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EXHIBITS

MARKED ENTERED

NO EXHIBITS PROFFERED

1 CAROLINA REAL ESTATE HOLDINGS VS. BRILIN ELECTRIC

2 THE COURT: Hopefully we will not -- we will not
3 be doing this when you all visit me in the new building
4 in about 12 months. We're supposed to be there in about
5 12 months and two weeks, so hopefully it will get done,
6 because this building has seen it's better days. But
7 thank you all for coming to Spartanburg.

8 All right. I've got that we're here on the
9 post-trial motions that have been filed, both by the
10 plaintiff and the defendant. Let's see. What I'll do
11 is, I usually take the motions like this by order of the
12 filing, and I believe the defendant's filed theirs
13 first. You know, logically, it might be better to hear
14 from the plaintiff first. I believe I want to hear from
15 the defendant first and take their arguments.

16 I know we've got motions going both ways, so
17 normally what I'll do is I'll let the party argue their
18 positions, as they're the party that has the burden of
19 persuasion. Let the other person reply, and we'll close
20 with a response from the party that's moving. But since
21 we've got motions both ways, we'll try to stick to that
22 plan, but we'll deviate towards the end and just let
23 y'all do close back and forth until finally we've killed
24 the horse.

25 So, with that being said, Mr. White, I believe

1 you've got three motions; is that correct?

2 MR. WHITE: Sort of.

3 THE COURT: You've got the defendant's motion for
4 treble damages and attorneys' fees. And then you've got
5 the -- well, you've got the motion for treble damages
6 and you've got the issue for attorneys' fees, correct?

7 MR. WHITE: Correct. Three issues, sort of two
8 motions.

9 THE COURT: All right.

10 MR. WHITE: And, Your Honor, I will be
11 referencing some of the trial exhibits. I've brought
12 some of the notebooks, if you don't have them.

13 THE COURT: I have your notebook left over from
14 the trial.

15 MR. WHITE: I've got an extra one if your clerk
16 -- may I approach, Your Honor?

17 THE COURT: Yes, sir.

18 MR. WHITE: If he would like to follow along too.

19 THE COURT: Thank you.

20 MR. WHITE: I'm ready when you are, Your Honor.

21 THE COURT: Yes, sir.

22 MR. WHITE: All right. Well, I will try not to
23 -- obviously you got our written submission.

24 THE COURT: I did.

25 MR. WHITE: So I won't belabor any of that. Just

1 to kind of highlight, as you know, I -- we had -- I
2 would argue that we prevailed on our counterclaim for
3 breach of contract that we asked for and received every
4 penny that we asked the jury to award. So I want to
5 correct something at the outset that was in my opposing
6 counsel's briefing papers, that there was a -- and this
7 is kind of almost a rebuttal, if you will, to his, I
8 think his last motion, with respect to the excessive
9 reward, that were -- was a \$280 excess in what the
10 Motion for Remittitur that the jury awarded, and that's
11 simply not true.

12 That \$280 was the amount of money that our client
13 spent making the brick repairs, so that was the \$280 we
14 asked for. We asked for our security deposit back for
15 the \$3,000. And then the \$1100 and change, 1144 and
16 change that we had to get the, get the forklift from.
17 So they literally gave us every penny we asked for, for
18 our breach of contract counterclaim. So I do want to
19 make that very clear, Your Honor.

20 Obviously the jury found that we presented
21 sufficient argument that there was no possible way that
22 we were responsible for that under any theory of
23 liability, breach of contract, negligence, or otherwise.
24 As a matter of fact, there are witnesses, I'm sure
25 you'll recall, testified that, you know, probably

1 something in the way that they built that building, and
2 there was some sort of settlement or subsidence or
3 something like that.

4 And that's probably what caused it, as evidenced
5 by the fact that after it was replaced two years ago,
6 that same issue seems to be appearing once again and
7 there's no evidence that anybody ever hit it since we
8 repaired it. So, so we 100 percent prevailed on our
9 breach of contract counterclaim.

10 And I would argue that we absolutely prevailed on
11 our South Carolina Unfair Trade Practices Act as well.
12 And I do want to spend a little bit more time on this,
13 Your Honor, because we did take a unique approach in our
14 closing argument, which I think is going to be used
15 against me. It certainly was in the briefing papers.
16 And I'll explain why we did that, because it probably
17 wasn't readily apparent. But there was a tactical
18 reason for that and I would say ---

19 THE COURT: Does your reply make you, even if
20 your technical strategy worked, does that make you
21 prevailing when they only gave you a dollar?

22 MR. WHITE: I believe -- I would say so, Your
23 Honor. I do believe it does. But what I want to
24 emphasize is closing argument is not evidence. And we
25 certainly presented evidence that there were unfair

1 trade practices, numerous unfair trade practices in
2 terms of the, the fake invoices and things like that.

3 THE COURT: All right. Let me rephrase my
4 statement.

5 MR. WHITE: Sure.

6 THE COURT: If the -- the elephant in the room if
7 you're striving for a trade practices claim is that you
8 argued for a dollar.

9 MR. WHITE: Yes, Your Honor.

10 THE COURT: And they gave you money for it.

11 MR. WHITE: They did give us money.

12 THE COURT: But that's the elephant you need to
13 address with me.

14 MR. WHITE: And I'm about to address that, Your
15 Honor.

16 THE COURT: Okay. Look forward to hearing it.

17 MR. WHITE: My thinking was, because I think one
18 of the main damages, and we certainly presented evidence
19 of this, and we presented it primarily through the
20 testimony of Mr. Brian Russell, is the fact that this is
21 where I'll turn you to Defense Exhibit 14 in the binder.
22 And that's the, kind of 20-plus page exchange that
23 happened primarily between me and opposing counsel.

24 And I would emphasize, Your Honor, that at this
25 point this is -- first of all, none of this is 408

1 protective, obviously. If it were, you wouldn't have
2 let it in. This was us doing punch list item work. And
3 it was -- we were doing punch list item work because
4 that's exactly the terms that were dictated to us by
5 plaintiff and plaintiff's counsel.

6 Any communications with respect to any repairs
7 that were gonna be made, had to be made through
8 communications through the attorneys. So, Your Honor, I
9 find myself talking to an asphalt contractor. I talked
10 -- I found myself talking to all these various other
11 contract -- the land, the door guy, to get the garage
12 doors replaced.

13 And so I'm doing all this work, not really in the
14 capacity as an attorney, but work that anybody could
15 have done, but was being dictated by the fact that these
16 communications, once I had that information, it made --
17 I had to be the one, as the attorney, to relay it to
18 plaintiff's counsel, because that's the terms that were
19 dictated.

20 It was quite unusual, Your Honor, the fact that
21 before the lease even ended, the -- my client, the
22 tenant was getting sued for, for these supposed breaches
23 of the lease, and not even giving us the opportunity to
24 do the standard stuff that happens in a commercial lease
25 when the tenant's exiting the premises, which is, okay,

1 let's, let's figure out what we need to do to get this
2 the way it needs to be so it's -- we can move out and
3 you can give us our security deposit back, and you can
4 rent it out to the next perspective tenant.

5 And none of that requires attorneys to do. None
6 of it. And so I found myself almost being like a, sort
7 of like a general contractor/project manager for, for my
8 client. And so, obviously I'm billing my client for
9 that because it's my time. So we incurred those
10 damages. And, in fact, at one point in response to a
11 question on cross-examination it was like, yeah, I've
12 got invoices sitting in my inbox. And so, things like
13 that.

14 And so, I made a tactical decision, because even
15 though it was kind of project manager type things and
16 not really true, like, legal expenses, but because we're
17 entitled to attorneys' fees is simply ask for a dollar
18 and then ask for attorneys' fees as a prevailing party,
19 per the lease provisions in a prevailing party under
20 the, under the UTPA. So that was a tactical decision I
21 made in, in our argument, but it doesn't negate the fact
22 that we presented overwhelming evidence of, basically,
23 unfair trade practices.

24 And, as you know, Your Honor, you denied a Motion
25 for Direct Verdict on that. Said, look there's

1 evidence. Don't know, you know, I'll paraphrase what
2 you said, but not sure he's going to get there with this
3 jury at the end of the day, but if there's enough for it
4 to go to the jury, then that's certainly nothing about
5 my argument should, should negate the fact that evidence
6 was presented that met those elements.

7 And then the jury was quite unique. And then one
8 thing they obviously, that I did say resonated with
9 them, Your Honor, was, look, your -- y'all -- your --
10 what's unique about this case is it's not just a
11 run-of-the-mill landlord tenant case where somebody
12 didn't do what they were supposed to do under the
13 contract.

14 Plaintiff, in his actions, went above and beyond
15 that by manufacturing fraudulent invoices, harassing the
16 tenants, employees constantly. You heard that testimony
17 that is, that is the property manager was there all the
18 time, taking pictures, making the female employees very
19 uncomfortable. I mean, none of that falls under the
20 scope of a, of a contract in any way.

21 So we presented overwhelming evidence in that
22 regard. And I said to that jury, look, this is one of
23 those unique cases in the context of a civil action
24 where you actually get to do a wheel of justice. And
25 the justice you get to do here is to send a message to

1 the plaintiff in this case, the principal of that
2 plaintiff, don't ever do this again. Don't ever do this
3 to the tenant that takes over this space, or takes over
4 any other spaces in any of your properties. And you
5 heard him say he's got a whole bunch of properties all
6 over South Carolina.

7 Send that message. And the way you can do that,
8 one, I was telling them, you know, give them nothing on
9 their breach of contract claim, give us what we're
10 asking for on our breach of contract claim, and find
11 that he committed an unfair trade practice.

12 And they, they did that, but they did it in a
13 unique way in terms of the money in that they said,
14 okay, I mean, I think I can -- I think we can all agree
15 to this. What the jury says, look, at the end of the
16 day, my client did bang up the wall and should pay for
17 that. But -- and then plaintiff should give them their
18 security deposit back and money for the forklift they
19 had to rent when they shut him down and the brick money.

20 And we are gonna send that message. We're gonna
21 send that message to don't do this again by awarding the
22 amount of money they did in the Unfair Trade Practices
23 claim. And that's how they did it. They didn't do it
24 the way I asked them to, but they certainly did it.

25 And so that leads me right into the prevailing

1 parties piece under the contract terms, and then I'll
2 wrap this up, Your Honor.

