

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr., Master in Equity

Case No. 2010-CP-23-4786

Tony Ray Green and Frances
K. Pittman,

Appellants,

v.

Samuel D. Humphries and
Veronica L. Humphries,

Respondents.

SUPPLEMENTAL RECORD ON APPEAL

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INDEX

Complete Trial Transcript.....	1
Certificate of Counsel	142

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2010-CP-23-4786

TONY RAY GREEN AND FRANCES K.
PITTMAN,

PLAINTIFFS,

VS.

SAMUEL D. HUMPHRIES AND VERONICA L.)
HUMPHRIES,

DEFENDANTS.

TRANSCRIPT OF TESTIMONY

MARCH 21, 2012
GREENVILLE, SOUTH CAROLINA

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

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*Wanda E. Fudge, CCR
Court Reporter*

INDEX

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
TONY RAY GREEN, SR.				
MR. THOMPSON	3		30	
MR. HECKMAN		22		
FRANCES K. PITTMAN				
MR. THOMPSON	31			
MR. HECKMAN		34		
GARY ALAN JOHNSON				
MR. THOMPSON	41			
MR. HECKMAN		52		
ROY GENE GREEN				
MR. HECKMAN	56		64	
MR. THOMPSON		63		
SAMUEL D. HUMPHRIES				
MR. HECKMAN	65		89	
MR. THOMPSON		79		92
BRYAN ALAN GOSNELL				
MR. HECKMAN	93		101	
MR. THOMPSON		96		103
JAMES ROBERT TOLAR				
MR. HECKMAN	104		109	
MR. THOMPSON		106		

INDEX (CONTINUED)

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
CHAD M. EMERY				
MR. HECKMAN	112		122	
MR. THOMPSON		120		
JUDY D. SCOGGINS				
MR. HECKMAN	123		126	
MR. THOMPSON		125		
KAREN D. EMERY				
MS. HECKMAN	126		132	
MS. THOMPSON		130		
ROY GENE GREEN				
MR. HECKMAN				

EXHIBITS

	<u>ID</u>	<u>EV</u>
P-1	THREE PAGES OF PHOTOGRAPHS DATED 2003	9
P-2	NINE PAGES OF PHOTOGRAPHS DATED 2006	9
P-3	FIFTEEN PAGES OF PHOTOGRAPHS DATED MARCH 2007	13
P-4	TWO PAGES OF PHOTOGRAPHS DATED SEPTEMBER 2007	14
P-5	TEN PAGES OF PHOTOGRAPHS DATED MARCH 2010	16
P-6	PHOTOGRAPHS LABELED "TIMEFRAME UNCERTAIN"	17
P-7	PICTURES LABELED "DATE UNKNOWN"	3
P-8	PLAT DATED JULY 23, 1991	19
P-9	DEED DATED SEPTEMBER 19, 1991	21
P-10	"PROJECT NARRATIVE & PRELIMINARY SCOPE OF WORK"	49
P-11	RCS GRADING, INC. PROPOSAL	50
P-12	DRAWING OF STREAM	43
P-13	DRAWING OF RELOCATED STREAM BANK	51

EXHIBITS(CONTINUED)

	<u>ID</u>	<u>EV</u>
D-1 DEED DATED MAY 19, 2006		66
D-2 DEED DATED MAY 13, 1993		66
D-3 DEED DATED SEPTEMBER 10, 1991		67
D-4 PLAT DATED JULY 23, 1991	3	
D-5 COPIES OF PICTURES (3 PAGES)	3	
D-6 THIRTEEN PHOTOGRAPHS LABELED 2005		75
D-7 POLICE REPORT	3	
D-8 FOURTEEN PHOTOGRAPHS	3	
D-9 REPORT FROM HORTICULTURAL ASSET MANAGEMENT	3	
D-10 SCHNEIDER TREE CARE REPORT	3	
D-11 HANDWRITTEN NOTE DATED SEPTEMBER 27, 2004	3	
D-12 TEN PHOTOGRAPHS		117
D-13 SURVEY BY BRYAN ALAN GOSNELL	3	
D-14 ONE PHOTOGRAPH	3	
D-15 DEED DATED APRIL 24, 2000		23
D-16 PLAT DATED MAY 6, 1993		24
D-17 DEED		36
D-18 DEED DATED DECEMBER 30, 1994		36
D-19 DEED DATED SEPTEMBER 9, 1996		36

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 (PER JUDGE SIMMONS' INSTRUCTIONS, ALL EXHIBITS WERE MARKED
2 PRIOR TO THE COMMENCEMENT OF THE TRIAL)

3 BY THE COURT: GO ON THE RECORD. THIS IS 2010-4786. YOU
4 CAN CALL YOUR FIRST WITNESS.

5 MR. THOMPSON: THANK YOU, YOUR HONOR. THE PLAINTIFF WOULD
6 CALL TONY GREEN AT THIS TIME.

7 BY THE COURT: IF YOU WOULD COME AROUND OVER HERE, PLEASE,
8 SIR.

9 **TONY RAY GREEN, SR.,** BEING FIRST DULY SWORN, TESTIFIED AS
10 FOLLOWS:

11 BY THE COURT: THANK YOU. COME AROUND AND HAVE A SEAT,
12 PLEASE, SIR. (COMPLIES)

13 FOR MY COURT REPORTER, IF YOU WOULD STATE YOUR FULL NAME.

14 THE WITNESS: MY NAME IS TONY RAY GREEN, SR.

15 BY THE COURT: ALL RIGHT. THANK YOU.

16 **DIRECT EXAMINATION BY MR. THOMPSON:**

17 Q TONY, GOOD MORNING.

18 A GOOD MORNING.

19 Q COULD YOU PLEASE TELL THE COURT WHERE YOU RESIDE?

20 A I RESIDE IN GREENWOOD, SOUTH CAROLINA.

21 Q OKAY. DO YOU HAVE SOME PROPERTY UP IN MARIETTA?

22 A YES, I DO.

23 Q ALL RIGHT. WHAT'S THE ADDRESS OF THAT PROPERTY?

24 A IT'S ON BEAVER DAM ROAD. I DON'T HAVE -- IT'S A TRACT OF
25 LAND. I DON'T REALLY HAVE AN ADDRESS FOR THAT.

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 Q ABOUT HOW MANY ACRES IS IT?

2 A IT'S ABOUT 18 ACRES.

3 Q WAS THIS PART OF A FAMILY TRACT THAT GOT BROKEN UP?

4 A YES, IT WAS.

5 Q IS ONE PART OF YOUR PROPERTY ADJACENT TO A STREAM OR A
6 CREEK?

7 A YES, SIR.

8 Q WHAT'S THE NAME OF THAT CREEK?

9 A IT'S BEAVER DAM CREEK.

10 Q OKAY. NOW, ACROSS THE CREEK FROM YOU -- WHO'S THE PROPERTY
11 DIRECTLY ACROSS THE CREEK FROM YOU?

12 A THE HUMPHRIES.

13 Q IS THAT MR. AND MRS. HUMPHRIES SEATED AT THE DEFENSE TABLE?

14 A YES, SIR.

15 Q OKAY. WHEN DID YOU PURCHASE THIS TRACT OF LAND OR WHEN DID
16 IT GET PUT IN YOUR NAME?

17 A IT WAS LEFT TO ME OR GIVEN TO ME LIKE INHERITANCE. IT WAS
18 AROUND 2001, I THINK.

19 Q NOW, BEFORE THIS, IS THIS PROPERTY YOU WERE FAMILIAR WITH?

20 A I GREW UP THERE. YES, SIR.

21 Q YOU GREW UP IN THIS AREA, ON THIS TRACT OF LAND?

22 A YES, SIR.

23 Q ARE YOU FAMILIAR WITH THE LAY OF THE LAND, HOW IT LOOKED,
24 THAT SORT OF THING?

25 A YES, SIR.

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 Q OKAY. WHEN YOU GOT THIS TRACT OF LAND DEEDED TO YOU, IS IT
2 STILL IN PRETTY MUCH THE SAME CONDITION AS IT'S IN AS FAR AS THE
3 LAY OF THE LAND THE WHOLE TIME YOU WERE GROWING UP?

4 A THE CREEK, NO. THE LAND, YES, PRETTY MUCH.

5 Q OKAY. WHAT ABOUT THE CREEK WAS DIFFERENT WHEN YOU GOT THE
6 PROPERTY IN 2001?

7 A THE CREEK HAS BEEN CHANGED AND MOVED.

8 Q OKAY. BEFORE YOU GOT THE PROPERTY IN 2001?

9 A YES.

10 Q NOW, TELL ME ABOUT -- THE CREEK WAS THE PROPERTY LINE. WHEN
11 YOU GOT THE PROPERTY, THE CREEK WAS BETWEEN YOURSELF AND THE
12 HUMPHRIES. WAS IT A STRAIGHT LINE RUN? WHAT WAS THE SHAPE OF
13 THE ANGLE OF IT?

14 A IN THAT PARTICULAR AREA, YES, IT WAS. IT WAS PRETTY
15 STRAIGHT THROUGH THERE.

16 Q DO YOU HAVE -- ARE THERE OTHER PROPERTY OWNERS ON THE OTHER
17 SIDE OF THE CREEK TO EITHER SIDE OF THE HUMPHRIES?

18 A WELL, MY BROTHER LIVES ACROSS THE STREET FROM THERE.

19 Q NOW, AT SOME POINT DID YOU OBSERVE THE HUMPHRIES START TO DO
20 SOME WORK OR MAKE SOME MODIFICATIONS TO THE RUN OF THE CREEK?

21 A YES, SIR, WE DID.

22 Q OKAY. WHEN DID THAT FIRST START?

23 A I'M THINKING AROUND 2004, 2003, POSSIBLY A LITTLE BIT BEFORE
24 THAT.

25 Q OKAY. LET ME ASK YOU, THE PROPERTY, THE LAND THAT'S

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 ADJACENT TO THE CREEK ON EITHER SIDE, IS IT IN A FLOODPLAIN?

2 A IT'S A CLASS A FLOOD ZONE.

3 Q LET ME SHOW YOU WHAT I'VE MARKED AS EXHIBIT NO. 1 AND ASK IF
4 YOU CAN -- DO YOU RECOGNIZE THE PHOTOGRAPHS, THE FIVE
5 PHOTOGRAPHS, CONTAINED IN EXHIBIT 1?

6 A YES, SIR.

7 Q ARE THOSE PHOTOGRAPHS OF THE PROPERTY IN APPROXIMATELY 2003?

8 A YES, SIR.

9 Q OKAY. LET ME GET YOU TO LOOK AT THE FIRST PAGE THERE. DOES
10 THE TOP PICTURE ON THIS FIRST PAGE HERE SHOW ANY MODIFICATIONS TO
11 THE CREEK?

12 A YES, SIR, IT DOES.

13 Q WHAT DOES IT SHOW?

14 A WELL, THERE'S SOME STONES LIKE HE HAD CREATED A DAM THERE TO
15 DIRECT THE WATER TOWARDS THE OTHER SIDE, AND THERE'S A PARTIAL
16 WALL BUILT OUT OF PLYWOOD OR SOMETHING THAT HE PUT UP.

17 Q WHAT WAS THE EFFECT OF THIS PLYWOOD WALL AND THESE ROCKS
18 THAT HE PUT IN THE RIVER? WHAT EFFECT DID THAT HAVE ON THE FLOW
19 OF THE WATER?

20 A WELL, IT FORCED THE WATER TO HIT THE OTHER SIDE, AND IT
21 CAUSED LIKE A SANDBAR THERE WHICH HE COULD FILL IN EASILY ON THAT
22 SIDE, ON HIS SIDE.

23 Q ALL RIGHT. AT SOME POINT SHORTLY AFTER THAT, DID YOU HAVE
24 THE PROPERTY LINE SURVEYED? DID YOU HAVE THE PROPERTY SURVEYED?

25 A I DID. THE HUMPHRIES NEVER HAD THEIR PROPERTY SURVEYED. HE

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 WAS ENCROACHING ON OUR PROPERTY. WE WANTED TO HAVE IT SURVEYED
2 JUST SO THAT HE KNEW -- WE KNEW THAT HE KNEW WHERE THE PROPERTY
3 LINES WERE.

4 Q AT SOME POINT, DID THE WALL, THE ROCK AND THAT KIND OF
5 PLYWOOD WALL, WERE THOSE REMOVED AT SOME POINT?

6 A YES, THEY WERE.

7 Q WHO REMOVED THOSE?

8 A MY BROTHER.

9 Q DOES YOUR BROTHER HAVE ANY OWNERSHIP INTEREST IN THAT TRACT
10 OF LAND?

11 A WELL, IT WAS INHERITED PROPERTY. YES, SIR.

12 Q BUT IS IT TITLED IN HIS NAME AT ALL?

13 A NO.

14 Q ALL RIGHT.

15 A HE LIVES THERE.

16 Q DID THE HUMPHRIES SUBSEQUENTLY PUT UP SOME OTHER KIND -- LET
17 ME ASK YOU THIS, TONY, AT ANY TIME BEFORE THAT, HAD YOU EVER DONE
18 ANY WORK IN THE CREEK, YOU KNOW, WITH HEAVY EQUIPMENT TO CHANGE
19 OR ALTER THE FLOW OF THE CREEK?

20 A I NEVER HAVE.

21 Q DID ANYBODY EVER ON YOUR BEHALF, HAVE YOU EVER ASKED OR TOLD
22 ANYBODY TO DO THAT?

23 A NO, NOT REALLY. AS -- GROWING UP THERE, WE'VE ALWAYS KEPT
24 THE CREEK CLEANED OUT.

25 Q WHAT DO YOU MEAN BY "CLEANED OUT"?

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 A WELL, IT GROWS UP AND DEBRIS CATCHES IT, AND WE HAVE TO
2 CLEAN IT OUT SO IT WON'T BACK UP AND FLOOD THE FIELDS.

3 Q WHEN YOU DO THAT, DO YOU ALTER THE FLOW OR THE DIRECTION OF
4 THE CREEK AT ALL?

5 A NO. WE JUST HELP THE WATER. HOPEFULLY, IT FLOWS ON OUT.

6 Q ALL RIGHT. AT SOME POINT AFTER THOSE PICTURES WERE TAKEN,
7 DID THE HUMPHRIES PUT UP SOME OTHER STRUCTURE?

8 A THEY DID. THEY BUILT A SEAWALL AND -- WHAT I CALL A
9 SEAWALL. IT'S A STRUCTURE THAT IT WAS DIRECTED TOWARDS THE
10 OPPOSITE SIDE. TO ME, IT WAS ACTING LIKE A DREDGE. WHEN THE
11 WATER CAME DOWN THROUGH THERE, IT JUST POURED INTO US AND JUMPED
12 THE FIELDS. IT CAUSES ALL KIND OF PROBLEMS LIKE EROSION AND---

13 Q LET ME SHOW YOU SOME PICTURES THAT HAVE BEEN MARKED AS
14 PLAINTIFFS' EXHIBIT NO. 2, SEE IF YOU RECOGNIZE THE PHOTOGRAPHS
15 OF THOSE -- IN THAT EXHIBIT.

16 A I DO.

17 Q ARE THOSE PHOTOGRAPHS OF THE CREEK IN QUESTION AND THE
18 PROPERTY IN QUESTION?

19 A YES, SIR.

20 MR. THOMPSON: YOUR HONOR, BEFORE I FORGET, I WOULD MOVE
21 PLAINTIFFS' 1 AND 2 TO BE INTRODUCED INTO EVIDENCE. THEY WERE
22 PREVIOUSLY MARKED.

23 BY THE COURT: ANY OBJECTION?

24 MR. HECKMAN: NO OBJECTION.

25 BY THE COURT: ALL RIGHT.

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 (THREE PAGES OF PHOTOGRAPHS DATED 2003 ENTERED INTO EVIDENCE
2 AS PLAINTIFFS' EXHIBIT NO. 1)

3 (NINE PAGES OF PHOTOGRAPHS DATED 2006 ENTERED INTO EVIDENCE
4 AS PLAINTIFFS' EXHIBIT NO. 2)

5 Q ON THE FIRST PAGE, TONY, IS THAT THE WALL THAT YOU WERE
6 REFERENCING?

7 A YES, SIR.

8 Q IS THERE WATER BEHIND THE WALL IN THAT PHOTOGRAPH?

9 A YES, SIR, THERE IS.

10 Q OKAY.

11 BY THE COURT: DO YOU HAVE AN EXTRA COPY? IT'S DIFFICULT
12 FOR THE COURT TO SEE THEM.

13 MR. THOMPSON: NO, YOUR HONOR. YOUR HONOR, I'M SORRY. I DO
14 NOT HAVE AN EXTRA COPY OF THOSE PHOTOGRAPHS. I APOLOGIZE.

15 BY THE COURT: ALL RIGHT.

16 Q TONY, LET ME GET YOU TO FLIP TO THE SECOND PAGE THERE. WHAT
17 PROPERTY CAN YOU SEE IN THE SECOND PAGE OF THOSE PHOTOGRAPHS?

18 A THAT'S THE PROPERTY ON THE OPPOSITE SIDE WHICH IS OUR
19 PROPERTY -- MY PROPERTY.

20 Q AND WHAT IS HAPPENING TO THE STREAMBANK IN THIS PICTURE?

21 A IT'S JUST EAT OUT TREMENDOUSLY.

22 Q WHAT HAS CAUSED THE STREAM TO GO IN THAT DIRECTION?

23 A IN MY OPINION, IT WAS THE WALL BECAUSE IT FORCES IT OVER
24 THERE. IT HAS NO WHERE ELSE TO GO. LIKE THE WALL -- THE WATER
25 IS ON BOTH SIDES OF THE WALL. THE CREEK WANTS TO GO BACK WHERE

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 IT NATURALLY WAS. IN MY OPINION, HE'S FORCING THE WATER IN A
2 DIFFERENT DIRECTION.

3 Q ALL RIGHT. DID YOU CAUSE THIS FLOOD TO TAKE PLACE?

4 A NO, SIR.

5 Q LET ME SHOW YOU -- LOOK ON PAGE 3 OF THIS EXHIBIT. IS THERE
6 A TREE THAT HAS FALLEN OVER INTO THE CREEK ON MR. HUMPHRIES'
7 SIDE?

8 A YES, SIR.

9 Q THAT LOOKS LIKE SOME KIND OF A FRUIT TREE?

10 A IT DOES.

11 Q OKAY. WAS THAT THE RESULT OF SOME KIND OF EROSION OR WATER
12 EVENT?

13 A YES, SIR.

14 Q NOW, DID MR. HUMPHRIES CONTINUE TO DO SOME WORK ON THIS WALL
15 AT SOME POINT AFTER THIS?

16 A YES, HE DID.

17 Q WHAT KIND OF STUFF DID HE DO TO IT?

18 A HE HAD FILLED IN BEHIND THE WALL. HE SECURED IT MORE SECURE
19 WITH CABLES. HE PUT MAIL BAGS FULL OF -- SAND BAGS IN THERE,
20 TELEPHONE POLES, BRICK, WHATEVER HE COULD PUT IN THERE.

21 Q LET ME SHOW YOU A GROUP OF PHOTOGRAPHS THAT HAVE BEEN MARKED
22 FOR IDENTIFICATION AS PLAINTIFFS' EXHIBIT 3. FLIP THROUGH THOSE
23 REAL QUICK, TONY, AND TELL ME IF YOU RECOGNIZE THOSE PHOTOGRAPHS.

24 A YES, SIR.

25 Q ARE THOSE PHOTOGRAPHS OF THE CREEK AND THE PROPERTY IN

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 QUESTION?

2 A YES, SIR.

3 Q WHAT IS THE APPROXIMATE TIMEFRAME IN THESE PHOTOGRAPHS AS
4 LISTED ON THE TOP OF THE PAGE?

5 A THESE WERE TAKEN IN PROBABLY 2007.

6 MR. HECKMAN: I OBJECT. WHO TOOK THESE PHOTOGRAPHS? YOU
7 HAVE NOT ESTABLISHED WHO TOOK THE PHOTOGRAPHS. DID YOU TAKE THE
8 PHOTOGRAPHS?

9 MR. THOMPSON: YOUR HONOR---

10 BY THE COURT: WHAT'S THE BASIS OF YOUR OBJECTION?

11 MR. HECKMAN: WE DON'T HAVE ANY BASIS OF FACTUAL NATURE OF
12 THE PHOTOGRAPHS. WE DON'T KNOW WHO TOOK THEM, AND HE'S TRYING TO
13 TESTIFY AS TO WHEN THEY WERE TAKEN.

14 BY THE COURT: I DON'T THINK THE ISSUE IS WHO TOOK THEM. I
15 THINK THE ISSUE -- THE QUESTION PROPERLY IS: ARE THEY FAIR AND
16 ACCURATE REPRESENTATIONS OF THE EVENTS AT THE TIME THEY WERE
17 TAKEN?

18 MR. HECKMAN: EXACTLY.

19 BY THE COURT: IF YOU COULD LAY SOME ADDITIONAL FOUNDATION,
20 PLEASE, SIR?

21 MR. THOMPSON: ALL RIGHT.

22 Q MR. GREEN, ON THE BACK OF THESE PHOTOGRAPHS IS THERE A DATE
23 WHEN THE PHOTOGRAPH WAS PROCESSED?

24 A YES, SIR.

25 Q WHAT'S THAT DATE, PLEASE, SIR?

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 A 3/21/07..

2 Q OKAY. DO THESE PHOTOGRAPHS FAIRLY AND ACCURATELY DEPICT THE
3 CONDITION OF THESE PROPERTIES IN THE MARCH OF 2007 TIMEFRAME?

4 A YES, SIR, IT DOES.

5 Q LET ME GET YOU TO LOOK AS WE'RE GOING THROUGH, LOOKING ON
6 PAGE 2. DOES IT DEPICT THE WALL IN QUESTION IN THESE TWO
7 PHOTOGRAPHS?

8 A YES, SIR.

9 Q WHAT'S BEHIND THE WALL IN QUESTION?

10 A ROCKS AND DIRT.

11 Q ALL RIGHT. FLIPPING AHEAD TO PAGE 5 OF PLAINTIFFS' EXHIBIT
12 NO. 3, WHAT'S BEHIND THE WALL IN THIS PHOTOGRAPH?

13 A DIRT, AND A SMALL TREE AND A ROCK.

14 Q FLIPPING AHEAD, MR. GREEN, TO PAGE 10 OF PLAINTIFFS' EXHIBIT
15 3, WHAT DO YOU SEE BEHIND THE WALL IN QUESTION THERE?

16 A FROM WHAT I CAN SEE, THERE'S -- LOOKS LIKE SHRUBBERY, DIRT,
17 ROCK.

18 Q ALL RIGHT, SIR. NOW, AGAIN LOOKING AT PAGE 10, IS YOUR
19 PROPERTY DEPICTED IN THOSE PICTURES?

20 A YES, IT IS.

21 Q CAN YOU DESCRIBE WHAT YOU OBSERVE ABOUT YOUR PROPERTY IN
22 THOSE PHOTOGRAPHS?

23 A WHAT I DESCRIBE IS A SEAWALL, WHAT I CALL A SEAWALL. IT'S A
24 STRUCTURE---

25 Q WHAT ABOUT YOUR PROPERTY? WHAT DO YOU OBSERVE ABOUT YOUR

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 PROPERTY?

2 A MY PROPERTY IS TOTALLY ERODED OUT.

3 Q DID YOU CAUSE THAT EROSION OR DID YOU CAUSE THAT EROSION
4 WITH A BACKHOE?

5 A NO, SIR.

6 Q MR. GREEN, LOOKING AT PAGE 14 OF PLAINTIFFS' EXHIBIT NO. 3,
7 WHAT DO YOU OBSERVE DOWNSTREAM OF THIS STRUCTURE THAT IS BUILT ON
8 TO THE HUMPHRIES' SIDE OF THE CREEK?

9 A WELL, THE SEAWALL HAS FORCED A CURVE INTO A REALLY -- IT
10 HITS ME, IT RICOCHETS BACK AROUND TO ANOTHER PIECE OF PROPERTY
11 AND IT FORCES -- CAUSES A SANDBAR THERE.

12 Q WAS THAT SANDBAR IN THOSE PICTURES, HAD THAT PREVIOUSLY BEEN
13 THE BED OF THE CREEK?

14 A THAT WAS PREVIOUSLY WHERE IT WAS BEFORE HE PUT THE SEAWALL
15 THERE.

16 MR. THOMPSON: YOUR HONOR, I WOULD MOVE PLAINTIFFS' EXHIBIT
17 3 BE MOVED INTO EVIDENCE.

18 BY THE COURT: ALL RIGHT.

19 (FIFTEEN PAGES OF PHOTOGRAPHS DATED MARCH 2007 ENTERED INTO
20 EVIDENCE AS PLAINTIFFS' EXHIBIT NO. 3)

21 Q MR. GREEN, LET ME SHOW YOU WHAT'S BEEN MARKED AS PLAINTIFFS'
22 EXHIBIT NO. 4 OR IDENTIFIED AS PLAINTIFFS' EXHIBIT 4, TELL ME IF
23 YOU RECOGNIZE THE PROPERTY DEPICTED IN THOSE PHOTOGRAPHS.

24 A YES, SIR.

25 Q ALL RIGHT. APPROXIMATELY, WHAT TIMEFRAME ARE THOSE

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 PHOTOGRAPHS FROM?

2 A THE TIMEFRAME IS 2007.

3 Q IS THAT A FAIR AND ACCURATE REPRESENTATION OF THE PROPERTY
4 IN QUESTION?

5 A YES, IT IS.

6 Q ALL RIGHT. THE FIRST PAGE, WHAT DO YOU RECOGNIZE -- DO YOU
7 MAKE ANY OBSERVATIONS ABOUT THE SANDBAR WE DISCUSSED A MOMENT
8 AGO?

9 A YES, SIR. THE SANDBAR HAS INCREASED IN SIZE TREMENDOUSLY.
10 THE SEAWALL IS STILL INTACT.

11 Q WHAT DO YOU NOTICE ABOUT THE GROUND IN THE PROPERTY BEHIND
12 THE WALL?

13 A IT'S GOT ROCK IN IT. IT'S GROWING GRASS ON IT NOW WHERE
14 HELLS FILLED IT IN.

15 Q WAS THAT PREVIOUSLY WHERE THE CREEK RAN?

16 A SIR?

17 Q IS THAT PREVIOUSLY WHERE THE CREEK RAN?

18 A YES.

19 Q ALL RIGHT.

20 MR. THOMPSON: YOUR HONOR, I WOULD MOVE EXHIBIT 4 BE
21 ADMITTED INTO EVIDENCE.

22 BY THE COURT: ALL RIGHT.

23 (TWO PAGES OF PHOTOGRAPHS DATED SEPTEMBER 2007 ENTERED INTO
24 EVIDENCE AS PLAINTIFFS' EXHIBIT NO. 4)

25 Q MR. GREEN, LET ME SHOW YOU WHAT'S MARKED FOR IDENTIFICATION

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 AS PLAINTIFFS' EXHIBIT 5. TELL ME IF YOU RECOGNIZE THE
2 PHOTOGRAPHS.

3 A YES, SIR.

4 Q AND THOSE?

5 A I DO.

6 Q SOME OF THOSE PHOTOGRAPHS ARE TIME OR DATE STAMPED. WHAT IS
7 THE DATE OR THE TIME THAT'S ON THOSE PHOTOGRAPHS?

8 A THIS IS 2010.

9 Q IS THERE A SPECIFIC MONTH OR DAY?

10 A IN MARCH.

11 Q LOOK AT THAT FIRST PAGE OF THESE PICTURES FROM MARCH 2010,
12 WHAT DO YOU OBSERVE ABOUT THE PROPERTY ON MR. HUMPHRIES' SIDE OF
13 THE CREEK BEHIND THE WALL?

14 A HE'S RE-ENFORCED THE WALL. HE'S -- I SEE A PIPE UP WHERE IT
15 HAS CABLE HE ATTACHED TO TO KEEP THE WALL IN PLACE. HE HAS
16 FILLED DEBRIS IN THE BACK OF IT LIKE OLD BRICK AND DIRT.

17 Q NOW, AROUND THIS TIMEFRAME, DID YOU HAVE SOMEBODY ELSE COME
18 OUT AND SURVEY THIS PROPERTY?

19 A YES, SIR, I DID. THERE'S A SURVEY FRESH FLAG ON THE PHOTO.

20 Q LET ME SHOW YOU THE PHOTOGRAPH ON PAGE 9 OF PLAINTIFFS'
21 EXHIBIT 5, THE TOP PHOTOGRAPH, WHAT DOES THAT DEPICT?

22 A IT SHOWS WHERE THE SANDBAR HAS INCREASED IN SIZE. IT SHOWS
23 WHERE THE SURVEY MARKER, WHERE THE PIN IS.

24 Q IS THERE ONE PIN KIND OF THERE IN THE FRONT OF THE PICTURE?

25 A YES, SIR.

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 Q CAN YOU SEE IN THAT PICTURE WHERE THE OTHER PIN IS LOCATED?

2 A THERE'S A PIN DIRECTLY IN FRONT OF THE DOOR OF THE RED
3 BUILDING.

4 Q THAT'S THE BUILDING IN THE BACKGROUND OF THAT PHOTOGRAPH?

5 A YES, SIR.

6 Q AGAIN, THIS SANDBAR THAT WE'VE DISCUSSED, WHAT KIND OF
7 COVERING, WHAT KIND OF MATERIAL DO THEY HAVE ON IT NOW?

8 A IT'S SAND, SOME GRASS.

9 MR. THOMPSON: YOUR HONOR, I WOULD MOVE THAT PLAINTIFFS'
10 EXHIBIT 5 BE ADMITTED INTO EVIDENCE.

11 BY THE COURT: ALL RIGHT.

12 (TEN PAGES OF PHOTOGRAPHS DATED MARCH 2010 ENTERED INTO
13 EVIDENCE AS PLAINTIFFS' EXHIBIT NO. 5)

14 Q MR. GREEN, LET ME SHOW YOU WHAT'S MARKED FOR IDENTIFICATION
15 AS PLAINTIFFS' EXHIBIT NO. 6. DO YOU RECOGNIZE THE PROPERTIES IN
16 THOSE PHOTOGRAPHS?

17 A YES, SIR, I DO.

18 Q WHAT PROPERTIES ARE THOSE?

19 A IT'S THE PROPERTY OF MY SISTER'S BELOW IT, IT'S THE
20 HUMPHRIES AND MYSELF.

21 Q NOW, IS THE CREEK -- DO YOU STILL SEE A SANDBAR IN THOSE
22 PHOTOGRAPHS?

23 A YES, SIR.

24 Q IS THE CREEK STILL CURVED INTO YOUR PROPERTY IN THIS
25 PHOTOGRAPH?

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 A YES, SIR.

2 Q TONY, LET ME ASK YOU THIS, THERE HAS BEEN SOME ALLEGATION
3 THAT AT SOME POINT THAT WALL WAS REMOVED. WERE YOU INVOLVED IN
4 THE REMOVAL OF THE WALL THAT WAS PUT UP?

5 A NO, SIR.

6 BY THE COURT: ARE YOU REFERRING TO WHAT HE'S REFERRED TO AS
7 THE SEAWALL?

8 MR. THOMPSON: YES, SIR.

9 Q DID YOU REMOVE THE SEAWALL, MR. GREEN?

10 A NO, SIR, I DID NOT.

11 Q DID YOU INSTRUCT OR HIRE ANYONE TO DO THAT?

12 A NO, SIR, I DID NOT.

13 Q DID YOU ASK ANYONE TO DO THAT ON YOUR BEHALF?

14 A NO, SIR, I DID NOT.

15 Q DO YOU KNOW WHO DID IT?

16 A I DO KNOW WHO DID IT.

17 Q WHO DO YOU KNOW REMOVED THAT WALL?

18 A MY BROTHER REMOVED IT AND A FRIEND OF HIS.

19 Q WAS HE ACTING ON ANY INSTRUCTION OR DIRECTIVE OF YOURS?

20 A NO, SIR.

21 MR. THOMPSON: YOUR HONOR, I WOULD MOVE PLAINTIFFS' EXHIBIT
22 6 BE ADMITTED INTO EVIDENCE.

23 BY THE COURT: ALL RIGHT.

24 THE WITNESS: MAY I SAY, I WAS IN THE HOSPITAL AT THE TIME.

25 (ONE PAGE OF PHOTOGRAPHS LABELED "TIMEFRAME UNCERTAIN")

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 ENTERED INTO EVIDENCE AS PLAINTIFFS' EXHIBIT NO. 6)

2 Q NOW, MR. GREEN, ARE YOU FAMILIAR WITH THE DEEDS AND GRANTS
3 OF THE VARIOUS PROPERTIES IN QUESTION?

4 A YES, SIR, I AM.

5 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS PLAINTIFFS' EXHIBIT 8
6 AND ASK IF YOU RECOGNIZE THIS DOCUMENT THAT'S KNOWN AS
7 PLAINTIFFS' EXHIBIT 8. WHAT DOCUMENT IS THAT?

8 A YES, SIR. THAT'S THE PLAT OF THE PROPERTY WHEN IT WAS
9 SURVEYED OUT THAT MY GRANDMOTHER HAD DEEDED TO DORA LEE HALL.

