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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
In the Court of Common Pleas for the First Judicial Circuit

The Honorable James E. Chellis, Master in Equity

Case No. 2019-CP-18-02217

Virgie C. Simmons Family, LLC.....Appellant

vs.

Limetrade, LLC and Limehouse Produce, LLC Respondents

RECORD ON APPEAL, VOLUME I

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Family, LLC*

March 19, 2025

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) FIRST JUDICIAL CIRCUIT
) C/A No. 2019-CP-18-02217

Virgie C. Simmons Family, LLC,)
))
Plaintiff,)

vs.)

**CONSENT ORDER FOR REFERENCE
TO THE MASTER**

Limetrade, LLC and Limehouse Produce,)
LLC,)
))
Defendants.)

This matter, which was originally filed as a jury case, has been transferred recently to the non-jury docket by consent of both parties. The parties, as indicated by their signatures below, have requested that the case now be referred to the Dorchester County Master in Equity. Given that this matter is a contract dispute between two sophisticated business entities, this Court agrees that the Master would be well suited to preside over this matter.

Therefore, this case shall be immediately referred to the Master-in-Equity from the date of this Order through its conclusion, in accordance with SCRCP Rule 53(b).

IT IS SO ORDERED.

Dorchester County Clerk of Court

Date: _____
St. George, South Carolina

WE CONSENT:

March 10, 2022

date

s/K. Michael Barfield

K. Michael Barfield (S.C. Bar No. 69400)
Barnwell Whaley Patterson & Helms, LLC
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Counsel for Plaintiff

March 10, 2022

date

s/G. Hamlin O’Kelly, III

G. Hamlin O’Kelly
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Counsel for Defendants



Dorchester Common Pleas

Case Caption: Virgie C Simmons Family Llc VS Limetrade Llc , defendant, et al

Case Number: 2019CP1802217

Type: Order/Referred to Master or Special Referee

So Ordered

s/Cheryl Graham, Clerk of Court

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO. 2019-CP-18-2217
	)	
Virgie C. Simmons Family, LLC,	)	
	)	CONSENT SCHEDULING ORDER
Plaintiff,	)	
	)	
vs.	)	
	)	
Limetrade, LLC and Limehouse Produce,	)	
Inc.,	)	
	)	
Defendants.	)	

By the consent of the parties pursuant to Rule 16 of the South Carolina Rules of Civil Procedure and it appearing to the Court that the issuance of a Scheduling Order in this matter is appropriate, the following schedule is established:

SCHEDULING ORDER

1. All depositions and discovery in the within matter shall be completed on or before September 30, 2021.
4. This case shall be mediated on or before October 29, 2021. The mediation shall submit his written report to the court within ten (10) days of mediation.
2. All dispositive motions shall be filed on or before November 3, 2021.
5. This case shall be set pre-trial hearing and all outstanding motions on or by November 30, 2021.
6. The party shall come to the pre-trial hearing with a pre-trial brief to be exchanged, a list of witnesses and a good faith estimate of time for trial and all other matters per Rule 16(a)(8).
7. Upon completion of all steps noted above, the matter shall be set for a day certain trial (usually 30-60 days) and, unless otherwise agreed in writing, subject to all matters under Rule 16(b)(1-5).

This Scheduling Order may not be amended except by consent of all parties or upon motion of any party for good cause shown; and

IT IS SO ORDERED!

The Honorable Edgar W. Dickson
Chief Administrative Judge for the
First Circuit

Orangeburg, South Carolina

_____, 2021

WE SO MOVE AND CONSENT:

/s/ G. Hamlin O'Kelley, III

G. Hamlin O'Kelley, III

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Dorchester Common Pleas

Case Caption: Virgie C Simmons Family Llc VS Limetrade Llc , defendant, et al

Case Number: 2019CP1802217

Type: Order/Scheduling Order

It is so Ordered!

s/Diane S. Goodstein

Electronically signed on 2021-07-22 12:16:00 page 4 of 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO. 2019-CP-18-2217
	)	
Virgie C. Simmons Family, LLC,	)	
	)	
Plaintiff,	)	AMENDED CONSENT
	)	SCHEDULING ORDER
vs.	)	
	)	
Limetrade, LLC and Limehouse Produce,	)	
Inc.,	)	
	)	
Defendants.	)	

By the consent of the parties pursuant to Rule 16 of the South Carolina Rules of Civil Procedure and it appearing to the Court at the Status Conference held via telephone on November 16, 2021, the issuance of an Amended Consent Scheduling Order in this matter is appropriate, and the following schedule is established:

SCHEDULING ORDER

1. This case shall be mediated on or before February 15, 2022. The mediator shall submit his written report to the court within ten (10) days of mediation.
5. This case shall be set for a trial not before March 1, 2022.

This Scheduling Order may not be amended except upon motion of any party for good cause shown; and

IT IS SO ORDERED!

The Honorable Edgar W. Dickson
Presiding Judge for the First
Judicial Circuit

St. George, South Carolina
_____, 2021

WE SO MOVE AND CONSENT:

/s/ G. Hamlin O'Kelley, III

G. Hamlin O'Kelley, III

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Dorchester Common Pleas

Case Caption: Virgie C Simmons Family Llc VS Limetrade Llc , defendant, et al

Case Number: 2019CP1802217

Type: Order/Scheduling Order

It is so Ordered!

s/Diane S. Goodstein

Electronically signed on 2021-12-08 15:12:38 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
BEFORE THE EQUITY DIVISION

C/A No. 2019-CP-18-02217

Virgie C. Simmons Family, LLC,
vs.
Limetrade, LLC and Limehouse Produce,
LLC,
Plaintiff,
Defendants.

FINAL ORDER

This matter came before this Court pursuant to a Consent Order of Reference entered March 11, 2022. In its broadest sense this case is a landlord-tenant dispute. As such it is a contract dispute. Although this Court is the Equity Division of the Court of Common Pleas, once a matter is referred to this Court it has the same powers and authority as a Circuit Court. To this end, the case before the Court is a matter at law in that the case is a dispute in contract seeking damages for an alleged breach in a term of the underlying Business Lease (the Lease).

Plaintiff is the landlord. Defendant Limetrade, LLC, is the Tenant by assignment from Easy Tray, LLC, and Limehouse Produce, LLC, dated May 24, 2007¹. Defendant Limehouse Produce, LLC operated within the demised property from May 24, 2007 until it vacated at the

¹ Within a few months of Easy Tray's occupancy, it began to fail. By 2007 Easy Tray was done. A national auction house liquidated the processing equipment. The Defendant Limehouse Produce, LLC, took an assignment of the Lease from Easy Tray with the consent of the Plaintiff. In May 2007, Limehouse Produce, LLC assigned the lease to the single purpose limited liability company, Limetrade, LLC. Exhibit 2. The same individuals owning the membership interest in Limehouse Produce LLC own the membership interests in Limetrade, LLC. Limehouse Produce, LLC, operated within the facility during the entire occupancy of Limetrade. Limetrade exercised several options under the lease. It vacated at the end of the optioned Lease term in 2017. Limetrade, LLC, shortly after vacating the warehouse, terminated by dissolution.

end of the term in the spring of 2017. Limetrade and Limehouse Produce are sister limited liability companies. The same members own or owned each entity.

Plaintiff alleges that the Defendants breached a lease agreement by failing to return a modified concrete slab to its condition at the outset of the Lease, and prior to modifications to the concrete slab. Defendants assert they returned the slab to its condition at the outset of the Lease. Defendant further asserts the Plaintiff is seeking to recover a “betterment.”

In this Court’s view, after consideration of all of the documentary evidence, the testimony of the parties and their respective witnesses, the facts bear out that the parties lacked mutual assent to the Remedy Clause (defined below) of the Lease on which this case turns. In other words, the Plaintiff’s take on the remedy it contemplated by the Lease upon termination is one result and the Defendant’s take on the remedy is quite another result. Where there is a lack of mutual assent to all the terms of a contract in South Carolina, the contract cannot be enforced. In short, Defendant is not liable under the contract for the remedy the Plaintiff seeks. To this end, this Court will make specific findings of fact and conclusions of law by which it will dismiss Plaintiff’s claims with prejudice.

A brief history of the undisputed facts of the Lease reveals that the Plaintiff leased a warehouse described as “a grate-high facility, concrete slab, tilt-up concrete panels, and a steel roof system[.]” to Easy Tray, LLC, a start-up vegetable processing company on April 22, 2004. T V-I, p15,10-11 and Exhibit 1. Easy Tray made several significant modifications to the warehouse facility that involved changes in the concrete slab floor of the warehouse to operate its vegetable processing plant.

Plaintiff's representative, David Simmons, described the improvements: "Easy Tray installed a refrigerator/freezer that was approximately 18, 19,000 square feet inside of the building. Inside of the freezer or refrigerator portion of the unit, they also installed a vegetable washing plant. They -- basically, the concept was that they were going to process vegetables and package them and then distribute them to different companies." T V-I, Page 17, lines 3-10

He continued, "they cut the drain systems in throughout the cooler." T V-I, lines 2-3

And ,

9 They soft cut a slab throughout
10 the cooler. Roughly two, two and a half feet wide. And
11 then they put a factory-designed composite drain system
12 in, which was probably about 8 inches wide, 12 inches, 16
13 inches deep, with a metal grate on it. And then they
14 poured concrete back around it with no structural support,
15 just buried the drain into the dirt, and then just poured
16 concrete back. Did not install any rebar or any
17 reinforcement. Approximately 350 linear feet of drain.
18 So it was teed off in a lot of different places and it was
19 connected into the sanitary sewer in multiple locations.
T V-I, Page 18, lines 9-19

Continuing Mr. Simmons explained, "The major cutting of the slab to install the floor drain system." T V-I Page 18, lines 19-20. Then Mr. Simmons states, "We did know they were gonna [sic] have to put the trench drains in, so we added a clause in our lease that the floor had to be restored at the termination of the lease back to its original condition." (the Court's emphasis) T V-I, Page 18, lines 24 – Page 19, line 1.

The clause to which Mr. Simmons alludes is Paragraph 14 of the Lease. Paragraph 14² entitled "**IMPROVEMENTS**" of the Business Lease states, in part, as follows:

² The next paragraph of the Business Lease is numbered 14, as well. That paragraph is entitled "Liens." The Liens paragraph is not an issue in this lawsuit.

Lessee at its own cost and expense shall fully equipped the Demised Premises with furniture, operating equipment, and all other equipment necessary for the proper operation of the lease business. Modifications to the floors and special electrical and lighting requirements contemplated by the Lessee and acknowledged by the Lessor that are necessary to operate the Lessee's business will be made at the Lessee's expense except for the "step down" transformer required for other tenants. Lessor request that the floor modifications must be remedied at the termination of the lease; Normal wear and tear excepted. Special lighting and electrical equipment and related cooler plant panels and fixtures will be property of the lessee at termination of the lease. Lessee shall not do any alterations or construction work or install any equipment without first obtaining lessors written approval and consent which consent shall not be unreasonably withheld or delayed lessee shall present to lessor plans and specifications for such work at the time approval is sought. . . . Exhibit 1, paragraph 14

The sentence within Paragraph 14, "Lessor request that the floor modifications must be remedied at the termination of the lease; Normal wear and tear excepted[.]" is the term of the Contract over which the parties lacked mutual assent. For ease in reading this Order, the foregoing sentence of paragraph 14 of the Lease will be referred to as the "Remedy Clause."

Additional changes Easy Tray made were described by Mr. Simmons:

5 The refrigerator/freezer unit panels were
 6 anchored to the floor using what is called a ThunderStud
 7 or a wedge anchor. And then inside and out of the cooler,
 8 the tenant installed an angle iron that was also fastened
 9 with ThunderStuds, half-inch in diameter, about every 16
 10 inches to keep their forklift from pushing pallets into
 11 the freezer wall. So it was a bumper system mounted to
 12 the concrete slab. T V-I P 21

And "spacing of those anchor bolts was every 16 inches³." T V-I Page 21, line 20

Plaintiff produced no documentary evidence of the contemplated modifications described in Paragraph 14. Further, Plaintiff produced no evidence of the condition of the concrete slab of

³ That there were 1,000 bolts is not controverted.

the demised property immediately prior to these modifications. Also, Plaintiff produced no evidence of the specifications of the described modifications. At best, this Court finds the Plaintiff's focus of remedial action according to his testimony was "The major cutting of the slab to install the floor drain system⁴." T V-I 18, 19-20.

Plaintiff failed to produce any objective evidence of what "floor modifications must be remedied at the termination of the lease." Id. Exhibit. 1 paragraph 14. Mr. Simmons's testimony on its condition is summed up in a subjective statement, "The slab was in good condition." T V-1, page 105, line 13. Notwithstanding, the Defendant in an effort to remedy the slab deficiencies hired Southeastern Construction Corp., a reputable local commercial general contractor, to fill in the trench drains. Southeastern Construction Corp came in and filled in the trench drains after the refrigeration units were removed. T V-2 Page 98, line 25. Mrs. Limehouse, Defendants' representative, stated she asked Mr. Willis⁵ to "Do whatever he thought he needed to do, to put the floors in -- as -- back to as good a condition as he could, including filling all of the areas of subsidence⁶." T V-2, Page 98, lines 15-20.

The parties' lack of mutual assent to the Remedy Clause is best observed by the divergence of what the Defendants did to remedy the deficiencies in the concrete slab floor of the demised premises and what the Plaintiff described as necessary to meet the remedy. First, the Court addresses the findings of what the Plaintiff described as being done by the Defendants.

⁴ The floor drain system is also referred to as a "trench drain."

⁵ David Willis is the licensed commercial contractor that operates Southeastern Construction.

⁶ During the ten year occupancy by Defendants, the evidence reveals the tenant experienced multiple failures of the slab. Plaintiff alleges these failures were caused by Defendants. Defendants allege the failure was a latent defect in the construction of the warehouse, particularly an insufficient sub-surface. In my view, the cause of the slab failures is not dispositive of the case.

Then the Court addresses the finding of what the Plaintiff specified as necessary to satisfy the Remedy Clause.

Mr. Simmons testified that Defendants removed the refrigerator/freezer, including the angle irons on the floor, removed the steel plates, the refrigeration lines, electrical lines, water lines, and that the water lines that were feeding into the cooler were cut off. No wire were capped. The thunder bolts were grinded off somewhat to the slab, but some were not, leaving a tripping hazard. T V-1 Page 49, line 17 – Page 50, line 4. The Defendants did not controvert this description. Defendants explained they hired a company to remove the refrigerator/freezer. That company grinded down the thunderbolts. Vol 2 Page 91, Line 20. Further, the Defendants hired David Willis' company, Southeastern Construction, to fill in the trench drains and return the floor back to its original condition, wear and tear excepted. T V-2, Pages 53, line 15, 58:8, 71:17, 77:6, 85:17, 92:9, 93:15, 97:13, 14, 16 and 128:11.

The Plaintiff, after the Defendant vacated, and after Defendant had made its attempt to comply with the Remedy Clause, had the clarity to specify what the Remedy Clause meant. He spells this out in an email to Defendants found in Exhibit 9, dated July 19, 2017. Plaintiff published the terms of the email through Mr. Simmons:

24 Yes. "Remove floor drainage system
25 complete" -- should be "completely" -- and cap drain line
1 at connection point beneath slab. Remove concrete around
2 drainage system back to original concrete at saw cut.
3 Install rebar every 16 inches on center, furling 6 inches
4 into both sides of existing concrete cuts. Install
5 moisture barrier and pour 4,000 PSI concrete and finish
6 concrete to the finish of existing slab and to industry
7 practices."

T V-1, Page 56, line 24 – Page 57, line 7

8 Q Okay. And then number 2, just for the sake of
9 thoroughness.
10 "Remove all sawed-off steel pipes that were on
11 the corners of the cooler, saw cut 12-by-12 squares, and
12 install rebar drilling into existing slab" -- it should
13 say "slab" -- six inches, install moisture barrier, and
14 pour 4,000 PSI concrete, and finish concrete to the finish
15 of the existing slab and to industry practices." T V-1, Page 57, lines 10-14

1 Q Okay. All right; after -- item number 3, can
2 you read that out loud for us.
3 A Yes. "Remove all anchor studs used to connect
4 cooler to the concrete floor that had been ground off.
5 Repair holes using an epoxy filler." T V-1, Page 56, lines 1-5

Despite the clarity of the Remedy Clause after the tenant has vacated and has remedied, as it understood the Remedy Clause meant, the Plaintiff failed to produce sufficient evidence at the outset of the Lease what the Remedy Clause meant. It follows, that since the Defendants are only provided the clarity of the Plaintiff's Remedy Clause after the fact, the Defendant could not have assented to the Remedy Clause from the outset of its tenancy. Therefore, the Plaintiff's understanding of the Remedy Clause cannot be enforced against the Defendant.

CONCLUSION OF LAW

The Plaintiff and the Defendants did not have mutual assent to all of the terms of the Contract in that the Remedy Clause specifically lacked mutual assent. "It is well settled in South Carolina that in order for there to be a binding contract between parties, there must be a mutual manifestation of assent to the terms. *Kitchens v. Lee*, 221 S.C. 59, 69 S.E.2d 67. Furthermore, the assent must be as to all of the terms of the contract. *Lee v. Travelers' Insurance Company of Hartford, Conn.*, 173 S.C. 185, 175 S.E. 429. Some terms are considered indispensable to a binding contract. Among these are price, time and place. 17 C.J.S. Contracts, s 36(2). Where a contract does not fix price, there must be a definite method for ascertaining it. 17 C.J.S.

Plaintiff: Virgie C. Simmons Family, LLC
Defendants: Limetrade, LLC, and Limehouse Produce, LLC,
Case Number 2019CP1802217
FINAL ORDER

Contracts, s 36(2)(c). Edens v. Laurel Hill, Inc., 271 S.C. 360, 364, 247 S.E.2d 434, 436, 1978 WL 497885 (1978)

Plaintiff's claims against the Defendant should be, and are hereby, dismissed because the Plaintiff and Defendants did not have mutual assent as to all of the terms of contract in that the Remedy Clause specifically lacked mutual assent. Id. NOW THEREFORE IT IS

ORDERED, ADJUDGED AND DECREED that the Plaintiff's claim against the Defendants is hereby dismissed with prejudice. AND IT IS

ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of the Defendants.

Electronic Signature of the Court Follows

Plaintiff: Virgie C. Simmons Family, LLC
Defendants: Limetrade, LLC, and Limehouse Produce, LLC,
Case Number 2019CP1802217
FINAL ORDER



Dorchester Common Pleas

Case Caption: Virgie C Simmons Family Llc VS Limetrade Llc , defendant, et al

Case Number: 2019CP1802217

Type: Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

Electronically signed on 2024-04-05 12:52:10 page 9 of 9

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1802217

Virgie C Simmons Family Llc
PLAINTIFF(S)

Limetrade Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

PLAINTIFF'S NOTICE OF MOTION AND MOTION TO ALTER, AMEND, OR RECONSIDER IS DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/20/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Dorchester Common Pleas

Case Caption: Virgie C Simmons Family Llc VS Limetrade Llc , defendant, et al

Case Number: 2019CP1802217

Type: Order/Electronic Form 4

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

Electronically signed on 2024-04-20 15:02:57 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.:
	)	
VIRGIE C. SIMMONS FAMILY, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	SUMMONS
LIMETRADE, LLC and LIMEHOUSE	)	
PRODUCE, INC.,	)	
Defendants.	)	
_____	)	
	)	

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint upon the subscribers at their offices located at 288 Meeting Street, Suite 200, Charleston, South Carolina 29401 within thirty (30) days after service hereof, exclusive of the date of such service, and if you fail to answer the Complaint within the aforesaid time, the Plaintiff will apply to the Court for the relief demanded in this Complaint, and judgment by default will be rendered against you for the relief demanded in this Complaint.

BARNWELL WHALEY PATTERSON & HELMS, LLC

s/ Jeffrey M. Bogdan

Jeffrey M. Bogdan

288 Meeting Street, Suite 200

Charleston, SC 29401

(843) 577-7700 (office)

(843) 577-7708 (facsimile)

jbogdan@barnwell-whaley.com

ATTORNEY FOR PLAINTIFF

December 3, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.:
	)	
VIRGIE C. SIMMONS FAMILY, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	COMPLAINT
LIMETRADE, LLC and LIMEHOUSE	)	
PRODUCE, INC.,	)	
	)	
Defendants.	)	
_____	)	

COMES NOW Plaintiff Virgie C. Simmons Family, LLC (hereinafter “Plaintiff”), and states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a limited liability company organized and existing under the laws of South Carolina, with its principal place of business in Charleston County, South Carolina.
2. Defendant Limetrade, LLC was an entity that is currently dissolved but was organized and existing under the laws of South Carolina and regularly transacted business in Dorchester County, South Carolina.
3. Defendant Limehouse Produce, Inc. is an entity that is organized and existing under the laws of South Carolina and regularly transacts business in Dorchester County, South Carolina.
4. The real property that is in dispute in this matter is located in Dorchester County, South Carolina.
5. This Court has jurisdiction over the subject matter of this action.
6. Venue is proper in Dorchester County.

FACTS

7. At all times relevant to this litigation, Plaintiff owned the real property and improvements, which included an approximately 55,000 square foot warehouse building, located at 4791 Trade Street in North Charleston, Dorchester County, South Carolina.

8. On April 22, 2004, Plaintiff entered into a Business Lease with Easy Tray, LLC whereby Easy Tray, LLC agreed to rent 31,888 square feet of the warehouse building (hereinafter the “Premises”) from Plaintiff.

9. On March 3, 2007, Easy Tray, LLC assigned all of its right, title and interest in the Business Lease to Limehouse Produce, Inc. Limehouse Produce, Inc. also assumed all of Easy Tray, LLC’s obligations under the Business Lease.

10. On May 24, 2007, Limehouse Produce, Inc. assigned all of its right, title, and interest in the Business Lease to Limetrade, LLC. Limetrade, LLC also assumed all of Limehouse Produce, Inc.’s obligations under the Business Lease.

11. Upon information and belief, Limehouse Produce, Inc. is Limetrade, LLC’s parent company and/or successor in interest. Limehouse Produce, Inc. and Limetrade, LLC may hereinafter be referred to collectively as “Defendants.”

12. As a result, beginning on May 24, 2007, all rights and obligations under the Business Lease belonged to Defendants.

13. While the Business Lease allowed the tenant thereunder the install equipment and modify the concrete floor in the Premises, the Business Lease contained the following obligation for the Defendants: “floor modifications must be remedied at the termination of this Lease; normal wear and tear excepted.”

14. The Business Lease further required Defendants to repair or pay for any damage to the Premises, aside from reasonable wear and tear, upon demand of Plaintiff.

15. The Business Lease further provided that if Defendants fail to perform their duties under the Business Lease and Plaintiff employs the services of an attorney to enforce the Business Lease, Defendants shall pay the reasonable attorney's fees and costs incurred by the Plaintiff.

16. Defendants and/or one of their predecessor's in interest under the Business Lease made significant modifications to the concrete floor of the Premises.

17. These modifications included cutting into the concrete floor to install drainage trenches and drains as well as installing steel pipes and anchor studs to secure a refrigeration system and fasteners for the racking system.

18. As a result of these modifications and Defendants' use of the Premises, the concrete floor in the Premises sustained serious damage.

19. Upon termination of the Business Lease and once Defendants vacated the Premises, Plaintiff demanded that Defendants return the concrete floor back to its pre-occupancy condition.

20. Although Defendants recognized their duty to return the concrete floor to the pre-Business Lease condition, Defendants failed and/or refused to do so.

21. Within two weeks of refusing to honor the terms of the Business Lease, Limetrade, LLC filed its Articles of Termination.

FIRST CAUSE OF ACTION
(Breach of Contract)

22. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as though set forth herein verbatim.

23. The Business Lease is a binding contract between Plaintiff and Defendants.

24. The Business Lease generally required Defendants to repair or pay for any damage to the Premises, aside from reasonable wear and tear, upon demand of Plaintiff.

25. The Business Lease specifically required Defendants to ensure that “floor modifications must be remedied at the termination of this Lease; normal wear and tear excepted.”

26. Defendants materially breached the Business Lease by failing and/or refusing repair the damaged concrete floor in the Premises and return it to its pre-Business Lease condition.

27. Plaintiff has suffered damages directly and proximately caused by the Plaintiff’s breach.

WHEREFORE, Plaintiff prays the Court to hold Defendants liable for the actions set forth herein, and award the following relief:

- A. Award actual and consequential damages as allowed by law;
- B. Award attorney’s fees and costs as allowed by contract; and
- C. Award any other relief that the Court deems just and equitable.

BARNWELL WHALEY
PATTERSON & HELMS, LLC

s/ Jeffrey M. Bogdan

Jeffrey M. Bogdan
288 Meeting Street, Suite 200
Charleston, SC 29401
(843) 577-7700 (office)
(843) 577-7708 (facsimile)
jbogdan@barnwell-whaley.com

ATTORNEY FOR PLAINTIFF

December 3, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO. 2019-CP-18-2217
	)	
Virgie C. Simmons Family, LLC,	)	
	)	
Plaintiff,	)	ANSWER OF THE DEFENDANTS
	)	LIMETRADE, LLC, AND LIMEHOUSE
	)	PRODUCE, INC.
vs.	)	
	)	
Limetrade, LLC and Limehouse Produce,	)	
Inc.,	)	
	)	
Defendants.	)	

TO: JEFFREY M. BOGDAN, ESQ.
BARNWELL WHALEY PATTERSON & HELMS, LLC

The Defendants Limetrade, LLC, and Limehouse Produce, Inc., (the “Defendants”) answering the Plaintiff’s Complaint alleges and states as follows:

1. Each and every allegation of the Plaintiff’s Complaint not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Defendants demand strict proof thereof.
2. The Defendants admit the allegations of Paragraphs 1, 2, 3, and 4 of the Plaintiff’s Complaint.
3. The Defendants are not required to not required to answer the allegations of Paragraphs 5 and 6 of the Plaintiff’s’ Complaint as said allegations constitute legal conclusions. To the extent an answer is required, the Defendants deny same and demand strict proof thereof.
4. The Defendants admit the allegations of Paragraph 7 of the Plaintiff’s Complaint.
5. The Defendants are without sufficient information to form a belief as to the allegations in Paragraph 8 of Plaintiff’s Complaint, and, therefore, denies same and demands strict proof thereof.

6. The Defendants admit only so much of the allegations of Paragraphs 8, 9, and 10 of the Plaintiff's Complaint that allege there were assignments of leases made as described in those Paragraphs. The Defendants deny the remaining allegations of said Paragraphs and demand strict proof thereof.

7. The Defendants deny the allegations of Paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 of the Plaintiff's Complaint.

8. Answering Paragraph 22 of the Plaintiff's' Complaint, the Defendant repeats Paragraphs 1 through 7 above as though repeated herein verbatim.

9. The Defendants are not required to not required to answer the allegations of Paragraph 23 of the Plaintiff's' Complaint as said allegations constitute legal conclusions. To the extent an answer is required, the Defendants deny same and demand strict proof thereof.

10. The Defendant denies the allegations of Paragraphs 24, 25, 26, and 27 of the Plaintiff's Complaint and demands strict proof thereof.

FOR A FURTHER ANSWER
AND BY WAY OF A FIRST AFFIRMATIVE DEFENSE

11 The Defendants would allege and show that the Plaintiffs' claims, if any, and none of which are admitted, are barred by the applicable statutes of limitation.

FOR A FURTHER ANSWER
AND BY WAY OF A SECOND AFFIRMATIVE DEFENSE

15. The Defendants would allege and show that the Plaintiffs' claims, if any, and none of which are admitted are barred by waiver, estoppel, and laches as the Plaintiffs have failed to act timely to protect their rights.

FOR A FURTHER ANSWER
AND BY WAY OF A THIRD AFFIRMATIVE DEFENSE

16. The Defendants would allege and show that the Plaintiffs' claims, if any, should be dismissed pursuant to Rule 12(b)(6) SCRCF as the Plaintiffs have failed to sufficiently alleged facts upon which relief can be attained

FOR A FURTHER ANSWER
AND BY WAY OF A FOURTH AFFIRMATIVE DEFENSE

17. The Defendants would allege and show that the Plaintiff failed to mitigate its damages in this matter.

FOR A FURTHER ANSWER
AND BY WAY OF A FIFTH AFFIRMATIVE DEFENSE

18. The Defendants would allege and show that any damage complained of by the Plaintiff was caused by other parties over whom the Defendants had no control and was condoned, tolerated, and permitted by the Plaintiff

Wherefore, having fully answered the Plaintiffs' First Amended Complaint, the Defendant prays that this Court enter its Order as follows:

- a. Dismissing the Plaintiffs' Complaint;
- b. Awarding the Defendant its attorneys' fees for defending this matter pursuant to the Lease described in the Plaintiff's Complaint; and
- c. Awarding any and all such further relief as this Court may deem just and proper.

Mt. Pleasant, South Carolina
December 13, 2019

s/ G. Hamlin O'Kelley, III
G. Hamlin O'Kelley, III
S.C. Bar No. 15491
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
hamlin.okelley@buistbyars.com

Attorneys for the Defendants

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO. 2019-CP-18-2217
	)	
Virgie C. Simmons Family, LLC,	)	
	)	
Plaintiff,	)	THE DEFENDANTS LIMETRADE,
	)	LLC, AND LIMEHOUSE PRODUCE,
vs.	)	INC.'s MOTION FOR ENTRY ON
	)	PROPERTY (SCRCP RULE 34)
	)	
Limetrade, LLC and Limehouse	)	
Produce, Inc.,	)	
	)	
Defendants.	)	

TO: JEFFREY M. BOGDAN, ESQ.
BARNWELL WHALEY PATTERSON & HELMS, LLC

The Defendants Limetrade, LLC, and Limehouse Produce, Inc., (the “Defendants”), hereby move, on a date and time to be set by the Court, for an order permitting unconditional entry on the property at issue in this case pursuant to Rule 34 of the South Carolina Rules of Civil Procedure.

The Defendants’ engineering consultants needs access to the property at issue to conduct soil testing and geotechnical engineering.

Pursuant to Rule 11 SCRCP, counsel certifies that consultation would serve no useful purpose.

Please be present to defend if so minded.

Respectfully submitted.

Mt. Pleasant, South Carolina
February 11, 2020

s/ G. Hamlin O’Kelley, III
G. Hamlin O’Kelley, III
S.C. Bar No. 15491
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488

Attorneys for the Defendants

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	C/A No. 2019-CP-18-02217
Virgie C. Simmons Family, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF TRANSFER WITHIN FIRM
	)	
Limetrade, LLC and Limehouse Produce,	)	
LLC,	)	
	)	
Defendants.	)	

PLEASE TAKE NOTICE that the responsibility of this action on behalf of Plaintiff Virgie C. Simmons Family, LLC has been transferred within the firm of Barnwell Whaley Patterson & Helms, LLC, from Jeffrey M Bogdan to K. Michael Barfield.

All future pleadings, motions, orders, notices, and correspondence should be directed to the undersigned K. Michael Barfield.

Barnwell Whaley Patterson & Helms, LLC

s/K. Michael Barfield

K. Michael Barfield (S.C. Bar No. 69400)

P.O. Drawer H

Charleston, SC 29402

(843) 577-7700

mbarfield@barnwell-whaley.com

Counsel for Plaintiff

June 25, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	C/A No. 2019-CP-18-02217
Virgie C. Simmons Family, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S NOTICE OF
	)	WITHDRAWAL OF ITS DEMAND FOR
Limetrade, LLC and Limehouse Produce,	)	JURY TRIAL
LLC,	)	
	)	
Defendants.	)	

Pursuant to SCRCP Rule 38(D), Plaintiff Virgie C. Simmons Family, LLC hereby withdraws its demand for a jury trial with consent of the Defendants Limetrade, LLC and Limehouse Produce, LLC.

Barnwell Whaley Patterson & Helms, LLC

s/K. Michael Barfield

K. Michael Barfield (S.C. Bar No. 69400)

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Charleston, SC 29402

(843) 577-7700

mbarfield@barnwell-whaley.com

Counsel for Plaintiff

March 10, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	C/A No. 2019-CP-18-02217
Virgie C. Simmons Family, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S NOTICE OF MOTION
	)	AND MOTION TO ALTER, AMEND, OR
Limetrade, LLC and Limehouse Produce,	)	RECONSIDER
LLC,	)	
	)	
Defendants.	)	

PLEASE TAKE NOTICE that the undersigned counsel for Plaintiff Virgie C. Simmons Family, LLC will move before the Honorable James E. Chellis (or such other judge as the Court may direct), after ten (10) days from the date of service hereof or at such time and place as the Court may direct, pursuant to Rule 59(e), SCRPC, *inter alia*, for an order altering, amending, or reconsidering the Court's April 5, 2024 Final Order in this matter.

In the alternative, Plaintiff moves for a new trial pursuant to Rule 59(a) for the court to hear additional testimony, as needed, to support amended findings of fact and conclusions of law.

Plaintiff reserves the right to file a Memorandum of Law in support of this Motion at the appropriate time.

Barnwell Whaley Patterson & Helms, LLC

s/K. Michael Barfield

K. Michael Barfield (S.C. Bar No. 69400)

P.O. Drawer H

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(843) 577-7700

mbarfield@barnwell-whaley.com

Counsel for Plaintiff

April 10, 2024
Charleston, South Carolina

RECEIVED

May 22 2024

SC Court of Appeals

ELECTRONICALLY FILED - 2024 May 21 4:30 PM - DORCHESTER - COMMON PLEAS - CASE#2019CPI1802217

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
In the Court of Common Pleas for the First Judicial Circuit

The Honorable James E. Chellis, Master in Equity

Case No. 2019-CP-18-02217

Virgie C. Simmons Family, LLC.....Plaintiff/Appellant

vs.

Limetrade, LLC and Limehouse Produce, LLC Defendants/Respondents

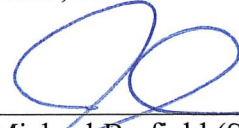
NOTICE OF APPEAL

Plaintiff/Appellant Virgie C. Simmons Family, LLC ("Appellant") hereby appeals from: (a) the Final Order of James E. Chellis, Master in Equity, signed and filed on April 5, 2024 (attached hereto as Exhibit A); and (b) the Form 4 Order of James E. Chellis, Master in Equity, signed on April 20, 2024 and filed on April 22, 2024 (attached hereto as Exhibit B).

Appellant received written notice of entry of the Form 4 Order denying its Motion to Alter, Amend or Reconsider (Exhibit B) on April 22, 2024. This Notice of Appeal is timely served pursuant to Rule 203(c), SCACR

May 21, 2024

BARNWELL WHALEY PATTERSON &
HELMS, LLC

By: 

K. Michael Barfield (S.C. Bar No. 69400)

John W. Fletcher (S.C. Bar No. 69550)

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211 King Street, Suite 300 (29401)

Charleston, SC 29402

Phone: (843) 577-7700

*Attorneys for Appellant Virgie C. Simmons
Family, LLC*

Other Counsel of Record:

G. Hamlin O'Kelley, III

S.C. Bar No. 15491

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Mt. Pleasant, SC 29464

(843) 856-4488

Attorneys for Defendants/Respondents

Limetrade, LLC and Limehouse Produce, LLC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
In the Court of Common Pleas for the First Judicial Circuit

The Honorable James E. Chellis, Master in Equity

Case No. 2019-CP-18-02217

Virgie C. Simmons Family, LLC.....Plaintiff/Appellant

vs.

Limetrade, LLC and Limehouse Produce, LLC Defendants/Respondents

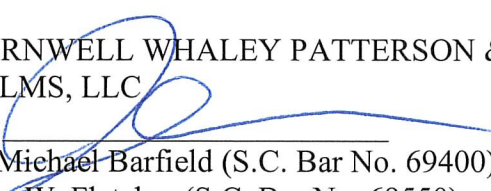
PROOF OF SERVICE OF NOTICE OF CROSS-APPEAL

I certify that I have served the Notice of Appeal on the above-referenced Respondents by email in accordance with the South Carolina Supreme Court's Order re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022) and by depositing a copy of it in the United States Mail, postage prepaid, on May 21, 2024, addressed to their attorneys of record:

G. Hamlin O'Kelley, III
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464

Attorneys for Defendants/Respondents Limetrade, LLC and Limehouse Produce, LLC

BARNWELL WHALEY PATTERSON &
HELMS, LLC

By: 

K. Michael Barfield (S.C. Bar No. 69400)

John W. Fletcher (S.C. Bar No. 69550)

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Phone: (843) 577-7700

***Attorneys for Appellant Virgie C. Simmons
Family, LLC***

**EXHIBIT
A**

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
BEFORE THE EQUITY DIVISION

C/A No. 2019-CP-18-02217

Virgie C. Simmons Family, LLC,
Plaintiff,
vs.
Limetrade, LLC and Limehouse Produce,
LLC,
Defendants.

FINAL ORDER

This matter came before this Court pursuant to a Consent Order of Reference entered March 11, 2022. In its broadest sense this case is a landlord-tenant dispute. As such it is a contract dispute. Although this Court is the Equity Division of the Court of Common Pleas, once a matter is referred to this Court it has the same powers and authority as a Circuit Court. To this end, the case before the Court is a matter at law in that the case is a dispute in contract seeking damages for an alleged breach in a term of the underlying Business Lease (the Lease).

Plaintiff is the landlord. Defendant Limetrade, LLC, is the Tenant by assignment from Easy Tray, LLC, and Limehouse Produce, LLC, dated May 24, 2007¹. Defendant Limehouse Produce, LLC operated within the demised property from May 24, 2007 until it vacated at the

¹ Within a few months of Easy Tray's occupancy, it began to fail. By 2007 Easy Tray was done. A national auction house liquidated the processing equipment. The Defendant Limehouse Produce, LLC, took an assignment of the Lease from Easy Tray with the consent of the Plaintiff. In May 2007, Limehouse Produce, LLC assigned the lease to the single purpose limited liability company, Limetrade, LLC. Exhibit 2. The same individuals owning the membership interest in Limehouse Produce LLC own the membership interests in Limetrade, LLC. Limehouse Produce, LLC, operated within the facility during the entire occupancy of Limetrade. Limetrade exercised several options under the lease. It vacated at the end of the optioned Lease term in 2017. Limetrade, LLC, shortly after vacating the warehouse, terminated by dissolution.

end of the term in the spring of 2017. Limetrade and Limehouse Produce are sister limited liability companies. The same members own or owned each entity.

Plaintiff alleges that the Defendants breached a lease agreement by failing to return a modified concrete slab to its condition at the outset of the Lease, and prior to modifications to the concrete slab. Defendants assert they returned the slab to its condition at the outset of the Lease. Defendant further asserts the Plaintiff is seeking to recover a “betterment.”

In this Court’s view, after consideration of all of the documentary evidence, the testimony of the parties and their respective witnesses, the facts bear out that the parties lacked mutual assent to the Remedy Clause (defined below) of the Lease on which this case turns. In other words, the Plaintiff’s take on the remedy it contemplated by the Lease upon termination is one result and the Defendant’s take on the remedy is quite another result. Where there is a lack of mutual assent to all the terms of a contract in South Carolina, the contract cannot be enforced. In short, Defendant is not liable under the contract for the remedy the Plaintiff seeks. To this end, this Court will make specific findings of fact and conclusions of law by which it will dismiss Plaintiff’s claims with prejudice.

A brief history of the undisputed facts of the Lease reveals that the Plaintiff leased a warehouse described as “a grate-high facility, concrete slab, tilt-up concrete panels, and a steel roof system[.]” to Easy Tray, LLC, a start-up vegetable processing company on April 22, 2004. T V-I, p15,10-11 and Exhibit 1. Easy Tray made several significant modifications to the warehouse facility that involved changes in the concrete slab floor of the warehouse to operate its vegetable processing plant.

Plaintiff's representative, David Simmons, described the improvements: "Easy Tray installed a refrigerator/freezer that was approximately 18, 19,000 square feet inside of the building. Inside of the freezer or refrigerator portion of the unit, they also installed a vegetable washing plant. They -- basically, the concept was that they were going to process vegetables and package them and then distribute them to different companies." T V-I, Page 17, lines 3-10

He continued, "they cut the drain systems in throughout the cooler." T V-I, lines 2-3

And ,

9 They soft cut a slab throughout
10 the cooler. Roughly two, two and a half feet wide. And
11 then they put a factory-designed composite drain system
12 in, which was probably about 8 inches wide, 12 inches, 16
13 inches deep, with a metal grate on it. And then they
14 poured concrete back around it with no structural support,
15 just buried the drain into the dirt, and then just poured
16 concrete back. Did not install any rebar or any
17 reinforcement. Approximately 350 linear feet of drain.
18 So it was teed off in a lot of different places and it was
19 connected into the sanitary sewer in multiple locations.
T V-I, Page 18, lines 9-19

Continuing Mr. Simmons explained, "The major cutting of the slab to install the floor drain system." T V-I Page 18, lines 19-20. Then Mr. Simmons states, "We did know they were gonna [sic] have to put the trench drains in, so we added a clause in our lease that the floor had to be restored at the termination of the lease back to its original condition." (the Court's emphasis) T V-I, Page 18, lines 24 – Page 19, line 1.

The clause to which Mr. Simmons alludes is Paragraph 14 of the Lease. Paragraph 14² entitled "**IMPROVEMENTS**" of the Business Lease states, in part, as follows:

² The next paragraph of the Business Lease is numbered 14, as well. That paragraph is entitled "Liens." The Liens paragraph is not an issue in this lawsuit.

Lessee at its own cost and expense shall fully equipped the Demised Premises with furniture, operating equipment, and all other equipment necessary for the proper operation of the lease business. Modifications to the floors and special electrical and lighting requirements contemplated by the Lessee and acknowledged by the Lessor that are necessary to operate the Lessee's business will be made at the Lessee's expense except for the "step down" transformer required for other tenants. Lessor request that the floor modifications must be remedied at the termination of the lease; Normal wear and tear excepted. Special lighting and electrical equipment and related cooler plant panels and fixtures will be property of the lessee at termination of the lease. Lessee shall not do any alterations or construction work or install any equipment without first obtaining lessors written approval and consent which consent shall not be unreasonably withheld or delayed lessee shall present to lessor plans and specifications for such work at the time approval is sought. . . . Exhibit 1, paragraph 14

The sentence within Paragraph 14, "Lessor request that the floor modifications must be remedied at the termination of the lease; Normal wear and tear excepted[.]" is the term of the Contract over which the parties lacked mutual assent. For ease in reading this Order, the foregoing sentence of paragraph 14 of the Lease will be referred to as the "Remedy Clause."

Additional changes Easy Tray made were described by Mr. Simmons:

5 The refrigerator/freezer unit panels were
6 anchored to the floor using what is called a ThunderStud
7 or a wedge anchor. And then inside and out of the cooler,
8 the tenant installed an angle iron that was also fastened
9 with ThunderStuds, half-inch in diameter, about every 16
10 inches to keep their forklift from pushing pallets into
11 the freezer wall. So it was a bumper system mounted to
12 the concrete slab. T V-I P 21

And "spacing of those anchor bolts was every 16 inches³." T V-I Page 21, line 20

Plaintiff produced no documentary evidence of the contemplated modifications described in Paragraph 14. Further, Plaintiff produced no evidence of the condition of the concrete slab of

³ That there were 1,000 bolts is not controverted.

the demised property immediately prior to these modifications. Also, Plaintiff produced no evidence of the specifications of the described modifications. At best, this Court finds the Plaintiff's focus of remedial action according to his testimony was "The major cutting of the slab to install the floor drain system⁴." T V-I 18, 19-20.

Plaintiff failed to produce any objective evidence of what "floor modifications must be remedied at the termination of the lease." Id. Exhibit. 1 paragraph 14. Mr. Simmons's testimony on its condition is summed up in a subjective statement, "The slab was in good condition." T V-1, page 105, line 13. Notwithstanding, the Defendant in an effort to remedy the slab deficiencies hired Southeastern Construction Corp., a reputable local commercial general contractor, to fill in the trench drains. Southeastern Construction Corp came in and filled in the trench drains after the refrigeration units were removed. T V-2 Page 98, line 25. Mrs. Limehouse, Defendants' representative, stated she asked Mr. Willis⁵ to "Do whatever he thought he needed to do, to put the floors in -- as -- back to as good a condition as he could, including filling all of the areas of subsidence⁶." T V-2, Page 98, lines 15-20.

The parties' lack of mutual assent to the Remedy Clause is best observed by the divergence of what the Defendants did to remedy the deficiencies in the concrete slab floor of the demised premises and what the Plaintiff described as necessary to meet the remedy. First, the Court addresses the findings of what the Plaintiff described as being done by the Defendants.

⁴ The floor drain system is also referred to as a "trench drain."

⁵ David Willis is the licensed commercial contractor that operates Southeastern Construction.

⁶ During the ten year occupancy by Defendants, the evidence reveals the tenant experienced multiple failures of the slab. Plaintiff alleges these failures were caused by Defendants. Defendants allege the failure was a latent defect in the construction of the warehouse, particularly an insufficient sub-surface. In my view, the cause of the slab failures is not dispositive of the case.

Then the Court addresses the finding of what the Plaintiff specified as necessary to satisfy the Remedy Clause.

Mr. Simmons testified that Defendants removed the refrigerator/freezer, including the angle irons on the floor, removed the steel plates, the refrigeration lines, electrical lines, water lines, and that the water lines that were feeding into the cooler were cut off. No wire were capped. The thunder bolts were grinded off somewhat to the slab, but some were not, leaving a tripping hazard. T V-1 Page 49, line 17 – Page 50, line 4. The Defendants did not controvert this description. Defendants explained they hired a company to remove the refrigerator/freezer. That company grinded down the thunderbolts. Vol 2 Page 91, Line 20. Further, the Defendants hired David Willis' company, Southeastern Construction, to fill in the trench drains and return the floor back to its original condition, wear and tear excepted. T V-2, Pages 53, line 15, 58:8, 71:17, 77:6, 85:17, 92:9, 93:15, 97:13, 14, 16 and 128:11.

The Plaintiff, after the Defendant vacated, and after Defendant had made its attempt to comply with the Remedy Clause, had the clarity to specify what the Remedy Clause meant. He spells this out in an email to Defendants found in Exhibit 9, dated July 19, 2017. Plaintiff published the terms of the email through Mr. Simmons:

24 Yes. "Remove floor drainage system
25 complete" -- should be "completely" -- and cap drain line
1 at connection point beneath slab. Remove concrete around
2 drainage system back to original concrete at saw cut.
3 Install rebar every 16 inches on center, furling 6 inches
4 into both sides of existing concrete cuts. Install
5 moisture barrier and pour 4,000 PSI concrete and finish
6 concrete to the finish of existing slab and to industry
7 practices."

T V-1, Page 56, line 24 – Page 57, line 7

8 Q Okay. And then number 2, just for the sake of
9 thoroughness.

10 "Remove all sawed-off steel pipes that were on
11 the corners of the cooler, saw cut 12-by-12 squares, and
12 install rebar drilling into existing slab" -- it should
13 say "slab" -- six inches, install moisture barrier, and
14 pour 4,000 PSI concrete, and finish concrete to the finish
15 of the existing slab and to industry practices." T V-1, Page 57, lines 10-14

1 Q Okay. All right; after -- item number 3, can
2 you read that out loud for us.

3 A Yes. "Remove all anchor studs used to connect
4 cooler to the concrete floor that had been ground off.
5 Repair holes using an epoxy filler." T V-1, Page 56, lines 1-5

Despite the clarity of the Remedy Clause after the tenant has vacated and has remedied, as it understood the Remedy Clause meant, the Plaintiff failed to produce sufficient evidence at the outset of the Lease what the Remedy Clause meant. It follows, that since the Defendants are only provided the clarity of the Plaintiff's Remedy Clause after the fact, the Defendant could not have assented to the Remedy Clause from the outset of its tenancy. Therefore, the Plaintiff's understanding of the Remedy Clause cannot be enforced against the Defendant.

CONCLUSION OF LAW

The Plaintiff and the Defendants did not have mutual assent to all of the terms of the Contract in that the Remedy Clause specifically lacked mutual assent. "It is well settled in South Carolina that in order for there to be a binding contract between parties, there must be a mutual manifestation of assent to the terms. *Kitchens v. Lee*, 221 S.C. 59, 69 S.E.2d 67. Furthermore, the assent must be as to all of the terms of the contract. *Lee v. Travelers' Insurance Company of Hartford, Conn.*, 173 S.C. 185, 175 S.E. 429. Some terms are considered indispensable to a binding contract. Among these are price, time and place. 17 C.J.S. Contracts, s 36(2). Where a contract does not fix price, there must be a definite method for ascertaining it. 17 C.J.S.

Plaintiff: Virgie C. Simmons Family, LLC
Defendants: Limetrade, LLC, and Limehouse Produce, LLC,
Case Number 2019CP1802217
FINAL ORDER

Contracts, s 36(2)(c). Edens v. Laurel Hill, Inc., 271 S.C. 360, 364, 247 S.E.2d 434, 436, 1978 WL 497885 (1978)

Plaintiff's claims against the Defendant should be, and are hereby, dismissed because the Plaintiff and Defendants did not have mutual assent as to all of the terms of contract in that the Remedy Clause specifically lacked mutual assent. Id. NOW THEREFORE IT IS

ORDERED, ADJUDGED AND DECREED that the Plaintiff's claim against the Defendants is hereby dismissed with prejudice. AND IT IS

ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of the Defendants.

Electronic Signature of the Court Follows



Dorchester Common Pleas

Case Caption: Virgie C Simmons Family Llc VS Limetrade Llc , defendant, et al

Case Number: 2019CP1802217

Type: Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

Electronically signed on 2024-04-05 12:52:10 page 9 of 9

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

FORM 4

JUDGMENT IN A CIVIL CASE

EXHIBIT
B

CASE NO. 2019CP1802217

Virgie C Simmons Family Llc
PLAINTIFF(S)

Limetrade Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

PLAINTIFF'S NOTICE OF MOTION AND MOTION TO ALTER, AMEND, OR RECONSIDER IS DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/20/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Dorchester Common Pleas

Case Caption: Virgie C Simmons Family Llc VS Limetrade Llc , defendant, et al

Case Number: 2019CP1802217

Type: Order/Electronic Form 4

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

Electronically signed on 2024-04-20 15:02:57 page 3 of 3

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF DORCHESTER) THE FIRST JUDICIAL CIRCUIT
3) CASE NO: 2019-CP-18-02217

4 Virgie C. Simmons Family,)
5 LLC,)
6 Plaintiff,)
7 vs.) Volume I
8)
9 Limetrade, LLC and)
10 Limehouse Produce, LLC,)
11)
12 Defendants.)
13 _____)
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12 The Master-In-Equity damages hearing, taken
13 before Lori Webber, Stenographic Court Reporter and Notary
14 Public, at Dorchester County Courthouse, 5200 East Jim
15 Bilton Boulevard, St. George, South Carolina, on Monday,
16 October 9, 2023, commencing at 11:13 a.m., The Honorable
17 James Chellis, presiding.

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1 JUDGE CHELLIS: So this is the matter of
2 Virgie C. Simmons Family, LLC, as a plaintiff, against
3 Limetrade, LLC and Limehouse Produce, Inc., defendants.
4 The civil action number is 2019-CP-18-02217. Present
5 today on behalf of the plaintiff is Mr. Kenneth Michael
6 Barfield with Barnwell Whaley, and Mr. George Hamlin
7 O'Kelley from Buist Byars & Taylor. So I'll be glad to
8 hear from you. Do y'all want to make a short opening
9 statement? Would that be helpful.

10 MR. BARFIELD: I think just to put the
11 case in context. I can do it in under a minute.

12 JUDGE CHELLIS: All right.

13 MR. BARFIELD: Your Honor, may it please
14 The Court. Again, I'm Michael Barfield on behalf of the
15 plaintiff. This is a pretty simple case in terms of
16 issues. I don't believe there are any complex matters of
17 law that will have to be dealt with. It's really just a
18 question of how the facts are viewed. My client owns a
19 warehouse in Dorchester County, closer to Charleston than
20 St. George. But he leased a large portion of that
21 warehouse space beginning in 2007 to the defendants.
22 There had been a tenant in that space that was in the
23 produce production and distribution business, and you're
24 gonna hear about that. That tenant went bankrupt or went
25 belly up, and so the lease was assumed by the defendants

1 who ran a similar but not exact copy of that business
2 model. They ran a produce distribution center out of that
3 location for about 10 years. You'll hear that the lease
4 provided that the defendant would be required to restore
5 the facility to its pretenancy condition when they vacated
6 the premises. The issue that we're gonna be dealing with
7 today is the concrete floor and the slab beneath the floor
8 of that facility, and the question is whether or not the
9 defendant did a sufficient job in attempting to restore
10 that to its prelease condition or if what they did was
11 insufficient. You'll hear that ultimately that portion of
12 slab had to be demolished and replaced, so this is an
13 action for damages to recover the cost of that work.

