

RECEIVED

Sep 02 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-In-Equity

Appellate Case No. 2024-000753
Case No.: 2019-CP-10-01108

Balfour Beatty Construction, LLC, Appellant,

v.

Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation, Defendants,

And

Library Associates, LLC, Third-Party Plaintiff,

v.

Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc., Third-Party Defendants.

Of which Strong Tower Construction, LLC d/b/a Koch Corporation and Watson Electrical Construction Co., LLC are the Respondents.

RECORD ON APPEAL – VOLUME II

James Lynn Werner (S.C. Bar No. 6029)
Katon E. Dawson, Jr. (S.C. Bar No. 101167)
1221 Main Street, Suite 1100
Columbia, SC 29201
(803) 255-8000
jimwerner@parkerpoe.com
katondawson@parkerpoe.com

Thomas C. Hildebrand, Jr. (S.C. Bar No. 2501)
Robert C. Byrd (S.C. Bar No. 1069)
850 Morrison Drive, Suite 400
Charleston, SC 29403
(843) 727- 2650
tomhildebrand@parkerpoe.com
bobbybyrd@parkerpoe.com

*Attorneys for Appellant Balfour Beatty
Construction, LLC*

Don R. Terry (S.C. Bar No. 101395)
Steele B. Windle, III
Windle | Terry | Bimbo
150 Milestone Way, Suite C
Greenville, SC 29615
dterry@wtbconstructionlaw.com
awindle@wtbconstructionlaw.com

*Attorneys for Watson Electrical Construction,
Co., LLC*

Samuel M. Wheeler (S.C. Bar No. 101008)
Whitfield-Cargile Law, PLLC
23 South Brevard Street, Suite 204
Brevard, NC 28712
sam@whitfieldcargilelaw.com

and

Steven L. Smith (S.C. Bar No. 5173)
Smith Law Group of the Carolinas LLC
P.O. Box 50610
Summerville, SC 29485
steve@smithlawcarolinas.com

*Attorneys for Strong Tower Construction,
LLC d/b/a Koch Corporation*

INDEX

	Page(s)
 <u>ORDERS</u>	
Order to Consolidate C.A. No. 2019-CP-10-2275 and Refer to the Charleston County Master-In Equity, filed November 18, 2019.....	1
Order to Consolidate C.A. No. 2019-CP-10-2868 and Refer to Charleston County Master-In-Equity, filed November 18, 2019.....	5
Form 4 Order Denying Strong Tower Construction, LLC d/b/a Koch Corporation’s Motion for Summary Judgment, filed January 8, 2021	9
Order Granting Strong Tower Construction, LLC d/b/a Koch Corporation’s Motion for Partial Summary Judgment, filed September 9, 2021	12
Consent Order of Dismissal with Prejudice as to Claims Between Strong Tower Construction, LLC d/b/a Koch Corporation and Library Associates, LLC, filed September 13, 2021	28
Order Granting Watson Electrical Construction Co., LLC’s Motion for Partial Summary Judgment, filed September 13, 2021	32
Order Granting Watson Electrical Construction Co., LLC’s Motion for Entry of Judgment Against Library Associates, LLC, filed September 15, 2021	42
Trial Order, filed October 6, 2023	46
Order Denying Balfour Beatty Construction, LLC’s Motion to Reconsider Grant of Summary Judgment in Favor of Strong Tower Construction, LLC and Order Granting Strong Tower’s Motion to Certify Judgment as Final, filed April 4, 2024	93
Form 4 Order Granting Summary Judgment to Strong Tower Construction, LLC, filed April 4, 2024.....	96
Order Denying Balfour Beatty Construction, LLC’s Motion for Reconsideration of Watson Electrical Construction, LLC’s Summary Judgment, filed April 12, 2024	101
 <u>PLEADINGS</u>	
Summons and Complaint, C.A. No. 2019-CP-10-01108, filed March 5, 2019	104
Library Associates, LLC’s Answer to Plaintiff’s Complaint and Counterclaims, filed May 3, 2019	130

Amended Answer and Counterclaims of Library Associates, LLC and Third Party Complaint, filed May 15, 2019	144
Summons and Complaint, C.A. No. 2019-CP-10-02868, filed May 30, 2019	307
Watson Electrical Construction Co., LLC’s Answer to Third Party Complaint, Affirmative Defenses, Crossclaim Against Plaintiff, and Counterclaim, filed June 27, 2019	319
Answer of Defendant Balfour Beatty Construction, LLC, C.A. No. 2019-CP-10-02868, filed July 29, 2019.....	397
Amended Summons and Complaint, C.A. No. 2019-CP-10-01108, filed October 3, 2019	406
Answer and Counterclaims of Library Associates, LLC to Amended Complaint of Balfour Beatty Construction, LLC and Third Party Complaint, filed October 17, 2019.....	430

TRANSCRIPTS

Transcript of January 6, 2021 Hearing on Strong Tower Construction, LLC d/b/a Koch Corporation’s Motion for Summary Judgment, or Partial Summary Judgment	465
Transcript of March 19, 2021 Hearing on Multiple Motions	497
Transcript of August 16, 2021 Hearing on Strong Tower Construction, LLC d/b/a Koch Corporation’s and Watson Electrical Construction Co., LLC’s Motions for Summary Judgment	573
Transcript of August 31, 2021 Hearing on Watson Electrical Construction Co., LLC’s Motion for Summary Judgment, and Alternative Motion for Partial Summary Judgment	688
Transcript of March 13, 2024 Hearing on Motions to Alter or Amend Award of Summary Judgment in Favor of Subcontractors, Pages 1-29.....	856
Trial Transcript, Pages 4387:11-4390:16	885
Trial Transcript, Pages 4613:22-25.....	889
Trial Transcript, Pages 4635:20-4636-7	890

OTHER DOCUMENTS

Balfour Beatty Constrection, LLC’s Notice and Certificate of Mechanic’s Lien, Filed January 25, 2019	892
Strong Tower Construction, LLC d/b/a Koch Corporation’s Notice of Mechanic’s Lien, Filed March 5, 2019	898

Watson Electrical Construction Co., LLC’s Notice and Certificate of Mechanic’s Lien, Filed March 7, 2019	903
Balfour Beatty Constrection, LLC’s Notice and Certificate of Amended Mechanic’s Lien, Filed July 23, 2019.....	909
Balfour Beatty Construction, LLC’s Answers to Plaintiff’s First Interrogatories, C.A. No. 2019-CP-10-02868, served January 28, 2020	914
Strong Tower Construction, LLC d/b/a Koch Corporation’s Notice of Motion and Motion for Summary Judgment, with Supporting Memorandum, filed October 19, 2020.....	919
Balfour Beatty Construction, LLC’s Memorandum in Opposition to Summary Judgment by Strong Tower Construction, LLC d/b/a Koch Corporation, filed January 5, 2021	992
Strong Tower Construction, LLC d/b/a Koch Corporation’s Notice of Motion and Motion for Summary Judgment, or Partial Summary Judgment, with Supporting Memorandum, filed May 6, 2021	1061
Strong Tower Construction LLC d/b/a Koch Corporation’s Additional Memorandum in Support of Summary Judgment, filed August 9, 2021	1068
Balfour Beatty Construction, LLC’s Memorandum in Opposition to Renewed Summary Judgment by Strong Tower Construction, LLC d/b/a Koch Corporation, filed August 16, 2021	1104
Third-Party Defendant Watson Electrical Construction Co., LLC’s Motion for Summary Judgment and Alternative Motion for Partial Summary Judgment, filed August 20, 2021	1137
Balfour Beatty Construction, LLC’s Memorandum in Opposition to Summary Judgment by Watson Electrical Construction Co., LLC, filed August 27, 2021	1162
Watson Electrical Construction Co., LLC’s Memorandum of Law in Support of its Motion for Entry of Judgment Against Library Associates, LLC, filed September 9, 2021	1213
Strong Tower Construction LLC d/b/a Koch Corporation’s Notice of Motion and Motion to Dismiss, to End the Case as to Strong Tower Construction, LLC and to Certify Summary Judgment as the Final Judgment with Respect to Movant, filed September 15, 2021	1228
Balfour Beatty Construction LLC’s Motion for Reconsideration of Order Granting Strong Tower Construction, LLC d/b/a Koch Corporation’s Motion for Partial Summary Judgment, filed September 20, 2021	1232
Balfour Beatty Construction, LLC’s Motion for Reconsideration of Order Granting Watson Electrical Construction Co., LLC’s Motion for Partial Summary Judgment, filed	

September 23, 2021	1238
Watson Electrical Construction Co., LLC’s Memorandum in Opposition to Balfour Beatty Construction, LLC’s Motion for Reconsideration of Order Granting Watson Electrical Construction Co., LLC’s Motion for Partial Summary Judgment, filed October 19, 2021.....	1244
Stipulation of Dismissal Between Watson Electrical Construction Co., LLC and Balfour Beatty Construction, LLC, filed December 1, 2021	1253
Strong Tower Construction, LLC’s d/b/a Koch Corporation’s Memorandum in Opposition to Balfour Beatty’s Motion for Reconsideration, filed December 1, 2021	1258
Balfour Beatty Construction, LLC’s Memorandum in Support of Its Motions to Reconsider the Entry of Summary Judgment in Favor of Various Subcontractors, filed March 7, 2024	1261
Strong Tower Construction, LLC’s d/b/a Koch Corporation’s Memorandum in Support of Motion filed by Strong Tower Construction, LLC to Certify Summary Judgment as the Final Judgment and in Support of a Lift of Stay on Execution, filed March 7, 2024.....	1265
Balfour Beatty Construction, LLC’s Motion for Reconsideration of Order Denying Balfour Beatty Construction, LLC’s Motion for Reconsideration of the Order Granting Watson Summary Judgment, filed April 22, 2024.....	1269
Watson Electrical Construction, LLC’s Trial Exhibit 5, Subcontract Between Watson Electrical Construction, LLC and Balfour Beatty Construction, LLC	1272
Subcontract Between Strong Tower Construction, LLC d/b/a Koch Corporation and Balfour Beatty Construction, LLC.....	1327
Transcript of August 6, 2020 Deposition of Kimberly B. Brown, Pages 370-373; 536-541	1363
Transcript of August 26, 2020 Deposition of James M. Clements, Pages 212-215; 369-374	1374
Transcript of December 17, 2020 Deposition of Timothy Spano.....	1385
Transcript of April 22, 2021 Deposition of James M. Clements, Pages 1-4; 175-177	1691
Transcripts of April 28, 2021 and April 29, 2021 Deposition of Kimberly B. Brown as Library Associates, LLC’s 30(b)(6) Designated Representative.....	1699
Transcript of May 3, 2021 Deposition of Mark Boe, Pages 1-5; 161-165	2131
Transcript of May 6, 2021 Deposition of Sam Hadley, Pages 206-210; 314-319; 324-325	2142
Transcripts of June 15, 2021 and June 16, 2021 Deposition of Jeffrey Sandeen as	

Balfour Beatty Construction, LLC's 30(b)(6) Designated Representative.....	2156
Transcript of June 23, 2021 Deposition of Grady Query, Pages 1-5; 74-76	2833

1 Mr. McDonald saying that perhaps they couldn't open
2 some of the documents or had some trouble locating
3 them. We went back through and provided everything
4 in a format that he could review and open.

5 There are millions and millions of documents
6 in this case. Most of them don't relate to the
7 particular claims, but we have made just Herculean
8 efforts to try to produce all the documents related
9 to the case, and we made every effort to do that.
10 Might there be a couple of stragglers that were
11 overlooked somehow? Maybe. But if there were we
12 will certainly produce them.

13 It's interesting to note that we still haven't
14 gotten a full request for production from Library
15 Associates. They haven't asked us for all of our
16 files or all of our documents. We've been producing
17 them voluntarily, but they haven't asked us for them.

18 To summarize all of it, Your Honor, I agree
19 with you. I'm happy and very thankful that you
20 agreed to this August 1 status conference, and I
21 think that probably all the parties will come
22 together and give forward some ideas and suggestions
23 for how we can expeditiously try the case.

24 THE COURT: Very good. Well, let's
25 say that -- I would ask that you all see if you can't

1 meet some time prior to that, maybe that end of that
2 last week in January. See if you-all can't have a
3 status conference amongst several of you and see if
4 you can't get some -- at least some issues out on how
5 you wish to proceed. It doesn't even sound like
6 you-all have got an agreement on that.

7 But I do think that it's going to be very
8 involved.

9 Mr. Wheeler, I am denying your motion today,
10 but that's not in perpetuity. So if we get to the
11 point where this case is going to languish for
12 another year, year and a half, I would encourage you
13 to probably do that again, but let's see if we can't
14 get this ball rolling so we can see that -- so we can
15 see the end. Let's try and get some justice for
16 everybody in this thing.

17 MR. WHEELER: Thank you, Your Honor.

18 MR. HILDEBRAND: Thank you, Your Honor.

19 THE COURT: All right. I'll look to see
20 you-all on the 1st if not before. Okay? Thank you.
21 Bye-bye now.

22
23 (The proceedings were concluded at 3:43 p.m.)
24
25

1 CERTIFICATE OF REPORTER

2
3 I, Christine A. Smith, Court Reporter and
4 Notary Public for the State of South Carolina at
5 Large, do hereby certify that the foregoing
6 transcript is a true, accurate, and complete record.

7 I further certify that I am neither related to
8 nor counsel for any party to the cause pending or
9 interested in the events thereof.

10 Witness my hand, I have hereunto affixed my
11 official seal this 17th day of June, 2025 at
12 Charleston, Charleston County, South Carolina.

13
14
15 *Christine A. Smith, RPR*

16 _____
17 Christine A. Smith, RPR
18 Court Reporter
19 My Commission expires
20 May 12, 2021
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Balfour Beatty Construction, LLC,
Plaintiff,

vs. CASE NO. 2019-CP-10-1108

Library Associates, LLC; and
Metropolitan Life Insurance
Company, a New York Corporation,
Defendants.

Library Associates, Inc.,
Defendant/Third-Party Plaintiff,

vs.

Lithko Contracting, LLC; Guy M.
Beaty, Inc.; Bernard MMC, LLC;
Gulf Stream Construction Company,
Inc; Precision Walls, Inc.;
Palmetto Automatic Sprinkler
Company, Inc.; et al,
Third-Party Defendants.

Hearing (via WebEx) before the Honorable
Mikell R. Scarborough, reported by Christine A.
Smith, Court Reporter and Notary Public, at
10:01 a.m. on March 19, 2021 at 100 Broad Street,
Courtroom 2A, Charleston, South Carolina.

Christine A. Smith, Court Reporter
Master-in-Equity
P.O. Box 30276
Charleston, South Carolina, 29417
(843) 958-5071
casmith@charlestoncounty.org

1 *Any court, party, or person who has purchased a
2 transcript may, without paying a further fee to the
3 reporter, reproduce a copy or portion thereof as an
4 exhibit pursuant to court order or rule or for
5 internal use, but shall NOT otherwise provide or sell
6 a copy or copies to any other party or person.

7 APPEARANCES OF COUNSEL:

8 Thomas C. Hildebrand, Jr., Esq.
9 Robert C. Byrd, Esq.
10 Parker Poe Adams & Bernstein, LLP
11 200 Meeting Street
12 Suite 301
13 Charleston, SC 29401
14 (843) 727-6315
15 Tomhildebrand@parkerpoe.com
16 Bobbybyrd@parkerpoe.com

17 Walter H. Bundy, Jr., Esq.
18 M. Brent McDonald, Esq.
19 Bundy McDonald, LLC
20 1516 Old Trolley Road
21 Second Floor
22 Summerville, SC 29485
23 (843) 492-0221
24 Walter@bundymcdonald.com
25 Brent@bundymcdonald.com

 Jaan G. Rannik, Esq.
 Epting & Rannik, LLC
 46A State Street
 Charleston, SC 29401
 Jgr@epting-law.com

 John Linton, Jr., Esq.
 Walker Gressette Freeman & Linton, LLC
 P.O. Drawer 22167
 Charleston, SC 29413
 Linton@wgflaw.com

 G. Hamlin O'Kelley, Esq.
 Buist Byars & Taylor, LLC
 652 Coleman Boulevard
 Suite 200
 Mt. Pleasant, SC 29464
 Hamlin.okelley@buistbyars.com

1 Sarah L. DiFranco, Esq.
2 Poyner Spruill, LLP
3 301 South College Street
4 Suite 2900
5 Charlotte, NC 28202
6 Sdifranco@poynerspruill.com

7 Peter Phillips, Esq.
8 Kelly Law Firm
9 180 Spring Street
10 Charleston, SC 29403
11 Peter@kellylawsc.com

12 Robert C. Hughes, III, Esq.
13 Rahimi Hughes & Padgett, LLC
14 35 Bull Street
15 Suite 590
16 Savannah, GA 31401
17 Rhughes@rhp-law.com

18 Samuel M. Wheeler, Esq.
19 Smith Closser Wheeler, PA
20 P.O. Box 40578
21 Charleston, SC 29423
22 Swheeler@scnlaw.com

23 Don R. Terry, Esq.
24 Al Windle, Esq.
25 Steele B. Windle, III, Esq.
Smith Terry Johnson & Windle
150 Milestone Way
Suite C
Greenville, SC 29615
Dterry@smithterrylaw.com
Awindle@smithterrylaw.com

Robert L. Wylie, IV, Esq.
Mullen Wylie, LLC
P.O. Box 1980
Myrtle Beach, SC 29578
Rwylie@mullenwylie.com

Michael A. Timbes, Esq.
Thurmond Kirchner & Timbes, PA
15 Middle Atlantic Wharf
Charleston, SC 29401
Michael@tktlawyers.com

1 R. Britton Kelly, Esq.
2 Kelly Law Firm, LLC
3 696 King Street
4 Charleston, SC 29403
5 (843) 991-4128
6 Britt@kellylawsc.com

7
8
9
10
11 Also Present: Taylor, M. Morris, Esq.
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

1
2
3 THE COURT: So we are back on the record in
4 the case of Balfour Beatty versus Library Associates,
5 et al, 2019-CP-10-1108. I've got a number of motions
6 that have been presented that I need to work through
7 with you-all. I've got, unfortunately, a limited
8 time in which to do it.

9 They sent out a message -- I might be wrong
10 about this, but I know they closed the courthouse
11 early yesterday. I thought it said Thursday and
12 Friday for some reason. I want to try and get
13 through this hearing in a couple of hours.

14 According to my records, I've got about ten to
15 15, maybe 20 minutes per motion. So I've got a
16 schedule of motions before me. These are basically
17 in chronological order, which is how I intend to
18 address them. I am hopeful that everybody's on the
19 case. I guess I should do that to get started.

20 How about Balfour Beatty. We've got
21 Mr. Hildebrand? Mr. Byrd? I see them.

22 MR. HILDEBRAND: Your Honor, Thomas Hildebrand
23 is here and Bobby Byrd.

24 THE COURT: I've got you. Very good. And I
25 see Mr. Bundy here for Library Associates. How about

1 1st Choice Glass, Tracy James; are they still in this
2 one?

3 MR. McDONALD: Your Honor, this is Brent
4 McDonald. I don't believe they are. I don't think
5 1st Choice Glass is in the action anymore.

6 THE COURT: I think they're the ones that
7 dropped out. We're going to cover that if we get as
8 far as we want to get to. Bernhard MCC with John
9 Linton and Jennifer Ivey? I see Mr. Linton.

10 MR. LINTON: Good morning, Judge. How are
11 you?

12 THE COURT: Very good. Good morning. Cook
13 and Boardman with Sarah DiFranco?

14 MS. DiFRANCO: Good morning, Your Honor. I'm
15 here.

16 THE COURT: Very good. You're going to have
17 the first motion up, Ms. DiFranco.

18 MS. DiFRANCO: I don't have a motion, Your
19 Honor.

20 THE COURT: You do, don't you? You'll be the
21 first motion up, 12(b)(6).

22 David Allen Company, Catherine Mackelcan?

23 MR. KELLY: Your Honor, Britt Kelly here.
24 Catherine Mackelcan was working with me previously
25 when this lawsuit got filed. She's no longer with my

1 firm. So I'm here and Peter Phillips has worked with
2 me on this case. We represent David Allen and
3 company.

4 THE COURT: David Allen and whom?

5 MR. KELLY: David Allen and Trimark who
6 provides the kitchen equipment.

7 THE COURT: I've got it. Okay, Britt. Britt
8 Kelly. I've got you.

9 Next up, Flooring Services, Mark Koontz?
10 Brandon Belger?

11 MR. BELGER: Yes, Judge.

12 THE COURT: All right, Mr. Belger. I've got
13 you. Gulf Stream, Ian Freeman?

14 MR. FREEMAN: Good morning, Your Honor. Ian
15 Freeman.

16 THE COURT: Very good, Mr. Freeman. Guy
17 Beaty, Allen West?

18 MR. LINTON: Judge, this is John Linton. I
19 think Guy M. Beaty is also no longer part of the
20 case.

21 THE COURT: Thank you. Next on my list,
22 Library Associates. I see Mr. McDonald as well.
23 Lithko Contracting, Don Terry?

24 MR. TERRY: Don Terry and Al Windle here on
25 behalf of Lithko, Watson, and Old North State.

1 THE COURT: Okay, Don. Just one second. I've
2 got some motions of you-all's too.

3 MR. TERRY: Yes, Your Honor, I believe our
4 motions have been resolved.

5 THE COURT: That would be great. That would
6 move us along quicker.

7 MR. TERRY: Al can speak to that.

8 THE COURT: Okay. So Don, I've got you-all
9 for Lithko, Old North State, and Watson Electrical;
10 is that right?

11 MR. TERRY: Yes, Your Honor.

12 THE COURT: Low Country Case and Millwork,
13 Mr. Rannik?

14 MR. RANNIK: Good morning, Judge.

15 THE COURT: Good morning, Jaan. Metro Life,
16 Mr. Hamlin O'Kelley? G. O'Kelley, I've got you.

17 MR. O'KELLEY: Yes, and Your Honor, there was
18 a motion that Mr. Windle had to get to my client, but
19 it has been resolved. I can confirm that.

20 THE COURT: Very good. Perfect. One of them
21 down. Palmetto Automatic Sprinkler, Robert Wylie and
22 John Menechino?

23 MR. WYLIE: Robert Wylie is present, Your
24 Honor.

25 THE COURT: Very good. Thank you, Mr. Wylie.

1 Pleasant Places, Rachel Igdal and Michael
2 Wright?

3 MR. WRIGHT: I'm here, Your Honor. Michael
4 Wright for Pleasant Places.

5 THE COURT: Thank you, Mr. Wright.

6 Premier Exteriors, Robert Hughes?

7 MR. HUGHES: I'm here, Your Honor. Robert
8 Hughes.

9 THE COURT: Thank you, Mr. Hughes.

10 Quantum Coating, Michael Timbes?

11 MR. TIMBES: Good morning, Judge. Michael
12 here. With me is Sarah Baum from my office. She's
13 joining us as well.

14 THE COURT: Very good. Good morning.

15 All right. I've got Britt Kelly for Trimark.

16 Strong Tower Construction, d/b/a Koch
17 Corporation, Steve Smith, Samuel Wheeler?

18 MR. WHEELER: I'm here, Your Honor. I
19 wouldn't want to be anywhere else on a Friday.

20 THE COURT: All right, Sam. Glad to have you.

21 Then I've got Warco with Scott Miller and
22 David Brennan?

23 MR. MILLER: Yes, Your Honor. Scott Miller
24 here. Good morning.

25 THE COURT: Thank you, Mr. Miller.

1 We did Watson Electrical. Welch, Roberts with
2 Bland Richter? I don't think they're taking part any
3 further on it.

4 MR. KELLY: No, Your Honor. That's correct.

5 THE COURT: Very good. So let's go back. I
6 did have seven on my list. I believe two may be the
7 same from Balfour Beatty. All the others are either
8 Hildebrand or Bundy's motions except for Cook and
9 Boardman's 12(b)(6) Motion to Dismiss. Ms. DiFranco?

10 MS. DiFRANCO: Your Honor, I was not aware
11 that this was on for a hearing today. I am not going
12 to be able to go forward with the 12(b)(6) at this
13 point. We will withdraw that motion.

14 THE COURT: That would be great because I was
15 going to deny it anyway. We'll just note it as
16 withdrawn.

17 MS. DiFRANCO: That will make it easy on you.
18 Thank you, Your Honor.

19 THE COURT: There you go. So number one on my
20 list -- you-all don't have my list. I apologize. I
21 should have sent it out. 1 and 3 are gone. Old
22 North State Masonry's Motion to Compel and Rule to
23 Show Cause filed January 19 has been resolved between
24 the parties. That tells me that some discovery has
25 been ongoing.

1 Next in line would be Mr. Hildebrand's Motion
2 for Summary Judgment. Mr. Hildebrand, this has to do
3 with your Motion to Dismiss the Balfour Construction
4 Group from the action. I'll turn to you, and then
5 I'll look to hear from Mr. Bundy on that one. I did
6 receive a response memorandum from him as well.

7 MR. HILDEBRAND: Thank you, Your Honor.
8 Excuse me really quick. The scenario of who the
9 parties are -- the primary party in this matter from
10 my perspective is Balfour, which was the general
11 contractor. Another primary party would be the
12 owner, Library Associates.

13 There are actually two Balfour entities that
14 are noted in the pleadings. The primary Balfour
15 entity is Balfour Construction, LLC, and is the one
16 that brought this case. It is the one that is on the
17 contract with Library Associates. It's the one
18 against whom Library has made various counterclaims
19 and such. That is the primary party.

20 There is another party that is under the
21 pleadings that is shown as being a Third-Party
22 Defendant. That is a separate entity called Balfour
23 Beatty Construction Group, Inc. So to try to keep
24 these clear and simple, I'll refer to them as
25 Balfour, LLC, and that's the primary party, and then

1 Balfour Group, which is an above the chain --
2 Balfour, LLC is a wholly-owned subsidiary of the
3 parent company, which is Balfour Group.

4 So when we got the third-party complaint from
5 the Plaintiff, there was an allegation that Balfour,
6 and I'll quote to you, agreed to act as a guarantor
7 of the contract and did so agree and contract. It
8 says that Balfour Group contracted to act as a
9 guarantor of the contract. That's in Paragraph 151
10 of Library's counterclaim.

11 So when I got that I was scratching my head.
12 I said, Well, where did that guarantor provision come
13 from? So I sent a very detailed discovery to Library
14 Associates. I'll get to that in just a second.

15 The first part of the analysis says, there was
16 a claim that Balfour Group contracted, and I've
17 attached a copy of the contract, and there's nowhere
18 in there where Balfour group acted as a signatory to
19 the contract. If you look on the signature page, it
20 is Balfour, LLC and there's also a -- so the
21 validation that Balfour Group contracted is just
22 inaccurate. There's nowhere in the contract that
23 says that it contracted. So it did not act as a
24 guarantor.

25 So then the second issue is -- so when I got

1 this meeting I sent a very specific interrogatory to
2 Library Associates saying, Tell me why you think that
3 Balfour Group acted as the guarantor? I got a very
4 specific response that said -- it was a five word
5 response saying, See the attached Exhibit A.

6 What was attached was -- when this first came
7 up, Your Honor, Michael Bennett and Bennett
8 Hospitality asked a bunch of general contractors to
9 come in and do kind of a presentation on their
10 experience and such doing projects like this, and
11 that sort of -- they were asked to fill out a
12 document as part of that called a contractor's
13 qualification statement.

14 So Balfour, LLC filled out the contractor's
15 qualification statement, and again that was to
16 Michael Bennett and Bennett Hospitality, not Library
17 Associates. In any event, there's a note in that
18 qualification that Balfour Group is the parent
19 company, and that Balfour, LLC is a wholly-owned
20 subsidiary.

21 There's a question on that contractor's
22 qualification asking if the party whose financial
23 statement is attached would be willing to guarantee
24 the contract, and the financial statement that I've
25 attached to our pleading is from Balfour, LLC not the

1 parent company.

2 So I'm looking at their response saying, Why
3 is Balfour Group named a party, and they're saying
4 that it's due to this pre-construction contractor's
5 qualification statement. Your Honor, that
6 contractor's qualification statement is not part of
7 the contract.

8 I've cited in detail the contract and what is
9 included and what is specifically excluded, and
10 there's a provision of the contract saying that
11 pre-contract discussions and such are not part of the
12 contract, only what is actually specifically
13 included.

14 So what we have here is a -- to sum it up, a
15 contract that was executed only by Balfour, LLC. It
16 was never signed by Balfour Group. The document
17 presented in support of that allegation by Library
18 Associates was a pre-construction agreement that was
19 not included as part of the contract. Moreover, even
20 if you look at that document it says -- with the
21 party whose financial statement is attached agreed to
22 act as a guarantor, and the financial statement
23 attached is from Balfour, LLC. Again, Balfour, LLC
24 didn't agree to act as a guarantor for itself because
25 that's not part of the contract. In any event, those

1 are the facts underlying the claims against Balfour
2 Group, so I would respectfully submit that based on
3 that, it is not a guarantor under the contract or
4 otherwise and should be dismissed. Thank you.

5 THE COURT: Let me ask you, before I let you
6 go -- I'm looking at his response -- Mr. Bundy filed
7 that Exhibit A. Let me turn to Section 5.1.3, 4, and
8 2 just so I'm clear because I don't have the
9 financial statement in front of me, but 5.1.3 says,
10 The attached financial statement for the
11 organization. The answer there is, No. If not,
12 provide an explanation, and the explanation is that
13 the LLC is a wholly-owned subsidiary of the group,
14 Inc., where the organization whose financial
15 statement is attached act as guarantor, the answer
16 is, Yes.

17 So my question is, whose -- you say that it
18 was the LLC's financial statement that was attached
19 and not the Inc.?

20 MR. HILDEBRAND: Yes, sir.

21 THE COURT: All right.

22 MR. HILDEBRAND: It's real clear when you look
23 at it. The first page says, Balfour Beatty
24 Construction, LLC and subsidiaries. It notes that it
25 is a wholly-owned subsidiary of Balfour Group, but it

1 is for Balfour Beatty Construction, LLC.

2 THE COURT: Under principal office?

3 MR. HILDEBRAND: Yes, sir. If you look at the
4 second page of Exhibit -- actually the fourth page of
5 Exhibit C, which I've attached to the motion.

6 THE COURT: Okay. All right. Describes the
7 LLC. All right. Okay. Let me hear from you,
8 Mr. Bundy.

9 MR. BUNDY: Good morning, Your Honor. Thank
10 you. I have a couple of things I would just point
11 out initially. This is a Motion to Summary Judgment,
12 of course. I call it the Chinchilla Rule, which is
13 of course the Scintilla Rule. It's hard not to be
14 able to find a chinchilla somewhere in every case.

15 As Judge Dennis points out, he's reluctant to
16 grant any Summary Judgment because he knows he's
17 going to get reversed. We'll put that aside.

18 This is a sworn statement signed under oath by
19 the senior vice president. I'm looking at Page 6 of
20 the document. So we have the senior vice president
21 of Balfour Beatty Construction answering those
22 questions that you just went through with
23 Mr. Hildebrand. Maybe it's a bait and switch. I
24 have no idea what the attachment's got to do with
25 anything.

1 I've got a sworn statement here upon which my
2 client relied that this other company, the parent
3 company, was going to provide financial guarantee and
4 in reliance on that they didn't require payment and
5 performance. We had the assets not only of the LLC
6 but the Inc., so I mean, it's clearly not ripe for
7 any Summary Judgment taking all -- if you just take
8 this document at face value, I don't know how a sworn
9 statement doesn't trump an attachment. It might be
10 the wrong attachment. I have no idea.

11 I don't know that Mr. Bennett's required to go
12 back and review all the attachments to make sure that
13 the affidavit is not a lie. On the face of it, the
14 affidavit says that this parent company is going to
15 guarantee this contract. That's the basis of our
16 claim. Thank you, Your Honor.

17 THE COURT: Very good. Mr. Hildebrand, I'm
18 going to deny the motion for now. We may hit that
19 one again soon, but I'm just going to deny it for
20 now. All right?

21 Let's move to the next one on my list, which
22 is Mr. Bundy's Motion to Serve Unlimited
23 Interrogatories and Requests to Admit. Let's talk
24 about that one.

25 MR. BUNDY: Thank you, Your Honor. Judge, I

1 don't know, you know, what your case load is or
2 anything about the average size of cases you handle,
3 construction cases, or have over these many years. I
4 would suggest that this is probably one of the larger
5 and more complicated ones that you've had or at least
6 as complicated.

7 The Rules specifically provide for you in your
8 discretion to allow additional discovery when it is
9 necessary or prudent. If this case doesn't qualify
10 for that, then I think the Rule needs to be changed
11 and all you get is 50. There is no reason to even
12 have for good cause shown because I don't know what I
13 could do other than present to you a case where
14 there's \$50 million in dispute, and we need more
15 discovery.

16 Additionally, while a lot of lawyers
17 apparently don't realize it, although I bring it up
18 every time, interrogatories have to be verified under
19 oath. I can't tell you how many times I have to
20 write a lawyer and say, Verify the answers or I'm
21 going to make a motion. I've had lawyers say, I
22 don't have to do it. They go read the Rule and they
23 determine they do have to do it. An unverified
24 interrogatory, of course, is useless to a trial
25 lawyer. It means nothing. But a verified

1 interrogatory is testimony essentially.

2 If Your Honor will allow us to do unlimited
3 discover, interrogatories, requests to admit, et
4 cetera, then we can narrow the issues in this case
5 significantly by asking questions which get rid of
6 fake issues that don't really exist. Okay?

7 Your Honor is always in a position to monitor
8 and make sure that nobody abuses your -- if you
9 choose to give additional discovery that people
10 aren't going to be abused and taken advantage of. Of
11 course, that's the way it ought to be.

12 I don't know of any better way to reduce trial
13 time and narrow the issues than additional discovery,
14 particularly requests to admit, which can be very,
15 very useful as you know. So that's my position.

16 THE COURT: Now, my difficulty has been -- let
17 me just play devil's advocate with you for a second.
18 My difficulty in this case somewhat has been getting
19 the ball rolling with discovery. It looks like we're
20 making some progress today. I do agree that it could
21 limit some of the issues that the Court would have to
22 try.

23 I see that more so in the requests to admit,
24 though, than in unlimited interrogatories. So give
25 me some feedback at this point in time where you-all

1 stand with discovery per se, and before we go
2 exploring a little bit deeper.

3 MR. BUNDY: Well, as an example, every pay
4 request that was submitted by Balfour Beatty up
5 through, I think, September of 2019 was paid,
6 certified by the architect and paid. There was very
7 little dispute.

8 Of the last three or four pay requests, 41,
9 42, 43, 44 that last four-month, five-month period of
10 the job, the pay requests weren't certified. There
11 are significant questions about how Balfour Beatty
12 arrived at these numbers, what the backup is, et
13 cetera.

14 What I've already done -- I've already
15 prepared the interrogatory questions, very specific
16 interrogatory questions, which will say, here are the
17 documents that we have on this issue. Here is the
18 question I have about that -- where did that number
19 come from?

20 The problem with trying to do it through a
21 request to admit is that if you're one syllable off
22 of the exact language that the Defendant is going to
23 accept they say, No. They just say, No. We don't
24 admit it. Okay? So requests to admit really aren't
25 that effective if there's anything more than one

1 simple thing like, Were you in the room on April 22nd
2 and -- very specific. Defendants are loathe to admit
3 anything. I don't blame them.

4 If we can ask interrogatories, I can save a
5 lot of time because I don't -- otherwise I have to go
6 through a 30(b)(6). I have to give them the same
7 information, and I'm going to try to do that as well.

8 In a deposition if you ask about how we got to
9 this, you end up with, I don't know. Somebody else
10 knows. I don't have this document in front of me. I
11 haven't had time to think about it, and on and on and
12 on and on.

13 Interrogatories have 30 days. They can sit
14 down with their experts. They can sit down with
15 their accountants, and they can come up with a
16 straight answer that everybody is stuck with. That's
17 what I'm trying to do. I'm trying to pin people
18 down. What is your position, and what's the basis of
19 it? 30 days to answer, it seems to me, to be in a
20 situation where those interrogatories would be very
21 helpful. So that's one example.

22 THE COURT: You say you've already drafted
23 these. Have you got a number in mind?

24 MR. BUNDY: Well, no, because I don't know
25 what the answers are going to lead to. I mean, the

1 first set -- if I sent 20 or 30 out, those answers
2 may result in ten or 15 more. Right? So that's why
3 I said unlimited. That's why I wanted to point out
4 that you, of course, can monitor all this.

5 I would point this out. I'm not saying this
6 just for me. This will apply, I presume, to
7 everybody in this case. Everybody in this case will
8 get the benefit of these interrogatories, and they
9 will be able to ask me as many hard questions as they
10 want to ask. I'm perfectly willing to answer hard
11 questions. If I have a question that hurts my client
12 I'm going to go tell him, you know, this is a problem
13 you have.

14 So I guess maybe start out with 100? I don't
15 know if you want to do 100? 50? 75? I need at
16 least 50. Then the problem is you have get into
17 subparts, 50 with subparts. Now, is that two
18 questions or is it three questions? Is it four
19 questions or is it eight questions? Eight plus
20 four -- you just end up spending all this time
21 litigating which to me litigation is a bad thing to
22 say about somebody. To me to litigate is just to
23 fight over nothing. Okay? If anybody calls me a
24 litigator, I take it as an insult.

25 THE COURT: I understand that.

1 Mr. Hildebrand, let me hear from you first on this
2 one, and then I'll be glad to open it up. All right?

3 MR. HILDEBRAND: Yes, sir. The primary
4 problem with the request, Your Honor, is that I've
5 already done a lot of discovery, and the other side
6 has. I've taken a lot of depositions. If I'd been
7 provided with this request by Mr. Bundy earlier in
8 the case, then I probably could have cut down on some
9 of the depositions I've taken.

10 I took down the prior scheduling order with an
11 idea that discovery was going to be finished by
12 February 15, which is what the order said. So I took
13 the depositions. I had my list of everything that I
14 needed to go over. All these RCOs, any pay
15 applications, everything else that I needed to ask
16 about, in large part, I've asked. I may have a few
17 follow-up questions with the 30(b)(6) deposition, but
18 I haven't -- the playing field should have been set
19 early in the case.

20 Mr. Bundy has had the opportunity to depose
21 the principal witnesses from my client, and he has
22 not asked them the questions that he's asking you to
23 compel me to respond to in interrogatories. So there
24 is a good reason that the Rules limit interrogatories
25 because they lead to extra work, particularly late in

1 the game after a lot of the discovery has already
2 been completed.

3 So for that reason I don't think that it's
4 appropriate. If inclined to grant it, thought, I
5 would say, definitely limit it. The Rules provide
6 for 50 interrogatories, and if you want to say that
7 they want to limit it to 50 more, that's fine.

8 One other point, though, Your Honor, is that I
9 just feel like -- I've already responded over and
10 above, and Balfour has, to discovery requests, and
11 one of the things you'll recall that you did, Your
12 Honor, was you required us to go through an audit
13 under the contract which took a very long period of
14 time and took many, many, many man hours of my client
15 responding to requests back and forth from Your
16 Honor's.

17 What Mr. Bundy's now trying to do is to ask
18 even additional questions that are going back. If
19 you look at interrogatories that he's propounded,
20 they're basically followups to what they already
21 should have done in their audit.

22 So my basic position, Your Honor, in closing
23 is that we've already conducted most of the
24 discovery. What we needed to ask we've asked. If
25 Mr. Bundy wants to do a 30(b)(6), fine. I don't

1 think that it's necessary or appropriate to have
2 additional interrogatories given the fact of where
3 the case is now.

4 Lastly, if you are inclined to grant it, then
5 I would definitely put a limit on it. I would say 25
6 or maybe 50 at the maximum. Thank you.

7 THE COURT: All right. Mr. Bundy, does this
8 apply to all the subcontractors? That would be my
9 question to you because I just don't want to
10 overburden them. I want to get moving on some of
11 these subcontractors.

12 MR. BUNDY: I'm perfectly willing to not let
13 it apply to subcontractors. I don't care. I just
14 want to get the answers from the general contractor.
15 We didn't contract with any of these poor people that
16 aren't being paid by Balfour Beatty.

17 Just a few points on the retort: Once again,
18 the audit has been conflated with discovery. The
19 audit was not discovery. We went through that
20 ad nauseam. So it was never a discover process. It
21 was part of the contract. Number two, with all due
22 respect, I believe I'm entitled to try my case and
23 prepare my case and do discovery the way I want to do
24 it. Clearly I don't follow Mr. Hildebrand's trial
25 strategy or procedure. I follow my own. I may well

1 have handled it differently if I was representing
2 Balfour Beatty. I have no idea, but I do know how
3 I'm going to handle it for Library Associates.

4 We would just request that we be given
5 additional discovery, as to Balfour Beatty is fine
6 with me, and I would prefer at least 100 questions,
7 not 50.

8 THE COURT: All right. And then I'm assuming
9 that once you get the responses that you're seeking
10 you would try to be doing requests to admit; is that
11 right, or do you want to do those simultaneously?

12 MR. BUNDY: Well, you know, actually, the way
13 I would probably do it is I would ask for
14 interrogatories first and some requests to admit that
15 I'm satisfied in it, but if the answer I get in an
16 interrogatory is verified, as it's supposed to be,
17 that's essentially the same as a request to admit.

18 I may, again, if it's a particularly important
19 thing I may then double up and ask for an admission
20 because under Bundy versus Shirley, which is a case
21 up in the Supreme Court, the Court held that the
22 request to admit -- once it was admitted that was it.
23 I assume that an interrogatory response, even though
24 it was verified, they could still come into Court and
25 say, Well, I've changed my mind, and all you would be

1 able to do is cross-examine them on the fact that
2 they changed their, quote/unquote, "testimony".

3 If they come into Court and try to change a
4 request to admit, it doesn't work that way. They
5 would have to make a motion, and they would probably
6 lose. So from a strategy in a trial procedure, trial
7 preparation process, my typical traditional approach
8 is to start with interrogatories and then move on
9 from there to requests to admit, of course without
10 regard to request to admit through authenticity,
11 which of course, is limitless. There is no limit on
12 the request to admit for authenticity and
13 admissibility. That's my thinking at the present
14 time.

15 THE COURT: All right. I'm going to grant the
16 motion subject to this limitation: And that is that
17 I'm going to allow you -- I'm going to allow Library
18 Associates to submit interrogatories to Balfour
19 Beatty limited to the number of 100 including
20 subparts, and I'm certainly going to allow Balfour
21 Beatty to do the same back towards Library
22 Associates. It's only going to apply to those two
23 parties. I'm not going to get the subcontractors
24 involved with all of that. Okay? All right? So
25 I'll grant that in part.

1 MR. BUNDY: How about requests to admit? Is
2 it 100 more requests to admit on interrogatories? Is
3 that what we're saying?

4 THE COURT: I'll allow that, yes, 100 of each.

5 MR. BUNDY: Thank you. Perfect.

6 THE COURT: All right. Next on my list then
7 is Mr. Hildebrand's motion. Mr. Hildebrand, I have
8 it twice, but I think it's the same with supporting
9 documentation. That was the Motion to Exclude
10 Testimony of the rebuttal witnesses that have been
11 named.

12 When I looked at the memoranda it looked like
13 those witnesses it didn't necessarily state they were
14 rebuttal witnesses. It looked like they were just
15 witnesses is what Mr. Bundy indicated to me, but
16 let's talk about that.

17 MR. BUNDY: Your Honor, I might be able to
18 clear it up. In the second motion filed by Balfour
19 Beatty February 24, they have failed to refer to your
20 February 1st amendment to the scheduling order which
21 sent everything out by 90 days. They again referred
22 to the September 30 order, and the September 30 order
23 was modified by your February 1st order, which
24 extended everything by 90 days.

25 Within that extended 90 days -- within that

1 time period that is extended by the 90 days, we
2 listed these two rebuttal witnesses as expert
3 witnesses, so now they were listed within time for
4 both rebuttal and expert witnesses.

5 I think the issue before you now is whether or
6 not Balfour Beatty has met the six requirements to
7 exclude my witnesses.

8 THE COURT: Mr. Hildebrand, that's your
9 motion. Go ahead.

10 MR. HILDEBRAND: Thank you, Your Honor. We're
11 operating under a scheduling order, and initially we
12 had two witnesses designated by Mr. Bundy as rebuttal
13 witnesses. He then said, Well, I'm not going to just
14 name them as rebuttal witnesses. I'm now going to
15 name them as primary witnesses, expert witnesses.

16 That's the reason that I had two motions. One
17 was done before he changed the witnesses to be
18 primary witnesses.

19 The scheduling order, Your Honor, that we're
20 operating under, is very thorough, precise, about
21 what the designation is supposed to be for expert
22 witnesses. It says that each expert witness -- the
23 party needs to provide a complete statement of all
24 opinions that the witness will express and the basis
25 for it, and then secondly, provide the facts for what

1 the witnesses will want to testify to after that.

2 What's important, Your Honor, is that -- when
3 I look at the facts I can determine if I, one, wanted
4 to depose that witness; two, if I am going to depose
5 him what on earth it is that they're going to testify
6 about so I can do some background homework and make
7 the deposition efficient and appropriate. Also, it
8 allows me to decide whether I'm going to need, within
9 the appropriate period of time, to hire or obtain, or
10 consult with a rebuttal witness to that particular
11 person.

12 So the scheduling order is real clear, and the
13 statement of all opinions and the general facts and
14 data that the expert is going to rely on. So what
15 I've gotten is a listing with two witnesses, and I
16 got very detailed reports from those two witnesses.
17 Those are Cotton and Company and a guy named -- I
18 don't know if it's Mr. Boey or Boe (phonetic).

19 With both of those we got detailed reports so
20 I know where they're coming from, and I know what I
21 need to respond, and the playing field is clear. For
22 two of them though, Your Honor, what I've gotten is
23 virtually nothing where there is a reference to an
24 attorney out of Minneapolis, and it says basically
25 that they may provide opinion testimony relating to

1 the custom usage and terms in the construction
2 industry. That is incredibly broad.

3 The impact with AIA documents on the project,
4 claims, procedures, customs, and usage for liquidated
5 damages. It doesn't say what his opinions are.

6 There's no -- by the scheduling order, there's no
7 recitation of what his specific opinions are, just a
8 very general description that he basically could
9 testify about anything relative to the project under
10 that very broad response, and that's the same thing.

11 The second person I've gotten very little
12 information about is Jim Clements. Jim Clements was
13 actually the owner's representative on this project,
14 and I've taken his deposition. He does not have
15 opinions as an expert when I took his deposition
16 which was about four days. He said that he was not
17 qualified to offer opinions as a critical path
18 methodology expert. He had not done that. He was
19 not qualified to do that. I asked him about all of
20 his opinions and went through those at great length.

21 Then after that I've gotten this new
22 designation where it says that Mr. Clements may
23 provide testimony relating to the scheduling,
24 management, and construction of the project. So
25 basically he could testify about anything.

1 So I think that in response to that, it would
2 be appropriate for you to say that there's not been
3 an appropriate designation, and I'm going to exclude
4 those witnesses or as an alternative compel Library
5 Associates to provide detailed reports from those
6 witnesses setting out with specificity like Mr. Boe
7 (phonetic) did about his opinions so that I can
8 address them and then decide whether I want to depose
9 them or whether I will need to retain somebody or
10 not. Thank you.

11 THE COURT: Okay. Mr. Bundy?

12 MR. BUNDY: Thank you, Your Honor. Your
13 Honor, there is no requirement in the scheduling
14 order for an expert to issue a report. So the issue
15 becomes whether or not Mr. Hildebrand has sufficient
16 knowledge about what these people are going to
17 testify about to enable him to take their deposition
18 and ask them questions.

19 Mr. Clements was the owner's representative on
20 the job, and he's extremely qualified as an owner's
21 representative, and with regard to the management of
22 a project he's certainly qualified to give opinions
23 about how the job is running. The gentleman with
24 regard to the AIA documents, Mr. Patrick O'Conner, in
25 fact helped draft those documents for the American

1 Institute of Architects. He's the one that drafted
2 it. He's employed by the American Institute of
3 Architects.

4 Clearly, I think Mr. -- counsel for Balfour
5 Beatty ought to know which issues he contends are
6 relevant to this case. As an example, liquidated
7 damage says here, custom and usage of the assessment
8 of liquidated damages. Well, that's what he's going
9 to testify to. He's going to testify to custom and
10 usage.

11 The problem is that when you try to anticipate
12 exactly what he's going to say -- I have to
13 anticipate what kind of questions Balfour Beatty's
14 counsel is going to ask about liquidated damages. If
15 I can't anticipate them then when he testifies to
16 something if I didn't basically outline to opposing
17 counsel what to ask, then somehow I'm outside of
18 disclosure.

19 I'm glad to try, if Your Honor wants me to, to
20 provide a more detailed narrative of what these
21 expert witnesses are going to testify to. I'm glad
22 to try to do that. I think excluding them would be
23 pretty strong because if you'll look at the six
24 requirements I don't think any of them would be fit
25 particularly since we are at least six months away

1 from trial.

2 So I'm glad to make an attempt to satisfy
3 Mr. Hildebrand's concerns and give him sufficient
4 information where he can make a professional decision
5 as a lawyer as to whether he ought to take the
6 depositions or not. I'm glad to try to do that, and
7 if I can't satisfy him I guess we can come back
8 before you and you can tell me what else I need to
9 do.

10 THE COURT: All right. When can you get that
11 done by?

12 MR. BUNDY: I can have it done -- I'll have it
13 done by next Friday.

14 THE COURT: All right. I'll take that under
15 advisement, and then Mr. Hildebrand, once you've had
16 a chance to review that let me know where you stand
17 relative to those guys. I'm reluctant to exclude any
18 witnesses. I'll just let you know that. I do think
19 you should have some idea as to what area they are
20 going to be testifying into and what their background
21 is and some information on that. Okay?

22 MR. BUNDY: Your Honor, if Tom wants to send
23 me an e-mail or a letter and say specifically -- I'm
24 glad to work with him on this thing and then try to
25 satisfy what he needs short of paying him to draft

1 some large report. I just don't want to spend the
2 money to do a report. I'm glad to work with him to
3 try to educate him about what these witnesses are
4 going to testify to.

5 MR. HILDEBRAND: Your Honor, it's real simple.
6 I just simply want him to provide -- to follow the
7 order that you executed in the scheduling order that
8 you provided, which is to make a complete statement
9 of all opinions the witness will express.

10 So Mr. Bundy needs to talk to his experts and
11 say, What are the opinions you plan to express just
12 like he's done with his other experts and provide
13 that to me whether it's in a report or in a narrative
14 or whatever. I don't care. I just simply want it to
15 comply with the order that you've signed which I've
16 tried to do with my responses.

17 Give me the opinions and the specific facts
18 that underlie those opinions.

19 MR. BUNDY: Understood, Your Honor.

20 THE COURT: Very good. So I'll look to hear
21 back from you-all by -- let's just say three week's
22 time on that. Okay?

23 MR. HILDEBRAND: Thank you, Your Honor.

24 MR. BUNDY: Thank you, Your Honor.

25 THE COURT: That should be around the 5th of

1 February or something or the 9th of April? I just
2 went back in time. Let's go forward in time, not
3 back in time. I'll take it under advisement until
4 that time.

5 Finally, number seven on my list was
6 Mr. Bundy's motion, and that's to compel a video that
7 was apparently taken of the project back in 2018 to
8 which Mr. Hildebrand, I believe, has claimed attorney
9 work product and confidential information.

10 Tell me about that, Mr. Bundy.

11 MR. BUNDY: Thank you, Your Honor. Your
12 Honor, in its broadest sense the hotel was evidence.
13 The hotel is evidence. The hotel is the car wreck.
14 Okay? The hotel is the smoking gun. Whatever
15 analogy you want to use -- I can't bring the hotel
16 and put it in evidence and put a sticker on it, but
17 it is evidence in this case.

18 Now, if we were given a privilege log of 4,000
19 documents, which we're getting ready to send you
20 another motion for a lot of reasons, but in the
21 e-mail transmittal of the privilege log, Balfour
22 Beatty's counsel referred to this video of the hotel,
23 my client's hotel, which was attorney/client
24 privilege. I filed a motion. It never occurred to
25 me that it was attorney/client privilege, but I guess

1 maybe it is. I don't know.

2 Anyway, I get this affidavit from Tim Spanno,
3 who is one of the project managers whose deposition I
4 have yet to take. He says in Paragraph 4 that the
5 videos were taken at the recommendation of in-house
6 counsel for Balfour, John Hughes, Esquire and outside
7 counsel, Tom Hildebrand.

8 The videos were taken for confidentially
9 discussing in context issues related to this
10 litigation. To be clear, I don't want the audio of
11 this video. I don't care about Mr. Houer or Huer
12 (phonetic), or whatever his name is, and
13 Mr. Hildebrand's secondary client. It's none of my
14 business. Okay?

15 The videos were taken on November 12 and 14,
16 2018. Now, at that time this job was 90 days away
17 from substantial completion. I got the contractor
18 walking around taking pictures and videos of the
19 evidence. Okay? Now, he's got his lawyers with him.
20 Great.

21 Then they go back and they take another video
22 on March 19, 2019, only taken of the exterior, and
23 that video can easily be taken at this time. Well, I
24 guess if this is the law you could go to a wreck
25 scene as long as -- people would just have a lawyer

1 on their hip 24/7, right? Because then everything
2 you saw, everything you took a picture of, everything
3 you did would just be attorney/client privilege. You
4 wouldn't be entitled to see the bloody knife, okay,
5 because I took the picture of the knife I killed the
6 guy with because my lawyer was there. You can't look
7 at it.

8 One of the issues in this case is going to be,
9 as it relates to the November 12 and 14 videos, the
10 completion of the job and the satisfactory nature or
11 unsatisfactory nature of the finishes.

12 Well, if I take Spano's deposition and say,
13 Well, tell me what it looked like on the 12th and
14 14th and he describes to me, Well, it was beautiful,
15 everything was painted beautifully, whatever. Have
16 you got a picture of it? Oh, yeah. I have a
17 picture. Well, can I see it? You can't see it. I
18 was with my lawyer. The picture may show peeling
19 paint and leaks. I don't know what it's going to
20 show. That's the evidence.

21 From an evidentiary standpoint of what he saw
22 on that day, is the video that was taken on that day.
23 When I'm seeing the video, I have no way of
24 cross-examining him. So to me, I fully accept and
25 appreciate the attorney/client privilege, but I do

1 not believe that it allows a party to have secret
2 evidence, which is what this is. Okay? So that's my
3 position.

4 THE COURT: Very good. All right,
5 Mr. Hildebrand?

6 MR. HILDEBRAND: Your Honor, there's -- yes,
7 this is a secret because it was clearly
8 attorney/client privilege because what has been noted
9 in this affidavit -- what the witness was asked to do
10 was to give a narrative of some issues that he had
11 discussed with me, with John, with a lawyer, and
12 there was an exchange, so to speak, where the witness
13 would say, Here are my thoughts on various aspects of
14 the case.

15 That is clearly -- that's what you might --
16 from looking at a photograph that you have a client
17 in your office looking at photographs or looking at
18 the evidence and you have a discussion, and you might
19 write down notes. Those notes are clearly
20 attorney/client privilege. Here it was on videotape,
21 and as noted in the affidavit, what was being
22 videotaped is in -- it is at the very end of the
23 project. There was about 1 percent left to do at the
24 most to get this done. It was basically done to
25 substantial completion a month later according to

1 Balfour Beatty. So right there at the end we asked
2 him to give us his thoughts and that's what he did.

3 As far as taking photographs of the building,
4 my gosh, Mr. Bundy's client is the one who has full
5 access to it any time now and they can photograph and
6 videotape whatever they want to on the inside of it
7 just like we might have had to have done. I think
8 this is clearly attorney/client privilege.

9 It's the same with the outside video. It's
10 the same sort of thing. They can video or photograph
11 the outside of the project, but the issues are, what
12 did I think was important and what we videotaped
13 and -- so I don't think it's just the narrative that
14 can be taken out. The next thing we would want to do
15 is say, Well, why was this important? Why did you
16 think that this was important, and what were you
17 thinking and what was your lawyer saying when you
18 looked at this aspect of it? It's going to lead to
19 all of those sorts of questions. For all those
20 reasons I don't think that it's produceable. Thank
21 you.

22 MR. BUNDY: Your Honor, it's true. I can go
23 take a video, but I can't take a video on March 19th,
24 2019. That day has come and gone. That picture no
25 longer exists in this universe. Neither does

1 November 12/14 of 2018. If I have the photographs
2 and am stupid enough to ask a witness what his lawyer
3 said when he took the photograph, his lawyer's going
4 to tell him not to answer. I'm going to have to file
5 a motion and come before you and pay attorney's fees
6 for asking him a question I knew was attorney/client
7 communication. That's not what I'm trying to do.

8 All I want is the evidence. It is a little telling
9 that Counsel refers to talking to the witness, not
10 talking to his client but talking to the witness.

11 I'm not familiar with a process where a lawyer
12 tells a witness what to say on the witness stand.
13 Clearly the communications are confidential.
14 Witnesses, if they gain knowledge they don't
15 otherwise have, from a lawyer have now made the
16 lawyer a witness because the witness is required to
17 testify from firsthand knowledge, not from what his
18 lawyer tells him.

19 If he's going to be testifying about what his
20 lawyer told him and basing his testimony and opinions
21 on what his lawyer told him, well, then I'm going to
22 need to take the deposition of the lawyer because I
23 need to know where those facts came from so we can go
24 down that road, too. Thank you, Your Honor.

25 THE COURT: Well, I think that's the slippery

1 slope that I want to try to avoid, so I'm going to
2 deny that motion. I think based upon the affidavit
3 and the projection that it appears to have been
4 clearly done. Upon advice of counsel I think it fits
5 into the criteria. That confidential communication
6 can be both audio and video, so I'm going to deny
7 that motion, Mr. Bundy.

8 MR. BUNDY: Thank you, Your Honor.

9 THE COURT: Now, that gets through my motions
10 that I had on the calendar for today. We're doing
11 really well because we're done within an hour. I did
12 receive a motion by Balfour Beatty to reconsider the
13 denial of the Motion to Compel. This comes from the
14 last hearing I think we had directly. I'm not sure
15 you've gotten that yet, Mr. Bundy, so I'm going to
16 sit on that one for today. That may get us back
17 together.

18 What I did want to do, while I had everybody
19 together was spend a little bit of time talking about
20 trial procedure and trying to move this case forward.
21 I have been looking at my calendar, and I have
22 received proposals from both Library Associates on
23 how to proceed to trial as well as Balfour Beatty,
24 and I also believe I got one from Old North State
25 Masonry. I'm not sure that I like any of them

1 particularly, but there was some thought process
2 about doing mini-trials.

3 I think there's some benefit to doing that,
4 but there's certainly some objection as well. I do
5 think that the big issue in this case that the
6 Court's got to resolve is the question of what was
7 the guaranteed contract price, what were the approved
8 changes, and what's the amount of money that should
9 be distributed out there.

10 I've thought about this from two standpoints.
11 I'm going to let Balfour Beatty respond first and
12 then Library Associates, and then I'm going to start
13 going into the subs. I've done that from the
14 standpoint -- we need to get that issue out of the
15 way. I've done it from the other standpoint that
16 these subcontractors need to quit being twisted in
17 the wind and we get somewhere with their claims.

18 When I say that I don't necessarily know that
19 I would issue an order arising out of the
20 subcontractor's claim so much as trying to figure out
21 what their claims are, what they're for, and then to
22 what extent they are covered by the contract, but
23 that contract amount needs to be then determined. So
24 I've got that -- so why don't I turn to -- I think it
25 was Mr. Terry's office that did that; is that right?

1 Am I right about that, Don?

2 MR. TERRY: Yes, Your Honor.

3 THE COURT: Let me hear from you on your
4 proposal. Frankly, I think I came in liking yours
5 the best, so let's start there. You still proposed a
6 mini-trial. I think you were opposed to it, but you
7 still proposed it being done that way. I don't want
8 the tail to wag the dog, but I do think that this
9 litigation has become time consuming and expensive
10 for the subcontractors and is a point of diminishing
11 returns ultimately.

12 MR. TERRY: So we do oppose it, but to be
13 frank, I don't want Mr. Bundy's mini-trial proposal
14 to be the only one in existence. The primary way
15 that I looked at this case was -- you've got an
16 initial contract. You've got approved change orders.
17 You have proposed change orders that have never been
18 dealt with, and then you have change directives that
19 came in the form of construction change directives,
20 and that group of items determines the total amount
21 that should be paid. To me that's how you get to the
22 guaranteed maximum price, hearing all of the evidence
23 of all of those items, and then on top of that what
24 additional money, if any, should be paid because of
25 delays, acceleration, or inefficiencies caused by the

1 change directives and the change orders.

2 So the format of the mini-trials that I've
3 proposed follows that procedure to say, okay, first
4 the Court determines how much money based on all
5 these criteria that we've heard, and then we'll get
6 to the next step as we go through. Frankly, I just
7 looked at it as if I was going to try this case how
8 would I want to try it? If you want me to go through
9 each section I'm happy to do that, but you've read
10 it, so obviously I don't want to waste the Court's
11 time doing that.

12 THE COURT: I've read it, and I'm assuming
13 everyone else has gotten a copy of it. I'm just
14 trying to -- as I indicated, I had told you-all the
15 last time we were all together that my last hearing
16 was really between Balfour and Library. We touched a
17 little bit on how to go forward with this case
18 because I'm trying to get my arms around it.

19 It's just like, How do you eat the elephant?
20 You know, it's one bite at a time. There's got to be
21 a way to get this thing bit off one bite at a time.
22 That's my thought process on moving forward. I'm
23 happy to hear from anybody that has a dog in that
24 fight. We've just got to find a way to get it moving
25 forward.

1 I did not -- Mr. Hildebrand, I did not like
2 the time limitations that we were doing, although I
3 know that that's been done in certain cases. I just
4 haven't done it in my office ever.

5 My schedule, because of where we've been over
6 the last year, my calendar is fairly flexible as we
7 go out three, six, nine months. So the ability to
8 break this into time blocks is actually pretty good
9 as we meet today. I keep waiting to see if we're
10 going to have the proverbial drop of the shoe on the
11 foot and I get really busy with foreclosures. This
12 doesn't look to be the case this year. Thank God it
13 doesn't look like we're returning to the 2008
14 timeframe I'm very happy to report, and that should
15 keep me open again.

16 As of this week courts are open again. We're
17 ready for business. I still have some limitations on
18 space. We're going to have to work on that from a
19 space standpoint to the extent that we get everybody
20 together.

21 That was one of my questions that I had. At
22 one point in time we had talked about a number of the
23 subcontractors. Some are covered by the general and
24 some are not is my recollection. I can't recall
25 exactly what the term of art we used for that, but

1 there were some that filed counterclaims. Some that
2 did not. Some just answered as third-party
3 defendants.

4 So I'm sort of trying to figure out how to
5 best deal with the subcontractors, but I would like
6 to see -- I think there's probably a consensus.
7 We've got to figure out what the contract price is to
8 get that -- does anybody disagree with that? I'm
9 just going to open it up to everybody else.

10 MR. TERRY: Your Honor, the way I look at it
11 is the subcontractors are the folks that did the
12 work, and particularly with my three clients, Watson,
13 Lithko and Old North State, we all filed lawsuits,
14 and those lawsuits were consolidated. So from my
15 perspective step one is: Let's realign the parties
16 and make those folks plaintiffs as they would have
17 been with the original claims, and then we can move
18 forward.

19 You say that we need to figure out what the
20 contract is. Well, what the contract is is
21 ultimately based on what the contract should have
22 been if there were not a breach of that contract. So
23 these subcontractors claims -- for example, let's use
24 a change directive for example.

25 My understanding of the facts is that the

1 owner reviewed change directives. Mr. Clements
2 testified that if the owners used change directives
3 and the subs do that work, that should increase the
4 amount -- I'm paraphrasing -- but it should increase
5 the amount of the contract.

6 Well, you've got to hear all of that to decide
7 what the contract should be, and the subs are the
8 folks that tell that story.

9 MR. BUNDY: Your Honor, if I may -- first off,
10 this thing about change directives is not entirely
11 accurate. Change directives were used on this job to
12 make the contractor do work which it refused to do
13 which was a requirement of the contractor under the
14 contract.

15 In other words, we would tell Balfour Beatty,
16 Go do this work. They would say, No. That's not in
17 the contract. Okay? We'd go to the architect. The
18 architect would say, Yes. It is in the contract.
19 You do the work. Balfour Beatty refused to do the
20 work, so we had two choices. One, we could direct
21 them to do the work and let them keep up with the
22 cost and we'll argue later about whether we owe it,
23 or two, we could have gone out and hired yet another
24 contractor to do that work.

25 So that's the way we had to use some

1 construction change directives on this job. Other
2 construction change directives were, It's clearly a
3 change but the price you have given us is ten times
4 what it ought to cost, so we're going to pay you on a
5 cost plus basis, which the contract allows.

6 Two, the notion of realigning the parties
7 needs to be brought to you with a proper motion under
8 the Rules of Civil Procedure. The Rules of Civil
9 Procedure prohibit the realignment of some of these
10 parties because it violates the terms of the Rules of
11 Civil Procedure.

12 Specifically, the fact that some of these
13 subcontractors have a secret agreement with the
14 general contractor and their interests are aligned
15 when they should be different. I mean, I agree. I'm
16 glad to have a hearing on that issue. Okay?

17 I think what I'd like to focus on as it
18 relates to the subcontractors are the classes of
19 subcontractors. There is a class of subcontractor,
20 and I think maybe Mr. Wylie, as an example, would be
21 a representative of such a subcontractor as far as I
22 know. I stand to be corrected later.

23 Let's assume that Mr. Wylie's client doesn't
24 have any change orders and all he wants is his
25 retainer. His client did the job. The job is over.

1 He drove the piles. He finished the fireproofing,
2 whatever he did. There's a specific amount owed to
3 him by Balfour Beatty. We didn't contract with
4 Mr. Wylie's client.

5 Let's say that Balfour Beatty owes \$100,000 to
6 Mr. Wylie. Okay? There is no reason why -- my
7 client does not contend that Mr. Wylie's client
8 delayed this job, doing defective work, caused any
9 problems that Balfour Beatty should not pay that
10 amount. Okay? There's no reason for it legally or
11 morally.

12 Additionally, in order for a cost to be proper
13 under this contract it has to have been incurred.
14 Until such time as Balfour Beatty pays Mr. Wylie's
15 client, under my example, that \$100,000 is not a cost
16 of the work by definition. The contract says they
17 have to be paid.

18 So if those subcontractors -- there may be
19 five or six or ten of them -- could make a Motion for
20 Summary Judgment, come to you and you can look to me
21 and say, Bundy, do you have a complaint about these
22 people's work? No. Balfour Beatty, do you have any
23 complaint about their work? No. Why haven't you
24 paid? Well, because I got this paying provision over
25 here which of course violates public policy and you

1 can argue about all that. You might be able to get
2 rid of half of the people in this case. Okay?

3 That leaves Balfour Beatty, Library
4 Associates, and the five or six subcontractors
5 they've conspired with to steal from my client.
6 Okay? So that's where we are.

7 We have determined, Your Honor, that there are
8 change orders that were issued by subcontractors to
9 Balfour Beatty, two full years before Library
10 Associates was told anything about it, two years
11 before a subcontractor presents a change order to
12 Balfour Beatty, Balfour Beatty hangs onto it for two
13 years, doesn't tell anything to Library Associates.
14 They have a sub out there claiming additional costs
15 and then two years later they make a claim. Well,
16 there's a 30-day time limitation in our contract for
17 additional work.

18 It says it's condition precedent, and Balfour
19 Beatty agreed in the contract that we would be
20 prejudiced if they didn't do it in a timely fashion.
21 So the real case, and I believe in front of you, is
22 Balfour Beatty, Library Associates, and the five or
23 six contractors that they have entered into a
24 pass-through agreement with, in its most charitable
25 description.

1 We might be able to get rid of them. I might
2 be able to get rid of the gentleman representing
3 these three individuals. Okay? His claims really
4 aren't that big. Okay? What's holding this case up,
5 Judge, is the BMCC claim. Okay? The mechanical
6 contractor who has claimed four -- \$6 million when
7 they've got \$400,000 or \$500,000 left in retainage.
8 Okay? That's the real bugaboo as far as the
9 subcontractor is concerned. That's what's going to
10 take up all of your time.

11 THE COURT: Okay.

12 MR. BUNDY: Is that \$4 million claim for lost
13 profits and lost productivity and all the rest of it?

14 MR. WHEELER: Your Honor, Sam Wheeler. If you
15 recall, I filed a motion that Bill was referring to,
16 a Summary Judgment for the exact same thing he wants
17 me to file. Here's an exact number that no one
18 disputes. Tom doesn't dispute it. I'm not sure if
19 Bill disputed it or not. I asked in the hearing -- I
20 said, Ask Bill if the owner disputes this amount.
21 Did I cause any delays? What did I do wrong? If I
22 didn't do anything wrong, I could get a judgment
23 against Balfour Beatty for the exact amount that is
24 undisputed. I'll do it again. I'll file it again.
25 If you want to ask Bill pointblank whether the owner

1 has any delays associated with my work, I am happy to
2 file that motion today and put that exact number back
3 in front of you. Then Tom can't claim that Well,
4 Bill's experts may say that there's delays caused by
5 Strong Tower. I'll do it today, and we can have that
6 motion next week or in 10 days, whatever the Rule is.

7 THE COURT: All right. Well, that's certainly
8 one way to go back at it. Mr. Hildebrand, let me
9 hear from you on that one.

10 MR. HILDEBRAND: Yes, Your Honor. Let's back
11 up for a second. Here's where we are -- is that this
12 project was basically completed and we submitted our
13 final pay applications, the last couple of pay
14 applications for the work and the contract amount
15 that Library agreed to pay, the change orders that
16 they agreed to pay were for \$5 million. It owed
17 \$5 million with no excuse. They said they were going
18 to pay it.

19 Then all of a sudden when we finished the
20 project, Mr. Bundy, who's with righteous indignation
21 saying that his client didn't do anything. When we
22 finish the project and they have agreed to pay us
23 \$5 million with changes to the contract -- all of a
24 sudden, for the first time, they pipe up and say, Oh,
25 my gosh. Well, the project has been delayed by

1 16 months. We're going to assert liquidated damages.
2 We're going to serve -- despite the fact that the
3 contract says that you can't file a claim for lost
4 profits. We're going to assert lost profits. We're
5 going to make all sorts of claims.

6 So right at the very end when Library
7 Associates owed us that \$5 million, it just thumbed
8 its nose at us. We have (technical interruption)
9 paid clauses with our subcontractors. In addition to
10 the amount that they agreed to pay, the fact is that
11 there were huge changes to the design of this
12 project. These are the facts that you're going to
13 have to consider later on that delayed the project by
14 these 16 months.

15 Library has an obligation, contractual and
16 otherwise -- when there are delays that it causes --
17 obviously time is money and Balfour and all of our
18 subcontractors were on this project for an additional
19 16 months trying to get the dang thing finished so
20 that Library Associates could use their hotel.

21 Those are two of the claims. The other one is
22 that we had submitted another \$3 million in requested
23 change orders that according to Mr. Jim Clements he
24 never even looked at and wasn't planning to look at
25 them until the project was over and then he never

1 did. I think he was instructed by the owner not to
2 look at them.

3 So where we are, Your Honor, is that Balfour
4 is owed a bunch of money from Library Associates
5 under the contract and otherwise. These
6 subcontractors are owed a bunch of money. The one
7 that owes us money is Library. That's the simple
8 point that I'm trying to make. Library is the one
9 who is enjoying this hotel, having guests over there,
10 all of this and it hasn't paid its bills.

11 So I would agree with you that we need to --
12 the subcontractors need to be taken care of
13 absolutely. Balfour needs to be taken care of
14 absolutely. The one who owes all this money is
15 Library Associates. They got the benefit.

16 Although Mr. Bundy says, Well, I don't have an
17 agreement with these subcontractors, the fact is that
18 under South Carolina law those subcontractors have a
19 right to file a Mechanic's Lien against his client,
20 and that's what they've done. They have a right to
21 pursue those Mechanic's Lien claims, which is what
22 they have done and are entitled to do.

23 So what I simply proposed, Your Honor, I think
24 is just a very commonsense solution to this case,
25 which is the people who did the work which are the

1 subcontractor and Balfour, are entitled to payment
2 from Library Associates, and Library, Mr. Bundy, can
3 raise whatever defenses he wants to against Balfour
4 and against all these subs. Those are the issues
5 that you're going to have to determine. That seems
6 to me to be a very simple way to do it.

7 This mini-trial issue -- to make this case a
8 guinea pig for a mini-trial issue where you decide
9 one issue and you make a judgment and then you go to
10 the next issue and make a judgment and then you go to
11 the next issue -- there's nothing in South Carolina
12 case law that allows for that.

13 The millions of cases that -- certainly
14 hundreds of thousands of cases that have been tried
15 in South Carolina and many that are much, much more
16 complicated than this one -- and I've tried more
17 cases that are less complicated or not -- you simply
18 just go through the time tested method where the
19 Plaintiff puts up its case and has to prove it and
20 then if Mr. Bundy thinks he's entitled to a directed
21 judgment or directed verdict he can make his motions.
22 He can then put up his case, and then, you after
23 hearing all of the evidence, you make your decision
24 and that's what we'll get from you one day.

25 I think, and I certainly understand, Your

1 Honor, that I've got to prove what the contract is,
2 what the original contract was, how it was changed,
3 how the owner didn't pay us and we would make
4 requests for payment and then we have delay times. I
5 understand all that Your Honor, that I've got that
6 obligation to prove that. I think that all these
7 subcontractors clearly understand -- these are smart
8 lawyers, that they've got to prove their Mechanic's
9 Lien. I think that they do that just like they would
10 in any case. They can simply call the people do the
11 claims for money owed against Library, let them put
12 on their cases. I would say, if you can, just set
13 them for some trial dates. If you can do it all in
14 one stretch, great. If you need to do maybe a couple
15 of weeks in one month and another couple of weeks
16 another month -- let's just follow through the simple
17 time tested manner that every other court does which
18 is the Plaintiff puts on its witnesses and then you
19 hear them. Library puts on its witnesses and its
20 case and you hear those and then you render your
21 opinion after hearing all of the evidence. I think
22 that's one of the major problems I've got with this
23 mini-trial issue is it's completely inappropriate to
24 have you or a jury hear some of the evidence and
25 render a partial decision based on some of the

1 evidence when they haven't heard all of it.

2 Every jury trial that I've participated in,
3 right from the start, the first time you have even a
4 recess, a bathroom break, the judge says, Now, Jury,
5 you're admonished that you're not to discuss this
6 case at all. When you go back on this break, you're
7 not to discuss it until after the closing arguments
8 and I've instructed you on the law and then you will
9 make your decision. It's inappropriate to try to
10 hamstring me and say that I have to prove a part and
11 then you decide that, and then I've got to prove
12 another part when evidence that I might introduce
13 near the end of the trial would, I think, perhaps
14 sway you on how you might Rule on any particular
15 item.

16 With all due respect, Your Honor, I think that
17 this is being made much more complicated than it is.
18 Like every other complicated case, the Plaintiff puts
19 on his case, and then the other side puts on his case
20 and you make your decision.

21 THE COURT: Mr. Hildebrand, do you have any
22 objection to those subcontractors who have done the
23 work, should be paid, haven't got a claim for lost
24 profits and liquidated damages, moving for Summary
25 Judgment to try and move some of them out of here?

1 Do you have a problem with that?

2 MR. HILDEBRAND: Well, I think that they
3 should move for Summary Judgment, and they should
4 move forward against Library Associates, which is the
5 person who owes the money. They're the ones who have
6 the Mechanic's Lien against it. Mr. Bundy's client
7 is enjoying that hotel, and under South Carolina law
8 they're entitled to those monies from Mr. Bundy's
9 client. So I would agree that, yeah, Mr. Bundy -- if
10 you don't have qualms with whatever time and
11 materials and benefits that you obtained from these
12 subcontractors and you pay them like you're obligated
13 to and like South Carolina law says, You have to,
14 under the Mechanic's Liens Statutes --

15 MR. WHEELER: Your Honor, Tom is forgetting
16 that we all have contracts with Balfour Beatty. Our
17 contractual obligation is to Balfour Beatty. The
18 payment obligation is from Balfour Beatty. Tom is
19 treating this solely as a Mechanic's Lien case. It
20 is not solely a Mechanic's Lien case. There is a
21 series of Breach of Contract cases, and by the way,
22 the subs all have Mechanic's Liens as well.

23 THE COURT: Right. Right.

24 MR. WHEELER: The only real thing that I care
25 about between Balfour and Library Associates is

1 whether there is a payment in full defense because
2 then that's going to wash out my lien. That takes
3 into account all of the delays, everything else
4 associated with the lien claim.

5 In the meantime, if Tom is sitting there
6 agreeing with me that we should be paid, let's get us
7 paid. I have an undisputed claim. Tom has not
8 disputed a certain amount of my claim, and I brought
9 it in a Summary Judgment Motion. The only issue
10 outstanding was, What are Library Associates' experts
11 going to say? What amount of delays are they going
12 to tag to my client?

13 We have not taken the depositions of those
14 experts. I don't know what they're going to say, but
15 if we have another motion and we have another hearing
16 and Bill is going to say, Hey, I've talked to my
17 experts. I'll go on the record saying "X" amount of
18 money is attributable to your client. If it washes
19 it out then I guess I'm washed out and I have to go
20 sit in a trial, but if it's hey, there's no delays
21 associated with your work, I'm not a party of some
22 secret agreement. I have no idea about what it is.

23 I'm sitting here with a largely undisputed
24 claim and not getting paid. So tell me how we are
25 sitting in a Court of Equity and my client has a

1 \$100,000 lien and claims he's being dragged through
2 this?

3 MR. BUNDY: Your Honor, the subcontractors
4 didn't assume the risk of nonpayment by the owner.
5 The contract is a risk-sharing device. The
6 subcontractors are to be paid whether or not the
7 owner has paid the general contractor. We have
8 complete defenses to any more payment to
9 Mr. Hildebrand based on delay and additional cost and
10 offset all the amounts that are owed to him. That
11 doesn't mean he doesn't owe the subcontractors under
12 that contract. Am I missing something here?

13 THE COURT: Well --

14 MR. WHEELER: I'm not bound by a "pay if paid"
15 contract. That's just flat out unenforceable in
16 South Carolina. Pay when paid is enforceable if
17 reasonable. We are now years removed from the
18 project. That's no longer reasonable.

19 MR. HILDEBRAND: Your Honor, I think that one
20 thing that we're overlooking is that Balfour did not
21 self-perform anything on this job. All of the -- it
22 had the supervision, and it had the people there
23 overseeing it and coordinating it, but it didn't
24 supply anything. It's the subcontractors that
25 supplied it, and it's the owner that has the

1 obligation to pay for the work. That's simply what
2 the Mechanic's Lien Statute says. The owner has to
3 pay for work provided for its hotel.

4 That's what you're going to have to figure out
5 is if Mr. Bundy says, Okay. Well, there were delays
6 or other issues that caused this project to get
7 behind, well, Balfour didn't supply anything. I
8 don't think that these delays were the fault of the
9 subcontractors. I think that they all fall on
10 Mr. Bundy's client and his architect.

11 That's not something that I think that we can
12 decide here today or through motions practice because
13 there are, as Mr. Bundy said, scintilla -- not only
14 scintillas but huge issues of fact that you're going
15 to have to decide. I wish I knew of an easier,
16 quicker way to do it. I think that that is the
17 time-tested method, and that's the way that is
18 appropriate, for you to hear the evidence, and I
19 would submit that it's appropriate for you to realign
20 the parties because these subcontractors are just
21 like Balfour where all of our claims are ultimately
22 owed by Library Associates.

23 The materials and work was supplied to have
24 the benefit or they didn't, and they can have their
25 counterclaims against us and our subs or not. I

1 think it's very simple.

2 MR. WHEELER: Your Honor, I'll say one more
3 thing and then I'll be quiet, but if Tom is agreed
4 that I am owed a certain amount of money from the
5 owner, which he has in the interrogatories that he
6 has -- he's admitted in a hearing. He said, These
7 guys need to be paid.

8 If Bill's experts and rebuttal experts pin a
9 certain amount of delayed damages on me, or pin no
10 delayed damages on me, then the amount that Tom
11 agrees that I'm owed, I'm owed. What is the
12 scintilla of evidence then at that point? What are
13 we litigating at a trial? Why would I sit through
14 45 days or 60 days of a trial if both of the primary
15 players in this thing agree that I'm owed a certain
16 amount of money?

17 Now, who pays it? That's between them, but I
18 know I have a contract with Balfour Beatty.

19 THE COURT: I'm with you on that. So here's
20 how I want to try and handle this: I'm going to try
21 this and see if this works. It might and it might
22 not. We're just going to have to start biting into
23 the apple.

24 Those subcontractors who seek Summary Judgment
25 on the Breach of Contract claim -- my understanding

1 is they all have a contract with Balfour. I'm going
2 to entertain those Motions for Summary Judgment. If
3 what they wish to do is to realign you can. I know
4 originally some filed Mechanic's Liens. Some filed
5 Breach of Contract actions. Whatever they are I'm
6 going to entertain them under the Breach of Contract
7 terms.

8 To the extent that the Mechanic's Liens are
9 being sought, I think I'm going to have to answer the
10 first question, and that is: What is the amount of
11 the contract, and what's the amount that's owed? I
12 don't think there's any other way to go about doing
13 that, and that's going to be Step 2 in the process.

14 So those of you who are subcontractors who
15 think you can get out of the case by virtue of a
16 Motion for Summary Judgment on the Breach of Contract
17 only -- at this point in time I don't see any sense
18 in bringing a Mechanic's Lien foreclosure action
19 until we figure out what the amount of the debt is
20 that has to be paid. You-all are just going to have
21 to wait in line on that one. That's the only way I
22 see to get that done, so we're going to work on that
23 step next.

24 I don't know to what extent this leaves
25 everybody twisting in the discovery wing, but I would

1 think that this case has been going on long enough
2 that everybody is pretty much sure where they are
3 relative to it. I'm just trying to find a way to cut
4 down on the number of Defendants. We've got a lot of
5 third-party Defendants. I think that's what they can
6 do.

7 If somebody wants to pursue the Mechanic's
8 Lien, they're going to have to be subject to all the
9 criteria of the Mechanic's Lien Statute. You can
10 stay in the case if you're not satisfied. I'm just
11 trying to find some way to cut it down before we get
12 into the big issue, and the big issue ultimately is
13 what's the contract price? What does the owner owe?
14 How much that is? Then once we get that dollar
15 figure figured out you-all are going to have to find
16 a way to get paid, whether that's through a
17 Mechanic's Lien or foreclosure or whatever. I think
18 that's what's going to have to be done on it
19 ultimately. Go ahead.

20 MR. HILDEBRAND: If I may speak to that? I
21 can appreciate where you're coming from, but I think
22 that the problem with what you suggest is that from
23 Balfour's perspective, we think that all these
24 problems are caused by the owner, and that's what our
25 experts are going to say, the delays and nonpayment.

1 So if you find, and it's clear under the
2 Mechanic's Lien Statute and our contracts with the
3 subs that if you ultimately find that there was some
4 delay caused by those subcontractors then that would
5 reduce the amounts that they're owed.

6 So the subcontractor can come in and say,
7 Look. We think we're owed \$100,000. Balfour says,
8 We agree. We don't think that you are at fault. We
9 don't think that we're at fault, but Library and
10 Mr. Bundy is going to argue that you're at fault and
11 we're at fault and if he ultimately prevails on that
12 then the amounts we owe to you are diminished because
13 we have a right -- if that subcontractor's work
14 delayed the project then we're entitled to a
15 reduction.

16 So I think for you to try to answer the first
17 part and say, Well, okay. I'm going to say to that
18 subcontractor, you're entitled to \$100,000 but not
19 allow the evidence to come in that -- from Mr. Bundy
20 when he's arguing that there are delays and other
21 problems that those subcontractors had to have
22 caused -- again, Balfour did not perform any of this
23 work. It was all done by subcontractors.

24 Then I think that you need to decide and would
25 have to decide legally -- it would be impossible to

1 grant Summary Judgment to the subcontractors when you
2 haven't heard the evidence yet at trial, and
3 determined whether Mr. Bundy's claims are valid or
4 not. After you make that, then I think that you will
5 ultimately Rule that Balfour is entitled to all of
6 its payments and these subcontractors are entitled to
7 all of their payments.

8 MR. BUNDY: Your Honor --

9 MR. HILDEBRAND: If you look at all the
10 evidence, you can't make that Ruling, so to try to do
11 it sooner as opposed to later, I think would -- it's
12 contrary to the law and contrary to our contracts
13 with our subcontractors. You just have to hear the
14 evidence.

