

1 STATE OF SOUTH CAROLINA)
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2)
COUNTY OF YORK)
3)
)
4)
CAROLINA REAL ESTATE)
5 HOLDINGS, LLC,)
)
6 Plaintiff,)
)
7 vs.)
)
8 BRILIN ELECTRIC, LLC,)
)
9)
 Defendant.)
10)

11 -----
12 July 18-21, 2022
13 York, South Carolina

14 B E F O R E:

15 HONORABLE J. MARK HAYES, II, Judge.

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18 COURT MONITOR: EBONY LOVE-TAYLOR
19 Proceedings recorded by DCRP,
20 Digital Courtroom Recorder Project

21
22 TRANSCRIBED BY:
23 Julie A. Cendroski,
 Circuit Court Reporter II
24 Seventh Judicial Circuit
25

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For The Plaintiff

3 NATHAN A. WHITE, ESQUIRE
4 For Defendant

5 JACK SPENCER, ESQUIRE
For Defendant

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CAROLINA REAL ESTATE HOLDINGS VS. BRILIN ELECTRIC

DAY ONE OF TRIAL

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(Plaintiff's Exhibit Number 2, Lease Agreement, was marked for identification.)

(Plaintiff's Exhibit Number 3, Remand Letter, was marked for identification.)

(Plaintiff's Exhibit Number 4, Photograph, was marked for identification.)

(Plaintiff's Exhibit Number 5, Photograph, was marked for identification.)

(Plaintiff's Exhibit Number 6, Country Wide Contract, was marked for identification.)

(Plaintiff's Exhibit Number 7, Photograph, was marked for identification.)

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3 (Plaintiff's Exhibit Number 26, Invoice, was
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5 (Plaintiff's Exhibit Number 27, Invoice, was
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23 (Defendant's Exhibit Number 9, Invoice, was
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10 (Defendant's Exhibit Number 15, Invoice, was
11 marked for identification.)

12 (Defendant's Exhibit Number 16, Photographs, were
13 marked for identification.)

14 (Defendant's Exhibit Number 17, Photograph, was
15 marked for identification.)

16 (Defendant's Exhibit Number 18, Invoice, was
17 marked for identification.)

18 (Defendant's Exhibit Number 19, Photograph, was
19 marked for identification.)

20 THE COURT: All right, ladies and gentlemen.
21 Congratulations, you've made the second cut. All right.
22 Ladies and gentlemen, we're now going to select the
23 first jury for the week. We're gonna select the first
24 jury in the week of the case of Carolina Real Estate
25 Holding, LLC, Plaintiff, versus Brilin Electrical, LLC.

1 Now, Ladies and gentlemen, again, like we did
2 downstairs, I've got a series of questions that I need
3 to ask you. But before I ask you these questions, the
4 clerk of court needs to administer an oath to you, so I
5 need you to, please, stand and raise your right hand.
6 (All comply.) All right, ladies and gentlemen, I'll
7 swear you in.

8 Do you solemnly swear or affirm that you will
9 truthfully answer the questions asked of you and that
10 you will tell the truth, the whole truth, and nothing
11 but the truth?

12 (All answer in the affirmative.)

13 Thank you, you may be seated. All right. Ladies
14 and gentlemen, please listen to these questions. And if
15 you need to respond to the questions, again, please
16 stand and let me call on you.

17 All right. Ladies and gentlemen, again, as I
18 told you, this case is Carolina Real Estate Holdings,
19 LLC, versus Brilin Electric, LLC as defendants. I'm
20 going to introduce you first to the principles of these
21 two companies. All right. I would ask, if you would,
22 Carolina Real Estate Holdings, LLC, sir, if you will
23 please stand and face the ladies and gentlemen of the
24 jury. This is -- tell me your name, sir.

25 MR. DECKER: William Decker.

1 THE COURT: This is William Decker, otherwise
2 known as Brad?

3 MR. DECKER: Yes, sir.

4 THE COURT: This is William Brad Decker. He is
5 the principle of Carolina Real Estate Holdings, LLC.
6 And then, let's see, you're Bryon Russell?

7 MR. RUSSELL: Yes, sir.

8 THE COURT: If you would, sir. This is Bryon
9 Russell. He's principle of Brilin Electric, LLC.

10 Now, ladies and gentlemen, this case involves a
11 dispute involving a commercial real estate lease. The
12 action -- in this case, plaintiff was the landlord of
13 the lease, and the defendant, Brilin Electrical, was the
14 defendant. The lease involved a lease for commercial
15 space located at 2180 Carolina Place Drive in York, Fort
16 Mill in York County, and the lease included a three-year
17 term commencing May 1st, 2017, and ending on April the
18 30th of 2020. And the litigation or the dispute between
19 these parties involve performance or lack thereof of
20 that lease.

21 Now, ladies and gentlemen, I need for you to
22 please stand if you are related by blood or marriage to
23 either of these individuals or if you have a close
24 personal or social relationship with either of these
25 individuals or if you've ever been in any type of

1 employment situation with any of these types of
2 individuals. If so, please stand at this time.

3 All right. Ladies and gentlemen, I also would
4 ask that you please stand -- I'd also ask that you
5 please stand, ladies and gentlemen, if you've ever had
6 any business transactions or dealings or any type of
7 commercial or professional relationships with either
8 Carolina Real Estate Holdings, LLC or Brilin Electric,
9 LLC. If so, please stand at this time.

10 All right. Gentlemen, I'll tell you what, can
11 you all sit down just for a moment? Yes, sir, your
12 juror number?

13 JUROR: Seven.

14 THE COURT: Give me one second, sire. All right.
15 Sir, if you will, come right over here. Let me see the
16 lawyers. Tell you what, meet me right over there at the
17 court reporter.

18 (Judge leaves the bench.)

19 (No audio.) (Monitor notes state: Juror's
20 ex-wife and Mr. Decker used to be friends.)

21 All right. Ladies and gentlemen, I'm now going
22 to read to you a list of potential witnesses who may be
23 called as part of this case. I need you to listen to
24 all these names. Once all the names have been published
25 to you or read to you, I'm gonna ask that you please

1 stand if you're related by blood or marriage to any of
2 these witnesses. I'm gonna ask that you please stand if
3 you have a close personal or social relationship with
4 any of these witnesses, or if you've ever been in any
5 type of relationship or business relationship with any
6 of these witnesses, so please listen to them.

7 And I would also ask when I call the names, if
8 the witnesses are in the courtroom, if they would please
9 stand and face the ladies and gentlemen of the jury. We
10 have Mark Robinson, John Abernathy, Wayne Schulte, Trip
11 Moore, Craig King, Jim Hemphill, Luis Her a -- do I say
12 that correctly?

13 MR. White: Heredia, Your Honor.

14 Heredia, and Bill Broadway. Again, ladies and
15 gentlemen, if you're related by blood or marriage to any
16 of those individuals or if you have a close personal or
17 social relationship with any of those individuals or if
18 you've ever been in any type of employment or business
19 relationship with any of those individuals, I would ask
20 that you please stand at this time.

21 Ladies and gentlemen, at this time, I'm going to
22 ask the lawyers, who will be participating in the trial
23 of this case to please stand and introduce themselves to
24 you. Yes, sir.

25 MR. DLUZNESKI: Ladies and gentlemen, I'm Steven

1 Dluzneski. I'm an attorney with the Hamilton Martens
2 law firm.

3 MR. WHITE: Good morning. I'm Nathan White. I
4 am an attorney at the law firm Alexander Ricks. And I
5 (inaudible.)

6 THE COURT: Ladies and gentlemen, if you're
7 related by blood or marriage to any of these attorneys
8 or if you have a close personal or social relationship
9 with any of these attorneys, or if you've ever been in
10 any type of employment or business relationship with any
11 of these attorneys, I would ask that you please stand at
12 this time.

13 Ladies and gentlemen, I would also ask that you
14 please stand if you or a member of your immediate family
15 has ever been represented by any of these attorneys or
16 any member of their firms. If so, please stand at this
17 time.

18 Thank you very much. Ladies and gentlemen, if
19 you or a member of your immediate family has ever been
20 involved in litigation, either where you or a member of
21 your immediate family was a landlord or you or a member
22 of your immediate family was a tenant, I would ask that
23 you please stand. If you've ever been involved in any
24 type of litigation where you either served as a tenant
25 or a landlord or a member of your immediate family was

1 ever a landlord or a tenant, please stand at this time.

2 Ladies and gentlemen, is any member of the jury
3 panel aware of any bias or prejudice towards either the
4 plaintiff or the defendant in this case? If so, please
5 stand at this time.

6 Is there any member of the jury panel who's a
7 member of or contributor to any group which has as its
8 primary concern the promotion of law enforcement or
9 victims rights? Now, these groups would certainly
10 include, but not be limited to such groups as MADD,
11 SADD, CAVE, or against Citizens Against Violent Crime?
12 If so, please stand at this time.

13 Does any member of the jury panel know of any
14 reason whatsoever why he or she should not serve as a
15 juror in this case, with particular emphasis being
16 placed on your ability to be fair and impartial to both
17 the plaintiff and the defendant in this case? If so,
18 please stand at this time.

19 Does the plaintiff have any additional questions?

20 MR. DLUZNESKI: No, Your Honor.

21 Any additional the defendant wished the Court to
22 explore?

23 MR. WHITE: No, Your Honor.

24 THE COURT: Thank you very much.

25 Ladies and gentlemen, we are now going to move

1 into the striking process. Madam Clerk.

2 Ladies and gentlemen, what we're now doing, to
3 let you know. We -- the clerk of court is performing
4 what used to be in Spartanburg, is that she's now making
5 a random selection of your names. She's throwing your
6 names into a barrel, and -- but she's doing it
7 electronically. And from that barrel, she's now going
8 to present a list to both of the lawyers and the lawyers
9 have an opportunity to review the list. And then we're
10 gonna strike from that list and come up with the 12 and
11 the 2 alternates that will serve as a jury in this case.

12 I mention that to you because if you ever come to
13 Spartanburg, we used to do this. When I was a younger
14 lawyer, jury selection was a little bit different before
15 we had internet technology and all of the IT equipment
16 that we have now. We would actually put your names into
17 a capsule and we'd put that capsule into a wooden
18 barrel. Spartanburg is the home for the School for the
19 Deaf and Blind in South Carolina, so we'd bring in a
20 person who was visually impaired. And we would actually
21 have that person visually impaired reach into that
22 barrel and pull your names out one at a time.

23 I mention that to you because jury selection in a
24 case like this would usually take the entire day. And
25 we still have that barrel, and every now and then when

1 we have technical glitches or we have a power outage, we
2 will bring that barrel out and it takes -- and can take
3 quite a while. But, fortunately, we've advanced enough
4 so that now this barrel rolling and barrel selection of
5 your names only just a few minutes. So give the clerk
6 of court and I just a few minutes and we'll have the
7 list produced, and then we'll move into the striking
8 process for the jury.

9 York is one of my favorite places to come and
10 work. One of the big benefits that you all have is, is
11 that you all have a very nice courthouse. It's
12 technology, it's equipped. You have nice people who
13 work in it, but you have good courtrooms, good security,
14 and you need to feel fortunate that you -- that you and
15 your community leaders have decided to invest in your
16 judicial system and have this facility to perform your
17 service as jurors.

18 We're in the process of building one in
19 Spartanburg. Our present courthouse was opened in 1960.
20 And one of my old law clerks said the architectural
21 design is like post-era Soviet era communism buildings.
22 It is a lot of brick and block and that's about it, is
23 brick and block.

24 And our courthouse has served it's function over
25 the last 60-plus years, but it's time for it to go. And

1 we're in the process of building a courthouse, a new
2 courthouse in Spartanburg and it's taken quite some
3 effort. The voters approved the plan for the courthouse
4 in 2017 and this is 2022 now, so we should be in it next
5 year. But it takes that long to build a building like a
6 courthouse and to get it up and functioning. But feel
7 blessed that you live in York County and have a facility
8 like this.

9 Ladies and gentlemen, the lawyers now have a
10 list. They now have to have an opportunity to go
11 through the list and to check their list and figure out
12 who they want and don't want, and so we're gonna need to
13 take about a 15-minute break.

14 I've looked, there's a clock back there above the
15 door. I'm gonna ask, if you would, to be back in your
16 seats. I'm gonna let you stretch your legs and you can
17 walked outside in the hall way and maybe find a restroom
18 if you need to. I'm gonna ask, if you would, to be back
19 in your seats by 12 o'clock, and we will continue with
20 the striking process to select the first jury, but I
21 will step down and see you all in about 15 minutes.
22 Thank you very much.

23 (Recess was held from 11:46 a.m. - 12:06 p.m.)

24 THE COURT: All right. Are the parties ready to
25 select -- do the strikes?

1 (Conference was held off the record between the
2 Court and the clerk.)

3 MR. DLUZNESKI: Yes.

4 MR. WHITE: Yes.

5 THE COURT: All right. Yes, ma'am, madam clerk.

6 THE CLERK: Counsel, I'll receive your
7 alternating strikes, beginning with the plaintiff, using
8 the number on the left 1 through 20 for your four
9 strikes. Numbers 21 through 23 as your first alternate
10 and numbers 24 through 26 for your second alternate.

11 MR. DLUZNESKI: Plaintiff would strike juror
12 number 1.

13 MR. WHITE: Defendant strikes juror number 9.

14 MR. DLUZNESKI: Plaintiff would strike juror
15 number 11.

16 MR. WHITE: Defendant strikes juror number 10.

17 MR. DLUZNESKI: Plaintiff would strike juror
18 number 14.

19 MR. WHITE: Defendant strikes juror number 16.

20 THE CLERK: I'm sorry?

21 MR. WHITE: Juror number 16.

22 THE CLERK: 16, thank you.

23 MR. DLUZNESKI: Plaintiff strikes juror number
24 15.

25 MR. WHITE: Defendant strikes juror number 22.

1 THE CLERK: I'm sorry, it has to be from 1
2 through 20.

3 MR. WHITE: We have no further preemptory
4 challenges for the primaries. (Inaudible.)

5 THE COURT: You've got four? I've got four from
6 the plaintiff, I've got three from the defendant.

7 MR. WHITE: We have no further peremptory
8 challenges.

9 THE COURT: All right. Take number 20 off.

10 THE CLERK: Yes, sir.

11 THE COURT: Okay.

12 MR. WHITE: Defendant strikes number 22.

13 MR. DLUZNESKI: Did the defendant strike number
14 22?

15 THE COURT: He did.

16 MR. DLUZNESKI: Plaintiff will strike juror
17 number 21.

18 THE COURT: Okay.

19 THE CLERK: And your second alternate?

20 MR. WHITE: Defendant would strike juror number
21 25.

22 MR. DLUZNESKI: Plaintiff would strike juror
23 number 26.

24 THE CLERK: Okay. I would like to verify strikes
25 for both sides. I have the following strikes for the

1 plaintiff: 1, 11, 14, 15. As your first alternate, 21,
2 and as your second alternate 26. Is this correct?

3 MR. DLUZNESKI: That's correct.

4 THE CLERK: And for the defendant I have: 9, 10,
5 16. Court strikes 20. As your first alternate, I have
6 22, and as your second alternate I have 25. Is this
7 correct?

8 MR. WHITE: That is correct.

9 THE COURT: Thank you. Madam Clerk, if you will
10 seat the jury.

11 THE CLERK: Ladies and gentlemen, as I call your
12 name, please bring your personal belongings and move to
13 the jury box to my right. There will be a bailiff to
14 direct you.

15 Juror number 105, Brittany Lee. Number 86,
16 Jessica Johnson. Number 167, Megan Sowell. Number 108,
17 Ellen Lundy. Number 66, Curtis Greenway. Number 143,
18 Mary Pride. Number 129, Lori O'Dell. Number 65, Patty
19 Goodnight. Number 43, Angela Dalton. Number 165 Edward
20 Snowdecki. Number 107, Valerie Lowrey. Number 114,
21 Clair Manor. As our first alternate, number 23,
22 Margaret Boone. As our second alternate, number 64,
23 Nicholas Gonzales.

24 THE COURT: Anything concerning the manner and
25 method of selection of the jury from the plaintiff?

1 MR. DLUZNESKI: No, Your Honor.

2 THE COURT: From the defendant?

3 MR. WHITE: No, Your Honor.

4 THE COURT: Thank you very much. Ladies and
5 gentlemen, congratulations on being selected to our jury
6 for this trial. Give me just a moment. I've got to
7 address those unfortunate people who did not get
8 selected to be a part of this jury.

9 Ladies and gentlemen, thank you very much for
10 your time, your patience while we went through the jury
11 qualification process, as well as the jury selection
12 process in this case. I'm gonna ask, if you would, to
13 please return back down to the jury assembly room.
14 Someone will be down there to give you, your
15 instructions, which are probably going to be to all back
16 after 6 o'clock.

17 But just to be sure that something has not
18 happened that I'm not aware of, please go with the
19 bailiffs. They'll take you back downstairs. But thank
20 you very much. Please leave the courtroom quietly,
21 we're gonna continue to work. Thank you very much.

22 All right. Ladies and gentlemen, congratulations
23 on being selected on our jury for this trial. I'm gonna
24 give you a couple of preliminary instructions right now
25 that are gonna apply throughout this entire case. I

1 need you to listen to these, because both of these are
2 very, very important.

3 What you're gonna be asked to do in this case is
4 gonna be to decide the outcome. And what that will
5 entail is that you will engage in deliberations in this
6 case. And your deliberations mean that the 12 of you
7 who make the final round, you will get in the jury
8 deliberation room and you will discuss the case. You
9 will discuss the evidence. You will discuss the law.
10 You will apply the law to the evidence that has been
11 presented to you during this trial, and then you will
12 come up with the decisions that you have to make in this
13 case. Now, again, that discussion, those things are
14 called deliberations, where you talk among yourselves
15 about this case.

16 Your first instruction, until you begin your
17 deliberations of this case, which is at the end of this
18 case, after all of the evidence has been presented to
19 you and I have instructed you on the law of this case,
20 you are not to talk to anyone about anything involving
21 this case. So don't start your deliberations at breaks.
22 Don't say, oh, gosh, did you see what that witness had
23 on or did you believe what that witness said, or you
24 can't believe a witness didn't say this. Do not talk
25 about anything involving this case until you begin your

1 deliberations in this case.

2 And, again, your deliberations in this case
3 occurs at the end of the case, after all the evidence
4 has been presented and I have instructed you on the law.
5 So don't discuss this case among yourselves.

6 Take that a little bit further. Do not discuss
7 this case with anyone at any point during the process of
8 this case. That means that shortly we're gonna take a
9 lunch break and you might run home, you might go back to
10 your job, or you -- and you run into somebody. Oh, you
11 got selected on a jury, they might say. What kind of
12 case is it? Or who is the judge? Or who are the
13 lawyers? Very politely tell them, I'm sorry, I can't
14 talk to you about anything involving this case while
15 it's still going on.

16 Now, after the case is over, I will talk to you
17 as much as you want to know, but until this case is
18 over, I cannot talk to you at all about anything
19 involving this case. So at lunch break, any breaks,
20 even in the evenings, do not have any discussions with
21 anyone about anything involved in the case.

22 All right. Second instruction to you that
23 applies throughout this case. There's things that you
24 talk about in your deliberation. That thing that occurs
25 after, at the end of the trial? You're gonna be

1 discussing the evidence that has been presented during
2 the course of this trial and the law that I will tell
3 you at the end of this case. That's what you will
4 discuss in your deliberations in order to reach the
5 decision that you have to make in this case.

6 The second instruction is do not do any type of
7 independent research or investigation into anything
8 involving this case. Allow your deliberations to be
9 controlled by the evidence that is presented and the law
10 that I will tell you.

11 If by chance during the course of this trial, or
12 maybe I've said something already, let's say, oh, I'm
13 not quite sure I understood what the judge meant. Or
14 one of the lawyers may present something during the
15 course of this trial and say, oh, I'm not quite sure I
16 understand that. Or you might hear a location. Oh,
17 well, I think that's close to my home. I'm gonna drive
18 around this way to get to that and see if I can go find
19 this location. Don't do any of that.

20 Do not do any type of independent research or
21 investigation because it'll allow your deliberations to
22 be influenced and based solely on the evidence as it's
23 presented during the course of this trial and the law
24 that I give you at the end of this trial. And that
25 includes, even if I've used a word that you don't

1 understand or somebody else, do not pull Webster's
2 dictionary off the shelf and look up that word.

3 All us, the people that are participating in this
4 trial before you to educate you as to what you need to
5 know as part of your deliberations. So, don't do any
6 type of homework, don't feel any responsibility that
7 you've got to do anything outside of this courtroom.
8 Let the lawyers educate you as to what the evidence is
9 and allow me the opportunity to instruct you on the law.

10 Now, with those two instructions that are gonna
11 carry throughout the course of this trial, I'm gonna
12 allow you to take a lunch break now. Given the hour
13 that it is, the fact that you've been downstairs, held
14 hostage, you came up here, we made you -- we locked you
15 in this room even further, I'm gonna let you take a
16 lunch break.

17 Looking at that clock on the wall, I'm gonna ask
18 that you be back in here -- let's say, I'm gonna ask
19 that you be back in here by 2 o'clock. And we will
20 start with the opening statements from the lawyers. I
21 will then give you some preliminary instructions. We
22 then will receive the opening statements of the lawyers
23 and we will begin with the presentation of the evidence
24 that you will hear in this case.

25 So, with those two instructions, don't talk about

1 anything involving the case with anyone, and don't do
2 any type of independent research or investigation. I'm
3 gonna let you go with the bailiff, and he will show you
4 where the jury deliberation room, and have it come in
5 and out of the courtroom. But thank you very much.

6 Ms. Goodnight, when we come back, I'm gonna ask
7 that you serve as the forelady of this jury. So you'll
8 get further instructions on that when we come back. But
9 you all may go with the bailiff, right here.

10 (Jury leaves the courtroom at 12:19 p.m.)

11 All right. A couple comments. There will be
12 times -- and these comments are primarily for the
13 litigants that are involved in this case. Also, to some
14 degree, to the attorneys that are involved in this case.
15 I have -- thank you, first, for showing up for this
16 today. Thank you for participating and being downstairs
17 with the jury qualification process. Also, for
18 participating and being present during the jury
19 selection process.

20 I think it's very -- those are, while sometimes
21 might not seem to be that significant or important
22 during the course of a litigation, they actually are,
23 because we now have, through this process that has been
24 tested for hundreds of years, gotten to the point to
25 where we now have the 12 people out of those 14 that are

1 going to be deciding the issues in this case. And those
2 12 people will, if we don't need the alternates, but 12
3 of those people will go into the jury deliberation room
4 at the end of this case and will decide the issues that
5 are gonna be presented to them.

6 If you haven't figured it out, I take this
7 process pretty darn seriously. I've been doing this
8 coming up on 20 years. And I take it a little serious
9 these days because I have witnessed, I can say hundreds
10 of jury trials during my career. And I will tell you,
11 taking a look at who you all and your lawyers have
12 selected to be on this jury, you have a smorgasbord of a
13 cross section of the community here in York County.

14 I've got a teacher with a masters degree. A
15 quality technician with a ninth grade education. I've
16 got a dental hygienist. I've got a machine operator.
17 I've got a sales manager for a TV station. I've got a
18 Dominoes -- well, you all struck the Dominoes. I've got
19 a carpenter with a 12th grade education. I've got a
20 teacher from Rock Hill with a bachelor's degree. You've
21 got a cross-section of the community here in York.

22 My experience in sitting where I've sat for
23 almost 20 years is that it is going to be hard to
24 predict what's gonna happen when those 12 people start
25 their deliberations. I mention that because there are

1 -- and I'm talking, making these comments now, as
2 opposed to some other point, because there gets to be
3 times during the course of a litigation during a trial
4 where what's windows or doors open for possible
5 resolution. This is one of those times where that
6 window and door has cracked open.

7 You now have an insight to the people who are
8 going to -- you're going to be asking to make the
9 decisions to control the outcome of this case. I will
10 tell you, I have met with your lawyers and we have
11 discussed this case. You both have hired very good and
12 competent lawyers and your lawyers are well prepared in
13 this case, but it's still gonna be up to those 12 people
14 to do the job that we're asking them to do.

15 And it is not a light responsibility that they
16 are undertaking. They probably, like most jurors that
17 I've had the opportunity to appear in front of them as a
18 judge, they will take it very seriously, and they will
19 do the best job that they know how to do. But I will
20 also, again, I'll tell you, it's gonna be hard to
21 predict how this case is going to -- I don't know what
22 the outcome is going to be.

23 I mention that to you, because I need for you to
24 very seriously consider during this lunch break, explore
25 the possibility of resolving this case. Resolving this

1 case and exploring the opportunity of what they call
2 settling or coming up with a neutral resolution, allows
3 the parties to still have some control over the outcome
4 of this case.

5 Meaning, that you can still control and influence
6 the direction of what this takes. Once it's given to
7 those 12 people, your lawyers have done the best they
8 can do. I've done the best that I can do, but it's in
9 their hands. And I will tell you, I have seen jurors
10 come to decisions in cases that I was shocked,
11 surprised, but upon reflection was completely supported
12 by the evidence that was presented to them.

13 Because we can sit here and we can say, oh, that
14 was a good piece of evidence, well that's not real
15 important, or why did he say that or why did she do
16 this? Yeah, we can say that sitting on the outside, but
17 once those 12 people get back in that jury room, it is
18 up to them as to what they do or as important to what
19 they view as material to the outcome of their case.

20 I will tell you, when I was a young lawyer, one
21 of my first cases in Spartanburg, and this was before
22 they did the remodeling of the courthouse, you could
23 hear the jury in deliberations sitting in the courtroom.
24 I had one of the jurors -- it was an automobile case. I
25 had one of the jurors say, well, I don't like that

1 little red-headed lawyer in that blue suit, he's from
2 the insurance company.

3 I was not from the insurance company. I was for
4 the plaintiff and insurance never became an issue in the
5 case, but somehow somebody in that jury room, thinking
6 they understood the judicial process, figured out that I
7 was -- somewhere insurance was involved in this case and
8 I must be that insurance's lawyer, and that affected
9 that juror's decision in the case that I tried in front
10 of that -- in front of them.

11 And it could be that in this case, those 12
12 people may pick up on something that you or your lawyers
13 do not even think is important, and they may very well
14 hang their hat on that particular piece of information
15 that they believe is true and decide this case. This is
16 this opportunity where this door and this window has
17 opened that you all still have some control over the
18 outcome of this case.

19 I encourage you to talk during this lunch break
20 and to come to some amicable resolution. If you don't,
21 that is fine. I have to be doing something. Much --
22 you've got great lawyers. I'd much rather try a case
23 with these lawyers, than probably any lawyer in the
24 county of York, because they're well prepared. But I
25 just want to tell you that you need to talk, because

1 this is one of those cases where reasonable heads could
2 get it resolved, if you will explore that.

3 Now, with those comments, take it for what it's
4 worth. I will step down and I will see you all about 2
5 o'clock. Thank you all very much.

6 (Lunch break was held from 12:27 p.m. to 2:01
7 p.m.)

8 THE COURT: All right. I'm told that all the
9 jury has returned from -- as requested, anything from
10 the plaintiff or the defendant before we begin the
11 trial?

12 MR. DLUZNESKI: Your Honor, we've submitted --
13 we've stipulated to a set of exhibits for both the
14 plaintiff and the defendant. We have submitted binders
15 to the court, the court reporter, each side has one, the
16 witness will have one, and then all 14 jurors will have
17 one. We wanted to move all of those exhibits into
18 evidence and so stipulated and premarked in the binders.

19 THE COURT: Is that correct?

20 MR. WHITE: Yes, Your Honor. We'd like to move
21 them into exhibit [sic}, and we'll have a binder up
22 there for every witness to use. And he goes first, so
23 if he wants to publish the binders, we've got all the
24 binders for each of the 14 jurors, Your Honor.

25 (Plaintiff's Exhibits 1-27 were admitted into

1 evidence.)

2 (Defendant's Exhibits 1-19 were admitted into
3 evidence.)

4 THE COURT: Okay, they'll be admitted without
5 objection. My understanding is they're all agreed to
6 and you all will use them as they are numbered, and
7 refer to them as their number as you go forward with the
8 trial?

9 MR. WHITE: Yeah. Do we want to have each juror
10 have one after openings, or when do we want to do ---

11 MR. DLUZNESKI: Sure.

12 MR. WHITE: Okay.

13 THE COURT: I mean, I've seen it so that if you
14 would place them in their chairs, and then they can open
15 them whenever you refer to them. I don't know whether
16 you're gonna use them in the opening or not.

17 MR. WHITE: We are not. We will, however, be
18 using them during the first witness.

19 THE COURT: Okay. Why don't you go ahead and put
20 them in the chairs, have somebody put them in the
21 chairs. That way you don't have to take up time to, to
22 hand them out when they come in.

23 MR. WOODS: And, Your Honor, I'll also say, as
24 far as the exhibits go, I do have several demonstrative
25 exhibits. The exhibit -- these demonstrative exhibits

1 are in the binders, but some of the photographs I've had
2 blown up and so on and so forth. And so I am going to
3 publish those to the jury, since all the exhibits have
4 come in as appropriate. We have the easel here.

5 MR. DLUZNESKI: No issue, Your Honor.

6 THE COURT: Just be sure when you're doing that,
7 referring to, like, Plaintiff's 3, this is showing a big
8 blow up of Plaintiff's 3 so that it'll be on the record.

9 MR. WHITE: Okay. Fair enough. Fair enough.

10 THE COURT: Anything else?

11 MR. DLUZNESKI: Your Honor, I do have just one
12 brief thing, just to bring to the Court's attention. I
13 don't think it'll be an issue, but as you probably have
14 seen from the case caption, W&L Services, LLC was also a
15 defendant in this case. They were brought in by way of
16 the amended complaint. They have settled out of court
17 with the plaintiff.

18 Luis Heredia, one of our witnesses, is the
19 principle for W&L Services. I don't intend to really
20 get into the fact that they settled or anything like
21 that. And I certainly would not be offering it for any
22 proving or disproving liability under rule of evidence
23 408, but I could see how somehow, some way it might just
24 simply come out as a fact, that W&L was in the case and
25 then no longer in the case. But just again, wanted to

1 bring that to the Court's attention.

2 MR. WHITE: And, Your Honor, if that does come up
3 through the witness, himself, I would plan to object and
4 ask that that testimony be stricken from the record.

5 THE COURT: Now, let me ask you this. My
6 notebook has W&L written on the outside of it. I mean,
7 aren't they going to know about it anyway?

8 MR. DLUZNESKI: Well, that's what I'm saying.
9 It's gonna be an open secret for the jurors. And I, you
10 know, like I said, I don't plan on getting into it. And
11 I will certainly counsel the witness to not refer to the
12 fact that he was in the suit --

13 THE COURT: Okay.

14 MR. DLUZNESKI: -- and nothing like that.

15 THE COURT: Okay. All right. Then, counsel your
16 witnesses how you believe they need to be counseled. I
17 can't do that. Okay. All right. And I would
18 anticipate brief opening statements?

19 MR. DLUZNESKI: Yes, Your Honor. Yes.

20 THE COURT: Okay. Anything else before we bring
21 the jury in?

22 MR. DLUZNESKI: Nothing from the plaintiff, Your
23 Honor.

24 THE COURT: Nothing from the defendants? Let's
25 bring the jury in.

1 Tell me one time, counsel. Pronounce the
2 defendant's name, Berling?

3 MR. WHITE: Brilin.

4 THE COURT: Brilin, okay.

5 (Jurors enter the courtroom at 2:07 p.m.)

6 THE COURT: All right. Ladies and gentlemen, we
7 are now going to start the trial of the case of Carolina
8 Real Estate Holdings, LLC and Brilin Electric, LLC. But
9 before we do that, the clerk of court has to administer
10 an oath to you. So, if you would, you can just put
11 those notebooks on the floor, but I need you to please
12 stand and raise your right hand.

13 THE CLERK: (Inaudible.)

14 THE COURT: All right, ladies and gentlemen.
15 Before we begin the trial, I want to tell you that this
16 trial probably will be different from what you might
17 expect. Many people do not have a chance to attend an
18 actual court session, as you are doing now. And they
19 think that from watching television or movies or reading
20 books that trials are always full of high drama, intense
21 action, and riveting circumstances.

22 Now, while all of those things may be true at
23 times, this trial is not for entertainment. It is a
24 fundamental part of our democracy. And trials are often
25 slow, deliberate, and repetitive, just the opposite of

1 what you might have seen on television or in a movie or
2 read about in a book. This courtroom is a place of
3 honor dedicated to the protection and preservation of
4 citizens rights through what many have called the
5 greatest justice system ever created.

6 The attorneys appearing before you, they are
7 advocates for the parties that they represent. But
8 first and foremost, they are officers of the court,
9 sworn to and uphold the integrity and fairness about the
10 judicial system.

11 You should expect them to be professional,
12 competent, and ethical in the representation of their
13 client's interests, but remember that you have now taken
14 an oath to try this case and reach a fair and just
15 verdict. You are also expected to be professional,
16 reasonable, and ethical. But thank you for accepting
17 the important responsibility of jury service and for
18 your contribution today to our justice system.

19 What I will say now is meant to serve as an
20 introduction to the trial in the case. And my remarks
21 are not a charge on the law. I will instruct you on the
22 law at the end of the trial before you retire to decide
23 the case. Before the trial begins, I want to explain to
24 you the procedures that we will follow so that you can
25 better understand what is going to happen.

1 You have been selected as fair and impartial
2 jurors, whose purpose is to find and determine the facts
3 of this case. You are the sole judge of the facts of
4 this case. If at any time during this trial I make
5 comments regarding the facts, you must disregard my
6 comments. You are to determine the facts from the
7 testimony you hear and other evidence that is presented.

8 You should not be influenced by any opinions or
9 statements you may have heard outside of this courtroom.
10 It is especially important that you perform your duty of
11 determining the facts of this case, diligently and
12 conscientiously, because ordinarily there is no way to
13 correct an erroneous determination of facts that is made
14 by a jury. When you comply with your oath to
15 impartially determine the facts of this case, you will
16 have fulfilled your duty as jurors and no one will have
17 the right to criticize your verdict.

18 Now, on the other hand, and with equal emphasis,
19 the same law that makes you the judge of the facts,
20 makes me the judge of the law. The law, as given by the
21 Court is the only law that you may consider. You must
22 accept and follow it, even though you may disagree with
23 it. I cannot tell you what the facts are, and you
24 cannot disagree with me about what the law is or should
25 be.

1 Your job is to take the law as I give it to you
2 and apply it to the facts as you find them from the
3 testimony of the witness and any other evidence that is
4 presented. After doing that, you will render your
5 verdict, a true and just verdict under the solemn oath
6 that you just took as jurors.

7 As I've mentioned to you, until you begin your
8 deliberations, you must not discuss the case with
9 anyone, including your fellow jurors, friends, family
10 members, and anyone involved in this case. This
11 includes you cannot have any discussions face-to-face or
12 by telephone, e-mail, text, blog, or any other types of
13 communication.

14 You must not use a computer, a cellphone, or
15 other electronic device with communication capabilities
16 at any time while you are in this courtroom or while you
17 are in your deliberations. During the breaks, for
18 meals, at nights, and for meals, and otherwise, you can
19 use those devices, but you cannot use those devices to
20 have any types of communications with anyone about
21 anything involved in the case, nor, as I've already
22 informed you, you cannot do any type of independent
23 research or investigation into any matter that might be
24 involved in this case.

25 I do not anticipate there being any type of media

1 coverage, but if there is, do not read, listen to, or
2 watch any news reports about this case. This includes
3 anything that might be in a newspaper, on an internet,
4 radio, or television. You must not consider anything
5 you may have heard or read about the case outside of the
6 courtroom, whether before or during the trial. After
7 the case is submitted to you, you must discuss it only
8 in the jury room with your fellow jurors.

9 The attorneys and the parties in this case have
10 been advised that they are not to talk to you at all, so
11 if you see anyone that is involved with this case and
12 they do not even say hello to you as they were coming
13 and going from the courthouse, they're not being rude to
14 you, they're simply following my instructions not to
15 have any communications with you.

16 It is important that you keep an open mind and
17 not decide any issues in this case until all of the
18 evidence has been presented, the parties have made their
19 closing arguments to you, and I have instructed you on
20 the law to apply to this case.

21 Now, in just a moment the attorney for the
22 plaintiff will make what's called an opening statement.
23 The attorney will explain to you the issues in the case,
24 or at least what the attorney thinks the issues are in
25 the case. The attorney for the defendant will also make

1 an opening statement. Now, ladies and gentlemen, what
2 the attorneys tell you during their opening statements
3 is not evidence in a case. It is only their contention
4 as to what the issues are.

5 The evidence in the case will be presented to you
6 by testimony of sworn witnesses from this witness stand
7 and any exhibits that will be introduced through the
8 course of this trial, which is why you have those
9 notebooks that are sitting in front of you. Those are
10 exhibits that have been agreed upon by the parties in
11 this case.

12 Now, I want to let you know in advance, from time
13 to time, you may hear one of the lawyers say, Your
14 Honor, I believe I have a question of law or a matter of
15 law to discuss with you. Or they may say, Your Honor,
16 may we approach the bench? Or sometimes I, myself, may
17 find it necessary to excuse you from a courtroom for a
18 short while so that the attorneys and I can discuss what
19 is called matters of law.

20 The reason for -- the reason for -- the reason
21 that we exclude you from these discussions is because
22 you are the judges of the facts in this case, and
23 sometimes in discussing matters of law with the
24 attorneys, it is necessary for me to make some comment
25 about the facts in connection with ruling on whether or

1 not a particular law applies or not. I'm not supposed
2 to tell you what I think the facts are, so I will excuse
3 you from a courtroom, while these types of discussions
4 take place so that you will not be influenced by
5 anything that I say in rulings on matters of law.

6 In determining what the true facts are in this
7 case, you must determine whether or not the testimony of
8 a witness is believable. It'll be my responsibility to
9 rule as a matter of law whether or not certain testimony
10 is admissible at all or not, but once the testimony is
11 admitted, whether or not you believe it is fully for you
12 to determine.

13 In deciding whether to believe a witness, you
14 have the right to consider whether the witness has an
15 interest in the result of the trial, whether the witness
16 is prejudiced towards either the plaintiff or the
17 defendant. The opportunity for the witness to have seen
18 the matters and things about which the witness may
19 testify, and the way the witness acts on the witness
20 stand.

21 You have the right to consider anything that is
22 in the record of this case that will help you evaluate
23 the testimony of the witnesses. Now, that means that it
24 is your duty to pay close attention to the witnesses, to
25 observe the witnesses, to listen to the witnesses, and

1 to pay close attention to the attorneys and to the
2 Court. Do not let your thoughts wander, but pay
3 attention to the testimony so that at the end of the
4 trial, you will be able to determine what the true facts
5 are, to apply the law to those facts and render a true
6 and just verdict.

7 It is your added duty, Madam Foreperson, to
8 preside in the jury room and to be the jury spokesperson
9 in this court, but we will have further discussions
10 about that later.

11 Now, in order to preserve everyone's rights, I
12 will give the parties an opportunity to object to
13 anything that I have said during this instruction to
14 you. Is there any exceptions by the plaintiff?

15 MR. DLUZNESKI: None, Your Honor.

16 THE COURT: Any by the defendant?

17 MR. DLUZNESKI: No, Your Honor.

18 THE COURT: Thank you, gentlemen. Ladies and
19 gentlemen, at this time we will receive the opening
20 statement from the attorneys.

21 MR. DLUZNESKI: Your Honor, may it please the
22 Court?

23 THE COURT: Yes, sir.

24 OPENING STATEMENT

25 BY MR. DLUZNESKI:

1 Your Honor, opposing counsel, ladies and
2 gentlemen of the jury, sticks and stones may break my
3 bones, but words can never hurt me. This is something
4 that we have all heard thousands of times throughout our
5 lives. It is something that our parents taught us to
6 say when we were kids when someone said something you
7 didn't like. Words can't hurt you. Words aren't
8 important, they're just words.

9 But as we grow and as we gain life experiences,
10 we learn that words are important, words matter. Words
11 have power. The United States Constitution: We, the
12 people of the United States, in order to form a more
13 perfect union, establish justice, ensure domestic
14 tranquility, provide for the common defense, promote the
15 general welfare, and secure the blessings of liberty to
16 ourselves and our prosperity, do ordain and establish
17 this constitution for the United States of America.

18 These are just words on paper, but we know that
19 those words on that paper laid the course of this
20 nation. Those words on that paper are the very
21 foundation of the laws and procedures that bring us
22 together today. Words on paper matters. Spoken words
23 matters. They are important. They have power.

24 Ladies and gentlemen, my name is Steve Dluzneski.
25 I'm an attorney in Rock Hill, and I represent a company

1 that you will hear referred to as Carolina Real Estate
2 Holdings or CREH, for short, during the course of this
3 trial. CREH is owned by a gentleman named Brad Decker,
4 who is seated to my left at the plaintiff's table.

5 This is a case about some words on a piece of
6 paper. That paper is a commercial lease agreement
7 between CREH and a company called Brilin Electric. What
8 you will learn during the course of this trial is for
9 the past several years, Carolina Real Estate Holdings,
10 under Mr. Decker's leadership and direction has acquired
11 and rented out commercial real estate to local
12 businesses.

13 One of those local businesses is a business that
14 some of you have probably heard of, Two Men And A Truck.
15 And in the course of renting out its commercial real
16 estate, CREH came across another local company called
17 Brilin Electric.

18 You will learn that in April of 2017, CREH and
19 Brilin Electric, that you may hear referred as simply
20 Brilin during this trial, entered into a three-year
21 commercial lease agreement, commencing on May 1st, 2017,
22 and ending on April 30th, 2020. You will hear about and
23 see for yourselves what this commercial lease agreement
24 required of both CREH and Brilin Electric during the
25 lease term. You will hear and see how this commercial

1 lease agreement allowed Brilin Electric to use its
2 leased commercial space.

3 In addition to the written words contained in the
4 commercial lease agreement, you will also hear a lot
5 about the spoken word during the course of this trial.
6 You will hear about Brilin Electric's spoken words
7 toward its landlord, CREH, as well as its spoken words
8 towards CREH's agents and employees and its neighboring
9 commercial tenant, Two Men And A Truck.

10 You will learn that during its tenancy at CREH's
11 commercial property, Brilin Electric caused a variety of
12 damages to its leased commercial space. Pay careful
13 attention to how Brilin's owner, agents, employees
14 reacted when CREH attempted to discuss those damages
15 with Brilin and ensure that Brilin Electric remain in
16 compliance with the lease agreement. Pay careful
17 attention to whether Brilin Electric allowed CREH's
18 agents and employees to enter its leased commercial
19 space during Brilin's tenancy to inspect the premises
20 and make repairs, as the lease agreement expressly
21 allows.

22 Pay careful attention to how Brilin Electric's
23 owner and employees treated Wayne Schulte, CREH's
24 property manager, when he patrolled Brilin's leased
25 commercial space to ensure that the property owned by

1 CREH was okay and that Brilin was conducting itself
2 appropriately and within its landlord's expectation.
3 Probably the most significant thing that you will hear
4 and learn about during the course of this trial is a
5 partition wall that expands the entire length of the
6 warehouse space at Brilin's leased commercial property
7 and separated Brilin's Electric from its neighbor, Two
8 Men And A Truck.

9 You will hear that Brilin Electric hit the
10 partition wall many times, possibly on an almost daily
11 basis during its three-year lease term at CREH's
12 property. You will hear that the repeated, forceful
13 contacts that Brilin made to the partition wall were
14 done with a forklift that Brilin was using, both inside
15 and outside of the warehouse space at its leased
16 premises.

17 You will hear from a general contractor, as well
18 as a structural engineer that these repeated forceful
19 hits to the partition wall caused the internal
20 structural components to the wall, the things tasked to
21 hold the 11,000-pound wall up and in place to become
22 bent, twisted, and damaged, in some cases beyond repair.

23 While you listen to this testimony, pay special
24 attention to how Brilin's owner, Bryon Russell, reacted
25 to the experts findings that portions of the wall had to

1 be replaced. You will hear that Mr. Russell became
2 hostile and irate at one point during a meeting with
3 CREH's general contractor and had to be removed from the
4 meeting.

5 You will hear that Brilin Electric had an
6 opportunity to, and did inspect the damaged partition
7 wall for itself, and have its own structural engineer of
8 Brilin's choosing to inspect the damage. You will hear
9 that Brilin performed its own inspection of the damaged
10 partition wall, Brilin chose not to participate in any
11 repair that had to be made to the wall. You will hear
12 that CREH shouldered the full expense of repairing the
13 partition wall all on its own, from the damage that
14 Brilin Electric caused by hitting the wall over and over
15 and over again with a forklift.

16 Pay careful attention to what Brilin finds
17 through Mr. Russell, himself, did and did not do in this
18 regard. Pay careful attention to his spoken words, what
19 he said and did not say. Remember, I told you that at
20 the outset that words, both written and spoken, are
21 important. That words of a commercial lease agreement
22 matter. That the spoken words of the parties matter.
23 Those words mean something and are important.

24 Focus on the lease, what it says, what it doesn't
25 say. Focus, too, on the spoken words of the parties,

1 what they said and didn't say. And we are confident
2 that if you do that, you will be able to return a
3 verdict in this case that is fair and impartial. That's
4 all that anyone can ask of you.

5 I want to conclude my comments this afternoon by
6 thanking all of you for being here today and for serving
7 your community and country as jurors. My client and I
8 sincerely appreciate it. Thank you.

9 THE COURT: Yes, sir.

10 MR. WHITE: May it please the Court, Your Honor?

11 OPENING STATEMENT

12 BY MR. WHITE:

13 Good afternoon, ladies and gentlemen of the jury.
14 Let me introduce myself once again. I am Nathan White
15 with the law firm of Alexander Ricks. Over on the left
16 side there is Mr. Jack Spencer, he's an associate with
17 my firm. You're not going to hear anything from Mr.
18 Spencer because he is a North Carolina licensed only
19 attorney, so don't feel like I'm hogging you all to
20 myself. That's why he's helping me out.

21 Mr. Bryon Russell is the founder and owner of
22 Brilin Electric, the defendant in this case. Ms. Karen
23 Sintell (phonetic) is the case paralegal on this case.

24 This case is about a commercial lease between
25 landlord and tenant -- do I need to be by a microphone,

1 madam court reporter?

2 This is about a commercial lease between a
3 landlord and a tenant. A three-year lease. The lease
4 ended April 30th, 2020. Now, as you're gonna see, the
5 lease clearly requires the tenant to make any repairs
6 that are the tenant's responsibility during the lease,
7 and then turn the property back over to the landlord.
8 And the evidence will show that's exactly what we tried
9 to do, but we were not able to do.

10 Remember that date that I just told you, ladies
11 and gentlemen. The lease ended April 30th, 2020. Mr.
12 Bryon Russell's company got sued March 27th, 2020. We
13 got sued before we even moved out and had an opportunity
14 to repair things. However, what you will find when you
15 hear all the evidence, both documentary and testimonial,
16 is that we made almost all of the repairs that we
17 possibly could. Even some that we were not responsible
18 for making.

19 Why did we not make all the repairs? Well, the
20 evidence will show that upon getting sued and trying to
21 work this out and get everything resolved and repair
22 what needed to be repaired, our side asked their side,
23 Mr. Decker, to come do a walkthrough of the premises.
24 Come walkthrough the premises, see what we've done, tell
25 us what we need to do.

1 And the evidence will show that Mr. Decker, CREH,
2 refused to do a final walkthrough. So this is more than
3 just words on a piece of paper, this is about what the
4 lease requires, and it's also about good faith and fair
5 dealing between two counter parties to a contract. And
6 when Mr. Decker refused to do a final walkthrough and
7 tell Mr. Russell what needed to be done, Mr. Russell, as
8 the evidence will show, did what he could do, patch up
9 whatever needs to be patched up, turn the space over as
10 good as he possibly could.

11 Now, back it up a little bit. Before we even get
12 to that point this relationship went off the rails in
13 approximately the middle of 2019. Not a 100 percent
14 clear why. Maybe we'll figure it out during the course
15 of these proceedings why that happened, but I believe
16 the evidence may show that it's because at some point in
17 2019, Brilin indicated that they were going to move out
18 of the space. Brilin is doing quite well with its
19 business and it was running out of space, and needed a
20 new space that was much bigger.

21 CREH wasn't too crazy about that. And because by
22 mid-2019, things start getting hostile. In fact, the
23 evidence will show that CREH at one point put up jersey
24 barriers that blocked off the side of this building.
25 The side of that building has a side garage door with a

1 ramp. And that ramp was integral for Brilin's
2 operations, because Brilin is an electric company that
3 goes into track developments and buildings and puts all
4 the electrical wiring in.

5 And what they do is they have a lot of smaller,
6 light-duty trucks that they load up with all their
7 wiring equipment and all that, and they ship them off to
8 all their jobs. So there's two garage doors in the back
9 of this space that are loading bays for an 18-wheeler.

10 Well, he doesn't -- Mr. Russell doesn't use
11 18-wheelers. He uses small trucks, and he gets the
12 stuff in and out of his warehouse using a forklift. And
13 with those jersey barriers there, he couldn't use the
14 forklift. Blocked it off. Had to go actually hire a
15 larger forklift that could lift up the bay and they
16 could load and off load from the back area.

17 And it all kind of went downhill from there, as
18 you're gonna see. There was a default letter. There
19 was claims of all this damage and on and on and on. And
20 Brilin indicated, look, we will repair anything we need
21 to repair before we move out. I'll reiterate once
22 again, Brilin was sued before they moved out.

23 Now, you're gonna hear specific points of
24 damages. One of them is the wall. Now, I'm probably
25 gonna call it the demising wall. Plaintiff's counsel is

1 probably gonna call it the partition wall. Partition
2 wall, demising wall, tomato, tomato, okay? So, in the
3 summer of '19, repairs were made at the demand of CREH
4 by Brilin Electric. Hired a company called W&L Services
5 to come in and make repairs to the drywall on the other
6 side of the demising wall.

7 At the time, Two Men And A Truck occupied that
8 space. And they told landlord, hey, the wall is kind of
9 busted up and it's kind of pushed toward us, can you get
10 Brilin to fix it? We did. CREH's property manager, Mr.
11 Wayne Schulte, oversaw that whole operation. And you're
12 gonna see that that wall was opened right up. You're
13 gonna see pictures. You're gonna see the aluminum
14 studs. You're gonna see the installation. And you're
15 gonna see that the drywall's fixed.

16 CREH asked Brilin to fix the other side.
17 Brilin's got pallets and pallets of electrical equipment
18 on its side and said, look, we'll fix it when we move
19 out, because what was so critical about that final
20 walkthrough tell us exactly what we need to fix on this
21 wall.

22 Now, there are other things that CREH is claiming
23 were damaged. One of which is these bricks on the top
24 of that side garage door. And I'm not sure if the
25 evidence is gonna show what caused the damage to the

1 bricks, but we fixed them.

2 There's gonna be claims of damages to paint in
3 the office area. There's gonna be claims about soiled
4 carpets. We did all that. There's gonna be claims
5 about the garage doors. Now, remember, there's a few in
6 the loading bay that I've talked about and there's one
7 on the side.

8 A few of them got busted up, we fixed them. We
9 repaired them. We replaced them. And to this very day
10 two years later, they're still there. Well, one thing
11 thing that I expect the evidence is gonna show in the
12 plaintiff's case in chief is, hey, the lease has this
13 provision and any repairs over \$3,000, that contractor
14 must be approved by the landlord.

15 Remember what I said earlier about that good
16 faith and fair dealings. We hired a contractor. We
17 asked for them to use it, they refused. Now, you're
18 gonna hear from Mr. Hemphill, who's gonna tell you how
19 these doors are identical, they were alike in every way,
20 even right down to the paint color. And you're gonna
21 see the pictures.

22 You're gonna see a side-by-side of the old garage
23 door in the left loading bay, and the right one, the new
24 one, on the right loading bay, and they look exactly the
25 same. The only thing that looks different is the one on

1 the left says Natural Power Cord. Everything else looks
2 exactly the same.

3 CREH, as the evidence will show, they wanted to
4 use their contractor. Their contractor's doors were not
5 like that and cost twice as much. And this is gonna be
6 a theme that you're gonna see throughout the
7 presentation of both sides, is CREH wanted to use its
8 preferred vendors because it could up charge and then
9 pass it along, those costs, to Brilin. You're gonna see
10 that every single way.

11 And we believe that the evidence will show that
12 that's exactly why the final walkthrough was not done,
13 the wall was not opened up and inspected, and Brilin was
14 not given an opportunity to repair those structural
15 supports that plaintiff's counsel referenced earlier.
16 Now, those structural ports are alluminum studs. It's
17 an easy fix. Sometimes you can put one in and bracket
18 it, or you rip it out and you put another one in.

19 It's not complicated, and Brilin would have been
20 more than willing to do it, had we been given the
21 opportunity. We didn't know they were damaged, and we
22 certainly weren't going to cut open the wall and see
23 what was going on. That was the whole point of the
24 final walkthrough, as the evidence will show CREH
25 refused to do.

1 Now, there's one other damaged piece, asphalt.
2 They're gonna say we damaged the asphalt because we used
3 this forklift that would come around the ramp. It would
4 loop around and there were -- then the asphalt got torn
5 up. But the evidence will show that the thickness of
6 that asphalt was not commercially reasonable. CREH knew
7 that Brilin would use a forklift as part of its
8 operations to load and unload its vehicle, and that that
9 was a commercially reasonable thing to do for a light
10 industrial warehouse space such as this.

11 The evidence will show that the other side of the
12 building, where the trucks that would use those loading
13 bays would ingress and egress from the main road to the
14 back, was double the thickness of the asphalt on the
15 side where the forklift was. And anybody who knows
16 anything about forklifts would know, that turning
17 radius, it's gonna tear up asphalt if it's not thick
18 enough.

19 For example, as the evidence will show in the
20 pictures you'll be able to see, all of those pads where
21 all those loading bays are, are all concrete, because
22 concrete is a type of material you should use for very
23 thick asphalt.

24 So the reason why the asphalt was damaged, was
25 because CREH did not use commercially reasonable

1 efforts. They did not use commercially reasonable
2 building materials, which obviously is part of the
3 evidence that we tried to fix that too. But remember,
4 we got sued and it all fell apart.

5 So, at the end of the day, at the end of
6 hopefully three days, maybe four, no guarantees, I'm
7 gonna say this right now and I'm gonna be bold in my
8 statement. I think you all are all gonna be wondering
9 why we are all here. Why this wasn't resolved in April
10 of 2020 or May of 2020, and none of us had to show up
11 here at this beautiful courthouse for three or four days
12 a few years later. Thank you, ladies and gentlemen.

13 THE COURT: Is the plaintiff ready to call their
14 first witness?

15 MR. DLUZNESKI: We are, Your Honor. Our first
16 witness will be Brad Decker.

17 THE COURT: Mr. Decker, come right up here and
18 let the clerk of court swear you in.

19 THE CLERK: Place your left hand on the bible and
20 raise your right hand, please. Do you solemnly swear or
21 affirm the testimony you give to this court will be the
22 truth, the whole truth, and nothing but the truth so
23 help you God?

24 THE WITNESS: Yes, I do.

25 THE CLERK: Thank you. Please be seated.

1 THE COURT: Sir, watch your step as you're
2 stepping up. Just have a seat in the chair and speak
3 into the microphone. Thank you, sir.

4 THE WITNESS: You're welcome.

5 WILLIAM BRAD DECKER,
6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. DLUZNESKI:

9 Q. Afternoon, Mr. Decker.

10 A. Good afternoon.

11 Q. If you would, please, state your full name.

12 A. William Decker.

13 Q. And what city and state do you currently live?

14 A. I'm in Myrtle Beach, South Carolina.

15 Q. What do you do for a living?

16 A. Contractor, general contractor.

17 Q. How long have you been doing that?

18 A. Thirty years.

19 Q. What does your day-to-day schedule look like?

20 A. Varies from looking at job site estimates, at
21 jobs, properties that we own, maintenance schedules, or
22 just a general thing with the construction and the
23 properties that we currently own and maintain.

24 Q. Do you own any businesses?

25 A. Yes.

1 Q. Okay. Tell us what businesses you own or have an
2 ownership interest in.

3 A. Carolina Real Estate Holdings, LLC and Decker
4 Inspections and Contracting Services.

5 Q. All right. All right. I want to focus our time
6 today talking about Carolina Real Estate Holdings, LLC.
7 I mean, and you may hear me refer to the company as
8 CREH. Is that fair to you?

9 A. That's fair.

10 Q. Okay. When was CREH created?

11 A. 2012, '10, sometime in that timeline.

12 Q. All right. And why was it created?

13 A. From the construction side of the business, we
14 decided that we should probably start owning properties.
15 It seemed to be the right thing to do. We could buy
16 older properties, fix them up, turn them into something
17 and have a stream of income coming in from two sides
18 instead of just one direction.

19 Q. All right. And tell the jury what CREH does.
20 What is its business structure?

21 A. To buy buildings, modify them and make them
22 better, and then lease them out to the general public or
23 businesses.

24 Q. And what real properties does CREH own?

25 A. Several. The ones in this area would be 118

1 Academy Street in Fort Mill near the police station.
2 And 2180 Carolina Place, which is the commercial
3 warehouse near Shutterfly or I-77.

4 Q. Okay. All right. So let's talk about the second
5 piece of property that you just mentioned. Is that
6 piece of property 2180 Carolina Place located here in
7 York County?

8 A. Yes, sir.

9 Q. Okay. And who owned that company prior to CREH?

10 A. A holding company, but it was a direct buy, was
11 their tenant. It was a membership company.

12 Q. Do you know when CREH acquired that piece of
13 property?

14 A. Oh, there's been so many transitions. About 12
15 years ago.

16 Q. Okay.

17 A. The same time.

18 Q. All right. And what does CREH do with that
19 Carolina Place property?

20 A. It's a warehouse flex space building, meaning it
21 has offices and warehouse in the back and it's divided
22 in numerous portions of a building that we can rent out
23 to different tenants. So we just split it up and we
24 rent it out.

25 Q. All right. So it's commercial?

1 A. It is commercial.

2 Q. Okay. Who's occupying suite 111 of 2180 Carolina
3 Place now?

4 A. Now would be Two Men And A Truck.

5 Q. And who, prior to Two Men And A Truck, who was in
6 that property?

7 A. Brilin Electric.

8 Q. Okay. And did you have a written lease agreement
9 with Brilin Electric?

10 A. We did.

11 Q. All right. Mr. Decker, there is a binder in
12 front of you, and each of the jurors also have a binder.
13 I want to look with you at the first exhibit that we're
14 gonna talk about. And the first exhibit is going to be
15 in the first section of the binder, which is Plaintiff's
16 Exhibits, Exhibit Number 2. Do you see Exhibit Number
17 2?

18 A. Yes, I have it.

19 Q. All right. And what is Exhibit Number 2?

20 A. That is a lease between Brilin Electric and
21 Carolina Real Estate Holdings.

22 Q. All right. Is Exhibit Number 2 in this binder
23 the lease agreement that we're here for today in this
24 case?

25 A. Yes.

1 Q. Okay. All right. What was the term of CREH's
2 lease with Brilin?

3 A. It was a three-year lease.

4 Q. All right. All right. Let's go through a few
5 portions of this lease agreement, all right? The first
6 one that I want to talk about is Paragraph 10.

7 And, Your Honor, this is the first one I'm gonna
8 have a demonstrative exhibit that I would like to
9 publish to the jury.

10 All right. Mr. Decker, do you see paragraph
11 number ten of exhibit ten of the lease agreement?

12 A. I do.

13 Q. All right. Can you read for us the first
14 sentence of paragraph ten?

15 A. Landlord agrees to keep good repair of the roof,
16 foundation and structural supports, exterior walls of
17 the buildings located at the premise.

18 Do you want me to continue?

19 Q. Yes.

20 A. Exclusions of all glass, inclusive of all
21 exterior doors. And accept as may be speci -- excuse
22 me. Specifically allocated to the tenant in paragraph
23 12. The landlord agrees to be responsible for capital
24 repairs, replacements on the premises, provided the
25 landlord shall not be responsible for repairs or capital

1 repairs or replacements rendered necessary by negligence
2 or intentional wrongful acts of a tenant, its employees,
3 agents or invitees or contractors.

4 Q. All right. I want to stop you right there. So
5 the last portion of that, that you just read, which is
6 highlighted on this demonstrative exhibit says that CREH
7 isn't responsible for things that were rendered
8 necessary due to the negligence, intentional harmful
9 acts of the tenant, right?

10 A. Correct.

11 Q. Employees, agents, invitees or contractors,
12 correct?

13 A. That's how I interpret it, yes.

14 Q. All right. Let's look at paragraph 11(a) of the
15 lease. Do you see that?

16 A. Yes.

17 Q. All right. This session discusses repairs by the
18 tenant, correct?

19 A. Yes.

20 Q. Okay. All right. If you will read the first
21 sentence of this provision for us, please.

22 A. The tenant accepts the premises in their present
23 condition and is suited for the permitted use and
24 tenants intended purpose.

25 Q. All right. If you'll continue.

1 A. Tenant, throughout the initial term of the lease
2 and any extensions or renewal thereof at its expense,
3 shall maintain in good order and repair the premises,
4 except those repairs expressly acquired to be made to
5 the landlord hereunder, which would include, but not
6 limited to, any building or other improvements located
7 therein of all light bulbs, ballast replacements,
8 plumbing fixtures, systems repairs within the premise,
9 and water and heater repairs.

10 The tenant should only use licensed contractors
11 for repairs such as where a license is required. The
12 landlord shall have the right to approve the contractor
13 as to any repairs in excess of \$3,000.

14 Q. All right. So from this provision we see a
15 couple of important things. The tenant, in this case,
16 Brilin Electric, is obligated to maintain the property
17 in as good a condition as it received it, right?

18 A. Correct.

19 Q. Okay. Brilin was obligated under this provision
20 to only use licensed contractors for repairs?

21 A. Correct.

22 Q. And the landlord, meaning CREH, has the
23 responsibility and the ability to approve the contractor
24 that Brilin intends to use for any repairs that costs
25 above \$3,000?

1 A. Correct.

2 Q. Okay. All right. And, finally, let's look at
3 11(b). All right. If you'll read the first sentence of
4 11(b).

5 A. Tenant agrees to return the premise to the
6 landlord at the expiration date or prior termination of
7 this lease in good condition and repair, as the lease
8 commencement date. Natural wear and tear, damage by
9 storm, fire, lightning, earthquake, or other casualty
10 alone is accepted.

11 Q. Okay.

12 A. Do you want me to stop right there?

13 Q. Continue.

14 A. Tenant, tenant's employees, agents, invitees, or
15 contractors shall take no such action, which may void
16 any manufacturer or installer's warranties which
17 relationship to the premise. Tenants shall indemnify
18 and hold the landlord harmless from the liability,
19 claim, demand, or cause of this action arising on this
20 account of the tenant's breach of provision of this
21 paragraph. 12.

22 Q. All right. Now, did Brilin Electric occupy suite
23 111 for the entire term of its lease?

24 A. Yes.

25 Q. At the beginning of the lease term, tell us about

1 what your dealings and interactions with Brilin were
2 like.

3 A. They were reasonable. They were good in the
4 beginning. I really didn't have any issue in the
5 beginning.

6 Q. Would you say they were like those that you have
7 with other tenants?

8 A. Yeah. You get to know them on a request of a
9 roof leak or maybe something on the property needs
10 attention, pest control, maybe capital improvements that
11 we might have to do around the premise, we would notify
12 the tenants. Or something somebody did on the adjacent
13 tenant, we would notify them to the issue or concern.

14 Q. All right. So, as the three-year lease term
15 progressed, tell us about what happened with your
16 dealings and interactions with Brilin?

17 A. Myself, I didn't have as many interactions daily
18 as we did with Mr. Schulte, which I think will be
19 testifying at a later date, but they were brought to my
20 attention. And during those times, you try to pull
21 those people out and put yourself in their shoes to deal
22 with whoever you're dealing with to see if you can
23 resolve an issue and come to some sort of a compromise
24 or an agreeance.

25 For some reason that dissolved with all parties

1 on our team, including me, Frank Jackson, and Mr.
2 Schulte. None of us were able to communicate very well,
3 just for some reason that's unknown to me. It became
4 difficult towards the end.

5 Q. Now, just so we orient ourselves, you mentioned a
6 couple of people, the first one being Frank Jackson.
7 Who is Frank Jackson?

8 A. Frank Jackson's our CFO that's been overseeing
9 our books and accounting and taxes for over 17 years
10 through the different companies.

11 Q. And who is Wayne Schulte?

12 A. Wayne Schulte was an employee of both companies
13 and had been with us for over 20 years, and was
14 maintaining and we called him a project property
15 manager. We tried to change the walls for him so he
16 could be included in all facets of the business.

17 Q. All right. How was Brilin with paying its rent
18 on time every month?

19 A. He was good. Brilin was good overall. There was
20 a couple hiccups there, but overall was good.

21 Q. All right. At some point, did you send a letter,
22 a written correspondence to Brilin Electric?

23 A. In reference to?

24 Q. What we may call a cease and desist letter.

25 A. Oh, yeah. Yeah. I think that's gonna go along

1 with the jersey barriers that the defendant said in his
2 opening statement. We, obviously, do improvements
3 around properties and had to change traffic controls.
4 And we weren't getting anywhere by e-mail or phone or
5 responses from the tenant. And it got to a point where
6 I asked Steve to get involved and send out a letter
7 certified mail first.

8 It went unanswered, so we did it again. And then
9 we still saw the actions on the property, things that
10 were not the way we want them, and we couldn't get a
11 response. So I took the letter, against his better
12 judgment, and taped it to all the doors. Somebody had
13 to see the letter. It's a general letter. We got a
14 response the next day and dialog started.

15 Q. All right. So let's take a look at that letter.
16 Let's break down what you just testified to. Let's look
17 at Exhibit 3, Plaintiff's Exhibit Number 3 in this
18 binder. What is Plaintiff's Exhibit 3?

19 A. It's the, it's the action I asked to help me with
20 to get resolved to get somebody to talk to us.

21 Q. All right. So, Exhibit 3 is the letter that was
22 sent to Brilin?

23 A. Yes.

24 Q. Okay. You've testified to the reasons why you
25 decided to have that sent. What were your concerns

1 about Brilin when you sent this letter?

2 A. I had multiple concerns. We had ductwork damage
3 that we originally saw months before that, that we
4 brought to his attention, via the rent invoice, per my
5 CFO, followed with an invoice to fix the ductwork.
6 Nonresponse to that for a long time.

7 Then we saw the jersey barriers that we placed
8 in the new parking lot to control the traffic, but we're
9 sharing the property with an adjacent property owner.
10 But we, we split it on the property line, so everybody
11 had the same right to be there. We just had to
12 reconfigure it due to car burnouts, loud noise,
13 directed, from what I heard, Brilin's employees were
14 driving fast and making it unsafe for other tenants. So
15 we came up with a mastermind plan to put jersey barriers
16 in to separate our property from the neighbor. But I
17 also went to the neighbor and asked them how to separate
18 it. We all agreed. We put a notice out to all the
19 tenants. If they had any ideas of how we could resolve
20 this to pitching their ideas, we got zero.

21 We noticed it was becoming a hardship for them,
22 as well as us trying to understand what they were doing.
23 The jersey barriers became the problem in the beginning
24 because they were moving them with their forklift to
25 make room to do whatever they wanted to do, and that was

1 causing us problems with the neighbor and trying to keep
2 some sort of rule or order here, and it just turned into
3 a problem.

4 And we had a balance -- we had some checks
5 missing from rent. Some other things were probably
6 covered in that. And we had a number of catalog things
7 that we call protocol that we said we need to get help
8 because the landlord tenant is not working. The
9 relationship broke down for whatever reason. They may
10 have their side, the reasons, and I may have my own. I
11 tried to be neutral to figure it out, and I had zero
12 luck in getting there, and so I got Steve involved.

13 Q. All right. Now, Mr. Decker, at any point during
14 Brilin's lease term, did you try to interfere with
15 Brilin's ability to conduct and run its business?

16 A. No.

17 Q. What was your primary concern about Brilin when
18 it was occupying CREH's commercial space?

19 A. You know, you want a good tenant and you see
20 damages, you want a good response for what you're seeing
21 is gonna be taken care of, especially knowing that the
22 lease was coming to its end term. We all know as
23 landlords, and I'll share with everybody, it's hard to
24 chase it after they're gone. You need to expose these
25 things in the front because people just leave and then

1 we're here.

2 We tried to do it before it got to that point,
3 and we just couldn't get traction. We couldn't see
4 anything that was positive coming back to us. It was
5 like, we'll fix it when we're done. And we're like,
6 yeah, but that's a lot of money. I mean, we don't have
7 a big deposit. And, you know, what are you doing?

8 How do you promise me you're gonna do that,
9 because you're not listening to what I'm saying now.
10 You're doing the opposite of what we agreed to. And so,
11 I called Steve and said timeline is right now. Wherever
12 it goes, it's gonna start here with you legal, because I
13 don't know how to -- everybody's not the best at
14 interpreting a lease.

15 You get it to enforce for both parties, but you
16 can't always come to the same conclusion. And when you
17 start seeing these problems and your own property being
18 damaged, you put a lot of blood, sweat, and tears into,
19 and money, it's disheartening if you can't get the
20 tenant to kind of help you do that. During, not after,
21 but during the time that there's a problem, so that's
22 where we headed.

23 Q. Now, Mr. Decker, you just testified that you were
24 concerned about Brilin potentially moving out of your
25 commercial space and not knowing where they went. Is

1 that why you decided to file suit prior to them moving
2 out?

3 A. Probably a number of factors came in. Of course,
4 having legal advice was one. We're not getting dialog
5 from the representative attorneys for Brilin. We're
6 getting promises that they're talking, the two attorneys
7 and Brilin are talking to come to a resolve, but the
8 actions aren't there. I mean, you just sat back and go,
9 what's going on?

10 And the parking lot, the building became, you
11 rented a building, there was parking lot around it, but
12 your business grew so big, now you're disrupting not
13 only the people around you, but you're tearing up the
14 parking lot by extending your building outside the
15 footprint of what maybe we all think your lease it. And
16 you're going, what are you doing? You shake your head.

17 Forklift in the parking lot, asphalt. You
18 wonder, why are you using a concrete type warehouse
19 forklift in an asphalt parking lot? And you see the
20 damages on a brand new parking lot at \$100,000. It's
21 disheartening. You have to nail it in the butt first
22 and say, hey, can we change forklifts? Can we put air
23 tires? Can we figure out a better process? Nobody
24 replied. Wouldn't do it.

25 Q. All right. So you mentioned, one of the things

1 that you mentioned was some jersey barrier.

2 A. Yes, sir.

3 Q. And first, for the record, this is gonna be
4 Exhibit Number 4 in the binder. Mr. Decker, Exhibit
5 Number 4 in the binder, are these the jersey barriers
6 that you're talking about?

7 A. Yeah. Jersey barriers are the concrete structure
8 you see on the highway. That is called a jersey
9 barrier, yes.

10 Q. Okay. What conversations or interactions with
11 Brilin did you have regarding these jersey barriers?

12 A. Well, the first notice was with the asphalt that
13 we were gonna reconfigure the parking lot for safety
14 reasons. We had FedEx, UPS, overnight tractor trailers.
15 It's a horseshoe shaped lot. You can go under another
16 property owner's entrance and come out on our side, but
17 we both have a property on the middle.

18 And he was getting his parking lot torn up,
19 rutted out, watered. The truck's parking overnight
20 illegally, so we talked to the fire marshall, and the
21 fire marshall told us, yes, this would be the best way
22 to divide the parking lot for safety reason and for
23 traffic flow, speeding, flow of traffic would work.

24 So we decided to split it right on the property
25 line like a fence. This is our property. This is your

1 property. You can still access the back of your
2 property where you need to, and separate it from the
3 front where the commercial cars come in, like for
4 patrons, like all of us, that go to a store, we go in
5 the front, the warehouse is in the back.

6 We left them to have their flex space warehouse
7 office in the front, and the heavy stuff and the
8 movement out back, and the jersey barriers controlled
9 that.

10 Q. Okay. So, did there become any problems with the
11 jersey barriers?

12 A. Not the jersey barriers themselves, they were
13 fine. The problem became that, not Mr. Russell himself,
14 but his employees at times would move those jersey
15 barriers and I had this conversation with Bryon and sent
16 him voice-mails to not move the jersey barriers. If
17 we're gonna do something, we need to figure out a
18 figuration.

19 But, again, I'm in Myrtle Beach about this time,
20 trying to see it from a distance. And Wayne Schulte,
21 the project manager, maintenance man is watching over
22 this and he says, they're moving on, they're changing
23 them. And nobody's listening to Wayne, so I'm trying to
24 get some logic across. Don't move them right now, we're
25 trying to figure out a plan. Again, we have \$100,000

1 parking lot specced out by a company that's reputable
2 with a warranty in place.

3 So anything we do to that parking lot and change
4 the configuration voids my warranty, including a
5 forklift in the parking lot causing damage. They're not
6 gonna warrant that, and I'm concerned, because that's a
7 lot of money and we budgeted for a long time to put that
8 capital investment back and to make it better for
9 everybody. Just with this it wasn't working out.

10 Q. All right. Now Exhibit 4 that we're looking at,
11 it looks like there's several jersey barriers. And then
12 it appears that there's some kind of trailer between
13 them. Can you tell us about this photograph and what
14 happened with this?

15 A. It's a -- somebody had moved the jersey barriers
16 to place a trailer in there again. So, obviously, I can
17 say, if you look at where the trailer's at, I didn't see
18 it happen, but the picture indicates that Brilin, at one
19 occasion asked me, can he park a trailer behind the
20 jersey barriers and I said I'd rather you not, because
21 we don't want damage, parking in the gravel anywhere,
22 but we worried about security.

23 He was worried about it being stolen. And I
24 said, well, lock it up or put a truck in front of it or
25 figure it out. And he text me back and said, I'll take

1 care of it. Don't worry about it, I'll move it
2 somewhere else, but I don't know what happened after
3 that. I just have this picture from one of my guys.

4 Q. So, did Brilin heed your request or follow your
5 requests about not moving the jersey barriers?

6 A. Obviously I can't say, I wasn't there, but it
7 looks like he didn't on the picture.

8 Q. And how soon, how early or late in this lease
9 term did you go through this rigamarole with the jersey
10 barriers?

11 A. It was at the end of this one. We did the
12 capital improvement, so it would be towards the end of
13 the lease when, you know, we finally said the parking
14 lot's exhausted its original life and we put the dollars
15 into making it better.

16 Q. Okay. And when did you redo the parking lot or
17 repave the parking lot?

18 A. I would say '19. I don't know the exact day
19 without seeing an invoice. It's been a while, though.

20 Q. Okay. All right. So, now, you mentioned not
21 only the jersey barrier, talking about these issues, but
22 you also mention some damages to the asphalt in the
23 parking lot, right?

24 A. Yes.

25 Q. All right. And this is gonna be Exhibit 5, for

1 plaintiff's exhibits in the binder. Mr. Decker, what
2 does Exhibit 5 show?

3 A. There was asphalt just outside the warehouse and
4 a ramp that we're discussing on the property, and the
5 pallets that are in the picture are of the defendant's
6 workload that he brings out to the site, as his attorney
7 stated, to run the business outside the warehouse.

8 Q. All right. So, there's a few things in this
9 picture that I want to discuss with you. The first one
10 is the actual, it looks like, asphalt damage itself, but
11 a circle, circular shape damage area at the bottom of
12 the asphalt pavement. Do you see that?

13 A. I do.

14 Q. All right. Do you know what causes asphalt
15 damage?

16 A. There are a number of things. I don't know
17 exactly. I mean, anybody can drive on that part, part
18 of the asphalt, but obviously brought it to their
19 attention. There's damages being caused outside and try
20 to get it resolved.

21 Q. And with regard to this asphalt damage that we're
22 looking at in Exhibit Number 5, tell us what
23 conversations or interactions you've had with Brilin
24 specifically regarding this asphalt.

25 A. Well, one of them we noticed a forklift, which

1 seemed to me, and after researching it and calling the
2 forklift company and figuring out if it was resolved and
3 I left him a voicemail, the forklift seemed to be the
4 nemesis to the whole problem.

5 Cars don't do that. The density of a pneumatic
6 tire is a very hard rubber. Very solid tire. And the
7 forklift guys that I -- I don't own one, but I checked
8 with them and I've used them before, coming down an
9 incline of a ramp with a load on your forks, hitting the
10 hot asphalt or a dense material like that, was not gonna
11 hold up to a forklift.

12 Depending on how fast the driver comes down, what
13 the load is and the turn radius. If he did a wider
14 turn, he might have some more longevity. If he did --
15 if he sat a sharp turn, that edge of that tire would cut
16 and cut and then peanut brittle the asphalt, is probably
17 a good term for it. It would cause it to alligator or
18 crack.

19 And continued use like that, water gets in it, it
20 rains, it's cold, it would just deteriorate faster. And
21 there's -- and I saw it happening and I'm like, you've
22 got to figure a better way. There's got to be a better
23 way.

24 We have two dock doors out back. How about an
25 idea of you get whatever you need out the back door and

1 not the side door, but I couldn't get anybody to listen
2 to that, so...

3 Q. So this asphalt damage was on Brilin's property?

4 A. It's on the area that's on his end of the
5 building that no other tenant really uses. It would be
6 deliveries for him, his daily truck usage, or his
7 vendors, from what Wayne Schulte had monitored for us
8 for a while.

9 What's going on over there? And we had him go
10 out and take pictures and just write notes and send them
11 back to us so we could kind of figure out which
12 direction do we go here, and headed out, because
13 obviously we had counsel by then and we were trying to
14 figure out how to articulate the next step into fixing a
15 problem that maybe he was gonna fix when he left, and we
16 hated to see it torn up to a point where it was gonna
17 cost so much money.

18 And when you have a \$3,000 deposit and you have X
19 amount of dollars in repairs, you start to get worried
20 if you're gonna get that or end up in a place like this
21 to fight it out.

22 Q. All right. So, the asphalt that we're looking at
23 in exhibit 5, you mention in one of prior responses,
24 that you've had the, the pavement resurfaced or redone.

25 A. Correct.

1 Q. Was this area in the area of the pavement that
2 CREH had resurfaced or redone?

3 A. It seems to be. I mean, I'd have to know the
4 date of this picture, but, obviously, that's what,
5 that's what I was given and I would say yes.

6 Q. Okay. And in terms of the resurfacing work
7 itself, how much did CREH spend to have that done?

8 A. 100,000-plus dollars to do the front of the
9 building, which would be the length of the whole
10 building and down this section right here that we can
11 see from front to back.

12 Q. All right.

13 A. It's like a horseshoe around the building.

14 Q. Now, when you have the -- do you know how many
15 square feet we're talking about here?

16 A. Not off the top of my head, no.

17 Q. Okay. How did you determine -- did CREH have any
18 part in determining how thick or the thickness of the
19 repaving?

20 A. We used a contractor. We told them about the use
21 of the alleyway or what we called between the
22 properties. We talked about car usage in the front. We
23 talked about side. We actually undermined that whole
24 area, extra excavation to get down to a more bearing
25 soil. We compacted a gravel, under the recommendations

1 of our contractor that said he would warrant it, but not
2 for -- he never said for forklift, so that's when this
3 all came into play. And once we found out the forklift
4 was causing the damage, then it became who fixes the
5 job?

6 At one point he gave us an estimate to fix. But
7 then I called his guy and his guy said I'm not
8 warranting anything. My guy said he would warrant it
9 and keep it under same umbrella of the \$100,000 job, but
10 he had to do the job. But he wasn't happy about cutting
11 seams in asphalt because in our terms, if you cut a seam
12 in something, it is the point that might be the less --
13 it won't be the strongest point.

14 You like to do an entire asphalt job. If you
15 start piecing it together, water could get into those
16 joints and cause it to laminate or crack again, so we
17 had concerns about that. But we were trying to address
18 them, we just couldn't come eye-to-eye on how to do it
19 until now, which we recently did it. We just bit the
20 bullet and did it.

21 Q. All right. Now, you mentioned your response that
22 you went through -- you had some extra excavation done.

23 A. We did.

24 Q. What is -- what benefit does extra excavation
25 serve for the strength and the durability of this

1 asphalt?

2 A. The original asphalt job was done with no gravel
3 base. It was one of those jobs that somebody probably
4 did and ran out of a budget and they just put asphalt
5 under it, so we took it all up. Six inches in the
6 front, four inches on the side. We tried to come up.
7 This wasn't a main traffic area. The side door wasn't
8 used by any tenant prior. And we said and we're putting
9 jersey barriers up and it's a dead end.

10 We came up with the methodology that we would go
11 four inches, an inch-and-a-half, two inches of asphalt
12 on top, using a high-grade asphalt, and I was happy with
13 that. I was -- coming from my professional that I used,
14 I was like, you're gonna warrant it, and I really need
15 it to be warranted. And also, maintenance warranty. He
16 was gonna follow up every year so we could catch before
17 it gets worse. And I wanted to have all that wrapped up
18 with one guy. I don't need five different contractors
19 coming every year because something else happened. I
20 was trying to keep it under that umbrella.

21 And I explained that to Mr. Russell that it was
22 under warranty, or even his SMI guy that gave him the
23 quote that we'll probably see later. I called that guy
24 as a working owner, like I always do. I don't know what
25 you're doing. How are you gonna fix this? He goes, I'm

1 not warranting anything that guy said. Mr. Russell just
2 asked me to patch it. And I said, well, you understand
3 we just did the parking lot? And he goes, oh, no, I
4 didn't really know what was going on here. And I said,
5 well, we'll see what happens. And obviously we didn't
6 use that guy.

7 Q. All right. Now, so were -- you know, when you
8 testified earlier about your, you know, background being
9 a general contractor, I want to delve a little bit
10 deeper into the thickness of the asphalt issue. In this
11 area, I believe, if I understand your testimony
12 correctly, the asphalt in this area that we're looking
13 at is about four-inch thickness; is that correct?

14 A. No. The base is four inches of thick, the
15 gravel. I don't think anybody puts four inches of
16 asphalt many places. Maybe at an airport or something,
17 but for commercial use, we decided this would be the
18 best use with the -- they're using more of an
19 emulsification, which is the tar and gravel mix that
20 would get a tighter pack with rolling the machine on it.
21 We all see rolling over asphalt to compact it down and
22 make a nice bond, and then you let it cure out and you
23 hope that it's gonna hold up to normal wear and tear.

24 Again, it goes back to the forklift. This
25 forklift normal -- I didn't know the guy was operating a

1 forklift from the parking lot, first of all, because it
2 never came to my attention until he had it in the
3 warehouse on the concrete the whole time, that I ever
4 saw it, until he outgrew the warehouse, then it was out
5 in the parking lot.

6 And then we notified him about the damages and it
7 went, hey, I take care of it later to, you know, to
8 where we're at now with Steve, get him involved to try
9 to figure out how do we deal with this, this, this, and
10 this and get somewhere.

11 Q. All right. Now, this damaged asphalt, are you
12 aware of whether or not Brilin fixed it or attempted to
13 repair it at any time?

14 A. Yes.

15 Q. All right. And what did Brilin do in terms of
16 its repair, of this damaged asphalt?

17 A. He added a -- he added a concrete apron at the
18 base of this ramp in this picture. I can't see it from
19 your angle, but from right to left there's a ramp
20 concrete. He extended it out where the biggest part of
21 the damage was when you come down the ramp. The front
22 of the forklift's tire would hit that asphalt and kept
23 peanut brittle type glass shatter technique would hit
24 the asphalt and it would just start to break up. And he
25 noticed it, so he decided to cut out the asphalt and put

1 a concrete pad there.