3 THE COURT: Before you move from unfair trade
4 practices --

5 MR. WHITE: Yes, Your Honor.

6 THE COURT: -- if you're good, I've got a
7 question.

8 MR. WHITE: Okay. Let's say you look at the
9 unfair trade practices claim, you argued what you
10 argued. You argued give us a dollar. They didn't give
11 you a dollar, they gave you \$6,890 -- 89.13; is that
12 correct?

13 MR. WHITE: Yes, Your Honor.

14 THE COURT: Okay. Where did the eight -- where
15 did the \$6,089.13 come from, other than what is the
16 other elephant in the room from me, is that they gave
17 you the same amount of money that they gave the
18 plaintiff?

19 MR. WHITE: I think that's -- I think that's the
20 answer, Your Honor, is they took the ten, minus the
21 four, got the six and that's where they -- and they said
22 that's how we're gonna send a message. That's how we're
23 gonna send the message. I think, you know, Lord knows
24 I spent more than \$6,000 in costs on dealing --

25 THE COURT: But is that ---

1 MR. WHITE: -- with this stuff.

2 THE COURT: But is that an unfair trade practices
3 calculation that's proper?

4 MR. WHITE: I would -- I think, I think, I think
5 it's proper, Your Honor, absolutely. I think it's ---

6 THE COURT: Then how can you support \$6,089.13 in
7 unfair trade practices damages?

8 MR. WHITE: Because I think the way the jury
9 looked at it, Your Honor, is that basically when they
10 gave the order of \$10,000-and change to the plaintiff,
11 that in turn damaged the defendant because the defendant
12 would have to pay that out. And they wanted to send
13 that message, said you're not getting a dime, because
14 what you should have done in this case is you should
15 have just worked this out.

16 You shouldn't have sued your tenant, and then you
17 would have got your wall paid for and we'd all move on
18 and wouldn't have a full-blown trial two years later
19 over something that's simple and uncomplicated, as this
20 case really was at the end of the day.

21 THE COURT: Well, that's a very good summary on
22 my feelings on the case in trying to get y'all to settle
23 the case. But we're talking about a jury verdict where
24 they came out and they awarded an unfair trade practices
25 damages \$6,089.13, in which I'm being asked then to

1 treble and I'm being asked to consider the award --
2 being asked to award attorney fees that are related to
3 the unfair trade practices and damages.

4 MR. WHITE: Yes, Your Honor.

5 THE COURT: So I'm trying to get my head around,
6 if I agree, if I agree with you, that the unfair trade
7 practice verdict stands. I'm trying to get my head
8 around, okay, there's got to be some relationship to the
9 amount of damages that were awarded and to what you
10 actually presented to the jury to come up with this
11 unfair trade practice, the amount that they came up
12 with.

13 The elephant in the room, an undeniable logical
14 link is that the monetary amount that they awarded in
15 unfair trade practices damage to your client, added to
16 what they awarded your client equals 100 percent to the
17 penny the amount of money that they gave the plaintiff.
18 But I do not believe that that is a correct calculation
19 of unfair trade practice standards that the jury can do.
20 I think you've got to have established by evidence,
21 proof before this jury that your client suffered \$6,800
22 -- \$6,800.13 [sic] for damages that are unfair trade
23 practices damages. Can you justify that?

24 MR. WHITE: I can't give you to that specific
25 amount, Your Honor, but I think -- I think what they

1 were doing is like that is the delta between the two,
2 what they awarded on their contract, breach of contract
3 claim with us. And I think that's what they were trying
4 to do is say, you know, basically those are -- by filing
5 this lawsuit you caused damages, but it's almost like
6 the award caused the damages, if you will. And so they
7 were negating that.

8 So they gave and they took away, you know? They
9 gave with the one hand and took with the other, and so
10 that's where they came up with the number, I think. So,
11 I think, I think that was entirely appropriate thing for
12 them to do, particularly in these facts and
13 circumstances of this case, so...

14 THE COURT: I'm not gonna -- and if that's your
15 position, that is your position. I'm not gonna say.
16 And I'm trying to analyze it the way in a very
17 legalistic compartmental way that I'm supposed to do.
18 But if that's your position, I'm not gonna say you're --
19 the position you just articulated is not supported by
20 what is the neon lights that this jury here was sending
21 when they came out with equal verdicts to both sides.
22 I'm not gonna say your argument is not correct, but I'm
23 just wanting to in the way that I, I believe I've got to
24 compartmentalize the unfair trade practices claim
25 separate as to how -- to the extent it can be separate,

1 from what your client was awarded otherwise. And also
2 what the plaintiff was ---

3 MR. WHITE: Right, Your Honor. And that, what
4 you just said, because there is the neon lights signal
5 that they set and there's the legalistic way that, you
6 know, with the UTPA claim, which that's exactly why I
7 asked for a dollar, because I didn't want to go down
8 that rat hole with a jury. I just wanted them to find
9 that there was an Unfair Trade Practice Act, that to
10 send that message and that we would ask for our
11 attorneys' fees under both that act and under, under our
12 preventative parties theory.

13 What I much rather they had done when I did, hey,
14 y'all, you all do this for this one, this for this one,
15 this for this one, and not given them a dime on their
16 breach of contract claim? Absolutely, it would be a
17 lot. I would have preferred that, but I think, I think
18 it's a distinction without a difference at the end of
19 the day. They could do what they did and they did what
20 they did for all the right reasons, so...

21 THE COURT: May I ask another question?

22 MR. WHITE: Yes, Your Honor.

23 THE COURT: Okay.

24 MR. WHITE: Ask away.

25 THE COURT: All right. So let's take that as

1 being your position on the unfair trade practices actual
2 damages amount. All right. Under the statute, Unfair
3 Trade Practice Statute, my understanding is that there
4 is the word must award or shall award treble damages.

5 MR. WHITE: Yes, Your Honor.

6 THE COURT: And shall award attorney fees. Both
7 of those are mandatory?

8 MR. WHITE: That is how I read that, Your Honor.
9 That as a matter of law, thou shalt treble, like there
10 is no discretion in your regard in terms of trebling the
11 award. Liberty Mutual Insurance Company 176 S.C. 2d
12 510, at 531 says: SCUFITA mandates that a court award
13 attorneys fees and costs to a successful party. Upon
14 the finding by the court of a violation article, the
15 court shall award to a person bringing such action under
16 this section reasonable attorney's fees and costs.

17 And that actually the word shall was emphasized
18 in that opinion and it was quoting directly from
19 39-5-140(a).

20 THE COURT: It goes back to -- okay. All right.
21 The -- let's move away from the actual damages part of
22 the Unfair Trade Practice and move to the attorney's
23 fees part. Then doesn't the attorney's fees part have
24 to relate to the damages that were awarded in regards to
25 the Unfair Trade Practices claim and not related to the

1 overall litigation itself, but just relates to the
2 unfair trade, that parts of the litigation that are
3 related to the unfair trade practices?

4 MR. WHITE: I think that's a fair assessment,
5 Your Honor, and I would say that in response to that
6 it's, you know -- again, this is a very unique case,
7 Your Honor. I mean, I, you know, I'd say nine times out
8 of ten, if not more, this is the type of case where we
9 would be talking economic loss and this is a breach of
10 contract case. And this is getting booted. You know,
11 it's the summary judgment stage, things like that.

12 THE COURT: But you all didn't file.

13 MR. WHITE: Well, I'm not filing against myself
14 in that regard, Your Honor, but so... But This is, this
15 is a unique case. I mean, I'd defer to my brother in
16 the bar. I'm assuming he didn't bring a summary
17 judgment motion because he didn't think he'd prevail,
18 because of the unique facts and circumstances of this
19 case because you have, you know ---

20 THE COURT: We had that discussion, the three of
21 us, about why didn't y'all file a summary judgment
22 motion. Go ahead, I'm sorry.

23 MR. WHITE: No, no, it's okay. It's okay, Your
24 Honor.

25 THE COURT: Yeah.

1 MR. WHITE: But to answer that question if I
2 didn't -- well, I'll put it on the record because I
3 think it was in chambers. I didn't file a summary
4 judgment motion in this case because I was not concerned
5 at all about the negligence claims that were brought in
6 this case and the conspiracy and all that. And I simply
7 have done everything I possibly could in this case, Your
8 Honor, to keep, keep my fees to a minimum.

9 I mean, you saw that our fees were -- and that's
10 not even counting getting prepared for this and being
11 here today, but \$99,000 in a case where the plaintiff
12 asked for \$20,000 to the jury, I mean, I've been trying
13 to do everything. So that was like one more thing.

14 I mean, I had the conversation with my client,
15 Your Honor, that normally I would file a summary
16 judgment motion because I think these negligence claims
17 should get booted if there's any evidence of conspiracy
18 or fraudulent misrepresentation. Well, look, to save
19 you money, what I'd like to do is just move for a
20 directed verdict, which we did, Your Honor, and you
21 granted it.

22 So, I mean, that's, to answer that question for
23 the record, that's exactly why we did not bring summary
24 judgment motions. It's just simply as a cost saving
25 measure in a case that should never ever had gone to

1 trial, let alone had been filed in the first place.

2 THE COURT: The reason for my question about not
3 -- I wasn't suggesting that you were padding your bill,
4 but I was wanting to suggest that an award of attorney's
5 fees under the Unfair Trade Practices Act needs to have
6 some relationship to the amount of money that was
7 awarded, those are damages that the jury found that
8 related to the unfair trade practices claim. And so,
9 based upon the information that you submitted to me thus
10 far, I cannot determine what amount of your bill that
11 you would contend is related to an unfair trade
12 practices claim versus what is just the broader contract
13 claim.

14 MR. WHITE: Yes, Your Honor. And I, I did kind
15 of digress on the summary judgment piece. And let me
16 answer that question. It's, it's -- what I was trying
17 to say was, you know, normally you don't even -- we
18 don't even get this far, but we got this far. But even
19 though they're two different claims, our breach and
20 their alleged breach of our obligations, our
21 counterclaim, and then the unfair trade practices, they
22 were so intertwined in this case, because it was
23 constant. I mean, we had the -- we had the evidence of,
24 like, in October. It was a Halloween day of, I believe
25 it was, before, before the lawsuit was filed in 2020

1 trying to work this out, doing all this stuff and
2 constantly dealing with all that.

3 So -- and if -- and I don't know if you saw it --
4 well, actually, we said we'd submit the, the invoices in
5 chambers, if you so requested, but if you were to --
6 I'll proffer for you right now, Your Honor.