14 JUDGE CHELLIS: Okay.

15 MR. BARFIELD: So that's the case in a
16 nutshell.

17 JUDGE CHELLIS: All right; thank you
18 very much.

19 MR. BARFIELD: You're welcome.

20 JUDGE CHELLIS: Any response?

21 MR. O'KELLEY: Yes, Your Honor. May it
22 please The Court, Hamlin O'Kelley here for the defendants,
23 who are Limetrade -- which is a defunct entity. We'll
24 show that it was wrapped up soon after my clients got rid
25 of this lease -- and also, for Limehouse Produce. And we

1 do disagree with what Mr. Barfield said to some extent.
2 There was a business lease with a crowd called Easy Tray;
3 and Easy Tray was in the business of processing fruits and
4 vegetables, onions, tomatoes. They had this brilliant
5 idea that they could sell presliced products to fast food
6 businesses and they would take them. Unfortunately, that
7 didn't work for Easy Tray. And my folks don't process
8 vegetables or fruits, but they are the largest
9 distributor. You've probably seen the Limehouse Produce
10 trucks all over the Lowcountry. They've been in business
11 for years. They did assume this lease from Easy Tray in
12 2007; and what you're gonna hear from Mr. and Mrs.
13 Limehouse -- who are sitting right here beside me -- from
14 David Willis -- who's back here, he's in the construction
15 business -- and from our expert, Mr. Allen, is that this
16 concrete floor was no good from the get-go. Easy Tray
17 came in, they made modifications, they put in
18 refrigerators, they put in drain lines. And the floor,
19 from the time before they moved in, was cracking, it
20 leaked, it had problems. They were at this space during
21 what Your Honor will remember was the storm of the century
22 back in 2015 when we had 20-plus inches of rain and the
23 place really -- lots of damage. The Limehouses were
24 concerned the whole time that they were gonna lose their
25 ability to actually have fruits and vegetables at the

1 facility because of the water damage and because of issues
2 with storage. They were concerned that if USDA ever came
3 in or DHEC came in, they could lose their license, which
4 would be devastating. And what you're gonna hear is from
5 the time before they even moved their storage, their
6 distribution facility there, they had problems with the
7 floor. And there were problems with the floor throughout
8 the lease. You're going to hear that they dealt with Mr.
9 Simmons and his agent, Kevin Milligan, from the get-go and
10 there was no solution or fix to the problem. When they
11 left, they did make some repairs, as they were required to
12 do; but you can't -- they couldn't restore the floor back
13 to its original condition because its original condition
14 was terrible when they moved in and that's what you're
15 gonna hear today.

16 JUDGE CHELLIS: All right; thank you
17 very much.

18 Mr. Barfield?

19 MR. BARFIELD: All right. Your Honor,
20 I'd like to call David Simmons to the stand.

21 JUDGE CHELLIS: Come up here, sir.

22 DAVID SIMMONS,
23 being first duly sworn by JUDGE CHELLIS, was examined and
24 testified on his oath as follows?

25 JUDGE CHELLIS: You're oath now. Have a

1 seat. If you need something. Let me know. She's got a
2 cup of water for you in case you get dry mouth.

3 THE WITNESS: Thank you.

4 JUDGE CHELLIS: And we'll hear from
5 Mr. Barfield now.

6 MR. BARFIELD: Your Honor, I'm gonna
7 hand Mr. Simmons a copy of the same binder that I handed
8 to you and Mr. O'Kelley. This is a binder of exhibits
9 that's indexed on the first page. And David, if I refer
10 to something, you turn to the tab and we're talk about it;
11 all right?

12 MR. O'KELLEY: And Your Honor, just to
13 make housekeeping a little easier, Mr. Barfield and I met
14 before we went on the record and there's no objection on
15 either side, Exhibits 1 through 17. We can make them
16 joint exhibits or plaintiff's or defendants', however The
17 Court wants to do it, but there'll all admitted and in and
18 we're fine with 1 through 17 that are in the notebook. 16
19 and 17 are loose in the notebook, but you've got 'em; and
20 I've got copies of 16 and 17 for Your Honor.

21 JUDGE CHELLIS: Let's do it this way:
22 I'm gonna make the first 15 exhibits plaintiff's exhibits.

23 MR. BARFIELD: Okay.

24 JUDGE CHELLIS: 16 and 17 will be
25 defendants' exhibits.

1 MR. O'KELLEY: Thank you, Your Honor.

2 JUDGE CHELLIS: Mr. Barfield.

3 DIRECT EXAMINATION

4 BY MR. BARFIELD:

5 Q Mr. Simmons, can you state your full name,
6 please.

7 A David A. Simmons.

8 Q All right. And Mr. Simmons, let's just learn a
9 little bit about you, if we can. Where are you from?

10 A Charleston.

11 Q All right. And do you live in Charleston now?

12 A I do.

13 Q All right. What kind of businesses are you in?

14 A I am a -- my family is in the property
15 management business, as well as leasing and property
16 management. Commercial and light industrial.

17 Q Okay.

18 A That's one.

19 Q That's one avenue.

20 A That's one.

21 Q Okay.

22 A And then I own a company called Simco, Inc. of
23 Charleston, which is a construction business -- I'm a
24 general contractor -- and I do tenant upfits -- commercial
25 tenant upfits and high-end residential spec builder. I

1 then have a business called Millwork Artisans, which is a
2 window and door manufacturing business. We manufacture
3 high-end hurricane-rated windows and doors.

4 Q Okay. And that manufacturing business, where
5 is it currently operating out of, what facility?

6 A 4791 Tradd Street.

7 Q Okay. And is that, in fact, the warehouse that
8 we're here to talk about that was leased by Limetrade and
9 Limehouse Produce?

10 A A portion of it, yes.

11 Q Okay. All right; so you mentioned that you do
12 some commercial leasing. We're here today to talk about
13 this warehouse. Is this the only warehouse that you've
14 ever owned and operated and leased?

15 A No.

16 Q Okay. How many warehouses over the years do
17 you think you've had ownership or operational control
18 over?

19 A Eight buildings.

20 Q Okay. All right. Is there anything
21 exceptional or different about this particular warehouse
22 on Tradd Street?

23 A No.

24 Q All right.

25 All right; is it a climate-controlled facility

1 or...

2 A No.

3 Q It's just a warehouse.

4 A That's correct.

5 Q All right.

6 Okay. All right; what is the street address,
7 so we're clear on that, of the warehouse we're here to
8 talk about today?

9 A 4791 Tradd Street.

10 Q Okay; and whereabouts is that in the
11 Lowcountry, just to reference?

12 A It's close to Dorchester Road and Ashley
13 Phosphate.

14 Q Okay.

15 A Right off of Patriot Boulevard.

16 Q North Charleston area, but in Dorchester
17 County?

18 A That's correct.

19 Q Okay. Did you or one of your companies
20 originally build that warehouse?

21 A We did not.

22 Q Okay; do you know when it was built?

23 A I'm not really sure.

24 Q All right. Do you remember roughly when it was
25 that your company -- and I'm gonna ask you about the

1 company in a second -- but when your company acquired it?

2 A In the early '90s.

3 Q Okay. All right; and what is the name of the
4 company that you own and manage that is the legal owner of
5 that warehouse?

6 A Virgie C. Simmons Family, LLC.

7 Q Okay. Now, just for reference, what is Virgie
8 C. Simmons Family, LLC?

9 A It's a holding company.

10 Q Okay. And are you one of the owners of that
11 holding company?

12 A Yes, I am.

13 Q All right. And do you have day-to-day
14 operational responsibility for that entity?

15 A I do.

16 Q Okay. Who else owns it?

17 A My two sisters.

18 Q Okay. All right; are they more or less silent
19 partners?

20 A That's correct.

21 Q All right.

22 Okay. When you, your LLC -- and for reference,
23 if I say "you," I'm gonna be talking about the LLC, just
24 for reference, unless I make a distinction; okay?

25 A Okay.

1 Q When you acquired that warehouse facility in
2 the early '90s, what was the condition of the property?

3 A It was in great shape.

4 Q Okay. The warehouse? And can you describe
5 what the warehouse looks like? I mean, I know we can all
6 imagine a warehouse; but we're here generally to talk
7 about a concrete slab, so can you maybe start from the
8 slab up and just sorta describe the facility and the size
9 of it?

10 A Yes; it's a grate-high facility, concrete slab,
11 tilt-up concrete panels, and a steel roof system.

12 Q Okay. And does it also have some loading
13 docks?

14 A A portion of the building does.

15 Q Okay. And has your entity made any
16 improvements or modifications to that building since you
17 acquired it?

18 A Yes.

19 Q All right; can you describe those, please.

20 A The loading docks -- and these are recessed
21 loading dock wells -- were put in for a portion of the
22 building, which was the area that the Limehouses were
23 occupying.

24 Q Okay. And who constructed those?

25 A Virgie C. Simmons Family, LLC contracted those

1 out.

2 Q All right. I'm gonna ask you to turn to
3 Exhibit 1 in the notebook and ask you if you've ever seen
4 this document before.

5 A Yes, I have.

6 Q Okay. Can you tell us what this is?

7 A This is a lease that's dated April 22, 2004,
8 between Virgie C. Simmons Family, LLC, and a company by
9 the name of Easy Tray, LLC.

10 Q Okay. And this lease was -- it looks like it
11 is for 31,888 square feet of warehouse space on Tradd
12 Street?

13 A That's correct.

14 Q Is that the entirety of the warehouse?

15 A No, it's not.

16 Q Roughly, what percentage of the warehouse space
17 is that?

18 A 55 percent.

19 Q Okay. And this is in 2004. What was Easy Tray
20 -- what did they tell you they were gonna use the space
21 for?

22 A Vegetable processing.

23 Q Okay. And Mr. O'Kelley mentioned them in his
24 opening, but I wanna make sure we get it officially on the
25 record. Can you be a little more specific about the

1 nature of the processing they were doing, the types of
2 produce, and what their day-to-day operation was like?

3 A Yes. Easy Tray installed a
4 refrigerator/freezer that was approximately 18, 19,000
5 square feet inside of the building. Inside of the -- I'm
6 not sure if it was the freezer or refrigerator portion of
7 the unit, they also installed a vegetable washing plant.
8 They -- basically, the concept was that they were going to
9 process vegetables and package 'em and then distribute 'em
10 to different companies.

11 Q Okay. And you said they had a wash station set
12 up?

13 A Yes.

14 Q I'm picturing a sink and a hose. I imagine it
15 was probably a little more sophisticated or at least
16 bigger than that. Can you kinda describe what that wash
17 station looked like and its approximate size?

18 A Probably a quarter of this courtroom was the
19 actual processing plant.

20 Q Okay. And were there any drains in the floor
21 of that warehouse before Easy Tray came along?

22 A No.

23 Q All right. So Easy Tray's running this
24 rather-large produce wash station. What, if anything, did
25 they do to try and take that water out of the facility

1 rather than having it sort of sit on top of the floor?

2 A Right. They -- basically, they cut the drain
3 systems in throughout the cooler. But the floor was not
4 sloping, it was flat.

5 Q Okay. And you say they cut drain systems. Can
6 you kinda describe for The Court what that looked like and
7 the relative dimensions of those drains?

8 A Yes. And this is approximately. An
9 approximate measurement. They soft cut a slab throughout
10 the cooler. Roughly two, two and a half feet wide. And
11 then they put a factory-designed composite drain system
12 in, which was probably about 8 inches wide, 12 inches, 16
13 inches deep, with a metal grate on it. And then they
14 poured concrete back around it with no structural support,
15 just buried the drain into the dirt, and then just poured
16 concrete back. Did not install any rebar or any
17 reinforcement. Approximately 350 linear feet of drain.
18 So it was teed off in a lot of different places and it was
19 connected into the sanitary sewer in multiple locations.

20 Q Okay. As the landlord, did you understand that
21 when Easy Tray moved in they were gonna have to make some
22 modifications to the facility to accommodate their usage?

23 A Yes. We did know they were gonna have to put
24 the trench drains in, so we added a clause in our lease
25 that the floor had to be restored at the termination of

1 the lease back to its original condition.

2 Q Okay. And is that clause in Exhibit 1, the
3 lease I just handed you? I believe if you turn to page 4
4 under paragraph 14, "Improvements." About midway through
5 that paragraph.

6 A Yes, it does.

7 Q Okay. And what does it say specifically with
8 the regard to the floor?

9 A "Lessor requests that floor modifications must
10 be remedied at the termination of this lease, normal wear
11 and tear excepted."

12 Q Okay. Is that a sentence or provision that you
13 put in other warehouse leases for other facilities or for
14 other tenants?

15 A I have never had that in any of my leases.

16 Q All right; so what was about this Easy Tray
17 lease in 2004 that caused you to add that particular
18 provision?

19 A The major cutting of the slab to install the
20 floor drain system.

21 Q Okay. Now did Easy Tray -- now you knew they
22 were gonna put the drains in, it sounds like; is that
23 right?

24 A Yes.

25 Q Did Easy Tray work with you or any of your

1 companies on the design or the construction of those
2 drains?

3 A They did not.

4 Q All right. Do you know if they took out a
5 building permit before they cut into the slab to install
6 those drains?

7 A I do not.

8 Q All right. And do you know if they had a
9 licensed contractor or design professional work with them
10 on the installation of those drains?

11 A I do not.

12 Q All right. You mentioned that it was not
13 sloped toward the floor.

14 A Toward the drain.

15 Q I'm sorry; the floor was not sloped towards the
16 drain. Common sense dictates, but why would that be a
17 desirable attribute if you were gonna install those
18 drains?

19 A I don't know.

20 Q Okay.

21 A Because water's not gonna flow to the drain.

22 Q Thank you. That's all I was asking about.

23 Okay. So you mentioned that they installed
24 some refrigeration equipment, as well?

25 A Yes.

1 Q Other than simply placing that equipment on top
2 of the floor, presumably up against one of the walls, did
3 they install any hardware to anchor and/or protect that
4 equipment from normal warehouse activities?

5 A Yes. The refrigerator/freezer unit panels were
6 anchored to the floor using what is called a ThunderStud
7 or a wedge anchor. And then inside and out of the cooler,
8 the tenant installed an angle iron that was also fastened
9 with ThunderStuds, half-inch in diameter, about every 16
10 inches to keep their forklift from pushing pallets into
11 the freezer wall. So it was a bumper system mounted to
12 the concrete slab.

13 JUDGE CHELLIS: How far was it out?

14 THE WITNESS: About a foot, inside and
15 out.

16 BY MR. BARFIELD:

17 Q Okay. And what was the spacing of those anchor
18 bolts along the floor?

19 A Every 16 inches.

20 Q Okay. And just for -- because I don't usually
21 get to do show and tell in trial, I just wanna ask you --
22 we're gonna probably talk about these for a different
23 purpose later, but I wanted to ask you if these are good
24 -- forgive the dust, but what is this?

25 A This is what I was referencing as a

1 ThunderStud. It's a wedge anchor. Hole is drilled in the
2 concrete, then it's tapped down into the concrete and it
3 expands. This is actually a sample. We took some samples
4 when we were determining what we were gonna do with the
5 floor. So we had a core drill.

6 Q Okay.

7 A And you'll see, the bottom of the anchor there,
8 they drilled all the way through the slab.

9 Q Okay. And you said these were about a foot out
10 from one of the walls outboard of the refrigeration
11 equipment; right?

12 A Inside and out of all the refrigeration walls.

13 Q Okay. And these were roughly 16 inches on
14 center across?

15 A All the way around the -- every wall upfit that
16 was a refrigerator panel.

17 Q Okay. I don't know that you've got an exact
18 count, but do you know roughly how many of these were in
19 the floor?

20 A There was over a thousand.

21 Q Okay. So we've got over 300 square feet of --
22 linear feet of floor drain Easy Tray installed, and over a
23 thousand of these; correct?

24 A That's correct.

25 Q And then also some angle irons that they had

1 installed into the slab?

2 A The angle iron ThunderStuds is inclusive of
3 that 1,000 plus anchors.

4 Q All right. And is an angle iron just a right
5 angle piece of metal?

6 A Yes.

7 Q All right. And again, did you or any of your
8 companies have any role in the installation of any of that
9 hardware?

10 A No.

11 Q Okay. You were aware of it.

12 A I was not aware of the angle iron until after
13 it was installed.

14 Q Okay. So the drains you expected, the angle
15 irons came as a surprise?

16 A Yes.

17 Q All right. About how long was Easy Tray in
18 operation in that space?

19 A I think roughly 24 months, plus or minus.

20 Q All right; if the date on their lease, Exhibit
21 1, is April 22nd, 2004 -- and then we're gonna look at
22 Exhibit 2 next. And this is an assignment of the lease,
23 and it's dated May 24th, 2007. Does that refresh your
24 memory about --

25 A Yeah. So roughly, three years.

1 Q Okay. So tell me how Easy Tray came to vacate
2 the premises and Limehouse Produce came on to the scene.

3 A Easy Tray, we knew they were struggling a
4 little with their business plan. And out of the blue, the
5 Limehouses came to us through their attorney to see if we
6 would let them assume the lease. And we did not have any
7 agreement outside of allowing them to assign the lease.

8 Q Okay.

9 A The responsibilities and the verbiage in the
10 lease was assumed by the Limehouses.

11 Q Okay. So this lease, Exhibit 2, that's the
12 assignment?

13 A That is.

14 Q Okay. And that is from Easy Tray to Limehouse
15 Produce, Incorporated?

16 A That's correct.

17 Q Okay. And --

18 MR. O'KELLEY: Your Honor, I need to
19 object to that. The assignment's from Limehouse Produce,
20 Inc. to Limetrade, LLC. It's between my clients.

21 MR. BARFIELD: That's the next one.

22 MR. O'KELLEY: That's what I have as 2
23 in mine.

24 MR. BARFIELD: Oh, you're right; sorry.

25 MR. O'KELLEY: Just keeping the record

1 clean.

2 MR. BARFIELD: Yep, yep, yep. Apologize
3 for the sidebar, but there was a point of clarification.
4 Exhibit 2 is actually, I believe, an assignment from
5 Limehouse Produce, Inc., to Limetrade, is it not?

6 THE WITNESS: That's correct.

7 BY MR. BARFIELD:

8 Q Okay. However, it references an earlier
9 assignment from Easy Tray to Limehouse Produce, Inc; is
10 that correct?

11 A That is correct.

12 Q Okay. And Mr. O'Kelley and I just had a
13 colloquy and determined that we've never seen a copy of
14 the original assignment, or at least we don't have it in
15 our files. So that document did at one time and may still
16 exist; is that --

17 A That's correct.

18 Q Okay. All right. So looking at Exhibit 2, if
19 you look at the second paragraph that starts with
20 "Whereas," can you read that for the record, please?

21 A Yes. "Whereas, assignment dated March 3, 2007,
22 Easy Tray, LLC, assigned all of the rights, title and
23 interest and said business lease to Limehouse Produce,
24 Inc., and by consent to assignment dated March 1, 2007,
25 lessor acknowledges consent to this assignment."

1 Q All right. So the missing original assignment
2 from Easy Tray to Limehouse Produce, Inc. predates this
3 assignment, Exhibit 2, by roughly two months?

4 A Yes.

5 Q All right. What, if I may ask, was your
6 understanding of why the assignment went from Limehouse
7 Produce, Incorporated to Limetrade?

8 A Just the attorney for the Limehouses said that
9 they were just starting a new LLC for this facility.

10 Q Okay. And did you have any -- take any issue
11 with that at the time?

12 A I did not.

13 Q Okay. All right; if you look down at numbered
14 paragraph 3 on this exhibit, could you read that for us,
15 please?

16 A Yes. "Assignee hereby assumes all of the
17 obligations of the assignor arising or occurring on or
18 after the date herein of under the business lease and
19 shall make all payments and keep and perform all
20 conditions and covenants of the business lease in the same
21 manner as if assignee were the original lessee
22 thereunder."

23 Q Okay. And so that kinda speaks for itself,
24 doesn't it?

25 A Yes, it does.

1 Q Okay. In your mind, did that include the
2 obligation to restore the floor to the pre Easy Tray lease
3 condition per the terms of Easy Tray's lease?

4 A Yes.

5 Q Okay. Was that made clear to the Limehouses to
6 your understanding?

7 A Through their attorney, yes.

8 Q Okay. All right; Easy Tray had been there for
9 over two years at that point. Closer to three, I believe,
10 if my math is correct. You said when they initially
11 leased the space, the floor was basically pristine or in
12 its original condition. Was that your testimony?

13 A Yes.

14 Q Okay. What did the top of the slab look like
15 when Easy Tray vacated and Limehouse moved in under this
16 assignment? We talked about the drains and the
17 installation of the equipment. So let's maybe take that
18 apart. Did Easy Tray take any of their equipment with
19 them? Or sell it to third parties.

20 A I'm not sure if the Limehouses bought
21 everything. I know they bought the cooler. I was under
22 the impression they owned the wash plant. And who
23 disposed of it, I'm not sure.

24 Q Gotcha. So was the wash plant taken out
25 shortly after Easy Tray vacated?

1 A Yes.

2 Q Okay. And you don't know who purchased it or
3 what was done with it, but it was gone.

4 A That's correct.

5 Q Okay. Was there any damage to the surface of
6 the slab that had been caused by Easy Tray's operations at
7 the time of the original assignment?

8 A There was a section around the wash plant and
9 beneath the wash plant that the acid out of the onions had
10 basically eaten the top of the concrete. And so Andrea
11 Limehouse wanted to get it replaced, because she was not
12 sure if USDA or whoever did their inspections would pass
13 that area, so the Limehouses paid my construction company,
14 Simco, Inc of Charleston, to come in and cut a section of
15 the slab out and replace it.

16 Q Okay.

17 A And that was in the area of the processing
18 area.

19 Q Okay. If you would flip over to tab 13.

20 A Okay.

21 Q That's Exhibit 13. This is -- I'll represent
22 that the document is the defendants' forensic engineering
23 report, but at this point I just want you to flip the
24 photo section. And that section is separately paginated.
25 So if you look at the photo, page 6 of 14. It's actually

1 overall page 104. It's in the bottom center.

2 A Okay.

3 Q Since we're talking about that onion acid
4 related damage to the top of the floor, do any of these
5 photos show that condition at the time of the lease?

6 A No.

7 Q Okay. Does photograph 13, is that similar to
8 what the floor looked like with the acid damage?

9 A Yes.

10 Q Okay. And again, how much of the floor roughly
11 was affected by that condition?

12 A The section that was removed I think was
13 approximately like 30-by-30, plus or minus. And I don't
14 have the quote in front of me.

15 Q Sure.

16 A But the effects went out further than that
17 immediate area that got replaced.

18 Q Okay. And so do you know if -- do you know how
19 -- well, I'm trying to figure out how to ask this question
20 fairly. You said the slab was not sloped.

21 A That's correct.

22 Q Toward the drains.

23 A That's correct.

24 Q Okay. This section of floor that was damaged
25 by the onion acid from the wash station, was that adjacent

1 to the drain? In other words, how did that water not make
2 it to the drain?

3 A I can't tell you for sure if it's adjacent to
4 it or how close it was just by looking at this photo.

5 Q Okay. Would it be fair to say, though, that if
6 that water with the acid is sitting on top of the floor
7 long enough to do that damage, that it's sitting there for
8 a time?

9 A That's correct.

10 Q All right. In other words, it's not making its
11 way to the drain immediately.

12 A Correct.

13 Q Okay. All right; so any other damage that you
14 can recall that was caused by Easy Tray's operations?

15 A The installing of all the ThunderStuds and
16 having 'em all in line and so close together would cause
17 the cracking of the slab in various places due from
18 running forklifts in a certain path continuously, as well
19 as, you know, the slab in some of the areas of their
20 pathways began to crumble, like at expansion joints. As
21 you can see, there's a steel plate in picture number 14.

22 Q Right. We're still talking about Easy Tray
23 now.

24 A Oh. We never had any complaints of that while
25 Easy Tray was there.

1 Q So if we kind of rewind that testimony a little
2 bit, in the Easy Tray era at the time that they left, we
3 talked about the floor drains, the ThunderStuds, the angle
4 irons, and this area where the washing station had caused
5 damage to the top of the slab because of acid runoff;
6 okay? Was there any other observable damage to the top of
7 the slab as of the time Easy Tray vacated?

8 A No.

9 Q Okay. And so the cracks you mentioned and
10 such, those came later?

11 A Yes.

12 Q Okay. All right. So moving along, you
13 assigned Limetrade -- well, Easy Tray assigned Limehouse
14 Produce, which later assigned Limetrade, LLC, the lease.

15 A Yes.

16 Q Who was your main point of contact for
17 Limetrade?

18 A Limetrade, I believe, was through their
19 attorney, Joe Schachte.

20 Q Okay.

21 A Or Joseph Schachte.

22 Q All right. And what about after -- you know
23 they were for 10 years. In terms of day-to-day points of
24 contact, did you go through their contact or did you have
25 somebody at Limetrade that you could talk to?

1 A Andrea would typically call our office. Or if
2 I was up there, she would, you know, pull me aside.

3 Q Okay.

4 A Sometimes she would talk to my superintendent,
5 Mr. Milligan.

6 Q Okay. We'll hear from him in a minute.

7 A Yeah.

8 Q And that's Andrea Limehouse?

9 A That's correct.

10 Q Okay. Can you give us sort of a brief rundown
11 of what Limetrade's operations within that warehouse were
12 by contrast to Easy Tray.

13 A Volumewise, the Limehouse -- or Limetrade was a
14 lot greater volume than -- than the Easy Tray. The amount
15 of product that was coming and going daily was
16 considerably more.

17 Q Okay. And we've established they removed the
18 wash station. So what was the nature of their operation?
19 Was it -- I think the word distribution was used. Is that
20 your understanding?

21 A Yes. They would bring in -- 18-wheelers would
22 bring fresh produce in, and it would then come in to the
23 refrigeration units, whether it was the freezer,
24 refrigerator, or both. And I believe some of the
25 produce -- and I'm not sure which one -- would come in

1 with ice or have water on it, because the floor would stay
2 wet in a certain area.

3 Q Okay.

4 A And then the Limehouses would then I guess
5 break the product down, and then they would distribute it
6 to restaurants and stores and whatnot from there.

7 Q Okay. And we've mentioned they still had the
8 Easy Tray refrigeration equipment there. Is it safe to
9 assume that that equipment was used to cold store produce?

10 A Yes.

11 Q Okay. We haven't talked about bollards, but
12 were there bollards also installed in the slab?

13 A Yes. So every opening going into the
14 refrigerator/freezer or around any door, they installed --
15 and I believe it was the Limehouses, because I think they
16 were not there when Easy Tray was there -- these steel
17 bollards that were put in concrete and then filled with
18 concrete to protect the openings for a forklift from
19 running into -- getting too close to the door.

20 Q Okay. And about how high were those bollards?

21 A At least three feet, maybe close to four feet.

22 Q Okay. To your knowledge -- and maybe this is a
23 better question for Mr. Milligan; but to your knowledge,
24 what type of equipment was Limetrade using to operate that
25 produce distribution center?

1 A They had several forklifts, regular style
2 forklifts, as well as battery-powered pallet jacks. You
3 know, you basically walk behind and they were powered.

4 Q Okay. So a pallet jack, we talking about like
5 wood shipping pallets that you could put -- that forklifts
6 put their forks into and can raise 'em up and down?

7 A Yes.

8 Q Okay; so a pallet jack is what? It performs a
9 similar operation on a smaller scale?

10 A Right.

11 Q Okay. And you said that's a walk-behind piece
12 of equipment?

13 A Yes.

14 Q Okay. If you flip to Exhibit 3. It's a
15 document that bears the letterhead of Simco, Inc. of
16 Charleston. And again, what is Simco?

17 A It is my construction company, my personal
18 company.

19 Q Okay; and that's a --

20 A I'm a general contractor.

21 Q That was not the lessor for this warehouse;
22 right?

23 A No.

24 Q Okay. What is this document, this contract
25 that's got some itemized construction costs on it?

1 A This is the area of the slab that I mentioned
2 earlier when the Limehouses moved in that the onions
3 had -- the acid from it had eaten the concrete; and they
4 wanted to replace this section, and so it was cut out and
5 replaced.

6 Q Okay. For a cost of just shy of \$24,000 it
7 looks like?

8 A Yes.

9 Q Okay.

10 A Roughly 1,900 square feet.

11 Q And did Simco perform that work?

12 A Yes.

13 Q Okay. And who paid for that work?

14 A The Limehouses. Or Limehouse Produce.

15 Q Got it. All right. If you turn to the next
16 document, Exhibit 4, do you know what this is? Doesn't
17 appear that you or your company was a party to this
18 document, but do you know what this references?

19 A I do not.

20 Q Okay.

21 All right. So if we flip over to Exhibit 5,
22 this says "Option to Renew Business Lease." And did
23 Limetrade, in fact, have renewal options under its lease?

24 A Yes.

25 Q Or I should say under its assignment of Easy

1 Tray's lease?

2 A Yes.

3 Q And it appears they exercised that option on --
4 this appears to be the -- is this the first or the second
5 occasion? I guess this would've been the first, since
6 they originally took over the lease in 2007?

7 A So this was in July of 2011; so yes, I believe
8 so.

9 Q Okay. So they took it over for?

10 A Three more years.

11 Q Three more years. And then just to sort of put
12 a pin in that, if you flip over to Exhibit 6, this is a
13 similar document entitled "Lease Extension and Renewal,"
14 and it's dated March 22nd of 2014.

15 A Can I back up one second?

16 Q Absolutely.

17 A Correct something; I'm sorry.

18 Q Please.

19 A Back on document number 5, the renewal of
20 business lease, this was actually their second option for
21 three years.

22 Q Okay; okay.

23 A Yeah.

24 Q But they did lease continuously through this
25 time period.

1 A That's correct.

2 Q Okay. And so then we get to Exhibit 6. This
3 is a lease renewal dated 2014, and this is for another
4 three years? I'm sorry; two years, it appears.

5 A So this was -- they were asking to extend for
6 an additional term of two years and terminating on June
7 30th, 2016.

8 Q Okay. And then if you look at paragraph 2,
9 they had another option beyond that.

10 A They had three one-year options after that.

11 Q Okay. So Limetrade occupied the premises from
12 2007 until when? Year. We don't need an exact date.

13 A I think 2019.

14 Q Okay. I think it was 2017.

15 A Oh, I'm sorry; yeah, 2017.

16 Q This suit was filed in 2019.

17 A Yeah.

18 Q Okay.

19 A That's right; sorry.

20 Q All right. So does that refresh your
21 recollection, 2017?

22 A Yes, yes.

23 Q All right. Okay; tell me about any
24 communications that you recall between yourself and
25 representatives of Limetrade over the course of their

1 10-year tenancy regarding the condition of the floor slash
2 slab.

3 A Sorry; I'm doing this from memory.

4 Q Sure.

5 A The -- there were some issues that would
6 basically arise during their tenancy of the concrete
7 basically crumbling in their pathways where they were
8 running their fork trucks, near expansion joints, some
9 near the floor drain systems. They were running over the
10 floor drains with their equipment. Virgie C. Simmons
11 Family, LLC, in the beginning was repairing some of those
12 areas. And basically, Virgie C. Simmons Family was
13 telling the Limehouses that, you know, we had water that
14 was on the floor, it was getting, you know, into the slab.
15 And basically, at some of the expansion joints in these
16 pathways, it would over time pump up some liquid dirt.
17 After -- for a good many -- I'll probably say five, six
18 different times, we'd go in and patch some of these areas.
19 Most of the time they'd come back. At that point in time,
20 the Limehouses just started putting steel plates over 'em.

21 Q Okay.

22 A So once that started occurring, there really
23 was not a lot of communication at all.

24 Q Okay. So at some point they began to exercise
25 self-help with regard to those conditions?

1 A That's correct.

2 Q All right. Did you make it clear that -- after
3 attempts to fix it on your behalf, was there discussion
4 whereby you made it clear that they were on their own
5 going forward?

6 A Yes, that they would have to start paying for
7 these repairs.

8 Q Okay. And why is that? What was your position
9 vis-a-vis the lease with regard to them being responsible
10 to pay for those repairs?

11 A This was not a normal warehouse operation.

12 Q Okay. You mentioned some cracks appeared. Can
13 you describe in a general sense -- and we're gonna look at
14 a diagram that shows the location and size of those cracks
15 in a little bit, but can you sorta describe in a general
16 sense what those cracks looked like and how many of them
17 there were.

18 A The cracks were pretty big in size. I mean,
19 they were not just a hairline crack. And they typically
20 would run from some areas where the ThunderStuds might be
21 or the saw cut where the floor drains were put in or from
22 the areas that were damaged in the forklift path.

23 Q Okay.

24 A So you would see 'em spidering off.

25 Q Okay. When you said the forklift path, was it

1 your observation that Limetrade ran its equipment on
2 obviously not tracks, but in roughly the same pathways?

3 A Yes.

4 Q Okay. Now you mentioned that they had
5 complained about some muddy water coming up through those
6 cracks and even some of the expansion joints in the floor;
7 is that right?

8 A Correct.

9 Q Do you remember roughly when those complaints
10 started?

11 A Probably several years after they moved in.

12 Q Okay. They were there for 10 years. Maybe we
13 can shed some light on that. I'm gonna pass you up what's
14 been premarked as Defendants' 16.

15 A Okay.

16 Q And this is a whole big stack of papers, but
17 I'm only gonna ask you about the first one. You can take
18 a second to read over that if you need to.

19 JUDGE CHELLIS: 16?

20 MR. BARFIELD: Yes, Your Honor. Well,
21 it's Defendants' 1. We had talked about doing 'em
22 jointly.

23 BY MR. BARFIELD:

24 Q You okay with the first e-mail, David?

25 A Yes.

1 Q Okay. And what is the date on that e-mail?

2 A December 1, 2014.

3 Q Okay. And that is from whom?

4 A Andrea Limehouse to my e-mail address.

5 Q Okay. And what's the substance of that e-mail?

6 What is it addressing?

7 A You're aware of many problems with the
8 foundation in the building.

9 Q Okay. The foundation, it's a slab foundation;
10 right?

11 A No.

12 Q Okay. What kind of foundation is it?

13 A It has a continuous footer foundation.

14 Q Okay. Does she appear to be talking about the
15 actual foundation, or is she using the word foundation to
16 refer to the slab?

17 A I believe the foundation is being used as a
18 slab.

19 MR. O'KELLEY: Your Honor, I'm gonna
20 object as to saying what my client thought.

21 JUDGE CHELLIS: It's sustained.

22 MR. BARFIELD: Certainly.

23 JUDGE CHELLIS: So if you wanna clear it
24 up.

25 MR. BARFIELD: I'll clarify, Your Honor.

1 Thank you.

2 JUDGE CHELLIS: Okay.

3 BY MR. BARFIELD:

4 Q What is she complaining of? What conditions?

5 A I believe she was meaning the slab.

6 Q Okay. And what --

7 MR. O'KELLEY: Again, Your Honor, he's
8 saying what she means, so I'm gonna object to that.

9 JUDGE CHELLIS: Sustained.

10 MR. BARFIELD: Okay.

11 Can you read the e-mail into the record,
12 please?

13 THE WITNESS: Yes. "I called twice last
14 week and asked for someone to come and address the
15 (unintelligible) in the concrete floor at our warehouse
16 and 4791 Tradd Street, North Charleston. You are aware of
17 many problems with the foundation in this building, as you
18 came and observed yourself recently and your maintenance
19 department repaired one serious damage place a few months
20 ago. I would not be calling repeatedly if there was not
21 another serious issue, and this morning became bad enough
22 to cause a piece of handling equipment to turn over with a
23 loaded pallet. We are both very lucky there was not
24 physical injury, although there was damage to the product
25 that fell. I'm sending one of my employees to purchase a

1 steel plate at your expense to cover the area until
2 suitable repairs are made. The area that was already
3 repaired is deteriorating rapidly also and I have had to
4 cap that area with a plate, as well. I'm sending this as
5 a written notice that this matter requires immediate
6 attention."

7 BY MR. BARFIELD:

8 Q Okay. So she referenced a prior meeting onsite
9 in that e-mail; right?

10 A Yes.

11 Q And it talks about observing problems with the
12 foundation. Do you remember the meeting that precipitated
13 that e-mail?

14 A I vaguely remember, yes.

15 Q Okay. What was being discussed when you were
16 out there? Was it the floor or the foundation?

17 A The concrete floor.

18 Q Okay. And what about the floor -- I mean, she
19 sorta describes her predicament there. What do you
20 remember about the condition of the floor when you were
21 out there before that e-mail?

22 A There was an area, once again, near like an
23 expansion joint in their forklift pathway that had started
24 deteriorating.

25 Q Okay. Now she mentioned that they had already

1 put down at least one steel plate in that e-mail, does she
2 not?

3 A She did.

4 Q Okay. And I think you testified earlier that
5 the steel plates started being installed after you, the
6 landlord, said it was -- the ball was in their court for
7 repairs.

8 A Yes.

9 Q Is that your testimony?

10 A Yes.

11 Q Okay. So does the date of that e-mail then
12 kinda refresh your memory about when the issues and the
13 complaints about the floor of the warehouse began?

14 A Yes.

15 Q Okay. And when would that have been?

16 A December of 2014.

17 Q Okay. Well, that's when they put down the
18 first plate.

19 A Right.

20 Q Do you believe that you, the landlord, had made
21 attempts to repair or address those cracks and problems
22 with the floor prior to that e-mail?

23 A Yes.

24 Q Okay. Subsequent to that e-mail, was it your
25 position that it was all tenant responsibility?

1 A We were heading in that direction, yes.

2 Q All right. Okay; you mentioned that there was
3 water coming up through the cracks in the slab. Do you
4 know what the source of the water was?

5 A In the -- there were areas of the floor that
6 were wet continuously. As I mentioned earlier, I don't
7 know if it was from washdown or from ice melting or what.
8 So continuous amount of water on the floor seeping through
9 the floor going through the expansion joints or around the
10 floor drains or, you know, not sure where.

11 Q Okay.

12 A But it was in the area that they would run
13 their forklifts. They had like -- in the
14 refrigerator/freezer unit, there were multiple door
15 openings that they could run in and out of. And
16 basically, I wanna say they ran kind of like on an outer
17 square in each compartment but traveled pretty much the
18 same path day in/day out.

19 Q Okay. Was there a vapor barrier underneath the
20 slab of this warehouse?

21 A Yes.

22 Q Okay. And so we got a slab, and then is there
23 a vapor barrier?

24 A Yes.

25 Q And that's made of what?

1 A Plastic.

2 Q Plastic sheeting?

3 A Yes.

4 Q And beneath that was what?

5 A Filter.

6 Q And was this the original slab for that
7 warehouse?

8 A Yes.

9 Q And the original foundation, as well?

10 A Yes.

11 Q Okay. Had any modifications been made to the
12 slab or the foundation from beneath or adjacent to since
13 you had acquired the property?

14 A Not until we cut out that one square that the
15 Limehouses had paid for.

16 Q Okay. All right. I'm certain the defendants
17 are gonna ask you about a series of photographs showing
18 severe flooding and standing water on the property. I'll
19 let them do that. But what was the drainage like around
20 that property in an average rain event?

21 A It drained properly.

22 Q Okay. So if you were to see a picture with
23 water filling up the dock wells and extending beyond,
24 would that be an unusual situation?

25 A Yes.

1 Q Okay. The Limehouses -- I should say
2 Limetrade, leased I believe you said roughly 55 percent of
3 the premises?

4 A Plus or minus, yes.

5 Q Okay. Was all of the space that they leased
6 the space we've been talking about with the refrigeration
7 equipment and forklifts and such, or was there additional
8 space that they used for other purposes?

9 A There was space outside of the
10 refrigerator/freezer unit. They had office space, as well
11 as areas that they would -- people would come and pick up
12 produce or they would load their trucks out that was
13 outside of the refrigerated unit. So yes, there was
14 additional square footage outside.

15 Q Okay. Do you recall if any of the conditions
16 that we've been discussing with the cracking and the water
17 coming up through the cracks and expansion joints, if
18 those conditions ever manifested in their office space?

19 A Did not.

20 Q Okay. What about the other 45 percent of the
21 warehouse? What was that being used for during
22 Limetrade's tenancy?

23 A A portion, roughly 18,000 square feet of it,
24 was used, multiple tenants. One was a indoor skate park.
25 After that, it was used for -- movie sets were fabricated

1 there and stored there. And that was on several occasions
2 that they leased it.

3 Q Okay.

4 A Then there is another section which was used by
5 my Millwork Artisans business as a paint facility for
6 painting our windows and doors. And then another tenant
7 called Division 8, which is a heating and air company,
8 they occupied the remainder part of the building.

9 Q Okay. And did any of those tenants use similar
10 forklift or pallet jack type equipment to Limetrade?

11 A The skate park did not. The users prior to
12 them -- and I cannot remember who was in there before, but
13 forklifts were used. After the skate park moved out,
14 forklifts have been used, still to this day, in the
15 building. Division 8 has a forklift, but not a lot of
16 forklift traffic. And they're in a small space.

17 Q Okay. And have there been any other tenants
18 that you did not list for that other space since Limetrade
19 vacated?

20 A Yes. So after Limetrade vacated and we
21 discovered all the issues we had with the floor --

22 Q I'm talking about the other 45 percent still.

23 A Oh. There's no issue.

24 Q Right. But what about other tenants? Have
25 there been any other tenants that you did not describe?

1 A After -- so in roughly 20,000 square feet,
2 currently is my manufacturing business, Millwork Artisans.

3 Q Okay.

4 A And we manufacture windows and doors and have
5 heavy equipment running all day long, forklifts running.

6 Q Okay. Trucks coming in and out?

7 A Yes.

8 Q Okay. Have any of the cracking or
9 water-intrusion issues that have plagued the space that
10 Limetrade leased manifested in any other portions of the
11 warehouse?

12 A No.

13 Q Okay. At any time?

14 A No.

15 Q Was the slab on that side, the other 45 percent
16 of the warehouse roughly, was that the same slab that was
17 underneath the Limetrade space?

18 A Yes.

19 Q Okay. Poured at the same time?

20 A I assume so, yes.

21 Q Okay. No reinforcement or modifications after
22 you bought the building?

23 A No.

24 Q All right. So Limetrade gave notice to you
25 that they were intending to vacate the premises roughly in

1 2017?

2 A Yes.

3 Q Okay. Did they say why?

4 A Andrea said several times that they wanted to
5 build a building and own their own building.

6 Q Okay. And after they vacated, do you know
7 where they moved?

8 A To their new building. I'm not sure of the
9 address.

10 Q Okay. So to your knowledge, they took
11 distribution kinda in-house?

12 A Yes.

13 Q All right.

14 All right. So when they left, tell me what the
15 progression of events was with regard to the condition of
16 the slab after they moved out.

17 A So when they finally moved out, they -- I don't
18 know if they sold the refrigerator/freezer unit and
19 equipment or they removed it, but somebody came in and
20 removed it all, including the angle irons on the floor,
21 the steel plates. Basically just lifted a lot of those up
22 and took those. The refrigeration lines, electrical
23 lines, water lines, water lines that were feeding into the
24 cooler, everything was just cut off. No wires capped, no
25 nothing, just cut and took it out and left. They did

1 grind the ThunderStuds off somewhat to the concrete, but a
2 lot of 'em were still sticking up and, you know, would be
3 a tripping hazard; so that's when I wrote a letter to
4 Andrea about the condition of the space.

5 Q Okay. And if you look at Exhibit 9.

6 A Okay.

7 Q This is an e-mail chain and it's not -- I
8 believe it's in reverse chronological order,
9 unfortunately, or at least part of it. Can you turn to
10 the second-to-the-last page in that exhibit?

11 JUDGE CHELLIS: Which exhibit are you
12 on?

13 MR. BARFIELD: 9.

14 THE WITNESS: Okay.

15 BY MR. BARFIELD:

16 Q Okay. And if you look at the page before it,
17 it's the e-mail information. Is this an e-mail from you
18 to Mrs. Limehouse?

19 A The last page?

20 Q The second-to-the-last page.

21 A Okay; second-to-the-last page at the top of the
22 page is, yes, from me to her.

23 Q Okay; and if you look at the page before that,
24 it's got the sending information and --

25 A Yes.

1 Q It appears to be dated Wednesday, July 19th,
2 2017?

3 A Yes.

4 Q Okay. And is this e-mail the letter that you
5 were referring to a moment ago?

6 A Yes.

7 Q Okay. Can you kinda summarize what your
8 position was in that letter?

9 A So we had -- I think it was the day before, or
10 maybe even the day of the e-mail, had a walkthrough of the
11 space. It was myself, Andrea. I'm not sure who else was
12 with us. Actually, I believe she had her contractor
13 there. He was walking through with us. And, you know,
14 she was ready to turn the space back over to -- to me, and
15 I was very surprised the condition that the space was in
16 at this time. As you can see in my e-mail, there were
17 many things that were wrong with the space.

18 Q Okay. In the second paragraph there you say
19 "The filling of the existing drainage trough with concrete
20 is not" -- it says "expectable." I think that was
21 supposed to be "acceptable"?

22 A Yes.

23 Q Okay. "Furthermore, the finishing or the lack
24 thereof is totally not acceptable. I'll be glad to meet
25 you onsite again for another walkthrough. I need all

1 repairs made ASAP." That implies that some attempt had
2 been made to fill the drains.

3 A Yes.

4 Q Can you tell me what had been done to your
5 observation?

6 A Yes. Basically, they had a contractor come in,
7 remove the metal grates off the top of the drains, and
8 just pump it full of concrete. And basically, took the
9 back of a shovel and just dragged it across the finish;
10 and that's how they left it.

11 Q Okay. Do you know if any reinforcement had
12 been added to that concrete?

13 A At the time, I did not. But when we tore it
14 out, it had not.

15 Q Okay. Had the drain pipe that was in that
16 trench drain, had that been pulled out before they
17 backfilled it?

18 A No.

19 Q Okay. Do you know how many days it took them
20 to perform that work?

21 A I was, you know, up at the property several
22 times. I wanna say like two or three days. And then I
23 saw time cards that were presented in my deposition from
24 their contractor that looked like several days.

25 Q Okay. Do you know how many guys they had out

1 there working, to your observation?

2 A Two or three; cannot remember.

3 Q Okay. Now what about the anchor bolts and
4 ThunderStuds and the angle irons? You said some attempt
5 had been made to grind those down?

6 A That was prior, I think that by whomever took
7 the cooler and the angle iron out. I'm not sure who did
8 that. But yes, they attempted to grind some of 'em off.

9 Q Okay.

10 A Flush with the concrete.

11 Q All right; you said "attempted." Were they
12 successful?

13 A They cut off what was penetrating up, but it
14 might be at an angle so part of the bolt's still hanging
15 up or they might've gouged the concrete where they tried
16 to cut too deep. So it was all different varieties of
17 that.

18 Q Okay. Was that job acceptable to you after the
19 fact?

20 A No.

21 Q Okay. And what were your concerns? Why would
22 that not be okay to simply shave those anchor bolts down
23 level or close to?

24 A Tripping hazards, different operations coming
25 in afterwards that would want a smooth floor.

1 Q Okay. All right; after -- item number 3, can
2 you read that out loud for us.

3 A Yes. "Remove all anchor studs used to connect
4 cooler to the concrete floor that had been ground off.
5 Repair holes using an epoxy filler."

6 Q Okay. So when you say "remove," what did you
7 mean?

8 A Core drill and take it out.

9 Q Okay. Would that be something similar to the
10 sample that we looked at earlier of the anchor bolt with
11 the concrete around it?

12 A Yes.

13 Q Okay. So is this the method you're describing,
14 coring it out?

15 A Yes.

16 Q So that would leave a hole.

17 A Yes.

18 Q And you asked for it to be backfilled with
19 epoxy?

20 A Yes.

21 Q Item number 1, it appears that you set forth
22 the way you believed the drain system should be addressed.
23 Can you read that?

24 A Yes. "Remove floor drainage system
25 complete" -- should be "completely" -- and cap drain line

1 at connection point beneath slab. Remove concrete around
2 drainage system back to original concrete at saw cut.
3 Install rebar every 16 inches on center, furling 6 inches
4 into both sides of existing concrete cuts. Install
5 moisture barrier and pour 4,000 PSI concrete and finish
6 concrete to the finish of existing slab and to industry
7 practices."

8 Q Okay. And then number 2, just for the sake of
9 thoroughness.

10 A "Remove all sawed-off steel pipes that were on
11 the corners of the cooler, saw cut 12-by-12 squares, and
12 install rebar drilling into existing slab" -- it should
13 say "slab" -- six inches, install moisture barrier, and
14 pour 4,000 PSI concrete, and finish concrete to the finish
15 of the existing slab and to industry practices."

16 Q Okay. Is it fair to say that items 4 through 7
17 have either been remedied to date and/or are not part of
18 this case?

19 A They have been remedied and not part of this
20 case.

21 Q Okay. So really, we're talking about 1 through
22 3?

23 A Yes.

24 Q Okay. If you flip forward one page -- we're
25 going in reverse chronological order -- there's an e-mail

1 from you to Mrs. Limehouse dated July 25th, 2017; do you
2 see that?

3 A Yes.

4 Q Okay. Can you read that, please?

5 A Yes. "I want to make sure you received my
6 e-mail from July 19th, 2017. Please let me know if you
7 would like to meet this week. I'm really needing to get
8 this resolved. If you are not planning to do any of the
9 repairs, please let me know so I can move forward to my
10 legal counsel for review."

11 Q Okay. Had you received any response in any
12 format from Mrs. Limehouse between your e-mail of the 19th
13 and this follow-up on the 25th?

14 A Not that I'm aware of.

15 Q Okay. If you then flip over one more page,
16 there's an e-mail from a lawyer named Gray Taylor to you
17 dated later that day. Do you see that?

18 A Yes, I do.

19 Q Okay. Is this the first response you got on
20 behalf -- from or on behalf of the Limehouses to your
21 request for a better repair job?

22 A Yes.

23 Q Okay. And if you'll look at the second
24 paragraph there.

25 A Okay.

1 Q Of his e-mail. Can you read that for us,
2 please?

3 A Yes. "Section 14 of the lease entitled
4 "Improvements" deals with improvements and modifications
5 which the tenant was authorized to make to the premises.
6 And specifically authorized the tenant to make
7 modifications to the floors and special electrical and
8 lighting requirements. Section 14 further authorized the
9 tenant to make certain floor modifications. Of these
10 authorized improvements, only the floor modifications are
11 required to be returned to the prior condition at lease
12 termination. Specifically, section 14 states 'the lessor
13 requests that the floor modifications must be remedied at
14 the termination of this lease, normal wear and tear
15 excepted.'"

16 Q Okay. So while there's some pushback in this
17 e-mail, Mr. Taylor says in bold and underlined, "only the
18 floor modifications are required to be returned to their
19 prior condition at lease termination."

20 A That's correct.

21 Q Did I read that correctly?

22 A Yes.

23 Q Okay. At this point in time, had the floor
24 been returned to the condition it was in prior to the
25 lease?

1 A No.

2 Q Okay. All right. Was it your position that at
3 a minimum, items 1 through 3 listed in your e-mail of July
4 19th what should be done in your mind to restore the floor
5 to its prelease condition?

6 A That's correct.

7 Q Okay. All right. And then one more e-mail in
8 that chain. If you flip one more page forward -- or I
9 should say back -- actually, you know what, that's outta
10 sequence. I don't wanna ask you about that and confuse
11 the timeline.

12 After that exchange between yourself and
13 Mr. Taylor, did Limetrade send anybody out there to
14 address any of the floor conditions?

15 A No.

16 Q Okay. Was there any more discussion of why
17 they did not acknowledge your request or did not comply
18 with your request as to how that should be remedied?

19 A No. And at that point in time, I turned it
20 over to your colleague, Jeff Bogdan, to respond and to see
21 if we could come up with a solution and there was no
22 solution.

23 Q All right. So the lawyers got involved, and
24 then everything --

25 A Yes.

1 Q -- went to hell in a hand basket.

2 A Yes.

3 Q It always happens that way; okay. And here we
4 are today, years later.

5 A Yes.

6 Q Okay. Well they had left the premises, the
7 floor was in the condition that you described. What was
8 your next move with regard to dealing with that space?

9 A Well, we didn't know what to do. I mean, the
10 floor was a mess. We could not rent the space as-is with
11 the condition that it was in. I had to make a decision to
12 mitigate my damages on renting, and we were able to lease
13 it to a tenant, NRX, with the condition that we would
14 patch over everything that was there with a temporary
15 patch. Which we did, patched over the voids in the
16 concrete or the cracks. We ground all of the ThunderStuds
17 off a little bit more and just to put patch, knowing what
18 we were doing was a Band-aid. The floor had to be
19 removed. But to mitigate the damages, they were willing
20 to accept the floor if we patched it. And I believe
21 that's in writing from the tenant or their agent. Which
22 would give us some time to sort through who was gonna pay
23 for the flooring being replaced. At the time of the
24 expiration of their lease, we basically had to make a
25 decision. We got a new tenant that would not take the

1 floor in its as-is condition. So we, through your
2 colleague, told them we were moving forward with the
3 replacement.

4 Q Right. Let me stop you there. We're gonna
5 break that up a little bit. You mentioned a company
6 called NRX.

7 A Yes.

8 Q Was that the next tenant that you brought in?

9 A Yes.

10 Q Okay. And if you look at tab 11, Exhibit 11.

11 A Yes.

12 Q This is a document bearing the letterhead of
13 Simco of Charleston. And again, that's your construction
14 company?

15 A Yes.

16 Q Okay. And it says "Draw Request." And the
17 "re" line says "Temporary floors requested by NRX for
18 damages by Limehouse Produce."

19 A Yes.

20 Q So what is this?

21 A So we began grinding off the ThunderStuds and
22 patching the floor, and the first draw was for 760 pounds
23 of patch. That was not enough to do everything we had to
24 do, as you will see through several more of the patches.
25 Also, NRX came in and inspected and said "We need some

1 more filling." So we were basically at their mercy, as
2 well, to how flush we got the floor.

3 Q Got it.

4 A A lot of the floor drains had been pressed
5 down. The concrete that they used to put the floor drains
6 in was pressed below the slab in the areas that they were
7 highly trafficked with forklifts.

8 Q Did that create kind of a divot?

9 A Yes. So we were putting a lot of patch in
10 those areas. And that was a self-leveling patch.

11 Q All right. And it's titled "Draw Request."
12 And I note that at the bottom it says labor and materials
13 for a little over \$17,000.

14 A Uh-huh (witness indicated an affirmative
15 response). That's correct.

16 Q Is that what Simco charged to Virgie Simmons
17 Family, LLC, for that work?

18 A Yes.

19 Q Okay. Do you know who on behalf of Simco
20 actually performed that work?

21 A Many a people. I think maybe Mr. Milligan was
22 involved with some of that. I don't know how much of it
23 he was there for, but...

