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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. 2024-000788
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 Library Associates, LLC is the Respondent.

RECORD ON APPEAL - VOLUME 5 OF 51

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

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

*Attorneys for Appellant Balfour Beatty
Construction, LLC*

Walter H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
Bundy McDonald, LLC
1516 Old Trolley Rd 2nd Floor
Summerville, SC 29485-8209
walter@bundymcdonald.com
brent@bundymcdonald.com

and

John P. Linton, Sr.
Mary Kathleen Linton
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
jlinton@duffyandyoung.com
mlinton@duffyandyoung.com

Attorneys for Library Associates, LLC

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1 Q. All right. Ready to go to the next
2 slide?

3 A. Pardon?

4 Q. Are we ready to go to the next slide?

5 A. Yes.

6 Q. All right. So how did you -- tell me
7 about this project.

8 A. I was asked to get involved in the Hotel
9 Bennett to look at the processes, the development
10 process, the design process, and the construction
11 process, and make a determination about the
12 actual performance of what happened during those
13 various timeframes, to look for anything that may
14 have disrupted the project or may have been
15 mechanically for -- a cause for the project to
16 get off the tracks.

17 Q. You say disruption. Is that a term of
18 art in the construction sector?

19 A. Well, disruptions means if you plan to
20 do a project one way and in the as-built
21 condition, whether it be development, design, or
22 construction, that you are not able to perform
23 the work as you had planned, it is a disruption
24 because delay -- it could have caused many
25 things.

1 The disruption is what I'm going to look
2 for to see what actually occurred. It could have
3 been a candidate that caused this project to have
4 difficulties downstream.

5 Q. All right. And is that what you testify
6 to typically in the matters that you are involved
7 in?

8 A. Some of those, yes, yes.

9 Q. All right. Let's go to the next slide.
10 Okay.

11 A. What I tried to do is to share with the
12 Court and everyone here some of the experience
13 that I've had over my career and on projects that
14 are very similar to the Hotel Bennett.

15 Q. All right.

16 A. This first project is the Old Biltmore
17 Hotel that was converted by Stanley Harte, who is
18 the developer out of Palm Beach. And he
19 converted it into luxury apartments, condos, and
20 he had a section on the upper left-hand corner, I
21 think it was, that was suites by the hotel.

22 Q. Okay.

23 A. So I was contacted by Stanley to work on
24 his development team at a point in time when this
25 project was majorly disrupted. And he wanted my

1 assistance in trying to figure out ways to carve
2 out time and to deal with the issues.

3 And the issues were that Gene Lawrence,
4 who was the architect on this project, had been
5 given the old structure drawings from the
6 previous hotel. And Gene went out in the field
7 with a Litmus test to see whether those structure
8 drawings were accurate. And they only checked
9 like two or three places.

10 Q. Okay.

11 A. He designed the whole building around
12 those structured models, the whole building.
13 MEP, electrical, everything.

14 And then, when the contractor came into
15 this existing building, to be able to demolish it
16 to get to the work, they found that most all of
17 those columns and the beams were not the same
18 dimension that was shown on the as-built
19 drawings.

20 So the subcontractors -- and I knew many
21 of them because I had been working in Florida.
22 The subcontractors had already laid out and
23 prefabricated many of the pipes -- the plumbing
24 pipes because Stanley wanted these guys to get in
25 and get this thing done.

1 Q. Right.

2 A. Well, then Stanley found out that his
3 drawings were wrong, and that's when he called me
4 to come in.

5 And what we did was, I had to schedule
6 the work on a daily basis with the contractor,
7 open up areas where he could go to work, take
8 crews to multiple floors to work on other floors
9 so we could keep the project going.

10 Because we had to really -- and while
11 Gene was trying to design various levels of the
12 building to get it to us as soon as possible, so
13 that we could maybe get back on track where it
14 could be used.

15 But then I also was responsible of -- I
16 had to understand what the subcontractors'
17 original scope of work was, and then what they
18 actually put in. And obviously there was a
19 difference, and so I would come up with the
20 numbers that Stanley was to use to keep these
21 contractors paid and keep the project moving.

22 Q. Okay.

23 A. So that's what I -- that's really the --
24 what I did during the course of that project.
25 And I really point to it because -- and I will

1 show you in a slide later on how it's very
2 similar to the Hotel Bennett.

3 And by similar, I'm talking about the
4 manpower required, the use of materials that are
5 required to build it floor to floor, and all of
6 the logistics that goes into construction that
7 oftentimes people don't think about.

8 Q. Right.

9 A. But I just wanted to start showing, at
10 the outset -- at the very outset of some
11 projects, that replicate, if you will, the type
12 of project of the Hotel Bennett.

13 Q. Okay. How do you -- I mean, is that
14 something that you've done in this matter, done a
15 manpower analysis to look at what manpower was
16 that was used and whether it was appropriate?

17 A. Yes.

18 Q. Is that something you've testified --

19 A. I used that experience and others that I
20 will show you. One of the things that I've
21 been -- testified over the years is, labor and
22 construction.

23 Because when I was a contractor, we used
24 our own labor. We didn't sub anything out except
25 the electrical because I didn't learn about it.

1 So we did our own plumbing, our own piping, our
2 own concrete pouring. I had my own formal group.
3 We managed our labor. So I knew what my labor
4 bills would be based on what I was building.

5 And so I'm called upon often to look at
6 labor construction to determine -- because that's
7 always an easy thing, how were you affected, how
8 was the labor affected. So I've been used often
9 to look at just labor inefficiencies.

10 Q. So that's something that you can tie in
11 for the Judge is the impacts of the labor?

12 A. Yes. And you will see in my
13 presentation that -- where I look at the labor on
14 this project, and, you know, be able to look at
15 the causal factor that maybe disrupted the labor.

16 Q. All right. Next slide.

17 A. The next slide was a very intriguing
18 project to me. It was in Pasadena, California.
19 It was the Old Huntington Hotel, and the
20 developer on the project named Milkie, Mike
21 Milkie -- wanted to build a new hotel.

22 The one that you see on the left, the
23 big, pretty picture, that's the hotel as it was
24 constructed. But the black and white picture in
25 the right-hand corner is the original hotel.

1 And when Mr. Milkie went into develop
2 that project, he went to the City of Pasadena.
3 And Pasadena said, well, we'll allow you to build
4 a new hotel, but you have to build it so it looks
5 exactly like the one that's there now or the city
6 was not going to approve it.

7 And in addition, there's the Georgia
8 ballroom and there's another function area within
9 the hotel that they had to keep in place as they
10 tore down the hotel, keeping certain elements, so
11 that then they could go ahead and build the new
12 hotel around it.

13 Q. Okay.

14 A. So I was called in by Swinerton, who was
15 the contractor that was to build the new hotel
16 and was building the new hotel. And it got into
17 a situation where he was being disrupted, and
18 they couldn't go forward in the manner they had
19 planned.

20 And what happened was -- a lot of things
21 happened. But one of the primary things that
22 happened was, because this was such a high
23 profile project, every brand operator wanted to
24 put their tag on this hotel. And so Milkie was
25 negotiating the brand with the hotel operators as

1 to who was going to become involved with the
2 design, what interior decorators were going to be
3 involved in the original design.

4 And that took about three or four months
5 for him to be able to have these -- these
6 companies get them an answer who could get them
7 to let people pin the operators. By the time he
8 did that, the project was up three or four
9 levels.

10 The cutaways and the duct cutaways and
11 the pipe sleeves, everything was already embedded
12 in concrete. And that's when the grand operator
13 got involved in the interior. It was a lot of
14 the MEP work that had to be redone.

15 So the work that Swinerton had done
16 was -- had been affected by it and go back and do
17 rework. So I got involved to help track what
18 that rework was and to quantify it and help
19 determine what was really being the target of
20 completion because Swinerton was trying to get
21 the job done as fast as he could.

22 And so I was trying to help them, and it
23 looked like we were going to go a dispute on
24 that. But I was able -- I was called in for it,
25 and they settled it in mediation.

1 Q. All right. Let's go to the next one.

2 Just fairly briefly, let's --

3 A. Let's stop there. Just briefly, this is
4 a -- the Baha Mar Resort in the Grand Bahamas. I
5 was called in on the project by the developer.
6 And part of the development team and that point
7 in time, the work -- the concrete was about
8 poured. But what had happened on this project
9 was, they had China State --

10 Q. They had what?

11 A. China State from China. It was a
12 construction company. It was building the
13 project. And I was first asked -- I was first
14 asked to come in and actually prepare a
15 projection based on the labor and the status of
16 the project, when that project was going to be
17 completed.

18 Because it was supposed to be completed
19 in 2012. It was supposed to be completed in 2014
20 and Sarkis Izmirlian, who is the developer, was
21 told that they were going to -- China State told
22 them they weren't going to make that date.

23 My analysis showed that it was going to
24 be 16 months late, which obviously caused a
25 concern. So the developer asked me to become a

1 part of the team to get involved and to try to
2 follow the progress to see if I had any ideas how
3 to resolve that time and to pick up time.

4 And basically -- go to the next one now.
5 There is basically two luxury hotels in that
6 resort, the Rosewood on your left and SLC on the
7 right. And the Rosewood on the left was one of
8 the problem child because the -- it was not a --
9 Rosewood hadn't been selected at the time the
10 project started.

11 The construction had proceeded, and not
12 only that, in addition, the developer changed
13 architects for the whole project.

14 Q. Okay.

15 A. And a new architect came in, and so I
16 was working with Rosewood and all the various
17 entities, trying to get what the old drawings
18 said from what the new drawings said and to try
19 to help move that project along to the extent I
20 could.

21 Q. So you're familiar with the design
22 changes --

23 A. Yeah.

24 Q. -- on the project?

25 A. I worked with -- when the new designer

1 was brought in, I was in design meetings, and I
2 worked through the various changes they were
3 going to make and tried to say, hey, that's not
4 going to help the situation. But oftentimes,
5 they didn't -- didn't listen.

6 Q. All right. Next slide.

7 A. All right. And right here is where I
8 would like to stop and just pause for a moment.
9 The Hotel Bennett is in the center. On the left
10 is The Biltmore Hotel I spoke about. On the
11 right is the Huntington Hotel that we spoke
12 about. The bottom, I just pulled out the
13 Rosewood.

14 Because if you look at the similarities
15 of construction on those projects, the same type
16 of facades, even the height of the buildings, and
17 the ability to move the cranes, those that had
18 tower cranes, the ability to move manpower up
19 through a building is all based upon the size of
20 the building and how many floors you should be
21 able to address and have crews still on.

22 So if you're thinking about manpower for
23 projects like this, they're very similar about
24 the number of crews that you need to do your
25 rough-in work, the number of crews you need to

1 come in and do your stud work.

2 Q. Okay.

3 A. So I tried to use my experience when I
4 then looked at evaluating the Hotel Bennett. We
5 got only -- not only the manpower but the
6 development process that those hotels had went
7 through to get to the process before they could
8 do the construction.

9 Q. All right. Thank you. Next slide.

10 A. Now, the next project, obviously,
11 doesn't look like the buildings, but it was an
12 interesting perspective of what we're here to
13 talk about. I was retained by the Department of
14 Labor to get involved in this project, as it was
15 a diplomat hotel.

16 It was going to cost 400 million, and it
17 cost over 800 million. And the reason why I was
18 brought in, I was to help look at it from the
19 pension fund. The (inaudible) pension fund
20 funded that project.

21 And the business managers for the
22 pension fund, the journeyman working on the job,
23 got actively involved in making changes during
24 the course of the project. And so he would then
25 make directions to the architect to make

1 provisions during the project as it was being
2 constructed.

3 Q. Okay.

4 A. So what I was -- I didn't do the delay.
5 I was trying to figure out where did the 400
6 million dollars go. You know, if it was from the
7 disruption, the delays. There was a lot of
8 things.

9 Also, explanation of the material costs.
10 The different types of amenities that were more
11 expensive than what we planned for. So I did an
12 itemized evaluation to determine where were the
13 dollars actually spent. They've got to be in the
14 numbers.

15 Q. Okay. So it sounds like you've had a
16 very, very experienced in some respects, but in
17 some respects, you've been involved with projects
18 very similar to this. Is that a fair statement?

19 A. Yes.

20 Q. All right. And you have testified as --
21 with regard to disruptions and impacts regarding
22 development of process, design process, and the
23 construction process on many occasions, correct?

24 A. Yes.

25 MR. HILDEBRAND: All right. Your

1 Honor, at this time, I would like to proffer
2 Mr. Huyghe as an expert to render opinions
3 regarding disruptions and impacts to Balfour
4 Beatty on this project related to development
5 process, design process, and construction
6 process.

7 THE COURT: All right. Any voir
8 dire?

9 MR. BUNDY: Yes, Your Honor.

10 THE COURT: All right. Mr. Bundy?

11 VOIR DIRE EXAMINATION

12 BY MR. BUNDY:

13 Q. Let's see, you're not an lawyer?

14 A. No, sir.

15 Q. You're not an architect?

16 A. No, sir.

17 Q. Not licensed as an architect in any
18 state?

19 A. No, sir.

20 Q. All right. Are you -- you're an
21 engineer, I think. You said you had a degree in
22 civil engineering?

23 A. And construction management.

24 Q. Okay. While you were an engineer, are
25 you a PE?

1 A. No.

2 Q. Are you a civil -- do you practice civil
3 engineering?

4 A. Not now, no.

5 Q. Do you currently hold a general
6 contractor's license?

7 A. No. When I left the construction
8 business, I --

9 Q. Pardon me?

10 A. I'm on what's called inactive status.
11 I'm not building anything.

12 Q. You've got to speak up. I don't hear
13 very well.

14 A. Neither do I.

15 Q. So how long have you been inactive in
16 construction?

17 A. Since probably the late '80s.

18 Q. The late '80s. Okay.

19 A. As far as my license.

20 Q. Right. And so you -- and you've been a
21 professional witness for 22 years?

22 A. More like 30.

23 Q. More like 30.

24 A. Well, in addition to doing project
25 advisory, I just --

1 Q. Right, right. But, I mean, your main
2 source of income for the last 30 years has been
3 as a professional witness?

4 A. No.

5 Q. What has it been as a professional
6 witness?

7 A. I would say it's 50/50.

8 Q. 50/50. Okay. What about the last 15
9 years?

10 A. Probably the last 15 years has been
11 about the same.

12 Q. About the same. Okay. How about the
13 last couple of years? You're essentially a
14 professional witness now full-time?

15 A. No. The last couple of years, it's been
16 more project advisory services, ongoing project
17 advisory services.

18 Q. And you also, I assume, set as an
19 arbitrator -- sat as an arbitrator?

20 A. No, sir.

21 Q. Or have you?

22 A. I've been a mediator.

23 Q. Pardon me?

24 A. I have been a mediator.

25 Q. Oh, you've been a mediator. Are you --

1 have you ever sat as an arbitrator?

2 A. No.

3 Q. Okay. So you don't actually sit as an
4 arbitrator. Okay. You did not do a CPM analysis
5 on this job, correct?

6 A. No, sir.

7 Q. All right. So there's no -- you don't
8 have any testimony regarding critical path
9 management as it relates to this job?

10 A. No, I do not.

11 Q. Okay. And you don't have any testimony
12 that the architect committed negligence or
13 malpractice?

14 A. No, sir.

15 Q. Okay. You don't have any testimony that
16 the architect's conduct fell below the average
17 standard of care because you're not qualified to
18 give such an opinion, are you?

19 A. No, sir. I don't talk about standard of
20 care.

21 Q. Okay. Now, you're going to testify --
22 as I understand it, you've been qualified as an
23 expert -- or are trying to be qualified as an
24 expert. Are you -- do you take the position that
25 you are qualified to give an opinion as to the

1 average standard of care of a developer?

2 A. I've never heard the term standard of
3 care for developer, but as far as the basic
4 procedures, the developer takes this type of
5 project, yes.

6 Q. And the reason you've never heard the
7 term standard of care for a developer is because
8 there's no such thing, is there?

9 A. I've never heard the term.

10 Q. Okay. And the developer -- I mean, I
11 could go outside right now, if I wanted to, and
12 stand on the corner and proclaim myself to be a
13 developer, could I not?

14 A. You could.

15 Q. Okay. Because it doesn't require any
16 licensure, right?

17 A. No.

18 Q. You don't have a license to be a
19 developer?

20 A. No.

21 Q. Okay. And you can be a good developer
22 or a bad developer, right?

23 A. Or both.

24 Q. There are good ones and there are bad
25 ones, right?

1 A. That's right.

2 Q. Okay. And you're one of the good ones,
3 and apparently, my client is one of the bad ones,
4 right?

5 A. I didn't say that.

6 Q. So we will go -- back up in a minute.
7 All right. So the first thing is, you don't --
8 there is no such thing as a standard of care of
9 developers. So you're not going to testify about
10 that because there's no such thing and you're not
11 qualified to do it.

12 So what you have been offered as an
13 expert for, as I understand it, okay, since
14 you're not doing a delay analysis, are you doing
15 a -- let's say, an Eichleay analysis? Are you
16 doing an extended home office overhead analysis?

17 A. No, sir. But let me make one --

18 Q. No. You don't get to ask questions. I
19 ask the questions.

20 A. Well, I'm not -- I wasn't going to ask a
21 question. I'm just going to comment to what you
22 just said.

23 Q. Well, your lawyer --

24 MR. HILDEBRAND: Your Honor, he can
25 answer his questions. And if he wants to -- Your

1 Honor, if he wants to preface the question with a
2 comment, then I think the witness can respond to
3 the comment.

4 THE COURT: Just one second. All
5 right. First of all, one at a time. She can
6 only take one down at a time. You asked the
7 question. He had a response. And you wanted to
8 add something to your response?

9 THE WITNESS: Well, he made a
10 comment that -- and it goes back to -- and I'm
11 not trying to argue -- to the standard of care.
12 There is no standard of care, but there are
13 finite steps that one takes or should take when
14 you develop real estate projects in my opinion.
15 BY MR. BUNDY:

16 Q. Okay. That's right. In your opinion,
17 there are finite steps that, you, Mr. Huyghe,
18 takes. Okay? And if anybody else doesn't take
19 them, they fall below your standard of care,
20 right?

21 The standard of care established by you
22 for developers. You have ten things you're
23 supposed to do. If you don't do but nine of
24 them, you're a substandard developer, right?

25 A. There's things that the developer is

1 supposed to do, not only me, but the developers
2 that I have worked for, and they follow the same
3 steps.

4 Q. Okay. And what governmental
5 organization -- where would we go to find out, if
6 we couldn't talk to you to find out -- if my
7 client, Mr. Bennett, didn't know how to develop a
8 hotel -- because obviously he doesn't. Okay?

9 So where would he go if you weren't
10 available to find out what he was supposed to do?
11 Is this a secret that you have, or is there some
12 book somewhere that we can go to? Is there some
13 organization -- developer's organization of
14 America that we can go?

15 A. I don't know of any organization, but
16 there's many, many books about developing luxury
17 properties that are -- that you could find.

18 Q. So would it surprise you to know that
19 Mr. Bennett's fairly successful, at least by my
20 standards -- I don't know about yours. I mean,
21 maybe you're worth a billion dollars. I don't
22 know how much money you're worth.

23 But would it surprise you to know that
24 he develops without using any books? He just
25 does it because he has the talent. Is that --

1 does that fall below the average standard of
2 care, to have a talent as a developer?

3 A. No. I think that's --

4 Q. And there are no tests. There are no
5 organizations. Do the developers have any
6 ethical standards? Is there like a lawyer -- do
7 y'all have, like, an ethics committee that makes
8 y'all act a certain way?

9 A. There's no ethics committee, but I
10 believe that there's good developers.

11 Q. Does the building code set forth any
12 rules or regulations or requirements in order to
13 declare yourself to be a developer?

14 A. Building codes apply to contractors.

15 Q. Okay. Contractors. All right. Well,
16 tell me what code applies to developers if my
17 client allegedly violated that you feel like
18 you're qualified to testify about. What book or
19 what code are we talking about?

20 A. There's no book that I'm referring to.
21 It's my experience and my working with other
22 developers.

23 Q. Are you -- do you take the position that
24 you can testify that Mr. Bennett was negligent in
25 the way he built this hotel?

1 A. I'm not saying he was negligent. I'm
2 talking about various practices and processes
3 that normally can be followed that can help you
4 build and develop the project.

5 Q. Well, he hasn't been accused of
6 negligence in the pleadings. Okay? Right? So
7 the negligence is not an issue in this case,
8 right? So -- all right. So you're not going to
9 do an Eichleay Formula analysis. Are you going
10 to do a loss of productivity analysis?

11 A. No.

12 Q. All right. And are you going to put any
13 numbers to anything? Are you going to say,
14 because of this, that or the other, Bennett
15 owes -- or not Bennett, but Library Associates
16 owes Balfour Beatty X amount of dollars?

17 A. No, that's not my -- that's not my job.

18 Q. Okay. Is the real problem here is that
19 Mr. Bennett failed to hire you when the job
20 started, and if he'd have hired you, you could
21 have told him how to do it, and we wouldn't even
22 be here, right?

23 A. I try to stay away from hypotheticals.

24 MR. BUNDY: Your Honor, I don't
25 think this witness is qualified. And to -- he's

1 certainly qualified. I mean, he's certainly a
2 smart man. He's got a lot of experience. He's
3 got beautiful pictures of beautiful hotels.
4 Okay?

5 But there's no standard of care for
6 developers. Okay? And he's not going to put in
7 any damages. He didn't do a CPM schedule. He's
8 not going to give -- all he's going to do is take
9 over your job. That's what he wants to do.

10 He wants to do your job and tell you how
11 to handle this case and what we did wrong, but
12 with no numbers, no causation, no breach of duty,
13 none of that. None of it. So I object. Thank
14 you.

15 THE COURT: All right.

16 MR. HILDEBRAND: Your Honor,
17 Mr. Huyghe has testified, I don't know how many
18 times, and in each of these cases, what he does,
19 as he's testified already is, he does -- in many
20 of them, disruption and impact analysis.

21 And that's what he's done here because
22 he's tried to -- what he's trying to is to help
23 you understand what the impacts were and the
24 disruptions on this case because that's what this
25 case is about. And he's been recognized by,

1 gosh, international tribunals and, I mean,
2 worldwide.

3 This is what he does day in and day out,
4 offers opinions on disruptions and impacts. And
5 that's what he wants to testify about here.

6 MR. BUNDY: He might do it day in
7 and day out, but I take the position he can't do
8 it here. Okay?

9 THE COURT: All right.

10 MR. BUNDY: So the contract says,
11 in paragraph 5.3.1, the construction manager
12 shall be entitled to equitable adjustment in the
13 contract time as a result of changes in the work
14 when such changes directly impact the critical
15 path to the work.

16 I don't care if he did a disruption
17 analysis. I don't care if he did whatever he
18 did. If he didn't do it within a critical path
19 format, there can be no recovery for it in the
20 contract. And so, therefore, the whole thing
21 is -- this whole exercise is irrelevant.

22 THE COURT: Okay. All right. Take
23 me to that issue about the critical path.

24 MR. HILDEBRAND: Well, I know that
25 he gets involved in cases where there's a

1 critical path. A critical path is a very linear,
2 DOT, DOT, DOT, DOT, exactly what caused those,
3 why that came on the critical path, what caused
4 the disruptions, and what the effects were, the
5 disruptions and impacts.

6 That's where, I think, what he does day
7 in and day out and what he provides the courts
8 with in the tribunals that he goes before. He
9 looks at the big picture, Your Honor.

10 And let me refer you to the same rule
11 that Mr. Bundy just did, Rule 702. The
12 scientific, technical, or other specialized
13 knowledge will assist the trier of fact to
14 understand the evidence or to determine the fact
15 in issue, a witness is qualified as -- is
16 qualified as an expert by knowledge, skill,
17 experience, training.

18 He can testify about the facts, and
19 that's what he does, Your Honor. Mr. Bundy is
20 trying to make a distinction that he's not
21 qualified to testify in this matter when he has
22 been in so many worldwide.

23 THE COURT: I'm okay with that.
24 How does his testimony differ from Mr. -- what's
25 the fellow we had this morning?

1 MR. HILDEBRAND: Doran.

2 THE COURT: Mr. Doran yesterday and
3 Mr. McAuliffe this morning.

4 MR. HILDEBRAND: Yes, sir.

5 THE COURT: What in addition -- or
6 what are you offering him for that would be
7 different from what I've heard?

8 MR. HILDEBRAND: He will explain to
9 the Court, and from a construction standpoint of
10 view, and I think it will become real clear when
11 you see his presentation, that -- what the actual
12 disruptions and impacts were that -- he explains
13 in more detail and in a more understandable way
14 through the charts that you have in front of you,
15 what the -- what caused the disruptions, what
16 caused the impacts.

17 And that's what -- what he does.

18 Mr. Doran talked about the critical path, and he
19 said that he did believe that they were owner
20 related, but he didn't go into the big picture.
21 And that's what Mr. Doran -- I'm sorry, what
22 Mr. Huyghe will testify about. I think it will
23 be instructive and informative.

24 THE COURT: Okay. All right.

25 MR. BUNDY: Yeah. Well, it may

1 well be, but the expert rule is trumped by Rule
2 401, which says, relevant evidence means evidence
3 having the tendency to make the existence of any
4 fact that is of consequence to the determination
5 of the action more probable or less probable than
6 it would be without the evidence.

7 The delay and disruption as a matter of
8 contract have to be on the critical path. It
9 doesn't make any difference if there was a delay
10 or disruption if it wasn't on the critical path.

11 THE COURT: All right.

12 MR. BUNDY: And if he can't assign
13 a number to it, and if he can't tie it together
14 with the contract and tie it to the contract
15 documents, it's irrelevant. Thank you, Your
16 Honor.

17 THE COURT: All right. Very good.
18 I find it's relevant. I'm going to allow it. Go
19 ahead.

20 MR. HILDEBRAND: Thank you very
21 much, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. HILDEBRAND:

24 Q. All right. So tell me about just --
25 let's go through these fairly quickly on the

1 development process and what should have happened
2 on this project.

3 A. From the developer's perspective, as the
4 developer, I was in that division where we went
5 in a property in Aspen, Colorado.

6 THE COURT: Why don't we just go to
7 this project? Can we just do that? Can we just
8 go right to this project? Let's just talk about
9 this one.

10 THE WITNESS: Okay. Sure, yeah.

11 THE COURT: Yeah. Let's just jump
12 right in. You've been all around the globe. I'm
13 impressed. I'm sure you're glad you're out of
14 Hong Kong now.

15 THE WITNESS: Exactly.

16 THE COURT: I don't blame you.

17 THE WITNESS: So the tasks that I
18 do is that I compare the steps necessary to
19 develop the design and construct a luxury hotel,
20 and to compare it how this project developed in
21 that line.

22 THE COURT: Okay.

23 MR. HILDEBRAND: We've already been
24 through this, Your Honor, but if he's going to
25 jump up every time we talk --

1 THE COURT: All right. You've got
2 a continuing objection to his entire line of
3 testimony. If something really particularly, you
4 can jump up. But I am with you.

5 MR. BUNDY: I gotcha. But, you
6 know, I mean, the problem is, every time he comes
7 up with something new, it's more ridiculous than
8 the last thing. And so I feel like --

9 THE COURT: Okay.

10 MR. BUNDY: -- I have to point it
11 out to you. But if you -- if I have a continuing
12 objection to everything he has to say, then I'm
13 good to go.

14 THE COURT: All right. You're
15 protected on the record. All right.

16 THE WITNESS: All right. I thought
17 that this would be important for me to quickly
18 talk about my -- I did an evaluation on this
19 project. I always visit the project. I look at
20 the site logistics, the structure layout.

21 And on this project, I reviewed all the
22 relevant documents. And when I talk about
23 relevant documents, I've got a slide that talks
24 about it. But I wanted to read every
25 contemporaneous documents that gave me insights

1 into what may have affected the process in going
2 forward, other than the -- we will get into the
3 actual documents. But I did that in
4 chronological order.

5 Of all these documents that I reviewed,
6 I placed them into buckets. The development, the
7 design, and the construction because they all
8 interrelate. And here's just some of the
9 documents that I looked at. Obviously, the plans
10 and specs, project correspondence, the owner
11 architect meeting, pre-construction meetings. I
12 made sure I understood those.

13 All the monthly progress reports. In
14 the monthly progress reports is information about
15 the RFI logs, the critical issues that were going
16 on during the course of construction. I compared
17 that to the photos of what was going on in those
18 months to the extent that I had photos.

19 I looked at all the daily reports. I
20 looked at all the design modifications, the ISE
21 drawings and change orders, the RFI logs. I
22 looked at -- there's some contractor claims, many
23 depositions from both sides, I read all of them,
24 and the experts' reports from the other side,
25 I've read those.

1 And also, I looked at photos, and there
2 was also video that was provided of the
3 walk-through of the project. So that's all the
4 things that I took into consideration.

5 BY MR. HILDEBRAND:

6 Q. All right. And so on the --

7 MR. BUNDY: Wait a minute. There
8 was a video that they refused to give us. They
9 said it was privileged. And so now I've got a
10 witness who's relying on evidence that they took
11 the position was privileged. That can't be fair.
12 He can't -- it can't be fair for him to rely on
13 evidence they will not produce, and I cannot see.
14 That cannot be fair.

15 BY MR. HILDEBRAND:

16 Q. What impact, if any, did the videos have
17 that you --

18 A. What I wanted to see was the types of
19 interiors, the various levels. You know, I
20 never -- when I went to the hotel, I tried to get
21 up there in the hotel, but they wouldn't let me.
22 They had good security.

23 But I just wanted to see the amenities,
24 the various areas of the dining rooms. And this
25 video, actually, by various parts of the project,

1 showed me what the interior finishes were like,
2 the millwork, the things that I felt were
3 important to look at.

4 THE COURT: Okay. All right.

5 MR. BUNDY: He said he relied on
6 it. The rule says, you can rely on evidence
7 that's not admissible, but the rule doesn't allow
8 you to rely on evidence that you can't even look
9 at, hidden evidence, undisclosed evidence.

10 MR. HILDEBRAND: It's their hotel,
11 Your Honor. They can look at -- it's exactly
12 what they can look at. It was a video, just like
13 photographs, of the hotel, except it was some --
14 I was there. And it was involved in the
15 narration, and you ruled that it was privileged.

16 THE COURT: Okay. All right. I
17 noticed it. He clearly has been hired by
18 the Balfour Beatty team to testify. I think he's
19 entitled to have looked at it. To the extent it
20 gave him a bases for his opinion, I think he's
21 testified about it. Okay? As part of this
22 opinions, not the sole source of your opinion --

23 THE WITNESS: No.

24 THE COURT: -- I wouldn't think?

25 THE WITNESS: No, no.

1 MR. BUNDY: Okay. But --

2 THE COURT: I understand your
3 objection.

4 MR. BUNDY: But I have another
5 objection, which is I just -- what I just
6 already -- what I just heard. He's also being
7 provided evidence by the lawyer because he's also
8 relying on the narrative.

9 So what I've got is a lawyer who's
10 hiding behind the privilege providing information
11 to his experts, which I can't get, which is
12 privileged. Okay? I've had this problem before
13 with lawyers who just tell experts, well, here's
14 what you're going to find, here's what I want you
15 to do. Don't even bother to look. You can count
16 on it. That's just not fair.

17 THE COURT: All right. I'm with
18 you.

19 MR. HILDEBRAND: Thank you, Your
20 Honor.

21 BY MR. HILDEBRAND:

22 Q. All right. So what -- okay.

23 A. Okay. So I mentioned the three buckets.
24 One was real estate developer and one was the
25 design and one was the construction. So what I

1 did, so everyone can understand what I was
2 looking at, but I just laid out what those --
3 what those processes were.

4 And they start with the developer. And
5 the basic development steps for luxury hotel, in
6 my experience, is based on Swire (ph) and the
7 people I work with on luxury hotels, is that
8 first and foremost, it's basically
9 commonsensical, if you're going to determine the
10 type of hotel that they're building.

11 And one of the things to be able to help
12 do that that I found to be very helpful, when I
13 first got involved in the development of these is
14 a feasibility study that is created. Okay? Go
15 back.

16 Feasibility studies are a study that not
17 only tells you the cost and the profitability of
18 the hotel, but a feasibility study did, in my
19 finding, was that they went out and they looked
20 at all of the various hotels in the area that
21 were five-star hotels. And they would come back
22 with a list of what was actually included in
23 those packages for these hotels.

24 And, therefore, you, as the developer,
25 could decide, okay, you had like a menu to choose

1 from. I'd like to have this one; I'd like to
2 have that one, and that one is out, depending on
3 the geographic location of where you're at.

4 So it gave you information that you
5 could then digest to try to prepare a list of
6 conceptual designs so the process of the
7 architect could go forward with all of the
8 information they had.

9 Q. Okay.

10 A. And then you engage the architect, your
11 interior designer, your hotel brand operator.
12 You start the schematic including the design, and
13 that's the role of the developer. It leads that
14 effort. The goal is, you want this hotel to be
15 what you envisioned. You want the final product
16 to be what you expected from the outset.

17 So then you go through your conceptual
18 design and you oversee that. All these various
19 areas, obviously permitting approvals. The
20 developer has to play a role in that, and
21 obviously compare the risks and financial
22 analysis.

23 But these are the steps that I find, and
24 that's what I will be talking about during my
25 evaluation. Next is the role of the architect.

1 You know, the -- once we tip past the developer,
2 well, then the architect, you know, also meets
3 with the developer, the architect, the interior
4 designer.

5 But then the important thing -- and I
6 heard Mr. McAuliffe mention this, the design
7 program and process is very important. The
8 architects that are familiar with these types of
9 projects know that there's -- you have to define
10 the types of activities within the hotel, the
11 space requirements for the back of the house, the
12 rooms, how they talk to each other, whether it's
13 MEP driven or not.

14 The details of the activities and the
15 spaces need to be outlined at the outset during
16 this design program process. Then your
17 preliminary design takes these into consideration
18 while they're preparing their structural,
19 mechanical and electrical parts.

20 THE COURT: One second.

21 MR. BUNDY: He's now commenting on
22 the conduct of the architect, and he wasn't
23 qualified as an architect. I've got -- I can't
24 just go with a blanket objection because he's
25 doing things that are -- that, you know, need to

1 be specifically brought to your attention.

2 THE COURT: Okay. All right.

3 MR. BUNDY: He just testified to an
4 architect's conduct. He is not architect. He's
5 not being offered as an architect. He's being
6 offered for disruption in -- in whatever it is
7 that he's been qualified for. The work --

8 MR. HILDEBRAND: We're going back
9 to the same thing, Your Honor. He's just talking
10 about the design process. And let's move
11 forward. Let's try and get --

12 THE COURT: Yeah.

13 MR. HILDEBRAND: Let's jump ahead.
14 I think we just need to go very quickly.

15 THE WITNESS: Well, the
16 construction, obviously the contract, the
17 baseline schedule, the supervision to build the
18 project, the major activities, the manpower to
19 build the project, the develop architect, the
20 design process and the affect on construction,
21 and the performance of the work by the
22 contractor.

23 BY MR. HILDEBRAND:

24 Q. So there's a lot of preparation that
25 needs to be taken in advance and particular steps

1 in your opinion to have a successful project; is
2 that correct?

3 A. Yes. Yes.

4 Q. All right. Let's --

5 A. The reason I say that is, you know, the
6 developmental height -- I don't know if anybody
7 has seen this kind of recap, but this development
8 process took 14 years. It started in June of
9 2004 and finished when the building was of
10 substantial completion in 2018.

11 And there were different stages during
12 the design process that also occurred during the
13 development process that I have noted on this
14 summary drafting. It talks about some of the
15 major events that occurred during the design
16 development.

17 And then, on the next, you would see in
18 the construction -- this is from 2015 to 2018.
19 So I broke my evaluation and my presentation into
20 two components: Before construction and then
21 after construction.

22 And the first thing I will be talking
23 about is looking at the development process and
24 the design process before construction began.
25 And I start at the beginning in July of 2014.

1 And I only -- of all this hundreds and
2 hundreds and hundreds of documents that I've
3 looked at to help me form an opinion about what
4 happened, I selected only those that I felt could
5 be helpful to present and that were helpful for
6 me to understand the situations that occurred
7 during the project.

8 Q. All right.

9 A. From early on in July -- I call them
10 architect 1. When architect 1 got involved,
11 there are contemporaneous documents that say that
12 they need structural engineer, MEP engineer, and
13 they also need -- assuming that the project is
14 going be a Hilton Hotel is what the architect is
15 mentioning, and they do need operator items from
16 the Hilton as he starts to prepare his conceptual
17 design and going forward in the design process.
18 And that happened --

19 THE COURT: Okay.

20 MR. BUNDY: For the record, I would
21 just like to remind the Court of the statements
22 in State vs. Warner. We recognize charts,
23 PowerPoints, even when they have been -- and
24 jurors often ask, the trial must be vigilant in
25 ensuring the 1,006 summaries accurate portrayal

1 and that any inferences are faithful to the
2 evidence and are not mere placards of argument.

3 It must fairly convince the underlying
4 material and cannot embellish the information not
5 contained in the originals. It cannot be a jury
6 argument in disguise. Okay?

7 THE COURT: All right.

8 MR. BUNDY: So that's -- he's
9 making -- he's making -- he's commenting on the
10 evidence.

11 THE COURT: Okay. All right.

12 MR. BUNDY: So, I mean, it's
13 just out --

14 THE COURT: All right. So what I
15 will do is I would admonish the witness to
16 testify as to what you observed, what you saw,
17 what you reviewed.

18 And then, when it's all said and done,
19 he's going to wrap up a nice big question and
20 give you a softball that you get to hit as your
21 opinion. So that's kind of how we're going.
22 Okay?

23 MR. BUNDY: Right. And --

24 THE WITNESS: And I can respond,
25 Your Honor. What I was trying to do with this,

1 as I've tried to do many times, is that if I just
2 pull up that one black and white document --

3 THE COURT: Yeah.

4 THE WITNESS: -- and try to take
5 the Court through the main things that I have
6 seen in the documents, it takes a lot of time.
7 So what I've only tried to do is try to take the
8 points that I found of interest --

9 THE COURT: Okay.

10 THE WITNESS: -- to share those, so
11 that we won't be here until next Sunday.

12 MR. BUNDY: Well, I would like to
13 only share the things that are allowed in
14 evidence and to go by the rules of our Court,
15 with all due respect. So I bring that to your
16 attention, Your Honor.

17 THE COURT: All right.

18 MR. HILDEBRAND: He's already done
19 that, and I think that he's allowed to testify
20 about the facts, obviously, Your Honor, the facts
21 that impact his opinion.

22 THE COURT: Right.

23 MR. HILDEBRAND: And that's what
24 he's doing. He's hitting on some of those.

25 THE COURT: The bases for his

1 opinion?

2 MR. HILDEBRAND: Yes, sir,
3 absolutely.

4 THE COURT: He can give that, yes.

5 THE WITNESS: Now, in 2004, let's
6 go to the next. In August, they're talking about
7 tweaking the floor plans that they're actually
8 laying out, and they're Hilton's standards, which
9 is a prototype design that was printed off the
10 website. So it was a Hilton Hotel at that --

11 THE COURT: Okay.

12 THE WITNESS: -- at that juncture,
13 yes, and that they were using a web design plans
14 to be able to start laying out the concept of the
15 floor plans.

16 BY MR. HILDEBRAND:

17 Q. All right.

18 A. Now, we go forward a year again to
19 December of 2005. Now, we're looking at, there
20 was -- during that timeframe, the first architect
21 was going through many meetings about the height
22 of the building, and that's all of this. I just
23 wanted to figure out -- I knew the height of the
24 building was an issue. I just wanted to
25 understand what the issues were, and that's what

1 this document tells me.

2 Now, we go six months out. At that
3 particular point in time is when -- from what I
4 was seeing, that was when the developer started
5 thinking about the luxury hotel or getting the
6 input on it from somebody who knew about luxury
7 hotels. They sent the plans off to the Waldorf
8 Astoria for them to take a look at the plans.

9 I never saw any feedback from that, but
10 I do know, at that particular point in time, they
11 went from thinking, starting in two years
12 earlier, that they had a Hilton, but they're now
13 talking about Waldorf Astoria from the records
14 that I've seen.

15 Now, we go all the way out to February
16 2009, and that's the end of the timeframe for
17 architect number 1. Because that's when WLA gets
18 involved, and all of this documented that was
19 meaningful to me was talking about the status of
20 the project at the time. It was 48 percent
21 complete range, the design.

22 They talk about a lot of the
23 specifications is not -- is missing. So there's
24 a lot of decisions that needs to be made in
25 regard to that. The kitchen and areas such as

1 that hadn't been laid out yet, which is obviously
2 a very critical thing that the hotel operators
3 are very important to.

4 And they talk about, it's very critical
5 to get the local operator's plans to support the
6 brand concept. And that's architect number 2.
7 Architect number 1 said, yeah, we need to bring
8 him when I started. Architect number 2 is
9 saying, okay, I just got the -- I got a feel for
10 it. We need to get their input. And this is
11 architect 2 in 2009.

12 And then the other thing that I found
13 interesting was that the materials had been
14 provided by the first architect, the CAD files,
15 and the documents, were in question as to the
16 validity of the usage of those documents. So
17 obviously they went through five years of design
18 development.

19 Architect 2 becomes involved, and he's
20 got an issue maybe with the documents and whether
21 they can use them or not. And so that was the
22 first time I saw this, and I will be talking
23 about that later on during the evaluation.

24 So now we go out a year to February of
25 2010. And they're regarding to BCVs again. Now,

1 you're talking a year passes, and WLA is still
2 talking about, there's a problem possibly with
3 the design documents that I'm supposed to use.

4 The mechanical, plumbing, electrical and
5 structural are PDF, which in the design world,
6 the construction world means, you need to have a
7 CAD drawing to be able to tell what's behind the
8 PDF. And they did not have that for those. And,
9 again, they still haven't found any specs on the
10 project. Now --

11 MR. BUNDY: Your Honor, I hate to
12 keep doing this, but we're right back where we
13 were before we went to lunch. He's putting
14 evidence in and reading from documents that are
15 not in evidence. Because he is an expert, he can
16 rely on them, but he doesn't get to read them
17 into evidence.

18 And these aren't -- these letters are
19 not compilations. I mean, the whole purpose of
20 the rule is for tests, calculations to distill
21 quantitative information. Okay?

22 THE COURT: Okay.

23 MR. BUNDY: That's not what any of
24 this is.

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

1 you. How about that, Mr. Hildebrand? Rather
2 than going into what he saw, what specific items
3 he saw, I think he just testifies as to what
4 his -- how he distilled the information that he
5 received. That's what I'm looking for.

6 MR. HILDEBRAND: Okay. I
7 understand that, Your Honor. There might one or
8 two that I'd like, just if you will indulge me
9 with just a couple. But, otherwise, I will move
10 forward very quickly.

11 THE COURT: All right.

12 MR. HILDEBRAND: Go ahead.

13 THE WITNESS: Well, I mean, the
14 only -- well, the way that I am used to trying to
15 evaluate a project is looking at the
16 contemporaneous that were taken through the
17 course of the project.

18 THE COURT: I'm with you.

19 THE WITNESS: And when I say
20 distill, I distilled it down to some of the
21 primary documents that I think were road marks as
22 to what happened that led me to be able to get
23 the whole project, starting in 2004 out to 2018,
24 to -- it's like painting the markers down the
25 highway. You know, you need to stay within

1 the -- well, all I'm trying to do is to get the
2 documents that will help me stay within the
3 highway. That's all.

4 THE COURT: All right. All right.

5 MR. HILDEBRAND:

6 Q. So you have the height litigation
7 and the --

8 A. Yeah. And then the project was in the
9 height litigation for two years.

10 THE COURT: I'm familiar with that.

11 THE WITNESS: Pardon?

12 THE COURT: I'm familiar with that.

13 MR. BUNDY: Here we go again.

14 THE COURT: What's that?

15 MR. BUNDY: Objection. Here we go
16 again.

17 THE COURT: All right. He's going
18 to object to the specifics on here. But just
19 tell us -- tell us where we are and what
20 information you received from reviewing the
21 documentation from the architect to the
22 developer.

23 THE WITNESS: And I think it's very
24 important. There are still problems with the
25 drawings that came from architect number 1.

1 THE COURT: Okay.

2 THE WITNESS: And, in fact, there
3 was a lawsuit between architect number 1 and the
4 developer, from my understanding. And they
5 couldn't turn over the documents while that
6 lawsuit was still going on.

7 So they finally started getting the
8 documents, WLA to architect number 2, to start
9 looking at them. And the thing that was
10 interesting to me was, he basically says there's
11 three things that we need to proceed. One was to
12 throw it all away; the second is, use parts of
13 it, and the third is, to selectively go and see
14 if there's anything we could use.

15 So that was meaningful to me because it
16 goes to show, you know, what may have been and
17 what may have developed into the problems with
18 the architectural drawings because the
19 information underlying the design was probably --
20 or could have been deficient.

21 MR. BUNDY: Those statements just
22 made by him are hearsay, offered for the proof of
23 the matter asserted, and they're not admissible.
24 And he can't repeat them by virtue of being an
25 expert.

1 He can say, I looked at the architect's
2 file. Okay? And based on looking at his file
3 and reading these documents, I have an opinion.
4 Of course, he's not an architect; so I don't even
5 know how he gives an opinion. If they want him
6 to read these things, they should have put these
7 things in evidence.

8 There's nothing that prevents them from
9 putting documents in evidence first, bringing an
10 expert in here, and letting them go through the
11 record. But you can't do it this way.

12 THE COURT: I agree with that. I
13 think he can say he looked at it. He saw that
14 there were three alternatives given. That tells
15 me -- tells him that there was a problem that has
16 been -- it created a problem. Okay?

17 MR. HILDEBRAND: All right.

18 THE WITNESS: February 13th --

19 THE COURT: I understand engineers
20 and the need to be specific. Okay? But here,
21 we're an expert witness. I just need to know the
22 basis for your opinion. He gets to ask you all
23 the questions as to whether or not there's a
24 proper foundation for it, if that's what he wants
25 to do.

1 THE WITNESS: I'm sorry, okay.

2 February 2013. This is -- well, this is -- well,
3 they're talking about -- I saw that the developer
4 was talking to the city about the height of the
5 building.

6 THE COURT: We're still in the
7 development stage, right?

8 THE WITNESS: Yes.

9 THE COURT: February 13th?

10 MR. BUNDY: Why does he even need
11 this? Your Honor --

12 THE COURT: He's using it as a
13 crutch. I'm not even looking at it. I'm just
14 listening to it.

15 MR. BUNDY: All right. Fine. I
16 don't mind if he uses it as a crutch, but to read
17 stuff to you that you can't -- you're hearing it,
18 okay, and it's not in evidence.

19 THE COURT: I'm with you. I'm with
20 you. Tell me how we got there. Tell me what
21 opinion you've got.

22 THE WITNESS: Okay. Now, we're
23 in -- go back one more. I will read it from
24 here. All right. This is February also. I'm
25 talking about the status of the height of the

1 building.

2 I'm still trying to figure out -- from
3 my perspective, I'm looking at it as an engineer.
4 You know, to design the project, you have to know
5 the height the building is going to be because it
6 affects the floors.

7 THE COURT: Right.

8 THE WITNESS: All right. Now, we
9 go out to August of 2013, and the thing I picked
10 out from that is they're still talking -- and
11 this is architect number 2, that they need an
12 interior designer, for which they don't have.

13 Then this one is also, I believe, in
14 August where they talked about the BIM is needed.
15 I think that this was talked about earlier. The
16 BIM was needed on a project like this. And this
17 tells something to me, as an expert and having
18 experience on these, and I -- the BIM process is
19 a very important process to go down to use on a
20 project like this.

21 And let me explain quickly why. The BIM
22 process -- and I've heard the discussion. The
23 BIM process is the designer, the engineers that
24 designed the building, they use BIM for
25 structural drawings, mechanical drawings,

1 electrical drawings, the plumbing drawings, and
2 they create a model.

3 That's what the architect and their
4 engineers do. The contractor uses the BIM to do
5 MEP coordination. It used to be done by hand,
6 but now they take the MEP BIM and insert it into
7 the overall model and look for conflicts.

8 If you don't have the original model,
9 you're trying to use the MEP drawings by
10 extracting what information you can give that's
11 triangulated, that has to be triangulated for the
12 MEP because you're drawing in a three
13 dimensional. So there's a disconnect if you
14 don't have the original BIM.

15 And then the reason why I say that, this
16 project has got post-tensioning slabs, and
17 there's post-tension cable run through this
18 project. And you need to make sure your sleeves
19 are in the right location because, once you pour
20 the concrete, you have to go back and try to --
21 if you're going to do core drilling, you have to
22 bring the core drill out there to actually locate
23 where those can go.

24 So it becomes very critical to the
25 structural integrity of the building, and you

1 want to make sure that the project has BIM to
2 know where those things go.

3 THE COURT: The BIM is a 3D
4 project, and if you've only got a 2D plan to put
5 it into, you're --

6 THE WITNESS: The whole thing about
7 BIM came about -- because I was there in 1995,
8 working with the group who created it, before
9 BIM, in Sacramento with Mortenson Construction,
10 one of the foremost people into creating the BIM.

11 What it actually is, is that you're
12 drawing in third dimensions. You're actually
13 drawing in 3, versus drawings in a plan. So
14 you're drawing in 3D, and when you encapsulate
15 it, the -- if a structured building is designed
16 in BIM, the structured drawing comes out, and the
17 MEP can take that -- let's say there's an
18 interstitial space that's this big (indicating).

19 The MEP takes those dimensions and plugs
20 their stuff into it to see if all of their
21 plumbing and electrical lines can fit in that
22 space. But you have to have this first before
23 you can plug the MEP into it.

24 If you don't have this, you're out there
25 trying to take MEP coordination drawings and put

1 it into wherever you can find to place within the
2 program that you think you can get within the
3 two-dimensional drawings, where you can fit it
4 in. So that's the difference.

5 November of 2013, this is when -- and
6 the reason why -- this is when the design -- the
7 interior designer basically got involved in the
8 project -- or contractor, sometime around
9 November of 2013. It's on the heels of -- the
10 pre-construction services started about a month
11 earlier.

12 So the pre-construction services
13 started, the interior designer started getting
14 involved. But the hotel had been designed up to
15 the -- obviously to a certain point in time.
16 Then they start talking about the five-star
17 hotel.

18 MR. BUNDY: Objection, hearsay.

19 THE WITNESS: And, again, they
20 talked about -- even at this point in time --

21 THE COURT: Okay. He's objecting
22 to what they said. Just tell me what's going on
23 and whatever timeframe we're talking about. What
24 information is of interest to you?

25 MR. BUNDY: To me?

1 THE COURT: No.

2 MR. BUNDY: I'm not interested in
3 any of this.

4 THE WITNESS: In November of 2013,
5 after the interior designer was brought
6 onboard --

7 THE COURT: Okay.

8 THE WITNESS: -- they still hadn't
9 looked at -- they were still going to the web to
10 get what a five-star hotel is. What's the
11 elements of a five-star hotel? For nine years
12 after the project started, that they're still
13 considering what should go into a five-star hotel
14 even after the interior designer was actually
15 brought onboard.

16 THE COURT: Okay.

17 THE WITNESS: Now, January of
18 2014 -- and we're about done. January 2014.
19 That's when there was a memo from Matrix, a
20 meeting minute that said that --

21 MR. BUNDY: What? Objection.

22 MR. HILDEBRAND: Your Honor, he --

23 THE COURT: Okay. I don't know if
24 this is in evidence, but what's the significance
25 of this?

1 THE WITNESS: That the WLA and the
2 DCI were having a problem with compatibility with
3 their electronic files, which is interesting to
4 me because I knew that there was an issue with
5 some of the design information that was out
6 there. And now WLA and DCI were working up the
7 capability issues with the current design versus
8 what DCI is coming along to suggest.

9 THE COURT: All right. So there is
10 incongruity between WLA, the architect, and the
11 interior design consultant; is that right?

12 THE WITNESS: That's right.
13 Because the design had progressed further down
14 the line before the interior designer got in to
15 provide their input. This is an another one that
16 said that the teams are related to (inaudible) --

17 MR. BUNDY: Objection. It's
18 hearsay.

19 THE WITNESS: So I was trying to
20 get in a -- what that told me was, that before --
21 at this juncture, they were trying to determine a
22 point in time where they could -- where the
23 contractor could price the work. And that's the
24 first time I heard that in seeing that in the
25 documents.

1 In May, this is -- again, I was trying
2 to find out, when did the contractor get to the
3 GMP. And there was a request of the contractor
4 to bid the project at 50 percent complete design.

5 MR. BUNDY: Objection. It's
6 hearsay.

7 THE WITNESS: But the contractor
8 wouldn't do it.

9 THE COURT: Okay. All right.

10 THE WITNESS: That's all I took
11 away from that. June, this goes to the -- oh,
12 this is when they had made major changes to the
13 manager's department that affected the structural
14 design drawings in a major way. And that's what
15 that reflects.

16 THE COURT: The timeframe is still
17 summer of '14?

18 THE WITNESS: During the summer,
19 June of '14.

20 THE COURT: Okay.

21 THE WITNESS: Then they got the
22 design of the -- and it's also noted that kind of
23 referred to -- it caused major problems with the
24 post-tension floors. So it kind of was relative
25 to me, like, that that was what --

1 THE COURT: The structure?

2 THE WITNESS: Yeah. July of 2014.

3 That's when the design documents, the hundred
4 percent design documents were published. And I
5 found that document to be interesting because it
6 talks about --

7 MR. BUNDY: Objection.

8 THE WITNESS: -- the status --

9 MR. BUNDY: Objection. Your Honor,
10 are you --

11 MR. HILDEBRAND: Your Honor, he can
12 testify about hearsay. That's -- experts can
13 testify about --

14 MR. BUNDY: No.

15 MR. HILDEBRAND: Yes, they -- may I
16 finish, Mr. Bundy?

17 THE COURT: Just one second.

18 MR. HILDEBRAND: Experts can
19 testify about evidence that is not otherwise
20 admissible in evidence. Hearsay -- and this is
21 not hearsay. This is a document of the project
22 architect talking about this design and moving
23 forward with this project.

24 And here's an expert saying, here is the
25 document from the construction expert, and here

1 are -- here's why I think this is relevant.
2 That's what he can do, Your Honor. He might say,
3 you should've introduced it. There's no
4 requirement in our law to say that you have --
5 before an expert can testify, every fact known to
6 him has to be introduced into evidence.

7 MR. BUNDY: And I will --

8 THE COURT: With that, I agree.

9 MR. BUNDY: And I tried a case one
10 time in this courtroom -- not in this one, but
11 over there in front of Walter Bristow, okay? You
12 remember Judge Bristow?

13 THE COURT: Oh, yeah.

14 MR. BUNDY: He's pretty tough.

15 THE COURT: Oh, yeah.

16 MR. BUNDY: Okay. It was against
17 Bob Hollings, okay, and I was representing
18 Wieters Construction, and I had an expert. No, I
19 was representing Klons Garrison (ph). I had an
20 expert.

21 And I moved, when I put him on the
22 stand -- he was my first witness. I put him on
23 the stand, and I said, have you looked at every
24 piece of paper in these ten boxes? And the rule
25 had just come out. And he goes, yes. I said,

1 did you look into the delay? He goes, yes.

2 I said, tell me what your opinion is on
3 the delay. He said, they delayed the job 73
4 days. Thank you very much, and I sat down. And
5 Hollings didn't know what to do. And Judge
6 Bristow goes, Mr. Hollings, I don't know why you
7 did that, okay, but you did. And he couldn't
8 cross-examine him because he didn't know what was
9 going on.

10 I'm not saying -- because the rule says
11 he can give an opinion based upon stuff that's
12 not in evidence. It doesn't say that the stuff
13 goes in evidence. We had this conversation this
14 morning. This document, unless it's in
15 evidence --

16 THE COURT: Right.

17 MR. BUNDY: -- is not admissible,
18 and it's hearsay until it's put in evidence.
19 It's got to come in in some exception. He's got
20 to move to put it in evidence.

21 THE COURT: All right. Go ahead.

22 MR. HILDEBRAND: We've already been
23 through that, Your Honor.

24 THE COURT: We have.

25 MR. HILDEBRAND: You've already

1 ruled, and I would ask -- Your Honor, I would
2 like to refer the Court to Rule 43, conduct at
3 trial.

4 THE COURT: Okay.

5 MR. HILDEBRAND: And (i), argument.
6 No argument shall be made on objections to
7 admissibility of evidence or conduct of trial
8 unless specifically requested by the Court. 43,
9 small (i).

10 MR. BUNDY: I agree with that. I'm
11 good with that. I'm good with that. If you just
12 want me to object, I will object and sit down.