15 THE COURT: Let me make sure I'm clear on
16 this. I've indicated I'm only entertaining Motions
17 for Summary Judgment on the Breach of Contract
18 claims, which are essentially those against Balfour
19 Beatty. If they are successful, because there is no
20 genuine issue of material fact, and I can assure you
21 that I only grant Summary Judgment when I'm clear on
22 the facts of the law, then if granted that ultimately
23 would seem to me to be in Balfour Beatty's interest
24 because that would be a clear finding that they were
25 owed that money. If they're not owed that money and

1 there's a dispute of fact, we're going to go try that
2 one. Okay?

3 So it's going to take some understanding to
4 there's got to be some give and take somewhere along
5 the line. I don't really care. I'm not caught up in
6 the outcome of this either. I'm just trying to take
7 the first bite of the apple and see where it leads
8 us. It may lead us nowhere. I understand that. I'm
9 fully aware of that, but I've got to make some
10 decision, and I find sometimes the best way to do
11 that is to take one step forward.

12 I hear what you're saying, but I'm not
13 entertaining -- I'm not going to entertain a
14 Mechanic's Lien at this point in time and all that
15 entails. To me that's a separate issue. We're only
16 talking about Breach of Contract. It's only going to
17 get granted in the event that the parties agree.
18 They did the work. They did the work timely. There
19 was no breach of the contract relative to those two
20 parties. Okay?

21 MR. HILDEBRAND: Your Honor, I can appreciate
22 that, and I would respectfully submit that -- to do
23 that fairly and in compliance with the contracts,
24 that the other part of that equation is for Mr. Bundy
25 to stipulate that you have a subcontractor who comes

1 in, say Sam Wheeler's subcontractor, and he says,
2 Okay. Balfour, I'm owed \$100,000; and we say, As far
3 as we're concerned we don't have a beef with your
4 work hypothetically.

5 THE COURT: Sure.

6 MR. HILDEBRAND: But we don't know what the
7 owner's position is. If the owner -- what I can
8 get -- prejudice and Shanghaied is, Yeah. We don't
9 have a problem with what you did, but then later on
10 you find that whatever work that subcontractor did
11 actually delayed the project.

12 What I'm simply suggesting, Your Honor, is for
13 any subcontractor that feels like it's entitled to
14 Summary Judgment, then have them discuss that with
15 Mr. Bundy and come to me with a stipulation for what
16 Mr. Bundy says.

17 If he says we owe it, then he needs to say,
18 Okay. I, representing Library Associates, hereby
19 stipulate that the work performed by this
20 subcontractor was not proficient and did not cause or
21 contribute to any of our damages. That is fair. If
22 that's what he wants, then I -- that's looking at it
23 from both sides. Then there's not a question of fact
24 because there can't be a claim later on by Mr. Bundy
25 at trial that -- well, that subcontractor who was let

1 out of Summary Judgment was the cause of all the
2 problems.

3 Simply have the subcontractors work with
4 Mr. Bundy and come to a stipulation that their
5 work -- that they're owed "X" amount and that he does
6 not have any -- one, any problems with the work that
7 they did; and two, does not make any allegation and
8 stipulates that he will not make any claim that any
9 work done by that subcontractor caused or contributed
10 to delays on the job.

11 THE COURT: Well --

12 MR. BUNDY: Your Honor, I'm thumbing through
13 the Rules of Civil Procedure here, and I don't see
14 the Stipulation Rule in front of me, but if
15 Mr. Hildebrand could send that on I would be glad to
16 read it.

17 If they can make a Motion for Summary
18 Judgment -- okay -- and if I've got a complaint I'll
19 make it. If I don't know of any problem the subs
20 had, Mr. Hildebrand keeps saying -- he acts as if his
21 clients knows nothing about this job.

22 They ought to know whether or not the
23 subcontractor delayed the job. All I can tell them
24 is that as far as I know the guy who put in the
25 fireproofing didn't delay the job.

1 Now, if Balfour Beatty knows they delayed the
2 job let them put that in as part of their defense to
3 the Breach of Contract Summary Judgment Motion. You
4 know, he talks about they didn't do any work on the
5 job. I agree with that. They didn't schedule it
6 properly. They didn't do the financial work
7 properly. They didn't build anything. They haven't
8 done anything right.

9 THE COURT: That gets us back into the whole
10 contract.

11 MR. BUNDY: Sorry, Judge.

12 THE COURT: I'm going to stick with the
13 program I've just submitted. As far as the
14 stipulation goes, any time any of you-all reach an
15 agreement in this case, I'm happy to approve it.
16 Okay? Just so you know -- as long as it doesn't
17 violate any public policy I'll approve an agreement
18 that anybody needs.

19 Mr. Wright you had your hand up a while back.
20 Go ahead.

21 MR. WRIGHT: Yes, Your Honor. I'm just asking
22 for a clarification on the Breach of Contract claims
23 that you had entertained in the Summary Judgment
24 Motion. I think some of us may have claims under
25 20-57-115 (technical interruption) or other claims

1 that arise out of the Breach of Contract or
2 contractual relation with Balfour Beatty.

3 Would you be open to us including arguments on
4 those within our Summary Judgment Claims against
5 Balfour Beatty, or is that something -- you want us
6 to limit it solely to a Breach of Contract issue?

7 THE COURT: I would suggest if you want to get
8 it granted you will limit it to Breach of Contract.
9 If you're moving under statutory procedure I'm going
10 to deny it, okay, just so you know. We have got to
11 try the contract case in order for you to get to that
12 point.

13 If the damages are \$60 million and there's no
14 money left over, then there's no money left over.
15 That's what you're going to have to deal with.

16 MR. WRIGHT: Thank you, Your Honor. The only
17 reason I asked is my client, I believe, is literally
18 the smallest player in the game. They're the
19 landscaper. They are currently the landscaper for
20 Library Associates at the hotel. I think their
21 Mechanic's Lien might be \$33,000, and I'm just simply
22 trying to figure out what to tell my client -- how
23 much money he needs to spend to -- to continue to
24 spend to try to resolve this thing. So thank you for
25 the clarification, Your Honor.

1 THE COURT: That's kind of where I'm going.
2 Any other questions about that procedure? I'm happy
3 to answer them. It may get somewhere. We may get
4 nowhere with this process, but I suspect we will have
5 something. I would like to see you-all do a little
6 bit of discovery and then press forward.

7 I did push out those discovery deadlines on
8 the scheduling order about 90 days out, so we've got
9 some additional work to be done there. I did take
10 the Motion to Exclude Testimony under advisement as
11 to what was here today, and then we'll reschedule
12 whatever other motions that you've got coming in the
13 near future when we get those.

14 I'm just trying to telegraph what I'm going to
15 do. Once we get to that point and I get a handle --
16 there's no way that my courtroom can accommodate all
17 of the people that we've got here. I've either got
18 to find a way to whittle down the parties and/or get
19 a larger courtroom -- and I can tell you that that's
20 going to be hard to do because as you can imagine
21 there haven't been any criminal trials in the last
22 year, and I'm sure they're going to be using those
23 big courtrooms upstairs for the criminal trials. So
24 we'll have to find a way to get that done.

25 Some people may be able to appear by WebEx,

1 but I can tell you this: I have learned that if not
2 everybody's on WebEx then nobody in the courtroom can
3 hear what you're saying. So it becomes a problem for
4 the people on the WebEx. It's just a practical
5 consideration as to how to break this thing down.

6 Ultimately the big issue is between Library
7 and Balfour. I have no doubt about that. All right?
8 So that's my thoughts for today. I'm still happy to
9 and look forward to trying to come up with some other
10 type of solution going forward. I'm trying to get
11 the subs out that can get out and then sort of focus
12 in on the bigger picture, which is, like I say, the
13 contract action between Balfour and Library
14 Associates.

15 Mr. Hildebrand, I fully understand that
16 you-all are the initial Plaintiff in this case, and
17 the Plaintiff gets to figure out how they want to go
18 forward. I've got that in my consideration as well.
19 You-all would be the moving party from that
20 standpoint, but I'm trying to free up some of these
21 parties so we can free up some space. All right?

22 Any other matters I need to take up today?

23 MR. BUNDY: Not from Library Associates,
24 Your Honor.

25 THE COURT: All right. I'm going to do a

1 Form 4 to show my Rulings from today. You-all should
2 all get a copy of that in short order. If any other
3 objections or questions come up I'll be glad to
4 reschedule you-all as motions come in. All right?

5 I appreciate everybody's time and attention
6 today. We're out of here in less than two hours.
7 That's really good. Thank you-all very much.

8 (The proceedings were concluded at 11:41 a.m.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3

4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 15th day of June, 2021 at
13 Charleston, Charleston County, South Carolina.
14
15
16

17 _____
18 Christine A. Smith
19 Notary Public
20 My Commission Expires
21 March 10, 2031
22
23
24
25

1 STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON
FOR THE NINTH JUDICIAL CIRCUIT

BALFOUR BEATTY CONSTRUCTION,
 LLC,

 Plaintiff,

 -versus-

 LIBRARY ASSOCIATES, LLC; AND
 METROPOLITAN LIFE INSURANCE
 COMPANY, A NEW YORK CORPORATION

 Defendants.)

10 LIBRARY ASSOCIATES, INC.,)
11 Defendant/Third-Party Plaintiff,)
12 -versus-)
13 LITHKO CONTRACTING, LLC; GUY M.)
14 BEATY, INC.; BERNHARD MMC, LLC)
15 GULF STREAM CONSTRUCTION CO.,)
16 INC; PRECISION WALLS, INC.;)
PALMETTO AUTOMATIC SPRINKLER)
COMPANY, INC.; ET AL,)
Third-Party Defendants.)

Hearing before the Honorable Mikell R.
Scarborough, reported by Jennifer M. Huggins,
Court Reporter and Notary Public, at 2:04 p.m. on
August 16, 2021 at 100 Broad Street, Courtroom
2A, Charleston, South Carolina.

1 A P P E A R A N C E S

2

ON BEHALF OF PLAINTIFFS:

3

4

5

6

7

8

9

ON BEHALF OF DEFENDANT LIBRARY ASSOCIATES:

10

11

12

13

14

15

16

ON BEHALF OF DEFENDANT BERNHARD MCC:

17

18

19

20

21

ON BEHALF OF DEFENDANT COOK & BOARDMAN:

22

23

24

25

PARKER POE ADAMS & BERNSTEIN, LLP
BY: THOMAS HILDEBRAND, JR., ESQ.
BY: ROBERT C. BYRD, ESQ.
200 Meeting Street
Suite 301
Charleston, SC 29401
(843) 727-6315
Tomhildebrand@parkerpoe.com
Bobbybyrd@parkerpoe.com

BUNDY MCDONALD, LLC
BY: WALTER H. BUNDY, JR., ESQ.
BY: M. BRENT MCDONALD, ESQ.
1516 Old Trolley Road
Second Floor
Summerville, SC 29485
(843) 492-0221
Walter@bundymcdonald.com
Brent@bundymcdonald.com

WALKER GRESSETTE FREEMAN
& LINTON, LLC
BY: JOHN C. LINTON, ESQ.
P.O. Drawer 22167
Charleston, SC 29413
Linton@wgflaw.com

POYNER SPRUILL, LLP
BY: SARAH L. DIFRANCO, ESQ.
301 South College Street
Suite 2900
Charlotte, NC 28202
Sdifranco@poynerspruill.com

1 ON BEHALF OF DEFENDANT PREMIER EXTERIORS:

2 RAHIMI HUGHES & PADGETT, LLC
3 BY: ROBERT C. HUGHES, III, ESQ.
4 35 Bull Street
5 Suite 590
6 Savannah, GA 31401
7 Rhughes@rhp-law.com

8 ON BEHALF OF DEFENDANT WATSON ELECTRICAL:

9 SMITH TERRY JOHNSON & WINDLE
10 BY: DON R. TERRY, ESQ.
11 150 Milestone Way
12 Suite C
13 Greenville, SC 29615
14 Dterry@smithterrylaw.com

15 ON BEHALF OF DEFENDANT WARCO CONSTRUCTION:

16 JOHNSTON, ALLISON & HORD, PA
17 BY: DAVID V. BRENNAN, ESQ.
18 1065 East Morehead Street
19 Charlotte, NC 28204
20 Dbrennan@jahlaw.com

21 ON BEHALF OF DEFENDANT OLD NORTH STATE & LITHKO:

22 SMITH TERRY JOHNSON & WINDLE
23 BY: STEELE B. WINDLE, III, ESQ.
24 150 Milestone Way
25 Suite C
26 Greenville, SC 29615
27 Awindle@smithterrylaw.com

28 ON BEHALF OF DEFENDANT GULF STREAM CONSTRUCTION:

29 WALKER GRESSETTE FREEMAN
30 & LINTON, LLC
31 BY: IAN W. FREEMAN, ESQ.
32 P.O. Drawer 22167
33 Charleston, SC 29413
34 Freeman@wgflaw.com

35

1

ON BEHALF OF DEFENDANT STRONG TOWER CONSTRUCTION:

2

3

SMITH CLOSSER WHEELER, PA
BY: SAMUEL M. WHEELER, ESQ.
P.O. Box 40578
Charleston, SC 29423
Swheeler@scnlaw.com

5

6

ON BEHALF OF DEFENDANT DAVID ALLEN COMPANY:

7

KELLY LAW FIRM, LLC
BY: RUSSELL BRITTON KELLY, ESQ.
689 King Street
Charleston, SC 29403
Britt@kellylawsc.com

9

10

ON BEHALF OF DEFENDANT METROPOLITAN LIFE:

11

12

BUIST BYARS & TAYLOR, LLC
BY: G. HAMLIN O'KELLEY, ESQ.
652 Coleman Boulevard
Suite 200
Mt. Pleasant, SC 29464
Hamlin.okelley@buistbyars.com

13

14

15

ON BEHALF OF DEFENDANT QUANTUM COATINGS:

16

17

THURMOND KIRCHNER & TIMBES, PA
BY: MICHAEL A. TIMBES, ESQ.
15 Middle Atlantic Wharf
Charleston, SC 29401
Michael@tktlawyers.com

18

19

20

21

22

23

24

25

1 THE COURT: All right. So we have
2 a lot of motions today to entertain in the
3 Balfour Beatty versus Library Associates case.
4 And I'm going to take them up in a certain order,
5 but what do you got.

6 MR. LINTON: And, Your Honor, John
7 Linton on behalf of Bernhard MCC.

8 THE COURT: Mr. Linton?

9 MR. LINTON: My client has reached
10 a settlement agreement with Library Associates.

11 THE COURT: All right.

12 MR. LINTON: And I would like to
13 put it on the record if I could.

14 THE COURT: All right. Happy to do
15 it. All right.

16 MR. LINTON: Library Associates
17 pays Bernhard MCC a retainage of \$436,361.
18 Bernhard MCC will provide a verified and sworn
19 statement of the retainage of that amount is
20 still due at owing and has not been paid to it.

21 Library Associates pays BMCC
22 \$137,917.73, which is the amount included in
23 BMCC's pay application 31, which has not been
24 paid. BMCC will provide a verified and sworn
25 statement that this amount has not been paid to

1 it.

2 BMCC will sign its claim for that amount
3 against Balfour Beatty to Library Associates.
4 Library Associates pays BMCC \$50,712.27 for
5 resolution of all pending change order and other
6 payment requests and for an assignment of all
7 claims on the project that BMCC has against
8 Balfour Beatty.

9 BMCC agrees to provide the availability
10 and witnesses and documents at no cost to Library
11 Associates other than out-of-pocket expenses for
12 time and travel.

13 BMCC withdraws all remaining requests
14 for payment or extensions to time against Library
15 Associates and Balfour Beatty except to the
16 extent BMCC assigns those claims to Library
17 Associates.

18 Library Associates dismisses with
19 prejudice, a conspiracy claim and any and all
20 other claims, including any claims of attorney's
21 fees against BMCC only. BMCC will admit the
22 authenticity of any of its business records. And
23 counsel for Library Associates can confirm, I
24 think, that that's our agreement.

25 THE COURT: Mr. Bundy?

1 MR. BUNDY: The only thing I would
2 add in is dismiss the lien and withdraw their lis
3 pendens. But other than that, Your Honor, that's
4 what we agreed to.

5 THE COURT: All right.

6 MR. LINTON: That's correct.

7 THE COURT: Well, does that relieve
8 you from any further involvement in this matter?

9 MR. LINTON: It does, Your Honor,
10 but having lived it for the last two and a half
11 years, I might want to witness it.

12 THE COURT: See what happens next?
13 Any other agreements? I have seen some -- a lot
14 of activity happening here, of late; so I had
15 some cancellation of lis pendens and whatever,
16 whatever.

17 Let me tell you how I want to do this,
18 and I've got a new court reporter here, so that's
19 saved everybody a lot of trouble. Ms. Jennifer
20 Huggins just started with me last week, and that
21 was helpful because I need a court reporter on a
22 case like this, somebody that I can turn to and
23 get things straight.

24 Why don't we go ahead and do
25 introductions, really, for her benefit, as much

1 as anybody. I've given her a list already of who
2 is here and who's representing whom, but just so
3 she's familiar.

4 And I know the Balfour Beatty and
5 Library Associates are the main parties in this.
6 But there's lots of subcontractors, and that's
7 what I want to do.

8 So, Mr. Hildebrand, let me start with
9 you in the introductions, and that's really for
10 her benefit. But just put it for the record.
11 Okay?

12 MR. HILDEBRAND: Certainly, Your
13 Honor.

14 THE COURT: Thank you.

15 MR. HILDEBRAND: Jennifer, I'm Tom
16 Hildebrand, and I represent the plaintiff,
17 Balfour Beatty Construction, LLC, and also the
18 third-party defendant, Balfour Beatty
19 Construction Group, Inc. And I'm here with my
20 partner, Bobby Byrd, B-Y-R-D.

21 THE COURT: Very good.

22 MR. BUNDY: Good afternoon, Your
23 Honor.

24 THE COURT: Mr. Bundy?

25 MR. BUNDY: My name is Walter Bundy

1 with the firm of Bundy McDonald. I have with me
2 my law partner, Brent McDonald, who represents
3 Library Associates.

4 THE COURT: Okay.

5 MR. BUNDY: And now Bernhard MCC.

6 THE COURT: And Bernhard MCC. All
7 right.

8 MS. DIFRANCO: Good afternoon. I'm
9 Sarah DiFranco. I'm here on behalf of Cook &
10 Boardman, LLC.

11 MR. HUGHES: Good afternoon. I'm
12 Robert Hughes. I'm here on behalf of Premier
13 Exteriors, LLC.

14 THE COURT: Robert, your client
15 again was whom?

16 MR. HUGHES: Premier Exteriors,
17 LLC.

18 THE COURT: Premier. All right.
19 Thank you.

20 MR. TERRY: Good afternoon, I'm Don
21 Terry. I'm here on behalf of Watson Electrical
22 Construction, and together with my partner, Al
23 Windle down here at the end, Old North State
24 Masonry and Lithko Contracting.

25 THE COURT: Very good. Thank you.

1 Okay.

2 MR. BRENNAN: Good afternoon.

3 David Brennan with Johnston, Allison & Hord,
4 representing Warco Construction Company.

5 THE COURT: Warco. Okay.

6 MR. FREEMAN: Afternoon. Ian
7 Freeman with Walker, Gressette, Freeman, &
8 Linton, and I represent Gulf Stream Construction
9 Company.

10 MR. WHEELER: Sam Wheeler on behalf
11 of Strong Tower Construction, LLC.

12 MR. KELLY: Good afternoon. I'm
13 Britt Kelly. I represent David Allen Company.

14 THE COURT: Britt, your client
15 again was whom?

16 MR. KELLY: David Allen Company.

17 THE COURT: David Allen. All
18 right.

19 MR. O'KELLEY: Good afternoon, Your
20 Honor, Hamlin O'Kelley for Metropolitan Life
21 Insurance Company.

22 MR. TIMBES: Afternoon, Judge.
23 Last, hopefully not least, Michael Timbes on
24 behalf of Quantum Coatings, LLC.

25 THE COURT: As a matter of fact,

1 Mr. Timbes, I'm going to start with you because
2 I'm going to start with your continuance request.
3 I've gotten three continuance requests. The
4 first one came in from Mr. Terry and Mr. Windle.
5 But my understanding is y'all got that resolved.

6 MR. TERRY: Yes, Your Honor.

7 THE COURT: So on behalf of those
8 three clients, y'all will be ready to proceed on
9 the week of the 13th?

10 MR. TERRY: Yes, Your Honor.

11 THE COURT: Mr. Timbes, you're
12 fortunately or unfortunately a Board of Law
13 Examiners and you've got protection. So I'm
14 happy to hear -- go ahead and tell me when you
15 can be ready to proceed.

16 MR. TIMBES: Thank you, Judge. And
17 in a bit of irony, reflective of today, I'm
18 actually on protection today, but I'm here. So
19 I'm violating the chief's instructions to come in
20 and tell you why I need some help.

21 THE COURT: I'm with you. All
22 right.

23 MR. TIMBES: Judge, I've done this
24 for about a decade now. I'm now the chair of the
25 Board of Law Examiners. I take that role very

1 seriously. It's an important role for the state.
2 A lot of people ask me why I do it. It's a
3 thankless job. If I'm trying this case on the
4 13th, it's going to be a lot like it.

5 THE COURT: Right.

6 MR. TIMBES: This has never
7 happened before; so I don't know what proper
8 playbook was for this, but I know I can't prep
9 for a multi-week trial and grade bar exams at the
10 same time. It's just not a sustainable task.

11 And I really wasn't sure what the
12 procedure was. Should I reach out to Chief
13 Justice? Should I come to you? And I made the
14 decision to come to you, Judge, because your
15 docket is affected.

16 THE COURT: He's a little higher on
17 the pecking order than I am, but that's okay. I
18 did speak to Gene Toll at the request of Mr.
19 Terry. And we worked it out; so I found out some
20 information. Let me know how much time you need.

21 MR. TIMBES: I need two weeks,
22 Judge. What I'm asking for is fairly
23 everybody -- is I'm asking for the two weeks that
24 I'm essentially going to lose. And so that the
25 Court can understand my role in this process,

1 there are graders that work -- they're not
2 beneath me, they're just -- they're on a
3 different task than I am right now.

4 THE COURT: Okay.

5 MR. TIMBES: And they're grading
6 all the different sections. And so they've got a
7 box of 400 exams. My office has 2,400 exams in
8 it because I have to redo all six sections.

9 THE COURT: Okay.

10 MR. TIMBES: And I don't get to
11 start them until they get them to me, and that's
12 going to be later this month, probably in the
13 next week or so. And it's going to take me, as
14 it has for the last decade, up until the 10th to
15 get those grades in. We've never gotten them in
16 a day early.

17 THE COURT: Okay. All right. So
18 you've got to review all of them?

19 MR. TIMBES: Yeah. When we
20 joined -- it was not like this under the old
21 system.

22 THE COURT: Right.

23 MR. TIMBES: When we went to the
24 UBE, we now have to grade into a curve that's
25 nationalized. And so it takes a lot of

1 calibration, I think, is the term they use.

2 We've got to make sure that the grades
3 we are submitting are graded with the same set of
4 lenses that New York is grading, that Alabama is
5 grading, that Alaska is grading.

6 And so a lot of what we have to do in
7 the interim right now, Judge, is my next -- my
8 early phases are going to consist of watching
9 calibration seminars that the administrators of
10 this exam put on. They're about two hours
11 apiece. I've got six of them to watch. My
12 graders have one of them to watch.

13 So I've got to get calibrated to
14 everybody; so that, when I get those grades in, I
15 know how to go through them to make sure that
16 they're meeting what the administrators require.
17 And I just don't know how to do that and keep my
18 trial prep on schedule.

19 THE COURT: All right. Okay.
20 Mr. Bundy, you filed a response in opposition; so
21 let me hear from you.

22 MR. BUNDY: Yes, Your Honor. Thank
23 you very much. This is the first I've heard of
24 two week -- a specific two week request. I could
25 not just agree to some blanket request.

1 THE COURT: Sure.

2 MR. BUNDY: I clearly understand
3 where he's -- we all appreciate the hard work he
4 does. Two weeks is not -- I will withdraw an
5 objection to two weeks as long as -- Your Honor,
6 indulge me with a couple things.

7 THE COURT: Sure.

8 MR. BUNDY: One, that we --
9 everything stays the same; it's just a calendar
10 entry, moving everything forward two weeks,
11 right? That's one. So we don't -- nothing
12 changes with trial and it would be two weeks.

13 The other issue is, is Your Honor is
14 going to -- in some ways, this plays into where
15 we're going to end up later on today, which is
16 based on the -- well, you'll decide later why.

17 There's lot of documents we haven't
18 received. We received documents last night. We
19 received documents Friday. It takes five, six
20 hours to even download them, much less look at
21 them. And we'll go into the particulars of that
22 later.

23 What I was going to ask you is, part of
24 the relief -- is part of my relief in those
25 motions was that, if you agreed with me, I was

1 going to ask that we be allowed to move all the
2 depositions, which are scheduled for next week,
3 one week over, right? And just give us another
4 week to get ready, read all these documents and
5 move your scheduled prehearing date a day or two
6 ahead so we can do that.

7 Now that Mr. Timbes has said two weeks,
8 that gives us a little bit of breathing room. So
9 as long as I don't sort of get prejudiced
10 anymore, other than just have a two-week delay
11 because it's expensive and all that.

12 THE COURT: Sure.

13 MR. BUNDY: I'm glad to try to
14 accommodate, you know, in appreciation for what
15 he does.

16 THE COURT: Okay. All right. And
17 Mr. Brennan, you had a motion as well. So let me
18 go ahead and hear your continuance.

19 MR. BRENNAN: Yes, Your Honor.
20 When I saw the motions for Mr. Timbes and Mr.
21 Terry go through, I figured I might as well throw
22 my hat into the ring. We have a development in
23 my firm where the attorney that was previously
24 lead counsel went to another firm.

25 And I, as the other South Carolina

1 barred attorney stepped in. And I'm already on a
2 trial calendar in Mecklenburg County for the
3 13th. I know that this case has been pending
4 longer, but I'm, similarly, not sure what the
5 procedure is in circumstances such as that.

6 When I reached out, the trial court
7 administrator in Mecklenburg County, she said
8 that they are not doing continuances anymore for
9 conflicts. I'd have to file a notice of
10 conflict, and they would consider it. And I
11 wanted to make sure I had something filed in both
12 cases in the event that we were able to work
13 something out.

14 So I will, of course, if there's a way
15 to accommodate the request for Warco Construction
16 so that they won't be prejudiced. We won't have
17 to hire somebody and get some help, or otherwise,
18 try to work it. But I feel like a continuance
19 would be greatly appreciated, Your Honor.

20 THE COURT: Your -- I think your
21 motion said you were lead counsel in that case
22 pending in Charlotte?

23 MR. BRENNAN: That's right, Your
24 Honor.

25 THE COURT: But only counsel in

1 this case? Is that what you're telling me?

2 MR. BRENNAN: We -- our concern is
3 prejudiced to the client in trying to bring
4 somebody up to speed on such sort notice.
5 Obviously, given our professional
6 responsibilities to our clients, we would have to
7 do whatever needed to be done.

8 But in the interest of the client's best
9 interest, I wanted to go ahead and request that
10 continuance in the event we could get it.

11 THE COURT: All right. Okay.
12 Well, the problem I've got is calendar and stuff,
13 so bear with me a second. So I had y'all
14 scheduled the week of September 13th and then the
15 following week, the 20th. I had anticipated that
16 we might problems, and I put some additional time
17 aside.

18 It's not two weeks after, because I've
19 already been filling that roster. But it's late
20 October, early November is the time I've got. So
21 these nonjury trials take -- do not take
22 precedence over jury trials.

23 And I still want -- I frankly did that,
24 to be honest with you, Mr. Bundy, I did that
25 because I didn't think we could get through this

1 trial in two weeks. I probably needed some
2 additional time. That's why I built that time in
3 here.

4 MR. BUNDY: The only thing I would
5 just bring to your attention, I've got a vacation
6 that I went ahead and scheduled. I've got an
7 order of protection for October.

8 I made all -- because I figured by late
9 October, we would be through with this thing, if
10 it stayed where it was. It's only a week, but
11 I've already paid like \$4 or \$5,000 of
12 non-refundable stuff.

13 THE COURT: Is that the end of
14 October?

15 MR. BUNDY: Yes, sir. I think I
16 filed and got an order of protection.

17 THE COURT: Okay. All right.

18 MR. BUNDY: Thank you.

19 THE COURT: We've got a lot of
20 people in this case. All right. So the other
21 question, Mr. Brennan, was, how long is that case
22 anticipated to go?

23 MR. BRENNAN: I don't anticipate
24 that trial to go longer than a week.

25 THE COURT: Okay. You'd be ready

1 to go the following week --

2 MR. BRENNAN: Yes, Your Honor.

3 THE COURT: -- if need be? And Mr.
4 Timbes, you really wanted two, right?

5 MR. TIMBES: I do, Judge.

6 THE COURT: All right. Let me work
7 around that. Let me go next to -- because I
8 think the next issue is the one that's going to
9 take up most of the time. I'm going to consider
10 that.

11 Mr. Timbes, I'm going to grant you the
12 continuance for your client on your behalf for
13 sure. Mr. Brennan, I'm probably going to keep
14 you in for the following week is what I'm going
15 to do.

16 Just so y'all know, I'll give you a
17 full, final recap when we get through some of
18 these discovery motions. But that's what I want
19 to go into now because I think that's where we're
20 going to be. So just so y'all know, my calendar
21 already set aside the weeks of September 13th and
22 20th.

23 If we buy some additional time -- I've
24 already set aside the weeks of October 25, and I
25 believe it's November 1 as the additional time I

1 have set aside. Okay?

2 So just so y'all know that that's there,
3 but I'm still going to try and get this ball
4 rolling some time the week of the 13th of
5 September, to the extent that I can. All right.
6 So let's go from there.

7 MR. TIMBES: Yes, Your Honor.

8 THE COURT: And if you need to
9 depart at this point in time, you certainly may.
10 I will keep you apprised. If you want to watch
11 and see what goes on, you're welcome to.

12 MR. TIMBES: I'm going to see what
13 happens just in case it may affect how I staff
14 things.

15 THE COURT: Sure, sure.

16 MR. TIMBES: But, Judge, thank you
17 for your position and thank you for your
18 accommodations today.

19 THE COURT: All right. Very good.

20 MR. BRENNAN: Likewise, Your Honor.

21 THE COURT: Let me get to my list.
22 One second. All right.

23 So the second thing I wanted to cover
24 were the discovery motions, and by that, motions
25 to compel principally. And I had -- what I had

1 coming in, I've had a flurry of motions in the
2 last couple days. So we'll get to those if we
3 can.

4 But I had on -- Mr. Bundy, Library
5 Associates had motions to compel discovery as to
6 Watson, Lithko, and Old North State Masonry that
7 I wanted to take up.

8 And then, Mr. Terry, I think I saw in
9 here, you had a motion to reconsider, if I'm not
10 mistaken; is that right?

11 MR. TERRY: I did, and you denied
12 it last week, Your Honor.

13 THE COURT: Good. Thank you. Very
14 good. I thought I covered that. Okay. Very
15 good. All right. Let me hear from you on those,
16 and that has to do with the hundred questions or
17 whatever.

18 Mr. McDonald, do you want to address
19 that one?

20 MR. MCDONALD: I am indeed, Your
21 Honor.

22 THE COURT: All right. Very good.

23 MR. MCDONALD: Good afternoon.

24 First and foremost, there's motions to compel as
25 it relates to these defendants: Old North State

1 Masonry, Watson, and Lithko. The Old North State
2 Masonry motion to compel related to verifications
3 that it required under the Rules of
4 Interrogatories.

5 THE COURT: Okay.

6 MR. MCDONALD: That motion was
7 withdrawn, and those verifications have been
8 received.

9 THE COURT: Okay.

10 MR. MCDONALD: What we are left
11 with now, Your Honor, and I -- and there is a
12 motion to compel based upon outstanding discovery
13 requests, but it bleeds a little bit into the
14 motion for rehearing that you've denied -- that
15 you denied last week. So if you'll -- I beg your
16 indulgence.

17 But what those -- as it relates to
18 Watson, the Watson motion to compel, there were
19 discovery requests that were sent to Watson in
20 2019, July of 2019, that related to the lien,
21 what's in the lien.

22 And, Your Honor, if you'll recall the --
23 before Your Honor got involved, there was a
24 hearing wherein Library Associates sought and
25 spent a significant amount of money determining a

1 couple of things.

2 One, whether or not there were
3 duplication in the lien between the general
4 contractor, construction manager, and the
5 subcontractors trying to clear that up early on.

6 And then, two, whether there was
7 excessive liening in their own right, whether you
8 could lien for certain costs that comprised of
9 their lien.

10 In anticipation of that, these
11 requests -- these interrogatories were sent. I
12 will tell you that every other defendant in this
13 case was able to understand these interrogatories
14 and answer these interrogatories, and there are
15 seven in total.

16 And they are attached to our motion, and
17 at the risk of reading them to you -- I'm not
18 going to do that, Your Honor. But what they --
19 what they relate to is, what's in your lien,
20 what's the approved contract value that you have.

21 If there's change orders that you
22 submitted that were not approved, are those in
23 your lien, and are there any other costs? Are
24 there delayed costs, acceleration?

25 What have you included in your lien

1 without regard to your breach of contract case
2 that you have for the -- against the construction
3 manager, what's included in your lien that
4 relates to my client's property.

5 Okay. The way -- the way that these
6 cases are handled, the way that we handle these
7 cases is, we approach the construction manager.

8 We find out what the construction
9 manager has done because the construction
10 manager -- our position is, under their contract,
11 it's the ultimate responsibility to review these
12 liens and then bond them off down, in which the
13 position has come up, but it's not here before
14 you today.

15 But then, two, review these claims as
16 they come in. So the construction manager is
17 supposed to have all this information. Where we
18 wound up in taking construction manager's
19 30(b)(6) deposition, and I apologize for being so
20 verbose.

21 I think it's very important in
22 understanding how this all came about -- was the
23 construction manager's position is, we don't even
24 look at these things. We don't evaluate them.
25 We don't know what's in there. That's not our

1 job. Now, of course, we adamantly disagree with
2 that.

3 But one day that's going to come before
4 Your Honor, and I don't think Mr. Bundy and I can
5 sit here and say, well, that -- our position was,
6 we didn't have to look at them either. So we
7 started going and looking at what the
8 subcontractors have done, what's included in
9 their lien, what's included in their claims.

10 So we go back and we revisit all of the
11 discovery that's been submitted. And what do we
12 find out? We find out that Watson has objected
13 to each one of these seven interrogatories -- and
14 we'll get to Lithko in a second -- on the basis
15 of them being vague and ambiguous.

16 Now, once again, all the other parties
17 were able to figure them out. Now, Lithko, just
18 to save time, did the same thing. They objected
19 to them being vague and ambiguous. Okay. These
20 seven interrogatories that were part of this
21 motion to compel. Lithko also didn't produce any
22 documents, document no. 1 in this case.

23 So in May of this year, in getting ready
24 for trial and getting ready for addressing
25 subcontractor claims that we take the position

1 that Balfour should have done, we wrote a letter
2 the 18th, 2021, to counsel for Lithko and counsel
3 for Watson, outlining various deficiencies in the
4 discovery responses asking them to please forward
5 them on by Friday, May 21st.

6 We didn't get those responses after that
7 letter. So on June 25th, 2021, we wrote a letter
8 saying, hey, we've got these responses to request
9 for production, and they say, come look at our
10 documents. They're at your-all's office in
11 Smith, Terry, Windle -- whatever the name of
12 their -- their firm. Smith, Terry & Johnson.

13 Okay. I get a response that same day
14 from Mr. Windle saying, Mr. Terry is in
15 Greenville, North Carolina. He represents
16 Watson. Mr. Windle is in Charlotte, North
17 Carolina, and he represents Old North State and
18 Lithko. Do you anticipate one day in each office
19 or two days in each office?

20 I respond, well, if I've got to go to
21 two -- if you're going to make me go to two
22 different ones, I will be one day in each office.
23 I'm going to come look at your documents, going
24 to get ready for trial. Okay? The response is,
25 I'm not making you do anything, but the documents

1 are in two different places.

2 This is how they're maintained in the
3 normal course of business. This is on June 25th,
4 2021. So on July 7th, I say in response to that,
5 I say, I'm coming up there. And I'll give you
6 some dates to come up there and look at the
7 documents. It seems very straightforward.

8 The response I get from Mr. Terry on the
9 next day is, I don't know why you were told. We
10 don't have Watson's documents in our office. If
11 you were told that, I apologize. We were
12 planning to electronically produce some more
13 documents. The same is true from Ms. Stavinal at
14 Mr. Windle's office.

15 Additionally, we were attempting to
16 arrange to provide you the files electronically;
17 so it's -- a trip to Charlotte won't be
18 necessary. We went round and round with them,
19 Your Honor. They then followed up on the 12th,
20 making sure you're not coming to Charlotte to
21 look at these documents. We'll produce them in
22 the near future.

23 We filed the motion to compel. Watson
24 still hasn't answered the seven interrogatories.
25 Lithko, on Thursday evening at 7 p.m.,

1 produced -- last Thursday evening at 7 p.m.,
2 produced for the first time, the documents in
3 this case. It takes us four or five hours to
4 download them.

5 We then get the documents, download
6 them, and we send them right to our experts, Your
7 Honor. And what I would like to hand up is a
8 letter from our experts.

9 And this letter is going to cover two
10 things. It's going to cover the Lithko
11 documents, and it's going to cover the BBC
12 documents that we'll talk about at a later
13 motion. And if I may. It's dated today.

14 THE COURT: Thank you.

15 MR. MCDONALD: And what they've
16 done is, they've tried to go through these
17 documents as quickly as possible. Obviously,
18 upon no -- by no means have they been through
19 them all.

20 We just, on Sunday night, received
21 additional documents that at the time of coming
22 here today, we still hadn't completed the
23 download of, much less the review.

24 And I would just point out to Your
25 Honor, that this is Ms. Sam Hadley who was

1 the -- performed the audit at this Court's
2 direction -- not the discovery audit, the
3 contract audit at this Court's direction, and has
4 been involved in this case since 2019. And I'm
5 not going at -- I'm not going to try and put a
6 spin on her words, Your Honor.

7 But I would request the Court, as much
8 as I can, if you have the time, please review
9 this letter because this highlights the
10 consternation that we have faced in attempting to
11 get documents to prove up claims that these
12 subcontractors have made as it relates to our
13 client. They're the plaintiff. This isn't --
14 they're not the defendant. They brought these
15 cases affirmatively against our client.

16 Now, the second letter that I'd like to
17 hand up is also from Ms. Hadley. And what she
18 has attempted to do is determine how much costs
19 are associated with dealing with the Lithko --
20 and we'll talk about Balfour in response to
21 another matter -- as a result of the way they
22 produced these documents and waited as long as
23 they have.

24 And I'm wrapping up with Your Honor, and
25 I'm going to get to my relief in a second. We

1 spent hundreds of hours getting ready for
2 subcontractor depositions that we undertook to
3 take over the last two weeks and did, in fact,
4 for the most part.

5 Unfortunately, Lithko, Watson, and Old
6 North State Masonry were not available during
7 that time frame due to various reasons that their
8 lawyers and that their witnesses had.

9 But what you have to understand is, the
10 way this job breaks out is, just because you
11 understand one subcontractor or you think you
12 understand one subcontractor's claims, doesn't
13 mean anything until you get the whole picture of
14 the other subcontractor claim. And what we're
15 finding is hundreds of thousands of dollars of
16 back charges.

17 And what that is, just to be very brief,
18 is when one subcontractor causes another
19 subcontractor to extend more money. The owner is
20 not responsible for that. So you have this back
21 and forth between those subcontractors and as it
22 relates to the GC.

23 So I take these depositions, Old North
24 State Masonry and it's -- I take these
25 depositions, and it's impossible to understand

1 the full view until you get all of these parties
2 together. And that's why we tried or attempted
3 to put them within a two-week time frame.

4 We have not taken their depositions.
5 Currently, the depositions of Watson's principal,
6 two principals from Old North State Masonry -- we
7 just got an e-mail yesterday that they may have
8 COVID; so it might not go forward -- and Lithko
9 are scheduled for this week. Tomorrow,
10 Wednesday, or Thursday.

11 The relief that I'm requesting is a
12 couple of things. First, we would like -- and
13 this plays into what Mr. Bundy alluded to
14 earlier. We would like to move those depositions
15 until next week on Wednesday, Thursday, and
16 Friday.

17 We would like the order to be that those
18 currently scheduled parties and Lithko's 30(b)(6)
19 be produced in our office in Summerville on those
20 three days. We will work as diligently as we can
21 to get through these documents and to understand
22 what's in them.

23 We would ask that, if you will recall in
24 this -- I don't want to blend too many things,
25 Your Honor, because it's gets complicated. But

1 Watson and Old North State Masonry file a motion
2 for protective order based on the joint defense
3 agreement. Mr. Bundy is going to address that in
4 the future.

5 But at that time, we would ask that
6 Watson and Old North State Masonry also produced
7 a 30(b)(6) witness if that motion for a
8 protective order, how it comes out, at the same
9 time, to answer questions on that defense
10 agreement.

11 You will recall, as it stands right now,
12 Your Honor, you're -- you have a pretrial
13 conference scheduled for Thursday, I believe.
14 That's the 26th. So we would ask in order to
15 take those depositions, that that be moved to
16 some time after that Friday in order to
17 accommodate that.

18 We would also ask for the fees
19 associated with this motion, to bring both for
20 Watson and the interrogatories that still haven't
21 been answered and Lithko, the interrogatories
22 that still haven't been answered.

23 And more importantly, Lithko, the
24 documents that have just been produced after two
25 years and the fees, which we all know --

1 obviously, we had Ms. Hadley working over the
2 weekend.

3 We tried to get her to come up with
4 these numbers. She's estimated an amount of
5 \$51,424 that would be related to both the review
6 of the Lithko documents and the Balfour Beatty
7 documents that we'll talk about in response to
8 the -- to a motion that's currently pending
9 before you.

10 And that's what I have, Your Honor. I
11 believe that the interrogatories are very
12 straightforward. Of course, the requests for
13 production are very straightforward.

14 As it relates to these back charges,
15 Your Honor -- and I always hesitate with how much
16 facts you want to hear now because, obviously,
17 we're going to have to prove it up in front of
18 you at some stage.

19 But one thing we've come across is,
20 we've come across the term called internal change
21 orders, change orders internal between
22 construction manager and subcontractor that
23 occurred after the job. We don't know what that
24 means. We don't know if there's a set of change
25 orders that the contractor keeps related to the

1 subs, that the owner's not going to be privy to.

2 And I don't want to go into it too much
3 because, obviously, when I prove this up in front
4 of you one day, Judge. But that term is coming
5 up time and time again. And it's coming up as it
6 relates to these particular subcontractors,
7 Watson, Old North State and Lithko, as they are
8 parties to that, quote, unquote "joint agreement"
9 that we take the position violates our contract
10 and is a civil conspiracy.

11 So I just bring that up as these -- this
12 information and the documents, it's not as if we
13 completely understand Balfour's claim or
14 completely understand other subcontractor's claim
15 without the evaluation of these things.

16 And we're going to roll through it just
17 as fast as we can. And that's why the relief
18 that we've asked is just to push it one week, and
19 we will get through these documents, if that's
20 what it takes. But I would --

21 THE COURT: You're finding that
22 term in multiple locations, multiple subs?

23 MR. MCDONALD: Internal change
24 orders, yes, sir.

25 THE COURT: Okay. All right.

1 MR. MCDONALD: Yeah. And they take
2 the position that there are settlements vis-a-vis
3 their claims as it relates to the general
4 contractor.

5 But they're still both going to go
6 forward with the owner, even though those claims
7 have been settled between themselves. And it's
8 all very confusing, but it -- it certainly makes
9 everybody together and are trying to evaluate
10 what these claims are actually on.

11 THE COURT: Mr. Terry?

12 MR. TERRY: Thanks, Your Honor. If
13 it pleases the Court, I'm going to speak as to
14 the Watson -- most to Watson and let Mr. Windle
15 handle the Lithko, if that's fine with you.

16 THE COURT: All right.

17 MR. TERRY: All right. As to
18 the -- and my understanding is the only issue
19 left as to Watson is, one -- which Mr. McDonald
20 did not raise -- is a verification for a set of
21 interrogatories dated April 16th, 2019.

22 We don't have a set of interrogatories
23 on that date, Your Honor; so I don't -- I don't
24 know what he's talking about. If there is a set,
25 we'll provide the verification, but I don't think

1 there is.

2 THE COURT: Okay.

3 MR. MCDONALD: May I put this issue
4 to bed?

5 THE COURT: Sure.

6 MR. MCDONALD: The
7 interrogatories -- April 16th interrogatories has
8 a typo. It's 2021. Those are the
9 interrogatories that were the subject of your
10 denial of the motion for a rehearing.

11 So we don't have a verification
12 associated with them. We don't have a response
13 associated with them either. So I assume that
14 the time he gives a response, and pursuant to
15 your order, he'll also supply a rule to require
16 verification.

17 THE COURT: So the year date was
18 incorrect? Is that what it was?

19 MR. MCDONALD: Yes, sir.

20 MR. TERRY: Yes, sir, I guess. I
21 just looked for one that date and couldn't find
22 anything.

23 THE COURT: Okay.

24 MR. TERRY: Multiple times. The
25 other issue, Your Honor, is these seven

1 interrogatories, Your Honor.

2 THE COURT: Sure.

3 MR. MCDONALD: And these
4 interrogatories, I agree with Mr. McDonald that
5 other parties answered these interrogatories.

6 But, Your Honor, I would tell you that,
7 the only way they could answer them is to guess
8 as to what they mean. Your Honor, as you know,
9 interrogatories are important. Mr. Bundy has
10 indicated, he intends to read these
11 interrogatories before the Court.

12 And certainly, I think he has the right
13 to do that. And the -- often, you'll see in
14 interrogatories, that the attorney includes
15 definitions. Those definitions are equally as
16 important. In this case, in this particular
17 instance, these seven interrogatories, there's
18 only one definition that's important. And I'll
19 get to that in a minute.

20 But I want to go over each
21 interrogatory. Now, before I do that, I think
22 it's also important to note that each
23 interrogatory stands for itself, unless it refers
24 to something else. So we're not supposed to be
25 guessing what they're referring to.

1 Interrogatory No. 1, what is the total
2 amount of the latest lien amount submitted for
3 work performed on the Hotel Bennett project?
4 What is the latest amount submitted -- I'm
5 sorry -- what is the total amount of latest lien
6 amount?

7 So I'm going to start with that, Your
8 Honor. I don't even know what the latest lien
9 amount is. I don't know if he's referring to my
10 client's lien. I don't know if I'm supposed to
11 go look up the lien -- the last lien that was
12 filed and tell him what it was; and if it wasn't
13 my client's lien, then tell him whether it was
14 for work performed. I just don't know.

15 THE COURT: Well, it was directed
16 to your client, though, right?

17 MR. TERRY: Your Honor, these
18 interrogatories were reflected -- directed to
19 every third-party defendant.

20 THE COURT: Okay.

21 MR. TERRY: And it doesn't say,
22 your lien. It says, the latest lien amount.
23 When they do define "your" and "you," they define
24 it as every single one of these subcontractors.
25 So assuming that -- even if assuming it was my

1 lien, I still don't -- one, I assumed it was my
2 lien. I read the question. If it didn't make
3 any sense --

4 THE COURT: What's the date of that
5 interrogatory? What's the date that was sent?

6 MR. TERRY: It is in 2019, Your
7 Honor.

8 THE COURT: Okay. Did you pick up
9 the phone --

10 MR. TERRY: August of 2019.

11 THE COURT: Did you pick up the
12 phone and ask them what they were asking for?

13 MR. TERRY: Your Honor, in fact, I
14 did not. They called me when I objected.
15 Mr. McDonald called me back in 2019.

16 THE COURT: Okay.

17 MR. TERRY: My recollection of that
18 conversation is, I asked them -- I said, I don't
19 know what this means. You send me a set that
20 makes sense to me, and I'll respond. I never
21 received a response --

22 THE COURT: All right.

23 MR. TERRY: -- to that. Then I
24 want to go to Interrogatory No. 6, Your Honor.

25 THE COURT: Okay.

1 MR. TERRY: And this is why I
2 brought up the part of, it stands on its on.
3 Interrogatory No. 6, does the lien calculation
4 include any other expenses? Other than what,
5 Your Honor? I don't know if I'm supposed to
6 refer back to prior interrogatories. I don't
7 even know what lien calculation he's talking
8 about.

9 Interrogatory No. 2, what is the total
10 of your approved contract value used in the lien
11 calculation? Again, I don't know what lien he's
12 talking about. And that's why I went to 6
13 because am I supposed to refer back to
14 Interrogatory No. 1 to say the latest lien, not
15 my lien?

16 No. 3, what is the total value of labor
17 and services furnished to the approved contract
18 value used in the lien calculation? Again, I
19 don't -- I don't know what this means, Your
20 Honor. I have read these repeatedly trying to
21 figure out what they mean. It gets worse, Your
22 Honor.

23 No. 4, what is the total of your
24 unapproved contract changes? Your Honor, there's
25 no such thing, to my knowledge, of an unapproved

1 contract change. And I don't know how I'm
2 supposed to guess what he's asking. What is the
3 total of your unapproved contract changes used in
4 the lien calculation, if any?

5 No. 5, what is the total value of labor
6 and services furnished related to the unapproved
7 contract changes used in the lien calculations.
8 We either have a contract change or we don't. We
9 don't have unapproved changes.

10 No. 6 we talked about. No. 7, what is
11 the total amount of any additional claims,
12 acceleration, delay, et cetera, included in the
13 lien amount? Your Honor, I don't know what "the
14 additional claims" means. What -- the things
15 that are included in Watson's lien amount are
16 labor and -- or services and materials furnished
17 to the project. That's what's in there.

18 But if Mr. Bundy wants to read the
19 definition -- or read these interrogatories in
20 Court, I'm not going to have -- unless you order
21 me to guess what these mean, it's probably
22 malpractice for my client to answer them and
23 guess at what the question is supposed to be.

24 To me, it's very simple. Give me a
25 question that I can understand and my client can

1 understand, and we're happy to answer that.
2 Today, if they will send me reworded questions
3 that make sense, we will respond.

4 THE COURT: Okay.

5 MR. TERRY: And so for that reason,
6 Your Honor, I ask that you deny Library
7 Associates motion to compel as it relates to
8 those seven interrogatories.

9 THE COURT: Okay. All right. Let
10 me just ask the question: Is it addressed to
11 Watson? Is that who you're trying to get the
12 information from?

13 MR. MCDONALD: Yes, Your Honor.

14 THE COURT: In this particular
15 instance?

16 MR. MCDONALD: Yes, Your Honor.
17 And every -- everybody got their own version of
18 this.

19 THE COURT: All right.

20 MR. MCDONALD: And you've been read
21 them, so it's -- you've been read the
22 interrogatories. It's, what's your lien amount,
23 because in Lithko's case --

24 THE COURT: I'm with you. I'm with
25 you.

1 Is the complication arising from the
2 fact that your firms represent multiple parties
3 or --

4 MR. TERRY: Your Honor, the
5 complication is that when you read the
6 interrogatories and the definitions that are
7 included --

8 THE COURT: All right.

9 MR. TERRY: -- they -- the first
10 one is -- really creates the first say, okay,
11 what's wrong here? The latest lien amount. We
12 only have one lien. Watson only has one lien.
13 But there's a whole group of people who here --
14 who have a lien. We've reached out to these --
15 to them via e-mail, and it got worse.

16 THE COURT: Okay.

17 MR. TERRY: The responses that we
18 received via e-mail are equally as confusing when
19 now -- now they're asking the response of the
20 e-mail, which, of course, wouldn't be read before
21 the Court, is that --

22 THE COURT: Now, let me ask this
23 question: If you were -- if I was to direct you
24 to answer that question on behalf of Watson, how
25 soon could you get those answers to Mr. McDonald?

1 MR. TERRY: Before the --

2 THE COURT: In other words, the
3 Watson -- we're referring now to the Watson lien.
4 You're telling me only one lien was filed by
5 Watson, correct?

6 MR. TERRY: Yes, sir.

7 THE COURT: Okay. All right. How
8 soon could you get them answers for that?

9 MR. TERRY: Well, currently, the
10 deposition of Dale Winovich, Watson project
11 manager, is scheduled for Thursday, so before
12 that deposition.

13 THE COURT: Okay. All right.

14 MR. TERRY: And that -- this same
15 interrogatories relates to Old North State.

16 THE COURT: Sure. Okay. All
17 right. Got it. Thank you. And they could do it
18 in that time frame as well; is that right?

19 MR. TERRY: I don't know the answer
20 to that. Mr. Windle would have to --

21 MR. WINDLE: I can address that,
22 Your Honor.

23 THE COURT: Okay. All right.
24 Mr. Windle, let me hear from you. You were going
25 to speak on behalf of Lithko and as well as Old

1 North State?

2 MR. WINDLE: Old North State.

3 THE COURT: Okay.

4 MR. WINDLE: This only pertains to
5 Lithko.

6 THE COURT: Okay.

7 MR. WINDLE: It's a motion to
8 compel for the same interrogatories --

9 THE COURT: Yeah.

10 MR. WINDLE: -- Mr. Terry just
11 reviewed. And you -- and I have the same
12 objections because they're not good questions.
13 They ask for things that have one definition,
14 which isn't the definition -- there's one
15 definition under the contract that isn't the
16 definition that they're giving to the question.

17 So I did something different. I picked
18 up the phone. I called Mr. Bundy. I wanted to
19 talk to him about, what do you mean? I'll give
20 you what you want if you just explain what it is
21 you're looking for. He wouldn't talk to me. He
22 refused to talk to me. He said that he wasn't
23 going to talk to me and that, if I wanted
24 anything, I needed to submit it in writing.

25 So I said okay, Bill, I tried. I will

1 submit something in writing. So I submitted the
2 questions, and Mr. McDonald answered them. But
3 the answers were just as bad as the original
4 questions, for all the reasons that Mr. Terry
5 just went through.

6 Now, we're not trying to get out of
7 providing information. We will provide it, if we
8 understand the question, and we'll do it by
9 whatever time frame the Court says do it. But
10 that's what happened in regard to those seven
11 interrogatories.

12 THE COURT: Okay. So you and --
13 the you and your was a problem, but also, you
14 said that language was not tracking the contract?

15 MR. WINDLE: No, sir. There's --
16 they're asking -- in more than one of the
17 questions, they use the term, approved contract
18 amount. Well, in the subcontract, in the
19 application for payment, line item 3, it is
20 labeled approved contract sum.

21 Well, that's what my definition of
22 that -- what that term is. But that's not what
23 they want. They want something different. They
24 wanted approved contract amount in the lien
25 claim, and I don't -- I just didn't get it.

1 THE COURT: Okay.

2 MR. WINDLE: I was trying to get
3 it.

4 THE COURT: Mr. Bundy?

5 MR. BUNDY: Well, since my name has
6 been drawn into this, I'd like to explain.

7 This is the first time in my career I've
8 ever written a lawyer or a law firm and told
9 them, if we're going to communicate, we have to
10 do it in writing. Okay? I didn't like doing
11 that.

12 That found its genesis, okay, when
13 Mr. Terry writes me a letter. And I hate to get
14 all this bickering stuff, but, you know, you need
15 to hear it. Mr. Terry writes me.

16 THE COURT: I'm getting used to it.

17 MR. BUNDY: Well, I don't like
18 doing it.

19 THE COURT: I don't like it either,
20 but go ahead.

21 MR. BUNDY: Mr. Terry writes me an
22 e-mail about a conversation he had with my law
23 partner. Now, I wasn't involved in that
24 conversation.

25 This man has -- he's a grown man. He's

1 got two children. He doesn't need to be calling
2 his daddy about something. Okay? They can call
3 him. Okay? I'm not his daddy. I'm his law
4 partner.

5 And the allegation was that my law
6 partner had made certain statements that he
7 recollected. Okay. So I went to my law partner,
8 and I said, did this occur? He goes, no, I
9 haven't talked to that gentleman.

10 So I wrote him back and I said,
11 Mr. Terry, the conversation you recollect did not
12 occur. In the future, since we obviously can't
13 deal with y'all, okay, verbally, just write it.
14 I said, we'll deal with it. We won't have all of
15 this going back and forth.

16 So then I get a letter back from him,
17 and finally, he apologized. No, I was wrong. I
18 apologize. That conversation took place two
19 years ago. That's the conversation I recollect
20 as having taken place two years ago, and that
21 conversation was, from Mr. Terry, we got your
22 interrogatories. We don't understand.

23 I mean, supposedly he said, we'll send
24 you some more. Fast forward two years.
25 Mr. Windle tries the same trick, okay, and wants

1 me to get on the phone with him, okay, and have a
2 conversation about what was said in that
3 conversation. I'm not doing that. Okay. I sent
4 you interrogatories the questions are what they
5 are.

6 Now, I said, if you will put in writing
7 and tell me what your question is, I'll respond.
8 You put it in writing. He said, as to question
9 number so and so, what does this mean? And I
10 said, it means this, and I sent it back to him
11 within 30 minutes.

12 Okay. The issue is not whether or not I
13 won't talk to Mr. Windle -- and I will in open
14 court and I will in front of third parties, and I
15 will in writing. But I will not have a private
16 conversation with him because it's going to end
17 up here with a match between who says who to
18 what, between the lawyers, for God sakes.

19 The issue is, what do you think? Do you
20 think that -- we aren't talking about how many
21 angels can dance on the head of a pin when the
22 argument is you said some instead of amount. I
23 mean, is that where we are? Thank you, Your
24 Honor.

25 THE COURT: Mr. Windle, you can get

1 those responses out by Thursday as well?

2 MR. WINDLE: Yes, sir.

3 THE COURT: All right. One is
4 addressed to Lithko, and the other to Old North
5 State. Okay? Just so we're clear. Are you
6 clear on what answers you're giving?

7 MR. WINDLE: Yes, sir.

8 THE COURT: All right. Very good.

9 MR. TERRY: Your Honor, I'm not
10 clear on what answers we're getting.

11 THE COURT: All right. Tell me
12 what you need clearance on.

13 MR. TERRY: Interrogatory no. 1,
14 what is the total amount of the latest lien
15 amount? Does that mean -- obviously that sounds
16 like Watson's lien amount.

17 THE COURT: There you go. That's
18 how I interpret it. If you answer it that way,
19 we're good to go. All right.

20 MR. TERRY: What is the total
21 amount of your approved contract value used in
22 the lien calculation?

23 THE COURT: All right. I don't
24 know what that is, so you'll have to answer that
25 for me, Mr. McDonald.

1 MR. MCDONALD: Watson had a
2 contract with Balfour. Approved contract value
3 means the contract amount included in the lien
4 that was approved by Balfour. That is a verbatim
5 quote from the response from our firm to
6 Mr. Windle on Friday.

7 MR. TERRY: What is the total value
8 of labor and services furnished related to the
9 approved contract value used in the lien
10 calculation?

11 MR. MCDONALD: Value has the same
12 meaning as it does in South Carolina code
13 annotated section 29-5-20, which uses the term
14 value as to what a subcontractor can lien for.

15 MR. TERRY: Does that mean cost of
16 the works, Your Honor?

17 MR. BUNDY: Asked and answered.

18 THE COURT: I think that would be
19 pretty clear, yeah. Cost of work. Labor and
20 materials, right?

21 MR. WINDLE: Would it include
22 overhead and profit?

23 THE COURT: It certainly could as
24 part of the lien.

25 MR. TERRY: What is the total of

1 your unapproved contract changes used in the lien
2 calculation?

3 THE COURT: Unapproved contract
4 changes.

5 MR. MCDONALD: And this is the
6 question: In regard to Interrogatory No. 4, do
7 you want to know if there are any change orders
8 submitted by Lithko to Balfour but which have not
9 been approved by Balfour included in the lien
10 claim? Answer: Yes.

11 THE COURT: All right. Would have
12 been the answer to that then.

13 MR. TERRY: What is the total
14 amount of any additional claims? And maybe I can
15 clear this up with this one, Your Honor. If that
16 means, are we claiming something that's not
17 approved?

18 THE COURT: I think so.

19 MR. TERRY: And to be clear, we
20 asked him if these same definitions applied to
21 Watson and Old North State, and we did not
22 receive a response.

23 THE COURT: Yeah. We just talked
24 about that.

25 MR. TERRY: I understand.

1 THE COURT: So, yeah. So the
2 answer would be yeah.

3 MR. TERRY: Thank you.

4 THE COURT: What are you claiming
5 that would not have been approved by Balfour?

6 MR. TERRY: Thank you, Your Honor.

7 THE COURT: Between the approved
8 and unapproved, I guess you get the total amount,
9 right? That's what I would guess. Okay. All
10 right. Through those ones.

11 All right. Mr. Windle, let me hear from
12 you.

13 MR. WINDLE: This is in regard to
14 the consternation expressed by Mr. McDonald about
15 Lithko's alleged failure to provide discovery.

16 In 2019, Library Associates served a
17 request for production of documents. At that
18 time, we responded and said we would produce the
19 documents at our office at a mutually convenient
20 time.

21 Two years later, they say, okay, we'd
22 like to see the documents. I said, okay, come to
23 my office, and I was mistaken about that. I
24 said, you have to go to Greenville for Watson's
25 and come to Charlotte for Old North State. And I

1 was wrong. They're all on the same server.

2 THE COURT: Okay.

3 MR. WINDLE: So Mr. McDonald gave
4 us a date. Unfortunately, we had a conflict. We
5 said that date won't work, but can you give us
6 another date? Crickets. Nothing. Nothing. So
7 we then said, well, to make it easy on everybody,
8 we'll see if we can't produce them
9 electronically. And we've done that.

10 Now, some of them weren't produced until
11 recently, but we had some problems with the
12 software. But they worked that out. The
13 documents have been produced. I don't want them
14 to be prejudiced. We've got an obligation to
15 produce documents. If they need time to review
16 them, that's fine with me.

17 We weren't trying get out of anything,
18 but there was some communication issues between
19 us and then some electronic issues getting the
20 things out. But everything has been produced
21 now.

22 THE COURT: Very good. And get
23 those answers to those interrogatories, and we'll
24 be -- you'll have them, and we'll be done, right?

25 MR. BUNDY: Well, that and we'd

1 like some relief on the way this document
2 discovery was handled. We've lost \$50,000
3 because they've done this. You know, the
4 notion -- the notion that every other party in
5 this litigation produced all documents to each
6 other in electronic format.

7 Okay. And now -- and they don't do it
8 for two years. The notion that there's somehow
9 now accommodating us by waiting until the last
10 minute to produce these documents in form on
11 Friday, last -- two or three days ago.

12 And then, when we get them, they're not
13 Bates stamped. We have no way of -- they're not
14 Bates stamped. They're not organized. They're
15 mislabeled. And then they send more on Sunday
16 night.

17 But to add insult to injury, on Friday,
18 we got -- we got an e-mail from their paralegal
19 wanting to know whether or not in the deposition
20 coming up, we were going to make all those
21 documents available to them that they had
22 produced to us the night before at 7:30. And
23 they're good at this, they really are.

24 THE COURT: All right. I'm going
25 to take that issue under advisement. I'm going

1 to order them to produce the answers to the
2 interrogatories by the end of the day Thursday,
3 and I'm going to grant your request to extend the
4 time to take the depositions the following week,
5 so you can prepare for those depositions.

6 I see where Ms. Hadley has referenced
7 what an -- what estimates she had made and --

8 MR. BUNDY: Yes, Your Honor.

9 THE COURT: -- and other things.
10 And I'll just -- I'm going to have to review
11 that. I glanced at the three-paged letter. This
12 other one has got to be about 10 pages long,
13 so...

14 MR. BUNDY: And we'll get you
15 whatever you need in that regard if you need more
16 information.

17 THE COURT: I'll take that under
18 advisement on that issue. There was -- the next
19 item on my list -- there may have been some other
20 discovery motions, but I noted Balfour Beatty had
21 a motion to reconsider the order denying its
22 motion to compel production. I want to make sure
23 that's been covered as well.

24 MR. BUNDY: Your Honor, before we
25 begin, that was an in-camera proceeding.

1 THE COURT: Yeah.

2 MR. BUNDY: I'm afraid if we
3 proceed, we need to clear the courtroom or maybe
4 wait for the last motion.

5 THE COURT: Yeah. And maybe so.
6 And was that propounded towards the -- the things
7 towards privileged -- privileged was complained
8 or just a --

9 MR. BUNDY: No. It's --

10 MR. HILDEBRAND: I don't know that
11 it is privileged. I think we can address it
12 without talking about what happened in camera.

13 MR. BUNDY: No, no, no. This is
14 about financial documents.

15 THE COURT: I gotcha. I'm with you
16 on that one.

17 MR. BUNDY: This is a 59(e) motion
18 on financials.

19 THE COURT: Gotcha. I'm with you.
20 Okay. So let's hold that to the end.

21 MR. BUNDY: Thank you.

22 THE COURT: Let me go into -- and I
23 don't -- I really don't want to go into the
24 details of it. But Mr. Hildebrand, I wanted to
25 give you and your firm credit. Y'all did a

1 tremendous job setting forth the basis for your
2 privileged documents.

3 MR. HILDEBRAND: Thank you, Your
4 Honor.

5 THE COURT: I mean, it's just
6 excellent. Okay?

7 MR. HILDEBRAND: Thank you.

8 THE COURT: I got through that
9 thing much quicker than I thought I would. I did
10 have some issues with some of those documents.

11 Rather than going into that on the
12 record, I've got a memo here as to a document
13 that's listed by the number, and then I've got
14 privileged -- some of which I do not believe are
15 privileged, and you've got it by the number.

16 And then, as to the redacted documents,
17 I had some issues with some of those, but not
18 many, of the 280-some-odd documents of which
19 y'all were still claiming privilege.

20 I mean, I might have, you know, on
21 the -- there's a theme running through there with
22 logs of information, time tables, and cost
23 expenses. And I just can't find definitively
24 where the privilege is being claimed or that it
25 was work product.

1 So I need you to -- I'm going to give
2 this to you. I want you to go back and find for
3 me where -- generally, I think it was Mr. Quare
4 was the lawyer that was mostly getting that stuff
5 together -- and find where he's requesting that
6 stuff that would keep it privileged or work
7 product as opposed to whatever.

8 It's just, most of time it's a document;
9 so I can give this to you so you have it, and
10 then, if you have an objection to what I have --
11 I'm talking mainly to him on these documents.

12 MR. BUNDY: Right.

13 THE COURT: I'm going to assume --
14 I don't know -- you must have gotten, at some
15 point in time, a time summary of what this job
16 was supposed to have done. I have to assume that
17 y'all got that because I can't imagine building a
18 hotel without a contractor coming up with a time
19 sequence for getting the stuff done.

20 MR. BUNDY: That's true. But we
21 need all of them, not part of them because
22 sometimes they will change sequence and what
23 wasn't a delay yesterday can become a delay if
24 you change the thing. If I may?

25 THE COURT: Yeah.

1 MR. BUNDY: I can figure it out and
2 cut you short.

3 THE COURT: Okay.

4 MR. BUNDY: I think I can cut this
5 all short.

6 THE COURT: Okay.

7 MR. BUNDY: I agree with you.
8 Their motion was wonderful.

9 THE COURT: It was excellent.

10 MR. BUNDY: Beautiful motion.
11 Elegantly written, and I intend to use it in the
12 future.

13 THE COURT: Best I ever seen.

14 MR. BUNDY: Absolutely. I'm glad
15 Balfour Beatty paid that \$20,000 motion to that
16 answer because I'm going to use it.

17 THE COURT: Okay.

18 MR. BUNDY: But that's not the
19 issue.

20 THE COURT: Right.

21 MR. BUNDY: The issue is this, and
22 quite simply this, we sent them interrogatory
23 requests for production in January of 2020. Was
24 it 2020?

25 MR. MCDONALD: '21.

1 MR. BUNDY: '21. Okay. And if
2 you -- where is his motion? I want to go through
3 the -- what I want to do is go through the
4 numbers with you out of his own -- out of his own
5 motion. Okay?

6 THE COURT: Okay.

7 MR. BUNDY: And the numbers are --
8 go to page 2 of his motion, and let's just walk
9 through that together, if we might.

10 THE COURT: We're in the January?

11 MR. BUNDY: Yes sir. It starts
12 on -- his number -- page 2 of his Balfour Beatty
13 memorandum opposition to Library Associates
14 motion to compel. He slights the background, and
15 that's what I want to walk through.

16 THE COURT: All right. Wait a
17 second.

18 MR. HILDEBRAND: Your Honor, I'm a
19 little bit confused. Was this the motion
20 scheduled to be heard today?

21 THE COURT: I don't know that it
22 was, but I got into this -- I got into your
23 stuff. I want to go back to where we are. I
24 want to make sure we're talking apples and
25 apples. So I was looking at -- I was responding

1 to their production of in-camera documents.

2 MR. BUNDY: Right. And I'm -- and
3 I'm saying that -- first what I'm saying is, is
4 that whatever you decide on that --

5 THE COURT: Right.

6 MR. BUNDY: That were in-camera --

7 THE COURT: Right.

8 MR. BUNDY: I'm perfectly happy
9 with it. I agree his motion is elegant and
10 beautiful and correct. Okay?

11 THE COURT: Okay.

12 MR. BUNDY: And so, to that extent,
13 you may use that with my consent, permission,
14 whatever, non-objection. Whatever you decide is
15 not privileged or privileged under that memo, I'm
16 good with.

17 THE COURT: Okay. All right.

18 MR. BUNDY: Okay. That's not the
19 issue.

20 THE COURT: Okay.

21 MR. BUNDY: The issue is this: If
22 you look at the background he set forth in his
23 motion.

24 THE COURT: Okay.

25 MR. BUNDY: We asked for documents

1 in January of 2021.

2 THE COURT: Okay.

3 MR. BUNDY: On February, they sent
4 us the answer.

5 THE COURT: Okay.

6 MR. BUNDY: And they served
7 contemporaneously therewith a privilege log,
8 which contained 3,969 items withheld.

9 THE COURT: Right.

10 MR. BUNDY: This is their privilege
11 log. I didn't create it. I didn't make it.
12 They -- they have the obligation, as the
13 attorneys in this case, to not only produce the
14 log, but to produce a log which reflects
15 documents that are actually privileged, correct?
16 I mean, that's just bottom line law.

17 THE COURT: Right.

18 MR. BUNDY: So we get this
19 document. My law partner -- the index that came
20 with the privilege log was created by them. The
21 description of some documents in the privilege
22 log were created by them.

23 My law partner spent \$12,000 worth of
24 time going through just the index because we
25 don't have the documents, and spent hours

1 creating a spreadsheet for their use to say,
2 look, based on your description of the documents
3 that you said are privileged, we think that 1,422
4 of those documents are not privileged.

5 THE COURT: Just based on
6 descriptions?

7 MR. BUNDY: Just based on their
8 descriptions.

9 THE COURT: Right.

10 MR. BUNDY: We then get, shortly
11 thereafter -- you know, some Balfour Beatty cause
12 and they -- we promise we'll get it to you in a
13 couple weeks. Well, that's not how we do
14 business. Either get it to us or not. File a
15 motion or not.

16 Okay. And, of course, it didn't come
17 within two weeks. Okay. And I knew it wasn't
18 going to come within two weeks; so I'm going to
19 file a motion. So then we finally get the
20 documents.

21 Okay. Now, what we get is an admission,
22 okay, because he admits it right here, that all
23 but 401 of the 1,422 documents were not
24 privileged; so they gave us a data dump. They
25 dumped all of those documents on us.

1 We paid a copy company, okay, to print
2 them all out because you can't really do much
3 with this. We got 13 volumes. Okay. Here's one
4 of them. That's what it is. 1,400 pages of
5 this.

6 THE COURT: Gobbledygook?

7 MR. BUNDY: Gobbledygook.

8 THE COURT: There you go.

9 MR. BUNDY: My law partner spent
10 \$12,000, and we had to pay to get it copied.
11 That's what we got back from them. My position
12 is, they had a duty to us and a duty to the Court
13 to read their own index.

14 If they'd have read their own index,
15 they would have known they weren't privileged in
16 the first place. They then had a duty, once they
17 went back and read the index, to look at those
18 documents and tell us that, of the stuff we're
19 giving to you, 90 percent of it is gobbledygook.

20 No, we're going to send it to you. You
21 spend the money. You take the copy costs, and
22 you figure it out, Bundy. No, that's not the way
23 it works, I don't believe. And then later on, lo
24 and behold, they come up with some more
25 documents.

1 Now, within all of that, hundreds of
2 hours, Mike Fench spending money on us looking at
3 this, we find some more stuff. What this is
4 really about is not the privileged documents that
5 you have decided or will decide are or are not
6 privileged. It's about discovery abuse is what
7 this is about.

8 It's about making your adversary waste
9 time doing work that they should have done, which
10 is vet their own privilege log. And that's why
11 we think we're entitled to \$12,000 in legal fees.
12 Thank you, Your Honor.

13 THE COURT: All right. Very good.
14 All right. Anything?

15 MR. HILDEBRAND: Your Honor, I
16 didn't realize this was going to be heard today,
17 but I'm happy to discuss some of the aspects of
18 it. I don't have all the documents in front of
19 me.

20 But basically what happened was, there
21 were a number -- we did vet all of our documents,
22 and if you'll remember that we've went out of our
23 way to try to be cooperative in this case before
24 we got any discovery requests from Library
25 Associates.

1 We gave them all of our files and said,
2 here's all our documents. We've tried to be very
3 forthcoming with -- with our data and our
4 documents.

5 We did review the documents, and of
6 course, the way we do that is the way anybody
7 reviews documents these days, and we do word
8 searches for the attorneys involved and such in
9 identifying documents, which -- which we believe
10 to be privileged.

11 And we tried, unlike a lot of parties in
12 a lot of litigation, who don't even do a
13 privilege log, we made an effort to do a detailed
14 privilege log with our production.

15 So we gave those documents to Mr. Bundy
16 and said -- and he said, well, I'm not sure all
17 these are privileged. Would you take another
18 look? And we said, yes, give us a couple of
19 weeks. Before we get back to them, he filed
20 motion to compel.

21 We took another look at the documents
22 and said, well, you asked us to take another look
23 at them. We have, and we believed that these,
24 although arguable -- arguably might be
25 privileged, we're going to produce these. We're

1 good with giving you these; so we did that.

2 Whether they're gobbledygook or not,
3 I -- I would think that if they looked at them
4 and saw that they were gobbledygook, they
5 wouldn't have printed them. But I do know that
6 in some of these instances, Your Honor, there are
7 computer programs that you have to do to distill
8 the information.

9 We have to use them. We provided those
10 in that capacity with them or they've said, what
11 computer program do you need to use and we've
12 said, you just download this or use this one, and
13 you get an answer. It could have been resolved
14 with a phone call.

15 But what we've done is, we tried to
16 respond appropriately and professionally to these
17 document requests. And let me say to you, Your
18 Honor, that the -- yes, there were 1,400
19 privileged documents, but that -- we did the math
20 on that, and I think it's in one of our letters.
21 That's less than one percent of all the
22 documents.

23 There are, as you might imagine on this
24 project, which was complicated to start with and
25 then was delayed 16 months for reasons that we

1 contend are the responsibility of the owner. I'm
2 not going to get into those details. The project
3 was long and very detailed.

4 The number of documents that are
5 privileged are -- is not huge in a case like
6 this, but we've tried to do what's right, Your
7 Honor, and give the appropriate documents in
8 to -- for me to stand here and be blamed for
9 being unprofessional, I just don't appreciate it.

10 THE COURT: Well, what he just
11 showed me was a bunch of binary computer spit out
12 stuff. It was -- I'm hoping you don't have 12
13 volumes of that.

14 MR. BUNDY: Yes. We were going to
15 bring them all in. There are 14 or 15 volumes
16 that we have; is that correct?

17 MR. MCDONALD: 16 volumes, Your
18 Honor.

19 MR. BUNDY: We took a picture of
20 them. This is a picture of the documents in
21 terms of just the number of volumes. I didn't
22 want to haul all of that in. It's 10 pounds a
23 box, right? But this is -- this is true, right?
24 This is what's 13, 14 volumes. It looks just
25 like that.

1 THE COURT: If I was a computer, I
2 could read it, but I'm not. It's just on or off,
3 a one or zero. These are A's and squiggly lines.

4 MR. HILDEBRAND: And I don't know
5 what the --

6 THE COURT: It's got to be a
7 computer software issue somewhere along the line.

8 MR. HILDEBRAND: I would imagine if
9 it -- if I got a call or a communication saying,
10 we can't decipher those, then I think that we
11 could have resolved that issue. This is the
12 first time I've heard of this. And in the past,
13 we have gotten issues. When they couldn't
14 decipher something, we tried to be accommodating
15 to response.

16 THE COURT: Or open it. You were
17 able to open it, but it wasn't English. Were
18 y'all able to get documents? Were they able to
19 produce documents out of it?

20 MR. MCDONALD: So there's 16
21 volumes. Volumes 4 through 11 look exactly like
22 that, and no, the first three volumes, if you
23 started to go through them, which I did, and you
24 say, okay, I can't stare at a computer screen
25 anymore, I'm going to send them all to Procopy.

1 You may think that the 16 volumes were
2 populated. The last three volumes were also
3 populated with things you could read. Now, it
4 was things like the construction contract, which,
5 you know, withheld as privileged.

6 So didn't know, and I'm the one that's
7 going to have to go through these things, and
8 just 4 through 11 were that. Now, we tried to
9 get our IT guy to look at it and see if that was
10 the case. He couldn't ever figure it out. I
11 will say that the Bates stamp still appears. If
12 you look at it, the Bates stamp still appears at
13 the bottom so...

14 MR. BUNDY: Remember these are
15 documents they're dumping on us six months after
16 the request for -- was due, and we're trying to
17 take subcontractors' depositions, telling them
18 they don't have the right to keep these documents
19 based on their own list.

20 And what we get is a data dump of 14
21 volumes of stuff. But we're trying to take
22 subcontractors' depositions to figure out what
23 the subcontractors' claims are because Balfour
24 Beatty has testified under oath, they didn't look
25 at any of them.

1 MR. HILDEBRAND: Your Honor, that's
2 just not true. That's just flat not true. And I
3 really wish we would stop with the financial
4 statements that are claims that are inaccurate.
5 We did review the contract sums that are due our
6 subs that are part of our lien.

7 We reviewed those, and we passed those
8 on. We also got claims for delay damages and
9 such, and we vetted those. And we will have
10 witnesses who will say what we did. We can't vet
11 on 1,000 percent. The subcontractors will have
12 to testify.

13 But I just highly disagree with the
14 repeated assertions that we just didn't look at
15 anything before the mechanic's liens were filed
16 by the subcontractors because that's just not
17 true.

18 MR. BUNDY: I took the deposition,
19 and I asked the 30(b)(6) deposition of Balfour
20 Beatty, did you review these claims? His answer
21 was, we have no obligations to review any
22 subcontractor claims. I asked him four times,
23 and that's all he would say.

24 Then, I asked him, I said, well, whether
25 you have the duty to do it or not, did you review

1 them, and he refused to answer the question.

2 MR. HILDEBRAND: That's just not --

3 MR. BUNDY: Okay. We'll see what
4 the record says. I'm perfectly happy to --

5 THE COURT: We'll cross that bridge
6 when we get to it. All right. Let me give
7 you -- Mr. Hildebrand, while you're up, let me
8 give you this document. That's been produced by
9 my office for your benefit to go back and review
10 those.

11 MR. HILDEBRAND: Thank you.

12 THE COURT: I'd like you to give me
13 an answer on that, and then I'm going to decide
14 what's privileged and what's not.

15 MR. HILDEBRAND: Okay.

16 THE COURT: If you could do that
17 within -- by the end of the week, if you could.
18 It's not that many documents. I'm not sure --
19 I'm not sure how busy y'all are the rest of this
20 week, but apparently, somebody sent me the
21 deposition schedule from the last two weeks.

22 It looks like y'all have been busy. I'm
23 happy to hear that. I'm not sure that these
24 clients are happy, but I'm happy to hear y'all
25 are doing that. So we're moving forward.

1 All right. The third matter I wanted to
2 take up was the Library Associates motion for
3 protective order regarding the deposition of
4 Mr. Bundy.

5 Mr. Bundy, I was surprised that you had
6 your deposition taken. But anyway, y'all tell me
7 how we got to this situation, and I will be glad
8 to hear it.

9 MR. MCDONALD: Yes, Your Honor,
10 Brent McDonald again. Thank you very much. Yes,
11 it was a very unusual situation where the lead
12 counsel for the opposing party's deposition gets
13 taken.

14 And there's really two ways to handle
15 it, right? I'm in front of you with a motion for
16 protective order prior to the deposition. And
17 you look at me and say, well, what's counsel for
18 Balfour going to ask him, and then I say, no
19 idea.

20 And you say, well, Mr. McDonald that's
21 real interesting that you're wasting everybody's
22 time, but who knows what he's going to ask him.
23 So we did the thing and tried to keep it as -- as
24 minimal cost as possible.

25 Okay. Let's find a convenient date so

1 we're not wasting time. Mr. Bundy will appear,
2 and to the extent there's legitimate questions
3 that are asked, whether they're relevant or not,
4 we're going to enter it and it will just be
5 whatever it is.

6 THE COURT: Okay.

7 MR. MCDONALD: We attended the
8 deposition, and as the deposition unfolded, after
9 a period of time about Mr. Bundy's background and
10 other clients he's represented, there were some
11 questions related to -- and I believe, if you
12 look at the memoranda that was filed today on
13 this issue, there were some questions related to,
14 what was Library Associates reasoning for making
15 certain changes to the contract that was in fact
16 negotiated by Mr. Bundy in 2014.

17 Balfour has known that he was
18 negotiating in 2014, and there was a series of
19 questions that elicited work product,
20 attorney-client privilege. We objected to those
21 questions.

22 As Your Honor is aware, the rule
23 requires us that -- and it's very important. I
24 wasn't around when it was the Wild West and
25 people were directing them not to answer all the

1 time.

2 Okay. So now we've got the rule that
3 says, if you direct somebody to not answer, you
4 better go file your motion within five days or
5 they can reconvene. And that's where we are.

6 THE COURT: I saw where they
7 straightened you out.

8 MR. MCDONALD: So, Your Honor, what
9 I would say is that this -- the entire deposition
10 yielded nothing meaningful.

11 The entire questioning -- and there's
12 been no -- in the response to the motion for
13 protective order, there's been no suggestion that
14 the questions didn't solicit attorney-client and
15 work product information.

16 And we would ask that it was a waste of
17 time. We put in there that there were fees
18 associated with the deposition. There are fees
19 associated with being here today, and the
20 fundamental problem is, that's why you don't take
21 the deposition of the attorney on other side.

22 And that's why our reaction was similar
23 to yours; very unusual situation to be in. Thank
24 you very much, Your Honor.

25 THE COURT: Mr. Hildebrand, can you

1 tell me why that was noticed? What was the
2 purpose?

3 MR. HILDEBRAND: I just sent you
4 our responsive memo.

5 THE COURT: I hadn't seen it.
6 Watch your step.

7 MR. HILDEBRAND: May I approach?

8 THE COURT: Yes, sir.

9 MR. HILDEBRAND: The dispositive
10 language that relates to this whole issue is the
11 paragraph in the middle of -- of page 2. I took
12 the 30(b)(6) deposition of Library Associates,
13 and I asked the representative a question. The
14 question is very simple. You're not answering my
15 question.

16 If I need to ask somebody about what the
17 intentions were and why particular provisions
18 were included or not included, like conditions
19 preceded or anything else, the only person I can
20 ask, and the appropriate person to ask from
21 Library's perspective is Bill Bundy because he's
22 the one who negotiated and drafted it, agreed.
23 Mr. McDonald objected and the witness said yes.

24 Here's where we are, Your Honor.

25 Everybody's -- I've taken a bunch of depositions

1 of people from the Library Associates, and I have
2 said, have this -- the provisions of the contract
3 or many of them are important in this case.

4 So I've asked them, just like they've
5 asked us. They said, why did you negotiate? Why
6 did you put this in the contract? And our
7 response was, well, actually, we didn't,
8 Mr. Bundy. You're the one who put those in
9 there. You're the one who drafted it.

