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Dec 22 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Robert E. Hood
Circuit Court Judge

Appellate Case No. 2025-002198
Circuit Court Case No. 2023-CP-40-05555

O. Stanley Smith, III; Acre Plus, LLC; and Constan Gervais Street
Car Wash, Inc.,..... Respondents,

v.

City of Columbia..... Appellant.

APPELLANT’S MOTION TO STAY BRIEFING AND FOR A LIMITED REMAND FOR
PURPOSES OF CORRECTING THE TRANSCRIPT

Appellant City of Columbia respectfully moves this Court for an order staying the January 7, 2026 deadline for filing its opening brief and remanding this matter to the circuit court for the limited purpose of allowing the parties and the court reporter an opportunity to address errors and deficiencies in the transcript of the underlying proceedings. The City further proposes that, during the stay, it submit periodic status updates to the Court regarding the progress of transcript correction or, if necessary, record-settlement efforts.

This request is prompted by material deficiencies in the certified transcript of a critical post-trial hearing and by the court reporter’s ongoing efforts—currently underway—to re-listen to the audio recording in an attempt to correct those deficiencies. The City seeks this relief to ensure that appellate briefing proceeds on a record that accurately reflects what occurred in the circuit court.

Background and Chronology

This matter was tried to the circuit court in a bench trial June 23-26, 2025. Following entry of judgment, the City timely filed post-trial motions pursuant to Rules 52 and 59(e), SCRCP. Those motions, together with related issues concerning judicial notice, the court’s post-trial authority, and attorneys’ fees, were heard by the circuit court on November 6, 2025.

The November 6 hearing was substantive. The court engaged in extended questioning of counsel, and the parties presented detailed legal arguments bearing directly on issues that are likely to be raised on appeal. The content of those exchanges—and the court’s responses—matters to the appellate record.

The transcript of the November 6 hearing was requested promptly by Appellant and, on November 24, 2025, Mr. Kevin Dehlinger, Director of Operations for Legal Eagle, Inc., indicated that Legal Eagle had been assigned to prepare the transcript. On December 1, 2025, Mr. Dehlinger updated counsel for Appellant as follows:

We are a good way into the audio of this transcript and are having some issues with the audio. The judge is very clear, but the both the plaintiff and defense microphones appear to cut out regularly. We are going to go through this audio twice in hopes of capturing as much as possible, but we do expect several inaudibles or indiscernibles in the transcript. We will keep you posted. Thank you.

(Ex. A, Email correspondence dated Monday, December 1, 2025, at 9:51 AM.)

On December 4th, Mr. Dehlinger contacted Appellant’s counsel again, this time to request “help with identifying two speakers.” (*Id.* Email correspondence dated Monday, December 4, 2025, at 3:13 PM.) On December 8th, Mr. Dehlinger forwarded the transcript and Legal Eagle’s invoice to Appellant’s counsel, following which the Appellant notified the Court that it had received the transcript.

During the week of December 15, 2025, Appellant’s counsel began reviewing the transcript of the November 6, 2025 hearing to begin preparation of Appellant’s opening brief, which is currently due on January 7, 2026. That review revealed material deficiencies in the transcript. In numerous places, the transcript is wholly unintelligible. Although the court reporter evidently made conscientious efforts to prepare the transcript from the court-provided audio recording, the transcript reflects approximately 120 instances in which the audio was deemed “indiscernible,” resulting in substantial gaps in the record. In addition, counsel identified dozens of other passages that, while not expressly marked “indiscernible,” do not make sense syntactically or contextually and cannot be reconciled with the surrounding dialogue.

In addition to approximately 120 “indiscernible” notations, the transcript contains incomplete sentences and other apparent inaccuracies, including during judicial questioning and counsel’s articulation of legal standards and arguments. These deficiencies are not confined to collateral or background matters. Rather, they occur at points that bear directly on issues likely to be presented on appeal. As a result, the transcript in its current form does not provide a reliable record from which Appellant can prepare a meaningful opening brief under the existing briefing schedule. A copy of the current version of the transcript is attached as Exhibit B.

Upon identifying these issues, Appellant’s counsel acted promptly. At 11:17 a.m. on December 16, 2025, counsel emailed opposing counsel to alert them to the transcript deficiencies, to request consent to a motion holding the briefing deadline in abeyance so that the transcript could be evaluated and corrected, and to propose a cooperative approach to addressing the problem. (Ex. C, Email correspondence dated December 16, 2025, at 11:17 a.m.) Two minutes later, at 11:19 a.m., Appellee’s counsel responded by email indicating their opposition. (*Id.* Email from Mr. Harpootlian at 11:19 a.m.)

On December 18, 2025, Appellant’s counsel contacted Legal Eagle’s representative, Mr. Dehlinger, and requested a copy of the audio recording from which the transcript was prepared. Later that day, Mr. Dehlinger responded by email explaining his understanding that Rule 607, SCACR, does not permit Legal Eagle or the South Carolina Judicial Branch to release the audio recording to the parties. (Ex. A, Email correspondence dated December 18, 2025, at 12:05 p.m.) Mr. Dehlinger further advised, however, that Legal Eagle would undertake a two-step re-review of the audio recording in an effort to address unclear portions and potential inaccuracies in the transcript. He indicated that the first step of that process should be completed no later than Monday, December 22, 2025.

As it stands, the City’s opening brief remains due on January 7, 2026. Christmas is three days away, and New Year’s Day follows shortly thereafter. In light of the significant transcript deficiencies, the reporter’s ongoing but open-ended re-review process, and the intervening holidays, it is clear that a revised transcript will not be available in time to permit meaningful appellate briefing under the current schedule.

Governing Law

South Carolina law has long recognized that meaningful appellate review depends upon a full and accurate record. The transcript of record is the source from which the reviewing court learns what occurred below, and its purpose is to inform the appellate court authoritatively of the legal questions contested and the facts pertaining to them.

In *South Carolina State Highway Department v. Meredith*, 241 S.C. 306, 128 S.E.2d 179 (1962), the Supreme Court held that where a transcript is so incomplete as to be prejudicial, it is error to proceed on the assumption that nothing can be done. The Court emphasized that the trial judge has not only the power, but the duty, to correct or settle the record so that a full, true, and

accurate account of the proceedings may be presented on appeal. If the stenographer cannot supply a complete transcript, the trial judge must provide some settlement or report so that the appeal may be heard.

Likewise, in *China v. Parrott*, 251 S.C. 326, 162 S.E.2d 276 (1968), the Supreme Court reaffirmed that where there is uncertainty or disagreement as to what the record on appeal should contain—particularly where stenographic notes are lost or incomplete—the responsibility for settling the record rests with the trial judge, who may rely on affidavits, recollections, and other reliable sources. Once settled, the record governs appellate review.

The Court of Appeals' decision in *Sweat v. Crawford*, 292 S.C. 324, 356 S.E.2d 147 (Ct. App. 1987), further underscores the importance of timely action when transcript deficiencies are identified. While the appellant bears the burden of ensuring a complete record, the circuit court possesses implicit authority, upon proper motion, to require correction or amendment of an inaccurate or incomplete transcript.

Rule 60(a), SCRPC, expressly contemplates the correction of clerical mistakes or errors arising from oversight or omission in “other parts of the record,” including transcripts. During the pendency of an appeal, such corrections may be made with leave of the appellate court. South Carolina procedure therefore anticipates transcript correction during an appeal and provides a mechanism for doing so in an orderly manner, with appropriate appellate oversight.

Grounds for Holding Briefing in Abeyance or Staying the Deadline

Requiring the City to file its opening brief while the accuracy of the transcript remains unresolved would place counsel in the untenable position of briefing from a record that may soon change in material respects. It would risk mischaracterizing what occurred below, invite disputes

about preservation and context, and potentially necessitate supplemental briefing or remand after briefing has already begun.

The City has acted diligently. It did not create the transcript deficiencies. It identified them promptly, engaged cooperatively with the court reporter and opposing counsel, and now seeks the Court's guidance before the briefing deadline expires. This motion is designed to avoid inefficiency and to ensure that this appeal proceeds on a stable and reliable record, consistent with the principles articulated in *Meredith, China, Sweat*, and Rule 60(a). Holding briefing in abeyance, or staying the briefing deadline will protect the integrity of the record while ensuring that the appeal continues to move forward under the Court's supervision.

Proposed Periodic Status Updates

To underscore its diligence and to minimize any burden on the Court, the City proposes to file short written status reports at reasonable intervals—such as every fourteen days, or at such interval as the Court may direct—advising the Court of the status of transcript correction efforts, including whether the reporter's renewed review has been completed or whether record settlement or reconstruction may be necessary.

Requested Relief

For these reasons, the City respectfully requests that the Court enter an order holding in abeyance the January 7, 2026 deadline for filing Appellant's opening brief and remitting this matter to the circuit court for the limited purpose of correcting or reconstructing the transcript. The City also requests that the Court permit or direct periodic status updates during the abeyance or stay period so that the Court can stay informed of the parties' progress towards resolving the errors and gaps in the transcript.

Conclusion

This motion seeks to ensure that appellate briefing proceeds on an accurate and intelligible record, as South Carolina law requires. A brief abeyance or stay, coupled with periodic updates, will promote fairness, efficiency, and orderly appellate review.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll

S.C. Bar No. 74000

todd.carroll@wbd-us.com

Kevin A. Hall

S.C. Bar No. 15063

kevin.hall@wbd-us.com

Levi Wright

S.C. Bar No. 107817

levi.wright@wbd-us.com

1221 Main Street, Suite 1600

Columbia, SC 29201

(803) 454-6504

CITY OF COLUMBIA

W. Mike Hemlepp, Jr.

S.C. Bar No. 64264

william.hemlepp@columbiasc.gov

1136 Main Street, 7th Floor

Columbia, SC 29201

(803) 737-4242

RILEY, POPE & LANEY, LLC

Peter M. Balthazor

S.C. Bar No. 68244

peteb@rplfirm.com

2838 Devine Street

Columbia, SC 29205

(803) 799-9993

Attorneys for the City of Columbia

December 22, 2025

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SC Court of Appeals

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellant City of Columbia, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Appellant's Motion to Stay Briefing and For a Limited Remand for Purposes of Correcting the Transcript

Parties Served:

Richard A. Harpootlian (rah@harpootlianlaw.com)
Andrew R. Hand (arh@harpootlianlaw.com)
Tobias G. Ward, Jr. (tw@tobywardlaw.com)

Counsel for the Respondents

By: /s/ M. Todd Carroll

December 22, 2025

From: [Kevin Dehlinger](#)
To: [Hall, Kevin](#)
Cc: [Velvet Mills](#); [Carroll, Todd](#); [Wright, Levi](#); [Caldwell, Bryant](#)
Subject: RE: Smith v City of Columbia 11-6-25
Date: Thursday, December 18, 2025 12:05:18 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[image009.png](#)

External (kdehlinger@legaleagleinc.com)

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Kevin,

Thank you for reaching out. We are happy to assist in ensuring this transcript is as accurate as possible and completed as quickly as possible. Unfortunately, Rule 607 does not permit Legal Eagle or the SCJB to release the audio.

That said, we will immediately review the audio again at no charge to address any unclear portions or potential inaccuracies. Additionally, if your team would like to send us any sections you believe are inaccurate, misspelled, or unclear, particularly those marked as inaudible, we will review those portions a third time to ensure accuracy.

Again, we apologize that we cannot provide the audio, but we will work diligently to return the revised transcript to you no later than Monday. Thank you.