13 MR. HILDEBRAND: Well, you've said
14 that about three times, and you keep jumping up.
15 So I'm just --

16 THE COURT: All right.

17 MR. HILDEBRAND: This case is going
18 to go on for weeks if --

19 THE COURT: Well, I'm trying to
20 keep -- I'm trying to avoid that, too. It's
21 already scheduled for two.

22 MR. HILDEBRAND: Right.

23 THE COURT: We don't need to be
24 there for five. All right. So an objection can
25 be made, and then I'll ask for the basis for the

1 objection. But it shouldn't be -- shouldn't be a
2 speaking objection. It should be a hearsay
3 objection.

4 MR. BUNDY: Thank you.

5 THE COURT: Or whatever it is. So
6 I think we will get through this faster if we
7 present the information on what -- what was the
8 basis for his opinion, how he got there.

9 MR. HILDEBRAND: I think we would
10 have been finished by now.

11 THE COURT: All right.

12 THE WITNESS: The importance to me
13 on this was, you know, as a contractor, when
14 you're given a hundred percent design drawings,
15 they're never a hundred percent of what they are
16 supposed to represent, what you're going to be
17 building.

18 And when I saw this document, and it
19 talked about -- at the top, it talks about the
20 nature of those drawings, and then I read certain
21 things as a contractor. So I want to point some
22 of those out. Meets specifications --

23 MR. BUNDY: Objection, hearsay.

24 THE WITNESS: -- which you see that
25 the document states regarding -- this is a total

1 disaster. You can read the next one, DCI
2 decides --

3 MR. BUNDY: Objection.

4 THE WITNESS: -- they're changing
5 all door hardware, which is a -- could be a major
6 implication as far as the future problems with
7 the project. Next, need the final manager's
8 apartment layout --

9 MR. BUNDY: Objection.

10 THE WITNESS: -- that it needed to
11 be. No air distribution for the first and second
12 floor.

13 MR. BUNDY: Objection.

14 THE WITNESS: Significant
15 mechanical design work remains. All wall section
16 indicators not defined --

17 MR. BUNDY: Objection.

18 THE WITNESS: -- on standard public
19 area plans could use more (inaudible). In most
20 construction details, they're not even --

21 MR. BUNDY: Objection.

22 THE WITNESS: -- read from the
23 plans.

24 BY MR. HILDEBRAND:

25 Q. Just tell the Judge what your opinion

1 was based upon the --

2 A. My opinion of this is, is that the
3 drawings that were issued were not only not a
4 hundred percent, but they were far from it. And
5 the contractor, if they were trying to bid that
6 project off of those drawings, didn't have enough
7 information that they could put together the bid
8 to cover all the scope of the work, period.

9 Q. Okay. All right.

10 A. Then September of 2014 is when they
11 entered in the GMP.

12 Q. Okay. So you've got a signed contract.
13 We've got the GMP that's been agreed upon. Where
14 do you go?

15 A. All right. I know that the design at
16 that point is still deficient and the
17 construction started in March of --

18 MR. BUNDY: Objection. Not
19 qualified to give an expert opinion on design.

20 MR. HILDEBRAND: I thought he was
21 just going to object.

22 THE COURT: All right. Objection
23 made. Construction commences March of '15,
24 right?

25 THE WITNESS: Well, I think that

1 this is --

2 THE COURT: Based on those -- based
3 on those hundred percent plans?

4 THE WITNESS: Yes.

5 THE COURT: All right.

6 THE WITNESS: Yes, March of 2015.
7 And the design had continued from that point in
8 time, but it was still based on the hundred
9 percent design and any drawings that had been
10 provided.

11 THE COURT: Right.

12 THE WITNESS: So when you get to
13 February 2015, which is the heels of when
14 construction started, this is an internal memo
15 to -- between architect 2 and the developer
16 and --

17 MR. BUNDY: Objection.

18 THE WITNESS: -- I point out some of
19 the things that are stated that I think are
20 significant.

21 THE COURT: All right. Let's just
22 say this. There were problems; is that right?

23 THE WITNESS: There were problems.

24 THE COURT: Without going into the
25 details.

1 THE WITNESS: Yes.

2 THE COURT: So the architect is
3 noting there are potential problems?

4 THE WITNESS: He's saying most
5 current --

6 THE COURT: All right.

7 MR. HILDEBRAND: Let's move on.

8 THE WITNESS: Most current plans
9 for pricing. I'm guessing about 150 sheets are
10 yet to be published -- to be republished.

11 THE COURT: Okay.

12 THE WITNESS: This is in February
13 on the heels of construction. Next.

14 BY MR. HILDEBRAND:

15 Q. Let's move forward.

16 A. This will definitely add to the GMP and
17 I'm not sure how they were going to jump back and
18 do this work. The delay had a faster schedule
19 than DCI.

20 MR. BUNDY: Objection.

21 A. If they had slowed down, he would have
22 been able to the July drawings. Next. And the
23 truth is that WLA focused on aggressive
24 production process, and that's basically what
25 it's -- the nature of those drawings.

1 Q. Let's do this. Let's jump forward to
2 the sequence of construction in your --

3 A. Yeah. That's where I'm going to now.

4 Q. Okay. Good.

5 A. Now, we've done -- now, we've talked
6 about everything up through the construction.
7 Now, we're going to talk about what happened
8 during construction and compare the development
9 process to the design and the construction
10 process.

11 And here's the things I've mentioned at
12 the outset that I would be looking at. First of
13 all, just as a quick big picture, this is the
14 baseline schedule, plans for the project. Here's
15 the as-built for the project. So I'm trying to
16 frame the picture, what's the delays about?
17 About 16 months of delay.

18 And along the road, they had the
19 1,000-year flood, which cost them 20 days during
20 the actual. And then now they get into the
21 normal sequence of the work. I think it's
22 important to maybe walk through, what is the
23 normal sequence of the work on a construction
24 project of this nature. So here's the Hotel
25 Bennett. Now, when you start off, you know, your

1 structure crew comes in and starts framing --

2 MR. BUNDY: Objection.

3 A. -- the first floor obviously.

4 MR. BUNDY: Your Honor, may I at
5 least -- may I at least explain what I'm -- my
6 current objection?

7 THE COURT: All right.

8 MR. BUNDY: This is -- what he just
9 said was, is that this is how you would do it.

10 THE COURT: Right.

11 MR. BUNDY: There was an as-planned
12 schedule on this job, and I don't -- it sounds
13 like, to me, that -- there's no testimony that
14 he's using the plan schedule -- that the
15 contractor actually produced. So how could it be
16 relevant that somebody could -- that he would
17 have done it a different way? This is the
18 contractor's schedule.

19 BY MR. HILDEBRAND:

20 Q. Let's give the background. I thought we
21 were trying to move forward more quickly, but
22 Mr. Bundy wants you to slow down, I think. Okay?
23 Can you tell --

24 A. This does follow the plan sequence of
25 the project because the plan sequence on a

1 project like this is mandatory. You have to
2 start at the bottom, and then you have to work
3 your way up.

4 THE COURT: Okay.

5 THE WITNESS: So your structure
6 crew goes up, and then you strip your flooring.
7 Then you have your cranes come in afterwards.

8 And then on a project like this, in the
9 plan, they plan on going up two levels at a time
10 to get up so the crews -- they have two sets of
11 crews, doing two floors at a time. So the
12 various trades can follow the way up through the
13 building so you're not disrupting the work of the
14 crew that's coming behind you.

15 THE COURT: Okay.

16 THE WITNESS: Because, again, it's
17 mandatory. You put your layout with your studs,
18 you go up, and that's how this sequence and the
19 work in the hotel works. But you must follow
20 those sequences for the manpower because you
21 don't want them to be disrupted by the work of
22 other trades.

23 BY MR. HILDEBRAND:

24 Q. Is that what we've -- we've heard the
25 term flow several times in this case.

1 A. Flow?

2 Q. Yes.

3 A. Work flow, yes.

4 Q. All right. Is that what you're
5 describing the plan of the work flow?

6 A. It's the movement of men and materials
7 up through the high rise or mid rise
8 construction. And it does match the sequence.
9 It has to.

10 THE COURT: From that standpoint,
11 they're all the same, right?

12 THE WITNESS: They have to do it
13 that way.

14 THE COURT: All right.

15 THE WITNESS: Now, I looked at this
16 project to try to zero in on more thing in my
17 mind which were important. I call it the release
18 of control points.

19 THE COURT: Okay.

20 THE WITNESS: And let me explain
21 what that is. In my mind, as a contractor, you
22 always want to get out of the ground. You must
23 get out of the ground because everything two feet
24 underneath the surface of this earth is always a
25 question in my experience. You never know what

1 you're going to get. So you've got to get out of
2 the ground so you can go vertically.

3 Because that releases the man hours to
4 go forward. So you release the structure. And
5 at this particular point in time, I wanted to see
6 the status of that work. So I looked at -- on
7 the plans, specifically the lower level to
8 slab-on-grade was to be poured and when it
9 actually was poured.

10 And I found there was only basically one
11 day of delay, if you take into consideration the
12 20 days that they already lost. So 21 minus just
13 the one day. So at that particular point in
14 time, the contractor got out of the ground. The
15 project was on schedule, even though they had
16 just experienced all of these issues. You
17 probably heard about that happening below grade,
18 which I won't get into.

19 Now, you go up, and so it's one day
20 behind at that particular point in time. And
21 there's the picture -- I just confirmed the
22 pictures. Go ahead. And now I wanted to know,
23 when did the structure released to the interior,
24 how far up before you reached the interior
25 because that's what releases your next amount

1 of -- major amount of manpower.

2 Your structure continues on, but you
3 want to release the work underneath you to get
4 the little stickman coming up through the
5 building. So I looked at it, and that was up
6 through a level of 5, the work. And I looked at
7 what the delay was there. It was 22 days behind
8 at level 5.

9 When they got to the point at level 5,
10 they were only two days behind schedule. So the
11 project hadn't lost any more time up until the
12 point in time they got to level 5. And there's a
13 picture of the building. Now, when you release
14 the interior work -- and I'm talking interior
15 work means the outside, exterior, when you
16 release the work, then you have -- go ahead to
17 the next.

18 The interiors finished, I think it was,
19 14 months late by the time they started doing
20 their commissioning and getting the project done
21 in the field. So the interior work -- the
22 interior division, interior work was delayed 14
23 months.

24 And then if you look at the last, you
25 will see that, when you finish the substantial

1 completion, there were 16 months of delay, or the
2 project lost another couple months. If you're 14
3 months delayed when the interior is finished,
4 you're 16 months delayed on substantial
5 completion or you lost a couple months more work.

6 Now, I did this release of work, but
7 just for me to frame the picture of, where were
8 the original -- where were the delays to the
9 projects, not a critical path analyses, but just
10 a commonsense construction. What was the status
11 of the project at various points in time?

12 Now, comparison of design construction.
13 The top bar, or the red bar across the top, as I
14 just summarized the various work that I just
15 described, talking about the underground work,
16 construction to the fifth floor, the interior
17 work, and I just rolled it up into one bar so I
18 could make some comparisons on how I did my
19 analysis.

20 So I took every month to find out that
21 the monthly progress reports show the RFIs that
22 were in play at that particular point in time,
23 and it told you which -- what they were and
24 obviously you can tell where they're located. So
25 I studied every month of the project and studied

1 it in time that these are the priors to determine
2 what was going on during the various points in
3 the project.

4 In addition, I looked that there was
5 modifications, design modifications that came out
6 during the underground work. So I looked at
7 those modifications and the extent of the
8 modifications and the many drawings that were
9 involved in the modifications that were occurring
10 in 2015.

11 BY MR. HILDEBRAND:

12 Q. What is a mod?

13 A. A mod is when they take all the various
14 design revisions and they roll them up into a
15 modification. And it listed many things that
16 were being considered and many things that were
17 designed under a certain mod at a certain point
18 in time.

19 Q. Okay. So it's a compilation of a lot of
20 changes?

21 A. It's a compilation. In fact, I've got
22 an example I can show you of that. So now, March
23 of 2015, I look at the RFIs. And then the other
24 thing I looked at, in those monthly progress
25 reports, they have critical issues that the

1 contractor points out.

2 Here's the things that are critical to
3 the project in their mind during the course of
4 construction. And you will see a lot of these
5 are shop drawing submittals that haven't been
6 obtained yet. They talk about the things that
7 are affecting them. The guys in the field
8 that -- during that timeframe, these are the
9 things that are affecting them.

10 It gives me the ability to do this
11 monthly. So I'm being able to paint a picture as
12 to what was happening during the course of the
13 project. And then mod 5 came out on May 13th,
14 and I will go over it and just show you -- I'm
15 going to quickly go through these.

16 But this is -- when I talk about a
17 model, these are the architectural drawings and
18 the revisions and the clarifications that are in
19 a mod. That's architectural drawings. Those are
20 architectural drawings. Those are architectural
21 drawings. There's your mechanical drawings.
22 There's your mechanical drawings. You have
23 electrical, and then you've got -- yeah, the
24 electrical drawings are last.

25 So I just wanted to show you the volume

1 of the things that were actually in a mod. Now,
2 keep in mind then, when mod 5 came out, that was
3 in May of 2015. But even with all the things
4 that were on the plate that will affect the
5 future design, as well as the design that was
6 going on concurrently, the project was on time as
7 of then.

8 So if you look at it from this
9 perspective, that -- go ahead -- that anything
10 before that, any of the modifications, anything
11 that happened during the course of construction
12 basically was mitigated by the time they got to
13 the fifth level. But these modifications would
14 change the work that's also downstream. So I
15 just wanted to make the point, the project, at
16 that point in time, was basically on schedule.

17 Q. All right.

18 A. And I just showed a picture. If you
19 start off into after July, and you get into the
20 upper level, mod 7 and mod 8 came out, and that's
21 when you got to the point -- this is when the
22 project went -- and I'm sure you've heard from
23 the standard floors to the suites, which change
24 all the MEP. It changes in all the places.

25 THE COURT: Right.

1 THE WITNESS: So that's where this
2 project was when that occurred. All these
3 modifications had to be made to a building that
4 was already up to that level.

5 So you had to make all these four floors
6 going up, have to incorporate them, and that's
7 why they were delayed. So the fourth floor, they
8 had to incorporate all the design revisions
9 because they couldn't locate the sleeves. They
10 couldn't go forward with the project.

11 BY MR. HILDEBRAND:

12 Q. Okay.

13 A. And I continued. I looked at the RFIs
14 throughout the project. These are just examples.
15 And every time I looked at an RFI, I went and
16 looked at the photos. Go back one more time.

17 And I looked at -- I went in and I tried
18 to figure out where they were working, where the
19 area was that they were talking about. And when
20 they talk about the critical issues (inaudible).
21 These were the critical issues that were
22 occurring after the project was supposed to be
23 completed.

24 Q. All right. Can you explain these, just
25 very briefly?

1 A. Yeah, go on. These are the
2 modifications that I talked about that occurred
3 all the way up through May of 2017, and I just
4 drew -- I just drew a circle around them.

5 And then these are the ones that
6 occurred after the project was supposed to be
7 opened. And these are the CDs and things that
8 occurred, the design revisions that occurred in
9 addition to the mods that came out. And some of
10 these CDs were related to some of these mods.

11 But there's all the changes and
12 revisions were made, you know, after the project
13 was to have been completed. And here's a list of
14 what those modifications and the CDs were. A lot
15 of them pertained to the first floor, second
16 floor. In fact, every level at the bottom, you
17 see the bars is where it affected these various
18 areas.

19 Now, the construction. To look at
20 construction, of course, there's the major
21 activity. To look at construction, you have to
22 take and consider the manpower. Manpower built
23 the job. Schedulers didn't build the job,
24 manpower.

25 Q. So you're looking now at -- you're

1 comparing the original baseline schedule to the
2 planned manpower?

3 A. Right.

4 Q. All right.

5 A. I'm taking the planned duration. That's
6 what you see in that bar, and I'm looking at the
7 manpower. And this is just for the major trades.
8 This is for your concrete work, your mechanical
9 work, your electrical work.

10 So these are for the major trades that I
11 was looking at. And I could see that there was
12 going to be a plan of manpower, where a couple
13 hundred people were out there during the -- I'd
14 say the peak period of time. So I wanted to get
15 a feel for the planned manpower. When was the --
16 what were the manpower trends regarding the plan?

17 Q. So when we're looking at the beginning,
18 you expect, as it shows in this chart, that the
19 manpower is pretty low at the beginning and then
20 when the --

21 A. Well, right through here is when they're
22 starting to come out of the ground. You know,
23 obviously, you've got less people on the project,
24 and when you get into the --

25 Q. You will have to do it on the screen or

1 the Judge won't see it.

2 A. So when you're coming out of the ground,
3 if you've got it -- if you're starting to come
4 out of the ground, and when you start to get to
5 the structure, to release the structure to the
6 interior work, you start looking at how the
7 manpower ramps up.

8 And I've got a little bit more detail on
9 this to show you how that occurred. But that's
10 what we call a normal S curve on construction,
11 and when you start off, you build up, and you can
12 do that. But I wanted to take a look at that to
13 frame in my mind as far as the manpower that was
14 required.

15 So as we talked about the project, being
16 in July, you know, this project was basically on
17 schedule at this point in time, that the work was
18 released to the interior. That's the
19 slab-on-grade, and that's -- and then that work
20 shifts downstream, and this was where basically
21 the interior work was complete.

22 Q. So the interior is where the major
23 manpower expenditures are?

24 A. Yes. Okay. Now, I wanted to look at
25 the plan supervision, and here's the plan

1 supervision that Balfour Beatty had on the
2 project and number of people and the durations
3 because this is the plan duration. I wanted to
4 see in the supervision, when they had the
5 supervision.

6 Q. Okay. Let's zoom in on this part on the
7 left. Let's zoom in on this.

8 A. This just talks about the various
9 positions on the project that Balfour had
10 planned.

11 Q. This is what they had planned to have
12 them --

13 A. Had planned. This blue is plan. Senior
14 project manager, assistant project manager,
15 engineer, project superintendents. And this was
16 their planned staffing at the outset of the
17 project based on their baseline schedule.

18 Q. Okay. So you reviewed the schedule to
19 determine --

20 A. Yes, yes, yes.

21 Q. -- that's what they planned?

22 A. Yes.

23 Q. All right. So what happened next?

24 A. Now, this is -- go ahead. What I found
25 interesting was -- and I think it would make --

1 go ahead to the next slide. When you look at --
2 they broke the project down into floors one and
3 two, floors three through eight, the floor around
4 the elevators.

5 And they actually assigned various
6 project superintendents to address these various
7 areas, which is -- which I found is a good thing.
8 Now, when I looked at this list, I think they
9 were short an engineer based on engineering. I
10 would have had -- my opinion is that I would have
11 had a project engineer out there just to deal
12 with the MEP issues.

13 If there was no changes on this job at
14 all, I would have had another project engineer up
15 there, based on my experience. Now, this is the
16 actual. Comparison to design and manpower.
17 Here's the as-built conditions, and here's --
18 this is where they're measuring to the fifth
19 floor.

20 THE COURT: Yeah.

21 THE WITNESS: And this is the
22 as-built duration compared to what we just saw,
23 and this is the as-built labor. And this is when
24 the project was supposed to have been completed.

25 BY MR. HILDEBRAND:

1 Q. Okay. Explain -- what does this show?

2 Explain what the relevance --

3 A. Well, I was trying to figure out -- I
4 mean, I saw what the relationship with the
5 manpower was in the plan and the timeframe. And
6 I wanted to look at, okay, where was that in the
7 as-built.

8 You know, when they actually were on
9 schedule of the fifth floor, this amount of men,
10 basically workers and Balfour Beatty performed
11 the work to get the project in on schedule. But
12 on the as-built condition, they were on schedule
13 at that particular time.

14 So I was looking at these manpower
15 trends. I had this broken down by subs. So I
16 could look at the various trades on the project.
17 I was trying to get the manpower trend, the
18 as-built durations and the manpower trends, and
19 then, as I wanted to look at the various design
20 and the developer process. And then I looked
21 at -- this basically was the finishing work
22 including the -- all the interior work. Go
23 ahead.

24 So to get to the slab-on-grade -- and
25 then I look at the -- I did the same process. I

1 took the critical issues for each one. In March
2 of 2016, on the heels of one of the slab-on-grade
3 that was on schedule, I wanted to see what they
4 were talking about. And I don't know what
5 happened back here, but what was going to be
6 happening out here.

7 And I looked at the critical issues for
8 each month of the project, and the RFIs for each
9 month of the project. And here, this is the
10 mechanical manpower. I looked at this by trade,
11 and you can see that when the project got to the
12 fifth level and you're looking at the mechanical
13 work, this is where the floor (inaudible).

14 When the floor got to the fifth level
15 and you start releasing the work below, that's
16 when you can see your manpower and your
17 mechanical trades jump. And if you overlay every
18 sub on this project, their as-built manpower,
19 it's got that same pattern. And this is when the
20 interior work was going on.

21 And so I went through and I looked at
22 the critical issues that were going on, and right
23 when the manpower -- the as-built manpower was
24 peaking at that particular point in time, it gave
25 me an idea of what was going on. So I looked at

1 the critical issues.

2 And then I also wanted to look at, in
3 addition to the critical issues, I laid out --
4 there was shop drawing information in some of
5 these critical issues. It says, here's where the
6 plan was with the shop drawings for levels -- I
7 think it's levels 3 and 4. And here's when the
8 shop drawings were supposed to be submitted to go
9 forward, and here's when they actually were.

10 Then if you continue looking at this
11 information -- go ahead. There's the decks,
12 level 5 and 6. Here's when they were supposed to
13 be there, and here's when those drawings were
14 actually submitted.

15 Q. Submitted by whom?

16 A. Given to the -- provided by the
17 architect. They're late. This is a late
18 issuance of drawings, shop drawings.

19 Q. Okay.

20 A. And then there's one more cut. Go
21 ahead.

22 Q. So the manpower, that should have
23 been -- the inference here is that the manpower
24 would have ramped up earlier if the information
25 had been received earlier; is that correct?

1 A. If you look at the plan, you know, you
2 would have seen that these were -- and I will
3 show you that in a little bit. But as you can
4 see that this is, you know, a lengthy delay
5 because when you get the shop drawings for those
6 floors.

7 Q. Okay. So does this show us -- is the
8 manpower, -- once the information was provided to
9 Balfour, does this show that the manpower was
10 sufficient to --

11 Mr. Bundy: Objection, leading.

12 A. Well, it shows me the manpower trends
13 actually peak up once you get that information.
14 And you couldn't have done it back here because
15 you're doing it now in here.

16 Now, I'm trying to really summarize
17 this. It's a lot of information, and I
18 apologize. This chart is very busy. But what I
19 tried to do -- here's all the modifications I
20 talked about.

21 And here's the as-built, and I just put
22 that on the critical issues. So here's when
23 those came about, and you can see the pattern
24 here, the as-built versus the planned. And you
25 can see that the manpower levels are between 100

1 and 150 at any time during this timeframe when
2 you look at all of the trades.

3 Q. All right. Let's slow down just a
4 second. So up at the top, you've got the
5 modifications?

6 A. Right.

7 Q. Those are the major design -- represent
8 the major design changes, correct?

9 A. That's correct.

10 Q. All right. And then what is this?

11 A. And these are the late shop drawings for
12 the floors for layout.

13 Q. Okay. Which you just described to the
14 Judge just a moment ago.

15 A. Right.

16 Q. Now, tell me what -- explain to the
17 Judge, if you would, what this right there is.

18 A. Well, I'm looking at manpower on this.
19 Now, this started off here, when these mods came
20 out, the manpower jumped to like 150. And so I'm
21 looking at the increase of manpower reflective of
22 when things were being provided. And I'm trying
23 to look at these labor trends.

24 Q. Okay. Go ahead.

25 A. Then I overlay the design changes that

1 happened late in the project.

2 Q. So all of these are after the original
3 completion date?

4 A. Project completion was supposed to be
5 here, and these changes came at the tail-end
6 after the project completion was supposed to have
7 been accomplished. What I found interesting,
8 when you look at this work and what this reads in
9 this part, what I found interesting was -- go to
10 the next one.

11 I circled this in black because if you
12 look at -- if you put yourself on the project
13 right here, and you've got the modifications that
14 you're dealing with. You've got these -- the
15 issues with delayed shop drawings, and you were
16 working (inaudible) started coming down here.

17 So your normal as-built curves, the S
18 curve like your plan should be. So they started
19 to come down here, but then they were hit with
20 this. So this labor is dealing with these
21 changes, and then they tried to, I guess, you
22 know, get things out of the way. So they did
23 reduce their staff down to --

24 Q. I can't hear you. You need to slow down
25 and speak up.

1 MR. BUNDY: Objection, lack of
2 foundation.

3 A. So you see your manpower here, and you
4 have these issues you're dealing with. And as
5 these start to get resolved, when you see a
6 pattern, that's when the labor starts coming down
7 except for the one (inaudible) over here.

8 So you can tie -- or I can look at this
9 and say, well, okay, what was affecting this
10 labor? This labor was affected by the late
11 modifications and the shop drawings. You knew
12 the building was basically on time when it got to
13 the fifth level to release the interior work.

14 So what was causing -- and this labor
15 basically on this project, they spent twice as
16 long with about the same amount of labor as
17 they'd planned. And during the project, there
18 were points in time that I found where they
19 actually did complete work on schedule. There
20 were various areas that they did complete the
21 work on schedule.

22 So, you know, you have to look at what
23 causes these man hours, and that's when I try to
24 go in and try to figure out from these
25 evaluations what actually did cause that. So,

1 again, this is the way you plan your sequence of
2 work of what happened is to thoroughly -- go
3 ahead. The project was planned like this.

4 Q. So the prior one is -- you went through
5 that before as to how it was planned to take
6 place?

7 A. This is how -- yeah, that was the plan
8 sequence. But when you look at the daily reports
9 and you see where people were actually working on
10 the project, you saw that -- again, this is the
11 tutorial. But this is where people were working
12 haphazardly all the way through the building.
13 Wherever work was released to them, that's where
14 the subcontractors would go to try to perform the
15 work.

16 Q. Is that something that you would expect
17 to see, you know, them all over the building like
18 that?

19 A. I would expect to see it based on the
20 conditions I found on this project, yeah. That
21 would occur if you had the design at that
22 particular point in time being released. That
23 would cause your trades to have to work in areas,
24 wherever they could, to try to get the project
25 completed.

1 Q. Is that efficient in your view?

2 A. No, no.

3 Q. Why not? Tell me why that's -- tell the
4 Judge why that's bad.

5 A. Because, you know, if you push
6 yourself when -- and that's what I always do in
7 labor disruption. You're trying to plan your
8 work. Everybody thinks that you go to work, a
9 crew, and you go out there and you swing pipe
10 wrenches for eight hours a day. That's not true.

11 You have mobilization to get to the
12 floor and get the materials. So you lay your
13 materials on the floor. You get your gang boxes
14 on the floor. You get everything you need. You
15 get your layout on the floor. So that takes
16 about three hours of the day, and then you've got
17 maybe five hours that you can do something.

18 So if you start to go to work on
19 something and you're pulled off of it, it's just
20 not like, okay, I'm just going to have to try and
21 go down to this next floor. I've got to take my
22 materials, get the hoist, get the crane to move
23 that stuff up to another level, get my gang box
24 into the elevator, get it up to the next level,
25 and get the design of what I'm going to do. And

1 then these crews, usually they're put together as
2 composite crews.

3 Q. What is a composite crew?

4 A. The composite crew is like, if I'm the
5 carpenter crew, I've got two carpenters with a
6 laborer. I've got a laborer there to clean up.
7 For the pipe fitter crew, I've got two
8 journeymen, and I got an apprentice to help go
9 get stuff.

10 So if you've got to change the work, you
11 might not need the same tools. You may not need
12 the same composite crew. So you're literally, as
13 a subcontractor, trying to plan your work around
14 what's available and what you're going to do to
15 get the work done that's in front of you. So
16 it's very inefficient, and it's not a pleasant
17 experience.

18 So now I'm on -- and this is when I'm
19 looking at the plan versus the actual.

20 MR. BUNDY: Objection, lack of
21 foundation.

22 THE COURT: Overruled. Go ahead.

23 THE WITNESS: This is the plan
24 then. You can see here --

25 BY MR. HILDEBRAND:

1 Q. The blue is the plan?

2 A. I'm sorry?

3 Q. The blue is the plan?

4 A. The blue -- I'm sorry, the blue is the
5 plan. Every time you see red on my graphics,
6 it's as-built, and every time you see blue, it's
7 the plan. So here's when you can see up through
8 the slab-on-grade, that the work, like we said,
9 was basically on schedule.

10 And you can see in the as-built manpower
11 that the plan is fairly close. Go on. And next,
12 when you get to the fifth floor, you can see that
13 now, you're supposed to have manpower up to here.
14 But even though you're on schedule with the fifth
15 floor, you could not bring on -- you were
16 restricted.

17 You could not bring on people because of
18 the design revisions we just talked about and all
19 the things that were occurring during the course
20 of the work. So this manpower that was supposed
21 to be expended here is actually shifted
22 downstream because those hours are going to be
23 expended somewhere.

24 So this is the plan to actual
25 supervision. So what I wanted to do was, if

1 these things occurred, I knew, from experience,
2 that there had to be more supervision on this
3 project than was planned because you just
4 couldn't keep up with everything that needed to
5 be done.

6 And I was surprised to see that the
7 owner's rep on this project was out there
8 basically not full-time at this point in time.
9 And from my opinion, that's -- they should have
10 brought in more people to help that man on the
11 jobsite because he definitely had his hands full
12 in trying to get things done, in my opinion.

13 MR. BUNDY: Do you mind repeating
14 that? Your Honor, I didn't hear that. I'm
15 sorry.

16 A. I'm saying that, at a critical point in
17 time like this, when you've got all the -- I'll
18 answer your question when I get to this. I will
19 show you. This is the planned manpower. Here's
20 the actual manpower on the project.

21 These red bars are the people that they
22 had planned in the contract. I tried to overlay
23 the individual, but they didn't name them at the
24 outset of who everybody was. And they tried to
25 go in and say, okay, this is the -- the original

1 manpower would be here, looking at the trends as
2 to when they had people on the project sites,
3 like supervision.

4 And all these blue, or blue -- all these
5 green bars are additional staff that was brought
6 on to deal with the issues that were going on
7 during the course of construction. And so, to
8 answer your question, when you bring on, you
9 know -- this work, as I mentioned here, this work
10 right here is basically when they were doing the
11 underground work. And they were on schedule up
12 to July of this year.

13 So you can see the staff that they had,
14 and you can see that when these design revisions,
15 when these mods started, here's where they
16 started bringing in additional people,
17 superintendents, engineers, to come in and
18 address these problems.

19 So when you have this amount of people
20 starting at the outset with a crew that was able
21 to keep the project on schedule through July of
22 '16 and then you had the issues with the interior
23 work, and that's when this work took off. Now,
24 you know that they're actually staffing up for
25 that. And I can show you proof.

1 Now, here's the -- here's those same
2 people. Here's the amount of people that were on
3 the site. And as you can see, when they were on
4 schedule up through July of '16, you had your
5 standard crew. But after this, and after all of
6 these modifications came out, starting here.

7 And then, when all of these design
8 revisions hit at the end of the project, you can
9 see how they needed additional staffing. And
10 that these individuals would've planned to be out
11 for two years, were out there for five. Some of
12 them for five years.

13 Q. Some people were out there from Balfour
14 for five years?

15 A. So what I did, trying to make sense of
16 all of this, was to lay those modifications out
17 when they occurred, lay out the design revisions
18 at the end when they occurred, looked at the
19 manpower and the actual belts, the tools with
20 belts on them, what they were doing during that
21 timeframe, and then the supervision that was
22 actually implemented onto the project.

23 And that -- and that's why I made the
24 comment. I'm trying to answer the question I
25 knew you were going to ask me. At this

1 particular point in time, my opinion, they had
2 one owner's rep out there that wasn't there
3 full-time. There was no architect on the job
4 full-time.

5 And this is my opinion. My opinion was,
6 is that they should have brought additional help
7 out there to deal with these design revisions.
8 They should have brought an architect, and what I
9 always did, I make somebody sit out there.

10 So if I had an RFI, I would go and I'd
11 say, look, I need an answer on this, and I need
12 it today to see what I'm doing. So that's my
13 opinion that this was something that could have
14 helped during the course of the work.

15 Now, conclusions. Go ahead. What I've
16 done here is, I explained how I rolled the bar
17 up, how I rolled this design -- the development
18 design bar up just to summarize it. Go ahead.
19 And I also did the same thing for construction.
20 But let me deal with the design -- for the
21 development and the design first.

22 I stated earlier, these are the things
23 that normally a developer, I think, ought to do
24 to make sure that they can provide a luxury hotel
25 project that's built as efficiently as you can.

1 There's always going to be things come up. What
2 you need to determine in the development is the
3 type of the building.

4 Architect number 1 never had a grand
5 operator, nor a designer or guidance to a
6 five-star hotel operator. (Inaudible) to prove
7 that anything that went into the design up to the
8 point and time he left.

9 Architect 2 came on and said, look, we
10 need it, too. We need a hotel operator. We need
11 an interior designer. We need this to be divided
12 because we're -- we need to get going, even
13 though, as I mentioned, those drawings were in
14 question as to whether or not these drawings
15 actually even played a role in the actual drawing
16 deficiencies and drawings that needed to be
17 revised downstream.

18 Then you went into heights, and then you
19 get -- architect number 2 comes in. He's
20 basically still saying, I need an operator. I
21 think the developer, at this point in time -- you
22 know, I believe that this developer -- and I
23 could be wrong, but I think this developer, when
24 he started in 2012, he planned to go on.

25 You usually don't start one of these

1 projects and not leave the money, if you don't
2 plan on getting it done. I don't think he
3 thought that he would be here in 2018 opening a
4 hotel 14 years later. That's my opinion.

5 MR. BUNDY: Your Honor, I hate to
6 object, but I don't think he thought. I mean,
7 really.

8 THE WITNESS: I'm just saying that.
9 So if you wanted to -- if you wanted to --

10 THE COURT: All right. That's
11 clearly your opinion, right?

12 THE WITNESS: That is my opinion.

13 THE COURT: All right. I got it.

14 THE WITNESS: Anyway, so my opinion
15 is that the hotel operator, he should have
16 defined what that project was at the outset,
17 whether he had done it here, whether -- or he
18 knew there were height -- or whether he did it
19 here.

20 He certainly should have defined the
21 scope so that the architect -- he should have
22 provided the information that gave the architect
23 the tools to be able to design the project based
24 upon the actual scope for a luxury hotel. And so
25 I believe that, and not having the owner's rep

1 out there, probably did contribute to the fact
2 that this project had difficulty.

3 But I think the key to this, before they
4 ever hit the ground, this project was going to be
5 in trouble because the design wasn't correct.
6 There wasn't the correct information provided to
7 the architect, who asked for it numerous times.
8 He never received it.

9 And he went on with the various custom
10 websites and until he got the interior
11 designer -- which was right at the time that he
12 started the pre-construction drawings and it came
13 out here over a hundred percent. And then the
14 operator didn't even come onboard until the end
15 of 2016.

16 BY MR. HILDEBRAND:

17 Q. So Salamander came onboard in '16, the
18 end of '16?

19 A. October 2016. And they're a manager. I
20 don't think they're the -- as far as operator,
21 someone who is involved in luxury hotels, the
22 design of them, I think they're a manager. From
23 what I could read. I could be wrong. But that's
24 what I think.

25 So they didn't define that project.

1 They didn't do a feasibility scale that would
2 have been very helpful in my experience, and the
3 developers that I've worked with -- to define
4 what the project is.

5 They engaged an architect, but they
6 didn't provide them with what they should have to
7 provide the design developments. And then that
8 affects the conceptual drawings, and obviously,
9 the preliminary approvals gets into the height
10 litigation issue, and I don't know how -- what
11 they did for risk and financial analysis.

12 And now, let's look at the architect.
13 The same thing. The developer and the architect,
14 they're all supposed to work together. And the
15 developer leads this effort to put together what
16 this project was going to be all about because
17 that releases the design program where now you
18 know the activities within the hotel.

19 You start laying out together the space
20 requirements that are needed because the space
21 requirements dictate many things regarding the
22 amenities and the MEP systems that are required
23 for a luxury hotel.

24 Then you start getting into the
25 activities. You know, when I was involved in

1 luxury hotels, I was told that, you know, people
2 go to luxury hotels. They don't just expect a
3 clean bed and nice amenities. They're looking
4 for an experience. And to develop that
5 experience, that's like the steak doesn't sell,
6 but it's the sizzle of the steak that sells.

7 The sizzle is -- is your audience
8 actually create a vehicle where people are going
9 to want to have an experience. But to do that --
10 and I'm not saying this hotel doesn't do that.
11 I'm just saying, it took this long to do that.
12 I'm saying, if they'd have tried to use this
13 formula, it would eliminate a lot of these
14 problems.

15 Q. All right.

16 A. Next, the contract. Now, here's the
17 contract that comes in. The contractor comes in,
18 and basically, when he starts off before the
19 design revisions started to occur, other than the
20 ones that they that overcame in the lower levels,
21 but they got the building up to the fifth level
22 on schedule. They overcame anything that was
23 handed to them.

24 And what happened, if you see this
25 line -- that's what I'm using it as a comparison.

1 All of these modifications and all of these
2 design -- late design revisions are what hit them
3 in here. And that's why it took this long to do
4 the interior work because these modifications and
5 design revisions drove the project out to when
6 the project was actually constructed in 2018.

7 So the performance of Balfour Beatty, I
8 believe they did what they could do based on the
9 circumstances. I know that on projects like
10 this, they had -- it impacts the subcontractors
11 by not getting them the information to the field.
12 It just happens.

13 I know that the monthly schedule updates
14 may be questioned here and there because you
15 can't get all these design revisions into a
16 monthly schedule. You would have to have five
17 schedules out there and putting it in this
18 review, and you just can't do it.

19 So I'm sure that the monthly schedule
20 updates would be questionable here and there, but
21 overall, I think that Balfour Beatty did what
22 they could to actually deal with the issues on
23 the ground. And I think they staffed it up
24 appropriately and didn't try to minimize the
25 amount of people that they had on the project

1 that I could see that were actually involved in
2 trying to get this project to be -- to come home
3 in 2018.

4 Q. Okay.

5 A. That's it.

6 MR. HILDEBRAND: All right. Thank
7 you. Please answer any questions that Mr. Bundy
8 might have.

9 MR. BUNDY: No questions.

10 THE COURT: Mr. Huyghe, let me ask
11 one question on that last slide. I'm just trying
12 to get a timeline down. I'm in the red boxes.
13 Okay?

14 THE WITNESS: Yeah.

15 THE COURT: I've got architect 1
16 from the start, 2009, and then I've got architect
17 2 coming in in 2009. I've got the height
18 litigation from '10 to '12. And then I've got
19 architect 2 again, and then you end up back with
20 architect 1 in February of '15.

21 THE WITNESS: I saw that this
22 morning.

23 THE COURT: Is that a typo?

24 THE WITNESS: Yeah.

25 THE COURT: That should be

1 architect 2, right?

2 THE WITNESS: Yeah. I saw that
3 this morning.

4 THE COURT: Okay. Architect 1
5 didn't come back?

6 THE WITNESS: I saw that. I didn't
7 think anybody would catch it; so I didn't try to
8 change it.

9 THE COURT: All right. It just
10 threw me off for a second. So I just wanted to
11 make sure I was clear on that. We're using
12 architect 2's drawings from the time --

13 THE WITNESS: Yes.

14 THE COURT: -- he comes onboard,
15 correct?

16 THE WITNESS: Architect 2 is the
17 one that produced those -- the original GMP step
18 on the floor, and architect 2 -- as a result of
19 architect 2 and his work product, is the one that
20 has got big stack down there.

21 THE COURT: Okay. All right.
22 Thank you. That's the only thing I saw that
23 jumped out at me there. Thank you, sir.

24 MR. HILDEBRAND: I would like to
25 move that into evidence, Your Honor.

1 THE COURT: Okay. He wants to move
2 this into evidence.

3 MR. BUNDY: No, I object. It
4 doesn't meet the rule under any civil
5 circumstances. The rule says it has to be
6 admissible evidence.

7 THE COURT: All right. I think
8 that could be treated -- yesterday, we treated it
9 as demonstrative evidence, did we not?

10 MR. HILDEBRAND: I think you
11 admitted it and said it would be -- according to
12 the way that a jury might --

13 MR. BUNDY: What?

14 THE COURT: That's not my
15 recollection. Let's take a break, and I will
16 review it, and I'll get right back to you.

17 MR. BUNDY: Okay. Let's do that.
18 I want to make sure you understand my position as
19 one --

20 THE COURT: Yeah.

21 MR. BUNDY: -- it's not admissible
22 into evidence; and two, it's completely
23 inappropriate demonstrative evidence because it
24 contains hearsay. It contains evidence that is
25 not -- it contains documents. It contains

1 reproductions of documents that are not in
2 evidence, period.

3 I mean, it just -- it can't be evidence
4 in this case. It would be so prejudicial for him
5 to be able to let you go back and look at these
6 charts and have to remember his testimony. I
7 mean, how are you going do that?

8 THE COURT: All right. I will get
9 back to you.

10 MR. HILDEBRAND: I think it's just
11 the opposite, Your Honor. I think that it would
12 be highly beneficial for you to try to -- in
13 trying to remember his testimony.

14 And you don't have to look at all of it.
15 You can -- just like a jury might, you can say,
16 okay, I like this one; I don't like this one.
17 And you can make your own decisions and draw and
18 use what you deem as appropriate.

19 THE COURT: All right. Let's take
20 10 minutes, and I will give you a ruling when I
21 get back.

22 MR. BUNDY: Thank you, Your Honor.

23 (A recess transpired.)

24 THE COURT: Okay. So back to the
25 report that Mr. -- I can't say his name. I guess

1 it's Huyghe. Around here we spell it H-U-G-E-R.
2 Anyway, he's probably somewhere along the line, a
3 French Huguenot, you know.

4 But anyway, what I did yesterday I'm
5 going to do today, which is that I'm going to
6 allow the document to come into evidence with
7 this understanding -- it boils down to the Rule
8 403 balancing test. I find it more probative
9 than prejudicial.

10 However, to the extent that it contains
11 documentation or excerpts of documents which are
12 not in evidence -- and there was plenty of that,
13 as he testified, and I just sort of -- just
14 didn't consider it. That would be stricken.
15 Okay? I'm not going to consider it. I'm not
16 going to go here and strike through everything.

17 But to the extent that it discussed or
18 quoted from documents that are not in evidence --
19 now, in the event that they come into evidence,
20 that would be -- I would alter that. So I'm not
21 going to alter the document. But I'm going to
22 allow the document in evidence. It's
23 demonstrative.

24 It's also helpful to the Court, and I
25 find it to be more probative than prejudicial.

1 To reduce the amount of prejudice, I'm going to
2 not consider it. It would be, I think, the
3 proper term, that language in there, to which
4 references made to exhibits which are not in
5 evidence. Okay.

6 MR. BUNDY: May I make my record?

7 THE COURT: You certainly may.

8 MR. BUNDY: Okay. And, again, and
9 I will rely on State vs. Warner.

10 THE COURT: Got it.

11 MR. BUNDY: There is no doubt that
12 you have very, very, very wide discretion as it
13 relates to the use of that exhibit as
14 demonstrative evidence.

15 The Court says, the trial court is so
16 better attuned to the rhythms of the trial than
17 we are as wide discretion over the choice of
18 whether a summary should be admitted, excluded,
19 or allowed only as a demonstrative aid. So
20 you've got wide discretion all the way through.

21 And I don't believe you have the
22 discretion to not apply the requirement that the
23 underlying documents are admissible in evidence.
24 There are four requirements. One, the contents
25 of the documents will be -- to summary and space

1 are so voluminous, it would be inconvenient to
2 examine them in court.

3 As an example, if you had 50 boxes of
4 data, right, and the guy comes in and he says,
5 did you look at this data? Yes. Was this data
6 collected, is this data a business record? I
7 mean, you would prove that the documents he
8 looked at are independently admissible into
9 evidence. They don't have to be admitted into
10 evidence.

11 THE COURT: Right.

12 MR. BUNDY: That's the whole
13 purpose of the rule, so you don't have all of
14 these boxes, right?

15 THE COURT: Yeah.

16 MR. BUNDY: But you do have to
17 establish and lay a foundation that the documents
18 that are being summarized are admissible. You
19 don't have to offer them. They don't have to be
20 put into evidence, but you have to prove they are
21 admissible.

22 The other thing you have to prove, the
23 summary is a faithful rendering of the underlying
24 data. And, of course, that goes back to giving
25 our opponent, under the rule, the opportunity to

1 look at the stuff. And that's on -- you know,
2 whatever.

3 And four, the origins or duplicates have
4 been reasonably available to the other parties.
5 So you've got four things, and there's just
6 simply no foundation. The witness is gone now.
7 He's off the stand. There's no foundation in
8 this record that the documents he relied on were
9 admissible in evidence.

10 It's irrelevant whether they were
11 actually admitted, but they -- but there was no
12 proof those documents were admissible. Now, if
13 for instance -- may I just continue?

14 THE COURT: All right.

15 MR. BUNDY: If he had given you a
16 summary of the daily reports, I wouldn't have
17 complained. I could not have complained for two
18 reasons. One, they're admissible, and two,
19 they're already in evidence, right? So it's just
20 a matter of proof, Your Honor. It's not a
21 question of me trying to hold the trial up or any
22 of the rest of it.

23 THE COURT: I'm with you. I fully
24 understand.

25 MR. BUNDY: And, you know, I will

1 concede that there's no way that any Appellate
2 Court is going to do anything about you taking
3 this as demonstrative evidence. I don't think
4 there's any chance of that.

5 But I do think there's a chance, under
6 this number 3, that they would take the position
7 it's not admissible in evidence. And that -- it
8 concerns me. I don't want you to make -- I mean,
9 I don't want any errors in this case.

10 THE COURT: I don't want to have to
11 try it again either.

12 MR. BUNDY: I don't either, I
13 really don't. But I do think it would -- in all
14 fairness, it doesn't comply with the rule, and it
15 is prejudicial. Now, in Federal Court, they
16 just -- they passed a rule in the Federal Court,
17 which is fascinating. I don't know if you have
18 seen this rule or heard of it. I call it the
19 take it for whatever it's worth hearsay.

20 THE COURT: Okay.

21 MR. BUNDY: It's the residential
22 exception in Federal Court. A hearsay statement
23 is not included against the admissible -- the
24 statement is supported by sufficient guarantees
25 of trustworthiness after considering the totality

1 of the circumstance which was made, yada, yada.

2 We don't have that rule.

3 THE COURT: Right.

4 MR. BUNDY: Our rules stop at 806.

5 THE COURT: Yeah.

6 MR. BUNDY: Okay. Thank you, Your
7 Honor.

8 THE COURT: All right. Very good.

9 Well, just while we're on the subject, I just
10 want to -- I will just expand further in that, I
11 do think that the -- probably the underlying
12 documents are admissible.

13 They have not been admitted. They've
14 not been proffered into evidence at this point in
15 time. Actually, some of them have been
16 proffered, but I didn't let them in. Okay? But
17 there's a difference between admitted and
18 admissible would be my first thought.

19 My second one is ultimately, in any
20 evidentiary consideration, the Court has got to
21 concern itself with whether or not it's more
22 prejudicial than probative or vice versa. And so
23 I'm allowing the documentation into evidence with
24 the caveat that those items which are not
25 admitted yet, all right --

1 MR. BUNDY: Thank you, Your Honor.

2 THE COURT: -- will not be

3 considered. All right.

4 MR. BUNDY: I appreciate you

5 putting up with me.

6 THE COURT: That's all I can do.

7 MR. BUNDY: I appreciate you

8 putting up with me.

9 THE COURT: Very good. No

10 problem -- I've got no problem with that,

11 Mr. Bundy. I've gotten a few lawyers in the --

12 even in the courtroom telling me that we've been

13 giving them a CLE on evidence. So I'm happy to

14 do it.

15 Listen, this is the best part of my job.

16 Okay? Ruling on evidentiary issues. The hard

17 part is making decisions at the end. But anyway,

18 I find those are a lot easier to do in your live

19 than I do in mine. I'm happy to give you my

20 opinion and my answer when it comes time.

21 All right. With that gentlemen, it's 4

22 o'clock. I do want to press on a little bit.

23 I'm going to go today to the extent we can.

24 Tomorrow, I just want put y'all on notice that

25 I'm going to wrap it up around lunchtime tomorrow

1 because I've got some stuff I've got to get done
2 before the end of the week. So we're going to
3 finish up at lunchtime tomorrow, and we will come
4 back Monday morning.

5 But back to you, Mr. Hildebrand.

6 MR. HILDEBRAND: Thank you, Your
7 Honor. I would like to now introduce the
8 deposition testimony of Kimberly Brown.

9 THE COURT: All right, sir.

10 MR. MCDONALD: And, Your Honor,
11 that was obviously -- this is the -- again, to
12 make the record.

13 THE COURT: This is what y'all --
14 you've already made objections, and I've done
15 that. Anything further?

16 MR. MCDONALD: No, sir. But just
17 to be clear, this is the deposition of Kimberly
18 Brown, the individual deposition --

19 THE COURT: Right.

20 MR. MCDONALD: -- that I objected
21 to earlier, and the exhibits that I objected to
22 earlier.

23 THE COURT: All right. Objection
24 noted for the record, and I think I've already
25 ruled on it. So overruled.

1 All right. Do you want to publish this?

2 MR. HILDEBRAND: Yes, sir.

3 THE COURT: All right. How long do
4 you think this is going to take? I can take it
5 home and read it if it's -- if it's more than 15
6 minutes, I can take it home and read it.

7 MR. BUNDY: The defendants would
8 respectfully request that that's exactly what you
9 do.

10 THE COURT: Yeah. I'm happy to do
11 that. Okay?

12 MR. HILDEBRAND: Your Honor, I
13 would greatly prefer to read it in.

14 THE COURT: Well, I'm going to deny
15 that motion because I can read it myself. All
16 right? And if you want me to make some findings
17 or something about it, I will be glad to give you
18 that report tomorrow. Okay?

19 MR. HILDEBRAND: All right.

20 THE COURT: I will do that. For
21 the record, I do know how to read. That might
22 take the wind out of your sails. I don't know.
23 Do you plan to offer any live testimony tomorrow?

24 MR. HILDEBRAND: Yes, sir.

25 THE COURT: Okay. All right. What

1 else did you have planned for today?

2 MR. HILDEBRAND: I can -- I would
3 prefer to call -- just wait until tomorrow for
4 the next live witness, but I can start if you
5 would like.

6 THE COURT: How long do you -- do
7 you think we could do whoever it is in the
8 morning because that's what I'm going to give you
9 tomorrow. I'm happy to go for another hour or so
10 today just -- and break it out if you'd like.

11 MR. HILDEBRAND: I think we can
12 finish in the morning.

13 THE COURT: Okay.

14 MR. BUNDY: So he thinks he's going
15 to finish his case tomorrow?

16 MR. HILDEBRAND: No, no, no, the
17 next live -- are you talking about the next live
18 witness?

19 THE COURT: The next live witness,
20 yeah.

21 MR. HILDEBRAND: All right.

22 THE COURT: You don't think the
23 plaintiff's case is going to finish tomorrow,
24 though?

25 MR. HILDEBRAND: No, sir.

1 MR. BUNDY: Do we have any idea
2 when that might happen? I mean, I've tried. I
3 haven't cross-examined anybody yet.

4 THE COURT: Yeah, I know. I know
5 the crosses have been the best I've ever heard.

6 MR. BUNDY: Thank you. That's what
7 Mr. Howe told me. That's what I was taught by
8 Mr. Howe. The best cross-examination is none.

9 THE COURT: That's what I told this
10 young lady to my left. Ms. Wilkerson is getting
11 an education. Very few lawyers can leave it
12 alone. But there's a reason for that. I
13 understand trial strategy as well.

14 MR. BUNDY: Thank you.

15 THE COURT: All right.

16 MR. HILDEBRAND: I think we can
17 finish on Monday. So we'll finish the witness
18 tomorrow and then notice the rest of it on
19 Monday.

20 MR. BUNDY: And could we get a list
21 of his witnesses so I can get ready?

22 THE COURT: Sure.

23 MR. BUNDY: If I had a little
24 notice, I could be even faster.

25 THE COURT: Well, your preparation

1 must be awful quick, Mr. Bundy.

2 MR. BUNDY: It is. I saw that
3 guy's report today as you were looking at it. I
4 don't read expert reports. They're ridiculous.
5 I just wait until they put it in.

6 THE COURT: Okay. Who do you plan
7 to call tomorrow?

8 MR. HILDEBRAND: David Simonton.

9 THE COURT: David Simonton. Okay.
10 All right. I've seen his name. And do you think
11 we can get done in the morning? That would be
12 our hope? Is he here today? Is he here this
13 afternoon?

14 MR. HILDEBRAND: Well, particularly
15 based on the cross-examination thus far,
16 definitely.

17 THE COURT: I assume he's going to
18 be the guy putting numbers on the table, isn't
19 he?

20 MR. HILDEBRAND: No, sir. That
21 will be Monday.

22 THE COURT: That will be Monday?

23 MR. HILDEBRAND: Yes, sir.

24 THE COURT: Who is your witness for
25 that?

1 MR. HILDEBRAND: Casey Thompson,
2 the same fellow who's --

3 THE COURT: Okay. Gotcha. He's
4 your -- that's your expert. Okay. Got it. All
5 right. If you want to just do Mr. Simonton
6 tomorrow, I'm happy to wait and go from there.

7 (The hearing concluded at 4:06 p.m.)

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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF DORCHESTER

4 I, Jennifer M. Huggins, Certified
5 Shorthand Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby
7 certify that the witness whose attached in the
8 foregoing hearing was by me duly sworn to testify
9 to the truth, the whole truth, and nothing but
10 the truth in the within-entitled cause; that said
11 hearing was taken at the time and location
12 therein stated; that the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed by computer-aided
transcription; that the foregoing is a full,
complete and true record of the testimony of the
witness and of all objections made at the time of
the examination; and that the witness was given
an opportunity to read and correct said hearing
and to subscribe the same.

Should the signature of the witness
not be affixed to the hearing, the witness shall
not have availed himself/herself of the
opportunity to sign or the signature has been
waived.

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

Witness my hand, I have hereunto
affixed my official seal on June 24, 2022 at
Charleston, Charleston County, South Carolina

20 _____
21 Jennifer M. Huggins
22 Court Reporter And Notary Public
23 My commission expires: 03/15/2032
24
25

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

3
 4 BALFOUR BEATTY CONSTRUCTION,)
 LLC,) VOLUME FIVE
) Case No.
 5 Plaintiff,) 2019-CP-10-1108
)
 6 -versus-)
)
 7 LIBRARY ASSOCIATES, LLC; AND)
 METROPOLITAN LIFE INSURANCE)
 8 COMPANY, A NEW YORK CORPORATION)
)
 9 Defendants.)

10 LIBRARY ASSOCIATES, INC.,)
)
 11 Defendant/Third-Party Plaintiff,)
)
 12 -versus-)
)
 13 LITHKO CONTRACTING, LLC; GUY M.)
 BEATY, INC.; BERNHARD MMC, LLC)
 14 GULF STREAM CONSTRUCTION CO.,)
 INC; PRECISION WALLS, INC.;)
 15 PALMETTO AUTOMATIC SPRINKLER)
 COMPANY, INC.; ET AL,)
 16)
 Third-Party Defendants.)
 17 -----

18 Hearing before the Honorable Mikell R.
 19 Scarborough, reported by Jennifer M. Huggins,
 20 Court Reporter and Notary Public, at 9:00 a.m. on
 21 September 17, 2021 at 100 Broad Street, Courtroom
 22 2A, Charleston, South Carolina.

23

24

25

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

2
3 ON BEHALF OF PLAINTIFFS:

4 PARKER POE ADAMS & BERNSTEIN, LLP
5 BY: THOMAS HILDEBRAND, JR., ESQ.
6 BY: ROBERT C. BYRD, ESQ.
7 200 Meeting Street
8 Suite 301
9 Charleston, SC 29401
10 (843) 727-6315
11 Tomhildebrand@parkerpoe.com
12 Bobbybyrd@parkerpoe.com

13
14 ON BEHALF OF DEFENDANT LIBRARY ASSOCIATES:

15 BUNDY MCDONALD, LLC
16 BY: WALTER H. BUNDY, JR., ESQ.
17 BY: M. BRENT MCDONALD, ESQ.
18 1516 Old Trolley Road
19 Second Floor
20 Summerville, SC 29485
21 (843) 492-0221
22 Walter@bundymcdonald.com
23 Brent@bundymcdonald.com

24 ON BEHALF OF DEFENDANT WATSON ELECTRICAL:

25 SMITH TERRY JOHNSON & WINDLE
26 BY: DON R. TERRY, ESQ.
27 150 Milestone Way
28 Suite C
29 Greenville, SC 29615
30 Dterry@smithterrylaw.com

31 ON BEHALF OF DEFENDANT OLD NORTH STATE & LITHKO:

32 SMITH TERRY JOHNSON & WINDLE
33 BY: STEELE B. WINDLE, III, ESQ.
34 150 Milestone Way
35 Suite C
36 Greenville, SC 29615
37 Awindle@smithterrylaw.com

1

ON BEHALF OF DEFENDANT DAVID ALLEN COMPANY:

2

KELLY LAW FIRM, LLC

3

BY: RUSSELL BRITTON KELLY, ESQ.