2 Q. Was that repair acceptable to you?

3 A. No.

4 Q. Why not?

5 A. One, I didn't know about it. I heard about it,
6 but I didn't know about it, so I didn't understand what
7 really happened there.

8 Q. All right. Did you ever authorize or approve
9 Brilin to patch the damaged asphalt?

10 A. No.

11 Q. All right. And why not?

12 A. Because he had started with you. Once we had the
13 other issues, we decided -- we had a meeting on a job
14 site.

15 Q. All right.

16 A. Yeah.

17 Q. And we'll discuss that.

18 A. That's fine.

19 Q. We'll discuss that --

20 A. Yeah, no.

21 Q. -- in a few moments.

22 A. I know.

23 Q. Did you solicit any estimates for the repairs to
24 the damaged asphalt?

25 A. Yeah. Not only that area, but the associated

1 area in that area right there by the ramp, what we call
2 the alley property line, yes.

3 Q. All right. Let's look at Exhibit 6. Can you
4 tell us what Exhibit 6 is?

5 A. That's a repair to that area.

6 Q. All right. And what is the grand total of this
7 repair proposal?

8 A. \$5,950. And this is by the same company that did
9 the original job.

10 Q. All right. And the same company that you
11 testified warranted ---

12 A. And would warrant this, included with their job.

13 Q. All right. Did Brilin ever make or attempt to
14 make any other repairs to the asphalt outside of the
15 building at suite 111?

16 A. Other than an estimate, no, no attempt.

17 Q. All right. I want to look at what is Exhibit 7
18 in the binder. What does exhibit -- what does Exhibit 7
19 show?

20 A. A concrete patch in the asphalt area at the
21 bottom of the ramp.

22 Q. All right. Tell us what conversations or
23 dealings you have with Brilin specifically regarding
24 this concrete patch.

25 A. From the start?

1 Q. Just regarding the concrete patch that we're
2 looking at in Exhibit 7.

3 A. Asked who did it. Wanted to know if there's
4 rebar in it, what PSI the concrete was. I didn't know
5 anything of how thick it was. I was like, how thick is
6 that concrete? Is it gonna break on me? I didn't have
7 any idea of why they did it. In reason it sounded good,
8 but actually I didn't know anything, because concrete
9 can be over mixed, under mixed. And he could have said
10 I fixed the problem, and then I end up with the problem
11 when he's gone. It all cracks up. So I want to know I
12 have the best job in that situation. I asked him that,
13 but I never got an answer.

14 Q. So, so you were asking these questions of Brilin,
15 but, but was Brilin, Mr. Russell or anybody else at
16 Brilin not responsive to your questions?

17 A. That was in a group meeting that we'll probably
18 get to sooner than right now, but it was in the context
19 of a job site meeting that we were all on when that came
20 up.

21 Q. All right. Now, thinking back to the lease
22 agreement and the provisions that we went through with
23 that. Did Brilin Electric ever request permission from
24 you or authorization from you or anyone else at CREH, to
25 your knowledge, to do this concrete path?

1 A. No.

2 Q. All right. Did you ever authorize Brilin
3 Electric to patch this area?

4 A. I did not.

5 Q. Was this concrete patch, when you discovered it,
6 acceptable to you?

7 A. No.

8 Q. Why not?

9 A. Why I just stated, I didn't know anything about
10 it. Again, you want some ownership, you want somebody
11 to tell you what they did, how they did it, and I have
12 nothing because somebody did the work that wasn't
13 authorized.

14 Q. So, would you say that your concerns were about
15 the durability of this concrete patch?

16 A. Yeah. And water intrusion, because water likes
17 to get in the cracks. Any time you have a crack, next
18 to another crack, next to another crack, that seems to
19 be the biggest problem with us with commercial
20 buildings.

21 Water and heavy trucks or equipment will get the
22 soil soft underneath. So you try to do a full
23 encapsulation of an area with the proper drainage taking
24 the water away from the problem. The water seeps into
25 these joints. It's like anything else, water at your

1 house, in a window, it gets in, you can't see it, the
2 damage starts, and before you know it you're tearing it
3 apart trying to find the root of the problem, and it's
4 really right in front of you.

5 Q. So Brilin patched this area with concrete during
6 its tenancy, but CREH still owned that property at that
7 time, did it not?

8 A. Yes.

9 Q. And even today, the day of this trial, CREH still
10 owns that property, does it not?

11 A. We do.

12 Q. Okay. So were your concerns about future tenants
13 having issues? Did that enter your mind?

14 A. It didn't enter my mind at the time. I'd just
15 like to know, when you own something exactly what's
16 going on so you know how to fix it or, you know, deal
17 with the problem if it results to another problem. If
18 you did something good or bad.

19 Q. All right. At a certain point did you become
20 aware of some damage to some bricks above one of the
21 doors of the warehouse door?

22 A. Yes, I did, become aware of it.

23 Q. All right. And for the record we're looking at
24 Exhibit 8 in the binder of plaintiff's exhibits. Can
25 you refer our attention in this photograph of where the

1 damaged bricks are?

2 A. That would be at the top of the ramp that we just
3 looked at from the asphalt pictures. There's a side
4 door entrance to the warehouse with a concrete ramp that
5 leads up to that door. And that's a roll up door
6 picture with a steel lentil.

7 Q. Okay. Now, so let's back up and kind of talk
8 about what you just said. The bricks that you're
9 talking about, are they -- where are they in relation to
10 the door in this picture?

11 A. If you're facing the door, it would be the upper
12 right-hand corner of the full opening of the door.

13 Q. Okay. All right. How did you find out about
14 this damage to the bricks?

15 A. It was brought to our attention by Wayne Schulte.

16 Q. All right. After you learned of the damage, did
17 you discuss it with Brilin?

18 A. I did not personally discuss it with him, no.

19 Q. Okay. All right. Do you have any knowledge or
20 understanding as to how this damage to the brick
21 occurred?

22 A. From what Mr. Schulte told me, he investigated
23 and it's possible that the discussions he had he might
24 -- he said, forklift hit. It's something high. Hit the
25 door. Hit the -- maybe they had a load high and it hit

1 the door and it jolted that corner and caused it to
2 become loose or detached. That's all he said. And he
3 was looking into trying to figure out how to get a
4 repair, fix it.

5 Q. Now, you mentioned a few moments ago the lentil.
6 Tell us what a lentil is.

7 A. It's like a header above the door. It carries
8 the load, because obviously there's nothing underneath
9 it. A brick doesn't go from the ground up to the top of
10 the opening, so that piece of metal stands across to the
11 left side and the right side of that opening, onto the
12 courses of brick and it's usually attached to something
13 of the building or the structure so they can carry the
14 brick above that up to the roof line, like a load,
15 carrying that load above. So like from the top of this
16 above. So that's all it does.

17 Q. All right. Now, and from this picture it appears
18 that the brick damage is relatively minimal. Do you
19 have any concerns about the lentil that you just told us
20 about?

21 A. Yeah. The only concerns I had was to make sure
22 that it was structurally sound, it wasn't loose. I was
23 concerned that -- we don't know how -- sometimes you
24 don't even know how much that's bearing. You don't even
25 think about it until you see a crack or some structural

1 concern like that.

2 If the lentil was barely touching and barely on
3 the other bricks and you just band-aid or patch it and
4 don't investigate it into the depth, at least to get a
5 clear mind a couple of pictures, satisfy everybody that
6 you fixed it. And my concern was to Wayne, hey, if we
7 get our guy, Billy Philemon, out there, can you have him
8 check to make sure that if that gets repaired, it's not
9 a band-aid, it's a factual solid repair, and he said he
10 would.

11 Q. Did you ever discuss with Brilin or Mr. Russell
12 the need to have this damage repaired?

13 A. We talked about it at a walkthrough at one point,
14 yeah.

15 Q. All right. Did this damage occur during Brilin's
16 lease term?

17 A. Yes.

18 Q. Okay. Did you solicit an estimate to repair this
19 damage?

20 A. We did.

21 Q. All right. I want to look at Exhibit 9,
22 Plaintiff's Exhibit 9. Tell us what Exhibit 9 is.

23 A. That's the estimate of Billy Philemon to do the
24 work in those areas, and then get further inspection
25 inside the cavity where the brick was loose and falling

1 or had fallen out. Billy said, I need to see it more,
2 inspect it and repair it, and that was the estimate to
3 do that.

4 Q. Okay. So this estimate includes the necessary
5 inspection, as well as the repair work?

6 A. Correct.

7 Q. All right. And what is the total price for this
8 repair work, according to Exhibit 9?

9 A. \$1600.

10 Q. All right. Now, it might sound like a silly
11 question, but did the building that Brilin occupied
12 during its lease term have doors?

13 A. Yes.

14 Q. All right. I want to spend a little bit of time
15 talking about, Mr. White mentioned it in defendant's
16 opening, the rollup doors in the back of the building.

17 A. Correct.

18 Q. Okay. Describe those doors for us.

19 A. They're commercial rollup doors that you quite
20 often see in the back of a building. They're metal in
21 nature and alluminum components, spring loaded. They
22 roll up and coil up, so they just lift straight up and
23 they roll into themselves.

24 Q. Was there any incident or incidents involving the
25 doors to the building, the rollup doors, during Brilin's

1 tenancy?

2 A. Yeah. Mr. Russell text me one day and said
3 something to the fact that we damage the doors, I'll
4 need to get those replaced before I leave. And I said,
5 okay. And we discussed possibly getting what type of
6 doors replaced and with a future date.

7 Q. All right. So, what kind -- what type of rollup
8 doors, specifically, were on the building when Brilin
9 moved in, took possession of the premises?

10 A. It's a coil rollup door. There's probably
11 different doors, styles from each manufacturer, but it's
12 a coil rollup. They interlock differently. Probably
13 better explained by somebody besides me, but that is
14 what I was challenged with when I found out the doors
15 were damaged and we get an equal door to what's there.

16 Q. All right. When you were looking at new doors to
17 replace these with after you and Mr. Russell discussed
18 the damage to them, were you concerned about the quality
19 of door that he proposed?

20 A. Yeah. Both from his side and our side, because
21 we use Overhead Doors, our preferred vendor. In our
22 business you like to stay with the same companies. You
23 can't have everybody using a different company to fix
24 something and you hope that when you lead them to one,
25 you come to some agreeance that you use the product.

1 Because it makes sense for us going down the
2 road, and if the price is different, maybe we come to an
3 agreeance that we're still gonna use that guy that we
4 want to use, but you give us the money so we can do it
5 the way we want to do it. And that was discussed. It
6 was discussed with -- he gave me the specs of the doors.
7 I called the door manufacturer he gave me, had a long
8 talk with him. Very nice gentleman.

9 Also called our expert and he disagreed with the
10 doors they are using, so I brought it back to his
11 attention through Steve that they're not apples for
12 apples and we're trying to figure it out what to do.
13 But we didn't know that they were gonna replace the
14 doors while we were in negotiations to figure out what
15 we needed to do. So we were happy to try to figure it
16 out, but I never got that phone call.

17 I just, I got a call that someone was at our
18 building, removing the doors off the back of the
19 building in the middle of the day. And I have no clue
20 who it is, but I assume it's those guys. But no
21 paperwork, no work invoice.

22 Not even an acknowledgement from the company that
23 did it to make sure that it was okay with the owner of
24 the building that you remove doors from a building,
25 which I thought was ludicrous that you don't have the

1 owner of the building sign something to approve removing
2 something and taking it away. And he said, no, but we
3 should, because he'd never been in this situation
4 before.

5 Q. All right. Let's look at exhibit 10 of
6 plaintiff's exhibits in the binder. Tell us what
7 exhibit 10 is.

8 A. Let me get to 10.

9 Q. All right.

10 A. I've been working with Overhead Doors for a long
11 time. Again, trying to stay loyal to the trusted
12 vendors. We all build reputations. Overhead will
13 service me in a minute. They'll come out in a second.
14 They'll, you know, they'll give me the quote. He did
15 everything he did. He just supplied me with a quote to
16 repair the doors, which they said was light condition to
17 what was there, and I said okay. And that's the quote
18 they gave me.

19 Q. So you just said light condition were the
20 parameters that you gave to Overhead Doors.

21 A. Correct.

22 Q. All right. Did you ever say, we want to upgrade
23 the doors?

24 A. I wanted that opportunity. If I needed to, that
25 was on our nickel. But first of all, the doors that I

1 was given by the defendant, I wasn't getting the
2 comfortable feeling that I was getting apples for
3 apples. So I wanted the chance to figure it out. And
4 they were like, hey, we need to know now. We need to
5 know now. And I'm like, I can't get people just to give
6 me the information like that. I didn't get it. So I
7 told my guy, is this the door I should put on the
8 building and he said yes. And that was Joshua Montoya,
9 I believe.

10 Q. All right. Now, how much is this estimate for,
11 for both of the roll up doors that were damaged?

12 A. \$7913.51.

13 Q. All right. And is it your understanding that
14 these doors were like kind to the doors that were
15 existing on the building?

16 A. That's my understanding.

17 Q. Okay. All right. Let's look at, let's look at
18 Exhibit 25 of plaintiff's exhibits.

19 A. 25, you said?

20 Q. 25.

21 A. All right, 25. Oh, okay, I got ya.

22 Q. All right. Now, what is, what does Exhibit 25
23 show? Just very briefly and generally?

24 A. Josh's comparison to the door being provided,
25 versus what should be there for us, compared to what's

1 at the building existing.

2 Q. Okay. If you would, read what Josh Montoya wrote
3 regarding the doors.

4 A. He just says to Wayne: Wayne, per our phone
5 conversation a couple of days ago, this is where my
6 research led me. The A Montessori 5501 door -- all
7 right, it's a door actually -- is a great product for
8 the proper application.

9 The application at your address would be better
10 suited for a commercial door, meant for a more frequent
11 revolutions between the two options, the OHD Model 600
12 door is better than the option for your location. The
13 slats and angle mounting offer more structure, structure
14 is very important in a commercial application.

15 The Model 600 is a lighter duty rolling steel
16 slat door, but in a different class. Light duty
17 compared to the Amarr series 5501. This is an old age
18 comparison of apples to oranges, considering these
19 openings are used every -- used for commercial
20 industrial purposes.

21 Q. All right.

22 A. And then he highlighted some stuff from somewhere
23 along the way.

24 Q. All right. And if we go back to Exhibit 10,
25 which is the Overhead Door estimate, what kinds of --

1 A. Hold on, I need to go back.

2 Q. -- what kinds of doors is this estimate for?

3 A. Ten?

4 Q. Exhibit 10.

5 A. Yes.

6 Q. What model or brand of rollup doors is this
7 Exhibit 4?

8 A. Hold on, let me look at it for a second. It's
9 the model 600 coil away rolling steel service door.

10 Q. And is that the preferred type of door that
11 Joshua Montoya talked about in his e-mail, which is
12 Exhibit 25?

13 A. It is.

14 Q. All right. Now, did this e-mail, did Exhibit 25,
15 the e-mail that we just looked at from Joshua Montoya,
16 give you any concern or any pause regarding the doors
17 that Brilin Electric was seeking to introduce or to have
18 installed at your building?

19 A. Not.

20 Q. Okay. So you didn't have any concern about the
21 doors that Brilin was trying to install?

22 A. Oh, I did have concern, but I didn't have a time
23 to -- let's go back to it. They asked about the door to
24 be installed. At the same time, they had already
25 engaged with a guy to install it.

1 I found out later they already signed a contract
2 and he said, the doors are already ordered, Brad.
3 Brilin already gave me the green light, but we're still
4 researching and looking up what we're supposed to be
5 doing between his team and their communication and me
6 when theirs was broke down. I told them what I was
7 doing.

8 I was looking at the door trying to figure out
9 what's the best application, in all fairness, and I was
10 getting told, that's not the best door for my guy. And
11 I'm asking them, can we figure it out? And then he told
12 me in the e-mail, use this door. That's equal to it.
13 That one that they're putting in wasn't, so I went with
14 that.

15 Q. All right. Now, so did Brilin have the damaged
16 rollup doors at the building taken off and replaced?

17 A. He did.

18 Q. All right. Do you know what happened to the
19 damaged doors that were taken off?

20 A. I have no clue.

21 Q. All right. Did you ---

22 A. Oh, hold on a second, let me go back. I, at the
23 time we saw the doors going down, we had Wayne go out.
24 He found out arbitrarily the doors be taken out and we
25 had some back and forth on what are you doing? We were

1 told to let them continue to put up the doors, because
2 it's a legal matter. I think the police were called for
3 that.

4 I called the owner of the -- that's why I called
5 the owner of the company that had installed and said,
6 what are you doing? Don't you call the people that own
7 the place? And he's like, Mr. Russell told me to put
8 them up, take it up with them. I said, this could be a
9 court matter, because we already started some legal
10 talks with the cease and desist. Do not do anymore work
11 on our property without us knowing, period. That's a
12 cease and desist official letter, but you keep doing
13 work.

14 So it kind of gets you going back and forth all
15 the time. Your brain is I want to help the guy, but I
16 can't because I don't know what he's doing.

17 Q. Do you know what Brilin did with the rollup doors
18 that it removed from the building?

19 A. Yes. Vendor told me they were discarded.

20 Q. Okay. Did you ask for Brilin to -- did you make
21 a specific request to Brilin that the damaged doors be
22 returned?

23 A. I, I didn't. I think you did, but I also called
24 the owner and he said, I can't bring them back. And I
25 said, I want my doors back. You shouldn't have took

1 them down. He's like, they're gone. They're in a
2 dumpster.

3 Q. All right. To date, as of today, have you gotten
4 those rollup doors back?

5 A. I have not.

6 Q. All right. Now, you mentioned this a couple of
7 times in your testimony so far. After all of this
8 happened, and all the damages that we've talked about so
9 far, did they all happen during Brilin's three-year
10 lease term?

11 A. They did.

12 Q. Okay. Now, after all this happened, did you meet
13 with Brilin out at the property, out at the lease
14 premises?

15 A. Yes.

16 Q. All right. And when did that meeting occur?

17 A. I want to say late October, November-ish of '19.

18 Q. Okay. Who was present at that meeting?

19 A. His original attorney, Nathan, which works for
20 the same firm. You, me, and Mr. Russell. And the
21 meeting was for us to come to a meeting of the minds.
22 We started a lawsuit. Obviously none of us wanted to go
23 there. We were gonna try to meet on the ground and come
24 to what's really going on here, at Ryan's request, to
25 resolve the possibility of this lawsuit coming to this

1 point.

2 Q. Now you just mentioned Ryan. Tell us who Ryan
3 is.

4 A. Ryan was his original counsel that was hired out
5 of the North Carolina firm. We thought we were making
6 headway.

7 Q. Okay. Tell us, tell the jury what happened
8 during this meeting in October of 2019.

9 A. I thought it was a good meeting, first of all.
10 To this day I'll say that until it goes wrong. We met
11 at the site. We all agreed to walk the premise. Went
12 in the front door. Mr. Russell was very nice about
13 that. He -- I knew he had some bad blood with Wayne and
14 whoever else. We went through the offices to the
15 warehouse. We got to the warehouse and we wanted to
16 address a few things.

17 The doors would come up. The ductwork that's
18 probably going to come up in the rest of this testimony,
19 and the damaged studs in the walls and the racking
20 system and the asphalt apron and the brick. Oh, and all
21 the punch work that he asked me to do at that meeting
22 were all discussed.

23 And immediately the punch work got done. As soon
24 as I left my office and we had a handshake, I left back
25 to my office and ordered a new lock for a door. I did

1 weather stripping, some things that he was concerned
2 with. I text him and he was thankful and it was all
3 good.

4 Q. Now, the punch list items that you just
5 mentioned, the things that Mr. Russell asked you to do
6 as the landlord during this meeting. How quickly did
7 you get that entire punch list of work done?

8 A. Within a week, including the locksmith that he
9 asked me to change the lock in the hallway. I took it
10 away from Wayne Schulte. Seems to be a little bit of
11 animosity with Wayne and his employees and him not
12 liking Wayne, keep him off the property, I stepped in to
13 take the role, to try to, like, okay, we'll be better at
14 this.

15 We'll just go and meet everybody of minds, with
16 two constituents I thought would be able to resolve
17 this, because it's -- it was kind of childish, but at
18 the same time he's not happy. I'm concerned about the
19 building and we're all trying to resolve something, with
20 good intentions at that meeting. And I think that's
21 what it was all about.

22 Q. All right. Now, during the meeting, do you
23 recall anything about what Mr. Russell said, if
24 anything, about making future repairs or alterations at
25 the leased premises?

1 A. Yeah. He said he would not do anymore repairs.
2 And if we go through the beginning of this, if we do it
3 and you guys decide to do that, at the end of it he said
4 he'd do zero more repairs, reiterated by his attorney
5 and you both in front of me and he was right there. He
6 promised he would not do any more work without us
7 knowing about it.

8 Q. Did you believe him at that point?

9 A. I did. And we also said -- you said we want
10 approval and I said, yes, that would be nice. We'd have
11 it in writing, some approval that we okayed this,
12 because we were ready to go. We just want to know what
13 you're doing and it's done to a standard of quality that
14 we can both agree on.

15 And that's how I left it. And that's why I
16 jumped on the punch items. Didn't let Mr. Schulte do
17 the punch items. I did them personally as the owner. I
18 walked through every list item he gave me and I made
19 sure it was done, because I didn't want to have that --
20 he asked me, how fast can you do it, Steve did.

21 I said, I'm on it. I already did it. I called
22 the locksmith. I called the weather stripping guy for
23 the door. I did this and he said, okay, great. And
24 I'll let the other's counsel know. And that's what I
25 was told.

1 Q. All right. Now, during the meeting, did Mr.
2 Russell point out anything to you related to the
3 ductwork inside the building?

4 A. Yes, he did.

5 Q. All right. And this is gonna be, for the record,
6 Exhibit Number 11 in the plaintiff's exhibits. What did
7 -- what do you recall Mr. Russell telling you or talking
8 to you about the ductwork inside the building during the
9 October 2019 meeting?

10 A. Well, I'm gonna take it back a step. The
11 ductwork was known to Mr. Russell early on in '18,
12 because we noticed it got damaged on our inspections we
13 do every year on our buildings. We do pest control. We
14 walkthrough the buildings. We try to see things that
15 need fixing or damages maybe a tenant caused or it could
16 fall down and hurt somebody. And we saw some ductwork.

17 And Mr. Jackson, our CFO, asked me to get an
18 estimate and then we would provide it to Brilin in his
19 lease statement or his monthly payment. And it went
20 unheard of. He didn't respond to it for a long time.
21 And then at one point he told Mr. Jackson, I'll take
22 care of it at the end of my lease.

23 So, as we walked in that day and we saw it,
24 before we even got to get our attention to it, he
25 brought it up. He said, oh, by the way, I fixed that

1 ductwork. And I said, okay. And he told us what he
2 did. He reconfigured it to make it work better for him
3 without we really knowing what it was really doing yet.
4 It looked to be good, but we asked him, well, who did
5 the work? What if that falls down and kills somebody or
6 hurts somebody? We needed to see a lot.

7 And I think Steve went back to Nathan and said,
8 oh, I need a COI, I need a COI, I need a COI. We end up
9 getting a COI for the company that did it, but he also,
10 since he altered it. I hadn't talked to our HVAC guy
11 yet, and understand the flow of that ductwork, how it
12 really worked in the warehouse, because now you changed
13 it and put it up higher, it'll take a lot more force to
14 get it down here to cool or heat for the person on the
15 floor. So it was, it was made and engineered at a
16 certain height, so when you turn on the AC and it comes
17 out of the vent, it actually gets to you.

18 And my AC guy says, well, it's not the worst
19 repair, but it's not what was there before. They
20 changed it. And I said, yeah, I'm not real happy with
21 it but, you know, right now I'm just gonna let it go
22 until we go to the next step, which was walk into the
23 wall area that was hit by the forklift.

24 Q. Now, you mentioned a COI. Tell us what a COI is
25 and what the importance or utility of it is.

1 A. Okay. As a landlord, or even anybody, COI is a
2 Certificate of Insurance. It's for the person that does
3 the work they provided. At your house, if you have a
4 plumber come, you want to get a Certificate of
5 Insurance. Or a roofer, if they fall off the roof, you
6 want to know they're insured, because if they're not
7 insured and they get hurt on your site or something
8 happens to that product and you get hurt, your insurance
9 has to cover it. So it mitigates the damages for you.

10 You learn this in business real fast when you own
11 something. Try to get as many COI's in your file as you
12 can, so you limit your risk if something happens,
13 especially if you're building or remodeling. So there
14 was a protocol for us to have a COI with the -- it's an
15 insurance policy for the vendor that did the work.

16 Q. All right. Now, the reconfiguration work that,
17 that Mr. Russell talked to you about that he had done to
18 this ductwork, did he ever request permission from you
19 or anyone else at CREH, to your knowledge, to do that
20 work?

21 A. No, sir.

22 Q. Okay. So, you found out about it after the fact?

23 A. I did.

24 Q. Okay.

25 A. The same day you were there.

1 Q. All right. After Brilin did its reconfiguration
2 work, did you, as the landlord, have to do anything else
3 with the ductwork?

4 A. No. Not to this date, nothing, no.

5 Q. Okay.

6 A. Still in the same condition it was, because it
7 was another expense that we didn't want to burden
8 ourselves with at the time because of the lawsuit. We
9 were kind of picking and choosing where we spend the
10 money to fix some things that were more important, like
11 the asphalt that was left behind damage, or this costing
12 a lot of money to figure out how to fix this.

13 Q. Now, you mentioned your ductwork, HVAC guy.

14 A. Yes, sir.

15 Q. What company do you use for this type of service?

16 A. We're using a trade vendor called MTB. They were
17 used by us for many, many years.

18 Q. Okay. And did you solicit any kind of estimate
19 or invoice from MTB to have any repairs done to the
20 ductwork?

21 A. We did.

22 Q. All right. Let's look at number 12, Exhibit
23 Number 12 of plaintiff's exhibits. Number -- Exhibit 12
24 is two pages. Can you tell us what those two pages are?

25 A. Number 12?

1 Q. Yes.

2 A. It was the estimate and a quote. The quote was
3 from MTB, and then it was an invoice from us to get them
4 to pay so we could fix the damages prior to them
5 leaving, because we felt responsibility to do that at
6 the time.

7 Q. All right. And the damages related to the
8 ductwork, were those damages done during Brilin's lease
9 term?

10 A. Yes.

11 Q. All right. All right. So we've talked about
12 this meeting. We talked about what was discussed during
13 the meeting. How were you feeling at the end of the
14 meeting?

15 A. Oh, great. He gave me his promise. With you and
16 Ryan, he promised not to do anymore work and I believed
17 him.

18 Q. When you say he, who are you talking about?

19 A. Mr. Russell. Bryon Russell, owner of Brilin
20 Electric.

21 Q. All right. Now, from the time of the site
22 meeting with Mr. Russell up until the date when Brilin
23 vacated the premises, tell us how things were with
24 Brilin.

25 A. Say that again.

1 Q. From the time of the site meeting with Mr.
2 Russell in October 2019 --

3 A. Right.

4 Q. -- up until the date when Brilin vacated the
5 premises, how were things between CREH and Brilin?

6 A. Fairly mild, quiet. I mean, normal. We're still
7 trying to resolve the issues we knew were coming up that
8 we all want done. We were trying to get a game plan.

9 Q. Now, did you ever, as the landlord, ever try to
10 antagonize Brilin or interfere with Brilin's business?

11 A. I did not.

12 Q. All right. All right. Let's talk a little bit
13 more about the inside of the building of Brilin's space.
14 How is the interior warehouse building configured?

15 A. It's a flex space, what we call offices, at the
16 front side of the building, with a warehouse basically
17 in the back. But this one actually had a warehouse in
18 the back and a side portion was a warehouse. So small
19 offices in the front and warehouses in the back, so that
20 would be the best description of the, of the space.

21 Q. All right. And is there a -- tell us about the
22 building itself. Are there multiple tenants in the same
23 building or how does that work?

24 A. It's split up between several tenants. It's a
25 long rectangle building. Probably 19 feet and 20 feet

1 in height. And a ceiling height in the front. It
2 slopes down to the back, with all dock doors in the
3 back. All store front in the front, like when you go to
4 a commercial store front. Each tenant has a little bit
5 more space than the other. Some are bigger, some are
6 smaller, and it's broken up like that.

7 Q. All right. Is there any kind of dividing wall or
8 partition wall between the commercial spaces?

9 A. Yeah. One, one part of the building under the
10 square footage premise and zoning has a firewall, which
11 would be a solid center-block wall from floor to
12 ceiling. And then some have a demising wall, as Mr.
13 White said, or a, you know, separation wall between the
14 two tenants under the same roof.

15 Q. All right. And to your understanding, is there
16 any real difference between calling something a demising
17 wall, versus calling it a partition wall?

18 A. No, the same. I agree with Mr. White.

19 Q. Okay. All right. So let's talk about this wall,
20 all right? Was there a partition wall or a demising
21 wall in the warehouse area of Brilin's leased commercial
22 space?

23 A. Yes, there is.

24 Q. All right. How long would you estimate that wall
25 is?

1 A. 90 to 120 feet in length.

2 Q. All right. And how, how tall is it?

3 A. 19 feet on average, probably.

4 Q. Okay. Do you know what that wall's made of or
5 how it's constructed?

6 A. It's made of steel studs, aluminum studs inside
7 the wall cavity with drywall on both sides.

8 Q. All right. Now, when Brilin moved into that
9 space that we're talking about, what was the condition
10 of the wall at that time, the partition wall or the
11 demising wall?

12 A. It was in good condition.

13 Q. All right. Tell us what you mean by good
14 condition.

15 A. It was plumb. All the drywall seams and tape was
16 consistent. There was no damaged drywall. And we
17 inspected that when we bought the building. That was
18 one of our inspection points, so to look for walls and
19 roofs and all that. So we had some history of knowing
20 the wall and what it did and what its purpose was.

21 Q. Now, what is -- you used the term plumb. What
22 does plumb mean?

23 A. Plumb vertically. Plumb straight top to bottom
24 with little variance within tolerance of a wall being
25 that high. Straight up and down from the bottom, put a

1 level on it. Plumb and straight.

2 Q. What was the condition of the demising wall or
3 the partition wall when Brilin vacated that place?

4 A. It was not a 100 percent plumb.

5 Q. All right.

6 A. It was patched, and that was part of the concern
7 to figure out what was going on.

8 Q. All right. Let's look at Exhibit 14 in
9 plaintiff's exhibits. What does Exhibit 14 show?

10 A. That shows the demise -- the wall, partition wall
11 or demising wall. We're talking about separation wall,
12 the two spaces. The picture view is of the side of Two
13 Men And a Truck. That was on one side, and Brilin's on
14 the side that you can't see in the picture on the other
15 side of the drywall.

16 Q. All right. Now, you used the word "plumb"
17 before, and you said that when Brilin took occupancy of
18 this space, the wall, the demising wall plumb. What can
19 you tell us about the plumbness of this demising wall
20 after Brilin left?

21 A. Well, after he left, it wasn't as plumb as we
22 would have hoped. He did a repair on it. And this is
23 the picture of it when it -- before it was repaired on
24 Two Men And A Truck side, showing how it got bumped out
25 by the forklift that we all discussed out earlier.

1 Q. Now, on, on the left-hand side of this, do you
2 see a yellow, what appears to be a yellow line?

3 A. I do.

4 Q. All right. What does that yellow line show in
5 reference to the wall?

6 A. Variations of plumbness at the bottom if you use
7 a straight line. Those lines were taped on the ground
8 by the lieutenant that was there to store, directly
9 store things against the wall and tell those people not
10 to put it too close to the wall.

11 So he had a particular way he wanted things in
12 the building, in the warehouse, Two Men And A Truck,
13 stores furniture, and they were not to go on the other
14 side of the yellow line, and try to stay within the
15 yellow line when they put packages or furniture to have
16 room to get around.

17 For fire marshall codes and for reasons that we
18 can exterminate and pest control the building, we don't
19 need a lot of stuff against the wall. We need to be
20 able to get around and check things out.

21 Q. All right. Now, is it your understanding that
22 this yellow line that you see in this exhibit is a
23 straight line or is it curved or...

24 A. No, it's straight.

25 Q. Straight line, okay. So in this exhibit we are

1 looking at, with a reference point this yellow straight
2 line, for looking at a plumbness, as you termed it, onto
3 the demising wall?

4 A. Correct.

5 Q. All right. Now, moving away for a moment from
6 the exterior demising wall, are you aware at all about
7 the internal structural components of the wall?

8 A. I'm familiar with them.

9 Q. Okay. All right. At some point, did you become
10 aware of what the condition of those structural
11 components inside the wall were while it vacated the
12 premises?

13 A. I became aware of those, yes.

14 Q. Okay. Let's look at Exhibit 16, plaintiff's
15 exhibits. What does Exhibit 16 show us?

16 A. Damaged studs.

17 Q. All right. Are these the structural components
18 inside that demising wall we just talked about?

19 A. Yes.

20 Q. All right. So this, this wall that you described
21 for us, would it be fair to say that it's held up, for
22 lack of a better term, by these metal studs?

23 A. Yes.

24 Q. Okay. All right. So... And tell us about what
25 we're looking at in Exhibit 16, as far as the metal

1 studs go.

2 A. All right. We're looking at a viewpoint from
3 Brilin Electric side, versus the other picture was on
4 Two Men And A Truck side that we saw with the drywall.
5 This is what we found when we opened the drywall on the
6 tenant's side, which was Brilin's.

7 When we investigated the repair that they did on
8 the wall, they did one side of the wall, Two Men And A
9 Truck side, that they had access to. We had to come in
10 and investigate what happened on this side, because we
11 didn't get the opportunity to see it before he repaired
12 his side of the wall, because he did it in two stages.

13 He did, phase one, he plumbed the wall up or did
14 something with the wall. Someway he pushed it over and
15 had somebody correct one side of the wall. But the
16 impact came from his side of the wall with a forklift.

17 So it hit the studs and damaged the studs to one
18 side, but didn't show up on the other side.

19 Q. When did you become aware that the damage to
20 these studs was done by a forklift?

21 A. He told us.

22 Q. When you say he, who are you talking about?

23 A. Bryon told us that the wall damage that caused
24 the plumbness out in our vigil site meeting that we met
25 with the two attorneys and myself. Oh, yeah, I know I

1 damaged the wall. I'll let you see it when I take the
2 racks down.

3 So he had racks from front to back full of stuff.
4 And he was out of space. He had a lot of pallets there.
5 And I remember looking up in the pallets and looking
6 around and going there's, there's holes in the walls and
7 I can see stuff. And I go, we need to see that before
8 you fix this side or whatever you're gonna do. And he
9 said he would let us see it before it got covered up,
10 and that whenever he pulled the rack out, he would give
11 us a call to come over and check it out. And that was
12 part of that meeting.

13 Q. Did Mr. Russell ever give you an opportunity to
14 come and inspect the wall further?

15 A. No.

16 Q. All right. So, after you discover these damages
17 that we talked about to the demising wall, what did you
18 do?

19 A. Well, let's -- we knew there was damages from one
20 side or the other. One that got plumb. But it still
21 had drywall on it. It just had puncture holes from
22 either pallets going through or maybe the forks being
23 extended through a pallet, when you pick up a pallet,
24 hidden puncture marks on the wall.

25 So, you don't really know what's there until you

1 open it up. So, since it got covered up before we saw
2 it, it looked nice. It was clean and sanded and -- but
3 you could see the old textured drywall versus the new,
4 so it was easy to figure out, like a quilt, not all the
5 squares matched, so it was like an easy puzzle to figure
6 out. We're like, what's going on here?

7 And that was done with you and Mark Robinson and
8 myself. We had access to the building to go see what it
9 -- looked like after the tenant when I couldn't make the
10 walkthrough. What happened? You know, we went into the
11 building, trying to figure it out and see what was going
12 on.

13 Q. Now, when you were talking about when we were in,
14 when the October 2019 meeting occurred --

15 A. Oh, yeah.

16 Q. -- were you able to adequately inspect the
17 condition of the demising wall at that time?

18 A. No. And that was one of our conditions that he
19 offered to let us come, because my concern was we can't
20 see this side of the wall, because it's covered with
21 those racks again and pallets in different positions and
22 pallets extending in front of those. And his exact
23 words is, I'm not gonna move all this stuff. You'll see
24 it when I take the rack down.

25 Q. So, from my understanding, your testimony is

1 during that meeting, there was stuff on the walls so you
2 weren't able to conduct a proper inspection?

3 A. I was not.

4 Q. Okay.

5 A. Just a visual.

6 Q. All right. So, after Brilin Electric vacated the
7 space, did you enlist any type of professional to do an
8 inspection of the wall?

9 A. I did.

10 Q. All right. And who did you enlist to do that?

11 A. John Abernathy, a local structural inspector. We
12 paid for him to come out to give a third-party
13 inspection of the wall.

14 Q. Okay. And so, you paid Mr. Abernathy for his
15 work in this case. If you'll turn to Exhibit 17 of
16 plaintiff's exhibits. What does Exhibit 17 show or what
17 is this?

18 A. That's services we hired John that was for the
19 site visits. So once we engaged Mr. Abernathy, we
20 decided that we should do a demo diagnostic of the wall
21 to see what was left behind that maybe the tenant didn't
22 purposely leave, but he hired someone to do the work.

23 And I don't think they understood the scope of
24 work, and they just put drywall over damaged studs
25 because we took the pieces they brought on and obviously

1 found the damaged studs behind it, and we immediately
2 stopped. And called a -- actually, we called our
3 attorney and he came too. And we had everybody that was
4 involved on site, not to go any further other than a
5 demo diagnostic which is open it up and see what we got.

6 Q. All right. Now, before we proceed any further,
7 these damages to the wall that we're looking at, we have
8 this one of the damage, structural damage, and then we
9 have the other one of the damages, how the wall looked
10 from the outside. Did you manufacture or cause any of
11 those damages?

12 A. No.

13 Q. All right. Did anyone at CREH manufacture or
14 cause any of those damages?

15 A. No. Not to my knowledge, no.

16 Q. Okay. So, after Mr. Abernathy conducted his
17 inspection of the wall, was a general contractor
18 involved to actually do any repairs?

19 A. We hired a -- well, I say contractor. We hired
20 someone to take the repairs on, yes.

21 Q. Okay. And who was that contractor?

22 A. Mark Robinson.

23 Q. All right. What is Mr. Robinson's company name?

24 A. Benchmark Flooring.

25 Q. All right. If you'll turn to Exhibit 18 in

1 plaintiff's exhibits. Tell us what Exhibit 18 is.

2 A. It's an invoice for a marked -- it's a final
3 invoice to repair the wall that the tenant left behind
4 damaged.

5 Q. Okay. And all of the work in this invoice, has
6 it all been completed?

7 A. It has.

8 Q. All right. And have you paid Mark Robinson the
9 full amount of this invoice?

10 A. Yes.

11 Q. All right. What's the total cost, according to
12 this invoice?

13 A. \$6,121.00.

14 Q. Okay. Now, at any time, Mr. Decker, did you
15 instruct Mark Robinson or anyone else to inflate any
16 costs to repair the damaged wall?

17 A. I did not.

18 Q. Did you ask anybody who repaired any of the
19 damages that were caused during Brilin's lease term to
20 inflate any repair costs or material costs?

21 A. No, I did not.

22 Q. Okay. Did Carolina Real Estate Holdings incur
23 any expense for materials for any repair work that were
24 done?

25 A. Yes.

1 Q. All right. And who does CREH obtain those
2 materials from?

3 A. L&W Supply.

4 Q. All right. If you'll turn with me to Exhibit 26,
5 plaintiff's exhibits. What does Exhibit 26 show?

6 A. It was a cost of damage material we bought to fix
7 the damages. And you can see my writing on it to have
8 accounting post it properly to the repair costs, because
9 we were in a legal situation. We figured we'd better
10 track everything.

11 Q. All right. So under product description on this
12 invoice, it looks like there's some codes for the
13 materials that were actually purchased. Can you tell us
14 what materials this invoice covered?

15 A. Probably most of it. Yeah, the studs, the
16 18-gauge studs, sheets of drywall, the joint tape. It
17 looks like a drill point, probably putting in the
18 fasteners. And some gold bond is the mud you use, the
19 drywall mud. It just has a different name. It's the
20 pro form.

21 Q. Okay. And did Carolina Real Estate Holdings
22 actually pay this invoice?

23 A. We did.

24 Q. All right. And what's the total invoiced amount?

25 A. \$1861.38.

1 Q. All right. Let's look at Exhibit 27, the very
2 next exhibit.

3 A. Okay.

4 Q. What is -- what does Exhibit 27 show?

5 A. Something about rental. It was for the scissor
6 lift. Since the ceiling's so high, we rented a lift to
7 go up and down to work on the wall. It was a safer way
8 of putting the drywall up since it's so high, and
9 securing it properly.

10 And also using it for inspections for Mr.
11 Abernathy is available to inspect a wall, and in a dual
12 roll, leave it for the tenant to come back to use the
13 lift, which they did, to see the wall that we did the
14 demo diagnostic on. Because they had a right to look at
15 it, and we let them come over before we started the
16 repairs.

17 Q. All right. So, as of the date of this trial,
18 what repairs do you understand still need to be made to
19 the demising wall?

20 A. No, none at all.

21 Q. Okay. So all the repairs have been completed?

22 A. Yes. We looked at 100 percent of the wall and
23 tried to work with the laws of nature with an engineer
24 to fix a percentage of the wall. Some theories were to
25 take the whole wall down and make it an exorbitant cost,

1 but when you're in th middle of this, you've got to make
2 decisions sometimes that are in the best interest for
3 you and maybe when you know you're not gonna go to
4 court, we decided to do it with John Abernathy and fix
5 under his direction and get this to a structurally sound
6 certifiable wall. And we have a letter for that we
7 provide everybody here.

8 Q. All right. Do you have any concerns, as far as
9 future tenants go about the condition of the demising
10 wall?

11 A. I do not.

12 Q. All right. Have there been any issues since you
13 made the repairs to the demising wall?

14 A. Not that I'm aware of.

15 Q. Okay. All right, now, moving away from the
16 warehouse space, in addition to the warehouse space,
17 Brilin Electric's lease premises, is there a separate
18 office area of the building that Brilin also occupied?

19 A. Yeah, the flex space in the front of the office
20 is. Break room, bathrooms are all in the conditioned,
21 air conditioned space.

22 Q. All right. And what type of flooring -- I
23 understand at a warehouse you're gonna have concrete,
24 but what type of floor covering is in the office area?

25 A. Mostly carpet.

1 Q. Okay. What was the condition of the carpeting in
2 the office area when Brilin began occupying that space?

3 A. It was in good condition.

4 Q. All right. Tell us what you mean by good
5 condition.

6 A. Similar to what's here in the courtroom. It was
7 clean and free of debris. It had no odors. No major
8 stains that were brought out before the lease was
9 signed. And so I would say it was in good condition,
10 similar to what's here.

11 Q. Were you able to walk the interior office space
12 of this property after Brilin vacated?

13 A. I was at a later date, yes.

14 Q. All right. Between when Brilin vacated and when
15 you got into the office space to inspect, was there
16 anybody else in that space?

17 A. There was not.

18 Q. Okay. What was the conditioning of the carpeting
19 in the office space after Brilin vacated?

20 A. It was in pretty good condition. It just had an
21 odor. Had recently been cleaned by Mr. Russell. But it
22 had a smell, and I couldn't figure out what it was. And
23 so, I called my carpet guy, because it smelled like to
24 me like pee. So I brought my guy out and he did a black
25 light and found dog urine in the corner of the office

1 where there used to be a dog or something there that --
2 I know they had dogs there at times, but apparently it
3 peed on the carpet. You can't see it, but you can smell
4 it when it's wet.

5 Q. All right. And this was after Mr. Russell had it
6 cleaned himself, is that your understanding?

7 A. Yes. It was just a secondary. He did clean it.
8 It just didn't smell good enough to turn it over to the
9 next person. I was like, something's not right.

10 Q. All right. So what, if anything, did you do with
11 respect to the carpeting in that office area?

12 A. We cleaned it again and, you know, absorbed the
13 cost. And, you know, we were still in the middle of
14 what we started before with the problems. We just kept
15 adding them. Even as minors, they would be a couple
16 hundred bucks here or a couple hundred bucks there. We
17 added it in thinking we would resolve this at some point
18 before we got to trial. Or we never thought we'd be
19 here, but we're here.

20 Q. And what company did you have perform that carpet
21 cleaning service?

22 A. I used COIT Services out of Fort Mill.

23 Q. All right. If you'll turn to Exhibit Number 20.
24 All right. What is Exhibit Number 20?

25 A. It's an invoice for COIT to reclean the carpets.

1 Q. All right. And how much is that?

2 A. \$250.

3 Q. Okay.

4 A. He noted on here, carpets appeared to have a pet
5 stain in spots, so I'm just going by the professional.
6 We couldn't figure out the odors. He did a black light
7 test and some other testing came up. It said, some dog
8 urine, it can be cleaned. You know, we just said, do
9 it, because you have to do it. It's not a point to
10 debate.

11 Q. All right. Mr. Decker, what are you, what are
12 you asking the jury to do in this case?

13 A. The whole thing?

14 Q. For the case. What are you, as the plaintiff,
15 asking this jury to do?

16 A. You know, we had a tenant, we lost them somehow.
17 They did some good things, they did some bad things, but
18 then they took it on their own. They didn't communicate
19 the best way they could. And we had an attorney -- I
20 called an attorney because I got frustrated and didn't
21 want to do the wrong thing. Because every time I hear
22 the story, you did what? You did this, did this.

23 I called Mr. Dluzneski, had hired him on the
24 referral of Morton & Gatty's, a local Rock Hill attorney
25 that we used in the past. Said he would be great for

1 this and try to resolve it. He said, let's start. And
2 every time we got somewhere and we started something, we
3 found different things that we needed to do or we didn't
4 like what happened. We didn't get the best result.

5 And I was promised. That's why we met on the job
6 site. Even though I don't want to meet, it's
7 uncomfortable, probably for Mr. Russell as well as me,
8 and we're paying these attorneys. We met at the expense
9 of that to resolve this with a plan. And he promised me
10 he would not do any work without me approving it. I did
11 not drag my feet. I didn't get the proper information.

12 I thought I put myself out there the best way I
13 could and those two attorneys could correspond pretty
14 easily. Due to their caseloads, who knows what they do.
15 I'm ready to answer the phone. It's on 24/7. I would
16 just get calls of jersey barriers are being moved, doors
17 going in without me knowing. You know, this or that, or
18 we're gonna repair the wall on one side, we've got a
19 little plumb, but we'll let you see this side when we
20 take all the stuff out. Before I repair it, Mr. Russell
21 said, you'll get to see it in that meeting.

22 So I was assuming that's what was gonna happen.
23 Since it didn't, I had to go backwards and reconstruct
24 each piece. Keeping in mind, that in fairness to him
25 also, he did give me estimates.

1 He did give me some tools to work with, but they
2 didn't always meet the standard or we didn't have enough
3 time to, hey, why don't you just pay me for the two
4 doors you replaced and I'll keep the ones that are
5 there. And if I want to upgrade or change or do
6 anything, they just replaced them and took them away.

7 And it was almost deflating to me to see my, the
8 building that I own, with employees that I care about
9 just being stuff taken out because it wasn't that bad,
10 but he wanted to do it. He could have come to an
11 agreeance with me.

12 It's just like they just rush things, and then
13 you get pointed fingers at -- you're at fault, you're at
14 fault. I feel like we did the best we could with where
15 the meeting led us, with Ryan and Steve, honestly was a
16 promise that we made to each other.

17 I did my punch work. I followed the rules that
18 they asked me to. And then we go through all the other
19 stuff before we get here, which is, you know,
20 disheartening for Mr. Russell as well as me. I kept
21 hoping it would settle. I don't like it, but you're
22 right. The guys he hired didn't do the best job. They
23 have no expert witness. They don't have people to stand
24 on to back this, I do. Not to be a bad guy, but you've
25 gotta do what's right, and I did it. And that's why I

1 ended up with Steve and that's why I ended up putting
2 this together and agreeing to this as kind of like a
3 good Bible or tool to go through. I'm gonna see the
4 plaintiff's stuff too, is in here, and he's gonna come
5 after me trying to make me look like a bad guy. I'm a
6 good guy. Mr. Russell's a good guy, but, man, he's
7 overwhelmed and stressed. He's got a lot going on. He
8 had a divorce going on at the time. He was very not
9 himself and he's angry at Wayne. Who knows what they
10 did, because I can never get to the bottom of it. But
11 that didn't deflate the promise he gave me. And I did
12 that with my own admission with you and Byron.

13 Q. All right. Now, when we're talking about all
14 these damages that we looked at today --

15 A. Yeah.

16 Q. -- that you're seeking --

17 A. Correct.

18 Q. -- do you believe that you're asking for too
19 much? Did you inflate any of the damages that we're
20 asking for today?

21 A. No. It's an unfortunate situation, but I'm not
22 inflating it. It just gets out of hand. Everybody
23 knows when you do stuff after the fact that it just
24 catches you. And we've absorbed all this the whole
25 time, the whole thing until this point.

1 Q. So CREH, the plaintiff in this case, has absorbed
2 these damages?

3 A. We've absorbed it. We've paid for them in full.
4 There's no liens. Nobody's owed anything. That's not
5 how we operate. We pay as we go.

6 MR. DLUZNESKI: All right. Thank you, Mr.
7 Decker.

8 Your Honor, I tender the witness.

9 THE COURT: All right. Ladies and gentlemen,
10 we've been at it for quite some time. I'm gonna let you
11 take a short recess. I'll remind you of the two ongoing
12 instructions, don't have any discussions among
13 yourselves or anyone else involved in the case. Do not
14 do any type of independent research or investigation.
15 You can leave the notebooks in your chair when you stand
16 up and you may retire with the bailiff back to the jury
17 deliberation room. We'll get you back just shortly.

18 (Jury left courtroom at 4:11 p.m.)

19 THE COURT: All right. Sir, I just need to
20 remind you that you're in the process of giving
21 testimony, so you can't have any discussions with anyone
22 about the substance of your testimony, but you may step
23 down as well.

24 THE WITNESS: Thank you.

25 THE COURT: All right. We're gonna step down for

1 just a second.

2 Madam Clerk, can I see you in the back for a
3 moment?

4 (Recess was held from 4:11 p.m. - 4:32 p.m.)

5 (Judge briefly leaves the bench.)

6 (Jury enters courtroom at 4:32 p.m.)

7 THE COURT: Ms. Goodnight, thank you for serving
8 as forelady of this jury. What we've done, is I've
9 discussed with the lawyers and we tried to come up with
10 a schedule. And what we're going to do is we're going
11 to break for the evening. I would like for you to
12 inform the jury, remind them of those two ongoing
13 instructions, don't do any type of independent research
14 or investigation and don't do any type of investigation
15 and don't do any type of discussions with anyone about
16 anything involving the case. Do you think you can do
17 that for me?

18 MADAM FORELADY: Yes.

19 THE COURT: If you'll do that for me, ask them to
20 please return by 9:30 in the morning and we will resume
21 taking the testimony. Thank you very much.

22 MS. FORELADY: Thank you.

23 THE COURT: Thank you.

24 MS. FORELADY: Do I leave the books?

25 THE COURT: Yes. Just leave the books right

1 there and we'll get them tomorrow.

2 (Madam Forelady leaves the courtroom at 4:33
3 p.m.)

4 All right, gentlemen. Thank you all very much
5 for your work today. We will see you by 9:30 in the
6 morning.

7 MR. DLUZNESKI: Thank you, Your Honor. Have a
8 good evening.

9 (Court concluded at 4:34 p.m.)

10

11 --- THIS CONCLUDES DAY ONE OF TRIAL ---

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13 --- THIS IS THE END OF DAY ONE OF TRIAL ---

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1 CAROLINA REAL ESTATE HOLDINGS VS. BRILIN ELECTRIC

2 START OF DAY TWO OF TRIAL

3 THE COURT: Anything before we bring the
4 jury in?

5 MR. DLUZNESKI: Not from the Plaintiff, Your
6 Honor.

7 MR. WHITE: Not from the defendant.

8 THE COURT: Sir, do you want to come back up here
9 and sit where you were yesterday. Sir, I just need to
10 remind you that you remain under oath, do you understand
11 that?

12 THE WITNESS: I do.

13 THE COURT: Okay. Let's bring the jury in.

14 THE WITNESS: Do I need to turn the microphone
15 on?

16 THE COURT: I'm not the technology person.

17 THE WITNESS: It's red. So I don't know if it's
18 supposed to be green or if you can hear me? I don't
19 know. It's fine? Okay. Hello? Okay.

20 (Jury enters the courtroom at 9:39 a.m.)

21 THE COURT: Is defense ready for
22 cross-examination?

23 MR. WHITE: Yes, Your Honor.

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. WHITE:

2 Q. Good morning, Mr. Decker.

3 A. Good morning.

4 Q. I'll just remind you again that you are under
5 oath. See that binder right there, I just want to
6 orient you and the jury, there's a little blue sticky
7 note. Do you see that on the side?

8 A. Yes.

9 Q. Y'all should have one too. That's a super fancy
10 marker where the defendant exhibits begin --

11 A. Okay.

12 Q. So we're gonna be bouncing back and forth between
13 the plaintiff's --

14 A. I understand.

15 Q. -- exhibits and the defendant's exhibits. Let's
16 start with Plaintiff's Exhibit 4. And I'm gonna try to
17 go through my cross-examination issue-by-issue, like the
18 direct was.

19 A. Okay.

20 Q. So we're gonna start with the asphalt. And I'll
21 just hold this up for you real quick. This is the side
22 right here, right?

23 A. Side door entrance.

24 Q. All right. So this is the back?

25 A. Yes.

1 Q. To give everyone an orientation, beyond that tree
2 line that's I-77, right?

3 A. That's correct.

4 Q. And so, if you keep going that way, you'll run
5 into the Shutterfly building, right? This side, the
6 opposite side, that's where all the big trucks go around
7 and then Shutterfly's ---

8 A. Yeah. You'd have to go through the woods to get
9 to Shutterfly, but...

10 Q. Right. I'm just trying to point out where we are
11 in York County.

12 A. I understand.

13 Q. And so those are, also while we're looking at
14 this, those are some of -- those are Brilin's vehicles
15 right there?

16 A. They are.

17 Q. So that's what they use for their business?

18 A. Correct.

19 Q. Now, in this picture, Plaintiff's Exhibit 4, that
20 ramp is made of concrete, right?

21 A. It is.

22 Q. Now, you mention in your direct, the prior tenant
23 never used this side with the ramp. Never used that
24 side garage, right?

25 A. No. They used it. It was just more vehicles

1 than a forklift. They never had a forklift outside the
2 warehouse.

3 Q. Never had a forklift that they used. And, in
4 fact, when Brilin took over it was a -- it was asphalt,
5 just like the rest of this? It was all asphalt.

6 A. Correct.

7 Q. And when they started using the forklift almost
8 immediately upon taking occupancy of the premises, that
9 became a problem, right?

10 A. Yes, it did.

11 Q. The ramp, when it was asphalt, could not handle
12 the weight of a forklift?

13 A. I don't know if it was that or it was just that
14 the asphalt that was there wasn't that great.

15 Q. Okay. And like you said, like in your direct,
16 you know, certain forklift, asphalt just can't handle
17 it.

18 A. Well, we inherited that building, so it had
19 asphalt there when we got it.

20 Q. And so you actually replaced that, at landlord's
21 expense.

22 A. I did not.

23 Q. You converted that asphalt to ---

24 A. I did not replace it.

25 Q. Who did then?

1 A. Mr. Bryon Russell did.

2 Q. And you were fine with him making that into
3 concrete?

4 A. We worked on a deal and he worked with me in the
5 beginning and then we came to a decision that it was
6 okay to do that. Discussed it with him.

7 Q. And that happened right, like within months, of
8 Brilin taking over the space?

9 A. I don't remember the timeline, but it was a
10 reasonable request and we went with what he said and he
11 got a vendor and showed us what he was doing and, and
12 explained it to us and gave us some time to think about
13 it and that was great. He did it and we liked what he
14 did.

15 Q. So you knew from the beginning he was using
16 forklifts?

17 A. Oh, not all the time. Not, not on, not on the
18 new parking lot. On the old parking lot he was.

19 Q. So you knew he was using forklifts to get in and
20 out of the door, right?

21 A. On some basis, yes.

22 Q. Okay. Once he goes out this door, he goes down a
23 ramp.

24 A. That is true.

25 Q. But you agreed to let him convert it to concrete?

1 A. I did, for the ramp only.

2 Q. And then when it goes down the ramp, it goes down
3 the asphalt.

4 A. That is true.

5 Q. Back to those, where those little bands of trucks
6 are to load and unload.

7 A. I don't know where he goes down or if the trucks
8 come to him. I never saw that.

9 Q. Well, let me ask you this. It's totally
10 reasonable for him to take forklift and load and unload
11 the vehicles, is it not?

12 A. It's reasonable, yes.

13 Q. This property is light industrial?

14 A. It is.

15 Q. And that's what he does, he takes electrical
16 equipment and he goes to like track homes and stuff like
17 that and installs electrical wiring?

18 A. I'm sure he does, yes.

19 Q. So it's completely commercially reasonable to use
20 a forklift at a light industrial place like this?

21 A. It could be. That's fair enough.

22 Q. He was doing that from the beginning.

23 A. I don't know that.

24 Q. Well, you knew it when you had to replace the
25 ramp. You replaced the ramp ---

1 A. He was going in and out of the ramp and he
2 requested the change to the concrete. He didn't say
3 just because of the forklift. He says he's using it for
4 access. He had cars going there, trucks backing up. I
5 don't know. I wasn't there daily.

6 Q. And I know you said you didn't remember exactly
7 when you had the parking lot repaved. You said it was
8 in 2019, right?

9 A. Yeah, '20 -- August of 2019, I believe.

10 Q. August of 2019, does that sound right?

11 A. I'd have to look at the invoice. It's somewhere
12 in the dockets.

13 Q. Well, we're going to flip to Defendant's Exhibit
14 13. Scratch that. Defendant's Exhibit 7. Countywide
15 Commercial, that's who did the repaving in 2019, right?

16 A. Yes, sir.

17 Q. And Defendant's Exhibit 7 is their April 1st,
18 2019, proposal and contract to do the entire repaving
19 where you wanted it done to repave the asphalt?

20 A. Yeah. We came up with a side plan and they acted
21 on it.

22 Q. In your direct yesterday you said it was about
23 \$100,000, and we've got a quote there for 97,5. That is
24 the quote and that's what you paid to repave the
25 asphalt?

1 A. Yes, sir.

2 Q. Okay. Now, let's look down. You see where it
3 says grand total? There's two bullets immediately above
4 that. One says on left entrance inside.

5 A. Yes.

6 Q. Okay. Just tell the, you know, in layman's
7 terms, tell this jury what ABC stone is.

8 A. It's a gravel that you probably see most commonly
9 in parking lots. It's used for a base in either an open
10 parking lot, or somebody might use it for the base to
11 put concrete or asphalt on top to have a better
12 substrate instead of a soft soil or a sand.

13 Q. You're saying the soil is going to settle and so
14 you're gonna start getting crack in the asphalt once you
15 put down that, that gravel base?

16 A. Not always. You can compact the soil sometimes,
17 but that was just the method they used on this
18 particular spec.

19 Q. Okay. And on the left entrance to the side it
20 says, six -- and I believe that's a typo. It probably
21 should be six inches, not six feet of ABC stone?

22 A. I would -- yeah, that's a typo.

23 Q. A quarter inch of asphalt?

24 A. Correct.

25 Q. Now the left side, the left entrance, that is the

1 exact opposite side of this building? Like if
2 you're ---

3 A. Oh, left side is facing the front. Yeah, it
4 would be the other side.

5 Q. The other side. So this is the right side --

6 A. Yes.

7 Q. -- that we're looking at in Plaintiff's Exhibit
8 4?

9 A. Yes, that is correct.

10 Q. And the left entrance is -- and we'll get to some
11 pictures later. Back here, I don't know if you can see
12 it, it's kind of ---

13 A. Yeah, I can see it.

14 Q. Like, that's where all the loading bays are,
15 around that corner, right?

16 A. The dock doors are on the back corner.

17 Q. The dock doors. And so, folks will then go
18 around in grass and egress from having trucks on the
19 left side?

20 A. With the new layout with the jersey barriers,
21 that's correct.

22 Q. Right. So left entrance other side.

23 A. Yes, sir.

24 Q. Six inches ABC stone, four inches asphalt on that
25 side?

1 A. Correct.

2 Q. And the rest of the parking lot, which is the
3 front, which is kind of right here --

4 A. Correct.

5 Q. -- and this side, you only had them do four
6 inches of ABC stone and two inches of asphalt.

7 A. That's not what we did there.

8 Q. Well, that's what the quote says.

9 A. That's fine. We made field decisions when we're
10 out there and we went with a little thicker gravel,
11 because it was an idea to do on the field.

12 Q. Do you have any evidence that shows you did
13 something other than what's on this contract?

14 A. I'm on site, all I can tell you is what happened.

15 Q. Do you have a, do you have a document that shows
16 that you --

17 A. I can only --

18 Q. -- used different materials with this?

19 A. I can let you know, the project manager, Wayne
20 Schulte, when he's here, can probably answer that
21 question for the jurors and the Court to what was there
22 because he was on site daily and can tell you -- answer
23 that question.

24 Q. And, actually, in your testimony yesterday you
25 said, no, we didn't do four inches of asphalt anywhere.

1 Only an airport would do that. Do you remember saying
2 that?

3 A. An airport? No, I used it as an example.

4 Q. I believe you said only at an airport would you
5 see four inches of asphalt.

6 A. It's an example.

7 Q. But, in fact, on the opposite side where all the
8 heavy trucks come and go, you did four inches of
9 asphalt.

10 A. Tractor-trailers come in there.

11 Q. Four inches of asphalt, yes or no?

12 A. Yes.

13 Q. You did not do four inches of asphalt on this
14 side.

15 A. I can't tell you that exactly, because I'd have
16 to look at my notes and my field notes. But Wayne
17 Schulte was on site. It would probably be better to ask
18 Wayne than me.

19 Q. We'll ask Wayne too.

20 A. Please.

21 Q. Again, Brilin took over this space in 2017.

22 A. That's fair, yep.

23 Q. You repaved it in 2019?

24 A. Correct.

25 Q. Before you repaved it, you allowed them to put a

1 concrete ramp in for the forklift.

2 A. That's what he requested, and we worked with him
3 to do that.

4 Q. So when you had this side paved to the thickness
5 equivalent of a parking lot for light automobiles, you
6 knew he was using a forklift, did you not?

7 A. Not to the degree he was using it or the damage
8 it might cause. I wouldn't know that at the time.

9 Q. Okay. You didn't know the degree to which he was
10 using it, but you knew he was using a forklift?

11 A. We knew it, but not daily.

12 Q. Yes or no?

13 A. Yeah, but I don't know if he's using it every day
14 outside. I don't know what he's doing over there. I
15 wasn't there every day.

16 Q. You knew he was using a forklift.

17 A. I did know he was using it.

18 Q. And you already testified earlier this morning
19 that it was a commercially reasonable thing to do to use
20 a forklift at a light industrial space like this.

21 A. I'm not disagreeing with that.

22 Q. So it should have come as no surprise when the
23 asphalt started getting torn up, because you did a
24 parking lot depth instead of a heavy vehicle depth,
25 right?

1 A. It was a surprise.

2 Q. Why was it a surprise?

3 A. Because the damage is on the ramp. If he was so
4 concerned with the ramp being asphalt and he saw the
5 bottom before it was fixed, then it was asphalt too, why
6 wouldn't he ask to bring the concrete ramp all the way
7 out into the parking lot, knowing that he's already
8 damaging the asphalt that's on the ramp, consequently
9 gonna damage the bottom of the ramp that's asphalt that
10 you're trying to depend on.

11 Q. Well, I will try to do most of the questions, Mr.
12 Decker, but that is a good question. But the reason why
13 is because you never told them when you were gonna
14 repave it. This was a no-notice thing. You never gave
15 them a heads up you were going to repave this, didn't
16 you? You never told him?

17 A. I told him. He actually contacted me about the
18 schedule because I messed the schedule up when I paved
19 it because they delayed it by a week because of rain and
20 he was irate that I disrupted his business. And I said,
21 we had a full-time guy on site going to each tenant
22 daily to tell them what's going on. If he's not at his
23 business, I don't know, or his staff doesn't tell him,
24 but Wayne Schulte can answer that question. Please ask
25 him.

1 Q. So part of the reason you put up the jersey
2 barriers here is not just to partition your side from
3 the Keller side, it's to block off his ability to use
4 his forklifts in that area.

5 A. Not true. And we also gave him an opportunity to
6 discuss the barrier layout. I got no reply.

7 Q. You set these up. See how that's moved?

8 A. And they're able to be moved.

9 Q. Brilin moved that, right?

10 A. Brilin moved them all the time. And he even told
11 me that he had problems with his employees moving them.
12 We tried to work with them to find out the configuration
13 that would work best for their use.

14 We have nothing in writing and no reply from him
15 to tell me to do that, but we actually tried to make
16 something work between the next door neighbor and their
17 business with the new traffic pattern, not to disrupt
18 businesses, but just to make some better sense of no
19 speeding through the parking lots, no turnarounds, no
20 big tractor-trailers cutting through where they might
21 cause damage.

22 Q. Who put the jersey barriers there, y'all or
23 Brilin?

24 A. We put them there.

25 Q. And you configured them away so that they could

1 not use this frame unless they moved the jersey
2 barriers?

3 A. No. That jersey barrier is placed where you can
4 go down the ramp and get out and drive around the
5 barrier.

6 Q. Well, that's because they moved them with a
7 forklift.

8 A. Well, I don't know what they moved. I got
9 reported to daily, sometimes weekly, that things were
10 being moved either by the adjacent property owner or
11 boots on the ground Wayne Schulte would call me and say
12 they moved the barriers. And I'd get those calls. It
13 really is a two-way street. We put them there to help
14 everybody, including him, understanding, one, is there's
15 people stealing stuff from the back of the buildings?
16 We cannot control these trucks coming through, and we
17 have had thefts there, so we just came up with a great
18 plan and nobody really added any value to it, including
19 your, your client.

20 He didn't come to me and say, hey, can we move
21 the barriers? Can we meet out here and mark it in the
22 best way to make it reasonable that we can function?
23 They just did what they wanted to do, went rogue.

24 Q. Because the barriers just showed up and they
25 couldn't use the ramp to load and offload their trucks.

1 A. Well, that's your assumption. You weren't there.
2 I was there.

3 Q. I've been living and breathing this case for Mr.
4 Decker for two years.

5 A. Me too, brother. Me too.

6 Q. All right. Let's move to Plaintiff's Exhibit 6.

7 A. Yes, sir.

8 Q. All right. We're gonna bounce back and forth
9 between Defendant's 7 and Plaintiff's 6. All right.
10 This is a quote to ---

11 A. Six and seven?

12 Q. Plaintiff's Exhibit 6.

13 A. Got ya.

14 Q. But put a tab in for Defense 7, because I'm gonna
15 go, flip back and forth between them. So this is, this
16 quote here is from February 11th, 2020, right?

17 A. It's an invoice. It's not a quote.

18 Q. It says, proposal and contract.

19 A. Which one am I looking at, number six? I'm
20 sorry, I'm on number five.

21 Q. Yeah, Plaintiff's Exhibit 6.

22 A. Six in my book says invoice.

23 Q. No. Plaintiff's Exhibit 6. Flip to the front.

24 A. Oh, sorry. You're right. My bad.

25 Q. All right. Do you see Countywide Commercial

1 proposal and contract?

2 A. Okay, go ahead.

3 MR. WHITE: Okay. May I approach, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. WHITE:

6 Q. All right. You've got it?

7 A. Yeah.

8 Q. I want to make sure. All right. You see that
9 date on the top left, February 11th, 2020? Yes? No?
10 Maybe so?

11 A. Yeah, I see it.

12 Q. Okay. This was a proposal to do a patch on this
13 right side.

14 A. Correct.

15 Q. So where the asphalt was damaged, right?

16 A. Being damaged, yeah.

17 Q. Now, if you go down, do you see where it says
18 asphalt repair, right towards the middle of that?

19 A. Yeah, I see it.

20 Q. It says, includes adding stone to damaged areas.
21 Make sure it is six inches deep.

22 A. Okay.

23 Q. So this is where I want you to go back to Defense
24 7. Rest of parking lot four inches of ABC stone. So
25 this quote now is 50 percent more gravel impacted in the

1 patch you're gonna have them do.

2 A. Fair enough.

3 Q. All right. Then go back to Plaintiff's 6.

4 Second to last bullet, install three-inch surface course
5 with hot mix asphalt. And if you go back to Defense 7,
6 it was two inches of asphalt during the original paving,
7 correct?

8 A. Yes.

9 Q. So you had them do 50 percent more gravel and 50
10 percent more asphalt on the patch.

11 A. I did not.

12 Q. What do you mean you did not? Is that not --

13 A. I asked them for a quote.

14 Q. -- what the quote says?

15 A. I asked them for a proposal based on the site
16 conditions that they saw, based on the usage that they
17 saw the damage being caused by the defendant, they came
18 up with this plan and proposed it to me. I did not do
19 it myself. I asked them for their expert opinion, what
20 should we do here based on a light industrial use, like
21 you said. And they said, wow, that's a lot of damage.

22 Q. Countywide says make it 50 percent thicker all
23 around.

24 A. Hey, they can change their mind based on daily
25 activity. Things change a lot, and that changed.

1 Q. Maybe they would have done that back in 2019 if
2 you had told them the forklift was being used, right?

3 A. Maybe if we didn't have a bad substrate with the
4 original asphalt, not knowing that the next asphalt
5 would be damaged as hard or maybe used as much as it was
6 under the conditions of unknown to me. Yeah, maybe we
7 could offset there, but we brought it to Brilin's
8 attention and we asked him what he wanted to do.

9 Q. So you knew the forklift was being used, you know
10 what a forklift can do to asphalt if it's not the
11 required thickness and you didn't do it over here in
12 '19, but you did do it at some point later, did you not?

13 A. I'm not gonna say required because I wouldn't say
14 that. We hired experts. We used the conditions that
15 were there prior to us getting the building. We specced
16 out something. We also specced out and we also told
17 Brilin we saw minimal damage. Hey, by the way, you're
18 damaging the new asphalt, but he continued to make it
19 worse and worse and worse.

20 Instead of calling us up and saying, hey, hey, we
21 need to do something else that he took advantage of that
22 later by adding the concrete at the bottom without
23 telling us, maybe that could have been resolved without
24 it being resolved here in court, but, he didn't
25 communicate.

1 This is communication. You've got it right here.
2 My professionals came out and advised us on the
3 conditions, maybe the next steps we should take, based
4 on his usage and a future tenant, this would be the best
5 way to go about it, but we all know when we do stuff it
6 doesn't always, always come out perfect, right? So...

7 Q. Mr. Decker, what we're trying to figure out right
8 now is who is the proximate cause to the damage of the
9 asphalt? Is it a guy using a forklift, which was a
10 commercially reasonable thing to do per your testimony,
11 or was it the person who has the, the space paved in the
12 first place?

13 A. That would be an expert to say. You would have
14 to ask the expert, obviously. If you think driving down
15 the road it never cracks and heavy tracks going on
16 something and nobody knows the weight it distributes.
17 If we had a forklift expert, but I'm not. I've got
18 common sense. A forklift weighs 9,000 pounds, you add
19 goods on the front of it that weighs thousands of
20 pounds. You come down at an angle. You see damages as
21 a tenant. You should probably report him to the
22 landlord right then and tell them, hey, I'm seeing a
23 problem with the new asphalt and I don't want to be
24 liable for it, can you help me fix it?

25 Q. I believe this is Plaintiff's 7.

1 A. We're at what number?

2 Q. Plaintiff's 7.

3 A. Plaintiff's 7.

4 Q. I mean, we knew pretty quick that the asphalt
5 wasn't getting the job done. That's why Brilin went and
6 put that additional concrete strip in there.

7 A. Great.

8 Q. It was the moment they were going from the
9 concrete to the asphalt and making that turn, there's
10 that partition right there between the Keller side and
11 your side --

12 A. I'm not disagreeing with that.

13 Q. -- tearing it up instantly, right?

14 A. I'm not disagreeing with it. He just never asked
15 us to do it, never told us to do it, and we asked,
16 what's it constructed of? Was it rebar? Was it PSI
17 concrete? Who did the work? Who's liable for the work
18 if it breaks? I don't have any answers for you.

19 Q. Well, your lawyer did these big blowups with
20 highlighted letters saying it's our responsibility,
21 right? Shouldn't we fix it if it's our responsibility?
22 No, he just took the initiative and fixed it, didn't he?

23 A. That's just a part of that lease. I'm sure
24 there's more to that lease than just that one segment
25 that works both ways for us.

1 Q. And you mentioned expert. You need an expert to
2 talk about his. Actually, you just testified earlier
3 that Countywide Commercial is an expert, right?

4 A. I hope so.

5 Q. No, hold on. I'm not done with my question. You
6 said you didn't come up with the 50 percent increase in
7 that quote of February 2020, they did, because they're
8 the experts. Okay? Did you not just say that?

9 A. They are experts.

10 Q. Okay. So there's our expert right there saying
11 it should have been 50 percent more from the get go.

12 A. Great analogy, but I'm not buying it. Nice try.
13 You're not gonna convince me that that apron was done
14 because I admitted to something or somebody made a
15 fault. Accidents could happen, you're right. But a
16 tenant doing work on a building that he doesn't own
17 without permission with no knowledge to me is not gonna
18 fly. Sorry. I'm gonna raise my hand and ask the
19 question to everybody in this room. How did that get
20 there? And I might be okay with it, if you'll just tell
21 me what it's -- how it's made, like, the asphalt's made
22 and the base is made. How is that made? We'll ask your
23 client when he sits up there. Who did the work? What's
24 the PSI? And how much rebar is in it? And then you and
25 I and the judge and the Court and the jury can decide,

1 wow, you're gonna ask me the same questions I'm gonna
2 ask you. And you can't answer them. I know you can't.

3 Q. Now, you're claiming these damages, Plaintiff's
4 Exhibit 6, 5950, you're claiming that under damages here
5 today, correct?

6 A. Say that again.

7 Q. You're claiming that the 5950 that's in this
8 proposal in Plaintiff's Exhibit 6, you're claiming those
9 as damages, are you not?

10 A. Yes.

11 Q. You want us to write you a check for 5950, right?

12 A. I paid to have the area outside that apron detail
13 that got continued to get broken up after he did the
14 apron. You don't show the pictures or we don't or
15 anybody with additional damages there that your client
16 also admitted to and said he would take care of it to me
17 upon his leaving the building. He admitted to it. He
18 said, I've got to take care of that, you're right.

19 During our walkthrough meeting with your other
20 attorney that didn't practice law in South Carolina and
21 then switched it over to you and passed the baton to
22 you. Unfortunately, you weren't at that meeting, but if
23 you were, we probably wouldn't be here today, because
24 they all promised me the things they were gonna do and
25 they didn't deliver.

1 Q. This is a quote from February 11th, 2020,
2 correct?

3 A. Number seven?

4 Q. Plaintiff's 6.

5 A. Let me go back to six. Yeah, it is 2020.

6 Q. Brilin was still in the space until April 30th of
7 2020, right?

8 A. Yes, he was.

9 Q. And, in fact, Brilin did, as a good faith
10 gesture, try to do the repaving, right? Go ahead and
11 switch to ---

12 A. He did give us a proposal, yes, sir.

13 Q. Go ahead and switch to Defense Exhibit 8.

14 A. Number 8.

15 Q. Are you there?

16 A. I'm there.

17 Q. All right. You see that's SMI payment quote?

18 A. I do.

19 Q. And if you look down at the patch area at the
20 loading dock, it's two patch back same area. It's the
21 second bullet towards the bottom. Approximately 2 1/2
22 inches of hot mix asphalt?

23 A. Correct.

24 Q. So this was kind of a like kind repair. Two
25 inches, two-and-a-half, and it was originally two inches

1 and it was half the quote that you got a month earlier,
2 right?

3 A. It is half the quote, based on what you just
4 said, yes.

5 Q. Because the quote you got wasn't like kind, it
6 was actually a 50 percent upgrade of materials in that
7 area.

8 A. To be honest with you, I called SMI and they told
9 me exactly what they said. He asked me to patch it, but
10 he didn't really get into the details of why he was
11 patching it, just patch it. I called the guy and asked
12 him at SMI and he said, first of all, I'm not gonna
13 warrant that job because you just did the parking lot,
14 but Mr. Brown and Russell asked me to give them a patch
15 quote.

16 I said, okay, well, do you understand there's
17 damages from the forklift there and you're gonna be
18 liable for it? He goes, I don't warrant patches. I
19 also explained to him the building was under warranty
20 for the \$100,000 job that I was really concerned with
21 and now I'm gonna have a patch that you're not gonna
22 warrant, a company that serviced the entire project for
23 \$100,000 and they will warrant the patch. So, yeah, I
24 was concerned on which way to go. And I didn't pull the
25 trigger and tell them to do it.

1 I didn't stop them from doing it, but I did bring
2 it up with SMI and I said, you better get back with your
3 client and talk to them about what we're doing here,
4 because I wouldn't want them to do it again. I don't
5 want them to do it a third time. Obviously, if he did
6 the asphalt I'd hold him liable.

7 Then I would be going back to him after his lease
8 was over, taking him to small claims court to say he did
9 an inferior job. Well, that's what we were trying to
10 avoid. We both could have worked between our estimate
11 and his, if the two teams would get together, but I
12 don't know what happened. The breakdown happens
13 sometimes. That's why we're here.

14 Q. Bryon got that quote on March 11th, 2020, 16 days
15 before you filed suit on him, right?

16 A. Oh, yeah.

17 Q. All right. Let's go to Defense Exhibit 14.

18 A. Yes, sir.

19 Q. And I want you to start in the back. Actually,
20 I'll tell you what, just to orient everybody --

21 A. Yes, sir.

22 Q. -- the first page says Brilin 56 in the bottom
23 right corner. Do you see that?

24 Your Honor, can I have exhibit 14?

25 THE WITNESS: Yes, sir.

1 BY MR. WHITE:

2 Q. Bottom right, see it says Bryon 000056?

3 A. Right.

4 Q. See that? And then if you go all the way to the
5 back, the 24th page is actually Brilin 00079. Do you
6 see that?

7 A. Are we gonna go back?

8 Q. We're gonna go from the ---

9 A. Yeah, you've got to flip, I'll just make -- I'm
10 gonna tab them when you do it.

11 Q. Okay. Since this is an e-mail chain, we're gonna
12 start in the back and work our way through it.

13 A. I got ya.

14 Q. I promise I'll go fast.

15 A. No problem.

16 Q. All right. So you go to page 78, number 23, as
17 the note states.

18 A. Seventy? Yes.

19 Q. So it says, Monday, March 30th, 2020, 10:35 a.m.
20 right?

21 A. Yes.

22 Q. All right. That's me reaching out to your lawyer
23 on Monday after y'all sued us on that Friday, right?

24 A. It seems to be, yeah.

25 Q. Yeah, okay. And then if you look in the body

1 with a paragraph that starts with Ryan. So it's: Ryan
2 said all communications go through counsel. That's Ryan
3 Hoffman in my office. So at your request, at your
4 lawyer's request, whomever, everything from that point
5 forward was to go through the lawyer, right?

6 A. Yeah, I would hope so. At some point it had to.

7 Q. That's what it says, right?

8 A. I hope so.

9 Q. Okay. All right. Now we're gonna go jump ahead
10 to page 18, Brilin 73.

11 THE COURT: I'm sorry, where are you?

12 MR. WHITE: Page 18, Your Honor. Also has the
13 Bates number Brilin 73 in the bottom right. Okay. You
14 see that bottom there? That's an e-mail from me to your
15 attorney on April 3rd, 2020.

16 THE WITNESS: Correct.

17 BY MR. WHITE:

18 Q. Okay. You got a phone call. I'm gonna send
19 Certificates of Insurance. I have you, CREH, added as
20 an additional insurer, and then send any invoice
21 estimate. This is us trying to work this out
22 immediately, is it not?

23 A. Yeah. You guys were working at times, but other
24 times you weren't.

25 Q. And you were, you were privy to all these

1 communications?

2 A. Not on a daily basis, but at times I was, yes.

3 Q. Don't tell me anything you and your lawyer talk
4 about --

5 A. I understand.

6 Q. But was he sending you these e-mails as it was
7 going on?

8 A. He may have been, but if I didn't see them, if
9 I'm out in the field, it may have been something I
10 didn't see for a while.

11 Q. And you talk about COI's in your direct
12 yesterday. There's nothing in that lease that says we
13 need to give you Certificates of Insurance, does it?

14 A. No, there is not.

15 Q. There's nothing in there that says we need to put
16 you as an additional insurer on any of the insurance,
17 does it?

18 A. That's correct.

19 Q. But we did it anyway because you asked?

20 A. You did.

21 Q. All right. Now, you, that's your lawyer. Me,
22 that's me.

23 A. Correct.

24 Q. There's four things that I'm supposed to do to
25 try and work this out?

1 A. Correct.

2 Q. Get you all's folks added. Get y'all a quote for
3 replacing the garage doors. Paving quote. And
4 permission for my folks, for the landlord to come on
5 site for an inspection, preferably Monday. Monday,
6 being April 6th, 2020. Do you see all that?

7 A. And this was on?

8 Q. The e-mail's from April 3rd.

9 A. All right. So you had a Friday to a Monday.
10 Okay. I'm just trying to see the timeline.

11 Q. Okay. And if you flip to the next page, 19.

12 A. Yeah.

13 Q. That's me talking about the garage door quote
14 that we got, right? Do you see that?

15 A. I see it right here.

16 Q. Bullet number two.

17 A. Right.

18 Q. I'm attaching a brochure from the contractor that
19 Brilin has engaged to fix the doors.

20 A. Okay.

21 Q. Now, pursuant to section 11(a) of the lease,
22 tenant requests landlord's approval of this contract to
23 proceed with repairs, which are estimated in excess of
24 \$3,000. Do you see that?

25 A. Yes.

1 Q. So, let's just, for the jury, for that quote,
2 which is Plaintiff --- excuse me, Defense 1. That's a
3 quote from two garage doors, right?

4 A. It is.

5 Q. And the total quote is 4943.

6 A. Correct.

7 Q. Now, to be on the safe side, if you flip back to
8 that page 19, Defendant's 14, we said it was in excess
9 of \$3,000.

10 A. We're back to 19 on the?

11 Q. Defense 14.

12 A. Okay.

13 Q. And you know the reason we did that is there was
14 a lease provision with respect to tenant repairs that
15 anything in excess of \$3,000 must be contractor -- you
16 have the right to approve the contract.

17 A. Okay.

18 Q. Now, if you actually break up those doors,
19 because really they were two repairs with less than
20 \$2500 for each repair, if you look at Defense Exhibit 1,
21 correct?

22 A. It's not broken up that way so, no, I can't say
23 that.

24 Q. Each of those doors would have cost less than
25 \$2500 to repair when you look at Defense Exhibit 1,

1 correct?