7 You're gonna see up until that lawsuit was filed,
8 another attorney in my law firm was the one dealing with
9 Mr. Hoffman. And I believe you heard -- I mean, his
10 name came out at the trial. Mr. Hoffman was the one who
11 had this case. And then -- but Mr. Hoffman is not a
12 licensed South Carolina attorney, so the moment the
13 lawsuit was filed, he brought me in, and I, I took it
14 from there once it became a civil action.

15 But he spent a considerable amount of time and
16 effort trying to deal with all this stuff. These
17 constant, like, you owe us this, you owe us that. All
18 these invoices and all of that. And that continued on
19 throughout. So you've got these claims of you breach
20 your obligations under the lease and here's a fake
21 invoice to show. I mean, it's so intertwined. That
22 would be my answer to your question, Your Honor.

23 That it's hard -- it was hard to deal with one
24 without dealing with the other because of the way the
25 plaintiff approached this relationship from

1 pre-litigation and post-litigation to try to just deal
2 with all these claims of you're not doing this, you're
3 not doing that.

4 But going above and beyond an allegation of you,
5 you know, you're not doing what you're supposed to do,
6 to creating invoices. I mean, I think one of the most
7 powerful pieces of evidence that the jury heard, Your
8 Honor, was an invoice was given to our client in May of
9 one year. And the underlying invoice from that
10 particular contractor was from December of that year.
11 So somehow, some way the plaintiff knew what the number
12 was going to be to fix the duct work seven months before
13 they actually got an invoice from their preferred
14 vendor.

15 And you heard a lot of testimony about it, Your
16 Honor, from, from Mr. Becker himself about the fact that
17 he wants things done his way. He takes pride in his
18 properties. He's got his preferred vendors. He wants
19 his preferred vendors used, all that stuff, and was just
20 creating all these invoices.

21 I mean, so that like -- so it's like not just,
22 hey, you bang something up, but here's how much it cost
23 for us to fix it. And I'm like, well, what are you
24 talking about? And so, it's really indistinguishable in
25 terms of the work that we had to put in as lawyers to

1 deal with this, to defend our client from these
2 allegations, including these claims, which is fraudulent
3 claims, that you need to pay this, you need to pay that.
4 So that, that is my answer to that question, Your Honor.

5 THE COURT: Okay.

6 MR. WHITE: That it really is hard to just, okay,
7 this right -- you know, I know, you know, as a legal
8 matter, we need to compartmentalize a different cause of
9 action with respect to how the jury came down in terms
10 of liability reward. But in terms of being the
11 practitioner, it was impossible to compartmentalize
12 because it's all part of an ongoing back and forth
13 between counter parties, which is why you don't see an
14 unfair trade practices claim get this far. But this
15 plaintiff was, you know, doing all kinds of crazy stuff,
16 Your Honor. And, obviously, the jury felt the same way.

17 THE COURT: All right. Do you want to -- I don't
18 want to cut you off --

19 MR. WHITE: Yes, sir.

20 THE COURT: -- from unfair rights, but you need
21 to move on to why --

22 MR. WHITE: Yes, sir.

23 THE COURT: -- under the contract why you
24 prevailed.

25 MR. WHITE: Very glad to move on to that, Your

1 Honor. As you know, the lease has prevailing parties
2 fees. That is an enforceable provision of the lease.
3 And, quite simply, we prevailed. I think it's hard to
4 say, Your Honor, that a plaintiff under any
5 circumstances could be considered to have been a
6 prevailing party in a case where the jury ultimately
7 awarded it nothing.

8 And particularly under the unique facts and
9 circumstances of this case, is that jury awarded nothing
10 in the manner that they did to send a message to the
11 plaintiff, as we asked them to do, because of all the
12 untoward and inappropriate conduct that the plaintiff
13 engaged in, in this relationship with this tenant.

14 THE COURT: The contract, though, if I remember
15 correctly, used the word "may"?

16 MR. WHITE: May, yes. Let me -- I believe it
17 does say "may", Your Honor, but I will double check just
18 to be on the safe side.

19 THE COURT: Double check, because I was thinking
20 it was "may".

21 MR. WHITE: I'm incorrect. It does say "shall".
22 It's the very last provision, Your Honor, 26(g), right
23 around the signature blocks. Legal proceedings are
24 instituted to enforce any provision of this lease. The
25 prevailing party in the proceeding shall be entitled to

1 recover from the non-prevailing party reasonable
2 attorney's fees, court costs incurred in connection of
3 that proceeding.

4 THE COURT: So the qualifying or the
5 non-objective word would be reasonable?

6 MR. WHITE: Yes, Your Honor, reasonable, so...
7 And you have our affidavit on that. I'm happy to answer
8 any question on that, but I think given the scope of
9 this case, it's a two year -- two years in litigation,
10 about four or five months of pre-litigation, responding
11 to default letters, and trying to get out there and
12 resolve this and all that. And then all of this stuff
13 where I'm basically being like a punch-list item project
14 manager guy. There's a lot of stuff going on, so I do
15 believe our fees were very reasonable in this case.

16 It -- I mean, I can't tell you how many
17 conversations I had, Your Honor, with my client about
18 I'm doing everything I can. I didn't sue you. I'm
19 trying to defend you as reasonably as I can, and try to
20 resolve this.

21 And that kind of goes to let's talk about us
22 resolving this, Your Honor. I mean, we -- the biggest
23 problem we had in resolving this case is what are your
24 actual, like, no kidding damages? I've got all these
25 invoices and stuff and I don't -- we've alleged fraud,

1 obviously, because some of these, I don't believe the
2 work was ever done. Like, what's your actual number?

3 And I'll be honest with you, Your Honor, I didn't
4 know what that number was until I heard it with
5 everybody else during that closing argument. I really
6 didn't know what that number was. So that made it very
7 difficult to really make an offer. But we made offers.
8 We made an offer at mediation. We had offers before
9 mediation, we made offers after mediation.

10 And if I'm being quite candid with the Court, I
11 always thought in this case, and advised my client
12 accordingly like, look, I think, I think, you know, the
13 way this should have worked is you guys should -- if
14 y'all ---

15 If the landlord had done the walk through, like
16 we begged and pleaded them to do, and we would have
17 known that those studs were busted up, we would have
18 fixed them and you would have paid \$10,500, which is
19 about what they cost them to fix, or maybe even less, if
20 we had our contractor do it. Because we know that there
21 was sufficient evidence that was prevented, Your Honor,
22 that the quotes they were getting were inflated.

23 Some of them were three times as much as the
24 quotes we were getting for lifetime materials and labor,
25 which goes again to the Unfair Trade Practices Act

1 claim, basically juicing the numbers with their
2 preferred contractors. And so, like, what should have
3 happened in this case is they did the walk through, we
4 figured that out and we fixed it. It would have been
5 done.

6 Because that's the thing, and that did come out
7 in the evidence, Your Honor. We didn't know. Like, we
8 didn't know -- we knew there was, like, drywall busted
9 up, but we didn't know that the studs were messed up.
10 And we certainly weren't going to cut holes, as you
11 heard in the evidence. We're not gonna tear up the
12 demisen wall because at the end of the day it's not our
13 property, which is why we wanted to do all those walk
14 throughs. But we never got a chance to do that.

15 And so, really, like, that's what we try to do.
16 And finally, just to avoid the costs of a full week-long
17 trial, when we were on the May docket and didn't go, my
18 client went ahead and said, look, offer them \$20,000,
19 which is above -- twice as much as we thought he was
20 ever, like, anything, like if this had been done the
21 right way without getting lawyers involved, just work it
22 through it. Like two, you know, business folks
23 operating in good faith and dealing fairly with one
24 another. That's twice as much as what my client should
25 have been on the hook for. And he made that offer in

1 May.

2 And, Your Honor, we never got a response. We
3 didn't get a rejection of that. We never even got a
4 response to that offer, you know? And we never got a
5 counter offer until you hauled us in your chambers and
6 said I want y'all to resolve this thing. And we got an
7 offer of \$65,000.

8 The May -- excuse me. The Monday evening after
9 the first day of trial. That's the first time we ever
10 got a real offer of what to pay since mediation, which
11 if I wasn't clear earlier, just to flush that out, I
12 kept saying over and over to our mediator, like, I don't
13 -- I don't -- I need like -- I need these numbers
14 they're talking about, I don't know where they're coming
15 from. Like walk me through this. And if my memory
16 serves, whatever that number was, it was less than
17 \$65,000.

18 So the first, you know -- so, in terms of
19 prevailing party, they offered 65, we offered 20, they
20 got zero. So I think very simple -- you know, I went to
21 law school to avoid numbers, but when I look at those
22 numbers we won, okay? And we were the prevailing party,
23 and those were the circumstances, you know?

24 And I cited the Seckinger. You know, that,
25 that's the standard case in the context of allowing, you

1 know, attorney's fees. A prevailing party is the one
2 who successfully prosecutes the action or successfully
3 defends against it, prevailing on the main issue, even
4 though not to the extent of the original contention, and
5 is the one in whose favor the decision or burden is
6 rendered to judgment entered.

7 I mean, clearly on the main issue we won. And,
8 and when the plaintiff files a lawsuit alleging
9 liability and damages and gets nothing, the defendant
10 won. And so, I think it's pretty straightforward. But
11 also, you know -- and I got beat up a little bit in the
12 opposition brief, but I, I referenced the fact that the
13 second juror was an -- was the statutory attorney's fees
14 provision in that particular case, was in -- it was in
15 the mechanics lien context. And that's 29-5-10(b).

16 THE COURT: Does the mechanics lien statute
17 require use of the word shall receive or is it optional?

18 MR. WHITE: Well, it's more about who's the
19 prevailing party, Your Honor.

20 THE COURT: All right.

21 MR. WHITE: You know, and it says, you know --
22 so, the party whose offer is closer to the verdict
23 reached is considered the prevailing party in that
24 action. And I simply offered that for -- Your Honor, it
25 looked like you had a question.

1 THE COURT: I do.

2 MR. WHITE: Okay.

3 THE COURT: Okay. So, in you're trying to get to
4 where your guardrails are for this definition of
5 prevailing party is where your position is. And you're
6 arguing things that are factors that are -- most of the
7 things -- a lot of things you're arguing took place off
8 the record of this case.

9 MR. WHITE: Uh-huh.

10 THE COURT: We had a mediation. We had bench
11 conferences. I know the three of us, I tried to get
12 y'all to settle the case. You're arguing a lot of
13 things that are actually not on the record of this -- of
14 the actual trial of this case. Is your guardrails for
15 determining -- because, if I agree with you, and that's
16 a big if, if I agree with you and I award you money,
17 then I've got to look that you got to defend this at
18 some point in front of other judges.