24 Q What was the nature of NRX's business in that
25 warehouse?

1 A NRX was a white glove furniture assembly. They
2 had a contract with Restoration Hardware. And so the
3 product would come in; and they would basically unbox it,
4 put it together, and then load it up and deliver to your
5 home white glove.

6 Q Okay.

7 A So they had high-end expensive furniture that
8 they were transporting across these floors on rolling
9 dollies, so it had to be pretty flat for them to do that.

10 Q Gotcha. Did the deviations in the levels or
11 the surface of the floor of the warehouse, did that cause
12 any issues with them?

13 A It did prior to their leasing the space, and
14 then we assured them that we would temporary patch it as
15 necessary.

16 Q Gotcha. So when and why did they leave?

17 A They lost their contract with Restoration
18 Hardware.

19 Q Okay. So they didn't have need for the space
20 anymore?

21 A That's correct.

22 Q What happened next? NRX vacated?

23 A NRX was responsible for paying rent until we
24 found a new tenant. We found a new tenant, which is L&W
25 Supply. It was CK Supply, which was now L&W Supply.

1 Q Okay. And what is their business?

2 A They are in metal studs, sheetrock, acoustical
3 ceilings, ceiling grid insulation.

4 Q Okay. Construction material?

5 A Yes.

6 Q Okay. So what need did they have of this
7 warehouse space?

8 A To store product. Building materials.

9 Q Okay. Is it heavy?

10 A Very.

11 Q And what type of equipment do they use in there
12 presently?

13 A Big forklifts.

14 Q All right. Before they moved in, was anything
15 further done to remedy the issues with the floor?

16 A Yes.

17 Q All right; tell me how that came about and what
18 was done.

19 A L&W Supply looked at the space. Of course, the
20 floor was a condition, you know, of the lease. The area
21 that was bad had to be removed and replaced. So I had to
22 make a decision on behalf of the LLC to move forward with
23 having the slab replaced. The slab everywhere where the
24 cooler refrigeration unit was installed was removed. And
25 the rest of the slab, other than a couple spots, was not

1 removed. As it didn't need to be.

2 Q Okay. So do you recall roughly how many square
3 feet of the slab were removed and replaced?

4 A Little over 18,000 square feet, plus or minus.

5 Q Okay. And was that a request from -- what was
6 the name of the company?

7 A L&W Supply. CK at the time.

8 Q Getting lost in alphabet soup.

9 A Right.

10 Q L&W Supply, was that at their request?

11 A Yes.

12 Q Okay. Why, to your knowledge, was the floor as
13 repaired in 2018 by Simco serviceable for NRX but not
14 acceptable to L&W Supply?

15 A The floor drains that had been patched were
16 still in areas uneven, and they were concerned --

17 MR. O'KELLEY: Your Honor, I'm gonna
18 object to telling us what anyone else who's not in the
19 courtroom and not a party about.

20 JUDGE CHELLIS: Overruled. Tell me what
21 the problem was at that point in time.

22 THE WITNESS: The cracks in the floor.
23 They basically wanted to make sure that the slab was in
24 usable shape. The last thing they wanted was a big
25 forklift with a heavy load going through the floor. Also,

1 the floor drains pushing those down, because it was very
2 clear that they were already being pushed down from weight
3 loads. So the area underneath the refrigerator cooler was
4 the area that had to come out. That's where the
5 ThunderStuds were, the majority of the cracking. The
6 drains were in that area, the bollards were in that area.
7 So it was pretty much confined to the refrigerator/freezer
8 unit.

9 MR. BARFIELD: Okay. And so --

10 JUDGE CHELLIS: Let me just ask
11 something. I mean, you'd already observed all of those
12 problems before you even had any discussions with L&W;
13 right?

14 THE WITNESS: That's correct.

15 MR. BARFIELD: I wanted to make sure
16 you're done.

17 JUDGE CHELLIS: I think it was hearsay
18 the way he testified to it, but my understanding was that
19 he already knew it as a problem and I was just clarifying
20 that he already knew those issues before he met with them;
21 that's all.

22 MR. BARFIELD: Gotcha; thank you. Thank
23 you, Judge.

24 So was this an issue that needed to be
25 addressed before L&W would occupy the premises?

1 THE WITNESS: That's correct.

2 BY MR. BARFIELD:

3 Q Okay. So you mentioned a decision was made to
4 cut out and replace a section of the slab; right?

5 A That's correct.

6 Q All right. How did you go about setting that
7 process in motion? Did you deal with any design
8 professionals?

9 A Well, at that time I had contacted Jordan with
10 Berenyi Engineering; and we visited the site, looked at
11 the condition. We discussed, I believe, core drilling,
12 the ThunderStuds out, filling, taking the drains out,
13 properly putting concrete back in that. And that would
14 fix the ThunderStuds and the drains, but wouldn't fix the
15 cracking of the slab. So, basically, I think together we
16 decided it was probably more economical to replace that
17 section of the slab, as we would never have a slab that
18 was designed as it was to handle with all the cracking and
19 penetrations.

20 Q Okay. Speaking of the cracking, after the
21 Limehouse operation vacated that part of the warehouse,
22 was there still water coming up through the cracks?

23 A No.

24 Q Okay. Who performed the removal and
25 replacement of that section of the slab?

1 A Simco Inc of Charleston.

2 Q Okay. I'm gonna ask you to flip to Exhibit 12.

3 A Okay.

4 Q And this is really tiny on this size paper, but
5 do you recognize this document?

6 A Yes.

7 Q Okay; what is this?

8 A This is quote from Berenyi, Incorporated to
9 remove the slab and install a new slab in that same area.

10 Q All right. You referenced that Berenyi had an
11 engineering operation. Do they also have a construction
12 side?

13 A Yes.

14 Q All right. And is this estimate from their
15 construction side, to your knowledge?

16 A Yes.

17 Q Okay. And what is the estimate total down at
18 the bottom?

19 A \$423,102.76, I believe. It's kinda small.

20 Q I think you got it right.

21 A Okay.

22 Q But it is kinda small. But you did not hire
23 Berenyi to do the work.

24 A Not the actual construction, but I did consult
25 with them on what needed to be done and how it should be

1 done.

2 Q Okay. So the design work was from their
3 engineering people?

4 A Yes.

5 Q All right. And specifically, with whom did you
6 work?

7 A Jordan Behringer.

8 Q Okay. And he's here in the courtroom today to
9 testify?

10 A Yes.

11 Q Okay. Why did you take it in-house with Simco
12 rather than going with Berenyi?

13 A We had a real short timeline with L&W moving
14 in. I mean, it was really short because we had to have
15 curing time for the new slab. And just to be able to get
16 on it and get it done. I mean, we had like a 90-day
17 window from start to finish, so we were not sure that
18 anybody else could get it done that quickly.

19 Q Okay. Did Simco submit an invoice to Virgie
20 Simmons Family, LLC, for that work?

21 A Yes.

22 Q Okay. And I have to confess, I don't have
23 that. Do you recall what the amount of the invoice was?

24 A Yeah, it was more than this. I know that.

25 Q Okay.

1 A Because we decided to do some additional work
2 while we were doing what we were doing.

3 Q Okay. Was it roughly --

4 JUDGE CHELLIS: When you said "it was
5 more than this," you mean it was more than the Berenyi
6 price?

7 THE WITNESS: Yes.

8 BY MR. BARFIELD:

9 Q But I believe you said the scope was broader
10 than what was contemplated in the Berenyi estimate?

11 A Yes.

12 Q All right. What beyond what was estimated by
13 Berenyi did Simco do?

14 A Well we had all of the electrical and
15 everything else that had to be done, so the scope of work
16 was a broader scope. And the trades had to work with the
17 replacement of the floor because we were having to work
18 overhead, as well. Because all the lighting had been
19 removed over the refrigerator/freezer.

20 Q Uh-huh (counsel indicated an affirmative
21 response).

22 A As they said, I think somewhere that they put
23 in better lighting. Well that was inside of their
24 refrigerator/freezer. But when they took it, there was no
25 lighting above. We had all the conduits, we had all the

1 water lines that they had running into the
2 refrigerator/freezer just cut off. Everything had to be
3 removed and capped off properly along with the electrical.
4 Refrigerant lines were still up there, and drain lines.
5 So there was a lot of additional work that had to be done
6 and coordinated with the pouring of the slab.

7 Q Perhaps when we take a break, I'll be able to
8 find the Simco invoice. Was that a written invoice?

9 A Yes.

10 Q Okay. We should be able to find that, but you
11 recall it was in excess of this \$423,000 amount?

12 A Yes.

13 Q Okay. What year was that work done?

14 A I would have to look at the -- do you -- it was
15 like 120 days prior to the lease to CK Supply.

16 Q Okay. If I tell you that Coastal Engineering's
17 report for the defendant said they visited the site on
18 February 19th, 2020 -- and that's in Exhibit 13 -- does
19 that refresh your memory?

20 A Yes. I think we probably started in January.

21 BY MR. BARFIELD:

22 Q Okay. And so we've established that at that
23 point with regard to your dealing with the Limehouses, it
24 was -- the lawyers were the method of communication?

25 A That's correct.

1 Q Okay. Did you or your attorneys ever offer to
2 allow the Limehouses, their attorneys, and/or any experts,
3 to come out there and inspect the slab prior to its
4 demolition in roughly January of 2020?

5 A Yes. There were many e-mails from Mr. Bogdan
6 to I believe their attorney.

7 Q Okay.

8 A And what dates we were moving forward based on
9 our schedule.

10 Q Okay. And did they ever take you up on those
11 invitations?

12 A Not until after the slab was taken out.

13 Q Okay. So is it your recollection that roughly
14 a month after or in mid-February of 2020 somebody came out
15 on behalf of the Limehouses to look at the space?

16 A Yes.

17 Q Okay. What was the condition of the space at
18 the time?

19 A I believe -- I'm not sure if all of the slab,
20 but a good portion of the slab had been saw cut and
21 removed and piled up behind the building. And also, we
22 had excavated the dirt below, as one of the
23 recommendations by Berenyi was to put rock down per
24 today's standards.

25 Q Okay. If you were to turn to Exhibit 13, tab

1 13.

2 A Okay.

3 Q This is that Coastal Engineering report.

4 A Yes.

5 Q Again, I'm just gonna refer you to a couple of
6 photographs.

7 A Okay.

8 Q So if you would flip to page number 96 on the
9 bottom center.

10 A Okay.

11 Q Okay. What is the photo in the upper-left-hand
12 corner showing?

13 A That is an area of the -- photograph number 37?

14 Q Yeah.

15 A You can see where the concrete had been saw cut
16 out and there's some tracks. But that was also a ramp
17 going to the outside.

18 Q Okay.

19 A Dirt ramp.

20 Q Okay. Is the general -- does the edge of the
21 slab here at the top of this photograph sort of generally
22 depict what the space looked like post demolition but
23 prerestoration?

24 A Yes.

25 Q All right. And is this what it looked like

1 when the Limehouses' expert went out there and took these
2 photos?

3 A Yes.

4 Q Well that's a dumb question. Obviously, if he
5 took the photos, that's what it looked like.

6 This photo shows a little bit of standing water
7 down there. And I'm sure there's gonna be some discussion
8 about that later on in the day. Do you know where that
9 water came from?

10 A Um --

11 Q What was the weather like that day or right
12 before?

13 A Several weeks before and the week of this
14 inspection, it was raining.

15 Q Okay.

16 A We had had a lot of rain. But we had also just
17 finished saw cutting this concrete with water, walk-behind
18 saws.

19 Q Wet saws?

20 A Yes.

21 Q Okay.

22 A And equipment running inside and out in the
23 pouring-down rain hauling the debris to the back of the
24 building.

25 Q Okay. So to your observation, did any water

1 come bubbling up from the ground during this process?

2 A No.

3 Q All right. I think we touched on this earlier,
4 but I do wanna underscore it. When you were talking with
5 Mr. Jordan Behringer, the engineer from Berenyi, about
6 your options, did you discuss with him the option of
7 salvaging the existing slab and making repairs?

8 A I believe, as I mentioned earlier, that we did
9 have a discussion of core drilling and cutting out the
10 floor drain and properly pouring it back with rebar and
11 special concrete, that that would be an option, but we
12 still had the hurdle of the cracks. You know, we were
13 talking big cracks, not little cracks, what we would do
14 with those. So that's really what determined the
15 replacement of the slab.

16 Q Okay. Was it more cost effective in your mind
17 to do the replacement?

18 A Yes. Just the core drilling and the saw
19 cutting and filling of the drains was gonna be in the
20 high-200 range.

21 Q Right.

22 A Almost \$300,000.

23 Q Because, again, you said there were over a
24 thousand of these guys?

25 A Yes.

1 Q And each one would have to be core drilled and
2 backfilled with epoxy?

3 A Yes.

4 Q And what about the concrete that had been
5 poured into the drains by Limetrade's contractor that you
6 were dissatisfied with? Could that be salvaged?

7 A Not at all. The drain needed to come out.
8 When the floor drains were put in, the contractor,
9 whomever put 'em in, should have put rebar tying into the
10 concrete going underneath the floor drain installed
11 properly. All they did was saw cut the concrete, dug a
12 trench, put the drain in, and just poured some concrete on
13 both sides.

14 MR. O'KELLEY: Your Honor, I'm gonna
15 move to strike that. He's just given an opinion. He
16 hasn't been qualified as an expert.

17 JUDGE CHELLIS: I don't think that's
18 really an opinion; that's just a statement.

19 MR. O'KELLEY: He said they should have.

20 JUDGE CHELLIS: Oh, that part.

21 MR. O'KELLEY: Yes, sir.

22 JUDGE CHELLIS: All right. Well, I'll
23 sustain that portion but allow the portion of the
24 testimony as to what he observed. That is to say, they
25 cut strips through the concrete, laid the pipe in, and

1 then filled it up with cement; is that correct?

2 THE WITNESS: That's correct.

3 MR. O'KELLEY: Thank you, Your Honor.

4 Just wanted to clarify.

5 JUDGE CHELLIS: I understand.

6 MR. BARFIELD: And we'll have testimony

7 about that.

8 JUDGE CHELLIS: And when I say "they,"

9 I'm speaking of Easy Tray, not Limetrade.

10 MR. BARFIELD: Correct.

11 JUDGE CHELLIS: Okay.

12 BY MR. BARFIELD:

13 Q Was the entirety of the slab underneath the
14 space that Limetrade had leased removed?

15 A No.

16 Q Okay. Approximately how much of the slab was
17 left?

18 A Well, I think the cooler was 18,000, plus or
19 minus, square feet; and I think the lease said earlier,
20 31,888.

21 Q Okay. So the difference, then, is what was
22 left?

23 A That's correct.

24 Q Have there been any issues with the performance
25 of the portion of the slab that was not removed since LC

1 moved in?

2 A CK Supply.

3 Q L&W. I'm mixing it all up; sorry.

4 A None whatsoever.

5 Q Okay. Are they running their forklifts and/or
6 storing construction materials on top of the portions of
7 the slab that were not removed?

8 A Yes.

9 Q Okay. And there's been no cracking?

10 A No.

11 Q Has there been any water come up through cracks
12 or joints?

13 A No.

14 Q Any complaints from that tenant about the
15 performance of the slab?

16 A Zero.

17 Q All right. And again, we've gone over this,
18 but have there have been any similar issues with cracking
19 or water coming up through cracks or joints in any other
20 portion of the warehouse?

21 A No.

22 Q And part of that is occupied by your own custom
23 door and millwork company.

24 A Yes; that's correct.

25 Q All right. Would those conditions be -- if

1 those were manifesting in your space, what would you do
2 about it? In other words, could you run your operation
3 with all of that going on?

4 A Could not.

5 Q Okay.

6 MR. BARFIELD: Your Honor, I believe I'm
7 done with my direct of Mr. Simmons. However, I do want to
8 have an opportunity to supplement with that the Simco
9 invoice for the removal and replacement of the slab,
10 because I'll have Berenyi with me and so --

11 JUDGE CHELLIS: Do you have a problem
12 with that?

13 MR. O'KELLEY: No, sir.

14 JUDGE CHELLIS: All right; that'll be
15 permitted.

16 MR. BARFIELD: Okay. So we can do that
17 at a recess?

18 JUDGE CHELLIS: And you'll add that as
19 an additional exhibit.

20 MR. BARFIELD: Yes, Your Honor.

21 And just to be clear, once we have a
22 copy of the Simco invoice, is the total on that invoice,
23 are those the damages that you are claiming in this case?

24 THE WITNESS: Yes.

25 MR. BARFIELD: All right. Thank you.

1 JUDGE CHELLIS: So that's your direct of
2 Mr. Simmons. I think since it's five after 1:00. We
3 oughta take a break. Otherwise, you're gonna have an
4 unhappy judge.

5 MR. O'KELLEY: I agree. Your Honor,
6 will you just remind Mr. Simmons that he's under oath and
7 all that fun stuff?

8 JUDGE CHELLIS: Yeah.

9 Mr. Simmons, once you take the stand and
10 you're in the middle of testimony, you can't talk about
11 your testimony with your lawyer.

12 THE WITNESS: Okay.

13 JUDGE CHELLIS: Okay? So if you would
14 just refrain from talking to him during the intermission
15 here about your testimony, and even what you might testify
16 to further. The best thing to do is just go to lunch by
17 yourself or somebody else. That'll avoid any
18 improprieties whatsoever. I'm sure your lawyer knows the
19 rule and he's gonna abide by it. But the temptation is
20 always there to slip something in, and it's best just to
21 try not to do that. Take your experts to lunch. Maybe
22 they might enjoy that.

23 MR. BARFIELD: I will need to coordinate
24 with him to get that document.

25 JUDGE CHELLIS: That's fine; you can do

1 that.

2 All right; so we gonna break now. Let's
3 get back at 2 o'clock. That gives us 55 minutes. The
4 only reason I do that is it will take you a good 30
5 minutes to get served if you go get something to eat. And
6 I don't want you to rush too much, but you'll have to
7 anyway; but we'll get back right at 2 o'clock.

8 MR. O'KELLEY: And we can leave
9 everything here; right?

10 JUDGE CHELLIS: Yeah.

11 Now, are all the witnesses on the
12 subpoena?

13 MR. BARFIELD: Yes, Your Honor.

14 JUDGE CHELLIS: Everybody? Okay; that's
15 good.

16 Thank you; we'll take a break.

17 MR. BARFIELD: Thank you.

18 (The hearing took a lunch recess.)

19 JUDGE CHELLIS: Mr. Simmons, please
20 remember that you're still under oath.

21 THE WITNESS: Yes, Your Honor.

22 JUDGE CHELLIS: Answer any questions
23 Mr. O'Kelley has to ask you.

24 MR. O'KELLEY: Your Honor, one more
25 housekeeping thing. The people who are being paid to be

1 here, timing-wise, we may take them out of order, if
2 that's okay with you.

3 JUDGE CHELLIS: That's fine. Y'all okay
4 with that?

5 MR. BARFIELD: Yes, sir. We both got
6 people on the clock.

7 JUDGE CHELLIS: That's one reason I
8 asked about the subpoenas. I'm thinking I don't want
9 these people sticking around if they don't have to. But
10 if they are on the subpoena, maybe we need to get to 'em.

11 MR. O'KELLEY: Yes, sir. And they won't
12 take as long as Mr. Simmons or the Limehouses. At least I
13 don't think.

14 MR. BARFIELD: No, no.

15 MR. O'KELLEY: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. O'KELLEY:

18 Q Mr. Simmons, how's your day going so far?

19 A So far, so good.

20 Q Okay; you've got the exhibits in front of you?

21 A Yes, sir.

22 Q Just so you know, I get to ask what's called
23 cross-examination. I took your deposition as part of the
24 case earlier, but it's along those lines; and just
25 remember, you're still under oath if you would.

1 A Okay.

2 Q You read contracts on a regular basis, do you
3 not?

4 A Yes.

5 Q And as a landlord, as part of your business as
6 a contractor, leases pretty regularly, too; right?

7 A Yes.

8 Q Okay. And turn -- it's Exhibit Number 1, the
9 original lease with Easy Tray. From April of 2004;
10 correct?

11 A Yes.

12 Q And just so you know, I've read this thing many
13 times. Do you realize there's two paragraph 14s in this
14 lease? Did anybody point that out to you?

15 A No.

16 Q There's one for improvements and one for liens.
17 We're here about the paragraph for improvements; correct?

18 A Yes.

19 Q The part that brings us here is midway down the
20 page; right?

21 A Yes.

22 Q And it says "Lessor" -- and that's the Virgie
23 C. Simmons Family Trust, LLC?

24 A Yes.

25 Q "Lessor requests that floor modifications must

1 be remedied." Is that what it says?

2 A Yes, sir.

3 Q And the word is "requests." I read that
4 correctly?

5 A Yes.

6 Q It doesn't say "Lessee shall or must," does it?

7 A No.

8 Q And to your mind, if I requested \$50 from you,
9 you could say "yes" or "no," couldn't you?

10 A Yes.

11 Q That's what I thought. May I have 50 -- I'm
12 just teasing.

13 You testified earlier that you're not sure when
14 the 4791 Tradd Street was built; is that correct?

15 A That's correct.

16 Q And do you have any pictures of what I'll call
17 the concrete floor at the time you -- when I say "you," I
18 mean Virgie C. Simmons Family Trust" -- took possession?
19 Got any pictures of the condition of the floor at that
20 time?

21 A No, I do not.

22 Q Did you think it was important to take pictures
23 of the floor? Because you testified earlier that the
24 condition was that the floor was in great shape.

25 A That's correct.

1 Q But no pictures to prove that as we sit here
2 today, almost 30 years later; correct?

3 A Didn't need 'em.

4 Q That wasn't my question. We don't have any
5 pictures of the floor back in 2004, do we?

6 A Do not.

7 Q Okay. Do you know when the loading docks were
8 put in at the property? Was that under y'all's ownership
9 or prior to your taking possession?

10 A Under our ownership.

11 Q Okay. And do you recall who did that work?

12 A Cannot remember who the contractor was.

13 Q Again, my notes can be kinda spotty, but was
14 that because Easy Tray needed the loading docks or you put
15 them in for another tenant?

16 A Easy Tray needed 'em.

17 Q All right. And the same with the drainage.
18 That was put in by Easy Tray; correct?

19 A That's correct.

20 Q And did you do any inspection -- again, when I
21 say "you," I'm talking about your LLC. Did anybody from
22 the LLC do any inspection of Easy Tray's work back in
23 2004?

24 A No.

25 Q So no one looked at the drains; is that

1 correct?

2 A No.

3 Q Sorry; poorly-worded question. Did anyone look
4 at the drains? I think your answer's "No."

5 A No.

6 Q Okay. Did anyone look at what we call -- and I
7 understand it's not really a term used, but what I'm
8 picking up is the demonstrative ThunderStud exhibit. Did
9 anybody look at those at the time of the original
10 modification?

11 A No; because at the time, they were not in.

12 Q Okay. And then -- sorry. When Easy Tray did
13 its modifications, did you go inspect any of their work?
14 Let's ask it that way.

15 A No; I didn't inspect any of their work, no.

16 Q Okay. And my client, Limetrade, didn't cut the
17 drains, did it?

18 A No.

19 Q Okay. And Limehouse Produce didn't cut the
20 drains, did they?

21 A No.

22 Q And turn with me to the next exhibit, Exhibit
23 Number 2. This is an assignment. And you'll remember I
24 had to correct your lawyer. It's an assignment between my
25 two clients, is it not?

1 A That's correct.

2 Q And the only entity that you were dealing with
3 was Limetrade; correct? During the performance of the
4 lease when they took it over in 2007.

5 A Well at first it was Limehouse Produce.

6 Q Correct; but they assigned that --

7 A That's correct.

8 Q -- in May of 2007; correct?

9 A That's correct.

10 Q And do you recall -- and I'll -- that they
11 moved in sometime in the summer of 2007; is that correct?

12 A I believe that's correct.

13 Q And I'll refresh your memory. Look at Exhibit
14 Number 3. And you testified this is the work that you all
15 did for Limetrade prior to their moving in; correct?

16 A That's correct.

17 Q And this is dated June 8th of 2007; right?

18 A That's correct.

19 Q Okay. So does that refresh your memory as to
20 when they moved in?

21 A Yes.

22 Q And your testimony I think was that this work
23 was required prior to move-in?

24 A I'm not sure if it was prior to move-in or when
25 they were moving in.

1 Q Okay. But the contract is with Limetrade;
2 correct? This specific --

3 A Yes.

4 Q Okay; all right. Just trying to clarify who
5 did what, where, when, and why.

6 And at the time of the assignment in 2007, did
7 you take any pictures of the floor or the condition?

8 A Did not.

9 Q Okay. You were asked about the work Easy Tray
10 was doing out there, and you stated that -- or were
11 prompted to say that some of their materials caused
12 problems with one area of the floor; is that correct? The
13 onion juice or the acid from the onions or whatever?

14 A Yes.

15 Q And was floor sort of pock marked or --
16 describe it to me, describe it for His Honor. What did it
17 look like?

18 A It just was real rough in text.

19 Q Okay.

20 A Exposed aggregate.

21 Q Okay. And that's what you had to come in and
22 kinda -- I don't want to put words in your mouth -- do the
23 work to repair that; correct?

24 A That's correct.

25 Q I think your testimony is you repaired the acid

1 damage before my folks moved in.

2 A I'm not sure if it was when they were moving in
3 or while.

4 Q Okay.

5 A Before.

6 Q Can you look at your Exhibit Number 3 and see
7 if any of these items on this Exhibit 3 relate to that
8 repair?

9 A Exhibit Number 3?

10 Q Yes, sir; the Simco invoice.

11 A That was the area that was cut out at their
12 request.

13 Q Okay; this 23,000 was for all of that work.

14 A That's correct.

15 Q Okay; all right. And I think you said Exhibit
16 4, you didn't know anything about; correct?

17 A Did not.

18 Q Okay. We'll get to that with my clients. And
19 you testified there were two renewals; correct?

20 A Yes, I believe so.

21 Q All right; and the last one, I think you said
22 that it was kind of a year-to-year situation for the last
23 three years? And this is Exhibit Number 6 I'm asking you
24 about, Mr. Simmons.

25 A So number 6 --

1 Q Paragraph 2 is what I'm talking about.

2 A So after the two-year additional term, they had
3 three one-year options.

4 Q And they exercised two of those three; right?

5 A That's correct.

6 Q Okay. And does the name Steve Schachte ring a
7 bell? I think you said it was Joe; but if I represented
8 it was Stephen Schachte who help draft this, does that
9 refresh your memory?

10 A Yes, it was Stephen.

11 Q Okay.

12 A I'm sorry.

13 Q That's all right; he's got a brother.

14 A I do know Joe.

15 Q Exactly. Look for me at Exhibit Number 7, if
16 you can. And it's a photograph dated 10/8 of '16.

17 A Okay.

18 Q Tell His Honor what we're looking at there.

19 A This is a photo of a hose and a pump into the
20 dock well. This was during one of the storms that we had.
21 I think --

22 Q Would Hurricane Matthew be that one?

23 A I think it was Matthew. That was the 150-year
24 flood.

25 Q Well that was in 2015. We'll get to those,

1 too.

2 A Yeah.

3 Q But I think October of '16 was Matthew. So you
4 didn't take this picture, did you, sir?

5 A I did not.

6 Q Okay. So I think you stated earlier that from
7 2007 to 2017 my folks had problems with the floor and
8 flooding all 10 years of their lease. Is that your
9 recollection of what you testified to earlier?

10 A No; that's incorrect.

11 Q Okay; well then when do you recall that the
12 first problems with the flooring were brought to your
13 attention by my client?

14 A The flooring was one thing. Flooding, other
15 than the named storms, we had no flooding.

16 Q Okay. All right; when did the first flooring
17 problems, when do you recall those being brought to your
18 attention?

19 A I can't remember exactly.

20 Q Because we looked at an e-mail today. The
21 earliest one, I thought, was 2014. And we'll get to it.
22 Does that help refresh --

23 A I believe you're correct.

24 Q Okay. Turn to Exhibit Number 16. It's a
25 defendants' exhibit. It's just a series of e-mails and I

1 don't think --

2 A You said 16?

3 Q Yes, sir; it's right here.

4 A Oh, sorry.

5 MR. BARFIELD: Didn't we -- didn't His
6 Honor say that would be Defendant's 1 instead of Joint 16?

7 MR. O'KELLEY: Yeah, yeah; I'm sorry.

8 THE WITNESS: So this one?

9 MR. O'KELLEY: Yes, sir; yes, sir.

10 THE WITNESS: Okay.

11 BY MR. O'KELLEY:

12 Q You were asked about these e-mails this
13 morning; correct?

14 A Yes.

15 Q And does this refresh your recollection as to
16 when there was some written documentation of issues with
17 the floor?

18 A Yes.

19 Q All right. And Mrs. Limehouse wrote to you
20 about the subsidence in the concrete floor in our
21 warehouse, did she not?

22 A Yes.

23 Q And she states "You are aware of the many
24 problems with the foundation in this building, as you came
25 and observed yourself recently." What did you observe

1 back in 2014 about problems with the foundation?

2 A I didn't observe anything with the foundation.

3 Q What problems --

4 A We looked at the floor slab.

5 Q Okay. And you saw those problems back in 2014;
6 correct?

7 A Yes.

8 Q And I think at one point there were pumps put
9 in. Were those put in only because of named storms or
10 because there was water from time to time? How did it
11 work?

12 A Pumps put in where?

13 Q You tell me. We just saw a picture of pumps
14 being placed into the loading dock area. Do you recall
15 when pumps first went in out there?

16 A When the dock wells were built, there were sump
17 pumps put in the dock wells.

18 Q Okay.

19 A But the pump we were pointing to a minute ago
20 was an auxiliary pump.

21 Q And you stated you didn't know the source of
22 the water intrusion earlier today this morning, you didn't
23 know the source of the water intrusion at Tradd Street.
24 Is that still your testimony?

25 A That's correct.

1 Q Okay; you testified that there was -- you saw
2 standing water but didn't know where it was from. Tell
3 the judge about that.

4 A So once again, the areas inside of the
5 refrigerator/freezer, there were certain areas that water
6 was on the floor. I'm not sure from melting ice or
7 washing down. The cooler was equipped with spigots inside
8 of it, so I'm not really sure their process, what was used
9 or not, but the floors were wet.

10 Q And did you see actual subsidence of the floors
11 in certain areas? "Subsidence" being another word for
12 floors that are -- you know, sinking is the layman's term.

13 A Did not see any sinking.

14 Q Okay; what about any subsidence where they were
15 off level? Or how would you define subsidence?

16 A Unlevel, sinking; but no, did not see sinking.

17 Q All right; you didn't see any in the middle of
18 the slab where forklifts don't run? You never saw any of
19 that?

20 A No.

21 Q Okay. And you testified earlier today about
22 the forklifts going along repeated pathways. That would
23 make sense in a warehouse, wouldn't it?

24 A Yes.

25 Q Loading dock to refrigerator, loading dock to

1 storage area, refrigerator back out to the loading dock;
2 correct?

3 A Yes.

4 Q Okay. I just didn't want His Honor to think
5 that was something abnormal in a warehouse situation.
6 It's not, is it?

7 A No.

8 Q Okay. Same with the pallet jacks; correct?
9 They would be going to and from the same areas on a
10 regular basis; right?

11 A Yes.

12 Q Earlier today I wrote this down because I
13 thought it was interesting, you said that problems plagued
14 the space. Tell His Honor when you meant by that.

15 A Can you repeat the whole --

16 Q Yeah; I wrote this down because you said "Well,
17 Limetrade was occupying, there was problems that quote
18 unquote plagued the space; and I don't know what you meant
19 by that.

20 A I'm not sure, either.

21 Q Okay. Well "plagued" would be like diseased or
22 sick or -- you know, a plague is not a good thing, is it?

23 A No.

24 Q And some people would call the COVID -- you
25 know, said that that was a modern version of a plague.

1 A Right.

2 Q The COVID crisis; right?

3 A Right.

4 Q So can you explain what you meant by "plagued
5 the space" now?

6 A I don't remember saying the word "plague."

7 Q All right; well I wrote it down and I could've
8 been wrong, but I thought that's what you said.

9 A Okay.

10 Q Exhibit 9. Again, sorry for jumping around,
11 Your Honor, but it is what it is. Mr. Barfield asked you
12 questions about this e-mail exchange with Mrs. Limehouse
13 and my now deceased law partner, Gray Taylor. You recall
14 that question and the questions about this e-mail?

15 A Yes.

16 Q All right; turn -- as Mr. Barfield did, we're
17 gonna go in chronological order, page 3 of 4. This is
18 from July 19 of 2017.

19 A Okay.

20 Q And just to confirm, the only thing that you're
21 complaining about today are items 1 through 3; correct?

22 A That's correct.

23 Q Okay; 4, 5, 6, 7, not an issue before The Court
24 today.

25 A That's correct.

1 Q And again, we're here because the paragraph 14
2 has a request in it. That's the language; correct,
3 request?

4 A Yes.

5 Q All right. And in fact, Mr. Taylor points that
6 out to you on the next page in his e-mail of July 25th,
7 2017, at 1:19 p.m.; correct? And it's the top of page 2
8 of 4. At the end of the first full paragraph that begins
9 "Section 14" and ends "tear excepted." Do you see that?

10 A Yes.

11 Q In fact, he says "Specifically, section 14
12 states that lessor requests" -- he fixed the grammar --
13 "that floor modifications must be remedied at the
14 termination of this lease. Normal wear and tear
15 excepted." Correct?

16 A Yes.

17 Q Again, request from the landlord; right?

18 A Yes.

19 Q Not a shall, not a must, not a will; correct?

20 A Right.

21 Q And you have lawyers representing you when you
22 wrote that lease?

23 A I'm not sure.

24 Q Okay. Do you know if Easy Tray had lawyers
25 representing them when the lease was written?

1 A Yes.

2 Q Okay. And you stated earlier that when NRX was
3 talking about moving in, the floor was a mess. I think I
4 wrote that down. Do you recall that testimony?

5 A I do.

6 Q And your testimony I think -- and I just want
7 you to confirm it -- was the floor repairable in any way,
8 shape, or form when NRX was gonna take possession?
9 Because you had to rip -- you testified you ripped it out.
10 The part that was -- you know, had the drains in it and
11 all that. Was it possible to repair that?

12 A Prior to NRX?

13 Q Yes, sir. Because you said there was a
14 temporary patch, but that it had to be removed.

15 A So the temporary patches were just to mitigate
16 loss of rent until we could figure out what was gonna be
17 necessary to fix the floor.

18 Q And your determination after consulting with
19 the folks at Berenyi Engineering was that it had to be
20 ripped out; correct?

21 A That's correct.

22 Q Okay. And was work done to the foundation, as
23 well? I think you testified it was.

24 A No work was done to the foundation.

25 Q No work was done to the foundation.

1 You were asked, and this is -- sorry, jumping
2 around -- Exhibit Number 13, is my client's expert report
3 by Coastal Engineering & Testing.

4 A Okay.

5 Q Turn to page 96. At the bottom, it says page
6 10 of 11.

7 A Okay.

8 Q And do you see the photograph number 37?

9 A I do.

10 Q All right; you testified that that water was
11 from rains that had occurred that day or the day before?

12 A I testified that it was raining for several
13 weeks during that time. We had just saw cut all the
14 concrete and had removed it, so there is water in the
15 process of saw cutting.

16 Q So you don't know if that was water that was
17 there on a regular basis or from the wet saws or from the
18 rain; correct?

19 A This is the only time I've ever seen the water
20 on the floor.

21 Q All right; you weren't with Mr. Allen when he
22 took these photos, were you?

23 A No.

24 Q Okay; so anything you're saying about them is
25 seeing them here today, not telling us what the conditions

1 were at the time the photos were taken; correct? Other
2 than what you're looking at.

3 A I was onsite the day they were there. I was
4 not with them.

5 Q Well that was my question, you were onsite?

6 A Yes, I was.

7 Q Okay; then I misunderstood.

8 A Okay.

9 Q Berenyi gave you a 40- plus thousand dollar
10 estimate to do this work; correct?

11 A Yes.

12 Q And then you chose not to use them because they
13 were too expensive or why?

14 A No; for time reasons, as I indicated earlier.

15 Q Well it helps when you own a construction
16 company, doesn't it?

17 A Yes.

18 Q Mr. Barfield said I was gonna -- I was gonna be
19 the one, if you'll turn to Exhibit Number 14.

20 A Okay.

21 Q You'll remember in your deposition we went
22 through these photographs; correct?

23 A Yes.

24 Q And you had various -- you didn't take any of
25 these photographs; correct?

1 A I did not.

2 Q And to ask you about them would be conjecture
3 on your part; correct?

4 A Correct.

5 Q And you stated earlier that Simco did
6 additional work than what Berenyi's estimate was or scope
7 of work. What additional work did you do out there?

8 A We put six inches of concrete in.

9 Q Where'd you put that?

10 A In the area we removed.

11 Q Okay.

12 A Also installed wire mesh in the additional
13 concrete.

14 Q As a way -- before installing the concrete?

15 A Yes.

16 Q Just as people do with rebar or mesh or
17 whatever; right?

18 A Extra.

19 Q Extra work.

20 A Yeah.

21 Q Okay. And again, just so we know, in 2004 when
22 Easy Tray did its work, you didn't do any inspection of
23 the premises, did you?

24 A Did not.

25 MR. O'KELLEY: Thanks, Mr. Simmons.

1 That's all I got.

2 JUDGE CHELLIS: Any redirect?

3 MR. BARFIELD: I have just a little bit
4 of follow-up for you.

5 REDIRECT EXAMINATION

6 BY MR. BARFIELD:

7 Q If you can turn to Exhibit 9, page 2 of 4.
8 Mr. O'Kelley had you look at the last line that quotes the
9 lease in that paragraph that talks about lessor request.
10 But what about the line in bold and underlined underneath
11 that? What did Mr. Taylor say?

12 A The whole sentence, "Of these authorized
13 improvements, only the floor modifications are required to
14 be returned to their prior condition at lease
15 termination."

16 Q Okay. So Mr. Taylor, again, was the
17 Limehouses' attorney?

18 A That is correct.

19 Q And in his language, he used the word
20 "required."

21 A That's correct.

22 Q Okay. Did Andrea Limehouse or any other
23 representative of Limetrade ever tell you that they did
24 not believe that they were required to do anything to
25 repair the floor drains?

1 A They did not.

2 Q Okay. And in fact, they did make an attempt.

3 A That's correct.

4 Q As we've heard.

5 A That's correct.

6 MR. BARFIELD: Okay. All right; thank
7 you. That's all I have.

8 RECROSS-EXAMINATION

9 BY MR. O'KELLEY:

10 Q And Mr. Simmons, what was the prior condition
11 in 2004? You testified a minute ago you don't know, do
12 you?

13 A 2004?

14 Q Yeah; you don't have pictures, do you, of what
15 the floor looked look in 2004?

16 A The slab was in good condition.

17 Q Again, you don't have pictures of it from 2004,
18 do you?

19 A I do not.

20 MR. O'KELLEY: Thank you, sir.

21 JUDGE CHELLIS: Okay; that's it. Thank
22 you, Mr. Simmons.

23 MR. BARFIELD: You can come on down.

24 THE WITNESS: Do you want me to leave
25 these up here?

1 JUDGE CHELLIS: Yes.

2 MR. O'KELLEY: Your Honor, may I look at
3 the exhibits?

4 JUDGE CHELLIS: Sure.

5 MR. O'KELLEY: I wanna make sure you're
6 not missing Defendants' 1 and 2.

7 JUDGE CHELLIS: Let me just make sure.

8 Mr. O'Kelley, the first exhibit you gave
9 me was a transaction complete. It's entitled "Business
10 Entities Online Transaction Complete."

11 MR. O'KELLEY: Yes, sir.

12 JUDGE CHELLIS: Okay. That's 1.

13 MR. O'KELLEY: Yes, sir; and then the
14 e-mails are 2.

15 JUDGE CHELLIS: All right.

16 MR. O'KELLEY: Just making sure.

17 MR. BARFIELD: Okay; so I think we
18 erroneously then referred to 2 as 1.

19 MR. O'KELLEY: We did.

20 JUDGE CHELLIS: I thought you did. I
21 was going with it.

22 MR. O'KELLEY: I think we all went with
23 it. But for the record, when I was asking about the
24 e-mails and subsidence, we really should've been
25 referencing Defendants' 2.

1 JUDGE CHELLIS: Okay; got it. Thank you
2 for clearing that up.

3 (Discussion held off the record.)

4 MR. BARFIELD: At this time, Your Honor,
5 the plaintiffs would call Jordan Behringer.

6 JUDGE CHELLIS: Mr. Behringer.

7 JORDAN BEHRINGER,
8 being first duly sworn by JUDGE CHELLIS, was examined and
9 testified on his oath as follows:

10 JUDGE CHELLIS: All right; you're under
11 oath.

12 DIRECT EXAMINATION

13 BY MR. BARFIELD:

14 Q All right; sir, can I have you state your name,
15 please.

16 A Jordan Richard Behringer.

17 Q Okay. Mr. Behringer, are you a little fumbly
18 with the court protocols? Have you ever testified in a
19 court proceeding before?

20 A I have not.

21 Q Okay. All right; well welcome. First time for
22 everything. All right.

23 Can you give The Court the benefit of your
24 education from the time you graduated high school forward.

25 A Sure. I went to Clemson University, studied

1 civil engineering, graduated in August of 2013, and then
2 went directly back to grad school to get my master's in
3 structural engineering.

4 Q Okay. And do you hold any professional
5 certificates or licenses?

6 A Yes, I'm a professional engineer.

7 Q Okay. And is that in the state of South
8 Carolina?

9 A Yes, and California.

10 Q And California.

11 A Yes.

12 Q And when did you obtain your professional
13 engineering certification?

14 A I believe that would've been in 2018.

15 Q Okay. And where are you currently employed?

16 A Berenyi, Inc.

17 Q Okay. And in what capacity?

18 A I'm a managing partner there, part owner.

19 Q Okay. And do you work as an engineer?

20 A Yes. Engineer, construction project manager.
21 We wear many hats.

22 Q Okay. Have you worked anywhere else in your
23 capacity as a licensed professional engineer?

24 A No.

25 Q What about during an apprenticeship?

1 A No.

2 Q Okay. So Berenyi has been your professional
3 home since you became licensed?

4 A That's correct.

5 Q All right. And what is Berenyi, what do they
6 do?

7 A We're a design/build firm specializing in light
8 and heavy industrial, some commercial work, perform
9 architecture and structural engineering services, as well
10 as an unlimited general contractor.

11 Q Okay. So there's a construction arm of
12 Berenyi?

13 A That is correct. Berenyi, Inc., wholly owns
14 Berenyi Construction, LLC, which is our construction.

15 Q All right. And you're one of roughly how many
16 engineers at Berenyi?

17 A Four.

18 Q And we're obviously here today to talk about
19 the slab floor, and we're also gonna talk about the
20 foundation of this warehouse on Tradd Street. Do you have
21 personal knowledge of that project?

22 A Yes.

23 Q Okay. Do you have experience as an engineer
24 working on similar projects not owned by any entity
25 controlled by Mr. Simmons?

1 A Yes.

2 Q Okay. So you then have experience and
3 professional experience dealing with warehouse foundations
4 and slabs?

5 A Yes.

6 Q What about the filling in of trench drains and
7 repairing damage to concrete slabs from penetrations like
8 what we've affectionately called ThunderStuds?

9 A Yes; we've done several projects like that,
10 yes.

11 Q All right; very good.

12 MR. BARFIELD: Your Honor, at this time
13 I would like to offer Mr. Behringer as an expert in the
14 field of structural engineering. And he intends to offer
15 opinion testimony.

16 JUDGE CHELLIS: Do you want to voir dire
17 him?

18 MR. O'KELLEY: Just a couple quick
19 questions.

20 VOIR DIRE

21 BY MR. O'KELLEY:

22 Q Mr. Behringer, Hamlin O'Kelley. I took your
23 deposition last week. Lovely to see you again. You're
24 not a hydrologist, are you, sir?

25 A No.

1 Q You have no degree in hydrology or any
2 certification as to hydrology; correct?

3 A No.

4 MR. O'KELLEY: That's all, Your Honor.

5 JUDGE CHELLIS: All right. So I'm going
6 to grant him an expert in the field of structural
7 engineering.

8 MR. BARFIELD: Yes, sir.

9 JUDGE CHELLIS: All right.

10 MR. BARFIELD: Thank you.

11 DIRECT EXAMINATION (Cont.)

12 BY MR. BARFIELD:

13 Q All right; Mr. Behringer, when did you first
14 make Mr. Simmons' acquaintance, roughly?

15 A Around the middle of 2019, May of 2019, I would
16 say, somewhere around there.

17 Q Okay. And was that in conjunction with the
18 work that you ultimately did for his company with regard
19 to this warehouse on Tradd Street?

20 A Yes.

21 Q Okay. So you had no prior relationship with
22 him or any of his companies?

23 A No, not me personally. I think one of the
24 other engineers at Berenyi at the time was doing some
25 engineering for their window business, doing some

1 calculations for their hurricane rating. That's how I
2 originally got the relationship with Mr. Simmons.

3 Q I see. So how did you come to, personally, of
4 the engineers at Berenyi, come to be involved helping him
5 with this slab issue?

6 A I was available.

7 Q Okay. Hey, that's good a reason as any.

8 All right; so what was your first involvement?
9 In other words, what were you called about initially by
10 Mr. Simmons?

11 A He let me know that he was having some issues
12 at his building on Tradd Street with some structural
13 cracking and things like that and he wanted me to come out
14 and take a look at it and see what we could do to make
15 repairs, and we met onsite to review it.

16 Q So you said this was about 2020?

17 A 2019.

18 Q 2019. So by the timeline that we've kinda
19 established through testimony today, Limetrade would have
20 been gone for a year and a half to two years at that
21 point, roughly.

22 A Correct.

23 Q Okay.

24 A As far as I know, yes.

25 Q As far as you know, but you know that Limetrade

1 was not the tenant in the space at the time.

2 A Yes.

3 Q Okay. Had NRX, the intermediate tenant, come
4 and gone?

5 A I believe they were occupying the space at the
6 time.

7 Q Okay. There was equipment and some operations
8 in there when you first saw it?

9 A Yeah, minimal. There wasn't a whole lot.
10 There was some operations going on there, but it was
11 minimal.

12 Q Okay. And so why at that point was Mr. Simmons
13 interested in making some improvements or corrections to
14 the slab?

15 A He made mention to me that he had a tenant in
16 there that had refrigeration units and had installed some
17 post-installed anchors into the slab and, you know, was
18 not repaired to its previous condition. So, you know, he
19 had some concerns about, you know, being able to lease it
20 with a new tenant; and so he requested if I could look at
21 it and make a recommendation based on my review of the
22 slab.

23 Q Okay. And did you, in fact, do that?

24 A Yes.

25 Q All right. Did you -- the notebook in front of

1 you, if I can have you turn to tab 15, please.

2 A Okay.

3 Q All right. And you're welcome to flip through
4 it, but I believe that this is -- tab 15 is comprised of
5 your file.

6 A Yes.

7 Q All right. Can I have you turn to the last
8 page.

9 A Okay.

10 Q And are you looking at the floor plan?

11 A Yes.

12 Q All right. Can you tell me what this is and
13 where it came from.

14 A So after I met with Mr. Simmons, I walked the
15 site and I made hand notations on a drawing of what I
16 deemed to be structural defects with the slab. So you'll
17 see several different annotations on here, such as where
18 the trench drains were located, where I observed
19 structural cracking. What's referred to as refrigerator
20 line is really where the post-installed anchors were. Not
21 any sort of mechanical piping system, but where those
22 anchors were installed.

23 Q And when you say "post-installed anchors,"
24 that's what we've been loosely kinda referring to --

25 A Yeah; the wedge anchors or ThunderStuds.

1 Q ThunderStuds. You don't like that word,
2 though. You like --

3 A I've only heard 'em in this context. I'm not
4 aware of 'em in any other context.

5 Q Okay; okay. So when you say "post-installed
6 anchors," you're talking about the things in the bag over
7 there that we've been discussing.

8 A Yes.

9 Q All right; proceed, then. What else is on
10 here?

11 A There's some areas on the slab where you can
12 see exposed aggregate -- which is the rocks or stones in
13 the concrete mixture -- and where I observed leveling
14 compound having been installed, which I believe
15 Mr. Simmons was referring to as the patches.

16 Q Okay. And what then -- the print is very small
17 on this and my eyes are aging rapidly on me. What are the
18 shaded areas, the boxes of sort of diagonally-shaded
19 areas?

20 A Exposed aggregate.

21 Q All right. Okay. And the drains are noted by
22 these -- what look like kinda like railroad tracks?

23 A Yes; it's kind a hard to see on this small of a
24 drawing, but they kinda look like solid lines on the
25 actual print here.

1 Q All right. And where did you get the -- I
2 understand that you personally observed the cracks and
3 noted the location of the defects in the floor. Where did
4 you get the floor plan of the warehouse itself to put into
5 -- I'm assuming this is in CAD?

6 A Yes.

7 Q Were you provided with plans?

8 A Yes.

9 Q All right. So then your work -- is your work
10 overlaid on top of that or did you reproduce the plans in
11 CAD?

12 A My work is overlaid on top of that.

13 Q Okay. So is this drawing of this portion of
14 the warehouse, then, to the best of your knowledge to
15 scale?

16 A Yes.

17 Q All right. So it's shown here in CAD, but can
18 you tell us in your own words what you observed about the
19 slab in that portion of the warehouse when you went out
20 there in person?

21 A Sure. Yeah, there was plenty -- at that point,
22 most of the slab was visible that I could see, other than
23 the small abrasions that were going on at the time. But
24 almost every panel of the concrete had some structural
25 cracking occurring. A large portion of it had the exposed

1 aggregate, and at that time I believe the post-installed
2 anchors had all been ground down to the top of the slab.

3 Q Okay. Were they still visible from the
4 surface?

5 A Yes.

6 Q The tops of those post-installed anchors?

7 A Yes.

8 Q Okay. And did you endeavor to determine how
9 those cracks had come to be there?

10 A I did not.

11 Q Okay. Do you have any opinions as to how those
12 cracks likely came to be there?

13 A I mean, it could be -- it could be any number
14 of factors, but I couldn't say without seeing the actual
15 operation how it was being used.

16 Q Okay. Could water from the surface that makes
17 its way between the bottom of the slab and the top of the
18 vapor barrier compromise the structural integrity of that
19 slab?

20 A It could, yes.

21 Q Okay. What if that water is infused with
22 acidic onion juice that has the ability to eat away at the
23 top of the slab?

24 A Yes; that makes it even worse, yes.

25 Q Okay. So the acid doesn't just disappear if it

1 washes under the slab?

2 A I'm not a chemist, but I wouldn't think so.

3 Q Okay; all right. Did you look at the trench
4 drain that had been previously filled in?

5 A Yes.

6 Q All right. And what were your observations
7 about the condition of that trench drain in 2019?

8 A So my understanding from Mr. Simmons was that
9 the tenant was responsible for restoring the slab to its
10 original condition. And looking at the way that the
11 trench drain was just filled in with concrete, you know,
12 that's not how -- if we were asked to do -- you know,
13 remove a trench drain or put a slab back to its original
14 condition, you know, the proper way would be to cut out
15 perimeter around the trench drain, dowel back into the
16 slab and put in reinforcement, and then repour the
17 concrete. And we've done that on several occasions,
18 several projects, including at Boeing.

19 Q Okay. When you say "reinforcement," what are
20 you talking about?

21 A Rebar or temperature and shrinkage steel. You
22 know, wire mesh. Something along those lines.

23 Q All right. So I'm a visual learner. So we've
24 got 300-ish feet, linear feet, of this trench drain. It
25 had been backfilled with concrete. So would the first

1 step be to remove that or could you leave it in?

2 A You would remove that, yes.

3 Q All right. So you pull out the concrete, you
4 go back in, and then take us step by step through the
5 correct process.

6 A The best practice would be to start by core
7 drilling at the corners you intend to saw cut to, and that
8 allows you to leave a rounded edge. Because you don't
9 wanna leave any reentrant corners where you're saw
10 cutting, because if you have a corner of concrete, lot of
11 times you'll have a crack propagate from that corner. So
12 you wanna leave rounded edges anywhere you wanna leave
13 internal corners, so you core drill at each corner, saw
14 cut to that, remove the concrete, install -- if you had
15 any subgrade issues, you would address that, lay vapor
16 barrier back down, put your reinforcement dowel back into
17 the existing slab, then repour the concrete and finish it.

18 Q Okay. And what would the spacing on the
19 reinforcement be? Roughly.

20 A Like I said, depends on the application, what
21 load application you have. But it could be, you know,
22 number 4 rebar, 12 inches on center, is typical what I've
23 seen.

24 Q Okay. So if it's 12 inches on center, we've
25 got 300 linear feet, we're talking about roughly 300

1 pieces of rebar, give or take?

2 A Sure.

3 Q What about the anchors, aka the ThunderStuds?
4 What would be -- you said they had been ground down before
5 you got there.

6 A Correct.

7 Q If you were going to -- well, would simply
8 grinding them down restore the floor functionally to the
9 condition it would've been in before they were installed?

10 A No.

11 Q Okay. What would it take to -- if you got a
12 thousand or so of these anchored into the floor, what
13 would it take to appropriately restore those locations to
14 the preinstallation condition?

15 A The only way to do that is to core drill those
16 anchors out. Because they're wedge anchors, they're not
17 designed to come out. They're designed to stay in. So
18 the only way to pull those up is the concrete's gonna come
19 with it. So you can't just pull 'em out, you have to core
20 drill around it, then pour back with grout.

