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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 VI

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1 A. Correct, yes.

2 Q. And it was done in part because it was
3 fulfilling Balfour Beatty's obligation to Library
4 Associates to manage the subcontractors, correct?

5 A. Correct.

6 Q. Okay. So let's look at this e-mail and
7 notice of default. Southwest front entry still
8 incomplete. Was scheduled to complete in November of
9 '16. Do you have any information that the failure to
10 complete was caused by the owner?

11 A. Yeah. There were numerous, numerous design
12 changes and lack of design that resulted in impacts
13 throughout the entire project.

14 Q. Do you have any information or facts as it
15 relates specifically to the southwest front entry that
16 the allegation here that it was still incomplete was
17 caused by the owner?

18 A. Again, numerous changes. If we go back and
19 look at the documents and look at all the revisions
20 that were made throughout the project and all the cost
21 events that took place, the schedule impacts that we
22 incurred, we still haven't received the change orders
23 and the schedule extension as it relates to that.

24 Q. As it relates to the southwest front entry,
25 do you have any evidence that that was -- the

1 incomplete nature of that work as of January 23, 2017
2 was caused by Library Associates?

3 A. Again, numerous changes.

4 Q. Arches, notified to start 1/13/17. Scaffold
5 still not complete and no masonry started. Needs to
6 be complete by 1/27/17. Do you have any evidence the
7 failure to complete the scaffolding and the fact that
8 no masonry was started was a result of any actions of
9 the owner?

10 A. Numerous changes.

11 Q. Now, changes that occurred after this date,
12 would they be the cause of this?

13 A. Absolutely not.

14 Q. Okay. So if they move the TV two years
15 later, that wouldn't have prevented these people from
16 putting the scaffolding up?

17 A. But again, if you have a structure that has
18 an impact because it physically cannot be constructed,
19 that is an issue, right? And again, all of these
20 items that they're identifying here doesn't
21 necessarily mean that these are on the critical path.
22 These are items that been identified, that the sub has
23 not completed, that we notified them, and expect them
24 to go resolve. Day to day we have issues that happen
25 on a job. It's our responsibility to identify those

1 issues, work with the contractors to go fix it. To
2 the extent that we have delays on the owner and a lack
3 of design that impacts the overall project, that is
4 out of my control. My responsibility is to go manage
5 what I have and the work that I have in front of me.

6 **Q. So the critical path is -- does come into**
7 **play when it relates to subcontractors?**

8 A. Critical path is what drives the job, all
9 right?

10 **Q. The critical path comes into play when**
11 **you're analyzing whether a sub's work delayed or did**
12 **not delay the job?**

13 A. Again, the critical path through the project
14 was through all the changes. The changes and the
15 impacts in the lack of design on behalf of Library and
16 WLA is what impacted the critical path on this
17 project. Hands down.

18 **Q. Would you agree with me that things that**
19 **occurred after January 13, 2017, could not have been**
20 **the cause of scaffolding not being complete and no**
21 **masonry started?**

22 A. Maybe at the time. But if the decisions and
23 the lack of decisions continued, it most certainly
24 could have had an impact.

25 **Q. Okay. So things that occurred after the**

1 scaffolding was late, things that occurred after that
2 day --

3 (Unidentifiable voices on Zoom.)

4 MR. BUNDY: Who is that?

5 THE COURT REPORTER: Guys, somebody is
6 not muted.

7 Q. (By Mr. Bundy) It is your position --

8 (Unidentifiable voices on Zoom.)

9 MR. BUNDY: Tell him I'm going to cut
10 it off.

11 THE COURT REPORTER: Guys, Mr. Bundy
12 said we're going to cut off the Zoom if you guys
13 don't mute yourself. We're hearing conversation
14 between -- I don't know who's talking.

15 VIDEO TECH: I just muted them.

16 Q. (By Mr. Bundy) It is your position and
17 Balfour Beatty's position, Balfour Beatty Construction
18 Company's position, that events that occur after a
19 delay can cause a delay that precedes those events?

20 A. Because of the numerous delays and impacts
21 in design efficiencies on this project, that stacked
22 and resulted in out-of-sequence work, stacking of
23 trades, all that had a compound effect that was just
24 unbelievably detrimental to the schedule.

25 Q. So it is a legitimate excuse to not putting

1 up a scaffold in time that months from now somebody is
2 going to move something?

3 A. Sir, there were -- again, at the time of
4 the -- from day one on this project, day one the
5 design documents changed. Day one. And we chased
6 those design issues all the way up the structure to
7 the extent that the project shut down because we
8 didn't have sufficient design documents.

9 Q. Okay. The next one is a deficiency that was
10 noted by Mr. Starcevic. It's L3 low grout break
11 identified on 11/28. Old North State -- Old North
12 State Masonry denied responsibility. S&E performed
13 core test and ONSM maintains not a grout issue. ONSM
14 verbally proposed fix on 1/8. BBC RFLD and gave
15 direction on -- to ONSM on 1/19. Activity still not
16 started. Causing delay.

17 Now, did Library Associates cause the grout
18 issue?

19 A. No.

20 Q. Huh?

21 A. No.

22 Q. All right. Was there a delay resulting from
23 the grout issue?

24 A. There was an impact to the -- to the next
25 phase of work it sounds like.

1 **Q. Well, it says causing delay.**

2 A. Right.

3 **Q. Now, is that a critical delay?**

4 A. It doesn't appear to be, no.

5 **Q. Well, if it's not a critical delay, then**
6 **why -- what was the significance of it?**

7 A. Because we need the work to progress and get
8 done.

9 **Q. Is the subcontractor responsible for damages**
10 **resulting from noncritical delays?**

11 A. I don't understand the question.

12 **Q. You don't understand what a critical delay**
13 **is versus noncritical delay?**

14 A. I didn't understand your question.

15 **Q. Okay. My question is: Under the**
16 **subcontract with Balfour Beatty, is the subcontractor**
17 **responsible for delays that do not cause a delay on**
18 **the critical path of the job?**

19 A. It's their responsibility to maintain
20 schedule, perform their work within that schedule.
21 And to the extent that they don't, it's our
22 responsibility to help identify that for them and help
23 them to achieve that and get back on track. Now,
24 again, identifying these items and things that we
25 needed to have fixed doesn't mean that it's

1 necessarily an impact on the critical path, by any
2 means, especially knowing and witnessing and enduring
3 the number of changes and impacts that came throughout
4 this entire project.

5 Q. Well, all I'm asking you is, if it wasn't a
6 critical delay, is Balfour Beatty entitled to be
7 compensated for the delay from its subcontractor?
8 That's all.

9 A. Again, the delays throughout the project is
10 what had the compound effect on all the subcontractors
11 of Balfour Beatty.

12 Q. Control joints. The window in 309, still
13 wrong and in delay identified in November. Did Mr. --
14 did Library Associates cause window 309 to be in the
15 wrong -- be wrong?

16 A. I don't -- I don't know specifically the
17 issue with 309.

18 Q. Okay. Would Starcevic be in a better
19 position than you to know that?

20 A. Being as he authored this, I would say yes.

21 Q. And if it were Mike Bennett's fault or
22 Library Associates' fault or the architect's fault,
23 would it have been appropriate for him to make a
24 complaint with Old North State Masonry about the
25 window?

1 A. Again, with the number of changes and design
2 impacts on this project, I don't know what dictated
3 the window 309 being incorrect.

4 **Q. You don't believe Mr. Starcevic did?**

5 A. I'm not suggesting that. He wrote the
6 letter.

7 **Q. So you won't -- will you defer to**
8 **Mr. Starcevic's knowledge over yours since you don't**
9 **know and he knew at least enough to write the letter?**

10 A. He authored the letter. I did not author
11 the letter, right. What I'm trying to tell you is, is
12 that each of these individual items were significantly
13 impacted by the fact that the owner and the design
14 team had an incomplete design that hindered this
15 project in any progress.

16 **Q. So it's your position that the incomplete**
17 **design caused the window in 309 to be in the wrong**
18 **place?**

19 A. I didn't say that. I don't know. I said I
20 do not know what the issue was with 309.

21 **Q. Level 3 windows opening 4 inches too large,**
22 **not complete and fix not started. Now, is that the**
23 **responsibility of the owner or the architect?**

24 A. I don't know. I'm not familiar with the
25 specific issue.

1 **Q. Okay. Level 5 not complete, in delay.**
2 **12/13 scheduling included precast activity, CMU**
3 **finishing 123. Level 6 not complete.**

4 **Were these a result of design problems or**
5 **owner-created problems?**

6 **A. I mean, we all know that the structure**
7 **itself was completely shut down right there about that**
8 **level.**

9 **Q. All right. Let's go to the next letter,**
10 **January 24, 2017 from Chip Venable. Got it?**

11 **A. You got a letter?**

12 **Q. Yeah, it's a letter to Nick Starcevic.**

13 **A. Yep, okay.**

14 **Q. You got it?**

15 **A. Got it.**

16 **Q. Venable is a project manager for Old North**
17 **Stat -- Old North State, right?**

18 **A. That's what it says, yeah.**

19 **Q. All right. In the middle of the paragraph**
20 **it says, "From the development of the schedule to**
21 **today, we have pointed out numerous issues with job**
22 **schedule from logic and sequencing for all of the**
23 **masonry activities." You see that?**

24 **A. I do, yes.**

25 **Q. Is it true?**

1 A. I mean, again, the number of issues and
2 design issues and impacts that we created that were
3 created on this project by the owner and the design
4 team, we did the very best that we could to develop a
5 schedule that created a flow to allow the trades to be
6 successful on the job. This job was plagued with
7 insufficient design and changes throughout.

8 **Q. All right. Here is another one Thursday,**
9 **February 9, 2017 from Geno Cassatt. Who is that?**

10 A. He was one of the field supervisors for
11 Balfour Beatty.

12 **Q. And he's talking about second notice of a**
13 **delay and demand to cure. Do you know what that one**
14 **was about?**

15 A. I mean, it looks to me -- I don't, but it
16 looks like it's a continuation of the e-mail
17 correspondence from earlier.

18 **Q. Let's go to -- e-mail at the top of it --**
19 **this is back on January -- it's January 23, 2017,**
20 **Starcevic to Anastasi, January 23rd at 5:26. This is**
21 **the one we went over earlier.**

22 A. So flip back in the book, is that what
23 you're saying?

24 **Q. Yeah.**

25 A. Okay. Yes, sir.

1 Q. Go to the page -- the next one where the
2 letter says, Chip, see attached notice of demand for
3 cure. Do you see that? It's behind -- it's behind --
4 there is an e-mail at the top it says Starcevic,
5 January 23, 2017, at 5:26.

6 A. I've got that.

7 Q. Okay. Turn the page. Behind it should be a
8 letter that says "Chip" in the upper left-hand corner.

9 A. Now I've got -- I've got a letter to --

10 Q. There may be more than one e-mail with
11 that -- keep going. There may -- there are more
12 than -- these e-mails are --

13 A. Here we go. Yes, okay. Chip said number
14 one cleanup.

15 Q. Yeah, you got it?

16 A. Yeah.

17 Q. Okay, let's keep going. Let's do that
18 later. Let's go to the next one, which is March 3,
19 2017, Starcevic to Holloway.

20 A. Okay.

21 Q. You see that one?

22 A. Yes.

23 Q. All right. Toby -- this is Toby Holloway.
24 Per the below e-mail and attached survey from Geno.
25 Who is Geno; do you know?

1 A. Geno, again, was one of the field
2 supervisors for Balfour.

3 **Q. One of your guys?**

4 A. Right.

5 **Q. See attached notice to cure masonry defects**
6 **in stair 3. The walls are out of plumb. The walls**
7 **out of plumb are to be demo'd, rebuilt, and cleaned up**
8 **by 3/17/17.**

9 **Now, did Library Associates or the architect**
10 **cause the mason to build walls in stairway number 3**
11 **out of plumb?**

12 A. I'm not familiar with this issue, but it
13 sounds like they had an issue with them being out of
14 plumb; so thus, from a quality standpoint, need to be
15 replaced.

16 **Q. My question was: Do you have any evidence**
17 **that Library Associates or the architect caused this**
18 **out-of-plumb construction to occur?**

19 A. I do not, no.

20 **Q. Okay. We also need to address the lack of**
21 **manpower and efficiency in stone setting. Numerous**
22 **difficulties getting started with zero pieces set, et**
23 **cetera.**

24 **Is the lack of manpower and inefficiency in**
25 **stone setting caused by any actions on the part of**

1 Library Associates or the architect?

2 A. Again, there were numerous impacts to the
3 design throughout this project.

4 Q. So the answer is yes?

5 A. Yeah, numerous, numerous designs.

6 Q. So just be -- all you got to do is say:
7 Yes, the lack of manpower and efficiency in stone
8 setting was caused by the architect and Library
9 Associates. If that's your answer, that's fine.

10 A. Number of design changes, yeah.

11 Q. Huh?

12 A. Yeah, number of design changes.

13 Q. Okay. Absolutely. It doesn't matter to me.

14 A. Well, it does for me because we're still
15 trying to get paid for all these -- all those design
16 changes we incorporated. So it --

17 Q. All right, let's keep going.

18 A. -- very much matters to me.

19 Q. Let's keep going till we get to Balfour
20 Beatty's notice of delay and demand for cure. Are you
21 there? March 1, 2017. You there?

22 A. I am, yes.

23 Q. And this was issued by Nick Starcevic,
24 right?

25 A. Yes.

1 **Q. Pursuant to the terms of the subcontract,**
2 **correct?**

3 A. Yes.

4 **Q. And the item checked is correct defects in**
5 **the work, Article iii HVI?**

6 A. Yes.

7 **Q. Do you have any evidence that these defects**
8 **were caused by the architect or the owner?**

9 A. I am not suffic- -- I don't know what
10 defects specifically he is referring to.

11 **Q. Let's go to the photograph, the next page.**
12 **Do you see the photograph?**

13 A. I do, yes.

14 **Q. It says, level 4 CMU out plus or minus**
15 **1.5 inches from adjacent CMU face west of concrete**
16 **column.**

17 **Is that acceptable work, one and a half**
18 **inches out of plumb?**

19 A. Again, I don't know what the design was for
20 this area specifically and whether or not that they
21 took into consideration tolerances and everything else
22 that plays into different --

23 **Q. So you don't have an answer as to whether or**
24 **not an inch and a half out of plumb is or is not**
25 **defective work?**

1 A. I don't know if that is -- if that's
2 deficient.

3 **Q. Okay.**

4 A. All right. So --

5 **Q. Is it your position that the architect's**
6 **drawing required out-of-plumb work and that they were**
7 **following the plans and specifications?**

8 A. It's saying that it's out one and a half
9 inches from the adjacent CMU. It doesn't say that the
10 wall was out of plumb. I believe it said it was out
11 of plumb on the stairs, but it's just -- I am reading
12 this as it's saying it's one and a half inches out
13 from the adjacent CMU --

14 **Q. Okay.**

15 A. -- or the concrete column. I don't know
16 what was designed. I don't have the documents in
17 front of me.

18 **Q. Point well taken. Okay. So it's not out of**
19 **plumb, it's just --**

20 A. I don't know. I'm just -- I'm reading it
21 and interpreting it that way.

22 **Q. Well, if it was a problem with the contract**
23 **drawings which required apparently that this wall was**
24 **to be out an inch and a half, why would you send a**
25 **notice to the masonry contractor that the work was**

1 deficient when he was following the plans and
2 specifications and putting it where it was supposed to
3 be?

4 A. Again, it looks to me like what's been
5 checked here is tear down, rebuild the wall, stair 3.

6 Q. Well, that's what was checked there, but I'm
7 just pointing out what's in the picture. It says --

8 A. But again --

9 Q. -- level 3 --

10 A. Right.

11 Q. -- CMU out two inches from adjacent CMU face
12 west of concrete column. Was that per the design?

13 A. I don't know what this is referring to
14 specifically.

15 Q. All right, let's go to March 6, 2017. All
16 right. This is Holloway to Starcevic -- yeah, to
17 Starcevic. All right. He says -- in the last
18 sentence of the paragraph he says: I suggest you --
19 and that would be Starcevic -- go through our daily
20 reports before writing an e-mail like this. As we
21 well could be setting all the parapet stone had you
22 had the flashing that you committed to have two months
23 ago while we are correcting the deficiencies in the
24 concrete on the lower floor where your shelf has no
25 consistency in elevation.

1 Was the lack of consistency in the elevation
2 caused by the owner or the architect?

3 A. Say that, the question.

4 Q. The allegation here by your mason that there
5 were deficiencies in the concrete on the lower floor
6 where your shelf -- and that would be BBC -- has no
7 consistency in elevation.

8 Was that lack of consistency in elevation
9 caused by the owner or the architect?

10 A. Again, I don't know exactly --

11 Q. You don't know.

12 A. -- what the design documents say, but
13 Balfour Beatty didn't install any shelves.

14 Q. Who did?

15 A. We had a concrete contractor that did.

16 Q. And who was that?

17 A. That was Lithko.

18 Q. Okay.

19 A. Again, who -- the structure had numerous
20 design issues and it was unbelievable.

21 Q. Sure, sure. And one of these design issues
22 was that the design called for the concrete on the
23 lower floor having an inconsistent elevation, that was
24 how the architect wanted it. He wanted it to be
25 inconsistent. Is that the way --

1 A. I don't know.

2 Q. Do you know that?

3 A. You might know, yeah.

4 Q. Okay. Well, most architects would want
5 that, wouldn't they, an inconsistent elevation to work
6 off of?

7 A. I don't know what the design intent was,
8 right. I mean, again, they couldn't get
9 ceiling-to-ceiling heights correct, so I mean --

10 Q. Sure.

11 A. -- who's to say --

12 Q. And the building shrunk by 12 stories. I
13 mean --

14 A. Right.

15 Q. -- it was just a mess?

16 A. It was a horrific mess, yeah. Horrific
17 mess.

18 Q. Okay, I got you. Let's go to July 10, 2017.
19 You see it, from Starcevic to Toby Holloway?

20 A. Yeah, I'm trying to find it. All right,
21 July 10th, yes.

22 Q. Okay. Now, in terms of the CC, this is from
23 Starcevic of BBC to Holloway of -- Lith- -- no, he's
24 not with Lithko. He's with the mason, right?

25 A. Yes, Toby Holloway is with the mason.

1 **Q. Now, they're cc'ing this Chip Venable. Who**
2 **is Chip Venable with?**

3 A. He was the one that signed -- he was the
4 project manager for Old North State.

5 **Q. Okay. David Stanton, who is he with?**

6 A. David Stanton is with Balfour Beatty.

7 **Q. And what was his job?**

8 A. He was a VP of operations.

9 **Q. All right. Tim Spano, what was his job?**

10 A. Superintendent.

11 **Q. Okay. Joe Anastasi, what was his job?**

12 A. He's the owner of Old North State.

13 **Q. Michael Jansen?**

14 A. Field supervisor for Balfour Beatty.

15 **Q. Ryan Ledford?**

16 A. Field supervisor for Balfour Beatty.

17 **Q. All right. If a problem -- if there was a**
18 **problem with a design and you were notifying a**
19 **subcontractor and you believed it to be a problem with**
20 **the design, wouldn't it be appropriate to copy the**
21 **architect on that e-mail so the architect would be**
22 **made aware of, there's a problem over here, okay, and**
23 **it's your problem, and you need to know about it? Or**
24 **not?**

25 A. And there were -- there are numerous avenues

1 to notify the architect of issues.

2 **Q. There might be numerous, but this isn't one**
3 **of them. The architect is not on here, is he?**

4 A. In this one instance?

5 **Q. Right.**

6 A. I mean, I don't see the architect in this
7 one instance but there were RFIs, there were OAC
8 meetings, there were coordination meetings, there were
9 site walks by the architect, there were numerous
10 conversations with the architect. So they were aware
11 of their insufficient design --

12 **Q. So it's your testimony?**

13 A. -- throughout this project.

14 **Q. -- under oath that the architect was aware**
15 **of this problem, this specific problem, on July 10,**
16 **2017?**

17 A. I don't know --

18 **Q. He was made aware of this problem?**

19 A. I don't know when he was made aware of this
20 problem.

21 **Q. You don't know that.**

22 A. Huh -- uh.

23 **Q. Do you know if he was ever made aware of it?**

24 A. Again, we can go back and look at all the
25 RFI logs and everything else. If there was a problem

1 on the job with the design, he was made aware of it.

2 Q. All right. Now, you also didn't copy the
3 owner's representative, Jim Clement [sic]. Why not?

4 A. Because again, they may not have used this
5 as the means to notify them. There could have been an
6 RFI that was generated to notify them. He could have
7 brought it up in an owner's meeting to notify them.

8 Q. Sure. It could have been a lot of things
9 but it wasn't done in this e-mail?

10 A. That's a true statement, yeah.

11 Q. Okay. The e-mail says here: As further
12 proof of the out of -- of the block walls out of
13 plumb, as we're casing out windows on L3, we are
14 seeing anywhere from a half inch to one inch out of
15 plumb.

16 Now, a half inch to an inch out of plumb, is
17 that the responsibility of the architect?

18 A. Again, there's -- there's variances that
19 come into play on different product types. It might
20 be out of plumb, but does it work and did the
21 architect translate those variances throughout the
22 entire facade of the building, I don't know.

23 Q. Sure. Since there is nothing we can do at
24 this point from the CMU perspective, we will track
25 these issues and forward to costs. We will continue

1 to update you as we move on. But the added time and
2 costs will be forwarded on to ONSM. Consider this
3 your notice, so take any measurements of survey you
4 wish. It is evident the exterior walls far exceed
5 your tolerances.

6 Okay. So let's assume that Mr. Starcevic is
7 not lying in this e-mail.

8 A. Okay.

9 Q. And that these tolerances have been exceeded
10 by walls that are half an inch to one inch out of
11 plumb, okay?

12 A. Okay.

13 Q. Is that the responsibility or caused by the
14 architect?

15 A. Again, it's what is -- what is the overall
16 product and what did they design. They designed a
17 substrate -- they picked the materials, not me. They
18 picked the substrate, they picked the windows, they
19 picked the finish on the wall, they picked the inside
20 furring, they designed a system.

21 Q. So the inside finishes in a building affect
22 the mason's ability to put up a plumb wall?

23 A. Again, what dictates -- I didn't design the
24 building.

25 Q. And as a construction -- somebody in the

1 construction field, you can't testify here today under
2 oath that, in fact, the ability to put up a plumb wall
3 by a mason is completely unrelated to the finishes
4 that occur on that wall later? Or do you really
5 believe that?

6 A. Again, I don't select the materials. I
7 don't dictate the tolerances. That's an industry
8 standard that's been defined.

9 Q. Okay.

10 A. So if Starcevic has determined that that is
11 outside of the tolerance, then so be it. But again,
12 I'm not saying that he's lying or he's doing anything
13 false. What I'm saying is that I do not know what the
14 tolerances are and whether or not that is out of
15 tolerance.

16 Q. Well, what is it about concrete masonry
17 units that prevents a mason from putting up a plumb
18 wall?

19 A. Again, that's not -- that's not my
20 expertise.

21 Q. You don't know? Okay, so --

22 A. I'm not a mason.

23 Q. Sure. So is it -- so from your standpoint
24 if you're a mason, there are some concrete masonry
25 units or blocks that you can put up plumb and others

1 that you just can't put up plumb. You just can't do
2 it. Is that your understanding of masonry?

3 A. No. I think there's always a tolerance that
4 comes into play throughout any type of product.

5 Q. Okay.

6 A. Right. Now, the owner and the architect's
7 responsibility is to coordinate those.

8 Q. Okay. I got you. All right. Let's go
9 to -- there's an e-mail at the top of the page. It's
10 a June 16, 2017 e-mail. That's just a place marker
11 for you. Once you find that, let me know.

12 A. From Starcevic to Joe?

13 Q. Yeah.

14 A. Okay.

15 Q. Dated June 16, 2017 at 3:51 p.m.

16 A. Okay.

17 Q. You got it?

18 A. Got it.

19 Q. Okay, let's go to the next page. That's
20 where this e-mail chain begins. It's from Starcevic
21 to Spano, Stanton.

22 A. It looks like Joe to Starcevic.

23 Q. Yeah, there you go. To the extent that you
24 have -- this is from Starcevic -- to the extent you
25 have any claim for time or money related to any

1 change, impact, delay, acceleration or any other event
2 on the project through April 30, 2017, Balfour Beatty
3 is requesting that any such claim, together with all
4 supporting documentation required by your conduct --
5 subcontract be submitted to us by June 16th.

6 A couple of questions. Is this typical that
7 Balfour Beatty would invite its subcontractors to make
8 claims?

9 A. Again, I mean, if there are costs that are
10 outstanding and they are trying to capture those
11 costs, then it's not unreasonable to ask.

12 Q. Do you know why Mr. Starcevic sent this
13 e-mail at this time --

14 A. No.

15 Q. -- requesting impacts through April of 2017?

16 A. I do not, no.

17 Q. Okay. Do you know if the subcontractor
18 responded?

19 A. It looks like Joe did respond up top.

20 Q. Okay. And he -- and Joe responds: Find our
21 updated claim draft. All costs are realized -- as
22 costs are realized, we will adjust the claims as
23 required.

24 That was his response, right?

25 A. Yes.

1 **Q. In this request for time and money, I don't**
2 **see any exception here or any request that this**
3 **change -- this request for change impact delay be**
4 **restricted to just things against the owner as opposed**
5 **to claims for any time or money related to any change,**
6 **impact, delay, or acceleration. Was any attempt made**
7 **to distinguish what these subcontractors had for**
8 **claims as it related to claims just against Balfour**
9 **Beatty as opposed to just the owner?**

10 A. Again, they -- the request was for claims
11 that were out there. So when we got those, then we
12 passed through the ones that are associated with the
13 owner.

14 **Q. But y'all weren't asking for claims against**
15 **Balfour Beatty, were you?**

16 A. We had a general request for claim.

17 **Q. Okay. So you were --**

18 A. That's what it says right here: Requesting
19 any such claim.

20 **Q. Okay. So you were not only requesting**
21 **claims against the owner; you were also requesting**
22 **claims against Balfour Beatty?**

23 A. Any cost, any cost claims --

24 **Q. Any claims. Whatever you got, let's get it**
25 **to us now, right?**

1 A. That's right.

2 Q. And it goes on to say: If you don't have
3 any claims, nothing needs to be provided. If nothing
4 is provided, we will presume there are no such claims.
5 Right?

