STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Circuit Court for the Eleventh Judicial Circuit

Debra R. McCaslin, Circuit Court Judge

App. Case No. 2022-000597

Suzan Garland, Respondent,
v.
Robert Cade, Cristy Cade, and Roger Singleton, Defendants,
of whom
Robert Cade and Christy Cade are the Appelants,
and Roger Singleton is a Respondent.

RECORD ON APPEAL – VOLUME 1

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I certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material designated for this appeal.

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ELECTRONICALLY FILED - 2022 Apr 22 4:44 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON SUZAN GARLAND, vs. ROBERT CADE AND CHRISTY CADE Defendants.	IN THE COURT OF COMMON PLEAS CASE NUMBER: 2019-CP-32-01442 **ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL**

This matter comes before this court on Defendant's Motion for New Trial, New Trial Nisi and Judgment Notwithstanding the Verdict filed on Wednesday April 6, 2022. On April 1, 2022, a jury found the Defendants liable for nuisance and negligence. The jury awarded the Plaintiff $125,000 in actual damages and $8,000 in punitive damages.

After the verdict was pronounced, Defendants filed a timely Motion for a New Trial, New Trial Nisi and Judgment Notwithstanding the Verdict on April 6, 2022. After reviewing Defendants' Motion in whole, this Court denies it for the following reasons:

1. The Defendants renewed all motions made at the conclusion of the Plaintiff's case. For the same reasons indicated in the record, these motions are denied.
2. The Defendants allege the Court erred in dismissing the Third-Party Defendant, Roger Singleton. As indicated by the Court on the record, the decision to dismiss Mr. Singleton from the case was based on the testimony of the Defendants and the required elements needed to be proven as to the actions alleged against Mr.

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Singleton. The record was largely empty regarding Mr. Singleton's involvement; therefore, the Court dismissed the Third-Party Defendant.

3. The Defendants allege the Court erred in allowing the engineering testimony from Bill Matthews, an engineer from Greenville. The Plaintiff's witness met the standards the Court applies when considering whether an expert opinion is appropriate or not. Additionally, the Defense counsel was afforded the opportunity to voir dire the proposed expert prior to the Court's acceptance of his credentials. Lastly, the Court instructed the jury that they did not have to hold the expert witness's opinion in any greater or lesser regard simply because of his expert status.

4. The Defendants allege the Court erred in submitting both punitive damages and the Lexington Stormwater Ordinance to the jury. First, the record reflects the Defendants relied on individuals and contractors other than Mr. Singleton to perform work on their property. Therefore, the Court ruled that punitive damages were appropriate for the jury's consideration. Second, the Lexington Stormwater Ordinance was submitted to the jury as an exhibit in evidence by agreement of the attorneys. During jury charges, the Court explained the necessary elements for a finding of negligence per se and noted the Lexington Stormwater Ordinance would be in evidence for their review should they wish to read it to assist in their deliberations.

5. Defense counsel alleges the expert from Greenville was allowed to testify to proximate cause when there were no documents or facts in the record from which he could glean any expert opinion. As previously stated, Defense counsel had the opportunity to voir dire this witness prior to the Court's acceptance of him as an

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expert. Once the witness was qualified as an expert, he was allowed to testify as to his opinion while relying on his education, experience, and information received regarding the pond at issue and the means through which it could be remedied. The Court did not find then and does not find now any improper basis from which the expert gleaned his opinion.

6. Defense counsel alleges the Court erred in failing to allow a jury view of the Plaintiff's pond. The Court disagrees. Defense counsel asked for a jury view at the close of the day on April 5, 2022. Defense counsel stated he would bring case law to support his position that a jury view was necessary and Plaintiff's counsel was prepared to argue his position. Defense counsel failed to present any case law regarding this issue. Instead, he later stated he wished to use a drone video he retrieved and created on April 5, 2022. The drone footage was played for the jury after Plaintiff's counsel had an opportunity to review it. The only "admonishment" the Court placed upon counsel was for not complying with discovery rules. Plaintiff's counsel did not see the drone video prior to Defense counsel's attempt to introduce it. Additionally, there were other instances throughout the course of the trial regarding discovery rules and the methods by which lawyers are to share and produce discovery to opposing counsel. This led to the Court reminding both lawyers of their responsibility to follow discovery rules.

The Court denies the Defendants' Motion for a new trial absolute or JNOV nisi. When reviewing JNOV motions, courts must "review the evidence and the inferences deducible from it in the light most favorable to the non-moving party." *Rewis v. Grand Strand Gen. Hosp.*, 290 S.C. 40, 41, 348 S.E.2d 173, 174 (1986). The trial court lacks "the authority to decide credibility issues

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or to resolve conflicts in the testimony or the evidence." *RFT Management Co. LLV v. Tinsley & Adams LLP*, 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012). A JNOV motion should be denied "if the evidence is susceptible to more than one reasonable inference." *Henderson v. St. Francis Cmty. Hosp.*, 303 S.C. 177, 179, 399 S.E.2d 767, 768 (1990). In other words, JNOV can be granted only "if no reasonable jury could have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). In the case at hand, the jury heard the testimony and evidence regarding the pond before the Defendants' began working on their property, the pond during the Defendants' work on their property, and the status of the pond today. Issues were raised by the Defense concerning rainfall and hurricane season that were alleged to have led to the Plaintiff's problems with silt in her pond. Conversely, testimony was presented that the amount of silt in the pond was largely attributed to the agricultural work performed by the Defendants. Thus, this factual issue was properly submitted to be determined by the jury. Based on the evidence and testimony, the Court concludes that in the light most favorable to the non-moving party, the evidence was susceptible to more than one reasonable inference; thus, it was reasonable for the jury to reach this verdict.

For the reasons previously laid out by this Court in this Order and within the trial record as whole, the Defendants' Motions for New Trial, New Trial Nisi, and Judgment Notwithstanding the Verdict are denied.

AND IT IS SO ORDERED.

_____
Debra R. McCaslin
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

Dated: April __, 2022

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Lexington Common Pleas

Case Caption: Suzan Garland VS Robert Cade , defendant, et al

Case Number: 2019CP3201442

Type: Order/Other

So Ordered

Debra R. McCaslin

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Lexington
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP3201442

Suzan Garland et al
PLAINTIFF(S)

Robert Cade et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☑ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

The jury found for the plaintiff for the cause of action for negligence and nuisance and awarded $125,000 in actual damages for nuisance and $8,000 in punitive damages.

The parties have 10 days to file post trial motions.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/04/2022 .

Roger Singleton
Christy Cade
Robert Cade

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2022 Apr 04 1:18 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Lexington Common Pleas

Case Caption: Suzan Garland VS Robert Cade , defendant, et al

Case Number: 2019CP3201442

Type: Order/Electronic Form 4

So Ordered

Debra R. McCaslin

ELECTRONICALLY FILED - 2021 Nov 04 12:51 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	C.A. No: 2019-CP-32-01442
Suzan Garland Plaintiff, vs. Robert Cade, Christy Cade and Roger Singleton Defendants.	)	**ORDER ALLOWING CROSSCLAIM AND/OR THIRD-PARTY COMPLAINT**

This matter was hard before me on November 1, 2021. Counsel for all of the parties were present.

The Cade Defendants have moved before the court for an Order allowing a supplemental of the pleadings to assert a Crossclaim and/or Third-Party Complaint against the contractor Defendant.

The Cade's seek to add a claim for breach of contract; negligence and equitable indemnification.

The parties previously were working together as Defendants. It appears the contractor Defendant has settled with the Plaintiff. Based upon the change in posture of the case, it appears appropriate to allow the Cade's to assert a Crossclaim or Third-Party Complaint against the contractor.

I FIND AND CONCLUDE the issues in this case have not changed. There is no prejudice to anyone by allowing the supplementation or amendment of the pleadings by the Cade's.

After significant argument by all counsel, I FIND AND CONCLUDE the Motion to supplement or amend by way of Crossclaim or Third-Party Complaint should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the pleadings shall be amended and/or supplemented to allow a Crossclaim or Third-Party Complaint by the Cade's against the contractor Defendant.

AND IT IS SO ORDERED.

The Honorable H. Steven DeBerry, IV
Circuit Court Judge, At-Large Seat 12

ELECTRONICALLY FILED - 2021 Nov 04 12:51 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

ELECTRONICALLY FILED - 2021 Nov 04 12:51 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

Lexington Common Pleas

Case Caption: Suzan Garland VS Robert Cade , defendant, et al

Case Number: 2019CP3201442

Type: Order/Amend

H. Steven DeBerry, IV

Circuit Court Judge 2771

ELECTRONICALLY FILED - 2019 Apr 11 9:18 AM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Suzan Garland,	)	Civil Action No. 2019-CP-32-
	)	
Plaintiff,	)	**SUMMONS**
	)	**(Jury)**
vs.	)	
	)	
Robert Cade and Christy Cade,	)	
	)	
Defendants.	)	
	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer upon the undersigned attorney at 1325 Park Street, Suite 300, Post Office Box 96, Columbia, South Carolina 29202, within thirty (30) days from the date of service hereof upon you, and in the event you fail to answer within the time specified herein, plaintiff will apply to the court for the relief demanded in the Complaint.

BELSER & BELSER, P.A.

s/ H. Freeman Belser
H. Freeman Belser [SC Bar #72403]
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Columbia, South Carolina

April 11, 2019

ELECTRONICALLY FILED - 2019 Apr 11 9:18 AM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Suzan Garland,	)	Civil Action No. 2019-CP-32-
	)	
Plaintiff,	)	**COMPLAINT**
	)	**(Jury Trial Demanded)**
vs.	)	
	)	
Robert Cade and Christy Cade,	)	
	)	
Defendants.	)	
	)	

Plaintiff, complaining of Defendants, hereby alleges that:

1. Plaintiff is a resident of Lexington County, South Carolina.

2. Defendants are residents of Lexington County, South Carolina.

3. Plaintiff owns real property in Lexington County located at 105 Davis Drive, West Columbia, South Carolina 29172 and bearing tax map number 007899-01-022 ("the Garland Property"). There is a pond ("the Garland Pond") on the Garland Property that Plaintiff has used for recreational purposes for decades.

4. Defendants own real property in Lexington County located on New Cassel Drive, West Columbia, South Carolina and bearing tax map number 007899-01-013 ("the Cade Property".)

5. The Cade Property is uphill from the Garland Property in the same watershed area.

6. Plaintiff is informed and believes that, shortly after acquiring the Cade Property on March 13, 2018, Defendants timbered nearly the entire parcel, grubbed the stumps, and mass graded the soil.

7. Plaintiff is informed and believes that Defendants were required to obtain a permit under the National Pollutant Discharge Elimination System (NPDES) administered by SCHEC and Lexington County prior to commencing land-disturbing activities, but that Defendants failed to do so.

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8. Plaintiff is informed and believes that Defendants were required to install and maintain stormwater sediment and erosion control devices in connection with and during the course of the land-disturbing activities, but that Defendants failed to do so.

9. The Garland Property and Pond have been damaged by the Defendants' land-disturbing activities on the Cade Property, to wit, as a result of Defendants' negligent actions and omissions in destabilizing the soil, sediment-laden stormwater emanating from the Cade Property has caused sedimentation in the Garland Pond, thereby damaging the Garland Property and Garland Pond and impacting the Plaintiff's ability to fully use and enjoy the Garland Property and the Garland Pond.

10. Plaintiff sent Defendants a Notice of Claim and Cease and Desist Letter on November 27, 2018.

11. Plaintiff is informed and believes that Defendants thereafter, took steps to conceal the damage to the Garland Property and the Garland Pond by, among other things, placing dye in the wetlands area that separates the properties and diverting water in a way that is likely to cause the wetlands and the Garland Pond to dry up.

12. On information and belief, Plaintiff has been damaged and is therefore entitled to actual and punitive damages in an amount to be determined by the jury.

FOR A FIRST CAUSE OF ACTION
Gross Negligence

13. Plaintiff realleges and incorporates by reference the allegations of the above paragraphs.

14. On information and belief, Defendants owed a duty to Plaintiff to exercise due care in connection with the land-disturbing activities on the Cade Property and to take all necessary steps to prevent sedimentation from causing damage to the Garland Property and the Garland Pond.

15. On information and belief, Defendants violated applicable laws in performing the land-disturbing activities. As such, their actions and omissions constitute negligence per se.

16. As a direct and proximate result of Defendants' negligent, grossly negligent, reckless, and intentional actions and omissions, the Garland Property and the Garland Pond have been and will continue to be damaged by sedimentation and decrease in water flow, and Plaintiff has suffered from the loss of full use and enjoyment of the Garland Property and the Garland Pond.

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17. Consequently, Plaintiff is entitled to actual and punitive damages in an amount to be determined by the jury.

FOR A SECOND CAUSE OF ACTION
Trespass

18. Plaintiff realleges and incorporates by reference the allegations of the above paragraphs.

19. On information and belief, Defendants have recklessly and intentionally caused an invasion of Plaintiff's interest in exclusive possession of the Garland Property and the Garland Pond.

20. As a direct and proximate result of said invasion, the Garland Property and the Garland Pond have been damaged by sedimentation and decrease in water flow, and Plaintiff has suffered and will continue to suffer the loss of full use and enjoyment of the Garland Property and the Garland Pond.

21. Consequently, Defendants are liable to Plaintiff for the tort of trespass, and Plaintiff is entitled to actual and punitive damages in an amount to be determined by the jury.

FOR A THIRD CAUSE OF ACTION
Private Nuisance

22. Plaintiff realleges and incorporates by reference the allegations of the above paragraphs.

23. On information and belief, Defendants have caused an unreasonable interference with Plaintiff's use and enjoyment of the Garland Property and the Garland Pond.

24. As a direct and proximate result of said interference, the Garland Property and the Garland Pond have been and will continue to be damaged by sedimentation and decrease in water flow, and Plaintiff has suffered and will continue to suffer the loss of full use and enjoyment of the Garland Property and the Garland Pond.

25. Consequently, Defendants' actions constitute a continuing private nuisance, and Plaintiff is entitled to equitable relief to the extent the Court deems appropriate.

WHEREFORE, Plaintiff prays that this Court:

(A) Grant Plaintiff judgment on her causes of action against Defendants;

(B) Award Plaintiff actual damages and punitive damages; and

(C) Award Plaintiff such additional equitable relief as the Court deems appropriate.

BELSER & BELSER, P.A.

s/ H. Freeman Belser
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Columbia, South Carolina

April 11, 2019

ELECTRONICALLY FILED - 2019 Apr 11 9:18 AM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

ELECTRONICALLY FILED - 2019 May 03 3:54 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA)) COUNTY OF LEXINGTON)	IN THE COURT OF COMMON PLEAS C.A. No: 2019-CP-32-01442
Suzan Garland Plaintiff, vs. Robert Cade and Christy Cade, Defendants.	**ANSWER**

The Defendants above named answers the Complaint of the Plaintiffs herein as follows:

1. Defendants hereby denies each and every allegation set forth in the Complaint except for those allegations hereinafter specifically admitted, qualified or explained.

2. The allegations set forth in paragraph one of the Complaint are admitted.

3. The allegation set forth in paragraph two of the Complaint are admitted.

4. The allegation set forth in paragraph three of the Complaint are admitted.

5. The allegation set forth in paragraph four of the Complaint are admitted.

6. The allegation set forth in paragraph five of the Complaint are admitted.

7. The allegation set forth in paragraph six of the Complaint are admitted.

8. The allegations set forth in paragraphs seven through nine of the Complaint are denied..

9. The allegation set forth in paragraph ten of the Complaint are admitted.

10. The allegation set forth in paragraph eleven through twenty-five of the Complaint are denied.

(Signature block on following page)

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MOORE TAYLOR LAW FIRM, P.A.

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Attorney for Defendants
May 3, 2019

ELECTRONICALLY FILED - 2020 Jan 10 9:11 AM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Suzan Garland,	)	Civil Action No. 2019-CP-32-01442
	)	
Plaintiff,	)	
	)	
vs.	)	**AMENDED SUMMONS**
	)	**(Jury)**
Robert Cade, Christy Cade, and Roger Singleton,	)	
	)	
Defendants.	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer upon the undersigned attorney at 1325 Park Street, Suite 300, Post Office Box 96, Columbia, South Carolina 29202, within thirty (30) days from the date of service hereof upon you, and in the event you fail to answer within the time specified herein, plaintiff will apply to the court for the relief demanded in the Complaint.

BELSER & BELSER, P.A.

s/ H. Freeman Belser
H. Freeman Belser [SC Bar #72403]
1325 Park Street, Suite 300
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Columbia, South Carolina

January 10, 2020

ELECTRONICALLY FILED - 2020 Jan 10 9:11 AM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Suzan Garland,	)	Civil Action No. 2019-CP-32-01442
	)	
Plaintiff,	)	
	)	
vs.	)	**AMENDED COMPLAINT**
	)	**(Jury Trial Demanded)**
Robert Cade, Christy Cade, and Roger Singleton,	)	
	)	
Defendants.	)	

Plaintiff, complaining of Defendants, hereby alleges that:

1. Plaintiff is a resident of Lexington County, South Carolina.

2. Defendants Robert and Christy Cade ("Defendants Cade") are residents of Lexington County, South Carolina.

3. Defendant Roger Singleton (Singleton) is a resident of Lexington County South Carolina and doing business in Lexington County under the tradename "Singleton Landworks".

4. Plaintiff owns real property in Lexington County located at 105 Davis Drive, West Columbia, South Carolina 29172 and bearing tax map number 007899-01-022 ("the Garland Property"). There is a pond ("the Garland Pond") on the Garland Property that Plaintiff has used for recreational purposes for decades.

5. Defendants Cade own real property in Lexington County located on New Cassel Drive, West Columbia, South Carolina and bearing tax map number 007899-01-013 ("the Cade Property".)

6. The Cade Property is uphill from the Garland Property in the same watershed area.

7. Plaintiff is informed and believes that, shortly after acquiring the Cade Property on March 13, 2018, Defendants Cade timbered nearly the entire parcel, grubbed the stumps, and mass graded the soil.

ELECTRONICALLY FILED - 2020 Jan 10 9:11 AM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

8. Plaintiff is informed and believes that Defendants Cade hired and paid Singleton approximately $100,000 to assist with the grubbing and grading after the Cade Property was timbered.

9. Plaintiff is informed and believes that Defendants were required to obtain a permit under the National Pollutant Discharge Elimination System (NPDES) administered by SCDHEC and Lexington County prior to commencing land-disturbing activities, but that Defendants failed to do so.

10. Plaintiff is informed and believes that Defendants were required to install and maintain stormwater sediment and erosion control devices in connection with and during the course of the land-disturbing activities, but that Defendants failed to do so.

11. The Garland Property and Pond have been damaged by the Defendants' land-disturbing activities on the Cade Property, to wit, as a result of Defendants' negligent actions and omissions in destabilizing the soil, sediment-laden stormwater emanating from the Cade Property has caused sedimentation in the Garland Pond, thereby damaging the Garland Property and Garland Pond and impacting the Plaintiff's ability to fully use and enjoy the Garland Property and the Garland Pond.

12. Plaintiff sent Defendants Cade a Notice of Claim and Cease and Desist Letter on November 27, 2018 informing them that the uncontrolled land-disturbing activities on their property was causing damage downstream.

13. Plaintiff is informed and believes that Defendants Cade engaged a professional engineer to evaluate Plaintiff's claim that the uncontrolled land-disturbing activities on their property was causing damage downstream.

14. Plaintiff is informed and believes that the engineer confirmed Plaintiff's allegations as stated in the November 27, 2018 Notice of Claim, and informed Defendants Cade of the same.

15. Plaintiff is informed and believes that Defendants Cade thereafter, took steps to conceal the damage to the Garland Property and the Garland Pond by, among other things, placing dye in the wetlands area that separates the properties and diverting water in a way that is likely to cause the wetlands and the Garland Pond to dry up.

16. On information and belief, Plaintiff has been damaged and is therefore entitled to actual and punitive damages in an amount to be determined by the jury.

ELECTRONICALLY FILED - 2020 Jan 10 9:11 AM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

FOR A FIRST CAUSE OF ACTION
Gross Negligence

17. Plaintiff realleges and incorporates by reference the allegations of the above paragraphs.

18. On information and belief, Defendants owed a duty to Plaintiff to exercise due care in connection with the land-disturbing activities on the Cade Property and to take all necessary steps to prevent sedimentation from causing damage to the Garland Property and the Garland Pond.

19. On information and belief, Defendants violated applicable laws in performing the land-disturbing activities. As such, their actions and omissions constitute negligence *per se*.

20. As a direct and proximate result of Defendants' negligent, grossly negligent, reckless, and intentional actions and omissions, the Garland Property and the Garland Pond have been and will continue to be damaged by sedimentation and decrease in water flow, and Plaintiff has suffered from the loss of full use and enjoyment of the Garland Property and the Garland Pond.

21. Consequently, Plaintiff is entitled to actual and punitive damages in an amount to be determined by the jury.

FOR A SECOND CAUSE OF ACTION
Trespass

22. Plaintiff realleges and incorporates by reference the allegations of the above paragraphs.

23. On information and belief, Defendants have recklessly and intentionally caused an invasion of Plaintiff's interest in exclusive possession of the Garland Property and the Garland Pond.

24. As a direct and proximate result of said invasion, the Garland Property and the Garland Pond have been damaged by sedimentation and decrease in water flow, and Plaintiff has suffered and will continue to suffer the loss of full use and enjoyment of the Garland Property and the Garland Pond.

25. Consequently, Defendants are liable to Plaintiff for the tort of trespass, and Plaintiff is entitled to actual and punitive damages in an amount to be determined by the jury.

ELECTRONICALLY FILED - 2020 Jan 10 9:11 AM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

FOR A THIRD CAUSE OF ACTION
Private Nuisance

26. Plaintiff realleges and incorporates by reference the allegations of the above paragraphs.

27. On information and belief, Defendants have caused an unreasonable interference with Plaintiff's use and enjoyment of the Garland Property and the Garland Pond.

28. As a direct and proximate result of said interference, the Garland Property and the Garland Pond have been and will continue to be damaged by sedimentation and decrease in water flow, and Plaintiff has suffered and will continue to suffer the loss of full use and enjoyment of the Garland Property and the Garland Pond.

29. Consequently, Defendants' actions constitute a continuing private nuisance, and Plaintiff is entitled to equitable relief to the extent the Court deems appropriate.

WHEREFORE, Plaintiff prays that this Court:

(A) Grant Plaintiff judgment on her causes of action against Defendants;

(B) Award Plaintiff actual damages and punitive damages; and

(C) Award Plaintiff such additional equitable relief as the Court deems appropriate.

BELSER & BELSER, P.A.

s/ H. Freeman Belser
H. Freeman Belser [SC Bar #72403]
1325 Park Street, Suite 300
Post Office Box 96 (29202)
Columbia, S. Carolina 29201
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Email: freeman@belserpa.com

Columbia, South Carolina

January 10, 2020

ELECTRONICALLY FILED - 2020 Jan 22 4:26 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS
SUZAN GARLAND, Plaintiff, v. ROBERT CADE, CHRISTY CADE, and ROGER SINGLETON, Defendants.	)	Civil Action No.: 2019-CP-32-01442 **DEFENDANT ROGER SINGLETON'S ANSER TO PLAINTIFF'S COMPLAINT** (Jury Trial Demanded)

COMES NOW THE defendant, Roger Singletion, hereinafter ("Singleton" or "Defendant") by and through his undersigned counsel, specifically reserving all of his rights to make jurisdictional, Rule 12, or other motions and in answer to the Plaintiff's Complaint (hereinafter "Complaint") would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. The Complaint fails to state a cause of action against the Defendant, James M. Dove, and should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A SECOND DEFENSE

2. Each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained is denied RCP.

FOR A THIRD DEFENSE

3. Upon information and belief paragraph 1 of the Complaint is admitted.

4. Upon information and belief paragraph 3 of the Complaint is admitted.

5. Paragraph 4 of the Complaint is admitted.

ELECTRONICALLY FILED - 2020 Jan 22 4:26 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

6. This Defendant lacks sufficient information as to the allegations in paragraphs 4, 5, 6, and 7 of the Complaint and therefore denies the same.

7. Paragraph 8 of the Complaint is denied.

8. Paragraphs 9, 10, and 11 of the Complaint are denied.

9. This Defendant lacks sufficient information as to the allegations in paragraphs 412, 13, 14, and 15 of the Complaint and therefore denies the same.

10. Paragraph 16 of the Complaint is denied.

11. As to paragraph 17 of the Compliant the Defendant realleges as if fully repeated verbatim herein his responses in paragraphs 1 through 10 above.

12. Paragraphs 18, 19, 20, and 21 of the Complaint are denied.

13. As to paragraph 22 of the Compliant the Defendant realleges as if fully repeated verbatim herein his responses in paragraphs 1 through 12 above.

14. Paragraphs 23, 24, and 25 of the Complaint are denied.

15. As to paragraph 26 of the Compliant the Defendant realleges as if fully repeated verbatim herein his responses in paragraphs 1 through 14 above.

16. Paragraphs 27, 28, and 29 of the Complaint are denied.

17. As to the un-numbered paragraph immediately following paragraph 29 of the Complaint the Defendant denies that the Plaintiff is entitled to the relief requested.

FOR A FOURTH DEFENSE

18. That whatever damages, if any, that were sustained by the Plaintiff were due to, caused solely or partly by, and were the direct and proximate result of the negligence of the Plaintiff and therefore her recovery, if any, should be barred, or reduced in proportion to the amount of their own negligence.

ELECTRONICALLY FILED - 2020 Jan 22 4:26 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

FOR A FIFTH DEFENSE

19. As to any punitive damages sought by Plaintiff, the Defendant asserts that should any punitive damages be awarded, which is denied, then the Defendant asserts that any such punitive damages must be capped under §15-32-530 SC Code Ann.

FOR A SIXTH DEFENSE

20. This Defendant adopts any defenses raised by any other Defendant or Third-Party Defendant to the extent that such defenses are not incompatible with the defenses raised above

FOR A SEVENTH DEFENSE

21. The Defendant reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Complaint, the Defendant, Roger Singleton, prays that he be dismissed from this lawsuit, that the Complaint be dismissed, that he be awarded his expenses, costs, and attorney's fees, and for such further relief as the Court deems just and proper.

Respectfully submitted,

DOUGALL & COLLINS

s/Thomas F. Dougall
Thomas F. Dougall, Esq.
SC Bar No.: 1729
Michal Kalwajtys, Esq.
SC Bar No. 100950
1700 Woodcreek Farms Road
Elgin, South Carolina 29045
(803) 865-8858 (TEL)
(803) 865-8944 (FAX)

Attorneys for Defendant Roger Singleton

January 22, 2020

Columbia, South Carolina

ELECTRONICALLY FILED - 2020 Jan 23 1:39 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON Suzan Garland Plaintiff, vs. Robert Cade, Christy Cade and Roger Singleton, Defendants.	IN THE COURT OF COMMON PLEAS C.A. No: 2019-CP-32-01442 **ANSWER TO AMENDED COMPLAINT**

TO: **H. FREEMAN BELSER, ESQUIRE, COUNSEL FOR THE PLAINTIFF:**

The Defendants above named answer the Amended Complaint of the Plaintiff herein as follows:

1. Defendants hereby denies each and every allegation set forth in the Amended Complaint except for those allegations hereinafter specifically admitted, qualified or explained.

2. The allegations set forth in paragraphs one through six of the Amended Complaint are admitted.

3. The allegations set forth in paragraphs seven through twenty-nine of the Amended Complaint are denied.

MOORE TAYLOR LAW FIRM, P.A.

BY: s/ S. Jahue Moore

S. Jahue Moore (SC Bar #4063)
Post Office Box 5709
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Phone: (803) 796-9160
Fax: (803) 791-8410
jake@mttlaw.com
Attorney for Defendants
January 23, 2020

ELECTRONICALLY FILED - 2021 Dec 06 4:01 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS
Suzan Garland, Plaintiff, vs. Robert Cade, Christy Cade, and Roger Singleton, Defendants, OF WHOM: Robert Cade and Christy Cade, Third Party Plaintiffs, vs. Roger Singleton, Third Party Defendant.	)	C.A. No.: 2019-CP-32-01442 **THIRD PARTY SUMMONS**

TO: THE THIRD PARTY DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the THIRD PARTY COMPLAINT in this matter, a copy of which is herewith served upon you, and to serve a copy of your ANSWER to said THIRD PARTY COMPLAINT upon the subscriber at his office, 1700 Sunset Boulevard, P. O. Box 5709, West Columbia, South Carolina, 29171, within THIRTY (30) days from the service thereof, exclusive of the day of such service; and if you fail to answer the THIRD PARTY COMPLAINT within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the THIRD PARTY COMPLAINT.

(*Signature on the following page*)

ELECTRONICALLY FILED - 2021 Dec 06 4:01 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

MOORE BRADLEY MYERS, P.A.

BY: s/ S. Jahue Moore
S. Jahue Moore, SC Bar No. 4063
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEYS FOR THE DEFENDANTS AND THIRD PARTY PLAINTIFFS,
ROBERT CADE and CHRISTY CADE

West Columbia, South Carolina
November 29, 2021

ELECTRONICALLY FILED - 2021 Dec 06 4:01 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS
Suzan Garland, Plaintiff, vs. Robert Cade, Christy Cade, and Roger Singleton, Defendants, OF WHOM: Robert Cade and Christy Cade, Third Party Plaintiffs, vs. Roger Singleton, Third Party Defendant.	)	C.A. No.: 2019-CP-32-01442 **AMENDED ANSWER AND THIRD PARTY COMPLAINT AGAINST ROGER SINGLETON**

The Defendants pursuant to an Order of this Court, Answer the Complaint of the Plaintiff herein and make Third Party Complaint against the Third Party Defendant, Roger Singleton, as follows:

FOR A FIRST DEFENSE

1. These Defendants, Robert Cade and Christy Cade, hereby reassert and realleges all allegations previously made in all responsive pleadings

FOR A SECOND DEFENSE
AND BY WAY OF THIRD PARTY COMPLAINT
AGAINST ROGER SINGLETON

2. These Defendants hereby reassert and reallege each and every allegation previously alleged as fully as if set forth verbatim.

ELECTRONICALLY FILED - 2021 Dec 06 4:01 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

3. If anything was done wrong in the construction or clearing and grading of the property, then the Third Party Defendant, Roger Singleton, breached his contract with these Defendants in that he failed to perform to adequate standard.

4. As a direct and proximate result of the alleged breach of contract, the said Third Party Defendant, Roger Singleton, was paid large sums of money which he did not deserve; allegedly did not properly perform; and exposed these Defendants to a lawsuit as well as damage to their property.

5. These Defendants are entitled to judgment against Third Party Defendant, Roger Singleton, for the amounts of money paid; for damage to the property; and for any judgment which might be rendered against these Defendants as a result of breach of contract by Third Party Defendant, Roger Singleton.

FOR A THIRD DEFENSE
AND FURTHER BY WAY OF THIRD PARTY COMPLAINT
AGAINST ROGER SINGLETON

6. If the work which was done by Third Party Defendant, Roger Singleton, was improper then Third Party Defendant, Roger Singleton, was negligent and reckless in failing to properly comply with county and state standards as well as with best practices in the clearing and construction business.

7. As a direct and proximate result of the aforementioned acts of negligence and recklessness, these Defendants have sustained the damages set forth above and are exposed to potential liability from Plaintiff for which Third Party Defendant, Roger Singleton, liable over.

WHEREFORE, having fully Answered the Complaint of the Plaintiff and having made Third Party Complaint against Roger Singleton, these Defendants pray for judgment against the Third Party Defendant, Roger Singleton, for actual and punitive damages; for indemnification

against any award to the Plaintiff; and for such other and further relief as this Court might deem just and proper.

MOORE BRADLEY MYERS, P.A.

BY: s/ S. Jahue Moore
S. Jahue Moore, SC Bar No. 4063
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEYS FOR THE DEFENDANTS AND
THIRD PARTY PLAINTIFFS,
ROBERT CADE and CHRISTY CADE

West Columbia, South Carolina
November 29, 2021

ELECTRONICALLY FILED - 2021 Dec 06 4:01 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

ELECTRONICALLY FILED - 2022 Jan 06 4:00 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS
SUZAN GARLAND, Plaintiff, v. ROBERT CADE and CHRISTY CADE, Defendants.	)	Civil Action No.: 2019-CP-32-01442
ROBERT CADE and CHRISTY CADE, Third-Party Plaintiffs, v. ROGER SINGLETON, Third-Party Defendant.	)	**DEFENDANT ROGER SINGLETON'S ANSER TO ATHIRD-PARTY PLAINTIFF'S COMPLAINT** (Jury Trial Demanded)

COMES NOW THE Third-Party Defendant, Roger Singleton, hereinafter ("Singleton" or "Defendant") by and through his undersigned counsel, specifically reserving all of his rights to make jurisdictional, Rule 12, or other motions and in answer to the Third-Party Plaintiffs' Complaint (hereinafter "Complaint") would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. The Complaint fails to state a cause of action against the Singleton and should be dismissed pursuant to Rule 12(b)(6), SCRCP.

ELECTRONICALLY FILED - 2022 Jan 06 4:00 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

FOR A SECOND DEFENSE

2. Each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained is denied RCP.

FOR A THIRD DEFENSE

3. As to paragraph 1 of the Complaint, Singleton denies any all allegations made in any previous pleadings in this matter.

4. As to paragraph 2 of the Compliant, Singleton realleges as if fully repeated verbatim herein his responses in paragraph 1 above and incorporates be reference herein all defenses previously set forth in any previous pleadings.

5. Paragraph 3 of the Complaint is denied and Singleton craves reference to the alleged contract for the terms and conditions therein, further denying that any such contract exists.

6. Paragraph 4 of the Complaint is denied.

7. Paragraph 5 of the Complaint is denied.

8. Paragraph 6 of the Complaint is denied.

9. Paragraph 7 of the Complaint is denied.

10. As to the un-numbered paragraph immediately following paragraph 7 of the Complaint, Singleton denies that the Third-Party Plaintiffs are entitled to the relief requested.

ELECTRONICALLY FILED - 2022 Jan 06 4:00 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

FOR A FOURTH DEFENSE

11. That whatever damages, if any, that were sustained by the Third-Party Plaintiffs were due to, caused solely or partly by, and were the direct and proximate result of the negligence of the Third-Party Plaintiffs and therefore their recovery, if any, should be barred, or reduced in proportion to the amount of their own negligence.

FOR A FIFTH DEFENSE

12. As to any alleged punitive damages sought by Third-Party Plaintiffs, such damages have not been pled; however, Singleton asserts that should any punitive damages be awarded, which are denied, then any such punitive damages must be capped under §15-32-530 SC Code Ann.

FOR A SIXTH DEFENSE

13. Singleton pleads the Statute of Frauds as a defense to the alleged contract.

FOR A SEVENTH DEFENSE

14. Singleton pleads the Statute of Frauds as a defense to the alleged contract.

FOR AN EIGHTH DEFENSE

15. Third-Party Plaintiffs' claims are barred by the doctrine of unclean hands, laches, and estoppel.

FOR A NINTH DEFENSE

16. Third-Party Plaintiffs' negligence claim is merely a disguised equitable indemnity claim pursuant to the Stoneledge doctrine and should be dismissed as unripe at this time.

ELECTRONICALLY FILED - 2022 Jan 06 4:00 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

FOR A TENTH DEFENSE

17. Singleton adopts any defenses raised by any other party or parties to the extent that such defenses are not incompatible with the defenses raised above

FOR AN ELEVENTH DEFENSE

18. Singleton reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Third-Party Complaint, the Third-Party Defendant, Roger Singleton, prays that he be dismissed from this lawsuit, that the Complaint be dismissed, that he be awarded his expenses, costs, and attorney's fees, and for such further relief as the Court deems just and proper.

Respectfully submitted,

DOUGALL & COLLINS

s/Thomas F. Dougall
Thomas F. Dougall, Esq.
SC Bar No.: 1729
Michal Kalwajtys, Esq.
SC Bar No. 100950
1700 Woodcreek Farms Road
Elgin, South Carolina 29045
(803) 865-8858 (TEL)
(803) 865-8944 (FAX)

Attorneys for Third-Party Defendant Roger Singleton

January 6, 2021

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	
	)	PROOF OF ADR OR EXEMPTION
Suzan Garland,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	FILE NO.: 2019-CP-32-01442
	)	
Robert Cade, Christy Cade, and Roger Singleton	)	
	)	
Defendants.	)	
	)	

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

PURSUANT to the South Carolina Alternative Dispute Resolution Rules (SCADR):

A. _____ I certify that this case is exempt from ADR for the following reason and the parties wish to exercise that exemption:

_____	_____
Plaintiff/Attorney for Plaintiff	Defendant/Attorney for Defendant
_____	_____
Print Name	Print Name
_____	_____
Phone/Fax	Phone/Fax
Date: _____	

B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

_____

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

Thornwell F. Sowell, III

3. The ADR was conducted on July 20 , 2021

SCADR 104A (11/2012)

ELECTRONICALLY FILED - 2021 Jul 27 11:27 AM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

ELECTRONICALLY FILED - 2021 Jul 27 11:27 AM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

4. As a result of ADR, this case should be considered (please check one);

( ) Fully Settled.

( ) by Consent Judgment, to be filed by _____

or ( ) Voluntary Dismissal to be filed by Plaintiff

(X) Partially Settled.

( ) At an Impasse.

( ) In need of further ADR I ☐ am ☐ am not willing to continue as a neutral. I recommend that ADR resume as of _____.

5. Plaintiff ☒ was present ☐ was not present
Defendant ☒ was present ☐ was not present

6. Other participants were:

X	Lawyer for Defendants Robert Cade and Christy Cade	S. Jahue Moore
X	Lawyer for Defendant Singleton	Thomas Dougall
X	Lawyer for Plaintiff	H. Freeman Belser
	Representative for Insurance Carrier	
	Guardian *ad Litem*	
	Experts	
	Others	

7. Choice of the neutral was by:

X Stipulation
_____ Court Order

8. The total number of hours spent in ADR was: 7 hours.

9. Further comments of the neutral:

Thomwell J Lowell
Neutral's Signature

Date: July 26, 2021

SCADR 104B (11/2012)

ELECTRONICALLY FILED - 2021 Jul 22 2:31 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	C.A. No: 2019-CP-32-01442
	)	
Suzan Garland	)	
	)	
Plaintiff,	)	
	)	**NOTICE OF MOTION TO ADD CLAIM FOR INDEMNIFICATION**
vs.	)	
	)	
Robert Cade, Christy Cade and Roger Singleton	)	
	)	
Defendants.	)	

TO: **H. FREEMAN BELSER, ESQUIRE, and THOMAS DOUGALL, ESQUIRE, COUNSEL FOR THE PLAINTIFF:**

YOU WILL PLEASE TAKE NOTICE that the undersigned as counsel for the Cade Defendants moves before the court for an Order allowing an amendment of the pleadings in order to assert the defense of indemnification.

MOORE TAYLOR LAW FIRM, P.A.

BY: s/ S. Jahue Moore

S. Jahue Moore (SC Bar #4063)
Post Office Box 5709
West Columbia, South Carolina 29171
Phone: (803) 796-9160
Fax: (803) 791-8410
jake@mttlaw.com
Attorney for Defendants, Robert and Christy Cade
July 22, 2021

ELECTRONICALLY FILED - 2021 Oct 22 11:44 AM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON Suzan Garland, Plaintiff, v. Robert Cade, Christy Cade, and Roger Singleton, Defendants.	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT **DEFENDANT ROGER SINGLETON'S AND PLAINTIFF SUZAN GARLAND'S MOTION FOR COURT APPROVAL OF SETTLEMENT** C/A No. 2019-CP-32-01442

The Defendant, Roger Singleton (hereinafter "Singleton"), by and through his undersigned counsel, and Plaintiff, by and through her undersigned counsel, pursuant to Rule 41(**a**)(2) of the South Carolina Rules of Civil Procedure, hereby move this Court for an Order approving the settlement between them in this action. This motion is made on the following grounds:

This matter was mediated on July 20, 2021. Plaintiff and Singleton reached an agreement between them to settle all of Plaintiff's claims against Singleton. That agreement has been memorialized in a Covenant Not to Execute between them dated July 29, 2021. Plaintiff's counsel is in receipt of the settlement funds and desires to disburse those funds to his client and retain his portion of the earned fees.

Pursuant to Rule 41(**a**)(1), S.C.R.C.P. the Plaintiff and Singleton sought a Stipulation of Dismissal of Plaintiff's claims against Singleton. Counsel for Defendants Robert Cade and Christy Cade, despite the lack of any asserted claims against Singleton, or any counterclaims against Plaintiff, refuses to stipulate to the requested dismissal.

ELECTRONICALLY FILED - 2021 Oct 22 11:44 AM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

Accordingly, pursuant to Rule 41(a)(2), S.C.R.C.P., Singleton and Plaintiff hereby request that the Court enter an Order dismissing Plaintiff's claims against Singleton and allowing Plaintiff's counsel to disburse those funds.

Respectfully submitted,

DOUGALL & COLLINS

s/Thomas F. Dougall

Thomas F. Dougall, S.C. Bar No. 1729
Michal Kalwajtys, S.C. Bar No. 100950
1700 Woodcreek Farms Road, Suite 100
Elgin, South Carolina 29045
Tel: (803) 865-8858
Attorneys for Defendant Roger Singleton

BELSER & BELSER, P.A.

s/H. Freeman Belser

H. Freeman Belser, S.C. Bar No. 1729
Post Office Box 96
Columbia, South Carolina 29202
Tel: (803) 929-0096
Attorneys for Plaintiff Suzan Garland

October 22, 2020

Columbia, South Carolina

ELECTRONICALLY FILED - 2021 Oct 22 11:44 AM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

CERTIFICATE OF SERVICE
C/A No. 2019-CP-32-01442

I, the undersigned employee of Dougall & Collins, attorneys for Roger Singleton do hereby certify that this 22nd day of October 2021, I served by electronic mail—in accordance with the April 22, 2020 order of the Supreme Court, Appellate Case No. 2020-000447 at (c)(13)—the foregoing Defendant's Responses to the Cades' Interrogatories on all counsel of records sent to their AIS-registered email addresses as follows: jake@mbmlawsc.com and freeman@belserpa.com

s/ Thomas F. Dougall

Thomas F. Dougall

ELECTRONICALLY FILED - 2021 Oct 26 8:39 AM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	C.A. No: 2019-CP-32-01442
Suzan Garland Plaintiff,	)	**MOTION TO SUPPLEMENT**
vs.	)	
Robert Cade, Christy Cade and Roger Singleton Defendants.	)	

TO: H. FREEMAN BELSER, ESQUIRE, and THOMAS DOUGALL, ESQUIRE, COUNSEL FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned as counsel for the Cade Defendants will move further to be allowed to bring a third-party action against the Co-Defendant based upon breach of warranty and neglect.

This Motion shall be based upon the fact that the work which was done which is the subject of this action was done by the Co-Defendant. These Defendants are simply property owners.

Based on the conduct of the Co-Defendant, these Defendants were sued and have incurred damages.

The Co-Defendant warranted his work and the silt system failed arguably through the acts of the neglect on the part of the Co-Defendant.

The Defendants have sustained damages already as a result of the breach of warranty and negligence if there is any fault on the part of either Defendant.

The evidence in this case is expected to show nothing done by either Defendant was approximate cause of Plaintiff's injury but based upon the work of the Co-Defendant a suit has been brought and these Defendants have sustained damage.

(Signature block on following page)

ELECTRONICALLY FILED - 2021 Oct 26 8:39 AM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

MOORE BRADLEY MYERS LAW FIRM, P.A.

BY: s/ S. Jahue Moore
S. Jahue Moore (SC Bar #4063)
Post Office Box 5709
West Columbia, South Carolina 29171
Phone: (803) 796-9160
Fax: (803) 791-8410
jake@mttlaw.com
Attorney for Defendants,
Robert and Christy Cade
October 25, 2021

ELECTRONICALLY FILED - 2021 Oct 29 2:10 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON Suzan Garland, Plaintiff, v. Robert Cade, Christy Cade, and Roger Singleton, Defendants.	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT DEFENDANT Roger Singleton's **MEMORANDUM IN OPPOSITION** TO DEFENDANTS Robert and Christy Cade's MOTION TO ADD CLAIMS C/A No. 2019-CP-32-01442

The defendant Roger Singleton opposes the defendants Robert and Christy Cade's Motion to Add Claim for Indemnification, filed on July 22, 2021, which, despite being so styled, appears to be a motion under Rule 15(a), SCRCP, for leave to amend pleadings.

Singleton submits this memorandum to address the issues implicitly raised by the Cades' motion, including its supplement filed on October 26, 2021, regarding breach of warranty and negligence claims.

ISSUE PRESENTED

To rule on the Cades' motion, this Court needs to consider the following:

> A leave to amend pleadings should be granted if justice so requires and it would not cause prejudice to other parties. The Cades' indemnification claim has yet to accrue and can be asserted in an independent action; the Cades raised the issue only after the mediation—27 months into the litigation—when Singleton negotiated unaware of any other claims and without the benefit of relevant discovery. Is a leave to amend warranted?

ELECTRONICALLY FILED - 2021 Oct 29 2:10 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

BACKGROUND

In April 2019, Suzan Garland sued her neighbors, Robert and Christy Cade, for negligence, trespass, and private nuisance, all stemming from land-disturbing activities on their property that led to erosion and other damage to Garland's land. Nearly a month later, the Cades answered the complaint without impleading anyone.

Over the following eight months, Garland and the Cades exchanged written discovery and conducted depositions. Garland's attorney deposed the Cades in August 2019, and later, in January 2020, Singleton, who had been indicated by the Cades as a fact witness (Singleton performed land-clearing services for the Cades). Within days of Singleton's deposition, Garland, with the Cades' consent, amended her summons and complaint, naming Singleton as a defendant. The Cades answered the Amended Complaint without asserting any crossclaims against Singleton.

After nearly two and a half years in litigation, the parties agreed to mediate the case. At the July 20, 2021 mediation, Garland and Singleton reached a compromise and entered a settlement agreement. Meanwhile, Garland and the Cades' negotiations ended in an impasse.

Following the settlement conference, Garland and Singleton sought to file a consent stipulation to dismiss Garland's action against Singleton. The Cades, however, withheld their consent. It was at that time that the Cades, through their counsel, raised for the first time the issue of an indemnification claim against Singleton.

ELECTRONICALLY FILED - 2021 Oct 29 2:10 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

On July 22, 2021, the Cades filed the Notice of Motion to Add Claim for Indemnification and on October 26, 2021, a Motion to Supplement seeking "to bring a third-party action against the Co-Defendant based upon breach of warranty and neglect."

DISCUSSION

This Court should deny the Cades' motions because grant of leave to amend their answer would cause prejudice to Singleton and would not serve the ends of justice.

Under Rule 15(a) of the South Carolina Rules of Civil Procedure, once the 30-day period following service of a pleading expires, a party serving the pleading can no longer amend it as a matter of right. Rule 15(a), SCRCP. Absent consent of the adverse party, a party seeking to amend his or her pleadings must first obtain a leave of court to do so. *Id.* The rule further provides that "a leave shall be freely given when justice so requires and does not prejudice any other party." *Id.* The prejudice the rule contemplates consists in lack of notice that the new issue is to be tried and lack of opportunity to refute it." *Stanley v. Kirkpatrick*, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2003). Although delay in seeking leave to amend pleadings, regardless of its length, will not ordinarily be held to bar an amendment, a leave should be denied if the delay results in prejudice to other parties. *Forrester v. Smith & Steele Builders, Inc.*, 369 S.E.2d 156, 295 S.C. 504 (S.C. App. 1988).

Here, the Cades' motion has been unduly delayed and the delay in seeking amendment caused prejudice to Singleton. For over 18 months of his participation in

this lawsuit, Singleton had no indication that the Cades may seek indemnification. Accordingly, Singleton's discovery efforts were not informed by the prospect of defending against an indemnification claim: Singleton's counsel had no opportunity to depose the Cades with the defense against such a claim in mind. In fact, the Cades were deposed long before Singleton was brought into this lawsuit. In addition, because the Cades had not been an adverse party, it did not appear that such deposition was necessary. What is more, had it been known, a prospect of indemnification would have shaped Singleton's strategy at the mediated settlement conference: Singleton's counsel obtained settlement authority from Singleton's insurer based on potential liability and further litigation costs as they appeared at the time, that is without the variable of defending against an indemnification crossclaim. In sum, the Cades' failure to timely assert crossclaims induced Singleton not to pursue relevant discovery and to undertake litigation strategy that, if the leave is granted, will have been prejudicial to him.

* * *

This Court should refrain from granting leave to amend also because justice does not so require. Note that a claim for indemnification has yet to actually accrue to the Cades and that, despite the allegations in their Motion to Supplement, the Cades do not have causes of action for negligence or breach of warranty.

Twin opinions of the Court of Appeals in *Stoneledge at Lake Keowee Owners' Association, Inc. v. Clear View Construction, LLC*, 413 S.C. 615, 776 S.E.2d 426 (Ct. App. 2015), and *Stoneledge at Lake Keowee Owners' Association, Inc. v. Builders*

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FirstSource-Southeast Group, 413 S.C. 630, 776 S.E.2d 434 (Ct. App. 2015), hold that the claims of negligence and warranty that do not assert damages arising independently of the plaintiff's action, and that have been already independently incurred by a defendant/third-party plaintiff, are in fact disguised claims for equitable indemnity. The *Stoneledge* court found that the allegations, such as, "[s]hould [plaintiff] prevail on its claims, [the general contractor] is entitled to recover legal fees and costs or any amount it is ordered to pay to [plaintiff]," *id.* at 621, 776 S.E.2d at 429 (quotation and alteration marks omitted), demonstrated the contingent nature of the claims. The allegations indicated that the general contractor did not sustain its own damages as a result of the alleged negligence, breach of contract, or breach of warranty on the part of its subcontractor but was merely exposed to potential liability to the plaintiff and incurred the costs of its own defense. *Stoneledge v. Builders FirstSource*, 413 S.C. at 636, 776 S.E.2d at 437. The *Stoneledge* court held that because these claims were not independent of the equitable indemnity cause of action, summary judgment in favor of the subcontractors was appropriate. *Id.* at 637, 776 S.E.2d at 438; *Stoneledge v. Clear View Construction*, 413 S.C. at 619, 776 S.E.2d at 428.

Here, the Cades' rudimentary allegations in their Motion to Supplement signal that the breach of warranty and negligence claims they want to assert are simply differently labeled claims for equitable indemnity; they are couched in conditional terms that do not articulate distinct causes of action. The Cades state that "based on the conduct of the Co-Defendant, these Defendants were sued . . . and have sustained

damages . . . if there is any fault on the part of either Defendant." (Mtn. to Supp. at 1.) The Cades further allege that they sustained damage because "based upon the work of the Co-Defendant a suit has been brought" against them. *Id.* The language of these allegations indicates that the Cades' potential cause of action for "breach of warranty and neglect" is entirely dependent on the outcome of Garland's case against them, and therefore it collapses into equitable indemnification claim.

Consider also that justice not only does not require the leave to amend but, quite the contrary, calls for the denial of the leave here. The Cades want to assert in this action a claim in equity. But note that equity aids only the vigilant and diligent and not those who sleep on their rights. *See e.g.* Roger Young and Stephen Spitz, *SUEM—Spitz's ultimate equitable maxim*, 55 S.C. L. Rev. 175, 188 (2003). The Cades had multiple opportunities to assert the equitable-indemnity claim against Singleton. They could have done it without either consent of adverse parties, or leave of this court, as many as four time: First, on May 3, 2019, they could have added third-party claims when answering the initial complaint; Second, by June 2, 2019, they could have amended the answer to implead Singleton; Third, once Garland filed the Amended Complaint with Singleton as a defendant the Cades could have asserted crossclaims in their Answer to the Amended Complaint, which they filed on January 23, 2020; And fourth, by February 22, 2020, they could have rectified that failure by filing an amended answer, which they had a right to do. Despite those opportunities and plenty of time to move this Court, the Cades continued to sleep on their rights for another 17 months. This Court should not reward these failures.

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* * *

Apart from the equitable consideration addressed above, the denial of leave would be appropriate because it would not prejudice the Cades. Consider that if they manage to obtain a defense verdict, or their liability will be adjudged to have derived solely from Singleton's actions, they still will be able to sue Singleton for indemnification of not only the litigation costs and attorney fees but also the damages paid to Garland. And if they are held liable, the damages award will be set off by the amount of Singleton's settlement, and, possibly, they will have a viable contribution claim.

CONCLUSION

Because the Cades failed to timely exercise their rights and that undue delay prejudiced Singleton, their Motion to Add Claim and the Motion to Supplement should be denied. This Court should also deny the motions because considerations of justice and equity do not require that leave be granted and the denial of the leave will not prejudice the Cades.

Respectfully submitted,

DOUGALL & COLLINS

s/Michal Kalwajtys

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Michal Kalwajtys, S.C. Bar No. 100950
1700 Woodcreek Farms Road, Suite 100
Elgin, South Carolina 29045
Tel: (803) 865-8858
Fax: (803) 865-8944
Attorneys for Defendant Roger Singleton

October 29, 2021

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF LEXINGTON	)	**CIVIL ACTION NO. 2019CP3201442**
SUZAN GARLAND,	)	
Plaintiff,	)	
vs.	)	**VERDICT**
ROBERT AND CHRISTY CADE,	)	
Defendants.	)	

1. On the Plaintiff's cause of action for negligence, we, the jury, find for the:

[√] Plaintiff

[ ] Defendants

2. On the Plaintiff's cause of action for trespass, we, the jury, find for the:

[ ] Plaintiff

[√] Defendants

3. On the Plaintiff's cause of action for nuisance, we, the jury, find for the:

[√] Plaintiff

[ ] Defendants

If you, the jury, found for the Plaintiff on any of the above, please go on to the next page.

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We, the jury in the above captioned case, unanimously find for the Plaintiff against the Defendant in the amount of — 0 — actual damages for trespass.

We, the jury in the above captioned case, unanimously find for the Plaintiff against the Defendant in the amount of $125,000 actual damages for nuisance.

We the jury, unanimously find for the Plaintiff against the Defendant in the amount of $8,000 punitive damages.

Foreperson

April 1, 2022
Lexington, South Carolina

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ELECTRONICALLY FILED - 2022 Apr 06 2:25 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	C.A. No: 2019-CP-32-01442
	)	
Suzan Garland	)	
	)	
Plaintiff,	)	
	)	**NOTICE OF MOTION FOR NEW TRIAL, NEW TRIAL NISI AND JUDGMENT NOTWITHSTANDING THE VERDICT**
vs.	)	
	)	
Robert Cade, Christy Cade and Roger Singleton	)	
	)	
Defendants.	)	

TO: THE HONORABLE DEBRA MCCASLIN, CIRCUIT JUDGE FOR THE ELEVENTH JUDICIAL CIRCUIT; FREEMAN BELSER, ESQUIRE; and TOM DOUGALL, ESQUIRE:

Per the Order of the court, the undersigned as counsel for the Cade Defendants, hereby moves before the court for judgment notwithstanding the verdict; for a new trial absolute; and a new trial nisi.