10 Q WHICH PROPERTY -- JUST SO THE COURT'S FAMILIAR -- WHICH
11 PROPERTY IS THIS PLAT?

12 A THIS IS THE HUMPHRIES' PROPERTY WHICH THEY PURCHASED.

13 Q WHAT'S THE DATE OF THIS PLAT?

14 A 20-97. I MEAN, '97. I'M SORRY.

15 Q ACTUALLY, LET ME DIRECT YOU TO THE DATE DOWN HERE.

16 A OH, OKAY. THAT'S '91.

17 Q ALL RIGHT. DOES IT REFERENCE THE PROPERTY LINE IN QUESTION
18 BETWEEN YOURSELF AND THE HUMPHRIES?

19 A IT DOES.

20 Q DOES IT INCLUDE WHAT WE COMMONLY REFER TO AS A METES AND
21 BOUNDS DESCRIPTION THERE ON THAT PLAT?

22 A YES, IT DOES.

23 Q ARE YOU FAMILIAR -- AGAIN, WERE YOU KIN OF DORA LEE HALL?

24 A THAT'S MY UNCLE'S DAUGHTER, COUSIN.

25 Q ALL RIGHT. KATIE EMERY, WHO IS KATIE EMERY?

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 A KATIE EMERY IS MY GRANDMOTHER.

2 Q SHE WOULD HAVE ALSO BEEN DORA LEE HALL'S GRANDMOTHER?

3 A YES.

4 Q ARE YOU FAMILIAR WITH THE DEED FROM MS. EMERY TO DORA LEE
5 HALL FOR THIS PIECE OF PROPERTY?

6 A YES, I AM.

7 MR. THOMPSON: BEFORE I GO ANY FURTHER, YOUR HONOR, I WOULD
8 MOVE PLAINTIFFS' EXHIBIT 8 BE ADMITTED INTO EVIDENCE.

9 MR. HECKMAN: NO OBJECTION.

10 BY THE COURT: ALL RIGHT.

11 (PLAT DATED JULY 23, 1991 ENTERED INTO EVIDENCE AS
12 PLAINTIFFS' EXHIBIT 8)

13 Q PLAINTIFFS' EXHIBIT 8, DOES THAT SAY THE AMOUNT OF ACREAGE
14 FOR THAT PIECE -- THAT TRACT OF LAND THERE?

15 A YES, SIR, IT DOES.

16 Q WHAT IS THE TRACT?

17 A ONE ACRE.

18 Q NOW, MR. GREEN, LET ME SHOW YOU WHAT'S MARKED AS EXHIBIT 9.
19 DO YOU RECOGNIZE THAT DOCUMENT?

20 A YES, SIR, I DO.

21 Q WHAT DOCUMENT IS THAT?

22 A IT'S THE DEED WRITTEN OUT TO MY COUSIN.

23 Q DOES THAT INCLUDE A DESCRIPTION OF THE PROPERTY IN QUESTION?

24 A YES, IT DOES.

25 Q DOES IT DESCRIBE THE BOUNDARY LINES OF THE PROPERTY?

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 A IT DOES.

2 Q WHEN I SAY "DESCRIBE THE BOUNDARY LINES" DOES IT GIVE
3 DISTANCES AND DEGREES AND REFERENCE IRON PINS?

4 A YES, IT DOES.

5 Q DOES IT ALSO AT ONE POINT REFERENCE THE CREEK FOR ONE
6 PORTION OF THE PROPERTY LINE?

7 A I'M SORRY. WHAT?

8 Q IN THE MIDDLE OF THAT DESCRIPTION, DOES IT ALSO REFERENCE
9 THAT BEAVER DAM CREEK IS THE LINE OR AS THE LINE?

10 A IT DOES.

11 Q ON THAT PLAT IN QUESTION DOES THE PROPERTY LINE APPEAR TO BE
12 IN THE SAME LOCATION AS THE CREEK?

13 A AT THE TIME, YES.

14 Q DOES THIS DEED FROM MS. EMERY TO MS. HALL INCLUDE A
15 MEASUREMENT FOR THE AMOUNT OF PROPERTY, THE AMOUNT OF ACREAGE?

16 A YES, IT DOES.

17 Q HOW MUCH IS THAT?

18 A IT'S LIKE ONE ACRE.

19 MR. THOMPSON: YOUR HONOR, I WOULD ASK THAT PLAINTIFFS'
20 EXHIBIT NO. 9 BE ADMITTED INTO EVIDENCE.

21 BY THE COURT: WHICH DEED IS THIS? I HADN'T HEARD---

22 MR. THOMPSON: THIS IS -- I'M SORRY, YOUR HONOR.

23 Q WHO IS THE GRANTOR IN THIS DEED, MR. GREEN? WHO IS GIVING
24 THE PROPERTY?

25 A MY GRANDMOTHER, KATIE EMERY, IS GIVING THE PROPERTY.

1 Q AND WHO IS SHE GIVING IT TO?

2 A SHE'S GIVING IT TO DORA LEE HALL.

3 Q WHAT'S THE DATE OF THE DEED ON THERE? LOOK AT THE BOTTOM
4 WHERE IT'S SIGNED, SIR.

5 A IS THIS IT?

6 Q YES.

7 A SEPTEMBER OF '91.

8 Q OKAY. DO YOU KNOW WHO MS. HALL DEEDED THE PROPERTY TO?

9 A SHE SOLD IT TO THE HUMPHRIES.

10 (DEED DATED SEPTEMBER 10, 1991 ENTERED INTO EVIDENCE AS
11 PLAINTIFFS' EXHIBIT NO. 9)

12 Q NOW, MR. GREEN, LET ME ASK YOU AT THIS TIME, WHAT HAS BEEN
13 THE IMPACT ON THE HUMPHRIES' ACTIVITIES WITH REGARD TO THIS CREEK
14 ON YOUR PROPERTY? WHAT EFFECT HAS IT HAD ON YOUR PROPERTY?

15 A WELL, IT'S DESTROYED MY PROPERTY AND IN THE PROCESS OF HIM
16 DESTROYING IT, HE'S GAINING PROPERTY.

17 Q WHEN YOU SAY HE DESTROYED YOUR PROPERTY, CAN YOU BE A LITTLE
18 MORE SPECIFIC FOR THE COURT? WHAT'S HAPPENED TO YOUR PROPERTY?

19 A WELL, BY HIM CONSTRUCTING A STRUCTURE ON THERE, IT FORCED
20 THE WATER IN ON ME.

21 Q HAS THAT CAUSED EROSION TO THE BANK?

22 A TREMENDOUS EROSION.

23 Q HAS THAT DECREASED THE AMOUNT OF PROPERTY ON YOUR SIDE OF
24 THE CREEK?

25 A TREMENDOUSLY. I'VE HAD TWO SURVEYS DONE AND JUST IN A SHORT

TONY RAY GREEN--CROSS BY MR. HECKMAN

1 PERIOD OF TIME, IT'S MOVED THE PROPERTY OVER, LIKE, 11 FEET, I
2 THINK.

3 Q MR. GREEN, WOULD YOU LIKE -- HAVE YOU EVER DEEDED ANY
4 ADDITIONAL PROPERTY TO THE HUMPHRIES?

5 A NO.

6 Q ARE YOU ASKING THE COURT TO RESTORE THE CREEK AND THE
7 PROPERTY BACK TO THE CONDITION IT WAS PRIOR TO 2003 WHEN THE WALL
8 STARTED BEING CONSTRUCTED?

9 A YES, SIR.

10 Q WHAT DO YOU USE THAT PROPERTY UP THERE FOR, MR. GREEN?

11 A WHEN I GREW UP THERE, WE ALWAYS FARMED IT. IT'S IN
12 AGRICULTURAL WHEN I ACQUIRED THE PROPERTY, AND WE ARE IN THE
13 PROCESS OF MAKING IT A WORKING FARM.

14 Q BECAUSE IT'S IN A FLOODPLAIN IS THERE MUCH ELSE YOU CAN DO
15 WITH THAT PROPERTY?

16 A NO, SIR, NOT A WHOLE LOT, JUST AGRICULTURE.

17 MR. THOMPSON: YOUR HONOR, I BELIEVE THAT'S ALL OF THE
18 QUESTIONS I HAVE FOR THIS WITNESS.

19 BY THE COURT: ALL RIGHT. YOUR WITNESS.

20 **CROSS-EXAMINATION BY MR. HECKMAN:**

21 Q GOOD MORNING, MR. GREEN.

22 A GOOD MORNING. YOU TESTIFIED EARLIER THAT YOU INHERITED THIS
23 PROPERTY IN 2000. BUT THAT'S NOT REALLY THE CASE, IS IT?

24 A IN 2001 OR SOMETHING LIKE THAT.

25 Q IN FACT, THAT WAS A GIFT TO YOU FROM A LILLIE MAE BONNAKE

TONY RAY GREEN--CROSS BY MR. HECKMAN

1 (SIC).

2 A BOENEKE.

3 Q I'M SORRY FOR THE MISPRONUNCIATION.

4 MR. HECKMAN: YOUR HONOR, I WOULD LIKE TO INTRODUCE THE DEED
5 TO THE PROPERTY TO MR. GREEN.

6 THE WITNESS: THAT'S MY MOTHER.

7 MR. HECKMAN: THAT WOULD BE DEFENDANTS' 1 (SIC).

8 (DEED DATED APRIL 24, 2000 ENTERED INTO EVIDENCE AS
9 DEFENDANTS' EXHIBIT NO. 15)

10 Q DOES THAT LOOK LIKE THE DEED INTO YOU?

11 A YES, SIR.

12 Q CAN YOU READ WHAT THAT LEGAL DESCRIPTION SAYS AS THE ACTUAL
13 DESCRIPTION FOR PLAT REFERENCE? THAT DOES NOT HAVE A METES AND
14 BOUNDS DESCRIPTION ON THE DEED, DOES IT?

15 MR. THOMPSON: YOUR HONOR, IF I MAY, CAN I SEE A COPY OF
16 THAT? I DON'T KNOW WHAT ORDER THAT I GOT. IF I COULD SEE THAT
17 BEFORE WE READ IT INTO THE RECORD, I WOULD APPRECIATE IT. ALL
18 RIGHT.

19 Q I WILL RESTATE THE QUESTION, DO YOU SEE A METES AND BOUNDS
20 DESCRIPTION THAT DESCRIBES THE DIMENSIONS OF THE PROPERTY ON THAT
21 DEED?

22 A NO, SIR.

23 Q DOES IT HAVE A PLAT REFERENCE?

24 A YES, SIR.

25 Q WHAT IS THAT PLAT REFERENCE?

TONY RAY GREEN--CROSS BY MR. HECKMAN

1 A BOOK 24-W AT PAGE 9.

2 MR. HECKMAN: YOUR HONOR, I WOULD LIKE TO -- I BELIEVE -- I
3 DON'T BELIEVE MR. THOMPSON PUT THAT PLAT INTO THE RECORD. SO, I
4 WOULD LIKE TO GO AHEAD AND INTRODUCE THAT PLAT BOOK 24-W AT PAGE
5 9.

6 Q MR. GREEN, THIS IS THE PLAT REFERENCED ON THE DEED INTO YOUR
7 PROPERTY. DO YOU RECOGNIZE THAT PLAT?

8 A I DO.

9 Q WHAT DOES IT SAY THE BOUNDARY LINE IS THERE BETWEEN YOUR
10 PROPERTY AND THAT OF THE HUMPHRIES?

11 A I DON'T SEE A BOUNDARY LINE ON THERE.

12 Q IT SAYS BEAVER DAM CREEK IS THE LINE, DOES IT NOT?

13 A BEAVER DAM CREEK IS THE LINE, THAT'S WHAT IT SAYS.

14 Q WHAT'S THE DATE ON THIS PLAT?

15 A MAY 6, 1993.

16 Q THANK YOU.

17 MR. HECKMAN: I WOULD LIKE TO INTRODUCE THAT PLAT AS
18 DEFENDANTS' 2 (SIC).

19 (PLAT DATED MAY 6, 1993 ENTERED INTO EVIDENCE AS DEFENDANTS'
20 EXHIBIT NO. 16)

21 Q ARE YOU FAMILIAR WITH A TERM ACCRETION?

22 A NO, SIR.

23 Q WE'LL GET INTO THAT LATER ON THEN. SO, YOU LIVE IN
24 GREENWOOD, SOUTH CAROLINA. WERE YOU AN ACTUAL WITNESS TO ANY OF
25 THIS ALLEGED BUILDING OF THE WALL BY MR. HUMPHRIES?

TONY RAY GREEN--CROSS BY MR. HECKMAN

1 A I'VE SEEN THE PROCESS. I COME UP TO VISIT MY MOTHER
2 FREQUENTLY.

3 Q DO YOU OWN OR HAVE ACCESS TO A BACKHOE, TRACK HOE, BULLDOZER
4 OR ANY OTHER HEAVY MACHINERY?

5 A NO.

6 Q WHO LIVES AT THE PREMISES UP THERE THAT YOU OWN?

7 A MY SISTER HAS THE PROPERTY RIGHT BELOW THE HUMPHRIES, AND MY
8 MOTHER LIVES ACROSS THE STREET FROM THE HUMPHRIES -- ACROSS THE
9 STREAM FROM THE HUMPHRIES.

10 Q YOUR BROTHER'S NAME IS---

11 A ROY.

12 Q ROY GREEN?

13 A HUH-HUH (AFFIRMATIVE).

14 Q DOES YOUR BROTHER ROY HAVE ANY HEAVY MACHINERY OR ACCESS TO
15 HEAVY MACHINERY?

16 A HE HAS A SMALL TRACK HOE, I THINK, OR ACCESS TO ONE.

17 Q OKAY. WHO CONTROLS THE PROPERTY THAT YOU OWN ON BEAVER DAM
18 CREEK? ARE YOU IN CONTROL OF THAT PROPERTY OR IS YOUR BROTHER
19 ROY?

20 A WHAT DO YOU MEAN "IN CONTROL"?

21 Q I MEAN, IF SOMEONE IS ACTIVELY ENGAGING IN THE USE OF HEAVY
22 MACHINERY, WOULD THAT BE UNDER YOUR DIRECTION OR WHO IS DIRECTING
23 THAT ACTIVITY?

24 A HE LIVES ON THE PROPERTY. SO, IF HE DOES ANYTHING TO IT, HE
25 DOES IT---

TONY RAY GREEN--CROSS BY MR. HECKMAN

1 Q SO, YOU BASICALLY GIVE HIM A LICENSE TO DO WHATEVER HE WANTS
2 ON THAT PROPERTY?

3 A I DON'T GIVE HIM A LICENSE BUT, YOU KNOW.

4 Q YOU LET HIM DO WHAT HE WANTS TO DO?

5 A WELL, IT'S OUR PROPERTY BASICALLY.

6 Q IT'S YOUR PROPERTY, CORRECT?

7 A YES, SIR. IT'S MY PROPERTY.

8 Q WHERE WERE YOU ON SEPTEMBER 15, 2010?

9 A I WAS IN THE HOSPITAL.

10 Q WERE YOU AWARE THERE WAS COURT MANDATED MEDIATION FOR THAT
11 MORNING?

12 A I WAS.

13 Q OKAY. SO, YOU WERE UNABLE TO ATTEND THE MEDIATION DUE TO
14 HEALTH CONCERNS?

15 A YES, SIR.

16 Q DID YOU ORDER A MAN TO USE HEAVY MACHINERY TO DIG OUT THE
17 HUMPHRIES' SIDE OF THE BANK ON SEPTEMBER 15, 2010?

18 A NO.

19 Q ARE YOU AWARE THAT A MAN FROM YOUR SIDE OF THE PROPERTY DID,
20 IN FACT, DIG OUT THE BANK ON THE HUMPHRIES' SIDE AND DEPOSIT DIRT
21 ONTO YOUR SIDE ON SEPTEMBER 15, 2010?

22 A I WAS AWARE THAT THE WALL WAS REMOVED, YES.

23 Q WERE YOU AWARE THAT THEY WERE SCOOPING OUT THE BANK AND
24 PUTTING THE DIRT BACK ON YOUR SIDE?

25 A THAT'S THE ONLY THING I WAS AWARE OF.

TONY RAY GREEN--CROSS BY MR. HECKMAN

1 Q WERE YOU AWARE OF SOME OTHER DIGS THAT OCCURRED IN JULY OF
2 2004?

3 A I KNEW THAT THE BANKS WAS -- HE HAD CLEANED SOME BANKS OFF.
4 YES.

5 Q CLEANED SOME BANKS INCLUDING THE HUMPHRIES' SIDE OF THE
6 BANK?

7 A NO.

8 Q ARE YOU AWARE OF THE CATASTROPHIC FLOOD OF 2004, THE JULY
9 2004 FLOOD?

10 A YES, SIR.

11 Q DO YOU BELIEVE THAT THAT FLOOD MAY HAVE HAD SOME NATURAL
12 CAUSES TO THE EROSION IN THE CREEK BED?

13 MR. THOMPSON: YOUR HONOR, I OBJECT. IT CALLS FOR
14 SPECULATION ON THE PART OF MR. GREEN.

15 BY THE COURT: IF HE HAS PERSONAL KNOWLEDGE, I'LL ALLOW HIM
16 TO ANSWER IT.

17 A WHAT WAS THE QUESTION?

18 Q THERE WAS A CATASTROPHIC FLOOD ON JULY 29TH, TO BE SPECIFIC,
19 2004. WAS THAT FLOOD -- DID THAT FLOOD CAUSE SIGNIFICANT DAMAGE,
20 EROSION OR CHANGE TO THE COURSE OF THE CREEK TO YOUR KNOWLEDGE?

21 A NOT TO MY KNOWLEDGE.

22 Q NOT TO YOUR KNOWLEDGE. THE FLOOD DIDN'T CAUSE ANY DAMAGE AT
23 ALL. OKAY.

24 A WELL, THERE'S DAMAGE -- I MEAN, IT FLOODS ALL OF THE TIME.
25 IT'S IN A FLOOD ZONE.

TONY RAY GREEN--CROSS BY MR. HECKMAN

1 Q BUT THAT FLOODING DOESN'T CAUSE NEARLY AS MUCH DAMAGE AS THE
2 BUILDING OF -- HAND BUILT RETAINING WALL, HUH?

3 A IF IT DON'T -- IT WILL OVERFLOW THE BANKS WHEN YOU BUILD THE
4 WALL, IT'S GOT TO GO SOMEWHERE.

5 Q TO YOUR KNOWLEDGE, WHO DID THE ACTUAL DIGGING IN 2005 OR
6 2004? WOULD THAT BE ROY OR WOULD THAT BE SOMEONE THAT WAS HIRED?

7 A THAT WAS A FRIEND OF HIS, I THINK.

8 Q WHAT WAS HIS NAME?

9 A HIS NAME WAS RAY SOMETHING.

10 Q IS HE PRESENT TODAY?

11 A NO. HE'S NOT PRESENT THIS MORNING.

12 Q DID YOUR SISTER FRANCES EVER ORDER ANYBODY TO DIG IN THE
13 CREEK TO YOUR KNOWLEDGE?

14 A NO, SIR.

15 Q DOES SHE HAVE ACCESS TO ANY HEAVY MACHINERY OR DIGGING
16 EQUIPMENT?

17 A NO, SIR. NO.

18 Q OKAY. LET ME GO BACK TO THIS SURVEY THAT WAS INTRODUCED A
19 LITTLE WHILE AGO, YOU TESTIFIED EARLIER---

20 BY THE COURT: IF YOU COULD REFER TO THE EXHIBIT NUMBER,
21 PLEASE, SIR.

22 Q PLAINTIFFS' EXHIBIT 8 WHICH IS THE SURVEY OF THE HUMPHRIES'
23 ONE ACRE PARCEL SHOWING -- WHAT DOES THAT BOUNDARY LINE SAY ON
24 THIS SURVEY THERE? DOES IT SAY BEAVER DAM CREEK IS THE LINE?

25 A THAT'S WHAT IT SAYS.

TONY RAY GREEN--CROSS BY MR. HECKMAN

1 Q SO, THE METES AND BOUNDS ON THIS SURVEY WOULD SHOW THE
2 LOCATION OF THE CENTER LINE OF THE CREEK BACK WHEN THE SURVEY WAS
3 DONE IN 1991. IS THAT YOUR UNDERSTANDING?

4 A THE CENTER LINE?

5 Q YEAH.

6 A WHERE THE CREEK WAS?

7 Q YEAH.

8 A YES.

9 Q YOU SAY THERE WAS NO BEND IN THE CREEK. THAT SURVEY SURE
10 LOOKS LIKE THAT'S GOT A HECK OF A BEND IN IT TO ME WAY BACK IN
11 1991.

12 MR. THOMPSON: YOUR HONOR, I OBJECT. IT'S A STATEMENT AS
13 OPPOSED TO A QUESTION.

14 BY THE COURT: OVERRULED.

15 Q DOES THIS SURVEY SHOW A BEND IN BEAVER DAM CREEK?

16 A IT'S A BEND IN THE PLAT, YES.

17 Q YOUR TESTIMONY EARLIER WAS THAT DUE TO MY CLIENT'S ACTIVITY
18 THE CREEK HAD STRAIGHTENED OUT, AND IN THE OTHER TESTIMONY YOU
19 CLAIM THEY CAUSED THE SANDBAR TO COME OUT IN THE CREEK. I'M
20 TRYING TO UNDERSTAND: DID IT STRAIGHTEN THE CREEK, OR DID IT BOW
21 THE CREEK OR WHAT DID IT DO?

22 A WELL, AT THIS TIME HE HAD PUSHED THE CREEK OVER---

23 BY THE COURT: SIR, IF I COULD ASK YOU TO BE SPECIFIC WHAT
24 "THIS TIME" MEANS.

25 A WHAT ARE YOU SAYING NOW?

TONY RAY GREEN--REDIRECT BY MR. THOMPSON

1 Q I JUST AM POINTING OUT THE INCONSISTENCIES OF YOUR EARLIER
2 TESTIMONY.

3 A THIS IS THE ORIGINAL PLAT OF THE PROPERTY, THE ONE ACRE.

4 Q IT'S YOUR TESTIMONY THAT YOUR USE OR YOUR FAMILY'S USE OF
5 HEAVY MACHINERY, A TRACK HOE SUCH AS ROY -- YOU'VE ADMITTED THAT
6 ROY USES FROM TIME TO TIME TO CLEAN OUT THE CREEK -- HAS NOT
7 CONTRIBUTED TO ANY EROSION OR DAMAGE OR CHANGE---

8 A I NEVER SAID HE USED A TRACK HOE TO CLEAN THE CREEK OUT. I
9 SAID HE USED THE TRACK HOE TO CLEAN THE BANKS OFF OR SOMETHING.
10 HE USED THE TRACK HOE TO TAKE THE SEAWALL OUT.

11 MR. HECKMAN: NOTHING FURTHER.

12 BY THE COURT: ANY OTHER QUESTIONS?

13 MR. THOMPSON: ONE OR TWO, JUDGE.

14 **REDIRECT EXAMINATION BY MR. THOMPSON:**

15 Q MR. GREEN, LET ME SHOW YOU DEFENDANTS' EXHIBIT 16 THAT WAS
16 INTRODUCED A MINUTE AGO. THIS WAS FROM MAY OF '93; IS THAT
17 CORRECT?

18 A YES, SIR.

19 Q WE HAD JUST GONE THROUGH PLAINTIFFS' EXHIBIT 9, THE DEED TO
20 THE PROPERTY FROM KATIE EMERY TO DORA LEE HALL, CORRECT?

21 A CORRECT.

22 Q WAS THERE ANY RECORD OF THE HALL PROPERTY AND ALL OF THAT IN
23 THE PLAINTIFFS' (SIC) EXHIBIT 16 PLAT?

24 A YES.

25 Q WHERE IS THAT, SIR?

FRANCES K. PITTMAN--DIRECT BY MR. THOMPSON

1 BY THE COURT: PLAINTIFFS' EXHIBIT 16?

2 MR. THOMPSON: DEFENDANTS' EXHIBIT 16.

3 A WHAT'S YOUR QUESTION NOW?

4 Q TONY, MY QUESTION IS: DOES THIS PLAT LIST OR REFERENCE THE
5 HALL TRACT OR THE HALL PROPERTY ANYWHERE?

6 A I DON'T SEE IT. NO.

7 Q WHERE IT LISTS AS BEAVER DAM CREEK BEING THE LINE, DOES IT
8 ALSO GIVE MEASUREMENTS AND DEGREES ALONG THAT LINE AS WELL?

9 A YES, IT DOES.

10 Q OKAY.

11 MR. THOMPSON: NO FURTHER QUESTIONS, YOUR HONOR.

12 BY THE COURT: ANYTHING ELSE?

13 MR. HECKMAN: NO.

14 BY THE COURT: THANK YOU, SIR. YOU CAN STEP DOWN.

15 (WITNESS EXCUSED)

16 MR. THOMPSON: YOUR HONOR, THE PLAINTIFFS WOULD CALL FRANCES
17 PITTMAN TO THE STAND.

18 **FRANCES K. PITTMAN**, BEING FIRST DULY SWORN, TESTIFIED AS
19 FOLLOWS:

20 BY THE COURT: THANK YOU. IF YOU'LL COME AROUND AND HAVE A
21 SEAT, PLEASE. (COMPLIES) IF YOU'LL STATE YOUR FULL NAME.

22 THE WITNESS: FRANCES K. PITTMAN.

23 **DIRECT EXAMINATION BY MR. THOMPSON:**

24 Q GOOD MORNING, MS. PITTMAN.

25 A GOOD MORNING.

FRANCES K. PITTMAN--CROSS BY MR. HECKMAN

1 Q WOULD YOU LIKE TO HAVE THE CREEK RESTORED OR YOUR PROPERTY
2 RESTORED TO THE WAY IT WAS BEFORE THIS WALL WAS BUILT?

3 A YES, SIR.

4 MR. THOMPSON: YOUR HONOR, I DON'T HAVE ANY OTHER QUESTIONS
5 OF THIS WITNESS.

6 BY THE COURT: YOUR WITNESS.

7 **CROSS-EXAMINATION BY MR. HECKMAN:**

8 Q GOOD MORNING, MS. PITTMAN.

9 A GOOD MORNING.

10 Q WHEN DID YOU ACQUIRE YOUR PROPERTY? DO YOU RECALL?

11 A '95.

12 Q OKAY.

13 MR. HECKMAN: IN FACT, I HAVE THE DEED INTO MS. PITTMAN.
14 KYLE, IF YOU DON'T HAVE ANY OBJECTION, THAT'S THE DEED INTO
15 FRANCES FROM HER BROTHER, THIS IS INTO HER AND ROY, AND THAT'S
16 THE ONE FROM ROY TO HER.

17 MR. THOMPSON: OKAY.

18 MR. HECKMAN: YOUR HONOR, THESE ARE THE DEEDS INTO MS.
19 PITTMAN. I'M GOING TO ASK HER TO IDENTIFY THESE DEEDS.

20 Q IS THIS THE ORIGINAL DEED INTO YOU FROM KATIE EMERY INTO YOU
21 AND YOUR BROTHER ROY?

22 A YES, SIR.

23 Q AND THEN IS THIS OTHER DEED A DEED FROM YOUR BROTHER ROY
24 INTO YOU INDIVIDUALLY?

25 A YES, SIR.

1 Q HAVE YOU, YOURSELF, EVER DONE ANYTHING TO THE CREEK AS FAR
2 AS DREDGING IT OR DIGGING IT OUT?

3 A NO, SIR.

4 Q HAVE YOU EVER EMPLOYED ANYBODY OR ASKED ANYBODY TO ACT ON
5 YOUR BEHALF IN TERMS OF DREDGING OUT THE CREEK OR ANYTHING LIKE
6 THAT?

7 A NO, SIR.

8 Q AL RIGHT. THERE'S BEEN AN ALLEGATION THAT YOU AS A
9 PLAINTIFF IN THIS CASE WAS RESPONSIBLE FOR DIGGING OUT THE
10 DEFENDANTS' PROPERTY ON SEPTEMBER 15, 2010. WHERE WERE YOU ON
11 THE DATE THIS HAPPENED?

12 A I WAS AT THE MEDIATION.

13 Q ALL RIGHT. DID YOU ASK, OR TELL OR ORDER ANYBODY ELSE TO DO
14 ANYTHING TO THE DEFENDANTS' PROPERTY ON THAT DATE?

15 A NO, SIR.

16 Q DID YOU ASK HIM TO TELL -- TO DO ANYTHING TO THE SEAWALL ON
17 THAT DAY?

18 A NO, SIR.

19 Q THIS WALNUT TREE THAT YOU LOST, HOW OLD WAS THAT, DO YOU
20 KNOW?

21 A WELL, IT WAS THERE WHEN MY GRANDMOTHER LIVED THERE.

22 Q AS A RESULT OF THE CREEK KIND OF RICOCHETING OFF YOUR
23 BROTHER'S PROPERTY AND COMING BACK INTO YOUR PROPERTY, HAS IT
24 CAUSED EROSION ON YOUR PROPERTY?

25 A YES, SIR.

1 Q CAN YOU TELL THE JUDGE WHERE YOU LIVE?

2 A I LIVE AT 612 BEAVER DAM ROAD.

3 Q MS. PITTMAN, WHERE IS THAT IN RELATION TO THE HUMPHRIES'
4 PROPERTY?

5 A IT'S TWO DOORS UP.

6 Q IS YOUR PROPERTY RIGHT NEXT TO THE HUMPHRIES' PROPERTY?

7 A I HAVE A PIECE OF PROPERTY THERE.

8 Q OKAY. WHAT'S THE ADDRESS OF THAT PROPERTY?

9 A IT'S 602 BEAVER DAM ROAD.

10 Q OKAY. YOUR PROPERTY AT 602 BEAVER DAM ROAD IS THAT
11 DOWNSTREAM FROM THE HUMPHRIES' PROPERTY?

12 A YES, SIR.

13 Q HAVE YOU OBSERVED OVER THE LAST SEVERAL YEARS THE WORK THE
14 HUMPHRIES HAVE DONE WITH REGARD TO THIS WALL AND THE CHANGES AND
15 THE EFFECT THAT IT'S HAD ON THE CREEK?

16 A YES, SIR.

17 Q DID THAT HAVE AN IMPACT ON YOUR PROPERTY AT 602 BEAVER DAM?

18 A YES, SIR.

19 Q TELL THE COURT WHAT'S HAPPENED THERE.

20 A WELL, THE SEAWALL, AS MY BROTHER TONY CALLS IT--

21 Q YES, MA'AM.

22 A --WHEN THAT WAS PUT THERE, IT ERODED OVER INTO HIS PROPERTY
23 AND THEN IT RICOCHETS -- THE WATER COMES OVER TO MY PROPERTY.

24 Q OKAY.

25 A AND IT TOOK A WALNUT TREE DOWN AT A POINT IN TIME.

1 Q THAT 1.7 ACRE TRACT THAT IT REFERS TO IS YOUR PROPERTY?

2 A YES, SIR.

3 Q THE PROPERTY IN QUESTION?

4 A YES, SIR.

5 Q COULD YOU PLEASE READ THE HIGHLIGHTED LEGAL DESCRIPTION ON
6 THAT DEED?

7 A I'M NOT TOO GOOD AT READING.

8 MR. HECKMAN: CAN I READ THE DESCRIPTION FOR HER? DO YOU
9 HAVE AN OBJECTION---

10 MR. THOMPSON: NO OBJECTION, JUDGE, IF HE'S READING FROM THE
11 DOCUMENT.

12 THE WITNESS: JUDGE, COULD YOU READ IT?

13 BY THE COURT: I'M NOT SUPPOSED TO GET TOO INVOLVED. I'M
14 KIND OF LIKE THE REFEREE TODAY. I JUST MAKE SURE THE LAWYERS DO
15 WHAT THEY'RE SUPPOSED TO DO. YOU'VE GOT A FINE LAWYER AND HE
16 WILL MAKE SURE IT'S BEING READ CORRECTLY.

17 A OKAY. WOULD YOU READ IT? BECAUSE I'M NOT REAL GOOD ON
18 LETTERS.

19 Q ALL RIGHT. THE LEGAL DESCRIPTION -- THIS IS THE DEED
20 RECORDED IN DEED BOOK 1600 AT PAGE 996 IN THE REGISTER OF DEEDS
21 OFFICE OF GREENVILLE COUNTY FROM KATIE EMERY TO FRANCES K.
22 PITTMAN AND ROY G. GREEN, THE LEGAL DESCRIPTION READS, "ALL THAT
23 CERTAIN PIECE, PARCEL OR TRACT OF LAND LYING AND BEING IN THE
24 STATE OF SOUTH CAROLINA, COUNTY OF GREENVILLE, CONTAINING 1.7
25 ACRES MORE OR LESS, AND BEING A PORTION OF THE 38 ACRE TRACT

FRANCES K. PITTMAN--CROSS BY MR. HECKMAN

1 CONVEYED TO KATIE EMERY BY DEED OF W. D. BARNETT DATED DECEMBER
2 7, 1943, RECORDED MARCH 27, 1945 IN DEED BOOK 273 AT PAGE 386."