6 A. Right.

7 Q. That's what it says; is that true?

8 A. That's what it says right there, yeah.

9 Q. Is that true that if you don't give us these
10 claims now, then you can't make them later. At least
11 as of this date, you're done for these claims.

12 A. Yeah, that's what it says right -- through
13 April 30th of 2017, yeah.

14 Q. Okay. All right. Let's go to -- there's a
15 document claim calculation Attachment 1, 6/14/2017.
16 Now, what is this document? Do you see that?

17 A. Are you referring to this?

18 Q. Yeah. It looks like it. It's got Claim
19 Calculation Attachment 1?

20 A. Okay.

21 Q. Sort of cut off at the bottom?

22 A. Uh-huh.

23 Q. Okay. Now, this appears to be a -- it says
24 here revised draft claim. So this is Old North State
25 Masonry's claim for 1,023,630, and they're sending it

1 to Balfour Beatty for what purpose?

2 A. Just I guess to make us aware of their
3 claim.

4 Q. Okay. But it says draft claim. Are y'all
5 working with them on the claim or are they just
6 providing you with drafts and you pick the one you
7 like?

8 A. I don't know why they chose to put draft on
9 there.

10 Q. Okay, fair enough. All right. Old North
11 State Masonry then rolls into all of their daily job
12 logs and production reports, right?

13 A. That's what's attached back here.

14 Q. And it goes through until we get to the next
15 document or next sub document, which is Precision
16 Walls' claim, Exhibit B. We discovered that earlier,
17 right, when we were going through all of this?

18 A. Right.

19 Q. Right?

20 A. Yes.

21 Q. Why did y'all send us in this book six
22 inches of Old North State Masonry's daily reports?
23 What were we supposed to do with that?

24 A. Again, you know, the request was for the
25 additional information, and so we submitted the

1 information they provided to us.

2 Q. And that was supposed to help the architect
3 arrive at a conclusion on your claim?

4 A. Again, it's what they submitted to us, and I
5 have an obligation to submit it to you.

6 Q. So you just passed it on?

7 A. Right.

8 Q. However, before you even got the information
9 y'all went ahead and sued Balfour Beatty, right? I
10 mean sued Library Associates. Before any of this
11 information was passed on to the architect at his
12 request, y'all went ahead and filed a lawsuit the day
13 before?

14 A. Again, there were -- there were numerous
15 changes and impacts that were submitted --

16 Q. Sure.

17 A. -- to the owner throughout the duration of
18 the project, much of which we still haven't been paid
19 for.

20 Q. And do you know what the architect's
21 position was with regard to his obligation to review
22 the claim after Balfour Beatty filed the lawsuit and
23 before the documents substantiating the claim were
24 even delivered to the architect?

25 A. Do I know their responsibility, no.

1 **Q. Huh?**

2 A. Do I know their responsibility?

3 **Q. No. Do you know what his response was?**

4 A. Oh, response was, I'm sorry. No. Again, we
5 submitted changes that went back two years that he had
6 had that they never responded to. Some which they did
7 respond and approve that we never got paid for.

8 **Q. I'll ask you the question again. Do you**
9 **know what the architect's response to the claim**
10 **information submitted by Balfour Beatty was as a**
11 **result of Balfour Beatty's filing a lawsuit the day**
12 **before the backup documentation was provided to the**
13 **architect?**

14 A. I don't have anything available in front of
15 me now.

16 **Q. Okay, thank you. All right.**

17 So let's go to Precision Walls. Lien and
18 claim. All right. What did Precision Walls do? What
19 was their scope of work?

20 A. Drywall.

21 **Q. Huh?**

22 A. Drywall.

23 **Q. Drywall?**

24 A. Hanging drywall.

25 **Q. And does that include metal studs?**

1 A. Yes.

2 Q. Okay. So it would include metal studs,
3 drywall and tape and mud. Did they tape and mud as
4 well?

5 A. They did.

6 Q. Okay. Is that -- is that their -- basically
7 their scope of work?

8 A. They majority of it. They had some other
9 things, set some frames and trusses and some different
10 miscellaneous things.

11 Q. I got you. All right. Do you know whether
12 or not they still have a mechanic's lien?

13 A. I do not know.

14 Q. Okay. Their mechanic's lien was one
15 million -- according to this -- 1,236,284.65 plus
16 interest and attorney's fees, correct?

17 A. That's what they claim in here, yes.

18 Q. Huh?

19 A. That's what they have as total amount due,
20 yes.

21 Q. Does Balfour Beatty owe them that money?

22 A. I mean, this is what they're claiming. As
23 far as the breakdown of everything else, we can go
24 through the RCOs and the -- the RCOs --

25 Q. Do you owe --

1 A. -- and look at the schedule of values.

2 Q. Does Balfour Beatty at this time owe
3 Precision Walls, Inc., any money at all?

4 A. I don't know from the -- I'd have to go
5 through the schedule of values and see what's left on
6 the contract.

7 Q. Let's assume that they do owe some money.
8 You can pick any number you want. \$10, \$50, whatever
9 it is.

10 A. Fair enough, yeah.

11 Q. If they owe Precision Walls any money, why
12 haven't they paid them?

13 A. Because I haven't been paid by the owner.

14 Q. Okay. All right, let's go through the --

15 MR. HILDEBRAND: What time do you want
16 to knock off?

17 MR. BUNDY: Huh?

18 MR. HILDEBRAND: What time do you
19 have --

20 MR. BUNDY: 5 o'clock. Ten -- ten more
21 minutes, and then we'll start tomorrow morning at
22 9:30.

23 Q. (By Mr. Bundy) Let's look at Precision
24 Walls' claim and then we'll call it a day. Did -- Tom
25 Sneed verified this lien and filed it on January 31st.

1 Do you know whether or not Balfour Beatty reviewed or
2 anybody at Balfour Beatty reviewed this claim with him
3 before he filed a lien?

4 A. I am not aware, no.

5 Q. Didn't review it with you?

6 A. Not with me, no.

7 Q. All right, let's go to the pull-out section
8 of this claim entitled Job Contracts Law. Do you see
9 that?

10 A. Yes.

11 Q. All right. The first one is October '16 --
12 October 12, '16 claim for \$143,278. It's dated
13 October 12, 2016. Do you know when that claim was
14 first presented to Balfour Beatty?

15 A. I do not, no.

16 Q. Okay. Was this the first time that claim
17 had been presented to Library Associates with this
18 submission?

19 A. I -- I don't know.

20 Q. Okay. Who at Balfour Beatty would know the
21 answer to that question?

22 A. Our project team, so Tim Spano. They --

23 Q. Well who -- give me a name.

24 A. Tim Spano --

25 Q. I took a 30(b)(6) to avoid all of this and

1 **apparently it's not very successful, so I need to know**
2 **a name.**

3 A. I did. Tim Spano or David Simonton.

4 **Q. All right. The next one is -- apparently it**
5 **has a CO number, CO 7 -- 17668. So Balfour Beatty**
6 **Construction, so does that look like a Balfour Beatty**
7 **CO numbering system or can you tell?**

8 A. It doesn't. No, it does not look like one.

9 **Q. Huh?**

10 A. No, it does not look like a Balfour Beatty
11 CO number.

12 **Q. All right. The next one is a March 13, 2017**
13 **claim schedule compression stacking acceleration cost**
14 **as a result of schedule update, 19 compared to 14**
15 **schedule, \$189,943.**

16 Do you know if this claim had been made to
17 Balfour Beatty before March of 2019 when this document
18 was --

19 A. I don't have the exact date, no.

20 **Q. Okay. And then we've got MSH claim. Do you**
21 **know what MSH stands for?**

22 A. I don't, no.

23 **Q. Okay. Cost impacts or schedule delays from**
24 **start of contract through April 30, 2017. That's**
25 **another \$520,856. You don't know who MSH is? Do you**

1 know how this claim was calculated?

2 A. No. There's some subsequent pages here with
3 documentation.

4 Q. Huh?

5 A. There's some subsequent pages here with some
6 documentation --

7 Q. Right.

8 A. -- and values.

9 Q. Okay. So good. Let's go look at -- let's
10 go over -- we have the foldouts, foldouts and then
11 we've got the request for change order. We've got a
12 reference C0 of 17668, which matches the number on the
13 foldout. And it looks like 143. It looks like the
14 numbers match. Okay?

15 A. Yeah.

16 Q. Can you and I agree that this request for
17 change is the request for change that's referred to in
18 the spreadsheet?

19 A. It looks like they got it.

20 Q. Thank you. Do you know if Balfour Beatty
21 received this request for change order on or about
22 October 12, 2016 as referenced on the document?

23 A. I can't confirm the exact date, no.

24 Q. Okay. But whether you got it or not, if you
25 thought it was the responsibility of the -- if Balfour

1 Beatty thought it was the responsibility of the owner,
2 you were obligated to provide that information on to
3 the owner?

4 A. Correct.

5 Q. In a timely fashion pursuant to the terms of
6 the contract?

7 A. Correct.

8 Q. Okay. Is there any delay between the -- any
9 amount of delay between the time you received the
10 information -- Balfour Beatty received the information
11 of a change order from a subcontractor, okay -- is
12 there any amount of time which you would consider to
13 be unreasonable to pass it on to the owner?

14 In other words, would it be reasonable to
15 wait a year before you sent a notice that you had
16 about a cost impact or delay to the owner? Would that
17 be reasonable?

18 A. Again, I think there's a -- there's a notice
19 provision within the contract where I have to notify
20 you of a potential cost and/or schedule impact. The
21 specifics of that being the detail information. There
22 is no timeline within the contract that stipulates
23 when I must give you the actual dollar amount and/or
24 schedule impact.

25 Q. But you have to give notice that it

1 **occurred?**

2 A. I agree, yes, that's per the contract.

3 **Q. And if you're outside that timeline, then**
4 **you've lost the right to ask for that?**

5 A. Once I'm notified as Balfour Beatty, I have
6 an obligation to notify per the contract, yes.

7 **Q. And if you don't do it within the contract**
8 **time, you've lost the ability to recover that?**

9 A. Right --

10 MR. HILDEBRAND: Object to the form.

11 A. -- I have --

12 **Q. Is that correct?**

13 A. -- an obligation per the contract to notify
14 you.

15 **Q. And what is the effect of the failure to**
16 **meet that obligation?**

17 A. I have an obligation to meet it.

18 **Q. Okay. And what's the effect of the failure**
19 **to meet it?**

20 A. I -- I've met my obligation within the
21 contract --

22 **Q. Well, if you have not, if you didn't do it.**

23 A. I've done it.

24 **Q. All right. All right. Let's go through**
25 **this. This says: For various reasons and to no fault**

1 of Precision Walls there were delays caused by the
2 completion of the concrete structure pushing the hotel
3 completion date from 8/17 to 10/24/17. This is a net
4 60-day extension taking into consideration a six-day
5 work week. The schedule comparison that was used was
6 the 4/11/16 schedule update and the 12/13/16 update
7 issued by Balfour Beatty. The change order reflects
8 the following added costs. There is a lot extending
9 the end date of the schedule: Added parking fees,
10 added costs for a bus driver, and 60 days of
11 additional superintendent time, et cetera.

12 Did Balfour Beatty request a 60-day time
13 extension on or about October of 2016?

14 A. We submitted a claim for this -- for this
15 impact.

16 Q. All right. Let's look at the next document.
17 It's a foldout. Can you read this document?

18 A. Can I? Sure.

19 Q. Yeah, can you read it?

20 A. It's a little faint.

21 Q. Huh?

22 A. It's very faint.

23 Q. But can you read any -- what do you think
24 this is?

25 A. It looks to be like a schedule.

1 **Q. All right. And you would expect an**
2 **architect to be able to look at this and draw**
3 **conclusions from it; is that correct?**

4 A. Well, it's a document that was part of it.
5 If there's additional information, they could
6 certainly request it.

7 **Q. Would you expect an architect to expect a**
8 **document in a claim that he can actually read as**
9 **opposed to just this?**

10 A. I believe we've provided sufficient
11 documentation throughout this. And again, this isn't
12 the first time that they've been made aware of this
13 claim. This happened back on the 6th floor early in
14 the project, of which we sat to try to mediate and
15 resolve this early in the project, and we're still
16 sitting here today talking about a claim that they had
17 already agreed happened and we should be paid for.

18 **Q. Is it your position, is it Balfour Beatty's**
19 **position, that these two pages in this claim are**
20 **acceptable proof of a delay claim?**

21 A. The content that is reflected on these
22 documents is certainly substantiated in the claim,
23 yes.

24 **Q. So it's acceptable to send a document that**
25 **no one can read in order to backup your claim?**

1 A. This document has information that is
2 pertaining to our claim, yes, and it should be
3 reviewed and approved as it already has by the
4 architect.

5 **Q. But this --**

6 A. Already approved it. And subsequent to
7 that, there is another document here that has all of
8 it summarized for you.

9 **Q. Well, why don't you read me some of this.**
10 **Why don't you tell me what's in the line -- read --**
11 **read some of this to me.**

12 A. It's all right here. And it all is
13 summarized right here.

14 **Q. No, no, no, no.**

15 A. No, I know.

16 **Q. Read --**

17 A. This is summarized, sir.

18 **Q. Read this document, not the summary of the**
19 **document, but read to me the information contained on**
20 **this graph.**

21 A. It's all right here. It's all in this
22 document. It's all right there.

23 **Q. Read to me what's on the graph.**

24 A. It's got your completion dates. It's got
25 your impact. It shows the flow. It's all right

1 there.

2 **Q. Can you read the information in the gray?**

3 A. I am. I'm reading it right here. The
4 summary is right here.

5 **Q. Put the camera -- put the camera on these**
6 **documents.**

7 A. The document that is right here.

8 **Q. Yeah. Can you read that?**

9 A. It's all right here, sir.

10 **Q. Can you read it, yes or no?**

11 A. Yes. It's all here. It's interpreted
12 information for the contract.

13 **Q. No, no. These two pages, pull them out,**
14 **show them to the videographer. Testify under oath**
15 **that you can read these documents.**

16 A. This information right here, I can't read it
17 from there, no.

18 **Q. Can you read it from where you're sitting?**

19 A. Yeah, right here you can see the dates that
20 are on it, you can see the activities that are on it.
21 The documentation, the line Gantt chart, and then it's
22 summarized on the last page here.

23 **Q. All right. So from Balfour Beatty's**
24 **stand- --**

25 A. And again, this is the not the first time

1 that they've seen these documents. This was submitted
2 to them back when the claim took place and the delay
3 on the project took place.

4 **Q. So for Balfour Beatty's standpoint, this**
5 **document is appropriate for use in a claim for**
6 **\$22 million?**

7 A. They've already approved this claim.
8 They've already approved this impact.

9 **Q. All right. The next one is request for**
10 **change order dated June 14, 2017. This is for**
11 **\$408,000 from Precision Walls, correct?**

12 A. The top section is, yes.

13 **Q. Huh?**

14 A. The top section is, yes, for 408,012.

15 **Q. This reference C0 18452.**

16 A. Right.

17 **Q. You got it?**

18 A. Got it.

19 **Q. Down at the bottom it says under D: We will**
20 **not proceed with this work without a written change**
21 **order.**

22 **Did you issue Precision Walls a written**
23 **change order or did Balfour Beatty issue them a**
24 **written change order?**

25 A. I'd have to go look. I can't confirm.

1 **Q. Okay. All right. I'm getting ready to stop**
2 **for the day, but I'd like to at least get you to**
3 **identify, if you can, the next document, which says**
4 **Hotel at Marion Square Construction Change Order**
5 **Directive Tracker, January 2, 2019. What is this**
6 **document?**

7 A. See if we're looking at the same thing.

8 **Q. It's at the left-hand corner. It says**
9 **construction change order -- construction Change**
10 **Directive Tracker.**

11 A. Yeah, these are OCOs that were submitted and
12 the dates for which they were -- they took place.

13 **Q. COs or CCDs?**

14 A. This is referencing OCOs. CCD tracker, but
15 then it has the OCO numbers that are associated with
16 it as well by month.

17 **Q. Hold on. Is this the document you're**
18 **looking at?**

19 A. I am. Yeah, up on the left it says Contract
20 Change Directive Tracker. But then if you look at
21 each of the columns, it references the OCO numbers per
22 month.

23 **Q. Right. Right, I just wanted to make sure we**
24 **were on the same document.**

25 A. Right.

1 **Q. Who prepared this document?**

2 A. I don't know.

3 **Q. Okay. And it says January 2, 2019, but in**
4 **the right-hand side it says 3/5/2019. What is the**
5 **difference in -- what do those two dates reflect?**
6 **What difference do those two dates reflect?**

7 A. I'm not sure of the time frame. I don't
8 know.

9 **Q. So you don't know whether or not the 3/5/19**
10 **is the run date of this document?**

11 A. I do not know. I can't confirm that, no.

12 **Q. And you don't know what the January 2, 2019**
13 **relates to?**

14 A. No, I do not.

15 **Q. Okay. How does this document track back, if**
16 **at all, to the January 25 letter under damages?**

17 A. Again, all -- all of this document was
18 pulled together and outlined here in the tab section
19 here. Right.

20 **Q. Huh?**

21 A. All of it was developed based on these tabs
22 on the cover letter here, and all this is based on our
23 total claim, right.

24 **Q. So this is --**

25 A. So to try to make the correlation back,

1 again we've been through this. All right, so ...

2 Q. Okay. So you can't use any of these
3 numbers, for instance, the total of all of these OCOs
4 from April through January of 2019 and relate them
5 back to any of the damages claimed in the letter of
6 1/25?

7 A. Right. Again, this is -- this is our total
8 claim that we've consolidated since we've --

9 Q. Okay, I got you. Okay. All right. A
10 couple more and then we'll start back tomorrow, but I
11 just want to feel I can understand it. The CCD
12 number, what is -- a CCD is construction change
13 directive? Is that --

14 A. That's correct.

15 Q. -- short for that, an acronym?

16 A. That's correct.

17 Q. And what is your understanding of how it --
18 how the CCD process works?

19 A. When there was a change that was going to
20 take place, that the owner and the architect would
21 direct us via CCD to go perform the work.

22 Q. Okay. All right. And is a CCD the -- at
23 least in some instances, the result of being unable to
24 agree on a change order?

25 A. I can't answer that. I don't know.

1 Q. Okay. So you're -- are you familiar with
2 the procedure whereby the owner says, I want to make
3 this change, asks you for a proposed change order, you
4 send it back, and the owner goes, no, I'm not paying
5 that. It's too much, but I want the work done, and so
6 what we're going to do is proceed with the
7 construction change directive.

8 And you proceed with the work, keep up with
9 your time and materials. You're not familiar with
10 that?

11 A. Yes, I am familiar with that.

12 Q. So if you have an agreed upon change order,
13 there is no reason to have a CCD, right?

14 A. Correct.

15 Q. Okay. So CC- -- you correct me if I'm
16 wrong. CCDs represent those items that the owner and
17 the contractor were unable to agree on as it related
18 to cost and time, let's say?

19 A. That could be one.

20 Q. Okay.

21 A. Or they could direct us to proceed with the
22 work and follow up with the pricing.

23 Q. Okay.

24 A. But their good faith that we're going to get
25 paid too, right.

1 Q. Were CCDs also used to direct Balfour Beatty
2 to do work that the owner considered in the original
3 contract documents and which Balfour Beatty refused to
4 perform without a CCD?

5 A. I'm not familiar with any of that.

6 Q. You don't think that -- you don't know
7 whether that occurred or not?

8 A. I don't, no.

9 Q. Let me ask you this. If an owner has a job
10 and he's trying to get it built and the contractor
11 refuses to do some portion of work because they --
12 let's say in good faith, that's not what we agreed to
13 do, okay? But the owner says, "Well, I need to get it
14 done, okay, and I think you're responsible for it."
15 At that point the owner's got two choices, right,
16 either you hire somebody else to do it, which he has
17 the right to do, correct?

18 A. Right.

19 Q. Because he can go outside and use his own
20 forces. Or he can direct the contractor to do it
21 under a CCD and somebody is going to decide later
22 whether the contractor gets paid making the initial
23 determination as to whether or not the contractor
24 should have done it in first place without a CCD?

25 A. Fair enough.

1 Q. So just because the owner issues a CCD for
2 work, okay, that is in dispute, doesn't necessarily
3 mean the owner has agreed to pay for it, correct?

4 A. Under that circumstance, yes.

5 Q. Yeah, okay. Because the owner only has two
6 choices, right?

7 A. But, again, if we're adding scope to the
8 job, they have the ability to go direct us. And
9 Balfour Beatty and the subcontractors completed this
10 project, a hundred percent, turned over a fully
11 functional facility without being paid for \$22 million
12 worth of work.

13 Q. I get all of that. But you're changing my
14 hypothetical. I'm jut trying to get some common
15 ground so we can have a discussion, okay? And I'm
16 trying to get to understand, if you will agree with me
17 that if the owner and the contractor have a good faith
18 dispute about what is included in the scope of work
19 outlined in the contract -- the owner says, "You're
20 obligated to do it for the original contract."

21 Contractor goes, "No, I'm not obligated to
22 do it." The owner has one of two choices; either I
23 get somebody else to do or I direct the contractor
24 with a CCD to do it, right?

25 A. Yes.

1 Q. Okay. And the contractor at that point can
2 say, "No, I'm not doing it. You issue all the CCDs
3 you want. I'm not doing it." And then the owner's
4 got another two choices. He either just doesn't get
5 it done or he goes out and hires another contractor,
6 right? Those are his other choices. Not many more
7 left because we don't -- you know, we don't hold guns
8 to each anymore. We try to do it a little more
9 civilized, okay?

10 So if that's the scenario and the owner
11 issues a CCD under that scenario, both parties have
12 agreed that the entitlement to the cost of this work
13 under my scenario will be decided at a later date.
14 And just because the owner issued a CCD does not mean
15 that he agreed that he owes the money ultimately. He
16 may end up owing it if the judge or whoever decides it
17 was not in the original scope of work. Is that fair
18 or no?

19 A. Yes, if it's not in the original scope of
20 work, right.

21 Q. Okay, okay. But I guess what I'm trying to
22 get to is, see if we can agree that just because an
23 owner issues a CCD does not mean the owner agrees he
24 is going to pay for it in every instance if he has
25 contested in the first instance that it's the

1 architect -- it's the contractor's job in the first
2 place. If that's in dispute, okay, then you have to
3 resolve that dispute first?

4 A. Understood.

5 Q. Okay. All right. Thank you. So you start
6 out with a CCD. Black out windows. Let's just pick
7 one, okay? That total represents what? The amount of
8 money that was spent to black out the windows?

9 A. That's what I would assume, yes.

10 Q. Okay. Do you know who prepared this
11 document?

12 A. I do not.

13 Q. Okay. And then you've got -- all right.
14 So -- and I'll quit in a minute. But so in April
15 there was an OCO. Now, what is an OCO, what does that
16 stand for?

17 A. Owner change order.

18 Q. Okay. So if we start in the beginning, the
19 owner issued a change order to the contractor to black
20 out the windows; is that fair?

21 A. We submitted an owner change order, yes.

22 Q. Huh?

23 A. Balfour Beatty submitted an owner change
24 order, right.

25 Q. And presumably there was no agreement on the

1 price?

2 A. We submitted numerous change orders.

3 Q. No, but on this one specifically.

4 A. I don't know specifically.

5 Q. Well, apparently it's in the CCD list, and
6 so, I mean, that's not a reasonable assumption?

7 A. Again, they could have -- if the OCO had
8 been approved, then the owner would have paid it,
9 right, presumably.

10 Q. Right. So it turned into a CCD because the
11 owner didn't approve it, he didn't agree with the
12 price?

13 A. Or they directed us to go do it with a
14 follow-up of the price later.

15 Q. Okay. And so these are the amounts of money
16 that were spent on the blackout windows. Is that how
17 to read this column?

18 A. Yes.

19 Q. Okay. Then you got -- then you just go down
20 the line, right?

21 A. Right.

22 Q. Okay. So the -- what is the difference
23 between the first page and the second page? What am I
24 missing here?

25 A. I don't know.

1 **Q. Huh?**

2 A. I don't know. The only difference I see are
3 some of the values are different and the date on the
4 top right is different. Other than that, I don't know
5 what one reflects versus the other.

6 **Q. Because if you look at the first one --**
7 **well, okay. On the face of it there is a difference.**
8 **You've got one that says January 2, 2019, and it**
9 **doesn't have any date on the far right-hand side?**

10 A. Correct.

11 **Q. Then you've got another one that says**
12 **January 2, 2019, and there is a date on the far-hand**
13 **side?**

14 A. Right.

15 **Q. Which is 3/5/19?**

16 A. Correct.

17 **Q. It appears as though the descriptions and**
18 **the numbers are the same in both of them. Is that**
19 **correct?**

20 A. No, I think the values are drastically
21 different.

22 **Q. Yeah, the one where it says under the**
23 **total -- under the column of BBC totals, it appears as**
24 **though the -- the descriptions are the same and the**
25 **numbers are the same for all of them. Is that --**

1 A. Oh, yes, correct.

2 Q. Huh?

3 A. Correct, yes, I'd agree with that.

4 Q. And the other difference between the two is
5 there is a date issued date in the column which has
6 3/5 and the other one doesn't have it, okay?

7 A. Right.

8 Q. The other difference is, is that the one
9 without the date of 3/5, the total is \$53,000, but the
10 date of one with 3/5, its total is \$385,000, and it
11 has a different -- at the bottom it says totals
12 include overhead and profit. So when you add overhead
13 and profit to \$53,000, you go up to \$385,000?

14 A. I don't know. I don't know what makes up
15 this document. When you look at the current total for
16 the column, that adds up to 53,000, those values are
17 different when you get to the next document.

18 Q. Well, let me ask you this. If you don't
19 know, and you represent Balfour Beatty, and I don't
20 know because I ain't that smart to figure this out,
21 how would you expect the architect to know what this
22 means if he's going to evaluate a claim, or how would
23 you expect Library Associates to evaluate this claim
24 with these two documents? What good are they?