2 A. It says one door, item one is 4943.

3 Q. It's a quote for two garage doors, is it not?

4 A. Two were ordered, but one was quoted on one line.

5 Q. Well, there is one line item for the price,
6 quantity ordered one and one. So there's two garage
7 doors, correct?

8 A. Where's the paid invoice? I have no clue what
9 you're -- where you're heading with this.

10 Q. Where I'm heading is each garage door cost less
11 than \$2500, so we really didn't need your approval to
12 replace these doors because each of these replacements
13 was less than \$3,000, correct?

14 A. I would have to defend the lease and say that's
15 not right. The lease says \$3,000 total. It doesn't
16 split it out. It doesn't give you the opportunity to
17 split it at your leisure and do lots of work around the
18 building at 100,000 and say, well, this was the paint,
19 was 2,000 and then the labor was 1,000 and the plastic
20 was this part.

21 I would assume this is per task per the lease. I
22 would be fair to the jury to say that. You did
23 something over the amount of the lease and didn't get
24 approved, and now you're wanting me to admit that I
25 could break it apart right here and incriminate myself.

1 I'm not gonna do that for you.

2 Q. Now, just to be on the safe side we did say, hey,
3 it looks like it's in excess of \$3,000 so we are
4 requesting your approval. And although it is not
5 expressly stated in the lease, the landlord may not
6 unreasonably withhold its approval. And that if he did
7 so, any unreasonable holding of approval will be treated
8 as a breach of the lease where alternatively it'll be
9 applied covenant good faith and fair dealings. Do you
10 see that?

11 A. Yeah, I see it.

12 Q. All right. And you wanted your preferred vendor?

13 A. No. I called your preferred vendor and talked
14 with him also before I talked to my vendor. And I put
15 the two together to try to figure out what the best
16 situation was for CREH's doors to be replaced, and we
17 could not agree, so time did expire a little bit. But
18 we were working on it feverishly, obviously, because it
19 was a concern.

20 Unfortunately you weren't privy to that, because
21 I was working with my counsel and my team to try to
22 figure out the best way to handle this, because it was
23 over the 3,000 and our quote was a little higher, and I
24 couldn't understand what the difference was. So I
25 called SMI, which was one of your witnesses that will

1 tell him I called and asked him where our doors were,
2 why he was putting doors in without my approval. And he
3 said, Mr. Bryon Russell ordered them.

4 And if we look at the order date on when the
5 doors were installed, it was probably all undermining
6 the process. They were ordered way ahead of all this.
7 He already said go ahead and do it.

8 Q. Go to Plaintiff's Exhibit 10 real quick. This is
9 your preferred vendor's quote for \$8,000.

10 A. Ten.

11 Q. No, go back. Right?

12 A. Right.

13 Q. In fact, although it's not in evidence, you went
14 and got a quote from this guy back in 2019, did you not?

15 A. Bryon sent me a text and said he had to replace
16 the doors. And he sent me a picture. I said I'll have
17 it today. I looked at the picture, I thought, crap. I
18 wasn't sure if we're really going to replace the doors
19 because he said he wanted to and I like that, but didn't
20 know that the damage was far enough. If you have a bad
21 dent in the car door, you don't replace the door.

22 I thought maybe we would figure something out.
23 Like, he'll just say here. Here's what it was, here's
24 what we'll do and we'll settle or we'll figure out
25 something, but it didn't happen. It just didn't happen.

1 It happened the way it came out. I got a quote from
2 you. I asked my expert, because he's our preferred
3 trade vendor, as I told everybody yesterday. We try to
4 keep the same vendors housed on every property, so when
5 we need them, we get them. And we get consistent
6 service and quality. Not that I wouldn't get it from
7 their guy, but their guy said, hey, I'm not working for
8 you, I'm working for him. So he only gave me vague
9 answers and he did try to help me along. He's very
10 nice. And asked me to be part of this suit. And I told
11 him, I don't want to sue you, I just want to know what's
12 going on here. And he said, I'm sorry, the doors are
13 gone, I trashed them, I put them up. I said that's not
14 good. Not a good situation.

15 Q. You just said it again, like you said yesterday.
16 You like the preferred vendors, you like to build a
17 relationship?

18 A. I do.

19 Q. You want to have control on the repairs that are
20 made to your buildings that you own, right?

21 A. It's not control, it's just a logic situation.
22 When you go to the dentist, do you go to 15 different
23 dentists your whole life? Do you go to the mechanic?
24 Do you go to 50 different mechanics? At some point in
25 your life you're gonna drive yourself crazy if you have

1 50,000 people to call and you can't depend on any of
2 them.

3 So that's my methodology of my business. Not
4 yours, but it is mine. And I will stick by it, and it
5 has been very successful for me. I like it. I like to
6 call you or her or whoever's in this courtroom that
7 works for me and be able to have that communication.
8 And if the prices were higher we could have debated
9 that.

10 I could have sat down with you. You could have
11 called me for a site meeting, because I met your other
12 constituents out there. I had no problem doing that,
13 because of the diffusion with Wayne Schulte that we all
14 know is going to be discussed in the next day or so with
15 him, that we couldn't work together with Wayne on the
16 ground. So I'm the guy. The buck stops with me. I'll
17 sit in this chair for ---

18 Q. So it doesn't really matter about logic and going
19 to see a bunch of dentists, it's what the contract says,
20 what the lease says, right Mr. Decker.

21 A. It said \$3,000, then, if we're gonna hang
22 ourselves with that one and you didn't -- they didn't
23 honor that. They spent more than \$3,000 on that item.

24 Q. Any duty that Brilin Electric owes to CREH is
25 established by that lease and that lease alone. Do you

1 agree or disagree?

2 A. It's a tool, yes. It works both ways for both
3 Brilin and myself. Obviously I care about the tenants,
4 but also in a situation like this, I'm not sure the best
5 defense or offense to this situation, other than we're
6 going by the letter of the law. Then you're gonna win
7 some and I'm gonna win some. And on that case the
8 letter says \$3,000.

9 Q. The legal document that is the lease governs the
10 duties that CREH and Brilin have with respect with each
11 other, yes or no?

12 A. It does have respect, yes, sir.

13 Q. And there is nothing else besides that lease,
14 correct?

15 A. Other than the meeting on the side and our verbal
16 meeting that we had that we all agreed what we were
17 doing going forward. And I was promised by Mr. Russell
18 during that meeting with your constituent, my attorney,
19 Brilin, and myself what the method was going forward,
20 because we did have the suit, but we also are moving in
21 the direction not to go this far. That was the reason
22 to start the suit, because things weren't going right.
23 Communication was not working, so I thought attorneys
24 would be able to figure that out and I can step back and
25 not do it wrong per the lease, because you know I might

1 have the lease, but I'm not the attorney that wrote the
2 lease.

3 Q. All right. Let's go back to Defense 14. 14
4 through 16 is sending your attorney ---

5 A. Fourteen?

6 Q. Defense Exhibit 14.

7 A. Okay.

8 Q. Pages 14 through 16.

9 A. Yes, sir.

10 Q. That's us sending y'all the brochure from
11 Southern, and that's Defense Exhibit 2, just for
12 reference. You don't need to look at it. Got it?

13 A. Got ya.

14 Q. So we sent y'all a brochure so y'all could look
15 at this contractor and see if you were okay with them.

16 A. You did.

17 Q. Okay. All right. Let's go to 12 on Defendant's
18 Exhibit 14. Page 12.

19 A. Yes, sir.

20 Q. Bottom of page we're still on April 3rd here at
21 the bottom of page 12, less than exactly one week after
22 we're getting sued. And this is me telling your lawyer
23 any time between 10 and 5 will work on Monday. Let me
24 know what works for your side. And that is to arrange a
25 final walk-through of the premises by the landlords,

1 okay?

2 A. Okay.

3 Q. And at this point, April, there's still one month
4 left on the lease, the entire month of April 2020,
5 correct?

6 A. Right.

7 Q. But Brilin has completely moved all her stuff out
8 of the space by this point, correct?

9 A. I don't know that, I wasn't there.

10 Q. If you would have done a walkthrough you would
11 have known, right?

12 A. I couldn't be there, I had a conflict.

13 Q. Well, look, remember you talked about on direct,
14 you were like, yeah, I need you to fix your side and he
15 said, when we move all our stuff out we will?

16 A. Well, we don't know if he's going over his
17 timeline. I didn't know if he would be out on time,
18 under time. I wasn't there. And I explained that to my
19 counsel to explain to you.

20 Q. I told you at the October 2019 meeting, the
21 moment we got all our stuff out, you go ahead and tell
22 us what you need us to do, correct?

23 A. Okay.

24 Q. And so this is us trying to set up a final
25 walkthrough.

1 A. I don't disagree with trying to set something up,
2 it just didn't work for me on that day.

3 Q. Didn't work for you on that day.

4 A. Or that week.

5 Q. I followed up.

6 A. There's a lot going on.

7 Q. Let's go to page 11.

8 A. All right.

9 Q. I followed up with your lawyer. On Monday, 9:30
10 in the morning, hey, how are we looking for meeting
11 today?

12 A. Which page? Which item?

13 Q. Page 11. Right towards the bottom. Hi, Steve,
14 how are we looking for meeting today? Regards, Nate.
15 Okay.

16 And let's go to the bottom of page 10. This is
17 your attorney's response less than 30 -- about 30
18 minutes later. Hey, got off the phone with my client.
19 We won't be able to have the meeting today.

20 A. Okay.

21 Q. Then you start using COVID as an excuse, right?

22 A. I'm not sure. I'd have to look back and see
23 what's going on in my ---

24 Q. Read what it says right there.

25 A. I'm trying to find it. If you look at me, I

1 asked you where you're at in the book, because ---

2 Q. The bottom of page 10.

3 A. Which number.

4 Q. We are still in Defendant's Exhibit 14.

5 A. Okay. I flipped the book over and that lost the
6 page. And page again?

7 Q. 10, at the bottom.

8 A. All righty.

9 Q. Are you there?

10 A. Yeah.

11 Q. The very last sentence on the very last line:
12 So, unfortunately, the site meeting is not going to
13 happen. Go to page 10, the one forward -- or, excuse
14 me, nine.

15 A. Nine?

16 Q. I'm sorry. Here's me in the middle of the page
17 four minutes later: Steve, So I'm clear, your clients
18 do not want to have an on site meeting at any point,
19 correct? Again, we're still going back and forth about
20 the doors too. You see that, right?

21 A. That's between you and Steve. Yeah, I see it
22 going.

23 Q. Let's go to eight.

24 A. Okay.

25 Q. Steve -- about two minutes later: Nathan, that

1 is what I understand from my phone call with Brad Decker
2 this morning. If that position changes, I will let you
3 know.

4 A. Okay.

5 Q. So Brilin is completely, physically out of the
6 space with all their stuff, trying to set up a
7 walkthrough a week after you sue them, a month left on
8 the lease and you refuse to do a final walkthrough.

9 A. I didn't refuse, I had a conflict. Even my
10 counsel had COVID at one point. There's been -- it was
11 a bad time.

12 Q. Oh, no, no, no. This isn't a conflict. Your
13 clients do not want to have an onsite meeting at any
14 point.

15 A. That's not true. We met before. Just couldn't
16 meet at that time.

17 Q. But that was October of 2019. We're October --
18 April 2020 now. You did not want to do a final
19 walkthrough.

20 A. Not true.

21 Q. It is commercially reasonable for a landlord and
22 a tenant to walkthrough a space and hand it over.
23 Eight, premises, we're leaving. Handing it back to you
24 landlord, but let us know if there's anything we need to
25 do, right? Is that commercially reasonable?

1 A. It's reasonable.

2 Q. That's pretty standard practice in South
3 Carolina?

4 A. It doesn't always happen, but it's reasonable.

5 Q. You do it with your other tenants, right?

6 A. Not always. I'm not always at every walkthrough.
7 I'm not at every place every time. Sometimes we do it
8 after the lease is over, depending where we're at.

9 Q. Don't you want to know what's going on in the
10 space before you get it back?

11 A. Obviously. That's why we came back at a future
12 date. And I believe when we did go, we asked you to
13 come.

14 Q. Your testimony -- your testimony yesterday was,
15 you know, we've got a \$3,000 security deposit. I'm
16 getting worried about being more than \$3,000 ---

17 A. 3,000? We never talked about that yesterday, the
18 security deposit.

19 Q. You most certainly did, Mr. Decker.

20 A. Even the security deposit?

21 Q. You don't remember yesterday?

22 A. Did you ask me that question?

23 Q. I didn't ask you any questions yesterday. Your
24 lawyer asked you that question.

25 A. I think it referenced the \$3,000 limit to what

1 the repairs were.

2 Q. You were getting worried about the \$3,000
3 security deposit ---

4 A. Really?

5 Q. Were you getting worried about the security
6 deposit?

7 A. Really?

8 Q. Do you not recall saying anything about the
9 security deposit?

10 A. Really? A large company like us is gonna worry
11 about \$3,000? Come on.

12 Q. No, that wasn't my question, Mr. Decker. Do you
13 not remember Paul mentioning anything about a security
14 deposit yesterday, yes or no?

15 A. Not being irate about it or concerned, but go
16 ahead, let's see.

17 Q. I'm asking you, do you remember talking about it
18 or not?

19 A. I talked about the \$3,000.

20 Q. The security deposit.

21 A. Tell me what it ---

22 Q. Do you remember talking about the security
23 deposit? That's fine if you don't remember your own
24 testimony.

25 All right. 11(b). We've got it blown up right

1 here, it's part of the lease on Plaintiff's Exhibit 2.
2 Tenant agrees to return the premises in good repair.
3 That's why we do walkthroughs, landlords and tenants,
4 right, Mr. Decker?

5 A. We hope so. We hope that's the intention.

6 Q. To tell me, if I'm giving it back to you the way
7 I got it from you in the first place. That's why you do
8 a walkthrough.

9 A. You did not.

10 Q. What do you mean I did not?

11 A. You did not give it back --

12 Q. I didn't do --

13 A. -- the way you got it. That's why we're here.

14 Q. -- anything, I'm just the lawyer.

15 A. I understand.

16 Q. But you didn't do a walkthrough. And there's a
17 provision in the lease which governs the duties and
18 rights and responsibilities of the parties. One of
19 which is, we've got to give it back to you. Brilin's
20 got to give it back to CREH the way we got it. And the
21 way we, in South Carolina, in commercial leases achieve
22 that is to do a walkthrough and say, is it good to go,
23 Mr. Landlord.

24 A. I agree.

25 Q. But you refused to do that final walkthrough.

1 A. I didn't refuse. I had a conflict and we made it
2 for another time and we actually invited you to that
3 time at a later date, but I believe you declined because
4 it was after the lease and you said, go ahead and go in
5 the building. That's just what I heard. I didn't write
6 the e-mail.

7 Q. We're getting off track here, Mr. Decker. We're
8 getting off track on a lot of your responses, quite
9 frankly, but we did actually come back after the lease
10 was over. We did come back on site, didn't we?

11 A. No.

12 Q. You don't remember that?

13 A. Not with me, you didn't.

14 Q. Mr. --

15 A. Nice try.

16 Q. Mr. Robinson was there. You had all the
17 materials all ready to rock and roll. We came over and
18 took a look.

19 A. No. We did a demo diagnostic at first, then we
20 invited you to see what we found in the wall. And we'll
21 get to that with your client when the jury hears that.
22 Then we'll probably get the real story. But nice, nice
23 to paint me there when I'm not there.

24 Q. There were stacks and stacks of materials ready
25 to go and Mr. Robinson was ready to do the repair,

1 right?

2 A. And what does that mean? Did we do the repairs
3 yet or did we not do them?

4 Q. No. I'm just saying, you waited until the moment
5 we moved out to do your demo diagnostics.

6 A. No, that's not true. We went in -- we went in
7 and looked at the space. I was, I was actually pretty
8 surprised how well it looked. I'll be honest. We don't
9 need to go sugarcoat this. Painting looked great,
10 things were looking fine, but there were some direct
11 concerns with the rollup doors, with the walls, always
12 been the concern. You got that point across. They can
13 see the pictures. I can paint the picture. It looked
14 like this courtroom, where we had to strip it down to
15 see what really happened to the problem.

16 Q. Of course, because you can't see that the studs
17 are damaged unless you tear out the walls, right?

18 A. He promised me to see that side. He had a rack
19 in front of it with equipment. He said, you have to see
20 that side. We were adamant about seeing that side.

21 Q. You were adamant until you said you didn't want
22 to do a walkthrough, then you ---

23 A. I couldn't be there at that time, and that's
24 fine. If anybody has a conflict in their life and can't
25 be somewhere, they just say they can't be there and make

1 another date.

2 Q. The reason why you didn't want to do a final
3 walkthrough ---

4 A. One time.

5 Q. The reason why you didn't want to do a final
6 walkthrough while Brilin was still in possession of the
7 premises is because you wanted to wait until after they
8 were out so you could use your vendors to make the
9 repairs, yes or no?

10 A. No. That would be absurd.

11 Q. Do you have any doubt in your mind that if you
12 had gone in there and done your demo diagnostic in April
13 and the whole place was empty, except fix these studs,
14 do you have any doubt in your mind that Brilin would not
15 have done that?

16 A. I was hoping he came back when we saw him in the
17 meeting that we came and we all went for the demo
18 diagnostic. I was hoping you guys stood up to the plate
19 and said, oh, God, my drywall guy left some bad studs in
20 the wall. You know what? We'll take care of it.

21 But when Robinson and you guys talked about your
22 meeting, I'm sure the truth will come out how that
23 meeting went with your client being irate about us
24 finding a dented stud behind sheetrock. Why repair one
25 side and not repair the other properly? Who knows? I

1 wasn't there. The facts will be known by John
2 Abernathy, our expert.

3 I will testify to you guys what I know from a
4 distance. I'll support the pictures. Also support
5 Brilin at times. He did some great things. He's not
6 the worst guy in the world.

7 I just want to get to the bottom of it. How come
8 we weren't invited? Because we're contractors. You
9 might say, hey, Bryon, I need a further place to save
10 those studs. Oh, you know, God, that's another two
11 grand, he could have took it on his own.

12 He went rogue. I believe between the move, the
13 stress of a divorce, just hearsay, and all that on his
14 plate, he just forgot to call me. He got busy himself.
15 So we'll ask him on the stand, and he'll know my pre
16 question before he gets here, because that's gonna be a
17 direct question.

18 Q. Mr. Decker, what are you talking about when you
19 say he didn't call you? We are trying on April 6th of
20 2020, a week after you sued us, a month before the lease
21 is over, to have you come over and look at the space.
22 What are you talking about?

23 A. I don't believe Mr. Brilin saw the repairs going
24 on in that building and he trusted somebody else to do
25 it. And he's a business owner like me and they didn't

1 do a good job and now he's hanging with the bag, bottom
2 line. Period.

3 Q. Let me, let me close the loop on the garage
4 doors. Something I forgot to ask you and we'll take it
5 back to this wall. You never did approve Southern
6 putting those garage doors in, did you?

7 A. No, we didn't. That's why you -- that's why you
8 got a lawsuit.

9 Q. No. You sued us before.

10 A. And it included that and it kept perfecting along
11 the way, as you know.

12 Q. You sued Brilin before we moved out, Mr. Decker.

13 A. That's because we couldn't get him to listen to
14 us. But I'm just the guy asking, hey, can you do this?
15 And I might get, hey, don't move the jersey barriers.
16 Nobody listens to Brad, they just move them.

17 Q. Let me go back to Defense Exhibit 14, page 5.
18 All right, towards the middle. Here's where -- you got
19 me off track on the wall. Let me close the lid on the
20 garage doors and we can talk about the wall again.

21 Here's me two days later, April 8th. Steve,
22 checking on installation of the doors.

23 A. Okay.

24 Q. We have the contractor lined up to go next week,
25 Wednesday, April 15th.

1 A. When did you order the doors? We're gonna ask
2 your guy that when he comes.

3 Q. I'll ask -- from now on, Mr. Decker, I will ask
4 all the questions during this examination.

5 A. Fair enough.

6 Q. Okay. All right. So here's me trying to get
7 approval again.

8 A. Okay.

9 Q. Now, second paragraph. I had the opportunity to
10 inspect the premises today and I have to tell you
11 honestly, I don't understand why we're in litigation.
12 The doors will be repaired next week, and the asphalt,
13 if your client so desires, more below. The drywall is
14 done and the carpets and walls in the office area will
15 be good to go -- as good as new once tenant moves out.
16 All right, do you see that?

17 A. Yeah, I see it.

18 Q. Okay. And we got the next paragraph. We've got
19 the asphalt person come next Tuesday. All right, do you
20 see that?

21 A. Yeah.

22 Q. Tenant would like to patch the asphalt as a
23 good-faith gesture to rectify this matter and have you
24 drop the lawsuit. Do you see that?

25 A. I see it.

1 Q. Our position is that the asphalt is a capital
2 improvement. And it deteriorated through normal wear
3 and tear of the base, if there is any. And asphalt
4 depth was not sufficient for commercially reasonable and
5 known uses of that surface area by the tenant. Do you
6 see that sentence?

7 A. I see it.

8 Q. Okay. That's that whole back and forth we went
9 about the forklift when we started, okay? All right.
10 We talked about how there was ponding. Know there was a
11 water, because obvious the rain. You know, I'm sure you
12 remember this. Because there's a ramp, water would kind
13 of trickle down and would go that way, because there's a
14 little drain down this way, right?

15 A. Water runs from the lowest point.

16 Q. And that kind of messed up the asphalt too.

17 A. Yep.

18 Q. So, okay. So here's us saying we're gonna --
19 we're gonna -- we'll do the asphalt as a good-faith
20 gesture, but, but it's not our fault. It was a bad
21 install job because it wasn't sufficient material.

22 A. The damage ---

23 Q. All the way --

24 A. You damaged it either way.

25 Q. All the way back in April of 2020 we're saying

1 this.

2 A. If you rent a car, you damage it, you're liable.
3 You don't get to say, well, you know, I'm sorry.

4 Q. Well, we'll wait for the judge's instructions on
5 that point of law, Mr. Decker.

6 A. All right. I hope so.

7 Q. Okay.

8 A. Remember, I called all those vendors in between
9 all those e-mails and talked to them and was trying to
10 figure out what they were doing and who they were and to
11 make sure that if they're gonna be doing the work, that
12 we agree what we're doing, and I got mixed
13 communications.

14 Q. Get Defense Exhibit 14, we're not done.

15 A. All right.

16 Q. All right. Next one sentence paragraph: If you
17 do not want us to patch the asphalt, then please let me
18 know immediately so I can have my client cancel the job.
19 And that was SMI, right? That was -- that's who we're
20 talking about, that SMI that we talked about briefly
21 or...

22 And we didn't end up using them because
23 Countywide, it would kill the Countywide warranty if we
24 got some -- another vendor to use, right?

25 A. Well, I wanted them both to know that it was a

1 job that was recently done and that what -- how could we
2 warrant the job? And SMI declined. They said, you just
3 asked me for a patch. And I said, do you realize what's
4 going on here? The damage is caused from a forklift.
5 We're all concerned with whether it's been damaged in
6 the parking lot.

7 However it's happening, we're sorry it's
8 happening, but we need to fix it. And, correctly, he
9 goes, I'm not warranting anything. I'm just patching
10 it, because that's all I was asked to do, so I walked.

11 I said, hold on a second. Let me call my guy
12 back up. I can't engage you to tell you what to do,
13 because you're not my client. Only Russell can tell
14 him. Russell could have did it behind my back, like he
15 did the doors, or like he did the wall.

16 Q. Well, you know -- all right. So, just to orient
17 the jury, just to ---

18 A. Why didn't he do that? He did everything else.

19 Q. No. No. No. Quick jump to Defense 13. Hold
20 your, hold your place in Defense 14.

21 A. Okay.

22 Q. All right. You see Satwinder Singh there? He's
23 the, he's the principal of Countywide Commercial, right?

24 A. Correct.

25 Q. You know that I talked to him --

1 A. Good.

2 Q. -- about doing the asphalt job? You know that,
3 right?

4 A. I don't know.

5 Q. You don't know that I talked to him?

6 A. I have no clue.

7 Q. You don't know that? You don't -- he never told
8 you that we talked?

9 A. I haven't talked to him.

10 Q. And that we were more than happy to --

11 A. He might have talked to Wayne.

12 Q. -- use him so that we wouldn't void the warranty?

13 A. Okay.

14 Q. Nobody communicated that to you?

15 A. Maybe Wayne. Not me personally, no.

16 Q. So we were more than happy to use him because we
17 didn't want to kill you all's warranty either.

18 A. Okay.

19 Q. But then it all fell apart, because you continued
20 to do it anyways.

21 A. Did you send me an e-mail? Did anybody tell me?

22 Q. I can't talk to you, you've got a lawyer.

23 A. Send it to my lawyer. You sent him all the other
24 stuff.

25 Q. I most certainly did.

1 A. I know, but you didn't send that. I would have
2 responded. I would have tried to.

3 Q. Okay. Now, it says: Please let me know if
4 you'll be sending the 18K in quotes invoices. Then it
5 says: Once we have everything fixed up and mentioned
6 above, that leaves those three cracked bricks at the top
7 right corner. And who knows what caused those, right?
8 We have no idea of what caused that damage way high up
9 in the top right corner. We don't, do we?

10 A. We can only imagine, based on the door, the wall
11 with the forklift, the two doors that were hit by the
12 forklift, maybe. Maybe they hit the other door.

13 Q. But you have no proof that you can present here
14 in this court that Brilin was responsible for damaging
15 those bricks way up high, do you?

16 A. Other than he said, hey, the bricks are broke at
17 the top, I'm gonna fix them. I said, okay, what
18 happened? He might not know. I don't know that.

19 Q. He did fix them. Let's go to Defense Exhibit 4.

20 A. Okay.

21 Q. 280 bucks to fix the, fix the bricks, right?

22 A. Yeah.

23 Q. And he fixed the bricks. Again, another good
24 faith gesture to just kind of make this thing go away.
25 Who knows what caused those bricks way up high to get

1 dislodged. I don't know. Maybe we'll find out from
2 another witness might have caused that.

3 A. It's possible. I think there's some people that
4 have suspicion to what caused it and have more expertise
5 than me in that particular department.

6 Q. All right. We're gonna jump around again. We're
7 gonna go to Plaintiff 9 right now.

8 A. Number 9.

9 Q. This is Philemon. This is one of your preferred
10 vendors that you got to do a quote for bricks, right?

11 A. Yes.

12 Q. And they never actually repaired bricks, did
13 they?

14 A. They did not.

15 Q. But this quote is for \$1600, Mr. Decker, right?

16 A. Yes.

17 Q. Your preferred vendor's quote is five times more
18 than what was charged to my client for this repair.

19 A. Okay.

20 Q. Are you seeing a pattern yet, Mr. Decker?

21 A. No.

22 Q. Your asphalt quote. Your brick quote, your
23 garage door quote, they're all substantially higher than
24 what my client's quotes or actual repair jobs cost.

25 A. They are different types of specs for each one of

1 those quotes.

2 Q. Are they? We're talking about the same thing.

3 A. No, we're not.

4 Q. We're talking about garage doors. We're talking
5 about asphalt, we're talking about bricks.

6 A. We're talking about Coca-Cola and then Food Lion
7 cola. It's two different things.

8 Q. Okay. Why is it Coca Cola and Food Lion?

9 A. Because everything is different in the world.
10 Every price is different from everybody. They're
11 different products. They're not the exact same apples
12 for apples. It's oranges for apples. You're trying to
13 get me to admit to you that because a quote's higher, we
14 took advantage or we're going with the highest quotes.
15 No.

16 The quote could have been lower too, I would have
17 been fine with it. The question is, he would have still
18 had the opportunity to fix it, which we let him have it.
19 But we don't know what caused the problem. We don't
20 know if McGee Brothers investigated to see if the lintel
21 was straight or if it's still that way. We have no
22 clue, but when it happened under their ownership of the
23 space, was obviously a concern.

24 Q. All your quotes are higher than our quotes for
25 repair, right? I just want a yes or no.

1 A. Yes.

2 Q. Okay, thank you. And that leaves us with the
3 demising flash partition wall.

4 A. Uh-huh.

5 Q. And that's why you didn't want to do a final
6 walkthrough, because you wanted your preferred vendor,
7 Mr. Robinson, to do those repairs and get the Cadillac
8 version on that repair too, right?

9 A. No. We offered Robinson to work with him
10 directly. And if he wanted to use it, whatever, and use
11 it through us or come back with a solution. He chose
12 the latter, which I don't think he really paid attention
13 to what was going on. It's unfortunate.

14 Q. You did not do a demo diagnostic while Brilin was
15 still in possession of the premises, you knew what
16 possible damage there to tell him to fix it, did you?
17 Yes or no?

18 A. No. The rack system was in the way and, no, we
19 did not.

20 Q. Well, they weren't in the way in April of 2020,
21 Mr. Decker, right?

22 A. No.

23 Q. That's why we were trying to do a final
24 walkthrough.

25 A. Well, we tried, but I couldn't meet that date,

1 unfortunately. And the space stayed empty until we went
2 in there so we could look at it.

3 Q. All right. This is plaintiff 13. All right. To
4 orient the jury, the demising wall we're talking about
5 is that one right there, right?

6 A. No, that's the front wall.

7 Q. Front wall? No, this is the front wall.

8 A. No, that's the office wall.

9 Q. Well, yeah, the office.

10 A. That's the back of the office. The demising wall
11 is not in that picture.

12 Q. Well, you see the corner right there, right?

13 A. That's the demising wall. You don't have any
14 pictures of that because nobody ever took any pictures
15 when they did the repairs on that side because the racks
16 were up. And when you left, you patched it, and nobody
17 got to see it. That's why we're here.

18 Q. Nobody got to see it. You didn't get to see it
19 because you didn't do a final walkthrough.

20 A. Couldn't. There were racks in the way when I was
21 there last in the meeting, and I wasn't invited back to
22 say we took the racks down, and why don't you look at
23 this wall when we repair the side of it so we can make
24 sure it meets, you know, standards. Because we knew it
25 got pushed so far out that we had an engineer come out.

1 We had a lot of people concerned with the wall, even
2 Bryon was concerned, and he wanted to put it back in
3 place somehow. That's fine.

4 But we didn't get to see the side that we saw
5 earlier in yesterday's testimony where the studs are
6 damaged because it's not in anybody's picture. Your
7 drywall guy didn't give me a picture. You can't give me
8 a picture because we weren't invited. It's kind of
9 funny that nobody has a picture of that, except the ones
10 that we took in the demo diagnostic.

11 Q. Let's give you some pictures right now.

12 A. A little credit here.

13 Q. The same ones we gave you years ago. Let's go to
14 Defense Exhibit 19. Actually, let's do 18 real quick.
15 The other thing you're complaining about is the carpet.
16 The carpets need to be clean. You got your black light
17 out. We owe you money for carpet cleaning, right?

18 A. Yeah, that's fair.

19 Q. Okay. So Defense 18, there's an e-mail. And if
20 you look at the second page through the third page, that
21 is the receipt for the carpet cleaning that occurred on
22 April 22nd, 2020, where Brilin was still in possession
23 of the premises, correct?

24 A. Correct.

25 Q. And unlike all your invoices, your proposals, and

1 all your quotes, that actually says, amount paid.

2 A. Okay.

3 Q. \$280.

4 A. Fair enough.

5 Q. All right. Let's flip that page. You've got
6 Southern Dry Carpeting again. Here's an estimate of the
7 carpet cleaning to be done in September of 2019. So six
8 months before April 2020 they did the carpets again as
9 well, right?

10 A. Well, they had animals in there. We saw dogs in
11 there. Maybe they did it for that reason.

12 Q. No. Is that a quote --

13 A. Yes.

14 Q. -- for carpet cleaning? All right. Flip the
15 page. All right. And there's the deduction of that
16 235.20 from Brilin's checking account, the one that they
17 actually paid to have that done, too.

18 A. That's because ---

19 Q. They had the carpets cleaned in September of 2019
20 and April of 2020, when it's empty, and they have moved
21 out, right?

22 A. They're in the construction business, I ---

23 Q. Yes or no.

24 A. Yes.

25 Q. I'm gonna start making you do yes or no questions

1 because --

2 A. That's fair enough.

3 Q. -- you talk too much and it's driving the jury
4 and me crazy. All right? Yes or no questions. Yes or
5 no answers or yes or no answers. All right. Let's flip
6 to Defense Exhibit 19. All right. These are the move
7 out photos. There's the front, right, first page?

8 A. Yep.

9 Q. This is the flex page we're talking about or the
10 office. Second page, that's one of the offices. Third
11 page, that's the hallway. Fourth page another office.
12 Fifth page, there's the bathroom. Not only have they
13 cleaned the carpets, but they painted the walls too,
14 right? There's a break room on the sixth page. But
15 they painted the walls, too, didn't they?

16 A. Yes.

17 Q. You never painted the walls, did you?

18 A. I did not.

19 Q. All right. Seventh page.

20 A. Seventh?

21 Q. That's for one of those garage doors, right?

22 A. Right.

23 Q. On the inside. And the next one, page 8, see
24 that exit door?

25 A. Yes.

1 Q. Okay. So to orient the panel -- excuse me, jury,
2 that first garage door, that's actually the side garage
3 door, right?

4 A. That is a -- no, that is a -- that is the rear
5 door. Hold on a second. Yeah, yeah, the first one is
6 the side door.

7 Q. The first one is the side one, and then the next
8 page, that's the right of the two back ones if you're
9 looking at it from the inside.

10 A. The second page is the right if you're looking at
11 it from the inside, yes.

12 Q. Let's go back to the first page. Do you see any
13 damage up on the top left on the interior, Mr. Decker?
14 Have we done something to those three magic bricks?

15 A. Yeah, the drywall's cracked.

16 Q. Where?

17 A. Right at, right at the point where you're talking
18 about on the left-hand side.

19 Q. Okay.

20 A. There's a seam, and the drywall's totally cracked
21 all the way through.

22 Q. Okay. So you think that's it?

23 A. I don't know, but you said, did I see anything, I
24 see that.

25 Q. That doesn't look like a forklift ran into it.

1 This looks like a crack of mud of where the gypsum one
2 needs to go.

3 A. All I can tell you, what I see is a crack in the
4 associated area of the brick on the outside.

5 Q. You testified yesterday that your guy thought
6 maybe somebody banged it up from the inside. Does that
7 look like ---

8 A. If Brilin has said that, I'm sorry, they hit the
9 doors. He told me in a meeting one time, our guy's hit
10 the door and I get it. We all get it. The forklift is
11 a hit thing.

12 Q. That's good. No, just to be clear for the jury,
13 that's one of the doors that are replaced, that side
14 door, right?

15 A. The side door was not replaced.

16 Q. The side garage door.

17 A. No, it was never replaced. He only replaced the
18 brick.

19 Q. No. The garage door. He replaced the -- Brilin
20 replaced the side garage door ---

21 A. No. He replaced the two back dock doors. The
22 side door he never replaced, sorry.

23 Q. Okay. All right. Let's just jump around here
24 and get this one knocked out. All right. Let's go to
25 Defense Exhibit -- give me a second. Bouncing around.

1 All right. Defense Exhibit 6.

2 A. Six?

3 Q. Six.

4 A. Six.

5 Q. Yeah. I'm sorry, hold on one second, that's the,
6 that's the -- give me a second. Okay. Defense 3, my
7 apologies.

8 A. Defense 3?

9 Q. Yeah.

10 A. Okay.

11 Q. All right. First page, left right, you see
12 Nations Power Corp up on the left --

13 A. Right.

14 Q. I mean on the right. It's not on there, is it?

15 A. No, I don't see it, not National Power Corp.

16 Q. Now, flip that second page. That's what it looks
17 right now. Same doors, right?

18 A. Well, no, I can't say it's the same doors, that's
19 a picture.

20 Q. It's the same door.

21 A. It is?

22 Q. Well, I'm asking ---

23 A. The same doors as what?

24 Q. If you don't know, just say I don't know.

25 A. I don't know. It's the same doors as what?

1 Q. Look real closely on that second page on what
2 says National Power Corp. Do you see that, Mr. Decker?

3 A. I see the National Power Corp, yes.

4 Q. And it's not -- doesn't say National Power Corp
5 on the right door, right?

6 A. No.

7 Q. Because the right door was replaced.

8 A. Correct.

9 Q. We replaced two doors, right?

10 A. You did.

11 Q. The left one is an original door, correct?

12 A. That is true.

13 Q. So then we replaced the second door.

14 A. You did replace them.

15 Q. There we go. All right. Just wanted to get that
16 into evidence. So let's jump back to 19. So, that
17 first garage door we're looking at from the interior,
18 that's one of those replaced garage doors. You can see
19 that. That's the insulation there, right? That's what
20 we're looking at, that silvery stuff. It's an
21 insulation garage door.

22 A. Okay.

23 Q. All right. Now, if we look at the next page,
24 that's the original door that's still there to this day,
25 right?

1 A. They're not numbered, so you've got to ---

2 Q. I know.

3 Permission to approach, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. WHITE:

6 Q. All right. So side door.

7 A. Got that. Yeah, I know that now.

8 Q. That's the door that we did not replace right
9 there on that next page, right?

10 A. No, you replaced that door.

11 Q. No, we did not replace that door.

12 A. That's the back door. There's no exit door.

13 Q. The one on the left. On the right if you're on
14 the outside.

15 A. You replaced both back doors. There's no exit
16 egress door at the side door, if that helps you
17 reference.

18 Q. Okay. Just to be 100 percent clear, Mr. Decker,
19 your testimony here today, it that the two garage doors
20 were replaced are the rear doors where the loading bays
21 are.

22 A. That's ---

23 Q. That's your testimony?

24 A. That's the one that you replaced. No side doors.

25 Q. Not the one, not the one with the ramp that the

1 forklift uses. You didn't replace that? That's your
2 testimony?

3 A. The first picture is the one with the ramp.

4 Q. I know. But you're saying we didn't replace that
5 one?

6 A. You did not.

7 Q. Okay. All right. So, and we keep flipping
8 through. All right? Now, I want you to get to this one
9 right here.

10 May I approach, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. WHITE:

13 Q. Okay. It's three -- this one right here, where
14 it has that little corner right there. Keep going.
15 That one. All right. Everyone see that? That's the
16 demising wall right there on the right, right? The
17 partition wall or dividing wall?

18 THE COURT: Is that in your notebook?

19 MR. WHITE: Yes, Your Honor.

20 THE COURT: It's 19?

21 MR. WHITE: Yes, Your Honor.

22 THE COURT: Okay.

23 BY MR. WHITE:

24 Q. Defense 19. So that's what it looked like when
25 we moved out.

1 A. Okay.

2 Q. Do you see any racks? Do you see any pallets?
3 Do you see any stuff there?

4 A. That's all removed.

5 Q. And it had been removed for the entire month of
6 April when you could have done a final walkthrough at
7 any time, which you refused to do. Correct, Mr. Decker?

8 A. No, that's not correct.

9 Q. All right. I want you to go to the second to
10 last picture of Defense Exhibit 19. That's the ductwork
11 on there?

12 A. Yes.

13 Q. All right. Brilin asked to raise up the ductwork
14 to create more space for their racks for storing all
15 their materials, right?

16 A. No.

17 Q. They didn't?

18 A. They didn't ask.

19 Q. Okay. But that little like, kind of that little
20 S joint right there, Brilin did that, right? They made
21 that repair?

22 A. That's what he told me.

23 Q. With your approval?

24 A. No.

25 Q. Your testimony here today is that you did not

1 approve that modification of the ductwork?

2 A. I did not. That was impossible.

3 Q. The lease specifically says that ductwork, the
4 HVAC system is the responsibility of the tenant. Yes or
5 no or you don't know?

6 A. I don't know either.

7 Q. Okay. Would it surprise you if I told you that
8 the lease says the ductwork, HVAC system is the
9 responsibility of the tenant?

10 A. Yeah, but not altered HVAC systems. He altered
11 the flow of the air by changing the duct.

12 Q. Okay. Your testimony here today under oath is
13 that you did not give him permission to make any
14 modifications of that ductwork?

15 A. No. I sent him an invoice in 2018, all the way
16 up to the time of '19 to pay the invoice or help us
17 understand if we needed to do it or not, and he never
18 responded. He just went death con on us.

19 Q. Okay. Let's talk about that invoice. Let's look
20 at Plaintiff 12. That first page, that's the invoice
21 that you sent to Brilin, right?

22 A. Nathan, what number is that?

23 Q. Plaintiff's Exhibit 12, Mr. Decker.

24 A. Okay.

25 Q. That's it right there.

1 A. Yes.

2 Q. It says Carolina Real Estate Holdings, LLC billed
3 to Brilin Electric, LLC, right?

4 A. Correct.

5 Q. And then a description, costs and repair damaged
6 ductwork in warehouse caused by forklift hitting
7 overhead HVAC duct?

8 A. Yes.

9 Q. So you think the forklifts got that high up and
10 hit those ducts?

11 A. He told me that when they loaded the top of the
12 racks, they were hitting it because the way that it's
13 configured, the ductworks hung down from the ceiling at
14 a certain height. Well, the rack was as high as what
15 they needed that last space to load the pallets. So
16 they were hitting it in numerous places.

17 Q. Top right of that Plaintiff's Exhibit 12, first
18 page, invoice date 5/2/2018. Is that May 2nd, 2018?

19 A. It is.

20 Q. And that was an invoice for, at the bottom, total
21 \$2,625?

22 A. Yes. You sent it to us.

23 Q. Let's go to the next page. This is one of your
24 preferred vendors, Mr. Decker, like you said yesterday
25 in your testimony. MTB, you've got a great relationship

1 with them, right?

2 A. I do have a good relationship with them.

3 Q. And this is their invoice billed to you.

4 A. This was their quote. It's not an invoice.

5 Q. \$2,000 -- okay. That's right. Good point. It
6 is a quote. It's not a bill, it's a quote. But it does
7 say, billed to Carolina Real Estate Holdings, right?

8 A. Yeah. Because we thought we would do that,
9 because we asked the tenant, do you want to fix the --
10 we can fix it. And he said, I'll take care of it when
11 he's at the end of the lease. That's all he said.

12 Q. Their quote was for \$2,625, the same exact number
13 as your invoice, right?

14 A. That's in '18, and they fixed it in '19. That's
15 the point.

16 Q. That's the same number as your invoice that you
17 were gonna quote Brilin, right?

18 A. Brilin would have been responsible for this if it
19 was fixed by us.

20 Q. Well, you did an invoice for \$2,625 on May 20 --
21 May 2nd, 2018, billed to Brilin, yes or no?

22 A. Yes.

23 Q. And then you got an invoice, a quote, excuse me,
24 from MTB for the same exact amount, \$2,625.

25 A. Yes.

1 Q. But that quote is from December 28th, 2018, Mr.
2 Decker. How did you know to invoice Brilin the same
3 exact amount as your preferred vendor would bill you
4 seven months later? How were you able to do that?

5 A. We sent it with the rent, the invoice, because we
6 thought we would be taking care of it and he would say
7 go ahead and do it because we're the landlord.

8 Q. Oh. So you came up with a number to bill to
9 Brilin and your preferred vendor filled that number into
10 their invoice?

11 A. No, not at all.

12 Q. Well, how did you -- you just said that. You
13 just said you gave MTB an invoice.

14 A. Listen, we got a quote. We invoiced for the
15 amount of the damage it was gonna cost us to fix, and if
16 it got reciprocated by the tenant, we would, like most
17 tenants do, because they don't have all these people to
18 do stuff ---

19 Q. You got the quote seven months after you invoiced
20 or created an invoice to Brilin.

21 A. No. I think we asked them to revise the quote if
22 it was still actually valid after the fact.

23 Q. This is what you do. You get preferred vendors
24 to fill in the number they're gonna pass along to your
25 tenant.

1 A. Not true.

2 Q. Because you're not gonna pay anything.

3 A. Not true.

4 Q. That's how they knew to put \$2,625.

5 A. Most tenants use that ---

6 Q. Do you still not see the pattern, Mr. Decker, how
7 your vendors seem to up charge ---

8 A. I see your pattern --

9 Q. (Inaudible.)

10 A. -- but not my pattern. I don't. I get where
11 you're going, but that's not how it works. We have a
12 team of people. I'm not sitting around the corner
13 going, hey, every job that comes up, I'm gonna try to
14 make some. That's ridiculous. I have no time for that.

15 Q. It was your testimony not two minutes ago that
16 you sent this invoice to MTB, was it not?

17 A. It was, because we asked them to requote it
18 because it already lapsed and expired. And I said, hey,
19 guys, we still need to get this. Can you send me a
20 quote again so we can revise this and send it to the
21 tenant.

22 Q. So there's another MTB quote that precedes May
23 2nd, 2018, is that your testimony?

24 A. Well, I think there was a lapse of time, and then
25 it went so long that Mr. Brilin didn't respond to our

1 invoice with his thing until Frank went months and
2 months later, Mr. Jackson, our CFO.

3 Q. Well, where did you get this number from on May
4 2nd, 2018?

5 A. Listen, it's a real number. The guy could have
6 called me. Why are you asking me about it? Why didn't
7 he ever ask me about it? He brushed it off until the
8 end.

9 Q. How do you know what to bill your tenant, unless
10 you've talked to a vendor?

11 A. I only bill them with the vendor. He had a
12 chance to approve it or deny it.

13 Q. But you didn't get a quote until --

14 A. Obviously, he let it go.

15 Q. -- seven months later, Mr. Decker.

16 A. Well, he fixed it at the end and he altered the
17 whole thing, so now it's his responsibility. So it's a
18 moot point. Really a moot.

19 Q. Again, you never paid \$2,625 to MTB?

20 A. We didn't say we paid. That was a quote.

21 Q. So these aren't damages? You're not --

22 A. They are, they are to fix it.

23 Q. -- claiming damages?

24 A. They are to fix it back to the way it is now. If
25 you call MTB today, he will come out and fix the

1 ductwork the way it used to be before Mr. Brilin
2 reconfigured it to make it higher for his ability to use
3 a forklift.

4 Q. And how much will that repair be to work ---

5 A. We're gonna honor what we're suing for, even
6 though it's way in the future. It can't be much more,
7 and we're willing to absorb that, because why would we
8 keep spending time trying to reestimate to reestimate to
9 reestimate in 2022? We'll just have to bite the bullet.

10 Q. Now, you said you're gonna honor what you're
11 suing for.

12 Your Honor, may I approach?

13 THE COURT: Yes, sir.

14 MR. WHITE: This is a discovery document. I was
15 gonna offer this as substantive evidence, Your Honor,
16 but if you want me to mark this I'd be happy to.

17 THE COURT: All right.

18 BY MR. WHITE:

19 Q. All right. Do you see this? Two pages here, Mr.
20 Decker. 7 of 18 and 8 of 18, those are your responses
21 to our discovery requests. Do you see that?

22 A. Sure.

23 Q. Bottom of seven, number six. Set forth an
24 itemized statement of all damages claimed to have been
25 sustained by the plaintiff as a result of the alleged

1 cause of action against Brilin or co-defendant W&L
2 Services. Do you see that, bottom of page six? Excuse
3 me, bottom of page seven.

4 A. Seven.

5 Q. All right. Page eight, that's your line items
6 right there. You've got your asphalt quote. That's
7 number eight. You've got your carpet cleaning, right?

8 A. Fair enough.

9 Q. You got your -- yes or no? So, you've got your
10 Philemon Brick quote that you never did that, right?
11 They never repaired the bricks, right? We're looking at
12 C?

13 A. At the time, this was probably stuff that was out
14 in front of us, yes.

15 Q. You submitted this to us in June of 2021. Do you
16 not recall that?

17 A. Fair enough.

18 Q. You did review the responses to our discovery
19 requests that your lawyer gave you, right?

20 A. I'm sure we did, yeah.

21 Q. Okay. And then you've got Overhead Door Company
22 in Charlotte to replace the two doors? They never
23 actually replaced those doors, did they?

24 A. Well, they will when we finish with this court
25 case. We'll either be replacing them or you will,

1 because you took my original doors.

2 Q. So, so the doors -- let's make sure we get this
3 clear. The doors that Brilin put on, they're still
4 there to this day, right?

5 A. Until we resolve this case, yes.

6 Q. So you're gonna take them down, even though
7 they've been working for two years, and put up your
8 doors?

9 A. Absolutely.

10 Q. Okay. And then we've got Decker inspections and
11 contracting services, Inc. The cost for repairing
12 damages, drywall in the warehouse area of the subject
13 property, including the interior office area inside of
14 the building of the subject property, \$2700. See
15 estimate date of March 13th, 2020. Do you see that?
16 It's little E.

17 A. What's the number.

18 Q. No, right here. The one on the discovery
19 response I just gave you on page 818(e).

20 A. I see E.

21 Q. Decker Inspection and Contracting Services, Inc.
22 You see that, right?

23 A. I see it.

24 Q. And it says: The costs for repairing damaged
25 drywall in the warehouse area of the subject property

1 and any interior office inside the building of the
2 subject property, \$2700, right?

3 A. Correct.

4 Q. And so this is part of your itemized statement of
5 damages that we asked you to give us to figure out what
6 you were claiming were damages, right? Right?

7 A. Right.

8 Q. Okay. Now, we've got a whole mess of invoices
9 and quotes and proposals in the plaintiff's exhibits,
10 but we don't have that \$2700 estimate.

11 A. It's an estimate?

12 Q. It's a plaintiff's exhibit, right?

13 A. It's an estimate.

14 Q. It's an estimate. But this was not -- this was
15 us -- these are your damages. You set forth an itemized
16 statement of all damages claimed to have been sustained.
17 And you submitted that invoice, did you not?

18 A. I didn't submit an invoice, we submitted an
19 estimate from ---

20 Q. You gave it to us in discovery, right?

21 A. This is true.

22 Q. Do you understand when I use the word discovery
23 what I mean by that?

24 A. I do.

25 Q. Okay. That's when we figure out what everybody

1 else has, right?

2 A. Yes.

3 Q. Okay. And that's not a plaintiff's exhibit, is
4 it? Correct?

5 A. No.

6 Q. Well, it's Defense Exhibit 9, right? Let's move
7 to Defense Exhibit 9. That is the estimate to which
8 you, a year ago, respond to our discovery request that
9 that was a, one of the itemized statements of damages
10 that CREH sustained, correct?

11 A. Correct.

12 Q. Now, you said one of the first things you said in
13 your testimony yesterday, you have two main companies,
14 Carolina Real Estate Holdings and who's the other one?

15 A. Decker Inspections and Contracts.

16 Q. Well, this is an invoice, Decker Inspections and
17 Contracting Services.

18 A. It's an estimate, it's not an invoice.

19 Q. This is an estimate of your one company to do
20 repairs for your other company.

21 A. Could have been for that particular position,
22 yes.

23 Q. Yes or no?

24 A. Yes.

25 Q. So, in this case, you would have been the payor

1 and the payee, right?

2 A. Yeah. I could have sent somebody.

3 Q. And you told us these were some of the damages
4 you just sustained, \$2700. \$2700 in drywall and paint
5 damages, right?

6 A. Yes.

7 Q. Mr. Decker, that is a fake invoice, is it not?

8 A. It's an estimate.

9 Q. That is a fake invoice.

10 A. It says estimate on the top.

11 Q. You told us in discovery that this was one of
12 your itemized statements of damages that you sustained.
13 This was a completely manufactured invoice.

14 A. It was at the time, and maybe it was confused
15 with one thing. It may be --

16 Q. You never did --

17 A. -- an invoice to an estimate.

18 Q. -- \$2700 of drywall -- Decker Inspections never
19 did \$2700 drywall repair and ---

20 A. If we did, it would say invoice. It says
21 estimate. It may have been produced as an invoice.
22 Maybe counsel can answer that or maybe somebody else
23 can. I can't, but I didn't make the estimate. And it
24 might have got produced in all these thousands of papers
25 that we did. We could have possibly given you an

1 estimate versus an invoice, because we thought all of a
2 sudden we were asked to do some work, or maybe we were
3 gonna do some work. I'd have to know, but it is an
4 estimate.

5 Q. You said -- was it your testimony just two
6 seconds ago that you didn't make this estimate?

7 A. No. Frank Jackson did that.

8 Q. Okay. Frank Jackson made this. Who's Frank
9 Jackson?

10 A. He's a CFO.

11 Q. CFO of?

12 A. Carolina Real Estate Holdings and Decker
13 Inspections.

14 Q. So Carolina Real Estate, or the CFO from Carolina
15 Real Estate Holdings --

16 A. Oh, Jesus.

17 Q. -- made a Decker Inspections invoice?

18 A. Why not? He's, he's a CPA, accountant,
19 accredited.

20 Q. So not only, Mr. Decker, do you make up charge
21 fake invoices or give the number of your preferred
22 vendor to fill in the blank for their invoice, you just
23 manufactured invoices and try and pass them off to the
24 tenant. Is that not what you did right here? Is this
25 not what you tried to do?

1 A. No. Nice try. No, that's not what ---

2 Q. What is it?

3 A. It's an estimate. At the time it was probably
4 for some repairs and painting in the warehouse. There's
5 a lot that goes onto that. I would say in that
6 particular case, it was estimated to do a repair, but
7 was never invoiced.

8 And maybe through all the discovery, it was given
9 to your team and my team and they -- you just said it
10 yourself. It's estimates, it's an invoice. You're
11 confused too. It says estimate. And maybe we got
12 confused on that item. We'll remove it. If that's the
13 end of the case and I'm the owner here, I'll pull it out
14 of my final say.

15 And if we end up winning this or you win, whoever
16 wins this, I'll put that out if we win, and we won't ask
17 your client to pay it. That's what I'll say here on the
18 stand. We did not pay anybody to do the work, and we
19 sent it to somebody as an estimate. That's all, that's
20 all it is.

21 Q. All right. I'm gonna wrap up in just a couple
22 minutes and we'll be done with this cross. All right.
23 Let's got to Plaintiff's 3, very quickly. This is your
24 default letter that you had your lawyer send, right?

25 A. Yes, sir.

1 Q. And here you are rattling off all these damages
2 back then. You've got the doors. You've got the door
3 quote in there. You've got the HVAC quote in there.
4 You've also got, if you look at page two of three, an
5 \$1800 quote to do some more drywall stuff. There's a
6 whole mess of quotes in here, right?

7 A. Yeah, supplied by counsel.

8 Q. And what triggered this is if we go all the way
9 back to those jersey barriers, is you shut Brilin down
10 and they couldn't use that ramp, so they went out and
11 hired a forklift where they could actually raise it up
12 to the loading bay and load and offload?

13 A. I don't even think you have a clue what happened
14 out there, buddy, I'm sorry.

15 Q. Well, do you have a clue what happened?

16 A. I do. I know exactly what happened.

17 Q. Don't you know that he rented a forklift?

18 A. He did the asphalt job and he couldn't use the
19 side door for a couple of days, so he decided on his own
20 merits, since he wanted to go get a forklift, to, to
21 reach into his back doors, the two dock doors. He
22 rented it for that purpose only. It was nothing else.

23 Q. Because he couldn't use the ramp, right?

24 A. Well, yeah, because we're doing new asphalt. We
25 closed it down for a few days.

1 Q. He's got vans and trucks. He doesn't have a
2 loading bay, right?

3 A. He's got a dock. He never once called me doing
4 the asphalt job and said, hey, can you help me? He had
5 30 people around that job site. I would have helped him
6 offload trucks. I would have helped him. I would have
7 had no problem.

8 Q. With what?

9 A. Listen. It was a couple of days ---

10 Q. What would you have uploaded and unloaded?

11 A. Whatever we could. Maybe we could have made a
12 temporary gravel ramp right there to assist him getting
13 out in the morning and asphalt it in the afternoon. But
14 he rented the forklift, and it's a big forklift, to
15 extend out and for whatever reason -- and it's in this
16 complaint that you're showing me. I don't see where
17 that's relevant. It has nothing to do with one or the
18 other.

19 It was unfortunate he didn't communicate, but
20 when you do an asphalt job, you need all cars and all
21 the stuff out off of it. And all the tenants knew. And
22 to preplan it, he should have put the stuff out the
23 night before and have it staged with a security guard or
24 asked us to watch it, or help us. I asked my team,
25 would you put a temporary ramp there to help him? They

1 go, yes, we would. We would have.

2 Q. You completely shut down his ability to use that
3 ramp --

4 A. Oh, come on.

5 Q. -- and you took away his ability to load and
6 unload until he went and got a forklift that cost him
7 \$1200 so he could load and unload in the bay.

8 A. He never asked. I would have helped him. We
9 have forklifts on the job. We're doing asphalt. We
10 could have used our forklift.

11 Q. What do you mean he could have asked? Would you
12 have credited him that amount?

13 A. I would have gave him a free forklift we were
14 using on the job site to offload the trucks. That's how
15 mysterious that whole forklift episode was. We were
16 there, and all the other tenants knew it. I know he had
17 a busy business. I get it.

18 Q. That's what triggered this default letter,
19 because he actually deducted a ---

20 A. No. There's probably a lot of things. I'd have
21 to go to counsel. The letter reads like it reads. It
22 means we're not communicating well enough to get to
23 where we need to go. And, please, come to -- as a
24 matter of fact, we sent it certified and you never
25 picked it up. We sent it twice. I pasted it on the

1 doors in yesterday's testimony. Right on the windows.
2 I got a call the next day, to my attorney. And then ---

3 Q. It affected the 1144.75 from his August rent
4 payment, and you didn't take your time with that, did
5 you?

6 A. Listen, we have protocol. When you deduct off of
7 rent without an explanation, somebody's --

8 Q. Yes or no.

9 A. -- gonna ask a question. I'm sorry.

10 Q. Didn't take too kindly to that, yes or no?

11 A. I didn't take -- I'm not taking kindly to it.

12 Q. Let's turn to Defense Exhibit 12. And go to the
13 second page, page two, Brilin (e)1.

14 A. Say that page one more time.

15 Q. Page two. It's defense exhibit 12.

16 A. I got ya.

17 Q. We're on the second page. So, do you see where
18 it says on August 12th, 2019, 11:45, Bryon wrote? It
19 says: Bryon Russell with Bryon Electric. Do you see
20 that?

21 A. Which two?

22 MR. WHITE: May we approach? May I approach?

23 THE COURT: Yes, sir.

24 THE WITNESS: Yeah, show me that.

25 BY MR. WHITE:

1 Q. Okay. It's right here. It's that line right
2 there.

3 A. I got ya.

4 Q. Okay. He's actually sent that to Frank?

5 A. Yeah. Actually, you can see Frank Jackson at the
6 top. Sent from iPhone, Frank Jackson. It said: Hey, I
7 got this from Brad, I'm not sure why.

8 Q. That's a text message from you saying this serves
9 as your eviction notice, due to short paid rent. Damage
10 to the property, both inside and out. Please be advised
11 that our attorney is taking all reasonable steps to
12 enforce the lease. So, here's you trying to kick him
13 out via a text message?

14 A. That's a text from me?

15 Q. That's what I -- yes, that is what ---

16 A. Or is that an e-mail from some ---

17 Q. Did you know that that's a text from you?

18 A. It says Frank Jackson's iPhone above, so it's not
19 me.

20 Q. Yes or no?

21 A. How am I Frank?

22 Q. Because Mr. Russell forwarded it to Mr. Jackson,
23 and he says, I just received this from Brad.

24 A. Well, I might have been communicating to Frank
25 and he forwarded it to them, that's fine. I was upset

1 that they kept doing things around the job site to at
2 the end of the point, I'm like, this guy's not
3 listening. He won't work with us. What do we do?

4 Q. Well, Frank says, how much was your August rent
5 check? So let's jump to page one.

6 A. Okay.

7 Q. Mr. Russell says, \$2,037.95, deducting for the
8 lift 1 -- 1144.75.

9 A. Okay.

10 Q. Should have sent you paperwork, but she paid
11 through ACH. Because they normally auto pay checks. So
12 just the checks come in the mail, right? So that's how
13 they did the rent?

14 A. I think so. I believe I've seen it in the
15 office. I don't handle the checks, so...

16 Q. Well, let's jump very quickly. We're gonna jump
17 right back to this, to Defense Exhibit 10. That's an
18 example -- that's the September 2019 rent check right?

19 A. Exhibit Number 10?

20 Q. Yeah. Defense Exhibit 10.

21 A. Yeah.

22 Q. That's what the checks normally look like, but
23 because they deducted that money, they did this one by
24 an ACH. Go back to 12, Defense exhibit 12 --

25 A. Right.

1 Q. Defendant's Exhibit 12. Mr. Jackson, along with
2 you, not too happy, the objection for the rental of the
3 lift during the paving project is a violation of the
4 terms of your lease, and that is why you sent the
5 eviction notice. So y'all -- y'all weren't crazy ---

6 A. I don't think it was that. I think it was a
7 multitude of things. It wasn't just about that.

8 Q. Oh, sure. So let's go to two. Let's go to that
9 lease.

10 A. And it's not official anyway, it's talk. It's
11 not official until it goes to a magistrate.

12 Q. Go to Plaintiff's Exhibit 2.

13 A. Just talk about an eviction.

14 Q. All right. We're gonna talk about paragraph 21.

15 A. Back to the lease?

16 Q. Back to the lease. Section 21.

17 A. Twenty-one.

18 Q. Let me know when you're there, Mr. Decker.

19 A. I will, but... what was the section again?

20 Q. Twenty-one. With the heading Pride and
21 Enjoyment.

22 A. Well...

23 Q. The one that: Tenant observes and performs a
24 covenant agreement said herein and shall at all times
25 during the lease, peacefully and quietly have and enjoy

1 possession of premises, subject to terms thereof. So,
2 when you shut down his ability to use his ramp, that's a
3 breach of the covenant applied during this lease.

4 A. No. We made a capital improvement and notified
5 the tenants and we acted within the leased parameters.

6 Q. You shut him down, you breached the provision of
7 the lease.

8 A. I never shut him down. You can still use the
9 ramp.

10 Q. You can say no.

11 A. No.

12 Q. Okay.

13 A. He could have drove over the ramp, up and down
14 the ramp on gravel.

15 Q. All right.

16 A. Just because asphalt's not there, doesn't mean he
17 can't get in.

18 Q. Let's jump up to 20. Landlord entry of premises.
19 On the lease, section 20. Landlord may have a cause of
20 premises, blah, blah, blah. Then it says: Landlord may
21 enter the premises upon prior notice at reasonable hours
22 to exhibit same for prospects and purchasers or tenants,
23 to make repairs for our landlord. For reasonable
24 business purposes and as otherwise this may be agreed by
25 landlord and tenant.

1 The only time you can come on there without
2 notice is for emergencies, per the lease. Yes or no?

3 A. Yes.

4 Q. Almost done. All right. We're gonna jump real
5 quick to a couple things. Now, there was an issue with
6 the October rent as well from the -- you all sent the
7 default letter in September '19. And then October '19,
8 there was an issue with the rent. You all couldn't find
9 the rent check, right? Remember that?

10 A. I don't know if they could find it.

11 Q. Go to ---

12 A. I was just told the rent didn't show up.

13 Q. Go to defense, let's do 11 real quick.

14 A. Defendant's Number 11. Got ya.

15 Q. Do you see that?

16 A. Yeah, I see it.

17 Q. Go to the second page.

18 A. Yes.

19 Q. See the checks?

20 A. Yeah. October 11th, 2019?

21 Q. That's a rent check you all said you couldn't
22 find, and then Brilin ACH'd over the rent for October,
23 right?

24 A. I don't know. I don't handle that.

25 Q. If you don't remember, say you don't remember.

1 A. I don't recall.

2 Q. Okay. You don't recall. Do you see where it
3 says stop payment?

4 A. From your -- from Brilin?

5 Q. Yeah.

6 A. Yes.

7 Q. Now, page one of defense, Defendant's Exhibit 11,
8 that's from your bank, right?

9 A. Bank of America, yes.

10 Q. Okay. And it says Carolina Real Estate Holdings,
11 LLC on there?

12 A. Yes, correct.

13 Q. You all tried to -- once you all actually found
14 that check in July, you tried to deposit that check on
15 July 27, 2020, right?

16 A. I believe it showed up later through the mail
17 service, or undeliverable or something. It got
18 misdirected. But it showed up at a later date.

19 Q. And I did misspeak. It was actually, the bottom
20 left there, July 23rd, 2020, once you all found that
21 check and tried to deposit it, right?

22 A. It came into the office through the mail, and I'm
23 sure they do what they always do, they put it in the
24 bank. It was a payment that was missing from the
25 defendant.

1 Q. But he paid you back in October by an ACH direct
2 deposit.

3 A. He may have, but it was just a corresponding
4 problem that we were having. We didn't get the check,
5 and then when we came back from our bank it said it was
6 stop payment, so we don't know what check numbers come
7 in every day and look to some sequence of stop payment.
8 Only Brilin gets to stop payment. We don't get to see
9 it.

10 Q. Right. He stopped the payment. We know that,
11 because that's what it says on page ---

12 A. Okay. Well, then he probably rectified at a
13 later date or not.

14 Q. Well, when you guys supposedly found this missing
15 check in July, a few months later, you tried to deposit
16 it, didn't you?

17 A. You say find, it probably turned up. You know,
18 the mail's not the most dependable thing. Brilin paid
19 his rent most of the time on time, so...

20 Q. You tried to deposit his check?

21 A. I did not try. Somebody in our office ---

22 Q. When I say you, I mean CREH.

23 A. I'm sure they deposited the check at some point
24 in time, yes.

25 Q. How many employees does CREH have?

1 A. Pardon?

2 Q. How many employees at this time does CREH have?

3 A. Frank was handling the checks, so it would have
4 went to Frank Jackson for ---

5 Q. No. Are you an employee of CREH?

6 A. I am.

7 Q. What about Wayne Schulte?

8 A. Yes.

9 Q. Was he an independent contractor?

10 A. Well, actually, Wayne was with Decker Inspections
11 and Contracting.

12 Q. Right. He was an independent contractor with
13 Decker Inspections, right?

14 A. No, he was an employee.

15 Q. Was he a 1099 or a salaried employee?

16 A. Salary.

17 Q. Okay. For Decker?

18 A. Yeah. He got a W-2.

19 Q. The only actual salaried employees was you and
20 Mr. Decker [sic], right?

21 A. No.

22 Q. Who else is there?

23 A. Man, you have no clue.

24 Q. Who else is there?

25 A. What do you mean?

1 Q. Who else is on the payroll for CREH?

2 A. What's the point?

3 Q. Just answer the question, Mr. Decker. Who else
4 is on the payroll? Who could have possibly -- the point
5 is, who could have possibly deposited this check?

6 A. Frank Jackson could have, because he actually
7 handles the books and the checks, and the remittances,
8 and the payments, and the taxes, and all the stuff that
9 office people handle with that kind of title. We're the
10 field guys. We get the mail and bring it to the office,
11 and then we do our job.

12 Q. So, after you've sued our client and you're
13 trying to go after him for all this stuff, you find this
14 check and you try to deposit it.

15 A. I'm assuming it came in. I'm assuming it came in
16 and it got deposited because, oh, look, there's a check.
17 Maybe they didn't even look at the top date. Oh,
18 Brilin's check.

19 Q. Who is they, Mr. Decker? The only employees are
20 you and Mr. ---

21 A. If Frank didn't see the top of the check date and
22 he's like, oh, I got a check and he went to reconcile it
23 against the books and saw the account was, I would say,
24 past due and a certain amount, he would have applied the
25 check.

1 Q. You and Mr. Jackson were just trying to get a
2 little extra money from the guy you had sued, right?

3 A. 36 checks Mr. Russell sent, and one check is what
4 we're gonna send over to the jury and try to figure out
5 if we deposit it or not late? Come on. It's a straw
6 you're trying to draw with me and I'm not gonna bite
7 into it. I didn't do anything to hurt Mr. Russell. It
8 came in late. I would have totally told him about it.
9 Even if he might have double paid me, we would have sent
10 him a credit back. We have an accountant. We're
11 accountable for this stuff too. We don't just get to
12 deposit people's money if they don't send it to us.

13 Q. So you think you buy it (inaudible) when you
14 couldn't find the check. And then when the check
15 magically shows up after you sued them, you tried to
16 deposit the check, yes or no? You can say no, it's
17 fine.

18 A. No.

19 Q. When I say you, I mean CREH.

20 A. I understand.

21 Q. Either you or Mr. Jackson as the natural person.
22 All right Defendant's Exhibit 15. We're gonna close on
23 the wall and we're done.

24 A. Okay.

25 Q. Are you there, Defendant's Exhibit 15?

1 A. Yes, sir.

2 Q. Okay. \$1800. That's the \$1800 that Brilin paid
3 back in 2019 to fix the Two Men And A Truck side of the
4 demising wall, correct? Yes or no?

5 A. That's a trick question.

6 Q. I don't know why that's a trick question.

7 A. Fix. I guess he did. That's what this says. I
8 didn't hire the guy, so I can't tell you what he did.

9 Q. Okay. You are aware that W&L did the repairs,
10 right?

11 A. Yes. They attempted to do the repairs.

12 Q. Well, and that is for the Two Men And A Truck
13 side. So in 2019, Two Men And A Truck side.

14 A. I don't know that it's for that side.

15 Q. And the plan ---

16 A. It doesn't say that it's for that side. That
17 invoice does not say that's for Two Men And A Truck
18 side.

19 Q. Well, it's from 2019, right?

20 A. It's from 2019.

21 Q. And it says: Labor to fix wall that had been
22 knocked out of bottom plate. See that?

23 A. Yeah, I see it.

24 Q. So everyone knew like something had happened to
25 the wall, even as far back as 2019, right?

1 A. Yeah.

2 Q. Nobody was trying to conceal that ---

3 A. No. I think Two Men And A Truck called us and
4 said, oh my God, this wall is blowing out really bad on
5 my side and I'm worried. It's a dangerous situation.
6 And that's when ---

7 Q. So what they did is they fixed all those bent up
8 drywall gypsum boards. Let's go to 16.

9 A. Well, wait a second. Bent drywall or gypsum
10 board?

11 Q. Well, one in the same. The gypsum board part.
12 Okay. Let's just go to defense -- Defendant's Exhibit
13 16. You can say I don't know to this question. That's
14 the Two Men And A Truck side and that's the 2019
15 repairs, right?

16 A. That's an open portion of the wall from the Two
17 Men And A Truck side, correct.

18 Q. Okay. And you can see the drywall and you can
19 see the insulation and you can see the alluminum stud,
20 right?

21 A. Correct.

22 Q. So you can see that on the other side of that
23 insulation is just gonna be the drywall on the Brilin
24 side, right?

25 A. Yes.

1 Q. So if you just pulled out some of that
2 insulation, you're just gonna see drywall?

3 A. And the other side of the stud. You only see one
4 side of the stud on this side, so you'll see the other
5 side of the drywall and the condition of the studs on
6 the adjacent side.

7 Q. Mr. Schulte, your property manager oversaw this
8 repair on the Two Men And A Truck side.

9 A. Not true.

10 Q. Right?

11 A. Not true.

12 Q. Not true? Okay.

13 A. Not true. He didn't oversee it. He let you have
14 access to it.

15 Q. He observed this being done, right?

16 A. Uh-huh. You took responsibility. You wanted to
17 touch it.

18 Q. He could have taken out some insulation and seen
19 what's going on with the studs at any time in 2019,
20 right?

21 A. That wasn't his job that day.

22 Q. He could have done that, right?

23 A. Maybe. You'll have to ask him.

24 Q. Now, let's compare that to this picture right
25 here. This is what it looks like on the Brilin side.

1 A. That's the wrong picture of where you're talking
2 about. That's ---

3 Q. No. This example right here shows where the
4 drywall has been banged up, right?

5 A. But that doesn't show you the actual wall that
6 we're talking about.

7 Q. I know, but that's just -- that's an example of
8 the banged up drywall, correct?

9 A. No. That's, that's the wall -- that's an example
10 of the wall that's on the opposite. It's a whole
11 different story. The rack to the right, that's not in
12 that picture. Is the wall we're talking about, which we
13 showed you yesterday with the impacted studs. Like one
14 side of the Coke can you dent and you look at it from
15 this side, it looks great, but the the other side is
16 dented.

17 Q. All right.

18 A. Two Men And A Truck looks great.

19 Q. Until once you actually start cutting into this
20 drywall, you really can't see what's going on, right?
21 Correct? You can't see the studs, you can't see the
22 insulation.

23 A. You can only see the damages from the picture,
24 correct.

25 Q. Right. And here's a picture. This is an

1 equivalent of a demo diagnostic in 2019, is it not?

2 A. I don't know what that is.

3 Q. When you say demo diagnostic, that's a fancy way
4 of saying cutting a hole in the drywall and seeing
5 what's going on, right?

6 A. We remove the products to see what's behind it.

7 Q. And then ---

8 A. On both sides.

9 Q. And in 2019 that happened?

10 A. Half the picture. Show me the other side of the
11 wall and we'll be done with this --

12 Q. Nobody's trying to conceal --

13 A. -- because that's not the other side.

14 Q. -- anything that might have been going on inside
15 that wall, right?

16 A. I think they are, but that's just for me and you
17 and this whole thing to debate.

18 Q. Then if you flip through the rest of ---

19 A. Show me the other picture to the other side of
20 the wall at the exact time that you repaired that side,
21 and we'll settle this today.

22 Q. Well, flip ---

23 A. You can't show me the picture because nobody took
24 a picture.

25 Q. Look through Defendant Exhibit -- 16 pages and

1 that's not just -- they literally did the entire wall.

2 A. They half-ass'd it.

3 Q. Watch your language, Mr. Decker, we are in a
4 court of law.

5 THE WITNESS: Sorry, Your Honor.

6 BY MR. WHITE:

7 Q. All right. But this is why I'm going down the
8 line section by section --

9 A. Show me the picture of the other side and I'll
10 answer.

11 Q. -- pushing the wall back so it's --

12 A. How did they push it back?

13 Q. -- long like they were shown yesterday --

14 A. How did they push it back?

15 Q. -- and put up new drywall. Isn't that what these
16 pictures show?

17 A. How do you push a 19-foot stud back? Tell me how
18 you did it. Show me your expert witness. Show me the
19 picture of the other side of those studs and I will
20 answer the question, but this is a half a story here.

21 Q. If we all just thumb through those, we can see
22 inside that drywall in 2019, right Mr. Decker?

23 A. You can see drywall, but you can't see the
24 damaged studs that you saw in the picture yesterday
25 because you're not bringing that picture up today

1 because that's pretty much gonna rest the case.

2 Q. Now, let's go quickly to Defendant's Exhibit 17.
3 I'm showing some of the asphalt damage. And that's a
4 good picture, although it kind of cuts it off, but that
5 shows the loading bay, right, in the back? There's the
6 Two Men And A Truck loading dock backed up to their
7 loading bay on that first page, right?

8 A. Correct.

9 Q. Okay. And that's all concrete pads where the
10 loading bays are, right? You kind of see if you go to
11 the next page you can actually see up and see the
12 loading bay garage doors, how they are elevated and that
13 you need either a forklift or an 18-wheeler to get
14 through? See those on that second page?

15 A. I do.

16 Q. But the concrete pads are there because you're
17 gonna be backing up heavy equipment and concrete is
18 better than asphalt in sustaining heavy equipment like
19 an 18-wheeler or like a forklift, right?

20 A. Obviously I can't say that is better, but one
21 would want to know -- hope it's better.

22 Q. Why do you got concrete pads for your loading
23 bays at your building, Mr. Decker?

24 A. They have asphalt ones too. It's by design.
25 Whoever designed this building designed it to use

1 concrete.

2 Q. I'm asking, why did you go with concrete pads or
3 asphalt pads? That's how it was when you got it, right?

4 A. It wasn't a choice at the time. I mean, we
5 designed it with a crew of people. We used the asphalt
6 guy and we talked to him, we said we're doing the front
7 parking lot and we came up with the methodology this is
8 what we want to do for the job. We don't want to mix
9 and match. Maybe it was probably a discussion besides
10 me, with maybe a project manager or somebody who was out
11 in the field with the asphalt guy and he said, hey, we
12 can do all this on asphalt and you'll get a really good
13 result and we'll warrant it, we'll service it, and no
14 problems. I get it. You hope for that. But concrete
15 cracks too, so I can't see that you can't say that a
16 heavy truck doesn't cut asphalt.

17 Q. Okay. Go quickly to Plaintiff's Exhibit 19.

18 A. 19?

19 Q. Yeah. That \$1800 invoice is exactly the same as
20 the \$1800 invoice Brilin paid to W&L Services to do the
21 drywall, right?

22 A. Excuse me, I want to make sure I'm on the right
23 one.

24 Q. Plaintiff's Exhibit 19.

25 A. 19. My 19 shows carpet. Am I missing something?

1 MR. WHITE: May I approach, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. WHITE:

4 Q. Plaintiff's 19.

5 A. Oh, sorry. Sorry. Yes.

6 Q. Okay. And that \$1800 invoice is exactly the same
7 as what Brilin paid W&L back in 2019 to fix the drywall
8 on the Two Men And A Truck side, right?

9 A. That's the amount on yours, yes.

10 Q. Labor and materials to repair damage to the wall
11 between Brilin Electric and Two Men And A Truck caused
12 by your careless forklift operator. See that?

13 A. Correct.

14 Q. And, you again, Carolina Real Estate Holdings
15 billing this to Brilin Electric, right?

16 A. Yeah. There might have been discussions with
17 Wayne or somebody to do something and we never did it,
18 but that was -- we were going to invoice that amount to
19 make the temporary repair.

20 Q. This isn't a damage you're claiming here today,
21 is it?

22 A. No, not at this time.

23 Q. It's another just made up invoice?

24 A. No. It was probably asked and estimates and
25 invoices may have been something we asked for. So they

1 invoiced me, we'll get it fixed and you guys do it. I
2 would have to ask Wayne or Frank what that actually came
3 from, but we didn't do the work so it's a moot point,
4 you're right.

5 Q. Why did you make an invoice then?

6 A. It's probably something you can ask one of the
7 other witnesses that might be able to answer that. I
8 can't answer that.

9 MR. WHITE: Nothing further for this witness,
10 Your Honor.

11 THE COURT: Ladies and gentlemen, thank you very
12 much for your time while we did the cross-examination.
13 I'm gonna let you take a break. Leave the books either
14 in the floor or in your chair. I'll remind you of the
15 two ongoing instructions. Don't have any discussions
16 among yourselves or anything involving the case. Do not
17 do any type of independent research or investigation or
18 anything involving the case. You may go with the
19 bailiff and we'll get you back here just shortly.

20 MR. DLUZNESKI: May I approach?

21 THE COURT: No.

22 (Jury leaves courtroom at 11:22 a.m.)

23 All right. I just need to remind you, you remain
24 under the process of giving testimony, so don't have any
25 discussions with anyone about anything involving the

1 substance of your testimony, but you may step down.

2 Now, you want to approach?

3 (Witness leaves witness stand.)

4 MR. DLUZNESKI: I just want to get the discovery
5 document.

6 THE COURT: Uh-huh. We can make that a Court's
7 Exhibit to the proceeding. All right. We'll step down
8 for a few minutes.

9 (Court's Exhibit Number 1, Discovery Document,
10 was marked for identification.)

11 (Court's Exhibit Number 1 was entered into the
12 record.)

13 (Recess was had from 11:23 a.m. - 11:44 a.m.)

14 THE COURT: Okay. Let's bring them on in. Sir,
15 do you want to come on back up here? Mr. Decker, just
16 come on back up here.

17 (Witness resumes witness stand.)

18 I need to remind you, you're still under oath,
19 okay?

20 THE WITNESS: Yes, sir.

21 (Jury enters courtroom at 11:44 a.m.)

22 THE COURT: Plaintiff ready for his redirect?

23 MR. DLUZNESKI: Yes, Your Honor.

24 THE COURT: Limited to what he went into, please,
25 sir.

1 MR. DLUZNESKI: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. DLUZNESKI:

4 Q. Mr. Decker, there's just -- I want this redirect
5 to be brief, if we can make it. So, I just have a few
6 issues that Mr. White covered with you on cross that I
7 want to follow-up on.

8 A. Okay.

9 Q. The first one is Mr. White started out by talking
10 with you about the thickness of the asphalt and the
11 Countywide Commercial proposal.

12 A. Right.

13 Q. All right. Now, did you tell or discuss at all
14 with Countywide Commercial what the property was being
15 used for when you solicited those proposals?

16 A. Yes.

17 Q. All right. And what did you tell Countywide
18 Commercial that that property was being used for?

19 A. For warehouse and flex space and, you know,
20 traffic. You know, the basic stuff.

21 Q. All right. So at the time that Countywide
22 prepared the proposals that Mr. White asked you about,
23 Countywide Commercial was aware that there was traffic
24 coming and going through that property?

25 A. Say that again.

1 Q. At the time that you solicited the proposals from
2 Countywide Commercial that Mr. White asked you about on
3 cross, you had already discussed with them that that
4 property had traffic coming through it?

5 A. I did.

6 Q. Okay. All right. And who determined the
7 thickness of the asphalt, you or Countywide Commercial?

8 A. Countywide.

9 Q. Okay. And did Countywide discuss those opinions
10 with you?

11 A. Yeah, we discussed that.

12 Q. Okay. And did you rely on those specs that
13 Countywide provided?

14 A. I did.

15 Q. Okay. All right. Now, how often does CREH use
16 County Commercial as a vendor?

17 A. Periodically. The asphalt typically lasts quite
18 a while. And then when it starts to wear out we do seal
19 coating, which was the next process. Probably most
20 people see it as a black coating and spray it over the
21 parking lot to get a little bit more time out of the
22 original.

23 Q. All right. Now, very briefly, tell us why CREH
24 uses Countywide Commercial over maybe other vendors for
25 parking lot repaving, those types of things.

1 A. Trusted vendor. You know, I felt good about
2 them, confident in their abilities. The people were
3 responsive, timely. Showed up when they said they'd
4 show up. All the things we all would like to have when
5 you hire somebody. And it could work within our
6 schedule at the time. And the pricing, we quoted out,
7 like we do in some places. We'll spot check things
8 every once in a while. And time when it's -- you do
9 that at points when you have time, especially on a big
10 project like that. An undertaking, which is in the six
11 figures. We were trying to figure out which way to go
12 and we ended up using them.

13 Q. All right. Now, let's move on to those rollup
14 doors that Mr. White asked you about. And I want to
15 specifically look at Plaintiff's Exhibit 25 in the
16 binder. And put your thumb there, along with Defense
17 Exhibit 1.

18 A. Okay.

19 Q. All right. Now, to orient the jury, Plaintiff's
20 Exhibit 25 is the e-mail from Joshua Montoya that we
21 talked about yesterday, right?

22 A. Right.

23 Q. Okay. And Defense Exhibit 1 is the estimate or
24 invoice from Southern, correct?

25 A. Yes. On theirs, yes.

1 Q. Okay. So -- and from the Southern invoice, what
2 model of the rollup doors was Brilin proposing?

3 A. From Southern?

4 Q. Yes.

5 A. They were reporting a model 5501 sheet door color
6 buckskin.

7 Q. Okay. Now, if we flip back to Plaintiff's 25,
8 the e-mail from Mr. Montoya, did Mr. Montoya consider
9 Brilin's proposed doors, in his opinion?

10 A. No.

11 Q. He did not?

12 A. Well, he put them -- he put apples to oranges.
13 So he looked at them against what Overhead Door wanted
14 to use versus what Southern Door was proposing, because
15 I got involved with all these guys to figure out what's
16 the best, because obviously the tenant sent us an
17 estimate to replace some doors, but I didn't know
18 anything about the type of doors he was using, so I had
19 to trust Montoya was my go-to guy to figure it out in
20 the application that was being used.

21 Q. All right. So if we're looking at the doors,
22 apples to apples, which model of door did Mr. Montoya
23 say would be the most appropriate one for Brilin's
24 leased space?