10 So I've asked witnesses, why was this
11 done? Why was that done? And they have
12 uniformly said, Mr. Bundy is the one who drafted
13 that. So I haven't named him as a witness and
14 did not want to depose him until we got -- we got
15 down to the 30(b)(6) deposition, and I said --

16 THE COURT: This is not Mr. Bundy's
17 answer? This is --

18 MR. HILDEBRAND: No.

19 THE COURT: This is from the
20 30(b)(6)?

21 MR. HILDEBRAND: Of Library
22 Associates.

23 THE COURT: All right.

24 MR. HILDEBRAND: So I'm asking the
25 party, what are your intentions, and they say,

1 well, we can't answer that. You've got to ask
2 our attorney. So then I asked their attorney,
3 and he said, I can't -- I'm not going to answer
4 that because it's attorney-client privileged and
5 work product.

6 Fine. If that's their position, fine.
7 I can live with that, and if Mr. Bundy had simply
8 followed Rule 11 and called me or said, Tom, do I
9 need to file a motion for a protective order, are
10 you going to move to compel me to respond? I
11 would have said no.

12 I just wanted to get on the record that
13 your client takes the position that they don't
14 know anything about the contract, and you're
15 saying I'm not going to testify because it's
16 attorney-client privileged and attorney work
17 product. Fine. That's all we -- where we are.

18 So I'm not really sure what this motion
19 is about. I just wanted to get them on the
20 record because that's who their client said is
21 the one who needs to answer these questions.

22 THE COURT: Now, how is it
23 relevant, how certain terms got put into a
24 contract? What we're trying to know is what does
25 the contract mean? How did it get there, how is

1 that relevant? The fact that it's there is
2 highly relevant; but how it got there, how is
3 that relevant?

4 MR. HILDEBRAND: Well, sometimes if
5 there is -- if there is any ambiguity in the
6 contract, then extrinsic evidence can be admitted
7 to -- as to what the intentions were or the
8 parties or were their discussions or what was
9 meant by it.

10 So that's simply what I was -- wanted to
11 know, and it's -- again, Your Honor, these are
12 the identical questions that they first asked us.
13 So they think it's relevant, and they asked us
14 the same questions, and we turned around and
15 asked them the same ones. And those are the
16 response that I got.

17 THE COURT: Okay.

18 MR. HILDEBRAND: So I don't think
19 there is anything to compel. I haven't asked the
20 court to compel Mr. Bundy to respond. I've got
21 the response enough.

22 THE COURT: When I first read the
23 heading, I assumed it was to head off the
24 deposition; but then I pick it up and read the
25 deposition has already been held.

1 MR. BUNDY: And if you read it,
2 it's non-sensible. The fact that my client says
3 I did this because my lawyer said it. Now,
4 that's a waiver of the attorney-client privilege
5 in answer to a question under oath? That's just
6 not -- that's beyond belief.

7 Okay. And then the notion that I'm
8 supposed to call counsel up and say, well, if
9 you'd have just called me. The rule requires us
10 to do this. I don't know how these lawyers think
11 we can agree between ourselves to violate the
12 rules. I don't do that. That's like agreeing to
13 have depositions beyond the scheduling order.
14 This is your order. I can't agree to change
15 anything you do.

16 THE COURT: All right.

17 MR. BUNDY: Thank you, Your Honor.

18 THE COURT: All right. So what are
19 y'all asking for? Costs, fees?

20 MR. BUNDY: Attorneys' fees and
21 costs, Your Honor.

22 THE COURT: And what do y'all seek
23 there?

24 MR. BUNDY: Pardon me?

25 THE COURT: Do you have a dollar

1 figure?

2 MR. BUNDY: We were there a couple
3 of hours. I'm 400 bucks an hour. I don't know.
4 Maybe 1,000 bucks would be fair.

5 THE COURT: All right. I will take
6 that under consideration while I read all this
7 other stuff.

8 MR. BUNDY: Thank you.

9 THE COURT: Let me get back to my
10 list. The only thing I had left on my list was
11 summary judgment motions, and I think the only
12 one we were down to was the Strong Tower one.
13 Are there some other discovery motions?

14 MR. BUNDY: We've got one more
15 motion that we need to deal with or one more
16 issue we need to deal with.

17 THE COURT: All right.

18 MR. BUNDY: And that is the
19 protective order that was filed by Watson. I
20 believe it's Watson and Old North State. What
21 this relates to is this -- what I call -- they
22 call it a pass-through agreement. I call it a
23 conspiracy agreement.

24 THE COURT: Okay.

25 MR. BUNDY: It's all the same

1 agreement. We just see it a little differently.
2 Okay. In the deposition I took, I believe, of
3 Watson or whenever it was years ago, we had found
4 or discovered that there was a secret agreement
5 pass-through agreement. Okay?

6 THE COURT: Right.

7 MR. BUNDY: We had an unsigned copy
8 of it.

9 THE COURT: They call it a joint
10 defense agreement, do they not?

11 MR. MCDONALD: Yes, sir. Yes, sir.

12 THE COURT: Okay. All right. I
13 just wanted to make sure.

14 MR. BUNDY: And pass-through
15 agreement and total agreement.

16 THE COURT: Right.

17 MR. BUNDY: That's how they
18 characterize it. We discovered the existence of
19 such a document through -- it was provided -- a
20 blank copy was provided to us through subpoena
21 from First Choice.

22 So when taking the deposition a couple
23 of years ago, I pulled it out and was starting to
24 ask questions of the witness, and they were --
25 and the witness was told not to answer because it

1 was attorney-client privilege. It was a secret
2 document.

3 In fact, we have correspondence from
4 Balfour's attorney referring to it as a secret
5 document. At any rate, we then -- at any rate,
6 under the rule, Watson or Lithko or whoever it
7 was, had to make motion because they had told
8 us -- they told me not to -- that their client
9 refused to answer questions, right.

10 THE COURT: Right.

11 MR. BUNDY: So they filed that
12 motion. We filed, I think, a motion in response
13 or a response. So where we are now is, they have
14 produced that document. They've now produced
15 signed copies of that document. But up until
16 now, okay -- and they are still taking apparently
17 the position that, even though they produced it,
18 I can't ask questions about it. Okay. But I
19 can.

20 Okay. It's a document in this case, and
21 they've presented some motion and they used --
22 they cited some case in New York from the Rules
23 of Federal Decisions. They talk about whether
24 the -- this pass-through agreement provides a
25 substantive basis for a claim.

1 In this case, it does. The -- one of
2 the elements in our case against Balfour Beatty,
3 Lithko, Watson, and anybody else who's still left
4 in this case is for conspiracy. And that
5 document we contend is a conspiratorial
6 agreement.

7 Okay. The document also was a
8 foundation for breach of contract accompanied by
9 a fraudulent act and unfair trade practices
10 against Balfour Beatty. This is a substantive
11 document, and what I would like the Court to
12 order is for Lithko or Watson or whoever -- was
13 it Lithko or Watson?

14 MR. MCDONALD: Watson and Old North
15 State.

16 MR. BUNDY: Watson, Old North
17 State, and Lithko be required to produce at my
18 office those witnesses who previously would not
19 answer questions about this so I can ask them
20 questions about it.

21 Because if Your Honor finds that they're
22 not entitled -- and they've produced the
23 document. I don't know how you voluntarily
24 produce the document and then somehow still
25 assert privilege about being able to ask

1 questions about it.

2 Now, if we go to take the deposition,
3 and I ask the question, and they say we're still
4 going to tell him not to answer, they can -- they
5 can tell him not to answer. We'll be right back
6 in front of you, which I have no problem with.

7 But the notion that I'm going to be
8 denied the opportunity to ask them questions
9 about a document they refused to let me ask
10 questions about before, in which they have now
11 only produced pursuant to a motion to compel,
12 seems to be a little out of place. Thank you,
13 Your Honor.

14 THE COURT: All right. Mr. Terry,
15 do you want to take one?

16 Mr. Terry: I will try, Your Honor.
17 I wasn't aware we were going to -- this was going
18 to be heard.

19 THE COURT: I think this is an
20 older motion.

21 Mr. Terry: I'm not prepared, but
22 this motion was -- was filed in 2019.

23 THE COURT: Okay.

24 Mr. Terry: Simply for the same
25 reason, because under the rule, if we direct

1 someone not to answer a question, we have five
2 days to file the motion and we did.

3 At the terms of the agreement, say that
4 it is confidential, thus we directed our client
5 not to answer questions about it. We -- someone
6 else subsequently produced the document. At that
7 point, we thought there's no fault in producing
8 it; so we produced the document.

9 To the extent that he would like to ask
10 questions about the document, I don't have a
11 problem with that. Having a different witness
12 come back and answer questions about the document
13 than the witness -- I already have -- they're
14 already taking the deposition of -- it's either
15 going to be this week or next.

16 THE COURT: Scheduled, right?

17 Mr. Terry: We'll designate that
18 person as a 30(b)(6) to answer questions about
19 the document. I don't -- and I'm talking about
20 Watson now.

21 THE COURT: Right.

22 Mr. Terry: Lithko, I believe
23 there's already a 30(b)(6) scheduled because that
24 wasn't taken before.

25 THE COURT: All right.

1 Mr. Windle: That's correct. And
2 they can ask questions about that joint defense
3 agreement at that time to find out that there is
4 no conspiracy, no fraudulent intent, or whatever
5 else.

6 THE COURT: Okay. All right.
7 So --

8 Mr. Terry: While we're talking
9 about these depositions --

10 THE COURT: Yeah. So we've got
11 that -- we've got that issue. Y'all agree, they
12 can ask about it at this point, right?

13 Mr. Terry: Oh, sure.

14 THE COURT: Okay. All right. Go
15 ahead.

16 Mr. Terry: I do have one other
17 issue about these depositions.

18 THE COURT: Sure.

19 Mr. Terry: Mr. Bundy and
20 Mr. McDonald referred to wanting to hold off the
21 depositions that were scheduled for next week. I
22 think they meant this week for -- and move them
23 to next week.

24 THE COURT: Right.

25 Mr. Terry: But that's because of

1 Lithko's documents, as I understand it. Are we
2 are going to move Dale Winovich's deposition as
3 well? We can work it out after, but --

4 MR. MCDONALD: Yes, all three
5 because of the interconnectivity that I just
6 talked about.

7 THE COURT: Okay. Yeah. Were they
8 scheduled over three days? Wednesday, Thursday,
9 Friday?

10 Mr. Terry: Yes, sir.

11 THE COURT: All right. So you --
12 if we pushed the deposition, y'all can produce by
13 Thursday, and then push them back until next
14 Wednesday, Thursday, Friday? Does that work for
15 y'all as far as you know?

16 Mr. Terry: I have a deposition
17 next Friday and a mediation as well next --
18 there's three days I'm out next week. I'm happy
19 to work with them on whatever days that we can be
20 there.

21 THE COURT: Okay.

22 Mr. Terry: I haven't talked to my
23 client either.

24 THE COURT: Yeah. I just want to
25 keep the train on track.

1 Mr. Terry: That's why I'm asking
2 about Watson. If you want to take Watson's this
3 Thursday, that's fine by me because we're both --

4 THE COURT: Well, they want to be
5 able to review the documents. That makes sense
6 to do that. Okay. See if y'all can't get that
7 done.

8 All right. So we're back -- before I
9 get to that summary judgment, we're sort of back
10 to where we are on the September timeframe. I'm
11 happy to give him -- Mr. Timbes two weeks time.
12 I've got stuff scheduled between September -- the
13 week of September 20 and October 25; so that's
14 the problem that presents to my schedule.

15 Tell me where we are with starting the
16 week of the 20th, as it relates to this case or
17 even the week of 13th, as it relates to the
18 principal parties in this thing. I had
19 scheduled --

20 MR. BUNDY: Of September? Excuse
21 me.

22 THE COURT: -- scheduled the subs
23 because I figured we could knock some of those
24 subs out, and we could get down to the nitty
25 gritty between the two of y'all. That was why I

1 did it that way.

2 MR. BUNDY: Well, I don't think
3 we -- I don't think you can really figure this
4 case out until you figure out what the subs --
5 what the general owes the subs because you can't
6 get the total cost. You can't get all that
7 stuff, right?

8 THE COURT: Okay.

9 MR. BUNDY: That was the whole
10 theory behind it.

11 THE COURT: Uh-huh.

12 MR. BUNDY: I thought that's why
13 you did it, either way.

14 THE COURT: Yeah.

15 MR. BUNDY: We can -- you know, if
16 you're talking about September 13 and 20, yes, I
17 mean, we can -- we're ready. We'll be ready to
18 go as long as I get the stuff done next week.

19 THE COURT: All right.

20 MR. BUNDY: The only thing I would
21 just again point out, I've got that protection
22 order, and that's all.

23 THE COURT: Yeah. And that's for
24 late October or sometime?

25 MR. BUNDY: Yeah, late October.

1 Yes, Your Honor.

2 THE COURT: Okay. I can work
3 around that. Mr. Hildebrand?

4 MR. HILDEBRAND: We're ready to go
5 for September 13 through the 20th.

6 THE COURT: All right. Okay. That
7 doesn't help you at all, Mr. Timbes, but we don't
8 need to get to your case either until later.

9 MR. TIMBES: I think that's
10 correct. Is it possible there's going to be some
11 testimony that week that I need to have ears on,
12 perhaps?

13 THE COURT: I have no idea.

14 MR. TIMBES: Yeah, nor do I.

15 THE COURT: I hate to let the tail
16 wag the dog because the dog has got to bite or
17 eat, I should say.

18 MR. TIMBES: That's right. I will
19 do my level best to try to have some ears that I
20 think would be able to assist me in that regard.
21 I'm happy to not disrupt the entire train.

22 THE COURT: Okay.

23 MR. TIMBES: And certainly
24 appreciate the accommodations for my case in
25 chief.

1 THE COURT: Okay.

2 MR. TIMBES: I wanted to correct
3 one thing on the record.

4 THE COURT: Sure.

5 MR. TIMBES: There's no dispute
6 about this. I think it was just a slip of the
7 tongue by chance. Mr. Bundy mentioned that the
8 joint defense agreement, he had questions for all
9 parties that were left in this case.

10 For the benefit of the court reporter,
11 Quantum Coatings is not a party to that joint
12 defense agreement.

13 THE COURT: All right. Very good.

14 MR. FREEMAN: If I could just ask a
15 question, Your Honor.

16 THE COURT: Mr. Freeman, yes.

17 MR. FREEMAN: Understanding that
18 Mr. Timbes has the two-week continuance, the plan
19 would remain that September 13th week, subs can
20 still present their claims other than Quantum
21 Coatings. And that may drag on into the
22 following week; is that right?

23 THE COURT: Well, I'm hoping we can
24 knock the subs out the first week is my goal.
25 Okay. That's my goal. That was why I did it

1 that way.

2 And then I knew we were going to need
3 additional time on the back end; so now we'll
4 have to work around that. I didn't -- have not
5 disclosed those dates to y'all until today. But
6 I just wanted you to be aware. If you'll check
7 your calendar on that, I can work around that.

8 MR. FREEMAN: Thank you.

9 MR. BUNDY: And I only have one
10 question. Are we going to be allowed to
11 participate as a party in this subcontractor,
12 general contractor trial?

13 THE COURT: I don't know why not.
14 I don't see why not.

15 MR. BUNDY: Yeah. Thank you. I
16 just wanted to make sure because I think res
17 judicata filing and collateral estoppel would be
18 difficult without it.

19 THE COURT: Yeah. And then
20 Mr. Brennan, I think you were available that
21 second week, right?

22 MR. BRENNAN: Yes, Your Honor.

23 THE COURT: The 20th unless you get
24 your case settled, right?

25 MR. BRENNAN: That's right.

1 THE COURT: Okay. All right. So
2 let's plan to do it that way. Let's just stay on
3 track that way, and let's plan to do the subs
4 that first week. And then we will move into
5 the -- roll into the litigation between these two
6 main parties after that -- after that time.

7 Okay. All right. Any other matters to
8 take up? I've got some questions under
9 advisement. Mr. Wheeler, I think we were on the
10 WebEx about -- seems like about six years ago,
11 but it was probably about six months ago.

12 MR. WHEELER: All right, sir.

13 THE COURT: And you were begging
14 for summary judgment at that time, and you're
15 back so...

16 MR. WHEELER: I'm back. I have one
17 question about the trial schedule.

18 THE COURT: Yes, sir.

19 MR. WHEELER: Just out of curiosity
20 is the first week, is that just breach of
21 contract claims against Balfour or is that also
22 the --

23 THE COURT: No. That's all claims
24 that y'all -- the subs would have.

25 MR. WHEELER: Okay. So --

1 THE COURT: My point was, you want
2 summary judgment. I'm going to entertain summary
3 judgment on breach of contract claims. If you
4 want to go to trial, we can go to trial. Okay?
5 Because the lien -- the lien is a different issue
6 to me. Okay?

7 MR. WHEELER: I would agree. I
8 just -- okay. Are we still planning on --

9 THE COURT: You still want to
10 pursue your --

11 MR. WHEELER: Yes, Your Honor.

12 THE COURT: -- summary judgment on
13 a breach of contract?

14 MR. WHEELER: I do, Your Honor,
15 yes.

16 THE COURT: Okay. All right.

17 MR. HILDEBRAND: But for the
18 clarity, the subs, there are claims that they
19 have liens and they have claims against the
20 owner. Obviously, they're foreclosing on the
21 liens. Any claims the subs have will be tried
22 that first week?

23 THE COURT: Correct, correct.

24 MR. HILDEBRAND: I just wanted to
25 make sure.

1 THE COURT: Yeah, yeah. I'm not
2 trying to limit that, whatsoever.

3 MR. HILDEBRAND: All right.

4 THE COURT: Okay. That would be
5 any liens, any claims that the subs would have
6 and let's see if we can't knock those down.
7 Okay?

8 MR. HILDEBRAND: Okay.

9 THE COURT: Let me just make sure
10 I've got -- everybody nods. Do I have everybody
11 in agreement on that except those ones who
12 settled and whatever they need to do? And I'm
13 going to protect Mr. Timbes on that as well.

14 MS. DIFRANCO: Your Honor, maybe
15 this will be addressed at the pretrial
16 conference, but -- so all the subs will be here
17 the entire week? We're not going to have, you
18 sub come this day; you sub come this day?

19 THE COURT: I'm happy to do it that
20 way if that's what y'all want to -- want to come
21 to. I don't know how to parse y'all out is
22 really what I'm getting at.

23 So I think it would be easier if we just
24 throw up the subs and let the -- let the crosses
25 come as they go, frankly. But I don't know if

1 y'all want to try and parse them out. I don't
2 know how many we've got. They look like they are
3 seven pretty -- I shouldn't say quickly, but they
4 are seven.

5 So I don't know who we're going to have,
6 but I want to get the subs going, and clearly,
7 the Watson, Lithko crowd is -- is pushing that
8 envelope pretty hard. So I just think we need to
9 present -- to have the subs present their cases.
10 Okay? All right.

11 MR. WHEELER: Thank you.

12 THE COURT: And then I am going to
13 move the date from the 26th. I don't have one
14 yet, but I will move that for a pretrial, and we
15 go from there.

16 MR. WHEELER: For the benefit of
17 the court reporter, Sam Wheeler on behalf of
18 Strong Tower Construction, LLC.

19 And I -- just a follow up about that
20 trial procedure, my claim is very much, I guess,
21 the tail wagging the dog. I've probably got the
22 smallest claim in the group, outside of some
23 others. But I'm in the process of making the
24 strategic decision to get rid of my lien to avoid
25 a two-week trial or sitting for a two-week trial.

1 So I'm happy to take it up when we have
2 the status conference to say, hey, can I have my
3 own day, or my case caption that I filed back in
4 2019, do I get to break that back out and have my
5 own day or half day against Balfour Beatty on my
6 breach of contract?

7 Because I don't want to be involved in
8 the mess that is this case now. So I can
9 represent that at the end of the month when we
10 have the status conference. But just, I guess,
11 food for thought, I'm making this decision to
12 avoid all this.

13 THE COURT: Right.

14 MR. WHEELER: To save my client
15 money, not to get right back into this.

16 THE COURT: Well, that was really
17 why I was willing to entertain the summary
18 judgments like I was. I thought -- frankly, I
19 thought I would have gotten more than I got, and
20 I didn't.

21 MR. WHEELER: Well, when you --
22 when the judge asked for it, I would assume that
23 people would file them. But I'm here today on a
24 motion for summary judgment, and the figure that
25 I'm requesting is \$82,859.21.

1 It is verbatim the amount that I
2 claimed -- whether it was six months ago or six
3 years ago, it's the same amount. And in our
4 estimation, it's been undisputed for about 19
5 months now.

6 And I sent very, very simple
7 interrogatories to Balfour Beatty and said -- I
8 essentially tried to reverse engineer my claim.
9 I said, you tell me what's undisputed. It almost
10 like a 27-1-15 letter where you -- you write the
11 contractor and say, pay undisputed amounts under
12 our contract.

13 So I said, what's undisputed? What are
14 you guys claiming up the chain that's -- that's
15 also for work that I did. And the answer I got
16 was \$104,859.21. And so my next question was,
17 well, why don't you pay it? And the answer I
18 got, back in January of 2020, 19 months ago, was,
19 well, there's a \$22,000 back charge.

20 I don't agree with it. I dispute it,
21 but I'm going to give them credit for it for the
22 purposes of the summary judgment motion. So
23 that -- that 104 minus the 22 gets you to that
24 figure I'm seeking today.

25 The other reason, back in January of

1 2020, that they didn't want to pay was because
2 they were unsure about what the owner might claim
3 with respect to delays or damages associated with
4 Strong Tower. So I said, fair enough. Let's go
5 and take the owners' depositions.

6 So we deposed Mr. Bennett, Ms. Brown,
7 and then Jim Clement, who was -- represented the
8 owner. Six or seven days of depositions, and I
9 come -- none of them say anything wrong about my
10 client. I come in, and we have a motion for
11 summary judgment in October of 2020.

12 And at that point, Tom's argument and
13 opposition, mind you, bringing nothing that would
14 actually meet the standard rule 59 standard,
15 except we don't know what the owner's experts are
16 going to say.

17 After that motion was heard, you denied
18 it. I respect that. After that motion was
19 heard, we had the status conference in March.
20 And this was when this whole idea came that says
21 hey, the subs need to bring their motions. If
22 there's uncontested sums, we need to hear about
23 them.

24 And the general argument was, well,
25 again, we don't know what the owners' experts are

1 going to say. So for \$100,000 lien, I sit
2 through five experts' depositions, you know, 10,
3 12, 13 days, whatever it is, just to wait until
4 the end and say, hey, do you have any issue with
5 Strong Tower?

6 And the response I got was, no, or we
7 didn't run that analysis or we don't intend to
8 run that analysis, or, no, they were an absolute
9 pleasure to work with. And that's not an
10 exaggeration. That's a quote from Jim Clement.
11 I hold them in the highest regard. I have no
12 issue with them.

13 So Tom's response, which I got today to
14 this motion, which has been the same motion as --
15 it's essentially two-fold. Sam's a broken
16 record. I like to say I'm consistent. My number
17 has been consistent. But, yeah, I'm a broken
18 record because it's -- it's an undisputed amount
19 for 19 months.

20 And the other argument was, we just
21 don't know. We don't know what they're going to
22 say at trial. Well, we do because everybody has
23 been deposed. We're beyond the scheduling order,
24 and we are where we are.

25 This amount remains the amount, and I'm

1 giving them credit for everything. Anything I
2 give them credit for, back charges, whatever. I
3 don't think they're right, but I will take the
4 hit for the purposes of the summary judgment
5 motion.

6 So I just don't know what else I can do.
7 I don't know what else I can present. And the
8 only thing I'm getting on the other side is, we
9 just don't know. We don't know what's going to
10 happen in trial.

11 I know of -- I've never been so cavalier
12 to come to a summary judgment motion against me
13 and basically say, well, we don't know. After
14 two years, after 19 months, we don't know. We do
15 know. Everybody has been deposed.

16 So it's time to cut some of these subs
17 out. And I'm the only one that's got a motion,
18 but I don't think it's disputed. I don't think
19 the amount is disputed. And I think Tom said in
20 open court numerous times that the subs should be
21 paid. Well, let's pay them. I'm here. I've got
22 a motion. It's undisputed. Thank you, Your
23 Honor.

24 THE COURT: All right.

25 Mr. Hildebrand?

1 MR. HILDEBRAND: Thank you, Your
2 Honor. May I approach the bench?

3 THE COURT: Sure.

4 MR. HILDEBRAND: I've filed those.
5 My actual memo is very short.

6 THE COURT: All right. Thank you.

7 MR. HILDEBRAND: I e-mailed them to
8 you earlier, but here's the situation. The --
9 Here is the question. The motion by Strong Tower
10 is a rehash of its prior motion.

11 There are disputed facts about how much
12 its lien is, and I've produced, in response to
13 the last time, an e-mail from Balfour, which
14 says, and I quote, "We've devoted 400 hours to
15 trying to resolve these weak issues."

16 Strong Tower is one of the few
17 subcontractors where there was a demonstrated
18 inarguable defect with their work that took a lot
19 of time and effort to repair and address after
20 they put it in. So we've introduced that
21 evidence before.

22 But then on top of that, Your Honor,
23 here's what we did. Part of the -- in each of
24 the subcontracts that we have with each
25 subcontractor, there's a provision, as you might

1 imagine, which says, look, subcontractor, if you
2 have a claim for payment, then we -- and there's
3 something wrong with your work, or if you cause
4 damages, then we have a right to set off any
5 damages that you might have caused.

6 Every contract has that. So what we did
7 in this case was, after the prior hearing that we
8 had, we sent -- and I just handed you them. I
9 sent to Library Associates, for each and every
10 subcontractor, I said, simply, admit whether --
11 or deny, whether you contend -- now, after two
12 and a half years, whether you contend that
13 this -- each of the subcontractors in this case,
14 whether you contend that they caused or
15 contributed to any of your damages.

16 Just tell me one way or the other. I
17 got a response from Library Associates, which is
18 Exhibit A, which admitted some of the requests
19 and said, we think that these subcontractors,
20 about five of them, did cause damage. But for
21 the rest of them, we don't have enough
22 information.

23 So just like Sam just argued, I said,
24 you know, holy mackerel, Library Associates, if
25 after two and a half years, you've had all of

1 your experts look at it -- and this is the third
2 exhibit there.

3 I said, listen, tell us one way or the
4 other if you have a beef with the subcontractor.
5 Let us know one way or the other so we can
6 have -- we know where they stand. So we filed a
7 motion to compel for more specific responses to
8 the request for admissions, and you granted that
9 motion.

10 And then I think it was that same day, I
11 then got a response, which you have in front of
12 you -- the third one, which is from Library
13 Associates where it denied each request for
14 admissions as to each subcontractor.

15 So when you have a -- when you have the
16 owner saying, we deny that; we don't have a claim
17 against these subcontractors, if they would admit
18 that they don't have a claim, then it puts us in
19 the position of, okay, look, if we have a right
20 to set off against them, Library, just tell us
21 whether you have any claim that they did anything
22 wrong that you're seeking damages for.

23 And they denied each -- for each one of
24 these subcontractors. So that creates an issue
25 of fact, Your Honor, because we have now the

1 owner saying, we don't admit that Sam's client
2 didn't cause any damages.

3 Now, he might point to some deposition
4 testimony from some people saying that they don't
5 have any knowledge or their experts might say
6 that. But, when -- when the rubber hits the
7 road, as we did, with a very specific request for
8 admissions, and that's the answer we got. So
9 that creates, in and of itself, an issue of fact.

10 THE COURT: All right.

11 MR. BUNDY: I realize I don't have
12 a dog in this fight, but I would like to read you
13 this request to admit.

14 THE COURT: Okay.

15 MR. BUNDY: Admit that Library
16 agrees and admits that it does not now, will not
17 hereafter for the conclusion of this litigation,
18 claim or assert of any witness, lay or expert,
19 document, data, argument of counsel, any breach,
20 act, err or admission of Strong Tower caused or
21 contributed to any management of claims of
22 damages as defined above -- that's a stipulation.
23 That's not a request to admit.

24 The 30(b)(6) deposition of Library
25 Associates says, no, we don't know of any

1 damages. I don't think a request to admit trumps
2 that, and while -- with all do respect, I
3 appreciate your order, but basically, when they
4 sent these interrogatories, this request to
5 admit, the first time, we tried to explain to
6 them how nobody could admit or even deal with
7 that kind of thing.

8 So it left us not choice with your order
9 to stand; so we denied it. We tried to give them
10 an answer that would say, we can't admit or deny
11 this, and here's why we can't admit or deny it
12 because it's ridiculous basically.

13 Okay. The bottom line is, Sam's got a
14 client over here who nobody can articulate any
15 reason to you as to why he shouldn't be paid
16 other than the 22 grand he's willing to take out
17 and try later. I mean, you know.

18 THE COURT: All right.

19 MR. WHEELER: And, Your Honor, if I
20 might.

21 THE COURT: Sure.

22 MR. WHEELER: And I appreciate that
23 because that's where I was going is, the owner's
24 30(b)(6) has been deposed, and it was the same
25 person that was deposed -- I don't know -- a year

1 and a half ago, Ms. Brown. Very lovely work.
2 She's here today, and I appreciate it. So I have
3 no issue with them, and I know of no delays or no
4 damages.

5 THE COURT: Okay.

6 MR. WHEELER: This is --

7 THE COURT: All right. Good enough
8 for me. I'm going to grant the motion.

9 MR. WHEELER: Your Honor, if I may,
10 I have a fees provision in my contract as well.

11 THE COURT: Okay.

12 MR. WHEELER: And I -- I'll provide
13 an affidavit.

14 THE COURT: Submit it.

15 MR. WHEELER: Okay. And I'll
16 provide one with the statutory interest rate as
17 well, Your Honor.

18 THE COURT: All right. Okay. Very
19 good. I'm going to grant the motion for summary
20 judgment on that basis. Now --

21 MR. WHEELER: Would you like --
22 just one more thing. Would you like me to draft
23 the order, Your Honor?

24 THE COURT: Yes, sir.

25 MR. WHEELER: Thank you.

1 THE COURT: And submit your
2 affidavit for attorney's fees if you want to get
3 paid. Let them run by it. I can move y'all's
4 pretrial to Tuesday, August 31, 2 p.m. That's
5 the time I got available. Okay? We're going to
6 stay on track for the 13th.

7 What I do want to do, I put some thought
8 into this, I would like, at that status
9 conference, the subs to have met and figure out
10 in what order you want to go. I'm going to have
11 you go one at a time to present your case. So
12 present your case.

13 Mr. Wheeler, if you've still got a case
14 and you want to present it; you want to go first.
15 I will make that decision on the 31st. But
16 that's how I need to -- I'm going to have y'all
17 present y'all's cases, in that order.

18 Okay. We'll present them one --
19 seriatim. One, two, three, four, five. Y'all
20 put them up. I will know who's presenting which
21 case, at what time, what you've got left. And
22 then you'll be subject to cross by anybody who's
23 here. Okay?

24 MR. WHEELER: I'll talk to the
25 client. I'm going to have a hard time believing

1 I'm going to try a \$22,000 case.

2 THE COURT: Yeah, yeah, yeah. I
3 understand that. Maybe we'll get some other ones
4 out of the way. But that's how -- I think that's
5 how I want to do that.

6 So I'm going to set y'all up. I'll be
7 happy -- there are some other motions, I know,
8 that have just recently been filed. Some are
9 summary judgment. I'll take those up on the
10 31st, but that's the time that I've got. That
11 gives y'all just under two weeks to prep for
12 trial and be raring to go, so we're on track.

13 David?

14 MR. BRENNAN: Well, Your Honor, I
15 wanted to clarify. Will you be entertaining
16 potentially additional motions for summary
17 judgment that are filed in the interim by a
18 subcontractor?

19 THE COURT: If you get them in 10
20 days ahead of time, I will entertain them.

21 MR. BRENNAN: Okay.

22 THE COURT: Okay?

23 MR. BRENNAN: Yes, Your Honor.

24 MR. FREEMAN: 10 days ahead of
25 August 31st?

1 THE COURT: Yes, sir.

2 MR. FREEMAN: Thank you, Your
3 Honor.

4 THE COURT: All right. I hope we
5 made some progress here today. We'll see.

6 (The hearing was concluded at
7 3:46 P.M.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF DORCHESTER

4 I, Jennifer M. Huggins, Certified
5 Shorthand Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby
7 certify that the witness whose attached in the
8 foregoing deposition was by me duly sworn to
9 testify to the truth, the whole truth, and
10 nothing but the truth in the within-entitled
11 cause; that said deposition was taken at the time
12 and location therein stated; that the testimony
13 of the witness and all objections made at the
14 time of the examination were recorded
15 stenographically by me and were thereafter
16 transcribed by computer-aided transcription; that
17 the foregoing is a full, complete and true record
18 of the testimony of the witness and of all
19 objections made at the time of the examination;
20 and that the witness was given an opportunity to
21 read and correct said deposition and to subscribe
22 the same.

23 Should the signature of the witness
24 not be affixed to the deposition, the witness
25 shall not have availed himself/herself of the
opportunity to sign or the signature has been
waived.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal on September 13, 2021 at
Charleston, Charleston County, South Carolina

19

20

21

22

23

24

25

Jennifer M. Huggins
Court Reporter And Notary Public
My commission expires: 02/07/2022



Deposition of:
**Hearing - Motion for Summary
Judgment**

August 31, 2021

In the Matter of:
Balfour, Beatty v. Library Associates

[Veritext Legal Solutions](#)

800.743.DEPO (3376) | Calendar-carolinas@veritext.com |
www.veritext.com

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 BALFOUR BEATTY CONSTRUCTION, LLC,
4 Plaintiff,

5 vs. CASE NO. 2019-CP-10-01108

6 LIBRARY ASSOCIATES, LLC, et al.,
7 Defendants.

8
9 LIBRARY ASSOCIATES, LLC,
10 Third-Party Plaintiff,

11 vs.

12 LITHKO CONTRACTING, LLC,
GUY M. BEATY, INC., ET AL.,

13
14 Third-Party Defendants.
15

16 HEARING BEFORE: HON. MIKELL SCARBOROUGH

17 DATE: August 31, 2021

18 TIME: 2:10 p.m.

19 LOCATION: Charleston County Courthouse
100 Broad Street
Courtroom 2A
Charleston, SC

20 REPORTED BY: KAREN NELLIUS, RPR
21

22
23
24
25

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR PLAINTIFF

3 BALFOUR BEATTY CONSTRUCTION, LLC:

4 PARKER, POE, ADAMS & BERNSTEIN, LLP

5 BY: THOMAS C. HILDEBRAND, JR.

6 BY: BOBBY BYRD

7 200 Meeting Street

8 Suite 301

9 Charleston, SC 29401

10 843-727-2653

11 Tomhildebrand@parkerpoe.com

12 ATTORNEYS FOR DEFENDANT

13 LIBRARY ASSOCIATES, LLC, ET AL.:

14 BUNDY MCDONALD, LLC

15 BY: BILL BUNDY

16 BY: BRENT MCDONALD

17 1516 Old Trolley Road

18 2nd Floor

19 Summerville, SC 29485

20 843-492-4134

21 Brent@bundymcdonald.com

22 ATTORNEYS FOR THE DEFENDANTS

23 LITHKO CONTRACTING, LLC, OLD NORTH

24 STATE MASONRY, LLC, WATSON ELECTRICAL

25 CONSTRUCTION CO., INC.:

SMITH, TERRY, JOHNSON & WINDLE

BY: DONALD R. TERRY

150 Milestone Way

Suite C

Greenville, SC 29615

704-944-3244

Dterry@smithterrylaw.com

ATTORNEYS FOR THE DEFENDANT

WARCO CONSTRUCTION, INC.:

JOHNSTON, ALLISON & HORD, P.A.

BY: DAVID V. BRENNAN

1065 East Morehead Street

Charlotte, SC 28204

704-332-1181

Dbrennan@jahlaw.com

1 ATTORNEYS FOR THE DEFENDANT
2 TRIMARK FOODCRAFT, LLC:

3 KELLY LAW FIRM
4 BY: R. BRITTON KELLY
5 689 King Street
6 Charleston, SC 29403
7 843-991-4128
8 Britt@kellylawsc.com

9 ATTORNEYS FOR THE DEFENDANT
10 OLD NORTH STATE MASONRY, LLC:

11 SMITH, TERRY, JOHNSON & WINDLE
12 BY: STEELE B. "AL" WINDLE, III
13 150 Milestone Way
14 Suite C
15 Greenville, SC 29615
16 704-944-3244
17 Awindle@smithterrylaw.com

18 ATTORNEYS FOR THE DEFENDANT
19 GULF STREAM CONSTRUCTION COMPANY, INC.:
20 WALKER, GRESSETTE, FREEMAN
21 & LINTON, LLC
22 BY: IAN W. FREEMAN
23 66 Hasell Street
24 Charleston, SC 29401
25 843-727-2200
Freeman@wgflaw.com

ATTORNEYS FOR THE DEFENDANT
PLEASANT PLACES, INC.:

ROBERTSON, HOLLINGSWORTH, MANOS
& RAHN, LLC
BY: MICHAEL E. WRIGHT
550 King Street
Suite 300
Charleston, SC 29403
843-723-6470
Mew@roblaw.net

1 ATTORNEYS FOR THE DEFENDANT
2 LOWCOUNTRY CASE & WILLWORK, INC.:

3 EPTING & RANNIK, LLC
4 BY: JAAN G. RANNIK
5 46A State Street
6 Suite A
7 Charleston, SC 29401
8 843-377-1871
9 Jgr@epting-law.com

10 ATTORNEYS FOR THE DEFENDANT
11 QUANTUM COATINGS, LLC:
12 THURMOND, KIRCHNER & TIMBES, P.A.
13 BY: MICHAEL A. TIMBES
14 15 Middle Atlantic Wharf
15 Suite 101
16 Charleston, SC 29401
17 843-790-0083
18 Michael@tktlawyers.com

19 ATTORNEYS FOR THE DEFENDANT
20 COOK & BOARDMAN, LLC:

21 POYNER SPRUILL, LLP
22 BY: SARAH L. DIFRANCO
23 301 South College Street
24 Suite 2900
25 Charlotte, NC 28202
704-342-5250
Sdifranco@poynerspruill.com

18 ATTORNEYS FOR THE DEFENDANT
19 PREMIUM EXTERIORS, LLC:
20 RAHIMI, HUGHES & PADGETT, LLC
21 BY: ROBERT C. HUGHES, III
22 33 Bull Street
23 Suite 590
24 Savannah, GA 31401
25 912-421-9988
Rhughes@rhp-law.com

ATTORNEYS FOR THE DEFENDANT
PALMETTO AUTOMATIC SPRINKLER
COMPANY, LLC:
MULLEN WYLIE, LLC
BY: ROBERT WYLIE
171 Church Street
Suite 370
Charleston, SC 29401
843-722-3058
Rwylie@mullenwylie.com

(INDEX AT REAR OF TRANSCRIPT)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 THE COURT: Good afternoon, folks.
2 Please have a seat.

3 Is everybody here? I was going to call
4 the roll because I need to make sure everybody is
5 here. It's quickly come to my realization that we
6 are going to have a hard time trying this case in
7 this courtroom. We have got room for lawyers but
8 we don't have room for anybody else. We are going
9 to cover that towards the end of our conversation
10 today, okay, not at the beginning, but I just want
11 y'all to know I'm thinking about that as well.

12 So I had this thing set as a status
13 pretrial and also summary judgment motions, and
14 I've been preparing for that for today. I thought
15 I would take up summary judgment motions to start
16 with and see what we can do about moving people out
17 of here. And there have been a flurry of filings,
18 some of which I've got and some of which I have
19 not. So as a matter of fact, as my daughter
20 describes it, the slow spinning ball of death is
21 going on right now, trying to open up a document
22 from the electronic filings in this case.

23 Mr. Timbes, I saw you're up. Let me
24 hear from you, sir.

25 MR. TIMBES: Yes, sir. If I may very

1 briefly, we have a settlement agreement to put on
2 the record.

3 THE COURT: Okay.

4 MR. TIMBES: Your Honor, Library
5 Associates and Quantum Coatings, my client, have
6 reached a settlement agreement that fully resolves
7 all claims between them.

8 THE COURT: Okay.

9 MR. TIMBES: So Library Associates nor
10 Quantum is going to have any claims against each
11 other going forward. This agreement does not
12 affect any claims that either of those parties
13 might have against others in this case.

14 THE COURT: Okay.

15 MR. TIMBES: The salient terms, Judge,
16 Library Associates agrees to pay the sum of \$50,000
17 to Quantum. Quantum and Library Associates agree
18 that this payment is made in relation to extra work
19 performed by Quantum in the first floor private
20 dining area of the hotel. This is going to be
21 memorialized in change orders number 26 and 32
22 issued by Balfour to Quantum Coatings.

23 As part of the settlement, Quantum is
24 going to record a satisfaction of the mechanic's
25 lien in this case, dismiss its lis pendens, and

1 Quantum and Library Associates have agreed they
2 each will be responsible for their own attorney's
3 fees.

4 THE COURT: All right.

5 MR. TIMBES: Thank you, Judge.
6 Appreciate your indulgence.

7 THE COURT: Yes, sir.

8 Any other of those that we need to
9 cover before we get started?

10 MR. FREEMAN: Your Honor, I'm also
11 trying to thin out the courtroom for trial. Ian
12 Freeman here for Gulf Stream Construction. And
13 Gulf Stream Construction has reached a settlement
14 with Balfour Beatty. Balfour Beatty will pay Gulf
15 Stream a one-time payment of \$46,000. The parties
16 will mutually settle and release the claims between
17 them.

18 We have also reached a settlement with
19 Library Associates, in that, based on Gulf -- based
20 on Balfour Beatty paying Gulf Stream that money,
21 Gulf Stream is dropping and has already dropped all
22 of its claims against Library Associates and
23 Library Associates is doing the same. We have
24 already filed a cancelation of lis pendens, a
25 satisfaction of the mechanic's lien, and although

1 Mr. Bundy and I submitted and filed a stipulation
2 of dismissal, to be on the safe side I've also
3 submitted to you today a joint motion and order of
4 dismissal of claims between Gulf Stream and Library
5 Associates. It's in your inbox. I have a paper
6 copy here, if you would like. Or it was filed with
7 the court today.

8 THE COURT: Have you seen that one?

9 All right. We have got it. Apparently
10 we got that one.

11 MR. FREEMAN: Great. As soon as
12 Balfour has effected settlement where we have
13 signed a settlement agreement, we'll get an order
14 of dismissal of the claims between Balfour and Gulf
15 Stream as well.

16 THE COURT: So that would satisfy all
17 issues involving Gulf Stream in this case, correct?

18 MR. FREEMAN: We are out and will not
19 be appearing for trial.

20 THE COURT: Got it.

21 Mr. Hildebrand?

22 MR. HILDEBRAND: That's correct, Your
23 Honor. There are a few additional details that are
24 not on the record, but what he said was basically
25 right.

1 THE COURT: Okay. Very good.

2 Yes, sir.

3 MR. HUGHES: Your Honor, Robert Hughes
4 on behalf of Premier Exteriors. I want to announce
5 that we have reached a resolution of Premiers'
6 claims against Library and Library's claims against
7 Premier. Yesterday I filed a joint -- or we filed
8 a joint motion to dismiss our respective claims
9 against each other. So that's currently pending
10 before you.

11 THE COURT: Okay.

12 MR. HUGHES: So at this time we are
13 simply proceeding against Balfour Beatty. Lien
14 cancelation is being filed today.

15 THE COURT: Got it.

16 MR. HUGHES: And the lis pendens is
17 being canceled as well.

18 THE COURT: Right. Retain the claims
19 against Balfour which are pending for today,
20 correct?

21 MR. HUGHES: That's correct, Your
22 Honor.

23 THE COURT: Okay. Mr. Hughes, I'll get
24 to you in due order.

25 Anybody else?

1 MR. WRIGHT: Your Honor, Michael
2 Wright. I have Pleasant Places. We have reached a
3 resolution with Balfour that will -- a settlement
4 agreement. We will be submitting a dismissal with
5 prejudice once that settlement agreement is signed.
6 We have also reached a resolution with Library
7 Associates where essentially the parties will agree
8 to dismiss with prejudice the claims against each
9 other, bear their own costs, stipulation of a
10 release of lien will be filed, as well as
11 cancelation of lis pendens.

12 THE COURT: All right. Again, that's
13 as to both entities, Library and Balfour, correct?

14 MR. WRIGHT: Correct, Your Honor.

15 THE COURT: Which is --

16 MR. WRIGHT: We will not be at trial.

17 THE COURT: That's with Mr. Freeman.

18 Let me go back and look at my list
19 here. So Pleasant Places is fully settled?

20 MR. WRIGHT: Yes, Your Honor.

21 THE COURT: As is Gulf Stream.

22 MR. FREEMAN: Correct, Your Honor.

23 THE COURT: Let me ask while I've got
24 people here. I was doing that in preparation for
25 today. Is Palmetto Sprinkler still involved?

1 MR. WYLIE: Yes, we are, Your honor.
2 Robert Wylie.

3 THE COURT: Mr. Wylie. Okay. Y'all
4 are still in? Just wanted to make sure.

5 MR. WYLIE: Yes, sir.

6 THE COURT: Johnny Linton was here last
7 time with Bernard MMC. They have settled as to
8 Library. They are totally out, though, right?

9 MR. MCDONALD: Right.

10 THE COURT: I just wanted to make sure
11 of that.

12 How about Guy Beaty, Inc., anybody here
13 for them? They get triggered later? Is that what
14 they do?

15 MR. MCDONALD: Your Honor, I actually
16 just got an e-mail from their counsel with their
17 proposed stipulation of dismissal. I just haven't
18 had a chance to respond back to them. That was a
19 third-tier subcontractor to John's client. So they
20 have been out for quite a while. They just haven't
21 submitted their paperwork.

22 THE COURT: They should be out?

23 MR. MCDONALD: Yes, sir.

24 THE COURT: I'm just trying to get
25 numbers.

1 Warco is here today with Mr. Brennan?

2 MR. BRENNAN: Yes, sir.

3 THE COURT: I'll get to you today,
4 Mr. Brennan.

5 How about First Choice Glass, I think
6 they have been out, too, for a while, have they
7 not?

8 MR. MCDONALD: Yes, Your Honor. They
9 have actually filed a stipulation of dismissal and
10 canceled their lien.

11 THE COURT: Precision Walls, Joey
12 Floyd, I haven't seen them in a while. Are they
13 gone?

14 MR. MCDONALD: They canceled their lien
15 and their stipulation of dismissal.

16 THE COURT: Very good.

17 Mr. Rannik, I'm going to take your
18 motion up first. Lowcountry Millwork.

19 Mr. Kelly, Brit Kelly, I saw Brit on
20 the phone.

21 Mr. Kelly, you've got two separate
22 clients, Trimark and David Kelly, or are they one
23 and the same?

24 MR. KELLY: I did have two. Trimark
25 has dismissed its claims. Library dismissed claims

1 -- he had claims. Whatever existed has been
2 dismissed, and they have been relieved from
3 participation in the case. Everything has been
4 canceled. David Allen Company is different. David
5 Allen Company has claims pending, foreclosed, and
6 mechanic's lien.

7 THE COURT: Okay.

8 MR. KELLY: That's all -- I believe
9 that's all before the court.

10 THE COURT: David Allen is out?
11 Trimark is out?

12 MR. KELLY: Yes, Your Honor.

13 THE COURT: Got it. Thank you.

14 Ms. DiFranco here for Cook & Boardman?

15 MS. DIFRANCO: Yes, Your Honor.

16 THE COURT: All right. I'll get to you
17 shortly.

18 Mr. Koontz, did you get here? Faton
19 and Company, F-A-T-O-N? Forton.

20 MR. MCDONALD: Your Honor, just for the
21 Court's benefit, Mr. Koontz represented Forton
22 Company. Forton Company is no longer in the
23 action.

24 THE COURT: Okay.

25 MR. MCDONALD: However, this wrinkle

1 was discovered by our office somewhat recently. He
2 also represents an outfit called Flooring Services,
3 which was apparently consolidated into this case.
4 The only parties to that lawsuit are Flooring
5 Services and Balfour Beatty. We weren't aware of
6 the existence of it because the order of
7 consolidation I believe was filed in the other --
8 in the Flooring Services/Balfour Beatty case rather
9 than 1108. So where that stands I don't know, but
10 you've got everything I know about it.

11 THE COURT: Well, his office called
12 about 20 till wanting to know if there was a
13 hearing today, and we told him yes. So he may bop
14 in here.

15 Premier Exteriors, Robert Hughes is
16 here. That would be moving forward on the summary
17 judgment as to Balfour, correct?

18 MR. MCDONALD: Correct, Your Honor.

19 THE COURT: Got it. Ross Sapell
20 (phonetic) and Robert Thomas Design, I haven't seen
21 Ross in a long time. Are they out of this?

22 MR. MCDONALD: Robert Thomas Design is
23 out as well.

24 THE COURT: Good. I think that was
25 everybody. Has everybody been called on? Who have

1 I left off?

2 MR. TERRY: Your Honor, Don Terry, with
3 Watson Electrical Construction, Lithko Contracting,
4 Old North State Masonry.

5 THE COURT: Right. Don, thank you. I
6 don't know how I could have possibly missed you,
7 but anyway. You've got three of them. Good to go.

8 All right. So with that, then,
9 Mr. Bundy is going to rise.

10 Mr. Bundy, go ahead and tell me where
11 you are. Obtain the summary judgment --

12 MR. MCDONALD: Before we start the
13 summary judgment portion of this hearing today, I
14 wanted to bring to your attention that while the
15 subcontractor might be entitled to a summary
16 judgment against the general contractor, that does
17 not adjudicate whether or not that number, whatever
18 it is, is a cost of the work as against Library
19 Associates. Those are separate and entirely
20 different issues. They may end up being the same
21 number, but in some cases they are not going to be
22 the same number. So by participating or objecting
23 or whatever I'm doing today or next week or the
24 week after next when the subcontractors begin their
25 claim, I want to make sure that Your Honor

1 understands that our position is that that does not
2 establish the cost of the work. It merely
3 establishes the bona fides between those two
4 parties.

5 THE COURT: I'm with you. That's the
6 main reason why I set these up for breach of
7 contract claims as opposed to the lien claims.
8 Okay? Just so we're clear on that.

9 Anything before we start?

10 Mr. Byrd is still around.

11 I'm going to start. Mr. Rannik, why
12 don't you come on up. I think the first time we
13 met you tried to make this motion. Come on up.
14 You might do a little better today. You might be
15 surprised.

16 MR. RANNIK: All right. May it please
17 the court.

18 Judge, this is a bit of an unusual one
19 in my experience, in that no one disputes that my
20 client is entitled to be paid in full. Not
21 Balfour. Not the owner. Not the architect. They
22 have all testified to that in their depositions.
23 Yet here we are. Lowcountry is a finishing trade,
24 so we have performed the millwork at the Hotel
25 Bennett, and it's undisputed that the work was

1 completed and accepted by the owner and the
2 architect. It's undisputed that there was no delay
3 to the project caused by Lowcountry. It's
4 undisputed that there are no defects or problems of
5 any kind with Lowcountry's work and that their work
6 was of the highest quality. And, Judge, it really
7 was. The finishings are beautiful. I'm sure
8 you've been in the hotel.

9 I filed a memo yesterday with the court
10 and I cited all the relevant deposition testimony
11 that establishes what I've just said.

12 THE COURT: It was very good. Short,
13 concise, interesting reading. Thank you,
14 Mr. Rannik.

15 MR. RANNIK: I do my best, Judge.

16 And so there is no dispute as to any
17 material fact as to Lowcountry, and they are
18 entitled to summary judgment.

19 Now, Balfour has advanced two
20 arguments. One is that Library might try and prove
21 its setoff, something that Lowcountry did entitles
22 Library to a setoff in the amount that Balfour
23 would seek from them. Judge, first a couple
24 things. There were no problems with Lowcountry's
25 work. Library has acknowledged that. The 30(b)(6)

1 deponent said as much. So I don't anticipate that
2 happening. I would imagine Balfour would know
3 better than Library if there were any problems with
4 Lowcountry's work, as they were the general
5 contractor.

6 The second issue that Balfour has
7 raised is an e-mail from February of 2018, and in
8 that e-mail apparently there is an allusion to
9 Lowcountry having manpower issues. Now, Judge,
10 that's not the question. That's not material
11 because the question is did any issues that arose
12 cause any delay to the completion of the project or
13 lead to any construction defects? The answer is
14 they didn't. The question isn't were there bumps
15 along the way. It's a construction project. There
16 are always bumps along the way. That's not a
17 material issue of fact.

18 So with that, Your Honor, I'll sit down
19 and just say I believe Lowcountry is entitled to
20 summary judgment.

21 THE COURT: Do you recall if you have
22 the date of y'all's agreement and then the date
23 y'all commenced work? Do you have that
24 information?

25 MR. RANNIK: Off the top of my head,

1 there were two different agreements: the guest
2 floors and for the common areas. And there was
3 about nine months difference between those contract
4 dates. I believe the first was in late 2015, I
5 want to say October. I believe the second was in
6 September of 2016. Commencement of work actually
7 began around January, February of 2018.

8 THE COURT: Okay. The amount of
9 y'all's claim is?

10 MR. RANNIK: \$369,000. I'll get you
11 the exact number, Judge. \$369,333.25.

12 THE JUDGE: Okay. All work performed,
13 then? All billed pursuant to the contract? Any
14 change orders in there? Any additional work that
15 was done?

16 MR. RANNIK: Yes, Judge. 87,000
17 represents change orders that were submitted to
18 Balfour but that Balfour never formally passed on
19 to the owner.

20 THE JUDGE: So would that be -- my
21 question there would be would that be unapproved
22 work by the owner at this point in time? You say
23 it was not passed on?

24 MR. RANNIK: It was not passed on. It
25 was not as a matter of administrative paperwork.

1 No, it was not approved by the owner, but it's been
2 accepted by the owner. And it was part -- I mean,
3 they were asked to do it. It was not extraneous or
4 anything of that nature.

5 THE COURT: Okay. But the request was
6 by Balfour?

7 MR. RANNIK: Yes, sir.

8 THE COURT: Right?

9 MR. RANNIK: Correct.

10 THE COURT: All right. And that's
11 included in the 369 figure?

12 MR. RANNIK: It is, Judge. Also about
13 \$150,000 in retainage in there.

14 THE COURT: Okay. All right. Very
15 good.

16 MR. RANNIK: Thank you.

17 THE COURT: Mr. Hildebrand? Mr. Byrd?
18 Any response?

19 MR. BYRD: Bobby Byrd, Your Honor, here
20 on behalf of Balfour Beatty.

21 Your Honor, I'm not unsympathetic to
22 Mr. Rannik's arguments, but it just is not a case
23 where summary judgment would be appropriate.

24 THE COURT: Let me ask this question.
25 Have y'all provided any type affidavit or anything

1 in response to their request for payment?

2 MR. BYRD: We have submitted a copy of
3 the report from Library Associates' own scheduling
4 expert that specifically mentions Lowcountry Case &
5 Millwork in its report. And our concern here is
6 that Library Associates because of that report has
7 indicated to us that it tends to introduce evidence
8 presumably through that expert that it could argue
9 that there is some delay or defect that is
10 attributable to this particular subcontractor. I
11 don't know what's going to happen. That's one of
12 the problems that we have with the posture of the
13 case in trying the subcontractor claims first. I
14 know it's already been determined sometime ago, but
15 we don't know what --

16 THE COURT: That was certainly my
17 choice, but I can say that becomes -- I've got a
18 practical problem with the space, and that's why I
19 started with that today, but it sounds like things
20 are starting to float. I'm interested in hearing
21 what your substantive meritorious argument in
22 opposition to their summary judgment motion is.

23 MR. BYRD: The argument is that it's
24 premature at this time. And only because we don't
25 know until we try the case with Library Associates

1 what exactly is going to come out during that
2 trial. They obviously have accused Balfour Beatty
3 of delay, manpower issues. Library has -- their
4 own expert has mentioned by name Lowcountry Case &
5 Millwork in its report. We have cited that in the
6 response to the Court. I have an extra copy of the
7 -- of his report, if the Court would like it. But
8 he does talk about this in his report, and our
9 concern is that as the Court is aware of our
10 argument, we have -- in our subcontract we have a
11 provision, Article 5C, which is a contractual
12 setoff provision that if it is proven or
13 established to this Court's satisfaction at trial
14 with Library Associates that there are delays or
15 damages that are attributable to the
16 subcontractor's work in this case, then there is a
17 passthrough, there is a setoff, that Library
18 Associates -- I mean, that Balfour Beatty is
19 entitled to under a subcontract. We don't know
20 what is going to come during the middle of the
21 trial. We have no idea. And it's our concern that
22 at this point that there is -- it's simply
23 premature to grant summary judgment simply because
24 there is no controverted testimony that has been
25 brought forth by Balfour Beatty.

1 Our position has never been that our
2 subcontractors or that Balfour Beatty is
3 responsible for these delays. Our position all
4 along has been that any delays and damages that are
5 flowing therefrom are the responsibility of the
6 owner and the architect in this. So it's a
7 fundamental dispute as to what the cause of the
8 delay in completion of this project is. We don't
9 know until we get into the trial with Library
10 Associates what is going to come out in the form of
11 testimony, in the form of findings by this Court.
12 And that would be our concern, is that Mr. Boe in
13 his report does make specific reference to
14 Lowcountry, and we believe that if the Court were
15 to go ahead and grant summary judgment on the
16 contract claim, that -- it's not only premature.
17 It's also unfair. Because if it comes out during
18 the trial of the main case that there is any sort
19 of damages attributable to Lowcountry, they're
20 already out of this case, and we have got an issue
21 of what do we do at that point to resurrect that
22 claim.

23 THE COURT: Okay.

24 MR. BYRD: That's our concern, Your
25 Honor.

1 THE COURT: In response to my question
2 of Mr. Rannik, I asked him what additional work was
3 done. He said roughly \$87,000 worth of change
4 orders. Were those approved by Balfour Beatty and
5 then not passed along to the owner, which is what
6 Mr. Rannik indicated, or do you have --

7 MR. BYRD: Your Honor, my understanding
8 was that all of those were passed along to the
9 owner, but I don't know. That was my understanding
10 of it.

11 THE COURT: Let me hear from Mr. Bundy.

12 MR. BUNDY: Well, it's bad enough that
13 in South Carolina we have the scintilla rule to
14 prevent summary judgment. Okay? But now we have
15 got the I'm not prepared rule. I'm not prepared
16 for trial after two years? Two weeks before trial
17 they don't know what's going to happen? The reason
18 they don't know what's going to happen is because
19 they haven't done any discovery and they haven't
20 done their job and they haven't defended the claims
21 like they were supposed to.

22 Furthermore, at some point in time in
23 this case, these people have to put evidence in the
24 record, evidence, actual evidentiary rules,
25 objection, sustained, overruled, all those things

1 we supposedly learned in law school. A second-hand
2 statement in an expert's report that they did not
3 even hire is not evidence. It's inadmissible
4 hearsay. They didn't take his deposition and ask
5 him that question. They are simply not ready for
6 trial, but they better be because it starts in two
7 weeks -- less than two weeks.

8 It would be, in my opinion, an
9 abomination for you to make these people come down
10 here again for the third time and spend weeks and
11 weeks while these gentlemen try to figure out
12 what's going on around them. What's going on
13 around them is an avalanche is getting ready to
14 start.

15 Now, I want to read to you out of their
16 interrogatory -- this is part of their brief. The
17 following quote is from Boe's report. Now, this is
18 a defense to summary judgment. Boe is my expert.
19 E-mails from Balfour identify manpower issues with
20 Lowcountry Case & Millwork in the first quarter.
21 Now, this is Boe reciting their e-mails. Boe
22 didn't write them. I just hired him to look into
23 it. All Boe says is it's Mr. Spano who works for
24 them. Presumably they know where he is.
25 Presumably he could have filed an affidavit. Had

1 no idea. Cites a lack of material and manpower
2 from LCCM in February. And that one quote, after
3 two years, is supposed to defeat a motion for
4 summary judgment for three hundred some odd
5 thousand dollars? I think not, Your Honor.

6 THE COURT: Okay.

7 MR. BYRD: Briefly, Your Honor, that is
8 not the sum total of our argument today. Also, in
9 addition, we have served a specific request to
10 admit on the owner requesting them to admit that
11 this particular subcontractor, Lowcountry Case &
12 Millwork, did not contribute in any way to the
13 claim or damages that Library Associates is seeking
14 in this case, and they denied that. It's -- I
15 think that also supports this.

16 Again, if the issue is, are we at a
17 point yet where we know exactly what the testimony
18 is? And until the case is tried, I don't know how
19 we know that.

20 THE COURT: All right.

21 MR. BYRD: It's not a matter of lack of
22 preparation. It's just a matter of things happen
23 during cases.

24 THE COURT: Thank you.

25 Mr. Rannik, anything further?

1 MR. RANNIK: Very brief, if I may, Your
2 Honor.

3 THE COURT: Sure.

4 MR. RANNIK: Judge, with regard to the
5 interrogatory response by Library, we have
6 Library's 30(b)(6) designee saying no, there are no
7 issues or any delays or problems with Lowcountry's
8 work.

9 THE COURT: You put that right in your
10 memo, did you not?

11 MR. RANNIK: Yes, we did, Judge.

12 The other thing, Mr. Bundy, far more
13 articulately that I could, made my hearsay argument.
14 And, in fact, Judge, the person who wrote that
15 particular e-mail, Tim Spano, we also included his
16 testimony in our brief, and he says in his
17 deposition that there were no delays caused in any
18 way by Lowcountry Case & Millwork. So that should
19 be sufficient to refute that particular line, and I
20 don't think that's a reason to deny summary
21 judgment, respectfully, Judge.

22 THE COURT: Very good.

23 MR. RANNIK: Thank you very much,
24 Judge.

25 THE COURT: All right. I'm going to

1 grant the motion. Okay? I'll award the sum of
2 \$369,333.25.

3 MR. RANNIK: Thank you, Judge.

4 THE COURT: I'll ask you to prepare an
5 order along those lines. All right?

6 MR. RANNIK: Yes, sir.

7 THE COURT: Thank you, Mr. Rannik.

8 All right. Next up, I have Watson's
9 motion for summary judgment and alternative motion
10 for partial summary judgment.

11 Mr. Terry? Watson Electric.

12 MR. TERRY: Good morning, Your Honor.

13 THE COURT: Good afternoon, actually.

14 MR. TERRY: I'm sorry.

15 THE COURT: Before we start, Mr. Love,
16 you came in -- you were here for Mr. Koontz, were
17 you not?

18 MR. LOVE: That's correct, Your Honor.

19 THE COURT: Your client -- I'm looking
20 to verify.

21 MR. LOVE: Flooring Services.

22 THE COURT: Flooring Services. Well,
23 we had an issue with which case it was supposed to
24 be in.

25 What about Forton, do you know anything

1 about them at all?

2 MR. LOVE: No, Your Honor.

3 THE COURT: All right. Based on our
4 conversation yesterday, I was thinking maybe not.
5 I just wanted to acknowledge your presence.

6 MR. LOVE: It's not for lack of trying.

7 THE COURT: I understand. I wanted to
8 acknowledge that you were here on behalf of them.
9 And Flooring Services, we are going to have to
10 scratch our head on that one a little bit. Just
11 bear with me a little bit.

12 I'm sorry, Mr. Terry. Go ahead.

13 MR. TERRY: May it please the court.
14 Your Honor, I'm Don Terry, here on behalf of Watson
15 Electrical Construction on Watson's motion for
16 summary judgment against Balfour Beatty.

17 Your Honor, this, as you are aware, is
18 related to the construction of the Hotel Bennett
19 project. Watson Electrical Construction was the
20 electrical contractor with the project under
21 contract with Balfour Beatty, dated March 20th,
22 2015. Balfour Beatty breached the contract against
23 Watson by failing to make payment. Balfour
24 admitted in its deposition that it failed to make
25 payment, and in the deposition of its senior

1 project manager, Mr. Tim Spano, testified that the
2 only reason it did not pay Watson was because
3 Library Associates did not pay Balfour.

4 Balfour's 30(b)(6) testimony is that
5 Library Associates was the cause of all delays on
6 this project. In my motion, I included portions of
7 the deposition transcript. I'm happy to hand that
8 up if it's something you don't already have.

9 Additionally, in Library Associates'
10 30(b)(6) deposition, Library Associates says that
11 they are not aware of any critical path delays to
12 the project caused by Watson, and also Mr. Spano,
13 senior project manager for Balfour Beatty's
14 deposition, he says he is not aware of any critical
15 path project delays caused by Watson.

16 Neither Balfour nor Library Associates
17 knows of any defective work by Watson. Library
18 Associates similarly in its 30(b)(6) deposition by
19 Ms. Kim Brown says she is not aware of any reason
20 why Watson should not be paid for the work that it
21 performed on this project.

22 Watson has submitted with its lien,
23 which is also obviously an affidavit, a verified
24 statement of account seeking the amount that they
25 owed, \$1,859,359. Watson seeks that amount, plus

1 attorney's fees and costs. Your Honor, I'm happy
2 to provide an affidavit on attorney's fees and
3 costs.

4 The defenses that Balfour made in its
5 memorandum -- I would like to go ahead and touch on
6 those.

7 THE COURT: Sure.

8 MR. TERRY: One, Your Honor, Balfour
9 Beatty did not provide any affidavit. There is
10 nothing factually presented in support in their
11 opposition to this motion. They didn't provide any
12 deposition transcript. They didn't provide any
13 factual evidence for your consideration in
14 opposition to Watson's motion for summary judgment.
15 And as I would point out to you, the only thing
16 they offer is the opinion testimony of Library
17 Associates' prospective expert. That person,
18 Mr. Boe, has not even yet been accepted as an
19 expert before this court. He is a gentleman who
20 may opine on something that he has seen in
21 documents, but he certainly has not provided any
22 factual evidence at this time.

23 For those reasons, Your Honor, Watson
24 seeks summary judgment against Balfour in the
25 amount of \$1,859,359. Now, Your Honor, to the

1 extent you are inclined to only award a partial
2 summary judgment, I would prefer to reserve my
3 argument on that until after the response from
4 Balfour.

5 THE COURT: Okay. I'm going to jump on
6 it as we go. I went through your memoranda. You
7 had actually divided your costs into different
8 categories.

9 MR. TERRY: Yes, sir.

10 THE COURT: Maybe that's where we're
11 going. \$600,000 under the breach of contract.
12 \$62,000 and change for some change orders that were
13 issued.

14 MR. TERRY: Your Honor, the first
15 number -- I'll get back to my motion. I apologize.

16 THE COURT: Sure.

17 MR. TERRY: The first number,
18 \$597,546.28, is retainage in the final billing on
19 the project for items that are not included in the
20 signed change orders. Then there is \$62,091.71 in
21 change orders -- that change request Watson sent to
22 Balfour. Balfour incorporated those into change
23 orders, sent them back to Watson. Watson signed
24 them. I don't know what happened with them after
25 that. From our perspective they are approved and

1 they are not disputed at all.

2 THE COURT: Proven but not yet paid.

3 MR. TERRY: That's right.

4 There are \$262,033.40 in change orders
5 that Watson submitted and we believe were also
6 submitted to the owner, Your Honor, but we
7 sincerely don't know what happened to those change
8 order requests. They were all for work performed
9 by Watson, and there has been no evidence in the
10 record that shows that that work was not performed,
11 and there is no evidence in the record that
12 Watson's work was not accepted -- well, let me say
13 it this way. Watson's work was accepted by both
14 Balfour and the owner.

15 THE COURT: Okay.

16 MR. TERRY: The remainder of the amount
17 is -- there was some work on the project for
18 prefabrication that was originally in Watson's
19 contract. It was changed to conventional.
20 Basically there were rooms in this hotel where
21 Watson was supposed to be able to prefabricate
22 certain portions of their work. The rooms changed,
23 and so Watson wasn't able to prefabricate its work.
24 So it's seeking \$90,487.29 for that.

25 In claims submitted to Balfour Beatty

1 that Balfour Beatty did, in fact, submit to the
2 owner, there is another \$69,232.52 for material
3 escalation; \$78,211.78 for labor premium,
4 \$45,906.07 for overtime; \$8,087.17 for temporary
5 labor overtime, overtime on temporary labor that
6 was utilized; extended job cost overhead of
7 \$272,266.51; and then what we refer to as
8 cumulative impact of \$373,497.28. I think I
9 skipped one, Your Honor. I may have said this.
10 Temporary labor premium of \$78,211.78.

11 All of these amounts were submitted --
12 actually, at one point higher than these amounts
13 were submitted to Balfour Beatty in Watson's
14 claims, and those amounts were -- that higher
15 amount was actually submitted to Library Associates
16 as part of Balfour Beatty's claims.

17 THE COURT: Was all that included in
18 the 937,687.61 figure for the items that were
19 refused to issue a change order?

20 MR. TERRY: Yes, Your Honor.

21 THE COURT: All that was included
22 within that?

23 MR. TERRY: We are not confused as to
24 the change order. They are items that were
25 submitted, but no change order has been submitted.

1 They haven't been rejected, either.

2 THE COURT: Right.

3 MR. TERRY: It's not been dealt with.

4 THE COURT: That 937 is just sort of
5 hanging out there, that figure?

6 MR. TERRY: Yes, Your Honor.

7 THE COURT: The numbers you just
8 incorporated were part of the 937, were they not?

9 MR. TERRY: Yes, Your Honor.

10 THE COURT: They just hadn't been dealt
11 with? The work's been done?

12 MR. TERRY: The work's all been done,
13 Your Honor.

14 THE COURT: Okay. Very good. Thanks,
15 Mr. Terry.

16 MR. BUNDY: Your Honor, if I may
17 interrupt?

18 THE COURT: Sure.

19 MR. BUNDY: I feel obligated as an
20 officer of the court to notify you that what is
21 being done before you is a fraud. It's the
22 perpetration of a fraud upon this court. I have
23 provided you with a notice of a Mary Carter
24 agreement, okay, in that agreement what Watson and
25 Balfour Beatty agreed to do with Old North State

1 and Lithko. Okay?

2 Now, the first thing you are going to
3 hear is Watson got out of this last week, but they
4 signed it two years ago, and they have lived under
5 this agreement for two years. What the agreement
6 says is, one, that Watson is not even going to
7 bring these claims against Balfour Beatty. But
8 they did anyway. That's between them. That's none
9 of my business. They decided not to comply with
10 their own contract. But I guess if you could give
11 Balfour Beatty credit, they at least lived up to
12 their agreement, which was they didn't make claims
13 against Watson.

14 Now, what they have done, among other
15 things, is agreed not to conform to the South
16 Carolina Rules of Civil Procedure because
17 counterclaims are compulsory. They don't get to
18 decide between the two of them which rules of court
19 they're going to abide by. As far as you know or
20 knew until I stood up, they didn't have any
21 counterclaims because they didn't bring them. They
22 do.

23 So, Your Honor, if you don't understand
24 what a Mary Carter agreement is, I'll be glad to
25 explain it to you. The reason this is a Mary

1 Carter agreement is because the passthrough
2 agreement that they allegedly have is itself a
3 fraud. A passthrough agreement has to have a
4 liquidation clause. The United States Supreme
5 Court in Spear in as late as 1931, and every court
6 since then, has said definitely that in a contract
7 case a general contractor cannot bring a claim
8 against an owner that he passes through by the
9 subcontractor unless he acknowledges the debt to
10 the subcontractor. You can't say I don't owe you
11 any money, but I'm going go forward and pass it on
12 to the owner. And we had said that in the
13 agreement, after this case is over, they are going
14 to get in a room and they are going to light up
15 cigars and they are going to divide the spoils.
16 Because if you give him money and his client money,
17 they are going to go back and divide it up between
18 them, which is a fraud.

19 This is a -- they have a fiduciary duty
20 to look after my client's money. Balfour Beatty
21 did. And we are going to have more evidence at
22 trial about us paying Balfour Beatty, Balfour
23 Beatty not paying subcontractors. We have got
24 change orders that were not disclosed. They have a
25 separate set of books in this case. It would be

1 highly inappropriate and definitely prejudicial to
2 my client to allow this fraud to proceed. I think
3 Your Honor needs to look into it and bring some
4 witnesses in here and you -- well, you, you do what
5 you want; you are the judge. But I believe you
6 need to look into this. This is a very, very
7 serious matter. Very serious.

8 This whole notion -- Watson stands up
9 here and says we have got \$230,000 in lost
10 productivity. They haven't made a single attempt
11 to defend any of this. None of it. It is all BS.
12 And when it comes down to it, if they got a witness
13 they can bring in here -- which is another problem
14 we have with them, because they won't produce their
15 expert witnesses.

16 Watson has been ordered by you twice in
17 this courtroom to produce notices of delay. As we
18 sit here today, they have not done it. They are in
19 contempt of your orders. They refuse to comply
20 with discovery. They enter into fraudulent
21 agreements. And they come down here to ask for
22 money, and this Balfour Beatty contractor doesn't
23 even defend it. Then they are going to come in
24 here and pile it up and then roll it into the
25 construction case, and say, well, the judge said

1 you owe us a million two. I tell you you need to
2 do an investigation into this and not let it
3 proceed.

4 THE COURT: All right, Mr. Bundy.

5 MR. BUNDY: Thank you, Your Honor.

6 MR. TERRY: Do I respond to him or do
7 you want to let them respond first?

8 THE COURT: Go ahead, Mr. Terry.

9 MR. TERRY: Your Honor, a Mary Carter
10 agreement is an agreement wherein, as best I
11 understand -- I'm not sure I'm going to explain
12 this as well as I ought to. But when two
13 defendants may be jointly and severally liable, the
14 plaintiff settles with one and keeps the second as
15 a fraud upon the court and agrees not to execute
16 against the plaintiff or the defendant with which
17 it settled. That has not happened in this case,
18 Your Honor. The joint defense prosecution, even if
19 it were, even if it is an enforceable agreement,
20 allows anyone to withdraw at anytime. Watson
21 withdrew from the joint defense agreement on I
22 believe it's the 20th but before filing this
23 motion. There has been no fraud on this court.
24 Watson is pursuing its claims against Balfour
25 Beatty. Watson has not made a motion under its

1 lien causes of action. It simply made a motion
2 under its cause of action against Balfour Beatty
3 and seeks a judgment against Balfour Beatty.

4 Mr. Bundy pointed out at the beginning
5 of this hearing that whatever happens with these
6 claims against Balfour Beatty is not -- I'm not
7 necessarily sure I'm going to agree with his legal
8 interpretation, but it's not a cost of the work
9 that you should apply to the lien claim. For the
10 sake of argument, I'm happy to agree with him on
11 that situation. Again, there is no fraud on the
12 court. There is no backroom deal. It's not going
13 to happen.

14 THE COURT: What's the genesis of the
15 373,497? What's the basis for that lost time,
16 whatever the term of art you used for it? How do
17 you come up with that number?

18 MR. TERRY: Your Honor, that number, as
19 it relates to the claim against Balfour Beatty, is
20 a calculation of the cost of labor that Watson
21 expended on this project that was additional labor
22 caused by the mismanagement of this project.

23 THE COURT: Okay.

24 MR. TERRY: The project lasted longer
25 than anticipated, by over 500 days. The project

1 was haphazard at best at the way the subcontractors
2 performed the work. And just like you, if you
3 start a task and you stop that task and go do
4 something else, when you come back to do the task
5 you are going to be less productive. The same
6 thing is the situation we have on this project as
7 it relates to the claims against Balfour Beatty.

8 THE COURT: All right.

9 MR. BUNDY: Where is the evidence of
10 any of this? This is just simply a statement in a
11 piece of paper.

12 THE COURT: I understand. I
13 understand.

14 MR. TERRY: Your Honor, it's a sworn
15 affidavit that's before the court. There is no
16 affidavit to overcome that at this point. There is
17 no factual evidence.

18 MR. BUNDY: They have to lay the
19 foundation. In North Carolina you can do all this
20 crazy stuff. You can't do this here. You can go
21 in there with an affidavit and try it. We don't
22 have that here. The law in South Carolina is
23 clear. Your Honor is fully aware of --

24 THE COURT: Admissible evidence.

25 MR. BUNDY: Exactly. The fact they

1 filed a statement for a mechanic's lien, that's not
2 an affidavit of anything. That's just a procedural
3 device in order to be able to file the lien. I
4 mean, none of this is real. This is unreal. This
5 is not how you do it.

6 MR. TERRY: Your Honor, the verified
7 statement of account is a notarized sworn
8 statement.

9 THE COURT: I'm with you.
10 Mr. Byrd? Mr. Hildebrand? Any
11 response?

12 MR. BYRD: Your Honor, again, we have
13 cited and attached copies of the report. We cited
14 to it extensively that Watson was identified
15 throughout the report on numerous issues. We
16 believe that the expert report which was -- he was
17 deposed. He acknowledged this was his report, and
18 this is -- of course we all know that experts can
19 rely on non-admissible evidence, hearsay, whatever.

20 THE COURT: Right.

21 MR. BYRD: And here we have got
22 numerous references in his report to Watson, and a
23 lengthy discussion starting with page 19 and page
24 20 of his report talking about the problems with
25 Watson and the manpower issues that he determined

1 were a significant problem on this project, and he
2 -- I assume he is going to show up at trial and lay
3 blame on that. Again, as Mr. Bundy correctly
4 pointed out, it's a mere scintilla rule in South
5 Carolina, and we believe that there is ample
6 finding here of at least a mere scintilla. We
7 think there is more than that to warrant a trial of
8 these issues.

9 Specifically as to the 937,687 for
10 additional labor and services that Watson claims
11 that it is entitled to because of so-called delays
12 and inefficiencies by other trades, aside from the
13 fact that the expert's report indicates that Watson
14 itself was responsible for claimed delay, there
15 hasn't been any trial or judicial finding as to any
16 of these so-called other persons who are supposedly
17 responsible, whoever they are, and what -- how that
18 caused any delay that resulted in Watson having to
19 perform additional work. We think there is a
20 question of fact clearly as to the 937 claim, and
21 that is clearly in dispute.

22 THE COURT: All right. Very good.

23 MR. BUNDY: I hate to interrupt you.
24 One more thing I would like to call to your
25 attention is the potential res judicata collateral

1 estoppel effect of any ruling you may make now.
2 Because I've sued Watson for civil conspiracy.
3 They were engaged, along with Balfour, Old North
4 State Masonry, and Lithko in a civil conspiracy.
5 It's been alleged, and I'm going to prove it. I
6 have the agreement. I've got the agreement in
7 writing. They have all -- interestingly enough,
8 they admitted they entered into the agreement, and
9 then when I filed a Mary Carter notice to you, they
10 all went back and amended their admission to still
11 admit it but now they are no longer admitting it
12 was confidential. So they are running as hard and
13 as fast as they can to get away from that
14 agreement. But I've got it. I've got damages.
15 And I don't have to have special damages anymore
16 based on the Supreme Court's decision. So I've got
17 all the elements of civil conspiracy, and I just
18 want to make the Court mindful that your ruling
19 here could have a res judicata collateral estoppel
20 effect that could be prevented if you deny it.

21 THE COURT: All right.

22 MR. TERRY: Your Honor, a few things.
23 I'm going to start with Mr. Bundy's comments.

24 First, the civil conspiracy cause of
25 action or damages he has to prove. They are

1 completely unrelated to Watson's claims against
2 Balfour Beatty.

3 Second, Mr. Bundy said that the
4 subcontractors have amended their interrogatory
5 responses to say that they are not -- they are not
6 taking the position that the agreement is
7 confidential. Watson has not amended that in their
8 interrogatory response, although I'm not sure it
9 matters.

10 Third, as to Mr. Bundy, I'm not sure
11 Mr. Bundy has standing to oppose Watson's motion
12 against Balfour Beatty. Library Associates does
13 not have standing to oppose Watson's motion against
14 Balfour Beatty. And I would remind you of that.
15 All of the evidence, regardless of what is in
16 Mr. Boe's report that Watson did not delay the
17 project, Watson's work has been approved by Balfour
18 Beatty and the owner, and that Watson is entitled
19 to be paid for all the work they performed are in
20 30(b)(6) depositions of Library Associates and
21 Balfour Beatty.

22 Thank you, Your Honor.

23 THE COURT: All right. Very good. So
24 my ruling here is going to be a partial summary
25 judgment. I think it's fairly clear. I tallied up

1 the first, second, and third numbers, and I come to
2 921,671.39 as being owed by Balfour Beatty to
3 Watson Electrical. I do think it's a question of
4 fact. Maybe an additional question. But the
5 additional claim of 937, so it's less than 50 cents
6 on the dollar that you are asking for. But I'm
7 going to grant partial summary judgment to the tune
8 of 921,671.39. You are going to need to be able to
9 satisfy the Court as to the basis for the 937
10 figure. Okay?

11 MR. TERRY: Yes, Your Honor. Thank
12 you.

13 MR. BUNDY: I ask that whatever order
14 you issue makes it clear what is being paid for.
15 My whole thing about cost of the work is really
16 unrelated to the mechanic's lien claim. The
17 mechanic's lien claim is based on the value of the
18 work as it relates to subcontractors. What I'm
19 talking about is the cost of the work in the breach
20 of contract between Balfour Beatty and my client,
21 which is a preliminary threshold they have to meet.
22 They have to prove it's a cost of work under the
23 definition of cost of the work in the contract.
24 Simply because you ordered it inter sese between
25 them does not establish that fact.

1 THE COURT: I think you have made that
2 point I think on that. All right.

3 Let's see. Next up on my list is Cook
4 & Boardman. Ms. DiFranco.

5 MS. DIFRANCO: Thank you.

6 THE COURT: Good afternoon.

7 MS. DIFRANCO: Good afternoon, Your
8 Honor. Do we need to clear our palettes a bit
9 after the last one?

10 THE COURT: I'm trying.

11 MS. DIFRANCO: Okay. May it please the
12 Court. Sarah DiFranco here on behalf of Cook &
13 Boardman, LLC.

14 Your Honor, Cook & Boardman provided
15 and installed interior doors, framing, and hardware
16 to the Hotel Bennett pursuant to its subcontract
17 with Cook & Boardman as set forth in our motion
18 supporting affidavit from Joseph Harrell that the
19 subcontract was dated August 6, 2015. Cook &
20 Boardman completed its scope of work, including 13
21 change orders that were required and approved by
22 Balfour, but Balfour has failed to pay the final
23 four pay applications and then a small bit of
24 retainage from one of the earlier payouts,
25 totalling \$359,709.39.

1 Balfour has not alleged any
2 back-charges or delay to the critical path caused
3 by Cook & Boardman. This is a bit redundant for
4 the Court, but I feel like I need to establish my
5 record. Balfour only contends that if the owner is
6 able to prove delay, then they are going to come
7 back against their subcontractors, but they haven't
8 done anything to actually determine what amount of
9 delay any of the subcontractors have caused, and
10 they are merely relying in opposition to our motion
11 for summary judgment on a report from the owner's
12 expert in rebuttal to their owner's expert saying
13 the delay was purely caused by the owner.

14 THE COURT: No affidavit submitted in
15 response to your motion, correct?

16 MS. DIFRANCO: No, Your Honor. It's
17 the same March 2018 e-mail from Tim Spano that says
18 that Cook & Boardman needed more people on the job.
19 But at his deposition, Mr. Spano testified that
20 Cook & Boardman hasn't paid Balfour because Balfour
21 -- Balfour hasn't paid Cook & Boardman because
22 Balfour hasn't been paid by the owner.

23 Balfour, again, has said nothing to
24 determine which subs are potentially liable for any
25 specific damages. And I hear Mr. Byrd arguing that

1 they don't know what the owner is going to do, but
2 they had ample time to depose every one of the
3 owner's witnesses and experts, and there is just
4 simply no evidence that can overcome the summary
5 judgment for my client on its breach of contract
6 claim.

7 Their own expert says that the 141 days
8 for delay related to the barn doors. My client
9 provided barn doors to the hotel guest suites, and
10 that all of that delay, the 141 days, is all
11 attributable to the owner. That portion of
12 Balfour's expert's report is attached to our motion
13 as Exhibit 2, and that's on page 30.

14 And so they are relying on this
15 argument that we would be in default if they are
16 determined to have caused delay. And then they are
17 also relying on those same responses to the request
18 for admissions where Library denied that it
19 couldn't say that there was no issue, any claim.
20 As Mr. Bundy said, in response to Mr. Wheeler's
21 summary judgment argument, that's more of a
22 stipulation, and it calls for speculation about the
23 future that they are not prepared to make today or
24 at the time of that denial.

25 Your Honor, my client is entitled to be

1 paid for the work that was done on the project to
2 the tune of 359,709.39.

3 THE COURT: Ms. DiFranco, that is work
4 that was all done pursuant to contract?

5 MS. DIFRANCO: Yes, Your Honor.

6 THE COURT: And there were how many
7 change orders? 13 change orders?

8 MS. DIFRANCO: There were 13 change
9 orders.

10 THE COURT: All approved; is that
11 right?

12 MS. DIFRANCO: They were directed by
13 Balfour and approved by Balfour. Apparently there
14 is one that's still part of a request for a change
15 order to the owner that hasn't been approved by the
16 owner, is my understanding.

