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 2

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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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THE COURT: All right. Are we ready?

MR. MOORE: Yes, ma'am. We're ready.

THE COURT: Let's bring the jury in.

(Whereupon, the jury return to the courtroom at 10:32 AM.)

THE COURT: Madam Forelady, are we ready?

FOREPERSON: We're ready.

THE COURT: Okay.

All right. Mr. Moore, you can call your first witness.

MR. MOORE: Your Honor, we'd like to introduce the deposition of Paul Shearer. We have it cued up and I believe ready to go.

THE COURT: Okay.

All right. Before we do that, let me read my deposition thing.

All right. Let me tell the jury you're fixing to hear testimony by a witness, but it's by deposition. And it's done by a manner that's prescribed by law and you will consider the testimony from that deposition just as if the witness were here and upon the stand testifying and you will assess it -- the testimony, the same credibility that I explained to you earlier. It's for you to consider and give it the weight that you feel is necessary.

You can go ahead.

(Defendant's Exhibit Number 27 and 28 was marked and admitted into evidence.)

(Whereupon, the deposition of Paul Shearer, Part 1, was played.)

THE COURT: Mr. Moore, can you pause this just for one moment?

(Whereupon, the video deposition was paused.)

THE COURT: I apologize, but I need to excuse the jury for just one second.

Y'all can take a five-minute break and come right back. We'll wait on you.

(Whereupon, the jury retires to the jury room at 11:24 AM.)

THE COURT: I apologize, but one of them motioned to me that they needed to take a quick break, so when that happens I have no choice.

MR. MOORE: I'll join them.

(Recess taken at 11:25 AM.)

(Back on the record at 11:33 AM.)

BAILIFF: Court is back in session. Please keep your seats.

THE COURT: Thank you.

Okay. Well, let's bring the jury back in. I've ordered them pizza, so hopefully they can have a short

lunch because I really would -- we've got two more witnesses?

MR. MOORE: We've got maybe three more witnesses. Maybe two. Probably three. Three more witnesses.

THE COURT: All right. I'd like to get through this today.

(Whereupon, the jury return to the courtroom at 11:38 AM.)

THE COURT: Madam Forelady, are you ready?

FOREPERSON: We're ready.

THE COURT: Okay.

(Whereupon, the deposition of Paul Sheer, Part 1, continued playing.)

(Whereupon, the deposition of Paul Sheer, Part 1, concluded.)

THE COURT: All right. I do have to run to this thing for like five minutes. Y'all are having pizza for lunch. They ordered pizza. It will be here at 1:00.

Let's go ahead and finish the thirty minutes, then we'll take a break, I'll run over there right quick and we'll come back in and see what we can get -- I'm determined we're gonna finish this case today.

Let's go ahead.

MR. MOORE: Thank you, Your Honor.

(Whereupon, the deposition of Paul Shearer, Part 2, was played.)

(Whereupon, the deposition of Paul Shearer, Part 2, concluded.)

THE COURT: All right. Mr. Moore, let me ask, is our next witness short, long?

MR. MOORE: The next witness will be probably fifteen to twenty minutes.

THE COURT: I don't want them to eat cold pizza.

MR. MOORE: I don't either.

THE COURT: So it's 12:40. Your lunch will be here at 12:45 they tell me. I kind of wanted to do short so we could keep going.

Let me ask, is there anybody on the jury -- everybody okay with working after five today?

Okay. Thank you.

THE CLERK: One on the front says no.

THE COURT: What do you -- is it childcare?

JUROR: (Nods head.)

THE COURT: Is there any way you could make arrangements?

JUROR: I could ask my mom.

THE COURT: Okay. If you could do that for us, please.

MR. MOORE: Judge, we have -- Callee and I represent

Lexington School District 2 and have a critical board meeting this evening, I believe, at seven. Our board meeting is at seven tonight and we've been asked to be there a moment earlier to speak to the superintendent about a pressing matter dealing with the schools.

THE COURT: Okay.

All right. Well, then we'll try to go as late as we can. I'd like to at least get through the witnesses and charge. I've got to be somewhere in the morning myself and I need to get this case heard.

MR. MOORE: I --

THE COURT: So let's be back here at 1:30, no later than 1:40, and let's start back again, okay?

All right. Thank you.

If you could check for me and let me know.

(Whereupon, the jury was excused for lunch at 12:42 PM.)

THE COURT: All right. We'll be back at 1:40.

(Whereupon, a luncheon recess was taken at 12:43 PM.)

(Back on the record at 1:50 PM.)

THE COURT: All right. Are y'all ready to bring the jury in?

MR. MOORE: Yes, ma'am.

MR. BELSER: Yes, ma'am.

MR. DOUGALL: Yes, ma'am.

BAILIFF: Are you ready for the jury, ma'am?

THE COURT: Yes, please.

(Whereupon, the jury returns to the courtroom at 1:52 PM.)

THE COURT: All right. Madam Forelady, are we ready to continue?

FOREPERSON: We are, Your Honor.

THE COURT: Okay. I hope y'all enjoyed lunch.

Mr. Moore, do you want to call your next witness?

MR. MOORE: May it please, Your Honor, I'd like to call Roger Singleton.

THE COURT: Sure.

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

THE CLERK: Have a seat and state your full name for the record, please.

THE WITNESS: Roger Singleton.

ROGER SINGLETON,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOORE:

Q. Roger, how old are you?

A. 52.

Q. Do you do stump removal, clearing, grading, pond and

dam work?
A. Yes, sir.
Q. How long have you been doing that?
A. I've been in heavy construction most of my life off and on.
Q. Let me ask you this. If you were going to pay somebody to move a track hoe, a couple of bulldozers and some pads twenty miles, do you have any idea what that would cost in your business?
MR. BELSER: Your Honor, objection.
Can we approach?
THE COURT: Sure.
(Proceedings held at the bench; not reported.
BY MR. MOORE:
Q. Roger, you're familiar with the standard charges in the business to move heavy equipment?
A. I'm -- I have a hard time hearing. I'm sorry.
Q. All right. I'm going to get closer.
A. Thank you so much.
Q. I think I have -- it's been stipulated that I can speak fairly loud.
A. Yes, sir, you can.
Q. So I'll try to speak up even louder. How about that?
A. Thank you.
Q. Are you familiar with the market rates of what it

costs to transport heavy equipment?
A. Yes, sir.
Q. Would it ever cost $10,000 to haul that much stuff twenty miles?
A. No, sir.
Q. What would -- what would you expect to pay in the market for that sort of transportation?
A. I can tell you what I pay.
Q. What do you pay? That's what I want to know.
A. I've got my track hoe that's almost 60,000 pounds. It cost me $250 to move it from Robert's house fifty or sixty miles to St. Matthews.
Q. All right. Now when you heard the number $10,000 to move this stuff twenty miles, I believe you told me you wanted that business?
A. Yes, sir. Yes.
Q. How reasonable is that sort of number?
A. It's not reasonable at all.
Q. All right.
A. Unless they were moving thirty pieces of equipment, I -- I couldn't see it.
Q. All right. And how long have you been working with heavy equipment?
A. Off and on most of my adult life.
Q. How much heavy equipment do you actually own?

A. Right now I have two track hoes. One that I think is 56,000, the other one is 63,000 pounds. I've got a track loader. I think it's 25,000 pounds. I have a bulldozer that's right at 30. I've got a skid steer and I might be gonna buy a mini excavator here shortly.

Q. Did you do any work on the Cade's property?

A. Yes, sir.

Q. Did you build either of the two buildings?

A. No, sir.

Q. They had separate permits as far as you know?

A. As far as I know.

Q. Did you cut the timber?

A. I did not.

Q. What work did you -- were you actually hired to do on the Cades' property?

A. Originally I was -- Mr. Cade asked me if I would come work in his pond a little bit to try to make it a little bit deeper and shore up the sides.

Q. Did it need it?

A. Yes, sir.

Q. What was wrong with that pond that caused it to need work?

A. The pond or the dam?

Q. The dam and the pond.

A. Okay. The pond was eight feet-ish -- six or eight

feet low. There was very little water there. What was there was covered in vegetation. The -- Mr. Cade didn't want it to be as big as it was gonna be if we had just tried to bring the water up, so we -- we shored it up and made the pond smaller. Later on we found -- after the trees were gone looking, at the backside of the dam we saw how bad it was leaking and a very unsafe condition.

Q. Why do you say that the dam was in an unsafe condition?

A. It had trees larger than -- about the size of the jury box growing in it. When you have something like that, the roots grow through and they'll create small capillaries for the water to seep past and go out the other side. What happens over time is those capillaries will get larger and larger and eventually the dam with completely blow out.

Q. So the dam when you -- when you got into it and saw it, the dam was unsafe?

A. Correct.

Q. Did you do the work on the dam to make it safe?

A. Yes, sir.

Q. What did you have -- how much were you paid to correct the dam?

A. I do not remember.

Q. Would it have been thousands or hundreds of dollars?

A. It would have been thousands.

Q. Can you tell me did you do the work to repair the dam and the pond before or after the hurricane?
A. Before the hurricane.
Q. Tell me what it is you actually did to the dam to make it safe.
A. We had to replace the spillway and the pipe. We had to re-core the entire dam where it was leaking. You actually have to dig down. In some places to get to solid ground, I had to dig over 20 feet deep, so you have to dig all the -- the --
Q. Muck?
A. For -- the muck or -- or jell-o or pudding is basically what it was. You have to get all of that out and you have to cut through all the capillaries and then you have to come back with clean dry dirt over the top of that and compact it.
Q. Did you do all of that?
A. Yes, sir.
Q. This -- this pond that is on the Cades' property, is it rain-fed, stream-fed or spring-fed?
A. It's a watershed, which means it's basically rain-fed. There may be a spring or two, but I'd say 90 percent of the water is from rain.
Q. So what happens is it rains, the water from other people's property runs into the pond and the pond is full.

When the pond's full, it goes to the spillway and runs out?
A. Correct.
Q. Did you build any type of a filtration system into the dam when you re-cored it?
A. The top of the inlet?
Q. Right.
A. The top of the inlet for the pipes that go down and go through the pond does have a trash rack on top.
Q. And that's to do what?
A. To keep the -- any trash, limbs or any kind of debris from going downstream and possibly clogging the pipe and creating more problems later on.
Q. All right. Now the dam work that you did after you put in the filter on the inlet valve and after you re-cored it and after you filled it back up with dirt and got it in an appropriate condition, what did you do to the face of the dam, if anything, in order to stabilize it?
A. Mr. Cade had somebody come in and do hydroseeding.
Q. Would you explain to the jury what hydroseeding is?
A. Hydroseeding is basically a mix of seed, fertilizer and glue. When you put it down -- you've probably seen it on the side of interstates. It's a green -- it makes the dirt look green, but it actually glues the seed, the fertilizer and the ground together to keep it from washing.
Q. And did you seed the dam after the hurricane?

A. Yes, sir.
Q. What, if any, evidence was there that the hydroseeding hadn't worked?
A. There wasn't.
Q. Was the dam stable during the hurricane?
A. Absolutely.
Q. Did any of the dirt on the dam wash off during the hurricane?
A. If it was, it was very minimal.
Q. All right. If you hadn't done this work before the hurricane, what would you have expected that dam to do?
A. Break.
Q. Why?
A. Because it was unsafe. When I got into the dam is when I really discovered how unsafe it really was. It was basically jell-o.
Q. If that hurricane had come through before you did the work, it would have burst?
A. I have no doubt.
Q. And the dirt and water from the dam and -- the dirt and water in the dam would have gone where?
A. It would have gone downstream.
Q. All right. Now we've talked about something called a spillway.
A. Yes, sir.

Q. Which is where the water collects and then runs across, right?
A. Yes, sir. It's where -- the spillway is where the water exits the pond.
Q. And the spillway, would you explain to the jury how the spillway works?
A. In this case, we installed -- I believe it was either a -- I think it was a 10-inch pipe with a T on the pond side. The T would continue forward to a gate valve where the water could be -- it could be opened and the water could be lowered. Before that at the T there's also a stand pipe that comes up. The stand pipe is brought up and trimmed to wherever the maximum level of the water is going to be and then the trash rack installed on top of it.
Q. When the water comes out of the dam, does it follow the natural flow downstream?
A. Yes, sir.
Q. And would that be the ordinary and natural flow where it's been going for years?
A. To my knowledge, yes, sir.
Q. When the water comes out of the spillway into the natural streambed, is it clean water or is it trashy water?
A. Clean water.
Q. Why?
A. Because it's coming off the top of the dam and it has

a trash rack on top.
Q. The sand -- any silt in it goes down and the water stays up?
A. Correct.
Q. So the water getting into the spillway is all clean water?
A. Correct. Yes, sir.
Q. Is there any way that there's any major siltation coming out of the spillway of the dam?
A. Not -- not that I've been able to determine, no, sir.
Q. Well, if the laws of physics --
A. I mean, it's all --
Q. Go ahead.
A. I'm sorry. I mean, if you've got -- you have clean water going in, you're gonna have clean water coming out.
Q. And do you have clean water going in?
A. Yes, sir.
Q. And how do you know that?
A. Because I did the work and I've seen it.
Q. All right.
A. And we instilled -- like I said, we installed the trash rack as well.
Q. So whatever is coming out of the pond is not dumping silt on Ms. Garland's property?
A. No, sir.

Q. Because it can't?
A. It cannot, no, sir.
Q. When water comes out of that pond below the pond where the water comes out, did you do any excavation there?
A. I had to do some excavation there because I had to put the pipe in.
Q. Right.
A. Other than that, no, sir.
Q. All right. So then the -- the actual land except for where you put the pipe in, that's a small area, right?
A. Correct.
Q. Except for that, did it stay normal and vegetated?
A. Yes, sir.
Q. Is that actually a wetlands area that the water dumps into?
A. I don't know if it's actually classified as a wetlands, but it does -- it does stay wet. Yes, sir.
Q. Describe for me what the land looks like between the spillway exit and when it gets to the pipe on Mr. Shearer's property. If it does. What -- what does the land -- hold on. That's a bad question. From the time that clean water leaves the dam until it gets to Mr. Shearer's property, what does it pass through?
A. It passes -- it passes through a swampy area, a swampy -- basically wetland. It's several poplar trees, there

might be some oaks in there, there's not any pines in there I don't think. The ground is covered in leaves and debris.

Q. Did you do anything to the pond that would have increased the flow or volume of water?

A. Just the opposite. No, sir, I did not. What I did was the opposite.

Q. Tell me what you mean that it was the opposite.

A. Before there was so much water coming out of the dam that there was actually a steady -- steady stream. From the beginning at the toe of the dam the water was coming from the sides on the back of the dam and coming down into a central area in the -- in the buffer that we left and then from there it went on down. It was -- that was one of the reasons why it was so necessary to do something with the dam because of all of the water that was coming out of it.

Q. So how is -- the work that you did to the dam, how did it reduce the volume and the flow that was going into the wetlands?

A. It stopped it. It stopped it until the pond got full.

Q. So the only water now that can come out of the dam is coming out of the spillway?

A. Correct.

Q. And it's clean?

A. Yes.

Q. And goes into wetlands?
A. Yes, sir.
Q. From the time that water goes in the wetlands until it gets to Mr. Shearer's property, how great a distance is it?
A. To Mr. Shearer's property?
Q. To Mr. Shearer's property line, how far is it?
A. I'm thinking it's several hundred yard -- several hundred feet.
Q. And then Mr. Shearer's property would be how far away from Davis Road?
A. I'm not a hundred percent on that. I think it's a couple of hundred feet.
Q. If something was wrong with the dam, you would be the one responsible for having done the work?
A. Sure.
Q. Did you do the work correctly?
A. I believe I did, yes, sir.
Q. Now we get back to the -- the trees. Can you give me an estimate of how many trees were harvested?
A. I cannot.
Q. On farmlands is that something that is done from time to time?
A. Harvesting trees?
Q. Yes.
A. Yes, sir.

Q. And when the trees were sold, were they actually harvested and sold to somebody else to your knowledge?
A. Yes, sir.
Q. How many acres were you asked to clear?
A. I don't know how many acres we actually cleared. I just kept going until they told me we were done.
Q. And were you the person paid to do the work?
A. Yes, sir.
Q. Now in your business and what you know, would a -- any type of permit have been necessary to do that work?
A. No, sir, because at the time it was listed as agricultural property. Agricultural property does not require any sort of permit to cut and dig stumps.
Q. When you are working on agricultural property, do you know of any rule, regulation or anything else that requires any type of a silt fence?
A. Not on agricultural property, no, sir.
Q. The -- would you please just describe for me the actual work that you did in -- on the land. We know what you did with the pond. You fixed it. What did you do with the land?
A. When the loggers left, the mess that was left was epic. Limbs, logs laying everywhere. You couldn't -- it was -- it looked like a tornado had come through and just chewed up a bunch of trees and spit them out, so what I did

is we got in and started raking all the limbs and logs, digging the stumps. I would work in sections, then I'd get down and I'd go back and I'd cover the holes and continue to work down, and then when we got enough down is when we went back and -- actually Mr. Cade went and bought the seed and I helped him put it out.

Q. Was the property seeded before the hurricane?

A. Yes, sir.

Q. Was there actually grass growing up there before the hurricane?

A. Yes, sir, there was grass.

Q. Was there full heavy standing grass before the hurricane?

A. It wasn't -- I wouldn't say heavy, no, sir.

Q. But there was grass there?

A. It was -- it was actually a crop, but, yes, sir.

Q. What was Mr. Cade's intent to do with the land that you had graded and stumped?

A. Mr. Cade loves cows and that was his intention. He wanted to -- he wanted to have cows out there.

Q. Would that have been a good place for them?

A. Absolutely. Absolutely.

Q. The land in question, was it flat? Was it hilly? How was that land?

A. A soft slope.

Q. Tell me what you mean a soft slope.
A. I wouldn't call it a hill. The -- from Fish Hatchery Road the ground had a soft steady slope going -- going down to the buffer area that was left.
Q. Tell me about the buffer area. Why was there a buffer area left?
A. The buffer was left by -- actually by the loggers other than a -- for the lack of a better word, a road they had to put on -- they had to put through it on the back side of the dam through all the -- the marsh and the swamp. They had -- they used -- instead of crane mats, they used other trees, smaller trees and debris that was there, and that's what they drove on. Other than that, it wasn't touched.
Q. The buffer that you're talking about, does it adjoin Mr. Shearer's property?
A. Yes, sir.
Q. The whole length? Except for the wetlands.
A. On that side where we left the buffer, I believe it is. I think he had since sold a piece of something to the Mark guy that used to live there, but it does -- it did join his property all the way down.
Q. How was the -- how was the -- we know he had trees on it. How about the land underneath, was it vegetated or was it stripped?

A. There wasn't anything there. The trees that were there was so thick the sunlight couldn't get through to grow anything else. The only thing that was there was pine straw and leaves. The pine straw was very acidic so that when we took all the limbs and everything else off, the pine straw came off with it to reduce the amount of lime that we were gonna have to use to neutralize the acid.

Q. How thick was that buffer?

A. How thick?

Q. Yeah. I mean, how -- from the -- from the area -- from Mr. Shearer's back into Robert and Christy's property, how deep was the buffer?

A. The buffer changed. After Mr. Shearer's house, the buffer got much deeper. It was 30 to 50 feet right behind his house, but after his house when -- on the left side of his house toward the dam, the buffer got much, much deeper, which is where the water was gonna go. It's still hundreds of feet.

Q. Okay. Now you have heard the amount of dirt that is claimed to be in Ms. Garland's pond. I believe it was some 1700 cubic yards. You've heard that number?

A. I've heard that number, yes, sir.

Q. How many dump truck loads would 1700 cubic yards of dirt be?

A. I would say between two and three hundred tri axel

trucks.
Q. That's big trucks?
A. Large single -- single piece dump trucks, yes, sir.
Q. If that much dirt had left the Cade's property, do you believe you would have noticed it?
A. Yes, sir.
Q. Why do you say that?
A. 1700 yards of dirt is -- would have left a Grand Canyon in the -- in the field that we were working in or had done work in. It would have -- you wouldn't have been able to put a cow out there if that much dirt had been removed. You would have -- you would have ditches and holes and it's just -- it's not possible.
Q. Is it physically possible that that much dirt could have been moved by that hurricane?
MR. BELSER: Objection, Your Honor. It's getting into opinion here.
MR. MOORE: That's all right.
THE COURT: Withdraw it?
MR. MOORE: I'll withdraw it.
BY MR. MOORE:
Q. When dirt erodes to the extent of 1700 cubic yards, what sort of traces does that leave behind?
A. Ditches and ravines.
Q. After the hurricane, were there any ditches or ravines

that you saw?
A. There were no ditches or ravines. There might have been a little bit of the surface sand that had gone and moved a little way and recollected itself, but there were no ditches, no, sir.
Q. Did you have occasion to look at the property after the hurricane?
A. Yes, sir.
Q. Did the hurricane occur while you were still in the process of taking out the stumps?
A. I don't remember if I was completely finished with the stumps or not. There were some other things that we were doing as well. But I'm -- I'm 90 percent certain that that side was done and it had been planted. I know it had been planted.
Q. And you were the person responsible for doing all of the work on the dam?
A. Yes, sir.
Q. And you were the person responsible for doing all of the work on the site?
A. On the -- I'm sorry?
Q. On the site.
MR. DOUGALL: Object, Your Honor. Contrary to the evidence, he did not clear the trees, so he couldn't have done all the work on the site.

THE COURT: Are you gonna withdraw that question?

MR. MOORE: I will.

THE COURT: Please do not answer.

BY MR. MOORE:

Q. Except for building the buildings and clearing the trees, you did all the work on the site?

A. Yes, sir.

Q. Would the Cades have paid you tens of thousands or over a hundred thousand dollars for the work you did?

A. They paid me over a hundred thousand dollars for the work I did.

Q. Of the work that was done out there day in and day out, how much of it did you actually do yourself?

A. I was there almost every day myself.

Q. Were you actually driving machines?

A. Yes, sir.

Q. How well do you know this piece of land?

A. I know it very well.

Q. How long did it take you to re-core the dam, re -- to stabilize the dam, to remove the trash that had been left by the loggers and to take the stumps and so forth out?

A. That part took a month or -- a couple of months. I don't remember exactly. We were doing other things as well, so.

Q. Well, why did it take so long?

A. I don't know.
Q. It was a lot of work?
A. It was a lot of work. It was a lot of stumps. There were thousands upon thousands of stumps that had to be dug, piled, loaded, trucked.
Q. Were there really thousands?
A. Yes, sir.
Q. Okay. When you got the -- by the time the hurricane hit, can you tell me the actual condition -- as best you can the actual condition of the Cades' land?
A. I don't -- the condition?
Q. Well, start -- start with the dam. By the time the hurricane hit, what was the dam like?
A. The dam was completed and safe.
Q. And how about the actual land between the dam and Mr. Shearer's property?
A. It had been stumped, cleaned up and planted.
Q. The holes had been filled by that time?
A. Yes, sir.
Q. So you'd been about finished when the hurricane hit?
A. I was getting real close, yes, sir.
Q. Now after the hurricane hit, did you come out and look at what was left?
A. Yes, sir.
Q. How much water had been out there?

A. There had been a lot of water out there.
Q. Were you able to look at the berm on the other side of Davis Drive?
A. No, sir.
Q. Are you familiar with Davis Drive?
A. I am.
Q. Is it a dirt road or is it a paved road?
A. It's a dirt road made of sand clay with some pockets of loose sand.
Q. Does it slant towards or away from Mr. Shearer's property?
A. If memory serves me right, it does slant toward Mr. Shearer's property.
Q. From what you know, is there any way the work you did would have silted Ms. Garland's pond?
A. No, sir.
Q. Why?
A. Because of the buffer that we left there in good faith to -- to keep anything like that from happening.
Q. But you also saw it, right?
A. I saw it. I was there during the hurricanes. I was there during the rain. Mr. Cade and I both was out there.
Q. When you were looking at the rain, was there any evidence that giant amounts of silt were washing away?
A. No, sir.

Q. If it had been doing it, would you have seen it?
A. Yes, sir.
Q. Now you said that there was some loose sand that did move into the wetlands; is that right?
A. It moved in -- in different areas. I mean, the field that we're talking about is on the right side of the Cades' driveway. Water -- water runs all different kind of ways up there and you can see little trails of -- of sand.
Q. Well, that was on the upper side of the Cades' property, right?
A. The -- well, on the right side of the driveway, yes, sir. The whole -- the whole thing. And there was -- I don't know if any actually made it down to the -- to the buffer, I don't remember that or not, but you could see where a little bit had moved, but there were no ditches.
Q. Did you see anything to indicate a significant amount of sand had moved into the buffer?
A. No, sir.
Q. Did you see any significant amount of sand that moved into the -- into the wetlands?
A. No, sir.
Q. Did you see any evidence that any significant amount of sand had moved into the ditches?
A. Which ditches?
Q. The ditches that front on Davis Drive.

A. I've only been down Davis Drive one time and that's when I rode down there with the attorneys to look at the property.
Q. Did you see any evidence that any of the sand had moved into Mr. Shearer's property in major amounts?
A. I did not, no, sir. I didn't see that or anything else for that matter.
Q. Have you ever even seen the pipe that runs under Davis Road?
A. You can't actually see the pipe. It is under the ground.
Q. What -- why did you not put silt fences up when you were doing the work?
A. Well, two reasons. It wasn't required and I left the buffer instead. The buffer -- the buffer took everything out that would have gotten in there. The buffer would have taken it out.
Q. When you say it's not required, why would a silt fence not have been required?
A. Because it's agricultural property.
Q. Were you there the day the gentleman from the County came and put the stop work order up?
A. No, sir, I was not.
Q. How did you learn of that?
A. I was actually in Texas and I got a phone call.

Q. How long after the fact was it that the stop work order was lifted?
A. I got another phone call, it was either later that day or the next day, saying that it had been lifted and I had a couple of guys and they went back to work.
Q. Were y'all asked or required to stabilize the soil?
A. I do not -- I was told that the work order had been lifted and I can get back to work, but it had already been seeded at that point.
Q. By the time the -- the stop work order was issued, the seeding had already happened to the land and the hydroseeding to the dam?
A. Correct.
Q. Can you think of anything wrong that Robert or Christy Cade did?
A. No, sir.
Q. Can you think of anything wrong that you did?
A. No, sir.
Q. You were working for the Cades?
A. Correct.
Q. And there were two buildings constructed, there was a dam repaired and made safe, there was a certain acreage that was cleared, stumped and seeded, and to your knowledge was there any other work done?
A. We tried to unclog a couple of springs that was out on

the other side that fed Mr. Cade's pond.
Q. All right. Let me ask you this. When you were working out there, were Robert and Christy living there?
A. No, sir.
Q. How long after you left did they actually build their new home?
A. I -- I can't remember the -- the amount of time. It was a good while. I knew -- I went back -- I went back and assisted with doing some of the footers and that sort of thing and didn't charge them anything.
Q. Nice people?
A. We were good friends.
Q. Still are?
A. Still are.
Q. The house they built, is it a pretty house?
A. Very.
Q. Christy's pretty proud of it?
A. Yes. That with all the cow pastures and everything around, it's beautiful.
Q. And the ducks?
A. The ducks.
Q. They've got ducks?
A. The ducks are a little aggravating, but, yeah.
MR. MOORE: I don't have any further questions. Thank you, Your Honor.

THE COURT: Mr. Belser.

MR. BELSER: Yes, ma'am. I've got some questions.

CROSS-EXAMINATION

BY MR. BELSER:

Q. All right, Mr. Singleton. How are you doing?

A. Good.

Q. You look incredibly relaxed right now. Are you relaxed?

A. I'm trying to be.

Q. All right. And you've seen all the other witnesses come up here and be cross-examined by Mr. Moore, kind of white knuckling up there because he's a pretty tough guy?

A. Yeah. I hope I'm not getting ready to do that.

Q. All right. You look about as calm as I've seen a witness ever be.

A. Plenty of practice.

Q. Now you know -- you know Mr. Cade from back in your days with the South Congaree police force, right?

A. Yes, sir.

Q. Okay. And you resigned from there years ago?

A. Yes, sir.

Q. And you're friends with Mr. and Ms. Cade right there?

A. Yes, sir.

Q. Okay. I'm confused. And you've been talking to them the entire time of this trial, sitting next to them?

A. Sure.
Q. Okay. And you've been talking to Mr. Moore about what -- about the questions he was gonna ask you and that kind of stuff?
A. Sure.
Q. Do you know that they're suing you?
A. I do.
Q. And you have no fear at all?
A. No, sir.
Q. Because you're sitting by your friends, right?
A. I did nothing wrong.
Q. All right. Now let's just walk through this stuff. So the Cades cut the timber; is that right?
A. Yes, sir.
Q. And the Cades were out there just about every day, right?
A. Yes, sir.
Q. Okay.
A. Unless he was out of town or something like that.
Q. But do you remember when I took your deposition on January the 8th of 2020?
A. It's been a couple of years ago. I remember some of it, yes, sir.
Q. All right. So they were out there -- one of them was out there every day supervising, watching everything that

you were doing; is that right?
A. Pretty much. I believe that's correct.
Q. Okay. And you had -- and Mr. Cade even got on some equipment, didn't he?
A. When he -- he purchased something to help maintain the property, he purchased a smallest excavator, and I taught him how to run it.
Q. So they just didn't just give you the key to their gate and let you into their property and let you just ride your big equipment around, did they?
A. They did.
Q. But they were there with you all whole time, weren't they, every day?
A. Not -- not all the time, no, sir.
Q. But every day?
A. Most -- most days somebody out was out there for some period of time.
Q. All right. And when you first got there, before you did anything, you described the -- the land as being thick and dense. Do you remember that?
A. Yes, sir.
Q. And that's throughout the site?
A. Yes, sir.
Q. The trees and the vegetation in this area of that green, those were big trees; is that right?

A. Yes, sir.
Q. And there were thousands of trees, weren't there?
A. I believe there were.
Q. That's what you said in your deposition. Do you recall that?
A. In my deposition, I don't remember what I said, but there were -- it had to be at least a thousand trees.
Q. And some of the roots on those trees were eight feet deep; is that right?
A. Some of them were, yes, sir.
Q. Okay. And do you remember -- you saw the video deposition of Mr. -- Mr. Shearer, right?
A. Yes, sir.
Q. Did you hear him describe it as like a water sink?
A. I think what he was talking about when he said water sink was the -- the trees that were -- the roots were absorbing water.
Q. Okay. And so those eight-foot roots, that's what he's talking about, right?
A. The taproot on a -- on a pine tree sometimes can be six, eight, ten feet long.
Q. Okay. And those -- and when you pulled out these roots, some of the roots were you said twelve feet across. Some of the root beds of these trees were twelve feet across and five feet deep. Do you remember that?

A. Some of them were, yes, sir.
Q. Okay.
A. The root -- the root balls, yes, sir.
Q. Yeah.
All right. So let's just make a couple of things clear here. You have no -- no license, correct?
A. I do not.
Q. No contractor's license, no grading license or anything like that; is that right?
A. I do not, correct.
Q. You have no advanced training in -- in riding heavy equipment, do you?
A. Other than on-the-job training, no, sir.
Q. Okay. You haven't been to any classes, you have no certifications?
A. I do not.
Q. Okay. You have no employees, right?
A. I had a couple of guys that would help out a little bit, yes, sir.
Q. Okay. And one of the guys who helped you out on the site, it turns out he had a pretty bad substance abuse problem?
A. Yes, sir.
Q. And just -- just to be clear, you're not an engineer, you're not a civil engineer, you're not a geotechnical

engineer or anything like that; is that right?
A. I'm not.
Q. Okay. And all your experience sitting on the stand is as a policeman, right?
A. Yes, sir.
Q. Now Mr. Moore was asking you some questions about how long you were out there, and this is very, very important. Do you remember when I asked you in your deposition how long the land disturbance process took? Do you remember what you said?
A. I do not.
Q. Okay. Would it surprise you if you said it was six months?
A. The whole time I was out there was probably six or eight months, but the actual land disturbance on that side of the driveway -- the water on this side of the driveway goes toward the buffer, the water on this side of the driveway goes to the Cades' pond. This side was the smaller side and I was not there that long.
Q. You were out there with all of your heavy equipment though for six months about, right?
A. In total, yes.
Q. Every day for six months?
A. For the most part.
Q. Okay. All right. Now I just want to make something

very clear about the scope of what you did. The Cades hired you to pull up the stumps and to grade the land; is that right?

A. Pull the stumps, fill the holes.

Q. Okay. They -- you said a minute ago that they got somebody else to do the hydroseeding. They weren't looking to you to do that, were they?

A. I didn't know anybody that did it. I think he asked me if I did and I told him no.

Q. Okay. So that was beyond what you were asked to do, is to stabilize the soil?

A. I was asked to help put the seed in, put other seed in.

Q. Now -- but that was with -- that was to help. So Mr. Cade was doing that himself; is that right?

A. Uh-huh.

Q. Now you were out there -- I think you testified you started in June and -- May or June of 2018 and you were out there continuously for about six months through the end of 2018; is that correct?

A. Yeah. When deer season started in -- in August, I was out there less and less.

Q. Okay. Now when your deposition was taken on January the 8th of 2020, so about a year or so after you had left the site, obviously by that time the lawsuit had been

filed, right?
A. Yes, sir.
Q. And you'd been off the site for about a year, correct?
A. Okay.
Q. And you -- even at that point in time, you had no idea that the Cades had hired Gerald Lee, a professional engineer, to give them an objective opinion as to whether or not what they were doing was causing problems; is that right?
A. I did not know about it until after the fact.
Q. Okay. Now I'm -- this is Exhibit Number 10 and you testified about the grass that y'all -- that was planted and it was such a good stand. Do you remember that?
A. It was a crop, yes, sir.
Q. Okay.
A. We actually planted it a couple of times.
Q. I'd like to -- is there a single blade of grass in that photograph? And you can take all --
A. That photograph is not on the side that's in question. That photograph is showing the Cades' pond. Any water on that side of the driveway goes into the pond, it does not go anywhere near --
Q. Is there a single blade of grass in that photograph?
A. This side was not completed at the time. The other side that we've been talking about is what was -- what was

done and planted.
Q. Is there a single blade of grass in that photograph?
A. There's not. Not that I can see.
Q. All right. Here's another picture. This is also taken by Mr. Lee on December -- I think it's December 11th of 2020 -- or 2018. Is there a single blade of grass in that photograph?
A. Again, that's the same side of the driveway.
Q. Is there a single blade of grass in that photograph?
A. Yes.
Q. Where?
A. In the photograph.
Q. Where?
A. Can you look?
Q. Yeah, point it out to me.
A. There's grass up here and there's grass down here and there's grass right here.
Q. All right. Why -- why don't you point that out to the jury so they can see what you're talking about.
A. Let me get my bearings right here. There's grass behind the shed, there's grass along the peninsula and there's grass along the edge of the pond.
Q. Okay. And Ms. Garland's pond is back down that way?
A. Yes, on the other side of the driveway.
Q. Okay. And this was like an asphalt-type --

A. That's recycled asphalt.
Q. Recycled asphalt. How much recycled asphalt was poured to give a nice driveway to get down there?
A. I do not know.
Q. Okay. Did you do that?
A. I helped spread some of it, yes, sir.
Q. Okay. Would you have liked to have known when you were working out there that a professional engineer had come out and made certain recommendations?
A. Sure.
Q. That would have been helpful to know, wouldn't it?
A. Uh-huh. I found out about it after the fact, yes, sir.
Q. Okay. And you heard -- never mind.
Now you've seen -- you've been here at trial this week and you've seen pictures of Ms. Garland's muddy pond, haven't you?
A. I have.
Q. Do you -- looking at those photographs that we've all seen, do you deny that her pond has been muddy?
A. I'm sure it has. I don't know anybody that's got a pond that hasn't been muddy at one time or another.
Q. Do you deny that it's muddy as a result of the land disturbing activities that took place on the Cade property?
A. I don't see how it's possible.

Q. You don't see how it's possible at all?
A. I do not.
Q. Okay. So you disagree with the engineers who've testified?
MR. MOORE: Objection, Your Honor. He's pitting one witness against another.
THE COURT: I agree. You can't do that. Let's move on.
MR. BELSER: Yes, ma'am.
BY MR. BELSER:
Q. Now you're aware when you were working -- were you working on the site in late November of 2018?
A. If I was, I was in and out. I wasn't there much. My equipment was there for some time after I got done and I would go back and help with different things, fencing and just different things, and if my equipment was still there, I used it to help.
Q. All right. I'm handing you what is marked as Plaintiff's Exhibit Number 9. When you were working out there, were you provided a copy of that letter?
A. I heard about it, but I never saw it.
Q. Would you have liked to have seen it?
A. No, sir.
Q. Did you care?
A. If it had been signed by a judge, I would have cared.

MR. BELSER: No further questions.

THE COURT: Mr. Dougall.

MR. DOUGALL: Just briefly, Your Honor.

CROSS-EXAMINATION

BY MR. DOUGALL:

Q. Roger, you were just shown Defendant's Exhibit 9?

A. Yes, sir.

Q. Who's that from?

A. Belser and Belser. From H. Freeman Belser.

Q. Okay. Who you know -- have learned during the course of this trial is the gentleman sitting to my left?

A. Yes, sir.

Q. And who's it addressed to?

A. Mr. Cade.

Q. Okay. So is there any reason why you should have seen that document?

A. No.

Q. And that's just a letter from Mr. Belser telling Mr. Cade he shouldn't be doing anything on his property, right?

A. Exactly.

Q. So there would be no reason for you to see that, would there?

A. I don't believe so.

Q. Mr. Belser was asking you about your certifications to

operate heavy equipment. Are you required to have any in the state of South Carolina?

A. No, sir.

Q. You can operate all the -- as long as you're not doing highway paving, you can pretty much do whatever you want without a license, right?

A. I don't believe you need to have a permit or certification for heavy equipment to pave a highway either.

Q. Well, you've got a work for a contractor who has the certification?

A. Well, yes. Yes. My apologies.

Q. Other than that, there's no such requirement in this state, is there?

A. No, sir.

Q. And a few times, and it's easy to fall into that trap, you said we left the buffer.

A. Yes, sir.

Q. You didn't leave any buffer, did you? The loggers left the buffer.

A. The loggers left it and we -- we left it behind them.

Q. Yeah. You didn't do any work past the buffer that was left?

A. Correct.

Q. And you didn't have any input into how wide that buffer was gonna be, did you?

A. No, I took what -- what the loggers left appeared to be more than adequate, so we just left it alone.

MR. DOUGALL: That's all I've got for you. Thank you.

THE COURT: Thank you, Mr. Dougall.

MR. MOORE: I have no questions.

THE COURT: Okay. No redirect.

Can I let this witness step down and be excused then?

MR. DOUGALL: No, ma'am. He's a party.

THE COURT: Oh, that's right. I'm sorry.

May I let -- you can return to the table.

THE WITNESS: Thank you, Your Honor.

THE COURT: Thank you.

(Witness excused.)

THE COURT: Thank you, Mr. Dougall.

Mr. Moore, your next witness.

MR. MOORE: Christy Cade.

(Whereupon, Christy Cade 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: Christy Cade.

THE COURT: You might want to scoot up just a little bit.

Now if anybody can't hear, y'all raise your hand so I'll know.

THE WITNESS: Christy Cade.

CHRISTY CADE,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOORE:

Q. You're not nervous, are you?

A. A little bit. I'm not used to this.

Q. First time in a courtroom, Christy?

A. Yes. Or for like this I should say.

Q. All right. You're how old? I shouldn't ask that to a lady, but how old are you?

A. I am 49.

Q. And where do you live?

A. I live in Gaston, South Carolina.

Q. Is your house and property one of the things we've been talking about?

A. Yes, sir.

Q. It's been pretty rough, hasn't it?

A. Very.

Q. Christy, I know after being pulled on during the lunch break pretty hard, you want to tell this jury about that conversation that took place with Ms. Garland.

A. Yes, I do.

Q. Have you only had one conversation with her?
A. Just one, yes.
Q. Did it happen the way she said it happened?
A. Absolutely not.
Q. Okay. You want to tell this so bad you're -- wait a minute -- you're about to jump out of that chair.
A. I do.
Q. So what I want to do is this. I'm gonna be quiet, and I'm sure they're glad that I am, and I want you to just tell this jury -- describe why you went down there, what you were trying to do and how you were received by Ms. Garland.
A. The reason I actually went to her property, I was told that -- that I was being sued for a half a million dollars, which I didn't know anything about. I didn't even know she existed. I had never met her before, had never seen her before. Again, I'd been told several times that day enjoy your half a million dollar lawsuit, so -- and I was told that she was the one suing me for a half a million dollars.

So I decided to go around. I had to -- of course, I had to leave my property to go down Fish Hatchery down to Davis because we do not adjoin, so I decided to ride around. I pulled into her property and I actually met her boyfriend, the gentleman sitting there in the audience. He was very polite, as I was. I shook his hand, I introduced

myself, asked if he was the property owner because, again, I didn't know. He explained to me that Ms. Garland was and he said she was in back. And I don't know if it was gardening or doing something out back, so he proceeded to walk with me that way.

She actually started coming out as we were headed that way. She approached and I stuck my hand out to shake her hand and as I did so, I introduced myself, and when I told her who I was, she instantly got very nasty. She told me to get the hell off of her GD -- I don't like to say that word -- property, that she was suing me, you will hear from my attorney, you're gonna pay me money, and I said ma'am, I don't know you, if I've done something to you, please tell me what it is, I don't know you, you know, please tell me what I've done you. She said you get the hell off of my GD property, you don't come back, you're gonna pay me money. I said I'm sorry, if I've done something to you, I don't know what it is, I apologize. I got in my car and I left, and I've never been back over there other than a few months back one of the attorneys came to -- and, as a matter of fact, she came on my property as well and that same day I went to her property with the attorneys to look, and that's the only time I've ever, other than in court, had interaction with her.

Q. When you extended your hand to shake her hand and

introduce yourself --
A. Yes.
Q. -- did she shake your hand?
A. No, sir. She instantly told me to get the hell off of her property.
Q. How well do you --
A. Her GD property. Excuse me.
Q. How well do you remember this conversation?
A. Very well because I didn't -- I was very shocked to have, you know, had her act that way, I mean, because I was not rude to her at all. Again, like I say, her boyfriend, I think his name's Mr. Shelley or Shelby, I'm not quite sure, he shook my hand, was very nice, cordial, and walked with me to go speak to her, and I was very shocked.
Q. Well, let's go back to your -- to your property. When did y'all buy it?
A. March of 2018.
Q. And what did y'all hope to do down there?
A. We wanted to make pastureland and have cows and we wanted to build our home and just retire there eventually.
Q. Your husband, does he do specialty truck driving?
A. He does.
Q. And as a result he has some 18-wheelers and heavy trucks?
A. Yes, sir.

Q. And does he drive them?
A. Yes, sir.
Q. Have y'all made your living working for a living?
A. Yes, sir.
Q. The property in question, you now have a house there, right?
A. Yes, we do.
Q. The house is a pretty brick house?
A. I think so. Yes, sir.
Q. You're proud of it?
A. Very much so.
Q. Did you do any of the work decorating it?
A. Of course.
Q. Was it fun?
A. No.
Q. Okay.
A. That's stressful to me.
Q. And behind your house what is there?
A. We have pastureland, we have cows, ducks. We've had -- we don't have it now after everything -- I'm sorry.
Q. Take your time. Take your time.
A. This was supposed to be my dream --
Q. I know.
A. -- and it's not anymore. It turned into a nightmare.
Q. These folks are listening, Christy. It's okay,

sweetie. Do you want some water? Christy, there's some water right there. Here.

THE COURT: He's gonna get you some -- here you go.

THE WITNESS: Thank you.

THE COURT: Uh-huh.

BY MR. MOORE:

Q. All right. You're doing what I call snuffling and there's only one way to fix it, so you have to listen to me, okay? You've got to do what I tell you. I want you to take a really deep breathe and blow it out. Now count slowly out loud to ten. Out loud.

A. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

Q. Tell me about the ducks on your property.

A. There -- they're really pretty to look at, but --

Q. How many of them have you got?

A. At least thirty.

Q. Do you like those ducks?

A. I do.

Q. Do any of them have names?

A. Yes, they do. We have ducks and we have geese. The first two that we brought out were geese and their names are Lucy and Leroy.

Q. Are Lucy and Leroy still there?

A. They are.

Q. You can talk to me now, can't you?

A. They come. They know their name.
Q. You can talk to me now, can't you?
A. Yes, sir.
Q. I did good. You're gonna be okay.
A. (Nods head.)
Q. Don't do that again. Come on, Christy. You can make this. I thought I had you fixed. No?
A. I'm good.
Q. I think so, too. Work with me.
A. Yes, sir.
Q. Y'all bought the land, wanted to build your house and you got some permits to build your outbuildings?
A. Yes, sir.
Q. Well, after you bought the property, did you learn you had a problem with the dam?
A. We did. Apparently where the trees had grown in, it made it unsafe.
Q. And you had to spend a bunch of money on the dam after you'd spent the money on the land?
A. Yes, sir.
Q. What did it cost you to get the dam fixed?
A. I don't recall exactly. I don't remember. It's been a while. As far as I know, it's thousands. I don't know, you know, exactly as far as just the dam. I'm not sure.
Q. And y'all hired Roger to come do it?

A. Yes, we did.
Q. Roger's been a friend for a long time?
A. Yes, we've known him a long time.
Q. How hard did Roger work on that dam trying to make it safe?
A. He worked very hard.
Q. And when you had the hurricane, had the dam already been done at that time?
A. Yes, it was.
Q. Did it hold during the hurricane?
A. Oh, yes, sir.
Q. That was good, wasn't it?
A. Yes, it was.
Q. Now on this dam, this is where you live, isn't it?
A. We do.
Q. And you walk the property, see the property all the time?
A. I -- I do. I usually -- I try to walk at least two and a half miles a day.
Q. And you walk on your land if you can?
A. I do.
Q. The spillway from that dam, when the water comes over the spillway, is it clean or is it dirty?
A. From the spillway it's clean water.
Q. And you know why that is, don't you?

A. I'm not good with a lot -- with the whole science of that, but I know we have the spillway pipe thing that comes in, and I don't even know the whole names of everything, and so the water that goes in there, it goes over top, so it's the top water, so.
Q. The water that comes through your dam comes from the top, not the bottom?
A. Yes, sir.
Q. So it's clean?
A. Yes, sir.
Q. And the water that comes into your pond comes from other people's land that flows naturally in that direction?
A. Yes, sir. And the rain.
Q. And the rain?
A. Yes, sir.
Q. Rainwater causes -- rainwater hits your pond, but it also hits upstream and causes water to flow towards you?
A. Yes.
Q. And then you discharge water and the water's clean and heads toward Mr. Shearer's property?
A. Yes.
Q. When it heads towards Mr. Shearer's property, does it go into a stripped off area or a vegetated area?
A. It's vegetated. Very heavily vegetated.
Q. Did y'all do anything to the vegetated area where the

water runs out of the pond?
A. No, sir.
Q. So that's there like it's always been?
A. Yes, sir.
Q. So the water coming from the pond is like it's always been except it's better and it's clean and it goes where it's always gone?
A. Yes, sir.
Q. Did y'all do anything to disrupt the flow of that pond or make it dirty or change the direction or amount that comes out of it?
A. No, sir.
Q. At the time of the hurricane, which is where this supposedly all took place, had the pond dam been hydroseeded?
A. Yes. Once the work was completed on the pond dam, it was hydroseeded. They come in and sprayed the -- the green stuff.
Q. After the hurricane, did you look at the dam to see if it had been damaged at all?
A. Yes, we walked out there and I didn't see anything wrong with it at all.
Q. Was there any evidence that the dam had eroded at all or dirt had fallen off?
A. No, sir.

Q. Was the hydroseeding still there and intact?
A. From what I saw, yes.
Q. And you saw it?
A. Yes.
Q. Okay. Now we know somebody came in and cut the timber on that bottom section?
A. Yes.
Q. And that had been at one time a pretty good stand of trees there?
A. That's correct.
Q. And you were able to sell them because this is agricultural property?
A. Yes, sir.
Q. And the plan for that bottom area was to do what with it?
A. Make pastureland.
Q. And in order to make pastureland on this agricultural property, did you have to clear out what you cleared out?
A. Yes, sir.
Q. So in order to do the work or in order to get the work done, you had to get somebody to do the work?
A. Yes, we did.
Q. And who was that?
A. Roger.
Q. And as far as you know, did Roger do everything okay?

A. As far as I know, yes, sir.
Q. If you did something wrong, you paid him to do it right?
A. Correct.
Q. As far as you know, he was working for you, correct?
A. Yes, sir.
Q. And you relied upon him to do it right?
A. I did.
Q. Now before you guys started the work on these outbuildings, did you go to the County and get a building permit?
A. My husband did, yes.
Q. Did -- did you have anything to do with talking to the County about what permits were needed?
MR. BELSER: Your Honor, objection.
Can we approach real quick?
THE COURT: You can.
(Proceedings held at the bench; not reported.)
BY MR. MOORE:
Q. Did you go to the County to pick up any of the permits?
A. I went for our home. Now I did for our home, so I have been to the County for permits.
Q. Hold on. Did you go to the County to get the permit for the outbuildings?

A. I did not.
Q. Who handled the outbuildings and the clearing of the land?
A. My husband.
Q. Before anything was done to timber or to fix the dam or to take out the stumps, did one of you go to the County and check on what was needed?
A. Yes.
Q. That would be your husband?
A. My husband.
Q. He handled all of that?
A. Yes, he did.
Q. How long did it take to actually get the work done on the dam to where the dam was stable and safe?
A. The actual dam?
Q. The dam.
A. I think just a couple of weeks. I'm not sure. I --
Q. That's okay. And how long did it take for them to cut the timber?
A. I don't remember exactly how long it took them to do that.
Q. How long did it take Roger to get the stumps cleared and the land level?
A. Do you mean like everything or just --
Q. To get the land to where it was -- it didn't have any

more stumps on it and the holes had been dug.
A. I would say a month or two. A couple of months or so.
Q. You're gonna have to forgive me if I'm not clear, I've got this mint in my mouth so I won't cough myself to death, okay?
A. That's okay.
Q. Do you recall the hurricane coming?
A. I do. I do. There were two.
Q. There were two of them, weren't there?
A. Yes, sir.
Q. By the time the hurricanes arrived, the first one let's say, had the work on the dam already been finished?
A. Yes.
Q. The dam was stable and hydroseeded?
A. Yes.
Q. When the hurricane showed up, what was the condition of the work that Roger was doing?
A. The dam was completely finished and hydroseeded and he had already pulled the stumps and filled the holes and he was doing other things at that point.
Q. Now, Christy, at your home after the hurricane did you go outside and look at the land which was being worked on?
A. I did.
Q. Did you see any type of signs of erosion like gullies or big washes of large amounts of sand or anything like

that?
A. I did not.
Q. What did it look like on the place where Roger was working after the hurricane?
A. I mean, of course, it was wet. There was like no big holes or no ditches or anything like that. The most that I saw was you could see where -- just like a little bit of sand movement, but not like any holes or anything. You could just -- and it was no like ditches or nothing like that.
Q. Could you see where any sand had moved -- had actually moved on your property?
A. On my property, like I say, you could see just where a little bit of sand, the light top sand had, you know, moved a little bit, but nothing -- I didn't see where no major -- there was not no hills brought up or no holes or nothing like that.
Q. Now 1700 cubic yards of sand would be about 250 dump truck loads from what I understand. If 250 dump truck loads was missing from your property, do you think you would have seen it?
A. I'm pretty sure I would have. I think if 200 -- 200 dump truck loads of sand would have washed off of my property, I don't think there would have been a wetlands left.

Q. That's because the wetlands is down below your property?
A. Because it's down below.
Q. Was the wetlands still there?
A. The wetlands was still there and is still there today. I think that wetlands has been there for many, many years.
Q. Why do you think 250 dump truck loads would have destroyed the wetlands?
A. Well, because when I think of 250 dump truck loads of sand getting dumped in an area, I mean, it's -- the way I see it, it's gonna fill it up.
Q. And it didn't do that, did it?
A. No, sir.
Q. And if it didn't get in the wetlands, it couldn't have got in Ms. Garland's pond either, could it?
A. I don't think so. I couldn't imagine -- I don't think there would have been a pipe left.
Q. Well, have you ever seen that pipe we're talking about?
A. I have.
Q. Is it partially stopped up?
A. It is. I actually, like I say, within the last -- it's been within the last six months all the attorneys came out, Mr. Belser was present, Ms. Garland came onto my property and inspected and saw the -- the -- the board

and everything that was left, and we got to go to her place, and I actually crossed over the fence with another gentleman and got down and looked and there is no pipe on her side. You can't -- there's not anything. There's just ground there and a little bit of water bubbling up.

Q. Christy, there's -- we're not gonna take the jury out to your home to look at it, but I think last week we did a drone flyover so we could see what it looks like.

A. Yes, sir.

Q. And you've seen that drone flyover and it's an accurate representation of what your place looks like?

A. Yes, sir.

Q. And what I'm gonna do is this. I'm gonna play that video from the drone flyover.

A. Yes, sir.

Q. I'm gonna take the volume completely off of it.

A. Okay.

Q. So while the jury is looking at it, all I want you to do is to narrate to them and tell them what they're seeing. So instead of having to go out and look at the property, they can actually see what it looks like on video, okay?

A. Yes, sir.

THE COURT: Any objection? Is this already into evidence?

MR. BELSER: It's not into evidence and I've never

seen it and this is the first time I've heard of a drone video, so.

MR. MOORE: I haven't seen it myself, but I understand it was there. It was taken last week. I told counsel about it this morning. I have two videos and it just simply shows --

MR. BELSER: I mean, I don't know what it is. I mean --

MR. MOORE: It simply shows the property. Both of them.

THE COURT: All right.

Madam Forelady, I'm gonna ask y'all to go to the jury room. Let's take a break, stretch our legs.

(Whereupon, the jury retires to the jury room at 3:08 PM.)

MR. DOUGALL: I don't have any problem with them looking at both of them.

THE COURT: Well, you know, y'all should have done this beforehand. You just can't spring a video on the other side who has not seen it.

So, Mr. Belser, you have every right to look at it and then tell me if you've got an objection, and I will be back. And I hope they're short videos.

(Recess taken at 3:09 PM.)

(Back on the record at 3:20 PM.)

(Whereupon, the jury return to the courtroom at 3:20 PM.)