This motion shall be based upon the following:

1. This Defendants hereby renew all of the motions made at the conclusion of the Plaintiff's case and at the conclusion of the testimony.

2. The court erred in dismissing the Third Party Defendant, Roger Singleton. The trial court applied an improper standard in dismissing Roger Singleton as a Third Party Defendant in the case.

The record as a whole was not considered in the decision of the court and the admissions of Mr. Singleton established a legitimate claim against Mr. Singleton.

Mr. Singleton admitted he was hired a paid by the Cade's to the work on the property. He did not put up the erosion control devices. Mr. Singleton admitted if the work was done improperly

and if the work caused Plaintiff injuries, then the failure to do the work properly was his responsibility.

Taking in the light most favorable to the Plaintiffs, the work was done improperly and the improper work caused injury to the Plaintiff.

The Cade's had no insurance. Mr. Singleton was fully insured as he should have been since he was the contractor who actually did the work. If the work was done improperly, it was done improper by Mr. Singleton.

The court required the Cade's to prove wrongdoing by Mr. Singleton which was improper and totally unfair. The Cade's position all along has been nothing wrong was done. On the other hand, they testified if something was done wrong, it was done by Mr. Singleton.

The record as a whole should have been considered as well as the admissions of Mr. Singleton and the acceptance of responsibility by Mr. Singleton.

The Cade's in this case have been severely prejudiced by the improper dismissal as the dismissal stripped the case from full insurance coverage. Once Singleton was dismissed, there was no insurance coverage left except for the money the Singleton carrier had paid to settle with the Plaintiff.

If the court had not taken the actions it did, the insurance company would have paid and no appeal would have been necessary. Thus, the Cade's have been severely prejudiced by what was a clear error on the part of the court in dismissing Mr. Singleton.

The court should either grant a new trial or the matter will be forced to an appeal on the issue as the insurance coverage will be critical to the ultimate resolution of the case.

3. The court erred in allowing the engineering testimony from the engineer from Greenville.

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The Defendants had previously sent Interrogatories and Requests to Produce prior to trial. In trial, the engineer increased his opinions and testified as to proximate cause as well as the amount of siltation.

Prior to trial, counsel for the Defendants had been told this individual would only testify in accord with his report. The report mentioned nothing about proximate cause. Prior to trial, there was no one who was told to the Defendants who would testify as to proximate cause.

During discovery, counsel for the Defendants were never told the engineer would add to his testimony and would opine as to causation.

Prior to trial, there was no expert disclosure as to anyone who would testify as an expert as to proximate cause. This testimony should not have been allowed.

Counsel for the Plaintiff provided a report prior to trial from this expert and indicated in discovery the expert would simply testify in accord with the report.

The report and discovery did not reveal new testimony. The new testimony was highly prejudicial as it was the only testimony as to proximate cause.

The testimony of the new expert should have been stricken and not allowed. Additionally, the expert did not have in the record an approximate basis for his opinion. He testified he had formed his opinion looking at "some maps on the internet". The maps were not in evidence and were not even identified. This expert did not have an appropriate foundation in order to opine as to proximate cause. The testimony should have been stricken. If the testimony had been properly stricken, then there would have been no testimony in the trial at all as to proximate cause and the matter should have resulted in a directed verdict for these Defendants.

4. The lower court erred in submitting punitive damages to the jury. Any conduct to violate any rules or law which resulted in any proximate cause to the Plaintiff was done by Mr. Singleton and not by the Cade's. The Cade's hired Mr. Singleton as a contractor to do the work necessary. There is nothing to indicate Lexington County ever required a permit of these people.

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The evidence is undisputed the Cade's went to the county seeking the appropriate permits. In any event, the lack of a permit was not the proximate cause of any injury.

Any violation of any law was the responsibility of Singleton.

In addition to the foregoing, the court erred in submitting the issue of the Lexington County Stormwater Act to the jury. The issue of law is for the court and not for the jury. The law had a specific exclusion which excluded the work done on the Cade's property. Lexington County did not ever testify a permit was required and never made the Cade's get any type of permit.

The lack of a permit would not have been a proximate cause of any injury. Any lack of sediment control was the responsibility of Singleton. The record indicates that sediment control was put up following the meeting with the county.

In any event, the court did not do a post-trial analysis and the issue of punitive damages should not have been submitted together with the rest of the case. There should have been a separate treatment and a separate verdict in regard to punitive damages as requested by counsel for the Defendants. The court simply ignored the request and the law of South Carolina requires the issues to be considered separately. No reason was given by the court for ignoring the requirement for separate consideration of proximate cause. Thus, the Defendants are entitled to a new trial or for a dismissal of the punitive damage award.

5. The expert from Greenville was allowed to testify in regard to proximate cause when there were not documents or facts in the record from which he gleaned any expert opinion. The only testimony was he formed his opinion based upon "some maps from the internet". If such an opinion as to causation which to be allowed, then the "maps from the internet" he used would have had to be placed in the trial as the basis for the conclusion.

The Plaintiff called Mr. Lee from Chow & Associates. Mr. Lee said no opinion could be formed without a detailed hydrological study.

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The basis for the expert opinion as to proximate cause is improper because it was not supported by an appropriate foundation as is required by the rules and case law.

6. A new trial absolute or a JNOV nisi should be granted as the verdict is obviously a compromise verdict. There was absolutely nothing in the record to indicate how that number was arrived at or could have been arrived at other than by way of compromise. There is simply no way the amount found by the jury could have been arrived at based upon the testimony as a whole.

The record indicates damage of $435,000 plus the other non-quantifiable damages.

The number arrived at by the jury was never placed into evidence by anybody. The verdict is obviously a compromised verdict and should be set aside as such.

7. The court erred in failing to allow a jury view. Counsel for the Defendants requested the jury view and was prepared to place into the court an amount of money to cover the expenses by virtue of a jury view. Jury views are required under the rules so long as the requested parties is willing to pay for it. The court simply ruled, "I'm not going to allow it" without explanation and without any inquiry as to whether the expenses would be covered.

What actually happened here is this case was originally set for a one week trial. The one week was compromised by unforeseeable circumstances. When the court made inquiry into whether the case could be done in a timely fashion, counsel for the Defendants raised serious questions in this regard. Thereafter, the Friday morning schedule was compromised and there simply was not enough time to adequately try the case.

The refusal of the court to allow a jury view seriously harmed the case and was error. It is urged upon the court that the jury view was disallowed because of the time crunch which was not created by these Defendants.

The court seriously admonished counsel for the Defendants for securing a drone video of a part of the party when the jury view request was denied. The material in question could not have

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been produced prior to trial because it was anticipated a jury view would have been allowed in accord with the rules.

The drone video could not have been produced prior to trial as it is not exist prior to trial. Counsel for the Defendant simply attempted to cure the defect of the court not allowing a jury view and received serious admonition from the court for trying to correct what was an obvious error.

The use of the drone video seriously hampered the ability of the jury to see the entire scene as the Defendant did not do the video over the Garland property because to have done so would properly have resulted in a trespass.

The jury view should have been allowed and counsel for the Defendant should have been allowed the opportunity to post a sufficient sum of money to cover the cost of the jury view. The only reason the jury view was not allowed was the time pressures which were beyond anyone's control but which denied these people a fair and proper trial in accord with the South Carolina rules of practice.

8. The specifics listed in this motion are in addition to the motions previously made at the end of the Plaintiff's case. The Defendants urge all of the arguments previously made as further support of the motions for new trial; new trial nisi and judgment notwithstanding the verdict.

Respectfully Submitted,

MOORE BRADLEY MYERS LAW FIRM, P.A.

BY: s/ S. Jahue Moore

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Attorney for Defendants, Robert and Christy Cade

April 6, 2022

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Circuit Court for the Eleventh Judicial Circuit

Debra R. McCaslin, Circuit Court Judge

Case No. 2019-CP-32-01442

Suzan Garland, Respondent,

vs.

Robert Cade and Christy Cade, Appellants.

NOTICE OF APPEAL

Robert Cade and Christy Cade appeal the Order of the Honorable Debra R. McCaslin, signed on April 22, 2022 and E-filed by the Clerk on that date. Appellants received electronic notice of entry of this Order on April 22, 2022.

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Other Counsel of Record:
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Columbia, SC 29202
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ATTORNEYS FOR THE RESPONDENT

RECEIVED
May 04 2022
SC Court of Appeals

ELECTRONICALLY FILED - 2022 May 09 1:43 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Circuit Court for the Eleventh Judicial Circuit

Debra R. McCaslin, Circuit Court Judge

Case No. 2019-CP-32-01442

Suzan Garland, Respondent,

vs.

Robert Cade and Christy Cade, Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal by mail, to H. Freeman Belser, Esquire, Belser & Belser, Post Office Box 96, Columbia, South Carolina 29202, and via e-mail, freeman@belserpa.com on May 4, 2022.

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(1918-1994)
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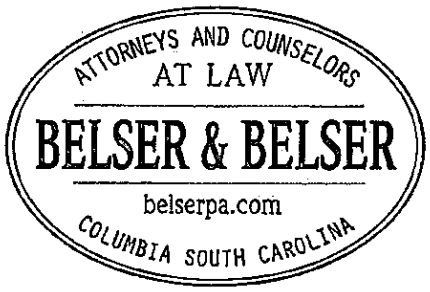
WILLIAM C. DILLARD, JR.
CHARLES H. McDONALD
ROBERT YOUNG, P.A.
OF COUNSEL
CHARLES L. DIBBLE
OF COUNSEL



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December 30, 2020

S. Jahue Moore, Esq.
Bryan C. Letteer, Esq.
Moore Taylor Law Firm
Post Office Box 5709
West Columbia, South Carolina 29171

RE: Garland v. Cade
Ca No. 2019-CP-32-01442

Dear Jake and Bryan:

Enclosed and served upon you as a supplemental discovery response is a report from Bill Matthews regarding the above referenced matter.

Sincerely,

H. Freeman Belser

HFB/rhs
Enclosure

cc: Thomas F. Dougall, Esq.
Suzan Garland (via email)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Suzan Garland,	)	Civil Action No. 2019-CP-32-01442
	)	
Plaintiffs,	)	
	)	**PLAINTIFF'S SECOND SUPPLEMENTAL DISCOVERY RESPONSE**
vs.	)	
	)	
Robert Cade and Christy Cade,	)	
	)	
Defendants.	)	
	)	

The Plaintiff hereby submit her supplemental discovery response, as follows:

Supplemental Answer to Interrogatories

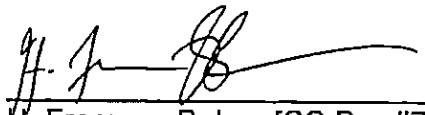
5. List the names and addresses of any and all expert witnesses whom the party proposes to use as a witness at the trial of this case.

SUPPLEMENTAL ANSWER:

William A. Matthews, P.E.
Bunnell-Lammons Engineering, Inc.
6004 Ponders Court
Greenville, SC 29615

Mr. Matthews evaluated the extent of sedimentation in the Plaintiff's pond resulting from Defendants' land disturbing activities. He will testify consistent with his report.

BELSER & BELSER, P.A.



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Columbia, South Carolina

December 30, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Suzan Garland,	)	Civil Action No. 2019-CP-32-01442
	)	
Plaintiffs,	)	
	)	**CERTIFICATE OF SERVICE**
vs.	)	
	)	
Robert Cade, Christy Cade, and Roger Singleton,	)	
	)	
Defendants.	)	

I hereby certify that a copy of the herein below listed document was served upon all counsel of record by depositing in the United States Mail, proper postage affixed thereto, a true and accurate copy thereof on December 30, 2020 as follows:

DOCUMENTS: Plaintiff's Second Supplemental Discovery Response

PARTIES SERVED:

S. Jahue Moore, Esq.
Bryan C. Letteer, Esq.
Moore Taylor Law Firm
Post Office Box 5709
West Columbia, South Carolina 29171

Thomas F. Dougall, Esq.
Dougall & Collins
1700 Woodcreek Farms Road
Elgin, SC 29045

By: _____
Rebecca H. Schwind
Legal Assistant

BUNNELL LAMMONS ENGINEERING

December 23, 2020

Belser & Belser
1325 Park Street, Suite 300 (29201)
PO Box 96
Columbia, SC 29202

Attention: Mr. H. Freeman Belser
freeman@belserpa.com

Subject: **Report of Sediment Evaluation**
105 Davis Drive
West Columbia, Lexington County, South Carolina
BLE Project No. J20-15477-01

Gentlemen:

Bunnell-Lammons Engineering, Incorporated (BLE) is pleased to present this report of sediment evaluation for the above referenced project. These services were performed generally as described in BLE Proposal No. P20-0770 dated June 20, 2020 and were authorized in email communication from Mr. Belser to our Mr. Bill Mathews dated October 26, 2020.

PROJECT INFORMATION

The following project information was provided in email correspondence between Mr. Belser and our Mr. Bill Mathews. We were also provided a report prepared by Dennis Corporation titled Garland v Cade – Results of Field Investigation and Sampling dated March 20, 2019 and a transcript of the deposition of Mr. Gerald Lee, P.E. dated January 8, 2020.

There is an existing pond located on the Garland property at 105 Davis Drive in West Columbia, South Carolina (reference Figure 1). Due to previous construction activity at the 39-acre site upstream of the Garland property (noted as the Cade Property), it was reported that excessive sediment traveled downstream into the Garland property pond. Dennis Corporation completed a sediment study with a report of their findings dated March 20, 2019. BLE was requested to evaluate the quantity of sediment in the Garland pond and evaluate whether significant additional sediment has entered the pond since the previous Dennis Corporation investigation in February 2019.

6004 Ponders Court, Greenville, SC 29615 864.288.1265 864.288.4430 info@blecorp.com
BLECORP.COM

SEDIMENT MEASUREMENTS

Sediment measurements were obtained by representatives of BLE on October 29, 2020 at eight locations identified on the attached Sediment Measurement Location Plan (reference Figure 2). The locations were selected to approximate the locations that were measured by Dennis Corporation and presented in their March 20, 2019 report referenced previously. The measurements were obtained by using a small boat provided by the property owner to access the sampling locations. After determining the water depth at each location, the soft sediments were probed to determine the thickness of sediment at each location. Three readings were collected at each location as indicated in the following table.

Test Location	Water Depth (ft)	Sediment Thickness (inches)	Average Sediment Thickness (inches
1	7.0	27	21.0
	6.75	17	
	8.0	19	
2	5.17	8	9.3
	5.75	10	
	5.83	10	
3	3.25	7	5.7
	3.0	2	
	4.08	8	
4	6.0	6	16.0
	6.0	25	
	4.33	17	
5	3.5	6	7.0
	3.67	7	
	3.33	8	
6	3.75	9	12.0
	3.17	16	
	3.25	11	
7	4.83	12	10.3
	4.92	16	
	3.08	3	
8	2.83	2	3.7
	3.0	4	
	3.33	5	
Overall Average	**4.5**	**10.6**	**10.6**

EVALUATION

The sediment measurement locations identified on Figure 2 should be considered approximate. The level of control (i.e., paddling to an approximate location) made it impossible to check the sediment at the exact locations checked by Dennis Corporation. It is also likely that some of the deposits have been redistributed across the pond during different storm events. For these reasons, it is our opinion that the sediment thickness identified at any discrete point could be expected to change with each measurement and this is reflected in the differences in readings reported by Dennis Corporation and BLE. However, the total estimated sediment in the pond would be a better indication of the change in sediment deposits over time rather than looking at discrete points.

The Dennis Corporation report indicated total sediment of 1,361 cubic yards and an additional potential 67 cubic yards of sediment held in suspension. A review of the data presented in the Dennis Corporation report indicates an overall average sediment thickness of 10.1 inches (excluding outliers). If we assume that the sediment is a uniform thickness of 10.1 inches, then 1,361 cubic yards of sediment covers an area of 43,660 square feet.

The data collected by BLE as part of this study indicates an average sediment thickness of 10.6 inches. If we assume that the 10.6 inches of sediment is uniformly spread over 43,660 square feet as indicated above, the total volume of sediment is equal to 1,428 cubic yards. This represents an additional 67 cubic yards of sediment as compared to the Dennis Corporation report. It is interesting to note that the Dennis Corporation report indicated 67 cubic yards of potential sediment held in suspension and reported as total suspended solids. BLE did not test for suspended solids. However, it is reasonable to assume that the suspended solids reported by Dennis Corporation have had an opportunity to settle out over the approximately 20 months between the Dennis Corporation measurements and the BLE measurements. Therefore, it is our opinion that the volume of sediment measured in the pond by BLE is essentially the same as reported by Dennis Corporation.

We appreciate the opportunity to offer our professional services on this project.

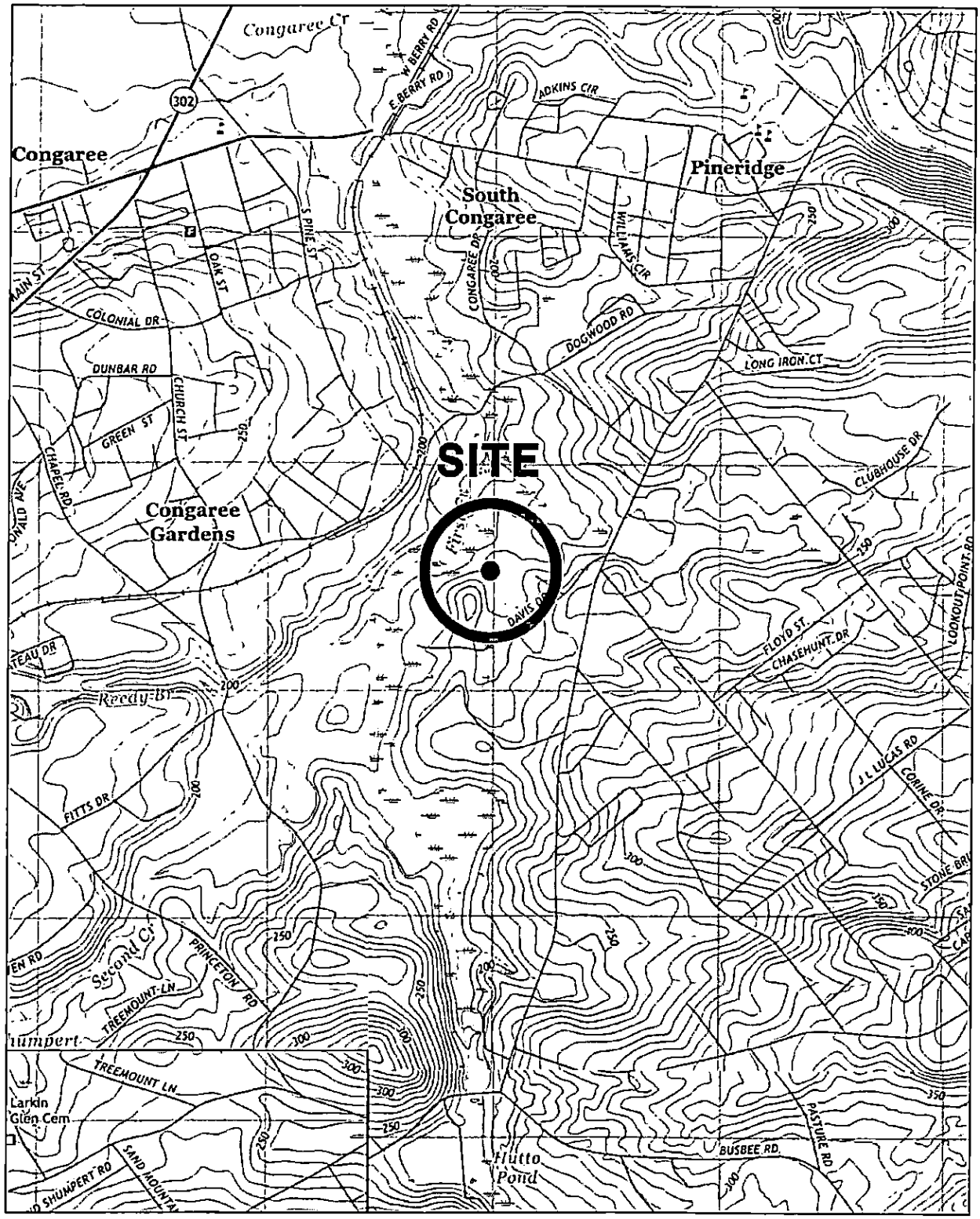
Sincerely,
BUNNELL-LAMMONS ENGINEERING, INC.

Jason C. Jansante, P.E.
Project Engineer
Registered, SC 34614

SOUTH CAROLINA
BUNNELL-LAMMONS ENGINEERING, INC.
No. C01452
CERTIFICATE OF AUTHORIZATION

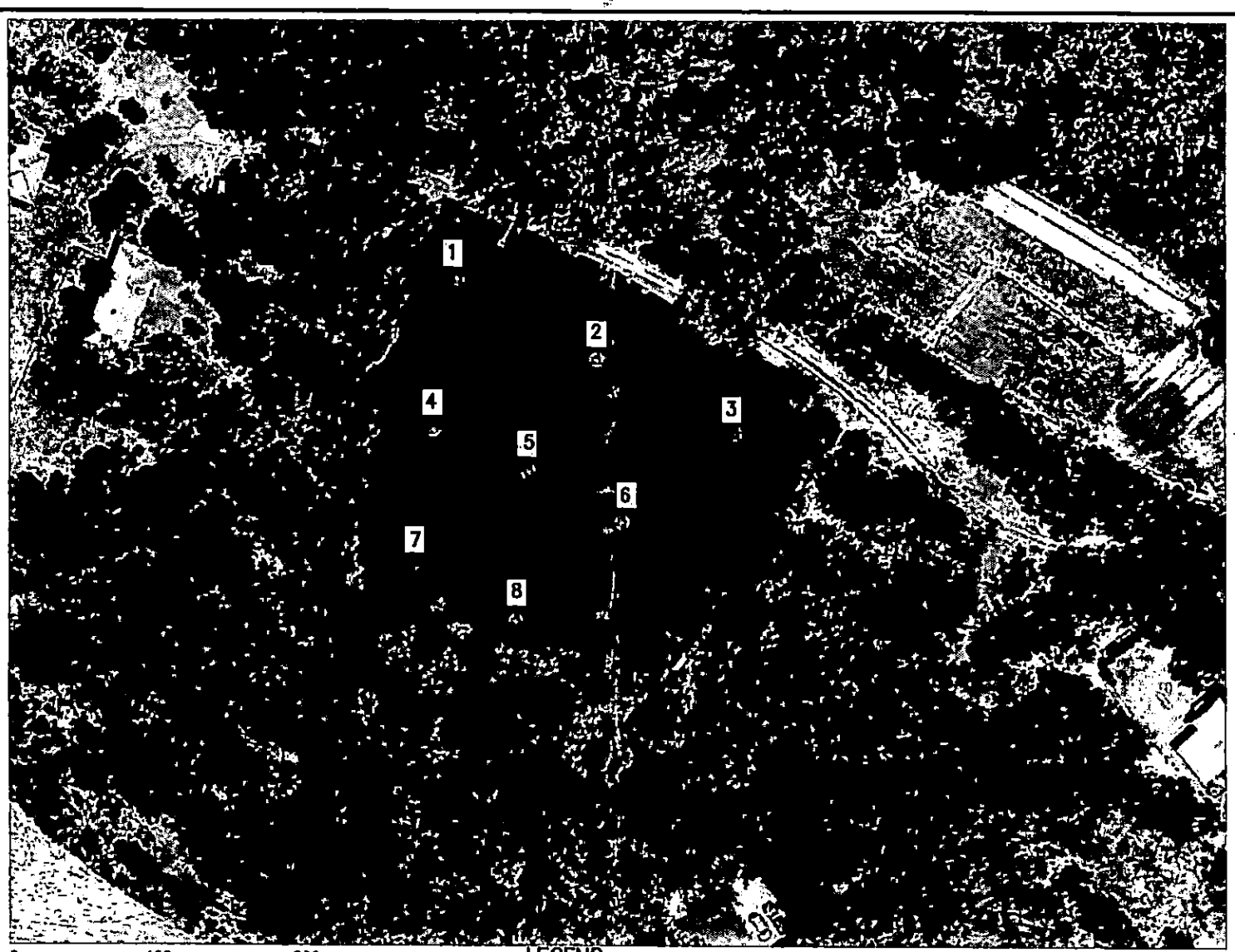
William A. Mathews, P.E.
Chief Engineer
Registered, SC 14039

SOUTH CAROLINA
REGISTERED PROFESSIONAL ENGINEER
12/23/20
NO. 14039
WILLIAM A. MATHEWS



REFERENCE:
USGS TOPOGRAPHIC MAP, 7.5 MINUTE SERIES, GASTON, LEXINGTON, PELION, AND SW COLUMBIA, S.C. QUADRANGLES, 2017, 2014, 2014 AND 2014.

DRAWN: ACE	DATE: 12-22-20	BUNNELL LAMMONS ENGINEERING	FIGURE
CHECKED: JCJ	CAD: GARLANDPOND-SLM	6004 Ponders Court, Greenville, SC 29615 Phone: (864) 288-1265 Fax: (864) 288-4430	SITE LOCATION MAP GARLAND POND SEDIMENT STUDY 105 DAVIS DRIVE WEST COLUMBIA, SOUTH CAROLINA
APPROVED: WAM	JOB NO: J20-15477-01		1



100 50 0 100 200

APPROXIMATE SCALE IN FEET

LEGEND

APPROXIMATE LOCATION OF SEDIMENT SAMPLE

REFERENCE:
GOOGLE EARTH IMAGE DATED 5-2-2018.

DRAWN: ACE	DATE: 12-22-20
CHECKED: JCJ	CAD: GARLANDPOND-BLP
APPROVED: WAM	JOB NO: J20-15477-01

BUNNELL LAMMONS ENGINEERING
6004 Ponders Court, Greenville, SC 29615
Phone: (864) 288-1265 Fax: (864) 288-4430

BORING LOCATION PLAN
GARLAND POND SEDIMENT STUDY
105 DAVIS DRIBE
WEST COLUMBIA, SOUTH CAROLINA

FIGURE
2

State of South Carolina)	Court of Common Pleas
County of Lexington)	Eleventh Judicial Circuit
Suzan Garland,)	Transcript of Record
Plaintiff,)	2019-CP-32-01442
vs.)	
Robert Cade and Christy Cade and Roger Singleton,)	
Defendants.)	
Robert Cade and Christy Cade,)	
Plaintiffs,)	
vs.)	
Roger Singleton,)	
Defendant.)	

March 28-31, 2022 & April 1, 2022

Lexington, South Carolina

B E F O R E:

The Honorable Debra R. McCaslin, Judge

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

H. Freeman Belser, Esquire
On be half of the Plaintiff

S. Jahue Moore, Esquire
On behalf of Robert and Christy Cade

Thomas Dougall, Esquire
On behalf of Roger Singleton

Reported by: Tara Scott, Stacy S. Johnson, and Melinda Jones, DCRP

Transcribed by: Stacy S. Johnson, Circuit Court Reporter

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(The following proceedings were held March 28, 2022, beginning at 10:33 AM.)

THE COURT: All right. Ladies and gentlemen, we are about to begin the trial of the case of Suzan Garland versus Robert and Christy Cade. That's C-A-D-E. And Robert and Christy Cade versus Roger Singleton.

And before we select a jury, there's just a few questions that I'm gonna need to ask you, but first I'm gonna let the attorneys introduce themselves to you and then I'll ask you a few questions. Both sides will introduce themselves to you.

Mr. Freeman {sic}.

MR. BELSER: Thank you, Your Honor.

Good morning, everybody. My name is Freeman Belser. I'm a lawyer in Columbia and I -- I live in Richland county. I'm married with three children, three little boys, that are here in Lexington, and I represent Suzy Garland, who lives off of Fish -- Fish Hatchery Road, kind of out near the airport, in Lexington county, West Columbia.

THE COURT: Mr. Moore.

MR. MOORE: Good morning. My name is Jake Moore. I have practiced law over on Sunset Boulevard in this county for about forty-seven years. I represent Robert and Christy Cade.

Could y'all stand up and turn around?

They also live in the area.

Have a seat.

And with me is my hopefully soon-to-be new lawyer, Callee Jumper. Callee has just finished taking the bar. She's worked for me all the way through law school and she is now awaiting her bar results. She -- so she'll be assisting me, but she can't participate quite yet because she hasn't got her bar results.

Stand up, Callee, if you would.

Thank you, Your Honor.

THE COURT: Okay.

MR. DOUGALL: Good morning. My name is Thomas Dougall. I rep -- I practice with a law firm in Columbia known as Dougall and Collins, and I represent Mr. Roger Singleton.

Roger, if you'd please stand up.

And he's a local businessman who is, unfortunately, also part of this lawsuit.

THE COURT: All right. Thank you.

All right. Let me ask the jury panel, is there any member of the jury panel related by blood or marriage or have a close personal or social relationship with any of the attorneys involved in this case or their law firms?

If so, please stand.

Is there any member of the jury panel related by blood or marriage to either Suzan Garland, Robert Cade, Christy Cade or Roger Singleton?

If so, please stand.

Has any member of the jury panel ever been represented by any of the attorneys involved in this case or their law firms?

If so, please stand.

(Potential juror stands.)

THE COURT: Yes, sir. Your juror number.

POTENTIAL JUROR: 179.

THE COURT: Mr. Seymour?

POTENTIAL JUROR: Yes, ma'am.

THE COURT: Mr. Seymour, and I don't want you to blurt out any answers, just tell me who represented you.

POTENTIAL JUROR: Mr. Moore's firm.

THE COURT: Mr. Moore.

All right. Mr. Seymour, if you were chosen as a juror in this case, could you be fair and impartial to really all three sides here? I've got a plaintiff, cross-defendant, a second plaintiff. Can you be fair to both sides in this lawsuit?

POTENTIAL JUROR: Yes.

THE COURT: Okay. I'm gonna keep you.

All right. The following is a list of possible

witnesses in the case and my question to the jury panel is gonna be is there any member of the jury panel related by blood or marriage to any of the people that I'm fixing to call out their names or if you have a close personal or social relationship with any of these people.

A Mac Watson from West Columbia. A Suzy Garland from West Columbia. A Michael Spires from Lexington. A Brandon Corder, C-O-R-D-E-R, from Lexington. A Gerald Lee from Columbia. A Bill Mathews from Greenville. A Heath Hanna from Columbia.

(Potential jurors stand.)

POTENTIAL JUROR: Gerald Lee, civil engineer. Michael Spires used to be Lexington County.

THE COURT: Okay.

POTENTIAL JUROR: Also, Your Honor --

THE COURT: Hold on just a second.

POTENTIAL JUROR: I'm sorry.

THE COURT: When -- when I call on you, it's important that you don't blurt out any answers. I will ask you the questions, okay?

POTENTIAL JUROR: Yes, ma'am.

THE COURT: So if you'd stand up and tell me the -- your juror number.

POTENTIAL JUROR: 90.

THE COURT: Number 90. All right. You just told me, Mr. Hartz -- Hartzog, that you knew one of the engineer's names that were called out. Can you tell me who else you know on the witness list that I called out?

POTENTIAL JUROR: Michael Spires.

THE COURT: All right. Let me ask you, if you were selected as a juror in this case, could you be fair and impartial to all sides?

POTENTIAL JUROR: I -- I think so.

THE COURT: Okay.

POTENTIAL JUROR: Also I'd like to point out, Your Honor, that my company is being named in a lawsuit and one of the lawyers present --

THE COURT: Okay. See, I'm telling you that's why I don't want you to do that, okay?

POTENTIAL JUROR: Oh. Sorry.

THE COURT: And I'm gonna tell you, "I think" is not good enough for me, so I'm gonna excuse you. This case is truly important to both sides and I -- I need jurors who can be fair and impartial to both sides, not an "I think".

POTENTIAL JUROR: I understand.

THE COURT: So with that said, I'll excuse you. Thank you for coming.

POTENTIAL JUROR: Thank you, Your Honor.

THE COURT: Yes, sir. Your juror number?

POTENTIAL JUROR: 107. I know Brian Corder.

THE COURT: Okay. Well, knowing Mr. Corder, let me ask you --

POTENTIAL JUROR: Mr. Porter or Corder?

THE COURT: Huh?

POTENTIAL JUROR: I heard Corder.

THE COURT: Corder.

POTENTIAL JUROR: Yes, ma'am.

THE COURT: All right. And, Mr. Jordan, if you were selected as a juror in this case, could you be fair and impartial to both sides?

POTENTIAL JUROR: He's my cousin, so...

THE COURT: All right. Then you're out of here, too. Thank you.

Anybody else?

All right. I'm gonna continue the list.

A Robert Cade. A Christy Cade. A Suzan Garland. A Matthew Hines, H-I-N-E-S. I think some of these I've already called. A Gerald Lee. A Kimberly Swygert. A Michael Spires. A Scott Whetstone. A Bobby Keisler. A Paul Shearer, S-H-E-A-R-E-R. And a Julie Shearer. A Claude P. Davis. Al Davis. Susan Davis. A Bryant Boyd. A Harvey Reynolds. A Jacket Reynolds. And a Robert Baughman, B-A-U-G-H-M-A-N.

If you know any of these people, please stand.

(Potential juror stands.)

THE COURT: Yes, ma'am. Your juror number?

POTENTIAL JUROR: 16.

THE COURT: Number 16. Is it Bommarito?

POTENTIAL JUROR: Yes, ma'am.

THE COURT: Let me ask, who do you know?

POTENTIAL JUROR: In a -- in a professional sense, Mr. Bobby Keisler, and I -- also, I think, the Cades.

THE COURT: You know the plaintiffs in this case?

POTENTIAL JUROR: Not personally, but I know them from a -- without being --

THE COURT: Okay. I got it. Let me ask you, because you're probably gonna stand on another question that I have, if you were selected as a juror in this case could you be fair and impartial to both sides?

POTENTIAL JUROR: Yes.

THE COURT: Okay. I'm gonna keep you.

Is there any member of the jury panel who is related by blood or marriage to any other member of the jury panel?

So you might want to look around. Are you kin to anybody by blood or marriage? Believe it or not, I've had somebody stand with this question before. If so, please stand.

Have you or anyone with whom you are related by blood or marriage or with whom you have a close business relationship, related to or connected with the plaintiffs or the defendants in this case? If so, please stand.

Does anyone know the parties involved in this case? If already called the case and listed their names. A Suzan Garland. A Robert Cade. Christy Cade. And a Roger Singleton.

Has any member of the jury panel been a plaintiff or a defendant in a civil lawsuit before? If so, please stand.

(Potential jurors stand.)

THE COURT: Yes, ma'am. Your juror number?

POTENTIAL JUROR: 70.

THE COURT: Ms. Gatch.

POTENTIAL JUROR: Uh-huh.

THE COURT: If you were selected as a juror in this case, could you be fair and impartial to both sides?

POTENTIAL JUROR: Yes, I can.

THE COURT: Thank you.

Does any member of the -- oh, I'm sorry.

Your juror number?

POTENTIAL JUROR: 220.

THE COURT: 220. Ms. Williams.

POTENTIAL JUROR: Yes.

THE COURT: You were involved in a civil lawsuit before?

POTENTIAL JUROR: Yes, ma'am.

THE COURT: Let me ask you, if you were selected as a juror in this case, could you be fair and impartial to both sides?

POTENTIAL JUROR: I can be fair and impartial.

THE COURT: Ma'am?

POTENTIAL JUROR: Yes, ma'am.

THE COURT: Okay. Thank you.

Does any member of the jury panel own or have you ever owned a pond, P-O-N-D? If so, please stand.

(Potential jurors stand.)

THE COURT: Your juror number?

POTENTIAL JUROR: 156 -- I'm sorry. 157.

THE COURT: 157. Is it Quenneville?

POTENTIAL JUROR: Quenneville.

THE COURT: Ms. Quenneville, if you were selected as a juror in this case, could you be fair and impartial to both sides?

POTENTIAL JUROR: Yes, ma'am.

THE COURT: Okay. Thank you.

POTENTIAL JUROR: Juror 124.

THE COURT: 124. Ms. Long, if you were selected as a juror in this case, could you be fair and impartial

to both sides?

POTENTIAL JUROR: Yes, ma'am.

THE COURT: Thank you, Ms. Long.

Yes, ma'am. Your juror number?

POTENTIAL JUROR: 220.

THE COURT: Ms. Williams. Ms. Williams, if you were selected as a juror in this case, could you be fair and impartial to both sides?

POTENTIAL JUROR: Yes, ma'am.

THE COURT: Thank you.

Yes, sir. Your juror number?

POTENTIAL JUROR: 211.

THE COURT: 211. Mr. Vandelinder?

POTENTIAL JUROR: Vandelinder, yes, ma'am.

THE COURT: Vandelinder. Mr. Vandelinder, if you were selected as a juror in this case, could you be fair and impartial to both sides?

POTENTIAL JUROR: Yes, ma'am. Without a doubt.

THE COURT: Thank you.

Yes, sir. Your juror number?

POTENTIAL JUROR: 172.

THE COURT: 172. Mr. Savage, if you were selected as a juror in this case, could you be fair and impartial to both sides?

POTENTIAL JUROR: Yes, ma'am.

THE COURT: Thank you.

Does any member of the jury panel have any knowledge relating to problems with a pond? If so, please stand.

(Potential jurors stand.)

POTENTIAL JUROR: Juror 124.

THE COURT: Juror Number 124. Knowing that you might have had problems with a pond, if you were selected as a juror in this case could you be fair and impartial to both sides?

POTENTIAL JUROR: Yes, ma'am.

THE COURT: Thank you.

Your juror number?

POTENTIAL JUROR: 157.

THE COURT: Same question. I know that all of y'all standing have had some kind of problem or knowledge of a pond. So let me ask you, if you were selected as a juror, could you be fair and impartial to both sides?

POTENTIAL JUROR: Yes, ma'am.

THE COURT: Okay.

Your juror number?

POTENTIAL JUROR: 85.

THE COURT: Ms. Hallman, if you were selected as a juror in this case, could you be fair and impartial to both sides?

POTENTIAL JUROR: Yes, ma'am.

THE COURT: And your juror number?

POTENTIAL JUROR: 220.

THE COURT: 220. Ms. Williams, again, if you were selected as a juror, could you be fair to both sides? Fair and impartial?

POTENTIAL JUROR: Yes, ma'am.

POTENTIAL JUROR: 211.

THE COURT: 211. Mr. Vandelinder.

POTENTIAL JUROR: Yes, ma'am. I can be impartial.

THE COURT: I have to ask it for the record.

They -- they make us taken down everything we say, so let me ask you. If you were selected as a juror, could you be fair and impartial --

POTENTIAL JUROR: Yes, ma'am.

THE COURT: -- to both sides?

POTENTIAL JUROR: Yes, ma'am.

THE COURT: Thank you.

Mr. Savage. I don't even need to look you up, but for the record, what is your juror number?

POTENTIAL JUROR: 172.

THE COURT: 172. Mr. Savage, if you were selected as a juror in this case, could you be fair and impartial to both the plaintiffs and the defendants in this case?

POTENTIAL JUROR: I can.

THE COURT: Thank you.

Anybody else?

Does any member of the jury panel know or has any member of the jury panel ever been involved in a case when you or another party was represented by or opposed by Mr. Moore? That would be Jake Moore. If so, please stand.

(Potential juror stands.)

POTENTIAL JUROR: His firm represented me.

THE COURT: Right. And your number?

POTENTIAL JUROR: 179.

THE COURT: I -- I think we established that when they first introduced themselves to you, but out of an abundance of caution, let me ask you again if you were selected as a juror in this case could you be fair and impartial to the plaintiffs and the defendants in this case?

POTENTIAL JUROR: Yes.

THE COURT: Thank you.

Does any member of the jury panel know or has any member of the jury panel ever been involved in a case when you or another party was represented by or opposed by Freeman Belser? If so, please stand.

And I think it's only fair I ask the same question of you, Mr. Dougall.

MR. DOUGALL: Yes, ma'am.

THE COURT: Does any member of the jury panel know or has any member of the jury panel ever been involved in a case when you or another party was represented by or opposed by Tom Dougall? If so, please stand.

Has any member of the jury panel formed or expressed an opinion about any issue or matter involved in this case? If so, please stand.

Is any member of the jury panel aware of any bias or prejudice toward either the plaintiffs or the defendants in this case? If so, please stand.

Does any member of the jury panel know of any reason whatsoever why he or she should not serve as a juror in this case, with particular emphasis being placed on your ability to be fair and impartial to both the plaintiffs and the defendants? If so, please stand.

Does the plaintiff have any additional questions it would like to have asked?

MR. BELSER: No, Your Honor.

THE COURT: Does the defense or cross-claim --

MR. MOORE: No, ma'am.

MR. DOUGALL: No, ma'am.

THE COURT: Okay.

All right. There is -- let me see the lawyers for one second.

(Proceedings held at the bench; not reported.)

THE COURT: Can I have Juror Number 16 come up and speak with me?

(Proceedings held at the bench; not reported.)

THE COURT: Okay. Mona, it's been a while since I selected a civil jury. We're gonna --

THE CLERK: How many alternates do you want?

THE COURT: I'm -- I've been going with three alternates and, believe it or not, for the past eight weeks I've used just about every one of them.

Do y'all agree to three alternates?

MR. DOUGALL: Sure, Your Honor.

MR. BELSER: Yes, Your Honor.

THE COURT: All right. Let me see the lawyers just one second so we can figure out how I'm gonna do this.

(Proceedings held at the bench; not reported.)

THE COURT: All right, ladies and gentlemen. I'm gonna give you a quick break. The way we select a jury in a civil case is a little different. The clerk will generate a random list and then it's distributed to the lawyers and they pick it on paper. It's not that you get to walk up to the podium, turn around, let them look at you. We're not doing that. This is a civil case. In criminal cases they make you do that, but it's -- it's all random and it's on a piece of paper.

So while they're doing their work, I'm gonna let

y'all take a break instead of sitting in here. You can go to the restroom. There is a snack machine down on the first floor. I'm gonna give y'all like a twenty-minute break and then we're gonna come back and we'll know -- they would have selected who's gonna be on the jury.

Now with that said, as we'll do that rather quickly, I don't want anybody in this room getting upset if you don't get selected. Believe it or not, I've had people get really upset. It's random and these lawyers have a system and a method on how they do all this, but anyway I'm gonna give you a twenty-minute break. Just make sure you're back into the courtroom in twenty minutes. Our clock is gone, so that will be ten after, okay?

Thank you.

(Recess taken.)

(Back on the record.)

THE COURT: All right. Are we ready?

MR. BELSER: Yes, ma'am.

MR. DOUGALL: Yes, ma'am.

THE COURT: Okay. Let's pick a jury.

THE CLERK: Plaintiff strikes first. Please use the numbers to the far left and only look -- use numbers 1 through 20 for the jury, please.

MR. BELSER: Plaintiff strikes Juror Number 3.

THE CLERK: Defense?
MR. MOORE: 13.
THE CLERK: Plaintiff?
MR. BELSER: 20.
THE CLERK: Defense?
MR. MOORE: 12.
THE CLERK: Plaintiff?
MR. BELSER: 6.
THE CLERK: Defense?
MR. MOORE: 5.
THE CLERK: Plaintiff?
MR. BELSER: 15.
THE CLERK: And defense?
MR. MOORE: 2.
THE CLERK: Now using numbers 21, 22, 23 for the first alternate, plaintiff strikes one, defense strikes one.
Plaintiff?
MR. BELSER: 23.
THE CLERK: And defense?
MR. MOORE: 22.
THE CLERK: Using 24, 25 and 26 for second alternate, plaintiff strikes first.
MR. BELSER: 24.
THE CLERK: And defense?

MR. MOORE: 26.

THE CLERK: I'm gonna read your strikes back. If you'll please confirm.

MR. MOORE: Mona, we have one more.

THE CLERK: Oh, I'm sorry. That's correct.

27, 28, 29 for a third alternate.

MR. BELSER: 28.

THE CLERK: And defense?

MR. MOORE: 29.

THE COURT: Okay. Now let's confirm the strikes.

Plaintiff, you struck Number 3, 20, 6, and 15; is that correct?

MR. BELSER: Yes, ma'am.

THE CLERK: Defense struck Number 13, 12, 5, and 2; is that correct?

MR. MOORE: Yes, ma'am.

THE CLERK: For first alternate, plaintiff struck Number 23.

MR. BELSER: Yes, ma'am.

THE CLERK: And defense struck Number 22.

MR. MOORE: Yes, ma'am.

THE CLERK: For second alternate, plaintiff struck Number 24.

MR. BELSER: Yes, ma'am.

THE CLERK: And, defense, you struck Number 23.

MR. MOORE: Yes, ma'am.

THE CLERK: For third alternate, plaintiff struck Number 28.

MR. BELSER: Yes, ma'am.

THE CLERK: Defense struck Number 29.

MR. MOORE: Yes, ma'am.

THE CLERK: When I call your name, if you'll bring your belongings, come up here, and the bailiff will seat you in the jury box, please.

Allison Johns.

(Whereupon, Allison Johns, a white female, was called forward.)

Ann Miller.

(Whereupon, Ann Miller, a white female, was called forward.

Elizabeth Lemmond.

(Whereupon, Elizabeth Lemmond, a white female, was called forward.)

Chris Seals.

(Whereupon, Chris Seals, a white male, was called forward.)

Tosha Roberts.

(Whereupon, Tosha Roberts, a black female, was called forward.)

Shadavia Lanham.

(Whereupon, Shadavia Lanham, a black female, was called forward.)

Theresa Key.

(Whereupon, Theresa Key, a white female, was called forward.)

Danny Cantrell.

(Whereupon, Danny Cantrell, a white male, was called forward.)

Kelehear Jones.

(Whereupon, Kelehear Jones, a white female, was called forward.)

Michael Butler.

(Whereupon, Michael Butler, a white male, was called forward.)

Trenton Walker.

(Whereupon, Trenton Walker, a white male, was called forward.)

Jessica Uldrick.

(Whereupon, Jessica Uldrick, a white female was called forward.)

First alternate, Lori Ford.

(Whereupon, Lori Ford, a white female, was called forward.)

Second alternate, Christy Waters.

(Whereupon, Christy Waters, a white female, was

called forward.)

Third alternate, Patricia Giles.

(Whereupon, Patricia Giles, a white female, was called forward.)

THE COURT: All right. Before I let the jury panel go, let me see the lawyers right quick.

(Proceedings held at the bench; not reported.)

THE COURT: Mr. Cantrell, do you want to come on up and -- you want to come up, too?

JUROR: Yes, ma'am. I'm sorry.

THE COURT: I'll get to you in just a second. Make your way, Ms. Ray {sic}.

(Proceedings held at the bench; not reported.)

THE COURT: All right. Let me address everybody else.

First off, please do not think 1 through 29 was your number because it was not. It's just 1 through 29 that was randomly selected. Your juror numbers are off to the side, so it's not like we picked jurors 1 through 29, so I don't want anybody to think that because we did not.

Now the rest of you, I'm gonna excuse you. We're only gonna try one case this week. And I want to thank you for coming again. I hope you don't get upset that you weren't selected. In consolation, we do have a

check for you. I wouldn't get real excited about it. I'm not real sure that you can buy a gallon of gas with it, but maybe so.

But thank you very much for coming and I hope that I see y'all again later on in the year, okay? You can be excused.

(Whereupon, the jury panel was excused from the courtroom.)

THE COURT: All right, ladies and gentlemen. Y'all are now the jury. Congratulations. Happy to have you.

So let me try to tell you what's gonna happen. We are not going to start this case today. I have a jury out from last week that I am trying to finish that case, so hopefully we will be able to start tomorrow.

But let me give you a little -- some ground rules. I'm going to have the bailiff take you back to your jury room so you will know where you're going to report tomorrow. You will also be given a juror badge. Wear it proudly, okay?

I'm gonna tell you if the lawyers see you in the hall or on the elevator or if you're out to lunch, they're gonna turn around and go the other way, and that's by my order. They're not allowed to speak with you.

You are not allowed to talk about this case. You

are not to go home and call your best friend or your neighbor or your -- anybody else and say hey, you're just not gonna believe this, I got picked for a jury. Don't do it. You are not allowed to talk about this case even amongst yourselves until I tell you to do so.

Try -- don't get on the computer, look up this case, look up these lawyers names or anything else that you've heard about this case. Believe it or not, we end up finding out about it. And it still amazes me, but Lexington is a small town to have so many people. It's amazing. So, please, you're not allowed to do research. You're not allowed to text, call, use social media, any of that, concerning this case.

Also, when you're in the courtroom there's no cellphone. As a matter of fact, the bailiff will take up your cell phones when you report in. On breaks you're allowed to use them; however, again, I'm gonna tell you, use them, but don't use them for anything related to this case to look up anything. Even if you hear a word that you don't understand and you want to look it up, don't do it. Don't do it.

I will try to keep you informed of our schedule. Right now I think this case will go through till Friday. I will tell you I'm gonna need you to call in by -- is it 6:00, Mona, that we'll have it --

THE CLERK: Yes, ma'am.

THE COURT: -- on the recorder? There ought to be a phone number on your piece of paper where you can call to check in. I'm gonna have them put on the recorder what time you need to report tomorrow. I'm gonna have to wait and see where I am with this other case, so it's not gonna be until later this afternoon before they put it on there. Please call and check.

I will also tell you that if one of you is late, then all of you are late because we can't start. I have to have everybody, so please be kind of conscientious of -- of everybody else's time.

Ms. Miller, will you do me the honor or being my forelady?

FOREPERSON: I'll try.

THE COURT: I think you'll do just fine.

All right. With that said, I'm going to let the bailiff take you to your jury room so you'll at least know where to report tomorrow. I just don't know what time yet, okay?

Thank you. I hope you have a good evening and remember -- and you're gonna hear this from me ten times a day -- do not talk about this case whatsoever, okay?

All right. Thank y'all.

(Whereupon, the jury was excused for day at

11:08 AM.)

MR. MOORE: Judge, you'll let us know what time to be here tomorrow?

THE COURT: I will. Just one second before y'all leave.

Just for the record, any objections to the jury?

MR. BELSER: No, ma'am. Not from the plaintiff.

MR. MOORE: None.

MR. DOUGALL: None.

THE COURT: Okay.

All right. I will -- Abigail, do you have everybody's cell phone?

LAW CLERK: I was gonna ask for them to come up here so they can give me something.

THE COURT: All right.

All right. I will -- we'll get in touch with y'all and I'll see y'all sometime tomorrow. Worse scenario, the worse scenario, is me closing and charging tomorrow morning. If that's the case, then we'll start as soon as I finish, okay?

MR. BELSER: Thank you, Judge.

THE COURT: But we'll leave you a message.

MR. MOORE: Thank you.

(Whereupon, the proceedings were concluded for March 28, 2022, at 11:10 AM.)

(The following proceedings were held March 29, 2022, beginning at 2:00 PM.)

THE COURT: All right. We're on the record?

THE COURT REPORTER: Yes.

THE COURT: All right. This is in the case of Suzan Garland versus Robert and Christy Cade and Robert and Christy Cade versus Roger Singleton. Case Number 2019-CP-32-01442.

Note from the jury dated today. Judge McCaslin, I regret to inform you I cannot be impartial during this trial.

I know exactly who this is. Y'all are gonna know in a minute.

Yesterday I thought this case had to do with South Congaree. That was that young juror. While I was wrong, I continued to feel like there was some sort of connection to this case. In 2020, my father-in-law ran for reelection as mayor of South Congaree. Last night I went to my father-in-law's former Facebook campaign page and clicked the comments and, sure enough, there was Robert Cade. Mr. Cade's stark and persistent opposition to my father-in-law's campaign was so intense that I do not believe I could give him a clean slate mentally for this trial. I wish I could have confirmed this sooner, but I did not have my phone in court

yesterday. While I still have never spoken to or seen Mr. Cade until yesterday, his online presence was one left to be desired. I apologize for this inconvenience.

MR. BELSER: I think it's that Juror Number -- Number 105, Kelehear Jones.

THE COURT: She's Juror Number 105. Let me get my -- where's my jury list? Number 105. So that will make Lori Ford, Alternate 1, to be Juror Number 12. That's pretty straightforward. I've got to let her go.

MR. MOORE: If we could just make an inquiry and make sure she hasn't contaminated the jury pool.

THE COURT: Can you have that juror brought up?

BAILIFF: Yes, ma'am.

THE COURT: That's Juror Number 105, Ms. Jones.

MR. BELSER: Your Honor, in terms of the timing, the last thing that I want to do is impose upon the Court or a juror or the court staff or anybody, but, you know, from our perspective of the case -- I mean, like Mr. Heath, for example, I would anticipate being a 30-minute direct examination. If Mr. -- if Mr. Moore has a full day worth of cross-examination after a 30-minute direct evidence, and I can't control that, then -- I mean, if we -- if we wind up -- my only -- my concern here is that our client, who's not in the courtroom, that this is our third time --

THE COURT: I know. And let me tell you what. I talked to Judge McLeod. Judge McLeod said if this case doesn't go this week, it's going in front of him on the 25th of April.

MR. MOORE: I would recommend that we get started and if we don't finish it, we can always mis-try it and get it to Judge McLeod on the 25th and start over again.

THE COURT: Well, I'm not gonna -- I'm not gonna mis-try something, but what I could do is pick it back up, if we don't finish, after I finish -- where am I next week? The week after that I have civil in -- in Edgefield. I could probably finish it after the murder trial of next week if it -- if I can finish it by Thursday morning, pick up next week Thursday and Friday and try to finish it up.

MR. BELSER: I'm scheduled to go on -- I may need a divorce lawyer if that happens.

THE COURT: You and me both. My husband's wondering where I am.

MR. BELSER: I mean, it's -- there is nothing more that I would want than to -- can we come back -- can we talk in chambers?

THE COURT: Let's do it.

Well, wait a minute. I've got that juror coming. Let me talk to this juror right quick.

(Whereupon, Juror Number 105 enters the courtroom.)

THE COURT: Let me get the lawyers up here right quick.

Good afternoon.

All right. Ms. Jones. I got your note. Thank you for typing it.

JUROR NUMBER 105: Thank you. I'm a faster typer, so.

THE COURT: Let me ask you, I understand your situation and I certainly don't mind letting you go, and I can replace you with an alternate. Have you mentioned any of this to anybody on the jury?

JUROR NUMBER 105: No, ma'am.

THE COURT: Okay. That's all I wanted to know.

MR. MOORE: Thank you.

THE COURT: With that, and the lawyers's permission, I'm going to excuse you. The one lawyer wants you to stay really bad.

JUROR NUMBER 105: I figured one would.

THE COURT: But --

JUROR NUMBER 105: I was like -- you know, I was surprised yesterday when I finally figured it out. I was like the last name...

THE COURT: Well, I could tell it bothered you yesterday. I knew you think you knew something.