Kevin Dehlinger
Director of Operations

M (864) 444-4219 | **P** (864) 467-1373
E kdehlinger@legaleagleinc.com

107 LeGrand Blvd., Greenville, SC 29607
www.LegalEagleInc.com





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From: Hall, Kevin <Kevin.Hall@wbd-us.com>

Sent: Thursday, December 18, 2025 11:16 AM

To: Kevin Dehlinger <kdehlinger@LegalEagleInc.com>

Cc: Velvet Mills <vmills@LegalEagleInc.com>; Carroll, Todd <Todd.Carroll@wbd-us.com>; Wright, Levi <Levi.Wright@wbd-us.com>; Caldwell, Bryant <Bryant.Caldwell.Contractor@wbd-us.com>

Subject: FW: Smith v City of Columbia 11-6-25

Good morning, Kevin. I hope you are doing well.

As we've turned our attention to the transcript with our upcoming briefing deadlines, we've noticed what appear to be significant transcription issues, likely stemming from problems with the court's microphone during the hearing. Without access to the audio recording, however, we're unable to assess the full scope of the inaccuracies.

I served as counsel for the City at the hearing, and I can confirm that there are several portions of the transcript where I was speaking and the transcription is materially inaccurate. Of course, we understand that this is not your office's fault.

Would you be able to provide us with the audio recording of the hearing so that we can better evaluate the extent of the issue and, if necessary, appropriately alert the Court of Appeals?

Thank you in advance for your assistance.

Best regards,

Kevin

Kevin Hall

Partner

Womble Bond Dickinson (US) LLP

d: 803-454-7710

m: 803-603-0392

e: Kevin.Hall@wbd-us.com

1221 Main Street

Suite 1600

Columbia, SC 29201



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From: info <info@LegalEagleInc.com>

Sent: Monday, December 1, 2025 9:51 AM

To: info <info@LegalEagleInc.com>; Jones, Sarah <Sarah.Jones@wbd-us.com>

Cc: Transcripts <transcripts@sccourts.org>; Velvet Mills <vmills@LegalEagleInc.com>; Hall, Kevin <Kevin.Hall@wbd-us.com>; Carroll, Todd <Todd.Carroll@wbd-us.com>; Dubin, Andrew <Andrew.Dubin@wbd-us.com>

Subject: RE: Smith v City of Columbia 11-6-25

External (info@legaleagleinc.com)

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Sarah,

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Kevin Dehlinger

Director of Operations

M (864) 444-4219 | **P** (864) 467-1373

E kdehlinger@legaleagleinc.com





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Sent: Monday, November 24, 2025 4:15 PM

To: Jones, Sarah <Sarah.Jones@wbd-us.com>; info <info@LegalEagleInc.com>

Cc: Transcripts <transcripts@sccourts.org>; Velvet Mills <vmills@LegalEagleInc.com>; Hall, Kevin <Kevin.Hall@wbd-us.com>; Carroll, Todd <Todd.Carroll@wbd-us.com>; Dubin, Andrew <Andrew.Dubin@wbd-us.com>

Subject: RE: Smith v City of Columbia 11-6-25

Thank you. We will get started on it.



Kevin Dehlinger
Director of Operations

M (864) 444-4219 | **P** (864) 467-1373
E kdehlinger@legaleagleinc.com

107 LeGrand Blvd., Greenville, SC 29607
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From: Jones, Sarah <Sarah.Jones@wbd-us.com>

Sent: Monday, November 24, 2025 4:11 PM

To: info <info@LegalEagleInc.com>

Cc: Transcripts <transcripts@sccourts.org>; Velvet Mills <vmills@LegalEagleInc.com>; Hall, Kevin <Kevin.Hall@wbd-us.com>; Carroll, Todd <Todd.Carroll@wbd-us.com>; Dubin, Andrew <Andrew.Dubin@wbd-us.com>

Subject: RE: Smith v City of Columbia 11-6-25

Good afternoon,

Thank you for getting in touch!

Yes, we would like to proceed with this transcript. Please place us in line for production.

Thank you,

Sarah J. Jones

Sarah Jones

Legal Practice Assistant
Womble Bond Dickinson (US) LLP

d: 803-454-7717

e: Sarah.Jones@wbd-us.com

1221 Main Street
Suite 1600
Columbia, SC 29201



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Sent: Monday, November 24, 2025 4:07 PM

To: Jones, Sarah <Sarah.Jones@wbd-us.com>

Cc: info <info@LegalEagleInc.com>; Transcripts <transcripts@sccourts.org>; Velvet Mills <vmills@LegalEagleInc.com>

Subject: Smith v City of Columbia 11-6-25

External (info@legaleagleinc.com)

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Sarah,

Today, Legal Eagle was assigned your transcript request in the above referenced matter. Based upon our review of the records, it appears this transcript will be approximately 60 pages long. The following was indicated on the request from:

- Expedited Delivery (7 Days)
- PDF/Email Requested

The estimated 7 business day expedited cost for this transcript is \$435.00.

Please note that the page estimate is not guaranteed. The price indicated above is an approximation based on the audio length. The actual cost and page count may vary due to several factors including but not limited to speech rate, side bars, Q&A v Colloquy, and hearing type. A final invoice will be sent when the transcript is completed.

Once you have authorized us to proceed by responding to this email, we will place your transcript inline for production. An invoice will be provided with your final transcript. If you have any questions, please let us know.

Thank you,



Kevin Dehlinger

Director of Operations

M (864) 444-4219 | **P** (864) 467-1373

E kdehlinger@legaleagleinc.com

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STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA CIRCUIT COURT 5
COUNTY OF RICHLAND) DOCKET NO. 2023-CP-4005555

STANLEY O SMITH III)
Plaintiff)
Versus)
CITY OF COLUMBIA)
Defendant.)

H E A R I N G
BEFORE THE HONORABLE ROBERT E. HOOD

DATE: November 6th, 2025.
LOCATION: South Carolina Circuit Court 5
TRANSCRIBED BY: ERIN REILLY

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24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH IS

25 REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

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PROCEEDINGS

THE COURT: We are here on the record in 2023-CP-4005555, O. Stanley Smith, Junior Acre Plus LLC and Constan Gervais Street Car Wash against the City of Columbia. All right. We got a bunch of things that have been filed. We're just going to kind of take them one at a time. Let's start with the City's motion to clarify the order on the motion to reconsider.

MR. HALL: Your Honor, of course. First of all --

THE COURT: [Indiscernible].

MR. HALL: -- on behalf of the City of Columbia, may I please the Court?

THE COURT: Yes, sir.

MR. HALL: As your state is filed Rule 5259 -- motion after the trial of case. Your Honor, the Court ruled the matter [indiscernible] by waiting [indiscernible] before Court works signed as to the judicial notice of the assessor's records.

THE COURT: Right.

MR. HALL: That's the basis of that motion to ask the Court to clarify when there is a ruling, and if there is a ruling, what that is.

THE COURT: Okay. And do you want to be heard on the Court's authority to even consider those things that were submitted? How many days after the trial was over, and how

1 many months after the discovery deadline had passed?

2 MR. HALL: Well, I'd be glad to speak to those, Your
3 Honor. The -- a couple -- first of all, judicial notice to be
4 taken any time, right?

5 THE COURT: So, two years from now in the middle of
6 the appeal, the City can submit all these public records and
7 somebody is supposed to review them.

8 MR. HALL: That's actually true, Your Honor. There's
9 an appellate court case that you cite that tells you that, but
10 one of the appellate courts did exactly that.

11 THE COURT: Okay.

12 MR. HALL: The appellate court and any court takes
13 judicial notice of any fact at any time. Okay. So, it's
14 absolutely within the Court's power to do that. The argument
15 that we may set forth, Your Honor, is that there's actually a
16 legal mandate, it's mandatory.

17 The Court takes judicial notice of these records, and
18 we point [indiscernible]. It says that the Court shall take
19 judicial notice or you've requested and supported if the
20 information necessary the rules defined. These are certified
21 records of public officials under 195-10. The courts are
22 required to take certified public records into evidence.

23 THE COURT: And so, why were they not turned over in
24 discovery?

25 MR. HALL: Well, they're not so many in discovery,

1 Judge. They're public records. They're not something --
2 they're out there for the world to find.

3 THE COURT: I know but if the City wanted to use
4 them, why weren't they turned over by the discovery deadline?

5 MR. HALL: Your Honor, again, the question is what
6 about the discovery requests and compliance with the discovery
7 request respectfully. The question is one of a public record.

8 THE COURT: But the question is one on a 59E motion
9 to where the purpose of the 59E and the motion to reconsider
10 the ruling of the Court is to argue things that could have been
11 argued -- that should have been argued. I'm getting my wording
12 confused.

13 But the purpose of what I'm trying to say is the City
14 had their chance to evaluate, cross examine. They had the
15 woman's report for over a year. They never turned over any of
16 these documents. They never told anybody they wanted to use
17 them; they never gave Ms. Haskell the opportunity to go into
18 those documents. What they mean, what they look like, what
19 they stand for, what they don't stand for, nothing.

20 And when the City -- just so the time record is
21 clear, the trial occurred the week of June the 25th. The order
22 went out the week of July the 28th. The City filed its motion
23 to reconsider on August the 7th, which was within the 10 days.
24 It makes no mention, zero, nada, nothing of these records --
25 which their public were records obviously from the assessor's

1 office. But -- I mean, I don't think anybody's disputing that
2 they're public records, but I mean, the stamps on the records
3 themselves are from September of 2025. The discovery deadline
4 in the case was months before -- I mean, so, you -- the City
5 can just -- anybody can just submit whatever they want to,
6 whenever they feel like it's in a case if it's a bench trial.
7 Is that -- but that's the City's theory,

8 MR. HALL: No, I wouldn't be quite as long. The
9 statement is, Your Honor, I don't care about it. Essentially,
10 very close to that, yes. The rule says, look we've got a bench
11 trial. Rule 52 allows the Court to take into consideration
12 things that go to the sufficiency at any point in time.

13 THE COURT: Right.

14 MR. HALL: We didn't have a jury on, we don't have
15 something that a jury can't look at. We've got the same Judge,
16 the same Court, the same parties present.

17 THE COURT: But the witness is not present.

18 MR. HALL: Well --

19 THE COURT: How is it not prejudicial to the other
20 side to come in 30, 60, 90 days after the trial and say, "We
21 really should have used all this information to cross-examine
22 this woman but we didn't. And now that we have a new lawyer in
23 somebody's Monday morning quarterback, the case, we realize we
24 got to submit all this stuff. "

25 MR. HALL: Your Honor, the legal authority -- First

1 of all, asking the Court to take judicial notice as promised is
2 not a function of a Rule 52, Rule 59 motion. We communicated
3 it's not asking the Court to do something that could have
4 shown.

5 THE COURT: But you -- it was not done within 10-
6 days?

7 MR. HALL: It's not required to be done within 10-
8 days.

9 THE COURT: Right. Because under the City's theory,
10 you can submit it two years later, and everybody's just got to
11 deal with it.

12 MR. HALL: Your Honor, again, I'll just cite in front
13 of the Court, and make sure the record's clear on it. 201
14 says: the Court shall take judicial notice when requested and
15 support a certified official record whose authenticity is
16 undisputed." That's what the rule says. And I realize it may
17 not meet everyone's life but that is what the rule says.
18 Section 19-5-10 in requires that certified public records
19 assessors be received into evidence. That's what the statute
20 says.

21 THE COURT: Okay.

22 MR. HALL: So, again, I understand the points that --
23 Your Honor, respecting by way of question and I'm saying
24 articulate is that the Court has the authority. We say
25 respectfully, Your Honor, responsibility to proceed those into

1 evidence. All right.