17 THE COURT: How much is that one for,
18 do you know?

19 MS. DIFRANCO: Roughly \$108,000 or
20 \$109,000, Your Honor.

21 THE COURT: Other than that, everything
22 has been paid?

23 MS. DIFRANCO: No.

24 THE COURT: 359 -- 109 is included
25 within the 359, correct?

1 MS. DIFRANCO: Correct, Your Honor.

2 THE COURT: Okay. All right.

3 MS. DIFRANCO: Attached to
4 Mr. Harrell's deposition -- sorry -- Mr. Harrell's
5 affidavit is a reconciliation for my client that
6 lays out each of the pay applications in the
7 amounts that have been paid, along with the various
8 change orders.

9 THE COURT: Okay. That's the affidavit
10 of Mr. Harrell?

11 MS. DIFRANCO: Yes. Cook & Boardman.

12 THE COURT: Take me to that figure
13 again. Do you have that in front of you?

14 MS. DIFRANCO: Take you to the
15 reconciliation?

16 THE COURT: Yes.

17 MS. DIFRANCO: I'm trying to figure out
18 which number it is.

19 THE COURT: Exhibit 1, affidavit of
20 Harrell, paragraph 8.

21 MS. DIFRANCO: Yes. So -- no. Not
22 paragraph 8. Exhibit G to his affidavit, yes, Your
23 Honor. I can hand up a copy if you would like.

24 THE COURT: Yes. Please.

25 Thank you. I don't see a specific 109.

1 So it's a combination of some of these, do you
2 know?

3 MS. DIFRANCO: I believe it's the last
4 change order, which is the 102. I think they
5 contend that there is 109 in unapproved change
6 orders that are part of a request for change order,
7 but, of course, that's -- there is no sworn
8 testimony to that effect, but that's my
9 understanding.

10 THE COURT: Okay. Thank you.
11 Anything?

12 MR. BYRD: Your Honor, all of our
13 arguments were set forth in our brief, and I know
14 that counsel just went through our arguments again.
15 I'm happy to repeat them again.

16 THE COURT: I'm not likely to change my
17 mind at this point in time.

18 MR. BYRD: I can tell that.

19 THE COURT: All right. Do you take
20 issue with the additional change order that
21 apparently the owner has not approved?

22 MR. BUNDY: Yes. We may have never
23 seen it. We found a lot of change orders we never
24 even saw. But I take issue with all of this as it
25 relates to the cost of the work. It may end up

1 there. I'm not saying it won't end up there, but I
2 want to have the opportunity. Since Balfour Beatty
3 didn't choose to defend these claims, I'm going to
4 have to figure out a way to deal with them when
5 they try to pass them down to me.

6 THE COURT: I'm with you. I'm with
7 you.

8 All right. Ms. DiFranco, I'm going to
9 grant you a summary judgment, but not all of it.
10 I'm going to reduce the claim by the 102,058
11 figure, okay, on change order number 13.

12 All right. Next on my list is --
13 actually, I've got Quantum, but, Mr. Timbes, I
14 wasn't prepared to go forward on that one. Do you
15 want to go forward today or not?

16 MR. TIMBES: Your Honor, Mr. Hildebrand
17 and I discussed putting that off since I'm a little
18 bit behind the curve on everybody else.

19 THE COURT: I noticed you were still
20 here.

21 Anyway, how about Premier Exteriors?
22 Mr. Hughes, come on forward.

23 MR. HUGHES: Good afternoon, Your
24 Honor. Before I get started, I just wanted to make
25 sure. I filed a reply brief yesterday afternoon.

1 Did you have an opportunity to receive or review
2 that?

3 THE COURT: I could tell you that I
4 have not.

5 MR. HUGHES: Would you like for me to
6 bring you a copy?

7 THE COURT: You may hand it to me if
8 you would like.

9 MR. HUGHES: May I approach?

10 THE COURT: I did get your joint motion
11 on dismissal.

12 MR. HUGHES: Okay. That's important,
13 too.

14 THE COURT: That I did get, yes. Thank
15 you very much, Mr. Hughes. To the extent you need
16 it in your argument, you can hold onto it.

17 MR. HUGHES: Well, I've got other
18 copies. I just thought it might be helpful.
19 Balfour has essentially -- before we get into
20 Balfour, I'll get into my client.

21 I represent Premier Exteriors. Premier
22 served as the stucco applicator on this project.
23 In addition to other claims against Balfour, we
24 have asserted claims for breach of contract, unjust
25 enrichment. As I noted at the beginning of the

1 hearing this afternoon, we have dropped all of our
2 claims against Library, including the lien, and
3 we're attempting to extract ourselves from this
4 litigation. We are a pretty small player in the
5 big scheme of things. The amount we're seeking
6 today is \$104,703.51 contract balance.

7 We have submitted in conjunction with
8 our motion that was filed on August 20th the
9 affidavit of William J. Bremer, IV. Mr. Bremer
10 right now is the vice president of operations for
11 Premier Exteriors, but at all relevant times
12 leading up to this litigation he served as the
13 general superintendent for Premier and testified in
14 his affidavit that he is familiar with the
15 day-to-day operations on the job site, was
16 responsible for keeping up with everything. And
17 basically his affidavit establishes pretty
18 indisputably that Premier performed all of its work
19 in accordance with the subcontract, which was
20 attached as an exhibit to that affidavit, that
21 Premier has an outstanding balance under the
22 subcontract in the principal amount of 104,703.51,
23 and that Premier had satisfied all conditions
24 precedent to payment under the contract. He has
25 indicated that there was never any complaint from

1 Premier or -- sorry -- from Balfour or anyone else
2 with respect to Premier's work. There were no
3 delay issues ever raised, no notices to cure, no
4 back-charges, nothing along those lines, directed
5 at Premier's work.

6 We have submitted an excerpt of
7 deposition testimony from Library's owner's rep
8 under the prime contract, Jim Clements.
9 Mr. Clements testified that Premier did a great
10 job, that there were no issues with respect to any
11 deficiencies with Premier's work, there were no
12 manpower issues with respect to Premier's work, and
13 that there are no delays that are being attributed
14 to Premier. When asked whether he was aware of any
15 reason that Premier should not be paid in full for
16 the amount that's due on this job, he said
17 absolutely not. He has no reason whatsoever to
18 think they should not be paid.

19 So those are the things that we
20 submitted along with our position. And as you know
21 under Rule 56, the opponent has an opportunity to
22 file admissible evidence to try to contest that.
23 Balfour in this case for whatever reason decided to
24 just basically file a blanket brief against every
25 subcontractor's motion for summary judgment. It's

1 the same argument against everybody. The only
2 thing that's a little bit different is where
3 Mr. Boe's report specifically mentions one of the
4 subs and they will highlight that. Well, there is
5 nothing about Premier. Balfour concedes that
6 Mr. Boe's report doesn't mention Premier. I want
7 to for the record state that I object to the
8 admissibility of Boe's report as being -- evidence
9 can be used to support an opposition to a motion of
10 summary judgment, but even if it's allowed, we have
11 in our file, which I just handed you, provided an
12 excerpt of testimony from Mr. Boe.

13 Now, that report that was attached to
14 Balfour's response was dated December of 2020. I'm
15 not specifically sure what day. We had the
16 opportunity to take Boe's deposition in May of
17 2021. May 3rd, I believe. Mr. Boe testified that
18 he has no opinion whatsoever to support any claim
19 that Premier caused any delays on this job. Boe is
20 a scheduling expert. We also asked him if he was
21 aware of any delays. He has no opinion as to --
22 I'm sorry -- if he was aware as to any
23 deficiencies, and he said he has no opinions as to
24 any deficiencies that were caused by Premier. He
25 said he has no opinions as to any manpower problems

1 caused by Premier. So any insinuation that this
2 general reference to some subcontractors may have
3 also contributed to delays that are not named in
4 this report has been countered by his sworn
5 testimony, which is admissible for purposes of this
6 motion, Your Honor.

7 The only arguments that Balfour has
8 made throughout the entirety of this litigation to
9 not pay Premier and many of the other subs is,
10 number 1, this pay-if-paid clause. And then,
11 secondly, and more recently, in the response brief
12 they raised this right to setoff in the event of a
13 subcontractor default. They have -- obviously, I
14 think it's been well briefed and I'm sure this
15 court is well aware that in the State of South
16 Carolina pay-if-paid clauses are unenforceable.
17 They are void against public policy.

18 As to the second basis, Balfour has
19 failed to present any evidence of any default on
20 the part of Premier that would trigger its right of
21 setoff in this case. It's got an obligation to
22 come forward before this court and point to some
23 evidence that it can attach to Premier to trigger
24 that setoff. If you get into the language of the
25 subcontract default provisions, it talks about

1 reasonable estimates being withheld that are
2 specific to Premier's work. They have not
3 undertaken to do any of that.

4 The other little piece of evidence that
5 they call it that they are presenting in opposition
6 is this denial from Library on this request for
7 admission. The request to admit in question is one
8 that was served in -- I think the answer date was
9 July 20th. It's an extremely broad request to
10 admit. Mr. Bundy covered that pretty well at the
11 last hearing for Mr. Wheeler's motion on summary
12 judgment for Strong Tower. But I want to reiterate
13 those arguments and also point out that it's very
14 forward looking. It doesn't ask whether Library is
15 going to simply contest -- or is simply going to
16 make any claims with respect to Premier's work at
17 this time.

18 It also talks about claims in the
19 future. And at the time that that response was
20 responded to -- or that that request was responded
21 to, July 20th, Library had set the depositions for
22 all of the subs -- served 30(b)(6) notices for all
23 of us. All of those were taken under the course of
24 August I believe starting on the 3rd going on for
25 two weeks. So how in the world could he have

1 admitted anything? Why would he want to bind
2 Library to something that might happen in the
3 future? There is no authority that I'm aware of
4 that a denial from another party can be used
5 against the movement to oppose summary judgment.
6 Rule 56 contemplates the use of admissions on file.
7 That's not what we're talking about here, Your
8 Honor.

9 So at best all that Balfour has done,
10 they have not presented any affidavit whatsoever to
11 dispute the quality of our work or to counter the
12 fact that it's owed \$104,000 and change that I
13 previously recited at the beginning of my argument.
14 It has only set a basis for a potential right of
15 setoff, Your Honor. In that reply brief, I
16 reference a case, Wachovia versus Winona Grain,
17 2004, WO -- or WL6334915 --

18 I'm sorry. That's the only cite I've
19 got available to me.

20 -- a court of appeals case from 2004,
21 wherein the court of appeals acknowledged that a
22 potential right of setoff does not create a genuine
23 issue of material fact to defeat summary judgment.
24 That's all they have done here, Your Honor.

25 So on that basis, Premier is entitled

1 to summary judgment in the amount \$104,703.51
2 principal and then prejudgment interest and
3 attorney's fees pursuant to the subcontract.

4 THE COURT: All right. Thank you,
5 Mr. Hughes.

6 Anything in response?

7 MR. BYRD: Not specifically, Your
8 Honor. Just as far as the -- I just want to point
9 out that this is not a pay-if-paid clause. That
10 keeps getting tossed up here. This is a
11 substantive contractual right of setoff, and it's
12 an important right, when you think about it,
13 because this is a general contractor that's not
14 self-performing its work. So to the extent there
15 are issues with workmanship or delays, Balfour
16 looks to its subcontractors if they are, in fact,
17 the ones that are ultimately responsible for the
18 workmanship issues and/or the delays.

19 THE COURT: Don't you have to create at
20 least a genuine issue of material fact? Didn't
21 your witness testify pretty much along the line
22 that everybody did what they did and there was no
23 complaints about the work that was done?

24 MR. BYRD: Understood, Your Honor.
25 But, again, it's not so much what the Balfour

1 witness thinks how good of a job this subcontractor
2 did. We have got a trial that we're coming up on
3 between Balfour Beatty and Library Associates
4 that's going to get into these issues. And to the
5 extent that there are deficiencies or delays that
6 get pushed back on Balfour and that are
7 attributable to any of these subcontractors, that's
8 something that will be the subject of litigation.

9 THE COURT: Isn't that why y'all were
10 hired? Isn't that why Balfour got hired, to push
11 this project along?

12 I'm going to grant the motion for
13 summary judgment, \$104,703.51.

14 Mr. Hughes, if you'd give me an order
15 along those lines, I would appreciate that.

16 MR. BYRD: Your Honor, with regard to
17 attorney's fees, I keep hearing a number of
18 subcontractors talking about that. I have not
19 heard Your Honor grant an order --

20 THE COURT: If it's there in the
21 contract --

22 MR. HUGHES: Do I need to --

23 THE COURT: Mr. Hughes, if you want to
24 put it in there. I'm going to think about that. I
25 assume they are entitled to prejudgment interest

1 and attorney's fees and costs if they are in the
2 contract.

3 MR. HUGHES: The contract is attached
4 in its entirety as the exhibit to Mr. Bremer --

5 THE COURT: If you can, cite me to the
6 clause.

7 MR. HUGHES: I'm trying to.

8 MR. BUNDY: You'd think that would be
9 the only clause he would know in the contract.

10 MR. HUGHES: All right. Okay. I'm
11 going to read you and I'll read into the record
12 page 10 of the subcontract terms and conditions.
13 It's Article 10, Contract Interpretation and
14 Disputes, paragraph D: If contractor elects not to
15 invoke the arbitration procedures set forth in
16 Article 10A, then all claims, disputes, and other
17 matters in controversy between contractor and
18 subcontractor arising out of or relating to the
19 subcontract and covered by Article 10A will be
20 resolved through litigation in the state court in
21 the county of the project or the federal court
22 closest to the location of the project. The
23 prevailing party will be entitled to recover its
24 reasonable attorney's fees and court costs in
25 connection with any such litigation.

1 That's the relevant portion of that,
2 Your Honor.

3 THE COURT: All right. If you submit
4 your proposed order, cite the authority, and then
5 you can argue the prejudgment interest, as well as
6 your attorney's fees. Just submit your affidavit
7 of attorney's fees in support of that. Okay?

8 MR. HUGHES: Thank you, Your Honor.

9 THE COURT: All right, Mr. Hughes.
10 Very good. All right.

11 Mr. Brennan, I think you are up next.

12 MR. BRENNAN: Your Honor, may I
13 approach?

14 THE COURT: Sure.

15 MR. BRENNAN: I'm handing up a binder.
16 It's just our motion, the affidavit, and the tabbed
17 exhibits in case we need to talk about anything
18 specific.

19 THE COURT: Thank you, sir.

20 MR. BRENNAN: I have an extra copy.

21 MR. BYRD: Thank you.

22 THE COURT: All right. You may
23 proceed.

24 MR. BRENNAN: May it please the court.
25 David Brennan with Johnson, Allison & Hord on

1 behalf of Warco Construction Company, Warco's
2 motion for summary judgment.

3 I think an appropriate place to start
4 with my remarks is exactly who Warco is because I
5 think when we understand that the idea that they
6 have delayed critical path just becomes, frankly,
7 ridiculous. Because we are the specialties,
8 quote-unquote, subcontractor on this project. That
9 sounds like it might be something really, really
10 interesting and sophisticated, but really we are
11 the jack-of-all-trades contractor. We do a lot of
12 miscellaneous stuff that needs to get done. It
13 might not seem internally consistent with that kind
14 of stuff, but it's off-site interior mockups, was
15 something we did. We put toilet and bath
16 accessories into the building. We did wall corner
17 guards and caps, cosmetic caulking. We went around
18 and sealed openings in joints with fire sealant.
19 We installed lockers. We put the fire extinguisher
20 things that you hang on. Really kind of the
21 biggest thing we did was PVC composite shutters for
22 exterior windows.

23 I mean, we weren't doing steel. We
24 weren't doing framing. We are not masonry or site
25 services. We were just out there. We did our

1 work. We did it timely. There is absolutely no
2 evidence to the contrary. And the idea that Warco
3 Construction Company is responsible for delays to
4 the critical path is just -- it strains credulity
5 here because --

6 THE COURT: Y'all are the cleanup crew,
7 right?

8 MR. BRENNAN: Exactly. If there is
9 something that needs done, they call us up and we
10 do it. Frankly, we did everything that we were
11 supposed to do under our base contract. There are
12 five change orders that were approved. There was a
13 construction change directive where -- in my
14 materials we have e-mails from Balfour Beatty
15 saying, yeah, we couldn't work out with the owner
16 for the shutters so they are going to be a
17 construction change directive, go ahead and bill
18 your time and materials. I have tabs in here with
19 what we submitted for our time and materials.

20 Frankly, we have just -- I know it's a
21 broken record and you've heard this from a variety
22 of subcontractors, but there is nothing in the
23 pleadings tying Warco Construction to any delays or
24 defective work. We haven't received any notices.
25 Our work was accepted without objection. There is

1 just simply nothing to tie us to whatever setoffs
2 or allegations might be out there. I'm happy to be
3 in a position to hold up for Your Honor this very
4 thorough report that everybody has kind of been
5 alluding to as something that Balfour has been
6 citing to, Library's report of who has been
7 mentioned, who hasn't been mentioned, and nowhere
8 in this entire report is Warco mentioned once.
9 There is not a single reference to my client.

10 I was not in a position to get a
11 memorandum to Your Honor, but I went through and
12 tried to find if there was any references at any
13 point in time during the depositions to Warco, and
14 I couldn't find anything. I'm all ears if somebody
15 can point to anything tying my client to alleged
16 delays. Because the reality is, what Balfour has
17 put forward in their response in opposition to my
18 client's motion is the same things that everybody
19 else really filed against them. It was this expert
20 report, that wasn't even theirs, the admissibility
21 is questionable, and we are not even mentioned in.
22 They just cite some kind of general language that
23 conceivably there could be some innuendo that there
24 are other subcontractors that might have caused a
25 problem; let's just find out.

1 There is the request for admission that
2 Your Honor has already heard the arguments as to
3 why those are just inadequate to create an issue of
4 material fact, the timing of when they were served
5 and responded to, the nature of the wording of
6 them, and then just simply -- we have already seen
7 with Strong Tower's motion for summary judgment.
8 It just wasn't persuasive. And for the same
9 reasons that we're not even in the report, we're
10 not mentioned anywhere in the pleadings, in any of
11 the discovery. It's just simply we have been
12 dragged along on this process. And, believe me, I
13 enjoy my trips to Charleston to the extent I can,
14 but really it's not fair to my client. It's not
15 fair when you are a business and you are not that
16 big and cash is king and this has caused a major
17 problem for them over the years that this
18 litigation has continued.

19 And we have tried to resolve it. We
20 have tried desperately to just say we want to get
21 out of here, and yet I'm here. And I'm asking
22 again, just we're trying to get paid for what we
23 did. We don't think there is any question about
24 that.

25 I can go through the numbers right now.

1 We had a base subcontract about \$585,000. We had
2 five approved change orders. Only four of those
3 actually added money. The other one was a time
4 one. That one -- those were \$50,890. So that one
5 comes to \$635,890. There was a construction change
6 directive for the installation of the exterior
7 shutters. My understanding from some e-mail
8 correspondence that's in here in our backup for
9 that work was in the time and materials. It was --
10 I think the owner picked out another product. It
11 was just something as simple as that, and we had to
12 move to -- I think it was a PVC product. We
13 installed it. There is no doubt that we installed
14 it. Nobody had any issues with it.

15 THE COURT: It was a request by the
16 owner as far as you can tell?

17 MR. BRENNAN: They did a construction
18 change directive per Balfour to Balfour, and then
19 Balfour turned around and told it to us. I don't
20 think there is any doubt about whether that work is
21 subject to a construction change directive.

22 So when you add up that, it's
23 \$709,803.15, we have gotten paid \$478,621.93, and
24 that leaves a balance of \$231,181.19. I'm all ears
25 and I'm happy to respond to any counter-arguments,

1 but I think relative to what you've heard and some
2 of the other subs that maybe had some potential
3 gray areas, I think it's cut and dry. And we would
4 frankly just really appreciate getting paid for the
5 work we did and credit we have extended to Balfour
6 all these years.

7 THE COURT: I can't get you paid. I
8 can grant you judgment, but I can't get you paid.

9 MR. BRENNAN: Your Honor, I
10 respectfully request an order granting summary
11 judgment and award of attorney's fees and also
12 interest, but I rest my remarks at this point.

13 THE COURT: Y'all's contract is
14 providing for attorney's fees?

15 MR. BRENNAN: Yes. It has the same
16 standard Section 10 language in the conditions.

17 THE COURT: Very good. Thank you.
18 Any response?

19 MR. MCDONALD: Yes, Your Honor. Brent
20 McDonald. I would be happy to go after Mr. Byrd.

21 THE COURT: Okay. Mr. Byrd.

22 MR. BYRD: Your Honor, nothing to add
23 to what we have put in our brief.

24 THE COURT: Mr. McDonald.

25 MR. MCDONALD: Your Honor, you've been

1 apprised that there were a number of subcontractor
2 depositions that were taken in this case. I'll
3 inform you that for the most part I was the one
4 that prepared for them. Notwithstanding my client
5 didn't agree with the deal with the subcontractors
6 in this case, but that's where we are.

7 THE COURT: All right.

8 MR. MCDONALD: And I took a number of
9 depositions, and one of the things that when it
10 comes time -- our time to prove something, I felt
11 it to be important to bring it up now, is money
12 that has been paid by the owner to Balfour that
13 were never paid to subcontractors, subcontractors
14 are now claiming in this action. This instance in
15 taking the deposition of Warco was the first time
16 that I found monies paid to a subcontractor by
17 Balfour, albeit three months late, that are now in
18 the lien. I'll tell you what happened.

19 THE COURT: All right.

20 MR. MCDONALD: We took the deposition
21 of Warco. What we did is we sent -- with 30(b)(6)
22 depositions, we sent exhibits, a notebook of
23 exhibits in advance, not just these are the topics,
24 these are the documents we want to talk about.

25 The starting point was their

1 interrogatory response by Warco Construction, Inc.,
2 verified under oath by Mr. James O. Waring, III,
3 vice president, that basically says they hadn't
4 been paid. In addition to pay application 10
5 through 13, they had a number of change orders,
6 CCDs, for a total I believe he read \$231,181.19.

7 The problem is that Balfour Beatty took
8 from a pay application that was submitted by Warco
9 to Balfour in September of 2018, didn't get around
10 to -- even though the owner funded it, didn't get
11 around to paying Warco until January. And this was
12 Exhibit 2. Your Honor, quite frankly, I expect
13 Balfour Beatty to make these arguments. I brought
14 the materials. I'm ready to talk to you about it.
15 This was Exhibit 2 to the deposition. In Exhibit 2
16 there is 19 tabs.

17 Balfour Beatty didn't get around to
18 paying the document, if you look at tab 16, the pay
19 application, until January 28, 2019. If you look
20 at pay application 9 -- Your Honor, I'm going to
21 apologize in advance because I just lived it for a
22 month. You are going to unfortunately have to live
23 this, that when you talk about pay applications,
24 you are going to hear a number that's a
25 subcontractor pay application and then you are

1 going to hear a number that's a general contractor
2 pay application. They are never the same. As you
3 bounce back and forth, you can understand where it
4 might be a little -- there might be a
5 misunderstanding.

6 This is Warco's pay application 9,
7 which they said was funded --

8 MR. BRENNAN: Can I make one remark to
9 potentially get in front of some potential
10 confusion?

11 Did you check the affidavit that I
12 filed in support of it? Because I cleared up I
13 think maybe some of the confusion about --

14 MR. BUNDY: You took out \$67,966.15?

15 MR. BRENNAN: No. I explained how
16 there was a revised pay application 9, as my
17 witness indicated in the deposition, and that was
18 circulated, and it's in the affidavit.

19 MR. BUNDY: Well, then we have a
20 disputed fact. We have a 30(b)(6) deposition that
21 says one thing. He can't just introduce an
22 affidavit and get rid of a disputed fact. They can
23 come in and said it was a typo. I can't tell you
24 how many typos there are on this job.

25 MR. BRENNAN: I'm happy to address what

1 the potential confusion was. If you want to
2 continue with the deposition, and then I'll say --

3 MR. MCDONALD: So we went through the
4 deposition. The owner paid pay application 9, a
5 revised pay application 9, and it says that it is
6 for the shutters. Okay? The owner also funded pay
7 application 7, 8, and 9. That nine had the shutter
8 amount at \$64,000 -- you'll hear two numbers.
9 67,000 is with retainage. 64,000 is after
10 retainage is taken out.

11 I asked the question in the deposition:
12 You've already been paid for this. Why is it in
13 your lien amount? Because it's also in pay
14 application 10, which they say they haven't been
15 paid. At the time they submitted pay application
16 10, they, in fact, hadn't yet been paid by Balfour
17 because Balfour took, notwithstanding the terms of
18 their contract, three months to pay.

19 So to the extent there is a revised pay
20 application, that's not what the owner funded.
21 That's not what the owner paid. That's not what
22 was submitted by Balfour in Balfour pay application
23 42 to the owner. So I will represent to you, this
24 comes up -- we took depositions last week of
25 Lithko, and they said they had two sets of pay

1 applications with the same numbers. Some that were
2 paid by the owner. Others that never went to the
3 owner. So if there is a revision, it's not with
4 the 30(b)(6) representative. He said it's a typo,
5 and that's where we were when we wound up with --
6 I've got the documents that were submitted to the
7 owner and these pay applications from Balfour.

8 MR. BRENNAN: I think we may have to
9 confirm that that's, in fact, what they got from
10 the owner and not from our production. Because I
11 believe in our production we initially produced the
12 wrong pay app number 9, and I think maybe everyone
13 was operating as that's the pay app number 9. We
14 can confirm because I don't see how -- I guess I'll
15 just explain all the tabs so I can direct you to
16 the tabs.

17 At the time, as I mentioned, we're
18 talking about a construction change directive. We
19 are waiting for a change order to be approved and
20 issued. We submit the proposal and say, hey, this
21 is extra stuff. We are going to bill it as if it's
22 a change order. We then go ahead and bill it as if
23 it's a change order to Balfour. Balfour says we
24 are still working on this with the owner. We can't
25 approve this change order yet. What you should do

1 to get paid, though, for this work just so you can
2 get cash flow is move that work to your regular
3 portion of your pay app. So in the pay app, you
4 have the schedule of values where you've allocated
5 for the respective work. As you go you are billing
6 that proportion and it goes forward. They say you
7 have got some space in your schedule of values for
8 this work. Why don't you move that change order
9 value amount into that, get paid -- we'll get you
10 paid for that, and then that will buy us time so
11 then we can increase the pot.

12 Because at that point we are tapped out
13 because we have billed extra work under the
14 existing schedule of values for that. Let's say
15 they allocated a hundred dollars for that. By
16 billing our change order stuff under that, we hit
17 that hundred mark, but they said don't worry, we'll
18 resolve the change order, we'll figure it out, and
19 then it will be paid under a future thing. I have
20 e-mails where Balfour is telling us to do that.
21 Balfour says -- and it's behind tab number 10.
22 It's Nicholas Starcevic. It says if you move their
23 shutter billing to the base part of the SOV, not
24 the change order, they will include it in this
25 month's billing. Thanks. So they are telling us

1 -- and the background to that conversation is, hey,
2 we'll try to get you paid. Now, there is no doubt
3 -- and that's what we did, and you have us
4 submitting behind Exhibit 11 the revised pay app 9
5 in which it's then added not as a change order,
6 that's now marked zero where it had previously been
7 included as a change order, it gets moved up under
8 the regular schedule of values, and that's behind
9 tab 11.

10 Then later under exhibit -- behind tab
11 12, you have again Nicholas Starcevic, the project
12 manager of Balfour Beatty, saying, yes, you should
13 be billing this at cost-plus markup as cost has
14 been incurred per the construction change
15 directive, the CCC we were given by the owner.
16 Since we could not settle on a COR amount with the
17 owner, they directed us to proceed on PNN. I
18 believe you have now billed for your costs incurred
19 to date, at least for the invoices that I have
20 seen. Let me know if you have questions. And
21 that's a reference to how subsequently on pay app
22 number 10 that number, that change order number or
23 construction change directive number, appears as an
24 item at the bottom, as in -- as a change order or a
25 CCD, however we designated it, as an add.

1 So all that is to say is when you look
2 at what happened with the revised pay app and then
3 you look at the subsequent pay app, what's clear is
4 there is not double-dipping because the schedule of
5 values for the shutter work remains the same, and
6 then that additional money that we have submitted
7 backup for we then bill as a separate line item.

8 So I'm very mindful. I realized at the
9 deposition there was a mistake in the production of
10 the original pay app 9 when there was actually an
11 updated pay app 9 that was really the one that was
12 submitted for payment. So what we -- I guess the
13 argument is if you look at this and if you look at
14 what we've been paid, I'm trying to figure out --
15 other than the fact that the paperwork is not
16 perfect, I don't see how there is an argument that
17 we have been paid more than we're due.

18 MR. BUNDY: We are getting ready to
19 make that.

20 Before we do that, though, do you feel
21 like you are on 42nd Street in New York when you
22 were in high school and somebody is trying to play
23 three card Monty with you?

24 MR. BRENNAN: That's how a construction
25 project works on the ground.

1 MR. BUNDY: We hired Balfour Beatty to
2 run -- they only had to do two things: Schedule
3 the job and keep up with our money. What he is
4 talking about -- this is foolishness, the
5 shenanigans, that he is talking about is not
6 permitted anywhere in the documents we signed with
7 Balfour Beatty. It's a continuation of the fraud.

8 This is not the only time they did
9 this. There is a whole bunch of stuff they cut
10 with these subcontractors. They told
11 subcontractors that they paid change orders as if
12 it was in the base work. Well, Library Associates
13 doesn't know all this crookedness is going on.
14 They are relying on these people to tell us the
15 truth, and that's why you can't be giving these
16 people summary judgments and I'm stuck with the
17 cost of the work.

18 But now my partner is going to explain
19 to you financially why it doesn't work.

20 MR. MCDONALD: Very brief, Your Honor.
21 The way the owner gets these subcontractor pay
22 applications is through manifest billing. So when
23 Balfour submitted the pay application, they attach
24 the pay applications that were submitted by the
25 subcontractors.

1 So this is pay application 42 from
2 Balfour that was funded on this job, certified by
3 the architect on October 13th, 2018, and signed by
4 the contractor on September 28th, 2018. It
5 contains three pay applications for Warco's work.
6 The last one it contained was pay application
7 number 9.

8 If I may approach. I just have one
9 copy here.

10 Pay application number 9 as attached to
11 the pay application that the owner paid includes --

12 If you'll see this period, the column
13 in this period.

14 THE COURT: Okay.

15 MR. MCDONALD: -- include change order
16 number 4 shutter revisions.

17 THE COURT: Okay.

18 MR. MCDONALD: I don't know on behalf
19 of the owner, which is why we hired Balfour, what
20 Balfour's communications were with Warco subsequent
21 to Balfour submitting this to the owner and
22 certifying this is what's due, you need to pay it,
23 which my client did.

24 We then go to pay request number 10,
25 the next one, and this is a Warco document that we

1 received in -- obviously it's Bates stamped that we
2 received it in the litigation. Pay application 42
3 is something we received as the project is going
4 on.

5 May I approach one more time.

6 In pay application 10, which they said
7 was due is the same 67,966.15 for 10. I don't know
8 what agreements Balfour had. I thought Balfour
9 would be the one making this argument. To pay
10 them, not to pay them, I have no idea. I'm just
11 saying as the gentleman who is preparing for the
12 depositions for all these subcontractors, looking
13 at the documents that we have submitted, looking at
14 the documents that they submitted, it's the same
15 number and we funded it. The owner funded it. And
16 that is Exhibit 2 to the Warco deposition.

17 If you look at tabs 16 and 17 to
18 Exhibit 2 in the Warco deposition, they actually
19 received money for those pay applications by
20 Balfour on -- it looks like the first one was
21 November 13th of 2018. They got a check for
22 \$23,802, which would be consistent with pay
23 application 7, and then they got a check for -- two
24 checks. They got one for -- they got two amounts,
25 but a total check for \$103,267.93 on January 28,

1 2019.

2 So if there was a revised where it went
3 back up in the contract, I don't know anything
4 about that. I just know this is what the owner
5 had. I just wanted to point it to Your Honor's
6 attention.

7 MR. BUNDY: As a practical matter, when
8 you swear in a pay request this money is owed to
9 these people for this work, we pay them for it,
10 they don't get to go back in some back room and
11 turn it into something else, which is what they
12 did.

13 MR. BRENNAN: We're just putting in
14 fire extinguishes and caps on walls. I don't know
15 anything about conspiracies or what's been going on
16 previously between the parties to get emotions so
17 high. All I know is outside of the e-mails in
18 here, we did the work. Balfour decided that they
19 wanted to bill it the way that they wanted to bill
20 it. I mean, we are just the sub. They said, hey,
21 bill it this way. We then billed it that way.
22 They then again said, all right, we now have
23 confirmation. It's a construction change
24 directive. Now bill it -- now bill the remainder
25 -- so basically they said get rid of your schedule

1 of values number, get yourself paid, clear that
2 out, we'll deal with the extra when we have some
3 clarity on if it's a change order or a construction
4 change directive. When we got the clarity, we
5 billed it as a construction change directive.
6 That's on pay app numbers -- we haven't gotten paid
7 for pay app numbers 10, 11, and 12. We were paid
8 for revised pay app 9.

9 Again, the only change here is that the
10 amount of money -- it stays the same, the amount of
11 money we are claiming. It's literally just, well,
12 were we going to get paid for it, get that cash
13 coming in, and then right around when we did it --
14 frankly, I think Balfour was probably trying to do
15 us a favor, trying to get cash in the door for us
16 while they were working out something with the
17 owner.

18 So, I mean, I certainly don't
19 appreciate the insinuation that my client was up to
20 something nefarious. We're simply doing the work,
21 trying to be good subs, moving this project along
22 for the benefit of the owner, and we are simply
23 trying to get paid now for the work that we
24 performed. Whether there is an issue here, I
25 understand Library when it comes to the lien will

1 have things to say about what are the costs and
2 that aspect. But with regard to a contract with
3 Balfour, if there is no doubt that they told us to
4 do the work, said there is a construction change
5 directive, do the work, and that's not in dispute,
6 I'm not sure what grounds there are for saying we
7 are not entitled to that judgment, vis-a-vis Warco
8 and Balfour.

9 MR. BUNDY: Well, let me give you some
10 clarity about the favor these people are doing your
11 client. Y'all are engaged in bank fraud. The bank
12 takes the pay requests -- when we send the pay
13 requests in, these things are funded. The money
14 doesn't come off the hip. All these documents go
15 to the bank. They know the documents are going to
16 the bank. The bank provided loan documents and all
17 the stuff. The bank -- we go through it relying on
18 the truth of it because it's verified. The bank
19 goes through it relying on the truth of it because
20 it's verified. We have separate accounts. The
21 bank doesn't just let us fund every change order we
22 want to fund. When they put in there it's a change
23 order, the bank pays it because it's a change
24 order. These documents are going through the U.S.
25 mail. And banks are paying these things based on

1 fraudulent claims.

2 I'm telling you, what he sees is just
3 my people are just doing this and that. They are
4 dealing with our client's money and they are
5 getting money from banks illegally.

6 MR. BRENNAN: One major -- minor point,
7 not major, minor point. We didn't bill it as a
8 change order. There was a -- I'm confused as to
9 how they got the original one. It was my
10 understanding that it was not submitted. The
11 revised application is my understanding as what was
12 paid, and that amount was billed under the schedule
13 of values.

14 I think either way, I still don't
15 understand how it's a potential fraud because all
16 we have billed for is the schedule of values.
17 Let's say the schedule of values is a hundred
18 dollars. We bill for the schedule of values, the
19 hundred dollars, and then we had a construction
20 change directive, let's say it's \$25, we billed for
21 that, too. We billed \$125. Nothing more. Nothing
22 less.

23 THE COURT: Let me ask you, turn to --
24 you have a copy of your book in front of you?

25 MR. BRENNAN: I do.

1 THE COURT: I'm looking at the exhibit
2 they passed me. So this is an application number
3 10. So it's tab 13, and it's the Bates stamp Warco
4 number 73.

5 MR. BRENNAN: Yes, Your Honor.

6 THE COURT: All right. Here you've got
7 -- yours is kind of messy. The one you handed me
8 is a little cleaner. I'm seeing shutters as line
9 item number 6. I see a schedule of values of
10 166,000 and some change, right?

11 MR. BRENNAN: Uh-huh.

12 THE COURT: I'm showing from the
13 previous application 67,966.15 and this period is a
14 \$65,000 figure, right?

15 MR. BRENNAN: Okay.

16 THE COURT: And then going down to the
17 bottom, change order number 4, the shutter
18 revision, is that not the same thing that you just
19 billed in pay application number 9?

20 MR. BRENNAN: In pay application 9 it
21 was billed under the regular -- I guess -- it is
22 correct, in that this is not the typical way it's
23 done. The typical way it's done is you do -- I
24 guess what I'm trying to say is the mechanics of
25 how it was done, yes. The amount that was billed

1 for the change was in the regular schedule of
2 values in the prior pay app. But I guess what I
3 keep trying to come around to is we have still
4 never exceeded that schedule of values amount. We
5 always had in our contract let's say a hundred
6 dollars worth of shutter work --

7 THE COURT: Let's say \$167,660. That's
8 the contract.

9 MR. BRENNAN: Yes. Sure. We have
10 never billed for more than a total of what that
11 schedule of values amount was for that base work.
12 We then included an additional change relative to
13 the construction change directive. So yes, the
14 mechanics of how it was from an accounting
15 standpoint put under the schedule of values when
16 really we should have just I guess sucked it up and
17 not gotten paid, and said, fine, we will bill it as
18 a construction change directive and just not see
19 that money for three years, or however long. I
20 mean, I guess what I'm saying that's ultimately
21 what happened because the subsequent change
22 directive wasn't paid.

23 So I guess we are going around and
24 around. My point still remains. We are not
25 seeking anything more than what is made up of our

1 base contract, plus the construction change
2 directive. Was it billed perfectly? No. Then
3 again, I know that we have been -- I can maybe see
4 that they have got an issue. Maybe Your Honor has
5 an issue. If they want to take it out, take it
6 out, and we'll do a partial summary judgment, and
7 we'll go to court on it.

8 But the point being, at least from
9 where I stand -- I haven't heard anything from
10 Balfour saying that it's not legitimate. I know
11 I've heard a lot from Library arguing opposition to
12 a motion for summary judgment between us and
13 Balfour. But that's my position, Your Honor.

14 MR. BUNDY: It's not whether or not
15 it's accurate. It's whether it's truthful. It's a
16 lie. The document is a lie. Okay? When you rob a
17 bank, you don't get to give the money back when
18 they come to your place to get it. You go to jail.
19 You don't get to do it this way. You do it right
20 the first time.

21 THE COURT: I'm with you on that one.
22 Well, let me just tell you, I'm a
23 little surprised. Mr. Brennan, my general rule of
24 thumb is I'll grant summary judgment if I'm clear
25 on the facts and the law. You had me totally

1 flustered when you were trying to explain this.
2 I'm not clear on the facts. I think I'm pretty
3 clear on the law. I got reversed by the Supreme
4 Court not too long ago because -- not because of
5 what I decided was wrong but because it was subject
6 to somebody else's interpretation, and that's what
7 I'm hearing.

8 MR. BRENNAN: I understand. That's why
9 I'm willing to concede the construction change
10 directive amount and reserve that for the trial of
11 the matter, but I don't believe -- is there any
12 dispute as to the base contract amount?

13 MR. BUNDY: Let's just say I've lost
14 confidence in this gentleman's client's ability to
15 keep up good records.

16 MR. BRENNAN: I mean, we took the
17 deposition. At that time I think there was a
18 pretty thorough job done by counsel for Library.
19 We have discussed fairly exhaustively the issue
20 with the construction change directive additional
21 work, but I don't think his personal opinion as to
22 the situation is facts or evidence as to my client
23 delaying or otherwise doing defective work or not
24 being entitled to at the very least the base
25 subcontract amount, plus approved change orders.

1 So, Your Honor, if there is a question
2 about the \$73,913.15 for that scope of work that
3 has been brought up, fine. The amount of money, if
4 you remove that under our base contract plus the
5 five approved change orders there is no dispute
6 about, is \$157,268.04.

7 THE COURT: Did you say --

8 MR. BRENNAN: \$157,268.04.

9 THE COURT: All right. I'll grant you
10 that. I will grant that. We'll keep the \$73,913.

11 MR. BRENNAN: I understand. Thank you,
12 Your Honor.

13 THE COURT: You can prepare that order.

14 MR. BUNDY: Your Honor, could I get
15 attorney's fees --

16 THE COURT: I know you are seeking
17 those. I'm aware of that.

18 I think that concludes our summary
19 judgment motions. Those of you who have gotten a
20 summary judgment, if y'all will prepare proposed
21 orders. To the extent you are entitled to
22 attorney's fees, prejudgment interest, you can
23 submit that in there. Make sure you run it by
24 everybody. I'll sit on those.

25 We are going for trial here in less

1 than two weeks. So let's talk about that a little
2 bit. So I had set aside -- let me get my calendar
3 out.

4 That reminds me. There was another
5 motion --

6 MR. BUNDY: We have one motion, Your
7 Honor.

8 THE COURT: There was a motion to, hold
9 on, to exclude the testimony of Kay Kendall, but my
10 understanding is that's now been -- that witness
11 has been withdrawn. I just got it today. She has
12 been withdrawn as a proposed expert, right?

13 MR. MCDONALD: Yes, Your Honor.

14 THE COURT: All right. That was motion
15 number 6.

16 MR. BUNDY: One more thing, if I may.

17 THE COURT: Sure.

18 MR. BUNDY: You ordered Watson twice.
19 They moved for protective order. You told them no.
20 They filed a 59E, which we were required -- which
21 they were not entitled to file. You told them no
22 again. Are we now playing the game that I've got
23 to file a motion to compel them to answer the
24 interrogatories so they finally now have to answer
25 them? When are they going to do what you asked

1 them to do?

2 THE COURT: All right. Let's talk
3 about that.

4 MR. TERRY: Your Honor, the
5 interrogatories that you directed Watson to answer,
6 we agreed to respond to by that Thursday. We did,
7 in fact, answer those interrogatories, and they
8 have been served. There is no documents -- there
9 was no motions related to documents. There is
10 another set of interrogatories that were served.
11 We made a motion for protective order. We made a
12 motion for you to reconsider. That was, I don't
13 remember. I'm losing track of time. So maybe it
14 was last week. We were here the week before. We
15 have not yet responded to those, but it's only been
16 10 days.

17 MR. BUNDY: No. It's been six months.

18 MR. TERRY: No.

19 MR. BUNDY: Since we asked for them the
20 first time.

21 MR. TERRY: It's been 10 or whatever
22 number of days it is since our last hearing in
23 response -- to respond to those.

24 THE COURT: I thought I dealt with -- I
25 know I recently dealt with a motion to reconsider.

1 MR. TERRY: Yes, Your Honor. You
2 denied the motion to reconsider the day before our
3 last hearing.

4 THE COURT: Okay.

5 MR. MCDONALD: That was August 12th,
6 Your Honor. If I may, these were originally served
7 on April 16th, 2021. There was a motion for
8 protective order filed. They are not voluminous,
9 but I do think they are very important, Your Honor.
10 Identify the date of all notices of delay issued by
11 you to Balfour Beatty on the project. Something
12 that's come up time and time again.

13 Identify the date of all claims for
14 additional time or money made by you to Balfour
15 Beatty on the project. Identify the date of all
16 notices of delay and/or demands for cure issued by
17 Balfour Beatty to you on the project. The
18 response, if Your Honor will recall, is that there
19 were so many of these notices of delay, vis-a-vis
20 these two parties, that we're now in excess of the
21 interrogatories that were allowed. That was the
22 motion for protective order that was in front of
23 you, to which you denied.

24 A motion for reconsideration, which is
25 not permitted under the rules and we wrote Your

1 Honor a letter pointing that out, was then filed.
2 We wrote a letter the day after your July order
3 denying the motion for protective order saying when
4 are we going to get them. We get no response. 10
5 days later we get a motion for reconsideration. We
6 write Your Honor that we would like a ruling on it,
7 which you obliged and did. And that was on August
8 12th.

9 Discovery is over. I took their
10 project manager, Mr. Winter's (phonetic),
11 deposition last week. Last week we had to move it,
12 if you recall, down the road, and we still don't
13 have these answers on delay.

14 Now, why is it important? First of
15 all, there is a summary judgment motion made in
16 front of you about these issues. Second of all,
17 Balfour's subcontractors, which eventually they are
18 going to have to prove up, I would assume, at some
19 point, requires these notices of delay. The other
20 thing it does -- and I'll quit after this. I'll be
21 very brief. The other thing it does, if you don't
22 answer these interrogatories, then the notion that
23 the subs didn't do anything wrong, it's all the
24 owner's fault, continues to play in the absence of
25 answers to real questions under oath. That's what

1 we'd like. Thank you very much.

2 MR. TERRY: Your Honor, first of all,
3 there is no motion before the court on this issue.
4 They made a motion this morning. But I don't know
5 the day the last hearing was. My memory is not
6 that good. But you did deny the motion for
7 reconsideration the day before, but your order to
8 answer interrogatories was not about this set of
9 interrogatories, Your Honor. And we will answer
10 the interrogatories.

11 THE COURT: When?

12 MR. TERRY: I'll do it tomorrow.

13 MR. BUNDY: Verified.

14 THE COURT: Verified answers to
15 interrogatories tomorrow, that would be great.

16 MR. TERRY: Thank you.

17 MR. BUNDY: If we don't get them, can
18 we get some sanctions, Judge? Give him some reason
19 not -- because he is not going to do it unless you
20 make him do it.

21 THE COURT: Okay. I'll do it. Provide
22 those -- if you can do those by tomorrow, that's
23 great. Tomorrow is the first of September. Let's
24 do it then.

25 If you don't receive them, let me know.

1 MR. BUNDY: You will be the first to
2 know.

3 THE COURT: All right. Let's talk a
4 little bit about procedure and how we are going to
5 move forward.

6 MR. BUNDY: Would you like input from
7 us first?

8 THE COURT: Let me just state what I've
9 got the time set aside for it and then I will be
10 glad to hear from you.

11 All right. So I had this thing
12 scheduled to go forward the week of September 13th
13 and the following week, the 20th. I know
14 Mr. Timbes had some protection during the September
15 time. Mr. Brennan had protection that first week
16 of September, the 13th. So I also set aside for my
17 benefit, because I wasn't sure we would get done in
18 that timeframe, the weeks of October 25 and
19 November 1 in the event that we need them. Okay?

20 MR. BUNDY: I can't remember when my
21 protection was.

22 THE COURT: Well, according to my
23 staff, it ends somewhere around October 24th.

24 MR. BUNDY: Okay. That's fine.

25 THE COURT: That means you can get back

1 from some trip.

2 MR. BUNDY: That's fine. I don't mind.
3 That's fine. As long as I get back.

4 THE COURT: Does that week still work
5 for you if you are back, provided you are back?

6 MR. BUNDY: I'm always ready to go. If
7 I've got protection, I want -- I've got a bunch of
8 money invested in a fishing trip so I would like to
9 go.

10 THE COURT: I'm with you on that.

11 All right. So my original thought was
12 we'd try these sub cases first, and now I've got
13 two subs that can't be here the first week.

14 Let me hear from you, Mr. Bundy.

15 MR. BUNDY: I just want to bring up
16 something -- I don't know. I think hopefully we
17 can agree on one thing, and that's this is a
18 contract case. It's not a wreck case. It's a
19 contract case.

20 THE COURT: Well, there is some
21 conspiracy thrown in there. I thought we would be
22 trying a contract case.

23 MR. BUNDY: We will be trying the
24 contract case, conspiracy, unfair trade practices,
25 breach of contract accompanied by fraud in the

1 latter part of this case, but initially it's a
2 contract case.

3 Foundationally, in order to try a
4 contract case, the first thing that has to be put
5 in evidence is the contracts. Because if they are
6 not put in evidence first, after the guy gives or
7 woman gives us a name, the first question they ask
8 I'm going to object because there is no foundation,
9 no contract. Right?

10 Okay. The documents, the contract
11 documents in this case, thankfully, are defined in
12 the prime contract.

13 THE COURT: Okay.

14 MR. BUNDY: And the prime contract
15 documents are incorporated by reference in the
16 subcontracts. So you can't try the subcontract
17 case without all of these documents.

18 THE COURT: Okay.

19 MR. BUNDY: Okay. So what I would
20 propose to the Court is that you require the
21 parties to meet next week, whatever, before trial,
22 and agree on what the contract documents are,
23 stipulate to the ones they can stipulate and bring
24 before you the ones we don't agree on. That way we
25 save at least a half or day or two days in court

1 going through it. But I would ask Your Honor to
2 specifically require that the contract documents
3 included be those defined in Article 1, 1.1, basic
4 definitions, the contract documents, which are
5 specifically, unless otherwise enumerated, consist
6 of the agreement, the conditions of the contract,
7 general, supplementary, and other conditions,
8 drawings, all drawings, that means drawings,
9 specifications, addendums issued prior to the
10 execution of the contract, and other documents
11 listed in the agreement and modifications issued
12 after execution of the contract. A modification is
13 a written amendment to the contract signed by both
14 parties, a change order, a construction change
15 directive, or a written order for minor work issued
16 by the architect. Unless specifically enumerated,
17 the contract documents do not include the
18 advertisement or invitation to bid, instruction to
19 bidders, sample forms, other information, etc.,
20 etc.

21 This does a lot of things for you.
22 One, there will be no dispute about the change
23 orders because they will be signed. They will be
24 part of the agreement. We are not going to be
25 sitting around here looking at change orders.

1 Okay? That's one thing I would request.

2 The other thing I would request, Your
3 Honor, we are the only party who has spent a couple
4 hundred thousand dollars I think auditing this job
5 and trying to figure out what's going on. And,
6 believe me, it's going to be a complicated
7 mathematical deal. We have a lady who is very
8 good, Sam Adelly (phonetic). You've seen her in
9 court, I believe. She at our request and our
10 expense has created a spreadsheet, an interactive
11 spreadsheet, and what it does is it allows her to
12 take into account -- we are working on it now. You
13 started out with \$26 million worth of liens in this
14 case, and through our hard work we've managed to
15 get them down quite a bit. We are no longer at
16 that ridiculous number. We are zeroing in on the
17 real number.

18 And what I would like to do before we
19 start this case is let's figure out what the real
20 number is. Maybe the first day of trial ought to
21 be here is spreadsheets. Can we all agree that
22 there is a million dollars in Balfour Beatty's lien
23 that was made up of BNCC's lien, which is now gone?
24 We have got to get all of that out of their lien,
25 and we have got to get it out of these other liens.

1 And then what I would do is, we'll send
2 a summary of it to Balfour Beatty, okay, first, and
3 say here is the spreadsheet, here is what we think
4 you have been paid, here is what we think we paid
5 you. If you disagree, let us know. We can argue
6 about that in court. Okay?

7 Then we'll have certain cells that will
8 be purely for your use so that when you make a
9 decision about a specific item, you put the number
10 in, hit a button, and down here is your result so
11 you don't have to spend days and days and days
12 figuring it out. It will also help you, I believe,
13 hone in on what the real issues in this case are,
14 because finding the issues is almost as hard as
15 solving the issues.

16 So with your permission, I will ask her
17 to proceed. And you could even make her an expert
18 -- the court's expert if you want to. It doesn't
19 matter to me. She is a fraud person up in DC. She
20 isn't helping me. She is a number cruncher.
21 Right? So if we can be of assistance to you in
22 that regard, we would be more than pleased to
23 because I think we're more likely to get the proper
24 result, which is really what all of us are after.

25 THE COURT: Sure.

1 MR. BUNDY: Okay? Is that okay?

2 THE COURT: Yep. That sounds
3 reasonable.

4 Let me hear from you, Mr. Hildebrand.

5 MR. HILDEBRAND: Well, Your Honor, I'm
6 really not sure what he is proposing. If he is
7 proposing that we try to get together and figure
8 out based on the settlements what are the amounts
9 in controversy, then I'm certainly happy with that,
10 but for me to agree that his expert is going to be
11 the court's expert and that you are going to accept
12 what she says as being -- that's what the trial is
13 about.

14 MR. BUNDY: That's --

15 MR. HILDEBRAND: May I finish, Bill.

16 MR. BUNDY: I've got no problem with
17 that. That's fine. I'll withdraw it. They just
18 don't have an expert. That's the only thing. It's
19 the only one.

20 THE COURT: I'm with you.

21 Mr. Hildebrand, I've got you.

22 The meet and confer is a great idea,
23 and I think that will go a long way towards
24 expediting this trial. I would agree with that,
25 but that sounds like you do as well.

1 MR. HILDEBRAND: I do. If they want to
2 present us with where they think we stand, I'm
3 happy to look at it, and I think we can probably
4 come to an agreement.

5 THE COURT: All right. That would be
6 great. And then how we get those numbers
7 calculated is going to be a substantial amount of
8 effort. There is no two ways about that. But
9 ultimately it's going to be based upon proof and
10 the evidence that comes into trial. So we will go
11 from there. I think that that would be well worth
12 our time, to see what it is y'all can agree to.

13 Those of you who I have granted summary
14 judgment for today over the objections of both
15 parties, I would note, can submit those orders, and
16 we'll have a finite figure at least what we're
17 talking about.

18 I intentionally did not rule on the
19 mechanic's liens claims. Those are just not what I
20 was thinking we were going to do. That's
21 ultimately what's going to be tried here. There is
22 no question about that. My thought was really to
23 get the subs out of the way so that we get to the
24 brass tracks, but it may be that we just need to
25 start right in there with the case itself and go

1 from there. That was really my purpose behind
2 trying to get these motions heard today. Y'all go
3 back to your clients, tell them what I have
4 ordered, and go from there, and figure out how you
5 want to proceed. We have knocked out a number of
6 the parties, I think, today. I'm sure some of
7 y'all need to go back to your clients and figure
8 out what more, what additional effort and time,
9 they want to put into the trial of the case. I'm
10 happy to have you.

11 Like I said, I have been to the clerk
12 of court to ask for a larger courtroom, and so far
13 I've been declined in that offer. So I'm really
14 concerned with how many people we can put in here.
15 So I'm looking now into whether or not I need to
16 have some sort of audiovisual equipment and have
17 y'all in another room in the courthouse. That's
18 just a concern that I've got. So I just want y'all
19 to know that I'm working on getting everybody
20 together. Because not only are the masks difficult
21 when you guys determine credibility of witnesses
22 but so are people on Zoom. So that's just been the
23 toughest thing I've had to deal with.

24 MR. HILDEBRAND: Just so I'm clear, so
25 will Balfour -- will we proceed, then, with Balfour

1 putting its case up and then the subs to follow?

2 THE COURT: I'm starting to lean that
3 way, yes. I'm not sure how it's going to make
4 everybody happy, but I'm leaning that way.

5 MR. HILDEBRAND: If you'd just let us
6 know --

7 THE COURT: Let me tell you, one of the
8 benefits of being non-jury, we can cut this case
9 off and go try these other cases, and that's why
10 really as I was preparing for this when I realized
11 Mr. Timbes wasn't available and Mr. Brennan wasn't
12 available that first week, that sort of blew my
13 plans out of the water.

14 The other option is just to pick three
15 at a time and go forward in that fashion. That's
16 the other option I was thinking of.

17 MR. HILDEBRAND: Your Honor, the
18 problem that I've got with that or the concern that
19 I've got is that if you try one sub and he closes
20 his case, then I've got to call the witness to
21 testify about that one sub but then I'll have to
22 recall him in my case. You will almost have to
23 recall witness after witness after witness.

24 THE COURT: Well, I'm trying to keep
25 the tail from wagging the dog.

1 MR. HILDEBRAND: I understand that.
2 I'm happy to start on the 13th with Balfour's case
3 first. I don't know if any of the subs would have
4 any objection to that. I think some would probably
5 agree. It just makes a lot more sense since we
6 were the general to explain everything, and some of
7 them want to rely on our testimony. I heard them
8 say that today. If you could just let me know.
9 Again, we're only a week and a half away from
10 trial. I told my people that the subs were going
11 to be the first week, but if I need to tell them
12 that we are going to be going the first week, just
13 let me know. I'm happy to do it now if you just
14 tell us and we can get started.

15 THE COURT: I'm leaning that way. Let
16 me hear from some of the subs.

17 Ms. DiFranco is up.

18 MS. DIFRANCO: I just need some
19 clarification so I can advise my client. I only
20 got partial summary judgment today, so we need to
21 come back on our breach of contract claim. We
22 still have our lien claim. There is some
23 subcontractors who only have lien claims, no breach
24 of contract claim. There are some subcontractors
25 that have contract claims that include damages for

1 delay. So there seems to be, like, different
2 categories of subcontractors.

3 THE COURT: I don't think there is any
4 question but the delay issue is going to be decided
5 between these two in order to get to that point
6 with these subs. So I think a number of them have
7 delay damages. So I think we have just got to
8 address that problem.

9 So what I'm thinking is that I would
10 like to see is, one, on the issue of the contract
11 documents, is there any objection to what has been
12 put forth there on that, or do you want to sit down
13 and talk about that?

14 MR. HILDEBRAND: I'm happy to do that.
15 Just contact me in advance. I think we probably
16 could have talked about that. I think that they
17 have actually been introduced in depositions. So I
18 think we can get together and probably agree on --

19 MR. BUNDY: Just because there is a
20 document in a deposition doesn't mean I agree to
21 it. There is nobody there to tell them not to,
22 so...

23 MR. HILDEBRAND: Well, we had agreement
24 from the people who have been deposed on what the
25 contracts -- but in any event, I think we can

1 probably agree on that, Your Honor.

2 THE COURT: Okay. I'm not sure what
3 y'all's schedule is, but sometime the first of next
4 week you think y'all can get together?

5 MR. BUNDY: I would suggest, since he
6 is suing me, he bring the documents. He goes to
7 assemble them. That's his burden. He's going to
8 go first. He's got the burden of proof. He's got
9 to put the contract in. That's on him. Not me.
10 I'm not spending all that staff time looking up
11 stuff. That's his responsibility. So what I would
12 suggest is, he get all of his documents together as
13 quickly as he can and either bring them to my
14 office or I hate to come downtown but I guess I
15 will and we'll start going through them. It's
16 going to take us a day to get through them. This
17 is an amazing case, Your Honor. We have taken 40
18 some odd depositions, and nobody has referred to a
19 single sheet of plans or specifications. Not one.
20 This is going to be an interesting trial. But they
21 are part of the contract documents, and they need
22 to be in evidence.

23 THE COURT: Okay. What about your
24 expert witness who we were talking about? Do you
25 plan to have her provide some sort of spreadsheet?

1 MR. BUNDY: Yes. Putting aside the
2 document issue, I just talked to her this morning.
3 This just occurred to me today. It's sort of a
4 work in progress. Right now what she is doing is
5 preparing a spreadsheet that shows all the original
6 liens and as of today where we are now. The only
7 issue she raised with me was if the judge grants
8 summary judgment do I put that down as paid or do I
9 put that down as summary judgment. So we'll have
10 to make some -- because there is a difference
11 between having a judgment, as you know, and
12 collecting one.

13 THE COURT: Big difference.

14 MR. BUNDY: So that's the first
15 spreadsheet, to sort of give you a jumping-off
16 point. Okay? And then we'll go to the next
17 spreadsheet, which will be the next iteration of
18 it. It will probably take about a week to get
19 there. Okay? And as I create them, when I think
20 it's appropriate to share them with my adversary, I
21 will. Okay? I'm not going to share drafts with
22 him and all that because I'm not getting into 98
23 drafts.

24 THE COURT: Right.

25 MR. BUNDY: Okay? So that would be my

1 ideal. I would hopefully get it to you -- get
2 something to you, whether we agree to all of it or
3 not, by the middle of next week. Maybe Thursday
4 would probably be a more realistic date.

5 THE COURT: Okay. All right. I think
6 that would be beneficial because I do think we can
7 probably at a minimum take the morning of the 13th,
8 get everybody together, see how we are looking, how
9 we are going to proceed.

10 So in response to the question, I think
11 at this point in time probably Balfour Beatty gets
12 to put their case up first, and let's get started
13 that way. Those of you who are subs are certainly
14 welcome to be here and participate because they
15 will be talking about your stuff. Okay?

16 But, again, I've got a limitation of
17 how many people I can fit in here, unless I can
18 find y'all an alternative location. And, like I
19 said, that's just one of the things I was thinking
20 today from a procedural standpoint. So I want to
21 get on that and then we can continue to move
22 forward. But somebody from Charlotte doesn't need
23 to be hanging out here for two weeks before they
24 got time to try the case. That's my concern.
25 That's an additional cost and expense that they

1 don't need to have.

2 MR. BUNDY: But, just to be fair to
3 them, I'm suing three of them for civil conspiracy.

4 THE COURT: Right.

5 MR. BUNDY: And so I'm going to be
6 laying the groundwork, I hope, for my breach of
7 contract, accompanied by fraudulent acts, civil
8 conspiracy, and unfair trade practice, in
9 cross-examination with Mr. Hildebrand's witnesses.
10 And when we put people up, we are definitely going
11 to be shooting at them.

12 THE COURT: Okay. All right.
13 Understood.

14 MS. DIFRANCO: So are you envisioning
15 this case -- these claims to take the first two
16 weeks?

17 THE COURT: What do y'all think?

18 MR. BUNDY: I think so. I've got a lot
19 of damages to put in. I've got a serious
20 counterclaim. Probably going to take three to four
21 days, maybe a week.

22 THE COURT: Okay. All right.
23 Plaintiff's case? Two days? Three days? A week?

24 MR. HILDEBRAND: With
25 cross-examination, I think probably definitely

1 within a week. Maybe three or four days.

2 THE COURT: So realistically it sounds
3 like that time is going to be spent there.

4 MR. BUNDY: I've been known to spend a
5 day or two with one of them.

6 THE COURT: I can see that.

7 MS. DIFRANCO: Are we safe to advise
8 our clients that it will be October 25th before
9 they need to be available for trial?

10 THE COURT: If they want that
11 protection, I'll be glad to give it to them. Okay?
12 Just hold them off and just put them aside. Again,
13 let's do that. Okay? I know y'all are gearing up
14 for it, but I think at this point in time we need
15 to get that done.

16 MR. TERRY: Your Honor, if our subs
17 would be calling Balfour's witnesses, are we to
18 then call them again in our case or we question
19 them here?

20 THE COURT: You can certainly question
21 them here, if you would like. Okay?

22 MR. TERRY: I'm sorry. I said that
23 wrong. In the initial Balfour case --

24 THE COURT: That day they are going to
25 be talking about your work. Right? They are going

1 to be here talking about your work.

2 MR. TERRY: I guess the issue is, we
3 have to open up our case. We're not going to be
4 doing that until maybe the 25th. Will we leave it
5 all open and then it stays open?

6 THE COURT: I think the initial trial
7 is between Balfour Beatty and Library Associates.
8 That's what I want to try. In order for them to
9 get what they are going to have, they've got their
10 witnesses to come testify. Their witnesses are
11 going to be testifying about your people's work at
12 some point in time during their testimony. I don't
13 know any other way to do it.

14 MR. TERRY: I'm just trying to figure
15 out if I need to call them later or if I need --

16 THE COURT: Your witnesses? Are you
17 talking about their witnesses?

18 MR. TERRY: His witnesses.

19 THE COURT: If they are called and you
20 need them in your case, then you are going to be
21 able to call them again. Okay? I'm allowing you
22 to do that. For sure.

23 MR. TERRY: Thank you.

24 MR. BUNDY: Just as a point of
25 clarification, I had this issue come up in Atlanta,

1 cross-examination of a witness in their case in
2 chief does not prohibit me from calling them back
3 again in my case in a counterclaim. Just to make
4 sure that that's understood.

5 THE COURT: Yes. At least up until the
6 time that I can't stand it anymore.

7 MR. BUNDY: Judge, you are going to
8 love every minute of it. Okay?

9 THE COURT: Well, just a little clue to
10 everybody. If you see me up pacing back and forth
11 that means it's time to move it along. Okay? It
12 doesn't get stated on the record. It just becomes
13 very apparent if I'm walking.

14 MR. BUNDY: There is one more motion.
15 I'm sorry.

16 THE COURT: Okay. Go head.

17 MR. BUNDY: There was a motion filed I
18 guess it was last night. There's a lot of those in
19 this case. Third-party defendant Old North State
20 Masonry's motion for protective order, can we hear
21 that? We'll waive the 10 days.

22 THE COURT: All right.

23 MR. WINDLE: Your Honor, Al Windle, Old
24 North State Masonry.

25 THE COURT: Sure.

1 MR. WINDLE: During the deposition of
2 the Old North State Masonry witness, counsel for
3 Library attempted to ask the witness questions
4 about documents that were labeled -- clearly
5 labeled for settlement discussions only. I
6 objected and instructed the witness not to answer.
7 That was it.

8 THE COURT: All right. No
9 confidentiality? Just settlement discussions,
10 right?

11 MR. WINDLE: Yes, sir. Thank you, Your
12 Honor.

13 THE COURT: Mr. McDonald.

14 MR. MCDONALD: The starting point of
15 this -- well, not the starting point. The
16 consolidated claim that was made by Balfour Beatty
17 to Library Associates initially the architect on
18 January 25th, 2019, you are going to hear a lot of
19 about this, fight over it, whether it was timely,
20 and everything else.

21 But one thing you are not going to hear
22 is they -- everybody agrees they were required to
23 do it. Okay? Architect's response, they sent a
24 four-page letter and say we're due 22 or \$24
25 million, whatever it was. Architect says, hey,

1 that ain't going to be enough, boys. You need to
2 send me some additional documentation to support
3 this claim as required under the contract
4 documents. The timeline of these events can be
5 very important, as Your Honor will see when you are
6 trying this case.

7 On March 6th of 2019, Balfour Beatty in
8 response to the architect, who is the initial
9 decisionmaker and decision by the architect, the
10 condition precedent to being here today, okay --

11 We have got a fight over that.

12 -- sends four volumes of documents. 80
13 percent of it, Your Honor, are just e-mails. Okay?
14 But in those documents, certain subcontractors had
15 the benefit of Balfour Beatty including their
16 claims in what they were submitting to the owner.
17 Certain subcontractors unfortunately didn't get
18 that benefit. None of their stuff made it into the
19 four volumes.

20 We took, as an aside, Balfour Beatty's
21 30(b)(6) deposition in this case three months ago,
22 something like that, and when asked specific
23 questions, repeatedly Balfour Beatty, 30(b)(6),
24 says it's in the four volumes. You want to know
25 about the claim? You go to the four volumes. You

1 want to know what the numbers make up? You go to
2 the four volumes. Everything you need to know is
3 in these four volumes.

4 So, once again, in preparation for Old
5 North State Masonry's deposition, we went to the
6 four volumes because Old North State Masonry is one
7 of the chosen ones whose documents got included in
8 the four volumes, and if you look at those
9 documents, you find the very documents that were
10 sought to be inquired upon in the deposition of Old
11 North State Masonry.

12 Mind you, I don't dispute that they say
13 for settlement only. All right? I don't dispute
14 that those words appear on these documents that I
15 sought to ask him about. The settlement wasn't
16 made to my client.

17 Where we were, Your Honor -- I don't
18 want to play gotcha. I don't want to mousetrap
19 anybody. Where you are is, they moved that I can't
20 ask any questions on these settlements -- on the
21 documents that say settlement only. I would like
22 to know what Balfour's position is as it relates to
23 these documents. You can't ask any questions on
24 them. They are not invisible. They come out of
25 the claim. But just as I don't want to mousetrap

1 anybody, I don't want to get mousetrapped, either.
2 Okay? So that's where we are.

3 The settlement only documents were
4 included in Balfour's claim that was submitted to
5 us. If Balfour takes the position that these
6 settlement only documents can't be asked about,
7 well, then, the effect of that ruling will have
8 what it has when this case gets tried. But I
9 wanted to point that out. That's why I was asking
10 about them. Thank you very much.

11 MR. WINDLE: I don't know what was said
12 between Balfour and these folks, but what they are
13 talking about are letters that I wrote to another
14 attorney. They clearly say for settlement
15 discussion only.

16 MR. HILDEBRAND: Your Honor, I can nip
17 this in the bud. They were inadvertently produced
18 by my client. I didn't do them. They were trying
19 to support the claim as asked by the architect,
20 what is this for, and he provided that. So I think
21 they do need to come out. We can stipulate they
22 will come out, those letters will come out of those
23 four volumes.

24 THE COURT: That's both ways? No
25 problem?

1 MR. MCDONALD: I just want to make sure
2 I'm very clear about this.

3 THE COURT: Right.

4 MR. MCDONALD: This document, the
5 lawyer-to-lawyer document, has attachments. It's
6 got spreadsheets. It's marked for settlement
7 purposes only. If it's all coming out, well, then,
8 Your Honor is going to make a ruling that you can't
9 ask questions about settlement only, they take the
10 position -- Balfour takes the position it's
11 settlement only, that's where we are going to be.

12 MR. BUNDY: It's as if those documents
13 were not in there.

14 THE COURT: I'm with you.

15 MR. HILDEBRAND: Well, the backup
16 documents are.

17 MR. BUNDY: No. The backup documents
18 are part of the -- they are all one document.

19 THE COURT: I think that's where the
20 problem lies, right?

21 MR. BUNDY: That's where their problem
22 lies. I ain't got a problem. I don't care.

23 MR. HILDEBRAND: I would have to review
24 it.

25 MR. BUNDY: No. What --

1 MR. HILDEBRAND: Your Honor, if I may.

2 THE COURT: Let him finish.

3 MR. HILDEBRAND: That was not a motion
4 made to me. I would like to review it and then see
5 whether the letter that is being referenced
6 specifically references all those documents. I
7 don't know. I don't have it in front of me. I'm
8 not prepared to address it. But I would think that
9 the -- whatever letter there might be that talks
10 about what the claim is is completely different
11 than forwarding documents and forwarding backup for
12 a claim, which is what the architect said for the
13 backup. So the documents that underlie it I think
14 are part of the claim. The documents -- the
15 settlement letter from an attorney I don't think
16 is. Again, I'll have to look at it, Your Honor.
17 I'm not prepared to address that.

18 THE COURT: All right. So I need to be
19 clear on this. So the objection was made to the
20 lawyer-to-lawyer letters; is that correct?

21 MR. WINDLE: That's correct.

22 THE COURT: What about the underlying
23 data? Was that objection --

24 MR. WINDLE: The objection was to the
25 letter and the attachments. It was all part of

1 the --

2 THE COURT: Now, had the attachments
3 been produced in any other way, shape, or form
4 during the course of discovery?

5 MR. WINDLE: Yes.

6 THE COURT: They have been?

7 MR. WINDLE: Yes.

8 THE COURT: Okay. Mr. Hildebrand, you
9 have not seen that or gone back to see that?

10 MR. HILDEBRAND: I have not.

11 THE COURT: Is that y'all's
12 understanding, the attachments have been produced
13 otherwise?

14 MR. MCDONALD: Certain of the
15 attachments are e-mails. Certain attachments are
16 daily logs that have been produced otherwise. But
17 the most important thing is the summary, attachment
18 A to the letter, which is the client's summary of
19 what the claim is, Old North State Masonry's
20 summary of what the claim is, and the claim
21 calculations, dated December 5th, 2018. There is a
22 second one that's dated December 7th, 2018 that
23 also says for settlement purposes only that I tried
24 to ask questions about and there was an objection
25 to because it said settlement purposes. That's the

1 claim calculation. That's what they put together
2 in '18 and submitted to us in '19.

3 So where you wind up is there are
4 certain attachments, daily logs and e-mails, that
5 are what they are. I guess the e-mails would be
6 privileged, but the claim calculations, how they
7 wind up with their \$1.4 million that they are
8 trying to claim in this case, says for settlement
9 purposes only.

10 The other thing I would point out to
11 you, whether they were inadvertently produced at
12 the time of the submission of the claim is of
13 critical importance because they only get one bite
14 at the initial submission to the architect to meet
15 the condition precedent so he can make his initial
16 decision and then it goes to you under the terms of
17 the contract.

18 So there are no do-overs to this
19 process. It's either in there or it's not. I will
20 point out -- I'll quit after this. I will point
21 out that the architect gave them additional time to
22 submit these documents. He could have given them
23 10 days. I think he gave them 30 days. That's
24 where we are.

25 MR. WINDLE: My comment is, at the

1 deposition, these guys could have asked my witness
2 to write out the claim, to explain each item and
3 each component. They could have done that. They
4 didn't. That's not my fault. But that's a
5 settlement letter.

6 MR. BUNDY: We also could try the case
7 for it and write him a check.

8 Do I have to do your job, too?

9 MR. WINDLE: I don't have to do your
10 job either.

11 THE COURT: All right. So back to my
12 question because I'm not clear on that. Do you
13 have the other underlying data -- has that other
14 underlying data been produced, i.e., the basis for
15 the claim?

16 MR. HILDEBRAND: Yes, sir.

17 MR. MCDONALD: Your Honor, the claim is
18 -- I took Mr. Anastasia's deposition, and I did ask
19 questions about the claim, and the backup
20 documentation for how he arrived at those numbers
21 is simply those numbers. That is the claim. He is
22 the one that's come up with this. There is no
23 expert that they have named that is going to come
24 in here and show you inefficiencies. That's never
25 going to happen. What you are going to get and

1 what I fear, Your Honor, is where we wind up is a
2 witness writing out what was in this claim that was
3 submitted to Balfour. That prevents us -- at the
4 trial prevents us from saying it wasn't submitted
5 because this is the claim that they say now we
6 can't ask about.

7 And, two, that's all that exists.
8 There is no backup to it. There is nothing else.
9 Or, maybe there is new backup. I have no idea.
10 That's why we start with the four volumes. We took
11 Balfour's deposition. If you want to know it, it's
12 in there. If it's for settlement purposes only and
13 they say we can't ask about it, it needs to come
14 out I believe in toto.

15 THE COURT: Well, I think the general
16 rule of thumb is if something is presented for
17 settlement purposes it's not admissible. Okay?
18 That's the general rule. So to the extent that
19 that's what it was put there for, if that's the
20 basis for the presentation, then I think it's
21 probably not admissible. You are sort of asking a
22 motion in limine question here to me, as I see it.
23 This is discovery. I think it's discoverable.
24 Okay? I think under Rule 26 that kind of
25 information is discoverable. Just because it's

1 settlement based or some background for that, I
2 don't see it's confidential or privileged in any
3 way, shape, or form. That I would think. May be
4 attorney work product if it was requested by an
5 attorney, but I would think it would be
6 discoverable. But whether it is admissible or not
7 is I think a different question. To the extent
8 it's there for settlement purposes, generally
9 that's of no consequence.

10 That's one of the things that -- does
11 that help in way with the ruling? Do you need me
12 to rule on it now? Because if I rule on it now
13 I've got to look at it. Okay? It looks like --
14 that's volume 1 of four volumes right there?

15 MR. MCDONALD: It's only in volume 1,
16 thankfully, Judge.

17 THE COURT: How many pages are we
18 talking about?

19 MR. MCDONALD: Well, I'll give you a
20 better answer. So this was the tab -- when we were
21 talking with Warco I had the notebook and those
22 tabs? Same situation here, Judge.

23 And under the tabs, it was -- this is
24 Old North State Masonry. It was tabbed 9 and 10.
25 So we're talking about 50 pages I can send to you,

1 less than 50 pages I can send to you, of what's in
2 -- what they took the position was in -- I wasn't
3 allowed to ask any questions about it. And it all
4 comes from volume number 1. It's less than 50
5 pages.

6 THE COURT: It's certainly less than
7 what I've looked at before.

8 Speaking of which, we have gotten -- we
9 finalized all of that. That's all done, all the
10 confidential stuff. Most of that stuff got
11 produced, as I saw. So I'll take a look at it. If
12 you want to send it to me tomorrow, I'll take a
13 look at it and give you a ruling first of the week,
14 is what I'll do.

15 But, again, I think it's discoverable
16 but may not be admissible. Okay? If there is no
17 other basis for how the numbers were calculated, I
18 would be scratching my head. I don't want somebody
19 doing math in my witness stand over here any more
20 than they already do. You'll see a calculator
21 sitting over there. That's what people do in
22 there.

23 MR. BUNDY: There has to be a
24 foundation for all of that. He just can get in
25 there and say our books back there in Charlotte

1 show all of these things. I think that's where we
2 are headed.

3 THE COURT: Okay. I'm with you on
4 that.

5 I have seen some -- we had these
6 motions today as far as sort of getting resolution.
7 I think I've seen some offers of settlement as well
8 being put forth in this case. So y'all certainly
9 can continue to move along those lines. But my
10 anticipation is that we're going to trial, and
11 we'll start on the 13th. I would ask y'all to get
12 together sooner rather than later on admissibility
13 of documents. I mean, the one benefit of running
14 this court, you can run it somewhat like a federal
15 court. Okay? We are fairly relaxed in here. To
16 the extent the lawyers can meet, find your
17 documents, have your binders ready to go, we can
18 move the ball. We don't have to sit around waiting
19 on the jury to come back and forth. That's one of
20 the things I like about what we do here.

21 And so to the extent y'all can come to
22 terms, I generally -- just so you know at the time
23 of trial, to me it's generally admissible unless
24 and until I hear an objection. Okay? I mean,
25 there is a lot less stuff objected to than there

1 are move to admit, move to admit. Okay? So I'll
2 make that statement at the time of trial so we can
3 keep the ball rolling at that point in time.

4 But I'm here. I'm happy to help y'all
5 get through whatever the process you need to get
6 through to get this case through.

7 MR. HILDEBRAND: Your Honor, where
8 things are admissible, one thing that might kind of
9 cut down on some of the time would be -- can we
10 come to an agreement that, I'll ask counsel about
11 this, is that any documents that have been produced
12 by any party as part of their business records or
13 in response to a subpoena the authenticity does not
14 have to be established? Whether the document is
15 admissible, if somebody wants to argue that it's
16 irrelevant, or whatever, but is there any issue on
17 authenticity?

18 MR. BUNDY: I'm going to require strict
19 compliance with the business records rule. I'm
20 going to go by strict compliance of the best
21 evidence rule, authorization, all that. Okay? I
22 ask no quarter. I give none.

23 THE COURT: All right. To the extent
24 y'all can have joint exhibits, that would be great.
25 That sounds like that's not going to happen.

1 MR. TERRY: One other issue. Under the
2 offer of settlement, is the subcontractor case set
3 for trial on the 13th or October 25th? Because if
4 the case is set for trial and then subsequently set
5 for trial again, the opportunity to make an offer
6 of settlement is reset?

7 MR. BUNDY: I would respectfully submit
8 that that 10 days starts the first day of trial.
9 It doesn't get redone. Okay? In other words, the
10 fact that you divide the trial up, a strict reading
11 of that statute would be 10 days before the trial
12 begins. You are not going to stop the trial and
13 suddenly die. You are going to continue with the
14 trial. You don't get to wait to see how your trial
15 is going to see what kind of offer you are going to
16 make.

17 THE COURT: I do think that's the case.

18 MR. TERRY: Thank you, sir.

19 THE COURT: So we'll start the trial
20 the 13th. It's just a matter of housekeeping.

21 Any other matters that y'all think we
22 need to address?

23 Mr. Love, I know you are here for --

24 MR. LOVE: Flooring Services.

25 THE COURT: Flooring Services. And

1 truth be told, I'm assuming you know very little
2 about the case.

3 MR. LOVE: Twice in a week, it's pretty
4 rough to have an attorney leave us. I'm playing
5 catchup.

6 THE COURT: I'm okay with that.

7 There was an issue brought up today
8 where -- Mr. McDonald, I think you would want to
9 address that issue with Flooring Services. Help me
10 out with what happened there.

11 MR. MCDONALD: So Mr. Koontz -- and I'm
12 going by memory. Mr. Koontz represented Forton
13 Company. Forton Company had a lien or had a claim.
14 Balfour actually paid that directly many years ago,
15 two years ago. Forton Company was out of it. If
16 it had a lien, it satisfied its lien. Flooring
17 Services -- unfortunately they both had an F. So
18 you can see where a little bit of this confusion
19 comes from.

20 Flooring Services then also was
21 represented by Mr. Koontz. He filed an action
22 against Balfour Beatty only. He doesn't name
23 Library Associates. So we don't know anything
24 about that, and most of the lawyers don't know
25 anything about that because all the cases that were

1 consolidated had Library Associates in it. We kind
2 of kept everything moving.

3 The Flooring Services case -- Balfour
4 and Flooring Services I believe got consolidated in
5 this case, but that order got filed in their case,
6 and nobody in 1108 knew about it, and then so we
7 are where we are with Flooring Services. But
8 that's still a claim made vis-e-vis Flooring
9 Services, Balfour Beatty. We are not involved in
10 it.

11 THE COURT: Is that all news to you?

12 MR. LOVE: The consolidation is not,
13 but everything else is, yes. I go where they tell
14 me to go.

15 THE COURT: Well, it seems to me that
16 you've got your own action pending out there. But
17 when you say it got consolidated, it did not get
18 consolidated in this Library Associates case. It
19 got consolidated into, what, the original?

20 MR. MCDONALD: I believe it did get
21 consolidated into this case, but the order of
22 consolidation I think was in the Flooring Services
23 case. I'm going all from memory. So it's probably
24 six months ago when this issue came up.

25 THE COURT: See if there is not a

1 consolidation order on that.

2 So Balfour Beatty's motion to
3 consolidate and refer was granted in '19, 1108.
4 Isn't that their case? Y'all brought it in here.

5 All right. Welcome to the fray.

6 MR. LOVE: Glad to be here.

7 THE COURT: You can hang around the
8 week of the 13th or come back on the 25th.
9 Whatever. 25th will at least give you time to
10 figure out who your client is.

11 MR. LOVE: The case, the parties.

12 THE COURT: I've moved into new law
13 firms before. It can be very disconcerting.

14 MR. LOVE: Especially just down the
15 street, like I did.

16 THE COURT: Well, it's worse with
17 malpractice at every step you take.

18 All right, folks. Good to see y'all.
19 Thank you. Get me those documents. I'll give
20 y'all a ruling at the first of the week. Let me
21 know how y'all's meeting goes, or whatever I need
22 to do. Otherwise I'll look for those orders.

23 (The hearing concluded at 4:33 p.m.)

24

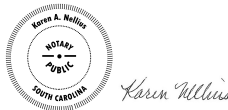
25

CERTIFICATE OF REPORTER

I, Karen Nellius, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 1st day of September,
2021 at Charleston, Berkeley County, South
Carolina.



Karen Nellius, RPR
My Commission Expires
November 14, 2024

I N D E X

Page Line

CERTIFICATE OF REPORTER

134

1

REQUESTED INFORMATION INDEX
(No requested information.)

E X H I B I T S

(No exhibits proffered.)