JUROR NUMBER 105: Well, I couldn't figure it out and then I got home and I was like...

MR. DOUGALL: Well, thanks for your honesty.

THE COURT: Yeah, we appreciate you being honest.

MR. MOORE: Who's your father-in-law?

JUROR NUMBER 105: Danny Jones.

MR. MOORE: I thought I knew everybody in South Congaree.

JUROR NUMBER 105: Well, Pat -- Anna Patchell (ph.).

MR. MOORE: Yeah.

JUROR NUMBER 105: So that's Danny's sister and I think you represented her also for South Congaree.

MR. MOORE: I did. Well, I represented South Congaree --

JUROR NUMBER 105: But I didn't know that yesterday either.

MR. MOORE: Okay.

THE COURT: Well, I appreciate you being honest with the Court. That's the thing to do.

JUROR NUMBER 105: Yes, ma'am. Sorry I didn't know it yesterday.

THE COURT: We will throw you back in the jury pool --

JUROR NUMBER 105: Well, I wanted to -- I really wanted -- I've never gotten to serve on jury duty. I

thought this is my chance.

THE COURT: -- and maybe I will see you before the end of the year.

JUROR NUMBER 105: Maybe so.

THE COURT: Thank you so much, Ms. Jones. You can go.

JUROR NUMBER 105: Y'all have a fun day.

THE COURT: I'm gonna make this Court's Exhibit Number 1.

(Court's Exhibit Number 1 was marked for identification.)

(Proceedings held at the bench; not reported.)

THE COURT: Okay. Are there any pre-trial matters I need to take up?

MR. BELSER: No, ma'am.

MR. MOORE: No, ma'am. We do want --

MR. BELSER: We have do have -- we've stipulated to the admissibility of the exhibits and so the first order of business will be to go ahead and move those into evidence.

THE COURT: And you've got them all marked?

Let me get my robe and we'll go on the record and --

(Recess taken at 2:09 PM.)

(Back on the record at 2:10 PM.)

(Plaintiff's Exhibit Numbers 1 through 12 were marked and stipulated into evidence.)

(Defendant's Exhibit Numbers 1 through 26 were marked and stipulated into evidence.)

THE COURT: All right. Let me ask, do I have all the jurors for 2:00?

BAILIFF: Yes.

THE COURT: All right. It's 2:10. And y'all are telling me that you have all of the exhibits marked?

MR. MOORE: Yes, ma'am.

THE COURT: Y'all are the bomb. You don't have to put bomb on the record. Y'all are excellent.

Okay. I'm gonna bring the jury in and do a general charge.

Is everybody gonna be ready for openings?

Mr. Belser?

MR. BELSER: Yes, ma'am, Your Honor.

THE COURT: Mr. Moore?

MR. MOORE: Yes, ma'am.

THE COURT: Okay. Are y'all splitting, sharing or are we doing three openings?

MR. MOORE: Three openings.

(Whereupon, the jury enters the courtroom at 2:21 PM.)

THE COURT: All right. Madam Forelady, ladies

and gentlemen of the jury, good afternoon. Anybody have any problems with this case? Nobody's contacted you? You haven't read anything? Researched anything? If so, raise your hand.

Just for housekeeping matters, a Ms. Ford --

Ms. Ford, you are now part of the jury, okay?

All right. We're beginning the case of Suzan Garland versus Robert and Christy Cade and Robert and Christy Cade versus Roger Singleton.

Now what I'm gonna say to you now is meant to be as an introduction to the trial of this case. These remarks are not the charge of the law in the case. I will instruct you on the law at the end of the trial before you retire to decide the case. Before the trial begins I want to explain the procedure that we will follow so that you can better understand what is happening.

You have been selected as fair and impartial jurors whose purpose is to find and determine the facts. You are the sole judge of the facts. If at any time I make any comment regarding the facts, you must disregard it. You are to determine the facts from the testimony you hear and other evidence that is presented. You should not be influenced by any opinions or statements that you may have heard outside this courtroom. It is

especially important that you perform your duty of determining the facts diligently and consciously because ordinarily there is no way to correct an erroneous determination of the facts by a jury. When you comply with your oath to impartially determine the facts of this case, you will have fulfilled your duty as jurors and no one will have the right to criticize your verdict.

On the other hand, and with equal emphasis, the same law that makes you the judges of the facts makes me the judge of the law. The law as given by the Court is the only law you may consider. You must accept and follow it even though you may disagree with it. I cannot tell you what the facts are and you cannot disagree with me about what the law is or should be. Your job is to take the law as I give it to you and apply it to the facts as you find them from the testimony of the witnesses and other evidence that is presented. After doing that, you will render your verdict, a true and just verdict, under the solemn oath that you just took as jurors.

I'm gonna get the clerk to swear you in when I finish this.

Until I advise you to begin your deliberations, you must not discuss this case with anyone, including your fellow jurors, friends, family members or anyone

involved in the case. This includes face-to-face, telephone, e-mail, text, blogs or any other method of communication. You may not use a computer, a cell phone or other electronic device with communication capabilities at any time while in the courtroom or during your deliberations. You may use these devices on your break, however, you may not at any time use these devices to get or send information about the case. This includes information about a party, a witness, an attorney, a court officer, news accounts about the case or any research.

During the trial, do not read, listen to or watch any news reports about this case. You must not consider anything that you may have read or heard about the case outside of the courtroom whether before or during the trial. After the case is submitted to you, you must discuss it only in the jury room with your fellow jurors.

The attorneys and the parties in this case have been advised that they are not to talk to you at all. I think I told y'all that yesterday.

I see everybody's got a juror badge except -- there you go, I see it -- so please don't think that these lawyers are rude because they're not. I know all of them. They're very nice and would love to talk to you, but they just can't talk to you during a trial.

It is important that you keep an open mind and not decide any issue in this case until you've heard all of the evidence that the parties present, they've made their openings, they've made their closings and I have instructed you on the law.

Now in just a moment the attorney for the plaintiff will make what is called an opening statement. The attorney will explain to you the issues in the case or at least what he thinks the issues are in the case. The attorney for the defendants, and we have two attorneys on this side that are gonna make openings, they will also make an opening statement and tell you during their opening statements -- and I just want you to understand opening statements are not evidence. Is it only their contention as to what the issues are. The evidence in this case will be presented to you by the testimony of sworn witnesses from the witness stand and/or exhibits that may be introduced into evidence.

Also, from time to time you're gonna hear these lawyers say they have a question of law or they may object or can we approach the bench or sometimes I'm gonna tell you I'm gonna have to send you to your jury room and let me discuss a matter with the lawyers. The reason for this is because you are the judges of the facts in the case and sometimes when I'm discussing

matters of law, it may be necessary for me to make some comment as to the facts in connection with the ruling. I'm not supposed to tell you what the facts are, so I will excuse you from the courtroom while these discussions take place so that you will not be influenced by anything I might say or do.

In determining what the true facts are in the case, you must decide whether or not the testimony of the witnesses is believable. It will be my responsibility to rule as a matter of law as to whether or not certain testimony is admissible at all or not, but once the testimony is admitted whether or not you believe it is solely up to you to determine.

In deciding whether to believe a witness, you have the right to consider if the witness has an interest in the result of the trial, whether the witness is prejudiced toward either the plaintiff or the defendant, the opportunity for the witness to have seen the matters and things about which they may testify, and the way the witness acts on the witness stand.

You have the right to consider anything that is in the record that will help you evaluate the testimony of the witnesses. That means it is your duty to pay close attention to the witnesses, to observe them, to listen and to pay close attention to the attorneys and to the

Court.

Don't let your thoughts wander, but pay attention to the testimony so that at the end of the trial you will be able to determine what the facts are, to apply the law to those facts and render a true and just verdict.

It is your added duty, Madam Forelady, to preside in the jury room and to be the jury's spokesperson here in court.

All right. In order to preserve everybody's rights, let me ask the plaintiff any objection to my general statement to the jury?

MR. BELSER: No objection, Your Honor.

THE COURT: Anything from the defendants? Mr. Moore?

MR. MOORE: No, ma'am.

THE COURT: Mr. Dougall?

MR. DOUGALL: No, ma'am, Your Honor.

THE COURT: Okay. With that, we are going to begin this case and let me call on you, Mr. Belser.

MR. DOUGALL: Excuse me, Your Honor. Can we swear the jury?

THE COURT: Oh, sorry. Yes. Let me swear that jury.

THE CLERK: I need you to raise your right hand,

please.

(Whereupon, the jury was duly sworn by the Clerk of Court.)

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

THE COURT: Yes, sir.

MR. BELSER: Good afternoon, everybody.

It's -- my name's Freeman Belser, and I'll tell you this, it's good to be back in court through the pandemic. This is my first live trial in two years and this is what you train for, so it's good to be back here. I doubt that y'all have the same level of excitement to be here today, but for my client, Suzy Garland, I think it's the combination of excitement and also relief.

We're here seeking justice for something that started about four and a half years ago. And a lot has happened in the world over the last four and a half years, but for Suzy Garland not much has changed as she has patiently waited to be here in front of you to have her day in court.

You know, as I get a little bit older I realize that the older you get, the more valuable your years get, the more of them you have the more precious they are, and that's, of course, true for Suzy, and she's been spending many valuable years I think living this

lawsuit and we are delighted to be here, and thank you very much.

So what is the opening statement? So as the judge -- as Judge McCaslin explained to you, this is an opportunity for -- really for further introductions. When we got here yesterday, y'all were all introduced to us and we introduced ourselves to you, but it was very quickly. You may not remember much about it.

So I've already introduced myself briefly, but since you're gonna be listening to me for the next three or four days, let me just tell you a little bit more just so you know who I am.

I grew up in Columbia and I went away for college where I met my wife and came back. I've been practicing law and have been married for eighteen years and I've got a busy law practice. And when I'm not practicing law, I'm working with my wife to try to chase or sons around the ball fields, lacrosse, baseball, et cetera.

I practice law at a firm called Belser and Belser, which is a family firm. It's located in Columbia in the Vista not too far from here.

Now I represent Suzy Garland. She is 82 years old and she lives on a 13-acre tract of land off of Davis Drive, and if you'd just give me one second, this is an aerial photograph that shows where her property is. And

just by reference, if we zoom out, the airport is up here, South Congaree is a little bit below that, Pine Ridge is over here, and Fish Hatchery Drive goes south like that. Davis Drive is right here. You can see it. And this is Suzy's property. This one that has 105 on it.

Suzy and her husband bought the property in 1985 and Suzy and her husband lived there until 2011 when he passed away. She has remained there and she lives there with her friend and companion, who will be here at the trial as well, but Suzy is -- if you remember some of the questioning in the voir dire, which is where the judge was asking about have you ever had a pond damaged, that's what this case is about. That may have been kind of a -- well, why she's she asking that? This is why.

Suzy's property has a two-acre pond on it right here. Can everybody see that? Her house is right here, the driveway comes in like that, and there's a two-acre pond. Now this pond from -- kind of from 1985 going forward was a great source of enjoyment, was a great source of enjoyment for Suzy and her husband and her family and her friends and her neighbors, and really when you hear Suzy talk, it will probably be tomorrow, she'll explain to you that that's the reason why they brought this property is because it had this beautiful

pond on it.

Now this case is about what happened to this pond beginning in 2018 when Suzy's new neighbors, the Cades, who are sitting right over there, took all of the trees, stumps and vegetation off of this 36-, 39-acre tract, which is uphill, without taking precautions to prevent Suzy's pond from being silted in.

This is a Lexington county map from 2017. The green right here, there'll be some discussion about the size of these trees and how heavily wooded this property was, and you'll hear about the land clearing that took place on that property.

Now, but it's not only about -- this case is not only about what the Cades did in clearing this property without taking precautions. It's about how they confronted -- they met this problem of their creation with defiance. They were issued a verbal stop work order by the county. Several months later they were given a written stop work order that was removed based on promises that they were gonna do what's called "stabilize" their property, which is grassing, et cetera.

They received a cease and desist letter from me and then significantly they hired their own -- they hired their own engineer who came out, and he'll testify. He'll testify that he was asked to tell them if they had

-- if they had caused a problem and that the answer was yes.

Now this defiance has also turned into aggression towards Suzy and you'll hear about what it's been like to live off of Davis Drive. It's also turned into blame against their friend, Roger Singleton, who is sitting right there next to them.

Now let me talk just a little bit about the evidence. As the judge says, what the lawyers say is not evidence. The lawyer's job is to facilitate the evidence, it's not to give it. The way I kind of -- the way I like to think about it is I'm the point guard, I'm not the shooting guard. I pass the ball and the shooting guard is the witness who gets to shoot. I don't get to shoot. Lawyers don't -- they just don't get to shoot. They're here to facilitate the evidence.

Now there will be two types -- two kind of main categories of evidence that you'll see this week. Number one is you're gonna hear witness testimony. Now witness testimony is when -- of course, when a witness is sworn into the witness box up there and has a chance to explain, you know, what they saw, who they are, what they observed and how they know about the case. And then there will be documents, and I'll go through some of the documents that you're gonna see and there's a

stack of documents right here that are already into evidence, but when you go back and you deliberate in a few days, you'll have these documents with you so you don't have to worry about taking a mental image of everything that you see because they'll go back there with you when you go back to the jury room.

Now the plaintiff -- Ms. Garland and I, the facilitator, are gonna call six witnesses. The first is a gentleman named Mac Watson. Mac is a longtime friend of Suzy's and has also been the pond maintenance contractor for her pond. You'll hear about how he -- his familiarity with the pond, what he's done over the years to maintain it, and, importantly -- this is the picture from 2017. Let me try to flip this without collapsing it here. What happened in -- this is from 2019. What happened in 2018 when this property was cleared and all the stumps and vegetation were removed, Suzy's pond was muddied.

Now you'll hear from two government employees who were at the time representatives of the public works department. One is a gentleman named Brandon Corder. He'll testify about the complaint that he received about Suzy's muddy pond, about what he observed, about the written stop work order that was -- that was initiated.

And then you'll hear from Michael Spires, who at

the time was the -- the director of the public works, and he will explain to you what the Lexington county stormwater ordinance is. It's the law in Lexington county that governs what you can do with your land and he'll also explain how the stop work order was lifted based on the promises that the Cades made to stabilize their property.

Now you'll hear from two engineers. The first is Gerald Lee. You may recognize his name. He was the gentleman that I mentioned to you before. We discovered that he existed in the deposition of Ms. Cade and he was hired after the complaints were made. He came and investigated the property, took a bunch of photographs and issued a report, which will be in evidence, saying yes, you have created a problem.

Then you'll hear from Bill Mathews, who is an engineer. And Mr. Lee is from the Irmo area in Columbia. You'll hear from Bill Mathews from Greenville, who was hired by Suzy to -- to quantify and to determine the amount of the sediment deposits in Suzy's pond and then what the source was.

You'll hear from one sediment removal contractor, a gentleman named Heath Hanna, about what goes into actually moving -- removing dirt that's underwater and what all goes into that, and he'll walk through you the

process of that and then the substantial cost in order to do that.

And lastly you'll hear from Suzy who'll testify about her -- her many years on the property and what she's seeking out of this process.

Now documents. I'm almost finished. You'll see the inspection reports from Mr. Corder when he went out there to inspect what was going on. You'll see the ordinance from Lexington county, the stormwater ordinance. Mr. Michael Spires will walk through it with you and you'll be able to kind of understand what the law is. You'll see the reports from the two engineers. They're both thick documents that will be in there. You'll see Mr. Hanna's estimate. And you'll see photos. You'll see lots of photos and videos. And when this is all said and done, you're gonna remember the expression a picture's worth a thousand words and you're gonna wonder why I spoke so much when we had all these pictures.

Now, lastly, I just want to show you one of those -- one of those videos. Let me make sure -- can everybody see? This is a photograph from January 4th of 2019. Let me see if I can -- well, can everybody see that okay?

Okay. This shows the mud coming into Suzy's pond

right at the inlet right here, and you'll see a bunch of photographs like this.

And this is a video of what it looked like in realtime.

(Video played.)

Thank you very much.

I want to thank you for listening to me. We're gonna try to get the evidence and call the witnesses up one after another so that we can be efficient and good stewards of your time. Again, as excited I am to be here, it's a beautiful day outside and I know we'd rather be doing something else.

Thank you very much and I look forward to being with you this week.

MR. MOORE: May it please, Your Honor?

THE COURT: Absolutely, Mr. Moore.

MR. MOORE: Ladies and gentlemen -- it's upside down for me, isn't it? Robert and Christy Cade are good people. They're working people. They worked hard all their lives, Robert basically makes his living with an 18-wheeler truck, and they've hired me to defend them against these charges.

Now I'm not quite like Mr. Belser and neither are my clients. Apparently he is enjoying this. He says that he is so happy to be here. Well, there's nothing

really that's been happy about this lawsuit. Allegations have been made against my clients, which are not true. Not only are they not true, if the laws of physics apply they can't be true, and that's one of the reasons why this map is upside down.

My clients are here because they've been sued for money. Mr. Belser tells you that he is seeking justice. What he is seeking is money.

The plaintiff owns thirteen acres of land in the Gaston area and on it she has a 60-year-old home that is about 1200 square feet. Mr. Belser's version of justice is that he wants you to order my clients to pay his client approximately $406,000 for damages to a two-acre pond. He is going to try to convince you that it will be take $406,000 to clean out a two-acre fish pond, and that is his version of what he says justice is.

Now my clients are kind of like you. They didn't ask to be here. They're here because they were summoned to be here with a lawsuit just like each of you were summoned to be here with a jury summons. They've had to hire me and we've done everything we know how to present to you the truth about what's going on here.

The truth is the entire lawsuit should never have been, and it's been built by the lawyer from the start

because he wants money, and the lawsuit as a whole is somewhat of a sham and the evidence, my friends, will show you that.

In 2018, Robert and Christy Cade found the American dream. They found about 35, 40 acres of land out in the country where they could build their final home and they could have a place for Robert to have his trucks and a shop. There was a pond on their property, but the dam was about to bust and they knew if they bought the land they were gonna have to spend six figures to fix their pond dam, but they would have a chance to do some farming, they would have a nice pond, they could build their home, and they could have their shop. The American dream. A lot of country people, to them 40 acres of land in the county with some cows, ducks and a pond, that's heaven.

But what basically happened here is that because of our friend, Ms. Garland, their American dream turned into the American nightmare, and we've been in litigation paying lawyers for the last four years, and that's a shame.

My client's property is agricultural property. All of you have seen farms where the property is tilled up. You don't see silt fences next to a farm because agricultural property is exempt from the zoning

ordinances of Lexington County. It is true that Ms. Garland, when my client was basically logging the property, getting it ready to turn into agricultural use, she called the County and got the County to come out and issue what's called a stop work order. Quit cutting those trees. But within a day Mr. Cade had gone to the County, had spoken to the County, told them the land was zoned agricultural, and the day after she got the stop work order placed it was lifted because my clients were doing nothing illegal. They were doing nothing wrong.

Now our clients wanted to build a home, raise some cattle, and in the lawsuit Ms. Garland has accused my clients of actionable wrongdoing. She says all kinds of things about actionable wrongdoing. That we're wrongdoers. That we're guilty of wronging her. My client's really aren't guilty of doing anything wrong except trying to build a house and put some cattle out on the land, and they've done nothing to hurt Suzy Garland.

Ms. Garland lives adjacent to a piece of property called Davis Drive and you'll see why I've got this upside down. The reason this is upside down is because the land all drains this way. Everything drains this way, everything drains this way, everything drains this

way. My client's pond is here, their land is here. You will notice that my client's property does not front on Davis Drive at all. The property here and here is owned by a gentleman by the name of Paul Shearer.

Now Mr. Shearer's a very fine individual. He has nothing against either of these parties, but he's not gonna be here to testify except he will be here by videotape. I am pleased to report to you that he had to go to Orlando, Florida, this week and thanks to the help of this fine judge we were able to make arrangements to have his videotaped deposition taken where he basically testified to what he knows.

Now Mr. Shearer has a house that's located right about here and he will tell you that my clients' property drains this way towards his property, but right here between Mr. Shearer's property and the Cades' property, there's about a 60-foot vegetated buffer. It's got trees, it's got ground cover, and that buffer was left there by the Cades. They didn't have to, but they left that buffer so that it would slow any water that was running.

Now Mr. Shearer has lived out there for years and years. He will tell you that right here is an area of what's called wetlands. Now that wetlands always has water on it. It's called wetlands because it's wet.

It's supposed to be. Nobody bothered any of these wetlands.

But what Mr. Shearer will also tell you is this. There's a ditch that runs right here down Davis Drive and that ditch takes all the water that comes from his property and all the water that comes from my client's property that ditch hauls the water in this direction. None of the water -- none of the water -- that comes to the wetlands has any way to get to this pond.

Well, that still leaves this area up here. This is where Mr. Shearer's house is and Mr. Shearer will tell you that this Davis Drive is a dirt road. That's important because out in the Gaston area it's sandy soil. Sandy soil's loose and when it rains, it will move. So this whole road here is sandy and right about here there's a pipe and that pipe runs under Davis Drive onto -- it runs under Davis Drive onto plaintiff's property, and it's done it for years and years and years. More like thirty to fifty years water has been running into this pipe, across and into this pond.

Now this whole area here, this is wetlands. So for water to get from here with sand in it, it's got to come through the Cades' property, it's got to come -- this portion has got to come across Mr. Shearer's property, it's got to all run into this pipe, it's got to come

under Davis Drive, it's got to go through wetlands and then it's got to go into this pond roughly, oh, somewhere between a tenth and a quarter mile.

Now there's also something very interesting about this pipe. This pipe is where Ms. Garland says hey, all the silt that is in my pond for fifty years, all the silt in my pond was caused by you cutting down some trees on your property, and that is what she wants you to believe.

The problem then arises with what Mr. Shearer is going to tell you. He's gonna say folks, I know about that pipe because when the County comes out and scrapes Davis Drive, sand runs into that pipe, and it's been doing it and doing it and doing it.

And it will surprise you to learn that Lexington County does no maintenance on that pipe and it's clogged up. It's been clogged up. Water does not freely run through this pipe. Through this pipe. This is the only place according to Mr. Shearer that any water from the Cades' property can get into Ms. Garland's property, but we know that pipe is clogged up.

But Mr. Shearer is gonna tell you more than that. He says where that pipe runs into Ms. Garland's property, you can't find the other end because on Ms. Garland's property they've covered up the outlet.

It is underground. The pipe when it runs onto Suzy Garland's property runs underground and it is stopped up. The only way water can get from the pipe is to seep through the pipe, and it will. It doesn't free-flow, it will seep.

When Mr. Shearer was asked hey, how bad stopped up is it, the response was if that were my coronary arteries, I'd be in the hospital getting a bypass. The pipe is stopped up. Silt cannot pass through there. Water can seep through there.

There's another thing that's incredibly important about Davis Drive right here. You say to me, well, maybe the water runs from the Cades through the Shearers onto Davis Drive across the wetlands and into the pond. Maybe that's what's happening. But that also is physically impossible because right here along Davis Drive on Ms. Garland's side of the property, there's an 18-inch berm that acts like a dam. Water cannot run from Davis Drive into Ms. Garland's pond. It's physically impossible. And we will show you photographs of the fact that the berm basically dams up the water that comes off the road.

Now there may be sand from that berm going into Ms. Garland's pond because we know that sand is loose and it will wash. And when the County scrapes, it

basically scrapes about every two months, and we know the sand goes on one side and probably goes onto the other.

But there's another thing that's very important about Davis Drive. It slopes away from the Garland side towards Mr. Shearer's side. So water we know -- I think we know -- doesn't run uphill, so how in the world can water get from Davis Drive into Ms. Garland's pond? Well, here's what Mr. Shearer says happens and he's got a picture of it. Water will dam up on the road and there's a little place here where the water will run across the little road, then it runs to the pipe, then it seeps across the road in its natural flow the way it's supposed to do. But instead of running freely it seeps across the road, then it goes underground, bubbles out of the ground, goes through the wetlands and then goes into Ms. Garland's pond.

Now we also know that Ms. Garland's pond is fed two ways. It's fed by underground springs. Now many of you may already know what an underground spring is. That's when water actually bubbles out of the ground carrying dirt and other things with it when it does so and it feeds the pond. We also know that Ms Garland's pond is fed by rainwater and she has to have the natural rainwater in order for her pond to keep water in it,

which is what she wants.

Now when we asked Ms. Garland about where do we really have a problem, she will tell you what really happened is this. That sometime in either 2015 or 2018 we had hurricanes. Do y'all remember those hurricanes? And those hurricanes caused major flooding along Davis Drive. It had nothing to do with Mr. and Ms. Cade's farm. It had to do with rain that came from the hurricanes.

Mr. Shearer will tell you about that rainstorm and what he will tell you is this. Ms. Garland is absolutely right. When the rain came and the flood came, it blew out the berm that is right here and all the water and all the sand from the berm ran down toward Ms. Garland's pond and she had a mess from the hurricane. As a matter of fact, she will tell you that's the only time she's really ever had a problem here was from the hurricane. Well, folks, cutting down some trees in 2018 didn't cause the hurricane and it didn't cause the flood and it didn't cause that sandy berm to blow out.

What the evidence is gonna show is that when the hurricane came, this entire road had two much water on it, the berm couldn't hold it, it blew out and all of the sand went into the pond along with the water.

Now because Ms. Garland has basically brought this suit, she has what is called the burden of proof. I'm sure all of you watch TV sometime in the daytime and you see the TV lawyers all over the television screen begging us to sue each other. I'm about as disgusted with that as any human being could be, but anybody can sue anybody for anything, but when you do, you have to prove what you claim.

The first thing Ms. Garland's got to prove is that my clients were wrongdoers. That there's something wrong with timbering agricultural property. Then they've got to basically prove that even if we shouldn't have timbered it that somehow another thirty to sixty days' worth of work caused all the silt that is in her pond. The pond's been out there for really sixty years. The house was built in 1960. And then what she's got to prove is the nature and extent of what we've done compared to somewhat somebody else did.

I mean, there is no doubt but there's silt in this pond. I would respectfully submit that if you go to any pond in the Gaston area where it is sandy you're gonna find silt. Silt is no more than sand. There is sand on the bottom of the pond as if there's something unusual about that. They contend that all the silt that has been going into this pond for sixty-two years is the

fault of my clients cutting down some trees and clearing a piece of agricultural property. That simply is not true.

Then what they have to do is they have to prove damages to you, okay? Let's assume now all of this is our fault and all of the silt in the pond is our fault and it's gonna cost money to take it out. Well, ladies and gentlemen, they're gonna keep the house. You've got a 60-year-old, 1200 square foot house in Gaston, thirteen acres of land. They want you to pay them $400,000 plus keep the land and they claim that you should have to pay $400,000 in damages to a piece of property that's not even worth $400,000 if you sold it for the whole shooting match.

And the judge, I believe, will tell you that that's not the law. That the difference in damages, if there are any, is the amount of depreciation that we've caused to that property based on what we did, not based on what somebody else did, what was it worth before and what was it worth after, and I'd respectfully submit that that number's not $406,000.

Folks, you heard about Roger Singleton. Mr. Roger Singleton is the gentleman with the little balding head in the blue shirt. Roger also works for a living every single day. Roger is a fine, fine, fine human being and

he's as good a general contractor as you will find in the state of South Carolina. He is an honest and a decent man. We hired Roger to do this work for us. Our position is that if we've done something wrong, we hired Roger to do it right, so if anybody did anything wrong it's Roger.

On the other hand, what else could we do? It is physically impossible to do the work without doing the work. If you're going to basically clear a piece of property, it has to be cleared. Roger and my client Robert checked with Lexington County before any work was done and were told you don't need any permits for this. Is it agricultural property? Yes. You may timber agricultural property and you may create farm property out of it and there are no regulations as long as it's agricultural property and that's what you're doing.

Roger Singleton did just what the County told him to do. Robert Cade did just what the County told him to do to. They basically followed the law. But, folks, even if they didn't, they still cannot prove what they claim; that a two-acre pond on thirteen acres of land that's been there for sixty years wound up being totally silted by sixty days' worth of land clearing and dam repair. It just didn't happen. It didn't happen because

it couldn't happen.

As we move along in this case, there are going to be some engineers testifying. Some of this may get tedious, and I apologize to you in advance for that, but it is going to be critically important that we speak to these engineers not only about what they know, but about what they don't know. And I would respectfully submit to you that there's not going to be any testimony, credible testimony, that will refute the testimony of Mr. Shearer who has lived there for twenty years and knows what's going on.

Folks, I'll end this as I started. And contrary to Mr. Belser, we're not having fun here. I'm embarrassed by having to charge my clients to be here. I hurt with them because they're hurting today. Thank God this thing is going to mercifully end one way or the other, but this hasn't been fun.

I will say this to you. One other thing I did want to say. This case has basically been manufactured by the lawyer and we'll prove that to you. We'll prove that to you without any question at all. When you look at this so-called land excavation man who tells us it's gonna take $406,000 to make this pond brand new, look who the estimate is sent to. It's not sent to this lady, it's sent to Belser and Belser law firm. He's

hired and paid for. They've got some expert supposedly out of Greenville. I wonder why they had to go to Greenville, South Carolina, for Mr. Belser to hire the so-called expert to come in and testify?

I would submit to you, ladies and gentlemen, there are gonna be a lot of questions in this case, but in the end the plaintiff will not be able to meet the burden of proof that my clients are guilty of wrongdoing. They're not guilty. The evidence will not prove them guilty. Not only are they not guilty of wrongdoing, they're fine people just trying to make a living like all the rest of us. There's also not gonna be any proof that we're the cause of the siltation in this pond and they certainly can't prove the amount of siltation that's supposedly in the pond, and as hard as we've tried to get them to tell us, they can't tell us what the fair market loss has been by way of depreciation on the value of the property. The judge will tell you later on about the economic loss rule. If what they claim to be the cost of repair is worth more than the property, they're not entitled to the cost to repair, and I don't think they're gonna put anything like that even into evidence.

Folks, we've been truthful. We've been working really hard on this and I -- I just thank you so much on behalf of my clients for being here with us, for paying

attention to me and for listening to our side because they can't prove this case.

Thank you very much.

THE COURT: Thank you, Mr. Moore.

Mr. Dougall.

MR. DOUGALL: May it please, Your Honor, and the Court?

THE COURT: Absolutely.

MR. DOUGALL: Good afternoon, ladies and gentlemen. As I told y'all yesterday, my name is Tom Dougall. I practice with a little firm in Columbia and I'm here to represent Mr. Singleton, the gentleman in the blue suit.

An important thing is to remember Ms. Garland isn't suing Mr. Singleton for anything he did out at her property. The only person suing Mr. Singleton are the Cades and as you heard from Mr. Moore they're saying well, we don't think we did anything wrong, but if we did, we want to blame Mr. Singleton for it.

So you're not gonna hear a lot from me during this trial, but there are a few things I just want to point out for you. First off, Mr. Singleton was hired to basically do some work on the Cades' pond. As Mr. Moore said, it was collapsing, it was in danger of failing, and Mr. Singleton, who was born and raised here in South Carolina, has done some heavy construction work

over his lifetime, is a former police officer out in South Congaree, has some heavy equipment and he went out there to do a lot of what Mr. Moore's -- or Ms. Garland's expert says he's gonna do and take some sand out of that pond, rebuild the dam and stabilize it, but while he was there he was asked to do some other things.

You've heard about this clear cutting of the trees. Mr. Singleton had nothing to do with that lumbering. That was done by the Cades. They hired another company to actually cut down all those trees and sell them for lumber because that's what people with agricultural property do. Mr. Singleton had nothing to do with cutting down those trees. What he was asked to do was pull the stumps up and he did that with his heavy equipment and then he filled the holes in. Not all of them, but most of them. Actually, a couple of stumps Mr. Cade himself pulled up and there are still some stumps that were left out there.

You've been shown this map and it's got lots of unusual numbers on it. Now I'd like to think that I'm a pretty good lawyer. I've been doing this for more years than I care to admit to, almost forty, but one thing I do know is I know how to read a contour map because forty-five years ago when I was young and stupid,

I thought jumping out of airplanes and being an Army Ranger was a great way to have fun. And we didn't have GPS back then. We had to learn how to read these maps so that we could get from Point A to Point B without getting lost. These numbers, the 208, 206, those are elevations. That's how many feet above sea level this land is. You go down to Ms. Garland's pond and you see all these 190's around it. As Mr. Moore said, water can't run uphill. Water runs downhill. It runs downhill from all of these other areas that are higher than 190. In other words, if you look at this map closely, other than this 176, which is another pond, everything around this piece of property runs to Ms. Garland's pond. That's the only way it can do. None of the work that Mr. Singleton did changed a single one of those contours. All he did was fill in some holes after he pulled up some stumps. The water still drains to this day the same way it's drained ever since this piece of property was created because it's got to go from uphill to downhill, and there's just no getting around that.

And you haven't heard anybody, Mr. Moore or Mr. Belser, say that they're gonna show you anything different from that. Sure, trees were cut. It was then grassed back in. But nothing that was done by Mr. Singleton changed the contours of that land, so he

can't have done anything that would have caused this silting.

I don't know what Ms. Garland's gonna say about maintenance on this property or on her pond, but silt from all over has been running into that pond and nothing that Mr. Singleton did caused that or changed any of that.

And like Mr. Moore, I'm not real happy about being here, but I'm getting paid to do it and I'm gonna defend Mr. Singleton, that's my job, and we're gonna do it well. But you're gonna not hear anything that he did wrong and at the end of this trial you're not gonna find him liable for anything.

I appreciate your time and I think we're gonna get started here.

Thank you, Your Honor.

THE COURT: Thank you.

Mr. Belser, you can call your first witness.

MR. BELSER: Okay. The plaintiff calls Mac Watson.

(Whereupon, John M. Watson was duly sworn by the Clerk of Court.)

THE CLERK: If you'll have a seat and state your full name for the record.

THE WITNESS: Okay.

JOHN M. WATSON,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BELSER:

Q. All right. Mr. Watson, please state your full name for the record.

A. It's John M. Watson.

Q. Okay. And where do you live?

A. I live in Arborgate Drive, West Columbia.

Q. Okay. How far is that from Suzy's pond?

A. About a mile and a quarter.

Q. Now talk a little bit about your background. Where are you from? What's your educational background, et cetera?

A. I was born and raised Montgomery, Alabama. I went to Auburn University from 1965 to 1970. I graduated with a BS degree in biology fisheries management and in January of 1970 I came to South Carolina, applied for a job with the Department of Natural Resources, and have worked with them for thirty-six years. I retired in 2006.

Q. Okay. So what was your -- again, what was your degree in from Auburn?

A. It was in biology.

Q. Okay. And what -- you say you worked for DNR for -- was it thirty-six years?

A. From January 1970 to May -- excuse me, June of 2006.
Q. Okay. And what type of stuff did you do when you were with DNR?
A. I came in 1970. I was in charge of statewide with management of small impoundments. I also was in charge of the state fish hatchery program and the Department had eighteen public fishing lakes that I was in charge of.
Q. Is impoundment another way to say a pond?
A. Well, a young lady in Charleston told me not to call them ponds. She said they're lagoons. So ponds, lagoons, et cetera, depending on where you are. I've looked at a lot of those.
Q. Okay. What the sort of licenses -- so you retired -- you retired from DHEC in 2006?
A. DNR.
Q. DNR. DNR in 2006; is that right?
A. Yes, sir.
Q. All right. And what have you been doing to keep busy since then?
A. In 1979, I started a consulting company, Aquatic Management Services, so I did pond management work for private pond owners and I've been doing that ever since. I've got a little over forty years of doing that.
Q. Okay. And what's the name of the company?
A. Aquatic Management Services.

Q. Okay. So, generally speaking, what type of services do you provide and who are your typical customers?
A. Ponds and things, aquatic weed control, fish stocking. We used to do pond liming. Pond design, consulting work on how to design a pond, and then any sort of issue regarding ponds.
Q. All right. Now let's kind of -- let me get the map here. How well do you know Suzy Garland?
A. I met Suzy back in early 1990's.
Q. And was that in the context of you being a consultant with the pond?
A. Actually I was with DNR, so I came and looked at her pond and gave her some information on pond management and had been coming back on a regular basis for consultation and actually I've done some aquatic weed work for her.
Q. So what type of -- so from 1990 through the present. Are you still doing work at the pond?
A. Yes.
Q. Okay. So let me do some quick math here. For the past thirty plus years, what types of services have you been -- and this is the photograph from 2017. What types of services did you provide -- have you provided to Suzy?
A. Probably eight to ten aquatic weed treatments. Her primary aquatic weed problems were water milfoil -- excuse me, ladies and gentlemen, most people call it moss, but

it's watermilfoil, she's had some watershield and white and yellow water lilies have been present in her pond.

Q. Okay. So you periodically --

A. Yes.

Q. And how -- how would you actually over the years go about treating that?

A. Generally we have used aquatic herbicides.

Q. And, generally speaking, I guess, some people maintain the ponds at different levels than others?

A. Yeah. At last count South Carolina has over 100,000 ponds or small impoundments. Richland county and Lexington county had a total of about 7,000 the last time I looked. You range from the golf course-type ponds, Spring Valley-type ponds, small residential ponds, whether it be a homeowner group or a private individual, and then, you know, other ponds. I've done sewage lagoon ponds. I quit doing that.

Q. And would you say that Suzy -- do you remember her late husband?

A. I do not remember him.

Q. Okay. Do you -- did y'all provide -- I mean, was Suzy kind of an above average pond keeper-upper -- up-keeper or was she average?

A. Oh, she was excellent.

Q. What do you mean?

A. The first time I met her -- I've done probably over 70,000 pond management inspections and you kind of remember people and I remember Suzy asked a lot of good questions. Suzy, excuse me. She talks a lot, so she explained everything around that pond to me. She had pitcher plants, she had her hummingbirds, she had ducks, she had wood duck boxes. The pond's right in front of her front door. So that was a major part of her life out there was the pond. That's all -- she called me. I knew it was a pond. I didn't ask any other questions and I -- lot of times I would come by and inspect the pond when she wasn't there because it's only two minutes from my house.

Q. Okay. All right. I want to talk about kind of two categories here. Before 2018 and then after 2018, okay?

A. Uh-huh.

Q. What was -- what was Suzy's pond like before 2018? If you can describe it by color and --

A. Is that your 2017 map?

Q. Yes, this is 2017.

A. Okay. If you see all of the ponds there --

Q. Hold on a second.

MR. BELSER: Your Honor, may the witness step down and just -- and point?

THE COURT: Absolutely.

You can step down, Mr. Watson.

MR. BELSER: Just be careful.

Can everybody see okay?

THE WITNESS: Okay. You see these ponds? These are typically dark water ponds. If you're in South Carolina, it's kind of a tannic acid-type water like dark tea, and all of these ponds have been like this. I didn't see this pond. I seen this pond from the road. I looked at this pond and I've been around the pond. That's the color of the lake. It's always been that color until -- until 2018.

BY MR. BELSER:

Q. Okay.

A. Do you want me to stay here or go back?

Q. Why don't you just hang tight for just a second.

A. Hang tight?

Q. Yeah, stand right there. Did you ever -- before 2018, did you ever observe any kind of sediment or siltation issues in Suzy's pond?

A. No. She's had blue green algae blooms, which is kind of a green color, and they come and go. That's normal in all these ponds. When she -- I never saw any silt and I've been looking at this pond for thirty years. She never had any silt issues in this pond. When she called me to come out after the event, she didn't -- she just said there's something wrong with my pond, it's a yucky color. I don't know if that's scientific or not, but when I came in here,

as soon as I got to here I knew what the problem was, it was siltation, so I came up here and talked to Suzy and she said what's going on and I said Suzy, you've got a siltation problem. I said do you know where it's coming from?

Q. And so when you're talking -- what was -- are you talking about --

A. Yeah.

Q. Is that --

A. Yeah, this is -- I was -- yeah, this is when I was there. So I asked her if she knew of any siltation areas on her property and she said not that she was aware of, so I physically walked this entire property. This is a hillside and I thought if you were gonna have siltation, I would see runoff here. I saw nothing here, nothing here, but when I got to here it was pretty evident there was a massive amount of silt that come in. All the vegetation for forty feet was covered in silt and so we walked up to look at where the silt -- do you want me to continue?

Q. Yeah.

A. Okay.

Q. Can everybody see okay?

A. Okay. You have a normal -- the wetlands you've been hearing about is over here. There's a channel and you could see where the water entered the pond for about

forty feet there was a thin layer -- not thin, a thick layer of silt. The whole color of the pond back here looked like this. So I walked up the channel and on the channel every side for thirty feet was silt. It's pretty easy to follow silt in a creek. So we kept going and we kept going all the way up to the road. I observed -- comments I've heard, but I observed only one area of silt source was what was coming through this -- this channel. We went all the way to the road. There is a pipe there. It's a concrete pipe. It was completely open. It was not clogged. I looked through there. There was silt in the pipe. I go on the other side and there was silt over here. The same silt color I saw here was here. I saw no siltation coming from any area like that and that was three days after the event. So that was my experience on that day as to what I saw.

Q. And how far up did you walk?

A. I just went over there. I didn't know whose property it was, but I could see where the silt was.

Q. Uh-huh. And what was the condition of the Cade property on that date where you got called?

A. I didn't see this property until a day or two later when Suzy asked me to ride around with her and we rode around and look at it. I used to come down this road to my house and this all used to be vegetated, so this area

here to me appeared to be the problem with where the silt was coming because the silt coloration here -- they had a little siltation here, but it looks like some dye had been -- I don't know when this picture had been taken, but it looked like it was matching what was over here. So I told her all I can tell you is I walked here, I saw silt, I saw silt deposited, I saw silt on the other side, I saw silt in the pipe.

Q. And you can go ahead and sit down.

A. Okay.

Q. All right. So after -- I want you to -- you described the kind of dark tannic --

A. Sir?

Q. You described the dark tannic, kind of the tea colored --

A. Yes, that's normal in the Midlands area of South Carolina.

Q. What about after -- after this event, what does Suzy's Garland's pond look like now?

A. Well, I haven't -- I was there in 2019.

Q. What did it look like then?

A. In 2019, it had cleared up a little bit, but she had some aquatic weed issues on the edge, which we treated.

Q. When you say --

A. We came back in '21 and treated again for algae.

Q. Okay. And what is the impact of turbidity and kind of fish health? Or what is turbidity?
A. Turbidity is just suspended silt particles. Depending on the size and the type of the silt and the pond, if you have a siltation event normally if there's no other rain and siltation added to the pond, it should clear up in one or two months. Her pond stayed fairly turbid for a long time after the event.
Q. Okay.
A. Did you want to know the effect of siltation on a fish pond?
Q. Yes. What does that do to the health of the fish?
A. What you have to understand in any sort of pond or lake, the basic food chain for the fish is plankton. Plankton are microscope plants. Plants are produced by water, sunlight and nutrients. The plankton, phytoplankton, are fed on by zooplankton and then you go up the chain. The phytoplankton, like a plant, has to have sunlight. When I looked at the pond, and this was probably one of the most turbid ponds I've ever seen, you couldn't see one inch down in the water. That means there was no sunlight, so all the zooplankton and phytoplankton in the pond was killed, so that's the basis of what your fish need. Now usually after this occurs the fish become stunted because they have nothing to eat. Now we haven't

done any sort of fish analysis, but I'm just telling you that's the impact of siltation. Normally if this happens, it clears up in a couple of weeks, it's not a major issue. If it stays silted, let's say, for six, eight, ten, twelve months or later, then you basically have affected the fish population.

Q. All right. One more question.

A. Sure.

Q. So do you remember several years before this, the 2015 flood?

A. Sure.

Q. Okay. You live nearby. What impact did that have in y'all's neck of the woods?

A. I'm right across from the fish hatchery, I used to work for the fish hatchery, there was no impact over there. I didn't see Suzy's pond during the 2015 because she never called me. There wasn't an issue.

Q. Okay. So she didn't call you then like she did later?

A. No.

Q. Okay.

MR. BELSER: Thank you very much. Counsel has questions.

THE WITNESS: Sure.

THE COURT: Mr. Moore.

MR. MOORE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MOORE:

Q. Your name is Matt Heinz?

A. What?

Q. What is your name? What is your name?

A. It's Mac Watson. I have hearing aids.

Q. I got you. Mr. Watson, are you an engineer?

A. No, sir.

Q. All right. Now as I understand it, sir, you keep talking about the event.

A. Uh-huh.

Q. Was there an event in 2018 that you're referring to?

A. Yes, sir.

Q. That event was a hurricane; was it not?

A. No, the event was the siltation problem.

Q. Sir, a siltation problem is not an event.

A. Okay.

Q. Would it surprise you to learn that in 2018, about the same time that you were there, there were two hurricanes that came through South Carolina?

A. I'm aware of that.

Q. Yes? You say you're aware of that?

A. Yes.

Q. And are you aware of the fact that the event that you're referring to that created this siltation problem

was a hurricane?
A. I disagree with that.
Q. Well, do you -- have you talked to Ms. Garland? Do you know that that's what she says?
A. I'm just -- you asked me what I thought. I haven't talked to her.
Q. No, I asked you have you talked to Ms. Garland about her saying the event was a hurricane?
A. I don't recall hearing that.
Q. Did you say you walked this area?
A. Yes, I did.
Q. Well, I'm sure when you walked the area you would have seen that Davis Drive has a berm that runs all up and down it in front of her property, right?
A. Yes, sir.
Q. And that berm's about eighteen inches high, isn't it?
A. I don't know. I haven't -- I don't recall.
Q. Well, since you walked the property, I'm gonna hand you what's been marked, I believe, as Exhibit 3.

Am I right, Callee?

Exhibit Number 3, this is my copy of it, the berm doesn't look to be there, does it?
A. I don't see a berm there.
Q. Right. Would it surprise you to learn that during the 2018 event that we're talking about, which was a

hurricane, the berm blew out and all of the sand that was in the berm ran from the berm down into Ms. Garland's pond? Would that surprise you to learn that?

A. I guess it would.

Q. As a matter of fact, that berm contains a right significant amount of sand; does it not?

A. It does.

Q. Now, sir, you said you were out there in 2018. That's when the two hurricanes were, correct?

A. Yes, sir.

Q. And do you know if you were out there before or after a hurricane?

A. I don't know when the hurricanes came.

Q. Yes, ma'am. What basically happened, sir, is that Ms. Garland asked you to come out because an event had happened, correct?

A. She didn't say event. She said her pond looked yucky.

Q. You said event?

A. I said event.

Q. Now tell me then -- you've told the jury about the event, tell the jury what the actual event was that you were referring to that led you to go out and see all this silt for the first time in the pond.

A. I was called out to look at the pond.

Q. Yes, sir. But that was after an event. Now you've

used that word "event" a number of times.
A. Right.
Q. The event that you're talking about that led to the siltation of this pond was a hurricane, wasn't it?
A. I disagree with you.
Q. Well, you, sir --
A. Nobody else on that road, nobody else in that area, had a problem during the hurricane event.
Q. Oh, there was a hurricane event?
A. No.
Q. Okay. Now we know about the hurricane event and since you walked this road like you've testified --
A. Right.
Q. -- you would have been able to see -- I'm gonna put my map up. You would have been able to see -- if I can get my map up here -- you would have been able to see, would you not, sir -- that since you say you walked it, you would have been able to notice if the berm had blown out, wouldn't you? If, in fact, you walked it, you would have been able to tell.
A. I didn't say I walked the road. I walked up to the road and over the road.
Q. Well, if you walked up to the road and over the road, you would have been able to see the berm after the event, wouldn't you?

A. I didn't see a berm.
Q. Right. Because the berm was gone.
A. Okay.
Q. And if the berm was gone, that would mean that the berm would have washed from the road down into Ms. Garland's pond from the event, right?
A. Are you talking about sand or clay?
Q. Sir, I'm talking about whatever makes up the berm.
A. Usually sand.
Q. All right. And that berm before you -- before this thing happened, before the event --
A. Right.
Q. -- we know that berm was long and that berm was eighteen inches high, right?
A. I don't know. I didn't see it.
Q. Sir, you told us that there was a berm there. You told us you know about the berm. You told us you've seen the berm.
A. I haven't seen the berm. I told you the only thing I saw -- because I walked across the road, I didn't look up either side because I could see where the silt clay, not sand, had come through the pipe and was coming from the other side of the road up the hill -- down the hill into the road.
Q. Sir, how is it possible to walk down Davis Drive --

A. I didn't walk down Davis Drive. I said I walked up from the pond to the road, and that's Davis Drive, and I went across -- directly across because I was following the silt trail.
Q. All right. And if you went to Davis Drive, you walked across it, but you didn't look to the left and you didn't look to the right, correct?
A. I didn't notice I was looking for a berm. I didn't know if a berm was there.
Q. Well, from what you told us the berm wasn't there from what you saw, was it?
A. I didn't notice a berm. I wasn't looking for a berm.
Q. Well, if we look at Exhibit Number 3, which was taken after the event, we can tell now that this berm is gone, can't we?
A. Where's the pipe?
Q. Sir, I'm just asking you --
A. I'm asking where the pipe is.
Q. I don't know. There's no berm there.
A. Well, I don't know where this was taken.
Q. I'm telling you it's taken where the berm used to be when it got blown out according to the record in this case.
A. I'm thinking where I walked across.
Q. Yes, sir.
A. Okay.

Q. Well, let me ask you this. Let us assume that there was an event like you've testified and let us assume that that event blew out an 18-inch berm for a number of feet because it was heavy flooding from a hurricane. The water and the siltation from the berm would have gone downhill; would it not?

A. Water runs downhill.

Q. Right. That means that if there was an event and if it blew out the berm, all of the sand from that berm would have run into Ms. Garland's pond; would it not?

A. I can't answer that.

Q. Sir, you just did. You said water runs downhill, right?

A. You're asking -- I'm trying to tell you exactly what I saw. I wasn't looking for berms, I was following the silt. It was like a white line that went directly from one side, through the pipe, out the pipe and out over the woods.

Q. Sir, you've held yourself out as knowledgeable in aquatics, you know everything there is to know about ponds, you've been the pond guy for West Columbia, for the state of South Carolina, for DHEC, for everybody. I'm asking you what you claim to know about, and that's ponds. Sir, if a big portion of a dirt berm had blown out as a result of the event, it would have wound up in Ms. Garland's pond,

wouldn't it?
A. The event that I'm talking -- you keep mixing the events. The event I'm talking about is me going out on that day having heard the pond was silted. That was the event. I'm not talking about hur -- I'm not sure when the hurricanes came. Do you have a date for them?
Q. Sir, you don't know that, do you?
A. I sure don't. Do you?
Q. So what you -- now what you're saying is that the event you were referring to wasn't an event, it was just you going out and looking?
A. I was inspecting a pond for a problem with siltation.
Q. Right.
A. I wanted to see where the siltation was coming from. I followed -- you've heard my story. I followed it right where I told you.
Q. Well, it would have come from the direction of the road toward the pond, wouldn't it?
A. It was coming from the other side of the road through the pipe.
Q. Let me ask you this question. Was the silt coming from this direction towards the pond?
A. Can I see the map?
Q. Sure you can. Was it coming from this direction toward the pond?

A. Which map is this now? To get me oriented, this is Suzy's pond?
Q. Her pond, my client's property, Mr. Shearer's house, the pond.
A. Right.
Q. The silt would have been coming in this direction, right?
A. Yes.
Q. From the direction of the road?
A. Right.
Q. Now you can step back on the witness stand.
A. Okay.
Q. Now would it surprise you to learn, sir, that the pipe that you've referred to had been partially clogged for years?
A. I heard that in your opening statement.
MR. BELSER: Objection. Lack of foundation.
THE WITNESS: I don't know if it had been --
THE COURT: Wait. Wait. Hold on just a second. There's an objection.
MR. MOORE: I'll change the question.
THE COURT: Okay. Thank you, Mr. Moore.
BY MR. MOORE:
Q. Sir, when you looked at the pipe, all right, when you looked at the pipe that came under Davis Road, would it

have been this side, this side, this side? Where was it?
A. It came from directly across where the pipe goes into her property to the other side of the road.
Q. Well, come down and show me where that pipe is.
A. Can I have the other -- I don't recognize the coloration on this.
Q. Well, this is a contour map. Show me where the pipe is.
A. This is her pond?
Q. Yes.
A. It came right across in here.
Q. Right. The pipe would have come from Mr. Shearer's property all the way towards Ms. Garland's property.
A. If that's the one pipe, that's the pipe.
Q. Now tell me about that pipe.
A. Yes, sir.
Q. Did it have silt in it?
A. It had silt in the bottom of the pipe.
Q. Would it surprise you to learn that silt was as much as 50 percent or better clogged?
A. The pipe?
Q. Right.
A. No, sir, it wasn't clogged. I looked at it.
Q. I see.
A. Were you there on that day?

THE COURT: All right. Let me -- let me tell you, Mr. Watson, how this works, okay? He gets to ask the questions --

THE WITNESS: I understand. My fault.

THE COURT: -- and you get to answer.

THE WITNESS: Just answer. Yes, ma'am. Okay.

THE COURT: You can't ask him questions.

THE WITNESS: Sounds like my wife. Go ahead.

BY MR. MOORE:

Q. What did you say, sir?

A. I was just commenting.

Q. I heard your comment. I didn't know what was said.

A. I said sounds like my wife.

THE COURT: And this would be the judge of this court, okay?

THE WITNESS: Okay.

BY MR. MOORE:

Q. Now, sir, I want to make sure I understand something. This pipe that you claim to have seen after the event, whatever the event may have been, you're saying it wasn't 50 percent clogged?

A. I'd say it wasn't.

Q. What percent clogged was it?

A. Probably at that point in time maybe five percent.

Q. The pipe where it came onto Suzy's land, was it

aboveground or was it below ground?
A. It was under the road.
Q. I know it went under the road, but when it came out from under the road?
A. It was aboveground.
Q. All the way aboveground?
A. Yeah.
Q. And you're as sure about that as anything else you've testified to today?
A. I'm pretty sure. I could see the bottom of the pipe.
Q. You say you're pretty sure. Now hold on a minute. Are you telling me the pipe was aboveground or do you think it was aboveground?
A. I think it was aboveground.
Q. Now Suzy's pond, it needs rainwater in order to survive, doesn't it?
A. Yes.
Q. But it's also spring fed; is it not?
A. I'm not sure of the springs.
Q. Well, let's talk about spring fed ponds.
A. Okay.
Q. When we have an underground spring, water bubbles up out of the ground, doesn't it?
A. Some -- some springs do.
Q. And when water bubbles out of the ground with a

spring, it carries dirt with it, doesn't it?
A. Sometimes. Usually it's clear.
Q. And when the water bubbles out of the ground and it carries dirt, the water then runs with the -- the dirt runs with the water, doesn't it?
A. It would.
Q. And do you know where the springs are that feed this pond?
A. No, I don't.
Q. Now you talked about the aquatic problems that she has had for -- since 1990.
A. Yes, sir.
Q. Had the pond ever been dredged before?
A. Not that I'm aware of.
Q. And the pond's about -- was built in 1960 or somewhere thereabout?
A. I'm not sure when it was built.
Q. And as I understand the way silt works, when it runs into a pond it's suspended, right?
A. In some cases.
Q. And then it falls down?
A. That's correct.
Q. And then it sits on the bottom of the pond?
A. That's correct.
Q. And when it's no longer suspended, it's just dirt on

bottom of a pond?
A. Yes, sir.
Q. How many ponds that you know of in the Gaston area where it's sandy soil don't have silt in the bottom of it?
A. I think almost all ponds have silt.
Q. What do you mean by that?
A. Well, if you have a body of water that has any water coming in off the hillside or from springs. Lake Murray has silt. It's just -- that's the normal part of aging of ponds.
Q. Right. As a pond ages, it's going to silt, right?
A. That's correct.
Q. And what would happen is if there's a major event, suspended particles will come with water, they'll eventually drop down and sit on the bottom of the pond, right?
A. That is correct.
Q. Do you know of any -- any 60-year-old pond that does not have siltation in it?
A. Not that I'm aware of.
Q. That's just a normal thing, correct?
A. That's correct.
Q. Now you've talked about these aquatic problems, the aquatic weed problems, that Suzy has had over the years, right?