689 King Street

4

Charleston, SC 29403

Britt@kellylawsc.com

5

6

ON BEHALF OF DEFENDANT METROPOLITAN LIFE:

7

BUIST BYARS & TAYLOR, LLC

BY: G. HAMLIN O'KELLEY, ESQ.

8

652 Coleman Boulevard

Suite 200

9

Mt. Pleasant, SC 29464

Hamlin.okelley@buistbyars.com

10

11

12

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1 THE COURT: All right, folks, are
2 you ready?

3 MR. HILDEBRAND: Yes, sir.

4 THE COURT: Okay. All right.

5 MR. HILDEBRAND: Thank you, Your
6 Honor. The plaintiff would call Nick Starcevic.

7 THE COURT: All right.

8 Mr. Starcevic, come on forward, sir.

9 (NICK STARCEVIC, having first been
10 duly sworn, testified as follows:)

11 THE COURT: Your full name and
12 address for the record.

13 THE WITNESS: Nicholas Robert
14 Starcevic, 927 Night Heron Drive, Mt. Pleasant,
15 South Carolina 29464.

16 THE COURT: All right. And, Nick,
17 spell your last name for me.

18 THE WITNESS: S-T-A-R-C-E-V-I-C.

19 THE COURT: Starcevic, just like it
20 sounds.

21 THE WITNESS: Yes, sir. First
22 time. Rolls off the tongue, right?

23 THE COURT: There you go.

24

25

1 DIRECT EXAMINATION

2 BY MR. HILDEBRAND:

3 Q. All right. Mr. Starcevic, I appreciate
4 you being here today. And I will try to move
5 through this fairly quickly.

6 MR. HILDEBRAND: Your Honor, I
7 promise I'm not going to ask him to describe BIM
8 for you so we can move forward.

9 THE COURT: Okay.

10 BY MR. HILDEBRAND:

11 Q. All right. Where are you from?

12 A. What's that?

13 Q. Where are you from originally?

14 A. I was born outside of Philadelphia. It
15 was a small town called Fox Hound. I moved to
16 Charlotte, North Carolina at the age of four.

17 Q. Okay.

18 A. And consider myself from Charlotte. I
19 spent pretty much my whole life there until I
20 moved down here.

21 Q. Ok. How old are you?

22 A. 34.

23 Q. All right, sir. Where did you go to
24 school?

25 A. University of North Carolina Chapel

1 Hill.

2 Q. What is your degree in?

3 A. It's a management and society degree.
4 It's kind of like a business management degree.

5 Q. Okay. Tell me what your work history
6 has been since you finished school. And that was
7 in what year?

8 A. 2009.

9 Q. 2009. All right.

10 A. Yeah. So I worked for a radio agency,
11 selling radio advertisements for about eight
12 months. At the time, the construction and
13 development industry was not -- in 2009, was not
14 booming, but about eight months later, I decided
15 I didn't want to sell radio advertising, and I
16 found a job with Balfour Beatty.

17 Q. All right. So what did you do -- so
18 that would take us to 2010.

19 A. That's right, late 2010.

20 Q. All right. So tell me how you got
21 started and what you did with Balfour Beatty and
22 how you worked up to your -- the position that
23 you were in performed by Hotel Bennett?

24 A. I started as a coordinator; so anyone
25 without a construction degree typically comes

1 into the industry as a coordinator. I did
2 anything and everything from being on-site,
3 running submittals, RFIs, process and invoices, a
4 lot of grunt work to kind of get to the ground
5 work for the industry.

6 Q. When you say, anybody that comes to work
7 for the industry, do you mean Balfour Beatty?

8 A. In Balfour Beatty, if you -- typically,
9 an entry-level position with Balfour Beatty,
10 you've got to have a construction management
11 degree or an engineering degree. It is -- you
12 enter as a project engineer.

13 Q. Okay.

14 A. I didn't have a construction management
15 degree. I didn't have an engineering degree. So
16 I entered as a project coordinator. So I spent
17 the first 10 to 12 months on sites, working with
18 crews, managing crews, monitoring installations
19 of all -- mostly small projects.

20 We installed some rooftop units. We did
21 some interior renovations, a lot of smaller jobs
22 that I could, you know, kind of get involved with
23 a little bit more and learn the process from
24 start to finish. And then about -- I think it
25 was about 10 to 12 months later, I was promoted

1 to a project engineer.

2 Q. All right, sir. With Balfour Beatty, is
3 it just kind catch as you can far as the -- just
4 strictly on-the-job training as far as training
5 of its personnel as they move through the ranks,
6 or is there a particular kind of structure with
7 classes and that sort of stuff? Describe that
8 for me, please.

9 A. Well, that was one of the more appealing
10 parts about Balfour is the amount of resources
11 that they invest in their employees. They've got
12 a pretty robust training program.

13 Q. Right.

14 A. When I started, there was a requirement
15 for training every year. I believe it was 10
16 hours, and everyone throughout the company had to
17 at least have 10 hours of training, whether --
18 and that was kind of subject to your manager.

19 Whether that was training on how to
20 process RFIs, you know, on how to process a
21 submittal, training on how to review a pay app,
22 or we get a lot of trade specific training. You
23 know, you could set up a training with a
24 mechanical subcontractor, electrical
25 subcontractor, learn a little more about their

1 trade. So there was a minimum you had at least
2 of 10 hours a year outside of your day-to-day.

3 Q. Okay. And maybe I'm jumping ahead a
4 little bit, but are there, outside of those --
5 gosh, we have some in the legal field called
6 CLEs, continuing legal education credits you have
7 to make. It sounds you have -- it's kind of
8 similar to what y'all have got, 10 hours that
9 you're expected to make?

10 A. We have 10. I think that went away
11 maybe six years ago. It was more subject to --
12 instead of forcing training, it was more subject
13 to your manager. But there's always a desire
14 within Balfour to continue education, and there's
15 not requirement anymore as far as I know.

16 Q. Okay. During just the course of
17 business over the year with Balfour Beatty, are
18 there continuing -- do y'all have seminars where
19 people will come in and they'll give you --

20 A. They call them lunch and learns,
21 seminars.

22 MR. BUNDY: Objection. He's
23 leading the witness, Judge. Objection, leading.

24 THE WITNESS: What is that?

25 MR. HILDEBRAND: Your Honor, I'm

1 just trying to get through it. It's background.

2 THE COURT: Just go ahead and get
3 through it.

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

6 MR. HILDEBRAND:

7 Q. What sort of seminars and what sort of
8 programs do you have during the year as far as
9 continuing training and such?

10 MR. BUNDY: Objection, personal
11 knowledge. He certainly can ask him what he did
12 and what seminars he went to. But the fact that
13 Balfour Beatty was having a seminar on how to put
14 together the Eiffel Tower, if he wasn't there, it
15 doesn't -- it's not relevant to this case.

16 THE COURT: Okay.

17 MR. BUNDY: So I object.

18 THE COURT: All right. Just what
19 type of training did he have.

20 MR. HILDEBRAND: All right.

21 BY MR. HILDEBRAND:

22 Q. They're talking about the Eiffel Tower,
23 but tell me about the training that you had and
24 then what you did and what your experiences were
25 while you were with Balfour as far continuing

1 training was concerned?

2 A. Sure. We had lunch and learns pretty
3 much across the board for every trade,
4 mechanical, electrical. Some was more formal
5 than others. We would bring in kind of some of
6 our key subcontractors, set up, you know, what
7 is -- what is conduit? What is wire? What are
8 the different sizes of the wire? Where are the
9 connections made?

10 And that was kind of all trades. We had
11 legal training, and we had project management
12 training. We had off-site seminars every year
13 for your -- you know, the project engineers. We
14 had project engineer training where you went and
15 spent two days off-site together.

16 Q. Did you have like a retreat?

17 A. Like a retreat, yeah. That was at least
18 annually, where you'd get together, you'd learn
19 how to better do your job, how to -- you know,
20 what -- if you're a project engineer, what a
21 senior project engineer would do. If you're a
22 senior project engineer, what a project manager
23 would do or an assistant project manager would
24 do. Just always trying to learn more and prepare
25 better.

1 Q. Okay. How often -- you mentioned lunch
2 and learns. How often were those kind of more ad
3 hoc or --

4 A. Monthly, bimonthly. It kind of
5 depended on -- in Charlotte, where our
6 headquarters was, we would have them monthly, if
7 not more frequently. Down here in Charleston,
8 where we were -- had a smaller group and not as
9 many people that could come in, a smaller
10 subcontractor base, we would do it more
11 frequently, maybe quarterly where we set up the
12 lunch for the whole team to come in and do a
13 lunch and learn or the post-work kind of meeting.

14 Q. Okay. All right. I interrupted your
15 progression just a little bit. So I think that
16 you told -- you explained that your -- after
17 about nine months or so, you became a project
18 engineer?

19 A. That's right.

20 Q. All right. And tell me what you did
21 after that.

22 A. More the same. A little bit more of an
23 expanded role, where we started -- we were
24 working on the bank tower downtown, the 1BAC
25 30-story bank tower for Bank of America.

1 Q. Where is this? Is this in Charlotte?

2 A. In Charlotte.

3 Q. Okay.

4 A. Yes, sir. We were fitting, doing the
5 upfit for -- I believe when I came on, it was the
6 14th floor up through the 30th. So I, at the
7 time, was responsible for the FF&E coordination
8 and the signage coordination. That was kind of
9 my first task.

10 Q. Okay.

11 A. And once I kind of got my -- got the
12 ball rolling there, I took on a little bit more.
13 I started handling the punch lists. I started
14 handling a little bit of trim-outs, MEP
15 trim-outs. More on the back end, the finish side
16 of the things.

17 Q. When you say MEP, what --

18 A. Hanging lights, making sure the lights
19 are hung in the right place, making sure the
20 right fans are hung, making sure the mechanical
21 is trimmed out.

22 Q. I think the Judge probably -- I probably
23 should have done a chart with all of the
24 acronyms. What is MEP?

25 A. Mechanical, electrical, and plumbing.

1 Q. All right.

2 A. So, you know, making sure that if
3 a Kohler faucet was spec, that a Kohler faucet
4 was installed. Making sure the -- if that
5 chandelier was spec, that that's the one that got
6 hung.

7 Q. Okay.

8 A. So that was kind of, as I expanded -- I
9 kind of work backwards. I worked from the
10 finished side towards the rough-in side.

11 Q. All right. So this would take us -- and
12 you did that for about how long?

13 A. About 10 to 12 months, in that range.

14 Q. And what next?

15 A. So we did the Merrill Lynch upfit on the
16 29th floor at 1BAC, and that was kind of --

17 Q. In Charlotte?

18 A. In Charlotte, the same building.
19 Extremely high-end finish that I was involved
20 from the -- from day one to completion. That
21 took, I think, about seven to eight months.

22 Q. Okay. And that would bring us to about
23 when? About what year?

24 A. 2011, late 2011.

25 Q. All right.

1 A. And we did -- I was on what we
2 called the SPG team or special projects group,
3 which is typically under -- anything under 10
4 million bucks.

5 And then we went and did an upfit for a
6 group called United Technologies. They are
7 aerosciences division in Charlotte. It was a
8 four-story restack, similar -- a little bit of
9 demo, a lot of moving walls, all new finishes.

10 Q. All right. Without going through each
11 project to try to speed things along, can you
12 just tell the Judge, if there were some major
13 ones you worked on, kind of what your experience
14 progression was and your -- the differences in
15 your responsibilities as they evolved up to the
16 time that you got involved with the Hotel
17 Bennett?

18 A. So I went from about a million dollar
19 job and the upfit to United Technologies, which
20 was about a 5 or 6 million dollar job. After we
21 completed that, I was offered the opportunity to
22 come down to Charleston. We built a 360 unit
23 apartment complex on Daniel Island from ground
24 up.

25 Q. What was that? Do you remember the

1 name?

2 A. It's called -- I'm drawing a blank.

3 Q. No problem. Regardless, a 360 --

4 A. 360 unit apartment complex on Daniel
5 Island.

6 Q. And what was your job title then?

7 A. So I was an -- I was promoted to an
8 assistant project manager and was kind of -- Tim
9 Spano and I were kind of first boots on the
10 ground, getting things running.

11 Q. So Tim was your superior at that point?

12 A. Tim was my superior, yeah, on that
13 project. Tim was managing two projects. One in
14 Charlotte and one in Charleston. He had -- about
15 a couple months into the job, he relocated to
16 Charleston.

17 But we, you know, got the thing running
18 and handled it from contract execution all the
19 way to completion, and that -- really, that
20 ran -- it was about two and a half years, two and
21 a half to three years until we got to Hotel
22 Bennett.

23 Q. Okay. Was that job finished on time?

24 A. It was.

25 Q. On budget?

1 A. It was on budget.

2 Q. Were there any major changes that you
3 recall on that project?

4 A. There were changes but nothing
5 significant. Mostly finish upgrades. I mean,
6 there were obstacles, right, but most of them
7 were within the confines of what we typically
8 expect on a project. You know, didn't relocate.
9 You know, it was all fairly simple, within the
10 structure that we originally set forth.

11 Q. Did you enjoy your job?

12 A. I loved it.

13 Q. What do you like about it?

14 A. You get to see something from start to
15 finish. You know, it evolved. And we really had
16 a fun time in Charleston. We built a team. We
17 built a lot of comradery. We were, at the time,
18 kind of on an island. We had an opportunity to
19 build somewhat of an office, and you're involved
20 with all kinds of people.

21 You're -- one minute, you're talking to
22 the guy that swings the hammer. The next minute,
23 you're talking to the developer that -- you know,
24 and the bank that just had a different level of
25 understanding on a project. So you talk to all

1 kinds of people, and you invest a lot of time and
2 effort into what you're doing.

3 Q. Are there challenges that arise on a
4 construction project on just a daily basis or
5 weekly?

6 MR. BUNDY: Objection.

7 THE COURT: Basis? What is the
8 basis for the objection?

9 MR. BUNDY: Oh, I'm sorry, leading.
10 He is leading his witness.

11 THE COURT: Leading? I'm going to
12 allow it. Go ahead.

13 THE WITNESS: Yeah, there are
14 challenges. There are challenges on every
15 project, big, small. It's -- a lot of what we do
16 is manage problems.

17 If there weren't any problems, they
18 wouldn't need us. So we're, you know, managing
19 whether it's -- did a submittal come that was
20 submitted incorrectly? Did it get put in the
21 wrong place? Is the -- there's a challenge every
22 day.

23 BY MR. HILDEBRAND:

24 Q. What enjoyment, if any, do you get out
25 of resolving those challenges as part of your

1 job?

2 A. It's a --

3 MR. BUNDY: Objection, relevance.

4 THE COURT: I'm going to allow it.

5 Go ahead.

6 THE WITNESS: It's a rush. A lot
7 of times there's time constraints. A lot of
8 times there's -- you've got to get a problem
9 figured out so it doesn't impact what's going on.
10 And we -- you've got to dive right in.

11 You never know what you're going to run
12 into that day. You never know who is going to
13 come in with, you know, their own set of plans,
14 who's going to come in with having a bad day,
15 who's going to accidentally put a hole in the
16 wall. And you've got to maintain a schedule.
17 You've got to figure out how to get that problem
18 or challenge figured out so it doesn't impact the
19 schedule.

20 And that's a rush. I mean, there's a
21 lot of -- there's a lot of, you know, hard
22 conversations, a lot of, you know, talking to a
23 lot of different people, making sure people are
24 being productive. There's -- it's a dance. We
25 used to call it a dance.

1 BY MR. HILDEBRAND:

2 Q. Okay. So that brings us up to the Hotel
3 Bennett. So what was your first involvement with
4 this project?

5 A. I spent about -- towards the end of the
6 Daniel Island project -- it's called Simmons
7 Park, by the way. I spent about the last three
8 months -- three to four months kind of -- they
9 opened up where they were. Bennett was -- I
10 wasn't involved in the hole -- when they had the
11 hole below grade. I came on after they had
12 poured the first floor slab.

13 Q. Okay.

14 A. So I spent about three months in overlap
15 in closing out Simmons Park and starting Hotel
16 Bennett. I was just getting caught up to speed,
17 reading the plans, catching up to -- finding out
18 who the players were, reading submittals, reading
19 archives, kind of understanding where we are,
20 getting involved with the schedule.

21 And then my first involvement was, we
22 were pouring, I believe, level one or level two,
23 I believe. We were pouring concrete on level
24 two.

25 Q. Let me stop you there for a second.

1 What was your job title at this point?

2 A. I was a project manager.

3 Q. Okay. So you had evolved from -- what
4 was the --

5 A. Assistant project manager.

6 Q. Right, going from an engineer to?

7 A. Senior project engineer. I was a senior
8 project engineer when I started the Simmons Park
9 project.

10 I was promoted to an assistant project
11 manager by the end of that project. At the end
12 of that project -- or at some point in that
13 project, I was promoted to an assistant project
14 manager. By the end of that project, I was
15 promoted to a project manager.

16 Q. Okay. And what are the general
17 responsibilities of the project manager? How was
18 that defined or I guess, in actuality, what are
19 your job responsibilities? What were they with
20 Balfour as a project manager?

21 A. Got on our hands on everything. We
22 manage the buyout process, which is -- we manage
23 soliciting business with subcontractors.

24 We manage negotiating the contract with
25 the subcontractors, the business terms of the

1 contract, the price of the subcontract. We
2 manage the RFI submittal process. We're
3 ultimately responsibility for that. We assist in
4 the -- in putting together the schedule.

5 Q. When you say RFIs, what are those?

6 A. Requests for information.

7 Q. Okay.

8 A. If we don't know how to do something or
9 the plans are unclear or if we think there's a
10 better way to do it, you can submit an archive,
11 which is an official change to the contract
12 documents.

13 Q. Okay. And to whom is the RFI submitted?

14 A. We submit it to the -- submit it to the
15 architect, and we copy the entire -- the design
16 team. So the design teams, the architect,
17 owner's representative, owner designers where
18 applicable and the interior designers where
19 applicable, and the engineers.

20 Q. Okay. There's been some discussion from
21 Tim Spano about kind of a general division
22 between people in the field and people in the
23 office; is that correct?

24 MR. BUNDY: Objection, leading.

25 Objection, leading. And he is asking one witness

1 to collaborate the sworn written testimony of
2 another.

3 MR. HILDEBRAND: I will withdraw
4 it, Your Honor, and I will restate it.

5 THE COURT: Okay.

6 BY MR. HILDEBRAND:

7 Q. All right. What division, if any, is
8 there on a project or like the Hotel Bennett
9 as -- between the field people and the office
10 people?

11 A. There's certainly division in your
12 ultimate responsibility. There's a lot of
13 collaboration, right? We have an on-site office.
14 We spent a lot of time in the office. We highly
15 recommend our -- so there's the management side.

16 If you have got an engineer that -- if
17 you're a project engineer on the management side
18 or assistant project manager or a project
19 manager, you're considered office. If you're a
20 superintendent, assistant superintendent, the
21 project engineer on the field side, you're
22 considered field.

23 There's certainly division in your
24 responsibilities and where you're spending the
25 majority of your time. The office side is

1 spending a lot of their time processing
2 paperwork, getting information from the
3 subcontractors, you know, getting submittals,
4 getting schedules, processing their RFIs,
5 requesting change orders, moving -- more moving
6 paperwork.

7 On the field side, they're the ones that
8 are often generating RFIs in the field and, hey,
9 this doesn't fit. The plans don't show me how it
10 does fit. Hey, Nick, hey, you know, Alec, can
11 you submit this to the architect and get
12 direction on how to install it.

13 Q. Okay.

14 A. They're the ones that are dealing with
15 the daily coordination of the subcontractors,
16 making sure people show up, making sure people
17 are on time. They're ultimately responsible -- I
18 say ultimately.

19 They're responsible for the day-to-day
20 scheduling. I always equated it to, the office
21 side is responsible for getting everything they
22 need to build the project. So we fed that -- the
23 field the information, and the field, if there's
24 an issue, tell us there's an issue, and we try to
25 resolve it, in simplistic terms.

1 Q. Okay. And so would you actually draft
2 the RFI that went from Balfour to the architect?

3 A. Sure. We had -- I -- if there were 2000
4 RFIs, which I probably drafted 10 percent of
5 them. I reviewed most of them. But we had a
6 team of -- a team of folks that drafted RFIs,
7 drafted submittals.

8 So actually drafting them, I probably
9 only drafted 5 to 10 percent. The assistant
10 project manager, senior project engineer, project
11 engineer, project coordinators usually drafted
12 most of them, compiled all of the information.

13 And then we would sit as a team, review
14 them. A lot of times we'd throw them out. A lot
15 of times we'd say, this doesn't need to go to the
16 architect. We can figure this out ourselves.
17 And we'd work as a team to figure out that.

18 Q. Okay. So was the Hotel Bennett a
19 complicated job?

20 A. Yes, very.

21 Q. So it sounds like -- is there a lot of
22 information that has to be assimilated and
23 orchestrated in order for the job to progress?

24 A. Yes.

25 Q. Describe that. Describe the mass of

1 information to the Judge that has to be -- on a
2 daily basis, assimilated and orchestrated to keep
3 this project moving on time with scheduling.

4 A. Yeah. So what I described before, the
5 field has to understand what to build. If it's
6 not on the plans and it's not -- and the
7 architect does not -- or designer, if it's not on
8 the construction set of documents, then you can't
9 ask a guy that's coming from another project to
10 know where to put something if it's not on the
11 plans.

12 MR. BUNDY: Objection. Now, Your
13 Honor, he's not been offered as an expert
14 witness. He obviously doesn't have the
15 experience at the time he took on this job. He
16 obviously didn't have the experience for the job
17 that they gave him to do.

18 But more than that, he's now telling you
19 how the architect and the process works. I mean,
20 I just don't think he's qualified to do that. I
21 mean, he hadn't been offered as an expert
22 witness. We've had plenty of -- we've had plenty
23 of people up here who are experts, and they could
24 testify to all of this.

25 THE COURT: Okay.

1 MR. BUNDY: This gentleman has
2 simply not been qualified as an expert. Thank
3 you, Your Honor.

4 THE COURT: Okay. I think what
5 he's driving at is what was his experience on
6 this particular --

7 MR. HILDEBRAND: Exactly right,
8 Your Honor.

9 THE COURT: Okay. All right.
10 BY MR. HILDEBRAND:

11 Q. What was your -- I'm not asking you to
12 offer an opinion about who might be working down
13 the street or who might be working on the Eiffel
14 Tower.

15 I'm asking about your experience on this
16 job, about coordinating and orchestrating the
17 mass of information that was necessary to get
18 this job finished. Tell us about that. That's
19 what the Judge wants to hear about, your
20 experience.

21 A. Okay. We -- it was an intense
22 experience. We had a ton of information to
23 process. We were -- can you ask the question
24 again?

25 Q. Yes.

1 A. I'm trying to understand what I'm --
2 what I'm allowed to opine on.

3 Q. Right. I'm not asking you about what
4 challenges you had later in the project. What
5 I'm simply asking you to convey to the Judge is
6 your experience of the -- what amount of
7 information there is that has to be assimilated
8 and orchestrated in order for the project to move
9 forward in a smooth fashion.

10 A. Gotcha. So we've -- there's a ton of
11 information. We've got to assimilate all of the
12 drawings. We've got to keep the drawings
13 organized, so all of the contract documents,
14 we've got to keep organized. We've got to
15 distribute them to the project team.

16 Q. Does Balfour have processes and
17 procedures for each of these items?

18 A. Yes, we do. We've got -- and we've got
19 a construction management system that manages
20 those documents.

21 We've got a document storage, digital
22 documents are a cloud-based system that holds all
23 of our documents. There's a process for
24 distributing documents, and there's a
25 management -- a construction management system

1 that is -- we distribute and track our documents
2 in.

3 Q. It just seems like a lot of information
4 to keep straight on. I'm just asking you to
5 explain what -- kind of what the process -- what
6 y'all have internally to keep all of that
7 information in.

8 A. It's called -- a system called
9 Constructware. If we get -- we have a base set
10 of plans, if we get a change, you take it, load
11 it and distribute it to all our subcontractors.

12 Q. Okay.

13 A. That -- depending on what type of change
14 it is, if it is a directive, we distribute it and
15 direct everyone to proceed. If it's a request
16 for pricing, we distribute it and request
17 pricing.

18 If it's an RFI, which we generally
19 start, we initiate, and send that to the
20 architect. The architect sends it back. We
21 distribute that to the team and get it back. And
22 whatever -- if there's a price impact or if
23 there's cost impact -- a cost impact or a
24 schedule impact, we get that information, compile
25 that information.

1 Submittals, oftentimes we -- we always
2 got submittals from the subcontractors. They
3 would come in. We would submit them. We'd
4 review them and submit them to the design team,
5 the architect or engineers. If it was approved,
6 we'd send it.

7 If it was reviewed with markups on how
8 to do it a different way or change what we were
9 supposed to do that was happening a lot, we would
10 get a submittal that was based on what the -- the
11 drawing said and send it to the design team.
12 They would send it back and say, do it
13 differently in a submittal.

14 So then we would have to take what they
15 told us to do, send it to the subcontractors,
16 figure out who all this impacted, compile that
17 information and then resubmit. And so we managed
18 that whole process.

19 Q. So you have the work that's being at one
20 end, the guy driving the hammers at one end,
21 actually doing the work, but can you describe --
22 can you just describe the -- that's all the
23 background work that would need to be done before
24 the actual work gets started. Is that a fair
25 statement?

1 A. That's right.

2 Q. All right. So I interrupted you a
3 little bit earlier, and I want to go back. So
4 you started this project in -- was it in 2015?

5 A. I think so. There -- it was when we
6 were pouring the second floor slab is when I came
7 over.

8 Q. All right. And did you tell me that you
9 spent about two or three months reviewing the
10 project documents before you actually had the
11 boots on the ground?

12 A. That's right.

13 Q. What was the reason for that?

14 A. Just to get familiar with it. So I
15 wasn't coming in day one and -- with no
16 understanding of the project. So I had time to
17 understand the schedule. I had time to get
18 familiar with who the subcontractors were. I had
19 time to get familiar with how the RFI process,
20 how the submittal process was working.

21 It's a lot easier if you know what
22 you're getting into prior than -- than just
23 showing up with no idea of who the players are,
24 how the document -- you know, moving works. It's
25 just a lot easier to understand that before you

1 come in.

2 Q. Okay. And let me back up just quickly.
3 As far the -- how you progress at Balfour Beatty,
4 how an individual progresses from project
5 engineer to the next step to the next step. Is
6 there a defined amount of time that you -- after
7 three months, you get promoted; after six months,
8 you get to the next one? Tell me how that is
9 decided and whether -- how a person is deemed
10 qualified and able to move to the next step.

11 A. It's all based on merit.

12 MR. BUNDY: Objection. This
13 witness has not -- has not been shown to have the
14 personal knowledge of how the promotion schedule
15 within BBC goes. I mean, he is not an executive.
16 He's not in a managing position.

17 I mean, he may not have any idea. I
18 mean, a lot of people that work for me have no
19 idea what my promotion schedule is, okay, and I
20 don't want them to know what it is. So until he
21 gives us some foundation for knowledge of this, I
22 believe it's an objectionable question. Thank
23 you, Your Honor.

24 MR. HILDEBRAND: Your Honor, my
25 response would be twofold. One, he is in the --

1 was on the management team on this particular
2 project, and he did work for Balfour for a number
3 of years.

4 So he certainly has personal knowledge
5 about how -- I'm sure that he had input into how
6 people beneath him were promoted. So I can go
7 through all of that if you -- may I finish,
8 please.

9 MR. BUNDY: Go ahead and finish.

10 MR. HILDEBRAND: So he can testify
11 about that, but, Your Honor, I will tell you
12 what, I would like to maybe reread the -- and I
13 don't mean to cut Mr. Bundy off, but I do want to
14 try to -- I know we've got a new deadline, but
15 I'd like to try to move through this fellow.

16 I would like to ask for the Court's
17 assistance in admonishing or enforcing the rule
18 that, if there's an objection, that you just
19 object, and if you want additional clarification,
20 then you can ask for that.

21 Because otherwise, these long speaking
22 objections, I don't think that they're
23 appropriate under the rules, and I don't think
24 it's going move the case along. So if we could
25 get back to that. If I could have some direction

1 from the Court on that, I would appreciate it.

2 MR. BUNDY: I stand admonished, and
3 I apologize to the Court.

4 THE COURT: Thank you. All right.
5 Very good. Okay. The objection was as to the
6 foundation; so we can lay some of that.

7 MR. HILDEBRAND: All right.
8 Certainly.

9 BY MR. HILDEBRAND:

10 Q. Did you have involvement, while you were
11 with Balfour, on the progression of -- or the
12 evaluation of your subordinates in whether they
13 were deemed qualified by the company to progress
14 from one level to another?

15 A. Yes, a hundred percent.

16 Q. Okay. Tell me about that. How was
17 that --

18 A. There was a management structure. So as
19 a project manager, everyone that was an assistant
20 project manager or below fell under my -- not
21 discretion because there were other folks that
22 would be -- but, ultimately, the assistant
23 project manager, I felt, or the senior project
24 engineer, I felt was ready for a promotion, I
25 would make that recommendation.

1 I led the review process. I led -- I
2 filled out the review. I conducted the review,
3 oftentimes with my superior, oftentimes with
4 other folks on the project that were superior to
5 that person. But I absolutely had a part in
6 promoting, recommending promotions, recommending
7 annual increases in pay, all of that as a project
8 manager.

9 Q. Do you have any gray haired fellows who
10 were in lower leveled positions at Balfour
11 because they haven't progressed?

12 A. Yes. There are certainly folks that are
13 older and with different experiences that haven't
14 progressed to -- as quickly as -- you know,
15 everybody has got their own speed. Everybody has
16 got their own qualifications. It's a merit
17 basis.

18 I mean, it's based on reviews.
19 Ultimately, your leadership, your executive, your
20 president has the ultimate say on who is
21 promoted. And depending on what positions
22 they're being promoted to. It varies on who has
23 got the authority to provide that promotion.

24 Q. All right. And I want to go through
25 this very briefly because I know the Judge has

1 heard a lot. And I want to try to progress very
2 quickly. So you got involved with the -- after
3 the first floor; is that correct?

4 A. That's right.

5 Q. All right. And you were there until the
6 completion of the job?

7 A. Yes, sir.

8 Q. All right. So let me ask you this: Are
9 changes something that come up in just about any
10 job?

11 A. Yes. They're expected.

12 Q. All right. Does the owner have the
13 right to make changes?

14 A. Absolutely.

15 Q. Are there some changes that are -- that
16 add costs and some that don't?

17 A. Yes.

18 Q. All right. If there are -- tell me
19 about what the range of changes might be from --
20 or just to give an example, say on this hotel,
21 what a minor change might be would have little
22 impact to a major change that might have a more
23 significant impact.

24 A. A minor change could be a -- the lights
25 do not -- are not shown centered in the corridor

1 or aligned with the sprinkler heads. Do you want
2 those aligned?

3 Q. Okay.

4 A. You know, that minor change. Or the
5 carpet is a red carpet. We want a grey carpet.

6 Q. All right.

7 A. That minor change. The finish change is
8 not a problem, easy to, you know, wrap up. A lot
9 of that stuff is done in submittals with a quick
10 RFI. You move on. If there's a cost impact,
11 we'll submit the cost impact and move on.

12 Q. Okay.

13 A. Major change, you're halfway through the
14 project. You take --

15 Q. Well, just describe, what was one on
16 this job? What would you consider a major
17 change?

18 A. We were halfway through the structure,
19 and we converted guest rooms into suites. So
20 you're talking about moving walls. You're moving
21 rough-in. You're moving -- it's just -- the
22 events to do that are just drastic. It impacts
23 things you've already done.

24 It impacts things you're going to do in
25 the future. It impacts the prefabrication of the

1 material that has already been submitted and
2 approved and is on the way -- is on the way to
3 the job. That's the mechanical subcontractor.
4 It's the plumbing subcontractor, the electrical
5 subcontractor. It's got prefabricated brackets
6 that sit in the wall. They've got to now
7 refabricate or modify them on-site.

8 Q. I hate to cut you off, but I think the
9 Judge has been well versed on exactly what all
10 the impacts were. But let me ask you this: Does
11 the owner have the right under the contract --
12 under this contract to make changes like that?

13 A. Yeah. The owner can make any change
14 they want.

15 Q. Okay. And there's a process for that?

16 A. That's right. They -- there's a number
17 of ways they can do it. They can submit -- they
18 can send an RFV, which is a request for pricing.

19 Q. Okay.

20 A. For us to evaluate the change. They can
21 send an ASI, which is an architect supplemental
22 instructions -- it's really not supposed to be a
23 change.

24 Q. Well, what is -- and we've read through
25 this when I read through sections of the contract

1 with the Judge. But what is an ASI supposed to
2 be?

3 A. It's supposed to be a supplement to the
4 information. If there is not enough information
5 to do something, and it says on the ASI, there is
6 not supposed to be a time or cost impact.

7 Q. Okay.

8 A. So that is supposed to be a vehicle for
9 them to supplement the information that there's
10 not enough on the plans. That was not how that
11 was used. Those were used to make significant
12 changes to the project.

13 Q. So ASIs are not supposed to have time or
14 cost?

15 A. That's right. It says on there. When
16 they send it to us, it's not supposed to have
17 time or cost.

18 Q. Okay. But those were used as change
19 orders, so to speak?

20 A. Absolutely, yeah. They were -- they
21 were used to move. They were used to -- there
22 was absolutely a cost impact and a time impact to
23 ASIs.

24 Q. Was there a point on this job where
25 Balfour said, no more ASIs or where it started

1 adhering to the contract requirement that ASI not
2 involve time or cost?

3 A. Towards the end of the project, when,
4 you know, things were getting a little -- we were
5 continuing to get ASIs, continuing to get -- and
6 we're trying to finish the project and changes
7 are continuing to come.

8 Finally we say, guys, we've got to
9 finish the project, and you keep changing it.
10 That's your right, but you can't use this vehicle
11 to do this anymore. You can't just keep sending
12 us ASIs that are -- we're pricing -- we're
13 proceeding with the work.

14 We're pricing the work, and then we're
15 getting in this long drawn out change order
16 review process that's just not getting -- that's
17 not getting settled in a timely fashion.

18 Q. Okay.

19 A. So we said -- we said, no. We said, if
20 you want us to make a change, we've obviously are
21 having problems settling on the cost of things
22 and getting change orders executed.

23 Q. Right.

24 A. Send us a CCD, which is a construction
25 change directive.

1 Q. Which, I guess, segues into the next way
2 that a change can be made. Do you have an
3 architectural supplemental instruction? What
4 would be the next way that a change could be
5 implemented?

6 A. Another way is a CCD, a construction
7 change directive.

8 Q. What is that?

9 A. It's -- there's, I think, three ways
10 that they can issue a CCD. But it's basically a
11 directive, got to do it. We were doing them on
12 this project on time and material. And so do it.
13 We need it done. We're directing you to do it.

14 We're going to pay you for the time and
15 material that it takes to complete the change.
16 And here's what we want you to do. So it comes
17 in a signed form, an AIA form with the plan
18 change or the direction on how to make the --
19 implement the change underneath it.

20 Q. Okay. Well, why would you -- why would
21 an owner use a CCD or a construction change
22 directive as opposed to just suggesting a change
23 order?

24 MR. BUNDY: Objection.

25 A. I'm not --

1 MR. BUNDY: Objection.

2 THE COURT: Objection noted, yeah,
3 sustained.

4 BY MR. HILDEBRAND:

5 Q. What are the other ways that -- you have
6 the CCD and then what other ways are there to
7 make changes?

8 A. There's a MOD, which is a significant
9 change, which is typically the way that they're
10 using this project. It was an accumulation of
11 changes. It was captured in MOD. Whether that
12 was changing the layout of the guest rooms,
13 whether that was, you know, changing -- there's a
14 number of things.

15 But it's a significant change. You
16 know, typically ASIs were one area, small, just
17 confined. MODs were kind of project wide on
18 multiple floors, multiple layers of impact.

19 Q. When a design change came about, say on
20 a significant issue on this project, just very
21 briefly, tell the Judge what -- how that change
22 had to be implemented from your first notice that
23 there was going to be a change until it actually
24 did get implemented. Just briefly tell him
25 what's involved with the conceptual idea to

1 actual implementation.

2 A. With like an MOD or --

3 Q. Right.

4 A. -- or just any change?

5 Q. Any significant change?

6 A. Any significant change. Usually, there
7 was a conversation, sometimes not, but we would
8 get the set -- the change from the designer.
9 Sometimes we wouldn't get it from the architect.
10 Sometimes we wouldn't get it in an appropriate
11 format, so we requested that.

12 They would send it to us, a significant
13 change. Depending on where we were in the
14 project, depending on who the quick evaluation,
15 is that -- is this major? Is this something that
16 we think can be worked out or, you know, is it a
17 nonimpact.

18 Q. Okay.

19 A. And it always depended on where we were
20 in the project and what the change was going to
21 be. And we would find out the desire of the
22 owner to implement that change.

23 A lot of these we had heard about. We
24 had heard they were being designed and worked on
25 for weeks and if not months. And then we would

1 get it right before it needed to be implemented.
2 So it would be all hands on deck to implement
3 that change, to get that change into the drawings
4 per the owner's desire.

5 So, you know, we would receive it,
6 describe it to our subcontractors with a layer of
7 urgency, right? This is -- hey, you know, we're
8 on the fifth floor. This is happening on the
9 sixth floor or this is happening on the fifth
10 floor. So this is hot, right?

11 And we've got to understand, is this a
12 scope, or is this a pricing exercise? Because
13 there were so many coming in, that we quickly had
14 to decipher, is this something that is going to
15 impact what we're doing moving forward so we
16 don't have to do it again, right? Or is this
17 something that's a pricing exercise to understand
18 what it would cost, which there's a significant
19 difference, right?

20 Q. Explain, what is the difference?

21 A. Meaning, if we knew that the owner was
22 working on something for months, the designers
23 were working on something for weeks, months, and
24 that this was something the owner really wanted
25 in, and, you know, we're on the fifth floor and

1 it impacts the sixth, seventh, and eighth floors,
2 we're pushing like heck to get this information
3 to the subcontractors.

4 And any questions that they've got from
5 the documents that we get, any response --
6 anything that we need to get clarified is tagged
7 as hot and urgent.

8 And oftentimes, we were having meetings
9 with -- directly with the designer, directly with
10 the owner's rep, the owner, saying, hey, we've
11 got to figure this stuff out or we're not going
12 make it work, right? Or we're not going to --
13 we're going to hold off framing.

14 We've got to get this stuff figured out.
15 The subcontractors have got to order the
16 material. They've got to get everything to the
17 site. They've got to have time to -- to get it
18 there. So we're pushing to get all this
19 information --

20 Q. Okay.

21 A. -- to the field so they know where to
22 built. Instead of, if we get something that
23 impacts the framing on the floor below, it's
24 already been framed. The lights are already
25 installed.

1 There's a different set of urgency than
2 if you've got to redo framing, redo concrete,
3 there's already a cost impact there, right?
4 You've already got to redo it. Instead, we're
5 trying to minimize the cost impact to the owner
6 by staying ahead and implementing all of the
7 revisions to the project prior to them being
8 installed.

9 So we weren't just having to do work
10 twice. That's demoralizing to the project. If
11 we ask a guy to go install a light, he
12 installs it. A week later they say, you know, we
13 want to remove -- we want to move it to the other
14 side. It's demoralized -- whether they paid for
15 it or not, it's demoralizing to the installer.

16 Q. So you were requesting information. All
17 right. Tell me about, just very briefly, the --
18 I think you said that there were sometimes just
19 pricing exercises that weren't made into changes,
20 or can you describe for me what those were? For
21 example, the Irish pub.

22 A. That's right.

23 Q. Do you know anything about that?

24 A. Yeah. We were --

25 Q. Describe to the Judge what some of these

1 rabbits were that you were chasing.

2 A. That's a really good example. We were
3 getting ready to -- we were there, ready to
4 install what was on the plans. We're really to
5 frame out what was on the plans, rough-in what
6 was on the plans.

7 And Mr. Bennett brought over a
8 consultant from Ireland and wanted to honor his
9 father and wanted to explore installing an Irish
10 pub in the corner of the building. He said -- we
11 totally get it, understand it. And we're here.
12 We're ready to do this work. Please send us a
13 stop work order, so we can tell all of these
14 people -- they've got the document to stop.

15 Q. Because it was originally scheduled for
16 a design --

17 A. Because we already there and ready to do
18 it, right?

19 Q. To be a patisserie?

20 A. To be -- it was something else before a
21 patisserie, I think. I don't remember. It
22 changed a few times.

23 Q. All right.

24 A. So we met the consultant. The
25 architects worked on a plan. We got pricing in,

1 understood the impact of -- you know, your whole
2 crew is based -- you know, flowing around the
3 building, ready to frame, ready to install.

4 They've got to stop. They've got to
5 skip that area. But they've also got to frame
6 areas that are impacted beside it. So you've got
7 this plan that was highlighted with areas that we
8 weren't allowed to work.

9 A, we're going to change this -- or
10 we're looking at changing this. Don't insult us.
11 And so, we're giving that to the subcontractor
12 team, who is then -- it was a pretty coordinated
13 effort to attempt not to impact anything in that
14 area.

15 Q. Right.

16 A. So we did -- I believe we did an order
17 of magnitude, a rough order of magnitude with
18 those ROMs. We did a ROM on what -- you know,
19 here's a napkin sketch of what is going to
20 happen. What do you think? And so we gave him
21 an order of magnitude. The design progressed a
22 little bit.

23 I think as time went on -- I'm not sure
24 why it wasn't implemented, but they decided not
25 to do it. And we ultimately got the green light

1 to go execute that work. Now, when we got the
2 green light, there weren't -- there wasn't enough
3 information in the drawings to resume. So that
4 area is kind of a mess.

5 Q. Were there other pricing exercises --
6 how often would that occur where you were asked
7 to do -- that there might be a change coming?

8 A. It was taking up most of my time.

9 Q. Most of your time?

10 A. I would say it was taking up a large
11 portion of our time pricing, compiling change
12 orders.

13 Whether it was an exercise, whether it
14 was going back and explaining change orders,
15 whether it was -- whether it was pricing one of
16 the archives, one of the revisions they made on
17 submittals, one of the changes, one of the MODs,
18 one of the RFPs.

19 Most of my time was -- probably 60 to 70
20 percent was working on pricing, which is not
21 typical, right? I mean, typically, when your
22 structure is complete or 75 or 80 percent
23 complete, we're focused -- the whole team is
24 focused on executing the work. And instead --

25 Q. Getting the job --

1 A. Getting the job done, getting the
2 information that we had implemented in the field.

3 Q. Okay.

4 A. On this one, we were -- we were pricing
5 the whole time. We never stopped. And so the
6 office side is managing the RFI.

7 They're managing the submittals, getting
8 all of these things pulled together as quickly as
9 we can and also trying to service the owner and
10 help them understand these changes that they want
11 to make and is their right to make, implement
12 them into the project. So that's not typical,
13 right? We understand that changes are going to
14 happen.

15 Q. Right.

16 A. Every -- most of this building was
17 changed from what we originally got, from the
18 guest room paint color to layouts to -- every
19 part of this building was impacted with a change,
20 whether it was millwork or -- every section of
21 this building was impacted. And it just -- it
22 kept going.

23 Q. Did that impact the schedule?

24 A. Yeah.

25 Q. What was the ultimate delay on the

1 project from the original schedule to completion
2 date until it was actually done?

3 A. Was it a year and a half?

4 Q. Okay. And to what do you attribute that
5 delay?

6 MR. BUNDY: Objection.

7 THE COURT: I think he can decide
8 that, overruled. Go ahead.

9 THE WITNESS: The ongoing
10 revisions -- you know, we put a lot of pride in
11 getting our structure complete on time, and so
12 that's a huge milestone. We were doing
13 everything we could to make that happen and
14 implement some of the changes.

15 And up until the structural delay on the
16 sixth floor, we were on schedule. We actually
17 thought that, at the time of the sixth floor
18 delay, that we could minimize it, and that would
19 be it. You know, we truly believed that. And
20 even from topping out on, we thought, hey, here's
21 the structural delay.

22 The changes were made. We captured it.
23 We submitted a request for that delay, and that
24 was it. That's -- and we felt that we could
25 still meet the project -- the project deadline

1 with those added days.

2 BY MR. HILDEBRAND:

3 Q. Right.

4 A. But they never stopped. The changes
5 kept happening throughout the project, and it was
6 just continual changes throughout the end of the
7 project is what just, you know, ultimately led to
8 the delay in completion.

9 Q. All right. On the prior projects, what
10 was your typical workday? What was your
11 typical -- before the Hotel Bennett, what was the
12 typical number of hours that you worked on a job?

13 A. We work -- in this industry, we work a
14 lot. Between -- you know, sometimes 50 hours a
15 week, but typically we were 60, 65, 70 hours a
16 week, weekends. And when it's -- when the heat
17 is on, you're working weekends.

18 You're, you know, getting up early.
19 You're sharing when -- who's got to get up early
20 for the pour, you're rotating weekends, who's got
21 to cover the job site. Sometimes everybody is on
22 the job site on the weekends. So you're --
23 it's -- you're there from 7 o'clock in the
24 morning, if not earlier.

25 Sometimes the field got there earlier.

1 They opened the job at 6. Typically, on the
2 office side, we were, you know, expected to be in
3 around 7:00ish, plus or minus. And then, you
4 know, depending on what your family obligations
5 were. Some people got to pick their kids up, and
6 we understand that.

7 But there's also an expectation that you
8 are putting -- you're putting time in, whether
9 that's at home on your computer late at night or
10 having to get the kids to bed. So, I mean,
11 that's 60, 70-plus hours a week.

12 Q. What additional efforts, if any, did you
13 and your team put in on the Hotel Bennett to try
14 to keep this project on schedule and have it
15 finished as quickly as possible?

16 A. Additional is, we put everything into
17 it. We did everything we could to deliver the
18 project, and that's just -- we're prideful
19 people. We're competitive people. We poured
20 everything we had into that project.

21 And, you know, additionally -- it
22 depends on what the job requires. Past projects,
23 we worked hard on as well. This one, I -- you
24 know, you worry. You get sleepless nights. If
25 you try to stay ahead and it -- additional, I

1 think, is -- it's certainly more stressful.

2 Q. Was this a stressful job to you?

3 A. Oh, yeah, yeah.

4 Q. Why?

5 A. Well, you're prideful, and you want
6 to -- we're advocates for the owner. We, you
7 know, we pride ourselves on that, and we want to
8 deliver the project that the owner is hiring us
9 to deliver. And we want to build the next
10 project for the owner.

11 And so we get laser focused on what
12 we're doing, and we try to execute that on a
13 daily basis. And this is -- this was stressful.
14 There was a lot of things working against us that
15 we were -- we're also prideful in making money on
16 the job and finishing -- making our fee on the
17 job and finishing on time. It's a huge part of
18 why we do what we do.

19 Q. Right.

20 A. You know, we don't do this to -- for
21 free.

22 Q. Right.

23 A. And we're also competitive in a sense
24 that we want to finish the project on time. And
25 so I'm telling our superiors in Charlotte, we're

1 doing everything we can to finish this job on
2 time. We're -- you know, it's all hands on deck,
3 and there's that stress of, you know, knowing
4 there's uncertainty on when the project is going
5 to finish.

6 Q. Very briefly, as changes are made and as
7 you were trying to implement structures -- the
8 structure to implement changes -- gosh, that's a
9 different question. Let me start over on that
10 one.

11 What impact or what direction were you
12 giving to the subs to try to keep the project on
13 schedule and to keep it moving as quickly as
14 possible?

15 A. Depends. Like I said, earlier, it
16 depends on the change. A lot of times we were
17 forcing the subs to do it. There was fatigue
18 there. A lot of times we were demanding they do
19 it.

20 You know, hey, Nick, we're not -- can't
21 make -- we can't make that. Well, we've got to.
22 Let's figure out a way to do it. So we were
23 meeting with subs, coordinating efforts, saying,
24 hey, you can't do this room, but you can do these
25 rooms. Let's go do these rooms.

1 Well, there's an impact there. If
2 you're going ask my guys to skip over a room and
3 come back, there's an impact there. Guys, it's
4 okay, right? Let's get what we can get done and
5 complete. So we were -- it depended on the
6 change. If it was -- if we felt it could be
7 implemented on time, we were doing everything we
8 could to get it done on time.

9 Q. Let me interrupt this flow just for a
10 second. Are you still with Balfour Beatty?

11 A. No. I haven't been since the middle of
12 April of this year.

13 Q. Gosh, about six months ago or so?

14 A. Yeah, five or six months ago.

15 Q. Okay. What are you doing now?

16 A. I work for a group called SunCap
17 Property Group. It's a development group that
18 does mostly industrial, a lot of light
19 manufacturing, distribution. There's a small
20 residential, multifamily group. But it's a small
21 part of what we do.

22 Q. All right. Did you leave on good terms?

23 A. Absolutely. Absolutely. I wouldn't --
24 I credited Balfour to -- you know, where I'm at
25 in my career, you know, the amount of resources

1 they provided me, the leadership. Absolutely.

2 I feel like I left on good terms. I
3 still talk to my old bosses frequently, the guys
4 I worked with frequently. I consider them
5 friends and will probably continue to rely on
6 them throughout my career.

7 Q. All right, sir. What involvement did
8 you have with pay applications?

9 A. I was probably -- I was kind of the
10 leader or the person that, at the end of the day,
11 submitted it to the owner. We compiled
12 information from the subs. We kind of readily
13 reviewed --

14 Q. Yeah. Let me ask you to walk through
15 this just briefly. What goes into compiling a
16 pay application and then getting it to the owner
17 and then getting it distilled or whatever until
18 the final pay application is signed? Can you
19 briefly walk the Judge through that process and
20 what it involves?

21 A. Yes. It's a team effort. So we --
22 everybody knows what they have to do monthly.
23 The subs would submit them typically by the 15th
24 or 20th of the month, depending on -- I think
25 this project was the 20th.

1 We would send the owner a draft, a
2 pencil copy we called it with -- usually, at that
3 point, it was -- we met I think on the third
4 Thursday of every month. And it was usually just
5 the G704 and the continuation sheet where it --
6 the schedule of values of, this is what we intend
7 to build.

8 Q. Okay.

9 A. The backup wasn't always put together at
10 that point; so it wasn't always submitted at that
11 point. But we would walk the pay application.

12 Q. When you say you do it every month, was
13 that at the OAC meetings that those were
14 discussed?

15 A. Yeah, yeah. We would meet before the
16 OAC meeting. Everyone was invited, but the
17 architect and the owner's rep, Jennifer
18 Faulkinberry, Jim Clements were there 99 times
19 out of 100. They were both there to walk the pay
20 app.

21 And they would look at the progress and
22 ask questions on, you know, your framers billing
23 50 percent complete. Is he 50 percent complete?
24 You know, you pull up the pay application and
25 say, well, he is billing, you know, a hundred

1 percent on the third floor; 80 percent on the
2 fourth floor; 60 percent on the fifth floor.

3 And so we would review that all
4 together, walk the project. And then we would
5 have a final version submitted by the end of the
6 month, with the sub backup sent. We couldn't
7 submit them electronically. We would send -- we
8 would have to scan everything in, send a hard
9 copy to the architect. The architect would sign
10 it. They would scan it back to us and then sent
11 it to the owner for execution.

12 Q. Okay. All right. Who is the owner's
13 designated representative on this project?

14 A. Jim Clements was the owner's rep.

15 Q. From your dealings with Jim Clements,
16 what authority did he have to make changes?

17 MR. BUNDY: Objection.

18 A. He didn't have any.

19 THE COURT: I'm sorry, the
20 objection was, Mr. Bundy?

21 MR. BUNDY: The grounds for my
22 objection?

23 THE COURT: Yes.

24 MR. BUNDY: The grounds for the
25 objection is that, it's an out of court -- he

1 doesn't know. He hadn't laid the foundation for
2 what Jim Clements' authority was. Jim Clements
3 had written authority. Okay?

4 And that -- the writing between Clements
5 and the writing that was in existence related to
6 his authority is contained in that document. And
7 this gentleman is offering an out of court
8 statement for proof of the matter asserted.

9 He is trying to testify as to what
10 those -- what that authority was. And he simply
11 has not laid the foundation for it, and he's not
12 a lawyer. He's not an expert in interpreting
13 legal documents.

14 THE COURT: Okay. All right. Go
15 back to the question.

16 BY MR. HILDEBRAND:

17 Q. Yes, sir. My simple question is, you
18 dealt with Jim Clements on a frequent basis,
19 correct?

20 A. That's right.

21 Q. And did you understand -- and we can
22 turn to the contract if you want to -- who the
23 owner designated as their owner's representative?
24 Do you want to go -- do we need to go through
25 that part of the provisions?

1 A. That's Jim Clements.

2 Q. All right. And you dealt with Jim
3 Clements?

4 A. Frequently.

5 Q. All right. Based on your personal
6 dealings with Jim Clements, what authority did he
7 actually have on this job?

8 A. He didn't have any.

9 MR. BUNDY: Objection.

10 THE COURT: All right.

11 MR. BUNDY: I can explain if you'd
12 like. He might -- what he's actually --

13 MR. HILDEBRAND: He hasn't asked
14 you.

15 THE COURT: You've asked him what
16 authority Jim Clements had on the job.

17 MR. HILDEBRAND: Based on his
18 observations.

19 MR. BUNDY: He asked him what his
20 actual authority was.

21 THE COURT: Right.

22 MR. BUNDY: They just have two
23 kinds of authority.

24 THE COURT: I'm with you. What was
25 his dealings? Just get into his dealings back

1 and forth with this witness. Okay?

2 BY MR. HILDEBRAND:

3 Q. Did you have dealings with Jim Clements?

4 A. Yes.

5 Q. All right. Did you -- would you ask him
6 to answer questions?

7 A. Absolutely.

8 Q. And what would his -- if it involved a
9 change to the project or information that was
10 needed in order to move forward, what was your
11 experience with Jim Clements on those issues?

12 A. Jim would -- Jim was the proverbial
13 messenger, or he was the -- he couldn't approve
14 anything that had a cost associated to it,
15 according to him. He couldn't approve anything
16 that had costs associated to it. That all had to
17 go to Kim and Mike.

18 Q. All right. How about as far as changing
19 colors or changing things like that? What
20 authority, to your knowledge, did he have to
21 implement changes like that?

22 A. Yeah, he -- you know, he tried, but he
23 didn't -- he didn't make any significant finish
24 changes. That was all -- you know, he delegated
25 that or passed that along.

1 Q. To who?

2 A. To the designers -- the designer, who
3 would make a recommendation. Jim would get
4 approval on that recommendation. But he -- Jim
5 didn't make any changes. Jim didn't -- I
6 don't -- Jim didn't have the authority to make
7 any changes. He just kind of coordinated and
8 passed along information.

9 Q. Okay. How often would Jim Clements be
10 on-site?

11 A. Once a week was typical; sometimes more,
12 sometimes less. But, typically, we would see him
13 once a week.

14 Q. And how long would he actually be
15 on-site during that period?

16 A. Yeah, he would walk the job. He would
17 kind of -- he wouldn't always let us know that he
18 was walking the job. But a lot of times before
19 our OAC meetings, he would walk it. So on-site,
20 he was probably two hours, maybe three hours a
21 week out there.

22 Q. Okay. And when I'm saying on-site, in
23 the hotel and the rest of the time would be at
24 office?

25 A. That's right, in the field office.

1 Q. Okay. And did you have a trailer that
2 was set up close by?

3 A. We had a trailer that was on-site, and
4 then we had a management office that was about a
5 block and a half away.

6 Q. Okay. How about Michael Bennett? Do
7 you know who he is?

8 A. Yep.

9 Q. How often would he come on-site?

10 A. You know, I don't know. He was there
11 maybe once a week, maybe more. He had a whole
12 bunch of businesses running. We didn't always
13 know when he was there.

14 Q. How would you know that he was there?

15 A. I would hear.

16 Q. Okay.

17 A. Hey, Mr. Bennett is on -- Mr. Bennett is
18 on-site. Or one of his superintendents would
19 call and say, Mr. Bennett is on-site. You know,
20 I didn't deal with Mike too often. He wasn't in
21 the owner meetings. We were always cordial when
22 we spoke, but it wasn't frequently.