19 MR. WHITE: Yes, Your Honor.

20 THE COURT: So is your guardrail gonna -- is your
21 guardrail of defining prevailing party take into account
22 all of the things that took place off of the record that
23 dealt with this case?

24 MR. WHITE: I think it's illustrative, Your
25 Honor. But, no, is the short answer to your question.

1 THE COURT: Okay.

2 MR. WHITE: What matters is the plaintiff filed a
3 lawsuit and got nothing from a jury. I mean, I think if
4 you grab 20 people on the street and said, who do you
5 think won, all 20 of them are gonna say the defendant.

6 THE COURT: And if the 20 people would understand
7 what went on with this case.

8 MR. WHITE: I don't think you have to, Your
9 Honor. That's my point. Like, if you're the plaintiff
10 and you sue somebody and you -- and the jury gives you
11 nothing, you've lost. We successfully defended the
12 action. We successfully defended the action on the main
13 issue. And that's why, that's why we are the prevailing
14 party. And I'm just throwing all that other stuff out
15 there as illustrative.

16 THE COURT: Right.

17 MR. WHITE: And, obviously, the mechanics lien is
18 inapplicable here, but the fact that, you know, 0, 20,
19 65, if this were a mechanics lien thing, we would have
20 won under those -- under that scenario, so... But, I
21 mean, plaintiff got zero. We won. And we're entitled
22 to the prevailing parties under both -- under the
23 contractual provision, in addition to the UTPA statute.
24 That's all I have, Your Honor, unless you have something
25 else.

1 THE COURT: I may have something later, but I'm
2 sure opposing counsel is gonna try to say that you got
3 too much money by getting nothing.

4 MR. WHITE: Sure. Yes, Your Honor. And I'm
5 saving rebuttal for his stuff, so...

6 THE COURT: I can't wait. Okay.

7 MR. DLUZNESKI: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 MR. DLUZNESKI: I do want to say a bit in
10 response to some of the points that opposing counsel
11 brought up. Your Honor, on August 17th, as part of our
12 post-trial motions, we provided a factual overview of
13 kind of what happened to get us to this point, to the
14 trial that we had a couple months ago.

15 And in that factual overview, Your Honor, I was
16 retained in this case in the fall of 2019. I've been
17 here almost from the beginning. So I'm familiar about
18 how we got from point A to point B in this case, okay?

19 CREH had some concerns about what its tenant,
20 Brilin Electric was doing out at this particular
21 property. There was withheld rent without getting
22 landlord's consent. There was damages that landlord
23 learned that tenant made to the property. So that's how
24 I got involved and that's the demand letter that was an
25 exhibit in this case that I sent to Brilin Electric.

1 I'm not gonna go through the whole factual
2 overview. It's a 16-page document. But, Your Honor, I
3 think the salient point with that is, the defendant in
4 this case was sued before their lease term ended,
5 because for the second time after we had that on site
6 meeting where it was myself, Mr. Decker, Mr. Hoffman,
7 who was involved for Brilin Electric at that time, and
8 Mr. Russell, we all met out at the property. And there
9 was a lot of testimony that came in at trial about that
10 on site meeting.

11 At the end of that meeting, Your Honor, the two
12 parties, Mr. Decker and Mr. Russell, shook hands. They
13 had a gentlemen's agreement that Brilin would, would not
14 do anything else in that building without getting -- at
15 least letting the landlord know what's going on. It's
16 the landlord's property. The landlord wanted to know,
17 and I think it's reasonable that the landlord wanted to
18 know, what Brilin was doing out at that property.

19 So, as I put in the factual overview, Brilin was
20 sued before the lease term ended because we did not
21 believe that we had any other choice. There was no way,
22 and we tried to work with them. There was nothing that
23 we did that was able to get this tenant's attention.

24 THE COURT: Let me ask you a question on that
25 point.

1 MR. DLUZNESKI: Yes.

2 THE COURT: But the jury found that your client
3 engaged in unfair trade practices. And I understand
4 your narrative and your background that came across very
5 strong during the course of the trial, but I can't -- I
6 have difficulty ignoring that the jury found that your
7 client committed an act of unfair trade practices. And
8 I had no exceptions taken to the law that I gave them
9 unfair trade practice.

10 I did question the wisdom of the defendant in
11 wanting to submit an unfair trade practice claim to this
12 jury, because I, from a strategy standpoint, from a
13 trial perspective I thought -- I didn't think it was
14 wise, but apparently I'm not as wise as what I sometimes
15 wish to believe I am. So how do I ignore the fact that
16 they -- that your client committed an unfair trade
17 practices?

18 MR. DLUZNESKI: Your Honor, I think what we have
19 here -- and, again, I don't know -- neither Mr. White
20 nor I know what happened in the jury deliberation room.
21 We don't know what they talked about. I do know that
22 shortly after they started deliberations, they came out
23 with a note. They wanted copies of the actual jury
24 instructions.

25 Frankly, Your Honor, I think the jury, you know,

1 if I'm speculating about what may have happened in the
2 deliberation room, I think the jury saw this as a
3 contract dispute. We had the lease. I honestly think
4 that unfair trade practices, that claim confused the
5 jury. And that's part of the basis for JNOB. I think
6 that they were confused about what an unfair trade
7 practice was.

8 And that, and that's reflected, Your Honor -- our
9 position is that's reflected by the fact that they
10 awarded the plaintiff -- or the defendant what we
11 believe, and I'll get to this in a moment, what we
12 believe is an excessive amount on the actual damage on
13 the unfair trade practices claim. That shows us that
14 they didn't really understand what that claim involved.

15 And, you know, it is -- I mean, the Court did
16 provide them with a substantial amount of, I think, jury
17 instructions on that point. But honestly, Your Honor, I
18 -- and, again, I'm speculating with this. I think the
19 jury was confused about what that Unfair Trade Practice
20 Act meant and how they should assess damages. And that
21 -- and the reason I can say that is because they gave a
22 damages amount that was completely unsupported by the
23 evidence.

24 THE COURT: Or they gave a damages amount that
25 said -- that sent a signal that they wanted to send to

1 the litigants in this case.

2 MR. DLUZNESKI: Sure. And that may have been,
3 but what counsel opposite argued to them during the
4 defendant's closing argument is, yes, send a message.
5 Send a message. Award one dollar to send a message that
6 CREH, you committed an unfair trade practice and we want
7 to admonish you and prevent you from doing that again.
8 The defendant asked for \$1, and what did the jury do?
9 They awarded 6,000.

10 THE COURT: But your -- and I don't want to --
11 your arguments are well received, but I want to be sure
12 that I understand the basis of your argument is still
13 speculation on your part as to what the jury did.

14 MR. DLUZNESKI: Certainly. Certainly.

15 THE COURT: Okay. All right.

16 MR. DLUZNESKI: So the next point Mr. White
17 talked about damages, and that the defendant is not
18 responsible for the damages. And, in fact, the
19 plaintiff got zero. Your Honor, that's not what the
20 jury found. The jury may not have awarded the full
21 \$28,500 that we asked them for in closing argument, but
22 they did award us \$10,513.88 as actual damages on the
23 breach of contract claim, so...

24 And that's even contrary to what the defendant
25 asked them to do in closing. The defendant asked the

1 jury to not give CREH a penny in actual damages. But
2 the jury did not do that. The jury awarded us over
3 \$10,000 in damages for breach of contract. And I
4 discuss that more in my Motion for Attorney's Fees,
5 which I won't get into at the moment, but the jury did
6 award us damages.

7 Now, talking about the closing argument. And I
8 spent some time in my, in my memorandum that I filed
9 with the Court talking about defendant's closing
10 argument. The defendant started his closing argument by
11 getting up and telling the jury, which I believe that he
12 also told the jury during opening statements, that this
13 is a bad movie. This is a bad movie. And he referred
14 to Brad Decker, my client, the principal of CREH as Dr.
15 Evil.

16 He referred to Wayne Shulty, the property manager
17 as Lurch. And that essentially the theory of this case
18 from the, from the defense, Your Honor, that the jury
19 heard, notably this is the last thing that they heard
20 before they started deliberations in this case, was that
21 this is a bad movie in which this, this terrible bad
22 faith landlord, Mr. Decker, also known as Dr. Evil, was
23 trying to take advantage of the feeble Brilin Electric
24 using his trusty henchman, Lurch, to do his bidding.

25 This is the last thing that the jury heard before

1 they started deliberating. And then they come out with
2 a verdict for unfair trade practices, 6,000 times more
3 than what -- actually more than 6,000 times than what
4 the defendant asked for. There can't be a coincidence,
5 Your Honor.

6 THE COURT: I heard you. You got up and gave a
7 reply before they went to their deliberations.

8 MR. DLUZNESKI: I think my reply was less than a
9 minute.

10 THE COURT: But they still heard you last. And I
11 thought your reply was very appropriate.

12 MR. DLUZNESKI: Thank you. And I understand.
13 But, but the timing -- I'm most concerned with the
14 timing between when they heard this and when they
15 started their deliberations. They had endless -- and,
16 frankly, Your Honor, I think that Mr. Decker commented
17 -- made a comment at some point in the trial that this
18 was the first time that he has ever been in a jury trial
19 situation on behalf of CREH. He was, frankly, beside me
20 for the entire pendency of the trial.

21 And when the defendant got up and started giving
22 its closing argument, name calling, him as Dr. Evil, and
23 Wayne Shulty as Lurch and saying that this was a bad
24 movie, he was reasonably and justifiably concerned about
25 how that would affect the jury and what they would

1 award.

2 And I think that this, that this damages award on
3 the defendant on this unfair trade practices is evidence
4 of that. That those inflammatory statements that they
5 heard in such short proximity before they started
6 deliberating influenced what they ended up awarding to
7 the defendant in this case.

8 THE COURT: So your position is that it was
9 counsel's closing argument that caused the award of the
10 unfair trade practices to be 6,000-and some-odd dollars?

11 MR. DLUZNESKI: I think that that's what the jury
12 had in its head, those inflammatory statements. I don't
13 know if it's what caused the jury to award that, but it
14 seems rather coincidental, and it very well could have
15 been a factor that that's what they heard so -- in such
16 short a time prior to starting their deliberations.