THE COURT: Madam Forelady, are we ready?

FOREPERSON: Yes, Your Honor.

THE COURT: Thank you.

All right. Go ahead.

BY MR. MOORE:

Q. Christy, I've asked that the volume be cut off on this. I would just like for you to tell the jury what they're seeing as they see it from this drone.

(Video played.)

A. Yes, sir. Of course, that's an aerial view of the area. Okay. This is our property. It's an aerial view of the entire property with the pond. That's the driveway going down into my property and pastureland on the right and on the left and that's our house.

This is going down the driveway.

Q. Speak up now, Christy.

A. This is going down the driveway and as you see our house is on the left and that's, of course, our house.

This is our house. Again, that's our house and out back behind it is more pastureland and our pond and there is the barn building and the overhead shed.

This is the -- well, it's kind of going quickly, but that was the back pasture area.

Q. That's the outbuilding?
A. That is the outbuilding right there.
Q. Behind it's the shed?
A. Uh-huh. And that -- that's the ag building where we keep feed and everything in it and that's the -- that's the shed that was in question. That's the barn.
Q. That's the barn? What's that behind the barn?
A. Pardon?
Q. What's that stick building behind the barn?
A. Just a feeding area so that their feed doesn't get wet. And then that's going over -- that was the front pasture, now you're over the back pasture, and there's our pond.
Q. There's your house.
A. There's our house again and the barn. That's just --
Q. Can you see the barn -- the vegetated area behind it?
A. That's the wetlands back behind the pond.
Q. Okay.

MR. MOORE: Christy, would you answer any questions that Mr. Belser might have for you?

THE WITNESS: Yes, sir. Most definitely.

MR. MOORE: Oh, I have one more question.

BY MR. MOORE:

Q. How recently were you able to look at Ms. Garland's pond?

A. A few months ago -- oh, yesterday. Actually yesterday.
Q. And how did you manage --
A. From the road.
Q. From the road?
A. I stood on top of a pickup truck.
Q. And how did it look?
A. It looks fine. It looks normal.
MR. MOORE: Thank you, ma'am.

CROSS-EXAMINATION

BY MR. BELSER:
Q. Good afternoon, Ms. Cade.
A. Good afternoon.
Q. We've met a couple of times.
A. Yes, sir.
Q. I'm sorry for the circumstances --
A. Yes, sir.
Q. -- but it is what it is.
A. That's right.
Q. All right. Just a few quick questions and then you'll be off the stand. I won't do the thing -- make you count to ten like Mr. Moore did --
A. Thank you.
Q. -- but do you remember when Mr. Moore asked you the question about the hydroseeding on the back of the dam?

A. Yes, sir.
Q. Exhibit Number 10 is the report from Mr. Chao {sic}. Is that a -- that a photograph of the back of the dam?
A. That is actually down. That's not the back part of my dam, no. That's like down. That's like down at the --
Q. At the toe?
A. I -- I don't know if that's what you call that or not.
Q. But is that the pipe -- the filtration pipe that you put in there or do you know?
A. I don't know. I honestly wouldn't know that because I didn't do any of that, so I have no idea.
Q. Do you see any grass in that picture? Any recent grass?
A. Any -- I see some grass right there, but --
Q. This older grass right here?
A. No, down at the bottom, but --
Q. Yeah. All right. I want to talk just about two more subjects.
A. Okay.
Q. I want to talk about the day that you met Ms. Garland for the first time.
A. Yes, sir.
Q. And you skipped over some pretty important details about -- about what happened.
A. Okay.

Q. Right before -- well, Mr. Melichar is -- he used to live in this property right here; is that right?
A. He did.
Q. And y'all had some nasty disputes?
A. He was shooting at my cows.
Q. And y'all actually filed a lawsuit against him because he was -- y'all claimed stressing out your llamas?
A. We did.
Q. Okay.
A. He actually filed one against us first about this restraining order thing, however, nothing came of it other than it was a mutual between he and my husband because he was video'ing my daughter, taking pictures of her and whatnot, and admitted that, and was cursing me over the fence and would carry a gun on his side intimidating me with a gun and things like that. So a mutual restraining order was given at that point, but then we did file a lawsuit against him because he stressed -- he was shooting at our animals and stressed out -- and we had llamas, they're heard protectors, and he caused our llama to have a premature birth.
Q. The reason I mention all that is because we're not hear to talk about Mr. Melichar and the disputes that y'all had with that, but right before you went to see Ms. Garland, confront her that day, you had had a very

heated and hostile encounter with Mr. Melichar?
A. He was nasty. Again, he had a gun and he was basically intimidating me with a gun and was yelling at me. I went to check the fence work because we had some fence guys doing some work and my husband was not there, so I was out there alone and was checking the fence work and he came out and was along the fence line and was yelling ugly things to me.
Q. You don't need to -- there's some extreme vulgarities that he said.
A. Yes, he did. He told me to go -- done ugly things to people, sexual things.
Q. Okay. I don't -- I don't want you -- I'm not trying to get into that at all. I'm just trying to get into your mindset before you confronted Ms. Garland that day.
A. Oh, I did not confront her. I did not. He kept yelling over to me enjoy your half a million dollar lawsuit, enjoy your half a million dollar lawsuit, my neighbor's suing you for half a million dollars, you're gonna pay her she said, and this and that. And I didn't know her. I was not upset when I went to see her. As a matter of fact, I didn't go right away because, again, I was walking my property. It's, you know, thirty-six acres give or take. I was walking the property, so I didn't like leave right then and go over there. I did not. I went

over just to introduce myself and to ask -- you know, I didn't know her. I didn't know she existed. I had never met her before.

Q. But when Mr. -- and I don't want to get into what was said, but Mr. -- Mr. Melichar was a man who was harassing you, who was intimidating you, had a gun and was yelling adult vulgarities.

A. Yes, he was.

Q. And you responded in kind; is that right?

A. I did, yes. I -- not with a gun.

Q. Well, not with a gun, but right before you went to -- to go see Ms. Garland --

A. Again, it was not right before. I -- I was walking the property. I was out there still and it was -- a little time -- some time passed. I had just gotten out there --

Q. Okay.

A. -- when that happened with him.

Q. I thought you testified that -- on direct examination that you --

A. I testified that he said the things that he said to me and I went to introduce myself to, you know, find out what was going on, but I did not testify as to how much time passed in between. I had just gotten out there. I was walking the -- I was walking the property checking the fence work because we had some gentlemen come out and put

up a fence, a chain link fence, and I was checking the fence work and, you know, seeing the progress of that and, like I say, I had literally just gotten out there and -- you know, considering he was kind of doing the way he'd been doing, no sooner than I get out there here he came out, so.

Q. Okay. How much time passed between when you and Mr. Melichar exchanged kind of fire and fire and when you went over to see Ms. Garland?

A. I don't know exactly how much time. It was a little bit. Like I say, I had -- I walked the property, walked the -- the fence line checking and, you know, just checking on the property in general and whatnot, so it was a little while.

Q. And then -- but you were mad?

A. Not when I was seeing her. No, I wasn't mad. I was good.

Q. All right. Do you remember when I -- I took your deposition on August the 27th of 2019?

A. I remember taking the deposition. That's been quite a while.

Q. Yeah. A lot's --

A. It's been a long time.

Q. A lot's happened in the world since then. During the -- do you recall saying that you just don't know why Suzy's

upset?
A. I don't because I wouldn't know what the question was. I don't --
Q. Okay. Well, right now do you under -- after seeing the photographs and hearing her testify, do you understand why she's upset?
A. I don't understand why she's upset with me.
Q. Okay.
A. I don't. I don't. No, I don't.
Q. And do you remember when we took your deposition in August of 2019? That's after I had already sent you a number of questions about witnesses and people who knew about the case. Do you remember that?
A. You sent -- several things have been sent since then. Without looking at it or seeing it, to be honest, I wouldn't know what you're talking about because over the course of that many -- you know, the years, several things have been sent, so I don't know what you mean.
Q. And in the deposition right when I asked you if you understood why Suzy was upset, you revealed that y'all had talked to an engineer, but you couldn't remember who it was. Do you remember that?
A. I don't without looking at it. It's been how many years? If you want to let me look at it, I'd be more than happy to, but I don't --

MR. BELSER: Your Honor, may I break the seal?

THE COURT: Yes. And then I'm gonna make that Court's Exhibit Number 5.

(Court's Exhibit Number 5 was marked for identification.)

BY MR. BELSER:

Q. I want to hand you -- and I've got a copy which I'm gonna go get.

Okay. If you look at -- and maybe I should just be your tour guide through this thing --

A. I was gonna say --

Q. But Exhibit Number 19. Let me -- let me show it to you.

A. Would that be in this?

Q. Yes, ma'am.

A. Okay. So this is not marked. This is 15.

MR. BELSER: Your Honor, I'm glad to help her.

A. If you don't mind. I've got a 14 and then after that I don't. I don't see --

Q. Well, here -- here's Exhibit 19.

A. Okay.

Q. Normally Mr. Moore might say don't take my word for it, but in light of the hour, Exhibit 19, these are the -- these are your responses to the questions that I asked that we talked about in your deposition.

A. Okay.
Q. And on -- let's look at page 58 of the deposition. And I'll represent to you that there's no mention of Gerald Lee in your --
A. Did you say page 58 or --
Q. Well, sorry. Now it's a different document. Now we're looking at the actual transcript itself, which is --
A. I was looking in the wrong place. Okay. I see it.
Q. Have you got it?
A. Yes. I was just thinking it was in the same stack there.
Q. Okay. And it's actually, yeah, page 58. Do you see where my question was beginning on line 10, "Have you been in contact with any engineers on your own or any expert witnesses?". What was your answer?
A. Yes.
Q. It was actually "Have I?"
A. Oh, have I, yes.
Q. And then the question --
A. You said yes. I'm sorry.
Q. And then what was your answer?
A. "My husband and I went down went and -- went and sat down and spoke with someone.".
Q. Okay. And now you didn't remember who it was?
A. I did not recall the name.

Q. You didn't remember by name, but then we took your husband's deposition after that, we actually looked on my phone and saw Mr. Lee's picture and identified who it was. Do you recall that?

A. I do.

Q. Okay. And you -- when I asked you about this in the deposition and discovered that he existed and had some knowledge about it, I asked you if -- if he gave you anything in writing. Do you recall that?

A. I don't. If you want to point it out, I'll be more than happy to look.

Q. All right. Let's look at page 59. The answer -- the question on line 24 is "What did he give you?". Your answer, "He went out and looked at our property and he told us what he thought.". Question, "Do you still have that sheet of paper?", "I do not. I don't -- I don't know where it's at.".

What -- when you got the report from Mr. Lee, did it just not matter to y'all?

A. No, I wouldn't say it didn't matter, you know, but I was not out there with Mr. Lee so he didn't explain anything to me other than when I sat down with -- when we went by his office that one day, I sat there, but when he actually came out, no, I was not present at all for any of that.

Q. So it would be better for me to ask your husband about questions about this?
A. Probably because I was not present for any of that.
Q. Okay. But y'all -- it's your house and it's a beautiful house.
A. Yes, it is. And my husband's.
Q. Yeah. Well, what's mine is -- well, I'm married, too. I know how that works.
A. Yes. Yeah, what's --
Q. What's yours is yours and what's mine is yours?
A. -- what's mine is mine and what's yours is mine, too.
Q. Yeah, that's how it works. But you -- in your -- in your house -- in y'all's house, you don't have a copy of that report? You didn't keep it?
A. Probably. We moved, so, therefore, to be honest with you, a lot of paperwork and things got packed up. I -- I have a lot of paperwork, so I probably do, but we did move, so.

MR. BELSER: Ms. Cade, thank you very much. I don't have any more questions.

THE WITNESS: Okay.

THE COURT: And do I just leave this here?

MR. BELSER: Yes.

THE WITNESS: Okay.

THE COURT: Don't go anywhere. Mr. Dougall does

get a turn.

THE WITNESS: Sorry, Mr. Dougall.

MR. DOUGALL: That's okay.

CROSS-EXAMINATION

BY MR. DOUGALL:

Q. You've testified here under oath today, right?

A. Yes, sir.

Q. And you testified that Mr. Singleton did some work on your property?

A. Yes, sir.

Q. And you have absolutely no problems with any of the work he did?

A. I don't. I don't know that they don't or the County or whoever doesn't, but --

Q. Well, but you're one of the people who've sued him and you don't know of anything wrong that he did, correct?

A. I don't know the rules and regulations, so.

Q. So you have no evidence that Mr. Singleton --

A. I have no idea.

Q. -- that Mr. Singleton did anything wrong on your property, correct?

A. Honestly, I wouldn't know if he did.

Q. Okay.

MR. DOUGALL: Thank you.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. MOORE:

Q. Christy, if you did something -- you don't know -- you don't know anything you did wrong, right?

A. No, sir, I don't.

Q. If you did something wrong, he's the one you paid to do it right?

A. Yes, sir. So my assumption was that he knows what he's doing and he's supposed to take care of all that. To me, that's like having my car fixed. I pay them to fix it and I expect to get back in my car and drive.

Q. All right. But as far as you know, Roger did a pretty good job?

A. As far as I know, yes, sir.

Q. And, therefore, as far as you know y'all did a pretty good job?

A. Yes, sir, as far as I know.

Q. Okay.

MR. MOORE: Thank you, ma'am.

THE COURT: May I let her step down?

MR. BELSER: Yes, ma'am.

THE COURT: You can step down. Thank you.

(Witness excused.)

MR. MOORE: Your Honor, I would call Roger Cade.

I'm sorry. Roger Singleton. Robert Cade. I'm

trying to do three things at one time.

THE COURT: That's okay.

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

THE CLERK: Have a seat and state your full name for the record.

THE WITNESS: Robert Cade.

ROBERT CADE,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOORE:

Q. Robert, it is Robert Cade and not Roger Cade, right?

A. Yes, sir.

Q. Your lawyer's getting old. Robert, you live at the house we looked at?

A. Yes, sir.

Q. How old are you?

A. 45.

Q. What do you do for a living?

A. I'm a specialty contractor with the Department of Defense.

Q. Basically -- for the Department of Defense, that's the United States Department of Defense?

A. Yes.

Q. Do you do specialty truck driving, specialty hauling

for them?
A. I handle the logistics for the historical items for the Army Museum Enterprise.
Q. And while that sounds pretty sophisticated, what you do is drive 18-wheelers and haul sophisticated stuff around?
A. Not necessarily. I'm more of a project manager.
Q. Okay. But you've got trucks that you operate?
A. Yes, sir.
Q. And this place out there, you like it pretty much?
A. Absolutely.
Q. Have you worked your whole life?
A. Absolutely.
Q. Before we start, you did a video last night; is that right?
A. Yes, sir.
Q. That was at my request?
A. Yes, sir.
Q. I'm gonna ask you -- I'm gonna do the same thing with you we did with your wife. If you would just let me be quiet and you just narrate what we see.
(Video played.)
Q. By the way, the big rock in the ocean, that's not your house, is it?
A. No, sir.

Q. All right. What are we looking at here?
A. This is on Davis Drive directly across from Ms. Garland's property. There's Ms. Garland's property. There's a -- there's a cutout in the berm there for drainage into her pond.
Q. Did you do that cutout?
A. No, sir. The wetlands that are besides Mr. Shearer's property, as you can see we haven't had rain other than today, in approximately a week. There's standing water in the wetlands. This is the channel that -- that flows underneath Davis Drive.
Q. And that channel flows from your pond?
A. Yes, sir.
Q. The water's clean?
A. Yes, sir. Now I'll tell you --
Q. That's Mr. Shearer's property there, right?
A. That is Mr. Shearer's property. At the edge of the foot of our pond, the water is stagnant. It is not moving. So there is a spring in that channel that is picking up water, moving it.
Q. What are we looking at here?
A. This is on Ms. Garland's side of the property.
Q. What is it?
A. That is the -- the pipe going underneath. The water is stagnant.

Q. And the pipe's in the ground?
A. Yes, sir. And you can see the loose soil on the dirt road.
Q. This is Davis Drive?
A. This is continuing on Davis Drive at the corner of Ms. Garland's property and Mr. Claude Davis's property.
Q. Up on the right you see a scarfed-off field. Is that Mr. Claude Davis's?
A. It is.
Q. And are those woods there that are between Claude's property and Ms. Garland's property?
A. Yes, sir.
Q. Where are we here?
A. We're back on the wetland side of Mr. Shearer's property. That's the channel.
Q. Is there -- there's more, isn't here?
A. No, sir. There's some photographs.
Q. All right. Let's see the photographs you took last night. What's that a picture of?
A. That's a picture of Ms. Garland's pond from Davis Drive.
Q. Black water?
A. Black water.
Q. Do you see anything wrong with it?
A. No, sir.

Q. How did you get the picture?
A. On Davis Drive.
Q. Next picture. Same thing, her pond?
A. Same thing. Yes, sir.
Q. Next picture. Same thing?
A. Same thing.
Q. Next picture.
MS. JUMPER: That's all of them.
Q. That's all of them?
A. Yes, sir.
Q. All right. I've got to ask this question. Who flew the drone?
A. We have a friend that has one. He does a pretty good job of it.
Q. It looked like it to me.
How far did you go to in school, Robert?
A. High school.
Q. Where did you go?
A. Vacaville High School in California.
Q. This area that we're talking about where your home is, how many acres do you have?
A. I believe it's right at thirty-six.
Q. And is it -- it's rural property?
A. Yes, sir.
Q. Do you know what it is zoned?

A. It is zoned as agricultural.
Q. What do you understand that to mean?
A. Anything to do with the production of agricultural-related products, forestry, livestock, poultry.
Q. Before you started work out there, you wanted to build a home, you wanted to build a shed, you wanted to build an outbuilding, you wanted to fix the dam and you wanted to timber the property and turn it into a field for pasture?
A. We were not a hundred percent on building a home there.
Q. All right.
A. The main thing we wanted to focus on was basically turning it into pasture and hayfields to produce livestock.
Q. Before you did that, did you go to the County?
A. Yes, sir.
Q. Do not tell me what anyone at the County told you.
A. Okay.
Q. I just want to know what you had when you left. Did you -- because that would be hearsay for you to say what somebody said. Did you explain to the County personnel what you wanted to do?
A. Yes, sir.
Q. Did you make any requests for permits?
A. Yes, sir.

Q. After you explained what you wanted to do, did they give you the permits that you needed?
A. The first department I had to -- I was informed that I needed to go to --
Q. Now don't say what you were informed.
A. That I needed to go to the zoning department because we had no -- the property had never been addressed before.
Q. All right. You had to get an address?
A. We had to get an address.
Q. So you got an address. Then where did you go?
A. To the zoning department.
Q. And did you get the necessary zoning permits?
A. We didn't need one.
Q. Didn't need one.
A. We just had to make sure it qualified as -- still as agricultural property.
Q. And it did?
A. And it did.
Q. All right. From the zoning department where did you go?
A. To building permits.
Q. And did you explain to them what you were gonna do?
A. Yes, sir.
Q. And what permits did you get from them?
A. The first permit I got from them, I believe, was the

permit to build our barn.
Q. What other permits did you get from them?
A. Shortly afterwards I got a permit to build a shelter.
Q. Did you get any other permits?
A. Not at that time, no, sir.
Q. Did you ever get any other permits?
A. We got one to build a house two years later.
Q. Now in regard to the -- the clearing, grading and conversion into pasture, did you make inquiry as to what permits you would need for that?
A. I made inquiry as to as far as what the requirements were.
Q. And did you learn what those requirement were?
A. As long as it was related to agricultural purposes, there were no -- there were no permits required.
Q. And when you learned that there were no permits required, did you start work?
A. Yes, sir.
Q. And how do you know Roger?
A. I've been friends with him for years.
Q. A good guy?
A. A very good guy.
Q. Works hard?
A. Yes, sir.
Q. How much did you pay him for all the work that he did?

A. I believe the total was approximately 130,000.
Q. Now the -- the allegations are that you did -- you and your wife did something wrong. You're wrongdoers.
A. Yes, sir.
Q. To your knowledge, did you do anything wrong?
A. No, sir.
Q. To your knowledge, did Roger do anything wrong?
A. To my knowledge, no, sir.
Q. If you did something wrong, Roger's the person you paid to do it right, correct?
A. That's correct.
Q. And the lawsuit that you filled against him is because I told you to do it?
A. Yes, sir.
Q. You didn't like that very much?
A. No, sir.
Q. Because you don't believe you either of you did anything wrong?
A. That's correct.
Q. Did you do this just like the County instructed you to?
A. Yes, sir.
Q. The dam -- did you know the dam was in as bad a shape as it was in when you bought the property?
A. No, sir.

Q. When you learned the dam was in this bad of shape, did it scare you?
A. Yes.
MR. BELSER: Your Honor, objection. Leading. I know that we're late in the day, but this is Mr. Cade's chance to testify, not Mr. Moore's.
MR. MOORE: I'll withdraw the question.
THE COURT: Okay. Thank you, Mr. Moore.
BY MR. MOORE:
Q. What, if any, concerns did you have when you realized the dam was in the dangerous condition that it was in?
A. The pond was very poorly maintained over the years and from my understanding the gentleman that previously owned it died previous years before that and left it to a trust a family in Charleston owns, so there was no direct contact with anybody that owned this property until we purchased it and then once we got into where we could see what was going on with it, the pond was in very, very poor condition.
Q. Did you have any choice but to make the dam safe?
A. No, sir.
Q. What all did you have to do to make it safe?
A. We had to go in and repair the spillway and basically re-core the dam.
Q. Was there any way to do the work without doing the work?

A. No, sir.
Q. And the work had to be done?
A. Yes, sir.
Q. Do you agree that if that hurricane had come before you did the work that everybody would have had a problem?
A. Yes, sir.
Q. How big is your pond?
A. Approximately three to four acres.
Q. How deep is it?
A. At certain spots about eighteen feet.
Q. Is it -- do you basically take water from upstream?
A. Yes.
Q. Is that how it's primarily fed?
A. Basically just off of rainwater or just the rain basin.
Q. Rainwater falls in your pond?
A. Yes, sir.
Q. And what rainwater falls off your land, it flows into your pond?
A. Yes, sir.
Q. This is the natural flow of the land?
A. That's correct.
Q. Now when water flows out of the pond, is there any way that water can be silted?
A. No, sir.

Q. Why not?
A. Because of the depth of the pond and the -- and the measures that we put into place. The materials that I ended up purchasing that Roger installed, it's basically all the water is coming off the top.
Q. So any of the sand falls down before it gets to the spillway?
A. That's correct. And any water -- any water going into the pond is at the farthest end.
Q. So what you can tell me is the water that comes out of the pond into the channel is all clean?
A. That's correct.
Q. And it flows into vegetated wetlands where it's supposed to?
A. Yes, sir.
Q. Have you ever seen the pipe that we're talking about?
A. The pipe?
Q. The 24-inch pipe under Davis Drive.
A. I saw the inlet side of it, yes, sir.
Q. Is it clogged or is it free-flowing?
A. I didn't see it free-flowing last night.
Q. You looked at it as late as last night?
A. Yes, sir.
Q. Is there siltation in the pipe?
A. I didn't look down in the pipe.

Q. What did you see?
A. I saw water -- a flow of water going into the pipe and there was water on the other side, but it was not free-flowing.
Q. Does water back up from that pipe from time to time?
A. I have seen it so, yes, sir.
Q. Now besides the -- besides the water coming from your pond into that channel, is there other water that goes into that channel from other places?
A. I could not a hundred percent confirm that, but there has to be because of the -- the shed that I've seen that has backed up on Mr. Shearer's property before.
Q. There's also a spring in that -- down below you?
A. Yes, sir.
Q. So yours is not the only water going into the pipe?
A. That's correct.
Q. But the water that's headed from your land is clean?
A. Yes, sir.
Q. It can't be otherwise?
A. That's correct.
Q. Now is there water that flows toward the pipe from a ditch?
A. There is a -- there's several indentions in Mr. Shearer's property that -- that hold water and when the water backs up, it -- it combines and it also combines

off of Davis Drive into a -- into a holding area right there at Mr. Shearer's property and eventually separates into a ditch and then into that channel.

Q. That basically is rainwater?

A. Yes, sir.

Q. That's not your water?

A. That's correct.

Q. Now we saw somewhat of a cut there in the berm. Did you see that?

A. Yes, sir, I did.

Q. How long has that been there?

A. I could not tell you.

Q. Did you do that?

A. No, sir.

Q. What does that cut in the berm do?

A. It drains Davis Drive into Ms. Garland's pond.

Q. Do you know who did that cut?

A. No, sir.

Q. Davis Drive, the cut there in the berm, the berm acts like a dam, right?

A. Yes, sir.

Q. Water that falls on Davis Drive dams up along that berm?

A. Yes, sir.

Q. But where that cut is the water can go through and it

would go in the direction of Ms. Garland's pond, wouldn't it?

A. That's correct.

Q. Do you have any idea of who put that cut-through in that berm?

A. No, sir.

Q. Would you have had any reason to do that?

A. No, sir.

Q. Would that cut-through allow silt to go down towards her pond?

A. Absolutely it would.

Q. Now last night when you were out there, you say you looked at her pond from the road. You didn't go on her property?

A. No, sir.

Q. You wouldn't do that?

A. I've never been on her property.

Q. At one -- Ms. Garland, was there any time that she started doing anything unusual towards you and your wife?

A. Several occasions. Yes, sir.

Q. Would you tell me what it is that she would do?

A. She would drive up and down Newcastle Drive bordering our property videotaping us, recording us, trespassing on my neighbor's property at my chain link fence to take pictures of our property.

Q. Did you like that?
A. No, sir.
Q. Now was there one day you reciprocated?
A. Absolutely.
Q. What did you do?
A. I -- I returned the favor.
Q. What did you do?
A. I followed her with my videocamera back to her facility -- her -- her residence.
Q. Did you ever block her into her driveway?
A. She pulled into her driveway, I pulled up on Davis Drive. Her significant other got out of the vehicle, closed the gates, and they -- they drove on into her property.
Q. And you drove off?
A. Yes, sir.
Q. That's the only time you've ever followed or video'd her?
A. Yes, sir.
Q. And you did it because she was following and video'ing you?
A. Yes, sir. Numerous times a day.
Q. You just wanted to basically try to put an end to it?
A. Yes.
Q. But did you assault her or accuse -- talk to her or

anything?
A. I didn't speak a word to her.
Q. You just did to her what she was doing to you?
A. Yes, sir.
Q. That was kind of childish, wasn't it?
A. Very.
Q. You're not particularly proud of that fact?
A. No, sir.
Q. Were you angry at the time or frustrated?
A. I was frustrated and aggravated.
Q. How many times do you reckon that she drove all the way around her property video'ing you and your wife before you did this one incident where you followed her?
A. I would say hundreds.
Q. And you actually have a videotape of that -- that day when you were following her, but it doesn't show anything except you in your truck, does it?
A. That's correct.
Q. Did you ever leave your truck?
A. No, sir.
Q. Did you ever cuss her?
A. No, sir.
Q. Did you ever do anything out of the way towards her?
A. No, sir.
Q. Have you ever even spoken to her?

A. No, sir.
Q. Did you ever do anything to damage her property?
A. No, sir.
Q. Who actually cut the timber off your land?
A. I don't remember the name of the company. It was a timber buyer and they actually hired a logging company out of North, South Carolina, who actually cut the timber.
Q. Now Roger is in this business and you're not?
A. That's correct.
Q. Have you ever been in the land clearing or grading business?
A. No, sir.
Q. Now we talked about this stop work order. When the stop work order was issued, where were you?
A. I was either -- I believe I was either in Alabama or I was in Maryland.
Q. And your wife had to handle the problem, right?
A. Yes, sir.
Q. How long did it take for the stop work order to go away?
A. Within hours.
Q. How did you get it removed?
A. I talked to the gentleman with the County. I forget his name now.
Q. Now I don't want you to tell me what he told you, I

want you to tell the jury what you told him. What did you say to him when you learned that there had been a stop work order?

A. We had a previous verbal stop work order, I believe, in the month of June and there was a gentleman that -- I've got a voicemail that I forwarded to you.

Q. Go ahead.

A. That we were disturbing -- had some land disturbing activities and that he was trying to -- there was another property that he couldn't ever catch anybody there. He saw us there --

MR. BELSER: Your Honor, objection.

MR. MOORE: Don't say what he said.

THE WITNESS: Okay.

MR. BELSER: Number one, there's allegedly a voicemail that I never heard or seen and, number two, this is clearly hearsay which is trying to back door, front door, side door, through the roof, everything trying to get in. It's improper.

MR. MOORE: Your Honor, I didn't ask anybody what he said.

THE COURT: All right. Let me see the lawyers for a second.

(Proceedings held at the bench; not reported.)

THE COURT: Don't answer that.

Mr. Moore's gonna rephrase it.

THE WITNESS: Yes, ma'am.

BY MR. MOORE:

Q. You had previously back in June had a conversation with the County. Don't tell me what they said.

A. Yes, sir.

Q. Did -- were you allowed to continue to work?

A. Yes, sir.

Q. Were you required to get a permit?

A. No, sir.

Q. Did anybody ever tell you you had to have a stormwater permit?

MR. BELSER: Objection.

BY MR. MOORE:

Q. Were you ever required to get a stormwater permit?

A. No, sir.

Q. All right. Now I want to go back to the stop work order that's in evidence. When you learned that had taken place, you called somebody?

A. Yes, sir.

Q. And that was with the County?

A. Yes, sir.

Q. What did -- don't tell me what they told you, but tell me what you told them.

A. I asked them what it was in reference to, they --

they followed up with a complaint. The -- I told them previously I went down there over a verbal stop work order and the person that I discussed that with --

Q. Don't say what he said.

A. -- that we were not required to have a permit.

MR. BELSER: Your Honor, objection.

THE COURT: I'm telling you I just said not to say what he said.

MR. MOORE: Don't say what he said.

THE WITNESS: I'm sorry.

MR. BELSER: Your Honor, can we strike that from the record?

THE COURT: I'm gonna strike it from the record.

MR. BELSER: And I'd like a curative instruction, too.

THE COURT: I am.

When I strike something from the record, that means you are not to consider it at all in any way in your deliberations.

Now with that said, let me see the lawyers.

(Proceedings held at the bench; not reported.)

BY MR. MOORE:

Q. Robert, if you tell me again what somebody from the County told you, I'm gonna come up and strangle you, okay?

A. Yes, sir.

Q. You can't do that.
A. Okay.
Q. You can say what you did and you can say what you said, but you can't say what somebody else said.
A. Yes, sir.
Q. Got it?
A. Yes, sir.
Q. All right. You called them and you told them the history?
A. Yes, sir.
Q. Was the stop work order lifted?
A. It was lifted.
Q. Now in the stop work order that was lifted, it says please stabilize. Did you -- other than that request, was there ever any order issued by anyone that you know of ordering you to do anything?
A. No, sir.
MR. BELSER: Objection. Leading.
THE COURT: It is leading.
Just rephrase it, Mr. Moore.
BY MR. MOORE:
Q. What, if any, orders -- other than that stop work order that was lifted, what, if any, other orders were directed toward you?
A. None.

Q. And did you go back to work?
A. Yes.
Q. And did you finish?
A. Yes.
Q. Before the hurricane, was your property already seeded?
A. Yes.
Q. Before the hurricane, was the dam hydroseeded?
A. Yes.
Q. Before the hurricane, was the dam stable?
A. Yes.
Q. Now there's been testimony that approximately 1700 cubic yards of sand is missing from your property. If 1700 cubic yards were missing, do you think you would have noticed it?
A. Absolutely.
Q. Why?
A. That's a -- that's a large portion of dirt.
Q. Did you look at your land after the hurricanes?
A. Every day.
Q. What, if any, erosion have you ever seen on your property since the time you bought it?
A. Very minimal.
MR. MOORE: Thank you, sir. If you would answer any questions counsel may have.

MR. BELSER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BELSER:

Q. Mr. Cade, if I give you a check right now for $13,890, would you transfer your property to me?

A. No, sir.

Q. Okay. Do you know what your property is taxed at?

A. I -- I don't recall what the last tax record was at.

MR. BELSER: Your Honor, this has only come up just because of the questions on cross -- earlier. Your --

MR. MOORE: Your Honor, I've never seen this document, nor has it been disclosed to me in discovery.

THE COURT: It's a question. I don't know that he's introducing anything.

BY MR. BELSER:

Q. What is your -- what is your property assessed at?

MR. MOORE: Your Honor, that would be hearsay.

MR. BELSER: He can answer what the property is assessed at.

THE WITNESS: I don't recall what the last tax --

BY MR. BELSER:

Q. Okay. What do you pay in taxes?

A. My wife writes the check. I couldn't tell you. I don't think I was home when the bill came.

Q. Okay. Would you be surprised to know that your

property was assessed for less than $14,000?

MR. MOORE: That's hearsay, Your Honor. What somebody assessed it at would be what somebody else says and it's hearsay.

THE COURT: I --

THE WITNESS: I don't believe that's accurate. Not -- not for the past year after our house was built.

THE COURT: Don't answer until I rule, please.

THE WITNESS: Yes. I'm sorry.

THE COURT: All right. Let me have you back.

(Proceedings held at the bench; not reported.)

BY MR. BELSER:

Q. All right. Mr. Cade, I'm showing you your -- I just got this this morning. What is -- what is your property assessed at?

A. That says 13,890.

Q. Okay. So for that piece of property that we did the tour of, that's what its assessed at?

A. I didn't see the address on there. We did own some other properties. I wasn't sure what the year is on that.

Q. Is your address 106 Newcastle Drive?

A. That was the old -- that's the old address. I just want to make sure it's the same piece of property.

Q. But it is the same piece of property that we had the drone tour of and that's 2,021 -- I mean, 2021?

A. Yes.
Q. Now let's talk about this cut. Do you remember the cut we saw the picture of you took last -- that was last night?
A. Yeah, that was last night. Yesterday afternoon.
Q. Whose house is that right across the street from?
A. Mr. Shearer's.
Q. Okay. Now there was a -- I'm not even going to get into what happened in June with the verbal stop work order. There was a written stop work order that you received in October after you got a complaint -- after there was a complaint by Ms. Garland?
A. Yes.
Q. Okay. And you actually had a sit-down conversation with -- with Mr. Spires; is that right? Did you hear him testify?
A. Yes, sir. Yes, sir. I couldn't remember what his name was.
Q. Okay. But you and Mr. Spires had a sit-down conversation?
A. No, sir, we had a phone conversation.
Q. You had a phone conversation?
A. Yes, sir.
Q. And you told him you were gonna stabilize the property?

A. I do -- I do not recall that, no, sir. The property had already been stabilized. It'd already been seeded or grassed and I told him we had already been through this once before.

Q. Okay. So it's your testimony under oath -- because I took your deposition. Do you remember when I took your deposition?

A. Yes, sir.

Q. So it's your testimony under oath today, March the 31st of 2022, that it was -- that your property was stabilized well before the stop work order?

A. That it had been seeded, yes, sir.

Q. Okay. It was not stabilized until after Christmas; is that right?

A. No, sir. We had it sprigged. We had the hayfield sprigged in Christmas of that year.

Q. Let me hand you your --

MR. BELSER: Your Honor, may I approach the witness with his deposition transcript?

THE COURT: You may.

MR. BELSER: And I'm gonna unseal it as well.

THE COURT: You may.

(Court's Exhibit Number 6 was marked for identification.)

BY MR. BELSER:

Q. All right. Let's do -- let's do a little turn back the clock here. Do you remember when -- do you remember when I took your deposition on August the 27th of 2019?
A. Yes, sir.
Q. All right. Let's turn to page 20 and just to be -- actually page 19.
A. Page 19.
Q. Okay. And just to be abundantly clear, what you're saying here today, Mr. Cade --
A. Yes, sir.
Q. -- what you're saying here today, what you've told this jury under oath, is that the property was stabilized -- seeded or stabilized? Which one?
A. I said seeded.
Q. So it was not -- it was stabilized?
A. Well, I don't know what the definition of stabilize would be. As far as the -- the condition of the property, we were complete -- we were done with the stump removal and the property had been seeded on the lower side or the right side of our driveway --
Q. Well, let's --
A. -- the opposite side of our pond.
Q. -- think about it this way. Was grass growing?
A. Yes.
Q. So it's your testimony that it was seeded and there

was grass growing, things to hold the ground together, before Sep -- before you got the stop work order?

A. That is correct.

Q. All right. This -- on page 19, my -- what we're gonna do is just I'm gonna read the "Q" and you're gonna read the "A", okay?

A. Okay.

Q. "What does the -- is the condition of the -- is the grass stabilized now? Is it established?".

What was your answer?

A. "Yes.".

Q. "So when you're talking about sprig, let me get back there real quick. It's not like sod --"

A. "No.".

Q. "-- that you roll out?".

A. "No.".

Q. "And it's not like just a seed --"

A. "No.".

Q. "-- that you dis -- that you just broadcast, it's a --"

A. "It's a grass sprig.".

Q. "So like a seed, which has grass growing out of it."

I said that not like a question.

"So like a seed which has grass growing out of it."

What was your answer? Do you see it? Line 18 on

page 19. I -- I flipped my page. You didn't need to flip yours. My pages are messed up. Do you see where we are?

A. Yes.

Q. All right.

A. "From my understanding -- I'm referring to the gentleman that did the sprigging for us --"

Q. "Okay.".

A. It's basically established hay.

Q. No, I'm asking you to read your answer.

A. Okay.

Q. Okay. So from my understanding --

A. "From my understanding, this is what he has at his as farm. This is what he does. He goes out, removes the grass off of his farm and it's in pieces. Bermuda grass grows. It's what we commonly have around here as hay and that's what he brought to sprig it. That's what they call it, sprigging, but it's actually grass sprigs.".

Q. "And when was that done?".

A. "Christmas Day. It was a three-day process, so it was the 24th, 25th and the 26th.".

Q. "2018?".

A. "Yes, sir.".

Q. "So the property was -- what was done to stabilize the soil before then?". What was your answer?

A. "That's the only thing we've done.".
Q. Okay. So when you testified under -- and you were sworn to tell the truth when I took your deposition, right?
A. Yes, sir.
Q. Okay. So do you stand by that answer that you didn't stabilize it until after Christmas of 2018?
A. We seeded it. I didn't clarify being stabilized. I said we seeded it.
Q. So -- okay. You'd just agree with me it wasn't stabilized until after Christmas?
A. I wouldn't even say sprigging it was -- as far as the definition of stabilizing, I don't understand what you're trying to get to.
Q. Well, let's think about it this way. If you've got -- if you have bare earth, if it -- and you've got grass on it, if the grass is grown and established, it's stabilized. Do you agree with that?
A. I agree with that, yes.
Q. Okay. At what point in time on all the earth -- the work that was done, at what point in time -- you saw the video --
A. Yes.
Q. -- which had -- it looked like grasses and the pastures and all that kind of jazz. At what point in time was that actually established?

A. As far as growing and heavily grassed?
Q. And holding the earth together.
A. I would say that would probably be February to March of '19 before that was -- actually before it was all filled in.
Q. Okay.
All right. So you got the stop work order in October that mentioned stabilizing and you didn't start that process for another two months?
A. It did not mention stabilizing, sir. The stop work order did not.
Q. All right. I'm gonna hand you the letter if I can find it.
A. You said the stop work order, sir.
Q. Do you remember receiving the letter?
A. I requested a letter.
Q. Okay. And the letter -- what does the -- Garland Exhibit Number 8, what does it -- do you see the sentence that references stabilization?
A. It says "Please move forward with the stabilization of the project site to eliminate offsite impacts.".
Q. And that was two months later before you actually started that?
A. No, sir. It had been seeded and there was grass growing.

Q. But your -- your buddy who came out with the sprigging, that -- that was not for another two months.
A. That's correct, but we did have it established as far as having grass growing.
Q. Okay. And Exhibit Number 9, we've only met I think on -- how many times have we met? Just once?
A. Just -- there's been a few. A handful here or there.
Q. All right. Do you -- on November the 27th of 2018, do you recall receiving a letter from me?
A. I don't recall, no, sir.
Q. Okay. I'm handing you what's marked as Garland Exhibit Number 9 and I'd like for you to read that letter.
A. Dear, Mr. Cade. I represent Suzan Garland, who owns a pond downstream from your property located at Newcastle Drive and Fish Hatchery Road. Since you began land-disturbing activities at your property heavy loads of sediment laden stormwater, have been discharged and deposited into Ms. Garland's pond. Enclosed are photographs of Ms. Garland's pond dated November 8th, November 13th, November 15th, November 24th that depict the damage. Please be advised that your negligent failure to stabilize your property after logging, stumping and grading it violates Federal, state, county and common law, and I am writing for two reasons. One, to put you on notice of an environmental water quality and property

damage claim that I intend to file and, two, to instruct you to immediately take measures to cease and desist further discharges.

Q. And you got that letter and then you called Mr. Lee; is that right?

A. I got this letter and I turned it over to Mr. Moore.

Q. Okay. You don't need to -- I don't want to know what he has to say, but you --

A. Then I called Mr. Lee.

Q. You called Mr. Lee?

A. Yes.

Q. And you heard -- and Mr. Lee gave you the report?

A. Yes.

Q. Okay. And you never gave -- you never bothered to give that report to Roger to say hey, Roger, you know, we've got a problem?

A. Roger was not named in this, sir. I was.

Q. But you knew at least -- whether or not you actually had a problem, you knew that somebody was saying you had a problem?

A. Yes.

Q. Okay. And you got Mr. Lee to investigate it and he said yeah, I mean, I know you're paying me and I'm -- you asked me for an objective opinion and in my opinion, yeah, you've got a problem?

MR. MOORE: Your Honor, I object to that hearsay. That's not -- the report speaks for itself; otherwise, he's basically pitting one witness against the other. It's hearsay with that.

THE COURT: Rephrase it, Mr. Belser.

MR. BELSER: I can't remember what I said, but...

BY MR. BELSER:

Q. Mr. Lee. All right. So you got the letter from me, you called Mr. Lee for an objective opinion, right?

A. Yes.

Q. And you paid him for an objective opinion?

A. Yes.

Q. Okay. And we've already seen -- and he -- the report that he walked the jury -- walked everybody through, that's what he gave to you; is that right?

A. That's correct.

Q. And do you remember the sentence in there which says the short answer is yes?

A. Yes, I do remember that.

Q. Okay. But you didn't think that was important to you?

A. I do think that was important to me, but I also noticed that there was a sentence in there that also noted -- notated that it took a severe rainfall event.

Q. So you didn't think you'd done anything wrong?

A. No, sir.
Q. Even to this day you have absolutely no remorse for what has happened?
A. I feel sorry for Ms. Garland, I do, but as far as the fault on myself, it's not there, sir.
Q. You wouldn't do anything different, would you?
A. I did. I took the appropriate measures in everything that I did.
Q. You would not do anything differently, would you?
A. No, sir.
Q. All right. Just briefly -- and again, this is -- so can you see this okay?
A. Yes, sir.
Q. I've got to stand so everybody can see it. This is a Lexington County map. Oops. I'm looking -- well, all right. This is the one -- I'm not sure -- there's not a -- I'm not sure what date this is, but this is before you cleared your property, right?
A. Yes, sir.
Q. Okay. And what we saw in the video was kind of the road goes down right here and then loops and then there's all the different paddocks and that kind of stuff?
A. Yes, sir.
Q. Okay. There's no -- the only land use change in this area since 2018 is you clearing your thirty-six,

thirty-nine acres?
A. I -- I wouldn't have any other knowledge of anybody else.
Q. So you don't know of any other land use change?
A. No, sir.
Q. And you don't deny that you're the only land use change since 2018?
A. Again, I have no knowledge of anybody else.
Q. And we saw the -- going through the video, we saw there -- you've got an asphalt kind of road that comes down to your property?
A. Yes, sir.
Q. And you've got that nice big house?
A. Yes, sir.
Q. And you've got those multiple structures. One I think was at least a three-door garage?
A. A barn.
Q. A barn?
A. Yes, sir.
Q. Okay. What do you park in there?
A. Usually a tractor, animal feed, pond supplies and just --
Q. And for your -- sorry. I didn't mean to interrupt.
A. No, no.
Q. And for your trucking business, you occasionally park

your trucks on your -- on your property?
A. Yes.
Q. And in your deposition -- and so in realty the -- the flyover of the paddocks, which has the sprigs, that was not -- that didn't really take until, you know, February, March, 2020 -- 2019?
A. Bermuda grass is dormant in the winter -- in the winter months, so that's why we pre-seeded with a winter grass so that we would have some establishment of grass until it was sprigged, so when the -- when Bermuda hay grows, it grows in the spring to summer months.
Q. So when did the -- I guess when did the -- your property look like it did in the video?
A. It's looked like that since probably February of 2019. February to March. Because the winter -- the winter grass we had growing was up by -- was really high by then. It was probably waist high.
Q. And you started in May of 2018; is that right?
A. I believe so.
Q. Okay. All right. We're getting close. I want to talk about -- we saw the video of -- of you outside of Ms. Garland's gate. Do you remember that? I can pull it up again.
A. Yes. Yes. The one we showed yesterday -- or you showed yesterday.

Q. Yeah, the one that I -- yeah, that Ms. Garland said she felt intimidated, threatened. Do you remember that?
A. Yes, sir.
Q. Okay. That was your truck?
A. That was my truck. Yes, sir.
Q. And that was -- it's kind of hard to see because it's kind of pixilated, but in your truck you had your camera out and you were doing this towards Ms. Garland; is that right?
A. I was -- I was doing the same exact thing she was doing. Yes, sir.
Q. Okay. And you said that -- and, I mean, in this day and age, it is so easy to take videotapes, isn't it?
A. Yes, sir. It sure is.
Q. I mean, we can -- I can photograph -- I'm not taking a photograph of you right now --
A. That's right.
Q. -- but it's as easy as all get out?
A. Yes, sir.
Q. Okay. And you say that there were hundreds of times when she came and videotaped you?
A. Our property, yes, sir. Sometimes with us in it and sometimes with us not.
Q. Okay. And on -- on public roads?
A. On public roads.

Q. And do you have any videotapes of that?
A. Yes.
Q. Dueling videotapes?
A. I've got the one videotape of the same identical incident that you referred to yesterday with her.
Q. And --
A. And I can tell you one of the occasions, and you have photographs of it, where she was on a chain link fence bordering my property, which shows her trespassing on a neighbor's property.
Q. Whose property was that?
A. Mr. Harvey Reynolds.
Q. And she was -- she was on the chain link fence?
A. Yes.
Q. Like --
A. Newcastle Drive is here. He owns a very small strip of property here. My chain link fence starts here. She was at my chain link fence.
Q. Now when you heard -- how big are you?
A. I'm six-foot-three.
Q. Six-foot-three?
A. Yes, sir.
Q. When you heard -- when your wife told you that Mr. Melichar was filming her with a gun and -- and yelling obscenities towards her, that made you mad as all get out,

didn't it?
A. My wife's not intimidated very easily, sir.
Q. I'm asking how you felt. Did you -- you heard her --
A. I felt that my wife can handle herself.
Q. But you were mad, weren't you?
A. I -- she took care of the situation herself, sir, and explained to me that she handled herself.
Q. But you and -- but eventually you and Mr. Melichar got mutual restraining orders against each other?
A. That was -- I believe that was -- yes. Yes, that was after that fact.
Q. Okay. Do you understand why Ms. Garland would be intimidated when a six-foot-three man as big as you are parks in front of her driveway filming her like that? Do you understand?
A. Sir, she had never seen me outside of a vehicle. She didn't know how tall I was or how large I was.
Q. But she'd seen you before if she'd --
A. No, sir.
Q. So even -- so in all the hundreds of times -- so you're saying the hundreds of times --
A. Yes, sir.
Q. -- she had driven on a public road and filmed you, right?
A. Yes, sir.

Q. Were you -- were you always in the truck when that happened?
A. I was either in a truck or I was -- I was on what -- we have one of our side-by-sides that I would ride the property with.
Q. And your -- it's your testimony that you -- you don't think she had any idea how big a boy you were?
A. That's correct.
Q. Okay. Assuming that she -- that she knew you were six-foot-three and a big guy, do you understand why she would feel intimidated, bullied and threatened?
A. No, sir.
MR. BELSER: I have no further questions.
MR. MOORE: Your Honor, he asked him three times about what he would understand about what she might believe, in my humble opinion it's totally irrelevant facts of the case, but the question's been asked about three times.
THE COURT: Okay.
MR. BELSER: I don't have any further questions, Your Honor.
THE COURT: He's not gonna ask any more.
All right. Go ahead.
MR. DOUGALL: May it please the Court?
THE COURT: Absolutely.

CROSS-EXAMINATION

BY MR. DOUGALL:

Q. Mr. Cade, you hired Mr. Singleton, right?

A. Yes, sir.

Q. You paid him a lot of money for the work he did?

A. Yes, sir.

Q. Because he did a lot of work?

A. He did a lot of work.

Q. And you inspected all that work?

A. I was there most days.

Q. And you were happy with that work?

A. I was satisfied, yes, sir.

Q. Okay. And as Mr. Moore testified to earlier, you sued Mr. Singleton because he told you to?

A. Yes.

Q. On the eve of trial, in other words, December 6th of last year, correct?

A. Yes, sir.

Q. This case has been going on for three years and right before trial you decided to sue Mr. Singleton because your lawyer told you to?

A. Yes.

Q. That's the only reason you sued him, right?

A. Yes.

Q. And you have absolutely no evidence that he did

anything wrong, do you?
A. No, sir.
MR. DOUGALL: Thank you.
REDIRECT EXAMINATION
BY MR. MOORE:
Q. Robert, you sure didn't want to sue him, did you?
A. No, sir.
Q. And that's because you don't believe that he did anything wrong?
A. That's correct.
Q. Just like you don't believe you did anything wrong?
A. That's correct.
Q. If you did something wrong --
MR. DOUGALL: Objection, Your Honor. He's going into -- basically Mr. Moore's now trying to testify as to why he told his client to sue my client and that's improper.
THE COURT: Well, I think it might be improper there, Mr. Moore. Let's rephrase it and not on a hearsay.
MR. MOORE: Sure.
BY MR. MOORE:
Q. If you did something wrong, what do you believe about Roger?
A. That if I did something wrong?

Q. Yeah.
A. Then -- then it would have to have been Roger did it wrong.
Q. All right. Now I do want to pull up something that you were asked about?
MR. MOORE: Callee, can you help me, please?
Q. You were asked about your property being valued at some $13,000 and you were asked about a tax bill. I'm gonna show you the tax bill that you were asked about.
And there we have the rock in the middle of the ocean again.
Robert, is this the document that you were asked about from the County of Lexington?
A. That the County of Lexington asked me about?
Q. No, that you were asked about by the lawyer?
A. No, that's not the document he showed me. No, sir.
Q. Well, this appears to be a Lexington County, I think, tax bill.
Bring it down one, Callee, if you can. That should be it.
Robert, I think this is what he showed you from what I understand because they just sent it to us, okay?
A. Okay. Well, it was a smaller screen and it might have been displayed a little differently.
Q. It was a smaller screen.

MR. BELSER: No.

MR. MOORE: That's not it?

MR. BELSER: That's not the same document, but I did send it to you, so.

THE WITNESS: I was gonna say it didn't look familiar, but it could have been.

BY MR. MOORE:

Q. All right. Well, this appears to be a document from Lexington County and it has taxable value of land at 190 some odd thousand, taxable value of building at $320,000 and then assessment of the building $13,170, and it's got a homestead exemption and the property is basically assessed as agricultural property, isn't it?

A. Yes, sir. Other than the acre our house sits on.

MR. MOORE: Thank you, sir.

Nothing further, Your Honor.

RECROSS EXAMINATION

BY MR. DOUGALL:

Q. Mr. Cade, to get to the point --

A. Yes, sir.

Q. -- can you tell this jury anything that Mr. Singleton has done wrong to justify him being sued in this case?

A. No, sir.

MR. DOUGALL: Thank you.

THE COURT: Mr. Belser, anything?

MR. BELSER: No, Your Honor.

THE COURT: May I let him step down?

You may return to the table.

(Witness excused.)

MR. MOORE: And that would be our case, Your Honor.

THE COURT: All right. Madam Forelady, I have just a couple of things I need to take up with the lawyers. I'm gonna let you go back to the jury room and I'll call you back in in just a moment.

(Whereupon, the jury retires to the jury room at 4:31 PM.)

MR. DOUGALL: Your Honor, I would move for a directed verdict on behalf of Mr. Roger Singleton. As you well know, Mr. Belser and his client have not sued him, they've put up no evidence. None of the experts, none of the witnesses they called provided any testimony that Mr. Singleton had done anything wrong. Both Mr. and Ms. Cade, who have sued him, have both testified he did nothing wrong. There is absolutely no evidence in front of this jury that Mr. Singleton has done anything wrong and he's entitled to a directed verdict in the third-party case.

THE COURT: And I'll be glad to hear from you, Mr. Moore.

MR. MOORE: He's just wrong. Here's the -- here's

what the evidence shows. We're in a Catch-22 situation here. We agree that Mr. Singleton did nothing wrong; however, if what they say we did is wrong, then what he did is wrong because he did it for us.

So we get up and say no, we did nothing wrong and neither did he, but the answer is this. If what they say is true, then the person who got paid to do it right is Roger Singleton, which clearly under any theory of indemnification or any theory of liable over has to work that way.

The defense is basically one of we didn't do it, he didn't do it, but if we did it, he did it, and that's the way it basically has to be. I'm not limited in my case against him on simply what my clients say was done wrong. We basically have said in our pleadings that he didn't do anything wrong, but if -- if we did anything wrong, he's the one who did it and he did it wrong and he's liable over.

As a matter of fact, Mr. Singleton said if anything was done wrong, I'm responsible for it. That's in the record. And no matter how much Mr. Dougall wants to say it's not in the record, it is. Mr. Singleton says the exact same thing we do. Neither of us did anything wrong, but if something was done wrong, I'm responsible for it, which is the law, and which is true.

So we're in a posture to where if in our lawsuit we have to adopt what they say and say okay, from the record as a whole if there's evidence that we did anything wrong, he did it and is responsible for it as he says, there's no way that they can be dismissed in this case.

Now I think everybody should be dismissed based upon this record. I think both of them should be dismissed because there is no proof of negligence, there is no proof of duty and -- and there is no proof of any proximate cause nor rational proof of damages nor actually any legitimate expert opinion that says anybody did anything wrong.