21 Q Gotcha. And so we looked at a couple of
22 samples of these. I believe the bolts themselves are half
23 an inch?

24 A Uh-huh (witness indicated an affirmative
25 response).

1 Q Is that a "yes"?

2 A Yes.

3 Q Okay. And so these -- have these been core
4 drilled?

5 A Yes.

6 Q All right. And do you know what the diameter
7 of these core samples are?

8 A I do not.

9 Q All right. Significantly wider than the bolts
10 themselves; would you agree with that?

11 A Looks to be an inch and a half or so.

12 Q Got it. Would this be sort of the appropriate
13 approach if you were gonna core drill to remove these
14 bolts?

15 A Yes.

16 Q All right. So roughly this diameter of a core
17 removal?

18 A Yes. I'd say anywhere from an inch and a half
19 to two inches would be appropriate.

20 Q Okay. And what's the method for doing that?
21 Mechanically speaking, what tool do you use and how is it
22 accomplished?

23 A It's a core drill. Lot of times they have
24 diamond tips. And saw cut the concrete all the way
25 through, then you can pull up the concrete cylinder as you

1 see there.

2 Q But to do that, somebody would have to go bolt
3 by bolt and remove those?

4 A Yes.

5 Q Is that a stand-up stool or an on-your-knees
6 kind of tool?

7 A On your knees, yeah.

8 Q Okay. I was just wondering.

9 All right. So to do a thousand of those is
10 fairly labor intensive; would that be fair?

11 A Yes.

12 Q All right. So, having examined the slab and
13 documented the locations of cracks, the sawed-off or
14 ground-down bolts, and the filled-in trench drain, did you
15 have a recommendation for Mr. Simmons as to how best to
16 approach restoring the slab to a condition that his new
17 tenant would be satisfied with?

18 A Yes. So Mr. Simmons and I spoke casually
19 about, you know, all that would need to be done to repair
20 all of that and, you know, how much of the slab you would
21 actually have to touch to repair or remove. And, you
22 know, by the time you did all that, you're talking about
23 almost the entire space and then leaving, you know, a
24 portion of it untouched, very small portion to address all
25 the cracking, all the exposed aggregate, all the parts

1 where leveling compound was put in, all the trench drains,
2 coring a thousand anchors, however many it was, you're
3 better off -- if you're trying to restore the slab to its
4 original condition, you're better off replacing the whole
5 thing.

6 Q Okay. And if we set aside the cracking for a
7 moment -- and let's just assume for the purposes of this
8 question that the cracking had not manifested to the
9 extent that you had observed -- would it still be an
10 expensive proposition to properly fill in the trench
11 drains and properly core and backfill all the locations
12 where the anchor bolts were?

13 A Absolutely.

14 Q Okay. And at the end of the day, do you know
15 roughly how much of the warehouse square footage would
16 have not been subject to that kinda repair? In other
17 words, absent the cracks, how much would've been left?
18 That's putting you on the spot, I know.

19 A Just looking at this drawing here, looking at
20 maybe 25 percent, 30 percent, something like that.

21 Q Okay.

22 A Would not be touched.

23 Q Would not be touched. So 75 percent would need
24 to be. If you were gonna do spot repairs, about 75
25 percent would be subject to that, to those spot repairs;

1 and you concluded that it made more sense to remove and
2 replace?

3 A Yes.

4 Q All right. And did Mr. Simmons ask you to
5 design the scope of work and the methods for removing and
6 replacing the portion of the slab that was cut?

7 A Mr. Simmons asked me for a slab section for the
8 new slab that he was going to put into the new building.
9 Or into that space.

10 Q Okay. And was that the entirety of that half
11 of the warehouse or was this more surgical? In other
12 words, was the slab that was cut out, was there a straight
13 line cut across the middle of the warehouse or was it more
14 detailed than that within the space that Limetrade had
15 leased?

16 A I believe the entirety of the slab was saw cut
17 out, like leaving a small strip around the perimeter of
18 that specific area.

19 Q Okay. And why would you leave a strip around
20 the perimeter?

21 A To tie back into.

22 Q Okay. And what type of foundation does this
23 building have?

24 A It has a continuous footer around the exterior,
25 because there's concrete panels as walls on this metal

1 building.

2 Q Okay. So we've talked about the slab; right?

3 A Yes.

4 Q And we talked about it sitting on top of a
5 plastic vapor barrier, and then there's soil underneath
6 that.

7 A Correct.

8 Q And then that's in the middle. That's in the
9 field of the space.

10 A That's correct.

11 Q Okay. So you described the foundation design.
12 How would that look if we were gonna try and visualize
13 that around the perimeter?

14 A So you would have a thickened foundation around
15 the edge. So if this is the top of your slab and this is
16 the end of your slab, you would come to the corner here
17 and come down. This would be your thickened section, come
18 this way, and then it would taper back up. And then the
19 bottom of your slab would be above the bottom of your
20 foundation.

21 Q Okay. So it's chunky around the perimeter. Is
22 that a good layman's term?

23 A Yes. The concrete is thicker around the
24 perimeter.

25 Q Okay. And deeper.

1 A Yes.

2 Q Did you observe any water coming up from the
3 cracks in the slabs or the expansion joints when you were
4 out there?

5 A No.

6 Q All right. I asked Mr. Simmons about Berenyi's
7 estimate. If you could turn back one page in your
8 documents, Exhibit 15. And that's that
9 really-hard-to-read tiny print. Do you recognize that
10 document?

11 A Yes.

12 Q Okay. Who prepared that?

13 A I did.

14 Q All right. And what was the purpose of
15 preparing this estimate?

16 A It was at the request of Mr. Simmons. After
17 our conversation about removing the slab, he asked if I
18 could provide an estimate to remove the slab in that area
19 and replace it back with what I would recommend.

20 Q Okay. So first off, we've already established
21 that the total of this estimate is \$423,102.76?

22 A Yes.

23 Q All right. Now, what is the design of the slab
24 you were recommending going back with?

25 A Four inches of stone base underneath the slab

1 and six inches of concrete. And I believe it was number 4
2 rebar at 12 inches on center.

3 Q Okay. And is that industry standard for --

4 A It's very typical for a spec warehouse.

5 Q -- a warehouse slab?

6 All right. And to the best of your knowledge,
7 is that what he -- I understand Berenyi didn't do the job,
8 but is that what Simco did?

9 A I believe so.

10 Q All right. And did you have any supervisory
11 construction administration responsibilities on the repair
12 job?

13 A No, we did not.

14 Q Okay. Have you been out to the warehouse since
15 the slab was replaced?

16 A Yes.

17 Q Okay. What brought you out there?

18 A We did some work for LW Supply in filling a
19 portion of the truck dock.

20 Q Okay. When you had occasion to observe the
21 replacement slab on that occasion, is it holding up?

22 A Yes.

23 Q All right. Have you ever had occasion to
24 observe the slab, the original slab, in the other half of
25 the warehouse, the part that Limetrade had not occupied?

1 A Yes.

2 Q Okay. What is the condition of that slab to
3 your observation?

4 A It was significantly better. There wasn't
5 nearly the amount of cracking or patching or trench drains
6 or anchors or anything like that in those areas.

7 Q Did you observe any water on the surface of the
8 slab in those other portions?

9 A I did not.

10 Q All right. And were those other portions being
11 used for typical warehouse activities, forklifts, so
12 forth?

13 A I believe so.

14 Q All right. Now, I believe the defendants take
15 the position -- and we're gonna hear from their expert
16 shortly -- take the position that this slab was doomed to
17 fail from the start because its thickness was variable
18 throughout. After it was demolished, some measurements
19 were taken that indicated that portions of that slab were
20 not six inches thick. Are you familiar with that?

21 A Yes, I did see it after the slab had been
22 demolished; yes.

23 Q Okay. Do you agree that that was the reason
24 why the slab experienced cracking and spalling and all the
25 conditions that it experienced?

1 A I think it would be hard to say. Your slab's
2 only as good as your subgrade. So if you have poor
3 subgrade, then it could result in issues. And with the
4 other parts of the warehouse not experiencing the same
5 issues as this area, I mean, I don't know how you can --
6 you say that that was the cause of the problem.

7 Q Right. Are you assuming that the thickness of
8 the slab, if it was variable in one part of the warehouse,
9 it was variable in the rest?

10 A It could be, yes.

11 Q Okay. This is an older building, as these
12 things go. Built in the early '90s. Did you hear that
13 testimony?

14 A Yes.

15 Q All right. Back then, would it have been
16 uncommon for -- because of the way they poured concrete
17 during that time, is it uncommon to have variations in
18 slab thickness across a space this large?

19 A I mean, I've seen all sorts of different
20 things. So yeah, I mean, you do get variability when you
21 pour slabs, yes.

22 Q Okay. My question to follow up is, you know,
23 is that condition alone fatal to a slab's performance?

24 A No.

25 Q Okay. Bear with me one second.

1 I wanna ask you a question that probably the
2 judge is potentially wondering about. Why is it so
3 expensive to pulverize some rock and pour some new
4 concrete on a slab? 400,000-plus is a lot of money. What
5 goes into that?

6 A I mean, it's a lot of labor. You're saw
7 cutting up the slab, you have to basically put anchors in,
8 pull the pieces of slab up, get 'em outside, send 'em off.
9 We were gonna excavate like about four inches of subgrade
10 to put the four inches of rock in and then all the
11 materials and then pour the slab back.

12 Q Gotcha.

13 A So it's a pretty good amount of work to do
14 inside of a building.

15 Q Okay. And even at that, it was a -- I think
16 you testified it was a close enough call between the cost
17 of that, doing that, versus properly filling the trench
18 drain and properly removing the anchor bolts and angle
19 irons, that the cost was not significantly different?

20 A That's what Mr. Simmons and I discussed. It
21 was that in combination with all of the cracking. And if
22 the expectation is that it's gonna be back to its original
23 condition, I mean, it's going to be a combination of those
24 two things.

25 Q Okay. One second.

1 MR. BARFIELD: Mr. Behringer, that's all
2 I have for you now. I may have some on redirect, but
3 please answer any questions that Mr. O'Kelley has for you
4 on cross.

5 THE WITNESS: Okay.

6 CROSS-EXAMINATION

7 BY MR. O'KELLEY:

8 Q Okay. Mr. Behringer, your testimony is you
9 have no information as to the cause of the cracks in the
10 concrete slab; is that correct?

11 A That's correct.

12 Q And other than being here today and hearing
13 about Easy Tray, you don't have any information about
14 their work or what they did out there; correct?

15 A That is correct.

16 Q For example, you don't know -- you have no
17 knowledge or no testimony about the fact that my clients
18 don't use any water or liquids. Did you know that?

19 A I did not see their operation.

20 Q Okay. And in fact, you never went out there
21 while Limetrade was in the space; is that correct?

22 A That is correct.

23 Q And I think on one of the exhibits that
24 Mr. Barfield was asking you about, the date of it is 23
25 May 2019; is that correct, the estimate?

1 A Yes.

2 Q And that estimate was never accepted by
3 Mr. Simmons' company, and to your knowledge he never paid
4 the \$423,102.76 to Berenyi or Berenyi Construction.

5 A Correct.

6 Q Either the engineering company or the
7 construction company; right?

8 A Correct.

9 Q And your testimony is you went out there to
10 help with L&W Supply?

11 A Yes.

12 Q To give them an estimate for the dock, the
13 loading dock?

14 A Yes.

15 Q Okay. But you didn't do any -- like I don't
16 know how else to describe it -- like forensic testings of
17 the repairs or anything of that nature, did you?

18 A No.

19 Q And you didn't do any soil testing outta the
20 site, did you?

21 A No.

22 Q Because your testimony was that the slab is
23 only as good as the subgrade. That's your testimony;
24 right?

25 A That's correct.

1 Q And you can't offer any opinion about the
2 subgrade today; correct?

3 A No.

4 Q Okay. And you can't say what the 2004
5 condition of the slab was, can you?

6 A I cannot.

7 MR. O'KELLEY: Thank you, sir.

8 MR. BARFIELD: Just one on redirect.

9 REDIRECT EXAMINATION

10 BY MR. BARFIELD:

11 Q Have you read the report of Coastal Engineering
12 that was prepared for the defendants in this matter?

13 A No.

14 Q You have not? When you say "the condition of
15 the subgrade," is that a reference to the quality of the
16 soils?

17 A Yes. Compaction requirements, all of that.

18 Q Okay.

19 A Yes.

20 Q All right. Well, we'll put a pin in that. And
21 since you've not read the report, I won't ask you about
22 it. I'll ask Mr. Allen about that. That's all I have;
23 thank you.

24 A Okay.

25 JUDGE CHELLIS: Thank you. Y'all

1 finished?

2 MR. O'KELLEY: Yes, sir.

3 MR. BARFIELD: Yes, sir.

4 Mr. Behringer's excused.

5 JUDGE CHELLIS: Okay; you can go home
6 now.

7 THE WITNESS: Thank you.

8 JUDGE CHELLIS: Of course, you're
9 welcome to stay if you'd like.

10 MR. O'KELLEY: And Your Honor, since
11 we're going out of order, we'll call Michael Allen to the
12 stand.

13 JUDGE CHELLIS: And this is done with
14 your consent; correct?

15 MR. BARFIELD: Yes, Your Honor.

16 JUDGE CHELLIS: Come on up, sir.

17 MICHAEL ALLEN,
18 being first duly sworn by JUDGE CHELLIS, was examined and
19 testified on his oath as follows:

20 JUDGE CHELLIS: Have a seat. You're
21 under oath. Answer any questions that Mr. O'Kelley may
22 have for you.

23 THE WITNESS: Yes, sir.

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MR. O'KELLEY:

3 Q Good afternoon, Mr. Allen; how we doing?

4 A Doing well.

5 Q If you would, please, will you tell
6 Judge Chellis what your professional qualifications are?

7 A I'm a licensed professional engineer in South
8 Carolina, 45 years of experience locally.

9 Q And tell the judge about your educational
10 background, too, please.

11 A I've got a civil engineering degree from
12 Georgia Tech.

13 Q And you've been licensed for how long in this
14 state?

15 A 37 years.

16 Q And are you licensed in any other state?

17 A No.

18 Q And have you always had your license in good
19 shape, no disciplinary actions, no dangers of losing it;
20 correct?

21 A No.

22 Q All right. And just briefly, you've been in
23 the engineering business -- for lack of a better term --
24 your entire professional career; correct?

25 A Correct.

1 Q And tell His Honor how you're employed now.

2 A I'm employed by Coastal Engineering & Testing
3 Company.

4 Q And what is your scope of employment? What do
5 you do there?

6 A As the owner, I'm engineer, reviewer,
7 supervisor. I wear a lot of hats.

8 Q And you actually go to job sites and make
9 observations, do testing, the whole thing; correct?

10 A Yes.

11 Q And you actually have been doing that for
12 years; correct?

13 A Correct.

14 Q And as part of that, you issue reports and take
15 pictures and that sort of thing; correct?

16 A Correct.

17 Q All right. And how many times have you been
18 qualified as an expert witness in South Carolina, if you
19 recall?

20 A I'd estimate several dozen.

21 Q In courts throughout the state; correct?

22 A Mostly in Charleston County.

23 Q But in other counties, too; correct?

24 A Yes.

25 MR. O'KELLEY: Your Honor, at this time

1 I'd like to offer Mr. Allen as an expert in engineering
2 and testing.

3 JUDGE CHELLIS: You need to voir dire?

4 MR. BARFIELD: Just very briefly. Just
5 same actual voir dire that Mr. O'Kelley asked
6 Mr. Behringer.

7 VOIR DIRE

8 BY MR. BARFIELD:

9 Q Are you a hydrologist?

10 A No.

11 Q All right. Do you anticipate offering any
12 opinions here today that would require the expertise of a
13 hydrologist?

14 A No.

15 MR. BARFIELD: All right. That's all I
16 have, Your Honor. No objection to him being qualified as
17 an engineering expert.

18 JUDGE CHELLIS: All right. So he's
19 qualified as an engineering expert.

20 MR. O'KELLEY: Thank you, Your Honor.

21 JUDGE CHELLIS: That's a broad term.
22 Are you sure you don't wanna narrow that down a little
23 bit?

24 MR. O'KELLEY: Well, I said engineering
25 and testing as a result of the work we did, so we can

1 narrow it down to an engineer who did testing and work out
2 at the site. Engineering is probably too broad, Your
3 Honor.

4 JUDGE CHELLIS: So civil engineering?

5 MR. O'KELLEY: Yes, sir.

6 JUDGE CHELLIS: Okay; let's narrow it
7 down to civil engineering. How 'bout that?

8 MR. O'KELLEY: Works for us.

9 MR. BARFIELD: That's fine, Your Honor.

10 JUDGE CHELLIS: I don't want him to be
11 testifying about microenzymes and biological engineering,
12 things of that nature.

13 MR. O'KELLEY: Things I wouldn't begin
14 to understand.

15 MR. BARFIELD: That'd be far more
16 interesting.

17 DIRECT EXAMINATION (Cont.)

18 BY MR. O'KELLEY:

19 Q Mr. Allen, if you would turn, and there's a
20 notebook in front of you. Exhibit Number 13 is what we're
21 gonna walk through. You drafted this document and
22 authored it and signed it; correct?

23 A Correct.

24 Q All right; if you would in your own words, tell
25 His Honor how you came to go out and do the floor slab

1 evaluation that's Exhibit Number 13.

2 A I was contacted by David Willis, with
3 Southeastern Construction, who was observing a demolition
4 project; and he asked if I could come out and make
5 observations before it was too late to see what was going
6 on.

7 Q And the date of your report is February 25th of
8 2020; correct?

9 A Correct.

10 Q And do you recall what your scope of work was?
11 It's all stated in here; but just for the record, what was
12 your scope of work?

13 A Well, basically, just to observe what was being
14 done and try to discern anything that could be visually
15 interpreted from an engineering perspective of the
16 demolition project what was there before. It was all gone
17 by the time I got there, but to discern from 44 years of
18 experience of what quality of the project was there before
19 it was demolished and anything that could be observed and
20 accounted for to tie back to some of the observations that
21 the Limehouses had had.

22 Q And you state in your report that "We visited
23 the site on February 19th of 2020." Who is "we"?

24 A I was escorted by one of my staff engineers.

25 Q All right. And you were in the -- you've been

1 in the courtroom all day. You heard Mr. Simmons state he,
2 too, was on the site. Did you have any discussion with
3 Mr. Simmons that day?

4 A Seeing him today, I recognize him being out on
5 the site. We did not have any conversation.

6 Q You state in your report that the property
7 owner had recently sawed and removed a large section of
8 the warehouse flooring and excavated approximately one
9 foot of wet subgrade soil and was preparing to pour a new
10 floor slab for a new tenant. Tell His Honor what you
11 observed out there related to that and that -- you know,
12 what you say in here is a stockpile of wet clay, soil, and
13 things of that nature.

14 A Well, the -- most the floor, except for in the
15 refrigerator area and in a small office. Refrigerator was
16 in the back left corner facing the building, the office
17 enclosure was in the front left space, there was a large
18 roll-up door at the front right corner. And the entire
19 slab from there to back to the refrigeration enclosure had
20 been saw cut and the soil had been excavated down, as I
21 said, 10 to 12 inches below what it apparently had been.

22 Q All right, sir. And knowing that was the
23 background, again, tell His Honor what your full scope was
24 as set forth in your report, but if you could just go
25 through the bullet points on pages 1 and 2.

1 A Well I said "Review photographs provided by the
2 client." Andrea had some pictures she had taken that were
3 helpful to size up the situation. I have "client
4 interviews," again, with Andrea.

5 Q And tell His Honor about those discussions, if
6 you could.

7 A Well she explained flooding problems and cracks
8 and slab failures. Not just cracks, but failures where it
9 was basically unusable. Soil and water squirting up
10 through the cracks and ending up on top of the slabs
11 which, of course, leaves a void underneath the slab, no
12 support. Severe flooding around the property. You know,
13 they had some steel plates that they had placed over areas
14 just to continue operating in their traffic corridors.
15 Visually, you could see the profile of the concrete slab
16 all the way around; and it was highly variable. And then
17 we --

18 Q What do you mean by that, highly variable? The
19 thickness was variable?

20 A The thickness of the edge of the exposed
21 concrete was from 10 inches to 2 inches. And there are
22 pictures of that. They're cataloged in the document. And
23 then, as Mr. Simmons said, the rubble was piled up around
24 the perimeter of the property being slowly removed, you
25 know, loaded out. So I, you know, crawled around on the

1 stockpile and got some chunks of the concrete, thinner
2 pieces and thicker pieces. I didn't see any evidence of
3 any vapor barrier, I didn't see any steel reinforcing or
4 wire mesh in the concrete. Thicknesses of the chunks of
5 concrete ranged from 10 inches to 2 to 4 inches, but it
6 was obviously broken up and in a stockpile at that time.

7 Q All right, sir. And then what else did you do
8 in your scope of work?

9 A Well, one issue in slab evaluation is
10 thickness. As the former gentleman said, is its bearing
11 on the subgrade soil, and also the strength of the
12 concrete. So we selected some pieces of the broken slab
13 that were big enough to core a sample from and do a
14 compressive strength test in our concrete testing
15 laboratory to confirm the strength of the concrete itself.

16 Q And your conclusions, we'll go over those in a
17 minute, because you reached certain conclusions about
18 that, did you not?

19 A That is correct.

20 Q And generally, what were those conclusions?

21 A Well, the variability of the slab. It was
22 clear that the slab had been poured by driving trucks
23 across a building pad. So you had deep divots where the
24 tires had gone. The nature of that is the soil compresses
25 where the tire -- the concrete truck is very heavy.

1 Compresses where the wheel loads and then heaves in
2 between. So there's a picture of that. It's reflected in
3 the perimeter of that concrete where you had 10 inches of
4 concrete, 10 inches of concrete, and then the heaved thin
5 section in between.

6 Q And that would go down to as low as 2.5 inches;
7 correct?

8 A I'm sorry?

9 Q I think you put in your report that varied from
10 2.5 to 10 inches; correct?

11 A Correct.

12 Q Okay. And you also did some lab testing of
13 some of the samples, too?

14 A Correct.

15 Q And tell the judge about those.

16 A Well, like I said, concrete strength is a
17 component of the evaluation. And so we cut a core sample
18 from chunks of concrete that were big enough, thick
19 enough, to get a sample from and then did a compression
20 test on the concrete; and the results were adequate. I
21 mean, concrete strength was not an issue.

22 Q And that would be your determining the strength
23 for the suitability of the slab in general or -- explain
24 that to the judge.

25 A Well, most concrete, we encountered strengths

1 of the 4,400 to 5,000 pounds per square inch, which most
2 specific cases require 3,000 to 4,000 PSI at the time of
3 placement.

4 Q All right, sir. And if you could, just tell
5 the judge generally about your findings and observation
6 overall, because I think you set those forth in your
7 report, too, on pages 2 and 3.

8 A "Widely variable slab thickness was observed
9 and measured, generally between two and a half and 10
10 inches. The photographs in the appendix document variable
11 concrete thickness."

12 Q And I'm sorry, Mr. Allen. You don't have to
13 read it. If you could just summarize it for His Honor.
14 He can read it.

15 A Okay. Basically, the common -- as I already
16 described, this is common when slab concrete is poured on
17 ground with concrete trucks traversing the area, resulting
18 in significant variation of the slab thickness. The load
19 transfer dowels were not observed.

20 Q Well go up when you discuss wire mesh and
21 reinforcement and a vapor barrier, because you testified
22 earlier that you didn't see a vapor barrier. But this
23 says you observed a vapor barrier, so I just wanna clarify
24 that with His Honor.

25 A Okay; I'm sorry. Well this overrides that.

1 Q Okay. That's what I thought.

2 A Okay.

3 Q I knew we were gonna get to it, but I just
4 wanna correct it.

5 A Yeah, what's in writing. I'm speaking from
6 memory.

7 Q Okay.

8 A The load transfer dowels, which are common in
9 heavy duty --

10 Q Explain what that is. Or what they are; excuse
11 me. Bad English.

12 A A core slab in an industrial warehouse, you're
13 accommodating a rolling load; it's moving across the slab.
14 It's not a static load that sets there and doesn't move;
15 it's rolling. So when the rolling load crosses a joint,
16 whether it's a control joint or a saw joint, there's a gap
17 in the load transfer. So what typically happens is the
18 edge of a saw joint can compress, deflect, when the
19 rolling load passes by, and that ultimately causes
20 compression of the soil, an air void, and a crack at the
21 joints. Typical method in design for heavy-duty slabs is
22 dowel joints along the saw joints and control joints to
23 transfer load from one slab to the next. So those were
24 not present, and then the --

25 Q But you state in here that a metal keyway edge

1 was used to shape the edges of individual slab pours as a
2 load transfer mechanism. Explain that.

3 A Keyway is a different load transfer mechanism
4 where you actually form one concrete pour. You form like
5 a notch or keyway in it to where the next pour matches in
6 that and it adds some vertical sheer strength resistance
7 to transfer the load from one slab to the next.

8 Q Got it. And you state that you did not observe
9 any load transfer mechanism at sawed control joints.
10 Explain that to the judge.

11 A Well there's two type of joints in concrete
12 slabs. One is where you stop a pour, you form it, and you
13 pour up to that, and the next day you take that form up
14 and pour up against that. The other type of joint is
15 sawed into the cured slab to redirect potential shrinkage
16 cracking into a control joint instead of it being randomly
17 across the slab.

18 Q Understood. And then you said "Reviewed
19 photographs provided by Mrs. Limehouse." And you also
20 took photographs the day of; correct?

21 A Correct.

22 Q All right. And we'll walk through those. And
23 you talked a little bit about the muddy water on the slab
24 coming up through the cracks?

25 A Yes, sir.

1 Q Okay. Did you observe water on the ground the
2 day you went out there?

3 A Yes, I have a picture of there's water all over
4 the slab of the new construction area.

5 Q All right. And then you've got in your
6 report -- "Concrete Cores" is your next section, and
7 you've already testified about that; correct?

8 A Right.

9 Q And you've got "Soil Subgrade." Tell the judge
10 what you observed with the soil subgrade.

11 A Well, basically, they had undercut, excavated
12 previously-existing soil. And the main observation was
13 that there was water everywhere. There was no work taking
14 place on that day, I guess because the soil was so wet.
15 But there was, you know, standing water in that subgrade
16 area.

17 Q And you described the soil as being clayey
18 sand. Is that a term of art?

19 A Repeat that.

20 Q Yes, sir. You said "Visual examination of new
21 subgrade soil indicated the soil was clayey sand, and
22 water was observed on top of the soil in many areas." And
23 what I was talking about is clayey sand a term of art? Is
24 that something in your business other people would know
25 what you meant?

1 A Yes.

2 Q Okay. And what is meant by clayey sand?

3 A Well, clay -- the more clay that's mixed in
4 with the soil, the more sensitive it is to this type of
5 load. When you roll across a clayey building pad, much
6 more likely to wobble, compress, and compact. Sand is
7 probably the most foolproof bearing soil for foundations
8 and slabs on grade. So the sandy soil with some clay in
9 it, it holds on to the water, it's a lot harder to get the
10 water out of it, and it's -- you know, the clay absorbs
11 the water and retains it in the soil.

12 Q And you state in here you did some sample
13 testing?

14 A Yes.

15 Q And tell the judge about that. This is at the
16 bottom of page 3.

17 A Okay; so we picked two locations,
18 representative locations, and got a bag sample to take
19 back to the lab. Did some lab testing and determined that
20 there was -- approximately 15 to 19 percent of the mass
21 was clay. The plasticity index testing that we ran was
22 generally from 3 to 5, indicating the clay component was a
23 low-plasticity clay soil.

24 Q And what does that mean for those of us that
25 aren't in the soil business, low plasticity?

1 A Well clay, like pluff mud, you know that term.

2 Q Very well.

3 A That's a highly-plastic clay compared to the
4 typical orange-gray clay that we see on job sites is a
5 low-plasticity clay. It's generally more workable for
6 construction and more suitable for construction.

7 Q One would be better to make bricks with, and
8 the other to just throw at your friends when you're in the
9 river; right?

10 A Right.

11 Q You state in here that the values indicate a
12 unified soil classification of SC.

13 A SC.

14 Q And explain what that means.

15 A Well, the unified soil classification system is
16 an accepted way for engineers to look at an abbreviation
17 like that and know what we're talking about, and they're
18 classified in terms of the strength properties or
19 suitability of use in construction and how favorable they
20 are for building projects on.

21 Q And what does SC mean?

22 A Soil with some clay. Sand with some clay; I'm
23 sorry.

24 Q And then you've got in here AASHTO. What is
25 that?

1 A AASHTO is other than standard. It's American
2 Association of Transportation of Soil and Materials.

3 Q Okay.

4 A And it also classifies different materials for
5 suitability of use for different construction purposes.

6 Q All right; and I think you've already stated
7 that this is a moisture-sensitive soil. Anything else you
8 need to tell the judge about that?

9 A No, sir.

10 Q And does it -- for lack of a better term, does
11 it retain water?

12 A Retains more water than a sand that would
13 percolate water. The clayey soil retains more water.

14 Q And you said in here that the AASHTO rating is
15 fair to good as subgrade for pavements or slabs; correct?

16 A Correct.

17 Q And would you consider this to have been fair
18 to good soil for the slab that was put on there?

19 A At the proper moisture content.

20 Q Okay. And then you state that your observation
21 of slab thickness and (unintelligible) indicate concrete
22 truck traffic traversed the prepared subgrade. You've
23 already testified about that; correct?

24 A We talked about that.

25 Q All right; and then you've got some other

1 observations. Tell The Court about your other
2 observations. If you need to take a minute to refresh,
3 take a minute.

4 A Yeah; just what we talked about already, that
5 the slab was already gone. It was a post-demolition
6 inspection, but with some observable physical properties
7 that would land credence to what kind of quality of slab
8 was there.

9 Q And you stated that clearly flooding and other
10 drainage issues, downspouts dropping water on the building
11 foundation, resulted in water seeping into the subgrade
12 along edges and through saw joints and construction
13 joints. Did I read that correctly?

14 A Yes.

15 Q And then you state "The client documented wet,
16 muddy soil on the slab surface in areas. The facility
17 manager observed slab deflection at a number of joint
18 locations when lift trucks traverse the slab. With an
19 associated eruption of the muddy water, this obviously
20 creates a void below the concrete and unsupported slab
21 edges will break and settle, resulting in a pothole,
22 especially if the slab thickness is substandard. Concrete
23 damage was widespread, and we assume this was the cause
24 resulting potholes require steel plates to cover the area
25 so that operations could continue. It is our

1 understanding that the client frequently dealt with these
2 issues during their lease term." Did I read all that
3 correctly?

4 A Yes. And that's based on my comments from
5 Andrea, the property client.

6 Q And then you've got your ultimate evaluations
7 and conclusions. Tell Your Honor what your ultimate
8 evaluations and conclusions were about the slab.

9 A Well, based on the evidence that we saw, and
10 our lots of experience with slabs and industrial warehouse
11 projects, that when distress or damage occurs, it's
12 typically related to one or more of the following issues.
13 We listed inadequate slab thickness were sanctioned,
14 highly-variable slab thickness, strength or quality of the
15 concrete materials, strength or quality of the supporting
16 subgrade soils, overloading slabs beyond design capacity,
17 and subgrade drainage issues.

18 Q And Mr. Allen, you don't know what the
19 condition of the slab was in 2004, do you?

20 A I did not see it then.

21 Q All right. And then ultimately, you have
22 conclusions in your report, do you not?

23 A Yes.

24 Q And tell His Honor what the conclusions you
25 came to are.

1 A Generally, that the operation that was taking
2 place would be considered a very-light warehousing
3 operation. That most any warehouse floor could support
4 that kind of -- you know, the small lift trucks, pallet
5 jacks, and light materials without failure, that the
6 problems that they encountered during their operations
7 were the result of construction defects with the slab
8 itself, which -- during the actual construction of the
9 building, which predates any of our involvement, and wet
10 subgrade soil.

11 Q All right, sir. And let's turn -- there's an
12 appendix here. And the first thing we come to on page 86,
13 you've got a drawing that looks like this. Page 86 is the
14 Bates label. Tell His Honor what we're looking at here.

15 A That's an approximate drawing of the layout of
16 the sawed area with the numbers being inside the saw cut.

17 Q And the numbers being?

18 A The numbers correspond to the photo logs that
19 follow.

20 Q Okay; just making sure. And then let's turn
21 and tell His Honor about the first set of photographs; and
22 we've got 11 pages of 'em. Photographs 1, 2, 3 & 4.
23 Going back a page, we can find out where those photographs
24 are taken; correct?

25 A Correct.

1 Q For example, we can see where 35 is and where
2 10 is, the whole deal; correct?

3 A Correct.

4 Q All right; what are we looking at at photograph
5 124?

6 A Well, there's -- we're taking a picture of the
7 thickness of the concrete there and the -- you can see the
8 soil condition, so it's just a documentation measured
9 thickness of the slab in different locations.

10 Q And it's measuring different thicknesses, is it
11 not?

12 A Yes.

13 Q For example, photograph 1, what's the
14 thickness?

15 A Approximately five inches.

16 Q Okay; and how about photograph 2?

17 A Four.

18 Q And three?

19 A Four.

20 Q And number 4?

21 A Five and a half.

22 Q All right. And then moving on to page 2 of 11,
23 photographs 5, 6, 7 and 8, tell His Honor what he's
24 looking at there.

25 A The same thing. It's just a progression of

1 photographed measurements of the slab edges. We observed
2 it around the perimeter of the saw cut area.

3 Q And showing more variable thicknesses; correct?

4 A Yes.

5 Q And how about photographs 9, 10, 11 and 12?

6 A Same thing.

7 Q Photograph --

8 A Actually, 12 was --

9 Q Yeah, tell His Honor about photograph 12.

10 A Well, you see there where the impression of the
11 concrete indicates that something heavy -- i.e., a
12 concrete truck -- backed across the slab and caused ruts
13 and variability of the concrete thickness.

14 JUDGE CHELLIS: That's where the little
15 --

16 THE WITNESS: Yes, sir.

17 JUDGE CHELLIS: Okay. That suggests to
18 you a concrete truck rolled over that?

19 THE WITNESS: Yes.

20 JUDGE CHELLIS: Would that be the two
21 tires?

22 THE WITNESS: To pour it. To pour it.
23 When they rolled across the ground to pour the concrete.

24 JUDGE CHELLIS: Okay. So there would be
25 two wheels, and then what's left is a --

1 THE WITNESS: Yes, they're dual axle
2 with two tires on each axle on each side.

3 JUDGE CHELLIS: So that would be the two
4 tires coming this way.

5 THE WITNESS: Yes.

6 JUDGE CHELLIS: Okay; go ahead.

7 BY MR. O'KELLEY:

8 Q Then moving on to page 4, again, photographs
9 13, 14, 15, 16 are more variable thicknesses; correct?

10 A Correct. And then photographs 13 and 14 are
11 very close to each other. This variability of concrete is
12 commonly a problem with concrete slabs. Concrete should
13 be uniformly thick with a uniform subgrade to perform
14 properly.

15 Q Tell His Honor about photograph 17, 18, 19 and
16 20. Well let's do it this way: 18 and 20 are
17 measurements of the thickness; correct?

18 A Correct.

19 Q What are 17 and 19?

20 A This is up against I think the enclosure toward
21 the office building where they had sawed around that and
22 left that concrete there to support the office wall.
23 That's the wall of the office building.

24 Q All right. Photographs on page 6 of 11, 21,
25 22, 23 and 24. 21, 23 and 24 are, again, measured

1 thicknesses; correct?

2 A Correct.

3 Q What about 22; what are we looking at?

4 A 21 is 10 inches thick.

5 Q Sure.

6 A So obviously, a concrete truck backed across
7 the subgrade there. You see next to it, it's a backaway
8 view of where 21 was; and you see clearly where the
9 concrete truck tires backed across the soil subgrade and
10 rutted the subgrade, as reflected in the slab thickness,
11 and heaved the soil in between the tires.

12 Q When you say "heaved," you're talking about
13 making it come up, for lack of a better word.

14 A Lifted, shoved up; yeah.

15 Q Okay. Then photographs 25 through 28, measured
16 thicknesses; correct?

17 A Correct.

18 Q And then page 8 of 11, more measured
19 thicknesses of -- variable thicknesses, rather, 29, 30, 31
20 and 32; correct?

21 A Correct.

22 Q What about 33, 34 and 35 on page 9 of 11?

23 A It's the same; and 36 was taken just to
24 illustrate the amount of water that was trapped inside the
25 building.

1 Q Was it raining that day?

2 A No.

3 Q All right. You were here for Mr. Simmons'
4 testimony; correct?

5 A Yes.

6 Q And he testified that it had been raining a lot
7 during that time period. Do you remember that?

8 A It wasn't raining when I was there.

9 Q All right. And photograph 37 is showing more
10 water; correct?

11 A Correct.

12 Q And what about 38, 39 and 40?

13 A More profile pictures of the concrete slab
14 thickness.

15 Q All right. And then 41 and 42?

16 A 41 is just a thickness measurement, 42 just
17 shows, you know, some more of the wet soupy soil.

18 Q All right. And the next you have are
19 photographs by client. Did you get these from
20 Ms. Limehouse?

21 A Actually, 42 also shows the footing.

22 Q Okay.

23 A Where the column -- structure of the column is
24 bearing on the footing.

25 Q All right.

1 A Yeah, so the rest of the pictures were provided
2 to me by the client.

3 Q And you used them as part of your report or
4 just for reference here to show basically the removed slab
5 and the subfloor and all of that.

6 A That's right.

7 Q Okay. And then there are photographs beginning
8 on page 6 of 14 -- photographs 11, 12, 13, 14 -- that show
9 water on the floor, show what looks like part of the
10 concrete that is down to the aggregate and rebar, and then
11 a concrete slab. Do you see that?

12 A Yes.

13 Q All right. And then photographs 16, 17 on the
14 next page, and 15, show standing water; correct?

15 A That's, yeah, on the side and rear area of the
16 building.

17 Q And do you know when any of those were taken or
18 Ms. Limehouse would have to explain all of that.

19 A Yes, that was -- she took those pictures.

20 Q Okay. But you don't know when, whether it was
21 during Hurricane Matthew, the storm of the thousand-year
22 flood in 2015, or --

23 A I don't know.

24 Q Okay. But you just included these for
25 reference; correct?

1 A Correct.

2 Q Ultimately, they did not have the ultimate
3 bearing on your conclusion, did they, her photographs?

4 A Just supplemented.

5 Q Supplemented; all right.

6 And again, your total conclusion is that the
7 slab was not constructed according to standard and there
8 were water issues at the property; correct?

9 A Correct.

10 Q Basically construction defects in the slab and
11 the type of soil that it was resting on, correct, were
12 problems.

13 A Correct.

14 Q From day one; correct?

15 A And the actual operation of being a light-duty
16 warehousing operation. Or I would say very-light-duty
17 warehousing operation. You should be able to rely on a
18 floor slab to support that without cracking and breaking
19 all to pieces.

20 MR. O'KELLEY: Thank you, Mr. Allen.
21 Please answer any questions Mr. Barfield may have for you.

22 JUDGE CHELLIS: Mr. Barfield.

23 MR. BARFIELD: Thank you.

24 ///

25 ///

1 CROSS-EXAMINATION

2 BY MR. BARFIELD

3 Q Mr. Allen, good to see you again.

4 A Yes, sir.

5 Q Met you at your deposition not long ago. I'll
6 be pretty brief.

7 Isn't it true that you did not see this slab
8 prior to it being saw cut, then demolished and turned into
9 a rubble pile?

10 A Correct.

11 Q All right. And anything that you know about
12 the appearance of the interior of that portion of the
13 warehouse prior to that demolition would've been told to
14 you by Mr. and/or Mrs. Limehouse; right?

15 A Yeah, through the photographs that they
16 provided.

17 Q Okay. And what did they tell you about the
18 trench drains that were in there?

19 A I didn't observe the trench drain or know
20 anything about it.

21 Q Okay. And they had not told you that a prior
22 tenant called Easy Tray had been in there prior to
23 Limetrade with a wash station?

24 A No, sir.

25 Q Okay. And so it stands to reason, then, you

1 never got to observe the quality of construction of the
2 trench drains, did you?

3 A No, sir.

4 Q All right. Same thing with the anchor bolts
5 that we've talked about at times. Are you familiar with
6 this type of hardware?

7 A Yes, sir.

8 Q I would imagine so.

9 You didn't have occasion to observe these as
10 installed, did you?

11 A I did not.

12 Q All right. And were you told that they had
13 been installed?

14 A No, sir.

15 Q All right. What about angle irons or bollards?
16 Did you have any discussions with the Limehouses about
17 that?

18 A No. I saw the bollards -- they're painted in
19 bright yellow -- but I didn't really go into the existing.
20 All of that was sort of left intact when I was there.

21 Q Okay. And so you wouldn't have known where,
22 for example, those bollards would have been installed in
23 the slab prior to demolition.

24 A I saw them on the exterior, like guarding the
25 doorway -- as the other gentleman described -- and

1 probably at the corner, where they turned the corner.

2 Q Okay. But to the extent that any of them were
3 interior, they would have been removed.

4 A I did not go inside of the enclosure.

5 Q All right. Had the Limehouses or anybody on
6 their behalf made contact with you about investigating
7 these conditions prior to the demolition of the slab?

8 A No, sir. As I said, my first view of it was
9 after the slab had been saw cut.

10 Q All right.

11 Now, you were here for some testimony earlier
12 about the nature of saw cutting. You will agree that a
13 concrete saw is a wet saw; right?

14 A Yes; most people have -- when we core, we have
15 a Shop-Vac, and we maintain -- recapture that water; but I
16 don't know if they did that or not on this project.

17 Q Okay. So if you were to turn to the section of
18 your report with client photos that were provided to you
19 by the Limehouses. If you go to -- and this is page 99
20 down at the bottom, and it's 1 of 14 in that section. You
21 with me?

22 A Yes, sir.

23 Q Okay. These two photos show what?

24 A The general area of where the slab had been
25 removed.

1 Q So this is sort of the field of the slab, for
2 lack of a better term, isn't it?

3 A Yes, from a couple different perspectives.

4 Q All right. It appears to me that the soil
5 looks relatively dry in these photos in the field of the
6 slab; wouldn't you agree?

7 A It's hard to say. I don't see any standing
8 water.

9 Q No standing water. But you've got some photos
10 that you took of some standing water. You know, for
11 example, photo 37, which is on page 96.

12 A Yes.

13 Q That shows some standing water; right?

14 A Yes, sir.

15 Q But all of that, all of those photos showing
16 standing water that you took, are around the -- close to
17 the perimeter of where the saw cutting took place, aren't
18 they?

19 A Some were of the heavy water, but there was
20 water all over, it was wet.

21 Q Okay. And it appears in photos 37 and 38 that
22 the exterior doors are open?

23 A Of the Limehouse photos?

24 Q No, in your photos.

25 A Yes, the doors were open.

1 Q So if somebody left the doors open and it
2 rained, if it was a blowing rain, it's gonna come inside
3 and puddle up?

4 A It could.

5 Q Right there, wouldn't it? Okay.

6 Ms. Limehouse provided you with some
7 pretty-dramatic photos of standing water around the
8 property, and you said that you took those into partial
9 consideration but they did not weigh heavily in your
10 opinions?

11 A Well, obviously, the property has flooding
12 issues, as does the adjacent property and the surrounding
13 properties do. But, I mean, a truck well full to the brim
14 with water is a pretty-concerning issue.

15 Q Well have you looked at any weather history
16 data to determine how much rain fell when these photos
17 were taken?

18 A No, sir.

19 Q In fact, you don't know when exactly these
20 photos were taken, do you?

21 A No, I don't.

22 Q If it was, in fact, the thousand-year flood
23 and/or Hurricane Matthew, those are, you would agree with
24 me, abnormal weather events; correct?

25 A Absolutely.

1 Q In fact, I believe Hurricane Matthew is the one
2 that kinda sat on top of South Carolina for days and
3 caused flooding all the way up into Pee Dee; right?

4 A That's right.

5 Q Okay. There were some dams that burst in
6 Columbia, as I recall.

7 A Right.

8 Q So that was a big storm.

9 A It was an extreme condition.

10 Q All right. So you would agree with me, then,
11 that the rain that fell in Hurricane Matthew or the
12 previous year in that what's been dubbed the thousand-year
13 floor are not good indicators for the normal drainage
14 capabilities of a piece of property.

15 A Abnormal conditions, yes.

16 Q Okay. And so as we sit here today, you've not
17 made any observations about the ability of this property
18 to drain water away from that warehouse under normal rain
19 conditions. Right?

20 A No, that's not --

21 Q Okay. You weren't asked to do that.

22 A No.

23 Q All right. And not knowing about the presence
24 of those trench drains that had been installed by Easy
25 Tray, would it be fair to say that you were not aware Easy

1 Tray, the predecessor tenant to Limetrade, had a wash
2 station as part of their operation, did you?

3 A I have no knowledge of that.

4 Q Okay. And so a wash station where they're
5 rinsing vegetables all day every day, including onions
6 that apparently cause damage -- the acid from the onion
7 juice caused damage to the top of the slab, would that not
8 be important to know for purposes of determining what may
9 have compromised the slab from beneath?

10 A I don't understand that question.

11 Q Right; well so if a substance is acidic enough
12 to seriously damage the top surface of concrete, if you
13 just sort of wash it underneath, if it escapes that trench
14 drain or gets down through control joints, you would
15 expect that acid, then, to eat away at the underside of
16 the concrete, wouldn't you?

17 A No.

18 Q Why not?

19 A It's pretty far-fetched.

20 Q Well if you move -- if it's only two inches
21 thick and you move it from here down to here, if it stays
22 there, it's gonna do the same thing, isn't it?

23 A Are you asking if onion juice caused the slab
24 to be thinner?

25 Q No. I'm asking if onion juice that can eat

1 away at the top of a slab can also eat away at the bottom
2 of a slab.

3 A Sounds reasonable.

4 Q Okay. And not knowing that there was this wash
5 station above prior to Limetrade's operations, you did not
6 know that there was a lot of water being used above;
7 correct?

8 A I had no knowledge of the former use of the
9 building, no.

10 Q Okay. So wouldn't that be important for you to
11 know before you conclude that it's water from the
12 perimeter that's somehow seeping into the subsoil?

13 A I did not conclude that.

14 Q Okay.

15 A I didn't say that.

16 Q That is not your conclusion. Okay; forgive me,
17 then.

18 Let's turn then to your conclusions on -- I'm
19 sorry. It's the "Evaluation" section of your report.
20 That's page 82 of the document. And I recall going
21 through this in your deposition, but we need to do it
22 again on the record.

23 A Okay.

24 Q You got some bullet points here with the
25 preface "When distress and/or damage occurs in concrete

1 slabs, this is typically related to one or more of the
2 following issues." So the first one is "Inadequate slab
3 thickness slash section." Right?

4 A Correct.

5 Q All right. Now you have concluded that that is
6 an issue in this particular slab. Or was.

7 A Yes.

8 Q Correct? Okay. The next one is
9 "Highly-variable slab thickness." It's my understanding
10 of your opinions that that is also, in your opinion, a
11 contributing factor to the failure of the slab.

12 A Yes.

13 Q All right. Next is "Strength slash quality of
14 concrete materials." I think you've testified --

15 A No problems with that.

16 Q -- that was not a factor; okay. Next "Strength
17 slash quality of supporting subgrade soils." Now you
18 analyzed the soil and determined that it was adequate for
19 this application; correct?

20 A The soil type is, but the condition of it at
21 the time the slab was poured was evidently unstable.

22 Q Okay. We'll get to that in a second. Okay;
23 "Overloading slabs beyond design capacity." You've ruled
24 that out.

25 A I don't think their operation nearly loaded the

1 slab capacity.

2 Q Okay. And then "Subgrade drainage issues." Is
3 that -- now I'm not sure, is that part of your opinion?

4 A It's something that's typically related, but I
5 don't think it was involved here.

6 Q Okay. All right. So really, we're talking
7 about bullet points 1, 2 and 4?

8 A Yes.

9 Q As being problematic.

10 A Applicable to this project, yes.

11 Q All right. So can we sorta -- so 1 and 2 are
12 sorta part and parcel of the same issue; am I right?

13 A No. A slab can be uniformly inadequately
14 thick, which this was not. It was spotty, as evidenced by
15 the pictures, but the variability is a totally different
16 issue.

17 Q Okay. But here, if we were to combine those,
18 you would say there are certain portions of this slab that
19 were not thick enough, and then the fact that there was
20 variable thicknesses throughout is problematic.

21 A Yes.

22 Q An issue. Okay. So if we take that, can we
23 go, then, to your -- page 86. This is your drawing that's
24 sort of the guide to the -- well, I'll let you tell us
25 what the numbers mean. So first off, this is a drawing

1 that you prepared; correct?

2 A Yes.

3 Q And is this to scale?

4 A No.

5 Q All right. And so what are the numbers on this
6 drawing? What do those correspond to?

7 A To the photographs.

8 Q All right. So if there's a number here, number
9 28, that's photo 28?

10 A That's correct.

11 Q All right. And because this is not to scale,
12 did you take any measurements to guide us as to how far
13 apart these photos were taken?

14 A It's a relative scale but not to scale.

15 Q Okay. And all of these measurements here were
16 taken to the outer perimeter of the slab that had been cut
17 away.

18 A The edge of the cut slab, yes.

19 Q In other words, that's what was left behind.

20 A That's what was left, yes.

21 Q The edge; okay. And since everything else had
22 been cut out and hauled outside and put in a pile, there's
23 no way for you to know what the thickness was, variable or
24 not, in the middle of this space.

25 A Well the pile was still there and I dug through

1 it pretty good, and there was a lot of variability.

2 Enough to say, you know, the whole slab was like that.

3 Q Okay. But my point is we don't know -- you
4 can't put Humpty Dumpty back together again. You've got a
5 pile of rocks that was there.

6 A Obviously.

7 Q And I understand you can measure the thickness
8 of some of those rocks, but you don't know exactly where
9 they had come from.

10 A Correct.

11 Q Okay. And did you exercise any sort of
12 statistical sampling when you selected pieces of debris to
13 measure, or what drove that selection?

14 A No. We needed a certain size and thickness to
15 core it. And the coring rig has to set on something
16 that's stable, and it's a spinning pole saw. And so I
17 picked some larger pieces that randomly -- it was a random
18 selection out of the pile that were thick enough. And to
19 get a good core result, the thickness has to be at least
20 the diameter of the core or greater. So those were the
21 criteria to determine which samples to obtain.

22 Q Gotcha. So you took the core samples from
23 bigger chunks in the pile.

24 A I mean, small enough to pick up and put in the
25 truck, yeah.

1 Q Okay. So there were some bigger chunks in the
2 pile, it stands to reason.

3 A Yeah. They were pulverized pretty good.

4 Q Gotcha. And you didn't have any diagram or
5 photographic evidence to indicate where the various cracks
6 had been, did you?

7 A I did not.

8 Q All right. And so as we sit here today, to the
9 extent that you are opining that the variable thickness or
10 insufficient thickness of portions of that slab
11 compromised the slab, you can't correspond -- or you can't
12 correlate those thinner pieces of the slab to the symptoms
13 that manifested. Can you?

14 A I can see that the slabs were deflecting and
15 squirting muddy water up from below at locations where
16 Andrea provided the photographs. I can't say where in the
17 slab that was, but I can say that that concrete was
18 deflecting as the forklift trucks moved across, resulting
19 in loss of subgrade soil. All of a sudden you have a slab
20 with no subgrade support because the soil's on top of the
21 slab and, ultimately, it's the manifestation of a pothole.

22 Q Okay. But as we sit here today, you're not
23 prepared to render an opinion as to what the source of
24 that water was, are you?

25 A No.

1 Q Okay. You mentioned that you were fairly
2 certain or you may be certain that the variability of the
3 thickness of this slab was largely the result of the
4 method that was used when it was built. Is that right?

5 A When it was first constructed, yes.

6 Q Right. And that was because back then they
7 didn't have these boom trucks that can come over the top
8 and pour it all from one location.

9 A It was rare to see that used back then.

10 Q So it was most common to do it kinda the way
11 they did it; right?

12 A It was a common procedure, yes.

13 Q Right. So you gotta get across a wide span of
14 subgrade to pour. And to do that, you gotta come across
15 with some piece of machinery that's toting wet concrete,
16 and then you pour it and back off of it and kinda do it
17 and hope you don't pour yourself into a corner; right?

18 A They try not to do that, but that makes the
19 subgrade that much more important. I've seen many slabs
20 poured that way that did not deflect and then resulted in
21 a nice, uniform thickness of slab. The key is that the
22 soil was obviously wobbly and soft and yielding when they
23 poured that slab. So if it was poured a long time ago --
24 before Mr. Simmons owned it, obviously -- had nothing to
25 do with that. But as part of the evaluation is you got

1 highly-variable slab thickness which contributes to slab
2 performance problems.

3 Q Okay. Is there any reason for you to believe
4 that the rest of the slab for this warehouse was poured
5 any differently?

6 A No.

7 Q Okay. Did you endeavor to inspect any other
8 portions of that slab?

9 A No, sir.

10 Q Okay. And you've heard testimony here today
11 that the rest of that slab has not experienced performance
12 problems; correct?

13 A I can't comment on how it's been used or how
14 it's performed, except this immediate area.

15 Q Okay. All other things being equal, though, if
16 half of the slab sitting on the same soil, built the same
17 way, is performing satisfactorily, and the other half had
18 to be torn out, as an engineer, I imagine you would agree
19 that something's different there.

20 A I would conclude that the building pad was more
21 suitable for supporting the construction traffic.

22 Q On the other side?

23 A Where it didn't fail.

24 Q Okay. What about the possibility of a
25 different type of use than the slab that had to be torn

1 out, like the presence of a trench drain and a thousand
2 anchor studs and a wash station?