17 And talking about damages under the Unfair Trade
18 Practices Act, okay, the damages that the defendant
19 presented evidence of, the security deposit, the \$1144,
20 and I think 75 cents, that Brilin unilaterally withheld
21 from one of its month's rent without talking to its
22 landlord ---

23 THE COURT: Tell me that figure again, if you
24 would.

25 MR. DLUZNESKI: 11 -- \$1,144.75, I believe.

1 THE COURT: Okay.

2 MR. DLUZNESKI: Those two damages are what the
3 defendant presented to the jury as far as its, as its
4 breach of contract damages went, okay? There were no
5 actual damages presented of Brilin incurring any damages
6 in any amount from any alleged unfair deceptive trade
7 practices from CREH. And I am confident that if that
8 were the case, the defense would have argued that to the
9 jury in closing argument.

10 And I understand that closing argument is not
11 evidence. However, a closing argument can influence
12 what the jury does in the case. Now, the jury verdict
13 ended in, as far as actual damages go, in dog brawl.
14 Neither party got anything.

15 However, as the Court inquired when defense
16 counsel was making his argument, the \$6,089.13, where
17 did that number come from? There was no evidence
18 whatsoever to support that damages figure. The damages
19 that the plaintiff presented to the jury, and we can
20 include for sake of an argument, the \$280. I did not
21 hear that during the closing argument. My recollection
22 is it was the \$3,000, the 1144.

23 But if we include, for the sake of this argument,
24 that \$280 for replacing some of the breaks, those
25 damages are what the jury awarded was actual damages for

1 breach of contract. There were no damages presented
2 whatsoever that the jury could award for unfair
3 deceptive trade practices. Brilin suffered no damages
4 whatsoever. Brilin didn't pay any of those invoices.
5 So, as far as actual damages, if that's what the defense
6 is hanging its hat on, as far as unfair trade practices
7 goes in actual damages, Brilin didn't incur any actual
8 damages. So that was an improper calculation by the
9 jury. And I do have a Motion for Remittitur as to
10 unfair trade practices that I'll get into at the
11 appropriate time.

12 And remember, during its closing argument, the
13 defense asked for \$1. \$1 from the jury for unfair trade
14 practices. And then what's the jury do? They come back
15 and award \$6,089.

16 All right. Talking about section 29-5-10(b)
17 regarding the prevailing party determination. And I get
18 into this in the memorandum that I filed last month.

19 THE COURT: Now, is this for the prevailing party
20 for unfair trade practices or contract terms and
21 conditions?

22 MR. DLUZNESKI: That is for -- well, I think it's
23 for both because there's no definition as to what a
24 prevailing party is.

25 THE COURT: Okay.

1 MR. DLUZNESKI: So since there's no definition in
2 the lease, the lease provision, 28(g) doesn't define
3 what a prevailing party is, or what constitutes the
4 prevailing party. It just may be a case that the
5 prevailing party is entitled to attorney's fees,
6 reasonable attorney's fees.

7 And I agree, I cited *Seckinger* as well. I think
8 that's -- and I'll leave that for later when I argue my
9 Motion for Attorney's Fees. I just want to touch on
10 this 29-5-10(b). Number one, that is a mechanics lien
11 statute for determining who is a prevailing party in a
12 mechanics lien case. This case is a contract dispute.
13 It has nothing to do with a mechanics lien.

14 So, our position is that Court in determining
15 prevailing party, should not even consider section
16 29-5-10(b) in making this ---

17 THE COURT: What do you think I should consider
18 in determining prevailing party?

19 MR. DLUZNESKI: The definition that the South
20 Carolina Supreme Court establishes in *Seckinger*. And
21 I'll argue that issue when we get there.

22 THE COURT: Well, tell me now. I want to know
23 what is it -- what factors that relate to this case
24 should I apply to come to the conclusion that your
25 client was the prevailing party?

1 MR. DLUZNESKI: Okay. So, in *Seckinger* the court
2 defines prevailing party as the one who successfully
3 prosecutes the action or successfully defends against
4 it, prevailing on the main issue. Even though, and I
5 think this language, even though not to the extent of
6 the original contention.

7 And that's a citation from *Seckinger*. The court
8 in *Heath*, which is a Supreme Court case, observed that a
9 party need not, need not to be successful as to all
10 issues in order to be found to be a prevailing party.

11 So, in other words, Your Honor, the reason that
12 our position is, as we argue on our Motion for
13 Attorney's Fees, that CREH is the prevailing party, is
14 that CREH successfully prosecuted its breach of contract
15 action. And the reason I can say that is the jury
16 awarded us \$10,513.88 on our breach of contract action.

17 And the court in *Seckinger* makes clear that the
18 party need not be a success, need not be to the extent
19 of the original contention. So, in other words, worded
20 slightly differently, we did not have to receive the
21 full amount of damages that we asked for, asked for from
22 the jury in order to be declared prevailing party. We
23 asked for approximately \$28,500. A jury awarded us
24 \$10,513. And we prosecuted on the main -- we prevailed
25 on the main issue as well.

1 THE COURT: Well, let me help you. I perceive it
2 as being you prevailed on one issue.

3 MR. DLUZNESKI: Correct.

4 THE COURT: Because when this case first came to
5 me, and you have a lot of causes of actions.

6 MR. DLUZNESKI: Right.

7 THE COURT: -- that you were seeking. And you
8 were seeking a lot more damages than the \$10-some-odd
9 dollars that the jury gave you.

10 MR. DLUZNESKI: Well, Your Honor, I would agree
11 with that; however, the main issue, as I see it in this
12 case, was whether or not Brilin breached the lease.

13 THE COURT: Okay. And, and that was the main
14 issue. And, according to *Heath*, *Heath* makes clear that
15 a party need not be successful as to all of the issues
16 in order to be found to be a prevailing party. So if we
17 look at that in the context of this case, Your Honor,
18 the jury did give actual damages to the defendant on its
19 breach of contract counterclaim.

20 The jury did award, what we believe to be an
21 excessive amount of actual damages to Brilin's unfair
22 trade practices claim -- counter claim. However, the
23 Court in *Heath* says that we don't have to be successful
24 as to all of the claims in the action in order to be
25 determined to be the prevailing party.

1 And I do want to touch briefly on section
2 29-5-10(b), because I think it's, it's important.
3 Number one, it's a mechanic's lien statute. It has no
4 applicability to this case. So our position is that the
5 Court should not even consider section 29-5-10(b) in
6 determining who's the prevailing party in this case.

7 THE COURT: No, not even as persuasive authority?

8 MR. DLUZNESKI: No. And that's the second point
9 in my argument. Even if the Court finds that there's
10 some applicability to this ---

11 THE COURT: Well, I don't -- my decision is not
12 going to be based on whether 29-5-10 applies or not.

13 MR. DLUZNESKI: Okay.

14 THE COURT: I'm looking for y'all to educate me
15 on what your definition of prevailing party is. I'm
16 only accepting 29-5-10 arguments based upon this is what
17 counsel has looked at as a reasonable place to go to
18 find a definition of that word. You know, I'm looking
19 for y'all to educate me as to what you want me to apply,
20 the factors, in determining the prevailing party, then
21 tell me what those factors are in this case that
22 supported your position that your client was the
23 prevailing party.

24 MR. DLUZNESKI: Okay.

25 THE COURT: You know, that's what I'm looking

1 for. So whether 29-5-10 applies or not is -- don't get
2 hung up on that, because -- don't spend a lot of time on
3 that. That don't matter to me.

4 MR. DLUZNESKI: Okay. Okay. Fair enough. And I
5 go through that analysis of why it's not applicable in
6 my, my brief.

7 Getting back to your question, Your Honor, the
8 definition that we believe, and I think it's fair to
9 say, the defense as well, because the defense also cited
10 in their Motion for Attorney's Fees. The prevailing
11 party determination is the one from the court in
12 *Seckinger*. I, I think that that applies. And if the
13 Court considers that definition and considers how this
14 came out, CREH is the prevailing party under that
15 definition.

16 It matters not, according to the courts in
17 *Seckinger* and *Heath* if we did not get all the damages,
18 the full \$28,500 in damages that we had asked for from
19 the jury. It matters not, as well, that the defendant
20 also received an award of actual damages from the jury.
21 What matters for this definition is that CREH, as far as
22 its breach of contract claim goes -- and that is, in the
23 words of the Court, the main issue. CREH prevailed on
24 the main issue in this case, and the main issue is
25 whether or not Brilin Electric breached the lease

1 agreement. The jury found that. The jury unanimously
2 found that. And if they didn't unanimously find that,
3 they wouldn't have given us any money for actual
4 damages, as the defendant requested.

5 So we were successful in prosecuting that action.
6 It doesn't need to be to the extent of the original
7 contention. The full amount of damages. And it also
8 doesn't matter, according to Heath, that we didn't
9 prevail on all the claims. In other words, that we got
10 actual damages on our breach of contract claim, and the
11 defendant got nothing on either of those two claims.

12 That doesn't matter, according to *Heath*. Under
13 the definition that the court in *Seckinger* set out, CREH
14 is the prevailing party for purposes of this case.

15 THE COURT: Let me ask you this.

16 MR. DLUZNESKI: Yes, sir.

17 THE COURT: Your factual guardrails, I mean,
18 counsel for the other side has gone into the efforts
19 that were pre-suit, mediation, conferences with the
20 court, all the efforts, the settlements that didn't
21 place that all of a sudden did take the place, went back
22 and forth to highlight why his client should be the
23 prevailing party. Is that -- can I take into
24 consideration those things?

25 MR. DLUZNESKI: Your Honor, and that's the very

1 reason that I, that I included a factual background with
2 my brief. I wanted the Court to understand based on the
3 factual background. We tried to resolve this matter as
4 well prior to filing suit. That was the whole reason
5 that we had that October 31st, 2019, meeting out at the
6 premises. We were going back and forth, and I can't
7 remember who suggested it. I think maybe it was me.
8 Why don't we meet out at the property with these two,
9 walk the building, see what we're dealing with, and then
10 try to resolve it.

11 And both parties, Mr. Russell and Mr. Decker,
12 testified during the trial a couple months ago, that
13 they both genuinely believe that that turned out well.
14 And then after that, there was other stuff that happened
15 that Mr. Russell told us and shook Brad Decker's hand
16 and said he wouldn't do. It caused us to think or
17 caused Mr. Decker to think, this tenant's not listening
18 again. This tenant's gone rove again, in his words.