23 Q. Okay.

24 A. He didn't call me to tell me that he was
25 coming to the site.

1 Q. All right. How about Kim Brown? Who is
2 she?

3 A. She was the owner or the owner's rep.
4 She kind was the one who had signed the change
5 orders, the one that was, you know, reviewing pay
6 applications and getting sent the pay
7 applications.

8 Q. How often would Kim Brown be on-site?

9 A. Maybe once a week. Again, it's hard
10 to -- sometimes more than others. It wasn't
11 every day. It wasn't every other day. Maybe
12 once a week.

13 Q. Okay. How about the architect of
14 record, Buck Lindsay? How often was he on-site?

15 A. Very infrequently.

16 Q. Very infrequently?

17 A. Very infrequently. I believe I saw Buck
18 on-site less than 10 times. I met with him
19 on-site probably three times, and then, if he
20 went there, it was unannounced.

21 But it was -- it was Jennifer
22 Faulkinberry that was on-site. It wasn't Buck
23 that was on-site. Buck came twice, I think, for
24 particular reasons. But other than that, you
25 know, I don't know if Buck was very involved in

1 the project.

2 Q. So over the five-year period from start
3 to finish on this project, the architect, to your
4 recollection, was there about ten times; is that
5 correct?

6 A. Probably less. Yeah. He could have
7 been sneaking in and walking the site, getting
8 through the gate. But, you know, typically, I
9 would know if he was coming, and it was not
10 often.

11 Q. All right. How about the architect's, I
12 guess, field representative --

13 A. Jennifer?

14 Q. -- Jennifer Faulkinberry?

15 A. Yeah.

16 Q. How often was she on-site?

17 A. Typically once a month. If we -- you
18 know, sometimes more. But she would come for the
19 pay app walk and spend all day; come the night
20 before and spend all day, go out that afternoon
21 around 2 or 3. But about once a month.

22 Q. Okay.

23 A. There were times -- there was a few
24 times in the structure where she spent more than
25 once a month for maybe three months -- or, no,

1 about a month she probably spent six, seven days
2 on-site.

3 Q. Okay. We described the -- never mind.
4 I will come back to that. What involvement did
5 you have with the RCO -- explain to the Judge
6 what RCO is.

7 A. So request for change order.

8 Q. Okay. And what is that?

9 A. It's our request for a change to the GMP
10 in cost and/or time or credit, an add or deduct
11 to the GMP.

12 Q. What involvement did you have with the
13 request for change orders on this job?

14 A. When I started, I was probably the lead
15 on the change orders. Alec and I kind of
16 tag-teamed. He did some portions. I --
17 ultimately, I was the lead point on the change
18 orders. We kind of divided it up into all to
19 delegate the responsibility on how to accumulate
20 them.

21 But I was usually the one submitting
22 them. The ones that Alec pulled together, he
23 would -- he would typically explain -- or if he
24 spent more time on something, he would represent
25 what the cost was. But I would say I, you know,

1 ultimately submitted like 80, 85 percent of them.

2 Q. Okay. All right.

3 MR. HILDEBRAND: This is going to
4 take just a little bit of time. I'm going to try
5 and move through it briefly.

6 THE COURT: All right.

7 MR. HILDEBRAND: Would this be a
8 good time to take just a few minutes?

9 THE COURT: Why don't we take a
10 break? Yeah. Let's take five minutes.

11 MR. HILDEBRAND: Thank you.

12 (A recess transpired.)

13 THE COURT: All right.

14 MR. HILDEBRAND: Thank you, Your
15 Honor.

16 MR. HILDEBRAND:

17 Q. Mr. Starcevic, you have in front of you
18 what has been marked as Plaintiff's Exhibit No.
19 12.

20 MR. HILDEBRAND: And, Your Honor,
21 this was in -- well, it was in the notebook, but
22 I pulled it out of one of the notebooks to try to
23 make it -- it's the exact item.

24 THE COURT: Is it separated? It
25 was within, like, the first book?

1 MR. HILDEBRAND: Right.

2 THE COURT: This is just now
3 that -- this represents all submitted RCOs?

4 MR. HILDEBRAND: It's the ones that
5 are in dispute.

6 THE COURT: All right.

7 MR. BUNDY: This hadn't been put in
8 evidence, has it?

9 MR. HILDEBRAND: No.

10 THE COURT: No, no. This is for ID
11 purposes.

12 MR. BUNDY: Sounds like to me this
13 is already in evidence.

14 THE COURT: No. No. 12 for ID
15 purposes is what we have here.

16 MR. HILDEBRAND: Right.

17 THE COURT: Okay. And these are
18 the RCOs, which are in dispute.

19 MR. HILDEBRAND: Right.

20 THE COURT: Okay. All right.

21 Thank you.

22 MR. HILDEBRAND:

23 Q. All right. Mr. Starcevic, so I think
24 you were personally involved with the RCOs and
25 their -- all the RCOs and their preparation?

1 A. Yeah, from when I came on the team.
2 There were RCOs prior to me coming to the
3 project. But from the time I came to the project
4 and on, I was -- whether directly involved or
5 supporting, I was involved.

6 Q. Okay. And for the RCOs that were --
7 that preexisted you that might be in dispute,
8 have you reviewed the documents and are you
9 familiar with the information that's in them?

10 A. Uh-huh, yes.

11 Q. All right. Do you have personal
12 knowledge of the issues that relate to those
13 RCOs?

14 A. I do.

15 Q. All right. Let's turn to the first RCO
16 in the book, which is number 27, January 13,
17 2016. All right. Can you tell me what this
18 request for a change order is?

19 A. This is change order -- request for
20 change order number 27.

21 Q. Okay. Let's work down, so it goes --
22 you see the project, and then the re: Request
23 for change order number 27?

24 A. That's right. So it's Hotel Marion
25 Square, request for change order number 27, the

1 1,000-year storm delay and recovery cost.

2 Q. Okay. And where we -- okay. And then
3 for each of these, I guess there's some provision
4 in the -- explains what the amount of the RCO is?

5 A. Yes. So this is for \$124,089.19 --

6 Q. Okay.

7 A. -- for material, labor, equipment and
8 supervision necessary to complete all the work
9 with returning to the jobsite to pre-storm
10 conditions, including, but not limited to
11 pumping, import dry fill, muck, export muck,
12 rebuild dirt wedge, ramp to well-point roads.
13 This is a six-week process. So this is the cost
14 associated.

15 Q. All right. Can you just describe for me
16 briefly what this request for change order was
17 for?

18 A. Yeah. So, originally, before I was
19 here, this was a -- the same cost that we
20 submitted originally; however, it was settled to
21 cover the cost out of contingency, the direct
22 cost of the work out of contingency.

23 Q. Explain that.

24 MR. BUNDY: Objection.

25 THE COURT: Okay. And the basis?

1 MR. BUNDY: May I state my basis?

2 THE COURT: Sure.

3 MR. BUNDY: Thank you. This
4 document is unsigned. It's a request for change
5 order. On its face, it's unsigned, and it's a
6 request for change order. And you wouldn't
7 expect it to be signed. I'm not complaining
8 about that. I'm just simply bringing it to the
9 Court's attention.

10 However, I would bring to the Court's
11 attention that on January 26, 2016, a change
12 order was actually signed by Mrs. Kim Brown on
13 2/24/16. So I don't know what the purpose or how
14 this document could be relevant to this case, the
15 document that's presently being tried to be
16 introduced into evidence because Your Honor --
17 and may I approach?

18 THE COURT: Yeah.

19 MR. HILDEBRAND: Your Honor, this
20 is cross-examination.

21 MR. BUNDY: No, it's not
22 cross-examination.

23 MR. HILDEBRAND: Yes, it is.
24 It's -- I'm going to ask the witness to explain
25 the process of what -- he hasn't even gotten to

1 an explanation of what this is about. So that's
2 what I'm going to ask him about, and I think then
3 it will become clear to you.

4 MR. BUNDY: Then the objection is
5 hearsay. Because the best evidence of what
6 happened, with regard to these written contract
7 changes, are the documents themselves. If he
8 wants to put in that document, great. He can put
9 it in right now, but it's not cross-examination.
10 These documents are misleading, and they're
11 irrelevant.

12 MR. HILDEBRAND: That's not a valid
13 objection, Your Honor.

14 THE COURT: Okay. So what are the
15 distinctions here? I'm sorry. I'm missing out.

16 MR. HILDEBRAND: Yeah. The issue
17 here is that there's something called project
18 contingency. It's just a pool of money that's
19 set aside in the contract that there are certain
20 events that the owner -- that the contractor can
21 use that money as needed during the project, and
22 it comes straight of the project funds.

23 THE COURT: Okay.

24 MR. HILDEBRAND: That money the
25 contractor wants to use -- it's in his interest

1 to use that on things that are not otherwise
2 anticipated and he doesn't believe should be
3 charged to him.

4 So what happened on this one was, the
5 owner said, we don't -- we're not going to pay
6 this out of -- we're not going to pay you this as
7 a change order, even though it was a change like
8 every other change order, that totaled 5 million
9 dollars. They paid us for them.

10 Here, the owner said, we want to use --
11 we want you to deduct your contingency. And we
12 said, no, we don't think that that's appropriate
13 under the contract. And that's why -- what he is
14 about to get into.

15 THE COURT: Okay. All right. And
16 so --

17 MR. BUNDY: I can't think of, on
18 its face, anything that's more contingent than a
19 hurricane. That's exactly why you have
20 contingencies. They didn't -- Mrs. Brown didn't
21 order up a hurricane as part of the request for
22 change order. I mean, I assume. Maybe they've
23 got that kind of power. I don't think Balfour
24 Beatty has that kind of power.

25 THE COURT: Okay.

1 MR. BUNDY: You have contingencies
2 in contracts for unanticipated events, which is
3 exactly what a hurricane is. I mean, we know
4 we're going to have them, but we don't know when
5 we're going to have them.

6 THE COURT: Right.

7 MR. BUNDY: And we don't know what
8 they're going to do. So, if that's their
9 argument, that's fine. But I object.

10 THE COURT: All right. Objection
11 noted and overruled. You may proceed.

12 BY MR. HILDEBRAND:

13 Q. All right. Mr. Starcevic, please
14 continue.

15 A. Yeah. So we initially executed a change
16 order to agree, based on the owner's direction,
17 to use contingency, so to settle this a change
18 order. After -- and that was before I was on
19 board.

20 Q. Okay.

21 A. That was before I was on the project.

22 Q. Okay.

23 A. Afterwards, we went back for the cost
24 because we felt that it was not an appropriate
25 use of contingency, and we were requesting that

1 the owner pay the additional cost of the work.
2 My understanding is, they didn't have insurance
3 on the building.

4 MR. BUNDY: Objection, that's
5 hearsay.

6 THE COURT: Yeah. I will sustain
7 that. As to the basis, I will sustain the
8 objection, what he thought the basis was.

9 BY MR. HILDEBRAND:

10 Q. All right. So have you been paid this
11 amount?

12 A. No.

13 Q. And what does it relate to?

14 A. It relates to the cost -- the cost to
15 return the jobsite to pre-storm conditions. So
16 the holes dug by the 1,000-year storm basically
17 eroded the dirt wedge. It took, you know, 20
18 days, and \$118,000 of subcontractor costs to
19 re-estimate, reinstall the dirt wedge, get all
20 the muck out.

21 Q. Okay.

22 A. So we could get back to work.

23 Q. Okay. But just to be clear, Balfour
24 Beatty has not received this \$124,089.19 from the
25 owner? It has not been paid, correct?

1 A. And in addition to -- as an addition to
2 the GMPs. We bill for it out of contingency to
3 pay the subcontractor and to reduce our
4 contingency amount. So the subcontractor, I
5 believe, has been paid for this.

6 Q. All right. That was a bit of an
7 anomaly. Let's move to the next one, which is
8 number 75. Can you explain what that is?

9 A. Yeah. It's interior mockup tower
10 revisions. It's for the Hotel Marion Square,
11 change order request number 75. Interior mockup
12 tower revisions. It's for material, labor, and
13 equipment to -- to do the revise work, the revise
14 stone and tower, do the mockup -- you also had
15 mockup -- for changes to the mockup drawings.

16 Q. Explain briefly what this -- what the
17 issue was here.

18 A. Yeah. So we had --

19 MR. BUNDY: Objection.

20 THE COURT: Basis?

21 MR. BUNDY: I don't see a date on
22 this letter.

23 THE COURT: Number 75?

24 MR. HILDEBRAND: That's not an
25 objection -- that's not an objection to him

1 answering the question to what it relates to. If
2 he wants to cross-examine him and ask him that,
3 then --

4 MR. BUNDY: No, it is an objection.
5 It's the best evidence rule, and it's the rules
6 of evidence. And he's taking -- and this is an
7 out of court statement offered for the truth of
8 the matter asserted, and it's being presented to
9 you that an unsigned and undated letter, which is
10 unsigned by Kim Brown. It's not signed by
11 anybody.

12 MR. HILDEBRAND: I can lay more
13 foundation, Your Honor.

14 THE COURT: Okay. All right.
15 Please do.

16 MR. HILDEBRAND:

17 Q. All right, sir. So request for change
18 order number 75, did you have involvement with
19 drafting that?

20 A. Yes.

21 Q. All right. Sequentially, it is -- let
22 me ask you this: Were these change orders
23 drafted and submitted sequentially in time?

24 A. I was -- are you asking if 75 was
25 submitted prior to 76?

1 Q. Right.

2 A. I don't know.

3 Q. Were they drafted?

4 A. They were drafted sequentially. So we
5 created 75 prior to creating 76.

6 Q. Okay. Do you know if this request to
7 change for a change order was submitted to the
8 owner?

9 A. It was.

10 Q. Okay. And how do you know that?

11 A. Because we -- because I submitted it.

12 Q. And to whom did you submit it?

13 A. We submitted all change orders to
14 Jennifer Faulkinberry, Kim Brown, Jim Clements,
15 and if it related to the designer, we copied the
16 designer on it.

17 Q. Okay. So explain what this request for
18 change order was for.

19 MR. BUNDY: Objection.

20 THE COURT: Overruled. Go ahead.

21 THE WITNESS: So we install tile in
22 the mockup per the drawings, and the owner
23 requested and designers to send us drawings that
24 had different tile installed in the mockup. Our
25 agreement was, if the tile that was installed in

1 the mockup was installed in the project, we
2 wouldn't charge for it.

3 BY MR. HILDEBRAND:

4 Q. Okay.

5 A. If it was installed in the mockup and
6 changed, the owner had to pay for that cost.

7 Q. Okay.

8 A. And this is the cost to change the --
9 the cost of the original tile that we installed,
10 the cost to change it to what ended up being
11 installed on the project.

12 Q. Okay. So what was installed on the
13 mockup was not installed on the hotel, and,
14 therefore, it could not be reused?

15 A. That's right. Well, you can't reuse
16 tile anyways, but we had to get all new tile and
17 install new tile in the mockup to get approval
18 and install it in the hotel.

19 Q. I gotcha. So do you know why this was
20 not paid?

21 A. I have no idea.

22 Q. Has it been paid?

23 A. No, I don't believe so.

24 MR. BUNDY: Objection.

25 Q. To your knowledge, has it been paid?

1 A. To my knowledge, it has not been paid.

2 THE COURT: All right. I will
3 allow it.

4 MR. HILDEBRAND:

5 Q. All right. The next one, 88, what is
6 this for?

7 A. Hotel Marion Square, request for change
8 order number 88, provision one, concrete change
9 orders, per Lithko, our concrete subcontractor.

10 Q. And what is the amount of this one?

11 A. This is for \$56,414.30.

12 Q. All right. I'm not going to ask you to
13 read all of those pages because the Judge can
14 read those himself.

15 A. Yeah.

16 Q. But can you just tell us in general
17 terms what this change order was?

18 A. Yeah. This is a summary of change order
19 of all the costs that added -- from added work,
20 due to changes throughout the slab. We were
21 doing clean up, Lithko's change orders, and
22 reviewed all these. These are all extra labor,
23 extra materials that it took beyond what was in
24 the contract drawings.

25 Q. Okay. Let me stop you just for a second

1 and ask you this question. So we see that
2 there's a gap in the change -- requested change
3 orders in this book. For example, we go from 27
4 to 75. Why are some missing?

5 A. Well, this one -- this one -- well,
6 there's a gap in change order numbers.

7 Q. No, no, no. My question is, I would
8 assume that some of the change orders were paid?

9 A. That's right.

10 Q. So these are the ones that were unpaid?

11 A. Yeah.

12 Q. Okay. So that's a simple explanation of
13 why the ones in here are the ones that are
14 unjustified?

15 A. That's right.

16 Q. All right. Did you finish your
17 explanation on change order -- request for change
18 order 88?

19 MR. BUNDY: Objection.

20 A. Yeah. They're all tied to specific
21 RFIs.

22 THE COURT: Just one second.

23 MR. BUNDY: I have an argument on
24 this if you --

25 THE COURT: All right. Go ahead.

1 MR. BUNDY: It's not an evidentiary
2 argument, it's a contractual argument.

3 THE COURT: Okay.

4 MR. BUNDY: This document was
5 submitted after the lawsuit was file in this
6 case.

7 THE COURT: Okay.

8 MR. BUNDY: Okay. So they were off
9 the job. The law -- the contract requires that,
10 as the condition preceded to any change order,
11 they have to send us the change order.

12 If we -- we can pay it. We can disagree
13 with it. The architect has got to look at it.
14 The architect has got to rule on it. And if the
15 architect signs it, you know, or doesn't sign it,
16 then we will go down -- that's why we're here
17 today.

18 But once they filed that lawsuit, none
19 of these change orders could meet that procedure.
20 None of them, as a matter of law, and as a matter
21 of contract. That's exactly how he had the
22 contract provisions, Your Honor. So I object to
23 the entry of this exhibit and the testimony on
24 this exhibit.

25 THE COURT: On the basis that it

1 was not timely submitted?

2 MR. BUNDY: Correct. Yeah, it
3 didn't -- no, it's not so much it wasn't timely.
4 Well, in addition to not being timely submitted,
5 in this contract, the way it's written, the way I
6 wrote it, notice is a condition precedent to
7 entitlement. It's a requirement, and the failure
8 of notice has been agreed to by the parties --

9 THE COURT: Okay.

10 MR. BUNDY: -- in the contract to
11 be prejudicial to the owner. That's in the
12 contract. It says, we agree now. Not only is a
13 notice a condition preceded, which is just --
14 which is more than just simply notes.

15 It's a condition preceded. Okay? It's
16 a requirement. Just like filing -- in that
17 filing for the mechanic's lien is a condition
18 preceding the foreclosure. All right. It's an
19 agreement. It has timeframes to it, like
20 whatever.

21 THE COURT: Okay. All right.

22 MR. BUNDY: So that's what they
23 agreed to. I've been doing this long enough to
24 know that failure of notice is not very
25 successful in a courtroom in a construction case.

1 MR. HILDEBRAND: Objection, Your
2 Honor.

3 MR. BUNDY: So the contract
4 contains the provisions to try to help my client
5 in that regard. One, a condition precedent, and
6 two, that late notice is presumed and agreed to
7 be prejudicial. So, for those reasons, I object
8 to this document and this testimony.

9 THE COURT: All right. Just one
10 second.

11 MR. HILDEBRAND: Your Honor, these
12 were all presented to -- these were all received
13 by and presented to Mr. Clements in his
14 deposition testimony, which we're going to
15 introduce.

16 THE COURT: Okay.

17 MR. HILDEBRAND: It says that he
18 got them, and what the normal procedure is on a
19 construction project -- because there's no
20 provision in the contract that says that these
21 had to be presented at any particular time.

22 A request for change order can be done
23 at any time during the project. There's no time
24 limits on it. Mr. Clements admits that in his
25 deposition. He said, what I was planning to do

1 was -- at the end of the job, was get all of
2 these change orders that had not been resolved,
3 get them in front of me, work through them all,
4 and see which ones we agreed with and were going
5 to be paid.

6 He was told by the owner, don't work on
7 them, don't do anything else. So he said that's
8 the reason that he never went through them and
9 resolved them. But regardless, Your Honor, what
10 Mr. Bundy is arguing is a contractual argument,
11 okay, that y'all didn't follow -- y'all didn't
12 dot your I's and cross the T's in the contract.
13 And I understand that's his position.

14 THE COURT: Okay.

15 MR. HILDEBRAND: But it's your
16 position, as the fact finder, to hear all the
17 evidence and then you determine whether you feel
18 that the contract was complied with or not. Were
19 there reasons why we were prevented? Were there
20 waivers? Were there forfeitures?

21 There are a lot of defenses that we've
22 raised. One, we think that we complied with it,
23 but if he wants to cross-examine him and make
24 those arguments later on, then that's fine. But
25 that has nothing to do with him answering the

1 question about what these RCOs are for and why
2 we're here presenting them here today.

3 THE COURT: You've got a quantum
4 meruit claim, too, do you not?

5 MR. HILDEBRAND: Yes, sir.

6 THE COURT: All right. As well as
7 a statutory claim?

8 MR. HILDEBRAND: Yes, sir.

9 THE COURT: All right. Let me ask
10 this question. Are all of the subsequent RCOs
11 that are in dispute, are they postdated, or are
12 there some dated timely? What's the story on it?
13 So I can address this as a continuing objection.
14 I just want to do that.

15 MR. BUNDY: I don't think we're
16 going to --

17 MR. HILDEBRAND: I think it -- was
18 that addressed -- the question to me?

19 THE COURT: Yes.

20 MR. HILDEBRAND: Yes, sir. I want
21 to be honest with the Court because I don't know
22 the answer to that. I think -- I don't know,
23 maybe the --

24 THE WITNESS: Not all of them.

25 THE COURT: Okay. All right.

1 MR. BUNDY: May I?

2 MR. HILDEBRAND: But I will let him
3 have a continuing objection.

4 THE COURT: All right.

5 MR. BUNDY: We're going to have to
6 go through every one of these, and the reason we
7 have to go through them is because,
8 notwithstanding my learned counsel's argument, to
9 the contrary, he still has to get the document
10 into evidence under the rules of civil procedure.
11 Okay?

12 THE COURT: I'm with you.

13 MR. BUNDY: This letter, okay,
14 which was filed after the lawsuit and is dated
15 March 7th, 2019, the back of it, the backup for
16 it is a subcontractor claim in April of 2016.
17 Okay? The backup for this document is three
18 years old as of the date that it was submitted in
19 the Court.

20 THE COURT: Right.

21 MR. BUNDY: And we're just now
22 seeing it, and it doesn't have a foundation.
23 This gentleman cannot -- I don't believe legally
24 can lay a foundation for Lithko, the
25 subcontractor's documents.

1 He doesn't know how they're -- he
2 couldn't know how they're kept in the normal
3 course of business. He couldn't be able to
4 testify to what they're doing every day. All he
5 can say is, I sent it on. Okay? I don't think
6 that's enough to get it into evidence, and I
7 respectfully object.

8 THE COURT: All right. I'm going
9 to overrule that objection. I'm going to allow
10 it.

11 MR. HILDEBRAND: Thank you, Your
12 Honor.

13 BY MR. HILDEBRAND:

14 Q. All right, sir. Have we described the
15 request for change order 88?

16 A. I believe so.

17 Q. All right.

18 A. I believe so. These are all the
19 concrete changes that had not been paid yet, and
20 it's a revision to the original change order. So
21 it's revision number one, and that's the final
22 version of all of Lithko's outstanding change
23 orders that were directed by the architect and/or
24 engineers.

25 THE COURT: All right. Let me stop

1 you there, so I'm clear. Your testimony is, this
2 is all of the Lithko change orders?

3 THE WITNESS: This is all of their
4 extra work change orders. So they have another
5 change order in here for the delay in the
6 structure.

7 THE COURT: Okay.

8 THE WITNESS: This is just added
9 steel, extra labor, to expedite, to make a first
10 floor slab pour. This is just added responses to
11 RFIs. And this is not -- this does not have to
12 do with the structural delay.

13 THE COURT: All right. And on the
14 last line item in here, COR63, rework added,
15 VFCUs. Can you define that for me?

16 THE WITNESS: Yeah. That's a
17 vertical fan cool unit.

18 THE COURT: Vertical fan cool unit.
19 All right.

20 THE WITNESS: If you move it,
21 you've got to box out and add some structure or
22 add a pad underneath. So they added a VFCU.
23 It's got to have a concrete pad underneath to
24 support it.

25 THE COURT: Okay. All right. I

1 just wanted to know what that was.

2 MR. HILDEBRAND: All right, sir.

3 MR. HILDEBRAND:

4 Q. Has this amount been paid?

5 A. No.

6 Q. Let me ask you this: What is the -- for
7 unresolved change orders -- I understand a lot of
8 change orders -- requested change orders are
9 discussed during the project and are paid,
10 correct?

11 A. That's right.

12 Q. And then some, there's a dispute. The
13 owner says, I don't want to pay them and the
14 contractor says, I want you to, correct?

15 A. That's right.

16 Q. When are those -- the ones that are
17 unresolved during the job, is there a customer
18 practice in the industry as to when those are
19 typically addressed?

20 A. Typically at the end of the project.

21 Q. What happens?

22 A. We sit down and walk through the open
23 change orders and any outstanding costs and
24 resolve them. We say, here are the outstanding
25 change orders that we have. Here's why we're

1 submitting them. And we sit down and discuss
2 them with the owner and work through them all.

3 Q. Okay. Let's turn to the next one, which
4 is 103. This is dated December 16, 2017.

5 MR. BUNDY: Objection.

6 THE COURT: This is -- we're at
7 number what?

8 MR. HILDEBRAND: 103, the next one,
9 Your Honor.

10 THE COURT: All right. Objection
11 is?

12 MR. BUNDY: My objection is that
13 the Library Associates has settled with this
14 subcontractor. They have given us a release.
15 They have released Balfour Beatty, and they
16 don't -- this claim no longer exists. Okay?

17 So I don't know how they collect money
18 or come in here and talk about money that they're
19 never going to pay and never going to have to
20 pay. And furthermore, if they do pay it, they've
21 got to pay it to us because that claim belongs to
22 us.

23 So if this gentleman wants to send me
24 Balfour Beatty's check for \$290,257.91, if that
25 money is owed, and apparently, he's testified

1 that it's owed, then, sir, I would like you to
2 call Balfour Beatty and have them issue my client
3 a check because we now own that claim. Thank you
4 very much.

5 THE COURT: Okay. Who is this
6 from, this claim?

7 BY MR. HILDEBRAND:

8 Q. Who is the claim from?

9 A. Well, it's -- we submitted it.

10 THE COURT: Yeah.

11 THE WITNESS: The cost of work is
12 from BMCC.

13 THE COURT: Okay. All right. And
14 that is one of the subs that has settled,
15 correct?

16 MR. HILDEBRAND: Has this been
17 settled, Mr. Bundy?

18 MR. BUNDY: Yes, it's been settled,
19 and we own the claim.

20 THE COURT: Okay.

21 MR. HILDEBRAND: But is this --
22 would you agree then this one, if it's been -- if
23 the owner has paid the sub directly on this one,
24 that that one should be resolved?

25 MR. BUNDY: Yes.

1 MR. HILDEBRAND: Okay. Then we'll
2 take that out.

3 MR. BUNDY: Well, let's get it
4 straight. The owner hasn't paid for this. The
5 owner owns the claim. There's a difference
6 between being paid money and owning money. They
7 assigned to us their contract rights against your
8 client.

9 Your client still owes that money, but
10 in order to satisfy that obligation, they've got
11 to send the check to me, or you can send it to
12 BMCC if you want to. They're just going to
13 forward it on to us. It doesn't matter to me how
14 you want to do it.

15 MR. HILDEBRAND: Well, I was
16 unclear about what the settlement was. I thought
17 they had said that they had paid BMCC.

18 THE COURT: I think -- if memory
19 serves me right, this was the first sub to say
20 they settled out. This was Mr. Litton's client,
21 if I'm not mistaken.

22 MR. BUNDY: May I? We've read that
23 settlement on the record.

24 THE COURT: Yes.

25 MR. BUNDY: And Mr. Litton stated

1 under -- as an officer of the Court -- I'm
2 stating as an officer of the Court, we were on
3 the record. And and the rule goes, we don't have
4 a writing if we stand up in Court and put it on
5 the record. The record is clear. Library
6 Associates owns this claim, and they owe us the
7 money.

8 THE COURT: Okay.

9 MR. HILDEBRAND: Then I think I
10 need to go back and say that we do need to talk
11 about this and do need to say -- if they're going
12 to say that we owe them this money, then it's
13 like that settlement never happened. We've got
14 to present it to the Court and get our money so
15 that we can pay them.

16 MR. BUNDY: No, no, no, no.

17 THE COURT: Well, let me ask you
18 this question: Do y'all intend to --

19 MR. BUNDY: We have a judiciary
20 interest in --

21 THE COURT: Do you intend to pursue
22 this claim?

23 MR. BUNDY: Well, I don't know. I
24 haven't made up my mind yet.

25 THE COURT: All right. Well, I'm

1 going to -- if you hadn't made up your mind yet,
2 I'm going to let him --

3 MR. BUNDY: No, no, no, no. May I
4 finish? I need to make a record here. Okay?

5 THE COURT: You may.

6 MR. BUNDY: The claim belongs to
7 us.

8 THE COURT: Correct.

9 MR. BUNDY: When they signed the
10 pass-through agreement, they entered into a
11 tolling agreement --

12 THE COURT: Okay.

13 MR. BUNDY: -- with BMCC, which we
14 get the benefit of, that aspect of it.

15 THE COURT: I'm with you.

16 MR. BUNDY: Because that document
17 clearly says, some parts of it might not be
18 enforceable, but clearly tolling agreements are.

19 THE COURT: Right.

20 MR. BUNDY: All right. So we don't
21 have to do anything. We don't have to do
22 anything. I'm just informing the Court that they
23 are claiming that this is a cost of the work, and
24 they haven't paid it. In order to be a cost of
25 the work, they have to pay either BMCC or Library

1 Associates. Okay?

2 THE COURT: Okay. I'm with you.

3 MR. BUNDY: And Library Associates,
4 as a matter of law, cannot owe this money because
5 they've released all claims against us.

6 THE COURT: Okay.

7 MR. BUNDY: And they've incurred no
8 cost. It's not as if they've paid BMCC and now
9 they're trying to come in here and collect it.
10 That's not what this is.

11 THE COURT: I'm with you. I'm with
12 you.

13 MR. BUNDY: All right. Thank you,
14 Your Honor. I object to the document.

15 THE COURT: I'm going to allow it
16 because I think it's going to be more efficient
17 to do it this way. So go ahead.

18 BY MR. HILDEBRAND:

19 Q. All right. So what is this work for?
20 Can you explain what this RCO was for?

21 A. This is change order 103, revision
22 number one, modification number 5. This is the
23 mechanical revisions.

24 Q. Was this the amount that was submitted
25 to the owner for payment by Balfour Beatty?

1 A. Yes.

2 Q. Was it ever paid?

3 A. No.

4 Q. Have you been paid to-date for it?

5 A. No.

6 Q. All right. And generally, more
7 generally just very quickly, what was this for
8 and what was the dispute? Do you know why it was
9 not paid?

10 A. Modification number 5 --

11 MR. BUNDY: Relevancy, objection.

12 THE COURT: Overruled. Go ahead.

13 THE WITNESS: It says, for the
14 changes they modified, and it was not paid. We
15 had a number of meetings on this change order
16 with all parties, including the subcontractors,
17 the owner and the engineers.

18 Everyone was involved. We had a
19 detailed take off that we submitted that
20 supported it. The engineer didn't -- so the
21 engineer's documents did not match what was
22 installed and used in the field.

23 MR. BUNDY: Objection.

24 THE WITNESS: Because we had the
25 BIM model and their take off was based on the BIM

1 model. So they've got a detailed take off.
2 Every part and piece was in this change order.
3 It's about 20 pages long, down to the screw and
4 the nut. And this is -- this is for the changes
5 that they had in their take off that were
6 different than what was in the previous set of
7 contract documents.

8 BY MR. HILDEBRAND:

9 Q. Okay. So Balfour, with respect to this,
10 it changed from -- in the documents that incurred
11 a cost to the subcontractor and you're --

12 A. Yes.

13 Q. -- requesting the payment for this one?

14 MR. BUNDY: Objection.

15 A. Yes. The subcontractor requested the
16 payment for --

17 MR. BUNDY: Objection.

18 A. -- added dampers, added ductwork, move
19 ductwork, relocated the fan cooling units, and
20 moved fan cooling unit 10 feet to the left. It
21 had to be 10 feet longer to get there. That's 10
22 feet of extra ductwork.

23 Q. Do you know why --

24 THE COURT: Okay. Just one second.

25 MR. BUNDY: Objection.

1 THE COURT: Objection. Hearsay?

2 MR. BUNDY: How could it be -- no,
3 it's irrelevant. How could it be relevant? He
4 just testified -- there's been an issuing of it
5 being hearsay, but it can't be relevant.

6 He just testified, they had not paid.
7 And since they haven't paid it, that's -- in
8 order to be a cost of the work, it has to be
9 paid. Okay? Or it has to be owed. I will give
10 them that it has to be owed.

11 THE COURT: Okay.

12 MR. BUNDY: They do not owe it.
13 It's irrelevant.

14 THE COURT: Okay.

15 MR. BUNDY: In a cost plus job that
16 they didn't pay. We will be forever if they can
17 do that.

18 THE COURT: All right. I
19 acknowledge that. Let me just tell you, I'm
20 trying to keep these RCOs categorized. I have
21 made a notation that this claim is now owned by
22 Library Associates. Okay?

23 MR. BUNDY: And it's been released.

24 THE COURT: And released by
25 Bernhard MCC to Library, correct?

1 MR. BUNDY: And to Balfour Beatty.

2 MR. HILDEBRAND: He has

3 just totally --

4 MR. BUNDY: Well, no. Balfour
5 Beatty has still got -- yeah, they've still got
6 the claim against Balfour Beatty because it was
7 assigned. My apologies. I misspoke.

8 THE COURT: Yeah. Okay.

9 MR. BUNDY: We still own the claim.
10 It's been assigned to us. We haven't prosecuted
11 it, and we may never. I don't know what we're
12 going to do, but I don't think we're required to.
13 The only thing -- the only limitation we have is
14 the statute of limitations, right?

15 THE COURT: Right.

16 MR. BUNDY: But we have a tolling
17 agreement.

18 THE COURT: Okay. I'm with you.
19 All right.

20 BY MR. HILDEBRAND:

21 Q. All right. Have we discussed this one?

22 A. I believe so.

23 Q. All right. Let's turn to 118, please.

24 A. It says, change order 118, hard drive
25 451, (inaudible) manifolds. It's another BMCC

1 change order.

2 MR. BUNDY: Same objection.

3 THE COURT: So noted.

4 BY MR. HILDEBRAND:

5 Q. What was this one for?

6 A. So trim for the tubs was changed. The
7 fixture for the tubs was changed, and it didn't
8 have a integral stop; meaning, it didn't have a
9 shut off in the fixture.

10 So by code, you have to have a way to
11 shut the water off; so we added one. We had to
12 add them at the manifold where the PEX comes in
13 and separates; and all the places it's going, we
14 had to add stops. And it was a requirement of
15 the documents and has not been paid.

16 Q. Do you know why?

17 A. There's a note in the mechanical
18 specifications that said that the manifold is
19 required.

20 MR. BUNDY: Objection.

21 THE COURT: I'm going to allow it.
22 Go ahead.

23 THE WITNESS: That, at the
24 manifold, you're supposed to have a stop return.
25 So there's a note in here called out; however,

1 you can also have that in the fixture. The
2 previous fixture had a manifold stop. So we
3 didn't need the shut off at the manifold.

4 So when you change the fixture that had
5 what was necessary by code, a shut off, an
6 integral stop, when you change the fixture that
7 doesn't have an integral stop, then you add --
8 you have to add the shut off to the manifold.

9 MR. HILDEBRAND:

10 Q. Right.

11 A. The engineer told us that. He was
12 referring back to a note, a cover-all note that
13 wasn't applicable. You don't have two shut offs
14 in a plumbing fixture.

15 Q. All right. 122, please.

16 A. This is 122R1, structural delay claim,
17 Jennifer, level 6, level 8 and level 9.

18 Q. All right. First, what's the date on
19 it, please?

20 A. November 27th, 2017.

21 Q. Okay.

22 A. This is for the delay in the structure.

23 Q. Okay. And what was this for?

24 A. This was an accumulation of the cost on
25 the sixth, eighth, and ninth floor that, when we

1 were delayed on those floors, there was rental
2 and form work, remobilizations. There was all
3 kinds of costs that are incurred by the
4 subcontractors that were on-site, can't work.

5 We've got to keep the people there and
6 start -- and started and stops, started again;
7 didn't have enough information to pour, had to
8 stop again. Got the information, started again;
9 didn't have enough information, had to stop
10 again. And so this is the accumulation of that
11 cost.

12 Q. Okay.

13 MR. BUNDY: Objection, Your Honor.

14 A. We --

15 THE COURT: Anything new on that
16 one? Any new objection or just renewal?

17 MR. BUNDY: Pardon me? Well, BMCC
18 is in this change order as well. So to the
19 extent there's BMCC money in this one. I believe
20 there's BMCC money in it.

21 THE WITNESS: There is.

22 THE COURT: Objection noted.

23 BY MR. HILDEBRAND:

24 Q. All right. So there's already been
25 discussion about this, but you weren't here

1 earlier in the case.

2 Okay. You're making the claim that
3 this -- this claim was brought in and discussed,
4 but not resolved. And you're bringing it
5 formally before the Court, asking for them to pay
6 for these delays; is that right?

7 A. That's right.

8 Q. Okay. That was number 122. The --
9 let's go to the next one. Is that 159?

10 A. 159 is out of order in my book, but we
11 can go there.

12 Q. That's the next one in mine. Is that
13 what you have?

14 A. It's after -- in mine, it's after 250, I
15 think. There's a couple that are out of order.

16 MR. BUNDY: 159?

17 A. I can go to 159.

18 Q. Yeah. Let's just do that.

19 A. So change order 159, FF&E changes.

20 Q. What's the date?

21 A. This is August 21st, 2017.

22 Q. Okay. 159, tell us about it. Describe
23 it.

24 A. \$242,633.32. This is for expanded scope
25 of our FF&E contractor.

1 Q. What is FF&E?

2 A. Furniture, basically loose fixtures.

3 Q. Furniture. What's the acronym?

4 Furniture, fixtures and equipment?

5 A. That's right, furniture, fixtures and
6 equipment.

7 Q. All right, sir.

8 A. So we had a responsibility matrix in the
9 contract as an exhibit that listed all the things
10 that we were responsible for, all of the things
11 that we were responsible to install, order. It
12 basically listed everything that was in our
13 responsibility.

14 Q. Okay.

15 A. The designer had responsibility; the
16 owner had responsibility. That's -- the FF&E
17 matrix delineated all of that.

18 Q. Okay.

19 A. This request is for items that were
20 added, changed to our scope. This request is
21 also for additional storage. We didn't buy the
22 furniture. The owner bought the furniture and
23 delivered it to us. This is for added storage
24 that were results of the delays incurred in the
25 project.

1 Q. Okay. Explain that.

2 A. Meaning, this furniture, it takes a long
3 time to build.

4 Q. Okay.

5 A. It was released prior to the structural
6 delay. And after the structural delay, the
7 furniture now had to be stored for additional
8 time. We agreed to store it for the time in our
9 schedule. This -- obviously, the structural
10 delay and other delays incurred, increased the
11 time that the furniture had to be stored.

12 So, when we submitted this, the current
13 overage and storage was included, and we
14 projected an additional amount that was going to
15 be incurred because the FF&E provider, the
16 manufacturer, couldn't segment their deliveries
17 and couldn't delay it. They refused to. They
18 sent it.

19 Q. They said, we're sending it?

20 A. They said, they're sending it, and the
21 owner told us, it's coming. It's your
22 responsibility. It's not my problem. We didn't
23 order it. We didn't have control over when they
24 were sending it.

25 Q. And so you're saying you couldn't

1 install it?

2 A. We couldn't install it.

3 Q. So you had to extend the storage?

4 A. That's right.

5 Q. And that's what this is for?

6 A. That's what this is for.

7 Q. All right. So this kind of adjunct or a
8 component of the delay?

9 A. It's both of them. It's for all of the
10 fabric. It's for all of the added equipment, all
11 of the added furniture, all of the differences in
12 what was originally shown as furniture, what was
13 originally in that responsibility matrix and what
14 ended up being delivered and installed.

15 Q. Okay. Let's go to the next one.

16 A. Which number is that, 178?

17 Q. I've got 161 is the next one. Let me
18 see. I don't know why that one is --

19 A. I've got 261. Here's 161.

20 Q. This might have been a late night when
21 somebody was putting that together.

22 MR. BUNDY: So we're changing
23 books? He's got a different book?

24 MR. HILDEBRAND: It's identical.

25 THE COURT: They were just out of

1 order somehow?

2 MR. BUNDY: I gotcha.

3 THE WITNESS: 161, this is August
4 26th, 2017, off-site mockup, drywall --

5 MR. BUNDY: Objection.

6 THE WITNESS: -- and plumbing.
7 Off-site mockup, drywall and plumbing
8 reconciliation. This is -- has BMCC cost in it.
9 Also, it has --

10 MR. BUNDY: Your Honor, objection.

11 THE COURT: Yeah, one second.

12 Basis?

13 MR. BUNDY: My basis of this
14 objection is, on the face of it, \$8,929 for BMCC
15 cost.

16 THE COURT: Okay. I'll note that.

17 MR. BUNDY: And all the other
18 reasons I've been objecting. I assume I've had a
19 running objection to all the foundational
20 problems.

21 THE COURT: You do.

22 MR. HILDEBRAND: Your Honor, if it
23 will help move things along, I'd be willing to
24 stipulate that he has -- all the objections that
25 he's noted thus far are on the record for the

1 rest of these.

2 THE COURT: All right.

3 MR. BUNDY: No, sir. I'm going to
4 make an objection. If you need to know what it
5 is, you can ask me what it is. I thought that's
6 what he wanted. I'm not going to stipulate to
7 anything.

8 THE COURT: All right. It sounds
9 like somebody is having Christmas back there.
10 All right.

11 THE WITNESS: So off-site model
12 room revisions, then changes to the model room.
13 And, you know, this is framing revisions,
14 drywall, patching, and just -- it's all time and
15 material. So installed it the first time,
16 tracked on time material, the changes that were
17 implemented, and we're submitting for the cost.
18 BY MR. HILDEBRAND:

19 Q. Do you know why this one was not paid?

20 A. No.

21 MR. BUNDY: Objection.

22 MR. HILDEBRAND: All right.

23 THE COURT: Noted, overruled.

24 BY MR. HILDEBRAND:

25 Q. The next one I've got is 178.

1 A. Yes.

2 Q. All right. Date?

3 A. Date is October 10th, 2017. Request for
4 change order number 178, delivery in storage for
5 DC67.

6 Q. Okay. What is this one?

7 A. Similar to the last FF&E change order,
8 the owner is responsible for light fixtures, the
9 decorative light fixtures.

10 Q. Okay.

11 A. This is DC67, the owner purchased and
12 paid for. We were responsible to install it.
13 They were delivering it or delivering them prior
14 to when we needed them.

15 All of our light fixtures were delivered
16 as needed on a floor-by-floor basis. This
17 supplier wouldn't do that, and so we had to store
18 them off-site. Prior to them being sent, we
19 submitted this, saying, hey, we will store them,
20 we will be happy to. Here's the cost to do it,
21 and the owner said in response, no, you're taking
22 them.

23 MR. BUNDY: Objection.

24 A. You deal with it. This is your problem.
25 And this is -- and this is cost that has

1 incurred, two months of storage. We told them
2 when we needed them, how we needed them, and they
3 couldn't accommodate it. So they sent them to
4 us, and this is the cost that we incurred.

5 Q. Okay. Next one, 188?

6 A. Hurricane Irma prep and recovery,
7 November 9th, 2017, change order 184, hurricane
8 owner prep and recovery, \$57,467.82.

9 Q. All right. What was this for?

10 A. Hurricane Irma, the governor issued a
11 state of emergency. I forget the category that
12 we anticipated coming, but we had a scaffolding
13 up around the building.

14 In order to protect the jobsite, protect
15 the project, we took down scaffolding, as
16 necessary. We spent -- we got support on a
17 number of hours, but, basically, installed the
18 plywood to secure doors, put sandbags around the
19 perimeter, ordered a pump to remove excess water,
20 stacked and bound loose material.

21 And then we also had some subcontractor
22 costs from our scaffolding and stucco
23 subcontractor to attempt to take the netting down
24 because the netting was up, which was a potential
25 to the scaffolding flies away in a significant

1 event.

2 Q. Right.

3 A. So there is 418 man hours in taking all
4 of that down and putting it back from our stucco
5 subcontractor, and then two doors were damaged in
6 the storm on level 6 and the cost to replace
7 those doors.

8 Q. Okay. Do you know why this was not
9 paid?

10 A. I do not.

11 Q. Exhibit 212, what is this?

12 MR. BUNDY: Your Honor, objection.

13 THE COURT: As to 212 or as to the
14 last one?

15 MR. BUNDY: It's the one that --
16 Premier Exteriors is involved, and I think
17 they're in some of these. But they're out of the
18 case as well and have no claims against Balfour
19 Beatty.

20 THE COURT: Is that on the last
21 one? I'm sorry.

22 MR. HILDEBRAND: No, sir, on 212.

23 THE COURT: On 212?

24 MR. HILDEBRAND: The next one, yes,
25 sir.

1 THE COURT: Okay. Is this all or
2 partial?

3 MR. HILDEBRAND: I'm sorry, Your
4 Honor?

5 THE COURT: Is it all or partial of
6 this claim?

7 THE WITNESS: They had \$18,810 of
8 that.

9 THE COURT: Okay.

10 THE WITNESS: The balance is for
11 First Choice and staff, our labor.

12 THE COURT: 18,180? All right. So
13 noted. Thank you.

14 THE WITNESS: 18,810.

15 THE COURT: 18,810?

16 THE WITNESS: Yes, sir.

17 BY MR. HILDEBRAND:

18 Q. All right, sir. Explain what that is.

19 A. Yeah. Change order 212R1, October 19th,
20 2018, use Robert Thomas for decorative brackets.
21 This is a revised version.

22 So we had a drawing for the brackets
23 that are on the sixth floor. It was reviewed and
24 approved by the architects with no limitations.
25 They were ordered, delivered to the site, and the

1 BAR, Board of Architectural Review, rejected
2 them, and the owner provided us with a custom
3 steel fabricator.

4 This is the delta in that cost. We
5 provided a credit for the installation.
6 Robert -- so we originally had Tate Ornamental to
7 install the brackets.

8 Q. Okay.

9 A. And they're the ones that had to submit
10 it and review and approve the change order.

11 Q. Right.

12 A. Robert Thomas ended up installing and
13 providing the brackets. We credited the labor.
14 This is the delta and the cost between the two
15 subcontractors.

16 Q. Do you know why this was not paid?

17 A. The owner contends that we were
18 responsible for the Board of Architectural
19 Review, and that we shouldn't have ordered the
20 brackets prior to their approval, which we
21 disagree with.

22 That's not our responsibility. We
23 design what was on the drawings, what was
24 approved and reviewed by the architect and
25 fabricated them in order to have them on-site,

1 and we were ready.

2 Q. All right. 215?

3 MR. BUNDY: Your Honor, I
4 realize -- can I say something?

5 THE COURT: You may. Go ahead.

6 MR. BUNDY: We've paid this claim.

7 THE COURT: Right.

8 MR. BUNDY: These people have been
9 paid. Now, if I may, two weeks ago, I asked
10 Balfour Beatty to get together and try to inform
11 each other what had been paid and what hadn't
12 been paid.

13 THE COURT: Okay.

14 MR. BUNDY: And that never
15 happened. And so now we're here, as I predicted
16 if we didn't do that, going through every one of
17 these when this was -- this really shouldn't have
18 been necessary.

19 And I apologize for interrupting your
20 proceedings, but I feel like I need to bring this
21 to your attention as it comes up. Not only is it
22 objectionable from an evidentiary standpoint,
23 it's objectionable from a substantive procedural
24 standpoint.

25 THE COURT: Okay.

1 MR. HILDEBRAND: Your Honor, I
2 couldn't agree more. I wanted to sit -- that's
3 what I thought that we were going to do when
4 Mr. Bundy said, let's -- when he stood up in
5 court and said, let's try to get these worked
6 out. I thought that's what he wanted to do.

7 What I instead got was a letter from Sam
8 Hadley saying, we want this additional
9 information, and that's what we've been arguing
10 about. I didn't realize that -- this was my
11 understanding that we would try to do this. It
12 wasn't done, and so here we are. And I think
13 we're just going to have to go through them. I
14 apologize to the Court as well.

15 THE COURT: All right. So that's
16 water under the bridge at this point in time, but
17 what I need to know for my purposes is whether or
18 not this is a valid paid claim or unpaid claim
19 and how much the claim -- or how I'm going to
20 categorize these claims. That's what I've got to
21 figure out.

22 Of the 21,000, he has already
23 established that almost 19,000 was Premier
24 Exteriors, which is another group that settled
25 out. So that leaves it to a \$2,000 claim. But

1 I'm not going to do math right now. I'm just
2 telling you -- I'm just trying to categorize what
3 they are.

4 Some are going to be contract matters;
5 some may end up being quantum meruit matters. We
6 will have to flesh that out later. I just need
7 to know what the claim is --

8 MR. HILDEBRAND: I understand.

9 THE COURT: -- the basis for the
10 claim, and whether or not it's been paid or not
11 paid.

12 MR. BUNDY: Just to make my record
13 clear, what the -- this is the subject of the
14 documents that were subpoenaed that you have not
15 quashed.

16 THE COURT: Okay.

17 MR. BUNDY: I don't know why this
18 is so hard to understand. The purpose of getting
19 together was to this determination. The
20 methodology to accomplish the purpose was to
21 obtain documents, give them to Ms. Hadley -- I'm
22 not a CPA. I had to ask her, what is it do you
23 need so we can figure all of this out?

24 THE COURT: Right.

25 MR. BUNDY: And what I got was, no,

1 I thought we were going to get together. So I
2 did the only thing I knew to do, which was to
3 issue a subpoena, and I still don't have the
4 documents.

5 THE COURT: Okay. All right.

6 THE WITNESS: So to be clear, this
7 is not the Premier Exteriors. 212R1 is for
8 \$21,253. That's for the decorative brackets that
9 are installed, and it's for the cost of the --
10 since we've already had a bracket delivered that
11 met the requirements and was approved by the
12 architect, this is the additional cost over that.
13 BY MR. HILDEBRAND:

14 Q. I don't understand that.

15 A. Meaning Tate Ornamental fabricated and
16 delivered brackets for what was already in the
17 GMP, and that was changed. And Robert Thomas had
18 a bracket that was approved by the BAR.

19 It was fabricated by -- on direction by
20 the owner and was delivered. And he had to
21 fabricate all of the brackets. And basically
22 Tate's went to waste. So this is the added cost
23 beyond what -- because we had to use Robert
24 Thomas.

25 MR. BUNDY: Objection.

1 THE COURT: All right. This
2 represents the difference in the two; is that
3 correct?

4 THE WITNESS: Well, we already --
5 so we gave a credit for the laborer.

6 THE COURT: Right.

7 THE WITNESS: We've already had the
8 original value for the brackets.

9 THE COURT: Right.

10 THE WITNESS: This is the cost for
11 Robert Thomas because it was -- because we had
12 already delivered and approved the ones that --
13 or delivered -- manufactured and delivered the
14 original brackets that were approved.

15 This is the cost. We had already
16 executed the submitted and approved ones. So we
17 credited the labor because we didn't install
18 them.

19 THE COURT: Right.

20 THE WITNESS: Robert Thomas's cost
21 was \$27,000.50.

22 MR. BUNDY: Objection.

23 THE WITNESS: And that was to
24 submit -- or to fabricate and install the
25 brackets that the BAR approved. And we doubled

1 the credit -- we actually submitted about a
2 \$3,000 credit and labor from the subcontractor.
3 The architect -- the architect said it should be
4 \$7,000; so that's what this markup value is for.

5 THE COURT: Okay. All right.

6 MR. HILDEBRAND:

7 Q. Did we cover that one?

8 A. I think so.

9 Q. The next one, 221?

10 A. August 14th, 2018.

11 Q. I'm sorry.

12 A. 215?

13 MR. BUNDY: What's the next one,
14 Tom?

15 THE COURT: 215, it looks like.

16 THE WITNESS: I think there may be
17 a missing tab between 212 and 221. There's RCO
18 215, Lutron lighting control division.

19 MR. BUNDY: I just need to know
20 what you're on.

21 THE WITNESS: Yeah, 215.

22 THE COURT: Mine is 215. It's
23 August 14 of 2018?

24 THE WITNESS: Yes, sir.

25 BY MR. HILDEBRAND:

1 Q. Okay.

2 A. This is to update the lighting control
3 package based off the changes to the OFCI, which
4 means owner furnishes the contractor installed
5 lights at the rooftop bar. The whole rooftop bar
6 changed significantly. New lights, different
7 lights. And they, in turn, changed the lighting
8 control package that we had to provide to work
9 the lights.

10 Q. Okay.

11 A. This is the revisions to the lighting
12 control package. I believe the lighting control
13 engineer reviewed this and didn't have any issues
14 with it. I'm not sure why it's not paid.

15 Q. Okay. So this was for goods and
16 materials provided for the job?

17 A. Yes.

18 Q. And you don't know why it's not been
19 paid?

20 A. No. I believe the lighting control
21 engineer recommended it be paid.

22 Q. All right. Did we cover that one?

23 A. Yes.

24 Q. All right. What's the next one?

25 A. 221. Is that right?

1 Q. Yes, sir.

2 A. I don't have the cover page, but this is
3 for --

4 MR. BUNDY: Objection.

5 THE COURT: We're at number 221?

6 THE WITNESS: Yeah.

7 THE COURT: Yeah. No cover letter?

8 MR. BUNDY: Well, it's not that
9 there's no cover letter. This isn't to us. This
10 is from Strong Tower to BBC. I mean, there's no
11 record -- there's no evidence here that they
12 transferred this on to us. I don't know what
13 this is.

14 THE WITNESS: We did. It's just
15 not here. This was submitted to the owner. Had
16 I had --

17 MR. BUNDY: No. Is my objection
18 overruled?

19 MR. HILDEBRAND: Is there a cover
20 letter? Would there have been a cover letter
21 with this?

22 THE WITNESS: Yes.

23 THE COURT: But we don't have it,
24 though. We don't have proof that it was
25 submitted to the owner?

1 THE WITNESS: We submitted it.

2 It's not here. It's not right here, but we
3 submitted it.

4 THE COURT: All right. I will
5 sustain the objection on that one.

6 MR. HILDEBRAND: All right. Can we
7 come back to that one, Your Honor?

8 THE COURT: If you can find the
9 letter.

10 THE WITNESS: Are we on 223?

11 MR. HILDEBRAND: Yes.

12 BY MR. HILDEBRAND:

13 Q. All right.

14 A. Request for change order 223, RFI 1093,
15 guest room 603, TD wall conflicts.

16 Q. What is this for?

17 MR. BUNDY: Same objection.

18 A. This is an RFI that we submitted
19 because the owner wanted to relocate a door
20 frame, change the layout of the room.

21 The entire case opening had to be
22 cleared out, and we had to fit electrical devices
23 that were located behind the fan cooling unit.
24 They were shown behind the fan cooling unit.
25 They had to pull those out, move the door frame.

1 And this is the cost for it.

2 Q. And what was the cost on that?

3 A. It was \$3,304.78.

4 Q. Do you know why this was not paid?

5 A. I do not.

6 Q. All right. The next one, 227.

7 A. Request for change order -- oh, here's
8 221's cover letter.

9 THE COURT: 221 I've got. I'm
10 showing 846.12 is what I'm showing.

11 THE WITNESS: Yeah. That's the one
12 that -- the cover letter that was missing on 221.

13 MR. HILDEBRAND: And so take --
14 turn to tab 227. Take that cover letter out, go
15 back to 221, and put that cover letter on it.

16 THE COURT: All right. So the \$800
17 is 221; is that right?

18 THE WITNESS: Yes, \$846.12. So we
19 had to -- do you want to go over this one?

20 BY MR. HILDEBRAND:

21 Q. If we can. Can we go back to 221 just
22 real quickly?

23 A. Yeah, it's pretty easy. We had to tint
24 windows so you wouldn't see the back side of the
25 columns from the outside of the building or the

1 underside of the stair. It's cut and dry cost,
2 and I don't know why it wasn't paid.