2 THE COURT: And how is anybody supposed to respond to
3 it?

4 MR. HALL: Well, we --

5 THE COURT: I mean, we have -- there's no
6 information. Number one: Everybody in the room that owns a
7 home in South Carolina or owns a car in South Carolina knows
8 that the tax assessor's version of what the car is worth or
9 what the home is worth is rarely what the fair market value of
10 the property is, right?

11 So, we have -- there's no way to judge any of that
12 credibility in these documents in any way, shape or form. We
13 don't know who created them, we don't know how it was done.
14 And we don't know when it was done. We don't know the last
15 time it was done, nothing. And so, how is the opposing side
16 supposed to respond to that?

17 MR. HALL: Your Honor, the issues that want a
18 response. Here's the issue. The law says that the information
19 should come in, and we're simply saying that is what should
20 happen here. And importantly here, when you submit something
21 at judicial notice of taken on a document, it doesn't establish
22 the facts or what's communicated that document as dispositive,
23 it simply puts the documents in evidence, takes judicial notice
24 of existence and content of the record. It doesn't say, "Yeah,
25 there's evidence, there's numbers, here they are." That's what

1 it is. Before it's simply asked in the judicial notice context
2 to take notice of the existence, and content of the record.
3 Right. So, again, it must come in with the law and sorry that
4 we provide a state.

5 THE COURT: But under what you just said, there's no
6 meaning to what it is. Well, I mean, the whole purpose of this
7 is the City's argument in their reply to the reply is that Ms.
8 Haskell was wrong and these documents proved that Ms. Haskell
9 was wrong. So, you can't just sit there and say, "Well, you
10 have to let the documents in but you don't really have to look
11 at them or pay attention to them."

12 MR. HALL: Your Honor, the argument is this: That
13 what was wrong in that form. The argument is that the Court's
14 judgment cannot be upheld because permissible evidence is the
15 basis of that. That's the 52/59E motion spoke of that. All
16 right. So, when a assessor -- excuse me, [indiscernible]
17 includes business income and, or sales incomes. The law
18 forbids it, straight out, flat out.

19 THE COURT: Yeah. I don't think they said that in
20 their original 59E motion. They said, she didn't know which
21 way the traffic turn was, which she admitted to on the witness
22 stand.

23 MR. HALL: Your Honor, we set forth in the motion in
24 detail how that all closed the evidence.

25 THE COURT: You set forth in the reply to the

1 Plaintiff's reply to the 59E motion.

2 MR. HALL: Your Honor, again, respectfully, I don't
3 think that's exactly the sequence but here's the point.

4 THE COURT: I'm pretty sure it is. Okay. You know
5 when the last time I read this many documents was? Okay. I
6 read the City's original reply about three hours ago. Let me
7 go find it.

8 MR. HALL: The City's the original reply -- excuse
9 me. The 52 --

10 THE COURT: The original 52/59E motion filed by the
11 City on August the 7th of 2025.

12 MR. HALL: It speaks, Your Honor, to the methodology
13 and the use of business income of profits and profitability.
14 It speaks to those issues that's detailed in more detail in the
15 reply it speaks to me.

16 THE COURT: That's not what it says. I'm reading it.
17 Here's what it says. Paragraph M, Page 12 of 17 City's reply
18 City's motion to reconsider filed August the 7th of 2025. Ms.
19 Haskell admitted to various discrepancies in her valuation,
20 namely access to the property, which would've affected her
21 valuation. She made no adjustments in her valuation for the
22 lack of access to the Constan property.

23 In her report, she opined that access to the
24 comparables was equal to the Constan property. Ms. Haskell's
25 valuation was based on the assumption that traffic could enter

1 the Constan property from either direction, turning left or
2 right from Gervais Street.

3 This was flatly incorrect but Ms. Haskell refused to
4 make any adjustments for this difference. Ms. Haskell also
5 testified to the different and inconsistent ways she valued the
6 canopies on various comparable sales. These inconsistencies
7 led to questions about the valuation from a pricing standpoint.
8 And by the way, we reserve the right to make any arguments in
9 the future at any point in time we ever feel like it. That's
10 what it says about Ms. Haskell in the City's original motion to
11 reconsider. It does not say anything about real estate taxes,
12 real estate documents. The evaluation was completely and
13 totally done wrong. She used the wrong type of business
14 information or anything else.

15 MR. HALL: Your Honor, I didn't come -- appear to
16 make -- argue the merits of that motion because the Court's
17 already ruled it.

18 THE COURT: Right. But what I'm saying is the time
19 to make all these arguments was not 60 days after the trial was
20 over.

21 MR. HALL: It -- your Honor --

22 THE COURT: What's the purpose of the 10-day rule if
23 under the City's theory, they can submit whatever they want to,
24 whenever they want to, and everybody's got to take it.

25 MR. HALL: Your Honor, our position is that City's

1 52/59E motion spoke of this issue sufficiently.

2 THE COURT: Okay.

3 MR. HALL: Now, I know, your Honor disagrees with
4 that. Our position is that the City's motion spoke to that
5 sufficiently and can reply in support of the same motion just
6 further adds to it. Okay. Now, again, the record is there.
7 The review court will have an opportunity to determine on what
8 they think the record says. All right. I did feel prepared to
9 argue that with you today because we requested a hearing on
10 that issue and we didn't have the opportunity.

11 THE COURT: Well, and you -- we briefed it. I mean,
12 I got more paper up here than I've seen in a long time. Okay.
13 So, I mean, it's been briefed, it's been read. Both sides have
14 spent hundreds, and hundreds, and hundreds, maybe thousands of
15 dollars briefing post-trial issues. Okay. So, it was briefed.
16 It was -- I mean, I didn't need to have a hearing about it --
17 I mean, I -- and just the -- but so, your argument is I should
18 let all the tax records in as part of the record in the case,
19 even though I don't have to make any analysis of them?

20 MR. HALL: Your Honor, our position of that statement
21 is required that they be admitted. Yes.

22 THE COURT: Okay. All right. And would the
23 Plaintiff like to respond to that?

24 MR. HAND: Just briefly, your Honor -- I mean, the --
25 I think, your Honor hit the nail on the head. If they wanted

1 these records included in the Court's record, it was
2 incompetent upon them to file a motion under Rule 52B within 10
3 days. It says: "upon motion of a party not later than 10 days,
4 receive a written notice or entry of judgment. The Court may
5 amend these findings." The -- asking the Court to take
6 judicial notice of documents that weren't even introduced at
7 trial is core of asking the Court to amend this finding -- I
8 mean, for what other purpose? Are they asking that these
9 documents be included? The Court's absolutely correct. The
10 Rule 52 motion that they filed on August 7th, did not include
11 that request anywhere. It didn't ask the Court to take
12 judicial notice of anything.

13 THE COURT: I don't think the City knew about those
14 documents on August the 7th of 2025.

15 MR. HAND: Well, your Honor. Right. The time stamp,
16 not the time stamp.

17 THE COURT: But they don't even have the documents.
18 The time stamp on the certified records is September 2nd,
19 September 3rd, September 4th, 2025. I don't even think the
20 City knew about those documents before the 10 days expired.

21 MR. HAND: I think that's right, your Honor and we
22 certainly didn't either. And they were never offered the trial
23 -- Introduced the trial. And so, you know, there's been a lot
24 of talk about Rule 201 and it being mandatory. What Rule 201
25 applies to is taking judicial notice of judicative facts.

1 Well, what are the facts -- I mean, they -- they've submitted,
2 I think 57 pages of documents they want the Court to take
3 judicial notice of. But why -- I mean, for what purpose?

4 If you read the Rule 201 -- I mean, it does say, you
5 know, judicial notice may be taken at any stage of the
6 proceeding. But that also says, you know, during the next
7 subpar, the Court shall instruct the jury to accept that's
8 conclusive any fact judicial notice. What's the point of
9 taking judicial notice of an adjudicate fact after the case has
10 been adjudicated? I mean, that's the whole point. And, your
11 Honor is also absolutely correct if the Court had taken
12 judicial notice of these documents after the fact we lack the
13 ability to respond to them -- I mean, certainly they -- these
14 are basically tax appraisals. We had a licensed real estate
15 appraiser here. They could have put these documents in front
16 of our licensed real estate appraiser and said, "What do you
17 think about this?"

18 And then, she could have explained some of what, your
19 Honor was getting into that is a tax appraisal. Do appraisers
20 routinely disregard these things when they're doing an
21 evaluation of real property, and it would've had no bearing on
22 her analysis. So, I don't understand the purpose for which
23 these documents are being offered. But the other thing too and
24 the Courts have recognized that, you know, despite the language
25 of the rule that says judicial notice may be taken in time side

1 of the case from the fiscal Court of Appeals explaining that --
2 well, that's not exactly right -- I mean, there are some
3 parameters on this, especially after trial. If you're forced
4 into taking judicial notice of something after trial, it almost
5 necessarily prejudices the party. So, if the Court's going to
6 do that, we need some really good reason to do it. And
7 certainly, your Honor, there's none of that present here.

8 We would argue that if judicial notice was taken, it
9 would prejudice us because we wouldn't have the ability to
10 respond to that. We don't have the ability to test the
11 accuracy of that information. What they really want -- the
12 facts they really want out of those documents are those values.
13 We put a witness up here to testify at length about how she
14 reached a value termination for this property and the
15 comparable sales that she relied on. They would like to just
16 [indiscernible] these values into the record without any
17 supporting testimony whatsoever -- I mean, that kind of
18 testimony has to be established either by the landowner or by
19 expert testimony. And that's -- it's not supported that the
20 records the City seeks to introduce aren't supported by any of
21 that because the trial [indiscernible]. I know this in our
22 briefing too, your Honor, to highlight the untimeliness of
23 this. A couple of those records were certified by Fred Descy
24 [phonetic], who's the head of the Richland County Surveyors --
25 excuse me, the Richland County assessors department. He was an

1 extra witness in this case. And they did call -- I mean, that
2 would've been a great time if they wanted to get these records
3 in it, they didn't do so.

4 THE COURT: I mean, they wouldn't even have needed
5 them -- I mean, if they had had the records prior to the trial,
6 and had the certification sheet on the front of them, they
7 could have used those records to cross-examine Ms. Haskell.
8 They could have used that -- those records in cross-examining
9 Mr. Smith. They could have used those records on their own
10 witness -- I think her name was Ms. Keys [phonetic] -- I mean,
11 wasn't the woman from Lexington named Ms. Keys? Okay. They
12 could have used them in putting up Ms. Keys. Ms. Keys could
13 have gotten up there and explained to everybody why in South
14 Carolina, the real estate, the tax assessor's value, and the
15 fair market value of the property are usually not exactly the
16 same -- I mean, but I don't know that we really need an expert
17 to know that -- I mean, pretty much common sense. Right. But
18 -- okay.

19 MR. HAND: Thanks, your Honor.

20 THE COURT: Okay. So, Mr. Hall, you're asking me to
21 amend my motion to reconsider to state that I have taken
22 judicial notice of these documents; is that correct?

23 MR. HAND: We are attesting the Court to take
24 judicial notice of the documents.

25 THE COURT: Okay. All right. Understood. Okay.

1 All right. So, that's Number One out of the way. Okay.

2 MR. PAUL: Your Honor, may I speak briefly?

3 THE COURT: Yes.

4 MR. PAUL: I do tell to note this motion is the
5 latest in a series of efforts on the part of the City to ignore
6 the law, and now Mr. Hall is new to this game. We were hoping
7 that he would --

8 THE COURT: He's new to this case, he's not new to
9 this game.

10 MR. PAUL: This case -- well, this case --

11 THE COURT: He's new to this litigation.

12 MR. PAUL: To this litigation.

13 THE COURT: Correct.

14 MR. PAUL: So, he was not here for the frustrating
15 process we went through prior to trial and during trial. But I
16 want to remind the Court of this, as you consider the City's
17 position on these issues. This case went to trial because this
18 City failed. When I say, "The City," these are city -- the
19 City officials fail to read the 1901 Howard deed which was --
20 gave the City property south of Santa Street, this property
21 north of Santa Street.