25 A. Again, we've notified you of the claim and

1 provided you the documentation based on the CCDs that
2 they had.

3 Q. How does -- how do these two pages inform
4 the reader about anything regarding your claim? What
5 more do you know about the claim after you read this
6 than you did before you read it, or are you more
7 stupid after you read than you were before you read
8 it?

9 A. I don't know. I mean, I think you owe me
10 \$385,412 that relates to the CCDs that are
11 outstanding.

12 Q. Okay. Well, why did you send the document
13 that has \$53,000 in it?

14 A. Because they were being transparent and
15 wanted to show you the whole thing.

16 Q. Okay. You want to be transparent that I'm
17 charging you \$330,000 overhead and profit on \$53,000
18 worth of work?

19 A. Sir, if you look at black out windows,
20 current total 47,287. If you look at the previous
21 one, 3,525. You can clearly see that the line items
22 down through OCOs, that those values have increased
23 based on the value that was attributed to that change.

24 Q. All right, well, let's look at the
25 blackouts. In the document of 3/5 in April it was

1 **\$73.14?**

2 A. Correct.

3 Q. In the document that's not dated, it was
4 \$69, so it went up \$4. In the next one, the undated
5 document, it was \$664. And then the one that's dated
6 3/5, it's now \$17,458. Where did that additional
7 \$16,800, what is that -- what makes up that difference
8 as it relates to the black out windows in May of two
9 thousand -- I guess it's 2018, I don't know.

10 A. I presume it's the cost to go perform that
11 work.

12 Q. The cost to perform that work?

13 A. Uh-huh.

14 Q. Went up? It's the same month though. So is
15 it -- did y'all discover it at some point? I mean,
16 I --

17 A. I don't know. I can't answer that.

18 Q. Okay. And then in June it went from \$922 to
19 \$17,000. And in July it went from \$555 to \$4,300.
20 And then it went from 214 to 27. And it went from 938
21 to 45. Then in October it went from 163 to 172. What
22 is the explanation for any of this?

23 A. This is the cost that was submitted as a
24 result of the CCD.

25 Q. But you're submitting two different ones.

1 **Which one do you want?**

2 A. I want -- I want to recover the costs that
3 are associated with the CCDs.

4 **Q. But which one is your cost? You sent me two**
5 **of them. I don't know which one you want.**

6 A. Right now 385,41- --

7 **Q. But this one says 53,089.**

8 A. You asked me, sir, which one. \$385,412.

9 **Q. Do what?**

10 A. \$385,412.

11 **Q. Well, if you wanted 385,412, why would you**
12 **send me the 53,089?**

13 A. I'm giving you the documentation.

14 **Q. What is it documenting? The fact that you**
15 **didn't know what the number was the first time you ran**
16 **it?**

17 A. Not whatsoever. Not whatsoever.

18 **Q. Are we just to presume every time you send a**
19 **document that you want the big- -- the larger amount?**
20 **So that if we get two documents related to the same**
21 **set of work and one is for X and one is Y, we always**
22 **default for paying you more money not less. Is that**
23 **where we are?**

24 A. I would just like to be paid for the changes
25 that we performed throughout the --

1 **Q. And we'd just like to know what they are.**

2 A. Throughout the project we have been
3 submitting -- there's changes that the architect has
4 approved that the owner to date still has not paid us
5 for.

6 **Q. All right. I got you. Okay.**

7 **All right. Well, I'll see you in the**
8 **morning at 9:30.**

9 THE VIDEOGRAPHER: We're going off the
10 record. The time is now 5:15.

11 (Whereupon, at 5:15 p.m., the foregoing
12 deposition was suspended. Signature was reserved.)
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WITNESS CERTIFICATION

I, JEFFREY SANDEEN, declare under the penalties of perjury under the State of South Carolina that I have read and examined the contents of the foregoing testimony as given by me on June 15, 2021, and that to the best of my knowledge and belief the foregoing pages are a complete and accurate record of the testimony given by me, except as noted on the Errata Sheet attached hereto.

I have ____ have not ____ made changes/corrections.

JEFFREY SANDEEN

ERRATA SHEET

RE: BALFOUR BEATTY CONSTRUCTION v. LIBRARY ASSOCIATES
DEPOSITION OF: JEFFREY SANDEEN, VOLUME I
DATE TAKEN: JUNE 15, 2021

Please read this transcript with care. If you find any corrections or changes you wish made, list them by page and line number below. DO NOT WRITE IN THE TRANSCRIPT ITSELF. Return the Errata Sheet and Witness Certification to this office. We appreciate your prompt attention to this matter.

To assist you in making any corrections, please use the form below. If supplemental or additional pages are needed, please furnish same and attach thereto.

Page	Line	Correction or Change/Reason for Change
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TJV

JEFFREY SANDEEN

STATE OF SOUTH CAROLINA

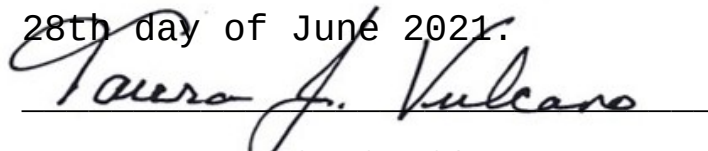
COUNTY OF LANCASTER

CERTIFICATE OF REPORTER

I, TAURA J. VULCANO, CSR, RPR, Notary Public, do hereby certify that the witness whose testimony appears in the foregoing transcript was duly sworn or affirmed by me pursuant to SC Supreme Court Order No. 7 dated April 3, 2020; that said proceedings were taken by me by Zoom Video Conference to the best of my ability and transcribed under my supervision and direction; that the parties were present remotely as stated; and that I am not of counsel for, related to, in the employment of any of the parties to this action, nor am I financially or otherwise interested in the outcome of this action.

I do further certify that the foregoing pages constitute a true and accurate transcript of the proceedings.

This the 28th day of June 2021.



TAURA J. VULCANO, CSR, RPR

My Commission Expires: 9/25/2024

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON C.A. NO. 2019-CP-10-01108

BALFOUR BEATTY CONSTRUCTION, LLC,
 Plaintiff,

VS.

LIBRARY ASSOCIATES, LLC; and METROPOLITAN
LIFE INSURANCE COMPANY, a New York Corporation,
 Defendants.

LIBRARY ASSOCIATES, LLC,
 Third-Party Plaintiff

VS.

LITHKO CONTRACTING, LLC, et al.
 Defendants.

30(b)(6) VIDEO DEPOSITION OF BBC, LLC
BY AND THROUGH JEFFREY SANDEEN

VOLUME II

June 16, 2021

9:31 a.m.

* * *

Taken By the Defendant Library Associates
At the Hampton Inn & Suites,
2688 Fernwood Drive
North Charleston, South Carolina

Reported By:

Taura J. Vulcano, CSR, RPR

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Kim Brown
Jodi Loup (Via Zoom)

I N D E X

EXAMINATION	PAGE
By WALTER H. BUNDY, JR., ESQ.:	378
By THOMAS HILDEBRAND, ESQ.:	519

E X H I B I T S

NUMBER	DESCRIPTION	PAGE
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Exh. 18	BBC Daily Reports Binder 2	486
Exh. 19	BBC Daily Reports Binder 3	486
Exh. 20	BBC Daily Reports Binder 4	486

* * *

1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: We're on the record
3 in the video deposition of 30(b)(6) Balfour
4 Beatty Construction, LLC in the matter of Balfour
5 Beatty Construction, LLC versus Library
6 Associates, LLC, et al. The case number is
7 2019-CP-10-01108. Today's date is June 16, 2021.
8 We are located at Hampton Inn, which is
9 2688 Fernwood Drive in North Charleston, South
10 Carolina.

11 The court reporter is Taura Vulcano.
12 My name is Matthew Starling. The time is now
13 9:31. Would counsel please identify themselves
14 for the record.

15 MR. BUNDY: Walter Bundy. I represent
16 Library Associates.

17 MR. HILDEBRAND: Tom Hildebrand for
18 Balfour Beatty, the plaintiff.

19 THE WITNESS: I don't see anybody on,
20 so I don't know.

21 THE COURT REPORTER: Anybody who's
22 appearing by Zoom, please make your appearances
23 for the record.

24 MS. IVEY: Jennifer Ivey. Walker
25 Gressette Freeman & Linton for Bernhard MCC, LLC.

1 THE WITNESS: It was muted, I'm sorry.
2 I was muted.

3 THE COURT REPORTER: Everyone on the
4 Zoom, you guys were muted and we actually just
5 went on record. So If you could state your
6 appearances, we're at that point.

7 THE WITNESS: It says that there's 11
8 people on.

9 MR. BUNDY: Ready to go?

10 THE VIDEOGRAPHER: Yep.

11 CONTINUING EXAMINATION BY MR. BUNDY

12 Q. Good morning.

13 A. Good morning.

14 Q. After we adjourned -- after we adjourned
15 yesterday, overnight did you do any additional
16 investigation or work or preparation for your -- for
17 the deposition today?

18 A. No, I did not.

19 Q. Okay. And I assume you didn't talk to
20 anybody or anything about the deposition?

21 A. No.

22 Q. Is that correct?

23 A. No, sir.

24 Q. Okay. All right. Yesterday, toward the end
25 of the day, we were discussing this document table

1 summary with two dates, January 2, 2019 and March 5,
2 2019, which totals 385, and the other document, which
3 is January 2 with no date on the right, 53,089.

4 And would, for the record, you just tell me
5 what this -- these documents, what they purport to be
6 and what their -- what their purpose is being included
7 in this claim? It's in Volume 1.

8 A. So it is called the Construction Change
9 Directive Tracker. It's an outline of 1 through 46
10 with dates associated when they were issued and the
11 description of each of the items with associated costs
12 associated with them, a breakdown month-by-month
13 starting in April going through January, the
14 associated OCOs numbered adequately throughout.

15 Q. And these are based upon documents,
16 change -- change -- construction change directive
17 documents that are in the file -- that are in this
18 claim book?

19 A. Yes. This is -- this is a part of the
20 claim. This is in the claim book here under Tab 4.
21 It's a construction change directive tracker tracking
22 all the CCDs.

23 Q. Okay. But they're all -- they all find
24 their genesis in a directive from the owner to either
25 do or not do some work; is that correct?

1 A. Yes. This list reflects all the CCDS.

2 Q. Okay. All right. The next page is a
3 document which is entitled Exhibit XX, the Hotel at
4 Marion Square Balfour Beatty Construction Master
5 Request For Change Order Log. Okay. What does this
6 document purport to inform us about regarding the
7 claim or, in other words, why is it in this document?

8 A. This is the Hotel Marion Square master
9 change request log tracking all the change orders that
10 have been submitted and the current status of those
11 change orders as of the time of this submission.

12 Q. All right. And with regard to each change
13 order, there's a column for RCO. I assume that stands
14 for request for change order, correct?

15 A. Yes.

16 Q. The next column is revision. And if we
17 start just at the first one, this is Revision 1,
18 right?

19 A. Yes, it's a --

20 Q. Does that mean there was precedent to this,
21 there's another RCO related to this same topic that
22 has been revised one time?

23 A. Yes.

24 Q. All right. And so the original RCO is not
25 here. This is the list of the up -- the last or most

1 up-to-date request for change order; is that correct?

2 A. Yes, the last version of that change that
3 had been submitted.

4 Q. All right. Date of first submission. So
5 this change order, rebar at post tension slab to
6 capping beam correction. Is that correct, is that
7 what that says?

8 A. It says rebar at PT slab to capping beam
9 connection.

10 Q. Okay. And why -- what necessitated this
11 request for change order?

12 A. We'd have to look at the specific
13 description within the change order.

14 Q. But you don't know as you sit here?

15 A. Not off the top of my head, I do not.

16 Q. Okay. Date of most recent submission. So
17 while there must -- there may have been a previous
18 one, the Revision 1 was September 1, 2015, correct?

19 A. Yes.

20 Q. It was approved \$5,291.99, right?

21 A. Correct.

22 Q. It was executed on 9/17/2015 --

23 A. Correct.

24 Q. -- correct?

25 And then there is a column for OCO. What

1 does that stand for?

2 A. Owner change order.

3 Q. So this was an owner change order?

4 A. Correct.

5 Q. Has this money, \$5,291.99 been paid?

6 A. We'd have to look at the schedule of values
7 to confirm what has been paid.

8 Q. How about look at it and tell me. Is there
9 a schedule of values in this claim?

10 A. All the scheduled values have been submitted
11 throughout and approved by the owner and the architect
12 throughout the job, so I'm sure we've got a copy of
13 it.

14 Q. Can you find it for me and tell me whether
15 or not the change order --

16 A. All of them have been submitted to the
17 ownership and approved throughout.

18 Q. I understand that. But I'm asking you has
19 it been paid. And you say you can't tell me without
20 looking at the schedule of values. This claim
21 contains a schedule of values. Will you find the
22 schedule of values and answer the question or not?

23 A. All of the schedule of values have been
24 approved by the owner and by the architect throughout.

25 Q. But you're not going to answer my

1 question --

2 A. I have.

3 Q. -- as to whether it's been paid or not?

4 A. It's in the schedule of values and the
5 approved pay applications.

6 Q. Which schedule of values is it in?

7 A. The schedule of values that's been approved
8 on the job by the architect and the owner.

9 Q. All right. How much delay was caused by
10 this change?

11 A. I would have to look at the change order.

12 Q. Okay. And if I go through each one of
13 these, your answer is going to be the same. You're
14 going to direct me to the schedule of values and not
15 answer the question related to a specific change
16 order?

17 MR. HILDEBRAND: Object to the form.

18 A. I have -- I have answered the question. The
19 schedule of values and the change orders will tell us
20 what -- the description of each of the changes and
21 what has been paid.

22 Q. Do I need to ask you the same question to
23 176, 291 -- there are 300, what is it -- how many are
24 on here? 269 of these. Do I need to ask the same
25 question to you 269 times to get the same answer, or

1 will you just give me an answer that I'm going to be
2 directed by you to the schedule of values for every
3 one of these change orders?

4 A. The schedule of values will reflect what has
5 been paid on the project and what is left to be paid.

6 Q. And if I ask you that question 269 times
7 separately for each one, you're going to give me the
8 same answer, correct?

9 A. I'll answer any question you ask me. What
10 I'm telling you is that specific to the one that you
11 asked me on number one, the schedule of values and the
12 change order will tell you what's been paid.

13 Q. Okay. We'll do it that way then. All
14 right. Number two, can you tell me whether that one's
15 been paid?

16 A. We can look at the schedule of values.

17 Q. Number three?

18 A. The same.

19 Q. Four?

20 A. We can refer to the schedule of values.

21 Q. Five?

22 A. The schedule of values will tell us what has
23 been paid --

24 Q. Six.

25 A. -- per the pay application process.

1 **Q. Six?**

2 A. The owner's approved the pay applications
3 and the payments for each of those items.

4 **Q. Seven?**

5 A. We can refer to the pay applications.

6 **Q. Eight.**

7 MR. HILDEBRAND: If you're going to do
8 this, then let him -- wait until he finishes his
9 answer before you start the question.

10 **Q. Okay. Eight.**

11 A. The owners approved all the pay applications
12 along with the design team for each of these pay
13 applications. If these change orders have been
14 billed, then they've been paid.

15 **Q. Nine?**

16 A. The owner has approved each of these change
17 applications as well as the pay application along with
18 the design team, and they've been billed and paid
19 accordingly.

20 **Q. All right. The next -- and what is the**
21 **purpose -- why is this in the log? Why is this in**
22 **your claim? What are you trying to show here with**
23 **this exhibit?**

24 A. It's a master request for change order log.
25 It demonstrates all the change orders that have been

1 submitted and the value and the current version of
2 those.

3 **Q. All right. And let's go to the last page of**
4 **this document. All right. You got a total at the end**
5 **of it?**

6 A. There's a couple of different totals per
7 volume. Which one are you referring to?

8 **Q. Well, you say a couple. What do you mean by**
9 **a couple of different totals?**

10 A. We've got one column that has pending above
11 it and one that has submitted, one that has approved,
12 and one that has rejected.

13 **Q. Right. That's what I'm looking at.**

14 A. Okay.

15 **Q. All right. So these as far as -- these are**
16 **all of the change orders, correct?**

17 A. This is what's reflected on this current
18 log, yes.

19 **Q. Are there any more change orders that are**
20 **not reflected on this log?**

21 A. I mean, there's claims that are throughout
22 this entire consolidated claim.

23 **Q. Pardon?**

24 A. These are the changes that have been
25 submitted per RCOs to the owner.

1 **Q. Are there any claim -- or change orders that**
2 **are not on this log?**

3 A. There is a CCD log that's also attached to
4 this as well as the master change order log is here.

5 **Q. Is this document supposed to be restricted**
6 **to change orders?**

7 A. This document is the master change order log
8 that's come out of the project, yes.

9 **Q. Are all the change orders on this graph --**

10 A. That have been requested, yes, are on the
11 master change order log.

12 **Q. Okay, all right. So the totals -- how many**
13 **dollars are pending regarding change orders according**
14 **to this document?**

15 A. Ah, this column under pending says
16 88,193.39.

17 **Q. Okay. And how many were submitted?**

18 A. I'd have to add this.

19 **Q. What's the total? What's the total? What's**
20 **the total under submitted?**

21 A. Oh, under submitted. Two thousand [sic],
22 064,917.37.

23 **Q. I think it's 2 million, isn't it?**

24 A. I'm sorry, two million, I apologize.
25 2,064,917.37.

1 **Q. So the total of all requests for change**
2 **orders on this job that were submitted was**
3 **2,064,917.37?**

4 A. That's what's under the submitted column
5 right now. That's not approved. And it has been
6 rejected, so those are current costs that are
7 outstanding.

8 **Q. I'm just looking at -- approved and rejected**
9 **is another column. I'm just wanting to talk about**
10 **this column.**

11 A. Right. That's what I said, under submitted
12 you have 2,064,917.37.

13 **Q. And that's -- and that's the total of all**
14 **the change orders that were submitted or requested on**
15 **this job?**

16 A. No, sir. That's what I'm saying, is that is
17 what is currently submitted and has not been approved
18 under this log.

19 **Q. Okay. So the total that had been submitted**
20 **is the total of the submitted and approved?**

21 A. No. The approved is a separate column. It
22 states 5,349,661.08.

23 **Q. All right. And what does -- what does the**
24 **rejected reflect? What is that?**

25 A. Those are costs. It has a value of

1 2,080,189.52.

2 Q. What does it mean when it says rejected?
3 What is that -- what is that the total of, all the
4 change orders that were submitted that were rejected?

5 A. There are a number of changes out throughout
6 here, where you can look at them, of items that have
7 values and descriptions of what had been rejected
8 throughout the project.

9 Q. I don't understand, and I'm sorry that I'm
10 slow on this. I don't understand what the submitted
11 number represents. Can you explain that to me again?

12 A. Again, there is a description of each of the
13 items, the day for which they were submitted and the
14 latest version along with the value of that cost that
15 was submitted to the owner.

16 Q. So by "submitted" that's what was requested
17 by Balfour Beatty to be paid for these change orders?

18 A. And subcontractors, yes.

19 Q. Okay. And of those that were submitted, the
20 2,064,30- -- what is that number 38,000 are still
21 pending?

22 A. Under submitted, you have 2,064,917.37.

23 Q. Well, what does the pending represent?

24 A. Pending is work that -- or pricing that
25 we've submitted that we haven't been given direction

1 to proceed on.

2 **Q. And approved?**

3 A. Is what the owner has approved and the
4 architect has approved as a value.

5 **Q. But it has -- that has no relationship to**
6 **submitted?**

7 A. Submitted is work that's been performed that
8 has not been approved yet.

9 **Q. And rejected, what does that relate to?**

10 A. It's either work that the owner determined
11 they don't want to move forward with and so they chose
12 not to execute the change order and move forward with
13 the work.

14 **Q. Do they owe -- does Library Associates owe**
15 **2,082,189.52?**

16 A. A portion of our claim would be that of any
17 cost that's outstanding for changes that we performed
18 on the project and our subcontractors performed on the
19 project, and those are the values that were owed.

20 **Q. I thought rejected was for work that was not**
21 **done.**

22 A. I didn't say rejected. I said for those
23 values that we performed the work on the project that
24 we want to be paid for.

25 **Q. But are you claiming -- are you making a**

1 **claim for the value of the rejected change orders?**

2 A. No, sir.

3 **Q. Okay. So part of your claim is not**
4 **2,082,189.52 for rejected change orders?**

5 A. No, it's the submitted 2,064,917.37.

6 **Q. That's the claim?**

7 A. That's a portion of the claim.

8 **Q. What's the other portion of it?**

9 A. The 88,193 for work that we performed, as
10 well as the 5,349,661.08 for any of the costs that we
11 have not recovered --

12 **Q. And you don't --**

13 A. -- and been paid for.

14 **Q. You don't know what that number is?**

15 A. We can go through the schedule of values and
16 pay applications of what's been approved.

17 **Q. All right. Let's do that. Tell me what --**
18 **tell me what that number is.**

19 A. If we go through the pay applications we can
20 see what OCOs have been approved, and we can look at
21 this sheet and tell which ones have been incorporated
22 into OCOs, which means that they should be on the
23 schedule on values and be billed. The ones that are
24 not would be the remainder of the costs that we expect
25 to be paid for.

1 **Q. Okay. But there is no complication in this**
2 **claim that we can go to show us that?**

3 A. This is one of many things that outlines the
4 costs that we're due.

5 **Q. All right. All right. What's the next**
6 **table -- it looks like it's entitled Change Orders**
7 **Pending Submission. What is that -- what is this**
8 **number? What does this chart show us?**

9 A. It shows you a list of change orders that
10 are pending submissions.

11 **Q. Money that's been requested?**

12 A. These are -- these are pending submissions.

13 **Q. Does that mean it's been submitted and has**
14 **not been responded to?**

15 A. It looks like they're pending from the
16 document.

17 **Q. Does that mean that you asked -- you sent a**
18 **change order in and it has not been responded to?**

19 A. Right, pending. Yeah, pending.

20 **Q. Okay. Has the work been done?**

21 A. If the work has been done, then those are
22 the ones that we would submit.

23 **Q. And has any of this been paid?**

24 A. If it's pending and not an OCO, then it
25 wouldn't show up on the pay applications; thus it

1 wouldn't be approved to be paid.

2 **Q. Okay. In the letter of January 25, 2019,**
3 **where would this number be included in your damages**
4 **column? What number would it be under?**

5 A. Again, it's -- it's defined by really the
6 tabs that are on the front end here that defines the
7 layout of the claim and where everything is. That's
8 the tool that's used to navigate the makeup of the
9 22 million.

10 **Q. I got you. Okay. All right. Item**
11 **number -- in this change orders pending submission, in**
12 **the middle of is schedule extensions and delays**
13 **Bernhard MCC. And that number is what, a little over**
14 **a million dollars and -- 1,122,884?**

15 A. If we're referring to Bernhard MCC, mine it
16 says 842,064.

17 **Q. Okay. So there is a pending change order**
18 **that was submitted to Library Associates regarding the**
19 **schedule extensions and delays encountered by Bernhard**
20 **MCC?**

21 A. Right, which is provided within the claim.

22 **Q. Okay. And is that in addition to Bernhard**
23 **MCC's claim or is that included in Bernhard MCC's**
24 **claim?**

25 A. Bernhard MCC's claim defines all the costs

1 that they expect to recover for the project.

2 **Q. Okay. All right. The next document is -- I**
3 **think it's under tab, what, five? Are we in tab 5**
4 **now?**

5 A. Okay.

6 **Q. Is that correct?**

7 A. I can be, yes.

8 **Q. Huh?**

9 A. I can be there. There is another document
10 in here, but we can go --

11 **Q. What's the -- what's the other document?**

12 A. Rough order magnitude pricing requested.

13 **Q. Oh, okay. I didn't see that one. Thank**
14 **you. So what does this document reflect?**

15 A. It reflects the rough order magnitude which
16 is called ROM on here. Pricing requested. It's got
17 description of price requests and the date as well as
18 some values plugged in for those.

19 **Q. So was the work -- was this work done?**

20 A. These were pricings that were requested. So
21 the work -- if the work was done, then a formal change
22 order would be submitted to the owner and then paid
23 for.

24 **Q. Was any of this work on here not done?**

25 A. If they didn't approve it, then it wouldn't

1 be performed.

2 **Q. Is this 815,570 included in your claim?**

3 A. The portions of the work that have been
4 completed would be in our claim.

5 **Q. And how would I find that out?**

6 A. They're in the -- submitted within the claim
7 paperwork.

8 **Q. Where?**

9 A. Throughout the claim.

10 **Q. Throughout the claim?**

11 A. Uh-huh.

12 **Q. Okay. When you produced this chart or this**
13 **document here entitled -- is it something -- what is**
14 **it, something of magnitude pricing request? What was**
15 **the R for?**

16 A. ROM is a -- is referenced as rough order of
17 magnitude.

18 **Q. Rough order of magnitude?**

19 A. Correct.

20 **Q. Does that mean that the price is an**
21 **estimate, or what does rough order of magnitude relate**
22 **to?**

23 A. Yes, a general value of what we would
24 anticipate the costs being for that.

25 **Q. Okay. So you were asked for what -- for**

1 instance, what the manager's apartment fireplace would
2 cost, and I don't see a number associated with it.

3 A. Right. We never provided a rough order of
4 magnitude.

5 Q. Okay. What's the purpose -- what does this
6 do to educate somebody about the claim that there was
7 a pricing request for the manager's fireplace and that
8 never was given?

9 A. Because the cost could come out in some
10 other form, like there'd be a CCD, an RFI, an ASI.
11 There were a number of different mechanisms that the
12 design team and the ownership team used to provide
13 directive for work on the job that we performed that
14 we're trying to get paid.

15 Q. Is Balfour Beatty making a claim for 815,700
16 against Library Associates based on this document?

17 A. Our claim is broken out into these four
18 documents and it's \$22 million as defined.

19 Q. But you don't know which ones of these are
20 included in the \$22 million?

21 A. It's all broken out. The ones that we have
22 the stance to present and recover on is what's been
23 presented to you.