3 Q. All right, sir. So let's jump back up
4 then to -- where are we now?

5 A. 223. No. We just went over that. 227.

6 Q. Okay.

7 A. April 9th, 2018, change order number
8 227, warehousing and handling of the mirrors.
9 This is mirrors that we -- warehouse, and we
10 received them. We opened them up, and a number
11 of them were broken. And it was determined that
12 they were not fit for the project. So this is
13 the cost to store them for 49 weeks.

14 Q. 49 weeks?

15 A. 49 weeks.

16 MR. BUNDY: Objection.

17 A. So they were delivered. They couldn't
18 stagger the deliveries. Same story as the
19 previous warehouse change order. And then we
20 ended up not using them on the project, and we
21 had to go through each one, inspect them,
22 repackage them. And this is the actual cost from
23 the warehouse for that period of time.

24 Q. Do you know why this was not paid?

25 A. No. Well, the owner -- the owner said

1 it was our responsibility to store them. We
2 didn't realize they weren't fit for the project
3 until later on.

4 So it's our cost, when they should have
5 been delivered when they were ready to install in
6 the first place. We shouldn't have had to store
7 them for 49 weeks and they ended up not being
8 used on the project. So we just stored them for
9 something like 49 weeks for no reason.

10 Q. All right. 244, is that the next one?

11 A. Yeah. 244, June 29, 2018, owner
12 furnished, contractor installed, light fixture
13 number 41. This is a credit. These are -- 244?

14 Q. Yeah.

15 A. These were light fixtures that were
16 delivered to the project.

17 THE COURT: 244, June 29, '18?

18 THE WITNESS: Yes, sir.

19 MR. BUNDY: Wait a second.

20 MR. HILDEBRAND:

21 Q. What's the date on that?

22 A. June 29th, 2018.

23 MR. BUNDY: Is that exhibit
24 originally --

25 THE WITNESS: Pardon me?

1 MR. HILDEBRAND: Let's skip over
2 that one.

3 MR. BUNDY: So you're not going to
4 offer 244?

5 MR. HILDEBRAND: No. I'm going to
6 withdraw that.

7 MR. BUNDY: So 244 is no longer
8 around.

9 THE COURT: All right.

10 MR. BUNDY: Oh, you know what?
11 It's a credit for goodness sakes. I mean, is that
12 the only one you --

13 MR. HILDEBRAND: That would explain
14 it.

15 MR. BUNDY: All right. Well, I
16 will put it in later then. We'll find it, and
17 we'll put it in.

18 MR. HILDEBRAND: Okay.

19 MR. BUNDY: For the record, they're
20 only putting in charges. They're not putting in
21 records -- credits as our construction manager in
22 case there was a good faith and fair dealing.

23 THE COURT: Noted.

24 MR. HILDEBRAND:

25 Q. All right, sir. So what's 244?

1 THE COURT: Actually, that was 244?

2 THE WITNESS: Yes.

3 THE COURT: I think it was in my
4 book. Yeah, I've got it in mine. So it went
5 down to negative 1,921. Do you want me to grant
6 that one for you?

7 MR. BUNDY: I will withdraw the
8 objection.

9 BY MR. HILDEBRAND:

10 Q. All right. What's the next one?

11 A. Do you want me to talk about that one?

12 Q. No.

13 A. The next one, August 10th, 2018, change
14 order 249, supplemental instruction number 10,
15 ballroom wall change.

16 Q. What's the amount?

17 A. It's for \$5,129.09.

18 MR. BUNDY: Same objection.

19 A. So we had to change the walls from
20 ceiling blocks to structural studs. In turn, the
21 stucco went from direct applied to a metalized
22 system. And this is the delta in the two
23 systems. It's supported by our Premier Exteriors
24 cost.

25 Q. Do you know why this one was not paid?

1 A. I do not know why.

2 Q. All right. What is the next one?

3 A. Change order 246, R1SI67, elevator cab
4 finishes. This is for \$31,157.12.

5 Q. All right. What is this for?

6 A. This is for revisions to the interior
7 cabs of the main elevators.

8 MR. BUNDY: Same objection.

9 A. We did a substantial review. Crown was
10 added. Millwork was added. Ceiling casing was
11 added. They changed the ceilings to a
12 pre-finished pecky cypress. Additional lights
13 were added.

14 There was a decorative -- there was like
15 a decorative chandelier and Tate lighting that
16 was added to the cabs. We changed to an oxidized
17 bronze handrail to match the metal finish on the
18 trim of the -- on the doors of the elevator.
19 That cost is here.

20 The credit for the original, and the new
21 cost is here. And the additional changes from
22 the previous revision were also included in here.
23 It's basically catching up all the changes in the
24 elevator cabs.

25 Q. Okay. Do you know why this was not

1 paid?

2 A. The owner told us that they disagreed
3 with portions of it, mainly the electrical
4 because they thought we should have accommodated
5 the lighting layout in the elevator design.

6 So there's an escape hatch that you
7 cannot have. It's got to be free. It basically
8 conflicted with the electrical layout in the
9 elevator cab. The owner contested that we should
10 have caught that and changed where that free area
11 should have been and caught it.

12 Q. And what was your response?

13 A. We said that it -- we had already
14 reached the elevators, right, when this revision
15 came out, and we flushed it out when the
16 elevators were on-site. We realized where the
17 hatch was. And this is the -- this is the
18 electrical portion they disagreed with.

19 Q. Okay.

20 A. So we located the hatch. The designers
21 could have -- the designers very well could have
22 caught this in their design review and not spec
23 this light fixture that conflicted with where the
24 hatch was.

25 Q. Okay. What's the next one?

1 A. MOD 7. This is August 13th.

2 Q. What number?

3 A. Change order 250, August 13th, 2018.

4 MR. BUNDY: Same objection.

5 A. MOD 7, terrace door glass change. They
6 were reduced in height. Glass for the doors was
7 already cut. This is the cost for the additional
8 glass as reordered. No charge for labor as they
9 hadn't been installed yet.

10 Q. Do you know why this wasn't paid?

11 A. No.

12 Q. All right. What's next?

13 A. Change order 251, August 31st, 2018,
14 dining room MOD 1 through 8 millwork change
15 orders.

16 MR. BUNDY: Same objection.

17 Q. What's the amount?

18 A. This is for \$22,305.58.

19 Q. What's this for?

20 A. This is the dining room. This is the
21 accumulation of all the changes from MOD 1
22 through 8 and submittal revisions, and this is
23 just the delta and what changed, what revisions
24 they made to the submittal process, what
25 revisions they made to the modifications.

1 And this is just the cost, and there's
2 added 10 grade tongue in groove, curved paneling,
3 added blocking, raised paneling on ceiling beams.
4 There's just miscellaneous changes that were all
5 accumulated into one change.

6 Q. Do you know why this wasn't paid?

7 A. I do not. I do not know why this wasn't
8 paid. The -- we spent a lot of time reviewing
9 it. Millwork did a fabulous job. I don't know
10 why wasn't changed -- wasn't paid.

11 Q. Did we talk about 249?

12 A. Yeah. That's the elevator cab finishes.
13 Oh, that's 246.

14 THE COURT: In my book, y'all had
15 those inverted. We did both -- we did 249 and
16 then we did 246.

17 THE WITNESS: Okay. So we talked
18 about both of them and just backwards.

19 THE COURT: Yeah.

20 MR. HILDEBRAND: Okay. Gotcha.

21 THE COURT: I put them in order in
22 my book for you.

23 MR. HILDEBRAND: Sorry about that.

24 THE WITNESS: Thank you. 253.

25 MR. HILDEBRAND:

1 Q. All right. 253, what is this?

2 A. This is added crown at the dome
3 rotundas. It's dated August 14th, 2018.

4 MR. BUNDY: Same objection.

5 A. For \$10,055.16.

6 Q. What was this for?

7 A. This was for a layer of crown that was
8 added at the dome rotunda, main entry. The
9 original drawing was ambiguous. They didn't show
10 two layers of crown, and we described that, the
11 change order through subsequent meetings.

12 And the owner objected to it, and I
13 don't know why they didn't pay it. They said
14 they -- you could have inferred that there was
15 intended to be two layers of crown, is what they
16 told us, but they weren't sure.

17 Q. So that was for work that was not shown
18 on the drawings?

19 A. That's right.

20 Q. Okay. All right. 254?

21 A. Decorative screen allowance
22 reconciliation, August 21st, 2018. I believe --
23 I don't know that they actually installed this
24 one.

25 MR. BUNDY: Pardon me. I'm sorry, I

1 didn't hear you. Can you repeat yourself?

2 A. Yeah. So this is a change order towards
3 the end of the project. It was an allowance --
4 we were reconciling allowance. There were four
5 metal grills in the dining area and under the
6 stairs. We were working through design trying to
7 figure this out, and the supplier -- the designer
8 could never get comfortable with the drawings and
9 the pricing that we were submitting.

10 They sourced a manufacturer that had
11 terms, specific terms for these grills. In here,
12 we specified that it's as specified on their
13 supplier's quote. It's 10 and 12 weeks from
14 approval and funding, lead times varied, and will
15 be provided when deposited receipt and shop
16 drawings are approved.

17 Q. Okay.

18 A. The manufacturer required 50 percent up
19 front, with the balance due prior to shipping,
20 and we specified that that would have to take
21 place for the supplier to release the drawings.

22 Q. Okay.

23 A. And I don't believe the owner ever paid
24 the deposit up front, and they were never
25 released.

1 MR. BUNDY: Objection, relevance.

2 THE COURT: Okay. Not issued, not
3 paid; is that right?

4 THE WITNESS: That's right.

5 THE COURT: All right. So no
6 expense here?

7 THE WITNESS: No expense.

8 THE COURT: All right. Objection
9 noted. Go ahead.

10 BY MR. HILDEBRAND:

11 Q. So this one should be struck; is that
12 right?

13 A. Well, yeah. There may be a small cost
14 for some mirrors.

15 Q. All right.

16 MR. HILDEBRAND: We will strike
17 that one, Your Honor.

18 THE WITNESS: All right. 255.

19 BY MR. HILDEBRAND:

20 Q. Yes.

21 A. Add trim to conceal pocket door header.
22 This is August 31st, 2018. This is at -- as
23 requested by the owner. This was reviewed
24 on-site and requested by the owner to add a
25 casing to conceal the pocket door header.

1 It wasn't shown. It wasn't needed. The
2 owner decided they wanted to conceal that better,
3 and they didn't want to pay the cost of it
4 because they thought it was customary in the
5 industry, but it wasn't shown.

6 Q. What was the amount of that one?

7 A. \$11,789.32.

8 Q. So that was for work and materials
9 provided but not paid?

10 A. That's right. Added work, added
11 materials not shown in the drawings and requested
12 by the owner.

13 Q. All right. Next one is 258.

14 A. Additional mockup revisions.

15 MR. BUNDY: Same objection.

16 A. March 28th, 2019. These are -- the BAR
17 is \$65,782.90. This is additional work required
18 by the VAR that was not shown. We never had --
19 had no idea.

20 There was no way we could have put a
21 value to this. It was added by the BAR after we
22 had a GMP. And it's pretty clear it should have
23 been paid. It should have been understood.
24 There's a cost in here.

25 We saved the owner money by using one of

1 the permanent Hope doors in the building, in the
2 mockup, so they didn't have to pay -- I think it
3 was like 12 or \$14,000 for an additional -- for
4 an additional window that we just took out of
5 mockup and put in the building.

6 Q. Wait, explain that. What was the issue
7 with the Hope doors and the mockup?

8 A. So the BAR after the -- the Hope doors
9 had to be released because they took 10 months to
10 fabricate; had to be released prior to the BAR
11 approving the mockup. So they were already in
12 fabrications. These guys are in Buffalo, New
13 York.

14 Q. 10 months?

15 A. 10 months. And so they were hand
16 selected by the owner. He flew up to the
17 fabrication site. Beautiful doors, but took
18 forever.

19 Q. All right.

20 A. So the doors are up in fabrication. In
21 order to -- when the BAR came along, they
22 requested another mockup, a whole nother mockup
23 from what was originally shown and agreed to
24 provide.

25 We worked with the BAR and the owner to

1 install a window that was already coming, right?
2 We -- and instead of starting that 10-month
3 process over, we were waiting, whatever -- I
4 think they were able to cut it down to six
5 months. But it would have just delayed the BAR
6 approval for that amount of time.

7 Q. Okay.

8 A. So one was already coming. We asked
9 that it be expedited and installed in the mockup;
10 so all we were asking was for the -- for the
11 amount of the money to take it from the mockup
12 that wasn't originally shown, and put it into
13 the -- to basically install it twice.

14 Q. Okay.

15 A. Install it, take it out, put it in the
16 building. And everything else has got a drawing
17 for the mockup, executed that mockup, and
18 that's -- I don't know why it hasn't been paid.
19 And the cost to demo it after the fact. 259?

20 Q. Yes, sir. Wait a second. Hold on a
21 second.

22 A. Hudson Street storm repair.

23 Q. Hold on a second. Okay.

24 A. August 30th, 2018, Hutson Street storm
25 repair --

1 MR. BUNDY: Same objection.

2 A. -- \$33,398.68. There was a storm box
3 that was degrading and had to be replaced. It
4 wasn't originally shown on the drawings. We
5 submitted the request to the engineers a year in
6 advance of needing to know what to do, needing to
7 fabricate the box.

8 We never got a response or a detail on
9 how to fix it. So the site subcontractor, the
10 (inaudible) and simply came back and said, hey,
11 you've got to fix this box. The engineer gave us
12 the detail. This is the cost for the added box.
13 And to hydrovac, cut out around it and fix it.

14 Q. All right. Next one.

15 A. 260?

16 Q. Yes.

17 A. March 1st, 2019, ASI52, added wall
18 covering. This is for \$5,586.12 added -- wall
19 covering was added, requested by the owner,
20 provided -- provided the wall covering,
21 installed the wall covering, was never shown in
22 the drawings before. It wasn't paid for whatever
23 reason.

24 Q. You don't know why?

25 A. I don't know why. It was installed. It

1 was clearly added. I don't know why.

2 Q. Okay. All right.

3 A. 261, revision three, allowance
4 reconciliation with the accordion doors.
5 November 15, 2018 --

6 MR. BUNDY: Same objection.

7 A. -- \$71,723.42, accordion doors. These
8 are revisions to the accordion doors. I honestly
9 do not know if these were installed or not.
10 There was a portion of it that the revision --
11 the revised front work that was, I believe,
12 similar, but they required the deposit up front.

13 I know the doors were fabricated. I
14 don't know if they were installed. The prep work
15 had to be sent to the subcontractor. He -- the
16 mill worker installed it, and I don't know if he
17 ever --

18 MR. BUNDY: Objection.

19 A. -- received it. We were never paid for
20 that.

21 MR. BUNDY: Move to strike the
22 testimony. Doesn't know, and in fact, I'm told
23 that they didn't do it. So I can do this on
24 cross-examination since he doesn't want me to
25 point these things out.

1 THE COURT: All right. The doors
2 were -- as far as you know, the doors were made,
3 but --

4 THE WITNESS: The doors were made,
5 waiting for the prep work. The prep work never
6 was delivered because they didn't accept the
7 change order.

8 THE COURT: The prep work wasn't
9 delivered; so I assume the doors were not
10 delivered?

11 THE WITNESS: I assume the doors
12 were not delivered.

13 MR. HILDEBRAND: Okay. We will
14 take this out then, Your Honor.

15 THE COURT: All right.

16 MR. BUNDY: So what now? 61 is
17 coming out?

18 THE COURT: Strike.

19 MR. HILDEBRAND: Yes.

20 THE WITNESS: 262, RFI 1004, TV
21 wall revisions. This is August 31st, 2018 for
22 \$15,635. This is revisions. There's a corner
23 stack of rooms, 315, 415, 515. The layout was
24 changed after it was framed.

25 It had to be demoed, selectively

1 reframed to accommodate a revision to the TV head
2 boards. It's just a bunch of electrical data
3 relocations. We didn't know at the time if
4 there -- if it was going to require the sprinkler
5 piping or HVAC revisions. And this is just the
6 cost for electrical and framing to accommodate a
7 revision that came in after that room was framed
8 and installed per the drawings.

9 BY MR. HILDEBRAND:

10 Q. Do you know why that one wasn't paid?

11 A. No.

12 Q. All right. Next one?

13 A. 264?

14 Q. Yes, sir.

15 A. September 4th, 2018, RFI 1180, sprinkler
16 heads in the TV walls, \$14,390.21. This was --
17 the designer came through and saw that -- we
18 pointed out that the sprinkler heads can be in
19 the TV wall. Is this what you want? And saw
20 where it was shown in the plans. TV wall, which
21 is an FF&E.

22 It's a padded, fabric wall that holds
23 the TV. And said, do you want to cut into the TV
24 wall? They said, no. Move the sprinkler that
25 had already been roughed in. I believe we had to

1 add -- you have to add the head to accommodate
2 the spray in the room, the fire protection.

3 And this is the cost to relocate the
4 heads that were already installed and add six
5 heads. There was some patchwork there because
6 the drywall was already installed, and we had
7 some miscellaneous costs to modify the wall
8 board.

9 Q. Was that paid?

10 A. No.

11 Q. Do you know why?

12 A. The owner said that the designers, the
13 fire protection designer should have accommodated
14 their design for the FF&E that we didn't have
15 drawings for at that time. We didn't have FF&E
16 drawings yet.

17 And they said, there should have been a
18 TV wall showing there. They should have known to
19 relocate it. Would have been added anyways, and
20 the design was done well at the beginning of the
21 project. And quite frankly, the interior
22 designer or the architect should have noted that.

23 If they didn't want their -- if they
24 didn't want the sprinkler head in the TV wall, I
25 don't know that. They should have called that

1 out. So it could have been caught. It wasn't,
2 and so it was installed as drawn, and had to be
3 moved.

4 Q. Okay. The next one, 266?

5 A. 266, additional framing and sheetrock
6 revisions, September 7th, 2018 for \$2,203.74.
7 This is the miscellaneous framing and rework that
8 the designer and architect directed us to pad out
9 a wall for purely aesthetic reasons. And that's
10 a portion of it. And it looks like that there
11 was some -- the lawn doors, which are these kind
12 of folding doors that are outside the second
13 floor of the dome rotunda.

14 So it was required by fire to separate
15 the rotunda from the ballroom, and the framer was
16 directing the time and material, and add some
17 sheetrock to the foyer side to achieve a fire
18 rating. So they had to add some sheetrock to
19 achieve a fire rating that wasn't shown but was
20 required when we asked about it.

21 Q. Okay. Do you know why this wasn't paid?

22 A. No. The work was done. The work was
23 executed. I don't know why it wasn't paid.

24 Q. All right. 267?

25 A. Roof top MOD 1 through 8 millwork 267,

1 September 7th, 2018, \$7,922.44. Similar to the
2 dining room changes -- there were so many changes
3 in the millwork through submittals, design,
4 drawing changes, MOD 1, 2, 3, 4, 5, 6, 7, 8, the
5 walls moved. The millwork submitted a cumulative
6 change order to reconcile it all at the end,
7 prior to them fabricating and delivering.

8 And this is the change order for all of
9 the changes. The owner typically trusted the
10 mill workers' submittals. I don't know why this
11 wasn't paid. The work was put in place. To my
12 knowledge, there's no issues with it, but it
13 wasn't --

14 Q. All right.

15 A. 268, RFI reconciliation number 3, number
16 4, September 24th, 2018. This is for two metals.

17 Q. What was that cost?

18 A. \$51,979.21.

19 Q. Okay.

20 A. It's for addition of two metals,
21 decorative metals, and Camilla's Bar, the pink
22 lounge, some added bays, and a mirror that was
23 added on a new drawing. This is an allowance
24 reconciliation, and we had a cost for it.

25 For all of the decorative metals, the

1 owner disagreed that these metals were included
2 in the allowance. They thought it was
3 specifically for a door allowance -- however the
4 allowance is worded, that it's for the doors and
5 it also includes metals 2 through 8.

6 It's pretty black and white on the
7 change order. They felt that it wasn't -- that
8 wasn't their intent, but the change order read
9 it's for the doors, it's for the metals, and this
10 is part of the allowance reconciliation.

11 MR. HILDEBRAND: Did that make
12 sense?

13 THE COURT: No. That's okay. I
14 understand.

15 BY MR. HILDEBRAND:

16 Q. All right. It was for work and
17 materials provided, but y'all weren't paid for?

18 A. That's right.

19 Q. And you felt you were due under the
20 contract?

21 A. Yes.

22 MR. BUNDY: Objection.

23 Q. What's the next one?

24 A. This is 270, framing and drywall change
25 orders, dated March 12th, 2018, from Precision

1 Walls. This is a summary of all of the change
2 orders that the framer had at the end of the job
3 that were --

4 MR. BUNDY: Objection, Your Honor.

5 THE WITNESS: -- added costs, added
6 labor, were the basis for the change in contract
7 drawings.

8 THE COURT: All right. One sec.
9 What is the basis?

10 MR. BUNDY: Precision Walls is out
11 of this case.

12 THE COURT: Precision?

13 MR. BUNDY: Yeah. They no
14 longer -- could I just make an observation?

15 THE COURT: All right.

16 MR. BUNDY: This gentleman doesn't
17 work for Balfour Beatty anymore.

18 THE COURT: Yeah.

19 MR. BUNDY: One of my objections
20 that I keep making goes to his firsthand
21 knowledge of the -- what he's testifying to.

22 THE COURT: All right.

23 MR. BUNDY: He doesn't have any
24 firsthand knowledge that these people have been
25 paid or not been paid and who has been paid and

1 hasn't been paid. It's obvious because every
2 time it comes up, he has no idea.

3 So I don't know how somebody who's no
4 longer employed, didn't work in the bookkeeping
5 department, and who's not -- and who has been off
6 this job for two or three years, and no longer
7 works for them and hadn't worked for them for
8 over six months, could possibly have firsthand
9 knowledge of whether these things have been paid
10 or not.

11 They may have been unpaid when he left
12 the job two, three years ago, but, you know, I
13 just think it's -- I don't think he's got the
14 proper foundation.

15 THE COURT: All right.

16 MR. HILDEBRAND: We certainly
17 haven't received any payments, that's for sure.

18 THE COURT: Yeah. I have to assume
19 that his testimony is based upon his knowledge,
20 his personal knowledge --

21 MR. HILDEBRAND: Right.

22 THE COURT: -- at the time?

23 MR. HILDEBRAND: Yes, sir.

24 THE COURT: He just left in April
25 of this year is what I understood.

1 THE WITNESS: That's right, April
2 15th.

3 MR. HILDEBRAND: I'll go through
4 that.

5 THE COURT: Go ahead.

6 BY MR. HILDEBRAND:

7 Q. So your testimony as to whether Balfour
8 has been paid or not was based on your knowledge
9 as of when you left Balfour?

10 A. That's right.

11 Q. Okay.

12 A. That's right.

13 MR. BUNDY: So just to make sure --
14 so for the record, he has no firsthand knowledge
15 about any payments since -- what is it -- April
16 of '18?

17 THE WITNESS: Mid April of '18.
18 No, mid April of this year, 2021.

19 MR. BUNDY: Since mid April of
20 2021?

21 THE COURT: Right.

22 MR. BUNDY: Okay. So since April
23 of 2021, he has no firsthand knowledge of
24 anything that he's testifying to that could have
25 changed, right? So there's no additional

1 knowledge, no payments, none of that?

2 THE COURT: He would not know about
3 payments since that time, right?

4 MR. HILDEBRAND: Have y'all made
5 some payments that I don't know about?

6 MR. BUNDY: Do you want to call me
7 as a witness? I'll answer the questions. We've
8 done it before. I'll be glad to answer again.

9 MR. HILDEBRAND: All right. 270.
10 What is your time frame, Your Honor? I've got
11 about 10 more.

12 THE COURT: Let's press on. I'm
13 good to go. Lunch can be anywhere from 11 to 2.
14 All right.

15 THE WITNESS: 271, hanging and wall
16 covering change orders, March 12th, 2019.

17 MR. BUNDY: Objection.

18 THE WITNESS: \$41,394.11, similar
19 to the last one. These are changes that were
20 directed by the owner and/or design team, were
21 executed, and to my knowledge, have not been
22 paid.

23 BY MR. HILDEBRAND:

24 Q. I'm sorry, did you say the amount?

25 A. \$41,394.11. Miscellaneous change orders

1 that have not been submitted prior that were
2 submitted towards the end of the job that -- for
3 payment.

4 Q. Okay. All right. 272?

5 A. 272, ornamental metal change orders from
6 Tate Ornamental, March 7, 2019. \$19,286.37.
7 Again, three items that were not shown in the
8 drawings were installed. Gates were -- at the
9 pool terrace, were required by code but not
10 shown. The stair picket and the pool terrace was
11 not shown but had to be installed for the safety
12 of the public.

13 And stair 1 and 2 guardrails were
14 redesigns, SI49, and these are the revisions and
15 the connection points. It's added cost beyond
16 what was shown and what was required. So the
17 drawings were revised and the connection had to
18 change because it cost more money to do it.

19 Q. All right. 273?

20 A. 273 is title change orders from David
21 Allen. \$111,644.29. Again, subsequent change
22 orders that were -- that had not been submitted
23 otherwise were all submitted together, all for
24 extra work.

25 MR. BUNDY: Objection.

1 A. This was to -- changes from GMP to
2 drawings that were actually installed, changes
3 and RFIs, additional leveling of the terraces
4 where there was a gap in what was specified and
5 what was required by the selection the owner
6 made, meaning concrete has tolerances.

7 The owner selected a tile that had a
8 tighter tolerance. And in order to make the
9 slopes and grades work, additional prep work had
10 to be made, concrete --

11 Q. What are you talking about, the
12 tolerances?

13 A. Meaning concrete tolerance and
14 post-tension varies. It can go up and down. It
15 has about a quarter inch over 10 feet, I believe.
16 So the concrete subcontractor, if a higher level
17 of flatness is not specified, has about a quarter
18 inch in 10 feet to happen.

19 Q. So you've got a quarter inch from
20 perfection?

21 A. That's right.

22 Q. All right.

23 A. And the tile was large format. It did
24 not -- the tolerance in the tile was about an
25 eighth of an inch.

1 Q. You mean each tile --

2 A. There was about a quarter inch -- that's
3 right.

4 Q. The thickness? I'm with you.

5 A. That's right. There was about a quarter
6 inch of gap in what was specified and what was
7 required between the two trays.

8 In addition to that, the layouts of the
9 drains on the terrace have changed because the
10 large format tile couldn't manipulate the drain,
11 the grades in that tile to drains, and it
12 wouldn't have drained properly. The -- if we had
13 installed it the way it was drawn, it would have
14 stayed wet. It wouldn't have drained to the
15 drain.

16 So we got an SI that revised how
17 everything was supposed to be sloped, tile was
18 supposed to be cut, and so it would drain
19 properly, and it wouldn't be a slip hazard. It
20 wouldn't be wet. And so there was additional
21 prep work in manipulating that tile, cutting that
22 tile to make sure that it drains, and it doesn't
23 stay wet for long periods of time.

24 Q. Okay.

25 A. I think that's the majority of this.

1 There's some interior stuff, too, that Camilla's
2 Lounge had beautiful tile but required the floor
3 to almost be perfectly flat. So there was just
4 additional prep work that was over and above what
5 was required by the contract design.

6 Q. There was a lot of tile in the hotel?

7 A. There's a lot of tile. It's beautiful.
8 It's beautiful tile. There's a ton of tile in
9 that hotel.

10 Q. All right. 274?

11 A. 274, punch list for \$30,537.68. This
12 was the third round of the punch lists that we
13 were requested to execute. We met with the
14 architect and went through every -- every guest
15 room, and they filled out a punch list.

16 We executed that punch list. The
17 architect signed off that we executed that punch
18 list. Then there were some additional items
19 that, when the owner's rep came through, marked
20 up. We executed those.

21 And then the owner requested that the
22 operator go through and execute their punch list.
23 That's not -- I mean, we executed what we were
24 told to do twice at no cost. And then the owner
25 sent their operator through that's in there every

1 day. We didn't know how this list was
2 formulated.

3 And we came up with -- and we had told
4 them we weren't going to do it. We said, this is
5 ridiculous. We're not going to do it, and they
6 directed us to do it and said, keep track on time
7 and material, and that's what this is for, and
8 they didn't pay it.

9 Q. All right.

10 A. 275, guest room vanity and balcony work,
11 April 12, 2019. This one is tough. The --

12 Q. What's the amount here?

13 A. This is \$67,384.91. USGA, which is the
14 kind of governing, framing and drywall. They
15 kind of spec tolerances. Drywall similar to
16 concrete has built-in tolerances that are plus or
17 minus about a quarter inch over, I think, 10 feet
18 or 8 feet.

19 MR. BUNDY: Objection.

20 BY MR. HILDEBRAND:

21 Q. So are you talking about this is the
22 drywall on the walls?

23 A. Yeah. Drywall of the walls, framing.
24 All of that can be about a quarter inch plus or
25 minus.

1 Q. And is this in a specific area? This is
2 in the guest rooms?

3 A. That's right. This is in the guest
4 rooms.

5 Q. Okay.

6 A. So what we had delivered were vanities
7 that had an eighth of an inch tolerance. And
8 this also -- I don't think it's listed, but the
9 vanities came.

10 There was an opening for the vanity to
11 fit -- let's call it 10 feet -- and we framed it
12 to 10 feet within that tolerance, about a quarter
13 inch plus or minus. But the vanity didn't have
14 that tolerance. The vanity had no tolerance. So
15 we had to reframe about half of our openings to
16 meet the 8 inch tolerance that the vanity came
17 in.

18 Q. I'm not following you.

19 A. So think here -- this is a wall, and
20 this a wall. You've got to fit a vanity in
21 between these two areas.

22 Q. Okay.

23 A. Right? The drywall is allowed to have a
24 quarter inch tolerance in it. So this could
25 be -- instead of 4 feet, it could be 3 feet and

1 11 inches and three-quarters of an inch.

2 MR. BUNDY: For the record, this is
3 all Precision Wall stuff again.

4 THE COURT: Precision Wall. Okay.

5 THE WITNESS: Well, it would be
6 BMCC.

7 MR. BUNDY: Precision Wall.

8 THE WITNESS: And BMCC.

9 MR. BUNDY: Okay. So neither of
10 one of them are due. So none of it is due.
11 Thank you.

12 THE WITNESS: So the vanity showed
13 up. We had to rework a large number. It's all
14 documented here, of a number of -- of the number
15 of walls to fit the tolerance.

16 Further, once that vanity was in place,
17 the cutout for the faucet had an eighth of an
18 inch tolerance. So the faucet fit almost
19 perfectly in the hole. So the -- the valves that
20 were already installed and laid out, already
21 installed, had to be cut and relocated when the
22 vanity got here.

23 So you had an -- I mean, you had an
24 eighth of an inch, I think, it's listed here.
25 There's again a gap in what was spec and what was

1 delivered. And so -- and the valves were
2 changed. They originally didn't have this
3 tolerance. The owner selected a more decorative
4 fixture after the majority of the walls were
5 framed.

6 BY MR. HILDEBRAND:

7 Q. Okay.

8 A. And it wasn't paid. 267?

9 Q. 276.

10 A. 276, case and millwork changes,
11 LowCountry, March 13th, 2019, \$78,632.10.

12 Similar, just miscellaneous change
13 orders from the mill worker that were -- whether
14 it was through an SI or whether it was through a
15 field condition or an additional -- we got some
16 rosettes and things that weren't shown in the
17 drawings that we ended up having to supply. All
18 of that is caught up in this change order.

19 Q. So this is all work provided to --

20 A. All work that was installed and was not
21 paid, to the best of my knowledge.

22 Q. All right.

23 A. Structural steel change orders, 277,
24 March 13th, 2019. Similar to concrete. These
25 were changes that were required throughout the

1 structure of the project.

2 MR. BUNDY: Objection.

3 A. Stair three, stair six, stair four, all
4 had to be modified.

5 Q. I'm sorry. What was the amount?

6 A. \$138,304.56.

7 Q. Okay.

8 A. Miscellaneous steel modifications. We
9 added rebar, added support, additional work,
10 changes to how the stairs, whether it was in the
11 submittal process or a field condition, they had
12 to add some supports. All these things are not
13 shown in the drawings, and we're -- we requested
14 payment for them.

15 Q. And unpaid, to your knowledge? They
16 were unpaid at the time that you left?

17 A. To my knowledge, they were unpaid. Some
18 of this was time and material; some of it was
19 estimated.

20 Q. Do you know why those were unpaid when
21 you left?

22 A. I don't know. 278, Coats type Q, window
23 flashing revision from SI10, March 29th, 2019.
24 This is something that we missed originally when
25 SI10 came out, when the wall changed from black

1 to frame.

2 The hooks, the windows, we talked about
3 before. It sat in a wall. What was once, I
4 believe, an eighth inch wide wall, inspected CMU
5 shrunk.

6 Q. Hold on. Let me get you to explain that
7 a little bit.

8 A. Yeah, sorry. So we talked about SI10
9 before where we had a metal lath because the wall
10 went from CMU -- above the ballroom, the wall
11 went from CMU to metal framing.

12 Q. The wall went from concrete masonry
13 units to metal?

14 A. Yeah. Block, CMU, brick, masonry units
15 to stud framing.

16 Q. Okay.

17 A. So it got smaller. It required a metal
18 lath. That was the previous change order. This
19 one is for the flashing. Remember these windows
20 released well in advance of some of these
21 changes.

22 The flashing now, you've got an 8 inch
23 wall or you've got five and three eighths,
24 whatever the wall ended up being. It was -- it
25 used to be 8 inches. Now, it's shorter, and

1 you've got to add extra flashing.

2 Q. Was that a change?

3 A. This is a change, SI10.

4 Q. Okay. Was that paid as of the time you
5 left?

6 A. It wasn't changed -- they didn't change
7 the flashing detail. They just changed it from
8 CMU to metal frame. So we had to go back and
9 figure out why the change was made because we
10 didn't catch it. It wasn't shown.

11 So, when the windows showed up, we were
12 like, there's a problem, right? There's going to
13 be a gap in how the wall is flashed. We don't
14 want water in the ballroom, so we had to add some
15 flashing. And this is custom flashing to match
16 the Hope's window. Fortunately, it didn't take
17 10 months to get it.

18 Q. What was the amount of that?

19 A. \$8,511.80.

20 Q. Okay.

21 A. Last one, 279. Construction change
22 directives, January and March draws --

23 MR. BUNDY: Objection.

24 A. -- for \$228,811.20. So all of the
25 incurred labor from January and February -- or

1 sorry, from January and March from construction
2 change directives, time of material and labor,
3 that the owner directed us to use CCD to execute.
4 And to my knowledge, has not been paid.

5 Q. All right. Explain that a little bit
6 more.

7 A. Meaning?

8 Q. So y'all were directed -- there was not
9 an agreed upon change order with an amount; so
10 the owner elected to tell you to do through a
11 CCD?

12 A. That's right. So we -- there's -- let
13 me get the total number of CCDs. This one goes
14 up to 46, but the owner started directing us to
15 make changes to the drawings at the end of the
16 project, and there wasn't enough time, or they
17 wouldn't agree with the cost.

18 So they directed us to do it on time and
19 material. They agreed it was a change. They
20 issued us the change, and we executed it on time
21 and material, and they didn't -- to my knowledge,
22 they haven't paid it.

23 Q. Do you know why?

24 A. I don't. They paid them up to a certain
25 date, and they stopped paying them. This was in

1 January and March of 2019. So I don't believe
2 that we were getting paid at that time, and we
3 were trying to get the hotel complete. So, you
4 know, this is the time period where they stopped
5 paying us.

6 Q. Okay.

7 MR. HILDEBRAND: All right. Your
8 Honor, I would like to move to admit these RCOs
9 into evidence at this time.

10 MR. BUNDY: Cost of codes?

11 THE COURT: Move to admit these
12 RCOs.

13 MR. BUNDY: Oh, I thought we
14 just -- we just went through each and every one
15 of them.

16 THE COURT: That's what we did.
17 Make this Exhibit No. 12. We made some changes
18 to it as we went through it.

19 (PLF. EXH. 12 was marked for
20 identification.)

21 MR. BUNDY: Also, I saw A through X
22 on here that he hasn't been through. So I object
23 to the rest of them.

24 THE COURT: You want to him walk
25 through A through X?

1 MR. BUNDY: Well, yeah. A through
2 X he hasn't talked about. I don't know if he was
3 going to talk about them or not.

4 THE WITNESS: I didn't realize it
5 was back there. So this is how we came up
6 with -- I believe this actually supports 279.

7 So we required -- we had set up
8 individual job numbers for each construction
9 change directive to track the time associated
10 with it. Mostly internal, how we billed. Any
11 time that our team spent on that change, we
12 billed. We had to submit a -- this is kind of
13 our internal cost report.

14 So there's a chart on how much we've
15 already billed to that change order, what our
16 current cost was for that month. And we included
17 the delta in that change order. So we have --
18 you know, if there were 49 CCDs, we had 49 job
19 cost codes set up for them.

20 MR. BUNDY: And I object based on a
21 lack of foundations.

22 THE WITNESS: This is CCD 46. It
23 is Exhibit A. Exhibit B is for CCD 7. They're
24 all titled. There was a labor summary that was
25 included with it for the number of hours that

1 equated to the dollar amount that you were
2 referring to.

3 MR. BUNDY: Well, I understand how
4 they're -- I guess. I mean, maybe I don't
5 because it's --

6 THE COURT: Help me out with how
7 you're distinguishing what you're saying the
8 change orders are as you look at the document.

9 THE WITNESS: Yes. So here's CCD
10 7, it was a revision in the dining room outlets.
11 The owner directed us to do it. So we set up a
12 job number, 13026470. That was for that
13 individual directive.

14 And any time spent on that change order
15 directive from Balfour Beatty was tracked. So it
16 was outside of our original requirement. We
17 tracked our time. We included a labor report,
18 who was charging time, and submitted that with
19 the change order.

20 THE COURT: Okay.

21 MR. BUNDY: May I explain my
22 confusion?

23 THE COURT: Sure.

24 MR. BUNDY: If what he's saying is
25 that the exhibit or the tab number 29, this

1 listing of things, is backed up by A through X.

2 Is that what he's saying?

3 THE COURT: That's my
4 understanding.

5 MR. BUNDY: All right. Well, A
6 through X, if I remember the alphabet, is 24
7 tabs.

8 THE COURT: Yeah.

9 MR. BUNDY: Okay. And there are 43
10 items listed in this exhibit. So unless we're
11 going to a different alphabet, maybe Cyrillic for
12 Russian, I think we are stuck with 24.

13 And I don't -- and there would be no way
14 for me to know which one relates to which.
15 There's no foundation for any of it. I don't
16 even know who prepared these documents. Okay.
17 And it's all attached to an undated letter. It's
18 unsigned. So, once again, I'm confused.

19 THE COURT: Okay. I noted the math
20 problem. I got it. When you get to X, you leave
21 off Y and Z. That's 26 minus two. So I came up
22 with 24 supporting documents, and you made
23 reference to 49.

24 THE WITNESS: 49?

25 THE COURT: Isn't that what you

1 said?

2 THE WITNESS: I believe the last
3 change order, CCD, that I saw a number on here
4 was 46. It's not all of them. Only work that
5 was in these months was billed for.

6 THE COURT: Okay.

7 THE WITNESS: There's cost codes
8 here. Like, for example, number 21 is cost code
9 400. That's a cost of work. 506, 40,000, that's
10 a subcontractor cost. So that's supported by a
11 subcontractor invoice.

12 23, it's similar. It's for a different
13 change directive, but it's for the same
14 subcontractor. 24 has a different cost code; so
15 that would be for a different subcontractor.

16 MR. BUNDY: May I say something?

17 THE COURT: Yeah.

18 MR. BUNDY: It really -- it matters
19 if I understand it because I can't cross-examine
20 the witness unless I understand it, and that's
21 why we have rules, which presumably give us our
22 basis for understanding. But whether I
23 understand it or not, it's vitally important that
24 you understand it.

25 THE COURT: Yeah.

1 MR. BUNDY: And I have a lot of
2 respect for your intelligence, but I don't know
3 how you could possibly know all the cost codes at
4 Balfour Beatty and how to read that document to
5 get you anywhere. Thank you, Your Honor.

6 THE COURT: I'm with you. You did
7 lose me on that one. So just pull out one of
8 these and let's go through it sample by sample.
9 I see the job number -- it's the very first one.
10 This is under tab A. I see a job number that
11 y'all have given this. Marion Square CCD, that's
12 your change directive, correct?

13 THE WITNESS: CCD 46.

14 THE COURT: This is number 46. I'm
15 not sure what DUL request is, but whatever that
16 is. But you started going into subcontractors
17 and other data, which I can't follow.

18 THE WITNESS: So 46 would be -- it
19 would be number 27 -- okay. So 11.

20 THE COURT: All right. So 46 is
21 11. Tell me where that comes in.

22 THE WITNESS: January draw. So
23 that actually ties to -- that actually ties to
24 number 27.

25 THE COURT: You lost me.

1 THE WITNESS: So --

2 THE COURT: You lost me there.

3 THE WITNESS: If you look at A --
4 if you look at A, it says period ending March
5 29th, 2019.

6 THE COURT: All right. Hold on.

7 MR. BUNDY: Well, Your Honor, while
8 you're looking --

9 MR. HILDEBRAND: Let him finish,
10 please.

11 THE COURT: Hold on. I'm just
12 trying to follow. All right. I see March 15 on
13 here somewhere, but I haven't found March 29th
14 yet.

15 THE WITNESS: At the top. He's
16 highlighting it on the screen.

17 THE COURT: Okay. All right. I
18 see it now.

19 THE WITNESS: So that's the revenue
20 cost at completion is 6,259. So what we have
21 included, this \$55 is a delta of previous months
22 to this month.

23 MR. BUNDY: Your Honor, if this is
24 a summary, one of the basic definitions of a
25 summary is, it's not supposed to be confusing.

1 This is the exact opposite of what a summary is.

2 THE COURT: Okay. Yeah. If he can
3 take me through it, then I can figure it out when
4 I get there. That figure represents -- the 6,259
5 figure is the dollar amount representative of
6 what, labor cost?

7 THE WITNESS: Yes.

8 THE COURT: That's strictly labor,
9 time and material?

10 THE WITNESS: Yes.

11 THE COURT: The labor cost. Okay.
12 All right.

13 THE WITNESS: So in a previous
14 month, there was a dollar amount. That's the
15 delta between the previous month. That's not the
16 delta. That's current, to-date. We subtracted
17 the previous month to come up with the cost for
18 that month. There's really no other way to do it
19 in how we tracked it. There's 49 CCDs.

20 THE COURT: Okay. I saw on some of
21 those CCDs, this doesn't include time and
22 materials. We'll get to that later. This is to
23 getting to that later. I'm asking --

24 THE WITNESS: Sorry, I
25 misunderstood your question.

1 THE COURT: Well, I can't remember
2 which one it was, but there were a series of
3 these documents that we went through. And then
4 the body of it says, however, this change order
5 does not resolve related requests for cost and
6 our time, which remain in dispute. And those
7 requests are expressly reserved.

8 I'm looking specifically at item number
9 270 is the one I just happened to pull up. Let's
10 see if that's one we have in evidence. My
11 question -- yeah, that's one we covered. That
12 was a summary and financial job cost, framing and
13 wall. This was Precision Walls.

14 But in the language at the bottom of the
15 body -- at the bottom, I just highlighted it,
16 this change order does not resolve -- right in
17 the middle; however, this change order does not
18 resolve requests with costs overtime, which
19 remain in dispute.

20 That's my question to you. Is this --
21 is this a calculation of what that is, the
22 amounts in dispute of costs and time? That's my
23 question to you.

24 THE WITNESS: I believe this was
25 included -- because if it was executed -- this

1 change order, March 12th, 2019, does not resolve
2 any change orders that are in dispute.

3 THE COURT: Right.

4 THE WITNESS: If executed, it
5 resolves that change order. It doesn't resolve
6 any other change orders. Because when we execute
7 a change order, sometimes the way they word it,
8 it resolves everything prior to that that was
9 submitted.

10 THE COURT: Right.

11 THE WITNESS: And that was not the
12 case. We had a number of outstanding change
13 orders that had not been resolved.

14 THE COURT: So my question is, is
15 what Exhibit No. 279, is that what is attempting
16 to be reconciled?

17 THE WITNESS: No, sir.

18 THE COURT: All right. Well, then
19 you've got me lost. So I don't know what we're
20 doing in 279.

21 THE WITNESS: 279, we had CCDs that
22 we were -- we had to track time and material.
23 And the only way that we could track time and
24 material for each of those CCDs was to set up --
25 and Balfour's time because it was a lot of extra

1 time on us. We set up the job numbers for each
2 of those.

3 The report that came out -- this report
4 that came out was a summary of the labor spent
5 to-date by Balfour to support the cost that we
6 were requesting. So 46, the Department of Labor
7 required these changes. They had not been
8 reconciled prior.

9 The owner directed us -- because we
10 didn't have time to price them -- do it on time
11 and material. Here's your CCD. We need this to
12 open our hotel. We set up a job number. We told
13 our guys, it's added work. If there's costs
14 spent on the project executing those change
15 orders, you charge your time -- your weekly time
16 to that job number.

17 THE COURT: Okay. All right.
18 Okay. I think I followed you, what you're
19 telling me now.

20 THE WITNESS: It's hard because
21 there was so many, and there was so many changes
22 coming. It was very hard to settle this. And
23 this was the format that we all sat down with Jim
24 Clements, Kim, and agreed that it would be
25 submitted under.

1 THE COURT: All right. And when
2 you talked about the number 49, you were talking
3 about the number of change directives; is that
4 right?

5 THE WITNESS: Yes, sir.

6 THE COURT: Okay.

7 THE WITNESS: And it may be 46 and
8 it may be 49.

9 THE COURT: Whatever the number is.

10 THE WITNESS: Yes. That's the
11 number of change directives, numbers of job
12 numbers we had set up.

13 THE COURT: All right. So you
14 created a job number for each change directive --

15 THE WITNESS: Yes.

16 THE COURT: -- is what you did? Is
17 that's reflected -- is that what's reflected in
18 the top left portion?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay.

21 MR. BUNDY: I voice my objection.

22 THE COURT: I got it. Objection
23 noted. Overruled. I'll allow it. I understand
24 where he is coming from now.

25 MR. BUNDY: And so 279 also

1 includes A through X, correct?

2 THE COURT: Yes. If you want him
3 to go through them, we can. If not, I understand
4 at least how he got to where he got to. Each of
5 those references says CCD, does it not?

6 THE WITNESS: Yes.

7 THE COURT: Yeah. Okay. So I can
8 go back to that.

9 MR. BUNDY: And maybe to move it
10 along, my objection would be the same on all of
11 them. So there's no -- I mean, if you don't want
12 to -- if he doesn't want to go through every one
13 of them, I won't be able to do anything other
14 than just say the same thing.

15 THE COURT: I'm with you. Very
16 good. Okay. They accumulate to the number on
17 whatever the front page is, correct?

18 THE WITNESS: Yes.

19 MR. HILDEBRAND: So these are
20 admitted into evidence, Your Honor? Plaintiff's
21 Exhibit 12, which has the tabs with the RCOs that
22 we just went over -- went through?

23 THE COURT: Yeah.

24 (PLF. EXH. 12 was received into
25 evidence.)

1 MR. BUNDY: The ones that were
2 admitted are admitted. Some of them were not
3 admitted.

4 MR. HILDEBRAND: Well, I think that
5 one, we agreed -- fair enough. I think that 254
6 we agreed to withdraw.

7 THE COURT: Right.

8 MR. HILDEBRAND: I will take that
9 out right now.

10 MR. BUNDY: Well, the record says
11 whatever it says. I'm not going to agree to a
12 book, Exhibit 12. I will agree by the tab
13 numbers, as I objected, and you said they were in
14 or out. Those are the exhibits in the case.

15 THE COURT: Yeah.

16 MR. HILDEBRAND: I think that only
17 254 is the only one that we -- we took that one
18 out. And 261. So 244 and 261, we will remove.

19 THE COURT: Okay.

20 MR. HILDEBRAND: Those are not part
21 of it.

22 MR. BUNDY: To be clear, I object
23 to each and every one of them.

24 THE COURT: Got it.

25 MR. HILDEBRAND: I had got -- just

1 to be clear.

2 THE COURT: 244 was a credit; so we
3 allowed that.

4 MR. BUNDY: That's the one I didn't
5 object to.

6 THE COURT: That was the 1090
7 credit. 254 is one we struck, as we also struck
8 261. Okay. So anything to do with those numbers
9 would be removed, correct?

10 MR. HILDEBRAND: Right, correct,
11 Your Honor.

12 THE COURT: Okay. And I got it.
13 Okay. Very good.

14 MR. HILDEBRAND: So Plaintiff's tab
15 12, which is Balfour Exhibit 12, and on the top,
16 it's amended and lien, submitted RCOs is
17 admitted, as I understand it, except for the
18 sub-tabs within it, which are for RCOs 254 and
19 261 will be removed.

20 THE COURT: Correct.

21 MR. HILDEBRAND: Thank you.

22 MR. BUNDY: Objection. I don't
23 agree with that. So I just need it to be on the
24 record.

25 THE COURT: All right. Objection

1 noted. Anything further?

2 MR. HILDEBRAND: Can you give me
3 just one minute, Your Honor?

4 THE COURT: Sure.

5 MR. HILDEBRAND: No further
6 questions, Your Honor.

7 MR. BUNDY: Obviously, I'm not
8 going to finish today, but I would request the
9 Court's indulgence to allow me to ask
10 approximately a half a dozen questions?

11 THE COURT: Okay. All right.

12 CROSS-EXAMINATION

13 BY MR. BUNDY:

14 Q. Mr. Starcevic, how are you?

15 A. Doing fine.

16 Q. Good. We met in your deposition, right?
17 So you know who I am, right?

18 A. Yes, sir.

19 Q. Okay. What I'm getting ready to ask you
20 is not personal to you. These are questions I
21 have to ask. Okay?

22 A. Fair.

23 Q. All right. Where are you going to today
24 when you leave? Are you going back home?

25 A. I am going to work.

1 Q. Okay. And where do you work?

2 A. At SunCap Property Group. It's in Park
3 Circle in North Charleston.

4 Q. North Charleston. Okay.

5 A. I may stop at my house. I've got --

6 Q. I'm just trying to establish what you
7 are doing this weekend. Okay. Does that company
8 have anything to do with Balfour Beatty?

9 A. No, sir.

10 Q. Does it have anything to do with the law
11 firm representing Balfour Beatty?

12 A. As far as I know, they don't.

13 Q. Are you related to anyone at Balfour
14 Beatty that you would need to speak to over the
15 weekend?

16 A. No.

17 Q. By blood or marriage?

18 A. No.

19 Q. Okay. So there would be no requirement
20 for you to call them for any reason at all?

21 A. Correct.

22 Q. I mean, even if you had a 911 emergency,
23 you'd probably call the emergency room. You
24 wouldn't call BBC?

25 A. I would call 911 if there's a 911

1 emergency.

2 Q. Okay. And the same is true of the law
3 firm that represents Balfour Beatty. You're not
4 represented by them, are you?

5 A. No.

6 Q. Okay. And they're not your personal
7 attorneys, and you're not personally represented
8 by anybody over there, and you're not related by
9 blood or marriage to anybody over there so
10 there's no reason to be talking to any of those
11 people?

12 A. That's right.

13 Q. Okay. The Judge is going to admonish
14 you that you are under oath and you remain under
15 oath and you're not to speak with anyone at
16 Balfour Beatty, the lawyers, or anybody about
17 this case at all, right, until you get back here
18 on Monday and you talk to me. Okay?

19 A. Okay.

20 Q. I just want you to be aware that this is
21 very serious. And I want you to take it
22 seriously, and I know you will, but I want to
23 remind you. Okay?

24 A. Okay.

25 MR. BUNDY: I will see you Monday.

1 THE COURT: All right,
2 Mr. Starcevic.

3 MR. BUNDY: Did I give the
4 admonition?

5 THE COURT: I think Mr. Bundy has
6 covered what I -- in great detail what I would
7 ask that you do, which is, we -- I told them
8 yesterday that we were going to try to break
9 around lunchtime today.

10 He does have some questions for you that
11 he's going to ask you on cross-examination. We
12 are going to resume this trial Monday morning at
13 9:30 a.m. Can you be here Monday morning?

14 THE WITNESS: Can I check?

15 THE COURT: Yeah. Because I'm
16 going to -- you're going to be here at some point
17 in time. So let me know.

18 THE WITNESS: Yeah. I understand
19 that. I just wasn't expecting to be --

20 MR. BUNDY: And, Mr. Starcevic, to
21 be fair to you, tell them you're going to be gone
22 all day and you might be gone Tuesday.

23 MR. MCDONALD: Your Honor, while
24 we're waiting, can I do a quick housekeeping
25 matter?

1 THE COURT: Sure.

2 MR. MCDONALD: Yesterday, you
3 admitted over objection to a PowerPoint from the
4 third witness, Huyghe.

5 THE COURT: Mr. Huyghe, yeah.

6 MR. MCDONALD: And all of those
7 objections were in that directive. But I'm not
8 going to re-comment on that.

9 THE COURT: Right.

10 MR. MCDONALD: But we don't know
11 what was handed up to you, and during that
12 process, he was unable to testify as to certain
13 slides.

14 THE COURT: Yeah. The owner stuff,
15 I struck, just so you know. Anything that was in
16 there that we didn't cover, I just drew a line
17 right through my document.

18 MR. BUNDY: This is what I would --
19 do you mind checking this against yours? I just
20 would not want you to have something that's not
21 in evidence.

22 THE COURT: Yeah. Well, frankly,
23 if it said owner, I think I struck it. But I
24 will be glad to take a look, sure.

25 MR. BUNDY: That's my copy.

1 MR. HILDEBRAND: May I see what
2 Mr. Bundy gave you, Your Honor?

3 THE COURT: Sure.

4 MR. BUNDY: Now, that's a different
5 witness. That's a different witness.

6 THE COURT: That's the stuff from
7 Mr. McAuliffe. That's what I did. If I wasn't
8 going to hear it, I struck through it. Do you
9 want me to verify it again?

10 MR. BUNDY: I guess this is Mr.
11 McAuliffe. Okay. I'm sorry. I've got the wrong
12 one.

13 THE COURT: No. This is McAuliffe.

14 MR. BUNDY: Okay. That's
15 McAuliffe. So that's the stuff you struck.

16 THE COURT: Yes, sir.

17 MR. BUNDY: I thought you struck
18 all owner stuff as well --

19 THE COURT: I pretty much did.

20 MR. BUNDY: -- in the one --

21 THE COURT: Owner causes for delays
22 and additional costs.

23 MR. BUNDY: Okay.

24 THE COURT: That was stricken.

25 MR. BUNDY: But wasn't there also

1 owner causes for delays in the last fellow that
2 testified? He also tried to do the same thing,
3 as I recall.

4 MR. HILDEBRAND: I don't think he
5 struck it. He just asked him to move on.

6 THE COURT: Yeah. I will check
7 that, too.

8 MR. BUNDY: Okay. Thank you. I
9 just don't want something -- since the state has
10 now decided I have to keep up with the exhibits,
11 which I think is a huge, huge mistake on their
12 part.

13 THE COURT: I know. I wouldn't be
14 surprised if stuff doesn't disappear.

15 MR. BUNDY: Well, I know it. They
16 ought to pay the court reporters more money so
17 they can keep up with all this.

18 THE COURT: Well, I'm sure they'd
19 like that. Scored another point for the record.
20 Yeah, I think that was done.

21 MR. BUNDY: All right. Thank you,
22 Your Honor.

23 THE COURT: Yeah, I struck that.

24 Nick, what did you find?

25 THE WITNESS: All day Monday and

1 all day Tuesday?

2 THE COURT: Hopefully not, but how
3 about Monday morning?

4 THE WITNESS: I'll be here Monday
5 morning.

6 THE COURT: If we can get started,
7 we can get you out of here.

8 THE WITNESS: I'll be here Monday
9 morning if y'all tell me to be here.

10 THE COURT: All right.

11 MR. BUNDY: I'll tell you what will
12 make it quicker, if you just continue to say,
13 yes, Mr. Bundy.

14 THE COURT: All right. Let's
15 resume Monday morning at 9:30. Thank you.

16 (The hearing was concluded at
17 12:48 P.M.)

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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF DORCHESTER

4 I, Jennifer M. Adams, Certified
5 Shorthand Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby
7 certify that the witness whose attached in the
8 foregoing deposition was by me duly sworn to
9 testify to the truth, the whole truth, and
10 nothing but the truth in the within-entitled
11 cause; that said deposition was taken at the time
12 and location therein stated; that the testimony
13 of the witness and all objections made at the
14 time of the examination were recorded
15 stenographically by me and were thereafter
16 transcribed by computer-aided transcription; that
17 the foregoing is a full, complete and true record
18 of the testimony of the witness and of all
19 objections made at the time of the examination;
20 and that the witness was given an opportunity to
21 read and correct said deposition and to subscribe
22 the same.