3 A Comparatively, the produce operation was a
4 light-duty slab. Most any warehouse should support that
5 without slab failure and hindering the operation. So what
6 happened down the way, how that was built, the condition
7 of that when they poured the concrete, I have no knowledge
8 of that. If it's performing better, then it's either a
9 higher-quality product or the loads are less or there's
10 less intrusion of water into the area. I can't -- you
11 know, any number of -- the opposite of the problems that I
12 recommended would have to be happening there for it to
13 perform differently.

14 Q Right. But you don't know what Easy Tray did
15 to that slab and how they used the space, do you?

16 A I've never heard of Easy Tray, no.

17 Q Okay. And so wouldn't you agree that it's
18 possible that Easy Tray's modifications to the slab and
19 subsequent use of acidic water could have played a role in
20 compromising the integrity of that slab?

21 A That would be a stretch, but I wouldn't rule it
22 out.

23 Q Okay. Bear with me.

24 MR. BARFIELD: No further questions,
25 Your Honor; thank you.

1 MR. O'KELLEY: Briefly on redirect.

2 REDIRECT EXAMINATION

3 BY MR. O'KELLEY:

4 Q You have no information about Easy Tray; that's
5 correct, is it not?

6 A That's correct.

7 Q And no one has asked you to opine about Easy
8 Tray or onion juice here today, have they?

9 A I don't see that being a factor at all.

10 Q All right.

11 You were just asked about the slab that has not
12 been taken up. You didn't do any evaluation of that slab,
13 did you?

14 A No, sir.

15 Q And do you know whether there's a loading dock
16 that backs up to that portion of the slab?

17 A There isn't.

18 Q Okay. Could that change things in terms of
19 water intrusion?

20 A Well, if there's no pool for water to
21 accumulate.

22 Q Right. And do you know if there's a ditch on
23 this property? Did you observe a drainage ditch? And if
24 you didn't, that's fine.

25 A I don't recall.

1 Q Okay. And did you see any rebar or rock being
2 put in when you were out at the property?

3 A Below the slab?

4 Q Yes, sir.

5 A There's no rock, gravel. You talking about
6 gravel?

7 Q Yes, sir.

8 A There's no gravel.

9 Q And I think your testimony is that you only saw
10 wire mesh on the back side of the demolished slab?

11 A I mean, I didn't even recall seeing any. But
12 if there was some --

13 Q It's in your report. You say it was wire mesh
14 and not rebar.

15 A Not rebar.

16 MR. O'KELLEY: Okay; thank you. That's
17 all I have.

18 MR. BARFIELD: Nothing further, Your
19 Honor.

20 JUDGE CHELLIS: Would you give an
21 orientation of what this picture is?

22 THE WITNESS: Yes, sir. That truck dock
23 well would be back here.

24 JUDGE CHELLIS: For my own sake, I wanna
25 mark that.

1 MR. O'KELLEY: The freezer building
2 would be right here, and this would be a roll-up door here
3 and a roll-up door there with the truck well.

4 JUDGE CHELLIS: Okay. Let me repeat
5 this so the record's clear. Roughly photographs 33, 34
6 and 35 are the truck well?

7 THE WITNESS: Correct.

8 JUDGE CHELLIS: So my own note, I'm
9 gonna put "truck well." And then photographs 1, 2 or 42,
10 in that area is a roll-up door.

11 THE WITNESS: At grade.

12 JUDGE CHELLIS: Roll-up door at grade.
13 And then in the far-left corner of this rendition, which
14 would be the roughly square in the upper-left corner,
15 photographs 25 down through 17, that corner is the --
16 that's the office space.

17 THE WITNESS: That was the refrigeration
18 space.

19 JUDGE CHELLIS: Refrigeration; all
20 right.

21 THE WITNESS: And that was still there
22 when I was there.

23 JUDGE CHELLIS: Okay. Were there any
24 other openings that you recall, or is it just those two?

25 THE WITNESS: Roll-up doors on the back

1 were 33, 32. And 1, 2 and 42 were both roll-up doors.
2 With the truck well on the back by 32, 33, and a at-grade
3 roll-up door on 1, 2.

4 JUDGE CHELLIS: Does that cause any
5 problem with anybody?

6 MR. O'KELLEY: I just wanna clarify.
7 The office was still there, not the refrigerator; correct?

8 THE WITNESS: The refrigerator was still
9 there.

10 MR. O'KELLEY: All right; I just wanted
11 to clarify.

12 THE WITNESS: Yes.

13 MR. BARFIELD: I do have one.

14 JUDGE CHELLIS: Yes, sir; go ahead.

15 MR. BARFIELD: One question on redirect.
16 Or recross, rather.

17 RE CROSS-EXAMINATION

18 BY MR. BARFIELD:

19 Q Just so we're clear, you are not aware of any
20 instances, you've not been told about any instances in
21 which water actually came in from the loading docks across
22 the surface of the slab, are you?

23 A I didn't observe that. But water was up at the
24 top of the foundation wall, and there's no gutters and
25 downspouts were rusted out.

1 Q That's in the hurricane photos, though; right?

2 A Excuse me?

3 Q That's in the hurricane photos, when it was up
4 to the foundation wall?

5 A The tenant-provided photos, yes.

6 Q Okay. But you've not been told or observed any
7 water coming in topping that foundation wall and entering
8 into the interior, are you?

9 A I'm not aware of that, no.

10 MR. BARFIELD: Okay; thank you. That's
11 all I have.

12 JUDGE CHELLIS: One other question: Did
13 you do any soil samples where the slab had been removed?

14 THE WITNESS: We took two samples and
15 did the laboratory work. We didn't do borings.

16 JUDGE CHELLIS: You didn't do a boring.

17 THE WITNESS: We didn't do soil borings;
18 no, sir.

19 JUDGE CHELLIS: Okay, I was just curious
20 of whether there was a strata of clay beneath the sandy
21 clay. Just pops in my head.

22 MR. BARFIELD: I wish we had an answer
23 for you.

24 JUDGE CHELLIS: Okay. One other
25 question: Were any topographical surveys provided to you

1 of the site itself?

2 THE WITNESS: No, sir.

3 JUDGE CHELLIS: Okay. All right; that's
4 all.

5 MR. O'KELLEY: And Mr. Allen is free to
6 go if he so chooses. He was under subpoena.

7 JUDGE CHELLIS: You're free to go if
8 you'd like.

9 MR. O'KELLEY: Your Honor, can we
10 take -- because it's been about two hours -- just a
11 two-second comfort break?

12 JUDGE CHELLIS: Of course. Let's get
13 back in about five minutes.

14 MR. O'KELLEY: Yes, sir.

15 (The hearing took a short recess.)

16 MR. O'KELLEY: At this time we call
17 David Willis to the stand.

18 JUDGE CHELLIS: Mr. Willis, come on up.

19 DAVID WILLIS,
20 being first duly sworn by JUDGE CHELLIS, was examined and
21 testified on his oath as follows:

22 JUDGE CHELLIS: All right; you're under
23 oath. Please answer any questions Mr. O'Kelley may have.

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MR. O'KELLEY:

3 Q Mr. Barfield, the notebook is in front of you,
4 is it not?

5 A Yes.

6 Q All right; Mr. Willis, tell Your Honor what you
7 do for a living, how long you've done that, things of that
8 nature.

9 A I'm a general contractor in the state of South
10 Carolina.

11 Q And how long have you held that license?

12 A Since 2000.

13 Q All right. And do you own a company called
14 Southeastern Construction?

15 A I do.

16 Q All right. And you've been under subpoena and
17 been in the courtroom all day patiently waiting, so thanks
18 for that. You've heard the testimony here today. Please
19 tell His Honor how you became involved with the Tradd
20 Street property.

21 A I was contracted to build the new facility for
22 Limehouse Produce.

23 Q The new facility where they currently operate?

24 A The one where they currently operate now. When
25 the new facility opened and the Limehouses vacated the old

1 facility, I was asked by Mrs. Limehouse to make some
2 modest repairs to the former facility.

3 Q And if you'll look at the notebook, Exhibit
4 Number 8, it's tab 8. Is this Southeastern's invoice for
5 the work that was done as requested by Mrs. Limehouse?

6 A That's correct.

7 Q And tell The Court what work you did. When I
8 say "you," I mean Southeastern, not you, David Willis.

9 A Sure.

10 Q I don't know that you were necessarily out
11 there swinging a hammer, but you might've been.

12 A That definitely happens from time to time.

13 Q Yes, sir.

14 A We purchased and installed four yards of
15 concrete, we provided a dumpster for some of the
16 Limehouses' debris, office chattle, furniture, things of
17 that nature. We also provided a scissor lift so that
18 electrician could terminate some electrical circuits in
19 the facility.

20 Q And what did you observe, if anything, about
21 the condition of the slab that you've been hearing about
22 all day when you did the work?

23 A The slab wasn't in good condition. There were
24 locations where it had failed, there were locations that
25 had been previously covered. I'd been in this facility

1 several times while we were in design and construction of
2 the new facility, and I saw some of the issues.

3 Q And just tell His Honor what you observed
4 during that timeframe before the tenants vacated the
5 space.

6 A It's in keeping with what everyone else has
7 said, including Mr. Simmons today. Areas that the slab
8 had failed and water was present.

9 Q All right. Mr. Willis, how much did you end up
10 charging the Limehouses for the work?

11 A \$4,164.89.

12 Q All right. And you were here for Mr. Allen's
13 testimony; correct?

14 A Correct.

15 Q And he said he got contacted by you to perform
16 his evaluation. Tell His Honor about that.

17 A Ms. Limehouse had called me and said that they
18 were removing the slab at the facility. And I don't
19 remember how the conversation went, but it was something
20 to the effect of "Do I need to go look at it?" And I
21 recommended that an engineer go look at it. I am an
22 unlimited general contractor; but short of that, I hold no
23 accreditations.

24 Q And in fact, you wouldn't be able to give an
25 opinion about the soil or the thickness of the concrete,

1 things of that nature; correct?

2 A Correct.

3 Q And so you recommended Mr. Allen, who just
4 testified a few minutes ago; correct?

5 A Correct.

6 MR. O'KELLEY: Mr. Willis, that's all
7 I've got. Thank you.

8 THE WITNESS: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. BARFIELD:

11 Q Mr. Willis, I'm gonna be equally brief.

12 A That's exciting.

13 Q What exactly were you asked to do with regard
14 to this older slab?

15 A I was asked to fill some drains. I don't
16 remember -- I can't believe it was all of 'em because we
17 only bought four yards of concrete, and there was
18 testimony earlier today that there was 335 linear feet of
19 it.

20 Q Uh-huh (counsel indicated an affirmative
21 response).

22 A So my recollection is that it was a section of
23 drain.

24 Q Okay.

25 A But it's been a while.

1 Q All right. And were you provided with any
2 design documents or specs, plans, anything like that that
3 would tell you exactly how to do it?

4 A No, sir.

5 Q Okay. And I'm assuming you did not retain a
6 design professional for that purpose yourself.

7 A I did not.

8 Q All right. You're a general contractor, and
9 you had built this brand new warehouse space for them;
10 right?

11 A That's correct.

12 Q Right. Handyman stuff is really not your
13 bailiwick, is it?

14 A I do it from time to time, but it's not normal
15 course.

16 Q Gotcha. Let me ask it this way: Had the
17 Limehouses called you outta the blue about just doing this
18 trench drain job, would you have taken that job at the
19 time without the other job?

20 A No, sir.

21 Q Okay. So how did you approach it? How many
22 guys on your crew for this?

23 A I think it was a three-man concrete crew.

24 Q Okay.

25 A Yeah.

1 Q All right. And did they install any -- do you
2 know if they removed the drain pipe that was in there?

3 A I don't recall.

4 Q Okay.

5 A I don't think so.

6 Q All right. And I haven't seen any record of
7 it, but would it be accurate to say they didn't put any
8 reinforcement into the drain before they backfilled it
9 with concrete?

10 A We apparently bought some for this project.
11 Whether it got in and how it was installed, I'm not sure.

12 Q Okay. But they poured concrete in the -- I
13 mean, they poured concrete in a hole and it dried and they
14 sorta finished it off at the top. Is that kind of a
15 summary of what they did?

16 A Yeah; we filled a trench drain, and I'm sure it
17 was trowel finished. I'm sure it wasn't troweled to the
18 level of a new slab, but I'm sure it was leveled. But
19 past that, no, sir.

20 Q Okay. And before you unfortunately got swept
21 up as a witness in this lawsuit, have you heard anything
22 else about that job since?

23 A Well, I obviously did this work. And then I
24 was told that the slab was being removed, so I helped
25 coordinate a PE.

1 Q Right.

2 A And I'm familiar with the findings. But short
3 of that, no, sir.

4 Q Gotcha. No direct personal involvement.

5 A Correct.

6 MR. BARFIELD: Okay; that's all I have
7 for you, sir. Thank you.

8 THE WITNESS: Thank you.

9 MR. O'KELLEY: Nothing on redirect, Your
10 Honor.

11 JUDGE CHELLIS: Could you tell me what a
12 trench drain looks like?

13 THE WITNESS: Like you'd see around a
14 pool, like a linear drain that would catch a sheet flow of
15 water. So if you think a floor drain in a shower, it's
16 usually square around.

17 JUDGE CHELLIS: Right.

18 THE WITNESS: This would be a elongated
19 drain that would have corrugated or grade across the top;
20 yes, sir.

21 JUDGE CHELLIS: Okay. I think I have
22 trench drains that collect water off of my roof onto my
23 patio.

24 Anyway, so you actually can see the
25 drain underneath the steel grate that might be over the

1 top of it; correct?

2 THE WITNESS: Yes, sir. And I don't
3 remember what kind were here. Some of 'em have flow built
4 into the bottom, then they collect into a pipe and then
5 it's taken to either the sanitary sewer or the stormwater.

6 JUDGE CHELLIS: For some reason, I was
7 thinking it might be covered, but it sounds like it's a
8 open --

9 THE WITNESS: Open grate.

10 MR. BARFIELD: I think you might be
11 thinking of a French drain.

12 JUDGE CHELLIS: Right. Well it sounded
13 like French drain, but I finally figured out trench drain.
14 Thank you, Mr. Willis. I appreciate
15 your help.

16 MR. O'KELLEY: And he's released too,
17 Your Honor.

18 JUDGE CHELLIS: All right. You're free
19 to go.

20 MR. BARFIELD: Your Honor. That is I
21 believe the last out-of-sequence witness. I have one more
22 brief witness to call before the plaintiff rests.

23 JUDGE CHELLIS: Okay. Let's do that.

24 MR. BARFIELD: And so at this time, I'd
25 call Scott Milligan.

1 SCOTT MILLIGAN,
2 being first duly sworn by JUDGE CHELLIS, was examined and
3 testified on his oath as follows:

4 JUDGE CHELLIS: All right; you're under
5 oath. Answer any questions Mr. Barfield might have.

6 THE WITNESS: Yes, sir.

7 DIRECT EXAMINATION

8 BY MR. BARFIELD:

9 Q All right. Mr. Milligan, can you state your
10 name, please.

11 A Kevin Scott Milligan.

12 Q All right. And you go by Scott; right?

13 A Yes, sir.

14 Q All right; so I'm gonna call you Scott, because
15 that's what I'm used to calling you.

16 A Yes, sir.

17 Q Gonna be very brief. What do you do for a
18 living?

19 A I work for Simco Construction.

20 Q Okay. In what capacity?

21 A A superintendent on the houses, and I do a lot
22 of the maintenance on the commercial buildings.

23 Q Okay. And how long have you worked in one
24 capacity or another for David Simmons?

25 A Since 1999.

1 Q Okay. Have you worn a lot of hats during that
2 time period?

3 A I still do.

4 Q Okay. Are you familiar with the warehouse
5 property we've been talking about all day on Tradd Street?

6 A Yes, sir.

7 Q All right. How are you familiar with that
8 property?

9 A I've done maintenance at the building, I've
10 painted the door and windows next to the facility that
11 we're talking about.

12 Q Uh-huh (counsel indicated an affirmative
13 response).

14 A In the same building, in another suite; and
15 I've worked at the facility.

16 Q Okay. When you say you painted doors and
17 windows, was there a paint booth in that facility?

18 A Yes.

19 Q Okay. And was that in close proximity,
20 relatively speaking, to the Limetrade operation?

21 A Right next to their mechanical shop.

22 Q Okay. Did you have occasion to observe their
23 operations when they were in the space?

24 A On occasion, yes.

25 Q Okay. And did you ever observe the floor got

1 wet?

2 A Yes.

3 Q Okay. And I'm not just talking about muddy
4 water bubbling up from the depths. I'm talking about on
5 the surface. Did their operations, to your observation --

6 A There would be a little water here and there,
7 yes.

8 Q Okay.

9 A Yes.

10 Q And did you ever perform maintenance on the
11 slab while they were in the space?

12 A Yes.

13 Q Okay. What kind of work did you do?

14 A I can't recall if it was before they moved in
15 or after they moved in. About the onion, I'm the one who
16 was involved in that.

17 Q Gotcha.

18 A Tearing out the concrete and pouring the
19 concrete and putting rebar in and doing that. And I
20 believe we removed after all that, after they were in,
21 several chunks of degraded concrete. I don't know how
22 many. A couple. I'd say two or three, something like
23 that.

24 Q Okay. And we've heard a lot of testimony here
25 today about comparing and contrasting that side of the

1 slab with the other side of the slab, and the testimony
2 has been that the other side of the slab has not
3 experienced the same kinds of conditions that occurred in
4 the Limetrade space.

5 A And we are talking about the other tenants in
6 the other side of the building.

7 Q Correct. Correct. Do you agree with that?

8 A Yes.

9 Q Since you personally observed the operations
10 there -- David touched on this -- but what kind of use
11 have those other tenants made of the other space?

12 A The other spaces?

13 Q Yes.

14 A Division 8 has multiple companies in there.
15 They have heating and air company, I believe a lock
16 company, and a Kona Ice company. They store a lot of
17 vehicles in their space.

18 Q You say they store a lot of vehicles?

19 A Yes, multiple Kona Ice trucks. Like a big --
20 like a snow cone ice trucks, multiple of them. When HBO,
21 I believe, was there doing the movie sets, they would have
22 multiple vehicles in there, which at the opposite end of
23 the building as the Limehouses.

24 Q Right.

25 A And David's door and window company is there

1 now with big, heavy equipment; and they have one to two
2 forklifts in there.

3 Q Okay. Any problems with cracking or water
4 coming up from the floor over there?

5 A No.

6 Q Okay. Did you observe water coming up from the
7 floor in the Limetrade space when they were there?

8 A I have seen it, yes.

9 Q Okay. Did you ever talk to anybody from
10 Limetrade about that issue?

11 A Andrea.

12 Q Okay. And what'd you talk to her about with
13 that?

14 A Well, just trying to find out what's going on.
15 She was trying to ask me what -- you know, what we were
16 doing about to try to fix the problem.

17 Q Right. At some point -- you were here for
18 David's testimony. At some point did the landlord tell
19 them that it was their responsibility?

20 A I don't know that.

21 Q You weren't privy to that?

22 A No, no.

23 Q Did you observe the condition of the space
24 right after Limetrade moved out?

25 A Yes.

1 Q All right. Can you kinda describe what it
2 looked like?

3 A I had went there --

4 Q Well let me ask this:

5 A Okay.

6 Q Let me dial down specifically.

7 A Okay.

8 Q Before they filled in the trench drain, had
9 somebody come and cut off the anchor bolts or the
10 ThunderStuds?

11 A Yes, I believe so at that time.

12 Q Okay.

13 A I believe so. I was there at the end of the
14 pouring of the -- the trough.

15 Q Okay.

16 A The concrete truck was gone by then. I just so
17 happened to be at the paint booth and saw the roll-up
18 doors open. I seen some guys working in there, so I just
19 walked on in and seen what they were doing.

20 Q Okay.

21 A And I noticed that they were filling the trough
22 instead of removing the trough.

23 Q Okay. And that was Mr. Willis's crew?

24 A I'm assuming so.

25 Q You assume; okay.

1 A There was two or three guys there.

2 Q All right.

3 A Didn't speak English.

4 Q All right. So you came upon that situation.

5 What, if anything, did you do?

6 A I asked them or tried to ask them are they not
7 planning on removing the drain and not just putting
8 concrete into the drain, and they couldn't give me an
9 answer. "No, no Ingles."

10 Q Okay. So they were non-English speakers.

11 A To me they were, yes.

12 Q Gotcha. So they couldn't give you an answer.

13 A No.

14 Q All right. So what'd you do next?

15 A I called Mr. Simmons.

16 Q Okay. So why would you call Mr. Simmons about
17 that?

18 A Because I know that troughs should've been
19 taken out.

20 Q Gotcha.

21 A He shouldn't have left a composite trough in
22 the middle of the floor and just put concrete on top of
23 it.

24 Q Gotcha. I'm gonna show you -- and
25 unfortunately, I only have one copy of these photos, but I

1 wanna show you two photos. This is Bates stamp Simmons
2 118 and 119. And I'm gonna ask you -- I've already shown
3 these to opposing counsel. He has no objection, I
4 believe.

5 MR. O'KELLEY: No objection, Your Honor.

6 BY MR. BARFIELD:

7 Q Can you tell me what's shown in those photos?

8 A It looks to me like the trough filled in with
9 concrete.

10 Q Okay.

11 A And this is after the Limehouses moved out and
12 with the company NRX.

13 Q Okay.

14 A Was in at that point.

15 Q Okay. So is that the drain as it appeared
16 right after Mr. Willis's crew filled it in, or is that
17 after it was sort of epoxied over again to satisfy NRX?

18 A It looks to be like -- it's hard to tell with
19 these pictures -- like it may be a little bit of epoxy was
20 put on 'em.

21 Q Okay.

22 A But I'm not positive.

23 Q All right; very good.

24 MR. BARFIELD: I'd like to admit those
25 as I guess Plaintiff's 16 and 17.

1 JUDGE CHELLIS: Okay.

2 MR. BARFIELD: And then I have two more
3 photos to show you from the same batch. This is Bates
4 numbered Simmons 117 and 116. I'm gonna ask you if you --
5 I'm not gonna ask you to pinpoint exactly where those are
6 on the floor; that would be unfair. But can you sort of
7 describe what's shown in those photos?

8 THE WITNESS: Looks to be a piece of
9 metal in this particular photo, 116, on top of the floor
10 by some cracked concrete, deteriorating concrete right
11 there.

12 MR. BARFIELD: Uh-huh (counsel indicated
13 an affirmative response).

14 THE WITNESS: And 117, it's got a little
15 orange on it. It kinda looks like piece of metal attached
16 to the floor. It actually looks like it's been patched.
17 It's kinda blurry. Got a little orange on there, so I
18 can't really describe what that is.

19 MR. BARFIELD: Gotcha.

20 THE WITNESS: To be honest with you.

21 BY MR. BARFIELD:

22 Q So if I were to ask you if those were
23 conditions left behind by the Limetrade operation, would
24 you know?

25 A I wouldn't know. Not this particular 117; no,

1 I would not.

2 Q Okay. Well, in that case, there's no sense
3 marking 'em as exhibits. We'll simply refer to those for
4 identification.

5 Okay. You said after Mr. Willis's crew been
6 out there and you were unable to communicate with them,
7 you called Mr. Simmons. Did you believe that he needed to
8 take a look at the job that had been done?

9 A Yes, sir.

10 Q Okay. And did he, in fact, come out and take a
11 look at it?

12 A Yes, sir.

13 Q And what was his reaction?

14 A That's not gonna fly.

15 Q Okay.

16 A That's not the way it should've been done.

17 Q Okay. We heard some testimony earlier that not
18 all of the slab in the space that was leased by Limetrade
19 was removed. Do you remember that?

20 A Yes.

21 Q All right. And so are you familiar with the
22 portions of the slab that were not removed?

23 A Yes.

24 Q All right. Have those portions of the slab
25 performed satisfactorily to this day?

1 A As far as I know, yes.

2 Q Okay. And were those portions of the slab in
3 the office area, partly?

4 A Office area, outside of the back of the office,
5 to the right of the office to the end of the building.

6 Q Uh-huh (counsel indicated an affirmative
7 response).

8 A And to the left of the office, there was some
9 more space.

10 Q Okay. And who's in there now? Who's the
11 tenant in that space now?

12 A LW Supply.

13 Q All right. And LW Supply, I think we've heard
14 testimony they are like a sheetrock and construction
15 material supplier?

16 A Yes; heavy, large sheetrock.

17 Q Heavy stuff.

18 A Yes.

19 Q Does their movement of their heavy stuff in
20 that warehouse traverse the sections of the slab that had
21 not been removed?

22 A Yes.

23 Q And has that caused any damage to that?

24 A No, not that I'm aware of.

25 Q Okay. There's no trench drains anymore, are

1 there?

2 A No.

3 Q And there's no more anchor bolts slash
4 ThunderStuds in the floor anymore, is there?

5 A No, sir.

6 Q All right. And everything is performing as it
7 should?

8 A As far as I'm aware, yes.

9 MR. BARFIELD: All right; thank you.

10 That's all I have. Please answer any questions that
11 Mr. O'Kelley has for you.

12 CROSS-EXAMINATION

13 BY MR. O'KELLEY:

14 Q Mr. Milligan, you testified a few minutes ago
15 that you were out at this site trying to fix the problems
16 on a regular basis; correct?

17 A I wouldn't say on a regular basis. I was out
18 at the facility, yes.

19 Q And from my understanding when I took your
20 deposition, you were often at this facility not
21 necessarily in my client's space, but at the warehouse;
22 correct?

23 A There were times I was there for, you know,
24 three, four days, but there would times I wasn't there for
25 two, three weeks; so I wasn't always there.

1 Q All right. So tell the judge, if you can,
2 about some of the fixes y'all tried.

3 A Some of the cracking concrete, we cut out the
4 concrete, removed the concrete, drilled holes through the
5 concrete, put rebar in the concrete, repoured the
6 concrete. We have tried -- I think we have done, not
7 including the onion --

8 Q Well that was before my time.

9 A Yeah; I can't remember if that was before they
10 moved in or just as they were moving in, but I don't
11 remember.

12 Q And you were here for Mr. Simmons' testimony;
13 correct?

14 A Yes.

15 Q And he testified that there was work that was
16 done prior to their moving in because of -- I guess we can
17 call it onion juice, for lack of a better term.

18 A Yes.

19 Q Causing damages to the surface.

20 A To the aggregate and the rebar.

21 Q Correct. But that was done prior to my clients
22 moving in.

23 A I believe it was. It's a long time ago.

24 Q Well I'll show you something. This should
25 refresh your memory. This notebook that you have in front

1 of you.

2 A Yes.

3 Q Turn to Exhibit Number 3.

4 A Okay.

5 Q And you see it's a contract with Limetrade by
6 Simco, Inc.

7 A Yes, sir.

8 Q June of '07?

9 A Yes, sir.

10 Q All right. And if you turn to the exhibit
11 before that, number 3, there's an assignment in May of
12 '07. Does that refresh your memory about when the work
13 was done and the move in?

14 A Exhibit 4?

15 Q Yes, sir.

16 A I don't see no dates or anything like that.

17 Q Sure. So the assignment, number 3, is dated
18 May of '07. Do you see that, 24 May 2007 at the top?

19 A No, I'm not seeing that.

20 Q Excuse me. I mean Exhibit 2. Sorry; sorry.
21 We are literally not on the same page right there.

22 A Okay; May 24th, '07.

23 Q And then Exhibit Number 3, which is the
24 contract with Simco, was June of '07.

25 A Yes, yes.

1 Q Okay. And do you know if that's
2 Mrs. Limehouse's signature?

3 A No.

4 Q Okay; fair enough. Do you recall at one point
5 trying to do a fix involving a tenant and some butane
6 trying to dry out concrete; do you remember that?

7 A I do not.

8 Q Okay. You haven't read the lease with my
9 clients, have you?

10 A I'm not privy to that, no.

11 MR. O'KELLEY: Okay; thank you, sir.
12 That's all I have.

13 MR. BARFIELD: Nothing further, Your
14 Honor.

15 JUDGE CHELLIS: How big a area is 252
16 linear feet of concrete slab?

17 THE WITNESS: As far as the trench,
18 you're talking?

19 JUDGE CHELLIS: Is that like a 12-by-12,
20 something like that?

21 THE WITNESS: 15-by-15, I would guess
22 it's somewhere around there. 15 by 12 somewhere.

23 JUDGE CHELLIS: So in this Exhibit
24 Number 3, the first item is "Saw cut approximately 252
25 linear feet of concrete slab six inches thick." So then

1 the second item is "Remove approximately 1,900 square feet
2 of six-inch-thick concrete." Is that the concrete that
3 you saw cut?

4 THE WITNESS: Yes; you're cutting
5 multiple cuts to be able to get it out, to be able to
6 remove it.

7 JUDGE CHELLIS: But the 1,900 square
8 feet of six-inch-thick concrete is within that 252 linear
9 feet?

10 THE WITNESS: Yes.

11 JUDGE CHELLIS: So what is a
12 two-foot-long number 5 dowel every two feet?

13 THE WITNESS: Piece of rebar.

14 JUDGE CHELLIS: Pardon me?

15 THE WITNESS: Piece of rebar.

16 JUDGE CHELLIS: Oh. Keyway. Is that
17 the -- that's the moisture barrier?

18 THE WITNESS: No; that's a piece of
19 metal that stops and starts two different slabs, you know,
20 when you're pouring. So you can pour a piece of keyway
21 like you do in a driveway.

22 JUDGE CHELLIS: Yes, sir.

23 THE WITNESS: You pour one side, and a
24 keyway stops it from going over.

25 JUDGE CHELLIS: Gotcha. It kinda like

1 creates the sheen in the concrete?

2 THE WITNESS: Yes. Yes.

3 JUDGE CHELLIS: Does that come out?

4 THE WITNESS: No; that stays. And it
5 kinda interlocks it, because they're kinda shaped like
6 this.

7 JUDGE CHELLIS: Yeah.

8 THE WITNESS: Not perfectly square like
9 that. It's kinda rounded.

10 JUDGE CHELLIS: So did you hear the
11 testimony of Mr. Allen?

12 THE WITNESS: Yes.

13 JUDGE CHELLIS: And he testified that --
14 I think he testified something along around 3,000 --
15 concrete that's 3,000 PSI is adequate for a slab form. Do
16 you recall that?

17 THE WITNESS: Yes. Yes, I do.

18 JUDGE CHELLIS: Okay. So it looks like
19 you did just what was adequate, nothing more.

20 THE WITNESS: Yes; 3,000 PSI was poured.
21 That's what the paperwork says. It's been a long time.

22 JUDGE CHELLIS: All right. And then
23 what Simco did was they billed the Limehouses for this?
24 Is that correct?

25 THE WITNESS: Yes. I -- yes.

1 Mr. Simmons would've billed.

2 JUDGE CHELLIS: So you weren't billing.

3 THE WITNESS: No, I work for him
4 directly.

5 JUDGE CHELLIS: What I'm confused about
6 is there's two entities: The family LLC, Virgie C.

7 Simmons Family, LLC. This bill is to Limetrade; right?

8 THE WITNESS: Yes; that's what it looks
9 like.

10 JUDGE CHELLIS: It says Limetrade. I
11 guess that's who you were billing.

12 THE WITNESS: Yes.

13 JUDGE CHELLIS: I'm just trying to clear
14 that up. So they would've paid Mr. Simmons this \$23,700?

15 THE WITNESS: Yes; that's correct.

16 JUDGE CHELLIS: All right. I just
17 wanted to clarify that; just a little curious.

18 Anything else?

19 MR. BARFIELD: No, Your Honor. Witness
20 may be excused.

21 JUDGE CHELLIS: Anything else?

22 MR. O'KELLEY: No, sir.

23 JUDGE CHELLIS: All right; thank you
24 very much, Mr. Milligan.

25 THE WITNESS: Thank you.

1 JUDGE CHELLIS: All right; gentlemen,
2 it's quarter to 5:00. That's a pretty good stopping
3 point, don't you think?

4 MR. O'KELLEY: Yes, sir.

5 MR. BARFIELD: I think so.

6 JUDGE CHELLIS: All right. Is there
7 anything you need me to do before we take this recess and
8 we'll reconvene at a convenient time for both of you?

9 MR. O'KELLEY: No, sir. We can hold
10 our, let's call it, record preservation motions until that
11 time because it might take a while and I'm supposed to
12 pick up a child at 6 o'clock.

13 JUDGE CHELLIS: I'm not sure I
14 understand the record preservation.

15 MR. BARFIELD: In other words, directed
16 verdict?

17 MR. O'KELLEY: Directed verdict.

18 MR. BARFIELD: You're Honor, we're
19 prepared to rest.

20 JUDGE CHELLIS: You haven't rested yet.

21 MR. BARFIELD: I have not. I haven't
22 said the words, but I'm prepared to.

23 MR. O'KELLEY: I don't think you can;
24 because, remember, there's an invoice we need to go over.

25 MR. BARFIELD: That's right.

1 JUDGE CHELLIS: I was gonna ask you
2 about that.

3 MR. BARFIELD: David's assistant retired
4 on him about a week ago, and so he's gonna have to
5 personally find that.

6 JUDGE CHELLIS: Good luck to you,
7 Mr. Simmons.

8 All right; and we're gonna leave the
9 case -- at this point, you think you may have finished
10 your testimony; but we still have a little piece of
11 evidence to get in, and then we'll talk about you resting,
12 and then we'll move on.

13 MR. O'KELLEY: Your Honor, we have
14 another housekeeping record we need to do off the record.

15 (Discussion held off the record.)

16 JUDGE CHELLIS: The exhibits are gonna
17 be uploaded by each counsel for their respective exhibits.

18 MR. O'KELLEY: Yes, sir.

19 JUDGE CHELLIS: Got that?

20 MR. O'KELLEY: Yes, sir. And madam
21 reporter, we'll send 'em to you, too.

22 THE STENOGRAPHIC REPORTER: Thank you.

23 (The hearing was adjourned at
24 4:46 p.m.)

25

COURT REPORTER'S CERTIFICATE

I DO HEREBY CERTIFY THAT THE TESTIMONY CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO WRITING IN THE PRESENCE OF SAID WITNESSES BY MEANS OF A COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE TESTIMONY GIVEN BY SAID WITNESSES, AS AFORESAID.

I DO FURTHER CERTIFY THAT I AM NOT CONNECTED BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL, ATTORNEY, AGENT, OR OTHERWISE.

SIGNED THIS 7th DAY OF FEBRUARY, 2024.

LORI WEBBER, NOTARY PUBLIC

My commission expires: April 7, 2027

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dropping (1)	engineers (5)	exercise (2)	familiar (6)
drove (1)	English (2)	exercised (2)	Family (15)
dry (3)	enjoy (1)	Exhibit (51)	far (10)
dual (1)	entering (1)	EXHIBITS (15)	far-fetched (1)
dubbed (1)	entire (3)	exist (1)	far-left (1)
due (1)	entirety (4)	existing (8)	fast (1)
dug (2)	Entities (2)	expands (1)	fastened (1)
duly (5)	entitled (3)	expansion (8)	fatal (1)
dumb (1)		expect (1)	

favorable (1)	footer (2)	go (30)	hard (4)
February (4)	footing (2)	goes (1)	harder (1)
feeding (1)	forensic (2)	going (29)	hardware (5)
feet (24)	forgive (2)	gonna (67)	hats (3)
fell (3)	fork (1)	good (28)	hailed (1)
field (5)	forklift (10)	Gotcha (16)	hauling (1)
figure (2)	forklifts (16)	gotta (2)	hazard (1)
figured (1)	forks (1)	gouged (1)	hazards (1)
file (2)	form (6)	grad (1)	HBO (1)
filed (1)	format (1)	grade (4)	head (1)
files (1)	former (3)	graduated (2)	heading (1)
fill (3)	forth (4)	grammar (1)	hear (12)
filled (8)	forward (8)	grant (1)	heard (10)
filled-in (1)	found (2)	grate (3)	hearing (8)
filler (1)	foundation (28)	grate-high (1)	hearsay (1)
filling (9)	foundations (2)	grates (1)	heating (2)
Filter (1)	four (10)	gravel (3)	heaved (3)
finally (2)	free (3)	Gray (2)	heaves (1)
find (5)	freezer (4)	great (2)	heavily (1)
findings (2)	French (2)	greater (2)	heavy (12)
fine (5)	frequently (1)	grid (1)	heavy-duty (1)
finish (7)	fresh (1)	grind (3)	held (3)
finished (5)	friends (1)	grinding (2)	hell (1)
finishing (1)	front (8)	ground (8)	HELMS (1)
firm (1)	fruits (3)	ground-down (1)	help (4)
FIRST (34)	full (5)	grout (1)	helped (1)
five (5)	fumbly (1)	guarding (1)	helpful (2)
fix (8)	fun (1)	guess (7)	helping (1)
fixed (1)	functionally (1)	guide (2)	helps (1)
fixes (1)	furling (1)	gutters (1)	Hey (1)
flat (2)	furniture (3)	guys (5)	high (2)
flip (11)	further (8)	< H >	high-200 (1)
flood (3)	Furthermore (1)	hairline (1)	high-end (3)
flooding (9)	< G >	half (11)	higher-quality (1)
floor (125)	gap (1)	half-inch (1)	highly (3)
flooring (5)	general (11)	HAMLIN (4)	highly-plastic (1)
floors (6)	generally (8)	hamlin.okelley@buist	highly-variable (3)
flow (3)	gentleman (2)	byars.com (1)	hindering (1)
Flush (2)	gentlemen (1)	hammer (1)	hire (1)
fly (1)	George (3)	hand (3)	history (1)
folks (4)	Georgia (1)	handed (2)	hold (3)
follow (2)	get-go (2)	handle (1)	holding (3)
following (2)	getting (3)	handling (1)	holds (1)
follows (5)	give (9)	Handyman (1)	Hole (3)
follow-up (2)	given (2)	hanging (1)	holes (2)
food (1)	gives (1)	happened (3)	home (3)
foolproof (1)	glad (2)	happening (1)	honest (1)
foot (3)	glove (2)	happens (3)	Honor (69)
footage (2)			Honorable (1)

hope (1)	industrial (4)	items (4)	laboratory (2)
hose (2)	industry (3)	its (24)	lack (6)
hours (1)	information (5)	< J >	laid (1)
housekeeping (3)	infused (1)	jack (3)	land (1)
houses (1)	Ingles (1)	jacks (3)	landlord (6)
how's (1)	in-house (2)	James (1)	language (2)
Humpty (1)	initially (2)	January (2)	large (6)
hurdle (1)	injury (1)	Jeff (1)	largely (1)
Hurricane (8)	inside (14)	Jim (1)	larger (1)
hurricane-rated (1)	inspect (4)	job (12)	largest (1)
hydrologist (3)	inspected (1)	Joe (3)	late (1)
hydrology (2)	inspection (5)	joint (10)	law (2)
< I >	inspections (1)	jointly (1)	lawsuit (1)
i.e (1)	install (12)	joints (18)	lawyer (4)
ice (6)	installation (3)	Jordan (8)	lawyers (4)
idea (1)	installed (23)	Joseph (1)	lay (1)
identification (1)	installing (2)	JUDGE (151)	layman's (2)
III (1)	instances (2)	JUDICIAL (1)	layout (1)
illustrate (1)	insufficient (2)	juice (7)	LC (1)
imagine (4)	insulation (1)	July (7)	leaked (1)
immediate (3)	intact (1)	jumping (2)	learn (1)
immediately (1)	integrity (2)	June (4)	learner (1)
implies (1)	intend (1)	< K >	lease (61)
important (4)	intending (1)	keep (2)	leased (11)
impression (2)	intends (1)	keeping (2)	leases (3)
improprieties (1)	intensive (1)	Kenneth (1)	leasing (3)
improvements (9)	interest (1)	Kevin (2)	leave (11)
in/day (1)	interested (2)	key (1)	leaves (1)
inadequate (2)	interesting (2)	keyway (6)	leaving (2)
inadequately (1)	interior (3)	kind (14)	left (20)
inch (4)	interlocks (1)	kinda (25)	legal (2)
inches (34)	intermediate (1)	kinds (1)	lessee (2)
include (1)	intermission (1)	King (1)	Lessor (8)
included (1)	internal (1)	knees (1)	letter (3)
including (5)	interpreted (1)	knew (5)	letterhead (2)
inclusive (1)	interviews (1)	know (126)	level (3)
Incorporated (3)	intrusion (4)	knowing (4)	leveled (1)
incorrect (1)	investigating (1)	knowledge (13)	leveling (2)
INDEX (5)	invitations (1)	known (1)	levels (1)
indexed (1)	invoice (11)	knows (1)	license (3)
indicate (3)	involved (6)	Kona (2)	licensed (6)
indicated (10)	involvement (3)	< L >	licenses (1)
indicates (1)	involving (1)	L&W (11)	liens (1)
indicating (1)	iron (5)	lab (3)	lift (3)
indicators (1)	irons (7)	label (1)	lifted (2)
INDIRECTLY (1)	issue (16)	labor (3)	light (4)
individual (1)	issues (25)		light-duty (2)
indoor (1)	item (4)		lighting (4)
	itemized (1)		Limehouse (41)

Limehouses (34)		mechanism (3)	motion (1)
Limehouse's (1)	< M >	meet (2)	motions (1)
Limetrade (51)	machinery (1)	meeting (2)	Mount (1)
Limetrade's (4)	madam (1)	melting (2)	mounted (1)
line (7)	main (2)	memory (10)	mouth (2)
linear (9)	maintain (1)	mention (1)	move (9)
lines (11)	maintenance (4)	mentioned (16)	moved (22)
liquid (1)	major (1)	mercy (1)	move-in (2)
liquids (1)	majority (1)	mesh (7)	movement (1)
list (1)	making (6)	mess (2)	movie (2)
listed (2)	manage (1)	met (5)	moving (14)
literally (1)	management (2)	metal (9)	mud (1)
little (24)	manager (2)	method (5)	muddy (6)
live (1)	managing (1)	methods (1)	multiple (8)
living (2)	manifestation (1)	MICHAEL (6)	< N >
LLC (26)	manifested (4)	microenzymes (1)	name (7)
load (17)	manifesting (1)	middle (7)	named (3)
loaded (3)	manner (1)	mid-February (1)	narrow (3)
loading (12)	manufacture (2)	midway (2)	nature (11)
loads (3)	manufacturing (3)	might've (2)	near (3)
locally (1)	March (3)	Milligan (11)	nearly (2)
located (1)	mark (1)	Millwork (4)	necessarily (2)
location (4)	marked (1)	mind (4)	necessary (2)
locations (11)	marking (1)	mine (1)	need (22)
lock (1)	MARRIAGE (1)	minimal (2)	needed (7)
logs (1)	mass (1)	minimum (1)	needing (1)
long (12)	Master-In-Equity	minus (5)	never (10)
look (36)	(1)	minute (7)	new (22)
looked (18)	master's (1)	minutes (5)	nice (1)
looking (12)	matches (1)	missing (2)	non-English (1)
looks (15)	material (2)	misunderstood (1)	normal (8)
loose (1)	materials (10)	mitigate (3)	North (2)
loosely (1)	math (1)	mixed (1)	Notary (2)
Lori (2)	matter (4)	mixing (1)	notations (1)
lose (2)	matters (1)	mixture (1)	notch (1)
losing (1)	Matthew (7)	model (1)	note (2)
loss (2)	mbarfield@barnwell-	modern (1)	Notebook (9)
lost (2)	whaley.com (1)	modest (1)	noted (2)
lot (25)	mean (27)	modification (1)	notes (1)
lots (2)	meaning (1)	modifications (17)	notice (2)
loud (1)	means (3)	moisture (4)	noticed (1)
Lovely (1)	meant (5)	moisture-sensitive	NRX (14)
low (2)	measure (2)	(1)	NRX's (1)
Lowcountry (2)	measured (5)	moment (2)	number (37)
low-plasticity (2)	measurement (2)	Monday (1)	numbered (2)
luck (1)	measurements (5)	money (1)	numbers (5)
lucky (1)	measuring (1)	month (1)	nutshell (1)
lunch (3)	mechanical (2)	months (3)	
LW (3)	Mechanically (1)	morning (3)	

< O >

oath (13)
 object (4)
 objection (4)
 obligation (1)
 obligations (1)
 observable (2)
 observation (9)
 observations (7)
 observe (19)
 observed (21)
 observing (2)
 obtain (2)
 obviously (11)
 occasion (7)
 occasions (2)
 occupied (4)
 occupy (1)
 occupying (3)
 occurred (2)
 occurring (3)
 occurs (2)
 o'clock (3)
 October (2)
 offer (5)
 offering (1)
 office (16)
 officially (1)
 Oh (7)
 Okay (515)
 O'KELLEY (95)
 old (1)
 older (2)
 once (5)
 one-year (2)
 onion (11)
 onions (5)
 Online (1)
 onsite (5)
 on-your-knees (1)
 open (6)
 opened (1)
 opening (3)
 openings (3)
 operate (3)
 operated (1)
 operating (2)
 operation (21)
 operational (2)

operations (12)
 opine (1)
 opining (1)
 opinion (8)
 opinions (4)
 opportunity (1)
 opposing (1)
 opposite (2)
 Option (7)
 options (4)
 orange (2)
 orange-gray (1)
 order (5)
 orientation (1)
 original (18)
 originally (3)
 oughta (1)
 outboard (1)
 outer (2)
 out-of-sequence (1)
 outside (8)
 outta (3)
 overall (2)
 overhead (1)
 overlaid (2)
 overloading (2)
 overrides (1)
 Overruled (1)
 owned (4)
 owner (4)
 owners (1)
 ownership (3)
 owns (3)

< P >

p.m (2)
 package (1)
 pad (3)
 page (40)
 pages (3)
 paginated (1)
 paid (6)
 paint (3)
 painted (3)
 painting (1)
 pallet (7)
 pallets (2)
 panel (2)
 panels (3)

paper (1)
 papers (1)
 paperwork (1)
 paragraph (13)
 parcel (1)
 Pardon (1)
 park (3)
 part (23)
 partial (1)
 particular (5)
 parties (2)
 partly (1)
 partner (2)
 partners (1)
 parts (2)
 party (2)
 pass (2)
 passes (1)
 patch (9)
 patched (4)
 patches (3)
 patching (2)
 path (4)
 pathway (1)
 pathways (5)
 patiently (1)
 patio (1)
 Patriot (1)
 PATTERSON (1)
 pavements (1)
 pay (2)
 paying (2)
 payments (1)
 PE (1)
 Pee (1)
 penetrating (1)
 penetrations (2)
 people (10)
 percent (10)
 percentage (1)
 percolate (1)
 perfectly (1)
 perform (8)
 performance (6)
 performed (4)
 performing (3)
 performs (1)
 perimeter (12)
 period (3)

permit (1)
 permitted (1)
 person (1)
 personal (3)
 personally (5)
 perspective (1)
 perspectives (1)
 Phosphate (1)
 photo (10)
 Photograph (16)
 photographed (1)
 photographic (1)
 photographs (28)
 photos (25)
 physical (2)
 pick (3)
 picked (2)
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 picture (8)
 pictures (16)
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 piece (12)
 pieces (9)
 pile (7)
 piled (2)
 pin (2)
 pinpoint (1)
 pipe (4)
 pipes (1)
 piping (1)
 place (5)
 placed (2)
 placement (1)
 places (2)
 placing (1)
 plague (3)
 plagued (5)
 Plaintiff (6)
 plaintiffs (1)
 Plaintiff's (19)
 plan (3)
 planning (2)
 plans (3)
 plant (6)
 Plastic (3)
 plasticity (2)
 plate (5)
 plates (5)
 played (1)

PLEAS (1)	preparing (2)	property (23)	random (1)
Pleasant (1)	prerestoration (1)	proposition (1)	randomly (2)
please (23)	presence (3)	protect (2)	range (1)
plenty (1)	Present (3)	protocols (1)	ranged (1)
pluff (1)	presented (1)	prove (1)	rapidly (2)
plus (7)	presently (1)	provide (1)	rare (1)
pock (1)	preservation (2)	provided (13)	rather-large (1)
point (23)	presiding (1)	provision (2)	rating (2)
pointing (1)	presliced (1)	proximity (1)	reached (1)
points (5)	pressed (2)	PSI (5)	reaction (1)
pole (1)	presumably (1)	Public (2)	read (19)
pool (2)	pretenancy (1)	puddle (1)	ready (1)
poor (1)	pretty (12)	pull (6)	real (2)
poorly-worded (1)	pretty-concerning (1)	pulled (1)	realize (1)
pops (1)	pretty-dramatic (1)	pulverize (1)	really (18)
portion (21)	previous (2)	pulverized (1)	really-hard-to-read (1)
portions (11)	previously (2)	pump (5)	rear (1)
position (6)	previously-existing (1)	pumps (5)	reason (8)
positive (1)	price (1)	purchase (1)	reasonable (1)
possession (3)	print (3)	purchased (2)	reasons (1)
possibility (1)	prior (27)	purpose (3)	rebar (19)
possible (2)	pristine (1)	purposes (4)	recall (24)
post (1)	privy (2)	pushback (1)	recapture (1)
post-demolition (1)	probably (13)	pushed (1)	received (2)
post-installed (6)	problem (8)	pushing (2)	recess (4)
potential (1)	problematic (2)	put (54)	recessed (1)
potentially (1)	problems (27)	putting (6)	recognize (3)
pothole (2)	procedure (1)	< Q >	recollection (5)
potholes (1)	proceed (1)	qualifications (1)	recommend (1)
pounds (2)	proceeding (1)	qualified (4)	recommendation (2)
pour (21)	process (7)	quality (8)	recommendations (1)
poured (17)	processing (5)	quarter (2)	recommended (3)
pouring (5)	Produce (29)	question (16)	recommending (1)
pouring-down (1)	product (6)	questions (11)	reconvene (1)
pours (1)	production (1)	quick (1)	record (15)
powered (1)	products (1)	quickly (1)	record's (1)
practice (1)	professional (11)	quote (4)	recover (1)
practices (2)	professionals (1)	quotes (1)	recross (1)
pre (1)	profile (2)	< R >	RECROSS-
precipitated (1)	progression (2)	railroad (1)	EXAMINATION (2)
predates (2)	project (8)	rain (9)	redirect (10)
predecessor (1)	projects (5)	rained (1)	REDUCED (1)
predicament (1)	prompted (1)	raining (5)	reentrant (1)
preface (1)	propagate (1)	rains (1)	refer (4)
preinstallation (1)	proper (2)	raise (1)	reference (7)
prelease (2)	properly (10)	ramp (2)	referenced (2)
premarked (1)	properties (3)	ran (5)	
premises (9)			
prepared (7)			

references (2)	repeated (1)	retired (1)	sanctioned (1)
referencing (2)	repeatedly (1)	returned (4)	sand (7)
referred (2)	replace (6)	reverse (2)	sandy (2)
referring (3)	replaced (9)	review (4)	sanitary (2)
reflected (2)	replacement (7)	Reviewed (1)	sat (1)
refrain (1)	replacing (2)	reviewer (1)	satisfactorily (2)
refresh (12)	report (19)	rewind (1)	satisfied (1)
Refrigerant (1)	Reporter (3)	Richard (1)	satisfy (1)
refrigerated (1)	Reporter's (2)	rid (1)	saw (44)
refrigeration (12)	reports (1)	rig (1)	sawed (5)
refrigerator (11)	repour (2)	right (288)	sawed-off (2)
refrigerator/freezer (11)	repoured (1)	rights (1)	saws (3)
refrigerators (1)	represent (1)	ring (1)	saying (4)
regard (8)	representative (2)	rinsing (1)	says (13)
regarding (1)	representatives (1)	rip (1)	SC (3)
regular (6)	represented (1)	ripped (2)	scale (6)
regularly (1)	representing (2)	river (1)	scene (1)
reinforcement (9)	reproduce (1)	Road (1)	Schachte (4)
reinforcing (1)	request (14)	rock (5)	schedule (1)
relate (1)	requested (4)	rocks (3)	school (2)
related (5)	requests (5)	role (2)	scissor (1)
relationship (2)	require (3)	roll (1)	scope (10)
relative (2)	required (8)	rolled (2)	Scott (6)
relatively (2)	requirements (2)	rolling (5)	seat (2)
released (1)	requires (1)	roll-up (9)	second (12)
rely (1)	residential (1)	roof (2)	second-to-the-last (3)
remainder (1)	resistance (1)	rough (1)	section (26)
remedied (7)	resolved (1)	roughly (30)	sections (1)
remedy (1)	respective (1)	rounded (3)	see (53)
remember (24)	respond (1)	rubble (2)	seeing (5)
remind (1)	response (10)	rule (2)	seen (11)
removal (3)	responsibilities (2)	ruled (1)	seeping (3)
remove (18)	responsibility (3)	run (5)	selected (2)
removed (31)	responsible (3)	rundown (1)	selection (2)
removing (6)	rest (6)	running (10)	self-help (1)
render (1)	restaurants (1)	runoff (1)	self-leveling (1)
rendition (1)	rested (1)	rush (1)	sell (2)
renew (2)	resting (2)	rusted (1)	send (3)
renewal (5)	Restoration (2)	ruts (1)	sending (3)
renewals (1)	restore (8)	ruttled (1)	sense (6)
rent (3)	restored (1)		sensitive (1)
renting (1)	restoring (2)	< S >	sentence (2)
repair (11)	rests (1)	safe (1)	separately (1)
repairable (1)	result (5)	sake (2)	sequence (1)
repaired (5)	resulted (2)	salvaged (1)	Series (3)
repairing (2)	resulting (4)	salvaging (1)	serious (2)
repairs (13)	results (1)	sample (7)	seriously (1)
repeat (3)	retain (2)	samples (8)	served (1)
	retains (3)	sampling (1)	

serviceable (1)	sir (77)	spacing (2)	step (3)
services (1)	sisters (1)	spalling (1)	Stephen (2)
set (7)	sit (5)	span (1)	Steve (1)
sets (3)	site (10)	speak (1)	sticking (2)
setting (1)	sites (2)	speakers (1)	stockpile (3)
settle (1)	sitting (5)	Speaking (5)	stone (1)
severe (2)	situation (5)	speaks (1)	stones (1)
sewer (2)	six (6)	spec (2)	stool (1)
shaded (1)	six-inch-thick (2)	special (2)	stop (2)
shape (6)	size (7)	specializing (1)	stopping (1)
shaped (1)	skate (3)	specific (4)	stops (2)
shave (1)	slab (243)	specifically (6)	storage (3)
shed (1)	slabs (17)	specs (1)	store (4)
sheen (1)	slab's (2)	spidering (1)	stored (1)
sheer (1)	slash (5)	spigots (1)	stores (1)
sheet (1)	slip (1)	spinning (1)	storing (1)
sheeting (1)	sloped (3)	spoke (1)	storm (3)
sheetrock (3)	sloping (1)	spot (3)	storms (3)
shipping (1)	slowly (1)	spots (1)	stormwater (1)
shop (1)	small (11)	spotty (2)	straight (1)
Shop-Vac (1)	smaller (1)	square (19)	strata (1)
short (6)	smooth (1)	squares (1)	Street (14)
shortly (2)	snow (1)	squirting (2)	strength (12)
should've (3)	soft (2)	St (2)	strengths (1)
shoved (1)	soil (46)	stable (1)	stretch (1)
shovel (1)	soils (3)	stack (1)	strike (1)
show (12)	soil's (1)	staff (1)	strip (1)
shower (1)	sold (1)	stamp (1)	strips (1)
showing (5)	solid (1)	stand (4)	structural (10)
shown (4)	solution (3)	standard (3)	structure (1)
shows (5)	somebody (7)	standards (1)	struggling (1)
shrinkage (2)	something's (1)	standing (11)	studied (1)
shy (1)	somewhat (1)	stands (2)	studs (3)
sick (1)	soon (1)	stand-up (1)	stuff (4)
side (13)	sophisticated (1)	start (5)	style (1)
sidebar (1)	sorry (22)	started (6)	subfloor (1)
sides (2)	sort (17)	starting (1)	subgrade (29)
signature (1)	sorta (6)	starts (2)	subject (2)
signed (2)	sorts (1)	STATE (18)	submit (1)
significant (1)	sounded (1)	stated (8)	subpoena (4)
Significantly (3)	sounds (3)	statement (2)	subpoenas (1)
silent (1)	soup (1)	states (3)	Subsequent (2)
Simco (25)	soupy (1)	static (1)	subsidence (6)
similar (8)	source (4)	station (11)	subsoil (1)
Simmons (64)	SOUTH (9)	statistical (1)	substance (2)
simple (1)	Southeastern (3)	stay (3)	substandard (1)
simply (4)	Southeastern's (1)	stays (2)	successful (1)
sink (1)	space (63)	steel (14)	sudden (1)
sinking (4)	spaces (1)	Stenographic (2)	sufficient (1)

suggests (1)	Tech (1)	ThunderStud (3)	Tray's (7)
suit (1)	teed (1)	ThunderStuds (18)	trench (30)
suitability (3)	tell (51)	tie (2)	trial (1)
suitable (3)	telling (3)	tilt-up (1)	tried (4)
Suite (3)	temperature (1)	time (71)	trip (1)
summarize (2)	temporary (5)	timeframe (1)	tripping (2)
summary (1)	temptation (1)	timeline (3)	trough (6)
summer (1)	tenancy (3)	times (11)	troughs (1)
sump (1)	tenant (29)	timing-wise (1)	trowel (1)
superintendent (2)	tenant-provided (1)	tiny (2)	troweled (1)
supervisor (1)	tenants (9)	tips (1)	truck (15)
supervisory (1)	term (14)	tire (1)	trucks (12)
supplement (1)	terminate (1)	tires (6)	true (2)
supplemented (2)	terminating (1)	title (1)	Trust (2)
supplier (1)	termination (7)	titled (1)	try (6)
Supply (13)	terms (5)	today (30)	trying (9)
support (7)	terrible (1)	today's (1)	turn (25)
supporting (3)	test (2)	told (7)	turned (3)
supposed (2)	testified (31)	tomatoes (1)	twice (1)
sure (46)	testify (2)	tool (2)	two (37)
surface (10)	testifying (1)	top (35)	two-foot-long (1)
surgical (1)	testimony (38)	topographical (1)	two-second (1)
surprise (1)	Testing (12)	topping (1)	two-year (1)
surprised (1)	testings (1)	tops (1)	tying (1)
surrounding (1)	text (1)	tore (1)	type (11)
surveys (1)	thank (37)	torn (2)	types (1)
sustain (1)	Thanks (2)	total (4)	typical (5)
sustained (2)	That'd (1)	totally (2)	typically (6)
swept (1)	thereof (1)	toting (1)	
swinging (1)	thereunder (1)	touch (1)	< U >
sworn (5)	thick (9)	touched (4)	Uh-huh (7)
symptoms (1)	thickened (2)	tracks (3)	ultimate (3)
system (9)	thicker (2)	Tradd (12)	ultimately (6)
systems (3)	thickness (33)	trades (1)	Um (1)
	Thicknesses (9)	traffic (4)	unable (1)
< T >	thin (1)	trafficked (1)	unbox (1)
tab (7)	thing (15)	transaction (2)	uncommon (2)
take (42)	things (14)	TRANSCRIPT (1)	undercut (1)
taken (17)	think (68)	TRANSCRIPTION	underlined (2)
talk (14)	thinking (3)	(1)	underneath (11)
talked (10)	thinner (3)	transfer (8)	underscore (1)
talking (29)	third (1)	Transportation (1)	underside (1)
talks (2)	thoroughness (1)	transporting (1)	understand (9)
taper (1)	thought (7)	trapped (1)	understanding (8)
tapped (1)	thousand (8)	traveled (1)	Understood (1)
TAYLOR (9)	thousand-year (3)	traverse (2)	uneven (1)
tear (4)	three (18)	traversed (1)	unfair (1)
Tearing (1)	three-man (1)	traversing (1)	Unfortunately (4)
teasing (1)	throw (1)	Tray (52)	unhappy (1)