&	10a 64:16,19	2016 20:6	2nd 2:11
& 2:3,16,22 3:7,13	11 78:4,9 84:7	2018 19:7 20:7	3
3:19 4:1,2,8,12,19	1108 15:9 132:6	49:17 73:9 81:3,4	30 18:25 28:6 31:4
14:14 22:4 23:4	133:3	82:21 122:21,22	31:10,18 46:20
26:20 27:11 28:18	12 78:11 84:7	2019 1:5 73:19	50:13 60:22 72:21
48:4,12,14,17,19	125 86:21	83:1 116:18 117:7	74:20 76:4 117:21
49:3,18,20,21	12th 94:5 95:8	2020 58:14	117:23 123:23
52:11 65:25	13 48:20 51:7,8	2021 1:16 58:17	300 3:20
	54:11 73:5 87:3	94:7 134:13	301 2:5 4:14
1	134 135:5	2024 134:23	31 1:16
1 52:19 59:10	13th 81:3 82:21	20th 30:21 40:22	31401 4:21
97:19 100:3	97:12,16 107:2	56:8 60:9,21	32 7:21
126:14,15 127:4	111:7 128:11	97:13	33 4:20
135:5	130:3,20 133:8	22 116:24	359 51:24,25
1,859,359 31:25	14 134:23	23,802 82:22	359,709.39. 48:25
32:25	141 50:7,10	230,000 39:9	51:2
1.1 100:3	14713 134:18	231,181.19. 70:24	369 21:11
1.4 123:7	15 4:9	73:6	369,000 20:10
10 64:12,13 71:16	150 2:17 3:8	24 116:24	369,333.25. 20:11
73:4 75:14,16	150,000 21:13	24th 97:23	29:2
77:21 78:22 81:24	1516 2:11	25 86:20 97:18	370 5:4
82:6,7 84:7 87:3	157,268.04. 91:6,8	25th 113:8 114:4	373,497 41:15
93:16,21 95:4	16 73:18 82:17	116:18 130:3	373,497.28. 35:8
115:21 123:23	166,000 87:10	133:8,9	3rd 58:17 60:24
126:24 130:8,11	167,660 88:7	26 7:21 101:13	
10-01108 1:5	16th 94:7	125:24	4
100 1:19	17 82:17	262,033.40 34:4	4 81:16 87:17
101 4:9	171 5:4	272,266.51 35:7	40 109:17
102 53:4	18 123:2	28 73:19 82:25	42 75:23 81:1 82:2
102,058 54:10	19 43:23 73:16	28202 4:15	42nd 79:21
103,267.93 82:25	123:2 133:3	28204 2:23	45,906.07 35:4
104,000 61:12	1931 38:5	28th 81:4	46,000 8:15
104,703.51 56:6,22	1st 134:12	2900 4:15	46a 4:3
62:1		29401 2:6 3:15 4:4	478,621.93 70:23
104,703.51. 63:13	2	4:10 5:5	4:33 133:23
1065 2:23	2 50:13 73:12,15	29403 3:4,21	5
108,000 51:19	73:15 82:16,18	29485 2:12	50 47:5 126:25
109 51:24 52:25	20 15:12 43:24	29615 2:18 3:9	127:1,4
53:5	200 2:5	2:10 1:17	50,000 7:16
109,000 51:20	2004 61:17,20	2a 1:19	50,890 70:4
	2015 20:4 30:22		
	48:19		

500 41:25	78,211.78. 35:10	accept 103:11	address 74:25
550 3:20	7th 122:22	accepted 18:1 21:2	108:8 121:8,17
56 57:21 61:6	8	32:18 34:12,13	130:22 131:9
585,000 70:1	8 52:20,22 75:7	67:25	adelly 101:8
590 4:20	8,087.17 35:4	accessories 66:16	adjudicate 16:17
597,546.28 33:18	80 117:12	accompanied	administrative
59e 92:20	843-377-1871 4:5	98:25 112:7	20:25
5c 23:11	843-492-4134 2:12	account 31:24	admissibility 58:8
5th 122:21	843-722-3058 5:5	43:7 101:12	68:20 128:12
6	843-723-6470 3:21	accounting 88:14	admissible 42:24
6 18:25 28:6 31:4	843-727-2200 3:15	accounts 85:20	43:19 57:22 59:5
31:10,18 46:20	843-727-2653 2:6	accurate 89:15	125:17,21 126:6
48:19 60:22 72:21	843-790-0083 4:10	134:6	127:16 128:23
74:20 76:4 87:9	843-991-4128 3:4	accused 23:2	129:8,15
92:15 117:21,23	87,000 20:16 25:3	acknowledge 30:5	admission 45:10
600,000 33:11	9	30:8	60:7 69:1
62,000 33:12	9 73:20 74:6,16	acknowledged	admissions 50:18
62,091.71 33:20	75:4,5,7 76:12,13	18:25 43:17 61:21	61:6
635,890 70:5	78:4 79:10,11	acknowledges	admit 27:10,10
64,000 75:8,9	81:7,10 84:8	38:9	45:11 60:7,10
65,000 87:14	87:19,20 126:24	action 14:23 41:1	129:1,1
66 3:14	90,487.29 34:24	41:2 45:25 72:14	admitted 30:24
67,000 75:9	912-421-9988 4:21	131:21 132:16	45:8 61:1
67,966.15 74:14	921,671.39 47:2	acts 112:7	admitting 45:11
82:7 87:13	921,671.39. 47:8	actual 25:24	advance 72:23
689 3:3	937 36:4,8 44:20	adams 2:3	73:21 108:15
69,232.52 35:2	47:5,9	add 70:22 71:22	advanced 18:19
6th 117:7	937,687 44:9	78:25	adversary 110:20
7	937,687.61 35:18	added 70:3 78:5	advertisement
7 75:7 82:23	98 110:22	addendums 100:9	100:18
704-332-1181 2:24	a	addition 27:9	advise 107:19
704-342-5250 4:16	abide 37:19	55:23 73:4	113:7
704-944-3244 2:19	ability 90:14	additional 9:23	affect 7:12
3:10	able 34:21,23 43:3	20:14 25:2 41:21	affidavit 21:25
709,803.15 70:23	47:8 49:6 114:21	44:10,19 47:4,5	26:25 31:23 32:2
73 87:4	abomination 26:9	53:20 79:6 88:12	32:9 42:15,16,21
73,913 91:10	absence 95:24	90:20 94:14 105:8	43:2 48:18 49:14
73,913.15 91:2	absolutely 57:17	111:25 117:2	52:5,9,19,22 56:9
78,211.78 35:3	67:1	123:21	56:14,17,20 61:10
		additionally 31:9	65:6,16 74:11,18
			74:22

[affixed - arrived]

Page 3

affixed 134:12 afternoon 6:1 29:13 48:6,7 54:23,25 56:1 ago 22:14 37:4 90:4 117:21 131:14,15 132:24 agree 7:17 11:7 41:7,10 72:5 98:17 99:22,24 101:21 103:10,24 104:12 107:5 108:18,20 109:1 111:2 agreed 8:1 36:25 37:15 93:6 agreement 7:1,6 7:11 9:13 11:4,5 19:22 36:24,24 37:5,5,12,24 38:1 38:2,3,13 40:10,10 40:19,21 45:6,6,8 45:14 46:6 100:6 100:11,24 104:4 108:23 129:10 agreements 20:1 39:21 82:8 agrees 7:16 40:15 116:22 ahead 16:10 24:15 30:12 32:5 40:8 67:17 76:22 ain't 117:1 120:22 al 1:6,12 2:8 3:8 115:23 albeit 72:17 allegations 68:2 alleged 45:5 49:1 68:15 allegedly 38:2	allen 14:4,5,10 allison 2:22 65:25 allocated 77:4,15 allow 39:2 allowed 58:10 94:21 127:3 allowing 114:21 allows 40:20 101:11 alluding 68:5 allusion 19:8 alternative 29:9 111:18 amazing 109:17 amended 45:10 46:4,7 amendment 100:13 amount 18:22 20:8 31:24,25 32:25 34:16 35:15 49:8 56:5,22 57:16 62:1 75:8 75:13 77:9 78:16 84:10,10 86:12 87:25 88:4,11 90:10,12,25 91:3 104:7 amounts 35:11,12 35:14 52:7 82:24 103:8 ample 44:5 50:2 anastasia's 124:18 announce 10:4 answer 19:13 60:8 92:23,24 93:5,7 95:22 96:8,9 116:6 126:20 answers 95:13,25 96:14	anticipate 19:1 anticipated 41:25 anticipation 128:10 anybody 6:8 10:25 12:12 118:19 119:1 anymore 45:15 115:6 anytime 40:20 anyway 16:7 37:8 54:21 apologize 33:15 73:21 app 76:12,13 77:3 77:3 78:4,21 79:2 79:3,10,11 84:6,7 84:8 88:2 apparent 115:13 apparently 9:9 15:3 19:8 51:13 53:21 appeals 61:20,21 appear 118:14 appearances 2:1 appearing 9:19 appears 78:23 application 73:4,8 73:19,20,25 74:2,6 74:16 75:4,5,7,14 75:15,20,22 80:23 81:1,6,10,11 82:2 82:6,23 86:11 87:2,13,19,20 applications 48:23 52:6 73:23 76:1,7 80:22,24 81:5 82:19 applicator 55:22 apply 41:9	appreciate 8:6 63:15 71:4 84:19 apprised 72:1 approach 55:9 65:13 81:8 82:5 appropriate 21:23 66:3 110:20 approve 76:25 approved 21:1 25:4 33:25 46:17 48:21 51:10,13,15 53:21 67:12 70:2 76:19 90:25 91:5 april 94:7 arbitration 64:15 architect 17:21 18:2 24:6 81:3 100:16 116:17,25 117:8,9 119:19 121:12 123:14,21 architect's 116:23 area 7:20 areas 20:2 71:3 argue 22:8 65:5 102:5 129:15 arguing 49:25 89:11 argument 22:21 22:23 23:10 27:8 28:13 33:3 41:10 50:15,21 55:16 58:1 61:13 79:13 79:16 82:9 arguments 18:20 21:22 53:13,14 59:7 60:13 69:2 70:25 73:13 arising 64:18 arose 19:11 arrived 124:20

art 41:16 article 23:11 64:13 64:16,19 100:3 articularly 28:13 aside 44:12 92:2 97:9,16 110:1 113:12 117:20 asked 21:3 25:2 57:14 58:20 75:11 92:25 93:19 117:22 119:6,19 124:1 asking 47:6 69:21 119:9 125:21 aspect 85:2 assemble 109:7 asserted 55:24 assistance 102:21 associates 1:6,9 2:8 7:5,9,16,17 8:1,19,22,23 9:5 11:7 16:19 22:3,6 22:25 23:14,18 24:10 27:13 31:3 31:5,9,10,16,18 32:17 35:15 46:12 46:20 63:3 80:12 114:7 116:17 131:23 132:1,18 assume 44:2 63:25 95:18 assuming 131:1 atlanta 114:25 atlantic 4:9 attach 59:23 80:23 attached 43:13 50:12 52:3 56:20 58:13 64:3 81:10 attachment 122:17	attachments 120:5 121:25 122:2,12 122:15,15 123:4 attempt 39:10 attempted 116:3 attempting 56:3 attention 16:14 44:25 83:6 attorney 119:14 121:15 126:4,5 131:4 attorney's 8:2 32:1,2 62:3 63:17 64:1,24 65:6,7 71:11,14 91:15,22 attorneys 2:2,8,14 2:20 3:1,6,11,17 4:1,6,12,17 5:1 attributable 22:10 23:15 24:19 50:11 63:7 attributed 57:13 audiovisual 105:16 auditing 101:4 august 1:16 48:19 56:8 60:24 94:5 95:7 authenticity 129:13,17 authority 61:3 65:4 authorization 129:21 automatic 5:1 available 61:19 106:11,12 113:9 avalanche 26:13 award 29:1 33:1 71:11	aware 15:5 23:9 30:17 31:11,14,19 42:23 57:14 58:21 58:22 59:15 61:3 91:17 awindle 3:10 b b 3:8 18:25 28:6 31:4,10,18 46:20 60:22 72:21 74:20 76:4 117:21,23 135:13 back 11:18 12:18 33:15,23 38:17 42:4 45:10 49:2,7 57:4 63:6 74:3 83:3,10,10 89:17 97:25 98:3,5,5 105:3,7 107:21 115:2,10 122:9 124:11 127:25 128:19 133:8 background 78:1 126:1 backroom 41:12 backup 70:8 79:7 120:15,17 121:11 121:13 124:19 125:8,9 bad 25:12 balance 56:6,21 70:24 balfour 1:3 2:2 7:22 8:14,14,20 9:12,14 10:13,19 11:3,13 15:5,8,17 17:21 18:19,22 19:2,6 20:18,18 21:6,20 23:2,18,25 24:2 25:4 26:19 30:16,21,22,23	31:3,13,16 32:4,8 32:24 33:4,22,22 34:14,25 35:1,13 35:16 36:25 37:7 37:11 38:20,22,22 39:22 40:24 41:2 41:3,6,19 42:7 45:3 46:2,12,14,17 46:21 47:2,20 48:22,22 49:1,5,20 49:20,21,22,23 51:13,13 54:2 55:19,20,23 57:1 57:23 58:5 59:7 59:18 61:9 62:15 62:25 63:3,6,10 67:14 68:5,16 70:18,18,19 71:5 72:12,17 73:7,9,13 73:17 75:16,17,22 75:22 76:7,23,23 77:20,21 78:12 80:1,7,23 81:2,19 81:21 82:8,8,20 83:18 84:14 85:3 85:8 89:10,13 94:11,14,17 101:22 102:2 105:25,25 111:11 113:23 114:7 116:16 117:7,15 117:20,23 119:5 119:12 120:10 125:3 131:14,22 132:3,9 133:2 balfour's 31:4 50:12 58:14 81:20 95:17 107:2 113:17 118:22 119:4 125:11

[ball - brit]

Page 5

ball 6:20 128:18 129:3 bank 85:11,11,15 85:16,16,17,18,21 85:23 89:17 banks 85:25 86:5 barn 50:8,9 base 67:11 70:1 77:23 80:12 88:11 89:1 90:12,24 91:4 based 8:19,19 30:3 45:16 47:17 85:25 103:8 104:9 126:1 basic 100:3 basically 9:24 34:20 56:17 57:24 73:3 83:25 basis 41:15 47:9 59:18 61:14,25 124:14 125:20 127:17 bates 82:1 87:3 bath 66:15 bear 11:9 30:11 beatty 1:3 2:2 8:14 8:14,20 10:13 15:5,8 21:20 23:2 23:18,25 24:2 25:4 30:16,21,22 32:9 34:25 35:1 35:13 36:25 37:7 37:11 38:20,22,23 39:22 40:25 41:2 41:3,6,19 42:7 46:2,12,14,18,21 47:2,20 54:2 63:3 67:14 73:7,13,17 78:12 80:1,7 94:11,15,17 102:2 111:11 114:7	116:16 117:7,15 117:23 131:22 132:9 beatty's 31:13 35:16 101:22 117:20 133:2 beaty 1:12 12:12 beautiful 18:7 began 20:7 beginning 6:10 41:4 55:25 61:13 begins 130:12 behalf 10:4 21:20 30:8,14 48:12 66:1 81:18 believe 14:8 15:7 19:19 20:4,5 24:14 34:5 39:5 40:22 43:16 44:5 53:3 58:17 60:24 69:12 73:6 76:11 78:18 90:11 101:6 101:9 102:12 125:14 132:4,20 beneficial 111:6 benefit 14:21 84:22 97:17 117:15,18 128:13 benefits 106:8 bennett 17:25 30:18 48:16 berkeley 134:13 bernard 12:7 bernstein 2:3 best 18:15 40:10 42:1 61:9 129:20 better 17:14 19:3 26:6 126:20 bid 100:18 bidders 100:19	big 56:5 69:16 110:13 biggest 66:21 bill 2:10 67:17 76:21,22 79:7 83:19,19,21,24,24 86:7,18 88:17 103:15 billed 20:13 77:13 78:18 83:21 84:5 86:12,16,20,21 87:19,21,25 88:10 89:2 billing 33:18 77:5 77:16,23,25 78:13 80:22 bind 61:1 binder 65:15 binders 128:17 bit 17:18 30:10,11 48:8,23 49:3 54:18 58:2 92:2 97:4 101:15 131:18 bite 123:13 blame 44:3 blanket 57:24 blew 106:12 bncc's 101:23 boardman 4:12 14:14 48:4,13,14 48:17,20 49:3,18 49:20,21 52:11 bobby 2:4 21:19 boe 24:12 26:18,21 26:21,23 32:18 58:12,17,19 boe's 26:17 46:16 58:3,6,8,16 bona 17:3	book 86:24 books 38:25 127:25 bop 15:13 bottom 78:24 87:17 bounce 74:3 boys 117:1 brass 104:24 breach 17:6 33:11 47:19 50:5 55:24 98:25 107:21,23 112:6 breached 30:22 bremer 56:9,9 64:4 brennan 2:22 13:1 13:2,4 65:11,12,15 65:20,24,25 67:8 70:17 71:9,15 74:8,15,25 76:8 79:24 83:13 86:6 86:25 87:5,11,15 87:20 88:9 89:23 90:8,16 91:8,11 97:15 106:11 brent 2:10,13 71:19 brief 26:16 28:1 28:16 53:13 54:25 57:24 59:11 61:15 71:23 80:20 95:21 briefed 59:14 briefly 7:1 27:7 bring 16:14 37:7 37:21 38:7 39:3 39:13 55:6 72:11 98:15 99:23 109:6 109:13 brit 13:19,19

[britt - change]

Page 6

britt 3:5 britton 3:3 broad 1:19 60:9 broken 67:21 brought 23:25 73:13 91:3 131:7 133:4 brown 31:19 bs 39:11 bud 119:17 building 66:16 bull 4:20 bumps 19:14,16 bunch 80:9 98:7 bundy 2:9,10 9:1 16:9,10 25:11,12 28:12 36:16,19 40:4,5 41:4 42:9 42:18,25 44:3,23 46:3,10,11 47:13 50:20 53:22 60:10 64:8 74:14,19 79:18 80:1 83:7 85:9 89:14 90:13 91:14 92:6,16,18 93:17,19 96:13,17 97:1,6,20,24 98:2 98:6,14,15,23 99:14,19 103:1,14 103:16 108:19 109:5 110:1,14,25 112:2,5,18 113:4 114:24 115:7,14 115:17 120:12,17 120:21,25 124:6 127:23 129:18 130:7 bundy's 45:23 bundymcdonald.... 2:13	burden 109:7,8 business 37:9 69:15 129:12,19 button 102:10 buy 77:10 byrd 2:4 17:10 21:17,19,19 22:2 22:23 24:24 25:7 27:7,21 43:10,12 43:21 49:25 53:12 53:18 62:7,24 63:16 65:21 71:20 71:21,22 c c 2:4,18 3:9 4:19 calculated 104:7 127:17 calculation 41:20 123:1 calculations 122:21 123:6 calculator 127:20 calendar 92:2 call 6:3 44:24 60:5 67:9 106:20 113:18 114:15,21 called 15:2,11,25 44:11,16 114:19 calling 113:17 115:2 calls 50:22 cancelation 8:24 10:14 11:11 canceled 10:17 13:10,14 14:4 caps 66:17 83:14 card 79:23 care 120:22 carolina 1:1 25:13 37:16 42:19,22 44:5 59:16 134:4	134:14 carter 36:23 37:24 38:1 40:9 45:9 case 1:5 4:1 6:6,22 7:13,25 9:17 14:3 15:3,8 21:22 22:4 22:13,25 23:4,16 24:18,20 25:23 26:20 27:11,14,18 28:18 29:23 38:7 38:13,25 39:25 40:17 57:23 59:21 61:16,20 65:17 72:2,6 98:18,18,19 98:22,24 99:1,2,4 99:11,17 101:14 101:19 102:13 104:25 105:9 106:1,8,20,22 107:2 109:17 111:12,24 112:15 112:23 113:18,23 114:3,20 115:1,3 115:19 117:6,21 119:8 123:8 124:6 128:8 129:6 130:2 130:4,17 131:2 132:3,5,5,18,21,23 133:4,11 cases 16:21 27:23 98:12 106:9 131:25 cash 69:16 77:2 84:12,15 catchup 131:5 categories 33:8 108:2 caulking 66:17 cause 19:12 24:7 31:5 41:2 45:24 134:9	caused 18:3 28:17 31:12,15 41:22 44:18 49:2,9,13 50:16 58:19,24 59:1 68:24 69:16 causes 41:1 ccc 78:15 ccd 78:25 ccds 73:6 cells 102:7 cents 47:5 certain 34:22 102:7 117:14,17 122:14,15 123:4 certainly 22:16 32:21 84:18 103:9 111:13 113:20 127:6 128:8 certificate 134:1 135:5 certified 81:2 certify 134:5,8 certifying 81:22 chance 12:18 change 7:21 20:14 20:17 25:3 33:12 33:12,20,21,21,22 34:4,7 35:19,24,25 38:24 48:21 51:7 51:7,8,14 52:8 53:4,5,6,16,20,23 54:11 61:12 67:12 67:13,17 70:2,5,18 70:21 73:5 76:18 76:19,22,23,25 77:8,16,18,24 78:5 78:7,14,22,23,24 80:11 81:15 83:23 84:3,4,5,9 85:4,21 85:22,23 86:8,20 87:10,17 88:1,12

88:13,18,21 89:1 90:9,20,25 91:5 100:14,14,22,25 changed 34:19,22 charges 49:2 57:4 charleston 1:2,18 1:20 2:6 3:4,15,21 4:4,10 5:5 69:13 134:13 charlotte 2:23 4:15 111:22 127:25 check 74:11 82:21 82:23,25 124:7 checks 82:24 chief 115:2 choice 13:5 22:17 choose 54:3 chosen 118:7 church 5:4 cigars 38:15 circulated 74:18 cite 61:18 64:5 65:4 68:22 cited 18:10 23:5 43:13,13 cites 27:1 citing 68:6 civil 37:16 45:2,4 45:17,24 112:3,7 claim 16:25 20:9 24:16,22 27:13 38:7 41:9,19 44:20 47:5,16,17 50:6,19 54:10 58:18 107:21,22 107:24 116:16 117:3,25 118:25 119:4,19 121:10 121:12,14 122:19 122:20,20 123:1,6	123:8,12 124:2,15 124:17,19,21 125:2,5 131:13 132:8 claimed 44:14 claiming 72:14 84:11 claims 7:7,10,12 8:16,22 9:4,14 10:6,6,8,18 11:8 13:25,25 14:1,5 17:7,7 22:13 25:20 34:25 35:14 35:16 37:7,12 40:24 41:6 42:7 44:10 46:1 54:3 55:23,24 56:2 60:16,18 64:16 86:1 94:13 104:19 107:23,25 112:15 117:16 clarification 107:19 114:25 clarity 84:3,4 85:10 clause 38:4 59:10 62:9 64:6,9 clauses 59:16 cleaner 87:8 cleanup 67:6 clear 17:8 42:23 46:25 47:14 48:8 79:3 84:1 89:24 90:2,3 105:24 120:2 121:19 124:12 cleared 74:12 clearly 44:20,21 116:4 119:14 clements 57:8,9	clerk 105:11 client 7:5 12:19 17:20 29:19 38:16 39:2 47:20 50:5,8 50:25 52:5 55:20 68:9,15 69:14 72:4 81:23 84:19 85:11 90:22 107:19 118:16 119:18 133:10 client's 38:20 68:18 86:4 90:14 122:18 clients 13:22 105:3 105:7 113:8 closes 106:19 closest 64:22 clue 115:9 coatings 4:7 7:5,22 collateral 44:25 45:19 collecting 110:12 college 4:14 column 81:12 combination 53:1 come 6:5 17:12,13 23:1,20 24:10 26:9 39:21,23 41:17 42:4 47:1 49:6 54:22 59:22 74:23 85:14 88:3 89:18 94:12 104:4 107:21 109:14 114:10,25 118:24 119:21,22,22 124:22,23 125:13 128:19,21 129:10 133:8 comes 24:17 39:12 70:5 72:10 75:24 84:25 104:10	127:4 131:19 coming 63:2 84:13 120:7 commenced 19:23 commencement 20:6 comment 123:25 comments 45:23 commission 134:23 common 1:1 20:2 communications 81:20 company 3:12 5:2 14:4,5,19,22,22 66:1 67:3 131:13 131:13,15 compel 92:23 complaint 56:25 complaints 62:23 complete 134:6 completed 18:1 48:20 completely 46:1 121:10 completion 19:12 24:8 compliance 129:19,20 complicated 101:6 comply 37:9 39:19 component 124:3 composite 66:21 compulsory 37:17 concede 90:9 concedes 58:5 conceivably 68:23 concern 22:5 23:9 23:21 24:12,24 105:18 106:18 111:24

concerned 105:14	112:3,8	99:9,10,14,22	21:9 29:18 49:15
concise 18:13	construction 1:3	100:2,4,6,10,12,13	51:25 52:1 87:22
concluded 133:23	2:2,15,21 3:12	100:17 107:21,24	121:20,21
concludes 91:18	8:12,13 16:3	107:25 108:10	correctly 44:3
condition 117:10	19:13,15 30:15,18	109:9,21 112:7	correspondence
123:15	30:19 39:25 66:1	117:3 123:17	70:8
conditions 56:23	67:3,13,17,23 70:5	contracting 1:12	cosmetic 66:17
64:12 71:16 100:6	70:17,21 73:1	2:14 16:3	cost 16:18 17:2
100:7	76:18 78:14,23	contractor 16:16	35:6 41:8,20
confer 103:22	79:24 83:23 84:3	19:5 30:20 38:7	47:15,19,22,23
confidence 90:14	84:5 85:4 86:19	39:22 62:13 64:14	53:25 78:13,13
confidential 45:12	88:13,18 89:1	64:17 66:11 74:1	80:17 111:25
46:7 126:2 127:10	90:9,20 100:14	81:4	costs 11:9 32:1,3
confidentiality	contact 98:25	contracts 99:5	33:7 64:1,24
116:9	99:12 108:15	108:25	78:18 85:1
confirm 76:9,14	contained 81:6	contractual 23:11	counsel 2:1 12:16
confirmation	contains 81:5	62:11	53:14 90:18 116:2
83:23	contemplates 61:6	contrary 67:2	129:10 134:9
conform 37:15	contempt 39:19	contribute 27:12	counter 61:11
confused 35:23	contend 53:5	contributed 59:3	70:25
86:8	contends 49:5	controversy 64:17	counterclaim
confusion 74:10	contest 57:22	103:9	112:20 115:3
74:13 75:1 131:18	60:15	controverted	counterclaims
conjunction 56:7	continuation 80:7	23:24	37:17,21
connection 64:25	continue 75:2	conventional	countered 59:4
consequence	111:21 128:9	34:19	county 1:2,18
126:9	130:13	conversation 6:9	64:21 134:13
consideration	continued 69:18	30:4 78:1	couple 18:23
32:13	continues 95:24	cook 4:12 14:14	101:3
consist 100:5	contract 17:7 20:3	48:3,12,14,17,19	course 43:18 53:7
consistent 66:13	20:13 24:16 30:21	49:3,18,20,21	60:23 122:4
82:22	30:22 33:11 34:19	52:11	court 1:1 6:1 7:3,8
consolidate 133:3	37:10 38:6 47:20	copies 43:13 55:18	7:14 8:4,7 9:7,8
consolidated 15:3	47:23 50:5 51:4	copy 9:6 22:2 23:6	9:16,20 10:1,11,15
116:16 132:1,4,17	55:24 56:6,24	52:23 55:6 65:20	10:18,23 11:12,15
132:18,19,21	57:8 63:21 64:2,3	81:9 86:24	11:17,21,23 12:3,6
consolidation 15:7	64:9,13 67:11	cor 78:16	12:10,22,24 13:3
132:12,22 133:1	71:13 75:18 83:3	corner 66:16	13:11,16 14:7,9,10
conspiracies 83:15	85:2 88:5,8 89:1	correct 9:17,22	14:13,16,24 15:11
conspiracy 45:2,4	90:12 91:4 98:18	10:20,21 11:13,14	15:19,24 16:5
45:17,24 98:21,24	98:19,22,24 99:2,4	11:22 15:17,18	17:5,17 18:9,12

19:21 20:8 21:5,8 21:10,14,17,24 22:16 23:6,7,9 24:11,14,23 25:1 25:11 27:6,20,24 28:3,9,22,25 29:4 29:7,13,15,19,22 30:3,7,13 32:7,19 33:5,10,16 34:2,15 35:17,21 36:2,4,7 36:10,14,18,20,22 37:18 38:5,5 40:4 40:8,15,23 41:12 41:14,23 42:8,12 42:15,24 43:9,20 44:22 45:18,21 46:23 47:9 48:1,6 48:10,12 49:4,14 51:3,6,10,17,21,24 52:2,9,12,16,19,24 53:10,16,19 54:6 54:19 55:3,7,10,14 59:15,22 61:20,21 62:4,19 63:9,20,23 64:5,20,21,24 65:3 65:9,14,19,22,24 67:6 70:15 71:7 71:13,17,21,24 72:7,19 81:14,17 86:23 87:1,6,12,16 88:7 89:7,21 90:4 91:7,9,13,16 92:8 92:14,17 93:2,24 94:4 96:3,11,14,21 97:3,8,22,25 98:4 98:10,20 99:13,18 99:20,25 101:9 102:6,25 103:2,20 104:5 105:12 106:2,7,24 107:15 108:3 109:2,23	110:13,24 111:5 112:4,12,17,22 113:2,6,10,20,24 114:6,16,19 115:5 115:9,16,22,25 116:8,13 119:24 120:3,14,19 121:2 121:18,22 122:2,6 122:8,11 124:11 125:15 126:17 127:6 128:3,14,15 129:23 130:17,19 130:25 131:6 132:11,15,25 133:7,12,16 134:3 court's 14:21 23:13 45:16 102:18 103:11 courthouse 1:18 105:17 courtroom 1:19 6:7 8:11 39:17 105:12 cover 6:9 8:9 covered 60:10 64:19 cp 1:5 crazy 42:20 create 61:22 62:19 69:3 110:19 created 101:10 credibility 105:21 credit 37:11 71:5 credulity 67:4 crew 67:6 critical 31:11,14 49:2 66:6 67:4 123:13 crookedness 80:13 cross 112:9,25 115:1	cruncher 102:20 cumulative 35:8 cure 57:3 94:16 currently 10:9 curve 54:18 cut 71:3 80:9 106:8 129:9 d d 64:14 135:1 daily 122:16 123:4 damages 23:15 24:4,19 27:13 45:14,15,25 49:25 107:25 108:7 112:19 data 121:23 124:13,14 date 1:16 19:22,22 60:8 78:19 94:10 94:13,15 111:4 dated 30:21 48:19 58:14 122:21,22 dates 20:4 daughter 6:19 david 2:22 13:22 14:4,4,10 65:25 day 56:15,15 58:15 94:2 95:2 96:5,7 99:25 101:20 109:16 113:5,24 130:8 134:12 days 41:25 50:7,10 93:16,22 95:5 99:25 102:11,11 102:11 112:21,23 112:23 113:1 115:21 123:23,23 130:8,11 dbrennan 2:24	dc 102:19 deal 41:12 54:4 72:5 84:2 101:7 105:23 dealing 86:4 dealt 36:3,10 93:24,25 death 6:20 debt 38:9 december 58:14 122:21,22 decide 37:18 decided 37:9 57:23 83:18 90:5 108:4 decision 45:16 102:9 117:9 123:16 decisionmaker 117:9 declined 105:13 default 50:15 59:13,19,25 defeat 27:3 61:23 defect 22:9 defective 31:17 67:24 90:23 defects 18:4 19:13 defend 39:11,23 54:3 defendant 2:8,20 3:1,6,11,17 4:1,6 4:12,17 5:1 40:16 115:19 defendants 1:7,13 2:14 40:13 defended 25:20 defense 26:18 40:18,21 defenses 32:4

deficiencies 57:11 58:23,24 63:5 defined 99:11 100:3 definitely 38:6 39:1 112:10,25 definition 47:23 definitions 100:4 delay 18:2 19:12 22:9 23:3 24:8 39:17 44:14,18 46:16 49:2,6,9,13 50:8,10,16 57:3 94:10,16,19 95:13 95:19 108:1,4,7 delayed 66:6 delaying 90:23 delays 23:14 24:3 24:4 28:7,17 31:5 31:11,15 44:11 57:13 58:19,21 59:3 62:15,18 63:5 67:3,23 68:16 demands 94:16 denial 50:24 60:6 61:4 denied 27:14 50:18 94:2,23 deny 28:20 45:20 96:6 denying 95:3 deponent 19:1 depose 50:2 deposed 43:17 108:24 deposition 18:10 26:4 28:17 30:24 30:25 31:7,10,14 31:18 32:12 49:19 52:4 57:7 58:16	72:15,20 73:15 74:17,20 75:2,4,11 79:9 82:16,18 90:17 95:11 108:20 116:1 117:21 118:5,10 124:1,18 125:11 depositions 17:22 46:20 60:21 68:13 72:2,9,22 75:24 82:12 108:17 109:18 describes 6:20 design 15:20,22 designated 78:25 designee 28:6 desperately 69:20 details 9:23 determine 49:8,24 105:21 determined 22:14 43:25 50:16 device 43:3 die 130:13 difference 20:3 110:10,13 different 14:4 16:20 20:1 33:7 58:2 108:1 121:10 126:7 difficult 105:20 diffranco 4:14 14:14,15 48:4,5,7 48:11,12 49:16 51:3,5,8,12,19,23 52:1,3,11,14,17,21 53:3 54:8 107:17 107:18 112:14 113:7 dining 7:20	dipping 79:4 direct 76:15 directed 51:12 57:4 78:17 93:5 directive 67:13,17 70:6,18,21 76:18 78:15,23 83:24 84:4,5 85:5 86:20 88:13,18,22 89:2 90:10,20 100:15 directly 131:14 disagree 102:5 disclosed 38:24 disconcerting 133:13 discoverable 125:23,25 126:6 127:15 discovered 15:1 discovery 25:19 39:20 69:11 95:9 122:4 125:23 discussed 54:17 90:19 discussion 43:23 119:15 discussions 116:5 116:9 dismiss 7:25 10:8 11:8 dismissal 9:2,4,14 11:4 12:17 13:9 13:15 55:11 dismissed 13:25 13:25 14:2 dispute 18:16 24:7 44:21 61:11 85:5 90:12 91:5 100:22 118:12,13 disputed 34:1 74:20,22	disputes 17:19 64:14,16 divide 38:15,17 130:10 divided 33:7 document 6:21 73:18 81:25 89:16 108:20 110:2 120:4,5,18 129:14 documentation 117:2 124:20 documents 32:21 72:24 76:6 80:6 82:13,14 85:14,15 85:16,24 93:8,9 99:10,11,15,17,22 100:2,4,10,17 108:11 109:6,12 109:21 116:4 117:4,12,14 118:7 118:9,9,14,21,23 119:3,6 120:12,16 120:17 121:6,11 121:13,14 123:22 128:13,17 129:11 133:19 dog 106:25 doing 8:23 11:24 16:23 66:23,24 84:20 85:10 86:3 90:23 110:4 114:4 127:19 dollar 47:6 dollars 27:5 77:15 86:18,19 88:6 101:4,22 don 16:2,5 30:14 donald 2:17 door 84:15 doors 48:15 50:8,9

[double - extent]

Page 11

double 79:4 doubt 70:13,20 78:2 85:3 downtown 109:14 drafts 110:21,23 dragged 69:12 drawings 100:8,8 100:8 dropped 8:21 56:1 dropping 8:21 dry 71:3 derry 2:19 due 10:24 57:16 79:17 81:22 82:7 116:24 duty 38:19	elects 64:14 elements 45:17 else's 90:6 emotions 83:16 ends 97:23 enforceable 40:19 engaged 45:3 85:11 enjoy 69:13 enrichment 55:25 enter 39:20 entered 45:8 entire 68:8 entirely 16:19 entirety 59:8 64:4 entities 11:13 entitled 16:15 17:20 18:18 19:19 23:19 44:11 46:18 50:25 61:25 63:25 64:23 85:7 90:24 91:21 92:21 entitles 18:21 enumerated 100:5 100:16 envisioning 112:14 epting 4:2,5 equipment 105:16 escalation 35:3 especially 133:14 essentially 11:7 55:19 establish 17:2 47:25 49:4 established 23:13 129:14 establishes 17:3 18:11 56:17 estimates 60:1	estoppel 45:1,19 et 1:6,12 2:8 event 59:12 97:19 108:25 events 117:4 134:10 eventually 95:17 everybody 6:3,4 15:25,25 54:18 58:1 62:22 68:4 68:18 91:24 105:19 106:4 111:8 115:10 116:22 evidence 22:7 25:23,24 26:3 32:13,22 34:9,11 38:21 42:9,17,24 43:19 46:15 50:4 57:22 58:8 59:19 59:23 60:4 67:2 90:22 99:5,6 104:10 109:22 129:21 evidentiary 25:24 exact 20:11 exactly 23:1 27:17 42:25 66:4 67:8 examination 112:9 112:25 115:1 exceeded 88:4 excerpt 57:6 58:12 excess 94:20 exclude 92:9 execute 40:15 execution 100:10 100:12 exhaustively 90:19 exhibit 50:13 52:19,22 56:20	64:4 73:12,15,15 78:4,10 82:16,18 87:1 exhibits 65:17 72:22,23 129:24 135:14 existed 14:1 existence 15:6 existing 77:14 exists 125:7 expect 73:12 expediting 103:24 expended 41:21 expense 101:10 111:25 experience 17:19 expert 22:4,8 23:4 26:18 32:17,19 39:15 43:16 49:12 49:12 50:7 58:20 68:19 92:12 102:17,18 103:10 103:11,18 109:24 124:23 expert's 26:2 44:13 50:12 experts 43:18 50:3 expires 134:23 explain 37:25 40:11 76:15 80:18 90:1 107:6 124:2 explained 74:15 extended 35:6 71:5 extensively 43:14 extent 33:1 55:15 62:14 63:5 69:13 75:19 91:21 125:18 126:7 128:16,21 129:23
e	e 3:19 12:16 19:7,8 26:19,21 28:15 49:17 67:14 70:7 77:20 83:17 117:13 122:15 123:4,5 132:8 135:1,13 earlier 48:24 ears 68:14 70:24 east 2:23 effect 45:1,20 53:8 119:7 effected 9:12 effort 104:8 105:8 either 7:12 36:1 86:14 109:13 119:1 123:19 124:10 electric 29:11 electrical 2:15 16:3 30:15,19,20 47:3 electronic 6:22		

[exterior - forwarding]

Page 12

exterior 66:22 70:6 exteriors 4:18 10:4 15:15 54:21 55:21 56:11 extinguisher 66:19 extinguishes 83:14 extra 7:18 23:6 65:20 76:21 77:13 84:2 extract 56:3 extraneous 21:3 extremely 60:9	fast 45:13 faton 14:18 fault 95:24 124:4 favor 84:15 85:10 fear 125:1 february 19:7 20:7 27:2 federal 64:21 128:14 feel 36:19 49:4 79:20 fees 8:3 32:1,2 62:3 63:17 64:1 64:24 65:6,7 71:11,14 91:15,22 felt 72:10 fides 17:3 fiduciary 38:19 fight 116:19 117:11 figure 21:11 26:11 35:18 36:5 47:10 52:12,17 54:4,11 77:18 79:14 87:14 101:5,19 103:7 104:16 105:4,7 114:14 133:10 figuring 102:12 file 43:3 57:22,24 58:11 61:6 92:21 92:23 filed 8:24 9:1,6 10:7,7,14 11:10 13:9 15:7 18:9 26:25 43:1 45:9 54:25 56:8 68:19 74:12 92:20 94:8 95:1 115:17 131:21 132:5 filing 40:22	filings 6:17,22 final 33:18 48:22 finalized 127:9 finally 92:24 financially 80:19 find 68:12,14,25 111:18 118:9 128:16 finding 44:6,15 102:14 findings 24:11 fine 88:17 91:3 97:24 98:2,3 103:17 finish 103:15 121:2 finishing 17:23 finishings 18:7 finite 104:16 fire 66:18,19 83:14 firm 3:2 firms 133:13 first 7:19 13:5,18 17:12 18:23 20:4 22:13 26:20 33:14 33:17 37:2 40:7 45:24 47:1 72:15 82:20 89:20 93:20 95:14 96:2,23 97:1,7,15 98:12,13 99:4,6,7 101:20 102:2 106:12 107:3,11,12 109:3 109:8 110:14 111:12 112:15 127:13 130:8 133:20 fishing 98:8 fit 111:17 five 67:12 70:2 91:5	float 22:20 floor 2:11 7:19 flooring 15:2,4,8 29:21,22 30:9 130:24,25 131:9 131:16,20 132:3,4 132:7,8,22 floors 20:2 flow 77:2 flowing 24:5 floyd 13:12 flury 6:17 flustered 90:1 folks 6:1 119:12 133:18 follow 106:1 following 26:17 97:13 foodcraft 3:1 foolishness 80:4 foreclosed 14:5 foregoing 134:5 form 24:10,11 122:3 126:3 formally 20:18 forms 100:19 forth 23:25 48:17 53:13 64:15 74:3 108:12 115:10 128:8,19 forton 14:19,21,22 29:25 131:12,13 131:15 forward 7:11 15:16 38:11 54:14 54:15,22 59:22 60:14 68:17 77:6 97:5,12 106:15 111:22 forwarding 121:11,11
f			
f 14:19 131:17 fact 6:19 18:17 19:17 28:14 35:1 42:25 44:13,20 47:4,25 61:12,23 62:16,20 69:4 74:20,22 75:16 76:9 79:15 93:7 130:10 facts 89:25 90:2,22 factual 32:13,22 42:17 factually 32:10 failed 30:24 48:22 59:19 failing 30:23 fair 69:14,15 112:2 fairly 46:25 90:19 128:15 familiar 56:14 far 28:12 37:19 62:8 70:16 105:12 128:6 fashion 106:15			

[found - great]

Page 13

found 53:23 72:16 foundation 42:19 99:8 127:24 foundationally 99:3 four 48:23 70:2 112:20 113:1 116:24 117:12,19 117:24,25 118:2,3 118:6,8 119:23 125:10 126:14 framing 48:15 66:24 frankly 66:6 67:10 67:20 71:4 73:12 84:14 fraud 36:21,22 38:3,18 39:2 40:15,23 41:11 80:7 85:11 86:15 98:25 102:19 fraudulent 39:20 86:1 112:7 fray 133:5 freeman 3:13,14 3:16 8:10,12 9:11 9:18 11:17,22 front 52:13 74:9 86:24 94:22 95:16 121:7 full 17:20 57:15 fully 7:6 11:19 42:23 fund 85:21,22 fundamental 24:7 funded 73:10 74:7 75:6,20 81:2 82:15,15 85:13 further 27:25 134:8	furthermore 25:22 future 50:23 60:19 61:3 77:19 g g 4:3 52:22 ga 4:21 game 92:22 gearing 113:13 general 16:16 19:4 38:7 56:13 59:2 62:13 68:22 74:1 89:23 100:7 107:6 125:15,18 generally 126:8 128:22,23 genesis 41:14 gentleman 32:19 82:11 gentleman's 90:14 gentlemen 26:11 genuine 61:22 62:20 getting 26:13 62:10 71:4 79:18 86:5 105:19 110:22 128:6 give 37:10 38:16 63:14 85:9 89:17 96:18 110:15 113:11 126:19 127:13 129:22 133:9,19 given 78:15 123:22 gives 99:6,7 giving 80:15 glad 37:24 97:10 113:11 133:6 glass 13:5	go 11:18 16:7,10 24:15 30:12 32:5 33:6 38:11,17 40:8 42:3,20 54:14,15 67:17 69:25 71:20 76:22 77:5 81:24 83:10 85:14,17 89:7,18 97:12 98:6,9 103:23 104:10,25 105:2,4,7 106:9,15 109:8 110:16 115:16 117:25 118:1 128:17 129:20 132:13,14 goes 77:6 85:19 109:6 123:16 133:21 going 6:3,6,8,21 7:10,11,20,24 13:17 16:9,21 17:11 22:11 23:1 23:20 24:10 25:17 25:18 26:12,12 28:25 30:9 33:5 33:11 37:2,6,19 38:11,13,14,15,17 38:21 39:23 40:11 41:7,12 42:5 44:2 45:5,23 46:24 47:7,8 49:6 50:1 54:3,8,10 60:15,15 60:24 63:4,12,24 64:11 67:16 73:20 73:22,24 74:1 76:21 80:13,18 82:3 83:15 84:12 85:15,24 87:16 88:23 91:25 92:25 95:4,18 96:19 97:4 99:8 100:1	100:24 101:5,6 103:10,11 104:7,9 104:20,21 106:3 107:10,12,12 108:4 109:7,15,16 109:20 110:21 111:9 112:5,10,20 113:3,24,25 114:3 114:9,11,20 115:7 116:18,21 117:1 120:8,11 124:23 124:25,25 128:10 129:18,20,25 130:12,13,15,15 131:12 132:23 good 6:1 10:1 13:16 15:24 16:7 18:12 21:15 28:22 29:12,13 36:14 44:22 46:23 48:6 48:7 54:23 63:1 65:10 71:17 84:21 90:15 96:6 101:8 133:18 gotcha 118:18 gotten 70:23 84:6 88:17 91:19 127:8 grain 61:16 grant 23:23 24:15 29:1 47:7 54:9 63:12,19 71:8 89:24 91:9,10 granted 104:13 133:3 granting 71:10 grants 110:7 gray 71:3 great 9:11 57:9 96:15,23 103:22 104:6 129:24

[greenville - hughes]

Page 14

greenville 2:18 3:9 gressette 3:13 ground 79:25 grounds 85:6 groundwork 112:6 guards 66:17 guess 37:10 76:14 79:12 87:21,24 88:2,16,20,23 109:14 114:2 115:18 123:5 guest 20:1 50:9 gulf 3:12 8:12,13 8:14,19,20,21 9:4 9:14,17 11:21 guy 1:12 12:12 99:6 guys 105:21 124:1	70:25 71:20 74:25 103:9 104:3 105:10 106:4 107:2,13 108:14 129:4 hard 6:6 45:12 101:14 102:14 hardware 48:15 harrell 48:18 52:10,20 harrell's 52:4,4 hasell 3:14 hate 44:23 109:14 head 19:25 30:10 115:16 127:18 headed 128:2 hear 6:24 25:11 37:3 49:25 73:24 74:1 75:8 97:10 98:14 103:4 107:16 115:20 116:18,21 128:24 heard 63:19 67:21 69:2 71:1 89:9,11 105:2 107:7 hearing 1:15 15:13 16:13 22:20 41:5 56:1 60:11 63:17 90:7 93:22 94:3 96:5 133:23 hearsay 26:4 28:13 43:19 help 102:12 126:11 129:4 131:9 helpful 55:18 helping 102:20 hereunto 134:11 hey 76:20 78:1 83:20 116:25	high 79:22 83:17 higher 35:12,14 highest 18:6 highlight 58:4 highly 39:1 hildebrand 2:4 9:21,22 21:17 43:10 54:16 103:4 103:5,15,21 104:1 105:24 106:5,17 107:1 108:14,23 112:24 119:16 120:15,23 121:1,3 122:8,10 124:16 129:7 hildebrand's 112:9 hip 85:14 hire 26:3 hired 26:22 63:10 63:10 80:1 81:19 hit 77:16 102:10 hold 55:16 68:3 92:8 113:12 hollingsworth 3:18 hon 1:15 hone 102:13 honor 7:4 8:10 9:23 10:3,22 11:1 11:14,20,22 12:1 12:15 13:8 14:12 14:15,20 15:18 16:2,25 19:18 21:19,21 24:25 25:7 27:5,7 28:2 29:12,18 30:2,14 30:17 32:1,8,23,25 33:14 34:6 35:9 35:20 36:6,9,13,16 37:23 39:3 40:5,9	40:18 41:18 42:14 42:23 43:6,12 45:22 46:22 47:11 48:8,14 49:16 50:25 51:5,20 52:1,23 53:12 54:16,24 59:6 61:8,15,24 62:8,24 63:16,19 65:2,8,12 68:3,11 69:2 71:9 71:19,22,25 73:12 73:20 80:20 87:5 89:4,13 91:1,12,14 92:7,13 93:4 94:1 94:6,9,18 95:1,6 96:2,9 100:1 101:3 103:5 106:17 109:1,17 113:16 115:23 116:12 117:5,13 118:17 119:16 120:8 121:1,16 124:17 125:1 129:7 honor's 83:5 hope 112:6 hopefully 98:16 111:1 hord 2:22 65:25 hotel 7:20 17:24 18:8 30:18 34:20 48:16 50:9 housekeeping 130:20 hughes 4:19,19 10:3,3,12,16,21,23 15:15 54:22,23 55:5,9,12,15,17 62:5 63:14,22,23 64:3,7,10 65:8,9
h			
h 135:13 half 99:25 107:9 hand 26:1 31:7 52:23 55:7 134:11 handed 58:11 87:7 handing 65:15 hang 66:20 133:7 hanging 36:5 111:23 haphazard 42:1 happen 22:11 25:17,18 27:22 41:13 61:2 124:25 129:25 happened 33:24 34:7 40:17 72:18 79:2 88:21 131:10 happening 19:2 happens 41:5 happy 31:7 32:1 41:10 53:15 68:2			

[huh - johnny]

Page 15

huh 87:11	includes 81:11	interest 62:2 63:25	114:2,25 129:16
hundred 27:4	including 48:20	65:5 71:12 91:22	130:1 131:7,9
77:15,17 86:17,19	56:2 117:15	interested 22:20	132:24
88:5 101:4	incorporated	134:10	issued 7:22 33:13
i	33:22 36:8 99:15	interesting 18:13	76:20 94:10,16
i.e. 124:14	increase 77:11	66:10 109:20	100:9,11,15
ian 3:14 8:11	incurred 78:14,18	interestingly 45:7	issues 9:17 16:20
idea 23:21 27:1	index 5:7 135:8	interior 48:15	19:9,11 23:3
66:5 67:2 82:10	indicated 22:7	66:14	26:19 28:7 43:15
103:22 125:9	25:6 56:25 74:17	internally 66:13	43:25 44:8 57:3
ideal 111:1	indicates 44:13	interpretation	57:10,12 62:15,18
identified 43:14	indisputably	41:8 64:13 90:6	63:4 70:14 95:16
identify 26:19	56:18	interrogatories	102:13,14,15
94:10,13,15	indulgence 8:6	92:24 93:5,7,10	item 78:24 79:7
iii 3:8 4:19 73:2	inefficiencies	94:21 95:22 96:8	87:9 102:9 124:2
illegally 86:5	44:12 124:24	96:9,10,15	items 33:19 35:18
imagine 19:2	inform 72:3	interrogatory	35:24
impact 35:8	information 19:24	26:16 28:5 46:4,8	iteration 110:17
importance	100:19 125:25	73:1	iv 56:9
123:13	135:8,9	interrupt 36:17	j
important 55:12	initial 113:23	44:23	j 56:9
62:12 72:11 94:9	114:6 117:8	introduce 22:7	jaan 4:3
95:14 117:5	123:14,15	74:21	jack 66:11
122:17	initially 76:11	introduced 108:17	jahlaw.com 2:24
inadequate 69:3	99:1 116:17	invested 98:8	jail 89:18
inadmissible 26:3	innuendo 68:23	investigation 40:2	james 73:2
inadvertently	input 97:6	invisible 118:24	january 20:7
119:17 123:11	inquired 118:10	invitation 100:18	73:11,19 82:25
inappropriate	insinuation 59:1	invoices 78:19	116:18
39:1	84:19	invoke 64:15	jgr 4:5
inbox 9:5	installation 70:6	involved 11:25	jim 57:8
inclined 33:1	installed 48:15	132:9	job 25:20 35:6
include 77:24	66:19 70:13,13	involving 9:17	49:18 56:15 57:10
81:15 100:17	instance 72:14	irrelevant 129:16	57:16 58:19 63:1
107:25	instructed 116:6	issue 19:6,17	74:24 80:3 81:2
included 21:11	instruction 100:18	24:20 27:16 29:23	90:18 101:4 124:8
28:15 31:6 33:19	intentionally	35:19 47:14 50:19	124:10
35:17,21 51:24	104:18	53:20,24 61:23	joey 13:11
78:7 88:12 100:3	inter 47:24	62:20 69:3 84:24	john's 12:19
118:7 119:4	interactive 101:10	89:4,5 90:19 96:3	johnny 12:6
		108:4,10 110:2,7	

johnson 2:16 3:7 65:25 johnston 2:22 joint 9:3 10:7,8 40:18,21 55:10 129:24 jointly 40:13 joints 66:18 joseph 48:18 jr 2:4 judge 7:15 8:5 17:18 18:6,15,23 19:9 20:11,12,16 20:20 21:12 28:4 28:11,14,21,24 29:3 39:5,25 96:18 110:7 115:7 126:16,22 judgment 6:13,15 15:17 16:11,13,16 18:18 19:20 21:23 22:22 23:23 24:15 25:14 26:18 27:4 28:21 29:9,10 30:16 32:14,24 33:2 41:3 46:25 47:7 49:11 50:5 50:21 54:9 57:25 58:10 60:12 61:5 61:23 62:1 63:13 66:2 69:7 71:8,11 85:7 89:6,12,24 91:19,20 95:15 104:14 107:20 110:8,9,11 judgments 80:16 judicata 44:25 45:19 judicial 44:15 july 60:9,21 95:2	jump 33:5 jumping 110:15 jury 106:8 128:19 k karen 1:21 134:3 134:22 kay 92:9 keep 63:17 80:3 88:3 90:15 91:10 106:24 129:3 keeping 56:16 keeps 40:14 62:10 kelly 3:2,3 13:19 13:19,21,22,24 14:8,12 kellylawsc.com 3:5 kendall 92:9 kept 132:2 kim 31:19 kind 18:5 66:13,20 68:4,22 87:7 125:24 129:8 130:15 132:1 king 3:3,20 69:16 kirchner 4:8 knew 37:20 132:6 knocked 105:5 know 6:11 15:9,10 15:12 16:6 19:2 22:11,14,15,25 23:19 24:9 25:9 25:17,18 26:24 27:17,18,19 29:25 33:24 34:7 37:19 43:18 50:1 51:18 53:2,13 57:20 64:9 67:20 78:20 80:13 81:18 82:7 83:3,4,14,17 85:15 89:3,10 91:16	93:25 96:4,25 97:2,13 98:16 102:5 105:19 106:6 107:3,8,13 110:11 113:13 114:13 117:24 118:1,2,22 119:11 121:7 125:11 128:22 130:23 131:1,23,24 133:21 known 113:4 knows 31:17 koontz 14:18,21 29:16 131:11,12 131:21 l l 4:14 labeled 116:4,5 labor 35:3,5,5,10 41:20,21 44:10 lack 27:1,21 30:6 lady 101:7 language 59:24 68:22 71:16 large 134:5 larger 105:12 lasted 41:24 late 20:4 38:5 72:17 law 3:2 26:1 42:22 89:25 90:3 133:12 law.com 4:5,22 lawsuit 15:4 lawyer 120:5,5 121:20,20 lawyers 6:7 128:16 131:24 lay 42:18 44:2 laying 112:6	lays 52:6 lccm 27:2 lead 19:13 leading 56:12 lean 106:2 leaning 106:4 107:15 learned 26:1 leave 114:4 131:4 leaves 70:24 left 16:1 legal 41:7 legitimate 89:10 lengthy 43:23 letter 95:1,2 116:24 121:5,9,15 121:25 122:18 124:5 letters 119:13,22 121:20 liable 40:13 49:24 library 1:6,9 2:8 7:4,9,16,17 8:1,19 8:22,23 9:4 10:6 11:6,13 12:8 13:25 16:18 18:20 18:22,25 19:3 22:3,6,25 23:3,14 23:17 24:9 27:13 28:5 31:3,5,9,10 31:16,17 32:16 35:15 46:12,20 50:18 56:2 60:6 60:14,21 61:2 63:3 80:12 84:25 89:11 90:18 114:7 116:3,17 131:23 132:1,18 library's 10:6 28:6 57:7 68:6

lie 89:16,16 lien 7:25 8:25 10:13 11:10 13:10 13:14 14:6 17:7 31:22 41:1,9 43:1 43:3 47:16,17 56:2 72:18 75:13 84:25 101:22,23 101:24 107:22,23 131:13,16,16 liens 101:13,25 104:19 110:6 lies 120:20,22 light 38:14 limine 125:22 limitation 111:16 line 28:19 62:21 79:7 87:8 135:3 lines 29:5 57:4 63:15 128:9 linton 3:13 12:6 liquidation 38:4 lis 7:25 8:24 10:16 11:11 list 11:18 48:3 54:12 listed 100:11 literally 84:11 lithko 1:12 2:14 16:3 37:1 45:4 75:25 litigation 56:4,12 59:8 63:8 64:20 64:25 69:18 82:2 little 17:14 30:10 30:11 54:17 58:2 60:4 74:4 87:8 89:23 92:1 97:4 115:9 131:1,18 live 73:22	lived 37:4,11 73:21 llc 1:3,6,9,12 2:2,8 2:9,14,15 3:1,6,13 3:19 4:2,7,12,18 4:19 5:2,3 48:13 llp 2:3 4:13 loan 85:16 location 1:18 64:22 111:18 lockers 66:19 logs 122:16 123:4 long 15:21 88:19 90:4 98:3 103:23 longer 14:22 41:24 45:11 101:15 look 11:18 26:22 38:20 39:3,6 73:18,19 79:1,3,13 79:13 82:17 104:3 118:8 121:16 126:13 127:11,13 133:22 looked 127:7 looking 29:19 60:14 82:12,13 87:1 100:25 105:15 109:10 111:8 looks 62:16 82:20 126:13 losing 93:13 lost 39:9 41:15 90:13 lot 53:23 66:11 89:11 100:21 107:5 112:18 115:18 116:18 128:25 love 29:15,18,21 30:2,6 115:8	130:23,24 131:3 132:12 133:6,11 133:14 lowcountry 4:1 13:18 17:23 18:3 18:17,21 19:9,19 22:4 23:4 24:14 24:19 26:20 27:11 28:18 lowcountry's 18:5 18:24 19:4 28:7 m m 1:12 mail 12:16 19:7,8 28:15 49:17 70:7 85:25 mails 26:19,21 67:14 77:20 83:17 117:13 122:15 123:4,5 main 17:6 24:18 major 69:16 86:6 86:7 making 82:9 malpractice 133:17 managed 101:14 manager 31:1,13 78:12 95:10 manifest 80:22 manos 3:18 manpower 19:9 23:3 26:19 27:1 43:25 57:12 58:25 march 30:21 49:17 117:7 mark 77:17 marked 78:6 120:6 markup 78:13	mary 36:23 37:24 37:25 40:9 45:9 masks 105:20 masonry 2:15 3:6 16:4 45:4 66:24 115:24 116:2 118:6,11 126:24 masonry's 115:20 118:5 122:19 material 18:17 19:10,17 27:1 35:2 61:23 62:20 69:4 materials 67:14,18 67:19 70:9 73:14 math 127:19 mathematical 101:7 matter 6:19 20:25 27:21,22 39:7 83:7 90:11 102:19 130:20 matters 46:9 64:17 130:21 mcdonald 2:9,10 12:9,15,23 13:8,14 14:20,25 15:18,22 16:12 71:19,20,24 71:25 72:8,20 75:3 80:20 81:15 81:18 92:13 94:5 116:13,14 120:1,4 122:14 124:17 126:15,19 131:8 131:11 132:20 mean 21:2 23:18 43:4 66:23 83:20 84:18 88:20 90:16 108:20 128:13,24 means 97:25 100:8 115:11

mechanic's 7:24 8:25 14:6 43:1 47:16,17 104:19 mechanics 87:24 88:14 meet 47:21 99:21 103:22 123:14 128:16 meeting 2:5 133:21 memo 18:9 28:10 memoranda 33:6 memorandum 32:5 68:11 memorialized 7:21 memory 96:5 131:12 132:23 mention 58:6 mentioned 23:4 68:7,7,8,21 69:10 76:17 mentions 22:4 58:3 mere 44:4,6 merely 17:2 49:10 meritorious 22:21 messy 87:7 met 17:13 mew 3:22 michael 3:19 4:8 4:11 11:1 middle 4:9 23:20 111:3 mikell 1:15 milestone 2:17 3:8 million 40:1 101:13,22 116:25 123:7 millwork 13:18 17:24 22:5 23:5	26:20 27:12 28:18 mind 53:17 98:2 118:12 mindful 45:18 79:8 minimum 111:7 minor 86:6,7 100:15 minute 115:8 miscellaneous 66:12 mismanagement 41:22 missed 16:6 mistake 79:9 misunderstanding 74:5 mmc 12:7 mockups 66:14 modification 100:12 modifications 100:11 money 8:20 38:11 38:16,16,20 39:22 70:3 72:11 79:6 80:3 82:19 83:8 84:10,11 85:13 86:4,5 88:19 89:17 91:3 94:14 98:8 monies 72:16 month 73:22 month's 77:25 months 20:3 72:17 75:18 93:17 117:21 132:24 monty 79:23 morehead 2:23 morning 29:12 96:4 110:2 111:7	motion 9:3 10:8 13:18 17:13 22:22 27:3 29:1,9,9 30:15 31:6 32:11 32:14 33:15 40:23 40:25 41:1 46:11 46:13 48:17 49:10 49:15 50:12 55:10 56:8 57:25 58:9 59:6 60:11 63:12 65:16 66:2 68:18 69:7 89:12 92:5,6 92:8,14,23 93:11 93:12,25 94:2,7,22 94:24 95:3,5,15 96:3,4,6 115:14,17 115:20 121:3 125:22 133:2 motions 6:13,15 91:19 93:9 105:2 128:6 mousetrap 118:18 118:25 mousetrapped 119:1 move 70:12 77:2,8 77:22 95:11 97:5 111:21 115:11 128:9,18 129:1,1 moved 78:7 92:19 118:19 133:12 movement 61:5 moving 6:16 15:16 84:21 132:2 mullen 5:3 mullenwylie.com 5:6 mutually 8:16	n n 14:19 135:1 name 23:4 99:7 131:22 named 59:3 124:23 nature 21:4 69:5 nc 4:15 necessarily 41:7 need 6:4 8:8 39:6 40:1 47:8 48:8 49:4 55:15 63:22 65:17 81:22 97:19 104:24 105:7,15 107:11,18,20 109:21 111:22 112:1 113:9,14 114:15,15,20 117:1 118:2 119:21 121:18 126:11 129:5 130:22 133:21 needed 49:18 needs 39:3 66:12 67:9 125:13 nefarious 84:20 neither 31:16 134:8 nellius 1:21 134:3 134:22 never 20:18 24:1 53:22,23 56:25 72:13 74:2 76:2 88:4,10 124:24 new 79:21 125:9 133:12 news 132:11 nicholas 77:22 78:11 night 115:18

nine 20:3 75:7 nip 119:16 non 43:19 106:8 north 2:14 3:6 16:4 36:25 42:19 45:3 115:19,24 116:2 118:5,6,11 122:19 126:24 notarized 43:7 notary 134:4 note 104:15 notebook 72:22 126:21 noted 55:25 notice 36:23 45:9 noticed 54:19 notices 39:17 57:3 60:22 67:24 94:10 94:16,19 95:19 notify 36:20 notion 39:8 95:22 notwithstanding 72:4 november 82:21 97:19 134:23 number 7:21 16:17,21,22 20:11 33:15,17 41:17,18 52:18 54:11 59:10 63:17 72:1,8 73:5 73:24 74:1 76:12 76:13 77:21 78:22 78:22,22,23 81:7 81:10,16,24 82:15 84:1 87:2,4,9,17 87:19 92:15 93:22 101:16,17,20 102:9,20 105:5 108:6 127:4 numbers 12:25 36:7 47:1 69:25	75:8 76:1 84:6,7 104:6 118:1 124:20,21 127:17 numerous 43:15 43:22 o o 14:19 73:2 oath 73:2 95:25 object 58:7 99:8 objected 116:6 128:25 objecting 16:22 objection 25:25 67:25 107:4 108:11 121:19,23 121:24 122:24 128:24 objections 104:14 obligated 36:19 obligation 59:21 obliged 95:7 obtain 16:11 obviously 23:2 31:23 59:13 82:1 occurred 110:3 october 20:5 81:3 97:18,23 113:8 130:3 odd 27:4 109:18 offer 32:16 105:13 130:2,5,15 offers 128:7 office 15:1,11 109:14 officer 36:20 official 134:12 okay 6:10 7:3,8,14 10:1,11,23 12:3 14:7,24 17:8 20:8 20:12 21:5,14 24:23 25:14 27:6	29:1 33:5 34:15 36:14,24 37:1 41:23 47:10 48:11 52:2,9 53:10 54:11 55:12 64:10 65:7 71:21 75:6 81:14,17 87:15 89:16 94:4 96:21 97:19,24 99:10,13 99:18,19 101:1 102:2,6 103:1,1 109:2,23 110:16 110:19,21,25 111:5,15 112:12 112:22 113:11,13 113:21 114:21 115:8,11,16 116:23 117:10,13 119:2 122:8 125:17,24 126:13 127:16 128:3,15 128:24 129:1,21 130:9 131:6 old 2:11,14 3:6 16:4 36:25 45:3 115:19,23 116:2 118:4,6,10 122:19 126:24 once 11:5 68:8 118:4 ones 62:17 99:23 99:24 118:7 open 6:21 114:3,5 114:5 openings 66:18 operating 76:13 operations 56:10 56:15 opine 32:20 opinion 26:8 32:16 58:18,21 90:21	opinions 58:23,25 opponent 57:21 opportunity 54:2 55:1 57:21 58:16 130:5 oppose 46:11,13 61:5 opposed 17:7 opposition 22:22 32:11,14 49:10 58:9 60:5 68:17 89:11 option 106:14,16 order 9:3,13 10:24 15:6 29:5 34:8 35:19,24,25 43:3 47:13 51:15 53:4 53:6,20 54:11 63:14,19 65:4 71:10 76:19,22,23 76:25 77:8,16,18 77:24 78:5,7,22,24 81:15 84:3 85:21 85:23,24 86:8 87:17 91:13 92:19 93:11 94:8,22 95:2,3 96:7 99:3 100:14,15 108:5 114:8 115:20 132:5,21 133:1 ordered 39:16 47:24 92:18 105:4 orders 7:21 20:14 20:17 25:4 33:12 33:20,21,23 34:4 38:24 39:19 48:21 51:7,7,9 52:8 53:6 53:23 67:12 70:2 73:5 80:11 90:25 91:5,21 100:23,25 104:15 133:22

[original - personal]

Page 20

original 79:10 86:9 98:11 110:5 132:19 originally 34:18 94:6 ought 40:12 101:20 outfit 15:2 outside 83:17 outstanding 56:21 overcome 42:16 50:4 overhead 35:6 overruled 25:25 overs 123:18 overtime 35:4,5,5 owe 38:10 40:1 owed 31:25 47:2 61:12 83:8 owner 17:21 18:1 20:19,22 21:1,2 24:6 25:5,9 27:10 34:6,14 35:2 38:8 38:12 46:18 49:5 49:13,22 50:1,11 51:15,16 53:21 67:15 70:10,16 72:12 73:10 75:4 75:6,20,21,23 76:2 76:3,7,10,24 78:15 78:17 80:21 81:11 81:19,21 82:15 83:4 84:17,22 117:16 owner's 49:11,12 50:3 57:7 95:24	padgett 4:19 page 43:23,23 50:13 64:12 116:24 135:3 pages 126:17,25 127:1,5 paid 17:20 31:20 34:2 46:19 47:14 49:20,21,22 51:1 51:22 52:7 57:15 57:18 59:10,16 62:9 69:22 70:23 71:4,7,8 72:12,13 72:16 73:4 75:4 75:12,15,16,21 76:2 77:1,9,10,19 78:2 79:14,17 80:11 81:11 84:1 84:6,7,12,23 86:12 88:17,22 102:4,4 110:8 131:14 palettes 48:8 palmetto 5:1 11:25 paper 9:5 42:11 paperwork 12:21 20:25 79:15 paragraph 52:20 52:22 64:14 parker 2:3 parkerpoe.com 2:7 part 7:23 21:2 26:16 35:16 36:8 51:14 53:6 59:20 72:3 77:23 99:1 100:24 109:21 120:18 121:14,25 129:12 partial 29:10 33:1 46:24 47:7 89:6	107:20 participate 111:14 participating 16:22 participation 14:3 particular 22:10 27:11 28:15,19 parties 7:12 8:15 11:7 15:4 17:4 83:16 94:20 99:21 100:14 104:15 105:6 133:11 partner 80:18 party 1:10,13 61:4 64:23 101:3 115:19 129:12 134:9 pass 38:11 54:5 passed 20:18,23 20:24 25:5,8 87:2 passes 38:8 passthrough 23:17 38:1,3 path 31:11,15 49:2 66:6 67:4 pay 7:16 8:14 31:2 31:3 48:22,23 52:6 59:9,10,16 62:9 73:4,8,18,20 73:23,25 74:2,6,16 75:4,5,6,13,15,18 75:19,22,25 76:7 76:12,13 77:3,3 78:4,21 79:2,3,10 79:11 80:21,23,24 81:1,5,6,10,11,22 81:24 82:2,6,9,10 82:19,22 83:8,9 84:6,7,8 85:12,12 87:19,20 88:2	paying 8:20 38:22 38:23 73:11,18 85:25 payment 7:18 8:15 22:1 30:23,25 56:24 79:12 payouts 48:24 pays 85:23 pendens 7:25 8:24 10:16 11:11 pending 10:9,19 14:5 132:16 134:10 people 6:16 11:24 25:23 26:9 49:18 80:14,16 83:9 85:10 86:3 105:14 105:22 107:10 108:24 111:17 112:10 127:21 people's 114:11 percent 117:13 perfect 79:16 perfectly 89:2 perform 44:19 performed 7:19 17:24 20:12 31:21 34:8,10 42:2 46:19 56:18 84:24 performing 62:14 period 81:12,13 87:13 permission 102:16 permitted 80:6 94:25 perpetration 36:22 person 28:14 32:17 102:19 personal 90:21
p			
p.a. 2:22 4:8 p.m. 1:17 133:23 pacing 115:10			

persons 44:16 perspective 33:25 persuasive 69:8 phone 13:20 phonetic 15:20 95:10 101:8 pick 106:14 picked 70:10 piece 42:11 60:4 pile 39:24 place 66:3 89:18 places 3:17 11:2 11:19 plaintiff 1:4,10 2:2 40:14,16 plaintiff's 112:23 plan 109:25 plans 106:13 109:19 play 79:22 95:24 118:18 player 56:4 playing 92:22 131:4 pleadings 67:23 69:10 pleas 1:1 pleasant 3:17 11:2 11:19 please 6:2 17:16 30:13 48:11 52:24 65:24 pleased 102:22 plus 31:25 78:13 89:1 90:25 91:4 pnn 78:17 poe 2:3 point 20:22 23:22 24:21 25:22 27:17 32:15 35:12 42:16 48:2 53:17 59:22	60:13 62:8 68:13 68:15 71:12 72:25 77:12 83:5 86:6,7 88:24 89:8 95:19 108:5 110:16 111:11 113:14 114:12,24 116:14 116:15 119:9 123:10,20,20 129:3 pointed 41:4 44:4 pointing 95:1 policy 59:17 portion 16:13 50:11 65:1 77:3 portions 31:6 34:22 position 17:1 24:1 24:3 46:6 57:20 68:3,10 89:13 118:22 119:5 120:10,10 127:2 possibly 16:6 posture 22:12 pot 77:11 potential 44:25 61:14,22 71:2 74:9 75:1 86:15 potentially 49:24 74:9 poyner 4:13 poynerspruill.com 4:16 practical 22:18 83:7 practice 112:8 practices 98:24 precedent 56:24 117:10 123:15 precision 13:11	prefabricate 34:21 34:23 prefabrication 34:18 prefer 33:2 prejudgment 62:2 63:25 65:5 91:22 prejudice 11:5,8 prejudicial 39:1 preliminary 47:21 premature 22:24 23:23 24:16 premier 10:4,7 15:15 54:21 55:21 55:21 56:11,13,18 56:21,23 57:1,9,14 57:15 58:5,6,19,24 59:1,9,20,23 61:25 premier's 57:2,5 57:11,12 60:2,16 premiers 10:5 premium 4:18 35:3,10 preparation 11:24 27:22 118:4 prepare 29:4 91:13,20 prepared 25:15,15 50:23 54:14 72:4 121:8,17 preparing 6:14 82:11 106:10 110:5 presence 30:5 present 59:19 104:2 presentation 125:20 presented 32:10 61:10 125:16	presenting 60:5 president 56:10 73:3 presumably 22:8 26:24,25 pretrial 6:13 pretty 56:4,17 60:10 62:21 90:2 90:18 131:3 prevailing 64:23 prevent 25:14 prevented 45:20 prevents 125:3,4 previous 87:13 previously 61:13 78:6 83:16 prime 57:8 99:12 99:14 principal 56:22 62:2 prior 88:2 100:9 private 7:19 privileged 123:6 126:2 probably 84:14 104:3 107:4 108:15,18 109:1 110:18 111:4,7,11 112:20,25 125:21 132:23 problem 22:18 39:13 44:1 68:25 69:17 73:7 103:16 106:18 108:8 119:25 120:20,21 120:22 problems 18:4,24 19:3 22:12 28:7 43:24 58:25 procedural 43:2 111:20

[procedure - reason]

Page 22

procedure 37:16 97:4 procedures 64:15 proceed 39:2 40:3 65:23 78:17 102:17 105:5,25 111:9 proceeding 10:13 process 69:12 123:19 129:5 produce 39:14,17 produced 76:11 119:17 122:3,12 122:16 123:11 124:14 127:11 129:11 product 70:10,12 126:4 production 76:10 76:11 79:9 productive 42:5 productivity 39:10 proffered 135:14 progress 110:4 prohibit 115:2 project 18:3 19:12 19:15 24:8 30:19 30:20 31:1,6,12,13 31:15,21 33:19 34:17 41:21,22,24 41:25 42:6 44:1 46:17 51:1 55:22 63:11 64:21,22 66:8 78:11 79:25 82:3 84:21 94:11 94:15,17 95:10 proof 104:9 109:8 proper 102:23 proportion 77:6	proposal 76:20 propose 99:20 proposed 12:17 65:4 91:20 92:12 proposing 103:6,7 prosecution 40:18 prospective 32:17 protection 97:14 97:15,21 98:7 113:11 protective 92:19 93:11 94:8,22 95:3 115:20 prove 18:20 45:5 45:25 47:22 49:6 72:10 95:18 proven 23:12 34:2 provide 32:2,9,11 32:12 96:21 109:25 provided 21:25 32:21 36:23 48:14 50:9 58:11 85:16 98:5 119:20 providing 71:14 provision 23:11,12 provisions 59:25 public 59:17 134:4 purely 49:13 102:8 purpose 105:1 purposes 59:5 120:7 122:23,25 123:9 125:12,17 126:8 pursuant 20:13 48:16 51:4 62:3 pursuing 40:24 push 63:10 pushed 63:6	put 7:1 25:23 28:9 63:24 66:15,19 68:17 71:23 85:22 88:15 99:4,6 102:9 105:9,14 108:12 109:9 110:8,9 111:12 112:10,19 113:12 123:1 125:19 128:8 putting 54:17 83:13 106:1 110:1 pvc 66:21 70:12 q quality 18:6 61:11 quantum 4:7 7:5 7:10,17,17,19,22 7:23 8:1 54:13 quarter 26:20 129:22 question 19:10,11 19:14 20:21 21:24 25:1 26:5 44:20 47:3,4 60:7 69:23 75:11 91:1 99:7 104:22 108:4 111:10 113:18,20 124:12 125:22 126:7 questionable 68:21 questions 78:20 95:25 116:3 117:23 118:20,23 120:9 122:24 124:19 127:3 quickly 6:5 109:13 quit 95:20 123:20 quite 12:20 73:12 101:15	quote 26:17 27:2 66:8 r r 2:17 3:3 rahimi 4:19 rahn 3:19 raised 19:7 57:3 59:12 110:7 rannik 4:2,3 13:17 17:11,16 18:14,15 19:25 20:10,16,24 21:7,9,12,16 25:2 25:6 27:25 28:1,4 28:11,23 29:3,6,7 rannik's 21:22 reached 7:6 8:13 8:18 10:5 11:2,6 read 26:15 64:11 64:11 73:6 reading 18:13 130:10 ready 26:5,13 73:14 79:18 98:6 128:17 real 43:4 95:25 101:17,19 102:13 realistic 111:4 realistically 113:2 reality 68:16 realization 6:5 realized 79:8 106:10 really 18:6 47:15 66:9,9,10,20 68:19 69:14 71:4 79:11 88:16 102:24 103:6 104:22 105:1,13 106:10 rear 5:7 reason 17:6 25:17 28:20 31:2,19

37:25 57:15,17,23 96:18 reasonable 60:1 64:24 103:3 reasons 32:23 69:9 rebuttal 49:12 recall 19:21 94:18 95:12 106:22,23 receive 55:1 96:25 received 67:24 82:1,2,3,19 recited 61:13 reciting 26:21 reconciliation 52:5,15 reconsider 93:12 93:25 94:2 reconsideration 94:24 95:5 96:7 record 7:2,24 9:24 25:24 34:10,11 49:5 58:7 64:11 67:21 115:12 134:7 records 90:15 129:12,19 recover 64:23 redone 130:9 reduce 54:10 redundant 49:3 refer 35:7 133:3 reference 24:13 59:2 61:16 68:9 78:21 99:15 referenced 121:5 references 43:22 68:12 121:6 referred 109:18 refuse 39:19 refused 35:19	refute 28:19 regard 28:4 63:16 85:2 102:22 regardless 46:15 regular 77:2 78:8 87:21 88:1 reiterate 60:12 rejected 36:1 related 30:18 50:8 93:9 134:9 relates 41:19 42:7 47:18 53:25 118:22 relating 64:18 relation 7:18 relative 71:1 88:12 relaxed 128:15 release 8:16 11:10 relevant 18:10 56:11 65:1 relieved 14:2 rely 43:19 107:7 relying 49:10 50:14,17 80:14 85:17,19 remainder 34:16 83:24 remains 79:5 88:24 remark 74:8 remarks 66:4 71:12 remember 93:13 97:20 remind 46:14 reminds 92:4 remove 91:4 rep 57:7 repeat 53:15 repeatedly 117:23	reply 54:25 61:15 report 22:3,5,6 23:5,7,8 24:13 26:2,17 43:13,15 43:16,17,22,24 44:13 46:16 49:11 50:12 58:3,6,8,13 59:4 68:4,6,8,20 69:9 reported 1:21 reporter 134:1,3 135:5 represent 55:21 75:23 representative 76:4 represented 14:21 131:12,21 represents 15:2 20:17 request 21:5 22:1 27:9 33:21 50:17 51:14 53:6 60:6,7 60:9,20 69:1 70:15 71:10 81:24 83:8 101:1,2,9 requested 126:4 135:8,9 requesting 27:10 requests 34:8 85:12,13 require 99:20 100:2 129:18 required 48:21 92:20 116:22 117:3 requires 95:19 res 44:25 45:19 reserve 33:2 90:10 reset 130:6	resolution 10:5 11:3,6 128:6 resolve 69:19 77:18 resolved 64:20 resolves 7:6 respect 57:2,10,12 60:16 respectfully 28:21 71:10 130:7 respective 10:8 77:5 respond 12:18 40:6,7 70:25 93:6 93:23 responded 60:20 60:20 69:5 93:15 response 21:18 22:1 23:6 25:1 28:5 33:3 43:11 46:8 49:15 50:20 58:14 59:11 60:19 62:6 68:17 71:18 73:1 93:23 94:18 95:4 111:10 116:23 117:8 129:13 responses 46:5 50:17 responsibility 24:5 109:11 responsible 8:2 24:3 44:14,17 56:16 62:17 67:3 rest 71:12 result 102:10,24 resulted 44:18 resurrect 24:21 retain 10:18 retainage 21:13 33:18 48:24 75:9

75:10 reversed 90:3 review 55:1 120:23 121:4 revised 74:16 75:5 75:19 78:4 79:2 83:2 84:8 86:11 revision 76:3 87:18 revisions 81:16 rhp 4:22 rhughes 4:22 rid 74:22 83:25 ridiculous 66:7 101:16 right 6:21 8:4 9:9 9:25 10:18 11:12 12:8,9 14:16 16:5 16:8 17:16 21:8 21:10,14 27:20 28:9,25 29:5,8 30:3 34:3 36:2 40:4 42:8 43:20 44:22 45:21 46:23 48:2 51:11 52:2 53:19 54:8,12 56:10 59:12,20 61:14,22 62:4,11 62:12 64:10 65:3 65:9,10,22 67:7 69:25 72:7,19 83:22 84:13 87:6 87:10,14 89:19 91:9 92:12,14 93:2 97:3,11 98:11 99:9 102:21 104:5,25 110:4,24 111:5 112:4,12,22 113:25 115:22 116:8,10 118:13 120:3,20 121:18	124:11 126:14 129:23 133:5,18 rise 16:9 road 2:11 95:12 rob 89:16 robert 4:19 5:3 10:3 12:2 15:15 15:20,22 robertson 3:18 roblaw.net 3:22 roll 6:4 39:24 rolling 129:3 room 6:7,8 38:14 83:10 105:17 rooms 34:20,22 ross 15:19,21 rough 131:4 roughly 25:3 51:19 rpr 1:21 134:22 rule 25:13,15 44:4 57:21 61:6 89:23 104:18 125:16,18 125:24 126:12,12 129:19,21 rules 25:24 37:16 37:18 94:25 ruling 45:1,18 46:24 95:6 119:7 120:8 126:11 127:13 133:20 run 80:2 91:23 128:14 running 45:12 128:13 rwylie 5:6	salient 7:15 sam 101:8 sample 100:19 sanctions 96:18 sapell 15:19 sarah 4:14 48:12 satisfaction 7:24 8:25 23:13 satisfied 56:23 131:16 satisfy 9:16 47:9 savannah 4:21 save 99:25 saw 6:23 13:19 53:24 127:11 saying 28:6 49:12 54:1 67:15 78:12 82:11 85:6 88:20 89:10 95:3 125:4 says 26:23 28:16 31:10,14,19 37:6 39:9 49:17 50:7 73:3 74:21 75:5 76:23 77:21,22 103:12 116:25 117:24 122:23 123:8 sc 1:20 2:6,12,18 2:23 3:4,9,15,21 4:4,10 5:5 scarborough 1:15 schedule 77:4,7,14 78:8 79:4 80:2 83:25 86:12,16,17 86:18 87:9 88:1,4 88:11,15 109:3 scheduled 97:12 scheduling 22:3 58:20 scheme 56:5	school 26:1 79:22 scintilla 25:13 44:4,6 scope 48:20 91:2 scratch 30:10 scratching 127:18 sdifranco 4:16 seal 134:12 sealant 66:18 sealed 66:18 seat 6:2 second 19:6 20:5 26:1 40:14 46:3 47:1 59:18 95:16 122:22 secondly 59:11 section 71:16 see 6:16 48:3 52:25 76:14 79:16 81:12 87:9 88:18 89:3 104:12 108:10 111:8 113:6 115:10 117:5 121:4 122:9 125:22 126:2 127:20 130:14,15 131:18 132:25 133:18 seeing 87:8 seek 18:23 seeking 27:13 31:24 34:24 56:5 88:25 91:16 seeks 31:25 32:24 41:3 seen 9:8 13:12 15:20 32:20 53:23 69:6 78:20 101:8 122:9 128:5,7 sees 86:2
	s 135:13 safe 9:2 113:7 sake 41:10		

[self - spoils]