22 So, either somebody in the City or city attorney's
23 office didn't know the difference between north and south, or
24 they didn't read the deed but that is what they relied on to
25 tear down our wall. They failed to look at Chip Smith's permit

1 application, which had a copy of the lease from Norfolk
2 Southern, giving him the right to build the wall on their
3 property.

4 They insisted the property was theirs based on that
5 deed. They then failed to call Norfolk Southern and say, "Do
6 you own that property? We think we own it." And Norfolk
7 Southern would've shown them an 1875B that conveyed that
8 property to them. They failed to -- we had a -- an engineer
9 proposed to putting a hole in the wall, which would mitigate
10 damage. Never even looked at it, never responded.

11 They ignored a Norfolk Southern police officer who
12 told the City the day they tore it down, "You don't own this
13 property, we do." You testified if that had been a private
14 individual rather than -- the City would've arrested them.
15 After receiving the copy of the Norfolk Southern deed and
16 admitting the L1 deed does not apply, they came up with a new
17 argument that they'd always owned this property, it was
18 conveyed to them based on some 1785 map.

19 Now, they come to that position to just before trial,
20 like a week before trial, and then admitted they never owned
21 the property. And the reason, your Honor, a couple mentioned a
22 couple other things. The reason I say that is this is another
23 display of this motion, another effort. We have to waste
24 considerable time responding to specious arguments.

25 And again, as you said, thousands of dollars are

1 being spent, because they would not concede that property was
2 not theirs. Before Mr. Hand here went down to the State
3 archives and went through documents from the early 18s, the
4 late 1800s, to find out was there any validity to their claim.
5 So, when we talk about attorneys' fees in a while, understand
6 this kind of specious conduct is what's going to -- what should
7 cost the City hundreds of thousands of dollars in attorney's
8 fees.

9 When we took their appraisal depositions they did not
10 -- those experts did not even know they'd been named as
11 experts. They didn't know what the case was about, what the
12 taking was, when it happened, or what an inverse condemnation
13 case was. A week before trial, they produced a new appraisal
14 still did not have a before and after analysis.

15 The City never offered its own valuation of the
16 damages in this case. And when the Court asked the City why it
17 did not get an appraisal, if you -- your Honor remembers this.
18 The Counsel for the City stood up and said, "That's my fault."
19 Well, as we deal with these motions today, I got to tell you
20 the next motion you made here is the motion to continue or not
21 deal with the attorney's fees today.

22 Everything is delay, everything is obstruction,
23 everything is out of state. The real issues in this case, I
24 would've expected better from this municipality to be frank
25 with you. And I may say to this Court, I expect better from

1 either do or don't expect better from him but he's representing
2 a client. These are not positions, he is taking the positions
3 his client has taken. So, in summary, I would say, can we just
4 make this the final hearing we have in this case, please.
5 Thank you.

6 THE COURT: Okay. All right. You do want -- you
7 don't have to respond to that if you don't want to but you're
8 welcome to if you would like to.

9 MR. HALL: It's quite a speech. Listen, Ms.
10 [indiscernible] we can try out the City. [Indiscernible] they
11 come [indiscernible] and I don't want to litigate issues and
12 you just got a story of litigation. All right. None of what
13 you just said has anything to do with the judicial notice
14 associated.

15 THE COURT: I agree.

16 MR. HALL: He did this, he didn't tell you this. The
17 report, just the basis of the Court's order, they've got a 38
18 [indiscernible] encroachment on the piece of property. Did she
19 account for that? No. It's full of holes. It is absolutely
20 impermissible evidence. The [indiscernible] Court says when
21 you point a valuation by including impermissible business
22 numbers, which her own report says are in there, it's gone.
23 When Rule 52 and Rule 59 is [indiscernible], it gives the Court
24 opportunity to say, "Wait a second, let's look at that." And
25 it's an even better trial setting because there's no chart

1 that's been -- that's gone. So, this notion that always it's
2 been last -- last like it be last year nonsense. The objective
3 should be to get it right, not a [indiscernible]. And that's
4 what I hear from my friends here at Memphis side. They are my
5 friends. It serves no constructive parts to come in here and
6 lecture the City on its behavior. Now, look, I don't use
7 buttons that's inside to push but it accomplishes nothing.

8 MR. PAUL: It's not to sign to push it your button.
9 your Honor listen to the perspective --

10 THE COURT: Okay. Time out. Stop.

11 MR. PAUL: Yes.

12 THE COURT: I'm in charge.

13 MR. PAUL: No problem.

14 THE COURT: Everybody listen. Okay. We're all big
15 boys, okay? We've all done this a long time. We've all also
16 known each other for a long time. Okay. So, let's take a deep
17 breath. Okay. I lived through the trial, okay. He didn't say
18 anything in there that I haven't heard him say before. Okay.
19 And I understand that the City has issues with what happened
20 and how it happened. I got that memo. Okay. I promise you; I
21 know some judges tell you they read stuff. Okay. Like I,
22 literally, in -- between me and the law clerk, we've probably
23 spent 15 to 20 hours processing through every single thing that
24 was filed after I issued my order. Okay.

25 I remember the trial very well. Okay. I was

1 present, I was engaged, I was one of the witnesses. I was
2 asking questions because I needed some more information. So, I
3 wasn't, you know, asleep at the wheel. So, I remember. So, we
4 don't need to rehash all that stuff. Okay. I -- and we're all
5 really good lawyers. Okay. And so, let's just stay there.
6 Okay. So, let's -- we're going to skip on, okay, to the motion
7 to defer. I think the motion is to defer an attorney's fees
8 award. So, let's talk about that before we get into the nuts
9 and bolts of the attorney's fees and what the options are, if
10 any. So, would you please move on to that, Mr. Hall? Okay.
11 Thank you.

12 MR. HALL: You are only entitled to the attorney fees
13 award if the other party and the amount is fixed. Okay. You
14 got to prevail; you've got a judgment on a fixed amount. In a
15 case like this, and it is in a lot of cases, not all cases.
16 The extent of success when something goes on appeal is
17 uncertain. It's up in the air. All right. So, the question
18 is if file -- excuse me, do you make a ruling appeal the case
19 called on appeal. If anything changes in that case on appeal,
20 you've got to come back and read the attorney fees all over
21 because degree of success and amount matter. All right. So,
22 as we set forth in the brief, we say, "Look, it makes more
23 sense if a firm or if the Court [indiscernible] stay
24 enforcement of that." Let the appellate process run its
25 course.

1 And at that point, you've got a fixed set of
2 variables, and you make it feel make it expense or not. Now,
3 here, the argument in response has not been -- that doesn't
4 make sense under the law, or law that, or that's not the
5 argument. The argument is: I'm entitled to my money, I don't
6 want I money. Okay. That's not the law speaks to law speaks
7 to getting it right the first time efficiently. So, you're
8 going to go back and do it again. With great respect for
9 everyone here, I went here for the trial, I read the transcript
10 every day, parts it in many -- in one time.

11 We with -- again great respect, believe that the
12 judgment of this case will be reversed by the appellate court.
13 That's certainly our objective, to decide if the award today
14 when you have an account issue going up, doesn't make sense
15 because we get to do it twice if we have any success on our
16 people. So, again, the Court's this is your Honor's discretion
17 you get to do what you want. Oppositely, it's not a -- you're
18 not compelled to do one or the other.

19 THE COURT: Right.

20 MR. HAND: What we say to the Court respectfully is,
21 look, it makes a whole lot more sense to even prefer the rule
22 [indiscernible] wait until we know what all the variables all
23 let see if the Court does, let's see if they say the judgment
24 here includes business incomes legit. The [indiscernible]
25 decision that we cite says, "Well, when it's infected with

1 business income, it poisons, and it's coming."

2 Appellate court can't recalculate you to go back and
3 you start over, which is why we filed the 52 and 59 motion, so
4 that can be cured here. That has been foreclosed. So, they
5 come up, and the appeal court is going to decide what to do,
6 all right. If they see it our way we're going to come back and
7 do it again. If they see it Doon's way, then we won't come
8 back and do it again, but there may be modification.

9 THE COURT: "Y'all" you mean the Plaintiff's way?

10 MR. HAND: Yes, sir.

11 THE COURT: Okay.

12 MR. HALL: [Indiscernible] it's my friend.

13 THE COURT: Sometimes the record doesn't define what
14 -- I knew what you meant by y'all, but by y'all you mean the
15 Plaintiff's way.

16 MR. HALL: I mean, the Plaintiff's. Anybody else
17 sitting this book? Okay, my friends here on lab and again,
18 they are my friends and the clients who are all are also
19 limits. So, that's our, you know, recognition alternative. If
20 you say, "Look, I hear that I want to go ahead and hear the
21 motions on the attorney. I want to figure out what I think I
22 know how to be." Then we say, "Okay, do that but stay
23 enforcement that so that you have the same protections."
24 Otherwise, you end up having to do it twice if you have any
25 chance that goes on above, that's our position, our

1 recognition.

2 THE COURT: Okay. All right. And Mr. Hand?

3 MR. HAND: Your Honor, I struggle with the statute
4 itself. I think Mr. Hall said something like it has to be a
5 fixed amount, but what the statute says is where an inverse
6 condemnation proceeding is instituted by the owner of a right
7 side or interest real property because of the use of this
8 property project, the Court and during the judgment for the
9 Plaintiff, and the proceeding and award compensation for taking
10 a property. Self-attorney, an award, or as a -- or some that
11 we court reimbursement for reasonable costs for disbursements
12 expenses including reasonable [indiscernible] fees actually
13 proceeding.

14 We're going to be talking about statute but what this
15 statute says, your Honor, is that we get our attorneys' fees if
16 two things happen: One, we get a judgment, so, finding
17 [indiscernible] and two, any amount compensations awarded
18 toward the Plaintiff that doesn't questionably happen
19 [indiscernible]. And when that happens, that the statute says
20 that the addition of the fees and costs must be made as part of
21 [indiscernible]. The statute clearly [indiscernible] this
22 determination happen at the trial. [Indiscernible] that makes
23 perfect sense.

24 [Indiscernible] I heard Mr. Paul's [phonetic]
25 argument, I don't see an issue warranting any sort of certainly

1 not personal significant and I'm very confident and was that
2 happened. Yeah. The -- for the purposes suggest we need to
3 sit here, forget the court of appeal is going to do -- they're
4 going to do what we can do. This Court's role is simply to
5 make the only way to what? The only way that we would not be
6 entitled to the truth is if the Court of Appeal [indiscernible]
7 or we were entitled zero compensation the statute mandate.

8 I would submit to the Court there's [indiscernible]
9 and maybe [indiscernible] results, but I just -- I don't see
10 that [indiscernible] I don't see the basis. So, given that
11 there's just no to reason issue the effect [indiscernible]
12 because fees to we would get, so, if we come back game have a
13 [indiscernible] the exact same numbers, figures, data,
14 [indiscernible] right? And then, they [indiscernible] the only
15 difference that makes two important opportunities and what
16 makes [indiscernible]. The interest calculated in the Court
17 fees interest on that is up to around \$66,000 [indiscernible]
18 two years. That's significant, it's not bad. So, that's the
19 reason [indiscernible].