3 MR. HECKMAN: I'M GOING TO GO AHEAD AND ENTER THIS INTO --
4 DEFENDANTS' 16, I BELIEVE.

5 BY THE COURT: WON'T THAT BE DEFENDANTS' 17?

6 (DEED ENTERED INTO EVIDENCE AS DEFENDANTS' EXHIBIT 17)

7 (DEED DATED DECEMBER 30, 1994 ENTERED INTO EVIDENCE AS
8 DEFENDANTS' EXHIBIT NO. 18)

9 (DEED DATED SEPTEMBER 9, 1996 ENTERED INTO EVIDENCE AS
10 DEFENDANTS' EXHIBIT NO. 19)

11 Q WHAT PROPERTY DOES THAT LEGAL DESCRIPTION DESCRIBE? WHEN I
12 READ THAT DESCRIPTION IT SAYS 1.7 ACRES PART OF 38 ACRES WITH NO
13 REFERENCE POINT. CAN YOU EXPLAIN HOW THAT LEGAL DESCRIPTION
14 DESCRIBES ANY PIECE OF REAL ESTATE ON EARTH OTHER THAN SOMEONE IN
15 SOUTH CAROLINA?

16 A I THINK IT NAMED -- THAT WAS THE LAST PIECE OF PROPERTY THAT
17 MY GRANDMOTHER OWNED.

18 Q IN A BOUNDARY DISPUTE CASE AND A DAMAGE TO PROPERTY CASE,
19 SHOULDN'T WE BE ABLE TO IDENTIFY WHAT PROPERTY IS BEING DAMAGED?
20 I CANNOT IDENTIFY YOUR PROPERTY FROM YOUR DEED. CAN YOU IDENTIFY
21 IT?

22 A CAN I IDENTIFY IT?

23 Q FROM THAT DEED.

24 A FROM THAT DEED?

25 Q YES.

FRANCES K. PITTMAN--CROSS BY MR. HECKMAN

1 A NO. IT WAS JUST BASICALLY FIXED AND IT WAS THE LAST TRACT
2 OF LAND THAT MY GRANDMOTHER OWNED, THE LAST PIECE IN HER TRACT.

3 Q HOW LONG HAVE YOU LIVED ON BEAVER DAM CREEK? HOW LONG HAVE
4 YOU---

5 A ALL MY LIFE.

6 Q ALL YOUR LIFE. DO YOU HAVE ANY ACCESS TO HEAVY MACHINERY OR
7 DIGGING EQUIPMENT?

8 A I THINK YOU ASKED ME THAT BEFORE.

9 Q I ASKED TONY BEFORE.

10 A I THINK YOU ASKED ME---

11 Q I DID NOT ASK YOU SPECIFICALLY.

12 A I THINK YOU'VE ALREADY ASKED ME THAT.

13 Q HAVE YOU EVER DUG INTO BEAVER DAM CREEK OR ORDERED, HIRED,
14 RENTED OUT ANYBODY TO DIG OUT THE BANKS ON YOUR BEHALF?

15 A WHOSE PROPERTY?

16 Q ANYBODY'S PROPERTY, ANYWHERE ON BEAVER DAM CREEK?

17 A NO, SIR.

18 Q YOU'RE UNDER OATH.

19 A I WANT TO KNOW WHAT PART YOU ARE TALKING ABOUT.

20 Q ANY PART ALONG THE WHOLE LENGTH OF THAT CREEK ANYWHERE,
21 YOU'VE NEVER ORDERED ANYBODY TO DIG IN THAT CREEK?

22 A NO, SIR.

23 Q HAVE YOU EVER SEEN YOUR BROTHER ROY USING HEAVY EQUIPMENT TO
24 DIG IN THE CREEK, IN THE CREEK BED, ON THE BANKS---

25 A NOT DIG IN THE CREEK, NO.

1 Q DID HE EVER DIG OUT THE OPPOSITE SIDE OF THE CREEK
2 SPECIFICALLY IN 2004?

3 A NOT TO MY KNOWLEDGE.

4 Q YOU'RE UNDER OATH. YOU NEVER SAW YOUR BROTHER OR SOMEONE
5 UNDER YOUR BROTHER'S DIRECTION DIG OUT THE HUMPHRIES' SIDE OF THE
6 BANK USING A BACKHOE?

7 A NO, SIR.

8 Q YOU'VE STATED---

9 A YOU'RE TALKING ABOUT 2004?

10 Q 2004, EARLIER THAN 2004, SINCE 2004, ANY TIME.

11 A NO. I'M JUST SAYING YOU PUT THE DATE ON THERE.

12 Q OKAY. YOU TESTIFIED EARLIER YOU WERE AT THE MEDIATION ON
13 SEPTEMBER 15, 2010, CORRECT?

14 A YES, SIR.

15 Q WERE YOU AWARE THAT ROY WAS PLANNING TO DIG OUT THE
16 HUMPHRIES' SIDE OF THE BANK ON THAT DAY---

17 A NO---

18 MR. THOMPSON: YOUR HONOR, THAT CALLS--

19 BY THE COURT: HOLD ON.

20 MR. THOMPSON: --FOR SPECULATION ABOUT WHAT SOMEBODY MIGHT
21 HAVE BEEN PLANNING. THERE'S BEEN NO TESTIMONY THAT PLAN WAS, IN
22 FACT, IN EXISTENCE.

23 BY THE COURT: IF YOU'LL REPHRASE THE QUESTION, PLEASE, SIR.

24 Q DID YOUR BROTHER TELL YOU HE WAS PLANNING TO DIG OUT THE
25 HUMPHRIES' SIDE OF THE BANK ON THE MORNING OF THE MEDIATION?

1 A NO, SIR.

2 Q DID YOU TELL YOUR BROTHER THAT THERE WAS A MEDIATION
3 SCHEDULED FOR SEPTEMBER 15TH AT 9:30 A.M. IN GREENVILLE COUNTY?

4 A I THINK IT WAS KNOWLEDGE. HE KNEW IT.

5 Q DID YOU OBSERVE THE DAMAGE DONE TO THE HUMPHRIES' SIDE OF
6 THE BANK AFTER SEPTEMBER 15TH, THE DAY OF THE MEDIATION?

7 A YES, SIR, I DID.

8 Q WHAT -- CAN YOU DESCRIBE WHAT THEIR BANK LOOKED LIKE AFTER
9 YOUR BROTHER DUG OUT THEIR SIDE OF THE BANK?

10 A THEIR BANK?

11 Q YES.

12 A THE PROPERTY LINE HAS NEVER BEEN ESTABLISHED.

13 Q I BELIEVE THERE'S TESTIMONY THAT BEAVER DAM CREEK IS THE
14 PROPERTY LINE. THE CREEK---

15 A IT'S STILL NOT -- IN MY OPINION, IT'S NOT BEEN ESTABLISHED.
16 UNTIL SOMEBODY ESTABLISHES THAT, I'LL TELL YOU IF THEY WERE ON
17 MR. HUMPHRIES' PROPERTY.

18 Q THERE IS A COMMON DEED FROM KATIE EMERY TO TONY GREEN'S
19 PROPERTY AND TO THE HUMPHRIES' PROPERTY, AND BOTH DEEDS SAID
20 BEAVER DAM CREEK IS THE LINE. DOES THAT NOT MAKE IT THE LINE?

21 A YOU KNOW, TO MY KNOWLEDGE -- I'VE SEEN THE PLAT THAT MY
22 MOTHER HAD THAT KATIE EMERY GAVE HER. TO MY KNOWLEDGE, IT HAD A
23 BROKEN LINE ON IT AND ZIGZAGS WITH THE CREEK ALL OF THE WAY UP,
24 AND THAT PLAT AND THAT DEED ALSO SAYS MORE OR LESS.

25 Q EXACTLY BECAUSE BEAVER DAM CREEK IS THE BOUNDARY LINE AND

FRANCES K. PITTMAN--CROSS BY MR. HECKMAN

1 THE CREEK CAN MOVE DUE TO FLOOD OR OTHER NATURAL ACTIVITY,
2 CORRECT?

3 A MY UNDERSTANDING VICKY AND SAMMY HUMPHRIES HAS ONE ACRE
4 THERE, AND IT IS A SOLID LINE--

5 Q HAVE YOU EVER SEEN--

6 A --WITH METES AND BOUNDS ON IT.

7 Q --NATURE MAKE ANY CHANGES TO THE NATURE OF THAT CREEK BED?
8 HAVE YOU EVER SEEN A FLOOD COME DOWN AND WASH OUT ONE SIDE OF THE
9 BANK OR THE OTHER?

10 A YEARS AGO. WE SEEN FLOODING ALL OF THE TIME GROWING UP AS
11 KIDS.

12 Q WHAT IS YOUR OCCUPATION?

13 A I'M DISABLED.

14 Q SO, YOU'RE AT YOUR HOME MOST OF THE TIME, CORRECT?

15 A YES.

16 Q SO, YOUR TESTIMONY IS THAT YOU HAD NO KNOWLEDGE OF ROY
17 GREEN'S PLAN TO DIG OUT THE HUMPHRIES' SIDE OF THE BANK WHILE WE
18 WERE AT MEDIATION?

19 A THAT'S TRUE.

20 MR. HECKMAN: NOTHING FURTHER.

21 BY THE COURT: ANY OTHER QUESTIONS?

22 MR. THOMPSON: NONE FOR THIS WITNESS, YOUR HONOR.

23 BY THE COURT: THANK YOU, MS. PITTMAN.

24 (WITNESS EXCUSED)

25 BY THE COURT: CALL YOUR NEXT WITNESS.

GARY ALAN JOHNSON--DIRECT BY MR. THOMPSON

1 MR. THOMPSON: YOUR HONOR, THE PLAINTIFF WOULD CALL ALAN
2 JOHNSON.

3 GARY ALAN JOHNSON, BEING FIRST DULY SWORN, TESTIFIED AS:
4 FOLLOWS:

5 BY THE COURT: COME AROUND AND HAVE A SEAT. (COMPLIES) IF
6 YOU'LL STATE YOUR FULL NAME.

7 THE WITNESS: MY FULL NAME IS GARY ALAN JOHNSON.

8 BY THE COURT: WILL YOU SPELL ALAN.

9 THE WITNESS: A-L-A-N.

10 DIRECT EXAMINATION BY MR. THOMPSON:

11 Q MR. JOHNSON, WHAT DO YOU DO FOR A LIVING?

12 A I'M A PROFESSIONAL CIVIL ENGINEER.

13 Q ALL RIGHT. WHAT'S YOUR EDUCATIONAL BACKGROUND?

14 A WENT TO COLLEGE AT THE GEORGIA INSTITUTE OF TECHNOLOGY,
15 GRADUATED WITH A BACHELORS OF CIVIL ENGINEERING IN JANUARY 1994.

16 Q ARE YOU CURRENTLY LICENSED AS AN ENGINEER?

17 A I AM.

18 Q IN SOUTH CAROLINA OR OTHER STATES AS WELL?

19 A YES.

20 Q WHAT OTHER STATES ARE YOU LICENSED IN?

21 A GEORGIA AND NORTH CAROLINA, ACTIVE; AND OTHERS, INACTIVE.

22 Q WHAT IS -- YOU'RE TALKING ABOUT CIVIL ENGINEERING. WHAT IS
23 THE PRIMARY FOCUS OF YOUR AREA OF WORK?

24 A PRIMARILY LAND DEVELOPMENT, SITE DESIGN AND LAND
25 DEVELOPMENT.

1 Q AS PART OF YOUR -- DOES THIS INCLUDE ISSUES SUCH AS
2 GROUNDWATER, DEALING WITH GROUNDWATER, RUN OFF TYPE ISSUES?

3 A DEFINITELY RUN OFF, GROUNDWATER NOT AS MUCH BUT I HAVE DONE
4 GROUNDWATER PROJECTS FOR LANDFILLS.

5 Q HAVE YOU EVER BEEN RETAINED BEFORE TO PROVIDE AN OPINION AS
6 AN EXPERT WITNESS?

7 A YES, I HAVE.

8 Q YOU HAVE TESTIFIED BEFORE?

9 A YES, I HAVE.

10 MR. THOMPSON: YOUR HONOR, I WOULD MOVE AT THIS TIME THAT
11 ALAN JOHNSON BE ADMITTED AS AN EXPERT WITNESS IN THE AREA OF
12 CIVIL ENGINEERING.

13 MR. HECKMAN: NO OBJECTION.

14 BY THE COURT: ALL RIGHT. I FIND HIM QUALIFIED.

15 Q MR. JOHNSON, WERE YOU HIRED TO TAKE A LOOK AT BEAVER DAM
16 CREEK UP IN MARIETTA?

17 A YES, SIR.

18 Q ALL RIGHT. TELL ME WHAT YOU OBSERVED ABOUT THE CREEK AS
19 WELL AS YOUR SITE VISIT FROM THE PHOTOGRAPHS.

20 A WELL, IT APPEARS TO BE A NATURAL WATERSHED TYPE CREEK, KIND
21 OF A MOUNTAIN TYPE CREEK, FREE FLOWING WATER. IT LOOKS LIKE THE
22 WATER IS A PERENNIAL STREAM ON THE AVERAGE OF MAYBE 10 TO 12 FEET
23 WIDE IN THE BOTTOM. WHEN I WAS THERE TWO WEEKS AGO AT THE SITE,
24 I OBSERVED MAYBE THREE INCHES OF WATER, AVERAGE, SOMETHING LIKE
25 THAT, IN THE NORMAL FLOW, CLEAR WATER.

1 Q DO YOU KNOW APPROXIMATELY HOW MANY ACRES THIS CREEK DRAINS?

2 A YES, APPROXIMATELY 890, 900; ROUGHLY, 900 ACRES.

3 Q NOW, WHEN YOU OBSERVED THE CREEK, DID YOU OBSERVE HOW IT
4 FLOWS BETWEEN THE PROPERTIES OF TONY GREEN AND THE HUMPHRIES?

5 A YES, I DID.

6 Q OKAY.. WHAT WAS THE PATH OF THE STREAM? WHAT DID YOU
7 OBSERVE ABOUT THE PATH OF THE STREAM? WAS IT STRAIGHT? DID IT
8 HAVE ANY CROOKS TO IT?

9 A NO. IT HAD AN "S" SHAPED ALIGNMENT. IT WAS NOT LINEAR.

10 Q THIS CURVE, DID IT GO, THE "S" CURVE, DID IT GO MORE TO THE
11 GREEN SIDE OF THE CREEK OR MORE TO THE HUMPHRIES SIDE OF THE
12 CREEK?

13 A DEFINITELY TO THE GREEN SIDE OF THE CREEK.

14 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS PLAINTIFFS' EXHIBIT 12
15 FOR IDENTIFICATION PURPOSES. DO YOU RECOGNIZE THIS DOCUMENT,
16 SIR?

17 A I DO.

18 Q IS THIS SOMETHING THAT YOU HAVE WORKED UP?

19 A YES.

20 MR. THOMPSON: YOUR HONOR, I MOVE THIS BE ADMITTED AS
21 PLAINTIFFS' EXHIBIT 12 INTO EVIDENCE.

22 MR. HECKMAN: NO OBJECTION.

23 (DRAWING OF STREAM ENTERED INTO EVIDENCE AS PLAINTIFFS'
24 EXHIBIT NO. 12)

25 Q MR. JOHNSON, WHAT DOES PLAINTIFFS' EXHIBIT 12 SIGNIFY? WHAT

GARY ALAN JOHNSON--DIRECT BY MR. THOMPSON

1 IS IT?

2 A IT IS A 8½ BY 11 DRAWING.

3 Q DOES IT DEPICT THE LOCATION BETWEEN THE HUMPHRIES' PROPERTY
4 AND THE GREEN PROPERTY?

5 A YES, IT DOES.

6 Q IS THAT -- IS THIS WHAT'S ON THIS BOARD, IS THAT THE SAME
7 PIECE OF PAPER?

8 A YES, IT IS.

9 Q COULD YOU COME DOWN HERE AND SHOW THE COURT, BASED ON YOUR
10 STUDY, A COUPLE OF THINGS -- FIRST OF ALL, WERE YOU ABLE TO
11 IDENTIFY THE APPROXIMATE LOCATION OF THE ORIGINAL PROPERTY LINE
12 THAT WAS ON THE -- I BELIEVE IT'S PLAINTIFFS' EXHIBIT NO. 7 OR
13 PLAINTIFFS' EXHIBIT 8 WHICH WAS INTRODUCED INTO -- HAVE YOU HAD A
14 CHANCE TO VIEW PLAINTIFFS' EXHIBIT 8 BEFORE TODAY?

15 A YES, I HAVE.

16 Q WERE YOU ABLE TO PUT AN APPROXIMATE LOCATION OF THAT
17 PROPERTY LINE ON YOUR GRAPH RIGHT THERE?

18 A YES, I DID.

19 Q WILL YOU STEP DOWN SO THAT YOU CAN POINT OUT TO THE COURT
20 WHERE THAT LINE IS?

21 A THE NORTHWEST CORNER OF THE HUMPHRIES' PROPERTY IS AT THIS
22 PIN, THE INTERMEDIATE PIN ON THE NORTH BOUNDARY AND THEN THE
23 NORTHEAST PIN IS THE CORNER OF THE PROPERTY.

24 Q NOW, WHAT IS YOUR UNDERSTANDING -- WAS IT YOUR UNDERSTANDING
25 THAT WAS THE CENTER OF THE CREEK AT THE TIME THAT PLAT WAS DONE?

1 A IT SAYS CREEK IS PROPERTY LINE, AND THE CREEK RUNS -- THE
2 LONG DASH AND THREE DOT TYPE LINE SYMBOL ON EXHIBIT 8 DOES SHOW
3 IT KIND OF GOING ON BOTH SIDES OF THESE LINES. YES.

4 Q NOW, WHAT IS THE MORE RECENT OR CURRENT LOCATION OF THE
5 CREEK BANK? IS THAT DEPICTED ON YOUR GRAPH AS WELL?

6 A I BELIEVE IT IS.

7 Q COULD YOU EXPLAIN TO THE COURT WHERE THE CREEK IS NOW AS
8 OPPOSED TO WHERE IT WAS ORIGINALLY?

9 A WELL, I DON'T HAVE -- I FOUND NOTHING FROM THE SURVEY OR ANY
10 OF THE PLATS THAT HAD ACTUALLY SURVEYED THE HUMPHRIES' SIDE OF
11 THE EDGE OF THE CREEK, JUST THAT IT WAS---

12 MR. HECKMAN: YOUR HONOR, I OBJECT. THIS WITNESS HAS NO
13 PERSONAL KNOWLEDGE OF THE LOCATION OF THE CREEK FROM THAT 1991
14 SURVEY IF HE WAS NEVER PRESENT DURING THAT DAY. IF HE WANTS TO
15 TESTIFY AS TO WHAT IS ON THE SURVEY THAT'S BEEN ADMITTED INTO
16 EVIDENCE, I'M OKAY WITH THAT BUT NO SPECULATION AS TO THE
17 CENTERLINE OF THE CREEK IN 1991. PLEASE KEEP HIS COMMENTS
18 SPECIFIC TO THAT SURVEY.

19 BY THE COURT: WHAT'S THE BASIS OF YOUR OPINION ABOUT WHERE
20 YOU COME UP WITH THE MARKINGS ON PLAINTIFFS' 12?

21 THE WITNESS: THIS LOWER LINE IS THE PROPERTY BOUNDARY FROM
22 EXHIBIT 8, PLAINTIFFS' EXHIBIT 8. THE LINE ON THE TOP, THIS LINE
23 ON THE TOP, IS THE LINE SURVEYED ON APRIL 20, 2010. IT SAYS
24 "EDGE OF STREAM BANK" AND IT SHOWS THE RETAINING WALL FROM THE
25 HUMPHRIES' PROPERTY. ALL OF THAT IS ON THE OTHER SIDE OF THE

1 PROPERTY LINE.

2 BY THE COURT: SO, WHAT YOU'RE SAYING IS YOU DON'T KNOW --
3 LET ME ASK IT THIS WAY. DO YOU FEEL QUALIFIED TO GIVE AN OPINION
4 AS TO WHERE THE ORIGINAL BOUNDARY LINE WAS BETWEEN WHAT IS NOW
5 KNOWN AS THE GREEN PROPERTY AND THE HUMPHRIES' PROPERTY?

6 THE WITNESS: I'M SORRY, ONE MORE TIME JUST TO MAKE SURE.

7 BY THE COURT: I PROBABLY DIDN'T ASK THAT REAL WELL. DO
8 YOU FEEL QUALIFIED TO GIVE AN OPINION AS TO WHERE THE ORIGINAL
9 PROPERTY LINE WAS BETWEEN THESE TWO TRACTS OF LAND, WHAT ARE NOW
10 KNOWN AS THE GREEN PROPERTY AND THE HUMPHRIES PROPERTY?

11 THE WITNESS: THE ORIGINAL BEING?

12 BY THE COURT: WHATEVER YOUR LAWYER JUST ASKED YOU A FEW
13 MINUTES AGO.

14 THE WITNESS: WELL, I'M LOOKING AT -- THE ANSWER TO THAT IS
15 YES, I'M QUALIFIED.

16 BY THE COURT: I KNOW YOU'RE QUALIFIED BUT ARE YOU QUALIFIED
17 TO GIVE AN OPINION ON THAT QUESTION?

18 THE WITNESS: I GUESS THAT'S MAYBE WHY WE'RE HERE. THE PLAT
19 SAYS THERE'S PINS WITH METES AND BOUNDS, DISTANCES AND BEARINGS,
20 AND IT ALSO SHOWS THE CREEK THERE, AND IT ALSO SHOWS A BRANCH ON
21 THE WESTERN SIDE. BUT IT'S CLEAR TO ME THAT WHERE THE BOUNDARY
22 LINE -- WHAT I CALLED THE BOUNDARY LINE OR NOT -- IS ON THE DEED
23 -- THAT LINE IS CLEARLY NOT IN THE CREEK NOW. THE CREEK IS WAY
24 OFF THAT LINE.

25 BY THE COURT: SUBJECT TO THE OBJECTION, YOU CAN CONTINUE

1 WITH YOUR EXAMINATION.

2 MR. THOMPSON: THANK YOU.

3 Q WHAT IS THIS YELLOW SHADED AREA, ALAN, THAT IS ON THIS GRAPH
4 THAT YOU HAVE -- THIS THING THAT YOU HAVE PREPARED?

5 A WELL, THAT IS THE AREA BETWEEN THOSE TWO LINES.

6 Q "BETWEEN THOSE TWO LINES" YOU'RE TALKING ABOUT THE LOWER
7 LINE BEING THE ORIGINAL PROPERTY LINE FROM '91 AND THE UPPER LINE
8 BEING THE LINE THAT WAS ON THE SURVEY FROM APRIL 2010?

9 A YES.

10 Q NOW, DID YOU OBSERVE THE CONDITION OF THE PROPERTY ON THE
11 GREEN SIDE OF THE BANK?

12 A YES.

13 Q ALL RIGHT. DID YOU OBSERVE ANY EFFECTS TO THAT PROPERTY
14 FROM WHAT YOU'VE HEARD DESCRIBED AS THE SEAWALL?

15 A YES.

16 Q WHAT DID YOU OBSERVE?

17 A WELL, I GUESS THE LARGE "S" PART OF THE STREAM BANK ON THE
18 GREEN SIDE, ON THE RIGHT-HAND SIDE OF THIS FIGURE, YES, THE BANKS
19 WERE STEEP. THE BANKS HAD ERODED OUT. IT WAS CLEAR -- IT WAS
20 EVIDENT THAT IT HAD ERODED, BEEN ERODED.

21 Q YOU'VE SEEN PHOTOGRAPHS OF THE SEAWALL; IS THAT CORRECT?

22 A YES, I HAVE.

23 Q DO YOU HAVE AN OPINION AS TO WHAT EFFECT THAT WOULD HAVE ON
24 THE FLOW OF THE CREEK?

25 A YES. IT WOULD HAVE DIVERTED WATER IN THE CREEK CHANNEL

GARY ALAN JOHNSON--DIRECT BY MR. THOMPSON

1 RIGHT INTO THAT BANK.

2 Q OKAY. WHAT WOULD BE THE RESULT OF THE PROPERTY DOWNSTREAM
3 FROM ANY WALL ON THE SAME SIDE OF THE PROPERTY AS THE WALL?

4 A ON THE SAME SIDE AS THE WALL?

5 Q YES, SIR.

6 A WELL, THE WALL WOULD PROTECT WHATEVER PROPERTY IS BEHIND THE
7 WALL AND KEEP IT FROM FLOODING AS LONG AS THE FLOOD WATERS DIDN'T
8 COME ABOVE THE WALL, TOP OF THE WALL.

9 Q HAVE YOU IDENTIFIED A CERTAIN AMOUNT OF SPACE THAT --
10 CERTAIN AMOUNT OF PROPERTY THAT NOW EXTENDS BEYOND THE ORIGINAL
11 PROPERTY LINE BASED UPON A COMPARISON OF THAT 2010 SURVEY?

12 A YES.

13 Q HOW MUCH SPACE IS THAT?

14 A BY OUR CAD MEASUREMENT, THERE IS ~~1,576~~ 1,576 SQUARE FEET OR 0.04
15 ACRES.

16 Q ALL RIGHT. DO YOU SEE ANY EVIDENCE OF ANY OTHER CONDITION
17 IN THE CREEK UPSTREAM FROM HERE THAT WOULD CAUSE THAT SORT OF "S"
18 CURVE, THAT SORT OF CONDITION OF THE GREEN PROPERTY?

19 A NO, I DID NOT.

20 Q HAVE YOU -- DID YOU PREPARE A PROPOSAL TO CORRECT THE
21 CONDITIONS THAT WERE EXISTING ON THE PROPERTY?

22 A YES.

23 Q I SHOW YOU WHAT'S BEEN MARKED AS PLAINTIFFS' EXHIBIT 10. IS
24 THIS A COPY OF YOUR PROPOSAL?

25 A IT'S A PROJECT NARRATIVE & PRELIMINARY SCOPE OF WORK. YES.

GARY ALAN JOHNSON--DIRECT BY MR. THOMPSON

1 Q IS THAT SOMETHING PREPARED BY YOU?

2 A YES. I DEVELOPED THIS.

3 MR. THOMPSON: YOUR HONOR, WE WOULD REQUEST EXHIBIT 10 BE
4 ADMITTED.

5 BY THE COURT: ALL RIGHT.

6 ("PROJECT NARRATIVE & PRELIMINARY SCOPE OF WORK" ENTERED
7 INTO EVIDENCE AS PLAINTIFFS' EXHIBIT NO. 10)

8 Q ON THE SECOND PAGE, MR. JOHNSON, YOU LIST A NUMBER OF ITEMS
9 THAT MUST BE DONE TO RESTORE THE CREEK BACK TO THE ORIGINAL
10 CONDITION ON THE '91 PLAT?

11 A YES.

12 Q IT WAS HOW MANY ITEMS?

13 A ELEVEN ITEMS.

14 Q NOW, WOULD YOU, YOURSELF, DO THAT WORK?

15 A NO. I WOULD DO ONLY ITEM NUMBER 1.

16 Q WHAT DOES ITEM NUMBER ONE INCLUDE?

17 A JUST TO PREPARE KIND OF A FINAL DESIGN TO TAKE BIDS ON THE
18 SCOPE OF WORK ON ITEMS 2 THROUGH 11, AND ALSO TO OBTAIN WHATEVER
19 PERMITS ARE REQUIRED TO DO THIS IN THE FLOODPLAIN.

20 Q LET ME GET TO THAT, IS THIS AREA IN A FLOODPLAIN?

21 A YES, IT IS.

22 Q TO YOUR KNOWLEDGE AND UNDERSTANDING IS PERMITTING REQUIRED
23 TO DO ANY KIND OF WORK ON THE CREEK IN THIS AREA?

24 A YES, IT IS.

25 Q WOULD THAT INCLUDE PUTTING UP LIKE A FLOOD WALL?

1 A YES, SIR.

2 Q HAVE YOU OBTAINED PROPOSALS TO COMPLETE THE REST OF THE
3 ITEMS CONTAINED ON YOUR EXHIBIT NO. 10?

4 A YES.

5 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT 11. IS THAT
6 THE PROPOSAL YOU OBTAINED?

7 A YES.

8 MR. THOMPSON: YOUR HONOR, I WOULD MOVE PLAINTIFFS' 11 BE
9 ADMITTED INTO EVIDENCE AT THIS TIME.

10 BY THE COURT: ALL RIGHT.

11 (RCS GRADING, INC. PROPOSAL ENTERED INTO EVIDENCE AS
12 PLAINTIFFS' EXHIBIT NO. 11)

13 Q WHO PREPARED THIS PROPOSAL FOR YOU?

14 A THIS WAS PREPARED BY RCS GRADING, INCORPORATED OF
15 GREENVILLE.

16 Q WHAT'S THE TOTAL AMOUNT OF THE PROPOSAL THEY PREPARED TO
17 RESTORE THE CREEK BACK TO THE CONDITION OF THE '91 PLAT?

18 A THE LUMP SUM TOTAL FOR ITEMS 2 THROUGH 11 IS \$77,475.00.

19 Q DID YOU HAVE AN AMOUNT THAT IT WOULD COST YOU TO PREPARE
20 ITEM 1?

21 A YES, \$9,000.00.

22 Q THE TOTAL TO DO THE WORK THAT YOU HAVE REFERENCED IS GOING
23 TO BE \$86,- -- LET ME PUT MY PAPERWORK UP HERE -- YOUR \$9,000.00
24 PLUS THIS \$77,000.00 IS GOING TO BE \$86,475.00; IS THAT CORRECT?

25 A YES, SIR.

1 MR. HECKMAN: I HAVE AN OBJECTION TO THE RELEVANCE OF THIS
2 ESTIMATE THAT -- YOU KNOW, YOU'RE GOING TO GO DO WORK ON SOMEONE
3 ELSE'S PROPERTY. I DON'T SEE HOW THIS IS RELEVANT TO THIS CASE.

4 BY THE COURT: OVERRULED.

5 Q MR. JOHNSON, I WANT TO SHOW YOU WHAT'S BEEN MARKED AS
6 PLAINTIFFS' EXHIBIT 13 AND ASK IF THIS IS A DOCUMENT THAT YOU
7 PREPARED.

8 A YES, I DID.

9 Q WHAT DOES THAT DOCUMENT DEPICT?

10 A IT DEPICTS, IN ESSENCE, A PROPOSED RELOCATED STREAM BANK ON
11 BOTH SIDES OF THE PROPERTY LINE.

12 Q WHEN YOU'RE TALKING ABOUT THE PROPERTY LINE, YOU'RE TALKING
13 ABOUT THE 1991 PROPERTY LINE?

14 A YES, FROM THE DEED OF JULY OF 1991.

15 Q IS THAT THE AREA THAT'S SHADED IN ORANGE ON THIS LARGER -
16 THIS PICTURE HERE?

17 A THE AREA---

18 Q IS THAT THE AREA THAT'S HIGHLIGHTED IN ORANGE WHERE THE
19 RELOCATED STREAM BANK WOULD BE?

20 A YES.

21 Q OKAY.

22 MR. THOMPSON: YOUR HONOR, I WOULD MOVE THAT PLAINTIFFS'
23 EXHIBIT 13 BE ADMITTED INTO EVIDENCE.

24 BY THE COURT: ALL RIGHT.

25 (DRAWING OF RELOCATED STREAM BANK ENTERED INTO EVIDENCE AS

1 PLAINTIFFS' EXHIBIT NO. 13)

2 Q MR. JOHNSON, WERE ALL OF THE OPINIONS YOU'VE RENDERED BEEN
3 TO A REASONABLE DEGREE OF CERTAINTY FOR A CIVIL ENGINEER?

4 A YES, SIR.

5 MR. THOMPSON: YOUR HONOR, I HAVE NO FURTHER QUESTIONS AT
6 THIS TIME.

7 BY THE COURT: YOUR WITNESS.

8 **CROSS-EXAMINATION BY MR. HECKMAN:**

9 Q GOOD MORNING, MR. JOHNSON. YOU TESTIFIED EARLIER THAT YOU
10 PERSONALLY OBSERVED THE PROPERTY ON BEAVER DAM CREEK IN QUESTION
11 TWO WEEKS AGO; IS THAT CORRECT?

12 A APPROXIMATELY, YES, SIR. I BELIEVE IT WAS ON MARCH 14TH.

13 Q MARCH 14TH OF 2012. YOU HAVEN'T OBSERVED THE PROPERTY AT ANY
14 TIME PRIOR TO THAT?

15 A NO, I HAVE NOT.

16 Q IN YOUR OPINION, WOULD THE USE OF HEAVY MACHINERY, DIGGING
17 OUT THE ACTUAL BANK FROM EITHER SIDE, HAVE A CHANCE TO CAUSE THE
18 TYPE OF EROSION OR CREATE AN "S" SHAPE IN THE BANK? COULD THAT
19 BE DONE WITH THE USE OF HEAVY MACHINERY SUCH AS A TRACK HOE?

20 A TO DIG OUT THE BANKS, TO DO THAT?

21 Q IF YOU TOOK THE DIRT ON HUMPHRIES' BANK HERE AND YOU PUT THE
22 DIRT ON GREEN'S BANK HERE, WOULD THAT CREATE AN "S" SHAPE?