Page 25

self 62:14 send 85:12 102:1 117:2 126:25 127:1,12 sends 117:12 senior 30:25 31:13 sense 107:5 sent 33:21,23 72:21,22 116:23 separate 13:21 16:19 38:25 79:7 85:20 september 20:6 73:9 81:4 96:23 97:12,14,16 134:12 serious 39:7,7 112:19 served 27:9 55:22 56:12 60:8,22 69:4 93:8,10 94:6 services 15:2,5,8 29:21,22 30:9 44:10 66:25 130:24,25 131:9 131:17,20 132:3,4 132:7,9,22 sese 47:24 set 6:12 17:6 38:25 48:17 53:13 60:21 61:14 64:15 92:2 93:10 96:8 97:9 97:16 130:2,4,4 setoff 18:21,22 23:12,17 59:12,21 59:24 61:15,22 62:11 setoffs 68:1 sets 75:25 settle 8:16 78:16	settled 11:19 12:7 40:17 settlement 7:1,6 7:23 8:13,18 9:12 9:13 11:3,5 116:5 116:9 118:13,15 118:21 119:3,6,14 120:6,9,11 121:15 122:23,25 123:8 124:5 125:12,17 126:1,8 128:7 130:2,6 settlements 103:8 118:20 settles 40:14 severally 40:13 shape 122:3 126:3 share 110:20,21 sheet 109:19 shenanigans 80:5 shooting 112:11 short 18:12 shortly 14:17 show 44:2 124:24 128:1 showing 87:12 shows 34:10 110:5 shutter 75:7 77:23 79:5 81:16 87:17 88:6 shutters 66:21 67:16 70:7 75:6 87:8 side 9:2 signature 134:18 signed 9:13 11:5 33:20,23 37:4 80:6 81:3 100:13 100:23 significant 44:1	similarly 31:18 simple 70:11 simply 10:13 23:22,23 26:5 41:1 42:10 47:24 50:4 60:15,15 68:1 69:6,11 84:20,22 124:21 sincerely 34:7 single 39:10 68:9 109:19 sir 6:24,25 8:7 10:2 12:5,23 13:2 21:7 29:6 33:9 65:19 116:11 124:16 130:18 sit 19:18 39:18 91:24 108:12 128:18 site 56:15 66:14,24 sitting 100:25 127:21 situation 41:11 42:6 90:22 126:22 six 93:17 132:24 skipped 35:9 slow 6:20 small 48:23 56:4 smith 2:16 3:7 smithterrylaw.c... 2:19 3:10 solving 102:15 somebody 68:14 79:22 90:6 111:22 127:18 129:15 somewhat 15:1 128:14 soon 9:11 sooner 128:12 sophisticated 66:10	sorry 29:14 30:12 52:4 57:1 58:22 61:18 113:22 115:15 sort 24:18 36:4 105:16 106:12 109:25 110:3,15 125:21 128:6 sought 118:10,15 sounds 22:19 66:9 103:2,25 113:2 129:25 south 1:1 4:14 25:13 37:15 42:22 44:4 59:15 134:4 134:13 sov 77:23 space 22:18 77:7 spano 26:23 28:15 31:1,12 49:17,19 speaking 127:8 spear 38:5 special 45:15 specialties 66:7 specific 24:13 27:9 49:25 52:25 60:2 65:18 102:9 117:22 specifically 22:4 44:9 58:3,15 62:7 100:2,5,16 121:6 specifications 100:9 109:19 speculation 50:22 spend 26:10 102:11 113:4 spending 109:10 spent 101:3 113:3 spinning 6:20 spoils 38:15

spreadsheet 101:10,11 102:3 109:25 110:5,15 110:17 spreadsheets 101:21 120:6 sprinkler 5:1 11:25 spruill 4:13 staff 97:23 109:10 stamp 87:3 stamped 82:1 stand 89:9 104:2 115:6 127:19 standard 71:16 standing 46:11,13 standpoint 88:15 111:20 stands 15:9 39:8 starcevic 77:22 78:11 start 6:15 16:12 17:9,11 26:14 29:15 42:3 45:23 66:3 101:19 104:25 107:2 109:15 125:10 128:11 130:19 started 8:9 22:19 54:24 101:13 107:14 111:12 starting 22:20 43:23 60:24 72:25 106:2 116:14,15 starts 26:6 130:8 state 1:1 2:15 3:6 4:3 16:4 36:25 45:4 58:7 59:15 64:20 97:8 115:19 115:24 116:2 118:5,6,11 122:19	126:24 134:4 stated 115:12 statement 26:2 31:24 42:10 43:1 43:7,8 129:2 states 38:4 status 6:12 statute 130:11 stays 84:10 114:5 steel 66:23 steele 3:8 step 133:17 stipulate 99:23,23 119:21 stipulation 9:1 11:9 12:17 13:9 13:15 50:22 stood 37:20 stop 42:3 130:12 strains 67:4 stream 3:12 8:12 8:13,15,20,21 9:4 9:15,17 11:21 street 1:19 2:5,23 3:3,14,20 4:3,14 4:20 5:4 79:21 133:15 strict 129:18,20 130:10 strong 60:12 69:7 stucco 55:22 stuck 80:16 stuff 42:20 66:12 66:14 76:21 77:16 80:9 85:17 109:11 111:15 117:18 127:10,10 128:25 sub 83:20 98:12 106:19,21 subcontract 23:10 23:19 48:16,19	56:19,22 59:25 62:3 64:12,19 70:1 90:25 99:16 subcontractor 12:19 16:15 22:10 22:13 27:11 38:9 38:10 59:13 63:1 64:18 66:8 72:1 72:16 73:25 80:21 130:2 subcontractor's 23:16 57:25 subcontractors 16:24 24:2 38:23 42:1 46:4 47:18 49:7,9 59:2 62:16 63:7,18 67:22 68:24 72:5,13,13 80:10,11,25 82:12 95:17 107:23,24 108:2 117:14,17 subcontracts 99:16 subject 63:8 70:21 90:5 submission 123:12 123:14 submit 35:1 65:3,6 76:20 91:23 104:15 123:22 130:7 submitted 9:1,3 12:21 20:17 22:2 31:22 34:5,6,25 35:11,13,15,25,25 49:14 56:7 57:6 57:20 67:19 73:8 75:15,22 76:6 79:6,12 80:23,24 82:13,14 86:10 119:4 123:2 125:3	125:4 submitting 11:4 78:4 81:21 117:16 subpoena 129:13 subs 49:24 58:4 59:9 60:22 71:2 84:21 95:23 98:13 104:23 106:1 107:3,10,16 108:6 111:13 113:16 subsequent 79:3 81:20 88:21 subsequently 78:21 130:4 substantial 104:7 substantive 22:21 62:11 sucked 88:16 suddenly 130:13 sued 45:2 sufficient 28:19 suggest 109:5,12 suing 109:6 112:3 suite 2:5,18 3:9,20 4:4,9,15,20 5:4 suites 50:9 sum 7:16 27:8 29:1 summary 6:13,15 15:16 16:11,13,15 18:18 19:20 21:23 22:22 23:23 24:15 25:14 26:18 27:4 28:20 29:9,10 30:16 32:14,24 33:2 46:24 47:7 49:11 50:4,21 54:9 57:25 58:10 60:11 61:5,23 62:1 63:13 66:2 69:7 71:10 80:16

[summary - think]

Page 27

89:6,12,24 91:18 91:20 95:15 102:2 104:13 107:20 110:8,9 122:17,18 122:20 summerville 2:12 superintendent 56:13 supplementary 100:7 support 32:10 58:9,18 65:7 74:12 117:2 119:19 supporting 48:18 supports 27:15 supposed 25:21 27:3 29:23 34:21 67:11 supposedly 26:1 44:16 supreme 38:4 45:16 90:3 sure 6:4 12:4,10 16:25 18:7 28:3 32:7 33:16 36:18 40:11 41:7 46:8 46:10 54:25 58:15 59:14 65:14 85:6 88:9 91:23 92:17 97:17 102:25 103:6 105:6 106:3 109:2 114:22 115:4,25 120:1 surprised 17:15 89:23 sustained 25:25 swear 83:8 sworn 42:14 43:7 53:7 59:4	t t 14:19 135:13 tab 73:18 77:21 78:9,10 87:3 126:20 tabbed 65:16 126:24 tabs 67:18 73:16 76:15,16 82:17 126:22,23 tail 106:25 take 6:15 13:17 26:4 52:12,14 53:19,24 58:16 89:5,5 101:12 109:16 110:18 111:7 112:15,20 120:9 127:11,12 133:17 taken 60:23 72:2 75:10 109:17 takes 85:12 119:5 120:10 talk 23:8 65:17 72:24 73:14,23 92:1 93:2 97:3 108:13 talked 108:16 110:2 talking 43:24 47:19 61:7 63:18 76:18 80:4,5 104:17 109:24 111:15 113:25 114:1,17 119:13 126:18,21,25 talks 59:25 60:18 121:9 tallied 46:25 tapped 77:12	task 42:3,3,4 tell 16:10 40:1 53:18 55:3 70:16 72:18 74:23 80:14 89:22 105:3 106:7 107:11,14 108:21 132:13 telling 77:20,25 86:2 temporary 35:4,5 35:10 tends 22:7 term 41:16 terms 7:15 64:12 75:17 123:16 128:22 terry 2:16,17 3:7 16:2,2 29:11,12,14 30:12,13,14 32:8 33:9,14,17 34:3,16 35:20,23 36:3,6,9 36:12,15 40:6,8,9 41:18,24 42:14 43:6 45:22 47:11 93:4,18,21 94:1 96:2,12,16 113:16 113:22 114:2,14 114:18,23 130:1 130:18 testified 17:22 31:1 49:19 56:13 57:9 58:17 testify 62:21 106:21 114:10 testifying 114:11 testimony 18:10 23:24 24:11 27:17 28:16 31:4 32:16 53:8 57:7 58:12 59:5 92:9 107:7 114:12	thank 8:5 14:13 16:5 18:13 21:16 27:24 28:23 29:3 29:7 40:5 46:22 47:11 48:5 52:25 53:10 55:14 62:4 65:8,19,21 71:17 91:11 96:1,16 114:23 116:11 119:10 130:18 133:19 thankfully 99:11 126:16 thanks 36:14 77:25 theirs 68:20 therefrom 24:5 thereof 134:10 thin 8:11 thing 6:12 28:12 32:15 37:2 42:6 44:24 47:15 58:2 66:21 74:21 77:19 87:18 92:16 95:20 95:21 97:11 98:17 99:4 101:1,2 103:18 105:23 116:21 122:17 123:10 129:8 things 18:24 22:19 25:25 27:22 37:15 45:22 56:5 57:19 66:20 68:18 72:9 80:2 85:1,13,25 100:21 111:19 126:10 128:1,20 129:8 think 13:5 15:24 17:12 27:5,15 28:20 35:8 39:2 44:7,19 46:25

[think - trying]

Page 28

47:3 48:1,2 53:4 57:18 59:14 60:8 62:12 63:24 64:8 65:11 66:3,5 69:23 70:10,12,20 71:1,3 74:13 76:8 76:12 84:14 86:14 90:2,17,21 91:18 94:9 98:16 101:4 102:3,4,23 103:23 104:2,3,11 105:6 107:4 108:3,6,7,15 108:16,18,25 109:4 110:19 111:5,6,10 112:17 112:18,25 113:14 114:6 119:20 120:19 121:8,13 121:15 123:23 125:15,20,23,24 126:3,5,7 127:15 128:1,7 130:17,21 131:8 132:22 thinking 6:11 30:4 104:20 106:16 108:9 111:19 thinks 63:1 third 1:10,13 12:19 26:10 46:10 47:1 115:19 thomas 2:4 15:20 15:22 thorough 68:4 90:18 thought 6:14 55:18 82:8 93:24 98:11,21 104:22 thousand 27:5 101:4 three 16:7 27:4 72:17 75:18 79:23	81:5 88:19 106:14 112:3,20,23 113:1 117:21 threshold 47:21 thrown 98:21 thumb 89:24 125:16 thurmond 4:8 thursday 93:6 111:3 tie 68:1 tier 12:19 till 15:12 tim 28:15 31:1 49:17 timbes 4:8,8 6:23 6:25 7:4,9,15 8:5 54:13,16 97:14 106:11 time 1:17 6:6 8:15 10:12 12:7 15:21 17:12 20:22 22:24 25:22 26:10 32:22 41:15 50:2,24 53:17 60:17,19 67:18,19 68:13 70:3,9 72:10,10,15 75:15 76:17 77:10 80:8 82:5 89:20 90:17 93:13,20 94:12,12,14 97:9 97:15 104:12 105:8 106:15 109:10 111:11,24 113:3,14 114:12 115:6,11 123:12 123:21 128:22 129:2,3,9 133:9 timeframe 97:18 timeline 117:4	timely 67:1 116:19 times 56:11 timing 69:4 tktlawyers.com 4:11 today 6:10,14 9:3 9:7 10:14,19 11:25 13:1,3 15:13 16:13,23 17:14 22:19 27:8 39:18 50:23 54:15 56:6 92:11 104:14 105:2,6 107:8,20 110:3,6 111:20 117:10 128:6 131:7 toilet 66:15 told 15:13 70:19 80:10 85:3 92:19 92:21 107:10 131:1 tomhildebrand 2:7 tomorrow 96:12 96:15,22,23 127:12 top 19:25 topics 72:23 tossed 62:10 total 27:8 73:6 82:25 88:10 totalling 48:25 totally 12:8 89:25 toto 125:14 touch 32:5 toughest 105:23 tower 60:12 tower's 69:7 track 93:13 tracks 104:24	trade 17:23 98:24 112:8 trades 44:12 66:11 transcript 5:7 31:7 32:12 134:6 trial 8:11 9:19 11:16 23:2,13,21 24:9,18 25:16,16 26:6 38:22 44:2,7 44:15 63:2 90:10 91:25 99:21 101:20 103:12,24 104:10 105:9 107:10 109:20 113:9 114:6 125:4 128:10,23 129:2 130:3,4,5,8,10,11 130:12,14,14,19 tried 17:13 27:18 68:12 69:19,20 104:21 119:8 122:23 trigger 59:20,23 triggered 12:13 trimark 3:1 13:22 13:24 14:11 trip 98:1,8 trips 69:13 trolley 2:11 true 134:6 truth 80:15 85:18 85:19 131:1 truthful 89:15 try 18:20 22:25 26:11 42:21 54:5 57:22 78:2 98:12 99:3,16 103:7 106:9,19 111:24 114:8 124:6 trying 6:6,21 8:11 12:24 22:13 30:6

48:10 52:17 64:7 69:22 79:14,22 84:14,15,21,23 87:24 88:3 90:1 98:22,23 101:5 105:2 106:24 114:14 117:6 119:18 123:8 tune 47:7 51:2 turn 83:11 86:23 turned 70:19 twice 39:16 92:18 131:3 two 13:21,24 17:3 18:19 20:1 25:16 25:16 26:6,7 27:3 37:4,5,18 40:1,12 60:25 75:8,25 80:2 82:23,24 92:1 94:20 98:13 99:25 104:8 108:5 111:23 112:15,23 113:5 125:7 131:15 tying 67:23 68:15 type 21:25 typical 87:22,23 typo 74:23 76:4 typos 74:24	42:13 66:5 74:3 84:25 86:15 90:8 91:11 107:1 understanding 25:7,9 51:16 53:9 70:7 86:10,11 92:10 122:12 understands 17:1 understood 62:24 112:13 115:4 undertaken 60:3 undisputed 17:25 18:2,4 unenforceable 59:16 unfair 24:17 98:24 112:8 unfortunately 73:22 117:17 131:17 united 38:4 unjust 55:24 unquote 66:8 unreal 43:4 unrelated 46:1 47:16 unsympathetic 21:21 unusual 17:18 updated 79:11 use 61:6 102:8 utilized 35:6	various 52:7 verified 31:23 43:6 73:2 85:18 85:20 96:13,14 verify 29:20 versus 61:16 vice 56:10 73:3 vis 85:7,7 94:19,19 132:8,8 void 59:17 volume 126:14,15 127:4 volumes 117:12,19 117:24,25 118:2,3 118:6,8 119:23 125:10 126:14 voluminous 94:8 vs 1:5,11	114:8 117:24 118:1,18,18,25 119:1 120:1 125:11 127:12,18 131:8 wanted 12:4,10 16:14 30:5,7 54:24 83:5,19,19 119:9 wanting 15:12 wants 129:15 warco 2:21 13:1 66:1,4 67:2,23 68:8,13 72:15,21 73:1,8,11 81:20,25 82:16,18 85:7 87:3 126:21 warco's 66:1 74:6 81:5 waring 73:2 warrant 44:7 water 106:13 watson 2:15 16:3 29:11 30:14,19,23 31:2,12,15,17,20 31:22,25 32:23 33:21,23,23 34:5,9 34:21,23 36:24 37:3,6,13 39:8,16 40:20,24,25 41:20 43:14,22,25 44:10 44:13,18 45:2 46:7,16,18 47:3 92:18 93:5 watson's 29:8 30:15 32:14 34:12 34:13,18 35:13 46:1,11,13,17 way 2:17 3:8 19:15,16 27:12 28:18 34:13 42:1
u		w	
u.s. 85:24 uh 87:11 ultimately 62:17 88:20 104:9,21 unapproved 20:21 53:5 underlie 121:13 underlying 121:22 124:13,14 understand 30:7 37:23 40:11 42:12	v v 2:22 value 47:17 77:9 values 77:4,7,14 78:8 79:5 84:1 86:13,16,17,18 87:9 88:2,4,11,15 variety 67:21	w 3:14 wachovia 61:16 wagging 106:25 wait 130:14 waiting 76:19 128:18 waive 115:21 walker 3:13 walking 115:13 wall 66:16 walls 13:11 83:14 want 6:10 10:4 16:25 20:5 26:15 39:5 40:7 45:18 54:2,15 58:6 60:12 61:1 62:8 63:23 69:20 72:24 75:1 85:22 89:5 98:7,15 102:18 104:1 105:5,9,18 107:7 108:12 111:20 113:10	

54:4 80:21 83:19 83:21,21 86:14 87:22,23 89:19 99:24 103:23 104:23 106:3,4 107:15 111:13 114:13 122:3 126:3,11 ways 104:8 119:24 we've 79:14 101:14 week 16:23,24 37:3 75:24 93:14 93:14 95:11,11 97:12,13,15 98:4 98:13 99:21 106:12 107:9,11 107:12 109:4 110:18 111:3 112:21,23 113:1 127:13 131:3 133:8,20 weeks 25:16 26:7 26:7,10,11 60:25 92:1 97:18 111:23 112:16 welcome 111:14 133:5 went 33:6 45:10 53:14 66:17 68:11 75:3 76:2 83:2 118:5 wgflaw.com 3:16 wharf 4:9 whatsoever 57:17 58:18 61:10 wheeler's 50:20 60:11 william 56:9 willing 90:9	willwork 4:1 wind 123:3,7 125:1 windle 2:16 3:7,8 115:23,23 116:1 116:11 119:11 121:21,24 122:5,7 123:25 124:9 windows 66:22 winona 61:16 winter's 95:10 withdraw 40:20 103:17 withdrawn 92:11 92:12 withdrew 40:21 withheld 60:1 withstanding 75:17 witness 39:12 62:21 63:1 74:17 92:10 106:20,23 106:23,23 109:24 115:1 116:2,3,6 124:1 125:2 127:19 134:11 witnesses 39:4,15 50:3 105:21 112:9 113:17 114:10,10 114:16,17,18 wl6334915 61:17 wo 61:17 woman 99:7 wording 69:5 words 118:14 130:9 work 7:18 16:18 17:2,25 18:5,5,25 19:4,23 20:6,12,14 20:22 23:16 25:2 28:8 31:17,20	34:8,10,12,13,17 34:22,23 41:8 42:2 44:19 46:17 46:19 47:15,18,19 47:22,23 48:20 51:1,3 53:25 56:18 57:2,5,11,12 60:2,16 61:11 62:14,23 67:1,15 67:24,25 70:9,20 71:5 77:1,2,5,8,13 79:5 80:12,17,19 81:5 83:9,18 84:20,23 85:4,5 88:6,11 90:21,23 91:2 98:4 100:15 101:14 110:4 113:25 114:1,11 126:4 work's 36:11,12 working 76:24 84:16 101:12 105:19 workmanship 62:15,18 works 26:23 79:25 world 60:25 worry 77:17 worse 133:16 worth 25:3 88:6 101:13 104:11 wound 76:5 wreck 98:18 wright 3:19 11:1,2 11:14,16,20 wrinkle 14:25 write 26:22 95:6 124:2,7 writing 45:7 125:2 written 100:13,15	wrong 76:12 90:5 95:23 113:23 wrote 28:14 94:25 95:2 119:13 wylie 5:3,3 12:1,2 12:3,5 x x 135:1,13 y y'all 6:11 12:3 19:23 21:25 63:9 67:6 85:11 91:20 104:12 105:2,7,17 105:18 109:4 111:18 112:17 113:13 128:8,11 128:21 129:4,24 130:21 133:4,18 133:20 y'all's 19:22 20:9 71:13 109:3 122:11 133:21 yeah 67:15 years 25:16 27:3 37:4,5 69:17 71:6 88:19 131:14,15 yep 103:2 yesterday 10:7 18:9 30:4 54:25 york 79:21 z zero 78:6 zeroing 101:16 zoom 105:22

South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3
4
5 BALFOUR BEATTY,

6 Plaintiff,

7 vs. CASE NO. 2019-CP-10-01108

8 LIBRARY ASSOCIATES, LLC, ET AL.,

9 Defendants.

10
11
12
13 Motion for Attorney's Fees, Motion to Elect a
14 Remedy Hearing

15
16
17 Testimony and Notes of Evidence, taken
18 in the above-entitled and -numbered cause, before
19 the Honorable Mikell R. Scarborough, Judge,
20 presiding on March 13, 2024.

21
22
23 Reported by:

24 Roxanne M. Easterwood, RPR

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR BALFOUR BEATTY:

3 Parker, Poe, Adams & Bernstein, LLP

By: James L. Werner

4 1221 Main Street, Suite 1100

Columbia, SC 29201

5 jimwerner@parkerpoe.com

6 By: Thomas C. Hildebrand, Jr.

850 Morrison Drive, Suite 400

7 Charleston, SC 29403

tomhildebrand@parkerpoe.com

8
9 ATTORNEYS FOR LIBRARY ASSOCIATES, LLC:

10 Bundy McDonald, LLC

By: Walter H. Bundy, Jr.

11 1516 Old Trolley Road

Summerville, SC 29485

12 walter@bundymcdonald.com

13 Duffy & Young, LLC

By: John Linton

14 96 Broad Street

Charleston, SC 29401

15 jlinton@duffyandyoung.com

16
17 ATTORNEYS FOR WATSON ELECTRICAL

CONSTRUCTION CO., LLC, LITHKO

CONTRACTING, LLC, OLD NORTH STATE

18 MASONRY, LLC:

19 Smith Terry Johnson & Windle

By: Don R. Terry

20 150 Milestone Way, Suite C

Greenville, SC 29615

21 dterry@smithterrylaw.com

22 By: Steele Windle

11525 North Community House Road,

23 Suite 425

Charlotte, NC 28277

24 awindle@smithterrylaw.com

25

1 ATTORNEYS FOR PREMIER EXTERIORS, LLC:

2 Rahimi, Hughes & Padgett, LLC

By: Robert C. Hughes, III

3 33 Bull Street, Suite 590

Savannah, GA 31401

4 rhughes@rhp-law.com

5 ATTORNEYS FOR STRONG TOWER CONSTRUCTION,
LLC, d/b/a KOCH CORPORATION:

6 Whitfield-Cargile Law, PLLC

7 By: Samuel M. Wheeler

23 South Broad Street, Suite 204

8 Brevard, NC 28712

sam@whitfieldcargilelaw.com

9 ATTORNEYS FOR LOWCOUNTRY CASE & MILLWORK,
10 INC.:

11 Epting & Rannik, LLC

By: Jaan G. Rannik

12 46A State Street, Suite A

Charleston, SC 29401

13 jgr@epting-law.com

P R O C E E D I N G S

* * * * *

THE COURT: Folks so we're back on the record. This is the Balfour Beatty Construction case versus Library Associates. And the Court issued its order to try this case in the fall of 2021. The Court issued its order October 6, 2023. So we're here today basically on motions to reconsider. And I tried to get out the sort of schedule and outline of what I wanted to do. So what I really wanted to start with today, I want to try to address all of these issues today, if possible. Although I did put something for sometime in April on the issue of punitive damages. I'm sure we'll cover that later.

What I really wanted to try to get done today was -- this morning, I should say, is to take care of a lot of these motions to reconsider with the subs. So, hopefully, we can get them taken care of after some length of time. So I wanted to do that. But I'm looking at my memo I sent out last week as to the order I wanted to take them in, and so the first one actually I had on here was Library's motion to alter, amend, and make additional findings of fact. I just

1 don't want to get bogged down in that. Can we
2 take that up later? Do you want to address that,
3 Mr. Bundy?

4 MR. BUNDY: Certainly, Your Honor.
5 We'll do anything you'd like.

6 THE COURT: Is Mr. Wheeler here? There
7 he is. Okay. I want to try to get into the
8 subcontractor issues having to do with Balfour
9 Beatty first and then see if we can't clear out
10 some of the courtroom and then start going into
11 some of the meatier issues I think we have to get
12 into. So, Mr. Wheeler, you're here. Are you
13 ready to proceed?

14 MR. WHEELER: Yes, sir.

15 THE COURT: Just in order, so y'all
16 know, I have Strong Tower issues, then I was going
17 to do Lowcountry Case & Millwork, Premier, and
18 then Watson Electrical, before we get to Old North
19 State, and Lithko.

20 It's actually Balfour's motion to
21 reconsider the grant of summary judgment to Strong
22 Tower, and then what Strong Tower has moved to do
23 is to convert it into a final judgment and then
24 enter that judgment, right?

25 MR. WHEELER: Correct, Your Honor.

1 THE COURT: Who is going to handle
2 that? Mr. Werner?

3 MR. WERNER: Yes, Your Honor. Thank
4 you. As a preface to all of these things, Judge,
5 let me say from my perspective that, obviously, we
6 have submitted memoranda to you with respect to
7 these various things. It is my judgment and
8 experience that it's not a good use of time to
9 just read to you the things that we've already
10 submitted.

11 THE COURT: If you do that I'll hold
12 you in contempt. The one thing you can do is you
13 can rest assured that I have read your memoranda,
14 your motions. So I'm somewhat familiar with what
15 we're doing, but I want to take up these issues so
16 that we can cover them for the record so that
17 y'all are covered, and when we get to y'all's
18 motion to reconsider, as opposed to the Court's
19 order, of which there were 122 entries, we're not
20 going to go through those seriatim either. I'll
21 give you an idea of how we're going to take care
22 of that when we get to that.

23 MR. WERNER: That's what I was going to
24 say, Judge. My primary purpose is to be here to
25 answer questions to the extent that there are

1 things that you think are important for you to
2 make your final decision.

3 THE COURT: Right. Fair enough.

4 MR. WERNER: With respect to the issue
5 about -- and this really bleeds over to all of the
6 subcontractor summary judgment issues. The
7 fundamental position and the fundamental basis of
8 the motion to reconsider is that in each of those
9 cases it is our position, and we believe that the
10 record before the Court at that time established
11 that there were, in fact, questions of material
12 fact as to whether or not the subcontractors were
13 due the money and the amounts specifically that
14 they had claimed.

15 You know, what the records -- what we
16 believe the records showed at that time was that
17 there were -- there had been issues raised by the
18 owner then made in response to the summary
19 judgment motions by Balfour indicating that there
20 were questions as to whether or not the quality,
21 acceptability, and amount or value of the work
22 were being challenged. And if they were, then
23 Balfour Beatty would be entitled to setoffs with
24 respect to each of those subcontractors.

25 Again, I'm sort of making this

1 generally, if that's all right with you.

2 THE COURT: Yes, that's fine. I think
3 they were all about the same; were they not?

4 MR. WERNER: Yes. So with respect to
5 the summary judgment issue, that's really the
6 fundamental question on our motions to reconsider.

7 Now, with Strong Tower we have a
8 separate issue about them trying to certify the
9 judgment.

10 THE COURT: Sure.

11 MR. WERNER: But generally speaking,
12 that is the basis of our motions. And I know
13 those matters were briefed, like, two years ago,
14 before my time in this case. But, again, I'm
15 happy to respond if Your Honor has particular
16 things that you want to discuss or questions, but
17 to go back and try to belabor the evidence, I
18 don't intend to do that.

19 THE COURT: As to the setoff, do you
20 have any position on that at this time?

21 MR. WERNER: As to what it should be?

22 THE COURT: Right.

23 MR. WERNER: I think that's, again, one
24 of the problems that we've raised in the papers,
25 Judge, is that, frankly, we think that your order

1 on the summary judgment decisions and your order
2 in the big case, the dispute between Balfour
3 Beatty and Library Associates, are irreconcilable.

4 I mean, you cannot have found as
5 you -- you used essentially the same statement in
6 each order, that is, that they had done the work
7 in accordance with the subcontract and that the
8 work had been accepted by Balfour Beatty and the
9 owner and they were entitled to be paid.

10 With all due respect, it is not
11 possible for that to be true and those things not
12 to be cost of the work or to the amounts
13 legitimately covered in the mechanic's lien. So
14 that, frankly, prevents us from saying -- I mean,
15 based on your bigger ruling, none of them are due.
16 We don't think that's correct, but that's the
17 irreconcilable problem given the two different --
18 the two sets of orders I guess you would call it.

19 THE COURT: I'm with you. Thank you
20 very much.

21 MR. WERNER: Thank you, Judge.

22 THE COURT: Mr. Wheeler.

23 MR. WHEELER: Yes, Your Honor, thank
24 you. Sam Wheeler on behalf of Strong Tower
25 Construction, LLC. Just a couple of responses. I

1 also won't try to belabor the point. We've
2 briefed it pretty well. It's been briefed for a
3 couple of years now.

4 But I think the problem is this
5 general lumping of all the subcontractors in with
6 the owner, with everybody else. They're not
7 parsing out who might be owed what, and then every
8 single subcontractor has come forth and said here
9 is what we're owed, here is how we established it,
10 and Your Honor has awarded us those awards. So
11 it's one issue.

12 The definition of a cost in the
13 primary cost and whether or not Your Honor found
14 that our awards were considered costs or not is
15 pretty irrelevant to my individual or my client's
16 individual award. So that is getting lumped into
17 this, and I just want to be sure that you're
18 extracting that from the actual situation. What
19 that contract has defined as costs should not be
20 considered as a part of this reconsideration
21 motion.

22 As I understand, the motion is
23 basically two arguments they're making. One is we
24 don't know what's going to happen at trial. We
25 might have a setoff issue. That is not the

1 summary judgment standard at the time, two and a
2 half years ago. The summary judgment standard is
3 present some issues of material fact. They didn't
4 do it, and, apparently, they still can't do it.
5 You just asked a question: What happened at trial
6 that would entitled you to a setoff? We don't
7 know. So this has been our problem for two and a
8 half years.

9 So being potential clairvoyant at the
10 time we are awarded summary judgment, hey, we
11 might get popped at trial, we might be entitled to
12 setoff. Maybe you shouldn't have gone through
13 trial. Maybe you should have settled these
14 claims. Maybe you shouldn't have got popped at
15 trial, but there was no issue. They didn't point
16 to any issue of material fact at the time we moved
17 for summary judgment. So they didn't come to you
18 with any fact that would allow them to withstand
19 the motion for summary judgment.

20 The other issue I understand them to
21 raise is they don't think we're entitled to fees
22 under the subcontract. That is very important at
23 this point because fees, as you have seen for
24 everybody, are start, take, outkick the actual
25 claims (sic). The subcontract is very, very clear

1 that if there is a dispute that doesn't involve
2 the owner, then they have the election to take it
3 to arbitration. They, obviously, didn't elect to
4 go to arbitration. They elected to come to
5 litigation and referred it to you.

6 So Section 10D of the subcontract then
7 governs that. It says if you have to go to
8 litigation, the prevailing party is entitled to
9 fees. They're saying this involves the owner;
10 they didn't pay us, so it involves the owner.
11 Everybody knows in South Carolina, an owner not
12 paying a contractor does not allow the contractor
13 not to pay its subs.

14 We have an isolated contractual claim
15 against just Balfour Beatty. We have no claims
16 against the owner. In fact, we have dismissed all
17 of our claims against the owner. Nor do we have a
18 right to bring a contractual claim against the
19 owner. We don't have a contract with the owner.
20 We have a single contract claim against the one
21 entity. We were awarded money under that
22 contract. That's it. This doesn't involve the
23 owner. So that fees provision is triggered in the
24 subcontract, and we're absolutely entitled to
25 fees. We're entitled to the award. We're

1 entitled to interest. We would ask that you not
2 disturb that ruling. Thank you.

3 THE COURT: Thank you, Mr. Wheeler. Do
4 you want to be heard on the attorney's fees
5 question?

6 MR. WERNER: Yes, Your Honor.

7 THE COURT: It's in the brief. I just
8 want to make sure it's on the record.

9 MR. WERNER: Just sort of quickly in
10 reply and to deal with that question. To say that
11 the issues with the owner do not matter and are
12 not a part of the subcontract disputes is simply
13 not correct. There are flow-down, flow-through
14 clauses in every one of these subcontracts. So
15 when the owner raises issues, when the owner says
16 that money is not due, that is an issue that
17 passes through to some contractors. Balfour
18 Beatty has that right to pass that through.

19 The question here, all of these folks
20 may be right if they had gone through trial and
21 these were the positions that ended up, but we're
22 talking about summary judgment. There just had to
23 be a question of material fact, not the resolution
24 of those questions. So it was just, we think,
25 premature to, in fact, have given them the

1 judgments that they sought.

2 Now, with the attorney fee question, I
3 mean, it is certainly a slightly unusual provision
4 in the contract the way it is written, but, again,
5 these are situations that did, in fact, involve
6 the owner. I guess the argument that we just
7 heard is, well, you can't have a pay if paid.
8 That's true. But pay when paid or the idea that
9 payment is not due when the owner is, in fact,
10 challenging whether or not the work is accepted
11 and it is due is a different question, and that's
12 where we were at the time of summary judgment, and
13 that's why we think, again, they weren't entitled
14 to summary judgment and why they weren't entitled
15 to the awarded fees.

16 THE COURT: Thank you.

17 MR. WHEELER: Just one response, Your
18 Honor. If you recall, this is a bit of a tortured
19 background, obviously, but I actually moved for
20 summary judgment once early in the case. The
21 argument was we don't know what all of these
22 people are going to say. We don't know what the
23 experts will say. We don't know what Library
24 Associates will say, so you need to come and sit
25 in on all of the depositions, like the lower-level

1 parties that we are, and at the end we'd say, you
2 know, do you know this party, do you have any
3 claims against them, you know, at the end of the
4 deposition where you look kind of foolish because
5 it looks like you're billing your clients for
6 nothing, but this is what they asked us to do.

7 So Your Honor, actually, after we did
8 all of this, somewhat invited the subs to come and
9 make additional motions for summary judgment,
10 said, hey, I think we have gotten through enough
11 of this discovery. And we deposed all of the
12 experts, all of the representatives from these
13 parties, and nobody said a darn thing about at
14 least my client, and I think a lot of the other
15 subs. Either they didn't remember or they didn't
16 have any issue. So I don't know where in the
17 course of this litigation the owner or where they
18 construed the owner making claims at least against
19 my client. There are no claims against them.

20 Again, just to be clear, the summary
21 judgment standard is not to think about what might
22 happen at trial. It's to present an issue of
23 fact.

24 THE COURT: At the time of the hearing?

25 MR. WHEELER: At the time of the

1 hearing.

2 THE COURT: I'm with you on that.

3 MR. WHEELER: It wasn't presented.

4 THE COURT: Your only claim was breach
5 of contract as to the general contractor, correct?

6 MR. WHEELER: Correct.

7 THE COURT: Mr. Bundy, do you agree
8 with that? Y'all have got no claim against any of
9 these subs, do you?

10 MR. BUNDY: We ain't mad with anybody,
11 Judge.

12 THE COURT: Very good.

13 MR. WHEELER: In fact, I would love to
14 see some of the records and with various, you
15 know, times we're here, because the entire time
16 Balfour's representatives and counsel are saying
17 we're entitled to money, the subs are entitled to
18 money, everybody is entitled to money. That's the
19 position that they rode all the way through trial,
20 and it didn't work out, but it doesn't mean we're
21 not owed money. It doesn't mean it presented an
22 issue of fact at the time we moved for summary
23 judgment.

24 THE COURT: In answer to the entry of
25 the judgment, that would just be confirming the

1 Court's prior ruling; would it not?

2 MR. WHEELER: To certify the judgment?

3 Yes, I think it's well within your discretion to
4 certify under 54b. They have raised the issue
5 that it's only allowed in certain exceptional or
6 weird circumstances.

7 I would present to you that this
8 case, there is no better example of exceptional or
9 unjust circumstances than allowing a subcontractor
10 like me -- I'm an \$82,000 judgment and 50,000 or
11 \$60,000 in fees -- to sit around and wait for two
12 and a half years. It should be certified.

13 I know we're close to the end here,
14 but I really foresee a lot of activity. We have
15 the punitives hearing. We will certainly, if --
16 Your Honor has said that they're entitled to
17 punitives and they will be awarded. To what level
18 I don't know. I can only assume they will file a
19 motion to reconsider. They will be back summer
20 sometime; I don't know. And then it is looking
21 like this is going up on appeal, if I had to
22 guess.

23 And, you know, I'm the most prophetic
24 person in this room, apparently. But it's going
25 to go up on appeal, and they're going to have to

1 start posting some pretty big bonds. That's not
2 my fight, but this is going to be a prolonged
3 fight.

4 I think at this point the subs really
5 should be entitled to have their -- at least me
6 and whoever else wants to make that motion -- have
7 their judgment certified as final and let them go
8 up on appeal or let them get figured out.

9 They say judicial economy. I say
10 judicial economy is in favor of allowing an
11 isolated sub with an isolated judgment go fight
12 whether it's on appeal or just try to settle it.
13 That's judicial economy.

14 THE COURT: All right.

15 MR. WERNER: On that issue, Judge,
16 again, we put it in the brief, the fact of the
17 matter is they don't have a final judgment. They
18 tried to jump the gun and asked you to certify
19 before our time even to file the 59(e) motion
20 expired. We filed it in time. They don't have a
21 final judgment. You can't certify a non-final
22 judgment, and you can't execute on a non-final
23 judgment, as I think you implicitly recognized
24 when you issued the stay saying that couldn't do
25 it. I mean, they're just wrong about that. I

1 understand their frustration, but they're just
2 wrong.

3 THE COURT: Okay.

4 MR. WHEELER: I would contend that the
5 sequence of events need to be deny the motion to
6 reconsider, then certify the judgment. But that
7 is a functional, easy process for Your Honor to
8 take.

9 THE COURT: I agree with that. That's
10 probably what I'll do. I'll ask you to prepare a
11 proposed order just addressing that issue and how
12 you want it to read. Send it to me within three
13 weeks.

14 MR. WHEELER: Thank you, Your Honor.

15 THE COURT: Lowcountry Millwork,
16 Mr. Rannik, come on forward. Mr. Rannik, I give
17 you credit, everybody wanted to jump on your
18 memoranda.

19 MR. RANNIK: Judge, I just wanted to
20 add a few points, and first I'd like to
21 incorporate what Mr. Wheeler so eloquently argued.

22 A few other issues. Some are
23 significant. Some are pretty minor. We'll start
24 with the minor one. Rule 59(g), of course, says
25 that a motion for reconsideration needs to be -- a

1 courtesy copy needs to be sent to the Court. I'm
2 not sure that happened here. I don't have any
3 record that it did. Not significant, but I'll
4 point it out.

5 THE COURT: I got it. Somewhere along
6 the line, I can assure you I got it.

7 MR. RANNIK: All right. There was the
8 discussion about whether summary judgment was
9 appropriate, because at the time they was still,
10 arguably, some potential for setoff. Now, we
11 cited a case in our memoranda that says the
12 potential for a setoff is not a dispute of
13 material fact that would defeat summary judgment.
14 So I think that issue can be put to bed.

15 There was also a discussion of, hey,
16 when paid, being permissible even if paid is not.
17 I would refer Your Honor to their 2023 Court of
18 Appeals decision in J&H Grading, which says, no,
19 actually, pay when paid is not enforceable, and
20 any delay of more than 90 days to pay a sub is per
21 se unreasonable. And I've got a copy of that
22 case. It's 441 S.C. 272, and that's Court of
23 Appeals 2023. I have a copy as well.

24 Third, I would note that -- or fourth,
25 I would note there still, apparently, has been no

1 finding that Lowcountry or any of the subs that I
2 can think of caused any delay or any of the work
3 was deficient or defective in any way. So the
4 record remains where we were. Everyone said
5 Lowcountry did a great job, they didn't cause a
6 delay, and they're entitled to be paid.

7 Finally, even if there had been a
8 finding at trial that there was some delay caused
9 by Lowcountry, I don't know that that would have
10 been binding on Lowcountry, because at that point
11 summary judgment had been granted. We were not
12 part of the case anymore, and we didn't have the
13 opportunity to cross-examine, et cetera, et
14 cetera.

15 So with that, Your Honor, I'll sit
16 down and stop talking, but we would ask that the
17 original ruling not be disturbed.

18 THE COURT: Very good. Any additional
19 response?

20 MR. WERNER: No. I think they were
21 incorporated in the final.

22 THE COURT: I'll deny the motion there.
23 If you will submit your proposed order within
24 three weeks. To the extent y'all want this to be
25 a final judgment, go ahead and submit a Form 4

1 with that stating what the judgment amount was.

2 MR. RANNIK: Thank you, Your Honor.

3 THE COURT: Very good. Thank you.

4 Next is Premier Exteriors.

5 MR. HUGHES: Robert Hughes on behalf of
6 Premier Exteriors.

7 THE COURT: All right. Mr. Hughes,
8 anything you wish to add?

9 MR. HUGHES: I'm going to adopt what
10 these two gentlemen very articulately argued
11 already. The only other point that I would note
12 is there was some discussion about the cost of the
13 work. I do want to point out that, you know, I
14 think -- I note my client, Premier, and most other
15 subs had submitted affidavits from their
16 representatives that talked about the work that
17 they did. Some of the work that my folks did
18 that, you know, they're not paid for is work that
19 was corrective in nature because of some sort of
20 issue with another sub's work that they had to
21 come back and do work. That's a Balfour Beatty
22 problem, and it doesn't mean that the owner
23 necessarily has to pay them for that. You see
24 what I'm saying?

25 The sub did the work. Balfour

1 authorized it, and just because the owner doesn't
2 necessarily owe that work doesn't mean that
3 Premier, the sub that did the work, shouldn't get
4 paid.

5 THE COURT: Did not -- do not get paid,
6 right?

7 MR. HUGHES: Right. If they didn't
8 cause that work and they did the corrective work
9 at Balfour Beatty's request, they ought to get
10 paid for it. That's just one type, one category
11 of work that subs were doing. It might not fall
12 in the cost of work category at trial on the
13 underlying contract. So I just want to make that
14 clear.

15 And, you know, again, the setoff issue
16 I think we have talked about pretty well, but the
17 fact that there was some language in the contract,
18 you know, they had the opportunity to present
19 evidence at that time showing that Premier and
20 each of the other subs that got summary judgment
21 potentially had some fault for some of the delays
22 or quality issues that would give rise to that
23 right of setoff, but they failed to do that.
24 That's why Your Honor granted the orders back when
25 you did.

1 We all relied on what happened then in
2 that setting. We relied on the invitation to do
3 this. And, you know, my folks were owed a very
4 small amount of money in the big scheme of things,
5 spent \$73,000 in attorney's fees paying me to go
6 to all of these depositions. And, you know, I
7 took the evidence I needed from those depositions
8 to get that judgment, and based on that, we opted
9 to not go to trial. And I think equity dictates
10 that we keep the judgment you entered back in
11 2021.

12 THE COURT: Very good. Thank you,
13 Mr. Hughes.

14 MR. WERNER: Judge, may I, just one
15 thing that that triggers?

16 THE COURT: Yes, certainly.

17 MR. WERNER: You asked about attorney's
18 fees earlier. What you just heard from
19 Mr. Hughes, frankly, is illustrative of why the
20 attorney's fees are not, in fact, owed to these
21 subcontractors. You just heard Mr. Hughes say
22 that they went to the various depositions,
23 participated in them so that they could accumulate
24 the evidence about the disputes between the owner
25 and Balfour and potentially the subcontractors.

1 That itself is, in fact, a statement
2 that there was an issue that involved the owner as
3 well as Balfour Beatty in their claims, and when
4 that is the case, the very clause that they are
5 trying to argue does not apply, and they do not
6 get their attorney's fees.

7 THE COURT: I'll find today that they
8 are entitled to attorney's fees. I'll grant yours
9 as well. Send me an order, if you would.

10 MR. HUGHES: Thank you, Your Honor.

11 THE COURT: Next up, Watson Electric,
12 Mr. Terry.

13 MR. TERRY: Good morning, Your Honor.
14 Don Terry, here on behalf of Watson Electric --
15 Electrical Construction. I also will adopt the
16 arrangements made by these gentlemen as well and
17 rely on the -- we have submitted two memoranda,
18 one back when the motion for reconsideration was
19 originally filed, and then a supplemental
20 memorandum last week.

21 I want to talk about a few things that
22 have been raised here. As you have recognized,
23 the time for considering summary judgment was back
24 then, not at trial. In fact, trial doesn't impact
25 summary judgment. It's the other way around;

1 summary judgment impacts trial, because the
2 undisputed facts that were found at or were
3 recognized in summary judgment orders are
4 established for the sake of trial.

5 Now, Balfour raises this issue of
6 setoff. And, one, Watson's breach of contract
7 claim against Balfour has nothing to do with
8 claims against the owner, but we've got a statute
9 in this state that discusses setoff, and that's
10 29-7-20, Paragraph 3, and here is what it says,
11 Your Honor -- and I didn't include this in the
12 memorandum: The right to setoff exists if with
13 your application for payment to the owner you send
14 a certified accounting to the owner saying we're
15 not going to pay this sub, and you have to send
16 that same certified accounting to the sub. There
17 is no -- they didn't raise that at summary
18 judgment. They didn't raise it at trial. It
19 never came up. So the right to setoff does not
20 exist.

21 Whether it's cost of the work is
22 really irrelevant for summary judgment, and I'm
23 going to explain in part why, Your Honor. Watson
24 can be entitled to be paid for work under a change
25 order approved by Balfour, but that doesn't mean

1 that Balfour ever submitted that change order to
2 the owner. So, therefore, whether the owner pays
3 that or not is irrelevant. It's got nothing to do
4 with the owner's conduct. Additionally, to the
5 extent that Balfour has been paid by the owner for
6 Watson's work, that's also -- any summary judgment
7 related to that is also not conduct involving the
8 owner.

9 THE COURT: I think y'all had -- did
10 y'all not argue that point as well?

11 MR. TERRY: Well, back then we may
12 have -- I don't know if we argued back then. I
13 don't want to misrepresent anything. We certainly
14 can see what happened at trial.

15 THE COURT: One of these subs was able
16 to show that the owner had paid \$200,000 towards
17 their claim. I thought that was Watson.

18 MR. TERRY: I think that issue comes up
19 at the trial, Your Honor. I can't remember if it
20 came up at summary judgment. It definitely came
21 up at trial.

22 THE COURT: It came up at trial.

23 MR. TERRY: What was shown by Library
24 Associates was that Balfour admitted it had been
25 paid \$206,000 for Watson's work back in I think

1 it's 2018 that Balfour never paid to Watson.

2 THE COURT: Yes, that was in your
3 supplement memo of last week.

4 MR. TERRY: Yes, sir.

5 THE COURT: I thought I had seen that.
6 That doesn't take us back to the time of summary
7 judgment.

8 MR. TERRY: It does not.

9 THE COURT: But it came up during the
10 trial.

11 MR. TERRY: What's interesting about
12 that, Your Honor, is if they were holding that
13 money back in 2018, that occurred prior to summary
14 judgment. Now, this flow-through argument,
15 there's no flow-through argument for money that
16 had been paid to Balfour already. It's, frankly,
17 irrelevant having the flow-through to the owner.

18 The attorney's fees is clearly allowed
19 to Watson under the contract under Paragraph 10B,
20 because it's claims that do not involve the owner.

21 At the time that the summary judgment
22 was granted, discovery had been closed in this
23 case. It was over. There was nothing else to do,
24 and Balfour didn't bring forth any evidence to
25 show there was a question of material fact.

1 There's one other thing that I think
2 is interesting about this, is if you were to grant
3 Balfour's motion here to reconsider Watson's
4 summary judgment, I have tried to understand what
5 that means for us. And, frankly, I can't find a
6 case that says anything about it, but what I think
7 it does is it means you create your own mistrial.

8 THE COURT: It would be a quagmire,
9 wouldn't it?

10 MR. TERRY: We ask that you deny
11 Balfour's motion for reconsideration of Watson's
12 summary judgment.

13 THE COURT: Very good. Anything on
14 that one, Mr. Werner?

15 MR. WERNER: Nothing. I appreciate
16 that.

17 THE COURT: I'll grant that -- deny
18 their motion, grant your request for judgment.

19 I think that gets us to -- I have a
20 Watson Electrical's motion to reconsider, but how
21 about Old North State Masonry? Let's talk about
22 that first. I'll come back to y'all's motion to
23 reconsider that has to do with other causes.

24 MR. WINDLE: Steele Windle, for Old
25 North State Masonry. Your Honor, Old North State

1 regardless, Your Honor, he can ask him if we have
2 sufficient assets to pay the subcontractors, and
3 certainly we will acknowledge that.

4 THE COURT: No objection to that.
5 All right.

6 MR. BUNDY: If they will stipulate
7 that they have assets to pay the subcontractors,
8 I will move on.

9 THE COURT: Okay.

10 BY MR. BUNDY:

11 Q. Now, you had admitted under oath today
12 that, as an employee of Balfour Beatty, that they
13 held over 3 quarter of a million dollars that
14 y'all had been paid by the owner to pay the
15 subcontractors and you did not do it; is that
16 correct?

17 A. When did I testify to that?

18 Q. When did you testify to it? You
19 testified that you had received some 700 hundred
20 thousand from the owner, did you not?

21 A. Yes.

22 Q. And that your company had been paid
23 that. They said under oath two times as to each
24 one, if we get it, we're going to pay it to the
25 sub. When the next one came along, they said, we

1 didn't pay it. Do you understand that is a
2 misdemeanor in the State of South Carolina?

3 MR. HILDEBRAND: Objection, Your
4 Honor. He is now -- he is referring to legal
5 issues and statutes that are not in evidence and
6 it's inappropriate to ask this.

7 THE COURT: I'm going to sustain
8 the objection as to the last comment.

9 BY MR. BUNDY:

10 Q. The contract requires that you pay
11 subcontractors when you are paid, does it not?

12 A. It does.

13 Q. And y'all breached that contract, at
14 least to the tune of over 3 quarters of a
15 million, that was to be paid to different
16 subcontractors. True?

17 MR. HILDEBRAND: Mr. Bundy, would
18 you please back up? He is harassing the witness.

19 THE COURT: Give him some space. I
20 will have him move back.

21 BY MR. BUNDY:

22 Q. Is it true?

23 A. It is -- that was not the intention.

24 Q. And there's nothing in this document
25 that referred to a project manager hold, is

1 there?

2 A. No, sir.

3 Q. And you never disclosed to my client --
4 and by you, I mean, Balfour Beatty, that we are
5 taking money from -- that you're taking the money
6 from the subcontractors that you got from the
7 owner to pay them, and you're not going to pay
8 them. That's true? You never told them that?

9 A. Not to my knowledge.

10 Q. And is it also true, a portion of the
11 liens filed by these subcontractors against my
12 client was a result of the nonpayment by Balfour
13 Beatty of money paid to Balfour Beatty to pay
14 those subcontractors. That's true, isn't it?

15 A. Can you please repeat that?

16 Q. Is it true that a portion of the
17 subcontractor liens filed -- whatever portion of
18 their amount, a portion of that amount that was
19 liened on my client's job was because that
20 subcontractor was not paid money, paid to Balfour
21 Beatty, to pay that subcontractor. That's true,
22 isn't it?

23 A. I'm not sure.

24 Q. How about Watson, the \$200,000 in
25 retainage. Wasn't that part of their lien?

1 A. I haven't seen Watson's lien.

2 Q. Okay. If a subcontractor included money
3 that he had paid to Balfour Beatty to pay that
4 subcontractor, would that be the responsibility
5 of Balfour Beatty, the failure to pay the
6 resulting lien?

7 MR. HILDEBRAND: Objection, Your
8 Honor.

9 THE COURT: Overruled. He can
10 answer that.

11 A. I'm not sure.

12 Q. You're not sure. Okay. When did you
13 first become aware that approximately 3 quarters
14 of a million dollars of a claim that you prepared
15 was wrong?

16 A. The first day of Sam Hadley's testimony.

17 Q. And if we hadn't gotten somebody as
18 skilled as Sam Hadley to look through fraudulent
19 claims, you would have picked up an extra three
20 quarters of a million dollars, wouldn't you?

21 MR. HILDEBRAND: Objection, Your
22 Honor.

23 THE COURT: Overruled. He can
24 answer that.

25 THE WITNESS: It's possible, but

1 Q. And --

2 MR. BUNDY: Your Honor, I object.
3 This is not an appropriate reply.

4 MR. TERRY: Mr. Bundy raised the
5 issue of what he called a -- if I can get to
6 paragraph here -- no change agreement. He asked
7 him about the portion of the paragraph of the
8 contract on page 4 of 16 called no change
9 agreement. So I think I'm entitled to ask him --

10 MR. BUNDY: I will withdraw the
11 objection.

12 THE COURT: Yeah, you may.

13 BY MR. TERRY:

14 Q. And so when you reviewed -- you reviewed
15 change orders before they were sent up to the
16 architect for approval, right?

17 A. Briefly.

18 Q. Okay.

19 A. They went to the architect and engineer
20 of record for entitlement purposes, otherwise I
21 wouldn't waste my time on them.

22 Q. Okay. And so there were in fact
23 electrical changes to this project that changed
24 the electrical work on the project, right?

25 A. Yes.

1 good.

2 (WATSON EXH. 5 was received in
3 evidence.)

4 BY MR. TERRY:

5 Q. All right. Let's look at the first
6 page, Mr. Brittelli. Again, it's dated May 14,
7 2015, and it says, Balfour Beatty Construction,
8 attention Mike Baumbach, senior vice president,
9 correct?

10 A. Yes.

11 Q. And it says, Dear Mr. Baumbach,
12 attached, please find the signed subcontracts,
13 Exhibits B, electrical work and C, subcontract
14 special provisions, insurance certificates and
15 our W-9 in support of the referenced project.

16 And then after that, it identifies that
17 Watson is making clarifications and exceptions to
18 the contract, correct?

19 A. Yes.

20 Q. Now, if you will take a look through
21 Exhibit No. W-5 and tell me if there's any lien
22 waiver forms attached.

23 A. What exhibit was that?

24 Q. It was the exhibit in your hand. Are
25 there any lien waiver forms attached to this?

1 A. I'm trying to find it. No.

2 Q. Is there a construction schedule
3 attached to Exhibit W-5?

4 A. No.

5 Q. Is Exhibit W-5 the contract that Watson
6 signed with Balfour Beatty?

7 A. Yes.

8 MR. BUNDY: Your Honor, I don't
9 have any objection, and I would -- to keep this
10 record a little cleaner, if we can, since he's
11 now testified as to the actual subcontract with
12 the appropriate amendments, I'm willing to
13 withdraw my exhibit so that you won't have but
14 one contract to look at because I'm in no
15 position to argue with this gentleman about what
16 the terms of his contract were.

17 THE COURT: Okay. So withdraw 156?

18 MR. BUNDY: Yes.

19 THE COURT: Okay.

20 (DFT. EXH. 156 was removed.)

21 MR. TERRY: Do you want to withdraw
22 the testimony about 156 as well?

23 MR. BUNDY: No, not the testimony.
24 Because I think Your Honor can look at the
25 testimony and see what he testified to is in this

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Balfour Beatty Construction, LLC,)
)
Petitioner,)
)
v.)
)
Library Associates, LLC; and)
)
Metropolitan Life Insurance Company, a)
)
New York Corporation;)
)
Respondents.)
)

IN THE REGISTER OF DEEDS

**NOTICE AND CERTIFICATE OF
MECHANIC'S LIEN**

RECEIVED 1/25/19
PER CLERK JBA
ROD OFFICE
CHARLESTON COUNTY, SC
0774-273

Petitioner's South Carolina General Contractor's License Number: 110668

TO THE ABOVE-NAMED RESPONDENTS:

NOTICE IS HEREBY GIVEN that a Mechanic's Lien is claimed pursuant to S.C. Code Ann. § 29-5-10 and 20 *et. seq.* (1976, as amended) by Balfour Beatty Construction, LLC, above-named, and is being filed in the Office of the Register of Deeds for Charleston County, South Carolina on behalf of the above-named Petitioner for labor, equipment and/or materials furnished and actually used in the erection, alteration or improvements to the real estate more fully described in **Exhibit A**, attached hereto and incorporated herein by reference. The undersigned Petitioner has furnished, within ninety (90) days of the date hereof, labor, services and materials in improving said real estate by virtue of an agreement with and/or the consent of the owners of said real estate. Petitioner craves reference to **Exhibit B** attached hereto and incorporated herein by reference, which is a just and true Statement of Account of the monies due to the Petitioner for such labor, services or materials provided at the request of or with the consent of the owners of said real estate or with their authorization.

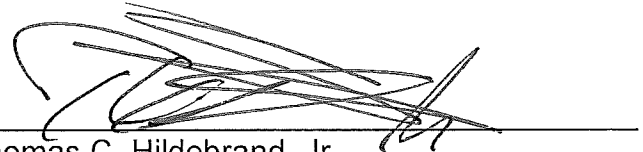
The value of the labor and materials furnished, with all just credits given, totals

Eight Million Four Hundred Nine Thousand Six Hundred Fifty-Eight and 54/100 Dollars (\$8,409,658.54), as is evidenced by the Verified Statement of Account.

That by virtue thereof, by the serving and filing of this Notice and Certificate, and pursuant to the provisions of the Code of Laws of South Carolina in such cases as have been made and provided, Petitioner has and claims a lien interest to secure the payment of the debt so due and the cost of enforcing said lien upon the property, buildings and/or structures hereinabove mentioned and upon the real property described in **Exhibit A**.

WHEREFORE, Petitioner claims a Mechanics Lien of Eight Million Four Hundred Nine Thousand Six Hundred Fifty-Eight and 54/100 Dollars (\$8,409,658.54), plus interest, attorney's fees, all other damages incurred and the costs and disbursements of this action.

PARKER POE ADAMS & BERNSTEIN, LLP
200 Meeting Street, Suite 301
Charleston, SC 29401



Thomas C. Hildebrand, Jr.
843.727.2653 (direct dial)
tomhildebrand@parkerpoe.com

Robert C. Byrd
843.727.2665 (direct dial)
bobbybyrd@parkerpoe.com

Robert C. Osborne III
843.727.2662 (direct dial)
robertosborne@parkerpoe.com

Attorneys for Balfour Beatty Construction, LLC

January 25, 2019
Charleston, South Carolina

EXHIBIT "A"

Property Address: 404 King Street, Charleston, SC 29403

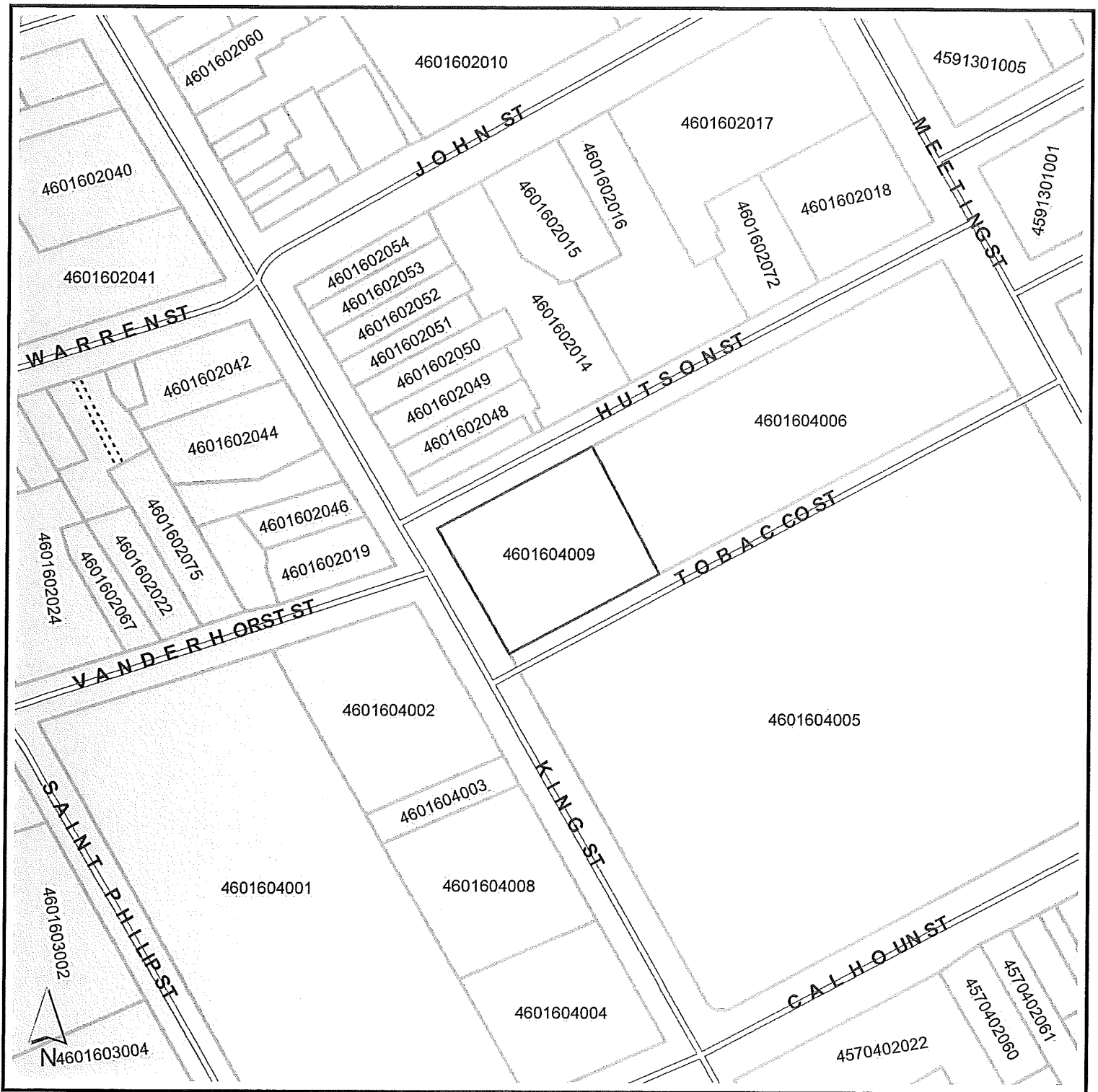
Owner of Property: Library Associates, LLC

Description of Property subject to lien:

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.722 acres, more or less, on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 MEETING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said Lot 1 having such size shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING a portion of the property conveyed to Old Citadel Associates, LLC by deed of The County of Charleston, dated March 14, 1995, recorded March 15, 1995 in the RMC Office for Charleston County, South Carolina in Book L-253, Page 629; also being a portion of the property conveyed to Hofford-Library, LLC by deed of Library Associates, LLC, dated December 30, 2008, recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina in Book 0027, Page 418; also being a portion of the property conveyed to Library Associates, LLC, by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina in Book 0102, Page 032; and also being a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2011, recorded in RMC Office for Charleston County on June 17, 2011, in Book 0192, at Page 809.

TMS#: 460-16-04-009



Charleston County SC

Parcel ID: 4601604009

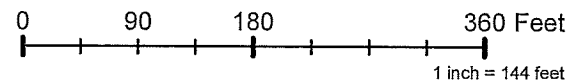
OWNER1: LIBRARY ASSOCIATES LLC

ACREAGE: 0.72

PLAT BOOK PAGE: L11- 0185

DEED BOOK PAGE: 0102-032

Jurisdiction: CITY OF CHARLESTON



Note: The Charleston County makes every effort possible to produce the most accurate information. The layers contained in the map service are for information purposes only. The Charleston County makes no warranty, express or implied, nor any guaranty as to the content, sequence, accuracy, timeliness or completeness of any of the information provided. The County explicitly disclaims all representations and warranties. The reader agrees to hold harmless the Charleston County for any cause of action and costs associated with any causes of action which may arise as a consequence of the County providing this information.

Author: Charleston County SC

Date: 1/24/2019

895

EXHIBIT "B"

STATEMENT OF ACCOUNT

Claimant/ Mechanic Lienor: Balfour Beatty Construction, LLC

Owner: Library Associates, LLC

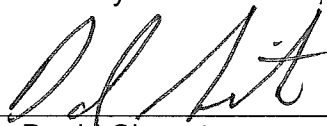
Nature of labor, materials and/or
Equipment supplied: Labor, materials and supplies to construct a hotel

Property Subject: See Exhibit "A" to Notice and
Certificate of Mechanic's Lien

Total Amount Due: \$8,409,658.54 plus interest thereon and attorney's fees

I hereby certify that the amount due to Balfour Beatty Construction, LLC, for the labor, materials and supplies necessary to construct a hotel on Owner's property, after all just credits and debits as of this date is Eight Million Four Hundred Nine Thousand Six Hundred Fifty-Eight and 54/100 (\$8,409,658.54), plus interest accruing thereon and attorney's fees and costs/expenses.

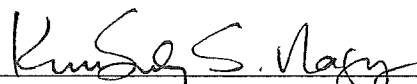
Balfour Beatty Construction, LLC

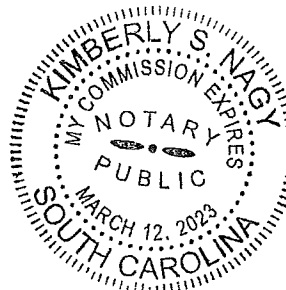
By: 
David Simonton

Its: Vice President, Operations

SWORN TO BEFORE ME

this 25th day of January, 2019

 (L.S.)
Kimberly S. Nagy (Printed Name)
Notary Public for South Carolina
My Commission expires 3/12/23 (SEAL)



Michael Miller
Register of Deeds



RECORDER'S RECEIPT

Received From:

PARKER POE ADAMS & BERNSTEIN LLP
200 MEETING STREET
SUITE 301
CHARLESTON SC 29402-0160

DATE:	25-Jan-19
INVOICE #:	X000408449
DRAWER:	Drawer 2
CLERK:	JBA
TIME:	02:07:28 PM

[illegible]

Paid:

Check #	Amount
12482	\$ 11.00
Check Total	\$ 11.00
Cash Total	

Total Paid: \$ 11.00

Balance: \$ -

***Please note:**

The ROD Office retains any recording fee overages of \$5 or less. Due to Charleston County Auditing Procedures for the ROD Overage Account, your request for refund must be made in writing on Company letterhead and signed by the requesting party. Please send a self-addressed stamped envelope with your request. Thank you.

It is our pleasure to serve you!



BP0781071

PGS:

5

Return to:
Allan R. Popper
Lienguard Inc.
1000 Jorie Blvd., Ste. 270
Oak Brook IL 60523

File No.: 111638-19-1

NOTICE OF MECHANIC'S LIEN
(S.C. Code Ann. §:29-5-90)

TO: **Library Associates, LLC** **OWNER**
 17 Lockwood Drive, Suite 400
 Charleston, SC 29401-1155

CLERK OF COURT OR REGISTER OF DEEDS OF CHARLESTON COUNTY

FROM: **Strong Tower Construction, LLC** **CLAIMANT**
 d/b/a Koch Corporation
 1131 Logan Street
 Louisville, KY 40204

PLEASE TAKE NOTICE that **Strong Tower Construction, LLC, d/b/a Koch Corporation**, has provided certain labor or materials to **Balfour Beatty Construction, LLC, 1930 Camden Road, Suite 280, Charlotte, NC 28210, Contractor**, for which claimant has not been paid in full.

Claimant has furnished the following materials: ***Glazing, related materials and/or labor.***

Said labor or materials were furnished in connection with the property located and described as:

Parcel #: 460-16-04-009, see Legal Description attached hereto, all in Charleston, County of Charleston, State of South Carolina

Commonly known as: **Hotel Bennett, 404 King Street, Charleston, SC 29403**

A just and true account of the amount due **Strong Tower Construction, LLC, d/b/a Koch Corporation**, with all just credits given, which is **\$124,080:21** is attached.

The name of the owner(s), if known, is: **Library Associates, LLC, identified above, Owner.**

Claimant is not required to be licensed or registered as contemplated by S.C. Code Ann. 29-5-15.

DATED: **February 28, 2019**

Submitted, Signed and Prepared by:
Stacie M. Tennyson
Asst. Finance Manager
Strong Tower Construction, LLC
d/b/a Koch Corporation
1131 Logan Street
Louisville, KY 40204

SC

The foregoing is true to my knowledge
Strong Tower Construction, LLC
d/b/a Koch Corporation

BY:

Stacie M Tennyson
Stacie M Tennyson
ASST FINANCE MANAGER
Strong Tower Construction, LLC
d/b/a Koch Corporation
1131 Logan Street
Louisville, KY 40204

STATE OF Kentucky

COUNTY OF Jefferson

This instrument was subscribed to and sworn before me on 2/28/19, by
Stacie M Tennyson, for Strong Tower Construction, LLC,
d/b/a Koch Corporation, on behalf of said claimant.

Whitney Ann Rosenbarger
Notary Public

VERIFIED STATEMENT OF ACCOUNT

Strong Tower Construction, LLC Petitioner)
d/b/a Koch Corporation
versus)
Library Associates, LLC Respondent)

Account Balance as of: **January 17, 2019** \$1,369,338.26
Payments Received: \$1,245,258.05
Balance Due as of: **February 28, 2019** \$124,080.21

STATE OF Kentucky

COUNTY OF Jefferson

I, HEREBY CERTIFY that the foregoing is a true and correct statement of account due to
Petitioner in connection with this Mechanic's Lien.

Strong Tower Construction, LLC
d/b/a Koch Corporation

BY:

Stacie M Tennyson
Strong Tower Construction, LLC
d/b/a Koch Corporation
1131 Logan Street
Louisville, KY 40204

Sworn to and subscribed before me this 28th day of February 2019

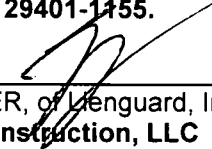
Whitney Ann Rosenbarger
Notary Public

File #111638-19-1

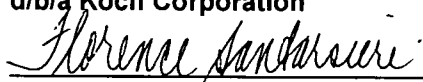
AFFIDAVIT OF SERVICE

On **February 28, 2019**, the Notice and Certificate of Mechanics Lien was served upon **Library Associates, LLC**, the owner(s) or the person(s) in possession of the real estate described therein, by delivering to them by certified mail, article **#9407 1108 9876 5029 9813 90** at the address of **17 Lockwood Drive, Suite 400, Charleston, SC 29401-1155**.

BY:


ALLAN R. POPPER, of Lienguard, Inc., Agent for
Strong Tower Construction, LLC
d/b/a Koch Corporation
1131 Logan Street
Louisville, KY 40204

Subscribed and Sworn to before me on **February 28, 2019**,
by ALLAN R. POPPER, of Lienguard, Inc., Agent for
Strong Tower Construction, LLC
d/b/a Koch Corporation



Florence Santarsieri, Notary Public



File No.: 111638-19-1

CC: Great American Insurance Company
301 E. 4th Street
Cincinnati, OH 45202

Bond #20646

CC: Metropolitan Life Insurance Company
200 Park Avenue
New York, NY 10166

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.722 acres, more or less, on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 MEETING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliott Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said Lot 1 having such size shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING a portion of the property conveyed to Old Citadel Associates, LLC by deed of The County of Charleston, dated March 14, 1995, recorded March 15, 1995 in the RMC Office for Charleston County, South Carolina in Book L-253, Page 629; also being a portion of the property conveyed to Hofford-Library, LLC by deed of Library Associates, LLC, dated December 30, 2008, recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina in Book 0027, Page 418; also being a portion of the property conveyed to Library Associates, LLC, by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina in Book 0102, Page 032; and also being a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2011, recorded in RMC Office for Charleston County on June 17, 2011, in Book 0192, at Page 809.

RECORDER'S PAGE

NOTE: This page **MUST** remain
with the original document



Filed By:

LIENGUARD INC
1000 JORIE BLVD
SUITE 270
OAK BROOK IL 60523

RECORDED

Date: March 5, 2019

Time: 10:40:32 AM

Book

Page

DocType

0781

071

Mech/Lien

Michael Miller, Register
Charleston County, SC

MAKER:

LIBRARY ASSOCIATES LLC

of Sats:

of Pages: 5

of References:

RECIPIENT:

STRONG TOWER CONST LLC AL

Note:

Recording Fee \$ 10.00

Extra Reference Cost \$ -

Extra Pages \$ -

Postage \$ -

Chattel \$ -

TOTAL \$ 10.00

Original Book:

Original Page:

DRAWER **Drawer 4**
CLERK **SLW**



0781
Book



071
Page



03/05/2019
Recorded Date



5
Pgs



Original Book



Original Page



D
Doc Type



10:40:32
Recorded Time



Notice of Service of Process

null / ALL
Transmittal Number: 19486795
Date Processed: 03/12/2019

Primary Contact: Janet McCord
Balfour Beatty Construction Group, Inc.
1930 Camden Road
Ste 280
Charlotte, NC 28203

Electronic copy provided to: Jessica Goodman

Entity:	Balfour Beatty Construction, LLC Entity ID Number 2305648
Entity Served:	Balfour Beatty Construction, LLC
Title of Action:	Watson Electrical Construction Co. LLC. vs. Library Associates, LLC
Document(s) Type:	Notice
Nature of Action:	Property
Court/Agency:	Charleston County, SC
Case/Reference No:	Not Shown
Jurisdiction Served:	South Carolina
Date Served on CSC:	03/11/2019
Answer or Appearance Due:	Other/NA
Originally Served On:	CSC
How Served:	Certified Mail
Sender Information:	Don R. Terry Not Shown

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
WATSON ELECTRICAL)
CONSTRUCTION CO. LLC.,)
Claimant,)
vs.)
LIBRARY ASSOCIATES, LLC and)
METROPOLITAN LIFE INSURANCE)
COMPANY,)
and)
BALFOUR BEATTY CONSTRUCTION,)
LLC,)
General Contractor.)

**NOTICE AND CERTIFICATE OF
MECHANICS LIEN**

NOTICE IS HEREBY GIVEN pursuant to S.C. Code Ann. §29-5-10, et. seq. that the Claimant **WATSON ELECTRICAL CONSTRUCTION CO. LLC. (“Watson”)** claims and holds a lien upon real property hereinafter described, together with all improvements thereon, for the sum of **One Million Eight Hundred Fifty-Nine Thousand Three Hundred Fifty-Nine and 00/100 dollars (\$1,859,359.00)** plus interest, reasonable attorney’s fees for the collection of said sum, and for the cost of this action.

This lien is intended to attach and to affect the ownership interest of Owner and Contractor in those portions of the premises described as (“property”):

PROPERTY DESCRIPTION: That certain real property located at 404 King Street, Charleston, Charleston County, South Carolina, and identified as PIN number 4601604009 of the Charleston County, South Carolina registry.

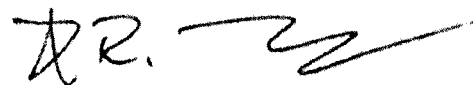
Said sum is due and owing to the Claimant for labor and materials furnished in making improvements to the real property hereinafter described by virtue of an agreement with and consent of the persons or entities exercising possessory rights over the subject real property. The said labor and materials were actually used in improving said property within ninety (90) days prior to the date hereof.

That by virtue thereof, by the service and the filing of this Notice and Certificate, and pursuant to the provisions of the statutes, the Claimant has and claims a lien to secure the payment of the debt due and the costs, interest and attorney's fees involved in enforcing said lien upon real property located in Charleston County, South Carolina and being more particularly described as the property described above.

A verified statement of account and the amount due thereon for labor and materials actually provided is attached hereto as **Exhibit "A"**.

The subcontractor is required to be licensed or registered as contemplated by S.C. Code. Ann. § 29-5-15. The S.C. License or Registration number for Watson is M106527.

THIS THE 7th day of March, 2019



**Don R. Terry, Esq., SC Bar # 101395
SMITH TERRY & JOHNSON
11525 N. Community House Rd., Suite 425
Charlotte, NC 28277**

FILE NUMBER _____

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

WATSON ELECTRICAL)
CONSTRUCTION CO. LLC.,)

Claimant,)

vs.)

LIBRARY ASSOCIATES, LLC and)
METROPOLITAN LIFE INSURANCE)
COMPANY,)

and)

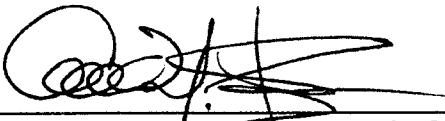
BALFOUR BEATTY CONSTRUCTION,)
LLC)

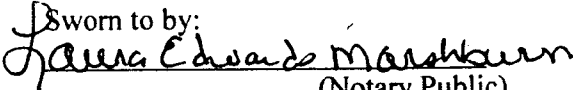
General Contractor)

VERIFIED

STATEMENT OF ACCOUNT

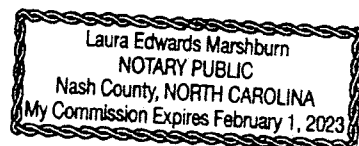
Personally, appeared before me, Carroll M. Lipscombe, Jr. who being duly sworn, deposes and states that I am the Chief Financial Officer of Watson Electrical Construction Co. LLC ("Watson"), and I am authorized to give this Affidavit. I am familiar with the accounts owed for services performed by Watson for the Owner's benefit on the property described in the Lien Claim. The amount owed to Watson in total is **One Million Eight Hundred Fifty-Nine Thousand Three Hundred Fifty-Nine and 00/100 dollars (\$1,859,359.00)** and is derived from the outstanding pay applications, change requests, and or claims.


Carroll M. Lipscombe, Jr.- CFO
Watson Electrical Construction Co. LLC

Sworn to by:

(Notary Public)

This 1th day of March 2019

My Commission expires on: 02 - 01 - 2023



EXHIBIT

tabbles

A

006

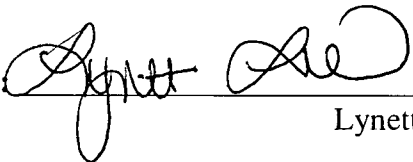
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he served a copy of the foregoing **NOTICE AND CERTIFICATE OF MECHANICS LIEN** upon the parties listed below by depositing a copy thereof in the United States mail in Charlotte, North Carolina, postage pre-paid, certified, return receipt requested and addressed as follows:

**Library Associates, LLC
c/o Michael R. Bennett
17 Lockwood Blvd, Suite 400
Charleston, SC 29401**

**Balfour Beatty Construction, LLC
c/o Corporation Service Co.
1703 Laurel Street
Columbia, SC 29201**

This the 7th day of March, 2019.

By:  _____
Lynette Lemor



**SMITH
TERRY &
JOHNSON**
CONSTRUCTION LAW

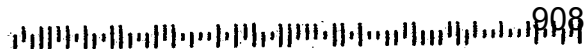
11525 N. Community House Rd., Ste. 425
Charlotte, NC 28277

RV

7017 0530 0001 0288 6521

Balfour Beatty Construction, LLC
c/o Corporation Service Co.
1703 Laurel Street
Columbia, SC 29201

29201-266099



CERTIFIED MAIL
CHARLOTTE
NC 282
07 MAR '19
PM 4 L

03/07/2019
US POSTAGE \$0.00
ZIP 28277
041L10242923

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Balfour Beatty Construction, LLC,)
)
Petitioner,)
)
v.)
)
Library Associates, LLC; and)
Metropolitan Life Insurance Company, a)
New York Corporation;)
)
Respondents.)
)

IN THE REGISTER OF DEEDS

**NOTICE AND CERTIFICATE OF
AMENDED MECHANIC'S LIEN**

0810-324

RECEIVED 7/23/19
PER CLERK JBA
ROD OFFICE
CHARLESTON COUNTY, SC

Petitioner's South Carolina General Contractor's License Number: 110668

TO THE ABOVE-NAMED RESPONDENTS:

NOTICE IS HEREBY GIVEN that Petitioner claims an Amended Mechanic's Lien pursuant to S.C. Code Ann. § 29-5-10 and 20 *et. seq.* (1976, as amended) for labor, equipment and/or materials furnished and actually used in the erection, alteration or improvements to the real estate more fully described in **Exhibit A**, attached hereto and incorporated herein by reference.. The undersigned Petitioner has furnished, within ninety (90) days of the date hereof, labor, services and materials in improving said real estate by virtue of an agreement with and/or the consent of the owners of said real estate. Petitioner craves reference to **Exhibit B** attached hereto and incorporated herein by reference, which is a just and true Statement of Account of the monies due to the Petitioner for such labor, services or materials provided at the request of or with the consent of the owners of said real estate or with their authorization.

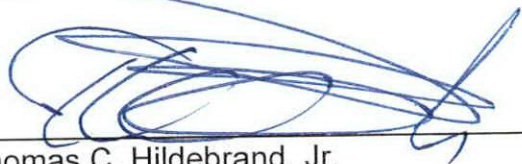
The value of the labor and materials furnished, with all just credits given, totals Twelve Million Sixty-Six Thousand One Hundred Forty-Seven and 9/100 (\$12,066,147.09), as is evidenced by the Verified Statement of Account.

That by virtue thereof, by the serving and filing of this Notice and Certificate of Amended Mechanic's Lien, and pursuant to the provisions of the Code of Laws of South Carolina in such cases as have been made and provided, Petitioner has and claims a lien interest to secure the payment of the debt so due and the cost of enforcing said lien upon the property, buildings and/or structures hereinabove mentioned and upon the real property described in **Exhibit A**.

This Notice and Certificate of Amended Mechanic's Lien is an amendment to the Notice and Certificate of Mechanic's Lien filed on January 25, 2019 in the Office of the Register of Deeds for Charleston County, South Carolina in Book 0774 at Page 273 on behalf of the above-named Petitioner for labor, equipment and/or materials furnished and actually used in the erection, alteration or improvements to the real estate more fully described in **Exhibit A**.

WHEREFORE, Petitioner claims an Amended Mechanics Lien of Twelve Million Sixty-Six Thousand One Hundred Forty-Seven and 9/100 (\$12,066,147.09), plus interest, attorney's fees, all other damages incurred and the costs and disbursements of this action.

PARKER POE ADAMS & BERNSTEIN, LLP
200 Meeting Street, Suite 301
Charleston, SC 29401



Thomas C. Hildebrand, Jr.
843.727.2653 (direct dial)
tomhildebrand@parkerpoe.com

Robert C. Byrd
843.727.2665 (direct dial)
bobbybyrd@parkerpoe.com

Taylor M. Morris
843.727.6315 (direct dial)

taylormorris@parkerpoe.com

Attorneys for Balfour Beatty Construction, LLC

July 23, 2019
Charleston, South Carolina

EXHIBIT "A"

Property Address: 404 King Street, Charleston, SC 29403

Owner of Property: Library Associates, LLC

Description of Property subject to lien:

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on the southeast corner of King and Hutson Streets, in the City of Charleston, State of South Carolina, shown and designated as "Lot 1" containing 0.722 acres, more or less, on a plat thereof entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOT 1, 404 MEETING STREET & LOT 2, 337 MEETING STREET, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, PREPARED FOR OLD CITADEL ASSOCIATES, LLC" prepared by F. Elliotte Quinn III, South Carolina Professional Land Surveyor, License No. 10292, dated June 14, 2011, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book L11, at Page 0185; said Lot 1 having such size shape, dimensions, buttings and boundings as will by reference to said plat more fully appear, said plat being incorporated herein and made a part hereof by this reference.

BEING a portion of the property conveyed to Old Citadel Associates, LLC by deed of The County of Charleston, dated March 14, 1995, recorded March 15, 1995 in the RMC Office for Charleston County, South Carolina in Book L-253, Page 629; also being a portion of the property conveyed to Hofford-Library, LLC by deed of Library Associates, LLC, dated December 30, 2008, recorded December 31, 2008, in the RMC Office for Charleston County, South Carolina in Book 0027, Page 418; also being a portion of the property conveyed to Library Associates, LLC, by deed of Hofford-Library, LLC, dated January 11, 2010, recorded January 12, 2010, in the RMC Office for Charleston County, South Carolina in Book 0102, Page 032; and also being a portion of the property conveyed to Library Associates, LLC by Deed of Old Citadel Associates, LLC dated June 16, 2011, recorded in RMC Office for Charleston County on June 17, 2011, in Book 0192, at Page 809.

TMS#: 460-16-04-009

EXHIBIT "B"

STATEMENT OF ACCOUNT

Claimant/ Mechanic Lienor: Balfour Beatty Construction, LLC

Owner: Library Associates, LLC

Nature of labor, materials and/or
Equipment supplied: Labor, materials and supplies to construct a hotel

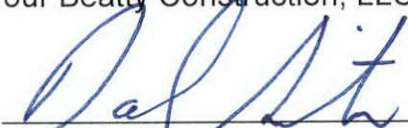
Property Subject: See Exhibit "A" to Notice and
Certificate of Mechanic's Lien

Total Amount Due: \$12,066,147.09 plus interest thereon and attorney's
fees

I hereby certify that the amount due to Balfour Beatty Construction, LLC, for the labor, materials and supplies necessary to construct a hotel on Owner's property, after all just credits and debits as of this date is Twelve Million Sixty-Six Thousand One Hundred Forty-Seven and 9/100 (\$12,066,147.09), plus interest accruing thereon and attorney's fees and costs/expenses.

Balfour Beatty Construction, LLC

By:


David Simonton

Its: Vice President, Operations

SWORN TO BEFORE ME

this 23 day of July, 2019

 (L.S.)

Lauren Heuss (Printed Name)

Notary Public for South Carolina

My Commission expires 12/13/2027 (SEAL)

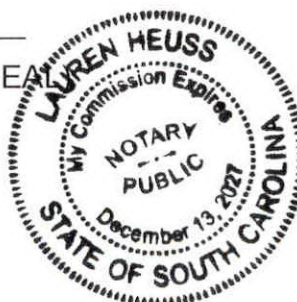


Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Strong Tower Construction, LLC

Plaintiff,

vs.

Balfour Beatty Construction, LLC, Library
Associates, LLC, and Metropolitan Life
Insurance Company

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2019-CP-10-02868

(consolidated with Case No.: 2019-CP-10-01108)

DEFENDANT BALFOUR BEATTY
CONSTRUCTION, LLC'S ANSWERS
TO PLAINTIFF'S FIRST
INTERROGATORIES

The Defendant Balfour Beatty Construction, LLC ("Balfour"), by and through its below-signed attorneys and pursuant to SCRCP 26 and 33, answers the First Set of Interrogatories from the Plaintiff as follows:

RESERVATION OF RIGHTS

Balfour does not waive any objections which may be appropriate either to (a) the use of any documents produced or (b) the materiality of any of the Interrogatories to any issue in the case. Balfour specifically reserves all rights to objections which may otherwise be available to it and further states that no response should be deemed as an admission of relevancy, materiality or admissibility into evidence of any particular Interrogatory or the response thereto. Balfour further reserves the right to alter or amend its answers to be more accurate if other information becomes available to it at a subsequent time.