So Mr. Dougall and I totally agree neither of us did anything wrong, but if we did...

THE COURT: I think you might agree with Mr. Dougall, but I don't believe Mr. Dougall agrees with you.

So, Mr. Dougall, let me hear your response.

MR. DOUGALL: Very briefly.

THE COURT: Because I'm gonna tell y'all, this is a trial. This is a court of law. This is why we have a jury. I've got a jury in the jury box. You just can't tell me y'all have got an agreement on the side and, therefore, I don't -- I can't dismiss the --

MR. DOUGALL: We have no agreement on the side.

MR. MOORE: We have no agreement on the side.

THE COURT: Well, saying that the indemnification -- this is -- he came and went to trial. Let me hear about that.

MR. DOUGALL: That's exactly what I was getting ready to say, Your Honor. He -- Mr. Singleton was sued for breach of contract and negligence. There's been no proof of any contract because there wasn't one and there's been no proof.

THE COURT: I haven't even seen a contract.

MR. DOUGALL: There isn't one and -- but they sued him for breach of contract and there is no proof on their negligence claim that he did anything wrong.

So now if Mr. Moore wants to turn this into an indemnity case, which it appears he's trying to do, the fact of the matter is that if it is an indemnity case, it's an equitable indemnity case.

Mr. Singleton has already settled with the plaintiff, so if he's gonna try to get indemnity from him, he's still got to show that he did something wrong and there's no evidence. He says well, if -- it's not a matter of if anymore.

THE COURT: And y'all even talked about a setoff. I guess that's what I'm -- I'm talking about.

MR. DOUGALL: He's entitled to a setoff from what we paid, but he's -- he's proven no right to any indemnity. He's proven no knowledge, he's proven no breach of contract. It's time to let Mr. Singleton go.

MR. MOORE: No. No. That's absolutely wrong. There is no requirement that there be a written contract in order to bring an action on a contract. Mr. Singleton clearly testified he was hired to do such certain work and he was hired to do it correctly.

MR. DOUGALL: And there's been no evidence he did it incorrectly.

THE COURT: And there's no testimony to the contrary.

MR. MOORE: Then I agree. Then there's no evidence to the contrary that anything he did was incorrect. I agree. And if that's the case, then the defendants both are entitled to judgment as a matter of law. If there's no evidence, as the Court has just indicated, there's no evidence that he did anything wrong.

THE COURT: No, your --

MR. MOORE: He did all the work.

THE COURT: -- clients have said that he did nothing wrong. This -- the plaintiff hasn't said that.

MR. MOORE: But the case is judged from the

evidence as a whole. We're in a posture of where we say we had a contract for him to do it right. He said if it's found that something was done wrong, it's on me, I did it wrong. He did all the work that he did for us pursuant to a contract. Everything that was done or not done out there was done pursuant to a contractual agreement with my client. If the Court determines that something was done wrong according to the evidence as a whole --

THE COURT: It's not the Court that's gonna determine, it's the jury that's going to determine.

MR. MOORE: Good. Then his motion should be dismissed. I agree. It's a jury question. Absolutely, and you're correct.

THE COURT: It's nothing but for the jury to decide, but not on his client on a directed verdict. I have heard absolutely no evidence whatsoever that he's done anything wrong. Your clients who are suing him just took the stand and said there's nothing that he did wrong.

MR. MOORE: We agree and we would like -- if the Court's gonna direct the verdict, we want a charge to this jury consistent with the Court's order that Mr. Roger Singleton did nothing wrong. Good. If that's the ruling. If, as a matter of law -- if, as a matter

of law Robert Singleton did nothing wrong, then the Cades have done nothing wrong.

THE COURT: That's not the way it works.

MR. MOORE: It is the way it works.

THE COURT: No, it's not the way it works, Mr. Moore, because I'm gonna tell you there is not enough evidence to go forward to prove to this Court that this man did anything wrong in what your clients stated or wrong or -- to even let it go to the jury. There's not enough. There is enough from the plaintiff to come against your clients.

MR. MOORE: What did my clients do that Mr. Singleton didn't do?

MR. DOUGALL: They did lots of things, Your Honor. They got permits. They maybe didn't get the right permits. They had some other company come and clear the land. They decided what the buffer was gonna be. They then hired my client who said yeah, if I had done anything wrong, I would be responsible for it, but there's absolutely not one iota of evidence in this courtroom that he did anything wrong.

THE COURT: I agree. And I agree that you're entitled to a directed verdict, and it's granted --

MR. DOUGALL: Thank your, Your Honor.

THE COURT: -- based on those reasons.

All right.

MR. MOORE: Well, then, Your Honor, I now move for a directed verdict.

THE COURT: I understand that you do and -- and the Court's denied it and I'm gonna deny it again. I think that there's enough to go to the jury for a duty. I think there's -- and I'll let you do it, Mr. Belser.

I've already ruled on this once before. There's a common law duty. There's been testimony about causation, there's been testimony on damages. I'm gonna let it go to the jury.

MR. MOORE: Your Honor, I just would like to -- to add some additional language to my motion.

THE COURT: You can.

MR. MOORE: The Court has now ruled as a matter of law that Mr. Singleton did nothing wrong.

THE COURT: I ruled on a directed verdict motion. You did not present enough evidence for this case, Mr. Dougall's case and his client, to go to the jury period. It's a directed verdict.

MR. MOORE: I understand. I'm not arguing against what you ruled. I'm making my own motion for directed verdict.

THE COURT: Okay.

MR. MOORE: The Court has now ruled as a matter

of law that there is no evidence that Mr. Singleton did anything wrong. As a result of that, I move to strike from the complaint all allegations of negligence pertaining to anything that Mr. Singleton did or did not do. There's plenty of testimony on those things that he did and plenty of things on the things that he did not do.

Now the Court has ruled as a matter of law that none of those amount to wrongful conduct. That being the case, I ask the Court to strike all of the allegations of the complaint against my clients related to those things that Mr. Singleton did or did not do because none of those as a matter of law have been determined to be negligent or wrongful and if if it's not enough proof there, then it's not enough proof there. The proof that has to be -- if I might finish. I mean, I'm happy to -- the Court can say what the Court wants to say, but I'm right about this. If, as a matter of law, Mr. Singleton did nothing wrong and there's not enough evidence to prove that he did, and yet of all these things that he did there's no proof that any of that was wrong, then the allegations that relate to what he did have to be stricken from the complaint.

THE COURT: Okay. I understand your position, and I know you keep saying as a matter of law, now let me

explain to you. This is a jury trial. It is -- your clients are suing Mr. Dougall's client. You have the burden of proving that he did something wrong. I'm telling you you haven't met your burden, okay? I don't know how else to say it because your client's testimony that I have heard from this witness stand, from your own clients, not the Court and as a matter of law, but from your own clients, have testified that he has done nothing wrong.

As a matter of fact, that is the only testimony that I have heard about Mr. Singleton throughout this whole trial period. The burden has not been met. I grant the directed verdict.

MR. MOORE: But that's not my motion. My motion is basically --

THE COURT: And I understand and you -- and you want me to strike it and I'm telling you I've denied that motion --

MR. MOORE: Thank you, Your Honor.

THE COURT: -- and for the reasons that I've just stated for the record.

So I also deny your directed verdict and we will go forward with this case.

Are y'all ready to give closings or do y'all need a quick break?

MR. MOORE: We can break.

MR. BELSER: Your Honor, I think for record I have to move for a directed verdict, too. It's not that I'm jumping on the direct verdict --

THE COURT: Let's see. Who are you being sued by?

MR. BELSER: Right. A directed verdict on -- on my claim that as a matter of law --

THE COURT: Okay.

MR. BELSER: -- we have -- we have proven our case. There is completely incompetent evidence from the defense as to -- to rebut the allegations of duty, breach, causation and damages. There's absolutely no competent evidence from the defense that there was not a trespass and damage and -- and an unreasonable interference and damage, so for those reasons I move for a directed verdict.

THE COURT: And I understand your reasons and I, too, deny it. I do think that it is a question for the jury, but I appreciate your argument and it is so noted for the record.

All right. Let's take a 15-minute break and then we will go into closings.

MR. DOUGALL: May Mr. Singleton and I be excused, Your Honor?

THE COURT: You may, Mr. Dougall.

MR. MOORE: And can we put on the record there's a 62,500 dollar payment --

THE COURT: Now let me tell you, that's the other thing, too.

Could you tell me, Mr. Dougall, the exact amount?

MR. DOUGALL: Yes, ma'am.

THE COURT: Because I don't know what this jury's gonna do. I don't even try to second guess a jury.

MR. DOUGALL: $62,500.

THE COURT: Okay. And you are in agreement that if there is an any verdict, this shall be a setoff?

MR. DOUGALL: That's my understanding of the law.

THE COURT: Okay. Then so be it.

And, Mr. Belser, do you have anything on that?

MR. BELSER: I agree.

THE COURT: And may -- do you need Mr. Singleton or Mr. Dougall anymore?

MR. BELSER: No. No, Your Honor.

THE COURT: Okay. You are excused.

MR. DOUGALL: Thank you.

THE COURT: Have a good weekend.

MR. BELSER: The only thing that I do need is a copy of the final jury charge and the -- whatever the final verdict form is.

THE COURT: Okay.

MR. BELSER: Your Honor, it's 4:45. What time do you want to roll?

THE COURT: I can start -- we can start at five.

Let me ask you. I guess -- because the jury's willing to work late to get this case done. I know Mr. Moore's got to be somewhere. If I let you close and charge tomorrow, it is not gonna be until about 1:00.

MR. MOORE: That's fine.

THE COURT: I guess I could call the jury back in and see what they want to do or we can go ahead and close and charge and let you go to your meeting and see how long they're gonna be out.

MR. MOORE: I can't imagine any way we could argue and charge from 5:00 until 6:15.

THE COURT: And that's the time you need to leave, 6:15?

MR. BELSER: As much as I'd love to get this thing over today, I do think that's probably pushing it.

THE COURT: Let's bring the jury back in and let me tell them what we're gonna do. And then I'm going to tell both lawyers. Jury charges. Please read them tonight. We're fixing to give you a printed copy. I think we've worked -- I know, Mr. Moore, you wanted Act of God, I put that in there, and some stuff you

wanted.

MR. BELSER: Act of God's in there?

THE COURT: For the hurricane.

MR. BELSER: Well, Your Honor, that's an affirmative defense and it was never pled, so.

THE COURT: Well, let me hear from the other side.

Hang on. Let me get this jury out of here and then we're gonna talk about this while we've got time.

(Whereupon, the jury return to the courtroom at 4:49 PM.)

THE COURT: All right. Madam Forelady, and ladies and gentlemen of the jury, we're finished with testimony; however, what is left in this case is closing arguments and also the charge on the law. I do not believe that there is going to be enough time for me to do that because by the time that -- even if we started now, it is 5:00. This case wouldn't go to you until 8:00 tonight and I don't want to do that to you because this case is important to both sides and I want you to have time to think about it, so.

Tomorrow is Friday. If I could ask you to come back at about 12:30, I will -- everybody be here at 12:30. I'm sitting here thinking of my travel time. If I can get here at 12:30, then we could do closings

and I can charge and then I can let you deliberate. I know it's been a long week, and I really was hoping we'd get it done today, but I also do not, do not, want you rushed at all.

So if that's amenable with everybody, I'm gonna tell you don't talk about this case tonight to anybody, don't do any research, and I'll see you about 12:15 tomorrow.

Thank you. Hopefully that helps you out with the babysitting.

JUROR: Thank you.

FOREPERSON: Thank you.

THE COURT: Have a good evening.

(Whereupon, the jury was excused for the day at 4:52 PM.)

THE COURT: All right. While we're -- while we're here and this way maybe it will save us a little bit of time tomorrow, let's flip through these jury charges right quick.

And, Stacy, this doesn't need to be on the record. Is that okay?

(Off the record discussion.)

MR. MOORE: Your Honor, you might want to keep the court reporter because we've got some --

THE COURT: Okay. Let's put it on the record. I'm

all for the record.

MR. BELSER: Could we just take a quick bathroom break?

THE COURT: Yeah, I could take a break, too. We'll come back because we've got till when Mr. Moore needs to go.

(Recess taken at 4:54 PM.)

(Back on the record at 5:12 PM.)

THE COURT: Okay. Let's go through these.

Page Number 2, introductions, are we okay with that?

MR. MOORE: Yes, ma'am.

MR. BELSER: Yes, ma'am.

THE COURT: Page Number 3, duties of judge and jury, are we okay?

MR. MOORE: Yes, ma'am.

MR. BELSER: Yes, ma'am.

THE COURT: Page Number 6, direct and circumstantial evidence and what is not evidence?

MR. BELSER: Yes.

MR. MOORE: Yes, ma'am.

I would also have one other motion, please, Your Honor, if we might.

Can I do that right now?

THE COURT: Yes.

MR. MOORE: I move to strike punitive damages on

all claims. There has certainly been no proof of gross negligence nor reckless. There certainly has been no intentional proof and all the factors required to be proven in regard to punitive damages, which are set forth in the case law such as history of recklessness, awareness of the attempts, degree of punishment, the wealth and the amount of impact it would have on defendant's future and likelihood of deterrents, none of those have been placed into evidence as required by the statute and I would object to punitive damages being considered until an actual award has come back. I'd ask that it be bifurcated.

THE COURT: Bifurcated? Do you agree on bifurcation?

MR. BELSER: Yeah, I've done it both ways. It's kind of a pain in the rear end thought because then you've got to argue twice and you've got to charge. It just -- it elongates the process and if we start at 12:30 tomorrow, then -- I mean, I would -- I would rather -- first of all, I do think -- for a lot of reasons think this is a punitive damages case. I'm happy to roll through that. I don't think -- I think that --

THE COURT: Roll through it because I want to hear it.

MR. BELSER: Okay. Well, Your Honor, there's -- I mean, punitive damages really are appropriate if there is conscious disregard for the rights of others. In this situation, there's ample evidence that the Defendants Cade were on notice that what they were doing was actually causing harm to Ms. -- Ms. Garland, not only from Ms. Garland herself and from me, but from the County and also from their own expert witness, yet they seem to disregard that whole thing and are still to this day steadfast in their defiance that they have not done anything wrong.

So, you know, is there kind of reckless disregard for her rights? Yes. Is a deterrent function necessary to teach these folks what the responsibilities are to their fellow neighbor? Yes.

As to the -- the relative wealth of the defendants, we were taken on the HGTV tour of the property. There's ample evidence of this property that they own, all the different structures that are out there, you could see vehicles, you could see farm equipment, you could see a very nice brick house. There's been -- this is a punitive damages case. Not to mention the fact that there's evidence in the record that there's a willful violation of an ordinance, which is evidence in and of itself of recklessness.

THE COURT: Okay.

MR. MOORE: Your Honor, proof of ownership of a house is not proof of net worth. The way you basically put into evidence in regard to the ability to pay is not that you have a big house, but what your net worth is.

In this situation, you could have a million dollar house with a $2 million --

THE COURT: Mortgage.

MR. MOORE: -- mortgage. That doesn't prove it.

THE COURT: I know.

MR. MOORE: The indication is that -- the evidence is replete that these folks didn't receive notice of anything until after the hurricane had hit. They went to the County, according to them, asked them what they had to do, were given the permits they needed, came back. Still nothing in the record indicating they even needed a permit. The record is devoid of that particular fact. There has to be not only intentional conduct in doing what they did, but there has to be some proof that they were actually doing what they did with knowledge of some sort that it was going to harm this lady's property. There is no evidence of that in effect. There's no indication of intentional wrongdoing, nor is there any evidence of negligence or gross negligence. It has to

be foreseeable.

When they're -- they have an ordinance that says they're exempt, when they've been to the County and they don't have to have a permit, and there's no indication that there's going to be any harm done to anybody, that's simply not a punitive case. This case -- punitive should actually be stricken. If anything, it's negligence, but there's no -- there's not adequate proof of -- of any type of intentional wrongdoing or gross misconduct that would give rise to a punitive case. It's just not there.

MR. BELSER: Your Honor, Mr. Moore is arguing the facts in the light most favorable to him. If he wants to argue that to the jury, that's fine. I've argued cases like this and gotten punitive damages -- gotten punitive damages in cases just like this that have been up to the court of appeals and have been affirmed. This is a punitive damages case if there ever was one with a conscious disregard for her rights.

THE COURT: Well, I'm gonna tell y'all, I'm gonna take it under advisement. I'll let y'all know in the morning, but I'm gonna tell you the thing that bothers me is their own letter from the engineer that they hired and totally disregarded that. At that point, I knew they were on notice because they hired somebody to figure out what was going on. That bothers me. I also

think that --

MR. MOORE: Your Honor, that was after the suit was already filed and whatever injuries happened had already happened.

MR. BELSER: That is absolutely false.

MR. MOORE: And the evidence also is --

THE COURT: I thought it was before the suit was filed.

MR. MOORE: No, ma'am. It was after.

MR. BELSER: That is false.

THE COURT: Okay. Then y'all two need to look at the evidence and -- and find out if it was before or after and let me know tomorrow. I'll take it under advisement and you'll have my decision tomorrow.

I'm just telling you that to me is a reckless disregard. I'm not convinced -- on the County, I'm not real sure I know what happened there. It looks like somebody dropped the ball because they do a stop order and the next thing I know there's supposed to be grass planted and it appears that it -- it wasn't until months later. So that, you know, is also disregarding. And why they didn't get a permit under the statute, I don't know, but it looks to me clearly it was well over a hundred acres. They built a pole barn. They probably should have gotten a -- or well over one acre. I think

it was one acre, not a hundred.

But I will take it under advisement, but be able to answer those questions for me tomorrow.

MR. MOORE: Thank you, ma'am.

THE COURT: All right. The direct and circumstantial evidence and what is not evidence, are we okay with that?

MR. MOORE: Yes, ma'am.

MR. BELSER: Yes, ma'am.

THE COURT: The preponderance of the evidence charge on page 7, are we okay?

MR. MOORE: Yes, ma'am.

MR. BELSER: Yes, ma'am.

THE COURT: Depositions. I changed the deposition to add video deposition because that's what it was.

MR. MOORE: Yes, ma'am.

THE COURT: So I made some changes on that, but I think it will be fine.

My expert witness is the same expert witness charge on 9 and 10. Any problems with that?

MR. BELSER: No, Your Honor.

THE COURT: Then I've got the ordinance.

MR. MOORE: And it's apparent one of us is not reading the ordinance correctly.

THE COURT: Well, I think it's gonna be up to the

jury to decide what --

MR. MOORE: Well, Your Honor, if this ordinance is going to be charged, there is a portion of the ordinance which says exemption and it says if it is over an acre, then no permit is required unless there's --

THE COURT: Yeah, that's on page 13. This is the whole complete statute. I didn't know if y'all wanted me to read that or I could shorten it.

MR. MOORE: I would prefer -- the ordinance has been placed into evidence --

THE COURT: Evidence.

MR. MOORE: -- and I think that when it is placed into evidence, they are required to do that if they claim it applies, but if it is a piece of evidence, it should not be read as basically --

THE COURT: A charge.

MR. MOORE: -- the charge. This should come out in my humble opinion.

MR. BELSER: I mean --

THE COURT: I'm gonna tell you now I know that I have in here negligence per se that says if you violate a statute you're negligent.

I'll be glad to hear from you, but I'm gonna tell you I'm kind of inclined to agree with him. It is a piece of evidence. They go can and read the statute

their selves. All I'm doing is reading it to them on a charge, the exact statute.

MR. BELSER: Well, I'm all for not boring them. I mean, it is in evidence. I'm fine. Let's just --

THE COURT: I could do this. Let me ask this. I could just put in addition to the common law duty of care, Lexington County has a stormwater management ordinance codified in the code of laws and just leave it. They've got it in the evidence.

MR. BELSER: I think that's perfect.

MR. MOORE: I think then you have to basically say it is up to you whether an exemption applies or doesn't apply.

THE COURT: Okay. There you go. I -- I think that's good.

MR. BELSER: That's works.

THE COURT: All right. She's fixing that. I think that works good. I like that.

MR. BELSER: And you can determine the applicability of it.

THE COURT: It is up to you -- what did you say, Mr. Moore?

MR. MOORE: It is up to you to decide whether the statute does or does not apply.

THE COURT: There you go. And I think that's the

law. I think it follows perfectly.

MR. BELSER: That's very fair and it cuts all that junk out.

THE COURT: It does and they've got a copy of the statute. They're gonna get all of this stuff back in the jury room just to let those of you who don't know what in world we're talking about, they'll get it back there in the back.

All right. Negligence on page 14. I found a typo, I've corrected that, but it goes onto page 17.

MR. BELSER: Your Honor, my only -- well, I've got a couple of comments on this. One is the plaintiff -- the second paragraph. First, the plaintiff must prove da-da-da-da-da, this is a question of law, which I will decide.

LAW CLERK: It should say "you" and that's what we caught, correct?

THE COURT: Yes.

MR. BELSER: Oh, okay.

MR. MOORE: Your Honor, I do think that something ought to be added there which basically is the defendant is not to be held liable for any injury not proven to have been caused by the defendant's actions.

THE COURT: All right. Let me find a place that we can put that, Mr. Moore.

All right. Let's go over page 14. I am changing this is a question of law which you will decide, and I put in there on the next, if you decide there was a duty of care, I had to change that, too, that was just a typo, then you must decide the remaining questions. Then we go into preponderance and whether they breached a duty of care by negligence act or omission. Then it goes on to explain what negligence is.

MR. BELSER: I don't have any issue with that.

THE COURT: And then on page 15 we're going into the plaintiff must also prove by the greater weight damages as a result of a breach of duty and then they must prove that the damages were proximately caused. Then I go on to explain proximate cause.

MR. BELSER: Your Honor, my only thought on that is I didn't -- I tried to look through this as quickly as I could, I didn't see anything in here on damage -- like an instruction as to what actual damages are.

THE COURT: What actual damages are and I didn't see it either. We're gonna need that.

MR. BELSER: And there's -- I think that the restatement of torts, which is in my pre-trial brief, is -- is applicable, which is the measure of damages when property has been harmed by something and is capable of remediation, which that's the case that was

cited -- I think that both of us cited the case of Vaught versus Hardee, which cites the restatement with approval. It's in my pre-trial brief on page 5, if you have it, which basically says that the damages are the difference in value or at the election of cost of restoration, the loss of use, discomfort and annoyance.

THE COURT: All right. Are you wanting to put that in with negligence?

MR. BELSER: Well, I thought that -- I thought I had that as like a separate charge. I think that can be just after this.

THE COURT: Okay. Let me get through so I can put in what Mr. Moore needs and then we'll add --

MR. BELSER: Sure.

THE COURT: -- and I'll get this all typed up here. She's typing it as we go.

Then I into proximate cause, the natural chain of events. I'm on page 15. And then the last paragraph on 15 is that the proximate cause injury would not have occurred but for the negligence.

Then I put on here they must prove legal cause that it was foreseeable, the consequences, and then proximate cause does not mean the only cause.

And then I think this is where I need to put in yours at the bottom of page 16. It says however, if

the real cause of the claimed injury or damage is left in doubt by the testimony, the plaintiff has not met his burden. I charge you that where the cause of the plaintiff's injuries may be reasonably attributed to an act for which the defendants are not liable as to one for which they are liable, the plaintiff has failed to carry the burden of establishing that his injuries were the proximate result of the defendant's negligence and the verdict must be for the defendant.

MR. MOORE: It also should say, Your Honor, that the defendant would only be liable for those damages which the defendant actually caused.

MR. BELSER: I think that that's already covered, but, I mean --

THE COURT: I'll add that as the last paragraph. The defendant would only be liable for the damages for which the defendant caused.

Should I say actually caused?

MR. MOORE: Actually caused, I think.

THE COURT: Actually caused.

MR. BELSER: That's fine.

THE COURT: Okay.

All right. Then on page 18, I've got the common law duty of landowners.

MR. BELSER: Yes.

MR. MOORE: I -- I don't have any problem with that.

THE COURT: Okay. Then I've got negligence per se. This is gonna go with the statute -- or not the statute, the ordinance --

MR. MOORE: Right.

THE COURT: -- that they will determine whether...

All right. Page 21 is gonna be a question mark per my ruling. That's punitive damages. I need to add what damages -- what they can give. So I'm gonna take out page 21. I'll decide on that. I'll look at it tonight.

Then I've got trespass to real property on page 24.

MR. MOORE: I think that's okay.

THE COURT: Because I took out the permanent because there's no testimony of any permanent. All of it's temporary.

MR. BELSER: Your Honor, my only -- sometimes -- I had one request to charge, which was trespass can be in the form of siltation or like particles.

THE COURT: I said no.

MR. BELSER: You said no? Okay.

THE COURT: I'm just gonna tell you I'll let the jury decide. It's just like that case law that came down -- I can't remember. It came down last year us giving examples.

MR. BELSER: Okay.

THE COURT: The Supreme Court wasn't happy with us. I don't know what judge did it, but they gave an example and said y'all let the jury decide. They can get it.

MR. BELSER: Okay.

THE COURT: So I -- I saw that and I originally had it in here and I marked it out. I just thought it was too close.

And I did put in here -- because I think it's hard to explain trespass without -- because you can just -- I could pour bacon grease out my window and it roll over on your property and that's trespass. It's hard for them to understand. I did put in here if one walks upon it, casts a twig upon it, pours a bucket of water on it, he commits a trespass.

MR. BELSER: I like bacon grease.

THE COURT: I do, too, because I throw bacon grease out all the time.

MR. BELSER: I was just kidding.

THE COURT: Do we have any problems with 24 and 25?

MR. BELSER: No, Your Honor.

MR. MOORE: No, ma'am.

THE COURT: All right. It's part of 26.

All right. Then the specific charge to trespass

to real property on damages?

MR. BELSER: No objection.

LAW CLERK: It does go into punitive damages in --

THE COURT: There's a part of it --

MR. BELSER: I looked for that and didn't see that.

THE COURT: Yeah, it's on page 28. I'm gonna hold that out until we decide on punitives.

MR. BELSER: Okay.

THE COURT: Now I will add -- evidently I thought that was on it, but --

MR. MOORE: Your Honor, I would ask that we add that basically any award of damages must be reasonable and that if you find -- if you find damages and the cost of repair would be unreasonable, the -- the award of damage would be the amount the property has depreciated. I think that's the law. That was in our -- at the beginning.

THE COURT: Yeah, the fair market value is for the permanent.

MR. BELSER: That's right.

THE COURT: Is for permanent trespass.

MR. MOORE: But if there is a -- if there's a damage and it has to be remediated, it doesn't --

THE COURT: That's the cost of --

MR. MOORE: If it doesn't make sense to remediate,

then the -- the reasonable thing to do is to leave it as it is and simply give an award for the depreciated amount.

MR. BELSER: I don't think that's what the law is. I think that in the Vaught --

THE COURT: I know, but I think I read something --

MR. BELSER: In the Vaught case, there's no -- there's no cap which limits the -- the recovered damages to the diminution of value.

MR. MOORE: An example, if the cost to remediate a two-acre pond is $10 million, it would be totally unreasonable to provide an award of $10 million for a property that's worth $200,000 or $400,000. In that instance, the damages would not be the cost of remediation, it would be the difference before and after.

MR. BELSER: Your Honor, the --

THE COURT: I want to say I read something, and I'm just doing this off the top of my head because I did do some research on this case before I heard it, but I think there's something that if the restoration value is what you said, an example like that, then I think you go -- or either they can add the value of the property when it wasn't -- they weren't able to use it. I don't know that it was fair market value.

MR. BELSER: Here's -- I think this is what you're referring to. It says when the cost of restoration exceeds the diminution of value, then the greater cost of restoration will be allowed when the landowner has a personal reason relating to the land for restoring the land to its original condition when cost of restoration is reasonable in relation to the damage inflicted. However, the landowner may not recover restoration costs which exceed the market value of the entire parcel prior to the loss, and so I think that there's no -- that the question I think here is that, you know, if the property is worth half a million dollars, then she can't get more.

In the case of --

THE COURT: She can't get 500,000.01. The one cent's gonna be gone.

MR. BELSER: Yeah, as to that element of the damage. I think the actual -- I mean, the damages are the cost of restoration and the kind of annoyance and discomfort on account of -- those types of things.

THE COURT: The loss of enjoyment of the property.

MR. BELSER: And all that jazz, which I didn't see in here.

THE COURT: And that's what we're -- we're gonna work on that.

MR. BELSER: Okay. But I think that the -- and I've got this kind of marked up if you want it. I just read it to you.

THE COURT: Well, then we need to add underneath here that it is limited to -- if the cost of restoration exceeds -- see, I even hate to put that in there because then I'm limiting the jury for whatever they want to do.

MR. BELSER: Isn't that a post-trial thing? I mean, isn't that --

THE COURT: It could certainly be that. If they came with, let's say, $501,000, then I would certainly do a post-trial motion and reduce it and then I would reduce it by the sixty-two five. Whatever -- whatever the verdict is gonna be is gonna be reduced by the sixty-two five.

MR. MOORE: But the law basically provides that the restoration value -- the damages for restoration cannot exceed the fair market value of the property.

THE COURT: Well -- and I can add a line in here. Restoration value cannot exceed the fair market value of the property.

MR. MOORE: I would ask that, but I also would add in addition to that that whatever the damage award is, it must be reasonable.

THE COURT: Do you have any objection to reasonable?

If I add reasonable into that and state -- and this is what it would say. If the cost of restoration exceeds the diminution in value, then the greater cost of restoration will be allowed when the landowner has a personal reason relating to the land for restoring the land to its original condition and when the cost of restoration is reasonable in relation to the damage inflicted. Restoration cannot exceed the fair market value of the property.

MR. MOORE: That's fair.

MR. BELSER: Your Honor, then my only -- just a few on that. What that last sentence says in the case is however, the landowner may not recover restoration costs which exceed the market value of the entire parcel prior to the loss.

THE COURT: Okay.

All right. We're gonna type that in.

MR. BELSER: Okay.

THE COURT: Okay.

All right. Page 29, private nuisance. Straight out of the Anderson book.

MR. BELSER: Good.

MR. MOORE: Fine.

THE COURT: The elements of the action. All this is straight out of the Anderson book.

MR. BELSER: That's good.

MR. MOORE: All that's fine.

THE COURT: And then private nuisance, negligence is not required.

MR. BELSER: Yes.

MR. MOORE: That's fine.

Do we have act of God?

THE COURT: I'm getting there.

Then I've got private nuisance, whether particular use is reasonable and whether use constitutes nuisance depends on the facts.

Do we need that in there? I really don't think --

MR. BELSER: I kind of wasn't listening because I -- I think we can probably go without it.

THE COURT: You look at page 34 and tell me if we need this charge.

MR. BELSER: 34. Okay. I don't think that's really --

THE COURT: I really don't think it's relevant in here.

MR. BELSER: It's redundant.

THE COURT: All right. And then this is the charge on damages.

MR. BELSER: My only thought about this is that the victim -- it needs to -- it's my understanding a

nuisance -- the first part of private nuisance is defined as causing material annoyance, discomfort or hurt to another person. There needs to be some reference to compensation for annoyance, discomfort and hurt in the damages section because it says --

THE COURT: That's on page 35?

MR. BELSER: Yes, ma'am.

LAW CLERK: You're talking about in the damages portion?

MR. BELSER: Yeah, I'm just saying that in the damages thing, if it causes it, then you're entitled to compensation for it.

THE COURT: You want it copied and put over on this part?

MR. BELSER: Yeah, that's good.

I mean, like it said, the victim of either a permanent -- or of a temporary nuisance can also recover for specific and identifiable losses, comma, such as --

THE COURT: Okay. And then we'll add that.

MR. BELSER: -- material annoyances, discomfort or hurt.

THE COURT: Okay. We've done that.

Is that okay with you, Mr. Moore?

MR. MOORE: Yes, ma'am.

THE COURT: All right. And then I've got the

sympathy charge. That's something that I always charge.

My closing. That's in every case that I do.

Now the act of God charge. I'm gonna tell you, there's testimony in here about two hurricanes; one in 2015, specifically 2018. I've heard testimony that the 2015 was the one that caused all the rain, the 2018 didn't cause much rain, then I heard it vice versa, so there's conflicting testimony on that issue.

It's been brought up. It's hard for me not to charge it when I'm asked to charge it unless you can give me a good reason, Mr. Belser.

MR. BELSER: Your Honor, the act of God defense is an affirmative defense and it was not pled in this case, therefore, I think there's no reason to charge it.

THE COURT: What law do you -- I don't see anything in the rules of evidence that keeps me from charging -- or just the general rules of civil procedure that keeps me from charging an act of God.

Do you know, Mr. Moore?

MR. MOORE: Your Honor, I don't, but if necessary I'd ask that you conform the pleadings to the proof.

THE COURT: I would conform it to what the testimony was.

MR. MOORE: Yes, ma'am. If the Court would do that, I believe that would take care of that issue.

Thank you.

THE COURT: All right. I'm -- there's plenty of testimony on that.

I'll be glad to hear from you, Mr. Belser, but I'm inclined to do it.

MR. BELSER: Your Honor, it's totally at your discretion, but I do believe it's an affirmative defense, which was not pled, and so for that reason it should not be charged. But if you want to charge it, there is the specific charge in the Anderson book which -- which talks about it.

THE COURT: And I think that's what you gave us, Mr. Moore, wasn't it?

MR. MOORE: Yes, ma'am.

THE COURT: I thought it was. I'm gonna grant your motion to conform the testimony -- conform your pleadings to the testimony that was presented in court.

Just like I get onto y'all about discovery process, I'm just gonna tell you I never know what's gonna be testified to, so it's only fair and right that the hurricane -- I heard plenty of testimony on that and I'm -- I'm satisfied.

Now let me tell you, the hurricane, I always like my charges to kind of tell a story as I'm going. I was like that as a lawyer when I tried a case. I've got

to tell a story. I'm gonna put the hurricane charge right before the sympathy charge because I think that they've got all the law in their head and these are the things they've got to consider at the end.

All right. Then the only thing that I have left to do is the -- you want a damages charge. Actual damages, is that what you wanted?

MR. BELSER: Yes, ma'am. I think that there needs to be just some explanation as to what --

THE COURT: All right. Is there one that I can put?

MR. BELSER: Well, whatever the one -- you know, actual damages are designed to put the person in the place they'd otherwise be in, just kind of what damages are.

And then the restatement -- is the restatement gonna be in there, too? 929, the -- which is the damages in property damage cases?

THE COURT: Well, a lot of this stuff I'm repeating over and over again.

MR. BELSER: Well, if it's already in there, then that's fine. I just -- I don't recall. I couldn't remember if you said you were putting it in there or not.

THE COURT: All right. If the landowner is

entitled to judgment -- well, this goes back to the cost of restoration that has been and may be reasonably incurred. I've got that --

MR. BELSER: We've already got that.

THE COURT: I've got that in there.

The loss of the land, I don't have that, and not applicable here.

MR. BELSER: Loss of use. I mean --

THE COURT: I think I'm going to put that in the actual damages.

MR. BELSER: Or maybe that goes in the nuisance damages.

THE COURT: Or the nuisance. I think we did the loss of enjoyment of her property in that.

MR. BELSER: Yeah, that's right.

THE COURT: And it covered it. When I read that, I knew I had already seen it.

Let me ask you this. Interferes with her enjoyment, the use of the land -- yeah, we've got that in there already.

I know in some of my criminal cases -- I did it in a medical malpractice case. Does anybody want the jury to have a copy of the jury instructions in the jury room?

MR. BELSER: Absolutely not.

MR. MOORE: No.

THE COURT: Okay.

MR. BELSER: I know a med mal defense lawyer wants that, but --

THE COURT: Oh, yeah, and they both agreed and it took me two weeks to try that case and the next thing I know...

All right. If you look -- have you got the Anderson charge book?

MR. BELSER: The book with me? What are you looking for?

THE COURT: We've got that 13.4 for the actual damages.

MR. BELSER: Yeah. I mean, just --

THE COURT: Just put like -- all we want is a charge that says when one person is injured by the negligent act of another, the injured person is entitled to be fully compensated for all injuries directly or proximately resulting from an negligent act or omission by the defendant. In determining the amount of compensation suffered by the plaintiff, it is proper for you to consider, and this is where we're gonna differ --

MR. BELSER: Yeah.

THE COURT: -- because the damages in this is

limited. She's not -- there's no --

MR. BELSER: That's when it goes into almost like a car wreck thing.

THE COURT: Yes. There's no loss of income.

MR. BELSER: I think just something saying designed to put the plaintiff in the position that she would otherwise be in. I mean, just like a basic here's what damages are, here's how they're -- here's how they're considered.

And I don't know if you want to put cost of repair in there, restoration cost. I don't think that's absolutely -- well, something short and sweet.

THE COURT: Yeah.

MR. BELSER: And it may not even be necessary.

THE COURT: And I just have a tough time even calling what we've got actual other than the restoration.

MR. BELSER: Well, the charge goes -- I mean, it talks about damages and then it goes on to kind of explain it as to the restoration and the loss of use and all that jazz.

(Pause in proceedings.)

THE COURT: Okay. I think this is what we should say, what I just read. When a person is injured, it is proper for you to consider the reasonable cost of

repairs plus the value of the use of the property during a reasonable repair time.

I don't think we have any personal items that she lost.

MR. BELSER: I was also looking at loss of use during the -- not only during the repair time, but, you know, since the injury began, the loss of use and enjoyment and annoyance --

THE COURT: And during a reasonable -- and the value -- let's see. Plus the reasonable cost of repairs and the value of the use of the property during a reasonable repair time. Because the rest of it was all like permanent stuff.

Can you read that for us?

LAW CLERK: Yes.

I have when one person is injured by the negligent act of another, the injured person is entitled to be fully compensated for all injuries directly or proximately resulting from any negligent acts or omission by the defendant. In determining the amount of compensation for injuries suffered by the plaintiff as a result of the defendant's negligence, it is proper for you to consider the reasonable cost of repairs and the value of the use of the property during a reasonable repair time.

MR. MOORE: I would add to that while damages do not have to be proven to a mathematical certainty, they do have to be proven to be reasonable by a preponderance of the evidence.

THE COURT: That's true. Okay. That sounds good.

All right. We're fixed. Thank goodness for Little Abigail.

LAW CLERK: Thank you.

THE COURT: Now the only thing that's left is punitive.

MR. MOORE: And I think that would be -- I think the Court said -- with all due respect, I think the Court said you were gonna look at it over the evening and let us know.

THE COURT: I am. I'm gonna think about it.

MR. BELSER: Your Honor, I will -- I'll put the timeline of things when the lawsuit was filed.

THE COURT: I want to know specifically. I was under the impression from the testimony I heard, and I probably have about forty pages of notes up here, that the engineer who wrote that letter saying if you want to avoid a lawsuit you need to do this, this, this, and this.

MR. BELSER: And that was December the 12th of 2018. The lawsuit was not filed until 2019, which is

-- that's -- the case caption has the '19.

MR. MOORE: And the testimony I believe is that we actually did put up the silt fences after we talked to the County.

THE COURT: And I don't know when the County was.

MR. BELSER: Well --

MR. MOORE: The County stop work order was 2018 and the letter letting us go back to work was 2018 and following that the testimony is, I believe, we put up silt fences.

THE COURT: Y'all look at that and give me a timeline because that's gonna make a difference to me. I'm just telling you.

MR. BELSER: June of 2018 was a verbal stop work order, did the work, October 2018 is when there was a written stop work order lifted based on promise of stabilization and then there was a cease and desist letter from me in November, then there was the Gerald Lee thing -- report in December and the testimony was that it was not actually stabilized until -- it was seeded but it wasn't actually stabilized until February.

MR. MOORE: But we put up the silt fences after Mr. Lee gave us his report.

THE COURT: Can y'all get me a date on when you put up the silt fences? Y'all just have that for me

tomorrow.

MR. BELSER: I think it's all in the Lee report because he said there were no sediment controls -- there was completely uncontrolled sediment leaving the site when he was there in December.

MR. MOORE: And we put up the silt fences as a result of his report, his advice. I don't know when the date was. I'm not sure the date's in evidence, but I'm reasonably certain it's in evidence when we talked to him and put up the silt fences.

THE COURT: Okay. We are e-mailing y'all right now the jury charges.

MR. BELSER: Thank you.

MR. MOORE: Thank you, ma'am.

THE COURT: Less the punitive.

We've left punitive in there. She's highlighted everything in red so we know to delete them if I decide not to.

MR. MOORE: Thank you, ma'am.

THE COURT: So that's what we would delete if I decide no punitive damages.

MR. BELSER: And the only -- the only thing else I think we need is the verdict form, but we don't need that until kind of before the --

THE COURT: Yeah. Anybody want to work on a verdict

form?

LAW CLERK: You didn't like the simple one I came with?

THE COURT: Did you see what Abigail came up with?

LAW CLERK: Y'all said something simple, so I went all simple.

THE COURT: I like simple.

MR. BELSER: I do, too. I think juries need simple.

LAW CLERK: I'll be happy to e-mail it for y'all. If anything, it will give you --

THE COURT: Please make any changes on the verdict form. I'm not very good at verdict forms. I don't mind telling anybody. It can be on the record.

MR. BELSER: K-I-S-S.

MR. MOORE: I never have been good at those either.

(Off the record discussion.)

THE COURT: All right. I'll see y'all at 12:15 tomorrow.

MR. BELSER: Thank you, Judge.

THE COURT: Just be prepared for closings. We'll address punitive. I'll have an answer in the morning and then we'll charge and let them go.

MR. BELSER: Sounds great. Thank you, Judge.

THE COURT: Okay.

(Whereupon, the proceedings were concluded for March 31, 2022, at 6:01 PM.)

(The following proceedings were held April 1, 2022, beginning at 12:35 PM.)

THE COURT: All right. I looked over it and I think the only thing I need to rule on is punitive damages.

Did you get a copy of his timeline? I'd like to hear from you on that?

MR. MOORE: Your Honor, we have a timeline as well, if I might. We -- I only have one copy of it, but this is the best --

THE COURT: Mona, can you make us two copies so I can have one and Mr. Belser can have one?

THE CLERK: I can.

MR. MOORE: I think we pretty much agree except for the fact of this. The County came out and gave a stop work order and the work stopped. The County turned the work back on again. They came to see me, I told them to hire Mr. Chao and Associates. Mr. Lee came out and indicated that we needed to do some prevention measures and he immediately put up the silt fences. As soon as -- as soon as we had an engineer look at it, he told us to stabilize, we immediately put up the silt fences and the property had already been sodded -- seeded. Not

sodded, seeded. You can't sod that many acres.

So we had seeded the property and we had -- is this the rest of it, Callee?

MS. JUMPER: That's just an extra copy.

MR. MOORE: So when -- when we talked to Chao, he came out, told us what to do, we put up extra silt fences, and that's basically what happened. As soon as we had information from our engineer, he gave us advice, we followed it. I don't think it's a punitive case, Your Honor.

MR. BELSER: Your Honor, I think it's a little bit different than that. I think that most importantly in terms of what was installed when, I think that Chao's report -- Mr. Lee's report is very instructive on that. He's very clear when he went out there on December the 11th --

THE COURT: 12th.

MR. BELSER: Well, yeah. Well, when he went out there, there was -- the site remained in a disturbed state and no stabilization or sediment control is in place period. He took a number of photographs, et cetera, and then he recommended that -- that they hire an engineer to get in compliance with the County.

But the actual timeline of events is -- well, there was this -- this verbal stop work order, lots of

questions about that, I don't really know what was going on there back in June. They received on October -- at least on October the 18th, they knew that Ms. Garland was claiming to be hurt. Now whether or not they disagree with it is irrelevant. They knew of an alleged -- of an injury and it took at least seven weeks -- well, in the seven weeks that followed, not only did they get a letter from me and not do anything, but there was also a stop work order from the County which said please go ahead and stabilize to eliminate impacts. By the time we get to December the 12th nothing had happened. December the 24th through the 26th is the testimony from Mr. Cade as to when they actually started sprigging the Bermuda grass, so that's five notices over eight months before anything was actually happening. And then the testimony yesterday from Mr. Cade was that the Bermuda grass was not established until February of 2019.

And so in terms of a punitive damages case, as the Court well knows, if you are -- if you know or have reason to know that what you are doing is harming somebody else, then that is conscious disregard for their rights. And I think that the timeline -- the self-serving statements of the Cades notwithstanding, Gerald Lee's report tells you all you need to know.

MR. MOORE: That's just not accurate. What he's

telling you is simply not accurate. They're basically taking bits and pieces of the evidence and basically trying to extrapolate. What Roger Singleton said was the grass was not an established grass bed until February. What he also said, we had already seeded the property by the time the County came out.

One of the ways that you stabilize soil is seeding. You can't hydro -- you can't -- you can't -- you can't roll out twenty-nine acres of sod.

THE COURT: Well, by their own expert on December the 12th it hadn't been seeded.

MR. MOORE: Well, not necessarily. He didn't say that.

THE COURT: Yeah, he did. He said at the time of this observation the site remains in a disturbed state and no stabilization or sediment control is in place.

MR. MOORE: That's exactly right, but he didn't say it hadn't been seeded. He said no stabilization control was in place. For it to be stabilized, it would have had to be growing. You have to plant it before it grows. He did not say it hadn't been seeded.

Now the testimony is it had been seeded and as soon as he -- Your Honor, as soon as he -- as soon as he told them to do it, they went out and put the silt fences up.

And, you know, Mr. Belser makes a big deal about

his cease and desist order, which has a legal import of nothing. They're not obligated to follow his instructions. As a matter of fact, when the guy from the County came out -- they say that we knew it was a result of Ms. Garland. There's no testimony they told them that Ms. Garland was the one complaining. They just came out and said we've had a complaint. There's no indication they knew it was Suzy Garland or that she said her property was being -- being inundated. The first time we had any information it was coming from Ms. Garland was when Christy went down to try to talk to her or we got the letter from Mr. Belser.

We went and hired an engineer as soon as the County told us to do something. The first thing they did is they came to a lawyer and said what do we do? Do what the engineer says. Do we do what Mr. Belser says? No. Do what an engineer says. So you go out and you hire an engineer, you pay him. He says stabilize the soil, put up some -- some silt fences, which is exactly what we did. We did exactly what we were asked to do by the County, by the attorneys, and we weren't even on notice that it was Ms. Garland who was complaining until we got Mr. Belser's letter. But they seeded it, they got an engineer, paid an engineer, put up a silt fence, and I don't know what else they expect them to do.

It's just not a punitive case, Your Honor.

THE COURT: Anything else, Mr. Belser?

MR. BELSER: Just in response to that, Mr. -- it sounds like a closing argument to me from Mr. Moore that he can make to the jury. He's arguing the facts. The legal import of my letter is -- you know, he doesn't have to -- he doesn't care what I say obviously, we're still here, but legal notice is important for purposes of punitive damages.

Now the statement that as soon as they got -- were informed by the County they hired an engineer is just a false statement. There is -- October the 22nd is when they got the notice from the County. It wasn't until seven weeks later that they hired -- that they went and even talk to Chao. Now if I hadn't written that letter --

THE COURT: And they'd already said that they had started stabilization.

MR. BELSER: Ma'am?

THE COURT: And at that time they had already -- the way it was lifted is that we said we are stabilizing it right now.

MR. BELSER: They said that they were and they did not.

THE COURT: And then they go -- and that was in October and then in December they hire -- I guess is it

Mr. Lee?

MR. BELSER: Yes, ma'am.

THE COURT: Mr. Lee doesn't see anything about stabilization, sediment control. I don't even think he mentions anything about anything being planted and even tells them pointblank to avoid litigation from the downstream property owner, you should work with the County to bring the site into compliance and a stable condition.

And then in December there's testimony -- December 24th through 26th that they're out there sprigging grass. That is from October the 23rd. October, November, December -- two months later when it was supposed to have already been done in October or in the process.

MR. BELSER: Well, then by the way, it should have been done in the first place. Not -- it was kind of a warning that --

THE COURT: And the lawsuit was not filed until 2019. I'm gonna tell you, I looked at the law about punitives and it says ordinarily the test is whether the tort had been committed in such a manner or under circumstances that a person of ordinary reason or prudence would have been conscious of it as an invasion of the plaintiff's rights. That is the Cartee case.

The test may also be satisfied by evidence of the causation, violation of the statute. In this case, we do have a statute and whether they violated it or not and it was a proximate cause is a question for the jury.

And then I turn to the trespass and it says trespass through mere negligence affords no ground for punitive damage, but damages may be awarded -- punitive damages may be awarded where the trespass is willful and deliberate.

I'm gonna find -- I think they were placed on notice and I'm gonna charge punitive damages for both of them. Both causes I think it falls under.

MR. MOORE: Of course, Your Honor, we still have the question as to whether or not the appropriate elements of punitive damages have been met. There's no -- there's no testimony as to the ability to pay. There's no testimony about the degree -- punitive damages are not going to be allowed to bankrupt. There's a whole litany of things which the Court has to have in the record before punitive damages are even considerable -- considered, and most of those elements are really not in the record.

THE COURT: I'd be glad to hear from you, Mr. Belser.

MR. BELSER: Your Honor, I'd disagree. There are a number of factors in awarding punitive damages and it's a combination. You don't have to go through all eight. It's kind of the duration of the conduct, it's the -- we know about that. We know the nature of the conduct, we know that there's conscious disregard.

In terms of the wealth -- relative wealth or ability to pay, probably the best evidence that we have of that is the flyover video that we had yesterday with the beautiful house and the well-manicured paddocks and there's ample evidence from which a jury could assess an appropriate amount of punitive damages. Not to mention the fact that -- I haven't looked at it, but there's a statute which relates to punitive damages and has certain elements to it I can't remember -- I mean, in terms of like caps. I can't remember if that applies or not, but there's no -- there's no requirement if -- just because a party pleads -- makes a prayer for punitive damages does not mean that they have to put up the defendant's personal financial statement or any other assets. We know that he has a trucking business, they own equipment, they own real estate. Based on the valuation that we have, their forty-six acres could be worth a substantial amount of money, so the jury will know how to send a message.

THE COURT: I don't know. Mr. Belser, I see ten factors. I don't see anything that tells me I've got to have all ten factors.

MR. BELSER: That's right.

THE COURT: I think that I can have a combination depending on their acts, determent, the duration of the conduct, whether they -- the nature and extent of the harm done to the plaintiff, the awareness, and the defendant's wealth or ability to pay. I don't think I have to have all of those in the record.

I'm gonna tell you, evidence of net worth is not a prerequisite to a punitive damage award. It's clear and convincing evidence. And I'm just gonna tell you, it's gonna be for the jury to decide the punitive damages, but to me I think there's pretty of evidence. I think it's right clear. Mostly Mr. Lee's report is pretty damaging to walk away from that on notice and not do anything. But this started back in May and I guess did not end until sometime early of 2019. Not to say the damage wasn't still happening to the pond.

So I'm gonna allow it and that's my -- that's my -- and that's the record for that and my ruling.

Anything else from the plaintiff?

MR. BELSER: No, Your Honor.

What time do you want to start? I just wanted to --

THE COURT: I'm fixing to start here in two seconds. I've got all --

MR. BELSER: Can I just go real quick to the restroom?

THE COURT: Sure.

Anything else from the defense?

MR. MOORE: We are going to basically have the issue of punitives considered separately as I understand?

THE COURT: To tell you the truth, Mr. Moore, I'm gonna do it all at once.

MR. MOORE: Thank you, ma'am.

THE COURT: And I'm just gonna put a one-liner on the verdict sheet. If the jury find that it's clear and convincing evidence and they want to award punitive damages, it's up to them. I think a one-liner is sufficient.

All right. Mr. Belser did you look at the verdict form?

MR. BELSER: Yeah, it looks fine, the one I saw yesterday.

Are you gonna add the part about punitive damages?

THE COURT: That's what we're trying to do. We're trying to put in there should the jury find by clear and convincing evidence the defendant's conduct to be

willful, wanton or reckless, you may award punitive damages.

MR. BELSER: In the amount of blank.

I think conscious dis -- if you want to just say conscious disregard of rights, then -- rather than willful, wanton because that's kind of -- I mean, those are confusing words. Wonton soup.

THE COURT: All right. Are y'all ready? I'm gonna bring the jury in.

Oh, you weren't -- we're gonna give you a makeshift verdict form until you two can look at it and agree on the verdict form.

Did you look at the verdict form, Mr. Moore, that we sent yesterday?

MR. MOORE: I did.

THE COURT: We're gonna give y'all another copy. If y'all look at it and y'all want it changed, then we've got time to change it after closings. Y'all can look at it while I'm charging the jury and Abigail can change anything right afterwards.

THE COURT: All right. Let's bring the jury in.

MR. BELSER: Yes, ma'am.

With reference to Mr. Singleton being let out of the case, will you address that with the jury before closings? I just don't know. He's here, but I didn't

know if the jury may -- I mean, they didn't -- obviously don't know about the directed verdict and they may kind of wonder well, where's Mr. Tom.

THE COURT: Well, I don't know that I need to --

MR. BELSER: I don't know.

THE COURT: -- specifically address it. I don't even -- to be honest with you, I'm not real sure they even knew he was here.

MR. BELSER: Okay. I was just curious.

THE COURT: Unless somebody wants me to instruct them, I don't think it's --

MR. BELSER: That's fine with me.

MR. MOORE: Your Honor, I think that -- again, I think it's appropriate that they be told that he was let out of the case and the reason why.

MR. BELSER: No way.

MR. MOORE: Well, the Court found he did nothing wrong.

THE COURT: The Court found nobody proved anything against him.

MR. MOORE: I agree, and that's what I think the jury needs to be told. I've got no problem with that at. That's basically what happened. The jury -- nobody proved anything --

THE COURT: I mean, I just don't know and I don't

know that I've ever addressed a jury to tell them what happened in somebody else's case.

MR. BELSER: Then let's just -- you know, Tom -- I told Tom last night word for word he's probably the best lawyer in town considering he only said about ten words all trial and got out on a directed verdict. So they might not even notice.

MR. MOORE: I think counsel is correct. They should be told and I think they should be told the reason why. The Court has found that nobody prove he'd done anything wrong.

THE COURT: We'll discuss it after closings.

MR. MOORE: Thank you.

THE COURT: Because I have time to let them know during the charge.

Let's bring them in.

(Whereupon, the jury enter the courtroom at 1:01 PM.)

THE COURT: Good morning. Or should I say good afternoon? Good afternoon.

Madam Forelady, is the jury ready?

FOREPERSON: We are, Your Honor.

THE COURT: Okay. Mr. Belser.