Unidentified (1)	very-light (1)	weigh (1)	written (4)
unified (2)	very-light-duty (1)	weight (1)	wrong (2)
uniform (2)	view (2)	welcome (4)	wrote (7)
uniformly (2)	viewed (1)	well (77)	< Y >
unintelligible (2)	Virgie (13)	wells (4)	y'all (4)
unit (8)	vis-a-vis (1)	went (18)	y'all's (1)
units (2)	visible (2)	we're (35)	yards (2)
University (1)	visited (3)	wet (15)	Yeah (33)
Unlevel (1)	visual (2)	we've (24)	Year (4)
unlimited (2)	visualize (1)	WHALEY (2)	years (23)
unquote (1)	visually (2)	what'd (2)	year-to-year (1)
unstable (1)	void (3)	whatnot (1)	yellow (1)
unsupported (1)	voids (1)	whatsoever (2)	Yep (3)
untouched (1)	voir (5)	wheel (1)	yielding (1)
unusable (1)	Volume (2)	wheels (1)	< Z >
unusual (1)	Volumewise (1)	whereabouts (1)	Zero (1)
upfit (1)	vs (1)	Where'd (1)	
upfits (2)	< W >	white (2)	
uploaded (1)	waiting (1)	wholly (1)	
upper-left (1)	walk (3)	wide (3)	
upper-left-hand (1)	walk-behind (2)	Widely (1)	
usable (1)	walked (2)	wider (1)	
usage (1)	walking (1)	widespread (1)	
USDA (2)	walkthrough (2)	willing (1)	
use (12)	wall (7)	Willis (12)	
users (1)	walls (4)	Willis's (3)	
usually (2)	wanna (18)	window (4)	
< V >	want (13)	windows (5)	
vacate (2)	wanted (11)	wire (6)	
vacated (11)	wants (1)	wires (1)	
vaguely (1)	warehouse (66)	wish (1)	
values (1)	warehouses (1)	Witness (73)	
vapor (9)	warehousing (3)	witnesses (3)	
variability (7)	wash (15)	wobble (1)	
variable (14)	washdown (1)	wobbly (1)	
variation (1)	washes (1)	wondering (2)	
variations (1)	washing (3)	wood (1)	
varied (1)	water (89)	word (8)	
varieties (1)	water-intrusion (1)	words (12)	
various (3)	water's (1)	work (65)	
Vegetable (2)	way (30)	workable (1)	
vegetables (5)	wear (5)	worked (3)	
vehicles (3)	weather (3)	working (3)	
verbiage (1)	Webber (2)	Works (1)	
verdict (2)	wedge (4)	worn (1)	
version (1)	Wednesday (1)	worse (1)	
versus (1)	week (5)	would've (7)	
vertical (1)	weeks (3)	wrapped (1)	
		writing (3)	

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 DORCHESTER COUNTY

4 TRANSCRIPT OF PROCEEDINGS
5 NOVEMBER 27, 2023

6 VIRGIE C. SIMMONS FAMILY, LLC,

7 Plaintiff,

8 vs. CASE NO. 2019-CP-18-02217

9 LIMETRADE, LLC, and LIMEHOUSE PRODUCE, LLC,

10 Defendants.
11
12 _____

13 BEFORE THE HONORABLE: JAMES CHELLIS
14

15 TIME: 11:30 AM

16 LOCATION: DORCHESTER COUNTY COURTHOUSE
17 ST. GEORGE, SOUTH CAROLINA
18
19
20

21 REPORTED BY: MACKENZIE ALLEN
22 CLARK BOLEN
23 CHARLESTON, SC 29405
24 843-762-6294
25 WWW.CLARKBOLEN.COM

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A P P E A R A N C E S

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EXHIBITS

EXHIBIT	DESCRIPTION	PAGE
Exhibit No. 18	Simco Proposal, 1/10/2020	7

1 THE COURT: Who wants to tell me
2 where we are?

3 MR. BARFIELD: Your Honor, if you
4 recall, we sort of took some witnesses out of
5 order to accommodate them. I was on the cusp of
6 resting, but we had an exhibit that we still
7 needed to locate. We've now located that. And
8 so the plan is I'm going to put Mr. Simmons back
9 on the stand very briefly, and then I will rest.
10 And then I believe Mr. O'Kelley has one or two
11 witnesses.

12 MR. O'KELLEY: And that's correct,
13 Your Honor. You heard from our experts.

14 THE COURT: Yeah, we did an expert
15 witness as well.

16 MR. O'KELLEY: And then David
17 Willis, who did the work.

18 THE COURT: Right.

19 MR. O'KELLEY: So we were out of
20 order because they couldn't come back, and that
21 was the only time they could do it. We've kind
22 of taken things out of order, but we're in --

23 THE COURT: I think I -- I recall
24 the case. Actually, I was -- I mean, for some
25 reason, it popped in my head the other day. I

1 said, "Have I made a decision in that case?"

2 Okay. Well, I'm glad I'm still -- I've
3 been working on a crazy foreclosure action, and I
4 spent my whole weekend working on that.

5 (Off-the-record discussion.)

6 THE COURT: So you're going to put
7 up Mr. Simmons?

8 MR. BARFIELD: Yes, sir.

9 THE COURT: All right. Do you have
10 this caption still in your -- were you here
11 before?

12 MR. BARFIELD: She was not. And,
13 Your Honor, just for the sake of human interest,
14 the court reporter that was here before
15 tragically lost her adult daughter a couple of
16 days before Thanksgiving. And so we had to --

17 THE COURT: That's horrible.

18 MR. BARFIELD: And I have to say,
19 bless her heart, she even told my secretary, she
20 said -- she apologized and said, "I don't think
21 I'll be ready to come back by Monday." And my
22 secretary said, "Don't even consider coming
23 back."

24 THE COURT: Well, let me give you
25 a -- I'm going to give you the caption.

1 MR. O'KELLEY: And, Your Honor,
2 I've given her one.

3 THE COURT: Oh, you have the
4 caption?

5 THE REPORTER: Yes.

6 MR. O'KELLEY: Yes, sir. Just to
7 make life easier, I just handed her a sheet. She
8 can copy it during a break.

9 THE COURT: All right. So let me
10 just say, this is a continuation of a trial that
11 was started several weeks ago. The parties have
12 come back for additional testimony. And we will
13 begin with Mr. Barfield's -- he wants to call
14 Mr. Simmons, correct?

15 MR. BARFIELD: That's right, Your
16 Honor.

17 THE COURT: Okay. Come on up,
18 Mr. Simmons. And you've been under oath. I've
19 put you under oath already, right?

20 MR. SIMMONS: Yes, sir.

21 MR. BARFIELD: And do you have your
22 exhibit notebook, Your Honor?

23 THE COURT: Yes, sir.

24 MR. BARFIELD: Okay.

25 THE COURT: Are there other

1 exhibits I'm missing other than just this sheet?

2 MR. O'KELLEY: No, sir, because we
3 added -- we uploaded everything to the queue.
4 But we did the original notebook. And then I
5 think 16 and 17 were added, Your Honor, to the
6 ones in the notebook. And then you put all of
7 the pictures in.

8 MR. BARFIELD: Right. Do you have
9 any objection to the thing -- the supplemental --
10 that was sent last week?

11 MR. O'KELLEY: (Shook head.)

12 MR. BARFIELD: Okay.

13 MR. O'KELLEY: And this will be 18.

14 MR. BARFIELD: Your Honor, this is
15 the missing exhibit. So it's been stipulated to.
16 So this will be 18.

17 (Exhibit No. 18 was marked for
18 identification.)

19 MR. O'KELLEY: And, Your Honor, I
20 think last time we did them all kind of joint
21 exhibits. And that's fine to do them that way
22 this time.

23 THE COURT: So I have an Exhibit 18
24 that's in front of me that's been admitted
25 without objection. We now have Mr. Simmons on

1 the stand.

2 Mr. Simmons, you're still under oath.

3 MR. O'KELLEY: And, Your Honor, so
4 I can see better -- I'm not trying to -- I'm just
5 going to move over.

6 THE COURT: Yes, sir. You can do
7 that. This is a little awkward, this courtroom.

8 MR. O'KELLEY: This courtroom's
9 situation is a little small. I'm just going to
10 pull up a chair.

11 MR. O'KELLEY: That's fine.

12 THE COURT: Mr. Barfield?

13 MR. BARFIELD: Thank you. May it
14 please the Court.

15 THE COURT: Yes, sir.

16 DAVID SIMMONS,
17 having been previously sworn, was examined and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BARFIELD:

21 Q. All right. David, welcome back.

22 A. Thanks.

23 Q. We heard from you at length the last
24 time. This will be much more brief; however, if
25 you recall the last time you were up there, we

1 talked about an estimate to replace the slab in
2 the warehouse that was given to you by Berenyi.
3 Do you recall that?

4 A. Yes.

5 Q. And that, in fact, was marked as
6 Exhibit 12. So would you turn to tab 12 in your
7 notebook.

8 A. Okay.

9 Q. And just to remind the Court, what was
10 Berenyi's estimate for performing that work?

11 A. \$423,102.76.

12 Q. And as we've already established,
13 Berenyi did not ultimately perform that work, did
14 they?

15 A. They did not.

16 Q. Who did?

17 A. Simco Inc. of Charleston.

18 Q. And we covered that before, but just for
19 -- because it's been a few weeks, what is Simco
20 Inc.?

21 A. Simco Inc. of Charleston is a
22 construction and development company that I own
23 personally.

24 Q. And is that in any way connected
25 formally to Virgie Simmons Family Trust?

1 A. No.

2 Q. A separate entity?

3 A. Yes.

4 Q. So why did Simco perform the work rather
5 than Berenyi?

6 A. Due to time constraint, Berenyi could
7 not start the job in a timely manner for us to be
8 able to get the current tenant in place.

9 Q. And so you had a tenant lined up at the
10 time you got the estimate from Berenyi?

11 A. Correct.

12 Q. Prospective tenant?

13 A. Correct.

14 Q. So Simco did the work. I've handed you
15 what has been entered as Exhibit 18. Could you
16 pull that up in front of you. We're done with
17 the notebook for now.

18 A. Okay. I have it.

19 Q. And what is Exhibit 18?

20 A. Exhibit 18 is a proposal to -- from
21 Simco Inc. of Charleston to Virgie C. Simmons
22 Family to remove and replace the slab.

23 Q. And what is the total of that proposal?

24 A. It appears four hundred -- I can't tell
25 if it's a six or an eight, because my signature

1 is going through it. It looks like 467,300. But
2 it could be 487,300.

3 Q. I think if we went through the invoices
4 behind it, we could do the math.

5 A. That's correct.

6 Q. Now, who did this estimate on behalf of
7 Simco?

8 A. The estimate was prepared by myself.

9 Q. And how did you go about preparing that
10 estimate?

11 A. Self-performed work. I was able to
12 perform -- put together a proposal, the length of
13 time, as well as subcontractors.

14 Q. And this type of estimation -- so you
15 own Simco. Is this type of estimation something
16 you've done in the past?

17 A. That's correct.

18 Q. So you brought -- would it be fair to
19 say you brought to bear some experience in
20 construction rather than just as a layperson off
21 the street?

22 A. That's correct. I've been doing it for
23 40 years.

24 Q. Very good. Now, behind the first page
25 of Exhibit 18 is a series of documents that bear

1 the heading -- well, the letterhead of Simco Inc.
2 of Charleston and then bear the title Draw
3 Requests. Do you see those?

4 A. I do.

5 Q. Now, so what are those?

6 A. Those are draw requests.

7 Q. For the job?

8 A. For the job.

9 Q. So Simco ultimately did the job?

10 A. That's correct.

11 Q. Now, it says here contract amount,
12 \$423,102.76?

13 A. Correct.

14 Q. So is that ultimately what the price
15 that Simco charged for the work?

16 A. That's correct.

17 Q. And that is exactly the same number as
18 the Berenyi estimate; is that right?

19 A. That's correct.

20 Q. So how did the two numbers come to be
21 synced up?

22 A. Simco's number originally was higher.
23 And I have two partners, who are my sisters. I
24 just made it competitive and went down to the
25 Berenyi number.

1 Q. And then the draw request -- I won't go
2 through each one. They kind of speak for
3 themselves. But did Simco Inc. of Charleston
4 ultimately perform the scope of work that's
5 reflected in the proposal for a total of
6 \$423,102.76?

7 A. That's correct.

8 Q. All right.

9 A. There was a change order as well that
10 was added along the way.

11 Q. And what was that change order, if you
12 recall?

13 A. It was towards the end. I'm not really
14 sure what it was made of -- what made the
15 \$12,183.

16 Q. Okay.

17 A. I think it was some additional concrete
18 cutting that we came up with along the way.

19 Q. Was that within the -- was that
20 contemplated in the original scope of work, or
21 was that something that was an add-on?

22 A. It was an add-on.

23 Q. We can put 18 aside for now. And again,
24 just to underscore the prior day's testimony
25 since it was some weeks ago, can you briefly say

1 again why it was the slab needed to be -- in your
2 opinion, needed to be replaced rather than
3 patched or spot repaired?

4 MR. O'KELLEY: And, Your Honor, I'm
5 going to object to that as calling for an
6 opinion.

7 THE COURT: Do you want to -- I
8 think as a witness, I mean, he can -- he can --
9 I'm going to overrule your objection. Let's put
10 it that way. As a witness, he can -- the
11 question is --

12 MR. BARFIELD: Right. And again, I
13 don't want to beat a dead horse. We heard from
14 experts on this issue. I didn't know if Your
15 Honor wanted some recap of --

16 THE COURT: Listen, I don't think
17 -- I think as the party plaintiff, he can testify
18 what he thinks the --

19 MR. BARFIELD: Appropriate scope of
20 repair work was.

21 THE COURT: Yeah. Plus he's a
22 contractor.

23 MR. BARFIELD: All right.

24 (BY MR. BARFIELD)

25 Q. David, if you would, just kind of

1 briefly recap why the decision was made to remove
2 and replace rather than to patch in place?

3 A. Well, looking at the slab and having
4 Berenyi come in and look at the slab as an
5 engineer, we felt the amount the slab that was
6 cut with the drain system in as well as the
7 ThunderStuds or the wedge anchors that we had
8 discussed at length, the number of those was
9 almost -- I think at around 1,000 is what we were
10 saying.

11 The slab was compromised and cracking
12 due to a lot of these penetrations in the slab,
13 as well as the moisture that was getting through
14 the slab from the top of the slab down underneath
15 the slab was causing some deterioration, as well
16 as there was some spalling from the processing of
17 the --

18 Q. Okay. And so was there a cost-benefit
19 analysis conducted?

20 A. Yes. It would exceed the replacement
21 cost to repair and still end up with a slab that
22 was compromised.

23 Q. All right. Okay. Well, let's leave
24 that subject matter then and move on to the last
25 thing I want to ask you about. Could you open

1 the notebook back up real quick, please.

2 A. Okay.

3 Q. And if you would turn to tab 2.

4 A. Okay.

5 Q. Now, Exhibit 2 bears the heading
6 Assignment. Can you tell me what this is, to
7 your understanding?

8 A. Yes. So the original lease was in the
9 name of Limehouse Produce. And shortly after the
10 lease was executed, I believe it was the attorney
11 for the Limehouses approached me about letting
12 them -- to do an assignment to start up a new LLC
13 for this particular location.

14 And in doing so, I felt comfortable with
15 the -- the strength of Limehouse Produce being
16 behind -- what I thought was behind the
17 assignment of Limetrade that it was okay for the
18 Virgie C. Simmons Family to allow it based on the
19 same terms and conditions of the lease that we
20 had currently and being a third-party beneficiary
21 to the lease.

22 Q. The assignment?

23 A. The assignment.

24 Q. And so, in fact -- so this document is
25 dated May 24, 2007?

1 A. That's correct.

2 Q. And again, it's an assignment between
3 Limehouse Produce and Limetrade. Which was the
4 new LLC?

5 A. Limetrade.

6 Q. And from that point forward, was the
7 lease renewed periodically?

8 A. That's correct.

9 Q. And going forward, was Limetrade the
10 tenant?

11 A. That's correct.

12 Q. However, if you -- on the assignment,
13 you mentioned you had a comfortable level based
14 on what you knew of Limehouse Produce, Inc. If
15 you would look down at the assignment at
16 paragraph 5, bottom of page 1.

17 A. Right.

18 Q. Can you read that into the record,
19 please?

20 A. Yes. "Assignor hereby indemnifies and
21 holds assignee harmless from any and against any
22 and all liabilities and obligations of the lease
23 under the lease and all obligations of the
24 assignor under any other agreements reflecting or
25 relating to the premises which liabilities and

1 obligations arose before the closing date."

2 Q. And just so we're clear on who the
3 parties are, if you look at the very top
4 paragraph where it's dated --

5 A. Yes.

6 Q. Okay. Limehouse Produce, Inc. -- well,
7 it says Limehouse Produce, Inc., hereinafter
8 assignor. And Limetrade, LLC, hereinafter
9 assignee?

10 A. That's correct.

11 Q. Do you see that? All right. Did you
12 perform any due diligence or make any inquiries
13 about assets or the financial situation related
14 to Limetrade, LLC, before this assignment?

15 A. I did not, because Jack Limehouse was
16 still going to be the assignor of the lease, so I
17 felt comfortable.

18 Q. And again, you had a comfort level with
19 Limehouse Produce?

20 A. That's correct.

21 Q. And why is that?

22 A. Been around forever. Just, you know,
23 reputation. I felt very comfortable in extending
24 the assignment.

25 Q. Okay.

1 MR. BARFIELD: All right,
2 Mr. Simmons, thank you. That's all I have.
3 Mr. O'Kelley may have some further
4 cross-examination for you.

5 CROSS-EXAMINATION

6 BY MR. O'KELLEY:

7 Q. And we'll go backwards because that's in
8 front of you. Look at the next paragraph of that
9 assignment, Mr. Simmons, paragraph 6.

10 A. Okay.

11 Q. Can you read that into the record,
12 please?

13 A. Yes. "Assignee hereby indemnifies and
14 holds assignor harmless from any and against" --
15 "and against any and all liabilities and
16 obligations of the lessee under the lease and all
17 obligations of assignor under any other
18 agreements reflecting or relating to the premises
19 which liabilities and obligations arise on or
20 after the closing date."

21 Q. And the closing date being May 24, 2007,
22 correct?

23 A. That's correct.

24 Q. So any obligation that would have arisen
25 under paragraph 14 of the lease would be those

1 belonging to Limetrade, correct?

2 A. Can you repeat that? I'm sorry.

3 Q. Sure. Exhibit Number 1 is the lease.

4 A. Okay.

5 Q. And you can -- turn to paragraph 14 of
6 the lease with me, because it's my understanding
7 what brings us here today is the language that
8 says, "Lessor requests that floor modifications
9 must be remedied at the termination of this
10 lease. Normal wear and tear excepted."

11 So my question to you is under
12 paragraph 6 of that assignment, that obligation
13 that brings us here today is that of Limetrade,
14 correct, because that obligation was arising
15 after May 24, 2007, correct?

16 A. Yes.

17 Q. And the invoices that you produced last
18 week that you were looking for, did any money
19 actually change hands?

20 A. Yes.

21 Q. And did you bring those checks today?

22 A. I did not.

23 Q. Why not?

24 A. I didn't know I had to bring the checks.

25 Q. All right. So did Simco declare this as

1 taxable income?

2 A. Yes.

3 Q. And again, did you bring anything to
4 prove that money actually changed hands?

5 A. I did not.

6 Q. All right.

7 MR. O'KELLEY: That's all I've got.

8 REDIRECT EXAMINATION

9 BY MR. BARFIELD:

10 Q. Briefly on redirect. We got into
11 details on some dates. Turn back to Exhibit 1.
12 The date on Exhibit 1 is what?

13 A. April 22, 2004.

14 Q. Okay. And this is the lease with --
15 between whom?

16 A. This is the lease -- Easy Tray, LLC.

17 Q. And is this the lease that Limehouse
18 Produce initially assumed?

19 A. That is correct.

20 Q. And then it was subsequently assigned to
21 Limetrade, LLC?

22 A. That's correct.

23 Q. Is the obligation to repair the floor in
24 Exhibit 1?

25 A. Yes.

1 Q. And so Limehouse Produce, Inc., assumed
2 all of the obligations in Exhibit 1 in this
3 lease?

4 A. That's correct.

5 Q. That was Easy Tray's lease?

6 A. That's correct.

7 Q. And then per Exhibit 2, the assignment
8 between Limehouse Produce and Limetrade, did
9 those obligations of Easy Tray pass on to
10 Limetrade?

11 A. Yes.

12 Q. And is that because Limehouse Produce
13 had those obligations, per its assignment from
14 Easy Tray?

15 A. That's correct.

16 Q. So for a period of time, just to be
17 clear, Limehouse Produce did have the contractual
18 obligation to repair the floor?

19 A. That's correct.

20 MR. BARFIELD: That's all I have.

21 Thank you.

22 RECROSS-EXAMINATION

23 BY MR. O'KELLEY:

24 Q. And just to clean it up. You answered
25 yes when I asked you the request to clean up the

1 floor was that of Limetrade, because Limetrade
2 was the tenant at the end of the lease, correct?

3 A. Limetrade was the tenant at the end of
4 the lease.

5 Q. And you just testified that the
6 paragraph I asked you to read, paragraph 6, says
7 that anything after May of 2007 is the obligation
8 of Limetrade, correct? May 24th.

9 A. Yes.

10 Q. All right.

11 MR. O'KELLEY: Thank you.

12 THE COURT: Anything else?

13 MR. BARFIELD: I didn't know if you
14 had any questions for the witness.

15 THE COURT: No, sir.

16 MR. BARFIELD: All right, you may
17 step down.

18 That's our last witness, Your Honor.
19 There will be -- I was trying to figure out
20 logistically the best way to do this. I do
21 intend to elicit some testimony on this subject
22 of Limehouse Produce's liability. They are a
23 co-defendant with Limetrade. I understand that
24 Mr. O'Kelley is going to be calling
25 Mrs. Limehouse as his possibly sole witness, and

1 she would be the one to ask those questions.

2 Now, obviously when I rest, he's going
3 to move for a directed verdict. And he's
4 probably going to move for a directed verdict on
5 the issue of Limehouse Produce's liability. So
6 to the extent that that issue may be up for
7 grabs, so to speak, I could call Mrs. Limehouse
8 during my case in chief to elicit that testimony.
9 But again, I don't want to disrupt the rhythm of
10 the trial out of deference to Mr. O'Kelley. So
11 that's sort of the situation I've found myself
12 in.

13 THE COURT: Okay. Well, let me
14 hear the motion first. You've rested, as I
15 understand it, with the exception that you want
16 to -- you've got a potential cross-examination of
17 the witness that may --

18 MR. BARFIELD: May tip the scales
19 on that motion, that's right.

20 THE COURT: All right. I've seen
21 that before.

22 MR. BARFIELD: It is a very
23 discrete issue within what I'm sure is going to
24 be some extended testimony. So again, not
25 wanting to disrupt the flow, but I could put her

1 on the stand and just ask about that and then
2 turn her over to Mr. O'Kelley.

3 THE COURT: Do you have a position
4 on that, Mr. O'Kelley?

5 MR. O'KELLEY: Well, it's his case,
6 and I'm not going to tell him how to try it.

7 THE COURT: I got you.

8 MR. O'KELLEY: But if he calls her,
9 I get to cross her.

10 THE COURT: That's right.

11 MR. BARFIELD: That's right.

12 THE COURT: That's exactly right.
13 Well, you're the plaintiff. You have the duty of
14 persuasion. It's your responsibility to make
15 sure that the scale tips ever so lightly in your
16 favor, correct?

17 MR. BARFIELD: Yes, I do.

18 THE COURT: I understand your
19 position. I just guess if you're going to rest,
20 you've got to rest, and we'll see what happens.

21 MR. BARFIELD: Yes, sir. Yes, sir.
22 It's an interesting quandary, but I appreciate
23 that you're not allowed to put -- to weigh in on
24 the issue. I think I'm still inclined to rest at
25 this time.

1 THE COURT: All right.

2 MR. O'KELLEY: And, Your Honor,
3 Mr. Barfield saw me coming. So we do move, as we
4 have to at this stage, for a directed verdict as
5 to several things, first of all, as to Limehouse
6 Produce remaining in the case. The original
7 lease term ended on June 30th of 2008. The
8 assignment that was effective May 24th of 2007, a
9 paragraph that was just read is that the
10 assignee, meaning Limetrade, LLC, would indemnify
11 and hold the assignor, Limehouse Produce,
12 harmless from any and all liabilities arising
13 after the closing date of that assignment.

14 And the paragraph that brings us here
15 today, paragraph 14, of the original lease about
16 improvements states that, "Lessor" -- and there's
17 a missing S -- "request" -- it should have said
18 requests -- "the floor modifications must be
19 remedied at the termination of this lease.
20 Normal wear and tear excepted."

21 So the termination of the lease being
22 June 30, 2008, was the obligation of Limetrade.
23 And of course, there's been the testimony that
24 that lease was actually extended a couple of
25 times with Limetrade. And so Limetrade would be

1 the only defendant -- needs to be the only
2 defendant in this case for the reasons under the
3 assignment that was agreed to by Mr. Simmons'
4 family trust, which are the plaintiffs here
5 today.

6 You heard him testify just a few minutes
7 ago that he agreed with me that the obligations
8 for the floor -- a request, rather, not
9 obligations, would be that requested of Limetrade
10 because that was the tenant at the time.

11 And, Your Honor, we also move for a
12 directed verdict under these invoices and
13 proposals that were just given. No one has been
14 able to testify either in October or today what
15 the original condition of that floor was. And
16 the obligation request was to return -- restore
17 or repair the premises, return them to their
18 original condition.

19 No one -- only God knows what that
20 original condition was, because we haven't had
21 any pictures of that original condition. We
22 haven't shown -- there's been no testimony about
23 that original condition. There's been plenty of
24 testimony as to what the condition was when my
25 client moved in, but not the original condition

1 of the floors. And frankly, these proposals and
2 the 400-plus-thousand-dollar work -- that's a
3 betterment, Your Honor.

4 That's what they're asking my client to
5 pay for, is a betterment. Not -- not a repair,
6 not damage. But it's like renting a Chevette and
7 then asking me -- my clients to pay for a
8 Cadillac or a Rolls Royce or something more
9 expensive. So we're moving for a directed
10 verdict on that.

11 And also, we're moving for a directed
12 verdict on the actual language of paragraph 14.
13 And you heard Mr. Simmons the last time we were
14 here that this is a request that floor
15 modification must be remedied at the termination
16 of lease. You've seen the e-mail from my
17 deceased law partner who said what work was done
18 at the time. You've seen the testimony -- or
19 heard the testimony from our engineer about what
20 his thoughts were on the floor. But again, we're
21 here for a request that was, frankly, met and
22 dealt with. They just want us to pay for a
23 betterment, which they're not entitled to under
24 the law.

25 THE COURT: Mr. Barfield?

1 MR. BARFIELD: Thank you, Your
2 Honor. Take those issues in order. With regard
3 to Limehouse Produce's potential liability, they
4 are a party defendant to the case. And while
5 they've not been discussed extensively within the
6 context of the testimony because they were
7 briefly the tenant prior to the assignment that
8 we were discussing a moment ago, frankly, we're
9 trying to avoid the situation we saw prior to us
10 going on the record here today with supplemental
11 proceedings and such.

12 And so Limetrade, LLC, was created as a
13 -- clearly as a single-purpose entity. And
14 without getting ahead on the record, I think
15 it's -- it's agreed to that that is now a dead
16 letter. Limehouse Produce, however, has been a
17 going concern for decades. They were the
18 original tenant, albeit briefly. But as
19 Mr. Simmons just testified to, he agreed didn't
20 have to.

21 He agreed for them to transfer their
22 obligations under the lease as Limehouse Produce
23 to this new single-purpose entity, Limetrade,
24 LLC. And he did that, per his testimony, based
25 on his reliance on the fact that Limehouse

1 Produce had, in essence, agreed to indemnify the
2 single-purpose entity going forward. And then
3 the lease was renewed in an unbroken line of
4 renewals on behalf of Limetrade, LLC.

5 But again, to the extent that the
6 original tenant was Limehouse Produce, they
7 assumed the obligations to repair the floor under
8 Easy Tray's lease. We believe that Virgie
9 Simmons Trust is clearly contemplated as a
10 third-party beneficiary under the assignment
11 between the two Limehouse entities, which is why
12 they had a comfort level to agree to that
13 assignment.

14 And so at a bare minimum, I think that
15 creates a question of fact for the Court to
16 consider and which is why I think that a directed
17 verdict would be inappropriate on that particular
18 issue.

19 With regard to the original condition of
20 the slab, we -- I respectfully disagree, at least
21 in large part, with Mr. O'Kelley's
22 characterization that the original condition of
23 the slab is, in fact, somewhat of an unknown,
24 because we established that Mr. Simmons was not
25 the party that built the warehouse. But he did

1 buy it many, many years ago. And he did testify
2 pretty extensively about what the condition of
3 the slab was when he bought the property prior to
4 Easy Tray, Limehouse's predecessor, making the
5 floor modifications that we believe the record
6 shows ultimately compromised the slab and created
7 this condition along with the ongoing activities
8 on top of those modifications that resulted in
9 the need to replace the slab.

10 And so to the extent that the lessor
11 recalls the original condition, we'd be fine with
12 the condition as it was prior to Easy Tray, which
13 we believe was the original condition of the
14 slab. And it's splitting hairs to think that it
15 was somehow different then. But to -- for our
16 part, the original condition is pre-Easy Tray
17 modifications.

18 And then finally, with regard to whether
19 or not the repair or replacement of the slab is
20 obligatory, again, that's an interpretation
21 question under the lease. Obviously we believe
22 that it is obligatory per the lease. But at this
23 stage for purposes of a directed verdict, we
24 believe that there's at least a serious question
25 of fact there as to the proper interpretation of

1 that. And so a directed verdict on that issue
2 would be inappropriate.

3 And I think I've covered everything.

4 THE COURT: I'm going to deny the
5 motion for a directed verdict, which is probably
6 a motion for involuntary nonsuit. But I know you
7 guys practice in the trial court -- in the jury
8 court system all the time. And I'm very
9 protective of my little -- nice little words that
10 we use in this court. But it is a directed
11 verdict, motion, same thing. I'm going to deny
12 the motion. But I'll hear from you,
13 Mr. O'Kelley.

14 MR. O'KELLEY: Hear from me in our
15 case in chief, correct?

16 THE COURT: In your case in chief,
17 yes, sir.

18 MR. O'KELLEY: And at this time, we
19 call Andrea Limehouse to the stand.

20 THE COURT: We're going to take a
21 break.

22 (A recess was taken.)

23 MR. O'KELLEY: I call Ms. Andrea
24 Limehouse to the stand.

25 ANDREA LIMEHOUSE,

1 having been first duly sworn, was examined and
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. O'KELLEY:

5 Q. Mrs. Limehouse, we are going to be
6 walking through this notebook. But tell His
7 Honor --

8 THE COURT: Hold on a second.
9 (Off-the-record discussion.)

10 THE COURT: Go ahead.

11 MR. O'KELLEY: May it please the
12 Court.

13 THE COURT: Yes, sir.
14 (BY MR. O'KELLEY)

15 Q. Mrs. Limehouse, I'm sure His Honor has
16 noticed you have an accent that may not be the
17 same as everyone's in the courtroom. Tell His
18 Honor where you're from originally.

19 A. I'm from Norwich. Norfolk, England.

20 THE COURT: Norfolk, England?

21 THE WITNESS: Yes.

22 THE COURT: How about that.

23 (BY MR. O'KELLEY)

24 Q. And you've been in the courtroom in
25 October when we were here. Tell His Honor what

1 your role is at Limehouse Produce and how that
2 came to be.

3 A. I guess probably chief operating
4 officer. I do everything. I came in 1979. And
5 we were at Wappoo Road. Limehouse Produce had
6 started at 49 Market Street. And then in 1976,
7 my husband moved to Charleston County Market at
8 Wappoo Road with his cousin, Lawton Limehouse.
9 And I got here in '79. And --

10 Q. When you say you got here, you mean to
11 the States or to Limehouse?

12 A. I got here to Charleston. To
13 Charleston, yeah.

14 Q. And you and -- the gentleman who is
15 right behind me is Jack Limehouse. How long have
16 you-all been married?

17 A. Since 1980.

18 Q. So you were working with him before
19 you-all were husband and wife, correct?

20 A. Correct.

21 Q. And you said you're kind of the COO or
22 jack-of-all-trades or run the show?

23 A. Uh-huh.

24 Q. In terms of the lease that brings us
25 here today, tell us how that came to be. In

1 terms of -- and let me tell you what I'm asking.
2 You said you-all were on Wappoo Road at the time.

3 A. Wappoo Road is --

4 Q. How long did that last?

5 A. It was -- they were there in 1976. It
6 was the old auction market and old open building.

7 Q. It was an old packing house, wasn't it?

8 A. Old packing house built by the railroad.
9 Southern for agricultural stimulus after the
10 Second World War. And then Lawton's father,
11 Julian Sidi, built another piece on to that
12 original market with some friends of his. They
13 demolished the packing shed that used to be where
14 the Sofa Super Store fire was and built the --
15 what was the original Piggly Wiggly number eight.

16 And so we were in the part that they had
17 built on in the back part of the market until
18 2007. And we started to have food safety issues.
19 Food safety has become a very important part of
20 any food distribution business.

21 Q. And what food safety issues were you-all
22 having in 2007?

23 A. Just an open dock. Open dock, you know,
24 birds. It was a wooden dock, and we poured
25 concrete on it, which obviously is an engineering

1 nightmare. As the building inspector told me
2 when he did the demolition order, "I watched you
3 violate every zone, every law for 40 years." So
4 we just made things work. We had a lot of
5 trailers for storage.

6 And it was -- the restaurant business in
7 Charleston was growing, and we didn't have enough
8 room. And Dan Stevenson, who had done Easy Tray
9 with David Simmons, had --

10 Q. Let's just break. When you say Easy
11 Tray, are you talking about the folks who
12 assigned the lease to you?

13 A. Correct, correct.

14 Q. And then they were in the space?

15 A. They were in the space. And we -- they
16 were buying product from us to process. And so
17 we found out that they were not make -- well, we
18 knew they weren't making it. They were
19 processing two days a week, sometimes three for a
20 couple of hours. They had had several million
21 dollars worth of Dutch and Italian processing
22 equipment. And their business model was severely
23 flawed. So he actually approached us.

24 Q. And who is he?

25 A. Dan Stevenson approached us about if we

1 would have any interest in the property. And we
2 went and looked at it.

3 Q. And that was in 2007, correct?

4 A. That was -- it would have been -- we
5 moved -- it would have been -- it was March -- we
6 signed the lease in March. So it was probably
7 February. January, February of 2007. And I
8 think they had already stopped operations.

9 Q. And look at Exhibit Number 2, please.
10 And that is the assignment of the lease to
11 Limetrade.

12 A. Uh-huh.

13 Q. And I'll tell you this. And I think
14 Mr. Barfield knows this. Everyone has searched
15 high and low for the original assignment, and no
16 one has seen it. But you recall there was an
17 original assignment, correct, from Easy Tray to
18 Limehouse Produce?

19 A. Correct.

20 Q. And then Limehouse --

21 A. I didn't know it was missing.

22 Q. Well, no -- I haven't seen it. And I
23 don't think anybody has -- but everyone -- it's
24 referenced in Exhibit 2, correct? It says
25 March 3, 2007.

1 A. Uh-huh.

2 Q. Easy Tray assigned all of its right,
3 title, and interest in said business leased to
4 Limehouse Produce, correct?

5 A. Correct.

6 Q. And then your testimony is that's about
7 the time you-all were looking for new space and
8 Mr. Stevenson approached you about taking over
9 the lease, correct?

10 A. Correct.

11 Q. And that lease, the original term of it,
12 was to end in June of 2008. Do you recall that?
13 And you can look at it in the --

14 A. Yeah, I believe so.

15 Q. Exhibit 1 is the lease.

16 A. Okay.

17 Q. If you'll see -- see at the top, it says
18 Initial Term and ending on June 30, 2008?

19 A. So June 30, 2008, yeah.

20 Q. And do you recall reading this lease
21 before the assignment to Limehouse Produce and/or
22 Limetrade?

23 A. I don't recall, but I'm sure we did.
24 Stephen Schachte was our attorney.

25 Q. I was about to say you had an attorney

1 at the time, correct?

2 A. Yes, correct.

3 Q. And in fact, Mr. Schachte was the
4 attorney who prepared the assignment we were just
5 discussing, correct?

6 A. Correct.

7 Q. And so you knew the terms of this lease
8 or were deemed to know it back in 2007, correct?

9 A. Correct. But we -- the only way we
10 entered into this -- we don't have any -- all of
11 our real estate is in separate LLCs. We have
12 that set up --

13 Q. Well, we'll get to that in just a
14 minute, because what I -- you were here earlier
15 today when there was discussion that Limehouse
16 Produce entered this lease, correct?

17 A. Correct.

18 Q. And the lease, as I know, was assigned
19 to Limetrade. And you heard Mr. Simmons read
20 paragraphs 5 and 6 of that assignment, correct?

21 A. Correct.

22 Q. And you were just explaining -- so the
23 property on Market Street you were just
24 discussing a few minutes ago where Limehouse
25 Produce started, who owns that property? Is it a

1 single-purpose LLC or entity?

2 A. 49 Market Street, LLC. All of our
3 properties are in separate LLCs.

4 Q. For example, where you are on Carner
5 Avenue now, is that a separate LLC?

6 A. Yes.

7 Q. And when I say you, I'm talking about
8 your business.

9 A. Yes.

10 Q. And Limetrade -- what I was asking --
11 any of the property that is associated with
12 Limehouse Produce is not owned by Limehouse
13 Produce, is it?

14 A. Correct.

15 Q. It is owned by single-purpose LLCs?

16 A. Correct.

17 Q. And that's been that way for some time,
18 correct?

19 A. Yes. We had one mistake, and we learned
20 from it.

21 Q. And for example, that's why Limetrade
22 was created, correct?

23 A. Correct.

24 Q. And when this assignment was done 24 May
25 of 2007, was Limehouse Produce operating out of

1 the property?

2 A. No.

3 Q. Explain what had to happen with the
4 property for Limehouse Produce to be able to
5 operate out of the Trade Street building.

6 A. We had a huge amount of work to do. It
7 was filthy. The offices were very disheveled.
8 We took down walls. We put up hardwood counters.
9 Painted. We built bathrooms, which we left for
10 the landlord's use. We built a three-stall
11 bathroom with urinals and wash basins. We
12 installed full Wi-Fi, which we left for the
13 landlord's use after we left.

14 We had to spend -- so it was a little
15 complicated, because Easy Tray having sold the
16 lease to us couldn't move their equipment. This
17 was, like I said, very expensive equipment.

18 Q. The Dutch and Italian equipment you were
19 just talking about?

20 A. Correct, for processing. And they had
21 barely used it. So it was a huge deal that they
22 got a national auction house to come in and sell
23 it, because instead of -- normally you'd get 10
24 cents on the dollar for used equipment, they were
25 planning and did get 60 to 70 cents on the dollar

1 because it was brand-new.

2 Q. And what was this equipment processing?

3 A. It was for peeling onions, and it was
4 for chopping peppers. Their business plan was to
5 sell to Pizza Hut, but they didn't have a
6 contract. So I mean, I don't know how they came
7 up with this plan. But they barely operated.
8 They were at a loss from day one.

9 Q. And you-all had to spend real money on
10 the space before you moved in, correct?

11 A. Well, so yes. So what happened was we
12 couldn't see -- until the equipment was taken
13 out, we couldn't really see what was there. And
14 when they took out the processing, the one piece
15 of processing equipment, it wasn't near any
16 expansion joints. It was in the middle of a
17 piece of concrete. But it was degraded. The
18 aggregate was degraded. And so it had to be
19 taken out.

20 David Simmons said we had already signed
21 a lease, so he held us responsible for paying for
22 it. His superintendent recommended that I have
23 them do the work to avoid any possible liability
24 at a later stage, which we now understood --

25 Q. And look at Exhibit Number 3, please,

1 Mrs. Limehouse.

2 A. Yes.

3 Q. Tell His Honor what we're looking at
4 with Exhibit Number 3.

5 A. This is what I had to pay Simco for
6 doing the work to take out the piece of concrete.
7 The only real problem was that from the time that
8 we signed the lease in March, we were preparing
9 to move in. So I had had my niece here from
10 England. She had moved our entire office and set
11 everything up. And they came in and cut the
12 cement out and ruined everything. I had to go
13 back and re-clean everything. So that was done.

14 Q. And you-all had to pay this \$23,748?

15 A. Yes. We paid this to Simco. And then I
16 had to pay -- I think there's an invoice in here
17 for Turner Consulting.

18 Q. Yes, ma'am. It's Exhibit 4. Look at
19 that.

20 A. Okay.

21 Q. You beat me to it. Go ahead to
22 Exhibit 4, and tell His Honor what --

23 A. Well, this was -- this was -- sorry.
24 This was done at the same time. So we had to go
25 in -- and there was a lot of studs. The studs

1 that Keith constantly referred to, which are no
2 big deal. I mean, it's just where a bolt has
3 been driven into concrete. It doesn't penetrate,
4 but it has to be drilled out and capped.

5 And so we didn't even think about, you
6 know, that the landlord should have done it. We
7 went ahead and did it ourselves. So this is the
8 bill for doing that and for coating the new
9 concrete that had been poured that needed to be
10 sealed.

11 Q. So before you moved in -- and using
12 round numbers -- you had to pay a little over
13 \$55,000 before you could even move in, correct?

14 A. Well, that was just in concrete repairs.
15 We built the bathrooms. We had to have more than
16 two bathrooms. And we had to do the Wi-Fi and
17 put in the telephone lines and -- and rehab the
18 whole office. I mean, I would say probably
19 closer to 100,000. I didn't honestly track it.
20 I just thought it was appropriate.

21 Q. Just a necessary expense?

22 A. Necessary expense. And it all
23 transferred to the landlord when we left.

24 Q. And go back to Exhibit Number 1,
25 paragraph 14, please.

1 A. Uh-huh.

2 Q. And you just said that all of the
3 improvements and everything was going to transfer
4 to the landlord?

5 A. Uh-huh.

6 Q. What was your understanding of
7 paragraph 14 regarding the floor modifications at
8 the termination of the lease?

9 A. That we would fill them in.

10 Q. Well, let's look at the language. It
11 says, "Lessor request that floor modifications
12 must be remedied at the termination of the lease.
13 Normal wear and tear excepted."

14 Did I read that correctly?

15 A. Correct.

16 Q. And in terms of -- you just said fill
17 that in. What do you mean fill that in? What
18 were you going to fill in at the end of the
19 lease?

20 A. Well, they had done a really terrible
21 job putting the drains in. I don't know who did
22 it, if it was Simco or somebody else. But they
23 had reinforced -- they had concrete liners in the
24 concrete that they had cut. But the real problem
25 is that -- what we didn't realize then until the

1 slab was demolished was that there was this
2 uneven grade, because it had been poured in the
3 old-fashioned way with dump trucks. So --

4 Q. We're going to get to all of that. But
5 we're just kind of walking back to the earlier
6 part of the lease. When it was assigned, you-all
7 read the lease. That's your testimony, correct?

8 A. Correct.

9 Q. And part of that would be reading that
10 the landlord have a request that floor
11 modifications must be remedied?

12 A. Uh-huh.

13 Q. You knew that, correct?

14 A. Correct.

15 Q. And how many times did you renew the
16 lease? And I'll tell you, that's Exhibits 5 and
17 6.

18 A. Twice.

19 Q. And that would be through what year?

20 A. 2008 -- no. 2007 to '12. And then
21 '12 --

22 Q. And if you look at Exhibit 6 --

23 A. -- to '17. And then we did a one-year
24 extension.

25 Q. Just a one-year extension.

1 A. I'm sorry. 2007 --

2 Q. Well, let's ask it this way. What was
3 the date you had to be out of the premises?

4 A. June 30, 2016.

5 Q. And when you-all moved into the premises
6 and you were talking drains and everything, tell
7 His Honor about kind of -- and there are a bunch
8 of pictures we'll walk through and other e-mails
9 and things we'll be going through. But tell His
10 Honor kind of what happened. And you mentioned
11 the Sofa Super Store. You moved in the day after
12 that fire, correct?

13 A. Correct.

14 Q. June of 2007?

15 A. Correct.

16 Q. And tell His Honor -- because he's heard
17 testimony and seen pictures about flooding and
18 drainage and issues with the floor. Tell him
19 about your experience. And you can go all the
20 way back to 2007 if you want to.

21 A. Well, like I said, we had these initial
22 problems, which we took care of. And the first
23 few years were really not so bad. But it seems
24 like as the weather -- as we have these wetter
25 years, we started to have more and more problems.

1 And I think also that the concrete -- I mean, we
2 had a lot of subsidence. And the only way I
3 think this could have happened is uneven --

4 MR. BARFIELD: Objection, Your
5 Honor. I don't believe she's got the --

6 THE COURT: I understand. Get her
7 to clean it up a little bit.

8 MR. O'KELLEY: Absolutely,
9 absolutely.

10 THE COURT: Mr. Barfield has a
11 point.

12 (BY MR. O'KELLEY)

13 Q. So, Mrs. Limehouse, you're not an
14 engineer, correct?

15 A. I'm not an engineer, no.

16 Q. So you have to rely on what the engineer
17 said, correct?

18 A. Correct, yes.

19 Q. And you were here for your engineer's
20 testimony, correct?

21 A. I was.

22 Q. And you don't have any disagreement with
23 his conclusions, correct?

24 A. No.

25 Q. And so I can't -- you can't give us your

1 opinion about the subsidence and what was going
2 on. But did you notice subsidence?

3 A. Yes.

4 Q. And then the next exhibit, for example,
5 Exhibit Number 7, is a photo dated 10/8 of 2016
6 showing flooding and Limehouse Produce trucks.
7 Tell the judge what we're looking at here.

8 A. This was Hurricane Matthew. But really,
9 we should start in 2015.

10 Q. Well, let's start with 2015 --

11 A. Yes.

12 Q. -- where we had what was called The
13 Storm of the Century with Hurricane --

14 A. Hurricane Joaquin.

15 Q. -- Joaquin of the coast and the
16 Nor'easter and everything. Tell His Honor what
17 happened during that.

18 A. We had such radical flooding that we had
19 to -- we, fortunately, had a friend at Sunbelt.
20 And we managed to get a big sewage pump that
21 pumped 2,200 gallons a minute. And we got
22 300 feet of sewerage pipe. And we ran it out
23 into the woods as far as we could to get the
24 water away from the building and stop flooding,
25 stop the water from coming in. But it ran for

1 36 hours. Then Matthew.

2 Q. And then the next year, we had --
3 unfortunately, in October, Hurricane Matthew hit?

4 A. Correct.

5 Q. And that's this photo --

6 A. The same thing, yeah. Both times we had
7 to get these huge pumps. But we did it and took
8 care of it. We never saw anybody from
9 maintenance or -- I actually stayed at Trotters
10 to monitor during Matthew.

11 Q. Trotters being a hotel in West Ashley --

12 A. Hotel in West Ashley, correct.

13 (Reporter interruption.)

14 (BY MR. O'KELLEY)

15 Q. We just finished with asking you about
16 Hurricane Matthew. Tell His Honor about other
17 work that needed to be done or what else was
18 going on with the floors and flooding and the
19 whole -- because you were here for Mr. Willis's
20 testimony, correct?

21 A. Yes.

22 Q. And tell His Honor why you had to bring
23 in Southeastern Construction to do work while you
24 were at the property.

25 A. Basically we had tried -- Scott Milligan

1 was working a lot up at the property, so I would
2 see him a good bit. He dreaded seeing me walk up
3 to him, because there was nothing that they could
4 do to fix the problems that we had in the floor.