A. Correct.
Q. Weeds grow in shallow areas, don't they?
A. Most weeds do.
Q. And what we're talking here is about aquatic weeds that generally were growing in the 1990's where the pipe fed the wetlands and it went into the pond, right?
A. Yes, sir.
Q. And what happens is over the years the siltation and the water will come here, raise the water level and then you can start having problems with weeds, right?
A. Yes, sir.
Q. The problem in the 1990's that caused you to start going out there was an aquatic weed problem, right?
A. That's correct.
Q. And we know then that beginning at least in the 1990's this area right in here where the water comes from the pipe according to you had already silted, right?
A. Correct.
Q. And it had silted enough to where the weeds were growing and had become a problem, right?
A. It had weeds all around the edge of the pond.
Q. Now 1990 is way before the 2018 event, isn't it?
A. Yes, sir.
Q. Twenty-eight years before the 2018 event, right?
A. Yes.

Q. So you would agree with me that Suzy Garland had had problems with siltation for twenty-eight years before this event happened, right?
A. Yes, sir.
Q. Is there any way to tell how much of the siltation came from the event and how much came from the sixty years the pond had been out there?
A. I'm not a geologist. I couldn't tell you.
Q. They can do studies to determine that though, right?
A. I would think they could.
Q. Now you are not able to say, are you, that all the siltation you saw when you went out there in 2018 came from my client's property, are you?
A. Are you saying the entire pond forever?
Q. Yeah. Sure.
A. Yeah, she had siltation in there before.
Q. She had siltation in the whole pond before, didn't she?
A. Yes.
Q. She had siltation here, here, here, here, everywhere before --
A. Yeah.
Q. -- whatever the 2018 event was?
A. Every pond has siltation.
Q. Right. Now do you have any idea -- when that berm

blew out on Davis Drive, do you have any idea the volume of sand that would have washed off that bank and found its way into Suzy's pond?

A. Which pond are you talking about?

Q. This pond. Suzy's pond. The Garland pond.

A. Suzy's pond. Okay.

Q. I'm just -- we know that there was an event, we know that berm blew out, we know that sand headed this way. Do you have any idea what the volume of dirt was that washed out of that berm into that pond?

A. I don't know how much silt came into the pond. No, I don't.

Q. Now the volume of sand, whatever it was that came off the berm, certainly didn't come from my client's property, did it?

A. I'm not sure where it came from.

Q. Right.

MR. MOORE: Thank you, sir. I don't think I have any further questions.

Thank you, Your Honor.

Thank you, sir, very much.

THE COURT: Mr. Dougall.

MR. DOUGALL: No questions, Your Honor.

THE COURT: Any redirect?

MR. BELSER: No, Your Honor.

THE COURT: Okay. May I excuse Mr. Watson?

MR. BELSER: Yes, ma'am.

THE COURT: Mr. Watson, you're excused. Thank you for coming.

(Witness excused.)

THE COURT: Madam forelady, I need to ask y'all to go to your jury room just for about maybe -- it might be about twenty minutes. I have another jury out that has a verdict and I need to take that real quick.

Remember, no talking amongst yourselves about this case and as soon as I finish this other case, I'll have you back in here.

Thank you.

(Whereupon, the jury retires to the jury room at 3:56 PM.)

(Recess taken at 3:56 PM.)

(Back on the record at 5:03 PM.)

THE COURT: All right. Sorry about that, but we had -- I was trying to get rid of another jury that was a week and two days' worth of trial.

MR. BELSER: Well, it's 5:05. What do we -- what do you want to do?

THE COURT: Well, let me ask you. Do you have any short witnesses?

MR. BELSER: Well, my next witness is Heath Hanna,

who's back in the back row smiling. I don't think he's gonna be very long on direct and I don't know what -- and the reason that I need to kind of -- I'd like to get him up and out today is because he's got some family obligations that I've been trying to work around. I didn't think we'd get to this point, but it is what it is.

THE COURT: All right. Mr. Dougall.

MR. DOUGALL: I was just gonna offer, if we get him in for direct, even if we can't cross him tonight, we can cross him first thing in the morning.

MR. BELSER: Well, that doesn't really help the situation. I mean, I don't think that there's need to -- I mean, if we start him, I can get him up and down within thirty minutes, and then they can cross.

You know, as -- just -- you know, just maybe we'll, you know, be able to move things along. We probably will be able to move things along quicker now that that -- you know, that other trial is completely over.

THE COURT: Right.

MR. BELSER: But I was kind of hoping that we -- I was thinking, and maybe wrongfully, that we'd be able to get, you know, three or four witnesses in this afternoon, and so I'm just trying to kind of plan ahead here.

THE COURT: All right. Well, then I'll tell you

what. Let's go ahead -- if it's 5:00, I mean, sooner or later we're gonna have to work late one night. We might as well go ahead -- let's go ahead and do one more witness and then I'll -- can we pick up with another witness in the morning?

MR. BELSER: Yes, ma'am.

THE COURT: Will you be prepared for that --

MR. BELSER: Yes, ma'am.

THE COURT: -- and well call them back to back?

MR. BELSER: The next -- all three of those gentlemen will be here tomorrow morning.

Sorry, guys.

THE COURT: And we will start early. I don't mind starting early.

MR. BELSER: That's fine with me.

THE COURT: Okay.

MR. BELSER: We've got -- I anticipate the two gentlemen -- well, Mr. Lee will probably be a longer witness on cross-examination. Again, I don't think he's gonna be all that long on direct. The other two gentlemen should probably be pretty short on direct and cross I would think. Then we have another engineer who's gonna testify tomorrow and then depending on how long that goes, we'll call Ms. Garland at the end of the day tomorrow just to kind of -- we'll go through

some photographs.

THE COURT: Okay.

MR. BELSER: So that's my goal, but I've kind of learned the longer I practice law that I'm really bad at estimating this kind of stuff and so that's what I'm shooting to do.

THE COURT: Okay. That sounds good.

Well, let's bring the jury in. If y'all are ready to call your next witness, let's get through --

MR. BELSER: Yes, ma'am.

THE COURT: -- Mr. -- what's his name?

MR. BELSER: Mr. Hanna.

THE COURT: -- Mr. Hanna.

I'm gonna let the jury know what we're doing.

Would y'all like to start at 9:00 or 8:30?

MR. MOORE: I'm totally at the Court's --

MR. BELSER: Whatever you prefer.

MR. MOORE: I will say based upon what I've heard from the stand, I think my case may go a lot quicker.

THE COURT: Okay. Well, then let's say 9:00 then. I won't hold you to it, Mr. Moore. If your case is gonna be a little bit short, let's start -- and I know me -- I will be on the bench at 9:00.

MR. MOORE: I will say, Your Honor, I do think that there's gonna be a significant legal issue in this case

at the end of the plaintiff's case and there's a -- I believe a very reasonable possibility this case may end there, but I'll just point that out, that there's a -- we think there's a legitimate chance that it will depending on what the testimony is.

THE COURT: Out of this witness?

MR. MOORE: Out of the rest of them.

THE COURT: Out of the rest of the witnesses.

Okay. Well, we'll take that up at the appropriate time and we'll start at 9:00 in the morning.

MR. BELSER: Sounds good.

BAILIFF: Are you ready?

THE COURT: I'm ready.

BAILIFF: Ladies and gentlemen.

(Whereupon, the jury return to the courtroom at 5:10 PM.)

THE COURT: All right. Madam Forelady, ladies and gentlemen, this is -- I just kind of want to keep you updated. We're gonna do one more witness. I'm trying really hard to get this case finished by Friday. We got a late start because of a holdover jury trial that I had and I was just finishing that up, so that was the delay and why I had to ask you to leave the courtroom.

But if you can go through one more witness, I'm gonna tell you we're gonna start early in the morning at

9:00, so I need everybody in the jury room at a quarter till nine. And just remember we can't start if somebody's not here, okay?

All right. You want to call your next witness, Mr. Belser.

MR. BELSER: Yes, Your Honor.

The plaintiff calls Heath Hanna.

(Whereupon, Heath Clark Hanna was duly sworn by the Clerk of Court.)

THE CLERK: Have a seat and state your full name for the record.

THE WITNESS: Heath Clark Hanna.

HEATH CLARK HANNA,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BELSER:

Q. Good afternoon, Mr. Hanna. Where do you live?

A. In Columbia.

Q. And so where are you from originally?

A. Enoree, South Carolina.

Q. Briefly describe your educational background.

A. I went to Woodruff High School and then to Greenville Technical College for a year and then graduated from Wofford College in Spartanburg.

Q. And what did you study at Greenville Tech?

A. Business economics.
Q. And what was your degree in at Wofford?
A. Business economics.
Q. What is your -- just how old are you?
A. Forty.
Q. Okay. Can you briefly run through your employment history since leaving -- since grading from Wofford?
A. After I graduated from Wofford, I worked for Havird Oil Palmetto Propane in -- here in Columbia as a sales rep, then I worked for Caterpillar for seven -- or, I'm sorry, for Yancey Brothers Caterpillar in Atlanta, Georgia, for seven and a half years as a products specialist for them, and then in 2012 we started our company, Contour Mining and Construction.
Q. Okay. And tell me -- please tell the jury a little bit about Contour Mining and Construction.
A. So we are a full scale heavy civil contractor based here in Columbia. We do anything from site work, utilities, mining, remediation work, reclamation work, as well.
Q. Do y'all clean out ponds on occasion?
A. Yes.
Q. Okay. And what experience does Contour Mining have working in Lexington county?
A. We've completed projects at Michelin, we've done the

Vulcan Lexington Quarry over near Leesville. We actually did the site work for the Town of Lexington maintenance site here in Lexington. We've worked at Diamond Pet Foods. Various enterprises.

MR. BELSER: Okay. Can everybody on the jury hear him okay?

BY MR. BELSER:

Q. All right. I want to talk a little bit about sediment removal. What do the terms "sediment" and "erosion control" mean?

A. So, you know, sediment, once it's -- it's been transported, it's -- it's called sedimentation, so erosion control is the act of controlling the sediment and keeping it either in place or keeping it in confines of the project limits.

Q. Okay. And what licenses and certifications do you have?

A. So we are a Class 5 contractor with the South Carolina Department of Labor and Licensing.

Q. And what does that mean?

A. So we're licensed for grading, highway, concrete, concrete paving, bridge, sewer and water utilities. So we are licensed to do any types of that work and we have a unlimited license, so any contract value is unlimited.

Q. Okay. And what experience do you -- when I say "you",

I mean your company. What experience do y'all have in removing sedimentation from ponds?

A. We've done numerous projects over the years. We've done one at Sunview Lake where we removed some sediment on the headwaters of the pond. We've done one for Gregg Park in the city of Columbia there. And typically most of our other site projects that we do, we build sediment basins as part of the erosion control SWPPP phases and then those will be cleaned out multiple times, typically throughout the life of the project until it's fully stabilized, grassed and -- and the project is terminated.

Q. Okay. So the SWPPP phase, is that -- the people -- the folks on the jury may not understand what that means.

A. So the SWPPP stands for stormwater pollution prevention -- yeah. So basically it's the -- the engineering behind controlling the sediment and keeping it onsite and you have various phases depending on the size of the project, different engineering controls that we have to put in in a sequence in order to maintain compliance with the County.

Q. Okay. So unlike the -- I guess, the sediment in the Sunview Lake situation that you mentioned and the Gregg Park situation when you had sediment in a pond from an external source, what you're talking about doing is if you're grading on a site cleaning up a sediment basin

that's -- that captures sediment from that site?
A. Yes.
Q. Okay. What are the different methods of -- and just so people understand, if you have a body of water with sediment underneath it that you have to remove, what are the different methods that can be employed to actually remove the sediment?
MR. MOORE: May it please, Your Honor? Is this gentleman being offered as an expert witness?
THE COURT: I don't think he's offered him as an expert witness.
MR. BELSER: Your Honor, I'm trying to qualify him as an expert witness in sediment removal and have him explain his -- his training and his educational background and his experience.
MR. MOORE: Then if that's the case, I have no objection to his reciting his qualifications then, but at this point in time he's beginning to ask the gentleman how is something done. I think he's putting the cart before the horse. Until this gentleman is qualified as an expert, I honestly don't think how you would do something would be relevant to the facts of the case unless he's qualified as an expert and accepted that way.
MR. BELSER: I think it's, very respectfully, a

chicken or egg thing. I mean, he has to be able to explain his experience and what the process is before he can -- he's eventually -- he's going to give opinions about this particular case, but as a part of my qualification of him he needs to be able to explain the process and what it is.

THE COURT: I think he can explain the processes that he uses. I don't think he needs to go into any detail until we get into the -- until you get into the meat of the matter.

But let him go ahead and explain the method that they're familiar with and what they use.

MR. BELSER: Okay.

BY MR. BELSER:

Q. All right. Mr. Hanna, generally speaking, what are the different methods that go -- that can be employed in cleaning sediment out from a pond?

A. The majority of them would be mechanized, but I guess you could use hand labor, but you would either use an excavator or a drag line of some sort to remove it below water or if you de-water the lake, you can still use some other mechanized methods, whether it's dozers, excavators and such.

Q. Okay. So when you're talking about a mechanized method, you're talking about heavy equipment?

A. Yes.
Q. And what does de-watering mean?
A. So it would be draining the body of water to make the bottom of the pond accessible.
Q. And so if the pond is - is lowered and the sediment is removed, what -- what has to happen to the sediment that's taken out generally speaking?
A. So depending on the -- depending on the area, if there is a place -- if there is a place onsite, the preferable method is to pull the material out, spread that material out, stabilize it and keep it there, but if that's not an available option, it has to be disposed of properly, either at a landfill or some other permitted facility.

MR. MOORE: Your Honor, again, I don't believe this is qualifications. I think what he's basically trying to do is explain certain processes for which I don't think he's been qualified as an expert yet.

THE COURT: Okay. Let's get onto qualifying him as expert, if that's what you will do.

MR. BELSER: Yes, Your Honor. I'd like to move to qualify Heath Hanna as an expert in sediment removal pricing.

MR. MOORE: Your Honor, may I -- may I voir dire?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. MOORE:

Q. Sir, in your examination you've told us some things. You went to Wofford College, correct?

A. Correct.

Q. What was your degree at Wofford College?

A. Business economics.

Q. And you went to a technical school, correct?

A. Correct.

Q. And your degree at the technical school?

A. I didn't -- I didn't get a degree there. I transferred to Wofford.

Q. So you have a bachelor of science in business economics?

A. That's correct.

Q. Now I noticed when you were talking, you're not an engineer, right?

A. No.

Q. And you're not a professional engineer?

A. No.

Q. Now you kept referring in your testimony we have these licenses, we have so forth. As I understand it, the licenses that you're referring to are general contractors licenses; is that right?

A. They are licensed under SC LLR, the contractor

licensing board.
Q. Right. This would be a contractor's license, correct?
A. That's correct.
Q. Now as I understand it, in order to get the contractor's license, an individual has to go and take the contractor's test, right?
A. Correct.
Q. And then the individual person receives the license?
A. Correct.
Q. And you've taken the test?
A. Yes, sir.
Q. And you are basically licensed as a contractor?
A. Yes.
Q. A general contractor?
A. I don't think SC LLR calls them general contractors, but we are -- we do have a BD5 license, too, so we can do vertical construction as well.
Q. The BD5 license, who holds that?
A. So our qualifying agent is a gentleman by the name of Matt Skelley.
Q. Right. Mr. Matt Skelley. Now Mr. Skelley is -- he is the gentleman who holds that particular license, right?
A. That's correct.
Q. Your license is that of what type of contractor?
A. GD.

Q. What does GD mean?
A. Grading.
Q. So you have a license in grading, correct?
A. Correct.
Q. Now there is a significant amount of difference in grading and pond restoration, isn't there?
A. No.
Q. Who holds the licenses necessary to do pond restoration?
A. I do.
Q. Is there an actual license for pond restoration?
A. They don't qualify it that way. SC LLR qualifies it by any contract value over $2,500.
Q. So what you're talking about is that you individually simply have a general contractor's license to do any kind of contracting work over $2,500?
A. That's correct.
Q. And the person who has a grading license is you?
A. That's correct.
Q. And the person who has the other type of license is Mr. Skelley, correct?
A. That's correct. And we have another qualifying agent as well. His name is Robert Thompson, so he's qualified for other -- some of the other licenses such as highway, bridges, water and sewer.

Q. Right.
A. Because it's a -- it's an experience qualifier.
Q. In your lifetime, how many private ponds have you ever drained and removed the silt from? Actually done the work. Done the work yourself.
A. I can think of three.
Q. Three?
A. That's a -- this is a -- well, when you refer to a pond, so sediment basins, we've probably constructed over -- probably over a hundred in the last ten years of business, but the -- as far as removing sediment, such as in this case, we've done about three that I can think of that are similar to this that are fishing, recreational, agricultural-type pond that's not a sediment basin pond.
Q. Now of the three ponds like this that y'all have actually done, how many of those did you actually do yourself the work in?
A. All of them.
Q. All right. You drove the backhoes and the bulldozers and that sort of thing?
A. I operated.
Q. I see.
A. I didn't do every bit of the work, but I did operate -- I've got some pictures if you'd like to see those.
Q. And how long has it been since you've done one of

those three?
A. The last one we did was probably Gregg Park, so I think that was 2019, I think.
Q. Well, now Gregg Park is more of a commercial piece, isn't it, a governmental piece?
A. No, that's a residential neighborhood.
Q. That's the pond that services the entire neighborhood?
A. Well, I mean, it's a -- no, it doesn't -- it's only a portion of the neighborhood.
Q. The -- right.
A. It's zoned residential.
Q. That's not -- that's not a private fish pond at Gregg pond, that's one that basically collects water and is maintained by a homeowners' association, right?
A. I guess that's correct.
Q. So now we're down to two. Where are the other two?
A. The Sunview Lake.
Q. Is that owned by one private individual or is that owned by more?
A. I'm not sure.
Q. All right. We're down to one. What's the other one?
A. The other one is a family pond.
Q. Okay. So you've done one family pond such as the one we're talking about?
A. Is that a question?

Q. Yes. Is that correct?
A. I guess. I guess you could say.
Q. Now I promise I'm not being funny. Did you find something humorous about the question?
A. No, it's just your demeanor.
Q. Do you find me funny?
A. No, I don't.
Q. All right. Now, sir, the -- Mr. Skelley, is he something that is referred to as an estimator?
A. That is his job title.
Q. So the person who is the estimator for your company is Mr. Skelley. Do you know where he is today?
A. He's probably on the way home right now.
Q. Does he work in Greenville or Columbia?
A. No, he works in Columbia at our office.
Q. Do you have any special expertise in estimating?
A. Yes. I was the estimator before I hired him.
Q. I see. And actually he would have been the estimator on this job, correct?
A. We both did it. We worked together on it.
MR. MOORE: Thank you, Your Honor.
Your Honor, we would except this gentleman's qualifications as an expert in what he was offered in.
Thank you.
THE COURT: You agree?

MR. MOORE: No, I would except. Take an exception.

THE COURT: Okay. Let me see the lawyers for a second.

(Proceedings held at the bench; not reported.)

THE COURT: Okay. Your exception is noted.

I'm not gonna qualify him as an expert. I don't believe that he needs to be an expert for what he's gonna testify to, so I'm gonna let you go ahead.

MR. BELSER: Okay. Thank you, Your Honor.

Your Honor, may I approach the witness?

THE COURT: You may.

CONTINUED DIRECT EXAMINATION

BY MR. BELSER:

Q. Okay. Mr. Hanna, I'm handing you two documents. One is marked Garland Exhibit Number 11 and the second one is marked Garland Exhibit Number 12, and I'd like to be able to project that up there. I don't know how to --

THE COURT: Well, if you do that little thing, it will come up over here.

MR. BELSER: Okay. There we go.

THE COURT: You are good.

BY MR. BELSER:

Q. All right. Mr. Hanna, are you familiar with Suzy Garland's property and her pond?

A. Yes.

Q. Okay. What is Plaintiff's Exhibit Number 12?
A. It's our estimate prepared out of Bid to Win for the sediment removal.
Q. Okay. And at the bottom of the page there's a reference to Mr. Matt -- Matt Skelley. And it's up on the screen. Who is Matt Skelley again?
A. That's my estimator.
Q. And what is the -- let's just go to the bottom line and then we can go back through the different elements. What is the cost estimate from your company to clean the sediment out of Ms. Garland's pond?
A. So the total price would be 435,075.08, less any exclusions noted down below.
Q. Okay. So let's -- let's walk up here to the -- the kind of narrative and if you could just kind of walk through -- walk through for the jury the process, what -- what this estimate is based on and kind of the process of preparing it, that will be helpful.
A. Okay. So my -- by trade, I'm an operator, so I've been operating since I was fourteen years old, and this type of work is one of the more difficult things that we have to do because the problem is if you're gonna remove sediment from a pond, everything under laden, under the water, is wet. So to get a 30-ton excavator out into the pond to excavate it, you have to have some type of firm

footing to sit it on or the machine will sink. And so we've done several of these and, like I stated before, on commercial sites we have to routinely clean these sediment basins out and we have to be very careful when we do that so we don't get the equipment stuck, but in this case, looking at it, it's kind of -- it's gonna be hard to get to, so we're gonna have to kind of build a road to get in to access the pond.

The other thing is, the -- the excavator that we would use is a super long reach excavator that has approximately 60 feet of reach on it, so in that case it wouldn't be able to reach all the way across the pond so we would have to use -- in this case we would use crane mats, eight-inch timber mats, to sit the machine on in order to distribute the weight of the excavator so that it doesn't sink down into the pond.

Q. Just briefly, what is the importance of -- of the crane mats and being able to operate the equipment on firm ground?

A. Well, I mean, when you're -- the machine weighs 30 tons, so if you've got a bucket full of material and it's extending 60 feet out, if the machine is not sitting on something firm, it will sink or tip over. So we've done this before and we always have to use mats in order to sit on because once you start walking the machine on ground

that's been fully saturated, it can wick up any additional moisture and before you know it the machine can become stuck.

Q. Okay. The first sentence references the Bunnell Lammons Engineering report dated December 23, 2020. Is that -- well, we'll hear from Mr. Mathews of Bunnell Lammons tomorrow, but is that the report upon which your estimate is based?

A. That's correct.

Q. And just walk through the -- so first the pond would have to be completely drained, any fish would die. Does that refer to the de-watering that you were mentioning?

A. Yes.

Q. Okay. Why can't you clean the sediment out without draining the pond?

A. Well, the problem is when you do a wet excavation or if you tried to do this with a wet excavation, the silt that's in the bottom, when you -- when you come out of the water, it just gonna run back into the pond, and so in this case we would drain the pond to expose the sediment, pull that material out and stack it on the side and -- and try to let it drain some, but if we did it below water it would basically float right back into the pond.

Q. Okay. So if you -- so I guess step one is you'd drain the pond, step two is you'd reach out with a 60-foot boom

or excavator and grab the sediment, and then you'd put it on -- once you pull the sediment out, what do you have to do once it's sitting there on the ground?

A. Well, once you pull it out, you've got to stack it up and let it wick out, let some of that water wick out of it because in this case the only disposal site that we could see fit that is permitted that would take the material would be a C and D landfill and so in that case you're paying by the ton. So the more water that drains out of it, the less it weighs, so that -- that would be in an effort to try and reduce the tonnage of material.

Q. And the landfill aspect of it, can you explain that?

A. So in some of the ponds we've done before we were able to remove the sediment and dispose of it onsite and stabilize it, but in this case there was nowhere to put it, so it would have to go to a permitted -- it would have to go to a permitted site, so in this case the closest permitted site would be Screaming Eagle -- or the landfill on Screaming Eagle Road.

Q. And have you used that landfill before for -- I guess, is it called "spoil" from the pond -- from ponds?

A. Yes.

Q. Okay. And where is that? That's off I-77?

A. That's off Screaming Eagle Road up I-20 -- or out I-20.

Q. Okay. The sentence where it says we have included some silt fence, grassing of disturbed area or repair and dry upon completion, explain that.
A. Yeah, so we -- the way we priced it was the same way we would price any other site work project that has land disturbance, so almost all of them are gonna require a stabilized construction entrance because you're gonna have dump trucks coming in and out and you can't track mud and stuff out on the road, so we have to put down a hundred foot entrance with about six to eight inches of Number 3 course stone to scrub that mud off the tires. And then the silt fence, we would stabilize -- or use a silt fence on the downstream side to prevent any runoff or further sedimentation outside the work area.
Q. Okay. And what is the -- this references a 404 permit. What is a 404 permit?
A. So that's a permit from the Army Corps of Engineers to do wetland filling or wetland excavation.
Q. And have you -- those other projects you mentioned, did you get a 404 permit for those?
A. We typically don't do it. We have -- usually what we'll see is an engineer or a consultant will acquire those permits ahead of our work.
Q. So does your estimate of $436,000 include the cost of getting those permits?

A. No.
Q. And it says the pricing is good for ninety days. This was July the 20th of 2021. Would you honor this pricing today?
A. Yes.
Q. All right. Let's walk through just the different item numbers to get to the bid price and if you can just explain to the jury how the -- how these figures arrive at that 435 figure.
A. So mobilization is basically mobilizing the equipment and whatever tools we need to the job. In this case, it would be a long reach excavator, probably a couple of loads of crane mats and then ancillary equipment, a skid-steer loader and a wheel loader as well. And then the next thing would be the construction entrance, which is based on the DHEC general permit standard specifications of 100 foot long, 20 foot wide construction entrance with fabric and six or eight inches of stone on top of that fabric, and that installing the construction entrance and then removing it at the end of the job and restoring that.
Q. And that is generally because if you're -- what did you say, a 30,000 -- or 30-ton piece of equipment?
A. Correct.
Q. To protect the road, you've got to kind of build a road; is that right?

A. Yeah. I mean, it's more to -- because the mud that comes out of the pond is gonna kind of dribble out and get on the tires and then it would track it on the road, so the construction entrance is made to -- to pull that material off of the tires.

Q. And how -- the next item, de-watering of the pond. How is -- how do you drain the pond?

A. So in this case we were -- because it's a smaller pond, we were gonna use a siphon system instead of a diesel system, but we'd have a siphon set up that we would just use PVC pipe. I can't remember what size it was. I think it was two six-inch siphons for this size of a pond.

Q. To pump the water out?

A. Yes.

Q. All right. And then Item Number 5, dredge and stack, and then there's dredge and load. What does that mean?

A. So basically the dredge and stack would be placing the crane mats in order to get a firm footing for the excavator. We would excavate the sediment out of the pond and then stack it out -- or, I'm sorry, excavate the sediment from within the pond and stack it outside of the pond, and we would do that all the way around the pond and let it kind of wick out, let it drain and let some of the water wick out of that, and then we would try to break the piles down a little bit to -- to open it up to air so that

it would drain and dry as much as possible before we haul it away.

Q. Okay. And how long does the process take of the -- of, you know, kind of going from one until six when you're removing the sediment, how long does it take to dry -- to de-water the pond and dry the sediment out?

A. The mobilization, the silt fence and all that would probably only take couple of days, but the de-watering as we found in previous projects it depends on how much it rains. So if it rains every other day, then it can take weeks sometimes, you know, to get it drained down to an acceptable level and then also maintaining that low level of water in the pond while you do the work.

Q. Okay. All right. And the next item -- so a matter of months?

A. I wouldn't say months. I would say -- to get it -- to get in there and get set up and get de-watered, probably a couple of weeks depending on the weather.

Q. Okay. And then the excavation, how long would that take?

A. I think we had forty-five or so hours in the excavation and stacking.

Q. Okay. And what's the trucking?

A. The trucking is basically -- and we broke it out so you can see it separately, so it's basically the cost to

truck it from that site to Screaming Eagle landfill.
Q. And I guess you have to pay the landfill when you drop it there?
A. Yes, there's a tip --
Q. And how is that number figured in unit price?
A. So the landfill disposal is the tipping fee per ton. Obviously, plus overhead and markup.
Q. Okay. And the grassing, hydro-seeding of one acre and then the gravel repair, that's kind of getting off the property?
A. Yes, that's just restoring everything back.
Q. All right. And what is the -- the notes? Can you just briefly walk through those?
A. So we excluded the 404, which is the corps permit. We excluded any performance and payment bonds. That's a typical exclusion. We excluded the relocation or protection of any existing utilities, water lines, phone lines, gas lines or anything like that. Pricing is based on someone else obtaining the 404 permits, if needed, and pricing assumes access to the site using the existing driveway, so as long as we can use that we don't have to build a new road, we just have to improve it. Then it includes SC DOT standard grassing, so we're just using the SC DOT spec for the hydro seeding. And then hauling estimated going to -- I want to say it was the Lovelace

and Lovelace landfill on Screaming Eagle Road in Elgin.
Q. Okay. All right. And would -- I want to talk about natural sedimentation and kind of the importance of being able to work on a hard -- the hard floor of a pond. In every pond there's natural sedimentation; is that right?
A. Sure.
Q. And in your experience in trying to clean out sediment from an acute event, and what I mean by that, some -- some issue, how important is it that you be able to actually work on hard -- hard ground?
A. Well, I mean, if you -- if you set an excavator on pond mud that's five feet thick, it will -- it will make it to the bottom of that pond mud whether you want it to go there or not and so you have to have a firm footing to set the machine on.
Q. And not if it's five feet deep, what if it's five inches deep, does it still need to be --
A. Yes.
Q. And, I guess, if you don't take that kind of precaution to get to hard ground, then what can it do to your equipment?
A. Well, I mean, it's a quarter of a million dollar piece of equipment, so you could potentially lose it into the pond and get it stuck.
Q. Okay.

MR. BELSER: Thank you very much. I don't have any further questions.

THE COURT: Mr. Moore.

THE COURT: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MOORE:

Q. Sir, if you would, please, look for me on your estimate and at the bottom of your official firm letterhead it indicates who the estimator was for this job, doesn't it?

A. That's correct.

Q. And are you listed on the official documentation of this estimate as the person who was the estimator?

A. No.

Q. According to the official records of your company, who is the person who actually did the estimate on this job?

A. We both did it --

Q. No, sir.

A. -- because I reviewed it.

Q. I'm asking you on the actual documentation.

A. Oh, yes, Matt did the -- he did the estimate and Bid to Win.

Q. Oh, I see. So the person who actually did the estimate and Bid to Win was Mr. Matt Skelley?

A. That's correct.

Q. That wouldn't be you. That's somebody else?
A. That's correct.
Q. And you say Mr. Skelley is not here today to testify?
A. No.
Q. And, of course, if we look at the estimate that Mr. Skelley did for this pond, he didn't do this estimate for Suzy Garland, did he?
A. No.
Q. He did the estimate for something called Belser and Belser, PA, right?
A. Sure.
Q. So the estimate wasn't performed for the actual owner of the pond, the estimate was performed by the law -- for the lawyer, right?
A. Yes.
Q. So the estimate really wasn't performed to do the work, the estimate was performed so that you'd have an exhibit in this courtroom, wasn't it?
A. No, we were asked to give an estimate so we gave an estimate.
Q. Sir, do you know anybody in the history of the world who has ever spent $435,000 to clean out a two-acre pond?
A. Do I know them? No.
Q. Do you know of any person in the world in his right mind who has ever spent $435,000 to clean out a two-acre

fish pond?
A. I don't.
Q. In the entire time you've done business, has your company ever charged $435,000 to clean out any kind of sediment basin like this, a two-acre sediment basin?
A. I don't think we've cleaned one out that's the same situation as this.
Q. Right. So you've never done any work like this, correct, for this kind of money on a pond like this?
A. No, we clean basins out all the time.
Q. Right, but you've never charged $435,000 to clean out a two-acre basin, have you?
A. I would have to check in our job files and see.
Q. Sir, do you know anybody in the world that's ever charged $435,000 --
A. Personally, no.
Q. -- to clean out a two-acre basin?
A. Personally?
Q. Yeah.
A. No, I don't know anyone.
Q. And, sir, there are times in your business that it sure don't make economic sense to do something, does it? Isn't that right?
A. I don't -- clarify what you're asking.
Q. Well, you've got a -- Ms. Garland, do you know how

many acres she's got out there?
A. No, sir.
Q. You know her pond's about two acres, right?
A. Yes.
Q. The house is about 1200 square feet?
A. Uh-huh.
Q. Is that yes?
A. Yes.
Q. It's about sixty -- the house is about sixty years old, right?
A. I guess so.
Q. It's on -- it's on a dirt road in rural Lexington county, right?
A. Yes.
Q. The whole place wouldn't be worth $435,000, would it?
A. I don't know.
Q. Sir?
A. I'm not a real estate appraiser, so.
Q. Right. But you are -- according you, you're a contour mining and construction person. It wouldn't make any economic sense at all to spend $435,000 to clean out silt from a two-acre fish pond on a property like this, would it?
A. If you had somewhere else to put it, it wouldn't be as expensive, but you've got to truck it almost 80 miles

away.
Q. No, sir. My questions are about what makes economic sense.
A. Well, I mean that's subjective.
Q. Well, yes, sir, but you -- you have to make business decisions all the time and you deal with people making business decisions all the time. Nobody in his right mind would spend $435,000 to clean out a two-acre fish pond, would they?
A. I don't -- I mean, I don't know.
Q. Well, you've never known anybody to do it, have you?
A. Not personally.
Q. All right. Well, you use this word "sediment basin". A sediment basin is something that you do work on from time to time, right?
A. Correct.
Q. The pond that we're talking about in your business is designed to be a sediment basin, isn't it?
A. That's correct.
Q. Now for a sediment basin to have sediment in it would not be unusual, would it?
A. No, that's what they're designed for.
Q. This pond is supposed to have sediment in it, correct?
A. No.
Q. If it's a sediment basis?

A. No. Which -- hang on. You said this pond. Which pond are you referring to?
Q. You've told me that this two-acre pond is designed as a sediment basin, correct?
A. I didn't say that.
Q. You didn't say that?
A. No.
Q. Well, it's a basin, isn't it?
A. No, it's a pond.
Q. It's a pond that is designed to take rainwater, right?
A. I thought it was a spring-fed pond.
Q. Do you know?
A. That's what -- that's what the other gentleman said.
Q. Well --
A. There's no natural --
Q. If it's not a spring-fed pond, that would mean there's not any runoff into it. If there's a pipe going into it from rainfall, that would be a rain-fed pond, wouldn't it?
A. Perhaps.
Q. Do you know if this pond is rain-fed or spring-fed?
A. No.
Q. One thing we do know though is that rainfall and springwater will both bring sediment, correct?
A. Rainwater --
Q. Rainwater will bring sediment with it when it comes,

right?
A. I don't know if I would fully agree with that.
Q. Sir, suspended solids would be like sand in water, right?
A. Typically sand is not suspended. Sand's heavier and drops out.
Q. It's suspended until it drops out, correct?
A. No.
Q. Are you telling me that water will not move sand?
A. It will move sand, but it doesn't suspend it.
Q. All right. Well, sand is a form of sediment that could be moved by water, right?
A. I guess you could say that.
Q. Well, sir, there's sediment in this pond. If water didn't put it there, what did?
A. That's -- that's how it was deposited there.
Q. Right. It was deposited when it got moved there by water, right?
A. Yeah.
Q. The -- the pond itself impounds water, correct?
A. Correct.
Q. Water moves into the pond and then moves through the pond, right?
A. It should.
Q. Any sediment being moved with the water is deposited

into the pond, correct?
A. Correct.
Q. That's what it's supposed to do, right?
A. No.
Q. The pond's not supposed to hold water?
A. The pond's supposed to hold water. It's not supposed to hold sediment.
Q. What's supposed to happen to the sediment that moves into the pond?
A. Typically it's trapped upstream from the pond.
Q. Right. It's there in the pond, upstream, downstream, but it actually moves into the pond as the water moves in, right?
A. Is that a question?
Q. That was a question.
A. Repeat the question.
Q. Let me ask you this. There's sediment in the pond, right?
A. Yes.
Q. What moved it there?
A. I guess water did.
Q. How did it do that?
A. Because it came from upstream.
Q. And the pond is designed to where water can move out, but sediment drops down, right?

A. Yes.
Q. And the pond bed is a basin, right?
A. Correct.
Q. And as the water moves through with sediment, the basin collects sediment, right?
A. Correct.
Q. And from time to time over the years ponds will collect sediment and they can either stay like they are or somebody can come in and clean them out, right?
A. Sure.
Q. Now how is it that your company managed to give the estimate to the lawyer instead of to the owner of the pond?
A. We gave it to whoever requested the estimate.
Q. And who would that have been?
A. Freeman Belser.
Q. The gentleman seated right here, correct?
A. Uh-huh.
Q. Is that yes?
A. Yes.
Q. When did Mr. Belser call you and tell you that he wanted you to do an estimate for him?
A. I don't recall.
Q. Sir, do you know why it is that you did your estimate for the lawyer and not for the owner of the pond?
A. Because he's the one who requested it.

Q. Have you ever worked with him before?
A. No.
Q. So he asked your company to do the estimate and Mr. Skelley went out and estimated the work for Mr. Belser?
A. He compiled the estimate.
Q. All right. Did your company ever ask you to do -- or sorry. Did Ms. Garland ever ask you to give her an estimate?
A. No.
Q. Have you ever built ponds?
A. Every day.
Q. Have you ever had a two-acre pond that you charged $435,000 to build?
A. We've had some that were more expensive.
Q. Two acres' worth?
A. Uh-huh.
Q. As a matter of fact, if you actually spent $435,000 out there, you would be removing all of the silt from the pond, right?
A. We were removing what was on the -- in the report. Based on the quantities in the report.
Q. Well, that according to that came off of some engineering estimate, right?
A. Correct.
Q. That's how much silt was estimated to be in the entire

pond?
A. Correct.
Q. So you were talking about taking all of the silt out, right?
A. Whatever was listed in the report.
Q. Well, according to what's listed in there, that's all the silt over about a 50-year period. That would sound about right, correct?
A. Yeah, but you can't just remove just the silt because you can't grade this close. You're operating an excavator. You're gonna be -- you're gonna vary how much material you're gonna take out. So inevitably you're gonna sometimes take out more material than you would prefer to.
Q. Right. You're gonna take out all the silt, plus you're going to deepen the pond from where it originally was.
A. Well, I mean, not necessarily, but --
Q. For $435,000 the pond would not only be like new, it would be better than new, wouldn't it?
A. I don't know if I would say that.
Q. How much would it cost to take out any silt at all -- if any silt ever wound up from my client's property, how much would it cost just to remove the silt that my client put in there?
A. I mean, that's what the estimate is.

Q. No, that's all the silt from fifty years. How about any silt that my client put in? How much would that cost?
A. Whatever's on the estimate, that's what we put in.
Q. Sir, the estimate is for all of the silt that's taken place over fifty years. I'm talking about an event that allegedly happened in 2018. Do you have any idea how much silt went in in 2018?
A. No.
Q. What percentage of your estimate would be to remove that silt?
A. I don't know because we're -- we're going off of the engineer's report.
Q. Sir, if you don't know, how is the jury supposed to know?
A. Well, that's why you have an engineer's estimate.
Q. Well, the engineer's estimate, let's talk about that. Who is that engineer?
A. It's Bunnell Lammons.
Q. Right. According to that report -- have you ever even seen that report?
A. Yes.
Q. That report places an estimate as to how much silt total is in this pond from 60 years. I'm trying to say -- ask you, if you know, of the silt that you say is in this pond based on the engineer's report how much, if any, came

from my client's, the Cades?
A. I don't know.
Q. If you don't know, who would?
A. I don't know.
Q. What percentage of this $435,000 would the Cades be responsible for?
A. That's not my job to determine that.
Q. If it's not your job, whose job is it? You're supposed to be the estimator.
A. My job is to estimate what's on the documents and that's what we've done.
Q. All right. Do you know if the pond is spring-fed?
A. No.
Q. Do you know if it's rain-fed?
A. No.
Q. One thing we do know is that it is a drainage basin and it basically drains and takes water from all over the basin, the watershed, doesn't it?
A. It takes water from whatever is upstream of it.
Q. It has a lot of stuff upstream from it, doesn't it?
A. I don't know.
Q. But certainly it needs that water to survive, doesn't it?
A. Yes, to stay -- to stay an active pond.
Q. One of the things that you wrote in your report -- or

at least Mr. Skelley wrote, first the pond would have to be drained completely, any fish would die, right?
A. Uh-huh.
Q. So what you put in your report is that if you take fish out of water they will die, right?
A. Correct.
Q. You saw fit to put that in an actual estimate?
A. Yes, sir.
Q. Didn't you sort of expect people would know that if you took fish out of water they'd die?
A. We don't make those assumptions.
Q. You don't assume that if a fish is taken out of water it's gonna die?
A. I learned a long time ago to do an estimate you don't make assumptions.
Q. But, of course, you didn't write this estimate, Mr. Skelley did.
A. I reviewed it.
Q. Oh, you reviewed it. I see.
A. I review all of our estimates.
Q. In the grand scheme of things, this is a very small pond; is it not?
A. I mean, that's subjective.
Q. Do you know anybody in the world who would testify that it would be commercially reasonable to spend $435,000

to clean out this pond? Do you know of anybody who would say that?

A. That's not for me to decide.

Q. Well, you know what you know, don't you?

A. Is that a question?

Q. Yes, sir. Don't you know what you know?

A. I guess you would say so.

Q. I'm just asking you. Do you know anybody in the world who could testify that it would be commercially reasonable --

MR. BELSER: Your Honor, objection. Mr. Moore has asked this question again and again about whether there's anybody in the world who would do this and he's answered again and again, and it's 6:00.

THE COURT: Yeah, it is time to move on, Mr. Moore. I think you've made your point.

MR. MOORE: Thank you.

BY MR. MOORE:

Q. Now I want to go over your numbers with you. Mobilization is gonna cost $9,995?

A. Correct.

Q. Really rounding that off it's $10,000, right?

A. Uh-huh.

Q. As I understand, mobilization would mean getting one track hoe or excavator, hauling it out to the pond and

hauling out some pads that it could operate on?
A. I mean, that's not everything it includes.
Q. Well, that's what you testified it was on direct.
A. I said there's incidentals, too.
Q. Incidentals. All right. So you're gonna charge $10,000 to load up an excavator, take some incidentals and some pads to the site, right?
A. Correct.
Q. Where's that excavator coming from?
A. It depend on where it's -- where it's at.
Q. Have you got one?
A. A long reach? Sure.
Q. All right. Where is it?
A. It's at 141 Court Road.
Q. How far is that from Ms. Garland's property?
A. I don't know.
Q. Give me an estimate.
A. Twenty miles maybe.
Q. You're gonna charge $10,000 to haul an excavator twenty miles and take a load of pads and some incidentals?
A. That's not everything I said. I said a couple of loads of crane mats.
Q. A couple of loads of crane mats.
A. And some other equipment.
Q. What other equipment?

A. I said -- I stated it earlier, a wheel loader, a skid-steer, a dozer.
Q. You're really gonna charge $10,000 just to haul that stuff out there?
A. Do you know how much a lowboy costs?
Q. I just asked you, sir. You're gonna charge -- look, I've done some of this work, too. You're gonna charge $10,000 to do that? Come on now.
A. Yes.
Q. Let me ask you this. The silt is just sand, isn't it?
A. No, silt is not sand.
Q. What does this silt consist of?
A. Silt is just fine clay particles.
Q. Well, if silt is fine clay particles, do you know if my client has any fine clay on his land?
A. I don't know.
Q. So the silt we're talking about are fine clay particles, right?
A. That's what you're talking about.
Q. I'm asking you. The silt we're talking about out there, is it fine clay particles?
A. I haven't done a soil analysis of the silt on the bottom of the pond, so.
Q. Then how are you able to tell me that the silt out there is not sand but is fine clay particles?

A. No, what I was saying is sand is not considered as silt. It's two different types of material.
Q. I see. So you're gonna charge $136,000 to take dirt to a construction and demolition landfill and dump it?
A. Yes.
Q. Sir, if you take your mathematics, as I compute it with what I know about a little bit of this equipment, you're gonna put about eighteen tons of dirt in a truck, right?
A. It depends on the truck.
Q. Well, the trucks that you're talking about using haul about eight tons apiece, don't they? They're dump trucks.
A. I mean, it depends on -- it depends on the truck because you have to use one that has a locking gate because of the -- the silt, the water that's in it, if you don't use a locking gate it dribbles silt out all over the road.
Q. I'm not talking about the substance, I'm talking about the weight. A dump truck hauls about eighteen tons, doesn't it?
A. Depending on the gross weight of the truck.
Q. Well, if you take my assumption that they're 18-ton standard dump trucks and it's according to you 3,779 tons of dirt, that's gonna be about 210 dump truck loads that you claim have to be pulled off the bottom of a two-acre pond; is that correct?

A. I'm trusting your math there, but --
Q. Sir, if you had a two-acre pond that was empty, 210 loads of dirt would fill the thing up to the top, wouldn't it?
A. Well, you can't look at it that way because you're -- you've got to look at what the material weighs and fully saturated material is gonna weigh more than material that's dry.
Q. Sir, if 3,779 tons of dirt had somehow rolled off my clients' property on to the neighbor's property into a pipe through the pipe under the road into a wetlands area and into the pond, it would be very easy to look at my clients' property and see that dirt's missing, wouldn't it?
A. Not over thirty acres. It wouldn't be very -- it wouldn't be very much.
Q. We're talking 3,779 tons of dirt, right?
A. Well, that's banked cubic yards.
Q. That's 210 truckloads, sir. How in the world is 210 truckloads of dirt going to wash off of 30 some odd acres in a 60-day period of time? Have you ever seen that happen before?
A. You're confusing dry density versus wet density.
Q. Sir, you're talking about the cost of trucking these loads of about $73,000. Did you know Mike Sturkie has a construction and demolition landfill within ten miles of

this place? Did you know that?
A. Unh-unh.
Q. No?
A. No.
Q. Well, if that happened to be true, that would sure change your estimate drastically, wouldn't it?
A. If they would accept that type of material.
Q. The material's just dirt, isn't it?
A. It's -- it's dirt, but it's not useable for anything.
Q. Sir, contractors are looking for dirt every single day, aren't they?
A. This is mud, not dirt.
Q. That's right because it's clay and not sand as you told us, right?
A. I don't think I told you it was clay. I don't think I used that word.
Q. Well, what is it? Is it clay or is it sand?
A. It's material. I don't know. I mean, we don't have a geo tech analysis on it.
Q. And in order to determine if it came off my client's property, you would have to have a geo tech analysis, wouldn't you?
A. Not necessarily.
Q. I asked you, sir, if you know of anyone who has ever spent $435,000 to clean out a two-acre fish pond. Do you

know anybody who's ever spent $335,000 to clean out a two-acre fish pond?
A. Me? No.
Q. How about $235,000 to clean out a two-acre fish pond?
A. I don't recall.
Q. How about $100,000 to clean out a two-acre fish pond?
A. I don't recall. No, hang on. Let me take that back. Yeah, we did one that was about that much.
Q. That also included some dam repair in it, didn't it?
A. I don't believe so.

MR. MOORE: Thank you, sir. I don't have any further questions.

Thank you, Your Honor.

MR. DOUGALL: Nothing, Your Honor.

THE COURT: Thank you.

Any redirect?

MR. BELSER: No, Your Honor.

THE COURT: May I excuse Mr. Hanna?

MR. BELSER: Yes, Your Honor.

THE COURT: Mr. Hanna, you may be excused. Thank you.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: All right. Ladies and gentlemen, Madam Forelady, I'm gonna let y'all go. Please do not

speak about this case, do any research on it or anything like that on your home computers.

We're gonna start early in the morning, like I said, a quarter to at nine. If everybody would be in the jury room and ready to go, okay?

Thank you.

(Whereupon, the jury was excused for the day at 6:17 PM.)

THE COURT: All right. I'll see everybody at 8:45. That way we can take up any issues and we'll be ready to go.

MR. BELSER: We'll be ready to go.

THE COURT: Okay. Thank y'all. Thank you for staying late.

(Whereupon, the proceedings were concluded for March 29, 2022, at 6:18 PM.)

(The following proceedings were held March 30, 2021, beginning at 9:01 AM.)

THE COURT: Okay. I've got two juror notes. One is from Juror Number 176, who I already read this to the lawyers.

Mr. Dougall, I don't believe you were out there in the hallway when I got Mr. Moore and Mr. Belser, but 176 has some stomach issues and I asked those two lawyers and we're gonna let him go. I wasn't gonna keep him.

So I'm gonna make that Court Exhibit 2, that note.

And then I had another note from Juror Number 25 that I'm gonna make Court's Exhibit Number 3 and it says "I am currently going through a nasty divorce and I have a five-year-old daughter that attends Lake Murray Elementary and one of my custody rights is tonight. My normal schedule is to pick her up at 5 PM at Lexington Middle School. I have to drop her off at her mother's in Gilbert by 7:30. If I leave late again today, it may affect my custody case.

I don't want to do that her {sic}. We will accommodate her because if I let Juror Number 176 -- I've let him go, 176, that was a Chris Seals, now Christy Waters, Juror Number 216, becomes our new juror.

That means I've got one alternate left. I'm glad I picked three.

And I'll address her when we come in and tell her that we will accommodate her.

Now anything I need to take up?

MR. BELSER: Did you say it was Juror Number 25 who had the childcare?

THE COURT: It's Juror Number -- yes, 25.

MR. BELSER: Michael Butler.

THE COURT: That's the childcare.

Juror Number 216 now becomes part of the jury.

That's Alternate Number 2.

MR. MOORE: There is one small matter I'd ask the Court to take up before we start.

Your Honor, we have two employees from Lexington County who are here prepared to testify. I have no objection at all to them testifying. I do object to them giving legal conclusions. Neither of them is an attorney. The actual stormwater ordinance speaks for itself. I think what counsel is gonna do is to ask them for interpretations of the stormwater ordinance. Their interpretation actually conflicts with the stormwater ordinance, what's written there.

The -- I think for them to say this is the ordinance, this is what we did, nobody was charged with any violation of the ordinance, and the stop work order was lifted, but when they get into their interpretation of what they think this ordinance says, it basically, from what I can tell, conflicts with what the ordinance actually says. And I don't have any problem at all with them telling -- reading the ordinance to the jury, telling the jury what that ordinance says by way of reading it, but I do object to them giving any legal opinions that would conflict with the clear wording of the ordinance.

THE COURT: Mr. Belser, are they planning on giving

legal opinions?

MR. BELSER: No, ma'am.

THE COURT: Okay. Just what they do in their normal course --

MR. BELSER: Yes.

THE COURT: -- of business and what they did out on this piece of property and --

MR. BELSER: Yes, ma'am.

THE COURT: Okay. They can testify to that.

No legal opinions. They're not gonna be experts, right?

MR. BELSER: No, ma'am.

THE COURT: So they can't give an opinion anyway unless -- they can give a lay opinion.

All right. Anything else, Mr. Moore?

MR. MOORE: No, ma'am. Thank you.

THE COURT: Let's bring the jury in.

(Whereupon, the jury enters the courtroom at 9:08 AM.)

THE COURT: All right. Madam Forelady, is the jury ready?

I hope everybody had a good evening.

I excused Juror Number 176. He wasn't feeling very well, so I'll tell you, Ms. Waters, you are now part of the jury. I think I have one alternate left.

Also, Mr. Butler, I will make sure that you are on time today. No worries.

I'm gonna make both of these Exhibit 2 and Exhibit 3, Melinda, in the order that I have them stacked.

(Court's Exhibit Numbers 2 and 3 were marked for identification.)

THE COURT: Okay. Mr. Belser, are we ready?

MR. BELSER: Thank you, Your Honor. May it please the Court? Plaintiff calls Gerald Lee.

THE COURT: Okay.

THE CLERK: Raise your right and place your left.

(Whereupon, Gerald Lee was duly sworn by the Clerk of Court.)

THE CLERK: If you'll state your full name for the record, please, sir.

THE WITNESS: Gerald Lee.

GERALD LEE,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BELSER:

Q. Mr. Lee, where are you from?

A. Originally born in Toledo, Ohio. I live in Blythewood right now.

Q. How long have you been in South Carolina?

A. Since 1989.
Q. And can you please -- are you here today pursuant to a subpoena?
A. Yes, sir.
Q. And describe your educational background for the jury, please.
A. I have a bachelor of science in civil engineering from the University of South Carolina.
Q. When did you get that degree?
A. 1997.
Q. And did you have any further education after that?
A. No.
Q. And what licenses -- or are you a professional engineer?
A. I am professionally licensed in South Carolina, North Carolina and Georgia.
Q. And when did you first get your South Carolina license?
A. 2001.
Q. What type of training did you have to have in order to get your license? I guess you graduated in 1997 and then got the license in 2001. Explain that four-year period.
A. Your last year of college you take the FE exam, the fundamentals of engineering exam, an eight-hour exam. If you pass that, you have to work for four years underneath

the guidance of a professional engineer and then you're qualified to take the professional engineer's exam, another eight-hour exam.

Q. And where did -- who did you -- after you -- after you took the fundamentals in engineering, who did you train under for that four-year period?

A. I was working at Civil Engineering of Columbia under the guidance of Bill Brown.

Q. And that was the location located -- that's off of Fernandina Road?

A. Yes.

Q. And so you got your license in 2001 in South Carolina. When did you get your license in the other states?

A. In North Carolina, I believe was 2008, and in Georgia was just last year.

Q. And why did you get those licenses out of state?

A. At the time in -- when I got the North Carolina license, I was working with Power Engineering, who had a branch office in Charlotte, and they asked me to work up there, so I got the North Carolina license. And then we had a -- a project at Robins Air Force Base and also Fort Gordon, some defense contracts, and those are in Georgia, so I got a Georgia license.