GENERAL OBJECTIONS

Balfour hereby states the following General Objections to Plaintiff's Interrogatories, which are incorporated herein and made a part of each answer set forth below.

1. To the extent that Plaintiff's Interrogatories seek information irrelevant to the issues raised in this lawsuit or are not reasonably calculated to lead to the discovery of admissible evidence, or are otherwise inconsistent with or enlarge upon the South Carolina Rules of Civil Procedure, Balfour objects to such Interrogatories.

2. Balfour objects to each Interrogatory that seeks the disclosure of information which is protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or doctrine.

3. Balfour objects to each Interrogatory to the extent that it is vague, ambiguous, overly broad, unduly burdensome or oppressive.

4. Balfour objects to each Interrogatory to the extent that it requests information in the possession of persons or entities that are not under the control of Balfour or is otherwise not in the possession of Balfour.

5. All responses set forth by Balfour are subject to the General Objections set forth above. The General Objections, or some portion thereof, may be specifically referred to or restated in a response for the purpose of clarity. A failure to specifically incorporate a General Objection shall not be construed as a waiver of the General Objection.

6. Balfour reserves the right to supplement or amend these responses.

ANSWERS TO INTERROGATORIES

1. Set forth whether Balfour has included in, or claimed as part of, its \$12,066,147.09 amended mechanic's lien the entirety of the value of the Plaintiff's \$124,080.21 mechanic's lien.

ANSWER: Balfour objects to this Interrogatory as it has no knowledge of the components of or basis for Plaintiff's mechanic's lien. Subject to and

without waiving this objection, Balfour states that its amended mechanic's lien contains \$87,264.56 that has been retained or has not been invoiced by Plaintiff as part of Plaintiff's executed contract amount, as amended. Further responding Balfour states that its amended mechanic's lien contains \$17,594.65 in Requested Change Orders that the Owner has not approved. (\$9,564.65 for Koch COR #006 (Balfour RCO 258) and \$8,030.00 for Koch COR #015 (Balfour RCO 278)). As discovery is ongoing, Balfour reserves the right to supplement and/or amend its Answer to this Interrogatory.

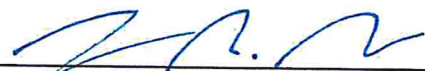
2. If the response to Interrogatories 1 is "no," or any variation, set forth what, if any, level of the Plaintiff's \$124,080.21 mechanic's lien is included in, or claimed as part of, Balfour's \$12,066,147.09 amended mechanic's lien.

ANSWER: See Balfour's objections and response to Interrogatory Number 1. As discovery is ongoing, Balfour reserves the right to supplement and/or amend its Answer to this Interrogatory.

3. If Balfour has included in its mechanic's lien the entirety, or any portion, of the value of the Plaintiff's mechanic's lien, set forth the reasons why Balfour has not paid the Plaintiff that uncontested portion of the Plaintiff's claim.

ANSWER: Balfour objects to this Interrogatory to the extent it seeks information protected by attorney-client privilege or the work-product doctrine. Balfour further objects to the characterization of the Plaintiff's claim as "uncontested." Subject to and without waiving these objections, the Owner of the Project has not paid Balfour in full for the value of the prime contract, as amended. Further responding, the Owner of the Project claims it is owed damages for delays and/or defects in the construction and delivery of the Project, but has not identified all of the work, delays and/or subcontractors are alleged to be involved. One of the defects that the Owner has identified and sent notice of involves leaks relating to the exterior doors installed by Strong Tower. The Owner sent notice of these defects to Strong Tower on October 24, 2019. Documents related to these defects are produced in conjunction with this discovery response (Balfour-Koch 000001 to Balfour-Koch 000047). Balfour denies any responsibility for any delays or defects, but to the extent a third-party finds such delays or defects exist, Strong Tower will be liable to Balfour for the same. Additionally, there is currently a \$22,000 pending back charge that would reduce the contractual amount owed to Plaintiff. As discovery is ongoing, Balfour reserves the right to supplement and/or amend its Answer to this Interrogatory.

PARKER POE ADAMS & BERNSTEIN LLP
200 MEETING STREET, SUITE 301
CHARLESTON, SC 29401

By: 
Thomas C. Hildebrand, Jr.
843.727.2653 (direct dial)
tomhildebrand@parkerpoe.com

Robert C. Byrd
843.727.2665 (direct dial)
bobbybyrd@parkerpoe.com

Taylor M. Morris
843.727.6315 (direct dial)
taylormorris@parkerpoe.com

Attorneys for Defendant Balfour Beatty
Construction, LLC

January 28, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CASE NO.: 2019-CP-10-1108
COUNTY OF CHARLESTON	)	
Balfour Beatty Construction, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Library Associates, LLC and Metropolitan	)	
Life Insurance Company,	)	
	)	
Defendants.	)	
	)	STRONG TOWER CONSTRUCTION,
Library Associates, Inc.,	)	LLC D/B/A KOCH CORPORATION'S
	)	NOTICE OF MOTION AND MOTION
Third-Party Plaintiff,	)	FOR SUMMARY JUDGMENT, WITH
	)	SUPPORTING MEMORANDUM
v.	)	
	)	
Lithko Contracting, LLC f/k/a Lithko Contracting,	)	
Inc., Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf	)	
Stream Construction Company, Inc., Palmetto	)	
Automatic Sprinkler Company, Inc., Cook &	)	
Boardman, LLC, Strong Tower Construction, LLC	)	
d/b/a Koch Corporation, Watson Electrical	)	
Construction Co., LLC, Trimark Foodcraft, LLC,	)	
Pleasant Places, Inc., David Allen Company, Inc.,	)	
Premier Exteriors, LLC, Warco Construction, Inc.,	)	
Old North State Masonry, LLC, Tom Rochester &	)	
Associates d/b/a Southeastern Architectural	)	
Systems, Lowcountry Case & Millwork, Inc.,	)	
Quantum Coatings, LLC, and Balfour Beatty	)	
Construction Group, Inc.,	)	
	)	
Third-Party Defendants.	)	
	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CASE NO.: 2019-CP-10-2868
COUNTY OF CHARLESTON	)	
STRONG TOWER CONSTRUCTION, LLC,	)	
d/b/a KOCH CORPORATION,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	
	)	
BALFOUR BEATTY CONSTRUCTION,	)	
LLC, LIBRARY ASSOCIATES, LLC, and	)	
METROPOLITAN LIFE INSURANCE	)	
COMPANY,	)	
	)	
DEFENDANTS.	)	

TO: THOMAS C. HILDEBRAND, JR. AND TAYLOR M. MORRIS, ATTORNEYS
FOR BALFOUR BEATTY CONSTRUCTION, LLC

The undersigned, as attorney for Strong Tower Construction, LLC d/b/a Koch Corporation (“Koch”), will move before the Charleston County Master-In-Equity within ten (10) days from the service of this Notice of Motion and Motion, or as soon thereafter as Counsel may be heard, for an Order granting Koch summary judgment, or partial summary judgment, on its breach of contract cause of action against Balfour Beatty Construction, LLC (“BBC”), pursuant to Rule 56, SCRC.

BRIEF FACTS AND PROCEDURAL HISTORY

The above-captioned actions arose out of the construction of the Hotel Bennett in downtown Charleston, owned by Library Associates, LLC (the “Owner”). BBC acted as the general contractor for the project, and, under a contract with BBC, Koch was a subcontractor responsible for installation of the ground level, storefront bronze windows and doors. (see Ex. A, Koch subcontract). After nonpayment of contractually owed sums, Koch filed a mechanic’s lien in the amount of \$124,080.21 (the “Koch Lien”), recorded on Book 0781, Page 071, of the Charleston County Register of Deeds. By that time, BBC had already filed its own mechanic’s lien on the project in the amount of \$8,409,658.54, recorded on Book 0774, Page 273 of the

Register of Deeds. BBC later amended its lien to \$12,066,147.09, which was recorded on Book 0810, Page 324 of the Register of Deeds (the “BBC Lien”).

On or about May 30, 2019, Koch filed Case No. 2019-CP-10-2868 for, *inter alia*, foreclosure of the Koch Lien and for breach of contract against BBC. Somewhat simultaneously, BBC filed Case No. 2019-CP-10-1108, in which it sought foreclosure of the BBC Lien. Ultimately, the two actions were consolidated.

In Koch’s written discovery requests to BBC, sent for the purposes of Koch determining the amount of the Koch Lien that BBC does not dispute, Koch requested BBC to set forth how much of the Koch Lien is included in the BBC Lien. BBC responded that \$104,859.21 of the Koch Lien is included in the BBC Lien. (Ex. B, BBC Int. Resp.). BBC indicated that it had not paid Koch this amount because of the Owner’s claims for delay and defects, in addition to a \$22,000 back charge.

The Owner’s representatives, Kim Brown and James Clement, have been deposed and both testified that there are no outstanding issues with Koch’s work, that Koch did not cause any delays and that Koch should be paid under its contract with BBC. (Ex. C, Brown and Clements Trs.). Clements testified that Koch was “a pleasure to do business with.” (Tr. Clements 347:11-12).

As to the \$22,000 back charge, BBC has provided no documentation concerning it and has recently indicated that it expended \$8,000 to correct Koch’s work, not \$22,000. Even if the entire \$22,000 back charge is eventually substantiated, at minimum, BBC does not dispute that Koch is owed \$82,859.21 under the parties’ contract, which is calculated based on the \$104,859.21 of the Koch Lien that BBC included in the BBC Lien, minus the undocumented \$22,000 back charge.

STANDARD OF REVIEW

A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if

any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCF; see also *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997).

In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997); *Hamiter v. Retirement Div. of South Carolina*, 326 S.C. 93, 484 S.E.2d 586 (1997); *City of Columbia v. American Civil Liberties Union*, 323 S.C. 384, 475 S.E.2d 747 (1996). However, the party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991); *George v. Empire Fire & Marine Ins. Co.*, 344 S.C. 582, 545 S.E.2d 500 (2001).

DISCUSSION

I. There exist no genuine issues of material fact as to at least \$82,859.21 owed by BBC to Koch under the parties' contract, entitling Koch to summary judgment on that amount under its breach of contract cause of action.

In BBC's written responses to Koch's interrogatories, BBC admitted that \$104,859.21 of the Koch Lien is included in the BBC Lien. (Ex. B). When BBC filed the BBC Lien, it was required by statute to submit a "subscribed and sworn" statement or affidavit "of a just and true account of the amount due to [it], with all just credits given..." S.C. Code Ann. § 29-5-90. BBC did in fact have its Vice President of Operations, David Simonton, sign an affidavit attesting that the BBC Lien is owed. (BBC Amended Compl., Ex. A). In admitting that \$104,859.21 of the Koch Lien is included in the BBC Lien, BBC is admitting that \$104,859.21 is owed to Koch under the parties' contract.

BBC refuses to pay that uncontested sum because of alleged delay or defective work claims

by the Owner, in addition to a \$22,000 back charge. (Ex. B). All of the Owner's representatives have been deposed, and both Kim Brown and Jim Clements testified that there were no delays caused by Koch and that they have no record of documented damages associated with Koch's work. (Ex. C). Both testified that they saw no reason why Koch should not be paid by BBC, under its contract with BBC. (Id.). Clements went even further, saying that Koch was "a pleasure to do business with." (Id. at Clements Tr. 347:11-12). Based on the testimony of the Owner's representatives, the Owner is not maintaining delay or defective construction claims against Koch, thus BBC cannot continue deny payment to Koch based on those alleged claims.

The second reason BBC is refusing to pay Koch is due to a \$22,000 back charge. (Ex. B). BBC has provided no documentation concerning the back charge and has recently indicated that it expended \$8,000 to correct Koch's work, not \$22,000. Even if the entire \$22,000 back charge is eventually substantiated, at minimum, BBC does not dispute that Koch is owed \$82,859.21 under the parties' contract, which is calculated based on the \$104,859.21 of the Koch Lien that BBC included in the BBC Lien, minus the undocumented \$22,000 back charge.

If BBC's defense is believed in full, there is no genuine issue of material fact as to \$82,859.21 owed to Koch under the parties' contract, entitling Koch to summary judgment on that amount.

II. BBC's use of the Koch Lien to support the BBC Lien, while simultaneously refusing to pay Koch under the parties' contract, amounts to judicial estoppel.

BBC is taking factual positions that diametrically oppose each other. First, it has filed foreclosure of the BBC Lien, amounting to its factual position that it is owed in excess of \$12,000,000 by the Owner. Second, the BBC Lien includes \$104,859.21 of the Koch Lien, amounting to its factual position that Koch's work at that level requires payment. However, third, BBC is defending against Koch's breach of contract claim by taking the factual position that

Koch's work is the source of damages. These positions cannot be maintained simultaneously, because they would allow BBC to claim the benefit of the Koch Lien and work, while claiming that it should not have to pay under the parties' contract, which gave rise to the Koch Lien and the relevant portion of the BBC Lien.

The doctrine of judicial estoppel is meant to prevent litigants from adopting inconsistent factual positions in related cases. In 1997, the South Carolina Supreme Court adopted the doctrine, describing it as one that "punishes those who take the truth-seeking function of the system lightly. When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him. It is certainly conceivable that parties may want to present novel legal theories, which may require changing one's previous legal theory. However, the truth-seeking function of the judicial process is undermined if parties are allowed to change positions as to the facts of the case, unless compelled by newly-discovered evidence." *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 252, 489 S.E.2d 472, 477 (1997).

BBC continues to change the narrative to suit its claims. BBC's current factual positions, as they relate to Koch, are a classic example of judicial estoppel, which cannot be allowed by this Court.

CONCLUSION

Based on the absence of genuine issues of material fact with respect to at least \$82,859.21, Koch is entitled to judgment as a matter of law on that amount, plus interest, attorney's fees and costs.

(Signature on following page)

SMITH CLOSSER & WHEELER, PA

s/Samuel M. Wheeler

October 19, 2020

19-135

Samuel M. Wheeler
SC Bar No. 101008, swheeler@scnlaw.com
7455 Cross County Road, Ste 1 (29418)
P.O. Box 40578, Charleston, SC 29423
843-760-0220; 843-552-2678 (fax)
*Attorneys for Strong Tower Construction,
LLC d/b/a Koch Corporation*

Exhibit A

SUBCONTRACT

STOREFRONT

DATE: May 5, 2015

TO: Strong Tower Construction, LLC dba Koch
Corporation
1131 Logan Street
Louisville, KY 40204

PROJECT NAME: Hotel at Marion Square

PROJECT ADDRESS: 404 King Street
Charleston, SC 29403

502-494-7846 (phone)
(fax)

PROJECT #: 13026000
VENDOR #:
CONTRACT#: 023
COST TYPE: 42040

ATTN: Ken Hummel

You are authorized to proceed with furnishing and installing all work specified on the attached Scope of Work and required by this Subcontract:

\$1,255,030.00 (One million two hundred fifty-five thousand thirty dollars)

Retainage: 10.0000 %

The Owner of the Project is: **Library Associates, LLC.**

The "SUBCONTRACT Documents" include this Subcontract form, the Subcontract Terms and Conditions, and all other applicable Exhibits including:

Exhibit A - Contract Documents
Exhibit B - Scope of Work
Exhibit C - Special Provisions
Exhibit D - Safety Plan
Exhibit E - Site Logistics Plan
Exhibit F - Lien Releases

Exhibit G - Pay Application
Exhibit H - Project Schedule
Exhibit I - Quality Control Plan
Exhibit J - Insurance Certificate
Exhibit K - Bond Forms

Exhibit L - Provisions Applicable to Publicly
Funded Projects
Exhibit M - EEO Policy
Exhibit N - Design Build/Design Assist Rider
Exhibit O - State Law Rider

Exhibits may be omitted even if listed above. The Special Provisions will list the omitted exhibits, if any.

Strong Tower Construction, LLC dba Koch Corporation
Subcontractor

By: Benjamin Feinn

Name: Benjamin Feinn

Title: CEO

State Contractor License #: Pending

Federal ID#: 26-2970059

Date: 9/29/15

Balfour Beatty Construction, LLC
Contractor

By: Michael Baumbach

Name: Mike Baumbach

Title: Senior Vice President/BUL

State Contractor License #: 110668

Federal ID#: 20-1627180

Date: 10/2/15

This Subcontract is not binding until accepted
This Subcontract covers the contract amount only
Additional work is to be billed separately

SUBCONTRACT TERMS AND CONDITIONS

Article 1: General

- A. Subcontractor will fully perform and timely complete, as an independent contractor, all work (Work) in accordance with the Subcontract, including the documents identified on **Exhibit A** (Contract Documents), the Scope of Work described in **Exhibit B** and the Special Provisions described in **Exhibit C** for the Subcontract Price as shown on the Subcontract. The Subcontract Price includes all materials, equipment, bonds, labor, sales and use taxes, supervision, insurance, overhead and profit required to perform the Work. If there is any conflict between the Subcontract and a Contract Document, the more strict provision governs. Time is of the essence in performing all Subcontract obligations.
- B. Prior to executing this Subcontract, Subcontractor has carefully determined to its satisfaction all requirements of this Subcontract and the extent and the costs of all aspects of the Work, and has:
- i. ascertained the conditions and requirements of its Work, including: a) the location, accessibility and character of the site and adjacent areas; b) surface conditions and reasonably ascertainable subsurface conditions (including potential water, materials, utilities or obstacles); c) any errors, omissions or conflicts in the Contract Documents that could reasonably be discovered by a Subcontractor experienced in the Work in the area of the Project; d) existing facilities at or near the site; e) transportation, disposal, handling and storage of materials or equipment; f) labor availability; g) location and availability of utilities; h) needed equipment and facilities; i) uncertainties of weather; and j) all federal, state, and local legal requirements, codes and regulations (collectively, Legal Requirements) applicable to any aspect of the Work or to Subcontractor; and
 - ii. reviewed this Subcontract and all information made available by Contractor or others, satisfying itself with the correctness and accuracy of this Subcontract and the Subcontract Price in light of all information and required investigations.
- C. Subcontractor acknowledges the critical importance to the Project and to all Project personnel of Contractor's "Zero Harm" safety initiative and Contractor's safety requirements. Subcontractor will comply with Contractor's safety requirements in **Exhibit D**, all Legal Requirements relating to safety in executing the Work and disposing or handling materials (including any hazardous materials), and all rules of Contractor and Owner regarding the performance of Work and the Project site, including compliance with the Site Logistics Plan attached as **Exhibit E**. Subcontractor at all times maintains primary control of and responsibility for safety for its Work, and will meet or exceed all safety requirements of this Subcontract. Subcontractor will at no time start, continue or resume any Work which Subcontractor or any representative of Contractor or Owner identifies as unsafe, until Subcontractor has taken corrective measures satisfactory to Contractor. Failure of Contractor or others to stop an unsafe practice will not relieve Subcontractor of its responsibilities. If Subcontractor or any person for whom Subcontractor is responsible fails to enforce the Contractor's safety requirements or any safety-related Legal Requirement, Contractor may, in addition to other remedies, bar such party from the site.
- D. With respect to its Work and this Subcontract, and in addition to the other duties specified in this Subcontract, Subcontractor owes to Contractor the duties timely and fully to: (i) comply with all Legal Requirements; (ii) provide within 3 business days any requested written assurances of complete and timely performance, including assurances prompted by any actual or potential insolvency, bankruptcy or failure to continue as a going concern; (iii) be responsible for the acts or omissions of its laborers, and those of its subcontractors and suppliers at all tiers (collectively, Lower Tiers); (iv) ensure that all obligations of this Subcontract and the Contract Documents are included in all agreements involving Lower Tiers as respects their performance of any Work; (v) comply with this Subcontract and the Contract Documents, assuming towards Contractor all obligations that Contractor has assumed towards Owner in the Contract Documents, and being bound to Contractor in the same manner as Contractor is bound to Owner under the Contract Documents, with respect to the Work; (vi) enforce Balfour Beatty's Supplier Code of Conduct (<http://balfourbeattyus.com/Partners/Sub-Contractors/Suppliers--Code-of-Conduct.aspx>), or one just as stringent, and otherwise to insure that no laws are broken in respect of this Subcontract; (vii) promptly provide all financial and performance information required by Contractor as part of Contractor's program for qualifying subcontractors to work on a Project with Contractor; and (viii) allow no bankruptcy or receivership filing to delay or otherwise adversely impact the Work, and consent upon request to any request by Contractor to expedite hearings or other actions by the bankruptcy court to minimize impacts on the Work or the Project.

SUBCONTRACT TERMS AND CONDITIONS

Article 2: Payments to Subcontractor

- A. Unless a shorter time is provided by the Contract Documents or by law, Contractor will make progress payments to Subcontractor within ten (10) days after Contractor's receipt of payment from Owner for Subcontractor's Work (including changes in the Work paid by Owner), to the extent of Subcontractor's interest in that payment. To the extent permitted by law, payment from Owner of amounts due Subcontractor is a condition precedent to the obligation to pay Subcontractor. Unless the Contract Documents or applicable law specify a different amount, 10.0000 % retainage will be withheld, which will be reduced and/or paid to Subcontractor as it is reduced and/or paid to Contractor by Owner, so long as Subcontractor is not in default. Contractor may withhold funds from monthly progress payments to protect Contractor because of any actual or reasonably likely default by Subcontractor. Title to material and Work incorporated into the Project will transfer to Owner as specified in the Contract Documents or if not so specified upon payment to Subcontractor. Neither title transfer nor payment by Contractor or Owner is an acceptance of any Work or stored materials.
- B. Subcontractor must deliver the following as conditions precedent to Contractor's duty to make any progress payment: (i) the documents identified in Article 3.B below; (ii) certified payrolls, if applicable to the Project, in the form and frequency required by the Contract Documents; (iii) monthly, or at intervals as specified in the Contract Documents, Subcontractor's executed Partial Waiver and Release Upon Progress Payment, in the form attached as part of **Exhibit F** and, upon request by Contractor, an executed Partial Waiver and Release Upon Progress Payment from each Lower Tier which may have lien or bond claim rights, in the form also attached as part of **Exhibit F**; (iv) other releases and documents required by the Contract Documents or reasonably required by Contractor; (v) all items listed in Contractor's Stored Material Checklist (payment for materials stored off site is subject to Owner approval); and (vi) at intervals specified in the Contract Documents and at least five (5) business days prior to Contractor's deadline for submitting its partial payment estimate, an acceptable partial payment estimate on the form at **Exhibit G**. After review and any appropriate adjustments, Contractor will include Subcontractor's partial payment estimate in its payment request to Owner.
- C. Subcontractor should send all final payment requests within thirty (30) days of its completion of its Work. As conditions precedent to final payment, Subcontractor must: (i) complete all Work in accordance with the Contract Documents and to the reasonable satisfaction of Owner and Contractor; (ii) deliver all final lien and claim waiver forms from it and from Lower Tiers which might have lien or bond claim rights (in the form at **Exhibit F**), all required warranties and guaranties, all maintenance manuals, all attic stock, certified payrolls, insurance information and all other documents or materials required by the Contract Documents; and (iii) send all final payment requests no later than sixty (60) days after final completion of the Project. Subcontractor's failure to send a payment request within sixty (60) days after final completion of the Project waives any and all claims by the Subcontractor.
- D. Contractor may withhold amounts due under this Subcontract or any other agreement between the parties to cover Contractor's reasonable estimate of any costs or liability Contractor or its surety has incurred or may incur for which Subcontractor may be responsible. The phrase "any other agreement between the parties" includes any agreement between Subcontractor and Contractor or any joint venture or other entity in which Contractor and/or Subcontractor have an ownership interest.
- E. Contractor may issue joint checks to Subcontractor and any laborer, Lower Tier, pension or benefit fund, or labor union if, in Contractor's reasonable judgment, joint checks are necessary to ensure payment to those parties or if those parties have threatened to file or filed liens, suits or demands against Owner, the Project, Contractor or its sureties. Contractor may also pay such party directly in those circumstances. All joint checks or direct payments will be for the account of Subcontractor. No payment under this Article will create a contract with any third party nor any continuing duty to make payments to any party.

Article 3: Operations

- A. Subcontractor will promptly provide all information and documents required by Contractor or the Contract Documents as needed to utilize BIM or similar modeling, or as otherwise as needed to eliminate potential conflicts between areas of work on the Project, including but not limited to conflicts arising from wall openings needed for delivery or construction, conflicting structural and/or MEP requirements, and potential interferences from lifts, cranes and scaffolds.
- B. Subcontractor must deliver the following as conditions precedent to performing any Work on site: (i) a fully executed Subcontract; (ii) insurance certificates satisfying the requirements of Article 8 below; (iii) acceptable, fully executed Performance and Payment Bonds unless waived in this Subcontract; (iv) a schedule of values

SUBCONTRACT TERMS AND CONDITIONS

reflecting the best estimate of the true value of each phase of the Work, in accordance with this Subcontract and the Contract Documents; and (v) a written injury and illness prevention program and its code of safe work.

- C. Subcontractor will at all times be thoroughly familiar with all requirements regarding the Work, and promptly notify Contractor, in writing and before proceeding with affected Work, of any deficiencies, errors, discrepancies, unanticipated site conditions, anticipated conflicts or unusual difficulties not specifically addressed in this Subcontract. Subcontractor will coordinate its Work with that of Contractor and all other subcontractors. Contractor will upon reasonable request provide shop drawings by other subcontractors to Subcontractor. Subcontractor will attend all coordination meetings and project meetings. Subcontractor's superintendent or foreman will represent Subcontractor and will have full authority to make decisions and commitments regarding Subcontractor's Work. All communications and notices given to the superintendent or foreman will be binding. Subcontractor represents that its superintendent or foreman is an expert in the Work, is a competent person as defined by OSHA, and is knowledgeable of all Legal Requirements
- D. Contractor is not responsible for damage to Subcontractor's Work or stored materials or equipment caused by others, but will cooperate with Subcontractor to secure payment for such damage from the responsible party.
- E. Subcontractor will be responsible for, and will use the highest degree of care in regards to, erecting and using scaffolding and all loading/ unloading of materials, tools and equipment from and onto hoists, elevators and/or cranes. During regular working hours and without charge, Subcontractor may share available cranes, temporary elevators and material hoists with Contractor and others; however, equipment use is subject to Contractor's schedule and reasonable construction priorities and Subcontractor's execution of any required release and indemnity agreements. Costs for equipment use on an overtime basis will be paid by Subcontractor. If "leave-out" areas are required by Contractor in the building skin, Subcontractor may be required to return out of sequence at these locations, the costs of which are included in this Subcontract Price.
- F. Subcontractor will employ only laborers who will work in harmony with those employed by Contractor or other subcontractors, or by Owner in its operations. Subcontracts may be awarded and labor employed by Contractor or its other subcontractors without regard to union status. Subcontractor will not allow labor disputes to delay or hinder its Work, that of any other subcontractor, or Owner's operations.
- G. Subcontractor will maintain a lien-free and claim-free Project, and timely and fully pay and/or insure payment of: (i) wages and benefits due to laborers; (ii) taxes, contributions, fees, penalties, and the like in respect of the Work or the Subcontract; and (iii) all amounts due all Lower Tiers and their laborers. Contractor may require satisfactory evidence as to the status of any payments or payment obligations in connection with this Subcontract.
- H. In performing its Work, and in addition to the other duties specified in this Subcontract, Subcontractor owes to Contractor the duties timely and fully to: (i) furnish and pay for all permits, licenses, equipment, labor, materials, supervision, required safety measures, employee parking and transportation, hoisting and scaffolding required for the proper and complete performance of the Work; (ii) perform all Work with no unapproved deviations or substitutions; (iii) provide quality control to ensure that Work is performed in strict accordance with the Contract Documents and as needed to ensure first class quality; (iv) correct/replace any Work identified as defective during construction; (v) comply with Contractor's written directives; (vi) submit proper notices, warranties, change order proposals, shop drawings, as-built drawings, submittals, parts lists, O&M manuals and other documents or materials required by the Contract Documents or by Contractor; (vii) correct defects in the Work which appear within the guaranty or warranty period established in the Contract Documents or by law (if no period is stipulated in the Contract Documents or by law, then the guarantee and/or warranty will be for one (1) year from date of completion and written acceptance of the Work by Owner); (viii) perform all required lay-out accurately and completely from control lines or benchmarks provided by Owner or Contractor; (ix) execute and deliver, and/or deliver from suppliers, any special guaranty or warranty required by the Contract Documents; (x) clean up daily from its operations as required by Owner or Contractor, and/or if requested contribute reasonably to a composite clean-up crew at no additional cost; (xi) prevent any damage to or trespass on adjoining lands or facilities; (xii) reasonably inspect work of other trades to insure that it has been performed properly to accommodate Subcontractor's Work, and advise Contractor in writing of any deficiencies that would prohibit or interfere with the proper performance of the Work; (xiii) pay all royalties and avoid any infringement of patents or copyrights; (xiv) provide daily reports, Safety Data Sheets (or similar sheets as required), job hazard analyses (or similar documents reflecting safe planning for safety risks in the Work), copies of all subcontracts and purchase orders and other reasonable documentation requested by Contractor; (xv) remove any employee for reasonable cause upon written request of Contractor; (xvi) protect its Work and stored materials from damage or destruction until final payment, and avoid damage to the work or materials of other trades; (xvii) provide punch lists and complete all punch list work identified by Contractor or Owner; (xviii) release no hazardous materials, and

SUBCONTRACT TERMS AND CONDITIONS

properly document and dispose of any hazardous materials discovered or used so as not to violate any Legal Requirement; (xix) provide and pay for power, gas, water, trailers, storage, temporary protection, guardrails, overhead protection and other temporary facilities needed for the Work; and (xx) provide such other services, documentation and materials needed to meet the Owner's requirements for the Work.

Article 4: Schedule

- A. Contractor has provided the Project Schedule prior to execution of the Subcontract – an initial draft is attached as **Exhibit H**. Subcontractor will fully comply with the Project Schedule. Subcontractor will, within fifteen (15) days after the date of the Subcontract or within such other time as may be reasonably specified by Contractor, submit its input with respect to the Project Schedule. Subcontractor's input will be consistent with the Project Schedule, and will list Subcontractor's sequence and duration of activities. Contractor may prepare a revised Project Schedule and if so will consider Subcontractor's input in developing that schedule. Subcontractor will proceed with its Work in accordance with the Project Schedule or as otherwise reasonably directed by Contractor, and perform the Work so as to avoid delays or inefficiencies to work of other subcontractors and Contractor so as to permit timely Project completion.
- B. Contractor may change the sequential order and/or duration of any work activities in the Project Schedule, including those of this Subcontract, to account for unanticipated delays, occurrences and other factors which alter Contractor's original Project Schedule, and may provide subsequent Project schedules. Contractor may require Subcontractor to prosecute its Work in such sequence as the progress of other subcontractors and the current Project Schedule dictate, with payment for additional costs and/or grants of additional time only as specified in Articles 4.D through 4.G.
- C. To the extent that any Work delays or inefficiencies are caused by Subcontractor or those for which it is responsible, then Subcontractor will: (i) not be entitled to any additional compensation nor any time extension; (ii) on its own account, or as directed by Contractor, increase shifts, personnel, operations, days of work, equipment and facilities, and work overtime as needed, to overcome any such events at no increase in price; and (iii) if requested, submit within three business days for Contractor's approval a recovery schedule demonstrating how it will meet the current Project Schedule.
- D. To the extent that any Work delays or inefficiencies are caused solely by Contractor or its other subcontractors, then Subcontractor will upon request take reasonable steps at no cost to Contractor or other subcontractors to mitigate the event. If those steps are unsuccessful, Contractor may: (i) grant Subcontractor in writing an equitable time extension, to the extent that Contractor reasonably determines that the time extension does not materially and adversely impact the Project critical path or the work of other subcontractors; or (ii) direct Subcontractor to work overtime, or other steps to accelerate. Where Subcontractor has been granted a time extension due to delays caused by Contractor or other subcontractors, the time extension will be the sole remedy for the delay, and no damages will be payable. Contractor will be liable for overtime or acceleration costs under this Article 4.D only to the extent caused by the gross negligence of Contractor in scheduling the Work with the work of other subcontractors. In that case, Contractor will pay Subcontractor for reasonable and demonstrable overtime wages (plus taxes, benefits, bond and insurance costs on those overtime wages) and increased material and equipment costs. To the extent that Contractor orders acceleration or overtime due to the acts or omissions of another subcontractor, Contractor will present Subcontractor's claims to the responsible party and Subcontractor's costs are recoverable only to the extent that they are paid by other subcontractors.
- E. To the extent that any Work delays or inefficiencies are caused by an event for which Contractor and/or subcontractors are not entitled to a time extension under the Contract Documents (except for delays described in Article 4.D, for which compensation is allowed only as set forth in that Article), or in situations where the Owner has failed to grant a time extension requested by Contractor or directed a compensable acceleration, Subcontractor will, at Contractor's direction, work outside of regular work hours or take other necessary measures to maintain the current Project Schedule, without additional cost or expense to Contractor unless those costs are paid by Owner to Contractor. If Owner orders acceleration, then Subcontractor will be paid those amounts only paid by Owner to Contractor on account of Subcontractor's acceleration. Other impact or inefficiency costs arising from events covered by this Article 4.E are recoverable by Subcontractor only to the extent paid by Owner.
- F. To the extent that any Work delays or inefficiencies are caused by an event for which the Owner provides a time extension, Subcontractor will receive an equitable extension of time but will not be entitled to any increase in the Subcontract Price or to damages or additional compensation as a consequence of such delays or related inefficiencies unless Owner pays those costs. Contractor will promptly pay Subcontractor the amount paid by Owner for Subcontractor's delay or inefficiencies.

SUBCONTRACT TERMS AND CONDITIONS

- G. Contractor will use reasonable efforts in presenting Subcontractor's claims for additional costs to Owner in those cases where Owner has accelerated Subcontractor or where the Contract Documents provide for payment for Work delays or inefficiencies and Owner's payment of such claims is a condition precedent to Subcontractor's recovery on its claims.
- H. Within three (3) business days after commencement of any event of delay, disruption, acceleration, or other impact, unless a shorter time is required by the Contract Documents, Subcontractor must notify Contractor in writing of the event, and promptly provide any requested additional information. In all cases, Subcontractor must provide written notice to Contractor in sufficient time and form so that Subcontractor's claim may be reviewed by Contractor and, if appropriate, timely presented to the Owner. Compliance with the notice requirements of this Subcontract and the Contract Documents is a condition precedent to any claim for additional time or compensation arising out of a delay.
- I. The remedies provided by this Article 4 are Subcontractor's exclusive remedies for all delays, impacts, inefficiencies or accelerations of the Work.

Article 5: Default and Damages

- A. If Subcontractor fails to fully or timely comply with any duty imposed by Legal Requirements or this Subcontract, including the Contract Documents, it is in default. Subcontractor will be liable to Contractor for all losses, costs (including attorneys' fees and court costs) damages, claims, suits, fines or penalties incurred by Contractor or its sureties to the extent caused by the default. Subcontractor will remain liable to Contractor for the same period of time, and to the same extent, as Contractor may be liable to Owner, other subcontractors or third parties for any claims against Contractor or its sureties by any such parties arising from a default.
- B. If Subcontractor has failed to cure a default within three (3) business days following written notice of default to Subcontractor (or where cure is not possible in that time, has failed to provide an acceptable plan to do so and to commence and continue to cure), then Contractor may do any or all of the following or take any other action permitted by law, without diminishing Subcontractor's liability for damages or costs arising from the default: (i) terminate this Subcontract for default, in whole or in part; (ii) make demand on Subcontractor's surety to perform the Subcontract and/or to indemnify Contractor for costs arising from the default; (iii) allow Subcontractor to continue to perform in whole or in part, but collect all damages arising as a result of the default; (iv) enter on the premises and take possession of all materials and equipment for the purpose of continuing or correcting the Work; (v) supply additional materials or labor at Subcontractor's cost; (vi) employ other firms or persons at Subcontractor's cost to complete or correct all or any part of the Work; or (vii) accept the conditions arising from the default but collect from Subcontractor the difference in value between the condition as required by this Subcontract and the accepted condition. Notice of a default is not required, and if not provided then Contractor will be deemed to have allowed Subcontractor to continue to perform without waiving the default, and Contractor may collect all damages arising as a result of the default.
- C. Contractor may deduct and withhold from payments otherwise due Subcontractor the costs Contractor has incurred or may reasonably incur as a result of a default. When the default has been cured, or when the Project has been completed by Contractor and accepted by Owner, if the unpaid balance earned under this Subcontract exceeds the expense incurred by Contractor or its sureties as a result of the default and in paying any damages or costs due to Owner or third parties because of Subcontractor's default, such excess will be paid by Contractor to Subcontractor. If those expenses and/or damages exceed the unpaid balance, then Subcontractor will pay the difference to Contractor upon demand.
- D. No failure to enforce terms of this Subcontract, nor any course of conduct by Subcontractor or Contractor, will amount to a waiver of any requirement of this Subcontract nor prohibit Contractor from enforcing its rights.
- E. Subcontractor must timely and fully comply with the terms of the Project Quality Control Plan attached as **Exhibit I**.

Article 6: Electronic Documents

- A. Subcontractor will utilize Contractor's electronic document management system if it is made available to Subcontractor for the Project. This system can accept electronic submission of submittals, applications for payment, proposed change orders and other items. By submitting documents electronically, Subcontractor is

SUBCONTRACT TERMS AND CONDITIONS

affirming that it has the appropriate license to use the documents, and it is not violating any copyright or other rights of owners of original documents.

- B. Subcontractor will utilize an electronic plan room to reference drawings if one is provided for its use. Subcontractor is responsible for updating the electronic plans with electronic as-built drawings as is necessary and required by the Contract Documents.
- C. If Building Information Modeling (BIM) is being used on the Project as referred in Article 3.A., Subcontractor is responsible to comply both timely and completely with all requirements for the successful implementation of BIM on the Project. This includes submitting all necessary information on a timely basis that is required to successfully build the BIM model that will be used during construction.

Article 7: Indemnity

- A. To the full extent permitted by law, Subcontractor will indemnify, protect and hold harmless Contractor and its surety (and any other parties as required by Contract Documents) and each of their respective officers, directors, members, managers, agents or employees, (individually, the "Indemnified Party" and collectively the "Indemnified Parties") from any and all claims, losses, demands, judgments, suits, actions and proceedings, as well as all attorneys' fees and costs which may be asserted against any Indemnified Party, to the extent arising out of or occurring in connection with: (i) any default or failure to timely or fully perform as required by Subcontractor; and/or (ii) any injury, loss, damage or death to any person or persons (including but not limited to any Indemnified Party) or any destruction of or damage to property, but only to the extent caused by the negligence or intentional wrongful acts of Subcontractor, its Lower Tiers, and its and their employees, or any other persons for which Subcontractor is responsible.
- B. To the full extent permitted by law, in addition to the express duties to indemnify, protect and hold harmless, there is a duty, separate from the duties in Article 7.A, to defend each Indemnified Party in connection with a claim, demand or suit described in Article 7.A(i) or 7.A(ii) (collectively, the "Claims"). The duty to defend includes all costs of litigation, attorneys' fees, expert and consultant fees, settlement costs and reasonable expenses in connection with the claim or litigation, regardless of whether the Claims are valid or groundless and regardless of whether the defense of an Indemnified Party is maintained by that party or assumed by Subcontractor, as long as the Claims asserted are causally connected to Subcontractor's alleged or actual default described in Article 7.A(i), or to an alleged or actual negligent act or omission or intentional wrongful act as described in Article 7.A(ii). An Indemnified Party at its option may defend any or all of the Claims (at Subcontractor's expense) or tender to Subcontractor the defense of any or all of the Claims. Upon tender to Subcontractor, Subcontractor will promptly assume the defense of the Claims. If an Indemnified Party tenders the defense of a Claim to Subcontractor and Subcontractor fails to assume the defense, an Indemnified Party facing liability for the Claim may defend, compromise and/or settle any such suit or action, and Subcontractor will be bound and obligated to reimburse each Indemnified Party for the amount expended in settlement, and/or the amount expended in paying any judgment, together with all reasonable attorneys' fees and costs of litigation, so long as the Indemnified Party demonstrates that the settlement or compromise was made in good faith and the Claim was one for which the duty of defense was owed. If a Claim under Article 7.A(i) is tendered and the defense is accepted, uninsured defense costs (if any) incurred by Subcontractor are subject to repayment by Contractor only to the extent that a final judgment in connection with the Claim determines that Contractor rather than Subcontractor is responsible for the Claim.
- C. In addition to the foregoing obligations, where the Contract Documents require either Contractor or Subcontractor to provide an indemnity or defense of Owner or any other party in circumstances beyond those stated in Articles 7.A and/or 7.B, Subcontractor agrees that, in respect of its Work under this Subcontract, it will indemnify, defend and hold harmless: (i) all such parties to the full extent required of Subcontractor by the Contract Documents; and (ii) Contractor, to the full extent that Contractor is required by the Contract Documents to indemnify, defend or hold harmless any such party with respect to Subcontractor's Work.
- D. The obligations of this Article are not limited by insurance limits in policies maintained by Subcontractor. Nothing in this Article will be interpreted to require Subcontractor to indemnify, defend or hold harmless any party to the extent such an obligation is prohibited by law. To the extent that applicable law would invalidate any part of the indemnity and defense obligations of this Article, then this Article will be interpreted and applied only to the extent legally permitted.
- E. Neither termination for any reason, nor final payment by Contractor, nor acceptance of the Work, will waive any obligations of Subcontractor under this Article.

SUBCONTRACT TERMS AND CONDITIONS

- F. The cause of action on a claim for indemnity under this Subcontract or any bond provided by Subcontractor will accrue on the later of: (i) the date of a written demand for indemnity to Subcontractor or its surety; or (ii) the date when Contractor or its surety makes the last payment with respect to which indemnity is sought.

Article 8: Insurance and Bonds

- A. Prior to starting Work, Subcontractor will provide a certificate that corresponds, at a minimum, to insurance evidenced on **Exhibit J (Sample Insurance Certificate)** and, if requested by Contractor, certified copies of all insurance policies. All policies will be written through a company authorized to transact that class of insurance in the state of the Project and will be with insurers acceptable to the Contractor with an A.M. Best rating of A- or better. Subcontractor will maintain all insurance for the periods required by the Contract Documents, and in no event less than one year after completion of the Work and for a period equal to any applicable statute of repose years in the case of products-completed operations coverage. Limits and terms shown are the minimum acceptable, and in no way limit available coverage under policies maintained by Subcontractor.
- B. Certificates of insurance for the commercial general liability policies will name Contractor, and others as required by the Contract Documents, as additional insureds for both ongoing and completed operations, as evidenced on Form No. CG 20 10 11 85, CG 20 26 11 85 or equivalent forms (ISO Form B, to be supplied to Contractor together with insurance certificate). The Project/job description and/or description of operations on all certificates, endorsements and other insurance documentation will include the provision "All Work Performed for the Additional Insureds." Commercial general liability policies will:
- i. be written on an "occurrence" basis, with a provision that defense costs are paid in addition to and do not deplete policy limits, provide that the limits apply per project, and contain a severability of interest or separation of insureds provision; and
 - ii. include coverage for broad form property damage coverage, on-going and products-completed operations, bodily injury or property damage, premises operations, blanket contractual liability (for this Subcontract), independent contractor's liability, mobile equipment, elevators, damage from explosion, collapse and underground hazards ("XCU"); and
 - iii. Contain no exclusions for cross-liability or cross suits, soils or earth movement, or residential, condominium, multi-family or multi-unit dwellings.
- C. Subcontractor's insurance will be primary and non-contributory to any insurance maintained by Contractor and/or Owner. Subcontractor will provide thirty (30) days written notice to the Contractor prior to expiration or cancellation of any insurance. Subcontractor is responsible for all deductibles in policies provided by Subcontractor. Renewal certificates and endorsements for commercial general liability will be provided to Contractor, at no expense to Contractor, prior to expiration of such insurance. Subcontractor will insure all material stored off site and all material in transit.
- D. Subcontractor, for itself and on behalf of its insurers, waives claims as to, and releases Contractor, its surety, Owner and any other additional insureds as required by this Subcontract from, liability for loss or damage covered by Subcontractor's policies of insurance, or liabilities or losses that are required to be covered by insurance under this Subcontract. Subcontractor will obtain a waiver of any subrogation right that its insurers may hold or acquire against the Owner, Contractor and any additional insureds by virtue of payment of any such loss covered by such insurance. To the extent permitted by applicable law, Subcontractor waives all rights of its carrier to any statutory workers compensation liens. Subcontractor and its lower-tier subcontractors will submit worker's compensation, commercial general liability, and business auto liability accident reports to their insurance carriers immediately after any accident and will furnish to Contractor copies of such reports.
- E. Subcontractor will require insurance coverage from Lower Tiers identical to that required of Subcontractor. Subcontractor will require Lower Tiers to name Contractor, and others as required by the Contract Documents, as additional insureds on the Lower Tiers' commercial general liability insurance policies and will provide Contractor with a waiver of subrogation from the Lower Tiers' worker's compensation carriers. Subcontractor will require its Lower Tiers to obtain Form No. CG 20 10 11 85, CG 20 26 11 85, or equivalent forms (ISO Form B), for ongoing and completed operations from its commercial general liability carrier, which endorsements will be furnished to Contractor as a condition precedent to Subcontractor's right to be paid for any Work performed by the Lower Tier.

SUBCONTRACT TERMS AND CONDITIONS

- F. If Subcontractor or any Lower Tier fails to procure, maintain or pay for the insurance required by this Agreement, Contractor may, in its discretion and at Subcontractor's cost, establish other financial risk transfer mechanisms and/or secure the same or similar insurance coverage.
- G. Subcontractor will immediately notify (or cause its insurers or insurance broker to notify) Contractor of any notice of cancellation or rescission received from an insurance carrier referring to or relating to a policy which names Owner, Contractor, its parent, subsidiary or affiliated companies or their officers, directors or employees as additional insureds or which may otherwise impact the ability of Subcontractor to fully perform its obligations.
- H. The insurance requirements in this Article are independent from all other obligations of Subcontractor under this Agreement, the Contract Documents or at law, including, without limitation, all indemnification provisions. This Article will survive termination for any reason, and will apply regardless of the enforceability of any other provision in this Agreement.
- I. Contractor or Owner will furnish and pay for builder's risk insurance, which will include fire, extended coverage, vandalism, named windstorm, and malicious mischief. Subcontractor's Work performed and materials stored on the jobsite for incorporation into the Work will be covered to the extent of such policy. Proceeds from the policy will be paid to Subcontractor to the extent paid by the insurance company for Subcontractor's loss. Builder's risk insurance does not include temporary buildings, Subcontractor's tools or equipment not incorporated in the Work. If there is a loss insured under the builder's risk policy, Subcontractor will be bound by any adjustment made between Contractor and/or Owner and the insurance company or companies, and Contractor's liability to Subcontractor for such loss will in all cases be limited to amounts actually paid on Subcontractor's claims. If the builder's risk insurance contains any deductible not paid by Owner, the deductible cost will be paid by Subcontractor to the extent that the loss is caused by Subcontractor. If an event not caused by Subcontractor causes loss to Subcontractor and others, any deductible costs will be equitably allocated among all parties suffering damage.
- J. Unless expressly waived in the Special Provisions or in writing by an officer of Contractor, Subcontractor will pay for, furnish to Contractor at the time this Subcontract is delivered by Subcontractor, and maintain in full force and effect an acceptable 100% performance bond and a 100% payment bond on Contractor's standard bond forms (**Exhibit K**), written by a surety company acceptable to Contractor. The surety must have a Treasury limit of not less than the amount of the Subcontract Price or the sum of \$500,000, whichever is greater, and which will have an AM Best rating of A- or better. The bond cost is included in the Subcontract price unless otherwise provided in the Special Provisions. Upon a default by Subcontractor and notice to the surety, the surety will either indemnify Contractor for losses and costs arising from the default, or timely and fully perform Subcontractor's obligations, or both, all in accordance with the terms of the bond. No change, alteration or modification to or deviations from this Subcontract or the Contract Documents will release in whole or in part any surety on any bond and Contractor will be under no obligation to notify the surety of any such change. Any increase in the Subcontract amount will automatically result in a corresponding increase in the penal amount of the bonds without notice to or consent from the surety, such notice and consent being waived by this Subcontract. Decreases in the Subcontract amount will not, however, reduce the penal amount of the bonds unless specifically provided in any Change Order decreasing the scope of Work.
- K. Contractor may at its option elect to enroll Subcontractor in a Subguard default insurance program in lieu of Subcontractor's providing bonds. If Contractor so notifies Subcontractor in writing, then Subcontractor will provide a letter from its surety confirming that Subcontractor is eligible for and qualified to receive bonds for its Work on the Project and provide other required qualification information. No obligation to provide a bond is excused until Contractor provides a written notice of that waiver. The use of Subguard does not limit Subcontractor's liability.
- L. If required bonds are not timely delivered, Subcontractor is in default. Contractor may either waive such requirement in writing signed by an officer of Contractor, or terminate this Subcontract in whole or in part and seek damages. The insolvency of the surety, the revocation of the surety's right to do business or license to issue bonds in the state of the Project, the removal of the surety from the list of federally approved sureties as indicated by the Federal Register, or the surety's failure to maintain an AM Best rating of A- or better, will each be deemed an act of default of Subcontractor.

Article 9: Changes

- A. Unless a different standard is specified in the Contract Documents or on the Scope of Work or Special Provisions attached, Subcontractor has included in the Subcontract Price all amounts necessary timely to perform all Work

SUBCONTRACT TERMS AND CONDITIONS

shown on and reasonably inferable from the Contract Documents, including all Work needed to obtain Owner's acceptance of the Project. Subcontractor agrees to provide all such Work without additional compensation or time except to the extent that Owner provides a time extension or additional compensation for the Work or unless Contractor specifically requests in writing a change proposal and/or authorizes additional Work in writing. Claims for additional costs or time extensions for errors, inconsistencies or omissions in the Contract Documents will not be recognized unless recognized and paid by Owner. The following apply to all changes or requests for changes:

- i. Subcontractor will be bound by all interpretations of Owner or its authorized representative that, by the Contract Documents, are binding on Contractor.
 - ii. Contractor may at any time, unilaterally or by agreement with Subcontractor, without notice to Subcontractor's sureties, make changes in the Work covered by this Subcontract. Upon written direction by Contractor, Subcontractor will proceed with specified extra work or changes so as not to delay the Work or the current Project Schedule. Any unilateral directive or mutual agreement must be in writing. If a change is ordered in writing by Contractor independent of the Owner or the Contract Documents provided by the Owner, Subcontractor will be entitled to an equitable adjustment in the Subcontract price. If Subcontractor considers any action or inaction by Contractor other than a formal written change order to be a change, it will so notify Contractor in writing within three (3) business days of the action or inaction, and seek a confirmation in writing from Contractor before proceeding with alleged change.
 - iii. Subcontractor will submit requested or required change order proposals in a form reasonably acceptable to Contractor, within five (5) business days of the request or the event giving rise to the proposal, unless a shorter time period is specified in the Contract Documents. Requests or claims that involve the conduct of the Owner or the Contract Documents must always be submitted in writing in sufficient time to allow Contractor to comply with the applicable provisions of the Contract Documents. The quotation must be supported by a time impact analysis, a cost breakdown, a quantity survey, unit prices and unit labor hours, markup for overhead and profit, and any other information requested by Contractor. The amount to be paid to Subcontractor and/or its Lower Tiers for overhead and/or profit for additive changes will be as allowed by the Contract Documents. If a change in the Work consists of both additions and deletions, any overhead and profit will be computed on the excess of the additive costs over deductive costs. Subcontractor will pay any additional bond and insurance premium associated with any change, and keep its surety informed at all times of changes to the Subcontract.
 - iv. Contractor's liability for costs arising from changes ordered by the Owner, or for deficiencies in the Contract Documents provided by the Owner, is limited to the amounts Contractor recovers from the Owner for those events. Payment on account of pending changes made by the Owner will be made only to the extent that Contractor receives payment from the Owner for Subcontractor's changed Work. Unless the change order as executed by Contractor reserves specific rights, an executed change order is a full and final settlement of all claims for time and compensation arising from the changes and events referenced in the change order.
- B. Work done on a time-and-material basis must be signed for daily by Contractor's authorized representative and invoiced weekly no later than the month in which the Work was done. No payment for time-and-material work will be made unless the Work has been authorized in writing by Contractor's representative, outlining the rates and terms of payment and the appropriate daily approval requirements. A signed ticket is not an acknowledgement that additional compensation is due or an acceptance of any Work.

Article 10: Contract Interpretation and Disputes

- A. Any disputes between Subcontractor and Contractor not involving the conduct of the Owner or the Contract Documents will, at the election of Contractor, be settled by arbitration by the American Arbitration Association under its Construction Arbitration Rules, or by a specified arbitrator or different arbitration service if the parties so agree in writing. The arbitration may include other parties if appropriate. The award rendered by the arbitrator(s) is final and may be entered in and enforced through any court having jurisdiction. Arbitration will be in the county of the Project unless the parties agree otherwise in writing. The arbitrator must apply the laws of the state of the Project and this Subcontract in determining responsibility and liability, and explain in writing the factual and legal basis for the decision. The arbitrator will have the authority to award the prevailing party its share of the arbitration costs. Absent such an award, each party will pay its pro rata share of the arbitration costs. The prevailing party will be entitled to attorneys fees for the arbitration only to the extent that such fees are required by applicable law, or to the extent that the arbitrator finds that it is equitable and just to award some or

SUBCONTRACT TERMS AND CONDITIONS

all such fees because either: (i) the claims or defenses of either party were asserted or maintained without a reasonable basis in fact or law; or (ii) the party seeking its fees had made a written offer of settlement which was rejected (or to which no response was provided) and: (a) if the requesting party is the claimant, then the requesting party recovered as much or more than its offer; or (b) if the requesting party is the defendant, then the requesting party prevailed in the arbitration at least to the extent that the claimant did not recover more than the amount of the written offer. The prevailing party in any litigation required to enforce or vacate an arbitration award will be entitled to recover its attorneys' fees and costs.

- B. If disputes between Contractor and Subcontractor involve the conduct of the Owner or an interpretation or requirement of the Contract Documents, then Subcontractor must follow all claim, notice and disputes procedures and requirements of the Contract Documents, and Subcontractor recognizes that it may be joined into any court or arbitration proceedings required by the Contract Documents. Subcontractor is bound to Contractor to the same extent that Contractor is bound to the Owner by the terms of the Contract Documents, and by any and all preliminary and final decisions or determinations made by the party, board or court authorized in the Contract Documents or by law, regardless of whether Subcontractor is a party to the proceedings. Subcontractor will, as a condition precedent to its right to prosecute any claim, comply with all notice, claim and dispute resolution provisions of the Contract Documents, including allowing a reasonable time for Contractor to analyze and forward to the Owner any required communications or documentation. Contractor will, at its option: (i) present to the Owner in Contractor's name or (ii) authorize Subcontractor to present to the Owner in Contractor's name, all of Subcontractor's claims, and answer the Owner's claims involving Subcontractor's Work, whenever Contractor is permitted to do so by the terms of the Contract Documents. If the dispute is prosecuted or defended by Contractor, Subcontractor at its expense agrees to furnish all documents, statements, witnesses, and other information required by Contractor and to pay or reimburse Contractor for Subcontractor's allocable share of reasonable costs incurred by Contractor in connection with the dispute, including attorneys' fees. Subcontractor will timely furnish Contractor with any claim certification required by the Contract Documents or by a Legal Requirement, in a form satisfactory to Contractor, and agrees to indemnify, defend, and hold Contractor harmless from any losses, claims, damages or expenses Contractor may incur as a result of Subcontractor's failure or inability to support any part of the claim as required by the certification or by a Legal Requirement. Contractor will not certify a claim when it cannot do so in good faith.
- C. If Contractor or its surety notifies Subcontractor in good faith that any arbitration or lawsuit brought under Article 10.A involves a controversy within the scope of Article 10.B, then dispute process under Article 10.A must be stayed until the procedures under Article 10.B are completed.
- D. If Contractor elects not to invoke the arbitration procedures set forth in Article 10.A, then all claims, disputes and other matters in controversy between Contractor and Subcontractor arising out of or relating to the Subcontract and covered by Article 10.A will be resolved through litigation in the state court in the County of the Project or in the federal court closest to the location of the Project. The prevailing party will be entitled to recover its reasonable attorneys' fees and court costs in connection with any such litigation. EACH PARTY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT, UNLESS THE MATTER ARISES UNDER ARTICLE 10.B AND THE CONTRACT DOCUMENTS ALLOW THE OWNER A RIGHT TO TRIAL BY JURY.
- E. The warranty period specified in the Subcontract or in the Contract Documents is not the exclusive period during which Subcontractor is liable for defects in its Work; that liability will extend to the end of applicable statutes of limitation and/or repose.
- F. Unless otherwise agreed in writing by the parties, Subcontractor will timely and fully perform the Work during any dispute and Contractor will make payments to Subcontractor to the extent required. Subcontractor will make relevant books and records available for inspection and copying if it asserts a claim for additional compensation or if Contractor reasonably contends that Subcontractor is in default under this Agreement.
- G. This Subcontract is governed by the laws of the state of the Project, without regard to any contrary conflicts of laws rules of that state. Both parties waive all claims for their own special, indirect or consequential damages in connection with any dispute or claim related to this Subcontract or the Project. This waiver does not preclude liability for liquidated damages or consequential damages assessed by Owner or payable to third parties.

SUBCONTRACT TERMS AND CONDITIONS

Article 11: Termination

- A. Contractor may terminate this Subcontract for Contractor's convenience and without cause by written notice to Subcontractor. If there has been a termination for convenience of Contractor's contract with the Owner, then Subcontractor will be paid the amount if any paid by Owner to Contractor as termination costs for Subcontractor's Work. In case of termination just for Contractor's convenience, Subcontractor will be paid for Work executed through the date of termination and reasonable demobilization costs. No recovery will be allowed for overhead or profit on any Work not performed by the date of termination.
- B. If Subcontractor is terminated for default in whole or in part due to its failure to cure or commence to cure a default as required by Article 5.C, that termination will not relieve Subcontractor of any liability for damages, claims or suits caused by any default or arising from the termination. If a court or arbitrator determines that Contractor erred in terminating Subcontractor for default, Subcontractor is limited to the damages it would have recovered had it been terminated for convenience.
- C. Subcontractor is not entitled to unabsorbed overhead, anticipatory profits or any similar damages for any termination. Upon receipt of termination payments, the parties will have no further obligation to each other except for Subcontractor's obligations to perform corrective and/or warranty work relating to Work actually performed by Subcontractor, to indemnify, defend, and hold harmless Contractor as provided in this Agreement, and to maintain required insurances regarding its Work in place.

Article 12: Miscellaneous

- A. If the Contract Documents identify certain public procurement clauses, regulations, or laws applicable to this Subcontract and the Project, then **Exhibit L** restates some or all of those clauses as required by the Contract Documents. Subcontractor confirms its obligation to comply with all applicable clauses in **Exhibit L**, the Contract Documents, and all Legal Requirements. Subcontractor will insure that all clauses and obligations of **Exhibit L** and/or the Contract Documents are included in all Lower Tier subcontracts and purchase orders as required by **Exhibit L** or the Contract Documents. On all projects that receive federal, state or local funding, Subcontractor will comply with Contractor's Equal Employment Opportunity Policy set forth on **Exhibit M** attached and in addition will comply with all such policies promulgated by any governmental authority.
- B. To the extent that Subcontractor is obligated by this Subcontract or the Contract Documents to perform any design or design- assist services, Subcontractor will comply with all requirements of **Exhibit N**.
- C. All notices, consents, requests or other communications will be in writing, unless otherwise expressly provided to the contrary and will be deemed to have been made or given on the date sent when e-mailed, hand-delivered, or transmitted as electronic facsimile to the other party, at the address noted in the Subcontract. If notice is sent by first class mail or by overnight or similar services, it will be deemed made three (3) business days after mailing or upon receipt, whichever is first. Either party may designate a different address by written notice given to the other.
- D. **Exhibit O** includes any changes to this form required by the law of the state of the Project. If any provision of this Subcontract is determined to be illegal, invalid or unenforceable under present or future laws, the parties intend the remainder to be unaffected and enforceable. In place of each clause or provision that may be determined to be illegal, invalid or unenforceable, and to the full extent permitted by law, the court or arbitrator is authorized to add a legally permissible clause or provision as similar as possible to that found unenforceable.
- E. This Subcontract has been reviewed, negotiated and accepted voluntarily and after due consideration, with advice from counsel as the parties deemed appropriate, and represents the entire agreement of the parties. This Subcontract may be amended only by change order signed by the parties. No part of this Subcontract may be assigned by Subcontractor without Contractor's written consent.
- F. Except as required by law, Contractor's sureties have no greater or different obligation to pay Subcontractor than does Contractor, and further are entitled to enforce this Agreement if the sureties perform in place of Contractor. Contractor's surety is an express third party beneficiary of this Subcontract. Owner, Architect and Owner's lender are third party beneficiaries to the extent required by the Contract Documents. There are no other third party beneficiaries.

SUBCONTRACT TERMS AND CONDITIONS

- G. Execution of the Prime Contract by Owner and Contractor is a condition precedent to the effectiveness of this Subcontract.
- H. The persons executing this Subcontract, and any change orders, claims, and lien or claim waivers or releases on behalf of Subcontractor, have actual authority to execute those documents.

Special Provisions

ADDENDUM TO BALFOUR BEATTY CONSTRUCTION, LLC ("Contractor")
-STANDARD FORM SUBCONTRACT- WITH
-STRONG TOWER CONSTRUCTION, LLC DBA KOCH CORPORATION -
("Subcontractor")

The following terms are hereby made a part of the Balfour Beatty Construction, LLC -**Standard Form Subcontract**- between Contractor and Subcontractor (the "Agreement"); to the extent any term set forth below is contrary to or inconsistent with any term set forth in the Agreement the term set forth below shall replace such contrary or inconsistent term:

Article 3 Operations paragraph A Delete entirely

Article 3 Operations paragraph H Delete ... "and/or if requested contribute reasonable to a composite cleanup crew at no additional cost;"

Article 6 Electronic Documents paragraph C Delete entirely

Article 11 Termination paragraph A Insert ... "and exit fees for purchase orders previously executed by Subcontractor for materials and labor required for the Scope of this subcontract."
After ..."demobilization costs"

ACCEPTED AND AGREED to this 1st day of Oct, 20 15

STRONG TOWER CONSTRUCTION, LL DBA KOCH CORPORATION

BALFOUR BEATTY CONSTRUCTION, LLC

By: Benjamin Feihn

Benjamin Feihn
CEO

Its: _____

By: Michael Baumgardner

Its: Sr. Vice President

Exhibit B

Subcontract Scope of Work

Hopes Bronze Storefront System

SCOPE OF WORK

1. DEFINITION, CORRELATION AND INTENT:

Subcontractor agrees to make the project complete in every respect insofar as this Subcontract is concerned in strict accordance with **Bid Package No. 08F – Hopes Bronze Storefront System PACKAGE**, the Contract Documents listed on Exhibit "A" and shop drawings and submittals as approved by the Architect and/or Owner. The Subcontractor shall not perform any portion of the work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data, Manufacturer's Instructions or Samples for such portion of the work. The Subcontract includes but is not limited to providing of all submittals, shop drawings (and associated engineering), trade coordination, layout, hoisting, supervision, tools, equipment, scaffolding, supplies, incidentals, plant, labor, materials, services, cutting, cleaning, and any other work or systems required to perform the work as described below:

2. SPECIFICATION REFERENCE:

The organization of the specifications into divisions, sections and articles, and the arrangement of the drawings shall not control the Contractor in dividing the work among the Subcontractors or in establishing the extent of the Work to be performed by any Subcontractor.

Reference is made to the following Divisions of Work and Specification Sections which relate to the Scope of Work, but is in no way intended to limit or alter the intent of the Contract Documents:

<u>SECTION NO.</u>	<u>TITLE and DESCRIPTION</u>
DIVISION 00	BIDDING REQUIREMENTS, complete;
DIVISION 01	GENERAL REQUIREMENTS, complete;
SECTION 07 900	JOINT SEALERS
DIVISION 08	DOORS, WINDOWS, AND GLASS, as it pertains
SECTION 08 411	BRONZE FENESTRATION AND EXIT DOORS, complete;
DIVISION 08	HOPE'S STEEL FENESTRATION AND EXIT DOORS, complete;
SECTION 08 800	GLASS AND GLAZING, as it pertains
SECTION 08 710	FINISH HARDWARE, as it pertains

3. INCLUSIONS:

It is understood and agreed this **Hopes Steel Storefront System** includes all inclusions as described in the following subparagraphs regardless of whether or not they are in the above specifications or any other specification section or shown on the plans:

3.A. Design Intent

1. It is the intent of the Scope of Work to convey to this Subcontractor the total responsibility for the Hopes Steel Storefront Work required for the HOTEL AT MARION SQUARE. This Subcontractor

understands that due to the "Fast Track" nature of this project, Construction Documents may not be 100 percent complete and will develop as the project progresses. However, the Subcontractor shall perform all work required or reasonably inferred under the best practices in the Construction Industry for a complete and fully functional and operational system(s) for the purpose intended.

2. This project will require the Subcontractor to work as a team member with the Contractor and other members of the project team through the completion of construction to assure that all work required by this Scope will be performed in such a manner that it is complete, fully functional, and in accordance with the contract documents within the contract price.
3. References to the term "Contractor" in the Drawings and Specifications shall be interpreted to mean work by this Subcontractor as they relate to this scope of work.

3.B. Hopes Steel Storefront Scope of Work Specific Inclusions

The Subcontractor shall furnish and install the work of this Subcontract in accordance with the Contract Documents, including, but not limited to the following:

1. Subcontractor shall be responsible for all necessary system design and engineering of Storefront, and entrances for the project in accordance with the design intent or criteria established by the Contract Drawings. When required by the Contract Documents, all engineering will be provided by a Professional Engineer.
2. Engineering shall include attachment of all Store Front and other glass and glazing components to the building structure, taking into consideration all wind load and dead load pressures, thermal, seismic and other movements as well as allowable tolerances in the fabrication and installation of adjacent materials such as concrete, steel, or stone work.
3. Ramps and ladders as required for general use, including relocation and maintenance thereof.
4. Any provisions necessary for cold or hot weather work as required including hot water, temporary heat, enclosures, blankets, cooling, etc.
5. Include mock-ups per specifications.
6. Subcontractor must comply with any third party water testing that may be required by the owner. Cost of testing is not included.
7. Work includes all anchors, blocking, bracing, kickers, framing, fasteners, and shims necessary to securely attached systems to the building structure as required for structural attachment, wind-loading requirements, seismic and all governing codes and requirements.
8. Subcontractor shall provide and install all Steel grilles at custom bronze frame extrusions.
9. Subcontractor shall provide and install all channels or supports encapsulated in this work as required. Steel and miscellaneous metals shown and sized on Contract Documents will be provided by the structural steel / miscellaneous metals bid package.
10. Subcontractor shall provide and install all flashing at Steel fenestration with finish, pattern, texture, color, manufacturer, and products as per exterior finish materials schedule, drawing A201 and specifications.
11. Subcontractor shall provide and install all coping, flashing, counter-flashing, end dams, thresholds, sills and other trim pieces in contact with work in this package.
12. Submit blocking and backing requirements and location drawings in accordance with Balfour Beatty's schedule. Blocking and backing that is not submitted will be the responsibility of this subcontractor.
13. Subcontractor shall provide and install all caulking, sealants, and insulation in contact with or adjacent to work in this package.

14. Subcontractor shall provide cleaning and label removal for all exposed surfaces furnished under this package.
15. Subcontractor shall furnish and install all BRZ rolled steel glass doors and Transoms required by the Contract Documents.
16. Subcontractor shall furnish and install all hardware for all entrances complete as indicated by the door schedule and specifications. Subcontractor shall be responsible for furnishing and installing all door hardware required for a fully operational (reasonable) system whether fully detailed or not, including thresholds, weather stripping and other sweeps or devices for moisture or air infiltration. All steel and glass entrance doors shall be pre-fit, pre-mortised, and pre-machined.
17. Subcontractor shall be responsible for all caulking and sealants both interior and exterior for a watertight installation, including specifically all exterior joints between the work of this Subcontract and adjacent materials such as steel, cast-in-place concrete, masonry and stone as indicated as specified. Sealants include all joint preparation, primers and backer rods.
18. Subcontractor shall furnish and install all metal flashings integral to glass and glazing systems to maintain a water tight installation.
19. Subcontractor shall provide all permits, plan checks, licenses, inspections and associated fees (if necessary) to complete the work of this Subcontract. Building permit is by General Contractor.
20. Subcontractor, if applicable, shall cooperate fully with all building inspection officials with the review and inspection of the work of this Subcontract. Subcontractor shall promptly remedy all rejected or disapproved work by building inspection officials.
21. Subcontractor, if applicable shall cooperate fully with all testing laboratory and inspection personnel with the review and inspection of the work of this Subcontract. Subcontractor shall promptly address remedies required for non-conforming work.
22. Subcontractor shall cooperate fully with General Contractor and other key trades to ensure obtaining the Certificate of Occupancies in an expeditious manner.
- 23.

3.C. Related Requirements

The following related requirements apply to the work of this Subcontract whether provided by the Subcontractor, Tier Subcontractors or Others:

1. Man lift and/or Lull-Forklift

3.D. Coordination with Other Trades and Authorities

This Subcontractor is responsible for coordinating with the other trades and authorities to ensure the proper installation of the work and to ensure work is not delayed.

1. Subcontractor shall cooperate fully with all building inspection officials, 3rd party inspectors and testing agencies regarding the review and inspection of the work of this Subcontract. Subcontractor shall promptly remedy all rejected or disapproved work.

3.E. Field Engineering

This Subcontractor shall be responsible for all layout and engineering, including horizontal and vertical control which is required to complete this Scope of Work. Subcontractor is further responsible for coordination, layout, and location as applicable of all equipment, piping, conduit sleeves and block outs. The General Contractor will provide:

1. Two control Lines on each level and in each structure.

Balfour Beatty Construction

2. Bench marks for elevation control on each level and in each structure.
3. One permanent bench mark for elevation control as necessary to complete work below grade.

3.F. Special Schedule Requirements

1. N/A

4. EXCLUSIONS:

- A. No Post applied profile trim
- B. Pre-order measuring- see clarifications
- C. Hardware per sets 21,24,36, 39,40,41,42,77, 79

5. UNIT PRICES:

Balfour Beatty Construction reserves the right to modify the work in accordance with the following Unit Prices at the costs as noted. Unit Prices are good throughout the duration of the project and include all burdens, overhead markups, and profit.

- A. Foreman Labor Rate \$54.77 Per Hour
- B. Carpenter \$47.63 Per Hour

6. ALTERNATES OR OPTIONS:

Balfour Beatty Construction reserves the right to modify the work in accordance with the following alternates or options at the costs as noted. Alternates or Options are good throughout the duration of the project and include all burdens, overhead markups, and profit.

- A. N/A

7. ALLOWANCES:

Balfour Beatty Construction has included the following allowances within this subcontract for the exclusive use of the Contractor. They are not intended to allow for or be included for any base bid scope of work required by the Contract Documents, or as indicated in this Contract for this subcontract scope of work. These allowances shall not be used without prior written direction and approval by the Contractor. Allowances are good throughout the duration of the project, and any unused portions of these allowances shall be deducted from the subcontract value and returned 100% to the Contractor

- A. N/A

8. RECAP OF CONTRACT AMOUNT:

The Total Subcontract Amount is arrived at and recorded as follows:

Balfour Beatty Construction

SUBCONTRACT AMOUNT	\$ 1,236,745.00
Bond	\$ 18,285.00
Total	\$ 1,255,030.00

8. **CLARIFICATIONS:**

The following clarifications apply to this Subcontract:

- A. Based on Hopes Jamestown 175 Series hot rolled steel, factory painted finish, no post applied profile trim included.
- B. All Type Q Radius Windows are included
- C. One Exterior Mock-up is included
- D. Balfour Beatty will be responsible for maintaining all building opening dimensions per the shop drawings.
- E. All Hardware listed in spec section 08 710 will be supplied by others.
- F. Hopes price Includes doors to be prepared to receive door hardware supplied by others, pivots, door seals and bronze lock box per spec section 08 411 pat 2.4

END OF SCOPE OF WORK



SUBCONTRACT SPECIAL PROVISIONS

This information must be provided to all parties with which Subcontractor or Supplier contracts directly for labor, services or materials on the project. Further, the obligation to provide all lower tier subcontractors and suppliers with this Lien Agent information must be flowed by Subcontractor or Supplier to those with which it contracts.”

The following exhibits are omitted:
Exhibit L Publically Funded Provisions
Exhibit N Design Build/ Design Assist Rider
Exhibit O State Law Rider

The following exhibits are Included:
Exhibit W Stored Materials
Exhibit X Surety letters
Exhibit Y Owner Contract
Exhibit E Site Logistics
Exhibit H Project Schedule
Exhibit I Quality Control

I. PROJECT PROVISIONS

These provisions shall apply to all Subcontractors on this particular project. The following Special Provisions modify, delete and/or add to the Subcontract Agreement. Where any paragraph or subparagraph in the Subcontract Agreement is supplemented by one of the following paragraphs, the provisions of such paragraph or subparagraph shall remain in effect and the special Provisions shall be considered as added thereto. When any paragraph or subparagraph in the Subcontract Agreement is amended, voided or superseded by any of the following paragraphs, the provisions of such article, paragraph or subparagraph not so amended, voided, or superseded shall remain in effect.

1. In addition to the Standard Form Agreement Subcontractor must comply with paragraphs A through F below:
 - A. Begin submittal of shop drawings, product data, samples, certificates, test reports, etc. **no later than 3 calendar days after notice of award of Subcontract.** (Issuance of subcontract shall not be cause for delay of Submittals.) Failure to submit correct or timely submittals does not relieve this subcontractor of material delivery obligations in accordance with the project schedule.
 - B. Complete submittal of shop drawings, certificates, test reports, etc. no later than 60 calendar days after Contract Execution.
 - C. Resubmit any items within a maximum of 14 calendar days after being returned for correction (or as required to maintain schedule). Failure to submit correct or timely submittals does not relieve this subcontractor of material delivery obligations in accordance with the project schedule.
 - D. The Trade Payment Breakdown shall include a line item for submittals and as-builts in an amount agreeable by the project team. This dollar amount will be released when all submittals are complete and approved with confirmed shipping dates. Subcontractor shall include with each payment application a material log. The material log must be fully executed and include all major materials and equipment used on the job with confirmed delivery dates noted for each

material approved. Subcontractor must furnish from supplier with material log, written evidence of confirmed shipping dates of major materials and equipment.

- E. All subcontractors shall submit to the Construction Manager's field office all Material safety Data Sheets (MSDS) for all hazardous substances as defined by Government authorities at the time of delivery. This shall be a job specific submittal, not a generic company-wide submittal.

2. SCHEDULE OF VALUES: In addition to any other provisions listed herein, Subcontractor hereby agrees to allocate a reasonable and fair share of cost as determined by Contractor in the schedule of values for requisitioning of the following items of work under this Agreement.

- A. Material Submittals - to be requisitioned as progress billing .
- B. Clean up - total clean-up cost allocated to this Project to be requisitioned based upon actual performance of clean up. (see Item #43 requirements)
- C. Close -Out information - including as-builts, owner manuals, warranties, etc. to be requisitioned as a lump sum amount upon 100% completion of these submittals. (see Item #1E above)
- D. Punchlist - value shall be 2% of subcontract value to be requisitioned as a lump sum amount upon 100% completion.

3. SCHEDULE: Subcontractor is cognizant of the project schedule and has factored all required material expediting requirements, overtime and manpower loading to complete the work within Contractor's Project schedule.

4. METHOD OF CALCULATING PAYMENT FOR EXTRA WORK: The cost or credit to Contractor resulting from a change in the Work shall be determined in one or more of the following ways at Contractor's option, in addition to the Standard Form of Agreement.

- A. Lump Sum - A change order cost or credit may be determined by mutual acceptance of a lump sum proposal properly itemized and supported by sufficient data to permit evaluation.
- B. Unit Price - A change order cost or credit may be determined by the use of the unit prices stated in the Contract Documents or subsequently agreed upon.
- C. Time and Materials - A change order cost or credit may be determined on a time and material basis, using agreed upon hourly labor, equipment rates, material costs and applicable markups as indicated in the Standard Form of Agreement.
- D. Other - A change order cost or credit may be determined by Contractor without any recourse by Subcontractor if mutual terms and acceptable pricing cannot be agreed to by using any of the methods described in Items A, B, or C above.
- E. No change order work will be undertaken by Subcontractor without prior acknowledgment and approval of Contractor.
- F. All allowable mark-ups breakdowns shall be per Owner Contract Agreement. This project shall allow a combined profit and overhead of 15% of the sum of the Subcontractor's direct costs for labor (including labor burden) and material (including sales tax). For example: Subcontractors maximum cost for a change = [(Subcontractors direct labor cost including labor burden) + (Subcontractor's direct material cost including sales tax) + (Sub-Subcontractor(s))] x (1.15).
- G. Back Charges – In the event of back charges between the Contractor and the Subcontractor or the Subcontractor and another Subcontractor, the Contractor and the Subcontractor will be

entitled only to the direct cost of the additional work or repairs in question. No percentage mark-ups for indirect costs such as overhead and profit will be allowed.

- H. Pricing - No greater than (10) days of receipt of a change the Subcontractor is required to provide pricing for change in the work to the Contractor.

5. **WORKING HOURS, OVERTIME, WEEKEND WORK & NOISEY WORK:** Unless changed by Contractor and posted at the job site, standard working hours are from 7:00 a.m. to 7:00 p.m. Monday through Friday. All subcontractors shall observe these hours unless otherwise directed. Additionally, it is understood that to meet certain schedule requirements of the project it may be necessary to perform some work tasks during off-hours, and that workdays in excess of eight (8) hours will be required as a normal course of performing the Work. Any additional costs incurred by the Subcontractor, in the performance of this shift work, are the responsibility of the Subcontractor. Work hours must be adhered to; if hours are not met then deductive change order will be written for hours not worked each week (labor to be deducted at same rate as approved additive change orders). 40 hours per week **minimum** work hours by full crew for work involved that week. It is further understood that due to the urban working environment and proximity to the Embassy Suites Hotel that working hours for active construction work (exclusive of meetings, general coordination and some deliveries (as determined by city and neighboring properties as acceptable) that work is to be limited to 7:00am to 7:00pm, Monday through Friday, with 7:00 am to 5:00 pm hours governing on Saturdays. No Sunday Work.

It is agreed that the Subcontractor will make up any normal workday (Monday through Friday) time lost by working Saturday and/or extra shifts as necessary to maintain the project schedule at no additional cost to Contractor.

6. **MOBILIZATIONS, CONCURRENT WORK, PHASED TURNOVER:** Subcontractor acknowledges that the Project will have a phased turnover in accordance with the Project Schedule and that multiple mobilizations will be required and are included as part of the Subcontract Agreement. Additionally, Subcontractor acknowledges that the Project has multiple building areas and concurrent work on each building area will be required in order to complete on schedule, and that all costs for doing so including utilizing separate crews, supervision, after hours deliveries, shop drawings, inspections, etc. are included.

Subcontractor shall mobilize within three (3) calendar days of Contractor's notification with complete work force, materials, supervision, labor and equipment available to maintain and complete scheduled activities

Subcontractor also acknowledges that subsequent bid packages and scopes of work will proceed and/or follow work under this agreement. Subcontractor is herein required to schedule and coordinate with such subsequent bid packages to ensure continuity of work.

7. **LIMITATIONS OF OPERATIONS:** Subcontractor hereby agrees to arrange his Work and his material as not to interfere with the operations of other Subcontractors engaged upon adjacent Work and to join his Work to that of others in a proper manner, and in accordance with the intent of the Plans and Specifications and to perform his Work in the proper sequence in relation to that of other Subcontractors, all as may be directed by Contractor.
8. **COORDINATION:** In addition to the Standard Form Agreement, Subcontractor shall coordinate his Work with all of the other Work which must be performed in the Project. To facilitate this coordination, there shall be coordination meetings, the attendance at which shall be mandatory for Subcontractor's coordination responsibility. Daily coordination meetings with Contractor's Superintendents shall be held every work day at Contractor's on-site office at 6:30am until such time as Contractor waives or reinstates this requirement.

All Subcontractors shall have their respective Superintendents attend this meeting. All Subcontractors shall provide daily force reports by 8:00am for the previous day's work and Pre Task Plans (PTP's) by 8:00am for the current days work. All daily force reports and PTP's shall be on Contractor's form.

9. **MEETINGS:** - Subcontractor understands that weekly (or a frequency as otherwise determined by the contractor) project meetings, coordination meetings, subcontractor meetings, superintendent meetings, schedule meetings and separate weekly safety meetings will be held on the job site. Subcontractor agrees to have the necessary and competent personnel attend all required meetings.
10. **PRE-INSTALLATION CONFERENCE:** Subcontractor shall attend a pre-installation conference conducted by Contractor which may be attended by Architect/Engineer, Owner's representative and Contractor's staff as deemed necessary by Contract Documents and scope of work. At this conference, Subcontractor's personnel, including Project Manager, Superintendent and any other key personnel (including those specifically requested to be in attendance by Contractor) will be introduced and the Scope of Work will be discussed along with other key issues such as workmanship, quality control, schedule, safety, etc.
11. **PROJECT SAFETY:** In addition to the Standard Form Agreement, Subcontractor acknowledges Contractor's commitment to providing a safe workplace and will cooperate and participate in establishing a Project Safety Plan. Said plan, at a minimum, will include the formation of a Project Safety Team which will meet regularly to review the status of overall Project Safety, discuss accidents and near-misses, promote training and safety awareness and develop mutual incentive programs that might be applicable. Furthermore, Subcontractor will provide written notice of who their on-site Safety Competent Person will be and forward any and all MSDS related to their Work to Contractor prior to start of any work.
 - a. 100% glove use will be required in all cases other than in instances where manufacturer/OSHA recommendations/standards specifically prohibit the use of gloves due to added risk involved with their use. This scope of work is allowed to have finger cutouts.
 - b. All Subcontractors are required to use platform type step ladders.
12. **DOCUMENTS:** Subcontractor shall be responsible for securing complete sets of Construction Specifications and Drawings. Subcontractor shall procure and pay for all required plans and specifications which shall be on file and available at a local blueprint company designated by Contractor.
13. **UTILITIES VERIFICATION:** Subcontractor shall verify locations of all existing utilities within the Construction Areas prior to commencing the Work. Subcontractor shall abide by the "Underground Facility Damage and Safety Act" which requires anyone doing any type of excavating, tunneling or demolition to call all agencies having jurisdiction. An excavator must call the local utility companies, and the Owner's Facilities and Maintenance Department not less than two or more than five business days before beginning any excavation. Any damage to existing utilities during construction will be repaired immediately as required to minimize disruption of the businesses and residences at the expense of Subcontractor that caused the damage.
14. **"NO CHANGE" AGREEMENT:** It is the intent of this Agreement and consistent with the prior negotiations of this Agreement for Subcontractor to perform the Work under this Agreement without extra Change Orders to the Contract unless specifically requested by Owner, Architect or Contractor. Subcontractor agrees and understands that the Contract Documents as defined in "Exhibit A" of this Agreement may be incomplete in detail or contain inconsistencies. Therefore, during the bid process, subcontractor should have received clarification in details via RFI to understand how to perform its scope of work. Subcontractor herein further represents and agrees that its Scope of Work is complete and shall be performed to Contractor's and Owner's complete satisfaction without cause for claim of additional cost or change orders unless additional scope is added by the owner or Architect. It is further understood and agreed that Contractor has entered into a Guaranteed Maximum Price (GMP) contract with Owner to complete this project based on the Contract Documents identified and described in "Exhibit A". Accordingly, claims for additional cost for inconsistencies in the Contract Documents will not be recognized. The

subcontract lump sum price includes all cost to complete the intended Scope of work as represented by the Contract Documents. Should Owner initiate additional work to the Scope of Work, or upgrades to the Work originally described, a change order will be negotiated for the same between Contractor and Subcontractor.

16. **FIREPROOFING AND INSULATION:** Subcontractor will be responsible for the patching of all fireproofing and insulation materials damaged by the execution of his Work. This shall include any patchwork around hangers and/or supports. Also, subcontractor shall provide all necessary protection materials to prevent the work of other trades from being made dirty due to the fireproofing patchwork for your specific trade.