5 Q. And what were those specific --

6 A. Subsidence.

7 Q. Water coming into the -- up through the
8 floor, was that an issue later on?

9 A. That was -- that was not -- the
10 subsidence was the worst. We had water coming
11 up, but in -- only in one particular place, which
12 was a dry area outside of our office. And there
13 was one seam, but it's where we stored our
14 tomatoes to ripen them. And there was one seam
15 that if we drove over it after a rain, it would
16 get a suction and just spew mud for hours.

17 Q. And when you were driving -- and you say
18 we were driving over it. What was being used --

19 A. A forklift. A forklift. 2,500 pound
20 max. So not heavy freight.

21 Q. And you were here earlier -- do you-all
22 ever use what are called hand jacks as well?

23 A. We use hand jacks.

24 Q. And how much do those generally weigh?

25 A. Less.

1 Q. Much less than a forklift?

2 A. Much less.

3 Q. And how many forklifts would be running
4 at any given time?

5 A. We could have at night up to 10.

6 Q. And I forgot to get you to explain to
7 His Honor -- I'm sure he's seen Limehouse Produce
8 trucks throughout the Lowcountry. But to whom
9 are you-all mainly supplying produce?

10 A. Schools, restaurants, institutions,
11 hospitals.

12 Q. It's a big wholesale operation, in other
13 words?

14 A. We bring in truckloads of product and
15 then ship it out to --

16 Q. And it's not a 9 to 5 business, is it?

17 A. It's not a 9 to 5 business.

18 Q. Explain to His Honor about the
19 operations schedule. I guess it depends --

20 A. We're pretty much 24/7. But I mean,
21 like I went to work at 3:30 this morning. It's
22 -- we close at 2:00 in the afternoon. So it's
23 really the busiest from midnight to late in the
24 morning.

25 Q. Because that's when the trucks are

1 coming in and going out?

2 A. And that's where we're shipping.

3 Q. That's right. And again, shipping,
4 what's the farthest you're shipping to?

5 A. What is the --

6 Q. Your geographical area. Where are you
7 shipping to?

8 A. Tricounty. Tricounty. We go to
9 Beaufort two days a week.

10 Q. And in terms of -- there's an invoice.
11 Go to the next exhibit, Exhibit Number 8, please.
12 This is an invoice from July of 2017 from
13 Southeastern Construction. Tell His Honor about
14 this invoice.

15 A. This is where David Willis went to fill
16 the drains.

17 Q. The drains that had been placed into the
18 flooring?

19 A. Correct.

20 Q. And when were those -- tell His Honor
21 the history of those drains being put in the
22 floors at the Trade Street location.

23 A. I don't know. I mean, I don't know, and
24 we don't use them. I mean, drains are our worst
25 enemy. We -- in our new facility, we've got two

1 10-foot drains for a 50,000-square-foot building.

2 Q. And why are they your worst enemy?

3 A. Listeria.

4 Q. And listeria being a food-borne illness,
5 correct?

6 A. And water-borne, yeah.

7 Q. And in fact, do you-all do any
8 processing of --

9 A. No. We do no processing.

10 Q. And let me just finish the question too
11 before you answer it. I know you know what I'm
12 doing, but just -- I don't want to get in trouble
13 again.

14 A. Sorry.

15 Q. And so those drains at Trade Street, if
16 they could have been eradicated, that would have
17 helped, correct?

18 A. Correct.

19 Q. But they were there. But you don't know
20 who put them in or when they were put in,
21 correct?

22 A. No, I do not.

23 MR. BARFIELD: Your Honor, I've
24 given him a lot of latitude on the leading
25 questions, but --

1 THE COURT: I get it.

2 MR. O'KELLEY: I'll be more -- less
3 yes-and-no answers.

4 THE COURT: Just tell him about the
5 drain.

6 (BY MR. O'KELLEY)

7 Q. Do you know who put the drains in? And
8 tell me about them.

9 A. No, I don't.

10 Q. If you would, please, look at the next
11 exhibit, Exhibit Number 9. These are a series of
12 e-mails between Gray Taylor, my former law
13 partner who died in 2019, and David Simmons. And
14 then you were actually -- if you keep looking,
15 this exchange began with an e-mail from you, the
16 last page, on July 14, 2017. Do you need to take
17 a second and read these, or do you remember these
18 e-mails, because it's been a few years since they
19 were exchanged?

20 A. Yes. I do remember the e-mails.

21 Q. Tell His Honor about the e-mails and the
22 genesis of them and why they were being sent and
23 all of that. And you can start with the first
24 one, which begins right before tab number 10.
25 July 14, 2017, at 1:22 PM.

1 A. Uh-huh.

2 Q. Well, tell His Honor why you were
3 writing Mr. Simmons about the sump pump.

4 A. Oh, the sump pump.

5 Q. Yep. And here, let me show you.

6 A. Oh, the last one?

7 Q. Yes, ma'am.

8 A. Because we were moving out. And we --
9 there was one tiny pump when we moved in. We had
10 two auxiliary sump pumps apart from these crucial
11 hurricane sewerage pumps. We had two auxiliary
12 pumps just to try and keep the dock clear of
13 water, because there's a low -- there's a ditch.
14 There's a low -- low area behind the building,
15 and there's a ditch that comes up. And that
16 ditch would flood into the dock every time we had
17 heavy rains.

18 Q. And so you paid for those pumps,
19 correct?

20 A. Correct.

21 Q. And then keep reading the e-mails,
22 because Mr. Simmons was talking to you about the
23 floor drains, correct?

24 A. Well, he's talking to Gray.

25 Q. No, ma'am. The e-mail right above

1 July 14th of 2017.

2 A. Okay, I've got it.

3 Q. Right here.

4 A. Okay.

5 Q. And take a second to read it.

6 A. Uh-huh.

7 Q. Specifically, what does his second
8 paragraph say there? And you can read it into
9 the record.

10 A. "On a different note, until the concrete
11 floor drains are corrected, it goes without
12 saying Limehouse Produce will be responsible for
13 paying rent until" --

14 Q. Go a little slower. Go a little slower
15 for the court reporter.

16 A. Okay. -- "until repairs are completed
17 as the space is not rentable in the condition
18 that it is now. Please let me know when I can
19 expect the floor drains to be removed and the
20 concrete to be repaired correctly."

21 Q. And then turn the page, please. And
22 then there's an e-mail. And again, you were here
23 for Mr. Willis's testimony. There's an e-mail
24 from that same Friday. Tell His Honor about that
25 e-mail and about the meeting it references. And

1 take a second to read it if you need to.

2 A. Do I need to read it?

3 Q. To yourself. Or just tell His Honor
4 about the meeting and about leaving the building
5 in June of 2017.

6 A. We met there. And I mean, I thought we
7 had agreed what we were going to do. And David
8 Willis did it. And then we didn't hear anything
9 back for several weeks.

10 Q. And then you got the e-mail on July 19,
11 2017, with the list of items from Mr. Simmons,
12 correct?

13 A. Correct.

14 Q. And then again, turn the other way.
15 Going towards Exhibit 9. At some point, you
16 turned this over to my law partner, correct?

17 A. Yeah, immediately.

18 Q. And then there's an e-mail -- if you
19 keep going back -- from Gray Taylor to
20 Mr. Simmons on July 25, 2017, correct?

21 A. Correct.

22 Q. And it references paragraph 14 of the
23 lease, correct?

24 A. Uh-huh.

25 Q. And is that a yes?

1 A. Yes.

2 Q. And what was Mr. Taylor telling
3 Mr. Simmons in this e-mail?

4 A. "Specifically section 14 states that the
5 lessor requests that floor modifications must be
6 remedied at the termination of this lease.
7 Normal wear and tear excepted."

8 Q. And then underneath, Mr. Taylor explains
9 what Limetrade did. What did Limetrade do,
10 according to his correspondence?

11 A. Gray said, "It's my understanding that
12 Limetrade, LLC, has installed lighting superior
13 to the original installation, filled in the floor
14 drains, cleaned the floors, and removed any
15 ducting suspended from roof rafters. Limetrade,
16 LLC, has not and will not repair concrete damage
17 due to subsidence from engineering issues with
18 the premises or make any of the wish list of
19 repairs detailed in your e-mails below."

20 Q. And after you-all moved out, did it come
21 to your attention that repairs were being done or
22 the slab was being removed? Tell His Honor about
23 your knowledge of those issues. Sometime in
24 2020.

25 A. Yeah, not for a while. But yes, we

1 did -- I don't even remember how we found out
2 that they were removing the slab. And we asked
3 for permission to do a survey, an engineering
4 survey. And had to really push to get an
5 agreement to do it. And we sent Coastal
6 Engineering -- Michael Allen from Coastal
7 Engineering.

8 Q. The same Mr. Allen who testified --

9 A. Correct.

10 Q. -- in this case, correct? And you're
11 going to rely on his opinions as to the floor and
12 the condition thereof, correct?

13 A. Yes.

14 Q. All right. Mrs. Limehouse, if you
15 would, please -- this might take awhile, but
16 let's turn to Exhibit Number 14. And I'll
17 represent to you -- your pictures that people
18 have testified to or talked about. But a lot of
19 them are pictures we got from you-all. Let's
20 just walk through them. And we're going to
21 identify them as 14. And you see down at the
22 bottom it's got BBT 1374 number four and a
23 number?

24 A. Uh-huh.

25 Q. Let's identify them that way. So tell

1 His Honor what this first picture we're looking
2 at -- shows the bottom half of a very
3 well-dressed gentleman. And he's standing on
4 something. Tell His Honor what we're looking at.

5 A. This is the seam -- this is the seam
6 outside of the office that --

7 Q. And when you say seam, S-E-A-M, correct?

8 A. Oh, I'm sorry. Yes. Well, expansion.
9 Expansion seam, I guess. Expansion joint,
10 whatever. But this was -- this is in an area
11 that's completely dry outside of the office. To
12 the right of these photographs would be the
13 windows out to the parking at the front of the
14 building.

15 We don't use water for anything. We
16 only use vacuum cleaners, scrubbing machines. So
17 we had to constantly run the vacuums over,
18 because these are the areas I'm talking about.
19 When you went over with a forklift, there would
20 be a suction, and we'd get consequent seeping of
21 mud.

22 Q. And there's certain boxes in the back of
23 that picture.

24 A. Tomatoes. That's where we ripen
25 tomatoes and avocados. It's an ambient area

1 outside of the office, not in the cooler.

2 Q. And is that Mr. Limehouse standing on --

3 A. It is.

4 Q. -- what looks like cardboard?

5 A. It is.

6 Q. Turn to the next picture. It's BBT
7 1374, number four, number seven. Tell His Honor
8 what we're looking at there.

9 A. Number --

10 Q. Just the next page.

11 A. Oh, the next page?

12 Q. Yes, ma'am. We're going to -- we're
13 going to --

14 A. It's the same. The same -- seven,
15 eight, nine is all that same seam.

16 Q. And then exhibits [sic] 10, 11, 12, 13,
17 14, 15, those are all pictures taken by your
18 engineer, correct?

19 A. Correct.

20 Q. And I think those go all the way to
21 number 24. And Mr. Allen testified about all of
22 that, correct?

23 MR. BARFIELD: When you say
24 exhibit, you mean pages, right?

25 MR. O'KELLEY: Excuse me. It's the

1 Bates labels at the bottom through number 23.

2 THE COURT: And just for the
3 record, it's Bates-labeled 1374.0004. And then
4 pages 11 through --

5 MR. O'KELLEY: 23, Your Honor.

6 THE COURT: -- 23 is what he
7 referred.

8 MR. O'KELLEY: Well, excuse me. 10
9 through 23.

10 THE COURT: Excuse me. 10 through
11 23.

12 (BY MR. O'KELLEY)

13 Q. Those were all pictures that were
14 provided to you by Mr. Allen, correct?

15 A. Yes.

16 Q. And he's already testified about what
17 those pictures were, correct?

18 A. Yes.

19 Q. And then tell us -- 24, is that another
20 picture of the seam?

21 A. Yes, it is.

22 Q. And then what are we looking at with
23 exhibits 25, 26 -- excuse me -- pages 25, 26, 27,
24 28, and 29, and 30?

25 A. 28 is the pump, the industrial pump that

1 we rented. The previous pages are the dock
2 completely flooded.

3 Q. And was that during one of the storms?

4 A. Yes.

5 Q. Do you know which one, whether it was
6 Joaquin or Matthew?

7 A. I don't. I don't. But it's irrelevant,
8 because they both -- in both places, the dock
9 flooded completely for over 24 hours.

10 Q. And then turn to 29 -- page 29 and 30.
11 What are we looking at in those?

12 A. Well, that's where we had to get the
13 sewerage -- we had to go back to Sunbelt to get
14 enough to get the water away from the building.
15 It was just -- it was -- we were just playing for
16 time. I mean, it came right back. But we just
17 pumped fast enough to where we didn't flood. The
18 electrical transformers are right down the aisle
19 next door to where that pump was. So it would
20 have been fairly catastrophic for everybody if we
21 flooded.

22 Q. And then turning to page number 30 of
23 this exhibit. What are we looking at there?

24 A. 30?

25 Q. Yes, ma'am.

1 A. That's the sewerage pipes. Sewerage
2 pipes and electrical lines.

3 Q. And how about 31, what are we looking
4 at?

5 A. 31, that's the parking lot in the front
6 of the building.

7 Q. And is that standing water there?

8 A. Standing water.

9 Q. And how about 32?

10 A. Back to the street. Same thing. That's
11 in front of the building.

12 Q. And then what are we looking at in 33?

13 A. 33 is a -- where you make the turn out
14 onto Trade Street.

15 Q. And how about 34?

16 A. 34 is our dock.

17 Q. Flooded again, correct?

18 A. Yes, but all the way. Like I said, we
19 were within a couple of inches of the building --
20 the water coming in the building, which there
21 again, for a food safety aspect would have been
22 catastrophic.

23 Q. And tell me about exhibit -- page --
24 excuse me -- the same exhibit, pictures 35 and
25 36.

1 A. 35 is the steps walking down to the
2 dock. 36 is our powered trailer that we have
3 parked at the dock to load pallets onto.

4 Q. And 37 appears to be upside down?

5 A. Upside down, yeah.

6 Q. But it's showing --

7 A. More of the same.

8 Q. Turn it upside down correct,
9 Mrs. Limehouse. If you'll just look my way. Am
10 I holding it the correct way?

11 A. Yes, yeah.

12 Q. What about page 38, what am I looking
13 at?

14 A. This is pulling into the building.

15 Q. Also taken during one of the storms,
16 correct?

17 A. Correct.

18 Q. And the same with 39?

19 A. 39 is the front of the building.

20 Q. How about 40, it looks like there's a
21 bunch of standing water on the other side of that
22 Crepe Myrtle tree, correct?

23 A. Yes. That's turning into the building.

24 Q. And how about 41? The same question.

25 A. That's the roadside to show you exactly

1 where it is.

2 Q. And how about --

3 A. In front of the building.

4 Q. How about 42? Again, there's a handsome
5 gentleman in that picture. What are we looking
6 at?

7 A. Oh, that's somewhere else.

8 Q. That's not this property?

9 A. That's not this property.

10 Q. All right. What are we looking at on
11 page 43?

12 A. Page 42 [sic] is Meeting Street.

13 Q. And how about page 43, what are we
14 looking at?

15 A. That's our parking lot.

16 Q. During one of the -- at Trade Street?

17 A. At Trade Street.

18 Q. And again, during one of these storms,
19 correct?

20 A. Yes.

21 Q. And how about 44, tell His Honor what
22 he's looking at.

23 A. That's our trailer at Trade Street.
24 This is the ditch that I'm talking about that
25 brings the water down from the low area in the

1 back. And when we pumped out after Matthew, we
2 had four eels in the dock. So I mean, it's a lot
3 of water that comes down that ditch. I would
4 think it would probably do well to have a -- kind
5 of blockage at the other end.

6 Q. And tell His Honor what 45 is a picture
7 of, the yellow line in the concrete.

8 A. It's the water moving. If you can see,
9 there's actual -- I mean, it was flowing down
10 into the dock.

11 Q. And that is the edge of the dock, right?

12 A. Correct.

13 Q. And how about 46, what are we looking
14 at?

15 A. 46 is the dock. That's where you'd go
16 up the steps to go in.

17 Q. And are those the steps we saw in an
18 earlier photograph?

19 A. Yes.

20 Q. And then tell His Honor what he's
21 looking at in 47, 48, and 49.

22 A. Sunbelt. Sunbelt sewerage pumps. And
23 this is the area that we found out in the woods.

24 Q. And are you talking about picture 48?

25 A. I'm talking about -- 48 is the area we

1 found out in the woods. We had to go to Sunbelt
2 and get additional pipes to run that far to get
3 the water away from the building. It still came
4 back, but it gave us probably a couple hours.

5 Q. And how about the next page, number 50?

6 A. The same thing. The same thing. We
7 were very proud when we found the hole. Oh, this
8 is 50 -- is the same thing, the docks.

9 Q. And the same with 51?

10 A. Yes.

11 Q. And 52?

12 A. Yes.

13 Q. And then 53 shows the sign that says
14 Limehouse Produce Office, Turn Here, correct?

15 A. Yes.

16 Q. That's just another angle of that same
17 picture with a Crepe Myrtle, right?

18 A. Correct.

19 Q. And then these are -- maybe it's because
20 I've -- they were blown up. But tell His Honor
21 what we're looking at in 54.

22 A. This is the kind of subsidence that we
23 were seeing all over the floor. It started to be
24 really bad in 2014. I think it's the first time
25 that there's an e-mail that I sent to David

1 telling him how serious the subsidence was. We
2 turned several pieces of equipment over with full
3 pallets of produce on them because they just
4 literally sank, fell away into the floor.

5 And this kind of represents -- like I
6 said, I'm not an engineer. But I think this must
7 be because these were the 2-inch parts of
8 concrete as opposed to 6-inch.

9 Q. And when you reported them to your
10 landlord, was a fix attempted? What happened
11 after you said, "Hey, the concrete is all busted
12 up" -- or I don't want to put -- what happened
13 after these issues were presented?

14 A. They made a couple of attempts. I mean,
15 Scott was more involved.

16 Q. And that's Scott Milligan, correct?

17 A. Scott Milligan, yes. And they made a
18 couple of attempts. And they worked with Larry
19 Lyon, my mechanic. And we've got a whole myriad
20 of different products to try, because concrete
21 doesn't set up in cold temperatures.

22 And so Scott actually one day did try a
23 tent with a little propane heater for an area,
24 which was absolutely not a success. But we got a
25 range of epoxy items to try and ameliorate some

1 of these places. But really, I mean, it was like
2 putting a Band-Aid on a hemorrhage, because we
3 got to where there was so many, we just had to
4 put in metal steel plates.

5 Q. And for example, the next page, 55 and
6 56 and 57 and 58 --

7 A. Same thing.

8 Q. -- all showing places where the concrete
9 cracked or --

10 A. Correct.

11 Q. -- subsided?

12 A. It just -- it just subsided and
13 disintegrated. And so in all of those cases, I
14 mean, like I said, Scott would literally dread me
15 walking out behind them because it was always one
16 of these problems, and there was not a fix. We
17 got David Willis involved. He had some
18 Silicabright [sic], I think it was called, that
19 was an epoxy product that we tried. But
20 basically we couldn't -- it was way too much to
21 try to fix.

22 We ended up with 13 steel plates when we
23 left. And when we left, we did patch the floors,
24 because the refrigeration was ours. So it could
25 be patched then, but --

1 Q. I have two more exhibits. And I don't
2 know whether they ended up --

3 MR. O'KELLEY: They're not in the
4 notebook. But remember these?

5 MR. BARFIELD: Yeah.

6 MR. O'KELLEY: Your Honor, I think
7 you should have copies. We marked them as
8 Defendants' 1 and Defendants' 2 last time.

9 MR. BARFIELD: What was the second
10 one?

11 MR. O'KELLEY: The second one was a
12 series of e-mails from 2014.

13 MR. BARFIELD: Okay.

14 MR. O'KELLEY: We're going to walk
15 through those in just a minute. And then the
16 other one, D1, was the transaction showing that
17 Limetrade had been terminated.

18 THE WITNESS: Uh-huh.

19 (BY MR. O'KELLEY)

20 Q. If you'll recall that, Limetrade was
21 terminated in 2017, correct?

22 A. Yes. I mean, the only -- the only
23 reason for it to exist was to carry the lease.

24 Q. And once the lease was over, did
25 Limetrade serve any purpose for you or your

1 family?

2 A. No.

3 Q. And then you mentioned e-mails back in
4 2014 in contacting Mr. Simmons. I'm going to
5 show you what we marked as Defendants' 2 last
6 time. And you just -- your transition was
7 actually perfect, because you mentioned something
8 called SikaQuick. Just tell His Honor about
9 these e-mails and what transpired, why did you
10 write them, and what happened?

11 A. Well, December the 1st, structural
12 problems. "I called twice last week. Asked for
13 someone to come and address the subsidence in the
14 concrete floor" --

15 Q. And, Mrs. Limehouse, just slow down.

16 THE COURT: Whoa, whoa, whoa. Slow
17 down.

18 (BY MR. O'KELLEY)

19 Q. A lot slower. A lot slower, because
20 she's got to take it --

21 THE COURT: You've got a soft
22 voice.

23 THE WITNESS: I know, I know. I'm
24 sorry.

25 THE COURT: And she's trying to keep

1 up with us.

2 THE WITNESS: Do I have to read the
3 whole thing, or can we just leave copies?

4 (BY MR. O'KELLEY)

5 Q. Well, His Honor will read them. But I
6 just want you to explain --

7 A. Oh, what this is.

8 Q. -- to the Court what it is -- you don't
9 have to read it into the record.

10 A. Desperation. I mean, you know, if we --
11 I, frankly, got to the point -- we had been
12 looking for property. We knew that the slab was
13 bad. We knew that we were in danger of failing
14 the ever-threatening food safety if they saw mud
15 seeping up through the floors, if they saw any of
16 these patches of subsidence.

17 Q. And would that be from the State of
18 South Carolina or the USDA? How does it -- or
19 both?

20 A. USDA. But we are party to a third
21 party. We have to have third-party inspections
22 for food safety designated by certain companies.
23 And that might be Primus. Might be Cook &
24 Thurber. There's a variety of them. And certain
25 purchasing entities will designate different

1 ones.

2 But we knew that we were on some thin
3 ice. So we had been looking desperately to find
4 some property to build a warehouse. But we
5 weren't there, which is why we extended the lease
6 again.

7 Q. Explain again -- walk His Honor through
8 those e-mails and just explain the discussions
9 that you were having at the time. And if you
10 need to review them, take your time.

11 A. Well, just to quote a small part of it,
12 "I would not be calling repeatedly if there was
13 not another serious issue. And this morning,
14 subsidence became bad enough to cause a piece of
15 handling equipment to turn over with a loaded
16 pallet. We are both very lucky there was not a
17 physical injury, although there was damage to the
18 product that fell."

19 Q. And does that refresh your memory about
20 the testimony you gave a little while ago about
21 something turning over?

22 A. Correct. Yeah, I mean, it wasn't once.
23 It was several times. So that's December
24 the 1st, 1914 [sic].

25 Q. That would be 2014, correct?

1 A. I mean 2014.

2 Q. I don't think anyone here was alive back
3 in 1914.

4 A. July 20, 2015 --

5 (Overlapping dialogue.)

6 THE COURT: All right, hold on. We
7 can't hear with all of these conversations at
8 once. Just one at a time. And please make sure
9 you speak up for me. Where are you, actually?

10 THE WITNESS: Okay. So there's a
11 series of these e-mails to --

12 THE COURT: At the very bottom of
13 the page is a number --

14 MR. O'KELLEY: If you'll just read
15 that number.

16 THE WITNESS: 1374.0004.

17 MR. O'KELLEY: And the page number
18 is what he's --

19 THE WITNESS: 134.

20 (BY MR. O'KELLEY)

21 Q. And then after that on 135 --

22 A. 135.

23 Q. -- what's that discussion about,
24 Mrs. Limehouse?

25 A. "I need to get the floors fixed this

1 week. Inspection, 7/29. And subsidence, pretty
2 bad." That would be food safety inspection. And
3 that would be the subsidence that we've been
4 discussing.

5 Q. And then on page 136, what are you --

6 A. This is -- David Willis had found a
7 product, but it was very expensive. And we got a
8 small amount to try, but it really wasn't any
9 better than the other product we had been using.

10 Q. The epoxy product?

11 A. Epoxy products.

12 Q. And then tell His Honor about what
13 you're looking at on page 138.

14 A. 138, I'm having a temporary fill.
15 That's to tide us over. I mean, we were
16 constantly patching, putting down plates.

17 Q. And is that a picture of a plate on page
18 one-thirty -- the next page?

19 A. It is. It is. It's a picture of a
20 plate. But it's a picture of -- the other side
21 of the plate is another patch of subsidence.
22 That's 139.

23 Q. I was about to say -- and then what's on
24 140?

25 A. 140, more complaints. The drain pipes

1 were broken and I think are still broken the last
2 time I went to see a friend of mine who is
3 working at 4791 Trade Street.

4 Q. And what's the date of that e-mail?

5 A. October the 3rd, 2015.

6 Q. And how about the next page, 141?

7 A. Okay. This is -- 141 is -- okay. This
8 would be Joaquin.

9 Q. The storm of the century, correct --

10 A. Yes.

11 Q. -- is what some people were calling it?

12 A. It was the one that was five days. And
13 we had like three consecutive king tides before
14 we got a tide that went out, which is probably
15 when the eels arrived. Yeah, the water came up
16 very fast.

17 Q. And that's continued on the next page,
18 142, correct?

19 A. Correct.

20 Q. And then tell His Honor about 143 and
21 144.

22 A. More of the same. More subsidence.
23 "Please confirm Scott is coming," which a lot of
24 times, they didn't show, because they had made it
25 very clear that they didn't know what to do and

1 couldn't -- were struggling to find --
2 basically -- I mean, they did ultimately what
3 they needed to do, which was put a new slab in.

4 So then October the 23rd, "David, the
5 floor degradation, as we have been discussing for
6 months, getting really dangerous. I have patched
7 it twice at my own expense. It needs a more
8 permanent fix. I'm going to Atlanta to a
9 convention. To be back Saturday evening. But
10 Larry Lyon, my mechanic, will be here if you come
11 today.

12 "I instructed him to get plates ready
13 since last weekend, which is when I thought we
14 had decided definitively to tackle this issue.
15 Working around the damage, but the areas are
16 getting so big, they're hard to avoid. We had
17 had another pallet spill yesterday. Please
18 advise."

19 Q. How about the next page?

20 A. More subsidence.

21 Q. And that's 146?

22 A. 146.

23 Q. And how about 147?

24 A. Same.

25 Q. Pictures of subsidence?

1 A. Yes, subsidence. And that's -- that's
2 adjacent to --

3 Q. And when you --

4 A. -- one of the drains.

5 Q. Hold on one second. When you're saying
6 that, you're talking about 147?

7 A. 147 is adjacent to one of the drains.
8 But most of these are not anywhere near the
9 drains. They're just in the middle of the floor.

10 Q. And when you say these, you're talking
11 about the areas --

12 A. These areas of subsidence.

13 Q. And then how about the next page, 149?

14 A. 149, I think one -- in one of the
15 discussions, I must have called Scott and asked
16 what he could do. And he just said, "Put a plate
17 over it." So I said, "David, for safety reasons,
18 I had to secure this area, so purchased a steel
19 plate to cover it. This was Scott's
20 recommendation. I had hoped you would do it but
21 couldn't wait any longer. Andrea."

22 Q. And the next page, 150, is that a
23 picture of the steel plate?

24 A. That is the picture of -- yeah.

25 Q. And it looks like it was -- how was it

1 placed? It is laying there or bolted?

2 A. It's bolted. Has to be bolted.

3 Q. How about the next page, 151?

4 A. Problems with the over -- overhang roof
5 on the dock doors.

6 Q. And then the next page, 152 and -53.

7 A. 153, "I have not disconnected the power
8 to 4791 Trade Street yet, as the sump pump runs
9 on our circuit. We had two other pumps to keep
10 up with normal conditions. The dock filled
11 halfway the weekend of 7/1 with your pump
12 running. Do you want to switch the power before
13 I disconnect?"

14 Q. And what year was that?

15 A. 2017. July 14th.

16 Q. And the next page, ma'am, what are those
17 e-mails? And you're at page 154, correct?

18 A. Yes.

19 Q. Unfortunately, they're not in
20 chronological order. And that's probably my
21 fault. But what are we -- what are we looking
22 at?

23 A. That was a patch on the roof.

24 Q. And when you say that, you're talking
25 about page 155?

1 A. 155 is a patch on the roof. The roof
2 was not the problem in this. The floor was --
3 the slab was the problem.

4 Q. And what are we looking at on the next
5 page?

6 A. The roof. 155.

7 Q. 156?

8 A. And 156.

9 Q. And what's 157?

10 And then 157 is a picture of what,
11 Mrs. Limehouse?

12 A. Oh, that's just a hole in the
13 insulation.

14 Q. And then 158 appears to be a drawing of
15 the inside of the building, correct?

16 A. Yes.

17 Q. Mrs. Limehouse, from the time the
18 operations started until the time you moved out,
19 there were problems with the floor, correct?

20 A. Yes. Much less at the beginning as the
21 water tables came up. And a lot of this, I
22 think, is a topographical issue. As the water
23 tables came up --

24 MR. BARFIELD: Objection, Your
25 Honor. I think she's venturing into hydrology.

1 THE WITNESS: Yeah, and I'm not a
2 hydrologist, but I -- yeah.

3 MR. O'KELLEY: I think she's
4 allowed to say as observation. If the water
5 table is rising, she can see it with her eyes,
6 Your Honor.

7 THE WITNESS: Yeah.

8 THE COURT: Well, I think the water
9 table was like under the ground.

10 MR. O'KELLEY: Well --

11 THE WITNESS: Subgrade. I mean, I
12 would say subgrade. But yeah.

13 (BY MR. O'KELLEY)

14 Q. We'll change it. But you literally saw
15 water coming onto the property and rising over
16 time, correct, during --

17 A. I think that the two occasions that we
18 had that severe flooding, it seemed like we
19 didn't recover from them as we had when there was
20 lesser rain.

21 Q. Fair enough. And paragraph 14, the
22 lessor request, tell His Honor what work you-all
23 did when you left the space.

24 A. We cleaned everything. We patched all
25 of these places of subsidence in the floor,

1 filled in the floor drains, took out all of the
2 overhead lights, cleaned all around the building.
3 I thought that we left it in much better shape
4 than it was when we moved in.

5 Q. And in terms of paying for that work,
6 you-all paid for that work, did you not?
7 Limetrade did?

8 A. Yes.

9 Q. And do you recall what you actually had
10 to spend to do that work?

11 A. No, I don't. And a lot of it was done
12 by Larry Lyon. We had had our mechanic working
13 up there for two or three weeks.

14 Q. In other words -- let me ask. You were
15 here for David Willis's testimony, correct?

16 A. Correct.

17 Q. And you heard what he had to say about
18 what they got paid to do that work, correct?

19 A. Yes.

20 Q. And at the time, I think he was your
21 contractor for your current building; is that
22 correct?

23 A. Yes.

24 Q. So he was -- I think his testimony was
25 that, "We were building Carner, and

1 Mrs. Limehouse asked if I could go do some work
2 on Trade Street." Does that refresh your memory?

3 A. Yes. But the bulk of the work was done
4 by Larry Lyon, our mechanic. And he was up there
5 for several weeks fixing everything, taking down
6 and cleaning up.

7 Q. And you didn't take out the bathrooms
8 you put in, correct?

9 A. I did not, no.

10 Q. Or the lighting you put in there?

11 A. All the Wi-Fi.

12 Q. Or the --

13 A. The office was ready to move into.

14 Q. And we've already been through the
15 exhibit showing the dispute that's been going on
16 since that time, have we not -- and that would be
17 Exhibit Number 9 -- where you and Mr. Willis met
18 with Mr. Simmons at the property and then --

19 A. Yes.

20 Q. -- have had a history then? And just to
21 be clear, going back to Exhibit Number 2, the
22 assignment. Paragraph 6 states that Limetrade is
23 going to take on and indemnify Limehouse Produce
24 from 24 May 2007 forward, doesn't it,
25 Mrs. Limehouse?

1 A. Yes.

2 Q. And you were here this morning when
3 Mr. Simmons testified that he signed this
4 agreement for the Virgie C. Simmons Family -- it
5 says LLC here. But you're aware that he
6 testified as to that, correct, that he signed
7 this document?

8 A. Yes.

9 Q. And in fact, you were here for his
10 testimony last month and today, right?

11 A. Yes.

12 Q. And what was your intention -- and when
13 I say your, I'm talking about Limehouse Produce
14 and Limetrade's -- intention by having this
15 assignment done by your attorney and signed by
16 all of the parties involved?

17 A. To put the lease into an LLC like we
18 have all our properties.

19 Q. And Limetrade -- when you got the
20 original assignment, had Limetrade been
21 established at that time?

22 A. No. We established it as soon as we had
23 the intent to move.

24 Q. And in fact, at the original assignment
25 was March. And then this assignment was two

1 months later, correct?

2 A. Prior to Limehouse Produce moving in.

3 Q. Right.

4 MR. O'KELLEY: Mrs. Limehouse,
5 that's all I have for you for now. I'm sure
6 Mr. Barfield will engender me asking you some
7 questions.

8 (A recess was taken.)

9 CROSS-EXAMINATION

10 BY MR. BARFIELD:

11 Q. Good afternoon, Mrs. Limehouse.

12 A. Good afternoon.

13 Q. Can you pull --

14 MR. BARFIELD: I'm not sure what
15 this has been numbered. This exhibit --

16 MR. O'KELLEY: 17 or 18. No, it's
17 not. It's Defendants' -- hold on.

18 (Off-the-record discussion.)

19 MR. O'KELLEY: It's Defendants' 1.

20 (BY MR. BARFIELD)

21 Q. So Defendants' Exhibit 1, this is a --
22 from the South Carolina Secretary of State's
23 website, I believe. Does that track with what
24 you know?

25 A. Yes.

1 Q. And this indicates that Limetrade, LLC,
2 has been terminated as an entity, correct?

3 A. Yes.

4 Q. And if you look -- it's not the biggest
5 print on the page. But it says on the right-hand
6 column, Transaction Information. And then
7 there's a Transaction ID. And then underneath
8 that in smaller print, it says Submission Date.
9 What is the date that this was submitted?

10 A. The 4th of August 2017.

11 Q. 2017. So that means that Limetrade,
12 LLC, ceased to exist as a going concern as of
13 August 4, 2017, right?

14 A. Yes.

15 Q. Now, if you turn then to Exhibit 9 in
16 the notebook, this is the series of e-mails that
17 Mr. O'Kelley asked you about. And it begins with
18 some back and forth between yourself and
19 Mr. Simmons and then sort of escalates into a
20 back and forth between the lawyers for the two
21 sides. Is that accurate?

22 A. Yes.

23 Q. And it goes in reverse chronological
24 order, as we -- as Mr. O'Kelley pointed out
25 earlier. So if you turn to the first page, which

1 is actually the last e-mail chronologically of
2 the exhibit. And this is the e-mail from David
3 Simmons to your attorney, Mr. Taylor. Do you see
4 that?

5 A. Yeah. I was just looking at the dates.
6 I'm not familiar with the dates.

7 Q. Okay. And that's fine, because that's
8 what I'm going to ask you about. So take your
9 time.

10 A. Yeah, it looks like the 25th was the
11 last day of communication.

12 Q. Okay. And that's July 25, 2017,
13 correct?

14 A. Correct.

15 Q. And so that is just a few days before
16 Limetrade, LLC, was terminated as an LLC with the
17 Secretary of State?

18 A. Yeah. I mean, I guess it was a week or
19 so before.

20 Q. Okay.

21 A. I mean, we had planned on -- as soon as
22 our last payments were made, we closed that bank
23 account.

24 Q. But at that point, there was still an
25 open dispute between Limetrade, LLC, and the

1 landlord for the Trade Street warehouse, was
2 there not?

3 A. Well, there was definitely some
4 discussion. But there was no filing.

5 Q. Okay. Well, so you -- exactly. There
6 was not yet a lawsuit. But there was an open
7 dispute, wasn't there?

8 A. There was a discussion with Gray. And
9 then that went quiet until his obituary was in
10 the paper.

11 Q. Which was certainly unfortunate. But as
12 between you and Virgie Simmons, LLC, there was --
13 the dispute over the floor condition had not yet
14 been resolved as of the date Limetrade, LLC, was
15 dissolved, correct?

16 A. Two separate -- completely separate --

17 Q. Well, I didn't ask the reason why. I'm
18 just asking you to confirm that the dispute was
19 ongoing when you dissolved the LLC.

20 A. I would say July 25th is before August
21 the 4th.

22 Q. Okay. As of August the 4th though,
23 there had not yet been resolution. In fact,
24 there's no resolution to this day. Am I right?

25 A. Correct.

1 Q. Now, if you look then at Mr. Taylor's
2 e-mail of July 25, 2017, to David Simmons,
3 there's a line in his e-mail that is in boldface
4 type and underlined, correct?

5 A. Correct.

6 Q. And it says, starting at the beginning,
7 "As you have stated, section 14 does call for
8 floor modifications are required to be returned
9 to their prior condition at lease termination.
10 As of today, the modifications have not" --

11 A. I thought the wording --

12 Q. -- "been addressed at all or have not
13 been properly restored to its original date." So
14 would you not agree with me that Mr. Taylor is
15 agreeing with Mr. Simmons that section 14
16 requires that floor modifications be restored or
17 returned to their prior condition at lease
18 termination?

19 A. Now, this says required. I believe that
20 it was request.

21 Q. I'm just quoting Mr. Taylor's e-mail.

22 A. Okay.

23 Q. Would you agree that Mr. Taylor was your
24 representative at that time?

25 A. Yes.

1 Q. And he uses the word require?

2 A. He did. But I was just looking back,
3 because I seem to remember it was request.

4 Q. Well, let's come at it from this way.
5 You did, in fact, undertake to one degree or
6 another to repair the floor, did you not?

7 A. I repaired the subsidence, and I filled
8 the drains.

9 Q. You had Mr. Willis fill the drains?

10 A. And work on the subsidence.

11 Q. I'm talking about after lease
12 termination, you had --

13 A. After lease termination.

14 Q. And you had someone grind down some of
15 those penetrations that were sticking up above
16 the slab, did you not?

17 A. No. That was done when they took out --
18 I offered the refrigeration to the landlord, and
19 he didn't want it. And so I had to get a company
20 to come and remove the refrigeration. And
21 they're the ones that ground the bolts.

22 Q. Is it your position that you would not
23 have ground those bolts down but for those people
24 taking the refrigeration equipment and doing it
25 then?

1 A. I would not. Put it a different way. I
2 don't understand what you're saying.

3 Q. All right. Well, so you undertook to
4 make some repairs to the floor post-lease
5 termination, right?

6 A. Well, you saw the areas of subsidence.
7 I mean, there were gaping holes.

8 Q. Ma'am, that's not my question.

9 A. When I took the plates --

10 THE COURT: You've got to answer
11 his question, ma'am.

12 THE WITNESS: Okay.

13 (BY MR. BARFIELD)

14 Q. You had the drains filled in by
15 Mr. Willis?

16 A. Yes.

17 Q. Now, you didn't do that out of the
18 goodness of your heart, did you? You did that
19 because you believed, as apparently Mr. Taylor
20 did, the lease did require that the floor be
21 repaired or restored to one degree or another,
22 correct?

23 A. Request.

24 Q. Okay. So you did that based -- out of
25 your own pocket based on a request?

1 A. Yes.

2 Q. Mr. Simmons requested?

3 A. No. The lease requested.

4 Q. Okay. Now, so my follow-up question
5 then is, per the lease, do you believe that
6 Limetrade, LLC, had any obligation to do anything
7 about those studs that were sticking up above the
8 grade of the slab after the refrigeration
9 equipment was removed?

10 A. Limetrade had already addressed it from
11 the previous tenants.

12 Q. I'm talking about when you -- when you
13 vacated the premises and your equipment was moved
14 out, did you not have some of those studs ground
15 out?

16 A. The company that removed the
17 refrigeration, a nationwide company, and they
18 took the studs down to what they thought was an
19 appropriate level.

20 Q. And why did they do that?

21 A. Because that's the way they operate.

22 Q. Did you request that they do that?

23 A. No.

24 Q. They did that out of --

25 A. Because they're professionals. That's

1 what they do for a living.

2 Q. Okay. Did Limetrade, LLC, have any
3 obligation to address those studs sticking out of
4 the floor regardless of what that other third
5 party did to obtain the refrigeration equipment
6 post-lease?

7 A. I think maybe the same responsibility
8 existed when we moved into the building, and I
9 had to address the same issue.

10 Q. Well, can we not agree that when you
11 moved into the building, any issues you addressed
12 were for the benefit of Limetrade's operations?

13 A. Correct.

14 Q. Not as a courtesy to the landlord,
15 correct?

16 A. No. I would have liked to have been --
17 had the property in a move-in condition, but it
18 was not.

19 Q. All right. So after the lease was
20 terminated, however, nothing you would do to that
21 slab would be for the benefit of Limetrade's
22 operations because Limetrade was no longer
23 operating there. Am I right?

24 A. Correct.

25 Q. Okay. So back to my question. But for

1 this third party removing the refrigeration
2 equipment after Limetrade relocated to its own
3 facility, do you believe that Limetrade had any
4 obligation under the lease to do anything about
5 those studs sticking out of the concrete floor?

6 A. I don't know that they were sticking
7 out. When I looked at the floor, it really
8 looked in pretty good condition.

9 Q. By the way, when you terminated the
10 lease, did you have a contractor or an engineer
11 come in and evaluate the floor and give you an
12 estimate as to what it would take to restore it
13 to its original condition?

14 A. That's not my job.

15 Q. But you did have somebody come and fill
16 in the drains?

17 A. I came and filled in the subsidence --
18 when I took the plates out, I had to fill the
19 subsidence that was underneath, which could not
20 be done while we had refrigeration because
21 concrete will not set up below 45 degrees.

22 Q. But I asked about the drains. You had
23 -- David Willis's company came in and filled in
24 those drains?

25 A. After the refrigeration was out.

1 Q. Right. And you paid him to do that?

2 A. Yes.

3 Q. But did you have him come in or anybody
4 else come in and give you an estimate or any sort
5 of scope of work as to what it would take to
6 properly do that?

7 A. I believe it was probably done.

8 Q. That was not my question. My question
9 is, did you have a professional, either a design
10 or a building professional, give you a scope of
11 work and/or an estimate as to what it would take
12 to properly fill in those drains before you
13 directed Mr. Willis to pour concrete into them?

14 A. I would say that David Willis is more
15 than competent.

16 Q. Now, do you recall that Mr. Willis
17 testified that his scope of work was dictated to
18 him by you; in other words, you told him, "Fill
19 in those drains with concrete."

20 A. Well, I actually don't know anything
21 about that. So I mean, he said that he was going
22 to do it and he knew how to do it.

23 Q. And this was ancillary to his completing
24 work on your new facility, correct?

25 A. No.

1 Q. It was not?

2 A. No.

3 Q. Do you not recall his testimony that
4 this was done as a favor to you because he had --
5 he was working on the new facility?

6 A. He was still working on it.

7 Q. Right. Do you recall that he said he
8 would not have taken on that job as a single job
9 but for the bigger job?

10 A. That's probably true.

11 Q. So when I asked you if this was
12 ancillary to his work on the other building,
13 that's what I mean.

14 A. Well, it's a separate building.

15 Q. Of course. And what exactly did you ask
16 him to do at Trade Street?

17 A. Do whatever he thought he needed to do
18 to put the floors in -- as -- back to as good a
19 condition as he could, including filling all of
20 the areas of subsidence.

21 Q. Back to as good a condition as he could
22 to what extent? We know now that the floor had
23 to be torn up.

24 A. Well, it should have been torn up before
25 we moved in.

1 Q. So would you not agree that it needed to
2 be torn up when it was torn up?

3 A. I think we all -- everybody agrees that
4 it was a bad slab.

5 Q. Okay.

6 A. I don't think there's any question.
7 We're not -- it's not in dispute whether or not
8 we needed a new one. It's who's going to pay for
9 it.

10 Q. You would agree with me that the
11 condition of the slab deteriorated over the time
12 that Limetrade was operating in the facility,
13 would you not?

14 A. I do.

15 Q. And the deterioration, as we've seen
16 from many photographs, was largely from above,
17 right?

18 A. No.

19 Q. The concrete had started spalling --

20 A. No. Underneath. I mean, it's -- the
21 subgrade was the problem. There again, I'm not
22 an engineer.

23 Q. Right, okay.

24 A. But when I see water coming up through
25 expansion seams, I have to think there's a

1 problem.

2 Q. Well, what about the places that you
3 call -- used the word subsidence. And let's
4 refer then back to Exhibit 13. And let me have
5 you look at page 1 of 4.

6 A. Page 1 of 14?

7 Q. It's page 6 of 14. There's a different
8 pagination in the bottom center of these pages,
9 so it's also page 1 of 4.

10 A. I'm on it.

11 Q. So these are some photos of the top of
12 the slab, right?

13 A. Yes.

14 Q. Right. And there's a location there
15 where it looks like some concrete has been broken
16 up or spalled and then ultimately patched over
17 with one of those steel plates?

18 A. Yes.

19 Q. So again, this is damage to the top of
20 the slab, right, that had to be covered over?

21 A. Well, that's not the top. That's dirt
22 underneath. That's bad subgrade.

23 Q. Again, not -- not a soils expert,
24 correct?

25 A. No.

1 Q. Okay. Now, would you agree with me that
2 this is showing the subgrade from above and not
3 from below?

4 A. I don't know what you're -- I don't
5 understand the question.

6 Q. Well, there's missing concrete here,
7 right?

8 A. There's subsidence.

9 Q. Okay. So that's what's patched, right?
10 Missing concrete from above.

11 A. I guess. I mean, I'm not sure what you
12 mean, but yes.

13 Q. Right. Well, the concrete went
14 somewhere, right? It didn't evaporate, did it?

15 A. Broke up.

16 Q. Okay, broke up. And that's a slab that
17 your machines are driving over all day every day,
18 right?

19 A. We don't have heavy freight.

20 THE COURT: Please answer his
21 question.

22 THE WITNESS: This would be where
23 we were working. That would be in the warehouse.
24 (BY MR. BARFIELD)

25 Q. So you will agree then that sections

1 like this of the slab deteriorated over time
2 while Limetrade was operating in that warehouse,
3 right?

4 A. Yes.

5 Q. Now, the photos that Mr. O'Kelley went
6 through with you in some detail showing all of
7 that flooding -- now, those were two named storms
8 causing flooding all over -- in Matthew's case,
9 all over the state of South Carolina?

10 A. Right.

11 Q. In fact, as I recall, part of I-95
12 washed away. Do you remember hearing about that
13 in Matthew?

14 A. Yes.

15 Q. Stuff like that happened. And so if you
16 refer back to Exhibit 18, which is the exhibit
17 with all of those photos --

18 MR. O'KELLEY: Do you mean 14?

19 MR. BARFIELD: Yes. Wrong exhibit.
20 My apologies. Exhibit 14.

21 (BY MR. BARFIELD)

22 Q. If you flip to page 42. This is the
23 photo I believe you identified as your Meeting
24 Street property, not related to Trade Street,
25 correct?

1 A. No. This is not our Meeting Street
2 property. This is down -- at the intersection
3 down by Bertha's.

4 Q. Which wasn't there a photo that you said
5 was not of this property?

6 A. Yeah, this is it. This is by Bertha's.
7 There were ducks. I was taking this photograph
8 because there was ducks swimming -- if you look
9 at that closely --

10 Q. Oh, yeah.

11 A. It's right by Bertha's down -- down --
12 going towards town.

13 Q. Okay. I see.

14 A. No. That's not -- not our present
15 location.

16 Q. All right. But I only bring this up to
17 note that there's pretty severe floating --
18 flooding in this area as well. There's ducks in
19 the street swimming, right?

20 A. There is. There is. But where there's
21 a concrete slab is where you run into problems,
22 in my experience. I've got the same problem at
23 my new property.

24 Q. What problem do you have at your new
25 property?

1 A. I had a problem with -- a pump failed
2 under construction of a new warehouse, and a
3 piece of my dock floated. Basically the same
4 thing happened. My dock filled with water. And
5 when that happens and it floats, it's very easy
6 to get fracturing and damage.

7 Q. I see.

8 A. Concrete and water generally don't mix
9 together very well.

10 Q. And speaking of the dock wells, the sump
11 pumps that you had to install during these named
12 storms, those were located in the dock wells,
13 correct?

14 A. The pump was outside of the dock well.
15 We ran the sewerage pipes into the dock well.

16 Q. But you were trying to get water out of
17 the dock wells --

18 A. We were getting it out.

19 Q. Those are essentially bowels in the
20 ground, right?

21 A. Correct.

22 Q. Right. So I mean, it's a known --

23 A. It's a problem.

24 Q. It's a known condition when you have a
25 warehouse that's got a subgrade dock well that

1 you're going to have to pump it out in a
2 significant rain, right?

3 A. We've only had that problem once at our
4 new warehouse. And that's when they were doing
5 construction behind us, and the pump failed.

6 Q. But point of fact is at the Trade Street
7 location, the pumping you were doing was trying
8 to clear the water out of the dock wells because
9 they were holding a significant amount of water,
10 right?

11 A. Because it was a danger to flood the
12 building.

13 Q. Right. But water never actually got
14 inside the building?

15 A. Within 2 inches.

16 Q. If you go back to Exhibit 9, now I want
17 to turn to the last page of the exhibit, which
18 is -- starts with an e-mail from you to David
19 Simmons. I'm sorry. That's from David to you.
20 Are you there?

21 A. Yeah.

22 Q. Now he says in the second paragraph, "On
23 a different note, until the concrete floor drains
24 are corrected, it goes without saying that
25 Limehouse Produce will be responsible for paying

1 rent until the repairs are completed, as the
2 space is not rentable in the condition that it is
3 in now."

4 If you look -- flip over to your
5 response to him on the same day. Did you correct
6 him for erroneously using the name Limehouse
7 Produce rather than referring to Limetrade?

8 A. No. I don't think I -- I don't mention
9 Limehouse Produce or Limetrade.

10 Q. Okay. Do you ever recall correcting him
11 if he erroneously used the name Limehouse Produce
12 instead of Limetrade to refer to the tenant?

13 A. I don't believe he ever said Limetrade.

14 Q. Did he generally use Limehouse Produce?

15 A. Well, he'd generally say Andrea.

16 Q. What about when he referred to the
17 entity, did you ever hear him say that his tenant
18 was Limehouse Produce?

19 A. I don't think we really discussed it.

20 Q. Speaking of what may or may not have
21 been discussed, do you recall any conversations
22 with Mr. Simmons prior to the lease assignment
23 from Limehouse Produce to Limetrade, LLC?

24 A. I really do not. But Stephen Schachte
25 probably would have been handling that.

1 Q. Would you agree with me that if
2 Limehouse Produce had an executed lease agreement
3 as it did with the landlord entity that the
4 landlord entity was under no obligation to permit
5 that assignment from Limehouse Produce to
6 Limetrade, LLC?

7 MR. O'KELLEY: Your Honor, I'm
8 going to object to that. That calls for
9 speculation.

10 THE WITNESS: I honestly --

11 THE COURT: Let her answer the
12 question.

13 THE WITNESS: Yeah, I honestly
14 don't remember what a discussion would have been.
15 But from the minute that we entertained the idea
16 of moving, it would have been a single-purpose
17 LLC. We set this up with John Kachmarsky. We
18 have every piece of our properties in separate
19 LLCs.

20 (BY MR. BARFIELD)

21 Q. And why is that?

22 A. Because it's the way we have it set up.
23 We have a master LLC. We have one tax-paying
24 entity. And every other piece of property under
25 it is in a separate LLC.

1 Q. So was Limetrade, LLC, wholly owned by
2 Limehouse Produce?

3 A. No. It was owned by Jack and I.

4 Q. And again, you don't know whether
5 Mr. Simmons was obligated or not to agree to that
6 assignment?

7 A. I don't have any idea what discussions
8 went on between Stephen Schachte and Mr. Simmons.

9 Q. Mr. Schachte was your representative,
10 correct?

11 A. I was not privy to the legal discussions
12 that went on.

13 Q. When Limetrade, LLC, was terminated or
14 dissolved as a going concern, did it have any
15 assets?

16 A. No.

17 Q. Where had all of the assets at that
18 entity gone?

19 A. Well, it had minimal assets. I mean, it
20 would -- paid a small amount more in rent than it
21 charged Limehouse Produce.

22 Q. And what about that refrigeration
23 equipment that was sold to the third party?

24 A. I offered it to Mr. Simmons. He didn't
25 want it. What I should have done is given it to

1 the food bank, which I didn't know was looking
2 for equipment at the time. It went to Bar
3 Equipment, and they paid \$15,000 for it. I mean,
4 they paid nothing, because the labor to take it
5 down is so high.

6 Q. Well, where did the \$15,000 go?

7 A. It went into Limetrade.

8 Q. And so when Limetrade was dissolved,
9 where did --

10 A. There would have been -- there would
11 have been minimal assets. I mean, I don't know
12 exactly how much. I could check and let you
13 know. But maybe \$20,000 or something like that
14 that would have stayed in the account until we
15 closed the account out.

16 Q. And what happened to the money that was
17 in the account when it was closed?

18 A. It would have been disposed to Jack and
19 I. Would have gone -- that's incorrect. It
20 would have gone to Limehouse Enterprises, which
21 is the master LLC.