19 We need to file suit to get their attention and
20 seek a remedy, seek readdress for these damages that we
21 have sustained up until this point. And there were
22 additional damages after that. So, I think if the
23 Court's gonna consider that kind of information -- and,
24 number one, I think that's 408 material. I don't know,
25 you know, as far as settlement negotiations and

1 settlement offers go.

2 I think the Court also needs to consider the, the
3 pre-suit efforts that we made on the plaintiff's side to
4 settle this dispute, without even having filed suit.

5 THE COURT: Thank you for sharing that with me,
6 but let me -- I want to be sure I understand your
7 position. Is it -- should I consider things that are
8 not -- that did not take place in the trial, i.e., the
9 settlement negotiations, pre-suit conferences that as
10 you outlined in your letter that occurred prior to the
11 time, should I consider those things at all or should I
12 just limit it to what transpired that's on the record in
13 this proceeding?

14 MR. DLUZNESKI: Your Honor, I think, I think the
15 Court should limit it's determination based on what is
16 actually in the record.

17 THE COURT: Okay.

18 MR. DLUZNESKI: And the meeting and some of the
19 stuff that I've talked about in this brief actually are
20 in the record of the trial.

21 THE COURT: Okay.

22 MR. DLUZNESKI: All right. I want to talk about
23 these fraudulent invoices. Again, I can't remember how
24 many there were, all the CREH witnesses denied under
25 oath on the witness stand that any documents that they

1 produced were fraudulent. They denied all of those.
2 Every question that the defense asked about these
3 fraudulent invoices, our witnesses denied.

4 So our position, and I would submit to the Court
5 is, with respect to those fraudulent invoices, the
6 defendant has not proven -- has not met their burden of
7 proof with respect to whether or not those invoices were
8 fraudulent, because every single plaintiff's witness
9 denied that, and they had nothing to continue the
10 examination to try and support those.

11 Again, the defendant never paid any of those
12 allegedly fraudulent invoices. The defendant made no
13 mention of those in his closing argument when it was
14 talking about damages. What the, what the defendant
15 mentioned in his closing argument as far as damages
16 goes. Where, again, the \$3,000 security deposit and the
17 1144.75 for the withheld rent. I believe it was for
18 August 2019. Those were the only two things, Your
19 Honor.

20 And the defense, in its closing argument, to my
21 recollection, mentioned as far as damages goes. And
22 that's why the defense said, we want \$1, nominal damages
23 on our unfair trade practices claim. They didn't
24 present any of those invoices, those allegedly
25 fraudulent invoices, those damages for unfair trade

1 practices because there was not reasonable basis to
2 argue that the jury should award damages for those.

3 THE COURT: All right. Help me out. Why are you
4 bringing up these fraudulent invoices? You've got three
5 motions, as I understand it. A Motion for Attorney's
6 Fees and costs, JNOB, and a Motion of Remittitur. What
7 issue does that apply to?

8 MR. DLUZNESKI: Was that to me or Mr. White?

9 THE COURT: You.

10 MR. DLUZNESKI: That is for the motion -- well,
11 two motions, one for JNOV, as to unfair trade practices,
12 because one of the elements for unfair trade practices
13 is that the defendant had to have suffered actual
14 damages as a result of the unfair trade practices. And
15 it's also in support for the Motion for Remittitur as to
16 unfair trade practices because there were not actual
17 damages presented to the jury. And, in fact, the
18 defendant asked for \$1. So that, that's the
19 applicability of those invoices.

20 THE COURT: Okay.

21 MR. DLUZNESKI: And, again, the damages -- and I
22 want to make sure this is clear, that the damages that
23 the jury awarded ---

24 THE COURT: All right. Let me help you out.

25 MR. DLUZNESKI: Yes, sir.

1 THE COURT: My thought process is that the
2 defendant is going to win on the did he establish an
3 unfair trade practices claim. I might have doubted it.
4 I might have thought it was a bad idea, but I believe
5 that there was evidence that was presented during the
6 course of the trial that the jury could take and view it
7 as equal to unfair trade practices.

8 I do have -- and so, I think he's over that
9 hurdle, I think, to establish unfair trade practices. I
10 might not agree with it, you know, I didn't agree with
11 it then, but the jury did what they did and I think
12 there's evidence to support the jury's decision. I do
13 not believe it is my role, nor do I have the authority
14 to invade that.

15 What I do want to hear the arguments on is the
16 fact they gave this amount of money and his argument to
17 the jury was for \$1. You know, that, that is just, as I
18 mentioned to defense counsel, that's an elephant that I
19 can't ignore. You know, now tell me what that means,
20 you know?

21 MR. DLUZNESKI: What that means, Your Honor --
22 and this is the content of our Motion for Remittitur.
23 But as far as those actual damages go, and this gets
24 back to the damages that the jury awarded for breach of
25 contract, because that's the evidence that the defendant

1 presented evidence of during its case. So it did not
2 present any evidence from actual damages sustained from
3 any allegedly unfair act by the plaintiff.

4 So our position is, that if the Court is inclined
5 not to grant JNOB, as far as unfair trade practices go
6 -- goes, we would ask that the Court grant our Motion
7 for Remittitur and reduce the damages for unfair trade
8 practices either to zero, which is the amount of actual
9 damages that the defendant presented evidence of,
10 nothing, or alternatively, that the Court reduce the
11 actual damages award for unfair trade practices down to
12 \$1, which is what the defendant itself asked the jury to
13 award.

14 THE COURT: I'd probably take it to zero, because
15 I've been involved in litigation before where juries
16 have found in favor of a party and awarded \$1. And I
17 think that case law establishes that a jury has the
18 ability to award nominal damages, as a statement that
19 they do believe the party was successful. And I think
20 if I awarded zero, if I said, as I've just said, that
21 there was evidence to support the jury's decision that
22 there was unfair trade practice and I gave them a
23 dollar, I think that's reversible error.

24 I think that I've been involved in jury cases
25 before where the jury actually came back and made it --

1 found for a party seeking a claim found for the
2 plaintiff and awarded zero and I had to send them back
3 to give a dollar amount, and they came back with a
4 dollar, you know, as a statement to -- by the jury. And
5 that, my understanding is, that that is permissible.
6 That's not reversible error to do that, do the \$1 thing,
7 and that's just my thought.

8 All right. So you want me on the JNOB either to
9 reduce it down to -- you want me to reduce it down to a
10 dollar, but your argument is it would probably be better
11 if I reduce it to zero, which I've indicated I probably
12 won't do?

13 MR. DLUZNESKI: Well, my initial argument is if
14 the Court grants the JNOB, as I've, as I've argued
15 there, is similar to what I argued during the argument
16 for summary judgment, that the defendant has not proven,
17 you know, one or more elements of that and that the
18 Court just dismiss it, notwithstanding the jury's
19 verdict. That's our first motion as to that
20 counterclaim.

21 Our second motion is as an alternative, if the
22 Court is not willing to take that action and dismiss it
23 outright, is to reduce the actual damages down to either
24 zero, which is the amount that the defendant actually
25 showed, you know, evidence of, or \$1, which is what they

1 asked the jury to award to send the message.

2 THE COURT: Okay. Did we cover -- okay. I think
3 I've got that. All right.

4 MR. DLUZNESKI: And then the other two, just
5 very, very quickly, I think -- and, again, my
6 recollection, I also moved for remittitur as for the
7 actual damages for breach of contract. The jury ended
8 up awarding \$280 more than what I recall the defendant
9 arguing during closing as to what its damages were. So
10 I asked for a remittitur on the actual damages on breach
11 of contract.

12 The defendant's breach of contract counterclaim,
13 to reduce it by \$280. So that would just account for
14 the \$300 security deposit, and the 1144.75 from the
15 August, 2019, rent.

16 And then my last motion, Your Honor was for
17 attorney's fees. I think we've gotten into that. I
18 understand that the Court is not really looking at
19 29-5-10(b). Our argument is against its applicability
20 in this case are outlined in our brief.

21 THE COURT: Why do you feel like -- your bill was
22 not as substantial as defendant's attorney bill. Why do
23 you feel like you should get everything if I decide that
24 you are the prevailing party?

25 I, I think the Court can look at what is in the

1 record. And, number one, my client and I were both
2 shocked at how high the defendant's attorney fee bill
3 is. The defendant and the plaintiff have both offered
4 to make invoices, the itemized invoices showing exactly
5 what was billed available for in-camera review. We
6 would request that, based on the fact that we're looking
7 at a \$99,000 invoice, versus a \$45,000 invoice as of
8 when I filed it.

9 Again, I think that that's something for the
10 Court to determine. The, the provision in the lease
11 agreement, 28(g), almost mandates the Court, because it
12 uses the word "shall" award attorneys fees to the
13 prevailing party. And I think it's in the Court's
14 discretion to determine what is reasonable.

15 As *Seckinger* points out, I think we squarely fit
16 in that definition. I think the Court should look to
17 the evidence and the testimony in the record. In the
18 record is testimony about that October 2019 visit. The
19 efforts that we made prior to filing suit to resolve
20 this matter to no avail. And this was just a defendant
21 and commercial tenant that continued doing things
22 without even informing the landlord of what was
23 happening.

24 The Court heard testimony about -- you know, one
25 of the things of one of the damage was those rollup

1 doors, that I'm sure the jury got sick of hearing about.
2 The defendant just took the doors off, broke the doors
3 off without even telling the landlord, discarded them.
4 Didn't even ask the landlord if they wanted them back,
5 despite multiple requests for Mr. Decker, through
6 counsel, asking number one, where those were, where
7 those doors are or were, and requested that they be
8 returned.

9 So, Your Honor, I think in this case, the picture
10 that we have got, based on the evidence, is this is just
11 a commercial tenant that did what it wanted to do
12 whenever it wanted to do. Pre-suit all the way up to
13 the closing argument, it withheld \$1144.00 from its
14 August 2019 rent without even asking for consent of the
15 landlord.

16 It knew what its monthly rent was. Those figures
17 were in the lease. And yet, Brilin unilaterally decided
18 to withhold that amount as for a forklift or whatever.

19 THE COURT: Thank you. We have a point of
20 clarification. I'm just asking.

21 MR. DLUZNESKI: Yes, sir.

22 THE COURT: All right. So if you are the
23 prevailing party, you don't want me to consider things
24 that are outside of the trial record in this case, but
25 in determining what's the definition of reasonableness

1 for the award of attorney's fees, you do want me to go
2 outside of the record in this case and consider things
3 like the pre-suit discussions and things that took
4 place?