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

THE COURT: Yes, sir.

MR. BELSER: Madam Forelady, and ladies and gentlemen of the jury, good afternoon. First, I want to thank y'all for listening so intently over the last couple of days and paying attention to all the witnesses as they testified and to the documents as they were entered in. I realize that y'all are not here by choice, you were summoned to be here to served as a jury -- on the jury, but I hope that while you've been here it's been educational for you and entertaining in some way. It's a good thing to experience.

Of course, you know, Ms. Garland is here technically by choice. She filed a lawsuit and so if that lawsuit had not been filed and this not come up, then we wouldn't be here in this setting, but really this case is about how she really had no other choice than to file this lawsuit. If she wanted to protect herself and what was so precious to her, her land, she had to come and file this lawsuit and spend the last three and a half years working on this.

You heard Ms. Garland testify just how important and precious her land is to her. You have thirty-five years in a place with people and memories, that's an important -- it kind of becomes a part of who you are, and that's what Ms. Garland testified to. You know, your -- your property is not just a collection of dirt

that has, you know, boundary lines. It's your home. It's your sanctuary. It's where you try to get away from all the hubbub of regular life, of traffic, of being around -- you know, just being out and about. It's your sanctuary. It's also the place where you spend most of your valuable time and your leisure time. It's where you create sentimental value, that's what -- you make memories on your property with friends and family and experiences and kind of relaxing and just being in your sanctuary.

And it's also, for many people, it's a place where you can kind of have a legacy. If you own a piece of property and you have a family, and everybody knows you can't take it with you and so it's got to go to somebody, and your land is what you've got. It's your legacy. That's certainly true for Suzy Garland. The only choice that she had to protect what was so precious to her three and a half years ago was to stand up for herself and fight.

So what did she do? You know, we saw that around October the 18th of 2018 her pond as described by Mr. Mac Watson was yucky. Y'all saw pictures of the yuckiness and know what that means. The muddiness, the discoloration. I think somebody described it as Nestle Quik-looking, cloudy, whatever you want to call

it. She talked to her friend Mac and then went to the County. The County issued a stop work order. Then she hired a lawyer, me, to try to -- to send a letter to try to put the Cades on notice as to what was going on. Then she filed a lawsuit several months later in April of 2011 when nothing was happening.

She, over the last three years -- it was actually April 11, 2019. The reason I know that is because that's my birthday and I looked at it this morning and today's April Fool's Day, too. A little April Fool's Day joke. But it's been about three years since this was filed and Suzy, who's now 83 years old, has been spending the last three years waiting to get here, and here we are.

This has been a tough fight. It's been a real tough fight. What's she been up against? Well, she's been up against a defiant defendant who still doesn't think he's done anything wrong even in the face of overwhelming evidence to the contrary.

Now normally in a case like this -- and the judge is gonna instruct you about what an expert witness is, and you saw a couple of witnesses who were qualified as expert witnesses, most cases are kind of a battle of the experts. There's often a fertile battlefield, battleground, for experts to argue because the standard

is more likely than not. You may have heard the witnesses testify to a reasonable degree of certainty as an engineer, more likely than not, here's my opinion. That leads to lots of different disagreements because people can disagree on that.

Here we don't have that. I want you to remember -- I think the most important witness that you heard this week was Mr. Gerald Lee, and you'll have his report -- you'll have all the exhibits with you back in the room and when you're deliberating. Remember that he was the undisclosed expert that was hired by the Cades in December of 2018 for an objective opinion on hey, are we doing anything wrong, and there's one sentence which says it all. The short answer is yes.

Ladies and gentlemen, this is the proverbial smoking gun. The smoking gun was not disclosed to us. It was uncovered kind of by accident in some depositions.

Now Mr. Lee's testimony provides some very important -- really an objective view, and remember he is -- he was paid by the Cades. He was asked by the Cades to come out, paid by the Cades, and issued a report, and that report was kept secret, not given to Mr. Singleton, not given to me. It shed some light on some really important issues in this case.

Number one, did the Cades need a permit to do

what they did? You heard Mr. Lee. I think we were downstairs actually when he testified. Yes, they needed a permit because of the impervious surface. You saw the video of how much impervious surface there is on the Cade property. What's also important is he gave an objective view of what the site looked like, the condition of the Cade property site, on December the 11th of 2018. Remember he went out there at the Cades' request and he walked around and he took photographs and issued a report and in his report he says, and I quote, "At the time of this observation the site remains in a disturbed state and no stabilization or sediment control is in place". That is an objective view of what he -- of what the site looked like. It's not the Cades' self-serving statements as to what they were doing on the site to stabilize.

Now why is Mr. Lee's findings -- why are his findings on December -- as stated in his report so important? Well, because it goes to the notice that the Cades had that Ms. Garland's property was being damaged. Mr. Lee's report was seven weeks after the Cades knew that Ms. Garland was being -- was at least claiming to be hurt. Whether or not they agree that she was being hurt, that was seven weeks after Mr. Brandon Corder came out and seven weeks after the stop work order was issued.

It was actually -- well, six weeks after the stop work order was issued. And let's remember you heard Michael Spires testify downstairs on Wednesday that the stop work order was released based on those statements by the Cades that they were gonna stabilize the property. According to Mr. Lee, seven weeks later nothing had happened. You'll have a lot of photographs back in the room with you that are all dated which will show that critical period of time what was happening and how Ms. Garland's property was being damaged.

Mr. Lee's report is three weeks after I sent a letter. If I hadn't sent a letter, do you think that they would have done anything? It was seven weeks after they knew that Ms. Garland was being damaged that they did something, but I don't think it was because they knew she was being damaged. I think it was because they got a letter from me saying I intend to file a lawsuit unless you clean this up.

Now December the 11th of 2018. It was -- you heard Mr. Cade's deposition testimony it was actually two weeks later before they actually started to sprig the Bermuda grass on the property. I think he said it was Christmas Eve, Christmas Day and Boxing Day. And what he said yesterday on the stand was that it was another two months before that was actually established.

So my -- the question, why did it take so long to do so when they knew that their neighbor was being hurt? It was nine weeks of not doing anything at all and then nine weeks plus two additional months to get established. What does -- what does that say? That's a symptom of the defiance and lack of responsibility and accepting that they've done something wrong. They won't listen to the County, they won't listen to their expert, they certainly won't listen to me, but ladies and gentlemen, they have to listen to you.

You are the ones that have the ability to send a message as to how neighbors in Lexington county are supposed to treat each other and to behave towards each other. On behalf of Suzy Garland, I ask that you send a message.

Now speaking of behavior, in opening statements I told that you that the evidence would show that the Cades' defiance turned into aggression toward Suzy. You saw the video where Mr. Cade's truck was blocking Ms. Garland's driveway. You heard Ms. Garland testify as to how that made her feel and yesterday you heard Mr. Cade testify about what happened. And I wrote this down because I thought it was very important. He said it was time to, quote, put an end to this. Good grief. Good grief.

You have a six-foot-three, 45-year-old man staring down an 83-year-old woman who probably weighs a hundred pounds soaking wet. Let's be honest. Mr. Cade said yeah, it was childish. What he really should have said is I was being a bully. That's the bully that Suzy Garland has stood up to.

Now Mr. Cade tried to explain that well, there were hundreds of videos that Ms. Garland had taken on the property -- of their family on the property and that he was returning the favor. There are no videos. There's nothing in evidence. Regardless, that's not an excuse for behavior to block somebody's driveway. Remember, this man, Mr. Cade, already had a mutual restraining order with Mr. Melichar, his other neighbor. So was Suzy scared? Absolutely. Again, this is the bully that she had to stand up to.

Now I also told you in opening statements that the Cades' defiance turned into blame against their friend Roger Singleton. Even after all this time being involved in this case for as long as they have, I still don't understand exactly what was going on between the two of them, Mr. Singleton and the Cades, but if you remember on the stand yesterday Mr. Singleton was completely at ease talking to Mr. Moore. Mr. Moore's a tough guy. You saw him rattle some of the witnesses. He's tough.

Mr. Singleton was not concerned at all.

And also the Cades sued him. If he -- if they sued him, then explain that behavior. It's just bizarre. What their -- what their testimony -- this is where the blame comes in. It was we're defiant, we did absolutely nothing wrong, but by the way, if we did, it's on him. It doesn't make any sense.

Now one of the things that I did not mention in opening statement, which has become kind of evident in the trial surprisingly, is that the Cades' defiance has not only turned into aggression toward Suzy and blame toward Roger, but it's also turned into this kind of victim complex for themselves.

You heard Mr. Moore talk in opening statement that the lawsuit is shameful and that the Cades' American dream is now a nightmare. Ladies and gentlemen, the American dream does not mean that you can do whatever you want to do without regard to what the law is or without regard to what your neighbor's rights are. That's not what it is. The American dream, as we all know, is if you work hard and if you live right, you can own your own house where you have your sanctuary, where you make your memories and where you can create a legacy.

Significantly, a big part of that, the American dream does not exist without the American laws and courts

and juries. You have the right to use and enjoy and own your property without interference and harassment from your neighbors. That is exactly what Suzy Garland is trying to do in her twilight. She's trying to enjoy the American dream and create a legacy for her family, protect what she has.

Now after the closing statements -- I'll talk and then Mr. Moore will talk and I'll get to talk one more time, you'll receive the jury instructions from the judge. This is an explanation as to the law that's applicable to the case and then you'll get -- you'll return back to the verdict -- to the jury room with something called a verdict form, which Madam Forelady will have, which will say -- it will reference the three causes of action that Ms. Garland has, and you'll say on the cause of action for negligence I find for blank or blank and if you found for Ms. Garland, you plug in the damages, and the same for the other two causes of action. And I'm gonna go -- I want to go through those with you and kind of explain what that is.

Before I do that though, a couple of other things that -- that Judge McCaslin will tell you is about the burden of proof. The burden of proof is on Suzy Garland. Judge McCaslin will tell you about the scales of justice. Imagine the scales. If the burden of proof is on the

plaintiff, it's to tip the scales ever so slightly in her favor. You don't have to prove a hundred percent, you don't have to prove beyond a reasonable doubt. That's for criminal cases. You've got to tip the scales of justice in your favor. That's important. It's hard to make the decisions that y'all have to make, but in a civil case like this it's more likely than not.

There's one very important exception to that about the burden of proof, and I'll come back to this later. The defense alleges that this was an act of God. Not an act of man, but an act of God that caused this problem. That is something that the defendants must prove, not Ms. Garland. She doesn't have to disprove that. The defendants have burden of proof to show by engineering testimony or something that this would not have happened but for the natural forces of God.

Now, three causes of action. Number one, negligence. Negligence, and the judge will describe this to you, you have a common law -- a person has a common law duty to not alter their property and leave it disturbed in a way that damages somebody else. If you -- if you own property, then you have an obligation to keep your property in an unaltered condition or in a stabilized condition so it doesn't harm your neighbor. That's the law. That's the common law.

There's also an ordinance. There's a lot of talk about the ordinance and the ordinance will be in the record, be back in the jury room with you. If there's an ordinance and the ordinance is violated, you find that it's violated, then that is negligence in and of itself. If you find that the Cades have violated the ordinance by not getting a permit, then you can check that box, find for the plaintiff on negligence, and move onto damages. That's called negligence per se.

The second thing is trespass and trespass is the -- legally defined as the intentional interference with the rights and possession of somebody else and their property. Now most people when you think of trespass you think like here's the property line, I'm stepping over, I'm on your property, now I'm off. In civil tres -- civil trespass is actually broader than that. It can either be by water through casting water on somebody else's property or casting a twig or by a baseball.

If somebody's out there throwing a baseball and they throw it across and it breaks the neighbor's window, guess what? You break it, you buy it. That's what civil trespass is.

Now it's an intentional tort, and what that means is -- the intent is important. It's not the intent to harm, it's not that that little kid with the baseball

said I'm gonna break that window right there and throw it and break that window. It's the intent to do the act which resulted in the damage. So the kid's throwing the baseball, lets one go, he's intentionally throwing the baseball, it went through the window. Sorry. You break it, you buy it. It's the same with silt. Silt's the same way.

Nuisance -- the private nuisance claim is a little bit similar to trespass and slightly different. Its called the unreasonable inference with property rights. What really makes it different is that the harm that it seeks to address is that everybody has the right -- in addition to not having the windows broken by a baseball or have silt get in their pond, they have the right to use and enjoy their property without interference from their neighbors. It's kind of a recognition of the fact that property is not just that collection of dirt with a boundary, but it's your sanctuary, it's your home, it's where you find your peace and comfort. That's what that seeks to address.

All right. Those are the three causes of action. The judge will instruct you as to the law. I'm not gonna go through all of the evidence and all the individuals who've testified. I think there's an abundance of evidence. If you have any question about that, I think

look at Mr. Lee's report on the issue of liability.

The first question. Do you find for the plaintiff? Yes. The next question is how much? What are the damages? Well, the design of -- and there are two types of damages. There's actual damages and punitive damages. We're gonna come to punitive damages in a moment.

Actual damages are designed to restore the plaintiff to the position that they would be in had the negligent acts not occurred. In cases like this, it's the cost of restoration. There's somewhat of a limitation on it though. As long as the cost does not exceed the value before the loss. And so if you have a ten thousand dollar -- well, I don't know, but if your property is worth $10,000 and it gets damaged and it would take $100,000 to fix it, you can only recover $10,000. That's the law. That's to actual damages.

So what is the value of Suzy Garland's property? Well, one thing that the judge will instruct you is that a property owner has the right to testify as to the value of their property. Suzy Garland testified as to that and she described several very well-maintained structures, one that she lives in, one kind of a shop-type place, and then a second structure in addition to the gardens and the pond and everything that she's built there over

the last thirty-five years. It's thirteen acres. Suzy said it's not for sale, but it's worth at least $500,000, but not only because that's what she has in it, but also based on what she knows about the other transactions and other kind of -- other listings in the neighborhood.

One, we know of a transaction where Paul Shearer bought less than a quarter of an acre for $10,000. That's $40,000 an acre. Mr. Davis, and you remember the Zillow thing that came up, that was five acres, $350,000. That's 50,000 or whatever per acre. Both of those, if you use those reference points, puts the value over $500,000, which is consistent with what Suzy said.

Now on cross-examination, and I'm sure in closing argument from Mr. Moore they're gonna imply that well, Suzy's property is not worth fixing. You know, if it's damaged that bad, it's -- it's taxed at $91,000, so you can't possibly -- it makes absolutely no sense to fix this property.

You know, for me this is really just symptomatic of -- of the Cades' attitude -- kind of careless attitude toward Ms. Garland and the value of her property to her. Ms. Garland's property has substantial value to her not only because of what she's invested in it dollar-wise, but years and feelings.

Now let's talk about the numbers. There are two

numbers I'm gonna talk about. One is $435,000 and the other one is 1428 cubic yards, and I'm gonna talk about 1428 cubic yards from Mr. Mathews first because that feeds into the 435. Mr. Mathews, I think, also testified on the third floor. He's an expert geotechnical engineer. He has forty years' experience. What he explained that he did was he looked for loose unconsolidated sediment with the sludge judge. Do you remember the -- having a straw and sticking it down into loose and unconsolidated? He wasn't looking for the bottom of the pond as it existed as of 1950. He was looking for loose consolidated -- unconsolidated deposits because that is indicative to him of recency and he testified with a reasonable degree of certainty that the sediment deposits in the Cade pond -- I mean, in Ms. Garland's pond were from the Cade property.

Is Ms. Garland claiming -- is Mr. Mathews saying that every spec of dirt or sediment in that pond since the pond was built in 1950 or whenever is from the Cade property? No. Mr. Mathews explained that. He's looking for loose unconsolidated sediment. The older sediment by hydrostatic pressure, if you have the weight of water sitting on top of you, over time it compresses it down. It's not gonna be captured by the sludge judge.

Is he -- is that saying that none of the sediment in Ms. Garland's pond came from the road or from

Mr. Davis's field? No, that's not -- that's not what we're saying. He said the bulk, at least 90 percent, is from the Cade property. There's not -- there's no absolutes. It's not all or none. It's within a reasonable degree of certainty this is the amount of sediment that is from the Cade property.

And how did -- how did he identify the Cade property as the source? Well, that's because it was the only land disturbance activity that had happened in the area. And he did look at topographical maps on the Internet. Everybody's familiar with the Internet now. He also read Mr. Lee's report, which y'all will have as well, that led him to that conclusion.

Now getting back to the battle of the experts, there's -- there's no battle here. You have Mr. Moore's statements against Mr. Mathews, but the judge will instruct you that what I say and what Mr. Moore says is not evidence. If y'all can't tell by now, I'm a sports guy. When we talked on Monday, the lawyer's the point guard, he doesn't get to shoot, he's the facilitator, he passes it. The witnesses are the ones who get to shoot. It doesn't matter what I say and it doesn't matter he says. We're here to facilitate evidence. Mr. Mathews's testimony is completely unopposed by an expert.

Mr. Hanna. Let's talk about Mr. Hanna's number.

Sure, it's a big number. I mean, cleaning -- cleaning all that sediment out of -- from this that's underwater, it's not gonna be easy. You've got to get a permit the right way as we know, you've got to use precaution so that you don't damage it on the way in, you've got to dispose of it properly. You can't just dump it wherever you want to. You've got to take it to a landfill. Mr. Hanna testified about all the work that he's done in Lexington county. He's a local guy. He's a grading contractor. He is the type of person who -- to do the job, not somebody like Mr. Singleton. Again, this is unopposed by any competent testimony. There are statements by counsel, but that's not evidence.

So when you're -- when you're filling out the damages form on these different causes of action, I ask that you consider the restoration estimate of Mr. Hanna and award that amount.

Now the other part of actual damages, and this kind of relates back to nuisance damages, is -- it's a little bit harder. There are damages that are hard to quantify, but they're real. What is the value of being able to use your -- have your house as a sanctuary, as your home, where you can make memories and where you can create a legacy? If that's taken away from you for some period of time, what's that worth? You can't -- there's no

calculator. You can't get any expert witness to say I looked in Suzy's head and this is what she places on it, so X numbers. That's completely within your discretion to decide and I want you to remember that those damages while they're hard to calculate, they're very real.

All right. I also want to talk -- there's a second category of damages called punitive damages and Ms. Garland has a claim for punitive damages. The judge will instruct you as to what punitive damages are, how they're to be considered and what their purpose is. The judge will instruct you that there's a -- if you do something with a conscious disregard of the rights of others, that is what's called -- that's what's called reckless, willful and wanton. If you are doing -- it's one thing if you do something and you realize oh, my goodness, I cannot believe that I just -- I hurt you, I can't believe that, I had no idea. It's another thing if you do something and you realize it's hurting somebody else or at least they're claiming that it's hurting that person and you continue to do it without changing your behavior. You're acting with conscious disregard for the rights of -- of that person.

Now negligence per se. The ordinance is important here because if you violate an ordinance, then that is evidence of recklessness. What other evidence do we

have of recklessness? Well, we've got a number of things and this kind of goes back to where we started. We've got the -- you know, you're presumed to know what the law is. Whether or not the Cades knew what the law was, they knew that Ms. Garland was claiming on October the 18th of 2018 that her pond was being silted in by their land clearing. Then we have Mr. Lee's report nearly two months later. Well, seven weeks later. Then we have Mr. Cade's admission that during that two-month period that they didn't start stabilizing it until Christmas. But most importantly we have Mr. Lee's report, which is, again, an objective view. Seven weeks. Seven weeks. It's one thing when you're just kind of going -- you know, the days and the year -- the weeks and the months and the years kind of roll together. If you know that you are hurting somebody and you wait seven weeks before you do anything, that's a conscious disregard for the rights of that person.

Now the purpose of punitive damages is not to compensate the plaintiff because that's what actual damages do. The purpose of punitive damages is to send a message and it is to tell people within the community that this is not how we treat each other. If we are hurting our neighbors -- we value our land. If we are doing something which hurts our neighbor's land, we must

act. Again, the Cades, they didn't listen to the County, they didn't listen to Mr. Lee and they certainly won't listen to me, but they have to listen with you -- listen to you and you, and only you, can send that message.

Now, you know, what are we asking for? You know, I am asking for justice for Suzy Garland. Suzy Garland is asking for justice. The only way -- the only way that y'all -- or that a jury is able to speak is by awarding money. That's the only thing that they can do. Nobody has the ability to turn back the clock and undo the damage and make like this never happened and make the Cades stabilize. The only way to address the problem and to allow her to fix the pond and to compensate her for her loss and to send a message is by awarding money. Yes, it's a -- you cannot really distinguish justice from money because that's why the courts exist. That's the only thing that we have the power to do.

So two of the most beautiful words in any closing argument are in conclusion. I want to thank you, again, for your attention and your time and on behalf of Suzy ask for your verdict.

Thank you.

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

THE COURT: It may.

MR. MOORE: Thank you, Your Honor.

Madam Forelady, and ladies and gentlemen, on behalf of Robert and Christy, I also would like to thank you for being here with us. I want to thank you for your time and your attention. You paid close attention to the evidence as it came down. We noticed that. You're a very good jury and we appreciate your time.

You know, when this case is over you people are gonna get a check. A big check from the County for your service. Ladies, I would not plan any wardrobe change. You might be able to take your family to McDonald's and get some change, but the check's gonna be small, and there's no way financially you can be paid for the time and effort you've put in this case.

I like to think that a juror receives a little bit more pay than just the little check they get, and that's this. You know if you try to do something on your property and make it better and your neighbor ever sues you and you're sitting where Robert and Christy are and you're looking at a jury and you're looking at accusations against you, you're looking at claims of intentional wrongdoing, claims for punishment damages, you know that twelve good people from this county will come and sit where you are. They'll exercise their common sense and they'll treat you fairly and they will basically do the right thing. And I really appreciate you being here and

I hope you can agree with me that you appreciate the fact that if you're ever in their seat folks will come listen to you.

Now when we started this process, I told you I was not having any fun. This -- a lawsuit is not for entertainment value, it's not playing basketball, it's not sports. It's real life where real people's livelihood and standards of living are in play. At times in this job I hate it. I hate having to confront adverse witnesses. I hate having to be hard on a juror and to press and to press and to press. I don't enjoy the fight. Apparently my adverse counsel does. This isn't fun for me. I never have liked the fight. But, you know, sometimes a lawyer has to be a little bit hard in order to uncover the truth and sometimes the truth isn't actually very pretty.

You know, the truth finally came out in Mr. Belser's closing argument. He starts talking about punitive damages. Those damages are designed to punish the wrongdoer. That's what Ms. Garland wants. She wants them punished. Why I have no idea, but punishment is what they're looking for. They tell you that justice and money is the same thing. I've seen lots of things in forty-seven years practicing law, but I submit to you justice and money are not the same thing. They're

quite different. Justice is about truth, decency, honor, respect, rational conduct, civil conduct. If your neighbor comes to talk to you about a problem, you don't -- you don't refuse to shake her hand and tell her to get off your goddamn property. That ain't the way things work.

One of the things that concerns me is the plaintiff's an 80-some-odd-year-old lady and she's sympathetic. At least she was when she was testifying on direct, but we heard some of the language she's capable of and some of the actual vitriol in her voice when she was talking about Mr. Shearer throwing water all over the GD road. Again, there's no pleasure in this, but if at any time in this trial I did something that was offensive, hold it against me, please, and please don't hold it against Robert and Christy. I love these people. They're some of the nicest people I've ever met in my life. Hold it against me and not against them.

I've always thought a trial was a little bit unfair to the jury. It's unfair to you. We get to ask the questions and we don't allow you to ask questions. The people who've got to make the decision are you and all we can do is ask the questions we think you're gonna want to know. It would be kind of like teaching a course for a

semester to the students and never allow the students to ask any questions. That wouldn't be fair to the students. So all we can do is do what we think you want to know as best we know how.

You know, sometimes in a trial you uncover things that are ugly. Mr. Mathews had the audacity to climb on that witness stand and proudly proclaim numerous times he was being paid in exchange for his testimony. That in this case he was hired by the lawyer and he was being paid by the lawyer in exchange for his testimony. No witness is supposed to be paid in exchange for testimony. That's not justice and that's not right.

In order to rule for the plaintiff, I would respectfully submit you're going to have to accept the testimony of Mr. Mathews because he is the only professional who ever said one drop of sand came from the Cades' property onto the plaintiff's property. Mr. Gerald Lee gave a report and he said your dirt's unstable. We already knew that. It was in the process of being graded and repaired and he suggested that we stabilize the soil or put up measures, which we did, but Mr. Lee said I cannot tell you if any dirt ever wound up on Ms. Garland's property and then he said something more important than that. He said this. The only way -- the only way you could ever determine if siltation had

actually come from the Cades' property was to do a hydrological study. You'd have had to go to the ground, you would have had to figure the contours, you would have to know the consistency of the dirt and you would have had to do a proper engineering study, which I didn't do. So you ask him. Mr. Lee, you suggested that they put up some silt fences? Yes. All right. Are you able to testify that any dirt from my client's property ever wound up on the Lee's {sic} property? No. Why? Because, Mr. Moore, to do that you've got to do a proper engineering study.

Then we have Mr. Mathews. Oh, yes, I can give the opinion that 90 percent of the silt in this pond came from the Cades' property. Oh, yeah? Well, let's look at your report. Here is your map, sir, and your report. Would you please look at your map and tell me where Davis Drive is and then he points to a driveway behind the property. He can't even tell you where the road is on the map that he used in his report that he was paid to testify from.

I did a calculation. I did a calculation that is incredibly interesting I think. If he is correct, he says that there's 1428 cubic yards of silt that is in Ms. Garland's pond total and then he says that 90 percent of that came from the Cades' property. A cubic yard is

a yardstick high and a yardstick wide and a yardstick long. A cube. It's a cube. Width, height and length. If he's correct and there's 1428 cubic yards of silt in her pond and 1280 of it came from the hurricane, that would be the equivalent of 128 football fields high. Imagine what 128 football fields high would look like. Not only would it be 128 football fields high, it would be 128 football fields long and then it would be 128 feet wide. Can you imagine what a stack of dirt 128 football fields cubed would look like? That's what Roger told us yesterday. If that much dirt had come off the Cades' property, it would look like the Grand Canyon. Remember that statement? There's no way.

And everybody testified that the only way the silt could get onto Ms. Garland's pond is to go through that pipe and Ms. Garland said in deposition anyway that the only time she had any problems was during the two hurricanes. We know according to Mr. Shearer that anything on the far side of his property runs off through a -- through a creek.

Now, folks, I ask this of you because you've got good common sense. You've got a 28-inch pipe that runs under Davis Road. How during a hurricane -- and it's half clogged, so it's, what, 14? It's a 24-inch pipe, so it's a foot of clearance to get through it. Is there

any way in a hurricane or any other time that 128 cubic yards or cubic football fields, 1280 cubic yards, could run through that pipe? I submit to you it's impossible. That pipe wouldn't hold 1280 cubic yards of dirt. Not in ten years, not in twenty years. It couldn't possibly pass through. It's physically impossible.

I know Mr. Mathews's testimony was bought and paid for and I know that it was very questionable because he couldn't even identify the documents in his own report. As a matter of fact, he actually added that after he had given the report, but if that much dirt had moved off of the Cade property, I respectfully submit to you in common sense it wouldn't have gone through the pipe, it would have had to go across Paul Shearer's property and then across the road and then into the pond. But if that much dirt had rolled, the wetlands would have been torn to shreds. You would have seen silt trails, dirt trails, mountains of dirt on the road. If that much dirt had gone on that road, you couldn't get by the road, you couldn't cross the road. It would be totally impossible.

Counsel talks about oh, Mr. Mathews is the guy to believe. Oh, yeah? Well, let's talk about what probably really happened with Mr. Mathews. They hired, as you know a firm, called Dennis Engineering, a Columbia, South Carolina firm. Not a firm from Greenville. And

you'll notice they did not call Dennis Engineering to the stand. What happened is Mr. Belser realize that Dennis Engineering was smart enough to know that 1280 cubic yards of sand didn't get in that pond from this storm or from anything the Cades did and he realized that he had to have an expert and then he realized that Mr. Lee wasn't gonna say it either and he was stuck because he had to have an expert who would testify that the silt in the pond came from my client's property, but he knew he had old Mr. Mathews and all he had to do was pay Mr. Mathews and Mr. Mathews would say anything he wanted him to, which he did. Which is ugly. And the bought and paid for expert basically said yeah, what I did is after I'd issued my original report I talked to Mr. Belser and then I went on the Internet and I looked at some maps and came to the conclusion that all that silt in that pond, 90 percent of it, came from what the Cades did.

Now Mr. Belser is so interested in talking about Mr. Lee's testimony. Mr. Lee did fine. The soil was unstable and he did tell us to put some silt fences up, but he didn't say that the silt got into Ms. Garland's pond and he also said, if you listened to him, Mr. Mathews is full of poohy because Mr. Mathews did not do what he had to do if he were going to give a legitimate non-paid

for professional opinion as to how the soil had got there in the pond. He doesn't know because it didn't happen.

Folks, you've got a pond that's been out there for fifty years and like the -- the gentleman Mac said yeah, there was silt in it, there's been silt in it. You get any pond out in Gaston in the sandy soil there's gonna be silt in it. It's not gonna hurt anything. It's gonna settle on the bottom and be fine.

I want to talk about this burden of proof. In opening statement, they -- they told us they were going to prove that the Cades violated the Lexington County stormwater ordinance. They said that. Now we looked at that ordinance and the ordinance has something called an exemption and it says if you've got over an acre of land and it's rural property, it's agricultural property, what you do is exempt from the requirements of the stormwater -- stormwater ordinance. That's hard to say. Stormwater ordinance. It's exempt. Exempt means the ordinance doesn't apply. Now it does say except if you're going to do an impermeable surface, but what they claim to be the impermeable surfaces are the two buildings we put up, but the Cades got separate permits for those. The Cades had permits for those. The work they were doing in clearing the stumps had nothing to do with those two buildings. So the ordinance didn't apply. As a matter

of fact, Mr. Cade went to the County before doing any work to try to get any permits they needed and he left understanding that no permit was required.

Now what's interesting, too, about the stormwater ordinance is when Ms. Cade complained -- I'm sorry, Ms. Garland complained, out comes the field worker, and he did his job. He put a stop work order on and said stop work until we can figure this out and at that point in time the supervisor got ahold of it and they looked at it and the day after they lifted that order and said you can go back to work.

Now if a permit was needed, they would have said you can go back to work once you get your permit, but they didn't do that. If they were in violation of the law, if the Garlands {sic} were in violation of the law, you can bet the County would have gotten its money for its permit. They're good about that. The County wants that money because they use that permit money and if a permit was needed, they would have required it before. But what did that gentleman say? We staffed it and told them to go back to work, we didn't require a permit, and we asked them to do stabilization. Didn't tell them, asked them to.

Now the problem with the way this thing is being argued is they're wanting to say the stop work order is

the equivalent of a citation. If they're gonna prove to you that my clients violated the Lexington stormwater ordinance, then a charge should have been brought against them and they should have been entitled to go to court and have their day in court and let a court decide whether or not they had violated the ordinance. But there's a reason no citation was issued. Because the word "exemption" applied. The law provides on page 9, if you look at it, a clear exemption. That is why Robert wasn't required to have a permit -- the first permit in the first place. That is why no permit was required for him to start work again. At no time on that witness stand did anybody from the County of Lexington ever say the man is in violation of the stormwater ordinance.

Now the worker who came out and gave the stop work order thought that might be the case, but that's not his determination. That determination is for his supervisor and like the supervisor said we staffed it, we looked at the facts and we let them go back to work again without a permit and without any directives to do anything. The Lexington County officials also said we came back out later and looked at the pipe and the water that was in the pipe was clean.

There is no doubt in this case, but that in the deposition Ms. Garland said that the only time she had

problems with siltation in the pond were during the two hurricanes. Did y'all hear her say that in the deposition? She tried to change it on the stand, but she admitted that what she said was true. The only time she'd ever had problems with siltation was during the two hurricanes.

Now think of about this. Mr. Shearer told us that part of that berm blew out during the hurricane and all of the sand would have flown down into the direction of Ms. Garland's pond, which it did. Would that not have silted her pond? Certainly it would have and it would have been an awful lot of dirt.

Ms. Garland tells us that somebody else at some time would come by and put cuts into the berm and they showed us a film of sediment going into the pond, but it wasn't from the Cades' property. Nobody's said that. Did it come from one of those cuts? Did it come from somewhere else? We don't know, but nobody's ever told you that silt was coming from our property. As a matter of fact, what we've been told is that the Cades built a trap and that the water that comes out of their pond has to be clean because it's coming out of the top, not the bottom, and we know that sand falls to the bottom. So the only water that goes into the stream that goes onto the wetlands that goes into the pipe that goes into the

additional wetlands and then goes to the pond, according to everybody else, that water's clean. It's clean.

There's no indication anywhere that anyone ever saw any major erosion, ruts, anything from major sand coming off these people's property. I respectfully submit to you that the testimony of Mr. Mathews is highly questionable. Highly questionable. And unless you accept the testimony of Mr. Mathews, which the judge will tell you you don't have to accept anything from any expert, if you don't accept the testimony of Mr. Mathews, there's not one shred of evidence that anything from the Cade property got into Ms. Garland's pond.

This case doesn't hinge on the County, it doesn't hinge on Mr. Lee, it doesn't hinge on Dennis Engineering. If you don't accept as true the testimony of Mr. Mathews from Greenville, there's no proof of anything at all in this case because there's no proof by anybody that anything got from my client's property into the pond.

Can you -- can you issue a guilty verdict of wrongdoing on the basis of Mr. Mathews, their paid witness, who was paid in exchange for his testimony? Can you really do that? Can you do that? Justice. The same thing as money. I do not know where this comes from.

Let's talk about credibility. We do have to consider the credibility of the witnesses and the plaintiff has the burden not only of proving wrongdoing through Mr. Mathews, he also has to prove damages. Reasonable damages.

Okay. What is the reasonable cost of repairing this pond? If we assume and take Mr. Mathews's word for it, which I submit you shouldn't, but you can if you want to because that's the law. You folks find the facts, not me. Is it reasonable that any sane human being would spend $435,000 to clean out a two-acre pond in Gaston, South Carolina? I asked the gentleman himself. Sir, do you know anybody that would be crazy enough to spend $435,000 to clean out a two-acre pond? You can build one for $50,000. No, I don't know anybody that's ever done anything like that. Do you know anybody that's ever spent $335,000 to clean out a two-acre pond in Gaston or anywhere? No. $225,000? No. The reason he doesn't know of anybody is because that would be commercially unreasonable. It would be commercially unreasonable for anybody to spend that kind of money.

Again, any proof of damages they have to prove them to a reasonable extent. They're not entitled to unreasonable damages and the only number you have is $435,000. If we look at the man's report, he's going

to spend $10,000 to drive two pieces of heavy equipment and two trucks twenty miles. If that's the case, I would like to be in the heavy equipment moving business. $10,000 to move a track hoe twenty miles?

If you listen to his report, he's going to dump good clean sand, dirt material, into the landfill. Do we know anybody who would be dumb enough to pay the landfill money to dump clean dirt? Builders are buying dirt all over this county. They want it. They need it. They stockpile it. This man is going to charge 100 and some odd thousand dollars to dump clean dirt at the landfill? The landfill is a construction and demolition landfill. It's for things like old shingles and old bricks. It's not for dirt. Surely to goodness a hundred and some odd thousand dollars to dump dirt at the landfill, I would respectfully submit is highly questionable. I'd just ask you to look at those numbers.

The -- Ms. Garland says that justice is that she gets $435,000 and that a 1200-foot, 60-year-old home in Gaston with thirteen acres and a pond is worth $500,000. That's what she says. If we look at the -- and everybody knows the County has recently reassessed the property, reappraised it. The tax value is only $90,000. If you say that the house is worth twice the tax value, it's 180. She wants the equivalent of two and a half times

the value of her house and to keep the house, and that's justice.

And, in addition, she wants to punish these people with punitive damages. And that's justice. That's money, but I respectfully submit it's not justice. And there is a difference between money and justice contrary to my friend's apparent belief. There's a major difference between money and justice.

If you listened to Paul Shearer's testimony, he's lived there for a long time, Mr. Moore, I didn't see any evidence of any dirt going across that road into Ms. Garland's yard or her pond. I looked at it. I know what was there. There was no evidence of any major erosion as a result of rainstorms, hurricanes or anything else. And I can tell you this. The pipe on the other side of the road, we saw pictures of it, is covered up with of dirt. In order for the water to even get into the wetlands on the other side, it's got to bubble up through the ground carrying dirt with it.

Mr. Shearer seemed to be a fairly credible individual. He had nothing against Ms. Garland, but apparently she thinks she's got something against him. But he has nothing against anybody. He's just trying to tell you what he saw.

I don't remember exactly how much money is it that

the man -- Mr. Mathews testified he was being paid for his testimony. I hope you will consider that when you go back to consider his credibility because this case certainly rises very much on his testimony. Can you really believe that man? Honestly is he credible? Look at the report from Mr. Mathews because we have a written report. His written report says nothing about where the dirt came from. His report says nothing about the Cades' property being the cause of it. His report says nothing about 90 percent of the silt being from my clients' property. All his report says is I went out, I got the vote and I made a determination that 1485 cubic yards of silt is in this pond. That was everything that we knew he was going to say before he climbed on the witness stand and then what did he say? Oh, I've got an addition to that. Sometime ago I talked to Mr. Belser and he said he'd pay me to look at the Internet and come back and tell y'all it all came from the Cades' property. It's just not -- it's frustrating to listen to that.

I submit Mr. Mathews was kind of sad. You know, y'all were able to watch him on the stand. You were able to watch him on the stand. You know, he admitted he's being paid for his testimony. Paid in exchange for his testimony is the words. He looked like he was embarrassed to admit it. He should have been. Nobody should abuse

his professional privileges like that. A bought and paid for expert, a bought and paid for witness, is no witness at all, and that's all this man is, is a bought and paid for expert. It is not worthy of consideration at all. He looked embarrassed when I asked him that question and then he really looked embarrassed when I said sir, here's your map, show me where Davis Drive is, and he says I don't know. First of all, he pointed it out to us and, of course, it was backwards and it's like okay, Mr. Bought and Paid for Expert, where's my client's property? I don't know. Sir -- I started to ask him aren't you really humiliated by trying to tell somebody that you're gonna be the witness in the case and that you're willing to sell your soul for a dollar? You're willing to basically abuse your professional standing to make a buck. Where were the real engineers? Where was Dennis Engineering, the people they hired to go out and do an evaluation as to whether my client's property had silted the pond? They weren't here. Look at Mr. Mathews's report. It's addressed to Mr. Belser. Look at the gentleman's report who says it was $435,000 to clean the pond. It's addressed to Mr. Belser.

When we started this case, I told you the evidence would show that this case is one that had been built by the lawyer, and that's the truth. Every report you see

is addressed to Mr. Belser. Every potential estimate is addressed to Mr. Belser. Mr. Belser. Mr. Belser. Mr. Belser. Who's paying you? Mr. Belser. Who are you billing? Mr. Belser. Who did you work your payment arrangement with? Mr. Belser. Come on, man.

I submit to you, again, a bought and paid for expert is no expert at all and certainly not someone that would basically be a legitimate basis to bankrupt somebody to the tune of $435,000.

Mr. Shearer testified that the pipe that goes under Davis Drive is stopped up. When a pipe is stopped up, water backs up. Didn't we see a photograph of water that was backed up from the pipe? Is that not photographic proof that what Mr. Shearer said to you is true? That pipe had been clogged for years. And, of course, it makes sense. I don't know if any of you live around a county road, but the county maintenance on its roads isn't what you would call stellar. And I don't fault the County for that. I love Lexington county. I've lived here forty-seven years, but the County doesn't have the manpower or the money to keep these pipes cleaned out and when they scrape the road, thank God they do that, the silt goes in, it goes in the ditch, rolls in the pipe, rolls under the pipe eventually and rolls straight into Suzy Garland's property. That is

exactly what everyone's testified to. But, oh, no, twelve football -- 120 football fields high, 120 football fields wide and 120 football fields long rolled through a 12-inch pipe at two occasions and wound up in Ms. Garland's pond. I submit to you, folks, that testimony is just not credible. It couldn't happen.

In regard to the $435,000 to clean the pond, would any reasonable person actually do that? The Court will tell you that any award, any award -- if they've proven anything, any award has to be reasonable and has to be based upon reason and justice.

We talked about Mac Watson, the caretaker of the pond. He said oh, yeah, there's been hydrological plants there for years. That's where it silts. That's where it started silting. The silt's been there. Those plants we saw, they couldn't have been there if there hadn't been silt for a long, long time. He testified that pond's been silty for years. But, oh, no, the pond had no silt, hardly at all, before the hurricane.

You know, we have been dealing with this case now for four or five years. The fees and costs that we've incurred and depositions and other things has been outrageous. My clients have had five years of worry and money and concern and absolute fear. And does anybody blame Robert when every time he turns around there's

Ms. Garland with a videocamera in her hand, which she didn't deny, videotaping him almost every day in some form or fashion? Do you blame him for one day following her and videotaping her? I mean, sometimes, you know, enough's enough. You've got to stop it sometime. These folks are entitled to some peace, aren't they? At some point aren't they entitled to some peace? The case has already about bankrupt them. I hate the fact that they've have to pay all this money just to defend themselves. I despise it.

You saw Christy on the stand and she cried. She cried to the point that she was snuffling. Have you ever seen anyone get so upset they're snuffling? The pressure, the worry, the financial impact has been devastating on these people. She tried to tell you what happened. When she explained to you how Ms. Garland chased her off the property when she extended the hand of friendship and cursed at her. That's one of the things that concerns me about this case. They made it very, very clear that this lady is 83 years old and she's a little old lady and, boy, she's being picked on. You ought to be sympathetic. That's what they're appealing to is your sympathy. Oh, doesn't everybody want to help a little old lady? Sure, I want to help a little old lady. And, boy, when she was on the stand with her lawyer questioning

her, oh, she was the little old lady, but when I started cross-examining her, that little old lady's personality shows up and when Christy goes down and extends a hand of friendship, get off my GD property. I'm not gonna say those words again. I'm trying to stop using that kind of language. I need a cuss jar or something so I'm not gonna say the words again. Get off my GD property. Then the telling words. I'm going to sue you for $500,000. Remember that? You're gonna pay me $500,000. That's what she told her when she ran Christy off her property. I'm gonna sue you for half a million dollars and, lo and behold, coincidentally, the amount of the actual damages they say is $435,000 to clean out a two-acre pond. Coincidence maybe, but please don't be fooled into judging this case because you feel sorry for an 83-year-old lady. This case has been miserable, absolutely miserable. It has taken a physical toll on these people.

Mr. Belser tells you that justice is about money and that money needs to be awarded to punish these people. That's really what they're trying to do. This case isn't really about money. It's about this lady wanting to punish these people. She wants to get them for something, I'm not sure exactly what, but what really happened is she is an environmentalist and when they cut

down the trees it made her mad if you want to know the honest truth about it. She got mad because they cut down the trees, she was gonna get them, and here we are.

It rains, she calls the County, the County comes out, and because she was complaining they issue a stop work order, they check it out, ain't nothing wrong here, take the stop work order away and off we go, but then off we go. Mr. Belser takes it upon himself. Cease and desist. Stop. What authority does he have to tell anybody anything? None. Oh, he makes a big deal about I ordered them to cease and desist. He's like me. He's just a lawyer. He doesn't have the authority to order anybody to cease and desist anything. He's trying -- what he's trying to do is to bully them and to scare them and to try to get money from them, and here we go.

Now he has an opportunity to have a case and to build it. He even tries to use his correspondence threatening my clients as a way to tell you he needs all this money which equals justice.

I've done this forty-seven years and I am exhausted, but I know this in my heart. Justice is not about money. It's about what's right, it's about what's wrong, and it's about truth. Nobody should be convicted of wrongdoing on the basis of a bought and paid for so-called engineer. At this time, I've worked on this

case hard for three or four years and I've done everything I know how to do. I got aggressive with some witnesses, but I think I had to. I didn't like it, I don't like it, but we got the truth.

All I can do now is sit down and listen. I have tried to care for my friends the entire time this case is going on and at this time I put their care into your hands. I ask you for some peace. I ask you to properly end this thing. Let that little lady go home and have the peace she so rightly deserves. Let her sleep at night for a change.

Thank you.

THE COURT: Thank you, Mr. Moore.

Mr. Belser.

MR. BELSER: You know, I need to do a quick math exercise, so let me just bring this up here. The purpose of this, I get to address a couple of things that Mr. Moore has raised. And I was a history major in college, not a math guy, but I do have an iPhone, so I'm empowered, and I believe that Mr. Moore said that the amount of sediment that Mr. Mathews found was 120 football fields wide, 120 football fields high and 120 football field long, something like that.

All right. Let's -- again, I'm going back to a sports metaphor, and I've got bad handwriting, but let's

say this is the goal line of a football field right here. This is the endzone. Touchdown.

All right. A football field is sixty yards wide, so we've got here and right here. So sixty yards wide, all right? Sorry to keep jumping back and forth. Therefore, you can fit sixty of those cubes and those cubes are not cement block types, they are blocks of loose sediment that have water in them, so you can fit sixty of them across right here. So 1400 -- 1400 divided by 60 is 23 and one-third. So you start at -- he's at the one, he passes the five, the ten. You get here to the twenty -- so let's just say the twenty-five yard line. You've got -- the amount of sediment that Mr. Mathews discovered was sideline to sideline from the goal line to about the twenty-five yard line, three feet high. I don't know where in the calculations came from about 128 football fields. I mean, that's enormous. That's bigger than this courthouse. How many football fields can you fit on the Cade property? How many football fields can you -- if you were to disperse this sediment, instead of having it within this little box, disburse it over the entire thirty-six acres that were cleared? It makes sense and that's -- this is the map. Mr. Moore's map, I have no idea where that came from, and that's all I have to say about that.

All right. Mr. Moore went on and on and on about how Mr. Mathews sold his soul, bought and paid for. Fortunately, the law recognizes that people have to get paid for their work. The judge is gonna instruct you that when an expert witness is called by either a plaintiff or a defendant he expects to be paid and should be paid. You should not take into consideration the fact that the witness is paid unless there's some evidence or circumstance appearing from the evidence which would fully and reasonably convince you that the testimony of the witness has been influenced because of the sum which he has been paid as a witness.

Mr. Mathews was paid just like Mr. Lee by -- just like Mr. Lee was paid by the -- by the Cades, all right? I'm not doing this for free. Mr. Moore is not doing this for free. There is nothing wrong, and that is the law that the judge will instruct you, that just because somebody gets paid for a professional opinion, that does not taint what they find.

Now I'm not -- Ms. Garland hired me not to be the bully. She hired me to stand up to the bully. The legal effect -- I know he's not gonna listen to me. I can tell him you must stop. Guess what? I don't have a badge, I don't have a gun. I don't have anything. I have no authority. But the legal significance of that letter is

that it put him on notice. Attached to my letter were photographs and the same ones that y'all are gonna see. Yeah, he doesn't have to listen to what I say, but he is on notice of the problem.

Now Mr. Moore talked a lot about the Lexington County officials and what was -- about how they never said this and never saw that. Y'all saw those gentlemen testify on the stand. You also saw Mr. Lee testify on the stand that they needed to have a permit. There's nobody from the County or an expert or anything which supports their position. The only thing -- the only basis for them to say that we did not need a permit is their self-serving statement that it was for agricultural purposes only. You saw the video. That is not just a horse and cattle farm. That is a manse.

Now the encounter between Christy Cade and Ms. Garland, the only reason I'm bringing that up is because Mr. Moore brought that up. Remember what Ms. Cade omitted from her testimony describing that event on direct examination. She came over -- she immediately -- she came over to Ms. Garland's property after this guy, Mr. Melichar, who y'all are probably wondering who in the world is this Melichar guy and what in world was going on there. Well, there was this nasty brouhaha between Melichar and Cade and both of -- right before

she came to Ms. Garland's property unannounced she got into a verbal disagreement with Mr. Cade {sic} where they were both exchanging vulgarities. So just kind of -- let's live in the moment here for a second. You're on your property, somebody is screaming at you about a half million dollar lawsuit -- not Ms. Garland, somebody's doing that, they're screaming vulgarities at you, you're screaming back. You know, as Mr. Cade said, Ms. Cade can stick up for herself. Let's go. Let's get up. Let's put an end to this. That's what Mr. Cade said later, but that's what was going on. Look at Ms. Garland. Come on.

Now the hurricane. Let's talk about the hurricane. You know, the -- the testimony from Mr. Shearer about the blow -- the blowout, those are Mr. Moore's words, not Mr. Shearer's words, was that it was a two-foot by two-foot area that -- that breached. A two-foot by two-foot area. It's not the entire road. It's not like a tsunami wave came through and blew it out. It was a small area that got pushed open so the water could get through and that was in 2015. That was the 2015 flood.

Mr. Shearer -- I mean, as y'all saw, I was confused. Wait, are you talking about the big flood when the Cades were there or when everybody else lost their property or what are you talking about and he was like no, no, no.

Just so everybody's clear, what I was talking about, that was in 2015. That has nothing to do with this case. This act of God defense has nothing to do with this case. The judge will instruct you as to what the act of God defense is. It must be an event which is completely unexpected. Not one which is mentioned on the news, we've got a big storm coming. Like, you know, that's -- you know, we know everything about the weather, a good thing or bad. Every single time. Everybody knows storms are coming. We knew the 2015 storm was coming days before it came. This wasn't a surprise popup disaster that came out of nowhere that was the sole cause of what happened. And guess what? Even if it was a -- even if the storm in 2018 had been a surprise popup disaster that the weathermen had no idea was coming and didn't report, it wouldn't have happened if they hadn't cleared their land and not put up any sediment controls. In order for the act of God defense to apply, it has to be something which is completely unforeseeable, not something which is reported on the news multiple days in advance. It has to be -- that act of God has to be completely separate from any act of man in order to apply and we have the acts of men that caused this.

You know, I -- you know, I told you this before, the judge will instruct you that the statements by

counsel, arguments by counsel, are not evidence. You know, we're here to argue and we're here to facilitate.

There's a statement by counsel that it's not commercially reasonable for Mr. Hanna to remove this twenty-five yards worth of sediment from the pond. That's just not reasonable. There's no competing evidence, there's no competing estimate. If it's commercially unreasonable, show me. Have somebody else come and say what it's gonna cost. We -- none of us are experts in draining ponds, moving heavy equipment, pulling out sediment and then getting a permit and knowing what to do with it. You rely on professionals and that's what our quote is.

You know, the tax value of $91,000. Again, I anticipated this. They completely discount the value of Ms. Garland's property. You know, Mr. Cade certainly agrees that whatever the tax value is not representative of what the value is. I mean, their property is assessed at, what, $13,000? Again, you saw the video. No. Everybody knows that.

You know, the thing about Mr. Mathews, you know, being disoriented, you know, throughout this trial we've had this thing where north has been south and south has been north and in that situation with that photograph, north was east. You know, if we look at the map as it

is, you know, Ms. Garland's pond is north. The way that Mr. Moore had this oriented the whole time is it was south and when it was in front of Mr. Mathews, zoomed in, it was west. Not to mention the fact that he's sitting on the stand having Mr. Moore ask him questions in the heat of battle.

You know, Mr. -- I understand why the defense tries to kind of blow off the Lee report, but, you know, one other thing, if you -- when y'all have the chance to read it, it will be back there with you, by removing the vegetation on the site the runoff characteristics have been altered and a more detailed study that is beyond the scope of this report would be required to quantify the overall impact to the basin. The downstream impacts resulting from the denuding of the site would be not only runoff laden with suspended particles, but also an increase volume of runoff and rate of runoff now being received downstream. It cannot be more clear. That's why it wasn't provided to us. It's the smoking gun.

Thank y'all very much. I appreciate it. We're now at the point where the judge will charge you as to the law.

THE COURT: All right.

Madam Forelady, I'm gonna give y'all a break because it's probably gonna take me about forty minutes

to charge y'all, okay?

FOREPERSON: Okay.

THE COURT: So let's take a quick break and I'll bring you back in. In the meantime, I'm gonna get the lawyers to get of all the exhibits together and we'll come and get you in just a minute.

(Whereupon, the jury retires to the jury room at 2:36 PM.)

(Back on the record at 2:47 PM.)

BAILIFF: Court's back in session.

THE COURT: Okay. Mr. Belser, is there anything that -- any videos being placed into evidence?

MR. BELSER: Well, there are videos, yes, but they're -- if they ask for them, I'm happy to show them to them, but they're on my computer or on my little iPad thing. Or I can e-mail them -- I could e-mail them to Abigail or I could put them on a -- I could create a separate folder. I've got them in my thing on --

THE COURT: I'm just wondering if I had something to send back to the jury.

MR. BELSER: Yeah.

THE COURT: All right. Everybody -- oh, you're looking at the verdict form, Mr. Moore.

Let me tell you, to answer your question, Mr. Belser, about Mr. Singleton's case, this is what

I'm gonna say to the jury. The defendant, Roger Singleton, is no longer a party to this case. You do not need to speculate as to why, nor is it to be considered by you in any way, nor is it to be discussed at all in the jury room.

MR. BELSER: Makes sense.

THE COURT: That's all I can say. Otherwise, I think it would be prejudicial.

Now how about the verdict form?

MR. MOORE: I think that the only part I would object to on the verdict form would be in large part is if you, the jury, in the above-captioned case, unanimously find by clear and convincing evidence the defendant's conduct was with a conscious disregard, you may award punitive damages.

You've already told them what punitive damages are. That right there should be stricken. They've already heard what you said in the charge. The only line we need is that last one, I believe. That's simply --

THE COURT: Let me ask, are you in agreement, Mr. Freeman?

MR. BELSER: I'm -- I think it's fine as it is actually. I mean, I think that that -- I don't really -- I don't care.

THE COURT: I don't mind striking it. I'm going

to read punitive damages, so they'll know.

MR. BELSER: That's fine.

THE COURT: Y'all discussed it also in closing.

Okay. Can I bring the jury in?

MR. BELSER: Yes, ma'am.

MR. MOORE: Yes, ma'am.

THE COURT: All right. Let's bring them in.

(Whereupon, the jury return the courtroom at 2:52 PM.)

THE COURT: Okay. Madam Forelady, are we ready?

FOREPERSON: We're ready, Your Honor.