25 A. Well, he specs it out right here. Which one is

1 better, it's a great product for the application, but
2 it's not suited for a commercial every day use. It's
3 more of a mini storage warehouse, is how he explained it
4 to me when you go to like Pointing Star or one of those.
5 They're not -- their doors are good for that
6 application, but wasn't equal to what we had, is what
7 was explained to me. So, that's where the difference
8 went of why I was trying to get Overhead Door to be
9 recognized when we said, hey, we've got a guy that's
10 gonna do it, because he's telling me it's not apples to
11 apples or oranges to oranges. There was a difference.
12 And he figured those guys would have picked up on it,
13 but that's all I was told.

14 Q. All right. Now, before we move away from Defense
15 Exhibit 1, those two line items, they add up to more
16 than \$3,000?

17 A. Yes.

18 Q. All right. So, under the terms of the lease
19 agreement, Brilin had to solicit CREH's approval in
20 order to install those doors?

21 A. Correct.

22 Q. Now, you indicated on cross that you did not
23 approve the doors that -- you indicated to Brilin that
24 you did not want those doors installed. Why not?

25 A. Because I was in the motions of figuring all this

1 out, what was the best use. And I called Southern Door
2 and they also said there was a better door at the time,
3 but this is the door they chose to use. He said it was
4 a quality door, but at the same time I tried to ask him,
5 well, Overhead's saying another door. The Southern door
6 is one that Mr. Russell used. He said, they're already
7 ordered and, you know, that's what we're doing, but he
8 hadn't installed them yet.

9 And I was just like a little taken back. Wait a
10 second, you already ordered the doors when we're talking
11 about the doors? So, how come I don't get a choice?
12 I'm supposed to get a choice, I thought, but I didn't
13 get it.

14 Q. All right. Let's turn to Defense Exhibit 4,
15 which is the McGee Brothers invoice.

16 A. Okay.

17 Q. Now, that line on -- there's only one line item
18 on that invoice; is that correct?

19 A. Yes.

20 Q. Okay. And the line item reads: Repair broken
21 brick at garage door for \$280.

22 A. That's correct. That's what it says.

23 Q. Does it include anything about inspecting the
24 lentil that you told us about yesterday?

25 A. No.

1 Q. Does it talk -- does it include anything related
2 to inspecting the interior of the door behind the brick
3 regarding the structural aspect?

4 A. No.

5 Q. Okay. So, this McGee Brothers invoice is just
6 for the broken bricks?

7 A. Correct.

8 Q. Okay. Whereas, if we look at the Philemon
9 invoice that we saw yesterday, that covered inspection
10 as well, did it not?

11 A. It did.

12 Q. Okay. All right. We talked about the partition
13 wall a lot already during this trial. Regard -- one
14 aspect regarding the partition wall, did Brilin ever
15 even offer to participate or assist in any repairs to
16 the partition wall?

17 A. With us?

18 Q. Yes.

19 A. No.

20 Q. Okay. After you did the, what you call, the demo
21 diagnostic and you knew what the damages were, did
22 Brilin offer to assist or participate in any repairs to
23 the wall at that point?

24 A. No.

25 Q. Okay. All right. Let's look at Defense Exhibit

1 16. And this is the last thing that we're gonna talk
2 about. Defense Exhibit 16 is the, I believe what you
3 termed, the temporary repairs.

4 A. Correct.

5 Q. Okay. And the temporary repairs you testified
6 were made on the Two Men And A Truck side, the opposite
7 side of the wall to Brilin?

8 A. Correct.

9 Q. Okay. Were you present when any of these repairs
10 were made?

11 A. I was not.

12 Q. All right. Were you present when the drywall
13 that we see in Defense Exhibit 16 was pulled off?

14 A. No.

15 Q. Do you have any idea of the condition of the
16 metal studs at that time?

17 A. I do not.

18 Q. Okay. So after the dry -- the temporary repairs,
19 what we see in Defense Exhibit 16 were made, the
20 sheetrock was replaced? The drywall -- the wall was
21 covered back up?

22 A. Correct.

23 Q. Is that correct?

24 A. Yes.

25 Q. Okay. Did Brilin or W&L, the one that Mr. White

1 talked to you about, the company that made the repairs,
2 ever tell you anything about the condition of the
3 interior of the wall after the wall was covered back up?

4 A. No.

5 MR. DLUZNESKI: Okay. All right, Your Honor, I
6 don't think I have anything further for this witness.

7 THE COURT: All right. Thank you very much.
8 Thank you, sir, you may step down. Watch your step as
9 you're stepping down, sir.

10 THE WITNESS: Yes, sir.

11 (Witness leaves witness stand.)

12 THE COURT: All right, ladies and gentlemen,
13 conferenced with the lawyers about scheduling and it
14 seems -- I know you just had a break. Well, you get to
15 have another break. I'm gonna let you take your lunch
16 break at this time. I'm gonna remind you of two ongoing
17 instructions. Do not have any discussions with anyone
18 about anything involving the case, including yourselves.
19 And do not do any type of independent research or
20 investigation in anything involving the case.

21 Now, you've heard testimony. You've probably
22 have heard some locations. If by chance you go to lunch
23 and say, well, I just might drop by that place. No,
24 don't do that. That would be a violation of my
25 instructions to you. It prohibits you from doing any

1 type of independent research or investigation.

2 Thank you very much for your patience and your
3 service this morning. Taking a look at the clock back
4 there on the wall, I'm gonna use that. I'm gonna ask
5 that you would, please, be back in the jury deliberation
6 room. Is 1:30 sufficient counselors?

7 MR. DLUZNESKI: Yes, Your Honor.

8 THE COURT: I ask that you be back in the jury
9 deliberation room by 1:30 and we will resume with the
10 presentation of the case. You can just leave those
11 books in the chair or on the floor. Thank you very
12 much. You may go with the bailiff.

13 (Jury leaves courtroom at 11:56 a.m.)

14 Anything else before I step down?

15 MR. DLUZNESKI: Nothing, Your Honor.

16 MR. WHITE: No, Your Honor.

17 THE COURT: Thank you very much. We'll see you
18 all shortly.

19 (Lunch recess was had from 11:56 a.m. - 1:36
20 p.m.)

21 THE COURT: Okay. I'm told that all of the
22 jurors have returned. Is the plaintiff ready to call
23 their next witness?

24 MR. DLUZNESKI: We are, Your Honor. I just
25 wanted to take this opportunity before the jury comes

1 back in to put something on the record. Two of the
2 witnesses that plaintiff is going to be presenting this
3 afternoon, Mark Robinson and John Abernathy, we intend
4 to present as expert witnesses. I discussed with
5 defense counsel prior to the lunch break if the defense
6 would stipulate to Mark Robinson being qualified as an
7 expert witness in general contracting and John Abernathy
8 being qualified as an expert witness in structural
9 engineering. And it's my understanding that defense
10 counsel agrees to stipulate to those qualifications and
11 we would ask that the Court give the jury the proper
12 instructions under rule 702 as to expert witnesses.

13 THE COURT: All right. Robinson is general
14 contractor?

15 MR. DLUZNESKI: General contracting.

16 THE COURT: General contracting.

17 MR. DLUZNESKI: And then, John Abernathy is
18 structural engineering.

19 THE COURT: Okay. And that's your understanding
20 of the agreement as well?

21 MR. WHITE: Yes, Your Honor, we'll keep it
22 moving.

23 THE COURT: Okay.

24 MR. WHITE: Get up and get that out of the way.

25 THE COURT: What I'll do is when you present the

1 witness, offer the witness, when you get to that point,
2 you would like to now offer the witness as an expert in
3 general contracting. Then I will tell the jury what an
4 expert witness is.

5 MR. DLUZNESKI: Okay. So, the Court would like
6 us to go through the litany of questions that apply ---

7 THE COURT: No. No. You can just say, this
8 witness is being presented as an expert witness in
9 whatever, you know? Then I'll tell them about what an
10 expert witness is and what they're to do with it.

11 MR. DLUZNESKI: Yes, sir. Okay, fair enough.

12 THE COURT: Thanks for alerting me.

13 MR. DLUZNESKI: Absolutely.

14 THE COURT: Okay. Anything else before we bring
15 the jury in?

16 MR. DLUZNESKI: No, Your Honor.

17 THE COURT: Okay. Let's bring the jury in.

18 (Jury enters the courtroom at 1:37 p.m.)

19 THE COURT: Is the plaintiff ready to call their
20 next witness?

21 MR. DLUZNESKI: We are, Your Honor. Before we
22 do, can we approach?

23 THE COURT: Sure.

24 (Bench conference was held off the record.)

25 MR. DLUZNESKI: Your Honor, plaintiff calls next

1 exhibit -- or the next witness, who is Mark Robinson.

2 THE COURT: Mr. Robinson, come on up here, if you
3 would. Let the clerk of court swear you in, just right
4 in front of me.

5 THE CLERK: Would you, please, place your left
6 hand on the Bible and raise your right. Do you solemnly
7 swear or affirm the testimony you give today will be the
8 truth, the whole truth, and nothing but the truth so
9 help you God?

10 THE WITNESS: I do.

11 THE CLERK: Thank you. Please be seated.

12 THE COURT: Sir, come right over here and have a
13 seat in the chair. Careful stepping up, and just be
14 sure you speak into the microphone.

15 THE WITNESS: Yes, sir.

16 MR. DLUZNESKI: And, Your Honor, this is a
17 witness that has been stipulated between the parties as
18 an expert witness in the area of general contracting.

19 THE COURT: All right. Thank you, sir. Ladies
20 and gentlemen, normally a person cannot give opinion
21 testimony. Normally when a person testifies, they must
22 testify as to what either they saw, heard, or sensed by
23 smell or something of that nature. However, there is an
24 exception when someone is qualified because of education
25 or experience.

1 They are permitted to give their opinion in
2 certain areas if the Court qualifies them that way.
3 This witness will be qualified in the area as a general
4 contractor to give opinion testimony in that area. Now,
5 that does not mean that you must accept the opinion, but
6 it is evidence for you to use in any way that you see
7 fit.

8 MR. DLUZNESKI: Thank you, Your Honor.

9 THE COURT: Uh-huh.

10 MARK PRESTON ROBINSON,
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. DLUZNESKI:

14 Q. Mr. Robinson, could you, please, state your full
15 name for us for the record?

16 A. Mark Preston Robinson.

17 Q. Okay. Do you understand why we're all in this
18 courtroom this week?

19 A. Most definitely.

20 Q. Okay. Tell us what your understanding is about
21 why we're all here.

22 A. Well, what I was part of is a wall got damaged, I
23 was called in, and I was supposedly supposed to come
24 down and give my opinion on the wall and what we needed
25 to do to fix the problem.

1 Q. Okay. When you're talking about the wall, are
2 you talking about what we referred to this week as the
3 partition wall or a demising wall?

4 A. Yes. It basically separates two tenants so they
5 can't get from one space to the other.

6 Q. Okay. Now, other than a demising wall -- and
7 before I ask you that question, let me ask you this one.
8 The demising wall that you were contacted about, where
9 was the demising wall located?

10 A. It was between Two Men And A Truck and between
11 Brilin Electric.

12 Q. Okay. So other than the demising wall inside the
13 building that Brilin Electric previously occupied, did
14 you have any other dealings or involvement with anybody
15 else associated with this lawsuit?

16 A. Well, I mean, I came -- are we talking about
17 before this or just on the job?

18 Q. On the job.

19 A. Okay. I was called before then and came down.
20 And I guess the wall got knocked out before then and I
21 was called earlier that morning and we were working and
22 Mr. Schulte called me and said, hey, can you come down
23 here? This wall's been knocked out pretty far, I need
24 to know what we need to do. By the time I got there, I
25 don't know what company or what people because they were

1 on the other side working. I walked into Two Men And A
2 Truck side and basically the wall -- hearsay, but the
3 wall was knocked back into place on Two Men And A Truck
4 side to be pushed back.

5 Q. Okay. All right. So, what you just told us
6 about, is that the first time that you became involved
7 in this matter with respect to the partition wall?

8 A. Oh, most definitely. Yeah, that was the first
9 time.

10 Q. Okay. And when was that?

11 A. I don't have a clue. It was way before Brilin
12 got out of its lease.

13 Q. Okay. So it was during Brilin's lease term?

14 A. Oh, most definitely, yes.

15 Q. Okay. And when you, when you came down to the
16 property to look at the demising or the partition wall,
17 who did you meet up with when you arrived?

18 A. Well, I was going -- I pulled into the parking
19 lot and I was going into the Brilin Electric side
20 because that's what I was told on the phone. And then
21 Wayne Schulte caught me outside and said, hey, you can't
22 go over there. And, you know, I didn't say anything.
23 Okay, and then I walked into Two Men And A Truck side.
24 And that's where, golly, the owner of Two Men And A
25 Truck was there, and Wayne Schulte. And I'm like, so

1 what do we got to do? And he said, well, they took and
2 beat it back into place and that's what they done.

3 And I'm, you know, kind of puzzled because it was
4 a 20-foot wall. I mean, it's pretty heavy. So I was
5 just like -- and then the words that was, we're not
6 allowed to be on that side of the wall. And I was like,
7 okay, this makes no sense.

8 Q. And when you were told that you were not allowed
9 to be on that side of the wall, what side of the wall
10 are you referring to?

11 A. Brilin Electric.

12 Q. Okay. Were you able to get in? Did Brilin
13 Electric allow you in to look at the time?

14 A. I didn't ask because basically, I guess, there
15 was some bad blood or something between Wayne and them.
16 And so I just basically just stepped back and was just
17 like, okay just call me and let me know when, you know,
18 we can fix it. Because I told Wayne, I said that, you
19 know, there's no way. If that wall got hit that hard,
20 it's suffered some grave consequences.

21 Q. All right. So, tell us about what you observed
22 with respect to the demising wall or the partition wall
23 during that first visit.

24 A. Well, basically what they done is some of the --
25 the wall got pushed out, and the sheets are 4 by 12's.

1 So what it done, it just pushed out sheets and broke the
2 joints apart. So it pushed them out. And then when I
3 got there, the wall had been pushed back. And there had
4 been some patches, some new sheetrock. And then they
5 had patched up where the sheets had been pushed out.
6 And so that's basically what I seen on the first on that
7 side. And the scuffs on the floor, because you could
8 see the wall came way -- I mean, if I had to -- I'd say
9 it was 12 to 16" pushed out.

10 Q. Okay. Was the wall what we would call plumb at
11 that point?

12 A. Of course not. It was, I mean, they took a
13 140-foot wall and they beat it back with a -- I was
14 told. I didn't see what they beat it back with, but I
15 was told like a 4X4 and a sledge hammer and they beat it
16 back into place and the wall, it just looked like a
17 snake. It was just, you know?

18 Q. And when you say they, who are you referring to?

19 A. I'm assuming whoever Brilin Electric got to come
20 in to fix it.

21 Q. Okay. All right.

22 A. I did not see anybody on this side of the wall.
23 Apparently they were still working on the other side.

24 Q. Okay. So, the side, just so it's absolutely
25 clear, the side of the wall that you were on, was

1 Brilin's neighbor, Two Men and And A Truck?

2 A. Yeah. I never got to see the other side of the
3 wall until the tenants moved out.

4 Q. All right. So, after you looked at the wall from
5 the Two Men And A Truck side, what concerns did you have
6 about the wall at that time?

7 A. Well, my concern is when you hit a wall like that
8 and you push it out, there's pins that are shot into the
9 floor that hold the track in place. And me, if the wall
10 was that crooked, they got sheared off. So the wall, if
11 you're just beating back into place, you're just
12 basically beating the studs back that had already been
13 compromised.

14 When you take a stud and you take a -- it's
15 pretty rigid when you got it in its natural form. But
16 if you take and kink it, bend it, or put any kink in it,
17 there's no strength to the stud. So, you know, there's
18 nothing in the floor that is shot into the floor that's
19 holding this wall back in place. At that point, if the
20 wall got pulled out like it did, then there's stuff up
21 in the ceiling that's shot in there that holds it into
22 place.

23 So, me thinking, okay, well this wall's just
24 sitting here, it basically got beat back into place and
25 is basically engined on the ceiling not knowing if it's

1 gonna fall or not. So, on their side, my understanding
2 was there was racks on their side. So, there's, you
3 know, it can't come down on their side, but it could
4 have came down on Two Men And A Truck side.

5 Q. Now, in terms of how big of a wall we're talking
6 about, how much would you estimate that this partition
7 wall weighs?

8 A. Well, as a matter of fact, I took, before I met
9 with Bryon and the attorney, I had taken and estimated
10 the weight and it was between 9 and 10,000 pounds, give
11 and take. And, you know, that's where the conversation
12 dividing wall or demising wall, it don't matter. When
13 you put 10,000 pounds 20-foot tall over somebody's head,
14 if it comes down it's gonna kill you.

15 Q. Okay. So based on what you saw in your first
16 inspection of the wall, on the Two Men And A Truck side,
17 what, if anything, did you recommend be done about the
18 wall at that time?

19 A. Well, I did not talk to Wayne about it. I called
20 Brad. And I told Brad at that time, I said, this is a
21 very dangerous wall. Somebody's gonna end up getting
22 hurt. And Brad said I know, I know, you know, we're
23 kind of stuck in a situation and I don't -- I just gotta
24 keep doing what I'm doing. And, you know, I was kind of
25 just taken, because I've worked with Brad on some of his

1 properties and he's very conscious about his properties,
2 very conscious. He's always worried about what they
3 look like, what the appearance is, and he takes very
4 good care of his properties.

5 Q. Okay. All right. So after your first visit to
6 inspect the demising wall, did you have occasion to
7 return to Brilin's lease space to do anything else
8 related to the wall?

9 A. We returned the day after his lease. Brad had
10 called me a week before and said is there any way you
11 can meet me down here so we can walkthrough this space
12 because of the wall. And I told him, yeah, that was
13 fine. And at that time I met Brad Decker and yourself
14 on the job when the door was first unlocked the day
15 after his lease.

16 Q. Okay. So the day after Brilin's lease term ended
17 was the first time that you were able to get into Brilin
18 Electric's side to look at the wall?

19 A. Well, at that point that's when I was asked to
20 come back.

21 Q. Okay.

22 A. Yes.

23 Q. All right. So, tell the jury, if you would, what
24 happened when you returned to inspect the wall for the
25 second time.

1 A. Well, I actually came in to inspect pretty much
2 everything because that's what I do. We came in and we
3 looked through and we walked through. And, you know,
4 the walls, everything in the place looked good. I mean,
5 you know, it had an odor, so I noticed that right off.
6 Brad noticed it. We kept walking through and I mean
7 they done a pretty decent job. But when I got all the
8 way through, I started looking and that's when I got to
9 the wall. And, you know, at that time I was kind of
10 like, okay, looking at it. And it -- the phrase, put
11 lipstick on a pig, that's basically what happened. He
12 took and put sheetrock mud over and replaced pieces.
13 So, when I walked in, there was just big chunks here and
14 there where they had taken sheetrock and put back over
15 and screwed it into place and mud it over and made it
16 look good. I mean, that's what the purpose was.

17 Q. Now, let me stop you there and ask you, when you
18 say they, they put sheetrock back up and, you know, did
19 the work on the wall, who, who was the they that you're
20 referring to?

21 A. Oh. My understanding, Brilin Electric done it.

22 Q. Okay.

23 A. I can't say Bryon done it because, you know, he's
24 like Brad. He tells people to do stuff and that's what
25 happens.

1 Q. Okay. All right. So, what did you observe about
2 the wall during your second visit to the property?

3 A. Well, the first visit is when I felt the wall.
4 That was with yourself and Brad. And it was, you could
5 put your hand on it and it would -- shaking. I mean, it
6 was pretty much I didn't even want to be around it.

7 The second time we came in, Brad instructed me, I
8 need to know what's going on with the wall. I said,
9 okay. I said -- well, he asked my opinion what I needed
10 to do. I said, well, first off, we need to just go to
11 everywhere that the sheetrock's been put on. We need to
12 take those off and we need to see what's going on.

13 So, me and my employees went down and that's what
14 we done. We went and started searching for, you know,
15 if there was something the matter with the wall. And
16 there's pictures that show where it had been patched.

17 Q. Now, let me stop you there. When you say that
18 you pushed on the wall and there was movement. How much
19 movement? How many inches? Give us an idea of how much
20 movement there was when you went up and actually pushed
21 on this wall?

22 A. I would say there was anywhere between an inch to
23 three inches. That's a lot. That's a lot.

24 Q. So, based on your experience, was that concerning
25 to you?

1 A. I didn't want to be in the room.

2 Q. Okay. All right. What did you recommend at that
3 time, during the second visit after Brilin had vacated?

4 A. Basically the second visit when I came in is when
5 we cut open the holes and we started looking around at
6 what was going on. And then at that point we uncovered
7 everything you've seen in the pictures where the studs
8 were just beat. I mean, and you could tell it was a, it
9 was a sharp object. So that point blank told me that it
10 was a forklift, the tong on the forklift basically went
11 in and sheered, sheered some off, sheered some sideways,
12 but it comes to the same thing. As soon as you take a
13 stud and you bend it, it's no good. Well, it's junk.

14 Q. Now, give the jury some idea of how durable these
15 studs are that there was some mention on the defense
16 side during opening that these are alluminum studs. Are
17 these studs alluminum or are they made with some other
18 material?

19 A. They're not alluminum, they're of steel.

20 Q. They're steel studs? Okay.

21 A. Yeah, they're not alluminum. We don't build
22 studs out of alluminum.

23 Q. Okay. All right. So we're talking about steel
24 studs that were, in your words, bent and twisted?

25 A. Yeah. I mean, when something -- you figure the

1 forklift that they have in there picks up about 4,000
2 pounds, so the weight on the back of it has to counter,
3 so it's a 7,000 pound weight. So, when you take and
4 you, you hit something like that, I mean, they took,
5 they took 9,000 pounds and knocked it out 16 to 18
6 inches. That tells you they're a pretty good force.
7 Plus they had shelves in front of it, so that means they
8 had to move the shelves too. So, you know, I mean, it
9 wouldn't take much for to take a forklift and drive it
10 through a wall.

11 Q. Okay. Now, before you opened -- before you --
12 how much of the wall did you expose? In other words,
13 how much sheetrock did you remove from the wall?

14 A. We probably, maybe 25 percent at first. And then
15 at that point I called Brad, Mr. Decker, and asked him
16 -- told him that we needed to get an engineer because I
17 basically, in my expert opinion, I could have went in
18 there and done what we done. But my problem with the
19 whole project was the liability comes back on me if I
20 just patch it. So, that was my problem with the whole
21 deal, was a patch is a patch, and if somebody gets
22 killed, I want somebody to stand behind me saying that,
23 yeah, you done it right.

24 Q. Okay. All right. So after the structural
25 engineer became involved, did the structural engineer,

1 who we'll hear from next, Mr. John Abernathy, did he
2 come out and do an inspection of the wall?

3 A. Yeah. When we took down the first 25 percent --
4 25 to 30 percent of the wall, I called Brad. He called
5 Mr. Abernathy and Mr. Abernathy met me on the job, but
6 this was before we done anything. And basically, we had
7 a scissor lift there and I let him take -- get on the
8 scissor lift or I drove the scissor lip and took him to
9 every hole in the wall and we looked at it. And, you
10 know, basically at the end of it I said, what do you
11 think? He said, that's not good.

12 Q. All right. So, did you ever remove -- you
13 indicated that you removed about 25 percent of the
14 sheetrock from the wall to be able to see the interior
15 components of the wall. Did you remove any more than 25
16 percent?

17 A. Nope. After Mr. Abernathy got finished with the
18 first one, his words were we need to see the whole wall
19 to see what happened. So, I think within two or three
20 days we took the complete -- well, hold on, not the
21 complete. We left about two sheets at this end and none
22 on the other end. So, basically, I would say 4X20 feet
23 on one end, because nothing ever got hit down there.

24 Q. Okay.

25 A. We're not gonna tear apart something that don't

1 need to be torn up.

2 Q. Okay. So in removing the sheetrock from this
3 wall, did you just do that on your own or were you
4 relying on Mr. Abernathy? How did you determine how
5 much of the sheetrock to remove?

6 A. Mr. Abernathy said we need to look at the wall to
7 make a conclusion of what needs to happen. So, as soon
8 as I finished with him, I called Brad, a Mr. Decker and
9 said, hey, Mr. Abernathy said he needs to look at it.
10 He said, whatever he tells you to do, let's get it done.
11 So we removed the sheetrock. And then when we removed
12 all of the sheetrock, it was even worse than we thought.

13 Q. All right. So tell us what you mean by that.
14 What did you see in the interior structural components
15 of the demising wall that gave you particular concern?

16 A. Well, okay, so, so after we finished taking the
17 wall down, the wall was -- most of the -- if you take
18 studs and you put them on concrete and it's called a
19 track, you run the track the length of the building
20 front to back and you put, basically a nail, but it's a
21 shot. It's a concrete nail. We take and shoot those
22 in, in between every stud, all the way down through the
23 building. I would say 25 to 30 percent of those were
24 missing in the floor. And mostly where the wall got
25 hit. So, basically, they didn't shoot it back in the

1 floor. They beat it back into place, but they didn't
2 shoot it back in the floor.

3 Well, after that I'm sitting here going, oh, my,
4 because what happens is those studs, they're screwed in
5 the bottom. It's a track. And then the stud comes in
6 the top here and they're screwed here and here on both
7 sides. So, the track shot into the floor.

8 So, up top there's another track and it's shot
9 into the, the beam. So, then we look at the bottom and
10 I'm like, this is not good. A track had been, you --
11 could tell that they took and beat the track back over,
12 because what they done is some of the track stayed on
13 the floor and the studs went out. So they pushed the
14 studs back in and beat the track back together.

15 Well, there again, as soon as you take and you
16 bend a piece of metal, the strength's not there anymore.
17 So, then we took -- I took the lip, I go up top. And
18 I'd say 15 to 20 percent of those were out. The shot in
19 the ceiling. So, basically the wall was holding up
20 there by itself.

21 Q. Okay.

22 A. And the studs were, I mean, destroyed. I mean,
23 they were just here, there. I mean, it was all through
24 the whole, the whole wall.

25 Q. All right. Mr. Robinson, you have a binder of

1 exhibits in front of you, if you could grab that for me?
2 And I want to -- I want you to look at Plaintiff's
3 Exhibit 16. And the plaintiffs exhibits are in the
4 front and they're tabbed. If you'll look at Plaintiff's
5 Exhibit 16.

6 A. Uh-huh.

7 Q. What does Plaintiff's Exhibit 16 show?

8 A. I don't have a 16. I've got a 15. Oh, here it
9 is, okay, behind it. That's the studs. That's what I
10 was talking about. This, this is a picture of all the
11 studs that were just bent over. As a matter of fact, I
12 can tell you this certain part here was never pushed
13 back over. They repaired it by taking 1X4's and putting
14 between the seams of the sheetrock to keep it from
15 flexing so the tape would stay stable.

16 Q. All right. And what are 1X4's?

17 A. They took a piece of wood, a piece of 1X4 wood.
18 Basically, when people are scabbing something together,
19 put lipstick on a pig, you take and you scab that behind
20 it. And they took and put screws on it so the sheetrock
21 wouldn't flex.

22 Q. Okay. Now, at a certain point did you have an
23 opportunity to meet with Mr. Bryon Russell, the owner of
24 Brilin Electric at, at the premises, at the demising
25 wall?

1 A. Most definitely.

2 Q. And who -- and when did that meeting occur?

3 A. I don't know the date. I'm pretty sure you all
4 do. I know Nathan does. He was with him. His lawyer
5 was with him. Bryon was with him. And they had another
6 independent inspector come out with them.

7 Q. Okay. All right. Tell us about that meeting and
8 how it went.

9 A. I had the key, I met -- I had the key. I think I
10 met Bryon and the lawyer out front. The inspector came
11 about five minutes later. He was behind. So, we just
12 stood around and just chitchatted and were talking. And
13 then the inspector showed up. And that's when the
14 conversation about the wall. Because I want -- when I
15 talked to somebody, I want us all to be on the same
16 page. I didn't want it spotty. I didn't want he said,
17 she said. So, basically, I think Nathan was in the same
18 boat. He wanted, you know, everybody to be on the same
19 page. So, he got there and we walked to the wall. And
20 I basically stood back off and let them look at the wall
21 -- let him look at the wall. Nathan and Bryon stood
22 back a little bit. He went and looked and then he asked
23 me, is there any way I can look up high, but we had the
24 lift there still, because we had just taken all the
25 sheetrock off one side.

1 So, I took him on the lift and showed him points
2 that I had concern and points that he wanted to look at.
3 At that point we came down off the lift and that's when
4 Nathan and Bryon and myself started talking about the
5 wall. And, you know, they gave me their concerns and I
6 told them my concerns.

7 Q. All right. And what concerns did you voice to
8 Mr. White and Mr. Russell?

9 A. Basically the wall is dangerous. The wall needs
10 to be fixed. And, you know, what are we gonna do? And,
11 you know, Mr. White said, well, you know, are we sure we
12 need this?

13 MR. WHITE: Objection, Your Honor, hearsay.

14 THE COURT: I'll sustain the objection.

15 BY MR. DLUZNESKI:

16 Q. Tell us what, if anything, Mr. Russell said
17 during that conversation about the wall.

18 A. Basically we took and were talking about it.
19 And, you know, we were talking about how we need to fix
20 the wall, why we need to fix the fall, but there's
21 nothing -- I think Bryon said why did you take the
22 sheetrock off? You know, this is ridiculous. And I
23 said, well, it's dangerous. I mean, this wall could
24 fall. And then it became, they started questioning,
25 well, did you take a hammer and beat this? Did you do

1 this? And I said, excuse me? Whoa, whoa, whoa, stop.
2 Listen, I'm a very honest person. I'm not gonna do
3 anything. I had my employees on the job, come on.

4 So, basically, it became -- the question I had
5 was -- oh, he said -- I'm trying, I'm trying to remember
6 exactly how it came about, because at that point I said,
7 you know, hey, I'll tell you what, you all sign off on
8 the wall and sign a tenure thing that we'll just let the
9 wall stand here and if it kills somebody, you all are
10 responsible for it, because that's what's gonna happen.
11 And that's when Mr. Bryon got upset. And Nathan called
12 him down the hall and was going out front. And then
13 their inspector was standing there with me and he was
14 like -- I was like, so what do you think? And he
15 said ---

16 MR. WHITE: Objection, Your Honor, hearsay.

17 THE COURT: Sustained. Sustain the objection.

18 BY MR. DLUZNESKI:

19 Q. All right. So, after Mr. White escorted Mr.
20 Russell from the meeting, did Mr. Russell subsequently
21 join the meeting back at any point?

22 A. Oh, yeah, yeah. They came back in. It was a
23 couple minutes. They went down the hall. I don't know
24 where they went, because I just -- all I seen, we were
25 in the warehouse, they went down the hall, they came

1 back, and Ms. -- Bryon didn't talk anymore. Nathan
2 talked.

3 Q. Okay.

4 A. And we just basically stood there. And I was
5 just like -- I think the question was, so what do you
6 gotta do? I said, well, everything that's bent has got
7 to be fixed. Then it was, I don't think we need to talk
8 anymore. But basically I said okay and we were going to
9 walk out.

10 Well, at that time Two Men And A Truck was in the
11 two front offices, I think. And I stood there and I was
12 just like, okay. And then the meeting was over. It was
13 that quick that they walked out.

14 Q. All right. So at any point in this process,
15 either before this meeting with Mr. Russell present,
16 after -- during the meeting with Mr. Russell present or
17 after the meeting with Mr. Russell present, did Mr.
18 Russell ever ask or request, be involved with or
19 participate in any other repairs to the wall?

20 A. No. I asked them standing there, they can fix
21 the wall. I'll call Brad and you all can fix it. And,
22 basically, you know, we're not gonna do nothing. And
23 that was the end of it.

24 Q. All right. So after the meeting, did you
25 undertake to perform any repairs to the wall?

1 A. Yeah. At that point the engineer had told me
2 what I needed to do. So we took and replaced -- I can't
3 remember right now how many studs, like track studs and
4 -- and we had to re-attach the wall to the top at the
5 metal and reattach on the concrete. And then we put the
6 sheetrock up and, you know, got it back. And then we
7 went on Two Men And A Truck side and attached the
8 sheetrock to the new studs.

9 Q. Okay. And at any point in that process any
10 input, any assistance, any participation from Brilin?

11 A. My understanding they were done.

12 Q. Okay. All right. So, how long did these repairs
13 take?

14 A. Well, I mean, are you talking about when we
15 started tearing down the wall to when we met with our
16 guy and them and then finishing the wall or -- after the
17 meeting with Mr. Russell and Mr. White on site.

18 Q. When you all actually started the repairs to the
19 wall, how long did those repairs take?

20 A. I think, I think we finished it off and -- well,
21 we sheetrocked it and mudded it for the first time, five
22 times, for five days. And I think we came back and
23 mudded it one more time.

24 Q. Okay. And when you say you mudded it, what are
25 you talking about?

1 A. Basically just taking the sheetrock mud and
2 pulling the joints over and make it look good.

3 Q. Okay. All right. And did you invoice Carolina
4 Real Estate Holdings for those repairs?

5 A. Yeah, most definitely.

6 Q. Okay. All right. If you'll take that binder and
7 turn with me to Plaintiff's Exhibit 18.

8 A. Okay.

9 Q. All right. Plaintiff's Exhibit 18 is what?

10 A. That's a bill from us on the sheetrock wall.

11 Q. All right. And does this invoice cover all the
12 repairs that you performed to the partition wall or the
13 demising wall?

14 A. It does not.

15 Q. Huh, okay.

16 A. Because Brad and them paid me to come out and
17 meet with the people. They paid me to meet with them.
18 They paid me after to meet with him afterwards. This is
19 just the bill for the wall.

20 Q. Okay. All right. And how much is this bill for?
21 What's the cost?

22 A. \$1,121.00.

23 Q. All right. And did Carolina Real Estate Holdings
24 pay the full amount of this invoice?

25 A. Yes.

1 Q. Okay. The repairs that you made, that you talked
2 to us about.

3 A. Most definitely.

4 Q. Okay. The repairs that you made that you talked
5 to us about, why were those repairs necessary?

6 A. Because it was a dangerous wall that could have
7 hurt somebody.

8 Q. All right. Did you do more work than was
9 necessary for the purpose of passing that charge to
10 Brilin?

11 A. No.

12 Q. Okay. Did you up charge any expenses related to
13 the inspection or the repair of the demising wall?

14 A. No.

15 Q. Have you been paid in full by Carolina Real
16 Estate Holdings for everything that you did in relation
17 to the wall?

18 A. Most definitely.

19 Q. Okay. Are you aware of any other problems
20 related to the wall since you completed those repairs?

21 A. None whatsoever.

22 Q. All right. Thank you, Mr. Robinson.

23 Your Honor, I tender the witness.

24 THE COURT: Yes, sir.

25 MR. WHITE: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. WHITE:

3 Q. Good afternoon, Mr. Robinson.

4 A. I was fixing to say, can you get a little bit
5 closer? I can't hear very well.

6 Q. I will get closer. You are one of Mr. Decker's
7 preferred vendors, are you not?

8 A. Yes, I would say that.

9 Q. You've done a lot of work for him?

10 A. Most definitely.

11 Q. For a lot of his different properties?

12 A. Uh, yeah.

13 Q. You're his go to general contractor for stuff
14 like this?

15 A. Umm, yeah. Yeah.

16 Q. And you said you weren't able to get into the
17 Brilin's space until May 1st of 2020, right?

18 A. That's when I was asked to go.

19 Q. That's when you were asked to go?

20 A. Yeah, thank you.

21 Q. No one asked you to go before that?

22 A. Yeah, I was asked. Mr. Schulte called me the day
23 that the wall got knocked out to get out there, that the
24 wall could fall.

25 Q. All right. That's fair enough. That's -- let

1 me, let me back up, review 2019. So I know you were
2 sitting back there. You heard Mr. Decker during the
3 cross say 2019, the summer of 2019 is when the Two Men
4 And A Truck's side was getting fixed, right?

5 A. Yeah, I would say. I wasn't paying that much of
6 attention.

7 Q. Go ahead and go to Defendant's Exhibit 16 in your
8 binder there, Mr. Robinson.

9 A. Yep.

10 Q. So you heard us talking about that's the Two Men
11 And A Truck side on that side, right?

12 A. Uh-huh.

13 Q. And it sounds like you came in on the tail end of
14 W&L doing this, this job over here.

15 A. Yeah. They -- my -- if I'm not mistaken, they
16 were on the other side of the wall working --

17 Q. Right.

18 A. -- at that time.

19 Q. Okay. So, you had a concern in 2019 that the
20 wall may not be fastened to the floor anymore, right?

21 A. Uh-huh.

22 Q. And you want it fastened to the floor?

23 A. Most definitely.

24 Q. You know, it's got a little give up in the top.

25 A. No give.

1 Q. A little bit. A little bit of sway.

2 A. No give.

3 Q. It's not anchored in.

4 A. No, it's anchored in.

5 Q. It's anchored it?

6 A. Yeah.

7 Q. But it's not connected to the roof, right,
8 because you --

9 A. No, it's anchored to --

10 Q. -- want an expansion and all that?

11 A. It's anchored to the girders of the building.

12 Q. Right. Right. Right. Fair enough.

13 A. To hold the outside of the building up.

14 Q. All right. Let's go back to Plaintiff's 16. You
15 were talking about that on direct.

16 A. Yes.

17 Q. Okay. So that's some, that's some of the damaged
18 studs right there, right?

19 A. I'm assuming. I wasn't there at that time.

20 Q. Okay.

21 A. I came in after the sheetrock was up.

22 Q. But this is on the Brilin side, right? Didn't
23 you testify to that? This is when you guys opened it
24 up.

25 A. No. This is way before. This is when the wall

1 got --

2 Q. No, I'm sorry.

3 A. -- damaged by a forklift.

4 Q. I'm jumping around. Plaintiff's Exhibit 16 now.

5 Yeah, I went from defense exhibit to plaintiff's

6 exhibit.

7 A. Okay. Sorry about that. Yeah.

8 Q. That's when y'all opened it up? Demo diagnostic

9 is the term we've heard.

10 A. Yep.

11 Q. Okay. So the bent grayish things, those are the

12 studs, right?

13 A. Yes, sir.

14 Q. And the gray stuff to the left of that, that's

15 the floor.

16 A. Yep.

17 Q. And the little yellow bits, that's some residual

18 insulation, when you all ripped off the insulation?

19 A. Well, we pulled it out --

20 Q. Right.

21 A. -- because we saved it all. They didn't get

22 charged for that.

23 Q. Go to the, just to orient you, this page part

24 right there on the right side. That's the drywall on --

25 A. Two Men And A Truck.

1 Q. -- Two Men and A Truck side. So that's how,
2 that's how skinny it is, right? What's that, about four
3 inches of four inches of four-inch studs?

4 A. Uh-huh.

5 Q. So, if you go back to Plaintiff's Exhibit --
6 excuse me, Defendant Exhibit 16.

7 A. Okay.

8 Q. If you were to stick your hand into that
9 insulation, it's only going in four inches, right?

10 A. Uh-huh.

11 Q. So you knew in 2019 there might be an issue with
12 the wall, based on the fact that it had been pushed out
13 of place and put back in place, right?

14 A. So, yeah. Yeah, okay.

15 Q. You had concerns about the integrity of the wall?

16 A. When I was standing with Mr. Schulte on the
17 outside of the Two Men And A Truck side, yeah, we were.
18 I was concerned because I thought I was gonna get in
19 there and be able to look and see what had happened.

20 Q. Right.

21 A. But my understanding was ---

22 Q. There may have been -- there may have been some
23 compromise to the wall. You had that concern as far
24 back as 2019, right?

25 A. Yeah.

1 Q. Okay. And so, now let's fast forward to the
2 question I asked a little while ago. You were not asked
3 to come over on the Brilin side until May 1st, 2020.

4 A. Well, when I walked onto the project ---

5 Q. Yes or no? You were not asked to come onto the
6 Brilin side.

7 A. Yes. I was called by Mr. Schulte after that.

8 Q. Right.

9 A. And we couldn't get into, into the facility.

10 Q. All right. Well, when? What do you mean you
11 couldn't get into the facility?

12 A. After, when I talked to Wayne, I was called the
13 day the wall got knocked out. And then I called Wayne
14 after that and asked him, what are we gonna do? He said
15 they will not let us in there.

16 Q. Your testimony right now, you're still back in
17 the summer of 2019 when you were first alerted as to the
18 issue of the wall by Mr. Schulte, right?

19 A. Yes.

20 Q. All right. I'm fast forwarding to 2020.

21 A. Okay.

22 Q. At no point in 2020 were you asked to come look
23 at that wall until May 1st, 2020, right?

24 A. Most definitely.

25 Q. The moment CREH lease had expired, CREH came back

1 into possession of it. And after the expiration of the
2 lease, the very next day is the first day you were asked
3 to come look at the wall from the Brilin side?

4 A. That's most definitely right.

5 Q. As a matter of fact. And then the engineer came
6 just three days later after the recommendation?

7 A. I don't know if it was three days, but somewhere
8 in there.

9 Q. Well, do you know? I won't get into it with him,
10 but just to give the -- a purview to the jury, we'll
11 grab Plaintiff's Exhibit 22, please. I'll tell you
12 what. See the salutation, Carolina Real Estate
13 Holdings, LLC colon, right there under the regards,
14 partition wall, temporary showing. Do you see that? I
15 can point to it, if it's easier?

16 A. Please.

17 MR. WHITE: All right. May I approach, Your
18 Honor?

19 THE COURT: Yes, sir.

20 BY MR. WHITE:

21 Q. All right. I want you right here. That first,
22 that first line, at your request, ICG met with you on
23 Monday, May 4th, 2020, four days after Brilin left and
24 CREH is back in the space. And they did that at your
25 recommendation, right?

1 A. Yes, sir. Certainly.

2 Q. Now, we looked at Defense Exhibit 16. We looked
3 at Plaintiff's Exhibit 16. We saw it's only four-inch
4 studs.

5 A. Uh-huh.

6 Q. If you had concerns about this wall, you could
7 have told CREH, hey, let's do a demo diagnostic on the
8 Two Men And A Truck side. Let's cut it open and take a
9 look, right?

10 A. Yeah.

11 Q. You were worried it could have fallen down. So
12 if you were that worried about it, you could have done
13 that right then and there. I know it's attached to
14 something. You've got to cut it open to see how bad it
15 is. You could have done that back in the summer of
16 2019, right?

17 A. Okay. Can I give you a little ---

18 Q. Yes or no?

19 A. Yeah.

20 Q. You could have made that recommendation to CREH.

21 A. I did make that recommendation.

22 Q. Had you made a time to do it?

23 A. No, they declined.

24 Q. They didn't do it?

25 A. It was pretty hostile.

1 Q. No. We're talking about the Two Men And A Truck
2 side. There's nothing hostile over there on the Two Men
3 And A Truck side.

4 A. Two Men And A Truck side looked fine on that side
5 at the time. The wall was -- the wall looked like a
6 snake but, you know, it was holding up doing what it was
7 supposed to do.

8 Q. But if it was so hostile and awful on the Brilin
9 side and you had safety concerns, you all could have
10 come in from the Two Men And A Truck side ---

11 A. I didn't need to see on Two Men And A Truck side,
12 I need to see the wall that got hit with a forklift.

13 Q. Okay. Well, let's look at what it looked like.
14 Plaintiff's Exhibit 21. Let me know when you're there,
15 Mr. Robinson.

16 A. I'm here.

17 Q. All right. That's what it looked like.

18 A. Uh-huh.

19 Q. Right?

20 A. Uh-huh.

21 Q. Can you, can you see any studs, any studs looking
22 at that?

23 A. No. Because if I had walked in on that, my first
24 thing would have been -- you see everywhere there's a
25 puncture mark?

1 Q. Right.

2 A. I'll fix that blade on that forklift.

3 Q. Are you sure it was the blade or just a pallet?

4 A. How thick is the blade?

5 Q. You see all those pallets there down at the
6 bottom?

7 A. I promise you that's the blade. So ---

8 Q. So you think they're crashing a forklift into the
9 wall --

10 A. No. No. No. No.

11 Q. -- instead of maybe the pallets busting holes in
12 the gypsum board?

13 A. It's the same thing. Brilin's in the same
14 situation I'm in. My guys are working on the job right
15 now, but I have to, I have to rely on the information
16 and the stuff they give me, okay? So his guys were
17 sitting in that warehouse driving a forklift around, and
18 if they hit the wall and they took and went outside of
19 it and they hit that metal, Brilin don't know that. His
20 guys know it. Do you think that his guy is gonna run in
21 there and say, oh, gosh, I just hit the wall? No, they
22 don't. My guys don't.

23 Q. Were you aware that Brilin was trying to do a
24 final walkthrough in the month of April with CREH?

25 A. No.

1 Q. No one from CREH asked you if you could come over
2 at any point in April of 2020 to the Brilin side?

3 A. They would not ask me. They would not ask me.

4 Q. They, being CREH, right?

5 A. (No verbal response.)

6 THE COURT: Mr. Robinson, if you would, we're
7 making a recording of everything that happens here.
8 Don't shake and nod your head. Give verbal answers.
9 And a few times you've given grunts. Give verbal
10 responses so that we can have a good record, okay?

11 THE WITNESS: Okay, Judge.

12 THE COURT: Thank you.

13 MR. WHITE: I'm gonna wrap this up real quick.
14 Thank you, Your Honor.

15 BY MR. WHITE:

16 Q. Myself, our engineer, and Mr. Russell did come
17 over in May to look at the wall, right?

18 A. Most definitely.

19 Q. We came over to look at the wall because we
20 wanted to look at the wall while it was open before you
21 did all the stuff you were gonna do --

22 A. Most definitely.

23 Q. -- on behalf of CREH.

24 A. At my request.

25 Q. Of course. Sure. Whoever. Well, it was at our

1 request too. We all wanted to see it, see what was
2 going on.

3 A. Well, I think the e-mail that I got that I was in
4 was they were asking you all to come look at it. I
5 don't think you all requested. I think you all -- we
6 asked you all to come look at it, because we had great
7 concerns.

8 Q. You had an engineer to come look at the wall
9 while it was open and that's what happened, right?

10 A. At our request.

11 Q. And now, when we got there, you already had all
12 of your materials ready to go to do the job, correct?

13 A. Most definitely.

14 Q. So as soon as we got to look at the wall while it
15 was open, you were ready to go and get those studs
16 fixed, replaced, repaired, whatever and put the drywall
17 back up?

18 A. Yeah. Because we had a client that wanted to get
19 into his space that he was still on the other side.

20 Q. And Two Men And A Truck was gonna come right over
21 to the other side. As a matter of fact, there was
22 really no impact because they were sitting over there,
23 and then they came right over the moment you finished
24 this all in May, right?

25 A. That's how the real estate world works.

1 MR. WHITE: Nothing further, Your Honor.

2 THE COURT: Any redirect, limited to what he went
3 into?

4 REDIRECT EXAMINATION

5 BY MR. DLUZNESKI:

6 Q. Mr. Robinson, I have one question for you on
7 redirect. Mr. White was asking you about tenants and
8 Two Men And A Truck moving into Brilin's commercial
9 space. Are you aware of whether or not CREH gave Two
10 Men And A Truck a rent abatement due to the decreased
11 utility of that space while the repairs were being made?

12 A. No. I wouldn't know about any rent.

13 MR. WHITE: Objection, Your Honor, calls for
14 speculation.

15 THE COURT: All right. He's already answered it.
16 Go ahead.

17 MR. DLUZNESKI: That's all I have, Your Honor,
18 thank you.

19 THE COURT: Thank you, sir. You may step down.
20 Watch your step as you're stepping down. Lawyers want
21 to approach real fast?

22 (Bench conference was held off the record.)

23 MR. WHITE: All right. Your Honor, Plaintiff has
24 kindly allowed us to take a witness out of turn because
25 he's got surgery tomorrow. So the defense would like to

1 call Mr. Bill Broadway to the stand.

2 THE COURT: Ladies and gentlemen, we're now --
3 I'll let you know what's going on. The lawyers have
4 agreed we have a witness that has an issue that can't be
5 here during the regular calling of witnesses, so we're
6 now gonna call one of the defense witnesses, which is
7 out of order. So we're now gonna hear from who?

8 MR. WHITE: Mr. Bill Broadway, Your Honor.

9 THE COURT: We're now gonna hear from Mr. Bill
10 Broadway. Mr. Broadway, come right up here and let the
11 clerk of court swear you in.

12 THE CLERK: Do you solemnly swear or affirm the
13 testimony you give will be the truth, the whole truth,
14 and nothing but the truth?

15 THE WITNESS: I do.

16 THE COURT: Sir, just have a seat up here. Watch
17 your step as you're having a seat. Please have a seat
18 in the chair and speak into the microphone, if you
19 would.

20 BILL BROADWAY,
21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. WHITE:

24 Q. Good afternoon, Mr. Broadway. Thank you for
25 being here. Could you, please, introduce yourself to

1 the jury?

2 A. Bill Broadway from McGee Brothers Masonry.

3 Q. Okay. And who do you work for, Mr. Broadway?

4 A. McGee Brothers Masonry.

5 Q. Okay. What do you all do?

6 A. We lay brick for buildings.

7 Q. Are you familiar with the premises in this case?

8 A. Yes.

9 Q. Okay. Now, I've got a binder up here.

10 Can I approach, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. WHITE:

13 Q. We've got a whole mess of exhibits in here, but
14 I'm going to orient you towards the back. If you can go
15 to Defense Exhibit 4. If you need help getting there,
16 I'm happy to help you, Mr. Broadway.

17 A. I don't see it.

18 MR. WHITE: All right. May I approach, Your
19 Honor?

20 THE COURT: Yes, sir.

21 THE WITNESS: I have two pages of that picture.

22 BY MR. WHITE:

23 Q. That's three. We're gonna go to this one right
24 here.

25 A. Oh, okay.

1 Q. Do you recognize that invoice, Mr. Broadway?

2 A. Yes. It's for a repair for replacing a couple of
3 bricks.

4 Q. Tell us about your efforts to make that repair.

5 A. We had to try to match the brick. It was an odd
6 colored brick, so we ended up finding a white, white
7 colored brick and tried to stain it to match the
8 building.

9 Q. Now, please flip to the next exhibit, Defendant's
10 Exhibit 5. Let me know when you're ready, Mr. Broadway.

11 A. Did you say defense?

12 Q. Yes, your -- yes. Yes, sir.

13 A. Yes.

14 MR. WHITE: May I approach?

15 THE COURT: Yes, sir.

16 BY MR. WHITE:

17 Q. All right. Do you recognize that picture, Mr.
18 Broadway?

19 A. Yes, I do.

20 Q. All right. Do you see the bricks in there?

21 A. Yeah.

22 Q. Is that a before picture?

23 A. Yes.

24 Q. Okay. Tell me what, tell me what your kind of
25 diagnosis of the situation was with the brick. What was

1 going on there?

2 A. At this time we just thought they got chipped,
3 hit. Somebody hit the building or something got chipped
4 or something, so we cut them out and replaced them.

5 Q. Okay. Now, let's flip to Defendant's Exhibit 6.
6 Let me know when you're there, Mr. Broadway.

7 A. I'm here.

8 Q. All right. What does that picture depict?

9 A. That's one picture I took about last week, same
10 corner.

11 Q. All right. And we got two pages here, right?

12 A. Yes.

13 Q. Well, let's flip to that second page. There's
14 kind of a vertical strip from kind of the corner of the
15 lentil, all the way up to the roof. Do you see that
16 there?

17 A. Uh-huh.

18 Q. What is that?

19 A. They call it an expansion joint so it moves. As
20 the building -- masonry moves different than a metal
21 building move so, yes, it's some relief so it won't
22 crack.

23 Q. And there's kind of some black stuff in the
24 middle of that. You can see it better on that first
25 page.

1 A. Yeah.

2 Q. What, what is that black stuff?

3 A. That stuff is the joint they put inside and then
4 they caulk over it and give it room to expand.

5 Q. So is that black stuff, is that like a crack in
6 the caulk?

7 A. No. That's the material behind the caulking that
8 you put in there when you lay it up and give it room to
9 move. And then they caulk over it to seal it so it
10 won't get water in there.

11 Q. You -- and the brick, like kind of the masonry,
12 even though you all replaced it two years ago, looks a
13 little kind of worn away on that top brick of the three
14 bricks.

15 A. It has broke again. Something in there -- this
16 is just my opinion, because we do this a lot. Something
17 in that corner's given to make that metal, the lentil
18 under there shifting a little bit to make that brick
19 break or something's not secure right there. There's a
20 little bit of movement in there that makes it chip,
21 break out.

22 Q. So, your original kind of diagnosis was something
23 maybe hit it. And then two years later you see that,
24 you think there's just something going on there?

25 A. Just a little movement there to make the brick

1 chip.

2 Q. Because that's probably what's making the brick
3 kind of wear away, kind of fall out, maybe even need to
4 be replaced again in a couple of years?

5 A. No, that lentil needed to be replaced any time.
6 It's just something in that lentil right there is moving
7 a little bit to make it chip.

8 Q. Maybe that -- what about that expansion joint, do
9 you think that might be a culprit too?

10 A. It's just a little bit of movement in the wall.
11 It probably just needs to be re-caulked.

12 MR. WHITE: Okay. Nothing further, Your Honor.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. DLUZNESKI:

16 Q. Mr. Broadway, good afternoon.

17 A. Good afternoon. How are you doing?

18 Q. Good. I'm gonna come up here so I can get closer
19 to you. Now, you talked about Exhibit Number 4.
20 Defense Exhibit 4, which is your invoice. Do you
21 remember that?

22 A. Yes, sir.

23 Q. All right. And looking at Defense Exhibit 4, the
24 work description is repair broken brick at the garage
25 door, right?

1 A. Right.

2 Q. All right. I noticed on here that other than the
3 broken brick, there was nothing for any kind of
4 inspection of the interior structural area of this or
5 the lentil. Did you do any of that kind of inspection?

6 A. No, sir.

7 Q. You did not?

8 A. No, sir.

9 Q. All right.

10 A. Excuse me. I walked inside and looked, but it
11 was enclosed sheetrock or something was in there. I
12 couldn't see it, so that's as far as I went.

13 Q. Okay. So other than replacing the broken brick,
14 you didn't go any further?

15 A. No, sir.

16 Q. Okay. You didn't look at the lentil, did you?

17 A. Just from right there.

18 Q. Okay. So your inspection of the lentil was
19 limited to what you could see from the outside with your
20 naked eye?

21 A. Correct.

22 Q. Okay. All right. So you're unaware as to
23 whether or not the lentil could have been damaged and
24 also needed to be repaired or replaced?

25 A. That's correct.

1 Q. Okay. It -- would that replacement of a lentil,
2 if that needed to be done, would that be an additional
3 expense?

4 A. Yes.

5 Q. Okay. Do you know about how much that would be?

6 A. No, sir, not right offhand. Not being able to
7 see inside, see what's moving. You might not have to
8 replace the lentil, just tighten it up inside there.
9 Something's just giving just a little bit.

10 Q. Okay. Now, who were you hired by to come out and
11 do this work?

12 A. I can't really answer that. It's been two years
13 ago. And I get calls all the time, but it's got Brilin
14 Electric on the invoice.

15 Q. All right. So Brilin Electric is the company or
16 entity that you billed pertaining to this?

17 A. Uh-huh.

18 Q. Is it fair to say that Brilin Electric is the one
19 that hired you to come out?

20 A. Correct.

21 Q. Okay. Did you -- were you aware when you came
22 out and when you were discussing this with Brilin, that
23 it was not Brilin's building?

24 A. No, sir.

25 Q. Did you have any idea of who the building

1 belonged to?

2 A. No, sir.

3 Q. Did you have any idea as to whether or not when
4 you performed these repairs, that there was an ongoing
5 lawsuit related to Brilin's conduct and behavior inside
6 this building?

7 A. No, sir. The first time I heard about it was
8 when I was sitting back here by this other wall.

9 Q. Okay. All right. Now, you talked about that you
10 were told that the cause was that bricks got hit or
11 chipped.

12 A. No, that was my assumption. I just thought
13 something had hit it and chipped it, said they needed
14 some brick to be repaired, so went out there to look and
15 see what it was and we just went ahead and repaired it.

16 Q. All right. Did you ever, did you ever ask any
17 questions or inquire further of the person who hired you
18 about what caused that damage?

19 A. No, sir.

20 Q. All right. So you were going completely off of
21 your assumption?

22 A. Correct.

23 Q. All right. So you have no idea if, for example,
24 a forklift came into contact with those bricks?

25 A. (Inaudible.)

1 Q. Okay. So you came out, you replaced the bricks
2 and only the bricks and you were done. The job was
3 finished?

4 A. Right.

5 Q. Okay. Tell us what you understand - we talked
6 about the lentil. What do you understand a lentil does?
7 Tell the jury what the purpose of it is.

8 A. It carries the weight over the garage door. The
9 brick, you know, the veneer carries the weight up there
10 and secures it.

11 Q. Okay.

12 A. And it's this -- that's what it's for.

13 Q. All right. So, would you agree with me that if
14 the lentil is damaged, there could be recurring issues
15 in this area?

16 A. This is my assumption of doing this. What I've
17 been doing for years is that something in that corner,
18 that lentil in the wall, something's just moving a
19 little bit there to cause that break. Might have never
20 been hit. It might have been like that when it first
21 constructed. It just took a while for it to move a
22 little bit. Everything, the measuring material in the
23 metal buildings moves differently. And something right
24 there is just making that shift a little bit, chipping
25 brick off.

1 Q. Okay. All right. But you testified a few
2 moments ago that you didn't investigate further, you
3 didn't determine what that cause may have been.

4 A. That's correct.

5 Q. Okay. When you were hired to do this work, what
6 were you told about the scope of work that you were
7 being hired to perform?

8 A. Just needed to replace some chip brick.

9 Q. Just replacing chip brick, okay. So no
10 inspection. You weren't hired to do an inspection, just
11 the bricks?

12 A. That's correct.

13 Q. Okay. Do you recall anything that Brilin told
14 you about? Anything about the damage, what caused it or
15 anything like that?

16 A. No, sir.

17 MR. DLUZNESKI: Okay. All right. Your Honor, I
18 don't have anything further. Thank you.

19 THE COURT: Any redirect, limited to what he went
20 into?

21 MR. WHITE: Yes, Your Honor. Two quick
22 questions.

23 THE COURT: All right.

24 REDIRECT EXAMINATION

25 BY MR. WHITE:

1 Q. Any damage to that lentil, Mr. Broadway?

2 A. No, sir.

3 Q. Brilin pay their bill?

4 A. Yes, sir.

5 MR. WHITE: Nothing further, Your Honor.

6 THE COURT: Thank you, sir.

7 Mr. Broadway, you may step down. Watch your step
8 as you're stepping down.

9 (Witness leaves witness stand.)

10 Ladies and gentlemen, we're gonna take a short
11 recess. Remind you, don't have any discussions among
12 yourselves about anything involving the case and do not
13 do any type of independent research or investigation.
14 You may put the books on the floor or in your chair and
15 we'll get you back just shortly.

16 (Jury leaves courtroom at 2:38 p.m.)

17 THE COURT: All right. Your next witness is
18 gonna be about the same length, you think.

19 MR. DLUZNESKI: Yes. Mr. Abernathy should be
20 about the same length as Mr. Robinson was.

21 (A recess was had from 2:38 p.m. - 2:54 p.m.)

22 THE COURT: Do you know if they're ready?

23 THE BAILIFF: Yes, sir, they are.

24 THE COURT: Okay. Anything from the lawyers
25 before we bring the jury back in?

1 MR. DLUZNESKI: No, Your Honor.

2 THE COURT: Okay. Let's bring them back in.

3 (Jury enters the courtroom at 2:54 p.m.)

4 THE COURT: Plaintiff ready to call their next
5 witness?

6 MR. DLUZNESKI: Yes, Your Honor. Plaintiff calls
7 John Abernathy.

8 THE COURT: Sir, just come right up here and let
9 the clerk of court swear you in, sir.

10 THE CLERK: Would you, please, place your left
11 hand on the Bible and raise your right hand. Do you
12 solemnly or affirm the testimony you give this court
13 will be the truth, the whole truth, and nothing but the
14 truth so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Thank you, and please be seated.

17 THE COURT: Sir, just have a seat in the chair
18 and pull the chair up to the microphone and speak into
19 it. Thank you.

20 MR. DLUZNESKI: And, Your Honor, this is the
21 second witness that the parties have stipulated to be
22 qualified as an expert witness in the field of
23 structural engineering.

24 THE COURT: Structural engineering. All right,
25 ladies and gentlemen. Once again, normally a person

1 cannot give opinion testimony. Normally when a person
2 testifies, they must testify as to what either they saw,
3 heard, or sensed by smell or something of that nature.
4 However, there is an exception when someone is qualified
5 because of education or experience.

6 They are permitted to give their opinion in
7 certain areas if the Court qualifies them that way.
8 This witness will be qualified in the area of structural
9 engineering to give opinion testimony in that area.
10 Now, that does not mean that you must accept the
11 opinion, but it is evidence for you to use in any way
12 that you see fit.

13 Yes, sir.

14 MR. DLUZNESKI: Thank you, Your Honor.

15 JOHN ABERNATHY,
16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. DLUZNESKI:

19 Q. Mr. Abernathy, the Court has qualified you as an
20 expert in the area of structural engineering. So with
21 that, I want to take you back to May of 2020. During
22 that month, did you have occasion to visit the property
23 located at suite 11, 2180 Carolina Place in Fort Mill?

24 A. Yes, I did.

25 Q. All right. And why did you visit that property?

1 A. I was contacted by Mr. Decker to come take a look
2 at a partition wall, demising wall on his property that
3 he reported had been damaged. So they wanted an
4 engineer to take a look at it.

5 Q. All right. How many visits to that property did
6 you make?

7 A. I believe a total of three.

8 Q. All right. Tell us when those visits were.

9 A. Initially I believe the first was May 4th of
10 2020. And I met with Mr. Robinson, who was here
11 previously, testified previously. Took a look at the
12 wall. I could see, you know, he explained to me that it
13 had been struck again. And I could see the bottom, the
14 bottom of the wall snaking a little bit as you looked
15 down the line of the wall.

16 And really couldn't tell that much during that
17 visit because it was covered with drywall, covered with
18 gypsum board, so I couldn't really make a decision as to
19 what was going on on the inside, which is really what I
20 wanted to see. I wanted to see the actual cold-formed
21 steel studs that were supporting the wall.

22 So I made a recommendation in my report to
23 stabilize the section that had been reportedly kicked
24 out at the bottom. So, you know, I recommend that he,
25 you know, put a couple of 2X6's down. Nail those down

1 so that the wall is at least stable at the bottom where
2 it was reported to me that it had been kicked out.

3 Q. All right. So, you just told us a lot. Let's
4 take each of your visits in turn, starting with your May
5 4th visit. What did you do and what did you observe
6 during that first visit as to the demising wall inside
7 the building at suite 11, 111, per your May 4th visit.

8 A. I just observed that the, the wall was
9 predominately covered completely with gypsum. I believe
10 there was a little bit, maybe at the bottom that had
11 been removed near the surface, but I told Mr. Robinson
12 that, you know, I needed to -- I really couldn't tell
13 that much from that. I needed to be able to see inside
14 a wall.

15 Q. All right. So, let's take a look at -- and as
16 part of that visit, did you prepare and generate a
17 written report?

18 A. I did.

19 Q. All right. Let's take a look at that report.
20 There's a binder of exhibits in front of you, and the
21 specific exhibit I want us to look at is Plaintiff's
22 Exhibit 22. And I want us -- are you familiar with that
23 exhibit?

24 A. Yes.

25 Q. Okay. Now, based on what your observations were

1 of the demising wall during your May 4th visit and you
2 told us that the gypsum board was still on the wall at
3 that time. Is that accurate?

4 A. That's correct.

5 Q. All right. So, based on your observations on the
6 wall on May 4th, what did you recommend be done at that
7 point?

8 A. I recommended that the section that was reported
9 where the damage had occurred, which, you know, I could
10 kind of see and you could see, you know, where there was
11 kind of a difference in drywall previous, I believe, in
12 that area. It was about a 12-foot section. And I just
13 wanted to make sure that, you know, before I came back,
14 if he would remove more and I could take a better look
15 at it between now and that time, I just wanted to make
16 sure that the bottom was secured so that it, you know,
17 that it wouldn't kick out, because I didn't want -- if
18 it were to kick out, a lot of that weight could be
19 shifted on the rest of the wall, which could pull the
20 remainder of the wall down, which I didn't want to
21 happen, in an extreme case.

22 You just want to take all precautions to make
23 sure that if -- you know, I was told that the bottom
24 plate, you know, had been struck and had been completely
25 knocked away from where it had been fastened. I just

1 wanted to make sure that it couldn't be moved, either
2 side before I, you know, returned to see the rest and
3 while they were working on it.

4 Q. All right. And I want to, in that regard I want
5 to refer your attention to the fourth paragraph down in
6 your May 2020 report that begins until such time. Do
7 you see that?

8 A. You're talking about in this report?

9 Q. Yeah, it's in this report. The paragraph that
10 begins: Until such time.

11 A. Oh, yes. Yes.

12 Q. Okay. You state: Until such time that we are
13 allowed to examine the wall internally, we recommend
14 temporary measures to ensure that the base of the wall
15 is stabilized and does not, quote, kick out from either
16 side.

17 Now, tell us what the term -- what did you mean
18 by the term kick out?

19 A. If anything were to impact it, you know, say a
20 vehicle. A heavy load were set down and shifted against
21 it. I didn't want it to -- you know, apparently, from
22 what I understood, the wall had been pushed or pulled
23 back into place relatively close to where it needed to
24 be. But if it were to be shifted again, mind you
25 nothing's holding it down at the time.

1 Apparently those fasteners had been sheered off
2 or broken off. But I just wanted to make sure that
3 nothing in that area where I was told that it was struck
4 could shift laterally, either direction at the base.

5 Q. Okay. All right. Now, is that a safety concern
6 for you? What were you concerned about specifically
7 with regard to the kicking out?

8 A. Yes. I did -- I wanted to -- I wanted to ensure
9 that, that, you know, that that couldn't contribute to
10 anything further developing with the wall. I didn't
11 want the wall basically to be hanging from above to the
12 beams that it was, you know, fastened to in that area,
13 because then you shift the load over to the other beams,
14 which, you know, they're distributed out because they're
15 all supposed to carry just that weight of the wall every
16 16 inches on center.

17 So if you take a group of them out, then, you
18 know, you're weakening the wall at that spot. And I
19 didn't want any further weakening of the wall. I didn't
20 want, you know, stress moved down the wall either
21 direction.

22 Q. Okay. In that same paragraph that we're looking
23 at that begins, until such time, did you make
24 recommendations as to what you believed would stabilize
25 the wall?

1 A. Yes.

2 Q. Okay. And what specifically did you recommend?

3 A. The 12-foot long 2X6's placed either side of the,
4 of the bottom, the bottom plate basically. It's a steel
5 plate.

6 Q. Okay. All right. And why did you recommend that
7 particular course of action or remedy?

8 A. It just -- again, you know, I wanted to make sure
9 that that part of the wall was stabilized.

10 Q. All right. So after this May 4th visit to the
11 property, you told us that you made a second visit to
12 the property. And when was that visit?

13 A. May 22nd, I believe. Yes, May 22nd.

14 Q. All right. So let's turn to the next exhibit,
15 Plaintiff's Exhibit 23.

16 A. Okay.

17 Q. Now, what was the purpose of your second visit?

18 A. The second visit was more of -- well the gypsum
19 was removed so that I could see what was going on in
20 that area and slightly up above it.

21 Q. All right. How much of the gypsum -- what
22 percentage of the gypsum was removed at that time?

23 A. For the entire wall you mean?

24 Q. When you went back for your May 22nd visit.

25 A. Uh-huh. Probably -- it was about halfway up. A

1 little more than halfway up the wall for most of the
2 length of the wall.

3 Q. All right.

4 A. So a little less than maybe 50 percent.

5 Q. Okay. And did that allow you to see the internal
6 structural components of the demising wall?

7 A. Yes.

8 Q. All right. Tell us what you observed during your
9 second visit to the property with regard to the demising
10 wall.

11 A. I saw a lot of the, of the cold form steel
12 sections, the studs basically. The steel studs looked
13 like they had been -- well, they had been bent. The
14 flanges and the web section of the frame, because it's
15 basically a channel shape section, c-shape section. And
16 those portions of the, of the studs had been buckled and
17 bent. And I'd been told that, you know, they had been
18 pushed back into place. But once you damaged one of
19 these to the extent that these were, you really can't --
20 they can't bend. When they're bent back into place,
21 they're obsolete. They no longer serve. They can't,
22 they can't hold the axial load that they're designed to
23 do. You basically -- you know, you, you kind of ruin
24 that individual stud. It no longer does its job.

25 Q. Okay. Now, we've heard in other testimony from

1 Mr. Robinson, as well as your testimony here this
2 afternoon, that these are steel studs, correct?

3 A. Correct. Cold form steel.

4 Q. Now, you've been qualified by this Court as an
5 expert witness in the area of structural engineering.
6 Can you give us any idea what kind of force it would
7 have taken to, to bend the steel studs in the ways that
8 you observed during your May 22nd visit?

9 A. It would, from the damage that I saw, it would
10 take -- I can't give you the exact number on it, but it
11 would take more than just an individual. You know,
12 people or persons couldn't do that. It would have to be
13 some type of machinery or vehicle impact that would
14 cause that kind of damage.

15 Q. Okay. All right. Now, so, after your May 22nd
16 visit or maybe during your May 22nd visit, what concerns
17 did you have about the condition of the internal
18 components of the wall?

19 A. I was just, I was just generally concerned that
20 you weakened so many of these studs that the integrity
21 of the wall is in question now. You know, it's bearing
22 a tremendous amount of load. Mind you, it's not bearing
23 the load of the building itself, but it is bearing the
24 weight of itself, which is, you know, thousands of
25 pounds. And as an engineer my first concern is, is life

1 and safety welfare. You know, any -- once we've opened
2 the wall and we've seen that, it has to be repaired
3 properly.

4 Q. Did seeing the internal steel structural
5 components during your May 22nd visit make your concerns
6 from the first visit more significant?

7 A. Yes.

8 Q. Okay. Tell us very briefly how.

9 A. Well, I'd seen right in the area where the
10 reported strike was, but as you got away from that area,
11 I saw additional bent studs away from the area that was
12 reported for that strike. And I saw them at different
13 locations on the studs. I saw them halfway up some of
14 the studs. Some down at the bottom. I think there was
15 roughly maybe 120, 120, 130 total studs. And I think
16 about 30 of those, I believe, I determined needed to be
17 replaced.

18 Q. So replaced in full, not just repaired?

19 A. Correct. Now, you can, you can replace -- you
20 can replace them and leave the old one in place as long
21 as you can get it back within the wall. It's not
22 hurting to keep the old stud in the wall, but you just
23 need to put up a new one beside it and screw it in at
24 the base and screw it in at the top. And that's
25 basically, I believe, what Mr. Robinson did, and I

1 directed him to do.

2 Q. All right. Now, your opinions that you're
3 offering today --

4 A. Uh-huh.

5 Q. -- and that are contained in Plaintiff's Exhibits
6 22 and 23, are those opinions, did you make them within
7 a reasonable degree of engineering certainty?

8 A. Yes.

9 Q. Okay. And did you render those opinions based on
10 your knowledge, training, and experience?

11 A. Yes.

12 Q. Okay. Now, with regard to your concerns about
13 the demising wall, you mentioned that it's not load
14 bearing. It's not holding up the building.

15 A. Correct.

16 Q. Did that make any difference in your
17 determination as to, you know, your concerns about the
18 wall?

19 A. No.

20 Q. Okay. Why not?

21 A. Basically, the wall itself is load bear -- itself
22 is load bearing. It's holding itself up, so if it
23 falls, the weight of the wall is enough to damage
24 property or injure individuals.

25 Q. Okay. So based on your observations of the

1 condition of the wall during your second visit, your May
2 22nd visit, what, if anything, did you recommend be done
3 to repair damage to the wall?

4 A. I recommended that the certain studs that I saw
5 that had been bent significantly enough to where they no
6 longer function structurally be replaced. And by
7 replaced, again, I mean by placing another stud beside
8 that stud that is not bent.

9 Again, if the studs were bent so far that they,
10 you know, that they were gonna protrude from either side
11 of the wall, obviously take the old stud out after you
12 put the new one in. But it was basically, again, I
13 believe 30 of those that -- which was maybe less than a
14 quarter, a quarter of the total number of studs on that
15 wall length.

16 Q. Okay. Now, you talked about some of the studs
17 having -- or a good number of the studs having to be
18 replaced. Were there some studs that were able to be
19 salvaged, just repaired?

20 A. Of the ones that I pointed out, no. They needed
21 to be replaced. They needed to have, you know, a stud,
22 comparable stud placed beside it. Again, you can leave
23 the old one in there if you want, but it has to have a
24 new one right beside it if it's gonna stay.

25 Q. Okay. All right. Now, let me ask you this as an

1 expert in the field of structural engineering. So,
2 we're looking at the damages to this demising wall.
3 Would going to the other side of the demising wall and
4 hitting the damaged internal structural members back
5 into alignment be an acceptable method to fix the wall?

6 A. Not to fix it, no.

7 Q. Tell us why not.

8 A. The studs that were damaged, even if you plumb
9 the wall back up, you know vertically plumb, you still
10 got these weak members. They're, you know, again,
11 trying to hold the wall the entire length of the wall
12 up, but not all the members of the wall are structurally
13 adequate. Once they're bent, they no longer are
14 effective. All the load of the wall at that location
15 you're putting -- moving -- again, you're moving
16 stresses to the other parts of the wall.

17 You're putting an undo amount of stress on the
18 remainder of the wall to hold up the damaged portion of
19 the wall, which you don't, you know, you don't want to
20 do that. You want to evenly -- 16 inches has to be a
21 complete, you know, stud that's not undamaged.

22 Q. Okay. Now, for these visits that you made to
23 this property and your inspections and these reports
24 that you generated, did you bill Carolina Real Estate
25 Holdings for that work?

1 A. I was with Integrity Consultant Group at the time
2 and, yes, we did.

3 Q. Okay. If you'll turn with me to Plaintiff's
4 Exhibit 17.

5 A. Okay.

6 Q. You might be looking at Defendant's Exhibit 17.

7 A. Okay.

8 MR. DLUZNESKI: Your Honor, may I approach the
9 witness?

10 THE COURT: Yes, sir.

11 THE WITNESS: Oh, back? Okay.

12 BY MR. DLUZNESKI:

13 Q. What is Plaintiff's Exhibit 17?

14 A. It appears to be an invoice from Integrity
15 Consultant Group, the company I was employed under.

16 Q. Okay. And who was it to?

17 A. Brad Decker.

18 Q. All right. And what was the balance that was
19 due?

20 A. \$1,757.50.

21 Q. All right. And Mr. Decker of Carolina Real
22 Estate Holdings paid this invoice as well?

23 A. Yes.

24 MR. DLUZNESKI: Okay. Your Honor, I tender the
25 witness.

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. WHITE:

4 Q. Mr. Abernathy, good afternoon.

5 A. Hey.

6 Q. You and I have never talked before, have we?

7 A. I don't think we have.

8 Q. No, we have not. Now, you first came and saw the
9 wall on May 4th, right?

10 A. That's correct?

11 Q. Of 2020. When were you contacted to come see
12 that wall?

13 A. Umm, we tried to respond within a couple weeks of
14 request, so it's hard to recall. Within two weeks,
15 maybe, previous. A week to two weeks.

16 Q. Were you contacted by Mr. Robinson or were you
17 contacted by Mr. Decker?

18 A. Mr. Decker.

19 Q. And you couldn't see the wall on May 4th, but you
20 could on May 22nd, right?

21 A. I could see more of it on May 22nd, that's
22 correct.

23 Q. If we look at Plaintiff's 23, we see those
24 pictures there. That's the demo diagnostic we're
25 hearing about where they're just cutting the sheetrock

1 to go to empty board that will lift this up, right?

2 A. Yes.

3 Q. Up towards the back of your report where it says
4 photographs, three of any ---

5 A. Yep.

6 Q. So at some point between May 4th and May 22nd the
7 wall got opened up?

8 A. Yes.

9 Q. And you said because the studs, 30 -- about 25
10 percent of the studs, if you do the math, all right? So
11 around 30, the porch is 30, about 120 foot?

12 A. I'd say between 120, 130, something that.

13 Q. In an extreme case, you said on direct, that
14 could cause a wall to fall down, right?

15 A. It's possible, yes.

16 Q. So, the likelihood that that wall was gonna fall
17 is unlikely, right?

18 A. At that time, correct, yes.

19 Q. Better safe than sorry. You know you've got some
20 studs that are busted up, you've got to fix it.

21 A. Yeah.

22 Q. That is the professional engineering
23 recommendation?

24 A. Correct.

25 Q. That's the sound, safe thing to do?

1 A. Yes.

2 Q. And just to reiterate, the only weight that this
3 demising wall bears is the wall itself, correct?

4 A. That's correct.

5 Q. And I feel confident in no way did any of these
6 studs getting banged up compromise the integrity of the
7 building and stuff?

8 A. Of the remainder of the building, that's correct.

9 Q. And nobody contacted you back in 2019?

10 A. No.

11 Q. Nobody contacted you, it sounds like, maybe
12 within a couple weeks showing up on May 4th?

13 A. From what I can recall. It's been a while.

14 MR. WHITE: Nothing further, Your Honor.

15 THE COURT: Any redirect limited to what he went
16 into?

17 MR. DLUZNESKI: No redirect, Your Honor.

18 THE COURT: Thank you, sir. You may step down.
19 Watch your step as you're stepping down. Any reason why
20 the witness cannot be excused?

21 MR. DLUZNESKI? No, Your Honor.

22 THE COURT: Thank you, sir. You may be excused
23 as well.

24 (Witness leaves witness stand.)

25 Is plaintiff ready to call their next witness?

1 MR. DLUZNESKI: Plaintiff calls Wayne Schulte.

2 THE COURT: Sir, just come right up here and let
3 the clerk of court swear you in.

4 THE CLERK: Do you swear or affirm the testimony
5 you give will be the truth, the whole truth, and nothing
6 but the truth so help you God?

7 THE WITNESS: I do.

8 THE COURT: Sir, watch your step as you're
9 stepping up, but please have a seat in the chair and
10 speak into the microphone.

11 WAYNE SCHULTE,
12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. DLUZNESKI:

15 Q. Hey, Mr. Schulte.

16 A. Hey.

17 Q. If you would, please state your name for the
18 record.

19 A. Wayne Schulte.

20 Q. And in what city and state do you presently
21 reside?

22 A. Fort Mill, South Carolina.

23 Q. All right. What do you do for a living?

24 A. Right now I'm kind of between jobs a little bit.

25 Q. Okay. At some point in the past, did you have an

1 occasion to work for Carolina Real Estate Holdings

2 A. Yes.

3 Q. All right. How long did you work for CREH?

4 A. The company, well, actually, I worked for Decker
5 Inspections which was a portion of CREH.

6 Q. Okay. What was your job title?

7 A. Project manager.

8 Q. Okay. Tell us what you did on a day-to-day basis
9 while you worked for CREH. So in other words, what did
10 a typical day look like?

11 A. It would depend. I'd be out of town working on
12 certain projects out of town. And when I was in town, I
13 could supervise around some of the properties we have
14 keeping up maintenance and keeping an eye on what's
15 going on on the properties.

16 Q. Okay. How many properties would you say that you
17 serviced or help maintain or manage for CREH or Decker
18 Inspections?

19 A. There's two buildings in the Fort Mill area that
20 I've worked on.

21 Q. All right. And what are those two buildings?

22 A. One is at 2180 Carolina Place, and the other is
23 118 Academy Street.

24 Q. Okay. Did you ever have any problems or issues
25 with any of CREH's tenants?

1 A. Yes.

2 Q. All right. Was part of your role as a project
3 manager or a property manager to access CREH's
4 commercial property to inspect and make repairs?

5 A. I'll usually repair it if I see something, but
6 usually repairs that come in, they put in a work order
7 for something to be done.

8 Q. Okay. And was that CREH's general practice with
9 it's tenants.

10 A. Uh-huh.

11 Q. I'm sorry, you ---

12 A. That's a yes.

13 Q. Okay. All right. Did you ever have any issues
14 or problems with fulfilling that aspect of your job
15 duty?

16 A. Not usually, no.

17 Q. All right. So let's delve deeper into this case.
18 At some point during your tenure with CREH, did you
19 become acquainted with Brilin Electric?

20 A. Yes, I did.

21 Q. All right, when?

22 A. Right after they moved into our building. I
23 can't remember what year it was. Right after they moved
24 in.

25 Q. All right. And how did you become acquainted

1 with Brilin Electric?

2 A. Just doing different things, because I was around
3 the building checking on stuff. Then they started out
4 like any other tenant, and then it just kind of
5 escalated from there. Didn't have much interaction with
6 them near the end, just always a battle.

7 Q. All right. Tell us about your dealings and
8 interactions with Brilin Electric when they first moved
9 in to their leased premises.

10 A. Didn't notice a whole lot right in the beginning.
11 I mean, they had a lot of cars coming across from the
12 front parking lot we requested not to have them do. But
13 the very beginning wasn't too bad. And then it's just
14 items up, kept coming up to be fixed or damaged and it
15 just kept getting worse.

16 Q. Okay. So as, as Brilin's lease term progressed,
17 talk to us about how your relationship developed with
18 Brilin.

19 A. It went downhill.

20 Q. All right. What do you mean by that, just
21 generally?

22 A. Whatever I was asked to do, they wouldn't let me.
23 Or if I was asked to do something or they complain about
24 everything, I was told to keep pictures around the
25 building. Every time I went out there, they come out

1 and yell at me for taking pictures of the property.
2 Basically tried to do what I was told to do by my boss
3 and I just got harassed all the time for it.

4 Q. Okay. Was law enforcement ever called in
5 connection with any of your dealings with Brilin?

6 A. Yes, they were.

7 Q. All right. Tell us about that.

8 A. The last day I was there, they were putting in a
9 garage door that weren't supposed to be installed. And
10 they had the old doors ripped out. I called my boss,
11 Brad. He recommended -- he said to call the sheriff. I
12 called the sheriff. Then Brilin's guys came out and
13 started yelling, picking up, I don't know what it was,
14 but -- and then the sheriff said it was a civil matter,
15 there was nothing they could do about it.

16 Q. All right. Do you know who called sheriff's
17 office on that occasion?

18 A. I did.

19 Q. Okay. Why did you call the sheriff's office?

20 A. Because I was instructed to by my boss to call
21 them.

22 Q. Okay. All right. Do you know how many times law
23 enforcement was called?

24 A. I want to say two or three for that particular
25 property.

1 Q. Okay. Any of your other or CREH's, any of your
2 other or CREH's other properties that you manage? Did
3 you ever have law enforcement involvement?

4 A. Just once, at the same building, but a different
5 unit. There was a misunderstanding. They thought there
6 was something going on with the water when they were
7 making some big repairs.

8 Q. Okay. All right. And how many times -- you told
9 us that there were two or three times that law
10 enforcement was called to Brilin's premises. How many
11 times did you call law enforcement?