17. **FUEL STORAGE:** On-site storage of fuel will not be permitted.

18. **GUARDRAILS / SAFETY DEVICES:** Subcontractor shall install, maintain and replace all required guardrails in accordance with OSHA Standards as a minimum for the purpose of safety at all openings and suspended work, created as a part of their scope of work. Subcontractor is responsible for fall protection of all employees

Subcontractor is also responsible for all temporary access to facilities, temporary fencing, overhead protection, signs and/or barricades as may be required to perform their Scope of Work, in addition to Contractor's furnished construction fencing.

Subcontractor agrees that if in the performance of their work it becomes necessary, convenient or advisable to remove, replace or interfere with any safety devices or controls installed by the Contractor or another Subcontractor, the Subcontractor will replace or restore such devices or controls at their own expense. In the event such safety devices or controls are not so replaced or restored, the Subcontractor agrees to reimburse the Contractor or Subcontractor for doing so.

19. **SCAFFOLDING:** Subcontractor shall provide all scaffolding (or other means of access) required for the performance of this Subcontract. All scaffolding shall be erected in complete accordance with the latest OSHA Standards, and Balfour Beatty Exhibit D as a minimum including all handrails, mid-rails, toe-boards, fully decked platforms, entrance and exit points, proper counterweights and anchor points, material landing and staging areas, material hoisting requirements, proper access ladders or stairs, etc.

20. **EXCAVATION:** All excavations must be in compliance with OSHA standards as a minimum. Subcontractor shall adhere to Contractor's Safety Program for excavations which may be more stringent than OSHA requirements. Subcontractor shall complete and submit to Contractor a job hazard analysis prior to commencement of all excavations. All soils for open cut excavations shall be classified as Type C (1.5:1 slope), unless Subcontractor can provide signed and sealed Engineering to Contractor illustrating existing soil conditions are allowed to withstand reduce slope cuts. Contractor Trench Safety Program is initiated in excavations exceeding 4'-0" in depth. Subcontractor shall name Competent Person prior to starting work.

21. **OSHA VIOLATIONS:** In addition to the Standard Form Agreement, In the event Subcontractor is cited for violations of the Occupational Safety and Health Act, he shall be responsible for all penalties assessed against him. In the event Contractor is penalized due to Subcontractor's actions or failures to comply with the Occupational Safety and Health Act, Subcontractor shall hold Contractor harmless. Any penalties assessed against Contractor for violations of Subcontractor shall be deducted from amounts due under this Agreement.

22. **DOCUMENT ORDER OF PRECEDENCE:** In addition to the Standard Form Agreement, In the event of any conflict or discrepancies in the terms of the Contract Documents, this Agreement, attached Exhibits, manual, code or laws, the document order of precedence shall be interpreted as the most stringent requirement within the above as solely determined by Contractor.

23. **FEES:** In reference to the Work in this Agreement, Subcontractor shall obtain and pay for all required Federal, State, City and County Permit Fees, Business License Fees, Right-of-Way Permits and Bonds,

Encroachment Bonds, License Fees and Inspection Fees, including all Re-Inspection Fees, for their scope of work unless specifically excluded in Section II (Scope of Work) enclosed.

24. WARRANTY PROVISIONS: Warranty provisions as mentioned in the Standard Form of Agreement are enhanced as described below (the words Guarantee and/or Warranty are synonymous):

- A. Warranty period for this project is 1 year.
- B. Subcontractor warrants to Owner and Contractor that all materials and equipment furnished under this Subcontract will be new, unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. For all Work not conforming to these requirements, including substitutions not properly approved by Architect or Contractor, Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- C. All warranties shall be in writing on Warrantor's stationery or official forms as designated by Contractor and signed by an authorized official of the Warrantor's Company. Contractor hereby agrees to provide written assignment to Owner of all warranties. Warranty term shall not commence until all of the following conditions have been satisfied.
 - (1) Certificate of Occupancy for the building areas, or its equivalent
 - (2) Satisfactory completion of item of Work or system by Subcontractor
 - (3) Formal acceptance of the Work by Owner, Architect and Contractor
 - (4) Subcontractor has provided all the specified warranty/guarantee documentation to Contractor.
 - (5) Subcontractor has provided specified training for the operation and maintenance of the system and/or equipment.
 - (6) Subcontractor has provided maintenance manuals for the operation and maintenance of the system and/or equipment.
- B. Failure to respond to warranty Work during the term within forty-eight hours of written notice and/or diligently pursue corrective measures shall be considered a Subcontractor breach of warranty. Subcontractor and his Surety shall be liable for all expenses incurred from such failure to respond.
- C. If within any warranty period, repairs or changes are required in connection with the warranty Work, which in the opinion of Contractor and/or Owner is rendered necessary as a result of the normal use of material, equipment, or workmanship which are defective, or not in accordance with the terms of the Contract Documents, Subcontractor and/or its Surety shall, promptly upon receipt of notice and at his own expense, proceed to:
 - (1) Place in satisfactory condition in every particular all such warranted Work, correct all defects therein.
 - (2) Make good all damages to the structure or site, or equipment or contents which, in the opinion of Contractor or Owner, is the result of the use of materials not in accordance with the terms of the Contract Documents.
 - (3) Make good any Work, materials, equipment, contents of structures or site disturbed in fulfilling any such warranty.
 - (4) In addition to the foregoing warranty, if any more-stringent terms exist in Owner Contract, then those terms shall apply.

24. **PUBLIC CONVENIENCE AND SAFETY:** Subcontractor shall, at all times, so conduct his Work as to ensure the least possible obstruction to traffic. The safety and convenience of the general public, operational service providers, residences and/or businesses located near the Project, and the protection of persons and property shall be provided by Subcontractor.

In addition, Subcontractor understands that the Work is to be constructed near businesses and residences and Subcontractor shall use its best efforts, in conformity with the applicable standards of care, to perform its Work hereunder in a manner which will not interfere with the ongoing business operations including, without limitation:

- A. Controlling noise, dust, insects, vermin and pests,
 - B. Requiring appropriate attire and conduct for Subcontractor's workers and the workers of Subcontractor of every level. Complaints received regarding attire or conduct will be grounds, at Contractor's sole discretion, for demanding removal of the offending parties.
 - C. Maintaining Work hours and noise levels in accordance with the applicable City of Charleston Requirements, County and City Ordinances and Contractor's requests.
 - D. Communication and/or fraternization between Subcontractor's personnel and the general public are strictly prohibited.
 - E. Unapproved Utility shut-downs or damages.
25. **STREET CLEANING:** Special care must be taken to prohibit any accumulation of dirt, dust and debris which might be blown or tracked into public areas or contaminate interior air quality. Subcontractor shall provide prompt and continuous cleaning and maintenance of street and sidewalk areas which might pose potential damage to the public in the vicinity of the Work including, but not limited to, covered walkways, building access areas, public right of ways, etc. Furthermore, Subcontractor is responsible for cleaning all vehicles prior to exiting site. Washing streets with water containing sediment particles into storm water system is prohibited.
26. **VEHICULAR AND PEDESTRIAN TRAFFIC:** Subcontractor shall not block off any public or private street nor use any part thereof for storage of materials unless approved by all applicable governing agencies and Contractor. Where affected by the Work, vehicular and pedestrian traffic shall always be accommodated and maintained in accordance with any special local requirements or in the absence of any such requirements, in accordance with the instructions of Contractor. Proper signage, indicating re-directed traffic shall be placed in appropriate locations throughout the project duration.
27. **BARRICADES AND DANGER/WARNING SIGNS:** Subcontractor shall provide and maintain suitable danger and warning signals, lights, signs, signal devices, barricades, flagman and/or watchman and take all necessary precautions that the barricades are appropriately located so as to give proper and unmistakable warning of hazards, structures or equipment involved under the Contract and shall remove same upon completion of the Work.
28. **SIGNAGE:** No signs will be permitted to be displayed at the jobsite or on trailers without written approval by both Contractor and Owner.
29. **RADIOS:** No radios (music radios, disc man, headset radios, MP3 players and the like.) other than two-way communication type will be allowed on the jobsite. Subcontractor agrees to furnish all his project managers, superintendents, supervisors, foremen, and lead men with two-way Radios with multiple channels to be used to communicate with Contractor and other Subcontractors on site. This requirement shall also be included for all Subcontractor lower tier subcontractors. Radio use and frequencies will be coordinated with the Contractor.

30. **FIRES / FIRE EXTINGUISHERS:** No fires for hand warming, trash disposal, land clearing etc. will be permitted on-site. Subcontractors will provide temporary fire protection system(s) within the immediate area of their work and required by the local Fire Marshall, and the applicable local, state, federal, and insurance underwriter requirements. The Contractor will provide general fire extinguishers in accordance with OSHA requirements.

31. **JOBSITE STORAGE / DELIVERIES:** Subcontractor is aware of the existing Site Conditions, and limited space availability that this urban site provides. On-site storage of materials and equipment will not be allowed except as specifically approved by Contractor's Project Superintendent or Project Manager. Unless specifically approved in writing, Subcontractor shall not assume any space is available for on-site storage.

All deliveries for Subcontractor shall be coordinated through Contractor no less than 24 hours in advance. If scheduled deliveries are not ready at the appointed time or if deliveries arrive without the ability to be unloaded, Contractor may refuse acceptance of materials and require deliveries to be rescheduled. It is understood that if hoisting of material is required for delivery (either via Crane or Buckhoist), or if street closure lane access is required that in order to maintain project schedule and maintain compliance with City Ordinances that these deliveries will need to be conducted after normal business hours as identified in Item 6 above.

All materials and deliveries must be coordinated and scheduled with Contractor prior to coming on site. Contractor will not allow delivery of materials to site without Subcontractor being represented on-site. Contractor will not receive, sign-for, accept or be responsible for materials delivered to the site or site office. Subcontractor has included in his subcontract price all off-site and phased storage as may be required.

Approval by Contractor of material storage locations shall only be construed by Subcontractor as temporary and for limited time duration. Contractor will not allow Subcontractor to procure "bulk deliveries" for Subcontractor convenience or for manufacturer purchase agreements. Each delivery of material shall only be approved for those materials of immediate or near future installations. Subcontractor has included in his subcontract price all off-site and phased storage as may be required. In addition to article 4.6 of the Standard Form Agreement, Contractor will not be responsible for relocation costs of stored materials on-site since utilization of on-site storage for convenience is at Subcontractor's risk.

Subcontractor is also responsible for the removal, consolidation, relocation, securing, etc. of all materials and equipment not permanently secured to building structure to meet design strengths and in case of impending weather condition emergencies at no cost to Contractor including hurricanes, snow storms, etc.

32. **CONSTRUCTION PARKING:** Subcontractor shall advise all of their employees, and tiered trades that NO on-site parking is available. Requirements for supervisor and worker off-site parking, and the costs associated with such shall be the responsibility of the subcontractor. Requirements for worker tools and delivery equipment shall be the responsibility of the subcontract and in accordance with item #32. Unsafe or unauthorized parking or temporary drop offs will result in vehicles being towed at Subcontractor's and/or vehicle owner's expense.
33. **SITE ACCESS:** Access to the site shall be gained only in areas and/or a route as determined by Contractor's Superintendent, and may be modified only to accommodate construction activities. Subcontractor is responsible for all ancillary removal and repairs costs for access points outside the Contractor provided access entrances, as well as any added traffic control or flagmen.
34. **ACCESS PANELS / ACCESS DOORS / COVERS:** Subcontractor shall furnish and install all access panels, access doors, and covers necessary to provide access to the Work of Subcontractor either concealed by Subcontractor's scope of work or by Scope of work of others including walls, soffits, floors, and ceilings. All proposed locations to be submitted for acceptance prior to installation. Subcontractor shall be responsible for coordinating and labeling the location and sizes of the required framed openings with respective trades during construction of walls, soffits, ceilings, and floors. Type of panels shall

match architectural and mechanical specifications (as approved by Owner) and match fabrication material to its exposed environment.

35. **BLOCKING AND BACKING:** Subcontractor shall furnish and install blocking and backing as required for installation of this Work. If excluded in Scope of Work, Subcontractor will be responsible for coordinating the blocking and backing as required for its installation of the Work. Blocking is excluded.
36. **TOUCH-UP PAINTING & CLEANING OF EQUIPMENT:** Subcontractor shall provide all equipment touch-up painting and cleaning of equipment as required for Subcontractor's Work. Owner expects equipment in as new condition at completion of project.
37. **PRECONSTRUCTION ACTIVITY:** Subcontractor shall resolve and include the costs of any and all preconstruction activities in the anticipation of this project including but not limited to manufacturer site visits, mock-ups, attendance to meetings, etc.
38. **STRUCTURAL SUPPORT FRAMING (MISCELLANEOUS):** All miscellaneous structural support framing not indicated on the Contract Documents required at openings in floors, decks, and walls for this Work are by others.
39. **FLOOR AND ROOF OPENINGS:** Subcontractor is responsible for initial covering, labeling and maintaining covers of all floor/roof penetrations related to this Scope of Work from time of placement in building structure through 100% completion of penetration concealment on permanent basis.
40. **WELDING MACHINES / FIRE WATCH:** Electrically powered welding machines shall not be allowed for use on this site except when explicit written approval is granted by Contractor where special circumstances of building construction require such machines. If electric welding machines are used, the necessary power *source*, service and power consumed shall be provided by Subcontractor. It will also be Subcontractor's responsibility to install all subpanels required for his convenience.

When welding, torching or other hot work operation occurs normal fire prevention precautions are not sufficient, Subcontractor shall provide additional personnel assigned to guard against fire while the actual work is being performed, and for a sufficient period of time (minimum 45 minutes) after completion of the work to ensure that on possibility of fire exists.

41. **TEMPORARY CONSTRUCTION FACILITIES AND UTILITIES:**

A. **Furnished By Subcontractor:**

Subcontractor field offices will NOT be permitted on site. All cost for offsite office space will be the responsibility of Subcontractor.

Except as expressly set forth elsewhere, Subcontractor shall, as part of the Scope of Work, supply, install, properly maintain, permit and remove all temporary construction facilities and utilities necessary for the complete performance of its Work. Such items shall include, but not necessarily be limited to those listed below. The type of facilities, move-in and move-out dates and locations on Jobsite shall be subject to and in accordance with the review and approval of Contractor's Project Superintendent.

- (1) Maintenance of Subcontractor's laydown, storage and Work area and roads within such areas. Repair costs to existing landscaping, hardscape or roadways damaged by Subcontractor outside construction limits are also included.
- (2) Rigging, Scaffolding and all equipment for erection.
- (3) All Small Tools
- (4) All standard expendable or consumable construction items and supplies

- (5) Drinking water including containers, ice and cups. All to be cleaned, dated, and labeled daily.
- (6) All Storage compounds, security measures, fencing, lighting, etc. as may be required by Subcontractor to protect tools, equipment and materials.
- (7) First Aid Supplies, fire extinguishers, personal protective devices, etc.
- (8) Builder's Risk Insurance Deductibles and additional Builder's Risk Insurance;
- (9) Material and Equipment hoisting to elevated floor and roof areas.
- (10) Access roads to work areas, crane pads, etc.
- (11) Employee access to work areas including ladders, scaffolds, lifts, etc.
- (12) Dewatering of natural underground water and rain water conditions
- (13) All Fall Protection Devices including rails, cables, harnesses, etc. and associated engineering, if required.
- (14) All required off-site storage for stored materials
- (15) All off-site parking fees.
- (16) Replacements costs for materials, tools, equipment, etc.
- (17) All equipment and tools brought inside the building and on site must be in accordance with Contractor safety plan (Exhibit D) or OSHA standards whichever is more stringent.

B. Furnished by Contractor:

Contractor shall supply or cause to be supplied the following temporary construction facilities and utilities to Subcontractor, without cost to Subcontractor, for or in connection with performance of the Work:

- (1) Sanitary Facilities - Furnished by Contractor shall consist of portable chemical toilets located at various areas of the jobsite as designated by Contractor based on average weekly manpower requirements.
- (2) Water for construction shall be furnished at points on jobsite as designated by Contractor's Project Superintendent. . Note: Subcontractor is responsible for all costs and/or fines received for water losses attributable to connections or line extensions installed by Subcontractor at Contractor's sole discretion of estimated water losses.
- (3) Accessible space near the construction site for performance of the Work and daily temporary storage of material and equipment at time of that day's installation. (No protective storage facilities, security, or protective coverings of any kind will be furnished by Contractor.). Subcontractor shall assume worst case accessibility and reach to each building structure for hoisting of materials based on present site conditions at time of delivery or installation.
- (4) Temporary Lighting in accordance with OSHA Standards will be provided by the Electrical Subcontractor. However it shall be the responsibility of Subcontractor to ensure that each craftsman on this project has adequate lighting in each room to do a "first class" job. Extension cords and light stands for lighting shall be the responsibility of Subcontractor.

- (5) Temporary Power - 110 volts, single phased, 60 cycle power shall be provided by the Electrical Subcontractor and made available throughout the building for small tools only. Power will not be available for electric welding machines or heavy duty saws. Portable panels or multiple outlets will be located on each floor within 100' of any work area by Electrical Subcontractor. This Subcontractor shall provide all OSHA approved extension cords as required for the execution of this Subcontract Agreement. All power cords and tools shall be protected by ground fault circuit interrupters (GFCI). Where GFCI outlets are not available or when building permanent power systems become energized and temporary systems removed, in-line GFCI protection shall be supplied by each Subcontractor.

Any equipment requiring temporary 220 volt (or above) power will not be provided by Contractor. It will be Subcontractor's responsibility to coordinate, provide, and pay for 220 volt connection with on-site electrician as required.

- (6) Centrally located dumpster for collection of debris, including hauling off site. Subcontractor shall haul debris from his work area and place it into the dumpster.

42. **DAILY CLEANUP & COMPOSITE CLEANUP:** In addition to the Standard Form Agreement, Daily cleanup of the construction area will be strictly enforced. Subcontractor shall perform cleanup and trash removal (on an ongoing daily basis, not at the end of the day) of all debris generated by Subcontractor to a central site container or truck as directed by Contractor. **Exception: Disposal and removal from the site of excess paint materials, residue from equipment cleanup operations, and other hazardous waste in accordance with governmental regulations shall be the responsibility of Subcontractor.**

43. **OWNER / CONTRACTOR AGREEMENT:** Subcontractor understands and agrees that this Subcontract is contingent upon Owner/Contractor Agreement being fully executed, and that this Subcontract shall be null and void without restrictions or remedies to either party if said Contract is not executed. No work shall be performed by Subcontractor until Owner/Contractor Agreement is executed. Contractor shall notify Subcontractor when said Agreement is executed.

Subcontractor further understands and agrees that the terms of the Agreement between the Owner and Contractor as regards but not limited to timely notification of delays and/or change requests and resolution of claims at substantial Completions also do apply to this Subcontract Agreement.

44. **MOCK-UPS / PROTOTYPES:** Subcontractor is cognizant of and has included in the Scope of Work multiple "Mock-ups" or "Prototypes" as may be required. Any and all refinishing of walls, floors, finishes, colors, etc. and removal and reinstallation of receptacles, fixtures, trim, furnishings, rails, grilles, etc. as required and associated with the "Mock-ups" or "Prototypes" is included in the Scope of Work.

45. **ENVIRONMENTAL PROTECTION:** Subcontractor is aware that the adjacent areas and properties are a very sensitive subject as it relates to Owner's development order. Subcontractor agrees not to deposit and/or store any liquids, solids, or gases on or near any area that is not designated as "Staging Area" by Contractor and Owner. Failure to comply with this provision shall result in severe consequential damages to Owner for which Subcontractor will be held responsible.

Subcontractor further agrees not to dispose of heavily chlorinated water utilized for testing of pipes or detergent/chemical water used for cleaning and flushing pipes onto the site, or into the site storm drainage systems. All such testing water shall be neutralized prior to discharging.

46. **ENVIRONMENTAL CONTROLS:** Federal and State regulations require that construction projects obtain various permits so that storm water, dewatering, and other forms of potential pollution can be controlled and regulated. Subcontractor agrees to protect those controls that are put in place and to be responsible for the cost of correcting any damage he may cause to those controls.

47. **STATE SALES and USER TAXES BONDING REQUIREMENTS:** Subcontractor shall be responsible for paying for all sales, consumer, use, and similar taxes arising out of the Work. These include, but are not necessarily limited to, all such taxes required on all materials, equipment, labor, accessories, and services which are part of the Work. Records must be maintained to record payment of required taxes.
48. **FIRE / TRAFFIC LANES:** All fire and traffic lanes must remain clear and accessible throughout the duration of the Contract. No material storage, laydown, or short term parking will be permitted in these areas, unless approved by Contractor. Contractor will supply lane closure areas in accordance with the site utilization plan. Subcontractor requiring additional lane closures, police escorts, road plates, storage, etc. beyond that provided will pay the cost of the same.
49. **LAYOUT:** Contractor will provide property line boundaries, a benchmark and one column line in each direction on each floor. In addition to the requirement of the Standard Form Agreement, Subcontractor shall provide all layout using Robotic Total Station Technology or equivalent, engineering and survey of existing conditions as required for its work, that is in excess of what Contractor is providing. It shall be the responsibility of the Subcontractor to maintain and preserve all stakes and other marks established by the Contractor and, if such stakes or marks are destroyed by the Subcontractor, they will be replaced at their expense.
50. **TOBACCO RESTRICTIONS:** The use of tobacco products will NOT be allowed within the confines of this project. Each subcontractor shall police its own employees to ensure compliance with this policy.
51. **BREAK AREAS:** Eating will be allowed only in areas so designated by the Contractor. Subcontractor or its employees are not authorized to sell or distribute food or beverages at the jobsite.
52. **CUTTING AND PATCHING:** Subcontractor shall be responsible for the cutting and patching of all penetrations and openings through existing walls and partitions, and all penetrations and openings through existing floors, ceilings, and roofs necessary for the installation of his Work. If the location for a penetration or opening is through an existing structural member, the Subcontractor shall notify Contractor's Superintendent, who, after consultation with the Architect, will instruct the Subcontractor how to proceed. Subcontractor shall be responsible for any cost associated with confirmation of existing conditions prior to proceeding with such work.
- Patching of all existing walls, floors, ceilings, etc. is included for all items demolished under this agreement including substrate and finishes to match existing surrounding conditions.
53. **SUBCONTRACTOR SUPERINTENDENT:** In addition to the requirements of the Standard Form Agreement, Subcontractor represents that its superintendent is an expert in the Work, is a competent person as defined by OSHA, and is knowledgeable of all local safety regulations and local codes. The Subcontractor shall be represented at all job meetings by the superintendent and such other persons as Construction Manager from time to time wish to have present at job meetings. The superintendent shall be satisfactory to Construction Manager and shall not be changed except with the consent of Construction Manager, unless the superintendent proves to be unsatisfactory to Subcontractor or ceases to be in its employ. The superintendent shall represent Subcontractor and shall have full authority to make decisions and commitments regarding Subcontractor's Work; and all communications given to the superintendent shall be as binding as if given to Subcontractor.
54. **EMPLOYEE REMOVAL:** The Subcontractor shall immediately remove from the Project any employee, including the superintendent, who is not satisfactory to the Contractor's Project Manager, Owner, or Owner's authorized representative at no cost to Contractor and with no extension of time.
55. **INSPECTION OF EXISTING CONDITIONS:** Each subcontractor shall check the accuracy of the building structure and/or surface to receive its work and notify the Construction Manager of any

deficiencies prior to beginning it work, and incorporate such into their shop drawings for accurate production and installations. Subcontractor shall not proceed with work until unsatisfactory conditions have been corrected and shall not apply work over other subcontractor's uncompleted work. Commencement of installation constitutes acceptance of structure and/or base surfaces and the cost of any corrective work due to faulty base surfaces shall be borne by the installer applying his materials thereon.

56. **SERVICE SHUTDOWNS:** All disruptions of services shall be limited to the maximum time specified by the Contractor and Owner. Proper and timely notifications must be made as required by the Owner. No shutdowns will be permitted. Each Subcontractor must submit a plan of how to maintain utilities to surrounding buildings including demolition requirements, temporary utility methods utilized, repairs, anticipated durations, etc. Subcontractor is responsible for all temporary utility requirements to maintain usage of utilities in the disturbed areas. This could require after hours or overtime work to maintain said utilities.

57. **PROPERTY DAMAGES:** Subcontractor is responsible for all damages to property and work of other trades including materials, tools, and equipment, excluding such property to be incorporated into the Work (as covered by builder's risk policy), subject to any deductibles contained in the builder's risk policy procured by Owner or Contractor.

Subcontractor is responsible for protection of all existing and new surfaces, materials, until accepted by Contractor/Owner and Architect.

58. **LIQUIDATED DAMAGES:** Subcontractor is responsible for payment of liquidated damages as set-forth in Owner/Contractor Supplementary General Conditions for all delays attributed to this subcontractor for their scope of work. Liquidated damages will apply to the Project Final Completion date. Contractor will begin deducting and withholding liquidated damages from Subcontractor monthly pay application as delays occur to ensure monies are available at conclusion of phase or Project.

59. **CONCRETE PADS AND CURBS:** Concrete pads, curbs, clean-out and valve rings, concrete equipment grouting, etc. required for equipment but not specifically shown on the construction documents will be the responsibility of the Subcontractor installing the item.

60. **QUALITY CONTROL:** Subcontractor is aware that Contractor has an active and aggressive Quality Control Program. The highest level of Quality Control will be managed by Subcontractor's project managers and will not be delegated to on-site superintendents. In that regard the Contractor will provide a project specific quality control plan that will identify various levels of responsibility by the Subcontractor. The Subcontractor will participate and assist fully with the Contractor's Quality Control Program.

In addition to the requirements of the Standard Form Agreement, the correction of faulty work not in compliance with the Contract Documents shall be corrected within 48 hours of Contractor notification. Payment will be withheld in the amount of 2 times the cost estimated by Contractor to make the repairs on behalf of Subcontractor until such time work is corrected and accepted by Owner and Architect.

61. **VISITORS:** All visitors must check in at the Contractor's on-site office prior to entering the project site and sign-in. Subcontractor is required to escort all visitors and provide visitors with required personal protection safety devices.

62. **PHOTOGRAPHS:** No photographs may be taken of the project without prior approval of the Contractor and Owner. Subcontractor acknowledges that there is an active webcam on-site.

63. **UNIT PRICES AND ALLOWANCES:** Subcontractor has responsibility to quantify and obtain appropriate approvals for all allowance expenditures above prior to beginning work under this agreement. Contractor does not have the obligation, authorization, nor did the responsibility to make payment for work execute which has not been approved by Owner/Architect. Subcontractor has responsibility to quantify and obtain appropriate approvals for all unit price expenditures above prior to

beginning work under this agreement. Contractor does not have the obligation, authorization, nor the responsibility to make payment for work executed which has not been approved by Owner/Architect

64. **OPERATORS:** Subcontractor shall provide list of all competent and certified operators and welders 10 days prior to beginning work. Subcontractor shall also provide all equipment certifications upon equipment arriving to site, but prior to placing in-use.
65. **WEATHER:** Weather delays are only as approved by the Owner which is in excess of the normal anticipated conditions established by Owner-Contractor Agreement. Subcontractor shall herein anticipate such delays and schedule work as time is of the essence. Subcontractor shall include all necessary means and methods to dewater, aerate and/or hydrate work areas including access to in order to avoid delays in Project schedule at no additional cost to Contractor.

Subcontractor is also responsible for the protection of all materials from thermal (temperature) changes for work schedule to be installed in accordance with current schedule. Delays in material installations which can be protected will not be accepted as a cause for a schedule delay.

66. **BUILDING INFORMATION MODELING (BIM) / DIGITAL DOCUMENTATION**

- Building Information Modeling will be a function of this project for coordination and will require a 3D modeling effort by all trades unless otherwise indicated. Trades will include Mechanical, HVAC, Electrical systems, Plumbing and Fire Protection. Drywall/Framing/Ceilings for coordination with MEP trades only.
- All subcontractors listed above will be required to attend a BIM "kick-off" meeting led by Balfour Beatty where items such as level of model detail, file sharing, and coordination schedule dates are determined. The results of that kick-off meeting will be captured in a BIM "Implementation Plan" which, once agreed upon, will be the team's guide for the coordination efforts.
- Each trade shall allow for one meeting per week led by Balfour Beatty for duration of project upon notice of award.
- An initial 3D coordination model and associated coordination drawings must be complete and submitted to Balfour Beatty within the 1st 60 days of the Project. Any additional costs associated with delays because the coordination was not completed within the allotted time shall be the responsibility of the Subcontractor. No additional coordination cost will be accepted by the Contractor.
- All required shop drawings will be submitted to Balfour Beatty and engineer of record by trades in an approved format.
- All subcontractors requiring embeds in concrete and/or precast will be required to provide layout drawings to the concrete and/or pre-cast subcontractor. Concrete and Pre-cast subcontractor are required to create 3-dimensional drawings to indicate any and all embeds for approval by other trades and to be utilized during installation.
- Each participant, by submitting its proposal, represents that:
 - A. They understand that his/her scope is required to be modeled in Revit or approved alternate.
 - B. Has, at a minimum, participated in at least 3 projects in which the subcontractor has created 3D models for the coordination effort.
 - C. Has, at a minimum, 2 persons on staff who are capable of performing the required 3D modeling responsibilities for this project

D. If required, this subcontractor shall submit model examples from previous experience (model files, graphic images, screen shots, etc...) for evaluation of capabilities to model the required detail.

- Subcontractors agree to provide and utilize Robotic Total Station Technology or equivalent for layout of materials and systems. This is required for all major trades include Mechanical, HVAC, Electrical systems, Plumbing & Fire Protection.
- If Subcontractor cannot meet requirements outlined above, they may hire services of a third-party vendor and must inform Balfour Beatty Construction to such arrangement. Subcontractor will be required to assign a representative as a point of contact and be required to manage the third party vendor to ensure compliance with the BIM implementation plan.
- All Contract Documents will be provided and used in digital format for the project. All subcontractors will have access to digital plans and all Project managers, Superintendents and Foreman are required to have Ipads (or an alternate form of digital document reader) during construction. The Punchlist, Quality Control Checklist, Safety Checklist and final 3D coordination model will be accessed through Autodesk BIM 360 Field on the Ipad (or alternate form of digital document reader).

67. **AS-BUILT DRAWINGS (RECORD DRAWINGS)** : During the progress of the work, all Subcontractors shall update their model and drawings with the exact locations, as installed, of all systems associated with their trade.

Upon completion of the Work, this data shall be recorded to scale into CAD and PDF drawings by a competent draftsman. Subcontractor shall provide preliminary as-built drawings for architect/engineer approval and a final as-built set in accordance with the project specifications. Subcontractor shall provide preliminary as-built drawings for Architect/Engineer approval and a final as-built set in accordance with the project specifications. Each Subcontractors as built drawings will be reviewed on a weekly basis by the Contractor.

68. **ACCESS:** Subcontractor shall be responsible for providing safe access for testing agency and Engineer of Record to the work being fabricated, stored, or installed so that required inspection and testing may be accomplished. It is understood and agreed that any work under this scope found to be in non-compliance shall be corrected and re-tested at no cost to Construction Manager and/or Owner.

69. **HOISTING:** In accordance to our Site Utilization plan and Project Schedule Contractor will supply Tower Crane(s) and Personnel/Material Hoist(s) with operator to the Subcontractor for their use (up to 60 hours/week), subject to change at Contractors sole discretion. The Tower Crane(s) and Personnel/Material Hoist(s) will be erected and removed at Contractors discretion. The schedule and priorities for hoisting will be established solely by the Contractor in accordance with the schedule. Provision of the Tower Crane(s) and Personnel/material Hoist(s) does not relieve the Subcontractor from the requirement referenced in the General Conditions of this Subcontract. The Subcontractor is advised that the hoists will not remain operational throughout the duration of the project. While the hoist is available for use, Subcontractors requiring additional hoisting time, or means of hoisting beyond that provided by the Contractor for will pay the cost of hoisting and/or the operator including all premium time charges.

All other hoisting and means to get equipment, manpower or materials into place including but not limited to all scaffolding, man lifts, forklifts, outriggers, etc. are to be provided by Subcontractor. Do NOT assume "By Others" or shared use.

Subcontractor will be required to have 3rd party inspections prior to starting work with any/all Cranes and equipment. Subcontractor to provide 3rd party inspection report to Contractor immediately upon completion of inspection. Included are any fees associated with these inspections.

All Subcontractors utilizing lifting equipment will require Certified Riggers. All paperwork must be submitted to Contractor no later than 10 days prior to hoisting/lifting activities.

Equipment will not be allowed to be lifted and suspended by equipment overnight. Subcontractors will be required to secure equipment by other means.

70. **FLAGMEN:** All subcontractors receiving deliveries will require flagmen as traffic control at the construction entrance.
71. **ENGINEERING:** All engineering required as a part of this Scope of Work must be performed by Engineer licensed in the State of South Carolina.
72. **WORK STOPPAGES:** Labor strike or unrest is not an excusable force majeure event under this Subcontract and any related delays the responsibility of the Subcontractor and will be subject to liquidated damages.
73. **PUNCH WORK:** Subcontractor shall complete punch work as required by, and to the complete satisfaction of the Contractor, Architect, Engineer and Owner. Subcontractor shall provide Contractor with a list of punch items to be completed for this scope of work prior to starting punch work
74. **TESTING:** Subcontractor shall provide all testing, documentation and certifications as required by the Contract Documents other than those performed by the Owner's testing agent. Identification and coordination of all testing procedures required by this Subcontract, whether performed by the Owners' testing agent or the Subcontractor, are the responsibility of the Subcontractor. In the event the Subcontractor's material and/or installation fails, any re-testing costs and lost time will be the responsibility of the Subcontractor.
75. **SECURITY:** Subcontractors understand that no security services will be provided and that neither Contractor nor the Owner is responsible for property loss or damage to materials not yet accepted by the Owner.
76. **OWNER AGREEMENT:** The following paragraphs are flowdowns from the agreement between the Owner and the Contractor.
- A) Subcontractor acknowledges the agreement between the contractor and the Owner provides that for any delay attributable to the Contractor or any entity for which it is responsible, there is potential recovery of Liquidated Damages as detailed below. Subcontractor further acknowledges and agrees that should Contractor be assessed liquidated damages and any part or all of the delay is attributable to Subcontractor's performance of the work, then Subcontractor will be responsible for its proportionate share of the liquidated damages amount.
- B. Hotel LD Amount \$9,000 per day

END OF SPECIAL PROVISIONS

Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Strong Tower Construction, LLC

Plaintiff,

vs.

Balfour Beatty Construction, LLC, Library
Associates, LLC, and Metropolitan Life
Insurance Company

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2019-CP-10-02868

(consolidated with Case No.: 2019-CP-10-01108)

DEFENDANT BALFOUR BEATTY
CONSTRUCTION, LLC'S ANSWERS
TO PLAINTIFF'S FIRST
INTERROGATORIES

The Defendant Balfour Beatty Construction, LLC ("Balfour"), by and through its below-signed attorneys and pursuant to SCRCP 26 and 33, answers the First Set of Interrogatories from the Plaintiff as follows:

RESERVATION OF RIGHTS

Balfour does not waive any objections which may be appropriate either to (a) the use of any documents produced or (b) the materiality of any of the Interrogatories to any issue in the case. Balfour specifically reserves all rights to objections which may otherwise be available to it and further states that no response should be deemed as an admission of relevancy, materiality or admissibility into evidence of any particular Interrogatory or the response thereto. Balfour further reserves the right to alter or amend its answers to be more accurate if other information becomes available to it at a subsequent time.

GENERAL OBJECTIONS

Balfour hereby states the following General Objections to Plaintiff's Interrogatories, which are incorporated herein and made a part of each answer set forth below.

1. To the extent that Plaintiff's Interrogatories seek information irrelevant to the issues raised in this lawsuit or are not reasonably calculated to lead to the discovery of admissible evidence, or are otherwise inconsistent with or enlarge upon the South Carolina Rules of Civil Procedure, Balfour objects to such Interrogatories.

2. Balfour objects to each Interrogatory that seeks the disclosure of information which is protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or doctrine.

3. Balfour objects to each Interrogatory to the extent that it is vague, ambiguous, overly broad, unduly burdensome or oppressive.

4. Balfour objects to each Interrogatory to the extent that it requests information in the possession of persons or entities that are not under the control of Balfour or is otherwise not in the possession of Balfour.

5. All responses set forth by Balfour are subject to the General Objections set forth above. The General Objections, or some portion thereof, may be specifically referred to or restated in a response for the purpose of clarity. A failure to specifically incorporate a General Objection shall not be construed as a waiver of the General Objection.

6. Balfour reserves the right to supplement or amend these responses.

ANSWERS TO INTERROGATORIES

1. Set forth whether Balfour has included in, or claimed as part of, its \$12,066,147.09 amended mechanic's lien the entirety of the value of the Plaintiff's \$124,080.21 mechanic's lien.

ANSWER: Balfour objects to this Interrogatory as it has no knowledge of the components of or basis for Plaintiff's mechanic's lien. Subject to and

without waiving this objection, Balfour states that its amended mechanic's lien contains \$87,264.56 that has been retained or has not been invoiced by Plaintiff as part of Plaintiff's executed contract amount, as amended. Further responding Balfour states that its amended mechanic's lien contains \$17,594.65 in Requested Change Orders that the Owner has not approved. (\$9,564.65 for Koch COR #006 (Balfour RCO 258) and \$8,030.00 for Koch COR #015 (Balfour RCO 278)). As discovery is ongoing, Balfour reserves the right to supplement and/or amend its Answer to this Interrogatory.

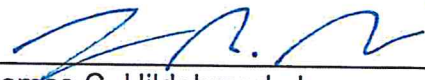
2. If the response to Interrogatories 1 is "no," or any variation, set forth what, if any, level of the Plaintiff's \$124,080.21 mechanic's lien is included in, or claimed as part of, Balfour's \$12,066,147.09 amended mechanic's lien.

ANSWER: See Balfour's objections and response to Interrogatory Number 1. As discovery is ongoing, Balfour reserves the right to supplement and/or amend its Answer to this Interrogatory.

3. If Balfour has included in its mechanic's lien the entirety, or any portion, of the value of the Plaintiff's mechanic's lien, set forth the reasons why Balfour has not paid the Plaintiff that uncontested portion of the Plaintiff's claim.

ANSWER: Balfour objects to this Interrogatory to the extent it seeks information protected by attorney-client privilege or the work-product doctrine. Balfour further objects to the characterization of the Plaintiff's claim as "uncontested." Subject to and without waiving these objections, the Owner of the Project has not paid Balfour in full for the value of the prime contract, as amended. Further responding, the Owner of the Project claims it is owed damages for delays and/or defects in the construction and delivery of the Project, but has not identified all of the work, delays and/or subcontractors are alleged to be involved. One of the defects that the Owner has identified and sent notice of involves leaks relating to the exterior doors installed by Strong Tower. The Owner sent notice of these defects to Strong Tower on October 24, 2019. Documents related to these defects are produced in conjunction with this discovery response (Balfour-Koch 000001 to Balfour-Koch 000047). Balfour denies any responsibility for any delays or defects, but to the extent a third-party finds such delays or defects exist, Strong Tower will be liable to Balfour for the same. Additionally, there is currently a \$22,000 pending back charge that would reduce the contractual amount owed to Plaintiff. As discovery is ongoing, Balfour reserves the right to supplement and/or amend its Answer to this Interrogatory.

PARKER POE ADAMS & BERNSTEIN LLP
200 MEETING STREET, SUITE 301
CHARLESTON, SC 29401

By: 
Thomas C. Hildebrand, Jr.
843.727.2653 (direct dial)
tomhildebrand@parkerpoe.com

Robert C. Byrd
843.727.2665 (direct dial)
bobbybyrd@parkerpoe.com

Taylor M. Morris
843.727.6315 (direct dial)
taylormorris@parkerpoe.com

Attorneys for Defendant Balfour Beatty
Construction, LLC

January 28, 2020

Exhibit C



Deposition of:
**Excerpt of Dep of Kim Brown, Volume
III**

August 6, 2020

In the Matter of:
Balfour, Beatty v. Library Associates

[A. William Roberts, Jr & Assoc.](#)

800-743-3376 | calendar-awr@veritext.com | www.veritext.com

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON
BALFOUR BEATTY CONSTRUCTION, LLC,
Plaintiff,
vs. CASE NO. 2019-CP-10-01108
LIBRARY ASSOCIATES, LLC; AND METROPOLITAN LIFE
INSURANCE COMPANY, A NEW YORK CORPORATION,

Defendants.

LIBRARY ASSOCIATES, LLC,

Third-Party Plaintiff,

vs.

LITHKO CONTRACTING, LLC, GUY M. BEATY, INC.,
BERNARD MMC, LLC, GULF STREAM CONSTRUCTION COMPANY,
INC., PRECISION WALLS, INC., PALMETTO AUTOMATIC
SPRINKLER COMPANY, INC., COOK & BOARDMAN, LLC,
1st CHOICE GLASS, INC., STRONG TOWER CONSTRUCTION,
LLC d/b/a KOCH CORPORATION, WATSON ELECTRICAL
CONSTRUCTION CO., LLC, TRIMARK FOODCRAFT, LLC,
PLEASANT PLACES, INC., DAVID ALLEN COMPANY, INC.,
PREMIER EXTERIORS, LLC, ROBERT THOMAS IRON DESIGN,
LLC, WARCO CONSTRUCTION, INC., OLD NORTH STATE
MASONRY, LLC, TOM ROCHESTER & ASSOCIATES d/b/a
SOUTHEASTERN ARCHITECTURAL SYSTEMS, FORTON COMPANY,
LLC, LOWCOUNTRY CASE & MILLWORK, INC., QUANTUM
COATINGS, LLC, BALIFOUR BEATTY CONSTRUCTION GROUP,
INC.

Third-Party Defendants.

EXCERPT OF: KIMBERLY BENNETT BROWN, VOLUME III
DATE: August 6, 2020
TIME: 9:04 AM
LOCATION: Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, SC
TAKEN BY: Counsel for the Plaintiff
REPORTED BY: TERRI L. BRUSSEAU

Page 2	Page 4
1 APPEARANCES OF COUNSEL: 2 ATTORNEYS FOR THE PLAINTIFF AND 3 THIRD-PARTY DEFENDANT BALFOUR BEATTY 4 CONSTRUCTION, LLC: 5 PARKER POE ADAMS & BERNSTEIN, LLP 6 BY: THOMAS C. HILDEBRAND, JR. 7 200 Meeting Street, Suite 301 8 Charleston, SC 29401 9 (843) 727-2650 10 tomhildebrand@parkerpoe.com 11 12 ATTORNEYS FOR THE DEFENDANT AND 13 THIRD-PARTY PLAINTIFF LIBRARY 14 ASSOCIATES, LLC: 15 16 BUNDY McDONALD, LLC 17 BY: WALTER H. BUNDY, JR. 18 M. BRENT McDONALD 19 1516 Old Trolley Road, 2nd Floor 20 Summerville, SC 29485-8209 21 (843) 492-4134 22 walter@bundymcdonald.com 23 brent@bundymcdonald.com 24 ATTORNEYS FOR THE THIRD-PARTY DEFENDANTS 25 OLD NORTH STATE MASONRY, LLC, LITHKO CONTRACTING, LLC and WATSON ELECTRICAL CONSTRUCTION CO., LLC: SMITH TERRY JOHNSON & WINDLE BY: DON R. TERRY STEELE B. WINDLE, III (appearing remotely) 150 Milestone Way, Suite C Greenville, SC 29615 (864) 520-4847 dterry@smithterrylaw.com awindle@smithterrylaw.com	1 ATTORNEYS FOR THE THIRD-PARTY DEFENDANT 2 LOWCOUNTRY CASE & MILLWORK, INC.: 3 4 EPTING & RANNIK, LLC 5 BY: JAAN G. RANNIK 6 (appearing remotely) 7 46-A State Street 8 Charleston, SC 29401 9 (843) 377-1871 10 jgr@epting-law.com 11 12 ATTORNEYS FOR THE THIRD-PARTY DEFENDANT 13 QUANTUM COATINGS, LLC: 14 THURMOND KIRCHNER & TIMBES, PA 15 BY: MICHAEL A. TIMBES 16 (appearing remotely) 17 15 Middle Atlantic Wharf 18 Charleston, SC 29401 19 (843) 937-8000 20 michael@tklawyers.com 21 ATTORNEYS FOR THE THIRD-PARTY DEFENDANT 22 COOK & BOARDMAN, LLC: 23 24 POYNER SPRUILL, LLP 25 BY: SARAH L. DIFRANCO (appearing remotely) 301 South College Street, Suite 2900 Charlotte, NC 28202 (704) 342-5250 sdifranco@poynerspruill.com ATTORNEYS FOR THE THIRD-PARTY DEFENDANT STRONG TOWER CONSTRUCTION, LLC d/b/a KOCH CORPORATION: SMITH CLOSSER WHEELER, PA BY: SAMUEL M. WHEELER (appearing remotely) 7455 Cross County Road North Charleston, SC 29418 (843) 760-0220 swheeler@scnlaw.com ALSO PRESENT: Jodi Loup (appearing remotely) Dale Winovich
Page 3	Page 5
1 ATTORNEYS FOR THE THIRD-PARTY DEFENDANT 2 PLEASANT PLACES, INC.: 3 4 ROBERTSON HOLLINGSWORTH 5 MANOS & RAHN, LLC 6 BY: RACHEL IGDAL 7 (appearing realtime) 8 550 King Street, Suite 300 9 Charleston, SC 29403 10 (843) 723-6470 11 igdalr@roblaw.net 12 ATTORNEYS FOR THE THIRD-PARTY DEFENDANT 13 PREMIER EXTERIORS, LLC: 14 15 RAHIMI HUGHES & PADGETT, LLC 16 BY: ROBERT C. HUGHES, III 17 (appearing remotely) 18 35 Bull Street, Suite 590 19 Savannah, GA 31401 20 (912) 421-9988 21 rhughes@rhp-law.com 22 23 ATTORNEYS FOR THE THIRD-PARTY DEFENDANTS 24 GULF STREAM CONSTRUCTION, 25 TRIMARK FOODCRAFT, LLC and DAVID ALLEN COMPANY: WALKER GRESSETTE FREEMAN & LINTON, LLC BY: IAN W. FREEMAN (appearing remotely for Gulf Stream Construction) JOHN LINTON, JR. (appearing remotely for Trimark Foodcraft, LLC and David Allen Company) 66 Hasell Street Charleston, SC 29401 (843) 727-2200 freeman@wgflaw.com linton@wgflaw.com	536 KIMBERLY BENNETT BROWN - EX. BY MR. WHEELER 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 EXAMINATION 23 BY MR. WHEELER: 24 Q. This is Sam Wheeler. I represent 25 Strong Tower Construction, LLC. Thanks for being

Page 6 537 1 here the last couple of days, Kim. I appreciate 2 it. Can you hear me all right? 3 A. Yes, I can. 4 Q. Okay. Are you familiar with Strong 5 Tower Construction? 6 A. I believe so. Can you refresh my 7 memory? 8 Q. Sure. They would have done the -- it 9 was labeled as a Hope's bronze or steel doorfront 10 system. It would have been the doors and windows, 11 the bronze doors and windows that are on the 12 exterior of the first floor for the street level 13 floor. 14 A. Yes. 15 Q. Okay. Do you recall having any direct 16 communications with any representatives or any 17 employees or trades of Strong Tower? 18 A. I specifically did not. I remember 19 that prior to the job starting that Mike Bennett 20 and I believe some employees from Balfour Beatty 21 actually went to the Hope's manufacturing facility 22 up north somewhere to look at these Hope's windows 23 and doors. 24 Q. Okay. As it relates to the 25 installation of the doors, did you have	Page 8 539 1 general manager in the operations to find out if 2 there's still any issues with that leaking. I do 3 know someone has been out to try to repair it. 4 Again, those -- it would probably be e-mails from 5 the chief engineer, maintenance engineer at the 6 hotel, Ryan Quinlan. I believe he's had some 7 conversations or e-mails regarding some leaking 8 issues with those doors due to the flashing. 9 Q. Do you know if it's still leaking? 10 A. I do not -- I do not recall if it is 11 still leaking or not, but it is something that I 12 can find out. 13 Q. Okay. Who would know? 14 A. Like I said, our general manager, Marty 15 Wall, and our chief engineer, Ryan Quinlan, would 16 know. Again, they would -- they have been in 17 discussions with Coach on those issues. 18 Q. Okay. So I guess if you don't know if 19 it's been corrected, suffice to say you don't know 20 any particular level of damage that might be 21 associated with that leak, is that right? 22 A. That's correct. 23 Q. Okay. Are you -- do you have any 24 knowledge of any delays that were caused by Strong 25 Tower's work?
Page 7 538 1 communications with Strong Tower? 2 A. I specifically did not. 3 Q. Okay. Are you aware of any issues or 4 defects with Strong Tower's scope of work? 5 A. Not necessarily. I do know that there 6 was some leaking in the dining area doors off of 7 the patio. I believe that Strong Tower or Coach 8 had to come out to look at that on several 9 occasions. And I think it -- the issue is due to 10 the -- how the flashing was installed. And as I 11 testified earlier, I'm sure who the responsible 12 party was to install the flashing in the area 13 between the block and the frames of the Hope's 14 windows and doors. 15 Q. Okay. I got some discovery responses 16 from Balfour Beatty and they indicated that Library 17 Associates did identify a leak in one of the doors. 18 To your knowledge is the only area leaking that 19 area isolated to the patio -- the entrance to the 20 patio and dining area? 21 A. Yes, at this time. 22 Q. Okay. And were those issues corrected 23 before opening or at any point after opening the 24 hotel? 25 A. No. I -- I'd have to check with our	Page 9 540 1 A. Not that I'm aware of. 2 Q. Okay. So the only thing potentially 3 that you could be charging Balfour Beatty for that 4 Strong Tower charges you -- or back charges you, 5 Strong Tower is correcting any leak to the patio 6 and dining area door, is that correct? 7 A. I would say that's a fair assessment. 8 Q. Okay. And I understand the issue, I 9 believe, that Library Associates is going to claim 10 that it's more than paid Balfour Beatty in full. 11 But setting aside the issue with release of the 12 payment in full, again outside of the one issue 13 with the leaking doors, the patio and is that 14 properly deducted, is there any reason in Library 15 Associates' estimation that Strong Tower should not 16 be compensated by Balfour Beatty under its contract 17 with Balfour Beatty? 18 MR. McDONALD: Object to the form. 19 BY MR. WHEELER: 20 Q. I can ask it a different way. If the 21 leak is properly charged back to Strong Tower, does 22 Library Associates have any objection to Strong 23 Tower collecting the remainder of its balance from 24 Balfour Beatty under its contract with Balfour 25 Beatty?

Page 10	Page 12
541 1 A. I'm sorry, can you repeat the question? 2 Q. I can try. If you take into account 3 the leaks and any damages associated with leaks to 4 the patio door and that figure is properly back 5 charged to Strong Tower, are there any other 6 damages that Library Associates would be claiming 7 that would prevent Strong Tower from collecting the 8 remainder of its contract balance from Balfour 9 Beatty under its contract with Balfour Beatty? 10 A. As I sit here today, I don't think that 11 there would be any reason. 12 Q. Okay. So effectively then, Strong 13 Tower needs to determine any damages associated 14 with that one leak, deduct that from its balance, 15 and then it can go about collecting its balance 16 from Balfour Beatty, is that Library Associates' 17 position? 18 A. I would think that would be fine. 19 MR. WHEELER: Okay. Thank you very 20 much, Kim. I appreciate your time. 21 THE WITNESS: Thank you. 22 23 24 25	1 I N D E X 2 Page Line 3 EXAMINATION 4 BY MR. LINTON (IN PERSON) - - 5 EXAMINATION 6 BY MR. TERRY - - 7 EXAMINATION 8 BY MR. WHEELER 536 22 9 EXAMINATION 10 BY MR. FREEMAN - - 11 EXAMINATION 12 BY MR. TERRY - - 13 EXAMINATION 14 BY MR. TIMBES - - 15 EXAMINATION 16 BY MR. TERRY - - 17 CERTIFICATE OF REPORTER 18 E X H I B I T S 19 (No Exhibits Were Marked in the Excerpt Portion 20 Of The Transcript) 21 22 23 24 25
Page 11	
1 CERTIFICATE OF REPORTER 2 I, Terri L. Brusseau, Notary Public for the 3 State of South Carolina at Large, do hereby certify 4 that the foregoing transcript is a true, accurate, 5 and complete record. 6 I further certify that I am neither related 7 to nor counsel for any party to the cause pending 8 or interested in the events thereof. 9 Witness my hand, I have hereunto affixed my 10 official seal this 11th day of August, 2020 at 11 Charleston, Charleston Countv. South Carolina. 12 13  Terri L. Brusseau 14 15 16 17 18 19 Terri L. Brusseau My Commission expires April 5, 2026. 20 21 22 23 24 25	

[& - collecting]

Page 1

&	5	appreciate 6:1 10:20	bernard 1:12
& 1:13,16,17,22 2:4,16 3:3,8,15 4:1,2,8,12	5 11:19 520-4847 2:19 536 5:1 12:8 537 6:1 538 7:1 539 8:1 540 9:1 541 10:1 550 3:4 590 3:10	april 11:19 architectural 1:17 area 7:6,12,18,19 7:20 9:6 aside 9:11 assessment 9:7 associated 8:21 10:3,13 associates 1:6,8,16 2:8 7:17 9:9,15,22 10:6,16 atlantic 4:9 attorneys 2:2,7,14 3:1,7,12 4:1,6,12 4:17 august 1:21 11:10 automatic 1:12 aware 7:3 9:1 awindle 2:20	bernstein 1:22 2:4 block 7:13 boardman 1:13 4:12 brent 2:10,13 bronze 6:9,11 brown 1:20 5:1 brusseau 1:25 11:2,18 bull 3:10 bundy 2:9,10 bundymcdonald.... 2:12,13
1	6	b	c
10-01108 1:5 11th 11:10 15 4:9 150 2:18 1516 2:11 1st 1:13	6 1:21 66 3:19	atlantic 4:9 attorneys 2:2,7,14 3:1,7,12 4:1,6,12 4:17 august 1:21 11:10 automatic 1:12 aware 7:3 9:1 awindle 2:20	c 2:4,18 3:9 carolina 1:1 11:3 11:11 case 1:5,17 4:1 cause 11:7 caused 8:24 certificate 11:1 12:17 certify 11:3,6 charged 9:21 10:5 charges 9:4,4 charging 9:3 charleston 1:2,23 2:5 3:5,19 4:4,10 4:21 11:11,11 charlotte 4:15 check 7:25 chief 8:5,15 choice 1:13 claim 9:9 claiming 10:6 closser 4:19 coach 7:7 8:17 coatings 1:18 4:7 collecting 9:23 10:7,15
2	7	b	
200 1:22 2:5 2019 1:5 2020 1:21 11:10 2026 11:19 21906 11:15 22 12:8 28202 4:15 2900 4:15 29401 2:5 3:19 4:4 4:10 29403 3:5 29418 4:21 29485-8209 2:11 29615 2:19 2nd 2:11	704 4:16 723-6470 3:5 727-2200 3:20 727-2650 2:6 7455 4:21 760-0220 4:22	b 1:14,16 2:17 4:18 12:18 back 9:4,21 10:4 balance 9:23 10:8 10:14,15 balfour 1:3 2:2 6:20 7:16 9:3,10 9:16,17,24,24 10:8 10:9,16 balifour 1:18 beatty 1:3,18 2:2 6:20 7:16 9:3,10 9:16,17,24,25 10:9 10:9,16 beaty 1:11 believe 6:6,20 7:7 8:6 9:9 bennett 1:20 5:1 6:19	
3	8		
300 3:4 301 1:22 2:5 4:15 31401 3:10 342-5250 4:16 35 3:10 377-1871 4:5	843 2:6,12 3:5,20 4:5,10,22 864 2:19		
4	9	a	
421-9988 3:11 46 4:4 492-4134 2:12	912 3:11 937-8000 4:10 9:04 1:21	account 10:2 accurate 11:4 adams 1:22 2:4 affixed 11:9 allen 1:15 3:14,18 appearances 2:1 appearing 2:18 3:4,9,16,17 4:3,9 4:14,20,24	

[college - john]

Page 2

college 4:15 come 7:8 commission 11:19 common 1:1 communications 6:16 7:1 company 1:6,12 1:13,15,17 3:14,18 compensated 9:16 complete 11:5 construction 1:3 1:12,13,14,16,18 2:3,15 3:13,16 4:18 5:25 6:5 contract 9:16,24 10:8,9 contracting 1:11 2:15 conversations 8:7 cook 1:13 4:12 corporation 1:6 1:14 4:18 correct 8:22 9:6 corrected 7:22 8:19 correcting 9:5 counsel 1:24 2:1 11:7 county 1:2 4:21 11:11 couple 6:1 court 1:1 cp 1:5 cross 4:21	date 1:21 david 1:15 3:14,18 day 11:10 days 6:1 deduct 10:14 deducted 9:14 defects 7:4 defendant 2:2,7 3:1,7 4:1,6,12,17 defendants 1:7,19 2:14 3:12 delays 8:24 design 1:15 determine 10:13 different 9:20 difranco 4:14 dining 7:6,20 9:6 direct 6:15 discovery 7:15 discussions 8:17 don 2:17 door 9:6 10:4 doorfront 6:9 doors 6:10,11,23 6:25 7:6,14,17 8:8 9:13 dterry 2:20 due 7:9 8:8	ex 5:1 examination 5:22 12:3,5,7,9,11,13 12:15 excerpt 1:20 12:19 exhibits 12:19 expires 11:19 exterior 6:12 exteriors 1:15 3:7 f facility 6:21 fair 9:7 familiar 6:4 figure 10:4 find 8:1,12 fine 10:18 first 6:12 flashing 7:10,12 8:8 floor 2:11 6:12,13 foodcraft 1:14 3:13,18 foregoing 11:4 form 9:18 forton 1:17 frames 7:13 freeman 3:15,15 3:20 12:10 full 9:10,12 further 11:6 g g 4:3 ga 3:10 general 8:1,14 glass 1:13 go 10:15 going 9:9 greenville 2:19 gressette 3:15	group 1:18 guess 8:18 gulf 1:12 3:13,16 guy 1:11 h h 2:10 12:18 hand 11:9 hasell 3:19 hear 6:2 hereunto 11:9 hildebrand 2:4 hollingsworth 3:2 hope's 6:9,21,22 7:13 hotel 7:24 8:6 hughes 3:8,9 i ian 3:15 identify 7:17 igdal 3:3 igdalr 3:6 iii 1:20 2:17 3:9 indicated 7:16 install 7:12 installation 6:25 installed 7:10 insurance 1:6 interested 11:8 iron 1:15 isolated 7:19 issue 7:9 9:8,11,12 issues 7:3,22 8:2,8 8:17 j jaan 4:3 jgr 4:5 job 6:19 jodi 4:24 john 3:17
d 1:14,16 4:18 12:1 dale 4:25 damage 8:20 damages 10:3,6,13	e e 8:4,7 12:1,18 earlier 7:11 effectively 10:12 electrical 1:14 2:15 employees 6:17,20 engineer 8:5,5,15 entrance 7:19 epting 4:2,5 estimation 9:15 events 11:8		

[johnson - reporter]

Page 3

johnson 2:16 jr 2:4,10 3:17	look 6:22 7:8 loup 4:24 lowcountry 1:17 4:1	occasions 7:9 official 11:10 okay 6:4,15,24 7:3 7:15,22 8:13,18,23 9:2,8 10:12,19 old 1:16 2:11,14 opening 7:23,23 operations 8:1 outside 9:12	precision 1:12 premier 1:15 3:7 present 4:23 prevent 10:7 prior 6:19 probably 8:4 properly 9:14,21 10:4 public 11:2
k	m	p	q
kim 6:1 10:20 kimberly 1:20 5:1 king 3:4 kirchner 4:8 know 7:5 8:3,9,13 8:16,18,19 knowledge 7:18 8:24 koch 1:14 4:18	m 1:11 2:10 4:20 mails 8:4,7 maintenance 8:5 manager 8:1,14 manos 3:3 manufacturing 6:21 marked 12:19 marty 8:14 masonry 1:16 2:14 mcdonald 2:9,10 9:18 meeting 1:22 2:5 memory 6:7 metropolitan 1:6 michael 4:8,11 middle 4:9 mike 6:19 milestone 2:18 millwork 1:17 4:1 mmc 1:12	pa 4:8,19 padgett 3:8 page 12:2 paid 9:10 palmetto 1:12 parker 1:22 2:4 parkerpoe.com 2:6 particular 8:20 party 1:9,19 2:2,8 2:14 3:1,7,12 4:1 4:6,12,17 7:12 11:7 patio 7:7,19,20 9:5 9:13 10:4 payment 9:12 pending 11:7 person 12:4 places 1:15 3:1 plaintiff 1:4,9,24 2:2,8 pleas 1:1 pleasant 1:15 3:1 poe 1:22 2:4 point 7:23 portion 12:19 position 10:17 potentially 9:2 poyner 4:13 poynerspruill.com 4:16	quantum 1:17 4:7 question 10:1 quinlan 8:6,15
l	n		r
l 1:25 4:14 11:2,18 labeled 6:9 large 11:3 law.com 3:11 4:5 leak 7:17 8:21 9:5 9:21 10:14 leaking 7:6,18 8:2 8:7,9,11 9:13 leaks 10:3,3 level 6:12 8:20 library 1:6,8 2:8 7:16 9:9,14,22 10:6,16 life 1:6 line 12:2 linton 3:15,17,21 12:4 lithko 1:11 2:14 llc 1:3,6,8,11,12,13 1:14,14,14,15,16 1:16,17,18 2:3,8,9 2:14,15,15 3:3,7,8 3:13,15,18 4:2,7 4:12,18 5:25 llp 1:22 2:4 4:13 location 1:22	n 12:1 nc 4:15 necessarily 7:5 needs 10:13 neither 11:6 new 1:6 north 1:16 2:14 4:21 6:22 notary 11:2		r 2:17 rachel 3:3 rahimi 3:8 rahn 3:3 rannik 4:2,3 realtime 3:4 reason 9:14 10:11 recall 6:15 8:10 record 11:5 refresh 6:6 regarding 8:7 related 11:6 relates 6:24 release 9:11 remainder 9:23 10:8 remember 6:18 remotely 2:18 3:9 3:16,17 4:3,9,14 4:20,24 repair 8:3 repeat 10:1 reported 1:25 reporter 11:1 12:17

[represent - york]

Page 4

represent 5:24 representatives 6:16 responses 7:15 responsible 7:11 rhp 3:11 rhughes 3:11 right 6:2 8:21 road 2:11 4:21 robert 1:15 3:9 robertson 3:2 roblaw.net 3:6 rochester 1:16 ryan 8:6,15	starting 6:19 state 1:1,16 2:14 4:4 11:3 steel 6:9 steele 2:17 stream 1:12 3:13 3:16 street 1:22 2:5 3:4 3:10,19 4:4,15 6:12 strong 1:13 4:18 5:25 6:4,17 7:1,4 7:7 8:24 9:4,5,15 9:21,22 10:5,7,12 suffice 8:19 suite 1:22 2:5,18 3:4,10 4:15 summerville 2:11 sure 6:8 7:11 swheeler 4:22 system 6:10 systems 1:17	timbes 4:8,8 12:14 time 1:21 7:21 10:20 tktlawyers.com 4:11 today 10:10 tom 1:16 tomhildebrand 2:6 tower 1:13 4:18 5:25 6:5,17 7:1,7 9:4,5,15,21,23 10:5,7,13 tower's 7:4 8:25 trades 6:17 transcript 11:4 12:20 trimark 1:14 3:13 3:17 trolley 2:11 true 11:4 try 8:3 10:2	wharf 4:9 wheeler 4:19,20 5:1,23,24 9:19 10:19 12:8 windle 2:16,17 windows 6:10,11 6:22 7:14 winovich 4:25 witness 10:21 11:9 work 7:4 8:25
s		u	x
s 12:18 sam 5:24 samuel 4:20 sarah 4:14 savannah 3:10 sc 1:23 2:5,11,19 3:5,19 4:4,10,21 scnlaw.com 4:22 scope 7:4 sdifranco 4:16 seal 11:10 setting 9:11 signature 11:15 sit 10:10 smith 2:16 4:19 smithterrylaw.c... 2:20,20 sorry 10:1 south 1:1 4:15 11:3,11 southeastern 1:17 specifically 6:18 7:2 sprinkler 1:13 spruill 4:13	t 12:18 take 10:2 taken 1:24 terri 1:25 11:2,18 terry 2:16,17 12:6 12:12,16 testified 7:11 thank 10:19,21 thanks 5:25 thereof 11:8 thing 9:2 think 7:9 10:10,18 third 1:9,19 2:2,8 2:14 3:1,7,12 4:1 4:6,12,17 thomas 1:15 2:4 thurmond 4:8	understand 9:8 v volume 1:20 vs 1:5,10 w w 3:15 walker 3:15 wall 8:15 walls 1:12 walter 2:10,12 warco 1:16 watson 1:14 2:15 way 2:18 9:20 went 6:21 wgfillaw.com 3:20 3:21	york 1:6

South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.



Deposition of:
**Excerpt of Dep of James Clements,
Volume II**

August 26, 2020

In the Matter of:
Balfour, Beatty v. Library Associates

[A. William Roberts, Jr & Assoc.](#)

800-743-3376 | calendar-awr@veritext.com | www.veritext.com

1 STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON
3 BALFOUR BEATTY CONSTRUCTION, LLC,
4 Plaintiff,
5 vs. CASE NO. 2019-CP-10-01108
6 LIBRARY ASSOCIATES, LLC; AND METROPOLITAN LIFE
INSURANCE COMPANY, A NEW YORK CORPORATION,
7
8 Defendants.

LIBRARY ASSOCIATES, LLC,

Third-Party Plaintiff,

vs.

LITHKO CONTRACTING, LLC, GUY M. BEATY, INC.,
BERNARD MMC, LLC, GULF STREAM CONSTRUCTION COMPANY,
INC., PRECISION WALLS, INC., PALMETTO AUTOMATIC
SPRINKLER COMPANY, INC., COOK & BOARDMAN, LLC,
1st CHOICE GLASS, INC., STRONG TOWER CONSTRUCTION,
LLC d/b/a KOCH CORPORATION, WATSON ELECTRICAL
CONSTRUCTION CO., LLC, TRIMARK FOODCRAFT, LLC,
PLEASANT PLACES, INC., DAVID ALLEN COMPANY, INC.,
PREMIER EXTERIORS, LLC, ROBERT THOMAS IRON DESIGN,
LLC, WARCO CONSTRUCTION, INC., OLD NORTH STATE
MASONRY, LLC, TOM ROCHESTER & ASSOCIATES d/b/a
SOUTHEASTERN ARCHITECTURAL SYSTEMS, FORTON COMPANY,
LLC, LOWCOUNTRY CASE & MILLWORK, INC., QUANTUM
COATINGS, LLC, BALFOUR BEATTY CONSTRUCTION GROUP,
INC.

Third-Party Defendants.

EXCERPT OF: JAMES M. CLEMENTS - VOLUME II
DATE: August 26, 2020
TIME: 9:07 AM
LOCATION: Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, SC
TAKEN BY: Counsel for the Plaintiff
REPORTED BY: TERRI L. BRUSSEAU

1 APPEARANCES OF COUNSEL: 2 ATTORNEYS FOR THE PLAINTIFF AND 3 THIRD-PARTY DEFENDANT BALFOUR BEATTY 4 CONSTRUCTION, LLC: 5 PARKER POE ADAMS & BERNSTEIN, LLP 6 BY: THOMAS C. HILDEBRAND, JR. 7 TAYLOR M. MORRIS 8 200 Meeting Street, Suite 301 9 Charleston, SC 29401 10 (843) 727-2650 11 tomhildebrand@parkerpoe.com 12 taylormorris@parkerpoe.com 13 14 ATTORNEYS FOR THE DEFENDANT AND 15 THIRD-PARTY PLAINTIFF LIBRARY 16 ASSOCIATES, LLC: 17 18 BUNDY McDONALD, LLC 19 BY: M. BRENT McDONALD 20 (APPEARING VIA TELEPHONE) 21 1516 Old Trolley Road, 2nd Floor 22 Summerville, SC 29485-8209 23 (843) 492-4134 24 brent@bundymcdonald.com 25 26 ATTORNEYS FOR THE THIRD-PARTY DEFENDANTS 27 OLD NORTH STATE MASONRY, LLC, LITHKO 28 CONTRACTING, LLC and WATSON ELECTRICAL 29 CONSTRUCTION CO., LLC: 30 SMITH TERRY JOHNSON & WINDLE 31 BY: DON R. TERRY 32 (APPEARING VIA VIRTUAL ZOOM) 33 150 Milestone Way, Suite C 34 Greenville, SC 29615 35 (864) 520-4847 36 dterry@smithterrylaw.com 37 38 39 40 41 42 43 44 45	1 ATTORNEYS FOR THE THIRD-PARTY DEFENDANT 2 QUANTUM COATINGS, LLC: 3 4 THURMOND KIRCHNER & TIMBES, PA 5 BY: THOMAS J. RODE 6 (APPEARING VIA VIRTUAL ZOOM) 7 15 Middle Atlantic Wharf 8 Charleston, SC 29401 9 (843) 937-8000 10 michael@tklawyers.com 11 12 ATTORNEYS FOR THE THIRD-PARTY DEFENDANT 13 FLOORING SERVICES, LLC: 14 KOONTZ MLYNARCZK, LLC 15 BY: SCOTT WINOGRAD 16 (APPEARING VIA VIRTUAL ZOOM) 17 1058 East Montague Avenue 18 North Charleston, SC 29405 19 (704) 332-1181 20 scott@kmlawsc.com 21 22 ATTORNEYS FOR THE THIRD-PARTY DEFENDANT 23 STRONG TOWER CONSTRUCTION, LLC d/b/a 24 KOCH CORPORATION: 25 SMITH CLOSSER WHEELER, PA 26 BY: SAMUEL M. WHEELER 27 (APPEARING VIA VIRTUAL ZOOM) 28 7455 Cross County Road 29 North Charleston, SC 29418 30 (843) 760-0220 31 swheeler@scnlaw.com 32 33 ALSO PRESENT: 34 John Heuer - in-house counsel for 35 Balfour Beatty Construction, LLC 36 (appearing via virtual zoom) 37 38 (INDEX AT REAR OF TRANSCRIPT) 39 40 41 42 43 44 45
1 ATTORNEYS FOR THE THIRD-PARTY DEFENDANT 2 PREMIER EXTERIORS, LLC: 3 4 RAHIMI HUGHES & PADGETT, LLC 5 BY: ROBERT C. HUGHES, III 6 (APPEARING VIA VIRTUAL ZOOM) 7 35 Bull Street, Suite 590 8 Savannah, GA 31401 9 (912) 421-9988 10 rhughes@rhp-law.com 11 12 ATTORNEYS FOR THE THIRD-PARTY DEFENDANT 13 GULF STREAM CONSTRUCTION COMPANY, INC.: 14 WALKER GRESSETTE FREEMAN & LINTON, LLC 15 BY: IAN W. FREEMAN 16 (APPEARING VIA VIRTUAL ZOOM) 17 66 Hasell Street 18 Charleston, SC 29401 19 (843) 727-2200 20 freeman@wgflaw.com 21 22 ATTORNEYS FOR THE THIRD-PARTY DEFENDANT 23 BERNARD MCC, LLC: 24 25 WALKER GRESSETTE FREEMAN & LINTON, LLC 26 BY: JOHN LINTON, JR. 27 (APPEARING VIA VIRTUAL ZOOM) 28 66 Hasell Street 29 Charleston, SC 29401 30 (843) 727-2200 31 linton@wgflaw.com 32 33 ATTORNEYS FOR THE THIRD-PARTY DEFENDANT 34 LOWCOUNTRY CASE & MILLWORK, INC.: 35 EPTING & RANNIK, LLC 36 BY: JAAN G. RANNIK 37 (APPEARING VIA VIRTUAL ZOOM) 38 46-A State Street 39 Charleston, SC 29401 40 (843) 377-1871 41 jgr@epting-law.com 42 43 44 45	369 JAMES M. CLEMENTS - EX. BY MR. WHEELER 1 2 3 4 5 6 7 8 9 10 11 12 13 14 EXAMINATION 15 BY MR. WHEELER: 16 Q. Tom and Jim, can you hear me all right? 17 A. Yes. 18 Q. Okay. My name is Sam Wheeler. I 19 represent Strong Tower Construction, LLC doing 20 business as Koch Corporation. I just have a few 21 minutes of questions for you. 22 Are you familiar with this company and 23 its role in the construction of Hotel Bennett? 24 A. I believe we contracted with your firm 25 to provide the storefront doors and systems, is

370 1 that right? 2 Q. That's correct. I'll represent to you 3 it was called a Hope's bronze and steel door front 4 system. Does that ring a bell? 5 A. Right. I spoke with your CEO at 6 various times after the project was over. 7 Q. Okay. Thank you. In taking Kim 8 Brown's deposition, she -- I'll represent to you 9 she testified that Library Associates had no claims 10 for delays associated with Strong Tower's work. 11 Are you aware of any delays that would have been 12 associated with Strong Tower's work? 13 A. No. 14 Q. Okay. Again, Kim Brown testified that 15 the only issue to Strong Tower's work related to 16 some flashing on a patio door. And I believe that 17 patio door also goes into the restaurant area that 18 would be on Marion Square. She said there was a 19 leak in the flashing -- or I believe in the door 20 associated with the flashing. Are you aware of 21 that issue? 22 A. I think what she's referring to is 23 Balfour Beatty. Or, actually, your firm never 24 installed the weatherstripping on those doors and 25 it was only after until they started leaking was it	372 1 Q. Right. So either way, whether it's 2 Koch or Hope's, the weatherstripping issue, you're 3 99 percent sure that issue was corrected? 4 A. Yeah, I seem to recall that being done 5 before I left. Either it is or it isn't, so... 6 Q. To the extent it wasn't done by Strong 7 Tower -- or, excuse me, Koch or Hope's, do you have 8 any idea what the cost associated with that fix 9 might be? Sounds like a pretty cheap fix to me, 10 but maybe I'm wrong. 11 A. No. No. And the reason I say 12 weatherstripping, because it was the gap between 13 the doors when I was there prior to the hotel 14 opening that was letting the water in. And I seem 15 to recall Tim Spano telling me that they had 16 forgotten the weatherstripping and I thought that 17 was installed. 18 Q. Okay. So Kim said flashing, you're 19 saying weatherstripping. Either way it sounds like 20 in your estimation the issue was resolved, is that 21 right? 22 A. That's what I recall. 23 Q. Okay. Are you aware of any other 24 issues associated with Koch's work on the project? 25 A. Well, there were issues with the main
371 1 discovered that the weatherstripping was missing. 2 Q. Do you know if weatherstripping was 3 later installed on those doors to correct that 4 issue? 5 A. No, I do -- I want to say yes, but 6 don't hold me to it. I believe that work was 7 completed. Because Hope's did come back in. Yeah, 8 I'm 99 percent sure that work was completed because 9 Hope's came back in for final adjustments and I 10 seem to recall them working in that restaurant area 11 on those doors or Koch Company. 12 Q. So Strong Tower completed the fix with 13 that issue or the manufacturer completed the fix 14 with that issue? 15 A. Yeah, I'm not aware of the difference. 16 I just saw people working there, whether it was 17 Koch or -- I don't recognize the name Strong Tower 18 at all. I mean, we dealt -- I do remember Koch. 19 Q. Okay. They're one and the same. I 20 said Strong Tower. I'll use Koch if that's easier 21 for you. 22 A. Yeah, because Koch was the labor side 23 of the Hope's doors and windows installation. As I 24 recall, you held the contract and Hope's provided 25 you the materials, right?	373 1 doors, hardware adjustment issues, while I was 2 still there. I believe repairs were made, but not 3 by Koch, but by a local company that your -- I 4 spoke with your -- some person in your company. 5 They referred me to a company in Charleston who 6 actually came out and did door adjustments because 7 they were dragging or they were hard to open and 8 those type of things. I'm trying to look up the 9 guy's name right now. You probably know who I'm 10 talking about. 11 Q. I do not, but that would be helpful. 12 Do you have any idea what that might 13 have cost to fix? 14 A. Oh, no, I wouldn't have any idea on 15 cost. 16 Q. But that issue has also been fixed, is 17 that right? 18 A. Jeff Slater. Does that ring a bell? 19 Q. Not with me, but that doesn't mean a 20 whole lot. 21 A. As far as I know, adjustments were made 22 on the main entrance doors. Whether that's -- 23 there's been work done since then, I don't recall, 24 but prior to the hotel's opening I know that there 25 were issues with the doors dragging or something

374 1 like that, but I thought the work was corrected. 2 Q. Okay. Any other issues with Koch's 3 work that you can recall? 4 A. No. No. When you say issues, you mean 5 open issues, unresolved issues? 6 Q. Unresolved issues. 7 A. No, I don't recall anything else. 8 Q. Okay. Were there any issues that went 9 on during the project that Koch did not resolve 10 during the course of the project? 11 A. No. They were a pleasure to do 12 business with. 13 Q. Okay. I asked Kim the same thing. To 14 the extent that someone helped pay for the 15 weatherstripping and the adjustment to the front 16 door, is there any other cost or damages that would 17 prevent Koch from being compensated by Balfour 18 Beatty under its contract with Balfour Beatty? 19 A. Nothing that I am aware of. 20 Q. And you're not aware of any delay 21 claims or claims for liquidated damages associated 22 with Koch's work, right? 23 A. I am not aware of any. 24 MR. WHEELER: Okay. Thank you very 25 much. That's all I have for you.	1 I N D E X 2 Page Line 3 JAMES M. CLEMENTS - - 4 CONT'G EXAMINATION 5 BY MR. HILDEBRAND - - 6 EXAMINATION 7 BY MR. WHEELER 369 14 8 CERTIFICATE OF REPORTER - - 9 E X H I B I T S 10 Page Line 11 12 (No Exhibits Were Marked in the Excerpt Portion 13 Of The Transcript) 14 15 16 17 18 19 20 21 22 23 24 25
1 CERTIFICATE OF REPORTER 2 I, Terri L. Brusseau, Notary Public for the 3 State of South Carolina at Large, do hereby certify 4 that the foregoing transcript is a true, accurate, 5 and complete record. 6 I further certify that I am neither related 7 to nor counsel for any party to the cause pending 8 or interested in the events thereof. 9 Witness my hand, I have hereunto affixed my 10 official seal this 9th day of September, 2020 at 11 Charleston, Charleston County, South Carolina. 12 13 14 15 16 17 18 19 <u>Terri L. Brusseau</u> My Commission expires April 5, 2026. 20 21 22 23 24 25	

[& - compensated]

&	4	4:15,20 april 11:19 architectural 1:17 area 6:17 7:10 asked 10:13 associated 6:10,12 6:20 8:8,24 10:21 associates 1:6,8,16 2:9 6:9 atlantic 4:4 attorneys 2:2,8,14 3:1,6,12,17 4:1,6 4:12 august 1:21 automatic 1:12 avenue 4:9 aware 6:11,20 7:15 8:23 10:19 10:20,23 b	brown's 6:8 brusseau 1:25 11:2,18 bull 3:4 bundy 2:10 bundymcdonald.... 2:13 business 5:20 10:12 c
& 1:13,16,17,22 2:4,17 3:2,8,13,18 3:19 4:2	421-9988 3:5 46 3:20 492-4134 2:13		
1	5		
10-01108 1:5 1058 4:9 14 12:7 15 4:4 150 2:18 1516 2:12 1st 1:13	5 11:19 520-4847 2:19 590 3:4		
	6		
	66 3:9,15		
	7		
2	704 4:10 727-2200 3:10,16 727-2650 2:6 7455 4:15 760-0220 4:16		
200 1:22 2:5 2019 1:5 2020 1:21 11:10 2026 11:19 26 1:21 29401 2:6 3:10,15 3:21 4:4 29405 4:10 29418 4:16 29485-8209 2:12 29615 2:19 2nd 2:12	8		
	843 2:6,13 3:10,16 3:21 4:5,16 864 2:19		
	9		
	912 3:5 937-8000 4:5 99 7:8 8:3 9:07 1:21 9th 11:10		
3	a		
301 1:22 2:5 31401 3:4 332-1181 4:10 35 3:4 369 5:1 12:7 370 6:1 371 7:1 372 8:1 373 9:1 374 10:1 377-1871 3:21	accurate 11:4 adams 1:22 2:4 adjustment 9:1 10:15 adjustments 7:9 9:6,21 affixed 11:9 allen 1:15 appearances 2:1 appearing 2:11,18 3:3,9,14,20 4:3,9	b 1:14,16 4:12 12:9 back 7:7,9 balfour 1:3,18 2:2 4:19 6:23 10:17 10:18 beatty 1:3,18 2:2 4:19 6:23 10:18 10:18 beaty 1:11 believe 5:24 6:16 6:19 7:6 9:2 bell 6:4 9:18 bennett 5:23 bernard 1:12 3:12 bernstein 1:22 2:4 boardman 1:13 brent 2:11,13 bronze 6:3 brown 6:14	certific 11:1 12:8 certify 11:3,6 charleston 1:2,23 2:6 3:10,15,21 4:4 4:10,16 9:5 11:11 11:11 cheap 8:9 choice 1:13 claims 6:9 10:21 10:21 clements 1:20 5:1 12:3 closser 4:14 coatings 1:18 4:1 come 7:7 commission 11:19 common 1:1 company 1:6,12 1:13,15,17 3:7 5:22 7:11 9:3,4,5 compensated 10:17

[complete - jr]

complete 11:5 completed 7:7,8 7:12,13 construction 1:3 1:12,13,14,16,18 2:3,16 3:7 4:12,19 5:19,23 cont'g 12:4 contract 7:24 10:18 contracted 5:24 contracting 1:11 2:15 cook 1:13 corporation 1:6 1:14 4:13 5:20 correct 6:2 7:3 corrected 8:3 10:1 cost 8:8 9:13,15 10:16 counsel 1:24 2:1 4:19 11:7 county 1:2 4:15 11:11 course 10:10 court 1:1 cp 1:5 cross 4:15	delay 10:20 delays 6:10,11 deposition 6:8 design 1:15 difference 7:15 discovered 7:1 doing 5:19 don 2:17 door 6:3,16,17,19 9:6 10:16 doors 5:25 6:24 7:3,11,23 8:13 9:1 9:22,25 dragging 9:7,25 dterry 2:20	firm 5:24 6:23 fix 7:12,13 8:8,9 9:13 fixed 9:16 flashing 6:16,19 6:20 8:18 floor 2:12 flooring 4:7 foodcraft 1:14 foregoing 11:4 forgotten 8:16 forton 1:17 freeman 3:8,8,11 3:13 front 6:3 10:15 further 11:6	heuer 4:19 hildebrand 2:4 12:5 hold 7:6 hope's 6:3 7:7,9,23 7:24 8:2,7 hotel 5:23 8:13 hotel's 9:24 house 4:19 hughes 3:2,3
	e	g	i
	e 12:1,9 easier 7:20 east 4:9 either 8:1,5,19 electrical 1:14 2:15 entrance 9:22 epting 3:19,22 estimation 8:20 events 11:8 ex 5:1 examination 5:14 12:4,6 excerpt 1:20 12:12 excuse 8:7 exhibits 12:12 expires 11:19 extent 8:6 10:14 exteriors 1:15 3:1	g 3:19 ga 3:4 gap 8:12 glass 1:13 goes 6:17 greenville 2:19 gressette 3:8,13 group 1:18 gulf 1:12 3:7 guy 1:11 guy's 9:9	ian 3:8 idea 8:8 9:12,14 ii 1:20 iii 3:3 index 4:21 installation 7:23 installed 6:24 7:3 8:17 insurance 1:6 interested 11:8 iron 1:15 issue 6:15,21 7:4 7:13,14 8:2,3,20 9:16 issues 8:24,25 9:1 9:25 10:2,4,5,5,6,8
d	f	h	j
d 1:14,16 4:12 12:1 damages 10:16,21 date 1:21 david 1:15 day 11:10 dealt 7:18 defendant 2:2,8 3:1,6,12,17 4:1,6 4:12 defendants 1:7,19 2:14	familiar 5:22 far 9:21 final 7:9	h 12:9 hand 11:9 hard 9:7 hardware 9:1 hasell 3:9,15 hear 5:16 held 7:24 helped 10:14 helpful 9:11 hereunto 11:9	jaan 3:19 james 1:20 5:1 12:3 jeff 9:18 jgr 3:22 jim 5:16 john 3:14 4:19 johnson 2:17 jr 2:4 3:14