THE COURT: Okay. I want y'all to bear with me because there is a lot of charges for me to read, but before I do that I want you to know that the defendant, Roger Singleton, is no longer a party to this case. You do not need to speculate as to why, nor is it to be considered by you in any way. In fact, it should not even be discussed in the jury room during your deliberations.

All right. With that said, it is now my duty as the trial judge to instruct you on the law applicable to this case and in that regard it is your duty as jurors to accept and apply the law as I now state it to you.

Furthermore, it is your exclusive duty to decide

all the issues of fact in this case and to determine the effect, value and weight of the evidence. All the parties have the right to expect that you will carefully consider and evaluate the evidence and apply the law of this case to it so that in the end all parties will receive a fair and impartial trial.

During this trial you and I have separate duties to perform. As the trial judge, it is my responsibility to preside over this trial and to rule upon the admissibility of the evidence offered during the trial. In that regard, you are to consider only the evidence before you. You are to consider only the testimony which has been presented from the witness stand, together with any exhibits admitted into the record.

Furthermore, I have the additional duty to charge you on the law to this case and in that regard it is your duty to accept and apply the law as I now state it to you. If you have any preconceived ideas as to what the law is or what you think the law ought to be and it does not agree with what I tell you the law is, you are obligated under your oath to abandon these preconceptions because you are sworn to accept the law as I now state it to you.

In this trial, you are the sole and exclusive judges of the facts. Do not infer that I have any opinion about

the facts in this case from anything I have said or done during the course of this trial. In this regard, the law simply does not permit me to have an opinion about the facts. As jurors, it is your duty alone to determine the effect, value and weight of the evidence presented during the course of the trial.

Furthermore, it is your job as jurors to determine the credibility or believability of the witnesses who have testified in this case. In determining the believability of witnesses who have testified, you may believe one witness over many or many over one. You may believe a part of the testimony of a witness and reject the remaining part. You may believe the testimony of a witness in its entirety or reject it in full. You may consider whether the witness has an interest in the result of the trial, whether the witness is prejudiced toward either party, the opportunity for the witness to have seen the matters and things about which the witness may testify and the way the witness acts on the witness stand.

Now evidence may be direct or circumstantial. Direct evidence is testimony by a witness about what the witness personally saw, heard or did. Circumstantial evidence is indirect evidence. In other words, it is proof of one or more facts from which one can find

another fact. You may consider both direct and circumstantial evidence equally.

The following things are not evidence and you must not consider them as evidence in deciding the facts of this case. Statements and arguments of the attorneys, questions and objections of the attorneys, and testimony that I've instructed you to disregard.

I believe in this case I did strike something and you are to disregard it.

The burden of proof in this case is by a preponderance of the evidence. A preponderance of the evidence simply means the greater weight of the evidence. It is evidence which as a whole shows that the fact sought to be proved is more likely true than not true.

This can be illustrated by imagining a set of scales. When the case begins the scales are even. After all of the evidence has been presented, if the scales remain even or if they tip even slightly in favor of the defendants, then the plaintiff has failed to meet the burden of proof and would not be entitled to recover in this case. If, on the other hand, the scales tip even slightly in favor of the plaintiff, the plaintiff will have met the burden of proof and you should return a verdict for the plaintiff.

The preponderance of the evidence is not determined

by the number of witnesses. Instead, it must be determined by the greater weight of all of the evidence.

During the trial of this case we had testimony by way of a video deposition of a witness that was taken outside of the courtroom. The deposition was taken in the manner prescribed by law and you will consider the testimony from that deposition just as if the witness were here upon the stand testifying. You take this deposition testimony in connection with all the other testimony and you assess the credibility of that witness from anything that is in the record that will aid you in doing so.

You should consider that deposition evidence along with the testimony of the witnesses who have appeared in person and you determine from all the evidence in this case whether by witnesses present or by deposition or whether by exhibits in this case what the truth of this controversy is according to the facts as you find them to be and then apply the law as I give it to you.

The rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who by education and experience has become an expert in some art, science or profession may give an opinion as to the subject the

witness claims to be an expert in and may also give the reasons for the opinion.

You should consider any expert opinion given by a witness and like any other evidence give it the weight you think it deserves. If you decide that an expert witness's opinion is not based on sufficient education and experience or if you decide that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

An expert witness's testimony is to be given no greater weight than that of other witness simply because the witness is an expert. You do not have to accept an expert's opinion even though it is uncontradicted.

When an expert is called by either a plaintiff or a defendant he expects to be paid and should be paid. You should not take into consideration the fact that the witness is paid unless there's some evidence or circumstances appearing from the evidence which would fully and reasonably convince you that the testimony of the witness has been influenced because of the sum of which he has been paid as a witness.

In addition to the common law duty of care, Lexington County has a stormwater management ordinance codified in the Lexington County Code of Ordinances. It

is up to you to determine if the statute does or does not apply.

The plaintiff claims that the defendants were negligent and should compensate the plaintiff for the injuries the plaintiff suffered as a result of the defendants' negligence. A plaintiff's right of recovery may not rest on the mere fact that an accident or injury occurred. Instead, in order to prove that the defendants were negligent, the plaintiff must prove by a preponderance or greater weight of the evidence the follow things.

First, the plaintiff must prove by a preponderance or greater weight of the evidence that the defendants owed the plaintiff a duty of care. This is a question of law which you will decide. If you find there was a duty of care, then you must decide the remaining questions.

The first of these is whether the plaintiff has proven by a preponderance or greater weight of the evidence that the defendants breached the duty of care by a negligent act or omission.

Negligent means that a person has done something that a reasonable person would not have done or has failed to do something that a reasonable person would have done in the same situation. The plaintiff must

also prove by a preponderance or greater weight of the evidence that they suffered damages as a result of the defendants' breach of duty.

Finally, the plaintiff must prove by a preponderance or greater weight of the evidence that the damages were proximately caused by the defendants' breach of duty. There is no countervailing burden on defendants to prove that their negligence did not cause the plaintiff's injuries.

Proximate cause is something that produces a natural chain of events which in the end brings about the injury. It is the direct cause of the injury. To prove that the defendants' negligence proximately caused the plaintiff's injury, the plaintiff must first prove causation in fact. This is proven by showing that the injury would not have occurred but for the defendant's negligence.

The plaintiff must also prove legal cause. Legal cause is proven by showing that the injury was foreseeable. This means that the injury occurred as a natural and probable consequence of the defendant's negligence.

The plaintiff must prove that some injury from the defendants' negligence was foreseeable, but does not have to prove that the particular injury that occurred was

foreseeable. However, the defendants cannot be held responsible for things which could not be expected to happen.

Proximate cause does not mean the only cause. The defendants' act can be a proximate cause of the plaintiff's injury if it was at least one of the direct concurring causes of the injury. However, if the real cause of the claimed injury or damage is left in doubt by the testimony, the plaintiff has not met his burden of proof.

I charge you that where the cause of the plaintiff's injuries may be reasonably attributed to an act for which the defendants are not liable as to one for which they are liable, the plaintiff has failed to carry the burden of establishing that his injuries were the proximate result of the defendants' negligence and the verdict must be for the defendants. The defendants would only be liable for the damages for which the defendants actually caused.

A landowner has an affirmative duty not to permit his land to remain in an altered state if such altered state creates a condition of 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 a

manner as to let the earth pass or slide over his land into the lot of his neighbor.

Where there is a duty arising from an ordinance and the plaintiff shows the defendants violated the ordinance, the violation of the ordinance is negligence per se. The violation of any of the provisions of an ordinance is negligence per se. That is, negligence in and of itself, negligence as a matter of law.

Negligence per se simply means you, the jury, need not decide if the defendant acted as would a reasonable man in the circumstances, the ordinances fixes the standard of the conduct required of the defendant leaving you merely to decide whether the defendants breached the ordinance. If they did, their failure to take due care is established as a matter of law. The only issue then left for you to determine is whether the defendants' conduct proximately caused damage to the plaintiff.

Accordingly, proof of a violation of an ordinance is, in fact, proof of negligence so that your only concern then would be whether such violation of the ordinance so shown was a proximate cause of the injury and damage.

The violation of an ordinance does not constitute recklessness, willfulness and wantonness per se, yet such violation is shown is evidence of recklessness,

willfulness and wantonness and may be considered in connection with other facts and circumstances surrounding the case in determining whether the defendants have been reckless, willful and wanton.

The violation of an ordinance will support a recovery of damages if such a violation proximately caused or proximately contributed to the injuries or damages complained of.

When one person is injured by the negligent acts of another, the injured person is entitled to be fully compensated for all injuries directly or proximately resulting from any negligent act or omissions by the defendant.

In determining the amount of compensation for injuries suffered by the plaintiff as a result of the defendants' negligence, it is proper for you to consider the reasonable cost of repairs and the value of the use of the property during a reasonable repair time.

Damages do not have to be proven to a mathematical certainty. They do have to be proven to be reasonable by a preponderance of the evidence.

The plaintiff claims that the defendants acted with recklessness, willfulness and wantonness and that, therefore, the plaintiff is entitled to punitive damages from the defendants.

Recklessness means a conscious failure to use reasonable care. A person who is negligent acts carelessly. However, a person who acts recklessly, willfully and wantonly is not only careless, but is also aware that he is being careless.

You may only award punitive damages to the plaintiff if you find that the plaintiff has proven a wanton, willful and malicious violation of her rights by the defendants. Punitive damages should be awarded only for conduct so gross that it implies wantonness, willfulness and recklessness.

The words "recklessness", "willfulness" and "wantonness" are syn -- synonymous. Thank you. The terms are used to describe a conscious failure to recognize and observe reasonable or due care. Recklessness implies the doing of a negligent act knowingly. When a person acts negligently and realizes that he is acting negligently, the law says he is reckless, willful and wanton. Whichever term you prefer they all mean the same thing. That is, the conscious failure to exercise due care.

Recklessness is distinguished from negligence. Negligence is the failure to use due care. Negligence is carelessness. Negligence is failure by omission or commission to exercise due care as a person of

ordinary reason and prudence would exercise in the same circumstances. Recklessness is a higher degree of culpability and responsibility. Recklessness signifies a conscious failure to exercise due care. Recklessness is a conscious indifference to the rights of the plaintiff or a reckless disregard of the rights of the plaintiff.

Recklessness is an awareness of wrongful conduct and a continuation to act regardless of the consequences. In other words, while negligence proves -- while negligent -- in other words, while a negligent person -- let me read that one more time.

In other words, while a negligent person is one who acts carelessly, a person whose behavior is reckless, willful and/or wanton is not only careless in his actions, but is also aware that he is careless.

The test for determining whether a tort may be deemed reckless, willful or wanton is whether it has been committed in such a matter and such circumstances that a person of ordinary reason or prudence would have been conscious of it as an invasion of the rights of the injured party.

The plaintiff must prove by clear and convincing evidence that he is entitled to an award of punitive damages. This burden of proof is over and above the

normal burden of proof or proof by a preponderance of the evidence.

Clear and convincing evidence is that degree of proof which will give you a firm belief as to the facts sought to be proved. This is more than a mere preponderance of the evidence but less than beyond a reasonable doubt.

I'm about halfway through.

Trespass is any interference with one's right to the exclusive peaceable possession of his property. To prove a trespass, the plaintiff must present evidence which establishes that he was in legal possession of the property, that the defendant voluntarily entered upon the plaintiff's property, and that such entry was made without the plaintiff's permission.

To maintain a trespass action, there must be possession and a right to it. One in peaceable possession though lacking title is entitled to remain in possession until ousted by the true owner and need only show prior peaceable possession of the defendant.

An action in trespass will lie if the defendant intentionally entered the property. The unwarrantable entry on land in the peaceable possession of another is a trespass without regard to the degree of force used, the means of entry or extent of damage.

The entry itself is the wrong.

For example, if one without a license from the person in possession of land walks upon it or casts a twig upon it or pours a bucket of water upon it, he commits a trespass. It is immaterial whether any further damage results.

To constitute an actionable trespass, there must be an affirmative act. The invasion of the land must be intentional and the harm caused must be the direct result of that invasion. Trespass does not lie for nonfeasance or for failure to perform a duty.

Intent is proved by showing the defendant acted voluntarily and that he knew or should have known the result would follow from his act. Although neither deliberation, purpose, motive or malice are necessary elements of intent, the defendant must intend the act which in law constitutes the invasion of the plaintiff's rights.

Trespass is an intentional tort and while the trespasser to be liable need not intend or expect the damaging consequence of his entry, he must intend the act which constitutes the unwarranted entry on another's land.

Finally, lack of permission is an essential element of a cause of action for trespass. If the plaintiff

proved the defendants trespassed on his prop -- on her property, she is entitled to recover at least nominal damages even if no proof or injury or damage to the property exists. Entry alone entitles a possessor to at least nominal damages.

The plaintiff is entitled to recover for any other actual damages that have been proved by the greater weight of the evidence to have been proximately caused as a result of the trespass. It is the well-settled law of this state that an owner is qualified by the fact of ownership to give his or her estimate of the value of the damaged real and personal property.

When injury to property resulting from a trespass is -- trespass is restoration or repair, it is considered to be temporary and the measure of damages is the cost of the restoration and repair. If the cost of restoration exceeds the reduction in value, then the greater cost of restoration will be allowed when the landowner has a personal reason relating to the land for restoring the land to its original condition and when the cost of restoration is reasonable in relation to the damage inflicted. However, the cost of replacing the land in its original condition is disaprop -- disproportionate to the reduction to the value of the land caused by the trespass unless there is a reason personal to the owner

for restoring the original condition.

Damages are measured only by the difference between the value of the land before and after the harm. The restoration cannot exceed the fair market value of the property. Punitive damages may be awarded only where the trespass was willful, wanton or reckless or in reckless disregard of the plaintiff's rights.

Generally a private nuisance is that class of wrongs that arise from the unreasonable, unwarrantable or unlawful use by a person of his own property, personal or real. A nuisance is anything that works hurt, inconvenience or damage or which essentially interferes with the enjoyment of life or property. It has been described as the unlawful use of property causing material annoyance, discomfort or hurt to another person. It is an unreasonable interference which is continuous or has the potential to reoccur with the use and enjoyment of the plaintiff's land by the defendant's conduct on his or her land.

Every citizen holds his property subject to the implied obligation that he will use it in such a way as to not to prevent others from enjoying the use of their property.

The plaintiff must demonstrate that the defendants unreasonably interfered with her ownership or possession

of the land. A nuisance is a substantial and unreasonable interference with the plaintiff's use and enjoyment of her property. It is anything which hurts, inconveniences or damages anything which essentially interferes with the enjoyment of life or property.

To prevail in a private nuisance cause of action, the plaintiff must demonstrate unreasonable interference with use and enjoyment of land and proximate causation of the interference by the defendants.

To make out a case for nuisance, the plaintiff must prove by the greater weight of the evidence that the defendants made an unreasonable use of their property that proximately caused harm to her. While everyone has the right to use his property as he sees fit, the right is subject to the implied obligation of every owner or occupant of property to use it in such a way that it will not be unreasonably injurious to the equal right to the enjoyment of their property.

For there to be a nuisance, the defendant's use of their property must be unreasonable. Whether a use is reasonable depends on the facts and circumstances of the case. In determining whether nuisance exists, resort must always be had to sound common sense and due regard should be given to notions of comfort and convenience entertained by persons generally of ordinary taste.

A reduction in property value alone is not sufficient to constitute an actionable interference with the use and enjoyment of land although maybe be relevant -- it may be a relevant factor in determining that a nuisance exists. For there to be an actionable nuisance, a wrongful act by the defendants must be shown and the nuisance must be the natural and proximate cause of the injury suffered by the plaintiff.

It is no defense that the nuisance must be the natural and proximate cause of the injury suffered by the plaintiff. It is no defense that the nuisance complained of is contributed to by the acts of others over whom the defendants have no control if there would be a nuisance without such contribution.

It is generally held that a nuisance may exist either with or without negligence. A lawful activity may be a nuisance if conducted negligently. However, nuisance does not require negligence. If a nuisance exists, the fact that due care was exercised and due precautions were taken against the annoyance or injury complained of are immaterial. A nuisance may exist where no negligence is involved because lack of due care is not essential to a cause of action for nuisance.

Where injury results from the creation or maintenance of a nuisance, the measure of damages is

compensation for the injury or loss sustained by the plaintiff. The victim of either a permanent or temporary nuisance can also recover for specific identifiable losses, such as material annoyance, discomfort or hurt. Consequential, as well as direct damages, may be recovered in an action for nuisance.

In the law, an act of God means an unusual, extraordinary, sudden and unexpected manifestation of the forces of nature in a manner that man cannot resist. It is an act occasioned exclusively by forces of nature without the interference of any human agency. A misadventure or casualty is to said to be caused by the act of God when it happens by the direct, immediate and exclusive operation of the forces of nature uncontrolled and uninfluenced by the power of man and without human intervention and is of such a character that it could not have been prevented or escaped from by any amount of foresight or prudence or by any reasonable degree or care or diligence or by the aid of any appliances which the stipulation of the parties might reasonably require him to use.

An act of God is generally described as an occurrence that is abnormal or unusual, strictly natural in origin with no human assistance or influence and inevitable so that it could not have been reasonably

prevented or provided against by the exercise of ordinary human foresight.

In order for an event to be considered an act of God, it must be abnormal. An event is abnormal within the meaning of the term "act of God" where it is such an unusual and extraordinary manifestation of the forces of nature that it could not under normal conditions have been anticipated or expected or whether history of the climatic vari -- variations or other conditions in the particular locality afford no reasonable warning of it.

Conversely, where conditions are predictable and not without precedence, they may not constitute acts of God. However, the occurrence need not to be unprecedented to be abnormal so long as it could have been anticipated under normal conditions.

The question of precedence relates to the manner of reasonable anticipation and opportunity to avert the consequences and it is in that sense that the term "unprecedented" is used with regard to the nature of the catastrophe.

Since an act of God has been defined in the law as an unusual, extraordinary, sudden and unexpected manifest -- I can't pronounce that word for nothing -- manifestation of the forces of nature, which man cannot

resist and which cannot under normal conditions be anticipated or expected.

An occurrence rising to the dignity of an act of God shields a defendant from liability. Generally, if the injury was caused by some extraordinary or unusual natural force or condition that could not have been foreseen or that would have caused the injury even if there had been no negligence, the negligence is not the proximate cause of the injury. If the natural condition or force that affects a negligent act or omission is unusual or extra -- extraordinary, the negligent party will not in general be held to have known or contemplated it unless the circumstances of the particular negligent act or omission are such that the negligent party should have known of or contemplated the probable appearance and effect of such unusual or extraordinary natural condition or force.

To constitute an act of God, an act must be one occasioned exclusively by the violence of nature and all human agency must be excluded from creating or entering into the cause of the mischief. When the negligence of a responsible person concurs with an ordinary flood, storm or other natural force or with a so-called act of God in producing an injury, the party guilty of such negligence will be held liable for the

injurious consequences if the injury would not have happened except for his failure to exercise care. In other words, where an act of God is the cause of an injury but an act or omission of a defendant so mingles with it as to also be an efficient and -- and cooperating cause, the defendant is liable.

The act of God defense is an affirmative defense. The burden of proving this defense is on the defendant. The law imposes no liability for injuries or damages sustained as the result of an act of God. A defendant is not liable for damages caused by the act of God if such act be the direct or proximate cause of the injury.

However, for you to find for the defendants on this issue, you must determine the act of God was the sole cause of the plaintiff's injuries. An act of God is a valid defense only when it is the sole cause of the injury. In other words, the defendants must prove that they were without negligence which contributed as a cause of the plaintiff's injuries.

Should you find that an act of God was the sole cause of the plaintiff's damages, then your verdict much be for the defendants.

A verdict in this case cannot be based upon sympathy, passion, prejudice or emotion or some other consideration not found in the evidence. I charge you

that as jurors you must decide the issues involved in this proceeding based solely upon the evidence which you hear during the course of the trial. Your verdict must be without bias and without prejudice to any party. You can't -- you cannot allow yourself to be governed by sympathy, by prejudice, by passion, by public opinion or by some other consideration not found in the evidence.

All right. Let me say something about your deliberations. Deliberation is defined as a careful consideration, weighing up, with a view to decision. The genius of our jury system is that it allows twelve good men and women from twelve different backgrounds, life experiences and perspectives to consider the evidence, talk about it, and ultimately reach a verdict.

We call them deliberations for a reason. You are to consider the evidence in this case carefully and deliberately and discuss it in a calm, thorough and courteous manner. Remember, you are not partisans or advocates for either side favoring one side over the other. You are judges. Judges of the facts. Listen to the views of all your fellow jurors, consider other people's points and points of view, and talk through and discuss the evidence. And, remember, if you are doing something deliberately, you are not in a big hurry and you should not be in a hurry here. This case is very

important to both sides and this is their only day in court.

When you retire to the jury room, you should discuss the case with your fellow jurors and to reach an agreement if you can do so. Each of you must decide the case for yourself, but you should do so only after you have impartially considered all of the evidence, discussed it fully with the other jurors and listened to the views of your fellow jurors. Do not be afraid to change your opinion if the discussion persuades you that you should, but do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict as to each cause of action, but, of course, only if each of you can do so after having made your own decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict. In other words, do not change your opinion solely for the sake of reaching a verdict. Your verdict must be unanimous. One as to each cause of action.

Madam Forelady, when the jury agrees on a verdict, you will sign your name as foreperson on the verdict sheet, then knock on the jury room door, let the bailiff know that y'all have reached a decision, and at that time I'll have you back into the courtroom.

I'm gonna ask you to go back to your jury room.

Madam Forelady, if there are any questions, the bailiff will give you a pencil and a piece of paper. It must be in written form.

I think in this case there were some videos. If you need to see the videos, please write us a note and we'll make sure those videos are played for you again.

Also, when you are deliberating all twelve of you must be in the room. So if one is excused to go to the ladies room or the mens room, you must wait. Hold your discussions until that juror comes back. All twelve jurors must be in the room.

There will be no use of telephones or any kind of communications, okay?

Now I'm gonna tell you, go back. Do not start deliberating yet. We're gonna bring this evidence back to you. The bailiff will bring it back with the clerk and she will tell you when to start, okay?

With that said, I'm gonna send you back.

(Whereupon, the jury retires to the jury room at 3:41 PM.)

THE COURT: All right. Any -- I'm sorry.

Anything from the plaintiff --

MR. BELSER: No, Your Honor.

THE COURT: -- as to the jury charges?

MR. MOORE: Nothing as to the jury charges that's not already been stated at some point.

Your Honor, I do -- we have put the sixty-two-five setoff on the record, have we not, already?

THE COURT: No, I have not. I mean, I put it on the record that there is a sixty-two-five and I intend if there is -- I think I even said it yesterday. If there is any verdict in favor of the plaintiff, it will be reduced by the sixty-two-five.

MR. MOORE: Thank you, ma'am.

THE COURT: I think even Mr. --

MR. BELSER: Dougall.

MR. MOORE: Dougall.

THE COURT: -- Dougall said that yesterday, too, so it's on the record. If not, I just said it and it's on it.

All right. Then we are in recess.

Don't go anywhere yet. She's printing the verdict from and I need to make sure the alternate is out.

(Recess taken at 3:42 PM.)

(Whereupon, the evidence and verdict form was sent back to the jury room at 3:45 PM.)

(Back on the record at 4:04 PM.)

THE COURT: All right. We've got a jury question.

We'll make this Court's Exhibit Number 7.

(Court's Exhibit Number 7 was marked for identification.)

THE COURT: This is the question. May we have a copy of the judge's charge to remind us of what nuisance, negligence and trespass are?

MR. BELSER: I'm fine with that.

MR. MOORE: I think we said yesterday we agreed we weren't gonna do that.

MR. BELSER: Well, that was before they asked the question. I mean --

MR. MOORE: I --

MR. BELSER: Sorry. Go ahead.

MR. MOORE: I would object to that.

MR. BELSER: We've had a -- well, the alternative is to recharge it, which I don't really want to do, and so I think the thing to do is to take -- just give them those sections.

MR. MOORE: I just don't think that -- we discussed that yesterday and counsel agreed with us that that should not be done. I think you're just asking for mischief. They've been told and I think they -- they've been charged properly. I really think that's not good especially when we talked about this issue yesterday and both lawyers agreed not to do it.

THE COURT: All right. Do y'all have a copy of

your jury instructions there?

MR. MOORE: Your Honor, if we're gonna send that back, I'd just as soon send everything back.

THE COURT: I wasn't gonna do that. I was gonna read it to them. Bring them back in and read it again from page 23 to page 33.

MR. BELSER: Your Honor, what was the question again?

THE COURT: To remind us of what nuisance, negligence and trespass are.

MR. BELSER: Okay.

THE COURT: I'm gonna read from page 23 to 33.

MR. BELSER: Well, I think the nuisance charge -- that's -- just trespass and nuisance and negligence starts -- negligence starts on page 12.

THE COURT: Well, I'm gonna read from page 12 to page 33 to them.

MR. MOORE: Thank you, ma'am.

THE COURT: Let's bring them back in.

I think page 16 I can take out because that's just the duty of landowners, so I'm just gonna read the negligence.

MR. BELSER: Doesn't that -- Your Honor, doesn't that go to the duty of care though under negligence?

THE COURT: You're right. It does.

All right.

MR. MOORE: I'm assuming, Your Honor, that the damages aspects of it could come out like on 20, punitive damages and that stuff. That's not the elements of -- of negligence. The damages portions can come out.

THE COURT: I wasn't reading the damages part.

MR. MOORE: Thank you.

THE COURT: Tell them to come on.

(Whereupon, the jury return to the courtroom at 4:10 PM.)

THE COURT: All right. Madam Forelady, I have your notes. I cannot send back a copy of the jury charge, but what I will do is I'll be happy to read the trespass, the nuisance and the negligence part of the charges again.

FOREPERSON: There's a -- can I ask a question?

THE COURT: No.

FOREPERSON: Thank you.

THE COURT: I'll be happy to read this to you again, so please pay attention.

The plaintiff claims that the defendants were negligent and should compensate the plaintiff for the injuries the plaintiff suffered as a result of the defendants' negligence. A plaintiff's right of recovery

may not rest on the mere fact that an accident or injury occurred. Instead, in order to prove that the defendants were negligent, the plaintiff must prove by a preponderance or the greater weight of the evidence of the following things.

First, the plaintiff must prove by a preponderance or greater weight of the evidence that the defendants owed the plaintiff a duty of care. This is a question of law which you will decide. If you find there was a duty of care, you must then decide the remaining questions.

The first of these is whether the plaintiff has proven by a preponderance or the greater weight of the evidence that the defendants breached the duty of care by a negligent act or omission.

Negligent means -- negligence means that a person has done something that a reasonable person would not have done or has failed to do something that a reasonable person would have done in the same situation.

The plaintiff must also prove by a preponderance or greater weight of the evidence that they suffered damages as a result of the defendants' breach of duty.

Finally, the plaintiff must prove by a preponderance or greater weight of the evidence that the damages were proximately caused by the defendants'

breach of duty. There is no countervailing burden on the defendants to prove that their negligence did not cause the plaintiff's injuries.

Proximate cause is something that produces a natural chain of events which in the end brings about the injury. It is the direct cause of the injury.

To prove that the defendants' negligence proximately caused the plaintiff's injury, the plaintiff must first prove causation in fact. This is proven by showing that the injury would not have occurred but for the defendants' negligence.

The plaintiff must also prove legal cause. Legal cause is proven by showing that the injury was foreseeable. This means that the injury occurred as a natural and probable consequence of the defendants' negligence.

The plaintiff must prove that some injury from the defendants' negligence was foreseeable, but does not have to prove that the particular injury that occurred was foreseeable. However, the defendants cannot be held responsible for things which could not be expected to happen.

Proximate cause does not mean the only cause. The defendants' act can be a proximate cause of the plaintiff's injury if it was at least one of the direct

concurring causes of the injury. However, if the real cause of the claimed injury or damage is left in doubt by the testimony, the plaintiff has not met the burden of proof.

I charge you that where the cause of the plaintiff's injuries may be reasonably attributed to an act for which the defendants are not liable as to one for which they are liable, the plaintiff has failed to carry the burden of establishing that her injuries were the proximate result of the defendants' negligence and the verdict must be for the defendants. The defendants would only be liable for the damages for which the defendants actually caused.

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 a matter as to let the earth pass or slide over his line to the lot of his neighbor.

Where there is a duty arising from an ordinance and the plaintiff shows that the defendant violated the ordinance, the violation of the ordinance is negligence per se. The violation of any of the

provisions of an ordinance is negligence per se. That is, negligence in and of itself. Negligence as a matter of law.

Negligence per se simply means that you, the jury, need not decide if the defendant acted as would a reasonable man in the circumstances. The ordinance fixes the standard of conduct required of the defendant leaving you merely to decide whether the defendant breached the ordinance. If they did, their failure to take due care is established as a matter of law. The only issue then left for you to determine is whether the defendant's conduct proximately caused damage to the plaintiff.

Accordingly, proof of a violation of an ordinance is, in fact, proof of negligence so that your only concern then would be whether such violation of the ordinance so shown was the proximate cause of the injury and damage. The violation of an ordinance does not constitute recklessness, willfulness and wantonness per se. Yet such violation if shown is evidence of recklessness, willfulness and wantonness and may be considered in connection with all other facts and circumstances surrounding the case in determining whether the defendants have been reckless, willful and wanton.

The violation of an ordinance will support a recovery of damages if such a violation proximately caused or proximately contributed to the injuries or damages complained of.

When one person is injured by the negligent acts of another, the injured person is entitled to be fully compensated for all injuries directly or proximately resulting from any negligent acts or omissions by the defendant.

In determining the amount of compensation for injuries suffered by the plaintiff as a result of the defendant's negligence, it is proper for you to consider the reasonable costs of repairs and the value of the use of the property during a reasonable repair time. Damages do not have to be proven to a mathematical certainty. They do have to be proven to be reasonable by a preponderance of the evidence.

The plaintiff claims that the defendants acted with recklessness, willfulness and wantonness and that, therefore, the plaintiff is entitled to punitive damages from the defendants. Recklessness means a conscious failure to use reasonable care.

A person who is negligent acts carelessly, however, a person who acts recklessly, willfully and wantonly is not only careless, but is also aware that he is being

careless. You may award punitive damages to the plaintiff if you find that the plaintiff has proven a wanton, willful or malicious violation of her rights by the defendants. Punitive damages should be awarded only for conduct so gross that it implies wantonness, willfulness or recklessness.

The words "recklessness", "willfulness" and "wantonness" are synopsis -- that word again -- synonymous. It's a lot of reading. Bear with me. The terms are used to describe a conscious failure to exercise and observe reasonable or due care.

Recklessness implies the doing of a negligent act knowingly. When a person acts negligently and he realizes that he is acting negligently, the law says he is reckless, willful and/or wanton. Whichever term you prefer, they all mean the same thing. That is, the conscious failure to exercise due care.

Recklessness is distinguished from negligence. Negligence is the failure to use due care. Negligence is carelessness. Negligence is failure by omission or commission to exercise due care as a person of ordinary reason and prudence would exercise in the same circumstances. Recklessness is a higher degree of culpability and responsibility. Recklessness signifies a conscious failure to exercise due care. Recklessness

is a conscious indifference to the rights of the plaintiff or a reckless disregard of the rights of the plaintiff. Recklessness is an awareness of wrongful conduct and a continuation to act regardless of the consequences. In other words, while a negligent person is one who acts carelessly, a person whose behavior is reckless, willful or wanton is not only careless in his actions, but is also aware that he is careless.

The test for determining whether a tort may be deemed reckless, willful or wanton is whether it has been committed in such a manner and under such circumstances that a person of ordinary reason or prudence would have been conscious of it as an invasion of the rights of the injured party.

The plaintiff must prove by clear and convincing evidence that he is entitled to an award of punitive damages. This burden of proof is over and above the normal burden of proof by a preponderance of the evidence.

Clear and convincing evidence is that degree of proof which will give you a firm belief as to fact sought to be proved. This is more than a mere preponderance of the evidence, but less than beyond a reasonable doubt.

Trespass. Trespass is any interference with one's

right to the exclusive peaceable possession of his property. To prove a trespass, the plaintiff must present evidence which establishes that she was in legal possession of the property, that the defendant voluntarily entered upon the plaintiff's property and that such entry was made without the plaintiff's permission.

To maintain a trespass action, there must be possession and a right to it. One in peaceable possession though lacking in title is entitled to remain in possession until ousted by the true owner and need only show prior peaceable possession against the defendant.

An action in trespass will lie if the defendant intentionally entered the property. The unwarrantable entry on land in the peaceable possession of another is a trespass without regard to the degree of force used, the means of entry or the extent of damage. The entry itself is the wrong.

For example, if one without a license from the person in possession of land walks upon it or casts a twig upon it or pours a bucket of water upon it, he commits a trespass. It is immaterial whether any further damage results. To constitute an actionable trespass there must be an affirmative act. The invasion of the

land must be intentional and the harm caused must be the direct result of that invasion. Trespass does not lie from nonfeasance or failure to perform a duty.

Intent is proved by showing the defendant acted voluntarily and that he knew or should have known the result would follow from his act. Although neither deliberation, purpose, motive nor malice are necessary elements of intent, the defendant must intend the act which in law constitutes the invasion of the plaintiff's right.

Trespass is an intentional tort and while the trespasser to be liable need not intend or expect the damaging consequence of his injury, he must intend the act which constitutes the unwarranted entry on another's land.

Finally, lack of permission is an essential element of a cause of action for trespass. If the plaintiff proved the defendants trespassed on his prop -- on her property, she is entitled to recover at least nominal damages even if no proof of injury or damage to the property exists. Entry alone entitles the possessor to at least nominal damages.

The plaintiff is entitled to recover for any other actual damages that have been proved by the greater weight of the evidence to have been proximately caused

as a result of the trespass.

It is well-settled law of this state that an owner is qualified by the fact of ownership to give his or her estimate of the value of the damaged property and personal property. When injury to property resulting from a trespass is remedial by restoration or repair, it is considered to be temporary and the measure of damages is the cost of restoration and repair. In the cost -- if the cost of restoration exceeds the reduction in value, then the greater cost of restoration will be allowed when the landowner has a personal reason relating to the land for restoring the land to its original condition and when the cost of restoration is reasonable in relation to the damage inflicted. However, the cost of replacing the land in its original condition is disproportionate to the reduction in the value of the land caused by the trespass unless there is a reason personal to the owner for restoring the original condition.

Damages are measured only by the difference between the value of the land before and after the harm. The restoration cannot exceed the fair market value of the property. Punitive damages may be awarded only where the trespass was willful, wanton or in reckless disregard of the plaintiff's rights.

Generally a private nuisance is that class of wrongs

that arises from the unreasonable, unwarrantable or unlawful use by a person of his own property, personal or real. A nuisance is anything that works hurt, inconvenience or damage or which essentially interferes with the enjoyment of life or property. It has been described as the unlawful use of property causing material annoyance, discomfort or hurt to another person. It is an unreasonable interference which is continuous or has the potential to reoccur with the use and enjoyment of the plaintiff's land by the defendants' conduct on his or her land.

Every citizen holds his property subject to the implied obligation that he or she will use it in such a way as not to prevent others from enjoying the use of their property. The plaintiff must demonstrate that the defendants unreasonably interfered with her ownership or possession of the land.

A nuisance is a substantial and unreasonable interference with the plaintiff's use and enjoyment of her property. It is anything which hurts, inconveniences or damages anything which essentially interferes with the enjoyment of life or property.

To prevail in a private nuisance cause of action, the plaintiff must demonstrate unreasonable interference with the use and enjoyment of land and proximate

causation of the interference by the defendants. To make out a case of nuisance, the plaintiff must prove by the greater weight of the evidence that the defendants made an unreasonable use of their property that proximately caused harm to her.

While everyone has a right to use his property as he sees fit, this right is subject to the implied obligation of every owner or occupant of property to use it in such a way that it will not be unreasonably injurious to the equal rights to the enjoyment of their property. For there to be a nuisance, the defendants' use of their property must be unreasonable. Whether a use is reasonable depends upon the facts and circumstances of the case.

In determining whether nuisance exists, resort must always be had to sound common sense and due regard should be given to notions of comfort and convenience entertained by persons generally of ordinary taste.

A reduction in property value alone is not sufficient to constitute an actionable interference with the use and enjoyment of land although it may be a relevant factor in determining that a nuisance exists. For there to be an actionable nuisance, a wrongful act by the defendants must be shown and the nuisance must be the natural and proximate cause of the injury

suffered by the plaintiff. It is no defense that the nuisance must be the natural and proximate cause of the injury suffered by the plaintiff. It is no defense that the nuisance complained of is contributed to by the acts of others over whom the defendant had no control. If there would be nuisance without such contribution, it has generally been held that a nuisance may exist either with or without negligence.

A lawful activity may be a nuisance if conducted negligently. However, nuisance does not require negligence. If a nuisance exists, the fact that due care was exercised and due precautions were against the annoyance or injury complained of are immaterial. A nuisance may exist where no negligence is involved because lack of due care is not essential to a cause of action for nuisance.

Last page. Where injury results from the creation or maintenance of a nuisance, the measure of damages is compensation for the injury or loss sustained by the plaintiff. The victim of either a permanent or temporary nuisance can also recover for specific identifiable losses such as material annoyance, discomfort or hurt consequentially as a direct -- as well as direct. Damages may be recovered in an action for nuisance.

I hope that helps. I'm gonna let you return to

your jury room.

(Whereupon, the jury retires to the jury room at 4:38 PM.)

THE COURT: All right. Everybody okay with what I read back?

MR. BELSER: Thank you, Your Honor.

MR. MOORE: Yes, ma'am. Thank you.

THE COURT: We'll yell at you when we hear something else.

(Recess taken at 4:38 PM.)

(Back on the record at 6:58 PM.)

THE COURT: All right. Well, let's get the lawyers. Have we got everybody?

MR. MOORE: Yes, ma'am.

MR. BELSER: Yes, ma'am.

THE COURT: All right. Let's bring the jury in.

(Whereupon, the jury return to the courtroom at 7:00 PM.)

THE COURT: All right. Madam Forelady, the jury has a verdict?

FOREPERSON: We do.

THE COURT: Is it unanimous?

FOREPERSON: It is, Your Honor.

THE COURT: Can you hand it to the bailiff, please.

BAILIFF: (Handing.)

THE COURT: All right.

THE CLERK: 2019-CP-32-01442, Suzan Garland versus Robert and Christy Cade. Number one, on the plaintiff's cause of action for negligence, we, the jury, find for the plaintiff.

Number two, on the plaintiff's cause of action for trespass, we, the jury, find for the defendant.

Number three, on the plaintiff's cause of action for nuisance, we, the jury, find for the plaintiff.

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

So we, the jury, in the above-captioned case unanimously find for the plaintiff against the defendant in the amount of zero dollars 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 damage for nuisance.

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

It is signed and dated by the foreperson of the jury.

THE COURT: Okay. Anybody want the jury polled?

MR. MOORE: No, ma'am.

MR. BELSER: (Shakes head.)

THE COURT: Okay. Are you gonna -- do we do like you always do, Mona? Are we gonna ask them if this is their true verdict all of them?

THE CLERK: I don't know how general sessions is. I call their name and do it that way.

THE COURT: Okay. But that's polling.

THE CLERK: Yes, ma'am.

THE COURT: Okay.

All right. Thank y'all. Y'all have done a fantastic job.

I'm gonna tell the lawyers, I'm gonna excuse the jury, let them go back to the jury room, so I can get them going home and I'll be back in just a minute to hear anything y'all might have.

(Whereupon, the jury was excused at 7:02 PM.)

THE COURT: I'm gonna give y'all just a few minutes and I'll be right back.

(Recess taken at 7:03 PM.)

(Back on the record at 7:13 PM.)

THE COURT: All right. Do I have any motions from the plaintiff?

MR. BELSER: Your Honor, just briefly for the record, a motion for additur to increase the verdict to reflect the -- the evidence that's actually submitted

in terms of the restoration cost of $435,000.

MR. MOORE: Your Honor, I would assume that's a motion for a new trial additur.

MR. BELSER: I haven't really thought about it.

MR. MOORE: That's the way an additur has to be. If he's moving for new trial additur, which he just did, and we don't consent to the additur, that results in a new trial. He's asked for new trial additur. That's new trial nisi unless we consent. So what he's done and we have before the Court right now is a motion from the plaintiff for a new trial. We would not consent to any additur, so I think we might be in a position -- and I'd like to look at the law on that, but I think if I -- if I consent to the granting of the order nisi, which is what that would be, if we didn't consent to it, it goes back for a new trial, but we might think about that.

We're not particularly dissatisfied with the verdict, but, in fact, we're pretty satisfied with the verdict.

But we have -- we have some legal issues that we care to raise, but if the Court could basically allow me to take a look at the law, you know, I might consider that new trial after talking to my clients because we obviously wouldn't consent to the additur. It would be nisi -- nisi additur is what they call it and that

basically means we -- nisi means unless and what it would basically mean would be a new trial unless we consent to the additur, which we wouldn't do.

I don't know if Mr. Belser wants to withdraw that or not. If I were in his shoes, I probably would, but it is certainly something I would like to ask the Court to let us look at before we respond to it.

MR. BELSER: Your Honor, respectfully I guess if we could have ten days to actually file any post-trial motions, if any, so I can withdraw that. I just haven't really thought about it all the way through.

THE COURT: I will. You can certainly have the ten days, Mr. Belser.

MR. BELSER: Thank you, Your Honor.

MR. MOORE: I would assume that I could have that, too.

THE COURT: Absolutely, Mr. Moore, you can.

MR. MOORE: Thank you, Your Honor.

THE COURT: I would not keep any of y'all from doing that. Ten days. Let me know what y'all want.

As long as I've got an answer within the ten days, if I need to schedule something, I'll schedule it. If we need to do a status conference, we'll do a status conference.

MR. MOORE: I'd ask the Court to please not to

schedule it the week after next or I'll get a divorce.

THE COURT: No, no, no, no. I'm in Edgefield -- I'm telling you, next week I'm in a murder trial. Next week after that I'm in Edgefield. I'm back here for another murder trial and then I am up in Lancaster for some other kind of trial.

MR. MOORE: I would like to thank the Court personally for the quality of the trial we got, the patience the Court demonstrated and the patience the Court had, as well as the -- the Court working with us in regard to scheduling issues. I enjoyed working with you and I thank you and I'm sure Mr. Belser --

MR. BELSER: Of course. Likewise.

THE COURT: The only way that stuff happens and everything goes smoothly is when I've got two good lawyers. It makes my life so much easier and y'all are awesome. I think you've done a very good job for your clients, both of you. I think we had a good jury. I think they -- you know, they were very conscientious. I went back there to go talk to them. They -- they had a good time.

MR. MOORE: They did.

THE COURT: You could hear them laughing. I always like it -- I always tell them when I pick a jury it's gonna be educational and the worse thing that's gonna

happen to you is you're gonna make some new friends, and it did. That's exactly what happened to them, but I thought they were very good and patient with us.

MR. MOORE: Thank you very much.

MR. BELSER: Thank you very much.

THE COURT: Thank y'all. I hope everybody has a good weekend.

MR. BELSER: Thank you.

MR. MOORE: Thank you. I assume we are adjourned?

THE COURT: We are adjourned.

(Whereupon, the proceedings were concluded for April 1, 2022, at 7:18 PM.)

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on March 28, of 2022, reported by Tara Scott, Circuit Court Reporter, and transcribed by me to the best of my ability.

This transcript may contain quoted material. Such material is reproduced as read by the speaker. This transcript may also contain inaudible or indiscernible portions due to being transcribed from digital audio files.

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

August 12, 2022

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on March 29th, 31st and April 1st, 2022.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

August 12, 2022

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on March 30, 2021, recorded by the Digital Court Reporter Program, and transcribed by me to the best of my ability.

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

August 12, 2022

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF LEXINGTON) C/A NO.: 2019-CP-32-01442
)
Suzan Garland,)
)
Plaintiff,)
)
v.)
)
Robert Cade, Christy Cade and Roger Singleton,)
)
Defendants.)

VIDEO DEPOSITION OF

PAUL SHEARER

****

Friday, March 25, 2022

9:59 a.m. - 12:02 p.m.

The video deposition of PAUL SHEARER was taken before Mary H. Occhipinti, a notary public in and for the State of South Carolina at the offices of Moore Bradley Myers Law Firm, PA, 1700 Sunset Boulevard, West Columbia, SC on Friday, March 25, 2022, pursuant to Notice of Deposition and/or agreement of counsel.

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EXHIBITS

Defendant's Exhibit Number 8
(Photograph of Davis Drive) 49

Defendant's Exhibit Numbers 1 through 7
(Photographs) 55

Plaintiff's Exhibit Number 15
(Photographs) 85

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STIPULATIONS

It is stipulated by and between counsel for the respective parties that all objections are reserved until the time of trial, except as to the form of the questions.

This deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is further stipulated and agreed that the formalities of taking a videotaped deposition are hereby waived.

- - - -

The reading and signing of this deposition is hereby waived.

Whereupon,

PAUL SHEARER, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. MOORE:

Q. What is your name?
A. Paul Shearer.
Q. Mr. Shearer, I believe that you have been asked to come to court with us this week, but you're going to be out of town.
A. That's correct.

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Q. And what we decided to do is to record your testimony just like it's in a courtroom except we're doing it here today in my law office, is that correct?
A. That's correct.
Q. I believe that I met you personally once before out at Mr. and Mrs. Cades' property?
A. Correct.
Q. And you had about a 15 minute conversation with me before testifying today?
A. That's correct.
Q. Other than that, have you and I had any conversations at all?
A. This morning and two or -- two or three days ago when I was calling specifically about the issue with the subpoena and my preplanned travel.
Q. Right. The substantive conversations, there was once on the scene and once about 15 minutes ago?
A. Correct.
Q. Tell me a little bit about you, are you married?
A. I am.
Q. What is your wife's name?

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A. Julie.
Q. And y'all's address is where?
A. 108 Davis Drive.
Q. And how close do you live to Mr. and Mrs. Cade?
A. They are immediately behind me.
Q. And how about Ms. Garland, how close do you live to them?
A. She is just on the other side of the road from me.
Q. You've lived out there approximately how long?
A. August of 2003.
Q. And you are a computer engineer, is that correct?
A. That's correct.
Q. So you have a college degree and education?
A. I do.
Q. Now, how long have you lived on Davis drive?
A. Since August of 2003.
Q. You have your home there?
A. I do.
Q. How many acres do you have?
A. It depends on which survey you believe, but approximately somewhere between .75 and 1.3.
Q. And I believe at some point in time Mr. and

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Mrs. Cade bought their property and began doing some work, is that correct?
A. That's correct.
Q. Now, if you'll turn on this map right here, the area right here, this would be -- this would reflect -- this actually is a county contour map.
A. All right.
Q. I've just blown it up so it's easy to see. This area right here would be what?
A. Give me a second, I'm just getting my bearings on this map.
Q. I believe this is the -- this is the pond that belongs to Ms. Garland.
A. Oh, okay. I got it. Yes, so that would be -- that would be the Cades' pond.
Q. And this area outlined in yellow would be what?
A. That's Davis Drive.
Q. And this piece of property right here would be what?
A. That would be my property.
Q. How about right here?
A. That's also my property.
Q. So your property fronts Davis Drive for about

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how many feet?
A. Two hundred. This is a guess.
Q. That's close. That's fine. And so the property that Mr. and Mrs. Cade bought basically adjoins you right at this line right here, is that correct?
A. That's correct.
Q. Now --
A. One thing probably to mention, so when they bought that property, that line would have been further in.
Q. Okay.
A. So this map incorporates the property changes that happened with two subsequent property transactions.
Q. You bought a small piece of property from Mr. Cade?
A. That's correct.
Q. Where was the property that you bought.
A. Immediately behind. So if you see the little wedge there --
Q. Right.
A. -- and kind of follow the contour of that out.
Q. Right.
A. That is basically representing what we bought

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along with --
Q. That strip right there?
A. -- that little strip right there.
Q. You were basically trying to square your property up?
A. Correct.
Q. And Mr. and Mrs. Cade were willing to let you do that?
A. They were.
Q. And you appreciated that?
A. I did.
Q. So by doing that, you now own this whole wedge between where your house is and all the way down?
A. That's correct.
Q. So let's talk about the distance between Davis Drive and where the Cades' property starts. How deep would that be between Davis roughly?
A. It's going to vary based on what portion of the property you're at. So even though we tried squaring it up --
Q. Yep.
A. -- it's still, it's still not quite square.
Q. I get it.
A. So the wider portion is going to be up near

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the Davis', the narrower portion is going to be down by 106 Davis Drive.
Q. All right. What are you talking about, 300 feet or so?
A. Property 300 feet or so on the widest area.
Q. Basically right in here?
A. No, the widest area would be right here.
Q. Oh, right in here. All right. How about right through here, how wide is it?
A. I'm going to guess 200, 250, but I'm not sure.
Q. All right. Is there a -- after the work was done by Mr. and Mrs. Cade on their property, I guess their property, the work we're talking about, was in this area right here, is that right?
A. That's correct.
Q. After the work was done, did they leave any type of a vegetative buffer between your property and theirs?
A. They did. There was about 20 or 30 foot of woods that they left.
Q. And would that have adjoined woods on your property?
A. It did.
Q. And would those woods be right about here?

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A. It would be right along that property line.
Q. So about 60 feet of depth, if you add their property to your property, it's going to be a wooded buffer area?
A. Well, not really. So there's going to be about 30 foot on their side.
Q. And how many feet on your side?
A. On my side, up until -- so this whole area here is wooded.
Q. Right.
A. This area here, there are some trees, but it's not heavily wooded.
Q. All right.
A. It's grass.
Q. Right. This area down here is what's referred to as wetlands, isn't it?
A. No, that's this area up here.
Q. This is the wetlands?
A. This is the wetlands.
Q. And your house is here?
A. No, my house is right here.
Q. Your house is here, okay. So you've got wetlands here --
A. Correct.
Q. -- and the wetlands would be about 300 feet

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deep?
A. Correct.
Q. Did anybody ever disturb this wetlands?
A. No.
Q. So you've got vegetative wetlands that is on this side and through here is about a 50 or 60 foot buffer.
A. Correct.
MR. BELSER: Objection, leading.
Q. How far would your buffer be in this area between the -- adding yours to theirs, the vegetative buffer in this area would be roughly how deep?
A. Probably 30 or 40 foot.
Q. And is there vegetation in addition to the trees that are in that buffer area?
A. There is.
Q. All right. Now, is there a fence that runs between your property and the Cades' property?
A. There is.
Q. Does the fence go down the property line here?
A. I believe so.
Q. And part of the fence is chain link and part of it is another sort of substance, right?
A. It's all chain link.

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Q. All right. Can trash or anything get through that chain link fence easily?
A. No.
Q. So we have the fence here, wetlands here and a buffer area here?
A. Correct.
Q. All right. Now, when you bought the property from the Cades, did you pay market rate for it or did you pay something else?
A. I paid above market rate.
Q. Why did you pay above market rate?
A. Because the situation at the time with Mr. Melichar, there was -- there was a lot of hostility that was going on at that time. And Mr. Cade had indicated that he was not interested in selling any of property. So I made an unsolicited above-market offer to him for selling that, which he accepted.
Q. And Mr. Melichar lives somewhere in this area. Where was he living?
A. 106 Davis Drive, so right here.
Q. Right here. All right. And you basically bought the squared-up piece for over market rate, but that was your idea?
A. Correct.

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Q. And when you made the offer, Mr. Cade said yes, and you did the transaction?
A. Correct.
Q. All right. Now, this wetlands area that we talked about that is on this side of your home, does it hold water on a pretty regular basis?
A. It does.
Q. How long has it done that?
A. Since we've been there.
Q. Since the Cades did the work on their property, does it hold more or less water than it's always held?
A. It held more water at the beginning, before they had planted grass and stuff back there.
Q. Right.
A. Before that grew there was definitely an increase in the amount of water it was holding.
Q. But it still held it?
A. Yes, but it still held there.
Q. All right. And let me ask you this about the Cades' property here. This is their pond, is that right?
A. Correct.

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Q. Did they do any work to the pond dam in order to make it more secure?
A. They did.
Q. Were you happy or sad about that?
A. I was happy about that.
Q. Why is that?
A. The pond itself had been in pretty, in pretty rough shape. It had just kind of grown over, not in -- not in great shape. And what they were doing with the pond was increasing the property values of the overall area.
Q. And was it also increasing the safety for all, everyone that came downward?
A. Yeah, I would say so, because I don't think any work had ever been done on the previous dam that was there since it had been built.
Q. And before the Cades did the work to improve the dam, did you have any uneasy-type feeling of any type about the security of that dam?
A. I didn't.
Q. All right.
A. Yeah, I really hadn't thought about it until I saw Robert doing the work.
Q. When you saw him doing the work, did you start thinking about it?

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A. Yeah, I did.
Q. And did it concern you, the condition it had been in?
A. Not really. I mean, I was just -- I was happy that he was doing it.
Q. All right. And additionally there were some trees removed down here and the stumps were taken out and ground, correct?
A. Correct.
MR. BELSER: Objection, leading.
Q. What work was done below the dam in addition to repairing the dam like he was doing?
A. Grass was planted.
Q. Now, the Cades' property through here, I'll see if I can make this thing work again, is it hilly or is it relatively flat?
A. It's relatively flat.
Q. The work, did you -- were you able to tell if Robert did it himself or if somebody else did it?
A. There was a number of contractors that were out there doing the work.
Q. Your property over here where your house is, is that residential or agriculture?
A. That's residential.

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Q. How about the Cades' property, is that residential or agriculture?
A. It's agricultural. When I first moved out here, I had actually tried -- I had looked at the property taxes on that particular lot, and they were significantly less than mine. So I had went to the county to try getting mine reduced and that's when I got explained the difference between the two.
Q. So you personally know this was zoned agriculture?
A. Correct.
Q. And have the Cades made an agricultural use of the property since they bought it?
A. Oh, yeah. There was livestock out there for probably close to two years.
Q. And has the property, since the Cades bought it, has it been upgraded or downgraded?
A. Both.
Q. All right.
A. In terms of the actual property value itself --
Q. Yes.
A. -- the property value has definitely gone up.
Q. And what have they done to make the property value go up?
A. Basically the house and the work on the pond.
Q. And now they have pasture land down here, is that right?
A. And now they have pasture land down there.
Q. The property that we're talking about all through here, is this basically now pasture land?
A. It is.
Q. And it's fenced pasture land?
A. It is.
Q. Have they grassed it?
A. They have.
Q. And since the property is relatively flat on the Cades' property, when it rains, is there any violent runoff that you've ever seen?
A. Only when the work was originally done.
Q. Okay.
A. So when the stumps were pulled out, when the soil was -- when the soil was disturbed.
Q. And that, the area, how long did it actually take them to do the work in there to get those stumps pulled out?
A. I'm going to say over a month, but I'm not entirely sure.