20 THE COURT: Okay. Would you like to reply to that
21 part of it, Mr. Hall?

22 MR. HALL: [Indiscernible] today, you [indiscernible]
23 they're arguing [indiscernible].

24 MR. PAUL: Your Honor, I object to this line of -- I
25 mean, this -- it draws out the fact. Again, none of this was

1 done at the trial level. None of this was done on the motion
2 to reconsider, and he continuing to argue while your decision
3 is based on faulty evidence which was never introduced or
4 argued either at trial or in the motion to reconsider. Now, I
5 know he wasn't here and he wants to relitigate. He saw some
6 things he'd rather do but I'd object to that.

7 THE COURT: Okay. Your motion is noted for the
8 record, you may continue Mr. Hall.

9 MR. HALL: [Indiscernible] speaking objection
10 [indiscernible]

11 THE COURT: Your thought process is there is a path
12 that a court -- an appellate court could zero it out.

13 MR. HALL: Let's get it --

14 THE COURT: Right.

15 MR. HALL: Let me explain this way, if I might, just
16 briefly. What we say -- negligence, duty causation,
17 negligence, right?

18 THE COURT: Okay.

19 MR. HALL: If you don't put in evidence that
20 satisfies all those, you don't get anything right here.
21 Period. When you have faulty evidence that supports your
22 client, what you get, you can write against you. You don't
23 even get a do-over. You don't even get a do over. So, when
24 you have for -- I don't mean that -- I mean, a faulty report
25 under the law -- Position on our household, look they didn't

1 fulfill the hurt. This evidence is impermissibly permitted.
2 Now, it doesn't matter about all the arguments, they didn't say
3 this. I can argue with this in the gatekeeping function of
4 court covers there, whether anything's said or not, but we're
5 saying it's not, evidence can come in because it's
6 impermissible, it can.

7 THE COURT: Okay. Let's move that. I got that.
8 Walk me down this road. Let's -- now listen. Some people
9 would say, "Well, he's being snippy," or "He's being okay."
10 Like, y'all are all really good lawyers, and that's why I'm
11 asking real questions, right? We're not dealing with a bunch
12 of people right out of law school. So, when I ask these
13 questions, I'm not trying to be snippy or I'm trying to tell
14 you this is what's going on in my mind. Help me walk this dog
15 to the end of the street because this is a question I have.
16 Okay.

17 So, if I go your route and say I'm going to defer
18 ruling on the attorney's fees whatever, and we can talk about
19 those in a minute. Okay. So, what happens if -- let's walk
20 the dog to the end of the street. So, you go up on appeal, and
21 at the end of the day, of the appellate road wherever or
22 whatever that is, my decision stands. Where are -- and then we
23 come back for another hearing on attorneys' fees, and then you
24 get to appeal all those issues with the attorney's fees. Is
25 that how you envision that?

1 MR. HALL: Your Honor, first of all, they're
2 two separate judgments. They're not the civil judgment,
3 they're two separate judgements.

4 THE COURT: Okay.

5 MR. HALL: Three is the collateral primary.

6 THE COURT: Right.

7 MR. HALL: Two different things. And the scenario
8 that you're going through, let's say it goes up on appeal.
9 Let's say you're making a warrant today.

10 THE COURT: Okay.

11 MR. HALL: It goes up on appeal, the Court does
12 something.

13 THE COURT: Okay.

14 MR. HALL: We have some success of some kind, right?
15 It comes back to you to deal with the merits, whatever limit
16 you're going to deal with. Keep in mind, there never will have
17 been entitlement, and even at that moment, there never was an
18 entitlement to the attorney's fees. The entitlement attaches
19 and the judgment is entered and upheld, okay? So, it would go
20 back up that process. Let's go to the second. Let's see
21 confirm or you stay a little.

22 THE COURT: Okay.

23 MR. HALL: So, said -- let's not give a dad, I'm
24 going to do what Mr. Paul's asking, or I'm going to come up
25 with a number, but I'm just going to stay in enforcement

1 number.

2 THE COURT: Okay.

3 MR. HALL: It goes up if everything -- if they want
4 everything.

5 THE COURT: Right.

6 MR. HALL: Right. Is it [indiscernible] 104? Yes.

7 But here's the thing, and here's where -- here's where I
8 [indiscernible] you're not entitled to the 104, you're not
9 entitled to it. But --

10 THE COURT: My question is: So, we come back and do
11 another hearing on the attorney's fees and then that's
12 appealable?

13 MR. HALL: It -- yes. But look, you've got
14 one appealable there. It's like two separate appealable
15 borders going up the first time. That's why I recite the whole
16 case lawyer there. Courts do this -- this isn't a crazy guy.

17 THE COURT: That's not how I normally do it, in FOIA
18 cases. Normally in FOIA cases, I assess the attorney's fees on
19 the spot and then when it gets affirmed on appeal add, you
20 know, all the interest to it, and all the additional appeal
21 time.

22 MR. HALL: We don't cite the cases here and
23 [indiscernible] jurisdictions judge, but courts even will say,
24 "Look, I'm going to make the award but I'm going to require
25 that to be separate." Okay? Because you get caught with back

1 problems. I don't think we have that here in all likelihood.
2 But you don't. That's why courts say, "Look, we're going to de
3 firmly on it. Let it all check out and make it all work."
4 Now, Andrew says -- [indiscernible] says, "Well, look, you
5 know, 626 times 11." 5 compound is about the math
6 [indiscernible].

7 THE COURT: Right. Whatever it is, right.

8 MR. HALL: There's not an injustice or unfairness
9 when you're not entitled to it until the -- or until it's
10 validated by the -- that the appellate courts to not get it
11 today. Okay. That's the point, that's where we're --

12 THE COURT: I got you. I'm -- I understand that
13 logic that you're espousing, it's not the final judgment, and
14 you don't -- you're not, you know, "The entitlement," for lack
15 of a better term comes at the final say-so.

16 MR. HALL: Majority.

17 THE COURT: Right. I -- yeah. I understand that.

18 MR. HALL: Under the law --

19 THE COURT: Statutorily.

20 MR. HALL: Statutorily.

21 THE COURT: Yes, "Statutorily" may be a better word
22 than entitled but --

23 MR. HALL: Your Honor, I think you've got this.

24 THE COURT: Okay.

25 MR. HALL: Questions [indiscernible].

1 THE COURT: No. And I mean I'm -- I think you all
2 know me well enough. I'm asking questions because these are
3 questions that I have in my mind coming into it, and y'all are
4 good enough to where you -- y'all do appellate work, and all
5 these other things with appellate judges peppering you.

6 So, I'm not trying to be snippy or short with
7 anybody. I just -- these are questions that I have in my mind
8 as I process through all the things that you've submitted, and
9 so, thank you for answering my questions. I'm not trying to be
10 short with anybody. I promise, even though my wife says
11 sometimes I can be a little short with her, so, maybe it is
12 real. Okay. All right. I'm kidding. All right. And do you
13 want to respond to anything -- any of that, Mr. Hand? You
14 don't need to but you're welcome to if you want to.

15 MR. HAND: The only thing I would say, Your Honor, I
16 mean, another reason for, I think, your Honor touched on this
17 another reason for -- not placing a lot of stop in this request
18 is this -- it's based on the idea of the Court of Appeals is
19 going to reverse this case. But as the Court's aware of their
20 argument about why it should be reversed was raised for the
21 first time in a reply brief filed long after travel
22 [indiscernible], you know, it's the way that argument is --

23 THE COURT: Okay. All right. Let's move on to the
24 Plaintiff's argument for attorneys' fees, and what attorney's
25 fees you're requesting or not requesting, or let's see how

1 those are defined in the different statutes that are at play,
2 and all those good things that go along with that.

3 MR. HAND: Should be a lot of fun, Judge. So, just
4 for clarification -- we, you know, we were originally
5 requesting, I believe it was \$626,000 in attorney fees. In our
6 reply, following -- reading some of their arguments, we may
7 suggest adjusting the attorney's fees down 10 percent and I'll
8 get to why. So, the amount that we're seeking is what's stated
9 in our reply, it's less than what we put in our petition. So,
10 attorney's fees in the amount of \$463,736.25 cost now \$110,000.
11 39 -- excuse me, \$110,039.16 for a total of \$574,775.41.

12 And let me explain how we got here. So, there's sort
13 of two issues here. There's attorney's fees and there's costs,
14 and so, I'd like to talk about the attorney's fees first.
15 First of all, coming back to the language of the statute which
16 is 28-1130. What the statute says we're entitled to is -- and
17 I know Mr. Hall has likely worked out but something -- we'll
18 opine that the Court or the agency's attorney, reimburse the
19 plan for its reasonable costs disbursements and expenses,
20 including reasonable attorney, appraisal and engineering fees
21 actually incurred because of proceedings. The Court's actually
22 incurred I think where the court ended, your Honor--

23 THE COURT: Yeah.

24 MR. HAND: --I just want to -- I want to say that
25 it's not requesting it from the Court, but I want to say it to

1 give context to our request. The attorneys' fees that Mr.
2 Smith actually incurred are well over \$2.2 million.

3 THE COURT: Because it was on a contingency.

4 MR. HAND: Contingency, that's what it actually cost
5 him.

6 THE COURT: Right.

7 MR. HAND: Now, that's a lot more than what we've
8 asked for, but your Honor, the staffing govern specifically
9 inverse condemnation actions. And so, I would submit the Court
10 just, and the reason I'm doing this is to give context to the
11 reasonableness of the amount that we've asked.

12 THE COURT: I understand.

13 MR. HAND: The -- you know, by saying that we're
14 entitled to receive our fees actually incurred. I think it
15 makes sense because in the context of an inverse condemnation
16 case you've got an illegal take necessarily by the government
17 entity that didn't follow the proceed direct -- didn't follow
18 the law when they did this.

19 And none of this was ever supposed to happen in the
20 first place, that's the idea. And so, the idea that, you know,
21 a Plaintiff in an inverse condemnation case is entitled to his
22 actual fees -- the fees actually incurred -- I think makes a
23 whole lot of sense from a policy perspective and that may well
24 be why the language is in there.

25 Notwithstanding that, your Honor, you know, when we

1 after this verdict came out, we took a look at this issue. We
2 made this to do with something that we thought was really
3 reasonable, which was instead of asking for our fees actually
4 incurred, was to put together all of our time, all of our
5 costs, and all of our expenses, and submit this number to the
6 Court. The Court be the statute still requires that the fees
7 be reasonable, and so, we thought this was a reasonable
8 approach by putting forward that number that was \$626,000.

9 Also, for context, I want to read some language, the
10 Vic case where [indiscernible]. Yes, if you -- where an
11 attorney services and provide your -- determined by the trial
12 of fact and appeal will not prevail the findings of factors
13 supported by any kind. So, the Court's got some wide latitude
14 here in deciding to be reasonable for these -- the -- you saw
15 all of the briefing, the City relies on the Jackson versus
16 Speed factors. The law is pretty clear from the Rebels case,
17 especially that the Court is not required to consider the
18 Jackson factors if they're not committing the statute.

19 THE COURT: Because there's a statutory scheme for
20 attorney's fees.

21 MR. HAND: Precisely. Right. And so, the Court's
22 not required to consider that sentence [indiscernible] but at
23 the end of the day, determination is this reasonable. Broadly,
24 the -- there's a lot of [indiscernible] our fees and
25 [indiscernible]. Broadly, he says that the hour for each fees

1 based on the amount of time that we spent on this case, is too
2 high. I -- it absolutely was too high, but none of that was in
3 fault. Mr. Harley got into this a little bit earlier, tell us
4 a little bit from my perspective.

5 When Mr. Harley and I got involved in this case the
6 case was on inactive status, it got reactivated. We started
7 looking at the case, and we sent a discovery to the city,
8 asking them, you know, tell us why you owned the space of
9 property.