23 Should the signature of the witness
24 not be affixed to the deposition, the witness
25 shall not have availed himself/herself of the
opportunity to sign or the signature has been
waived.

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

Witness my hand, I have hereunto
affixed my official seal on June 29, 2022 at
Charleston, Charleston County, South Carolina

21 _____
22 Jennifer M. Adams
23 Court Reporter And Notary Public
24 My commission expires: 03/15/2032
25

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

3
 4 BALFOUR BEATTY CONSTRUCTION,)
 LLC,) VOLUME SIX
) Case No.
 5 Plaintiff,) 2019-CP-10-1108
)
 6 -versus-)
)
 7 LIBRARY ASSOCIATES, LLC; AND)
 METROPOLITAN LIFE INSURANCE)
 8 COMPANY, A NEW YORK CORPORATION)
)
 9 Defendants.)

10 LIBRARY ASSOCIATES, INC.,)
)
 11 Defendant/Third-Party Plaintiff,)
)
 12 -versus-)
)
 13 LITHKO CONTRACTING, LLC; GUY M.)
 BEATY, INC.; BERNHARD MMC, LLC)
 14 Gulf Stream CONSTRUCTION CO.,)
 INC; PRECISION WALLS, INC.;)
 15 PALMETTO AUTOMATIC SPRINKLER)
 COMPANY, INC.; ET AL,)
 16)
 Third-Party Defendants.)
 17 -----

18 Hearing before the Honorable Mikell R.
 19 Scarborough, reported by Jennifer M. Huggins,
 20 Court Reporter and Notary Public, at 9:00 a.m. on
 21 September 20, 2021 at 100 Broad Street, Courtroom
 22 2A, Charleston, South Carolina.

23

24

25

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

2
3 ON BEHALF OF PLAINTIFFS:

4 PARKER POE ADAMS & BERNSTEIN, LLP
5 BY: THOMAS HILDEBRAND, JR., ESQ.
6 BY: ROBERT C. BYRD, ESQ.
7 200 Meeting Street
8 Suite 301
9 Charleston, SC 29401
10 (843) 727-6315
11 Tomhildebrand@parkerpoe.com
12 Bobbybyrd@parkerpoe.com

13
14 ON BEHALF OF DEFENDANT LIBRARY ASSOCIATES:

15 BUNDY MCDONALD, LLC
16 BY: WALTER H. BUNDY, JR., ESQ.
17 BY: M. BRENT MCDONALD, ESQ.
18 1516 Old Trolley Road
19 Second Floor
20 Summerville, SC 29485
21 (843) 492-0221
22 Walter@bundymcdonald.com
23 Brent@bundymcdonald.com

24 ON BEHALF OF DEFENDANT WATSON ELECTRICAL:

25 SMITH TERRY JOHNSON & WINDLE
26 BY: DON R. TERRY, ESQ.
27 150 Milestone Way
28 Suite C
29 Greenville, SC 29615
30 Dterry@smithterrylaw.com

31 ON BEHALF OF DEFENDANT OLD NORTH STATE & LITHKO:

32 SMITH TERRY JOHNSON & WINDLE
33 BY: STEELE B. WINDLE, III, ESQ.
34 150 Milestone Way
35 Suite C
36 Greenville, SC 29615
37 Awindle@smithterrylaw.com

1

ON BEHALF OF DEFENDANT DAVID ALLEN COMPANY:

2

KELLY LAW FIRM, LLC

3

BY: RUSSELL BRITTON KELLY, ESQ.

689 King Street

4

Charleston, SC 29403

Britt@kellylawsc.com

5

6

ON BEHALF OF DEFENDANT METROPOLITAN LIFE:

7

BUIST BYARS & TAYLOR, LLC

BY: G. HAMLIN O'KELLEY, ESQ.

8

652 Coleman Boulevard

Suite 200

9

Mt. Pleasant, SC 29464

Hamlin.okelley@buistbyars.com

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11

12

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1 THE COURT: All right, folks. So
2 we are day one, week two Balfour Beatty vs. The
3 Library Associates. We were on break on
4 Mr. Starcevic's testimony.

5 Nick, do you want to come on up?

6 THE WITNESS: Yes, sir.

7 THE COURT: Assume the position
8 over here if you would.

9 Any matters that we need to take up
10 before we commence this morning? Mr. Hildebrand,
11 for the plaintiff?

12 MR. HILDEBRAND: I don't think so,
13 Your Honor. But for clarification, we will not
14 go into next week, correct?

15 THE COURT: Correct. Yes. We've
16 got this week to go. I do have two weeks
17 reserved for y'all at the end of October, first
18 week of November. I'm hoping we can get most of
19 this case done this week. But anyway, we shall
20 see. Any matters to take up before we --

21 MR. BUNDY: A few, Your Honor.

22 THE COURT: Okay. All right.

23 MR. BUNDY: Did you get Mr. Terry's
24 e-mail?

25 THE COURT: I have not seen it, no.

1 MR. BUNDY: Mr. Terry sent an
2 e-mail on Sunday about 10 o'clock in the morning
3 saying that he had COVID.

4 THE COURT: Okay. All right.

5 MR. BUNDY: And he was -- asked you
6 for a continuance or said, if he couldn't get a
7 continuance -- I didn't quite understand, he was
8 going to move for one. Because he didn't want
9 the case as it related to his -- to my
10 counter-claim for conspiracy to start without him
11 being here. And I certainly don't want that
12 either.

13 THE COURT: Right.

14 MR. BUNDY: But it occurred to me,
15 one, a continuance is premature because
16 Mr. Hildebrand hadn't finished his case yet.

17 THE COURT: Right.

18 MR. BUNDY: That's one. Two, I
19 think it would be a mistake to start my case at
20 all, okay, because we're going to start my -- the
21 case is going to -- we've already got dates set
22 for October, right?

23 THE COURT: Right.

24 MR. BUNDY: If this case takes two
25 or three more days, right, then we've only got

1 two days left. Okay? The benefit of going
2 forward would be two more days of trial. That
3 would be the benefit.

4 The risk of going forward is that every
5 day we've been in Court up until this point will
6 be useless and will get reversed on appeal, okay,
7 because regardless of what anybody tries to tell
8 me now, okay, if I put in one shred of evidence,
9 I ask somebody what their name is and Mr. Terry
10 is not here, he is going to take the position on
11 appeal, that he didn't have the right of
12 confrontation because once my case starts, my
13 case includes the claim for civil conspiracy.

14 In evidence that I'm putting in first,
15 the witness may not appear to be a civil
16 conspiracy element, but it may well be. Okay?

17 THE COURT: Okay.

18 MR. BUNDY: And if you proceed, I'm
19 satisfied that we will be back in Charleston
20 doing this whole case all over again regardless
21 of the outcome. So the risk of loss is maybe a
22 day or two at trial -- well, the risk of loss is
23 losing everything.

24 THE COURT: Sure.

25 MR. BUNDY: The benefit is an

1 additional day of trial, and we're not in that
2 big of a hurry.

3 THE COURT: All right.

4 MR. BUNDY: So that would be my
5 request.

6 THE COURT: I'm with you on that
7 one.

8 Mr. Hildebrand?

9 MR. HILDEBRAND: Your Honor, I
10 think that might be premature. What I would
11 suggest -- and I don't mean to speak out of
12 school -- that, perhaps we can get Mr. Terry on
13 the phone. I think it would be appropriate
14 before Mr. Bundy starts his case.

15 But what I said -- I talked to Don
16 yesterday. I said, Don, is there any way we can
17 work this out? You certainly would have the
18 right to call any witnesses that you want to
19 at -- later on when you're putting on your case.

20 I said, maybe what you can do also is
21 just get a copy of the transcript from this week,
22 and to the extent that you wanted to
23 cross-examine a witness, then maybe you could
24 reserve your right to do that. And he said,
25 well, I really hadn't thought about that, Tom. I

1 said, that might be a good idea in lieu of a
2 continuance.

3 But I would say, let's not address a
4 hypothetical at this point. Let's see what --
5 where we get. I absolutely do want to go forward
6 with the -- with their case, Judge, because I
7 don't want this thing to extend beyond the next
8 two weeks after that.

9 I hope that there's some things we can
10 do to shave that down. But I definitely don't
11 want to extend it beyond that. So I want to make
12 this as judicious a time as we can of what we
13 have.

14 THE COURT: All right. I'm with
15 you. Let me just say this. I think he and Al
16 Windle work in the same firm, do they not?

17 MR. HILDEBRAND: That's exactly
18 right.

19 THE COURT: I kept up with
20 Mr. Windle last week about Mr. Terry's condition
21 with Al. I saw him in the restroom. And I just
22 asked him how he was doing, and he was starting
23 to cough is what I heard as of Wednesday. So it
24 wasn't sounding good.

25 But the reason I originally set this up

1 was, I think y'all -- we talked about it. We
2 would have the -- these two parties going at each
3 other for two weeks and then the potential for
4 two weeks of subs. Well, we've gotten rid of a
5 lot of subs.

6 So I think that frees us up on our time
7 in the next two weeks. But, again, we're still
8 on the plaintiff's case. So I think we ought to
9 just press forward on with the plaintiff's case,
10 and then I will address the issue. But I had not
11 seen the request as of yet.

12 MR. BUNDY: Just for the record, I
13 want to be very clear about this.

14 THE COURT: Yeah.

15 MR. BUNDY: I'm sorry that
16 Mr. Terry is ill. I regret it. But that's his
17 problem and not my client's problem. My client,
18 if we're required to go forward with him not
19 here, regardless of whatever problem solving
20 procedures we try to go through with, will be
21 prejudiced. There's no reason to go forward,
22 none at all.

23 And I'm not going to accommodate
24 Mr. Terry. I'm not going to accommodate
25 Mr. Hildebrand. I'm going to insist that my

1 client's rights are protected. And there's no
2 way to do that as long as there's a counterclaim
3 when I start proceeding against Mr. Terry's
4 client.

5 Additionally, Mr. Steele Windle doesn't
6 represent Watson Electric. He only represents --
7 Steele only represents two others. Old North
8 State Masonry and --

9 THE COURT: Lithko, right?

10 MR. BUNDY: And the other one,
11 whoever it is.

12 THE COURT: Lithko, I think it is.

13 MR. BUNDY: And he's appearing pro
14 hac vice. So if Mr. Terry can't be here,
15 Mr. Windle, I don't know how he handles a case
16 without his local counsel being at trial.

17 THE COURT: Okay. All right. I'm
18 with you.

19 MR. BUNDY: So we've got all kind
20 of problems if we try to save a day or two of
21 time.

22 THE COURT: All right. Well, we'll
23 cross that road when we get there.

24 MR. BUNDY: Okay. Thank you.

25 THE COURT: We've also got some

1 weather to deal with this week. But let's just
2 see how we do. As long as we can get to the
3 courthouse and back.

4 MR. BUNDY: Your Honor, I have a
5 couple other things, but we can do them later.
6 I'd just as soon get started.

7 THE COURT: All right. Very
8 good.

9 CROSS-EXAMINATION

10 BY MR. BUNDY:

11 Q. Good morning, Mr. Starcevic, how are
12 you?

13 A. Good morning, fine.

14 Q. I guess you picked up, I don't hear very
15 well. I probably talk too loud, and I do that
16 because I can't hear. So nothing personal if I
17 talk loud to you. Okay?

18 A. Yes, sir.

19 Q. All right. Tell me what you did
20 regarding this matter between the time you got
21 off the witness stand and right this minute as
22 related to this case. What have you done with
23 regard to this case?

24 A. Nothing.

25 Q. You haven't looked at any documents?

1 A. No, sir.

2 Q. You haven't talked to anybody about this
3 case?

4 A. No, sir. I got -- received a phone call
5 and told him I was sequestered and couldn't talk.

6 Q. Who called you?

7 A. Jeff Sandine.

8 Q. Jeff Sandine called you?

9 A. I didn't have his number. He called me
10 this -- Friday afternoon. I told him I was
11 sequestered and couldn't talk.

12 Q. Well, thank you for that. Do you know
13 whether Mr. Sandine was even aware that you were
14 going to -- that you were on the witness stand?

15 A. I don't.

16 Q. Was he in court?

17 A. No, sir.

18 Q. Okay. Do you know if he's in
19 constant -- if he's in communication with his
20 other employees --

21 A. I don't.

22 Q. -- who would have been in court?

23 A. I don't.

24 Q. We know he's got a telephone because he
25 called you, right?

1 A. Yes, sir.

2 Q. Okay. So he could have called other
3 people involved in this case in determining
4 independent of the witness under -- on the
5 witness stand who had been admonished, to find
6 out he wasn't supposed to call you. He could
7 have done that, right?

8 A. He could do anything.

9 Q. Okay. Now, you left the employ of
10 Balfour Beatty when?

11 A. April of this year.

12 Q. April of 2021, right?

13 A. Yes.

14 Q. Left employment, left BBC; is that
15 correct?

16 A. Correct.

17 Q. All right. And it's now September, so
18 five months ago?

19 A. Yes.

20 Q. All right. Now, after you left the
21 employment of Balfour Beatty, did you talk to
22 anyone that worked at Balfour Beatty from April
23 of 2021 until last Friday when you got on the
24 witness stand? Did you talk to anybody at
25 Balfour Beatty?

1 A. Yes, sir.

2 Q. All right. Tell me -- list for the
3 Court, if you will, the people that you talked
4 to.

5 A. Tim Spano.

6 Q. All right. When did you talk to Spano?

7 A. Infrequently.

8 Q. No. Infrequently is not a date. When
9 did you --

10 A. I don't remember each date. We had
11 projects that I had information on, I had to talk
12 to Tim about. He would call me. I don't
13 remember the specific dates.

14 Q. But you didn't work for them anymore.
15 Why was he calling you?

16 A. Because I left on good terms, and I
17 wanted to help Balfour Beatty and the things that
18 Tim and I were working on. I had information
19 that he didn't have. So Tim would call me and
20 say, hey, why -- you know, what's going on with
21 this project? Do you remember this? And I would
22 answer and tell him.

23 Q. Specifically, what project are you
24 talking about?

25 A. The Ryder Hotel on Meeting Street and

1 the 564 King Street renovation.

2 Q. And what were your duties on those jobs?

3 A. Project manager.

4 Q. Were you project manager on both of
5 them?

6 A. Yes, sir.

7 Q. And what were his duties on this job?

8 A. He was a superintendent.

9 Q. Okay. So you were his boss when you
10 left?

11 A. I wasn't his boss. We were -- he
12 managed the field; I managed the office.

13 Q. When did those jobs start?

14 A. The Ryder started about -- we had a long
15 mockup period. Construction started in January
16 of 2020, I believe.

17 Q. January of 2020, you were the project
18 manager for Ryder?

19 A. Yes.

20 Q. And explain what Ryder is to me.

21 A. It's the new hotel on Meeting Street.

22 Q. All right. And when did you leave that
23 job?

24 A. When I left Balfour Beatty.

25 Q. Pardon me?

1 A. When I left Balfour Beatty.

2 Q. And what was the status of construction?
3 What was the completion? How far along was the
4 job?

5 A. It was 95 percent complete. There was a
6 punch list and final closeouts.

7 Q. And is that a luxury hotel?

8 A. It's a high-end hotel.

9 Q. Is it a luxury hotel, Mr. Starcevic?

10 A. Define luxury.

11 Q. Is it a five-star hotel?

12 A. No, sir.

13 Q. And what other jobs -- the other job
14 that you mentioned that he called you about after
15 you left the employ, was what?

16 A. 564 King Street.

17 Q. Pardon me?

18 A. 564 King Street.

19 Q. 564 King?

20 A. Yes, sir.

21 Q. And what was your title on that job?

22 A. Project manager.

23 Q. All right. And what was his position on
24 that job?

25 A. Superintendent.

1 Q. And what was the nature of that work?

2 A. It was a historical renovation.

3 Q. A historical renovation?

4 A. Yes, sir.

5 Q. Specifically, tell me what -- any
6 renovation you do down in Charleston is going to
7 be historical renovation. That doesn't tell me
8 much at all. What kind of work is it?

9 A. It was an old building that hadn't been
10 occupied in a period of time.

11 Q. Who owns the building?

12 A. Asana owns it now.

13 Q. Who?

14 A. Asana Partners out of Charlotte owns it
15 now, and we were converting the upper two floors
16 into short-term rental units and just prepping
17 the first floor for new retail.

18 Q. What's the square footage of the
19 building?

20 A. About 3400 square feet, I believe.

21 Q. 3400?

22 A. 3400, yes, sir.

23 Q. What's square footage of the Bennett
24 Hotel?

25 A. I can't remember off the top of my head.

1 Q. And who was the previous owner of this
2 building? Do you know?

3 A. Of which building?

4 Q. King Street.

5 A. I don't know. We got involved when
6 Asana bought it.

7 Q. Pardon me?

8 A. We got involved when Asana Partners
9 bought it.

10 Q. Okay. And what was -- what was the
11 construction contract price?

12 A. Just over a million dollars.

13 Q. And what was the construction price of
14 the Bennett Hotel?

15 A. Final or --

16 Q. Just pick a number, whatever number you
17 think it was. It doesn't matter.

18 A. It was around 54 million, I believe.

19 Q. So it was probably 54 times bigger, if
20 you just use money as an example?

21 A. Sure.

22 Q. And what was the amount of the Ryder
23 Hotel? What was the price of that?

24 A. Around 8 million.

25 Q. Huh?

1 A. 8, around 8 million.

2 Q. So any other projects you worked on
3 after Bennett Hotel for Balfour Beatty before you
4 left?

5 A. Yeah, quite a few.

6 Q. Well, name a few.

7 A. The Kiawah Island Senior Living.

8 Q. Okay. Kiawah Senior Living. And what
9 was your status on that? What was your job?

10 A. I would have been the project manager.

11 Q. Would have been. Okay. And what type
12 of -- was that new construction?

13 A. New construction.

14 Q. And your client was the Beach Company?

15 A. No, sir.

16 Q. Who was your client?

17 A. It was Big Rock Partners.

18 Q. Okay. And what was the contract price
19 on that job?

20 A. We hadn't executed a GMP yet. We were
21 very close to prior to the pandemic. And it
22 would have been around 100 million.

23 Q. What do you mean, it would have been?

24 A. The contract value would have been
25 around 100 million. We didn't execute it. The

1 pandemic hit and they set it back because senior
2 living was kind of --

3 Q. So you didn't do that project?

4 A. It hasn't -- I did not do it. I was
5 involved in the preconstruction. We had a
6 preconstruction agreement, and we were getting
7 ready to start it.

8 Q. I'm sorry, I was confused. I thought
9 you said that that was a job you did while you
10 worked for Balfour Beatty?

11 A. No. It was a job I was involved with.

12 Q. Involved with it. Okay. All right. So
13 if you talked with Balfour Beatty -- to somebody
14 at Balfour Beatty about a project. Let's say it
15 was 800 million dollars, would you be able to say
16 you were involved in that project if all you did
17 was talk to them about it? Is that an
18 involvement as far as you're concerned?

19 A. Depends on my level of talking. No, I
20 wouldn't say that's true.

21 Q. So you were in fact not the project
22 manager on the Kiawah project because the Kiawah
23 project never got built?

24 A. I was the project manager during the
25 preconstruction portions of the project.

1 Q. Okay. That's fine, Mr. Starcevic. All
2 right. What other jobs did you do for Balfour
3 Beatty during that period of time?

4 A. We did the upfit for the Beach Company
5 headquarters at the Sergeant Jasper project.

6 Q. All right. Working for John Darby?

7 A. Not directly.

8 Q. Do you know John?

9 A. I've met him.

10 Q. And what was your job on the upfit for
11 the Beach Company?

12 A. Project manager.

13 Q. And what was the price of that job?

14 A. Around 4 million dollars.

15 Q. And explain that work to me.

16 A. It was an interior upfit for their
17 headquarters on the fifth and sixth floor of the
18 office building of the Jasper. There's a
19 residential tower, parking deck, and an office
20 tower.

21 Q. All right. What was the square footage
22 part of the building you worked on?

23 A. I don't remember.

24 Q. All right. What else?

25 A. On the jobs I was involved with, I

1 believe that was it.

2 Q. Okay.

3 A. We did a bunch of preconstruction on a
4 number of jobs, but that's it.

5 Q. Well, preconstruction is not actually
6 building anything, is it? That's why they call
7 it "pre"?

8 A. Correct.

9 Q. Okay. So after you left the Bennett
10 Hotel and before you left Balfour Beatty in April
11 of 2021, you were the project manager on a 4
12 million dollar renovation for the Beach Company
13 up at Sergeant Jasper. You were the project
14 manager for the Ryder Hotel. Which, did you say
15 it was an 8 million dollar job? I can't
16 remember.

17 A. Roughly.

18 Q. An 8 million dollar job. And you were
19 the project manager on a little renovation over
20 on King Street which you think was about a
21 million dollars?

22 A. That's right.

23 Q. Is that correct?

24 A. That's correct.

25 Q. All right. So back to Mr. -- who's the

1 gentleman that called you that you talked to?

2 I've forgotten his name.

3 A. Jeff Sandine.

4 Q. Sandine. That's the fellow that called
5 you about the Ryder job?

6 A. No.

7 Q. Okay. Who is the fellow you talked to
8 about the Ryder job? Everybody has got the same
9 last name in this case as far as I'm concerned.
10 Everybody has got an "S" in their name, and I
11 have a very hard time keeping all of these people
12 straight.

13 A. That's all right. Tim Spano.

14 Q. Tell me one more time who you talked to
15 about the job. What was his name?

16 A. Tim Spano.

17 Q. Spano. Okay. And was Spano the
18 superintendent on all the jobs that we've been
19 talking about that you've worked on?

20 A. Tim was the general superintendent in
21 Charleston.

22 Q. On all of them?

23 A. Yes. He oversaw the field.

24 Q. All right. So what we're back to now
25 is, we've established the -- would that be the

1 full range of projects that you would have talked
2 to with Mr. Spano about -- from the time you left
3 Balfour Beatty until the time you testified
4 Friday?

5 A. Of projects that were under
6 construction?

7 Q. No, sir, that's not my question. The
8 full range of projects?

9 A. I talked to Tim about all kinds of
10 projects. There were other jobs that we were
11 doing preconstruction on.

12 Q. No, sir. All right. We're going to be
13 here until Friday.

14 A. I don't understand the question, what
15 was the range?

16 Q. I want to talk to you about jobs you
17 have actually worked on and done construction on,
18 not preconstruction.

19 A. Okay.

20 Q. Construction.

21 A. Gotcha.

22 Q. Are we okay?

23 A. Understood.

24 Q. All right. We've named construction
25 jobs you worked on. You've named them. I

1 haven't. I have no idea what you did between the
2 time you left Balfour Beatty and the time you
3 took the witness stand last Friday. Okay? We
4 started out this conversation -- I'm trying to
5 find out who you talked to at Balfour Beatty
6 during that period of time. You started with
7 Mr. Spano.

8 I want to know, okay, as it relates to
9 jobs that you have actually done construction
10 work on -- which would include the Bennett Hotel,
11 which would include every job that you've worked
12 on since you left, which would include the upfit
13 job you did in Charlotte, which would include any
14 job that you worked on at Balfour Beatty while
15 you were an employee there.

16 It includes the air conditioner you put
17 in up in Charlotte. Okay? I want to know,
18 during that time period between the time of April
19 and Friday, what projects did you discuss with
20 Mr. Tim Spano that you had constructed?

21 MR. HILDEBRAND: Objection, Your
22 Honor, on relevance. We will be here for a
23 month. I just don't understand.

24 THE COURT: I'm going to allow it.
25 Go ahead. He is trying to focus in on what

1 projects were discussed. I'm okay with that. Go
2 ahead.

3 MR. HILDEBRAND: Okay.

4 THE WITNESS: And then I'm sure I
5 talked to Tim about Hotel Bennett.

6 BY MR. BUNDY:

7 Q. Okay.

8 A. I don't remember what we talked about,
9 but I -- when Tim and I talked, we talked for a
10 period of time. And we talked about everything
11 we've done and anything he's working on. I'm
12 sure it came up.

13 Q. Did you keep any notes of any of those
14 conversations --

15 A. No, sir.

16 Q. -- as it related to Hotel Bennett?

17 A. No, sir.

18 Q. Were you ever asked in the conversation
19 with him to discuss Balfour Beatty damages or
20 your testimony?

21 A. No, not my testimony.

22 Q. Did you ever review any documentation
23 with him related to the Balfour -- to the Bennett
24 Hotel?

25 A. From Tim Spano?

1 Q. Yes.

2 A. Or with Tim Spano? No.

3 Q. Okay. So we've taken care of Spano.

4 Who else? What other employees of Balfour Beatty

5 did you talk to during that same period, same

6 question. Do you understand the question?

7 A. I do.

8 Q. Okay. Well, who else?

9 A. Tyre Moore.

10 Q. Who?

11 A. Tyre Moore.

12 Q. Can you spell that for me?

13 A. T-Y-R-E M-O-O-R-E.

14 Q. What is his job?

15 A. He's a project engineer. He was not
16 involved with -- he worked for me under the
17 Ryder, 564 King Street. He wasn't involved with
18 the hotel; so I didn't talk to him about the
19 hotel at all, if that's what you're getting at.

20 Q. All right. Good. And as a project
21 engineer, that doesn't mean he's an engineer,
22 right, an actual engineer?

23 A. No. But he had an engineering degree.

24 Q. Huh?

25 A. He had an engineering degree.

1 Q. Oh, he did? Good. Who else did you
2 talk to?

3 A. Currently with Balfour, I talked to John
4 Heuer.

5 Q. John Heuer. All right. Now, I may have
6 misunderstood what you said. If you said current
7 employees, I didn't -- did you say you talked --
8 I don't want to limit this, if you're limiting it
9 to current employees. I want to know all
10 employees, past or present of Balfour Beatty you
11 talked to during that period, not just current
12 employees. Okay?

13 A. Okay. I talked to Alec Dooley.

14 Q. Well, we're not finished with Heuer yet.
15 I'm going to do them one at a time. Now, John
16 Heuer, he is a lawyer?

17 A. Yes, sir, to my understanding.

18 Q. He is corporate counsel for Balfour
19 Beatty?

20 A. My understanding, yes, sir.

21 Q. He's at that table right over there?

22 A. That's right.

23 Q. Okay. He's not your lawyer, is he?

24 A. No, I don't have a lawyer.

25 Q. Have you ever -- has he ever represented

1 you in any cases?

2 A. Personally?

3 Q. Yes.

4 A. No.

5 Q. Do you know whether he's licensed to
6 practice law in South Carolina?

7 A. I don't know.

8 Q. Okay. Tell me what you talked to
9 Mr. Heuer about between the time you left the
10 employment and the time you took the stand on
11 Friday.

12 A. I called him to ask when I would need to
13 be here, and he told me they were still working
14 that out, but to keep the weeks that we're here
15 open.

16 Q. Okay. When did that call take place?

17 A. About three weeks ago.

18 Q. Why did you call him?

19 A. Because I wanted to know.

20 Q. Why didn't you call Hildebrand?

21 A. Because I wanted to reach out to John.
22 I know John. We've, you know, worked together
23 for 10 years.

24 Q. Fair enough. All right. Who else did
25 you talk to?

1 A. Alec Dooley.

2 Q. Alex Dooley?

3 A. Alec.

4 Q. Alec, A-L-E-C?

5 A. Yes.

6 Q. All right. Who is Mr. Dooley?

7 A. He was the assistant project manager.
8 He's no longer with Balfour Beatty.

9 Q. All right. When did he leave the
10 employ?

11 A. I don't remember.

12 Q. When was it?

13 A. About a year and a half ago. I don't
14 remember when he left.

15 Q. How long were you on the --

16 A. It was towards the end of the year of --
17 I don't know. It was either -- it was about a
18 year and a half ago, I think.

19 Q. Oh, he left about a year and a half ago?

20 A. Maybe a little bit more.

21 Q. Okay. Do you know why he left?

22 A. To go work for his family business in
23 Ohio.

24 Q. Okay. And what did y'all -- why did he
25 call you? What was the nature of those

1 conversations?

2 A. We're friends, and we catch up
3 frequently.

4 Q. Did you talk about the Bennett Hotel?

5 A. I'm sure we did.

6 Q. Okay. Did you review any documents with
7 him or prepare any testimony --

8 A. No, sir.

9 Q. -- or look at any notes?

10 A. No, sir.

11 Q. Okay. Who else did you talk to?

12 A. Randy Bowden.

13 Q. I'm sorry, who?

14 A. Randy Bowden.

15 Q. Who is he?

16 A. He's another project manager with
17 Balfour Beatty -- formerly with Balfour Beatty.

18 Q. Formerly?

19 A. I had no conversations about the hotel.
20 He didn't work on it.

21 Q. Okay. Why did he leave Balfour Beatty,
22 if you know?

23 A. I don't know. You'd have to ask him.

24 Q. Who else did you talk to?

25 A. Nick Wegener, still with Balfour Beatty.

1 Didn't talk about the hotel. He didn't work on
2 it.

3 Q. Okay. Who else did you talk to?

4 A. I believe that's it.

5 Q. Okay. Did you talk to Mr. Hildebrand
6 during that period?

7 A. Yes, sir.

8 Q. Okay. What did you talk about?

9 A. About when I needed to be -- the case,
10 when I -- when he would -- when I would have to
11 be here.

12 Q. Did you talk about your testimony?

13 A. I didn't talk about my testimony. I
14 hadn't testified.

15 Q. Huh?

16 A. I didn't have a testimony at the time.

17 Q. Well, did he talk to you about the case
18 other than when you had to be here? Did he talk
19 to you about what your testimony would be? Did
20 he give you an indication of what the questions
21 were going to be? Did you give an indication of
22 what the answers were going to be? That's what
23 I'm trying to get to.

24 A. No, I didn't tell him what my answers
25 were going to be.

1 Q. Did he tell you what the questions were
2 going to be?

3 A. We talked about the case.

4 Q. Tell me what you can recall.

5 A. We talked about when I would have to be
6 here, approximately how much time I would need to
7 spend here. We talked about some of the RCOs
8 that were in question.

9 Q. Which ones?

10 A. The list that we went through yesterday.
11 We talked about what -- about which ones have
12 been thrown out, who had been settled. That's
13 generally what we talked about.

14 Q. Okay. When did that conversation occur?

15 A. Maybe two weeks ago.

16 Q. How long did it take?

17 A. Half an hour, maybe less.

18 Q. And how many other times did you talk to
19 Mr. Hildebrand during that period in preparing
20 for your testimony.

21 A. That's really it, just twice.

22 Q. Huh?

23 A. Just twice.

24 Q. What was the other time you talked to
25 him?

1 A. The other time was about a week ago. We
2 talked about the same, about the RCOs, about what
3 was in question, about -- that's really it.

4 Q. And was the RCO book already prepared at
5 that time?

6 A. I don't know.

7 Q. He didn't show it to you?

8 A. I saw it. So there were RCOs in the
9 book. I don't know if it was the same book I
10 looked at.

11 Q. Where did y'all meet?

12 A. Talked to him on the phone the first
13 time and we met at his office the last time.

14 Q. So in total, how much time do you think
15 you were with Mr. Hildebrand preparing for your
16 testimony last Friday?

17 A. About an hour and a half. I didn't meet
18 with him last Friday. Are you talking about my
19 testimony last Friday, preparing for the
20 testimony?

21 Q. Yeah.

22 A. About an hour and a half.

23 Q. Okay. What other times did you spend
24 with him preparing for anything else --

25 A. That's it.

1 Q. -- or doing anything else?

2 A. That's it.

3 Q. That's it?

4 A. Yeah.

5 Q. All right. I hand you what's entitled
6 response to RFP, which what does RFP stand for?
7 Do you know?

8 A. Request for proposal.

9 Q. Okay. Hotel at Marion Square,
10 Charleston, South Carolina, November 6th, 2016,
11 Bennett Hospitality matrix program management
12 service.

13 A. 2013.

14 Q. Pardon me?

15 A. Mine says 2013.

16 Q. I'm sorry, I don't have my glasses on.
17 Thank you. I stand corrected. I can't hear and
18 I can't see. All right. 2013, Balfour Beatty
19 Construction. Do you see this?

20 A. Yes.

21 Q. Do you recognize it?

22 A. Yeah, I'm sure I do.

23 Q. All right. When was the first time you
24 saw it?

25 A. I don't remember.

1 Q. When was the last time you saw it?

2 A. Right now. I mean, this is --

3 Q. Between these two times, do you know how
4 many other times you looked at it?

5 A. A handful. We had a copy of it in the
6 office.

7 Q. Okay. And when was -- did you see the
8 job -- did you see this requested proposal before
9 the Hotel Bennett contract was signed with
10 Library Associates?

11 A. Me, personally?

12 Q. Yes, you personally.

13 A. No. I wasn't involved with the project
14 before this contract was signed.

15 Q. All the questions I'm going to ask you,
16 I'm going to be asking you personally. I'm not
17 familiar with questions that you would ask that
18 weren't -- I'm going to ask you just personal
19 questions. Okay?

20 We're having a conversation. Okay? We
21 don't need to qualify it with personally. I'm
22 ask you: Did you see this contract -- this
23 document before the contract was signed with
24 Library Associates? Yes or no?

25 A. No. I was not involved before the --

1 before it was signed.

2 Q. Thank you.

3 A. Before the contract was signed.

4 Q. Thank you. All right. I hand you these
5 documents and ask if you can identify these
6 documents. They all come together as one group.

7 A. Okay. Do you want me to read them?

8 Q. No, sir. I'd just like you to look at
9 them first to yourself, just look through them.
10 All I'm going to do is ask you if you can
11 identify them first.

12 A. Okay. Yeah, I'm familiar with them.
13 Without reading all -- every page, they look
14 familiar.

15 Q. Have you ever seen those documents
16 before?

17 A. Yes.

18 Q. All right. When was the first time you
19 saw them?

20 A. As they were being prepared.

21 Q. All right. When did the preparation
22 begin?

23 A. I don't remember a date.

24 Q. For the record, tell me what those
25 documents are and what you believe them to be.

1 A. I believe these are volume 1, 2 and 3 of
2 the consolidated claim and volume 4, which is
3 schedule -- a complete schedule.

4 Q. And whose consolidated -- whose claim is
5 it?

6 A. I believe this is Balfour Beatty's
7 claim.

8 Q. Okay. And who are they making a claim
9 to?

10 A. Library Associates.

11 Q. All right. And do they first make --
12 the claims on this job, first go to the
13 architect?

14 A. I don't know.

15 Q. You don't know?

16 A. Yeah. The contract should specify that.

17 Q. Pardon me?

18 A. The contract should specify who the
19 claims go to.

20 Q. Yes, sir, it should. And do you know
21 what it says?

22 A. I don't, without pulling it out.

23 MR. BUNDY: Okay. Your Honor, I
24 would like to go ahead and move these into
25 evidence, please.

1 THE COURT: All right. So these
2 will be Defendant's next numbers. They're
3 volumes 1, 2, 3 and 4. Is that what we have?

4 MR. BUNDY: Yes, Your Honor. I
5 think we should put an exhibit sticker on them.
6 What I would like to do is, I like to mark
7 separate stuff with separate exhibit numbers.
8 I'm not into --

9 THE COURT: Yeah, no. I'm okay
10 with that. If memory serves me right, we had
11 Defendant's 10 is, I think, where we were, wasn't
12 it?

13 THE WITNESS: Do you want to go in
14 order?

15 MR. MCDONALD: Yes, sir, Your
16 Honor. We're 1 through 10; so the first one will
17 be 11.

18 THE COURT: All right. Very good.

19 MR. BUNDY: Your Honor, for the
20 record, these were also exhibits in depositions;
21 so I'm going to put the sticker next to it.

22 THE COURT: Okay.

23 MR. BUNDY: So that way it doesn't
24 get confusing --

25 THE COURT: We can identify them

1 that way.

2 MR. BUNDY: -- with the deposition
3 testimony. And the first exhibit will be what?

4 THE COURT: No. 11, I think you
5 said, right?

6 MR. MCDONALD: This will be No. 11.

7 (DFT. EXH. 11 was marked for
8 identification.)

9 MR. BUNDY: All right. The next
10 exhibit will be volume 2, No. 12.

11 (DFT. EXH. 12 was marked for
12 identification.)

13 MR. BUNDY: The next exhibit will
14 be volume 3 of -- yeah, volume 3, Exhibit 13.

15 (DFT. EXH. 13 was marked for
16 identification.)

17 MR. BUNDY: And, lastly, this will
18 be volume 4, which is Exhibit 14.

19 (DFT. EXH. 14 was marked for
20 identification.)

21 MR. BUNDY: Move to introduce into
22 evidence, Your Honor, Defendant's Exhibits 11,
23 12, 13 and 14 into evidence.

24 THE COURT: All right. Any --

25 MR. HILDEBRAND: No objection, Your

1 Honor.

2 THE COURT: Without objection, very
3 good. Thank you.

4 (DFT. EXHS. 11 through 14 were
5 admitted into evidence.)

6 BY MR. BUNDY:

7 Q. Can you and I agree that when we use the
8 name of consolidated claim, that what we're
9 talking about is the is Exhibits 11 --
10 Defendant's Exhibits 11, 12, 13 and 14?

11 A. Yeah, I believe so. There are three --
12 there are four volumes.

13 Q. I don't want you to believe it. I
14 either want you to tell me what you -- what I
15 need to call these exhibits for you to understand
16 what I'm talking about. Do you want me to name
17 the number every time or can we agree it's the
18 consolidated claim? It don't matter to me.

19 A. We can call volumes 1 through 4 the
20 consolidated claim, yes.

21 Q. Moving forward, if I say consolidated
22 claim, we're not going to be arguing about what
23 that means, are we?

24 A. No.

25 Q. Okay. Thank you. Now, when did you

1 start working -- well, let me ask you this: What
2 was your role in the preparation of the
3 consolidated claim?

4 A. I was involved in putting them together,
5 accumulating documentation, accumulating, you
6 know, various information to help put that
7 together.

8 Q. Okay. Well, I think, you know, probably
9 a secretary or somebody else in the
10 administrative department was involved in putting
11 it together. In other words, putting holes in
12 the pages and putting these little brass things
13 on there.

14 That's not what I'm -- I don't need to
15 talk to that person. Okay? When I say
16 involvement in the claim, I want to know what you
17 did substantively that found its way into this
18 claim? What were your duties and
19 responsibilities, if any?

20 A. I pulled together information from
21 subcontractors. I helped organize the
22 information in it, helped provide information to
23 our teams. I was very involved in putting
24 information into that consolidated claim.

25 Q. All right. And you said you helped.

1 Who did you help? Who else did you help?

2 A. Mr. Hildebrand, Tim Spano, Dave
3 Simonton, Casey Thompson, our whole team that
4 worked on putting this together.

5 Q. The whole team doesn't work. I don't
6 know who the team was. I need to know the
7 individual names, to the best of your information
8 and belief, because you're under oath. If you
9 don't remember who was on the team, just say it.
10 If you do, I would like to know their terms.

11 A. Sure. So Dave, Tim, Tom Hildebrand,
12 John Heuer, Casey Thompson. I believe that's it.

13 Q. Okay. And that's the universal people
14 that created this claim?

15 A. My understanding.

16 Q. And when did you start working? How
17 much time -- how many hours did you spend, did
18 you devote in preparation for this?

19 A. I don't know.

20 Q. Can you give me any idea at all?

21 A. I do not. I cannot. A lot.

22 Q. A lot. Okay. A lot of hours depends on
23 what you're doing. If you're having fun, they go
24 really fast; if you're not having fun, it seems
25 like a lot, and it may not be.

1 A. Sure.

2 Q. So a lot doesn't really do much for me
3 either.

4 A. That's right.

5 Q. Okay. So if you could just -- well,
6 let's do it this way. When did you start working
7 on the claim?

8 A. I don't remember.

9 Q. Was this the largest claim that you had
10 worked on -- well, strike that. Was what your
11 prior experience in preparing claims under a cost
12 plus contract with a guaranteed maximum sum?

13 A. Zero.

14 Q. Zero. Thank you. All right. And what
15 did you do to inform yourself about how to
16 prepare the claim? Did you have a lunch and
17 learn --

18 A. No.

19 Q. -- over claim preparations?

20 A. We didn't have a lunch and learn over
21 claim preparations.

22 Q. Okay. So how did you go about informing
23 yourself about what your duties were and what was
24 necessary to prepare a claim?

25 A. We -- I was asked to pull together

1 information, to pull together relevant costs, to
2 evaluate costs that should be in the claim.

3 There was no training involved in how to put
4 together the claim.

5 Q. Well, who told you what to get that they
6 wanted? In other words, you say you pulled
7 together information.

8 You're just saying that somebody came to
9 you and goes, okay, Nick, go pull together some
10 information and they didn't tell you what they
11 wanted? They didn't tell you what format they
12 wanted it in? They just left it entirely up to
13 you? You're not saying that, are you?

14 A. We put together an outline for the
15 claim.

16 Q. And who put that outline together?

17 A. So I think either John Heuer or Tom
18 Hildebrand did, put together an outline. And we
19 talked about the --

20 Q. Let me stop you there.

21 A. Excuse me?

22 Q. The first thing that happened was the
23 lawyers gave you an outline of what they wanted
24 you to do?

25 A. I don't know that that's true. I may

1 have drafted one originally or -- and there was a
2 couple iterations of how the claim should be put
3 together.

4 Q. I thought you just said the lawyers
5 prepared the outline?

6 A. They prepared the outline. I don't know
7 that they told me initially how to do it. They
8 may have edited my outline. It was -- I mean, we
9 passed a number of iterations back and forth.

10 Q. Do you have copies of that outline?

11 A. I don't.

12 Q. Has it been produced in discovery?

13 A. I don't know.

14 Q. Have you been asked to look for it as a
15 part of discovery?

16 A. No, sir.

17 Q. All right. So you -- there was an
18 outline. Is that the first thing that happened
19 in the claim preparation?

20 A. I believe so.

21 Q. Okay. And, again, you don't remember
22 when that was?

23 A. It would have been March or April after
24 the hotel is completed.

25 Q. Okay. So March?

1 A. Probably within the -- you know, a
2 couple months after the hotel was complete.

3 Q. Pardon me?

4 A. Within a couple months after the hotel
5 was complete.

6 Q. Okay. So that would have been? You
7 think March or April of that year?

8 A. '18; is that right?

9 Q. Huh?

10 A. '18.

11 Q. 2018. Okay. Would you look at Exhibit
12 11? And this is in evidence. It's a letter to
13 Buck Lindsay, and it says reconsolidated claim
14 preliminary. Do you see that?

15 A. Yeah.

16 Q. What's the date of that letter?

17 A. March 6, 2019.

18 Q. '19?

19 A. '19.

20 Q. So you were off about a year?

21 A. Sorry about that.

22 Q. That's okay. I just think it's
23 important that we know. This kind of information
24 is hard to find the truth if you've got missed
25 dates. Okay. So now we know what about when you

1 started working on this claim?

2 A. Pardon?

3 Q. What do we know about when you started
4 working on this claim? Now, you said that you
5 started about the time the claim was presented.
6 You thought it was in January or March of '18.
7 It turns out it's dated March of '19. So when
8 was it that you started work?

9 A. So it would have been January through
10 March of '19.

11 Q. Of '19. Okay. So this was after the
12 substantial completion date, right?

13 A. Yes.

14 Q. Okay. So you started working on the
15 claim sometime after substantial completion, and
16 you -- it was -- the preliminary claim was
17 presented in March of '19. What day in March?

18 A. 6th.

19 Q. 6th. Okay. So, really, you're talking
20 about two months, right? Between the time of
21 substantial completion -- this was late December.
22 Really, you didn't work -- did you work on New
23 Years Day on this claim?

24 A. I did not.

25 Q. Okay. And you've got a birthday in

1 February. I think it's the 17th. Did you work
2 on your birthday? Do you recall?

3 A. If it was during the week, I would have.

4 Q. Okay. So you probably had about 60 days
5 to work on this claim between the time they first
6 told you they wanted you to do it and the time it
7 was actually presented to the architect; is that
8 correct?

9 A. I don't know. It may have -- I may have
10 started late 2018. It was around that time
11 period.

12 Q. So was it 90 days?

13 A. Could be 90 days.

14 Q. Could be 90 days?

15 A. Yeah.

16 Q. Could be 60?

17 A. Could be 60.

18 Q. Okay. So somewhere between 90 and 60
19 days. Okay. Now, what portions of this claim --
20 if you need all four of them, I will hand them up
21 to you and ask you which portions of the claim
22 you provided. What information did you provide
23 in these claims? Or in this consolidated claim
24 by reference to exhibit number, please.

25 A. Let's see. Exhibit No. 11, I likely

1 pulled together this report from our
2 accounting -- from our accounting software for
3 the extended general conditions, the
4 subcontractor claims, some or if not most of the
5 change orders, RCOs and CCDs, some of
6 miscellaneous entitlement related materials and
7 some of the schedule.

8 Q. Okay. What about the other three
9 volumes?

10 A. Each of them have an index.
11 Notification logs. This is -- this is all in the
12 items that I listed before. So I went through
13 the index and said which ones I was involved with
14 or provided information in.

15 So, general conditions, section 1,
16 section 2, section 3, section 4, probably parts
17 of section 5, parts of section 7, and maybe
18 section 8, which is the schedule.

19 Q. Okay. And those were prepared by you?

20 A. Not in its entirety. I supported the
21 preparation of them.

22 Q. You supported the preparation. All
23 right. What else? Go to the next volume.

24 A. That's it. That's all. That's the
25 index, and it's --

1 Q. What is that set of volumes there?

2 A. That's -- so this is 7, section 7, which
3 is support for entitlement. Section 7 is
4 miscellaneous entitlement related to materials
5 that's in volume 2 for your Exhibit 12.

6 Q. Okay.

7 A. And I believe Exhibit 13 is a
8 continuation of that.

9 Q. Okay.

10 A. And volume 4 is section 8.

11 Q. Okay. Who would have reviewed your work
12 product, if anyone, before it went in this --
13 found its way into this consolidated claim?

14 A. Probably Tim Hildebrand, Taylor Morris,
15 John Heuer, maybe Tim, Dave Simonton.

16 Q. But mostly lawyers?

17 A. I don't know whether it was mostly or --

18 Q. Okay. Well, was your interaction mostly
19 with lawyers when it came to the review and
20 preparation of this claim?

21 A. I'm sorry?

22 Q. Was your interaction with lawyers
23 primarily in regards to the preparation of this
24 claim? Did you mostly meet with lawyers after
25 you gave them the information that you were

1 requested in an outline?

2 A. We all met together.

3 Q. Who is all?

4 A. Dave, Tim, Tom and Taylor.

5 Q. Okay. And how many people in that group
6 are lawyers?

7 A. Two.

8 Q. And how many are not lawyers?

9 A. Two.

10 Q. So what portions did the lawyers prepare
11 that you didn't prepare?

12 A. I don't know what they prepared. We
13 pulled together most of the information, as did
14 Taylor.

15 Q. Is there anything in this claim that
16 you're aware of that came exclusively from the
17 lawyers that you saw no backup for, that you
18 didn't go back and check to see if there was
19 backup for?

20 A. I'm not sure, no, sir.

21 Q. Did you check to see if the accounting
22 was accurate, that Mr. Casey Thompson had
23 accurately compiled these numbers?

24 A. Casey and I worked together. He would
25 have had the final say.

1 Q. All right. Did you review the contract
2 terms to determine whether or not the claim
3 complied with the contract -- the requirements of
4 the contract?

5 A. Me, personally, no, not for that
6 purpose.

7 Q. Well, this is a contract case, correct?

8 A. I don't know that.

9 Q. You don't know?

10 A. No.

11 Q. Gotcha. And you're not a lawyer?

12 A. No.

13 Q. You're not an engineer?

14 A. No.

15 Q. And not an architect?

16 A. No.

17 Q. Okay. And you didn't read the contract
18 before you prepared -- or in preparation for this
19 claim?

20 A. In preparation of this claim? I
21 probably read it. I didn't read it for that
22 purpose.

23 Q. Okay. Well, if you were preparing the
24 claim, why would you look at the contract for
25 other than that purpose?

1 A. I reviewed the contract frequently, but
2 I didn't review it to determine if that was how
3 to prepare the claim.

4 Q. Okay. So you did review the contract to
5 determine how to prepare the claim?

6 A. I don't -- I reviewed the contract as we
7 were preparing the claim.

8 Q. Okay. But you don't know whether that
9 review was specifically related to claim
10 preparation?

11 A. I'm sure it was.

12 Q. You're sure it was?

13 A. Yeah.

14 Q. Okay. All right. Do you know what
15 happened to that claim with what -- turn to the
16 first volume, if you would, and look at the
17 letter, the cover letter, I guess, would be one
18 way to characterize it.

19 A. Okay.

20 Q. Are you with me? Who is the letter
21 from?

22 A. David Simonton.

23 Q. Okay. And who is it to?

24 A. Buck Lindsay.

25 Q. Huh?

1 A. Mr. Buck Lindsay.

2 Q. Okay. And he is the architect on this
3 job?

4 A. Yes.

5 Q. And do you know why this letter was sent
6 and this consolidated claim was sent to Buck
7 Lindsay?

8 A. I believe it's because it's who the
9 claims are supposed to be sent to. But I don't
10 know.

11 Q. But you're not sure?

12 A. I'm not a hundred percent sure on -- I
13 believe that's why it was sent to him.

14 Q. And do you have any knowledge at all
15 about what Mr. Lindsay was supposed to do once he
16 got the claim?

17 A. You could look at the contract. He's
18 probably supposed to review it and, you know,
19 judge his entitlement on it, render his opinion
20 on it.

21 Q. Do you know if he ever responded?

22 A. I don't.

23 Q. Do you know whether or not filing a
24 claim and having an architect's decision is a
25 condition precedent to filing a lawsuit?

1 A. I do not.

2 Q. Do you know what condition precedent
3 means?

4 A. Yes.

5 Q. What does it mean to you?

6 A. It means, is that something has to
7 happen to filing a lawsuit.

8 Q. Right.

9 A. The requirement.

10 Q. And if the precedent thing doesn't
11 happen, the next thing can't happen?

12 A. I don't know that to be true.

13 Q. You don't know that to be true. But you
14 know what a condition precedent is?

15 A. That's right.

16 Q. Okay. Well, let me ask you this: Is
17 putting the first floor in on the Bennett Hotel a
18 condition precedent to putting on the second
19 floor?

20 A. Yes.

21 Q. Okay. So is that -- is there anything
22 else that you would like to tell me or that you
23 think would help inform the Court about your
24 involvement in the claim preparation in this
25 case?

1 A. I don't think so. I've been through it.

2 Q. Okay. Because, you know, I'm just
3 here -- if you've got something you need to tell
4 the Judge and you don't think you're getting out
5 your whole story and you think I'm maybe not
6 treating you right, now is your chance to tell
7 the Judge what you think I may have left out and
8 forgotten to ask you so that he could understand
9 what you did in this claim because it's important
10 that we know what you did involving this claim.
11 Okay?

12 A. Understood. I think I told you I was
13 involved in preparing it and pulling the
14 documentation together. Did I have the final say
15 on it? No, but I was involved.

16 Q. Okay. All right, sir. Let's --

17 A. Can I set these aside?

18 Q. Pardon me?

19 A. Can I set these aside?

20 Q. Sure, sure. Now, I would like to hand
21 you Exhibits 7, 8, 9 and 10. Can you identify
22 these exhibits for the record, Mr. Starcevic?
23 Well, they've already been identified. Can
24 you -- do you know what they are is the question?

25 A. They say they're daily logs.

1 Q. And what do you say they are?

2 A. No, they say they're daily logs.

3 Q. But what do you say? I want to know
4 what you say they are? Are they the daily logs?

5 A. These look like daily reports.

6 Q. On the Hotel Bennett?

7 A. Yeah.

8 Q. Okay. Do you need to check every book?

9 A. I can assume they're daily logs if they
10 say they're daily logs.

11 Q. Who would they be, Balfour Beatty?
12 Balfour Beatty is the one who says they're the
13 daily logs.

14 A. No, I'm sorry. Without checking every
15 one, these look like the daily logs that we put
16 together.

17 Q. All right. In your preparation, in your
18 duties for the preparation of the consolidated
19 claim, did you review the documents contained in
20 the exhibits, the daily logs that we just looked
21 at, Exhibit 8, 9, 10 and 11?

22 A. Not in its entirety.

23 Q. Did you look at them at all?

24 A. I'm sure I looked at a few daily logs
25 along the way.

1 Q. Pardon me?

2 A. I'm sure I looked at a few daily reports
3 along the way. So I have probably reviewed a
4 handful of these.

5 Q. No, no, no, that's not my question. I
6 didn't ask you whether or not you did any of
7 them. I asked you whether or not, in preparing
8 for the consolidated claim, you went back and
9 reviewed any of them?

10 A. Any of the daily reports?

11 Q. Yes, the daily reports.

12 A. Yeah. I said I reviewed a handful of
13 them.

14 Q. A handful. How many is a handful?

15 A. 40, 50.

16 Q. Okay. How many do you think you -- if
17 you took a book -- that's certainly less than one
18 book, right?

19 A. That's right.

20 Q. Okay. So roughly maybe an inch of
21 paper?

22 A. I don't know how many inches. 40 or 50
23 daily reports.

24 Q. Okay. So how many -- which 40 or 50
25 daily reports did you look at?

1 A. I don't remember. Ones that were
2 specific to me, looking back and validating
3 something or checking some information.

4 Q. Give me an example of what you would
5 have looked back to validate?

6 A. I can't pull a good one for you. If we
7 said we were doing something and I wanted to go
8 check and make sure those people were there, I
9 went back and looked at the daily report.

10 Q. So you did that? You went back and
11 checked the daily reports to make sure they were
12 consistent with the consolidated claim?

13 A. A couple times. I said a handful of
14 times, right?

15 Q. Now, the daily reports, by virtue of
16 their name, can you agree with me, they're made
17 on a daily basis or pretty much on a daily basis?

18 A. Pretty much on a daily basis.

19 Q. They weren't all made at the end of the
20 job, right?

21 A. That's right.

22 Q. Okay. And is it correct that you would
23 defer to what's in the daily report as opposed to
24 what you now might remember some five years later
25 as to what actually occurred on that day?

1 A. For what's in here?

2 Q. Yes.

3 A. I don't know that I would contest what's
4 in here. It's depending on what information
5 we're talk.

6 Q. What basis would you have to contest
7 what's in the daily report?

8 A. Well, it's one person's accounting of
9 what happened that day. It's not everybody's.

10 Q. All right. Now, that one person is an
11 employee of Balfour Beatty?

12 A. Yes, sir.

13 Q. Now, you said the other day that you
14 move up the ladder, so to speak, at Balfour
15 Beatty, based on the merit, right? The better
16 job you do, the faster you go up the ladder?

17 A. Sure.

18 Q. Is that fair?

19 A. Yeah.

20 Q. Okay. Now, in Balfour Beatty's -- in
21 the company Balfour Beatty, which is more valued,
22 honesty or deceit?

23 A. Honesty.

24 Q. Or deceit? You've got two choices in my
25 questions.

1 A. I said honesty.

2 Q. Honesty. Okay. So is there any
3 incentive to employees of Balfour Beatty to be
4 deceitful in these documents?

5 A. No.

6 Q. Okay. And in fact, isn't it true that
7 they're not only prepared by somebody, but they
8 are handed out to you and other people to review
9 contemporaneous or they're available to you on a
10 fairly contemporaneous basis, and you have the
11 absolute right to change those daily reports if
12 you thought them to be inaccurate at the time?

13 A. They were available to us.

14 Q. Okay. So if you went to a daily report
15 and the report said, the weather today was sunny,
16 okay, 80 degrees, and you look outside and it's
17 snowing, okay, you would probably change that
18 daily report if you had seen it; is that correct?

19 A. If I had seen it, yeah, I would have.

20 Q. Okay. What if you went back and looked
21 at the records of Noah, of the weather records
22 and it said it was snowing? Would you change it
23 then or would that not be good enough?

24 A. Pardon?

25 Q. So are daily reports mentioned or copied

1 anywhere in the consolidated claim? Is there one
2 single reference in the consolidated claim, the
3 daily report, that you're aware of?

4 A. I'm not -- I don't know. I don't know
5 how to answer that.

6 Q. Okay.

7 A. I don't know if the word daily report is
8 mentioned there. And just to be clear, I didn't
9 review the daily reports daily.

10 Q. Okay. That's fine. I'm more interested
11 in whether you reviewed them when you prepared or
12 had a responsibility comparing portions of the
13 consolidated claim. That's really what I'm
14 interested in. What daily reports you reviewed
15 then is what I'm interested in.