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Q. All right. Now, I want to talk about a Mr. Davis. Do you see this scarfed off area on the right side? This would be Ms. Garland's property, right?
A. Right.
Q. And this is her pond?
A. Right.
Q. This scarfed out area, this would belong to Mr. Paul Davis, is that right? No.
A. Claude.
Q. Claude Davis.
A. Claude Davis.
Q. This scarfed out area, what is that?
A. That is -- oh, I think this is his house right there.
Q. All right. This is his house.
A. No, that's his house, that's the barn.
Q. Right.
A. That's just an area of land adjacent to Davis Drive.
Q. Looking at this map it appears to simply not be vegetated at all. Does he just disc that up from time to time?
A. Yeah. He does that every year and then plants wheat or winter wheat.

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Q. And so on a regular basis, this portion of Mr. Davis' land is basically used for farming?
A. Yeah. I don't know that he actually harvests it or does anything with it. I think it's mainly just --
Q. All right.
A. -- to stabilize things on that side.
Q. But it's disced up pretty regular?
A. I'd say once or twice a year.
Q. Now, the area where Mr. Davis discs up on a regular basis and plants wheat, would this be upstream or downstream from Ms. Garland's pond?
A. That would be upstream.
Q. So water would flow from this direction down toward the pond?
A. It would.
Q. All right. When he discs it up, how loose is the dirt?
A. I've never actually really looked at it.
Q. But it's disced?
A. It's disced. I see him out there on the tractor and that's about it.
Q. All right. Now I want to talk for a minute about Davis Drive. This is the road that you

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live on right through here, right?
A. Correct.
Q. And Ms. Garland, if you were considering south being the bottom and north being the top, Ms. Garland would live on which side of Davis Drive?
A. The south side.
Q. And you would live on?
A. The north side.
Q. And the Cades would live on?
A. The north side.
Q. All right. Now let's talk about Davis Drive in regard to is it a county maintained road?
A. It is.
Q. Is it paved or is it dirt?
A. It's dirt.
Q. Now, the county, does it do any type of regular maintenance to Davis Road out here?
A. It does.
Q. What does it do?
A. They regrade the road every couple of months.
Q. So when they regrade the road, do they do it with a motor grader? It's a blade.
A. With a blade, yes.
Q. And the blade, does it push dirt off of the

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road?
A. Yeah, actually it does, yes.
Q. And because of that, is there a berm on either side of Davis Drive?
A. There's a berm on Suzy's side.
Q. That would be right through here?
A. Correct.
Q. How tall is that berm?
A. It's 18 inches, two foot.
Q. And Davis Drive, does it slope towards your property or does it slope towards her property?
A. I think it slopes towards mine.
Q. Yeah. So the water that actually hits the road would run towards you?
A. Correct.
Q. The water that hits the road wouldn't run towards her?
A. No.
Q. And if the water did start running towards her, could it get across the berm?
A. Most of the time, no.
Q. You would have to have a real heavy rain for it to top the berm?
A. Correct.

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Q. Now, is the water that runs down to Davis Drive, does it just come from the Cades' property?
A. No. It's from all over. I mean, there's not a, there's not a traditional gutter system there on the roads.
Q. So the entire drainage system would run towards the pond that is on Ms. Garland's property?
A. I don't know for sure. I can see that that is the low point where you're talking about this area --
Q. Right.
A. -- but if you're talking about the larger Davis Drive --
Q. Okay.
A. -- I'm not sure on the contours.
Q. When you say that is the low point, you mean Ms. Garland's pond?
A. Correct.
Q. And it would be for the area that we are generally speaking of that would be shown on this map?
A. I guess. I mean, this is a topological map.
Q. Sure.

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A. There shouldn't be any questions on --
Q. Yeah.
A. -- in my opinion of what that is should be irrelevant, it's the data is the data.
Q. Absolutely. I'm just trying to make it easy for the jury. So a lot more than the Cades' property naturally flows towards Ms. Garland's pond.
A. Yes.
Q. Now, how is it designed, how is the system designed for the water to get from your side of the road to Ms. Garland's side of the road as it naturally flows?
A. There is a culvert running underneath the road roughly about that area.
Q. And is there a ditch?
A. No.
Q. The culvert that runs under -- there's not a ditch on your side of the road?
A. No, there's not. There's a ditch on this side of the road --
Q. Right.
A. -- but there's not a ditch up here.
Q. Oh, yeah. The ditch is further down in front of the -- in front of this section?

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A. Correct.
Q. But the ditch is supposed to hold water to go into the culvert?
A. No.
Q. All right. Where does the water from the ditch go?
A. So it's going to go further down. There is another culvert right here.
Q. All right.
A. And all the way down to where the drain of this pond is and then across to the Campbell's pond.
Q. All right. So then when water runs from the Cades' property, it's got to go to your property?
A. Right.
Q. Then it goes to the ditch?
A. Right.
Q. And then it goes down Davis Drive away from Ms. Garlands?
A. Some of it does.
Q. And some of it goes towards that culvert?
A. Correct.
Q. Would the majority of the flow from the Cades' property go into the ditch or would the

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majority of it go into the culvert?
A. Probably the culvert because all of that land there is wet.
Q. Okay.
A. So it's, given that that ground is already saturated, it's not going to be soaking any of the stuff up.
Q. All right. Well, the wetlands that you described for me, this area, stays wet all the time?
A. Sure.
Q. So this portion of the Cades' property would drain into the wetlands?
A. Correct.
Q. This portion of the Cades' property would drain into the ditch?
MR. BELSER: Objection.
Q. All right. Wait a minute.
MR. BELSER: Once I state my objection. Mr. Melichar has not been offered as an expert witness in hydrology. He's not an engin -- he's not a civil engineer. I don't think he's qualified to answer questions about hydraulics.
MR. MOORE: I don't think his name is

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Melichar.
A. I'm Mr. Shearer. I'm Mr. Shearer.
MR. BELSER: I'm sorry, I'm sorry. I was looking at that ...
Q. Paul, you've been living there a long time?
A. I have.
Q. Now, do you have to be an engineer to go out and see where the water's going?
A. No.
Q. Just take this pointer. You've got to point. You've got to push this button, I think, right here. Show me, if you would, take that pointer and just show me the portion of the Cades' drainage that you can see going towards the culvert and the portion that you can see going towards the ditch.
A. So what I -- what I'm going to see most of the time is going through here.
Q. All right.
A. I really don't see very much coming across here --
Q. Okay.
A. -- unless it's an exceptionally heavy rainfall.
Q. Is the -- is the topography along this entire

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line, as far as being flat or hilly, about the same?
A. It's about flat but there is, there is a slope to it. So at this, probably about this point here, we're kind of sloping down.
Q. All right. So this point, from what you can see, does this portion of the drainage actually go into the ditch and go away from Ms. Garland's property?
A. It does.
Q. So the only real amount of the drainage that you can see coming from the Cades goes into the wetlands and eventually finds it way to the culvert?
A. Correct.
Q. Now, let's talk about the culvert for half a minute. Have you ever gone down and looked at it?
A. I have.
Q. How deep would you estimate it to be?
A. I'm going to guess two foot.
Q. Twenty-four inches.
A. Twenty-four inches, although I'm not positive on that size.
Q. And the culvert is designed to run under Davis

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Drive?
A. Correct.
Q. From your side of the property where your house is over to Ms. Garland's property?
A. Correct.
Q. Now, to your knowledge, during the entire time that you have lived out there, have you ever seen anybody from the county or anywhere else doing any work on that culvert?
A. No.
Q. At some point did you try to do some work on the culvert?
A. Yes.
Q. Now, the culvert, help me with the light, it's going to be right about here?
A. No, the culvert is going to be right in about here.
Q. The culvert is way on up?
A. Correct.
Q. Right there, okay. Now, why -- what was wrong with the culvert that made you want to do some work on it?
A. It's filled with silt and dirt on my side probably about fifty, fifty percent clogged. And then on Ms. Garland's side, it -- I can't

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find the end of it.
Q. What do you mean by that?
A. So when I was trying to clean it out, this was probably more than ten years ago, we had taken a shovel and a hoe and got in as far as we could on our side and got all of the dirt out of it, and had gotten permission from Mrs. Garland to go on her side and try to do the same thing, but we couldn't find the end of the culvert on her side.
Q. Because of what reason?
A. It was completely buried.
Q. Completely buried by dirt?
A. Completely buried by dirt.
Q. Now --
A. We would -- we would try to dig down to it, but we couldn't because dirt would just cave back in as fast as we could pull it out.
Q. Were you ever able to fix the culvert to where it became free-flowing?
A. No, no.
Q. So the water that comes from that culvert today, is it free-flowing?
A. It is -- it's clogged. Water flows through there, because I see water go in. So water's

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got to be coming out the other side.
Q. Does it flow freely or does it flow non-freely?
A. I would say it's non-freely. There's got to be a certain amount of hydraulic pressure that kind of pushes it through --
Q. All right.
A. -- the other end on her side.
Q. So we know that, from the best that you know since there's been work done on it, on Ms. Garland's side of the yard, the pipe is covered up --
A. Correct.
Q. -- with dirt?
A. Correct.
Q. And the pipe is about 50 percent clogged all the way through with dirt and silt?
A. Correct. If it were an artery, I'd be in the ER right now.
Q. What do you mean by that?
A. Just the level of how clogged it is.
Q. Now, but you do know that water still is able to get through?
A. Yeah. Because we see water go in, water's got to be coming out the other side.

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Q. Now, are you able to see water coming out the other side through the ground?
A. You see it bubbling up.
Q. I'm going to come back to that in a minute. So when the water passes through the pipe, it bubbles out of the ground?
A. Correct.
Q. How do you know that?
A. I've seen the water bubbling up out of the ground. I have been over there trying to dig it out in the past and --
Q. It didn't work?
A. -- it didn't work.
Q. Now, the -- this berm that we talked about that goes along Ms. Garland's property, is that all the way up and down Davis Road, that 18 foot, 18 inch berm?
A. That's all the way down the length of her property.
Q. When the county brings that blade out there and scrapes that road, do they add to or subtract from the berm?
A. I think it's relatively been stable most of the time I've been out there.
Q. But, I mean, when they scrape the road, do

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they throw more dirt up on top of the berm?
A. I'd say not really.
Q. The berm that's out there, is it made out of sand or clay or what is it?
A. Just dirt.
Q. When they scrape the road, what do the do with the dirt?
A. They're, well, not trying to get rid of dirt, they're just trying to level out the ... Now, some of it ends up in the ditch on my side.
Q. Okay.
A. And actually causes some drainage issues for me just from where that fills up.
Q. Okay. Now, the -- when it rains, is the berm vegetated totally that runs along Ms. Garland's property?
A. No.
Q. What stops the loose dirt or the dirt from the berm from running towards her pond?
A. Nothing that I would be aware of.
Q. What stops the dirt from Mr. Davis' farm from running towards her pond?
A. Nothing that I'm aware of.
Q. But, of course, this is agricultural property, right?

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A. Right.
Q. When Mr. --
A. Actually, a correction. I don't know what the --
Q. Okay.
A. -- what his property is.
Q. Well, when he farms his land planting that wheat, do you ever see him put up a silt fence or anything like that?
A. No, but I really don't have -- I really don't have any visibility to what's back there.
Q. Okay. Now, at some point in time when Mr. Cade was doing his improvements to his pond and to his land back there, did you have any hurricanes?
A. We had a couple of hurricanes. I'm not sure on the exact sequence and timing.
Q. All right. I'm showing, and I could be wrong, that these two hurricanes happened in close proximity to each other. Would that be true?
A. Yeah. We had two that were fairly close, I think within a year of each other.
Q. Did you have any type of a major rain event with either one of those floods?
A. So, and I believe it was the first one, we got

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a substantial amount of water to the point where it had backed up within a couple foot of the corner of my house.
Q. So water, you got so much rain it almost got to your house which is here?
A. Yeah. So from Davis Drive kind of all the way back here up to the corner of my house was standing water.
Q. Had you ever had that much rain before?
A. No.
Q. What, if any, type of flooding then, how would you describe the flooding that you had related to the hurricane?
A. Tremendous.
Q. And --
A. It was portions of Davis Drive were impassable for a while.
Q. Why?
A. Because of the standing water.
Q. They were under water?
A. Correct. Basically this area here and then further up towards Fish Hatchery.
Q. So Davis Drive, the whole length of Davis Drive, had a major problem with flooding?
A. Correct, during that hurricane.

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Q. From what you could see, was that because of the Cades' work or was that because of the hurricane?
A. That was the hurricane.
Q. Now, the flood waters that came from the hurricane, did they have any impact on the berm that was over at Ms. Davis' property?
A. Yeah. It washed out in this area a portion of it. And then this area basically started draining, draining through there.
Q. When the berm blew out, did it blow out in the direction of the pond?
A. It did.
Q. And the berm was made out of dirt, right?
A. Right.
Q. The water flowed towards her pond?
A. It did.
Q. How about the dirt and sand that --
A. Well, I mean, I'm speculating because it's obvious. I didn't see it firsthand.
Q. All right. But you would have seen it after it blew out?
A. Correct.
Q. And you would have seen the direction that the dirt from the berm that had blown out was

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headed?
A. Right. And I don't remember seeing anything specific with dirt heading in that direction, just that a section of the berm had blown out.
Q. And when the section blew out, the water would have traveled in the direction of this pond?
A. Right.
Q. And if the dirt wasn't there anymore, it would have had to go with the water towards the pond?
A. That makes sense.
Q. To the best of your knowledge, based upon what you saw, is it your belief that the dirt from the blown out berm actually went towards that pond?
A. Yes, it went towards the pond.
Q. And --
A. Just based on the grading of the road. Again, nothing that I saw firsthand.
Q. Sure. That would have been a lot of dirt, though, wouldn't it?
A. A fair bit. I mean, the berm itself isn't that thick, so it's probably two foot by -- two foot by two foot.
Q. Right. And it would have been blown out for

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how long a section?
A. That I don't exactly remember, but several feet.
Q. And all the dirt that got blown out was gone when you saw it?
A. Correct.
Q. And, of course, the water was gone when you looked at that area too, right?
A. Well, the water level had dropped tremendously.
Q. Right.
A. It was still standing on Davis Drive at that point but it was no longer, no longer needed wading pants to go out there in it.
Q. Did anybody ever find where the dirt that had blown out and washed wound up?
A. I don't think anybody was looking for it.
Q. It would have pretty much had to go into the pond, wouldn't it?
A. That or on the land upstream of the pond.
Q. Well, but it blew out right -- it blew out pretty close to where that culvert is, didn't it?
A. Right. So up in here.
Q. It blew out over here?

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A. Right.
Q. The natural water path would have been, water and silt path, would have been right that way, wouldn't it?
A. Right.
Q. And we know that the dirt was gone, from what you could see, that means it had to wind up in the pond?
A. Well, unless some of it just ended up in this area here.
Q. Did you see any of it in this area here?
A. I didn't go back there.
Q. Sure.
A. I mean there is a fence there.
Q. One thing we know is, a bunch of dirt headed that way?
A. Correct.
Q. All right. And I would -- were there any other damages to the berm or Davis Drive from that major flood that we're talking about?
A. I mean the road itself was just potted terribly. They had to get the equipment back out there to regrade it.
Q. Right. You didn't happen to notice if any dirt had moved from this direction towards the

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pond either?
A. Not that I saw.
Q. Or from this direction toward the pond, or from this direction toward the pond, or from this direction toward the pond?
A. I mean, I'm sure -- I'm sure it did as that's kind of a low spot and everything was just getting torrential rain at that point.
Q. When you say that's kind of a low spot, what are you talking about?
A. In this immediate area, that's going to be the low point.
Q. Right. So basically everything from the flood would have headed in that direction, right?
A. Right.
Q. And you never -- did you ever look at the pond to see how much damage was done to the pond by the flood?
A. No, or at least not that I recall.
Q. Do you have any indication that Mr. Cade's property had anything to do with the damage to the pond caused by the flood?
A. No. That was just -- that was the hurricane.
Q. Okay.
A. That was, what did they call it, a hundred

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year flood.
Q. Yeah. Your house is pretty good elevation. How close did that water get to your house?
A. Within a foot or so of the corner of my house.
Q. How about the wetlands down there, what happened to them?
A. It was completely submerged.
Q. How about the area, the buffer, that 60-foot buffer that runs through here, 50-foot buffer that runs through here, was it submerged too?
A. Not that I recall.
Q. It did okay?
A. I think so.
Q. Okay.
A. I mean, like I said, what I remember was the traumatic elements which was the standing water where the road was and worrying if that was going to actually end up in my crawl space.
Q. The flood was scary, wasn't it?
A. It was. A lot of people lost everything during it.
Q. A lot of your neighbors got hurt too pretty bad?
A. Not my immediate neighbors. In the Davis

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Drive area, for the most part, we all made it out pretty well. Just other, other people, in the larger Columbia area just completely lost their houses.
Q. Yeah. I can remember that. Was the berm, except for right in the area, right in the area of Ms. Garland's pond, was the berm blown out anywhere else?
A. Not that I was aware of. That was the only spot or the only spot that I was aware of.
Q. This area down here that's wetlands --
A. The wetlands is up here.
Q. I'm sorry, wetlands here, does it, from what you can see, does it have any impact on impeding or slowing down the flow of water, siltation or anything else?
A. I couldn't tell one way or the other.
Q. How about the fence, does the fence that's on Mr. Cade's property, does it impede water or trash or anything?
A. It's not going to impede water, but if there were any trash, it would catch the trash and accumulate on the fence.
Q. They say fences make good neighbors.
A. Right.

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Q. I guess you're glad to have that fence back there.
A. I don't mind having the fence back there.
Q. Okay. Now, the water table out here, does it impact septic systems at all?
A. Yeah, it does.
Q. Explain that to me.
A. Basically if I were to go in this area back here and start digging, within about two to three foot I'd get water.
VIDEOGRAPHER: Mr. Shearer, your microphone.
A. Oh.
Q. Within about two or three feet you'd hit water?
A. How long was that off? I'm good?
Q. You're fine. So it's got a real high water table?
A. It does.
Q. Do you know if Ms. Garland's property is spring fed, rain fed or both?
A. I have no knowledge.
Q. A moment ago, before we started this deposition, you were shown a videotape of water bubbling out of the ground. Is that videotape more or less than what you would

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normally see out there?
A. Oh, that was a lot more.
Q. When the water bubbles out of the ground there where the pipe comes in and is covered up, is it a giant amount of water or a small amount of water? How would you describe it?
A. It depends on the time of the year. So if you're talking about kind of March through -- March, April, May, a very wet time of the year, we'll see a lot more increase on that. Coincidently, that's also when we tend to have septic problems --
Q. All right.
A. -- on that road. The rest of the year, unless there is some type of exceptional amount of rain, it's just kind of a pretty general bubbling that you see coming out on the other side.
Q. How long has this dirt road, Davis Drive, how long has it been there?
A. Since the Davis' put it in some 50, 60 years ago.
Q. Were you able to determine, we talked about that pipe being silted up, that pipe was silted up, the 24-foot pipe, 50 percent

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clogged, was that silt there, that pipe, before or after the Cades did the work on their property?
A. The silt's been in the pipe since I moved in.
Q. How many years is that?
A. Nineteen, 2003.
Q. So for at least 19 years that pipe has been catching silt?
A. Correct. And we'll periodically go and try to clean out our end of it but we can't get more than about four or five foot into that side.
Q. So we know that water and silt has been headed towards the Garlands' pond for at least 19 years?
A. Correct.
Q. Is the silt that's been going towards that pond for 19 years, is it all coming from the Cade property?
A. I would suspect not.
Q. But one thing is for certain, if the natural drainage heading in that direction and surface water carries silt, doesn't it?
A. Right.
Q. And the silt carried by the surface water is what --

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A. And I think a lot of what I see in the pipe on this side where we get the accumulation is actually as a result of the grading of the road. So it loosens up that sand. We get a rain, it washes into this side --
Q. Right.
A. -- and accumulates.
Q. So what happens is the motor grader pushes the dirt around, some of it winds up going off into the road, draining into the pipe and through the pipe, and headed eventually towards Ms. Garland's pond?
A. Right.
Q. Now, so we know for at least 19 years silt's been headed in that direction, right?
A. Right.
Q. Is there any way to tell how much of the silt that's in there came from Mr. Cade's work and how much came from the motor grader?
A. I couldn't even -- I could not speculate.
Q. Now, we know then for at least 19 years silt has been headed from the road into Ms. Garland's pond. At any point in time during those 19 years that the silt from the road has been headed towards Ms. Garland's pond, have

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you ever seen Ms. Garland do anything to go over and clean out her pond?
A. I haven't, but I don't have a direct visibility to that area either.
Q. Sure.
A. And she's always out there working, doing stuff on the property.
Q. Have you ever seen any signs that anybody in those 19 years has ever done anything to clean out the silt that's been coming from the road that the county is supposed to maintain?
A. No.
Q. At any point in time have you ever seen the county go out and clean out any of the silt that its been putting in Ms. Garland's pond?
A. No.
Q. Have you ever seen the county come out and clean out the silt from the pipe that's basically running under Davis Road?
A. No.
Q. From what you can tell, most of the silt that's in that pipe, is it coming from the road or is it coming from someone else's property?
A. I'd say most of that is coming from the road.

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Q. All right. Could you hand me, do you have -- off the record for a moment.
(OFF THE RECORD BREAK FROM 10:47 A.M. TO 10:48 A.M.)
MR. MOORE: I am going to mark a document here as Exhibit Number 8. I'm just going to write this very, very faintly in the left-hand corner of this photograph.
Q. Would this photograph be a fairly typical view of what Davis Drive looks like in the area we're talking about?
A. It would.
MR. BELSER: Can you flip it just so I can see it? I don't need a copy.
MR. MOORE: I'm going to hand it to you because I want to introduce it into evidence.
(Defendant's Exhibit Number 8 was introduced into evidence.)
Q. Thank you, Paul.
MR. BELSER: No objection.
MR. MOORE: Any objection Tom?
MR. DOUGALL: No objection.
Q. Okay. And if you would just point on this map, this would be roughly what area of the road?
A. This is, this would be here looking back.

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Q. All right.
A. So probably this is where the photo was taken, it would be looking back this direction.
Q. All right. Now, if I look at the top end of this photograph, am I looking at that berm that you're talking about?
A. You are.
Q. Now, water seems to be standing next to that berm in the road, is that right?
A. That is correct.
Q. So this is an example of the fact that the berm won't let the water from the road across?
A. Correct.
Q. And there's water standing on your side, is that right?
A. Correct.
Q. Now, if we look at this photograph, does Davis Drive, is it Davis Road or Davis Drive?
A. Davis Drive.
Q. Does Davis Drive then shed water towards you or towards the pond?
A. Towards me.
Q. And the water that is standing there on your side of the property, is that in front of the wetlands?

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A. It is. So the wetlands would be there off to the right.
Q. Okay. So you can basically see that the water from the road doesn't go into her pond, does it?
A. The water from the road is going to go ultimately onto my property and then to that culvert.
Q. Okay. Well, there's not much -- how can water that's -- see where the water has ponded up?
A. Right. So you see right here where you can see you've got almost this little bridge?
Q. I see.
A. So water builds up here. It's going to flow across that and then it goes in behind there.
Q. All right. If you look at it here, though, you can see all this loose dirt on the berm, right?
A. Right.
Q. What prevents that loose dirt from going across that water bridge into that ditch and then ultimately through the pipe?
A. Nothing that I'm aware of.
Q. And if you look at the color of that water that is ultimately headed towards the culvert

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from the road, is that clouded or is that clear?
A. It's cloudy.
Q. So what's happening is, the water on Davis Drive that falls there naturally --
A. Right.
Q. -- either goes into your ditch or ponds up by the berm?
A. Correct.
Q. Then it will cross the road at one little low place --
A. Right.
Q. -- go back down the ditch, go through the ditch into the culvert --
A. Right.
Q. -- and then drain onto Ms. Garland's property?
A. Correct.
Q. Now, let's talk about the area --
MR. MOORE: Well, this thing is not working again for some reason and I don't know why, but I'm going to try. My little fancy -- yeah.
Q. If you look there at the pond, yes, there's a difference, there's a distance between Davis Drive and Ms. Garland's pond, is that right?

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A. There is.
Q. How great a distance is it from where the water bubbles up because the pipe is covered up to where her pond starts?
A. I don't know. I mean the water is going to bubble up right here.
Q. Yep.
A. What that distance is, I don't know.
Q. And we estimated it on the other property to be, the berm there or the buffer, was estimated at about, what 300 feet, 50 feet?
A. Right. It's roughly about the same amount.
Q. So it's about 300 feet from where the water bubbles up to actually get to her pond, right?
A. Assuming that buffer is that, which is -- I'm not great on --
Q. I know.
A. -- estimating that stuff.
Q. But all you're doing is ball parking numbers for me?
A. Right.
Q. I understand that. So the distance between Davis Drive where it bubbles up and Mrs. Garland's pond, is that also covered with vegetation?

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A. It is.
Q. Is that also wetlands?
A. I would assume so, although I don't know that for sure.
Q. So in order for -- in order for silt to get from the Cade's property, it would have to first get picked up by water, right?
A. Right.
Q. Then it would have to either go across the wetlands or the buffer that we've talked about, right?
A. Right.
Q. Then it would have to go across your property?
A. Right.
Q. Then it would have to either go and bump up against the berm or get into the creek or the ditch, right?
A. Right.
Q. Then it would have to eventually make its way into the pipe?
A. Right.
Q. Then it would have to go into the pipe and under the road through the silted pipe?
A. Right.
Q. And then it would have to bubble up out of the ground, right?

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A. Right.
Q. And then if it bubbled up out of the ground through the ground, it would then have to go over about 300 feet of vegetated area to find its way into the pond?
A. Right.
Q. And of course that would be the natural drainage system for the area anyway?
A. Right.
Q. And it's been that way for about 50 years?
A. I can only comment on how it's been since I've been there.
Q. Twenty years?
A. Twenty years.
Q. All right. Okay. Now, you did some work. Like you said, you bought some property and did some work on your property?
A. Right.
Q. Do these photographs show the type of work that you did on your property?
A. It does.
Q. Okay.
MR. MOORE: If I might introduce these.
(Defendant's Exhibits 1 through 7 were

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introduced into evidence.)
A. Only clarification, you said you bought some property, but that was property I already had.
Q. Right. You already owned this property anyway?
A. Correct.
MR. BELSER: Objection.
Q. Were you able to make any of the surfaces in the area where you did your work impervious?
A. Impervious?
Q. Yeah, where it doesn't -- it sheds water?
A. Yes.
Q. Where did you -- where did you do this work, is it right about here?
A. No, it's --
Q. It's up here?
A. -- it's right in about here.
Q. I see.
A. About where that line is.
Q. Well, I might point it out again. We'll figure this out. The first photograph I've got labeled as Exhibit 1. What does this actually show?
A. This shows the spreading of asphalt millings.
Q. Okay. And Exhibit Number 2, what does this

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show?
A. This shows a pile of asphalt millings.
Q. Okay.
MR. MOORE: I've already got them marked up here, Exhibit Number 2.
MR. BELSER: Oh, here's Number 1.
MR. MOORE: Okay.
Q. Tell me what an asphalt milling is?
A. It's basically asphalt that was previously a road or a highway somewhere that's been reclaimed and ground up.
Q. You use it kind of like pea gravel?
A. Yeah. Kind of that or crush and run.
Q. Right. Exhibit Number 3 here, does this show any of the work that you were doing?
A. It does.
Q. Is that your house there?
A. It is.
Q. Really pretty house.
A. Thank you.
Q. What is this showing about the work, not much?
A. Not much.
Q. It does show some standing water there, doesn't it?
A. It does.

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Q. Is it unusual for water to stand like that out there?
A. No.
Q. All right. Would that water eventually find its way into the pipe or is that some of the water that goes somewhere else?
A. It would eventually find its way into the pipe.
Q. Okay. But it's a slow process?
A. Right.
Q. Is this some of the asphalt milling area that you did?
A. It is.
Q. And what happens is, when you put the asphalt milling down, the water will run off it and not be a problem to you?
A. Correct.
Q. Okay. Did your work increase the problems that Ms. Garland was having that you know of?
A. No. It would be -- it would be a net difference or it would net out, because the total amount -- all that water ends up in that wetland.
Q. Right.
A. And the net amount of water going there is not

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changing.
Q. And the water going to the wetlands doesn't go onto her land anyway?
A. It does through the culvert.
Q. Oh, that's right. Well, okay. We know that the water, this water, goes in this direction?
A. Correct.
Q. And this water goes in the culvert?
A. Correct.
Q. And the work that you did was here?
A. That's correct.
Q. Okay, fine. As a matter of fact, did anybody from the Federal Government come out and check the work you were doing?
A. Yeah. There had been a complaint that had been made about it. The Army Corps of Engineers came out and inspected it.
Q. Anybody find anything you did anything wrong?
A. No.
MR. BELSER: Objection, hearsay.
Q. Were you cited for having done anything wrong?
A. No.
Q. This Exhibit Number 5, does this show sort of the finished product?
A. It's getting close to the finished product.

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Q. And Exhibit 6 is getting close to the finished product?
A. That's correct.
Q. Okay. Could I hold those again. All I'm doing right now is getting you to identify these photographs.
A. Sure.
Q. Now, there is a Number 7 here. Is this a photograph of what the wetlands looks like that we've talked about?
A. It is.
Q. And that would be standing water?
A. It is. This would also be more of like the March, April, May time area where there would have been heavy rain.
Q. Right. When we have the rainy season, the wetlands holds water more?
A. Correct.
Q. And you can go out there about any time and you can see something that looks like that?
A. Correct.
Q. It would have been like that before the Cades did their work, it would have been like that after the Cades did their work?
A. That's correct.

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Q. Okay. Now, do you have anything at all against Ms. Garland?
A. I don't.
Q. Anything against the Cades?
A. I don't.
Q. You just live out there?
A. Yeah. I try to maintain friendly relationships with everyone as much as I can.
Q. Pretty good idea. You've been awful nice to me. And you've talked to some of these other lawyers too and been nice to them?
A. I have.
Q. When that ditch fills up, the ditch being basically here --
A. Oh, yes, correct.
Q. -- and we know the ditch runs in this direction away from Ms. Garland's property --
A. Correct.
Q. -- when that ditch fills up, how long does it take for the water to actually go in the direction away from Ms. Garland's property?
A. I couldn't even speculate.
Q. Now the culvert is about here?
A. That's right.
Q. Does water coming onto your property here go

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in this direction towards the culvert?
A. It does.
Q. And water coming from the other neighbors goes towards the culvert.
A. So if you take where my house is --
Q. Yeah.
A. -- everything on this side of the house is going to go towards the culvert. Everything on the other side of the house is going to that ditch where it ultimately ends up over at the Campbells side.
Q. How about the land, the drainage from over here, is all this heading towards the culvert too?
A. It is.
Q. Who owns these properties, who owns this property here that would drain toward the culvert?
A. That would be Al -- oh, is this showing the property ...
Q. This is the property next-door to you.
A. Okay. So that would be the Davis'.
Q. Which Davis, there are a bunch of them.
A. I'm sorry, Al and Susan Davis.
Q. And this property would drain that way too.

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Who would own that?
A. Hold on. I'm trying to get my mental bearings here.
Q. Lives next-door to Al and Susan.
A. Oh, okay. That would be the Browns.
Q. And who owns this property that would drain in that direction?
A. That would be Bert.
Q. And do you know who would own these properties that would drain in that direction?
A. I do not.
Q. But all of the stuff basically heads towards that culvert and eventually towards the pond?
A. Right.
Q. And you know that because you've seen it?
A. Right.
Q. Okay. How well do you know Claude who owns the wheat field up here?
A. Fairly well. We're friends.
Q. And he just plants it with wheat?
A. He does.
Q. Just for the heck of it?
A. Yeah. It's kind of my suspicion, an excuse to get on his tractor.
Q. He likes that tractor, doesn't he?

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A. He does.
Q. He's out there all the time plowing up this thing, tilling it up?
A. No, I wouldn't classify it as all the time. Probably twice a year.
Q. Twice a year. He loves to do that, though, right?
A. Right.
Q. And of course his land as we can see is about 12-feet higher than the pond?
A. I can't read a contour map, so ...
Q. That's 202 and that's 190, so it looks like it's about a 12-foot difference.
A. I was trying to figure out what those numbers were.
Q. Yeah.
A. Okay.
Q. And that would be a pretty good drop, wouldn't it?
A. It would.
Q. When you cut the trees off your property, where were they, behind your house?
A. There were a couple that were over here. Most of them were on this side?
Q. All right. Did you have to get a permit to do

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that?
A. No, we had a tree service come out and do it for us.
Q. Okay.
A. We had a bad case of pine beatles.
Q. Oh, wow. By the way, did you build a retaining wall out here somewhere?
A. I did.
Q. Where?
A. Close to this line right here.
Q. Now, why did you need the retaining wall?
A. That was basically to keep erosion from going down into that wetland area.
Q. You had a problem with that for awhile?
A. We have.
Q. How long has it been eroding like that, just years?
A. I mean, since we've been out there.
Q. All right.
A. And mainly just during times of heavy rain.
Q. Right. How hard did you try to find how deep that pipe was buried on Ms. Garland's side?
A. I probably spent a good hour on it before I gave up.
Q. Just digging?

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A. Just digging. And the problem was, is the water, the sand, would be coming back down as quickly as we were trying to pull it out of there.
Q. Is that because the sand is so loose?
A. It is.
Q. Most of this whole area is covered in sandy soil, right?
A. It is.
Q. And it's --
A. Sand or clay.
Q. Sand or clay or sand clay. And it's very loose soil, isn't it?
A. It is.
Q. And since it's loose soil, all of it will move with the water, won't it?
A. Anything that's loose soil.
Q. Yeah. Mr. Shearer, I am delighted that we were able to save you from having to be in court this week. I hope you have a good trip. I believe you're going to Orlando?
A. I am.
Q. But you're going on business?
A. But I'm going on business.
Q. Well, maybe you can get to the land of a

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thousand Mickey Mouse ears.
A. I hope not.
Q. Thank you for answering my questions. I'm going to ask to go off the record for a moment, because with the cold that I have, I'm drinking gallons of water and I need a restroom again. So if you'll excuse me, I appreciate your answering my questions.
(OFF THE RECORD BREAK FROM 11:08 A.M. TO 11:18 A.M.)
MR. MOORE: If somebody would hit the button.
MR. DOUGALL: Here.
MR. SHEARER: The play button there in the corner.
MR. DOUGALL: Yeah, I know. I just need it --
MR. SHEARER: Oh.
MR. DOUGALL: -- it was going to pull it across the glass and it wasn't working.
(VIDEO IS SHOWN.)
Q. You saw, did you see that little movement of the water?
A. I did.
Q. Is that more what it looks like when it bubbles?
A. Generally a little bit more than that, but yeah.

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Q. Okay, thank you. I don't have any further questions and if you would answer any questions counsel might have.
CROSS EXAMINATION
BY: MR. BELSER:
Q. Thank you very much. And, Mr. Shearer, I apologize for calling you Mr. Melichar when I first got started, I've just got names running through my head, but why don't we -- why don't we start there.
MR. BELSER: And Jake, can I borrow your laser --
MR. MOORE: Sure, it's right there.
MR. BELSER: -- just so I don't have to jump on over you?
MR. MOORE: Would you like my seat? You can have the seat if you want it?
MR. BELSER: Well, that may be easier if you don't mind.
MR. MOORE: I don't mind, but the court reporter is going to shoot me about my tie and the microphones. I'll you go under, I'll -- I'll go under, you go over. That will do it. (LAUGHTER IS HEARD).
MR. MOORE: All right, very good. I'm not

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going to look at your notes, I'll move this paper.
MR. BELSER: All right. My handwriting is indecipherable, but I do need that.
MR. MOORE: Okay, you're all right.
MR. SHEARER: You dropped that pen.
MR. BELSER: Okay, thanks.
Q. All right. So speaking of Mr. Melichar, and I'm not looking at the video, I'm looking at this right here.
A. Oh, okay.
Q. I'm sorry. I couldn't get the video to work. So Mr. Melichar is a former neighbor of yours who had owned this property right here with the pond?
A. Yes.
Q. Right, okay. And he has had a -- he's now left the neighborhood, right?
A. Correct.
Q. And he had a pretty nasty set of disagreements with Mr. Cade, is that correct?
A. That's correct.
Q. And they had mutual restraining orders, is that correct?
A. That's correct.

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MR. MOORE: Object to the relevance.
Q. And they were out filming each other on occasion?
A. Yes.
MR. MOORE: Object to the relevance.
Q. And Ms. --
A. Quick question, so when --
MR. MOORE: You just keep answering.
MR. SHEARER: I just keep answering him. Okay.
Q. And Ms. Garland has had obviously disputes with the Cades, that's why we're here, right?
A. Right.
Q. But you've managed to stay on their good side, is that right?
A. That's correct.
Q. Okay. And he actually did you a favor by accepting your $10,000 to clear off your property, right.
A. That's correct.
Q. I mean, not to clear it off, but to --
A. Just to square it off.
Q. -- square it off. And one of the things that --
A. As well as favoring directly to Mark, when he had the dispute, because at the time we did

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the transaction --
Q. Uh-huh.
A. -- there was fence posts all the way down Mark's driveway --
Q. Uh-huh.
A. -- where he was not going to be able to get his vehicles in and out.
Q. And is it fair to say that you're kind of a conflict adverse guy, conflict avoider?
A. Yeah, that's fair to say.
Q. Okay. And you've tried to maintain a friendly relationship with Mr. Cade, is that right?
A. That is true.
Q. Okay. All right. I want to talk, to start by talking about, do you remember all the questions that Mr. Moore asked about the flood?
A. Yes.
Q. And do you remember about, do you remember how y'all talked about how you know that a lot of people were, were damaged in --
A. Right.
Q. -- in the Columbia area. I mean, the dams broke in the Northeast and there was a lot of loss of life and limb?

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A. Right.
Q. Not limb, but nor life.
A. Right.
Q. I don't think. I think there was a lot of property damage, maybe some life, mostly property damage. You remember that well, right?
A. Yes, very well.
Q. Okay. That was three years before the Cades bought this property in 2018, right?
A. I'm not sure on the exact dates, but I'm -- it's whenever the, whatever was labeled the 100 flood. I think that's what I'm referring to.
Q. Okay. I think that was in October of 2015 and that was a thousand year flood.
A. Okay.
Q. Okay. Does that, so does sound about right?
A. Yes, it does.
Q. Okay. And that was before Mr. Cade bought the property in 2018, if he bought it in 2018?
A. If he bought it in 2018, yes.
Q. Okay. And I believe that you said that after Mr. Cade bought the property, that there were some hurricanes and that you've never seen the

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tremendous amount of flooding that you saw then, is that right?
A. I may have been confusing the timeline in terms of the hurricanes. So the amount of flooding associated with that first hurricane, I had never seen anything like that. In terms of what was the sequence of events, when it happened when the Cades moved in, I'd have to sit there and look at the dates of when all that happened.
Q. Okay. But the tremendous flooding that you saw and the blowout that you saw, that was all after Mr. Cade and Mrs. Cade bought the property and cleared it, is that right?
A. No. That was associated with that 1,000 year flood. So if that happened before they moved in, then obviously that would be before.
Q. Okay. So the hurricanes you were talking about, what -- were there any hurricanes in 2018 that you're talking about?
A. There was one hurricane specifically that I'm talking about and that was the 1,000 year flood. Now, there was another hurricane where we got a lot of rain associated with it, but nothing on the scale that I was talking about

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before.
Q. Okay. So I'm just, I'm having a hard time understanding here. So there was the 2015 flood --
A. Right.
Q. -- which was three years before the Cades bought that.
A. Okay.
Q. And then you said that --
A. And so that was in 2015.
Q. Yes.
A. Okay.
Q. The 2015 1,000 year flood.
A. Okay.
Q. And then the Cades bought their property in 2018 and started to clear it. And in your direct testimony you talked about, the Cades were mentioned about how that flooding event in 2018 was like something you'd never seen before, is that right?
A. So if I said that was 2018, I was referring to the 2015 flood.
Q. So were the Cades there or not?
A. Not if it was 2015.
Q. Okay. I mean the jury will have heard your --

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already heard your testimony --
A. Okay.
Q. -- but as I heard your testimony, it was the hurricanes, when the Cades owned the property in 2018, which is like something you had never seen before?
A. Yes. So if I specifically said when the Cades owned the property, I don't remember saying that. What I remember talking about was the hurricanes, the amount of rain that was associated with them, and specifically that first one being the, I think what we've established, the date is 2015 which would have been before the Cades moved in.
Q. And did you take -- if in fact there was a blowout in 2015 which is disputed, was that -- did you take any photographs?
A. No.
Q. Okay.
A. Or at least not that I'm aware of.
Q. And do you know when -- let's look at this map here, have you ever seen this map before?
A. No.
Q. Okay.
A. I mean, I've seen a Lexington County version

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of it, I'm sure.
Q. Okay. But this was obviously before the Cades bought their property and cleared their land, right?
A. The flood was before?
Q. I'm talking about this photograph is -- this is all wooded right here --
A. Okay.
Q. -- where the Cades property is now.
A. Right. So does the green indicate that it's wooded?
Q. The green, that's trees.
A. Okay.
Q. The --
A. Yes. So that would be before then.
Q. Okay.
A. Well, it would be before or right after.
Q. Okay. But you don't know, but presumably it's sometime between the 2015 flood and the time that the Cades cleared the property?
A. I've never seen this map before today.
Q. Okay.
A. So I don't know what the date of this map is as of.
Q. Okay. But you see that -- you will agree that

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these are trees right here, and you see Ms. Garland's black water pond right there?
A. Uh-huh.
Q. Okay. Had you ever over the years, had you ever been to the Garland pond and met with either Suzy or her late husband and enjoyed their property?
A. We've been on the -- we've been on the property before but we've never spent much time over there. I have seen the pond as we would walk up the driveway.
Q. And as you remember it, back before the Cades bought it, it was a black-water pond just like what you see on this map?
A. I don't have any specific recollection of the pond itself. It wasn't anything that I was really focused on until after this whole event started.
Q. Okay. And the black -- there's the black-water pond, but Davis Drive is on there. Davis Drive has been on there for decades, right?
A. Right.
Q. And Mr. Claude Davis who likes to ride his tractor --

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A. Right.
Q. -- there's a black-water pond and he's been doing that for years, right?
A. Since we've been out there.
Q. And when -- I've got -- you started to take photographs of Mr. Cade's -- or from your backyard of the work that Mr. Cade was doing once he started doing it, right?
A. I think so. I mean, the dates are on the pictures.
Q. Okay.
A. Do you have those?
Q. Yeah.
MR. BELSER: Jake, could you just hand me those photographs right there, right underneath?
MR. MOORE: Yeah.
MR. BELSER: Thanks.
MR. MOORE: Oh, golly. Could we go off the record please.
(OFF THE RECORD BREAK FROM 11:29 A.M. TO 11:34 A.M.)
Q. All right. Mr. Shearer, I believe when we went off I was asking you about some photographs?
A. Right.
Q. And do you recall that I sent you a subpoena

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maybe last September and you sent some photographs back?
A. Correct.
Q. Okay. I've printed out a stack of them here and I've got handwritten notes as to the dates which match the metadata or whatever you call it.
A. The metadata.
Q. Is that what it's called?
A. That's what it's called.
Q. Oh, okay. And I've written those on there, but my question is did you start taking photographs of the work that Mr. and Mrs. Cade were doing on their property after they started to do it?
A. Yes.
Q. And that's because you were just -- it's easy to take photographs, right?
A. It's easy to take photographs.
Q. And you were curious about it, right?
A. Right. And there was a lot of really cool heavy equipment out there that looked very fun.
Q. And you also had sediment coming on your property, is that right?

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A. That's correct.
Q. Okay. And you had never seen sediment like that before on your property coming from uphill, right?
A. That's correct.
Q. Okay. And so let's walk through, and that's like back in 2015, the 2015 flood, you did not have sediment on your property like you had in 2018 after the land was cleared?
A. Oh, I couldn't tell with that particular flood because of the amount of standing water that would have been there. I mean, literally, it was -- the road was completely submerged.
Q. All right. If you wouldn't mind just walking through, just identifying. Do these photographs that were taken by you accurately depict what they purport to show?
A. Yes.
Q. Okay. And what is -- what is this first one, what's the date on it and what's the first one?
A. The first one is July 7, 2018 and it's an earth mover.
Q. And was that -- is that generally consistent with what you observed on the site, just the

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clearing off of the property, the de-stumping of the property and the mass grading of it?
A. What do you mean by mass grading?
Q. Well, just big heavy, cool heavy equipment moving earth around?
A. Yes, yes. That is.
Q. Okay. And the next one is what?
A. The next one is just showing some of the cleared land.
Q. Okay.
A. And that's also the same date. More of the same.
Q. What's the --
A. This one is November 21, 2018 and basically shows water that is heading into the culvert.
Q. Okay. And describe what the water looks like?
A. It looks cloudy.
Q. Okay. And you had never seen water in that area that color before 2018, is that correct?
A. No, I've seen water, yeah, I've seen water like this before then. There's various times that it's -- it's -- various times that it's been muddy, but the comment I had made earlier was kind of earlier in -- when the excavations were happening. And it was actually a lot

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darker than the color that's being shown here.
Q. With the excavations, are you talking about -- well, there's only --
A. Or not the excavations but the clearing of the land.
Q. Okay. And is that when you mentioned the violent runoff when the soil was disturbed?
A. Yeah. There was a lot of runoff when the soil was disturbed.
Q. Okay. And did I hear you, I thought I heard you say violent, is that the word you used?
A. Not that I recall.
Q. Okay. Well, then if it wasn't violent --
A. It was significant runoff.
Q. Okay. And that was like something you'd never seen before?
A. Yeah. It was, correct. Short of -- short of that previous flood we were talking about.
Q. Okay. What is that, is that just more of the same?
A. Just more of the same.
Q. Okay. And then the next photograph is dated what?
A. It's dated 12 -- I can't tell.
Q. That's 12/30.

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A. 12/30/2018.
Q. Okay. And do you remember when you saw some, it looked like antifreeze looking dye in the water?
A. I do.
Q. Okay. And is that what that picture shows?
A. Yeah. That's what turned out to be pond dye.
Q. Okay.
A. I was very concerned that perhaps when things had gotten unearthed or whatever that something had been buried and punctured and was leaking and -- but that turned out not to be the case.
Q. And what was, when you say unearthed, was there like a lot of turning over of the earth? And kind of when I say mass grading I mean like big equipment --
A. Well there was -- there was pulling out of the stumps. There was the work that was going on with the repair of the dam.
Q. Okay, I'll just grab these.
A. Sure.
Q. This next photograph is April the 1st of 2019. Does that -- that's from your backyard showing the improvements on the Cade property?

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A. It is.
Q. And so in addition to the mass grading, there are a number of structures that were built as well?
A. Correct.
Q. Including and on that property on occasion are stored at least one truck which relates to Mr. Cade's commercial business?
A. Correct.
Q. And that property looks a lot different than it used to look, right?
A. It does.
Q. It used to just be completely wooded?
A. Correct.
Q. No there's hardly a tree on the whole place, is that right?
A. Except for the buffer they left.
Q. Okay. And then this last photograph, 7/7/2019, that's the picture of the berm, is that right?
A. That is correct.
Q. And that's the berm that's on Ms. Garland's side?
A. It is. So this is her fence you can see in there and then this is built up against the

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fence.
Q. Okay.
MR. BELSER: Jake, I'm going to move to admit these.
MR. MOORE: Sure. I have no objection to those at all.
MR. BELSER: Okay. These are Exhibit 15, Plaintiff's Exhibit Number 15. And I'll stick these in front of you, but don't walk out with them.
Q. Now, you don't have any knowledge at all about any kind of permitting requirements in Lexington County for storm water, correct?
A. I do not.
Q. Okay. Now, when you're talking about Mr. -- the discussion about Mr. Davis right here, I can't remember, is that Claude?
A. Claude.
Q. Okay. You said that he -- you used the word stabilize. So is what he does is he discs the soil, has his diesel therapy and then plants it with his winter wheat?
A. Correct.
Q. Okay. So he just doesn't -- he doesn't leave it, you know, kind of bald for months at a

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time?
A. No. No, he doesn't.
Q. And why did you use the word stabilized?
A. Because the root system on that is basically going to hold the soil together.
Q. Which is a lot different, isn't it, than what happened when Mr. Cade cleared his property in 2018. It took a long time for that to get stabilized.
A. Well, right after they had cleared it, they immediately went through with what looked like a giant fire hose and was spraying the property with grass seed. And there were two different occasions I saw that happening.
Q. And do you know how long the property sat in it's condition, sat unstabilized, before that happened?
A. In terms of sequence, it was all back to back, but how much of the time span that was, I'm really not sure.
Q. Do you know if that was before or after the county came out and issued a stop work order?
A. I don't know.
Q. Did you know that the county had issued a stop work order?

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A. Only through Suzy.
Q. Now, you mentioned Mr. Moore asked you about silt. He asked you about Mr. Davis' property and you said Mr. Davis doesn't have any silt fences or anything like that.
A. Right.
Q. And so you know what a silt fence is?
A. I learned what a silt fence was through this whole thing.
Q. Okay. But when this clearing first began, looking at Plaintiff's Exhibit Number 15, there are no silt fences in that photograph, are there?
A. No, but the silt fences that would have been put up would have been further on this side. And I'm not sure on the exact date for when those went in, but I know that there was a complaint about the runoff happening. And very shortly after that, the Cades put in silt fences which were pretty close to where the fence line runs right there.
Q. Okay. But that was -- there was a long period of time where the property was unstabilized with no silt fences and no grass either?
A. I wouldn't classify it as a long period. Like

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I said, I'm not -- the whole thing runs together.
Q. Uh-huh.
A. There was a continuous sequence amount of activity. I can't tell you what amount of time that was over.
Q. So it could have been six months, it could have been six days?
A. I don't think it was six months and it wasn't six days.
Q. So --
A. I mean, we're probably -- we're probably talking in the timeframe of like one to three months, somewhere in there.
Q. And when you first started taking photographs in July of 2018, well I guess this -- you sent me a number of photographs in a folder that had silt on it, it was titled silt, do you remember that folder?
A. Right.
Q. Okay. The first photograph that shows silt in the -- in the creek is November the 2nd of 2018.
A. And to be clear on that title, the subpoena was extremely open-ended.

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Q. Uh-huh.
A. In so much that I considered getting a quash because there were things that were not defined. One of them was the word disputes. And I asked about the nature of disputes and I was -- basically got back a non-answer that said, well, just whatever disputes that you happen to be aware of. So I went through and I categorized what I thought the disputes were and that's where that silt folder came in, is anything that might be related to silt got put into that folder as a result of the subpoena.
Q. Okay. And we had a series of -- we've always had a nice relationship?
A. Sure.
Q. I mean you called me back immediately, we've talked a couple of times. I accidently called you a couple of days ago, didn't mean to --
A. Right.
Q. -- but you called me back and I appreciate that. And we've emailed back and forth, correct?
A. Correct.
Q. And we even talked about we tried to get your depositions set but then just a lot of things

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happened?
A. Right.
Q. We've never had your deposition until just earlier today, right?
A. Correct.
Q. And do you remember when we exchanged emails about kind of what, what this case is about, just so I understood from your perspective what this was about?
A. Sure.
Q. Okay. Can you, I'm handing you this document, is that the email exchange?
A. Yes, that is.
Q. And can you please read for the record my email to you and then my your response?
A. Sure. It says thank you for our call this morning. As I understand our conversation, you --
Q. I'm sorry. Can you start, just so everybody knows who is writing here?
A. Sure.
Q. So this is an email from me to you?
A. Correct.
Q. Okay.
A. Paul, thank you for our call this morning. As

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I understand from our conversation, you know about this case and it's about the sediment that came out of the Cades' -- came from the Cades' property after it was cleared, after it was cleared onto your property and then onto Suzy's property but you do not know the extent of the impact. If you agree with that, please respond to this email so that I don't need to take your deposition. And my response was, this is an accurate representation of our conversation.
Q. And do you stand by that?
A. I do.
Q. Okay.
A. And it's like I've told both attorneys all along, I don't think I have any specifics that are really in dispute by anybody. There was sediment that went across my property, went into the culvert and presumably out the other side. Shortly after complaints were made to the Cades about it, they put up silt fences.
Q. But you don't know how bad the damage is on Suzy's property?
A. I don't.
Q. Okay.

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A. And I understand that there are several engineers that have been brought out to do that assessment.
Q. Uh-huh. And obviously you rely on them?
A. I certainly wouldn't rely on mine.
Q. Okay. All right. Talking about the culvert just briefly, there were lots of questions about that. Just so everybody is clear, there are obviously two sides to the culvert, one on your property and one --
A. Correct.
Q. -- on Suzy's property, correct?
A. Correct.
Q. And the last time that you really looked at this 24-inch culvert on your property was two to three years ago?
A. Correct.
Q. And it was at that time that you got a shovel in there and you were able to dig out four or five feet?
A. No. That would have been before that.
Q. Okay.
A. This would have been the same time where I had talked about trying to go onto Suzy's side and dig out her side.

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Q. Okay. And just to be clear, that event was ten to 15 years ago?
A. That's correct.
Q. So sometime when Mrs. -- Mr. Garland passed away in 2012, so sometime when he was still alive, you tried to unclog the pipe and you said that you couldn't find the other end because it was completely buried?
A. Correct.
Q. And do you remember that -- so as I understand it, you had -- you were concerned about drainage on your property?
A. Correct. Basically water backing up on my property because it wasn't flowing through the, through the culvert.
Q. And so what you're saying is more than ten to 15 years ago, you went over there and spent an hour trying to dig out the other side and couldn't find it?
A. Correct. And that's because the water was bubbling up and it was falling back in as fast as I could pull it out.
Q. Okay. Now, there was some discussion about whether water was flowing freely or non-freely. Do you remember that?