10 They responded with his notes. I read the deed, it
11 said South of [indiscernible] not and it also bar amounts for
12 any land on my railroad. So, I said, "No that doesn't apply to
13 this piece of property clearly." So, I sent a subpoena
14 [indiscernible] tell me why you own them. They send me back in
15 1874, gave our dollars, and a piece of property. We get these
16 documents, and we look at them, and we say, "Okay, that's it."

17 Why did they decide they thought that they property
18 they owned and mistake? They -- and so, what we did was, we
19 took these documents, and we sent them via -- we produced in
20 the City, sent requests to admit. The request to admit was a
21 lot of them, but it basically said, you know on this property,
22 the railroads admit it was lease a bus [indiscernible] taken.

23 From that point on, we were thinking, this case was
24 going to be about damages, and what I got back in response
25 from, your Honor, was this history with pictures about the City

1 of Columbia about, you know, how it was founded, and how it was
2 laid down. And, you know, these claims from the 19th century,
3 and when that happened, your Honor -- I mean, that kind of
4 claim that there wasn't any record title deed or something that
5 we could rely on to verify the City's claims. The only thing
6 that we could do was a whole bunch of work to try to figure out
7 what is their argument.

8 And so, you know, I had to sit through these old
9 records from, like, you know, the early 19th century, mid-late
10 19th century. Had to go to [indiscernible] look at a bunch of
11 old maps, had to drive [indiscernible] Southern guy subpoena
12 power from here, and certainly wasn't going to come to Columbia
13 and [indiscernible] post.

14 So, we had -- the reason Bill Hams was supported was
15 because you've got this sort of, you know, theory to explain
16 the City has -- well, we -- and so, we needed someone who could
17 testify with some authority that's not [indiscernible] works.
18 And you've got all [indiscernible] it shouldn't have been
19 unnecessary. I shouldn't have had to do that, but I did, and I
20 did have to do it because that was the City's claim.

21 Now, as the Court knows, they let that go I think a
22 week or two before trial, but up until that point, it was going
23 to be an issue at trial. And so, we had to get ready for that
24 was -- I'll admit, your Honor, that was a very big chunk of my
25 time in this case. It could have been avoided, it's really

1 something new. I mean, if I were there, I really don't blame
2 Mr. Hall. If I walked in this case and I looked at our fees, I
3 would say, "What?" You know, you'd had 713 hours at an inverse
4 condemnation case. Why didn't you do that? That's why it was
5 a whole bunch of [indiscernible], I think we weren't
6 anticipating that that should have been -- it wasn't -- it
7 would be really something now, if the City comes in and, you
8 know, expresses frustration over this, over something that they
9 say that we should have to do those fees because it's too many
10 [indiscernible].

11 So, that's something that -- and I just want to go
12 through a couple more points. They -- they've already
13 duplicative. We've got multiple people doing the same thing
14 and that shouldn't happen. That's happen we operate as most
15 firms do. I -- you know, junior attorney and a firm. So, if I
16 did the leg work, if the Court looks at my hours, I've got way
17 more hours in this case than anybody else does and also the
18 labor hourly rate. And so, we divided tests that way. Some of
19 the depositions, Mr. Harper being took, and I helped him get
20 ready for those things. That's actually inefficient. It means
21 that the person with the [indiscernible] does the legwork, so,
22 the person need hire to do it, but can do the deposition.

23 Those tasks were -- you know, I looked at -- they got
24 me matrix and, you know, time of our time records, and it says
25 things like, you know, duplicative necessary. That was our

1 look at -- you know, first of all, the attorneys who performed
2 that work weren't part of this case. Whatever happened, I
3 don't say that in Jordan but they just don't have any context
4 from what it was that we were doing. You know, if we're having
5 a meeting and we're collaborating with each other, this is a
6 complex case, a lot of complex issues, that require that kind
7 of cooperation. And so, I really -- I don't think there's kind
8 of duplication that they're talking about.

9 They point out that deposition day to too much time
10 spending that case. Dan Higgin was the [indiscernible] -- I
11 mean, she was the person who went out and down, and made the
12 decision to do that, and made the critical error about, you
13 know, where they were tearing down the wall. And so, you know,
14 that was -- it's -- I would say that's not uncommon at all for
15 that much kind of work -- much work to go into that kind of
16 deposition.

17 So, we just disagree with the [indiscernible]. The
18 issue about GH Smith and our claims, this was an interesting
19 argument. The City -- the way their response from the motion
20 sort of assumed that because we had these other claims, we have
21 these that when we're doing this case --

22 THE COURT: You talking about the trespass and all
23 that stuff?

24 MR. HAND: Trespass and that was discussed.

25 THE COURT: And then there -- and then the

1 contractor, right?

2 MR. HAND: The GH staff.

3 THE COURT: Yeah. Right. Okay. I'm just making
4 sure I'm tracking what you're saying.

5 MR. HAND: Yes, your Honor.

6 THE COURT: Okay.

7 MR. HAND: And we settled with GH Smith, I think
8 before any depositions were taken in this case, or maybe the
9 day the first deposition was taken, member service. So, no
10 depositions were ever taken of GH Smith. So, they've got this
11 sort of assumption that, well, you've got this trespass claim,
12 you've got this negligence claim.

13 If you're working on a case, then logically your work
14 is divided, different claims. That's not true in really
15 [indiscernible]. When we got involved in this case, we -- you
16 know, as we do, in any case, we evaluated to determine what the
17 most meritorious claims, or strategy will be. Claims for, you
18 know, negligence and trespassing. The other claims that we
19 have, perhaps the exceptions to statute for claim, they're all
20 tort claims and they're limited by the Claims Act which cap in
21 about 3000.

22 The inverse condemnation claim is not so okay. So,
23 the very first thing that I think we got in this case was now
24 appraisal. I found Debbie Haskin since she could start working
25 on her appraisal, and working this up is an invoice combination

1 case. They about complain our time records, they can't -- you
2 know, I think they said we had subpar timekeeping because we
3 didn't break out. We were -- when we were working out
4 negligence claims and when we were working on different
5 combinations. Your Honor, the reason our time entries don't
6 reference the claims, it's because we weren't working on --
7 that wasn't what we were focused on.

8 We were focused on the claim that was going to yield
9 the greatest recovery enforcement. As it happens in terms of
10 GH Smith -- I mean, it's sort of the same thing here, GH Smith
11 was always a very secondary Defendant. They weren't the ones
12 who made the decision to go out here -- I mean, if we had taken
13 them to trial [indiscernible] for them because they were --
14 we're just doing what City told us. And that was their -- that
15 was their defense all the time.

16 The reason you don't see GH Smith in a lot of our
17 time entries is because we weren't focused on GH Smith. We
18 didn't spend a lot of time. My point in all this, your Honor,
19 is if you look at our time records, they speak for themselves -
20 - I mean, the fact that there -- those other claims are not
21 mentioned, and GH Smith is not mentioned is because we didn't
22 spend a great deal of time, very much time at all, frankly, on
23 either of those things.

24 I read their argument, I heard it. And so, what I
25 had is I went through the time entries, okay? Which one of

1 these, you know, was legitimately chased at [indiscernible].
2 For our -- the cases are stored, if you add up all the time
3 entries, they even mentioned GH Smith, and they're mixed number
4 time entries that don't total amount is \$3,300. Before this
5 gets on active -- in active status.

6 So, this would've been the time when Mr. Moore's firm
7 was drafting pleading claims, you know, suing GH Smith, you
8 know, this motion Smith. The entirety of those attorney's fees
9 is 8,950. Now, you that 13 grand, and I said in our response -
10 - in our reply, the maximum thousand, we said \$15,000.

11 But in order to get around this, maybe get around, is
12 not the right for resolve this. What we proposed was just to
13 reduce our attorney's fees by 10 percent, that's 50,000. That
14 is so much more time value than what -- and what we would've
15 spent, we did spend, rather, on any of those other claims that
16 GH Smith we proposed, that's a reasonable resolution.

17 This issue we're taking a big cut that way more than
18 I think is justified and that's why we do that. The last thing
19 will talk about is your -- this thing about the statute, you
20 know, when we filed our fee petition, we did cite both of the
21 condemnation statutes [indiscernible]. You know, I always
22 thought the condemnation statute was helpful for context.
23 There's a -- it's got this particular procedure in it that it
24 gets followed. Yeah. Did and -- but, of course, you know, the
25 Franklin case happened, the Franklin case provided more

1 appropriate statute was only been talking 28-11-30.

2 And I read this fresh in our mind, the attorneys'
3 [indiscernible] fees were entitled to is reasonable cost
4 disbursements and expenses including the reasonable attorney
5 domain procedure act. I just want to compare these two
6 statutes. It defines litigation expenses as the reason
7 [indiscernible] necessarily after service of the condemnation
8 notice, including attorney's fees, hearing fees, deposition
9 costs, and expert witness fees. Necessary preparation of
10 participation and condemnation actions, and the actual cost of
11 attorney fees or jury premises. Your Honor, the definition
12 [indiscernible] specific but if you read the statutes together,
13 they'll marketable similar and I think the key language here is
14 "Reasonable cost disbursement and expenses."

15 Actually, that's what we put on the fee. I can
16 represent to the Court that everything that's contained in our
17 fee deposition has cost us actually inferred because of this
18 state. The reason I'm [indiscernible] argument, the thing I
19 think really pushes us over the edge is, you know, giving us
20 all -- you know, these two statutes, and you look at the case,
21 the reason the Court of Appeals -- the Franklin Case decided
22 this other Statute 28-11-30 is the applicable statute, is
23 because applying the prevailing party definition in Section 28-
24 2-5 to inverse place a heavier burden only in inverse
25 condemnation cases, the result [indiscernible] our legislature.

1 So, the Court becomes recognizing -- look, there's no
2 way a legislator could commit to put inverse condemnation of
3 plaintiffs at a disadvantage to condemnation, if the City's
4 free about their interpretation. What that means is that if
5 the government follows the law and files a condemnation action,
6 follows up the procedure, follows the procedure act exactly
7 what it's supposed to do.

8 Deposit the amount of just compensation before it
9 gets [indiscernible] has a 30-day negotiation period with all
10 those things that are supposed to win, there's all those things
11 and you name -- you get your returns fees, then you get this
12 full deposition costs, other exports, the other things that
13 they object to.

14 But if the government doesn't do that -- if the
15 government breaks the law [indiscernible] it doesn't follow any
16 of those procedures, you don't get asked, that's the argument.
17 It makes no sense. And, you know, these statutes, they're 28.
18 They were times and they made this argument about to exclude
19 one excluded 20 [indiscernible] passed in 1967. So, these
20 statutes, they were right next to this [indiscernible]. There
21 are statutes contained in different chapters. Title 28 and
22 make [indiscernible] part the fees necessary [indiscernible].

23 THE COURT: All right. Thank you, Mr. Hand. Yes,
24 sir?

25 MR. HALL: [Indiscernible] talked about fees, right?

1 Okay. So, [indiscernible] I saw two cases where I had fees at
2 issue. And we all know we get a haircut on fees, right? A
3 couple section 1983 cases, multiple calls of action
4 [indiscernible], we all work. The [indiscernible], everything
5 I wanted [indiscernible] multiple, bring a case
6 [indiscernible], trial [indiscernible], a portion of her effort
7 is discount [indiscernible] courts what that's supposed to be,
8 right? But again, that's not [indiscernible]. But the
9 [indiscernible], real there -- the case is set, the Court has
10 [indiscernible], again, I -- yeah. Okay. So, again, the
11 reference is to contingencies about somehow setting a baseline
12 DC or misplace. Now, what you -- that an explanation starting
13 out with the long statute in your mission, realize
14 [indiscernible] kind of so [indiscernible], which is some
15 [indiscernible], it's there now applications. It's that aren't
16 [indiscernible], I suspect these insurance at one day --

17 MR. HAND: They represent an insurance company, never
18 will.

19 MR. HALL: Good [indiscernible].

20 MR. HAND: Or challenged -- same man.

21 THE COURT: Efficiency of the bill, right?

22 MR. HALL: It's okay. [Indiscernible] respectful of
23 [indiscernible] department. We said, what's his
24 [indiscernible], three people be at this deposition? So,
25 reasonable discovery [indiscernible], should apply object

1 factors, right? But you're not prepared.