5 MR. DLUZNESKI: Only to the extent that those
6 pre-suit discussions are on the record of the case. And
7 I think that there is some testimony from trial as to
8 what those pre-suit discussions consist of. But
9 pre-suit discussions that are not in the record or
10 pre-suit discussions or discussions contemporaneously
11 with trial, they're subject to 408 protections, I do not
12 think that the Court should consider.

13 THE COURT: Let me ask you about the 408
14 protection. 408 protection, my understanding is, it
15 goes to the issue of liability. We're not talking about
16 liability when it comes to attorney's fees and what's
17 reasonable under the terms of the lease.

18 MR. DLUZNESKI: Sure. But to the extent that
19 those are not in the record, I mean, if the Court's not
20 going to consider a 408, then I'll still argue if those
21 aren't in the record of this case, the Court should
22 nonetheless not consider them.

23 THE COURT: Okay. All right. Any reply to any
24 of that? He wants me to take away your \$6,089.13 for
25 the award for the unfair trade practices. And he wants

1 me to call his client the prevailing party because he
2 prevailed on the ultimate issue on the breach of
3 contract.

4 MR. WHITE: Yes, Your Honor. I'll reply, I
5 promise. I will say the main issue is did the plaintiff
6 do right by -- the landlord do right by the tenant.
7 That's the main issue here. This is a contractual
8 relationship between two parties, all right?

9 And what the jury did -- well, let's start with
10 this. I tried to get the jury to throw out and not
11 assess any liability or damages with respect to the
12 breach of contract claim pertaining to the wall, the
13 demising wall, on the basis of legal arguments that I'm
14 sure went over the jury's head in terms of the waiver
15 issue and the good faith in fair dealing piece.

16 So that was my argument there, because there was
17 evidence to show that, you know -- that we, it's likely
18 that the forklift is what caused damage to the studs and
19 all that. And I certainly think that's what the jury
20 found, okay? And so that's why I was asking for a
21 dollar, because I didn't want to go in a rabbit hole of,
22 hey, I'm doing all this project management stuff not
23 really for a lawyer and we want you to assess those
24 damages.

25 What they did, Your Honor, and what really

1 matters, and I do not think the jury -- this Court, in
2 its discretion should disturb this in any way, is
3 they've said with their breach of contract, liability,
4 and award for plaintiff, if you had been a normal,
5 rational human being and business person, this is what
6 you should have gotten, but we're not giving you a dime
7 because of how you conducted yourself, which was
8 unethical and inappropriate.

9 That is what the jury did. That is the message
10 they sent. And in that context, there is no possible
11 way that the plaintiff can be considered a prevailing
12 party when you look at it in terms of what the main
13 issue is. Did you do right in the way you conducted
14 yourself? And the answer from the jury was an emphatic
15 no.

16 If we're gonna talk about this in terms of the
17 breach of contract, as opposing counsel wants to, I mean
18 they said, you know, tenant, not only did the tenant
19 breach the contract, but it was negligent and it made
20 fraudulent misrepresentations, and it conspired with
21 another third party to, to hide the, the extent of the
22 damage to the wall. And you heard Mr. Russell say he
23 didn't know about it, because no one -- they wouldn't do
24 the inspections to open up the wall.

25 Well, Your Honor, you threw out those -- the

1 latter three, and all that went to the jury with respect
2 to the plaintiff's complaint, was that breach of
3 contract. And it wasn't just the wall. It was the
4 garage doors. It was the bricks. It was the asphalt.
5 It was all that stuff. It was the carpets.

6 You know, all of that, and the jury didn't buy
7 one bit of that. And all they ended up saying was the
8 wall, okay? Yeah, at the end of the day, he probably
9 didn't bang up that wall, he probably should have got
10 \$10,500, but we're not giving you a dime because you
11 didn't do right by your tenant. That's the main issue.

12 The jury was not confused at all by the Unfair
13 Trade Practices Act, because instead of going with my
14 waiver and breach of the implied covenant, good faith,
15 and fair dealing as to why you should wipe out that
16 \$10,500 damages to the wall. The jury wasn't confused
17 by that. Your instructions were quite clear on the UTPA
18 claim, Your Honor. And I absolutely think that they
19 followed those instructions.

20 They just sent a message a different way. We're
21 gonna wipe you out because of what you, what you did.
22 And that's where the 6,089.13 comes from. That's what
23 you would have gotten if you had not acted in an unfair,
24 deceptive, and unethical, and irresponsible way.

25 I will say this, Your Honor, and I will try not

1 to get -- I'm not gonna get heated about it, but the,
2 the comments about inflammatory statements are not well
3 received by this table. First of all, there was
4 absolutely no objection to anything we said during our
5 closing argument. So I think that's a plain error of
6 review on appeal, if we've got to go that far, but I
7 certainly don't think there was any plain error.

8 Okay? The comment about Dr. Evil was like just
9 in the context of it just seems like this guy's out to
10 get him. Like, that's how this guy's acting. He keeps
11 sending over his property manager to harass these
12 people. It's almost like he's Dr. Evil sitting in his
13 lair plotting against this guy.

14 And I even said, you know, the Mike Myers, one,
15 if you're of a younger vintage and Telly Savalas if
16 you're the older vintage. The jury laughed at that,
17 Your Honor. So it wasn't particularly inflammatory, it
18 was just -- it's just a little injection of humor into
19 this case. So it's not well received.

20 But more importantly, as a matter of law, there
21 were absolutely no objections to that. So I think that
22 you should absolutely discard that argument in its
23 entirety, that somehow, some way, I, in my closing
24 argument, said something that was so inflammatory that
25 it inflamed the passions of the jury and caused them to

1 do what they did.

2 Now, if anything inflamed the passions of the
3 jury, it was the inappropriate conduct of Mr. Decker
4 during the course of this relationship with my client.
5 That's the loud and clear message that this jury
6 conveyed and the manner in which they found liability
7 and award of damages.

8 We don't need to prove an exact number for
9 damages, Your Honor. And, again, I've explained, I
10 think, the technical reasons why I simply asked for \$1
11 in the Unfair Trade Practices Act claim, but that
12 doesn't negate that we had damages in excess of that. I
13 could have asked for a dollar on the breach of contract
14 claim, instead of \$4,424.75. And it wouldn't have
15 negated the other \$4,423.75 if I had done that, okay?
16 It's argument. It's not evidence.

17 I did -- I will say this, you know, because I
18 wasn't in that back room and none of us were, but if you
19 start tallying up those fraudulent invoices, it might
20 get close to \$6,000. So maybe that's what they were
21 thinking. I don't think that in my heart of hearts, I
22 think they were sending a very clear message to the
23 plaintiff that because you acted in the manner you did,
24 we're not giving you anything.

25 THE COURT: Let me ask you a question about that.

1 MR. WHITE: Yes, Your Honor.

2 THE COURT: I asked counsel about what's -- he
3 argued there's no evidence those invoices were
4 fraudulent. Asked him what of his motions that applied
5 to. I mean, one of the reasons that I made the
6 statement that I felt like that there was evidence upon
7 which a jury could find unfair trade practices were some
8 of the billing methods that had been presented to them,
9 as I recall the testimony. Is it necessary that that
10 actually has to produce fraud for there to be an unfair
11 trade practices claim or fraudulent or...

12 MR. WHITE: The ---

13 THE COURT: Let me ask you this, do you agree
14 with the statement that the billing -- that all of the
15 billings that were presented in were never acknowledged
16 as being fraudulent by the witnesses?

17 MR. WHITE: Well, Your Honor, I disagree. I
18 mean, I kind of reacted when he made that comment, Your
19 Honor, because I think, well, I think the jury thought
20 otherwise. You can continue to make the same argument
21 you made at trial and you can continue to argue the fact
22 that your client got on the stand and said, no, we,
23 blah, blah, blah, I think the jury thought otherwise.

24 To answer the first part of that question, no, I
25 don't think it has to be fraudulent. I'm trying to

1 remember the, the ETPA instruction in front of me, Your
2 Honor, but just really it has to be like unethical, and
3 I forget and -- or something else. So it doesn't have
4 to be fraudulent per say.

5 I mean, if it was something like that, we could
6 have me a fraud counterclaim. It just has to be
7 unethical and inappropriate behavior. And that's
8 certainly what it was. And so I think, perhaps my use
9 of the word fraudulent is a term of art in this context,
10 but I also think -- and, again, it's unique because
11 we're talking about, you know -- and I will say, when I
12 made those counterclaims, Your Honor, I was very mindful
13 of the economic loss rule, you know?

14 And I did -- and you may recall, Your Honor, I
15 did in our counterclaim, I actually, to your point about
16 the billing methods and things like that, I actually
17 alleged upon information and belief that, that there was
18 a pecuniary interest to be gained by Mr. Decker through
19 these invoices. So fake, fraudulent, whatever you want
20 to call them. And the most illustrative example is that
21 is the Decker Inspections invoice itself, which we
22 didn't discover until the deposition that that was a
23 wholly owned company by him.

24 So not only is he preparing fake invoices, but
25 he's preparing fake invoices for other companies that he

1 owns, where he is literally the payor and payee in that
2 particular invoice. I mean, so that, that is -- and the
3 jury was not confused at any point during that evidence.
4 They were not enflamed by my argument, and they followed
5 your instructions with regard to that.

6 With respect to prevailing party in terms of
7 off-the-record stuff, again, that's just for
8 illustration purposes. I don't want to belabor this
9 point. The only reason I put in my brief, Your Honor,
10 the reference to the mechanics lien statute is because
11 the black letter law case on what defines prevailing
12 party, *Seckinger*, was a case that dealt with mechanics
13 liens, so...

14 And I just threw that in there, it was like, hey,
15 by the way, *Seckinger's* a mechanics lien case and there
16 is actually a very simple formula in that context.
17 Whoever's closest in their settlement offer to, to the
18 verdict is the prevailing party. And so in our case,
19 zero, 20, and 65, you know, that's simply for
20 illustrative purposes, Your Honor.

21 I'm not asking you to use the mechanics lien
22 statute as bonding or persuasive authority in any way.
23 I just want to make that very clear for the record,
24 because we heard a lot of argument from opposing counsel
25 on that.

1 I'll also say there's a lot of stuff, the factual
2 summary and all that. There's an integration clause in
3 this lease, so we keep hearing about this. And that was
4 elicited. I elicited that through Mr. Decker during my
5 cross-examination. So all this gentlemen's agreement
6 and all that stuff doesn't matter in the context of the
7 breach piece, the lease piece.