Q. Who is your current employer?

A. Jimmy Chao at Chao and Associates.

Q. What kind of stuff do you do at Chao and Associates?
A. I am in charge of the civil engineering and surveying departments, in charge of all land development projects.
Q. And so being in charge of civil engineering, that department, what does that mean, in land development projects? What does that mean?
A. If someone comes in with a piece of property and -- and wants to develop it into a commercial or institutional or residential development, I can do that design.
Q. So you actually design the stormwater structures and that kind of stuff?
A. Yes, sir.
Q. How many different stormwater systems have you designed in your career?
A. I can't begin to count them. When I was at Civil Engineering of Columbia, we did all of Mungo's work, so you know how many was there, and then at Power Engineering for the next six years we did Centex, Pulte, D.R. Horton, we did all of those developments, Great Southern Homes, and now with Chao not so many residential developments, but numerous municipal, institutional and commercial developments.
Q. That all involves land disturbance and clearing lands for making it for a different purpose?
A. Correct.

MR. BELSER: Your Honor, I move to qualify Mr. Chao {sic} as an expert civil engineer.

THE WITNESS: Mr. Lee.

MR. BELSER: Sorry. Mr. Lee.

MR. MOORE: We would stipulate that -- that Mr. Lee is a civil engineer.

THE COURT: And as an expert. Do you have any objection?

MR. MOORE: Yes, ma'am. I have no objection at all.

THE COURT: And what is he gonna be an expert in?

MR. BELSER: In civil -- in stormwater sediment transport -- or stormwater management and sediment and erosion control.

THE COURT: Okay. Let me just address the jury right quick.

Mr. Lee's gonna be qualified as an expert and I'm gonna allow it and you heard the area. I'm not gonna -- I don't know that I can. It was a mouthful.

MR. BELSER: Do you want me to say it again?

THE COURT: He is going to be qualified in the area of --

MR. BELSER: Stormwater management and sediment and erosion control.

THE COURT: And he's gonna give opinion testimony in that area.

Usually witness are not allowed to give opinion testimony. That does not mean you must accept the opinion, but it is evidence for you to use in any way you see fit, okay?

Go ahead.

MR. BELSER: Thank you, Your Honor.

Your Honor, may I approach the witness and hand him his report?

THE COURT: Absolutely.

BY MR. BELSER:

Q. Mr. Lee, I'm handing you what's marked as -- for the exhibit numbers, do you remember when I sent you a subpoena way back for your files?

A. Yes.

Q. That is your response and what I would like to do is walk through your thirty-five pages of the report, and we're gonna turn the lights off, but before we do that I want to just kind of get some background information.

As I understand it, you were -- you were engaged by the Cades to come and evaluate their property after they cleared it; is that correct?

A. That is correct.

Q. Okay. And on December the 10th of 2018, that's when you were -- and your firm were formally engaged?

A. Yes.

Q. And then on December the 11th of 2010 -- sorry, 2018, you actually went to the site for a site visit?
A. I believe that is the correct date.
Q. And then on December the 12th of 2018, you issued a report and you met with Mr. Cade and explained to him your findings, he paid the bill and left?
A. Yes.
Q. All right. Let's walk through -- yeah, hit the lights.
Can everybody see that okay?
All right. This first page of -- of this document, is this your engagement letter?
A. Yes. This is our fee proposal.
Q. And going down to -- if you could just kind of describe for the jury the first -- go through the first paragraph and kind of the scope of services you were gonna provide.
A. The first paragraph is per Mr. Cade's request, Chao is pleased to have the opportunity to submit our fee proposal. The scope of services, what I was asked to do, was visit the site, perform a cursory observation of the current conditions to either refute or confirm the downstream property owner's claim of sediment transport. I basically said it's gonna be my professional opinion, and I'll -- I will give them a field report documenting our findings.

And the last is our fee rates.
Q. Okay. And so the second -- read the second sentence of the scope of that first paragraph. We will offer an objective...
A. We will offer an objective professional opinion regarding the findings and whether or not we feel the source of the sediment is from your property.
Q. All right. And you visited the site, the engagement letter was signed. Is that -- is that Mr. Cade's signature?
A. I believe so, yes.
Q. Okay. And then this next exhibit, is this something that you would have captured off of the -- off of the internet?
A. That's just off the County's website, yes.
Q. This shows there's -- this is actually north-south. There's some equipment around. This is the Cade property where the clearing was and then this is the Garland pond?
A. Yes.
Q. Okay. Let's go to the next page, which is October 12, 2018. Is this your report on page 3?
A. Yes, it is.
Q. And this referenced the -- the site visit on December the 11th, 2018?
A. Yes.

Q. And who all was present? Was Mr. Cade present?
A. Mr. Cade was the only other person there.
Q. All right. And this -- Chao was engaged for the scope of services. Is there anything different from the scope of services than what we just looked at?
A. No, sir.
Q. Let me pull up a chair. And the second sentence, this report is based on the visual observations and the information that was provided or made available during the visual evaluation?
A. That is correct.
Q. And then it references professional opinion and judgment of a licensed professional engineer, you?
A. Yes.
Q. If further -- if further information is provided or becomes available, the initial findings will be reviewed, which may result in the need to modify the opinion rendered initially. Is that --
A. Yes.
Q. All right. And this was how many years ago? Three years ago and some change. I took your deposition a couple of years ago and then you've been here kind of patiently waiting for your -- your turn to come up.

Has anything changed -- is there any new information or anything that you've learned over the last three years

since this report was issued that changes your opinions?
A. No, sir.
Q. The general information, there's -- everybody kind of knows where it is, but it's the northwest quadrant between Fish Hatchery Road and Newcastle Drive, and per aerial images obtained from Lexington County when the site was cleared sometime between February 2, 2017, and May 2, 2018, did you actually confirm that verbally with Mr. Cade?
A. No, just in the preparation of this report I just looked at historic images and determined that sometime in there. In the February 2, 2017, image, it was fully wooded. In the May 2nd image, 2018, it was cleared.
Q. Here are the two images that reflects your estimate. The 2017 image on the left.
A. Yes.
Q. And when from a -- and the water -- water quality and water quantity and runoff, they're two different things, right?
A. That is correct.
Q. Okay. So water quality's affected, if you clear off a piece of property. That relates to sediment transport, if water was settling in it?
A. That is correct.
Q. Water quantity relates to the volume of the water that -- that leaves the site if rain falls on it; is that right?

A. Correct.
Q. In other words, if you have trees and vegetation versus a clearing, which of those sites is going to actually absorb water and which one is gonna it let go?
A. The treed site would allow less runoff than the cleared site.
Q. Because the roots are soaking up the water?
A. There's root uptake, there's sufficient stable ground cover to slow the flow of overland flow.
Q. All right. Field observations. All right. This is -- let me just bring them out here to make sure I've got them.

All right. What did you observe in the field when you were out there?
A. I just when I arrived onsite started taking pictures of the existing conditions and saw that about 95 percent of the property was completely denuded of any vegetation.
Q. When you say denuded of any vegetation, what does that mean?
A. All vegetation was removed. At that time it appeared all root stumps were already pulled up. It was completely disturbed.
Q. And this sentence right here where you said there was no evidence of any vegetation or other means of sediment control, so what -- what does that -- what is sediment

control?
A. Silt fences or brush piles piled up along the edges to filter out any sediment transport. You know, there was nothing. Rock check dams. There's all kinds of means of controlling sediment and there was nothing.
Q. Okay. What -- what is this -- this photograph right here, which is on page 5 of the exhibit, what is an impervious structure, an impervious surface?
A. A roof is an impervious structure or surface, so that roof there would be an impervious surface. A concrete slab would be an impervious surface. An asphalt slab would be impervious.
Q. When you're talking about impervious, what does impervious mean? So rain drops and it falls on an impervious surface, what does that mean?
A. It will have -- approximately 98 percent of it will run off. Of course, 2 percent would remain as -- the surface will be wet, but it'll -- it'll shed 98 percent.
Q. What is the -- what is a kind of antonym to impervious?
A. Permeable surfaces. It's --
Q. And so this is -- this is a photograph you saw and took of an impervious surface that also is a concrete slab?
A. Right.
Q. And what was that -- can you see what the thing was

next to it?
A. I can't make it out.
Q. On my screen, is that -- it looks like some kind of cargo -- like an 18-wheeler load --
A. It could have been a dumpster, it could -- I don't -- I don't remember what that was.
Q. What is -- what is this photograph?
A. I was just starting to take some panoramic pictures around the site. That's where I parked looking towards the -- the pond on the Cade's property.
Q. And, again, on this -- on this site there, did it look like work was being performed on the pond itself?
A. They had done some work on it, it appeared, but, you know, I can't -- I had no recollection of what it looked like before.
Q. There were no --
A. But it was disturbed around the rims of it, so they probably, you know, trimmed it up and removed the vegetation.
Q. When you say it was disturbed, do you mean it doesn't look like --
A. There was no vegetation down to the edge of the pond.
Q. All right. And if you can kind of walk through this next paragraph here.
A. Well, just trying to give a synopsis of what the

conditions were onsite and noted that it had rained quite hard for three days prior to this observation. You know, the water was near the top of the outlet control, which -- which is typical for a pond.

Q. You're talking about of the Cade pond?

A. The Cade pond, yes.

Q. Have you ever seen Ms. Garland's pond?

A. I had -- had never seen Ms. Garland's pond, no. Only at the deposition.

Q. All right. So it had -- it had rained and there was no visible discharge coming from the pond. What's the significance of that?

A. That was an overtopping of the outlet structure.

Q. Okay. And walk through the next sentence.

A. Below the pond dam was extremely wet, which could be attributed to the recent rain. It was very wet. You couldn't even walk down in the bottom below the pond dam.

Q. Was there evidence that work had been done on the back side of the dam?

A. They left a small strip of vegetation along what would be the wetlands below the dam, but that was probably because -- I don't -- I don't really -- probably couldn't get their equipment safely in and out of there. It was very wet.

Q. But the toe of the dam up to the top, was -- was that

disturbed?
A. Oh, yes. That was cleared.
Q. Meaning no vegetation?
A. No vegetation on the back side of the dam.
Q. The next sentence, there is not a clearly defined outward channel below the pond with a series of wet conveyances to the wetland area. What does that mean?
A. Water was just finding its own way out of there. It was rather flat down there, but, you know, there were little channels as water was making its way out. There wasn't one single defined channel, there was -- there was several branches of water passing through.
Q. Some of the water flows were turbid and some were clear. What does turbid mean?
A. Turbid means it had a lot of suspended solids in it.
Q. Are suspended solids kind of an engineer way of saying dirt?
A. Yes.
Q. And so the term -- what does the term "turbidity" mean?
A. It's cloudy. Cloudy water.
Q. All right. Around the perimeter of the wetland area at the edges of the disturbance, there's evidence of soil movement signified by alluvial formations, mostly where concentrated flow exists. Can you kind of translate that

for us?
A. Well, an alluvial formation is a -- a deposit of sand and sediment where water would be running at a higher velocity and then meet up maybe against another water column and slow it down and water would -- and the soil would settle out or it's just simply a slope change where it's moving faster and then flattens out and then slows down and drops its sediment and it forms a delta of deposited sediment, and that's called an alluvial formation.
Q. All right. On page 4 of 6, is this a photograph of what you're talking about here?
A. The one in the upper part of the photograph is one alluvial formation that was onsite.
Q. Okay. So let -- so this is a channel below the pond?
A. Right.
Q. And these are just some -- this is evidence of some of the --
A. The land clearing, yeah.
Q. Okay. And you can see the buffer back there as well.
A. (No verbal response.)
Q. And did Mr. Cade, would he -- did he follow you around throughout the visit?
A. He walked me around for a little bit, but then I, you know, performed a more in-depth cursory review by walking

around by myself.
Q. All right. What -- what does this photograph show?
A. That's a lot of alluvial deposits entering into the wetland area from uphill.
Q. When you say a lot of alluvial deposits, that just means there's a lot of sediment?
A. There's a lot of sand there, yes.
Q. All right. Can you read this? What does this last paragraph mean?
A. In the disturbed soil that was -- that I observed, there was white clumps which signifies kaolin clay and clay tends to get suspended in water columns and stays there for a long time because the particles are very, very small.
Q. There was clay and sand?
A. Yeah, and that is significant as it adds to the turbidity in the water.
Q. All right. And then what's in this photograph at the top right here?
A. It's a -- just evidence of a thin layer of clay settled out onto the leaf liter, which means it was on top of what was already there.
Q. And this is turbidity in the stream. What is this, the last picture? Overbank area on the upstream side of Davis Drive is siltation.
A. I just went down Davis Drive and took some pictures

of the existing conditions and it shows that the water was coming off of the Cade property making it all the way to Davis Drive.

Q. And there's been a lot of talk about a culvert and some discussion about clogs, clogging and water flowing -- water flowing freely through that culvert area.

A. Yes, I observed the water flowing through the pipe.

Q. All right. Let's talk about your conclusions. If you can just kind of read the first -- the first paragraph and shed any color you want to.

A. The purpose of this report was to determine if clearing of the property could be contributed to the alleged adverse impacts of the pond downstream. The short answer is yes. The extent and type of adverse impact is as yet unknown, however, based upon this observation it's like they're experiencing high levels of turbidity in their pond and accumulating silt layer as --

MR. MOORE: Excuse, Your Honor. I'd have to object to this testimony. He basically now is indicating that what he found is something could be, basically it might be. I believe he would have to be able to testify in regard to a reasonable degree of professional certainty that it was, which is totally contrary to his report; therefore, I would have to object to the testimony because it does not meet the appropriate standard for

an expert witness opinion.

Thank you.

MR. BELSER: Your Honor, that was my next question, is are your opinions to a reasonable degree of certainty as an expert engineer.

MR. MOORE: Well, Your Honor, that would be contrary to the report. The report said "could be".

THE COURT: Yeah, but the next sentence is the short answer is yes --

MR. MOORE: It could --

THE COURT: -- so I'm gonna allow it.

MR. MOORE: Thank you, Your Honor.

THE COURT: He said -- I mean, it's pretty clear to me the purpose of this report was to determine if the property could be contributed and he put the short answer is yes.

I'm gonna let you continue.

BY MR. BELSER:

Q. All right. So just to go back on here, Mr. -- I keep wanting to call you Mr. Chao because I see that, but Mr. Lee, are -- are your opinions in this report, which you drafted for Mr. Cade, not for a court of law --

A. Right.

Q. -- but are they -- are they with a reasonable degree of certainty as an expert in engineering?

A. Yes, of course.
Q. All right. Now this part about the extent and type of adverse impacts is yet unknown, however, that means -- that's just basically saying you don't -- you didn't go to Suzy's property?
A. I haven't seen the pond and I didn't know how long this had been going on or how much longer it was going to be going on --
Q. You saw --
A. -- but there was damage that was gonna be occurring from what I saw.
Q. And you were here for opening statements?
A. Yes.
Q. And you saw the video?
A. Yes.
Q. This last, this is -- this is an environmental impact that directly affects the health of a pond. What does that mean?
A. Clay layers settling out in a pond tends to affect the -- the fish, microvertebrates, macroinvertebrates--
Q. You though --
A. And plus the sediment, of course, takes up water volumes, so.
Q. Now this next paragraph here, also by removing the vegetation on the site, the runoff characteristics have

been altered and a more detailed study that's not discussed in this report would be required to identi -- to quantify the overall impact to the drainage basin. What are you -- you're saying -- well, what are you saying there?

A. If I were to run a hydraulic calculation on this piece of property before the trees were cleared off using the SCS method, I would have to use a curve number, a runoff coefficient curve number of probably sixty or so depending on -- I don't remember if this was A, B, C or D soils, but if -- if I used a B, it would be around 60 because bare disturbed dirt I would have to use a curve number around 80, so that's a significant increase in runoff curve number.

Q. Curve number is a -- does that refer to the -- whether it's impervious or --

A. It's a reflection of its imperviousness and how much runoff it's gonna generate.

Q. The downstream impact resulting from the denuding of the site would be not only runoff laden with suspended particles, but also increased volume of runoff and rate of runoff now being received downstream, does that go to the water quality and water quantity?

A. Right. Runoff volume is water quantity. The laden water is water quality.

Q. And then the last sentence talks about no sediment

controls in place?
A. Right.
Q. All right. And did you recommend that the Cades work with the County to bring their property into compliance?
A. That is correct.
Q. Okay. And let's just kind of go through some photographs. We don't need to overdo it, but this is a photo -- is this a photograph from the wetlands area back up towards the Cade property?
A. The -- the back slope of their pond dam is in the back -- background there and that's the water coming down, yes.
Q. And then these are the different -- the trucks and things --
A. Right.
Q. -- on the site?
A. Right.
Q. And that's the sediment pile that's on the leaves?
A. That is correct.
Q. We saw that picture. What is -- what is this photograph?
A. That's the -- from Davis Drive coming down from the Cade property to the head of that pipe and you see that it's going into the pipe.
Q. This -- the Cade property is that way?
A. Yes.

Q. And this is a photograph -- do you see this fence right there?
A. I believe that is on Davis Drive looking towards the downstream pond.
Q. So Ms. Garland's property is down that way?
A. Yes.
Q. Cade is this way, Garland's going that way?
A. Yes.
Q. And that water was moving toward Ms. Garland's property?
A. That is correct.
MR. MOORE: Object to the leading, please, Your Honor.
THE COURT: It is leading. Try to avoid that.
MR. BELSER: I'm good with that. I'm just trying to move us along.
BY MR. BELSER:
Q. What is this photograph? This is on page 16.
A. That's the little drainpipe. That little white thing in the middle is a little drainpipe at the -- at the bottom of this slope. I don't know what it was. I think it was -- it might just be a toe drain installed in the design of that pond dam.
Q. The Cades' pond? The backside --
A. That's on the Cades' dam.

Q. Was there erosion evident on the backside --
A. Just from when they had recently removed vegetation.
Q. On this photograph?
A. That is more of a close-up of it.
Q. I think we saw this one.
A. Uh-huh.
Q. And what -- did you drive in on -- is this some kind of asphalt-type material?
A. I don't remember if he had gravel on there or -- I don't remember what the surface was at the time.
Q. Is that an impervious surface?
A. Gravel is semi-impervious. Asphalt is impervious.
Q. And this. We saw that one.

All right. Now you took some notes of your visit, right?

A. Yeah, these are just notes so I remember everything.
Q. Okay. Let's -- the first -- and we've already talked about how it was cleared except for a buffer. On the other side is zoned agricultural and other land is not permit required. Is that what Mr. Cade told you?
A. Yes.
Q. And did you actually speak with someone -- do you have an opinion as to whether a permit was required for this land?
A. Based on the amount of land disturbance, yes, a --

there should have been some kind of pollution prevention plan in place. Now I'm not familiar with agricultural. Obviously we don't prepare permits for agri -- we're not asked to prepare permits for agricultural, but this -- this I was surprised.

MR. MOORE: Your Honor, I'd ask to move to strike that. That's speculation and would basically say he'd be surprised if there wasn't one. I -- I don't think that's an expert opinion unless he can testify that there was actually -- under the ordinance is a permit required. I -- I think that's simply speculation on his part.

MR. BELSER: Your Honor, he can cross-examine on that. I think that if he's an expert, if a set of permits is required --

THE COURT: I do not agree with you, Mr. Belser.

Move on.

BY MR. BELSER:

Q. Let me just see if there's something on here.

All right. Here we go. This -- the paragraph that starts with the owner indicated that the complaint was after Hurricane Florence and Michael. Do you see that?

A. Yes.

Q. And then the property had been cleared -- the property had been cleared prior to these storms. These are extreme

rainfall events, as was the three days of rain experienced prior to my site visit.

Is an -- what is the -- with reference to storm events, rain events like a hurricane in any of your cases, what is the purpose of sediment and erosion controls?

A. Our sediment and erosion controls are usually -- are required to be designed to handle a ten-year storm, which is 5.3 inches in twenty-four hours, I believe, in Lexington county, and a -- a rainfall event such as Florence or Michael, I don't remember how much rain they dropped or the -- the three days prior. You know, if they exceeded a ten-year storm, there could have been failures in any kind of sediment device.

Q. But is the -- what is the purpose of sediment and erosion controls in dealing with rainfall and sediment transport?

A. It's to stop any sediment transport from the disturbed property onto adjacent properties or into wetlands, protected areas.

Q. Now you called and -- and spoke with the County about this; is that right?

A. Right.

Q. And with whom did you speak?

A. Kim Swygert.

Q. And based on your conversation with her, did that

confirm your opinion that a permit was needed?

MR. MOORE: Objection, Your Honor. That's asking for hearsay clearly.

MR. BELSER: Your Honor, an expert witness can rely on hearsay in -- in forming his opinions and that's all that's designed -- that's all I want to do.

MR. MOORE: His -- his opinion is his opinion, but what the County basically would have told him is a whole lot different than anything that would be forming any type of an opinion. If Ms. Swygert's gonna testify, I don't have any objection, but if Ms. Swygert's not gonna testify, this is an out of court statement, somebody's putting words in her mouth, and that would be -- that would clearly be hearsay. I cannot cross-examine that.

MR. BELSER: Your Honor, again, an expert witness can rely on hearsay in forming their opinions in interfacing with the County when they're designing things and so if Mr. Lee in part of doing his due diligence in performing his scope of service, if he spoke to Ms. Swygert, then -- then that -- then that is admissible because it's a -- because experts rely on it.

MR. MOORE: Your Honor, the rules, I believe, would provide that he can reply -- rely on -- on actual official reports, official documentation. He can rely

upon the opinions of other experts, but there's no indication that Ms. Swygert's any type of an expert and this is nothing in writing that we have that would possibly have been relied upon, nor does he have any way to testify that she's an expert, been an expert, ever been re -- what her qualifications are. This is just rank hearsay is all this is.

I thank you.

THE COURT: Wait a minute. Let me look up the rule right quick.

MR. BELSER: Sure.

THE COURT: Y'all give me just a second.

MR. BELSER: Is Ms. Swygert gonna testify?

MR. MOORE: We're in trial right now. I would be happy to answer the question, but...

THE COURT: It would be under the exception rule.

MR. BELSER: Right, the hearsay exceptions.

What Mr. Moore was talking about was a -- an official report created by a gov -- like an inspector is admissible if -- if the inspector himself -- it would have to be a quote --

THE COURT: Right.

MR. BELSER: -- if there was an official record.

But this is -- this is under Rule 703 or 704 to this point that -- that experts routinely rely on -- or

are able to rely on out of court statements in forming their opinions.

THE COURT: All right. Under 703, it tells me only facts or data in the case that he can use and rely on and any other -- that those were to be admissible only to help them understand outweighs any prejudicial value.

Let me look at 704.

If Mr. {Sic} Swygert's gonna testify, I'm -- I don't see where it meets the exception for hearsay.

MR. BELSER: Okay.

THE COURT: I see it for data and reports, but I don't see it specifically for another conversation somebody else gave, but if Mr. Swygert's gonna testify, we'll leave it to Mr. Swygert.

MR. BELSER: I think it's Ms. Swygert and I think she is --

THE COURT: Or Ms. Swygert. I'm sorry.

MR. BELSER: Thank you very much, Mr. Lee.

Well, one last question.

BY MR. BELSER:

Q. Are all the opinions that you've stated within a reasonable degree of certainty as a civil engineer?

A. Yes.

MR. BELSER: Thank you.

MR. MOORE: Your Honor, may I take one second

before we start to step out? Just one second and I'll be right back.

THE COURT: Absolutely.

Madam Forelady, does the jury need a break?

If one goes, we all go.

(Pause in proceedings.)

MR. MOORE: Thank you, Your Honor.

THE COURT: You're welcome.

MR. BELSER: Do you want me to move this closer over here?

THE COURT: I don't think Mr. Moore needs a mic.

Let me tell the jury, if you can't hear anybody when they're testifying, please raise your hand and then I'll know.

CROSS-EXAMINATION

BY MR. MOORE:

Q. Mr. Lee, I want to make sure I understand something that you said. Would it be fair to say that you never went on Ms. Garland's property, correct?

A. That is correct.

Q. You never looked at her pond?

A. That is correct.

Q. You never were able to see if her pond was sustaining any type of adverse reaction from the work that was being done on my client's property, correct?

A. I did not see it physically, but I could only imagine what was happening based on what I saw.
Q. Sir, there's an awful lot of difference between imagining something and providing a professional opinion as to something, correct?
A. Right, but I was hired by Mr. Cade to look at his property.
Q. Did I ask you that?
A. No, sir.
Q. Would you answer what I asked you rather than telling me about things that I don't ask you about? Can you do that?
A. Yes, sir.
Q. Now did you do any type of a drainage study to determine where the runoff from the Cades' property went?
A. Visual inspection showed it went towards the downstream pond and also the topography map on the County's website showed that all the water went to the downstream pond.
Q. Sir, you said that it had rained right significantly when you were out there, correct?
A. The day before.
Q. And what you saw was an area of wetlands that was below the Shearers' household that basically was holding standing water, right?

A. That's correct.
Q. Now would it surprise you to learn that all of the water that ran onto those wetlands went the other way down Davis Road or Davis Drive?
MR. BELSER: Objection, Your Honor. There's absolutely no foundation for this question on cross-examination. If he can lay the foundation, then that's fine.
MR. MOORE: Your Honor, there is testimony in the record and that's exactly what happens and I will tie this up with the deposition testimony of Mr. Shearer, who will substantiate this particular fact.
THE WITNESS: My observation on --
THE COURT: Hold on one second.
MR. BELSER: Your Honor, there's -- I'm trying to figure out how to say this.
THE COURT: I know there was testimony about the wetlands. I remember that.
MR. BELSER: There's testimony about the wetlands. What Mr. -- what Mr. Moore talked about in opening statement was that the water goes away from -- it goes the other way, it does not go towards Ms. Garland's pond. There's nothing in the record that supports that. And if he can lay a proper foundation, then he can cross-examine -- he can cross-examine him.

Just saying would you be surprised -- would you be surprised to know that something happened when there's no evidentiary basis for that, then that's not a proper question.

MR. MOORE: I don't see anything wrong with the question, Your Honor.

Would it surprise him to learn that and if he says no, it's fine; if it's yes --

THE COURT: I'm gonna allow it.

Go ahead, Mr. Moore.

BY MR. MOORE:

Q. Sir, would it surprise you to learn the water that runs from the Cade property through the buffer area across Mr. Shearer's property and into the wetlands actually is directed by way of a ditch away from Ms. Garland's property?

A. That is not what I saw.

Q. Well, would it surprise you to learn that that is actually what happens?

A. If I saw it happen, yes, but no, it's not what I saw.

Q. Well, did you see water running out of the wetlands property?

A. I saw water coming off the Cade property through the wetlands through the pipe and to the downstream pond.

Q. Now, sir, how in the world -- wait a minute. I'm

gonna come back to this. I want to come back to this.

I want to make sure we understand something. You would recognize this as a separate building permit for the building that you saw on the Cade --

A. I had nothing to do with that.

Q. Sir, this would look like -- essentially I'm leading him, but there's a record already --

A. All right.

Q. -- but it's not -- it appears to be --

A. It looks like a building permit.

Q. If you would allow me to finish asking the question.

THE COURT: Let him -- let him ask, Mr. Lee, and then you can answer. If you don't know, then just tell him you don't know, okay?

THE WITNESS: All right.

MR. MOORE: The jury needs to be able to understand the deal, okay?

THE WITNESS: Okay.

BY MR. MOORE:

Q. This would look like a Lexington County building permit for a building such as you saw on the property belonging to the Cades, don't it?

A. That's what it appears to be.

Q. And it appears to be an official copy of the building permit and it appears to be for a building that was

constructed about the same time as the agricultural work, right?

A. I -- I don't know what the timing is, but it's a building permit.

Q. Well, it says June 27, 2018, on the top. That's about the time you were out there taking all these pictures, right?

A. No.

Q. When were you out there?

A. December.

Q. December. Within -- within six months, right?

A. Right.

Q. And it appears it's for a 24 by 40 overhead shelter, which would look just like what you say is the permitted structure that we're talking about, right?

A. That is correct.

Q. This permit, if we look at it, appears to be a building permit for the building that we're talking about, right?

A. Yes.

Q. And it indicates that the permit type is agricultural, right?

A. That is what it says on the document.

MR. MOORE: We would like to offer this, please, Your Honor.

MR. BELSER: No -- I think it's already in evidence. I have no objection.

MR. MOORE: I believe it is, but I'd like to make sure it gets in. I'll put it --

THE COURT: Do you know what number? Because I know y'all had premarked and I have up to Number 26.

MR. MOORE: If we can mark it as 30, I know we'll be safe.

THE COURT: All right. We're gonna mark it as 30 and this is the permit for the whole building.

Okay. Any objection?

MR. BELSER: No, Your Honor.

THE COURT: It's admitted.

(Defendant's Exhibit Number 30, a building permit, was marked and admitted into evidence.)

BY MR. MOORE:

Q. Sir, you told us that you were not familiar with the requirements -- the permitting requirements with regard to agricultural property; is that correct?

A. That is correct.

Q. And we know if we look at this building permit, we're definitely talking about an agricultural permit because the permit says so, right?

A. That is correct.

Q. Now you then would not be a qualified expert to be

able to tell us what permits are or not required to do work on agricultural property, right?
A. Correct.
Q. And you wouldn't be able to tell us that you know of any rule or regulation that requires silt fencing when what's being done is agricultural work on large acreage, correct?
A. That is correct.
Q. As a matter of fact, we can go all over the county and see agricultural fields that are plowed up and there are no silt fences, correct?
A. That is correct.
Q. And the reason that is, when agricultural work is being done on large acreage, there aren't any silt fencing requirements, correct?
A. Correct.
Q. As a matter of fact, too, if we look at -- I want to show you something and ask you, sir, have you ever seen the Lexington County's Stormwater Map Ordinance?
A. Yes, sir.
Q. I'm gonna hand you a copy of the Lexington County Stormwater Map Ordinance that would have been in effect at the time this work was all being done. Do you see that?
A. Yes.
Q. That's what this is, isn't it?

A. Yes.

Let me take this back.

Mona, could you help me, please, ma'am? I don't know how to work this projector.

I just want to put something up on the screen.

THE CLERK: I don't. That's not my job.

MR. MOORE: You can't do that?

THE CLERK: No.

MR. MOORE: All right. That's fine.

THE COURT: We have one upstairs that --

MR. BELSER: I've got -- if you want, I can plug my thing in and -- because I think I've got that same document and I can blow it up.

MR. MOORE: If -- if we could get that document blown up, I would appreciate it.

THE COURT: Okay.

MR. MOORE: I want to start with page 8 of the Lexington County Stormwater Ordinance that I do know is already...

While he's doing that, sir --

MR. BELSER: Can you wait just a --

MR. MOORE: Sure.

THE COURT: Thank you, Mr. Belser, for doing that.

MR. BELSER: Which page?

MR. MOORE: Page 8 and then page 9.

MR. BELSER: Do you want to zoom it in?

MR. MOORE: Yeah, if we can zoom the bottom portion which basically says prohibitions and exemptions.

MR. BELSER: Right there?

MR. MOORE: Right.

BY MR. MOORE:

Q. Sir, what I'm gonna do is -- is let you -- I know it's hard to see sometimes, but I can see it, if you would take a look at the -- I'll let you hold it and we'll -- can you read it?

A. Yeah.

Q. All right. It says right here something called prohibitions and exemptions. Now as an engineer, when you're dealing with something called an exemption, can you tell me what an exemption is?

A. You're required to not get a permit if it's -- if it's exempt.

Q. If it's exempt --

A. Yeah.

Q. -- you don't have to have a permit?

A. Right.

Q. Now we know there was a separate permit for the building, right?

A. Right.

Q. And the work they had done, in addition to building,

there was a concrete slab out there, right?
A. That is correct.
Q. Did you know they had a separate permit for the concrete slab?
A. I was not aware of any other permits. Any permits.
Q. Did you ask?
A. No. That was not the purpose of my investigation.
Q. Right. Well, let's talk about the purpose of your testimony. One thing we do know it has to do with the ordinance that we're all familiar with now known as the Lexington County Stormwater Management Ordinance, right?
A. That is correct.
Q. And we know it has prohibi -- prohibited and what's exempted, right?
A. (No verbal response.)
Q. You -- you can't develop land, engage in any industry or enterprise, construct, operate, maintain a hazardous -- a landfill or hazardous waste or dispose of hazardous waste or otherwise promote, allow transport of sediment or other pollution associated with stormwater runoff beyond the boundaries without having provided compliance with this ordinance and other applicable State and Federal regulations, right?
A. That is correct.
Q. And this is -- the ordinance then talks about silt

fencing and stormwater and sediment control, right?
A. Correct.
Q. If we might go to page 9.
Now we know what they were doing out there when you went there. They had timbered some trees, right?
A. Right.
Q. And they had a bulldozer out there to pull up stumps?
A. Correct.
Q. And they were basically in the process of removing the stumps on agricultural property?
A. Correct.
Q. And harvesting timber on agricultural property is an agricultural use?
A. Correct.
Q. And harvesting timber does not create an impervious surface, does it?
A. Just that of harvesting trees does not.
Q. Pulling up stumps does not create an impervious surface, correct?
A. Correct.
Q. And we know that it says here the following land disturbance activities are exempt from the provisions of this ordinance. Do you see that?
A. Yes.
Q. Have you ever seen that language before?

A. Yes.
Q. What it says is agricultural land disturbances that disturb less than one acre. Well, he had more than one acre.
A. Right.
Q. And then it says agricultural land disturbing activities that disturb more than one acre and do not create a new impervious surface. Do you see that?
A. Yes.
Q. Now what we saw was -- looking at those photographs was land which had been basically denuded of the vegetation on the property, right?
A. Correct.
Q. There had been work done on the dam, right?
A. Correct.
Q. As a matter of fact, from what you could see, the dam was being repaired in proper order?
A. I don't know what type of work they were planning on doing. All I know is the vegetation was removed.
Q. All you know is the vegetation was removed?
A. Correct.
Q. So you can tell us if -- we know that the concrete and the -- the building had separate permits and we know that they were doing agricultural land disturbance on more than one acres and then there weren't any new impervious

surfaces that you saw built, were there?
A. I disagree with that.
Q. All right. What do you claim to be an impervious surface?
A. A roof, a pavement.
Q. Sir, the roof was separately permitted.
A. It says agricultural that does not create new impervious surfaces. You created new impervious surfaces. Even if they were issued a building permit, they were not given a land disturbance permit.
Q. Well, yes, sir, but -- well, let me ask you this. Other than the agricultural use being made of this land --
A. Right.
Q. -- the only impervious surfaces that were being created that were new were the surfaces that had been permitted?
A. They were issued a building permit.
Q. Right.
A. Right.
Q. Okay. A separate building permit, right?
A. Right.
Q. As a matter of fact, the land that we're talking about is pretty far removed from where those new buildings and pad were, weren't they?
A. Say that again.

Q. Let me ask you this question. Other than the two buildings that had separate permits, were there new -- any other new impervious surfaces?
A. I -- not at my site visit, no.
Q. And what you did is you talked to a lady at the County and told her what you saw, right?
A. No, I called her --
MR. BELSER: Objection, Your Honor. Are we not going into Ms. Swygert or are we going into Ms. Swygert?
THE COURT: That's right. We've got Ms. Swygert --
MR. BELSER: He can't have it both ways.
THE COURT: -- testifying.
MR. MOORE: I'm just simply asking him what he told -- he told her, not what she told him. I'm not gonna go into that.
THE COURT: Okay. Go ahead.
BY MR. MOORE:
Q. Sir, you -- you called Ms. Swygert about what you saw, right?
A. I called Ms. Swygert to get a history of what was going on.
Q. Now to your knowledge of everything that you have seen, sent, read about this whole situation, at any point in time did the Corps of Engineers cite the Cades for doing anything wrong?

A. Not to my knowledge.
Q. Did the Federal government cite the Corps of Engineers {sic} for doing anything wrong?
A. Not to my knowledge.
Q. Did DHEC cite the Cades for doing anything wrong?
A. Not to my knowledge.
Q. Did the County cite the Cades for doing anything wrong?
A. I -- not to my knowledge.
Q. And if the County had, in fact, found somebody violating the stormwater ordinance, the appropriate thing to have happened would have been for a citation to that effect, correct?
A. That is correct.
Q. And the County knows if there's a type of a violation it's supposed to write a citation, isn't it?
A. That's correct.
Q. Now do you have any idea why the County did not cite the Cades for doing something wrong?
A. I -- that was beyond my -- I was out there for a brief period of time to do what Mr. Cade asked me to do and that was it.
Q. Let's talk about that then. You were out there for a brief period of time?
A. Right.

Q. Now you testified, I believe, that you did not go onto Ms. Garland's property, right?
A. That is correct.
Q. Well, sir, the outlet pipe on Ms. Garland's -- the outlet pipe coming across Davis Drive is on Ms. Garland's property. If you didn't go onto her property, how was it possible for you to have inspected the outlet pipe on her property?
A. All right. And if Davis Drive is owned by -- by her, then I was mistaken as I was on Davis Drive.
Q. You were on Davis Drive, but you testified that you were not on her property, right?
A. I would have been in err because I did not know she owned the road.
Q. Well, she doesn't own the road, but the outlet pipe is -- is supposed to be on her property. We know you didn't go on her property, so you could have seen the outlet pipe by Mr. Shearer's house, but you could not have seen the outlet pipe on Ms. Garland's property?
A. The pipe under Davis Drive is the pipe that I am referring to.
Q. Well, you can't see it where it's on Davis Drive because it's under the dirt, right?
A. I saw both outlets of the pipe.
Q. Even though you didn't go on Ms. Garland's property?

A. From what I recall, the -- the fence is there and the other end of the pipe was just beyond the fence, if I'm recalling this correctly, and I could see the stream of water flowing through the pipe.
Q. What fence?
A. There's a fence.
Q. I see. Well, now you showed us a picture in your report of where the outlet is going into -- water coming into the pipe. Do you remember that picture?
A. Yes.
Q. And that would have been from Mr. Shearer's side of the road, right?
A. Yes.
Q. And it wasn't raining when you were out there?
A. Not at that time, but I did go out a second time.
MR. MOORE: Might I see that picture? Can we get that picture up that -- that he put up of the pipe?
THE COURT: Mr. Belser, all this is in evidence, right?
MR. BELSER: Yes, ma'am.
THE COURT: Okay.
MR. BELSER: Are you talking about the --
MR. MOORE: Where he showed the -- the picture where he showed the water at the point of entrance to the pipe. I'll show you. Right here. Right there.

MR. BELSER: I'm sorry, that's --

MR. MOORE: Backwards.

THE WITNESS: Right. That's coming down from the Cades' property.

BY MR. MOORE:

Q. That's a picture where the water is there at the pipe?

A. That would be the end of the pipe.

Q. Right. Right. Right. Right there is the end of the pipe.

A. Right.

Q. And you say the pipe's free flowing?

A. Yes.

Q. How big is the pipe?

A. I want to say fifteen or eighteen inch.

Q. Well, now, sir, how long had it been since it had rained?

A. Well, it's obviously wet. It hadn't -- it hadn't rained that long before this.

Q. Yes, sir. It's obviously wet. You can see water, right?

A. Yeah, you can see the water on the pavement.

Q. Explain this to me. If it's not raining and the pipe's free flowing, how come all that water is backed up? It doesn't look like a free flowing pipe to me.

A. It is a flat area, wetland area, and there's a large

volume of water coming there.
Q. Well, one thing that's for certain, we don't know how long it's been since it rained --
A. Right.
Q. -- but that pipe ain't free flowing. That water's backed all the way up way up.
MR. BELSER: Objection, Your Honor. Mr. Moore can't testify. He can ask questions.
MR. MOORE: I think I was.
THE COURT: Rephrase that, Mr. Moore.
BY MR. MOORE:
Q. Sir, if the pipe's free flowing like you say, how is it possible that all this water all the way back up here winds up getting backed up?
A. It's not backed up. It's flowing to the pipe.
Q. Well, yes, sir, it's flowing to the pipe --
A. Right.
Q. -- and the pipe is working here as a dam, isn't it, and backing everything up?
A. No. It's a large, flat area. The water is spread out as it's coming to that pipe. It's a wetland area. It's large, flat. There's multiple confluences to that pipe.
Q. Multiple confluences to that pipe?
A. Right.
Q. What do you mean by that?

A. Water is branching off. As it's flowing through the tress, the water's branching out going around the tress. There's multiple paths going to that pipe.
Q. Right. There's all kinds of different properties draining towards that pipe, right?
A. Well, this is basically focussed at -- looking at the Cade property.
Q. This is looking at the pipe. The pipe is on -- the pipe is on the -- is on Shearer property, isn't it?
A. It's under Davis Drive.
Q. Sir, let's take a look at a contour map. Do you know what a contour map is?
A. Yes, sir.
Q. You can come down, if you'd like. You can see a lot better.
MR. BELSER: I can blow it up, if you want.
MR. MOORE: I'm good.
You can come down, sir.
THE COURT: You can step down, Mr. Lee.
Be careful of that step.
BY MR. MOORE:
Q. Now, sir, there's property over here that is on Ms. Garland's side of the road, correct?
A. Correct.
Q. This property here appears to be designated, too,

right?

THE COURT: Hang on. Mr. Moore, the --

A. I can't tell how --

THE COURT: Mr. Lee, we're gonna need to start over because I've got two jurors over here who cannot hear you, believe it or not.

MR. MOORE: Let us see if --

THE COURT: And they can't see it.

MR. MOORE: We can -- maybe we can blow it up on the screen.

THE COURT: They just can't see. I think they can hear you, Mr. Moore.

MR. BELSER: I can blow it up.

MR. MOORE: If I can blow it up or I would like to have it upside down.

MR. BELSER: He's asking a lot, isn't he?

THE COURT: Mr. Belser, you are really good at this.

THE WITNESS: That one doesn't have the contours on it.

MR. MOORE: Well, it actually does, I think. Doesn't it?

MR. BELSER: No, that's addresses.

THE WITNESS: No, those are addresses.

MR. MOORE: All right. Here is the Cade property.

MR. BELSER: Are we good?

MR. MOORE: Yes, that's great.

THE COURT: All right. Now, Mr. Moore, you've got to start over because they couldn't see and they didn't know what you were talking about.

MR. MOORE: Thank you, Your Honor.

BY MR. MOORE:

Q. Sir, let me ask you this. This right here would be Suzy Garland's property, right?

A. I believe so, yes.

Q. And right next door to it is an area that seems to be scarfed off. Do you see that?

A. That could also be a grassed area, a lawn.

Q. Well, the -- would it surprise you to learn that that's actually an area where her neighbor grows wheat? Would that surprise you?

A. No.

Q. One thing's for certain, this area up here would be higher than this pond, right?

A. We'd have to look at the contour map.

Q. I'm showing you the contour map.

A. On the contour map, there's a high point about halfway --

Q. Right.

A. -- and it starts to break back the other way.

Q. Right. This basically is right next door to the Garland property, right?
A. It appears so, yes.
Q. If you look at the contour map, all of these areas up through here, all of these areas, are basically higher elevated than that pond, right?
A. Right.
Q. That pipe is designed inherently to where it will take all of the water that comes out of this entire drainage basin, right?
A. Yes.
Q. All of the water from all these people and from the Cade property would go naturally to the pond, right?
A. There's a portion above the Cades' pond that appears to drain directly into their pond.
Q. Right. And then it would drain from their pond back down toward the Garland property, right?
A. Correct.
Q. That being the case, that pipe is designed to handle this entire area, right?
A. In its current design state. I wasn't -- I didn't design that pipe, but it would handle the flow in its current state like that.
Q. The -- so that water we looked at that was backed up would have been designed to be coming from all these areas?

A. Right.
Q. Now let me ask this question. There is, I believe, some testimony that there's about 3,000 tons of silt in Suzy Garland's pond. How many pounds of dirt would that be?
A. I -- I would need a calculator for that.
Q. Well, you'd have to multiply 3,000 times 2,000 and I believe my friend, the bailiff, over here has got a calculator.

So if you would do the calculation. Let's just assume the testimony is that 3,000 tons of siltation in --
A. 3,000 tons?
Q. 3,000 tons. How many pounds is that?
A. 6 million tons.
Q. Okay. 6 million pounds, I think.
A. 6 million pounds, yeah.
Q. Now that's an 18-inch pipe under Davis Drive, right?
A. Right.
Q. It would be hard for 6 million pounds of dirt to get through that pipe, wouldn't it?
A. The pipes aren't designed to transport soil, they're designed to transport water.
Q. Right. It would be really hard for 6 million pounds of dirt to get through that pipe, wouldn't it?
A. Yeah.

Q. Sir?
A. It depends on how long, but if it was carried over a long period of time.
Q. Right. In order for there to be 6 million pounds of dirt in that pond, it would have had to be carried over a long period of time, right?
A. Correct.
Q. How long a period of time would it take for 6 million pounds of dirt to migrate into that pond? Years?
A. That was beyond my scope of services.
Q. Well, you're on your scope of services now because you're on the stand. It would take years for 6 million pounds of dirt to get into that pond, wouldn't it?
A. It would take a long time, yes.
Q. And you were out there right after a hurricane, right?
A. Yes.
Q. Did you know that the hurricane was like a 500 year flood?
A. I was not aware of that.
Q. Did you know the area had, in fact -- can we get that...

Do you have an opinion as to how much, if any, of the siltation in Suzy Garland's pond came from the Cade property?
A. I can't -- I have no way of doing that. I just know

my observation showed that there was sediment headed that direction.

Q. That direction. What you mean by that direction, you basically mean this way?

A. Right, from south to north on here.

Q. Now right here there's a line. It appears to be a property line. Do you see that?

A. Yes.

Q. The pipe that we're talking about, this 18-inch pipe, is about right here, correct?

A. Correct.

Q. Then you have Mr. Shearer's property, his home, right?

A. Correct.

Q. And then you have wetlands, right?

A. The wetlands extend all the way from the base of the pond -- the Cades' pond all the way through the pipe and all the way to the downstream pond.

Q. I'm just asking you on the Shearer side of the road, Mr. Shearer's side.

A. Right.

Q. This right in here would be wetlands, right?

A. Right in where?

Q. Right here.

A. Not necessarily. It's -- it's more of a line from the pond -- between the two ponds.

Q. Well, this area right in here below Mr. Shearer's house, is it -- was it disturbed?
A. No. I don't recall seeing that be disturbed.
Q. And it's a vegetated space?
A. I believe it was. I wasn't really looking that closely at that area.
Q. You took pictures of it, didn't you?
A. I took pictures of where the water was coming from the Cade property.
Q. You took pictures of standing water. That standing water was here on this --
A. I wasn't -- it wasn't down below his house. It was where the 18-inch pipe was.
Q. Did you take any pictures of the area below his house?
A. No.
Q. Did you do any type of a study to tell us what happens to the water that goes into the area below Mr. Shearer's house?
A. The extent of my study was to observe what was going on.
Q. I know. My question is when you were observing what was going on, did you observe where the water was going once it got into this space below Mr. Shearer's house?
A. No, because I didn't observe it going that direction.
Q. Oh, it didn't? So the water from the Cades' property

was not going into this direction, right?
A. No.
Q. So the water -- all of the water from the Cades' property was going towards that pipe?
A. All of the -- all of the water that went into that wetlands area below the pond, which basically collected all the water off the Cades' property, that came through that 18-inch pipe.
Q. Yeah, but you're not talking about the area where I have the light right now?
A. No, I'm talking about there.
Q. Thank you. To your knowledge, none of the water that was getting into this area you can say was going into the pond -- going towards the pond, right?
A. Right. Right.
Q. Okay. Now when you were out there, did you notice -- let me ask you this question. How great a distance is it from Mr. Shear's property line to this pipe?
A. You've got this thing in miles, but it's maybe a couple hundred feet would be my guess.
Q. And that hundred feet -- couple hundred feet, that's vegetated wetlands, right?
A. Yes.
Q. Hadn't been denuded?
A. No.

Q. Hadn't been disturbed?
A. Well, disturbed -- it was sedimented.
Q. Sure. And it hasn't been cleaned off, graded or anything?
A. No. No.
Q. And because there was sediment in it, that basically means that the sediment that was in it had been held, right?
A. Right.
Q. Sediment that was in that wetlands area that you saw, hadn't gone through the pipe into Ms. Garland's pipe?
A. Right.
Q. Now did you happen to see about a 50-foot vegetated buffer between the Cades' property and Mr. Shearer's property?
A. It possibly could have been there. I couldn't exactly tell where the property lines were when I was out there.
Q. In that general area --
A. Yeah.
Q. -- did you see a 50-foot vegetated buffer?
A. There was vegetation along the perimeter, but I didn't know where the property line was with respect to that. It could have been cleared right up to the property line.
Q. So you don't know, but you do know that there was about a 50-foot vegetated buffer that ran the whole course

of this area through here, right?
A. I -- there was trees remaining around the perimeter, but I don't know where the property line was with respect to those threes.
Q. And not only was there trees, there was also ground cover in that 50-foot area, wasn't there?
A. Possibly if they didn't remove the leaf litter.
Q. Sir, were you out there shortly after a hurricane?
A. No, but the morning of -- I issued my report, I was sitting in my office and it started to rain very heavily and I ran out there to Davis Drive and that's when I took those pictures.
Q. Did you know that there had been a hurricane that was a 500 year event?
MR. BELSER: Your Honor, objection. We've -- we've already plowed this ground, disturbed the soil. Let's --
THE COURT: That's right. We have been over this already.
Let's move on, Mr. Moore.
BY MR. MOORE:
Q. Sir, let me ask you this. Davis Drive out there, all through here is dirt, right?
A. Dirt, gravel, yes.
Q. Well, is it gravel or is it dirt?
A. I don't recall. It's been three, four years now.

Q. You're telling me you don't know if this Davis Road is gravel or if it's sand or is sand clay?
A. Due to the time, I don't recall what the exact consistency of it was.
Q. Well, do you recall that Davis Drive actually slopes towards the Shearer's property?
A. That wasn't part of my scope of services.
Q. I didn't ask you that. I asked you what you remember. You claim you walked --
A. I don't -- I don't remember that.
Q. Do you recall that Davis Drive has a berm on the Garland side, about eighteen inches?
MR. BELSER: Your Honor, objection. You know, he's already answered. There's no -- if he already answered that he doesn't remember, there's no need to continue to just bang, bang, bang.
THE COURT: Right.
I agree, Mr. Moore. If he doesn't know, he doesn't know.
MR. MOORE: Your Honor, I haven't asked him about the berm.
THE COURT: Ask him about the berm and if he doesn't know, he just doesn't know.
BY MR. MOORE:
Q. Do you recall seeing an 18-inch berm that --

A. No, sir.
Q. All of these pictures that you have -- that we placed into evidence, those were all on either Mr. Shearer's property or the Cades' property, right?
A. Right.
Q. And the reason for no photos of Ms. Garland's property is because you never went on there?
A. Right.
Q. Did anybody from your company ever go onto Ms. Garland's property to determine if any silt at all was actually reaching her property?
A. No.
Q. In order to make that determination, what would have to be done?
A. Say that question again.
Q. In order to make the determination as to whether there was any silt at all going into her pond from this work, what would you have to do?
A. Go and visually look at it or see what's happened. My -- my scope of services was to observe what was happening on the Cades' property and make a professional opinion on whether that was detrimental to the downstream property and my observation saw that yes, it would be.
Q. Well, there's a lot of property that's downstream though, isn't there?

A. I was right at the fence that I assumed to be Ms. Garland's property.
Q. Mr. and Ms. Cade did advise you that their property was agricultural and zoned agricultural, right?
A. Yes, he did tell me he was zoned agricultural.
Q. And what you actually did in your report was to tell the Cades they ought to contact the County?
A. Right.
Q. Do you know if they did that?
A. No, I don't.
Q. Do you know if they had actually contacted the County before you came out there?
A. I recall maybe there was some interaction between Mr. Cade and the County before that a complaint had been filed.
Q. Sir, when you were out there doing your work, did you ever have occasion to speak to Mr. Shearer, who's lived out there for a long time?
A. No, sir.
Q. And his property would have been directly behind the Cades' property, right?
A. That is correct.
MR. MOORE: Sir, I don't have any further questions. Thank you.
THE COURT: Redirect?

MR. DOUGALL: I've got two --

MR. COURT: Oh, Mr. Dougall, I'm sorry. You've been so quiet over there.

MR. DOUGALL: My feelings are getting hurt.

THE COURT: I'm sorry. I apologize. Please go ahead.

MR. BELSER: Tom, do you need any help with the audiovisual?

MR. DOUGALL: No, I'm good.

CROSS-EXAMINATION

BY MR. DOUGALL:

Q. Mr. Lee, a berm can be a sediment control device, correct?

A. Yes, it can be used as a diversion to divert water to another location.

Q. Another area or in a different direction --

A. Right.

Q. -- depending on how it's made?

A. Right.

Q. And you showed a picture of a fence?

A. Right.

Q. And that fence was in the wetlands on the Shearer's side of the property, correct?

A. No, it was on the other side of Davis Drive and I assumed it was the downstream property line.

Q. Okay. You didn't see the fence along the Cade and the Shearer property?
A. I -- I believe I walked down into the wetland area and then if there was a fence there, that's probably why I went all the way around Davis Drive and came up Davis to look at the rest of it.
Q. That fence would have been indicative of a property line, correct?
A. Right. Right.
Q. And so if there were trees on both sides of that fence, some of that wetlands and trees were in Mr. Shearer's property?
A. Right. Right.
Q. And the other was the buffer that Mr. Moore was asking you about that was on the Cade property, correct?
A. But I was focussed down in the wetlands area. There were trees all around.
Q. But you had a picture -- okay.
MR. DOUGALL: That's fine.
MR. BELSER: Your Honor, just very briefly on redirect.
THE COURT: Sure. You go right ahead.

REDIRECT EXAMINATION

BY MR. BELSER:
Q. All right. Just a few things to kind of clear up. Do

you remember Mr. Moore's questions about how the Federal government didn't do anything and the State didn't do anything, the County didn't do anything?

A. I had -- I had no knowledge of any of that.

Q. I'm handing you what is marked as -- it's already in evidence as Plaintiff's Exhibit 6. This is an inspection report from October the 18th of 2018 and, if you can, please, identify what it says as to enforcement action.

A. They've issued a stop work order.

Q. So what is -- in your experience, what is a stop work order?

A. Stop doing all activities you're doing and make corrective measures.

Q. Okay. The difference between -- I'm trying to find this -- the building permit. There it is.

A. Yeah.

Q. This looks like it's the real deal. It's got coffee stains on it and everything. There's a difference between a building permit and a land disturbance permit. Do you remember those questions?

A. That is correct, yes.

MR. MOORE: Object to the leading, please, Your Honor.

MR. BELSER: I'm just trying to read that area on the maps.

THE COURT: Go ahead.

MR. BELSER: Okay.

BY MR. BELSER:

Q. What -- is there -- as part of -- do you prepare building permits?

A. No, sir.

Q. So you're testifying about land disturbances?

A. Right.

Q. And so does this -- what relevance does this in Defendant's Exhibit 30 have with reference to your opinion?

A. If you want to build a little shed like that on your property, you can go get a building permit with no other information because you're gonna disturb less than 5,000 square feet and no build -- or no land disturbance permit is required for that.