2 THE COURT: Well, I think we -- you apply them so
3 much as it's impossible for them not to be in my mind as I do a
4 reasonableness test, and I understand that it's not mandatory
5 but we do it in so many cases, and they argued to you so many
6 times, it's almost impossible for me to start processing
7 through reasonableness without thinking about those factors,
8 so.

9 MR. HALL: Right -- I mean, we must the state.
10 Obviously, Jackson, I present it to capture that. Again, the
11 point is, I think we're all saying the same thing here is
12 there's a reasonable overlay, but that's precisely Jackson or
13 something different.

14 THE COURT: Sure.

15 MR. HALL: Of course, experience. There's a sequence
16 there. You also have the broadly-against side that says the
17 fees got more degrees of success. Now, look, degree to success
18 here if you look at the final numbers is a smashing success,
19 right? Well, hey, that's not the key measure. Key measure is
20 caused to actually serve so forth. And again, we all this
21 large frustration of multiple claims prevailing on one get what
22 you want and why should that have an impact on my fee. We also
23 all know that it does, and brought this for that proposition.

24 So, Judge, in the briefing, we go through detail and
25 set out how we come up with the numbers we did. Okay? And we

1 kept coming back to that \$212,000 number and said that, "Look,
2 anything north of that we would respectfully say is not
3 reasonable and not supported by the statute."

4 A couple of other things I would point out. I wanted
5 to like -- what do fees look like in that -- how they contested
6 condemnation status when you have a fight or something bad that
7 goes up on appeal that comes out. What does that look like?
8 What do the numbers look like? And, you know, I talked to
9 buddies at the bar, I talked to people who -- that type of
10 work, I went and tried to find cases.

11 Just look at field more cases that are complex and
12 not really simple ones, and see what you come up with. And we
13 included in our briefing chart, your Honor, with the ones we
14 can find. We've got Vic and Sunset and [indiscernible] and
15 several others. All -- sorry for 59E, your Honor, we cite
16 those cases, and your Honor obviously can look at those cases,
17 and say are they relevant policies. However, they like similar
18 -- however you slice that, the numbers are just dramatically
19 different. You better raise there of 44 to 182,000. You don't
20 have anything approach 600,000, or half a million dollars or
21 574K, or I guess actually 463 -- is this the 10 percent
22 discount?

23 THE COURT: Yeah.

24 MR. HALL: So ...

25 THE COURT: None of those cases were also from this

1 decade.

2 MR. HALL: Well, look --

3 THE COURT: Right.

4 MR. HALL: -- [indiscernible] math calculator says --

5 THE COURT: Right.

6 MR. HALL: -- and this is the math.

7 THE COURT: Right. But I mean, some of those cases
8 are from a long time ago when legal fees were a lot different.

9 MR. HALL: Yeah. That's true, your Honor. But some
10 of them do list hours. Okay. So, you can compare a resource
11 that in that way. Okay. So, look, I'm not here to beat up on
12 my breath on this, and obviously there's an enormous amount of
13 discretion here for your Honor's judgment, right? But that is
14 the sequence. What we provided for the briefs is that
15 analytical sequence described by the statute, and we set forth
16 [indiscernible] says that we believe are appropriate based on
17 that. Some of them, again, I say, respectfully, but the
18 exhaustively I know have the statute doesn't list it, don't get
19 it. Okay. Now, you may want it -- you may --

20 THE COURT: The statute doesn't say the list is
21 exhaustive, correct? It doesn't say this list is exhaustive,
22 and you can't have anything but what's on this list.

23 MR. HALL: It doesn't say eliminate exclusively in
24 the following.

25 THE COURT: Right.

1 MR. HALL: But we all -- and it's not somebody either
2 caveman lawyer reference to when you list them in one place and
3 you don't list them in another can sue it since the general
4 saying they didn't say, anything if --

5 THE COURT: Well, that's a big assumption.

6 MR. HALL: Well, it may be a big assumption, but
7 everybody has [indiscernible] that the Supreme Court applied.

8 THE COURT: Right.

9 MR. HALL: I had a case back -- John Rankin versus
10 Cindy Cooper. You are familiar with that case?

11 THE COURT: I am.

12 MR. HALL: Well, guess what? There was a list that
13 said who the governor got the fired [indiscernible], wasn't on
14 this list. Court said, "I don't know, the lack set it there."
15 I say here that meet your guy's toast.

16 THE COURT: Right. I recognize it as a legal, I was
17 more ingest of -- that comment was made.

18 MR. HALL: It's -- I don't think we also -- we have
19 two statutes that overlap, could be touched on the same subject
20 matter, but you've got to be the fact to every provision of
21 both, if you can. Well, here when you have this exclusion
22 scenario, we say if it's not listed, you can't. Yet again,
23 that can be tested over appeal. If they want something, it's
24 not there and it goes up, let the Court decide whether the list
25 [indiscernible] needs the list or not. Okay? Again, I'll

1 conclude by just saying --

2 THE COURT: So, help me with a number on what -- in
3 your mind, if you take out the things that are, "Not on the
4 list," what the number turns into.

5 MR. HALL: Well, look, the number that we put is
6 \$212,000. Now, look, it's got a decimal point as if there's a
7 degree of precision like that. We obviously are all working
8 [indiscernible].

9 THE COURT: Sure.

10 MR. HALL: We go through it, look at the cases, look
11 at frankly their own experience as lawyers. What does this
12 look like? That's where we come in. We would say
13 respectfully, your Honor, into a rhetoric. We believe that
14 anything north of that 212 number is not the right number. But
15 again, acknowledge that the Court has discretion here to
16 determine what is reasonable and to make that judgment, review
17 it, and decide whether that's a fair exercise number.

18 THE COURT: And I -- I'm not trying to relitigate
19 this issue. So, as I ask this question, this is not a
20 relitigation question. This is a -- let's just take out the
21 hourly rates, take out the statute and what it says, let's just
22 look at the lawyer time. Okay. And I was reading briefs two
23 weeks before trial on this case that the City was literally
24 arguing that Sherman burned Columbia and he burned all the
25 records with it. And that's part of the reason why we really

1 don't know who owns what. That was weeks prior to the trial
2 date. Okay? I mean, I think the response to that was, I
3 guess, the City's argument is Sherman ate my homework.

4 Okay. All right. Now, so, this concept that Mr.
5 Hand went through, that they spent an enormous amount of time
6 tracking down, or trying to prove, or trying to disprove some
7 they can both be difficult who the rightful owner of this
8 property was, right? -- I mean, to the week or two weeks before
9 trial, to the point where we start off the trial with an
10 admission by the City that they didn't own the property.

11 So, how does that not get factored into the fact that
12 the City took the position that we own the property, and we did
13 nothing wrong even after Norfolk Southern told them they were
14 in the wrong, the maps told them they were in the wrong. The
15 woman who works for the City who's in charge of the maps
16 admitted on the witness stand that she was wrong, okay?

17 And the engineer for the City admitted on the witness
18 stand, "Well, why do I have to go look at what permitting's
19 doing when I want to go tear down a wall? I have no
20 responsibility at all for what anybody else in the City of
21 Columbia government is doing." So, knowing all that, is it
22 that much of a stretch that the Plaintiff spent an inordinate
23 amount of time hunting down who the owner of the property was
24 in fighting -- trying to disprove something that didn't exist?

25 MR. HALL: Your Honor, that makes sense.

1 THE COURT: Okay.

2 MR. HALL: What you're describing about the way a
3 case is defended or the way the issues are joined is relevant
4 to what is reasonable in attorney's fees?

5 THE COURT: Right.

6 MR. HALL: Look, I've had cases where everything was
7 just, you know, [indiscernible] and sports-certified.

8 THE COURT: Right.

9 MR. HALL: They passed legal.

10 THE COURT: Sure.

11 MR. HALL: So, look, conceptually, I hear what you're
12 saying. I can't speak to the facts that you described,

13 THE COURT: Right.

14 MR. HALL: So, yes, that's a factor. But I would
15 just say this again -- greater respect. You got to be able or
16 have some approximation in your mind what additional time
17 [indiscernible]?

18 THE COURT: Right.

19 MR. HALL: Rather than just say, "You know what? I
20 didn't like that, that makes me mad." Right? That's a jury
21 type right here may -- so, what I'm saying is: It appropriate
22 for the Court to take in account and say, "Look, extra time was
23 required to chase down some ideas." You wouldn't have a normal
24 case and that would drive up the cost here. That's --

25 THE COURT: I mean, that's not in left field, right.

1 MR. HALL: The question is not the qualification.

2 THE COURT: Right. How much -- to what extent is it
3 reasonable under the circumstances that are existing?

4 MR. HALL: That's right, your Honor.

5 THE COURT: Okay.

6 MR. HALL: So, again, I'm not equivalent with
7 conceptually I agree with you.

8 THE COURT: No. You -- I just wanted to make sure
9 that you were part of me, you know, can see with my own eyes as
10 I was preparing for trial, I'm over here reading maps, right?
11 I'm over here looking at this and looking at that, and pulling
12 out my magnifying glass to read things on these papers they've
13 sent in. You know, prior to the trial to be prepared because I
14 thought the issue with number one was going to be who
15 controlled the area where the wall was. And then I -- you
16 know, we -- I don't know if they let me know before we started
17 the trial or the day of, I can't remember which one, but at
18 some point, they're like, well, everybody agrees now that the
19 City didn't own the property, right?

20 And so, it was clearly an issue that was litigated
21 for a substantial period of time while the -- while the -- I
22 mean, up until when the City says they want to take down the --
23 from the point the City says they want to take down the wall up
24 until a week or two weeks before trial. So, it is not a
25 foreign concept that it could have more work than the average

1 inverse condemnation case.

2 MR. HALL: Not at all, your Honor.

3 THE COURT: Okay.

4 MR. HALL: I'll tell you this. When I read cases you
5 put chart, I went back and looked at this may have some twists
6 sometimes and some points. Can I tell you that Mr. Turner and
7 correct is on par and perfect proxy for --

8 THE COURT: Right. And would be almost impossible to
9 do it. Right?

10 MR. HALL: The point I'm making and it's like when we
11 talk about a degree of success, right? Now, look, I understand
12 argument that Mr. Hand made about got a lot of theories, but
13 this is really the real one. But the law has not supported
14 that argument, right? The law says you get a haircut back.
15 All right. Now look, is that a good thing or a bad thing? I
16 don't know. When I've been a plaintiff or 1983 plaintiff and I
17 got a haircut -- I didn't like it, right? But I also don't
18 know that's the case is say, right? And that's what the courts
19 do. So, like, again, this questions of degree and status.

20 THE COURT: Sure.

21 MR. HALL: Obviously that's why --

22 THE COURT: Okay.

23 MR. HALL: [Indiscernible], your Honor.

24 THE COURT: Okay. I got all that. I'm -- I think I
25 follow you. Okay. Mr. Hand, what else?

1 MR. HAND: Yeah. Just briefly, your Honor. We were
2 just talking about a specific question of degree looking back
3 over the response, and these -- you they -- two things, they
4 went through it and actually struck off time entries that they
5 didn't like. Quite a few of them, you know, for reasons like,
6 you know, under recoverable costs duplicative, redundant,
7 that's what most of them say, "Duplicative, redundant."
8 There's a ton of those. It is mostly Mr. [indiscernible] time
9 a good event. Yeah.