22 Q. All right.

23 A. Limehouse Enterprises pays the taxes.

24 THE COURT: Is that an LLC or --

25 THE WITNESS: It's a master LLC.

1 THE COURT: Master LLC?

2 THE WITNESS: Yes. And under it,
3 all of the various real estate LLCs.

4 (BY MR. BARFIELD)

5 Q. And so where does Limehouse Produce fit
6 into that network of companies?

7 A. It doesn't fit in. Limehouse Produce is
8 an incorporated.

9 Q. Does it own any property?

10 A. No. I mean, real property, trucks. But
11 no property.

12 Q. Did you say that Limetrade, LLC -- how
13 did Limehouse Produce then fit into the
14 operations at Trade Street?

15 A. It was a tenant --

16 Q. If Limetrade -- let me finish. If
17 Limetrade, LLC, is the tenant and it only owns
18 the property, it sounds like Limehouse Produce
19 was the company that was actually operating out
20 of that facility?

21 A. Limehouse Produce was the tenant to
22 Limetrade.

23 Q. It was a subtenant for Limetrade?

24 A. Correct.

25 Q. Is there any documentation of that? Was

1 that in writing?

2 A. Yes.

3 Q. I don't believe I've seen that.

4 A. I'm sure we have a document. That would
5 be a Stephen Schachte document.

6 Q. So then the operations within the
7 warehouse were always Limehouse Produce, right?

8 A. Yes.

9 Q. Let me have you turn to Exhibit 4
10 briefly. Are you there?

11 A. Uh-huh.

12 Q. And Mr. O'Kelley asked you about this a
13 little bit earlier. I want to make sure I'm
14 clear on what this is. This is an invoice from
15 Turner Professional dated 6/27/07 to Limehouse
16 Produce for some concrete repairs. Can you
17 refresh my memory what it was that they were
18 doing and why at that time?

19 A. They were grinding off the bolts from
20 the equipment that had been taken out and
21 refinishing the floor where Simco had poured a
22 new piece of concrete that wasn't sealed.

23 Q. So is the reason that they were grinding
24 the bolts because Limehouse Produce would have
25 found it difficult to operate within the facility

1 with those bolts sticking up out of the slab?

2 A. Yeah, they didn't do a very good job
3 when they took them out.

4 Q. So you'll agree with me then that
5 operating in that warehouse with studs sticking
6 out of the slab, it's less than ideal?

7 A. Correct.

8 Q. Now, as we go down there, the
9 itemization here, I want to see if you can
10 clarify something for me. The first line item is
11 for concrete crack repair. That's pretty
12 self-explanatory. Then the next one, it says
13 repair concrete, patching at floor drains, and 14
14 other holes in penetrations for a little over
15 \$4,400. And then the third one is bolt hole
16 repairs for \$1,825.

17 Do you recall -- and I know it was a
18 long time ago. Do you recall what the
19 distinction is between 14 holes and other -- 14
20 other holes and penetrations versus bolt hole
21 repairs?

22 A. Because they were processing, I think
23 they had a lot of drains going down.

24 Q. Okay.

25 A. And they had to be -- they had to be

1 sealed.

2 Q. And so then the bolt hole repair line
3 item, do you think that that's more likely to be
4 the grinding or removal of the studs?

5 A. Where the equipment was.

6 Q. Right. There's no number there. Do you
7 know about how many of those they addressed on
8 that occasion?

9 A. I do not.

10 Q. Would you agree that for \$1,825, it
11 probably wasn't very many?

12 A. Well, they had -- they only had about
13 four pieces of equipment. I mean, I don't think
14 that you are gathering the scope of how small
15 they were and what an ill-conceived business plan
16 it was.

17 Q. Right. So for -- I guess what I'm
18 trying to get at is, is for \$1,825 Turner
19 Professional was addressing a very small number
20 of those --

21 A. Correct. It was just for where their
22 equipment was.

23 Q. Gotcha. So we've heard testimony then
24 that there were 1,000 or more of these
25 penetrations in the slab. Do you recall that?

1 A. Yes.

2 Q. So if you were going to take Turner
3 Professional's pricing at \$1,825 to address just
4 a few of those, you would agree with me that them
5 performing that scope of work as to all of those
6 bolt penetrations would have been many orders of
7 magnitude more expensive?

8 A. I mean, you're asking something that's
9 far too nebulous. I have no idea what scope it
10 was in any of the cases.

11 Q. Did you have Turner or some other
12 company price out what it would take to perform
13 the same scope of work to address those bolt
14 penetrations after Limetrade vacated the
15 premises --

16 A. No.

17 Q. -- slab wide? You did not?

18 A. No.

19 Q. The only thing that was done to address
20 those penetrations was when the third party came
21 in to get the refrigeration equipment out,
22 correct?

23 A. Correct.

24 Q. And they did it the way they wanted to
25 do it, correct?

1 A. Yes.

2 Q. Did you go behind them and inspect the
3 work they had done to grind down those --

4 A. Yeah, I thought they had done a pretty
5 good job.

6 Q. Would you have been satisfied going back
7 in as a new tenant to operate with the condition
8 that they left?

9 A. It depends what path I was going to
10 take. And I probably would have looked at the
11 paths that I was going to take and made a
12 decision based on that.

13 Q. So you will agree then that the
14 remaining condition they left could have impacted
15 a particular tenant's decision to lease the space
16 or not based on their needs, right?

17 A. Probably not as much as the subsided
18 areas. But possibly.

19 Q. If we turn back to Exhibit 2, which is
20 the assignment from Limehouse Produce to
21 Limetrade. Looking at paragraph 5 at the bottom
22 of the first page, will you agree with me that
23 this stands for the proposition that if
24 Limehouse -- I'm sorry. Yes. If Limehouse
25 Produce -- now I'm confused. Limetrade, LLC,

1 damaged the property such that -- let me back up.
2 Take a second here. There's too many Limes.

3 We'll re-read it. "Assignor hereby
4 indemnifies and holds assignee harmless." The
5 assignor is Limehouse Produce, right, and the
6 assignee is Limetrade? Limetrade is taking over
7 the lease. Do you follow?

8 THE COURT: You need to answer yes
9 or no.

10 THE WITNESS: Yes.

11 (BY MR. BARFIELD)

12 Q. "From any" -- "from and against any and
13 all liabilities and obligations of the lessee
14 under the lease and all obligations of assignor
15 under any other agreements reflecting or relating
16 to the premises which liabilities arose and
17 obligations before this closing date."

18 So that means that Limehouse Produce is
19 going to indemnify Limetrade, LLC, against any
20 liabilities that arise out of the lease that
21 arose before the date of this assignment,
22 correct?

23 A. Yes.

24 Q. And one of those obligations is -- and I
25 understand there's a dispute as to the scope of

1 this. But those obligations that arose vis-a-vis
2 paragraph 14 of the landlord's lease with Easy
3 Tray that Limehouse Produce originally took over,
4 right?

5 A. Yes.

6 Q. And during the time that Limehouse
7 Produce was the tenant entity, the lessor, it was
8 subject to all of the requirements and
9 obligations under Easy Tray's lease, right?

10 A. Limehouse Produce did not move in until
11 after the lease was assigned.

12 Q. Well, I understand that. But it was
13 contractually liable under all of the provisions
14 in that lease assignment from Easy Tray, right?

15 A. Contractually, yes.

16 Q. And we've established that it was
17 Limehouse Produce that actually was the entity
18 that operated in the warehouse with all of the
19 forklifts and pallet jacks and trucks and such,
20 right?

21 A. Yes.

22 Q. And we haven't seen a sublease between
23 the two. But is there an indemnity provision in
24 Limehouse Produce's sublease with Limetrade, LLC,
25 that requires Limehouse Produce to indemnify

1 Limetrade, LLC, from any damage or any
2 obligations to the landlord arising out of
3 Limehouse Produce's operations in the warehouse?

4 A. That would have been written by Stephen
5 Schachte. And if we don't have a copy of it, I'm
6 going to have to try to find it.

7 Q. Okay. Do you know whether that sublease
8 in writing was supplied to Mr. Simmons at any
9 time?

10 A. I'm sure it would have been, yeah.

11 Q. So I'll represent to you that I've never
12 seen it. That's not to say you're wrong about
13 that. But do you know if his approval was sought
14 for that sublease?

15 A. Yes.

16 Q. So he was aware that it was Limehouse
17 Produce operating in the warehouse?

18 A. We were very transparent from when we
19 first started with the idea that it would be a
20 single-purpose LLC that would hold the lease.

21 Q. Now, with regard to the condition of the
22 slab at the time that Easy Tray moved out, what
23 kind of due diligence did Limehouse Produce
24 perform to inspect the slab prior to signing the
25 lease?

1 A. We didn't do any engineering testing.
2 But in all honesty, it looked like pretty good
3 concrete after Wappoo Road.

4 Q. And what about those floor drains that
5 Easy Tray had running all over the place, did you
6 guys have an engineer or a contractor or anybody
7 come in there and take a look at how they were
8 built and whether or not they had potentially
9 caused water to go where water should not have
10 been?

11 A. Well, no. I assume that that would have
12 been a landlord responsibility. I mean, we --
13 our main problem with the drains was the listeria
14 testing.

15 Q. Did you understand that it was Easy Tray
16 and not the landlord that had cut those drains
17 in?

18 A. No. I have no idea who cut the drains.
19 I mean, they did a terrible job. But I would
20 have thought that the landlord would have been
21 overseeing it if he didn't do it.

22 Q. Well, now, you -- Limehouse Produce took
23 over Easy Tray's lease, right?

24 A. Correct.

25 Q. And paragraph 14 of Easy Tray's lease

1 says that they have somewhat of a responsibility
2 for restoring the slab to its original condition,
3 right?

4 A. A request.

5 Q. Well, we can argue about the meaning of
6 request. Putting that aside, paragraph 14 says
7 that Easy Tray acknowledges that there's floor
8 modifications being made and they have an
9 obligation or perhaps out of the goodness of
10 their heart upon request would be restoring the
11 floor to its pre-lease condition, right?

12 A. I don't think that's what this says. I
13 think it says, "Lessor requests that floor
14 modifications must be remedied at the termination
15 of this lease."

16 Q. Right.

17 A. "Normal tear and wear excepted," which
18 also, this slab is over 40 years old. Not
19 historic yet, but close.

20 Q. If you are assuming Easy Tray's
21 obligations under the lease, wouldn't you have
22 wanted to know what floor modifications they had
23 made that were being addressed in paragraph 14 as
24 part of your due diligence?

25 A. No. Didn't cross my mind.

1 Q. It didn't cross your mind?

2 A. Huh-uh.

3 Q. But you undertook to fill in the floor
4 drains after you guys vacated the premises,
5 right?

6 A. Correct.

7 Q. So if you went in assuming that was a
8 landlord responsibility, why would you have those
9 filled in going out?

10 A. Well, I didn't say it was a landlord
11 responsibility. I said I thought the landlord
12 would have overseen the engineering of the drains
13 when they originally went in.

14 Q. I see. So you did understand that Easy
15 Tray had cut the drains?

16 A. Somebody, whether -- I think Simco did
17 the dock. I don't know whether they did the
18 drains or they didn't do the drains. I mean,
19 that would be a question for Mr. Simmons. I
20 mean, the dock was a problem and has now been
21 mainly filled in.

22 Q. You didn't have an engineer go out to
23 look at the slab until after it had been
24 demolished and essentially piled up in the back,
25 right?

1 A. Correct.

2 Q. Why not?

3 A. Why would I? It's not my slab.

4 Q. Well --

5 A. My main concern was getting out of there
6 before I got shut down for food safety
7 violations.

8 Q. But you would agree with me that you
9 understood there was a dispute over the slab and
10 they were planning to tear it out, right?

11 A. I did not until somebody went by and
12 said they were actively tearing it out. And
13 that's when we got Michael Allen to go over and
14 do an evaluation.

15 Q. Were you not told repeatedly in advance
16 of the demolition of that slab that the landlord
17 intended to tear that slab out and that if you
18 wanted to have an expert come out there and look
19 at it you needed to do it beforehand?

20 A. No. When we tried to send Michael Allen
21 out, it took several stabs for us to get
22 permission to have him go and do it.

23 Q. But he was, in fact, given permission to
24 go out there and do it before the slab was
25 demolished, was he not?

1 A. It was partially demolished when he
2 went.

3 Q. That was not my question. He had the
4 opportunity to go out and look at it before it
5 was demolished, right? Or at least the
6 opportunity was offered to Limetrade?

7 A. We were not able to make an appointment
8 until he went the day that he went to do it.

9 Q. And that was between the lawyers,
10 correct?

11 A. I'm not sure. I'm not sure who was
12 involved in that, if it was him directly or if it
13 was Hamlin or Gray.

14 Q. If I told you that my former colleague,
15 Jeff Bogdan, helped with the coordination of that
16 site visit, would that refresh your recollection
17 that the lawyers were involved?

18 A. I believe so, because I don't remember
19 much about it. So somebody else arranged it.

20 Q. But it is correct that for whatever
21 reason you did not have an expert engineer come
22 and look at the condition of the slab or the
23 property until after that slab had been
24 demolished?

25 A. Correct.

1 Q. And so none of your -- or your expert
2 engineer had not had an opportunity to look at
3 the floor drains in the slab, right?

4 A. I'm not sure. It was partially
5 demolished when he went. I'm not sure what was
6 left. That would be a question for him.

7 Q. Well, I'll represent to you I asked him
8 that question, and he said that it was gone.

9 A. Oh, okay. Well then, that's -- whatever
10 he says is what it was.

11 Q. And the same thing with the anchor
12 studs, those sections had been torn out as well,
13 right?

14 A. Well, they would have been in the cement
15 outside.

16 Q. But he did not have an opportunity to
17 see them in situ, so to speak?

18 A. No. I know it took awhile to schedule a
19 visit.

20 Q. And do you recall him testifying that he
21 was not aware of the design, the size, the
22 location, or the length of the floor drains prior
23 to his inspection of the demolished lab?

24 A. Well, he had a plan. He had the same
25 plan that's in this book. So I mean, I presume

1 it's the scale.

2 Q. But he did not have an opportunity to
3 look at the floor drains as they were built, did
4 he?

5 A. Well, you'd have to -- why don't you ask
6 your partner if he was coordinating the visit,
7 because I know it was a lot of trouble to get him
8 in there.

9 Q. Well, the -- all I'm trying to establish
10 is if the drains had been torn out, your expert
11 engineer did not have an opportunity to see them
12 as they were built before they were demolished,
13 right?

14 A. I believe that that would be correct.
15 But your partner could probably enlighten you
16 more.

17 MR. BARFIELD: Mr. Bogdan wised up.
18 He's gone in-house with a former client. And so
19 he is now the object of my jealousy.

20 I'll tell you what, if Your Honor will
21 indulge me for one second to consult with
22 Mr. Simmons, I think I'm about done.

23 THE COURT: Sure.

24 (A recess was taken.)

25 MR. BARFIELD: Your Honor, I think

1 that is all I have for this witness at this time.
2 I may have some on redirect.

3 THE COURT: All right, sir. Thank
4 you.

5 REDIRECT-EXAMINATION

6 BY MR. O'KELLEY:

7 Q. I'll be brief, but that's everyone's
8 famous last words.

9 The assignment between Limehouse Produce
10 and Limetrade, Exhibit Number 2, go to
11 paragraph 6. Paragraph 6 states that, "The
12 assignee," which would be Limetrade, "indemnifies
13 and holds assignor," which is Limehouse Produce,
14 "harmless from" -- and again, "any and all
15 liabilities and obligations of the lessee under
16 the lease and all obligations of assignor under
17 any other agreement reflecting or relating to the
18 premises which liabilities and obligations arise
19 on or after the closing date."

20 Did I read that correctly?

21 A. Yes.

22 Q. And what's the closing date of this
23 assignment?

24 A. The 24th of May 2007.

25 Q. Now, go to paragraph 14 in Exhibit 1.

1 In the middle of that paragraph, I'm going to
2 read something. "The lessor requests that floor
3 modifications must be remedied at the termination
4 of this lease."

5 Did I read that correctly?

6 A. Yes.

7 Q. And the original termination date of the
8 lease is after the closing date of the
9 assignment, is it not?

10 A. Yes.

11 Q. Thank you. Mr. Barfield asked you some
12 questions about Defendants' Number 1. What's the
13 date of that document again?

14 A. August the 4th, 2017.

15 Q. And your testimony, I think, is that
16 Limetrade was out of the building at that time,
17 correct?

18 A. Correct.

19 Q. And you testified that it was always
20 your plan to close Limetrade once the lease
21 ended, correct?

22 A. Correct.

23 Q. And you've been asked lots of questions
24 about why Limehouse Produce was on the original
25 lease and who was operating and who was doing

1 what. Just for clarification, you always
2 planned -- when I say you, you and your
3 husband -- always planned to have a
4 single-purpose entity for this lease, correct?

5 A. We have it for all our properties.

6 Q. And, Mrs. Limehouse, as we sit here
7 today, do you know what the condition of the
8 floor was when Easy Tray moved into this property
9 in 2004?

10 A. No idea.

11 Q. And David Willis is a general
12 contractor, is he not?

13 A. He is.

14 Q. And you heard his testimony in this
15 court, correct?

16 A. I did.

17 Q. Did he testify anything that you would
18 contradict or say he got wrong?

19 A. No. I think he's accurate and
20 competent.

21 Q. You testified earlier that you
22 thought this was a --

23 THE COURT: Hang on. Ask it in a
24 little --

25 MR. O'KELLEY: Understood. I'm

1 moving on.

2 (BY MR. O'KELLEY)

3 Q. You testified that you thought this was
4 a bad slab. You're not an engineer or a
5 hydrologist or a mechanical engineer, correct?

6 A. Correct.

7 Q. You're just a layperson who is running a
8 business, correct?

9 A. Correct.

10 Q. Okay. Just wanted to clarify that. You
11 mentioned John Kachmarsky. He's an attorney in
12 Charleston who does estate and asset work,
13 correct?

14 A. Correct.

15 Q. And you-all have used him from time to
16 time -- because His Honor was asking a question
17 about Limehouse Enterprises, and you said it was
18 master LLC?

19 A. Correct.

20 Q. But it's not called master. It's just a
21 limited liability company --

22 A. No. It's called a master LLC.

23 Q. Let me just finish my question.

24 A. Sorry.

25 Q. If I were to look it up in the Secretary

1 of State's website, it would just say Limehouse
2 Enterprises, LLC, correct?

3 A. Correct.

4 Q. You don't have the word master in it.
5 But you're using it as the master LLC -- like a
6 holding company, for lack of a better term,
7 correct?

8 A. Correct.

9 Q. And I'll represent to you as well I've
10 not seen a sublease for Limehouse Produce and
11 Limetrade. But you think there was one?

12 A. Yeah. I mean, Stephen Schachte was very
13 meticulous about things like that. I'll just
14 have to start going through -- if you don't have
15 a copy of it. But I would think the landlord
16 would have a copy too.

17 Q. Well, I'll just tell you nobody has seen
18 it in this case to date.

19 MR. O'KELLEY: Mrs. Limehouse,
20 that's all I have. Thank you. And His Honor
21 might have some questions for you.

22 THE COURT: I don't have any
23 questions.

24 MR. BARFIELD: I have nothing
25 further, Your Honor.

1 THE COURT: Thank you. Appreciate
2 your testimony. You may have a seat back over
3 there.

4 MR. O'KELLEY: And, Your Honor, we
5 don't have any more witnesses, and so we rest.
6 And I will renew my prior motions on the same
7 grounds of the assignment, that Limehouse Produce
8 is not a proper party based on the indemnity
9 agreement and the -- contained in the assignment.

10 Also, we don't think we breached the
11 contract, because there was a -- the contract
12 lease says request. It's not a shall or will or
13 must situation. It's a request. And you've
14 heard the testimony from Mrs. Limehouse that work
15 was done.

16 What the -- again, the same as before,
17 what the defendants are asking for is a
18 betterment here, which they're not -- excuse me
19 -- the plaintiff is asking for a betterment,
20 which they're not entitled to. So we think we
21 should get our voluntary -- involuntary nonsuit
22 changes back to the proper language since it
23 is -- Your Honor will decide.

24 And having practiced before you many
25 times, I generally know the way those motions are

1 ruled upon, but -- making them so if the people
2 in black robes in Columbia have to look at
3 this --

4 THE COURT: All right. I
5 appreciate that.

6 Any response.

7 MR. BARFIELD: Well, Your Honor,
8 I'll reiterate my same counter arguments to the
9 previously raised motions; however, I feel the
10 need before I articulate my arguments fully --
11 and I do have a motion of my own. I would like
12 to call Mr. Simmons as a rebuttal witness for
13 about 30 seconds.

14 THE COURT: Sure.

15 Do you have any objection to that?

16 MR. O'KELLEY: No.

17 THE COURT: I should have given him
18 that opportunity.

19 MR. O'KELLEY: Absolutely. So I'm
20 sorry for jumping the gun, Your Honor.

21 THE COURT: I apologize too.

22 MR. O'KELLEY: And I'll reserve him
23 and just say ditto again for -- again, our
24 friends in Columbia.

25 DAVID SIMMONS,

1 having been previously sworn, was examined and
2 testified as follows:

3 REDIRECT EXAMINATION

4 BY MR. BARFIELD:

5 Q. Mr. Simmons, very briefly. And thank
6 you for being a three-peat on the witness stand.
7 I just have two things I want to cover with you.

8 Mrs. Limehouse said that she was unclear
9 about the opportunities that her expert were
10 [sic] presented with to go and inspect the slab
11 leading up to its demolition. Do you recall
12 whether or not those opportunities were extended
13 on one or more occasions prior to the demolition?

14 A. Yes. Your prior colleague, Mr. Bogdan,
15 on numerous occasions -- and I was copied on the
16 e-mails -- sent to her attorney numerous times
17 that we were going to start demolition on a
18 certain date and that if they wanted to do
19 inspections they would need to do it prior. And
20 that was, if I remember correctly, probably
21 30 days prior to commencement.

22 Q. And then the only other thing I want to
23 address is this sublease question. Do you recall
24 ever seeing a sublease between Limehouse Produce
25 and Limetrade, LLC?

1 A. No.

2 Q. Okay. But did you have an understanding
3 that there was an official sublandlord-subtenant
4 situation between those entities?

5 A. No.

6 Q. Was it your understanding though that
7 Limehouse Produce was the entity that was
8 actually operating out of the warehouse?

9 A. I assumed so, because all of the trucks
10 and signage, everything said Limehouse Produce.

11 MR. BARFIELD: Thank you. That's
12 all I have.

13 MR. O'KELLEY: I don't have any
14 questions, Your Honor.

15 EXAMINATION

16 BY THE COURT:

17 Q. Why weren't you made a signatory to the
18 assignment?

19 A. I'm not sure.

20 Q. But I think I heard you say you
21 understood it was okay with you, correct?

22 A. That's correct.

23 Q. Okay. One other question. I'm looking
24 at this language that you -- that says as lessor
25 that you request that the floor modifications

1 must be remedied at the termination of this
2 lease. Normal wear and tear excepted?

3 Has anybody suggested ever to you that
4 perhaps the word request was a word-processing
5 error and was actually meant to be required?

6 A. I believe that's what the intent was,
7 but it was a mistake.

8 Q. You never addressed that issue though
9 with Mr. Limehouse or Mrs. Limehouse?

10 A. I did not.

11 THE COURT: All right.

12 MR. O'KELLEY: And, Your Honor, if
13 I could just clarify one thing.

14 RECROSS-EXAMINATION

15 BY MR. O'KELLEY:

16 Q. Mr. Simmons, the back of Exhibit 2, you
17 did consent to the assignment, correct?

18 A. That's correct.

19 MR. O'KELLEY: Okay, just making
20 sure.

21 THE COURT: Yeah, I got that. I
22 just was wondering -- excuse me. I don't mean to
23 be --

24 MR. O'KELLEY: No, sir. That's it.

25 THE COURT: I just looked at the

1 assignment and said, "Why isn't his signature on
2 that thing?" But he did say he agreed to it.
3 And I just wanted to -- that's why I was
4 following up.

5 MR. O'KELLEY: And that is your
6 signature, correct, Mr. Simmons, on the consent?

7 THE COURT: It's on the consent?
8 I'm sorry.

9 MR. O'KELLEY: Yes, sir. That's
10 what I was trying to clear up on the last page.

11 THE COURT: Oh, I see it.

12 MR. O'KELLEY: Page 4, Your Honor.

13 THE COURT: I stopped too early.

14 MR. O'KELLEY: Yes, sir. That's
15 why I was trying to clarify that. Thank you.

16 THE COURT: Thank you.

17 Thank you very much. It's a pleasure
18 seeing you again.

19 MR. SIMMONS: Thank you.

20 THE COURT: Gentlemen, do you have
21 a -- your motion has been -- I'm going to go
22 ahead and state it. You're going to make that
23 same motion again?

24 MR. O'KELLEY: It's the same motion
25 I've made twice now, Your Honor, but I just have

1 to make it again to preserve our record, because
2 our friends say if I don't say I'm adopting and
3 reasserting now that I've waived it. So again,
4 the same arguments that you've heard.

5 THE COURT: Okay. Thank you.

6 Mr. Barfield?

7 MR. BARFIELD: Your Honor, I've got
8 a bit of an off-the-wall motion. But
9 considering -- you know, anticipating problems
10 and angles and such, based on the testimony that
11 we've heard today, I would like to amend our
12 pleadings to conform the evidence in two ways.

13 First, to the extent that we have a
14 breach of contract claim against Limehouse
15 Produce, Inc., and it is not -- potentially not
16 evident in the pleadings -- and it's been a while
17 since I've looked at them. And sad to say I
18 don't have a copy of our Complaint handy, at
19 least not without digging through a box. To the
20 extent that it's not abundantly clear, we would
21 assert that there's a third-party beneficiary
22 angle to that contract claim.

23 So we've got a direct contract claim
24 against Limehouse Produce, Inc., because they
25 were briefly the tenant entity. But to the

1 extent that that indemnity clause is in there
2 that makes them responsible for whatever they
3 were responsible for going forward, these would
4 be Limetrade -- we believe that the landlord
5 entity is clearly a third-party beneficiary of
6 that indemnity clause. And so to the extent that
7 the two related entities owe duties to one
8 another, we believe that those duties flow to the
9 landlord as well. That's the first one.

10 The second amendment is a little --
11 probably a little less anticipated. But to the
12 extent that they are alleging that Limehouse
13 Produce does not have any contractual obligations
14 to the landlord beyond that limited window of
15 time, we believe that now that we have
16 established that they -- albeit that the sublease
17 is nowhere to be found, that they were a
18 subtenant in that facility, that that creates
19 liability and tort.

20 And so I would move to amend to allege a
21 negligence cause of action against Limehouse
22 Produce, because clearly any damage to the slab
23 caused by the operations, while contractually the
24 responsibility of Limetrade, were caused directly
25 by Limehouse Produce. And therefore, I believe

1 that they owe a duty and tort to the landlord and
2 that negligence would be appropriate to add.

3 THE COURT: Well, there's an -- to
4 get at that, and it's through an equity
5 indemnification. It's the same principle. I
6 hadn't thought about that in the context of the
7 way this was set up, because you have party one
8 and party two, and then you have third parties
9 who's running around out there using the
10 facility. And I think there's some language in
11 the equity indemnification doctrine that allows
12 for the third party to be -- to equitably
13 indemnify.

14 MR. BARFIELD: As long as there's a
15 special relationship, I think you're right.

16 THE COURT: Yeah, something like
17 that.

18 MR. O'KELLEY: And, Your Honor --

19 THE COURT: I'm not a lawyer --
20 judge that can quote the law off the top of my
21 head. I just never have been able to do that in
22 46 years of operating in the confines of the bar.
23 I always look stuff up. So it's something I'll
24 look up for sure.

25 MR. BARFIELD: Okay. Well, I would

1 -- to the extent that that may be the better
2 theory or the flip side of the same coin, I would
3 move to assert that.

4 THE COURT: Well, I mean, it's --
5 let me hear what --

6 MR. O'KELLEY: And, Your Honor, I'm
7 not trying to take his case, but I don't know
8 that he needs these motions, because our enviably
9 in-house counsel, Mr. Bogdan, pled that Limehouse
10 Produce was a -- one of the original defendants
11 and was a party to the lease. He used the word
12 defendants. And I do read Complaint before we
13 come -- I read it again last night because I was
14 like, "Oh, gosh, I've got to go back to court."

15 Because it says that they are both
16 parties to the lease and both have all rights and
17 obligations -- are those of the defendants. So
18 he pled it very broadly. So I don't know that
19 these motions are necessary, because the way he
20 pled it wasn't -- I mean, I think our comment
21 about the assignment and the indemnification,
22 those are defenses.

23 And as for negligence, I don't think it
24 -- we haven't established duty, breach,
25 causation, and damage flowing, because this is a

1 breach of contract case. So I don't know that
2 these motions are needed, because this was pled
3 very broadly, which we're allowed to do. And I
4 think that's ultimately Your Honor's decision.

5 THE COURT: Yeah, this is
6 interesting. I'm not sure I understand the
7 master LLC stuff too well. That may be a tax --

8 MR. O'KELLEY: I think that it is,
9 Your Honor, a tax thing. We've had --

10 Mr. Kachmarsky and his former partner, David
11 Taylor, are very clever in that they create one
12 LLC so there's only one tax ID number and one --

13 THE COURT: One tax return.

14 MR. O'KELLEY: Yes. Yes, sir.

15 THE COURT: LLCs don't pay taxes.
16 All they do is report.

17 MR. O'KELLEY: They report them.
18 And then it's an easier flow-through than having
19 to issue 15 different K-1s. But it's just --

20 THE COURT: But she testified that
21 she and Mr. Limehouse were the sole members of
22 both of the --

23 MR. O'KELLEY: Master.

24 THE COURT: Of Limetrade, LLC.

25 MR. O'KELLEY: Correct.

1 THE COURT: And I guess the
2 enterprise itself?

3 MR. O'KELLEY: Correct, correct.

4 THE COURT: Okay. Let me think
5 about it.

6 MR. O'KELLEY: Thank you, Your
7 Honor.

8 MR. BARFIELD: Thank you, Your
9 Honor.

10 (The proceeding was adjourned at
11 3:03 PM)

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1 CERTIFICATE OF REPORTER

2
3
4 I, MacKenzie Allen, Court Reporter and
5 Notary Public in and for the State of South
6 Carolina at Large, do hereby certify that I
7 correctly reported the within-entitled matter and
8 that the foregoing is a full, true and correct
9 transcription of my shorthand notes of the
10 testimony and/or other oral proceedings had in
11 the said matter.

12 I further certify that I am neither
13 related to nor counsel for any party to the cause
14 pending or interested in the events thereof.

15 Witness my hand, I have hereunto affixed
16 my official seal this 3rd day of February, 2024,
17 at Charleston, Charleston County, South Carolina.

18
19
20
21 MACKENZIE ALLEN

22 My commission expires
23 August 30, 2029
24
25

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directed (12)	duly (1)	estate (3)	failed (2)
directly (2)	dump (1)	estimate (10)	failing (1)
dirt (1)	Dutch (2)	estimation (2)	fair (2)
disagree (1)	duties (2)	evaluate (1)	fairly (1)
disagreement (1)	duty (3)	evaluation (1)	familiar (1)
disconnect (1)	< E >	evaporate (1)	FAMILY (7)
disconnected (1)	earlier (7)	evening (1)	famous (1)
discrete (1)	early (1)	events (1)	far (3)
discussed (4)	easier (2)	ever-threatening (1)	farthest (1)
discussing (5)	Easy (25)	everybody (2)	fast (2)
discussion (8)	edge (1)	everyone's (2)	father (1)
discussions (4)	eels (2)	evidence (1)	fault (1)
disheveled (1)	effective (1)	evident (1)	favor (2)
disintegrated (1)	eight (3)	exactly (6)	February (3)
disposed (1)		EXAMINATION	

feel (1)
 feet (1)
 fell (2)
 felt (4)
 figure (1)
 filing (1)
 fill (12)
 filled (10)
 filling (1)
 filthy (1)
 finally (1)
 financial (1)
 find (3)
 fine (4)
 finish (3)
 finished (1)
 fire (2)
 first (14)
 fit (3)
 five (1)
 fix (5)
 fixed (1)
 fixing (1)
 flawed (1)
 flip (3)
 floated (1)
 floating (1)
 floats (1)
 flood (3)
 flooded (4)
 flooding (9)
 floor (58)
 flooring (1)
 floors (8)
 flow (2)
 flowing (2)
 flow-through (1)
 folks (1)
 follow (1)
 following (1)
 follows (3)
 follow-up (1)
 food (10)
 food-borne (1)
 foreclosure (1)
 foregoing (1)
 forever (1)
 forgot (1)
 forklift (4)

forklifts (2)
 formally (1)
 former (4)
 forth (2)
 fortunately (1)
 forward (5)
 found (9)
 four (5)
 fracturing (1)
 frankly (4)
 freight (2)
 Friday (1)
 friend (2)
 friends (3)
 front (8)
 full (3)
 fully (1)
 further (3)

 < G >
 gallons (1)
 gaping (1)
 gathering (1)
 general (1)
 generally (5)
 genesis (1)
 gentleman (3)
 Gentlemen (1)
 geographical (1)
 GEORGE (1)
 getting (6)
 give (6)
 given (8)
 glad (1)
 go (34)
 God (1)
 goes (3)
 going (65)
 good (10)
 goodness (2)
 gosh (1)
 Gotcha (1)
 grabs (1)
 grade (2)
 Gray (6)
 grind (2)
 grinding (3)
 ground (5)
 grounds (1)

growing (1)
 guess (8)
 gun (1)
 guys (3)

 < H >
 hairs (1)
 half (1)
 halfway (1)
 HAMLIN (2)
 hand (3)
 handed (2)
 handling (2)
 hands (2)
 handsome (1)
 handy (1)
 Hang (1)
 happen (1)
 happened (10)
 happens (2)
 hard (1)
 hardwood (1)
 harmless (5)
 head (3)
 heading (2)
 hear (7)
 heard (15)
 hearing (1)
 heart (3)
 heater (1)
 heavy (3)
 he'd (1)
 held (1)
 HELMS (1)
 helped (2)
 hemorrhage (1)
 hereinafter (2)
 hereunto (1)
 Hey (1)
 high (2)
 higher (1)
 historic (1)
 history (2)
 hit (1)
 hold (6)
 holding (3)
 holds (4)
 hole (5)
 holes (4)

honestly (3)
 honesty (1)
 Honor (77)
 HONORABLE (1)
 Honor's (1)
 hoped (1)
 horrible (1)
 horse (1)
 hospitals (1)
 hotel (2)
 hours (5)
 house (3)
 huge (3)
 Huh-uh (1)
 human (1)
 hundred (1)
 Hurricane (6)
 husband (3)
 Hut (1)
 hydrologist (2)
 hydrology (1)

 < I >
 I-95 (1)
 ice (1)
 ID (2)
 idea (6)
 ideal (1)
 identification (1)
 identified (1)
 identify (2)
 ill-conceived (1)
 illness (1)
 immediately (1)
 impacted (1)
 important (1)
 improvements (2)
 inappropriate (2)
 inches (2)
 inclined (1)
 including (1)
 income (1)
 incorporated (1)
 incorrect (1)
 indemnification (3)
 indemnifies (4)
 indemnify (6)
 indemnity (4)
 indicates (1)

indulge (1)	Jeff (1)	leading (2)	long (4)
industrial (1)	Joaquin (4)	learned (1)	longer (2)
Information (1)	job (12)	lease (93)	look (28)
in-house (2)	John (2)	leased (1)	looked (7)
Initial (2)	joint (2)	leave (2)	looking (32)
initially (1)	joints (1)	leaving (1)	looks (6)
injury (1)	judge (2)	left (11)	loss (1)
inquiries (1)	Julian (1)	legal (1)	lost (1)
inside (2)	July (11)	length (4)	lot (17)
inspect (3)	jumping (1)	lessee (3)	lots (1)
Inspection (3)	June (8)	lesser (1)	low (5)
inspections (2)	jury (1)	Lessor (10)	Lowcountry (1)
inspector (1)		letter (1)	lucky (1)
install (1)	< K >	letterhead (1)	Lyon (4)
installation (1)	K-1s (1)	letting (1)	
installed (2)	Kachmarsky (3)	level (4)	< M >
institutions (1)	keep (6)	liabilities (10)	ma'am (8)
instructed (1)	Keith (1)	liability (6)	machines (2)
insulation (1)	KELLEY (98)	liable (1)	MACKENZIE (3)
intend (1)	Kelley's (1)	life (1)	magnitude (1)
intended (1)	kind (12)	lighting (2)	main (2)
intent (2)	King (2)	lightly (1)	maintenance (1)
intention (2)	knew (8)	lights (1)	making (4)
interest (3)	know (48)	liked (1)	managed (1)
interested (1)	knowledge (1)	LIMEHOUSE (126)	manner (1)
interesting (2)	known (2)	Limehouses (1)	March (5)
interpretation (2)	knows (2)	Limehouse's (1)	marked (4)
interruption (1)		Limes (1)	Market (7)
intersection (1)	< L >	LIMETRADE (87)	married (1)
invoice (5)	lab (1)	Limetrade's (3)	master (11)
invoices (3)	labels (1)	limited (2)	math (1)
involuntary (2)	labor (1)	line (5)	matter (3)
involved (5)	lack (1)	lined (1)	Matthew (8)
irrelevant (1)	landlord (23)	liners (1)	Matthew's (1)
issue (14)	landlord's (3)	lines (2)	max (1)
issues (8)	language (6)	list (2)	mean (51)
Italian (2)	large (2)	Listen (1)	meaning (2)
item (2)	largely (1)	Listeria (3)	means (2)
itemization (1)	Larry (4)	literally (3)	meant (1)
items (2)	late (1)	little (16)	mechanic (4)
its (8)	latitude (1)	living (1)	mechanical (1)
	law (6)	LLC (56)	meeting (5)
< J >	lawsuit (1)	LLCs (6)	members (1)
Jack (4)	Lawton (1)	load (1)	memory (3)
jack-of-all-trades (1)	Lawton's (1)	loaded (1)	mention (1)
jacks (3)	lawyer (1)	locate (1)	mentioned (5)
JAMES (1)	lawyers (3)	located (2)	met (3)
January (1)	laying (1)	LOCATION (7)	metal (1)
jealousy (1)	layperson (2)	logistically (1)	meticulous (1)

MICHAEL (4)
middle (3)
midnight (1)
Milligan (3)
million (1)
mind (2)
mine (1)
minimal (2)
minimum (1)
minute (4)
minutes (2)
missing (6)
mistake (2)
mix (1)
model (1)
modification (1)
modifications (17)
moisture (1)
moment (1)
Monday (1)
money (4)
monitor (1)
month (1)
months (2)
morning (4)
motion (11)
motions (6)
Mount (1)
move (14)
moved (18)
move-in (1)
moving (7)
mud (3)
myriad (1)
Myrtle (2)

< N >

name (3)
named (2)
national (1)
nationwide (1)
near (2)
nebulous (1)
necessary (3)
need (9)
needed (11)
needs (4)
negligence (3)
neither (1)

network (1)
never (5)
new (16)
nice (1)
niece (1)
night (2)
nightmare (1)
nine (1)
nonsuit (2)
Nor'easter (1)
Norfolk (2)
Normal (7)
normally (1)
Norwich (1)
Notary (1)
note (3)
notebook (9)
notes (1)
notice (1)
noticed (1)
NOVEMBER (1)
number (34)
numbered (1)
numbers (2)
numerous (2)

< O >

oath (3)
obituary (1)
object (3)
objection (6)
obligated (1)
obligation (13)
obligations (26)
obligatory (2)
observation (1)
obtain (1)
obviously (3)
occasion (1)
occasions (3)
October (5)
offered (3)
office (8)
officer (1)
offices (1)
official (2)
Off-the-record (3)
off-the-wall (1)
Oh (13)

Okay (56)
old (5)
old-fashioned (1)
once (5)
ones (3)
one-thirty (1)
one-year (2)
ongoing (2)
onions (1)
open (6)
operate (4)
operated (2)
operating (11)
operation (1)
operations (9)
opinion (3)
opinions (1)
opportunities (2)
opportunity (7)
opposed (1)
oral (1)
order (9)
orders (1)
original (32)
originally (4)
outside (6)
overhang (1)
overhead (1)
Overlapping (1)
overrule (1)
overseeing (1)
overseen (1)
owe (2)
owned (4)
owns (2)

< P >

packing (3)
PAGE (45)
pages (5)
pagination (1)
paid (8)
Painted (1)
pallet (3)
pallets (2)
paper (1)
paragraph (29)
paragraphs (1)
parked (1)

parking (3)
part (10)
partially (2)
particular (4)
parties (5)
partner (6)
partners (1)
parts (1)
party (15)
pass (1)
patch (5)
patched (6)
patches (1)
patching (2)
path (1)
paths (1)
PATTERSON (1)
pay (9)
paying (4)
payments (1)
pays (1)
peeling (1)
pending (1)
penetrate (1)
penetrations (8)
people (4)
peppers (1)
perfect (1)
perform (7)
performing (2)
period (1)
periodically (1)
permanent (1)
permission (3)
permit (1)
personally (1)
persuasion (1)
photo (4)
photograph (2)
photographs (2)
photos (3)
physical (1)
picture (14)
pictures (11)
piece (9)
pieces (2)
Piggly (1)
piled (1)
pipe (1)

pipes (5)	pretty (8)	purpose (1)	REDIRECT-
Pizza (1)	previous (2)	purposes (1)	EXAMINATION
place (4)	previously (3)	push (1)	(1)
placed (2)	price (2)	put (24)	refer (3)
places (5)	pricing (1)	putting (4)	referenced (1)
Plaintiff (5)	Primus (1)	< Q >	references (2)
plaintiffs (1)	principle (1)	quandary (1)	referred (3)
plan (7)	print (2)	question (25)	referring (1)
planned (3)	prior (16)	questions (9)	refinishing (1)
planning (2)	privy (1)	queue (1)	reflected (1)
plate (6)	probably (18)	quick (1)	reflecting (4)
plates (7)	problem (13)	quiet (1)	refresh (4)
playing (1)	problems (9)	quote (2)	refrigeration (12)
pleadings (2)	proceeding (1)	quoting (1)	regard (4)
PLEAS (1)	PROCEEDINGS (3)	< R >	regarding (1)
Pleasant (1)	process (1)	radical (1)	regardless (1)
please (17)	processing (10)	rafters (1)	rehab (1)
pleasure (1)	PRODUCE (84)	railroad (1)	reinforced (1)
pled (4)	produced (1)	rain (3)	reiterate (1)
plenty (1)	Produce's (5)	rains (1)	related (4)
Plus (1)	product (7)	raised (1)	relating (4)
PM (2)	products (2)	ran (3)	relationship (1)
pocket (1)	professional (4)	range (1)	reliance (1)
point (6)	professionals (1)	read (21)	relocated (1)
pointed (1)	Professional's (1)	reading (3)	rely (2)
popped (1)	propane (1)	ready (3)	remaining (2)
position (3)	proper (3)	real (7)	remedied (9)
possible (1)	properly (3)	realize (1)	remember (9)
possibly (2)	properties (4)	really (14)	remind (1)
post-lease (2)	property (29)	reason (5)	removal (1)
potential (2)	Proposal (5)	reasons (2)	remove (3)
potentially (2)	proposals (2)	reasserting (1)	removed (5)
pound (1)	proposition (1)	rebuttal (1)	removing (2)
pour (1)	Prospective (1)	recall (23)	renew (2)
poured (4)	protective (1)	recalls (1)	renewals (1)
power (2)	proud (1)	recap (2)	renewed (2)
powered (1)	prove (1)	recess (3)	rent (3)
practice (1)	provided (1)	re-clean (1)	rentable (2)
practiced (1)	provision (1)	recollection (1)	rented (1)
predecessor (1)	provisions (1)	recommendation (1)	renting (1)
pre-Easy (1)	Public (1)	recommended (1)	repair (13)
pre-lease (1)	pull (3)	record (9)	repaired (4)
premises (11)	pulling (1)	recover (1)	repairs (9)
prepared (2)	pump (13)	RECROSS-	repeat (1)
preparing (2)	pumped (3)	EXAMINATION	repeatedly (2)
present (1)	pumping (1)	(2)	replace (4)
presented (2)	pumps (8)	REDIRECT (4)	replaced (1)
preserve (1)	purchased (1)		replacement (2)
presume (1)	purchasing (1)		report (2)

REPORTED (3)	ruined (1)	series (5)	slow (2)
REPORTER (7)	ruled (1)	serious (3)	slower (4)
represent (4)	run (4)	serve (1)	small (6)
representative (2)	running (5)	set (7)	smaller (1)
represents (1)	runs (1)	seven (2)	Sofa (2)
reputation (1)	< S >	severe (2)	soft (1)
request (22)	sad (1)	severely (1)	soils (1)
requested (3)	safety (9)	sewage (1)	sold (2)
Requests (7)	sake (1)	sewerage (7)	sole (2)
require (2)	sank (1)	shape (1)	somebody (5)
required (3)	satisfied (1)	shed (1)	somewhat (2)
requirements (1)	Saturday (1)	sheet (2)	soon (2)
requires (2)	saw (8)	ship (1)	sorry (11)
re-read (1)	saying (5)	shipping (4)	sort (4)
reserve (1)	says (23)	Shook (1)	sought (1)
resolution (2)	SC (3)	shorthand (1)	sounds (1)
resolved (1)	scale (2)	shortly (1)	SOUTH (7)
respectfully (1)	scales (1)	show (5)	Southeastern (2)
response (2)	Schachte (8)	showing (7)	Southern (1)
responsibility (7)	schedule (2)	shown (1)	space (8)
responsible (5)	Schools (1)	shows (3)	spalled (1)
rest (6)	scope (11)	shut (1)	spalling (2)
restaurant (1)	Scott (8)	sic (5)	speak (4)
restaurants (1)	Scott's (1)	side (3)	speaking (2)
rested (1)	scrubbing (1)	sides (1)	special (1)
resting (1)	seal (1)	Sidi (1)	specific (1)
restore (2)	sealed (3)	sign (1)	Specifically (2)
restored (3)	seam (8)	signage (1)	speculation (1)
restoring (2)	S-E-A-M (1)	signatory (1)	spend (3)
resulted (1)	seams (1)	signature (3)	spent (1)
return (3)	searched (1)	signed (6)	spew (1)
returned (2)	seat (1)	significant (2)	spill (1)
reverse (1)	second (13)	signing (1)	splitting (1)
review (1)	seconds (1)	SikaQuick (1)	spot (1)
rhythm (1)	secretary (5)	Silicabright (1)	ST (1)
Right (95)	section (3)	Simco (19)	stabs (1)
right-hand (1)	sections (2)	Simco's (1)	stage (3)
rights (1)	secure (1)	SIMMONS (54)	stand (6)
ripen (2)	see (22)	single (1)	standing (5)
rising (2)	seeing (4)	single-purpose (8)	stands (1)
Road (5)	seen (13)	sir (17)	start (7)
roadside (1)	seeping (2)	sisters (1)	started (9)
robes (1)	self-explanatory (1)	sit (1)	starting (1)
role (1)	Self-performed (1)	site (1)	starts (1)
Rolls (1)	sell (2)	situ (1)	STATE (6)
roof (6)	send (1)	situation (6)	stated (1)
room (1)	sent (5)	six (1)	states (5)
round (1)	separate (9)	size (1)	State's (2)
Royce (1)		slab (55)	stayed (2)

steel (5)	switch (1)	think (67)	Trotters (2)
step (1)	sworn (3)	thinks (1)	trouble (2)
Stephen (6)	synced (1)	third (8)	truckloads (1)
steps (3)	system (2)	third-party (5)	trucks (7)
Stevenson (3)	< T >	thought (14)	true (2)
sticking (7)	tab (3)	thoughts (1)	Trust (3)
stimulus (1)	table (2)	three (3)	try (8)
stipulated (1)	tables (2)	three-peat (1)	trying (11)
stop (2)	tackle (1)	three-stall (1)	turn (19)
stopped (2)	Take (23)	ThunderStuds (1)	turned (2)
storage (1)	taken (10)	Thurber (1)	Turner (5)
Store (2)	talked (2)	tide (2)	turning (3)
stored (1)	talking (16)	tides (1)	Twice (4)
Storm (2)	tax (4)	TIME (53)	two (23)
storms (5)	taxable (1)	timely (1)	type (3)
Street (25)	taxes (2)	times (7)	< U >
strength (1)	tax-paying (1)	tiny (1)	Uh-huh (12)
structural (1)	TAYLOR (10)	tip (1)	ultimately (8)
struggling (1)	Taylor's (2)	tips (1)	unbroken (1)
studs (10)	tear (8)	title (2)	unclear (1)
Stuff (3)	tearing (1)	today (14)	underlined (1)
subcontractors (1)	telephone (1)	told (5)	underneath (6)
Subgrade (6)	tell (45)	tomatoes (3)	underscore (1)
subject (3)	telling (2)	top (8)	understand (11)
sublandlord-	temperatures (1)	topographical (1)	understanding (6)
subtenant (1)	temporary (1)	torn (6)	understood (4)
sublease (8)	tenant (18)	tort (2)	undertake (1)
Submission (1)	tenants (1)	total (2)	undertook (2)
submitted (1)	tenant's (1)	town (1)	uneven (2)
subsequently (1)	tent (1)	track (2)	unfortunate (1)
subsided (3)	term (4)	Trade (15)	unfortunately (2)
subsidence (28)	terminated (7)	tragically (1)	unknown (1)
subtenant (2)	termination (16)	trailer (2)	uploaded (1)
success (1)	terms (7)	trailers (1)	upside (3)
suction (2)	terrible (2)	transaction (3)	urinals (1)
suggested (1)	testified (16)	TRANSCRIPT (1)	USDA (2)
Suite (2)	testify (5)	transcription (1)	use (9)
sump (5)	testifying (1)	transfer (2)	uses (1)
Sunbelt (5)	testimony (30)	transferred (1)	< V >
Super (2)	testing (2)	transformers (1)	vacated (3)
superintendent (1)	Thank (18)	transition (1)	vacuum (1)
superior (1)	Thanks (1)	transparent (1)	vacuums (1)
supplemental (2)	Thanksgiving (1)	transpired (1)	variety (1)
supplied (1)	theory (1)	Tray (19)	various (1)
supplying (1)	thereof (2)	Tray's (6)	venturing (1)
sure (24)	thin (1)	tree (1)	verdict (11)
survey (2)	thing (17)	trial (3)	versus (1)
suspended (1)	things (6)	Tricounty (2)	
swimming (2)		tried (3)	

violate (1)
 violations (1)
 VIRGIE (7)
 vis-a-vis (1)
 visit (3)
 voice (1)
 voluntary (1)
 vs (1)

 < W >
 wait (1)
 waived (1)
 walk (5)
 walking (4)
 walls (1)
 want (18)
 wanted (7)
 wanting (1)
 wants (2)
 Wappoo (5)
 War (1)
 warehouse (15)
 wash (1)
 washed (1)
 watched (1)
 water (30)
 water-borne (1)
 way (28)
 ways (1)
 wear (6)
 weather (1)
 website (2)
 wedge (1)
 week (7)
 weekend (3)
 weeks (6)
 weigh (2)
 welcome (1)
 well (82)
 well-dressed (1)
 wells (4)
 went (23)
 we're (24)
 West (2)
 wetter (1)
 We've (14)
 WHALEY (1)
 Whoa (3)
 wholesale (1)

wholly (1)
 wide (1)
 wife (1)
 Wi-Fi (3)
 Wiggly (1)
 Willis (12)
 Willis's (4)
 window (1)
 windows (1)
 wised (1)
 wish (1)
 within-entitled (1)
 witness (28)
 witnesses (3)
 wondering (1)
 wooden (1)
 woods (3)
 word (5)
 wording (1)
 word-processing (1)
 words (5)
 work (37)
 worked (1)
 working (10)
 World (1)
 worst (3)
 worth (1)
 write (1)
 writing (3)
 written (1)
 Wrong (3)
 WWW.CLARKBOL
 EN.COM (1)

< Y >
 Yeah (33)
 year (3)
 years (8)
 yellow (1)
 Yep (1)
 yes-and-no (1)
 yesterday (1)
 you-all (17)

< Z >
 zone (1)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
In the Court of Common Pleas for the First Judicial Circuit

The Honorable James E. Chellis, Master in Equity

Case No. 2019-CP-18-02217

Virgie C. Simmons Family, LLC.....Appellant

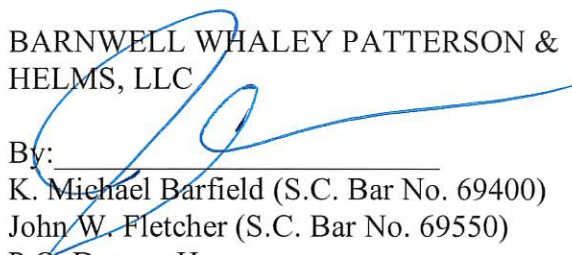
vs.

Limetrade, LLC and Limehouse Produce, LLC Respondents

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal, Volume I contains all materials proposed by the parties to be included in the Record on Appeal and does not include any other materials.

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HELMS, LLC

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
In the Court of Common Pleas for the First Judicial Circuit

The Honorable James E. Chellis, Master in Equity

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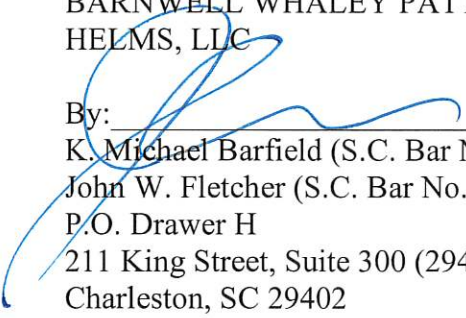
PROOF OF SERVICE OF RECORD ON APPEAL, VOLUME I

I certify that I have served the Record on Appeal, Volume I on the above-referenced Respondents by email in accordance with the South Carolina Supreme Court's Order re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022) on March 19, 2025, addressed to their attorneys of record:

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