12 A. I believe I just called the once.

13 Q. Okay.

14 A. Maybe twice, but I can't remember for sure. It's
15 been two year or better.

16 Q. All right. And how did they respond the other
17 two times?

18 A. Pretty much it was the same thing. They just
19 come out to make sure there was no physical violence
20 going on. And instead it's a civil matter. There was
21 nothing really that could be done on their end.

22 Q. Okay. Mr. Schulte, did you ever attempt to
23 interfere with Brilin's ability to run and operate its
24 business?

25 A. No, sir.

1 Q. All right. Were the actions that you took in
2 relation to Brilin attempts to perform your job as a
3 property manager?

4 A. Uh-huh, yes.

5 Q. Did you conduct your way as a property -- did you
6 conduct yourself as a property manager with Brilin any
7 way differently than CREH's other commercial tenants?

8 A. Probably near the end, yeah. We didn't get
9 along, so it was kind of like I tried to avoid them and
10 they tried to avoid me, but it never happened.

11 Q. Okay. All right. Did you ever attempt to enter
12 Brilin's leased commercial space for the purpose of
13 inspecting or making repairs?

14 A. I've tried to get in, but when the wall was
15 damaged, I tried to see. But they had shelves in the
16 way, so you couldn't see everything in there. I've been
17 in a couple times, but it was usually short lived.
18 Usually their warehouse manager would have come out and
19 tell me I have to leave.

20 Q. All right. All right. Now, while you were on
21 site, actually on the premises at Brilin's leased
22 commercial space as the property manager, tell us about
23 some of the things that you witnessed Brilin, Brilin's
24 employees do.

25 A. They were asked not to drive on the front parking

1 lot because there was damage to it from heavy trucks.
2 It wasn't designed for that. They would constantly do
3 that. They'd have trailers where they weren't supposed
4 to. We put up barricades to direct the traffic, keep
5 them in the back of the building. And they took their
6 forklift and moved the barricades. That's happened
7 several times. The barricades were moved on multiple
8 occasions.

9 That was one of the times the sheriff was called
10 was one of the times when they moved the barricades.
11 They were put up to direct traffic to keep them off, not
12 just them but any tenant and other trucks too off the
13 front parking lot. And they just went out and moved
14 them around wherever they wanted, do what they wanted.

15 Q. All right. What else did you observe Brilin or
16 its employees do?

17 A. I've seen them wash trucks out there, stuff like
18 that. But mainly with the barricades and the damage
19 with the walls, you know? And then the last incident
20 was the garage doors they replaced. And that was pretty
21 much one of my last days with Decker.

22 Q. Okay. All right. Did Brilin cause any damage to
23 the asphalt outside their building that you witnessed?

24 A. Yes.

25 Q. All right. Mr. Schulte, you have a binder of

1 exhibits in front of you and they are numbered. In the
2 front are the plaintiff's exhibits and in the back are
3 the defendant's exhibits.

4 A. Okay.

5 Q. I want you to turn to Plaintiff's Exhibit 5.

6 A. Picture of the asphalt here?

7 Q. Yes.

8 A. Okay.

9 Q. How did this asphalt damage happen?

10 A. That's for bringing the forklift out. They kept
11 bringing the forklift out and setting their pallets over
12 there and whatnot. And that's where they kept running
13 it over and parking trucks up in there. You had
14 barricades, so they couldn't get down that far, but they
15 kept moving them.

16 Q. All right.

17 A. So, that's exactly what that is. That's from the
18 forklift.

19 Q. All right. Did you actually witness the forklift
20 do this damage?

21 A. Several times. Well, I didn't, I didn't actually
22 see the asphalt crack under the forklift, but I seen the
23 asphalt run through these holes several times.

24 Q. Okay.

25 A. That's why I would take pictures every day to see

1 what's changed.

2 Q. Okay. Do you know of any attempt by Brilin to
3 repair this asphalt damage?

4 A. No.

5 Q. Okay. All right. Let's look at Plaintiff's
6 Exhibit 7.

7 A. Uh-huh.

8 Q. Exhibit 7 shows a, it looks like a concrete patch
9 at the bottom of one of the ramps.

10 A. Yes, that's what that is.

11 Q. Okay. Do you know anything about this patch?

12 A. The edge of the concrete was getting all busted
13 up there, and I can't remember for sure, but I believe
14 Brilin actually had somebody come in and put that,
15 trying to fix the concrete at the edge.

16 Q. Okay. Did Brilin tell you, or anybody from
17 Brilin tell you anything about the patch before they did
18 it?

19 A. No.

20 Q. All right. So Brilin just had someone come out
21 and do it?

22 A. To the best of my knowledge, yeah.

23 Q. Okay. All right. Now, speaking about the
24 parking lot outside the building, and you've mentioned
25 it a couple of times, parking barricades or jersey

1 barriers?

2 A. Jersey barriers.

3 Q. Okay. All right. Let's look at Plaintiff's
4 Exhibit 4. Does Plaintiff's Exhibit 4 show the jersey
5 barriers that you're talking about?

6 A. Yep.

7 Q. All right. Now, you mentioned a little bit about
8 this, but tell us what specifically you witnessed Brilin
9 and any of its employees do with respect to these jersey
10 barriers?

11 A. Well, that trailer, the day before that trailer
12 was not inside those jersey barriers. And if you look
13 at the weight of it, you can't get that in trailer in
14 there without removing the jersey barrier. They
15 literally came out, picked up the jersey barriers, put
16 them where they want it so they can get the trailer in
17 there.

18 Q. Okay. Did CREH request that Brilin Electric not
19 move the jersey barriers?

20 A. Yes.

21 Q. All right. How many times, would you say?

22 A. Multiple. I couldn't tell you off the top of my
23 head, but it's been multiple times.

24 Q. Okay. All right. Do you know why Brilin -- why
25 CREH put these parking or these jersey barriers up in

1 the first place?

2 A. Yeah. Well, first the parking lot was getting
3 damaged. That's why we wanted the trucks out. And then
4 we put the barriers up and the parking lot had gotten
5 too far gone, so we had it re-asphalted. And then we
6 wanted to block it off even more to make sure the truck
7 stayed where, in the back, where it wouldn't damage the
8 asphalt.

9 Q. Okay.

10 A. There's signs out there telling them trucks in
11 the rear. Everything was there.

12 Q. All right. Okay. So there's notices in the
13 parking lot talking about how CREH, the landlord,
14 desired its tenants to use the parking lot?

15 A. Yeah. And there's barricades and signs saying
16 all truck parking and trailer parking to be in the rear
17 of the building.

18 Q. Okay. All right. Let's talk about the warehouse
19 building of Brilin's lease for just a few minutes.

20 A. Uh-huh.

21 Q. You mentioned this as well. What types of doors
22 were on the warehouse?

23 A. They were rollup Overhead Doors.

24 Q. All right. Tell us about what damage that you're
25 aware of to the rollup doors of the building that

1 occurred during Brilin's tenancy.

2 A. They, they were bulged outward. It looked like
3 they had been hit several times by forklifts and stuff,
4 you know, moving equipment around, is what it looks
5 like.

6 Q. All right. Did any of Brilin's employees or
7 agents or owner ever tell you that a forklift caused the
8 damage?

9 A. No.

10 Q. Okay. How did you determine that a forklift is
11 what caused it?

12 A. Pretty much by looking at the height of the dent
13 and the height of the forks and every place else the
14 forks had been stuck through the building.

15 Q. All right.

16 A. So, I know what the doors looked like before they
17 took over the space.

18 Q. Okay. And how did the doors look before Brilin
19 moved in?

20 A. They were nice and straight. Nothing wrong with
21 them. They were aged, but they weren't dented or caved
22 in or pushed out.

23 Q. All right. Are you aware of either or both of
24 the damaged rollup doors being replaced by Brilin at
25 some point?

1 A. They were pointing -- they were changing the
2 door. That was like about my last day there, so I don't
3 know what the outcome. That's the last time we called
4 the sheriff.

5 Q. Okay. All right. So, so tell us about that day.
6 Were you on site that day?

7 A. I showed up there and I realized when I showed
8 up, just checking on the property and I seen they were
9 tearing the doors out, I had called Brad and let him
10 know what was going on. He told me to go in and stop
11 them, find out.

12 I went inside to try to find out what was going
13 on, I was told to get off the property. So I called
14 Brad back and he told me to call the sheriff. And then
15 we called the sheriff. Then they informed us it was a
16 civil matter.

17 Q. All right. What caused, what caused you to go to
18 the property that day in the first place?

19 A. That's what I do every day. When I wasn't out of
20 town on other projects, I went around to all the
21 properties every day.

22 Q. Okay. All right. And when you went in to voice
23 a concern to Brilin, was that a new experience for you
24 or have other commercial tenants of CREH told you to get
25 off the property?

1 A. Only Brilin. I've never been thrown off any
2 other properties. I didn't get to talk to the owner of
3 Brilin. I talked to his warehouse manager, I guess is
4 what he was.

5 Q. Okay. All right. Let's talk about the demising
6 wall inside the warehouse space. So we have Brilin's
7 warehouse space, and then next to it, who was in the
8 space next to Brilin?

9 A. Two Men And A Truck.

10 Q. Okay. So, are you aware of any damage that was
11 caused to that demising wall during Brilin's tenancy?

12 A. Yes, I am.

13 Q. All right. Tell us about that.

14 A. One of the times I was in the building. It was
15 getting near the end of the lease, we noticed the
16 building was -- the wall was pushed in. There were
17 holes in it from, it looked like, forks going through
18 it. There was a bunch of shelves though. Couldn't see
19 to go down to Two Men And A Truck side because they had
20 a bunch of stuff stacked up against there. And they got
21 stuff cleared out so we could see.

22 The wall pushed out at the bottom, probably
23 between a foot to 18 inches, maybe and two foot in some
24 places. There was holes broken through it, protruding
25 through it. At some point they removed the shelves,

1 pulled the shelves out of the way, and I came by to
2 check on it and they had some drywall crew in there
3 straightening it.

4 They were on Two Men And A Truck side, trying to
5 straighten it. Beating it with sledge hammers and
6 rehanging drywall.

7 Q. All right. Did -- do you know who Brilin had in
8 there doing work on the demising wall?

9 A. I don't.

10 Q. You don't, okay. And you personally observed
11 them, members of that crew, beating it with sledge
12 hammers?

13 A. Yes, sir.

14 Q. Okay. Where on the wall, on the height of the
15 wall were they doing that?

16 A. Down at the bottom.

17 Q. At the bottom of the wall?

18 A. The majority of it, but the bottom plate is
19 marking it. As Mark and them talked about it earlier,
20 the bottom plate was pushed way inside to the Two Men
21 And A Truck side of the building.

22 Q. Okay. Now, before you arrived on site that day
23 and saw the crew there working -- well, first of all, do
24 you remember what year that work was done?

25 A. Sometime in the beginning of 2019 or the end of

1 2018.

2 Q. Okay. Did you know when you arrived on site that
3 day, that there would be a crew doing work on the
4 demising wall?

5 A. I knew they were talking about getting something
6 done, but I didn't know when it was. I didn't have no
7 idea exactly when it was gonna start, no.

8 Q. Okay. So you never approved a start date for the
9 project?

10 A. No.

11 Q. Okay. Did you, when you arrived on site and saw
12 the people working on the demising wall, did you ask
13 them who they were?

14 A. I informed Brad. He had to make sure they had
15 their W-2's or their Certificate of Insurance and stuff.
16 And I believe our office manager at the time, Frank, I
17 believe, contacted Bryon about it, but I don't know for
18 sure.

19 Q. Okay. How long did you stay?

20 A. 20 minutes or so.

21 Q. All right. Did you supervise the crew at all
22 doing the work?

23 A. No.

24 Q. All right. Do you know how long they were there
25 doing the work?

1 A. I believe it was just one day, maybe. Maybe a
2 little bit the next day, but I don't know for sure.

3 Q. Okay. And you said -- so during that entire
4 couple day time span, you were there for about 20
5 minutes?

6 A. For the wall part, yes. I mean, I go by every
7 day and look at this stuff at the building, but they
8 were in there just beating stuff around. My main
9 concern was the drywall. They got it straight, but I
10 wouldn't know if they got everything back right at that
11 point. My concern was also that the drywall be fire
12 rated. Mine between the two spaces.

13 Q. All right. Did you have any conversations with
14 Mr. Russell or anybody else at Brilin that day about the
15 work to the demising wall?

16 A. No.

17 Q. Okay. Did you supervise that work?

18 A. No.

19 Q. Did anyone from Brilin, including Mr. Russell,
20 ask you to supervise that work?

21 A. No.

22 Q. The crew that was there doing the work, did you
23 hire them?

24 A. No.

25 Q. Okay. Did you participate in hiring them?

1 A. Nope.

2 Q. All right. After, did you return after they
3 completed the work on the demising wall?

4 A. Yes.

5 Q. All right. Do you know how soon after?

6 A. I can't remember for sure, but the first thing I
7 know is that it was pushed way out at the bottom. They
8 didn't get it straight. And I took pictures. The
9 photos should be around somewhere, but I also sent those
10 to our office.

11 Q. Okay.

12 A. Let them know what was done wasn't, wasn't
13 satisfactory.

14 Q. Did you, did you pass that information on to
15 anyone with Brilin that day?

16 A. No. I had as little contact with Brilin as
17 possible.

18 Q. Okay. Did you talk to Brilin or the crew at all
19 about the work?

20 A. No.

21 Q. All right. Did you tell anyone from Brilin or
22 the crew that you approved the work or that the work
23 looked good?

24 A. No.

25 Q. Okay. Mr. Schulte, after -- did you cause any

1 damage to the demising wall?

2 A. Did I cause damage?

3 Q. Yeah.

4 A. No.

5 Q. Did you witness anyone from CREH cause any damage
6 to the demising wall?

7 A. No.

8 Q. Were you present for either of the two
9 inspections that John Abernathy performed?

10 A. No.

11 Q. Were you present when any repairs to the wall
12 were made after Brilin vacated the space?

13 A. No.

14 Q. All right. Now, other than the demising wall, I
15 want to take a look at some ductwork inside the
16 building. Were you aware of any repairs that Brilin
17 made to the ductwork?

18 A. I don't know what the exact repairs were, but
19 there was some flexible ductwork that was damaged along
20 that same wall up above the shelf that they had put in
21 place.

22 Q. Okay. If you'll look with me at Plaintiff's
23 Exhibit 11. Does Plaintiff's Exhibit 11 show the
24 ductwork that you're talking about?

25 A. That appears to be it, and it looks like it's

1 been repaired.

2 Q. Okay. Well, what else did Brilin do with that
3 ductwork that you're aware of?

4 A. I honestly don't know.

5 Q. Don't know?

6 A. I know it was damaged before and that picture
7 looks like it's not damaged.

8 Q. Okay. All right. Finally, let's turn to
9 Plaintiff's Exhibit 24. What does Plaintiff's Exhibit
10 24 show?

11 A. That looks like a picture of the dog bed they had
12 in there.

13 Q. All right. What can you tell us about the dog
14 bed, the carpets? Were there carpets inside that
15 office?

16 A. One of the last things I done was go through
17 there, by the instructions of my boss. Went to check
18 out carpets and stuff to see what we'd have to do for
19 the next tenant and whatnot. And there was pet stains
20 on the carpet and whatnot. I don't know if they cleaned
21 up or replaced the carpet, because I was no longer
22 employed there shortly after that, but there was pet
23 stains on the carpet and the dog bed was just a picture
24 showing that they got a pet sitting there.

25 Q. All right. Mr. Schulte, you testified that you

1 were out at the property, that you took photographs of,
2 I guess, what was going on out at the property.

3 A. Yeah. And it wasn't just their building. It was
4 all the way around the property. I took pictures in
5 front of the building, down at the other people places,
6 other tenant spots, but they took offense to be taking
7 pictures, so...

8 Q. Okay. Did you ever go, other than what you just
9 told us about, did you ever go into the warehouse space
10 or the office area and cause any issues?

11 A. No.

12 Q. Okay. For the photos that you took, were they
13 closeups? Did you take them from a distance?

14 A. Most of them were close-ups. You know, the ones
15 outside. The ones outside were closeup. The ones
16 inside, I mean, the only one time I got inside was
17 occasionally, so...

18 Q. All right. Tell us what interactions you had
19 with Brilin's employees outside the warehouse.

20 A. We was in argument. His warehouse manager, no
21 matter the time, every time I went around there, they
22 come out wanting to know what I'm doing. Starts telling
23 me to leave them alone, I shouldn't be over there. I'm
24 harassing them and whatnot, so...

25 Q. All right. And you've testified that your

1 behavior with respect to Brilin and Brilin's premises
2 was no different from any other commercial tenant?

3 A. No, sir.

4 MR. DLUZNESKI: Okay. Your Honor, I tender the
5 witness.

6 THE COURT: Yes, sir.

7 MR. WHITE: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. WHITE:

10 Q. Thank you, Your Honor. Good afternoon, Mr.
11 Schulte, how are you?

12 A. Good, how are you?

13 Q. I'm good. You and I have never talked before,
14 have we?

15 A. No, sir.

16 Q. Now, you actually are not employed by -- at the
17 time, the relevant time being 2019, 2020, you were
18 employed by Decker Inspections, correct?

19 A. Up until 2019.

20 Q. Okay. It wasn't 2020, early 2020?

21 A. Oh, I believe it was 2019. It was when COVID
22 hit.

23 Q. Moving into 2020. Does that sound right?

24 A. It was April. Okay, 2020 then.

25 Q. And you were a 1099 employee, right? Independent

1 contractor?

2 A. No.

3 Q. You were paid ---

4 A. No, I was a salary employee.

5 Q. Okay. And you say you were being told what to do
6 when your boss told you what to do, right?

7 A. Yep.

8 Q. When he tells you to go takes pictures, you go
9 take pictures?

10 A. Yep.

11 Q. Now, I didn't hear who your boss is. Your boss
12 is Brad Decker, right?

13 A. Yep.

14 Q. Your testimony on direct was that you never
15 interfered with the operation of Brilin at any time.

16 A. Not under my opinion, no. I mean, I did what I
17 was told, which would put the barricades in place and
18 whatnot, but that wasn't intended to interfere with
19 their visits or nothing. They were still given ample
20 room. They could access their building, do what they
21 got to do.

22 Q. Wasn't intended to interfere, but it did because
23 they couldn't use the ramp because the jersey barriers,
24 right?

25 A. Well, they could use the ramp it shows in there.

1 We left them a little bit of room, but they decided it
2 wasn't enough and moved the jersey barriers.

3 Q. Well, a little bit of room was because they moved
4 the jersey barriers, right?

5 A. No. They had room. The jersey barriers were put
6 halfway down the parking lot. The parking lot down that
7 side of the driveway splits between our building and
8 somebody next door that we don't own that property. And
9 those jersey barriers were put right down the middle, so
10 they were keeping them off the other people's property
11 too.

12 Q. Yeah, but look at Plaintiff's Exhibit 4. Let me
13 know when you're there, Mr. Schulte.

14 A. Okay.

15 Q. You see those jersey barriers in the back right,
16 right?

17 A. Yep.

18 Q. Like those are blocking off this whole side area,
19 including the ramp, unless you move them, right?

20 A. Yes.

21 Q. You can't get a forklift into that warehouse,
22 down that ramp, through that asphalt, back where those
23 vans and trucks are --

24 A. That's right.

25 Q. -- unless you move one of those jersey barriers.

1 A. That's right. That's why we didn't want the
2 forklift on the asphalt. It kept tearing up the
3 asphalt. That's what the jersey barriers were put there
4 for.

5 Q. So why was the forklift on here?

6 A. Yeah, but they were making clear of that. And
7 they were given a little bit of room with the damage
8 that they're gonna have, a little bit of damage to
9 repair.

10 Q. But it's a commercially usual thing due to the
11 forklift that a lighted industrial warehouse space like
12 this, is it not Mr. Schultes?

13 A. Not on the asphalt side where it's not designed
14 for a forklift. The forklift has got the little small
15 tire that contains all the way to one little area. It's
16 not like a car.

17 Q. The asphalt wasn't paved with sufficient material
18 to bear the load of a forklift, right, Mr. Schulte?

19 A. It was bear -- it was put down to prepare for a
20 parking lot.

21 Q. That's not a parking lot, Mr. Schulte, is it?

22 A. Right. That don't -- that's my issue when -- I'm
23 telling you what I did when I was there.

24 Q. That's not a parking lot, is it, Mr. Schulte?

25 A. Yeah, it's a drivethrough. It's a drive. It's a

1 parking lot. It's a driveway.

2 Q. You guys didn't want anybody driving through it.
3 That's why there's jersey barriers in the foreground.

4 A. We didn't want big trucks and forklifts on it,
5 and we blocked the whole thing so they couldn't get out
6 there.

7 Q. Yeah. This front --

8 A. Okay.

9 Q. -- this part right here, that's where you all
10 blocked it off so people couldn't use it for anything.

11 A. Uh-huh.

12 Q. It's not even a driveway, is it?

13 A. Yep.

14 Q. And you were told by Mr. Decker to do that?

15 A. Everything I did out there I was told by Mr.
16 Decker.

17 Q. Put those jersey barriers out there so they can't
18 drive the forklift on that asphalt, right?

19 A. Yep.

20 Q. You called the cops multiple times on Brilin, did
21 you not?

22 A. Not multiple, no.

23 Q. I thought you just testified to at least twice,
24 right?

25 A. Well ---

1 Q. When they put the garage doors in ---

2 A. I think multiple as thinking like five or ---

3 Q. Well, multiple to me means more than one.

4 A. Okay.

5 Q. So twice you called the cops on them, right?

6 A. Yep.

7 Q. For the -- when they were putting the garage
8 doors in.

9 A. Yep.

10 Q. What was the other time?

11 A. When that trailer was inside the barricades where
12 it shouldn't be.

13 Q. Right. What's wrong with the trailer being
14 inside the barricades?

15 A. Well, they used the big truck to get it in there,
16 which we don't want trucks in the parking lot.

17 Q. Okay. But what's wrong with the -- what's wrong
18 with them just putting a trailer right there?

19 A. Because they came through the front of the
20 property to get there where we don't want trucks ---

21 Q. The security barriers are right there.

22 A. How did they back the trailer up there? That's
23 the front of the parking lot where the top of the
24 trailer is sitting, so they came through the front.

25 Q. So you don't like the fact that they put the

1 trailer there, right? That was the problem, right?

2 A. When I asked them to move it, that's when their
3 argument started. That's when the cops came in.

4 Q. You didn't like the fact that the trailer was
5 parked right there. You didn't like it.

6 A. Nobody did. We just paved the parking lot.

7 Q. Well, what's wrong with it?

8 A. Because it's a brand new parking lot that was
9 being paved from trucks driving over it, and we just
10 spent a lot of money fixing the parking lot and we don't
11 want them tearing it up again.

12 Q. From just having the trailer there. How's that
13 tearing it up?

14 A. How did the trailer get there? They didn't pick
15 it up and sit it down.

16 Q. So you think just backing it up, that's gonna
17 tear it up?

18 A. Twisted the tires, whatever, yes. Twisted the
19 tires on the parking lot will tear it up.

20 Q. Now, you said you took pictures every day, right?

21 A. Not every day, but most days.

22 Q. Your testimony on direct was you took pictures
23 everyday ---

24 A. Just about, yeah. And sometimes ---

25 Q. Were you told to take pictures by Mr. Decker?

1 A. I was told to take pictures of the property on my
2 daily routes. If it's anything out of the ordinary,
3 anything that don't look right, keep up with so we know
4 what's going on. That way we can tell when damages
5 happen that weren't there before. Yeah. I've got, I've
6 got lots of pictures.

7 Q. How many suites, units, whatever you want to call
8 them, were in this particular building?

9 A. At the time there was, oh, I think, one, two -- I
10 think four.

11 Q. Four suites? Four units, whatever you want to
12 call them, right?

13 A. Yeah.

14 Q. And you were only taking pictures of Brilin,
15 right?

16 A. No, that's not true.

17 Q. You're taking pictures of everybody?

18 A. Uh-huh.

19 Q. And you wouldn't tell people when you were
20 coming, would you?

21 A. Didn't make nothing. I didn't realize I had to
22 tell them, because that was part of my job.

23 Q. All right. So the answer is no, you didn't tell
24 people when you were coming in the building to take
25 pictures of the building, right?

1 A. Most people I didn't have to tell them. I just
2 go in and talk to them. They were always friendly. I
3 never had a problem.

4 Q. You just show up and take, what you said on
5 direct, close-up photographs unannounced, right?

6 A. Outside the building, absolutely.

7 Q. Because that's what Brad Decker told you to do.

8 A. Yep.

9 Q. Okay. And like you also said, you got in
10 occasionally. You were able to get inside every now and
11 then to take pictures on the inside?

12 A. Uh-huh.

13 Q. That's what Mr. Decker wanted you to do, get in
14 there and take as many pictures as you want?

15 A. It wasn't just their property, though. It was
16 all the properties. I've got pictures of our other
17 building. I've got pictures of the other unit that the
18 other tenants, spots at the same property. It's not
19 like I was targeting them.

20 Q. And it's your testimony here today that you did
21 not oversee the installation in 2019 of the drywall on
22 the Two Men And A Truck side?

23 A. Uh-huh. That's correct.

24 Q. Your testimony here today is you were there for
25 20 minutes?

1 A. Roughly. It was over two years ago. I can't
2 remember exactly how long, but I know I didn't have no
3 supervision. I wasn't in charge of supervising or
4 hiring or anything else to do with that job.

5 Q. So is it 20 minutes or not, because you seemed
6 pretty confident about 20 minutes on direct.

7 A. More or less, yeah, roughly. I mean, it might
8 have been 18, but it was like 20 minutes, in that
9 general area.

10 Q. And you never approved the start date of that
11 project?

12 A. I never approved nothing on that project.

13 Q. It's your testimony today that you did not tell
14 Brilin you need to come on the other side in another
15 tenant's premises to fix the drywall?

16 A. Nope.

17 Q. They just magically showed up all on their own?

18 A. I guess, because the Two Men And A Truck moved
19 some pallets and stuff in order for them to get to that
20 wall, but I had nothing to do with it.

21 Q. And the job was not satisfactory to you?

22 A. No.

23 Q. And it's also your testimony, I think we heard
24 now two people, that your testimony is you saw people
25 taking a sledge hammer to the wall?

1 A. They had a piece of wood with like a 12-foot,
2 10-foot piece of 2X4, 2X6 on the floor and they're
3 hitting it with a sledgehammer trying to push the wall
4 over.

5 Q. Right. So they're not actually banging the
6 drywall with a sledgehammer. They're just knocking a
7 piece of ---

8 A. Try to knock. The wall down.

9 Q. (Inaudible.)

10 A. That's what I said, they're trying to knock the
11 wall back in. Yeah. I never said they were damaging
12 it.

13 Q. (Inaudible.)

14 A. Right.

15 Q. And that happened during the 20 minutes that you
16 were there?

17 A. Uh-huh.

18 Q. When did you stop working for Decker Inspections,
19 Mr. Schulte?

20 A. April of 2020, I guess.

21 Q. And why did you stop working for them?

22 A. COVID.

23 Q. COVID. So you got let go?

24 A. Yep.

25 Q. Have you ever seen a copy of this lease in this

1 case, Mr. Schulte?

2 A. Probably when they first moved in, but I couldn't
3 tell you for sure. I don't know.

4 Q. You don't know what it says?

5 A. I've seen -- some leases I've seen and some of
6 them I haven't. I don't -- I honestly don't know.

7 Q. And you don't really know what it said back in
8 2020, do you?

9 A. No.

10 MR. WHITE: Nothing further, Your Honor.

11 THE COURT: Any redirect limited to what he went
12 into?

13 MR. DLUZNESKI: No redirect, Your Honor.

14 THE COURT: Thank you, sir. You may step down.
15 Watch your step as you're stepping down.

16 (Witness leaves the witness stand.)

17 Lawyers approach.

18 (Bench conference was held off the record.)

19 Give me just a moment, ladies and gentlemen. Why
20 don't you stand up and stretch your legs just for a few
21 moments. Ladies and gentlemen, this is one of those
22 times. Remember I told you there would be times where
23 I've got to take up matters of law with the attorneys
24 that I can't do while you're sitting over there? This
25 is one of those times.

1 I'll ask that you retire back to the jury
2 deliberation room. Do not talk about the case. Do not
3 do any type of independent research or investigation.
4 We'll get you back just shortly.

5 (Jury leaves courtroom at 3:56 p.m.)

6 Yes, sir.

7 MR. DLUZNESKI: Thank you, Your Honor. Your
8 Honor, we have one final witness on our witness list,
9 Mr. Trip Moore, who is the owner of Two Men And A Truck.
10 Two Men And A Truck occupied the adjoining commercial
11 space from Brilin Electric during Brilin's tenancy. Due
12 to previous scheduled commitments, Mr. Moore has been
13 able to be here with us up to this point.

14 I just conferred with my client, and it's my
15 understanding that he has had communications with Trip
16 Moore. Trip Moore is on his way back to South Carolina
17 from those out-of-state commitments in Cleveland, Ohio
18 as we speak, and he will be here first thing tomorrow to
19 testify.

20 So at this time, we would request that the Court
21 allow us to call Trip Moore as our final witness first
22 thing tomorrow. I do not envision his testimony will
23 take long at all, but I would respectfully request that
24 the Court indulge the plaintiff and allow us to call Mr.
25 Moore as our final witness first thing tomorrow.

1 MR. WHITE: If I may, Your Honor?

2 THE COURT: Yes, sir.

3 MR. WHITE: We would object to this witness. We
4 don't believe he's relevant in any way. I've had an
5 opportunity to speak with Trip Moore, and I frankly
6 don't know what he is going to offer in terms of
7 substantive evidence that will assist the plaintiff in
8 any way and proving up any of the elements of any of
9 their causes of action.

10 I think this testimony is designed in some form
11 or fashion to just make Mr. Russell the principle of the
12 defendant, look like a not nice guy, or something to
13 that effect. Interactions with, with Brilin, with Mr.
14 Russell, I don't see how any of that is relevant.

15 And I would also make an objection under 403 as
16 well. I think it's a waste of time. I think it's
17 distracting. It's gonna confuse the jurors, and it just
18 doesn't add anything to the plaintiff's case in chief,
19 Your Honor.

20 THE COURT: Any reply?

21 MR. DLUZNESKI: No reply, Your Honor.

22 THE COURT: All right. I have to agree with
23 defense counsel. I'm not seeing how an adjoining
24 property owner, unless he's gonna testify to something
25 new that has not been presented, is going to be relevant

1 to this case that this Court needs then to suspend the
2 conduct of this trial to allow this person to come in as
3 part of your case in chief.

4 MR. DLUZNESKI: Well, and, Your Honor, I would
5 say that some of these repairs, the temporary repairs
6 that have been mentioned by -- to the demising wall that
7 had been testified to by the plaintiff's witnesses in
8 this case were on Mr. Moore's side of this space. Mr.
9 Moore can certainly offer some testimony that maybe
10 other witnesses for the plaintiff were not able to about
11 what occurred regarding the repairs to the demising wall
12 on his side. The timeline for that. The conduct
13 involved in that, and the interactions between the
14 various parties. So I think from that perspective, Your
15 Honor, Mr. Moore, may be in a position to offer
16 testimony that other witnesses for the plaintiff have
17 not been able to provide.

18 THE COURT: Have you deposed this witness?

19 MR. DLUZNESKI: We have not, Your Honor.

20 THE COURT: Then how do you -- then what
21 assurance do you have to give the Court, if that's gonna
22 be his testimony?

23 MR. DLUZNESKI: From my conversations with him, I
24 believe that that -- he will have something to offer in
25 that regard.

1 THE COURT: Okay. All right. Anything else?

2 MR. WHITE: Very briefly, Your Honor. Just
3 proffering as an officer of the court. I just think
4 that my interview of Mr. Moore, the wall being pushed
5 out had no impact on their business operations in any
6 way. And as you have heard through other testimony, Two
7 Men And A Truck has actually moved from what we've been
8 calling the Two Men And A Truck side to the Brilin side.
9 And there was really not much of any delay in that
10 regard either. So it really hasn't been any impact
11 whatsoever to the tenant. And, again, what does that
12 have to do with anything in terms of the plaintiff's
13 case in chief anyway? Thank you, Your Honor.

14 THE COURT: All right. But you -- likewise, you
15 haven't deposed this witness?

16 MR. WHITE: I didn't see a need to, Your Honor.

17 THE COURT: All right. The lawyers have
18 requested four days worth of trial of this case and we
19 have been -- we, being everybody that's been involved
20 with this case, trying to get this case to move on.
21 We've reached a point in the trial where I've
22 conferenced with the lawyers and I think that it's time
23 that I'm not going to extend the opportunity for
24 plaintiff to present anymore in his case in chief by
25 calling this witness. I have yet to hear anything that

1 this witness will add to what has already been presented
2 to this jury. I've heard that this witness may
3 complement and maybe further support other testimony
4 that's presented by other witnesses that have already
5 been called in this case. And so I'm not going to grant
6 the request to delay moving on with this case.

7 With that being said, you have the opportunity,
8 and I would not exclude my ruling -- my ruling would not
9 exclude you using Mr. Moore in some type of reply,
10 because you will have the opportunity to present a reply
11 to anything that the defense says. So you can get Mr.
12 Moore here, and if you feel like that something has come
13 up, then you can present Mr. Moore through your reply.

14 So I'm not saying don't call him, but not calling
15 him now at this juncture in the case, I don't think it
16 adds anything to or in any way prejudices your case at
17 this juncture. You can call him later.

18 MR. DLUZNESKI: Sure. I understand, Your Honor.

19 THE COURT: Okay. So, we now have the jury out.
20 I know we have motions typically -- and my understanding
21 is you're now going to rest; is that correct?

22 MR. DLUZNESKI: Yes, Your Honor, barring any
23 reply from Mr. Moore, plaintiff would rest.

24 THE COURT: Okay. Well, reply doesn't -- you
25 rest your case. Mr. Moore will come up in reply in the

1 event he's needed to address anything that the defense
2 has.

3 What I would suggest for efficiency of time is to
4 go ahead and rest now. Let's do the motions while the
5 jury is out. Then you can rest in front of the jury if
6 I -- in the event I deny his motions, then you can rest
7 in front of the jury, then we'll move to the defense
8 case. That way we don't have to bring them back in and
9 bring them back in. Any problem with doing that,
10 counsel?

11 MR. DLUZNESKI: No, Your Honor.

12 MR. WHITE: No, Your Honor.

13 THE COURT: Okay. Okay. With that being said,
14 bring the forelady out. I'm gonna send the jury home
15 for the day and we're gonna do these motions.

16 (Forelady enters the courtroom at 4:04 p.m.)

17 Madam Forelady, you're gonna get your exercise
18 coming in and out.

19 MADAM FORELADY: That's okay.

20 THE COURT: We are going to take up some more
21 matters of law with the attorneys. It might not be that
22 quick, as what I thought. And so I would like to inform
23 the jury that you all's work is done for the day. But
24 ask them to remind them the two instructions. No
25 investigation, no discussion of the case, and ask them

1 to be back in the jury deliberation room by 9:30 in the
2 morning. Thank you very much.

3 (Madam Forelady leaves the courtroom at 4:05
4 p.m.)

5 All right. So Plaintiff want to rest on the
6 record?

7 MR. DLUZNESKI: Yes, Your Honor, plaintiff rests.

8 THE COURT: All right. Yes, sir?

9 MR. WHITE: May I have one moment, Your Honor?

10 THE COURT: Okay. All right.

11 MR. WHITE: Your Honor, at this time the
12 defendant would like to make a motion for a direct
13 verdict on plaintiff's first cause of action, third
14 cause of action, and fifth cause of action.

15 The first cause of action is negligence. Your
16 Honor, this cause of action is barred by the economic
17 loss rule of duties, rights, responsibilities of
18 defendant Brilin with respect to plaintiff, CREH, are
19 governed exclusively by the contract. And the second
20 cause of action does allege a breach. So the negligence
21 and gross negligence claims should be dismissed on that
22 basis.

23 The fraudulent misrepresentation, we have not
24 seen evidence of intent to deceive. And this goes along
25 with the civil conspiracy as well. There has not been

1 any intent to conceal any damage that may or may not
2 have happened to the demising wall by potentially or
3 possibly Brilin Electric or, for that matter, W&L
4 Services as it pertains to civil conspiracy.

5 As far back -- you heard evidence from Mr.
6 Robinson that he had concerns about the wall as far back
7 as 2019. There was an opportunity when the sheetrock
8 was removed from the wall in 2019 for anyone to look at
9 it. You've heard Mr. Schulte, the property manager say
10 that he was there and had an opportunity to look at it.

11 You have evidence of the Brilin -- excuse me,
12 W&L's invoice that talks about how -- and let me just
13 cite you that exhibit exactly, Your Honor. Defense
14 Exhibit 15, labor to fix wall that had been knocked out
15 of bottom plate. That's kind of the worst civil
16 conspiracy if you're just gonna sit there and kind of
17 talk about it in your invoice.

18 And so, there was no effort by Brilin to conceal
19 any damage that it allegedly caused to the demising wall
20 in any way, let alone even have an opportunity to even
21 make a representation to that effect, Your Honor.
22 Because in this case, Brilin was sued on March 27th,
23 2020.

24 And as the evidence showed from Defendant's
25 Exhibit 14, per the request of plaintiff and plaintiff's

1 counsel, all communications from that point onward were
2 through the lawyers. So there wasn't even an
3 opportunity for Brilin or any agent of Brilin to even
4 make such a representation that can even be construed as
5 a fraudulent misrepresentation with any intent to
6 deceive.

7 Furthermore, and I'll be brief. Just a few more
8 points. If you go to Plaintiff's Exhibit 3 on page 2,
9 top paragraph: Furthermore, Carolina Real Estate
10 Holdings has relayed to us that employees and their
11 agents of Brilin Electric caused damage to an interior
12 demising wall between Brilin's Electric's lease base and
13 the commercial space leased by Two Men And A Truck as a
14 direct result of negligent forklift operation. And
15 this, Plaintiff's Exhibit 3 is dated September 24th,
16 2019.

17 So it's been known that there was some damage.
18 It may not have been known to what extent the damage
19 was, but we have heard no evidence whatsoever that
20 either Brilin or W&L Services did anything with any
21 intent to deceive, with any intent to conceal, anything
22 of that nature. And, therefore, the fraudulent
23 misrepresentation and civil conspiracy claims should be
24 dismissed with prejudice, along with the negligence and
25 gross negligence claims, Your Honor. Thank you.

1 THE COURT: Yes, sir.

2 MR. DLUZNESKI: Thank you, Your Honor. I'm going
3 to start my comments with the first cause of action,
4 negligence, gross negligence, and then I'll move on to
5 fraudulent misrepresentation and several conspiracy. As
6 far as the negligence goes, as the Court's aware, one of
7 the elements of negligence is to what duty did Brilin
8 Electric owe to its landlord, Carolina Real Estate
9 Holdings?

10 And under the Miller v. City of Camden case,
11 which is 317 S.C. 28. It's a Court of Appeals case from
12 1994 that the Court in that case said, even if there is
13 no duty to act, so...

14 And I would submit that there was a duty between
15 Brilin Electric and its commercial landlord. In this
16 case, Carolina Real Estate Holdings. But even if that's
17 not the case. Even if the Court determines that there
18 was no duty that Brilin owed to CREH, the Court in
19 Miller said that even if there is no duty act, the
20 defendant who acts voluntarily assumes a duty to use due
21 care.

22 In this case there's been a lot, a plethora of
23 witness testimony about the defendant's use of the
24 warehouse space, particularly its use of the forklift
25 within the warehouse space. And we believe during our

1 cross-examination of Mr. Russell in defendant's case in
2 chief, one of the pieces of evidence that will come out
3 to the jury is that Mr. Russell admitted to Mr. Decker
4 on one or more occasions during Brilin's lease term that
5 Brilin caused damage using a forklift. And we've heard
6 and seen evidence of that here today.

7 So, Brilin's actions in those regards were
8 voluntary. And because Brilin acted and used the
9 warehouse space pursuant to the lease agreement for the
10 three-year lease term, we would submit that Brilin owed
11 a duty to use due care.

12 And it is a question for the jury to determine
13 whether based on the testimony and evidence that's been
14 presented, whether or not Brilin used due care. So we
15 would ask the Court to deny defendant's motion for a
16 directed verdict on the first cause of action.

17 As far as the fraudulent misrepresentation goes,
18 our fraudulent misrepresentation claim is making
19 misrepresentations the defendant knew to be false
20 regarding the demising wall. Now, the Court heard
21 testimony and the jury heard testimony today that there
22 were temporary repairs done to the demising wall in
23 2019.

24 There was also evidence and testimony that
25 Carolina Real Estate Holdings was not afforded any

1 opportunity to not only supervise that work, but inspect
2 the work and approve it after the work was completed.
3 And the testimony from Mr. Decker and the testimony from
4 Wayne Schulte that plaintiffs have presented in this
5 case bring that out. And, again, we have not heard the
6 defendant's case in chief at this point, so we would ask
7 the Court to deny that as well, so we can elicit
8 testimony from the defendant's witnesses on that count.

9 As far as the civil conspiracy charge goes, Your
10 Honor, there is also a case law that we would present at
11 this point in that regard. The civil conspiracy was
12 between Brilin Electric and W&L Services. Now, one of
13 the defendant's exhibits was an invoice from W&L.

14 And the invoice said that it repaired damage to
15 the demising wall that had been kicked out at the
16 bottom. So our claim for civil conspiracy is that
17 Brilin and W&L Services, and the Court heard testimony
18 from Wayne Schulte, that he was on site for 20 minutes.
19 He didn't see all the work that was done. He didn't see
20 exactly what they were doing, other than hitting the
21 bottom of the wall with sledgehammers.

22 You didn't get a chance to come back and inspect
23 the work or approve the work after the work was
24 completed. And the work that was done was not
25 acceptable to him. And the Court also heard testimony

1 from Mr. Decker, as well as our two experts, that the
2 work that was done in 2019 was not acceptable and did
3 not make the wall structurally sound from the damage.

4 As far as civil conspiracy goes, Lee versus
5 Chesterfield General Hospital. And the key strike to
6 that is 289 S.C. 6. It's another South Carolina Court
7 of Appeals case from 1986. And the Court of Appeals
8 indicated in that case that the gravamen of a civil
9 conspiracy is the damage resulting from an avert act
10 done pursuant to the combination, not the agreement or
11 combination per se.

12 In this case, the overt acts was the work done on
13 the demising wall and the patching of the demising wall
14 up that involved Brilin Electric and W&L Services. Now,
15 the Court heard that CREH was not involved in that
16 process. The Court heard that from Wayne Schulte on
17 direct examination.

18 So, in order for W&L Services to have been
19 involved in that or had been able to do that, Brilin had
20 to be involved in that. Brilin was the property owner
21 on one side of the wall. There's also case law,
22 Exchange Bank of Megett vs. Bennett, 193 S.C. 320.
23 That's a South Carolina Supreme Court case from 1940.

24 And what the Supreme Court said in that case is
25 that when a civil conspiracy is claimed, the plaintiff

1 has the right to sue and to proceed to trial against as
2 many actors of the civil conspiracy as the plaintiff
3 desires. There's no requirement, in other words, that
4 the plaintiff files suit and proceed to trial in the
5 action against all of the co-conspirators in the case.
6 In this case, Your Honor, we are moving forward with the
7 action against Brilin Electric, which we submit, based
8 on the evidence, was one of the co-conspirators involved
9 in this wall damage.

10 And going back very briefly, the case that I just
11 cited, one of the elements of a civil conspiracy is
12 damage caused to the plaintiff by way of this
13 combination between Brilin Electric and W&L Services.
14 We've talked about the demising wall at length during
15 the plaintiff's case in chief. We've seen the damages
16 that plaintiff has had to pay to have that wall
17 inspected, determine the root cause to repair that wall
18 and make sure it was structurally sound.

19 So there was certainly damage that we have
20 quantified on the record of this case in furtherance of
21 our civil conspiracy claim against Brilin. So, Your
22 Honor, we would respectfully request that the Court deny
23 all of defendant's motions for directed verdict.

24 THE COURT: Reply?

25 MR. WHITE: Very briefly, Your Honor. I just

1 wanted to add one point and then just give you a couple
2 of case cites. You heard the expert. We stipulated
3 that the engineer is an expert in structural
4 engineering. That he had to get the wall opened up to
5 see what was going on in there. You've heard no
6 evidence in the plaintiff's case in chief that Brilin
7 had any knowledge as to what the integrity of those
8 studs were at any point.

9 So how are they -- how are -- no one, no one
10 knew. No one knew and Brilin certainly wasn't gonna
11 tear open that wall because it's not their wall. That's
12 why they wanted to do the final walkthrough, which was a
13 commercially reasonable thing and standard practice in
14 South Carolina commercial landlord/tenant relationships.

15 Even the expert said, when he got there four days
16 after the tenancy was ended on its natural terms. And
17 CREH got back in possession of the premises. I don't
18 know what's going on. And Mr. Robinson was like, yeah,
19 I think there's some issues here. His issues were all
20 the way up to 2019 because it was pushed out of place.

21 So, you know, it's really a question of like,
22 well, what -- we don't really know what the extent is.
23 That's, again, why we wanted to do the walkthrough,
24 which they refused to do. And they started doing all
25 their stuff the moment they got possession. So they

1 obviously knew they needed to do something. Something
2 needed to be happening. So it's very confusing as to
3 how this, this was all concealed from them, when Mark
4 Robinson testified that he went into the space the day
5 CREH got it back. So I just wanted to add that factual
6 point.

7 Just with the economic loss doctrine, Your Honor,
8 I just wanted to cite to Tommy L. Griffin Plumbing and
9 Heating Co. That's 320 S.C. 49. A breach of a duty
10 which arises under the provisions of a contract between
11 the parties must be redressed under contract and a court
12 action will not lie. A breach of a duty arising
13 independently of any contact between the parties,
14 however may support a tort action.

15 These are all economic damages they're claiming.
16 There's no duty independent of what's set forth in the
17 contract. A negligence action cannot arise where two
18 parties are in privity of contract without a special
19 relationship between the alleged tort fees or an injured
20 party not arising in contract.

21 That's Brandon Mill, LLC 2019 WL 3458688, that's
22 a federal district court of South Carolina case from
23 July 13th, 2019, which cited to Tommy L. Griffin
24 Plumbing and Heating.

25 And then with the civil conspiracy, just case law

1 to add for Your Honor's consideration, Paradis v.
2 Charleston County School District, 433 S.C. 562, a 2021
3 case. A plaintiff asserting a civil conspiracy claim
4 must establish the combination or agreement of two or
5 more persons to commit an unlawful act or lawful act by
6 unlawful means, together with the commission of an
7 overact in furtherance of the agreement and damages
8 proximately resulting from -- to the plaintiff.

9 And this case also reaffirms the notion that a
10 civil conspiracy is an intentional tort and that
11 plaintiffs must demonstrate an intent to harm. Where is
12 the evidence that there was some intent to harm the
13 plaintiff here? We have quite the opposite. What
14 Brilin was trying to do was fix the Two Men And A Truck
15 side at CREH's assistance on the 2019 side. And once it
16 got all its stuff out, in 2020 when the lease was up, it
17 was gonna fix that side. Per the direction of CREH at a
18 final walkthrough, which CREH simply refused to do.

19 And if CREH had gone in there and done their, you
20 know, diagnostic, which is a diagnostic, which is a
21 fancy way of just saying cutting a hole in the drywall
22 and saying, hey, look, it's not just the drywall that
23 needs to get fixed, it's the, it's the studs too, then
24 they would have gotten fixed. We asked that question to
25 Mr. Decker. Do you have any reason to believe they

1 wouldn't have fixed that if they would have known about
2 it?

3 So, there's no fraudulent misrepresentation here,
4 and there certainly wasn't a civil conspiracy between
5 the company that was hired to do some drywall work and
6 the tenant, who was just trying to fix whatever they
7 could to get the landlord off their back. Thank you,
8 Your Honor.

9 THE COURT: Question. Let's say that plaintiff
10 establishes a factual foundation that applies to a
11 theory in this case that says that your client should be
12 responsible for the payment of the wall, the extra cost
13 that had to -- that has been presented to, to make the
14 wall as the way plaintiff wanted the wall to be made, is
15 that damage recoverable under the lease if plaintiff
16 also establishes a breach of the lease?

17 MR. WHITE: I think it's recoverable under the
18 lease. In this case, Your Honor, we would certainly be
19 arguing, we have our counterclaim that there was a
20 breach of the implied ---

21 THE COURT: We'll get to those counterclaims.
22 I'm asking about plaintiff's claims.

23 MR. WHITE: I think it's a breach argument. If
24 anything it's worse for defendant because they spent all
25 that money patching up their side, and then all that

1 drywall got torn down. Studs got fixed and then the
2 drywall went back up. It would have been a lot easier
3 if we just did it all at once, you know?

4 THE COURT: Okay, humor me. Okay. At this
5 juncture at this motion that's made, I have to view the
6 facts that have been presented to the -- before the
7 Court in a likeness most favorably to the plaintiff,
8 okay?

9 MR. WHITE: Yes, Your Honor.

10 THE COURT: So, let's take a look at this wall.
11 And the plaintiff has presented some monetary damages
12 that are associated with this wall. If the plaintiff is
13 successful in establishing that this wall was bad and
14 what the -- and what they needed to do to the wall is
15 appropriate, is that damage recoverable under the breach
16 of contract claim that plaintiff is seeking against your
17 client?

18 MR. WHITE: Yes. Subject to our affirmative
19 defense counterclaim.

20 THE COURT: I understand, subject to your
21 affirmative defenses we have not heard.

22 MR. WHITE: Yes, Your Honor.

23 THE COURT: All right. Tell me about this
24 economic loss rule. Mr. Plaintiff, tell me about this
25 economic loss argument that counsel's making. What

1 damages have presented to this jury that you intend to
2 ask them to award that is not recoverable under the
3 terms of the lease?

4 MR. DLUZNESKI: Well, I think, Your Honor, that
5 goes to the damages, the various damages that we
6 presented as evidence that Brilin caused to this
7 property by the reckless use of this forklift. And I
8 understand that recklessness is a level above due care,
9 and that's something that the jury is tasked to
10 determine.

11 THE COURT: Okay. Now, answer my question. I'm
12 talking about the damages.

13 MR. DLUZNESKI: Right.

14 THE COURT: What damage are you going to argue is
15 recoverable by your client that is not also recoverable
16 under the breach of contract claim, if you establish
17 that the particulars? I know that you've gone through
18 different items through this trial as to what the
19 defendant has done bad and that you've given dollar
20 amounts for those things. What, what damage is not
21 covered within the parameters of the breach of cause of
22 action?

23 MR. DLUZNESKI: Well, I think the wall would be
24 one of those damages, because the lease agreement,
25 unless I'm mistaken, does not obligate the tenant to

1 make repairs to the wall. I think that the damages
2 related to the wall would be covered by negligence and
3 gross negligence, if the jury finds those. But I don't
4 know that the lease agreement itself includes a
5 provision that says for a non-load bearing wall, such
6 as, you know, we've had testimony that this demising
7 wall was not load bearing, it wasn't holding up the
8 building. That would be recoverable under plaintiff's
9 cause of action for gross negligence and gross
10 negligence [sic].

11 THE COURT: So it's not a violation of the lease
12 for any of the allegations that I've heard made against
13 defendant for any of the damage to the wall.

14 MR. DLUZNESKI: The only, the only provision of
15 the lease agreement I can think of that would cover that
16 would be -- and I forget which specific provision, but
17 that the tenant has to return the premises in as good of
18 a condition to the landlord at the end of its lease term
19 as it received at the beginning of its lease term. The
20 lease does not include negligence -- negligent or
21 reckless acts by the tenant that caused damage to the
22 premises.

23 THE COURT: So a tenant under the terms of the
24 lease can act negligently, I mean, while he's at the
25 property or, in fact, used the property for a purpose

1 that's intended to -- for its lease or reasonably --
2 commercially reasonable use of the property and then
3 caused damage to something that I would classify as
4 being capital in nature versus personal property, and
5 then the tenant doesn't have to pay for that under the
6 terms of the lease?

7 MR. DLUZNESKI: Under the terms of the lease I
8 think those -- I mean, if we were to construe that the
9 provision regarding returning the property to the
10 landlord in as good of a condition as it received it, I
11 think that we could have that included in there, but
12 we're talking about negligence on the part of Brilin
13 Electric after being told by the plaintiff ---

14 THE COURT: Okay. I'm not -- I'm not asking you
15 questions about the theory of liability. I'm asking
16 about the damages. I want to know, because I believe
17 his economic loss rule is probably a very good argument,
18 because the economic loss rule, the way I understand it,
19 and have applied it in cases, is meant that you don't
20 allow parties who have this obligation and
21 contractually have joined them together, that you don't
22 allow -- the economic loss rule doesn't allow you then
23 to go outside of that contract, which is a written
24 document that defines the duties that both parties
25 agreed to in advance, that this is what -- this defines

1 our relationship.

2 And so that if this contract is breached, then
3 the damages are gonna be defined by those parties within
4 that document. The economic loss rule, the way I
5 understand it, does not allow parties to go outside of
6 that document to create new duties, than to be able to
7 come to court and say, okay. Well, in addition to this,
8 then you also have negligence.

9 The economic loss rule, as I understand it,
10 prevents parties from sort of double dipping in
11 theories. It sort of is an efficient way that the Court
12 can operate itself and manage what you present to a
13 jury. So I'm asking questions for the purposes of
14 determining what damages that are outside that you
15 presented are not gonna be covered by this breach of
16 contract claim that you have against the defendant.

17 MR. DLUZNESKI: And if the Court takes that
18 position based on the economic loss rule, I think I
19 could still argue to the jury that these damages are
20 recoverable. My argument as to negligence is even --
21 the defendant still owes a duty to the plaintiff, under
22 the law.

23 THE COURT: Oh, I am not disagreeing with you.
24 Yes.

25 MR. DLUZNESKI: Right.

1 THE COURT: Still owes that duty.

2 MR. DLUZNESKI: So I think that's the perspective
3 that we're taking, that there was something in addition
4 to a breach of contract here. There was negligent
5 behavior on the part of the defendant. There was
6 reckless behavior on the part of the defendant. And
7 primarily, if the jury finds that the defendant acted
8 recklessly in this case which, of course, our position
9 is that it is, the jury is free to award punitive
10 damages and contract does not allow the jury to do that.

11 THE COURT: And he hasn't made his motion as to
12 directed verdict on punitive damages. Okay. Question,
13 what are you saying or what evidence has been presented
14 to the jury that you intend to argue was negligent by
15 this defendant in regards to that wall?

16 MR. DLUZNESKI: To the wall, there has been
17 testimony and evidence presented about the defendant
18 hitting the wall with a heavy piece of equipment. John
19 Abernathy testified ---

20 THE COURT: You're talking about the forklift
21 thing?

22 MR. DLUZNESKI: Yes. Yes. And, you know, there
23 was evidence presented. There was a picture of the
24 demising wall itself with puncture marks in it. There's
25 been witness testimony that those puncture marks are the

1 teeth, if you will, of a forklift.

2 John Abernathy testified when I asked him, what
3 do you, in your professional opinion, attribute that
4 damage to the wall to? So in other words, how much
5 strength had to have hit this wall to cause the damage
6 that you observed? And his testimony was that it was
7 something outside of an individual. It had to be some
8 piece of equipment to be able to exert that much force
9 to bend these steel studs out of place as badly as they
10 were.

11 THE COURT: So if I'm viewing the evidence in the
12 light most favorably to you at this point, it is going
13 to be the negligent operation of the forklift that
14 caused the damage to the wall that then resulted in all
15 these bad things happening to the wall being bowed out
16 and all that bent, bent things.

17 MR. DLUZNESKI: That's correct, Your Honor. And
18 the negligent operation of the forklift. And there's
19 also been testimony on this caused the majority, if not
20 all of the damages to the property that we're talking
21 about. It caused damage to the rollup doors. It caused
22 damage to the asphalt pavement outside, even after Mr.
23 Schulte testified that CREH told Brilin and put Brilin
24 on notice multiple times, look, don't use a forklift
25 outside. So I think that's our argument that we would

1 argue to the jury in closing. And I think that there's
2 ample evidence that, you know, we have a basis to argue
3 that at this point based on the testimony and evidence
4 that we presented.

5 THE COURT: Okay. All right. Thanks for, thanks
6 for that.

7 MR. WHITE: Can I be briefly heard?

8 THE COURT: Yes, sir.

9 MR. WHITE: I wholeheartedly disagree with that
10 negligence theory.

11 THE COURT: Well, I have to look at the facts
12 most favorable in light to him.

13 MR. WHITE: I know you do, Your Honor. But the
14 lease, section 11 establishes a duty to repair on behalf
15 of the tenant, and a duty, 11(b) to return the premises
16 to landlord at the expiration of the termination of the
17 lease in as good as condition and repair as on the lease
18 commencement date. And they specifically in their
19 second cause of action as to breach, Brilin breached the
20 agreement by failing to maintain the subject property,
21 including the building located thereon in good order and
22 repair during the lease term provided for in the
23 agreement.

24 The duties are established right there by the
25 lease. Also, there was a comment about whether this

1 demising wall is a capital structure or not. I would
2 respectfully disagree, Your Honor. But even if it is
3 ---

4 THE COURT: Okay. And that was my term, so maybe
5 I injected something that I shouldn't have. In my mind
6 I was delineating between personal property versus real
7 estate.

8 MR. WHITE: Fair enough, Your Honor. But the
9 lease specifically covers capital. Maybe that's why I'm
10 thinking of it that way. So section 10 establishes
11 repair duties by the landlord. And it says that the
12 landlord agrees to keep in good order the repair,
13 foundation, structural support in exterior walls of the
14 building located on the premises.

15 So, we've heard the testimony that this is not a
16 structural support, this is simply a demising wall that
17 separates two different suites or units, whatever you
18 want to call within the building itself. However, even
19 if it were considered a capital repair, it says that
20 provided the landlord shall not be responsible for
21 repairs or capital repairs or replacements rendered
22 necessary by the negligence or intentional wrongful acts
23 of tenants, its employees, agents, invitees, or
24 contractors.

25 All these duties are established by the lease.

1 These are all economic damages that have been put
2 forward. There is no basis to go beyond breach of
3 contract. This is exactly what the economic loss rule,
4 the economic loss doctrine is designed to prevent.

5 And, yes, punitive damages are wholly
6 inappropriate, which I haven't made that motion yet,
7 because I don't need to make that motion -- well, maybe
8 I need to make that motion, depending on how my DV
9 motion goes on this first cause of action. But once we
10 kick the negligence and gross negligence, it's all about
11 economic damages under the breach of contract claim,
12 Your Honor.

13 THE COURT: Okay. I'm gonna move on to another
14 argument, unless you have something else to say on that
15 one, briefly.

16 MR. WHITE: Just very briefly. On the punitive
17 damages side, Your Honor ---

18 THE COURT: Don't worry about that. We're not
19 gonna address that.

20 MR. WHITE: Okay. Fair enough, thank you.

21 THE COURT: Civil conspiracy, my understanding of
22 civil conspiracy would have required a showing of -- and
23 maybe I'm misusing the word, so don't hold me to the
24 legal definition of this, but I thought there had to be
25 a special damage in order to recover in civil

1 conspiracy. Is that true?

2 MR. DLUZNESKI: Your Honor, I believe, and if I
3 remember correctly, I actually looked at this case,
4 Paradis versus --- it's a -- and I don't have the key
5 site to it, Your Honor. It's a recent case. Paradis
6 versus Charleston County School District. The key sight
7 is 433 S.C. 562.

8 THE COURT: Uh-huh.

9 MR. DLUZNESKI: The 2021, South Carolina Supreme
10 Court case, the Supreme Court ruled in that case that we
11 no longer have to allege or prove special damages to
12 maintain a cause of action for civil conspiracy.

13 THE COURT: I remember that case. Thanks for
14 pointing that out.

15 MR. DLUZNESKI: Thank you.

16 THE COURT: Anything? Yes, sir.

17 MR. WHITE: No, Your Honor.

18 THE COURT: Okay.

19 MR. WHITE: Just leaning forward.

20 THE COURT: All right. Okay. I'm gonna step in
21 the back for a few moments. Thank you very much.

22 MR. DLUZNESKI: Thank you, Your Honor.

23 (Court concluded at 4:26 p.m.)

24

25 --- THIS CONCLUDES DAY TWO OF TRIAL ---

CAROLINA REAL ESTATE HOLDINGS VS. BRILIN ELECTRIC

DAY THREE OF TRIAL

THE COURT: (Audio starts here.) At the end of the day, we took the directed verdict motions made by the defense. And I need to go on the record and make my ruling. The -- I had a conference with the attorneys afterwards in chambers and shared much of my ruling with them.

I will grant the motion in regards to the causes of action -- let me get my numbers right. In regards to the negligence and gross negligence claims, I do think that economic loss rule will prevail in regards to those motions, especially -- and also, I think the terms of the lease are going to cover any claims of negligence as well. So the first cause of action will be gone. I don't think this is a fraudulent -- a case that deals with fraud, based on the evidence that's been presented so far.

On the civil conspiracy claim, I did take a look at the Paradis versus Charleston School District case. That case issued in 2021, the Supreme Court did remove the element of special damages as part of South Carolina's juris prudence on civil conspiracy.

So tell me, refresh my memory. What is your position on the civil conspiracy claim as to why I

1 should grant the directed verdict motion? Am I throwing
2 you off this morning?

3 MR. WHITE: Let me grab my folder real quick,
4 Your Honor --

5 THE COURT: Sure.

6 MR. WHITE: -- with that information handy. You
7 know, the combination of an agreement between two or
8 more persons who commit an unlawful act or a lawful act
9 by unlawful means to go to the commission of an
10 overactive agreement. There simply was no agreement
11 here in this case. They just fell in the elements, Your
12 Honor.

13 There was no agreement. There's been no evidence
14 to suggest there was even an agreement between W&L
15 Services, Brilin Electric to, I guess, commit some sort
16 of act or omission with respect, I guess, concealing the
17 extent of the damage to the demising wall that might
18 have been caused by Brilin or any agents thereof. And
19 so, I just don't see where there was that intent to
20 harm, because I don't see where there was any agreement
21 to do that.

22 CREH told Brilin to fix the wall on the one side.
23 They got W&L to do it, and they tried to do it on the
24 other side. But there simply was no agreement to do
25 anything that could do harm or even intend to do harm

1 against the plaintiff in this case, Your Honor.

2 THE COURT: Yes, sir.

3 MR. DLUZNESKI: Thank you, Your Honor. Your
4 Honor, the Court heard testimony yesterday from Wayne
5 Schulte. Wayne Schulte was the, again, the property
6 manager for CREH that was supervising Brilin lease
7 space, as well as all the other commercial properties in
8 that area that CREH owned.

9 Wayne Schulte testified that he did not instruct
10 W&L Services as to the start date for the work. He did
11 not supervise the work. He did not approve the work.
12 He was only there for 20 minutes. So I think the
13 testimony of Wayne Schulte shows that CREH did not
14 arrange for this work to be done. Did not orchestrate
15 this work to be done.

16 The work was done to the demising wall on -- in
17 Brilin Electric's leased space. So if CREH did not
18 arrange for the work to be completed or even, even
19 schedule a start time for the work, the only other party
20 who could have done that would have been Brilin
21 Electric. It was Brilin Electric's leased space.

22 And although they may not have had a written
23 agreement for that work, if there was no agreement
24 between Brilin Electric and W&L Services for the repairs
25 to the wall, how did W&L Services know what's good work

1 to perform? How did they know when to get started? How
2 did they know what they were supposed to do there? How,
3 how did W&L Services get into that, that space to do the
4 repair work?

5 Your Honor, we would submit that while there is
6 not a written agreement between W&L Services and Brilin
7 Electric, there had to have been a verbal one.
8 Otherwise, it doesn't make logical sense as to why W&L
9 was there when they were, what they did there, how they
10 were able to get into the property.

11 Having said that, Your Honor, we do understand
12 that the intent to harm is an issue for the plaintiff,
13 based on the evidence that's been presented. The Court
14 addressed that with us yesterday and I understand,
15 again, that that's an issue, but our position is polar
16 opposite from the defense as far as the agreement goes.

17 THE COURT: Thank you for that. Let me ask you
18 another question. The elements of civil conspiracy,
19 though, not include the combination with an agreement of
20 two or more persons to do something, but that something
21 has to be that they are an agreement or that they're in
22 a combination to commit one in either an unlawful act
23 that harms a party, or the other one is to do a lawful
24 act by an unlawful means. So, which is it that
25 plaintiff's contention occurred here?

1 MR. DLUZNESKI: I think that the plaintiff's
2 position is that the -- that the -- it was an unlawful
3 act to damage plaintiff's property. And, again, that
4 wraps up the damages. It's also damaged the property.
5 I think that's an unlawful act. That's the overt
6 unlawful act that the plaintiff is saying is the basis
7 for the civil conspiracy.

8 THE COURT: All right. But -- okay. The
9 plaintiff is also claiming that the damages to the wall,
10 any damages that can be proved that was done to the
11 wall, it's plaintiff's position that that is the
12 contractual responsibility of the defendant, because
13 the defendant -- plaintiff, if I understand it
14 correctly, plaintiff then has breached their obligations
15 under the terms of the lease?

16 MR. DLUZNESKI: The defendant has breached.

17 THE COURT: Yeah, the defendant has breached,
18 yes.

19 MR. DLUZNESKI: Yes. Yes. That is correct.
20 That's correct.

21 THE COURT: So, is -- okay. All right. Do you
22 want to respond?

23 MR. WHITE: No, Your Honor.

24 THE COURT: Yeah. All right. I'm struggling
25 with the civil conspiracy based on my understanding of

1 what civil conspiracy consists of and the facts that
2 I've heard in this case, because the, the act, which is
3 being complained of as part of the theory of civil
4 conspiracy is covered by the terms of the lease that
5 what the defendant -- that plaintiff in his other cause
6 of action says it's the responsibility of the defendant
7 to do.

8 And since the defendant didn't do it right, then
9 he is somehow committing an unlawful act when he hired
10 someone to do that. I just think that's a stretch.

11 And that's not a real legal word. I think that
12 doesn't fit into that legal element of what civil
13 conspiracy is supposed to encompass with the idea that
14 two people have joined together to commit an unlawful
15 act that then harms another party.

16 So I'm gonna grant the motion, directed verdict
17 motion on the civil conspiracy. But I still think,
18 based on what's been presented to me, that the damages
19 that are being sought by the plaintiff are still
20 recognized -- are still encompassed when you take a --
21 again, taking a look at the facts most favorably at this
22 junction in a light most favorably to the plaintiff.
23 All of those damages that plaintiff is seeking or has
24 announced, as I perceived them in this trial is still
25 covered under the terms of the lease and under the cause

1 of action that remains for the breach. I think you
2 phrased it as breach of contract.

3 MR. DLUZNESKI: Okay.

4 THE COURT: All right. Anything else?

5 MR. DLUZNESKI: No, Your Honor.

6 MR. WHITE: No, Your Honor.

7 THE COURT: All right. I think that all the jury
8 is in. Are you ready to call your first witness?

9 MR. WHITE: We are, Your Honor.

10 THE COURT: All right. Do you want to bring --
11 bring them in.

12 (Jury enters courtroom at 9:52 a.m.)

13 THE COURT: Madam Forelady, ladies and gentlemen,
14 thank you for your patience while we took up matters of
15 law, not only yesterday, but also some time this morning
16 as well. And, again, I apologize for having to exclude
17 you, but as I previously announced, in deciding matters
18 of law that apply to this case, sometimes it is required
19 that I make comments about the facts.

20 And so, I have to be sure that I remove you all
21 from the courtroom, that when I comment about the facts
22 of the case, you all don't hear my comments. So I
23 apologize for having to exclude you, but I thank you for
24 your patience while we took care of those matters of
25 law.

1 At this time, yes, sir?

2 MR. DLUZNESKI: Your Honor, the plaintiff rests
3 its case.

4 THE COURT: Okay. Thank you, sir. Madam
5 forelady, ladies and gentlemen, at this time we will
6 begin with the presentation of the defendant's case. Is
7 the defendant ready to call their first witness?

8 MR. WHITE: Yes, Your Honor. The defendant calls
9 Mr. Jim Hemphill.

10 THE COURT: Mr. Hemphill?

11 MR. WHITE: Yes.

12 THE COURT: Come right up here and let the clerk
13 of court swear you in.

14 THE CLERK: If you'll place your left hand on the
15 Bible and raise your right. Do you solemnly swear or
16 affirm the testimony you give this court should be the
17 truth, the whole truth, and nothing but the truth so
18 help you God?

19 THE WITNESS: I do.

20 THE CLERK: Thank you. Please be seated.

21 THE COURT: Watch your step, stepping up. Have a
22 seat in the chair and just speak into the microphone,
23 sir, if you would.

24 JIM HEMPHILL,
25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. WHITE:

3 Q. Good morning, Mr. Hemphill.

4 A. Good morning.

5 Q. Would you, please, introduce yourself to the
6 jury? Tell them who you are and who you work for.

7 A. My name is Jim Hemphill. I'm the owner of
8 Southern Fireplace and Garage.

9 Q. And what does your company do, Mr. Hemphill?

10 A. We do fireplaces and garage doors.

11 Q. Okay. Are you familiar with the premises in this
12 case?

13 A. Yes, I am.

14 Q. Did you have the opportunity to install garage
15 doors on the premises in this case?

16 A. Yes, sir, I did.

17 Q. All right. Tell the jury a little bit about how
18 you got involved in that.

19 A. I received a call from Bryon, I believe it was in
20 October of 2019. And Bryon stated that he was coming
21 close to the end of his lease and he had a couple of
22 garage doors that needed replaced on the building and
23 asked me if I'd come take a look at them and give him a
24 price on replacing the door.

25 Q. Okay. Mr. Hemphill, we've got a binder right

1 there. That's got all the exhibits in there. If you
2 could kindly flip through the Defendant's Exhibit 1.
3 It'll be the first exhibit past that little blue sticky
4 note.

5 A. Okay.

6 Q. What is Defendant's Exhibit 1, Mr. Hemphill?

7 A. That is the quote that I had given to Bryon to
8 replace the two doors that was damaged on the building.

9 Q. And that quote is for \$4,943.00?

10 A. Yes, sir. Uh-huh.

11 Q. If that quote would have been for just one door,
12 would it have been just 50 percent of that quote?

13 A. The 12X12 door would have been a little bit more,
14 but they would have been close to the same, same price,
15 yes, sir.

16 Q. Approximately \$2500?

17 A. Yes, sir.

18 Q. All right. Would you flip to Defendant's Exhibit
19 2.

20 A. Yes, sir.

21 Q. What is Defendant's Exhibit 2, Mr. Hemphill?

22 A. This is the manufacturer's brochure on the
23 rolling sheet doors that we gave an estimate to place on
24 the building, sir.

25 Q. Okay. We're gonna talk about that in a minute,

1 the specs, but I want to get this out of the way because
2 we had a little conflicting testimony on this yesterday.
3 How many garage doors are on the premises?

4 A. I believe there's seven or eight on the building.
5 On the space that Brilin leased there's three doors.

6 Q. And are there -- well, describe where they are on
7 the, on the ---

8 A. On the tenant -- on Bryon's space, one of the
9 doors is on the side of the building, which is a pass
10 through between his building and the building next to
11 it. And the other building is -- the other door is on
12 the back of the building.

13 Q. Are they load -- the two back on loading ---

14 A. On the loading docks, correct.

15 Q. Which two garage doors did your company replace,
16 Mr. Hemphill?

17 A. So we replaced the one on the drive out door on
18 the side of the building and we replaced, if you're
19 looking straight at the back of the building, we
20 replaced the second door from the end on the back of the
21 building.

22 Q. Okay. Let's go to Defendant's Exhibit 3. We'll
23 bounce back to two in a minute. What is that picture?
24 That first page -- there's two photos there, but the
25 first photograph, what does that depict, if you know,

1 Mr. Hemphill?

2 A. Okay. The door on the -- the picture of the door
3 on the left that has the National Power Corp painted on
4 the door. That was the existing doors that, that are on
5 the building. The picture on the right is the door that
6 we installed replacing the doors on the building.

7 Q. All right. Go to the second page, Mr. Hemphill.
8 Thank you for that. Just to move things along, is that
9 just simply a further out picture of what we just looked
10 at on that first page?

11 A. That is correct.

12 Q. Okay. So the left one is original. Right one is
13 one of the ones you replaced?

14 A. Yes.

15 Q. The other door you replaced is the one on the
16 side?

17 A. On the side of the building.

18 Q. But looking at this picture, it's actually off,
19 off to the left around the side, right?

20 A. Yes.

21 Q. Okay. And then that third picture there on the
22 third page with the two pictures on it. What are we
23 looking at there?

24 A. All right. This is the warning label on the
25 bottom of the garage door, and then the manufacturers.

1 Q. Manufacturer's name?

2 A. Uh-huh.

3 Q. So, the doors that you replaced are still there
4 to this day, correct?

5 A. Yes.

6 Q. How do you know that?

7 A. I drove by the space the other day. You can see
8 it from the interstate. I drive by the building every
9 day going to work.

10 Q. Okay. Let's go back to 2. Tell the jury why you
11 recommended Mr. Russell replace the two garage doors
12 that had been damaged with -- it's Amarr, right? That's
13 how you say it?

14 A. Uh-huh.

15 Q. With Amarr doors. (Inaudible.)

16 A. Because it's what was on the building. The doors
17 that were on the building are actually a Janus door
18 that's manufactured as a private label for Amarr. So
19 the doors that were on the building, the other seven or
20 eight doors, we matched it exactly what was on the
21 building. Same color that was on the building. Same
22 style that was on the building. We put it back like it
23 was.

24 Q. What was the color? What was the name of the
25 color?

1 A. Buckskin.

2 Q. And we see that on Defendant's 1, right? Where
3 it says color, buckskin?

4 A. Correct, sir.

5 Q. -- okay. You're aware that the plaintiff in this
6 case wanted somebody to put other -- they wanted to use
7 one of their preferred vendors; is that correct?

8 A. Overhead Door, correct. Uh-huh.

9 Q. Look for me, please, at Plaintiff's Exhibit 10,
10 which is in the front of the book. Are you familiar
11 with Overhead Doors?

12 A. Yes, I am. Uh-huh.

13 Q. Okay. Have you seen this invoice before? This
14 quotation? Excuse me.

15 A. No.

16 Q. Okay. When you look at this. When you -- well,
17 let me back up. You're aware of the specs. You may not
18 have seen this quote, but you're aware of the specs of
19 what Overhead recommended, right?

20 A. Correct. And this is not the same quote that I
21 saw.

22 Q. Okay. What quote did you see?

23 A. Okay. The original quote that was sent to me was
24 for \$4,000-and some dollars. It was not for \$7,913.

25 Q. So that was a quote they got back in November of

1 2019, right?

2 A. Correct. Uh-huh.

3 Q. Okay. So this was the latest and greatest quote,
4 which I probably wasn't smart enough to send you, but I
5 sent you the old quote.

6 A. Uh-huh.

7 Q. Tell me why these doors are not like with what's
8 on the building.

9 A. Appearances is totally different than what is on
10 the building.

11 Q. When you say appearance, what do you mean?

12 A. Okay. So the doors that are on the building is a
13 rolling sheet. And what that means is most of the time
14 it's a continuous piece of metal that's formed into the
15 ridges that you see on the door. The model 600 that
16 Overhead Door quoted is a slat door. And that means it
17 has individual metal slats that are, that are coupled
18 together that form the door. So when you look at the
19 doors from the outside, the appearance is totally
20 different. When we, when we went out to quote it, we
21 tried to match exactly what was on the building so the
22 appearance was the same.

23 Q. What about color? Are you familiar with the
24 color options for the doors that plaintiff wanted to put
25 on using their preferred vendor?

1 A. Yes. The, the model 600 is only available in
2 white and brown.

3 Q. And, in fact, if we look at Plaintiff's Exhibit
4 10, that's the third bullet down under the Overhead Door
5 model 612 away rolling steel service door, right? It's
6 right there in the quote, right?

7 A. Yes, sir.

8 Q. So would you consider, and I might have missed it
9 thinking about my next question, did you mention whether
10 or not the doors you put on there were insulated or not?

11 A. They are. We put insulation on the door because
12 that's what was on the space.

13 Q. The pre-existing doors were insulated?

14 A. Correct.

15 Q. The Overhead Door, is that an insulated door?

16 A. No, it's not.

17 Q. What's the significance of an insulated door?

18 A. Well, if it's a condition space, you know, it's
19 gonna give you a higher R value that's gonna allow you
20 to condition the space, whether it's heated or your AC.

21 Q. So losing heat and or cooling by way of going
22 through the metal?

23 A. Correct.

24 Q. In your opinion, did you put like kind of doors
25 on the, on this -- on the premises?

1 A. Yes.

2 Q. You're actually familiar with these buildings to
3 some extent, beyond just having done this job, correct?

4 A. Yes, sir. My business was located on Carolina
5 Place Road for five years.

6 Q. And you're aware that, like, there's a -- CREH,
7 when they bought their buildings. Tell the jury what
8 was going on, you know, with your landlord and stuff
9 like that, in terms of how these buildings are acquired.

10 A. My landlord bought the buildings at a
11 foreclosure. They sat empty for some time on that
12 street. The gentleman that owned them, Jack, the
13 building into foreclosure. And my landlord bought those
14 two buildings out of foreclosure.

15 Q. What about CREH, did Jack own that building as
16 well?

17 A. I'm not sure if Jack owned that building or not.
18 I know there was several buildings on Carolina Place
19 Road that Jack owned that went into bankruptcy.

20 Q. Was his building in foreclosure?

21 A. I'm not sure.

22 MR. WHITE: Nothing further, Your Honor. Tender
23 the witness.

24 THE COURT: Yes, sir.

25 MR. DLUZNESKI: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. DLUZNESKI:

3 Q. Good morning, Mr. Hemphill?

4 A. Good morning. How are you?

5 Q. Good. Mr. Hemphill, we have not met or spoken
6 previously, have we?

7 A. No, sir.

8 Q. Okay. Mr. Hemphill, how long have you worked for
9 Southern Doors?

10 A. I started the company in 2010.

11 Q. Okay. So are you the owner of the company?

12 A. Yes, sir, I am.

13 Q. Okay. All right. Now, who hired you to replace
14 the doors at the property that we're here about this
15 week?

16 A. Brilin Electric. Bryon.

17 Q. Okay. Did you confirm or ask Mr. -- you're
18 referring to Mr. Russell, Bryon Russell?

19 A. Yes. Uh-huh.

20 Q. Okay. Did you confirm whether or not he was
21 actually the owner of that property?

22 A. No, sir.

23 Q. Okay. So you didn't ask Mr. Russell when he
24 called you, you're on the property that we're about to
25 do work at?

1 A. I knew he wasn't the owner. I didn't need to ask
2 him.

3 Q. Okay. All right. Did you ask him who the owner
4 was?

5 A. No, sir.

6 Q. Did you ask him if he had spoken with the owner
7 about this work?

8 A. No, sir.

9 Q. Okay. Did you talk to him at all about whether
10 it was acceptable or okay with the property owner for
11 you to come out and do this work?

12 A. Why would I need to?

13 Q. Okay. Now, the doors that you replaced, they
14 were damaged, were they not?

15 A. Correct.

16 Q. Okay. Did Mr. Russell tell you how that damage
17 occurred?

18 A. No, sir.

19 Q. He did not. All right. I think that you
20 testified on direct that one of the doors that you
21 replaced -- this is Plaintiff's Exhibit 8. If you'll
22 turn to Plaintiff's 8 for us. It's this photograph.
23 It's blown up.

24 A. Okay. I don't --

25 Q. Do you see that?

1 A. Yes, I do.

2 Q. All right. Is this one of the rollup doors that
3 you replaced? You see down here in the far left-hand
4 corner?

5 A. It's the upper right-hand corner.

6 Q. Right here?

7 A. Yes. Uh-huh.

8 Q. That's one of the rollup doors that you replaced?

9 A. I can't tell from the picture. It's only the
10 corner of the detail.

11 Q. All right. So, there's a -- there's a rollup
12 door leading out onto a concrete ring, right?

13 A. Yes, sir. Uh-huh.

14 Q. Okay. Was that rollup door one of the two that
15 you replaced?

16 A. Correct. On the side of the building, yes, sir.

17 Q. Okay. All right. Tell us about what -- how did
18 you replace that door? How did you take the old one off
19 and put the new one on? Tell us a little bit about that
20 process.

21 A. On this particular style door there's a bracket
22 that goes on each side of the door that has three lag
23 screws, and it's simply held up by that bracket. There
24 are two tracks that run down each side, but the tracks
25 don't hold the door any way. They're held up by the

1 brackets that are on the end.

2 Q. Okay. Are there lentils or a lentil on -- above
3 this door?

4 A. Yes, sir. There's steel there, yes, sir.

5 Q. Okay. All right. So, so what interaction or
6 contact, if any, did you have during the door removal
7 and replacement process with the lentil?

8 A. Well, we removed the door that was there and we
9 resecured the new door in the exact space that the old
10 door was mounted.

11 Q. Okay. So you didn't do anything to the lentil or
12 any of the structural components of the door?

13 A. No, sir.

14 Q. Okay. All right. How did you determine what
15 type or model of rollup doors to install?

16 A. We went out and did a visual inspection, sir.

17 Q. Okay. All right. And then you inspect it based
18 on that visual inspection?

19 A. Correct.

20 Q. Okay. Now, you testified on direct that the
21 doors that you replaced were quite common.

22 A. Yes, sir.

23 Q. Okay. Before you replaced those doors -- are you
24 familiar with Mr. Decker?

25 A. I spoke to him on the phone before, yes.

1 Q. Okay. Did he talk to you about any concerns that
2 he had about the rollup doors that you were replacing
3 the damaged doors with?

4 A. Yes. Uh-huh. Yes, sir.

5 Q. Okay. And what did he tell you in that regard?
6 Tell us what his concerns were?

7 A. He told me that he wanted the slat doors
8 installed on there.

9 Q. All right. Did he say why?

10 A. No, sir.

11 Q. Okay. All right. And you testified earlier that
12 you did not get Mr. Decker's approval as the landlord?

13 A. No, sir.

14 Q. Okay. You also testified that prior to the
15 Overhead Door quote that's in evidence for about \$9,000
16 -- or about \$9,000, that you saw a prior quote for about
17 4,000; is that correct?

18 A. Correct.

19 Q. All right. Now, that quote was for just one
20 door.

21 A. It was for one door and it was for some weather
22 stripping and some storm shield. There was about \$1900
23 that was on the quote with some other items that didn't
24 pertain to the damage.

25 Q. Okay.

1 A. But, yes, there was one garage door on the quote.

2 Q. All right. And, again, we're talking about two
3 garage doors that were damaged here, not just one?

4 A. Yes. Uh-huh.

5 Q. Okay. All right. Now, is it a normal practice
6 for Southern Doors to remove doors on a property that's
7 not owned by the person that you're actually doing work
8 for?

9 A. Yes.

10 Q. How often does that happen?

11 A. On the commercial side quite a bit. If you have
12 a tenant that's in a space and their lease requires them
13 to repair any damages that they do to the building then,
14 yes, it's common for us to go out and repair damages and
15 never have any interaction or contact with the owner
16 whatsoever.

17 Q. All right. On those other jobs, however, is it,
18 is it common practice for the landlord to give any kind
19 of approval?

20 A. No.

21 Q. So that's not something that you see?

22 A. It's not a common practice, no, sir.

23 MR. DLUZNESKI: Okay. Your Honor, I think that's
24 all I have.

25 THE COURT: Any redirect, limited to what he went

1 into?