16 A. Yeah. I don't remember which ones. I
17 just broadly reviewed some of them.

18 Q. All right. If you were asked to put
19 something in that report, in that consolidated
20 report, which you knew was contradictory to the
21 daily reports on that day -- and by
22 contradictory, I mean, not true, would you have
23 still put in the not true information in the
24 consolidated claim when there was a daily report
25 that said otherwise?

1 A. If someone told me to put something?

2 Q. If you read a daily -- let's start
3 again. Did you look at the final consolidated
4 claim?

5 A. Did I look at it? Yeah.

6 Q. Did you read it?

7 A. Did I review every page? No.

8 Q. Okay. You didn't read it.

9 A. Yeah. I mean, there's a lot of just
10 records.

11 Q. Sure. I get it. It's a big complicated
12 report. So you didn't review it from end to end,
13 you just sort of skimmed over it, right?

14 A. In its final form?

15 Q. Yeah, in its final form.

16 A. That's right.

17 Q. The one that was going to be sent to the
18 architect.

19 A. That's right.

20 Q. Because the architect is not going to
21 get the draft. He's only going to get one copy,
22 right?

23 A. I would probably agree with you.

24 Q. Okay. And presumably, when you make a
25 claim, you want your best claim to be the one you

1 send in and not the one three claims back, right?

2 A. Yeah, that's accurate.

3 Q. So the claim that was sent in was
4 y'all's best shot at the claim, was the one you
5 made?

6 A. I don't know. That's not --

7 Q. Okay. That's fine. Let's go back to my
8 question. In reviewing the claim, however much
9 you reviewed it, if you had discovered there was
10 a statement in the claim, which contradicted the
11 facts that stayed in the daily report, would you
12 have brought that to anyone's attention? Yes or
13 no?

14 A. Yes. If that circumstance that you
15 outlined happened, I would have.

16 Q. And it didn't occur, did it?

17 A. Not that I am aware of.

18 Q. Do you know whether the lawyers reviewed
19 the claim for what was sent out?

20 A. Do I know?

21 Q. Yes.

22 A. I wasn't there; so I don't know what
23 they did or didn't do. I'd hope so.

24 Q. Do you know if Mr. Simonton reviewed it
25 before it went out? He signed the letter.

1 A. Again, I would hope he did, but I
2 didn't -- you know, I can't --

3 Q. You don't know what happened after the
4 architect got it?

5 A. No, sir.

6 Q. Okay. All right. Let's go back and --

7 THE COURT: Do you want to take a
8 break now?

9 MR. BUNDY: Sure.

10 THE COURT: Let's go ahead and do
11 that. Let's take five.

12 MR. HILDEBRAND: Thank you very
13 much.

14 (A recess transpired.)

15 THE COURT: All right. Let's
16 proceed.

17 BY MR. BUNDY:

18 Q. Mr. Starcevic, I want to go back and
19 revisit your work history before you went to work
20 on the hotel. That's you, right?

21 A. That's me.

22 Q. Okay. In 2009, you were 22 years old
23 and you graduated in 2009. You're 22 years old.
24 You graduated from Chapel Hill with a bachelor's
25 of science in management and society; is that

1 correct?

2 A. Yes, sir.

3 Q. All right. What is the society part of
4 this degree?

5 A. It's psychology a little bit. It's just
6 a business degree.

7 Q. And then management, what is the
8 management aspect of this degree?

9 A. Business management.

10 Q. What are you managing?

11 A. I didn't manage anything in school
12 except for my personal experience. I didn't
13 manage anything in school.

14 Q. No, but I'm saying --

15 A. You're learning how to manage. You're
16 learning --

17 Q. No, no. What I'm trying to understand
18 is -- and I'm sorry I don't ask clear questions.
19 I was talking about your degree, and I would like
20 to know what courses you took or the education
21 you received regarding management and what it was
22 you were being taught to manage. Does that help
23 you?

24 A. Sure. I don't really know how to answer
25 that question. We took anything from statistics

1 to psychology classes. It's a broad
2 undergraduate degree where you learn a little bit
3 about everything.

4 Q. All right. And which of those skills
5 did you use in building the Hotel Bennett?

6 A. A little bit of all of them. I also
7 learned a lot during my entrepreneurship in
8 college as well, a lot of on-the-job training.

9 Q. Well, I want to just focus on the --
10 through graduation from college right this
11 minute.

12 A. Gotcha.

13 Q. So did you take any construction
14 management courses as part of your degree?

15 A. No.

16 Q. Did you take any carpentry courses?

17 A. No.

18 Q. Did you take any scheduling courses?

19 A. No.

20 Q. Okay. Did you take any legal courses?

21 A. No.

22 Q. Did you take any engineering courses?

23 A. No.

24 Q. Did you take any courses on how to
25 interpret contracts?

1 A. As part of my degree, no, sir.

2 Q. Did you take courses on the AIA suite of
3 documents and how to interpret them?

4 A. No.

5 Q. Okay. Now, when you were growing up,
6 did you work in the construction industry?

7 A. Yes.

8 Q. Tell me what you did.

9 A. I worked for a residential builder.

10 Q. Doing work?

11 A. Doing miscellaneous -- seminating
12 builders, doing miscellaneous things around
13 jobsites. Whatever the superintendent needed me
14 to do, I did.

15 Q. This was during high school?

16 A. Yes, sir.

17 Q. You were a common laborer?

18 A. Yes.

19 Q. And you got paid 8 bucks an hour or 10
20 bucks an hour?

21 A. I don't remember what I got paid but
22 somewhere around there. It wasn't much.

23 Q. All right. Then you went to work for
24 Clear Channel Radio as an ad salesman for eight
25 months?

1 A. I also worked for a developer in college
2 as an intern.

3 Q. Okay. What was the name of the
4 developer?

5 A. It's called 3D out of Pennsylvania.

6 Q. 3D. And they were in Pennsylvania?

7 A. Yes, sir.

8 Q. And when did you work for them?

9 A. Between my junior and senior year.

10 Q. And in North Carolina, you worked for
11 them?

12 A. Outside of Philadelphia.

13 Q. In Philadelphia -- outside of
14 Philadelphia?

15 A. Yes, sir.

16 Q. Okay. So you worked during the summers
17 for them?

18 A. I worked -- it was a summer internship.

19 Q. Summer internship for a developer in
20 Philadelphia?

21 A. Yes.

22 Q. Okay. And what did you do for them?

23 A. A little bit of everything. Marketing,
24 did some layout, helped manage some properties,
25 just a little bit of everything.

1 Q. Did you build any hotels?

2 A. I worked in a hotel. They owned hotels;
3 so I worked -- we didn't build any hotels, but I
4 worked --

5 Q. Pardon me?

6 A. We didn't build any hotels, but I worked
7 for -- in his hotels.

8 Q. Well, what did you do working in those
9 hotels?

10 A. Marketing, did some miscellaneous, you
11 know, punch stuff after people would check out.
12 They asked me to look at things in rooms and in
13 their common areas and just a little bit of
14 everything for them.

15 Q. But were the hotels in service? Were
16 people staying in the hotel?

17 A. Yes.

18 Q. Okay. So somebody would check out, and
19 you would go do a punch list on --

20 A. I would go look at, you know, things --
21 rooms for damages, rooms for just miscellaneous
22 management things.

23 Q. So were you a hotel engineer?

24 A. A hotel engineer?

25 Q. Yeah.

1 A. I don't know what a hotel --

2 Q. Were you a maintenance engineer in a
3 hotel?

4 A. I did a little bit of everything for the
5 hotel.

6 Q. Did you make the beds?

7 A. No.

8 Q. Okay. Now, so you had that extensive
9 experience in Philadelphia, and then you went to
10 work for Clear Channel. And what did you do for
11 them?

12 A. I sold radio advertising.

13 Q. Okay. All right. Then, when you were
14 working for Clear Channel, you -- I think, is
15 that when you met Mr. Spano?

16 A. No.

17 Q. Who did you meet when you worked for
18 Clear Channel? Did you meet somebody that worked
19 for Balfour Beatty while you were working for
20 Clear Channel?

21 A. I did.

22 Q. Who was that?

23 A. Pat Dean.

24 Q. Pat Dean. Okay. I'm sorry. Again, I
25 have a hard time with all of these names. You

1 met Pat Dean. And that was in Charlotte?

2 A. Yes.

3 Q. And what was Mr. Dean's position with
4 Balfour Beatty Construction then?

5 A. I believe he was the president of the
6 local office or vice president. He was the
7 business unit leader, actually, I think.

8 Q. Was he president, you think?

9 A. No, I don't think he was. I think John
10 Woodcock was. I believe he was the business unit
11 leader. I'm not sure his exact position.

12 Q. You're not sure. Okay. How about John
13 Rankin? Did you ever meet Rankin?

14 A. I met John.

15 Q. And he used to work for Balfour Beatty?

16 A. In the Raleigh office, I believe.

17 Q. And was he responsible -- he wasn't
18 responsible for the Bennett Hotel, was he?

19 A. Not that I'm aware of.

20 Q. Did he supervise any of the work at the
21 Bennett Hotel?

22 A. Did he supervise any of the work?

23 Q. Yes. Are you having a hard time
24 understanding me?

25 A. Not that I'm aware of.

1 Q. Pardon me?

2 A. Not that I'm aware of.

3 Q. Okay. It's not really necessary to
4 repeat every question if you understand it. A
5 yes or no answer is just fine.

6 A. Sometimes it helps me understand it
7 better.

8 Q. I don't want you to be confused.

9 A. All right.

10 Q. So you met Mr. Dean. How did you meet
11 Mr. Dean?

12 A. We coached football together.

13 Q. And what grade?

14 A. It was eighth grade, I believe.

15 Q. Was it like a Pop Warner kind of thing?

16 A. Middle school team. The middle school I
17 played for, his son went to.

18 Q. Do you have a son on a team or
19 something?

20 A. No. I went to school there and wanted
21 to give back to the community; so I helped out in
22 my spare time.

23 Q. Charlotte Day? Was it Charlotte Day or
24 one of those teams?

25 A. Holy Trinity.

1 Q. Huh?

2 A. Holy Trinity.

3 Q. Okay. So it's my understanding that,
4 while working as the assistant -- you were
5 assistant coach under Mr. Dean?

6 A. We were both assistant coaches.

7 Q. Okay. So the school had its own coach,
8 hired coach and y'all --

9 A. He was a parent as well.

10 Q. Gotcha. So he was a parent?

11 A. Yes.

12 Q. Okay. So you met Dean, and as I
13 understand it, you talked to him about what he
14 did. He talked to you. Y'all got to be friends
15 and then his -- what he did for a living came up,
16 right?

17 A. Yes.

18 Q. All right. And as a result of that new
19 friendship, did he offer you a job, or did he ask
20 you to apply for a job? How did it come to pass
21 that you went to work for Balfour Beatty?

22 A. He introduced me to the project
23 executive, Josh Ballimont.

24 Q. Josh?

25 A. Ballimont.

1 Q. Can you spell it?

2 A. B-A-L-L-I-M-O-N-T.

3 Q. Okay. And what was his job? What was
4 Josh's job?

5 A. I think he was a senior project manager
6 or a project executive. He ran the SPG Group
7 downtown in Charlotte.

8 Q. In Charlotte. Okay. Did you meet Tony
9 Stoneking then? Did you ever meet Tony
10 Stoneking?

11 A. I have met Tony Stoneking, but not then.

12 Q. Okay. He used to work in the Raleigh
13 division for Balfour Beatty; is that right?

14 A. Yes.

15 Q. And he wasn't responsible for managing
16 the Hotel Bennett, was he?

17 A. He helped out a little bit.

18 Q. He did? When was that?

19 A. When we needed some help or when we had
20 questions, he would come down and look at our
21 operations and support the team.

22 Q. All right. And when was that? What
23 time period?

24 A. He made -- I don't know if it was
25 quarterly or twice a year. He would come down

1 and then he would -- he came down a few times
2 during the structure -- when we were building the
3 structure.

4 Q. How long would he stay?

5 A. A day. Tony was an early riser. He'd
6 drive down in the morning and get there around 7
7 a.m. and stay for a portion, if not longer, of
8 the day, longer if we needed him to.

9 Q. Was he still coming to the job when you
10 finished the job, or had he quit coming?

11 A. No. He wasn't there then.

12 Q. Had he retired by then?

13 A. I don't know, is he -- if he is retired.

14 Q. Okay. So how many times during the
15 course -- let's do it this way. Let's just use
16 December as the substantial completion. I
17 believe that would be December of what year?
18 '18?

19 A. '18.

20 Q. Okay. Prior to December of '18, what is
21 your best recollection of Mr. Stoneking being on
22 the job?

23 A. The last time he was on the job?

24 Q. Prior to -- yeah, the last time he was
25 on the job relative to the date of completion of

1 the job?

2 A. I don't remember.

3 Q. Would it have been within six months of
4 the --

5 A. Probably within six months.

6 Q. Okay. And how many times was he on the
7 job during -- you were on the job the whole --
8 well, you were on the job from the concrete slab
9 poured on the second floor to the end, right?

10 A. That's right.

11 Q. March until --

12 A. January or whenever.

13 Q. Whatever it was. How many times do you
14 think he came to the job that you were aware of?

15 A. 15-ish plus or minus.

16 Q. 15. Okay. And is it fair to say, you
17 would have known he was going to be on the job?
18 I mean, he was a big shot and he needed -- you
19 expected to know he was coming?

20 A. Yeah. He didn't ask my permission. But
21 he would --

22 Q. Right.

23 A. Sometimes he would come down, and I
24 wasn't there. I don't know that I knew about
25 every trip.

1 Q. All right. During the job, did you
2 report to him? Did you send him any reports?
3 Did you send him updates and all of that, or was
4 he involved in the job in that way?

5 A. He had access to them. I didn't send
6 him any.

7 Q. He had access?

8 A. Right.

9 Q. But you don't have any firsthand
10 knowledge about what he did when he was not on
11 the job relative to the job?

12 A. No.

13 Q. Okay. All right. And how about
14 Mr. Russell Brockelbank? He used to work for
15 Balfour Beatty, right?

16 A. He may still.

17 Q. Okay. Was he responsible for managing
18 the Hotel Bennett job?

19 A. Not that I'm aware of.

20 Q. Okay. Did he supervise the construction
21 at the Hotel Bennett job?

22 A. I don't believe so.

23 Q. All right. Are you a licensed general
24 contractor in the State of South Carolina?

25 A. No.

1 Q. Okay. Now, you -- let's go back to
2 where we were. So you then -- you applied for a
3 job or you had a meeting? How did -- just
4 explain the process. I'm just curious.

5 A. Applied for the job, met with Josh, met
6 with some of the team members, and they offered
7 me a position with Balfour Beatty.

8 Q. Okay. And you quit your radio job?

9 A. I already had.

10 Q. You already had?

11 A. Yeah.

12 Q. Okay. So how long were you unemployed?

13 A. About a month.

14 Q. Okay. So your first position was called
15 what?

16 A. Project coordinator.

17 Q. Project coordinator. And you were an
18 hourly employee?

19 A. Yes.

20 Q. Okay. What were you paid by the hour?

21 A. I don't remember.

22 Q. I assume it was minimum wage at least,
23 right?

24 A. I don't know that it was minimum wage,
25 but it came out to, I believe, around 45, \$50,000

1 a year.

2 Q. Okay. And what does it take to be
3 titled the project coordinator by Balfour Beatty?
4 What education, experience do you have to have in
5 order to be titled the project coordinator?

6 A. They've got people with all different
7 kinds of education, experience as project
8 coordinators. So I don't know that there's a
9 minimum requirement.

10 Q. What are the minimum requirements --

11 A. I don't know if there is one.

12 Q. -- to be a project coordinator?

13 A. I don't know what the minimum
14 requirements are.

15 Q. Well, clearly you don't have a degree in
16 construction. Clearly you don't have to have an
17 engineering degree. Clearly you don't have to
18 have any construction experience, and clearly you
19 don't have to have a general contractor's license
20 because they gave you a job as project
21 coordinator, right?

22 A. That's right. I was the project
23 coordinator because they don't hire project
24 engineers if you don't have project experience.
25 They don't hire you as a project engineer, with

1 that title, if you don't have a construction
2 management degree, an engineering degree, or
3 prior experience in the construction industry.
4 So as an entry-level position, they hire you as a
5 project coordinator.

6 Q. Okay. So the name informs -- the name
7 of your title informs your coworkers, who may not
8 know you, okay? They know immediately if you're
9 a project coordinator, that you don't have any
10 construction experience and are not an engineer,
11 right?

12 A. I don't know that to be -- I don't
13 know -- it doesn't inform them of anything other
14 than I'm a project engineer.

15 Q. All right.

16 A. Or project coordinator.

17 Q. Well, in order to be a project engineer,
18 you have to at least have some construction
19 experience, right?

20 A. Typically, yes.

21 Q. Well, tell me about the atypical
22 situations.

23 A. I don't know of any --

24 Q. Name somebody who's a project engineer
25 that has no --

1 A. I don't know anybody that is.

2 Q. Okay. All right. So you were 23 years
3 old at that time in November of 2010, and your
4 first project was a rooftop AC unit install; is
5 that right?

6 A. Yeah, I believe so.

7 Q. And you took no in-house training
8 courses during -- for that job, right, at that
9 time?

10 A. For that specific project?

11 Q. Yes.

12 A. I didn't take a course on how to install
13 a rooftop A/C unit.

14 Q. All right. In late 2011, you're 24
15 years old, and you became a project engineer,
16 right?

17 A. Yes.

18 Q. All right. And that was roughly after a
19 year?

20 A. About so, yeah.

21 Q. All right. Tell me what project
22 experience you had that went -- it got you from
23 project coordinator to project engineer other
24 than the rooftop A/C unit install?

25 A. We did a project -- small projects, and

1 whether it was a rooftop A/C commissioning a
2 tenant upfit, we were -- our SPG Group is -- did
3 a lot of stuff. We were very nimble, had a lot
4 of different experiences, and just a number of
5 projects. That rooftop A/C unit probably took
6 less than a week.

7 Q. All right. And then, once you became
8 the project engineer, you did a tenant upfit for
9 one bank tower in Bank of America in Charlotte,
10 right?

11 A. Yes, sir.

12 Q. And --

13 A. Amongst others.

14 Q. Pardon me?

15 A. We upfit -- there were 30 floors in the
16 building. We upfit all -- or we upfit 29 of
17 them.

18 Q. Did you upfit all 29 of them?

19 A. I was involved in 12 of them.

20 Q. Okay. So those upfits -- what is an
21 upfit? What did you do?

22 A. You have a shell, right, walls, the
23 floor.

24 Q. Cold, dark shell?

25 A. What's that?

1 Q. Cold, dark shell?

2 A. Pretty much. We did the cold, dark
3 shell --

4 Q. Are you familiar with that term?

5 A. Yes, sir. We did the cold, dark shell,
6 and we also did the upfit. So it wasn't
7 completely a cold, dark shell. But after the
8 corner shell team came through, we handled all
9 the install of the A/C, basically through the fit
10 and finish.

11 Q. All on one single at a time?

12 A. We had multiple floors going on at the
13 same time.

14 Q. Okay. Were you able to do more than one
15 floor at a time?

16 A. Yes.

17 Q. Did you do more than one floor at a
18 time?

19 A. Yes. Our team did.

20 Q. And you were the project -- you were the
21 project engineer for that entire period until
22 2012, right?

23 A. I got a promotion, I believe, in 2012.

24 Q. So in 2012, your between the years --
25 from 2012 to 2014, you were 25 to 27. And during

1 that period, you became senior project engineer,
2 and you worked on the Merrill Lynch interior
3 upfit, right?

4 A. And others.

5 Q. Huh?

6 A. And others.

7 Q. And others. Okay. That's fine. And
8 you didn't mention any of this in your
9 deposition, but that's fine. So the training
10 courses that you had when you became a project
11 engineer and then a -- well, a project engineer.
12 You had something called lunch and learn; is that
13 right?

14 A. That's right.

15 Q. All right. And how many of lunch and
16 learns did you do in a year?

17 A. Probably six to eight.

18 Q. Okay. And who organized the lunch and
19 learns?

20 A. It was sometimes jobsite specific, and
21 sometimes it was the office, the main office.

22 Q. All right. And would y'all go to a
23 fancy restaurant and have lunch and learns? Or
24 did you do it at the office?

25 A. We didn't go to any fancy restaurants.

1 They either catered lunch into our construction
2 site office, at the office. It was all over.
3 Sometimes we would go on field trips and go to
4 the subcontractor's office and see what they did
5 there.

6 Q. And these would be subcontractors that
7 y'all regularly did business with?

8 A. Yeah, for the most part. Or engineers.

9 Q. Would y'all just pick subs out of phone
10 books and they would come in to have lunch and
11 teach you how to do --

12 A. That's right, or engineers as well,
13 consultants.

14 Q. How long would those last typically?

15 A. They're lunch; so one to two hours.

16 Q. Okay. And part of it was just taking up
17 eating, I assume, since it was lunch?

18 A. And they are boxed lunches, and a lot of
19 times they would talk as we were eating. So that
20 was a typical lunch and learn.

21 Q. Okay. So other than lunch and learn,
22 and you said they lasted two hours. So that
23 would be roughly somewhere between 12 and 16
24 hours a year of lunch and learns. Did you do
25 that every year?

1 A. Yeah. We -- until we moved to
2 Charleston, it -- that was pretty typical.

3 Q. Okay. And when you came to Charleston
4 in 2014, right?

5 A. That's right.

6 Q. All right. So you did lunch and learns
7 from 2011 to 2014, which is three years?

8 A. That's right.

9 Q. Okay. So three times six would be 18.
10 Three times eight would be 24. So somewhere
11 between 18 and 24 hours of lunch and learns you
12 did before you went to Daniel Island in 2014 when
13 you were 27 and -- you were 27 years old, and you
14 stayed there until you were 28. And that was
15 through 2015, right?

16 A. That's right.

17 Q. And you were under who? Who was your
18 boss at Daniel Island?

19 A. Tim Spano.

20 Q. Tim Spano.

21 A. Now, are you implying that I -- all I
22 did was lunch and learn during that time period?

23 Q. Mr. Starcevic, you don't get to ask
24 questions. I'm going to ask you the question,
25 and if the question is not proper, normally

1 somebody will object, and the Judge will issue a
2 ruling. But until you hear from the Judge, if
3 you don't mind, just answer my questions, please.

4 Other than lunch and learn, what other
5 courses or education did you receive during the
6 period of 2011 through 2014?

7 A. We had quite a few. We had yearly.

8 Q. Had what?

9 A. Yearly off-site seminars for your job
10 title. We had the project engineer and a two to
11 three day meeting every year. We had all kinds
12 of courses available to us. We had review an
13 RFI. We had to review a submittal. We had to
14 basically do everything you needed to within
15 that -- within your job title.

16 Q. You had them available to you. Did you
17 take them all?

18 A. Sure.

19 Q. You took every one of them?

20 A. Most of them. I mean, there's a -- you
21 know, we will call it 200 courses available to
22 us. And I took the ones that I -- you know, my
23 manager and I felt were applicable to my job.

24 Q. And are those courses given by the
25 University of Balfour Beatty? What educational

1 institution did --

2 A. They actually had a BBI -- or Balfour
3 Beatty University as we called it.

4 Q. Okay. Where is that located?

5 A. There's a training. It's a digital
6 database, and there was a training leader at the
7 time that coordinated all of these and made sure
8 all the appropriate teachers and educators were
9 available to us.

10 Q. Okay. And are these all Balfour Beatty
11 employees?

12 A. Not all of them.

13 Q. Okay. Are they consultants who teach?
14 I'm just trying to understand. That's all.

15 A. Yes, it's everybody. I mean, there's
16 consultants. There's engineers. There's design
17 professionals. Some were in-house; some were put
18 on by the trainer, by the --

19 Q. Do you get any certificates for this
20 in-house? Do they give you a little certificate,
21 a gold star or something when you finish one?

22 A. I didn't get any gold stars, but you got
23 a certificate of completion.

24 Q. Okay. And how many certificates of
25 completion did you get?

1 A. I don't know.

2 Q. A box full?

3 A. Sure.

4 Q. Now, did you take the -- I assume
5 there's a course on how to manage a 50 million
6 dollar cost plus contract the guaranteed maximum
7 sum and how to do the accounting, right?

8 A. That's -- there's no course on how to
9 manage a 50 million dollar cost plus job.

10 Q. Is there a course on the AIA documents?

11 A. Yes.

12 Q. Okay. And what is the nature of that
13 course?

14 A. It's a general course on how to read and
15 where to get your AIA documents. There the -- we
16 had a database of AIA documents that were
17 available to us. There's a course on how to get
18 to that database, how read to them, a general
19 understanding of them.

20 Q. And did you take that course?

21 A. Yes.

22 Q. Do you know how many different AIA
23 document forms there are?

24 A. No, I don't.

25 Q. Do you know how long AIA has been around

1 issuing documents?

2 A. I don't know how long they've been
3 around. I imagine a while.

4 Q. Are you aware there are volumes and
5 volumes of treatises on the interpretation of AIA
6 documents?

7 A. No.

8 Q. Had you ever, prior to this job, been
9 involved with a job that had -- or used the
10 contract documents that were used and modified,
11 in this case, specifically, those outlined in
12 Plaintiff's Exhibit 56, AIA document A133-2009;
13 AIA document 201-2007 edition. Specifically,
14 these document as amended. These documents have
15 been amended.

16 A. As amended?

17 Q. Did you ever work on a project in any
18 capacity that had these form documents used for
19 the construction?

20 A. I don't remember which documents were
21 used at Simmons Park. If there was a 133 or a
22 133 Exhibit A. I don't remember. But it was a
23 GMP project; so it would have been some form of
24 this agreement -- not this agreement. It was --

25 Q. Okay. Does it matter -- do you

1 recognize that different contracts, different
2 projects have different terms --

3 A. Yes.

4 Q. -- specific to that project?

5 A. Yes.

6 Q. Okay. So you would agree with me that
7 because there was a specific term in the Simmons
8 Pointe job, if it doesn't appear in the Bennett
9 Hotel job, it doesn't apply to this contract?

10 A. That's right. Each job has specific
11 terms that are negotiated for that project.

12 Q. So whatever experience you have with a
13 different set of documents, okay, unlike the ones
14 you're holding in your hand, would not inform you
15 about these documents, would it?

16 A. No. You would have to read the contract
17 for you to negotiate about that project.

18 Q. There you go.

19 A. Most of it is similar.

20 Q. There you go. Did you read it?

21 A. Yes.

22 Q. When did you read it?

23 A. A number of times. I always had it --

24 Q. And the first time you read?

25 A. I don't remember.

1 MR. HILDEBRAND: Your Honor, he's
2 not letting him finish his answer before he asks
3 the next question.

4 MR. BUNDY: I'll withdraw the
5 question.

6 THE COURT: Let him finish. Yeah.
7 Go ahead.

8 THE WITNESS: I always had it
9 available to me, and I read through it. In that
10 two to three month introductory period, I had the
11 documents available to me. It's a long document.
12 I obviously don't -- can't memorize each word and
13 so I kept it available.

14 BY MR. BUNDY:

15 Q. All right. And two things in your
16 answer, I didn't ask if you'd memorized it. I've
17 been reading them for 42 years. Okay. This
18 ain't my first rodeo. All right? And I don't
19 happen to remember it. Okay?

20 Every time I start a case, I read them
21 all over again, okay, even though it's the same
22 form. That's what I do. What I want to know is
23 what you did. Okay? What I want to know is,
24 when was the first time you read -- I didn't ask
25 you whether it was available to you. The Bible

1 is available to you, but I don't know that you've
2 read it from cover to cover. I want to know when
3 you read these contract documents the first time,
4 if you recall?

5 A. Within my first two months being on the
6 project.

7 Q. And did you read them all from front to
8 back?

9 A. Front to back, yes.

10 Q. Okay. You read completely through it?

11 A. Yes.

12 Q. All right. On the table here, we have
13 all of the -- on the floor, we have the plans and
14 some specifications, I believe. When's the first
15 time you read those?

16 A. The original set?

17 Q. Yeah.

18 A. Began on -- they were available to me in
19 the first couple months of me being on the
20 project or while I was finishing up Simmons Park.
21 So I got familiar with them.

22 Q. As of the day you started on this job in
23 May of 2015, when you were 28 years old, was this
24 the most complicated construction contract you
25 have ever been involved with as it relates to the

1 terms of the contract, the document you're
2 holding?

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

4 Q. As it relates to the plans that we're
5 looking at here on the floor, is this the most
6 complicated set of plans you had ever worked on
7 before?

8 A. The original set?

9 Q. Yes, the original set.

10 A. No, sir.

11 Q. What was the other job that you did that
12 was more complicated than this one?

13 A. Simmons Park was complicated.

14 Q. Okay. All right. Tell me what the
15 construction was -- what type of construction
16 Simmons Park was?

17 A. It was a wood-frame building wrapped
18 around the precast parking deck, 360-some odd
19 units on -- that abutted a pond.

20 Q. It's a precast parking deck, right?

21 A. Yes.

22 Q. Is that the first parking deck you'd
23 ever worked on?

24 A. Yes.

25 Q. At 28 years of age?

1 A. First precast parking deck at a
2 building.

3 Q. Well, actually, you worked on the
4 parking deck when you were 20 -- you would have
5 been 27, 28; so the parking deck is precast
6 construction. And you say a wood-framed building
7 is constructed around it; is that correct?

8 A. Yes, sir.

9 Q. Now, is that stick-built construction?

10 A. Yes, sir.

11 Q. Framers?

12 A. Yes, sir.

13 Q. Hammers swinging?

14 A. Yes, sir.

15 Q. What is the -- what are the floors like?
16 Are they trusses, wooden trusses?

17 A. Wood trusses.

18 Q. Pre-engineered wooden trusses?

19 A. Yes, sir.

20 Q. So it's not poured-in-place concrete?
21 There are no sleeves, okay, right?

22 A. There are no concrete sleeves, that's
23 correct.

24 Q. Okay. Well, we both know it's much
25 harder to put a sleeve in a wooden floor than it

1 is a concrete slab. Isn't it much harder to put
2 a sleeve in a wooden floor than a concrete slab?

3 A. I don't -- I don't know that that's
4 true.

5 Q. Oh, so --

6 A. You put it in after the fact. You put
7 it in after it.

8 Q. Well, is it true or is it not true that
9 if you put a floor in out of floor and you have
10 to come back later and put something up through
11 that floor, that it's easier to do that than it
12 is to do the same thing with a precast
13 construction that has a post-tension system like
14 the Hotel Bennett?

15 A. It wasn't -- the Hotel Bennett wasn't
16 precast flooring --

17 Q. (Inaudible).

18 A. It depends on the circumstance, I mean.

19 Q. I'm sorry, poured-in-place. Okay.

20 We'll just agree that wood is easier, and we'll
21 move on.

22 A. I don't -- I didn't say it was easier.

23 Q. Oh, it's harder. Okay. Which is it?

24 A. Each job has its own set of circumstances
25 that make it harder.

1 Q. Gotcha. All right. So tell me on those
2 contracts, what does the line -- do you see the
3 line in the margin? Do you see those lines in
4 the left-hand margin? Look through the contract.
5 Do you see the lines in the left-hand margin?

6 A. Yeah.

7 Q. Go through the pages and tell me if you
8 see any lines in the left-hand margin?

9 A. I see them.

10 Q. You do?

11 A. Yes.

12 Q. All right. And what do those represent?

13 A. It typically means that a portion has
14 been modified or edited.

15 Q. Modified as what?

16 A. Typically means that area has been
17 modified or edited from its original version.

18 Q. Okay. What's the original version? The
19 printed, standard form?

20 A. That's my understanding.

21 Q. Okay. Did you go back to determine, and
22 did you compare the original printed language to
23 the amended language to determine what the
24 changes were?

25 A. No.

1 Q. Okay. Why not?

2 A. Because I had the final version.

3 Q. So you didn't need --

4 A. The previous version didn't matter.

5 Q. So you didn't need to know what was in
6 the previous version to understand the changes
7 and the significance in the changes from the
8 original version?

9 A. No.

10 Q. Okay. Fair enough.

11 MR. BUNDY: Your Honor, what's the
12 next exhibit number?

13 THE COURT: And let me ask you:
14 You mentioned Exhibits 7, 8, 9 and 10. Those
15 were the daily log sheets. Did you move those
16 in, or --

17 MR. BUNDY: They've already been
18 in.

19 THE COURT: They're in evidence?

20 MR. BUNDY: They're already in
21 evidence.

22 THE COURT: Okay. All right. I
23 just wanted to make sure.

24 MR. BUNDY: The next exhibit, Your
25 Honor, is?

1 THE COURT: No. 15.

2 MR. BUNDY: 15?

3 THE COURT: Yes, sir.

4 (DFT. EXH. 15 was marked for
5 identification.)

6 BY MR. BUNDY:

7 Q. All right. Mr. Starcevic, do you
8 recognize or could you identify Defendant's
9 Exhibit 15 for identification?

10 A. It's a letter to Mr. Jim Clements. It
11 says, the Hotel at Marion Square consolidated
12 claim draft.

13 Q. And what's the date of it?

14 A. January 2nd.

15 Q. And who is Jim Clements?

16 A. He was the owner's rep on the project.

17 Q. And Mr. Clements, that's the -- the
18 first page of the consolidated claim, which I
19 believe, for the record is Exhibit 11.

20 A. 11. Okay.

21 Q. All right. Now, you said Jim Clements
22 was the owner's representative?

23 A. Yes.

24 Q. Okay. And this is dated January 2nd,
25 2019, and it's not signed. It just says, Balfour

1 Beatty, right?

2 A. Yes.

3 Q. And underneath it, we've got numerous
4 copy recipients, but since it's titled draft, do
5 you know if this letter was ever sent?

6 A. I do not.

7 Q. It, for the record, is also BBC e-mails
8 with Bates number 01738069 through 71; is that
9 correct.

10 A. Yes.

11 Q. All right. Now, Mr. Clements, he was
12 the gentleman you referred to on Friday as the
13 messenger, right? That's who you were talking
14 about?

15 A. The owner's rep.

16 Q. Okay. But you referred to him as a
17 messenger, right?

18 A. Okay.

19 Q. Did you or did you not?

20 A. If you say I did, I did.

21 Q. You don't remember?

22 A. I don't remember exactly what I called
23 him.

24 Q. Okay. Now, the letter that -- in the
25 consolidated claim. Let's turn to the first --

1 let's turn to the consolidated claim. I want you
2 to compare this letter, Exhibit 15 for
3 identification to the first letter --

4 A. Can I set this down?

5 Q. Sure -- in Exhibit 11. Okay? They look
6 similar, do they not? They're not the same but
7 they're similar. They're both entitled
8 consolidated claims. One of them is referred to
9 as a draft, and the other one is the one that was
10 finally sent. Is that a fair characterization?

11 A. That's from -- from the subject up, they
12 look similar.

13 Q. Okay. And in the one, two, three --
14 third paragraph in the draft, what is the claim
15 amount?

16 A. \$17,045,850.67.

17 Q. Okay. And in the claim letter itself
18 that was sent -- when is that?

19 A. March 6.

20 Q. March 6th, roughly -- February, March,
21 roughly 60 days later, what's the claim amount
22 now?

23 A. I don't see it on the title, on the
24 page.

25 Q. There's no claim amount on this?

1 A. I don't see it on the letter.

2 Q. It's not in the letter at all? There's
3 no claim amount in the letter in the consolidated
4 claim? There's no claim amount in the letter?

5 A. Not on these two pages that I see.

6 Q. Let me see those for a second. Okay.
7 You were involved in this. And so what I need to
8 know is -- take all the time you need -- what is
9 the claim? What is the amount of the claim that
10 accompanies the March 6th, 2019 letter, Exhibits
11 11, 12, 13 and 14, which are in evidence?

12 MR. BUNDY: Your Honor, while he is
13 looking, may I move to introduce Exhibit 15 into
14 evidence?

15 MR. HILDEBRAND: No objection, Your
16 Honor.

17 THE COURT: Without objection.

18 (DFT. EXH. 15 was received in
19 evidence.)

20 THE WITNESS: Mr. Bundy, I don't
21 know that it's in here. It says it's a response
22 to a letter from Buck Lindsay that requested that
23 Balfour Beatty Construction provide additional
24 supporting data on the claim. Additionally, he
25 referenced -- it looks like it's support for a

1 letter that was sent to us from Buck Lindsay.

2 BY MR. BUNDY:

3 Q. A letter that was sent to you from?

4 A. That's what this -- that's what the
5 letter says. In that letter, it says, this
6 letter -- an attachment is being sent to you in
7 response to your letter dated February 4, 2019.

8 In that letter, you acknowledge receipt
9 of the preliminary consolidated claim letter that
10 was sent by Balfour Beatty Construction dated
11 January 25, and you requested that Balfour Beatty
12 Construction provide additional supporting data
13 on that claim.

14 Additionally, you reference the final
15 determination of substantial completion, which
16 subject we will address in a separate letter from
17 this response. So this looks like it's support
18 that was requested.

19 Q. Okay. And do you know whether the claim
20 that's being supported is a \$17,045,850.67?

21 A. I don't.

22 Q. You don't what it's --

23 A. I don't know what it was -- I don't know
24 what this is in response to.

25 Q. Okay. That's fine.

1 A. It's a letter from Buck Lindsay.

2 Q. Okay. That's fine. All right. We're
3 looking for Plaintiff's -- well, is it in
4 evidence?

5 THE WITNESS: Exhibit 12, this one?

6 MR. MCDONALD: There you go. Right
7 there.

8 BY MR. BUNDY:

9 Q. Okay. If you would, tell the Judge what
10 you've got in your hand.

11 A. Balfour Exhibit 12, amended meeting
12 submitted RCOs.

13 Q. Do we have another copy of this for the
14 Judge?

15 THE COURT: I've got one right
16 here. I do have one.

17 MR. BUNDY: We're going to be quite
18 a while going through these. I need you to be
19 able to follow along.

20 THE COURT: Sure. Okay.

21 BY MR. BUNDY:

22 Q. All right. Who prepared this
23 compilation of RCOs?

24 A. This book?

25 Q. Yes.

1 A. I don't know.

2 Q. When was the first time you saw it in
3 its present form? Not the individual RCOs but
4 this assemblage of documents in its present form?

5 A. In this form, I think Friday.

6 Q. Friday of last week?

7 A. Yeah. I got -- I saw -- this form, I
8 believe I saw Friday for the first time.

9 Q. Okay. And when on -- before you took
10 the stand?

11 A. No, when it was handed to me on the
12 stand.

13 Q. Okay. So the first you ever saw this
14 assemblage of documents was when you were on the
15 witness stand and asked to identify it?

16 A. That's right. I saw the RCOs when I met
17 with Tom. We talked about it before. I don't
18 know if it was in this form.

19 Q. Right. And that's why I want to be very
20 specific with you. This assemblage -- do you
21 understand what I mean by assemblage, right?
22 This set of documents, this compilation of
23 documents, the first time you saw it was Friday
24 and you were already on the witness stand?

25 A. I believe so.

1 Q. All right. And nobody had discussed
2 this assemblage of documents with you before?
3 You may have discussed some of them, okay,
4 individually, but you had never sat down with
5 anybody and discussed the entire assemblage with
6 them?

7 A. Not the entire assemblage.

8 Q. Okay. All right. Who prepared this
9 set -- this assemblage of documents? Because you
10 identified them as the RCOs on this job, right?

11 A. Yes.

12 Q. All right. How were you able to
13 identify an assemblage of documents you had never
14 seen before you took the witness stand?

15 A. Because we went through each one, and
16 they -- we read the RCO number and the amount.

17 Q. Okay. So it wasn't until you went
18 through all of them, having seen them for the
19 first time in this format, that you were identify
20 them as the RCOs; is that fair?

21 A. They're all documents that either I
22 prepared or a team has prepared; so I had seen
23 them before.

24 Q. All right. Let's go to number 27.

25 A. Okay.

1 Q. Now, this is for -- dated -- the backup
2 letter is to Mrs. Brown January 13, 2016, and
3 it's for a change order for No. 27 in the amount
4 of \$124,000, additional work towards the
5 following qualifications, correct?

6 A. Correct.

7 Q. And the request for change order is
8 unsigned on the second page; is that correct?

9 A. Correct.

10 Q. But it is signed by Tim Spano?

11 A. Correct.

12 Q. You did not get a copy. Why is that?

13 A. I believe this is because it was before
14 I was on the project.

15 Q. So you didn't prepare this?

16 A. I did not prepare this.

17 Q. Okay. Are you aware that a time
18 extension was agreed to on this item?

19 A. Yes.

20 Q. Okay. And what was that time extension
21 agreed to? What was the agreed upon time
22 extension?

23 A. I believe it was 20 days.

24 Q. Okay. And this is asking for
25 additional -- is this asking for more time over

1 and above the 20 days?

2 A. No. I believe this predated the version
3 that was agreed to.

4 Q. I'm just trying to understand what
5 you're asking for, right? So is this change
6 order a request -- is this a document a request
7 in this case at this time for more than 20 days
8 that have already been granted?

9 A. I don't know. I don't think it's a
10 request for an additional 20 days. I think it's
11 just a request for a dollar amount.

12 Q. And let's talk about what this claim is
13 made up of. Is it not made up a Gulf Stream
14 claim of 115,969.21?

15 A. I believe so.

16 Q. And do you know whether they've been
17 paid for that or whether they've settled that
18 out?

19 A. I believe they've been paid for it.

20 Q. Who paid it?

21 A. I believe Balfour Beatty did.

22 Q. You believe Balfour Beatty did. Let's
23 talk about your belief regarding payment. You
24 haven't worked at Balfour Beatty since whenever
25 you left. I think we established earlier when

1 that was. And we know what conversations you've
2 had. You have not conferred with the accounting
3 department to know what was paid or has been paid
4 at least since you left, right?

5 A. That's right.

6 Q. So you don't know anything that
7 transpired with regard to this case, payments,
8 settlements, whatever as it relates to after you
9 left?

10 A. Yeah, in the last five months.

11 Q. Now, is the same thing true of what
12 happened after you left the job, or is it just
13 true for after you left Balfour Beatty because
14 those are two different days, right?

15 A. Just after I left Balfour Beatty.

16 Q. Okay. So between the time you left the
17 job and left Balfour Beatty was -- how long a
18 period was that? A couple years?

19 A. A year and a half, could be almost two
20 years.

21 Q. Okay. So during that year and a half,
22 while you weren't working on the Bennett Hotel,
23 you were still involved in the case and knowing
24 what was paid, how many had been paid, who had
25 been paid, and what was owed, correct?

1 A. That's correct.

2 Q. And you were involved in preparing a
3 claim?

4 A. That's correct.

5 Q. Okay. How much of your time, from a
6 percentage standpoint do you think you spent
7 working on the Bennett Hotel after you left the
8 Bennett Hotel job?

9 A. It varied. For the first couple months
10 after, quite a bit. Maybe 50 percent.

11 Q. 50 percent. What job did you go to?

12 A. We were doing preconstruction for the
13 Kiawah Senior Living, and we started working on
14 the upfits and other smaller projects.

15 Q. Right. Let me stop you. So for the
16 first couple months, you did two things after you
17 left the job for Balfour Beatty. One, you worked
18 on precontract stuff on a retirement facility at
19 Kiawah Island Company that never came to pass,
20 correct?

21 A. I believe they just broke ground last
22 week.

23 Q. Are you working on the job?

24 A. No, sir.

25 Q. So we're going to have to -- you're

1 going to parse every single word I say, right?

2 So we're going to be here all day. All I'm

3 trying to get you to agree with me --

4 MR. HILDEBRAND: Objection, Your

5 Honor. That's --

6 MR. BUNDY: Your Honor, I mean --

7 MR. HILDEBRAND: -- improper and an
8 inflammatory statement.

9 THE COURT: I'm going to sustain
10 that objection. Ask him the question. He can
11 answer it. If you're not happy with the answer,
12 you can rephrase the question.

13 BY MR. BUNDY:

14 Q. All right. The first two months after
15 you left the hotel, you worked on two things for
16 Balfour Beatty. One was preconstruction work on
17 a retirement home that you never worked on again
18 before you left Balfour Beatty?

19 A. That I was never involved in the
20 construction on.

21 Q. Thank you. The other half of that time
22 for approximate 60 days, you spent working on the
23 Bennett Hotel claim paperwork, whatever you want
24 to call it?

25 A. We were doing preconstruction for the

1 other upfit project. So the two jobs we worked
2 on preconstruction for, and the other percentage
3 of the time was on the claim.

4 Q. But you think that was 50 percent of
5 your time?

6 A. Plus or minus.

7 Q. Okay.

8 A. Maybe a little bit less, maybe a little
9 bit more at certain times.

10 Q. 20, 25 hours a week?

11 A. Roughly.

12 Q. Okay. And tell me what you did during
13 those -- that two months for 20 to 25 hours a
14 week working on the Hotel Bennett job claim?

15 A. Assemblage of all these documents, RCOs,
16 pulling costs together, reviewing information,
17 and all the documents and volumes we went through
18 before, pulling together -- pulling those
19 together, reviewing subcontractor claims,
20 reviewing costs from the subcontractors, change
21 events, cost events.

22 Q. And were you working with the lawyers
23 during that period?

24 A. Yes, sir.

25 Q. And that would be Mr. Heuer and

1 Mr. Hildebrand and whoever else was in his
2 office?

3 A. Heuer and Hildebrand, yes, sir.

4 Q. And how much of the 50 percent of that
5 25 hours a week would you spend with the lawyers?

6 A. Not often. Most of it was a phone call
7 or we reviewed what we needed to put together.

8 Q. And your direction for what to do came
9 from whom again?

10 A. Mr. Heuer and Mr. Hildebrand,
11 ultimately.

12 Q. Now, after the 60 days has passed, am I
13 to assume that your time on the claim started to
14 diminish?

15 A. Yes, sir.

16 Q. Okay. And what was the next sort of
17 phrase or what -- give me -- tell me how you
18 worked on the job as you -- until you finally
19 quit working on it, I guess, until you left the
20 job -- until you left the employer?

21 A. Dave Simonton kind of took over more of
22 the responsibility as construction on the other
23 project when the other project started. So, you
24 know, after whatever that period was, five, six
25 months, it went down to, you know, 10 to 15 hours

1 a week if not less.

2 Q. Okay.

3 A. Depending on what was needed.

4 Q. Does anything stand out in your mind
5 during that period that you did that was sort of
6 more important or more difficult? Anything that
7 stands out in your mind at all about that period
8 of time and the work you did?

9 A. No. It was all important.

10 Q. Okay. And would you go to -- would you
11 go to Charlotte to get this information? Where
12 did you get the information from?

13 A. Where did I get what information? That
14 I was pulling together?

15 Q. Yeah.

16 A. Most of it was on our -- on our digital
17 database or cloud database or from other
18 subcontractors. We'd request the information
19 from them.

20 Q. Sure. And you could get that -- you
21 could access that anywhere as long as you had a
22 computer, right, and access to the --

23 A. That's right.

24 Q. Okay. Let's talk a minute about
25 documents. What is Egnyte? What is the Egnyte

1 site?

2 A. It's our cloud-based document storage
3 site.

4 Q. Okay. And what use of it was made on
5 this job?

6 A. It was backup for documents.

7 Q. What documents?

8 A. Some, you know, personal -- not
9 personal, but some, you know, things that we were
10 working before we got the change orders, had the
11 change order backup, had the executed version of
12 some change orders.

13 It was more flexible than Constructware;
14 so we used -- that's where we kept things that we
15 were working on. That's where we kept pay
16 application backup. Anytime we needed to send a
17 link because the file was too big, it was on.
18 Egnyte. It was just kind of our data storage
19 website.

20 Q. Did the owner have access to the Egnyte
21 website?

22 A. I believe at certain points they did and
23 at certain parts they did.

24 Q. So they had limited assess?

25 A. I believe that's correct.

1 Q. Okay. Did they ever have access to
2 portions, and then later in the job or after the
3 lawsuit was filed, denied access to those same
4 portions of Egnyte?

5 A. Probably or potentially, yeah. I don't
6 remember specific instances.

7 Q. Well, what about change order backup?
8 Would they have been -- are you aware of any
9 situations where they were -- had access to
10 change order backup, and then, when they went to
11 go look at it again, it was gone or otherwise
12 unavailable?

13 A. I believe I remember that.

14 Q. And how did that come to pass?

15 A. I don't know how it came to pass.

16 Q. Well, it wasn't at your direction, was
17 it?

18 A. What's that?

19 Q. It wasn't at your direction, was it?

20 A. Was it at my direction? No.

21 Q. It wasn't at your direction that they
22 were no longer -- the owner was no longer to have
23 access to information they previously had access
24 to?

25 A. No.

1 Q. That was not your decision?

2 A. It was not my decision.

3 Q. Who made that decision?

4 A. I don't remember who made that decision.

5 Q. And do you have an opinion, is that --
6 whether or not that's a fair way to do business?

7 A. I don't.

8 Q. You don't have an opinion --

9 A. No, sir.

10 Q. -- or you don't know?

11 A. I don't have an opinion on whether
12 that's fair or not. Some things about, you know,
13 lawsuits and claims do not -- I don't know enough
14 about.

15 Q. Sure. So it's not something that came
16 up in that BS of management and society?

17 A. Or any of my training.

18 Q. Or any of your training at Balfour
19 Beatty?

20 A. Yeah. They don't teach you on how to
21 resolve lawsuits.

22 (DFT. EXH. 16 was marked for
23 identification.)

24 Q. Gotcha. Okay. I believe the next
25 Exhibit is Defendant's 16. I show you Exhibit

1 16. Okay. Do you see Exhibit 16?

2 A. Yes.

3 Q. All right. And can you identify it for
4 the Court, please?

5 A. Request for change order number 27,
6 thousand-year storm, zero dollars in 20 days.

7 Q. Can you identify this as a Balfour
8 Beatty document?

9 A. Yes.

10 MR. BUNDY: I move to introduce
11 this into evidence as Defendant's Exhibit 15.

12 THE COURT: 16.

13 MR. BUNDY: 16.

14 MR. HILDEBRAND: 16. No objection.

15 THE COURT: Without objection.

16 (DFT. EXH. 16 was received in
17 evidence.)

18 BY MR. BUNDY:

19 Q. All right. Let's read -- I'm going to
20 read this, okay, and you tell me if I'm reading
21 it wrong.

22 A. Okay.

23 Q. Ms. Brown, January 26th, 2016. We are
24 submitting here with our request for change order
25 027. Now, isn't that the same number we were

1 looking at under -- in the book?

2 A. Yes, sir.

3 Q. Tab 27?

4 A. Yes.

5 Q. Okay. In the amount of zero dollars to
6 provide additional work in accordance with the
7 following qualifications. Balfour Beatty is
8 requesting a time extension of 20 days, and it's
9 signed by Tim Spano.

10 How do we get -- we're really not
11 supposed to ask a witness how or why, but I'm
12 going to ask you. How do we get from zero
13 dollars in 20 days to January 26, 2016, and now
14 we're faced with a letter that predates that
15 letter, asking for \$124,000. How does that work,
16 Mr. Starcevic?

17 A. So this change order, from what I
18 understand, was the initial amount submitted for
19 \$124,000 and -- \$124,089 in 20 days. The owner
20 did not have insurance on the dirt, and so they
21 told us that we should pay that \$124,000 or
22 \$118,352 out of contingency.

23 After review some time later, we
24 determined that we didn't feel that was the right
25 question, so we reintroduced the \$124,000. I

1 believe there's another request for change order
2 after this date. So that's how.

3 Q. So that was just a good faith dispute?

4 A. I don't know that.

5 Q. You don't think the owner is acting in
6 good faith when he disputed it?

7 A. I'm not saying that.

8 Q. Well, I asked you if it was a good faith
9 dispute, if the parties, Balfour Beatty and
10 Library Associates had a dispute over the
11 contract, how the contract was to be interpreted,
12 right?

13 A. Sure.

14 Q. Do you have any evidence here today that
15 Library Associates acted in bad faith?

16 A. No.

17 Q. In taking that position?

18 A. No.

19 Q. Okay. And the contract allows for
20 disputes, doesn't it?

21 A. Yes, sir.

22 Q. Okay. It's not your position, is it,
23 that because an owner disagrees with the
24 contractor that the owner is automatically wrong,
25 is it?

1 A. No.

2 Q. Okay. All right. Now, the other --
3 other than the -- let's look at the -- I want to
4 look at this markup. What makes up this
5 \$124,089.19? Do you know?

6 A. Two cost items, \$2,383.15. 115,969.21,
7 plus markup of 5,736.83.

8 Q. So if we break it down, 115,969.21 is
9 for Gulf Stream. 2,338.15 is for BBC. And what
10 was that for? Labor and materials or what is
11 that for?

12 A. It says it's for a 6 inch diesel pump.

13 Q. Okay. And then there's BBC markup.
14 What is that?

15 A. That's a markup profit, overhead.

16 Q. Okay. So BBC then marks up profit and
17 overhead or whatever on the previous -- the sum
18 of the previous two numbers; is that correct?

19 A. And cost of work.

20 Q. Okay.

21 A. Yes.

22 Q. All right. Let's go to the next one,
23 tab number 75. What is this about?

24 A. Interior markup tab additions.

25 Q. And how is that broken out?

1 A. \$5,713, plus markup.

2 Q. All right. And this isn't signed. I
3 assume there is a signed copy of this somewhere,
4 or is there?

5 A. That's a good assumption.

6 Q. Okay. Can you tell me for sure that you
7 ever actually signed it and sent it to them?

8 A. I can't without looking and reviewing
9 whether it was. My assumption is it was.

10 Q. Okay. Let's look at the next one. This
11 would be number 88. What is this for?

12 A. Concrete change orders from Lithko.

13 Q. Okay. And it's made up of a claim for
14 Lithko of 53,221.04?

15 A. 53,221.04, yes, sir.

16 Q. And then BBC marks that amount up,
17 right?

18 A. Yes, sir.

19 Q. And this markup, they didn't actually --
20 there's no labor and materials to this markup?
21 It's just purely a percentage?

22 A. That's right.

23 Q. Something the subcontractor did, right?

24 A. That's right.

25 Q. All right. Do you know anything about a

1 pass-through agreement, a tolling and
2 pass-through agreement in this case?

3 A. The tolling and pass-through agreement?

4 Q. Yeah.

5 A. I'm not sure what you're referencing.

6 Q. So the name tolling and pass-through
7 agreement doesn't ring a bell with you in this
8 case?

9 A. I'm not sure what a tolling and
10 pass-through agreement is.

11 Q. Okay. All right. Are you aware of any
12 agreements between Balfour Beatty and any of its
13 subcontractors whereby Balfour Beatty was going
14 to prosecute claims on behalf of the
15 subcontractors?

16 A. I don't really understand how you're
17 arriving -- there was agreements that we would
18 pass along claims to the owner. I think our
19 contract is that agreement as well.

20 Q. But is there an additional agreement
21 other than the subcontract itself?

22 A. I think that's the main agreement.

23 Q. Okay. So just to make sure I understand
24 what your understanding is, your understanding is
25 that the subcontractor contains the provisions

1 that relate to Balfour Beatty's ability to pass a
2 subcontractor claim on through to the Library
3 Associates?

4 A. I believe so. Initially, yes.

5 Q. Okay. And you, as you sit here today,
6 are any -- unaware of any other agreements that
7 speak to that process?

8 A. To that specific process?

9 Q. Yes.

10 A. Now, there were settlement agreements
11 that we had with subcontractors.

12 Q. Right. Okay. But I'm talking -- not a
13 settlement agreement.

14 I'm talking about a specific agreement
15 between Balfour Beatty and any one of its
16 subcontractors which provide for a method for the
17 subcontractors, for Balfour to prosecute the
18 subcontractors' claims, and for those claims to
19 be handled pursuant to the terms of that
20 agreement which is not the subcontract agreement?

21 A. I believe there was a joint defense
22 agreement or something along those lines. I
23 don't know the specifics of it.

24 Q. Okay. Well, maybe I made it harder on
25 you than it should have been. There's a joint

1 defense and pass-through agreement, I think --

2 A. Okay.

3 Q. -- is probably the full title of the
4 document. Are you familiar with that?

5 A. I don't know that that's what it's
6 called, but I know that there's a joint defense
7 agreement.

8 Q. Have you ever read it?

9 A. I don't know that I've read it in its
10 entirety. I don't believe I've read the whole
11 thing.

12 Q. Were you involved in the signing of it
13 or the --

14 A. No, sir.

15 Q. Did you ever discuss it with anybody?

16 A. Not really. I've heard about it.

17 Q. When you prepared the documents for this
18 claim that you passed on and they would have
19 found their way ultimately to the claim, then you
20 were not aware of the pass-through agreement?