24 Q. When this document was created, this
25 particular one we're looking at, ROM pricing

1 requested, why didn't you have a column that would
2 tell us which ones were part of the claim and which
3 ones aren't and which ones were done and which ones
4 were not done?

5 A. Because we've got all the information as
6 requested in these documents and submitted to you.

7 Q. All right. Let's go to the next tab. This
8 first document is entitled Application Certificate For
9 Payment; is that correct?

10 A. Yes.

11 Q. All right. And behind it, it looks like the
12 second page -- are the next two pages the schedule of
13 values that went with this document, with the pay
14 application? My copy is not legible. Is your copy
15 legible?

16 A. The follow-on two pages are difficult to
17 read. Some of the --

18 Q. And you're looking at the original claim
19 that was made?

20 A. I'm looking at what you provided to me --

21 Q. I represent to you that was the original
22 claim that was made. I'm willing to take the oath but
23 that's what it is, okay?

24 A. Very good. Thank you.

25 Q. Thank you. Can you read --

1 A. So number 43 is showing up on the top
2 right-hand corner, which is that of the pay
3 application number.

4 **Q. Right.**

5 A. So 43 up in the top right-hand corner is 43,
6 and on the subsequent page it's 43, so I would say
7 that this is the schedule of values that's represented
8 with pay application number 43.

9 **Q. Can you read those two pages?**

10 A. In it's entirety, no, sir, I cannot.

11 **Q. And why would you submit a claim that had**
12 **documents that were illegible?**

13 A. I mean, the pay applications were something
14 that was approved by both ownership and the design
15 team throughout. So we have other records of this.
16 Certainly if the -- if this copy was illegible, they
17 could request another one. We'd be happy to give it
18 to them.

19 **Q. So it wasn't intentional?**

20 A. By no means, sir plus they've already
21 approved this document, so it's not as if it's the
22 first time they've seen it.

23 **Q. All right. Let's go back to first page of**
24 **the pay request, which is legible. It appears as**
25 **though the architect certified this pay request for**

1 payment of 556,408.01 on 11/8/18 and marked out what
2 was in typing and changed the numbers; is that
3 correct?

4 A. That's what it appears, yes, is the amount
5 that they certified.

6 Q. Was this pay request ever decertified by the
7 architect?

8 A. I am not aware.

9 Q. You're not aware of that?

10 A. No, sir.

11 Q. Okay. Do you know whether the architect has
12 the authority to decertify a pay request?

13 A. I do not know that.

14 Q. You don't know that?

15 A. No.

16 Q. One way or the other?

17 A. No, I don't.

18 Q. Does the architect -- does the owner have
19 any obligation to pay a pay request that's not
20 certified or later decertified?

21 A. I can't answer that. I don't know.

22 Q. You don't know?

23 A. Uh-uh.

24 Q. We'd go to the contract for that?

25 A. Right.

1 **Q. All right. Let's look at the next one, 44,**
2 **application for payment 44, the next exhibit or next**
3 **page in your claim.**

4 A. Yes, I have 44 here.

5 **Q. All right. Has this pay request been**
6 **certified by the architect?**

7 A. This copy does not show that it's been
8 certified.

9 **Q. Okay. Is the owner obligated to pay this**
10 **pay request if it has not been certified?**

11 A. This hasn't been certified. We have not
12 been paid for this.

13 **Q. Is the owner -- is the owner obligated to**
14 **pay a pay request that has not been certified?**

15 A. The architect would typically certify before
16 the owner would pay.

17 **Q. Okay. Well, isn't that a contract**
18 **requirement?**

19 A. Right. They haven't certified it.

20 **Q. Okay. So it hasn't been certified and it**
21 **hasn't been paid, and it's not required to be paid**
22 **until it's certified?**

23 A. It hasn't been certified and it hasn't been
24 paid, that's correct.

25 **Q. And there's no contract requirement that my**

1 client pay an uncertified pay request?

2 A. We'd have to refer to the contract.

3 Q. Okay. Here's -- here's the contract. If
4 you want to read it and refer to it, that's fine.

5 A. It's in the contract. I mean, we can look
6 at --

7 Q. You're not going to look at the contract and
8 tell me?

9 A. I mean, you've got the contract. If you
10 want to look at it. I've answered that it has not
11 been certified and the owner had not paid for it.

12 Q. Okay, fair enough. All right. Let's go to
13 the next one. What is the next attachment? It's
14 entitled -- it's got a first entry and it's MSI. Do
15 you know what that stands for?

16 A. I've got to look at -- what are you
17 referring to?

18 Q. Right after the pay request.

19 A. So the next schedule of values?

20 Q. Yeah, it's after the schedule of values.

21 A. After the schedule --

22 Q. I assume the pay request -- schedule of
23 values is part of the pay request.

24 A. Okay.

25 Q. What is the next document?

1 A. It's a document that has -- it looks like a
2 list of a number of the subcontractors on here.

3 **Q. And what's the purpose of this document?**

4 A. It's a part of the pay application process
5 that looks like they've identified some values
6 associated with each of those contractors and a
7 breakdown of what those values are.

8 **Q. Who -- who prepared this document?**

9 A. We can go back and look at who from Balfour
10 Beatty. There's no signature specifically on this
11 version. I can't tell you who authored it.

12 **Q. Huh?**

13 A. I can't tell you who authored it. There is
14 no signature specific on this application.

15 **Q. Why is it in the claim book?**

16 A. To demonstrate what was included in
17 application number 44.

18 **Q. Okay. All right. And then what's the next**
19 **document? Pay request 45?**

20 A. I have pay request 45 here, yes, sir.

21 **Q. All right. Has it been certified by the**
22 **architect?**

23 A. No, it has not.

24 **Q. Okay. Was this document -- has this**
25 **document been submitted to the architect?**

1 A. It shows that Nick Starcevic has signed and
2 certified from our billing perspective.

3 Q. Yeah, but do you know whether or not it was
4 forwarded on to the architect?

5 A. I can't confirm that.

6 Q. Now, this -- this document would have been
7 certified by Starcevic three days after you wrote the
8 claim letter for \$22 million?

9 A. It was certified on 1/28/19, so three days
10 after the letter.

11 Q. Do you know what the purpose of the
12 certification on the pay application is that was
13 signed by Mr. Starcevic, the language which says:
14 Undersigned contractor certifies to the best of
15 contractor's knowledge, information, and belief the
16 work covered by the application for payment has been
17 completed in accordance with the contract documents,
18 that all amounts have been paid by the contractor for
19 work for which payment -- for which previous
20 certificates of payments were issued and payments
21 received from the owner and the current payment shown
22 herein is now due.

23 Do you know what the purpose of a
24 certification is?

25 A. It's the language that requires you to

1 certify in order to submit your billing under the AIA
2 documents.

3 Q. And is the owner entitled to rely on that
4 certification?

5 A. It's what's supposed to be certified in
6 order to submit the pay application for approval.

7 Q. Okay. And is it also the case that as of
8 the day this certification was signed on January 28,
9 '19, Balfour Beatty had already filed a mechanic's
10 lien in the approximate amount of \$8 million?

11 A. We've got a copy of when the mechanic's lien
12 was submitted. I don't know what book it's in, but we
13 showed it yesterday, the date of that.

14 Q. Here you go. I think you've got it in
15 tab -- I think -- I think it's an exhibit, isn't it?
16 Didn't we make it an exhibit?

17 A. I don't know. You gave me a book yesterday.
18 I don't know all the tabbing.

19 Q. Here is a copy of the lien.

20 A. Yeah. Yeah, January 25, 2019.

21 Q. All right. What's the amount of that lien?

22 A. 8,409,658.54 plus interest, attorneys fees,
23 and all other damages occurred in cost distribution of
24 this action.

25 Q. Okay. So three days before Starcevic signs

1 and certifies that the contractor is due 2 million 4
2 -- what is he saying was due on 1/28/19? What's the
3 number he says is the current payment due, certified
4 by Starcevic under oath?

5 A. Current payment due under this pay
6 application number 45 was requested at 2,470,474.72.

7 Q. So on January 25, Balfour Beatty files a
8 mechanic's lien which verifies under oath that they're
9 owned 8 million bucks in January, right?

10 A. The -- it was filed on January 25.

11 Q. Yes. So what's the amount of the lien
12 again?

13 A. The lien was 8,409,658.54, plus interest,
14 attorney's fees, and all other damages incurred in the
15 costs and distribution of this action.

16 Q. And that was verified by whom? Who verified
17 the truth of that lien?

18 A. Thomas Hildebrand.

19 Q. Okay. And three days later Starcevic -- and
20 what was his position on the job?

21 A. He was the project manager.

22 Q. Three days later after you filed -- after
23 Balfour Beatty filed the lien for \$8,400,000, the
24 project manager on the project three days later under
25 oath says that the current payment due was \$2,470,427

1 -- 74.72. Right? That's what the facts show, right?

2 A. For this specific pay application, yes, sir,
3 for just this one pay application.

4 Q. Okay. So -- okay, that's fine. All right.
5 Can you hand that back to me, please?

6 A. Sure.

7 Q. Which one is true? Mr. Hildebrand's
8 affidavit that he owed \$8 million on January 25th or
9 Mr. Starcevic's affidavit that he owed 2 million 479
10 on -- three days later on the 28th? Which one of
11 those verifications about debts owed is true?

12 MR. HILDEBRAND: Object to the form.

13 A. Again, this is specific to pay application
14 number 45 that was requested for 2,407 -- 470,474.72.

15 Q. Well, isn't it true that the only way that
16 you can get paid on this construction job is through a
17 pay application?

18 A. Yes.

19 Q. Okay. You don't get paid on construction
20 job through lien filings, do you?

21 A. We request through the pay application
22 process as we had through the previous 42 pay
23 applications -- 43 pay applications on this project --

24 Q. Have you ever submitted a pay application --

25 MR. HILDEBRAND: Hold on a second. Let

1 him finish his answer.

2 **Q. (By Mr. Bundy) I'm sorry. What?**

3 A. We submitted our pay applications
4 consistently throughout this project and got approval
5 from the architect and the design team before we were
6 paid.

7 **Q. Have you ever submitted a pay application**
8 **that showed 8,409,658.54 due?**

9 A. It's a culmination of all the pay
10 applications and what is outstanding owed to us and
11 our subcontractors on this project.

12 **Q. Okay. All right. The next tab is what?**
13 **Are we done with those in that tab?**

14 A. I'm done if you're done.

15 **Q. Well, I mean, is that the last document in**
16 **there?**

17 A. I've got the schedule of values.

18 **Q. That's part of the pay app, right? Isn't**
19 **the schedule of values part of that pay app?**

20 A. It is, yes.

21 **Q. Okay. So now we've gone through the**
22 **documents in tab 5. Let's start with 6. All right.**
23 **What is the issue or the topic, if there is one, in**
24 **tab 6?**

25 A. So if we refer back again to the opening

1 letter, tab 6 is support for builders risk associated
2 costs, which consists of correspondence to the owner
3 regarding builders risk claims and backup for those
4 costs.

5 **Q. For change order number 41?**

6 A. Tab 6 is support for builders risk
7 associated costs, which consists of correspondence to
8 the owner regarding builders risk claims and backup
9 for those claims.

10 **Q. Are you looking at a March 28, 2016 letter**
11 **to Kim Brown from Tim Spano?**

12 A. Yes, I am.

13 **Q. Okay. We are submitting herewith our**
14 **request for change order 41 in the amount of**
15 **\$124,089.19. Is that what the letter says?**

16 A. That's what it does, for a thousand-year
17 storm cost.

18 **Q. And the documents that follow this letter in**
19 **tab 6, are they all related to this change order?**

20 A. This one is for a Hurricane Matthew prep.

21 **Q. Pardon me?**

22 A. Hurricane Matthew prep after -- so you've
23 got the first two pages, which appear to be part of a
24 thousand-year storm cost for 124,089. Then I have a
25 yellow page that then separates and goes to another

1 cost page that's associated with a CCR change order
2 for Hurricane Matthew prep.

3 **Q. Okay, so that's a different topic?**

4 A. It appears to be.

5 **Q. All right. And then the documents that**
6 **precede -- that follow that until we get to the next**
7 **yellow page relate to that?**

8 A. They looks to represent the preparation and
9 work associated with the hurricane.

10 **Q. Nothing else, just that relates to --**

11 A. My -- from my quick scan through, yes, it
12 appears that all of them reflect work prior to the
13 hurricane.

14 **Q. And the total amount of this claim is**
15 **\$10,307.11?**

16 A. This document here is representative of
17 \$10,307 for the storm.

18 **Q. \$10,307?**

19 A. \$307.11.

20 **Q. For the Hurricane Matthew prep claim?**

21 A. For this -- for this document here, right.

22 **Q. For all -- that's what it all rolls up to.**
23 **That -- that's part of your claim?**

24 A. Well, there's other subcontractor costs that
25 are associated with this as well.

1 **Q. All right, where are those costs?**

2 A. They're spread in the claim with the
3 different subcontractors, but they're also here broken
4 down with the detail as well.

5 **Q. Here, what we're looking at?**

6 A. Right, yeah.

7 **Q. So the first page change order request**
8 **number 65 -- is it 65.5 or 66? What is the five or**
9 **what is that?**

10 A. Which are you referring to, first page of
11 section --

12 **Q. I'm looking at the first page on the yellow**
13 **tab.**

14 A. Of the Matthews?

15 **Q. Yes. It's entitled Marion Square COR**
16 **number -- and it uses the ampersand or whatever that**
17 **is -- 65. And I'm asking you is that 65.5 or what is**
18 **that?**

19 A. It says 66.5.

20 **Q. 66.5, Hurricane Matthew prep claim.**

21 A. Right.

22 **Q. Are these the costs that were incurred by**
23 **Balfour Beatty alone?**

24 A. Right.

25 **Q. Okay. So in the documents that follow this,**

1 are the backup -- excuse me, the backup for the
2 10,307.11?

3 A. No, this is backup that supports those costs
4 and documentation for that of the other subcontractors
5 associated with this, which are dated back in
6 October 5th of 2016. October 5th of 2016.

7 Q. So is there a document which gives the total
8 of this claim for Balfour Beatty and the
9 subcontractors?

10 A. Yes, it's within the whole --

11 Q. But it's not in here. It's not in this
12 portion of the claim?

13 A. It breaks down the cost within here and the
14 backup for each of these different components within
15 here. Then it tallies into the claim by the
16 subcontractors.

17 Q. All right. Let's go through each one of
18 them, then. The next one is Ram Tool, \$161.45. Is
19 that a -- is that a claim by Lithko or a claim by
20 Balfour Beatty?

21 A. It's a cost that rolls up into the
22 subsequent page.

23 Q. Oh, it rolls up into the 10,000 number?

24 A. You can see it right here, 148.80. That was
25 the cost that was associated with that --

1 **Q. Okay.**

2 A. -- banding.

3 **Q. But this says it was billed to Lithko.**

4 A. This is 1750 foot of banding.

5 **Q. Huh?**

6 A. 1750 foot of banding for \$148.80, which
7 rolls up into this first page here.

8 **Q. Then there is one for Ram Tool, and that was**
9 **billed to Lithko for a hundred -- 1,396 [sic].**

10 A. Right.

11 **Q. Is that number contained in the first page?**

12 A. 1,301.69, which is the total less the tax.

13 **Q. Okay. The next one, what is the next**
14 **document? This is -- whose document is this or who**
15 **generated this document?**

16 A. I don't know.

17 **Q. It's got a cloud 10/31/16?**

18 A. 10/3/16. I believe that's October 3rd of
19 '16 when these impacts and costs were incurred.

20 **Q. And then that cloud goes to another cloud,**
21 **but there's no -- there's no numbers inside of it.**

22 A. Yes, it points to a cloud with no numbers in
23 it.

24 **Q. Okay. What is this document? How does this**
25 **document relate to the claim?**

1 A. I don't know specifically. I can't answer
2 that.

3 **Q. You don't know?**

4 A. I specifically do not know.

5 **Q. All right. Who does know?**

6 A. The author of this claim.

7 **Q. He's not here or she's not here, right?**

8 A. Right now I do not know the answer to that
9 question.

10 **Q. But you're the one who was presented by**
11 **Balfour Beatty to answer questions about this claim**
12 **and you don't know what this document means?**

13 A. This one document, sir, I do not know.

14 **Q. Okay. All right. And is there something**
15 **else I need to go through all four volumes to find out**
16 **what this means, or is it even possible to go through**
17 **the four documents to find the answer to that**
18 **question, or do I actually have to have somebody come**
19 **in here from Balfour Beatty to tell me what this is?**

20 A. Sir, we compiled our claim and provided an
21 outline of how to go navigate all the costs and
22 impacts associated with this project. The fact that
23 we're talking about something that occurred on
24 October 3, 2016, that is obviously costs of the
25 project incurred that we have not been paid for. All

1 right, that has been presented to the owner time and
2 time again. It is now included within this document
3 as part of our consolidated claim to go close the
4 project out. I believe any of the questions that
5 could have happened specific to this page in this
6 cloud could have been done when it was submitted back
7 on October 3, 2016.

8 **Q. But Balfour Beatty is the one who made the**
9 **decision or somebody at Balfour Beatty is the one that**
10 **made the decision to put this document in this claim?**

11 A. That's because these costs still have not
12 been paid for.

13 **Q. Which costs specifically are you referring**
14 **about in this document that have not been paid?**

15 A. This entire claim --

16 **Q. No, no.**

17 A. -- for all the items associated with our
18 consolidated claim of --

19 **Q. This particular --**

20 A. -- \$22 million have not yet been paid by the
21 owner.

22 **Q. This particular page. I'd like to talk**
23 **about this particular page. Tell me what items and**
24 **dollar amounts on this particular page have not been**
25 **paid by Library Associates.**

1 A. I cannot answer the question specifically.

2 Q. You can't answer the question?

3 A. I said that. I do not understand this page
4 myself.

5 Q. Okay. Well, if you don't understand it, how
6 is the architect or Library Associates supposed to
7 understand it? Because y'all are the ones who made a
8 decision to put it in here.

9 A. Sir, again, this one page I do not know the
10 answer to it, but it has been submitted since 10/3 of
11 2016.

12 Q. Okay. All right. On the next page. Now,
13 it has another cloud in it, and it goes down to
14 another cloud that has two numbers, new blended cost
15 of \$7,047, for -- it looked like CIP rubbing and then
16 new blended man hours. What -- what was the CIP
17 rubbing that was done apparently by Lithko, because
18 their name is in the upper left-hand corner, that
19 Library Associates owes for? What does this relate
20 to?

21 A. This looks like a production tracker for
22 Lithko contracting.

23 Q. Related to?

24 A. It talks about Lithko Carolinas, the project
25 name, their PM, their folks on their project team, a

1 different description of work activities they have,
2 their unit costs, their production rates, as well as
3 what their actual costs are.

4 **Q. Is it Balfour Beatty's position that Library**
5 **Associates owes \$7,047?**

6 A. This is a part of the documentation that
7 Lithko provided us, a portion of this claim.

8 **Q. What portion of the claim?**

9 A. As it relates to this portion of the claim.

10 **Q. As it relates to the preparation for the**
11 **Matthew?**

12 A. For the Matthew, yes, it's under that
13 section.

14 **Q. And what is CIP rubbing? What does that**
15 **mean?**

16 A. Under typical terms of, as I understand it,
17 in the concrete world would be cast in place, which is
18 what the structure of this building was.

19 **Q. So how would preparation for Matthew relate**
20 **to cast in place rubbing?**

21 A. Again, this is the document that Lithko
22 provided us as part of their costs associated with
23 this claim.

24 **Q. All right. And did you do any questioning**
25 **of Lithko to try to understand how cast in place**

1 **rubbing related to preparation for Matthew?**

2 A. Again, this is what they submitted for us to
3 pass through to the owner as it relates to this part
4 of the claim.

5 **Q. All right. What's the next page from**
6 **Lithko -- it looks like it's from Lithko Contracting.**
7 **What does it -- what does it tell us about this**
8 **particular claim?**

9 A. This appears to be a time sheet for Lithko
10 Contracting, Inc.

11 **Q. For what period of time?**

12 A. Day is Tuesday. Date is 10/4/16.

13 **Q. And what is your understanding of how this**
14 **document relates to the preparation for Matthew claim?**

15 A. This is the document that they submitted to
16 us that looks like it outlines hours and costs
17 associated with work performed on October 4th of 2016.

18 **Q. Okay. And then you've got a similar**
19 **document from Lithko on October the 5th, another one**
20 **on October the 6th, correct?**

21 A. Those are the subsequent pages, yes.

22 **Q. And then you've got another page, which is**
23 **another column listing a number of people. And it**
24 **shows a total of 76.5 hours on October the 5th, right?**

25 A. This is a Lithko document, has a number of

1 personnel names. It looks like their start time, stop
2 time, total hours.

3 Q. Okay. And it's your understanding that this
4 relates to Hurricane Matthew preparation?

5 A. This was part of the documentation submitted
6 from Lithko as a part of this claim.

7 Q. And did you -- do you know whether Lithko
8 understood when they sent this it was supposed to
9 relate to Hurricane Matthew preparation?

10 A. I mean, by the date of October 5, 2016, I
11 would agree that that was part of the hurricane
12 preparation.

13 Q. All right. And then we've got some pages
14 entitled daily field reports. And then we've got
15 safety supplies from Ram Tool, a quote from Lithko.
16 Then we've got another document it looks like Lithko
17 with a cloud at 10/3/16, and it goes to a cloud with
18 no information inside of it. Then we've got one that
19 is October 11 cloud and, it goes to another cloud with
20 the information of 7,047. Then we've got some time
21 sheets of 10/10/16. We've got field reports for 10/9.

22 Now we get to November 9, 2017 letter to Kim
23 Brown from Nick Starcevic. And this is a request for
24 change order 184; 57,468.82. And it sets out what you
25 want, how much you want, and why you want it, right?

1 A. Yes, it says 57,467, request for this change
2 order.

3 Q. Do you know whether this has been paid or
4 not?

5 A. I would have to look at the pay application.

6 Q. All right. Actually, that's a different --
7 this is a different change order than the one we were
8 looking at before, isn't it.

9 A. This is titled Hurricane Irma prep and
10 recovery.

11 Q. This is Irma prep and recovery. Okay. So
12 the documents that follow this letter, are they the
13 substantiation for the request for 57,467?

14 A. All right, as you walk down through here,
15 you can see Hurricane Irma, the breakdown, Premier
16 Exterior, two doors, general labor and prep \$154,811.

17 Q. What's the next -- so is it correct that the
18 documents that follow the letter of November 9, 2017
19 until you get to the next yellow tab, which relates to
20 Precision Walls, is the backup for the 57,467 or not?
21 Is that not true?

22 A. I'd have to look through here and see.

23 Q. All right, let's look through it and tell me
24 one way or the other.

25 A. Yes, it looks to be representative of Irma.

1 Q. Huh?

2 A. It looks like it's everything for Irma.

3 Q. So the documents behind this yellow tab all
4 relate to this request for \$57,467.82; is that
5 correct?

6 A. Associated with Irma, yes.

7 Q. And you don't know as you sit here whether
8 that's been paid or not?

9 A. It's in the claim. We can check the pay
10 application and change order line.

11 Q. Would it be safe to presume since it's in
12 the claim, it has not been paid?

13 A. That would be safe to say, yes.

14 Q. Because you wouldn't put anything in the
15 claim that had been paid, would you?

16 A. Well, we requested a number of things be
17 paid that haven't been paid, so ...

18 Q. But would you request something in your
19 claim that had already been paid once --

20 A. Absolutely not.

21 Q. And you wouldn't request something to be
22 paid for work that was not done, would you?

23 A. Absolutely not.

24 Q. And that -- it didn't happen in this claim?

25 A. It doesn't happen on this project.

1 **Q. Okay. All right. The next tab goes to --**
2 **it's an invoice from Precision Walls for \$1,880. What**
3 **is this related to?**

4 A. It looks like some additional costs
5 associated with Hurricane Irma.

6 **Q. Okay. Cleanup, material handling?**

7 A. Yes.

8 **Q. Is that -- that the description?**

9 A. Correct.

10 **Q. Okay. All right. The next one is Bernhard**
11 **MCC, LLC. That relates to Hurricane Irma as well?**

12 A. Correct.

13 **Q. Okay. And are all the documents that**
14 **follow, the remaining documents in this volume,**
15 **related to that request?**

16 A. It appears to be.

17 **Q. Okay. That's the end of Volume 1?**

18 A. Yes, sir.

19 **Q. Okay. All right. Let's go to Volume 2.**
20 **Volume 2 starts with tab 7; is that correct?**

21 A. Yes.

22 **Q. The first document is entitled Owner**
23 **Architect Notification Log October 2018. What is the**
24 **page 1 -- what is the purpose of this log? Why is**
25 **this in the claim?**

1 A. Give an outline of delay notification. It's
2 a log that was presented on October 2018.

3 **Q. Is this -- okay. All right. And what is**
4 **the next page?**

5 A. It's a document, Supplementary Instructions
6 Misuse Tracker.

7 **Q. What does Supplementary Instructions Misuse**
8 **Tracker mean? What does that mean?**

9 A. These are ASI numbers and the dates that
10 they were issued as well as the scope associated with
11 each of those, and then a column that dictates cost
12 and/or time impact and a checkmark under those.

13 **Q. But what -- but ASI stands for what?**

14 A. It's Architect's Supplemental Information
15 [sic]. There's a number of them issued on this job
16 throughout.

17 **Q. Okay. All right. So there were -- were**
18 **there -- is this the total of the Architect's**
19 **Supplemental Information is 81 of them. There were 81**
20 **of them altogether?**

21 A. Yeah, it's everything that's defined on this
22 log right now is what they've captured.

23 **Q. Huh?**

24 A. Everything that's been captured is on this
25 log right now.

1 **Q. Okay. And is it your -- is it Balfour**
2 **Beatty's position that all of these ASIs were misused?**

3 A. I don't understand the question. I'm sorry.

4 **Q. Well, I don't understand. ASI stands for**
5 **architect's supplemental information, right?**

6 A. Correct.

7 **Q. And that's -- what is that? What is**
8 **architect's supplemental information -- what is that?**

9 A. It's a change or clarification in the
10 design.

11 **Q. Okay. Issued by the architect?**

12 A. That's correct.

13 **Q. Is it issued unilaterally by the architect**
14 **or is it issued in response to a request for**
15 **information or anything like that?**

16 A. It could be a number of different things.

17 **Q. All right.**

18 A. Primarily owner driven changes, changes in
19 the design, clarification in the design that comes
20 from an RFI or request or coordination effort.