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A. I do.
Q. And water is obviously flowing through that pipe, right?
A. Yeah. Water is coming out the other end of the pipe.
Q. Okay. And there's water with sediment in it which is coming out the other end and has been since the Cades cleared their property, right?
A. I mean, I would assume so.
Q. Okay.
A. Because I have seen sediment go into the pipe.
Q. Okay.
A. And just to be clear, on the comment about the sediment going into the pipe, this is in reference to when all of that work initially happened --
Q. Uh-huh.
A. -- is when I had observed that going in.
Q. Uh-huh. When, like after the Cades cleared the property?
A. Correct.
Q. Kind of in between the clearing and then the --
A. And the grass.
Q. -- and the stabilization?

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A. Yes.
Q. Okay.
A. The grass and the silt fences.
Q. And you don't recall, you've never gone down to Suzy's property to see what it looks like when there's sediment in it?
A. Not that, not that I recall.
Q. Okay.
A. And that's not to say that I haven't, but I have no recollection of that.
Q. And have you seen photographs of Suzy's mudding pond?
A. I think she showed me photographs before when her and I were over at Mark's, Mark's before he moved.
Q. And have you seen videos of Suzy's muddy pond?
A. I don't think I've seen videos.
Q. Okay.
A. I think I've seen photos.
Q. And it looks muddy, right?
A. And it looked muddy.
Q. Thank you very much. I don't have anymore questions. Mr. Moore probably has some questions on direct-examination. I appreciate your time.

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A. No problem.
Q. I hope you have a safe trip.
A. Thank you.
MR. MOORE: I'll ask Mr. Dougall, do you have any?
MR. DOUGALL: I have none.
RE-DIRECT EXAMINATION BY MR. MOORE:
Q. I have just one or two more, Paul.
A. Sure.
Q. I understand there were three hurricanes, two of which resulted in significant flooding. There was one in 2015 and then there were two in 2018. And from a timeline standpoint, the Cades bought their property in either late 2017 or 2018.
A. All right.
Q. If the -- if the time when the berm blew out was 2015, any damage that had been done to Ms. Garland's pond from that would have been done long before the Cades even moved out there, wouldn't it?
A. That's correct.
Q. And if it was the 2018, I believe it was Hurricane Florence that also flooded, both the 2015 and 2018 hurricanes were listed as 1,000

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year floods. So you have two floods like that, 1,000 year floods, in about three years. If it was the 2018 flood, whatever damage was done to Ms. Garland's pond from the berm blowing out in 2018, that would have been done by the flood.

A. So there's only one time that I've seen the berm blow out.

Q. Right. And you don't know if that's 2015 or '18?

A. It was the one where significant portions of Columbia were under water. Where houses were completely submerged.

Q. That's 2015.

A. Okay. It was 2015 then.

Q. So then if that's the case, any of the damage that has been done to Ms. Garland's pond, if any, by the blowout would have been done before the Cades even owned their property?

A. Yeah. Any, yeah, anything associated with that for 2015 would have been.

Q. All right. Now, counsel asked you something about mass grading of the Cades' property. As I understand it, the Cades replaced the core of the dam and made it safe?

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A. Right.

Q. And they cut down some trees?

A. Right.

Q. And their land was flat, right?

A. Right.

Q. And they had the stumps --

A. Removed.

Q. -- removed by basically a bulldozer pushing them up?

A. Right.

Q. Then they filled in the holes?

A. Right.

Q. Other than pushing up the stumps and filling in the holes, was there any type of mass grading out there?

A. So by grading, do you mean changing the --

Q. Topography.

A. -- the topography of the land?

Q. Yeah. Did they change the topography?

A. No, no. I took the previous term just to mean that everything had been clear cut.

Q. Right.

A. Clear cut and the stumps removed.

Q. Stumps removed and the land was immediately grassed?

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A. Right. In terms of changing the elevation of the land, no. Nothing happened that I'm aware of.

Q. So did the Cades ever do anything that you saw that would change the natural water flow of the land from their property towards Davis Road?

A. No, other than just the removing of the trees themselves.

Q. That wouldn't change the topography as far as --

A. No, it wouldn't have changed the topography, they were a water sink though.

Q. Okay. But it's agricultural property and people clear that from time to time.

A. Sure.

Q. You didn't call the authorities or think there was anything wrong with that, did you?

A. No. It was his property.

Q. Yeah. Now, counsel asked you about this stop work order. Did you know the stop work order was lifted the day after it was issued?

A. Yeah. I heard that from Robert.

Q. Right. And you've talked about this sediment that goes into the pipe. Some of it comes

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from the road scraping.

A. Right.

Q. But there's been sediment going into that pipe for years before the Cades ever came out there, right?

A. Sure. And what I was specifically referring to with the sediment going in was the period of time initially after that had all been clear cut and the stumps had been moved out.

Q. There was --

A. That was atypical.

Q. Yeah, that was what, a very short period of time that it stayed like that?

A. Right.

Q. And there would have been --

A. More than two weeks, less than six months.

Q. All right. But for years there's been sediment going into that pipe going onto Ms. Garland's property and going into her pond if water flows like it normally flows?

A. I would say so, yes.

Q. Okay. If the pipe, this might be a question I ought not ask, but I'm going to ask it anyway --

A. Feel free to object.

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Q. If the pipe is already half filled with silt like you've testified, how would anymore silt get through it?
A. I would suppose the pressure of the water. So the more silt there is, the more water that's going to build up on my side. The more water that builds up, the more pressure there is pushing against it.
Q. But that comes from basically water being impounded and damming. Was there anymore impounded water during that period of time that the Cades were trying to fix their property?
A. There was.
Q. A lot?
A. A fair bit when they first did the clear-cutting.
Q. Sure. But that was mostly water, wasn't it?
A. I'm not sure I understand the question.
Q. That's okay. It was pretty much, when they put the grass in, grass grew and then everything went back to normal?
A. Correct.
Q. All right. Nothing further, thank you.
RE-CROSS EXAMINATION BY MR. BELSER:

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Q. Just one question. So I think you used the expression a water sink. Did I hear you?
A. Right.
Q. And then so what you're talking about is that the Cades property is water sink and then the outlet, it kind comes down where that, the sinkhole --
A. Oh, no. And just to be clear, I was saying that the trees were a water sink. So you get rain coming in, the trees are going to be soaking up a lot of that rain. That's what I meant by a sink.
Q. Oh, okay. And so when the, based on your experience out there, when it was -- when the trees were -- when it was a wooded area, that vegetation soaked up a lot of the water that fell?
A. Yeah. That's my supposition.
Q. Okay. And we talked, you looked at this topo thing earlier and you said you don't know how to read it, but do you see where the numbers are on there?
A. I do.
Q. Okay. And you see the 194 right at the corner of your property?

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A. Right.
Q. And then you see the 224 line that is up on the Cades' property right here?
A. Right.
Q. And that follows that line right there and then it keeps going up, that's not flat. I mean, that's like a 30-foot, I mean it's a hill that comes right down there, right?
A. Right.
Q. Okay.
A. Well, it's -- it's flat, it's not level. And by flat, I mean it's kind of consistent.
Q. It's sloped.
A. Right. It's a consistent slope.
Q. Okay. But it's not like level?
A. Yeah.
Q. I got what you're saying. No further questions.
RE-DIRECT EXAMINATION BY MR. MOORE:
Q. All of the property in that watershed slopes down towards Ms. Garland's pond, doesn't it?
A. It does.
Q. All right, thank you.
(There being nothing further, the video deposition concluded at 12:02 p.m.)

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CERTIFICATE

Be it known that I, Mary H. Occhipinti, do hereby certify that PAUL SHEARER appeared before me and I took the foregoing deposition at the time and place aforesaid by means of stenomask with backup; that I was then and there a notary public in and for the State of South Carolina and that by virtue thereof, I was duly authorized to administer an oath; that the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth.

I further certify that the foregoing transcript represents a true, accurate and complete transcript of said deposition. This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of this action.

Witness my hand and seal this 27th day of March, 2022.

_____
Mary H. Occhipinti
Notary Public for South Carolina
My Commission Expires:
10/8/2030

March 29, 2022

Judge McCaslin,

I regret to inform you I cannot be impartial during this trial.

Yesterday, I thought this case had to do with South Congaree, 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.

Sincerely,

Kelehear Jones

Juror 105

COURT'S
EXHIBIT NO. 1
IDENTIFICATION/EVIDENCE
DKT. #
DATE:

Judge McCaslin

URGENT

1 of 6 Juror

Bad Stomach

Running -

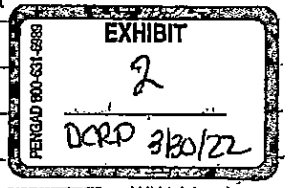
Started yesterday

worse today

Just nervous

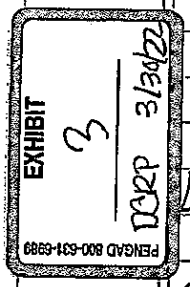
something might

happen



JUROR #25 - DRUE Michael Butler

I'm Currently going thru a nasty divorce & I have a 5 year old daughter that attends Lake Murray Elementary & One of my custody nights is Tonight. My normal schedule is to pick her up at 5pm @ LMES. I have to drop her off at her mothers in Gilbert by 7:30pm. If I leave late again today It may affect my custody case! Thanks Judge.



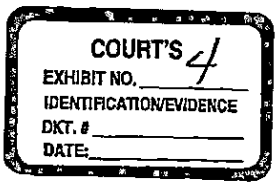
STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT
Suzan Garland, Plaintiff, v. Robert Cade and Christy Cade, Defendants	Case No: 2019-CP-32-01442 VIDEOCONFERENCE DEPOSITION OF Suzan M. Garland

Date: Tuesday, March 9, 2021

Time: 10:03 a.m.

Location: Via Remote Videoconference for All Parties

Reported by:
Darlene Pastel, CVR-CM



ORIGINAL

REMOTE APPEARANCES

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EXHIBITS

(No exhibits were marked during the deposition.)

STIPULATIONS

It is stipulated by and between counsel for the respective parties that all objections are reserved until the time of trial, except as to the form of the questions.

- - - -

The reading and signing of this deposition is reserved by the deponent and counsel for the respective parties.

Whereupon,

Suzan M. Garland, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. MOORE:

Q What is your name?

A Suzan May Garland.

Q How old are you?

A 81.

Q Ms. Garland, my name is Jake Moore, and I'm about to take your deposition. Do you know what a deposition is?

A Yes, I do.

Q What is it?

A You're going to question me.

Q That's part of it. All right. I'm going to question you. And what else?

MR. BELSER: Jake, just ...

MR. MOORE: I don't need instructions throughout the deposition. I've done it before.

A Regarding a civil suit.

Q (MR. MOORE) My job is to ask questions. What's yours? What's your job?

A To answer your questions.

Q That's exactly right. Now, many times people start telling me about things I don't ask about. And please assume if I don't ask about it, I don't want to know about it. Okay?

A Okay.

Q So I -- you have a right to fully explain your answers. But please don't tell me about things that I don't ask you about. Okay?

A Okay.

Q Now, the court tells me that I've got to tell you some things. We've been so bad to each other in depositions the court has actually gotten involved, your lawyer is entitled to make what's known as nonspeaking objections. Unless he tells you not to answer a question, you ignore anything he says and just answer what I ask you. Do you understand?

A Yes.
Q If you have a question about a question, ask me, not him. Okay?
A Yes.
Q Do not talk to anybody about your testimony until this deposition is over except me and Mr. Dougall and then when it's your lawyer's turn if he wants to ask questions. Okay?
A Yes.
Q Now, have you ever been involved in a lawsuit before?
A Yes.
Q Who all have you been involved in suits with?
A It was a construction company.
Q Just one other lawsuit?
A Yes.
Q Did they sue you, or did you sue them?
A We sued them.
Q You say "we." Who is we?
A My husband and I.
Q What did you sue them for?
A They didn't get permits to do work and their -- all of their work was denied. They -- when the inspectors came, they said that they had violated all the codes.

Q Did you go to court with them?
A It was settled out of court.
Q How long ago was that?
A Probably 30 years ago.
Q Have you ever been to any other courtroom before to testify?
A No. I was -- I testified in a federal courthouse in Boston in the '60s.
Q What was that about?
A I was in a bank when it was held up, and I identified the robber.
Q Now, are you married?
A I'm a widow.
Q When did your husband die?
A March 15, 2011.
Q Do you want to take a minute and get yourself together?
A I'm all right.
Q You ready?
A Yes.
Q Who owns the piece of property that you presently live on?
A I do.
Q How long have you lived there?
A 35 years.

Q Is there a pond on your property?
A Yes, there is.
Q What do you use it for?
A Fishing, pleasure. It's my front yard. My husband used to swim in it. I don't swim in it. We boat on it. We have a little jon boat.
Q Do you fish in it?
A Yes. Used to.
Q My question is: Do you do it now?
A I don't know if there's any fish left in it.
Q Well, how long has it been since you tried to fish in it?
A I think about a year ago.
Q And you say you don't know if there are fish in it or not?
A I can't see through the water anymore. I used to be able to see the bream beds and the bass. And now I can't see because the water is all murky.
Q Well, when you said you don't know if there are fish in it or not, what did you mean by that?
A I can't see them. I used to be able to see them.
Q I see. Now, how many acres do you own out there?
A I think it's a little over 13.
Q Is this agricultural property?
A Some of it's agricultural. I don't know. It

was -- we applied for the Homestead Act and -- because we grow our own vegetables and we cut wood for our -- to heat with, it's considered agricultural property, yes.

Q So I guess the answer to my question is yes?

A Yes.

Q So your property is agricultural. How about my clients' property? Is it agricultural?

A Whose property?

Q My clients' property?

MR. BELSER: The Cades' property.

A Oh, your clients' property. I don't know.

Q (MR. MOORE) So you don't know if my clients' property is agricultural or not. You just don't know?

A He said in his deposition it is. I don't know.

Q I'm just asking you, ma'am, what you know, not what he said. So you don't know --

A I don't know --

Q You don't know; right?

A Right.

Q How much land do the Cades have?

A I think it's somewhere around 40 acres.

Q Do you know Mr. Paul Shearer?

A Yes.

Q Does he have any land out that way?
A Yes.
Q Is his property agricultural?
A I don't know.
Q All right. Well, let's talk half a minute about my clients' property. You're familiar where my clients' property is; correct?
A Yes.
Q Does my clients' property adjoin your property?
A No.
Q How far would the closest property line of my client be to your property?
A I wouldn't have a clue.
Q It's a pretty good ways, isn't it?
A I would guess at the closest point probably it's only 100, 150 feet.
Q All right. How far would my clients' property line be from your pond?
A I don't know.
Q Probably be at least another 150 feet, wouldn't it?
A Yes.
Q How far is your pond from your property line?
A I don't know that either.
Q Well, do you know where something called Davis Road is?

A Yes. It's Davis Drive, not Davis Road. There is a Davis Road.

Q Davis Drive.

A That is correct.

Q Does your property adjoin Davis Drive?

A Yes.

Q Is your house on Davis Drive?

A Yes.

Q So your address is Davis Drive?

A Yes.

Q How long has Davis Drive been a dirt road?

A Ever since -- I don't -- I don't know. It's been a dirt road ever since I've lived there.

Q Who maintains Davis Drive?

A The County.

Q Does the County scrape it?

A Yes.

Q How often does the County scrape it?

A I don't know. They do it on an irregular basis.

Q Is it a one-lane dirt road or a two-lane dirt road?

A Mostly a one-lane. In some areas, it's wide enough for two vehicles. In many, it's only wide enough for one.

Q Well, where it adjoins your property, is it one lane or two lanes?

A It's pretty narrow there. Because there's a drainage ditch on the opposite side of the road.
Q Yes, ma'am. Let me ask you this question. When they scrape Davis Road, do they use a motor grader to do that? scraper?
A They use a grader.
Q And as I understand it, it scrapes the road level and throws dirt up on either side of the road; right?
A On the opposite side of the road, they make a ditch. On my side of the road, there's a berm.
Q Well, when they scrape the road, do they put any dirt on the berm?
A Yeah, it usually comes -- not over the top. It just kind of scrapes along the berm.
Q Well, there's a berm on your side of the road; is that right?
A Yes.
Q Does it go all along Davis Drive on your property?
A Yes.
Q What does that berm do?
A Prevents any water going onto my property.
Q Right. So that berm basically prevents water from coming off of Davis Road onto your property; right?
A That's correct.

Q So then any water coming off of Davis Road can't get onto your property, can it?
A No.
Q So then really the only way water can get onto your property is to come through that pipe, isn't it?
A That's correct.
MR. DOUGALL: Jake, may I interrupt for just a second. We keep changing back and forth from Davis Drive to Davis Road.
MR. MOORE: I'm sorry. I'm referring to it as Davis Road. It's Davis Drive. You're correct.
Q (MR. MOORE) Ma'am, now, as I understand it, there is a creek on -- there's a creek there that runs on Mr. Shearer's property, isn't there?
A Yes. That's where the creek comes down from Cades' property onto Shearer's property under the road and fills my pond.
Q That berm that you got over there on your side that runs all along Davis Drive that keeps water from the road onto your property, is it made of sand?
A Sand and clay, what's in the road.
Q Well, ma'am, when it rains, how do you keep property from running off the berm down towards your pond?
A Well, it's been there for years. There's stuff

growing on it.
Q Right. Well, how do you keep water from -- how do you keep that sand from coming off the berm into your pond? Is it the vegetation?
A I would guess.
Q Well, is that your understanding? The vegetation on the berm keeps the berm dirt from running into your pond?
A Yes.
Q All right. And vegetation will do that, won't it?
A Yes.
Q Now, I want to go back to the other side of the road on Mr. Shearer's property. That side is lower than Davis Drive, isn't it?
A I don't know.
Q Well, ma'am, your side is higher because of the berm, and his side is lower.
A Oh, you're talking about the berm on the road. Yes.
Q All right. So, basically, then Davis Drive keeps water from coming off of Paul's property into the road, doesn't it? Because it's built up; right?
A I guess.
Q Well, ma'am, you've lived out there for 35 years; correct?

A It's a dead-end road. I very seldom ever turn right to go up -- to the dead-end road.
Q Well, ma'am, Mr. Shearer's property, is it higher than Davis Drive, like yours with the berm? Or is it lower than Davis Drive where it adjoins?
A I don't know.
Q Well, you've already told us that water can't get off of Davis Drive onto your property because of the berm; right?
A That's correct.
Q So the only way that water can get off of Paul's property is to come through a pipe; right?
A No. He put in French drains, and they have made a big ditch that goes down the opposite side of the road that drains his property. Because he had trouble with his septic tank and drainage on his property.
Q Who did that? Paul did that?
A I have no idea who he hired. He told us that he had put in French drains.
Q Well, those French drains are on Paul's property; right?
A Yes. And they go down the ditch on the opposite side of the road.
Q When you say "the opposite side of the road," on

his side or on your side?
A On his side.
Q All right. So the French drain is on the side of the road; correct?
A That's correct.
Q And the ditch he dug or had dug is on his side of the road; right?
A That's right.
Q Does that ditch dump any water onto your property?
A No. That ditch goes down into the stream from the pond that he now owns that drains into the Campbells' property.
Q All right. So we do know then that there is no water from Paul's property coming onto your property except the water that comes through the pipe; right?
A Except the water that comes down the spring that feeds my pond.
Q Well, is that spring -- is that on your side of the road or is that on Paul's side of the road?
A It's on Paul's side of the road.
Q All right. Well, how does water get off of Paul's property onto your property?
A It goes down the French drains and down the ditch.
Q Well, are you telling me that you can get silt out

of a French drain?

A I have no idea.

Q You don't have any idea. Okay. Well, let me ask you this. We know that you got the berm that goes all the way down your property. And we know that Paul's property is lower than Davis Drive. We know that Paul has got a ditch, but that ditch diverts water onto somebody else's property; right?

A That's correct.

Q Now, how long has Paul had that ditch there?

A I don't know.

Q Has it been there more than two years?

A I really don't know when he put the French drains in.

Q Has the ditch been there more than five years?

A I don't know.

Q Was the ditch there when we had the two hurricanes?

A I don't know that either.

Q Was the ditch there before the two hurricanes came through?

A I don't know.

Q Well, one thing we do know, though, is that because of the ditch the runoff from Paul's property goes to somebody else's property; right?

A That's correct.

Q Now, I want to make sure I understand what we have here. We know that you have a pond; right?
A Yes.
Q How big is that pond?
A I think it's a little over 2 acres.
Q And there is a distance of -- a decent amount of distance between Davis Drive and your pond; right?
A Yes.
Q And that area between Davis Drive and your pond, is it vegetated?
A There's a wetland above my pond.
Q Is it vegetated? Is there something growing there?
A I don't understand the question.
Q All right. On your property, between your pond and the road, is there any vegetation?
A There is a wetland.
Q Well, I know it's wetlands. But things can grow in the wetlands. There are plenty of things --
A Yes. It's a vegetated wetlands.
Q Good. That's all I wanted to know. So we know the area between your pond and Davis Drive, at least for a part, contains vegetated wetlands; right?
A That's correct.
Q Is that vegetated wetland silted in?
A Yes.

Q So I can go out there now in the vegetated wetlands and I can see silt?
A Yes.
Q Well, ma'am, if water doesn't run onto your property off of Paul's property, where is all that silt coming from?
A Mr. Cade's property.
Q How does it get there? I mean, Mr. Cade's property is on the other side of Davis Drive; right?
A That's correct.
Q And we know that Davis Drive blocks water from getting on that side of the road onto your side of the road; right?
A There's a culvert that feeds my pond from the stream from Cades' property.
Q Yes, ma'am. That culvert is about a 6-inch pipe, isn't it?
A I think it's larger than that. I think it's an 8- or 10-inch.
Q All right. Let's say it's an 8- or 10-inch pipe. The only way that water can get on the Cades' -- on your property from the Cades' side of the property is through that pipe; correct?
A That's correct.
Q All right. So whatever siltation you claim existed

into your pond came through that pipe; right?
A That's correct.
Q Is there any silt in the pipe?
A I don't -- I wouldn't know.
Q You've looked, haven't you?
A No.
Q Well, ma'am, if siltation is coming through the pipe, you would expect for the pipe to be silted, too, wouldn't you?
A Not if it's coming through at a very high flow. It would all wash through, which I have filmed and we have evidence of.
Q So you have evidence of water coming through a pipe; right?
A That's correct.
Q How long has water flown through that pipe onto your wetlands and then into your pond, to feed your pond?
A For 35 -- well, ever since the pond has been built.
Q When was the pond built?
A I believe the Davises told me that when Mr. Davis, who originally owned all that property -- was the one that built the dams and the ponds, of which there are three -- he owned all that property.
And that pond has been there, I would guess,

more than 50 years.
Q When you say that the pipe on Paul's side of the road "feeds your pond," what do you mean by that?
A The pond has been spring-fed from the spring that --
Q Okay. You said a moment ago that that pipe that comes under Davis Drive "feeds your pond." What do you mean by that?
A That's where the source of water for my pond comes from.
Q You need that water in order for you to keep a pond there, don't you?
A That's correct.
Q So the water runs off of Paul's property through the pipe into your pond to feed your pond; right?
A The source of the water is not Paul's property.
Q I didn't ask you where the source was, ma'am. I asked you if the water came off of Paul's property through the pipe to feed your pond. Is that true?
A I guess it does.
Q And you need that water to feed that pond, don't you?
A That's correct.
Q Because you want that pond to keep water in it; right?

A That's correct.
Q You don't object to that water that comes off of Paul's property into your pond, do you?
A I want to have my pond.
Q So you like to have your pond. So you don't object to water coming off of Paul's property to feed your pond, do you?
A Clean water, no.
Q All right. Well, let's make sure we understand what's between your pond and my clients' agricultural property. Let's just start with your pond. Okay? We know that pond is there. How big is it?
A A little over 2 acres.
Q You have a 2-acre pond. Then between your pond and Davis Road there is a vegetated wetlands area; right?
A That's correct.
Q And like you told me, vegetation can basically filter silt; right? You already told me that. Right?
A That's correct.
Q Then we have a berm which keeps water off of your property from Davis Road, and that's vegetated, too; right?

A Yes.
Q Then we have Davis Road, which is the road everybody uses for access; right?
A Right.
Q Then on the other side, we have Paul's property; right?
A That's correct.
Q And that property has some pretty heavy vegetation on it, too, doesn't it?
A Yes, it does.
Q Does Paul live over there?
A Yes.
Q And he has trees and underbrush and all sorts of growth on his property; right?
A That's correct. It's a heavily wooded wetland.
Q Yes, ma'am. It's a heavily wooded wetlands on Paul's property.
A That's correct.
Q How wide is Paul's property?
A How what?
Q Wide.
A I don't know. I think his property originally, before he bought the other piece, was like 4 acres altogether.
Q And then you get to my clients' property; right?

A Yes.
Q So for water to get into your pond from my clients' property, it's got to go through my clients' property onto Paul's property, through Paul's property into Paul's ditch, into the culvert, through the culvert, into the wetlands, and then into your pond; is that correct?
A It goes through Paul's wetland under the road into my wetlands and then my pond.
Q Is what I said true?
A I don't know. Your question was very confusing.
Q Well, I'm going to ask it so you're not confused. So let's start over again.

The water, in order to get to Paul's property, has got to come from the Cades' property; right?
A Yes.
Q Then if the water is coming onto your land, it's got to go across a heavily vegetated wetland that belongs to Paul; right?
A That's correct.
Q Then it's got to go into a ditch that Paul built; right?
A No, no. Paul's ditch is on the other side of his house. It's on the left-hand side of his house and goes down -- there is no ditch where it goes under

the road.

Q Well, does the ditch direct water to the pipe that goes under the road?

A No.

Q All right.

A It directs water to the -- down beyond --

Q Well, is there a ditch --

A There is no ditch --

Q Wait a minute. Let me finish asking the question. Does Paul's ditch run parallel to Davis Drive?

A Yes, it does.

Q And you've told me it runs all the way down the property.

A It runs down one side of his property.

Q Parallel to the road; correct?

A That's correct.

Q As a matter of fact, that ditch is right there and adjoins the roadbed; right?

A That ditch what?

Q Adjoins the roadbed. You got the road and then the ditch; right?

A That's right.

Q So all the water that goes into the ditch goes onto somebody else's property; right?

A That's correct.

Q Well, now, how does my clients' water come across Paul's property and then jump the ditch?
A It doesn't go anywhere near the ditch. It comes down the stream that goes under the road onto my property. The ditch is not anywhere near the stream.
Q Oh, let me see if I understand now what you're saying. That stream is actually a creek, isn't it?
A I don't know what you call it.
Q Well, I'm going to call it a creek. The creek runs into the ditch, doesn't it?
A No.
Q Well, how is it possible that the creek doesn't run into the ditch? Let me ask you this. Okay.

Now, you've told me that there's a stream or a creek. The water in that stream or creek comes from underground springs; right?
A Yes.
Q All right. Now, how do you know the water that feeds that spring, that creek, comes from underground springs?
A Back when my husband and I first bought the property, we walked up and investigated.
Q So you now know that the water that gets into the creek comes from springs; right?

A That's correct?
Q That's not runoff water. Spring water is not runoff water, is it?
A No.
Q All right. So the water that gets into the creek comes from the underground springs; right?
A That's correct.
Q And those underground springs -- that water gets into the creek or the stream, goes down to the culvert, and comes under the road?
A That's correct.
Q Truly, the water coming from that culvert is the only water that can reach your property from Paul's side of the road; isn't that true?
A That comes down the stream is the only water that reaches my property, yes.
Q All right. Now, do you know if the Cades' property drains into that creek?
A Yes.
Q All of it?
A I guess so.
Q Well, how much of the Cades' property drains into the creek?
A I've never been on that property. So I don't know.
Q Well, is the creek silted?

A Yes. I've seen photographs of it.
Q How long has it been silted?
A Since the Cades bought the property and denuded it.
Q I see. Now, so we know that when it rains in addition to the spring water, water goes into the creek from the Cades' property; right?
A That's correct.
Q So for you to get any water from the Cades', the water has to run onto their property; right?
A That's correct.
Q Then it has to go into the creek; right?
A That's correct.
Q Then it has to run onto Paul's property; right?
A That's correct.
Q Then it has to go into the culvert; right?
A Uh-huh.
Q Is that yes?
A Yes.
Q Then it has to go across your wetlands, vegetated wetlands; right?
A That's correct.
Q And then into your pond?
A That's correct.
Q When the creek comes under the road onto your side of the property, does it remain a creek?

A Yes.
Q All right. So we know the creek is designed to carry water from Paul's property and from the Cades' property; right?
A Yes.
Q And it's been doing that for years; right?
A That's correct.
Q Now, your vegetated wetlands area -- how big is that?
A Probably a couple acres.
Q And the area on the Cades' property where the creek runs, have they left a vegetated buffer anywhere between the properties?
A Not in the photographs I've seen.
Q Would it surprise you to learn that there are trees and all kinds of undergrowth for a right significant way on their property?
MR. BELSER: Object to form. You can answer.
Q (MR. MOORE) Would that surprise you to learn --
A Yes, it would.
Q Do you know that the creek where it runs on the Cades' property runs through a vegetated area?
A It runs through Paul's property that's heavily vegetated.

Q Well, it also runs through the Cades' property that still has a heavily vegetated area, doesn't it?
A I don't know. I've never been on their property since they bought it.
Q Well, if you don't know, how come you sued them?
MR. BELSER: Object to the form.
A Because the silt is coming from their property.
Q (MR. MOORE) Well, yes, ma'am. Now, have you seen those videos y'all sent over here?
A Yes.
Q Have you listened to what you said on those videos?
A What I said on videos?
Q Right. Let me give you a quote I wrote down. You say, "When Paul Shearer filled in the wetlands, that's when the water started coming across" --
A I never said that.
Q Let me play it for you. I'm going to hit it, and you can listen to it.
(Video clip played.)
MR. BELSER: Jake, it's really hard to hear that.
THE DEPONENT: I can't hear it.
Q (MR. MOORE) Well, it says this -- it says, "When Paul filled in the wetlands here, that's when it started coming out across the God damn road."

A I never used that -- I don't know whose voice that is.
Q It's yours. Y'all sent it to us. As a conversation you were having.
Now, you said, "When Paul filled in the wetlands here, that's when the water started coming out over the God damn road." I'm assuming that Davis Drive is what you were referring to as the God damn road; is that right?
A I have no memory whatsoever of that conversation.
Q Well --
A When was that -- and when was it sent to you?
Q Well, it was sent to me in discovery. But I'm happy -- were you not able to hear that?
MR. BELSER: Jake, it was really hard to hear. If you can identify when it was, then I can play it a little easier. Or maybe --
MR. MOORE: I don't know. It was one of the videos y'all sent over here. I'll play it again. I'll get it as close as I can to the machine so she can hear it.
MR. DOUGALL: Freeman, while he's setting that up, I don't have that discovery. Could you send those videos to me?
MR. BELSER: Yeah, I'm not sure exactly what

videos he's talking about. But I will, yes.

MR. MOORE: Well, listen.

(Video clip played.)

Q (MR. MOORE) All right. You say, "Paul filled in all this wetland here so now it's all coming out over the God damn road."

A All right. I know what you're talking about. We're talking about the -- all the water that was running down the ditch from the French drains. Because after that happened, every time it rains there's a huge amount of water pouring down the ditch from his French drains.

Q Yes, ma'am.

A That was -- that is what it was referring to.

Q Well, it says it was coming out all over the God damn road. I would assume that's referring to Davis Drive?

A That's right. It was running over the road.

Q So when Paul filled in the wetlands, that's when water started running down the ditch; right?

A That's when he put in the French drains, I assume. I don't know.

Q And when he -- you say he "filled in the wetlands." What wetlands did Paul fill in?

A He had an area that he had someone bring in loads

and loads of sand and filled in and then tarred over and made into a parking lot.

Q When did Paul haul in all that sand? Loads and loads of sand. When did he do that?

A I don't know when that was.

Q Well, let's talk about when Paul hauled in all that sand and filled in all that wetlands and started getting water all over the God damn road.

Would that be more than a year ago?

A Yes.

Q More than three years ago?

A I don't know.

Q Well, ma'am, when Paul throws all that water into the ditch and all into the road, does any of that water get into the drain pipe?

A No.

Q How is that possible? If it gets into the God damn road, how is it possible that it doesn't wash off the road and get into the drain pipe?

A It isn't any -- his ditch is not anywhere near where the stream goes under the road and into my pond. His ditch is on the other side of his house and runs down.

Q How many acres of wetland did he fill in?

A I wouldn't know.

Q How many loads of sand did he bring in and dump out there?
A I don't -- I don't know that either.
Q Did he have a silt fence when he dumped all that sand?
A He built a cement wall and then filled in.
Q Did he have a silt fence?
A No. He put up a cement wall before he -- a cement block wall where he filled in. Before he filled in.
Q All right. Now, as I understand it, do you like the fact that my clients cleared their property?
A I have no opinion about it one way or the other.
Q How much clearing did they do?
A They stripped the land entirely except for a few trees.
Q How do you know that?
A I live on Davis Drive, and they -- the property is on Fish Hatchery Road. It's perfectly visible from the highway.
Q Did they plant anything when they stripped it? Did they plant any type of vegetation there?
A Not for a long time.
Q How long is a long time?
A I don't know.

Q Now, at some point in time, you complained to the County about what they did, didn't you?
A That was -- I called the storm drain people after the hurricane when my pond turned into a mud puddle.
Q Is the answer yes?
A Yes.
Q Now, before the hurricane, did you have any problem with mud in your pond?
A No, never.
Q And there were two hurricanes; right?
A That's correct.
Q So before the hurricane, there was no mud in your pond; right?
A When we had the 13-inch hurricane, there was absolutely no issue whatsoever. When we had the last hurricane with 4 inches of rain, my pond turned into a mud puddle.
Q All right. So there were two hurricanes in close proximity to each other; right?
A I think they were a few years apart. There was a 100-year hurricane. That was the 13 inches of rain.
Q All right. Actually, the way this thing worked is there was one that was the 13 inches, and then two

hurricanes came in that were one month apart; isn't that right?

A I don't know.

Q Did you know that Hurricane Florence was September 14, 2018?

A I guess so.

Q Did you know that Hurricane Michael was October 10, 2018?

A Yes.

Q Was there any vegetation growing on my clients' property in September 2018?

A Not that I know.

Q Well, how about in October 2018?

A Not that I know of.

Q But the only thing that you're telling me that put mud in your pond would have been those two hurricanes; right?

A That's when it started.

Q Well, you told me that -- I thought you told me the only time you saw mud was when the two hurricanes came through.

Is there still siltation going on?

A I don't know how much rain we got from the first hurricane. We had had a drought, and it had been very, very dry.

Q Well, ma'am, have you had problems with your pond getting muddy except for those two hurricanes?
A Never.
Q Okay. That's it? When the hurricanes came, the mud came in your pond?
A That's correct.
Q Did the hurricanes wash any water off of Davis Drive?
A No.
Q How do you know that?
A Because there were berms.
Q The water that came through the pipe under Davis Drive was moving rapidly when it rained hard with the hurricanes, didn't it?
A Yes.
Q Let me ask you this. When you complained to the storm water people, did they tell you that my client had to have some permits?
A They came out and they said that the silt was coming from his property and that it was illegal. And then I heard that they had been -- that they had issued a stop work order.
Q And then they came out and recognized that because it was agricultural property it wasn't illegal, didn't they?

A I don't know. They would not give me any further information, period.
Q Well, who is "they"? Who were you talking to from the County that refused to talk to you?
A I don't know what the gentleman's name was.
Q All right. Do you know that the stop work order was lifted?
A The Cades said in their deposition it was.
Q Do you know if that's false?
A I don't know.
Q Do you know Claude Davis?
A Yes.
Q Who is he?
A He's one of my neighbors.
Q Does Mr. Davis have property that adjoins yours?
A Yes, he does. He has 100 acres.
Q And is your property downhill from his?
A No.
Q Is it uphill? Is his property uphill from yours?
A No. His property is downhill from mine, I believe.
Q Do you know?
A No. I believe it's downhill from my property.
Q When my client was doing the work on their agricultural property, do you know of any requirements that they have a silt fence?

A No.
Q Do you know of any requirement that they violated in doing the work they did on their property?
A I'm not familiar with the laws.
Q Did they dump any more water than usual into the creek?
A I can't tell you. I don't know.
Q Are you able to testify they put more water than usual into the creek?
A I don't know.
Q This work that Paul did on his property, would it surprise you to learn he did it in January 2019?
A No.
Q I want to get back to the scraping of this road. This is a County dirt road; correct?
A Yes.
Q When they scrape the property, they push loose dirt on top of that berm, don't they?
A No, not on top of it.
Q Well, how do they keep the loose dirt out of the road when they scrape?
A They just push it up along the side of the berm. There's a fence on the berm that's been there ever since we bought the property.
Q Well, how do they keep the loose dirt out of the

pipe that comes through?
A The road is tilted this way.
Q Well, is the road tilted toward your property or towards Paul's property?
A It's tilted toward my property. There's always a big mud puddle when we get heavy rain there.
Q What do you mean by that?
A When we get heavy rain, there's a big mud puddle there.
Q Well, how can that be? If the berm is vegetated, how is it possible that there's a mud puddle on your side of the road when it rains?
A Because there's no place for the water to go. The road tilts down, and the water gradually perks through the dirt road.
Q And goes where?
A Into the ground.
Q Did you ever -- when we had those hurricanes and you had a problem -- like you've told me, the only time you had a problem was when the hurricanes came through; right?
A Not when the 100-year hurricane came through with 13 inches of rain.
Q That didn't create any problem at all, did it?
A No, it did not.

Q So the only two times you've had a problem was the two hurricanes; right?
A That's correct.
Q Well, ma'am, if that's the case, and the hurricanes were -- let's see, three years ago, how are the hurricanes keeping your pond still muddy? Silt goes down.
A There's still --
Q How can your pond still be muddy?
A There's still silt coming into my pond.
Q Coming from that pipe?
A Yes.
Q So where does the silt originate?
A I can only assume it's still coming from the Cades' property.
Q What do you mean "assume"? You say you can only assume it comes from the Cades' property. What do you mean?
A I have never been on the Cades' property, so I don't know.
Q So whatever silt is getting into your pond, you don't know where it's coming from?
A It's coming under the road.
Q Okay. We know it's coming under the road. But you don't know where it's coming from, though, where it

originates; right?
A I guess.
Q Now, how many engineers have you had out there?
A Two.
Q Who are they?
A I don't know.
Q Have you had them come onto the Cades' property?
A No.
Q Have you had them come onto Paul's property?
A No, not that I'm aware of.
Q Well, if they haven't been on the Cades' property and if they haven't been on Paul's property, do you have any idea how they know what they're talking about?
MR. BELSER: Object to the form.
A They were hired to do a siltation study of how much silt has been deposited into my pond.
Q (MR. MOORE) Well, were they hired to tell you where the silt was coming from?
A I don't know.
Q Were they hired to tell you how long that silt has been in that pond?
A I don't know that either. I'm not an engineer.
Q The pond has been there for how many years?
A At least 50.

Q During those 50 years, did the pond silt at all where it was being fed?
A No.
Q How do you know that?
A Because the water has always been crystal clear.
Q Just because the water is crystal clear doesn't mean there's not siltation up there.

How do you know that all the silt up there came from my clients' property?

A All of -- well, Mr. Lee's testimony made it very clear that that's where the silt was coming from. He went up and filmed it and told them that what they were doing was illegal and that they were going to be sued.
Q Who is Mr. Lee?
A He's the engineer that the Cades hired.
Q I see. He went up and told them they were going to be sued?
A That's what he said in his deposition. He told them what they were doing was illegal and that they were going to be sued.
Q How much silt did you have there before September 2018? None?
A Nothing.
Q Now, let me ask you this. You've got how many

acres of land there?
A 13.
Q And a 2-acre pond; right?
A That's correct.
Q What does -- what is your property worth? Do you know?
A No, I don't.
Q If you were going to sell it, what would use ask for?
A I wouldn't sell it. My daughter is going to inherit it.
Q Well, if you were going to sell it, what would you ask for?
MR. BELSER: Object to the form.
A $2 million.
Q (MR. MOORE) Do you know what it appraises for at the County?
A Yes.
Q How much?
A I would have to look at my tax bill.
Q Well, you said you know. So if you know, how much does it appraise for?
A I would have to get my tax bill and look and see.
Q So you don't know; right?
A Well, I know it's on the form.

Q So you don't know?
A Not offhand. I can't tell you.
Q How much do you contend it would take to get the silt out of your pond?
A Well, the engineer said it was going to cost over $400,000 to clean it out. And that did not include restocking or relandscaping anything that they destroyed at the time.
Q Now, what engineer said that?
A The first engineers that were hired.
Q Who hired him? You?
A Mr. Belser.
Q Oh, those are Mr. Belser's engineers?
A He -- I didn't know about engineers, and he said he would find people for me.
Q So all the engineers from your side were hired and found by your lawyer; is that right?
A That's correct.
Q So you didn't hire any engineers?
A No, I did not.
Q I see.
MR. BELSER: Jake, when we get to a stopping point, can we take a quick break?
MR. MOORE: Yeah, we can take a break. Let's do that. That would be good.

(Recess taken from 11:09 a.m. until 11:15 a.m.)

MR. MOORE: That's all the questions I have at this time.

EXAMINATION

BY MR. DOUGALL:

Q Mrs. Garland, my name is Tom Dougall. I represent a gentleman named Roger Singleton in this case. I've got a few questions I would like to ask you.

Have you ever met Mr. Singleton?

MR. BELSER: Tom, would you be able to rotate your screen down. That way we can see your -- that may help.

A Have I ever -- I've never spoken to him. I've seen him. I know who he is. But I've never spoken to him.

Q (MR. DOUGALL) Where did you see him?

A When the Cades were deposed, he was there. But he had to leave. And he was at court -- at magistrates court when Mark Melichar was there. He testified for the Cades, and I saw him then.

Q Did you ever see him on the Cade property?

A I believe I saw him once. He was talking to Mark Melichar.

Q Did you ever see him doing any work on the Cades' property?

A Did I? No.
Q So you have no idea what kind of work he did, if any, on the Cades' property?
A No, I don't know. He said he did --
Q I didn't ask you what he said. I said do you have any idea what kind of work Mr. Singleton did, if any, on the Cades' property.
A No.
Q On -- going back to your land, on another side of the property, there's some property owned by the Davises; correct?
A Yes.
Q And that's on the same side of Davis Road as your property; correct?
A Yes.
Q And they do farming on that property; is that correct?
A No.
Q Is that property normally tilled?
A There is one small area that he tills.
Q What do you mean by a "small area"? How many acres?
A Maybe an acre and a half. I don't know.
Q And that property is higher than your property; correct?

A No. Below mine.
Q You're saying the Davis property is below yours?
A Yes. I'm up on a hill.
Q Does any water from the Davis property come onto your property?
A No.
Q How is that water diverted away from your property, if it is?
A I don't know that any water has ever -- it's all sand. I think it just soaks in.
Q You've never seen sand wash out when it rains?
A No.
Q Never seen sand wash out after three hurricanes?
A No.
Q All right. Give me about two minutes. I've got to talk to my client, and then I'll decide if I'm going to ask any more questions.
(Recess taken from 11:20 a.m. until 11:21 a.m.)
Q (MR. DOUGALL) Going back to the Davis property that abuts your property --
A Yes.
Q -- are you saying that water and dirt can't get from the Davis property to your pond?
A That's correct.
Q And you're sure of that?

A Yes.

MR. DOUGALL: Okay. Jake, that's all I've got for right now.

REEXAMINATION

BY MR. MOORE:

Q Ma'am, I'm looking at a map of Davis Drive right now, which I wish I could show, but I can't.

And if we look at Davis Drive, the culvert that we're talking is at elevation 192. Above that is elevation 194. And if you go down Davis Drive, it's 196, which tends to indicate the culvert is in kind of a V between each end of Davis Drive.

That would mean that water would constantly be running off of Davis Drive into that culvert. Now, am I wrong about that?

A Yes, you are.

Q How can that be when water runs downhill?

A Because the road angles toward my property, which is why there's always a big mud puddle on my side of the road when it rains.

Q Yes, ma'am. But if it angles towards your property, and the berm keeps it from going onto your property, it would have to basically back up and run on the other side of the road when it rains heavy.

A You would have to ask the Davises. I don't live at that end of the road. But to my knowledge, it has never run back across the road. Because it's all sand and it gets absorbed rather quickly.

Q Well, when the sand gets running, where does it go? It can't go up the berm. It's got to go on the other side down into that ditch, down into that culvert.

A It soaks into the ground.

Q No, ma'am. The sand.

A I recently spoke with the man who grades the road and asked him if they could put gravel there so it wouldn't make a big mud puddle. And he said no, they weren't going to do that. The sand would -- it perks perfectly well through the sand and doesn't cause a problem. And that was an engineer who grades the road, the County man.

Q Let me ask the question another way. What form of engineering device is there that keeps sand from Davis Drive out of the culvert on Paul's side of the road?

A Device? Nothing except that the road slopes towards my property.

Q It may do that. But the -- if a car is coming through, it's going to throw sand on both sides.

When it rains, it's in a V. You got a mud hole there.

A That's because the people don't drive through the mud puddle. They go on the other side of the road.

Q Yes, ma'am. And when they do, the wheels basically throw dirt down the side and it winds up going into the culvert. My question is this: How do you keep that sand out of the culvert? For 50 years?

A I wouldn't know what you're talking about.

Q Ma'am, you've got a dirt road. Dirt -- the road has to be graded from time to time because the sand continues being disturbed. When the sand is disturbed, it's got to go somewhere.

How do you keep sand from getting onto Paul's side of the road and eventually getting into that culvert? How does that happen?

A You'd have to ask the County engineer who grades the road. I'm not an engineer.

MR. MOORE: Okay. Thank you very much. I don't have any further questions.

MR. DOUGALL: Neither do I.

EXAMINATION

BY MR. BELSER:

Q I just have one follow-up question. There were some questions that were -- can y'all hear me okay?

MR. DOUGALL: Yes.

Q (MR. BELSER) Some questions were asked about the hurricanes in the fall of 2018, Hurricane Florence and Hurricane Michael. Do you remember those questions?

A Yes.

Q Is that when the problem began?

A Yes.

Q And what have you observed as to whether it's continuing?

A It is still continuing. When we get heavy rain, I've got current pictures of my -- of silt still coming through the pipe and onto my property.

MR. BELSER: I don't have any further questions.

FURTHER DEPONENT SAITH NOT.

(Whereupon, there being no further questions, the deposition was concluded at 11:28 a.m.)

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State of South Carolina)
) CERTIFICATE
County of York)

Be it known that Darlene Pastel took the foregoing proceeding and herby attests:

That I was then and there a notary public in and for the State of South Carolina at-large and that by virtue thereof I was duly authorized to administer an oath;

That the deponent/witness was first duly sworn to testify to the truth, the whole truth, and nothing but the truth concerning the matter in the controversy aforesaid;

That the foregoing transcript represents a true, accurate, and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am neither a relative nor an employee of any of the parties hereto, nor of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Unless otherwise noted, this notary public administered the oath. Please refer to the transcript for any exceptions.

In witness thereof, I have hereunto affixed my signature and title.

Darlene Pastel

Darlene Pastel, CVR-CM

Date: 03/11/2021
Notary public for South Carolina
My Commission expires 09/20/2027

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF LEXINGTON

- - -

ORIGINAL

SUZAN GARLAND,

Plaintiff,

vs. CASE NO. 2019-CP-32-01442

ROBERT CADE AND CHRISTY CADE,

Defendants.

D E P O S I T I O N

WITNESS: CHRISTY CADE

DATE: Tuesday, August 27, 2019

TIME: 1:20 p.m. - 3:11 p.m.

LOCATION: Moore Taylor Law Firm
1700 Sunset Boulevard
West Columbia, South Carolina

TAKEN BY: Attorneys for the Plaintiff

REPORTED BY: Laura Chamblee
Registered Professional Reporter

- -

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DATE:

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ALSO PRESENT:

Suzan Garland

Robert Cade

(INDEX AT REAR OF TRANSCRIPT)

(Deposition Exhibit Numbers 1-21 were marked for identification prior to beginning the deposition.)

CHRISTY CADE, being first duly sworn, testified as follows:

EXAMINATION

BY MR. BELSER:

Q Good afternoon, Ms. Cade.

A Good afternoon.

Q My name is Freeman Belser. I'm a lawyer in Columbia. We've convened today for your deposition. I've never met you before.

A No, sir.

Q Never been to Jahue's office before, so I feel like I'm part of the family almost being in here. But we've convened for your deposition. This is my opportunity to ask you questions under oath and to gather facts.

I know this is a property dispute between neighbors. And at times disputes between neighbors can get hot and testy, but this is my opportunity to just ask you questions.

A Yes, sir.

Q During the course of the deposition the court reporter is transcribing everything that we say, all of

my questions and all of your answers. Before we get started, let me just kind of give you some ground rules as to how this works.

I'm going to try to ask questions one at a time and I'm going to try to stop when my question is finished and give you the opportunity to talk. It's important that we try not to talk over each other because that makes it hard for the court reporter to type everything down. It also makes it hard to read the record later, if we're talking over each other.

So even though this is like a conversation, even if you anticipate where I'm going with my question or if I anticipate where you're going with your answer, I'll let you finish; you let me finish. Sound good?

A Yes, sir.

Q Also it's important to give verbal responses to the questions. The court reporter can try to interpret head nods, and uh-huhs, huh-uhs, but it's much easier for her if it's a yes or a no so that there's no -- there's no gray areas as to what your answer was. Do you understand?

A I do.

Q This is not an endurance contest. If you need to take a break, let me know. Jahue has provided water for us, and that might lead to other things that

you need, too. So if you need to take a break, let me know. Hopefully we'll be out of here and start your husband's deposition before too long, but if you need a break, let me know.

A Okay.

Q If -- During the course of the deposition you may hear objections to questions. Most of the time, though, the majority of the time, large majority of the time, that's the lawyers making a note on the record, a placeholder, so they can then argue about something with the Judge later. Unless there's an objection and then an instruction for you not to answer, you need to go ahead and answer the question.

I don't anticipate that we'd have anything like that today, but if you hear "Objection," that doesn't mean things are about to get exciting between the lawyers. It's just the lawyers doing a placeholder so they can argue about things later. Do you understand?

A Yes, sir.

Q I'll try to ask my questions clearly and concisely. If any of my questions are not clear, I'm happy to rephrase it. You will have the opportunity after the deposition is concluded to read the deposition and to sign the deposition and to make any

changes that you want to make.

MR. BELSER: I don't know -- Hood, does she want to read and sign?

MR. DAWSON: Yes.

BY MR. BELSER:

Q So after the deposition the court reporter will get your -- you'll have an opportunity to read it and make any charges, mostly non-substantive changes, but you will have that opportunity.

In the deposition this is my opportunity to not only to learn about the case but also to learn about you as an individual as well. Because at the trial of this case, if we get that far, it's Ms. Garland versus the Cades, and I need to know who you are and who your relatives are in Lexington County and that type of thing.

So can you give me just a brief background of where you're from, your educational background, employment history.

A I was born and raised in Bennettsville, South Carolina, which is Marlboro County. I'm self-employed. I graduated high school.

Q Did you go to Marlboro County High School?

A I did.

Q When did you graduate from there?

A In 1990.

Q And what's your employment history from, say, when you graduated high school to the present?

A Goodness. I was a stay-at-home mom. I got -- I was a stay-at-home mom for years. I was a customer service manager for Walmart. I was a translator and then became translator/HR assistant for Columbia Farms.

Q Translator for Spanish?

A Hispanic, yes.

Q Okay.

A For Columbia Farms. From there I worked with -- in a lady's trucking company in her office.

Q Which company was that?

A Choice Trucking. And I did her fuel taxes. And from there we started our own business.

Q We being you and your husband?

A My husband and myself.

Q And when did that business start?

A Approximately 2003 I think. Approximately 2003.

Q What type of business is it?

A Trucking, transportation.

Q Do you broker freight or do you actually own trucks as well?

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A We own equipment and we -- Actually, the majority of the work that we do at this point is like museum quality pieces for the government. We transport museum pieces.

Q What range do you transport them? All over the country or --

A To be specific, wherever. Like if they have a piece that needs to go from another state into -- They're opening a new museum, they're in the process of, and we will bring that piece from -- So, wherever the pieces are, and they need it, we transport it for them, whether it's Oklahoma to Virginia or wherever. So, yes.

Q What's the name of the company?

A Our company is Cade Trucking Company.

Q We're here today to talk about this particular piece of property. Exhibit 1 that I've got in front of you is a Goggle Earth map showing the -- Those are the copies for -- Those are going to be the copies for Hood.

A Oh, I'm sorry.

Q And these are the court reporter's copies right here. So I'm going to ask you to look at these. One important thing is don't walk off with them. That happens a lot, but these actually belong to the court

reporter. But this particular property, which I think is off of New Cassel Drive; is that correct?

A Yes, sir.

Q Is this where you live?

A No, sir.

Q Where do you live?

A I live at 1003 Skyview Drive, and that's West Columbia 29170.

Q How far is that from this piece of property? And I'm just going to refer to this as the New Cassel property.

A Approximately ten minutes. Mileage-wise, I'm not great with that. So approximately ten miles I'm going to say, give or take.

Q One other thing, sometimes when I take husbands and wives depositions, even though your husband is here, I'm going to ask you questions. There may be certain questions I ask that you may want to defer to your husband. And then eventually he may want to defer to you later on. So if there's any question that I ask that you want to defer to him, I can ask that to him later.

MR. BELSER: But, Mr. Cade, as also part of the process, while I'm taking her deposition, as much as you may want to chime in, your time to

chime is coming up.

MR. CADE: Understood.

BY MR. BELSER:

Q All right. So this particular piece of property, this New Cassel Road property, Exhibit 1 is a Google Earth image from September 6 of 2017. How did -- how did y'all discover this property?

A Off of -- I don't recall. I don't recall the website. It's a real estate website, but I don't recall the name of it.

Q Did you have a realtor at the time?

A No, sir.

Q But this was -- this property was just listed for sale on some real estate website?

A It was.

Q Were you looking for a particular type of property or size of property?

A No, sir. Just definitely was looking for something that was not way out, as far as way away from Columbia.

Q What were you looking for? Like an investment purpose or for some particular use?

A We wanted to have a farm and eventually build there.