21 A. I don't know what you're calling a
22 pass-through agreement. There's a joint defense
23 agreement. I don't -- I'm not aware of a
24 pass-through agreement or what you're
25 referencing.

1 Q. All right. Let's look at the letter.
2 The letter is dated from Mr. -- the next one is
3 number 88, right?

4 A. Yes.

5 Q. That's the one we're on now, Lithko,
6 right?

7 A. Yes.

8 Q. And the letter is dated March 7, 2019,
9 and that's your signature at the bottom, right?

10 A. Yes.

11 Q. All right. Let's look at the
12 additional -- it sets forth a claim of \$56,000
13 and change order requests and things are
14 attached, right?

15 A. Yes.

16 Q. All right. Now, let's go to the change
17 order request. The first one is dated, it looks
18 like, April 26th, 2016, correct?

19 A. Yes.

20 Q. All right. So that's roughly two years
21 and 11 months after the change order request,
22 correct?

23 A. Yes.

24 Q. All right. Are you aware that there are
25 any time limitations for making a claim under the

1 contract?

2 A. There are time limitations on certain
3 things, but I'm not aware that we can't submit a
4 change order. There's a time limitation on when
5 we can submit the amount of the cost of work.

6 Q. Okay. So you're not aware that there's
7 a time limitation on giving the owner notice of a
8 claim?

9 A. I believe there's a provision.

10 Q. And what does it say?

11 A. I don't know. You would have to read
12 it.

13 Q. Do you know whether it's notice of a
14 condition precedent to such a claim?

15 A. No.

16 Q. You don't know that?

17 A. Yeah, you would have to read it.

18 Q. Would you defer to the contract?

19 A. I would.

20 Q. Okay. Thank you. But isn't it true
21 that most of the dates -- and you can look
22 through it, but it looks like to me -- like,
23 here's a date that's June of 2015. Now, we are
24 four years out. Do you see any dates of any of
25 this work referenced that was -- had been done

1 any sooner or closer to the date of the request
2 in say two, two and a half years?

3 A. Without doing the math, and these were
4 all structure related; so it would have been two
5 years prior to the date the letter was written.

6 Q. Okay. Are you the one who prepared or
7 provided these document?

8 A. I'm the one that wrote this change
9 order.

10 Q. Okay. And when you wrote the claim and
11 prepared the documents, did you go back and look
12 at the contract to see what was required in the
13 contract to make the claim proper within the
14 terms of the contract?

15 A. It's a change order, so I didn't. I
16 pulled together any outstanding costs from Lithko
17 that had not been settled, determined that they
18 were -- should be passed along to the owner or
19 not and issued a change order form.

20 Q. Okay. So is the answer to my question,
21 no, you didn't go back and look at the contract
22 to determine whether or not--

23 A. In this instance, I don't --

24 Q. Pardon me?

25 A. In this instance, I don't believe I did.

1 (DFT. EXH. 17 was marked for
2 identification.)

3 Q. Okay. Do you know whether or not -- no,
4 I will strike that. All right. Let's go to the
5 next one. I'm going to hand you a document
6 that -- well, first, let me just ask you if you
7 can identify this document for the record,
8 please.

9 A. Application and certificate for payment
10 to Library Associates from Balfour Beatty, pay
11 application number 18 for September 1, 2016 to
12 September 30, 2016.

13 Q. Okay. Do you see anybody's signature on
14 here that you recognize?

15 A. I see my signature and I see Jennifer
16 Faulkinberry's signature.

17 Q. So is it correct, this is a true and
18 accurate copy of the pay request?

19 A. Yes. I would imagine everything in
20 there is as I've submitted it.

21 MR. BUNDY: Your Honor, we would
22 move to introduce -- this would be pay
23 application number 18 dated October 19, 2016. I
24 believe it's No. 17.

25 THE COURT: Exhibit 17.

1 MR. BUNDY: And I move to introduce
2 this into evidence.

3 MR. HILDEBRAND: No objection, Your
4 Honor.

5 THE COURT: Without objection.

6 MR. BUNDY: No objection?

7 THE COURT: Without objection.

8 MR. BUNDY: All right.

9 (DFT. EXH. 17 was admitted into
10 evidence.)

11 THE COURT: What was the date
12 again? I'm sorry.

13 MR. BUNDY: I'm sorry, the date the
14 architect signed it was on October 19, 2016.

15 THE COURT: Okay.

16 MR. BUNDY: The date it was
17 submitted was for the period 9/1/2016 to
18 9/30/2016. I'm sorry, Judge, here's a copy for
19 you.

20 THE COURT: Okay. Thank you.

21 BY MR. BUNDY:

22 Q. All right. Let's look at this document.
23 This is your signature, correct?

24 A. Yes.

25 Q. All right. And I would like to read you

1 what's above your signature and see if I'm -- I'll
2 get you tell me whether I'm reading this
3 properly. The undersigned contract, and that
4 contractor is identified as Balfour Beatty
5 Construction, LLC, and you're signing on their
6 behalf as the project manager; is that correct?

7 A. I'm signing this document, yes.

8 Q. Pardon me?

9 A. I'm signing this, yes.

10 Q. As the project manager for Balfour
11 Beatty, LLC?

12 A. Yes.

13 Q. Okay. And in the chain of command on
14 site, you were, what, number three, four?

15 A. On site? Two, three.

16 Q. Okay. So it would have been reasonable
17 for Library Associates to have relied on you to
18 have sufficient knowledge to make such a
19 certification?

20 A. For this pay application?

21 Q. Yes.

22 A. Yeah, yes.

23 Q. And you believe that you had sufficient
24 knowledge to make such a certification?

25 A. That's why I signed it.

1 Q. Okay. And before you signed it, did you
2 make sure that everything here was accurate and
3 truthful?

4 A. We all did. We all met the architect,
5 owner's representation, owner. We all met and
6 reviewed this document before I signed it.

7 Q. No, sir. And I understand that other
8 people signed it, but they didn't sign it -- they
9 didn't sign this part of it. You signed this
10 part of it.

11 We undersigned contractor, certifies
12 that to the best of contractor's knowledge,
13 information and belief, the work covered by this
14 application for payment has been completed in the
15 course of the contract documents, that all
16 amounts have been paid by the contractor for work
17 for which previous certificates, payments were
18 made -- were issued and payments received from
19 the owner and that the current payment shown is
20 now due. Is that what it says?

21 A. That's what it says.

22 Q. All right. And you certified that to be
23 true?

24 A. Yes.

25 Q. And what does that certification -- when

1 you certify it to be true, what does that mean to
2 you?

3 A. To me, it means that we all met,
4 reviewed the pay application for the amounts that
5 were due and agreed on the amounts that we were
6 requesting. That's what it means.

7 Q. Okay. But that's not what it says, is
8 it?

9 A. No, sir.

10 Q. There's nothing in here that says we --
11 it doesn't say, we all met, and we did all of
12 these things. What it says is, the undersigned
13 contractor certifies.

14 A. Yes, sir.

15 Q. Nowhere in this document does it say, we
16 all met and decided this is what we were going to
17 do. What this says is, we, the undersigned
18 contractor, certified to the best of the
19 contractor's knowledge, et cetera, et cetera,
20 right? That's what it says, right?

21 A. Yeah. But you asked me what it meant to
22 me.

23 Q. Okay. Tell me what it means to you
24 then.

25 A. And that's -- there is a process. We

1 review the pay application. We submit the -- we
2 submit a draft copy of it. We have the draft
3 copy. We all walk the jobsite. We sit down and
4 review each individual line item.

5 The architect, the owner and owner's rep
6 and our team all sit down -- and the bank rep,
7 all sit down and review the information and the
8 amount that we're requesting, and we all process
9 the pay application. It's a standard way of
10 doing business.

11 Q. You don't have -- I think we've
12 established that you don't have a general
13 contractor's license in South Carolina?

14 A. That's correct.

15 Q. So you haven't taken the test to be a
16 general contractor?

17 A. That's correct.

18 Q. And so you haven't been schooled on the
19 laws regarding payments by general contractors to
20 subcontractors and certified pay requests, have
21 you?

22 A. Schooled, no.

23 Q. Yes. You haven't been taught what the
24 law is?

25 A. That's correct.

1 Q. Okay. So none of your learning lunches
2 were about the South Carolina law and the
3 obligation of contractors to pay subcontractors?

4 A. I don't believe so.

5 Q. And in none of your learning lunches
6 then, you would have learned that it is a
7 misdemeanor and punishable as a crime in South
8 Carolina to certify that you have paid a
9 subcontractor money you previously received and
10 not paid them. Is this the first you've ever
11 been aware of that?

12 A. Yes, sir.

13 Q. Okay. And if you had known that, would
14 you have been more careful about what you were
15 certifying?

16 A. That's a tough question, to go back in
17 time and under -- and say what I would have and
18 wouldn't have done. If I was breaking the law, I
19 certainly wouldn't have done it. And I don't
20 know that that's the case.

21 Q. Well, if you don't know what the speed
22 limit is, it's hard to know how fast to legally
23 drive, right?

24 A. That's correct.

25 Q. Okay. But have you ever been stopped by

1 a highway patrolman and he says, you were
2 speeding and you go, no, I wasn't because I don't
3 know what the speed limit was?

4 A. No, I've never -- that's never happened
5 to me.

6 Q. Okay. And you don't understand, that's
7 a defense to a speeding ticket, do you?

8 A. No.

9 Q. All right, sir. So how do you interpret
10 this language, that all amounts have been paid by
11 the contractor for work for which previous
12 certificates of payment were issued and payments
13 received from the owner? How do you interpret
14 that? What does that mean to you?

15 A. And that current payment shown as due.

16 Q. Well, that's another obligation. I just
17 want you to tell me what these words mean. Okay?
18 What do these words mean to you, that all amounts
19 have been paid by the contractor for work for
20 which previous certificate for payment were
21 issued and payments received from the owner.
22 What does that mean to you?

23 A. It means -- it means that all amounts
24 have been paid by the contractor for which
25 previous certificates for payment were at issue

1 and payments received from the owner.

2 Q. Well, does it mean that, in the previous
3 pay request, you asked for \$1,000 for a
4 subcontractor. Okay? I owe subcontractor XYZ
5 1,000 bucks. Owner pays you the 1,000 bucks.
6 Does it mean that you are going to pay that
7 \$1,000 to that subcontractor?

8 A. If they are owed the 1,000, yes.

9 Q. Well, if they weren't owed the \$1,000,
10 why would you put it on the pay request?

11 A. Because that's what they requested.
12 There's certain circumstances where the
13 subcontractor isn't -- if there's a back charge
14 where subcontractor two is owed a portion of that
15 money or there's an unsettled amount, then maybe
16 they're not owed the full \$1,000.

17 Q. Okay. All right.

18 A. And some -- part of that payment has to
19 go to somebody else to settle their pay request.

20 Q. So your understanding of the law in
21 South Carolina is, is that you, the general
22 contractor, can -- to use my example, get a bill
23 from subcontractor ABC for \$1,000. You put it on
24 a pay request to the owner. I -- the BC has
25 requested \$1,000. You pay me, owner, the 1,000

1 bucks.

2 But then you, the general contractor,
3 can keep part of that money because there's a
4 dispute between either you and ABC or ABC and
5 another subcontractor. Y'all can keep that
6 money, right, and not have to pay it?

7 A. I don't know. I don't really say it
8 that way. I'm saying, we're requesting X number
9 of dollars for X percent complete and that we're
10 owed that money. That's what this is. And
11 everybody that reviewed this agreed. That's what
12 I'm saying.

13 Q. Are you obligated to pay that money to
14 the subcontractor once the owner pays you?

15 A. I don't know South Carolina law.

16 Q. Okay. Well, does it seem fair to you
17 that a general contractor could take money that
18 belongs to ABC Construction, 1000 bucks the owner
19 gave to pay ABC Construction and yet the general
20 contractor doesn't pay ABC Construction the
21 \$1,000. Does that seem fair to you?

22 A. I think if that subcontractor has a
23 reason that they're not owed the full \$1,000, if
24 somebody else performed work on their behalf or
25 there's a dispute, that they're not owed that

1 full amount. They don't need to pay that full
2 amount.

3 Q. And then my next question to you then
4 is, if they aren't owed the money, what gives
5 Balfour Beatty the right to ask the owner to pay
6 it?

7 A. I don't -- because there's a percent
8 complete and an amount billed that -- we're
9 certifying that this work is X percent complete
10 and we (inaudible) completed that. The owner
11 doesn't necessarily understand. The bank doesn't
12 necessarily understand any internal change orders
13 or any internal disputes that we have with the
14 subcontractors.

15 Q. Okay. So y'all keep a different
16 accounting for the subcontractors basically?

17 A. Not necessarily. I'm just saying that
18 there may be -- that subcontractor may have \$100
19 of that \$1,000 that is owed to another
20 subcontractor. To ensure that other
21 subcontractor gets paid, we don't -- we hold
22 that.

23 Q. Okay. Are you aware of any statutory
24 requirements in the State of South Carolina that
25 a contractor, if he is going to do just what you

1 proposed, is legally obligated to tell the owner
2 that's what he's doing?

3 A. I'm not.

4 Q. Nobody ever told you that?

5 A. I'm not aware of that step. Whatever
6 you're referencing, I'm not aware of.

7 Q. You've never -- you don't know anything
8 about that?

9 A. I'm not saying I don't know anything
10 about it. I don't know what it is.

11 Q. You don't know what what is?

12 A. I don't know what -- can you ask the
13 question again?

14 Q. Yes. Are you aware that in South
15 Carolina, as part of the same statute which makes
16 it a misdemeanor not to pay your subs, that the
17 statute goes on to say, if you're going to money
18 for subcontractors and not pay them, you're
19 required to tell the owner.

20 I'm not taking the money you gave me to
21 pay that subcontractor. I'm not going to pay
22 that subcontractor because I have a dispute with
23 that subcontractor. Are you aware of that?

24 A. I'm not aware of that.

25 Q. Okay. If you had known that, what, if

1 anything, would you have done differently with
2 regard to doing pay requests regarding this
3 project?

4 A. I probably would have sent more notice
5 on the owner.

6 Q. And how many would you have had to have
7 sent?

8 A. I'm not sure.

9 Q. A dozen?

10 A. I don't know that.

11 Q. What about lien waivers? What is a lien
12 waiver on a claim waived?

13 A. It's a waiver, whether conditional or
14 unconditional of whoever sign its lien rights.

15 Q. It's a waiver of lien right or claim
16 right, correct?

17 A. Yes.

18 Q. Turn to the last page, please, of this
19 exhibit. Are you with me?

20 A. I'm with you.

21 Q. All right. And this was part of the
22 documentation that you were required to produce
23 in order to get paid, right?

24 A. Yes.

25 Q. All right. And this is part of the

1 documentation that you tell us, everybody agreed
2 that -- we're all agreeing, this money ought to
3 be paid. It wasn't just you. Everybody agreed
4 it ought to be paid, right? It's a team effort.
5 You, the architect, owner, everybody. We all
6 agreed this needed to be paid.

7 A. This amount needed to be paid.

8 Q. Well, the --

9 A. Whether that --

10 Q. Well, the amount of the pay request
11 needed to be paid.

12 A. What's that? The amount in --

13 Q. The pay request needed to be paid.

14 A. -- this pay request needed to be paid,
15 yeah.

16 Q. Okay. Why do you think there are lien
17 waivers on jobs with each progress payment?

18 A. I'm sorry?

19 Q. Why do you think, if you know, there are
20 lien waivers on construction jobs for every
21 product of the work that's done up through the
22 progress payment?

23 A. To certify the amount they're
24 requesting.

25 Q. Well, don't they also say -- well, it

1 says what it says. We'll talk about what it says
2 in a minute. What use is made of the lien waiver
3 by the owner and the bank when they consider
4 paying a pay request, if any?

5 A. What use does the owner and bank make?

6 Q. Yeah. Why do they want this piece of
7 paper, Mr. Starcevic?

8 A. It's a condition of payment. It's --
9 you're releasing your liens for the payment, a
10 condition, if they get paid, that they're
11 releasing their lien rights for the amount that
12 they're requesting, for what is in that request.

13 Q. All right. Now, let's read it. Lithko,
14 for and in consideration for payment of sum of
15 \$350,000. Now, this was attached to this pay
16 request, right? This is the -- this \$350,000 is
17 included in this pay request, right?

18 A. I would assume so.

19 Q. Okay. So in order for the owner and the
20 bank to be willing to pay your subcontractor for
21 its work, the subcontractor has to agree, does he
22 not that, that this will make us straight? You
23 won't owe me any more money forever and a day up
24 through the day I sign this lien waiver. That's
25 what it says, isn't it?

1 A. It's saying that -- I believe it's
2 saying for the \$350,000 -- \$350,221, that's what
3 they're waiving their lien rights upon receipt.

4 Q. Okay. All right. Let's read it.

5 A. It says, will -- have been. It's
6 struck, and it says, will be paid.

7 Q. All right. Let's read it. Hereby
8 releases, waives and quitclaims to contractor,
9 owner and their respective successors and signs,
10 all liens, lien rights, claims, or demands of any
11 kind, whatsoever, which lienor now has or might
12 have against contractor and/or owner and/or the
13 buildings on the improvements on the premises
14 labor and services performed and furnished for
15 the construction of any improvements thereon
16 except for retainage and open change order
17 requests or disputes identified as follows.
18 What's is in the blank?

19 A. None.

20 Q. Does that mean that, as of this day, all
21 they're saying I'm entitled to is this \$350,000
22 and retainage, and that's it. And I waive
23 forever and a day anything that I did before I
24 took this money. That's what they're saying,
25 isn't it?

1 A. That's what this is saying. That's what
2 this lien waiver is saying.

3 Q. All right. Let's go on. The
4 undersigned has the right and authority to excuse
5 the partial lien waiver for release of lien on
6 behalf of the owner. This is a waiver of all
7 lien rights and other claims this lienor has
8 against the property, the contractor and the
9 owner for all labor, materials and services
10 performed, on and on and on and on. Okay?

11 The undersigned acknowledges that the
12 contractor and owner and other parties have a
13 right to rely upon this waiver and release and
14 that making any false statements shall constitute
15 perjury and be punished -- and can be punished in
16 accordance with the laws in the State of South
17 Carolina. And it's sworn to be the truth,
18 correct?

19 A. Correct.

20 Q. Do you know what perjury is,
21 Mr. Starcevic?

22 A. Yes.

23 Q. Okay. Now, this is dated what day?
24 What's the period for this? It was back in --

25 A. September.

1 Q. -- for the period of September?

2 A. Of 2016.

3 Q. Okay. Let's look at this letter in tab
4 88. Are you with me?

5 A. I'm with you.

6 Q. This is a request -- they say they're
7 owed \$56,000, right? Now, the work that they're
8 claiming goes back to when? Does it predate
9 September of 2016?

10 A. Yes.

11 Q. Okay. So this lien waiver is a lie, is
12 it not?

13 A. I don't know that it's a lie. I'm --
14 this is -- it says --

15 Q. Well, let me -- I will back up. I will
16 withdraw the question.

17 A. It's set for retention and open change
18 order requests.

19 Q. I'll withdraw the question. The lien
20 waiver is not a lie. The claim is a lie because
21 the claim has been waived under oath under
22 penalty of perjury; isn't that true?

23 A. This is an open change order, and it's
24 the same except for retention and open change
25 order request.

1 Q. The release says none. There are no
2 open change orders as of this date. They're done
3 with that. I will ask you again. Isn't this
4 request for money a lie and doesn't it contradict
5 the line waiver?

6 A. Again, I'm not an attorney. I don't
7 know how to interpret that. There's open change
8 orders. So there's a lot of open change orders
9 that we submitted with our pay applications. I'm
10 not going to say -- sit here and say it's a lie
11 because there was no open change orders.

12 Q. All right. Let's go to number --

13 MR. BUNDY: Your Honor, do you want
14 to take a break? Are you ready for lunch?

15 THE COURT: Is now a good time to
16 break?

17 MR. BUNDY: It's fine with me. I'm
18 going to be here all afternoon. But 12:15 is as
19 good a time as any.

20 THE COURT: All right. Let's go
21 ahead and take it now. Let's come back at 1:30.

22 MR. BUNDY: If you'll admonish the
23 witness, Your Honor.

24 THE COURT: Sure. Mr. Starcevic,
25 just don't talk to anybody. We went through that

1 last week. All right. Thank you. Let's come
2 back about 1:30.

3 (A recess transpired.)

4 MR. BUNDY: Your Honor, I have
5 something to bring up before we begin.

6 THE COURT: All right, sir.

7 MR. BUNDY: Thank you. Your Honor,
8 we just received -- it was just filed -- a motion
9 of continuance.

10 THE COURT: Okay.

11 MR. BUNDY: What the motion says,
12 it says, this is motion by Lithko, Watson, and
13 Old North State, by and through undersigned
14 counsel, pursuant to the South Carolina Rules of
15 Civil Procedure, pursuant to Rule 7.

16 I hereby move for an order continuing
17 the trial involving the defendant, third-party
18 Library Associates, Inc., the conspiracy claims
19 in the case until the term of October 25th. In
20 support of this motion, they would state the
21 following, Terry's counsel for third-party
22 defendants.

23 Now, he is counsel for all third-party
24 defendants. Library is scheduled to begin its
25 case relating to its conspiracy claims beginning

1 on or about September 21, 2021 -- which is
2 incorrect.

3 THE COURT: Okay.

4 MR. BUNDY: That's an incorrect
5 statement of fact.

6 THE COURT: Okay. All right.

7 MR. BUNDY: Three, Terry tested
8 positive on September 17th.

9 MR. HILDEBRAND: Bill, I can't hear
10 you, I'm sorry.

11 THE COURT: That Mr. Terry posted
12 positive on September 17th.

13 MR. BUNDY: He tested positive on
14 the 17th. He's unable to attend the trial.
15 Four, third-party defendants, by this motion,
16 seek a continuance of any other portion of the
17 trial. Third-party defendants will be prejudiced
18 if a continuance is not granted. Now, this is
19 exactly the set up that I told you was coming.
20 Here's the set up. Okay?

21 THE COURT: Okay.

22 MR. BUNDY: One, I would ask the
23 record to reflect that Steele Windle is not here.
24 He has not been here all day.

25 THE COURT: Right.

1 MR. BUNDY: He's not even dressed
2 to sit in front of the bar. He's coming in in
3 tennis shoes or whatever, which is fine, if
4 you're not dressed. Why somebody -- I mean,
5 Terry has been here maybe one day. These
6 gentlemen have a large law firm or large enough
7 to send somebody, if they want somebody to
8 observe this trial out here. Okay?

9 And Mr. Steele who was the primary
10 lawyer for Old North State and Lithko prior to
11 the case. And the only reason that Terry is in
12 this case is because the two law firms merged and
13 Lithko -- and Steele brings his two big clients,
14 they merge.

15 And since Steele can't practice law in
16 South Carolina without pro hac vice status, he
17 needed Terry. Terry already had Watson. So
18 that's how this was all set up.

19 THE COURT: Okay. All right.

20 MR. BUNDY: So what they're trying
21 to do, and what they're going to accomplish
22 unless we do something to prevent it is, they're
23 going to set up a scenario where this somehow
24 will be turned into a part of the conspiracy
25 trial. Okay? This portion of it.

1 THE COURT: Okay.

2 MR. BUNDY: So they're going to
3 take the position that things that are said now
4 are somehow relative to the conspiracy and that
5 although that's not what we're trying, they've
6 been prejudiced thereby, I guarantee it.

7 THE COURT: Okay. All right.

8 MR. BUNDY: So how do you deal with
9 that? I would respectfully request that you
10 e-mail both of these gentlemen today, okay, and
11 tell them, if they want to see what's going on in
12 this trial, they need to send somebody down here
13 and watch. And if they don't do it, that's on
14 them. That's not on you.

15 Two, that you are not going to proceed
16 with my case at all, conspiracy or otherwise
17 because you can't try my case and cut out the
18 conspiracy. Okay? If they were move to sever
19 these case, which would be the appropriate motion
20 if they knew what the rules were, they would have
21 moved to sever the cases and then move for a
22 continuance.

23 I don't believe grounds exist under our
24 rule to sever these cases. In fact, I think a
25 conspiracy case is the epitome of what you could

1 never sever because the whole concept of a
2 conspiracy case is an agreement by and among all
3 of these people.

4 So, one, I would like you to now just
5 maybe take a minute and send an e-mail to
6 Mr. Terry and tell him what's going on down here
7 because he doesn't have the -- I don't know what
8 you would call it -- good grace to send somebody
9 down here.

10 Windle Steele (sic) won't even show up.
11 They're trying from a distance to set you up for
12 a mistrial, and I object to it. And it can be
13 prevented. You don't have to let it happen to
14 you. So I would respectfully request that we do
15 that now before we proceed any further. Because
16 I'm liable to ask some question of this witness.

17 THE COURT: Okay.

18 MR. BUNDY: You and I both know how
19 the Court of Appeals is.

20 THE COURT: All right.

21 Acknowledged.

22 Mr. Hildebrand, any position on this
23 continuance request?

24 MR. HILDEBRAND: My only comment
25 is, I don't know that -- that Al Windle can

1 attend without his sponsor, so to speak, in
2 attendance with him. I don't know if it's --

3 THE COURT: I think he -- my
4 personal opinion is, I believe that he can. But
5 he's still subject to our rules and --

6 MR. HILDEBRAND: Okay. Good.

7 THE COURT: -- as is the sponsoring
8 attorney who, in this case, is Don Terry.

9 MR. HILDEBRAND: Maybe we can get
10 him on the phone, Your Honor. I mean, I'm happy
11 to do that in chambers or otherwise or maybe we
12 can just get him on the speaker phone now and
13 find out what is going on. The guy does have
14 Covid.

15 THE COURT: Yeah. I did see
16 that -- after you brought it to my attention, I
17 did see the motion was filed, I think, yesterday.
18 It was somewhere around noon, lunchtime,
19 something like that. Well, excuse me, the motion
20 was not filed until just now.

21 MR. BUNDY: Right.

22 THE COURT: The request was made by
23 e-mail yesterday.

24 MR. BUNDY: But to be clear, what
25 my position is --

1 THE COURT: Right.

2 MR. BUNDY: -- this also can't be a
3 stalking horse to get them a continuance. They
4 are in their case.

5 THE COURT: Yeah.

6 MR. BUNDY: They need to proceed
7 with their case. If this is just some device or
8 scheme to get him continuance, I object.

9 THE COURT: I hear what you're
10 saying.

11 The plaintiff wishes to move forward
12 with its case, does it not?

13 MR. HILDEBRAND: Absolutely, yeah.

14 THE COURT: Okay. All right.

15 Well, we are going to do that. And then what I
16 was going to do was reserve until the end of the
17 day as to how I was going deal with the
18 continuance request when it came in.

19 It's now come in. I'm not going to get
20 them on the phone. It's totally within --
21 they're grown men. They know whether or not they
22 want somebody to be in here and listen to what
23 goes on. I'm not going to baby these people, you
24 know. I've got other lawyers hanging out in the
25 back of the room because they're concerned for

1 their clients, and I fully understand that.

2 So anyway, but I will address it, and I
3 appreciate you bringing it to my attention. I
4 will address it. Y'all are aware of it. I
5 hadn't heard from anybody else, but I want to
6 make sure that at least -- and Mr. O'Kelley was
7 here this morning. He told me he had a hearing
8 at 2 o'clock today.

9 So he will be out at that point in time.
10 And I note Mr. Kelly is still here on behalf of
11 his client. He's taken part in this case. I
12 don't know any other lawyers in the case other
13 than the ones that are participating in this
14 matter. So I am disinclined to grant the
15 continuance outright.

16 I am inclined to, depending on how far
17 we go with this case because we're going to press
18 forward with the plaintiff's case. I may well
19 grant your motion before you proceed. I'm
20 leaning towards doing that. I just want you to
21 know because I don't want them to be prejudiced.

22 MR. BUNDY: I don't want them
23 either.

24 THE COURT: They certainly have the
25 right to send somebody down here. I don't think

1 I need to tell them that because they've got more
2 than two lawyers at that firm.

3 MR. BUNDY: I don't want them to be
4 prejudiced, but I don't want to be prejudiced.

5 THE COURT: Absolutely.

6 MR. BUNDY: And I would be
7 prejudiced if I had to divide up my case so he
8 can carve out civil conspiracy.

9 THE COURT: I'm with you. I'm with
10 you. All right. So based on that, let's
11 proceed, and we will address that at the end of
12 the day. Okay?

13 MR. BUNDY: Thank you.

14 THE COURT: Very good.

15 (DFT. EXH. 18 was marked for
16 identification.)

17 MR. BUNDY: Your Honor, I would
18 move now to introduce into evidence Defendant's
19 Exhibit 18, which is this chart.

20 THE COURT: 18 is the chart,
21 Mr. Starcevic's background. All right. Any
22 objection to that? It's going to be hard to put
23 in the record, but -- do you have a smaller copy
24 of that?

25 MR. BUNDY: I do.

1 THE COURT: All right. Why don't
2 we mark that as the exhibit, and y'all can put
3 that in in lieu of the large document.

4 MR. HILDEBRAND: Your Honor, I
5 don't believe this is a full and accurate
6 representation nor synopsis of all of his
7 experience. I think the record speaks for
8 itself, and I think it's inappropriate to --
9 there's no -- there's nothing to be gained here.
10 You heard the testimony. You've heard what he --
11 how he answered the questions.

12 And for this to come in as substantive
13 evidence or demonstrative evidence or anything
14 else, it's -- it's not a summary of data. It's
15 just his answers to some of the questions without
16 all of his background and everything else that
17 he's done. So I don't think it's appropriate,
18 and I would object.

19 THE COURT: All right. I'm going
20 to overrule it. I'll allow it. I don't see any
21 prejudice to it. But it's just a compilation
22 of -- it's a timeline of Mr. Starcevic's records
23 and employment while at Balfour Beatty. And it's
24 not a full record, I will acknowledge that.
25 Okay?

1 (DFT. EXH. 18 was received in
2 evidence.)

3 MR. HILDEBRAND: Thank you.

4 MR. BUNDY: Thank you, Your Honor.

5 THE COURT: That was No. 18?

6 MR. BUNDY: Yes, Your Honor.

7 BY MR. BUNDY:

8 Q. Mr. Starcevic, it's true, is it not, you
9 did not prepare the estimate on this job?

10 A. I'm sorry?

11 Q. It's true, is it not, that you did not
12 prepare the estimate for this job?

13 A. That's correct.

14 Q. That's true?

15 A. True.

16 Q. It's true, is it not, that you did not
17 prepare the bid for this job?

18 A. Correct.

19 Q. It's true, is it not, that you were not
20 involved in the request for proposal?

21 A. True.

22 Q. It's true, is it not, that you did not
23 see the original request from Library Associates
24 to the contractors?

25 A. Ever?

1 Q. Well, okay. Did you ever see it?

2 A. Yes.

3 Q. When did you first see it?

4 A. Towards the latter end of the project.

5 Q. What?

6 A. Towards the latter end of the project.

7 Towards -- at the end of the Hotel Bennett
8 project I saw it.

9 Q. Okay. So at the end of the hotel
10 project, you saw it for the first time? The
11 request for proposals were brought in?

12 A. Yeah, I believe. Somewhere in the
13 middle to end of the project.

14 Q. And what use did you make of that
15 information?

16 A. I can't remember. I just remember
17 seeing it.

18 Q. You were aware there were other
19 contractors invited to respond to the request for
20 proposal?

21 A. Yes. I don't know who those contractors
22 are.

23 Q. You don't know who they were? Okay. So
24 this wasn't a sole source job? We had other
25 contractors who were willing to build this hotel.

1 A. Is that a question?

2 Q. Yes. We had other contractors who were
3 willing to build this hotel, yes or no?

4 A. I don't know.

5 Q. You don't know. Okay. So let's go to
6 tab 103 of the ROCs, Balfour Exhibit 12. RCOs,
7 excuse me. All right. This is MOD 5 mechanical
8 revisions; is that correct?

9 A. Let me get there.

10 Q. December 16, 2017 letter to Ms. Brown?

11 A. Yes, sir.

12 Q. And the BMCC claim is \$276,838.84; is
13 that correct?

14 A. Yes.

15 Q. And the BMCC markup is 13,419,07; is
16 that correct?

17 A. The BBC markup is, yes.

18 Q. Okay. Is this claim still pending? Is
19 Balfour Beatty still seeking this money?

20 A. I believe we discussed Friday that we
21 were not. I'm not sure. There was a whole
22 discussion on their claim being assigned. I
23 don't know.

24 Q. Okay. Well, you were -- you testified
25 in direct, at least initially, that Balfour

1 Beatty was trying to collect the money, did you
2 not?

3 A. That was a pretty confusing part
4 yesterday, where you had purchased their claim or
5 their assignment of claim. The work was
6 performed, and to my knowledge, Balfour Beatty
7 has not been paid for it.

8 Q. Well, regardless of the confusion that
9 you may have encountered, it questions an
10 objection. I want to know what you said. Do you
11 remember what you testified to, on direct
12 examination, before any interruptions, under
13 oath, about whether or not Balfour Beatty was
14 trying to collect \$290,257.91 from Library
15 Associates?

16 A. Prior to me being --

17 MR. HILDEBRAND: I'm going to have
18 to object.

19 THE COURT: Just one second.

20 Yes, sir, go ahead.

21 MR. HILDEBRAND: Your Honor, he
22 doesn't -- he's here to explain the RCOs and
23 whether, to his knowledge, that they've been paid
24 or not.

25 The decision of whether we are seeking

1 to collect those is not within his parameters of
2 his authority. So I don't think it's appropriate
3 to be asking him what Balfour, when he's no
4 longer an employee of Balfour, what our position
5 is on this. It's not binding. So I don't know
6 the relevance.

7 THE COURT: All right.

8 MR. BUNDY: Your Honor, at this
9 point, I would move to strike his entire
10 testimony of Friday. He testified at several
11 times during Friday, they hadn't been paid this,
12 they haven't been paid that.

13 I objected, and you overruled the
14 objection, and you let him testify. And now his
15 lawyer, his speaking agent is saying to you that
16 he doesn't know whether they've been paid or not.
17 That makes all of his testimony completely
18 irrelevant. What is -- what could it possibly be
19 relevant to.

20 THE COURT: All right. I'm going
21 to note the objection. Let me say this. I have
22 to -- I have to presume that this witness can
23 only testify as to his own personal knowledge.
24 His testimony was that he left the employment of
25 Balfour Beatty in April --

1 THE WITNESS: Yes, sir.

2 THE COURT: -- 2021?

3 THE WITNESS: Yes, sir.

4 THE COURT: And so I assume, from
5 that time on, he's got no knowledge of what's
6 happened other than what got him here today to be
7 a witness. Any payment that would have been
8 received would only have come during his
9 knowledge, during the period of employment.

10 MR. BUNDY: But we're here today
11 about a claim, and they have to prove their case.
12 And they put up a witness who doesn't know who's
13 been paid, as evidenced, from who has been paid.

14 THE COURT: No, I'm not going to --

15 MR. BUNDY: Okay.

16 THE COURT: I'm not going there.

17 MR. BUNDY: Okay.

18 THE COURT: He can testify to it,
19 and you're on cross-examination.

20 MR. BUNDY: Okay.

21 THE COURT: And one of the problems
22 from being on cross is, you've got to live with
23 the answers sometimes. So watch what the
24 questions are.

25 BY MR. BUNDY:

1 Q. Can you testify under oath today as you
2 sit here, whether or not Balfour Beatty is asking
3 the Judge to award \$290,257.91 to Balfour Beatty
4 on behalf of claim under tab 103 in Exhibit 12?

5 A. I don't know.

6 Q. Okay. Let's go to number 118. All
7 right. 118 is 21,036.56; BMC portion is 20,064;
8 BBC markup is 972.56. As you sit here today, is
9 it your testimony under oath that Balfour Beatty
10 is seeking \$21,036.56 against Library Associates
11 as reflected in tab 118 of Exhibit 12 introduced
12 by Balfour?

13 A. Again, I don't know what's happened
14 since I left the employment; so I don't know.

15 Q. Okay. All right. Let's look at number
16 21 -- excuse me, number 122. Okay. Now, looking
17 under -- well, this is for \$1,012,042; is that
18 correct?

19 A. Correct.

20 Q. Okay. What is -- the coversheet says
21 the time is requested. How much time is being
22 requested for this delay?

23 A. I don't remember the exact number of
24 days. I don't remember. It was written down
25 somewhere in the claim. I don't remember. My

1 recollection was it was around 61 days, but I
2 don't remember the exact number.

3 Q. My question to you was, what time
4 request is made in the claim? Point to me in the
5 claim where a request for time is being made for
6 a specific number of days. That's all I'm
7 asking.

8 A. I don't see it in here.

9 Q. So there is no specific request for a
10 specific number of days in claim tab 122, Exhibit
11 12, Balfour Exhibit 12; is that correct?

12 A. Yes. In this tab, I don't see a request
13 for timing.

14 Q. You don't see anything?

15 A. No.

16 Q. All right. Where is the backup for the
17 general conditions claim of \$321,255?

18 A. The cost per floor is on page 3, the
19 summary.

20 Q. What does it look like? Can you show it
21 to me?

22 A. Right here. It's a summary, and then
23 I've got general conditions on the top line.

24 Q. Structural delay claims, general
25 conditions. That's just a line item, right?

1 General conditions 321,255. Is there any --
2 where's the backup with that number?

3 A. I don't know. I don't have it here.

4 Q. You don't have it there; so it's not in
5 the RCO. There's no backup for almost one-third
6 of a million dollars.

7 A. It's not in this. It's not in what's
8 here.

9 Q. All right. If you would, let's go to
10 the Sunbelt invoices. Do you see Sunbelt
11 invoices?

12 A. Yes.

13 Q. All right. I would like you to turn
14 on -- five pages in on the left-hand side. It's
15 dated 7/13/16. Do you see that? Sunbelt
16 Rentals? Do you need some help with that?

17 A. Yes, I see it.

18 Q. All right. And Sunbelt Rentals
19 apparently rented some property, and they sent it
20 to a jobsite at Simmons Park, 200 Pier View
21 Drive, Charleston, South Carolina 29492. Did
22 y'all move the Bennett Hotel during the this job?

23 A. No, sir.

24 Q. Okay. So this is -- you're asking my
25 client to pay for rental equipment on the Simmons

1 Park job?

2 A. No, sir.

3 Q. Pardon me?

4 A. Not that I'm aware of.

5 Q. Well, why is it in here if you're not
6 asking for it?

7 A. We have multiple accounts with Sunbelt.
8 They must have included the wrong jobsite on it.

9 Q. Well, I understand you had multiple
10 accounts, but does my client owe Balfour Beatty
11 for equipment that was used on other jobs?

12 A. No.

13 Q. Okay. Was this equipment charged -- are
14 you trying to collect it now?

15 A. I'm not trying to collect anything.

16 Q. Is it part of the claim that you made
17 under tab 122 as shown in Balfour Beatty's
18 Exhibit 12?

19 A. I believe this is a mistake, that
20 this -- my understanding is, this was delivered
21 to the jobsite and was -- and they just charged
22 it to the wrong job.

23 Q. Sunbelt charged it to the wrong job?

24 A. They sent us the invoice for the wrong
25 job.

1 Q. Okay. So Sunbelt invoiced the wrong
2 job?

3 A. That's right.

4 Q. All right. And that's based on hearsay?

5 A. Sure, yeah.

6 Q. And who told you that?

7 A. What's that?

8 Q. Who told you that Sunbelt invoiced the
9 wrong job?

10 A. Well, we didn't have -- Simmons Park was
11 complete in July 13, 2016.

12 Q. And the same would be true of the next
13 one?

14 A. Yes.

15 Q. Did y'all have any obligation to keep
16 accurate records?

17 A. Yes.

18 Q. And did you?

19 A. Did our best.

20 Q. Does the contract say all you have to do
21 is your best, or does it say you have to keep
22 accurate records? Or do you know what the
23 contract says?

24 A. We'd have to refer to the contract,
25 where it says on record keeping.

1 Q. All right. Lithko. \$383,720, and this
2 is for Lithko, correct?

3 A. Yes.

4 Q. Is the backup -- well, strike that.
5 Pasco, 6,262. Do you know whether or not this
6 6,262 is part of the claim being made against my
7 client in this lawsuit at this time?

8 A. No.

9 Q. You don't know?

10 A. I don't know what's happened since we --
11 since I left employment with Balfour Beatty.

12 Q. \$35,782 from BMCC. Do you know whether
13 that claim is currently being made against my
14 client at this time by Balfour Beatty?

15 A. Same answer. I don't know.

16 Q. Okay. The BBC markup is based on the
17 total of the numbers above, is it not?

18 A. Yes, sir.

19 Q. Okay. So if the BMCC number of 35 comes
20 out, Pasco number of 6 comes out necessarily, the
21 markup would go down?

22 A. Yes.

23 Q. Do you know whether the architect
24 reviewed this claim, this delay claim initially?

25 A. They did.

1 Q. And did he in fact deny it for being
2 late, approximately one year past the actual date
3 of delay?

4 A. I don't know. That's why -- what they
5 said in reviewing, she -- Jennifer did. I don't
6 believe Buck did.

7 Q. So you don't know if the architect gave
8 a ruling on December 4, 2017, denying the claim?

9 A. I believe the architect gave a ruling in
10 which they felt we were owed the time and wanted
11 to split the amount, by the letter in front of
12 me.

13 Q. The best evidence of that would be
14 what's in the letter and not your recollection,
15 right?

16 A. Yeah, what Jennifer Faulkinberry
17 recommended in an e-mail or letter.

18 Q. Okay. Let's go to number 159,
19 Exhibit 12. Was there a proposal related to this
20 alleged additional work?

21 A. For FF&E changes, yeah, there should
22 have been.

23 Q. Okay. Is the proposal attached to the
24 claim?

25 A. No, sir.

1 Q. Is there any backup for any of these
2 costs in the claim?

3 A. It should be on the proposal.

4 Q. Huh?

5 A. It should be on the proposal.

6 Q. Okay. But the proposal is not in here?

7 A. Not in this tab. There's marked
8 exhibits on it, Exhibit X, Exhibit B, Exhibit C
9 and Exhibit D.

10 Q. What was the original proposal for,
11 242,633?

12 A. I don't know that that's true. The
13 original estimate -- hold on. No. We had the
14 original estimate for the scope of work that was
15 in the job originally, and then we had a revised
16 estimate with all of these items listed. And we
17 were requesting the delta.

18 Q. Is it your testimony that all of this
19 work was done?

20 A. To the best of my knowledge, this work
21 was done.

22 Q. Is it your -- do you know whether this
23 work was actually paid for by BBC?

24 A. I do not know.

25 Q. Do you know whether BBC, if they hadn't

1 paid it, are going to pay it?

2 A. I can't speak for BBC, what they're
3 going to do.

4 Q. All right. Let's look at tab number
5 161.

6 A. I do believe this work has been paid
7 for, but I'm not sure.

8 Q. Tab number 161 --

9 A. I'm here.

10 Q. -- for 17,376. Is it your testimony
11 that Balfour Beatty is now claiming \$8,928 on
12 behalf of BMCC?

13 A. Again, same answer. I don't know what's
14 happened since April.

15 Q. And the same answer would be true as to
16 Precision Walls? You don't know about the 7,644
17 either?

18 A. That's for BMCC, yes.

19 Q. Okay. And if none of those charges are
20 actually paid by Balfour Beatty, then the markup
21 would go away, would it not?

22 A. I don't know.

23 Q. You don't know whether or not a
24 contractor is or is not entitled to markup on
25 work that was not done?

1 A. I'm not saying this work wasn't done.

2 Just work wasn't --

3 Q. Not paid?

4 A. Not paid.

5 Q. Do you know whether or not Balfour
6 Beatty is entitled to a markup on work that they
7 have not paid for?

8 A. That we have not paid for or were
9 requesting payment?

10 Q. Paid for?

11 A. Yeah. I don't know.

12 Q. I guess we'd go to the contract, right?

13 A. That's -- yes.

14 Q. Let's go to 178, Liberty Lights. Are
15 you with me?

16 A. I'm with you.

17 Q. Do you know whether Wesley was paid or
18 has been paid the \$2,142?

19 A. I don't believe this is all for Wesley,
20 but -- I'm not even sure if this is Wesley.
21 You're right, it is. I don't know if they've
22 been paid.

23 Q. Do you have any evidence that the owner
24 requested Balfour Beatty to store these 72 car or
25 light fixtures?

1 A. Evidence? Not in this tab. But the
2 owner directed us to.

3 Q. Is part of Balfour Beatty's means and
4 methods, the procurement and storage of
5 materials?

6 A. Yes, that's part of our means and
7 methods.

8 Q. All right. Let's go to Exhibit tab 184.

9 A. Yes.

10 Q. All right. You're requesting 57,467.82.
11 Do you know whether Premier Exteriors has been
12 paid 18,810?

13 A. No, I don't.

14 Q. Do you know whether First Choice Glass
15 has been paid 20,486?

16 A. I don't.

17 Q. What did BMCC -- Balfour Beatty incur
18 that entitles them to 15,550?

19 A. That's labor and prep for the storm. We
20 had laborers on site to --

21 Q. And have they paid for that?

22 A. I believe so.

23 Q. Okay. And would the markup go down if
24 they have not paid Premier Exteriors or First
25 Choice Glass?

1 A. I'm not sure.

2 Q. Okay. All right. Let's go to the next
3 one, 212, Robert Thomas Decorative.

4 A. Yep.

5 Q. Do you know who paid Robert Thomas?

6 A. I believe we did. I don't know about
7 for this -- for this amount, but I believe
8 Balfour did.

9 Q. You believe Balfour did?

10 A. Yeah.

11 Q. But you don't know it for a fact?

12 A. I don't know it for a fact. You'd have
13 to check the records.

14 Q. Okay. And if we checked the records and
15 it showed Library Associates paid it, then
16 Library Associates wouldn't have to pay it again
17 to Balfour Beatty, would they?

18 A. So, yeah. I mean, I don't think they
19 would have to pay for it twice.

20 Q. Thank you. So we've agreed that Library
21 Associates doesn't have to pay Balfour Beatty
22 twice for work. Can we also agree that they're
23 not entitled to markup that they don't pay for?

24 A. They're not entitled to markup that they
25 don't pay for?

1 Q. Right.

2 A. Again, we would have to --

3 Q. Balfour Beatty is not entitled to markup
4 work that they didn't pay for?

5 A. We would have to check the contract on
6 how that works.

7 Q. Okay.

8 A. If they paid something direct and we
9 still did all of the records and send the
10 overhead, you know.

11 Q. Right.

12 A. If we performed the work and they
13 performed it under that, are we still entitled a
14 fee? I'm not sure.

15 Q. Sure. But we don't need to check the
16 contract to agree that they don't have to pay for
17 work twice?

18 A. Well, so I don't -- this isn't
19 necessarily asking them to pay for it twice.
20 This is the -- this is the increased cost because
21 we had already delivered metal brackets to the
22 site. So I don't know if they paid for the
23 original metal brackets. I don't know -- I don't
24 know what they paid for it.

25 Q. Let's put aside this specific tab, and

1 let me just ask you a general question. Can you
2 and I even agree today, Library Associates
3 doesn't have to pay Balfour Beatty twice for the
4 same work?

5 A. Well, this is a little --

6 Q. No, I'm not talking about this
7 particular work.

8 A. Because it's two sets of brackets.

9 Q. Pardon me?

10 A. We produced two sets of brackets. So we
11 produced the ones from Robert Thomas, and we
12 produced the ones for Tate. It's kind of like
13 paying for the same thing twice, but it wasn't
14 on -- it wasn't under our direction. I wouldn't
15 ask them to pay for Robert Thomas's scope twice.
16 We can agree to that.

17 Q. As a general proposition, can you and I
18 agree -- put aside Robert Thomas. Forget Robert
19 Thomas. Can you and I agree that Balfour Beatty
20 Construction Company is not entitled to be paid
21 twice by Library Associates for the exact same
22 work?

23 A. Again, that's not -- for the exact same
24 work?

25 Q. Yes.

1 A. We produced the exact same work
2 described? I'm not going to ask them to pay for
3 the same bracket twice.

4 Q. But that's not the question.

5 THE COURT: I'm with you. I think
6 he just answered it.

7 MR. BUNDY: Well, let me try it
8 again.

9 THE COURT: Yep, yep.

10 BY MR. BUNDY:

11 Q. Forget the brackets. Forget about them.
12 I don't want to talk about brackets. I want to
13 talk about this job. Do you agree or do you not
14 agree that Library Associates is not required to
15 pay Balfour Beatty twice for the same work?

16 A. Again, I'm going to say that's going to
17 happen every time.

18 Q. Okay. That's fine.

19 A. Because there's a circumstance like the
20 brackets --

21 Q. That's fine.

22 A. -- where it's the same scope, but it was
23 approved incorrectly. And in that case, they
24 should have to pay for both sets of brackets.

25 Q. All right. Let's go to 221. I'm sorry,

1 I missed one. All right. What does 215 show?

2 A. (Inaudible) lighting controls.

3 Q. Okay. Is there a second page to --

4 A. I don't see it.

5 Q. It says one of two. Is there a second
6 page to this letter?

7 A. There should be. I don't see it,
8 though.

9 Q. Do what?

10 A. I do not see it.

11 Q. Number 221 -- go back to the 221. What
12 is this for?

13 A. Additional tinting of Hope's store front
14 windows.

15 Q. All right. This letter is unsigned.
16 It's dated February 6th, 2018. Can you testify
17 here under oath that that letter was actually
18 sent to Library Associates?

19 A. This specific one, no.

20 Q. All right. Let's go to 223. 3,304,
21 guest room 603, wall concrete. What
22 subcontractor would this be for?

23 A. Precision Walls.

24 Q. Precision Walls. And do you know
25 whether Balfour Beatty has paid Precision Walls

1 for this?

2 A. I do not.

3 Q. 227, warehousing and handling of
4 mirrors, \$9,169. Does Balfour Beatty have any
5 obligation, when products are delivered, to
6 inspect them for damage and install them
7 undamaged?

8 A. Do we have an obligation to inspect them
9 for damage and install them undamaged?

10 Q. Without damage. Let's take away the
11 second part. Does Balfour Beatty have any
12 obligation, under the contract when it is shipped
13 the materials, to inspect them for damage?

14 A. Not all of them. There were 200 and
15 some-odd materials.

16 Q. Just some of them?

17 A. You can't expect us to inspect all of
18 them re-box them and store them. But it's
19 unreasonable. We did inspect a portion of them.

20 Q. All right. Number 244, do you see that
21 one? It doesn't have a tab. It's 244. It comes
22 next.

23 A. It's got a tab, or mine does.

24 Q. Yours does?

25 A. Yeah.

1 Q. Okay. And that's a credit, right?

2 A. Yes.

3 Q. All right. Did the owner disagree with
4 the amount of that credit?

5 A. I'm not sure.

6 Q. Okay. Exhibit 6. Explain this to me.

7 A. SI10 ballroom wall change? Is that the
8 one we're talking about?

9 Q. The additional lights to elevators is
10 what I'm talking about.

11 MR. HILDEBRAND: I'm sorry, what
12 are we on?

13 MR. BUNDY: It's 246.

14 THE WITNESS: Mine is out of order.

15 BY MR. BUNDY:

16 Q. Did we miss one?

17 A. Mine is out of order. I think everybody
18 else fixed theirs.

19 Q. Huh?

20 A. Everybody else fixed theirs yesterday,
21 and I didn't.

22 Q. I gotcha.

23 A. So 246 SI67 elevator cab finishes. It's
24 for millwork revisions, electrical revisions, a
25 revised handrail in the elevators and updated

1 elevator cab millwork.

2 Q. All right. Do you know whether Watson's
3 shop drawings were correct or not?

4 A. Watson's shop drawings?

5 Q. Yes, for the lighting in the elevator.

6 A. No. Watson wouldn't have produced shop
7 drawings for lighting in the elevator. They
8 listed their product data.

9 Q. Okay. So it's your testimony, Watson
10 didn't reduce any drawings related to the
11 electrical in the elevators?

12 A. Shop drawings?

13 Q. Shop drawings, yes, sir, shop drawings.

14 A. No. They, in all likelihood, product
15 data for what fixture was going to be installed.

16 Q. What are shop drawings?

17 A. Typically shop drawings are drawings
18 that show how something is built. It's a
19 document subcontractor's use to clarify or show
20 to the design team how something is going to come
21 together.

22 Q. Who creates shop drawings?

23 A. The subcontractor.

24 Q. Who's responsible for the accuracy of
25 the shop drawings?

1 A. That's the -- the accuracy? Well, the
2 architect would use it and ensures they're
3 accurate.

4 Q. The architect is responsible for the
5 accuracy of the shop drawings?

6 A. Everybody is responsible for it. The
7 subcontractor submits it to us. We review it.
8 We submit to the architect for the ultimate
9 review. The architect returns it.

10 Q. So it's your belief in the construction
11 industry, when an architect reviews a shop
12 drawing and he misses a mistake, it's the
13 architect responsibility?

14 A. Depends on the mistake.

15 Q. Depends on the mistake. Does it depend
16 on whether the mistake is caught or not or
17 whether the mistake exists?

18 A. Depends on the circumstance. I mean,
19 ultimately, we're responsible for what's on the
20 drawings. A lot of -- we submit drawings with
21 the expectation the architect reviews them and
22 thoroughly. If something is missed, it really
23 depends on what's missed, if it -- and whose
24 responsibility it is.

25 Q. Do you know if your opinion conflicts

1 with the contract documents, what they say?

2 A. No, I -- go ahead.

3 Q. Okay. Well, do you know whether your
4 opinion that you just gave conflicts with what
5 the contract documents say?

6 A. No.

7 Q. You don't know. And do you know whether
8 the opinion you just gave contradicts a general
9 understanding of the construction industry, which
10 has been in existence -- for an understanding
11 that's been in existence for at least 50 or 60
12 years?

13 A. I mean, the general understanding is
14 that ultimately, we're responsible to install
15 what's on the -- what's on the contract
16 documents.

17 Q. Who's responsible?

18 A. That that -- the contractor and the
19 subcontractors are.

20 Q. So the subcontractors are responsible
21 for their shop drawings?

22 A. Generally speaking, they're responsible
23 for it and they're responsible for the contract
24 documents.

25 Q. Who is responsible for an error in the

1 shop drawings that the architect does not
2 discover in his review of the shop drawings?

3 A. It depends. If we're asking a question
4 in the shop drawings, if we're asking how should
5 we install this because the documents don't say,
6 then I would say the architect is responsible.
7 If it's wrong based on the contract documents,
8 then the subcontractor and contractor are
9 probably responsible.

10 Q. Okay. And you would say that not as an
11 architect but as someone with a degree in
12 management and society, correct?

13 A. That's my degree, and that's what I'm
14 saying.

15 Q. And you're not an architect?

16 A. I'm not architect.

17 Q. And you haven't -- and you can't tell me
18 what the document say as it relates to this? So
19 you don't remember what they say?

20 A. The drawings or the contract?

21 Q. The documents, the contract documents.

22 A. I don't know exactly what it says.

23 Q. Do you know whether the contract
24 documents even speak to shop drawings?

25 A. I think we're responsible for producing

1 them.

2 Q. Yeah. But my question to you was -- and
3 I will ask it one last time -- is the architect
4 responsible for a shop drawing that he reviews
5 and he doesn't find an error made by the
6 subcontractor or contractor that produced the
7 drawing? Who's responsible for the mistake if
8 the architect doesn't discover it? The architect
9 or the contractor?

10 A. I'm not sure.

11 Q. You're not sure?

12 A. No, I'm not sure.

13 Q. We can go back to the documents to
14 decide, right?

15 A. That's right.

16 Q. Do you understand that a contract is a
17 device whereby people identify risks and then
18 share or allocate those risks --

19 A. That's right.

20 Q. -- between the two of them?

21 A. That's right.

22 Q. Okay. And you understand that that
23 allocation of risk changes the price of a
24 contract, correct?

25 A. Sure.

1 Q. And if people allocate risks, they have
2 to have enough experience to know what those
3 risks are so they can properly allocate them,
4 correct?

5 A. That's right.

6 Q. Okay. So it behooves someone like by
7 Balfour Beatty, when they sign a contract that's
8 provided to him in a request for proposal, to put
9 it in front of somebody who knows enough to know
10 if those risks are being reallocated?

11 A. Can you ask that again?

12 Q. Sure. It behooves a general contractor
13 like Balfour Beatty, when they're provided a
14 contract from an owner, okay, that changes --
15 let's say, the standard document.

16 To carefully review those documents to
17 determine if the risks have been reallocated, if
18 there's more risk on the contract than there
19 normal would be, so they can make an informed
20 about whether they want to enter into the
21 contract or not; is that a fair statement?

22 A. Yes.

23 Q. And nobody made Balfour Beatty sign this
24 contract, did they?

25 A. Not that I'm aware of.