21 **Q. Okay. So this doesn't inform us as to what**
22 **was the genesis of these ASIs?**

23 A. We wouldn't inform you. You -- the
24 architect is the one that generates it and informs us
25 of the ASI.

1 **Q. Right, I understand that. But I'm talking**
2 **about the genesis, what caused the ASI to be issued.**
3 **In other words, we don't know whether or not one of**
4 **these ASIs was a result of a request for information**
5 **from the contractor. We don't know whether -- we**
6 **don't know which ones are a result of change orders.**
7 **We don't know which ones are a result of change in the**
8 **design by the architect. At least not on this column,**
9 **right?**

10 A. Right. The ASIs are something that's
11 generated by the architect.

12 **Q. Are ASIs permitted under the contract?**

13 A. ASIs are something that's generated by the
14 contract and issued for us to go and to price and
15 perform.

16 **Q. But is it a breach of contract for the**
17 **architect to issue an ASI?**

18 A. I'm not aware of that, no.

19 **Q. Okay. Is it standard in the construction**
20 **industry?**

21 A. We've run ASIs, certainly not 81 ASIs, but
22 yes, ASIs.

23 **Q. All right. If 81 is outside the**
24 **reasonableness, what would be the reasonable number of**
25 **ASIs that Balfour Beatty would have expected?**

1 A. Certainly 81 is way outside of reason.

2 **Q. What would be -- what would you expect?**

3 A. For an ASI to be issued on a project is not
4 uncommon, but 81 is extremely high.

5 **Q. Understood. That's not my question. You've**
6 **already established 81 is uncommon. But now that**
7 **you've said it's uncommon, I want to know what common**
8 **is.**

9 A. Common is something less than a 81.

10 **Q. How much less than 81?**

11 A. Something less than 81. 81 is extremely
12 uncommon.

13 **Q. Okay. How about 80, is 80 uncommon?**

14 A. Extremely uncommon.

15 **Q. 79, is it uncommon?**

16 A. Sir --

17 **Q. 70?**

18 A. -- the reality is that 81 ASIs is uncommon.

19 **Q. Is 70 uncommon?**

20 A. 81 is uncommon.

21 **Q. You won't answer my question as to whether**
22 **70 is or is not uncommon?**

23 A. It's not my opinion as to what is uncommon
24 or common. What I'm telling you is that 81 is a
25 tremendous amount of changes to happen on a project.

1 **Q. You just said 81 was uncommon.**

2 A. I did. It is, extremely.

3 **Q. Now I'm asking you what would you expect --**

4 A. I don't have an opinion on what is uncommon.

5 **Q. You don't have an opinion about what would**
6 **be normal, but you can tell me this is abnormal?**

7 A. Because I have never experienced this in 20
8 years of my life--

9 **Q. You've never experienced it?**

10 A. That's right.

11 **Q. Okay. Okay. All right. So based on this**
12 **document, every single ASI on this job was a misuse?**

13 A. I don't understand the question.

14 **Q. Well, the document is entitled Supplementary**
15 **Instructions Misuse Tracker, correct?**

16 A. That's what it's titled, yes.

17 **Q. All right. And this document lists every**
18 **single ASI?**

19 A. Correct.

20 **Q. Under the rubric of a supplemental**
21 **instruction that was a misuse?**

22 A. I don't -- yes, I can't interpret the title
23 of it. It's a title that was used for the document.

24 **Q. You're here to answer questions about the**
25 **claim and you can't tell me what the title**

1 **Supplementary Instructions Misuse Trapper is supposed**
2 **to -- Tracker is supposed to represent?**

3 A. It's the title of this document.

4 **Q. Yes. But what does it mean? Does this mean**
5 **that every single ASI on this job was a misuse of the**
6 **ASI project?**

7 A. I didn't title this document. I'm just
8 telling you what the title of the document is.

9 **Q. Well, I'm asking you, as the 30(b)(6)**
10 **representative, whether or not it's Balfour Beatty's**
11 **position in their claim that every single**
12 **supplementary instruction on this job, issued on this**
13 **job, was a misuse of supplemental instructions**
14 **process?**

15 A. Again, the ASIs were issued by the architect
16 as changes throughout the project, okay? The title of
17 this document, I did not author the document. I did
18 not create the title of the document. It is simply a
19 name for the document.

20 **Q. All right. Was ASI number 1 a misuse of the**
21 **ASI process?**

22 A. ASI number 1 was submitted by the architect
23 for locating transformer pad.

24 **Q. Was it a misuse of the process?**

25 A. Again, it was something that was distributed

1 by the owner and the architect on January 26th of
2 locating a --

3 Q. Why is it on a --

4 A. -- transformer pad.

5 Q. Why is it on a list of supplementary
6 instructions misuse tracker?

7 A. Because it was an ASI that was -- that was
8 issued by the architect on January 26th.

9 Q. And in what -- in what way was ASI number 1,
10 locating transformer pad, a misuse of the
11 supplementary instructions?

12 A. I'm not suggesting that it is.

13 Q. You're not suggesting that it is.

14 A. Right, that was the question.

15 Q. How about Balfour Beatty, is Balfour Beatty
16 suggesting that it is?

17 A. Again, it's on the tracker here as ASI
18 number 1 issued January 26th of 2015 for locating a
19 transformer pad.

20 Q. ASI 2, was that a misuse of the ASI process?

21 A. It looks like it was deleted.

22 Q. Okay. So earlier when you said there were
23 81 ASIs, that's not true because one of them at least
24 was deleted. So it's not 81, it's 80?

25 A. Well, they issued an ASI to it. They just

1 deleted it.

2 **Q. Okay, so a deleted ASI is a misuse of the**
3 **ASIs?**

4 A. Again, the name of the document is
5 Supplementary Instructions Misuse Tracker. I did not
6 author or title this document.

7 **Q. I'm not talking about the title. I want to**
8 **know whether ASI number 2 issued on January 26, 2015**
9 **was a misuse of the supplementary instructions**
10 **procedure?**

11 A. Again, ASI number 2 was deleted as a whole
12 on January 26, 2015.

13 **Q. That's what it says, but I want to know --**
14 **you're the witness who's here testifying for Balfour**
15 **Beatty, you've made a \$22 million claim, and I'm**
16 **asking you to tell me whether or not ASI number 2**
17 **issued on January 26, 2015, which is listed on the**
18 **document Balfour Beatty provided to us as part of its**
19 **claim, whether ASI number 2 was a misuse of the**
20 **supplementary instructions procedure?**

21 A. The architect issued ASI 2 on January 26,
22 2015, and has since -- since been deleted.

23 **Q. Was it a misuse of the procedure?**

24 A. They submitted the ASI on January 26 of
25 2015.

1 **Q. Was it a misuse of the procedure?**

2 A. They sent us the ASI January 26th of 2015.

3 **Q. All right. ASI number 3 issued 1/27/2015,**
4 **was it a misuse of the procedure?**

5 A. Again, they submitted this January 27th for
6 outline structural reenforcements and a transformer
7 pad.

8 **Q. Okay. It says cost and time impact is**
9 **checked. How much cost and how much time?**

10 A. It's been outlined within the claim.

11 **Q. Where within the claim?**

12 A. Within the claim.

13 **Q. Where within the claim?**

14 A. It's been submitted throughout the claim as
15 well as with the change orders and the pay
16 applications.

17 **Q. So it's somewhere in these four volumes?**

18 A. Or within the change orders that have
19 already been executed and paid for.

20 **Q. Already been executed. And you can't tell**
21 **me where it is within the claim?**

22 A. Again, it's either within the change orders
23 that have already been executed and paid for or it's
24 within the claim.

25 **Q. Where within the claim?**

1 A. Within these four binders.

2 Q. But where within those four binders?

3 A. Within the four binders.

4 Q. Where inside of those four binders? What
5 page?

6 A. It's each --

7 Q. -- what page -- what page?

8 A. -- different subcontractors --

9 THE COURT REPORTER: Excuse me.

10 Q. (By Mr. Bundy) What page within the four
11 volumes?

12 A. We're going page by page right now, sir, so
13 we will continue to go through it. It's been
14 submitted for cost.

15 Q. We're going to go through the whole thing
16 page by page. When we get to the document, okay, that
17 substantiates or buttresses or answers my question
18 about ASI 1 through 81 -- and the question is going to
19 be the same for all of them -- when we get to the
20 point that talks about misuse of the ASIs within your
21 claim, I'd like you to say tell me then: Okay, now
22 we're at the point that I can tell you about the
23 misuse of ASIs because we're within that claim. Okay?

24 A. As we go through, I'll be happy to answer
25 your questions.

1 **Q. We went through the first volume. Do any of**
2 **the pages we've previously been through all day**
3 **yesterday explain or otherwise elucidate this ASI**
4 **misuse process?**

5 A. Again, this project had a number of ASIs and
6 changes that plagued it throughout the entire project,
7 some which have been identified, all of which have
8 been notified and paid -- and requested for adjustment
9 and time. 22 million of it which we have not
10 recovered.

11 **Q. The volume we went through yesterday, and we**
12 **just finished going through this morning, we went**
13 **through every single page, does any of those pages --**
14 **do any of those pages in Volume 1 that we've been**
15 **through explain any damages or cost or time impact of**
16 **the ASIs?**

17 A. There are a number of damages that have been
18 outlined throughout all of these volumes that we're
19 trying to demonstrate the best that we can the impacts
20 that happened throughout this job that plagued this
21 job through 81 ASIs, a number of drawing revisions,
22 RFIs, failure to coordinate the project on behalf of
23 the architect, owner changes that plagued this project
24 throughout. And we did the best we could to outline
25 this and to give it to you to the extent -- I said

1 this yesterday. If the way that this was presented to
2 you, if there was another way that you wanted it, that
3 the owner wanted it, that the architect wanted, they
4 were smart enough they could have put it in the
5 contract and told us how they wanted us to present
6 this claim. We did the very best that we could. We
7 did the very best that we could.

8 **Q. Okay. That wasn't my question. My question**
9 **was -- I'll ask it one last time. We went through**
10 **Volume 1 page by page yesterday. All I want to know**
11 **is, based upon going through every single page in**
12 **Volume 1 yesterday, can you tell me which, if any, of**
13 **those pages that we went through yesterday relate to**
14 **cost or time impact as a result of supplementary**
15 **instructions?**

16 A. There are costs and impacts associated with
17 all of the issues that plagued this project throughout
18 this claim.

19 **Q. I asked you specifically about book number**
20 **1, Volume Number I. Tell me if there is any of it in**
21 **Volume Number I that we went through yesterday.**

22 A. There are claims and impacts that have been
23 defined, and we went through them all in Volume Number
24 I. We presented what claims and impacts happened
25 there. We're doing the same thing here.

1 **Q. So if I went through every single one of**
2 **these, I'm going to get the same answer from you**
3 **regarding these ASIs, right?**

4 A. That we were impacted on the project, and
5 that we are owed the costs that we've claimed, yes.

6 **Q. And that I'm going to have to go through and**
7 **find it in these four volumes?**

8 A. Again, we've submitted it in the best manner
9 that we possibly could to demonstrate the impacts that
10 we've had on the project, and we're just trying to
11 seek the recovery and the moneys that are owed to us.

12 **Q. All right. That's three pages. Then we go**
13 **to another document entitled Marion Square DCI Drawing**
14 **Action List March 2, 2017. Did I read that correctly?**

15 A. You did, yes.

16 **Q. All right. What is the purpose of this doc,**
17 **this document?**

18 A. It's the -- it looks like it's areas of the
19 project, action that is required, the cause of the
20 action. And DCI is the owner's arch- -- or interior
21 designer.

22 **Q. Okay. DCI was the interior designer?**

23 A. Correct.

24 **Q. Well, let's just pick one, I guess. Let's**
25 **look at number 8, electrical updates at public plan**

1 revisions concierge desk, registration desk, lobby
2 seating, et cetera. And then the cause of action, it
3 says completed, Brian issued. What does that mean?

4 A. It means that there were some electrical
5 updates at the public plan at those different
6 locations. It looks like as if it was completed and
7 Brian issued it.

8 Q. Who is Brian?

9 A. I do not know.

10 Q. And how much damage are y'all asking for
11 because of that, if any?

12 A. That would be in a change order request or
13 one of these documents that outlines the impact.

14 Q. Okay. How about -- would all the rest of
15 them be in a change order request?

16 A. If they are warrant of a change order, yes.

17 Q. If they are not in a change order request,
18 are they still -- are there numbers that are in your
19 claim related to DCI drawing action list that are not
20 in change orders that you're claiming money for?

21 A. Again, if we identified them as an impact to
22 the project and we were owed dollars and/or time for,
23 we would have notified and then submitted the cost
24 either in this claim or in a previous change order.

25 Q. And where would I find this?

1 A. In this claim or a previous change order.

2 **Q. You can't point to me to a particular page?**

3 A. Again, we can go through all the change
4 orders that have been executed and determine from
5 there.

6 **Q. All right. All right, then we go through --**
7 **there's a few pages of that. The next document that**
8 **changes is a document which says status action**
9 **required, and it's got, it looks like, 28 rows. Are**
10 **you with me?**

11 A. Yes, I am.

12 **Q. A and B. A is status, B is action required.**
13 **What is this document for? What is it supposed to be**
14 **informing us of?**

15 A. Again, it looks like it's broken down by
16 public areas and suites. It talks about updating main
17 lobby entry door, surrounds, column sizes, details,
18 stair details, design and detail.

19 **Q. And how much money are y'all asking for in**
20 **your claim based on these items?**

21 A. Again, if we determined that there was a
22 cost or a schedule impact associated with these
23 things, we would have notified and then provided the
24 documentation for them.

25 **Q. And that documentation is somewhere in this**

1 **claim?**

2 A. Either that or in a previous change order
3 that we submitted.

4 Q. All right. Then we go to the next series of
5 documents, which are entitled Marion Square Hotel
6 Drawing Log Number of Drawings Impacted by SI, MOD, MR
7 or CCDS, right?

8 A. Right.

9 Q. All right. Explain to me what -- and this
10 document appears to be -- one, do you know who
11 prepared this document?

12 A. I do not know, no.

13 Q. Okay. All right. And this document is,
14 what, three pages -- one, two -- maybe four pages --
15 four pages?

16 A. Five pages.

17 Q. Five pages. And you don't know who prepared
18 it?

19 A. Not off the top of my head.

20 Q. And the purpose of the document is what?

21 A. It looks as if it demonstrates the ASIs, the
22 date for which they were issued and the number of
23 drawings issued per each ASI.

24 Q. The drawing that's entitled impacted by SIs,
25 what is an SI?

1 A. Supplemental information.

2 **Q. Okay. What is an MOD?**

3 A. Modification.

4 **Q. And who issues modifications?**

5 A. All of these would be issued by that of the
6 architect.

7 **Q. Okay. What is an MR?**

8 A. I don't know what that one is.

9 **Q. You don't know what an MR is?**

10 A. Not off the top of my head, no.

11 **Q. Who would know the answer to that question?**

12 A. I'm sure whoever authored this would know.

13 **Q. But we don't know who that is either?**

14 A. I don't know.

15 **Q. Who would know who it is?**

16 A. I'm guessing Dave Simonton, as he pulled
17 this -- this document together.

18 **Q. Who?**

19 A. Dave Simonton as he pulled this document
20 together.

21 **Q. Dave Simonton. So does Dave Simonton know**
22 **more about the claim document presentation than you**
23 **do?**

24 A. David Simonton helped us pull the document
25 together and obviously authored the cover page and

1 signed it.

2 **Q. So does he know more about this claim**
3 **document and what's in it than you do?**

4 A. Again, he's the one that pulled this thing
5 together to say -- I don't know how much he knows
6 about it. But again, if you ask me who authored this,
7 I don't know the answer to it. So the next best
8 person I would say would be to ask David Simonton.

9 **Q. Of the questions I've asked you over the**
10 **last day or so that you didn't know the answer to,**
11 **would Simonton more likely than not be the person who**
12 **could answer that question?**

13 A. Again, he authored this document, so he
14 would be the next one to call.

15 **Q. Okay. So in response to a 30(b)(6) that was**
16 **going to Balfour Beatty to have someone come in and**
17 **explain this claim to me, Balfour Beatty didn't offer**
18 **the author of the document, they offered you, right?**

19 A. Again, the subjects that were included in
20 the document that you sent over were a number of
21 things outside of just this claim. And so, again,
22 you're asking me who likely may be the next person to
23 ask. I don't know how much more he knows or how much
24 less he knows of this document. You asked me a
25 question who to talk to and that would be the person I

1 would suggest.

2 **Q. Are you aware that 30(b)(6) procedure allows**
3 **Balfour Beatty to present more than one witness and**
4 **divide them up into issues and to present the witness**
5 **as it relates to a particular issue that knows the**
6 **most about it? Are you aware of it?**

7 MR. HILDEBRAND: Object to the form.

8 A. Again, we have a document of a number of
9 topics that were provided to us that we prepared, and
10 I'm prepared to answer as many of the questions as I
11 possibly can.

12 MR. HILDEBRAND: Is this a good time to
13 take a break?

14 MR. BUNDY: Yeah, five minutes.

15 THE VIDEOGRAPHER: We're going off the
16 record. The time is 10:48.

17 (Recess from 10:48 a.m. to 10:57 a.m.)

18 THE VIDEOGRAPHER: We're going back on
19 the record. The time is now 10:57.

20 **Q. (By Mr. Bundy) All right. The next set of**
21 **documents I think that go together, the document**
22 **entitled drawing log, Marion Square Hotel, dated**
23 **2/23/2019. What is the purpose of this document in**
24 **the claim?**

25 A. This looks as if it outlines all the

1 documents throughout the entire submittal -- or
2 throughout the entire drawing log, what the GMP
3 documents were noted as, the architecturals, your
4 interior design, interior design, interior design. A
5 number that show added documents.

6 **Q. All right. What does GMP stand for?**

7 A. The guaranteed maximum price.

8 **Q. All right. Let's look at the first page of**
9 **this log. This log was prepared by Balfour Beatty?**

10 A. Yes, it's titled with Balfour Beatty on it.

11 **Q. And who did -- who prepared it at Balfour**
12 **Beatty?**

13 A. The exact author, I don't know, but Balfour
14 Beatty authored it.

15 **Q. On the first page, there are -- GMP drawings**
16 **would have been drawings that you had before you**
17 **signed the contract, right?**

18 A. GMP drawings would be the drawings that we
19 had that were titled GMP. So again they're -- each of
20 the documents are identified by some sort of
21 nomenclature GMP, hundred percent CD, 50 percent CD
22 GMP, or hundred percent CD plus. So there are a lot
23 of designations that the architect chose to define the
24 drawings.

25 **Q. All I want to know is what this particular**

1 document means. That's all I want to know. I don't
2 care about the architect or anything else. I just
3 want to know what y'all did, and why, and how to read
4 it. That's all I'm trying to do is understand your
5 claim. That's all I'm trying to do.

6 A. Okay.

7 Q. And it doesn't hurt Balfour Beatty for my
8 client's lawyer to understand the claim.

9 A. Understood.

10 Q. Right, you understand that?

11 A. Yep, very much so.

12 Q. You understand that he's not going to ever
13 settle this case as long as I tell him he shouldn't
14 pay any money because I don't understand the claim and
15 Balfour Beatty refuses to explain to it to me. So
16 it's in your best interest, Balfour Beatty's best
17 interest, to try to explain it to me. I'm not real
18 smart. I'm not bright. And I need some help here.
19 Okay? Can we agree -- can we agree on that?

20 A. Sir, I've done nothing other than cooperate
21 and try to answer as many questions as I can.

22 Q. That is an opinion that we will not agree
23 on. So --

24 A. So again --

25 Q. -- when it says GMP, this is a designation

1 that was put on this log. And if we pick one, it says
2 GMP C500. What does C500 mean?

3 A. That's the drawing number designated by the
4 architect.

5 Q. And the architect puts the drawing number on
6 it, right?

7 A. The design team, yes.

8 Q. And it says times revised, two, right?

9 A. Right.

10 Q. Grading and drainage plan. And then when
11 did those revisions -- what are the date of those
12 revisions? Do you know?

13 A. No, this document does not reflect the date
14 of those revisions.

15 Q. Okay. And the -- the 11/22/14 date. Is
16 that the date of the original drawing or is that the
17 date of the last revision?

18 A. It's the date that they have put on the GMP
19 drawings. "They" being the design team.

20 Q. So are you saying -- is this saying that
21 after 11/22/14 this document C500, which you have
22 labeled GMP, was revised two more times?

23 A. Correct, yes.

24 Q. Why didn't -- if the purpose of this is to
25 show the revisions, why aren't the dates of those

1 **revisions on this drawing -- on this tabulation?**

2 A. Again, we pulled together the information
3 that we are using to represent -- present our claim.

4 **Q. All right.**

5 A. If there's additional information that's
6 required, then that's fine.

7 **Q. All right. Then we go down a little bit.**
8 **There is a column entitled Added Drawings, and the**
9 **first one that was added apparently is C601A, right?**

10 A. Right.

11 **Q. Now, C601A has zero revisions, right?**

12 A. Correct.

13 **Q. It has no description?**

14 A. Correct.

15 **Q. And it has no date?**

16 A. Correct.

17 **Q. Okay. Why is it on here?**

18 A. I can only assume that C601A was added to
19 the documents without a title and a description as
20 well as a date associated with it.

21 **Q. Did that revision cause any additional cost**
22 **or time to Balfour Beatty?**

23 A. If we felt that it did, we would have
24 submitted a change order and a request for time.

25 **Q. Did you submit a change order on this?**

1 A. It's within all of our documents.

2 Q. So I've got to go look through all the
3 change orders to determine whether or not 601A caused
4 y'all any additional time or money?

5 A. If there was scope that was added to it.
6 Now, the design team typically should go ahead and
7 bubble their changes so as if it's easier for all of
8 us to understand the changes that they added.

9 Q. All of the drawings on this page that have a
10 date on them is a date which precedes the signing of
11 the construction contract, correct?

12 A. I believe it does, yes.

13 Q. And the contract for construction required a
14 guaranteed maximum price, right?

15 A. Correct, yes, sir.

16 Q. And that price was arrived at by Balfour
17 Beatty?

18 A. Correct, yes.

19 Q. And in fact, Balfour Beatty was paid an
20 additional fee to go back before they signed the final
21 contract and look at the original drawings before the
22 final GMP was arrived at, correct?

23 A. We were asked to price those documents, yes.

24 Q. Well, you were paid to do it though, right?
25 You were paid an additional fee?

1 A. To price the documents, yes.

2 **Q. \$80,000 or something?**

3 A. That was -- I think there was a total fee to
4 go down the precon. That lasted significantly longer
5 than the original time frame that was contracted for.

6 **Q. So you don't -- do you know whether or not**
7 **Balfour Beatty was paid an additional fee to review**
8 **the drawings outside of the --**

9 A. There was additional scope that was added to
10 go price the documents, yes.

11 **Q. Which y'all were -- were you paid that**
12 **money?**

13 A. We can go look at the pay application and
14 see what was certified, yes.

15 **Q. But you don't -- you don't know whether you**
16 **were paid or not?**

17 A. I mean, we can go look at the pay
18 application and confirm it.

19 **Q. Okay. Are y'all complaining -- is there a**
20 **part of this claim the fact that the architect issued**
21 **guaranteed maximum price drawings -- is part of the**
22 **complaint the architect issued drawings?**

23 A. I think what's apparent in this document is
24 the number of drawings that were revised, the number
25 of times that were revised, the additional drawings

1 that were added to the overall list of documents that
2 added scope or changed the scope or changed the intent
3 of the scope.

4 **Q. Did Balfour Beatty do a constructability**
5 **review of these drawings for --**

6 A. We were not required to do a
7 constructability review.

8 **Q. Pardon me?**

9 A. We were not required to do a
10 constructability review.

11 **Q. Well, whether you were required to do it or**
12 **not, did you do it?**

13 A. Contractually we were not required nor were
14 we paid to --

15 **Q. Did you do it, though? Whether you were**
16 **contractually required to do it or not, did you do it?**

17 A. Sir, we were not required contractually to
18 do a constructability review on this job.

19 **Q. Will you answer my question, though, whether**
20 **or not you did do it?**

21 A. We were not contractually required --

22 **Q. So the answer is --**

23 A. -- to do a constructability review on this
24 document.

25 **Q. So the answer is you didn't do it?**

1 A. We were not contractually required to do it.

2 **Q. So the answer is --**

3 A. If the owner wanted us to do a
4 constructability review, they could have paid us and
5 contracted us to go do that.

6 **Q. But you didn't do it, though?**

7 A. Again, if they wanted to contract us to go
8 do it, they could have done it.

9 **Q. All you have to say is you didn't do it.**

10 A. Yeah. If they wanted to contract us,
11 they're sophisticated enough to know that if they want
12 a constructability review, they could have contracted
13 us to do so.

14 **Q. All right. How much additional cost was**
15 **incurred and time lost by virtue of these revisions to**
16 **the drawings?**

17 A. Again, the total claim that we've provided
18 in all the additional documentation and change orders
19 are impacted by these additional costs and drawings
20 that were added to the project.

21 **Q. How much of the 22,452,282.51, how much of**
22 **that is for cost and delays associated with the**
23 **revisions to the drawings?**

24 A. Again, there's a number of impacts that have
25 come out of the added drawings. And to say that there

1 is one component of a drawing that is going to play
2 out throughout this entire claim, I mean, there's a
3 compilation of a number of different issues and
4 changes that happened.

5 **Q. Okay. Were any of the revisions a result of**
6 **any errors on the part of Balfour Beatty or any of its**
7 **subcontractors?**

8 A. Again, the documents are developed and
9 issued by the architect for changes and adds and
10 clarifications from original documents that they
11 hadn't provided initially.