23 A IT COULD.

24 Q I THINK IT PROBABLY COULD. THE RETAINING WALL THAT WAS
25 INTRODUCED ON THE FORM, YOU NEVER SAW THAT RETAINING WALL,

1 CORRECT?

2 A JUST IN THE PHOTOGRAPHS AND ON THE SURVEY.

3 Q SO, THAT'S REALLY JUST PURE SPECULATION AS TO THE TRUE
4 LOCATION OF THAT RETAINING WALL?

5 A NO. THERE'S A SURVEYOR -- A SURVEYOR LOCATED IT ON MR.
6 GREEN'S SURVEY FROM 2010.

7 Q YOU NEVER SAW THE ACTUAL RETAINING WALL?

8 A NO.

9 Q WHAT'S YOUR OPINION AS AN EXPERT AS TO THE TERM "THE CREEK
10 IS THE LINE"?

11 MR. THOMPSON: YOUR HONOR, I'M GOING TO OBJECT. HE'S
12 TESTIFYING AS TO CIVIL ENGINEERING NOT SURVEYING.

13 BY THE COURT: IF HE HAS A BASIS AS A CIVIL ENGINEER, THEN HE
14 CAN ANSWER IT. IF NOT, I'M SURE HE'S QUALIFIED ENOUGH TO SAY, "I
15 CAN'T ANSWER THAT."

16 A I'M NOT A REGISTERED LAND SURVEYOR. I'M NOT TOTALLY
17 FAMILIAR WITH THE LAWS OF SURVEYING.

18 Q JUST IN GENERAL, YOU'VE DONE -- YOU KNOW, YOU TESTIFIED THAT
19 YOU'VE DONE STORM WATER DRAINAGE. YOU'VE GOT TO KNOW SOMETHING
20 ABOUT THE LAW OF CREEKS AND BOUNDARY LINES.

21 A SURE.

22 Q JUST IN GENERAL, WHAT DOES IT MEAN WHEN A DEED WOULD SAY THE
23 CREEK IS THE LINE? IF SOMEBODY TOLD YOU THE BOUNDARY BETWEEN
24 THESE PROPERTIES IS THE CREEK, WHAT WOULD THAT MEAN TO YOU IN
25 GENERAL?

GARY ALAN JOHNSON--CROSS BY MR. HECKMAN

1 A IT WOULD MEAN THE CREEK IS THE LINE AT THAT TIME.

2 Q THE CREEK IS THE LINE AT THAT TIME. OKAY.

3 A UNLESS THE TWO PARTIES HAVE AGREED THAT WHEREVER THE CREEK
4 MOVES OR IF I PUSH IT OVER, YOU PUSH IT OVER, THAT'S OKAY. WE'RE
5 GOOD WITH THAT. HOWEVER, THERE'S ANOTHER SURVEY DONE AND THE
6 LAND PASSES FROM ONE PARTY TO ANOTHER AND A NEW SURVEY IS DONE ON
7 THAT PARCEL, BASICALLY CARVING IT OUT, AND A PIN IS ESTABLISHED,
8 AND METES AND BOUNDS OR CENTER PINS AND METES AND BOUNDS
9 ESTABLISHED FOR THAT TRACT, THAT SUPERSEDES ANY---

10 Q I DON'T BELIEVE THAT'S THE LAW IN THE STATE OF SOUTH
11 CAROLINA. I'LL AGREE THAT YOU'RE NOT QUALIFIED TO ANSWER A LEGAL
12 QUESTION IF THAT'S YOUR UNDERSTANDING OF---

13 BY THE COURT: I'M GOING TO STRIKE THAT. THERE'S NO---

14 MR. HECKMAN: I APOLOGIZE.

15 BY THE COURT: LET'S MOVE ON.

16 Q THIS PROPERTY IS IN A FLOODPLAIN, YOU SAID, CORRECT?

17 A YES.

18 Q WHAT DID YOU OBSERVE AS TO THE USE OF THE LAND ON THE GREEN
19 SIDE OF THE CREEK?

20 A IT LOOKED LIKE IT HAD BEEN FRESHLY PLOWED, AGRICULTURE.

21 Q IT WAS VERY, VERY---

22 A IT WAS.

23 Q WHAT DID YOU SEE AS TO THE NATURE OF THE LAND ON THE
24 HUMPHRIES' SIDE OF THE CREEK?

25 A IT LOOKED LIKE A MANICURED LAWN. THERE WERE FRUIT TREES.

1 THERE WAS A, LOOKED LIKE, A GRAPE ARBOR OR SOME KIND OF FRUIT
2 ARBOR.

3 Q A GRAPE ARBOR THAT WAS PRETTY MUCH HALF WAY DOWN THE BANK
4 WITH A BUNCH OF DESTROYED VINES ON IT?

5 A I REALLY DIDN'T TAKE NOTICE OF THAT. I'VE LOOKED AT SOME
6 PICTURES SINCE THAT POINT, AND I DID SEE IT LOOKED LIKE METAL
7 POLES WITH SOME HANGING VINES ON THEM LIKE A GRAPE ARBOR.

8 Q WERE YOU ABLE TO OBSERVE WHAT WOULD HAVE LOOKED LIKE
9 SCARRING FROM THE USE OF HEAVY EQUIPMENT, HEAVY DIGGING
10 EQUIPMENT, IN THE PAST? IS THAT WHAT COULD HAVE CAUSED THE WAY
11 THOSE BANKS WERE AS STEEP AS THEY ARE?

12 A I COULDN'T TELL. THE BANKS WERE VEGETATED ON THE 14TH WHEN I
13 LOOKED AT IT.

14 MR. HECKMAN: NOTHING FURTHER.

15 BY THE COURT: ANYTHING ELSE?

16 MR. THOMPSON: NO FURTHER QUESTIONS, YOUR HONOR.

17 BY THE COURT: THANK YOU, SIR. MAY THIS GENTLEMAN BE
18 EXCUSED?

19 MR. THOMPSON: NO OBJECTION, YOUR HONOR.

20 (WITNESS EXCUSED)

21 MR. THOMPSON: YOUR HONOR, THE PLAINTIFF RESTS AT THIS TIME.

22 BY THE COURT: YOU CAN CALL YOUR FIRST WITNESS, PLEASE.

23 MR. HECKMAN: WE WOULD CALL ROY GREEN TO THE STAND.

24 **ROY GENE GREEN**, BEING FIRST DULY SWORN, TESTIFIED AS

25 FOLLOWS:

ROY GENE GREEN-DIRECT BY MR. HECKMAN

1 BY THE COURT: THANK YOU, SIR. IF YOU'LL STATE YOUR FULL
2 NAME, PLEASE, SIR.

3 THE WITNESS: ROY GENE GREEN.

4 **DIRECT EXAMINATION BY MR. HECKMAN:**

5 Q GOOD MORNING, MR. GREEN. WHERE IS YOUR RESIDENCE?

6 A IT'S 598 BEAVER DAM ROAD, MARIETTA.

7 Q 598 BEAVER DAM ROAD. DO YOU KNOW HOW TO OPERATE HEAVY
8 MACHINERY SUCH AS A TRACK HOE, BACKHOE, BULLDOZER, ANY OTHER
9 DIGGING TYPE EQUIPMENT?

10 A SMALL TRACK HOE.

11 Q WHAT'S YOUR OCCUPATION?

12 A CARPENTER.

13 Q DO YOU OWN OR DO YOU HAVE ACCESS TO ANY HEAVY-DUTY EQUIPMENT
14 SUCH AS A TRACTOR, OR BACKHOE, BULLDOZER, ANYTHING LIKE THAT?

15 A A SMALL TRACK HOE.

16 Q A SMALL TRACK HOE.

17 A YEAH.

18 Q HAVE YOU EVER USED THAT SMALL TRACK HOE TO DIG IN BEAVER DAM
19 CREEK OR ALONG ITS BANKS?

20 A ALONG ITS BANKS.

21 Q ALONG ITS BANKS. BOTH SIDES OF THE BANK OR THE GREEN SIDE
22 OF THE BANK?

23 A GREEN SIDE.

24 Q YOU NEVER DUG ON THE FAR SIDE OF THE BANK?

25 A NO, SIR.

ROY GENE GREEN-DIRECT BY MR. HECKMAN

1 Q YOU'RE UNDER OATH.

2 A IN 2010 I TOOK THE WALL OUT. I HIRED THIS GUY TO TAKE IT
3 OUT.

4 Q HAVE YOU EVER RENTED, LEASED, BORROWED, HIRED OUT, OR HIRED
5 ANYONE WITH HEAVY EQUIPMENT TO DIG IN THE CREEK OTHER THAN WHAT
6 YOU JUST ADMITTED TO IN SEPTEMBER 2010?

7 A YES.

8 Q WHAT OTHER TIMES HAVE YOU USED OR HIRED OUT THAT TYPE OF
9 EQUIPMENT?

10 A ONE TIME IN 2010 TO TAKE THE WALL OUT.

11 Q SO, YOU---

12 A AGAIN, THAT WAS ON THE HUMPHRIES' SIDE.

13 Q HAVE YOU EVER USED EQUIPMENT TO DIG UPSTREAM OR DOWNSTREAM
14 OF THE HUMPHRIES' LINE SINCE THAT ONE TIME IN SEPTEMBER OR PRIOR,
15 ANYWHERE ON BEAVER DAM CREEK?

16 A IN 2010 -- NO -- 2004 I HAD THE BANKS CLEANED OFF AND ALL
17 AND THE DEBRIS, THE BRUSH AND STUFF LIKE THAT TOOK OUT OF THE
18 CREEK BUT NEVER DID TOUCH THE HUMPHRIES' SIDE.

19 Q DID YOU DIG IN THE BANK OR IN THE CREEK BED ITSELF IN 2004?

20 A JUST TO CLEAN THE BRUSH AND THE DEBRIS OUT.

21 Q DID YOU HAVE A PERMIT TO DO THAT WORK?

22 A NO.

23 Q WERE YOU STOPPED BY THE POLICE FROM DOING THAT DIGGING IN
24 2004?

25 A NO, I DON'T THINK SO. MR. HUMPHRIES WAS ON THE OTHER SIDE

ROY GENE GREEN-DIRECT BY MR. HECKMAN

1 WATCHING THE WHOLE THING. AS I WAS GOING DOWN, HE WAS AGREEING
2 WITH EVERY BIT OF IT.

3 Q WHERE WERE YOU ON THE MORNING OF SEPTEMBER 15, 2010?

4 A I WAS ON THE CREEK BANK.

5 Q WERE YOU AWARE THAT THIS CASE WAS IN A COURT MANDATED
6 MEDIATION THAT MORNING?

7 A YES.

8 Q WHO TOLD YOU ABOUT THAT MEDIATION?

9 A I HEARD IT OVER TALKING WITH MY SISTER, THAT SHE HAD TO GO
10 TO MEDIATION.

11 Q WHY DID YOU CHOOSE THAT DATE TO DO THE DIG?

12 A ACTUALLY, I DIDN'T CHOOSE THE DATE. IT WAS CONVENIENT THAT
13 THE TRACK HOE WAS UP THERE DOING OTHER WORK, STUMPS AND STUFF
14 LIKE THAT, AND I FIGURED THIS HAS BEEN GOING ON FOR YEARS AND
15 YEARS AND NOBODY SEEMED TO WANT TO DO ANYTHING AND THE FIELD WAS
16 WASHING AND IT WAS TAKING THE TOPSOIL OFF AND I COULDN'T FARM IT
17 OR ANYTHING. IT JUST SEEMED LIKE NOBODY DIDN'T WANT TO DO
18 NOTHING.

19 Q WHAT IS YOUR UNDERSTANDING OF THE TERM "THE CREEK IS THE
20 LINE"? WHEN YOU HAVE A NATURAL BODY OF WATER THAT SEPARATES REAL
21 ESTATE AND YOUR DEED SAYS THE CREEK IS THE LINE, WHY WOULDN'T YOU
22 JUST UNDERSTAND THAT THE CREEK IS THE LINE?

23 MR. THOMPSON: YOUR HONOR, THAT CALLS FOR A LEGAL CONCLUSION.
24 MR. GREEN HAS NOT BEEN IDENTIFIED---

25 Q IN GENERAL, WHAT IS YOUR UNDERSTANDING OF THE TERM "THE

1 CREEK IS THE"---

2 BY THE COURT: HOLD ON. MR. HECKMAN, THERE'S AN OBJECTION.
3 I'M GOING TO SUSTAIN THE OBJECTION.

4 MR. HECKMAN: CAN I REPHRASE THE QUESTION?

5 BY THE COURT: YES, SIR.

6 Q IN LAYMAN'S TERMS, IF I TOLD YOU THE CREEK IS THE BOUNDARY
7 LINE, WHAT WOULD THAT MEAN TO YOU?

8 A THE CREEK IS THE BOUNDARY LINE? I KNEW THE PROPERTY HAD
9 METES AND BOUNDS ON IT, AND THE CREEK WAS DIVERTED OFF THE
10 PROPERTY LINE FROM MR. HUMPHRIES.

11 Q IF I SAID, "MY LAND IS ON THIS SIDE OF THE CREEK, AND YOUR
12 LAND IS ON THAT SIDE OF THE CREEK," WHOSE LAND IS ON THIS SIDE OF
13 THE CREEK?

14 MR. THOMPSON: YOUR HONOR, I'M GOING TO OBJECT. THIS CALLS
15 FOR SOME SPECULATION AND SOME FACTS NOT INTO EVIDENCE.

16 BY THE COURT: GO AHEAD.

17 Q IT'S A GENERAL QUESTION. DO YOU UNDERSTAND THE CONCEPT OF
18 IF THE CREEK IS THE LINE, YOU SHOULD STAY ON YOUR SIDE OF THE
19 CREEK AND THE OTHER PEOPLE SHOULD STAY ON THEIR SIDE OF THE
20 CREEK?

21 MR. THOMPSON: YOUR HONOR, I HAVE A PROBLEM. I'M GOING TO
22 OBJECT. HE'S NOT BEEN IDENTIFIED AS A PROPERTY OWNER OR A LAND
23 OWNER. I'M NOT SURE THIS WITNESS HAS -- THIS HAS ANY RELEVANCE
24 TO HIS TESTIMONY.

25 Q ON SEPTEMBER 15TH WHEN YOU WERE DIGGING OUT THE HUMPHRIES'

ROY GENE GREEN-DIRECT BY MR. HECKMAN

1 SIDE OF THE CREEK BANK WHERE WERE YOU PUTTING THE DIRT FROM THE
2 HUMPHRIES' SIDE OF THE BANK? SO, WHEN YOU WOULD SCOOP OUT ON
3 HUMPHRIES' SIDE OF THE BANK, WHERE WAS THAT SCOOP OF DIRT BEING
4 DEPOSITED?

5 A IT WASN'T THAT MUCH DIRT TO IT. MOST OF IT WAS WALL AND---

6 Q WHERE DID YOU DEPOSIT THE WALL?

7 A I WASN'T RUNNING THE MACHINE. I HAD A GUY THAT WAS RUNNING
8 IT, BUT I DIDN'T SEE THAT MUCH -- IT WASN'T A WHOLE LOT OF DIRT
9 COME OUT OF THERE.

10 Q WHERE DID THE MAN RUNNING THE MACHINE DEPOSIT THE MATERIAL
11 THAT WAS TAKEN FROM THE FAR SIDE OF THE BANK? DID HE DEPOSIT IT
12 ON TO TONY GREEN'S SIDE OF THE BANK?

13 A THE WALL AND EVERYTHING WAS PUT ON TONY GREEN'S SIDE.

14 Q THANK YOU. DID YOU OBSERVE DAMAGE TO THE HUMPHRIES' SIDE OF
15 THE BANK DUE TO THE EXCAVATION WORK? DID YOU OBSERVE FRUIT TREES
16 GOING DOWN, MUSCADINE VINES GETTING TORN UP?

17 A I NOTICED THAT TREES WAS TOOK OUT, TWO TREES.

18 Q I BELIEVE IT WAS MORE THAN TWO TREES. WASN'T IT FIVE OR SIX
19 TREES?

20 A NO. I DON'T THINK SO. I THINK IT WAS -- IT WAS THREE TREES
21 THERE, AND THE FLOOD WASHED ONE OF THEM DOWN. WHERE THE WALL WAS
22 AT, THE FLOOD GOT BEHIND THE WALL AND IT WAS TRYING TO GO
23 STRAIGHT AND IT TOOK ONE OF THE TREES DOWN, AND I GOT DOWN IN THE
24 CREEK WHEN IT FELL OVER ON THE GREEN SIDE AND SAWED IT OUT OF THE
25 CREEK.

ROY GENE GREEN-DIRECT BY MR. HECKMAN

1 Q HOW LONG HAVE YOU LIVED ON BEAVER DAM CREEK?

2 A ALL OF MY LIFE.

3 Q ALL OF YOUR LIFE. HAVE YOU SEEN NATURAL OCCURRENCES SUCH AS
4 FLOODS COME THROUGH AND ERODE EITHER SIDE OF THE BANK?

5 A I'VE SEEN FLOODS UP THERE ALL MY LIFE. I'VE SEEN IT GO DOWN
6 THROUGH THERE, IT WAS JUST UNREAL.

7 Q ARE FLOODS, ARE THEY CAPABLE OF RE-ROUTING THE NATURAL FLOW
8 OF THE CREEK IF A BIG ENOUGH FLOOD COMES THROUGH THERE?

9 MR. THOMPSON: YOUR HONOR, I OBJECT, CALLS FOR SPECULATION.

10 BY THE COURT: OVERRULED.

11 Q ANSWER THE QUESTION, PLEASE.

12 A NOT NECESSARILY UNLESS IT'S SOME KIND OF STRUCTURE OR
13 SOMETHING THAT CAUSES THE RE-ROUTE. BUT IF IT'S OPEN, IF THE
14 CREEK'S OPEN, IT PRETTY WELL GOES DOWN THROUGH THERE.

15 Q SO, YOU -- STRIKE THAT. IN 2004, JULY OF 2004, DID YOU USE
16 EXCAVATION EQUIPMENT TO DIG OUT THE HUMPHRIES' SIDE OF THE CREEK?

17 A NO.

18 Q WERE THE POLICE CALLED IN 2004 TO PUT A STOP TO THAT
19 EXCAVATION ON THE HUMPHRIES' SIDE OF THE CREEK?

20 MR. THOMPSON: YOUR HONOR, I'M NOT SURE OF THE RELEVANCE OF
21 THE QUESTION. I'M GOING TO OBJECT BASED ON RELEVANCE.

22 BY THE COURT: WHAT'S THE RELEVANCE?

23 MR. HECKMAN: THEY'RE STATING THAT MY CLIENT CAUSED THE
24 CHANGE IN THE COURSE OF THE CREEK, AND OUR ALLEGATION IS THAT THE
25 USE OF HEAVY MACHINERY IS A MUCH MORE LIKELY CAUSE TO CHANGE THE

ROY GENE GREEN-DIRECT BY MR. HECKMAN

1 NATURE AND FLOW OF THE CREEK.

2 BY THE COURT: WHAT'S THE RELEVANCE OF WHETHER LAW
3 ENFORCEMENT WAS CALLED OUT?

4 MR. HECKMAN: JUST TRYING TO -- WELL, HE'S SAYING HE DIDN'T
5 DO IT. SO, WE'LL STRIKE THAT.

6 BY THE COURT: ALL RIGHT.

7 Q I WILL REMIND YOU THAT YOU'RE UNDER OATH.

8 A I NEVER GOT ON THAT SIDE IN 2004.

9 Q DID YOU WITNESS SOMEBODY ELSE DIGGING OUT THE CREEK IN 2004?

10 A YEAH, NOT TO DIG IT OUT, TO CLEAN THE DEBRIS OUT OF THE
11 CREEK AND THE---

12 Q YOU CHANGED THE COURSE OF THE CREEK BY REMOVING DEBRIS?

13 A NO.

14 Q WAS IT NATURAL DEBRIS LIKE ROCKS AND DIRT OR WHAT KIND OF
15 DEBRIS ARE WE TALKING?

16 A LIMBS, ALL KIND OF STUFF THAT COME -- I'VE PULLED 15 TIRES
17 OUT OF THAT CREEK. I'VE CLEANED THAT CREEK UP EVERY SINCE I WAS
18 A BOY. THERE'S BEEN TIRES, ALL KIND OF DEBRIS IN IT AND ALL.
19 WHEN MY GRANDFATHER WAS ALIVE, HE WOULD GET ME DOWN IN THERE TO
20 CLEAN THE CREEK OUT.

21 Q HAVE YOU -- DID YOU DIG IN THE CREEK IN DECEMBER OF 2010?

22 A NO.

23 MR. HECKMAN: NOTHING FURTHER.

24 BY THE COURT: ANY OTHER QUESTIONS? I'M SORRY. ANY
25 QUESTIONS, MR. THOMPSON?

ROY GENE GREEN-CROSS BY MR. THOMPSON

1 MR. THOMPSON: JUST BRIEFLY, YOUR HONOR.

2 **CROSS-EXAMINATION BY MR. THOMPSON:**

3 Q MR. GREEN, IT SOUNDED LIKE YOU WERE STARTING TO SAY
4 SOMETHING ELSE TO MR. HECKMAN A MINUTE AGO. DID I MISS
5 SOMETHING? WERE YOU ABOUT TO SAY SOMETHING ELSE IN THE ANSWER TO
6 HIS QUESTION?

7 A WHAT QUESTION?

8 Q THE LAST QUESTION HE ASKED YOU. IT SOUNDED LIKE YOU WERE
9 ABOUT TO SAY SOMETHING ELSE WHEN HE ASKED YOU IF YOU WORKED IN
10 THE CREEK IN DECEMBER 2010.

11 A I'VE NEVER ACTUALLY DUG. I'VE TRIED TO KEEP IT FROM ERODING
12 AS FAR AS DIGGING AND STUFF, LIKE I'VE PUT ROCKS ON THE BANKS TO
13 KEEP IT FROM COMING OVER AND STUFF LIKE THAT, TRYING TO STOP THE
14 WASH.

15 Q GOING BACK TO THE EVENTS OF SEPTEMBER 15, 2010, DID TONY
16 GREEN EVER ASK YOU OR TELL YOU TO -- EITHER YOU OR GET SOMEBODY
17 TO TAKE THAT WALL OUT?

18 A NO.

19 Q DID FRANCES PITTMAN EVER ASK YOU OR TELL YOU FOR YOU OR
20 SOMEBODY ELSE TO GET THAT WALL OUT?

21 A NO.

22 Q ALL RIGHT. DID YOU DISCUSS WITH THEM BEFORE THAT DAY THAT
23 YOU WERE GOING TO DO THIS?

24 A NO.

25 Q DID THEY HAVE ANY INVOLVEMENT IN THIS TAKING PLACE?

ROY GENE GREEN-REDIRECT BY MR. HECKMAN

1 A NO.

2 Q WHY DID YOU DIG IT OUT---

3 MR. HECKMAN: YOUR HONOR, MAY I REDIRECT, PLEASE?

4 MR. THOMPSON: I'M NOT DONE YET.

5 BY THE COURT: HE'S NOT FINISHED WITH HIS----

6 MR. HECKMAN: OH, HE'S NOT FINISHED. I'M SORRY, KYLE.

7 MR. THOMPSON: YOUR HONOR, I DON'T HAVE ANY FURTHER
8 QUESTIONS.

9 BY THE COURT: NOW, YOU MAY ASK ANY QUESTIONS YOU HAVE, MR.
10 HECKMAN.

11 MR. HECKMAN: THANK YOU, YOUR HONOR.

12 **REDIRECT EXAMINATION BY MR. HECKMAN:**

13 Q WHY DID YOU DIG IT OUT IF YOUR BROTHER DIDN'T ASK YOU TO OR
14 YOUR SISTER DIDN'T ASK YOU TO?

15 MR. THOMPSON: YOUR HONOR, I BELIEVE HE TESTIFIED TO THAT
16 PREVIOUSLY. IT'S A QUESTION THAT'S BEEN ASKED AND ANSWERED.

17 MR. HECKMAN: I DON'T REMEMBER THAT.

18 BY THE COURT: I DON'T RECALL. GO AHEAD.

19 A IT SEEMED LIKE NOTHING WAS GETTING DONE, AND IT WAS WASHING
20 THE TOPSOIL OFF THE PROPERTY AND STUFF. IT HAD BEEN GOING ON FOR
21 YEARS AND YEARS AND NOBODY WASN'T DOING NOTHING AND I TOOK IT ON
22 MY OWN---

23 Q YOU WERE AWARE OF THIS LAWSUIT TO SETTLE THAT ISSUE,
24 CORRECT?

25 A WAS I AWARE OF THE LAWSUIT TO SETTLE IT?

SAMUEL DARRYL HUMPHRIES-DIRECT BY MR. HECKMAN

1 Q YES.

2 A YES.

3 MR. HECKMAN: NOTHING FURTHER.

4 MR. THOMPSON: NO OTHER QUESTIONS, JUDGE.

5 BY THE COURT: THANK YOU, SIR. YOU CAN STEP DOWN.

6 (WITNESS EXCUSED)

7 BY THE COURT: CALL YOUR NEXT WITNESS.

8 MR. HECKMAN: CALL SAMMY HUMPHRIES TO THE STAND, SAMUEL L.

9 (SIC) HUMPHRIES. LET THE COURT KNOW THAT I WILL REFER TO HIM AS
10 SAMMY BECAUSE THAT'S HOW I KNOW HIM.

11 BY THE COURT: ALL RIGHT.

12 **SAMUEL DARRYL HUMPHRIES**, BEING FIRST DULY SWORN, TESTIFIED
13 AS FOLLOWS:

14 BY THE COURT: IF YOU'LL STATE YOUR FULL NAME.

15 THE WITNESS: SAMUEL DARRYL HUMPHRIES.

16 **DIRECT EXAMINATION BY MR. HECKMAN:**

17 Q GOOD MORNING, MR. HUMPHRIES. WHAT IS YOUR DATE OF BIRTH?

18 A 3/2/50, 1950.

19 Q PLEASE STATE YOUR ADDRESS FOR THE COURT.

20 A 604 BEAVER DAM ROAD, MARIETTA, SOUTH CAROLINA.

21 Q HOW LONG HAVE YOU LIVED AT 604 BEAVER DAM ROAD?

22 A SINCE '93.

23 Q THAT'S WHEN YOUR WIFE PURCHASED THE PROPERTY?

24 A YES, SIR.

25 Q SINCE THEN YOUR WIFE DEEDED THE PROPERTY TO YOU?

SAMUEL DARRYL HUMPHRIES-DIRECT BY MR. HECKMAN

1 A YES, SIR.

2 MR. HECKMAN: I WOULD LIKE TO GO AHEAD AND HAND IN DEFENSE
3 EXHIBITS 1 AND 2 WHICH ARE THE DEEDS TO THE HUMPHRIES' PROPERTY.

4 (DEED DATED MAY 19, 2006 ENTERED INTO EVIDENCE AS
5 DEFENDANTS' EXHIBIT NO. 1)

6 (DEED DATED MAY 13, 1993 ENTERED INTO EVIDENCE AS
7 DEFENDANTS' EXHIBIT NO. 2)

8 Q SAMMY, WHAT IS -- IN THIS ORIGINAL DEED INTO YOUR WIFE, WHAT
9 DOES THE LEGAL DESCRIPTION SAY RIGHT THERE THAT'S REFERRING TO
10 YOUR PROPERTY?

11 A DATED JULY---

12 Q PLAT BOOK 20-Y AT PAGE 97?

13 A YEAH. I SEE WHAT YOU WANT ME TO. YEAH.

14 Q ALL RIGHT. THE PLAINTIFFS ACTUALLY HAVE PREVIOUSLY ADMITTED
15 PLAINTIFFS' EXHIBIT 8 WHICH USES THAT PLAT 20-Y AT PAGE 97. WHAT
16 IS THE BOUNDARY LINE DESCRIBED AS ON THAT PLAT?

17 A IT SAYS BEAVER DAM CREEK'S THE LINE.

18 Q THANK YOU. YOUR WIFE PURCHASED THAT PROPERTY FROM DORA LEE
19 HALL; IS THAT CORRECT?

20 A YES, SIR.

21 Q THIS IS DEFENDANTS' EXHIBIT 3. THIS IS THE DEED TO THE
22 PREDECESSOR IN TITLE, AND THIS IS WHEN THE HUMPHRIES' TRACT WAS
23 ORIGINALLY ESTABLISHED. IS THAT YOUR UNDERSTANDING?

24 A YES, SIR.

25 Q AND IT REFERS TO THAT SAME PLAT, BOOK 20-Y AT PAGE 97,

1 CORRECT?

2 A YES, SIR.

3 Q THIS DEED INCLUDES A METES AND BOUNDS DESCRIPTION WHICH
4 SHOWS THE DIMENSIONS OF THE PROPERTY. BUT IN THE BOUNDARY LINE
5 CALL BETWEEN YOUR PROPERTY AND TONY GREEN'S, WHAT DOES THAT CALL
6 SAY? I HAD IT HIGHLIGHTED BEFORE BUT "THENCE" -- STARTING TO
7 READ RIGHT THERE WHERE IT STARTS WITH THE WORD "THENCE".

8 A IT SAYS, " THENCE WITH BEAVER DAM CREEK AS THE LINE."

9 (DEED DATED SEPTEMBER 10, 1991 ENTERED INTO EVIDENCE AS
10 DEFENDANTS' EXHIBIT NO. 3)

11 Q THANK YOU VERY MUCH. HOW WOULD YOU CHARACTERIZE THE FLOW OF
12 THE CREEK FROM 1993 TO 2004? WAS THE CREEK FAIRLY STABLE DURING
13 THAT TIME?

14 A YES, SIR. IT WOULD GET UP OUT OF THE BANK A LITTLE BIT WHEN
15 IT RAINED BUT NOT ENOUGH TO HURT ANYTHING.

16 Q DID YOU -- WHEN YOU -- WHEN YOUR WIFE FIRST OCCUPIED THE
17 PROPERTY IN 1993, DID YOU INSTALL A PASTURE FENCE ALONG THE CREEK
18 BANK IN THIS LOCATION IN 1993?

19 A YES, SIR.

20 Q ARE THESE PICTURES THE REMAINDER OF THAT ORIGINAL PASTURE
21 FENCE THAT YOU ESTABLISHED?

22 A THIS ONE RIGHT HERE, THE ONE SECTION IS. YOUR HONOR, WHERE
23 THE THREE OLD RAILS ARE AT RIGHT THERE ON OF THE LEFT HAND SIDE
24 IS THE OLD FENCE.

25 Q DID YOU BUILD THAT FENCE RIGHT SMACK ON THE BANK OR DOWN IN

SAMUEL DARRYL HUMPHRIES-DIRECT BY MR. HECKMAN

1 THE WATER? WAS IT PRETTY MUCH ON YOUR LAND?

2 A IT WAS, I GUESS, A COUPLE OF FOOT -- WELL, ABOUT A FOOT FROM
3 THE EDGE OF THE CREEK BANK.

4 Q BACK FROM THE BANK, NOT DOWN AT THE ACTUAL WATER?

5 A NO, SIR.

6 Q YOU INSTALLED THAT FENCE IN 1993?

7 A YES, SIR.

8 Q WHEN DID YOU FIRST NOTICE A CHANGE IN THE FLOW OF THE CREEK?
9 WOULD THAT HAVE BEEN AROUND JULY 2004?

10 A YES, SIR.

11 MR. THOMPSON: YOUR HONOR, I OBJECT TO THE LEADING.

12 Q WHEN DID THE FLOW OF THE CREEK CHANGE?

13 A WHEN I CAME HOME AND THEY HAD DUG OUT FROM UNDER MY BANK AND
14 PULLED THE DIRT OVER TO THEIR SIDE AND CLOSED THE CREEK IN WITHIN
15 ABOUT 30 INCHES, THEN THE NEXT DAY OR TWO IT CAME A BIG FLOOD AND
16 WASHED IT AWAY.