Q Build like -- build a husband there?

A Uh-huh. Yes, sir. I'm sorry, I apologize.

Q That's good. You caught yourself, that's good. Did you grow up on a farm or why did you want a farm?

A I did not grow up on a farm. I've always had animals and I like animals.

Q And what was particularly attractive about this New Cassel property?

A For me, location. It was close to everything and it was agricultural. That's why for me.

Q Did you walk the property? The process of -- I guess at some point you saw it on the internet?

A I did.

Q And then I assume there was a number; call this person if you're interested?

A Yes. There was a -- there was a number and my husband called.

Q And how long was the process of initially -- initially finding this piece of property? Exhibit 2 is a deed dated March 16 of 2018. How long was the process -- did you have like a real estate contract and due diligence? Did a significant amount of time transpire?

A I don't recall exactly the amount of time.

Q Did you actually walk the property before it

was purchased?

A We did.

Q You and your husband?

A Yes.

Q Was anybody else with you?

A My daughter at some point. I don't recall if anyone else did before we purchased it.

Q Where does your daughter live?

A With us.

Q With you?

A She goes to school.

Q How old is she?

A She just turned 15.

Q Do you have any relatives in Lexington County who are over the age 18?

A Yes, my children.

Q What are their surnames? What are their names?

A My daughter, her last name is Rojas. And I have a son whose last name is Saucedo. And I have a step-daughter, her last name is Cade.

Q So do you have children from a prior marriage?

A I do.

Q Do you and Mr. Cade have any children

together?

A One.

Q And that's the 15-year-old daughter?

A Yes.

Q Does Mr. Cade have children from a prior marriage?

A He has a daughter.

Q The reason I ask is because I don't want your daughter on the jury if we get there so I need to know who your daughter is.

A Okay.

Q So when you walked the property -- Looking at Exhibit Number 1, it appears to me that it was wooded, a wooded piece of property; is that correct?

A Yes.

Q How big were the pine trees?

A Different sizes, small, a lot of them were small, a lot of them were bigger, but I can't -- I don't know. As far as size, I couldn't tell you. I didn't measure them.

Q When you walked the property, did you walk -- I'm pointing at Exhibit Number 1 here. Where all did you walk on the property?

A In this front corner here there was like a little fence that was put up, a piece of a fence,

because it was like a previous driveway that went into the property. We walked through there and just different areas and walked down by the pond.

Q What was the condition of the pond before you bought it?

A It was in really bad condition.

Q What do you mean it was in really bad condition?

A It was losing a lot of water. It was dried -- really most of it was dried. There was water in it but it was not to the -- where it was supposed to be.

Q Did it look like there were holes in the dam?

A At the time I don't know. I'm not an expert on that. I wouldn't know why.

Q But it just wasn't holding water?

A It didn't have a lot of water. I don't...

Q How big is the dam itself? How tall is it?

A I don't know.

Q Is it taller than you?

A Can you be more specific as...

Q Well, is there a standpipe in the bottom of -- A lot of ponds have -- like the dam will be, you know, kind of a slope like this.

A Uh-huh.

Q And then there will be a standpipe that comes up, which is how the pond actually drains. Does this particular pond have a standpipe?

A It has a -- I don't know what you call it, but there is a thing there that if the water gets too full, it would go in there.

Q When I refer to a standpipe, it's like a metal tube that goes to the bottom of the dam.

A I don't know.

Q You don't know. I can maybe ask your husband about it. Was there -- In looking at Exhibit Number 1, it looks like there was no portion of this property, of the New Cassel property, that was cleared. It was all wooded and vegetative?

A I mean there were like areas in the woods that were -- Like I know apparently years ago there was a cabin in there of some sort that was no longer there. So there were areas that were not like loaded with trees or anything.

Q In looking at Exhibit Number 1 -- It looks like the second page of Exhibit Number 1, it's kind of a zoom in, it looks like there's a lot of vegetation that was growing in the pond; is that correct?

A Yes.

Q Were those trees that were growing in the

footprint of the pond?

A You talking about here?

Q Yes, ma'am.

A There were a few trees around the edges here, but it was mostly lily pads in the pond.

Q Did y'all get in a boat or anything?

A No.

Q Did you --

A You mean before we bought?

Q Before you bought it.

A No.

Q Before you bought it, did you cruise the property for timber? Cruise, that's what foresters talk about when they actually walk a piece of property and try to get some values for timber.

A Before we bought the property, did we do that?

Q Yes.

A No.

Q Is Mr. Singleton, is he a forester?

A I don't know.

Q How about this, did y'all sell the trees that you cut down?

A Yes.

Q Who actually did the -- cut the trees down?

Did you have a forester that helped you?

A We had a company come in and I don't recall their name.

Q Exhibit Number 2, this is a deed from McCutchen Holdings, LLC, Warren Irvin, and Wilmot Irvin to the two of y'all for $156,800. Did you actually meet the Irvin brothers?

A No.

Q Did you have any direct -- So you didn't have any direct contact with them at all?

A No.

Q Did you and your husband have any discussions before you bought it about your plans with the property?

A Briefly, yes. Like I say, we planned on purchasing a piece of property to have some pasture land and build.

Q Exhibit Number 3, this is a Google Earth image from May 2 of 2018. The color photograph did not come out all too well, but this is about six months or maybe eight months after Exhibit Number 1 where you can see all the trees and the vegetation on the property. How soon after you purchased it did you actually have people out there doing work?

A Approximately -- approximately a month.

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Q And it looks like -- Looking at Exhibit 3, I think I can see -- There's the intersection of -- There's two roads right here. What is this road that's going north and south?

A This one right here?

Q Yes, ma'am.

A That's right Fish Hatchery Road.

Q Fish Hatchery. What is that road that circles the south side of the property?

A This would be New Cassel Drive.

Q And I can see at the intersection of New Cassel and Fish Hatchery it looks like -- is that the gate where the timber trucks came in?

A Yes.

Q Do you remember -- I may have already asked you this. Do you remember who the timber company was that actually cut the timber?

A I don't recall.

Q Do you recall whether or not the timber was actually sold?

A Yes.

Q How much money came from cutting of the timber?

A I don't recall offhand.

Q And if you look at the second page of Exhibit

Number 3, it looks like there were some -- you can see where the trees have been -- where the timbering has been done. And you can see an area right here in kind of the center of the property where there's been some clearing. What is in that area right now?

A Right here?

Q Yes, ma'am.

A At present time right now?

Q At present time.

A We have a barn there.

Q What work did y'all perform on the dam itself or on the pond?

A I did not do the work, so I would not -- I can't answer that because I didn't do the work.

Q Okay. How frequently do y'all go out to the property?

A I'd go out there several times a week. Not daily. I may skip a day here and there, so...

Q Has your husband been the one who has been primarily involved and responsible for engaging contractors to do work on the site?

A Yes.

Q Of the property right now, are there any -- is there any wooded area that's still on the property?

A Yes. All the areas back behind the dam, and

then there's still wooded areas along the very back portion of the property back there, and then up the New Cassel side there's still some wooded area there.

Q So it looks like on Exhibit Number 3, the same areas where it looks like there's still mature trees on this photograph, there's still mature trees now?

A There's still some wooded area in those areas.

Q And what about the area which is where the trees were cut, was that -- were those stumps removed?

A Yes.

Q And what else was done to that? I mean is it grass now or --

A It has been sprigged and seeded and it's pasture.

Q Do you have animals on the property?

A Yes, we do.

Q How many animals?

A Approximately -- Approximately 20 cows, two llamas, four donkeys, approximately 15 to 20 ducks, two geese.

Q Are the ducks wild or are they --

A Mallards and Peking, and then there's these brown ones. I don't know what kind they are. We just

bought them as babies and I don't know the kind.

Q So you have like a Mallard release program?

A No. I just wanted ducks for my pond.

Q Okay.

A And I have two geese. And I think that was it. The geese, the ducks, donkeys, two llamas, cows.

Q Is there a structure on the property?

A There is.

Q How big of a structure? You said it was a barn, how big is it?

A It's 30 --

Q Thirty feet?

A It's the 30 x 76, with 15 feet of that un -- not enclosed, 15 feet of that.

Q Now when the property was being timbered and the stumps were being removed, was your husband the one who was out there kind of overseeing the work and monitoring what the workers were doing?

A Yes, and I mean I came and went. I wasn't out there, per se, monitoring what they were doing, but I would come and go, but, yes, my husband dealt more with the...

Q Now the pond, to your knowledge was there any kind of dredging or anything that took place in the pond?

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A No, sir.

Q How was -- what work was done on the dam itself?

A It had to be like -- they had to take the trees and roots off of it because it was leaking and it had to be repacked, redone.

Q Who was the contractor who did that work?

A Singleton Landworks, Roger Singleton.

Q I guess the -- how high is the water now? Is it elevated?

A I don't know the depth of the water.

Q Does it hold more water now than it did before?

A Yes.

Q And before you did any of this work, did you consult with the Army Corps of Engineers on doing work to the dam?

A I did not.

Q Have you had any contact with the Army Corps of Engineers since this started?

A I have not.

Q Has your husband?

A I don't know.

Q Before any of this work was done, did you have--when I'm talking about this work, I'm talking

about this timbering and the grubbing--did you have any communication with the County?

A My husband did.

Q But you did not?

A The only time -- the first time I did -- I have but not in the early stages.

Q But later, after some complaints were made, that's when you had contact?

A I did, along with my husband.

Q Did you ever have any -- Have you ever seen any silt fences that were installed?

A Yes.

Q When were those installed?

A I don't recall.

Q Was that after the work was performed?

A Be more specific.

Q Well, if the trees were cut and there's some grading that took place on the site, were the -- who actually -- do you know who did the grading work?

A Roger Singleton did the work out there.

Q So he would have done all the work all throughout the property, the earth work?

A He didn't take the trees out. He didn't, like, cut the trees down.

Q Except for the -- The cutting of the trees,

that was somebody else. But in terms of removing the stumps and getting it ready to turn into a pasture...

A Roger Singleton.

Q How much did y'all pay Mr. Singleton, if you recall, to do that work?

A I don't recall.

Q So your husband would know that probably?

A He may. Without it being in front of me, I don't have that answer. I would have to have that in front of me.

Q Okay. How long of a process was that that he was working?

A Months.

Q Months.

A I don't recall exactly.

Q Okay. Do you remember, were the silt fences and those kinds of things installed -- why were they installed?

A To prevent erosion or sediment flow and whatnot.

Q Who told you to install them?

A Nobody told me.

Q Did you receive complaints first or was it -- did you do it --

A I don't know because I didn't have -- I

didn't install them.

Q Exhibit Number 4 is a building permit that's dated May 15, 2008 [sic]. There are actually two building permits that you've produced. Exhibit Number 5 is a building permit from June 27 of 2018. What's the difference between these two permits?

A One is -- This one, Number 4, is for the barn itself. Number 5 is for an overhead built structure. It just has a roof; it doesn't have sides. So it's an overhead shelter.

Q Where is that in relation to the pond -- I mean to the barn itself?

A I could show you on here. Other than that, it would be hard for me to tell you.

Q Yeah, why don't you show me.

A With the barn being here, it's approximately in this area over here.

Q Why don't you -- Just for the record, why don't you mark on there. Mark on that one.

A And this is approximate.

Q Yeah, that's fine. If we're reading this deposition trying to figure out where over there is and over here is, it's hard.

A Approximately on this area.

Q Why don't you do an arrow to that, an arrow

from the white to where you just drew, and write on what that is.

A Should I put overhead building? I don't know how you want me to word it.

Q Yeah, let me see it. All right. If you could just write "overhead building" right there. And then wherever the second structure is, if you could do the same.

A Our accessory building. I don't know what you want to call it. Call it an overhead shelter.

Q Just shelter is fine. Is that for like picnics and --

A Yes, sir. It's just -- Like I say, it's got the roof and no sides.

Q Is anything parked underneath it?

A No, sir.

Q Mark on Exhibit Number 3 where the second structure is.

A Approximately here. This is approximate as well.

Q That's fine. I'll put these back in order. When you submitted -- Did you have to submit plans and things for this permit?

A I don't recall that. My husband -- I would defer that to my husband.

Q Did you get the permit before you started work or was it after?

A I'm going to refer that to him as well. I didn't do this permit.

Q And the same thing for Number 5, you'll defer to your husband on that?

A Yes, please.

Q Exhibit Number 6 is -- this is a letter from Michael Spires to your husband about the Stop Work Order being removed. Did you have any direct contact with Michael Spires?

A My husband did.

Q But you did not?

A I don't recall.

Q You're only graded on your honesty, not your memory. So don't worry --

A I'm trying to think back.

Q If you don't remember, you don't remember.

A I don't recall.

Q Do you remember when a Stop Work Order was placed on the property?

A I do.

Q Tell me what you remember about that.

A Do you mean for this letter here?

Q Yes, ma'am.

A It was in October, and I came -- we came out and there was a pink paper on there. And I actually did take the pink paper and went to where the stormwater is at.

Q Ball Park Road?

A It's either Ball Park or Barr, I don't remember which one.

Q Okay. But you took it to the stormwater folks?

A Yes, with intentions to speak to Ms. Swygert because -- and when I got there, she was not there and I spoke with a Ms.-- I believe it's Ms. Jenkins, I think was her name. And upon speaking with her, it was released. She said that a gentleman had come by and saw the work was being done. And when he went back to the office, he did not see a permit, so he put the Stop Work Order.

However, prior to that we had already been told we did not need a permit via Ms. Swygert. And Ms. Jenkins explained to me that Ms. Swygert did not make a file that she should have made. And so therefore, the gentleman who had put the Stop Work Order did not know about the prior contact. So it was -- it was removed because I was told we were not going against any of the -- the ordinance that was

placed on there; that we had not done anything wrong.

Q Did you actually speak with Ms. Swygert?

A In June.

Q In June of 2018?

A Yes.

Q What led you to a --

A A verbal -- a verbal Stop Work Order. He had stopped by and --

Q Who is he?

A A gentleman that works for the -- their office. I don't know his name. And it was a verbal, so we immediately went -- my husband and I went to see Ms. Swygert. We had our documentation. She said due to the fact that our property was agricultural, we did not need anything, that we were good, you can go.

I actually never -- She didn't even take us in her office. She was just standing in the front office there and said you're good. I see that it's agricultural property; you're good, you don't need anything. So we did ask her, are we good, do we need anything else, are we missing anything, and she said no.

Q So let me see if I understand this correctly. So sometime in June 2018 a male representative of Lexington County came to the property and told you to

stop work because you needed a permit for what you were doing. And you responded to that by going to talk to Ms. Swygert and told her --

A To see about a permit if we needed one.

Q And she said you didn't need one?

A She said we did not.

Q That was also in June of '18?

A That was in June. And she said we would have no more issues because she was calling him immediately, that we could go ahead and do what we were doing. And we never had any more issues until October when I came out, the pink paper was there. I went back.

Ms. Swygert was, I was told, in a meeting. And I spoke to a Ms. Jenkins. She looked up everything. She looked up the documentations and seen that everything was agricultural and said we didn't need anything. It was released.

And then I told them that I would be -- They had actually put one there, a formal Stop Work Order, that we wanted a formal release. So they did send us one.

Q Did you actually -- When the gentleman from Lexington County came by in June, did you have any direct contact with him?

A No, sir, I never even seen him. He just left

the piece of paper there.

Q Do you still have that sheet of paper?

A I think -- I think I turned that in to Mr. Moore.

Q Okay. Have you seen that gentleman since?

A I never seen him to start with. I don't -- no.

Q Who all -- Did you talk to your County Council person?

A I did not.

Q Did your husband?

A I'm not sure who all he talked to.

Q So the only people you talked to: You and your husband went together in June and talked to Ms. Swygert the first time?

A Uh-huh.

Q Then you also went back, the two of y'all --

A No, not the two of us, just me.

Q Just you, okay.

A And I spoke to Ms. Jenkins. I'm sure her name is Jenkins.

Q Did you know Ms. Swygert or Ms. Jenkins from any other circumstance?

A No, sir, I'd never met them before.

Q Have you ever worked in construction before?

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A No, sir.

Q Had you ever done any earthwork projects or anything?

A As in?

Q Were there any other pieces of property like this New Cassel Road property that y'all had cleared before for a farm?

A My husband and I?

Q Uh-huh.

A No.

Q How did you meet Mr. Singleton?

A We've known Roger for several years.

Q How did you meet him?

A He was a police officer in the town of South Congaree. He used to be the K-9 officer.

Q How did you come to know him as a police officer in South Congaree?

A I worked down there off and on. I volunteered and worked down there as a volunteer basis.

Q Did your husband serve in a capacity in South Congaree?

A He did.

Q What did he do?

A He was on the finance committee there for a brief time.

Q Do you know if you had like a written contract with Mr. Singleton?

A No.

Q You don't know or you didn't have one?

A To my knowledge, no.

Q To your knowledge you did not have one?

A Yes.

Q Have you ever spoken with Michael Spires?

A Me?

Q Uh-huh.

A No.

Q Has there ever been an occasion --

A I'm trying to think. Did he -- no, that was a phone call. He called my husband. I'm just making sure I did not answer the phone. To my knowledge I have not spoken, that I recall, I have not spoken to Mr. Spires.

Q So other than Ms. Jenkins and Ms. Swygert, you have not had any direct contact with anybody at the County?

A I spoke with Ms. Swygert and Ms. Jenkins. No, other than that.

Q When you went in June of 2018 --

A Now can I ask you to clarify? As far as when you say any contact with anybody at the County

concerning...

Q Well, concerning this case. I mean what we're talking about, damage to Ms. Garland's pond.

A No, no.

Q So you haven't -- with reference to this case or with reference to this Stop Work Order, you haven't spoken with anybody at the County about, you know, the work that you're doing or anything?

A I have not.

Q Have you spoken with anybody at the County about any other issues with Ms. Garland?

A At the County?

Q Uh-huh.

A Yes, I did a Freedom of Information Act request and got the information -- information through that.

Q Those have been produced. We'll get to those in a minute. But have you ever talked to any sheriff's deputies about any incidents involving Ms. Garland?

A Involving Ms. Garland?

Q Uh-huh.

A Let's see. That I can recall, no. Not me.

Q Now when you went to the stormwater office in June of 2018, what did you tell Ms. Swygert?

A That we had a gentleman call and that there

was a Stop Work Order issued verbally, and we went to find out why and what -- you know, the reason it was being put there, and what we needed to do as far as to straighten it out or whatever.

Q What did she tell you and how did you respond? What did you tell her you were doing on the property?

A We told her the work we were doing on the property, and she asked us how the property was zoned. And we told her it was zoned agricultural. I provided her the documentation showing that. And she told us we were good, that we didn't need anything.

Q Did she mention anything about having stabilization devices or anything?

A She did not. She didn't ask or mention any of that.

Q When you went back in October, what did you tell Ms. Jenkins you were doing at the property?

A I went in and I told her that there was a Stop Work Order. I said, we've been here before, I spoke with Ms. Swygert. Told her what I was told then. She looked at the order and she went and looked and saw that the property was agricultural. And she pulled up their ordinance that they were saying that there was an issue with. And she saw in the ordinance where, being

that it was agricultural, that it didn't apply. And she told us we were good.

Q Now in Exhibit Number 6, the second sentence. I guess you requested this letter -- because your husband did not accompany you in that visit in October, correct?

A He did not. It was just me.

Q And you requested something official saying that the Stop Work Order had been removed?

A That day when I spoke with Ms. Jenkins, I told her that -- she said that they would have it removed and I left. My husband requested the official...

Q The second sentence talks about, Please move forward with the stabilization of the project site to eliminate offsite impacts. Did you ever have any discussion with anybody from the County about the need to stabilize the project site?

A No.

Q Did you ever have any discussion with anybody about any offsite impacts?

A No.

Q This is October -- Number 6 is October 23, 2018. Number 7 is -- this is an email from Harrison Cahill to you. This is October 29 at 2:52 p.m. How

did you -- Did you actually speak with Mr. Cahill?

A I did.

Q Is he just like the Freedom of Information Act officer?

A Apparently he is the person that when you do a Freedom of Information Act request, it goes through him. I don't know what his title is, but he is the one who sent me the information.

Q So it looks like you submitted a Freedom of Information Act request on October 22. Would that have been around the time that you went to see Ms. Jenkins?

A I don't recall the exact date. I would have to see the --

Q What did you want to know?

A I wanted to know, as you see, regarding any and all correspondence or complaints or inquiries concerning the property.

Q Had you had any -- Were you upset that somebody was complaining about what you were doing with your property?

A No, the neighbor next door to my property, Mark Melichar, he kept yelling over my fence at me to enjoy my half a million dollar lawsuit that apparently Ms. -- I did not know Ms. Garland, had never met her before at that time. And he kept yelling over my

fence, enjoy your half a million dollar lawsuit that Ms. Garland supposedly had against me.

I didn't know her. So I went around -- I decided to go and introduce myself to see if she was upset. I didn't know her. I did that. I pulled into her property. First person I met was a Mr. Shelby. I don't know his last name. He was polite. Shook my hand, I shook his hand. He took me around the edge of the home. I think she may have been in a garden of some sort, I'm not sure.

She come out. And when I introduced myself, she got very upset and very nasty. She told me to get off of her property. With some ugly words, told me to get off her property and that I had ruined -- I tried to tell her, ma'am, I don't know you. I would never do anything to upset you, but according to Mark you're upset with me, and I wanted to come around and introduce myself and see if that was the case. If I've done something, please show me what you're upset about, and I'll be more than happy to rectify it, you know.

And she in not so many nice words told me to get off of her property; that she had an attorney; that she was going to sue me and that I was going to pay her.

Q How long was that encounter?

A As soon as she said that, I said I apologize, I'm sorry to have bothered you, and I got in my car and left. And I've never spoken to her again.

Q Was anybody there with you?

A No, it was just me.

Q And Mr. Sheldon was there?

A Shelby I think is his name. I'm pretty sure it was Shelby.

Q This was just another gentleman?

A I think that's her significant other, her spouse or something. I'm not sure.

Q At that point in time you were already kind of in a disagreement with Mr. Mark?

A That's actually the first encounter I had ever had with Mark. I was out there checking the fence line. My husband was not there. We were having some fence installed. I went out checking the fence, I was by myself. He proceeded to start being very nasty with me, cursing at me, calling me names, and told me some vulgar ugly stuff about going to suck on people. And that's when he started telling me how she was suing me for a half a million dollars.

Q At what point was the large -- the things between, I guess, the Cades and Mr. -- what is his last name? Melichar?

A I don't know how to pronounce his last name. I'm not quite sure.

Q Let's just call him Mark. Things have escalated, and I know there's a lawsuit concerning injuries to llamas that's been filed. Is there -- when did things really dust up between the two of y'all?

A He -- From actually before we signed the documentation on our property. We asked to be able to have it surveyed just to kind of know what we had, what was there. And so we did. We were given permission to have it surveyed. And during the process of having it surveyed, he came out and got my husband's name and phone number from the surveyor. And he proceeded to call my husband and was telling him that he wanted to buy property, and my husband explained to him, you know, I don't know what's here yet and whatnot.

So once the survey was back and everything was said and done, there was encroachment issues on the survey, his driveway, and he had cut a turnaround spot into the property. Once we got the survey back, my husband did call him back because he asked him to because he wanted to get with him about the encroachment issues and let him know what was going on, that we had gotten it back and there were some issues.

And he goes, well, that doesn't matter.

You're going to sell. He said, you're going to sell me the property anyway. When my husband told him he wasn't interested, he started cursing my husband. So he ended the phone call.

So it's been nasty with him since the very beginning because he -- from there when we had our fence -- We were having fence work done. He came out and cursed out our fence person and threatened to confiscate their tools. Apparently he --

The same surveyor came back out, but actually for the neighbor, not for us. I don't know if he assumed it was for us, but he apparently blocked the surveyor in and Lexington County had to be called, because he wouldn't let them leave unless they paid him $500.

Q When was the big Trump flag put up?

A I don't recall exactly when.

Q Did y'all put that right at the closest point on your property to where he is?

A No, it's not the closest point to where he is. It's I don't know how many feet back.

Q Let's look at Exhibit Number 3. Can you circle on here where the large Trump flag has been placed?

A And by the way, that's who he told me to go

suck, by the way, was Trump. I'm just trying to make heads or tails of this. I don't know exactly. This is an approximate, but it's approximately back here. I'm not good with measuring there.

Q Can you draw a line?

A I will.

Q Just put flag or Trump flag, whatever.

A (Witness complies.)

Q Okay. Did you put that flag down there to kind of -- why did you put the flag down there?

A Because I wanted to, to be honest.

Q Because he made you mad?

A No, I said something back to him.

Q What did you say?

A He called me fat, told me I needed to go lose weight. I told him maybe he needed to look at his own fat-assed wife and not worry about me.

Q Have you had any other -- Can you mark on this one where the flag is?

A This is approximate.

Q Okay. Did y'all put large kind of stacks of manure down there as well?

A No.

Q No? What other -- Besides Mark, what other neighbors on your property line do you have any

problems with?

A Nobody.

Q He's the only one; is that correct?

A That's correct. I'm sorry.

Q Have you and Mr. Mark ever exchanged any other -- have y'all had any other encounters, unpleasant encounters?

A Yes. The day we put our animals on the property, which was May 5, he came out and started shooting his gun by the -- close proximity of the fence. Then he lit firecrackers and threw them in close proximity of my fence, but only when my animals would go to that corner. He did not do it unless the animals went to that corner.

Q Was that during the day?

A Uh-huh. Yes. I'm sorry, I apologize.

MR. DAWSON: Make sure you say yes.

THE DEPONENT: I caught myself. I'm sorry.

BY MR. BELSER:

Q By the time you sent this first FOI request, you had already -- you already had had a major disagreement with Mark. You didn't know that Ms. Garland existed until he said whatever he told you.

A Exactly. I had never met her before, no.

Q Then this stack, Number 7, it looks like

there's -- just a different version of the building permit, May 15, then June 27. And then there's some images attached. To your knowledge, what are these five images in Exhibit 5 [sic]? And I produced them as they were produced to me; I don't know if you have color copies or not.

A I have -- I did not -- I don't know -- that was just something they sent me with the Freedom of Information Act request. I honestly don't exactly know what that is.

Q Did you ask for clarification?

A I did not.

Q And then -- So Number 7 is October 29th at 2:52. And then there's another email from Mr. Cahill, Exhibit Number 8, at 3:07 p.m.

A That's just more pictures, as you see. Apparently the file was too big for him to send in one so he sent it in multiples.

Q Did you say, hey, what are these?

A I did not. I just let him -- As a matter of fact, he had called me to tell me that he was sending me the Freedom of Information Act request that I had done. He said, I'm sending you over what I have but it's just in -- it'll be in multiple emails. He called just to tell me that so that I would look for multiple

emails. And once I got them, no, I did not question as to what they were. I just...

Q This would have been before you went over to Ms. Garland's house?

A I would have to go back. I can look on -- I think I went to her house on the -- Approximately it was the 22nd or 23rd.

Q Have you ever seen photographs of her muddy pond?

A I have, that she sent.

Q Uh-huh. Do you understand why she's upset?

A I know she's upset. I know her pond is not muddy now. So, no, I don't know why she's upset. I know were there two major hurricanes that had just came through within a month of each other, and she lives on a dirt road as well. So I don't know why she's upset with me.

Q The next, Exhibit Number 9, is some additional photographs. Here it says, the file is too large to send all this information at once.

A Uh-huh.

Q At the time that you went to see Ms. Garland, was there any -- when your saw these photographs, was there anything that you did to change the conditions on your property?

A When I saw the photographs from her? Because these photographs right here, I don't know what they are. The ones that came from Mr. Cahill, I'm not even for sure what these photographs are. I couldn't kind of make heads nor tails of them.

Q Okay. Exhibit Number 10, this is more Freedom of Information Act documents. It looks like it's a lot of the same things that we've already seen. I was curious why there were so many versions, but I think the size is the explanation.

A Yes, sir. They just said it was too big to send in one.

Q Exhibit Number 11 is -- these are two inspection reports.

A Uh-huh.

Q There are two three-page inspection reports. The first one is dated October 22, 2018. Do you see where it says that? It's on the -- flip the top page. And you see this is page 1 of 3?

A Uh-huh.

Q It says inspection date 10/22/18?

A Uh-huh.

Q And there's nothing that's filled out on this except for -- until page 3. It says -- You see where it says additional comments?

A I do.

Q Spoke with property owner and talked about the muddiness of their pond. Noticed from their spring that sediment was coming across from adjoining property owners' property and took pictures of the pond to show the color. Told them we would be in touch with property owner next to them.

A Uh-huh.

Q It looks like -- I don't see the name of the inspector on here. When this -- there's reference to this inspector speaking with property owner in the adjoining property.

A The adjoining property, that's not you.

Q Not you? That's your husband?

A No, I don't adjoin her. That property where that spring is, that adjoining property is not mine. So they never contacted us about any of this. We never had any contact with them at all about her complaints ever because we're not her adjoining neighbors.

Q Exhibit Number 12 -- Actually, there's two inspection reports in Exhibit Number 11. The second one in the packet is actually dated October 18, 2018.

A I need to find that one, excuse me. Okay, I'm there.

Q You see that?

A Yes.

Q Okay. This is a -- Do you see the comment section?

A Page 3 again?

Q Yes, ma'am.

A Yes.

Q It says, Had a complaint that a property owner had cleared some land and the runoff was clouding up their pond. Gary and I rode out to the address of Fish Hatchery and New Cassel and saw where the property had been cleared and stumped. Took pictures. And while we were there taking pictures, a neighbor came out and told us that the owner was putting cows on the property.

There's several different property owners we're talking about here. I believe that the property owner who complained was Ms. Garland. And then there's a reference to another neighbor who came out. Was that likely Mark; do you know?

A I don't know.

Q Did you ever speak with anybody named Gary from the County?

A No, I did not. Like I say, I've never spoken to any of them. They never -- In reference to these complaints or anything else, they've never came over

and physically spoken to me at all.

Q Brandon Corder, do you see that name on the bottom of this page right here, page 3? Do you recognize that name?

A I'm looking. There it is. Yes, I know he is one of their inspectors in talking with Ms. Jenkins. And I actually attempted later -- not during this time at all, it was after I had spoken to Ms. Jenkins. And I wanted to speak with him, but he was not there. And she called him on his phone while in her office.

Q Who is she?

A Ms. Jenkins. And had him on speaker phone and she was addressing him on speaker phone.

Q What do you mean addressing?

A She was talking to him.

Q Wasn't like dressing him down or anything?

A No. Addressing.

Q Talking?

A Talking to him, yes. And I don't know who else she spoke to. She spoke to several people while I was there, explaining how they did not do their due diligence and whatnot for a second time in a row. Meaning the County.

Q How much actual earth moving did Mr. Singleton do at the property?

A I don't know.

Q Do y'all have any heavy equipment yourselves?

A That we own?

Q Uh-huh.

A We own a mini-excavator. When I say mini, it's like a little -- I don't know the number. He would tell you the whatever.

Q I wouldn't know anyway.

A But, yes, a little mini-excavator that we own.

Q How much work did you do -- I mean did your husband --

A I don't know. That's a question for him. I can't answer that.

Q The last page of Exhibit 11 talks about references Kimberly, Stop Work Order per Kimberly to get something. Did you ever speak to anybody named Kimberly at the County?

A That Ms. Swygert.

Q Ms. Kimberly Swygert?

A Uh-huh.

Q How many times have you spoken with her about this?

A I spoke with her just in June. And then again, like I say, when I went back in October she was

not there. I was told she was in a meeting and I spoke to Ms.-- I think it's Ms. Jenkins. I don't want to be 100 percent on that name, but I'm pretty sure it's Ms. Jenkins.

Q But those were two conversations in 2018. Have there been any conversations since?

A Since that?

Q Uh-huh.

A No.

Q Did you -- Did y'all threaten the County that you were going to sue them if they didn't pull the Stop Work Order?

A I did not. I don't recall if my husband said anything like that. I have not, no.

Q Exhibit Number 12.

A I have 21, is that --

Q Let me see here.

A Oh, there we go.

Q I got them out of order. Let's do Number 21 here. It's at the back of your stack.

A I'm sorry. I've been flipping mine here because that's where you started putting them.

Q Yeah, that's right.

A I'm just trying to keep them --

Q Put 11 right here and let's go ahead and just

talk about 21.

A Okay.

Q This is another request, November 28, 2018. Did you have further conversations with -- what led you to send this Freedom of Information Act request?

A Just trying to see if there were any other complaints or phone calls, because we were told she has complained at one time against everybody on the street.

Q Tell me about that.

A Apparently she's complained about everybody on Davis Drive at some point.

Q Who told you that?

A Some of the neighbors.

Q Who?

A It was not told directly to me, but in front of me the Shearers said it, and then someone -- another neighbor said it to my husband.

Q Who is the other neighbor?

A The Davises said that she has complained about everyone on the street at some point.

Q When was that conversation?

A I don't recall the date of the conversation. As far as with the Shearers, there's been multiple conversations.

Q How did that come up?

A I don't recall. I don't recall.

Q Was that on your property?

A I'm not sure. I'm not sure because they've been on our property, we've been on theirs.

Q Are y'all friendly?

A Sure, we get along.

Q The Shearers and the Davises?

A I've not met the Davises, my husband has.

Q What did the Shearers -- When you overheard this conversation who all was there?

A Myself -- I was part of the conversation, we were just talking. And they said that she has complained against everyone on the street at some point or another.

Q Did you ask them what she was complaining about?

A No, I did not. They just said she's a complainer.

Q What did you -- Did you say anything at all or did you just listen?

A I don't recall. I don't recall if I said anything. And if I did, I don't even know what I said. I don't recall the conversation other than I remember them saying she is a complainer.

Q You don't remember when that was?

A I don't.

Q How frequently do you see the Shearers?

A I haven't seen them lately. I know his wife, Julie, has not been feeling well, so she's not out a lot. I see Paul out and about on their property, but...

Q Getting back in order here with the exhibits, Exhibit Number 12 is a letter from me to your husband, November 27, 2018. This 1003 Skyview Drive, that's the address where y'all live?

A Yes.

Q Do you remember when you got this -- What do you remember about receiving this letter?

A Can you be more specific?

Q When you got -- This letter came to your house. Do you know if you signed for it?

A I don't remember if we signed for it or not.

Q But you got it about this time?

A We got the letter, yes.

Q And were you mad when you got it?

A No.

Q Did you take a look at any of the photographs that Ms. Garland provided with the letter?

A I did.

Q And did you -- how did you -- What did you

think about her complaint and my letter? Did you care?

A Well, sure, I care. I mean I don't know her, but -- What do you mean did I care?

Q If your pond looked like this, what would you -- how would you feel?

A I maintain my pond. I maintain my pond, which is what I do.

Q How would you maintain it?

A We make sure to keep our -- We put things in to keep the algae and the vegetation down that's not supposed to be there. And we put pond dye in our pond to keep the sun from going down to help it -- to prevent it from growing.

Q What kind of pond dye do you put in?

A I don't know the name of it, but it's -- we order it and it's not harmful to the fish or anything like that. You can even drink it, but it just keeps the sun from getting down to help the lily pads and stuff, because the sun helps them grow. And it keeps them from growing.

Q So it like darkens the water?

A It does.

Q To cut down on lily pad growth?

A Yes.

Q We're going to come to a photograph here in a

minute which has blue dye. Is it a -- What color is it?

A It is a blue dye.

Q Where do you get it?

A You can get it Tractor Supply. We have bought some before at Tractor Supply, but I usually order it online.

Q From where?

A We order pond dye and we also order some stuff for the lily pads, and I believe it is Aquacide, I think.

Q How do you spell that?

A A-Q-U-A-C-I-D-E, Aquacide.

Q So it's designed to kill--I guess -cide is water [sic]--kill algae?

A Lily pads. Basically it's specific to what you have, the type of lily pads you have.

Q How did you learn about that?

A Online.

Q We've been going for a while. You doing okay?

A Sure.

Q Do you want to take a break?

A If we could.

(A brief break was taken.)

BY MR. BELSER:

Q Exhibit Number 13, it looks like Exhibit Number 13 and 14 are two -- They're pictures of the same thing, just in reverse order. So if you want -- That's only mine. Exhibit Number 13 is a photograph of Ms. Garland's pond from January of 2019. What do you see in this photograph?

A I see a picture of her pond and a tree and something hanging in the tree.

Q What do you see coming into the pond?

A I see water.

Q So you deny -- Well, do you deny completely that the land-disturbing activities on your property have had anything to do with the impact to Ms. Garland's pond?

A I don't think it's my property. I think she lives on a dirt road and there were two major hurricanes. And again, the adjoining property is not my property. And there's also property up just past hers at a higher level than hers as well that is dirt.

Q So in your belief, your -- the work that y'all have done on your property has had absolutely no impact on Ms. Garland's pond?

A I don't know if it did or didn't. I didn't do the work. I can't say it did or did not.

Q So you don't know one way or the another?

A I don't think it did, but again, I'm not an expert.

Q Have you -- outside of the present -- I don't want to know if you have spoken with any engineers or anything with Mr. Moore or with Hood --

MR. BELSER: What's your last name?

MR. DAWSON: Dawson.

BY MR. BELSER:

Q -- Mr. Dawson. Have you been in contact with any engineers on your own or any expert witnesses?

A Have I?

Q Yes.

A My husband and I went and sat down and spoke with someone.

Q Who was that?

A I don't recall his name. I don't know, I don't recall.

Q When was this?

A I don't recall the date. I don't know if it was late 2018 or it was in 2019. So I'm going to say I don't recall.

Q Did he come to your -- Was it a man or a woman?

A It was a man.

Q Old or young?

A I don't know how old he was. I would say old -- older than me I would say. Older guy.

Q Did you meet at his office?

A We did.

Q Where was his office?

A I think it was over -- Irmo-ish area I think.

Q What did you tell him?

A We just spoke to him about our property and about him taking a look at our property.

Q In connection with this lawsuit?

A We just wanted him to just take a look and tell us what he thought of it and if there was anything different we needed to do with our property.

Q Did you pay him?

A Yes.

Q How much did you pay him?

A I don't remember.

Q Was it hundreds of dollars or thousands of dollars?

A It was not thousands, no.

Q Did he give you anything in writing?

A Yes.

Q What did he give you?

A He went out and looked at our property and he

told us what he thought.

Q Do you still have that piece of paper?

A I do not. I don't. I don't know where it's at.

Q You say you don't know where the paper is?

A I don't have it.

Q You don't recall the guy's name. Do you recall what it said?

A I think his name, I believe, was a Mr. Chao, but I'm not 100 percent sure and I would not know how to spell that.

Q Yeah.

A I believe.

Q There's a Chao & Associates. I think it's C-H-O-A [sic].

A I don't know how to spell that, sir. I don't know how to spell his last name, I don't know. And I'm not for sure that's how you pronounce his name, so...

Q His first name is Jimmy?

A I don't know. I don't know.

Q So you reached out -- You reached out to him or did he reach out to you?

A I believe my husband reached out. I'm not sure. I believe my husband reached out to him.

Q Did you ever have any prior relationship with

Mr. Chao?

A I don't know him, no, sir. I'm not sure that that's his name either.

Q Was the office in a little kind of strip mall complex?

A Yes. It was this little small area and there was multiple little places there.

Q Uh-huh. Mr. Chao --

A But I don't recall the address.

Q Mr. Chao is an Asian-American gentleman. Was that -- Does that ring a bell?

A Yes.

Q Was the person with whom you met an Asian American?

A I don't know what his -- I don't know what his ethnicity is. I don't know. I don't know if he was Asian or Japanese, I don't know what he is. So...

Q Okay. I'm showing you a picture.

A Okay.

Q Is that -- That's Jimmy Chao. Is that him?

A I'm not sure that that's him or not.

Q I guess we can figure it out. Was it that guy, Gerald Lee?

A I don't know.

Q Was it David Chao?

A I don't think it was him.

Q Okay. What --

A That first guy, he just looks -- I don't know. I'm just not sure if that's him or not. I don't know.

Q Okay. What -- And you don't remember what he told you?

A He told my husband that he could come out and show him some stuff that he could do to the property if he wanted him to, but I don't -- Other than that, I don't recall the conversation.

Q Have there been any -- Have y'all put any berms on your property to divert water flow?

A Any berms? No.

Q You know what a berm is?

A Like a mound?

Q Like a little mound to divert.

A No.

Q Okay. Number 14.

A I was going to say I think I've done passed the pictures.

Q Number 14 is a photograph of the wetlands area in between Davis Drive and the Garland pond. Does this look like the blue Aquacide that y'all put in?

A The blue pond dye, yes.

Q Did y'all actually come down the road and pour it in the road?

A No.

Q So do you have any idea how that got there?

A As far as -- Exactly where do you mean as far as -- We put it in our pond and we put -- we have a -- I can't think of the name of it, like an area that is put there for the cows. And there's a pipe that goes from that and -- I can't think of what you call it.

Q Where do you put the manure from your cows?

A Over -- Now, as far as the manure from our cows?

Q Uh-huh.

A It's just out in the pasture.

Q You don't go pick it up or anything?

A No.

Q What about the -- are there any animals that stay in the barn?

A The big barn?

Q Uh-huh.

A No. That's where we store our hay and our equipment and whatnot. We do have shelters out on the pastures for the animals.

Q But y'all don't go out and kind of hunt and gather for cow patties and stockpile them in any one

place on the property?

A No. We have over in the far -- I could show you. I don't -- it's harder for me to try to tell you. I can show you.

Q Let's look at Exhibit 3 here.

A Over here in this area right here. We've got a corral at our house where we live. Like, for instance, when we brought our donkeys in, we kept them there for a while just to get them acclimated to us and everything. And when we cleaned that out, we bring it and we put it over -- again, let's see, over here because Mr. Harvey, which is a neighbor, he likes to have it for his garden.

Q Why don't you put a circle right there and just put --

A And this is what comes from a small corral we have at our home because -- It's just around in the corner.

Q Right by the gate?

A Past, near the dam area, yeah. See how the dam goes around right here. And then there's a gate right over here. And Mr. Harvey lives over here. It's right there.

Q Okay. I was looking at this thing upside down. All right. So that's where you bring -- you

have a corral at your house. How many animals are at your house?

A Right now we've only got left is four goats, four pigmy goats. We just brought our donkeys out a couple of days ago.

Q Why don't you do a line right there and put, I don't know, manure or something, whatever you want to call it.

A (Witness complies.)

Q How long have the other animals been out there?

A Since May 5th.

Q Of this year?

A Uh-huh. Yes, sir.

Q Did you -- So all 20 cows and -- were they all at your other place?

A No. We didn't get them all at the same time. We've gotten them over time. But, no, not all of them were at our other place, no.

Q Okay.

A Some of them have been there for a few days and then come out but not all of them, no.

Q Who else has access to this property, to the Cassel Drive property?

A Mr. Harvey, our kids, right now Davey Tree

Service is parking a few of their trucks there, so they have access.

Q Where are they parking?

A And it's just for a brief, little bit because they're cutting in the area. About right here. This is Fish Hatchery.

Q So up near Fish Hatchery?

A Yes, sir.

Q And when your children go, do they -- go to the property, do they just fish or what do they do?

A Typically fish or we're out there and we'll go at our overhead thing. We feed our animals. My daughter, she's usually out with me on the property. We go around and check our fences and whatnot, just hang out there. I mean it's our property, we just kind of hang out, you know.

Q Exhibit Number 15 is a report from Dennis Corporation, March 20, 2019. Have you ever seen this before --

A No, sir.

Q -- today? Okay. So it just goes without saying this report is not what led you to go talk to Mr. Chao or whoever it was?

A I've never seen this before.

Q Never seen it, okay. Exhibit 16 is a pond

remediation estimate dated April 10, 2019. Have you ever seen this before?

A No, sir.

Q You see where the estimate to remove all the sediment from Ms. Garland's pond is over $400,000?

A Right here?

Q Uh-huh.

A Okay.

Q You've never seen this before?

A No, sir, I've never seen this before.

Q Exhibit Number 17, this is a complaint that was filed -- is this your husband's handwriting or is this --

A That's my husband's handwriting.

Q Can you read his handwriting?

A I can.

Q What is -- where it says, I make this complaint on the following, can you read that?

A On numerous occasions Mark has harassed my livestock by firing his gun and fireworks near my property line causing one of my llamas to give birth prematurely. He only does this when my animals are near the property corner where he resides. I have several --

Wait a minute. There's a line there.

Q Camels? Does it say camels?

A Oh, I'm sorry, I see now. I have several animals that are expecting and this is stressing them.

Q So this was a complaint for veterinarian medicines, supplies, and milk, $500; 24/7 around-the-clock care for $2,500; and then punitive damages for $4,500. You don't allege that Ms. -- There's nothing that Ms. Garland is doing that is stressing your animals out, is there?

A Is she stressing my animals? Not to my knowledge. She just comes up and down the dirt road videoing and filming us all the time and taking our picture.

Q And have you done the same thing with her?

A My husband, after quite a number of months and days of her doing it, he did it back. She was over there doing it, and he did it back to her. So she called the police. And then the police called him. And he invited them over to see the video that he took, and they wouldn't --

Per the police officer, because he had the phone on speaker, he was not writing her a report because he told her why would he write a report against my husband; that he didn't do anything wrong, no more than she did. As far as he did only what she had done

to him, that she started it, and that he was not going to provide her with a report for something that she clearly was starting and initiating, and he didn't do anything worse than what she did.

Q Number 18, this is a police report dated July 9, 2019. Why don't you just take a minute to read that and we can talk about it.

A Okay, I read it, this first page. Is that all I was supposed to read?

Q Yeah. This recounts some incidence of following someone in a truck. Were you in the truck?

A No, I was not, but I see where she says he has no business on that road. She don't have any business on New Cassel either.

Q But have you ever taken any video footage of Ms. Garland?

A Have I?

Q Uh-huh.

A One of the times she was coming up the road, I held my phone up but I didn't video her, no. But I didn't follow her either. But I held it up while she was going by just to let her think I was because, again, she constantly is down there on New Cassel and constantly stopping down there with her camera and all out. As a matter of fact, Mr. Harvey has had to run

her off of the property, her hanging over the fence.

Q Were you ever interviewed by the Sheriff's Department?

A Me?

Q Uh-huh.

A Yes.

Q When was that?

A Several times. Concerning her?

Q Uh-huh.

A Okay. Let me go back. Then, no. Concerning Ms. Garland, I have not been, no. I've spoken with police officers concerning Mark. But concerning Ms. Garland, no, I have not.

Q Okay. Exhibit Number 19, this is the written discovery responses. So Singleton Landworks, that's Robert Singleton?

A Roger.

Q Roger.

A That's the gentleman that was here earlier.

Q Uh-huh. I think that these -- I think you already answered this, but you don't know the scope of work that Mr. Singleton performed?

A I do not. What exactly do you mean? Be specific as far as...

Q Well, exactly what -- Number 6 says, Identify

the contractor you hired to timber, grub, and grade your property. And Singleton Landworks is included.

A He did not timber it. He did not.

Q Okay. But you don't know who timbered it?

A I have the paperwork at home in a file. I don't have it in front of me, so I don't remember the name. But I do have the paperwork at home in a file.

Q But you don't know what areas of the property Mr. Singleton may have grubbed and graded?

A He would be better to answer that because I didn't do the work.

Q He as in your husband?

A Mr. Singleton.

Q Number 8 says, what have you done to divert the flow -- the water flow on your property. And it says, reserves the right to supplement. To your knowledge have any diversion ditches or swells been -- or berms or swells been installed?

A There have been no berms. We have -- I don't know the name of it. I can't -- Can I ask him the name of that water thing I'm trying --

Q Sure.

THE DEPONENT: What's the name?

MR. CADE: Retention pond.

THE DEPONENT: A retention pond. I could not

think of that. I'm sorry.

BY MR. BELSER:

Q Where is that?

A There's a retention pond on the property. And from that retention pond, we did put a pipe in so that that goes to the -- so it doesn't run across the ground. It goes to -- There's a little -- like where the water would come out if our pond was to overflow. Where the water would come out, right there.

Q Here you go.

A It's there.

Q Why don't you mark on here where the retention pond is and the pipe and all that jazz.

A The spillway for our pond is right here. This is the spillway. Where it goes back through, if water was to leak out of our pond --

Q Like an emergency spillway?

A Yes, like if the pond was to overfill, and that spillway is there, and that's where the water would go. And it's like a little canal thing right there. The retention pond that I couldn't think of is approximately -- this is approximate because this is a tiny little drawing and it's hard for me. It's approximately back here. And the pipe goes to where it would go into the little canal, the same place where

the water would spill out in the event that anything spills. Goes to the same canal as the spillway.

Q Just so -- Can you do a line and write retention.

A And this is approximate.

Q Yeah, of course. Just to where retention pond is and then pipe.

A Retention pond.

Q Is it a buried pipe?

A Yes. And it was kind of back a little bit. And this, again, is approximate.

Q Yeah, that's fine.

A Just put a line and put pipe?

Q Pipe, yeah.

A Other than that, no, we have not done anything to divert water.

Q Was that -- How big is the retention pond?

A I don't know. It's not large, it's not huge. But I'm -- as far as measurements, I don't know.

Q Is it like the size of this office?

A Oh, no, no.

Q The size of the table?

A It's bigger than that but -- I would defer that to my husband. He's --

Q Sure, sure. Who told you -- Did somebody

tell you to do that or you just --

A I don't know. I didn't have anything -- I would defer that to my husband, too.

Q Number 9, it's on page 4.

A Okay. I'm there.

Q Identify any sediment and erosion control measures that you have implemented. It says you have installed silt fencing and fabric design to stop the erosion. Additionally, Defendant created a detention/retention area on their property to stop any movement of soil from their property onto anyone else's.

Is your husband the one who would be the best to talk about the silt fences and fabric design?

A I know they were put out there and I know there was silt fencing and the carpet things, fabric things, and these big rolls, but, yes, I would defer that to him because I don't...

Q Is there any connection between this work that was done and what Mr. Chao told you to do?

A I don't -- I don't recall when this stuff was put out. I would defer all that to him.

Q The next is the Defendants' Responses to Request for Production.

A Number 20?

Q No, it's actually kind of the second half of this document.

A Okay.

Q Produce copies of all photographs in your possession of your property. Number 2, Produce copies of all photographs in your possession of your property, whether before or after land-disturbing activities began. None at this time.

When you -- After you bought it -- Before or after you bought the property, before any of the work was done, did you take any pictures of the property just to show what it looked like?

A I've probably got a few in my camera.

Q Well, basically -- Even though we've got these aerial photographs, to the extent you have any photographs of the property during your ownership -- if it's picture of your husband holding up a big fish or a duck by its neck or something like that, you don't need to send me that.

A Okay.

Q But if it's a picture that would show the condition of the property, that would be helpful.

A Okay, okay.

Q Same with -- While you're looking for stuff, if you would -- anything you have relating to the

timbering that y'all did, how much -- the scope of the timber contract, any money that came from it, any of that kind of stuff. Any contracts you have with Mr. Singleton, any evidence of any payments that were made, anything that would kind of relate to what we've talked about today.

A Okay.

Q Number 5 is all communications with any governmental entity or third-party concerning the complaints. Other than the Freedom of Information Act, have you -- are you aware of any letters that were sent to the County on your behalf or by you?

A No.

Q Have you had any communication with any of your other neighbors about this complaint, either by email or text or anything?

A I have not.

Q And Number 20 --

A Exhibit 20?

Q Yes, ma'am. At the back of this document there's a timeline. Who typed this up?

A I did.

Q Just kind of walking through this, you had a written contract to purchase the property February 26th. Did Mr. Smith actually perform a survey of the

property?

A Yes, he did.

Q Do you know if he did any kind of wetlands delineation or anything?

A Not that I'm aware of.

Q It was just a boundary survey?

A Yes, sir, as far as I know.

Q Now March 5, 2018, Mark approached M. Smith about what he was doing and demanded information from him. Does that mean --

A That should have been Mr.

Q Oh, Mr. Smith.

A Mr. Smith.

Q Mr. Shearer is referenced on April 11, 2018. And there's a purchase of a small piece of property adjacent to Mark's property.

A Yes, sir.

Q Can you point out to me where that is on Exhibit 3?

A Yes.

Q Why don't you go to the second page where it's --

A The property -- Let me make sure I'm in the right. Okay, I was about to be wrong here. There's Fish Hatchery, it was kind of cut off. Back in this

very back corner, the Shearers live here. And the property line kind of went -- the line like jutted back just a tad bit that way.

Q Uh-huh.

A What we did was where -- it's hard to see because of these trees. Basically do you want me to draw the line to show what I'm talking about?

Q Yes, ma'am.

A The kind of like went back and -- I'm not quite sure on here but I'm just going to draw and show you. It kind of went and kind of jutted back a little bit like so. What we did is straightened it out basically back there. And it like straightened it out once you cut off like a triangle like piece.

Q Why don't you do a line right there and put Shearer.

A This is approximate again because --

Q How much did he pay for that?

A $10,000.

Q Do you still have any incidents or, I guess, bad encounters with Mr. Mark?

A Do I still have?

Q Yeah.

A I have not had an encounter at all with Mr. Mark as far as an actual conversation encounter

since, I believe it was, the 7th of May approximately. However, he did continue to shoot and throw his fireworks at our animals and drove his car as if he was going to drive it through the fence trying to scare our animals. There's now a restraining order in effect right now.

MR. BELSER: Let's take a quick break. I make be finished with you, then I'll ask questions of your husband. Let's take a break.

(A brief break was taken.)

MR. BELSER: No questions.

MR. DAWSON: I don't have any questions.

(The deposition was concluded at 3:11 p.m.)

SIGNATURE OF DEPONENT

I, the undersigned, CHRISTY CADE, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

See Inside Back Cover

_____

CHRISTY CADE DATE

CERTIFICATE OF REPORTER

I, Laura Chamblee, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That reading and signing of the foregoing deposition by the witness is not waived.

That the foregoing deposition was taken before me on the date and at the time and location stated on the title page of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed to the best of my ability is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 3rd day of September 2019, at Hartsville, Darlington County, South Carolina.

Laura Chamblee

Laura Chamblee
Registered Professional Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
September 27, 2028

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November 22, 2019

Deposition of:	Christy Cade
Case:	Suzan Garland v Robert Cade and Christy Cade
Case Number:	2019-CP-32-01442
Deposition Date:	8-27-2019

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Deborah L. Dusseljee, President
Registered Professional Reporter

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