12 **Q. All right. The next document in this list**
13 **is a -- it's like a document in the upper left-hand**
14 **corner, it says RFI. Then it goes to subject RFI,**
15 **date due from AE -- received from AE, days held, days**
16 **overdue and status, right?**

17 A. Yes, sir.

18 **Q. And that goes on for how many pages,**
19 **roughly? Or exactly if you want to tell me -- well,**
20 **let's do it this way. There are 1224 on this list.**

21 A. Okay.

22 **Q. Is that correct?**

23 A. I haven't got to the last page yet.

24 **Q. Is that --**

25 A. 1200.

1 **Q. -- in your opinion or in Balfour Beatty's**
2 **opinion an excessive number of RFIs?**

3 A. I have never seen 1224 RFIs on a project
4 before.

5 **Q. That's not my question. I want to know what**
6 **Balfour Beatty's opinion is, not yours. Is it Balfour**
7 **Beatty's position that this RFI -- these are an**
8 **excessive number of RFIs?**

9 A. This is a lot of RFIs, yes, from Balfour
10 Beatty's --

11 **Q. Excessive?**

12 A. From Balfour Beatty's opinion, this is a lot
13 of RFIs.

14 **Q. And what would have been a reasonable number**
15 **of RFIs --**

16 A. I never --

17 **Q. -- that Balfour Beatty would have expected?**

18 A. I'm not here to give you an opinion on what
19 a reasonable number is. I'm telling you that I feel
20 like this is a lot.

21 **Q. Okay. Did Balfour Beatty expect any RFIs on**
22 **this job?**

23 A. I think it's unreasonable to think that
24 there's not going to be an RFI on a project.

25 **Q. Okay. So there is a number of RFIs which**

1 would have been reasonable to Balfour Beatty?

2 A. I think that it is -- it is reasonable to
3 say that there are conversations that happen
4 throughout the duration of a project that require
5 things to be documented. It's the pure fact that
6 there's 1224, 81 ASIs, a number of CCDs. It's the
7 culmination of all of the changes and impacts and
8 design errors that created the issue that we have.
9 It's not just one RFI or just one ASI.

10 Q. Does the contract permit the issuance of
11 RFIs?

12 A. It does, yes.

13 Q. Is there any limit in the contract,
14 contractual limit, to the number of RFIs?

15 A. Not that I'm aware of, no.

16 Q. Okay. Are there any -- does it permit ASIs,
17 does the contract permit ASIs, supplemental
18 instructions?

19 A. I believe it does, yes.

20 Q. Is there any limit in the contract to the
21 number of supplemental instructions the architect can
22 issue?

23 A. I'm not aware of any.

24 Q. Does the contract allow change orders?

25 A. Yes.

1 **Q. Are there any -- is there any limit in the**
2 **contract as to the number of change orders?**

3 A. I'm not aware of any.

4 **Q. Okay. Does the contract -- does the**
5 **contract permit requests for change orders?**

6 A. Yes.

7 **Q. Is there any limit to the number of requests**
8 **for change orders?**

9 A. I'm not aware of any.

10 **Q. Okay. So the owner and the architect did**
11 **not exceed any contractual limitations for RFIs,**
12 **supplemental instructions, or request for change**
13 **orders?**

14 A. To the extent that the requests for change
15 orders were submitted and we have not yet been paid
16 for work that we had performed, I would say there's an
17 issue there, yes.

18 **Q. Were any of these RFIs the result of the**
19 **inability of the -- of Balfour Beatty or its**
20 **subcontractors to understand what the documents were**
21 **saying needed to be done?**

22 A. Again, without looking at each of the
23 individual RFIs in detail, I don't know that I can
24 answer that question. What I can tell you is that
25 with the number of project revisions or page revisions

1 that we had on the project that we just reviewed, I
2 would say that a number of these were clarifying
3 design inefficiencies and errors.

4 **Q. This document informs us that there were**
5 **1224 RFIs?**

6 A. Correct, yeah.

7 **Q. Was any -- was there any attempt to**
8 **determine how many of these RFIs were reasonable?**

9 A. Again, the RFI is used as a mechanism to ask
10 a question and get an answer or response, right?
11 Again, what is reasonable and not reasonable, they
12 wouldn't be generated if there wasn't a request for
13 something that needed to be clarified.

14 **Q. My question to you is this: Balfour**
15 **Beatty's position is that 1224 RFIs are unreasonable.**
16 **You won't tell me what a reasonable number would be.**
17 **Can you tell me, though, whether or not you've looked**
18 **at this list to determine whether there is a single**
19 **RFI in this list that was a reasonable thing to do?**

20 A. Again, 1224 was what I said was a very high
21 number for a project like this, okay? I wasn't
22 providing an opinion on what was reasonable and
23 unreasonable --

24 **Q. So they all could be reasonable?**

25 MR. HILDEBRAND: Let him finish.

1 A. But I wasn't finished yet.

2 **Q. Pardon me?**

3 A. The question with regards to what is
4 reasonable, we asked a question because there was an
5 issue that was determined on the project or the
6 documents that needed clarification.

7 **Q. Okay.**

8 A. That is the purpose of the RFI.

9 **Q. But was any attempt made to determine**
10 **whether or not the request for clarification was not a**
11 **result of the inadequacy of the drawing but simply the**
12 **fact that the person reading the drawing couldn't**
13 **understand it and had to have it explained to them?**

14 A. Again, this project and this design was
15 plagued with so many errors and issues, which is
16 represented in the number of changes that happened in
17 the documents, to suggest that these questions were
18 asked and not seeking clarity to the documents is --
19 is tough to swallow.

20 **Q. You are not an architect, are you?**

21 A. No, sir, I'm not. That's why you hired the
22 architect.

23 **Q. And you are not qualified to give an opinion**
24 **about whether the architect on this job did or did not**
25 **perform within the standard of care in his profession,**

1 are you?

2 A. Again, 1224 RFIs, 81 ASIs, and a number of
3 design revisions and page revisions is a lot on a
4 project.

5 Q. My question was: You are not qualified --
6 you're not licensed as an architect in South Carolina,
7 are you?

8 A. No, I'm not.

9 Q. Okay. And you are not allowed, are you, to
10 give a professional opinion about the conduct of an
11 architect because you're not an architect?

12 MR. HILDEBRAND: Object to the form.

13 A. But I am allowed to rely on the documents
14 that are provided to us to build a project and to
15 ensure that those documents are complete and
16 accurately show what needs to be built on a project,
17 of which we did not get, and that is why we asked the
18 questions we did.

19 Q. Okay. All right. Now we start with an
20 e-mail from Jim Clements to Tim -- to Spano and
21 Starcevic and Nicholas, copies to Brown, Falkinberry,
22 et cetera, et cetera.

23 Why is this e-mail in here?

24 A. This appears to be a notice of delay for L6
25 design.

1 **Q. Okay. All right. Go through a little bit**
2 **more. You'll see some sort of -- there is another**
3 **list here of -- it looks like RFIs. What is this --**
4 **what is the function of this document? And it goes on**
5 **for quite a few pages. Asked another way, how does**
6 **this document inform us about Balfour Beatty's claim?**

7 A. I've got to read the e-mail here and see if
8 it references anything specific. So it appears that
9 this document, it is highlighting RFIs that were held.
10 So for instance, mirrored ceiling at Camillias Lounge
11 was submitted RFI date of 5/6/2016 and held for
12 132 days, approximately 125 days overdue. Continue to
13 go down through the list, then another one, data and
14 communication routing was submitted on July 2, 2015,
15 36 days, 29 days overdue. And so on and so forth
16 through the document.

17 **Q. All right, let's go to Volume 3. All right,**
18 **volume 3, can you just describe generally what Volume**
19 **3 contains?**

20 A. It looks to be a continuation of tab 7.

21 **Q. Okay. Tab 7 is described as what? What's**
22 **the description, excuse me, of tab 7?**

23 A. Support for entitlement related to schedule
24 delays and impacts which consists of Balfour Beatty
25 Construction's most recent updated schedule.

1 **Q. And are the documents in tab 7 all the**
2 **documents that Balfour Beatty has that makes that**
3 **claim?**

4 A. At this time, everything that's submitted in
5 the claim, correct.

6 **Q. Pardon me?**

7 A. Everything that's submitted in the claim.

8 **Q. Right. But I mean, that's the -- you're --**
9 **the basis of Balfour Beatty's claim as it relates to**
10 **the description in tab 7 is what's in tab 7?**

11 A. Right.

12 **Q. Okay. Nothing else?**

13 A. Not that I'm aware of, no.

14 **Q. Okay. So if I want to know what your claim**
15 **is as described under tab 7, I go to tab 7 and**
16 **everything I need to know is right there?**

17 MR. HILDEBRAND: Object to the form.

18 A. The tab 7 is defined within the cover
19 letter. It tells you what is included in that.

20 **Q. I guess just to reiterate, I don't need to**
21 **go outside the four volumes to understand Balfour**
22 **Beatty's claim?**

23 MR. HILDEBRAND: Object to the form.

24 A. Again, we've submitted all the documents per
25 the contract provisions.

1 Q. All right. Let's go to Volume 4, please.

2 All right. What is Volume 4?

3 A. This is Marion Square Hotel detail project
4 schedule dated 3/5/19.

5 Q. Dated -- what is the data date of this
6 document?

7 A. Data date is January 4, 2019.

8 Q. And what is the run date of the document?

9 A. The run date is March 6, 2019.

10 Q. Okay. And in the bottom right-hand corner
11 it says MSH-048, 3/5/19. What does that mean?

12 A. That is Marion Square Hotel typically would
13 be the version of schedule updates and the date which
14 it was published.

15 Q. Okay. So the -- this would have been the
16 last schedule revision that Balfour Beatty created on
17 this job?

18 A. I can't confirm that.

19 Q. Well, the data date is January 4, 2019. And
20 y'all -- we got substantial completion sometime in
21 February?

22 A. Correct.

23 Q. Would -- do you think you created another
24 schedule between January 4 and substantial completion?

25 A. Again, I can't confirm that. I don't know

1 what times -- this document here is what is related to
2 our claim.

3 **Q. Why -- if there is a later schedule, data --**
4 **later schedule with updated data, why wouldn't that**
5 **one be in the claim?**

6 A. I don't know. Again, this is what we have.
7 I'm not suggesting there is one or there isn't one. I
8 just don't know. So what I'm telling you is that this
9 document here is relative to the claim that we
10 submitted to substantiate the claim.

11 **Q. And who made the decision to put this**
12 **particular schedule in here?**

13 A. Again, it was part of the pulling together
14 the total claim.

15 **Q. Was it --**

16 A. I don't know.

17 **Q. Was it your decision?**

18 A. It was Balfour Beatty's decision.

19 **Q. Okay. And the individuals who would have**
20 **been involved in making that decision would be who?**

21 A. The same individuals I spoke of earlier:
22 Dave Simonton, Tim Spano, Nick Starcevic and our legal
23 team.

24 **Q. Okay. And the legal team.**

25 A. Uh-huh.

1 **Q. All right. Let's look at page 1. This**
2 **document was prepared by Balfour Beatty, correct?**

3 A. Correct.

4 **Q. Was it done in-house or done through a**
5 **consultant?**

6 A. Our in-house scheduler, Joe Lauricella,
7 Corey Crowder.

8 **Q. Who?**

9 A. Joe Lauricella and Corey Crowder were the
10 schedulers associated with this project.

11 **Q. Have you read --**

12 MR. BUNDY: Did I take Lauricella's?
13 No, I haven't taken either one of them? Okay.

14 **Q. (By Mr. Bundy) And did they originally --**
15 **did they produce the original schedule?**

16 A. That team was part of developing the
17 original schedule, yes.

18 **Q. And they did the revisions?**

19 A. They did the updates, yes.

20 **Q. All right. Let's go through it. Task ID,**
21 **what does that represent?**

22 A. An ID number that's identified or associated
23 with each activity.

24 **Q. Then the task is the description of that**
25 **work, right?**

1 A. That activity, yeah.

2 Q. The number of days it's going to take to do
3 it?

4 A. Or took to do it.

5 Q. Well, let's look at -- let's pick one out,
6 okay? Well, the first heading is hotel milestones.
7 What does that mean?

8 A. Those are some milestones that have been
9 developed and incorporated into the document.

10 Q. Let's look at test and balance building,
11 10/22, under hotel milestones, okay? 49 workdays.
12 Workdays are defined as what?

13 A. Monday through Friday.

14 Q. Okay. So that's five days, right?

15 A. Correct.

16 Q. So that would be roughly ten weeks, shy one
17 day, ten calendar weeks?

18 A. Correct.

19 Q. Is that correct?

20 A. Yes.

21 Q. Is that the -- is that the amount of time it
22 actually took to do it or is that what was planned?

23 A. So if you see within the start date and the
24 finish date where you have an A after that, those are
25 the actual dates for which the -- the work commenced.

1 **Q. Okay.**

2 A. So May 14th of 2018 to July 20th of 2018 are
3 the actual dates.

4 **Q. Okay, the actual dates. So we don't have**
5 **the planned dates on here?**

6 A. This is an updated schedule to the project,
7 so this is the as-built schedule for the project.

8 **Q. All right. If we go across to the next part**
9 **of this, this is a -- at the top those represent**
10 **months, right?**

11 A. Correct, yes.

12 **Q. Okay. So from February through December in**
13 **the left side would be 2015?**

14 A. I -- I would have do the math, but --

15 **Q. Let's do the math, work backwards.**

16 A. I assume that was.

17 **Q. Let's work backwards. Let's go to this**
18 **particular line, okay? And this particular line that**
19 **comes down would be the day, the run day of this**
20 **document, right?**

21 A. Right.

22 **Q. The vertical line that goes straight down,**
23 **right?**

24 A. Right.

25 **Q. And the run date was what? Data day was**

1 **January 4, correct?**

2 A. Correct.

3 **Q. Okay. So if we go up, we see where that 4**
4 **at the top runs into January. You see that?**

5 A. Correct, yeah.

6 **Q. Okay. So the December would be December of**
7 **2018, correct?**

8 A. If we're talking about the same ones, it
9 would be '19, '18, '17, '16.

10 **Q. Right. So but my point is if you -- If you**
11 **start from that line and use December and go back to J**
12 **before F, that's January, right?**

13 A. Correct, yes.

14 **Q. So December. You might want to mark it --**

15 A. I've got it marked right here, sir.

16 **Q. -- because we're going to be doing this.**
17 **December back to January is 2018?**

18 A. Correct.

19 **Q. And then December back to January is 2017?**

20 A. That's correct, yes.

21 **Q. '16 and '15?**

22 A. Correct.

23 **Q. Have I -- have I got my math correct, you**
24 **see the way the years go, one right after the other?**

25 A. Yes, sir.

1 Q. So the first F here for February would be
2 February of 2015, correct?

3 A. Correct.

4 Q. All right. Okay. So under test and balance
5 building, item 1022, there is a bar here, a horizontal
6 bar. And if you go up, it looks like it starts in
7 March of 2018; is that correct?

8 A. Yes, it does.

9 Q. And how does that relate to the May of two
10 thousand -- no, that's April.

11 A. That's April.

12 Q. So the green line reflects the actual days
13 as work took place?

14 A. Right, it's actually -- yeah, if you follow
15 it up, it's May not March.

16 Q. Yeah, I'm sorry. It's May -- you're right.

17 A. Yeah.

18 Q. So the green line is no more than a bar
19 chart of the beginning and ending of that activity?

20 A. That's correct, yes.

21 Q. Okay. And I guess when it's not green just
22 because there wasn't enough space in there to have
23 a -- for the green to show up?

24 A. Right.

25 Q. Is that correct?

1 A. Because you're showing the total duration of
2 the project.

3 Q. All right. And then we've got -- you've got
4 one titled inspections. Go to the next page, we've
5 got one entitled executed change orders, okay. CCD 2.
6 Black out stair windows and drywall. That is 122
7 workdays. It started in March -- March 30, 2018 and
8 ended September 20, 2018; is that correct?

9 A. That's what it shows here, yes.

10 Q. Why isn't there a green line corresponding
11 to that activity on the right-hand side?

12 A. Because it looks as if it's all been rolled
13 up into that overall title page, of which it doesn't
14 translate the detail across.

15 Q. Rolled up into what?

16 A. So if you look at next one down, see where
17 it says mock-up window?

18 Q. Uh-huh.

19 A. And you see that gray line where it says
20 27 -- or 97 days, I'm sorry.

21 Q. Uh-huh.

22 A. Right. And that line there --

23 Q. I got ya.

24 A. -- the flow across does not show it.

25 Q. Okay.

1 A. But this here, the black out stair
2 windows --

3 Q. I got you.

4 A. -- if you go down below --

5 Q. Yeah, I got ya.

6 A. -- mockup window stair 4, one day,
7 March 30th, and subsequent activities below that are
8 all reflected down below.

9 Q. I got you. Okay. And then we've got stair
10 3 mockup. The next one is stair 3 mockup window?

11 A. Right.

12 Q. Are all of these part of CCD 2? I don't
13 quite understand.

14 A. No. The overall area is change orders that
15 were incorporated into the project, so ...

16 Q. But what's the number of the change order
17 we're talking about?

18 A. They vary. I mean, there's tons of change
19 orders as we'd stated on this --

20 Q. No, but I'm just talking about this
21 particular document. It says CCD 2, black out stair
22 windows and drywall. And underneath it you've got
23 stair 4. You got stair 3, stair 6. And it goes over
24 to the next page. And then it goes -- so all of those
25 items were included in CCD 2?

1 A. Correct.

2 Q. Am I reading it correctly?

3 A. Correct, yes.

4 Q. That's all I'm trying to do is learn how to
5 read it. I ain't -- okay? Then CCD 3, CCD 4, and
6 then it says SI 61 R1. What is that in here for?

7 A. It's another change order that had time
8 associated with it.

9 Q. But it's all under CCD 4?

10 A. I don't know. I'd have to go back and read
11 exactly what was in CCD 4.

12 Q. And these are all just construction change
13 directives, right?

14 A. This SI is -- is a supplemental information.
15 Again, it's not tied directly to a CCD. It's a CCD 6,
16 supplemental information.

17 Q. All right. And then we go and we get to
18 page 9 of 63. And I see CCD 46.

19 A. Okay.

20 Q. Then we've got RCO 193 SI 36 R1 guest room
21 revisions. All right. Is that -- that's not part of
22 CCD 46, is it? Is it a separate item?

23 A. I don't know. I'd have to read exactly what
24 came out in CCD 6 and what portion of the RCO 193
25 could apply to CCD 6.

1 **Q. Well, let's look at -- CCD 46 DOL**
2 **requirements, it has a vertical line, a vertical blue**
3 **line. It stops above stone top thickness issue at spa**
4 **and retail.**

5 A. Right.

6 **Q. But if we follow the solid blue line on the**
7 **far left-hand side, that solid blue line apparently**
8 **goes all the way back to the very beginning of the**
9 **document, right?**

10 A. I'm not understanding.

11 **Q. Huh?**

12 A. I apologize. I don't understand what you're
13 referring to. I've got --

14 **Q. There are --**

15 A. Yeah, I see the blue lines that breaks out
16 each of the different --

17 **Q. The blue line is on the left-hand side.**

18 A. Yes.

19 **Q. Okay. But I'm trying to understand what the**
20 **significance of the first blue line is on the**
21 **left-hand side, because that blue line is continuous**
22 **from page 1 all the way through page 63?**

23 A. Which -- which blue line, if you don't mind
24 showing me? I'm sorry.

25 **Q. The very -- the blue line on the very left,**

1 the very first blue line --

2 A. Oh, the vertical blue line, okay.

3 Q. -- in this document runs through the entire
4 document.

5 A. Okay.

6 Q. So what is the significance of that blue
7 line is all I'm asking you.

8 A. Okay. Again, I'm not going to claim to be a
9 P6 operator, okay? But each of these subsections will
10 roll up in themselves. So if you were to have a floor
11 that then broke down into a certain activity or a
12 certain scope of work within a floor and trade work
13 within a floor and then into a room, you could roll it
14 all up into one line item. So you could have one line
15 item on the project that said hotel milestones
16 383 days, and that wouldn't have any other detail
17 below it. But this is showing that this is all the
18 detail that's up under those activities.

19 Q. But a line that runs through the entire
20 document in the far left-hand side that is colored
21 blue, okay, doesn't tell me anything, does it, other
22 than there's a blue line that runs through the entire
23 document? It doesn't inform me of anything.

24 A. I'm not aware of what it might inform you.

25 Q. Huh?

1 A. I'm not aware of what it could inform you of
2 other than that it rolls up into something --

3 **Q. How about you? What does it inform you of?**

4 A. Again, I'm not going to claim to be a P6
5 operator.

6 **Q. All right. The next blue line, if we start**
7 **on page 2 of 63, let's just pick one, hotel**
8 **milestones. Actually -- well, no, then go down from**
9 **hotel milestones. You've got 90 days prior to**
10 **opening. Then there's a horizontal blue line, and**
11 **then there's a vertical blue line that stops at**
12 **60 days prior to opening. And under that there's**
13 **another blue line vertically and one horizontally that**
14 **also stops at 60 days prior to opening. Is that**
15 **telling me that the information contained within this**
16 **second and third blue line relates to 90 days prior to**
17 **opening, since those two lines stop there?**

18 A. Right.

19 **Q. Is that correct?**

20 A. That's what I was describing to you earlier,
21 yeah.

22 **Q. Okay. So -- okay. I think I understand it.**
23 **Okay. So let's pick another one just so I will**
24 **understand it. Under inspections at the bottom, the**
25 **blue line, the second and third blue line under**

1 inspections stops above the horizontal blue line,
2 executed change orders on the next page?

3 A. Which is the next section.

4 Q. Huh?

5 A. Which is the next section.

6 Q. Right. But all the information above that
7 relates to inspections.

8 A. Yes.

9 Q. Okay. All right. I think I got it. All
10 right. So -- all right. Then we go to, after we get
11 done with CCD 46, DOL requirements, page 9 of 63. The
12 next one that I'd like to talk about is RCO 193. And
13 RCO is request for change order?

14 A. Yes, it is.

15 Q. And we've got three of those. 193, 176, and
16 then 42 and 183, 40R1. And that's the end of the RCOs
17 at least that are listed there; is that correct?

18 A. Yes.

19 Q. Then we've got pending change orders. And
20 by pending, that means that they haven't been signed
21 or they haven't been paid? What does pending mean in
22 this document?

23 A. Again, I mean here is an example. Owner
24 issued CCD to order additional hopes door at southeast
25 elevation. So pending that, owner to issue the CCD,

1 and that work to be performed.

2 **Q. Okay. Page 15 of 63 has a item entitled CMU**
3 **repairs at levels 1 through 3. And it's 11/22, it's**
4 **surveyed CMU levels 1 through 3. Was that survey a**
5 **result of anything the owner or the architect did**
6 **wrong?**

7 A. Again, I don't know specifically what made
8 this up other than the fact that we had, it looks
9 like, waterproofing activities on each of the
10 elevation, changes that were coming with that
11 waterproofing and then issued to the subcontractors.
12 That was the other activity.

13 **Q. Punch walls for waterproofing east**
14 **elevation, do you know what that's about?**

15 A. That's an activity description.
16 Specifically what is encompassed in that, I do not
17 know.

18 **Q. Do you know what the cause of -- why that**
19 **had to be done?**

20 A. Again, it's an activity that obviously had
21 to take place on-site. What it entailed and what
22 drove it, whether it was part of the original scope or
23 a change, I don't know.

24 **Q. You don't know whether it was fault of the**
25 **subcontractors, the owner, the general contractor or**

1 whose fault it was or what necessitated it?

2 A. It says -- I mean, it falls under CMU change
3 order under the title. But again, specifically what
4 ties to that, I would have to pull out the change
5 order and figure out what it -- who it ties back to.

6 Q. Do you know whether the original called for
7 punch walls for waterproofing?

8 A. Again, I don't know what the difference is
9 in the original scope to this without pulling the
10 change order out.

11 Q. All right. Is there a critical path shown
12 on this document?

13 A. There's a critical path that was identified
14 on the original schedule that was developed. You
15 know, this project again was plagued by so many design
16 changes and errors and owner changes that define the
17 critical path we did the very best we could throughout
18 the job to manage and juggle all of these impacts that
19 were dictated by the owner and the architect. I mean,
20 you have our third party independent scheduler that
21 has gone back since the project has been completed and
22 done their analysis to help define what that critical
23 path is. Now that all the -- the answers have been
24 done and the project has been completed.

25 Q. Is there a critical path shown on this

1 document?

2 A. Again, that there was a critical path
3 identified at the very beginning. This is simply to
4 demonstrate the impacts as we had them and the
5 duration for the work that was completed to
6 substantiate the change.

7 **Q. Is there a critical path shown on this**
8 **document?**

9 A. Again, I've told you, this is everything
10 that we had at the time to substantiate our change.

11 **Q. But you're not going to the answer question**
12 **as to whether or not this particular document,**
13 **which --**

14 A. I have --

15 **Q. -- is in your claim has a critical path**
16 **shown on it?**

17 A. Certainly everything that we've had so far
18 has been shown as the critical path items throughout
19 this project.

20 **Q. So all of the items in here are critical**
21 **path items?**

22 A. No. The things that we've reviewed so far.
23 All the changes and impacts associated with this
24 project and the owner and the designer are shown here
25 right now.

1 **Q. And all of them are on the critical path?**

2 A. Yes, that's what I'm saying is that the
3 owner's --

4 **Q. Okay, so it does show the critical path?**

5 A. The owner's impacts are what drove this
6 project, and that's what we're demonstrating here.

7 **Q. So the answer is this schedule does show a**
8 **critical path? Every item on this schedule was on the**
9 **critical path?**

10 A. No, sir, that's not what I'm saying. What
11 I'm saying is that all of the owner changes, all of
12 the design errors, all of the design changes drove the
13 critical path on this project and dictated where and
14 how we needed to work and execute this project. That
15 is what I'm saying, and that is what is reflected in
16 this document.

17 **Q. Okay. You have not been listed as a**
18 **critical path expert or an expert in this case at all.**
19 **Is it your intention to offer expert testimony on**
20 **critical path?**

21 A. We have -- we have one that's been performed
22 that you all have also looked at.

23 **Q. No, I'm asking you, are you going to do it**
24 **personally?**

25 A. We have not defined who that person is going

1 to be at this moment.