17 Q WHO ARE YOU REFERRING TO WHEN YOU SAY "THEY"?

18 A ROY GREEN AND THE MAN RUNNING THE BACKHOE. I DON'T KNOW WHO
19 HE WAS.

20 Q SO, YOU'VE SEEN THE BACKHOE ON THE GREEN PROPERTY?

21 A YES, SIR.

22 Q MANY TIMES OR JUST THAT ONE TIME?

23 A JUST THAT ONE TIME.

24 Q OKAY.

25 A IN '94 -- I MEAN, 2004.

SAMUEL DARRYL HUMPHRIES-DIRECT BY MR. HECKMAN

1 Q DO YOU REMEMBER THE HISTORIC FLOOD OF JULY 2004 COMING
2 THROUGH SHORTLY AFTER THAT DIG JOB WAS DONE?

3 A YES, SIR. AFTER THE CORP TOLD ME TO PUT A WALL---

4 MR. THOMPSON: YOUR HONOR, I WOULD OBJECT TO THE HEARSAY.

5 MR. HECKMAN: IT'S NOT HEARSAY. HE'S A DIRECT WITNESS.

6 MR. THOMPSON: HE SAID SOMEBODY TOLD HIM---

7 BY THE COURT: IF HE'S TALKING ABOUT THAT THE ARMY CORP OF
8 ENGINEERS WOULD HAVE TOLD HIM, WHY IS THAT NOT HEARSAY?

9 MR. HECKMAN: OKAY.

10 BY THE COURT: I SUSTAIN THE OBJECTION.

11 Q WHO WAS PRESENT AT THE TIME THE ORIGINAL DEED TOOK PLACE IN
12 2004?

13 A MY WIFE AND -- I WAS THERE AFTER THE DAMAGE WAS DONE.

14 Q WERE THE POLICE CALLED IN 2004 TO PUT A STOP TO THAT DIG?

15 A YES, SIR.

16 MR. THOMPSON: YOUR HONOR, AGAIN, SAME OBJECTION AS EARLIER.
17 I DON'T KNOW THE RELEVANCE OF THAT.

18 BY THE COURT: WHAT'S THE RELEVANCE OF LAW ENFORCEMENT?

19 MR. HECKMAN: IT GOES TO THE FACT THAT THE PLAINTIFFS WERE
20 CAUSING DAMAGE TO THE DEFENDANTS' PROPERTY, AND IT WAS STOPPED BY
21 LAW---

22 BY THE COURT: ON THAT LIMITED BASIS, I'LL ALLOW YOU TO GO A
23 LITTLE BIT FURTHER.

24 Q WERE THE POLICE CALLED?

25 A YES, SIR.

SAMUEL DARRYL HUMPHRIES-DIRECT BY MR. HECKMAN

1 Q AND DID THEY STOP THE DIGGING?

2 A YES, SIR.

3 Q BECAUSE OF THE DAMAGE THAT WAS BEING DONE BY THE PLAINTIFFS
4 TO YOUR SIDE OF THE BANK?

5 MR. THOMPSON: YOUR HONOR, I OBJECT. IT CALLS FOR
6 SPECULATION AS TO WHY THE POLICE DID WHAT THEY DID.

7 Q AFTER---

8 BY THE COURT: HOLD ON, I'M GOING TO OVERRULE THE OBJECTION.

9 MR. HECKMAN: OKAY, GOOD.

10 Q AFTER ROY DUG OUT THE BANK, WHAT CHANGED ABOUT THE FLOW OF
11 THE CREEK?

12 A WHAT CHANGED ABOUT THE FLOW?

13 Q YEAH.

14 A IT WAS JUST WASHING THE LAND AWAY. LOOSE DIRT ON THE SIDE
15 OF A CREEK BANK DON'T WORK.

16 Q IT WAS VEGETATED PRIOR TO THAT DIG, CORRECT?

17 A YES, SIR.

18 Q AND A STABLE CREEK BANK PRIOR TO THE DIG?

19 A YES, SIR.

20 Q WHAT DID YOU DO NEXT?

21 A CALLED THE ARMY CORP OF ENGINEERS AND GREENVILLE COUNTY SOIL
22 CONSERVATION, FLOOD CONTROL.

23 Q WAS THAT ROBERT TOLAR?

24 A YES, SIR.

25 Q WHAT DID ROBERT TOLAR RECOMMEND?

SAMUEL DARRYL HUMPHRIES-DIRECT BY MR. HECKMAN

1 MR. THOMPSON: YOUR HONOR, I OBJECT TO HEARSAY.

2 BY THE COURT: WHY IS THAT NOT HEARSAY?

3 Q WHAT DID ROBERT TOLAR TELL YOU DIRECTLY?

4 MR. THOMPSON: YOUR HONOR, THAT'S HEARSAY.

5 MR. HECKMAN: ROBERT TOLAR'S HERE. WE'LL GET TO THAT IN A
6 MINUTE.

7 Q DID YOU BUILD A RETAINING WALL?

8 A YES, SIR.

9 Q HOW DID YOU BUILD IT? DID YOU USE HEAVY MACHINERY OR DID
10 YOU USE YOUR HANDS AND HAND TOOLS?

11 A JUST MY HANDS, BACK, MY HAND TOOLS.

12 Q DID ANYONE DIRECT YOU TO BUILD THAT RETAINING WALL?

13 MR. THOMPSON: YOUR HONOR, OBJECTION TO THE HEARSAY. SAME
14 OBJECTION.

15 BY THE COURT: OVERRULED.

16 Q DID ANYONE TELL YOU TO BUILD THAT RETAINING WALL?

17 A THE ARMY CORP OF ENGINEERS SUGGESTED I BUILD A WALL TO SAVE
18 MY BANK AND MY FRUIT TREES.

19 MR. THOMPSON: SAME OBJECTION, YOUR HONOR.

20 BY THE COURT: I SUSTAIN THE OBJECTION.

21 Q WHEN YOU INSTALLED THE RETAINING WALL, DID YOU PUT IT
22 DIRECTLY AGAINST THE BANK OR DID YOU DIG IT OUT INTO THE MIDDLE
23 OF THE CREEK AS A DREDGE?

24 A I PUT IT DIRECTLY AGAINST THE BANK.

25 Q THE PURPOSE OF THE WALL WAS TO SAVE YOUR FRUIT TREES AND THE

1 MUSCADINE VINES?

2 A YES.

3 MR. THOMPSON: YOUR HONOR, OBJECT TO LEADING.

4 BY THE COURT: DON'T LEAD.

5 Q WHAT WAS THE PURPOSE OF THE WALL?

6 A TO HOLD MY PROPERTY FROM WASHING DOWN THE CREEK AND MY
7 TREES.

8 Q WHEN YOU FIRST PURCHASED THE PROPERTY, WHAT DID THAT BACK
9 YARD LOOK LIKE?

10 A IT WAS GROWED UP IN BRIARS AND VINES, AND I CLEANED IT UP
11 AND SOWED GRASS AND PLANTED TREES.

12 Q WHEN DID THE GREENS FILE THIS LAWSUIT? DO YOU REMEMBER?

13 A IT WAS, WHAT, 2009?

14 Q I THINK THE RECORD WOULD SHOW THE SUIT WAS FILED IN JUNE OF
15 2010.

16 A 2010.

17 Q WHERE WERE WE THE MORNING OF SEPTEMBER 15, 2010?

18 A WE WAS IN MEDIATION, ME AND MY WIFE.

19 Q I'M GOING TO INTRODUCE SOME PICTURES. DO YOU RECOGNIZE
20 THESE PICTURES, MR. HUMPHRIES?

21 A YES, SIR. THAT'S BEFORE HE DUG -- IN 2004, BEFORE HE DUG
22 THE WALL, UNDERNEATH THE WALL -- I MEAN, BEFORE HE DUG -- BEFORE
23 I HAD TO PUT THE WALL UP. THAT'S WHAT THE CREEK LOOKED LIKE
24 BEFORE HE DUG IN 2004, YOUR HONOR.

25 Q WAS THIS NEXT PICTURE ALSO TAKEN IN 2004?

SAMUEL DARRYL HUMPHRIES-DIRECT BY MR. HECKMAN

1 A YES, SIR.

2 Q DOES THAT SHOW AN ACCURATE REPRESENTATION OF THE ORIGINAL
3 PASTURE FENCE AND AT LEAST ONE FRUIT TREE?

4 A YES, SIR.

5 MR. THOMPSON: YOUR HONOR, I WOULD LIKE TO SEE THOSE
6 BEFORE---

7 BY THE COURT: SURE.

8 MR. HECKMAN: THEY WERE PROVIDED IN DISCOVERY.

9 BY THE COURT: WELL, HE HAS A RIGHT TO SEE THEM.

10 MR. HECKMAN: I HAVE A FOLDER FOR YOU.

11 BY THE COURT: MR. HECKMAN, HE HAS A RIGHT TO SEE THEM
12 BEFORE I SEE THEM.

13 MR. HECKMAN: I'M SORRY.

14 MR. THOMPSON: OKAY.

15 Q DO YOU RECOGNIZE THAT PICTURE?

16 A YES, SIR. THAT'S WHERE HE DUG OFF MY BANK, DUG UP UNDER THE
17 BANK AND PUT ALL OF THE DIRT OVER HERE ON HIS SIDE, NARROWED THE
18 CREEK IN TO ABOUT, LIKE I SAY, ABOUT 30 INCHES.

19 Q WHEN WAS THAT PICTURE TAKEN, 2005 OR AFTER?

20 A YES, SIR.

21 Q WHAT'S THAT PICTURE RIGHT THERE?

22 A THAT'S AFTER HE DUG IT OUT AND PUT ALL OF THE DIRT OVER
23 HERE, YOU CAN SEE THE PILE OF DIRT ON THE BANK, DUG IT OUT FROM
24 UNDER MY BANK SO IT WOULD FALL IN.

25 BY THE COURT: CAN YOU ASK HIM TO IDENTIFY WHICH SIDE OF

1 THE CREEK IS HIS, PLEASE, SIR?

2 THE WITNESS: THE RIGHT HAND SIDE IS MY SIDE.

3 Q WHAT DOES THAT PICTURE REPRESENT?

4 A IT'S SHOWING WHERE MY BANK CAVED ON IN AND MY APPLE TREE
5 FELL IN THE CREEK WHEN IT COME A BIG RAIN.

6 Q WAS THERE ANY EXCAVATION DONE UNDERNEATH THAT BANK BY---

7 A YES, SIR. THAT'S WHEN THEY DUG OUT UNDERNEATH THE BANK IN
8 2004.

9 Q WHAT DOES THAT PICTURE REPRESENT?

10 A WHEN IT CAME THE BIG FLOOD, IT WAS WASHING ME AWAY.

11 Q DOES IT ALSO SHOW SOME OF YOUR FRUIT TREES THAT HAVE SINCE
12 BEEN LOST?

13 A YES, SIR.

14 Q WHICH SIDE OF THE BANK IS YOURS IN THIS PICTURE?

15 A ON THE RIGHT HAND SIDE.

16 Q DOES THAT INDICATE WHERE A TRACK HOE HAS BEEN USED TO DIG
17 OUT THE BANK?

18 A YES, SIR.

19 Q WAS THAT PICTURE TAKEN IN 2004?

20 A YES, SIR.

21 Q WHAT DOES THAT PICTURE REPRESENT, MR. HUMPHRIES?

22 A THAT'S DOWN BELOW -- WHERE HE MOVED ALL OF THE DIRT OVER ON
23 HIS SIDE OUT FROM UNDER MINE ON THE RIGHT HAND -- MINE'S ON THE
24 RIGHT.

25 MR. HECKMAN: YOUR HONOR, THERE'S JUST A COUPLE MORE OF

SAMUEL DARRYL HUMPHRIES-DIRECT BY MR. HECKMAN

1 THESE. I'M JUST GOING TO SHOW THE MORE RELEVANT ONES.

2 Q WHAT IS THAT PICTURE A PICTURE OF?

3 A WHERE THEY TOOK THE BACKHOE AND DUG IN MY BANK.

4 MR. HECKMAN: MARK THOSE AS DEFENDANTS' EXHIBIT 6

5 COLLECTIVELY, THOSE PICTURES.

6 (THIRTEEN PICTURES ENTERED INTO EVIDENCE AS DEFENDANTS'

7 EXHIBIT NO. 6)

8 Q ALL RIGHT. ON THE MORNING OF SEPTEMBER 15TH WHERE WERE WE?

9 A MEDIATION.

10 Q WHAT TIME WAS THAT MEDIATION? DO YOU RECALL?

11 A 9:30, WASN'T IT? I'M PRETTY SURE IT WAS AROUND 9:30, 10:00.

12 Q WHILE WE WERE AT MEDIATION, DID YOU RECEIVE A PHONE CALL?

13 A YES, SIR.

14 Q WHAT WAS THE NATURE OF THE CALL?

15 MR. THOMPSON: YOUR HONOR, I'M GOING TO OBJECT TO THE
16 HEARSAY. THERE'S NOT AN INDICATION AS TO WHO MADE THE CALL OR
17 WHAT WAS---

18 BY THE COURT: HE CAN TESTIFY HE GOT A PHONE CALL. AT THIS
19 POINT, IT'S NOT HEARSAY.

20 MR. THOMPSON: NO, BUT HE WAS ASKING HIM---

21 BY THE COURT: IT MIGHT BE ONE STEP AWAY FROM HEARSAY. BUT
22 AT THIS POINT, IT'S NOT HEARSAY. SO, GO AHEAD.

23 MR. THOMPSON: SURE.

24 Q WHAT CAUSED YOU TO LEAVE MEDIATION?

25 A MY BROTHER-IN-LAW AND SISTER-IN-LAW WERE AT HOME, AND THEY

SAMUEL DARRYL HUMPHRIES-DIRECT BY MR. HECKMAN

1 CALLED AND TOLD ME THAT ROY GREEN---

2 MR. THOMPSON: YOUR HONOR, I OBJECT TO THE---

3 BY THE COURT: HOLD ON. I SUSTAIN THE OBJECTION. YOU
4 CAN'T TELL WHAT SOMEBODY ELSE TOLD YOU. I'M GOING TO HAVE TO
5 AGREE WITH MR. THOMPSON THAT THAT'S HEARSAY.

6 A I DON'T THINK WHEN THEY CALLED ME, THEY DIDN'T LIE ABOUT IT.

7 Q WHEN YOU RETURNED TO YOUR HOME---

8 BY THE COURT: I UNDERSTAND THAT.

9 Q WHEN YOU RETURNED TO YOUR HOME -- DID THE PHONE CALL CAUSE
10 YOU TO LEAVE MEDIATION?

11 A YES, SIR.

12 Q WHEN YOU RETURNED TO YOUR HOME, WHAT DID YOU FIND?

13 A I FOUND ALL OF MY TREES GONE, AND MY VINES IN THE CREEK, AND
14 A GOOD BIT OF MY PROPERTY GONE AND PUT ON THEIR SIDE OF THE
15 CREEK, ON THEIR BANK.

16 Q WHAT KIND OF MACHINERY DID YOU OBSERVE ON THE GREEN'S SIDE
17 OF THE BANK?

18 A A BIG TRACK HOE.

19 Q IS THIS THE TRACK HOE YOU HAD OBSERVED EARLIER FROM ROY OR
20 WAS THIS A LARGER---

21 A IT WAS A LARGE ONE, A BIG ONE THAT THEY BROUGHT IN.

22 Q ABOUT HOW MUCH PROPERTY WOULD YOU SAY WAS MOVED FROM ONE
23 SIDE OF THE BANK TO THE OTHER SIDE OF THE BANK?

24 A I GUESS, IN PLACES SIX OR EIGHT FOOT; SOME PLACES, YOU KNOW,
25 THREE TO FOUR FOOT. UP TO ABOUT 120 FOOT MAYBE.

SAMUEL DARRYL HUMPHRIES-DIRECT BY MR. HECKMAN

1 Q WHAT SORT OF DAMAGE OCCURRED ON YOUR SIDE OF THE BANK DUE TO
2 THAT DIG?

3 A EROSION, WASHING AWAY.

4 Q DID YOU LOSE ANY OTHER PLANTS OR SPECIFICALLY TREES?

5 A I LOST TWO PLUM TREES AND TWO APPLE TREES THAT TIME AND SIX
6 GRAPE VINES.

7 Q DID YOU MEET WITH BRANDON BROWN WITH SCHNEIDER TREE?

8 A YES, SIR.

9 Q DID MR. BROWN PREPARE AN APPRAISAL OF THE LOSS OF THE FRUIT
10 TREES?

11 A YES, SIR.

12 Q IS THIS THE APPRAISAL THAT MR. BROWN PREPARED?

13 A YES, SIR.

14 Q HE PREPARED A SECOND APPRAISAL FOR THE MUSCADINE VINES,
15 CORRECT?

16 A YES, SIR.

17 Q WHAT DOES THIS APPRAISAL SHOW THE VALUE OF YOUR MUSCADINE
18 VINES?

19 MR. THOMPSON: YOUR HONOR, I'M GOING TO OBJECT AT THIS POINT
20 AS HEARSAY. HE'S ASKED HIM TO READ AN APPRAISAL THAT SOMEBODY
21 ELSE PREPARED.

22 BY THE COURT: HOW IS THAT NOT HEARSAY?

23 MR. HECKMAN: MR. HUMPHRIES HAS DIRECT KNOWLEDGE OF THE
24 INSPECTION AND THE APPRAISAL. SCHNEIDER TREE, IT'S COMMON
25 KNOWLEDGE IS -- I CAN CALL SCHNEIDER TREE AND HAVE SOMEBODY COME

SAMUEL DARRYL HUMPHRIES-DIRECT BY MR. HECKMAN

1 OVER HERE TO TESTIFY, BUT IT IS COMMON KNOWLEDGE IN THE
2 GREENVILLE MARKET THAT SCHNEIDER TREE IS WELL RESPECTED AND A
3 LARGE TREE COMPANY.

4 BY THE COURT: MR. HECKMAN, I DON'T DISAGREE WITH WHAT
5 YOU'RE SAYING ABOUT SCHNEIDER TREE, BUT, NONETHELESS, I HAVE NO
6 OPTION BUT TO SUSTAIN THE OBJECTION.

7 Q HAVE YOU SEEN MR. GREEN'S ESTIMATE TO RESTORE THE CREEK
8 BANK?

9 A YES, SIR.

10 Q IN YOUR OPINION, WOULD THAT AMOUNT OF DAMAGE BE COMPARABLE
11 TO THE DAMAGE DONE BY THE PLAINTIFFS' DAMAGE TO YOUR SIDE OF THE
12 BANK?

13 MR. THOMPSON: YOUR HONOR, I WOULD OBJECT. I BELIEVE THAT
14 GOES BEYOND THE SCOPE OF HIS KNOWLEDGE IN TERMS OF COMPARING---

15 BY THE COURT: HE IS THE PROPERTY OWNER, AND THE LAW IS
16 CLEAR IS HE CAN GIVE AN OPINION AS TO THE VALUE OR DAMAGE OF THE
17 VALUE CAUSED TO HIS PROPERTY. SO, IF YOU'LL REPHRASE THE
18 QUESTION.

19 Q WHAT DO YOU BELIEVE THE DAMAGE TO YOUR SIDE OF THE BANK HAS
20 BEEN DUE TO THE ACTIONS OF THE PLAINTIFFS?

21 A REPHRASE---

22 Q HOW MUCH DAMAGE DO YOU BELIEVE HAS BEEN DONE TO THE VALUE OF
23 YOUR PROPERTY DUE TO THE ACTIONS OF THE PLAINTIFFS?

24 A IT'S HARD TO PUT A PRICE ON SOMETHING LIKE THAT REALLY
25 BECAUSE THE BEAUTY'S GONE, THE USE OF SOME OF MY PROPERTY'S GONE

SAMUEL DARRYL HUMPHRIES-CROSS BY MR. THOMPSON

1 WHICH, YOU KNOW, YOU CAN'T TAKE IT WITH YOU BUT I WOULD SAY
2 \$25,000.00.

3 MR. HECKMAN: NOTHING FURTHER AT THIS TIME.

4 BY THE COURT: YOUR WITNESS.

5 CROSS-EXAMINATION BY MR. THOMPSON:

6 Q NOW, MR. HUMPHRIES, YOU AGREE WITH ME THAT YOU BUILT THIS
7 RETAINING, DIVERSION WALL IN THE CREEK, RIGHT?

8 A IT'S NOT A---

9 MR. HECKMAN: I OBJECT TO THE USE OF THE WORD DIVERSION.

10 BY THE COURT: WHAT'S THE OBJECTION?

11 MR. HECKMAN: WITHDRAWN.

12 BY THE COURT: ALL RIGHT. GO AHEAD.

13 Q MR. HUMPHRIES, YOU AGREE WITH ME YOU BUILT THIS WALL IN THE
14 CREEK, RIGHT?

15 A TO START WITH, IT WAS A DEFERRING WALL AS YOU CALLED IT. I
16 PUT IT UP AGAINST WHAT THEY DUG OUT AGAINST MY PROPERTY.

17 Q YOU BUILT THIS WALL, RIGHT?

18 A YES, SIR.

19 Q YOU DID IT YOURSELF, CORRECT?

20 A YES, SIR.

21 Q OKAY--OVER TIME, YOU BACK FILLED THE WALL, DIDN'T YOU, SIR?

22 A OVER TIME WHAT?

23 Q OVER TIME, DID YOU BACK FILL THIS WALL?

24 A YES, SIR. IT TOOK ME ABOUT A YEAR WITH A WHEEL BARROW.

25 Q I SHOW YOU PICTURES OF -- THIS IS PLAINTIFFS' EXHIBIT 4,

SAMUEL DARRYL HUMPHRIES-CROSS BY MR. THOMPSON

1 THAT TOP PHOTOGRAPH, THAT'S THE PROPERTY BEHIND THE WALL, RIGHT,
2 SIR?

3 A YES.

4 Q IT LOOKS LIKE YOU'VE GOT GRASS GROWING, GOT THE TREES THERE,
5 RIGHT, SIR?

6 A HUH-HUH (AFFIRMATIVE).

7 Q NOW, THIS BOTTOM PICTURE, IS THAT WHERE THE STREAM BANK USED
8 TO BE, THE CREEK BED?

9 A NO, SIR. IT'S ALWAYS BEEN FILLED IN THERE.

10 Q THAT'S ALWAYS BEEN LIKE THAT?

11 A IT WASN'T WHEN THEY DUG IT OUT IN 2004.

12 Q SO, THEY DUG THAT PART OUT DOWN YONDER?

13 A YES, SIR.

14 Q YOU HAVE PHOTOGRAPHS OF THAT?

15 A YES, SIR.

16 Q THOSE ARE THE PHOTOGRAPHS--

17 A WE'VE GOT THEM SOMEWHERE.

18 Q --YOU SHOWED THE JUDGE A MINUTE AGO? NOW, MR. HUMPHRIES,
19 LET ME SHOW YOU, LOOKING AT PLAINTIFFS' EXHIBIT NO. 3, THE SECOND
20 PAGE, LOOK AT THAT BOTTOM PICTURE, SIR. THAT WALL IS AT AN
21 ANGLE, ISN'T IT?

22 A THAT PIECE OF PLYWOOD RIGHT THERE---

23 Q YES, SIR.

24 A THIS WALL -- THERE WAS DIRT RIGHT UNTIL THE BIG FLOOD COME
25 AND IT WASHED THE DIRT AND ALL OF THAT STUFF BEHIND IT.

1 ACTUALLY, UP HERE, WASHED THAT AWAY. SO, I WENT BACK AND
2 DIVERTED IT BACK THAT WAY.

3 Q BUT MY QUESTION, THAT PIECE OF PLYWOOD RIGHT THERE IS AT AN
4 ANGLE, CORRECT, SIR?

5 A YES, SIR.

6 Q SO, THE WATER COMES DOWN AND HITS THAT, IT PUSHES IT AWAY
7 FROM THAT WALL, RIGHT?

8 A I GUESS IT WOULD, YEAH.

9 Q THAT WAS YOUR INTENT, RIGHT, SIR?

10 A NO, SIR.

11 Q FOR THE WATER TO GET PUSHED AWAY---

12 A NO, SIR. I---

13 Q LET ME FINISH MY QUESTION, SIR. YOUR INTENT WAS TO PUSH THE
14 WATER -- KEEP THE WATER OFF YOUR PROPERTY AND PUSH IT AWAY,
15 RIGHT?

16 A NO, SIR, KEEP THE DIRT FROM FALLING OVER INTO THE CREEK.

17 Q OKAY. SO, YOUR PURPOSE WAS NOT TO KEEP THE WATER OFF YOUR
18 MANICURED PROPERTY BUT TO KEEP THE DIRT FROM FALLING IN?

19 A YES, SIR. THERE WAS A BUSH THERE RIGHT BEHIND THAT BOARD
20 THERE.

21 Q NOW, LET ME SHOW YOU PLAINTIFFS' EXHIBIT NO. 3, PAGE 8. IT
22 LOOKS LIKE A TREE THAT WAS RIGHT THERE, SIR, IN THAT AREA?

23 A YES, SIR.

24 Q WHAT KIND OF TREE IS THAT?

25 A PLUM TREE.

SAMUEL DARRYL HUMPHRIES-CROSS BY MR. THOMPSON

1 Q A PLUM TREE. THAT PLUM TREE WAS THERE BEFORE YOU PUT THE
2 WALL UP?

3 A YES, SIR.

4 Q NOW, WAS IT ABOUT TO FALL IN RIGHT BEFORE YOU PUT THE WALL
5 UP?

6 A I HAD TO PULL ONE OF THEM UP.

7 Q LET ME SHOW YOU PLAINTIFFS' EXHIBIT NO. 3, PAGE 3, THAT TOP
8 PICTURE. IS THAT THE TREE YOU'RE REFERENCING? IT'S KIND OF
9 FALLING IN OVER THE WALL THERE?

10 A YES, SIR.

11 Q SO, AT THAT POINT, YOU STARTED -- WENT AHEAD AND FILLED IT
12 IN WITH, WHAT, ROCKS, DIRT, WHATEVER BACK BEHIND THAT WALL?

13 A YES, SIR.

14 Q NOW, LET ME ASK YOU, MR. HUMPHRIES, WHEN WATER CAME THROUGH
15 DOWN THERE AND IT GOT UP A LITTLE BIT, WHERE DOES IT GO WHEN IT
16 HITS THAT WALL?

17 A SAY THAT AGAIN.

18 Q WHEN THE WATER CAME UP A LITTLE BIT AND WENT DOWN THROUGH
19 THERE, WHERE DID IT GO WHEN IT HIT THAT WALL?

20 A WENT ON DOWN THE CREEK.

21 Q DID IT GO OVER AGAINST THE GREEN PROPERTY?

22 A NOT THAT MUCH. THEY DIDN'T PUT ROCK ON THEIR BANK.

23 Q LET ME SHOW YOU PLAINTIFFS' EXHIBIT 3 AGAIN, PAGE 8. DO YOU
24 SEE THE BANK ON THE GREEN PROPERTY OVER THERE IN THAT TOP
25 PHOTOGRAPH, SIR?

SAMUEL DARRYL HUMPHRIES-CROSS BY MR. THOMPSON

1 A YES, SIR.

2 Q THAT'S ALMOST RIGHT ACROSS FROM WHERE YOUR WALL IS; IS THAT
3 RIGHT, SIR?

4 A YES, SIR.

5 Q YOUR WALL KIND OF BUMPS OUT INTO THE CREEK A LITTLE BIT
6 THERE, DOESN'T IT, SIR?

7 A NO, SIR. THAT WAS THE FLOW OF THE CREEK. THEY PUT DIRT
8 FROM HERE TO THERE TO BUILD THIS UP. SO, THAT MADE THAT DO THAT
9 ON THE DIG.

10 Q SO, TONY GREEN OR FRANCES PITTMAN PUT DIRT BEHIND THAT WALL,
11 BUILT THAT WALL FOR YOU?

12 A NO, I DID.

13 Q YOU DID THAT; IS THAT RIGHT, SIR?

14 A (NO RESPONSE)

15 Q BUT YOU UNDERSTAND, SIR -- LET ME GO BACK. NOW, WHEN YOU
16 BOUGHT THIS PROPERTY, YOU DIDN'T HAVE A SURVEY DONE, CORRECT?

17 A THE BANK SAID I DIDN'T NEED IT BECAUSE IT WAS SURVEYED A
18 YEAR-AND-A-HALF BEFORE.

19 Q LET'S TALK ABOUT THAT FOR JUST A SECOND. THAT'S PLAINTIFFS'
20 EXHIBIT NO. 8, IS THAT RIGHT, SIR, THIS PLAT FROM DORA LEE HALL
21 IN JULY OF '91; IS THAT RIGHT?

22 A YES, SIR.

23 Q ALL RIGHT. NOW, I THINK YOUR COUNSEL ASKED YOU ABOUT THIS.
24 IN THIS TOP LINE IS THE BOUNDARY BETWEEN YOU AND WHAT IS NOW TONY
25 GREEN'S PROPERTY, CORRECT, SIR?

SAMUEL DARRYL HUMPHRIES-CROSS BY MR. THOMPSON

1 A YES.

2 Q ALL RIGHT. IT SAYS BEAVER DAM CREEK IS THE PROPERTY LINE;
3 IS THAT RIGHT?

4 A YES, SIR.

5 Q IT ALSO HAS MEASUREMENTS IN TERMS -- WHEN I SAY METES AND
6 BOUNDS, DO YOU KNOW WHAT I'M REFERRING TO, SIR?

7 A YES, SIR.

8 Q THAT'S THE ANGLES AND THE DISTANCES FROM POINT TO POINT TO
9 HELP SET THE BOUNDARIES FOR A PIECE OF PROPERTY, RIGHT?

10 A YES, SIR.

11 Q THE NORTH SIDE OF YOUR PROPERTY LINE HAS METES AND BOUNDS
12 MEASUREMENTS; IS THAT CORRECT?

13 A IF THE PLAT SHOWS IT, YEAH.

14 Q ALL RIGHT. IT SHOWS -- THERE'S TWO LEGS THAT ARE KIND OF
15 ABOVE THE CREEK; IS THAT RIGHT, SIR? IT HAS TWO SEPARATE
16 MEASUREMENTS, AND METES AND BOUNDS DEFINITIONS FOR EACH ONE OF
17 THOSE SEGMENTS?

18 A THAT'S WHAT IT SAYS.

19 Q NOW, Y'ALL BOUGHT THE PROPERTY FROM DORA LEE HALL; IS THAT
20 RIGHT?

21 A YES, SIR.

22 Q PLAINTIFFS' EXHIBIT 9, AS WE'VE ALREADY DISCUSSED, IS THE
23 DEED INTO MS. HALL; IS THAT CORRECT, SIR? IS THAT A YES?

24 A YES.

25 Q ALL RIGHT. THIS WHOLE PARAGRAPH IS A LEGAL DESCRIPTION.

SAMUEL DARRYL HUMPHRIES-CROSS BY MR. THOMPSON

1 ARE YOU FAMILIAR WITH THAT TERM? WHEN I USE "LEGAL DESCRIPTION"

2 DO YOU KNOW WHAT I'M TALKING ABOUT, SIR?

3 A YES.

4 Q WOULD YOU AGREE WITH ME THIS MIDDLE -- THIS WHOLE PARAGRAPH

5 IS THE LEGAL DESCRIPTION FOR THE PROPERTY; IS THAT CORRECT?

6 MR. HECKMAN: OBJECTION. IT'S CALLING FOR EXPERTISE THE

7 WITNESS DOES NOT HAVE.

8 BY THE COURT: IF HE HAS AN OPINION OR A BASIS TO HAVE THAT,

9 THEN HE CAN ANSWER IT. IF NOT, HE CAN SAY HE DOESN'T KNOW.

10 Q MR. HUMPHRIES, DO YOU KNOW IF THIS IS THE LEGAL DESCRIPTION

11 THAT'S CONTAINED IN THIS DEED?

12 A YES.

13 Q DOES THIS LEGAL DESCRIPTION CONTAIN LANGUAGE SUCH AS "266.5

14 FEET TO AN IRON PIN AT THE JOINT LINE"? IS THAT LANGUAGE

15 CONTAINED IN THIS LEGAL DESCRIPTION?

16 A YEAH.

17 Q NOW, IT DOES SAY, "THENCE WITH BEAVER DAM CREEK IS THE LINE"

18 AT ONE POINT, CORRECT?

19 A YES, SIR.

20 Q IT TALKS ABOUT AN IRON PIN IN THE CREEK, RIGHT? "IRON PIN

21 IN BEAVER DAM CREEK; THENCE WITH BEAVER DAM CREEK IS THE LINE";

22 IS THAT RIGHT, SIR?

23 A YES, SIR. THAT'S WHAT IT SAYS.

24 Q OKAY. THEN IT GOES ON TO SAY, YOU KNOW, "N. 72-33 E., 99.9

25 FEET TO AN IRON PIN, AND N. 57-42 E., 117.8 FEET TO AN IRON PIN."

SAMUEL DARRYL HUMPHRIES-CROSS BY MR. THOMPSON

1 DID I READ THAT CORRECTLY?

2 A YES, SIR.

3 Q SO, NOT ONLY DOES IT REFERENCE THE CREEK, BUT IT ALSO GIVES
4 YOU A METES AND BOUNDS DESCRIPTION FOR THAT PROPERTY LINE; IS
5 THAT CORRECT, SIR?

6 A YES, SIR.

7 Q AND IT REFERENCES IRON PINS, CORRECT, SIR? IS THAT CORRECT?

8 A YES, SIR.

9 Q SO, IN THEORY, YOU HAVE A DEFINITE LINE AS TO WHERE THAT
10 CREEK IS AT THAT POINT IN TIME; IS THAT RIGHT, SIR?

11 A YES, SIR, BUT MY DEED AND MY PLAT SAYS THE CREEK IS THE
12 LINE.

13 Q LET'S LOOK AT YOUR DEED THEN SINCE YOU'VE REFERENCED THAT.
14 THE DEED TO YOUR WIFE IS -- LET ME FIND IT HERE, GRAB THE RIGHT
15 ONE. NOW, THIS PROPERTY WAS DEEDED TO YOUR WIFE BY DORA LEE
16 HALL; IS THAT CORRECT, SIR?

17 A YES, SIR.

18 Q IS THIS THAT DEED, DEFENDANTS' EXHIBIT 2, THE DEED TO
19 VERONICA HUMPHRIES FROM DORA LEE HALL?

20 A YES, SIR.

21 Q CAN YOU TELL ME WHERE ON THIS DEED IT TALKS ABOUT THE
22 PROPERTY LINE BEING -- THE CREEK BEING THE PROPERTY LINE?

23 MR. HECKMAN: I OBJECT.

24 A IT SAYS---

25 BY THE COURT: HOLD ON, PLEASE, SIR.

1 MR. HECKMAN: THAT QUESTION WAS ASKED ON DIRECT AND
2 ANSWERED. WHEN I SHOWED HIM THAT DEED AND ASKED HIM ABOUT THE
3 LEGAL DESCRIPTION, HE READ PLAT BOOK 20-Y AT PAGE 97.