2 MR. WHITE: Yes, Your Honor, very briefly.

3 THE COURT: Yes, sir.

4 REDIRECT EXAMINATION

5 BY MR. WHITE:

6 Q. Mr. Hemphill, how would you characterize that
7 conversation you had with Mr. Decker? Be honest with
8 the jury.

9 A. I personally felt Mr. Decker was wanting
10 something replaced on the building that was -- wasn't
11 the same product that was on the building. It was a
12 different product. I personally felt it was a bit
13 unrealistic.

14 MR. WHITE: Nothing further, Your Honor.

15 THE COURT: Anything new?

16 MR. DLUZNESKI: Just very briefly, Your Honor.

17 RECROSS-EXAMINATION

18 BY MR. DLUZNESKI:

19 Q. Mr. Hemphill, what date were those two garage
20 doors ordered?

21 THE COURT: You've got to limit it to what he
22 brought up. Go ahead and answer the question, sir.

23 THE WITNESS: It was sometime, I think, in
24 November or December of 2019. We -- I did the site
25 check on the job in October, and I think we ordered the

1 doors late November, first part of December.

2 MR. DLUZNESKI: All right. That's all I have,
3 thank you.

4 THE COURT: Thank you, sir. You may step down.
5 Watch your step as you're stepping down. Any reason why
6 the witness cannot be excused?

7 MR. WHITE: No, Your Honor.

8 MR. DLUZNESKI: No, Your Honor.

9 THE COURT: Thank you, sir. You may be excused
10 as well. Is the defendant ready to call their next
11 witness?

12 MR. WHITE: Yes, Your Honor. The defendant calls
13 Mr. Craig King.

14 THE COURT: Mr. King, come right up here in front
15 of the clerk of court and she'll swear you in.

16 THE CLERK: Place your left hand on the Bible and
17 raise your right hand. Do you solemnly swear or affirm
18 the testimony you give this court today be the truth,
19 the whole truth, and nothing but the truth so help you
20 God?

21 THE WITNESS: Yes, ma'am.

22 THE CLERK: Thank you. You may have a seat.

23 THE COURT: Sir, have a seat in the chair and
24 please speak into the microphone.

25 CRAIG KING,

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. WHITE:

4 Q. Mr. King, good morning.

5 A. Good morning.

6 Q. Please introduce yourself by stating your name to
7 the jury and tell us who you work for.

8 A. My name is Craig King. I've worked for Brilin
9 Electric since October of 2017.

10 Q. And what do you do for Brilin Electric?

11 A. I am currently a purchasing manager for the
12 company. I was a warehouse manager when I was hired.

13 Q. Were you the warehouse manager for the premises
14 in question in this phase?

15 A. Yes.

16 Q. In this case?

17 A. Yes. I became the -- I moved into my new role
18 probably about May of 2020.

19 Q. Now, describe your duties when you were the
20 manager of the warehouse at the old premises off of Rout
21 160 Carolina place.

22 A. I overseen all the logistics of the material
23 coming and going from the operation. I handle all the
24 materials, as far as getting it out to the crews. Make
25 sure all of the crews needed all the material -- had all

1 the material they needed for the job. I ordered all of
2 our inventory. Overseen all of the inventory for the
3 property. I was actually over the vehicle maintenance,
4 which has nothing to do with the warehouse, but we
5 overseen the vehicles. Just basically anything outside,
6 that had to do with outside the company I overseen.

7 Q. How did you all get the materials that you all
8 would use for your jobs in and out of the warehouse?

9 A. Through, usually we would use one of the doors
10 that's in question to the rear parking lot. We would
11 have a box truck from one of our numerous vendors come
12 and deliver the material. Then we would receive it into
13 the warehouse with a forklift or a pallet jack.

14 Q. Put it on the pallet, put it in the warehouse,
15 take it out on the pallet, right?

16 A. Take it out on the pallet. Then our crews in the
17 morning, we would have 17 to 20 crews that we would
18 facilitate in the parking lot in the morning. We would
19 take out the material outside to the parking lot so all
20 the crews could grab the material, then they would go
21 about their day.

22 Q. Then you all would use the side garage door?

23 A. We'd use the side door for that, yes, sir.

24 Q. And if that was restricted in any way, jersey
25 barriers, whatever, how much would that impact you all's

1 operations?

2 A. Detrimental. It would, it would shut us down for
3 -- it would slow us down tremendously. We could
4 facilitate our crews, about 18 crews in about 45 minutes
5 to an hour. It would take about three hours to
6 facilitate the same amount. The crews would have to
7 carry everything out by hand.

8 Q. How come you all never used the loading bays in
9 the back?

10 A. As far as for the crews?

11 Q. Right. For loading and unloading.

12 A. Because our crews are in vans and the dock was
13 about yay high off the ground, so it would be a lot of
14 handing down, which then becomes a safety issue for the
15 crews lifting and lowering the material down. Some of
16 this material is 100, 100 pounds an item. Raising and
17 lowering, so it just becomes a safety issue for all
18 parties involved.

19 Q. How would you describe -- well, let me ask you
20 this first. Did you have any opportunity as the manager
21 to interact with tenants that were also co-tenants of
22 the building?

23 A. Yes.

24 Q. And when I say Keller, do you know who I'm
25 talking about?

1 A. Yes. That's the neighbor to the, I guess, if
2 you're looking at the building from the front of the
3 building, it would be to the right-side of the building.

4 Q. Did you have an opportunity to interact with
5 Keller at all?

6 A. Yes. I actually checked in with them regularly
7 to make sure that we were compliant with everything.
8 And then because we have a lot vehicles that come in and
9 out of our business. And a lot of employees. I wanted
10 to make sure everything was okay with their operation as
11 well and we weren't bothering them in any way, shape, or
12 form. And then also with the other tenants in the
13 building as well.

14 Q. How would you describe your interactions with the
15 Keller folks?

16 A. Good. Good.

17 Q. How would you describe your interactions with the
18 co-tenants in the building you all were in?

19 A. Good. I felt like we had a good relationship
20 with everybody.

21 Q. How about Two Men And A Truck?

22 A. Good. Good.

23 Q. Did you feel like Brilin ever had any issues with
24 co-tenants or Keller?

25 A. No, not at all.

1 Q. How about ---

2 A. Not while I was employed, no.

3 Q. Sorry, go ahead.

4 A. Not while I was employed, no.

5 Q. Do you feel like you had any issues at any point
6 with the property manager?

7 A. The property manager I never met, but his
8 facility, his maintenance guy, yes, I did. I felt like
9 I was constantly harassed by him.

10 Q. The guy you're calling the maintenance guy, I'll
11 probably be calling him the property manager.

12 A. Okay.

13 Q. Mr. Wayne Schulte.

14 A. Wayne Schulte, yes.

15 Q. All right.

16 A. I know him as Wayne.

17 Q. And you said harassmt. What do you mean by
18 harassmt?

19 A. Just, he would constantly sit outside, take
20 photos of us. He would just show up randomly for
21 service, which I understand you have to service things
22 in a proper dock air conditioning. I would ask for him
23 to schedule that. No problem with him coming into the
24 property. But when he would come, we would have to shut
25 operations down for an hour so the guys could come in

1 and set up ladders, access the AC units, the air
2 handles, which would just shut us down, especially when
3 we were receiving material. So I would just ask for
4 cooperation to schedule it so we could kind of be on the
5 same page so he would just show up. And other times he
6 would just show up randomly, knock on the door and just
7 -- I felt harassed by the guy constantly.

8 Q. So when you say harassed, basically -- don't let
9 me put words in your mouth -- Mr. Schulte would be
10 coming through the premises unannounced on a frequent
11 basis?

12 A. Yes. Yes. He also had barriers set outside of
13 our wall that would shut us down.

14 Q. Now, when you talk about the warehouse and
15 throughout this trial with the office area -- I call it
16 the office area. I think we've also heard the term flex
17 space. Do you know what I'm talking about when I say
18 office area or flex space?

19 A. The internal office?

20 Q. Yes.

21 A. Okay, yes.

22 Q. Do you all have -- how many personnel did you all
23 have up there typically?

24 A. Four that would be there all day. And then with
25 the supervisors, roughly about 10 to 11 people in the

1 morning. And then it would go down to about four.

2 Q. Would you describe to the jury interactions that
3 office space had with Mr. Schulte? Did that become an
4 issue at any point?

5 A. I can't speak on that. I'm not 100 percent sure.
6 I was really busy in the morning when the guys were
7 there, so I'm just not aware of the -- I would be
8 handling the crews in the morning. My morning was
9 really heavy from six to eight. They would leave about
10 8:30.

11 Q. Now, we've heard testimony about the summer of
12 2019, the drywall installation on the Two Men And A
13 Truck side.

14 A. Okay.

15 Q. When I say that, do you know what I'm talking
16 about?

17 A. Yes.

18 Q. Okay. Tell me how that came about and what your
19 role was in it.

20 A. Okay. So, I -- it was brought to me that there
21 was some damages on the wall on the Two Men And A Truck
22 side. And my boss and -- I don't know the names of the
23 people that were involved. They came to me and said we
24 need to get this fixed. They had set up a time. Walked
25 the warehouse with the tenant, Two Men And A Truck.

1 And they come to me, so I reached out to a
2 drywall company that I knew of. Prior to working for
3 Brilin, I used to work for a paint and drywall company.
4 So I used a crew that I was very comfortable with that I
5 knew that would do a good job.

6 Call them, they came. Basically we fixed the
7 drywall. They fixed the drywall. They opened it up.
8 We took a lot of photos. Had Two Men And A Truck look
9 at it. Wayne looked at the property as well and they
10 fixed it. I mean, it was ---

11 Q. And I'll start calling Mr. Schulte Wayne too.

12 A. Sorry. Sorry.

13 Q. No, that's okay. You don't have to apologize.

14 A. I never heard Schulte until today. That's the
15 first time I've heard it.

16 Q. I'll call him Wayne. What was Wayne's
17 involvement before the -- did you all have a site visit
18 before the crew actually came and did the drywall job?

19 A. Yes.

20 Q. Was Wayne part of that?

21 A. Yes.

22 Q. What was Wayne's involvement in that initial site
23 visit with the work crew?

24 A. Just -- excuse me? What was the ---

25 Q. The site visit. What did you think the site

1 visit showed through what needed to be done, that sort
2 of thing? What was the (inaudible.)

3 A. So, the -- just kind of pointed out, showed the
4 sheetrock, that it was damaged. They exposed the
5 sheetrock that was damaged and then basically told them
6 to fix -- what they needed to fix in the warehouse. The
7 drywall crew never did a walk prior to the day that it
8 was fixed. They came the day that it was fixed.

9 Q. Who did the walkthrough at the prior walkthrough?

10 A. Bryon, me, Trip, I think was the guy's name. It
11 was Two Men And A Truck, we'll say Two Men And A Truck.
12 And that guy Wayne was there.

13 Q. So the tenants and property manager, Wayne --

14 A. Yep.

15 Q. -- were like, all right, this is what needs to be
16 done?

17 A. Yep.

18 Q. So who is the one saying this is what needed to
19 get done?

20 A. Wayne. With the drywall guys, yes.

21 Q. And then how many days after that visit, did the
22 crew show up to actually do the job?

23 A. They fixed it that day. Or, no, no, no. The
24 drywall, the drywall company and Wayne were the same
25 day. The walkthrough with my boss and Two Men And A

1 Truck were a couple of days prior that was addressed,
2 these are what needs to be fixed. Then when the
3 sheetrock guy showed up, then it was Wayne, pointed out
4 what needed to be fixed. It was already predetermined
5 prior to the sheetrock guys getting there.

6 Q. All right. And I think you said ---

7 A. Am I saying that correctly?

8 Q. All right. Let's just back up. I just want to
9 untangle that a little bit.

10 A. Yeah. Yeah. Sorry.

11 Q. The two tenants and Wayne walked to the Two Men
12 And A Truck side, and then your crew came a couple days
13 later?

14 A. Yes.

15 Q. And then Wayne tells them exactly what they
16 needed to do?

17 A. Yes.

18 Q. Okay. How long was Wayne on site the day --
19 well, let me back up. How many days does it take for
20 the crew to fix the problem on the Two Men And A Truck
21 side?

22 A. I think it was one day, maybe two. I can't -- I
23 can't 100 percent remember. Because the supervisor that
24 was over the drywall crew came in between. And we
25 talked, but we talked solely on our side of the

1 property. We maybe glanced in the warehouse on their
2 side, but it was just a brief. He didn't walkthrough,
3 per se, that was just -- he wanted to see the visual to
4 make sure that everything was no obstruction for him to
5 bring his crew in. So that's kind of all he did, was
6 just kind of peek in the back row.

7 Q. So at least it was -- you know it was at least
8 one day, right?

9 A. Yes, at least one day.

10 Q. The first day, how long was Wayne on the property
11 that day?

12 A. I would say most of the day. He sat out in the
13 parking lot most of the day in his pickup truck smoking
14 cigarettes.

15 Q. He was there the whole time?

16 A. Yes. I don't know if he was there until the very
17 end of the task, but, like I said, he was there for most
18 of the day.

19 Q. Did you -- grab that binder right there. And if
20 you could flip to Defendant's Exhibit 16, towards the
21 back?

22 A. Okay.

23 Q. Just flip through those. What are we looking at
24 there?

25 A. It looks like some studs for -- in the wall,

1 interior wall.

2 Q. Is that the Two Men And A Truck side, because
3 we're looking at the 2019 job right here, right?

4 A. I would, I would say so, yes.

5 Q. Okay. Let me back up. I'm gonna jump around
6 just to -- something on the jersey barriers that's sort
7 of maybe something. When you all were shut down by the
8 jersey barriers, did you all have the -- when you
9 couldn't use the side door, did you have to use that as
10 an emergency means to load and unload from the loading
11 bays at a certain point?

12 A. A couple of times, yes.

13 Q. How are you able to do that? If, like you say,
14 it's yay high, how are you able to get that stuff?

15 A. So, one time I actually consulted with law
16 enforcement. I actually called law enforcement and had
17 them come out. And I moved the wall, the barrier walls.
18 Without a forklift, I moved it back about four feet.
19 Still on our side of the property so I could access.
20 And then another time we had to rent a, what I call a
21 lull. It's an extended arm forklift, so we could reach
22 halfway across this courtroom. Kind of reach into the
23 warehouse and grab material out.

24 Q. Reach in and reach out?

25 A. Yep.

1 Q. Because you couldn't use your normal door?

2 A. Because we couldn't use our normal door, yeah.

3 Q. Okay. Let's fast forward to April 2020 when the
4 lease was ending. Do you remember that time period?

5 A. Yes. We were moving.

6 Q. Well, do you -- and that -- if you don't
7 remember, that's fine. But do you remember like when
8 the lease term ended? Yes or no? If you don't remember
9 exactly, that's fine.

10 A. I don't remember the exact date, no. But I do
11 remember I was the last guy in the facility though.

12 Q. Was there a point when the facility was still
13 being rented by Brilin but it was basically empty?

14 A. Yes. About the last week, week-and-a-half
15 probably.

16 Q. Okay. So you all had cleared it out?

17 A. Cleared the offices, moved everything. The last
18 thing was the warehouse. We moved the warehouse last,
19 because we were still in operations everyday. So we,
20 about two days towards the end of the lease, we moved
21 our warehouse.

22 Q. Okay. But -- and while it was -- right. A
23 couple of weeks before you moved out, still stuck in
24 there, but it was marginally cleaned out for about a
25 month, right?

1 A. Largely cleaned out for a month. The flex or the
2 office area was the first thing to go.

3 Q. Because you had moved into the new space and was
4 slowly moving all the material over there.

5 A. Yep.

6 Q. So, if someone wanted to do a walkthrough, check
7 out a warehouse area in the month of April, would there
8 have been any obstructions that would have impeded their
9 ability to do that?

10 A. No.

11 Q. Are you aware of whether or not the landlord did
12 a final walkthrough before you all's lease was over?

13 A. I don't know. I physically, personally never
14 seen him do it. I know that he was invited to do it,
15 but I never seen them physically do it. Nobody came and
16 did an inspection while I was there.

17 Q. Okay. And if there would have been, you would
18 have been a part of that?

19 A. I would have been there, 100 percent been there.
20 I was there physically to the last day.

21 MR. WHITE: All right. Nothing further for this
22 witness, Your Honor. I tender the witness.

23 THE COURT: Thank you, sir.

24 Yes, sir.

25 CROSS-EXAMINATION

1 Q. Good morning, Mr. King.

2 A. Good morning.

3 Q. You and I have not met or spoken before today,
4 correct?

5 A. Not at all.

6 Q. All right. You talked a lot about a lot of
7 things on your direct examination. I want to kind of go
8 through each one. Let's start out with Wayne Schulte.

9 A. Okay.

10 Q. Okay. Now, Wayne Schulte was Carolina Real
11 Estate Holdings property manager, correct?

12 A. Okay. Sure. I know him as the maintenance guy.
13 That's kind of what his role is.

14 Q. Fair enough. Fair enough. Maintenance guy,
15 property manager. Part of his job, if you will, was to
16 patrol the grounds of the properties that Carolina Real
17 Estate Holdings owned to ensure that everything was
18 okay, correct?

19 A. Sure.

20 Q. Okay. And part of the way that Mr. Schulte did
21 that was he took photographs to pass on to his boss, Mr.
22 Decker, right?

23 A. A couple -- yeah, I guess.

24 Q. Now, one of the things that you told us on direct
25 examination was that you felt harassed constantly by

1 Wayne because he was taking care of things, right? When
2 he was taking these pictures, where was he? Was he out
3 in his truck?

4 A. Sitting in his truck in the parking lot.

5 Q. Okay. In the parking lot?

6 A. Uh-huh.

7 Q. Okay. So he wasn't inside the office taking
8 pictures, right?

9 A. Not that I'm aware of. I mean, he did have his
10 phone when he would come in the facility, but I don't
11 know if he was on his phone talking, texting, taking
12 photos. I was doing my job.

13 Q. All right. But you never saw Wayne inside the
14 office snapping pictures of employees and the office
15 spaces or anything like that?

16 A. Not that I'm aware of.

17 Q. Okay. All right.

18 A. I didn't follow him.

19 Q. All right. Did he ever come into the warehouse
20 area taking pictures?

21 A. I'm not sure.

22 Q. Okay. You never saw him, right?

23 A. I mean, I seen him in the warehouse, yes, but I
24 seen him with his phone in his hand, but I wasn't
25 standing over his shoulder to see what he was doing.

1 Q. Okay. So as far as you're aware, you didn't see
2 Mr. Schulte taking pictures inside the warehouse?

3 A. Not that I'm aware of.

4 Q. Okay. All right. So Mr. Schulte's taking of
5 photographs was, as far as you're aware, limited to him
6 sitting out in his truck in the parking lot?

7 A. Yep.

8 Q. Okay. All right. And this made you feel
9 harassed?

10 A. Well, it just made me feel uncomfortable.
11 Absolutely. I mean, because I had prior interactions
12 with asking what he was doing, you know? And it was a
13 lot of profanity involved coming from him and it just, I
14 don't know. It just wasn't good conversation from the
15 guy.

16 Q. Well, on that point, the profanity went both
17 ways, did it not? The profanity came from your side as
18 well, correct?

19 A. I mean, potentially. I don't know. I don't
20 remember every conversation that we had with the guy. I
21 know that I never walked up blatantly and cursed the
22 guy.

23 Q. Okay. So you never observed any of your
24 warehouse employees going out when Wayne was on the
25 property and telling him, using expletives to get off

1 the property?

2 A. No.

3 Q. Okay. Did you ever have conversations with Wayne
4 about any of Brilin's employees doing burnouts or donuts
5 in the parking lot?

6 A. No, sir.

7 Q. So he never brought up that issue to you?

8 A. Not to me.

9 Q. Okay. All right.

10 A. And I don't recall that ever happening while I
11 was an employee for Brilin either.

12 Q. So you don't recall any employees of Brilin ever
13 doing burnouts with their trucks or donuts in the
14 parking lot?

15 A. No, sir.

16 Q. Okay. All right. You also talked about the, the
17 jersey barriers. And the jersey barriers are big
18 concrete structures, right?

19 A. Okay.

20 Q. When did the jersey barriers show up?

21 A. Umm, I kind of feel like they were there when I
22 started in the parking lot, but I feel like they
23 progressed to the immediate -- between the two
24 buildings. Maybe a couple months in, maybe or I can't
25 remember exactly.

1 Q. Okay. And ---

2 A. I just remember them being there.

3 Q. All right. And remind us when did you -- what
4 date did you start or what month and year did you start?

5 A. It was in October of 2017, I believe.

6 Q. Okay. A few months into Brilin's lease term.

7 A. Well, did we lease the building in '17?

8 Q. The lease ---

9 A. I have no idea. They were already there when I
10 rode into the property.

11 Q. Okay.

12 A. I have no idea.

13 Q. All right. Fair enough. And you said the jersey
14 barriers went down the median.

15 A. Yes. Divided between us and Keller.

16 Q. Okay. So, Brilin's building -- and Brilin's on
17 the end, right?

18 A. Yes, sir.

19 Q. Okay. And then so it's Brilin's building and
20 then there's a driveway, if you will, and what you
21 referred to as the median, right?

22 A. Yes.

23 Q. And then there was Keller USA's property?

24 A. Yes. Yes.

25 Q. All right. So, and you said the median, the

1 jersey barriers were placed -- were they going
2 vertically or horizontally down that median? How did
3 they work?

4 A. Yes. Yes. Yes. Just divided, divided right in
5 half between the two properties.

6 Q. Okay. Was that the only place that the jersey
7 barriers were placed?

8 A. If I remember correctly, yes.

9 Q. Okay. All right. And the jersey barriers were
10 placed there to direct the flow of traffic, correct?

11 A. Yes.

12 Q. Okay. And, and the jersey barriers were placed
13 by the plaintiff, Carolina Real Estate?

14 A. Sure.

15 Q. Okay. And Carolina Real Estate was concerned
16 about 18-wheelers and other heavy duty trucks passing
17 through that area, right?

18 A. Right. Because they also received a lot of
19 18-wheelers as well, because they needed the property to
20 make sure that folks had adequate turnaround space.

21 Q. Okay. So would it be fair to say, sir, that the
22 jersey barriers were placed, as you testified, down that
23 median as a traffic control device, to direct the flow
24 of traffic?

25 A. Only in the gravel parking lot. Not between the

1 two buildings, no. They did not use between the two
2 buildings. The space between the two buildings.

3 Q. Okay.

4 A. The barriers that were placed between the two
5 buildings was to stop us from using that side door.

6 Q. So, so do you know that for a fact that that was
7 the purpose of why Carolina Real Estate put them there?

8 A. Yes. Yes. Wayne said that we were not allowed
9 to use that door.

10 Q. What door?

11 A. The side door, went out the side of the facility.

12 Q. Okay. And ---

13 A. We parked the trailer there and they tried to
14 have it towed because of the ---

15 Q. Okay. And the, and the side door that you're
16 talking about is the rollup garage door that ---

17 A. Rollup walkout door, yes.

18 Q. Okay.

19 A. I don't know the correct name, but it's the one
20 bay door that's on the side of the building.

21 Q. All right. Okay. All right. Now, you said in
22 your direct, you told us that the jersey barriers slowed
23 you down; is that correct?

24 A. When they were up against our curb, yes.

25 Q. Okay. So they didn't completely block you. You

1 could still pass in and out of that?

2 A. Once I moved them back a foot or two. Once I
3 moved them back a couple feet, yes, I could.

4 Q. All right.

5 A. But I actually called law enforcement to make
6 sure that we were okay with this. I spoke with the fire
7 department to make sure we weren't harming any fire
8 codes between the two.

9 Q. Okay. So you ---

10 A. I tried to do my, I guess, proper, you know, just
11 make sure everything I was doing was correct.

12 Q. All right. So you actually called law
13 enforcement on that occasion?

14 A. Yes.

15 Q. Okay. All right. And you just testified that
16 you moved the jersey barriers back. How far back did
17 you move?

18 A. Just a couple feet. I mean, nothing -- not even
19 the -- I didn't split the parking lot, so the road, yay
20 wide, I mean I didn't move it to the middle of it. Just
21 enough to get my forklifts out into the parking lot into
22 the gravel.

23 Q. All right. And did you ask Wayne or discuss that
24 with Wayne or anybody else from the landlord before you
25 did that?

1 A. I don't remember if I did or not, honestly. To
2 tell you the truth.

3 Q. All right.

4 A. I just knew that that was our property we were
5 renting. We were renting that property.

6 Q. So you knew that was the property that you were
7 renting. You understood that it was not your property?

8 A. Well, I don't own it, yes. We were renting it,
9 yes.

10 Q. Okay. And because you were renting it, you
11 believe that you could use it however you wanted, right?

12 A. Well, to drive on, yes. I mean, I wasn't going
13 to have a cookout out there.

14 Q. All right. So, in moving the jersey barriers,
15 you took that liberty on property that was not yours to
16 do that?

17 A. I mean, I feel like we rented the property.
18 That's why that half of the property was ours. And I
19 also talked to Keller. And Keller did own their portion
20 of the parking lot, had no problem with me setting any
21 of the barrier walls towards their side of the property.

22 Q. All right.

23 A. Before I did anything, I consulted everything
24 with Keller to make sure that I wasn't harming them or
25 their business in any way, shape, or form.

1 Q. So you talked ---

2 A. I tried to be compliant with everybody around us.

3 Q. So you talked to the adjacent property owner, but
4 you didn't talk to your landlord?

5 A. I didn't think I needed to. We were renting that
6 property.

7 Q. Okay. All right. So ---

8 A. It's just like the parking lot out front. You
9 know, I don't ask where I need to be able to park my
10 car.

11 Q. All right. So in addition to that, one moving of
12 the jersey barrier is a couple feet back from what you
13 told us. You moved them several other times in addition
14 to that, right?

15 A. Yes. Just to get the forklift out. I mean, I
16 don't know about several other times.

17 Q. Okay. Are you aware that employees of Brilin
18 Electric moved the jersey barriers several other times?

19 A. No.

20 Q. Okay. So you have no knowledge of that?

21 A. I mean, I just know the times that I moved, and I
22 would say that was just a handful of times. I don't
23 know about a bunch of times.

24 Q. All right.

25 A. Because once they got moved, I mean, I think they

1 stayed at one point. We moved. It wasn't where we were
2 barricaded until towards the end our lease. We, we had
3 access for the majority of the lease. And then I only
4 moved them back to where they were prior to when they
5 moved them up against our building.

6 Q. All right.

7 A. So I never went further than where they had them
8 initially. Let's put it that way.

9 Q. All right. What did you move the jersey barriers
10 with?

11 A. A forklift.

12 Q. Okay. All right. Turn to Plaintiff's Exhibit 4,
13 please. Plaintiff's Exhibit 4 is a picture of the
14 jersey barriers that you're talking about, is it not?

15 A. Yes.

16 Q. Okay. And inside of those jersey barriers, it
17 looks like there's a trailer parked there. Do you see
18 that?

19 A. Correct.

20 Q. Did you move the jersey barriers around that
21 trailer?

22 A. No. I moved the jersey barrier in the front so
23 we could put the trailer right there. We had rented a
24 trailer for about 24 hours and we didn't want it to get
25 stolen because we had been broken into this property

1 numerous times. So I moved the one barrier in the
2 front. So a pickup truck could back up, drop the
3 trailer, and then I just set the barrier wall back where
4 it was initially.

5 Q. All right. Did you ask the landlord to do that
6 before you did it?

7 A. No, I did not.

8 Q. Okay.

9 A. Because, again that's kind of on the side that we
10 were using. Because, I mean, it serves as a driveway.
11 I didn't know that we had to ask for permission for our
12 driveway.

13 Q. Okay. Even though it wasn't your property, you
14 didn't think you had to ask permission to ---

15 A. Again, no, because I thought that was our
16 driveway because we -- that was on our side of the
17 parking lot.

18 Q. All right. So the jersey barriers you moved with
19 a forklift. Let's talk about some of the other things
20 that happened. Now, were you employed by Brilin
21 Electric during its entire lease term?

22 A. No. They were already in the property when I --
23 once I arrived.

24 Q. All right. In 2017 ---

25 A. I think I was in the middle of their lease when I

1 came in.

2 Q. Okay. But you stayed until the end of the lease?

3 A. Correct.

4 Q. Okay. Let's talk about some other things that
5 happened at the property while you were there. Now, out
6 in the parking lot, were you all using the forklifts out
7 in the parking lot?

8 A. In the rear of the building, yes.

9 Q. Okay. If you'll turn to Plaintiff's Exhibit 5
10 for me. And Plaintiff's Exhibit 5 shows some damaged
11 asphalt, right?

12 A. Okay.

13 Q. Is that correct?

14 A. It looks like it.

15 Q. Okay. How did -- and that damaged asphalt
16 happened with a forklift, did it not?

17 A. I can't spec -- I can't say that. I mean,
18 there's a lot of water that used to sit there and
19 vehicles that would drive on that. I can't say the
20 forklift did it.

21 Q. Okay.

22 A. I don't know, I'm not an expert.

23 Q. All right. So you can't comment today, you never
24 saw a forklift causing any damage to asphalt?

25 A. No. I mean, these are -- these are pretty big

1 holes. A forklift has a narrow tire and I can't. I'm
2 not an expert, I can't speak on that.

3 Q. All right. Now, when you started working on this
4 property for Brilin Electric, was that asphalt damage
5 there?

6 A. I feel like the asphalt was always damaged,
7 because water used to sit really bad right through
8 there. So, yes, I feel like there was, but again I
9 don't remember. It was a couple years ago.

10 Q. Are you aware that Carolina Real Estate Holdings,
11 before this asphalt got damaged, had that entire parking
12 lot resurfaced?

13 A. Not prior. I do know that they came out and did
14 some, some work on the asphalt, yes.

15 Q. All right. Were you there when the asphalt was
16 repaved or redone?

17 A. The last time, yes.

18 Q. Okay. And Carolina Real Estate Holdings gave you
19 an -- and when I say you, I mean Brilin Electric.
20 Carolina Real Estate Holdings gave Brilin Electric
21 notice that --

22 A. I disagree with that.

23 Q. -- that we're gonna be coming out and doing
24 asphalt repair.

25 A. They said that they were going to and they said

1 they were going to give us a time and date and they did
2 not. They just showed up one morning and shut us down,
3 our operations down.

4 Q. So your testimony here under oath is that
5 Carolina Real Estate Holdings gave you no notice
6 whatsoever they were repaving the asphalt?

7 A. No, that's not what I said. I said that they
8 notified us that they would be coming, but there was no
9 we'll be here said date and time. They just said we're
10 gonna be in the near future, be doing the parking lot.

11 Q. Okay. All right. So you knew at some point they
12 were gonna be coming out and doing that?

13 A. At some point with notice, yes.

14 Q. Okay. All right. And how long did that asphalt
15 work take?

16 A. I can't remember, but I feel like it was a few
17 days, maybe a week. I don't remember. It was
18 definitely a few days.

19 Q. And during that time you were still able to
20 conduct business, were you not?

21 A. It slowed things down. We had to rent a piece of
22 equipment because we didn't have access to our
23 warehouse. So, yes, but with restrictions.

24 Q. Okay. All right. Now, in addition to the
25 asphalt, there was also two garage doors that were

1 damaged while you were with Brilin, right?

2 A. Okay.

3 Q. Is that correct?

4 A. There was two damaged doors, yes.

5 Q. Okay. And those doors were also damaged by a
6 forklift, right?

7 A. Yes.

8 Q. And they were damaged by the forklift run into
9 the garage doors?

10 A. I physically did not witness the damage, so I
11 don't know. I can't say. I can't speak on that because
12 I don't know.

13 Q. But you know that the damage was caused by
14 employees of Brilin running forklifts inside that
15 warehouse?

16 A. Yes, but I don't know -- I can't speak on how it
17 was damaged. I don't know how it was damaged.

18 Q. Okay. All right. So... And above one of the
19 garage doors that was replaced were some bricks. Do you
20 remember some damage being caused to some of the bricks
21 up there?

22 A. No. I seen a brick in a photo but, no, I don't
23 remember that, no, sir.

24 Q. Okay. All right. Well, let's take a look at
25 that. Let's take a look at Plaintiff's 8. And you can

1 see the broken bricks, can you not?

2 A. Sure.

3 Q. Okay. And you don't know -- did a forklift hit
4 those as well?

5 A. I can't imagine how a forklift would hit that.

6 Q. Okay. How ---

7 A. With it being off centered like that, I just
8 don't see, I don't see how that would happen.

9 Q. Now, how many forklifts does Brilin Electric
10 have?

11 A. One.

12 Q. Okay. And how far do the teeth of that forklift
13 go up off the ground?

14 A. I would say probably ten, ten feet.

15 Q. Okay. Now, this rollup door right here, from
16 the, from the ground to the top of the rollup door, how
17 many feet would you estimate that that is?

18 A. I have no idea. Twelve feet? I have, I have no
19 idea.

20 Q. All right.

21 A. I never measured it. I just don't see how a
22 forklift can move over to the side and, and hit that. I
23 would think more of like an 18-wheeler or something
24 backed into the building would do that, is what I would
25 -- I mean, I don't -- more so than a forklift.

1 Q. Okay. So you're sitting here saying that ---

2 A. I'm not an expert, so I don't want to ---

3 Q. You're not an expert on forklifts.

4 MR. WHITE: Your Honor, I object. We're calling
5 for a lot of speculation.

6 THE COURT: I'll agree. You're asking him to be
7 speculative with his answers.

8 MR. DLUZNESKI: Okay.

9 BY MR. DLUZNESKI:

10 Q. All right. Let's move on to -- have you read the
11 lease agreement between Brilin Electric and Carolina
12 Real Estate?

13 A. No, I was just an employee. I would not be privy
14 to that information.

15 Q. Okay.

16 A. Nor would I need to read it.

17 Q. Okay. Part of what you told us about, about
18 Wayne and how you felt harassed was that Wayne would
19 come into Brilin's lease space.

20 A. Unannounced.

21 Q. Unannounced?

22 A. Yeah.

23 Q. So he never gave you notice? Carolina Real
24 Estate never gave you notice?

25 A. If they did, it didn't reach me, no.

1 Q. Okay. All right. So the times that Wayne showed
2 up, you were not expecting him?

3 A. Not expecting him, which I had no problem with
4 him coming to the property. I would just like for it to
5 be scheduled, so... Just like every other person that
6 comes to our place and schedules it so we can facilitate
7 their visit.

8 Q. Okay. And what would he show up to do?

9 A. Just to walkthrough the property or to service
10 the unit. I mean, with purpose sometimes. Sometimes it
11 was just to walkthrough, but... I guess to just
12 inspect, make sure that the facility was a facility.

13 Q. Okay.

14 A. And the other times like it would be to service
15 the air conditioning, which is fine as well. I just
16 would like it to be scheduled, because we'd have to stop
17 what we were doing, move a bunch of items out of the
18 way. Move a bunch of pallets. We could be receiving a
19 truck. These guys are on a schedule too. We scheduled
20 with all of our vendors that are making deliveries,
21 everybody is on a time schedule, so it's more just ---

22 Q. So, if I understand your testimony correctly,
23 Wayne would come into Brilin's warehouse space, really
24 it sounds like for two purposes, to make repairs and to
25 walkthrough and inspect the premises, right?

1 A. Sure.

2 Q. And as far as those two purposes, you understand
3 that the landlord has the right to do those things?

4 A. I do understand that, but I don't see anything
5 changes -- many changes happen within a few days. I
6 mean, he would come, you know, on a Tuesday and would be
7 back on a Friday. And then come on a Thursday the
8 following week. I mean, there's just not that many -- I
9 mean, I understand like when I've operated apartments, I
10 never had my landlord come once a week and walk off the
11 property to see what my apartment looks like.

12 Q. How often would Wayne come to inspect versus make
13 repairs?

14 A. The repairs, he never made any repairs that I'm
15 aware of, other than servicing the air conditioner. And
16 that would just be, I guess, I don't know how often you
17 have to do that. Every 60 days or something. How often
18 they would come to fill the thing, but then he would
19 come in between that.

20 Q. Okay. And how long do those -- would his visits
21 take?

22 A. 15, 20 minutes. Sometimes five minutes.
23 Sometimes it would just depend.

24 Q. All right. So anywhere from 5 minutes to 20
25 minutes?

1 A. Yeah.

2 Q. Okay. All right. And your claim is that those
3 visits of five minutes to 20 minutes harassed you?

4 A. The, the comments would be -- and I can't
5 remember because this was a couple years now. I've
6 moved on with this part of my life. I didn't dwell on
7 this. But I do remember that I felt uncomfortable
8 during those situations or just the -- I'm a very level,
9 calm person, and I remember that he used to get me
10 worked up. I remember he would come and make my blood
11 pressure rise a little bit there.

12 Q. All right.

13 A. I don't remember specific conversations.

14 Q. All right. Did Wayne ever come in? You
15 mentioned that he would service the air conditioning
16 unit. Did he ever do anything with the ductwork up at
17 the top of the warehouse space?

18 A. No.

19 Q. Okay. While you were there, that ductwork got
20 hit with a forklift, right?

21 A. So, when I started the -- we had already lifted
22 the ductwork out of the way, so that was prior to me
23 coming. But we did repair it while I was there, yes.
24 It was replaced while I was there.

25 Q. All right.

1 A. So the lease was up.

2 Q. All right. So, before you got there, the
3 ductwork was lifted. You -- and you may not. You can
4 just say I don't know if you don't, but do you know if
5 Brilin ever sought the landlord's approval to do that.

6 A. I do not know.

7 Q. Okay.

8 A. I was told by the prior warehouse guy that we
9 were told to do that, but I -- but he could just be -- I
10 can't specify.

11 Q. All right.

12 A. No, I do not know.

13 Q. All right. So, in the repair, what repairs are
14 you aware of that Brilin made to the ductwork?

15 A. They replaced the piping. I don't know the
16 correct -- air duct, I guess may be the correct term.
17 But we just re-plumbed it and replaced it. Rehung it,
18 and strapped it from the ceiling. Sorry, I'm not an
19 HVAC guy. I don't know the correct ---

20 Q. Okay. Was the landlord involved at all in that
21 process, to your knowledge?

22 A. I do believe that they were aware of it, yes. I
23 feel like there was a list of things, items that needed
24 to be fixed, and I believe that was on the list. But I
25 personally did not see the list, nor had the

1 conversation with the landlord, but...

2 Q. All right. Was the landlord on site for any of
3 those ductwork repairs?

4 A. I'm not sure. I don't think so. I know that
5 Wayne had been in and about, but if this is the landlord
6 behind you, I've never seen the gentleman behind you
7 before.

8 Q. Okay. All right. Now, let's talk about probably
9 the biggest thing that we're all here about this week,
10 and that's the partition wall, right?

11 A. Okay.

12 Q. The partition wall. You testified about the
13 partition wall on direct. The temporary repairs that
14 happened in 2019, were those repairs made to Brilin's
15 side of the wall or Two Men And A Truck's side of the
16 wall?

17 A. I don't remember the dates per se, but I will say
18 that the Two Men And A Truck side happened first, and
19 then we fixed our side. We did a repair on our side, as
20 well, prior to moving out, but I didn't know the dates
21 of the ---

22 Q. Okay.

23 A. But there was repairs made on both sides.
24 Sheetrock was replaced on both sides.

25 Q. All right. And on the Two Men And A Truck's

1 side, were those made in 2019? Were those made first?

2 A. The Two Men And A Truck was done first, yes.

3 Q. Okay. And who did the work on the Two Men And A
4 Truck side?

5 A. It's my buddy Louis. I can't remember the name
6 of his company.

7 Q. W&L Services?

8 A. That, would probably -- yes. They're the ones
9 that did all the repairs.

10 Q. Okay. So, was W&L Services on site twice?

11 A. Yes. On the Two Men And A Truck side and then
12 our side.

13 Q. All right. And how much of a gap of time was it
14 between the two jobs? In other words, how, how much --

15 A. A couple months maybe.

16 Q. -- time was needed to do their side and your
17 side?

18 A. I think two or three months maybe.

19 Q. Two or three months, all right. And during those
20 repairs, were you on site actually there supervising or
21 watching the crew for those repairs?

22 A. Not their crew, no. I was running the warehouse,
23 receiving material, doing my job.

24 Q. Okay. All right. Are you aware if anybody in
25 their crew during either of these two visits were

1 hitting -- was hitting the wall or the metal studs
2 inside the wall with a sledgehammer?

3 A. No.

4 Q. No. You never saw any of that?

5 A. Not when I was there.

6 Q. Okay. Well, I mean, you testified about Wayne's
7 involvement in that. And I believe that you testified
8 that Wayne was not actually inside the warehouse for
9 those repairs.

10 A. He would come in and out of the warehouse, but
11 the majority of the job sat in the truck.

12 Q. How long would you estimate Wayne's actually
13 inside there?

14 A. I have no idea, because, like I said, I was on my
15 side of the building. I was working on my side. I have
16 a lot of ten-hour day work on my side. I don't know
17 physically. I would see him get out of the truck, walk
18 back and forth.

19 Q. Okay.

20 A. But I don't ---

21 Q. And I think that you testified that W&L Services
22 was the company that you had used in the past, you had
23 prior dealings with?

24 A. Yes.

25 Q. Okay. So, you set up W&L's -- or you scheduled

1 W&L's work, right?

2 A. Yes. When we needed a drywall company, I knew a
3 reputable company.

4 Q. Okay. All right. So you scheduled the work,
5 right?

6 A. I mean, I made the phone call. I didn't pay the
7 people or anything like that, no.

8 Q. You call them.

9 A. Yeah. I mean, I called them and said, hey,
10 there's a job that I want you to come look at.

11 Q. Okay. So they came out. The work took the
12 amount of time that it did. And then after the work was
13 completed, did you inspect the work that they had done?

14 A. I mean, a quick visual I guess you would say yes,
15 but I mean I didn't, you know, take a flashlight to it
16 and inspect it or anything.

17 Q. Sure. Okay. And how did the repair work look?

18 A. It looked fine. I did -- I do know that the Two
19 Men And A Truck guy had to approve his side. Made sure
20 that he, that he visually was okay with what happened on
21 his side, okay on his side and then he was good with it.
22 I remember having that conversation.

23 Q. Okay. Did you have -- did Wayne come back into
24 the warehouse and inspect the work?

25 A. I have no idea.

1 Q. Okay. You didn't witness Wayne give any
2 approvals or comment about the quality of the work?

3 A. No.

4 Q. Okay.

5 A. I know that the Two Men And A Truck guy and them
6 talked. But, I mean, nothing was ever come back to me,
7 hey, you need two guys back out here to blah, blah,
8 blah.

9 Q. Okay.

10 A. Because I did tell him that if we needed them to
11 come back and do whatever else that needed to get done.
12 And it was never needed to come back.

13 Q. All right. Now, did you ever -- when Wayne was
14 on Brilin's Leased premises, did you or did you witness
15 anybody else that worked for Brilin Electric tell him to
16 get off the property?

17 A. I, I at one time asked him to leave the property,
18 yes, when he had made me feel uncomfortable, but I don't
19 remember what the context of the conversation was
20 anymore. But I do feel like that I was instructed that
21 I could tell him that, to leave the property, but I
22 don't -- like, again, I don't remember. I wouldn't have
23 just kicked him off the property without somebody
24 telling me that I could ask him to leave the property.

25 Q. All right. So you were instructed -- who were

1 you instructed by that you could do that.

2 A. I don't remember this conversation now. I feel
3 like it may have been from my boss, but I feel like that
4 it come from the tenant, the landlord. But I don't -- I
5 can't remember. I don't want to speak for sure, because
6 I can't remember the exact --

7 Q. All right. So you were told ---

8 A. -- term a couple years ago.

9 Q. So you were told that you could tell the property
10 manager or the landlord, somebody that actually owned
11 the property to leave when he was there?

12 A. From my remembrance, yes.

13 Q. And you don't remember the context, but you
14 testified a few moments ago that Wayne would show up to
15 perform inspections.

16 A. Yep.

17 Q. Right? Which is a landlord's responsibility and
18 duty under the lease, correct?

19 A. Okay. But also to make me feel uncomfortable as
20 well. I don't feel like that's part of the agreement.

21 Q. I understand. He would also be there to service
22 the AC system.

23 A. Okay.

24 Q. And you testified, even though you can't remember
25 the context that he, according to you, made you feel

1 uncomfortable as the landlord's boots on the ground, so
2 you asked him to leave the property?

3 A. I don't remember the exact reason or what we were
4 doing. I don't remember the process of what was going
5 -- like, I don't remember. I just remember at one
6 point, yes, because I do remember that he called law
7 enforcement on me. And that's how I remember the
8 conversation.

9 Q. All right.

10 A. But it has to do all around the same time as that
11 trailer that was sitting outside the building. I feel
12 like that was all within a 24-hour window. I feel like
13 that was all at the same time.

14 Q. All right. So let's recap a little bit what you
15 testified to so far. You testified that the rollup
16 doors, the garage doors got hit with a forklift, right?

17 A. They were damaged.

18 Q. Right. The asphalt outside that we just looked
19 at got damaged?

20 A. Visually, yes.

21 Q. Okay. The, the jersey barriers that you didn't
22 like the placement of them, you moved with a forklift.

23 A. Well, sure, so we could be operational.

24 Q. Okay.

25 A. But I also had the, the property next door's okay

1 on it as well.

2 Q. But you understand that Keller USA did not own
3 your property that you were in?

4 A. I mean, I thought that we were leasing. I
5 thought it was part of our driveway that we were
6 leasing.

7 Q. Okay. The ductwork up top at the warehouse, you
8 testified that damaged by a forklift.

9 A. I have no clue, no clue how it was damaged, I
10 just know that it was damaged once I got there. It had
11 actually been lifted up and was replaced prior, so I
12 don't know how. I can't speak to the damage, how it was
13 damaged.

14 Q. All right. And this demising wall or partition
15 wall that you told us about, that was also damaged by a
16 forklift, wasn't it?

17 A. Sure. It was damaged by a pallet, I would say
18 more so.

19 Q. All right. So, a pallet on a forklift being
20 driven into the wall?

21 A. Sure.

22 Q. Okay.

23 A. Or a pallet jack or something. I don't know.

24 Q. All right. So, finishing up here, you testified
25 that Brilin moved out when you all moved out in April of

1 2020, right?

2 A. Sure.

3 Q. Okay.

4 A. I don't know the date, but yes.

5 Q. All right. And Mr. White asked you on direct
6 examination if, you know, somebody could come in at that
7 point and do a final walkthrough for a lease term, do
8 you remember that?

9 A. Yes.

10 Q. Okay. Now, April 2020, going back, and I
11 understand that it has been a while, but going back to
12 April 2020, that was the height COVID, was it not, or
13 the beginning of the COVID pandemic?

14 A. Sure.

15 Q. Okay.

16 A. I don't remember exactly. But, yeah, I remember
17 COVID was somewhere in 2020, yes.

18 Q. Okay. And, in fact, since in April 2020 we're
19 dealing with not only a national pandemic, but a
20 worldwide pandemic. People were scared. Do you believe
21 -- I mean, would it have been reasonable for people to
22 say I don't want to come out right now and do a
23 walkthrough because of this virus that's killing people?

24 A. I mean, that person could have been by themselves
25 in a room this big with two people. So, I mean, I guess

1 they could have felt uncomfortable to do it, but it's
2 not like they would have been subjected to a room full
3 of people or any tight space by any means. I don't see
4 what would make somebody feel uncomfortable. Let's put
5 it that way. There was no tight quarters.

6 Q. Your opinion. That's your opinion?

7 A. And, again, I'm not a doctor. I'm not a
8 professional in any way, shape, or form, but yes.

9 Q. Sure.

10 Your Honor, may I have just one brief moment?

11 THE COURT: (No verbal response.)

12 All right. I just have two follow-up questions,
13 three additional questions for you, Mr. King.

14 A. Sure.

15 Q. Before you all moved out, there's carpets
16 covering the floors in the office space, correct? A
17 flex space, as you referred it.

18 A. Okay.

19 Q. Right?

20 A. Uh-huh.

21 Q. Okay. Did you all have a dog in there?

22 A. Yes.

23 Q. Okay. Whose dog was it?

24 A. The landlord or Bryon Russell's.

25 Q. All right. When did the dog show up?

1 A. I don't remember.

2 Q. Okay.

3 A. I don't remember the date.

4 Q. All right. And when you all moved out, there was
5 a dog pee smell on the carpets in the office space, were
6 there not?

7 A. I don't recall that. I mean, to be technical,
8 I've also had my dog in that property as well. I have a
9 Yorkie but he never -- I mean, he's potty trained. He
10 doesn't -- but I do know that we shampooed the carpet on
11 numerous of times while we were in the property.

12 Q. Okay.

13 A. Because the front door would leak. And I do feel
14 like we did talk to Wayne about that as one of the
15 repairs that never got handled, but it would probably
16 fill, from me to this lady right here, with water down
17 the aisle when you walk into the front door. And one of
18 the bay doors would leak water pretty bad as well.

19 Q. All right. One final thing about the jersey
20 barriers. You testified you moved with a forklift. Do
21 you have any idea how much those jersey barriers weigh?

22 A. No clue.

23 Q. Okay. But a person cannot lift them by themselves,
24 correct?

25 A. Huh-uh.

1 Q. Two people couldn't lift them by themselves.

2 A. I don't think so. They're concrete.

3 MR. DLUZNESKI: All right. Thank you, Your
4 Honor. That's all I have.

5 THE COURT: Any redirect, limited to what he went
6 into?

7 MR. WHITE: Yes, Your Honor. Super brief.

8 THE COURT: Yes.

9 REDIRECT EXAMINATION

10 BY MR. WHITE:

11 Q. You mentioned water intrusion in the front. Tell
12 us a little bit about that.

13 A. So every time we would get a good rain, at our
14 front door it would just flood. I mean, it would be,
15 you know, a quarter inch of water, and we would have to
16 shampoo the carpet after every -- pretty much every bad
17 rain storm so it wouldn't mold or anything like that.

18 Q. Or have an odor?

19 A. Or any odors or anything, absolutely.

20 Q. The landlord never really fully addressed that
21 water?

22 A. No. And I know personally that I brought it up
23 to Wayne numerous of times about letting in our -- in
24 our warehouse, too, the one rollup walkout door,
25 probably water from me to you would come through. And I

1 think in that original quote there was something
2 mentioned about weather stripping, and that was probably
3 what that was about was to help with that, but...

4 Q. In a space in a light industrial commercial space
5 like that warehouse, do you think, in your opinion, was
6 it a reasonable thing to operate a forklift inside that
7 warehouse?

8 A. 100 percent.

9 MR. WHITE: Nothing further, Your Honor.

10 THE COURT: All right. Thank you, sir. You may
11 step down.

12 Lawyers approach a moment.

13 (Witness leaves witness stand.)

14 MR. WHITE: Your Honor, may he be excused?

15 THE COURT: Any reason why the witness can't be
16 excused?

17 MR. DLUZNESKI: No objection.

18 THE COURT: Ence held off the record.)

19 All right, ladies and gentlemen, we're gonna take
20 a short recess. I need to remind you not to have any
21 discussion among yourselves about anything involving the
22 case and don't do any type of independent research. You
23 may go with the bailiff. We'll get you back just
24 shortly.

25 (Jury leaves courtroom at 11:01 a.m.)

1 (Recess was had from 11:01 - 11:21 a.m.)

2 THE COURT: Is the defense ready to call their
3 next witness?

4 MR. WHITE: Yes, Your Honor. We call Mr. Bryon
5 Russell.

6 THE COURT: Mr. Russell, come right up here in
7 front of the clerk of court and she'll swear you in.

8 THE CLERK: Place your left hand on the Bible and
9 raise your right-hand, please. Do you solemnly swear or
10 affirm the testimony you give today should be the truth,
11 the whole truth, and nothing but the truth so help you
12 God?

13 THE WITNESS: Yes, ma'am.

14 THE CLERK: Thank you. Please be seated.

15 THE COURT: Sir, have a seat in the chair, and
16 please speak into the microphone, if you would. Be
17 careful stepping up.

18 BRYON CASEY RUSSELL,
19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. WHITE:

22 Q. Good morning, Mr. Russell, how are you?

23 A. Good morning.

24 Q. If you could, please, introduce yourself to the
25 jury. Tell them who you are and who you work for.

1 A. I am Bryon Casey Russell. I am owner and
2 operator of Brilin Electric.

3 Q. What does Bryon Electric do?

4 A. We basically specialize in single family
5 residential for electrical, electrical contracting.
6 Mainly for tract home builders, such as Ryan Homes and
7 David Weekley. Just national home builders.

8 Q. So you all are the guys that go in and wire up
9 the houses?

10 A. Yes, sir.

11 Q. How, how long -- well, when did you -- did you
12 found Brilin?

13 A. February of 2009.

14 Q. What did you do before you started Brilin?

15 A. I was an electrician. I worked for somebody
16 else.

17 Q. How long have you been an electrician?

18 A. Since I was 18.

19 Q. How old are you now?

20 A. Forty-two.

21 Q. So you were doing it for somebody else, doing it
22 for yourself now?

23 A. Yes.

24 Q. Okay. You moved out of this space in April of
25 2020. Why did you do that?

1 A. We had outgrown it.

2 Q. Business was good?

3 A. Yes.

4 Q. Have you got a new space?

5 A. Yes, sir. We bought a 13,000 square foot
6 building right along Carowinds Boulevard.

7 Q. How would you compare your current landlord to
8 your previous landlord?

9 A. Much easier to deal with.

10 Q. Who's your current landlord again?

11 A. Myself.

12 Q. Do you still have the same landlord problems with
13 walls getting banged up and things like that?

14 A. Unfortunately, yes.

15 Q. Because that just happens in a warehouse space,
16 doesn't it?

17 A. Yes. You set your warehouse up and where your
18 pallets go are set up on racks. And you're set up based
19 upon standard pallet size. And then you give yourself a
20 buffer, a way from the wall. But you receive deliveries
21 from, say, 40 different companies. Not everybody uses
22 the same pallet size.

23 So your forklift driver has, you know, forklift
24 certified. He's got a 10-hour OSEA course, 30-hour OSEA
25 course, but... So, you know, he's -- like Craig said,

1 you know, moving packages for 20 different crews. What
2 kind of Craig left out is that these packages are
3 anywhere from two-foot tall to four-foot tall. And so
4 you're not exactly seeing everything around you. And if
5 somebody talks to you, distracts you in any way, and
6 you're not paying attention to that one pallet that you
7 just moved to put away is longer than the last one you
8 just picked up and put away, that's when they run into
9 the wall.

10 We constantly do it in our building now. And I
11 have tenants in my building that we are in now when we
12 have renters. And their space backs up to our warehouse
13 space. And sometimes we run into their space and they
14 kind of tell us, hey, you know, there's a noise we heard
15 and we go look at it and we have to evaluate it. So I'm
16 sure the same thing is happening to my wall that
17 unfortunately happened to their wall.

18 Q. Right.

19 A. You know, we're kind of trying to look and look
20 for a permanent solution to fix that. Maybe like
21 putting plywood up or something in that situation. That
22 might help the situation, but we haven't crossed that
23 bridge yet.

24 Q. All right. We're gonna bounce around just
25 because I do not want to get impatient. I just want to

1 fill in some gaps. They don't need to hear everything
2 again for me to start/stop. Let's start with the
3 October 2019 on site meeting. That was with you. That
4 was with the two gentlemen over at plaintiff's counsel
5 table and Mr. Brian Hoffman from my law firm. I just
6 want to ask you two things about that. What was your --
7 how would you describe the meeting? Was it productive
8 or unproductive?

9 A. I felt the meeting was really productive. We
10 came up with a, basically a punch out list of what we
11 were to complete by the time we moved out and what we
12 were going to do going forward.

13 Q. And what was -- this is my second question. What
14 was your takeaway as to what Mr. Decker's expectations
15 of you were coming out of that meeting?

16 A. Was to complete all the items on the punch out
17 list before we moved out, and everything was gonna be
18 fine and good.

19 Q. And so, we heard from Mr. Decker about a promise.
20 That you promise not to do anything without telling,
21 right?

22 A. Right.

23 Q. Was there anything that you intended to do in
24 fixing up this space before you turned it over that
25 wasn't on that list from October of 2019?

1 A. Not intended to, no.

2 Q. So, he knew what you were gonna fix as of October
3 2019, right?

4 A. Right.

5 Q. So there wasn't really a need to have additional
6 conversations about what you were already -- you had
7 already agreed to fix and what you knew you were gonna
8 fix, right?

9 A. Right. Except for things kind of stalemated on
10 the other side. We started communicating about, through
11 the lawyers, trying to pin down, like, going down the
12 list of the major items, like garage doors. When we
13 sent them the garage doors, like, hey, okay. Okay. You
14 want us to replace the garage doors?

15 The garage doors were not hit with a forklift.
16 The night before, when we get ready for the next day,
17 they would do a one line in front of the garage doors of
18 what was going out the night before. They would line it
19 up in front of the door. Well, the person in the back,
20 if they weren't paying attention of, you know, when
21 they're 10 pallets back, they drop one down and push it
22 forward, that would hit the bottom of the door. That's
23 what caused the bottom of the damage to the door, was
24 the pallets pushing forward, and that's why they damaged
25 the bottom of the doors. And that's why the doors had

1 to be replaced. They didn't run into them with a
2 forklift. They didn't hit them. It was when the doors
3 were closed at night and they were pushing the stuff
4 forward, staging for the next morning. And they were,
5 you know, they had told us, Decker or Carolina Real
6 Estate owner, told us the doors needed to be replaced.

7 So when we sent them our doors, they're like, no,
8 we want this one door instead. So we replied back. It
9 was like, okay, your one door is twice as much as ours.
10 It doesn't match the building. We're gonna replace
11 those doors that match the building, so why would we do
12 that? And then we never got no response.

13 So then we got down to coming time to, it takes
14 time to order doors. It takes time to get them in. It
15 takes some time to get installed. Even though we
16 ordered doors, I think Jim said, like around December or
17 whatever, the doors barely got installed. Right in
18 April, right before we moved out. That's how long it
19 took to order and come in. But if I would have waited
20 any longer, the doors would have been on the list saying
21 the door -- it would be -- we'd be sitting here saying
22 the doors not (inaudible). Because our goal was to fix
23 everything and turn the space over in the condition that
24 we received it in.

25 Q. So, I just want to back up to those two

1 takeaways. Your takeaways were to direct a meeting and
2 that you had a list of items that you were gonna do, you
3 knew you were gonna do them, but yet -- then it kind of
4 goes off the rails because then all of a sudden he
5 started saying, no, I want you to use this vendor for
6 that, right?

7 A. Yeah.

8 Q. And that was not something that was discussed in
9 October of 2019.

10 A. Correct.

11 Q. The obligation, per the lease, is the tenant
12 needs to repair it.

13 A. Right. And have the obligation. Only thing that
14 he requested was they had his certificate.

15 Q. And the reason I'm asking you is cause you kind
16 of heard from Mr. Decker that you basically breached
17 this promise and that's why, that's why you got sued.
18 What's your response to that?

19 A. I mean, I feel like they had from that moment,
20 they had already had the intentions of going through
21 with all this.

22 Q. And you got the -- you've seen the cease and
23 desist letter that's entered as Plaintiff's Exhibit 3.
24 Is that what caused you to hire our law firm to respond
25 to that?

1 A. Well, when we got the first letter, kind of like
2 the first eviction letter ---

3 Q. Yeah. The September 24th, 2019 one. It's right
4 -- it's in Plaintiff's 3, if you want to refresh your
5 memory. Is that -- that's what -- that was the catalyst
6 for you hiring a lawyer, right?

7 A. Yeah. Yeah. Because it talked about missing
8 rent and whatnot, and we had never missed rent or
9 nothing like that, so none of it made sense.

10 Q. Okay. Now, I want you to go to the last page of
11 the actual letter itself. So it's gonna be one, two,
12 three signature blocks of (inaudible). I want you to --
13 you see that last paragraph right before it says with
14 kind regards I am? You see that?

15 A. Sincerely Steve?

16 Q. Yeah, right above there.

17 A. Uh-huh.

18 Q. It says: Since our office now represents
19 Carolina Real Estate Holdings, in connection with this
20 matter, please direct all communication and
21 correspondence related to this matter to our office and
22 not to Carolina Real Estate Holdings. Do you see that?

23 A. Uh-huh.

24 Q. And even before that it says, if you have any
25 questions about the content of this correspondence or

1 wish to engage counsel, please let me know or have your
2 lawyer contact me, right?

3 A. Right.

4 Q. How would you describe to this jury, didn't
5 working through these -- now, obviously you had that
6 October meeting, but you know you've got stuff you need
7 to do. You know you're leaving the space. You want to
8 turn it over to the way you found it. Describe for the
9 jury how complicated or easy that was when you got
10 lawyers involved in that process.

11 A. I mean, they're just, it went nowhere.

12 Q. And why did it go nowhere?

13 A. I mean, we sent -- we'd send an e-mail over to
14 them and then not get a response. So, I mean, the goal
15 is to resolve the issue and get everything done in a
16 timely manner because we only have until we move out.

17 So if this is -- what, in September we got this?
18 Yeah, in September. So for -- okay, so let's call this
19 October. Basically September's over. This is 9/24. So
20 that's -- and then we have until the middle of April is
21 when our lease is up.

22 So then we have three months -- a total of five
23 months to conduct our business, get out of the space.
24 Get everything cleaned up and get it corrected and get
25 it done. So, I mean, that's really not a lot of time.

1 So think about if you're moving out of your house,
2 moving out of your house, I mean, you try to give
3 yourself like 90 days just to move out of your home, you
4 know? So...

5 Q. And that's why the -- and that's ultimately why
6 the meeting was called. You're trying to resolve this,
7 but we gotta direct all communications through the
8 lawyers, so that's why you end up having an on-site
9 meeting, right?

10 A. Yes.

11 Q. And you thought it was productive and you thought
12 you knew that the landlord knew what you were supposed
13 to do, okay? And you went about trying to do it?

14 A. Correct.

15 Q. But yet the landlord interfered every step of the
16 way?

17 A. Yes.

18 Q. Including filing a lawsuit against you a month
19 before you moved out?

20 A. (No verbal response.)

21 Q. Yes or no? You've got to give a verbal response.

22 A. Yes. Yes, sorry. Yes.

23 Q. So, the lease ended April 30th. We've heard that
24 already. We see it in the lease. When was the space
25 available for doing a final walkthrough with the

1 landlord?

2 A. I e-mailed you. I guess we were out before April
3 1st. We were out a full 30 days before. I made sure
4 when we bought our building that we were completely
5 vacated. That we could be in our new space 60 days
6 prior to when we moved.

7 So we have 30 days to move our facility and move
8 the office first, move the warehouse, and then be out,
9 touch up anything and then have it prepared for a
10 walkthrough. Because I knew that we needed time to make
11 repairs because I knew it wasn't gonna be an easy
12 process.

13 Q. Why did you want -- I'm sorry, go ahead. Keep
14 going.

15 A. No, that's fine. I mean, that's ---

16 Q. Why did you want to do a walkthrough?

17 A. I just knew it wasn't gonna be an easy process.
18 I mean...

19 Q. Why did you know it wasn't gonna be an easy
20 process?

21 A. I mean, not, not to -- I mean just, every dealing
22 with him is not -- has not been easy.

23 Q. Now, if you all had done a walkthrough and the
24 landlord came up with additional punch list items to do,
25 what would you have done with those punch list items?

1 A. I mean, we would have completed them like we
2 completed all the other items.

3 Q. What if they said, hey, we want to get our
4 general contractor and engineer here to take a look at
5 this wall and maybe even opened it up. What would you
6 have done?

7 A. I would have had the drywall taken down.

8 Q. Do you think it would have been a good idea for
9 you, unilaterally, to take a big old section of drywall
10 down on a space that you don't own?

11 A. I don't -- I feel that would have made him mad,
12 like why are you tearing apart my wall?

13 Q. So you didn't want to do that?

14 A. Well, I mean, I advised my counsel. I'm like
15 what do I do? You know, these -- we've got everything
16 taken care of except for the pavement and the wall.
17 Those were our last two big items we have left. And
18 then you e-mailed them. Said, hey, the space is empty,
19 space is clear. These are the last two big items we
20 have to resolve. We have 30 days to do it. Let's meet
21 and let's get them resolved and let's come to a
22 compromise. Let's get it done.

23 Q. Now, we heard the -- we heard the testimony of
24 Mr. Robinson and how we had the site visit in May of
25 2020 when we came. Do you recall talking about that?

1 A. Uh-huh.

2 Q. Prior to that date in May of 2020, did you have
3 any knowledge that any of the studs in the demising wall
4 had been hit or compromised in any way?

5 A. No. Because when they opened up the wall on the
6 other side, once they took the drywall off, they brought
7 me over, they showed me. They said, hey, okay. You
8 know how to get the drywall off. We've got, you know,
9 we're getting ready to put it back. Does it look good?
10 I'm like, yeah, I don't know what I'm looking at, but
11 okay. And then Wayne was there and I'm like, does it
12 look good to you? And he was like, yeah. I'm like,
13 okay. I'm like, well then go ahead. And then they
14 brought me back in when they finished. Me and Wayne
15 looked at it again. I said, look good to you? He said,
16 yes. And that was it.

17 Q. To orient the jury to what you just talked about,
18 that's the Two Men And A Truck ---

19 A. Sorry, on 2019. Sorry.

20 Q. November of 2019, right?

21 A. Yeah.

22 Q. And so Wayne supervised that whole job?

23 A. Wayne is the one who called me. He said, hey,
24 your forklifts have hit the Two Men And A Truck side or
25 went through the wall. I'm like, okay. I said, what do

1 you need? He goes, I need a drywall guy. I said, okay,
2 how soon do you need him? He said, within three to five
3 days. I said, no problem, I'll get you one. I said,
4 can I get in next door to go look at it? He said, yes.
5 So I just went in next door, looked at it, told Craig.
6 I said, did you used to work for a drywall guy? He
7 said, yes. So...

8 And it's the same drywall guy that does all their
9 drywall for Ryan Homes for all north and south, which is
10 like 1200 homes a year. I'm like, okay, well that's
11 gotta be a reputable company. I mean, that's good,
12 right? I mean, they're one of Charlotte's top home
13 builders. So that was fine with me.

14 So I asked him to call. They got there within
15 three days. I called Wayne back, told him when they
16 could be there. He met us there. I introduced the
17 drywall guys to Wayne. I said, hey, this is Wayne.
18 He's gonna tell you exactly what to do. All you need to
19 do is make sure that he's happy.

20 And they completed the task that he wanted and
21 they left. In fact, I think it took two days because
22 they did the first -- took it down, put up the drywall,
23 put a coat of mud on. And since it's a drywall space it
24 wasn't like a finished coat. It was just put one coat
25 of mud on, let it dry one day and then put another coat

1 on.

2 Q. And so, it's your testimony that Wayne Schulte,
3 an agent of CREH, was the one who signed off on that job
4 on the Two Men And A Truck side?

5 A. Called me, scheduled it, supervised it, signed
6 off on it, everything.

7 Q. You didn't sign off on it?

8 A. No.

9 Q. Okay. And you had -- did you have every
10 intention of something similar to that happening on the
11 other side once you guys moved all your stuff, cleared
12 it out, could do a walkthrough?

13 A. Well, yeah, because they asked me at that time.
14 They're like, hey, we need to do the other side. And
15 I'm -- I had the argument with Wayne at the time. Like,
16 it doesn't make any sense. You know, we still have
17 another year-and-a-half here, ten months, whatever it
18 is.

19 It doesn't make any sense to take down 150 feet
20 of racking, all these packages. I don't have nowhere to
21 put it. You don't have anywhere to put it. We wouldn't
22 be able to operate for however long it takes. And then
23 if we put it back up and if it happens again, we just
24 wait until the end and then we'll do it then. And then
25 that makes more sense. It's logic.

1 Q. How critical was using that ramp on the side
2 garage door for, for your business operations?

3 A. I mean 100 percent. Our main, two main
4 suppliers, they don't have in their budgets for a dock
5 high door truck, so they deliver with those big box
6 vans. So we have to go out and pick up from their
7 vehicles and then bring it back around inside to ours.
8 And then, when we go unload to the crews, we have to
9 take it back out to them.

10 Q. And that's why early, like within months of you
11 taking over that space, you had the ramp converted from
12 asphalt to concrete, right?

13 A. Well, I -- it started to deteriorate right away
14 on the first rain, so I contacted Wayne, because he was
15 the maintenance guy at that time and it was what he was
16 known as. Told them. And then, I guess, he contacted
17 his office.

18 Q. Okay.

19 A. And then we agreed to the best course of action
20 would be to concrete it. So, we found a local concrete
21 guy that had a Certificate of Insurance. Gave them the
22 estimate. They approved it, and then they paid for it
23 and the work was done.

24 Q. And then they later repaved it and you guys
25 didn't know the date that they were gonna do that,

1 right?

2 A. It was actually delayed for like a whole year.
3 And they just kept saying it was coming, coming, coming.
4 We showed up one Monday morning and all their trucks
5 were there. And we're like what's going on? And
6 they're like, we're repaving this morning.

7 And we're like, okay, so what does that mean?
8 They're like, everybody's gotta be out of the parking
9 lot in the front and on the sides. So we had to
10 scramble from there knowing we're not gonna be able to
11 use our side ramp.

12 So, we called the guy we rent equipment from. He
13 was able to get us a lull, which is -- I mean, we
14 probably could have done a smaller one, but that's all
15 that was available on that morning of the notice. They
16 wasn't able to get it out until noon. So that day we
17 had to unload all the packages by hand off the back of
18 the dock and unload the trucks by hand, the deliveries.
19 Then with our rent -- when we send out a rent, we
20 deducted that expense off our rent, because we felt like
21 that was their, you know, responsibility because that
22 was their fault.

23 Q. That was for 1144 and change, right?

24 A. Yeah.

25 Q. And that's when you got your eviction text from

1 Mr. Decker?

2 A. Yeah, after that. Yeah.

3 Q. And that's when you reached out to Frank Jackson
4 and said, what's going on here?

5 A. Yeah.

6 Q. So, you know, just to clear something up for the
7 jury. Why did you reach out to Frank Jackson? Who was
8 -- who at that time, who was Brad Decker to you? What
9 was your understanding of who he was? This is August of
10 '19.

11 A. Well, at first it was Wayne the maintenance guy
12 and then when we couldn't get something resolved with
13 him, went to the CFO or controller or whatever he was.
14 And then like when this situation came on, like then
15 they referred me to Brad. Because, you know, he said he
16 couldn't do nothing about us getting reimbursed for it,
17 but he could. He could approve it, him being Brad.

18 So literally had an argument with him on the
19 phone about 45 minutes about what was fair, about fair
20 notice. You know, about having a fair right to our
21 space. You know, us being able to work and operate.

22 And then comes towards the end of the
23 conversation I was like, you know, I want to talk to the
24 owner because this is ridiculous. You know, an owner is
25 supposed to deescalate the situation, resolve the

1 situation. By now the owner would have split this in
2 half, we would have moved on. We would have gone on.

3 That's when I found out he was the owner. And
4 then that's whey I'm like, okay, well, I'm just gonna
5 end this conversation here because this is not going
6 anywhere. And then that's when we just paid the other
7 1200 and moved on.

8 Q. So you just gave up on it?

9 A. Because I knew it wasn't ---

10 Q. It was a 45-minute unproductive conversation?

11 A. Yeah. Because I knew it wasn't -- I mean, it's
12 not really like a true owner. An owner, operator,
13 manager, anybody that's ever been a manager before or an
14 owner of anything knows that you're the last line.
15 Like, you're the one that's supposed to deescalate the
16 situation, resolve the situation. You're the one that's
17 supposed to compromise half and half, quarter,
18 something. You have to come to a resolve. Or anybody
19 that's ever been a parent before knows that like you
20 have to resolve the situation. You can't just let it go
21 undone.

22 Q. And so, deescalation, you get a default letter
23 and now we've got to get the lawyers involved?

24 A. And now we sit here.

25 Q. So, the -- we talked about how critical that ramp

1 was. Did you -- and the jury heard some testimony about
2 you all have an issue with Two Men And A Truck or
3 Keller. Do you feel like Brilin ever had any issues,
4 like good neighbor issues, Keller, or Two Men And A
5 Truck?

6 A. At first. When we first moved in we did have a
7 couple of hiccups. So, if we had a white board I could
8 draw you a picture. But if you have two big buildings
9 that are both shaped here and there's parking all the
10 way across the front of them, our guys would come in at
11 6 a.m., drop off their cars, go get in their vans and
12 leave.

13 So, the older gentleman that owned Keller, if one
14 of our guys would -- there's an imagining line in the
15 middle, right, that he owns. That's his property line.
16 If one of our guys would leave his car on across that
17 line, that would technically be one of his parking
18 spaces, even though he had extra parking spaces here and
19 a whole bunch more down the front of his building, he
20 didn't like that.

21 So, in the beginning he would come over, but he
22 was coming from another county. He didn't come over
23 like politely. Just came over like yelling, you want to
24 park in my parking ---

25 MR. DLUZNESKI: Objection, hearsay.

1 THE COURT: I'll sustain the objection.

2 BY MR. WHITE:

3 Q. So other than these hiccups, did you work it out
4 pretty quickly with Keller?

5 A. Yes. We ended up having a working relationship
6 and we were able to work it all out, and it became a
7 good working relationship.

8 Q. How about Two Men And A Truck?

9 A. We still do work for them today. I mean, we
10 still do stuff for them in their space now.

11 Q. Trip Moore, he's the owner of that particular
12 franchise?

13 A. Yeah.

14 Q. And he actually took over the space?

15 A. Yeah, the day we moved out.

16 Q. So he moved from that interior suite over to your
17 interior suite right after y'all?

18 A. Yeah.

19 Q. Did you ever -- did he ever contact you about any
20 issues with the space after he, after he took it over?

21 MR. DLUZNESKI: Objection, hearsay.

22 THE COURT: Do you want to rephrase the question?

23 MR. WHITE: Well, the yes/no part I don't believe
24 is hearsay, Your Honor.

25 THE COURT: All right, go ahead.

1 BY MR. WHITE:

2 Q. And I'm not following up, so...

3 But if you want to -- was that a yes or a no?

4 A. It was no.

5 Q. Okay. Again, this is me bouncing around a little
6 bit, because I'm just trying to fill the gaps. We're
7 gonna go now to the May 2020 meeting where you, myself,
8 and our engineer went to go look at the wall when it was
9 exposed. Do you remember that?

10 A. Yes.

11 Q. Okay. Now, you heard Mr. Robinson in that same
12 chair describe the interactions. That you were less
13 than pleasant, however you want to describe it. Tell
14 the jury, like, what was your take? Like, how did you
15 -- what did you think of that testimony?

16 A. I was blown away. We, we were there first or Guy
17 was there first. Someone was there first. But before
18 we walked in, he pulled me inside. He said, whatever
19 you see or whatever's going on, don't say anything to
20 them. Save all your comments and responses for me when
21 we get back outside. He said, don't say anything.

22 Q. Hold on. I just want to make sure the jury --
23 when you say you, you meant me, right?

24 A. Yes.

25 Q. Okay. Fair enough.

1 A. Nathan said, don't say anything to anybody about
2 anything. Just wait until we get back outside and then
3 say everything to me. So while we were in there, I
4 didn't say anything. I just stood back, kept my mouth
5 shut. And then Nathan said everything. And then the
6 engineer talked. And then I didn't say anything until
7 we got back outside in the truck to them and that was
8 it.

9 Q. The whole purpose of that was just to let our
10 engineer look --

11 A. To evaluate the situation.

12 Q. -- inside the wall once they closed it back up,
13 right?

14 A. Yeah.

15 Q. So that whole, like, you being hostile and me
16 having to pull you aside and talk to you, did any of
17 that actually happen?

18 A. No. You actually pulled me back and asked me,
19 like, a couple of questions like, you know, of what I
20 thought of what was going on. Was it needed? But you
21 pulled me back and asked me ---

22 Q. And why did I ask you that?

23 A. Because you thought it seemed excessive.

24 Q. Yeah.

25 A. Because a lot of the area wasn't damaged where

1 the drywall was missing.

2 Q. Because you've done repairs like that, right?
3 You know like what you do with studs and things like
4 that?

5 A. Yeah.

6 Q. So it wasn't hostile at all in any way?

7 A. No. I mean, the guy was polite to us all the way
8 outside and he walked with us the whole time and...

9 Q. And as soon as we were done, he was gonna start
10 fixing it. He had all his materials ready to go.

11 A. He was actually just waiting for us to leave.

12 Q. And then Mr. Robinson was gonna start doing his
13 work, replace the studs, put the drywall back up.

14 A. Yes. So when he said there was a -- never --
15 like, we never mentioned for us to jump in. I mean,
16 there wasn't a chance for us to jump in unless we were
17 gonna grab a tool belt then and join his crew.

18 Q. Okay. Now, I'm gonna bounce back to December
19 2019 very briefly. You heard Mr. Schulte's testimony
20 that he was on site for just 20 minutes and he didn't
21 approve it. He didn't supervise it. He didn't know it
22 was coming. What is your response to this jury as to
23 that testimony?

24 A. I mean, as you heard like Craig say, he was there
25 all the time. He never missed anything. And that was

1 the thing about him. Like he was supposed to have an
2 appointment to come by, and I mean, we actually just --
3 for the longest time I never knew the guy's name. We
4 always called him Lurch, because he just lurched around
5 the building.

6 We've called the law on him because the women in
7 the front office felt uncomfortable because he's taking
8 pictures as they're walking in. If he was taking a
9 legitimate picture of the front of the building, I don't
10 know and we didn't know, but why are you taking pictures
11 when there's women walking in the front of the building?
12 It doesn't make sense.

13 I mean, you can take the pictures of the front of
14 the building when we're not there or just, you know,
15 schedule them like you're supposed to. And like Craig
16 said, why are you Tuesday, Wednesday, Thursday, next
17 Tuesday. It doesn't make sense. The air conditioning
18 gets service once a year. And then we're technically in
19 our lease, we're supposed to be responsible for the air
20 conditioning. So, I mean...

21 Q. So you had female personnel working in the front
22 office?

23 A. Yeah, four of them.

24 Q. And they were not comfortable with the property
25 manager or maintenance guy, Mr. Schulte?

1 A. No.

2 Q. And why was that again?

3 A. Just because he would just sit out in his truck
4 and stare into the building. So it made them feel
5 uncomfortable when they walk in and out.

6 Q. And were you sensitive to that as the owner?

7 A. Well, because if I was gone and they would call
8 me and they're like, hey, I don't feel comfortable to go
9 to lunch. And this was back when, you know, Door Dash
10 was a big thing. So, yeah.

11 Q. So that caused problems in the front office?

12 A. Yeah.

13 MR. WHITE: One second, Your Honor.

14 BY MR. WHITE:

15 Q. All right. I've just got a few more areas to
16 close the gap on, Mr. Russell, and then I'm gonna turn
17 you over to plaintiff's counsel. We've heard a lot of
18 this, this ductwork. Tell the jury what really happened
19 with the ductwork in the warehouse.

20 A. Okay. So the ductwork was not hit. There was
21 three units in the warehouse base. There was one on the
22 closest to the outside wall that ran inside the office
23 units.

24 Q. I'll tell you what, let me interrupt you, Mr.
25 Russell, just to paint a picture for the jury. Let's

1 look at it while you're talking. So, we're gonna look
2 at Defendant's Exhibit 19, second to the last page. Go
3 ahead, Mr. Russell. Are you there?

4 A. Yeah. You're talking about this picture, right?

5 Q. Yeah. Everybody, this is the picture we're
6 talking about.

7 A. Okay. And so that unit --

8 Q. Go ahead.

9 A. That unit ran all the way back on the warehouse
10 side there. That's not a unit that we used. So
11 technically, you know, with the lease I could just
12 remove it, not use it. Take it, put it in a storage
13 unit, and then put it back when we moved in. It's not
14 necessary.

15 So, clinically I told my guy, I said, disconnect
16 it. Pull it up, lift it up, strap it to the ceiling
17 because it was in the way of the racks, of using the
18 whole upper level. Well, he was lazy. He just took the
19 end of it, lifted it up like this and strapped it to the
20 ceiling.

21 So, once I saw it I was like, okay, what's done
22 is done. Like, all right, we're just gonna have to,
23 when we're done, we're gonna have to lower it back down.
24 I'm gonna have to have an AC guy come back in here and
25 reseal it back down and everything else. But since

1 we're not using it, you know, it's gonna be fine. Just
2 where you took the seam apart there, just close that
3 back up with some tape so dust and stuff doesn't get in
4 it and make sure you close the vents.

5 And then at one point they kept after me about
6 fixing the ductwork. I'm like, why? I'm like, it's
7 still, it doesn't need to be fixed yet. You know, we
8 can just fix it at the end. We'll lower it back down
9 and back to the way exactly the way it was, and it will
10 be, you know, that way. But Brad insisted on -- Brad,
11 himself, even though he says he doesn't know why I did
12 it, by himself, insisted on me fixing it.

13 And so I said, okay. Got his approval. You can
14 put an S in it here, go straight up, and then S it over.
15 And then it'll be above the racks and it'll be fixed and
16 it'll be fine. It'll meet your approval? He goes, yes.
17 He said, just make sure I get a Certificate of Insurance
18 on your guy. And then once the work was done, he came
19 back out again and he approved the work that was done.

20 And at that time the only problem was my guy
21 hasn't sent him the Certificate of Insurance because he
22 was slow on sending it, because he thought he sent it
23 one time but the attachment didn't go through. And we
24 didn't look at it before we sent it, and so it came
25 through with no attachment and that was the only delay

1 in it.

2 But he directly knew, approved me doing it
3 beforehand, approved it after hand. Then now wants to
4 sit here and say knew nothing about it, when we could
5 have just waited and it would have been a straight piece
6 of pipe like it was originally.

7 Q. I'm gonna bounce around again. We're almost
8 done. The, what I prefer to call the concrete apron at
9 the end of the ramp. You made that repair, right?

10 A. Yes.

11 Q. And why did you make that repair?

12 A. Because the ---

13 Q. And that is Plaintiff's 7, if anybody wants to
14 look at it.

15 A. So, they had mentioned how the water runs down
16 that ramp. Well, not only does it run down the ramp,
17 but it runs that side of the street, is also at an angle
18 like this. So everything from the front of the parking
19 lot runs back away too. So the water would run down
20 that seam there in front of the concrete, where they
21 poured the concrete. And when the forklift would go
22 there, it was digging in.

23 So we reported that to them, that, hey, this is
24 getting worn out and we can't go down it. Well, to them
25 they don't care because they didn't want us using the

1 forklift anymore. Their idea was just, you know, don't
2 drive the forklift outside. Just don't operate your
3 business anymore. You know, just stop doing our
4 property, you know? Don't do anything anymore.

5 So, one of our guys had done concrete for 20
6 years. So, we got him to make the repair. And Brad had
7 saw it when he came out there to do his walkthrough that
8 day. That day, with all the attorneys, is what I'm
9 referring to. The two attorneys. And I explained to
10 him how he did it that day.

11 Do I remember all the specifications now to this
12 day, three years later? No. But I do remember that
13 there was like a lot of rebar used. It was used like
14 every six inches. Like one-foot dowels drilled into the
15 asphalt and drilled into the concrete. I think it was
16 like two-foot deep. That thing ain't going nowhere.

17 Was it a big improvement? Yes. It would have
18 been simply rectified by them? Yes, if they wanted to
19 let us use the space. But, you know, everything was a
20 battle.