2 **Q. You haven't decided who it's going to be**
3 **yet?**

4 A. No, sir.

5 **Q. Within Balfour Beatty or the expert?**

6 A. Within Balfour Beatty. That was the
7 question I thought I heard.

8 **Q. Okay.**

9 A. Other than, that we've presented our third
10 party expert.

11 **Q. I got you. Okay. All right. Do you have**
12 **your questions for the 30(b)(6) in front of you?**
13 **Number 2, will you identify all requests for change**
14 **orders that have been rejected by the owner?**

15 A. They're called out in our claim.

16 **Q. Where?**

17 A. We provided all the documentation, the
18 information we just reviewed.

19 **Q. Where within the claim?**

20 A. We just reviewed the matrix that had all of
21 the RCOs that were in there.

22 **Q. But where within the claim can I go to find**
23 **all requests for change order that were rejected by**
24 **the owner?**

25 A. Sir, I just walked through the claim with

1 you and walked through your questions as it relates to
2 that. The information has been provided to you for
3 your review.

4 **Q. Can you identify all the request for change**
5 **orders where the owner elected not to proceed with the**
6 **change of the work?**

7 A. Again, the items that they have elected to
8 take and we proceeded with, we provided the claim
9 documentation and the information to support those
10 claims and those changes, and that's what we're
11 looking for recovery on.

12 **Q. I'm asking you, though, to identify -- and**
13 **this exhibit asks a little over a month ago, a day**
14 **over a month ago -- to produce somebody who could**
15 **identify all the requests for change orders where the**
16 **owner elected not to proceed with the change or the**
17 **work. Can you identify those?**

18 A. Sir, we put the information in the claim to
19 you. We just reviewed all of that information,
20 including those change order requests that were
21 rejected on the project.

22 **Q. No, not the ones that were rejected, but the**
23 **ones that were not done.**

24 A. Again, those would be the rejected ones.

25 **Q. Right.**

1 A. And all the items that we've looked to be
2 paid for, that we should be paid for have been
3 identified in our claim.

4 **Q. Has Balfour Beatty produced all of its daily**
5 **reports on this job?**

6 A. I believe we've produced all the
7 documentation that's been requested.

8 **Q. Okay. Can you identify the individuals**
9 **identified -- or tell me the individuals -- no, strike**
10 **that.**

11 **Was a CPM analysis provided with a request**
12 **for time extensions by Balfour Beatty during the job?**

13 A. Ongoing updates of the CPM schedule were
14 provided throughout the project. Schedule reviews and
15 updates and conversations were had during the OAC.
16 And at the time we could determine what those impacts
17 would be, we would supply that information to the
18 owner.

19 **Q. What BIM services did Balfour provide on**
20 **this project?**

21 A. We weren't required to provide any BIM
22 services on this project.

23 **Q. So the answer is none?**

24 A. We weren't required to provide any.

25 **Q. What BIM services did your subcontractors**

1 **provide?**

2 A. They weren't required to provide any through
3 our contract to the owner.

4 **Q. Did they provide any?**

5 A. They weren't required to provide any.

6 **Q. Did they -- whether they were required to**
7 **provide it or not, did the subcontractors provide any**
8 **BIM services?**

9 A. The subcontractors nor Balfour Beatty were
10 required to provide any BIM services to the owner. We
11 provided a proposal to provide those services to the
12 owner, and the owner elected not to take us up on
13 that.

14 **Q. Okay. So neither Balfour Beatty or any of**
15 **its subcontracts provided BIM services on this job?**

16 A. We provided a proposal and the owner
17 selected not to execute that.

18 **Q. I didn't ask you whether you provided a**
19 **proposal. I didn't ask you whether the owner elected**
20 **not to do it. I simply asked you whether or not it**
21 **was provided, yes or no?**

22 A. It didn't need to be provided. I was not
23 providing it, and it was not required per the
24 contract.

25 **Q. That's fine.**

1 **Did any of the subcontracts with Balfour**
2 **Beatty with its subcontractors require the**
3 **subcontractors to provide BIM services?**

4 A. Coordination efforts were happening on the
5 project, but there were no BIM efforts that were
6 required per the contract.

7 **Q. Okay. So the subcontracts did not require**
8 **BIM services?**

9 A. We had no BIM requirements to the owner on
10 this contract.

11 **Q. Okay. In the agreements between Balfour**
12 **Beatty and the subcontractors, no BIM services were**
13 **required?**

14 A. We had proposals that were pulled from
15 the -- from the subs to provide the owner with BIM
16 services, and we were not -- we were not executed to
17 move forward with them.

18 **Q. And in number 20, then, the answer would be**
19 **that BBC had no responsibility for BIM coordination?**

20 A. Contractually I had no responsibility for
21 BIM coordination.

22 **Q. In the pre -- was there a preconstruction**
23 **plan review by Balfour Beatty?**

24 A. There was no plan review that was required
25 per the preconstruction proposal.

1 **Q. When did Balfour Beatty know that the**
2 **architect was not providing a REVIT, R-E-V-I-T, model**
3 **to Balfour?**

4 A. I'm not familiar with what platform the
5 design team was going to utilize to design their
6 project.

7 **Q. Okay. Who is John Rankin?**

8 A. John Rankin is no longer an employee of
9 Balfour Beatty, but during the course of this project
10 up until the end of December of 2020, was business
11 unit leader out of our Raleigh office.

12 **Q. And what -- what did he do on this job?**

13 A. He did nothing on this job.

14 **Q. Who holds the -- who is the license holder**
15 **for Balfour Beatty's license as a construction manager**
16 **in South Carolina?**

17 A. Off the top of my head, I don't know.

18 **Q. Who is the license holder for Balfour**
19 **Beatty's general contractor's license in South**
20 **Carolina?**

21 A. You've got Tony Stoneking or Anton
22 Stoneking, Johnny Rankin, Russell Brockelbank. Matt
23 Stephenson.

24 **Q. All right. Who is Russell Brockelbank?**

25 A. He is a -- I believe his title is operations

1 director or project executive, I think it is.

2 Q. And what did he have to do on this job?

3 A. Nothing.

4 Q. How about is it Alton or Aton Stoneking?

5 A. Alton. Tony is what we refer to him.

6 Q. Okay. And what was his -- what is his job
7 or was his job?

8 A. He's a vice president of operations out of
9 our Raleigh office.

10 Q. Is he still with the company?

11 A. Yes, sir.

12 Q. And what did he have to do with this
13 project?

14 A. Nothing.

15 Q. Okay. Does Balfour Beatty have any written
16 manuals or internal documents relating to the
17 requirements for completing daily reports?

18 A. I mean, it's a -- it's a process that we
19 have. We'll utilize a -- utilize our daily report, I
20 guess SOP, if you will, on a daily basis for what we
21 want to capture, and it's all defined on our -- on our
22 sheet itself with weather, you know, the manpower
23 count, the equipment that's on the job, and the
24 activities that took place that day.

25 Q. Is there any place on that form to put down

1 delays or problems on the job?

2 A. We can look at the form specifically and
3 identify what that is, but it certainly identifies
4 opportunities and obstacles that need to be
5 coordinated on a daily basis, yes.

6 Q. I'll hand you a document entitled Daily Logs
7 Binder 104 and ask you if you can identify those --
8 the documents in this binder.

9 A. This is Balfour Beatty Construction, Hotel
10 at Marion Square Daily Report Number 001, dated
11 4/15/2015. The temperature is 60 degrees. Current
12 temperature -- that's a low. Current temperature is
13 75, high temperature is 75. Wind speed of 16.
14 Condition, broken clouds. Robert Cotherman is the
15 name that --

16 Q. I don't need you to ident- -- to read the
17 document to me. I just want you to identify the
18 documents generally. Are these the daily reports --

19 A. Yes, sir.

20 Q. -- issued by Balfour Beatty?

21 A. These look to be the daily reports.

22 Q. Created by Balfour Beatty?

23 A. Yes, sir, they were.

24 Q. And were they created in the normal course
25 of Balfour Beatty's business?

1 A. Yes, sir.

2 Q. Okay. And were they contained -- created
3 contemporaneously with the events? In other words,
4 were they created on the day that the daily report
5 reflects or were they manufactured years later?

6 A. No, they would have been done on the day of
7 the report.

8 Q. Okay.

9 A. This is done in a platform that we have.

10 Q. And they are relied upon by Balfour Beatty
11 in the operation of its business?

12 A. On a day-to-day operation.

13 Q. On a day-to-day basis, but y'all rely on
14 these, okay?

15 A. Right. Like I said, yes, sir, I mean, these
16 are -- these are capturing the activities of a given
17 day.

18 Q. Okay.

19 A. Right, not necessarily for something that's
20 going to be used a year from now but certainly --

21 Q. No, I'm not -- yeah, I'm not suggesting that
22 your superintendents can predict the future, okay?

23 A. Right.

24 Q. And I hope you didn't take my question that
25 way, okay, because I don't believe they can.

1 A. Right.

2 Q. Maybe you do. All I want to know is if they
3 are accurate, created on the day that they were -- or
4 on or about the day the events occurred and whether or
5 not they're in the normal course of business of
6 Balfour Beatty?

7 A. There is no reason to believe they're not,
8 and that they are accurate and done on a daily basis.

9 Q. Okay. And as far as you know, they're
10 accurate?

11 A. That's correct. That's what I said, yes.

12 Q. And Balfour Beatty relies on them?

13 A. Correct, on a daily basis we rely on them
14 submitting these reports.

15 Q. All right.

16 MR. BUNDY: Let's mark that please,
17 ma'am.

18 Q. While I'm marking this, I want you to look
19 at binder 2 of 4, binder 3 of 4, and binder 4 of 4.
20 Tell me whether or not these are the daily reports
21 created by Balfour Beatty for the Bennett Hotel job.

22 A. Yes, these appear to be all the daily
23 reports.

24 Q. All right. Given that, I'd like you to mark
25 each one of them in order of -- hopefully the first

1 one -- you know, go from 1, 2, 3, and 4.

2 A. 17 is binder 1, 18 is binder 2, 19 is binder
3 3, and 20 is binder 4.

4 (Exhibits 17-20 marked for identification.)

5 Q. (By Mr. Bundy) To the best of Balfour
6 Beatty's information and belief, are these all the
7 daily reports on this job?

8 A. To the best of my belief, they are, yes.

9 Q. There was no intention on Balfour Beatty's
10 part to hide, modify, or otherwise change these
11 documents?

12 A. No, sir.

13 Q. And you believe them to be truthful?

14 A. I do.

15 Q. Okay. Now, I think we started this
16 conversation with whether or not the gentlemen or
17 gentlewomen who fill these out have a place to note
18 problems on the jobs; delays, or anything like that?

19 A. Right.

20 Q. Can you pick one and tell me whether or not
21 there is anyplace on this daily report for whoever is
22 responsible to produce the reports to notify or put in
23 the daily report problems on the job, et cetera?

24 A. Right. So the -- the document -- I'm in
25 binder 3, Exhibit 19. This binder here has daily

1 reports dated December 16th of '20. There are --
2 there is a note section which talks about different
3 trades, the locations of where they're working,
4 laborers, and where they're cleaning up, and some of
5 the general activities that are taking place on the
6 job. You've got the time and the weather, as I stated
7 previously. You've got man count or man/woman count
8 on here and the hours for which they worked on the
9 project, as well as the activities that took place for
10 each of those individuals, with a total at the end of
11 the number of workers and the hours for which they
12 worked on the project, and then the name of the
13 individual that is -- that is associated with the
14 documents. So there is a note section here that is
15 free for them to put any information that they want to
16 capture from that given day.

17 **Q. Okay. Whose responsibility is it to fill**
18 **out these daily reports?**

19 A. The project team as whole is required to
20 make sure that we capture all the information and get
21 it into the system.

22 **Q. And who would that -- who would that project**
23 **team as a whole constitute -- be constituted of?**

24 A. It would be the field supervision, our
25 office supervision, the day-to-day operational folks

1 for Balfour Beatty on-site.

2 **Q. But it's not the people at the home office.**
3 **They don't fill out the daily reports, do they?**

4 A. That's what I said, the day-to-day operation
5 is on-site.

6 **Q. So it's on-site.**

7 A. Yes, sir.

8 **Q. It's somebody on-site?**

9 A. That's correct.

10 **Q. And how many people would be on the team**
11 **that would be held responsible for seeing that got**
12 **done?**

13 A. That was a variable throughout this job
14 based on the necessity for the resources. But at any
15 given time, you know, if there was one person or there
16 was ten people, all those individuals might have some
17 input on counting man hours and resources.

18 **Q. Is it a requirement of Balfour Beatty that**
19 **it be done every day?**

20 A. It's a daily report, so the expectation is
21 it would be done. Days that there are activities
22 taking place on the site, those would be the days that
23 we'd have a report.

24 **Q. If it came to the attention of management at**
25 **Balfour Beatty that there were no daily reports being**

1 produced on the hotel, okay, who would you go to to
2 find out why that was not being done and whose
3 responsibility would it be? Would you talk to the
4 team? Would you have to bring in nine or ten people
5 and ask each one of them? How would that work?

6 A. Yeah, definitely. I mean, I think the
7 expectation again is on a daily basis that these
8 documents are completed. To the extent that we are
9 not completing those daily documents, then we would
10 certainly raise that issue and make sure that the team
11 follows through with that commitment.

12 Q. But would you raise it with the
13 superintendent who is on the job every day, or would
14 you raise it with the guy who cleans the floors? Who
15 would it be that you would call?

16 A. Again, what I stated was, the individuals
17 that are providing the information are the Balfour
18 Beatty supervisors that are on-site every day. And
19 that could be one individual, it could ten individuals
20 based on the number of work that's going on, the
21 activities that are taking place, the changes that we
22 are trying to work through and the challenges on the
23 job.

24 Q. All right. Let's -- let's go to binder 1 of
25 4. Go to document number -- daily log, BBC daily log

1 **number 000140 dated 12/16 -- well, that's the view**
2 **date. The date of it is 10/9/2015. Got it?**

3 A. No, I don't. I'm trying to find it.

4 **Q. It's about this far into it.**

5 A. I'm in December.

6 **Q. Maybe an inch. Daily log 00140?**

7 A. What was the date one more time, sir?

8 **Q. Huh?**

9 A. What was your date one more time?

10 **Q. Well, the date is 10/9/2015 is the date of**
11 **the report.**

12 A. Okay. And I've got daily report number 112
13 up on the top right under the view date. See the --
14 see the top right where it says view report?

15 **Q. Yeah, daily report 112. Yeah, I see that.**
16 **I was going by the daily log, the Bates number, which**
17 **is 00140.**

18 A. Okay, sorry. So yeah, we're on the same
19 one.

20 **Q. Okay. Let's talk about this. What software**
21 **is this document created in?**

22 A. It would be Prolog for this.

23 **Q. Prolog?**

24 A. Uh-huh.

25 **Q. Does Prolog have the ability to word search?**

1 A. That I can't say, I don't know.

2 Q. Okay. View date. The view date is
3 12/16/2020. What does that -- what does the view date
4 mean?

5 A. I don't know. I can only imagine it was the
6 day it was viewed on, 12/16/2020.

7 Q. All right. It's dated 10/9/2015. It says
8 type BBC. What does "type" mean?

9 A. I don't know, default from type was Balfour
10 Beatty's --

11 Q. Author --

12 A. -- daily report.

13 Q. Author was Robert Cotherman. Who is Robert
14 Cotherman?

15 A. He was a superintendent on the project.

16 Q. Okay. And was he the only superintendent on
17 the project in October of 2015?

18 A. I can't answer that. I don't know.

19 Q. Was he the that was responsible for daily
20 reports?

21 A. He was one. As I stated, the whole team was
22 responsible was responsible for --

23 Q. Who else on the team on-site would have been
24 above Robert Cotherman in terms of the hierarchy of
25 BBC?

1 A. On the field supervision side, nobody. That
2 was -- Bob Cotherman was the general superintendent at
3 that time on the project.

4 **Q. So while he may have delegated the job of**
5 **daily reports to someone else, ultimately it was his**
6 **responsibility to see that it got done?**

7 A. Again, it's the whole team. There's just a
8 certain -- one individual that needs to go into the
9 system to make sure that it's put in there, right, but
10 it's input from the entire team.

11 **Q. And do you know whether -- well, is it the**
12 **case that BBC requires whoever fills out the daily**
13 **report, to put in the daily report things that are**
14 **going on in the job that are causing additional money**
15 **or additional delay to BBC?**

16 A. Again, the -- what goes in the daily report
17 is that of what is reflected on the daily activities
18 on the job and the conditions of the project. So to
19 the extent that there is -- is an issue that needs to
20 be resolved and they identify it and they resolve the
21 issue. If there's manpower that needs to be added,
22 then we'll discuss the manpower; if there is material
23 that's being delivered, we'll discuss the material; if
24 there is a safety issue that happens on the project,
25 then we'll document the safety issue. The intent

1 behind it is to communicate on a daily basis the
2 things that are happening on the project so that the
3 next day we can resolve those issues and keep the
4 project moving forward.

5 **Q. If the job is being delayed, would that**
6 **something that should be put in the daily reports?**

7 A. Again, the delays on a design, owner change,
8 all of that is not going to be captured on what the
9 daily report is. This is the activities that are
10 happening on a daily basis out in the field.

11 **Q. Okay. If a subcontractor is supposed to**
12 **have people on the job and nobody shows up to work,**
13 **would you expect that to be on the daily report?**

14 A. We would -- we would certainly capture the
15 manpower that they have on-site. And if the manpower
16 is less than what is required, then we would contact
17 them to get more resources to the project.

18 **Q. Would anything in the daily report be**
19 **written to reflect that -- let's say it shows four men**
20 **on the job for a particular subcontractor?**

21 A. Yes.

22 **Q. It goes back to the office, wherever the**
23 **home office is, and somebody is looking at it. How**
24 **would that person looking at it know that four men was**
25 **or was not adequate on that day unless there was a**

1 **note saying, "They had four people here today, but**
2 **they told me yesterday they there were going to have**
3 **30 people here." Unless there's a note, how would**
4 **they know that?**

5 A. Again, it wouldn't go back to the home
6 office. It's the project team is managing the
7 activities day to day. They're the ones coordinating
8 the work. They're the ones that understand where
9 those activities are going to take place, and they are
10 the ones that are working coordinating with the
11 subcontractors on a daily basis to make sure that
12 we're productive, that we understand where the
13 materials are, we understand where we're going to
14 stage those materials, do they have the necessary
15 tools and equipment to go do the work, can they do it
16 safely, is there anything that they need from us or
17 from other trades to make sure that the work is
18 completed properly. And those are the things that we
19 can identify in here if and when it becomes an issue.

20 **Q. Okay. And you would expect there to be some**
21 **note if that was -- if that condition was in existence**
22 **on the daily report?**

23 A. If there was something that was of that
24 condition.

25 **Q. Okay. To my example, if the superintendent**

1 Mr. Cotherman had been told 20 masons were coming
2 tomorrow and three showed up, you would expect
3 something along the lines of three men listed in the
4 labor, but also some note saying that they were 17 men
5 short. They told me 20 men yesterday.

6 A. Again, they would identify what the manpower
7 is that's on here, and we would use that in order to
8 go address any challenges that may be on the site.

9 Q. All right. So you wouldn't expect a note
10 saying that they were short 17 men?

11 A. Yeah, the notes column here is general in
12 what they think is applicable to managing the project
13 on a daily basis and what they should document.

14 Q. Okay. So if Mr. Cotherman, for instance, on
15 this date of December 16 -- no, excuse me, on
16 October 9, 2015 didn't make any notes to that effect,
17 is it fair to assume that he didn't have any problems?

18 A. Anything that was of critical on that day.

19 Q. Right.

20 A. It doesn't mean that he didn't have
21 challenges that he had to go and work through.

22 Q. Sure. He may have had a cold, but I'm not
23 talking about that.

24 A. He may have had --

25 Q. I'm talking about the job.

1 A. He may had an excavation that needed to be
2 worked through with a subcontractor. He may have had
3 some delivery that came in that he had to go and close
4 down an area to get the delivery. Those things are
5 day-to-day activities --

6 **Q. Sure.**

7 A. -- that our teams are certainly well-versed
8 in being able to work through.

9 **Q. Sure. But anything significant -- of**
10 **significance you would expect him to put down there?**

11 A. Yeah, that he would possibly need help with
12 and/or to work through, yeah.

13 **Q. And if it's not in here on this particular**
14 **day, the assumption is whether he may have had small**
15 **day-to-day construction problems -- and there are**
16 **always problems -- that they weren't something he**
17 **couldn't handle.**

18 A. Right. That he -- the items that he was
19 controlling for that given day, he had documented
20 those things that he's responsible for and made note
21 of the -- of what resources were available to do the
22 job.

23 **Q. Right. But other than that, he had**
24 **everything under control on that day because he didn't**
25 **put any notes in to the contrary?**

1 A. Right.

2 Q. Okay, fair enough. All right. Do you know
3 whether these daily reports have been provided to your
4 scheduling expert?

5 A. I can't confirm that. I don't know.

6 Q. Do you have an opinion whether or not he
7 should have looked at them?

8 A. Again, I mean, the impacts that we have are
9 associated with all of the design changes, owner
10 changes, inefficiencies of the design, so on and so
11 forth. The activities that happened on a day-to-day
12 basis are not those of what is substantiated in the
13 claim.

14 Q. Okay.

15 MR. HILDEBRAND: Bill, do you want to
16 take a break or what do you want to do?

17 MR. BUNDY: Sure.

18 MR. HILDEBRAND: Break for lunch --

19 MR. BUNDY: Yeah, we can take a break
20 for lunch.

21 MR. HILDEBRAND: -- like we did
22 yesterday?

23 MR. BUNDY: Huh?

24 MR. HILDEBRAND: What do you want?

25 MR. BUNDY: Do y'all want to eat now?

1 That's fine with me.

2 MR. HILDEBRAND: I'm happy to eat at
3 1:00 or whatever. I really don't care. Do
4 you --

5 MR. BUNDY: That's fine. Let's go eat
6 now. It's a good time to go.

7 MR. HILDEBRAND: Let's go eat.

8 MR. BUNDY: Can you -- before you
9 leave, can you -- you had some exhibits I marked
10 yesterday for your preparation. Can you hand
11 them to me so I can look at them over lunch,
12 because I'm going to ask you about them. Thank
13 you. This is all of them, right?

14 THE WITNESS: Yes, sir. That was the
15 ones that you marked yesterday.

16 MR. BUNDY: All right. Why don't we
17 come back at 1 o'clock.

18 THE VIDEOGRAPHER: We're going off
19 record. The time is now 12:03.

20 (Recess from 12:03 p.m. to 12:58 p.m.)

21 THE VIDEOGRAPHER: We're going back on
22 the record. The time is now 12:58.

23 **Q. (By Mr. Bundy) All right. I want to hand**
24 **you what's been marked as Defendant's Exhibit 6 to**
25 **this deposition. And this purportedly is the response**

1 under Exhibit A to your -- to the 30(b)(6) notice of
2 Balfour Beatty. Issue number 6 is response by Balfour
3 to RFP dated November 6, 2013, correct?

4 A. Correct, yes.

5 Q. And is that what exhibit -- your exhibit is?

6 A. Yes. It's documents in reference to that
7 response, yes.

8 Q. Documents in reference to RFP dated
9 November 6, 2013?

10 A. Correct, yes.

11 Q. And how did you go about -- who assembled
12 these documents?

13 A. The project team and our attorney team.

14 Q. Okay. In response to this 30(b)(6)?

15 A. Yes, sir.

16 Q. You didn't bring another copy, did you?

17 A. No, sir.

18 Q. Okay. Let me see it. I'll go through it
19 myself, first. Thank you. Are these -- are the
20 documents contained in Exhibit 6 also in the claim
21 books that we've been through?

22 A. No, sir, I don't believe they are.

23 Q. So these are in addition to what's in the
24 claim books?

25 A. Yeah, I don't believe there's any

1 duplication at all.

2 Q. Okay. All right. The next exhibit that you
3 have brought, it relates to topic number 9 under
4 Exhibit A to your deposition of Balfour Beatty, all
5 delay notices sent by Balfour to owner. And that's
6 been marked as Exhibit 7; is that correct?

7 A. Yes.

8 Q. And how many tabs are there?

9 A. There's 19 tabs.

10 Q. Okay. And that constitutes all the delay
11 notices that were issued by Balfour Beatty to the
12 owner?

13 MR. HILDEBRAND: Object to form.

14 A. This is everything that we've compiled for
15 reference -- documents that I can reference during
16 this -- this deposition in addition to any other
17 notices that were sent throughout the duration of the
18 project.

19 Q. Well, the issue is all delay notices. Is
20 that all the delay notices or not?

21 A. Sir, the topic is all the delay notices.
22 This is just some documents that we had to help
23 reference some of the delay notices.

24 Q. So where are all --

25 A. I'm sorry.

1 **Q. Where are all the delay notices?**

2 A. All the delay notices have been sent to the
3 owner and the architect throughout the duration of the
4 project, so you have copies of those delay notices.

5 **Q. And what you've got in that exhibit there**
6 **are just some of those?**

7 A. Right. This is a representative example of
8 some of the delay notices that we sent to the owner.

9 **Q. And why did you pick those as opposed to**
10 **just -- as opposed to all of them?**

11 A. This was just some of the documents that we
12 had up until October 2018 that we felt -- that we
13 wanted to bring in that could be of assistance to me
14 during this -- during this deposition.

15 **Q. But you're saying there are other ones out**
16 **there?**

17 A. We notified per the contract throughout the
18 duration of the project, yes.

19 **Q. How many other ones are there; do you know?**

20 A. We'd have to look at the total number of
21 them that were submitted. But they've all been
22 submitted and they're part of the discovery that --
23 that was also been provided.

24 **Q. Are they in the claim documents?**

25 A. Some of them are referenced there. There

1 are other documents outside of that too.

2 Q. All right. All right. We've talked
3 about -- this is number 6. 16. Exhibit 16 -- Exhibit
4 A, number 16 is all Balfour and subcontractor
5 conditional partial waiver of liens. This is just one
6 from Gulf Stream. What is the significance of just
7 the one in your -- in Exhibit A?