4 BY THE COURT: WELL, I THINK HE HAS A RIGHT TO SEE IF THE
5 ANSWER IS GOING TO BE CONSISTENT ON CROSS. SO, GO AHEAD.

6 A: WHAT THE DEED SAYS IT'S THE PLAT AT 20-Y.

7 Q: DOES YOUR DEED REFERENCE THE CREEK AS THE PROPERTY LINE?

8 A: IT DON'T SAY IT ON THIS---

9 Q: YOUR DEED DOES NOT SAY THAT, CORRECT?

10 A: NOT ON THAT PARTICULAR DOCUMENT, NO.

11 Q: ALL RIGHT. WHAT ABOUT THE DEED FROM YOUR WIFE TO YOU? DOES
12 IT SAY IN THERE ANYTHING ABOUT THE PROPERTY -- THE CREEK BEING
13 THE PROPERTY LINE?

14 A: IT REFERS TO 20-Y, PAGE 97.

15 Q: SO, YOU WOULD AGREE WITH ME THEN THAT YOUR PROPERTY -- THE
16 PROPERTY GIVEN TO YOU BY DORA LEE HALL IS THE SAME PROPERTY GIVEN
17 TO DORA LEE HALL BY KATIE EMERY, CORRECT?

18 A: YES, SIR.

19 Q: MR. HUMPHRIES, I'M A LITTLE CONFUSED ABOUT SOMETHING. YOU
20 SAID THAT THIS EXCAVATION WORK WAS DONE IN 2004; IS THAT RIGHT,
21 SIR?

22 A: YES, SIR.

23 Q: YOU SAID SHORTLY AFTER THAT THERE WAS THIS MASSIVE FLOOD; IS
24 THAT RIGHT, SIR?

25 A: YES, SIR.

SAMUEL DARRYL HUMPHRIES-CROSS BY MR. THOMPSON

1 Q THAT'S WHAT CAUSED A LOT OF THE DAMAGE?

2 A YES, SIR.

3 Q YOU SAID THAT'S WHEN THESE PICTURES WERE TAKEN THAT SHOWS
4 THE TREE FALLING DOWN?

5 A YEAH, WHEN THE CREEK WAS IN, YOU KNOW, COMING DOWN PRETTY
6 STRONG.

7 Q WHAT'S THE DATE YOU HAVE WRITTEN ON THE BACK OF THAT
8 PICTURE?

9 A I'VE GOT 2005 BUT IT ACTUALLY WAS 2004 WHEN THAT HAPPENED.

10 Q WHEN DID YOU WRITE THIS DATE ON THERE, SIR?

11 A I DON'T -- JUST GOT CONFUSED ON DATES. A LONG TIME AGO, I
12 GUESS.

13 Q WOULD YOU AGREE WITH ME PERHAPS YOUR RECOLLECTION WAS A
14 LITTLE BIT BETTER BACK A FEW YEARS AGO THAN IT MIGHT BE NOW?

15 A WELL, I DON'T KNOW THAT. IT'S PRETTY SHARP ALL OF THE TIME.
16 I DON'T KEEP UP WITH SPECIFIC DATES.

17 Q YOU SAID YOU LOST SOME OF YOUR VINES; IS THAT RIGHT, SIR?

18 A YES, SIR.

19 Q DID IT ACTUALLY FALL IN THE CREEK?

20 A YES, SIR. THEY'RE DOWN IN THE CREEK.

21 Q DO YOU HAVE PICTURES SHOWING YOUR VINES DOWN IN THE CREEK,
22 SIR?

23 A YES, SIR.

24 Q DOES THIS PICTURE OF DEFENDANTS' EXHIBIT 5 SHOW THE VINES
25 DOWN IN THE CREEK?

SAMUEL DARRYL HUMPHRIES-REDIRECT BY MR. HECKMAN

1 A NOT THAT ONE. RIGHT HERE YOU CAN SEE WHERE THEY DROPPED OFF
2 DOWN THE SIDE OF THE BANK.

3 Q NOW, YOU WOULD AGREE WITH ME WHEN YOU PLANTED THAT IT WAS
4 ABOUT A FOOT FROM THE BANK, THE TOP OF THE BANK; IS THAT RIGHT,
5 SIR?

6 A I DIDN'T HEAR. I CAN'T HEAR GOOD. IF YOU'RE GOING YONDER
7 WAY, I SURE CAN'T HEAR YOU.

8 Q I APOLOGIZE, SIR. NOW, YOU TESTIFIED THAT WHEN YOU FIRST
9 PUT THOSE POLES UP, THEY WERE ABOUT A FOOT AWAY FROM THE TOP OF
10 THE BANK; IS THAT RIGHT?

11 A NOT THOSE. THAT'S NOT WHAT I SAID.

12 Q OKAY. WHEN---

13 A THIS POST RIGHT HERE--

14 Q YES, SIR.

15 A --WAS ABOUT A FOOT AWAY FROM THE BANK. THESE OTHER ONES WAS
16 ABOUT FOUR FOOT. THE ONE THAT FELL IN--

17 Q YES, SIR.

18 A --IT WAS ABOUT FOUR FOOT. YOU COULD WALK ON THE OTHER SIDE.

19 MR. THOMPSON: YOUR HONOR, I DON'T HAVE ANYTHING FURTHER FROM
20 THIS WITNESS.

21 BY THE COURT: ALL RIGHT.

22 **REDIRECT EXAMINATION BY MR. HECKMAN:**

23 Q MR. HUMPHRIES, DO YOU RECOGNIZE THE HANDWRITING ON THE BACK
24 OF THAT PICTURE WHERE IT SAYS 2005?

25 A WHERE IT SAYS 2005?

SAMUEL DARRYL HUMPHRIES-REDIRECT BY MR. HECKMAN

1 Q . YEAH.

2 A IT WASN'T MINE.

3 Q THAT WOULD BE DEFENDANTS' EXHIBIT 6.

4 A NO. THAT'S NOT MY HANDWRITING.

5 Q DO YOU KNOW WHO WAS HANDLING THOSE PICTURES WHEN SOME OF
6 THAT WRITING OCCURRED?

7 A I THINK MY WIFE MIGHT HAVE PUT THEM ON THERE, YOU KNOW OR
8 JACK. YOU MIGHT HAVE DID IT. I'M NOT SURE. I DON'T WANT TO
9 ANSWER THAT.

10 Q DO YOU KNOW HOW MUCH IT WOULD COST TO REPLACE YOUR FRUIT
11 TREES THAT YOU LOST DUE TO THE ACTIONS OF THE PLAINTIFFS?

12 MR. THOMPSON: YOUR HONOR, I BELIEVE I OBJECTED TO THIS
13 PREVIOUSLY.

14 BY THE COURT: I SUSTAIN THE OBJECTION. IF YOU WISH TO
15 PROFFER IT FOR THE RECORD, YOU CAN DO THAT.

16 MR. HECKMAN: I BELIEVE THE HOMEOWNER CAN STATE HIS OPINION
17 OF HIS DAMAGE.

18 BY THE COURT: I UNDERSTAND. MR. KYLE -- I MEAN, MR.
19 THOMPSON'S OBJECTION IS IT'S NOT PROPER ON REDIRECT. I SUSTAIN
20 THAT OBJECTION.

21 Q DO YOU KNOW -- WHAT WOULD IT COST YOU TO REPLACE YOUR FRUIT
22 TREES?

23 A MY FRUIT TREES?

24 Q AND YOUR MUSCADINE VINES.

25 A ABOUT \$7,200.

SAMUEL DARRYL HUMPHRIES-REDIRECT BY MR. HECKMAN

1 Q MR. THOMPSON REFERRED TO SOME PINS ON A SURVEY IN 1991.

2 HAVE YOU EVER SEEN THOSE PINS, THE ACTUAL PINS, IN THE GROUND?

3 A TWO I HAVE.

4 Q WHICH TWO DID YOU SEE?

5 A ONE THAT JOINS BEN EMERY AND THE ONE THAT JOINS THE OLD HOME
6 PLACE -- FRANCES.

7 Q YOU INDICATE THAT IS THE TWO CORNER PINS ON THIS SURVEY.

8 THE BEN EMERY AND THEN KATIE EMERY PIN. YOU PURCHASED THE
9 PROPERTY IN 1993, CORRECT?

10 A YES, SIR.

11 Q YOU DID NOT HAVE IT SURVEYED IN 1993?

12 A NO, SIR.

13 Q YOUR UNDERSTANDING IS THE BOUNDARY LINE IS BEAVER DAM CREEK?

14 A YES, SIR.

15 Q TO YOUR KNOWLEDGE, THE CREEK COULD HAVE CHANGED BETWEEN THAT
16 SURVEY BEING DONE IN 1991 AND THE TIME THAT YOUR WIFE ACQUIRED
17 THE PROPERTY IN 1993, CORRECT?

18 A YES, SIR.

19 Q YOUR WIFE DEEDED THE PROPERTY TO YOU IN 2006 REFERENCING
20 THAT SAME SURVEY, CORRECT?

21 A YES, SIR.

22 Q SO, YOU HAVE NO SPECIFIC KNOWLEDGE THAT THE COURSE OF BEAVER
23 DAM CREEK WAS THE SAME IN 2006 WHEN YOU RECEIVED YOUR DEED TO THE
24 PROPERTY?

25 A YES, SIR.

SAMUEL DARRYL HUMPHRIES-RECROSS BY MR. THOMPSON
SAMUEL DARRYL HUMPHRIES-REDIRECT BY MR. HECKMAN

1 Q YOUR UNDERSTANDING IS BEAVER DAM CREEK IS THE LINE?

2 A YES, SIR.

3 MR. HECKMAN: ALL RIGHT.. NOTHING FURTHER.

4 MR. THOMPSON: JUST ONE QUICK QUESTION, JUDGE.

5 BY THE COURT: SURE.

6 **RECROSS EXAMINATION BY MR. THOMPSON:**

7 Q JUST TO KIND OF FOLLOW UP ON THAT, JUST TO FOLLOW UP, MR.

8 HUMPHRIES, IT'S YOUR CONTENTION THAT WHEREVER THE CREEK GOES, YOU
9 GET TO KEEP ALL OF THE PROPERTY ON YOUR SIDE; IS THAT RIGHT?

10 A YES, SIR.

11 MR. THOMPSON: OKAY. THAT'S ALL I HAVE, YOUR HONOR..

12 MR. HECKMAN: ONE FINAL REDIRECT.

13 **REDIRECT EXAMINATION BY MR. HECKMAN:**

14 Q MR. HUMPHRIES, DO YOU RECOGNIZE THESE PICTURES?

15 MR. THOMPSON: YOUR HONOR, I WOULD OBJECT. THAT WASN'T PART
16 OF MY LAST - RECROSS.

17 BY THE COURT: HOW DOES THAT RELATE TO WHAT MR. THOMPSON
18 JUST ASKED?

19 MR. HECKMAN: REPEAT THE QUESTION.

20 MR. THOMPSON: IF I CAN. I THINK MY QUESTION TO THE WITNESS
21 WAS WHETHER HE BELIEVED THAT THAT MEANT HE GETS TO KEEP ALL OF
22 THE PROPERTY ON HIS SIDE OF THE CREEK IF THE CREEK MOVES. THAT
23 WAS THE ONLY QUESTION I JUST ASKED.

24 MR. HECKMAN: THE PICTURES SHOW THE NATURE OF THE CREEK
25 AFTER THE DIG WAS DONE IN 2010 WHILE WE WERE AT MEDIATION. HE

BRYAN ALAN GOSNELL-DIRECT BY MR. HECKMAN

1 OPENED THE DOOR TO THE THEORIES OF ACCRETION AND EROSION, AND I
2 WOULD LIKE TO SHOW THE RESULT OF THE PLAINTIFFS ACTIONS ON
3 SEPTEMBER 2010.

4 BY THE COURT: I THINK I HAVE TO SUSTAIN. AGAIN, IF YOU
5 WISH TO PROFFER IT, YOU CAN DO THAT.

6 MR. HECKMAN: NOTHING FURTHER, SAMMY.

7 BY THE COURT: ALL RIGHT. THANK YOU, SIR. YOU CAN STEP DOWN.
8 (WITNESS EXCUSED)

9 MR. HECKMAN: I CALL BRYAN GOSNELL TO THE STAND.

10 **BRYAN ALAN GOSNELL**, BEING FIRST DULY SWORN, TESTIFIED AS
11 FOLLOWS:

12 BY THE COURT: COME AROUND AND HAVE A SEAT, PLEASE, SIR.
13 (COMPLIES) IF YOU'LL STATE YOUR FULL NAME.

14 THE WITNESS: BRYAN ALAN GOSNELL.

15 BY THE COURT: COULD YOU SPELL BRYAN?

16 THE WITNESS: B-R-Y-A-N.

17 BY THE COURT: ALL RIGHT. THANK YOU.

18 **DIRECT EXAMINATION BY MR. HECKMAN:**

19 Q GOOD MORNING, MR. GOSNELL. WHAT IS YOUR OCCUPATION?

20 A LAND SURVEYOR.

21 Q HOW LONG HAVE YOU BEEN A LAND SURVEYOR?

22 A SINCE '90.

23 Q SO, YOU HAVE OVER 20 YEARS EXPERIENCE IN LAND SURVEYING?

24 A HUH-HUH (AFFIRMATIVE)

25 THE COURT REPORTER: IS THAT A YES?

1 THE WITNESS: YES, MA'AM. YES.

2 Q DID YOU HAVE AN OPPORTUNITY TO SURVEY THE LAND IN QUESTION
3 IN THIS CASE?

4 A YES, SIR.

5 MR. HECKMAN: I WOULD LIKE TO PROFFER MR. GOSNELL AS AN
6 EXPERT REGISTERED LAND SURVEYOR.

7 BY THE COURT: ANY VOIR DIRE?

8 MR. THOMPSON: NO, YOUR HONOR. I WOULD OBJECT. IN DISCOVERY
9 I ASKED MR. HECKMAN IF HE HAD ANY EXPERT WITNESSES, AND HE SAID,
10 "THE DEFENDANT DOES NOT HAVE ANY EXPERT WITNESSES TO PRESENT IN
11 THE TRIAL OF THE CASE."

12 MR. HECKMAN: AT THAT TIME.

13 MR. THOMPSON: SO, OTHER THAN THAT, I WOULD NOT HAVE ANY
14 ADDITIONAL---

15 BY THE COURT: ARE YOU RAISING THAT AS AN OBJECTION, THAT IT
16 WASN'T SUPPLEMENTED?

17 MR. THOMPSON: YES, YOUR HONOR. HAD I KNOWN THAT HE WAS
18 GOING TO HAVE A SURVEYOR AS AN EXPERT WITNESS, I COULD HAVE
19 POTENTIALLY HAD MY OWN SURVEYOR AVAILABLE TO PROVIDE---

20 BY THE COURT: WAS MR. GOSNELL'S NAME PRODUCED TO MR.
21 THOMPSON?

22 MR. THOMPSON: IT WAS PRODUCED AS AN EYE WITNESS, NOT AS AN
23 EXPERT WITNESS, JUDGE.

24 BY THE COURT: I THINK THAT'S CLOSE ENOUGH THEN. I'M GOING
25 TO OVERRULE THE OBJECTION.

1 MR. THOMPSON: THANK YOU, JUDGE.

2 Q SO, YOU DID HAVE A CHANCE TO SURVEY THE PROPERTY?

3 A YES, SIR.

4 Q DEFENDANTS' EXHIBIT 13, IS THIS THE SURVEY THAT YOU
5 PERFORMED ON SEPTEMBER 28?

6 A YES, SIR.

7 BY THE COURT: OF WHAT YEAR, PLEASE, SIR?

8 THE WITNESS: I BELIEVE IT WAS 2010. 2010.

9 Q SO, SEPTEMBER 28, 2010 YOU SURVEYED THE PROPERTY OF SAMUEL
10 HUMPHRIES?

11 A YES, SIR.

12 Q WHAT DO YOU HAVE THE BOUNDARY LINE MARKED AS BETWEEN THE
13 HUMPHRIES AND THE GREEN PROPERTY?

14 A THE CENTER LINE OF BEAVER DAM CREEK IS THE PROPERTY LINE.

15 Q WHAT IS YOUR UNDERSTANDING OF BOUNDARY LINES AS A REGISTERED
16 SURVEYOR WHEN THE BOUNDARY -- HISTORICAL LINE SAYS THE
17 DESCRIPTION, "BEAVER DAM CREEK IS THE LINE"? IN YOUR
18 PROFESSIONAL OPINION, WHAT DOES THAT MEAN WHEN YOU SEE THAT TERM,
19 "CREEK IS THE LINE"?

20 A THAT'S THE BOUNDARY LINE.

21 Q IN YOUR OPINION, WHEN THE NATURAL MEANDERINGS OF THE CREEK
22 OCCUR, DOES THAT CHANGE THAT BOUNDARY LINE?

23 A THE NATURAL MEANDERINGS?

24 Q YES.

25 A CHANGE THAT PROPERTY LINE? IF IT MOVES SLOWLY AND

BRYAN ALAN GOSNELL-CROSS BY MR. THOMPSON

1 IMPERCEPTIBLE OVER TIME AND YOU CAN'T CHANGE IT, YES, THE LINE
2 MOVES WITH IT.

3 Q IF THE CHANGE IN THE COURSE OF THE CREEK IS MANMADE, THAT'S
4 A DIFFERENT STORY, CORRECT?

5 A THAT'S A DIFFERENT STORY. THAT'S EMULSION, EROSION, THE
6 LINE STAYS IN THE OLD CREEK RUT.

7 Q WHEN YOU DID YOUR SURVEY, DID YOU OBSERVE DAMAGE DONE TO THE
8 HUMPHRIES' SIDE OF THE BANK THAT APPEARED TO BE MANMADE?

9 A YES.

10 Q WHAT DID YOU SEE?

11 A WHEN I CAME OUT THERE, A BULLDOZER HAD BEEN IN THERE, OR A
12 TRACK HOE, OR SOMETHING AND JUST TOTALLY REWORKED THE WHOLE
13 CREEK. THIS JUT RIGHT HERE THAT YOU SEE HERE IN THIS CREEK
14 LOOKED LIKE IT HAD BEEN THERE TO DIVERT THE WATER TO TURN TOWARDS
15 THE HUMPHRIES' SIDE, AND THEY EXPLAINED TO ME WHAT ALL HAD WENT
16 ON. I THINK I BASICALLY TOLD THEM THEN THAT THAT WASN'T GOING TO
17 HOLD ANYWAY IN THE CREEK. THEN I WAS UP THERE JUST A FEW DAYS
18 AGO AND LOOKED AND IT HADN'T. IT HAD STRAIGHTENED BACK OUT.

19 MR. HECKMAN: NOTHING FURTHER AT THIS TIME.

20 BY THE COURT: YOUR WITNESS.

21 CROSS-EXAMINATION BY MR. THOMPSON:

22 Q MR. GOSNELL, HOW ARE YOU THIS MORNING, SIR?

23 A PRETTY GOOD.

24 Q LET ME JUST ASK YOU, WHEN YOU WENT OUT THERE TO SURVEY THE
25 HUMPHRIES' PROPERTY, DID YOU DO ANY -- DID YOU EXAMINE ANY PRIOR

1 PLATS OR SURVEYS?

2 A YES.

3 Q IS THAT ACTUALLY -- LET ME GET MY HANDS ON THE RIGHT ONE.

4 MR. GOSNELL, LET ME SHOW YOU PLAINTIFFS' EXHIBIT NO. 8, IS THAT A

5 PRIOR SURVEY FOR THE SAME PROPERTY?

6 A YES.

7 Q DID YOU USE THAT IN PART OF YOUR SURVEY OF THE HUMPHRIES'

8 PROPERTY IN 2010?

9 A YES.

10 Q HOW DID YOU USE THE SURVEY FROM 1991?

11 A THAT'S OUR JOB IS TO FOLLOW THE FOOTSTEPS OF THE SURVEYS

12 BEFORE US. WE GO OUT AND WE LOCATE OLD MONUMENTATION. IT SEEMS

13 LIKE I FOUND OLD MONUMENTATION AND FOUND THE REFERENCE IRON PINS

14 -- Y'ALL HAVE BEEN UP HERE TALKING ABOUT THE PINS IN THE CORNERS.

15 Y'ALL ARE WELL AWARE, THOSE ARE CALLED REFERENCE IRON PINS. THAT

16 JUST GIVES YOU ALIGNMENT, AND IT PROJECTS IT TO THE CENTER LINE

17 OF THE CREEK.

18 Q SO, MR. GOSNELL, WAS THERE A MEASUREMENT -- THIS IS --

19 DEFENDANTS' EXHIBIT-8--(SIC) IS GENERALLY NORTH FACING; IS THAT

20 CORRECT?

21 A YES.

22 Q IT'S AT THE TOP OF THE PAGE. THE SAME THING WITH YOUR

23 SURVEY, DEFENDANTS' 13; IS THAT RIGHT?

24 A YES.

25 Q OKAY. THE WESTERN BOUNDARY OF THE HUMPHRIES' PROPERTY IN

BRYAN ALAN GOSNELL-CROSS BY MR. THOMPSON

1 '91, YOU'RE TELLING ME---

2 A I LEFT MY GLASSES BACK THERE. CAN I GO GET THEM?

3 Q SURE. ABSOLUTELY, SIR.

4 A OR YOU CAN BRING THEM TO ME. EITHER WAY. NOW, WHAT WAS
5 YOUR QUESTION?

6 Q YES, SIR. ON THE WESTERN BOUNDARY IN THE '91 SURVEY, WHAT'S
7 THE DISTANCE, THE TOTAL LENGTH OF THAT WESTERN BOUNDARY LINE?

8 A 212.18.

9 Q ALL RIGHT. NOW, IN YOUR SURVEY, DEFENDANTS' 13, FROM 2010,
10 WHAT'S THE DISTANCE OF THAT?

11 A 215.3.

12 Q SO, ESSENTIALLY, THERE'S A CHANGE AT THIS POINT OF 3 FEET;
13 IS THAT RIGHT?

14 A CORRECT.

15 Q WHAT ABOUT -- LET'S LOOK AT THE EASTERN BOUNDARY LINE. IN
16 THE '91 SURVEY THAT'S PLAINTIFFS' EXHIBIT 8, WHAT IS THE LENGTH
17 OF THE EASTERN PROPERTY LINE?

18 A 166.

19 Q WHEN YOU DID IT IN 2010, WHAT DOES THE LENGTH SHOW?

20 A 172.

21 Q 172.5, ISN'T IT?

22 A YES.

23 Q SO, THAT'S A CHANGE OF 6½ FEET; IS THAT RIGHT, SIR? FROM
24 166 TO 172.5?

25 A ABOUT 6½ FEET.

BRYAN ALAN GOSNELL CROSS BY MR. THOMPSON

1 Q SO, ESSENTIALLY, THE PROPERTY LINE HAS MOVED ANYWHERE FROM 3
2 FEET TO 6 1/2 FEET FURTHER TOWARDS THE PROPERTY ON THE OTHER SIDE OF
3 THE CREEK, IS THAT RIGHT?

4 A CORRECT. MY THOUGHTS ON THAT---

5 Q I'M SURE MR. HECKMAN WILL ASK YOU YOUR THOUGHTS IN A MOMENT.
6 BUT DO YOU HAVE ANY KNOWLEDGE, SIR -- DID YOU TRY TO LOOK IN YOUR
7 SURVEY THE ORIGINAL LINE FROM '91 THAT WAS THE ORIGINAL BOUNDARY?

8 A DID I TRY TO RELOCATE IT?

9 Q DID YOU TRY AND FIND IT, TRY TO LOCATE IT?

10 A NO.

11 Q YOU WOULD AGREE THAT THE '91 SURVEY HAS METES AND BOUNDS ON
12 IT ON THE NORTHERN BOUNDARY, IS THAT CORRECT, SIR?

13 A YES.

14 Q AND YOU COULD, AS A SURVEYOR, GO OUT THERE AND ESTABLISH
15 THAT LINE, COULDN'T YOU, USING THOSE METES AND BOUNDS?

16 A I COULD.

17 Q SO, YOU WOULD AGREE WITH ME THAT THIS SURVEY DONE IN 1991
18 REFERENCES 1.0 ACRES OF PROPERTY; IS THAT CORRECT?

19 A YES.

20 Q NOW, YOUR PROPERTY ITSELF, YOU REFERENCE 1.02 ACRES; IS THAT
21 CORRECT?

22 A THAT'S CORRECT.

23 Q WOULD THAT BE AN INCREASE OF PROPERTY TO THE HUMPHRIES?

24 A TRUE.

25 Q DO YOU KNOW IF THEY PAID ANYTHING FOR THAT EXTRA LITTLE BIT

1 OF PROPERTY?

2 A I DON'T THINK -- IT'S NOT EXTRA PROPERTY. THIS SURVEY WAS
3 DONE IN '91. ITS ACCURACY IS TO THE NEAREST MINUTE AND TO THE
4 NEAREST TENTH OF A FOOT; WHEREAS, STANDARDS HAVE CHANGED. HERE
5 IN 2010, WE HAVE TO SHOW TO THE SECOND, WE HAVE TO SHOW TO THE
6 HUNDREDTH. IT'S JUST TIGHTER CALCULATIONS.

7 Q OKAY. BUT THERE'S STILL A 3 FEET, 6½ FEET STILL -- WE'RE
8 NOT TALKING ABOUT LIKE AN INCH OR TWO, RIGHT? WE'RE TALKING
9 ABOUT SEVERAL FEET; IS THAT CORRECT?

10 A RIGHT.

11 Q THAT WOULD INCREASE THE AMOUNT OF PROPERTY CONVEYED IN THE
12 HUMPHRIES' PIECE OF LAND; IS THAT RIGHT, SIR?

13 A YES.

14 Q JUST SO WE'RE CLEAR -- AND I APOLOGIZE, JUST FOR MY OWN
15 CLARIFICATION, THE '91 SURVEY DOES GIVE METES AND BOUNDS
16 MEASUREMENTS WHERE YOU COULD, IN FACT, GO MEASURE -- PUT A LINE
17 DOWN WITH THE ORIGINAL BOUNDARY; IS THAT CORRECT, SIR?

18 A NO.

19 Q WHY NOT?

20 A BECAUSE THE CREEK IS THE LINE. IT'S THE MONUMENT. THE
21 METES AND THE BOUNDS DESCRIPTIONS WOULD YIELD TO THE ACTUAL
22 MONUMENT.

23 Q MY QUESTION TO YOU, SIR, IS IN THIS '91 SURVEY, PLAINTIFFS'
24 NO. 8, THERE ARE METES AND BOUNDS DESCRIPTIONS FOR TWO SEGMENTS
25 ON THE NORTHERN PROPERTY LINE OF THE HUMPHRIES' PROPERTY,

BRYAN ALAN GOSNELL-REDIRECT BY MR. HECKMAN

1 CORRECT?

2 A UH-HUH. (AFFIRMATIVE).

3 Q IS THAT A YES?

4 A THAT'S CORRECT. YES.

5 Q YOU COULD, AS A REGISTERED LAND SURVEYOR, GO OUT THERE AND
6 SHOOT THAT LINE, CORRECT, SIR?

7 A YOU COULD.

8 Q IT'S POSSIBLE --- THAT LINE IS CAPABLE OF IDENTIFICATION,
9 CORRECT, SIR?

10 A YES.

11 MR. THOMPSON: I DON'T HAVE ANY FURTHER QUESTIONS, YOUR HONOR.

12 BY THE COURT: ANY OTHER QUESTIONS?

13 REDIRECT EXAMINATION BY MR. HECKMAN:

14 Q MR. GOSNELL, IF YOU DID LOCATE THAT LINE AND SHOOT THAT
15 LINE, WOULD IT MAKE IT THE BOUNDARY BETWEEN THESE TWO PROPERTIES?

16 A NO, NOT AT THE TIME OF MY SURVEY.

17 MR. THOMPSON: YOUR HONOR, I OBJECT. THAT CALLS FOR A LEGAL
18 CONCLUSION. THAT CALLS FOR A LEGAL CONCLUSION, YOUR HONOR. SO,
19 I'M GOING TO OBJECT.

20 BY THE COURT: HE'S BEEN QUALIFIED AS A LAND SURVEYOR. I
21 THINK THAT WOULD BE SOMETHING WITHIN HIS OPINION. SO, GO AHEAD.

22 A SAY YOUR QUESTION AGAIN.

23 Q MR. THOMPSON JUST ASKED IF YOU COULD LOCATE THAT HISTORICAL
24 LINE FROM 1991, IF YOU DID LOCATE THAT LINE WOULD THAT
25 NECESSARILY MAKE IT THE BOUNDARY LINE OR WOULD BEAVER DAM CREEK

1 REMAIN THE MONUMENT AND THE BOUNDARY LINE?

2 A AS A SURVEYOR, I COULD GO OUT THERE AND JUST LOOK AT THE
3 CREEK TO SEE IF I FEEL LIKE THAT'S -- YOU KNOW, SOMETHING HAS
4 DISTURBED IT TO MAKE IT GO BACK TO THOSE CALLS. OTHERWISE, WE GO
5 TO THE CENTER LINE OF THE CREEK.

6 Q YOU WERE ABOUT TO GIVE SOME THOUGHTS ABOUT THE CHANGE IN THE
7 LENGTHS OR TO THE SIDES OF THE PROPERTY LINE. COULD YOU JUST
8 CONTINUE WITH YOUR THOUGHTS?

9 A I REMEMBER -- YOU KNOW, YOU GO UP THROUGH THERE AND YOU SEE
10 THIS CREEK. IN CERTAIN PLACES IT'S TYPICALLY 6 FEET WIDE. WHEN
11 I WENT OUT THERE, THE TRACK HOE'S THERE. THE CREEK'S -- THE EDGE
12 OF THE CREEK BANK WAS THAT WIDE. TO GET TO THE CENTER OF THE
13 EDGES OF THE CREEK, YOU HAD TO COME MORE THIS WAY. THAT WOULD BE
14 MY ANSWER AS TO WHY THAT WAS---

15 Q IN OTHER WORDS, THE ACTUAL BED OF THE CREEK HAD GOTTEN WIDER
16 IS ONE POSSIBLE EXPLANATION AS TO WHY THOSE LINE LENGTHS AND
17 CALLS WERE LONGER?

18 A CORRECT.

19 Q AS TO THE FACT THAT THE 1991 SURVEY REFERENCES A 1 ACRE AND
20 YOUR SURVEY REFERENCES A 1.02 ACRES, HAVE THERE BEEN IMPROVEMENTS
21 TO THE STANDARDS IN THE EQUIPMENT FOR REGISTERED SURVEYORS?

22 A YES.

23 Q COULD THOSE IMPROVED STANDARDS AND EQUIPMENT ACCOUNT FOR
24 THAT DIFFERENCE IN THE ACTUAL ACREAGE?

25 A YES, ESPECIALLY WITH THE MEANDERINGS OF THE CREEK.

BRYAN ALAN GOSNELL-RECROSS BY MR. THOMPSON

1 Q AND IT'S ALSO POSSIBLE THAT THE AREA IN THE MIDDLE OF THE
2 LOT WHICH, I BELIEVE, HAS BEEN EXPLORED COULD ACCOUNT FOR THAT
3 CHANGE AS WELL?

4 A ABSOLUTELY.

5 Q THE CREEK HISTORICALLY -- PREVIOUSLY IN THIS HEARING THEY
6 TESTIFIED THAT A BEND AND "S" CURVE -- IN YOUR OPINION IS IT AN
7 "S" CURVE HERE, IS IT STILL AN "S" CURVE TODAY?

8 A TODAY, THERE'S NO -- THAT CREEK IS MOVING OUT THERE.

9 Q YEAH. IN YOUR OPINION, YOU CAN SEE A MANMADE SLASH WHERE
10 THAT EXCAVATION HAS BEEN DONE FROM SEPTEMBER OF 2010?

11 A I COULD AT THE TIME OF THE SURVEY BECAUSE IT HAD JUST BEEN
12 RECENTLY DONE. LIKE I SAID, I WAS UP THERE LAST WEEK AND IT'S
13 ALREADY TOOK -- THE NATURAL COURSE AND FLOW OF WATER HAS ALREADY
14 TOOK THAT DOGLEG OUT.

15 MR. HECKMAN: NOTHING FURTHER.

16 BY THE COURT: ANY OTHER QUESTIONS?

17 BY THE COURT: JUST ONE, YOUR HONOR.

18 **RECROSS EXAMINATION BY MR. THOMPSON:**

19 Q MR. GOSNELL, WOULD SOME KIND OF WALL, A DIVERSION WALL,
20 WOULD THAT HAVE THE CAPABILITY OF CHANGING THE COURSE, THE
21 NATURAL MEANDERINGS OF THE CREEK?

22 MR. HECKMAN: OBJECTION. I DON'T SEE WHERE MY LINE OF
23 QUESTIONING OPENED THAT.

24 MR. THOMPSON: HE JUST TALKED ABOUT THE NATURAL MEANDERINGS
25 AND HOW THE CREEK CAN MOVE, JUDGE.

JAMES ROBERT TOLAR-DIRECT BY MR. HECKMAN

1 BY THE COURT: I'M GOING TO SUSTAIN THE OBJECTION. IF YOU
2 WANT TO PROFFER IT, I THINK THAT'S BEYOND THE CROSS OF HIS
3 REDIRECT.