Q. Is that what you observed on the site?

A. I have no -- I know that building was up.

Q. All right. I'm gonna pull up the Lexington County ordinance. Do you remember those questions about that?

A. Yes.

Q. Okay. All right. Let's -- let's walk through these. Do you see Section A that references forest land?

A. Uh-huh.

Q. Okay. Would it -- there were no trees or crops or anything out there?

A. Right.
Q. Did you see any evidence that if the land was gonna be returned to forest land?
A. No.
Q. And this last -- this last on the lists says conducted in accordance with best management practices. What is -- what are best management practices?
A. The use of silt fences or in timber they like to use debris piles, take all the branches and put it along the edges to act as filters.
Q. Basically the sediment controls that you did not see?
A. Right. And they're referring to the South Carolina Forestry Commission. They have their standards.
Q. Are they reason -- are they generally the same?
A. I -- I'm not familiar with their -- we -- we go by the County's or DHEC.
Q. And what are the minimum erosion protection measures? What does that refer to?
A. Whatever the South Carolina Forestry Commission recommends for, you know, providing erosion protection. They would have to do at least the minimum.
Q. Now I recognize that you're not a forester, you're an engineer --
A. Right.
Q. -- but in your line of work best management practices

in minimum erosion control refers to sediment control, right?

A. Right. Right.

Q. And these -- I'll try to zoom up here real quick. Do -- I'd like for you to describe what -- looking at the ordinance, can you, please -- this is Section 1.5. Purpose. Can you read Section B, please, for the record?

A. It is further the purpose of this ordinance to direct the development and implementation of a stormwater management program and establish legal authority to authorize Lexington County at a minimum to comply with State and Federal requirements, as well as to manage the County's stormwater system.

Q. What is the significance of the word "minimum" to you as an engineer?

A. At a minimum they need to protect the downstream properties, protect the County's stormwater system.

Q. All right. The last -- my last question here. Do you remember the questions about -- I think he used -- I can't remember who used the word "flush", but the word "flush" was used. Did you use that?

A. I don't recall using the word "flush."

Q. I'm talking about the -- there were some questions about the total poundage or whatever of the sediment that came through.

A. Uh-huh.
Q. If a -- what type of -- let's just -- let me just frame this question. You have sediment that goes towards -- you have sediment laden stormwater that goes toward some outlet, some structure.
A. Uh-huh.
Q. And there's too much water for the sediment to get through that structure, so it falls out, right? That -- is there -- what type of flushing effect is there when there's the next rainfall that comes through?

MR. MOORE: Your Honor, I do believe this would be exceeding the scope of redirect testimony. I didn't ask anything about the pounds per square inch of a flushing mechanism on cross-examination.

MR. BELSER: Your Honor, I wrote down the word "flush" and -- and that's --

THE COURT: And you're talking about when all this water, how it spread out, right?

MR. BELSER: Yeah.

THE COURT: I -- I think that's fair game. He -- Mr. Moore made an issue with that, so go ahead.

THE WITNESS: If there's another rainfall event, it could as -- as the velocity is increased in the channel resuspends some particles that have settled out and carry them further downstream.

BY MR. BELSER:

Q. You say could.

A. I guess, yes.

Q. With a -- is that with a reasonable degree of certainty --

A. Yes.

Q. -- as an engineer?

A. Yes.

MR. BELSER: I have no further questions.

THE COURT: Any -- anything else, Mr. Moore?

RECROSS EXAMINATION

BY MR. MOORE:

Q. So what you're saying is to a reasonable degree of professional certainty that could happen?

A. Yes.

Q. You don't mean to a reasonable degree of professional certainty that would happen. It could happen like you said?

A. It depends on the volume of water.

Q. And since we don't know the volume of water, we don't know the answer to the question, right?

A. Right. That is beyond my scope.

Q. And the -- you read several provisions of the storm -- stormwater ordinance by counsel. The exemption applies to whatever extent it applies to the entire stormwater

ordinance, right?

A. Right.

MR. MOORE: Thank you.

No further questions, Your Honor.

MR. BELSER: No further questions.

May Mr. Lee be excused?

THE COURT: You may be excused. Thank you.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: All right. Before we call our next witness, the jury's been out here for two hours. Let's take a fifteen-minute break, okay?

Remember, no talking about this case amongst yourselves or do any research or call anybody.

(Whereupon, the jury retires to the jury room at 10:45 AM.)

THE COURT: All right. We're gonna take a fifteen-minute break.

MR. BELSER: Your Honor, for scheduling purposes, just my next two witnesses should be short from my perspective and so there's a chance -- I'd like to able to -- the County folks, get them up, get them out and then maybe we can break for lunch, and then I've got my engineer after lunch. Just -- whatever happens, happens, but that's what I'm driving.

THE COURT: That sounds good.

Thank you.

(Recess taken at 10:45 AM.)

(Back on the record at 11:03 AM.)

(Whereupon, the jury return to the courtroom at 11:05 AM.)

THE COURT: All right. Madam Forelady, is the jury ready?

FOREPERSON: Ready.

THE COURT: Okay.

Mr. Belser, call your next witness.

MR. BELSER: The plaintiff calls Brandon Corder.

(Whereupon, Brandon Corder was duly sworn by the Clerk of Court.)

THE CLERK: If you'll have a seat and state your full name for the record, please.

THE WITNESS: Brandon Corder.

BRANDON CORDER,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BELSER:

Q. Good morning, Mr. Corder. Thank you for patiently waiting for your turn to testify and here we are.

I'd just like to ask you a little bit about your background and then talk about your familiarity with the

issues that you've heard about over the last day and a half -- or, I guess, it hasn't been twenty-four hours.

A. All right.

Q. But where do you live?

A. I live in Leesville, South Carolina. Leesville.

Q. Tell me a little bit about your background. Where you're from, where you went to high school, et cetera.

A. I was born and raised on a farm in Leesville, a poultry farm. I went to Batesburg-Leesville High School. I've went to Midlands Tech two years, did engineering, changed majors over to criminal law, three years of that, and I just got tired of school and was -- went to work.

Q. Okay. And -- all right. That's a great segue into the next question. Talk -- talk -- well, when did you graduate from high school?

A. 2002.

Q. Okay. And so your employment history -- I guess you went to college from 2002 to maybe 2004?

A. Yeah, '5 or '6. Something like that.

Q. '5 or '6. And then you've got to do what you got to do and started working. What's your employment history from, say, 2006 to the last sixteen years?

A. Okay. I worked at Ansaldo in Batesburg-Leesville, which is a train --

Q. I'm sorry, what did you say?

A. Ansaldo. It's a train -- they do all the train stuff. I did that for about -- until 2017 and then I come on with the County after that.

Q. Okay. And what did you do -- when you came onto the County in 2017, what was your job title?

A. I was a field inspector, stormwater management.

Q. Okay. So with stormwater management, is it the Department of Public Works and then stormwater management?

A. That's right. It's a separate division of public works, yeah.

Q. And as a field inspector, what types of things did you do?

A. We would do field inspections, inspections on the roadway and subdivisions. We also would hold complaint calls where we'd go out and investigate the parcel in question and if there was anything that -- that didn't meet our ordinance or had any issues, we would issue a stop work order and let -- our corrective action NOV's depending on how the severity it is and let enforcement go from there from our staff inside the office.

Q. Okay. So -- all right. I'm gonna fast-forward and then come back, so try to stay with me here. How long were you an inspect -- a field inspector and what do you do now?

A. I was a field inspector from 2017 to 2019 and now

I'm certified as a stormwater action plan reviewer. Previously I was certified as a sediment and erosion control inspector, which is CEPSCI.

Q. Okay. And tell me what CEPSCI -- you don't have to -- sometimes it's hard to know what acronyms actually stand for, but what is -- what is that certification?

A. It's a certification given through Clemson. You actually sit in a class that's given by professional engineers from Clemson professors and you go through a two-day class and you take a test. Out of 80 questions, you have to score 85 or higher, you receive the accreditation and then you get a DHEC -- it's actually administered through DHEC. You get a DHEC card with it from the DHEC director.

Q. When did you get that CEPSCI certification?

A. In 2017. October of 2017 I want to say.

Q. Okay. So now -- so you were a -- just to understand, you were a field inspector from '17 to '19 and then from '19 to the present you've been an action plan reviewer?

A. Yeah, it's -- it's the same test basically, but it's a whole lot harder. You go through three days of classes and then the professors pretty much tell you if you're not an engineer, you're probably not gonna pass. It's very difficult. It's only fifty questions and you can only miss thirteen, so it's a very hard certification to get, but

that's just to do the stormwater, what -- so I've reviewed some of Mr. Lee's plans who was here earlier.

Q. Not in relation to this case, but --

A. Yeah, not in relation to this case. I just was using that --

Q. Because he practices in Lexington and you're in Lexington?

A. That's right.

Q. Got you. All right. Let's -- I want to talk about -- just kind of focus in, dial in on, you know, what your familiarity with the issues in this case is about, which is the Cade property and Ms. Garland's property. I want you to testify about what you observed -- not what anybody else told you, but what you observed yourself because the hearsay isn't admissible, so.

A. Okay. Yes, sir.

Q. And I can --

MR. BELSER: Your Honor, may I --

Q. Well, actually do you have your file with you?

A. Yes, sir.

Q. Okay. And I'll just let you look at your file. So how are you familiar with the Cade property and the Garland pond?

A. Somewhat pretty familiar with it. I -- I think I made three different visits out to the property during the

complaint investigation.
Q. Okay. So I'd just like to walk through each one of those visits. What was the -- what was the first visit out there?
A. The first visit was a -- was a complaint call-in to our staff and they sent me the information just like we always do and it was some clearing doing on Fish Hatchery Road and that's pretty much all we had. So we just went down Fish Hatchery Road.
Q. You said "we". Who's -- who's "we"?
A. I had somebody riding with me then. It was Gary, one of our ex-coworkers. He's no longer with the County.
We rode out to Fish Hatchery and they said it was close to Newcastle, so once we got there we -- we kind of saw, you know, the Cades' property that was -- had been cleared and we rode around, we took some pictures of it, and actually while we was standing on the County right-of-way, you know, taking pictures, a -- a neighbor come out and asked us what we was doing and -- and all and we just was taking pictures and pretty much went back to the office after that to -- you know, to meet with staff.
Q. Okay. So that first visit was only to the Cade property. You did not go --
A. I did not go to Ms. Garland's property at that time.
Q. Okay. And so when you went up there -- and do you

know what date that was?
A. That was around October 22, 2019.
Q. 2018 or --
A. I mean, 2018. I'm sorry.
Q. And so what -- when you actually -- when you were actually at the Cade property, what did you observe? You heard -- there was some testimony about no vegetation. Did you look -- did you observe any sediment erosion controls?
A. No, sir. That's why we rode around the outskirts of the property, just -- like I said, just doing a typical investigation like we would any other, and we -- we noticed that the land was cleared and a building had been built, so right then we was like whoa, this probably does not meet our ordinance because usually -- ag is one thing, but once you put a building on it, then you have to have a land disturbing permit, you know, so that's where I was at.
MR. MOORE: Your Honor, he's interpreting -- I think we'd ask that he not be interpreting the statute. The statute speaks for itself and it doesn't say that.
BY MR. BELSER:
Q. Let's -- let's just move on, all right? I'm talking about what you observed. That's what I'm really trying to get at. So you observed impervious surfaces?
A. Yes, I observed impervious surfaces. Yes, sir.
Q. And you also -- and then you observed the disturbed

land?
A. Yes, sir.
Q. All right. So --
A. And I also observed that the pond was very blue, which kind of -- from doing this, that's kind of a -- a kaolin and that lets you know that there's a type of silt -- instead of silt -- you've silt and sediment.
MR. MOORE: Your Honor, I don't believe he's testifying as an expert. I believe he said the pond was blue, but I doubt that he can basically -- give an expert opinion as to what that's from.
THE COURT: Okay. I think he can testify that it's blue.
MR. BELSER: Testify to what you --
THE COURT: You know, it's what he observed.
MR. BELSER: Yeah, that -- yeah, just --
THE WITNESS: Okay.
MR. BELSER: -- just what you observed.
THE WITNESS: All right.
BY MR. BELSER:
Q. All right. So that was your first visit to the property and then was there another occasion when you came back and you saw Ms. Garland's property?
A. Yes. After I come back, Ms. Garland -- I believe when she called it was forwarded to me that she wanted me to

come onsite and do an inspection on her site.
Q. Okay. And what did you observe when you were on Ms. Garland's property?
A. My report, I -- you know, I pretty much observed -- I met with the property owner first, talked with her, and then walked up to her pond. It looked like Nestle Quik. I mean, you could see the muddiness and -- and the sediment or silt all in the pond. I walked around the pond with the property owner. I noticed that there was a stream. If you come in the driveway, it would be to the left of her -- there was a stream coming into the head of her pond. And the leaves -- you could tell as the water went down, the leaves were discolored with the gray-ish tint, you know, that -- usually that's the silt going into the -- you know, headed that -- in that direction.
Q. So did you walk from the headwater of the pond up to -- there's been discussion about a culvert. Did you see the culvert?
A. I walked from the head -- from the headwater of the pond all the way to Davis Drive, you know, within -- I won't say I've stepped foot on -- on the County right-of-way probably because -- but I could see the -- the pipe and it was flowing and on this occasion it was muddy.
Q. And -- and on that occasion, on that second time you

went out there, did you actually -- did you go back on the Cades' property?

A. No, I've never -- I've never walked the Cades' property.

Q. But you did visit the Cades' property?

A. I did visit the Cades' property and rode around -- Newcastle kind of ends and then you've got to go down Davis Drive and it also ends, so it's just kind of -- you've got to go down two roads, but just the perimeter and the driveway of course.

Q. Okay. And can you see -- if you're on Newcastle Drive or if you're on Fish Hatchery Road, do you have kind of complete visibility?

A. Oh, yeah. You could see the entire property.

Q. All right. Let's just -- all right. So this is Fish Hatchery Road right here. Fish Hatchery Road is right here?

A. Yeah.

Q. So from Fish Hatchery Road --

A. Right there where your thumb was -- right there where your finger's at was where their driveway is and I -- I pulled in there and kind of looked around and then you can go down Newcastle and it comes all the way around to the head of the -- right there, so you drive the perimeter and then you've got to come around Davis Drive.

Q. You're talking about -- here's Davis Drive?
A. Yeah, Davis Drive's there.
Q. All right.
A. So it may have been, you know, a hundred, two hundred feet of the property I probably couldn't see, but, I mean, you could tell from the road it was cleared.
Q. All right. So that was -- so the second -- the first time you went to the Cade property, the second time you went to the Garland property and then you said there was a third time. What was the third time?
A. Let's see here. The third time I went out there -- give me a minute. Sorry. The third time I went out there was she had called about equipment was moving onsite and she was getting water and like this and how complaints work with us is if you get a call, you've got to go out and look at it. I mean, it just triggers -- that's just the way -- way we do things. So I rode out there, and this was on 11-27-2019 -- or it might have been '18. When was it? '18. 11-27-2018. I'm sorry. I rode out there. I -- I went down Fish Hatchery Drive and the water crossing under the road at that time was clear sediment. We hadn't had any rain for a while. I did see that the Cades' property had not begun to plant any grass as our stop -- when we released the stop work order, that was one of the things that needed to be done was planting grass. And I saw a lot

of dirt and heavy equipment onsite and, I mean, that's pretty much the basis of my...

Q. Were -- now on what visit did you act -- did you actually nail in a stop work order?

A. Yes. That would have been my first visit on -- prior to -- that would have been my first visit on 10-21 -- I mean, October 22nd --

Q. Okay.

A. -- was when -- was -- yeah, it was put out.

Q. Okay.

A. Yeah, that's when it was. And I -- you know, I notified that a stop work order had been put out through our -- okay. 10-18 is when we saw it. That was on a Friday, so we had the weekend and then October 22nd would have been when I placed the work order and also mentioned with Ms. Garland. I'm sorry.

Q. Okay.

MR. BELSER: Thank you very much. You get the prize for being the shortest witness so far.

THE WITNESS: All right.

MR. BELSER: You can tell I'm hungry and lunch is around the corner.

CROSS-EXAMINATION

BY MR. MOORE:

Q. Now who is your supervisor?

A. Now?
Q. Who was the supervisor at the time? I'm sorry.
A. My supervisor at the time would have been -- Jeff McNesby was the County engineer, Lexington County engineer, and then Michael Spires would have been our director.
Q. Who's Ms. Swygert?
A. She is -- she's basically what I am now, but she holds a PE and I don't.
Q. She's a professional engineer?
A. That's correct.
Q. And you're not?
A. I'm not, no, sir. I'm just -- have a certification.
Q. Now as I understand it, the way this thing works, any time there is a complaint from anybody you have to go out, right?
A. Yes, sir.
Q. And in October of 2018, there had been a hurricane move through, correct?
A. I -- I do recall that. I was -- I had to work. We go to a special shift at public works, so I do recall that.
Q. That hurricane had dumped a bunch of rain, hadn't it?
A. We didn't get much where we was at, but I -- I mean, the northern part did.
Q. All right. And after the hurricane is when you got the complaint and you went out there?

A. Yes. I mean, I -- I guess. I don't know when the hurricane was exactly. I think it was in September maybe.
Q. How long was it after the hurricane that you actually got the complaint and went out to this site?
A. I do not recall.
Q. It sounds like about four or five days.
MR. BELSER: Objection, Your Honor. That's not -- he said he didn't know and he said it was September.
THE COURT: Yeah, you can't answer for him, Mr. Moore.
MR. MOORE: Sure.
THE COURT: So if he doesn't know, he doesn't know.
BY MR. MOORE:
Q. You would say, sir, that the complaint happened close in time to the hurricane?
A. Within reason.
Q. And do you know that before the Cades had done any work at all they went to the County? Do you know that?
A. I have saw a permit of that sort.
Q. And do you know that the Cades basically made inquiry as to what sort of permit they needed?
A. I'm privy to -- I mean, I've heard that, yes, sir.
Q. And do you know that the only permits that were required when they came to the County were building permits

for the structure they were going to build?
A. That would have been misleading information if anybody told them that.
Q. Yes, sir, but you do know that's exactly what happened, correct?
A. I'm assuming that could have -- I mean, that's possible.
Q. All right. So then as far as we know, the Cades did everything they were told to do before they did any work at all?
MR. BELSER: Objection. Lack of foundation. I mean, he's already testified he has a very limited scope in this. Mr. Moore's trying to get into conversations that happened with other people who are not here in court. We're dancing around the issue of Ms. Swygert.
THE COURT: And I don't -- I'm not convinced he has personal knowledge.
So let's move on, Mr. Moore.
BY MR. MOORE:
Q. To your personal knowledge, sir, did the Cades ever do anything out there they weren't told to do?
A. I was not privy to any conversations with them and the County. I -- I work in the field. I don't work in the office.
Q. Well, my question is --

A. At that time.
Q. -- with what you know, do you -- are you able to testify the Cades every did anything they were not told they could do?
A. Can I answer that as if I was the plan reviewer?
Q. No, sir. I just want to know what you know as to your personal knowledge. To your personal knowledge, do you know if the Cades ever did anything the County told them not to?
A. Basically, yes, because on 11-27 the ground should have been stabilized as the CAP plan per the release of the stop work order.
Q. Now let's take a moment. Before they -- before they did this work, before they did this work, before they built the building and put down the pads that he had permits for, do you know of anybody that told them to do something they did not do?
MR. BELSER: Objection, Your Honor. We just talked about this. He doesn't have personal knowledge of it. He just answered that. Let's move on.
THE COURT: I agree.
MR. MOORE: I'm sorry?
THE COURT: I mean, if he doesn't know, he doesn't know.
MR. MOORE: That was a -- that was before the

question that he doesn't know. That's why I asked the question. He doesn't know. That's all I wanted.

THE COURT: I think he's told everybody he doesn't know.

MR. MOORE: Thank you, Your Honor.

BY MR. MOORE:

Q. Now let me ask you this question. We talked about a stop work order, right?

A. Yes.

Q. Now the stormwater maintenance, that's a -- that's a criminal statute. If you violate it, you get cited, right?

MR. BELSER: Objection, Your Honor. Now Mr. Moore is asking him to give legal opinions as to the -- as to the ordinance itself.

MR. MOORE: I'm asking him what --

BY MR. MOORE:

Q. Sir, if someone violates the ordinance, are you familiar with what is known as a citation?

A. Yes, sir.

Q. And can you be fined for violating the ordinance?

A. Yes, sir.

Q. And when you find a violation of the ordinance, do you issue citations?

A. We do not. Code Enforcement does. We do not have authority with the stormwater ordinance.

Q. Right. What happens is if you find a violation, you turn it over to a Code Enforcement officer and he is supposed to issue a citation?
A. That's correct. $1,032 per day for a violation.
Q. And what Code Enforcement officer did you turn this over to?
A. We try to work with the people before we turn it over to Code Enforcement. If that doesn't happen, then it goes to Code Enforcement. I mean, that's -- we try to help people out. We give them the benefit of the doubt.
Q. Well, that really wasn't my question. My question is according to what you've told us, if you find a violation of the law you are supposed to turn the matter over to Code Enforcement, right?
A. We do not have that written in anywhere. We have discretion. Just like a police officer, we have discretion.
Q. Well, sir, one thing we do know is that you and none of your bosses ever turned this matter over to a Code Enforcement officer for a citation to be written, right?
A. That's correct because we hold that discretion.
Q. And nobody from Lexington County ever cited my clients for doing anything wrong in regard to a citation, right?
A. A CAP plan should have been -- a corrective action plan should have been submitted. I don't know if it was,

but that's usually the way we go before we get code enforcement involved. We give people -- I mean, everybody's a working person, so we try to give you the benefit of the doubt. Oh, I did something wrong, I'm sorry, then fix it.

Q. That's not my question.

THE COURT: That's his answer.

THE WITNESS: That's my answer, sir. That's the best I can do. I -- I'm not --

THE COURT: He's answered the question.

BY MR. MOORE:

Q. Sir, was a citation ever issued?

A. I -- I do not know.

Q. To you knowledge was a citation made?

A. I do not know.

Q. Did you ever turn this matter over to Code Enforcement?

A. I do -- I did not, not.

Q. Now you say this CAP plan should have been submitted. A CAP plan should have been submitted if the County determined that the exemption of the ordinance did not apply, right?

A. Well, the CAP plan should have been submitted to relieve that stop work order.

Q. And it wasn't, was it?

A. I'm -- I don't know. That would have went to my managers. It wouldn't have come to me.
Q. Right. This is -- this is the original stop work order that was issued out, correct?
A. Yes, it -- it very well is. It should been laminated, but, yes, this is it.
MR. MOORE: I'd like to offer this one into evidence.
MR. BELSER: No objection.
THE COURT: 31 we're gonna go with.
MR. BELSER: Just is that the -- that's the stop work order that was place out there? Is that the original document?
(Defendant's Exhibit Number 31, a stop work order, was marked and admitted into evidence.)
BY MR. MOORE:
Q. Sir, would you tell the jury on what date you issued this stop work order?
A. It doesn't have a date on it.
Q. Yes, sir. But you had to file it as well. You can -- you can basically tell us -- based upon your report and your file, you can tell us the actual date you issued this, can't you?
A. Let's see. I want to make sure I tell you right. October 22, 2018.

Q. And your work was ultimately reviewed by your supervisor based upon the facts of the case, right?
A. Yes.
Q. You know it was issued on the 22nd of October. On what date did your supervisors lift the stop work order?
A. I do not know.
Q. Well, let's take a look at this letter. This is dated the very next day, October the 23rd, 2018. Have you ever seen that?
A. I have never seen it, but I have heard of it. It was a -- it was talked around the office.
Q. Well, that does appear to be a letter to my client, correct?
A. It does appear, yeah.
Q. It appears to be a letter to my client written on Lexington County stationery, doesn't it?
A. Yes, it does.
Q. And it does appear to be a letter written by Mr. Spires, your supervisor, doesn't it?
A. That's correct.
MR. MOORE: We'd like to offer this one into evidence, too, Your Honor. I think it's already there, but I'm gonna make it --
THE COURT: Well, we're gonna mark it for Number 32.
Any objection?

MR. BELSER: No, Your Honor.

THE COURT: It's admitted.

(Defendant's Exhibit Number 32, a letter, was marked and admitted into evidence.)

BY MR. MOORE:

Q. Would you, please, read the language Lexington County wrote to my clients the day after you issued a stop work order.

A. Lexington County has removed the stop work order from the property at Newcastle Drive and Fish Hatchery Road, TMS Number 0790 -- 7899-01-13. Please move forward with stabilization of the project to eliminate all site impacts.

Q. So your boss the day after you issued the stop work order removed it, correct?

A. That's correct.

Q. And when the stop work order was removed the very next day, that allowed the work to resume; did it not?

A. Basically please move forward with stabilization of the site to eliminate all site impacts.

Q. That's a request --

A. That was the work that they should have been doing.

Q. That's a request, not a directive, isn't it?

A. Not typically. That should have been -- it might not have been worded the best, but that should have been what

was --
Q. Well, it's worded as a request, not a directive, correct?
A. The word "please" in there, I guess, it could be a request.
Q. Where in that letter when your boss removed the stop work order and allowed the work to resume as an official of Lexington County, where does it direct this plan that you say was required -- is required of anybody?
A. It is actually on the stop work order sheet. I don't have one that it's on there, but when you get a stop work order it is -- it is a sheet.
Q. All right. But the letter removes that stop work order so that's not applicable anymore. My question is this. We know the day after you issued the stop work order your boss said work can start again and did not require any other type of plans of any type to be submitted, right?
A. That's correct. I mean, I really don't know because it could have been a phone call or something, but I don't know. As of this letter, you're correct.
Q. I'm correct in what?
A. What you just said.
Q. That that plan you say was required wasn't required and work was allowed by Lexington County to start, right?
A. It should have been a conversation that that CAP plan

should have been done. I mean, it might have been voiced or whatever, but it's just, I think, you know -- I mean, I know what you're getting -- I see what you're trying to get at, but, I mean, I can't help you.

Q. Yes, sir. If it should have been required, then it should have been required when the stop work order was lifted as a condition to resume the work, shouldn't it?

A. It should have been as a condition, yes.

Q. And it wasn't, was it?

A. Not on this piece of paper.

Q. So your boss in Lexington County made a determination that work was authorized to start without any type of that required plan, correct?

A. To the best of my knowledge what I got from it.

Q. So we know of nobody from Lexington County that told them they couldn't do the work before October 22nd and the day after October 22nd, Lexington County fully authorized the work requesting stabilization, right?

A. Yes, requesting -- yeah, requesting the stabilization and grass planting.

Q. After October the 23rd, you went out there again?

A. Not after the 23rd.

Q. And do you know if they did what they were requested to do?

A. No -- actually I do because I was out there on

11-27-2019 {sic}.
Q. And they hadn't done what they were requested to do at that time, right?
A. No, sir.
Q. So you decided to call Code Enforcement and cite them. When you found they hadn't done everything that were asked to do, you called Code Enforcement and had them cited, right?
A. I let the staff know that they did not have any -- anything as far as BMP or stabilization, but they was trying. I mean, they was trying.
Q. You knew they were trying?
A. You could see a few sprigs, but it wasn't -- we require 70 percent and it wasn't near 70 percent.
Q. Well, when you told them what you told, the staff and your supervisors, nobody chose at that time to turn anything over to Code Enforcement, did they?
A. I think at that time it was directed to us that it had become a civil matter and once it comes to that, we step out. The County does not have anything to do with a civil matter.
Q. I see.
A. I mean, because we can't advise -- we're not a lawyer, we can't advise none of that.
Q. One thing's for certain, after the -- after the stop

work order -- I can't say the words. After the stop work order was lifted, nobody from the County did anything else in regard to this property, right?

A. That's pretty much correct. It was -- it was determined that it was a civil issue.

Q. Did the Corps of Engineers ever come over and do anything to them?

A. Corps of Engineers probably ain't coming out for anything to be honest with you.

Q. Well, how about the -- the forestry department? Did they come out and do anything?

A. I don't know.

Q. Did anybody from DHEC come out and do anything?

A. No, they won't -- they usually don't come out. The reason why I giggled at this, they usually won't come out for something like this.

Q. And actually a stop work order is something that investigative personnel can do until the supervisors look at it and straighten everything out, right?

A. For the -- yes, for the most part. You're correct.

Q. A stop work order doesn't mean that somebody did something wrong, it simply means hold on until we can figure out whether something has been done wrong?

A. That's right. To make sure we've got the correct permits and everything.

Q. And within one day that work order was lifted?
A. That's what you -- what you gave me, yes. You're correct.
Q. Was a stormwater permit ever required for this -- did anybody every say to them before you come back to work you've got to have a permit?
MR. BELSER: Your Honor, objection.
THE WITNESS: If they would have spoke to me, I would have told them that.
MR. BELSER: I mean, Your Honor, he made his point. Let's move on.
MR. MOORE: Your Honor, I'm not sure let's move on. I'm sure they don't like the question, but let's move on I don't think is a legitimate objection. I think I've asked a question I have not asked before. It seemed relevant to me.
THE COURT: He's answered it and -- and he's telling you -- obviously he doesn't know, but if had the choice he can tell you what he would have told them. That tells me --
THE WITNESS: If -- from the job -- you know, from the job position I'm in now versus then, yes, they would have had to have a permit. Was they told that at that time, I do not know.
BY MR. MOORE:

Q. You don't know of anyone that told them that though?
A. That's correct. That's correct.
Q. So we can then say that no permit -- no stormwater permit was ever required from anybody that you know of from Lexington County, right?
A. To the best of my knowledge.
MR. MOORE: Thank you very much for answering my questions.
THE COURT: Wait a minute. Let me ask Mr. Dougall now.
MR. DOUGALL: No, ma'am. I'm still napping.
MR. MOORE: I'm sorry to put you to sleep.
THE COURT: Thank you, Mr. Dougall.
All right. Any redirect?

REDIRECT EXAMINATION

BY MR. BELSER:
Q. The only thing, so all the questions about your boss, is that Mr. Spires right here?
A. That would be -- not directly. The Lexington County engineer would be directly, Jeff McNesby, who is no longer with the County, and then he -- Michael was the director, which in the chain of command it would have went to -- it would have went to two people before it got to Michael.
MR. BELSER: All right. I don't have any other questions.

THE COURT: Okay. Can I excuse the witness?

MR. BELSER: Yes, ma'am.

THE COURT: Mr. Corder, you can be excused. Thank you.

THE WITNESS: Yes, ma'am.

(Witness excused.)

THE COURT: Okay. It's 11:43. Can you get through one more witness before lunch?

MR. BELSER: Yes, ma'am.

THE COURT: Let's do it.

MR. BELSER: Michael Spires.

THE COURT: Okay.

MR. BELSER: The plaintiff calls Michael Spires.

(Whereupon, Michael Spires was duly sworn by the Clerk of Court.)

THE CLERK: Have a seat and state your name for the record.

THE WITNESS: Michael Spires.

MICHAEL SPIRES,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BELSER:

Q. All right. Mr. Spires, the only thing standing between all of us and lunch is you and me and him, so we'll try to move --

A. I can be as fast as you want to be.
Q. It's 11:44 on the clock. I've got a clock. I don't know if that was their intention or not, but I'll try to get rolling.
What -- tell me just briefly a little bit about yourself, where you're from, what's your education.
A. I reside in Chapin. I'm a lifelong Lexington County resident. I attended Chapin High School and then Clemson University. I have a BS in financial management and I began my employment with Lexington County in 1998 as a -- in the public works department as an engineer associate and then moved to an engineer associate II. Plat and deed research, drainage complaints, surveying, took over management of the county airport in 2012, became C Fund manager in 2014, which is overseeing all the asphalt resurfacing, pavement of county dirt roads, and then became Director of Public Works in 2018. I did that for three years. I was in public works for a total of twenty-two years and I'm currently the deputy county administrator and I assumed that role June of 2021.
Q. Okay. All right. So you're Lexington -- your roots are deep here. You're not going anywhere?
A. Correct.
Q. Just to kind of talk about 2018. There were some -- there's a letter in front of you, which I believe -- I

think it's Exhibit 32.

A. 32, yes, sir.

Q. Yeah. And is that -- does that document bear your signature?

A. Yes, sir.

Q. Okay. All right. I want to just talk a little bit about that letter and about what led you to sign it and what -- and what kind of meeting you had with Mr. Cade about that, okay?

A. Okay. For the record, this is the one and only letter ever done about a stop work order being released. Typically stop work orders are handled by the inspector in the field with the contractor or developer onsite. It usually does not make it up to the director's level. In this case, I am made aware of all stop work orders, either through a phone call or an e-mail in case I get a phone call, which was the case in this one, and I was made aware that some clearing had taken place on this property, it was -- there was a shed on the property, which is why they put up the stop work order because they were told it was under ag, and per the ordinance the staff felt that did not meet the requirements of the ordinance, so they put the stop work order and then I received a phone call from the Cades to discuss it and they told me that they were planning to do a pasture and they had equipment onsite and were ready

to stabilize and grass the site, so I consulted with -- as Brandon kind of went through the hierarchy, we have inspectors in the field, then we have a stormwater manager who's over making sure everything follows the MS4 or our compliance with State and Federal laws for stormwater, the County engineer, and then it would come to me as the director.

So I consulted with our stormwater manager at the time. And all stop work orders are -- are not a citation, they are to stop the work that's being done. It could be the case of there is no permit onsite, is one needed or not. It could be that the site is out of compliance, meaning that they are clearing the areas that were not permitted, or it could be that sediment has been leaving the site and that they've had to put the stop work order until a corrective action is being done.

In this case, it was -- the corrective action would be stabilize the site, which when we had the phone call they indicated the equipment was gonna be onsite, they were ready to start grassing, so the stormwater manager advised me that that is the appropriate action, so that's why the stop work order was removed so fast and they were able to begin stabilizing the site.

Q. So the corrective action plan, I think that Mr. Corder referred to it as a CAP?

A. Right.
Q. Is that corrective action plan?
A. Right.
Q. So was the stop work order released based on that stated plan to stabilize?
A. Not on a stated plan. It was based on the phone call with the Cades that they were ready to start stabilizing and grassing the site. Equipment was onsite.
Q. And so when you in this letter said please move forward with the stabilization of the project site to eliminate offsite impacts, that was based on what they told you they were going to do?
A. That's correct.
Q. All right. In your interactions with the Cades, were they kind of apologetic or remorseful about what had happened?
A. As I recall, we basically had -- we never had an in-person meeting. It was a phone call. Mr. Cade was out of town, I believe. He was in Alabama travelling when we had our -- our phone call. I would say he definitely was frustrated with being stopped while the equipment was onsite. I believe he stated he was -- basically it was costing them money because the equipment was onsite and was not able to work.
MR. BELSER: I have no further questions.

THE COURT: Okay. Mr. Moore.

CROSS-EXAMINATION

BY MR. MOORE:

Q. Now, sir, if more work is to be done, one of the things that should have been required, they should have been required to go and get a permit, right?

A. If required, yes, sir.

Q. And they weren't required to go get a permit, were they?

A. I checked the records and I did not find that there was ever a permit on file.

Q. Right. And if a permit was required, the work should have had a permit, if you followed proper procedure if one was actually required what should have happened is they should have been made to get a stormwater permit before doing anything else, right?

A. Yes.

Q. That wasn't done, was it?

A. In this case, no, sir.

Q. And who made the decision that they did not need to get a stormwater permit?

A. I don't know if any one person made that decision.

Q. Who was the group of people to determine that a stormwater permit was not required?

A. There's been a lot of transition of permitting and

staff changes since 2018, so the -- exactly the state it was then, I'm not really sure, but the stormwater manager would have been the one overseeing that program.

Q. What was that person's name?

A. Sherry Armstrong.

Q. And Sherry Armstrong would have been the person to know whether a permit -- a stormwater permit was required or not, correct?

A. Yes, sir.

Q. And the decision was made from Lexington County that they could go ahead with the work without a stormwater permit?

A. Yes, sir. Well, it was -- permission was given to stabilize the site, which they were ready to do and no permit was required to begin that work.

Q. Right. But stabilizing the site is part of the overall job, right?

A. Yes, sir.

Q. Before anything else could have been done, a permit would have been required if a permit was determined by the stormwater management to be required. That's true, isn't it?

A. Stop work orders are -- as I mentioned earlier, have various levels of corrective actions. In this case, there was the agricultural argument versus how it's stated in the

ordinance. Staff issued the stop work order at that time based on the fact that the shed was built on the property even though it is on an agricultural site.

Q. And after the stop work order froze everything, staff did an analysis and no one determined that they had to have a stormwater permit, correct?

A. Yes, sir.

Q. Because if they had determined that a stormwater permit was required, they would have made them get one before allowing the work to continue, right?

A. I can't speak to the mindset of the staff and why they said it did or did not need a permit. That was not part of the conversation.

Q. If proper procedure were followed and if a stormwater permit had been required for this job from the start, before they were allowed to resume a stormwater permit should have been required. That's true, isn't it?

A. Proper procedure, yes, sir.

Q. So either -- either a stormwater permit was never necessary or Lexington County didn't follow the proper procedure. One of those two things happened, correct?

A. Yes, sir.

Q. And you say before they made the decision to allow work to continue without a stormwater permit, all of these things were looked at in regard to what the permit said,

right?
A. Yes, sir.
Q. Now do you know if the building permits were issued before or after the work was done -- started on the clearing of these stumps?
A. At the time of this letter, no, sir, I did not even know they had a permit. I do now based on previous testimony.
Q. So you do not know if -- even today of your own personal knowledge if -- if impervious surfaces were created at the exact same time the agricultural work was done?
A. Personally I do not.
Q. Are you the person who removed the stop work order?
A. Yes, sir.
Q. You lifted it actually the very day it was issued and wrote the letter the next day, didn't you?
A. I don't know if it was the same -- are you talking -- was it a verbal? I think we had the con -- I don't know the date of the conversation I had with the Cades, but it was very close proximity in time.
Q. One thing's for certain. You issued the stop work order on the 22nd and you wrote a letter saying it was lifted and you can go back to work on the 23rd?
A. Yes, I wrote the letter and mailed it out. I'm not

sure if it went out the 23rd or 24th, but very -- very close in proximity.

Q. And you did that after consulting -- consultation with the stormwater management staff?

A. With a phone with the Cades and with consultation of staff, yes, sir.

Q. Did you know that they had already grassed the property at the time you wrote that letter?

A. No, sir.

Q. Now at some point in time one time you went out to this site; is that right?

A. Yes, sir. It was some date shortly after this letter. Late October, early November.

Q. And I believe you looked at a pipe that ran under Davis Drive?

A. I drove onsite -- like I said, because this was a very rare occasion. Usually I would not be involved with lifting of a stop work order, so on a rainy day, late October, early November, I drove out, looked at several complaints, went down Newcastle Road, which is right adjacent to their property and observed the property to see where it was cleared and a shed was on -- on the property, then I turned around and went down -- I'm trying to think of the name of the other road.

Q. Davis?

A. Davis. And rode down Davis Drive and I stopped at where one of the County's crossline pipes are and observed water coming from the direction of the Cades' property as I was downstream of it and water was going through the pipe, it was clear, and the pipe was unobstructed.
Q. Do you know which pipe it is you actually looked at?
A. No, sir.
Q. Whatever pipe you did look at, was clear?
A. It was -- it was a crossline pipe underneath Davis. And there could be multiple. I'm not sure.
Q. Wherever that pipe was coming from, the direction it came from --
A. At the time I went out there, it was simply to look at was there a shed on the property and it was cleared. I was not investigating the drainage complaint at the time.
Q. I see. But whatever pipe you looked at, the water that was coming through was clear, no -- no sand, no silt?
A. Correct. The pipe was open and free flowing and the water was clear.
MR. MOORE: Thank you very much and perhaps you might get some lunch.
MR. BELSER: Just two -- sorry.
THE COURT: Let me ask, Mr. Dougall, any -- any

cross?

MR. DOUGALL: Briefly.

CROSS-EXAMINATION

BY MR. DOUGALL:

Q. On this discussion about permits. Permits are required of landowners, right?

A. That's correct.

Q. It's the responsibility of the landowner to get the required permits in order for contractors or subcontractors to work on their property, correct?

A. The property owner can hire an engineer or a consultant to assist with it, but, yes, it typically is the property owner would be the one signing to get the permit, yes, sir.

Q. And in this case, you haven't heard any testimony that the Cades hired a consultant and one isn't here, correct?

A. No, sir.

Q. But it would have been their responsibility if it required permits?

A. Yes.

MR. DOUGALL: Thank you.

THE COURT: Thank you.

Any redirect?

MR. BELSER: Yeah, just two quick questions.

REDIRECT EXAMINATION

BY MR. BELSER:

Q. All right. Mr. -- in reference to Mr. Moore's question about the time that you went out there and you observed the culvert underneath Davis Drive, was it -- just to be clear, was it at the bottom of the hill where you could see the Cades and then see the Garland pond?

A. I did not know exactly which crossline pipe it was. Based on the topography, I assumed I was at the pipe just below the Cades' pond.

Q. And was it raining that day?

A. Yes, sir, it was raining.

Q. All right. The procedure and the -- and there were some questions about procedure and protocol. Is it right that there's some discretion that's built into that?

A. Yes, sir. As I was stating, with the stop work orders they're issued for many things -- or I shouldn't say many. There are several ways that you could get a stop work order and there is some discretion by staff and, you know, this ordinance was enacted in 2016, it has been revised twice since then, so it's always kind of a living, breathing document and it is up to staff to enforce that.

Q. And what in your experience happens when everybody's lawyer'd up? What does the County do?

A. Well, the County always tries to resolve the issues

as best we can, but when a lawyer's retained, then we typically step back and if any interaction goes forth, we go through our attorney with their -- the plaintiff or defendant's attorney.

MR. BELSER: Thank you very much.

MR. MOORE: Just very briefly, Your Honor.

RECROSS EXAMINATION

BY MR. MOORE:

Q. There is no discretion with your office in regard to requiring a permit if it is necessary, right?

A. In the past, staff has used discretion on the stop work order.

Q. I --

A. To answer your question, very specific, no. It should be you need a permit or no, you don't.

Q. And at no time was a permit ever required for Mr. and Ms. Cade?

A. Correct. At the time all development -- all the trees had been cut, the site had been disturbed and stabilization of the site is what was achieved and they were ready to do it, so that -- that was why that had taken place.

Q. If you find somebody's done required work without a permit, you'll even make them get a permit after the work is done, don't you?

A. I'm not aware of that taking place.

Q. Aren't you familiar with the building permits, that basically people will do unauthorized work, the County finds out about it and makes them get a building permit in retrospect?

MR. BELSER: Your Honor, objection. This is beyond the scope of recross.

MR. MOORE: I'll withdraw that question.

Thank you, Your Honor.

THE COURT: Thank you.

Does the other --

MR. DOUGALL: No, I'm -- I'm fine, Your Honor.

MR. BELSER: Now may this witness be excused?

THE COURT: He may.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: It's 12:02. That was very good.

All right. Start back at 1:30?

All right. Madam Forelady, I'm gonna let the jury go to lunch. Be back in the jury room at 1:15. We'll start at 1:30, okay?

No talking about the case.

Thank you.

(Whereupon, the jury was excused for lunch at 12:02 PM.)

THE COURT: All right. Off the record, Melinda.

(Whereupon, a luncheon recess was taken at 12:03 PM.)

(Back on the record at 1:32 PM.)

(Whereupon, the jury enter the courtroom at 1:32 PM.)

THE COURT: Madam Forelady, are we ready?

FOREPERSON: Yes, ma'am.

THE COURT: Okay.

Mr. Belser, you can call your next witness.

MR. BELSER: Thank you, Your Honor.

The plaintiff calls Bill Mathews, engineer.

(Whereupon, William Alfred Mathews was duly sworn by the Clerk of Court.)

THE CLERK: Have a seat and state your full name for the record, please.

THE WITNESS: William Alfred Mathews.

WILLIAM ALFRED MATHEWS,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BELSER:

Q. Mr. Mathews, where are you from?

A. Greenville, South Carolina.

Q. What -- you're an engineer?

A. Yes.

Q. What firm do you practice with?

A. Bunnell Lammons Engineering.
Q. And just describe generally what, you know, Bunnell Lammons Engineering does.
A. We're a geo -- geotechnical environmental engineering firm. We do drilling and sampling, geotechnical engineering, construction materials testing and environmental cleanup projects.
Q. And Mr. Lee testified earlier as -- he's a civil engineer. What is the relation -- what is a geotechnical engineer and how does that compare to a civil engineer?
A. Geotechnical engineering is a -- a branch of civil engineering.
Q. So is it like a subspecialty of civil engineering?
A. Yes. I -- I have my bachelor's degree in civil engineering and a master's degree in civil engineering and my master's degree was a concentration in geotechnical.
Q. Okay. And where did you get your bachelor's degree in engineering and your master's?
A. Both from the University of Texas at Arlington. My bachelor's degree in 1981, my master's in 1986.
Q. How long have you been prac -- how long have you been a practicing engineer?
A. Forty years.
Q. And Mr. Lee described how he got his degree and then there was a certain kind of training period, four years,

kind of an apprenticeship-type thing before he got his degree --

A. Yes.

Q. -- before he got his license. I'm sorry. Did you do a similar type thing?

A. That's pretty common from state to state, yes.

Q. Okay. And what -- what states are you licensed in?

A. I'm currently licensed in North Carolina, South Carolina, Georgia and Alabama.

Q. And what is your title at -- what are your job responsibilities at Bunnell Lammons?

A. My title is chief engineer. I mentor the younger engineers. I'm responsible for our quality control program. I do review of geotechnical reports and that sort of thing.

Q. How many engineers do you have or are you responsible for?

A. I have three direct reports, but we have maybe fifty or sixty professionals in the organization that -- that the quality program covers.

Q. So geotechnical engineering, what is the -- just so we all understand, what is the geo? What does that mean in terms of earth, wind, rain and fire?

A. Geotechnical engineering is everything to do with earth and rock construction, groundwater. We'll do

explorations to evaluate subsurface conditions and provide recommendations for foundation design and site preparation, we'll provide recommendations for dam construction, earth dam construction, seepage modeling, stability modeling, settlement modeling, lots of things.

Q. And what type of teaching do you do in geotechnical engineering?

A. I used to teach the soil mechanics review that was offered through Clemson continuing engineering education for people that were preparing to take the PE exam. I did that for ten or twelve, fourteen years, something like that. Now most of that has moved online, so I don't do that anymore.

Q. Now do you still have to take continuing education?

A. Yes, sir.

Q. And what type of -- how frequently do you have to do that?

A. We -- most states -- all of the states that I'm registered in require fifteen hours of continuing ed per year.

Q. And are you current and in good standing with the State of South Carolina?

A. Yes.

Q. And what is -- going back to the earth, wind, rain and fire thing or whatever that was said, what is the

relationship between geotechnical engineering and -- and civil engineering and how, say, water and earth interplay?
A. Well, again, it's a branch of civil engineering and geotechnical in particular is where we're evaluating how to make structures interface with the earth, right, so they'll perform as according -- according to their -- their need to, so we'll provide recommendations for foundation design, what types of foundation should be used. Again, if it's a dam structure, we'll provide recommendations for the type of material they need to use to control seepage through the dam, to filter the water coming through the dam, what kind of inclination on the slopes they need for proper slope stability, lots of different things.
Q. As -- as part of -- as a geotechnical engineer, are you looking at relative densities of -- of soil?
A. Yes, we do that all the time.
MR. BELSER: I'd like to move to qualify Mr. Mathews as an expert in civil engineering and geotechnical engineering.
THE COURT: Any objections, Mr. Moore or Mr. Dougall?
MR. DOUGALL: No, ma'am.
MR. MOORE: None from me.
THE COURT: Okay. Let me tell the jury again.
Mr. Mathews is gonna be qualified as an expert

and he's gonna give his opinion in this case. You can give it weight that you see fit. You don't have to accept it or you can accept it. It's up to you.

Go ahead.

MR. BELSER: Okay. Thank you, Your Honor.

BY MR. BELSER:

Q. Are you familiar with the Garland pond?

A. Yes.

Q. And I'm gonna hand you -- it's in evidence already, a copy of -- or it's not a copy, but Garland Exhibit Number 12 -- I'm sorry, Number 11.

MR. BELSER: Your Honor, may I approach the witness?

THE COURT: You may.

BY MR. BELSER:

Q. Is that the report that you prepared of your analysis of the Garland pond?

A. Yes.

Q. And just generally speaking, what -- what were you asked to do?

A. We were asked to evaluate the volume of sediment in the pond as compared to the volume that had been estimated by Dennis Corporation about a year, year and a half prior to us.

Q. Okay. So there was a prior report by Dennis

Corporation?
A. Yes.
Q. And did you -- in doing your work, did you rely upon that or did you do your own stuff?
A. The only thing we used from the Dennis Corporation report was referencing to the approximate locations where they did their sampling. Since we were comparing to their work, we tried to sample at essentially the same locations, but other than that all the calcs were our own.
Q. And what was the sampling equipment that you used?
A. We used a piece of equipment called a sludge judge. It's a -- it's a hollow acrylic tube that's graduated that we can lower down into the pond and sample the soft sediments in the bottom of the pond, extract it out and get a measurement of that.
Q. What is the difference between, I guess, using a sludge judge for soft sediments versus taking, say, a core sample of firmer sediments?
A. Well, the -- the sludge judge will only go through soft sediment, so recent sediments. If you wanted to get through a core or get a core sample to go deeper, that would get into firmer materials and when the sediments been in a pond a long time, it will tend to consolidate under its own weight and the weight of the -- or the hydrostatic pressure above it, so older settlements will -- sediments

will tend to be more compact than the relatively new stuff.
Q. When you say hydrostatic pressure, we're talking -- are we talking about the -- the weight of the water on the pond pushing down?
A. Yes.
Q. So what does natural -- sedimentation in ponds is a naturally occurring process; is that right?
A. Yes.
Q. And based on your experience as a civil engineer and as a geotechnical engineer, what happens to sedimentation over -- over a period of time if it's underwater?
A. Well, as -- as I stated a moment ago, it will consolidate under its own weight and the weight of the water above and it will become more dense.
Q. And when the sludge judge was out there, is that what you are looking for?
A. We were looking for the softer sediments near the top. That's all that that sampling device can penetrate is the softer sediments.
Q. Okay. So, I guess, describe the process of -- you've got the -- it's a clear tube device and you put it down as far as just to get the loose sediment?
A. We lower it down to touch the bottom and measure the water depth and then we push it into the soft sediments and it -- there's a way to close it off so you can lift out the

water and sediment that's in the tube. And the tube is graduated, so you can get a measurement of the thickness of the sediment at each location that we test.

Q. Kind of like if you're a kid and you've got a straw and you stick it in a Coke and put your finger on top and do that?

A. Exactly.

Q. All right. What -- what type of -- how many different sam -- how many different samples with the sludge judge did you -- did you take?

A. We collected three samples at each of eight different locations, so twenty-four.

Q. And why did you collect three at each location?

A. There's gonna be some natural variation from one point to the next, so we just selected three to give us an average depth at each location. And we were trying to sample from essentially the same location that Dennis Corporation reported they did.

Q. Okay. And how did you pick the eight different -- the sample locations?

A. The locations were selected based on our review of the Dennis Corporation report and then us going out into the pond and trying to sample at the same locations.

Q. Okay. And what was -- describe the process of -- so you've got the measurements and then in your report --

well, do you have an opinion with a reasonable degree of certainty as a geotechnical engineer as to the amount of recent sediment deposits in the pond?

A. Yes. As we reported in our -- in our letter, it was -- I know it's in here -- 1428 cubic yards.

Q. Okay. And how did you -- describe the process of actually -- the extrapolation process of taking the sludge drudge -- or sludge judge readings and then converting that into -- do the math.

A. We took the thickness at each of those three points at each location and then turned that into an average thickness and we use all those to figure out what the average thickness of the sediment is across the entire pond and multiply that times the area of the pond to come up with -- with the total volume.

Q. All right. So -- and -- just, again, what -- what you were measuring was the -- was the -- was depth, right?

A. Yes.

Q. Of unconsolidated sediment?

A. Correct.

Q. Okay. So let's talk about -- sorry -- talk about the source of the sediment. Do you have an opinion with a reasonable degree of certainty as to the source of the sediment that you -- that you discovered?

A. I looked at the drainage basin based on the topo data

that's available on the Lexington County GIS website and looked at the historical maps on Google Earth in an area that drains into the pond and over the course of those historical aerial photographs, the only significant disturbance upstream from the Garland pond was the -- was the Cade property that had been stripped.

Q. And you've been to the site, right?

A. Yes.

Q. Okay. And what is your opinion with a reasonable degree of certainty as to the source of the sediment that you discovered in the Garland pond?

A. It's my opinion the bulk of it came from the Cade side.

Q. Now have you considered natural sedimentation?

A. Well, all things being equal, and -- and when I say that I mean if -- if surface conditions are the same, like it's all wooded or it's all grassed or similar -- similar vegetation, then the contribution of sedimentation is gonna be relative to the amount of property within the total drainage basis. So, for instance, if -- if the Cades' property was ten acres and there was a hundred acre drainage basin, then I would expect it to be 10 percent if all things were equal, but when you strip the land and remove all the vegetation that changes it dramatically and there's a tremendous amount of runoff that can occur at

that point.
Q. And have you -- so based -- I guess you went to the site and you looked at the aerial photographs. Based on your review, were there any -- describe any other kind of land use changes that you saw in the area kind of leading, you know, in that -- in that kind of relatively recent period.
A. Nothing real significant. There was another plowed field up the road that it looks like maybe a third or a half of it might eventually end up as drainage down toward the Garland pond as well, but other than that nothing that I observed.
Q. What is the -- relative to the Cade property, what would be the relative contribution as to that tilled area?
A. I think it was probably negligible.
Q. And let's also talk about Garland -- I mean, sorry, Davis Drive as well. Did you drive down Davis Drive?
A. I did.
Q. And describe -- it's hard to look at the -- of course, everything looks flat when we're looking at a map like this, but what is the -- is that -- is the culvert -- what type of kind of topographic change is there along that area of Davis Drive? We have a topo map right here if you want to...
A. Yeah, let's -- yeah, let's look at the map.