8 A. Again, it's just an example that we can
9 reference throughout. All the lien releases were
10 provided throughout the pay application process,
11 excuse me, to the owner.

12 Q. All right. Do you know what the last
13 working day of Balfour Beatty was on the project?

14 A. Not the exact day, no.

15 Q. Okay. Even though number 29 asked you to be
16 able to tell me that?

17 A. It just says the last working day on the
18 project.

19 Q. Yeah, that's what -- that's what you were
20 asked to be able to come here and tell me what the
21 last working -- to discuss the last working day on the
22 project. Do you know what that day was?

23 A. Not the exact day, no, but --

24 Q. Why don't you know that?

25 A. I just don't know it off the top of my head.

1 **Q. But you were asked -- you read the notice,**
2 **you read Exhibit A, and it says number 29, the last**
3 **working day on the project. And you didn't come**
4 **prepared to answer that?**

5 A. No. Do you have specific questions about
6 the last working day --

7 **Q. What was the last working day on the**
8 **project? That's my question.**

9 A. I don't have that exact day.

10 **Q. What -- what was it about this question**
11 **that -- this topic in this Exhibit A that led you to**
12 **believe that you were not going to be asked what the**
13 **last working day on the project was?**

14 A. Sir, I did the best that I could with all of
15 the information that was provided and the millions of
16 documents that have been generated for this project to
17 come prepared to answer your questions.

18 **Q. What was the last working day on the**
19 **project?**

20 A. I apologize. I do not have the exact date
21 of the last working day on the project.

22 **Q. Okay. All right. Do you have any**
23 **documentation with you under item 35 including**
24 **critical path analysis supporting Balfour's claim to**
25 **RCO 122R1, structural claim delay, including**

1 **documentation requested by and submitted to the**
2 **architect. Do you have that document?**

3 A. No. The documents that I've shared with you
4 are the documents that I've brought with me.

5 **Q. So the answer is no, you don't have it?**

6 A. I don't have that. I have what I brought
7 and shared with you.

8 **Q. Okay. But you don't have the documentation**
9 **described in issue 35?**

10 A. This documentation has been submitted to the
11 owner and to the architect for their review as relates
12 to this claim.

13 **Q. Okay.**

14 A. There is also additional information within
15 this claim as it relates to this.

16 **Q. So the documentation in answer to number --**
17 **issue 35 is contained in these notebooks?**

18 A. It's been submitted to the owner previously
19 per the terms of the contract. It's also included
20 within our claim for the documents that are relevant
21 still outstanding.

22 **Q. Okay. It is your understanding that in**
23 **response to a 30(b)(6) notice of deposition to request**
24 **documents and discussion of documents, that all you**
25 **have to do is come in and here and say you have them**

1 somewhere else, and that meets your obligation under
2 30(b)(6). Is that your understanding?

3 MR. HILDEBRAND: Object to the form.

4 A. Sir, we've provided those documents to you
5 and to the owner and to the architect for their review
6 and approval.

7 Q. 36, Pasco had to open ceilings throughout
8 the building to address sprinkler head issues. How
9 did this impact the project cost and schedule?

10 A. I'm not aware of it impacting the project
11 cost or schedule.

12 Q. Do you agree that Pasco had to open up
13 ceilings throughout the building to address sprinkler
14 head issues?

15 A. I'm sure that there was a ceiling that they
16 had to open to address the sprinkler head issue but
17 I'm not --

18 Q. A ceiling?

19 A. Again, I'm not prepared to -- I don't know
20 the specific areas of which they had to adjust, but
21 for them to go and adjust a sprinkler head.

22 Q. Okay. And you didn't do any investigation
23 to determine the answer to that question?

24 A. I did. I asked the team and the response
25 was is there was no cost or schedule impact to the

1 job.

2 Q. Okay. All right, number 38, can you tell me
3 about all back charges made, claimed, or intended to
4 made or claimed by Balfour against its subcontractors
5 on the project?

6 A. Right now we have all of the documents that
7 are comprised for any outstanding costs that are owed
8 by the owner and any changes that were directed by the
9 owner as well as any delay claims and inefficiencies
10 that are owed to the subcontractors. And that's
11 what's been provided to you.

12 Q. All right. I want to know from you though,
13 however, all back charges made, claimed, or intended
14 to be made or claimed by Balfour against its
15 subcontractors on the project Issue 38, Exhibit A to
16 the 30(b)(6) deposition. Can you answer that
17 question?

18 A. Right. We've provided all that
19 documentation, of which has been reviewed and audited
20 by the team throughout this -- this entire process.

21 Q. But you didn't provide it today?

22 A. I had provided it previously.

23 Q. You didn't provide it today. Yes or no? Is
24 it here or not?

25 A. I don't know if you brought it. I have not

1 provided --

2 **Q. You didn't bring it.**

3 A. -- additional documentation to you other
4 than what I've already submitted per the terms of the
5 contract.

6 **Q. Is it in the claim book? Are the back**
7 **charges made, claimed, or intended to be made or**
8 **claimed by Balfour against its subcontractors in the**
9 **claim book that we've been discussing?**

10 A. No.

11 **Q. Okay. Michael Bennett's letter to**
12 **Mr. Blondin. I think that was -- wasn't that an**
13 **exhibit that you had?**

14 A. That was one of the documents that I
15 brought, correct.

16 **Q. Right here. All right. That's your**
17 **Exhibit 10, correct?**

18 A. Yes.

19 **Q. All right. Attached to Exhibit 10 is topic**
20 **regarding 39 is a letter -- copy of a letter from**
21 **Michael Bennett to Leon Blondin. Who is Leon Blondin?**

22 A. He is our US CEO.

23 **Q. Do you know whether he received this letter**
24 **or not?**

25 A. He responded to it in a subsequent letter,

1 so I would say yes.

2 Q. So yes, he did receive it?

3 A. Yes.

4 Q. Okay. And his response is in this e-mail?

5 A. Yes.

6 Q. Okay. All right. It was sent June 21,
7 2018, correct? That's what it says?

8 A. That's what it says.

9 Q. Okay. All right. Have you provided all --
10 can you tell me or provide for me all the requests for
11 change orders made by Balfour's subcontractors to
12 Balfour?

13 A. All the claims and change orders that are
14 relevant to the owner that are part of our claim or
15 recoverables that we're looking for is a part of all
16 the documentation in the claim.

17 Q. How about the ones that aren't relevant to
18 your claim, did you bring those?

19 A. No, I did not bring those.

20 Q. Do any of them exist?

21 A. There are change orders to the subs, yes.

22 Q. That are not included in the claim?

23 A. Correct.

24 Q. All right. And what is the total value of
25 those change orders?

1 A. I don't have that value.

2 **Q. Who would have it? Does --**

3 A. Well -- sorry.

4 **Q. Does Balfour Beatty have that value**
5 **somewhere?**

6 A. Balfour Beatty does have that value. And
7 the change orders that have been executed, the date
8 with the subcontractors would be reflected in the
9 schedule of values and billed and paid accordingly
10 through the pay application process.

11 **Q. How about delay notices sent by Balfour to**
12 **its subcontractors, do you have those? Did y'all send**
13 **any delay notices to subcontractors?**

14 A. We had some delay notices that we reviewed
15 today as far as the -- some of the e-mail
16 correspondence that we went through. So we talked
17 about those again. None of those were deemed to be on
18 the critical path but simply notifications to subs to
19 make sure we're addressing daily issues on the
20 project.

21 **Q. Okay. So none of the change -- none of the**
22 **delay notices sent by Balfour to any of its**
23 **subcontractors for the entire duration of the job**
24 **affected the critical path?**

25 A. To the best of our understanding, no, sir.

1 **Q. Okay. Did you ever contend to any**
2 **subcontractors at the time the delay notice was given**
3 **that it was affecting the critical path or delaying**
4 **the project?**

5 A. We told them that it was delaying their
6 activities and that we expected them to remedy that.
7 But again, those were addressed on a day-to-day basis.

8 **Q. Okay. Number 65, is the -- is Library**
9 **Associates entitled to a credit for the manager's**
10 **apartment, RCO number 247, credit manager's apartment**
11 **base contract millwork?**

12 A. Any change that would result in reduction of
13 scope and addition of scope, the credits would be
14 applicable as would the adds. So specific to this
15 one, we have to review that RCO to look at what
16 credits may be relevant. But in the event that
17 something was deleted and scope was deleted, yes,
18 credit would be given to the owner. And to the extent
19 that there are adds, we would expect to be paid and
20 compensated for those adds.

21 **Q. This is very specific, and I asked you about**
22 **a specific RCO. Can you tell me whether or not a**
23 **credit is owed for the manager's apartment including**
24 **RCO number 247, credit manager's apartment base**
25 **contract millwork. Can you tell me or not?**

1 A. We've submitted RCO 247 with the scope
2 associated with it, and if there is a credit due, then
3 that would be reflected on the -- on the RCO.

4 **Q. All right. What measures were taken by**
5 **Balfour to safeguard the earthen wedges supporting the**
6 **sheet piling prior to Hurricane Matthew versus**
7 **measures taken post-Hurricane Matthew? Number 66.**

8 A. We have to go and try to secure a site prior
9 to an event like this. We did the best we could at
10 the time to do that. And, again, we've submitted the
11 cost associated with any of that prep work to the
12 owner for compensation.

13 **Q. This doesn't ask you whether you did your**
14 **best effort or not. This says what are the measures**
15 **that were actually taken. What measures were actually**
16 **taken to safeguard the earthen wedges supporting the**
17 **sheet piling prior to Hurricane Matthew?**

18 A. Sir, we prepared the site to the extent that
19 we possible could in order to get ready for a storm
20 that came through.

21 **Q. Number 70. This is related to RCO 103, MOD**
22 **mechanical revisions. There was a meeting with**
23 **Balfour MCC, MCC's attorney, WLA and Matrix. WLA, the**
24 **architect, questioned MCC's takeoff. At the meeting**
25 **it was agreed that MCC Balfour would provide its**

1 detailed takeoff of the change to compare with that
2 submitted by WLA. Is that true or not?

3 A. That's what it's saying here. I was not a
4 part of that meeting.

5 Q. Okay. But you knew I was going to ask you
6 on this issue in this notice, that question, right?

7 A. I have no reason to believe that this
8 meeting did not take place.

9 Q. Okay.

10 A. Okay.

11 Q. In that meeting, Balfour Beatty and MCC
12 agreed they would provide the takeoff. Is that true?

13 A. I have no reason to believe that's not true.

14 Q. Despite numerous requests in writing between
15 WLA and Matrix, the promised backup was never
16 provided. Is that true?

17 A. The claim has been submitted per the terms
18 of the contract. And if there was something specific
19 that was required, it should have been included in the
20 contract. We've provided the documentation to support
21 that change order, and we tried to answer questions
22 regarding that.

23 Q. When was the BAR mockup fully complete and
24 available for BAR inspection?

25 A. There were a number of mockups that had to

1 be completed because the first mockup that was a part
2 of the drawings was -- did not comply with the BAR
3 requirements, so WLA had to go back and revise those
4 mockup documents a number of times. So there were
5 multiple phases of approval. The final approval, I
6 don't have that date, but it was -- it was -- it was
7 throughout the project.

8 **Q. Well, the question was fully complete and**
9 **available for BAR inspection. You don't have that**
10 **date as you sit here today?**

11 A. I do not. Not for the date of when it was
12 available for inspection, no.

13 **Q. Okay. 73, RCO 159 FFE changes including**
14 **charges for the assembly of knockdown vanities, TV,**
15 **walls, and headboards. When did Balfour first become**
16 **aware of the units not being single pieces?**

17 A. Date, I don't know. I know that initially
18 it was not intended that they were going to be
19 breakdown or knockdown units, that they were going to
20 be single pieces.

21 **Q. But you don't have the date here today when**
22 **Balfour became aware the units were not single pieces?**

23 A. No, because the FF&E was -- was decided
24 throughout the project. There wasn't a single time
25 that it was all FF&E approved at one time.

1 **Q. The assumption that they were single pieces,**
2 **how did Balfour plan to receive, handle, and install**
3 **the units as one piece? How was it -- what was the**
4 **plan?**

5 A. Well, my understanding was that the owner
6 was to store the material in the FF&E and have it
7 delivered to the site for the installation by the FF&E
8 crews. Again, it was as a single piece.

9 **Q. Okay. And how were y'all going to get these**
10 **pieces in this rooms?**

11 A. You'd use the vertical transportation
12 throughout the building.

13 **Q. So the pieces fully assembled would fit in**
14 **the elevator and you could get them in the room?**

15 A. I would have guessed that the owner in
16 making the decision with the interior designer would
17 have selected furniture that would fit within their --
18 within their building.

19 **Q. Okay. 75. As of 11/30/2018 Balfour had not**
20 **completed the cast stone and precast work. Is that**
21 **true?**

22 A. The schedule would reflect exactly when it
23 was completed. I don't have the exact date, but it is
24 reflected in the schedule.

25 **Q. Did Balfour on 11/3/2018 advise the**

1 architect of record that it was ready -- precast work
2 and cast stone was ready for inspection?

3 A. If there's a letter that submitted that
4 request, then yes.

5 Q. Is it true that no shutters were installed
6 above the first floor and that the final wash down of
7 the building's facade had not yet begun as of
8 11/3/2018?

9 A. Again, the schedule defines when the work
10 was completed, so we can get accurate dates from
11 reviewing the schedule.

12 Q. So I need to refer to the schedule?

13 A. The schedule that has the updates, yes, sir.

14 Q. All right. Did Balfour submit delay notices
15 to the owner on 10/31/18 for pool signage, decorative
16 sconces, and the private dining decision -- decision
17 on the wine cooler added by a change order, life
18 safety signage, carpet direction on the owner's
19 apartment, and final design of the hostess station?
20 Did y'all submit a request for cha- -- delay on that?

21 A. Yes. It says Balfour submitted the delay
22 notices, yes.

23 Q. How did those items in your request for
24 delay affect critical path of the hotel? Just those
25 items.

1 A. Again, there were so many changes on this
2 project that the culmination of them all impacted the
3 overall critical path on this project. And again,
4 until we were completed and could have the dust settle
5 and evaluate on, we did the best we could to identify
6 the delays. At the end of the day the expert proved
7 that the critical path went through all the changes
8 and impacts of design.

9 **Q. So you can't answer the question at the end**
10 **of issue number 75, which is identify how the items --**
11 **those items I discussed impacted the critical path to**
12 **the hotel. You don't have an answer for me?**

13 MR. HILDEBRAND: Object to the form.

14 A. Again, we provided a schedule that shows the
15 impacts of all these things on the job. At the time
16 that I provided the notice, I was not required to
17 provide cost or schedule impact associated with that
18 but to notify you of the potential for that, which is
19 what I did.

20 **Q. Who is Marty Dale?**

21 A. Marty Dale was one of our site supervisors.

22 **Q. During the period of time under 78 Marty**
23 **Dale was absent from the project, yet the daily**
24 **reports were signed in his name. Do you know who, in**
25 **fact, filled those reports out?**

1 A. Again, the daily reports are something that
2 need to be done by the entire team through our Procore
3 platform. So to the extent that they sign in, if
4 Marty Dale's name is what shows on the top, then
5 that's fine. The key was that the daily reports were
6 being completed daily.

7 **Q. Explain the basis of entitlement for RCO**
8 **275, guest room vanity value rework. It's number 79.**

9 A. Right. We've submitted RCO 725. It's part
10 of the claim as well.

11 **Q. 275.**

12 A. I'm sorry. 275. I apologize.

13 **Q. I'd like you to explain that to me.**

14 A. Again, it's all -- it's all laid out in
15 the -- in the claim and the RCO that was submitted to
16 the owner for the changes.

17 **Q. So you don't have any additional information**
18 **to add other than what's in the RCO?**

19 A. We provided the information relevant to
20 analyze and pay that, that change.

21 **Q. Number 70 -- number 80, RCO 277, why were**
22 **changes that were made in August of 2015, SSI stair**
23 **submittal, why were they not brought to the owner's**
24 **attention until March of 2019?**

25 A. Again, the notice provision states that I

1 have to give notice of a potential impact on the
2 project. It doesn't stipulate when the cost and/or
3 the time need to be delivered to the owner. To the
4 extent that we identified the issue, we notified the
5 owner of it, and it took time in order to capture all
6 the costs and the schedule impact, that's what's
7 reflected.

8 **Q. So it took approximately four years to**
9 **figure that one out? August of 2015 to March of 2019?**

10 A. Again, sir, we followed the provisions of
11 the contract in submitting the claim.

12 **Q. Who were the individuals at Balfour Beatty**
13 **who were involved in contract negotiations?**

14 A. I think -- Pat Dean, Mike Baumbach, Craig
15 Estridge, Jeff Sandeen, and John Heuer are the ones
16 that I recall.

17 **Q. Were the cost of the general -- the cost of**
18 **the work and the general conditions separated the two**
19 **separate GMPs in Section 4.1.2 AIA 133?**

20 A. Yeah, the contract was developed and had the
21 breakouts for general conditions as well as the cost
22 of work for the project.

23 **Q. What was the reasoning behind separating the**
24 **GMPs?**

25 A. Again, it was the form that the team

1 collectively decided to execute and negotiate.

2 **Q. 87. Section 6.1.2 of the contract in the**
3 **standard version was changed to require prior written**
4 **approval; is that correct?**

5 A. These change -- this change was -- was --
6 was already made prior to it being sent to Balfour
7 Beatty for our review. So I think, if I'm correct,
8 you were the author of it, so I would assume that
9 change --

10 **Q. Was it in the contract? Did you agree to**
11 **it? Did y'all agree to it?**

12 A. We agreed to everything that was executed in
13 our contract.

14 MR. BUNDY: All right. Thank you.
15 That's all I have.

16 MR. HILDEBRAND: People on the phone
17 may have a question.

18 THE COURT REPORTER: Does anybody on
19 the phone have any questions for the witness?
20 Mr. Bundy has concluded his direct examination.

21 MR. HILDEBRAND: I've got a few
22 follow-up questions.

23 EXAMINATION BY MR. HILDEBRAND

24 **Q. Do you have a copy of the contract?**

25 A. I do not. No, I do not have a direct copy

1 of it with me.

2 Q. Okay. I've got a copy but it's marked up.
3 But do you recognize the document I've handed to you
4 which is --

5 A. Yes.

6 Q. -- AIA document 133?

7 A. Yes.

8 Q. Is there a designation of who the owner's
9 representative is in that contract?

10 A. The owner's designated representative is
11 defined as Jim Clements from Matrix program.

12 Q. Do you know what authority, if any, that Jim
13 Clements had in regard -- regarding decision-making
14 ability for this project?

15 A. I mean, Jim Clements was a part of the
16 project, but all in all everyday decisions and
17 directives ultimately had to come through ownership of
18 Kim Brown. And the decisions that the owner would
19 make may come through Jim Clements, but Jim wasn't
20 able to make the decisions without -- without them
21 providing the directive.

22 Q. Did that have any impact on the project?

23 A. Huge amount of impact, a significant impact
24 on it, yeah.

25 Q. Okay. Now, there were a lot of -- were a

1 lot of questions regarding the claim documents that
2 were provided to the owner as part of the consolidated
3 claim. The original claim I think was in January
4 of 2019 and then the backup documents or additional
5 documents were provided in March.

6 Do you recall that discussion?

7 A. Right, yes.

8 Q. Okay. Since that time, have additional
9 documents and experts' reports been provided in
10 support of Balfour's claim?

11 A. Yes.

12 Q. And in your view, do those constitute a
13 basis for Balfour's claim?

14 A. Yes, definitely.

15 Q. There was a discussion yesterday of the -- a
16 certificate of substantial completion that was issued
17 by the architect I believe in February of 2019. Do
18 you recall that?

19 A. Yes, it was a document that we reviewed,
20 yes.

21 Q. Okay. Do you have any recollection as to
22 whether Balfour made it a claim or its contention was
23 that, in fact, the substantial completion for the
24 project was in late December of 2018?

25 A. I know we made it -- Balfour Beatty made a

1 request for substantial completion and that the
2 architect did not give that request until after we
3 thought we were completed. So December -- I can't
4 give the exact date of when that request was made, but
5 I know we requested it prior to when the architect
6 provided us that substantial completion letter.

7 **Q. Did he -- did the architect agree with**
8 **Balfour's substantial completion date?**

9 A. Yes.

10 **Q. Okay.**

11 MR. HILDEBRAND: All right. I think
12 that's all I have. Thank you very much.

13 THE VIDEOGRAPHER: All right. This
14 concludes the video deposition of 30(b)(6)
15 Balfour Beatty Construction, LLC. The time is
16 now 1:28, and we are off the record.

17 (Whereupon, at 1:29 p.m., the foregoing
18 deposition was suspended. Signature was reserved.)
19
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25

WITNESS CERTIFICATION

I, JEFFREY SANDEEN, declare under the penalties of perjury under the State of South Carolina that I have read and examined the contents of the foregoing testimony as given by me on June 16, 2021, and that to the best of my knowledge and belief the foregoing pages are a complete and accurate record of the testimony given by me, except as noted on the Errata Sheet attached hereto.

I have ___ have not ___ made changes/corrections.

JEFFREY SANDEEN

ERRATA SHEET

RE: BALFOUR BEATTY CONSTRUCTION v. LIBRARY ASSOCIATES
DEPOSITION OF: JEFFREY SANDEEN, VOLUME II
DATE TAKEN: JUNE 16, 2021

Please read this transcript with care. If you find any corrections or changes you wish made, list them by page and line number below. DO NOT WRITE IN THE TRANSCRIPT ITSELF. Return the Errata Sheet and Witness Certification to this office. We appreciate your prompt attention to this matter.

To assist you in making any corrections, please use the form below. If supplemental or additional pages are needed, please furnish same and attach thereto.

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TJV

JEFFREY SANDEEN

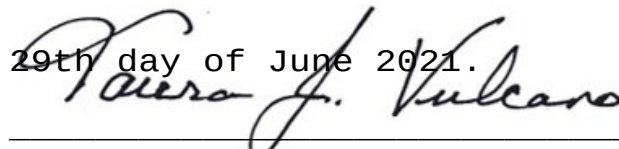
STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

CERTIFICATE OF REPORTER

I, TAURA J. VULCANO, CSR, RPR, Notary Public, do hereby certify that the witness whose testimony appears in the foregoing transcript was duly sworn or affirmed by me pursuant to SC Supreme Court Order No. 7 dated April 3, 2020; that said proceedings were taken by me by Zoom Video Conference to the best of my ability and transcribed under my supervision and direction; that the parties were present remotely as stated; and that I am not of counsel for, related to, in the employment of any of the parties to this action, nor am I financially or otherwise interested in the outcome of this action.

I do further certify that the foregoing pages constitute a true and accurate transcript of the proceedings.

This the 29th day of June 2021.



TAURA J. VULCANO, CSR, RPR
My Commission Expires: 9/25/2024

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Deposition of:
Grady W. Query

June 23, 2021

In the Matter of:
Balfour, Beatty v. Library Associates

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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, BALFOUR BEATTY CONSTRUCTION GROUP,
INC.

Third-Party Defendants.

DEPOSITION OF: GRADY W. QUERY
DATE: June 23, 2021
TIME: 10:02 AM
TAKEN BY: Counsel for the Plaintiff
REPORTED BY: TERRI L. BRUSSEAU

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9 ALSO PRESENT:

10 Kim Brown, Library Associates, LLC
11 (Via Telephone)

12 (INDEX AT REAR OF TRANSCRIPT)
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1 THE WITNESS: Thank you.

2 EXAMINATION

3 BY MR. WHEELER:

4 Q. Mr. Query, my name is Sam Wheeler. Can
5 you hear me all right?

6 A. Yes, sir.

7 Q. Okay. I represent Strong Tower
8 Construction, LLC doing business as Koch
9 Corporation. Are you familiar with that entity?

10 A. I've heard of them, yes, sir.

11 Q. Okay. I will represent to you that
12 they were a subcontractor responsible for
13 installing the storefront window and door package,
14 including some of those Hope doors.

15 There was a conversation -- a little
16 bit of a conversation about the Hope doors a little
17 bit earlier. Can you explain to me, I saw your
18 draft reports, what the issue was with respect to
19 the BAR and the Hope doors?

20 A. I believe the BAR did not want the Hope
21 doors removed from the mockup panel to install in
22 the building, the BAR's expectation would there be
23 Hope doors on the mockup and on the building
24 simultaneously and they would, you know, make the
25 inspection of both of them comparing them.

1 And it was just -- it was -- I think
2 the plan and sincere hope of the GC and the owner,
3 that those doors could be transferred over and used
4 and not, you know, throw away 80,000 dollar, you
5 know, mockup doors in order to get the final BAR
6 approval. That was my understanding.

7 Q. Okay. So just to be clear, that wasn't
8 an installation issue, correct?

9 A. No.

10 Q. Okay. So are you -- I guess then begs
11 the question, similar to John's questions, are you
12 going to offer any opinions as to Strong Tower's
13 work on the project?

14 A. No. The building was in the dry --
15 there were not -- I never saw them on the critical
16 path.

17 Q. You never saw Strong Tower on the
18 critical path?

19 A. Not during my time on the project.

20 Q. So you never saw them in the critical
21 path and I'm assuming it would be safe to say that
22 they did not cause any delays or you're not going
23 to offer any opinions as to them causing delays?

24 A. I have -- I don't have any opinion on
25 them causing delays.

1 Q. Okay. And last question, do you have
2 any opinions as to the quality or sufficiency of
3 their work?

4 A. No, sir.

5 MR. WHEELER: Okay. Thank you very
6 much.

7 EXAMINATION

8 BY MR. TERRY:

9 Q. Mr. Query, I'm Don Terry. I represent
10 Watson Electrical Construction together with Al
11 Windle, who said he didn't have any questions,
12 Lithko Contracting, as well as Old North State
13 Masonry. My questions are related to Watson.

14 Are you familiar with Watson Electrical
15 Construction?

16 A. I am.

17 Q. Why are you familiar with Watson?

18 A. I've worked on projects with them
19 before.

20 Q. Okay. Have you worked -- when you say
21 you've worked on projects, what was your -- the
22 extent of your work with Watson?

23 A. I've worked with them both as an
24 owner's agent and as representing the GC.

25 Q. All right. And as an -- in your work