4 MR. THOMPSON: NOTHING FURTHER.

5 Q THANK YOU, SIR.

6 BY THE COURT: MAY THIS GENTLEMAN BE EXCUSED?

7 MR. THOMPSON: NO OBJECTION, YOUR HONOR.

8 MR. HECKMAN: NO OBJECTION. YOU CAN HANG AROUND IF YOU
9 WANT.

10 (WITNESS EXCUSED)

11 MR. HECKMAN: THE DEFENSE CALLS ROBERT TOLAR.

12 **JAMES ROBERT TOLAR**, BEING FIRST DULY SWORN, TESTIFIED AS
13 FOLLOWS:

14 BY THE COURT: IF YOU'LL STATE YOUR FULL NAME, PLEASE, SIR.

15 THE WITNESS: JAMES ROBERT TOLAR.

16 THE COURT REPORTER: COULD YOU SPELL YOUR LAST NAME, PLEASE.

17 THE WITNESS: T-O-L-A-R.

18 **DIRECT EXAMINATION BY MR. HECKMAN:**

19 Q MR. TOLAR, WHAT IS YOUR CURRENT OCCUPATION?

20 A CURRENTLY, I'M EMPLOYED BY GREENVILLE COUNTY WITH LAND
21 DEVELOPMENT, STORM WATER ENGINEER AND DISCHARGE REPORTING
22 OFFICER.

23 Q WHAT WAS YOUR OCCUPATION IN DECEMBER OF 2004?

24 A I WORKED WITH THE SOIL AND WATER CONSERVATION DISTRICT
25 THROUGH AN AGREEMENT WITH GREENVILLE COUNTY AS A STORM WATER

1 ENGINEER.

2 Q DO YOU HAVE PERSONAL KNOWLEDGE OF THE SITUATION INVOLVED IN
3 THIS CASE INVOLVING THIS PROPERTY LOCATED ALONG BEAVER DAM CREEK?

4 A YES.

5 Q WHAT IS YOUR RECOLLECTION OF THE HISTORY OF THESE
6 PROPERTIES? JUST YOUR GENERAL RECOLLECTION OF THE SITUATION BACK
7 IN JULY THROUGH YOUR INVOLVEMENT THROUGH PROBABLY OCTOBER OF
8 2004?

9 A GENERALLY, AS STATED EARLIER WITH PLATS, ET CETERA. WE
10 RECEIVE -- YOU WANT ME TO GO INTO MY CALL TO THE SITE?

11 Q UH-HUH (AFFIRMATIVE).

12 A WE RECEIVED A CALL, COMPLAINT AT THE SITE BY THE HUMPHRIES
13 TO COME OUT AND OBSERVE SOME GRADING ACTIVITY THAT WAS OCCURRING
14 AT THEIR PROPERTY.

15 Q WAS IT GRADING ON THEIR SIDE OR ON THE OTHER SIDE OF THE
16 CREEK?

17 A IT WAS ON THE OPPOSITE SIDE OF THE CREEK.

18 Q OKAY, CONTINUE.

19 A WE RESPONDED, WENT OUT TO THE SITE AND OBSERVED SOME WORK,
20 GRADING ACTION, ON THE OPPOSITE SIDE OF THE CREEK, IN THE CREEK.
21 THERE WAS EARTH STOCKPILED ON THE OPPOSITE SHORE. THERE WAS SOME
22 EARTH MATERIAL THAT WAS PUSHED INTO THE CREEK, AND THE CHANNEL
23 HAD BEEN NARROWED. IT NARROWED IT AT THAT STRETCH ALONG THE
24 HUMPHRIES' PROPERTY.

25 Q DID YOU GIVE THE HUMPHRIES A RECOMMENDATION AT THAT TIME?

JAMES ROBERT TOLAR-CROSS BY MR. THOMPSON

1 A NOT AT THAT TIME, NO. I OBSERVED THE DAMAGE THAT WAS THERE
2 AND PRIMARILY -- AT THE TIME, WE ISSUED GRADING PERMITS ON
3 PROPERTY, GRADING ON LAND AREAS, AND I NOTICED THAT THE ACTION
4 AND THE GRADING ACTIVITY WAS PREDOMINANTLY IN THE CREEK, IN THE
5 CREEK BED ALONG THE BANKS. I OBSERVED THAT TO BE THE
6 JURISDICTION OF THE FEDERAL GOVERNMENT, THE CORP OF ENGINEERS.

7 Q THAT GRADING ACTIVITY WAS BEING DONE PRIMARILY BY THE GREENS
8 TO YOUR KNOWLEDGE?

9 MR. THOMPSON: YOUR HONOR, I'M GOING TO OBJECT. THAT CALLS
10 FOR SPECULATION. HE HASN'T ASKED HIM IF HE KNEW WHO WAS DOING IT.

11 Q THE GRADING ACTIVITY WAS TAKING PLACE ON THE GREEN SIDE OF
12 BEAVER DAM CREEK?

13 A THE TRACK MARKS, THE EARTH WORK AND THE ACTIVITIES THAT I
14 OBSERVED WAS ON THE OPPOSITE SIDE OF THE CREEK PRIMARILY ALONG
15 THE CREEK BANK, STOCKPILED MATERIAL. THE OPPOSITE SIDE OF THE
16 CREEK BANK HAD PRETTY MUCH BEEN DESTROYED.

17 MR. HECKMAN: NOTHING FURTHER.

18 BY THE COURT: YOUR WITNESS.

19 **CROSS-EXAMINATION BY MR. THOMPSON:**

20 Q MR. TOLAR, DID YOU -- TO YOUR KNOWLEDGE, DID GREENVILLE
21 COUNTY EVER ISSUE ANY PERMITS TO SAMUEL OR VERONICA HUMPHRIES TO
22 DO ANY WORK WITH REGARD TO THE CREEK?

23 A NOT TO MY KNOWLEDGE.

24 Q WOULD YOU HAVE KNOWLEDGE OF SOMETHING LIKE THAT?

25 A NOT CURRENTLY. AT THE TIME, I WOULD HAVE BEEN KNOWLEDGEABLE

1 OF IT.

2 Q WOULD SOMETHING LIKE A DIVERSION WALL IN THE CREEK REQUIRE
3 SOME KIND OF A PERMIT?

4 A NOT NECESSARILY. OUR ORDINANCE REQUIRES THAT PERMITS BE
5 OBTAINED FOR ACTIVITY BEYOND 5,000 SQUARE FEET. THAT'S A
6 MAINTENANCE ACTIVITY. IF IT WAS NOT A CONSTRUCTION ACTIVITY, IT
7 PROBABLY WOULD NOT CONSIDER IT BE A PERMITTED ACTIVITY.

8 Q MR. TOLAR, DOES THE COUNTY HAVE A FLOODPLAIN OR A FLOOD
9 CONTROL ORDINANCE?

10 A YES.

11 Q IS THIS AREA LOCATED IN A FLOODPLAIN?

12 A I WOULD ASSUME THAT IT WAS. I WAS NOT -- WE HAVE A
13 FLOODPLAIN MANAGER.

14 Q WOULD WORK IN A FLOODPLAIN REQUIRE SOME KIND OF AN
15 ENGINEERING STUDY OR PERMIT OR SOMETHING LIKE THAT?

16 A I BELIEVE IT WOULD REQUIRE A PERMIT IF THERE WAS GOING TO BE
17 SOME EARTH WORK AND CHANGE IN THE VOLUME OF THE FLOODPLAIN
18 ITSELF.

19 Q WHAT ABOUT -- DO YOU KNOW IF THE CORP OF ENGINEERS REQUIRES
20 ANY KIND OF A PERMIT TO DO WORK THAT POTENTIALLY COULD CHANGE THE
21 FLOW OF THE CREEK?

22 A YES.

23 Q WERE YOU -- DO YOU HAVE ANY KNOWLEDGE OF A PERMIT BEING
24 ISSUED TO THE HUMPHRIES FOR ANY WORK ON THE CREEK?

25 A I DON'T HAVE ANY KNOWLEDGE OF A PERMIT, NO. THERE'S A

1 GENERAL -- LET ME ADD THAT THERE'S A GENERAL PERMIT THAT WILL
2 ALLOW A LIMITED AMOUNT OF ACTIVITY IN THE STREAM BANK. IT'S A
3 GENERAL PERMIT. YOU STILL HAVE TO ADHERE TO THE STANDARDS. I
4 THINK THIS GOES BEYOND MAINTENANCE OF THE CREEK ITSELF. TO MAKE
5 A ROAD CROSSING OR SOMETHING OF THAT NATURE, THERE WOULD BE A
6 GENERAL PERMIT THAT WOULD COVER THAT SORT OF ACTIVITY WITHOUT
7 GETTING A FORMAL PERMIT WRITTEN.

8 Q YOU SAID AT THE TIME YOU WERE WITH THE SOIL AND WATER
9 CONSERVATION OR WORKING WITH SOIL AND WATER; IS THAT CORRECT?

10 A CORRECT.

11 Q LET ME SHOW YOU WHAT'S PREVIOUSLY BEEN MARKED -- A
12 PHOTOGRAPH PREVIOUSLY MARKED AS PLAINTIFFS' EXHIBIT NO. 3, PAGE
13 6. BY WAY OF REFERENCE, I'LL TELL YOU THAT THE LEFT SIDE OF THE
14 PHOTOGRAPH IS THE HUMPHRIES' PROPERTY, AND THE RIGHT SIDE IS THE
15 GREEN PROPERTY. DOES THAT LOOK FAMILIAR TO YOU?

16 A I STILL GET A GLARE FROM THE LIGHT. I CAN IDENTIFY THE
17 PROPERTY PROBABLY BECAUSE OF THE SURROUNDINGS. WHAT'S THE DATE
18 ON THIS PHOTO? MARCH OF 2007?

19 Q THAT'S CORRECT.

20 A I WAS THERE IN 2004. THE CREEK HAS CHANGED, OBVIOUSLY,
21 SINCE THEN.

22 Q SURE. LET ME ASK YOU A QUESTION: IS THERE ANY EROSION ON
23 THE CREEK BANK ON THE RIGHT SIDE THERE?

24 A YES.

25 Q ALL RIGHT. DOES THAT APPEAR TO BE KIND OF IN LINE WITH THAT

1 WALL ON THE LEFT SIDE OF THE CREEK?

2 A YES.

3 Q GENERALLY SPEAKING, IF THE SOIL LINE WERE TO COME DOWN THAT
4 CREEK AND HIT THAT WALL, WHAT'S GOING TO HAPPEN TO IT?

5 A IT WOULD RISE TO THE LEVEL -- ON A NORMAL FLOW, IT WOULD
6 JUST FOLLOW THE CREEK'S MEANDERING. AT THE RISE OF THE LEVEL,
7 THEN IT WOULD FLOOD BACK UP AND IT WOULD GO INTO THE FLOODPLAIN.

8 Q WOULD THAT WALL PUSH WATER ACROSS KIND OF THE ADJOINING
9 BANK?

10 A IF IT'S FOLLOWING THE CREEK BANK -- A CREEK NATURALLY
11 MEANDERS.

12 Q SURE.

13 A IT'S A SERPENTINE NATURAL OCCURRENCE.

14 Q DO YOU KNOW IF THIS CREEK HAS THIS NATURAL SERPENTINE?

15 A IT HAD SOME CURVATURE TO IT WHEN I FIRST OBSERVED IT IN
16 2004. IT WAS -- THE EROSION WAS THERE AND, OF COURSE, DISTURBED
17 AT THAT TIME TOO. THE EARTH ON THE OPPOSITE SIDE, ON THE
18 HUMPHRIES' SIDE, THERE WAS EROSION OCCURRING THERE WITH THE
19 GRASS, AND THE LAND, AND THE TREES FALLING INTO THE PROPERTY --
20 INTO THE CREEK.

21 MR. THOMPSON: NOTHING FURTHER, YOUR HONOR.

22 BY THE COURT: ANYTHING ELSE?

23 **REDIRECT EXAMINATION BY MR. HECKMAN:**

24 Q MR. TOLAR, COULD HEAVY MACHINERY HAVE BEEN A CAUSE OF THIS
25 EROSION JUST AS EASILY AS A RETAINING WALL?

JAMES ROBERT TOLAR-REDIRECT BY MR. HECKMAN

1 A ABSOLUTELY.

2 Q DID YOU OBSERVE WHAT MR. THOMPSON REFERRED TO AS A DIVERSION
3 WALL ON THE HUMPHRIES' SIDE OF THE BANK? WAS THE WALL
4 REDIRECTING FLOW OF THE CREEK---

5 A NOT AT THAT TIME. THERE WAS NO WALL AT THAT TIME. THERE
6 WAS PROTECTION OR MAKESHIFT PROTECTION AT THAT TIME JUST TO KEEP
7 THE EARTH FROM FALLING IN. IN 2004, THERE WAS MAKESHIFT ACTIVITY
8 JUST TO KEEP THE EARTH FROM CONTINUING TO ERODE ON THE STABILIZED
9 SIDE. THE OPPOSITE SIDE OF THE CREEK WAS NOT STABILIZED. THERE
10 WAS ACTIVITY ON THE OPPOSITE SIDE THAT WAS CAUSING THE HUMPHRIES'
11 SIDE TO ERODE AND FALL INTO THE CREEK. IT WAS -- SOMEONE
12 TESTIFIED, IT WAS MANICURED, ESTABLISHED AND STABILIZED. IT WAS
13 A STABILIZED SHORE. AND THE STABILIZATION WAS COMING UNDONE AT
14 THAT TIME IN 2004.

15 Q YOU DID OBSERVE HEAVY MACHINERY ON THE GREEN SIDE?

16 A I SAW HEAVY EARTH WORK ACTIVITY ON THE SIDE AS DID THE CORP
17 OF ENGINEERS.

18 Q DID YOU HAVE ANY DIRECT CONTACT WITH THE CORP OF ENGINEERS?

19 A YES. I MADE CONTACT AS WELL.

20 Q CAN YOU DISCUSS THE NATURE OF THOSE DISCUSSIONS OR JUST IN
21 GENERAL WHAT YOUR MEMORY IS?

22 A I CALLED THE CORP INTO THE SITUATION BECAUSE WE SAW A
23 VIOLATION INTO THE CREEK. THE CORP RESPONDED. THEY MADE AN
24 OBSERVATION WITH ME AT THE SITE, AND I UNDERSTAND THAT WE
25 SCHEDULED A TIME TO MEET WITH ROY GREEN AND ROY'S SISTER AND THEY

JAMES ROBERT TOLAR-REDIRECT BY MR. HECKMAN

1 MET AT THE ENTRANCE TO THE ROY GREEN PROPERTY AND THE CORP OF
2 ENGINEERS STOPPED THE ACTIVITY, ADVISED THEM TO STOP THE
3 ACTIVITY. THE ONLY UNDERSTANDING I HAD OF ANY FURTHER ACTIVITY
4 WAS ALLOWABLE AT THE CREEK WOULD BE THE STABILIZATION OF THE BANK
5 BECAUSE THE BANK WAS RAW AND UNSTABILIZED WITH NO VEGETATION AT
6 ALL.

7 Q TO BE CLEAR, THE CORP STOPPED THE ACTIVITY OF ROY GREEN AND
8 FRANCES PITTMAN?

9 A THAT'S CORRECT. AND THEY ALSO DIRECTED AT THE TIME THAT
10 THEY INSTRUCTED THEM TO STABILIZE -- THEY INSTRUCTED THEM TO
11 SPECIFICALLY REMOVE THE MATERIAL THAT HAD BEEN PLACED INTO THE
12 CREEK CHANNEL AND TO REMOVE THAT MATERIAL TO THE CREEK BANK AND
13 STABILIZE THE BANK AND DO NOT DO ANY FURTHER ACTION IN THE CREEK
14 OR THE CREEK BED UNTIL THEY RECEIVED A PERMIT FOR FURTHER WORK.
15 SO, IT WAS STOPPED.

16 Q THANK YOU.

17 BY THE COURT: ANY OTHER QUESTIONS?

18 MR. THOMPSON: NOTHING FURTHER, YOUR HONOR.

19 BY THE COURT: THANK YOU, MR. TOLAR. CAN MR. TOLAR BE
20 EXCUSED?

21 MR. HECKMAN: HE CAN BE EXCUSED.

22 MR. THOMPSON: NO OBJECTION, YOUR HONOR.

23 (WITNESS EXCUSED)

24 BY THE COURT: HOW MANY MORE WITNESSES FROM THE DEFENSE?

25 MR. HECKMAN: I HAVE THREE MORE, AND THEY SHOULD GO PRETTY

CHAD M. EMERY-DIRECT BY MR. HECKMAN

1 QUICK.

2 BY THE COURT: I KNOW I'M BAD FOR PUSHING AHEAD TOO FAR.
3 WE'LL TAKE A TEN-MINUTE BREAK, AND THEN WE'LL START BACK AND
4 CONCLUDE THE MATTER.

5 (WHEREUPON, A RECESS WAS TAKEN AT 11:33 A.M.)

6 (WHEREUPON, THE TRIAL RESUMED AT 11:43 A.M.)

7 MR. HECKMAN: I CALL CHAD EMERY TO THE STAND.

8 **CHAD M. EMERY**, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 BY THE COURT: COME AROUND AND HAVE A SEAT, PLEASE.

10 (COMPLIES) IF YOU'LL STATE YOUR FULL NAME.

11 THE WITNESS: CHAD MICAH EMERY.

12 **DIRECT EXAMINATION BY MR. HECKMAN:**

13 Q GOOD MORNING, CHAD. WHAT IS YOUR DATE OF BIRTH?

14 A 12/11/97.

15 Q HOW OLD ARE YOU?

16 A I'M 14.

17 Q WHERE IS YOUR RESIDENCE?

18 A 606 BEAVER DAM ROAD.

19 Q YOU ARE HOME SCHOOLED, CORRECT?

20 A YES.

21 Q YOU LIVE NEXT DOOR TO THE HUMPHRIES?

22 A YES.

23 Q AND THAT WOULD BE UPSTREAM OF THE HUMPHRIES AND ACROSS THE
24 CREEK FROM THE GREENS, CORRECT?

25 A YES.

1 Q WHAT DO YOU REMEMBER ABOUT SEPTEMBER 15, 2010?

2 A WELL, I WOKE UP THAT MORNING WITH -- I HEARD HEAVY
3 MACHINERY, AND I OBSERVED FROM OUR SIDE, ON MR. GREEN'S SIDE,
4 SOMEBODY IN A TRACK HOE DIGGING ON MR. HUMPHRIES' LAND.

5 Q WOULD YOU RECOGNIZE WHO WAS DIGGING?

6 A IT WASN'T MR. GREEN, BUT IT WAS SOMEBODY WHO WAS OUT THERE
7 WITH HIM.

8 Q OKAY. WHEN YOU REFER TO "MR. GREEN", WHO ARE YOU REFERRING
9 TO, ROY GREEN OR---

10 A ROY.

11 Q HOW MANY MEN WERE ON THAT SIDE OF THE BANK, ON THE GREEN
12 SIDE?

13 A THERE WAS ONE ON THE DIGGER, AND THERE WAS APPROXIMATELY
14 FOUR WITH MR. GREEN.

15 Q WHAT DID YOU DO NEXT?

16 A I WAS DETERMINED I WAS GOING TO GO OUT THERE, SO I MET UP
17 WITH A WOMAN NAMED JUDY AND SHE GAVE ME PERMISSION TO FILM THE
18 INCIDENT.

19 MR. HECKMAN: THE DEFENSE WOULD LIKE TO -- YOUR HONOR, I'M
20 NOT A TECHNOLOGICAL PERSON, BUT I'VE GOT A VIDEO THAT I EMAILED
21 YOU EARLIER. THIS MAN IS THE PERSON WHO TOOK THAT VIDEO. SO,
22 I'M NOT SURE HOW TO INTRODUCE THAT VIDEO INTO EVIDENCE. I HAVE
23 AN I-PAD THAT, YOU KNOW, SHOWS IT ON A PRETTY GOOD SCREEN. CAN I
24 INTRODUCE IT THAT WAY?

25 BY THE COURT: THE ONLY WAY TO INTRODUCE IT AS AN EXHIBIT IS

CHAD M. EMERY-DIRECT BY MR. HECKMAN

1 TO HAVE IT EITHER ON SOME KIND OF FLASH DRIVE OR CD UNLESS YOU'RE
2 INTRODUCING THE I-PAD AND THEN IT BECOMES AN EXHIBIT FOR
3 GREENVILLE COUNTY. I SUSPECT YOU DON'T WANT THAT TO HAPPEN.

4 MR. HECKMAN: NO. I MIGHT HAVE TO TAKE A RECESS TO GET THAT
5 BECAUSE I'VE JUST NEVER HAD OCCASION---

6 BY THE COURT: NO, SIR. WE'RE TRYING THIS CASE---

7 MR. HECKMAN: WE'RE TRYING THIS CASE.

8 BY THE COURT: YES, SIR. MR. THOMPSON.

9 MR. THOMPSON: YOUR HONOR?

10 BY THE COURT: DO YOU WISH TO BE HEARD ON IT?

11 MR. THOMPSON: NO, YOUR HONOR. WHATEVER THE COURT DECIDES IS
12 FINE WITH ME.

13 Q WHAT DOES THE VIDEO SHOW?

14 A IT SHOWS A MAN ON THE DIGGER DIGGING INTO MR. HUMPHRIES'
15 LAND.

16 Q ABOUT HOW LONG DID YOU OBSERVE THIS ACTIVITY?

17 A APPROXIMATELY 30 MINUTES.

18 Q ABOUT HOW MUCH DAMAGE WAS DONE? DO YOU RECALL SPECIFICALLY
19 DAMAGE DONE TO THE HUMPHRIES' SIDE OF THE BANK?

20 A YES, I DO. HE DUG A GOOD LITTLE BIT OFF THE BANK UP TO THE
21 GRAPEVINE.

22 Q WERE THERE ANY TREES LOST DURING THIS DIG?

23 A YES.

24 Q DO YOU KNOW WHAT TYPE?

25 A NO.

CHAD M. EMERY-DIRECT BY MR. HECKMAN

1 Q DO YOU KNOW ABOUT HOW MANY?

2 A ONE, I BELIEVE.

3 Q WHEN THE OPERATOR, WHEN HE WAS DOING HIS DIGGING, WHERE WAS
4 HE DEPOSITING THE MATERIAL?

5 A ON THEIR SIDE.

6 Q "THEIR SIDE" MEANING---

7 A MEANING MR. GREEN.

8 Q TONY GREEN'S PROPERTY?

9 A YES.

10 MR. HECKMAN: THE DEFENSE IS GOING TO INTRODUCE EXHIBIT 8.
11 THESE ARE PICTURES THAT WERE TAKEN THE SAME DAY OF THE DIG, ON
12 SEPTEMBER 15, 2010.

13 Q DO YOU RECOGNIZE THAT PICTURE?

14 A YES.

15 Q SO, ON THE RIGHT SIDE, THIS WOULD BE THE HUMPHRIES' SIDE OF
16 THE BANK AND THE LEFT SIDE WOULD BE THE GREEN SIDE OF THE BANK?

17 A YES.

18 Q ALL RIGHT. DO YOU RECOGNIZE THAT PICTURE?

19 A YES.

20 Q SO, ON THE RIGHT SIDE, THIS WOULD BE THE HUMPHRIES' SIDE OF
21 THE BANK, AND THE LEFT SIDE WOULD BE THE GREEN SIDE OF THE BANK?

22 A YES.

23 Q AND ACTUALLY, I THINK, I STATED EARLIER THESE WERE TAKEN THE
24 SAME DAY. THIS WAS, I BELIEVE, AFTER THAT DIG HAD OCCURRED, BUT
25 IT DOES SHOW THE EFFECTS OF THE TRACK HOE ON THE BANK ITSELF. I

CHAD M. EMERY-DIRECT BY MR. HECKMAN

1 BELIEVE THIS ONE WAS MORE LIKELY TAKEN THE DATE OF THE DIG. DO
2 YOU RECOGNIZE THAT PICTURE?

3 A YES.

4 Q WHAT DOES THAT SHOW?

5 A IT SHOWS WHERE SOME TYPE OF MACHINERY HAS DUG INTO THEIR
6 SIDE AND TAKEN AWAY THEIR LAND.

7 Q HOW ABOUT THAT ONE?

8 A THE SAME AS BEFORE.

9 Q IS THAT THE HUMPHRIES' BANK IN THAT PICTURE?

10 A YES.

11 Q HOW LONG HAVE YOU LIVED OUT ON BEAVER DAM CREEK?

12 A EVER SINCE I WAS BORN.

13 Q OKAY. CAN YOU TELL ME WHAT THAT IS A PICTURE OF?

14 A THAT'S SHOWING HOW NARROW -- HOW WIDE IT GOT AND JUST
15 BASICALLY WHERE EROSION'S WENT THROUGH AND LEFT ROCKS AND IT
16 STARTED DRYING UP AND OTHER THINGS LIKE THAT.

17 Q WHAT ABOUT THAT ONE?

18 A THAT LOOKS LIKE WHERE THEY DONE THE DIGGING AND IT STARTED
19 ERODING AND STUFF LIKE THAT.

20 Q OKAY. THAT'S SHOWING THE HUMPHRIES' SIDE OF THE CREEK AFTER
21 IT'S BEEN DUG OUT?

22 A YES.

23 MR. HECKMAN: WE'RE GOING TO COLLECTIVELY INTRODUCE THESE
24 PICTURES AS DEFENDANTS' EXHIBIT 8.

25 (FOURTEEN PHOTOGRAPHS ENTERED INTO EVIDENCE AS DEFENDANTS'

1 EXHIBIT NO. 8)

2 Q DO YOU HAVE KNOWLEDGE OF ANY OTHER DIGGING ACTIVITY BY MR.
3 GREEN OR THE GREENS?

4 A YES.

5 Q TELL US ABOUT THAT.

6 A MY MOTHER, KAREN EMERY, SHE WAS OUT ONE DAY TAKING PHOTOS OF
7 ROY GREEN ON A DIGGER ON OUR SIDE DIGGING THE CREEK BANK.

8 Q ABOUT WHEN DID THAT OCCUR?

9 A DECEMBER, SOMEWHERE ALONG THAT MONTH.

10 Q OF THE SAME YEAR?

11 A YES.

12 MR. HECKMAN: WE WOULD LIKE TO GO AHEAD AND INTRODUCE
13 DEFENDANTS' EXHIBIT 12.

14 (TEN PHOTOGRAPHS ENTERED INTO EVIDENCE AS DEFENDANTS'
15 EXHIBIT NO. 12)

16 Q THESE PICTURES, DO YOU KNOW WHO TOOK THESE PICTURES?

17 A YES.

18 Q WHO TOOK THEM?

19 A KAREN EMERY.

20 Q DO YOU KNOW WHEN SHE TOOK THEM?

21 A NOT EXACTLY. I DON'T KNOW THAT.

22 Q WOULD IT BE---

23 A IT WOULD BE AFTER THE DIGGING, DEFINITELY.

24 Q SO, AROUND DECEMBER 2010?

25 A YES.

CHAD M. EMERY-DIRECT BY MR. HECKMAN

1 Q WHAT DOES THAT PICTURE SHOW RIGHT THERE?

2 A THE PIECE OF MACHINERY PICKING SAND UP FROM THE CENTER OF
3 THE CREEK BANK OVER ON OUR SIDE.

4 Q WHERE WERE THEY DEPOSITING THAT SAND?

5 A ON THEIR SIDE.

6 Q AND THAT ONE?

7 A THE SAME AS BEFORE.

8 Q COULD YOU SEE WHO WAS OPERATING THE MACHINERY?

9 A YES.

10 Q WHO WAS OPERATING IT?

11 A ROY GREEN.

12 Q WHAT DOES THAT ONE SHOW?

13 A HIM PICKING IT UP OFF OF OUR SIDE AND DRAGGING IT OVER TO
14 HIS SIDE.

15 Q AND THAT ONE?

16 A THAT'S A PICTURE OF THE MACHINERY ON OUR SIDE FIXING TO GRAB
17 IN AND TAKE IT TO HIS SIDE.

18 Q SO, HE'S ACTUALLY MOVED HIS MACHINERY ONTO YOUR SIDE OF THE
19 BANK? HE'S REACHING ACROSS?

20 A HE WAS ON HIS SIDE. HE'S REACHING ACROSS AND PICKING IT UP.

21 Q AND THAT ONE?

22 A THAT WAS A LITTLE BIT ON DOWN FROM THERE WHERE HE PRESENTLY
23 TOOK OFF OF OUR SIDE AND PUT IT ON HIS SIDE.

24 Q I BELIEVE THESE SHOW THE FROST REALLY. DO YOU KNOW IF
25 THERE'S ANY OTHER REASON THAN TO SHOW THAT IT'S WINTERTIME?

1 A THAT WAS TO SHOW THAT YOU CAN TELL THERE WAS A PIECE OF
2 MACHINERY MUNCHING TOWARDS OUR BANK, YOU KNOW, THE CLAW PRINT.

3 Q THE SAME THING THERE?

4 A YES.

5 Q I CAN'T TELL WHAT THAT IS. SO, IF YOU HAVE ANY---

6 A THIS IS WHERE WE HAD TO PUT UP A FENCE, AND YOU CAN SEE
7 WHERE THERE'S SOME DIGGING AND EROSION HAPPENED HERE AND THEY
8 WOULDN'T HAVE PUT THAT FENCE THAT CLOSE TO THE CREEK.

9 Q OKAY. SO, THIS IS BASICALLY YOUR FENCE THAT'S BEEN EXPOSED
10 BY MR. GREEN'S DIG?

11 A YES.

12 Q WHAT'S THIS LAST PICTURE A REPRESENTATION OF?

13 A THAT WAS AFTER THE FLOOD HAPPENED, IT COULD SHOW THAT THE
14 EROSION WENT THROUGH AND KIND OF JUST MADE EVERYTHING A BIGGER
15 MESS THAN IT ALREADY WAS.

16 Q DO YOU KNOW WHEN IT WAS ABOUT --- WHAT FLOOD YOU'RE TALKING
17 ABOUT THERE?

18 A THE VERY LAST ONE WE HAD. I DON'T KNOW THE ESTIMATES ON THE
19 DATE.

20 Q IT WAS AROUND 2010?

21 A YES.

22 MR. THOMPSON: YOUR HONOR, I'M GOING TO OBJECT. HE SAID HE
23 DIDN'T KNOW.

24 BY THE COURT: REPHRASE YOUR QUESTION.

25 Q DO YOU REMEMBER THE APPROXIMATE TIME THAT THAT FLOOD

1 OCCURRED?

2 A IT WAS AFTER DECEMBER 10TH WHEN HE DUG.

3 Q OF 2010?

4 A 2010.

5 Q HAS THERE BEEN ANY OTHER ACTIVITY---

6 BY THE COURT: HAVE THESE BEEN MARKED?

7 MR. HECKMAN: THEY ARE COLLECTIVELY MARKED AS DEFENDANTS'

8 EXHIBIT 12.

9 Q HAS THERE BEEN ANY OTHER ACTIVITY SINCE THAT LAST DIG IN
10 DECEMBER OF 2010 TO YOUR KNOWLEDGE?

11 A NOT THAT I'M AWARE OF.

12 MR. HECKMAN: NOTHING FURTHER AT THIS TIME.

13 **CROSS-EXAMINATION BY MR. THOMPSON:**

14 Q MR. EMERY, THE MORNING OF SEPTEMBER WHERE YOU WENT OUT THERE
15 AND YOU SAID YOU SAW HEAVY EQUIPMENT, WAS ROY GREEN OR FRANCES
16 PITTMAN OUT THERE?

17 A ROY GREEN WAS PRESENT.

18 Q HOW ABOUT TONY GREEN?

19 A NO.

20 Q WAS HE OUT THERE? WHAT ABOUT FRANCES PITTMAN? WAS SHE OUT
21 THERE?

22 A NO.

23 Q NOW, YOUR PARENTS GET ALONG OKAY WITH -- TONY AND FRANCES
24 GET ALONG?

25 A THEY HAD A LITTLE INCIDENT A WHILE BACK.

1 Q WHAT DO YOU MEAN BY "A LITTLE INCIDENT"?

2 A MY DAD WAS ACCUSED OF ASSAULTING FRANCES PITTMAN.

3 Q DID THAT HAVE A CHILLING EFFECT ON RELATIONS?

4 A NOT THAT I'M AWARE OF.

5 Q YOU SAID -- I THINK YOU SAID THESE PHOTOGRAPHS YOU TOOK -- I
6 THINK YOU SAID YOU JUST WERE SHOWING THE FENCE ON YOUR PROPERTY;
7 IS THAT RIGHT?

8 A YES.

9 Q LET ME SHOW YOU WHAT'S PREVIOUSLY BEEN MARKED AS PLAINTIFFS'
10 EXHIBIT NO. 5, ON PAGE 10. IS THAT THE FENCE THAT'S ON YOUR
11 PROPERTY?