Q. So the culvert's the low spot?
A. Yes. The -- it's a little bit easier to read the -- the topo on the GIS website, but there is -- the Davis Road along -- along the property there on the Garland pond is pretty flat and then it goes uphill in both directions going away so that by the time you get up to that other field we were just talking about, it breaks and drains the other way about the time you get a third or halfway across the field and then it -- it does that similarly as you get further the other direction. So the -- the road itself is pretty minor in the total area of what drains into the Garland pond.
Q. So relative to the land disturbance activities of -- of the Cade property, what is the relative contribution of any sediment from Davis Drive in your opinion?
A. I think it's minor.
Q. All right. Just one more question. The -- what -- based on your experience as an engineer, what does the relative compaction or looseness -- what does the relative compaction of a deposit tell you as to the age of -- or relative age of that deposit?
A. When you're talking about sediment, the material near the surface will be relatively loose, and that's the younger material. As you continue making deposits on top of that, the underlying material begins to compress and get

more dense.
Q. And, Mr. Mathews, are your opinions with a reasonable degree of certainty?
A. Yes.
MR. BELSER: I don't have anymore questions.
THE COURT: Thank you.
Mr. Moore.
MR. MOORE: We're having a hard time with the Internet.
Might ask counsel --
MR. BELSER: Yeah.
MR. MOORE: If you can pull up --
THE COURT: Yeah, sometimes the Internet doesn't work very well in here.
(Pause in proceedings.)

CROSS-EXAMINATION

BY MR. MOORE:
Q. Sir, just to start off, I don't think we can read that yet, but I want to make sure that we have here -- this thing has -- to begin with, it comes on your letterhead, right?
A. Yes, sir.
Q. And according to the letterhead it says that you folks are engineers, right?
A. Yes, sir.

Q. Is a portion of your business providing expert testimony?
A. Occasionally.
Q. What portion of your business is functioning as a paid professional witness?
A. Probably less than 5 percent.
Q. How long have you worked in -- as a paid professional witness?
A. I have done it over my career, but -- infrequently, but it dates back to early in my career.
Q. And you're functioning today as a paid professional witness, correct?
A. Yes.
Q. How much are you being paid for your testimony here today?
A. $180 an hour.
Q. And who is paying you $180 an hour in exchange for your testimony?
A. Well, I will submit my invoice through Mr. Belser, but I assume that it's being paid for by the Garlands.
Q. You're looking to the plaintiff's lawyer to pay you for your testimony, correct?
A. I have done my communication through his firm, yes.
Q. As a matter of fact, I don't think we can really read that, but not only have you done your communications

with his firm, this report you did is addressed to Mr. H. Freeman Belser of Belser and Belser, right?

A. Yes.

Q. It's not addressed to Ms. Garland, it goes to her lawyer.

A. That's correct.

Q. And according to this, he's the fellow who hired you.

A. That's the way it's worded.

Q. It's worded that way because it's the truth, isn't it?

A. Yes, sir.

Q. So you are here today as a paid professional wit -- witness working for the plaintiff's lawyer, right?

A. Yes.

Q. Would you look at that report, the whole thing, and show me anywhere in that report that you expressed an opinion that there was any siltation coming from my clients' property onto the Garlands' pond.

A. It doesn't say that in the report. I simply reported the volume of sediment.

Q. Right. Because that's what you studied. You basically were engaged according to this report to do no more than to quantify the volume of silt in the pond, right?

A. According to this report, yes.

Q. When is it that you were asked to form an opinion as

to where the siltation was coming from?
A. There have been subsequent discussions since the issuance of this report.
Q. When is it, sir, that you were asked to do a study and to determine where the siltation was coming from?
A. I just answered that. In subsequent discussions. I don't know the exact dates.
Q. Well, in -- after you went out there and you measured what you were hired to do and what you gave a report on, did you do a supplemental report?
A. No, sir.
Q. Did you do a supplemental study on the property?
A. Just looking at aerial photographs and touring the property.
Q. You never toured my clients' property, did you?
A. No.
Q. You never went onto my clients' property, did you?
A. No.
Q. You never went on Mr. Shearer's property, did you?
A. No.
Q. Did you -- while you -- at any time when you were out there, did you do any field measurements?
A. Only when we measured the sediment in the pond.
Q. The only measurements you ever made were when you measured sediment in a pond, right?

A. Correct.
Q. You never did any type of topographical study, correct?
A. Only reviewing the topo data from the Lexington County GIS website, yes.
Q. Wait a minute. Are you telling me that your opinions in regard to the source of this siltation came from looking at pictures on a computer?
A. That's exactly what I'm telling you.
Q. And can you tell me when it is that you actually looked at the pictures on the computer?
A. Multiple times.
Q. Now because you're being paid by the hour, you should have timesheets --
A. Uh-huh.
Q. -- that would show us when you claim to have looked at these pictures on the computer to form your opinion in regard to where silt was coming from, right?
A. Yes, sir.
Q. Where are those timesheets?
A. In my office.
Q. Now, sir, we have asked in discovery for all of the relevant documents related to what the experts have done and what they're going to say. Do you have any idea why those documents in regard to your timesheets would not have

been sent to us?

MR. BELSER: Objection, Your Honor.

Mr. Moore never sent a subpoena to Mr. Mathews. I've complied with discovery. I provided a copy of the report, which -- which is what I have. Mr. Moore never took Mr. Mathews' deposition and so this rabbit trail is -- is mis -- is prejudicial.

MR. MOORE: Your Honor, it may be prejudicial, but we sent interrogatories to counsel asking for all the relevant documents in this case and these documents were never produced. It is prejudicial. That's why I'm asking the question.

THE COURT: Well, if you didn't ask for them -- he sent you the report. I do think it's prejudicial and it should have been brought up long before today's date, so let's move on. I'm -- I don't even want to go to that subject.

BY MR. MOORE:

Q. Sir, have you ever provided any type of report that said that my clients were responsible for anything?

A. No, sir.

Q. Now if we might, let's go to the -- let me ask you this. The fact that there is sediment in this pond would be expected; would it not?

A. Yes.

Q. This pond is adjacent to a dirt road?
A. It is.
Q. It's in sandy soil?
A. Yes.
Q. And it would be highly unusual if there weren't sediment in this pond, wouldn't it?
A. That's correct.
Q. And did you know how long this pond has been there?
A. I don't know when it was constructed. It's -- it's present in the aerial photographs that I've reviewed as far back as they go.
Q. Now if you look down here at Number 1 on this report that I don't think you can read, but I'll -- I'll try to get there. Go to the first page of that report again.
A. Yes, sir.
Q. It says due to previous construction activity at the 39-acre site upstream of the Garland property, noted as the Cade property, it was reported that excessive sediment travelled downstream into the Garland property pond. Do you see that?
A. Yes, sir.
Q. Who told you that?
A. It came through the communication that I had with Mr. Belser when we were asked to look at this project.
Q. Mr. Belser told you that?

A. Yes, sir.
Q. Mr. Belser told you that there was silt coming from the Cade property and your opinion is based on $180 an hour that there was siltation coming from the Cade property?
A. My opinion is based on my review of the aerial photographs and my forty years of experience on construction sites and seeing what happens when you don't have proper sedimentation and erosion control procedures in place.
Q. Right. But you're also -- your opinion is also based upon what Mr. Freeman Belser told you because you put that in your report, right?
A. I did.
Q. So part of your opinion, at least part of it, is based on what the plaintiff's lawyer hired and paid you for?
A. Yes.
Q. Sir, if we can take a look at the last page of your typed report, I don't think -- we'll read it together out loud -- it says there in the second paragraph if we assume the sediment is a uniform thickness of 10.1 inches, then 1,361 cubic yards of sediment covers an area of 43,600 feet, correct?
A. 43,660 square feet, yes, sir.
Q. How many dump truck loads would that be?
A. I don't know. I'd have to do the math.

Q. Can you do the math?
A. Not presently.
Q. Why not?
A. Dump trucks -- because dump trucks come in different volume sizes.
Q. They're -- dump trucks are generally 18 tons.
A. Well, they're measured in yards as far as the buckets are concerned.
Q. All right. Sir, if you look on down, you did a picture of --
MR. MOORE: Can we get this picture he did?
MR. BELSER: Which one?
MR. MOORE: This is the one of the pond -- of a pond.
MR. BELSER: That one?
MR. MOORE: Yeah.
MR. BELSER: Do you want me to zoom in?
MR. MOORE: That's good. If you could zoom in a little bit, it would be great. We need to make it bigger, a little bit bigger. That's big. If we can pull it on down, then we might be able to see it from that size. That's great. Thank you.
MR. BELSER: Sure.
BY MR. MOORE:
Q. Sir, if we look closely at this photograph, who's pond

is this?
A. This is the Garland pond.
Q. Where is Davis Road on the property?
A. It goes across the dam.
Q. Here?
A. Yes.
Q. What's this?
A. I don't know.
Q. Where's Mr. Shearer's property?
A. I don't know where Mr. Shearer's property is.
Q. Well, is there a house in this vicinity anywhere?
A. I can't see it for the trees.
Q. Well, yes, sir, but you supposedly have formed these opinions. Isn't there a house out here somewhere?
A. I wasn't looking for houses.
Q. That wasn't my question. You've done this report.
A. Well, I -- there may be. I don't know.
Q. You don't know if Mr. Shearer lives out here somewhere?
A. I have had no interaction with Mr. Shearer.
Q. Well, do you see this supposed growth back here, all this cleared land?
A. Yes.
Q. When was that land cleared?
A. I don't know.

Q. Who's land is it?
A. I don't know.
Q. How much land is it that was cleared back here?
A. I haven't checked that.
Q. Does this land go towards Ms. Garland's pond?
A. Yes.
Q. If this land was cleared, while it was being cleared, would that -- that siltation have gone to her pond?
A. I would expect it to, yes.
Q. How long did it take to clear this?
A. I don't know. I haven't seen any records of it.
Q. Do you -- you don't have any idea even what this is back here?
A. No, sir.
Q. Certainly whatever it is back here that would have basically contributed to siltation of this pond, is a lot further back than the Cade property, isn't it?
A. What are you asking?
Q. This parcel, whoever owns it, this parcel is closer to the pond than my clients' property.
A. Well, let me clarify something. That parcel is on the other side of the dam, so it's likely downstream from the -- from any inflow that would go into the Garland pond.
Q. It's on the other side of what dam?
A. The road -- the dirt road you see right there is the

dam.
Q. The dirt road is a dam. Right. So anything on the other side of the dirt road would not be contributing, right, because it's a dam?
A. If it's downstream, yes, it's not contributing.
Q. Because anything on this side of the road wouldn't contribute because of the dam, right?
A. If it's downstream, it would not contribute. If it's downstream from the dam, it would not contribute.
Q. Sir, you've done all this studying. Don't you know that this is actually upstream from the road?
MR. BELSER: Your Honor, objection. This -- the way that this photograph is oriented is it's -- it's not oriented north-south as -- I can rotate it. Just -- just to avoid any kind of confusion, we're -- I don't want to confuse anybody, so I guess I've got the keys to this. I don't know if you want me to turn it so that it's properly oriented north-south.
MR. MOORE: I appreciate the assistance from counsel. I think -- I think I'm happy right now doing my cross-examination, Your Honor. I'm not sure that's a -- an objection. I'd just like to be able to continue with cross-examination, Your Honor. This man says he knows something. I've got a feeling this is gonna be fun.

MR. BELSER: Well, Your Honor, I don't know exactly what -- what that means, but --

THE COURT: Yeah, I'm not real sure I do either.

MR. BELSER: -- but the whole point, you know, what we're -- we don't want to confuse anybody. We have an image which I zoomed in on and if -- there's no -- there's no sense in asking questions that just confuse him.

MR. MOORE: It's his map, Your Honor.

THE WITNESS: Well, the --

THE COURT: It is his map. If he needs it turned, he'll let Mr. Moore know. It's his report. That came from his report, right?

MR. MOORE: Yes, ma'am.

THE COURT: Okay. Go ahead.

BY MR. MOORE:

Q. Sir, this is Davis Road right here?

A. The -- the road I'm referring to that serves as the dam is the road that leads into the Garland property.

Q. I just want to know, sir, is this Davis Road right here?

A. If that -- if that is Davis Road, then that is upstream from her dam, yes.

Q. Do you know -- do you even know on the map that you presented if this road is Davis Road or something else?

A. I didn't label the roads on the map.
Q. My question is do you know? Are you able to identify this as Davis Road?
A. I would say that's Davis Road, yes.
Q. Well, then how about doing this favor since you've done the studying, looking at things on the Internet, show me where my clients' property is on here.
A. Your clients' property, if that's Davis Road, is up to the left.
Q. The left here?
A. Yes.
Q. And you don't know whose property this is?
A. I do not.
Q. Well, my question -- back to my question, which is closer, this property or my clients' property?
A. The property that you see on the map is closer.
Q. Sir, would it surprise to learn my clients' property is over here?
A. If Davis Road is -- if that is Davis Road, your clients' property is on the other side of it.
Q. That's not Davis Road, but I'll help you out here. That ain't Davis Road. So in regard to your map, you're telling me that you're such an expert that you can't even located the appropriate road on the map?
A. Sir, I can look at the map in a bigger scale and tell

you exactly where we were. We zoomed in on this map to show the points that we were collecting sediment readings in the pond. It was not an effort in this map to identify the surrounding properties.

Q. Sir, you're telling me that you can give an opinion based upon a reasonable degree of professional certainty of $180 an hour about where siltation is coming from and you can't even locate the appropriate roads on the map? Is that what you're saying?

A. That's not what I'm saying.

Q. Well, let's talk about this. Do you see this stuff right here in the pond?

A. Yes.

Q. That's hydraulic growth, isn't it?

A. Yes, sir, it appears to be.

Q. Hydraulic growth is something that grows in sediment, isn't it?

A. It grows in ponds, yes.

Q. And it takes a long time for sediment to get where growth can basically start growing, right?

A. It depends.

Q. And if we actually look over here, if we look at the discoloration of the water, we can see that siltation is coming from here going all the way around towards that dam, can't we?

A. Yes, sir.
Q. And if there's siltation over here, as we now know there is, that siltation would be coming from this direction, wouldn't it?
A. You'd have to look at the topo data to see where it's coming from.
Q. Sir, let me ask you this. You're the expert. The silt that's on this side of the pond, based upon a reasonable degree of professional certainty, look at whatever you've got to look, tell me where it's coming from.
A. As sediment enters a pond -- as water and sediment enter the pond, the velocity in the water slows down. The heavier material settles out first. That would be the sand and gravel that's transported by the water. The lighter material, the silts and clays, will continue in suspension and travel further into the pond. So you can get sediment all over the place, but most of it will occur where it enters the pond.
Q. Sir, are you able to tell me based upon a reasonable degree of professional certainty where the sediment that runs all over here is coming from?
A. As I've stated, it's coming from upstream and the only significant clearing that we saw upstream on historical photographs was from the Cade property.

Q. Sir, you're from Greenville, South Carolina?
A. Yes, sir.
Q. There are plenty of engineers in Columbia, South Carolina, aren't there?
A. Yes, there are.
Q. Do you have any idea why the lawyer who hired you to give this opinion that he suggested to you what should be in it, do you have any idea why he selected an engineer from Greenville instead of one from Columbia?
A. No.
Q. Did he actually pay you $180 an hour as you were driving down here?
A. That's the expectation.
Q. How much have you been paid so far?
A. We did this report for a lump sum fee.
Q. The report though, this report, doesn't say anything about the source of the siltation, does it?
A. No, sir.
Q. How much did you charge for the actual report that you did?
A. I believe that was a thirty-nine hundred dollar report.
Q. Now this supplementation that you did with all this work where you had to go look at the Internet, how much did you charge for that?

A. I have not billed for that.
Q. Sir, that's part of your report. How come you didn't -- if you wrote this report out, why didn't you write the other report out?
A. I wasn't asked to write a report.
Q. As a matter of fact, that's been done months ago and you never bothered to bill for it?
A. I knew that we were coming to trial. I was just gonna bill one more time on it.
Q. How did you know you were coming for trial?
A. It was a reasonable expectation. As long as it was an active suit.
Q. Right. You knew that the testimony you were trying to give that you were being paid for was gonna result in a trial?
A. I expected it to unless I was told that it had been settled.
Q. Other than the thirty-nine hundred dollars that Mr. Belser paid you in exchange for your testimony, how much more are you owed?
A. I'll have to look and see what's -- what's on our list to be billed.
Q. All right, sir.
MR. MOORE: Now could we pull up the -- this topo map on the projector.

MR. BELSER: I don't know if I've got the topo map over there.

MR. MOORE: Or just the map.

(Pause in proceedings.)

BY MR. MOORE:

Q. Now, sir, in this expensive research that you did using the Internet, were you able to determine that this property right here is owned by Mr. Paul Shearer?

A. I did not look for the property owner there, no, sir.

Q. You wouldn't deny that, would you?

A. No.

Q. Would you deny that between my clients' property, which I believe would be here, and Mr. Shearer's property, there is a 50-foot vegetated buffer all the way down the line?

A. I don't deny that.

Q. Now would a 50-foot vegetated buffer with ground cover, would that slow down silt?

A. Yes.

Q. How would that work?

A. Any time you slow the velocity of the flow, then you'll begin to have settlement of the solids that are in the water.

Q. So we know that whatever happened, whatever -- whatever was coming off my clients' property, would have

been slowed by a 50-foot vegetated buffer, right?
A. Yes.
Q. And then we know that there's residential property here and there's wetlands here and wetlands here, correct?
A. Yes, I think that's correct.
Q. When -- and this wetlands that's on what would be the south side according to this map, where does that water flow? Does it flow in this direction, does it flow in this direction? Do you know?
A. Let me ask a point of clarification. When you say the south side of this map, you're referring to the bottom?
Q. The bottom, yeah.
A. Okay. So would you repeat that, please?
Q. I'm using -- I don't know which one is -- I'm not --
A. I'm -- I'm fine with us doing it that way.
Q. South is bottom, right's, I guess, east and left is west.
A. I'm -- I'm fine with that.
Q. It may be just the opposite.
MR. BELSER: It is. It's flipped upsidedown.
BY MR. MOORE:
Q. It's upsidedown though because -- it's flipped upsidedown because it shows the direction of drainage, doesn't it?
A. Yes.

Q. All right. Now so the prop -- the water that flows from my clients' natural lay of the land flows towards the buffer and towards Mr. Shearer's property, correct?
A. Yes.
Q. Do you have any indication that my clients changed the actual grade of their property?
A. No.
Q. So we're talking here about a natural flow grade-wise, right?
A. Correct.
Q. The natural flow from my clients' property flows into the wetlands and onto Mr. Shearer's property, right?
A. Yes.
Q. How much distance is there between Mr. Shearer's property and where this buffer area lies?
A. I don't know exactly without measuring it.
Q. Certainly you would have done that as part of this Internet study you did in order to determine where the siltation was coming from. You didn't do that?
A. What I looked for were areas that had had vegetation, trees, removed.
Q. Oh, that's all you looked for. You looked to see what areas had vegetation and trees removed.
A. Upstream.
Q. Well, in order to know that, where that water's going,

wouldn't you have to make a determination of in which way that water was flowing?

A. And that's what I get from looking at the topo data.

Q. But if you look at the topo, it wouldn't show you if there was a ditch that was driven by Davis Road, would it?

A. Not with the GIS level topo that's on the -- on the Lexington County website, no.

Q. So with what you looked at, it wouldn't show you if there was a ditch over here that would have been collecting water, would it?

A. No.

Q. And it also wouldn't show you whether that ditch was actually hauling the water off in this direction away from Ms. Garland's pond, right?

A. Well, the topo indicates that everything flows down toward the bottom there near the Garland pond.

Q. Right. But if there's an artificial ditch that runs by the road that directs water away, that would change your opinions, wouldn't it?

A. If, in fact, it directed it away.

Q. You didn't talk to Mr. Shearer about that ditch, did you?

A. No.

Q. All right. Now let us talk about the area to, I guess, the northeast of Mr. Shearer's property.

MR. BELSER: Your Honor, that -- that's south. I mean, just for the record.

THE COURT: It's upsidedown.

MR. BELSER: Yeah.

MR. MOORE: Okay. But the way I'm referring to it -- I'll do it this way.

BY MR. MOORE:

Q. To the top right going from how I've got this thing upsidedown, that's basically wetlands, too, isn't it?

A. I don't recall if that's wetlands or not. It may be.

Q. Based upon your study, did you know that there is an 18-inch berm that runs across Davis Drive between my clients' side and the Garland side?

A. I noticed there was a soil berm as I drove down the road, yes.

Q. What is the purpose of a soil berm?

A. It could be from grading the road over and over. It could be as a means to channelize water to a certain extent.

Q. Well, certainly an 18-inch berm is going to work to channelize water, isn't it?

A. Within limits. It was not a -- it did not appear to be a well-compacted berm.

Q. No, but it was basically -- did you know it was created by Lexington County?

A. I did not.
Q. Did you know it's been out there for about fifty years?
A. No.
Q. And if that berm is out there, that would mean that any water crossing Davis Road -- that crosses the road is gonna hit the equivalent of a dam, isn't it?
A. A short one.
Q. An 18-inch dam, right?
A. I never measured the height of the berm, but I'll take your word for it.
Q. Sir, if you're doing this complicated analysis in a case as important as this, why in the world wouldn't you do an analysis of how the berm impacts the flow and volume of the water?
A. The berm would direct it to a low point where it's gonna go through the pipe that y'all have been discussing all morning and make it into the Garland pond. The topographic data shows the road going uphill in both directions. The ditch and berm cannot direct water uphill.
Q. Yes, sir. But, sir, the -- the berm is up here, not down here where the road is. Did you know that?
A. I don't -- I'm unaware of a berm up on anybody else's property. I was looking at the berm adjacent to the road.
Q. There's a berm adjacent to the road, but that would be

below where the pipe is, wouldn't it?
A. I don't know the exact location of the pipe.
Q. How would water crossing the road get into the pipe?
A. It would flow into it.
Q. It can't flow uphill, can it?
A. No, it can't.
Q. The water's flowing in the bottom direction, going from the top to the bottom, isn't it?
A. Yes.
Q. That means that any water that hits below the pipe is gonna be going in this direct if it's being directed by the berm, wouldn't it?
A. But it continues uphill as you get further down to the lower left there.
Q. Right. When it gets down to the lower left, it -- it goes somewhere else, but then it's not directed towards Ms. Garland's pond, is it?
A. Well, that's not what the topo indicates that I've reviewed.
Q. Would it surprise you to learn that the creek and the berm direct water all the way down towards somebody else's property?
A. All the way down the road?
Q. Sure.
A. I would be very surprised.

Q. All right. Now you -- you made your opinion about what the water does basically walking down the road and looking at the Internet, right?
A. And looking at Ms. Garland's property.
Q. All right. This pipe that we're talking about and that you've testified about, have you ever seen it?
A. I have not witnessed the pipe.
Q. How wide is the pipe?
A. I couldn't tell you.
Q. Is it stopped up at all?
A. I don't know.
Q. When the -- how does water get into the pipe?
A. It flows downhill.
Q. From where?
A. From uphill.
Q. From other people's property?
A. From any property upstream within that drainage basin.
Q. All right. How many different pieces of property direct water to that pipe?
A. I did not count the number of properties.
Q. What you can say is that you think there's a bunch of silt in the pond because we're one of the properties that goes into the pipe and that's where it is, right?
A. And because your property was the only one in historical photographs that I looked at that had been

cleared.
Q. How many cubic yards are you telling me that you claim to be in this pond?
A. 1,428.
Q. And are you telling me that all of that silt that you attribute to my client came through that pipe?
A. I don't know if the pipe got overwhelmed and the road got overtop. I'm just saying that it came from upstream and that's what we measured in the pond.
Q. Right. All you can say is that silt came from upstream, correct?
A. Yes.
Q. That is the sum total of your testimony, isn't it?
A. And that because of the clearing that was done on the Cade property I believe that the bulk came from that site.
Q. But, sir, you've done no testing or no evaluation to show how the sand, dirt, whatever you want to call it, would have gotten into the pond from my clients' property, right?
A. Other than looking at the topo data, no.
Q. You don't know if it came through the pipe, across the road or anywhere else, right?
A. No. I did not witness it during any precipitation or flow.
Q. Can you explain to me how long it would take for 1,300

cubic yards of dirt to go through an 18-inch pipe?
A. I cannot.
Q. It would take a long time, wouldn't it?
A. Yes.
Q. And your testimony is the pipe is about 18-inches?
A. I never said what size the pipe was.
Q. Do you know?
A. I do not know.
Q. How much of the -- of the rainfall falls onto my clients' property goes into the pipe and how much goes onto Davis Road?
A. I haven't done a hydrology study of that, but roughly on this map the upper right half of your clients' property drains into the pond on his property and then the lower left half works its way down toward the Garland property.
Q. Right. What happens is this portion of our property goes into our pond, right?
A. Yes.
Q. And then it's held, right?
A. Yes.
Q. And any sediment has a chance to fall out into our pond, right?
A. I would expect it to.
Q. Then it goes over a spillway clean, right?
A. I don't know how it leaves your clients' property.

Q. One thing's for certain. When it leaves my clients' -- when it leaves the pond, you would expect it to be clean water, right?
A. Depending on the outfall mechanism, yes, I would expect a lot of the sediment to settle out.
Q. So what you would expect to be going into the pipe from my clients' property would be clean water?
A. From that part of the contribution, but from the lower left part it would be the water that comes straight off the cleared land.
Q. Right here.
A. And --
Q. This water would flow onto the road, not into the pipe right?
A. I don't know.
Q. You don't know. If you don't know, how in the world are you able to give an opinion as to how this water got into this pipe?
A. I don't have an opinion of how the water got into the pipe. I have forty years of experience doing engineering on projects where we strip land and have to put in sedimentation and erosion control devices and I know what happens when those aren't properly maintained and when they're not properly maintained you get a tremendous amount of runoff, including sedimentation and silt that gets

transported in a very short period of time.
Q. Well, let's talk about properly maintained for a moment. Do you know in Lexington county when rural agricultural property is cleared and the stumps are cleared if there has to be any type of permit?
A. I don't know.
Q. In regard to proper maintenance and proper license, in Lexington county when agricultural property is basically cleared and -- do you know of any requirement for silt fencing?
A. I don't know.
Q. Well, sir, when we talk about not properly managed, not properly maintained, are you able to tell this jury what regulation, regulations, law, any type of legal requirement my clients' violated when they basically went out and cut -- timbered the trees and dug up the stumps?
A. I can't tell you. I don't know.
Q. So as the paid professional witness in this case, you're not able to tell this jury that my client violated any kind of law or standard?
A. I cannot tell you that.
Q. So as far as you know, everything that my client did was proper?
A. It may have been. I don't know.
Q. As far as you know it was, right?

A. I don't know.
Q. Do you know of anything my client did that would have deviated from any lawful standard of care?
A. I don't know.
Q. You've studied all these reports from all of these other engineers, Dennis Corporation, you've looked at the map, you've looked at the Internet, and studied these other reports. Have any -- have you seen any other engineer indicate that my client did anything wrong?
A. No.
Q. Now my client is being accused in this case of doing wrongdoing. They did something they shouldn't have done. To your knowledge, did my clients do anything they shouldn't have done?
A. I don't know if they did or not.
Q. And you're the expert, right?
A. What I am talking about is soil that will run off property when it's been stripped and whether they did that legally or illegally, I have no idea. That's not what I know.
Q. You don't have -- you can't tell us in your professional opinion how much of the silt came from my client's property or somebody else's?
A. I can tell you based on the clearing that it's my opinion that the bulk of it came off of your clients'

property.
Q. Well, 90 percent, 50 percent, 60 percent?
A. I would say 90 percent's probably a fair assessment.
Q. Even though you have no idea how water gets on her pond from my clients' property?
A. It flows downhill.
MR. MOORE: Thank you very much. Nothing further.
THE COURT: Any re -- I'm sorry, Mr. Dougall.
MR. DOUGALL: I'm good, Your Honor. I'm good.
MR. BELSER: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. BELSER:
Q. I'm coming over here to try to figure out what's up and what's down, what direction is what.
All right. So if we flip this around so this is actually north/south and look at -- I'm gonna blow up this photograph here that we looked at.
Is that -- is your photograph -- is that oriented north/south?
A. Yes.
Q. Okay. So the Cade property is down here; is that right?
A. The Cade property, yes, is down to the lower right there.
Q. Just about --

A. Yes.
Q. It's confusing though because --
MR. MOORE: Objection to leading, please, Your Honor.
THE COURT: I think he's moving on.
BY MR. BELSER:
Q. Yeah, the only other question is -- that I've got is you were here for Mr. Lee's testimony?
A. This morning, yes.
Q. And you've read Mr. Lee's deposition transcript?
A. Yes.
Q. Was that consistent with his testimony this morning?
A. Yes.
MR. BELSER: Thank you. No further questions.
THE COURT: Anything else?
MR. MOORE: Not from us. No, ma'am.
THE COURT: Okay. May I excuse Mr. Mathews?
MR. BELSER: Yes, ma'am. Thank you.
THE COURT: Thank you, Mr. Mathews, for coming.
THE WITNESS: You're welcome.
(Witness excused.)
THE COURT: Madam Forelady, are we okay -- the jury okay for another witness?
FOREPERSON: We'd like a break, please.
THE COURT: You'd like a break?

FOREPERSON: Uh-huh.
THE COURT: Absolutely.
MR. MOORE: Thank you.
THE COURT: All right. No talking about the case. Let's take a fifteen-minute break.
(Whereupon the jury retires to the jury room at 2:36 PM.)
(Recess taken at 2:36 PM.)
(Back on the record at 2:54 PM.)
(Whereupon, the jury return to the courtroom at 2:54 PM.)
THE COURT: Madam Forelady, are we ready?
FOREPERSON: We're ready, Your Honor.
THE COURT: All right. You can call your next witness.
MR. BELSER: Thanks.
The plaintiff calls Ms. Suzy Garland.
THE CLERK: Raise your right and place your left on the Bible.
(Whereupon, Suzan A. Garland was duly sworn by the Clerk of Court.)
THE CLERK: State your full name for the record.
THE WITNESS: Suzan A. Garland.
MR. BELSER: Okay.
THE COURT: Ms. Garland, can you pull that

microphone down just a -- there we go.

SUZAN A. GARLAND,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BELSER:

Q. All right. Suzy, when we got started I said we were excited to be here. We're three days in and we're just -- we're gonna call you to testify. I want to -- I want to ask you some questions and just have you introduce yourself to the jury and just tell them a little bit about you, where you're from, et cetera.

A. I was born in Puerto Rico and I've lived all over the United States, but I've lived at 105 Davis Drive for the last thirty-six years. It's been my husband's and my home. He died eleven years ago and I'm still living there. It was our dream and the place that we love.

Q. And, Suzy, I know this is hard for you and we're -- I'm gonna try to short-circuit some of the questions so we can get through this.

You and your husband bought the house in 1985 and lived there and how did --

A. Yes.

Q. How did you -- and I've got some photographs that we can walk through here. This is Plaintiff's Exhibit Number 3. Just briefly -- and, I'll show some pictures,

how did you and your husband use and enjoy your property over the years?

A. Well, we're both avid gardeners and environmentalists and we spent a long time trying to find a piece of land with a pond and we felt like we had found a little piece of heaven when we found this land.

Q. Did y'all -- did you use it to fish and entertain friends in addition to entertaining yourselves?

A. Yes. We fished, we entertained friends, we -- my husband and his friends would scuba-dive in the pond. We went swimming in it. It was stocked with bass and brim and we had wonderful bass and brim feeds out of it. We planted gardens and put our hearts and souls into that property.

Q. Everybody likes to see a picture of themselves with a big fish. So let me -- you're supposed to hold it out far like this.

All right. We've got some photos here and we're just gonna roll through these as quickly as we can without sacrificing anything, but this -- we've got -- the photographs, which are all in Exhibit 3, are labeled at the bottom from the years.

This would have been two years after y'all bought the property?

A. Yes`.

Q. And the picture on the top left, that's -- that's your

husband with a fish and that's you with a bigger fish on the right?
A. Yes.
Q. Okay. Did you intentionally put that --
A. (Laughing.)
Q. And where is this picture taken and what is it -- what is it looking at?
A. That's from my front window looking at my pond in the front yard.
Q. In terms of orientation, the -- your house is right here, the -- the road and the dam to your pond is right there and upstream is this way?
A. Yes.
Q. I remember that ice storm when I was a kid. And who is this?
A. That was a little boy who didn't have a dad and my husband and I had him come over with his mom and taught him how to fish.
Q. And did y'all do some of -- this is the same kid or it looks like a --
A. No, that's -- that's my husband with some other neighbors fishing in the pond.
Q. So over the years, was it common for you and -- we've talked about having friends and family members over, but did you have neighbors over? Was it kind of a community

pond?
A. You know, that little boy that was just catching the fish lived just down the road from us. He's an all grown up man now, but, yes, we had friends and neighbors and people come frequently to the house.
Q. In fact, here is a picture from 2016. Describe kind of what the -- the appearance of the pond and what the water looked like before 2018.
A. The water was crystal clear. I could see the bass and I could watch the brim bedding. I could see at least four feet down through clear water and I could see the bass swimming and keep an eye on it and the pond was always maintained as you heard Mac Watson's testimony. He took care of my pond for me and if it needed to have water lilies taken down, he would come and spray it. So we always maintained the pond and it was a great source of pleasure and beauty for us.
Q. And let's talk -- I actually want to talk briefly about the structures that are on this property. Your house is on the property?
A. Yes. There are two brick houses on our property. They both have commercial grade metal roofs. I have thirty-two solar panels. I'm a environmentalist and I don't use pesticides and herbicides. My property is a sanctuary for animals. The only thing I've ever killed

have been cottonmouth snakes because I've had pets and I didn't want my dogs and cats to be poisoned by snakes, but other than that it's a sanctuary.

Q. I'd like to kind of talk about why -- why we're here today and we've got -- Exhibit 4 and Exhibit 5 are a number of -- are a big old thick stack of photographs that will go back to the jury and I just kind of want to talk about when the Cades moved into the neighborhood, what you did, what you observed. We're not -- we're not gonna re-plow old ground, but what do you remember about the first time that you noticed your pond -- I think that somebody said you said it looked yucky. What do you remember about that?

A. It was after the hurricane in 2018 in October. The Cades had bought their property, I believe, in May of that year and had -- had timbered it and then totally taken it down to bare dirt and in 2015 when the huge flood came through and we had thirteen inches of rain, there was absolutely no impact to my pond. My pond was still crystal clear. After this four-inch rainfall of this 2018 hurricane, my pond turned into a mud puddle. I didn't know what was wrong with it and I called Mac Watson and said Mac, I don't know what's wrong, will you please come look at my pond.

Q. And there's been some -- so Mac has already testified and then I know you made a complaint to the County and

Mr. Corder's already -- he's already testified, so we don't need to talk about that, but you started taking a lot of photographs, didn't you?

A. Yes, I was -- I was told to document, so I've taken hundreds of photographs of all the -- the -- both sides of Davis Drive of all the silt coming into my pond, of where it was coming from, and went around Fish Hatchery Road and Newcastle Road, around the Dav -- the Cades' property. I never entered their property, but I took pictures because I was told of the stripping of the land and the construction.

Q. All right. Let's -- what we're gonna do is we're just gonna have to go on a little stroll through these photographs and I'm gonna give everybody a chance to look at them. I'm not gonna get you to describe each one unless there's something that you want to particularly discuss.

All right. Plaintiff's Exhibit Number 4, these are photographs from December -- the range is -- I'm sorry -- October the 18th of 2018 through December the 30th of 2018 -- 2019. That's how they're divided up.

So where is -- what direction are you facing taking this photograph?

A. I think I'm down -- I'm looking at the dam, which is my driveway, so I'm looking back up towards my pond. The stream would be back up here where the water comes in.

Q. Just by way of reference, your house would be up here?

A. Yes, my house would be up on the hill.
Q. Okay. And the Cade property would be back this way?
A. Yes.
Q. And did you -- I mean, had you ever seen your pond look that color before?
A. Never.
Q. And is -- is this kind of what made you -- what prompted you to call Mac Watson and also the County?
A. Yeah. I -- I called Mac because I said I thought there was some kind of weird algae in my pond. I didn't know what was going on because my pond had never looked like that since I had lived there.
Q. And is this a photograph from your living -- your house?
A. It's out my front window, yes, looking down at my pond.
Q. What room is that in your house?
A. My living room.
Q. Would that also be your living room?
A. Yes. Yes.
Q. All right.
A. That's where the water comes into the -- that's where the stream enters my pond where it goes under -- after it goes under the road from the Cades' prop -- from Paul's property and the Cades' property and enters my pond.

Q. Okay. So this is October the 26th of 2018. This is -- the first photographs you saw were from October -- I'm sorry -- October 26, 2018. The photograph that we saw was from October the 18th. Over this period of time if you had a big rain event, how long would you -- what period of time would your pond stay muddy?
A. The pond has been muddy for the last four years. Even now it's not really cleared up. I can't -- it's all filled with algae and slime now.
Q. That's a similar photograph, just a little closer up?
A. Yes.
Q. All right. This photograph, October the 31st of 2018, where is that photograph taken from?
A. That would have been taken on Newcastle Road looking across at the Cades' construction site.
Q. Your property is down this way?
A. Yes.
Q. And the Cades' pond is right here?
A. I believe -- yes.
Q. What is this? This is November the 2nd. Where is this photograph from?
A. That photograph is on the side on -- that's Paul Shearer's wetlands that goes up to the Cades' where the stream that has always fed my pond comes down and goes under the road.

Q. Here we are. We just went through a number of photographs in November of 2018. Is this color the type of pond that you -- the color of the pond that you observed in -- when this started to happen?
A. Yes.
Q. And was that -- did the whole pond turn that color?
A. Yes.
Q. And how did that -- how did that make you feel to see your pond -- this happen?
A. I'm heartbroken.
Q. All right. This photograph right here, what direct -- do you see the fence?
A. That's my property. There's a fence that goes across. That's Davis Drive, that's the berm that is along Davis Drive, and that's the water that's coming under the road from the stream onto my property.
Q. Okay. And this open area back there that we can see, is that where your pond is located?
A. Yes. I have a wetlands between the road and my pond.
Q. And this -- these are all photographs on December the 9th of 2018, okay? This is Davis Drive towards the Cade property; is that right?
A. Yes.
Q. And that's towards your property?
A. Yes.

Q. And that's what -- is that of your pond from your front porch?
A. Yes. Well, from the front yard.
Q. And these are all photographs that you took?
A. Yes. That's an interesting one. Mr. Cade -- well, Paul Shearer said that Mr. Cade had sprayed --
Q. You don't need to say what Mr. Shearer said.
A. Oh.
Q. But what do you -- what do you see in this photograph here?
A. It's wheat or rye seeds up against my dam.
Q. When did you start -- is this when you started to see that?
A. Yes.
Q. This is a video that we're gonna run. Where is this video being shot from?
A. It's from the edge of the road where the water comes under the road onto my property.
Q. That's the -- that's where the culvert is that we've talked so much about?
A. Yes.
Q. And that's back facing -- that's going towards your property?
A. Yes, that's going into my pond.
Q. What does this video show? Where's it taken from?

A. From my front yard.
Q. Okay. So the dam is where you're panning to?
A. Over to the left and I'm panning to up to where the stream comes in.
Q. And we're at December the 30th of 2018. Was it -- did your pond have that appearance from October of '18 -- of 2018 through the end of the year?
A. And longer.
Q. Let's look at 2019. Where -- where is this photograph taken from?
A. I think, again, from Newcastle Road. That was the burn pile where they spent months -- several months that they had -- they were burning all of the stumps and trash that they had removed from the property. I think the fire burned for close to three months. It was burning for a very, very long time. And that's taken -- that chain link fence is Mr. Cade's.
Q. Okay. So just so we have orientation, Fish Hatchery Road is back this way?
A. Yeah, Fish Hatchery Road is up there and this is Newcastle Road coming down because I could look across and get a good photograph of the construction. I wasn't allowed to go on their property and I didn't try to.
Q. And is that the -- the barn structure or is that a different structure?

A. I think that's a different structure. He put up another structure first before he put that one up, I believe.
Q. All right. What does this video show?
A. It shows more mud pouring into my pond washing over the -- that's my wetlands filled with mud.
Q. This is looking back through the wetlands now back towards Davis Drive?
A. Yes, where the stream comes down.
Q. All right. Tell me about -- why did you take this picture?
A. Because suddenly my pond started to change color and turn to green.
Q. And so where is this photograph taken?
A. That's taken on the --- looking up at Paul Shearer's property up to Cade's property.
Q. And had you ever seen the water that color before?
A. No.
Q. And when you say it -- this is February the 28th, 2019. When you say it made your pond turn green, here's a photograph from March the 1st of 2019. Is that what you're referring to?
A. Within twenty-four hours my whole pond was green.
Q. Was that concerning to you?
A. Yes. I didn't know what it was.

Q. Now where is this? Where is this photograph taken from?
A. Oh, that's -- that's on my dam. You can see my house up on the hill. That would have been the Cades' -- the Shearers' leading up to the Cades' property.
Q. What does this videotape show?
A. That's muddy water pouring under the road onto my property.
Q. So this is on the --
A. Cades'.
Q. -- Cades' side of Davis Drive?
A. Yes, on Mr. Shearer's property on the Cades' -- where it comes through the Cades'.
Q. And so this is the same day. You took a video of one side of Davis Drive --
A. And that's my side.
Q. And your pond is -- how far is your pond from this location?
A. I would say two or three hundred feet. My pond is not close to the road. I have a wetland and then by my driveway there's a field, so my pond actually is not close to Davis Drive. It's not right on Davis Drive. It's back in on my property.
Q. And then this is a photograph of the same day. What does this show?

A. Just more mud coming in.
Q. What does this photograph show?
A. This shows that the road tilts toward my property and the berm and I spoke to the road man because the neighbors complained about the mud puddle that always formed there and he said --
Q. You don't need -- you don't need to say what he says since he's not here to testify.
A. Okay.
Q. But where is this relative -- if this is the fence right here, so your property is --
A. Yes, that's where it goes under the road and the house over there is Paul Shearer's house.
Q. This is Shearer's house?
A. Yes.
Q. Is that like -- is the Cade property down that way?
A. Yes.
Q. Now where -- what -- what is the orientation of this photograph?
A. That's on my -- what we call an upper dam that was built and the water was just pouring over. There was just so much volume that it just went over the whole dam in -- in many places. It didn't go through the channel.
Q. Okay. What does this last photograph show?
A. I had called Mac Watson and I said Mac, my pond looks

terrible, I don't know why, and he came up and he said well, let's go see what's going on and he took a break and he went down and he said Suzy --

MR. MOORE: Objection to --

MR. BELSER: Yeah, you can't say what he said.

THE WITNESS: Oh.

BY MR. BELSER:

Q. But what do you see in this photograph?

A. Algae.

Q. Had you ever seen algae like that in your pond?

A. No.

Q. All right. Suzy, have you had any interactions with either Mr. or Ms. Cade since this lawsuit got started?

A. I've met Ms. Cade. She came up to my property. I was working in the garden, I was hot and tired, and she started ranting and raving about nothing had come out of their pond, they put betonite in their pond. I had no idea what she was talking about and I just finally -- I was exhausted, I'm 83 years old, and I said you are trespassing, you're on private property, and you need to leave. I wasn't gonna get in a fight with her. She didn't come up there to talk in a civil manner about what was happening.

Q. Was that the -- in the timeline of things, when was that?

A. That was before the lawsuit was filed.
Q. Now what about any kind of interactions you've had with Mr. Cade since this got started?
A. He's -- he's followed me in his truck, he's blocked us at the end of our driveway. The police have written a report for harassment and intimidation. Driving down the road he did this at me in his truck one day and scared me to death. I'm terrified of him.
Q. What does this video show?
A. I was on the phone to the police because he had followed us back to my house and you'll see his truck coming down and he parked at the end of my driveway and blocked my driveway.
MR. MOORE: With all due respect, I'll have to object on the grounds of relevance. I do not see the relevance to this testimony.
MR. BELSER: Your Honor, this all -- this all relates --
THE WITNESS: There's his truck.
MR. BELSER: -- to the conduct of the parties and the -- I mean, this is a punitive damages case, so this goes to his kind of conscious disregard for her rights.
THE COURT: I agree. I'm gonna allow it.
THE WITNESS: He stopped. He was photographing us and he just sat there. I couldn't get out of my

driveway. A second time he followed us and I had gone up to the stream and turned around and he came -- he had come back and gone and at the narrowest part -- in many places this road is only one lane wide. He just stopped his truck dead and I called the police and they said --

BY MR. BELSER:

Q. You can't -- you can't say what -- what the police said. That's hearsay. Rule 5 hearsay is out of court statements.

A. Okay. Anyway, I was very, very terrified and frightened. I didn't know what he was gonna do.

Q. Why don't we do this. Let's -- let's -- we can turn the lights back on and I can shut this down and then I've just got a few more questions and then Mr. Moore has some questions I'm sure.

Suzy, do you want to get your pond fixed?

A. Yes.

Q. And why is that so important to you?

A. It's my front yard.

Q. And why did you file this lawsuit?

A. Because my property has been seriously damaged.

Q. Now what is -- is your property worth to you?

A. It's worthless. I mean, it's -- to me it's worth everything. I would not sell that property. My family is looking forward to inheriting it and carrying it on. We've

planted blueberries, fig trees, strawberries, asparagus beds, all different kinds of flowers and plants, and they are looking forward to inheriting it and taking it on, and I would not sell my property for any price.

Q. Have you gotten any unusual -- describe any unusual telephone calls you've gotten since all this started about selling your property.

A. I've recently been getting robo calls asking me about selling my property and I've just hung up on them.

Q. Now based on -- based on what -- what you know about the neighborhood, what do you think that your property is worth?

A. Well, I know that the property beside me was sold for -- that's a 25-acre piece with a five-acre pond and that sold, I think, for $243,000. It had a very dilapidated brick house that was removed from the property and the gentleman at the end of our road has a five-acre piece of land and a house and he's got that on the market currently for $400,000.

MR. MOORE: I have an objection what it might be on the market for. I think that would be irrelevant and also hearsay.

MR. BELSER: Your Honor, it is relevant because in order to determine damages, one of the aspects is what's the fair market value of the property and a

property owner has the ability to testify as to the value of their property.

THE COURT: I'm gonna allow it.

BY MR. BELSER:

Q. Okay. So you were talking about a neighbor down the street that I think you said had five acres for sale before we got cut off.

A. He's asking 400,000 for his property. It's a five-acre piece. He doesn't have solar panels, he doesn't have a pond. It's a nice piece of property at the very end of -- it's a dead end road and it's at the end of the road, and other than that there's no other property on our -- our road that's for sale.

Q. Are you aware of -- what do you know about a property transaction between the Cades and a Mr. Paul Shearer?

A. He bought a third of an acre of land from Mr. Cade for $10,000.

Q. And that was after this lawsuit started?

A. I think it was before. Shortly before.

Q. All right. So the -- the five acres -- you mentioned the five-acre piece for sale for about $400,000 with no pond. How many acres do you have?

A. I have a little over thirteen acres.

Q. And how big is the pond?

A. Two acres approximately.

Q. And do you -- describe what kind of maintenance and upkeep you do on the structures on your property.
A. We built a -- a two-story barn. I have a -- we bought a secondhand greenhouse so that we can start vegetables in the spring for our gardens and my husband and I did that and bought it from a gentleman in Shandon and brought it up there and put it together and had it covered and we use that greenhouse. There's also a metal storage building that's, I think, 35 by 22 that doesn't have any water or electricity. It's purely a storage building.
Q. How much did you pay for that building?
A. I think about $30,000.
Q. What do you think dollar-wise you have invested in your thirteen acres off of Davis Drive?
A. About 500,000.
Q. Now, Ms. Garland, for the last three and half years, here we are in March of 2022, going back to, let's say, October of 2018, so the last three and a half years, have you -- have you been able to use and enjoy your prop -- your pond for any reason?
A. No. This is just been a horror show. Not how I intended to spend the last few years of my life that I have remaining.
MR. BELSER: I think I'm finished, but just let me -- Suzy, I don't have any more questions. Thank

you very much. Please answer any questions Mr. Moore has.

CROSS-EXAMINATION

BY MR. MOORE:

Q. Ms. Garland, do you have something to drink up there or would you like something?

A. No, thank you.

Q. I'm going to ask you if you could identify something for me. Now I will tell you that what I'm about to play for the jury was given to me by your lawyer. We got this in discovery, okay?

Now previously I asked you -- I think you'll be able to see what it is, okay?

MR. MOORE: Let's play this. Make sure the volume's loud enough that we can hear.

Start it over again.

Thank you, Callee.

BY MR. MOORE:

Q. Ma'am, you would recognize that; would you not?

A. Yes.

Q. When I asked you about that comment in your deposition, you told me you didn't recognize that, right?

A. I didn't at that time.

Q. But you do now?

A. Yes.

Q. And what you said there is that Paul filled in his wetlands and that put water all over the goddamn road, right?
A. That is what I said, but it has not -- it's not in the proper context.
Q. Well, when you said that Paul filled in his wetlands and that's what put water all over the goddamn road, who were you talking to?
A. I don't know who was in the car with me.
Q. When you mentioned Paul having filled in the wetlands, I'm not gonna use that word again, and threw water over the road, which Paul were you talking about?
A. Paul Shearer.
Q. And exactly what were you accusing Paul Shearer of having done?
A. There's an area just to the left of where the stream comes through that had always been flooded and Paul built a cement block wall and had someone bring in loads and loads of sand and then he bought from Mr. Cade re-used asphalt and put a parking lot there, and that had been an area that had been totally flooded. I have photographs of it.

Also, you told me that in 2019 Paul had put in French drains around his house because of the increase in water on his property and from his mailbox going down the other side of the road they've dug a very deep ditch to let the water

drain down from his French drains. That -- that water does not go into my pond, it goes into the other side of the road, ends up going into the Campbells' pond.

Q. Well, yes, ma'am. And we'll see in a moment who told who about that. I just want to make sure that when you were talking about Paul flooding the road it was your position at that time that the road had been flooded by Paul Shearer doing additional work on his property, right?

A. No, that's not correct.

Q. Well, when you said Paul did this work and put water all over the goddamn road, what road were you talking about?

A. The water going down the ditch from his French drains. The water was running out of -- out of those. There was so much water going down it was running all over the road.

Q. The water in the ditch isn't in the road. You were accusing Paul of throwing water into the road by virtue of the construction he did, right?

A. No.

Q. Well, when was the -- what actually did Paul do to throw water into the road?

A. I don't know what you're talking about.

Q. What you were talking about. We can play it again.

MR. MOORE: Can we play it again, please, Callee?

MR. BELSER: Is there a date on this?

MS. JUMPER: I believe so. I think the way that it's dated it says 12-13-2019 based on the way it's saved, but there was also a 12-18. I'll look and see.

Let's see if I can get it pulled up in a second.

I don't know why it's acting this way.

(Pause in proceedings.)

BY MR. MOORE:

Q. Ma'am, you said Paul filled in this wetland here and now it's coming out all over the GD road. Now the road you were talking about, would that have been Davis?

A. I don't know because I don't know who I was speaking with. I don't know who was in the car.

Q. Ma'am, your lawyer gave this us as part of discovery. When you said that Paul is now throwing water over the GD road, can you think of any road that you would have been talking about except Davis Drive?

A. No.

Q. Now is your position that what you said on that video was true?

A. I don't know what the context -- I don't remember the video and I don't know who was with me or who I was speaking with.

Q. Well, after the work that Paul did, was he throwing water out onto the road?

A. I seldom drive in that direction because it's a dead

end road. When I go out Davis Drive, I go left to go out to Fish Hatchery Road. I don't turn right to go up by Paul's house.

Q. Are you telling me you don't know after Paul's work if he was throwing water out into the GD road?

A. I don't know what the statement was about.

Q. As a matter of fact, you denied even making the statement when that video was first shown to you, didn't you?

A. I didn't recognize it.

Q. But you do now, don't you?

A. I believe it sounds like my voice, but I don't know who the other party in the car is or who I was speaking to.

Q. Well, let's talk about this property at -- that's listed for $400,000. You've sworn under oath that that property is listed for $400,000, haven't you?

A. That's what I was told.

Q. And -- well, you've told the jury it's listed at $400,000, haven't you?

A. I said I was told it was listed for $400,000.

Q. Yes, ma'am. That piece of property is actually at 101 Davis, isn't it?

A. Yes.

Q. And the house is about 2,152 square feet, isn't it?

A. I don't know. I've never been in the house.

Q. The house is a lot bigger than yours, isn't it?
A. Somewhat.
Q. And the house hasn't been sold yet, has it?
A. No.
MR. MOORE: Callee, would you please pull up the listing at 101 Davis.
BY MR. MOORE:
Q. Ma'am, this is the house you're talking about at 101 Davis that's listed for $400,000, right?
MR. BELSER: Your Honor, objection. This is -- this is a Zillow, this is not a listing. Unless there's a founda -- unless there's some foundations laid as to what -- how these values are put together. I don't know what the date of this is. It's not proper cross-examination.
BY MR. MOORE:
Q. Ma'am, if we look at it, it says For Sale by Owner, $349,000. It's a picture of the house you're talking about. It has that it's 2,152 square feet and it basically is on the internet for sale at $349,000, isn't it?
THE COURT: I'll allow it.
BY MR. MOORE:
Q. Is it?
A. I've never been around the back of the house. I don't

know -- I don't know if that's the house or not.
Q. Ma'am, you said there are only two properties on Davis for sale. One of them is an old shack. This is certainly no old shack and it's described as 101 Davis, which is the house you just told this jury was listed at $400,000.
101 Davis is the one you were talking about, isn't it?
A. I believe so.
Q. Well, if it's for sale by owner at $349,000, what you told the jury about how much it was being sold for would not have been accurate, would it?
A. No, it would not have been.
Q. And the truth of the matter is, you weren't lying, you just made a mistake, right?
A. I guess. I -- I don't recognize that house. It doesn't look like Mr. McClure's house.
Q. Well, ma'am, Mr. McClure's house has the address of 101 Davis and this is a picture of 101 Davis at $349,000, and you say there are only two houses out there for sale; one of them's a shack, one of them is the one at 101 Davis. This house at 101 Davis is listed by owner at $349,000. I'm not saying you're lying. I just want to make sure we can agree you said something that was not accurate, right?
A. Evidently.
Q. Your pond right now today, does it look good?
A. No, it looks horrible.

MR. MOORE: Your Honor, I would like to offer the properties into evidence and ask that the jury be allowed to view both properties prior to this matter being submitted to the jury.

THE COURT: Any objection?

MR. BELSER: Yes.

Your Honor, we have photographs, hundreds of photographs, of the property. It's been described in detail. If we were to drive out and see the property, that's -- there's no aid that that is going to -- to be able to provide to the jury, so I'm just --

THE COURT: Are these photographs that the defense has taken?

MR. BELSER: Ma'am?

THE COURT: Are these photographs that the defendants have taken?

MR. BELSER: There are photographs -- what, the ones that are in evidence? The defendants have presented photographs as well.

THE COURT: You want the jury to go see the property?

MR. MOORE: Yes, I'd like for the jury to be taken as a whole and view -- and view the property.

We -- we offer the property. I think the appropriate procedure is that I call it offering the

property into evidence.

I'd like the jury to see my clients' property and Davis Road and Ms. Garland's pond and her property.

THE COURT: I'm -- I'm gonna deny that. I think -- how many photographs do we have?

MR. BELSER: Hundreds.

THE COURT: That are introduced into evidence?