21 Q. Well, it could have been rectified if they used
22 the right materials in the first place when they repaved
23 that asphalt, right?

24 A. Yes. If they wouldn't have made our side thinner
25 on purpose.

1 Q. All right. Let's end with the bricks, these
2 three matched bricks. Do you have any reason to suspect
3 that Brilin was ever responsible for damaging those
4 bricks on the side garage door?

5 A. No. I honestly do not know how that ever
6 happened.

7 Q. Okay.

8 A. It was just pointed out to me one day that they
9 needed to be fixed. And so I said okay.

10 Q. Did you just say I'll get it done. Whatever we
11 can do to just make this go away and get out of here,
12 right?

13 A. Yes.

14 MR. WHITE: Okay. Nothing further, Your Honor.
15 Tender the witness.

16 THE COURT: Yes, sir.

17 MR. DLUZNESKI: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. DLUZNESKI:

20 Q. I was going to say good morning, but it looks
21 like almost afternoon, Mr. Russell. You and I have met
22 before. I was out at the meeting with Mr. Decker and
23 you all on October 29th, right?

24 A. Yep. And mediation and whatnot, yep.

25 Q. Right. All right. So your attorney started with

1 talking about that October 2019 meeting, so I'd like to
2 start my cross-examination with it as well. You
3 mentioned that during that meeting you identified
4 several issues with Mr. Decker that the landlord needed
5 to take care of, to fix, right?

6 A. No, I didn't say nothing like that.

7 Q. You didn't, you didn't provide Mr. Decker with a
8 list of punch list items during that meeting that you
9 wanted him to take care of?

10 A. No. You just said that I said that, and I didn't
11 say that.

12 Q. Okay. But that happened, did it not?

13 A. Yes. We did go over a couple of things.

14 Q. Okay. And that punch list item, there was a
15 couple of things that you asked Mr. Decker to take care
16 of, he completed within a week after the meeting, did he
17 not?

18 A. He did fix the pass through lock that was broken,
19 yes.

20 Q. Okay. And you did some weather stripping as
21 well?

22 A. They tried to do some weather stripping to get
23 the door to stop leaking, but it didn't work.

24 Q. All right.

25 A. And the roof still leaked in the back office,

1 but...

2 Q. Okay. Did you bring any of those issues to Mr.
3 Decker's attention after that?

4 A. Yes.

5 Q. Okay. And did he fix those after that point?

6 A. No. The roof still leaked.

7 Q. Okay.

8 A. Until the day we moved out.

9 Q. All right.

10 A. From the day we moved in until the day we moved
11 out.

12 Q. Okay. All right. We talked about the ductwork.
13 Okay. Now, during that October 2019 -- I actually think
14 it happened on Halloween in 2019. You pointed out or
15 Mr. Decker saw the ductwork reconfiguration, correct?

16 A. Okay.

17 Q. Did he? Is that correct?

18 A. You said the date. I don't know the date for
19 sure?

20 Q. Okay. But regardless, during that meeting in
21 October 2019, you discussed the ductwork, did you not,
22 inside the building?

23 A. Yeah. That's the time they had saw that it was
24 completed.

25 Q. Yes. Yes. And he wasn't aware of it prior to

1 that, was he?

2 A. Yes, he was.

3 Q. Okay. You brought it to his attention?

4 A. I did that at their request.

5 Q. Okay. You did what at whose request?

6 A. Repaired the AC at his request.

7 Q. All right. You testified about what your, what
8 your guy did. He raised it up, but didn't do it
9 properly, and you told him, you know, just leave it and
10 we'll fix it later; is that correct?

11 A. Correct.

12 Q. Okay. Why did you not fix it at that point if
13 you knew that it wasn't correct?

14 A. Well, because we were just completely gonna
15 detach it and raise the whole thing up. And the way he
16 had raised it was enough for us to get the work with it.

17 Q. All right. And your testimony today is that the
18 landlord was involved in that process. The landlord
19 knew it was going on and was involved in it?

20 A. The landlord wanted it fixed, so we came up with
21 a way between the two of us of how it could be fixed.
22 Got it fixed, and then saw that it was fixed.

23 Q. Okay. So you informed the landlord after the
24 fact that the ductwork had been done, the
25 reconfiguration?

1 A. That it was completed. Not that it had been
2 done. But, I mean, like anything, when it's completed
3 you tell somebody something's completed.

4 Q. Okay. All right. So, we also saw the demising
5 wall during that meeting, right?

6 A. Maybe.

7 Q. The partition wall.

8 A. Okay.

9 Q. We walked the warehouse space.

10 A. Okay.

11 Q. Did we not?

12 A. I think we walked the whole premises.

13 Q. The whole premises. And we saw the, the demising
14 wall between your space and Two Men And A Truck space,
15 right?

16 A. Yeah. Yep. That's one of the items on the list,
17 yes.

18 Q. Okay. All right. So, and Brad told you during
19 that meeting that he wanted to inspect the wall because
20 you indicated that there had been some damage done to
21 the wall, did you not?

22 A. Correct. That's why he was invited to inspect
23 the wall.

24 Q. Okay. And during the October 2019 meeting, you
25 told him, well, I've got my equipment in here, so I'm

1 not going to allow you to inspect the wall right now,
2 right?

3 A. I mean, there was nothing stopping him from
4 looking at it right now, but you said I've got to remove
5 all the racking and shelving and all the packages that
6 it would take to properly inspect it.

7 Q. Okay. So, and you testified that you ---

8 A. And he didn't come up with a solution like, hey,
9 you know, hey, I can -- we can put it down here in this
10 other unit that's empty. Like, he didn't offer an
11 alternate solution. Like, he knew the problem, like we
12 had all this stuff sitting here and it was here. He
13 didn't offer an alternate solution like, hey, I have an
14 empty unit down the street, we can put this stuff down
15 here. Like, we can make this work like this.

16 Q. Okay.

17 A. He realized the problems like, okay, we'll just
18 wait until the end.

19 Q. Okay. And the wall had been hit with a forklift,
20 hadn't it?

21 A. Pallet more likely.

22 Q. All right. A pallet that was being --

23 A. On a forklift.

24 Q. -- on a forklift.

25 A. Yeah.

1 Q. All right. And you told Mr. Decker that, right?

2 A. I don't know what I said that day, but I mean
3 that's what I'm saying today that, you know, that's what
4 the damage is probably from. I don't know how much of
5 it is from us or previous tenants or whatnot, because
6 it's the most common damage to our rental unit.

7 Q. Okay. But nonetheless, the damage to the wall,
8 at least part of it, occurred while your company was in
9 that space?

10 A. Correct.

11 Q. Okay. And Mr. Decker, at the conclusion of that
12 meeting said, that's fine, take care of the ductwork
13 before you move out. Don't do anything else without
14 letting us know what you're doing in our space, didn't
15 he?

16 A. Well, technically, the ductwork was already done.

17 Q. Okay.

18 A. And then we already had a list of what to proceed
19 on, so...

20 Q. Well, Mr. Decker told you, he said, don't do
21 anything else unless you let us know what you're doing.

22 A. Right.

23 Q. Right? And at the conclusion of that meeting,
24 you shook Mr. Decker's hand and promised him that you
25 would abide by his request as your landlord, right?

1 A. Right.

2 Q. Okay. But that didn't exactly happen. Let's
3 talk about what happened after the October 2019 meeting.
4 We have the rollup doors.

5 A. That was on the list though.

6 Q. Okay. But the rollup doors, I believe your
7 testimony was that it was -- it wasn't hit by a
8 forklift, it was hit by pallets that your guys drove
9 into the doors with that.

10 A. I mean, if I, if I would have known we'd be in
11 here today, I could have saved so many pictures and so
12 many e-mails and correspondence that would have all this
13 backed up. And so much information on Lurch that I
14 would make all this so much easier, but I mean, I'm just
15 not a mind reader or a future predictor and I didn't,
16 didn't know. I mean, right now my e-mail is all filled
17 up with nothing but his invoices unfortunately.

18 Q. All right. So how did the damage occur to those
19 rollup doors, Mr. Russell?

20 A. As I said, it's from them staging the day before.
21 And they would get to the back, they would push the
22 pallets a little too far forward.

23 Q. All right. So, so the damage to the rollup doors
24 was caused by Brilin's employees?

25 A. Yes.

1 Q. Okay.

2 A. And that's why we replaced the doors, the equal
3 quality.

4 Q. All right. So, you're obviously familiar with
5 the terms of your lease agreement with Carolina Real
6 Estate, right?

7 A. Yes.

8 Q. Okay. And you signed that agreement, right?

9 A. Yes.

10 Q. When you signed that agreement, you agreed to all
11 of the terms and conditions in that agreement?

12 A. Yes.

13 Q. Okay. All right. One of those terms, if you
14 will, in the lease agreement, is any repairs that
15 exceeded \$3,000 had to be approved in writing by the
16 landlord. Do you remember that?

17 A. Correct.

18 Q. Okay. If you'll turn to Defense Exhibit 1 for
19 me. Now, Defense Exhibit 1 is the invoice from
20 Southern, the company that you hired to replace the
21 garage doors, right?

22 A. I'm sorry. Okay, yep.

23 Q. Is that correct?

24 A. Yep.

25 Q. Okay. And I understand that one of your concerns

1 in this case is the, the invoice or contract for the
2 doors that we submitted from Overhead Doors; is that
3 correct?

4 A. Uh-huh.

5 Q. Okay. Now, even if we look at the expense for
6 the two doors that you were going to have installed,
7 \$4943.00, that exceeds the \$3,000 limit in the lease
8 agreement, right?

9 A. Okay.

10 Q. Okay. And pursuant to that, you had to obtain
11 written consent to put these doors in from CREH, did you
12 not?

13 A. Correct.

14 Q. Okay.

15 A. We tried to.

16 Q. Okay. Why did you want to install these doors
17 from Southern, as opposed to the ones that CREH
18 proposed?

19 A. Because I was required to by my lease to put it
20 back to like condition.

21 Q. Okay. All right. And you believe that these
22 doors in the Southern invoice were apples to apples,
23 compared with the rollup doors that were already there?

24 A. Same manufacturer, same thickness of steel, same
25 insulation, same color, same operation, they look the

1 same.

2 Q. All right. So, and when you provided us with
3 this invoice, you wanted a response quickly as to
4 whether or not we approved the invoice, correct?

5 A. I mean, I would have expected a response right
6 away, but I do believe we waited a long time.

7 Q. Okay. All right. And would it surprise you that
8 the reason that we wanted to take some time to look into
9 this was we wanted to research the doors that you wanted
10 to put onto our building?

11 A. I'd say a week would be a reasonable time. But
12 like anything over like a month would not be.

13 Q. All right. So at the time that the doors were
14 installed that Southern did the doors, you had not
15 obtained CREH's approval to have them done, did you?

16 A. Correct.

17 Q. Okay. And nonetheless, you proceeded with the
18 work. The new doors were installed, the old ones were
19 taken off, correct?

20 A. Correct.

21 Q. All right. What did you do with the old doors
22 that were removed?

23 A. They were probably taken to a recycling center.
24 I don't know.

25 Q. Okay. Did you offer them to your landlord CREH?

1 A. Why would I?

2 Q. Okay. CREH, after the doors were removed, made
3 multiple requests to you for the return of the damaged
4 doors that were moved, didn't we?

5 A. After they were gone, yes.

6 Q. Okay. All right. And isn't it true that until
7 your deposition in this case, you didn't tell us what
8 happened with the doors?

9 A. I'm not sure. As soon as we asked for them, they
10 told them they were already gone and they were in the
11 dump.

12 Q. All right. So the doors that were removed were
13 CREH's personal property, right?

14 A. Correct.

15 Q. All right. They came off of CREH's building.
16 What made you think that we might not want those doors
17 for whatever purpose? To recycle them ourselves or to
18 do whatever we deemed appropriate with them?

19 A. I mean, typically it's not up to you what happens
20 to the building, because I'm the one replacing it, I'm
21 the one responsible for it.

22 Q. Okay. It's not up to us, but it's our property.

23 A. But it's up to me to replace it.

24 Q. All right.

25 A. It's my responsibility.

1 Q. All right.

2 A. If there was only one door we wouldn't be talking
3 about it. We're only talking about it because it's two
4 doors and it's over the \$3,000. If I could have -- I
5 could have -- I could have been sneaky and just had them
6 send two separate invoices, you know? And then that's
7 under your \$3,000 rule. But, you know, that would be a
8 way around it. You know, that would have been two
9 separate repairs, but I mean, that's not the way I am.
10 So, I mean, it's the lesser of two evils. Do I break
11 the rule to not get your approval or do I break the rule
12 of not putting the place to like repair? You know, it's
13 more damaging not to put the place back to like it's
14 supposed to be.

15 Q. Okay. All right. So, you just testified that
16 you were faced with a choice. And one of those choices
17 was to break the rule and not get CREH's approval before
18 putting these doors in?

19 A. Yeah. After non-compliance, you know,
20 cooperation from you guys. You guys did not want to
21 resolve the issue.

22 Q. All right.

23 A. And, you know, I mean, Brad sat here and said
24 today about, well, just give us that money and I'll put
25 it towards my newer doors. You guys, you know, in a

1 month's time never responded back and said, hey, what
2 about if we do this? Not until after it was done did
3 you guys mention that.

4 Q. All right. Lets talk about -- let's move off the
5 rollup doors for a moment. Let's talk about the
6 temporary repairs to the demising wall. And I'm gonna
7 jump around a little bit as well. Now, obviously
8 there's two sides to the wall. Which side of the wall
9 was repaired first?

10 A. The Two Men And A Truck side.

11 Q. Okay. Let's turn to ---

12 A. That's the only side that was repaired by us.

13 Q. Okay. Let's turn to Defense Exhibit 15.

14 A. Okay.

15 Q. All right. Are you there?

16 A. Yep.

17 Q. All right. Defense Exhibit 15 is the invoice
18 from W&L Services, right?

19 A. Yes.

20 Q. And this invoice is for the repairs on the Two
21 Men And A Truck side of the demising wall, is it not?

22 A. Correct.

23 Q. Okay. And you testified about Wayne Schulte's
24 involvement in that process. Who called W&L Services
25 and lined up the work?

1 A. Craig.

2 Q. Craig did, okay. And Craig instructed W&L
3 Services of when to be there to start the work, didn't
4 he?

5 A. When to meet Wayne there, correct.

6 Q. Okay. And so, at least in that, the scheduling
7 part of this, we're in agreement that your warehouse
8 manager, Craig King, is the one who orchestrated that?

9 A. Coordinated it with Wayne, yes.

10 Q. All right.

11 A. And with Two Men And A Truck side, it took all
12 three of us to coordinate it.

13 Q. Okay. How long -- how many days did this repair
14 work take?

15 A. Not more than two.

16 Q. Okay. So, and you testified what Wayne was --
17 was he inside the warehouse when this work took place?

18 A. In and out all day.

19 Q. Okay. Did you hear Craig King's testimony prior
20 to yours that he was out in his -- sitting in his truck?

21 A. Uh-huh.

22 Q. But it's your testimony that he was in and out of
23 the warehouse all day?

24 A. And it was also Craig's testimony that he really
25 didn't pay attention to what was going on because he was

1 really busy on his side of the warehouse and what's
2 going on with all his work.

3 Q. So were you paying attention to see how often
4 Wayne was in and out?

5 A. Yes.

6 Q. Okay. And ---

7 A. Because I have cameras that are set up. If you
8 look to one of the pages of how I turned over the space,
9 that TV is left there with all the remote controls.
10 That's because of all my cameras that are there that I
11 put on the building. I left them there for Two Men And
12 A Truck because they asked me to.

13 Q. Okay. All right. So, so were you there the
14 entire day watching on these cameras?

15 A. Well, technically, my desk sits in front of that
16 TV, so it watches the whole property throughout the day.

17 Q. Okay. So how long -- and I understand that he
18 was coming in and out according to you, but how long
19 would you say he was actually in there?

20 A. I mean, I wouldn't know. I didn't keep a time
21 log on it.

22 Q. Okay. All right.

23 A. Just during the valuable part to get him set up,
24 saying take these pieces off and then they check it, you
25 know? And then put these pieces back on and then mud

1 it. Okay, these are sufficient and we're done.

2 Q. So you actually witnessed Wayne Schulte talking
3 to W&L Services crew, telling them exactly what to do?

4 A. No. At the end, me and him walked it together.
5 And I specifically asked him. I said, okay, is this
6 good? This is done? This is what you need? Yes, but
7 now I need to get on the other side. I'm like, I know,
8 but there's too much stuff in your way. Like, we're
9 gonna have to wait.

10 Q. Okay. So your testimony is that Wayne Schulte
11 said the work looks good, we're good to go?

12 A. Yes. He was the maintenance guy. He was the one
13 responsible for checking it.

14 Q. All right. You were here during his testimony
15 yesterday, correct?

16 A. Yes. I was amazed by it.

17 Q. All right. And he testified that he didn't
18 supervise anything. He was there for maybe 20 minutes.

19 A. Yes.

20 Q. Okay. You heard him say that, as you've
21 admitted, that he did not schedule it, he did not tell
22 them what to do. He was not involved at all in that
23 process.

24 A. Right.

25 Q. You also heard him testify that he did not

1 approve anything. And, in fact, when he looked at it
2 the work was subpar.

3 A. Correct. If it was subpar, then why didn't we
4 come back and fix anything when it was -- I mean, we
5 still had access to the space. We still had plenty of
6 time to touch it up, to do it.

7 Q. Okay.

8 A. Why would nobody go -- why is there no record of
9 anybody ever making a complaint about it? You know, I
10 mean, they could have went back and touched it up, done
11 whatever needed to be done.

12 Q. All right. All right. After these temporary
13 repairs were made, did W&L Services return?

14 A. Just right before we moved out.

15 Q. And what did they do right before you moved out?

16 A. They went through my space and just touched up
17 the drywall.

18 Q. Okay. Did they do any drywall repairs at that
19 point?

20 A. I mean, that's what it is. Like when you move
21 out, you know, you take down all your pictures, all your
22 stuff, your shelves. All this stuff. They just went
23 through and touched up the drywall.

24 Q. But they didn't cut any drywall out during the
25 second visit?

1 A. I don't know exactly what they did, but there was
2 -- their job was just to make the place look whole.
3 Like when you, you know, you move out of your apartment,
4 you know, whatever happens, you know, a kid runs his
5 little remote controlled car into the wall, whatever,
6 like make it whole, make it look like one piece. Get it
7 ready for the walkthrough. Make it look presentable for
8 the landlord, owner, to come through and do a
9 walkthrough.

10 Q. All right. Did W&L Services invoice you for that
11 trip?

12 A. I do not remember.

13 Q. All right. The only invoice that we have is the
14 one from June 2019.

15 A. Yeah.

16 Q. Okay. All right. Let's talk about the flex
17 space of your leased commercial unit. Did you have a
18 dog in there?

19 A. Yes, I had two. Craig every now and then had
20 one.

21 Q. All right. So, in total we're talking about,
22 what, three dogs in the warehouse space; is that
23 correct?

24 A. Yes.

25 Q. All right. Did you talk to the landlord about

1 that and get the landlord's approval to have dogs in
2 that space?

3 A. It's not in the lease term to get approval for
4 it.

5 Q. Okay. Is there anything in the lease saying that
6 you can't have dogs in there?

7 A. There's not anything saying you can't.

8 Q. Okay. But even though there's nothing saying you
9 can't, you didn't get landlord's approval for that?

10 A. No. Do I need his approval to have a plant?

11 Q. No, sir, Mr. Russell. This is cross-examination.
12 I'm asking you questions.

13 A. You were asking me questions about the lease, so
14 I didn't -- I was just seeing how the two went together.

15 Q. Okay. All right. So you didn't talk to the
16 landlord about having dogs in there, right?

17 A. No.

18 Q. And the land -- and the dogs caused damage to the
19 carpet, did they not?

20 A. No. I mean, as construction. As a construction
21 company, we cause more damage to the carpet. Well, not
22 really damage because the carpet's still there today.
23 But, you know, with the red Carolina mud that we have,
24 every time it rained, it would track in and out. And
25 especially when the front would rain and the front would

1 flood in. Then their shoes would come in with the red
2 mud and they would track that right down the hallway, so
3 it would be like a straight trail of mud, you know, red
4 mud down the hallway. So, like every six months to
5 three months we had to have the carpets cleaned, just to
6 keep them nice.

7 Q. All right. Now, you've submitted several
8 photographs of how that interior space looked when you
9 moved out. And this is Defense Exhibit 19.

10 A. Uh-huh.

11 Q. And we heard something during the course of this
12 trial that you painted the walls or had the walls
13 painted, right?

14 A. Yes.

15 Q. All right. Who did that work?

16 A. We did, Brilin Electric.

17 Q. Okay. All right. You didn't hire anyone to do
18 that work?

19 A. No. I mean --

20 Q. Okay.

21 A. -- it's a really small office.

22 Q. Okay.

23 A. Little office and a little bathroom and a little
24 break room.

25 Q. Okay. Now, let's move outside the warehouse

1 space and the flex space for a minute into the parking
2 lot outside, all right?

3 A. Okay.

4 Q. And I want to start with, there's been evidence
5 put on about some damage to the asphalt outside. Are
6 you aware of that?

7 A. Yes.

8 Q. All right. Did you ever have a conversation with
9 Brad Decker or Wayne Schulte or anybody running CREH
10 about employees of yours doing donuts or burnouts in
11 their trucks outside in the parking lot?

12 A. Well, we got reports. It wasn't necessarily in
13 our, like in Brad's building. But, like, the guys from
14 Keller called in because somebody had done donuts in
15 their back parking lot over the weekend. And you could
16 see the donut parking lots. So they called, wanting to
17 know if it was one of our guys because, you know,
18 construction we had one of their guys from 18 to 80.
19 Then they know that we have some guys that are younger
20 and they drive kind of fast cars sometimes. They were
21 saying it was our guys. And it was not, well, that we
22 know of. And at night, we went back and looked and
23 looked at the camera and we could see it didn't match
24 any of their cars. So, we let them see the footage and
25 the issue was resolved.

1 Q. But you haven't told Mr. Decker or comment on
2 this ---

3 MR. WHITE: Objection. I don't know why we're
4 talking about (inaudible).

5 THE COURT: All right. I wasn't going to limit.
6 I've already heard it, so go ahead.

7 MR. DLUZNESKI: And this is my last question
8 about that.

9 THE COURT: All right.

10 BY MR. DLUZNESKI:

11 Q. So you never had a conversation about that
12 behavior with Mr. Decker and --

13 A. And but ---

14 Q. Let me finish the question. So you never
15 commenting to Mr. Decker that I can't really do much
16 about them, they're just kids?

17 A. That was more commenting towards them going fast
18 about the back parking lot, because at that point he was
19 just being such a smart ass. I mean, of course, you
20 know, when we get -- I mean, our numbers are plastered
21 all over our vans. You know, and every van's got a
22 number and then a tag. So every time -- and every van's
23 got a GPS in them. Now we've got over 30 vans. So
24 anybody -- any time anybody calls and complains about
25 them, you know, an employee gets written up. It's very

1 serious, you know? I mean, I pay a ton of money for
2 insurance, so... but there were a couple of complaints
3 where they, in the back of the parking lot where they
4 had drove too fast leaving. So, you know, it's like, of
5 course, you know, we said something and we were still
6 like being like a smart ass about it. I'm like, okay,
7 well, what are you gonna do? They're kids, you know?
8 Like, okay, the conversation's not going anywhere.

9 Q. All right. So talking about the asphalt damage
10 now. And you saw a picture and the jury seen a picture
11 of this is Plaintiff's Exhibit 5 of some asphalt damage
12 in the parking lot outside of the warehouse. Do you
13 remember that?

14 A. Yeah.

15 Q. Okay. This asphalt damage was caused by a
16 forklift operating outside, wasn't it?

17 A. And the big trucks that would come and deliver
18 and turn around. I mean, that's what I contribute it to
19 because all the water would come down that way and
20 trickle there. And that's where the weakest part of the
21 asphalt was.

22 Q. Okay.

23 A. I would contribute it to those two things.

24 Q. Okay.

25 A. And, I mean, it's a good pictures to show, like,

1 how when our -- like when some of the barricades were up
2 there in one row and it blocked off the alley, like that
3 was sufficient to limit the flow of traffic. It wasn't
4 needed to put all the other barriers there in the
5 configuration, you know, like S configuration to make us
6 go around and around, like it shows in the other
7 pictures.

8 Q. All right. So since you mentioned the barrier,
9 the jersey barriers, let's flip back one exhibit to
10 Plaintiff's Exhibit 4. And you talked about -- and it
11 got into this with Mr. King a little bit as well so that
12 there's Brilin's space and Brilin had, had an end unit,
13 right?

14 A. Uh-huh.

15 Q. And then there's an alleyway or a meeting, as Mr.
16 King referred to it as, and then you have Keller USA
17 space, right? Correct?

18 A. Yep.

19 Q. Okay. And down the center of that is property
20 line, the imaginary property line dividing CREH's space
21 from Keller USA space, correct?

22 A. Uh-huh.

23 Q. All right. And down that property line, CREH put
24 these concrete jersey barriers, did it not?

25 A. Yep. They're moved around. They're conformed a

1 couple different ways over the course of the time.
2 Like, if you look back at the last picture we were just
3 looking at, it only shows them up towards the front,
4 which does the same thing as what they're doing now,
5 except for now they're more in a hindrance forum of
6 blocking access to our space.

7 Q. Well, and how they're configured in Plaintiff's
8 Exhibit 4 is due to you, correct? I mean, Brilin was
9 ---

10 A. No. That's just due to the owner, basically like
11 being a bully.

12 Q. All right. But Brilin did move -- after CREH put
13 these jersey barriers up, you all moved them around in
14 the forklift, didn't you?

15 A. Well, the biggest problem was, they would drop
16 the barriers off over the weekend or on Sunday night
17 when we weren't there. So we'd come in Monday to
18 operate business and we'd find these things.

19 So, it wasn't like a coordinated effort of hey,
20 like, this is what we're gonna do, you know? Like in
21 the very, it started off in the very back between the
22 two buildings. They put it down the back between the
23 two buildings, so semis couldn't make that big horseshoe
24 that he was talking about making. Right?

25 So, okay, yeah, that's fine, that's no big deal.

1 And then when they put them across the very front,
2 blocked the trucks from them making a loop around ours.
3 Hey, that's fine. It's no big deal.

4 All right. But then you start putting all these
5 zigzags and everything else in there, that's just,
6 that's a hindrance to our business. You're literally
7 blocking access to our business. And then you're
8 actually narrowing the path that we're going on, on the
9 asphalt and, you know, making the path being the same,
10 instead of giving them a diverse path to go on. You're
11 making the path worse.

12 Q. All right. So when you would come in and the
13 jersey barriers were not exactly where you would have
14 preferred them, did you ever bring that up to CREH?

15 A. In the beginning, you know, we -- still in the
16 beginning, like we still had somewhat of a relationship
17 where we could kind of move them around and coordinate
18 them around, but then it was at the end. It's just
19 like, don't touch them. Da, da, da, da. Like, why is
20 this trailer here in a picture in a courtroom for these
21 people?

22 Q. Okay.

23 A. I mean, explain that to me. Why? Why is this
24 picture here in the trailer?

25 Q. Well, at some point -- well, let me ask you this.

1 A. Uh-huh.

2 Q. Brilin Electric was moving these jersey barriers
3 around with a forklift, right?

4 A. Correct. What did you guys put it there with?

5 Q. Okay. All right. So, this, this trailer that
6 we're looking at in Plaintiff's 4, you all put that
7 there, didn't you?

8 A. Correct.

9 Q. And you put the trailer there and you moved the
10 jersey barriers around, enclosing the trailer, right?

11 A. Correct.

12 Q. That wasn't something that CREH did.

13 A. Nope.

14 Q. Okay. And you didn't ask CREH before you did
15 this, did you?

16 A. Yes, we did.

17 Q. You asked them if you could put the trailer ---

18 A. Yes. We were worried about the trailer being
19 overnight. We needed to make sure it would be secured
20 because it wouldn't be stolen, because we've had them
21 stolen overnight, like we've tried to block them in
22 behind vans and whatnot. We really had them literally
23 have a \$7,000 brand new trailer.

24 They grabbed it with a chain, smashed it, drug it
25 over to the side and stole it. We had it all on camera,

1 never got it recovered. So I asked for permission to
2 move the barrier, back it in with a regular truck for
3 one night, and then the next day go return it when
4 they're open, and here we are now. That was
5 unacceptable.

6 Q. Okay.

7 A. In my eyes it was completely acceptable, you
8 know.

9 Q. All right. Now, these bricks. The bricks on the
10 side rollup door leading to the ramp, all right? We'll
11 get to the concrete pad in a moment, but the bricks
12 above that door, we heard some testimony yesterday from
13 Mr. Broadway regarding the repairs that you asked him to
14 make to that -- those bricks, correct?

15 A. Yes.

16 Q. And all you asked Mr. Broadway to do was to
17 replace the chipped or broken brick, right?

18 A. What I did is I was told that there was broken
19 bricks. So I found the largest and best brick company
20 in the Charlotte area and consulted them and told them I
21 had some broken bricks I needed replaced. And I trusted
22 them to make the repair that was necessary.

23 Q. All right. You didn't tell them how that damage
24 happened, did you?

25 A. Do I know? No.

1 Q. Okay. All right. Let's look at Defense Exhibit
2 4. Defense Exhibit 4 is a repair invoice from the McGee
3 right?

4 A. Correct.

5 Q. And the work description is repair broken brick
6 was at garage door, right?

7 A. Correct.

8 Q. And the price for that, that you paid was \$280,
9 right?

10 A. Correct.

11 Q. You did not ask or request that McGee Brothers do
12 any kind of inspection outside of repairing the broken
13 bricks, right?

14 A. I gave them no budget, no limit, no nothing. I
15 just said, I'll need you to come out here and take a
16 look at this and I need you to get it resolved and I
17 need it to be perfect.

18 Q. All right. You never told them anything about a
19 lentil or any other structural components behind the
20 bricks, did you?

21 A. He actually looked at it. His report back to me,
22 that everything was completely fine. And there was
23 basically like that it was not big deal. I don't
24 remember his words exactly, but I remember being like,
25 okay good, like that's a relief.

1 Q. All right. Let's look at Plaintiff's 7.
2 Plaintiff's 7. Is the concrete pad at the end of the
3 ramp, leading down from the garage door we were just
4 talking about, right?

5 A. Yep.

6 Q. Okay. And you took it upon yourself to do this
7 patch, didn't you?

8 A. Yes.

9 Q. All right. And you testified on direct that as
10 you sit here today, you can't remember any
11 specifications. You can't remember if there was any
12 rebar used or ---

13 A. No, there was rebar used.

14 Q. Okay. How much?

15 A. I mean, it was drilled in like every foot. Like
16 one-foot die rods or something like that. I remember
17 when we met, the four of us. I remember giving you guys
18 a description of how we did it, but I don't remember
19 now, three years later. But it was to prevent further
20 harm to the asphalt.

21 Q. Okay. Why did you not incorporate some amount of
22 asphalt into this patch?

23 A. Because then it would have been a bad patch.

24 Q. Why would it have been a bad patch?

25 A. Because that's when -- I mean, you can't really

1 tell from this picture, but I mean that's where the --
2 if the slope is meeting like this, and then when the
3 water runs down like this, when water is on asphalt and
4 is heavy soaked with water, the asphalt is, it makes the
5 asphalt weak. So when the weight of the forklift comes
6 down, the wheels come down like this, and the other
7 wheels come down, then that makes an indentation on the
8 asphalt.

9 Q. Okay. Now, while we're on Plaintiff's Exhibit 7,
10 you testified on direct that when the jersey barriers
11 went up, it restricted you. You couldn't access this
12 concrete ramp with the jersey barriers in place, right?

13 A. This is one of the pictures where it was like, it
14 was like in good working order. Like we had been moved
15 to a good working order.

16 Q. All right. And this is where CREH placed those
17 jersey barriers.

18 A. Well, this is us.

19 Q. What was you?

20 A. This is us redoing a configuration to make it in
21 working order.

22 Q. Okay. So, this does not show where CREH placed
23 these jersey barriers down that property line?

24 A. No. I -- um, I'm 100 percent gonna say I don't
25 remember at that point.

1 Q. Okay.

2 A. They were moved so many times in so many
3 different ways, it's ridiculous.

4 Q. All right. And we're talking ---

5 A. It should have been put up one time and that was
6 it.

7 Q. When we're talking about moving them, people them
8 moving them were you and your employees, right?

9 A. Correct. Warehouse guy. Either Robert or Craig,
10 yeah.

11 Q. All right. So if we look at Plaintiff's 7,
12 before the jersey barriers went up, how were you
13 accessing the side door? Were you using a forklift?
14 Were you using a truck? What were you using to access
15 it?

16 A. We always used a forklift from day one.

17 Q. Okay. All right. Now we're looking at
18 Plaintiff's 7, it appears, and correct me if I'm wrong,
19 that that's plenty of space for a forklift to get down?

20 A. Correct.

21 Q. Okay. So, in fact, the jersey barriers that you
22 claimed that Craig King claimed were impeding your
23 ability to conduct your business, that's not true, is
24 it?

25 A. We don't know what timeframe this was taken or

1 what timeframe like he was referring to. Like, if you
2 look back at the other picture where they're all
3 zigzagged around, like back where the trailer was, then
4 that's what he was talking about. And I can show you a
5 picture like back in the day where they were never
6 there. Why don't you go look on Google Orbits, they
7 were probably never there, so...

8 Q. All right. All right. So let's talk about --
9 let's jump ahead to April of 2020 when you vacated the
10 space. You testified on direct that you moved out about
11 a month prior to when you were obligated to, right?

12 A. Yes.

13 Q. All right. And that your lease ended, just to
14 refresh the jurors minds, the lease ended on April 30th,
15 2020, correct?

16 A. Something like that, yeah.

17 Q. Yeah. And April 2020 was the height of the COVID
18 pandemic, right?

19 A. The beginning of it.

20 Q. The beginning of the COVID pandemic?

21 A. Yeah. Right at the beginning of it, yeah.

22 Q. Right. And during that time period, there were
23 lock downs throughout the country that were in place by
24 a government entity, right?

25 A. I don't think any of them had started yet.

1 Q. Okay. All right. But nonetheless, people were
2 dying at that time of this, of this virus, right?

3 A. Okay.

4 Q. All right. So, when we're talking about the
5 final walkthrough inspection, one of the things that we
6 said, CREH said is, we don't feel comfortable doing that
7 because of COVID.

8 A. Which kind of blew us away, because so that means
9 that you're uncomfortable in going and walking in your
10 own warehouse empty by yourself. So you weren't capable
11 of going and walking the space and giving us a list of
12 what to do, is what you were saying.

13 Q. We would have been in there with you, correct?

14 A. You didn't have to be. If you were scared of
15 COVID, we could have waited outside. You could have
16 went in, then we could have switched and we would have
17 went in and looked. I mean, we could have stood
18 ten-foot away from each other. I mean, the place is
19 3,000 square feet. I mean, COVID is still going on. If
20 you're that scared of COVID, then why are we here now?

21 Q. Let's talk about Wayne Schulte a little bit more.
22 Wayne Schulte was, you referred to him as the
23 maintenance guy. I think that's how Craig King referred
24 to him. We refer to him as CREH's property manager. He
25 was the guy coming in and out, making sure that

1 everything was okay, correct? That was his job.

2 A. He was introduced to us as the maintenance guy.

3 Q. Okay. And what types of things would he be on
4 your property to do?

5 A. He was supposed to be there just to service the
6 air conditioning.

7 Q. Okay. You understand he was the boots on the
8 ground from CREH?

9 A. Well, I mean, maybe that's one problem, like a
10 mis-introduction in the beginning. But then still, the
11 contract, our lease says that he's supposed to have a
12 scheduled appointment to come in.

13 Q. Okay.

14 A. And he shouldn't be there more than, maybe once a
15 month would even be an overkill. I think maybe once
16 every six months we should see him, maybe.

17 Q. But you understand that as the maintenance person
18 or the property manager for CREH, one of Wayne's job
19 responsibilities was to inspect the property and make
20 sure everything was okay, correct?

21 A. Correct. But not like -- so, his demeanor was
22 when he came, like, I just don't understand. Like he
23 gets heated very easily, right?

24 So, when he would come across about a request to
25 do something or we couldn't do something or don't do

1 that, it wasn't like, hey, guys, we need to do this
2 instead of this. It's like a screaming, like, you can't
3 do that. La la la. Well, of course, like the younger
4 guy I had running the warehouse before Craig, he would
5 automatically scream back at him, you know.

6 I'm like, so that's why it didn't work out with
7 him, is he didn't have the temper to deal with these
8 people, but -- because you can't have that in a working
9 relationship. But, I mean, you can't approach a
10 business and like demand that you're gonna do something
11 when we're using the space freely, like we're supposed
12 to be able to do.

13 Q. Okay. And you testified one of the things that
14 caused you concern when Wayne was in his truck taking
15 pictures of the, of the area, correct?

16 A. Yes.

17 Q. All right. Was he ever in the office space
18 taking pictures?

19 A. I mean, obviously yes, because you have a picture
20 up here of one of my dog beds in my office. And my dogs
21 were in my office. When I was there, they were with me
22 at all times and they had a gate. I had a gate on my
23 door, so they stayed in my office.

24 Q. All right.

25 A. So they didn't just like roam freely around the

1 place.

2 Q. And the picture of the dog bed that you refer to,
3 you have no idea when that was taken, do you?

4 A. No. So, I mean, obviously he was walking around
5 taking pictures sneakily every time he was in there.

6 Q. But did you ever see him taking pictures in the
7 office?

8 A. No.

9 Q. Did any of the office staff tell you, hey, he's
10 in here taking pictures?

11 A. No.

12 Q. Okay. Did he ever go into the warehouse and take
13 pictures?

14 A. Not that I know of.

15 Q. All right. So, it sounds like Wayne's picture
16 taking was limited to outside in the parking lot from
17 his truck, is that correct?

18 A. Well, I mean, your book shows differently.

19 Q. Is that correct?

20 A. No.

21 Q. Based on your knowledge, your personal knowledge?

22 A. Not from what I've seen in your book, no.

23 Q. Okay. Did you ever see Wayne take any pictures
24 in any locations other than from his truck out in the
25 parking lot?

1 A. No. I never saw him take any pictures at all.

2 Q. Okay. All right. And then he would come in and
3 do inspections from time to time, would he not?

4 A. Well, here's the thing. He didn't really say he
5 was there to do an inspection, he was just there, like,
6 walking through. Like, he didn't really announce that
7 he was there. Like, I'm here to do an inspection and
8 I'm here to do this. Like, he would just linger around.

9 Q. So, so what ---

10 A. And then when he saw something he didn't like, he
11 would demand, like, you can't do that or da da da.

12 Q. So what? So your testimony is he would just show
13 up unannounced and just walk into the building?

14 A. That's what I've been saying the whole time.

15 Q. Okay.

16 A. And that's what Craig said.

17 Q. Okay. All right. Was he ever there to -- how
18 long would he stay?

19 A. I mean, it just depended. I mean, a lot of times
20 it was until I got there. And I told him, hey, you have
21 to leave. You know, you need an appointment to show up
22 here. Oh, I don't need no appointment. I can come and
23 go as I please. I can do whatever I want.

24 Q. You understand that he worked for the landlord,
25 right?

1 A. It doesn't matter. He's supposed to have an
2 appointment.

3 Q. All right.

4 A. You're supposed to be able to use the space
5 freely without, you know, harassment.

6 Q. All right. So, would he ever come in to do
7 repairs?

8 A. He'd come in once a year to service the air
9 conditioner.

10 Q. Did he do any repairs other than that?

11 A. Himself no.

12 Q. Okay. Did you ever witness any of your employees
13 yell at him to get off the property?

14 A. No. I always found out about everything
15 afterwards. He said, she said arguments. And it was,
16 he yelled at me first, he yelled at me first.
17 Kindergarten junk.

18 Q. Did you ever tell Wayne to get off the property?

19 A. Yes.

20 Q. How many times?

21 A. I cannot remember how many times. I told him
22 you're causing problems, you need to leave. I don't
23 need to go anywhere, this is our property. I'm like, I
24 know, but you, you need to just go to the other end of
25 the property, do whatever you've gotta do. You don't

1 need to be here in front of us harassing our employees.
2 Let them do their job so they can go on about their
3 business, you're distracting them.

4 Q. Did you ever call law enforcement on him? You
5 personally?

6 A. Yes.

7 Q. How many times?

8 A. Me, once, personally. And I think the office
9 probably twice. I think Craig once and then the girls
10 in the office once.

11 Q. What precipitated your contact to law
12 enforcement?

13 A. I mean, it always ended up being the same thing.
14 It was like a civil matter, they can't do nothing.
15 Like, they own the building, they lease the space. He
16 just needs to keep his distance and we need to keep our
17 distance, as long as nobody's, you know, fighting with
18 each other or whatever. You know, it's okay.

19 Q. All right. So, the lease agreement that you had
20 with CREH obligated you to return the property to CREH
21 in as good a condition as you found it basically,
22 correct?

23 A. Correct.

24 Q. And do you believe that you did that?

25 A. I believe that within 150 percent we tried to.

1 Q. Okay.

2 A. We had two items left that we e-mailed you guys
3 30 days prior to moving out, and those could have been
4 resolved before we moved out.

5 Q. All right. Let's look at Plaintiff's 14.
6 Plaintiff's 14 is a side view of the demising wall,
7 correct?

8 A. Correct.

9 Q. And do you see the yellow line down there, the
10 yellow vertical line. It's a straight line in front of
11 the wall?

12 A. Correct.

13 Q. Does that wall look to be plumb to you?

14 A. I'm not a fan, but no.

15 Q. Okay. And this is the condition that you left
16 that wall, correct?

17 A. No. This is the condition I left the wall for
18 inspection so we could figure out how to fix it, with
19 direction from you guys.

20 Q. So when you had all of your equipment, inventory,
21 everything else moved out in the beginning of April
22 2020 ---

23 MR. WHITE: Your Honor, I have an objection. Can
24 we approach?

25 THE COURT: All right.

1 (Bench conference was held off the record.)

2 BY MR. DLUZNESKI:

3 Q. All right. Mr. Russell, exhibit, Plaintiff's
4 Exhibit 14 is -- we've gotten witness testimony that
5 this is on the Two Men And A Truck side, okay?
6 Accurate?

7 A. Correct.

8 Q. Okay. All right.

9 A. Some of that was taken after we left.

10 Q. What was taken after you left?

11 A. That picture.

12 Q. Okay. Do you have any photographs of how the
13 wall looked at the time that you left?

14 A. Only on my side.

15 Q. Okay. All right.

16 A. Which are in the back of the book.

17 Q. Okay. When the temporary repairs to the wall
18 were being made, did you have any occasion or any work
19 on the wall that were being made on your side? Did you
20 have any occasion to look at the condition of the metal
21 studs inside the wall?

22 A. In the -- on the Two Men And A Truck side?

23 Q. On either side.

24 A. No.

25 Q. Okay. When was the first time that you had a

1 chance to observe those metal studs?

2 A. When we visited with the engineer and Nathan.

3 Q. Very briefly, Mr. Russell. The site meeting that
4 you had at the wall with our expert, Mr. Robinson and
5 your counsel present, you testified about that on
6 direct, right?

7 A. Yeah.

8 Q. And you had your expert witness there to look at
9 the condition of the wall as well, right?

10 A. Yes.

11 Q. Okay. After that point -- and I understand that
12 you testified that Mark Robinson was ready to go with
13 the materials to start the repairs. Did you ever ask
14 him if you could participate or assist in those repairs?

15 A. As to who?

16 Q. As to Brilin. Assist in any other repairs to the
17 wall or shouldering the expense related to the wall
18 repairs?

19 A. To Mark or to who?

20 Q. Either to Mark or us or anybody else?

21 A. I mean, all communications went through
22 attorneys. And that really didn't seem like a viable
23 option.

24 Q. All right.

25 A. I mean, the option would have been that when you

1 all went and looked at the wall and you saw that it
2 needed to be opened up, that's when you would have
3 called us and said, hey, this wall needs to be opened
4 up, do you want the chance to come open it up before we
5 do?

6 Q. Okay. But just for the jury and for the record,
7 did you ever offer to us to participate --

8 A. The job was --

9 Q. -- in either ---

10 A. The job was ---

11 Q. Mr. Russell, if you could let me finish my
12 question.

13 A. Uh-huh.

14 Q. Did you ever offer to assist or participate in
15 any of the wall repairs at any point?

16 A. Your contractor was already hired and the job was
17 already started, no.

18 Q. You did not. All right.

19 Thank you, Your Honor.

20 THE COURT: Any redirect, limited to what he went
21 into?

22 MR. WHITE: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. WHITE:

25 Q. When you rented that space, it was critical, a

1 critical thing for why you rented that premises was that
2 side garage door because it has the ramp, right?

3 A. Correct.

4 Q. All right, last question. What kind of dog did
5 you have?

6 A. I had an English bulldog, which was like at the
7 time like 38 pounds. And a French bulldog, which is,
8 she was only like 12 pounds.

9 Q. All right. I know the jury was dying to know
10 that answer for a long time. I have no further
11 questions.

12 THE COURT: All right. Thank you, sir.

13 Ladies and gentlemen, given the time that it is
14 and how much that you've worked today, we're gonna take
15 a lunch break. I need to remind you not to have any
16 discussions among yourselves about anything involving
17 the case, and do not do any discussions or do any type
18 of independent research.

19 I'm gonna ask, if you would, be back in the jury
20 deliberation room at 2:30 and we will resume. Just keep
21 the books there in the chair or on the floor and we'll
22 get you back just after lunch.

23 MR. WHITE: Your Honor, I don't know if you want
24 to put on the record, we don't have anything else.

25 THE COURT: Okay. You want to rest, then the

1 defense has rested. Thank you, ladies and gentlemen.

2 (Jury leaves courtroom at 12:55 p.m.)

3 All right, gentlemen. All right, so you've now
4 rested. Mr. White, I appreciate your willingness and
5 enthusiasm to want to help the Court, but I have reasons
6 why I do things that I don't share with people.

7 MR. WHITE: All right.

8 THE COURT: So, try not to speak after I have
9 asked the jury to retire. You know, if you want to have
10 -- and I appreciate your willingness, but there are
11 reasons why I do the things that I do that probably you
12 all don't know about, okay?

13 MR. WHITE: Good to know, Your Honor.

14 THE COURT: Okay. All right. Now, he's rested.
15 Are you going to call anybody in reply?

16 MR. DLUZNESKI: We are not.

17 THE COURT: Okay. All right. Then what I need
18 from you all, is we've been working on jury charges.
19 We've got to have a charge conference. All right. How
20 far are we with those?

21 LAW CLERK: (Inaudible.)

22 THE COURT: Okay. We've got to find a printer,
23 because I'd like to give you all of these to take a look
24 at during your lunch break. Hang on one second. Let me
25 see where we stand.

1 Okay. Go ahead and let her send them to the
2 clerks. I'm gonna need two copies. One for each of the
3 lawyers. These are drafts. They're based on what you
4 all have -- well, wait a minute. Does anybody have any
5 motions?

6 MR. DLUZNESKI: We have a motion for directed
7 verdict.

8 THE COURT: Okay. Let's do the motion. All
9 right. Yes, sir.

10 MR. DLUZNESKI: Thank you, Your Honor. At this
11 time, the plaintiff would move for a directed verdict as
12 to the defendants cause of action for violation of the
13 Unfair Trade Practices Act.

14 As the Court's aware, one of the elements of --
15 to establish a violation of the South Carolina Unfair
16 Trade Practices Act is that the plaintiff, in this case,
17 defendant Brilin Electric must show that the unfair or
18 deceptive act affected the public interest. And that's
19 Wright v. Craft, 372 S.C. 1. It's a Court of Appeals
20 case from 2006.

21 In this case the plaintiff is entitled to a
22 directed verdict in its favor because the defendant is
23 unable to establish that the alleged unfair and
24 deceptive acts by the plaintiff, CREH, affected
25 negatively impacted upon the public interest.

1 Now, with regard to this element, our state
2 Supreme Court has offered some guidance as to when a
3 defendant's actions are deemed to, quote, affect public
4 interest. Specifically in Daisy Outdoor Advertising
5 Company, Inc., versus Abbott. And that's 322 S.C. 489.
6 It's a Supreme Court case from 1996.

7 The Court observed that, quote, since 1986, South
8 Carolina courts have required that a plaintiff bringing
9 a private cause of action under an Unfair Trade
10 Practices Act violation allege and prove that the
11 defendant's actions adversely affected the public
12 interest.

13 And the Supreme Court went on to say, borrowing
14 from a standard fashion by the Washington Supreme Court,
15 the Court found that proof of the potential for
16 repetition of a defendant's action satisfies the public
17 interest requirement of the Unfair Trade Practices Act.

18 In other words -- and these are the words of our
19 state Supreme Court. In other words, after alleging and
20 proving facts demonstrating the potential for repetition
21 of the defendant's actions, the plaintiff has proven an
22 adverse effect on the public interest.

23 The Court observed that, quote, plaintiffs in
24 prior cases generally have shown a potential for
25 repetition in one of two ways. First, by showing the

1 same kind of actions occurred in the past. That's
2 making it likely that they will continue absent
3 deterrence; or, two, by showing the companies procedures
4 create a potential for repetition of the unfair and
5 deceptive acts.

6 This case, Your Honor, involves a single,
7 private, leased dispute between the plaintiff, CREH, and
8 the defendant, Brilin Electric. The defendant has put
9 on no evidence to show or establish that the same kinds
10 of actions that occurred in this case, that the
11 defendant is complaining of, have occurred in the past.

12 Additionally, there's been no evidence presented
13 that suggests that any of the plaintiff's company
14 procedures create a potential for repetition of the
15 allegedly unfair and deceptive acts that the defendant,
16 Brilin Electric, complains of.

17 As a result, the defendant has not established
18 all the essential elements of a violation of the South
19 Carolina Unfair Trade Practices Act against the
20 plaintiff, and so the plaintiff is entitled to a
21 directed verdict in its favor under that cause -- that
22 counterclaim. Thank you.

23 THE COURT: So you've got two points, if I heard
24 you correctly. The public interest requirement, and
25 then the repetition requirement, or both of those

1 combined together?

2 MR. DLUZNESKI: Those are both combined, Your
3 Honor. The Court in Wright v. Craft had as an element
4 for establishing a violation of the Unfair Trade
5 Practices Act that it has to adversely effect the public
6 interest.

7 Our state Supreme Court clarified that in a
8 subsequent case to say that plaintiffs in prior cases
9 generally have shown that. Well, let me backup.

10 One of the ways that you can show that conduct
11 adversely effects the public interest is by showing that
12 it's capable of repetition. And two of the ways that
13 the South Carolina Supreme Court has determined that you
14 can show that conduct is capable of repetition is by
15 showing either the same kind of actions that have
16 occurred in the past, or that the defendant's company
17 policies create a possibility for those similar acts to
18 occur in the future.

19 So the public interest component is an element of
20 unfair trade practices. The potential for repetition is
21 what our state Supreme Court has said has to be
22 demonstrated in order to satisfy that element.

23 THE COURT: All right.

24 MR. DLUZNESKI: Thank you.

25 THE COURT: Thank you.

1 MR. WHITE: Your Honor, I will turn you to
2 paragraph 119 of our amended counterclaim. If CREH or
3 other lessors of real property or chattel goods are
4 permitted to compel lessees into upgrading leased
5 premises or improving the chattel goods under the guise
6 of required repairs at the conclusion of every tenancy
7 or lease period, such unlawful practices would have an
8 adverse impact on the public interest.

9 We've presented evidence that this plaintiff
10 submitted fraudulent, fake invoices and tried to bill
11 them to our client. We have shown a pattern that is
12 most certainly capable of repetition in the fact that
13 multiple times when there were repairs that needed to be
14 made, this plaintiff wanted their preferred vendor to do
15 a repair, above and beyond like kind.

16 You heard Mr. Hemphill talk about that. When he
17 talked to the plaintiff, he wanted slat doors. He
18 wanted slat doors, but that's not what was on there.
19 We've literally sourced a lifetime door to replace it.
20 We had a pattern of the garage door quotes were higher
21 from the plaintiff than ours. The brick quote was hire.
22 The asphalt quote was higher, also because the asphalt
23 material that they were gonna put in in the patch was 50
24 percent greater with both the gravel and the asphalt
25 than what was previously there.

1 So there is a pattern of up-charging this
2 defendant, this tenant, this commercial tenant, that he
3 could most certainly do with all his other commercial
4 tenants. And there are no policies to show that are in
5 writing for this plaintiff because this is 100 percent
6 solely unaccompanied by Mr. Brad Decker. And we've
7 heard testimony about he takes a lot of care and
8 control. He wants to be in charge. He wants -- that's
9 why he's got his property manager going over there
10 harassing people every other day and why he wants to be
11 involved and he wants to have his say in how
12 everything's done regardless of what the leases say.

13 And that's why we brought this claim from the
14 outset, Your Honor, because this is a -- this does
15 adverse the public -- adversely effect the public
16 interest. We just can't have commercial landlords going
17 around trying to screw over commercial tenants like this
18 in this state. That's bad for business. Thanks for
19 hearing us out. Thank you, Your Honor.

20 THE COURT: Looking at the evidence in the light
21 most favorably to your client, you've articulated, the
22 way I heard it, you've articulated the elements or the
23 allegations that you feel like that you've established
24 as part of this lawsuit to support your suit, your side
25 of the suit. Now, how does that get, though, to being

1 potential of repetition to others, other than, other
2 than what? What is it that you would argue as part of
3 this case that meets that public interest requirement or
4 the possibility of repetition other than it could
5 happen? Because if it could happen, I don't think is
6 gonna get you across that line.

7 MR. WHITE: I would say it has happened because
8 we have repetition in this case, Your Honor. We have
9 multiple instances of where he was trying to get better
10 than what he got. I mean, we have a pattern in this
11 case that he can do any other time.

12 I think that I would have a much weaker argument
13 if we had one situation here. Hey, you wanted the
14 garage doors that you wanted that are better than ours.
15 But no, we've got multiple instances. We've got the
16 garage doors. We've got the bricks. We've got the
17 asphalt. And then they wouldn't do the walkthrough
18 because they wanted to do their preferred vendor on the
19 demising wall and all that.

20 And it typically is kind of a res ipsa loquitur
21 type thing in that it just speaks for itself. And it's
22 as simple as that, in addition to making up fake,
23 fraudulent invoices. If he can make a fake, fraudulent
24 invoice for his company Decker Inspections, so he can
25 bill for the company CREH when all you need is a word

1 processor, then he can certainly do it with any of his
2 other commercial tenants.

3 THE COURT: Any reply?

4 MR. DLUZNESKI: Yes, Your Honor. Your Honor,
5 let's just go down the issues that Mr. White brought up.
6 As far as these alleged fake invoices go, Mr. White
7 questioned at least Mr. Brad Decker about those alleged
8 fake invoices and Mr. Brad Decker denied that they are
9 fake, that they were fraudulent invoices.

10 So, as far as that goes ---

11 THE COURT: Well, I got to -- at this juncture,
12 I've got to view the evidence in the light most
13 favorably to him.

14 MR. DLUZNESKI: Right.

15 THE COURT: So, the fact that there's a dispute
16 at this juncture, I've got to resolve the factual
17 dispute to the other side.

18 MR. DLUZNESKI: Well, and I think that the
19 biggest point as far as that goes, is that the
20 defendant's allegations related to unfair trade practice
21 and the potential for repetitions are just for this
22 case. Mr. White cited instances in this case where he
23 believes that it may be capable of repetition, but it's
24 repetition in this case.

25 The defendant, Brilin Electric, has not brought

1 in any other commercial tenants to say that this kind of
2 conduct has happened in their leases. Nobody else has
3 testified about this kind of -- of these kind of alleged
4 behaviors occurring in any other case. Mr. Brad Decker
5 just brought to my attention as well that he has never
6 been in court before over a commercial landlord/tenant
7 dispute. So that speaks to the fact that contrary to
8 what the defense argued, that the allegations in this
9 case are not capable of repetition because we have
10 absolutely no other commercial tenants who have made any
11 type of allegation in court against CREH. Thank you.

12 MR. WHITE: Very briefly, Your Honor?

13 THE COURT: Briefly.

14 MR. WHITE: I'm gonna ask you not to consider any
15 of that. It's not evidence before you. And I've also
16 had the one ___ invoice, where they billed and created
17 an invoice for us in May of 2018 that was for \$2,625,
18 and then seven months later, got the preferred vendor to
19 magically -- to create an invoice to them that just
20 happened to be for the same exact amount. And we don't
21 have to show repetition. We have to show the potential
22 for repetition. And here we have a 2018 invoice, 2019
23 invoice, 2020. We have years of this pattern happening
24 against us and it's as easy as just saying write up your
25 invoice in your invoice system. You'll get your

1 preferred vendor. Hey 2625, plug that into your invoice
2 and send it my way. It was easy as that. So it is
3 absolutely capable of repetition for other commercial
4 tenants. And that's why it impacts the public interest.
5 We cannot have commercial landlords taking advantage of
6 commercial tenants in the state of South Carolina.

7 THE COURT: Do you want to close? You have the
8 burden of proof.

9 MR. DLUZNESKI: Yes, Your Honor. And I would
10 just say that the defense is speculating. They're
11 speculating about what could happen in other cases in
12 the context of other lease agreements. The Court's
13 heard no, no evidence today that any of that has
14 happened, so it's just speculating by the defendant.

15 THE COURT: All right. Thank you all very much.
16 I'll let you know. All right. All right. We -- all
17 the evidence has been presented and we are working on
18 the jury charges. Don't have them to give to you yet.
19 We also don't have the verdict form to give to you all
20 yet.

21 The jury's coming back at 2:30. Could you all be
22 back about 2:15 and we'll see where we stand.

23 MR. DLUZNESKI: That's fine, Your Honor.

24 THE COURT: See the lawyers for a moment.

25 MR. DLUZNESKI: Yes.

1 (Bench conference was held off the record.)

2 (Recess was held from 1:08 - 2:39 p.m.)

3 (Jury enters the courtroom at 2:39 p.m.)

4 THE COURT: Madam Forelady, ladies and gentlemen,
5 thank you very much for coming back in for the
6 afternoon. I've warned you that there would be times
7 when I have to do things with the lawyers that have to
8 be done outside of your presence, and we have reached
9 one of those times.

10 All of the evidence that is going to be presented
11 as a part of this case has been presented to you. What
12 is left to do for your role is to receive the closing
13 arguments of the case. For me to instruct you on the
14 law that you will apply to the evidence that you've
15 received, and then for you to engage in your
16 deliberations.

17 There are rules that I have to follow that sort
18 of puts guardrails on how I can conduct a trial, and one
19 of those guardrails is that there is a point in time
20 during the day where I'm not supposed to charge or let
21 arguments take place in front of a jury. I'm not
22 supposed to charge them on the law and then let a jury
23 start deliberating late in the day.

24 That is -- the reason for that requirement is
25 that then time becomes an element in your deliberations.

1 And we don't need to have -- it's too important. A
2 trial is too important to allow the element of time to
3 dictate how a trial comes to play.

4 With that being said, we've got a lot more work
5 to do in here, and I don't want to keep you all in the
6 back just waiting for us to try to get to that point to
7 where we can argue and charge to you.

8 So I'm gonna ask, if you would, take a break for
9 the day. And take the rest of the day. Do not have any
10 discussions among yourselves about anything involving
11 the case. Do not do any type of independent research or
12 investigation. And ask, if you would, to please come
13 back at 10 o'clock tomorrow morning and we will receive
14 the closing arguments in the case. I will instruct you
15 on the law of the case, and then you will begin your
16 deliberations.

17 But thank you for your patience while we got to
18 this point and we will see you in the morning.

19 (Jury leaves the courtroom at 2:42 p.m.)

20 Gentlemen, if you all will give me just a moment.
21 If you all will give me just a moment, I'll be right
22 back with you all. Thank you. We'll step down.

23 (Court concluded at 2:42 p.m.)

24

25 --- THIS CONCLUDES DAY THREE OF TRIAL ---

CAROLINA REAL ESTATE HOLDINGS VS. BRILIN ELECTRIC

START OF DAY FOUR OF TRIAL

THE COURT: The discussion we were having about the charges we did, back in chambers yesterday, on the charges that I've given you all, we had a discussion about the topic of proximate cause. So if you take a look at the -- what we discussed, what I've done is on the page of the topic of damages, the sentence starts with the word finally. Once that sentence ends, the sentence ends with the defendant's breach of contract, I will insert the following:

Proximate cause requires proof of both causation and fact. And legal causation and fact is proved by establishing that the claimed property damage would not have occurred or the alleged contracts breach Legal cause is proved by establishing foreseeability.

For an act to be a proximate cause of the alleged property damage, the property must be foreseeable, be a foreseeable consequence of the alleged contracts breach.

MR. DLUZNESKI: We're good with that, Your Honor.

MR. WHITE: So are we, Your Honor.

THE COURT: Okay. All right. Then I received an e-mail that defense counsel wants to add something on

1 the good faith and fair dealing. I already had that as
2 part of my charges. Did y'all not receive that?

3 MR. WHITE: We did, Your Honor. We would ask for
4 this language on 19-36 from the South Carolina Request
5 to Charge, 2016 edition. I thought I sent this to
6 y'all, I gave it to you Monday. But this was the
7 language I was looking for, for that, if that's okay?

8 THE COURT: Which part? Because I've got that
9 included.

10 MR. WHITE: The whole, the whole paragraph that's
11 in 19-36. And, Your Honor, I put hard copies for both
12 you and ---

13 THE COURT: Thank you, but what I gave you
14 yesterday has this language in it, it's just not phrased
15 in the same wording.

16 MR. WHITE: Right. And we're just asking for
17 that language verbatim, Your Honor. That's our request.

18 THE COURT: Well, I think my charges are
19 sufficient the way they are. I think it covers what is
20 requested in, in what you've given me, okay? Thank you.
21 And the other one?

22 MR. WHITE: Waiver, Your Honor. We would
23 respectfully request that you instruct on waiver. The
24 fact that he attempted to make any repairs, they refused
25 to work with us while we still had possession of the

1 space, and by not working with us and being
2 unreasonable, they've denied us the opportunity to make
3 those repairs. And by not acting in a commercial
4 reasonable manner and denying us the opportunity to make
5 those repairs, which is expressly what they allege in
6 their second cause of action in their amended complaint,
7 that we failed to give them the space back at the end of
8 the tenancy as, as we got it, per the lease, they waived
9 the right to then make any repairs that we were most
10 certainly ready, willing, and able to make, and then try
11 and assert that as a damage claims. Thank you, Your
12 Honor.

13 MR. DLUZNESKI: Your Honor, the defendant did
14 assert waiver as an affirmative defense. I would leave
15 it up to the Court's decision as to whether the Court's
16 gonna include this charge on waiver as an additional
17 jury charge. It is rather lengthy, and I don't know if
18 the Court wants to cut it down or, or rephrase any
19 portion of it.

20 THE COURT: I found his waiver assertion in his
21 pleadings, as contained in a two, two-lined defense.
22 And did I hear the word waiver during the course of this
23 trial? The reason I ask that question is, I'm not
24 trying to be short, by introducing issues to a jury
25 through a request for charge that a jury has not been

1 introduced to during the course of a trial, my opinion
2 leaves them scratching their heads going, where did this
3 come from? Why was -- you know, what am I to do with
4 this?

5 And so that's why I'm asking the question is it,
6 did we hear this concept presented through a witness? I
7 understand that it's a legal theory that can be asserted
8 as an affirmative defense, but where did this come from
9 in this trial so that the jury would have been able to
10 digest what I'm gonna tell them during this, if I charge
11 this?

12 MR. WHITE: Yes, Your Honor. It came out through
13 both Mr. Decker, it came out through Mr. Robinson, it
14 came out through Mr. Abernathy, and it came out through
15 Mr. Russell.

16 THE COURT: They said the word waiver?

17 MR. WHITE: Nobody said the word waiver, Your
18 Honor. I mean, because that's the legal aspect of it.

19 THE COURT: Uh-huh.

20 MR. WHITE: What we did is we established clear
21 evidence that the tenant was ready, willing, and able to
22 make all necessary repairs to comply with the lease
23 provision, that they return the premises to the landlord
24 at the end of the tenancy in as good a condition as they
25 received it. We established that through Mr. Decker,

1 that he refused to do a walk-through. That it's
2 commercially reasonable to do walkthroughs.

3 We established through Mr. Robinson that he
4 literally came to that space the day after the landlord
5 came back into possession of the premises the day after
6 the lease expired on its natural terms and that he could
7 have come sooner, but he was only asked to come then.
8 And the same with, with the engineer. And we heard
9 similar testimony corroborating all that with Mr.
10 Russell, that he had cleared out the space for a month
11 in advance in order to allow for an inspection of the
12 premises and to allow the landlord to direct any other
13 repairs that needed to be made to the space.

14 But what we've established is the facts that show
15 that the legal theory of waiver, that affirmative
16 advance is at play because -- I mean, I think, I think
17 if I would have said, well, Mr. Decker you waive the
18 right to bring this claim, I think that would have drawn
19 an objection because it's asking for him to state, you
20 know, a legal principle. And I just kept it to the
21 facts with all the witnesses, Your Honor.

22 And in respect to what we would actually ask is
23 that we would simply ask in 19-22, the first paragraph
24 and the second to -- the second to last and last
25 paragraphs. And that's all we'd ask for on this

1 particular instruction, because we do believe that, like
2 I said, tenant was ready, willing, and able to do what
3 it needed to do. But as we all know, with tenancy, such
4 as this nature, because you have a lease as an
5 intersection of both contractual and property law,
6 you've got an estate that you're handing back to the
7 landlord. So, per the terms of the lease, you need to
8 make sure you give them the estate the way they want it.
9 And there is necessary -- and we've talked about it,
10 it's commercially reasonable to do walkthroughs.

11 You have to have that interaction between the
12 parties at the conclusion of the lease to make sure you
13 fully comply. The land -- like, the tenant, can't
14 unilaterally just start doing whatever it wants. Like,
15 for example, we -- Mr. Russell said, hey, didn't think
16 it would be a good idea to tear open that demising wall
17 and take a look in there and see what's going on, one,
18 because it's not my property. And, two, that would
19 probably get me in more trouble. Look at all the other
20 stuff I'm dealing with, with this landlord.

21 And so, in order to really figure out what all we
22 need to do to comply with our end of the contractual
23 agreement, we needed that interaction with the landlord.
24 And by them refusing to do that, they denied us the
25 opportunity to fulfill our contractual obligations.

1 And, therefore, we believe waived because their
2 actions, or their lack thereof, were so unreasonable in
3 these circumstances that they waive the right to then go
4 after us and assert damages for repairs that they made
5 that we were more than ready, willing, and able to make,
6 had they directed us to do them, if we had known they
7 needed to be done, per the landlord doing a walkthrough
8 and a final inspection. Thank you, Your Honor.

9 THE COURT: My point in saying that this is
10 coming as an introduction at this stage of the case is
11 that you had more than just the opportunity to present
12 this theory to the jury. You can present it as theory
13 to the jury if it's so material to the defense of your
14 case or to your counterclaims through some type of
15 statement to the jury through your opening statement.

16 Whether or not counsel is going to object to it,
17 I can take care of that. My point is that this issue of
18 waiver, similar to the issue of damages, what are you
19 gonna do with the jury when they have not been told what
20 you want them to award as far as damages? When you've
21 not had a witness to actually sit up here and say, well,
22 I need \$10,302 or that I need \$25,417, and then to
23 explain to them what that is.

24 And then for them to now be introduced to a legal
25 theory and listen to that argument that you just gave to

1 me as to what factual basis supports this theory of this
2 facts, they're gonna sit there like I just did and
3 listen and go, what?

4 My point is, is that this is an opportunity to
5 use through closing arguments, as well as my
6 instructions to the jury, to assist them in reaching
7 what's a fair and just verdict in this case. I
8 understand that you pled this in one sentence as a
9 defense. I did not hear this stated to the jury. I
10 never got it from a witness.

11 Me, to have to sit up here and figure out, what
12 does he mean by waiver, when he's got so many other
13 things he needs to be focused on. Yeah, you have the
14 right to have me put this in a charge, but my point of
15 asking the question is that I'm trying to see, do we
16 really need to give something else to the jury than what
17 we're already giving them in this case?

18 As I've told both of you in private conference
19 and maybe out here, this is a case about this lease.
20 And for either side to misdirect this jury and to take
21 it somewhere else I think is not wise. But you're the
22 lawyers. You're the advocates in the case.

23 I'll instruct waiver as far as the first, and
24 next to the last, and the last paragraph. I will
25 include that after the -- all right. I've got, I've

1 got, according to what I've got up here, is I'm gonna do
2 the damages part of the breach of contract issue, then
3 I'm going to do the duty to mitigate damages issue.
4 Then I'm going to present the good faith and fair
5 dealing charge. Then I'm going to include the waiver
6 charge. Then I will include the counterclaim charge.
7 And then I'll do the Unfair Trade Practice Act charge,
8 and then do the jury verdict form. Anything else?

9 MR. DLUZNESKI: Not from the Plaintiff, Your
10 Honor.

11 MR. WHITE: No, Your Honor. Would it be possible
12 for the damages, to just get an updated hard copy with
13 that additional language?

14 THE COURT: As I told y'all yesterday, I'm not in
15 my home circuit, and so I don't have access to a
16 printer. I have to depend on other people within the
17 court system. We can give you a photo copy of what I
18 read to you.

19 MR. WHITE: That's perfect, Your Honor, thank
20 you.

21 THE COURT: All right. Do we have a photocopier
22 somewhere?

23 THE CLERK: Yes, sir.

24 THE COURT: Get two copies of this and share it
25 with counsel.

1 All right. We also had the stipulation that
2 y'all had agreed to. Tell me again -- I'll announce the
3 stipulations. Tell me again how you want me to say
4 this? This is about the security deposit.

5 MR. DLUZNESKI: Security deposit, Your Honor. I
6 think what we discussed, with respect to the
7 stipulations, that the Court's gonna charge the jury
8 or ---

9 THE COURT: Announce.

10 MR. DLUZNESKI: -- instruct the jury that the
11 parties stipulate that the defendant did not receive its
12 security deposit back from the plaintiff. And, I
13 believe, that we also agree that the defendant would not
14 be able to ask the jury to draw any negative inference
15 from that.

16 THE COURT: Well, I'm not -- yeah.

17 MR. DLUZNESKI: But I certainly don't intend to
18 argue that either.

19 THE COURT: Okay. Y'all don't want me to say how
20 much?

21 MR. WHITE: I would say \$3,000, Your Honor. I
22 mean, that's before the Court. I mean, it's in section
23 five of the lease.

24 MR. DLUZNESKI: That's fine.

25 THE COURT: All right. So I'll announce to the

1 jury before y'all start your opening -- I mean, closing
2 statements that, ladies and gentlemen, the parties have
3 stipulated that the defendant did not receive its \$3,000
4 security deposit back from the defendant.

5 MR. DLUZNESKI: From the plaintiff, Your Honor.

6 THE COURT: Oh, from the plaintiff.

7 MR. DLUZNESKI: Yeah.

8 THE COURT: All right. Back from the plaintiff,
9 okay. Okay, anything else?

10 MR. WHITE: No, Your Honor.

11 MR. DLUZNESKI: No, Your Honor.

12 THE COURT: All right. And y'all are going to
13 argue how long?

14 MR. DLUZNESKI: The plaintiff anticipates
15 approximately 30 minutes, Your Honor.

16 MR. WHITE: Same, Your Honor.

17 THE COURT: Then you're gonna reply to matters
18 that he brought up?

19 MR. DLUZNESKI: I may, depending what those
20 matters are. If I do, it's gonna be brief, Your Honor.

21 THE COURT: Okay.

22 MR. WHITE: I did have one other thing, Your
23 Honor, I apologize. We did -- you did make reference to
24 us being able to publish the verdict form, or at
25 least ---

1 THE COURT: Uh-huh.

2 MR. WHITE: I don't ---

3 THE COURT: Show it to them, yeah.

4 MR. WHITE: This looks final to me, so I just
5 wanted to confirm that what you gave us yesterday is the
6 final version.

7 THE COURT: I mean, y'all didn't express any
8 problems with the verdict form that I did, so I was
9 considering just E-filing.

10 MR. DLUZNESKI: The plaintiff has no concerns
11 about the verdict form, Your Honor.

12 THE COURT: Yeah. I mean, I, I think, as I've
13 told y'all yesterday, I think that's a good idea, that
14 if you work the actual verdict form with the jury,
15 because I don't think any of them has ever seen a
16 verdict form before. So I think it's a good idea to
17 introduce to them so at least they see, oh, that's what
18 it is. That's what we're talking about. Okay, now I
19 understand. I think that helps them, you know, but you
20 don't have to. That's just an idea.

21 Okay. Are they all here?

22 THE BAILIFF: Yes, sir.

23 Okay. Before you bring them in, juror number 66
24 is not with us, so I anticipate that we use alternate
25 number one.

1 MR. DLUZNESKI: No objection, Your Honor.

2 MR. WHITE: No objection.

3 THE COURT: Okay. Then alternate number one will
4 become our twelfth juror. Okay. Juror number 23 will
5 be Margaret Boone. She will be juror number 12.

6 MR. DLUZNESKI: No objection.

7 MR. WHITE: No objection.

8 THE COURT: All right. Let's bring them in.

9 (Jury enters courtroom at 10:04 a.m.)

10 THE COURT: All right. Madam Forelady, ladies
11 and gentlemen, good morning. A couple preliminary
12 things before we proceed with the closing statements.
13 Juror number 23, Ms. Boone, you will now serve as the
14 twelfth juror with the jury panel.

15 Ladies and gentlemen, prior to receiving -- we
16 worked very hard on getting this case ready to give to
17 y'all today, so in just a moment you're gonna receive
18 the closing statements from counsel. But before we do
19 that, I need to announce a stipulation that the parties
20 have agreed to.

21 The parties have stipulated that the Defendant
22 did not receive its \$3,000 security deposit back from
23 the plaintiff. With the announcing of that stipulation,
24 I also need to inform you, ladies and gentlemen, that
25 the parties, that they have now presented to you, all of

1 the evidence that will be presented to you in this case
2 for you to consider as part of your deliberations.

3 It is now time for the attorneys to make what is
4 known as their closing arguments to you. The arguments
5 of the attorneys are not evidence in this case. Their
6 statements and arguments are meant to help you
7 understand the evidence and apply the law to the
8 evidence.

9 You should disregard any remark, statement, or
10 argument, which is not supported by the evidence
11 presented during the trial, or the law that I will
12 explain to you after the arguments are presented to you.
13 But at this time, ladies and gentlemen, we will receive
14 the closing argument from the attorney.

15 Yes, sir?

16 MR. DLUZNESKI: Thank you, Your Honor.

17 CLOSING ARGUMENT

18 BY MR. DLUZNESKI:

19 Well, ladies and gentlemen, we are at the end of
20 the trial. We are at the end of this journey that
21 started on Monday and will come to a conclusion today
22 once you deliberate and render a verdict in this case.

23 Now, I want to start out by thanking you all for
24 being here this week. And my client and I have both
25 noticed the diligence and the attention that you have

1 given to us, as you've heard, the various witnesses
2 presented, and seeing the various exhibits that have
3 been presented by both sides.

4 We understand. My client and I, Mr. Decker,
5 understands that this has been a sacrifice for all of
6 you. You've sacrificed time with family. You've
7 sacrificed time making a living at your jobs to be here
8 with us and help us decide this dispute that the parties
9 have been unable to decide and resolve for themselves.

10 Now, during the jury qualification and selection
11 process, the judge told you that your service here as
12 jurors is very, very important. And, in fact, it is the
13 cornerstone for our democracy that we know in this
14 country today. The, the jury system is vital to the
15 smooth running of our judicial process that we have.
16 Without service by people like you, the court system
17 could not function as effectively as it does.

18 Now, as the Court just told you, what I am going
19 to discuss with you this morning is not evidence. The
20 evidence in this case was presented in that witness box
21 and in the binders of exhibits that we've been going
22 through this week.

23 However, what I hope and plan to do with you all
24 today is to go through, hit some of the highlights. Hit
25 some of the concerns that my client has about what this

1 defendant, Brilin Electric, has done as it relates to
2 the leased commercial space in Fort Mill.

3 And what I hope to do is to bring all of that
4 together for you and tell you and talk to you about what
5 we believe the evidence and the testimony has shown in
6 this case, and what we request that you deliver to us as
7 the outcome in this case.

8 Now, I stood at this podium before y'all on
9 Monday and told you that words matter. Words are
10 important. Words have power. Not only the written
11 word, but also the spoken word. And this week we have
12 seen and heard both.

13 I'm going to start with the written word. The
14 written word is this lease agreement that is in all of
15 your binders. And you'll have -- you don't have to
16 memorize anything that I'm going to show you with
17 respect to this lease agreement. You're going to have a
18 copy of this in the jury deliberation room with you.
19 You're going to be able to look at all of the provisions
20 of the lease agreement. See what they say. See what
21 they don't say.

22 And, if you remember, I had several provisions
23 blown up for you during Mr. Decker's testimony on poster
24 boards, and we went through those. I want to go through
25 those very briefly again, because my remarks to you this

1 morning will refer to these provisions.

2 So, the first provision that I want to talk to
3 you very briefly about, is the one that relates to
4 repairs by the landlord. And this is provision number
5 ten of the lease agreement. And I've highlighted for
6 you here what we believe to be important or the most
7 important portion of this lease provision, number ten.

8 It says: That the landlord shall not be
9 responsible for repairs or capital repairs or
10 replacements rendered necessary by the negligence or the
11 intentional wrongful acts of tenant, Brilin Electric,
12 it's employees, agents, invitees, or contractors.

13 And then we looked at provision 11(a) and 11(b)
14 of the lease. And, again, 11(a) talks about the tenant
15 throughout the initial term of this lease. And the
16 initial term of the lease, ladies and gentlemen, you
17 will recall, is May 1st, 2017 through April 30th, 2020.
18 Throughout the initial term of this lease and any
19 expense or renewal thereof, at his expense, shall
20 maintain in good order and repair the premises.

21 And then the final sentence here: Tenant shall
22 use only licensed contractors for repairs where such
23 license is required. Landlord shall have the right to
24 approve the contractor as to any repairs in excess of
25 \$3,000.

1 And then the final provision that I want to
2 discuss with you at this time, ladies and gentlemen, is
3 11(b) of the lease agreement. And this may be the
4 provision that we talked about most today.

5 Tenant agrees to return the Premises to Landlord
6 at the expiration or prior termination of this lease, in
7 as good condition and repair as, as on the lease
8 commencement date.

9 So these are the three provisions that the
10 plaintiff believes are the most important ones that are
11 to guide your deliberations in this case. Now, during
12 the course of this trial, ladies and gentlemen, we saw
13 multiple damages that this defendant caused to the
14 leased premises, both inside the leased premises and
15 outside.

16 Now, I want to go through each of those with you.
17 You remember this photograph that we showed? This
18 photograph is the broken gravel in the parking lot
19 outside Brilin Electric's building. You heard testimony
20 that prior to this damage being done, early on in
21 Brilin's lease term, the plaintiff, CREH, had the entire
22 parking lot resurfaced. The plaintiff spent \$97,500.00
23 to have this work done. Countywide Commercial did this
24 work.

25 Now, just think about that number, \$97,500.00 to

1 Countywide Commercial to have this parking lot redone.
2 That's a lot of money. That's a lot of money for a
3 business. That's a lot of money, probably for any of
4 us.

5 And then during Brilin's lease term, after
6 Countywide Commercial finished that work, that Carolina
7 Real Estate Holdings spent so much money, Brilin was
8 operating its forklift outside after CREH told Brilin
9 several times, look, we just had this work done, don't
10 operate the forklift outside. You don't want the gravel
11 or asphalt being torn up.

12 But what does Brilin do? Brilin takes its own
13 liberty to run the forklift outside. And the result is
14 exactly what Carolina Real Estate Holdings fear. The
15 result was that the gravel and asphalt paving got
16 destroyed, got torn up in this area.

17 Now, Brilin did not have, between when this
18 damage happened and when Brilin moved out, Brilin did
19 not have this asphalt paving, actually didn't have it
20 replaced, didn't have it repaired, okay?

21 We presented an estimate for repairs for this
22 asphalt that CREH got Countywide Commercial, the same
23 company that did the initial asphalt work in this
24 parking lot. And we're gonna go through the damages in
25 a moment. But I want you to ask yourselves, with

1 respect to this, with respect to the torn up, broken
2 gravel and the asphalt, is this being a good steward of
3 this lease space that you're using from somebody else?
4 Is this type of conduct, leaving this premises, in as
5 good a condition as you found it? I would submit to
6 you, the answer is no.

7 Q. In addition to the gravel, ladies and gentlemen,
8 we also talked about (inaudible) to establish the
9 behaviors between these two parties. You also found
10 these jersey barriers. You probably heard more
11 testimony this week about these jersey barriers than you
12 ever wanted to hear. You probably got sick of hearing
13 about these jersey barriers.

14 But what the jersey barriers establish and what
15 the importance of the jersey barriers are for this case,
16 is that Carolina Real Estate Holdings owned a piece of
17 property, a commercial property across an alleyway, if
18 you will, or a driveway from another property owner,
19 Keller USA.

20 And you heard testimony that Brilin had an end
21 unit. Brilin was on the end, then there was the empty
22 driveway, if you will, between CREH's property and
23 Keller USA's property. And then we had Keller USA. You
24 heard testimony that CREH installed jersey barriers down
25 the property line, down the middle of this driveway, of

1 this median. And you heard it did that because it
2 didn't want 18-wheelers again being considerate of the
3 asphalt paving that I just mentioned a few moments ago.
4 It did not want 18-wheelers and any other heavy duty
5 vehicles coming up and down that area that it had just
6 finished repaving and tear up the asphalt as a result.

7 The jersey barriers were put up by CREH to
8 control flow of traffic. But, again, as Brilin did with
9 the gravel after being told by the landlord what not to
10 do or being asked by the landlord what not to do, Brilin
11 took it upon itself to move these jersey barriers. It
12 didn't like where CREH had put the jersey barriers.
13 They claimed that it interfered with their business. It
14 didn't stop their business. They were still able to
15 access the ramp that you saw to go into the side door.
16 You heard testimony yesterday about that.

17 They were still able to access that door, but
18 they didn't like where these jersey barriers were
19 placed. So what did they do after being asked by CREH
20 not to move the jersey barriers? They moved them. They
21 moved them multiple times. And y'all heard about that.
22 You heard about the multiple times that they moved the
23 jersey barriers.

24 Then asked the landlord, then said, hey, you
25 know, the jersey barriers where you placed them are

1 interfering with our business activities, they moved
2 them. And what did they move them with? A forklift.
3 The brought a forklift out and moved these barriers,
4 several thousand pounds, to where they wanted them.

5 They had a trailer. They had a trailer for 24
6 hours. You heard about the trailer yesterday. They
7 didn't want the trailer getting stolen. That's
8 appropriate. So what did they do? They didn't talk to
9 the landlord. They moved these jersey barriers around.
10 They -- well, they took it upon themselves to move the
11 -- move CREH's property to where they wanted it. They
12 took liberties with this property that they do not own,
13 again, with a forklift.