12 A YES, IT IS.

13 Q DO YOU SEE SOME LOGS AND DEBRIS KIND OF GATHERED UP THERE?

14 A YES.

15 MR. HECKMAN: HAVE I SEEN THOSE, KYLE?

16 MR. THOMPSON: THESE ARE ALL EXHIBITS.

17 Q CHAD, JUST TO BE CLEAR, THE FENCE ON THIS PICTURE, ON
18 EXHIBIT 5, PAGE 10, IT'S YOUR FENCE, CORRECT?

19 A YES.

20 Q AND THE WOODEN PRIVACY FENCE IS YOUR FENCE, RIGHT?

21 A YES.

22 Q SOMETIMES DOES IT GET DEBRIS AND OTHER STUFF COLLECTED UP
23 BEHIND IT WHEN IT FLOODS OR HAS OTHER WATER EVENTS DOWN THROUGH
24 THERE?

25 A NOT THAT I'M AWARE OF.

CHAD M. EMERY-REDIRECT BY MR. HECKMAN

1 Q NOT THAT YOU'RE AWARE OF? WHAT ABOUT IN THESE PICTURES?
2 THERE'S STUFF KIND OF COLLECTED UP THERE?

3 A YES, LEAVES.

4 Q WHAT ABOUT THESE TIMBERS?

5 A NO. THAT'S NOT ON OUR SIDE.

6 Q BUT THAT'S KIND OF JAMMED UP THERE IN THE CREEK?

7 A YES.

8 Q RIGHT BELOW YOUR FENCE?

9 A (WITNESS NODS IN THE AFFIRMATIVE)

10 Q IS THAT A YES?

11 A YES.

12 Q DOES THE CREEK HAVE A BEND RIGHT THERE JUST BEYOND THAT
13 FENCE?

14 A YES, IT IS.

15 Q DOES OTHER DEBRIS KIND OF COME UP AND GET WASHED UP RIGHT
16 THERE JUST LIKE THOSE LOGS WERE?

17 A YES.

18 Q THAT WAS TAKEN ABOUT DECEMBER OF 2010, IS THAT WHAT ROY
19 GREEN WAS DIGGING OUT?

20 A NO, IT WASN'T.

21 MR. THOMPSON: NO FURTHER QUESTIONS, JUDGE.

22 **REDIRECT EXAMINATION BY MR. HECKMAN:**

23 Q WHAT WAS ROY GREEN DIGGING OUT?

24 A HE WAS DIGGING ON OUR SIDE OF THE SAND AND OUR GROUND AND
25 STARTED PUTTING IT ON HIS SIDE.

JUDY D. COGGINS-DIRECT BY MR. HECKMAN

1 Q THANK YOU.

2 MR. HECKMAN: NOTHING FURTHER.

3 BY THE COURT: THANK YOU, SIR. YOU CAN STEP DOWN.

4 (WITNESS EXCUSED)

5 MR. HECKMAN: WE CALL JUDY SCOGGINS.

6 JUDY D. SCOGGINS, BEING FIRST DULY SWORN, TESTIFIED AS
7 FOLLOWS:

8 BY THE COURT: COME AROUND. (COMPLIES) IF YOU'LL STATE
9 YOUR FULL NAME.

10 THE WITNESS: JUDY DIANE SCOGGINS.

11 DIRECT EXAMINATION BY MR. HECKMAN:

12 Q GOOD MORNING, JUDY. WHAT IS YOUR RESIDENCE?

13 A 145 SCOGGINS ROAD, GAFFNEY.

14 Q WHERE WERE YOU ON SEPTEMBER 15, 2010?

15 A 604 BEAVER DAM ROAD.

16 Q WHY WERE YOU THERE ON THAT OCCASION?

17 A I WAS HOUSESITTING FOR VICKI AND SAMMY.

18 Q WHY DID THE HUMPHRIES ASK YOU TO HOUSESIT?

19 A BECAUSE THEY KNOWED THERE WAS A BACKHOE IN THE FIELD. SHE
20 FIGURED THEY WOULD BE DIGGING UP HER SIDE OF THE YARD.

21 Q DO YOU REMEMBER WHERE SAMMY AND VICKI WERE THAT MORNING?

22 A YEAH. THEY WAS AT COURT.

23 Q WHAT DID YOU OBSERVE THAT MORNING?

24 A WELL, WE HEARD THE MACHINERY STARTED UP AND THEY WAS DIGGING
25 THE SIDE OF VICKI AND SAMMY'S YARD. THEY WASN'T DIGGING UP THE

1 CREEK. THEY WAS DIGGING THE LAND.

2 Q WHEN YOU REFER TO "THEY" WHO DO YOU MEAN?

3 A I'M TALKING ABOUT ROY AND FOUR OTHER MEN.

4 Q THEY WERE ON THE GREEN SIDE OF THE BANK?

5 A YEAH.

6 Q THEY WERE DIGGING INTO THE HUMPHRIES' SIDE OF THE BANK?

7 A YES. THEY DUG UP APPLE TREES, AND THEY DUG UP THE PLUM
8 TREES, AND THEY WAS GETTING THE VINES.

9 Q HOW LONG DID THIS ACTIVITY GO ON?

10 A IT WAS ABOUT THIRTY MINUTES.

11 Q COULD YOU TELL ABOUT HOW MUCH OF THE HUMPHRIES' SIDE OF THE
12 BANK WAS DUG OUT?

13 A THEY TOOK A BIG CHUNK.

14 Q OKAY. AND YOU SAW A FAIRLY LONG DISTANCE---

15 A YES.

16 Q YOU KNOW, A STRETCH, ABOUT HOW FAR DOWN THE CREEK BANK?

17 A OH, GOSH. ABOUT AS LONG AS THIS ROOM.

18 Q COULD YOU TELL IF ANYBODY WAS DIRECTING THE MACHINE
19 OPERATOR? COULD YOU TELL WHO WAS IN CHARGE ON THE GREEN SIDE OF
20 THE BANK?

21 A NO. I COULDN'T TELL THAT.

22 Q DID ANYTHING HAPPEN TO MAKE YOU FEEL THREATENED DURING THIS
23 DIG THAT YOU WERE OBSERVING?

24 A YES. I HOLLERED AND TOLD THEM TO STOP, THE POLICE WAS
25 COMING BUT HE WOULDN'T STOP. THERE WAS A BIG POLE -- THEY DUG

JUDY D. COGGINS-CROSS BY MR. THOMPSON

1 ALL OF THE WAY UP TO THE POLE ABOUT THIS FAR FROM THE GULLEY
2 WHERE THEY HAD DONE DIGGED THE GROUND HERE. ANYHOW, I WAS
3 LEANING ON THE POLE TELLING HIM TO STOP, AND HE PUT THE BACKHOE
4 DOWN WHERE MY TOE WAS. HE SAID, "MA'AM, YOU BETTER MOVE OR"---

5 MR. THOMPSON: YOUR HONOR, I'M GOING TO OBJECT AS TO THE
6 RELEVANCE. YOUR HONOR, I'M GOING TO OBJECT AS TO THE RELEVANCE
7 OF THIS LINE OF TESTIMONY.

8 BY THE COURT: LET'S MOVE ON.

9 MR. HECKMAN: WE CAN MOVE ON.

10 Q HAVE YOU OBSERVED ANY OTHER ACTIVITY OR WAS IT JUST THAT ONE
11 DAY THAT YOU HAPPENED TO BE AT THE--

12 A JUST THAT ONE DAY.

13 Q --HUMPHRIES' RESIDENCE?

14 A JUST THAT ONE DAY.

15 MR. HECKMAN: NOTHING FURTHER AT THIS TIME.

16 BY THE COURT: ANY QUESTIONS?

17 **CROSS-EXAMINATION BY MR. THOMPSON:**

18 Q MS. SCOGGINS, YOU DON'T KNOW TONY GREEN AND FRANCES PITTMAN,
19 DO YOU?

20 A NO.

21 Q AND YOU DON'T KNOW THE NAMES OF ANY OF THOSE PEOPLE ON THE
22 OTHER SIDE OF THE CREEK, DO YOU?

23 A I KNOW ROY.

24 Q HOW DO YOU KNOW ROY?

25 A BECAUSE VICKI POINTED HIM OUT AND SAID, "THAT'S THE MAN'S

JUDY D. COGGINS-REDIRECT BY MR. HECKMAN
KAREN D. EMERY- DIRECT BY MR. HECKMAN

1 TRYING TO TAKE MY LAND."

2 Q BUT YOU DIDN'T PERSONALLY KNOW HIM AT THE TIME, CORRECT?

3 A NO.

4 MR. THOMPSON: NO OTHER QUESTIONS, YOUR HONOR.

5 **REDIRECT EXAMINATION BY MR. HECKMAN:**

6 Q YOU KNEW ROY GREEN BY SIGHT THE DAY OF THE DIG; IS THAT
7 CORRECT?

8 A YES.

9 Q ENOUGH TO IDENTIFY HIM?

10 A YES.

11 Q THANK YOU.

12 BY THE COURT: THANK YOU, MA'AM. YOU CAN STEP DOWN.

13 (WITNESS EXCUSED)

14 MR. HECKMAN: WE WOULD CALL KAREN EMERY.

15 **KAREN D. EMERY**, BEING FIRST DULY SWORN, TESTIFIED AS
16 FOLLOWS:

17 BY THE COURT: THANK YOU. COME AROUND AND HAVE A SEAT,
18 PLEASE. (COMPLIES) IF YOU'LL STATE YOUR FULL NAME.

19 THE WITNESS: KAREN DENISE EMERY.

20 **DIRECT EXAMINATION BY MR. HECKMAN:**

21 Q MS. EMERY, WHAT IS YOUR ADDRESS?

22 A 606 BEAVER DAM ROAD.

23 Q YOU LIVE NEXT DOOR TO THE HUMPHRIES?

24 A YES.

25 Q UPSTREAM?

1 A YES.

2 Q HOW LONG HAVE YOU LIVED THERE?

3 A TWELVE YEARS.

4 Q SINCE 2000 THEN, CORRECT?

5 A YES.

6 Q WHAT WERE YOUR OBSERVATIONS OF THE FLOW OF THE CREEK PRIOR
7 TO THE ACTIONS OF 2004?

8 A PRIOR TO THAT, THE CREEK WAS NARROW AND IT HAD CROOKS AND
9 BENDS IN IT, AND THE WATER JUST FLOWED NORMALLY.

10 Q DO YOU RECALL WHEN THINGS CHANGED?

11 A YES. IT CHANGED AFTER THE -- IT ACTUALLY CHANGED AFTER THAT
12 FIRST DIG THEY WERE TALKING ABOUT BUT MAJOR CHANGES THE SECOND
13 DIG.

14 Q WHAT DO YOU REMEMBER ABOUT THE FIRST DIG, FIRST OF ALL?

15 A PRETTY MUCH I JUST REMEMBER THE LARGE BACKHOE BEING OVER
16 THERE, THE GOLD COLORED ONE. IT WASN'T ROY RUNNING IT. IT WAS
17 ANOTHER MAN. IT DIDN'T REALLY BOTHER US AT ALL. SO, I DIDN'T
18 PAY A WHOLE LOT OF ATTENTION, BUT I DO KNOW THEY WERE DIGGING ON
19 THE BANKS DOWN THE CREEK ON BOTH SIDES.

20 Q THAT WAS SUMMER OF 2004, TO YOUR RECOLLECTION?

21 A YES.

22 Q DO YOU REMEMBER A BIG FLOOD COMING THROUGH IN 2004?

23 A YES.

24 Q DID THAT CHANGE THE NATURE OF THE FLOW?

25 A YES, IT DID. IT STARTED ERODING ON THE HUMPHRIES' SIDE.

1 Q DID THE DIG EXACERBATE THE DAMAGE THAT FLOOD CAUSED OR---

2 MR. THOMPSON: YOUR HONOR, I OBJECT. THERE'S NO BASIS---

3 MR. HECKMAN: SHE'S LIVED THERE FOR TWELVE YEARS. SHE KNOWS
4 IF THE DIG, IN HER OPINION---

5 BY THE COURT: YOU KNOW, I SUSPECT I'LL TAKE THIS ONE.

6 OKAY? WHAT'S THE BASIS OF YOUR OBJECTION?

7 MR. THOMPSON: YOUR HONOR, THE OBJECTION IS THAT THERE'S NO
8 FOUNDATION AS TO HOW SHE WOULD HAVE KNOWLEDGE HOW ONE ACTIVITY
9 MIGHT EXACERBATE SOME OTHER ACTIVITY.

10 BY THE COURT: OVERRULED. GO AHEAD. LET'S MOVE ON. BOTH
11 SIDES. WE'VE GOT TO MOVE ON.

12 Q SO, YOU HAVE PERSONAL KNOWLEDGE OF THE GREENS' REPEATED
13 HISTORY OF USING HEAVY MACHINERY TO DIG IN THE CREEK AND ON THE
14 BANKS?

15 A YES.

16 Q WHERE WERE YOU ON THE MORNING OF SEPTEMBER 15, 2010?

17 A I WENT TO MEDIATION WITH VICKI AND SAMMY HUMPHRIES.

18 Q WHAT DID YOU OBSERVE WHEN YOU WENT BACK TO YOUR PROPERTY
19 THAT DAY?

20 A I OBSERVED TREMENDOUS DAMAGE TO SAMMY HUMPHRIES' LAND AND
21 BANK. TREES WERE DOWN. IT WAS JUST A DEVASTATING MESS.

22 Q DO YOU KNOW HOW MANY TREES WERE DAMAGED? DO YOU HAVE AN
23 ESTIMATE?

24 A SEVERAL APPLE TREES, PEAR TREES, VINES.

25 Q DO YOU BELIEVE THE HUMPHRIES ATTENDED THAT MEDIATION IN GOOD

1 FAITH?

2 MR. THOMPSON: YOUR HONOR---

3 A YES, I DO.

4 BY THE COURT: IS THAT AN OBJECTION?

5 MR. THOMPSON: YES, YOUR HONOR.

6 BY THE COURT: I SUSTAIN THE OBJECTION.

7 Q TELL US WHAT YOU KNOW ABOUT THE CONTINUING DIGGING
8 ACTIVITIES BY THE GREENS IN DECEMBER OF 2010.

9 A I HEARD MACHINERY. I GOT UP AND LOOKED OUT THE WINDOW. ROY
10 GREEN WAS ON THAT BACKHOE THAT HE HAS OVER AT HIS PLACE. HE WAS
11 SCOOPING OUT OF THE MIDDLE OF THE CREEK ROCKS AND DIRT AND THEN
12 HE WOULD PACK IT ON HIS SIDE, AND THEN HE WOULD COME OVER MORE TO
13 MY SIDE OF THE BANK AND SCOOP UP AND TAKE IT TO HIS SIDE. I WENT
14 DOWN THERE AND ASKED HIM, "WHAT ARE YOU DOING? WHY ARE YOU DOWN
15 IN THIS CREEK DIGGING?" AND HE SAID -- THIS WAS HIS EXPLANATION
16 TO ME--

17 MR. THOMPSON: YOUR HONOR, I OBJECT.

18 A "THE DAM BUSTED ABOVE"---

19 BY THE COURT: HOLD ON.

20 MR. THOMPSON: I OBJECT TO THE HEARSAY.

21 BY THE COURT: WHY IS THAT NOT HEARSAY?

22 MR. HECKMAN: SHE'S TESTIFYING TO FACTS SHE HAS KNOWLEDGE OF.

23 BY THE COURT: OKAY BUT SHE'S RELATING AN OUT-OF-COURT
24 STATEMENT BY A NON-PARTY.

25 MR. HECKMAN: WOULD YOU ALLOW ME TO RECALL ROY GREEN?

KAREN D. EMERY- CROSS BY MR. THOMPSON

1 BY THE COURT: YOU CERTAINLY HAVE THAT RIGHT. I'M GOING TO
2 SUSTAIN THE OBJECTION.

3 Q WAS THERE A DAM ABOVE YOUR PROPERTY THAT BROKE?

4 A NO.

5 Q THAT YOU KNOW OF?

6 A NO.

7 Q DEFENSE EXHIBIT 14. WHAT DOES THAT PICTURE SHOW?

8 A THAT PICTURE SHOWS THE CREEK BEHIND HIS MOM'S HOUSE. AND IF
9 THE DAM BUSTED, IT WOULD HAVE TORE ALL OF THAT UP.

10 Q THAT'S UPSTREAM FROM YOU?

11 A YES.

12 Q WHAT'S THIS? THAT'S A---

13 A THAT'S SOME KIND OF WATER PIPE, I ASSUME, WHERE THEY GET
14 WATER FROM HIM, FROM HIS WELL.

15 Q DO YOU KNOW WHAT IT'S MADE OF?

16 A IT LOOKS LIKE PVC PIPE.

17 Q IF, IN FACT, THIS DAM HAD BROKEN, IT WOULD BE UNLIKELY THAT
18 THAT---

19 A RIGHT. ALL OF THAT WOULD BE GONE.

20 MR. HECKMAN: NOTHING FURTHER AT THIS TIME.

21 BY THE COURT: ANY QUESTIONS?

22 MR. THOMPSON: VERY BRIEFLY, JUDGE.

23 **CROSS-EXAMINATION BY MR. THOMPSON:**

24 Q MS. EMERY, WHAT KIND OF RELATIONSHIP DO YOU HAVE WITH
25 FRANCES PITTMAN?

1 A I DON'T HAVE A GOOD RELATIONSHIP WITH SOMEBODY THAT
2 TRESPASSES IN MY YARD CONTINUALLY, AND THERE'S A CASE PENDING ON
3 HER NOW FOR THAT. SHE JUST COMES IN MY YARD AT WILL. YOU CAN
4 ASK HER TO LEAVE AND SHE'LL SAY SHE DOESN'T HAVE TO.

5 Q IN FACT, WEREN'T THERE SOME CRIMINAL CHARGES BY MR.
6 HUMPHRIES RELATED TO SOMETHING HE WAS ALLEGED TO HAVE DONE TO MS.
7 PITTMAN?

8 A IT WAS SOME ALLEGED LIES OF THEIRS.

9 Q SO, IT'S FAIR TO SAY YOU DON'T HAVE A GOOD RELATIONSHIP WITH
10 THE GREENS, CORRECT, TONY GREEN OR MS. PITTMAN?

11 A NO, NOT WITH THEM COMING IN MY YARD TRESPASSING. NO. I
12 DON'T DO THAT TO THEM.

13 Q NOW, THIS IS DEFINITELY ABOUT -- YOU HAVE KIND OF A LARGE
14 WOODEN PRIVACY FENCE BETWEEN YOUR PROPERTY, I GUESS, AND THE
15 PROPERTY UPSTREAM FROM YOU; IS THAT RIGHT?

16 A YES. A WOODEN FENCE WAS PUT THERE -- THE POLICE SAID THAT
17 THAT MIGHT KEEP HER OUT OF OUR YARD.

18 Q HAS IT BEEN THERE LONG?

19 A DON'T KNOW WHAT YEAR THEY PUT IT THERE, BUT IT'S BEEN A
20 COUPLE OF YEARS NOW.

21 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS PLAINTIFFS' EXHIBIT 5,
22 PAGE 10. IS THAT A PICTURE OF YOUR FENCE?

23 A THE WOODEN ONE, YES.

24 Q DO YOU OBSERVE DOWN THE CREEK THERE APPEARS TO BE SOME
25 DEBRIS LODGED IN THE CREEK BED, TIMBER AND SOME OTHER DEBRIS?

ROY G. GREEN- REDIRECT BY MR. HECKMAN

1 A THAT'S FOOT LOGS THAT THEY PUT ACROSS TO WALK TO ROY'S LAND.

2 Q WHEN HEAVY FLOODING COMES THROUGH, WHAT EFFECT DOES YOUR
3 PRIVACY FENCE HAVE ON HEAVY FLOODING?

4 A IF A FLOOD HAD COME THROUGH THERE, THAT WOULDN'T DO ANYTHING
5 WHEN I HAD LAND BEHIND IT UNTIL HE DUG IT OFF.

6 MR. THOMPSON: I HAVE NOTHING FURTHER OF THIS WITNESS, JUDGE.

7 BY THE COURT: THANK YOU, MA'AM. YOU CAN STEP DOWN.

8 (WITNESS EXCUSED)

9 MR. HECKMAN: I WOULD LIKE TO REDIRECT ROY GREEN BRIEFLY.

10 BY THE COURT: ALL RIGHT, MR. GREEN. COME AROUND, PLEASE,
11 SIR. REMIND YOU THAT YOU'RE STILL UNDER OATH, SIR.

12 ROY G. GREEN, BEING PREVIOUSLY DULY SWORN, TESTIFIED AS
13 FOLLOWS:

14 REDIRECT EXAMINATION BY MR. HECKMAN:

15 Q MR. GREEN, WHEN YOU WERE DIGGING IN THE CREEK WHEN KAREN
16 EMERY APPROACHED YOU AND ASKED YOU WHAT YOU WERE DOING, WHAT
17 REASON DID YOU GIVE HER FOR DIGGING IN THE BANK, IN THE CREEK
18 BED, IN DECEMBER OF 2010?

19 A I TOLD HER THAT I WAS GOING UP THE CREEK TO PULL THAT BRIDGE
20 OUT OF THE CREEK WHERE THE -- WHEN THE FLOOD COME BY, IT HIT THAT
21 WALL AND INSTEAD OF CUTTING ACROSS THAT LITTLE FIELD RIGHT THERE,
22 THE WATER DUMPED OVER INTO THE CREEK AND THROWN MORE CREEK WATER
23 IN IT. AND THAT'S WHAT CAUSED THE WASH OUT.

24 Q WHAT LOGS ARE YOU REFERRING TO?

25 A I WENT UP THE CREEK TO GET THEM LOGS OUT. WHAT CAUSED THE

ROY G. GREEN- REDIRECT BY MR. HECKMAN

1 LOGS TO WASH IN THERE WAS WHEN THE FLOOD COME THROUGH, IT HIT
2 THAT PRIVACY WALL AND IT DUMPED OVER INTO THE CREEK, IT CREATED
3 MORE WATER. SO, WHEN IT WENT AROUND THE CURVE, IT WASHED THAT
4 BIG HOLE OUT IN THEIR LAND.

5 Q THE PLAINTIFFS' SIDE, IS THAT WHAT YOU'RE TALKING ABOUT?

6 A RIGHT. SEE WHERE THE FLOOD WATER HAD COME AND HIT THIS
7 CHAIN LINK AND ALL OF THAT DEBRIS.

8 Q IS THAT FLOOD WATER OR IS THAT LEAVES BLOWN UP THERE BY THE
9 WIND?

10 A THAT'S FLOOD WATER.

11 Q HOW IS THAT GRASS GROWING THERE IF THAT'S FLOOD WATER?

12 A IT IS FLOOD WATER.

13 MR. HECKMAN: NOTHING FURTHER.

14 BY THE COURT: ANY QUESTIONS?

15 MR. THOMPSON: NOTHING, YOUR HONOR.

16 BY THE COURT: THANK YOU, SIR. YOU CAN STEP DOWN.

17 (WITNESS EXCUSED)

18 MR. HECKMAN: THE DEFENSE RESTS.

19 BY THE COURT: ALL RIGHT. ANYTHING ELSE ON BEHALF OF THE
20 PLAINTIFF?

21 MR. THOMPSON: NO, YOUR HONOR.

22 BY THE COURT: IF Y'ALL WOULD GET OUT YOUR PADS AND
23 PENCILS, I'M GOING TO ISSUE MY RULING.

24 ALL RIGHT. FIRST, AS FAR AS MR. GREEN, MS. PITTMAN, AND MR.
25 HUMPHRIES, INDIVIDUALLY, Y'ALL SEEM LIKE EXTREMELY NICE PEOPLE.

1 I'VE ALSO BEEN DOING THIS LONG ENOUGH TO UNDERSTAND, THE CREEK IS
2 A SYMPTOM OF A LARGER SET OF ISSUES WHICH I CANNOT ADDRESS. BUT
3 REGARDLESS OF WHAT MY RULING'S GOING TO BE, UNLESS ONE OF Y'ALL
4 MOVES OR DIES, YOU'RE GOING TO CONTINUE TO BE NEIGHBORS. IT'S
5 ONLY UP TO YOU WHETHER YOU WANT TO CARRY THAT WEIGHT AROUND THE
6 REST OF YOUR LIVES. TRULY, I'M SAYING THIS TO ALL SIDES. EACH
7 SIDE WOULD AGREE, "YES, THE JUDGE WAS RIGHT ON THAT. IT'S THEIR
8 PROBLEM."

9 BUT ASIDE FROM MY PREACHING, I WILL DO WHAT I'VE BEEN ASKED
10 TO DO. FIRST, THE REALITY IS ANY TIME THERE'S A CREEK AS A
11 BOUNDARY LINE, FREQUENTLY, YOU'RE GOING TO HAVE ISSUES, CONCERNS,
12 AND UNCERTAINTIES. WHEN YOU LOOK AT THE DEEDS AND THE PLATS,
13 THERE ARE SOME AMBIGUITIES, SOME CONFUSION OVER EXACTLY WHAT IS
14 THE BOUNDARY LINE. THE CONSISTENCY IS THAT THE CREEK IS THE
15 BOUNDARY LINE. HOWEVER, SINCE THIS IS A COURT OF EQUITY, I DON'T
16 NECESSARILY NEED TO REACH THAT RESULT IN LIGHT OF WHAT MY
17 RULING'S GOING TO BE IN JUST A FEW MINUTES.

18 AS I LOOK THROUGH THE FACTS, WE'VE GOT A 2004 DIG OUT BY MR.
19 ROY GREEN OF THE CREEK. WE'VE GOT A 2004 FLOOD. WE'VE GOT
20 WHAT'S BEEN CALLED A SEAWALL INSTALLED BY MR. HUMPHRIES AFTER
21 THAT. THEN WE HAVE TWO, WHAT'S BEEN CALLED DIG OUTS, AGAIN BY
22 ROY GREEN, IN 2010.

23 WHAT'S CLEAR IS THERE'S NO NATURAL ACCRETION OF LAND THAT'S
24 OCCURRED HERE, BUT ALL OF THIS HAS BEEN MANMADE. IT IS VIRTUALLY
25 IMPOSSIBLE TO DETERMINE WHAT CAUSED WHAT, WHAT RESULTED FROM

1 WHAT. SO, THE REALITY IS THAT BOTH -- ALL PARTIES SHARE SOME
2 FAULT AND RESPONSIBILITY IN WHAT'S HAPPENED TO THE CREEK AT THAT
3 POINT.

4 AS IT RELATES TO ANY POTENTIAL DAMAGES, I'M DECLINING TO
5 AWARD EITHER SIDE ANY DAMAGES.

6 AS RELATES TO THE \$86,000 THAT PLAINTIFF HAS SUBMITTED, I
7 JUST -- THAT CAN'T BE REALISTIC FOR, AT BEST CASE, 1,500 SQUARE
8 FEET OF FLOODPLAIN IN NORTHERN GREENVILLE COUNTY. HOWEVER, THIS
9 CONCLUSION IS ESPECIALLY TRUE IN LIGHT OF THE TESTIMONY THAT,
10 FROM THE SURVEYOR, THAT IT MAY BE THE RESULT OF A NATURAL
11 WIDENING OF THE CREEK BED OR IT MAY BE THE RESULT OF BETTER
12 INSTRUMENTATION BEING USED IN 2010 AS OPPOSED TO WHEN THE SURVEYS
13 WERE DONE IN THE 1990'S.

14 WHAT I'M GOING TO REQUIRE AND FIND IS THAT THE SURVEYOR GO
15 BACK OUT. HE'S GOING TO SHOOT THE CENTER LINE OF THE CREEK AS IT
16 EXISTS TODAY. THAT'S GOING TO BE THE BOUNDARY LINE UNLESS EITHER
17 ONE OR ALL Y'ALL WISH TO APPEAL MY DECISION, WHICH IS COMPLETELY
18 FINE. THAT'S PART OF THE PROCESS. BUT MY RULING IS GOING TO BE
19 THE CENTER OF THE CREEK AS IT IS WHEN MR. GOSNELL GOES OUT THERE
20 WITH HIS INSTRUMENTS, THAT'S GOING TO BE THE COURT-ORDERED
21 BOUNDARY LINE. EACH SIDE'S GOING TO HAVE TO PAY HALF OF WHATEVER
22 COST MR. GOSNELL CHARGES TO SHOOT THAT LINE. AND THAT SURVEY IS
23 GOING TO BE RECORDED WITH THE COURT ORDER.

24 FROM HENCEFORTH, ANY MAINTENANCE, ANY STABILIZATION, ANY
25 WATER FLOW PROTECTION UNDERTAKING, IT'S GOING TO HAVE TO BE DONE

1 WITH NOTICE TO EACH OTHER AND, IF APPROPRIATE AND NECESSARY, WITH
2 APPROVAL EITHER BY THE GREENVILLE COUNTY SOIL AND WATER
3 COMMISSION OR BY THE ARMY CORP OF ENGINEERS.

4 THE REALITY IS Y'ALL CAN'T GET ALONG ON THE CREEK. SO, THE
5 ONLY THING I KNOW HOW TO DO IS SIT YOU BOTH DOWN AND SAY, "YOU'RE
6 GOING TO HAVE TO HAVE SOMEBODY INDEPENDENT COME IN AND MONITOR
7 THE SITUATION."

8 AS NOTED EARLIER, NO DAMAGES TO EITHER PARTY SINCE BOTH
9 PARTIES HAVE CONTRIBUTED TO WHAT LED TO THIS LITIGATION.

10 MR. THOMPSON, IF YOU WOULD WORK ON A SHORT ORDER. IF BOTH
11 COUNSEL WOULD GO THROUGH ALL OF THE EXHIBITS WITH MY COURT
12 REPORTER TO MAKE SURE THAT THE EXHIBITS STAY HERE WITH THE COURT.

13 I'M NOT ASKING IF YOU AGREE OR DON'T -- DISAGREE BECAUSE
14 PROBABLY BOTH OF Y'ALL DISAGREE, BUT IS THERE ANY CLARIFICATION
15 THAT NEEDS TO BE DONE AT THIS POINT?

16 MR. THOMPSON: YOUR HONOR, THE ONLY CLARIFICATION I WOULD ASK
17 FOR IS IN TERMS OF THE BOUNDARY LINE YOU ARE SETTING, ARE YOU
18 SETTING IT -- I JUST WANT TO MAKE SURE WE DON'T HAVE THIS ISSUE.
19 IS THE BOUNDARY LINE -- TODAY'S CENTER LINE OF THE CREEK GOING TO
20 BE THE MEASURED BOUNDARY LINE OR WE SIMPLY WANT TO SAY IT
21 CONTINUES TO BE THE CREEK AND AS THE CREEK MEANDERS, THE BOUNDARY
22 MEANDERS?

23 BY THE COURT: IT'S GOING TO BE THE MEASURED BOUNDARY LINE
24 ON THE DATE MR. GOSNELL -- HE'S GOING TO SET OUT A SPECIFIC METES
25 AND BOUNDS DESCRIPTION SO THESE FINE FOLKS DON'T NEED TO FUSS

1 OVER WHAT THE BOUNDARY LINE IS ANYMORE.

2 MR. THOMPSON: THANK YOU, JUDGE.

3 BY THE COURT: MR. HECKMAN, ANY CLARIFICATION NEEDED ON
4 YOUR END?

5 MR. HECKMAN: I'M CLEAR ON EVERYTHING, JUDGE.

6 BY THE COURT: OKAY. ALL RIGHT. THANK YOU.

7 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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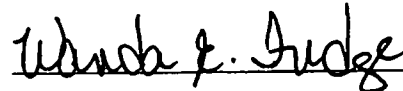
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25

1 THE UNDERSIGNED, WANDA E. FUDGE, COURT REPORTER, OFFICE OF
2 MASTER IN EQUITY FOR GREENVILLE COUNTY, SOUTH CAROLINA, DO HEREBY
3 CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE
4 TRANSCRIPT OF RECORD OF ALL OF THE PROCEEDINGS HAD AND EVIDENCE
5 INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO
6 APPEAL, BEFORE THE HONORABLE CHARLES B. SIMMONS, JR., AS MASTER
7 IN EQUITY FOR GREENVILLE COUNTY, SOUTH CAROLINA ON THE 21ST DAY OF
8 MARCH 2012.

9 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR
10 INTEREST TO ANY PARTIES HERETO.

11 AUGUST 29, 2012

12
13 

14 WANDA E. FUDGE, CCR

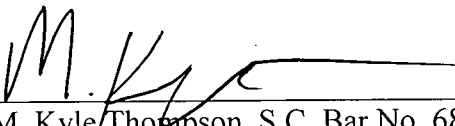
15 CERTIFIED COURT REPORTER
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

CLAWSON AND STAUBES, LLC

October 15, 2013
Greenville, South Carolina



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OCT 18 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr., Master in Equity

C.A. NO. 2010-CP-23-4786

Tony Ray Green and Frances K. Pittman Appellants,

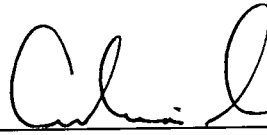
vs.

Samuel D. Humphries and Veronica L. Humphries Respondents.

PROOF OF SERVICE

I certify that I have served Appellants' Supplemental Record on Appeal on Samuel D. Humphries and Veronica L. Humphries by depositing a copy of each in the United States Mail, postage prepaid, on October 17, 2013, addressed to their attorney of record, John Heckman, 409 Pettigru Street, Greenville, SC 29601.

October 17, 2013



Paralegal to M. Kyle Thompson, SC Bar No. 68283
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OCT 18 2013

SC Court of Appeals