MR. BELSER: Already in evidence.

THE COURT: I -- I think looking at photographs -- and you've got pictures of your clients' property, Mr. Moore?

MR. MOORE: No.

THE COURT: Well, do you have pictures of --

MR. BELSER: Yes, ma'am.

THE COURT: Okay.

MR. BELSER: Their own expert, Mr. Lee, had put pictures into evidence.

THE COURT: I -- I think that's probably sufficient.

MR. MOORE: If -- if I'm -- if the Court could hold off on ruling, I believe that we can bring some law tomorrow and maybe show the Court.

THE COURT: All right. I'll revisit it in the morning.

MR. MOORE: Thank you.

THE COURT: I'm gonna let you finish with this witness because I've got one juror that's got to pick up his daughter --

MR. MOORE: And I --

THE COURT: -- and I'll -- I'll -- if you bring me some law, I certainly will reconsider it.

MR. MOORE: And I am mindful of the juror's issues and I will try to move this as quickly as I can.

THE COURT: Okay. Thank you.

BY MR. MOORE:

Q. Ms. Garland, you've got thirteen acres of land?

A. Yes.

Q. Two acres of which is a pond?

A. Yes.

Q. Your house is sixty years old?

A. Approximately, I guess.

Q. And it's about 1200 square feet?

A. Yes. There's a second house that's 800 square feet, double-walled brick, with commercial grade metal roofing. Both houses. There are thirty-two solar panels. There's a two-story barn. There's a Jaderloon greenhouse.

Q. And you've lived there for about thirty-five years?

A. Yes, I have.

Q. And we know that over thirty-five years your pond has been fed by rainwater. That's one of the ways it gets fed,

isn't it?
A. Yes.
Q. And it has been fed by underground springs, right?
A. I'm not aware of underground springs.
Q. Okay. The property out there is considered agricultural; is it not?
A. Yes.
Q. And you know Mr. Paul Shearer?
A. Yes.
Q. Is he a neighbor?
A. Yes.
Q. Do you know of anything he has against you?
A. We've never been close friends.
Q. But he doesn't -- he wouldn't have any reason to lie about you, would he?
A. He might.
Q. All right. Paul has land out there that way, doesn't he?
A. Yes, he does.
Q. As a matter of fact, Paul's land is directly across Davis Drive?
A. Yes.
Q. Now the Cades' property doesn't adjoin yours, does it?
A. No.
Q. As a matter of fact, the closest point between the

Cades' property and your property is several hundred feet; would it not be?

A. Well, the corner of his property on the property that Paul Shearer just bought from him is probably a hundred feet from my property line, a hundred and fifty feet.

Q. How far would the Cades' property be from your property?

A. I don't know that.

Q. And how far would the Cades' property be behind Mr. Cade's -- Mr. Shearer's property?

A. Mr. Shearer's property now since he bought Mark Melichar's property comes all the way down from Shumpert's septic system business and then goes all the way across to his wetlands, so he has a huge L-shaped piece of property that he shares with the Cades.

Q. Well, he doesn't share it with them. What basically happens is --

A. Well --

Q. -- the Cades' property backs up to him, right?

A. Well, it's -- the property line between the Cades' and the Shearers' is contingent.

Q. And running down that property line is about a 50-foot vegetated area, isn't it? Isn't there a buffer between the -- on the back side between the Cades and Mr. Shearer?

A. In the last five years a lot of growth has filled in.

There was no growth there at the time that they cleared it. It was bare dirt.

Q. Ma'am, bare dirt up until the buffer that was left, but there's actually about a 50 -- you've heard it testified to. There's about a 50- to 60-foot buffer that runs between my clients' property and the Shearers' property. You know that's true, don't you?

MR. BELSER: Objection, Your Honor.

THE COURT: All right. What's the objection?

MR. BELSER: The objection is he's testifying and he's testifying as to what people have already said and so if he wants to ask questions, then that's fine.

THE COURT: Let's rephrase it, Mr. Moore.

BY MR. MOORE:

Q. Ma'am, don't you know that when the Cades did their work there was about a 50-foot strip of trees and -- and vegetated area between the Cades' property and the Shearers' property?

A. If there was, I don't know where it was. All I could see was -- I could see their fence and I could see bare property. There was an occasional tree left here and there.

Q. All right. Davis Drive is a dirt road, right?

A. That's correct.

Q. And it's a county road?

A. That's correct.
Q. Anyone can drive up and down that road, right?
A. That's correct.
Q. Would that include Mr. Cade? Can he drive up and down the road?
A. Of course.
Q. And the County maintains Davis Drive, right?
A. Yes.
Q. And they scrape it, right?
A. Yes.
Q. And the -- they scrape it using a road grader?
A. Yes.
Q. And on the opposite side of Davis Road from you there is a ditch; is there not?
A. Yes.
Q. And on your side there's a berm?
A. That's correct.
Q. We actually saw a picture that you put into evidence. You saw the berm there, didn't you?
A. Yes.
Q. And you saw the water that was in front of the berm, right?
A. A puddle on the road, yes.
Q. And that berm stretches all the way down your property line?

A. Yes, it does.
Q. And what happens then is that means it works like a dam, that any water that runs onto Davis Drive can't get over the berm and in your direction, can it?
A. That's correct. Except that on numerous occasions someone who lives on the road unbeknownst to me has taken a tractor and dug away the berm where the water comes under the road and has also gone out with a shovel and dug away the berm to try to drain that puddle onto my property.
Q. And you wouldn't testify my client did that, would you?
A. No. I don't -- I have no idea who's done it. It just know it's been done.
Q. Whoever basically took away that berm there basically allowed sand and stuff from the road to eventually head towards your pond, didn't it?
A. They never took away the whole berm.
Q. Well, they certainly took away part of it, right?
A. They attempted to.
Q. In any event, however high the berm was, it always worked as a dam to stop that water from draining off the road onto your property?
A. That's correct.
Q. So then we can agree, can we not, that the only water that would get onto your property from my client's property

would have to go through the pipe that is located on Paul's property?

A. The 24-inch pipe, yes, that they -- that you and several -- or, no, not you. I think Mr. -- I don't know who was there that day. Freeman would know who was there. They went out and measured. Ms. Cade was there. They went and they measured the pipe and said it was 24 inches.

Q. That pipe is on Paul's property, right?

A. That pipe simply goes under the road. It's not on anybody's property. It's -- it's under the road. The road -- the -- when they built the road, the County put it there and it does not come out onto my property or come out onto Paul's property.

Q. How long has that pipe been draining that basin there? How long has it been working to drain the properties above you?

A. Ever since I've lived there.

Q. That's how many years?

A. Thirty-five. Thirty-six.

Q. And actually you'd need that pipe to do that because if the pipe was gone your pond would dry up because it's partially rain-fed, right?

A. That's correct.

Q. So the water that goes into the pipe under the road is coming off of Paul's property, right?

A. Off of --
Q. The water comes off of Paul's property and goes under the -- into the pipe under the road, right?
A. Yeah, it comes from the Cades' -- there's a spring on the Cades' property that feeds the stream which you've referred to as a creek --
Q. I see.
A. -- and that's what has fed the pond.
Q. So what happens is there's a spring that has been there for years that bubbles up water from the ground that runs off of the Cade property onto Paul's property through the wetlands into the pipe across the road through the wetlands again and into your pond?
A. Yes.
Q. And it's done that for years, right?
A. Ever since I've lived there and before.
Q. Now the spring that you've just testified that exists, it is water bubbling out of the ground, isn't it?
A. I have never seen the spring. It's on the Cades' property and I have never been down there.
Q. Ma'am, if you've never seen it, how is it possible for you to testify that it exists?
A. Well, the water's coming from somewhere.
Q. And you think it's coming from that spring?
A. Yes.

Q. Which it's been doing for thirty-five years at least?
A. Yes.
Q. And --
A. Actually longer than that because Mr. Davis was the one that put the dam in and filled that pond probably fifty years ago or more.
Q. And you've previously told me, have you not, the only way that water can get onto your property is from that pipe?
A. And rain.
Q. Well, rain would go in the pipe. The only way water --
A. Rain would go into the pond.
Q. Sure. I'm talking about water from off your property. The only way water from off of your property can get into your pond is to go through the pipe, correct?
A. As far as I know.
Q. Now do you recall telling me there's a creek that has come down always from the Cades' property?
A. You referred to it as a creek. I -- I told you it was a stream and you said no, I'm gonna call it a creek.
Q. Okay. So you -- let's use your word. There has always been a stream that comes off of the Cade property onto the Shearer property into the pipe under the road through your wetlands and goes into your pond?

A. There would have been no other reason for the County to put a pipe there if there hadn't been water coming through.
Q. So the answer would be yes, correct?
A. That's correct.
Q. So the only way water is getting into your pond is from the underground spring that goes into the -- what did you call it?
A. A stream.
Q. The stream onto Mr. Shearer's property into the pipe under the road through your wetlands and into your pond?
A. As far as I know.
Q. Now, ma'am, every time -- every time they scrape the road out there they use a blade, right?
A. That's correct.
Q. And it throws loose dirt on Paul's side of the property and on your side of the berm, right?
A. Not necessarily. They basically do very little. They only scrape enough to fill up holes that have formed from puddles in the road and they don't -- they don't do a major excavation of digging down a foot or six inches. They do a very skimming to level the road. That's all.
Q. And when they skim it, it basically skims up loose dirt, doesn't it?
A. A small amount and a lot of it goes into the holes,

the potholes, that have formed from puddles.
Q. And a lot of it goes into the ditch on Paul's side?
A. No.
Q. No? Okay. One thing's for certain, water cannot get off of Davis Drive onto your property, can it?
A. No.
Q. Now Mr. Paul put in French drains and made a big ditch that goes down the opposite side of the road from you, right?
A. That's correct.
Q. And Mr. Paul did that because he had trouble with a septic tank and drainage, right?
A. Yes. The people that lived there before him had to have their septic tank pumped every six months because it's basically swampland.
Q. And that ditch starts right about Paul's house and runs to the left carrying water away from Davis Drive, right?
A. It carries it down the hill on the opposite side of the road from me.
Q. That is away from you, right?
A. Yes.
Q. So any water that comes from the Cades onto Paul and goes in the ditch, none of that water could get to your pond, could it?

A. Paul owns a whole area of wetlands --
Q. I don't understand.
A. -- and that is the area that is in question, not the property that's right behind Paul's house.
Q. The ditch that Paul built is in front of the wetlands, isn't it?
A. Paul didn't build the ditch, the -- the County road man told me that he maintains the ditch because of the French drain.
Q. That ditch has been there a long time, hasn't it?
A. Yes, but not as deep or big as it is now.
Q. How many years to your knowledge has that ditch been there?
A. Probably since I've lived there has been a ditch.
Q. What that ditch does is it stops water from going onto Davis Drive and takes it way on down beyond you, correct?
A. Yes.
Q. So wherever that ditch is we know that water doesn't get into your pond, right?
A. I've never claimed it did.
Q. Yes, ma'am. I know. I just want to make sure that's correct, right?
A. That's correct.
Q. So you've previously told me, I believe, that there's no water coming from Paul's property onto your property

except for the water that comes through the pipe. Is that true?
A. I believe so.
Q. And this spring that feeds into the pipe that goes under the road, is that on Paul's property or is that on the Cades' property or do you know?
A. I don't know. I've never been up there. I haven't got the courage to slog through someone's swamp that's full of snakes to go see where the source of that water is.
Q. Certainly that ditch has been there in some fashion thirty years or so, right?
A. I would guess.
Q. How far is your pond from the dirt road known as Davis Drive?
A. Probably at least 200 feet or more.
Q. And between Davis Drive and your pond is this vegetated space, right?
MR. BELSER: Your Honor, objection. This has been -- this was asked about an hour ago and now we're back at it again. I think it's asked and answered again and again and again.
THE COURT: Yeah, Mr. Moore, let's don't go rehash it.
MR. MOORE: Thank you, Your Honor.
BY MR. MOORE:

Q. Ma'am, it's your position, is it not, that whatever siltation you claim went into your pond came through that pipe?
A. Yes.
Q. And you don't know if that pipe is silted partially or at all, right?
A. Someone put a volleyball through it and it went through without any trouble at all and landed on my property and then disappeared.
Q. Do you recall in your deposition telling me that you didn't know if that pipe was silted?
A. I haven't personally examined -- gotten down on my hands and knees and examined the pipe, but I have watched the flow of water and the amount of water that's pouring through it says to me it's not silted.
Q. The pipe where it comes into your property on your side, is it aboveground or below ground? Is it covered up?
A. You had testimony of two people today that said it -- that it's aboveground.
Q. I'm asking of you, ma'am. You're the one who --
A. I haven't been there. It's a swamp full of snakes. I'm 83 years old, Mr. Moore.
Q. Yes, ma'am. I understand that and I'm trying to be as nice to you as I know how.
A. It's not very nice. I'm sorry.

Q. Ma'am, I'm simply gonna try to ask you some questions. Are you telling me -- you were at Paul Shearer's deposition on Friday; were you not?
A. I was.
Q. All right. Do you know if the pipe on your property is aboveground or is it buried?
A. Paul couldn't even answer the questions as to whether the hurricane was in 2015 or 2018, so I found his testimony to be very iffy at best.
Q. Ma'am, whether it's iffy or at best, my question is very simple. Do you know if the pipe on your side is buried or not?
A. Only from the testimony I've heard from other people.
Q. Do you have firsthand knowledge as to whether your pipe is buried or not?
A. The photographs I have taken of it show a pipe with water pouring out of it. That's aboveground.
Q. Do you object to the water that comes from Paul's property into the pipe and into you pond?
A. Ordinarily there isn't any water that comes from Paul's proper -- well, it came downstream.
Q. Yeah. Do you object to that?
A. No. That's what fills my pond.
Q. You need that water, right?
A. That's correct.

THE COURT: All right, Mr. Moore. We're getting close to time that I can let you -- I'm not gonna let this juror be late.

MR. MOORE: Absolutely.

THE COURT: So what I can do is we can take this back up in the morning at 9:00 and let you finish.

MR. MOORE: Thank you, Your Honor.

THE COURT: I've got a feeling we're close, but I -- I can't let this juror be late.

MR. MOORE: I agree. And I thank you very much.

THE COURT: It's too important to him.

So we are going to be upstairs in the big courtroom on the fourth floor tomorrow, so report to the fourth floor and the bailiffs will tell you where that jury room is.

BAILIFF: They know -- they know where it is.

THE COURT: You know where it is.

Okay. Let's start -- I'd like to get this case done tomorrow, if you can. I'll see you at a quarter till nine. Remember, no talking about this case. No research on this case, no newspapers or any of that good stuff, and I will see y'all in the morning. I hope you have a good afternoon and I hope I'm getting you there in time.

(Whereupon, the jury is excused for the day at

4:17 PM.)

(Whereupon, the proceedings were concluded for March 30, 2022, at 4:18 PM.)

(The following proceedings were held March 31, 2022, beginning at 9:03 AM.)

THE COURT: Okay. Are we ready to pick up where we left off?

MR. MOORE: Yes, ma'am.

THE COURT: Okay. Now we're not gonna rehash all the testimony all over again. We'll pick up where we left off.

MR. MOORE: Yes, ma'am.

THE COURT: Okay. Do we have all the jurors?

BAILIFF: Yes.

THE COURT: Ms. Garland, let me remind you, that you are under oath. You're still under oath, okay?

All right.

(Whereupon, the jury enter the courtroom at 9:06 AM.)

THE COURT: Madam Forelady, is the jury ready?

FOREPERSON: We're ready.

THE COURT: Everybody have a good evening? No problems?

Okay. Mr. Moore, let's pick up where we left off from yesterday.

MR. MOORE: May it please? Thank you, Your Honor.

CONTINUED CROSS-EXAMINATION

BY MR. MOORE:

Q. Ms. Garland, is it true the only time you have ever had a problem with mud in your pond is with the two hurricanes in 2018?

A. With one of those hurricanes.

Q. Oh. So your --

A. The first one did not leave us any appreciable rain. I think it pretty much missed us.

Q. So the only time you really had a problem with mud in your pond was after that second hurricane?

A. I don't know whether it was the first or second. I couldn't tell you.

Q. You only had a problem one time and that was with one of the hurricanes in 2018?

A. That's when the -- that's when the problems started.

Q. Well, do you recall in your deposition telling me that you never have had any problems with your pond except for the two hurricanes?

A. I'm -- there were two hurricanes that came through, but one of them didn't -- pretty much missed us, I believe. I don't think we got any appreciable rain from that one -- from one of them.

Q. Ma'am, if you will look --

MR. MOORE: May I have permission, Your Honor, to break the seal of this deposition?

THE COURT: You may.

And then I think we need to make a Court's exhibit out of it --

MR. MOORE: Yes, ma'am.

THE COURT: -- which will be Court's Exhibit Number 4.

MR. MOORE: Well, Your Honor, I have -- it's been sealed up so well by the court reporter, I'm not sure I can get it.

I got it.

THE COURT: And this is the deposition of Ms. Garland?

MR. MOORE: Yes, ma'am.

THE COURT: Thank you.

Any objection?

MR. BELSER: No, Your Honor.

(Court's Exhibit Number 4 was marked for identification.)

BY MR. MOORE:

Q. Ms. Garland, you remember in March of last year I was able to ask you some questions at your deposition, right?

A. Yes.

Q. And you raised your hand and you told us that you

would tell the truth, correct?
A. That's correct.
Q. I'm gonna show you page 36 of your deposition at line 1, and if you would just read along with me.
I'll be right back. Let me get where I am supposed to be.
The question, ma'am, under oath was "Well, ma'am, have you had problems with your pond getting muddy except for those two hurricanes?".
A. And I said never.
Q. Hold on. Hold on. And your answer there was "Never", and that's the truth, right?
A. Yes.
Q. And then I said "Okay. That's it. When the hurricanes came, the mud came in your pond?", and your answer was -- you said "That's correct", right?
A. Yes.
Q. So the only two times according to your deposition that you had a problem with mud in your pond was with the hurricane or hurricanes, at least that's what you told me, correct?
A. In answer to your question, yes.
Q. And you told the truth, didn't you?
A. Yes.
Q. So you're still telling the truth today?

A. Yes.
Q. So the only time you had any trouble with mud in your pond was at the time of the two hurricanes?
A. No.
Q. Let's try it again. I said, "Well, ma'am, have you had problems with your pond getting muddy except for the two hurricanes?", and you said "Never", correct?
A. That's correct.
Q. All right. And if I were to ask you the question -- the same question today, have you had problems with your pond getting muddy except for the two hurricanes, the answer today would be the same, never?
A. No, it would be that that is when the problem started.
Q. Well, ma'am, that's really not what you said in your deposition.
A. Well, that's not what your question was.
Q. Ma'am, if you'll let me finish my question before you answer.
A. Okay.
Q. My question to you very simply was this. "Well, ma'am, have you had problems with your pond getting muddy except for those two hurricanes?", and you said "Never", right?
A. That's correct.
Q. And you told us that's the truth, right?

A. That's correct.
Q. And then I said "Okay. That's it. When the hurricanes came, the mud came in your pond?", and you said "That's correct", right?
A. That's right.
Q. So what you told us in deposition and what you say is true today, the answer to those questions is the exact same today as it was then, right?
A. I don't think because of the way the question was worded that it was accurate. I was referring to prior to those hurricanes I had always had a clear pond. I was not stating that after those hurricanes there hadn't been further problems. That's what I was answering to.
Q. All right. Well, you talked about yesterday somebody going to the berm and taking a shovel and trying to knock down the berm. Remember that?
A. Yes.
Q. And you certainly told me yesterday that you weren't accusing my clients of having done that, right?
A. That's correct.
Q. When did somebody come and take a shovel and try to knock down that berm? When was that?
A. On several occasions. Mr. Belser took a picture just recently where someone had dug a -- and that's within the last couple of months someone had dug a thing to let water

drain from the mud puddle on the road onto my land. That would not go into my wetlands. It just would go on this dry land there.

Q. And that's happened several times?

A. That I'm aware of it's happened a few times. I don't know who's done it.

Q. Well, has it happened any time other than recently, since the hurricanes in 2018?

A. Yes.

Q. And do you remember or do you know that one of those hurricanes actually washed out the berm?

A. No. I don't know when that picture was taken.

Q. All right. I believe Claude Davis has about a hundred acres up right next to you; is that right?

A. Yes, he does.

Q. And Claude's property is higher than your property, isn't it?

A. That's what you have maintained.

Q. Well, it's the truth, isn't it?

A. I don't know. I'm not an expert.

Q. Well, ma'am --

A. There's a -- there is a -- when Claude logged his property, which he did a number of years ago, he totally logged his hundred acres, he left a barrier between our properties of wooded area. So where my property line

starts and goes up, there's a wooded area that goes all the way up the side of my property.
Q. And when the Cades logged their property, they did the exact same thing, they left a barrier between their property and Mr. Shearer's property, didn't they?
A. I don't know. I haven't been there.
Q. You couldn't deny that, could you?
A. I said I don't know.
Q. All right. Well, ma'am, Mr. Davis has about a hundred acres that adjoins your property, doesn't he?
A. Yes, he does.
Q. Does he farm any of that property?
A. No. He told me he was going to replant it after he logged it, but he did not replant it.
Q. Ma'am, don't you know that he tills that property up regularly and plants wheat up there?
A. A very, very small area.
Q. Well, the answer would be he does that, wouldn't it? He tills it up regularly and plants, doesn't he?
A. I don't know. I -- I do not go up that road. I go in the other direction. That's a dead end road.
Q. Well, if he does till up the property up there and plant any of it, he certainly loosens the soil; does he not?
A. I wouldn't know. I don't run equipment, tractors.

Q. And certainly if it's loose dirt, the only thing that would be between you and him is this wooded area that you're talking about?
A. That's correct.
Q. Now from what I understand you've told us, there's a creek on -- creek, stream, which word would you prefer me to use? Stream or creek?
A. Whichever you prefer, sir.
Q. All right. There's a stream that runs off of the Cades' property, right?
A. Yes.
Q. And that stream ultimately find its way onto Paul Shearer's property, right?
A. Yes.
Q. And then Mr. Shearer's stream goes into the pipe and goes across the road, right?
A. That's correct.
Q. Just like it's supposed to?
A. Yes.
Q. Now do you know of anyone who can say that there's now more -- the Cades are putting more water into that stream?
A. I think the photograph --
MR. BELSER: Objection, Your Honor. There's been testimony about that. If he wants to ask questions

about what she knows, I mean, she -- what is he trying to get? I mean --

THE COURT: She can only answer to what she knows.

MR. MOORE: Sure.

THE COURT: So if she knows, she can answer.

BY MR. MOORE:

Q. Ma'am, here's my question to you. Are you able to testify as to whether or not the Cades have put more water into that stream after they bought the property?

A. Considerably more. The wetlands were never flooded the way -- and my wetlands have never been flooded the way they have been since the Cades denuded their property.

Q. Look at page 38 of your deposition. We're gonna go to line -- we're actually gonna go to line 5 where we're talking about that creek. The question at line 5, "Did they dump any more water than usual into the creek?", and your answer was -- what did you say?

A. I said, "I don't -- I can't tell you. I don't know.".

Q. And then you say -- "Are you able to testify they put more water than usual into the creek?", and your answer?

A. I said, "I don't know.".

Q. All right. And today you say you do know.

A. I know that the wetlands have been more heavily flooded since that time that they bought and denuded the property than they had ever been prior to that. It had

always been a very slow stream. The Davises pumped water out of that stream to fill their in-ground swimming pool when their children were young. That water was pure and clear and beautiful.

Q. Well, my question, ma'am, was "Do they now put more water into the creek than they used to?", and you said in deposition twice that you did not know, but today you say you do know. Now of those two sworn statements you have given, they can't both be true. Which is the truth?

A. The water in that stream is very, very variable as to whether we are in a drought. When the stream is barely running, it's just a very small stream, and when we've had an inch of rain or more and at that time there's a huge more volume than there has ever been.

Q. Well, there's a huge more volume because it rains, but the question I asked you is this and you said you didn't know. I asked you twice. Basically, "Did they dump any more water than usual into the creek?", and you said "I can't tell you. I don't know." "Are you able to testify they put more water than usual into the creek?", and your answer was "I don't know".

Is what you told me in the deposition the truth?

A. Yes.

Q. All right. And, again, if you look -- and we were asking you about when you had problems with mud. If we

look, again, at line -- page 40 in the deposition, line 1, I asked you again "So the only two times you had a problem was the two hurricanes, right?" And you said what?

A. I said "That's correct". Because that was when the issue started.

Q. Hold on. Well, was that true?

A. Yes, that's when the issue started.

Q. So when I asked you the only two times you've had a problem with -- with the creek -- with the pond were the two hurricanes and you said yes, right?

A. That's correct.

Q. And you've told me that you don't go down Davis Road very often, correct?

A. That's correct.

Q. Do you know if one of the hurricanes actually blew out that berm?

A. Yes, I spoke -- Susie Davis called me last night and I asked her if the road had ever been impassable as Mr. Shearer testified to in his videotaped testimony and she said no. She said there were some potholes --

MR. MOORE: May I ask the Court to help me with some hearsay, please, Your Honor.

THE WITNESS: -- and it was bumpy.

THE COURT: All right. Hold on just a second. Excuse me.

MR. MOORE: She's basically now not responding to the question, but she's started telling me what somebody else told her last night.

THE COURT: Okay. Ms. Garland --

MR. BELSER: Your Honor, if I could -- if I could just address --

THE COURT: Absolutely.

MR. BELSER: I mean, Ms. Garland does not understand the rules of hearsay and Mr. -- Mr. Moore asked the question, opened the door, and Ms. Garland was answering the question.

Now I can say, Suzy, you can't say what somebody -- if somebody's not here to testify, then we can't say what they said, but I just wanted to make that clear.

THE COURT: Yeah, that's just the rules of court, Ms. Garland. We don't allow hearsay, okay?

THE WITNESS: Okay.

THE COURT: Thank you.

BY MR. MOORE:

Q. Ma'am, from what I understand, I asked you -- do you recall me asking you are you able to say that silt from my client's property got into your pond and you told me you assumed it did?

A. I knew it did.

Q. Well, take a look, if you would, at page 40 of your

deposition again. Line 10. No, I'm sorry, line 13. "So where does the silt originate?", and you said "I can only assume it's still coming from the Cades' property.".

Question, "What do you mean assume? You say you can only assume it comes from the Cades' property. What do you mean?". And you said, "I've never been on the Cades' property, so I don't know.". Right?

A. That's correct.

Q. Is that the truth?

A. Yes.

Q. So your testimony about the silt coming from my clients' property is simply an assumption on your part like you said?

A. I don't believe that's correct.

Q. Well, it is correct that you said it under oath, that you could not say where it was coming from, you just assumed it was coming from the Cades' property, right?

A. Well, I testified yesterday that I had never hiked up the stream and I had never been on the Cades' property. So I --

Q. Well, wait a minute. You -- you go ahead and you finish your answer.

A. I'm done.

Q. When you said you didn't know where the silt was coming from and only assumed it was coming from the Cades'

property; is that true?
A. That's the source of the water for my pond.
Q. Is it true, ma'am, that you simply assumed that the silt you're complaining of comes from the Cades' property?
A. Having not been on their property to see it in person, I could not say to you yes, I've been there, I've seen the silt coming off their property. What I could say is, I see the muddy water coming through Mr. Shearer's property going under the road and into my pond and the source of the water is on the Cades' property.
Q. And you assume that the silt is coming from the Cades' property?
A. Yes.
Q. And you filed this lawsuit based upon that assumption, correct?
A. I don't think it was an assumption.
Q. Well, ma'am, other than the assumption you've made that that's where the silt came from whenever it came, did you have any facts to demonstrate that the silt was actually coming from the Cade's property before you sued them?
A. I think Mr. Belser showed you a lot of photographs yesterday that blue dye was coming down the stream, silt was coming down the stream and going into my pond and turning -- changing the color of my pond, so I would say

yes.
Q. Well, ma'am, there's no question but that water comes from the Cades' property, but this case isn't about water, it's about silt. Obviously the blue dye shows what we already knew, that water was coming from the Cades' pond.
A. No.
Q. My question is about --
A. No. No water never came from the Cades' pond.
Q. I see.
A. Ms. Cade made that very clear to me when she came to my house and to my knowledge no water ever came over their dam or out of their pond into the stream.
Q. Well, let's then just say it comes from their property. We know for sure that water comes from the Cades' property and other people's property through Mr. Shearer's property under the road and into your pond. That's not what this case is about. It's about the siltation, right?
A. That's correct.
Q. All right. Well, other than an assumption -- other than an assumption that the silt was coming from the Cades' property, what fact did you have to prove that when you filed this lawsuit against them?
A. The fact that the County had come out and said the silt was coming from that property and that there were

no silt fences put up and that nothing had been done to stabilize the property and it had been totally denuded and we had had four inches of rain and I think you saw the photographs of Mr. Lee yesterday.

Q. Yes, ma'am. Let me ask you this. You didn't like the fact that they cut those trees down, did you?

A. I -- it meant nothing to me. They don't abut my property in any place.

Q. Ma'am, do you recall having told me previously you have no idea where the silt originates from?

A. No.

Q. Look at page 40 again of your deposition. I hate to keep doing this, but let's -- let's see what you told us before under oath. Line 21. "So wherever silt is getting into your pond, you don't know where it's coming from?" Answer, "It's coming under the road.". Question, "Okay. We know it's coming under the road, but you don't know where it's coming from though, where it originates, right?".

MR. BELSER: Objection, Your Honor. I -- we've already spent time talking about the assumptions, she assumes where it's coming from, but Under Rule 403 this is not proper cross-examination and it's also just cumulative and not -- not advancing the ball.

MR. MOORE: Your Honor, counsel may think it's

not advancing the ball, but if she's giving an inconsistent statement to that which she's testified to previously, I believe it's fair game for cross-examination. I understand that counsel wouldn't like what she said, but she said it and the jury ought to be able to hear it.

THE COURT: I'm gonna allow it.

BY MR. MOORE:

Q. Ma'am, let's start over again there. Line 24. "We -- we know it's coming" -- this is my question. "We know it's coming under the road, but you don't know where it's coming from though, where it originates, right?" And your answer was?

A. "I guess.".

Q. So your answer there was you guess that you didn't know where the silt was originating from?

A. I was saying that I did not have firsthand knowledge because I have never been on the Cades' property.

Q. Well, did you ever ask to have an engineer or an expert to come look at the property to see where it was coming from before you filed the suit?

A. I repeatedly called Lexington County storm drain people. They came out. They said that that's where it was coming from. They issued a stop work order. They were the ones who I was relying upon to correct the problem.

Q. Well, ma'am, if what you've just said is so, do you have any idea why the stop work order was lifted?
A. I assume they were told that they said that in December they were planting grass that was stabilizing the property.
Q. Do you have any idea why they did not require any type of permit?
A. No, I don't.
Q. Now did you hear either of them who testified from the County say that they told you that?
A. Yes, Mr. Corder told me that they could not do that, that it was illegal. You cannot damage someone's property downstream.
Q. And he testified yesterday, didn't he?
A. Yes.
Q. Did you hear him say that yesterday when he was on the stand?
A. I don't know.
Q. Well, you were in the courtroom. He didn't say that yesterday on the stand, did he?
A. I don't remember what he said entirely. There was a lot of testimony yesterday.
Q. Now, ma'am, you've got a 13-acre pond and it's been there for how long?
A. I don't know. It was there when we moved there. I

don't know when the Davises built it.
Q. And you moved there thirty-five years ago?
A. Thirty-six years ago.
Q. Excuse me. Thirty-six years ago. Did you testify under oath that before the hurricanes you had no silt in your pond?
A. That's correct. The water was clear and we used to swim. My husband and his friend snorkeled in the pond. It's no longer swimmable.
Q. So let me ask you this then. If you had had no silt in your pond before 2018, why did the gentleman who testified was your pond caretaker, why were the lilly pads there? Why was the -- why were the lilly pads growing in the silt before 2018 if there was no silt --
A. The shallow -- the far end of the pond where the stream comes in is very shallow and lilly pads grow in shallow water.
Q. Yes, ma'am. And the shallow water is caused by siltation as we've already heard on the witness stand, right?
A. Well, when you stepped and walked in it, you landed on solid ground, you didn't sink into a foot of mud.
Q. Well, certainly your caretaker would have known whether there was silt in your pond before 2018, right?
A. I would guess. I don't know.

Q. Now the amount of siltation that appeared to be in your pond, I believe, was like 1300 cubic yards and it's your belief that in 2018, 1300 cubic yards of sand passed through the pipe and entered your pond, right?
A. Not at that one hurricane. It was over a long period of time after that. Every time it rained more and more came in, which was the photographs that Mr. Belser was showing you yesterday.
Q. And it's still happening, right?
A. It has diminished now to the point where it's -- there's practically no silt coming in. It's almost clear water again, but that's over five years.
MR. MOORE: Ms. Garland, I thank you so much for your time.
No further questions, Your Honor.
THE COURT: Mr. Dougall.
MR. DOUGALL: Very quickly, Your Honor.

CROSS-EXAMINATION

BY MR. DOUGALL:
Q. Ms. Garland, your address is 20 -- or, excuse me, 105 Davis Drive, correct?
A. That's correct.
Q. West Columbia, South Carolina?
A. That's correct.
Q. And that's in the county of Lexington?

A. Yes.
Q. And you pay property taxes to the County of Lexington, correct?
A. Yes, I do.
Q. Would it surprise you to know that the County of Lexington in 2019 assessed the value of your land at $91,000?
A. No, it wouldn't.
MR. DOUGALL: Thank you.
THE COURT: Thank you, Mr. Dougall.
How about any redirect?
MR. BELSER: No, Your Honor.
THE COURT: Okay. May I let Ms. Garland down?
MR. MOORE: Your Honor, if we might put this tax assessment that was asked about in evidence, I would appreciate it. I believe Mr. Dougall has no objection.
MR. DOUGALL: No objection.
THE COURT: How about Mr. Belser?
Mr. Belser, do you object?
MR. BELSER: No, Your Honor.
THE COURT: All right. Then let me -- are y'all sharing exhibits?
MR. DOUGALL: Yes.
THE COURT: All right. I'm gonna make that Exhibit -- to be safe, Exhibit Number 33.

(Defendant's Exhibit Number 33, a tax assessment, was marked and admitted into evidence.)

THE COURT: And I'm gonna tell you, Ms. Garland, you can get down.

(Witness excused.)

THE COURT: All right. Mr. Belser, do you want to call your next witness?

MR. BELSER: The plaintiff rests, Your Honor.

THE COURT: Okay.

Madam Forelady, I'm gonna have to take up a matter with the lawyers. They have rested, the plaintiff.

Do not talk about this case. It's gonna take me about fifteen minutes and I'll have you back in here, okay?

FOREPERSON: Thank you.

THE COURT: I brought y'all some doughnuts.

FOREPERSON: We saw that. Thank you.

THE COURT: You're welcome.

(Whereupon, the jury retires to the jury room at 9:40 AM.)

THE COURT: All right. Any motions from the State? I mean, the plaintiff. I'm sorry.

MR. BELSER: No motions, Your Honor.

MR. MOORE: I think the motions would be ours at this time, Your Honor.

THE COURT: And I know. I'm coming to you, Mr. Moore.

MR. MOORE: You've been in criminal court for so long, it's very easy to understand how it can get disorienting. I've done it myself.

THE COURT: Right.

MR. MOORE: Your Honor, might I ask a question before I make this motion because I think it is essential to the case?

In order for the plaintiff to prevail on at least the theory of negligence, there would have to be some proof of the standard of care. Negligence is basically violating the standard of care. In a case like this, and I have done lots of construction litigation in my time, it has always been incumbent upon the plaintiff to establish what the standard of care is. It would seem to me it would be impossible for a jury to find a breach of a standard of care without having in the evidence the record of what the standard of care is and I would like to know before I make my argument exactly what is the standard of care that is alleged to have been breached here?

Apparently when we started we were going to be told that we violated the stormwater ordinance, but the County people who testified never said that. As a

matter of fact, they said they did a stop work order, looked at it and it did not require any type of permit and that if a permit was necessary, it would have been required.

So I'm not sure I know, and maybe Mr. Belser can tell us and then I can make my motion, what is it that he actually contends to be the standard of care here that the jury would be considering to see whether or not we breached, and I don't know the answer to that question.

If I could ask the Court to ask him what is the standard of care that he claims we have breached.

THE COURT: All right. Mr. Belser, let me hear from you.

MR. BELSER: Sure.

Your Honor, the -- the questions in a negligence case -- there are three different causes of action; negligence, trespass and nuisance, and what is the source of the duty from a landowner to another -- to his neighbor, and it's -- and in my pre-trial brief, the source of the duty, there's a common law duty in the Duane -- which is stated very clearly in the Duane versus Presley Construction case, which is a landowner has an affirmative duty not to permit his land to remain in an altered state if such altered

state creates a condition, the natural and foreseeable result of which will result in injury to the adjoining property. The breach of this duty constitutes actionable negligence. He cannot fill up his own lot in such manner as to let earth pass or slide over his line onto the lot of his neighbor.

There's that common law duty which establishes -- which establishes the standard of care and there's been ample evidence in the record that -- that the Cades did alter their property by cutting all the trees, but then, more importantly, pulling out all the stumps and then smoothing out the soil and then leaving it unstabilized for a long period of time. And then there's also evidence in the record that, of course, the sediment wound up in Suzy's -- in Ms. Garland's pond.

Now, of course, we can argue to the jury about, you know, source and cause and all that kind of stuff, but those are kind of jury questions.

The more --

THE COURT: But I think we did have some testimony that the land -- the trees were cut, the stumps were removed and it was -- I think the word was "denuded" --

MR. BELSER: Yes.

THE COURT: -- is what they --

MR. BELSER: And then -- yeah, and to kind of --

so there's the common law obligation between -- between neighbors, but then there's also this -- there's a kind of a statutory duty under the ordinance to follow the -- the stormwater ordinance and the requirements of that.

Now I -- I don't recall hearing the testimony the way that Mr. Moore did, and the jury can decide what they heard or not, but I think the most important witness is their expert witness that they hired who we discovered, Gerald Lee, who said that, yes, they needed to have a permit, and so the source of the duty is not only -- I'm wrapping this up -- not only common law, but it's also under the county ordinance.

Now Mr. Moore can argue to the jury all day long about the exemptions and that kind of stuff, but that's the source of the duty.

THE COURT: Well, there was also kind of the testimony that I heard, Mr. Moore, that the ordinance people, they don't even know how this slipped by them because they went out there and issued a stop work order. I've got somebody who testified I lifted it on a conversation I had with your client saying -- stating they were gonna plant seeds. I -- I clearly heard that.

They also testified that -- I'm not real sure how it got past them having a permit, but it was insinuated that they should have had a permit and I'm probably

gonna leave that up to the jury to decide, but I'll be glad to hear from you.

MR. MOORE: I would make a motion at this time for a directed verdict now that I know what the alleged standard of care is based upon exactly what they say it is.

First of all, Your Honor, there is a question of law that has to be decided by the Court and that question is, is our property exempt from the stormwater ordinance. The stormwater ordinance clearly indicates -- at least I think it has to be -- Section 9 very clearly indicates that if you're doing -- clearing agricultural property, which this is, that ordinance doesn't apply.

THE COURT: Well, I'm gonna tell you, even when the testimony was going on, and I've got a copy of the ordinance, and I believe under Section 3.2, Subsection C, that land disturbing activities that disturb more than one acre, and clearly there's testimony in the record that it's more than one acre, and it does not create an impervious surface. There's testimony that an impervious surface was created, not only -- with the pole building and the concrete.

If you want a rule of the law, is that what you want me to --

MR. MOORE: I think that --

THE COURT: I don't believe it's my duty to say whether they violated it or not.

MR. MOORE: Your Honor, would -- here is --

THE COURT: I think they've got a good argument there.

MR. MOORE: The county manager, the assistant county manager, who was the person in charge of the department at the time said this without question if a permit had been required before they would have been allowed to lift the stop order and do any more work, they would have had to get a stormwater permit, and it was not required of them.

THE COURT: I don't know that he testified that it was not required. I think he skimmed right over that section in his testimony because I -- honestly from the testimony I heard, I don't know that anybody wants to admit whether they violated it or not.

MR. MOORE: Your Honor, having said that, our position basically is this. That under the plain language of the ordinance, the law provides that my clients had a right to do what they did and a person may not be held liable for doing that which is lawful on his own private property.

THE COURT: But I'm gonna tell you, Mr. Moore,

even if I went with that argument, you know, the conversation -- there was testimony between the two that he was gonna seed it and that's the only reason they lifted it, and whether that was done in a timely fashion, it appears not so, that the damage continued.

MR. MOORE: The -- the other motion I would have in regard to negligence, Your Honor, is a lack of cause -- there are two other arguments I have. First of all, there has been no proof in regard to causation. The testimony is there's 1300 cubic yards of siltation in this pond and the only person who has given any type of causation would have been the gentleman from Greenville yesterday. With all due respect to him, the work he did would have been insufficient to justify a type of causation.

Additionally, he hasn't -- no one has been able to say how much of the siltation that she has came from my client.

And the next argument I'd make, Your Honor, would be one of damages. In a tort case, damages do not have to be proven to a mathematical certainty, but they do have to be proven to a reasonable degree of certainty. Under the basic economic loss rule, which actually the economic loss rule generally applies to matters in contract, but there's a cousin to it which basically

says that if the cost of repair is beyond the actual value of the property, then the damages are not the cost of repair, the damages are the degree to which the property has been devalued. The value before the tort, the value after the tort.

Now in this case, we know that the cost to repair appears to be $435,000. The only evidence we have in the record in regard to her valuation of her home because she wouldn't value it, is the county tax records, which basically a show $90,000 assessment. Comparable sales are one way that real estate appraisers value property, but it is not the only way they value property and, generally speaking, what something -- an asking price is not even allowed to be considered in regard to comparable sales. The asking price is simply hearsay which is a set price that begins the discussions in regard to valuation.

There is no testimony of the one house that sold on Davis Road was anything like her house, so the measure of damages in this case, unless the Court were to determine that the -- spending $435,000 on what appears to be a $90,000 property is rational, which I think as a matter of law it's not, the actual element of damages would be the value of the property before and the value after.

This issue has arisen many times in the Supreme Court, and I had a case just like it and I think it was settled on appeal -- it may have been reported, but I think it was settled on appealed, but I'm getting so old I can't even remember the name of the case, but this issue arises many times when somebody cuts down a tree and the homeowner wants the cost of transplanting the tree.

In my context, the case came up where they're building a swimming pool and the -- the man tied yellow ribbons around the trees he didn't want cut. There was this one decorative oak tree that was 100 years old, it was beautiful, he didn't want it cut, the guys came out and the little boy says my daddy doesn't want that tree cut, go away, son, my daddy doesn't want that tree cut, go away. He got confused about what the yellow tags meant, so everything that wasn't supposed to be cut got cut, and so it was a mess. And the property owner was wanting to have the value to transplant his tree and brought in testimony about it would take half a million dollars to transplant a 50-foot tall oak tree, and the Court basically ruled, and I think rightly so, that under those circumstances the cost is not transplanting the tree, the cost is what is the devaluation of the property. Has it been devalued 5 percent, 10 percent

20 percent?

Where the cost of remediation exceeds or approaches the value of the property, the law basically provides the cost of remediation is not the proper assessment of what rational damages are. The true damage -- if there was damage in this case caused by my client, the true assessment of damages would be the devaluation of the property. How much was it devalued by virtue of the fact that there's silt in the pond?

With all due respect to the gentleman who testified, and I think the jury from the looks on their faces, that found that $435,000 to clean out a two-acre bass pond would be an absurd thing to do, and if that is an absurd thing to do, then that's not the proper measure of damages.

Then the question becomes has the proper measure of damages actually been proven? The proper measure of damages in this case is the value of the property before, the value of the property after. The depreciated value is the actual measure of damages, and we don't have any proof in that regard.

Counsel tried, but his client would never give him a -- and she could have said my property is worth 200,000, 500,000, a million dollars, she can value it as she pleases, but she never placed what she considered

to be the value of the property, but more importantly she never testified as to what she felt the devaluation of her property was.

If I'm correct, and I think I am, that the measure of damages in this case would not be the cost of repair, assuming the Court were to find that the cost of the repair would exceed the value of the property, and with the only evidence we have of the valuation of the property being $90,000, it would be absurd to allow a recovery in excess of the value of the property.

I mean, what the Court -- would the law really allow her to receive a value of money over and above what the property is worth and the answer, I think, is no. A resounding no.

In this case, the only damages they've got are that she has a house, there are other properties in the area, one of which is twice as big as hers that's worth -- asking I believe 300 and something thousand dollars, and there's no way for the jury to legitimately assess the value of her property. There's been no pictures of the house, inside or out, there's been no real estate expert to tell you what the value of the property would have been before and after, but if we assume for a moment that the Court won't allow her to collect as damages an amount equal to the total value of the property, the only

rational conclusion in this case based upon the evidence we have is that the property itself is not worth what she claims it would cost to fix it.

When we get to that point, if that's what the evidence shows, then we have to determine the alternate measure of valuation which basically says how much has the property depreciated by the siltation, and if we look to the record it is devoid of any proof in that regard. If, therefore, there has not been a legitimate proof as to the quantum of damage, which there hasn't been, then the case would have to fail because one of the things all three causes of action require is the actual proof of a legitimate theory of damages which can be quantifiable by a jury. If the jury simply is going to be asked to quantify damages based upon depreciated value, they have no way to do that other than guess because there's nothing in the record that would show that.

And the Court is not -- the jury is not allowed to guess or speculate and there simply is nothing -- by putting in a tax valuation or the asking price of the house down the street or the sales price of a totally noncomparable property according to the plaintiff, what rational evidence is there from which a jury could arrive at what the house was worth before and what the

house is worth after? And the answer is if there's not an answer to that, they've failed in their proof in regard to damages and the case has to fail outright overall.

I've done a good bit of research in looking at this issue and --

THE COURT: What case law are you relying on?

MR. MOORE: Callee, can I have those?

As I told the Court to begin with, I thought we were gonna have a very serious issue and this is what we're talking about. And we keep boxing it up and moving it back and forth, so it might take us a moment.

THE COURT: I know and we're going from courtroom to courtroom.

MR. MOORE: I'm just glad to be back here.

We have it.

While she's looking for the other one, the first case I would talk about, Your Honor, would be Scott versus Fort Roofing. The cost to repair or restoration is a valid measure of damages for injury to a building, although compensation may be limited to the value of the building before the damage was inflicted.

The case of Staubes versus City of Folly Beach, which is 529 S.E.2d 543, it's a hurricane case, and the cost to repair exceeded 50 percent of the value, which

according to Sapp versus Ford Motor, 687 S.E.2d 47, talks about the purpose of the economic loss rule. You basically -- that case is -- that case goes all over the place explaining the difference between tort and negligence.

Laurens Electric versus Altec Industries. That's another -- that's another case not totally on point because it is contractual and not -- then you wind up with the famous Kennedy versus Columbia Lumber case, 384 S.E.2d 730. You've got the -- the case of Pope versus Heritage Communities, 717 S.E.2d 765, which basically says to recover damage for negligence the evidence has got to be such as to enable the jury to determine the amount with a reasonable certainty.

The big case is the one I was looking for. It's McCarthy versus Keowee Falls. Where repair is feasible, the proper measure of damages is the cost to repair. The cost to repair or restoration is a valid measure of damages for injury to a building, although compensation may be limited to the value of the building before the damage was inflicted.

And they go on and talk about the -- they go on and talk about the fact that a damage award has got to be reasonable. Even in tort a damage award has to be reasonable. When a person is seeking damages in excess

of the value of the actual property, as a matter of law that would not be reasonable.

So what we're going to basically award her is she keeps the property and then gets a check for an amount twice the value of the property? In this case, the amount --

THE COURT: It hasn't been awarded yet. The jury hasn't decided.

MR. MOORE: I know, but -- but the problem here is that the -- what they're actually seeking in the damages is an amount equal to twice the value of the property as best we can see from what's -- actually if you look at the tax record, about four times -- three and a half times the value of the property. The damages have got to be reasonable and when you wind up with a cost to repair that exceeds the rational value of the property, it's like in a -- it's the classic -- it's the classic car case.

I rear end a 1970 Toyota and it's gonna cost $10,000 to fix the car. You can't collect the $10,000 cost to repair.

THE COURT: Right.

MR. MOORE: You get the value of the car.

It's the same concept here that when you have a claim for restoration that exceeds the total value of

the property, that is unreasonable as a matter of law, and at that point in time you have to go back to a different theory of damage, which is the difference before and the difference after.

THE COURT: I think she testified she thought her home was worth about $400,000. I learned -- or five. I learned a long time ago, my grandpa told me something. He said land is worth what somebody will pay you for it.

MR. MOORE: Yes, ma'am, but here's the problem we have. We now have -- if she said it's worth $500,000, I'm not sure I heard that, but I'm sure she probably did. If you say she did, she did.

THE COURT: I know -- am I -- didn't I hear that? I think four to 500,000.

MR. MOORE: If that's the case, that doesn't end the inquiry. The inquiry then becomes okay, let's assume she said it was worth $500,000. How much has it been depreciated by the siltation of the pond? You've got to do more than just put the value in. There's got to be some -- and she could have said this.

THE COURT: Yeah, but let -- let me just make sure I -- let me ask Mr. Belser some questions.

Mr. Belser, I don't think this -- fair market value goes to permanent injury to the property.

There's testimony that her pond is clearer, it's looking better.

Are we going for fair market value here? I thought we were going for cost of restoration and repair.

MR. BELSER: That's correct.

THE COURT: I just want to make sure that I've got this straight in my head because I didn't see anything about permanent injury to her property. This is something that's been going on for five years for her.

MR. BELSER: I think -- I'm sorry to interrupt.

I think that the consideration is, is it remediable or is it not.

THE COURT: Not. Exactly.

MR. BELSER: And it is remediable and we have an estimate to remediate it and the --

THE COURT: And he's saying it can't go over the value of her property. That it's limited.

MR. BELSER: And what we say about that is that the landowner is -- as a matter of law in South Carolina, a landowner can place a value on their property.

THE COURT: They can.

MR. BELSER: And she placed a value on it.

There's also other evidence in the record that a -- less than a quarter acre sold for $10,000.

THE COURT: And she's got thirteen.

MR. BELSER: And she's got thirteen. And there's also evidence in the record that whether it's 350 or 400, five acres down the street are being sold for that, and it's not thirteen acres. So the value of her property -- and we'll get into this on this -- the Lexington County tax records because it is taxed for agricultural purposes, that there's a difference between tax value --

THE COURT: There sure is. Trust me. I own agricultural property, so I know the difference.

MR. BELSER: And there's also a homestead exemption because of her age as well, so that's really a misleading piece of evidence that we'll get into -- that we'll talk about on cross-examination with the Cades as well, but the -- I'll -- if that answers your questions, then I'll sit down. If not, I'll keep talking.

THE COURT: All right. Anything else Mr. Moore?

MR. MOORE: Yes, ma'am.

The -- in my reading of the cases, the issue of whether the injury has been permanent or nonpermanent is not the issue. The main case, and the one I was looking for, is Vaught versus Hardee and Sons, which is 623 S.E.2d 373, and it talks about damages to trees.

It says the general measure of damages for damaged or destroyed noncommercial trees, shrubs and related vegetation is the difference in the value of the entire parcel of land, damaged and undamaged portions, immediately before and after the loss, and it recognizes the restatement second of torts, Section 929. When the cost of restoration of the property that has sustained damage or destroyed exceeds diminution in value, then the greater cost of restoration will be allowed as a personal reason -- this is it.

When seeking an award of damages for damaged or destroyed noncommercial trees, shrubs or related vegetation, a landowner may not recover restoration costs which exceed the market value of the entire parcel prior to the loss. That's -- this is the case that basically says that.

THE COURT: Okay.

MR. MOORE: So there's been no proof of the market value. The only proof we have is $90,000. I would basically move to strike any claim for the restoration value and -- but I also move for directed verdict on lack of -- we also move for directed verdict on the ground there's been no proof of causation. There's no indication as to how much of that siltation is allegedly caused by us.

And in regard to the trespass argument, we move for directed verdict. You can't trespass by doing what you had the right to do. We've had the right to put water on this property for thirty-five years. There's no indication that the amount of water has basically increased.

In regard to the nuisance, again, a person may not commit a nuisance when he does that which he has a right to do, and with that I'll ask the Court to consider my motions for directed verdict, and I thank you very much.

THE COURT: Thank you. Anything from you, Mr. Belser?

MR. BELSER: Your Honor, how much -- how far would you like for me to go? On -- on -- let's talk about -- let's talk about causation. I mean -- yeah, causation and damages. There's ample evidence in the record from our engineer, their engineer, everybody who's been up on the stand that there was a clearing and then damage, so causation is there.

On this -- and Mr. Moore was kind of arguing the facts about that. I mean, that -- as a reason enough for it to go to the jury.

On the damages and reasonableness, this is not a products liability case, this is not a refrigerator repair case, this is a property damage case, and actually

the Vaught versus Hardee and Sons case is -- we cited it in our pre-trial brief and that's included in our jury instructions because I think that is the law.

You know, to the extent that it's an unreasonable estimate, you know, there's no -- there's no competing estimate. If the defendants had thought that the estimate was unreasonable, they could proffer an estimate. There's not one. And if there's one that's offered, I'm gonna object to it.

Let me see. All right. And just -- and so I think that their argument on trespass and nuisance, as I understood, was that there can be no claim for trespass if you're doing something that you are lawfully allowed to do.

Well, number one, that's a false statement of the law. Number two, there's really not any evidence that they were following the law. There's -- there's a boat load of evidence that they were kind of acting in reckless disregard of the law and Ms. Garland's rights, and so this case is -- is for the jury.

THE COURT: And I'm going to tell you, Mr. Belser, I agree with you. I'm gonna deny the motion. I'm gonna say I think the owner can testify to the value of her land. That's clear law under Hawkins v. Greenwood and Waites v. South Carolina Windstorm.

As far as causation, I did listen to two engineers, and one of them hired by the defendant, and it was clear to me that it was their opinion that all of the silt which is the cause of the trespass, I don't believe it's so much the water, but it's more as the silt, both testified was coming from the Cades' property.

On top of that, they were put on warning from the County with a stop work order and then they told the County that they were going to plant grass, and I don't know if that was done in a timely fashion or not, I'll hear the rest of the case, but it is enough to go to the jury.

MR. BELSER: Thank you, Your Honor.

THE COURT: With that said, is the defense ready to go?

MR. MOORE: Yes, ma'am.

MR. BELSER: Your Honor, just -- could we take just a quick restroom break?

THE COURT: We sure can.

Let's take -- it's 10:17. My watch is a little fast. 10:17. Let's be back at 10:30, I'll grab the jury, and we'll go.

MR. BELSER: Thank you.

(Recess taken at 10:17 AM.)

(Back on the record at 10:31 AM.)