8 But it does matter in the, in the Unfair Trade
9 Practices Act claim -- act -- piece. This is what I'm
10 talking about, how this is so intertwined, because they
11 did have this sort of agreement. And then Mr. Decker
12 just basically went off and did his own thing. Started
13 to get quotes from vendors, even though there's
14 provisions in the lease that say unless it's over
15 \$3,000, the tenant's responsible for it and does not
16 need to get the permission of the landlord to make that
17 repair.

18 So he went off the rails immediately with all
19 these invoices. Some of which were fake, we argued were
20 fake. And I believe the jury found were fake or
21 fraudulent, whatever term we want to use.

22 I will say, there was a lot of stuff about the
23 pre-suit discussions. The one thing that didn't really
24 come up in the pre-suit discussions, Your Honor, is like
25 the damage to the studs is simply no one knew that. No

1 one knew that there was a damage to the material
2 structural components of the devising wall until after
3 we had completely vacated the premises, turned
4 possession back over to the landlord. And they went in
5 with their preferred vendor and opened up the wall and
6 had them look at it. Got their engineer to come out and
7 look at it, make an assessment that some of it needed to
8 be repaired. All of which we would have done, Your
9 Honor, had we been given the opportunity to do so.
10 Which we told the jury -- and, again, that just goes
11 back to the point of like that's why I think they gave
12 the 10,5. Like we kind of -- I kind of concede to that
13 in my closing argument. Had given the opportunity to
14 fix the wall, we would have fixed the dang wall, but
15 they refused to do the walkthrough. And that was part
16 of my whole waiver argument. You shouldn't give any
17 money because they basically waive the opportunity to
18 ask for these damages because they wouldn't do a full
19 and final walkthrough, which is a commercial and
20 reasonable thing to do in the context of a commercial
21 lease arrangement in South Carolina.

22 Again, that's a legal argument and I don't think
23 -- I mean, maybe they did. Like opposing counsel said,
24 they did ask for a written copy of the instructions, and
25 maybe that's what they were trying to drill down on, but

1 weren't able to do it without written instructions. So
2 be it.

3 But, again, Your Honor, prevailing party, we won.
4 It's as simple as that. We won the case and we should
5 get our attorney's fees under the provisions of the
6 lease. And we should get our attorney's fees under the
7 Unfair Trade Practices Act claim as well. And they are
8 so intertwined, so I don't think there's -- you can
9 really take some out with respect to that. But if the
10 Court is so inclined to kind of consider that route, we
11 would, like we said, we'd be happy to give you our
12 invoices.

13 And then I'll end with that. Our invoices, our
14 rates are higher than opposing counsel's. And I was
15 doing a whole lot in this case, but I've never had to do
16 in a commercial landlord tenant case, calling
17 contractors over and over again to get this stuff fixed,
18 all of which -- and that's Defendant's Exhibit 14. Why
19 we put that into evidence. Why we walk through that in
20 excruciating detail with Mr. Decker with the jury so
21 they understood how complicated this was in terms of
22 dealing with this guy.

23 And, again, none of that was for rate because
24 none of that was about liability. That was standard how
25 do we fix the things that need to get fixed, as we -- as

1 this, this contractual relationship winds down. And
2 that's one of those unique facts and circumstances case.
3 It was all being done by lawyers. I never had to get --
4 I've never had to get this far in the weeds on a case
5 like this.

6 I mean, look, Your Honor, I mean, you heard it
7 because you were there, but one of the -- you know, it
8 goes over first chronological order towards Defendant's
9 Exhibit 14. And I won't read it off because I know you
10 want me to sit down. I talked about, look, Steve, I
11 don't know why we're -- like, once we do X, Y, and Z, I
12 don't really know why there's a lawsuit going on. I
13 don't know what we're doing here. And I'm just saying
14 this, Your Honor, because this is why we spent a lot of
15 time on this. Although, I'll argue about a third, 40
16 percent of the fees alone are just the trial itself and
17 getting prepared for trial, because trial is a very
18 expensive thing. But the pre-trial stuff, there was a
19 lot of that.

20 I mean, I was desperately trying to do everything
21 I could once this lawsuit was filed to make it go away.
22 And doing things like calling their asphalt contractor,
23 calling our asphalt contractor. Calling our garage guy,
24 doing all this stuff. And all the while relaying to
25 opposing counsel what we're doing and what we're trying

1 to do to resolve this.

2 I mean, that -- there's a whole lot of other long
3 e-mail chains between myself and opposing counsel on
4 trying to resolve this thing, which are 408 protected,
5 which is why they didn't go into the trial exhibits.
6 And that's all stuff that I was doing to make this go
7 away, which is why my fees are likely higher than my, my
8 opposing counsel, because of the things that I was doing
9 to make this go away. So, unless you have any further
10 questions, Your Honor, I will sit down.

11 THE COURT: I don't have any further questions.

12 MR. WHITE: Thank you.

13 MR. DLUZNESKI: Just very briefly, Your Honor,
14 just to touch on a few of the points that were made.
15 First, regarding the waiver issue, the jury wasn't
16 charged with a waiver. The defense didn't even mention
17 the word waiver in any part of its case, its case in
18 chief or otherwise. The Court actually, when we were
19 meeting for the charge conference, the Court actually
20 indicated that it wasn't going to charge the jury on
21 waiver for that exact reason. So any argument related
22 to waiver, I would ask the Court to disregard.

23 Regarding the inflammatory statements and the
24 fact that we didn't object to those during defense's
25 closing argument, that's true. However, in preparing

1 this, our post-trial motions, we came across case law,
2 and this is what caused me to, you know, include it in
3 the first place. There's case law that inflammatory
4 statements do not need to be objected to during the
5 closing arguments so long as they are brought up in
6 post-trial motions.

7 About the argument not being evidence, that's
8 true. The argument, the Court instructed the jury,
9 don't consider counsel's argument because it's not
10 evidence. However, if we look at evidence, the evidence
11 put in of the actual damages caused by the alleged
12 unfair deceptive trade practices by CREH, the defendant
13 didn't present any actual damages that Brilin had
14 suffered as a result of that.

15 And I would say, Your Honor, and this is a case
16 that I cited in my case for remittitur, it's Rush v.
17 Blanchard 310 S.C. 375. And the Court in *Rush* says:
18 The trial court has wide discretionary power to reduce
19 the amount of the verdict, which in his or her judgment
20 is excessive.

21 Your Honor, I would submit to you, the jury's
22 award for actual damages for unfair trade practices was
23 excessive. There was not evidence presented by the
24 defense of actual damages that Brilin actually
25 sustained. And, in fact, even if we're going off of the

1 argument not being evidence, the defense only asked for
2 \$1 to send a message.

3 And then, you know, just very briefly, last
4 point, the companies that Mr. Decker owns, the
5 information came out during his deposition are not in
6 the record of this case. I would ask the Court to
7 disregard those. The deposition transcripts are not on
8 the record in this case.

9 THE COURT: They were mentioned in the trial.

10 MR. DLUZNESKI: We mentioned at trial. We dived
11 much deeper into them during the depositions. And I
12 can't recall the exact extent. It was a four-day trial,
13 of how far we got into the companies, but I would ask
14 the Court to only consider that to the extent that there
15 was testimony on that at trial. That's all I have.

16 THE COURT: Okay. Thank you very much. One of
17 the, probably, illuminating statements that I've heard
18 today was that this was a four-day trial and we're
19 arguing over how much money? \$6,000 that was awarded as
20 part of the unfair trade practices claim. Those two,
21 and for purposes of the record for anybody who may take
22 a look at this later, is probably, put quotation marks
23 around, this Court's frustration with this Court's
24 efforts that it took prior to engaging in a four-day
25 trial in trying to get this case resolved between the

1 parties. And after a four-day trial, the verdict being
2 given by this jury was the elephant in the room, equal
3 to both sides. That is the Court's frustration.

4 Parties have a right to engage in litigation,
5 have their matters heard and decided by a fair and
6 impartial jury, and I think that this case was tried
7 before a fair and impartial jury who sat for four days
8 and listened to the evidence in this case. And we're
9 here today and we're still arguing over this case. And
10 we're arguing over one side got 10,000-some-odd dollars,
11 the other side got 10,000-some-odd dollars. And we're
12 arguing now over unfair trade practices damages that are
13 a little bit over \$6,000 after a four-day trial.

14 And this is a four-day trial that this Court did
15 not have lawyers that were not prepared. Y'all were
16 prepared to represent your clients' interests. And this
17 jury, as I recall, received this evidence that y'all
18 presented over the matters in this case, and that jury
19 listened to this evidence and came up with the decisions
20 that it made in this case. And this jury made the
21 decision, and again, it's the elephant in the room, that
22 nobody won. When it comes to how that jury viewed this
23 case, it was a draw. It was a tie. Nobody was going to
24 walk out of this courtroom, after that four-day trial,
25 hearing all of the evidence that was presented, and say

1 that somehow one party needed to take the position that
2 as far as this jury was concerned, that they had
3 prevailed.

4 That's what I'm being asked today. The elephant
5 in the room is that this jury saw this case for what it
6 was. I'll take a look at it and let you know. Can I
7 talk to the lawyers in private?

8 MR. WHITE: Sure. May I put one more thing on
9 the record?

10 THE COURT: If you don't open pandora's box.

11 MR. WHITE: I'll try to ---

12 THE COURT: And you'll want to make a response.
13 Go ahead.

14 MR. WHITE: I will say that based on the case law
15 that, you know, thou shalt treble the damages, it's not
16 a zero verdict when you consider that. It's \$12,000,
17 which I wrote it down here for you, Your Honor.
18 \$12,188.13 -- 26 coming our way, as of right now, as a
19 matter of law, plus, you know, plus attorney's fees,
20 reasonable attorney's fees under the UTPA, so I'll say
21 that.

22 THE COURT: Okay. And you said that. I knew
23 that, but thank you for reminding me of that. Yes, I
24 know. Yes, that's what the statute says and that's
25 where we are. May I see the lawyers in chambers for a

1 moment?

2 MR. DLUZNESKI: Yes.

3 THE COURT: Y'all can leave that stuff here. We
4 can go in chambers. We'll come back and y'all can get
5 that.

6 (Hearing concluded at 3:47 p.m.)

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8 --- THIS ENDS REQUESTED TRANSCRIPT ---

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COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court of COMMON PLEAS for Spartanburg County, South Carolina, on the 13th day of September, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

s/o Julie A Cendroski

Julie A. Cendroski
Circuit Court Reporter III
Seventh Judicial Circuit