10 THE COURT: No comment.

11 MR. HAND: I mean, yeah. I mean I [indiscernible] a
12 little bit when I read it because I was thinking like, well,
13 how do you know it was duplicative or redundant. You know? it
14 feels a little bit like back when I was doing billable work for
15 Bank of America software, kicking my time entry out because I
16 didn't know what it was.

17 But so, after it makes flying out deductions that
18 appear very happy as then on top of that, it goes back, and
19 makes these percentage deductions based on the cause of action
20 for the conversion. They deducted 3 percent defensive motion
21 to dismiss three percent. I mean, they reduced it by our fees
22 by \$15,500, the entirety attorney's fees.

23 At that time, Mr. Smith was paying Mr. Toby -- excuse
24 me, Mr. Ward directly, and the total amount of fees was, like,
25 \$9,000. They took \$15,000 off from the Defense's motion to

1 dismiss, trespass cause of action, 10 percent negligence, cost
2 of action, 10 percent, statutory claim, 10 percent declaratory
3 judgment, cause of action 10 percent temporary injunction cause
4 of action, 10 percent reduce our fees by way of \$51,800
5 [indiscernible]. We didn't file a motion -- I mean, that
6 never happened. So, why are we having a 50,000 haircut?

7 My point, Your Honor, is that they just sort of all
8 due made numbers to our fees. And so, we're talking like an
9 insurance company. And then the result was a reduction, just
10 basically percentages of half of our requested fees, over half
11 the \$335,000 just based on these percentages that they just
12 made up. So, that's not a good basis to do. I just --

13 MR. HALL: Okay, [indiscernible]. Go briefly.

14 THE COURT: Sure.

15 MR. HALL: Look, I talked to a lot of lawyers who do
16 this type of work all day and do it more even said the nasty --
17 it was the nastiest case you ever had. It was a nastiest
18 [indiscernible] EDPA case. The hairiest one we've ever got,
19 nastiest fight [indiscernible]. Nobody could number north at
20 50. Ever -- these people do it all day every day. That is
21 their est. So, again, that's not evidence, that's trying to
22 say, look what is range of life. That's why we want to the
23 cases. And [indiscernible].

24 THE COURT: I understand.

25 MR. HALL: So, look, I hear where Counsel is coming

1 from. I think the way you leave you and go figure it out.

2 THE COURT: Okay.

3 MR. HALL: That's hopefully what this comes down to,
4 comply with the statute on the specific list, and then make a
5 response.

6 THE COURT: Okay. All right. Did you want to say
7 something else, Mr. Hand?

8 MR. HAND: I want to make one quick point, your
9 Honor, just about the contingency piece, the [indiscernible].
10 But the contingency part of the arrangement is something that
11 should be considered in reasonableness. If you take our
12 contingency arrangement into effect or into account, I think
13 again, that counts as in favor based on the amount of the
14 result that was obtained. That counts as in favor of
15 supporting the reasonable support fee, I just wanted to point
16 that out. That's all I got.

17 THE COURT: Okay. All right. So, Mr. Hall, I want
18 you to walk me through in your mind what you think, and I'm not
19 talking about the number, I'm not talking about the number for
20 the attorney's fees, costs, etc. I'm talking about the
21 procedural options are that exist for me in dealing with the
22 attorney's fees, and we'll start with Number One as I can just
23 assess attorney's fees right now. Right? Okay. What's number
24 two? I can assess but defer --

25 MR. HALL: Well, I --

1 THE COURT: -- Defer enforcement; is that right?

2 MR. HALL: Yeah, I guess.

3 THE COURT: Okay.

4 MR. HALL: Gets confused with deferral stay? But the
5 first motion would be -- what's your understanding?

6 THE COURT: Assess. I can look at all this -- come
7 up with a number in my mind. Say this is the order I find that
8 it's reasonable, and it comports with the statute and boom,
9 here we go.

10 MR. HALL: Go over to Option 1.

11 THE COURT: Okay.

12 MR. HALL: Option 2 would be -- I'm going, I -- I'm
13 just going to let the fee issue for the --

14 THE COURT: Okay.

15 MR. HALL: All right. Option 3 would be somewhere at
16 the middle. No, I'm not going to defer. I actually consider I
17 have one here today from Counsel and [indiscernible] and I'm
18 going to say, enforcing that number, it doesn't have much
19 different effect in deferred to stay function. Similarly, I
20 had one up in Greenville. One of your colleagues on the bench
21 said that I just wanted a deferral, right? I've had others
22 say, "No, I all that stay but I do want that record initially
23 we granted that record."

24 THE COURT: Right. Then --

25 MR. HALL: So, again, your rule -- you defer ruling -

1 - you rule but you stay it. I think that's the only three
2 options.

3 THE COURT: Okay. And I just wanted to make sure
4 that I was processing through what you were saying the options
5 were because that's what I thought, I just wanted to make sure
6 that I had --

7 MR. HALL: Yes, your Honor.

8 THE COURT: -- correctly come to that conclusion.
9 Okay. All right, Mr. Ward, how are you?

10 MR. WARD: I'm great.

11 THE COURT: Okay.

12 MR. WARD: I want to say about Mr. Hookland
13 [phonetic] is often imitated but in reference to the fee
14 billing, he's never duplicated.

15 THE COURT: Okay. Mr. Hamlet, you need to add
16 anything?

17 MR. HAMLET: No, thank you, your Honor.

18 THE COURT: Okay. Mr. Harpootlian, I cautiously ask
19 you if you would like to add anything?

20 MR. HARPOOTLIAN: Yes. Just got a bumped foot.
21 Tough to stand up. I would just say this: A couple of the
22 options that Mr. Hall talked about with me -- further hearings
23 in this case. We've tried it, we've gone through all kinds of
24 motions before trial. We've gone through all kinds of motions
25 after trial. I just ask you to put spike in it today, and send

1 it on up to the Court of Appeals, and let them deal with all
2 the issues one time, and while -- and they blackhead at us
3 today by saying he feels confident. I feel confident that
4 we'll -- that many of the issues -- almost all the issues
5 raised we've heard about today, were not raised at trial and
6 we're not raised post-trial motions. Now, that kind of counts
7 for something.

8 THE COURT: Okay.

9 MR. HARPOOTLIAN: And making legal, I just make it
10 cut.

11 MR. HALL: That was only once. You may have to
12 recognize it as such but --

13 MR. HARPOOTLIAN: I make them all the time, not
14 realizing the brilliant client [indiscernible].

15 MR. HALL: Look, I -- I'll just say this: If you
16 don't have competent evidence of every element of a client, you
17 win. And our position as we've noted in the -- in everything
18 is that when you have an impermissible basis, including in the
19 appraisal -- what's the award space? Here in the law, it says
20 it goes back for doing so, thank you. The public force will
21 address that, they'll figure out what --

22 THE COURT: Right.

23 MR. HALL: Am sorry.

24 THE COURT: Okay. All right. Last thing. Listen,
25 I've lived with this case for a few months now, okay. Longer

1 than the average cases that I live with. Take out death
2 penalties and death penalty PCRs. Okay? You know, I want you
3 all to know that you all are very good lawyers. Okay.? In
4 that I -- you know, we read all this stuff -- I mean, I think
5 the law clerk may have tried to quit on me this week. When the
6 last motion or response to a motion, or reply to reply came in
7 this week, I think her eyes about popped out of the top of her
8 head. "That do I have to do another memo on that" and the
9 answer was "Yes."

10 And so, we have both, and the previous law clerk as
11 well -- I mean, we -- you know, doing our level best to be
12 completely engaged, and understand the issues, and pay
13 attention to the witnesses, and listen to the arguments. And
14 really have spent a whole lot of time with the issues in this
15 case and reading these cases and processing through them, and
16 trying to understand them. And, you know, inverse condemnation
17 is not something that is not a car wreck case. Right. And
18 circuit court judges aren't doing inverse condemnation cases
19 every day of the week.

20 So, we really did, you know, put on our hats of "It's
21 time to stop, shut the door, sit down, and read and process
22 through it." And then the Court has tried it's best to do
23 that, and all the issues that have been presented, and give
24 everybody an opportunity to create the record, to file what
25 they need to file -- the file that, you know, that I at one

1 point, thought was never going to end. But we really have
2 tried to be gracious in allowing all those things that have
3 occurred that normally don't occur in most cases. So, I just
4 wanted to let everybody know that, okay?

5 MR. HAND: Right.

6 THE COURT: Thank you.

7 MR. WARD: Thank you, your Honor.

8 MR. HAND: Thank you, Judge.

9 MR. HALL: Thanks Your Honor.

10 (THERE BEING NOTHING FURTHER, THIS HEARING IS CONCLUDED)

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CERTIFICATE OF TRANSCRIBER

I, ERIN REILLY, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 5, South Carolina, on the 6th day of November 2025.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 2nd, 2025

ERIN REILLY
TRANSCRIBER

erinreilly

From: [Dick Harpootlian](#)
To: [Hall, Kevin](#); [Andrew Hand](#)
Cc: [Carroll, Todd](#); [Wright, Levi](#)
Subject: Re: City of Cola/Constan - Transcript Corrections and Agreement to Hold Appellate Deadlines in Abeyance
Date: Tuesday, December 16, 2025 11:19:43 AM
Attachments: [image364003.png](#)
[image897344.png](#)
[image750125.png](#)
[image064449.png](#)

External (rah@harpootlianlaw.com)

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Kevin

We will not consent. Please specify any errors you have found if you decide to file a motion.

Dick

From: Hall, Kevin <Kevin.Hall@wbd-us.com>
Sent: Tuesday, December 16, 2025 11:16 AM
To: Dick Harpootlian <rah@harpootlianlaw.com>; Andrew Hand <arh@harpootlianlaw.com>
Cc: Carroll, Todd <Todd.Carroll@wbd-us.com>; Wright, Levi <Levi.Wright@wbd-us.com>
Subject: City of Cola/Constan - Transcript Corrections and Agreement to Hold Appellate Deadlines in Abeyance

Hey Dick and Andrew — hope y'all are doing well and staying warm. We've done an initial pass on the November 6 hearing transcript and noticed what appear to be several transcription errors. Based on that first review, it looks like some corrections will be needed before the record is finalized and appellate briefing deadlines begin to run. To make sure the appellate record accurately reflects what happened at the November 6 hearing, we propose the following:

1. **Review and markup.** We each review the transcript and prepare proposed corrections, with page/line references and the basis for each correction where possible (including context and any available audio).
2. **Exchange and sign-off.** We share our proposed corrections and, to the extent we're in agreement, jointly submit them so the

transcript/record can be conformed.

3. **Meet and confer if needed.** If there are any disagreements on proposed corrections, we can confer to try to resolve them.
4. **Trial court resolution as a last resort.** If anything remains unresolved (which I don't really anticipate), we can present those issues to the trial court for resolution.

In the meantime, to avoid any prejudice to either side and to avoid briefing off a record we know may be inaccurate, we ask that you consent to holding the appellate deadlines in abeyance while this process plays out. We can handle that by filing a short consent motion with the Court of Appeals.

Let us know if you're agreeable to this approach and to holding the deadlines. If so, we're happy to circulate a short stipulation or consent motion reflecting the above.

Thanks.

Kevin

Kevin Hall

Partner

Womble Bond Dickinson (US) LLP

d: 803-454-7710

m: 803-603-0392

e: Kevin.Hall@wbd-us.com

1221 Main Street

Suite 1600

Columbia, SC 29201



womblebonddickinson.com



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