14 We heard about these, these bricks. And, again,
15 these bricks are located above the side garage door.
16 Ones that Brilin Electric had replaced during this time,
17 okay? And you heard testimony that several of these
18 bricks were broken or chipped. And you heard testimony
19 from the person that did these brick repairs, McGee
20 Brothers, that it had been hit by force by something.
21 He didn't know what. He couldn't tell us what hit these
22 by force, because Mr. Russell didn't tell him. But he
23 told us yesterday that these bricks were hit when this
24 area was hit with force by some piece of equipment,
25 okay, and cracked these bricks.

1 And you saw on his invoice yesterday, his invoice
2 was for \$280. And when I asked him, I said, if
3 something was hit -- if this area was hit by force, did
4 you do any kind of inspection? Any investigation to
5 figure out if any, anything behind the bricks were
6 damaged?

7 That the lentil, you heard the word lentil
8 several times during this trial. The lentil was damaged
9 and needed to be repaired or replaced, and his answer
10 was, no, I was hired just to replace the bricks. All
11 they wanted to do was put lipstick on a pig, if you
12 will. Not trying to replace the bricks to get the job
13 done.

14 Well, ladies and gentlemen, the invoice that we
15 presented from Mr. Philemon, we'll go into that in a
16 moment, included more than just replacing the bricks.
17 Mr. Philemon was to come in and do this job correctly,
18 the right way. He was going to, not only replace the
19 broken bricks, but he was also going to inspect, take
20 the bricks out. Inspect the lentil, inspect the upper
21 portion of this door, this rollout door that's basically
22 supporting the entire structure, to make sure that there
23 wasn't any damage, unconditional damage, done behind the
24 bricks by whatever hit this in force.

25 Mr. Philemon was gonna do the work right. But

1 Brilin, based on the testimony y'all heard yesterday,
2 all they want to do is a band-aid. They just wanted to
3 replace the brick. And, ladies and gentlemen, we submit
4 that is not acceptable, that is not appropriate. Is
5 this, is this another example of giving this property
6 back to the landlord in the same condition that he found
7 it? That's for you to determine.

8 Now, I want to put this up because this is the
9 concrete branded door, if you want to call it. It
10 leaves out from the side door. The side rollup door,
11 one of the ones that Brilin replaced.

12 The photograph we saw of the jersey barriers
13 earlier showed a little bit of this. And the damaged
14 bricks were in the top right corner of that door.

15 Now, you heard testimony that this concrete acre
16 or patch is one of the things that Brilin did during the
17 tenancy, because this brick or this asphalt down here
18 was getting destroyed. It was being pulled apart. It
19 was being broken up. Why? By a forklift. And you
20 heard from Mr. Russell yesterday that Brilin has one
21 forklift.

22 So this infamous forklift that we've talked about
23 and heard about, is causing all of this damage to this
24 property. After CREH tells them multiple times, both by
25 Mr. Decker and Mr. Schulte, stop doing that, you're

1 damaging our property, the property that we own. We're
2 gonna have to have future tenants in there and we're
3 gonna have to be responsible for the damage after you
4 leave. So they told Brilin, don't use the forklift out
5 here as much as you are, because it's damaging our
6 property.

7 Brilin took it upon itself, once again taking
8 liberty with this property, and putting this concrete
9 patch or apron. Didn't talk to Mr. Decker about it.
10 Didn't talk to anyone else at CREH about it. Didn't get
11 their approval, just put it in, okay?

12 You heard Mr. Decker testify about his concerns
13 with this, specifically about water intrusion getting in
14 under the concrete apron that Brilin put in. When I
15 asked Mr. Russell about this yesterday, I asked him
16 about the specifications. How much -- was there rebar?
17 You know, how much concrete did you use?

18 You heard his answer. He said, man, we put it
19 in. I knew at the time how much rebar he put in. I
20 don't really know how much. I don't remember the
21 specific specifications.

22 Those, those responses, ladies and gentlemen,
23 were not acceptable to the landlord. The landlord wants
24 to know if Brilin's doing work on the landlord's
25 property, what work was he doing? Is this something

1 that's going to be durable, something that's going to
2 last, or is it something that we're gonna have to deal
3 with years down the road?

4 Who did this work? Was the person licensed? Was
5 the person insured to do the work? Those are questions
6 that the landlord asked, but we never received any
7 responses to.

8 I also asked Mr. Russell yesterday, this shows
9 the ramp, and these are the jersey barriers that the
10 plaintiff put down the strip between CREH's property and
11 Keller USA's property.

12 You heard from Mr. King, you Heard from Mr.
13 Russell that these jersey barriers prohibited them from
14 doing business. They couldn't access this. Their
15 business slowed down.

16 Mr. Russell couldn't remember yesterday whether
17 or not the plaintiff, this is where the plaintiff put
18 these jersey barriers or this is where Brilin moved the
19 jersey barriers. I asked him about this space right
20 here. I said, well, you know, I started off by asking,
21 how would you access this? How would you access this
22 property?

23 And he told us it was always by a forklift. A
24 forklift shows up. Only by a forklift. I said, so you
25 were not using trucks or anything like that? No. It

1 was always, we would access this space by forklift. And
2 I asked him, I said, this space here, it seems to me
3 that you've been maneuvering a forklift in and out of
4 there.

5 Well, that's something that you have to
6 determine. Was his explanation, was Mr. King's
7 explanation about not being able to use this side door
8 on this side ramp, imposed by these jersey barriers, was
9 that reasonable in light of how much distance between
10 the jersey barriers and the end of the ramp?

11 And, again, you all are going to have these
12 pictures back in the jury deliberation room with you,
13 and you can look for yourselves at them and determine
14 for yourselves if what Brilin told you yesterday during
15 direct examination and cross-examination was reasonable.

16 The next damage that we talked about is the
17 ductwork. We went back and forth yesterday about this
18 ductwork. Now, the ductwork is at the top of the
19 warehouse building inside the space that Brilin Electric
20 was in, okay? And the testimony yesterday was the
21 ductwork was hit by a forklift. Once again, the
22 forklift shows up. The forklift is causing all of these
23 damages that we're complaining about. And this ductwork
24 is high enough up off the ground.

25 And when it was hit by the forklift, what does

1 Brilin do? Brilin doesn't tell CREH we hit the
2 forklift, what do you want us to do? How do you want us
3 to reconfigure it so it'll remain in compliance with the
4 lease agreement?

5 What does Brilin do? Brilin has one of his guys
6 reconfigure it. They altered it, ladies and gentlemen.
7 The testimony from the witnesses here, from Mr. King and
8 Mr. Russell, yesterday was that they altered this
9 ductwork that they damaged. They didn't ask CREH if
10 they -- you know, how CREH wanted to handle it.

11 You heard that CREH didn't find out about it
12 until the October, 2019, site visit. When myself and
13 Mr. Russell and Mr. Decker and Mr. Russell's attorney at
14 that time, we all walked the warehouse building. We saw
15 ductwork. Mr. Russell told us about the ductwork. We
16 walked the entire space. We looked at the wall that
17 we'll get at -- get to in a moment.

18 And Mr. Decker's words, you heard testimony about
19 ductwork. That's fine, we'll deal with it before you
20 move out, just let us know if you do anything else.
21 Don't do anything else with our building until -- unless
22 you let us know. And, again, one of the things that
23 you'll have to determine in this case was whether or not
24 that was reasonable.

25 Was it reasonable for Mr. Decker, as the owner of

1 that building, to tell Brilin, look, we know that you
2 caused this damage. We didn't know about it before. We
3 didn't know when it happened. We didn't know you had to
4 reconfigure it. You damaged this ductwork. We'll deal
5 with it later, just please tell us when you're doing
6 something else and ask us, you know, for consent to do
7 what you want to do with our building. Okay?

8 And you heard testimony that at the end of that
9 meeting, Mr. Russell agreed with that request. He shook
10 Mr. Decker's hand, and he promised him, I will come to
11 you before I do anything else. I will keep you updated
12 on what else that I do with this property. And everyone
13 left the meeting with a good taste in their mouth.

14 Mr. Decker thought it was a productive meeting.
15 Mr. Russell testified yesterday that he thought it was a
16 productive meeting. Everything was good. But what
17 happens after that meeting? Does Mr. Russell keep his
18 promise? The answer is, no, Mr. Russell does not keep
19 his promise. Because after that meeting, Mr. Schulte,
20 the property manager or the maintenance person or
21 whatever we want to call him, was out at the property
22 doing his normal duties as property manager, making sure
23 the CREH's assets are okay and aren't being damaged,
24 especially considering the history that we have here.
25 These are valid from a distance. He was in his truck,

1 okay? You heard that testimony as well during this
2 trial.

3 But what does Brilin do? Brilin decides it's
4 gonna replace the doors, the rollup doors. The side
5 garage door and then the garage door in the back.
6 Doesn't tell CREH that he's doing it. Doesn't ask for
7 authorization. You saw the invoice yesterday from
8 Southern for the two garage doors. The two of them
9 combined were above \$3,000.

10 Remember, the provision in the lease agreement,
11 ladies and gentlemen, where it says that Brilin had to
12 get the landlord's approval for any repairs or
13 improvements that exceeded \$3,000. The Southern invoice
14 was \$4900. We didn't find out that Brilin was gonna
15 replace those doors until Wayne Schulte brought it to
16 our attention. And then there was communication between
17 the parties in April of 2020, asking finally for
18 authorization, once we discovered that the doors were
19 coming down and the big ones were going up.

20 You heard testimony yesterday that -- you saw the
21 e-mails when Mr. White was cross-examining Mr. Decker
22 about the correspondence between the two attorneys
23 regarding the doors. Early April 2020. You heard
24 testimony yesterday that the doors were ordered in
25 November or December of 2019.

1 So, Mr. Russell knew. He knew that he had an
2 obligation to talk with CREH any time that he wanted to
3 do repairs in excess of \$3,000. He knew when he talked
4 to Southern that the doors that he wanted to put int,
5 were gonna cost more than \$3,000. They were, in fact,
6 going to cost \$4900.

7 He orders them in November or December 2019. We
8 don't find out about it until April of 2020. I submit
9 to you, ladies and gentlemen, Mr. Russell was never
10 going to tell us, never intended to tell us that he was
11 putting these doors in. Had Wayne Schulte not been out
12 at that property and said, and brought it to our
13 attention, hey, there's people out here putting doors
14 in, we would have never had known. Brilin would have
15 put the doors in and never told us.

16 And if you look at that gap, that tells you. And
17 the copies of the e-mails are in the book of exhibits
18 that you're gonna have in the deliberation room.

19 Now, think about that. Was that reasonable? Was
20 that reasonable? And then also about the doors, you
21 heard a gentleman from Southern testify, yeah, they were
22 like kind. We came out to the property, we specced them
23 out. You know, they were lifetime doors.

24 You have the e-mail correspondence to Wayne
25 Schulte from Joshua Montoya at Overhead Door. He looked

1 at the doors that Brilin wanted to put in. He looked at
2 the doors from Overhead Doors that CREH wanted to put
3 in, and he told us in black and white in that e-mail,
4 ladies and gentlemen, these doors are apples to oranges.
5 He's the door expert. He's the door contractor. CREH
6 relied on his opinion.

7 That's why CREH didn't give its written approval,
8 because it had an e-mail from Joshua Montoya saying the
9 doors that they want to put in are apples and oranges.
10 They are not like kind doors to the ones that you want
11 to put in. And he said, the ones that CREH was
12 proposing, and you'll have that e-mail, you'll have the
13 estimate from Overhead Doors.

14 The doors that CREH wanted to put in were like
15 kind to the ones that were there. They weren't trying
16 to do an upgrade. They weren't trying to upgrade the
17 material and pass the expense onto Brilin Electric.
18 They wanted the property back in the same exact
19 condition that Brilin Electric got. That's what they
20 were trying to do with the doors.

21 And even after we found out, in early April when
22 we found out about the doors, and you can see in there,
23 they rushed us to make a determination. And, ladies and
24 gentlemen, consider prior to that CREH had no clue the
25 doors weren't on yet. And we wanted time to check with

1 Overhead Doors to make sure that the doors that Brilin
2 wanted to put in were like, truly like kind.

3 And when we got the e-mail from Mr. Montoya, we
4 said, no, because the doors that you are putting in are
5 not suitable to the space that you're asking us to use.
6 Was that reasonable? Was that Brilin trying to be a
7 good steward of that property? Is that an example of
8 Brilin trying to return this property to the same
9 condition to CREH that it got it in? That's for you to
10 determine.

11 Now, we've got the wall, the demising wall. We
12 heard a bunch of testimony about this. We heard
13 testimony about this from Mr. Decker. We heard
14 testimony about this from Mark Robinson. Heard
15 testimony about this from John Abernathy. Heard
16 testimony about this from Wayne Schulte.

17 Now, this photograph, and this is, again, in the
18 book of exhibits you'll be able to have with you when
19 you deliberate after closing arguments today. This
20 shows what the wall looked like on the Two Men And A
21 Truck side, all right? But you heard Mark Robinson and
22 you heard John Abernathy testify that on both sides of
23 the wall, Two Men and a Truck side, as well as the
24 Brilin side, that this wall was like a snake. That's
25 what it looked like.

1 You see down here, this is a straight line,
2 ladies and gentlemen. This yellow line here. And
3 you'll have a closer view of this, but this is a
4 straight line. And you see if you compare this straight
5 line with the wall, the wall is, in fact, like a snake.
6 And you heard, we weren't able to get in to inspect the
7 wall before Brilin left, because Brilin said, oh -- you
8 know, remember the testimony about the October 2019
9 meeting?

10 You can't look at the wall right now because we
11 have all of our racks up. You know, we don't want you
12 to look at it right now. Well, when we leave, you'll be
13 able to look at it.

14 So that's exactly what we did. After Brilin
15 left, we got Mark Robinson, John Abernathy, both of whom
16 are professionals, to come in, look at this wall. John
17 Abernathy did two reports. One, after his visit on May
18 4th, 2020, and then one after his visit at the end of
19 the May 2020.

20 During his May 4th visit, all of this gypsum
21 sheeting was still up. It was still up on the wall,
22 okay? But he was able to see that the wall had give.
23 The wall had several inches of give, which a wall should
24 not have. And the wall looked like this. It looked
25 like, as he termed it, a snake. So he said, look, we

1 need to get it stabilized right now. This is an 11,000
2 pound demising wall. I don't want this wall to go down
3 and hurting or killing someone or damaging property. At
4 this point Two Men and a Truck were still on this side.
5 Two Men And A Truck still had its business on this side.

6 John Abernathy did not want Two Men and a Truck
7 to be injured or have somebody killed because of this
8 demising wall. So he said, we need to stabilize this
9 wall right now and then we can come back and look inside
10 to see what the interior structure of the elements are.

11 And you've got a copy of his first report in the
12 binder. You will see exactly what he recommended. What
13 he recommended, CREH did. CREH was going by his
14 opinions, his advice, his recommendations the entire
15 time.

16 John Abernathy is a licensed structural engineer,
17 okay? He's a professional. He was qualified by the
18 Court as an expert witness, okay? He testified as to
19 what -- how the wall looked, what his concerns were on
20 May 4th, and what he recommended to be done at that
21 point. And what he recommended be done, CREH did.

22 Now, after the wall was opened up, and this was
23 within a matter of a week or two, at the most. And the
24 exact dates are in John Abernathy's reports. After the
25 wall was opened up -- I'll show you this picture of the

1 interior threshold components. Now these studs, ladies
2 and gentlemen, these metal stubs are steel. They're not
3 alluminum, they're steel. And both Mark Robinson and
4 John Abernathy testified to that, okay?

5 Now, if you look at these, if you look at these,
6 this is the ground here. And you can see how far up the
7 damage to the metal studs are. Now, these metal studs,
8 and there's more pictures at the end of John Abernathy's
9 second report, but these metal studs were bent, they
10 were twisted, they were damaged, sometimes beyond
11 repair. There were 30 studs, John Abernathy testified,
12 that had to be completely replaced because of how
13 damaged they were.

14 John Abernathy testified he was surprised at the
15 damage. This -- these studs, I asked him, I said, how
16 much force would have to be exerted on these studs to
17 cause this kind of damage? And he said, it had to be
18 some kind of equipment. No individual person could have
19 caused this amount of damage.

20 Well, you heard Mr. Russell testify yesterday
21 what would cause all this damage, the forklift. The
22 forklift taking pallets and banging them into the wall
23 repeatedly to cause this damage here.

24 So again, see a trend here, ladies and gentlemen,
25 the forklift. The forklift that I mentioned in my

1 opening statement. All of the damages that we're
2 complaining of here were caused by this forklift, and
3 most fundamentally to this wall.

4 And you heard about the repair process. You
5 heard about Mark Robinson, after John Abernathy came in
6 for his second visit and said this is what needs to
7 happen. In my expert opinion to a reasonable degree of
8 engineering certainty, this is what needs to happen to
9 repair this wall. CREH followed his recommendations
10 precisely.

11 Mark Robinson, an expert in general contracting,
12 been doing contracting for decades, oversaw the work.
13 The work was done. The repairs to the wall were made.
14 Before the repairs started, when the wall was opened up,
15 you heard that there was a meeting out at the property
16 at this demising wall. I was not there, but Mark
17 Robinson was there, Mr. Russell was there, Mr. White was
18 there. And their own engineering expert.

19 We gave them an opportunity. We said that you
20 ought to see the condition of this wall. Bring your own
21 engineering expert and come out. We have no problem if
22 you look at it, if you want to contribute to the
23 repairs. Have at it. We were trying to bring the sides
24 together to coordinate the repairs between the sides.

25 You heard from Mr. Robinson. You heard from Mr.

1 Robinson that during that meeting, when Mr. Russell
2 found out that portions of the wall had to be repaired,
3 Mr. Russell became irate and had to be removed for the
4 meeting. Now, Mr. Russell denies that. And part of
5 your obligations as a jury, and the judge will instruct
6 you on this, is to determine credibility of witnesses.
7 Now, one of your jobs is to determine in that respect,
8 do you believe Mr. Russell or do you believe Mark
9 Robinson?

10 So, after that visit, you heard testimony that
11 Mr. Russell didn't even offer to participate in the
12 repairs. He didn't ask to participate. He didn't ask
13 to be present when any repairs were being made. He
14 didn't ask to shoulder any of the expense related to the
15 repairs. CREH shouldered that expense all on its own.
16 All on its own.

17 And why? Because CREH had commercial tenants in
18 those spaces. You heard testimony that Two Men And A
19 Truck moved over to where Brilin was after Brilin left.
20 And there was gonna be another commercial tenant where
21 Brilin -- or where Two Men And A Truck used to be.

22 Carolina Real Estate Holdings had to get that
23 space back up and running. It could not wait, because
24 every day that it waited, it was losing rent money from
25 those being empty spaces. CREH wanted this problem

1 resolved quickly. Brilin didn't offer to participate in
2 any regard whatsoever.

3 Now, we presented various invoices, estimates,
4 proposals, and contracts to you. Those are also all in
5 the binders related to our damages in this case. And
6 you'll have those back there with you in the jury
7 deliberation room, okay? I want to go through with you
8 right now briefly what damages we are asking you to
9 award, okay?

10 Asphalt. The torn up asphalt, the damaged
11 asphalt that you saw. This is Plaintiff's Exhibit 6 in
12 the binder. \$5,950, okay? It might seem like a big
13 number, but you all saw, and you'll see it in the
14 exhibit. You can look at it during deliberations.
15 There's a report for that. Why is this number?

16 Carolina Real Estate Holdings, ladies and
17 gentlemen, paid to have the asphalt repaired. Brilin
18 Electric did not. Brilin Electric turned the property
19 back over to CREH at the end of its lease term with this
20 damaged asphalt still damaged that it caused by using
21 the forklift outside. So we're asking for \$5,950 for
22 the damaged asphalt.

23 The bricks. This is Plaintiff's Exhibit 9. And,
24 again, getting back, we're asking for 1600. This is
25 Billy Philemon, who came out and quoted that. And if

1 you will recall, Billy Philemon's estimate included not
2 only replacing the bricks, but it also included an
3 inspection, a detailed inspection of the structural
4 component behind the bricks to see if anything else was
5 damaged.

6 Joel Zotemyer wants to -- wanted to replace it
7 completely. He wanted to make sure that that issue
8 would not resurface later on down the road with another
9 tenant. That's why it's 1600, and not the 280 that the
10 defendant proposed yesterday. That's why there was an
11 additional charge, because Bill Philemon is gonna come
12 in and not only replace the broken brick, but he was
13 gonna inspect the lentil. He was gonna instruct --
14 inspect the structural aspect of above the door to make
15 sure that nothing else was damaged. And that takes some
16 work, ladies and gentlemen. That's why it's an
17 increased expense.

18 The doors, Plaintiff's Exhibit 10, is the -- is
19 our Overhead Door invoice. \$7,913.51, okay? Now, the
20 defense, I imagine, is gonna argue that Southern said
21 that they can get it done for \$4900. And that is what
22 they paid to have done in that store that they had
23 performed. But the reason that ours is more, ladies and
24 gentlemen, is because they, according to the e-mail from
25 Joshua Montoya, was they had it installed without, by

1 the way, CREH's written consent. Or, according to
2 Joshua Montoya, not like kind.

3 The doors that Brilin put on were more
4 appropriate for, for example, a storage building. One
5 that doesn't have as many revolutions as the doors on
6 the space that Brilin occupied. That's why Overhead
7 Doors is a more -- is this high. That's why their
8 invoice is high.

9 The ductwork, Plaintiff's Exhibit 12, \$3,625.00.
10 Now, you heard testimony that an invoice was sent to, to
11 Brilin to have that done. Brilin never paid it. Brilin
12 never paid this invoice. The ductwork has since been
13 repaired back to its proper how it should be.

14 And the estimate in ductwork, ladies and
15 gentlemen, when Brilin left it up, that ductwork, the
16 ductwork is what circulates the airflow around that
17 warehouse building. So even though it may have been --
18 you know, even though Brilin took the liberty upon
19 itself to raise that ductwork up, the consequences of
20 that is that it's harder for the airflow to reach the
21 bottom of that warehouse space. So it takes more energy
22 to heat and cool that warehouse space, if the ductwork
23 is higher off the ground. That's why it was where it
24 was when Brilin moved into that building. So we're
25 asking \$2,625 for the ductwork.

1 The last Exhibit 17, Integrity Consulting Group.
2 That was John Abernathy. \$1,757.50. This is what CREH
3 paid to have John Abernathy come down on those two
4 occasions in May 2020 and oversee the inspections of the
5 wall and tell CREH, this is what needs to be done to
6 make sure that this wall doesn't fall and hurt or kill
7 someone or damage property. CREH paid this. This isn't
8 speculative. This is -- these are damages that CREH
9 benchmark. This is Mark Robinson. These are the
10 damages, the repairs to the wall.

11 But after John Abernathy came in and said these
12 30 metal studs have to be replaced, Mark Robinson's the
13 one who came in after that, after the meeting with, with
14 Mr. Russell and their expert witness or their
15 engineering expert, and actually made those repairs,
16 \$6,121.00. That's Plaintiff's Exhibit 18.

17 COIT, Plaintiff's Exhibit 20, 250 bucks. You
18 heard testimony that after Brilin moved out it smelled
19 of dog urine. It smelled of animal urine inside the
20 office space, flex space, as it's been called earlier in
21 this trial. CREH had to come in and pay COIT cleaning
22 services \$250 to clean those carpets so that it would be
23 appropriate for the next tenant.

24 L&W, Plaintiff's 26, these are the supplies. Mr.
25 Decker testified about the supplies for the wall. Mr.

1 Robinson had some supplies included with him, but these
2 were supplies that -- and Mr. Decker went through each
3 one of those on that list and explained what each one of
4 those are, \$1,861.13.

5 And then finally, Sunbelt Rentals. Plaintiff's
6 27, \$723.37. Mr. Decker told you that they had to rent
7 a scissor lift in order to get up high enough on the
8 demising wall inside the warehouse building to properly
9 inspect it. This was the charge related to that, okay,
10 that CREH incurred and paid.

11 So in total, ladies and gentlemen, we add all
12 these things up, all of these damages. We're asking you
13 to award a total to CREH on Breach of Contract claim
14 against Brilin Electric in the amount of \$28,802.76,
15 okay?

16 Now, just very, very briefly, one of the issues
17 in this case is that Brilin Electric believes that CREH
18 has engaged in unfair and deceptive trade practices in
19 the conduct of Brilin. And the Court will instruct you
20 about what that means. That's a claim that Brilin has
21 against CREH, okay?

22 You're gonna hear from the Court, and the judge
23 is going to instruct you on this. You're gonna hear
24 that one of the things that Brilin has to show you or
25 establish to you by a preponderance of the evidence, is

1 that the plaintiff, CREH, or the defendant, Brilin,
2 suffered actual damages as a result of the plaintiff's
3 Unfair Trade Practice Act.

4 I anticipate what Brilin is going to argue to you
5 is that the unfair trade practices comes from some
6 invoices or estimates that Carolina Real Estate Holdings
7 prepared, but never sent to Brilin and that Brilin never
8 paid. That Brilin now believes were fraudulent or
9 false.

10 And you'll remember that Brilin's attorney asked
11 Mr. Decker about those invoices and estimates on
12 cross-examination on Tuesday and Mr. Decker denied that
13 they were false or fraudulent. So you have to determine
14 whether or not you believe Mr. Decker's responses to
15 defense counsel's cross-examination questions in that
16 regard. But they have to prove that they suffered
17 actual damages, actual damages as a result of CREH's
18 unfair or deceptive acts.

19 And even if you decide that CREH engaged in
20 unfair and deceptive acts, and we would submit that CREH
21 has not. But even if you determine that they did, and
22 the judge will instruct you on what unfair and deceptive
23 acts includes. But even if you determine that, Brilin
24 suffered no actual damages as a result. These allegedly
25 false or fraudulent estimates were either not sent to

1 Brilin or Brilin never paid. So Brilin has sustained no
2 actual damages as a result of any alleged unfair
3 deceptive acts by CREH.

4 Something else that the Court's gonna instruct
5 you on is whether an act or practice is unfair or
6 deceptive within the meaning of the act depends upon the
7 surrounding facts and the impact of the transaction on
8 the market place. On the market place. Those are very
9 important words, ladies and gentlemen.

10 In this case we have one private lease dispute.
11 This is a lease dispute. A dispute over did a breach of
12 this contract, this lease agreement occur and who
13 breached it? This doesn't involve somebody going out
14 and engaging with, with the general market place. This
15 is a private contract dispute. So we would submit that
16 this has nothing to do with the market place. It has to
17 do with CREH and Brilin Electric, these two private
18 parties.

19 And then finally, the Court's gonna instruct you
20 that where a contract exists, a mere breach of a
21 contract is not conduct which violates the South
22 Carolina Unfair Trade Practices Act. So you can find
23 that -- and we would submit that they did not, but you
24 can find that CREH breached this agreement, this lease
25 agreement, but that alone doesn't mean that CREH

1 violated the unfair and deceptive trade practice. We
2 would submit that CREH did not.

3 So at the end of the day, ladies and gentlemen,
4 we are here over this lease agreement, which is
5 Plaintiff's Exhibit 2, which you've heard and seen ad
6 nauseam this week. The lease agreement was for a
7 three-year term between Carolina Real Estate Holdings
8 and Brilin Electric. That Brilin was leasing the
9 premises, Brilin caused damages to that property.

10 And these are the damages that we're asking you
11 to award as a result of that breach. And we would
12 submit that CREH is entitled to all of these damages.
13 Thank you.

14 THE COURT: Ladies and gentlemen, if you would,
15 stand and stretch your legs just for a moment.

16 Is the defense ready for his closing argument?

17 MR. WHITE: Yes, Your Honor.

18 THE COURT: Yes, sir.

19 CLOSING ARGUMENT

20 BY MR. WHITE:

21 Ladies and gentlemen, good morning. I will start
22 my closing argument where I ended my opening statement,
23 with that bold prediction that trial lawyers should
24 never, ever do in an opening statement because you never
25 want to promise something that won't actually happen.

1 When I was in the military, we had a great
2 phrase, all good plans never to arrive first contact
3 again. But I went ahead and made a bold prediction and
4 said, I want -- I bet you after four days of being here,
5 you're gonna wonder why you're here. Well, we finally
6 got the answer, because I'm wondering.

7 If you look at Defense Exhibit 14 when I said way
8 back in April 2020, hey, I've been in this case a week.
9 I had a chance to go out to the premises. I don't know
10 why we're in litigation. I don't know why you sued us.
11 We haven't even moved out of the space yet. What is
12 going on here?

13 Well, we got our answer today. Mr. Decker, and I
14 think this sums it up more than anything else. Mr.
15 Decker wants you all to award him, among other things,
16 \$8,000 so he can go out and buy the doors that he wants
17 and rip off perfectly good doors that have been sitting
18 on his building for over two years now.

19 So he can put on the doors that he wants because
20 gosh darn it, that's his building and it's his way or
21 the highway and I want those doors, even though they're
22 not insulated, even though they're not the same.
23 They're not even the same color. So everyday y'all are
24 driving by I-77, he puts on his brown and white new
25 doors, it's not gonna match those buckskin doors. It

1 doesn't make sense, other than the fact that this is a
2 person who wants absolute control, domination over
3 anything.

4 You know, this is almost like a bad movie. You
5 know, it would almost be comical if it wasn't such a
6 farce, in terms of the fact that this man, this
7 self-made man, who's been an electrician since he was 18
8 years old, and was so successful at 29 opening his own
9 business and has been thriving ever since, had to deal
10 with this and had to pay me to deal with this, and my
11 law firm for almost three years now.

12 I mean, this is like a bad James Bond movie where
13 you've got this evil villain like Ernst Blowfeld or, you
14 know, or, you know, think Telly Savalas if you're maybe
15 older vintage, or maybe Dr. Evil from Austin Powers if
16 you're younger vintage.

17 And it's like what are we gonna do today, instead
18 of world domination, we're gonna get Brilin Electric.
19 And the plaintiff is sitting in his lair, plotting the
20 demise of Brilin Electric and he's gonna get him. He's
21 gonna get him.

22 And like every good villain, he's got his
23 henchmen. He's got Mr. Wayne Schulte. Get over there.
24 Go over there every day, find out what's going on. Get
25 me those pictures. You know, find it out. And then one

1 day Mr. Schulte comes back to his lair, you're gonna
2 love it. I found it. I got the picture of the dog bed.
3 Why are we even talking about a dog bed in this case?
4 This is a contract to lease premises between two
5 businesses, and everything about this relationship is
6 governed by that lease, and yet we're talking about
7 sticks and stones may break my bones, but words will
8 never hurt me.

9 Pay attention to the words, look, there's a dog
10 bed. What does that have to do with anything, all
11 right? Do me a favor real quick. I'm not trying to
12 make y'all look at these dang binders any more than you
13 have to, but please do me a favor and open your binder
14 up and look at Plaintiff's Exhibit 2, the very last
15 page, please.

16 A gold star for anybody that picked up on this
17 during the course of that trial. Look who didn't even
18 sign that contract, the landlord. The landlord. I
19 wonder if he ever even read the dang thing. If you
20 looked at the front page, paragraph two:

21 All of the following conditions shall have been
22 satisfied or waived by tenant in writing. 2.2.:
23 Landlord has delivered a fully executed copy of this
24 lease's intent. He never even signed the dang thing.
25 Maybe that's why he's coming up with all these crazy

1 things that are outside the scope of the lease. I need
2 the certificates of insurance. I need to approve every
3 contract, whether it was for a dollar or \$10,000,
4 because he hadn't even read the lease. He had even
5 signed it.

6 Now, did he repudiate the lease? Did he say,
7 hey, we don't have a valid contract, you never signed
8 it? No. Because Bryon Russell is a good man, a good
9 business man. And honored his end of the bargain, every
10 step of the way. He did everything right, everything
11 right. And this landlord did everything wrong,
12 everything wrong.

13 Let's talk about the asphalt. Nobody's disputing
14 that the asphalt got torn up. We never did that, okay?
15 That's never what this case was about. We spent way too
16 much time talking about, look at these pictures of
17 damaged asphalt. It's about what caused the asphalt to
18 be damaged, okay?

19 And this is where it's very important that we
20 talk about the Judge's instructions. And one thing he's
21 gonna talk about when you look at damages, is you've got
22 to talk about the proximate cause, okay? The proximate
23 cause, that's a legal term. What actually caused it,
24 okay?

25 It's not that the forklift -- the forklift caused

1 the damage, but what really caused the damage from a
2 legal point, because it's not just actual, because the
3 judge will tell you, a legal cause, is that this
4 plaintiff, knowing full well that a forklift was used at
5 that premises, that it is a commercially reasonable
6 thing to do; that he rented that space in the first
7 place because it had a side door with a ramp. If it
8 didn't have that, he wouldn't have ever been there.

9 He knows all that, and yet he goes ahead and
10 paves the asphalt to an inadequate depth on that side.
11 How do we know that? Because in his own words, his
12 expert paver, I did what he told me to do. Well, he, on
13 the side where all the big trucks go, he did six of
14 grass -- gravel and four inches of asphalt, equivalent
15 to what you use at an airport, according to Mr. Decker.

16 Didn't do that on the other side. And then when
17 it gets torn up, he gets a quote, and then I don't tell
18 them what to do. I just do what Decker told me to do.
19 50 percent more gravel, 50 percent more asphalt.

20 You heard plaintiff's counsel, that was almost
21 \$100,000. That's a lot of money. Okay. Well it was
22 six grand to do the patch job, right? So let's do some
23 math, which is always dangerous with me. I went to law
24 school to avoid that.

25 Okay. \$6,000 to do the path. 50 percent more

1 materials for that little section, so I'm gonna go out
2 on a limb and say, no more than an extra \$3,000 to pave
3 it to the six inches gravel, four inches asphalt, if
4 they would have done it in the dang first place. Okay?
5 It's their fault.

6 The proximate cause of the damage to the asphalt
7 is their fault. They knew a forklift was being used.
8 It was a reasonable thing to do, and nevertheless, they
9 paved it to an inadequate depth. And what was their
10 solution? Because they knew they were using a forklift,
11 and probably because they knew they were using an
12 inadequate building shelf, we'll just block them off.
13 We'll just put up the jersey barriers.

14 And that's why we, ladies and gentlemen, have a
15 counterclaim for breach of contract, among many things.
16 In section 21 of that lease it says, we, as every
17 commercial lease says, heck in every lease says: We
18 have the covenant, the right of quiet enjoyment. So as
19 long as we do what we were entitled to do, he will leave
20 us alone. Leave us alone and let us use this space for
21 the purposes of which it was intended, which is an
22 industrial warehouse with some office flex space in the
23 front. Okay?

24 Now, one last thing on this asphalt. You have a
25 quote, a quote from February 11th, 2020, for 5950.

1 Shockingly, this plaintiff has presented you no evidence
2 whatsoever that that work was ever actually done or how
3 much it cost. You just have a quote. Okay?

4 Every time we actually had some damages, did you
5 pay it? Yep. Do you need your receipt? Yep. You have
6 a quote, so you can knock that one right off the list.

7 Let's talk about these doors. Just like the
8 asphalt. No one's saying the doors get damaged. You
9 heard from both plaintiff and defendant. There was a
10 conversation in 2019. Hey, I busted up your doors, but
11 you're gonna have to fix them before we go. No one said
12 we didn't bang up the doors. Okay?

13 And the lease says it's our obligation to repair
14 it. At least when it comes to repairs, ladies and
15 gentlemen, I would submit to you that this is a very
16 standard provision in the South Carolina commercial
17 leases.

18 That capital improvements are the responsibility
19 of the landlord. That's when you're dealing with big
20 ticket items, resurfacing a parking lot, messing with
21 the structure of the building. You definitely want to
22 have control over that. So that's on the landlord,
23 unless you, the tenant, did something to bust it up.
24 And everything else is on you, the tenant, to fix.

25 And as Mr. Hemphill said, I rarely talked to him,

1 because it's pretty standard. And he's got the
2 obligation to fix something and they fix it, and if it's
3 the doors, they call me and I fix the doors. Very
4 simple, okay?

5 Now, those doors, as you heard Mr. Hemphill say,
6 you split them up in the invoice. If we've got to
7 compete on the invoices, we could have split it up and
8 had more than one invoice with less than 3,000 and
9 another invoice with less than 3,000. Remember, we
10 don't have to talk to them at all per the lease, okay?
11 But we didn't, because Mr. Russell's a good man and we
12 took the high road and did everything right. And that's
13 why, I know some of y'all were growling when I said we
14 were going to go to that e-mail at Defense Exhibit 14,
15 but that is the site picture they took. What our
16 reality was over three years ago.

17 And I think that's a very important thing,
18 because I can tell you right now, like I said in that
19 e-mail, I don't know why we're in litigation. And if I
20 thought that I'd be spending this lovely July week with
21 y'all here two years later, back then, I would have
22 laughed in your face. I never thought that was gonna
23 happen.

24 So that really gives you a good state of mind,
25 right? How could you -- if you're not buying what I'm

1 selling right now because I've had a few years to sleep
2 with this under my pillow. That was what was going on
3 right then and there a week into this case, okay?

4 And in there we said, look, we're asking your
5 permission because combined it's over \$3,000. But
6 you'll see, and the judge will instruct you on this
7 point of law as well, that although it's not expressly
8 written in the contract, every contract in the state of
9 South Carolina has the five components of good faith and
10 fair dealings. You do right by your counterparty in a
11 commercial contract.

12 So, I'm asking you to approve this repair. And
13 if you don't, and I know you're not because you want
14 your preferred vendor to do your doors, I'm telling you
15 right now that's a breach in the implied good faith and
16 fair dealings, so you better approve this. And they did
17 it. And the judge is gonna instruct you on that point
18 of law and you need to take that into account.

19 And then, we just heard some crazy talk a minute
20 ago, that they didn't know. Look at Defendant's Exhibit
21 14. April 8th, hey, man, do we got approval on these
22 doors? We're ready to go next week, April 15th. Look
23 at the invoice, top right corner, delivery date, April
24 15th, 2020. They didn't know about the doors? They
25 most certainly knew about the doors. They knew about

1 the doors all the way back to the October meeting.

2 Y'all gotta fix the doors. Okay, we'll fix the doors.

3 Actually, I take that back. We told them we
4 busted it up and we needed to fix it. Okay? Do you
5 think doors come overnight? No. He ordered them back
6 in late 2019 and they got there in April. Now, for two
7 reasons. One, it takes time to get doors. And what's
8 the point of having two doors standing around, maybe six
9 months left of the lease.

10 Bring your forklift driver and bang right back
11 into them. So, he wanted to put those on when he's out.
12 And you heard he was out. Everything was out. Starting
13 with the office, beginning -- and by the first of April
14 with a couple weeks left. Well, a couple of weeks left,
15 before the end of the lease, was April 17th, 2020.
16 That's the time the garage doors go on.

17 They knew we were putting them on. They knew we
18 wanted to put them on. We didn't really need their
19 permission to put them on, but we asked anyway. And
20 what did they do? What did they do? They called the
21 cops on us. They called the cops on us. I mean, it is
22 crazy. This is a bad movie, that I will call the cops
23 on. Mr. Schulte, yes, master, what should I do? Call
24 the cops.

25 And what did the sheriff do? The sheriff's like,

1 oh, good God, what am I doing here? Like, this is a
2 civil matter, I'm leaving. Right? For the doors.
3 There's no breach in the doors. We repaired the doors.
4 No damages for that. No \$8,000 because he didn't get
5 his approval, okay? No. That's not how it works, okay?

6 Now, I tell you, in addition to not believing I'd
7 be here with 14 lovely perfect strangers in July of
8 2022, on Tuesday I had a thought. And that thought was,
9 you know, what's gonna be my fondest memory of July
10 19th, 2022? Is it gonna be that my oldest son turns 12?
11 He's all into Japanese stuff. We took him to a Japanese
12 steakhouse. Got there just in time. That lovely I-77
13 traffic. Is that gonna be my fondest memory? Or is it
14 gonna be that we don't think that we all spent 15
15 minutes of our lives we'll never get back talking about
16 these bricks.

17 I said to my son, I cannot believe this. I
18 cannot believe we are talking about bricks. This is 15
19 minutes of our lives we'll never get back, talking about
20 these bricks. And here's the kicker, we don't really
21 know. Heck, I even said in my e-mail, we don't know
22 what caused those bricks. That's so high up. It's
23 supposed to be -- you remember how high it is. It's
24 right there in the quote. That's a 10X12 door. 10
25 wide, 12 high.

1 A forklift didn't hit that, okay? The most
2 plausible explanation we heard was from Mr. Bill
3 Broadway himself. Why? Because if you go through the
4 pictures that he took just a week ago, it's high like
5 so. There's something going on there. That space where
6 the park is, there's just something going on. It looks
7 like a slightly bad deal where the brick meets the
8 lentil, something's moving around in there. I mean,
9 you've got a forklift and there's stuff going on right
10 there in the warehouse, well it's just -- nobody did
11 that. We didn't cause it. There's no breach. We
12 didn't, we didn't do that.

13 Well, then what did you hear Mr. Russell say? I
14 don't care, just fix, fix the bricks. Fix the bricks.
15 Let's get it done, let's get it over with. Anything he
16 needed to do to get this thing gone, do it.

17 And this is where we start getting into the
18 pattern, right? We've got an \$8,000 garage doors,
19 versus our \$4500. \$1600 was their quote. Again, quote.
20 They didn't pay any money. They want you to pay and
21 award \$1600 so he can get like the Cadillac diagnostic
22 of what the heck is going on with this lentil. Why?
23 Probably because Mr. Broadway said there is something
24 structural going on up there. Maybe it does need to get
25 fixed.

1 So, if I can get some structural defect, probably
2 from the initial construct to that building fixed and
3 put it on his tab, I'm gonna do it. That's what's going
4 on here, okay?

5 All right. So we've got the bricks. We've got
6 the doors. We've got the asphalt. We've got the
7 carpets. We, we've -- you heard him say, he's fixing
8 the carpets all the time. Why? One, there are people
9 going through with muddy boots and all of that stuff
10 from the job. But also, there was water intrusion
11 because it rained and the weather stripping was garbage
12 in the office space. So they were constantly doing
13 that.

14 So you know what you have to ask yourself right
15 now, do I really believe any of the plaintiff's
16 witnesses, that there was a smell, that there was an
17 odor, or is this more of just one more thing? This is
18 my building, and I will do what I need to do, and I want
19 it cleaned by my people and hold on to the paperwork. I
20 will throw another \$250 in the case. It's just crazy.
21 It is absolutely crazy.

22 So what does that leave us with, ladies and
23 gentlemen, at this point? We've got the insulation.
24 The insulation. Now, you heard me ask Mr. Decker about
25 this. And y'all didn't get this. This isn't going back

1 with y'all. This is a Court's exhibit. This is their
2 response to our discovery request. Discovery where you
3 give us your documents and we'll give you our documents.
4 And we requested an itemized statement of all damages.
5 Tell us what you think you paid out that we owed you.
6 And it says, you have been sustained, quote sustained.

7 We've got the asphalt quote. We've already
8 talked about that. Cleaning, the carpet cleaning. We
9 all know what that's gonna be. The Philemon quote,
10 which they never paid. Overhead Door, we talked about
11 that. Did we get -- oh, the Decker inspection, the
12 fraudulent invoice, we talked about that.

13 Mark Robinson for the wall, we're gonna talk
14 about that. There's nothing even on here about this
15 insulation. Nothing on here about that installation,
16 the two -- sorry, insulation. HVAC ductwork, I'm sorry.
17 All we did was raise it up a little bit. You can see,
18 like, the little S curve we put in there.

19 We did that. And you heard Mr. Russell say, they
20 knew we were doing that. They recalled us doing that.
21 We wanted to raise it up, get it out of the way of our
22 racking. And it's a warehouse space, okay? He said he
23 didn't even use it. They want it off. You don't really
24 need the warehouse cooled down. It's just one more
25 thing they've got to pay for. Why cool down your

1 electrical wiring so that you can be cool?

2 But what else do we have here as part of this
3 pattern? We've got an invoice. I want you to pay me
4 \$2,025.00 -- \$2,625.00. A May '18 invoice from CREH.
5 And then we get the magical preferred vendor invoice
6 seven months later, December 28th, 2018, for \$2,625.00.
7 I hope y'all are starting to smell a rat here. Put a
8 number down, give it to your vendor, that's what we're
9 paying.

10 So it makes you wonder, right, would it really
11 have cost \$2,625 to do whatever CREH wanted their
12 preferred HVAC vendor to do, or is maybe some of that,
13 hey, you didn't use our preferred vendor, you used your
14 own. So why don't you take \$1,000 or something at one
15 of our other jobs. And speaking on this one, because
16 we're gonna stick it to this guy.

17 How do you get an invoice through your tenant for
18 work preferred vendor is gonna do for you if they
19 haven't even called you yet? How does that work? I
20 didn't hear a good explanation. I have one, though.
21 It's part of his pattern.

22 But in any event, they didn't even ask for a list
23 of damages. They didn't do anything, so you can take
24 that off the list. So where does that leave us with,
25 ladies and gentlemen? It leaves us with -- it leaves us

1 with the wall. Okay? All this stuff to do with the
2 wall, okay?

3 Let's do this real quick. You can get rid of
4 that number. You can get rid of that number. You can
5 get rid of that number. You can get rid of that number.
6 And let's see, I think that's all. Sun Bell, L&W,
7 cleaners. Well, I'm gonna take that off. So that's all
8 that we've got left right there. I want to get rid of
9 this number, because we know we ain't nowhere close to
10 that money. Okay? All the wall stuff.

11 And this, once again ladies and gentlemen, is
12 where the judge's instructions are critical, okay? They
13 are saying we breached this contract by not fixing that
14 wall.

15 Now, if you go back to Defendant's Exhibit 14,
16 that comment where I said, how can them lawyers suing
17 us. We're gonna have all of this done, except for these
18 bricks. Who knows what happens with that, but we'll fix
19 it. I never mentioned anything about the studs. I
20 never mentioned anything about that demising wall, do
21 it? Why? Because we didn't know. Nobody knew. You
22 heard Mr. Robinson, the plaintiff's expert in general
23 contracting, say he thought something was going on with
24 that wall, but he wasn't sure. He needed to get an
25 expert, an engineer.

1 So the engineer comes out three days later. And,
2 by the way, Mark Robinson came out May 1st, seeing if he
3 can get the space back. We had that thing empty. We
4 begged for them to do a final walkthrough. If it was so
5 important, you heard plaintiff's counsel say, you know,
6 we could not wait to make repairs. They didn't offer to
7 fix the wall. Well, we've been sued.

8 We cannot wait to make repairs. Really? Mark
9 Robinson could have done exactly what he did on May 4th.
10 What he did on May 4th, what Mr. Abernathy did on May
11 4th, and what Mr. Abernathy did again on May 18th, all
12 in the month of April, all that could have happened. We
13 had it cleared out. They knew we had it cleared out.
14 We begged them for a final walkthrough. Okay? Because
15 that's what you do.

16 And that's the thing here about a contract like
17 this. We had the obligation as a tenant to give you,
18 the landlord, your property back the way we found it.
19 Well, my interpretation as a tenant might be a little
20 different from what your interpretation is with the
21 landlord as to what that means. So, how do you sort
22 that out? Through a walkthrough. Do a walkthrough.
23 Tell me what I need to do.

24 Imagine this is like a residential lease, okay?
25 A month before, okay, the landlord comes in, hey, you've

1 got a hole in the wall there. What's your landlord
2 supposed to -- you know, just fix that up, man. Fix it
3 up before you move out.

4 What happened here? He called the law. There's
5 a lawsuit. That's what happened. That's not what's
6 supposed to happen. You do a walkthrough and you fix
7 it. And if his expert contractor had come on that
8 walkthrough at any point in time in April and did
9 exactly what he did on May 1st, got an engineer out
10 here. And if an engineer came out there at any point in
11 April of 2020, and said I need for you to open up this
12 wall.

13 And as we all go looking at walls to say, yep,
14 the studs need to be fixed. Now, we don't know for sure
15 that the forklift operation did that. Maybe it was like
16 that before. But, you know, let's just assume for
17 purposes of argument that it was the forklift. That it
18 was pushing those pallets on the rack again there.

19 And, look, let me give you a visual. I think a
20 picture is worth a 1,000 words, so it's one of the last
21 times I make you look at the binder. Go to Plaintiff's
22 Exhibit 21 real quick. That's the before picture,
23 ladies and gentlemen, of the demising wall. That's what
24 it looked like. That is the scope of the damage to the
25 gypsum board, to the sheetrock, to the drywall. Okay?

1 Even the expert -- and, look, just to be honest, you'll
2 see it, it's our move-out photos. We did patch all that
3 up, okay?

4 But, like, even if it was like that, I guarantee
5 you, I submit to you, ladies and gentlemen, it is a
6 reasonable inference from the fact that we're gonna do
7 -- switch tile, then Mr. Robinson would not have been
8 able, if it had looked just like that to say the studs
9 are down. It may have been like that. Maybe some of
10 those that are studs behind the walls, and we need to
11 look at it, okay? And we could have cut it open. We
12 don't know. Nobody knew that their studs were busted
13 up. Okay?

14 And, again, this is where it's critical that if
15 you listen very carefully to the instructions on the law
16 that the judge will give you. Now, I'm gonna read to
17 you something. If I misstate anything, you go with what
18 he says, because he's smarter than both of us two
19 lawyers combined.

20 All right. One other thing, plaintiff will show
21 a preponderance or greater weight of the evidence of the
22 defendant unjustifiably breached the contract. Breached
23 the contract. The word breach means the failure without
24 legal excuse or any promise that forms a whole or a part
25 of the contract. Okay?

1 So that's when we get into the other legal
2 principles. One of which is a plaintiff's duty to
3 mitigate its damages. Members of the jury, I charge you
4 that the plaintiff has a duty to minimize the damage
5 caused by the defendant's breach of contract. The test
6 is whether the plaintiff has done what an ordinarily
7 prudent person would have done under like circumstances.

8 There is nothing ordinary and prudent about this
9 plaintiff. If the plaintiff had used unreasonable care
10 that leads to losses, the plaintiff -- then the
11 plaintiff has used reasonable care to reduce the losses
12 of the plaintiff and may recover the whole amount. If
13 the plaintiff has not done so, then you should reduce
14 the damages accordingly. They have a duty to mitigate
15 their damages. They also, as I told you earlier, have
16 an obligation to operate with good faith and fair
17 dealings with the tenant.

18 And, additionally, the judge will instruct you on
19 the concept of waiver. The defendant claims that even
20 if there was a breach, the plaintiff by his actions
21 after the alleged breach, waived his right to enforce
22 the contract. Okay.

23 The waiver of a breach of contract may be shown
24 by an act, which is so inconsistent with an intent to
25 enforce the right as it rises upon breach as reasonably

1 to induce of the length of the record has been
2 relinquished. If you find, because this burden's on us.
3 If you find that the defendant has proved the plaintiff
4 actually waived, waived his right to enforce the
5 contract, then your verdict must be for the defendant on
6 this issue.

7 When they refused to do that walkthrough, they
8 waived the right to go after us for any damage of that
9 demising wall. And we gave them every opportunity to
10 come in there and fix it. And don't -- listen, and I'm
11 not making light of COVID, but don't listen to that
12 COVID nonsense. As it says in Defendant's Exhibit 14,
13 you're telling me right now, no meeting at any point.

14 And y'all have seen those pictures. You can get
15 a visual. That's a big space. People -- we could have
16 used social distancing. We could have done whatever.
17 It could have just been them to do what they needed to
18 do to make their assessment to determine what we needed
19 to do to give them their space back the way we found it.
20 If I'm not doing the commercial and reasonable thing,
21 doing a walkthrough, they waive the right to come after
22 us after the fact.

23 You heard Mr. Russell say, if I had known about
24 it I would have fixed that too. He did everything he
25 possibly could. Like I said, that very first

1 instruction on breach, unjustifiably breached. What,
2 ladies and gentlemen, have you heard in four days that
3 Mr. Russell did that was unjustifiable? Absolutely
4 nothing. He's just trying -- business is so good,
5 because he's so good at what he does, that he outgrows
6 this space, and he's just trying to get the heck out of
7 there.

8 It probably irritated the plaintiff, among other
9 things, probably realized, hey, it's looking like
10 imminent shutdown because of COVID, I might have an
11 empty space, right? But then that didn't even happen
12 because Two Men And A Truck jumped over to the other
13 side and took it over just like that. He can't even
14 tell you, like, oh, we have lost rents.

15 You heard some stuff about, oh, we gave them a
16 rent waiver. You didn't hear any actual evidence that
17 they, like, had any of that because Two Men And A Truck
18 moved over immediately.

19 So, ladies and gentlemen, I'm gonna wrap this up.
20 I appreciate your time, your patience. What I want to
21 do now, is I want y'all to flip to Defendant's Exhibit
22 19, all the way to the back. Flip it over to the blank
23 on the back. Madam Foreperson, I'm going to publish
24 this verdict form for you.

25 So y'all should just be staring at a blank sheet

1 of paper. And what I want to do is I want to give y'all
2 a cheat sheet, okay? Does anybody need a pen? There's
3 a whole mess of pens over here, so you can write this
4 down. All right. All right. Raise your hand if you
5 still need a pen. All right.

6 Okay. I want you to write down, once you get
7 your pen, a couple things. I want you to make a column
8 with numbers on it. I want you to write down one. I
9 want you to write down 2(a). I want you to write down
10 2(b). I want you to write down 3(a). And I want you to
11 write down 3(c).

12 Now, 1, 2(a), and 3(a), I want you to write the
13 word for the defendant. Madam Foreperson, you've got
14 the ultimate cheat sheet right there. The right for the
15 defendant.

16 Now, for 2(a) -- excuse me, 2(b), I want you to
17 write this number down, \$4,424.75. And that number
18 represents the \$1144.75 that my client had to pay for a
19 forklift and shut down the side ramp. And he had to
20 offset, to keep his business running, without a breach
21 of the contract, because that second one is our claim
22 for breach of contract where they harassed us, shut down
23 our business, called the cops on us, all that stuff,
24 okay?

25 So that's the forklift. The \$3,000 security

1 deposit, that the judge told you we stipulated we never
2 got that back. Never gave it to us back. And \$280 for
3 the brick repair, because we all know we didn't cause
4 it. And we got it solid, we did it for them. They got
5 a benefit from that and we want our money back.

6 So I gave you those three sub numbers. As I told
7 y'all, I don't do math real well, so double check my
8 math and make sure that top line is 4424.75.

9 All right. 3(b), I'll tell you what I want you
10 to do for that one. I want you to write down one
11 dollar. And we also brought a counterclaim for unfair
12 trade practice violation. Now, ladies and gentlemen, in
13 a civil trial, yes, it was boring. Redundant, saying
14 everything over and over again. How many times did
15 somebody tell us about the dry boards? How many times
16 did we know that the asphalt was damaged? And it's
17 boring to hear.

18 But this is a fun one, okay? This is one where
19 you, in a civil setting, in a civil trial get to do real
20 justice. You get to do real justice to make our world,
21 our state, our county a better place, by sending a
22 message to this plaintiff, don't you ever, ever do this
23 again to your tenants. A trade practice -- and, again,
24 read the judge's instructions:

25 A trade practice or act is an unfair trade

1 practice or act if it offends, established by the
2 policy, whereas a moral, unethical, or oppressive. That
3 is the burden on us. The defendant must prove that the
4 Unfair Trade Practice Act, has an impact on the public's
5 interest. It most certainly does.

6 We cannot have commercial landlords in this great
7 state taking advantage of its tenants like this. This
8 may be shown by proof that the Unfair Trade Practice Act
9 is capable of repetition. If he can make fake invoices
10 against this tenant, that \$2700 that they didn't even
11 put in evidence, it's all in their deposition. Didn't
12 go up in this chart.

13 But his other company. His other company was
14 gonna hang the drywall and paint the, paint the walls.
15 He was gonna pay himself \$2700 and then go after him for
16 \$2700. He was gonna get inflated invoices for ductwork
17 that he didn't even do, to get his vendor to put the
18 number in for their invoice.

19 So this is your opportunity, ladies and
20 gentlemen, to do real justice. We don't want any money
21 for it. We want that one dollar. We want you to send a
22 message, don't you do this again.

23 I know there are several school teachers on this
24 panel, on this jury. And I think the operative word
25 these four days is bully. Don't let this bully leave

1 this courtroom without being chastened by you, the
2 sovereign jury of this county in this state. Send that
3 message, please. And for the love of God, don't give
4 him a dime.

5 And I'm gonna end on one note, and I appreciate
6 you all's time and you all's patience. You all have
7 been very attentive. I want to end with this. You
8 really do get to do some justice here. I want you to go
9 home, and here's what I want you to do. The judge is
10 gonna tell you on certain deliberations, he's gonna tell
11 you all to go back there, get to know each other a
12 little better. I think, but don't hold me to it because
13 I'm not in charge, go eat your lunch, okay? Get to know
14 each other. When y'all are done eating, get out your
15 cheat sheet, fill out that verdict form and let's go
16 home.

17 You can go tell your loved ones, your significant
18 others, your parents, your kids, your next door
19 neighbor, the person you see at the stoplight, hey, I
20 did justice today. I made this state and this county a
21 better place. All right? So I'm gonna leave and get
22 out of here with this. I'm gonna echo the judge's
23 admonition that second only to military service, that's
24 how important this duty is today.

25 And I wholeheartedly agree for two reasons. One,

1 it's my great privilege to serve ten years on active
2 duty military service. I went all around the world, to
3 doing the combat tour in Afghanistan. That's why that
4 was number one. We'll go over there so the chaos stays
5 over there and doesn't come home.

6 But like that oath I took, to defend this country
7 from all enemies foreign and domestic, we have domestic
8 enemies too. If we don't have civil trials like this,
9 where 12 dispassionate people go back in a room and
10 figure out what's right and what's wrong, then it's
11 trial by combat, Game of Throne's style. And that's why
12 what you're doing is so important.

13 Ladies and gentlemen, you have the opportunity to
14 do justice today. For the defendant, one, two, three,
15 give us our money back for the three or four things we
16 fixed and our security deposit we never got back. Send
17 that message. Don't ever, ever, ever do this again,
18 ever.

19 Thank you, Judge.

20 THE COURT: Any reply?

21 MR. DLUZNESKI: Very briefly, Your Honor.

22 THE COURT: Yes, sir.

23 REPLY CLOSING

24 BY MR. DLUZNESKI:

25 Ladies and gentlemen, Mr. White told you, you

1 have the opportunity to do justice today. You've sat
2 here in this courtroom now for four days. You've heard
3 the testimony, you've seen the evidence. You do have
4 the opportunity to make CREH whole for the damage that
5 Brilin Electric did while it was a tenant for three
6 years at its property. That's the justice that we're
7 asking you to give.

8 The purpose for civil jury trials in this
9 country, ladies and gentlemen, is to make, agree,
10 injure, harm, parties whole for their damages. And you
11 heard throughout this trial the damages that CREH
12 sustained at the hands of this defendant sitting right
13 here. And we would submit to you that justice in this
14 case is making the plaintiff whole for shouldering the
15 burden for the damages that the defendant caused. Thank
16 you.

17 THE COURT: Ladies and gentlemen, we've probably
18 got about ten more minutes. Is everybody okay? Okay.

19 JURY CHARGE

20 BY THE COURT:

21 All right. Then, ladies and gentlemen, it is now
22 my time to instruct you on the law that you will apply
23 in this case. Now, I remind you that during this trial
24 you and I have had certain duties to perform. And as
25 the trial judge, it is my responsibility to preside over

1 the trial of this case.

2 Now, I also have the duty to rule on the
3 admissibility of evidence that's been offered during
4 this trial. Ladies and gentlemen, as I've told you from
5 the very start, you are to consider only the evidence
6 that is before you and that has been presented during
7 the course of this trial.

8 There is -- if there has been testimony or is
9 stricken from the record in this trial, you must
10 disregard that testimony. You are to consider only the
11 testimony which has been presented from the witness
12 stand and any exhibits that has been presented and made
13 part of the record in this case. And, also, any
14 stipulations of counsel.

15 Now, I have the additional duty to charge you the
16 law applicable to this case. And it is your duty as
17 jurors to accept and apply the law as I now state it to
18 you. If you think you have any idea as to what the law
19 is or what the law ought to be, and it does not agree
20 with what I now tell you the law is, you must forget
21 that idea because you are sworn to accept the law and
22 apply the law exactly as I now state it to you.

23 In every case tried in this court before a jury,
24 the jury becomes the sole and exclusive judge of the
25 facts of the case. A trial judge cannot comment on or

1 make any statement about the facts in a case. Since you
2 are the sole judge of the facts, do not think by
3 anything that I have said during this trial that I have
4 any opinions about the facts in this case. The law does
5 not allow me to have an opinion about the facts in this
6 case.

7 The burden of proof in this case is by a
8 preponderance of the evidence. A preponderance of the
9 evidence simply means the greater weight of the
10 evidence. It is evidence, which as a whole, shows that
11 a fact sought to be proved is more likely true than not
12 true.

13 Now, this case can be illustrated by imagining a
14 set of scales. When the case begins, the scales are
15 even. After all the evidence has been presented, if the
16 scales remain even, or if they tip even slightly in
17 favor of the defendant, then the plaintiff has failed to
18 meet the burden of proof and would not be entitled to
19 recover in this case. If, on the other hand, the scales
20 tip even slightly in favor of the plaintiff, the
21 plaintiff will have met the burden of proof and you
22 should return a verdict for the plaintiff.

23 The preponderance of the evidence is not
24 determined by the number of witnesses. Instead, it must
25 be determined by the greater weight of all of the

1 evidence that has been presented in this case.

2 Ladies and gentlemen, there are two types of
3 evidence that's generally presented during the course of
4 a trial, direct evidence and circumstantial evidence.
5 Now, direct evidence is testimony of a person who claims
6 to have actual knowledge of a fact, such as an
7 eyewitness. It is evidence which immediately
8 establishes a main fact to be proved.

9 Circumstantial evidence is proof of a chain of
10 facts and circumstances indicating the existence of a
11 fact. It is evidence which immediately establishes
12 collateral facts from which the main fact may be
13 inferred.

14 Now, circumstantial evidence is based on
15 inference and not on personal knowledge or observation.
16 It is proof that does not actually establish the main
17 fact in question, but that asserts or describes
18 something else from which you may either reasonably
19 infer the truth of the fact or at least reasonably infer
20 an increase in the probability that the fact is true.

21 For circumstantial evidence to be sufficient to
22 warrant a finding of fact, the circumstances must lead
23 to that fact with reasonable certainty. Facts and
24 circumstances should be considered in light of ordinary
25 experience and common sense. And the existence of a

1 fact cannot be based on speculation, surmise, or
2 conjecture.

3 The law makes absolutely no distinction between
4 the weight or value given to either direct or
5 circumstantial evidence, nor is a greater degree of
6 certainty required of circumstantial evidence than of
7 direct evidence.

8 Now, ladies and gentlemen, necessarily, you must
9 determine the credibility of witnesses who have
10 testified in this case. Credibility simply means
11 believability. It becomes your duty as jurors to
12 evaluate and determine which evidence convinces you it
13 is true. In determining the believability of witnesses
14 who have testified in this case, you may believe one
15 witnesses -- I'm sorry -- one witness over several
16 witnesses or several witnesses over one. You may
17 believe part of a testimony of a witness and reject the
18 remaining part of a testimony of that same witness.

19 You may believe the testimony of a witness in its
20 entirety, or reject the testimony of a witness in its
21 entirety. You may consider whether the witness has an
22 interest in the result of the trial; whether the witness
23 is prejudiced towards either the plaintiff or the
24 defendant; the opportunity for the witness to have seen
25 the matters and things about which the witness may

1 testify; and the way the witness acted on the witness
2 stand.

3 Ladies and gentlemen, the rules of evidence
4 ordinarily do not permit witnesses to testify to
5 opinions or conclusions. An exception to the rule
6 exists for witnesses we call expert witnesses. A
7 witness who, by education or experience, has become
8 expert in some art, science, or profession may give an
9 opinion as to the subject the witness claims to be an
10 expert in, and may also give the reasons for the
11 opinion.

12 You should consider any expert opinion given by a
13 witness. And, like any other evidence, give it the
14 weight you think it deserves. If you decide an expert
15 witness's opinion is not based on sufficient education
16 and experience, or if you decide that the reasons given
17 in support of the opinion are not sound, or that the
18 opinion is outweighed by other evidence, you may
19 disregard the opinion entirely.

20 An expert witness's testimony is to be given no
21 greater weight than that of other witnesses simply
22 because the witness is an expert. And you do not have
23 to accept an expert's opinion even though it is -- even
24 though it is uncontradicted.

25 Ladies and gentlemen, in this case, the plaintiff

1 claims that the defendant breached a contract that
2 existed between the parties. In order to recover for a
3 breach of contract, the plaintiff must prove the claim
4 by preponderance of the evidence or greater weight of
5 the evidence.

6 First -- the first thing that the plaintiff must
7 prove by preponderance or greater weight of the evidence
8 is that the parties entered into a binding contract. A
9 contract is an agreement entered into by two or more
10 parties in which each party agrees to perform or not to
11 perform certain acts. It may be shown by words, written
12 or oral, or by conduct. However, a contract is more
13 than the mere exchange of promises.

14 For the agreement to be considered a contract,
15 the parties must have intended to enter into a contract
16 and must have reached a mutual understanding of the
17 terms of that contract. This is sometimes called a
18 meeting of the minds. The parties must intend to be
19 mutually bound by the agreement.

20 Next, the plaintiff must show by preponderance or
21 greater weight of the evidence that the defendant
22 unjustifiably breached the contract. The word breach
23 means the failure without legal excuse to perform any
24 promise that forms the whole or part of the contract.

25 Now, this includes the refusal of a party to

1 recognize the existence of the contract or the doing of
2 something inconsistent with the existence of the
3 contract. A party breaches a contract when that party
4 does not perform as agreed under the contract by failing
5 to carry out a term, promise, or condition of the
6 contract.

7 Finally, the plaintiff must prove by
8 preponderance or greater weight of the evidence that
9 plaintiff suffered damages which were proximately caused
10 by the defendant's breach of contract. Proximate cause
11 requires proof of both causation in fact and legal
12 causation.

13 Causation in fact is proved by establishing that
14 the claimed property damage would not have occurred but
15 for the alleged contract's breach. Legal cause is
16 proved by establishing foreseeability. For an act to be
17 a proximate cause of the alleged property damage, the
18 property damage must be a foreseeable consequence of the
19 alleged contract's breach.

20 The plaintiff must prove damages by a
21 preponderance or greater weight of the evidence. This
22 does not mean that the plaintiff must prove damages of a
23 mathematical certainty, or produce evidence of the exact
24 amount of damages suffered. However, the amount of
25 damages cannot be left to guesswork or speculation.

1 Instead, the evidence presented by the plaintiff must be
2 enough to allow you to determine the amount of damages
3 with reasonable certainty and accuracy.

4 Damages for breach of contract are those that may
5 fairly and reasonably be considered to arise naturally
6 from the breach of the contract itself, or those that
7 may be reasonable supposed to have been in the minds of
8 the parties at the time the contract was made.

9 The plaintiff may not recover damages for breach
10 of contract, unless the plaintiff shows that it has
11 performed its part of the contract or at least was able,
12 ready, and willing to perform at the appropriate time.

13 Members of the jury, I charge you that the
14 plaintiff has the duty to minimize the damages caused by
15 the defendant's breach of contract. The test is whether
16 the plaintiff has done what an ordinarily prudent person
17 would have done under like circumstances.

18 If the plaintiff has used reasonable care to
19 reduce -- has used reasonable care to reduce the losses,
20 the plaintiff may recover the full amount. If the
21 plaintiff has not done so, then you would reduce the
22 damages accordingly.

23 Ladies and gentlemen, I charge you that there
24 exists in every contract an unspoken, but legally
25 enforceable promise of good faith and fair dealing. The

1 defendant claims that even if there was a breach of
2 contract, the plaintiff, by his actions, after the
3 alleged breach, waived his right to enforce the
4 contract.

5 A default in the performance of a contract may be
6 waived. Although intent is necessary to effect a waiver
7 of a breach of contract, it need not be shown by direct
8 evidence. The waiver of a breach of contract may be
9 shown by an act which is so inconsistent with an intent
10 to enforce the right which arises upon the breach as a
11 reasonable -- as reasonable to induce a belief that the
12 right has been relinquished. If you find the defendant
13 has proved the plaintiff acted in such a way as to waive
14 his rights to enforce the breach of contract, then your
15 verdict must be for the defendant on this issue.

16 Now, members of the jury, I charge you that the
17 defendant has brought counterclaims against the
18 plaintiff. This means that the defendant not only
19 denied it breached the contract, but also says that the
20 plaintiff breached the contract and that the defendant
21 should be compensated by the plaintiff. The defendant
22 has the burden of proving any counterclaim by the
23 preponderance or greater weight of the evidence in the
24 same manner that the plaintiff must prove its case
25 against the defendant.

1 The defendant claims that the plaintiff committed
2 unfair trade practices. A trade practice or act is an
3 unfair practice or act if it offends established public
4 policy or is immoral, unethical or oppressive. This
5 does not include acts, practices, or representations
6 that are nothing more than dealer talk or what is called
7 puffing.

8 The defendant must prove that the defendant
9 suffered actual damages as a result of the plaintiff's
10 unfair trade practice or act. In addition, the
11 defendant must prove that the unfair trade practice or
12 act affected persons other than the parties to the
13 transaction. The defendant must prove that the unfair
14 trade practice or act has an impact on the public's
15 interest. This may be shown by proof that the unfair
16 trade practice or act is capable of repetition.

17 The act or practice complained of must be unfair
18 or deceptive. Whether an act or practice is unfair or
19 deceptive within the meaning of the act depends upon the
20 surrounding facts and the impact of the transaction on
21 the market place. It need not be based on a binding
22 contract. Where a contract exists, a mere breach of the
23 contract is not conduct which violates the South
24 Carolina Unfair Trade Practices Act.

25 Now, Madam Forelady, ladies and gentlemen, I have

1 prepared for you a verdict form to be used back in the
2 jury room. I have prepared it in such a way that you
3 will address first, the plaintiff's cause of action.
4 You will then, Madam Forelady, if you would, you can --
5 Madam Forelady, you can lay that up there on the
6 counter. Thank you. That is not a part of the evidence
7 in this case.

8 Madam Forelady, I have prepared this verdict form
9 for you. You will consider it as I have prepared it
10 here. You can first consider the plaintiff's breach of
11 contract against the defendant, and then you will decide
12 if the plaintiff has been successful in establishing his
13 case by a preponderance of the evidence. If so, then
14 you will enter it appropriately. And then also, in the
15 event they have established their damages, actual
16 damages by a preponderance of the evidence, then you
17 would enter that. If you feel like plaintiff has not,
18 then you will enter it for the defendant.

19 Then you address the defendant's counterclaims
20 that deal with the breach of the contract in the same
21 manner that I just addressed the plaintiff's claim. On
22 the counterclaims, the defendant has the burden of proof
23 establishing the counterclaims by preponderance of the
24 evidence. You make a determination whether that has
25 been accomplished by the defendant. And if so, has the

1 defendant established damages by preponderance of the
2 evidence and complete the form.

3 The third item on the verdict form that I
4 prepared, deals with the Unfair Trade Practices Act.
5 And then again, defendant has the burden of proof as to
6 that counterclaim. If the defendant has met its burden
7 of proof, then you would enter it for the defendant. If
8 the defendant has not, then you enter the third cause of
9 action in favor of the plaintiff. If the defendant has
10 met the -- its burden of proof, then you also would make
11 a determination of actual damages in accordance with
12 whether the defendant has met that burden of
13 establishing actual damages by preponderance of the
14 evidence.

15 Now, Madam Clerk [sic], the jury's decision has
16 to be unanimous All 12 members must agree. If by chance
17 during your deliberation at some point, one of the
18 members of the jury has to go to the restroom, make a
19 telephone call or something, your deliberations need to
20 stop. And those deliberations will begin only when all
21 12 members have returned back to the jury deliberation
22 room.

23 Now, Madam Forelady, not only must your decision
24 or the jury's decision must be unanimous, it cannot be
25 based on -- the verdict cannot be based on sympathy,

1 passion, speculation, prejudice, emotion, or any other
2 consideration that has not been presented as evidence in
3 this case.

4 Madam Forelady, one more important thing. Once
5 the jury has concluded its work and you've addressed and
6 you've completed the verdict form, you need to let us
7 know. Now, I had a jury one time, I forgot to say that
8 you've got to let us know, and they sat back there for
9 hours and we became worried about what's going on. So
10 we sent somebody back there and they said, well, Judge,
11 you didn't tell us what to do once you finish the form.
12 Once you finish the form, let us know and we will come
13 get you and bring you back into the courtroom.

14 I'm gonna let you retire back to the jury
15 deliberation room in just a moment. Your lunch should
16 be getting here. Once it gets here, you can go ahead
17 and eat. Do not begin your deliberations, though, until
18 the bailiff has brought you the verdict form that I have
19 prepared for you, and then also the official evidence
20 that will be presented to you as part of the record,
21 because there's still those things I've got to address
22 with the lawyers, it's called matters of law. I've
23 gotta do those before you begin your deliberations.

24 But I want to thank you for your time and
25 attention while we went through the arguments and the

1 instruction on the law. You can leave those notebooks
2 in the chair, and we will get you back just shortly, or
3 we will let you begin your deliberations just shortly.
4 You can take those with you. Pens are okay.

5 (Jury leaves courtroom at 11:53 a.m.)

6 Any exceptions to the charge from the plaintiff?

7 MR. DLUZNESKI: No, Your Honor.

8 THE COURT: Any from the defendant?

9 MR. WHITE: No, Your Honor.

10 THE COURT: All right. Gentlemen, this is the
11 verdict form. Be sure that -- do y'all have -- gonna
12 send one official notebook back?

13 MR. WHITE: Yes, Your Honor. And I think there's
14 one over there.

15 THE COURT: And then, do I recall correctly,
16 there are no other exhibits besides what's in the
17 notebook?

18 MR. WHITE: That's correct, Your Honor.

19 THE COURT: Okay. Mr. Bailiff, do you want to
20 take this? Now, we have an alternate. Yeah, make the
21 lawyers, get them to agree as to what we do with the
22 alternate. I can either have the alternate held in
23 another place in the event that something happens during
24 the deliberations and we have less than 12, such as a
25 juror has an emergency. Or y'all can agree in advance

1 that if we had an emergency and one of them had to
2 leave, that we would go less than 12. Do y'all want to
3 talk about it?

4 MR. DLUZNESKI: Your Honor, we would prefer to
5 have 12, so...

6 THE COURT: Okay, that's fine. We've got his
7 lunch coming anyway. All right. If you could take the
8 alternate. Let's see, that is Mr. -- that is juror
9 number 64, Mr. Gonzales, can you put him somewhere else?

10 THE BAILIFF: Yes, sir.

11 THE COURT: Yeah. Put Mr. Gonzales somewhere
12 else, and then once his lunch arrives, give him his
13 lunch. You can take that verdict form back to the jury,
14 and you can tell them they can go ahead and begin their
15 deliberations.

16 Yeah, do you have a book? Don't give them that
17 Court exhibit, though.

18 MR. DLUZNESKI: That doesn't include your
19 discovery responses?

20 MR. WHITE: No. I have that right here.

21 THE COURT: It should not include the discovery
22 responses. That's gonna be brought back.

23 (Inaudible.)

24 THE COURT: Yeah, that does not go.

25 THE BAILIFF: (Inaudible.)

1 THE COURT: They may begin. Just put the
2 alternate somewhere else.

3 (Unidentified people talking, inaudible.)

4 THE COURT: I usually let them ask. All right.
5 Anything else before I step down?

6 MR. DLUZNESKI: No, Your Honor.

7 MR. WHITE: No, Your Honor.

8 THE COURT: All right. May I see the lawyers for
9 a moment?

10 (A recess was had from 11:56 p.m. - 12:12 p.m.)

11 (Madam Forelady enters courtroom at 12:12 p.m.)

12 THE COURT: All right. Let's come to order. All
13 right. Madam Forelady, thank you very much for the
14 note. I'm gonna respond to it this way. I do not
15 provide written copies of my charges to the jury. There
16 are a lot of different reasons, while I'm not trying to
17 hide anything from the jury. But I do not -- my
18 practice is not to give a copy of my -- a written copy
19 of my charges to the jury, but if there comes a time
20 during the jury's deliberation that they feel a
21 particular section or multiple sections they'd like to
22 be recharged on, we'll bring all of the jury back out
23 here and I will recharge them. Okay? Thank you very
24 much.

25 MADAM FORELADY: I appreciate it.

1 THE COURT: Yes, ma'am.

2 (Madam Forelady leaves courtroom at 12:13 p.m.)

3 All right. I'm gonna make this note a Court's
4 exhibit to the record.

5 (Inaudible, unknown person speaking.)

6 (Court's Exhibit Number 2, Jury Note, was marked
7 for identification.)

8 (Court's Exhibit Number 2 was entered into the
9 record.)

10 THE COURT: All right. We'll step down. Thank
11 you very much.

12 MR. DLUZNESKI: Thank you, Your Honor.

13 (A recess was had from 12:14 p.m. - 2:11 p.m.)

14 THE COURT: Anything before we bring the jury in
15 from the plaintiff or defendant?

16 MR. DLUZNESKI: No, Your Honor.

17 MR. WHITE: No, Your Honor.

18 THE COURT: All right. Let's bring them in.

19 (Jury enters the courtroom at 2:12 p.m.)

20 THE COURT: Madam Forelady, I understand the
21 jury's reached a verdict, is that correct?

22 MADAM FORELADY: Yes.

23 THE COURT: If you will, give the verdict form to
24 the bailiff and he will give it to me. Thank you. All
25 right. Please publish the verdict.

VERDICT

THE CLERK: In the state of South Carolina, County of York, in the court of Common Pleas, Sixteenth Judicial Circuit, in the case 2020-CP-46-01145, Carolina Real Estate Holdings, LLC versus Brilin Electric, LLC and W&L Services, LLC. Number one, as to the plaintiff's claim of breach of contract against the defendant, we unanimously find for the plaintiff and award \$10,513.88 in actual damages.

Number two, as to the defendant's counterclaim of breach of contract against the plaintiff we unanimously find for the defendant and award \$4,424.74.

Number three, as to the defendant's counterclaim of violation of the Unfair Trade Practice Act, we unanimously find for the defendant an award of \$6,089.13. Signed this date -- sorry. Signed July 21st, 2022, by Foreperson Kay L. McKnight.

Ladies and gentlemen, if this is your verdict, please indicate by raising your right hand. Let the record reflect all jurors affirm the verdict.

THE COURT: Thank you very much, Madam Clerk. Anything from the plaintiff or the defendant before I dismiss the jury?

MR. DLUZNESKI: Nothing from the plaintiff, Your Honor.

1 MR. WHITE: Not from the defendant, Your Honor.

2 THE COURT: Madam Forelady, ladies and gentlemen
3 of the jury, I, with great amount of sincerity, I wanted
4 to extend my appreciation for your service. I'm sure
5 the parties and the attorneys and all the court staff
6 join with our appreciation for your service.

7 As I told you downstairs, I've been doing this
8 job for several years, I consider this job to be
9 extremely important because I've learned that the
10 service of jurors in this process that we, that we call
11 the judicial system is vital to our country's democracy.
12 It is often overlooked. It's often forgotten about.
13 Jury service is often put in some back place in
14 somebody's mind. It's like, oh, jury service, I'll try
15 to get out of that. Oh, jury service, oh, yeah, I got
16 called once ten years ago. What you've done this week,
17 though, is what citizens are required to do in every
18 city and every state all over this country to make our
19 democracy work on a, on an almost daily basis.

20 I mean, sure, people go vote, sometimes they
21 choose to run for office, but very few people do that.
22 But jury service is where the actual, the power of the
23 citizens come to bear. And being able to decide
24 disputes between these parties or any parties, as well
25 as in criminal court. It is a remarkable process that

1 we have and I thank you for your services and your
2 sacrifices.

3 I'm gonna dismiss you for the week. We have
4 concluded all cases. I do want you to know we did have
5 a lot of other cases, but we were able to work them out,
6 so you got to handle the case we had this week. I've
7 instructed you not to have any discussions with anyone.
8 Well, now you can talk as much as you want to.

9 But, if you get approached by people and you feel
10 like being approached and they're talking to you about
11 this case, you feel like it's beginning to be harassing,
12 contact the clerk of court or the sheriff's office and
13 we'll see to it that that type of contact or harassment
14 ceases.

15 But thank y'all very much. You may go with the
16 bailiff. And you may thank the alternate for his
17 service and excuse him as well.

18 (Jury exits courtroom at 2:17 p.m.)

19 THE COURT: Anything before I step down?

20 MR. DLUZNESKI: Nothing from the plaintiff, Your
21 Honor.

22 MR. WHITE: Your Honor, we will be making a
23 post-trial motion for attorney's fees. We can take that
24 up at another time, Your Honor.

25 THE COURT: Well, you have to ask permission,

1 because when I leave here my jurisdiction ends. So if
2 you haven't retained my jurisdiction...

3 MR. WHITE: I'd like your permission, Your Honor,
4 to make a post-trial motion for attorney's fees. I'd
5 like to treble the verdict on the second counterclaim as
6 well. And we would like to do it at a later time. You
7 said we could put all evidence for the attorney's fees
8 in an affidavit and hand it in to Your Honor.

9 THE COURT: All right. Why don't you file -- any
10 objection to waiting ten days to receive the motions?

11 MR. DLUZNESKI: Your Honor, I would ask for a
12 little bit more time since I'm gonna be out of town and
13 off grid all week next week. So I would ask the Court's
14 indulgence for a bit more time to return to the office
15 and get my bearings in order to do that.

16 MR. WHITE: We have no objection, Your Honor.

17 THE COURT: All right. How much time do y'all
18 need? What would be reasonable?

19 MR. DLUZNESKI: If the Court would allow it, Your
20 Honor -- and we would also -- we also intend to file one
21 or more post-trial motions in this case. I would ask
22 the Court for sometime during the week of August 15th,
23 if the Court would extend the deadline for this.

24 THE COURT: Okay, yeah. Is that agreeable?

25 MR. WHITE: No objection.

1 THE COURT: Okay. I mean, I'm looking at August
2 15th, not as the date of doing the hearing, but for the
3 date of receiving the motions.

4 MR. DLUZNESKI: Could we make the deadline for
5 filing post-trial motions Wednesday, August 17th? Would
6 that be too far out?

7 MR. WHITE: No objection, Your Honor.

8 THE COURT: Okay. Well, August 17th, Wednesday
9 by 5 o'clock, y'all can file them. Anything else before
10 I step down?

11 MR. WHITE: No, Your Honor.

12 MR. DLUZNESKI: No, Your Honor.

13 THE COURT: All right. See the lawyers in the
14 back before you leave.

15 (Trial concluded at 2:19 p.m.)

16
17 --- THIS ENDS REQUESTED TRANSCRIPT ---
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1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Cendroski, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that to the
6 best of my ability from the digital recording of the
7 Digital Court Reporter Program, the foregoing is a true,
8 accurate, and complete transcript of record so far as
9 through the quality of the audio recording of all the
10 proceedings and evidence introduced in the hearing
11 and/or trial of the captioned case, relative to appeal,
12 in the court of COMMON PLEAS for York County, South
13 Carolina, on the days of July 18th - 21st, 2022.

14 I do further certify that I am neither of kin,
15 counsel, nor interest to any party hereto. This was
16 transcribed from the Digital Court Reporter Program.
17
18
19
20

21 s/Julie A Cendroski
22 Julie A. Cendroski
23 Circuit Court Reporter III
24 Seventh Judicial Circuit
25