

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh

Case No. 2020-CP-04-00085
Appellate Case No. 2024-001911

Moats Construction, Inc. and Russell Moats,

Appellants,

v.

Anderson County, Rusty Barns, Matt Schell, and Holt Hopkins,

Respondents.

RECORD ON APPEAL
(VOLUME 1 OF 3)

David L. Paavola, SC Bar No.: 100714
KENISON, DUDLEY & CRAWFORD, LLC
440 Knox Abbott Drive, Suite 510
Cayce, South Carolina 29033
Email: paavola@conlaw.com
Attorneys for Appellants

John W. Davidson, SC Bar No.: 8494
MAYNARD NEXSEN PC
1230 Main Street, Suite 700
Columbia, South Carolina 29201
(803) 771-8900
Email: jdavidson@maynardnexsen.com
Attorney for Respondent, Anderson County

James W. Logan, Jr., SC Bar Bo.: 3385
WILSON JONES CARTER & BAXLEY
Post Office Box 259
Anderson, South Carolina 29622
(864) 226-1910
Email: logan@wjclaw.com
*Attorney for Respondents, Rusty Burns,
Matt Schell, and Holt Hopkins*

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

/s/ David L. Paavola
David L. Paavola, SC Bar No.: 100714
KENISON, DUDLEY & CRAWFORD, LLC
440 Knox Abbott Drive, Suite 510
Cayce, South Carolina 29033
(864) 242-4899
Email: paavola@conlaw.com
Attorney for Appellants

April 8, 2026
Cayce, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Moats Construction, Inc. and Russell Moats,
Plaintiffs,

v.

Anderson County, Rusty Burns, Matt Schell,
and Holt Hopkins,
Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2020-CP-04-00085

ORDER GRANTING NEW TRIAL

This matter is before the Court upon Defendant Anderson County's ("Anderson County" or the "County") post-trial motions for a Judgment Notwithstanding the Verdict ("JNOV") pursuant to Rule 50 of the South Carolina Rules of Civil Procedure; for a New Trial Absolute, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure; or for a New Trial *Nisi Additur* or *Remittitur*.

For the reasons stated herein, the Court grants the County's Motion for a New Trial Absolute. The Court finds and concludes that the excessiveness of the verdict shocks the conscious and indicates the verdict was reached as a result of caprice, passion, prejudice, partiality, corruption or other improper motives. This is especially true in light of the absence of evidence upon which the jury could have arrived at the verdict amount awarded. Alternately, the Court further exercises its discretion and orders a new trial on the basis of the "thirteenth juror" doctrine, as the verdict is not supported by the evidence.

I. BACKGROUND

In this case, Plaintiffs (hereinafter, "Moats Construction") contracted with Anderson County to perform two construction projects. One contract was for the removal and remediation

of Toxaway Mill (the “Toxaway Contract” or the “Toxaway Project”) and the other contract was for the construction of the East West Parkway (the “East West Contract” or the “East West Project”). Disputes arose between the parties relating to the work under both contracts, and the parties entered into a binding Mediated Settlement Agreement on March 29, 2018, which resolved all disputes between the parties, with the exception of the claim for retainage remaining on the East West Project. At trial, after the Court granted various directed verdicts, the only two causes of action that were submitted to the jury for deliberation were Moats Construction’s breach of contract claim related to the retainage issue and the County’s counterclaim for costs incurred in completing the East West project. The jury returned a verdict in favor of Moats Construction on the breach of contract claim and awarded Moats Construction \$412,105.00 in damages; and returned a verdict for the County and awarded the County damages of \$1,900.00 on its counterclaim. The County timely filed its post-trial motions.

II. MOTION FOR NEW TRIAL ABSOLUTE

In considering this motion for new trial, the Court stresses that it has due respect for the jury’s verdict. As the South Carolina Supreme Court has stated:

The Court must respect the verdict of the jury in fact as well as in pretense or theory and must not interfere or substitute its own judgment for that of the jurors. One is entitled to the constitutional privilege of the fair judgment of a jury rather than that of the Court

Brabham v. S. Asphalt Haulers, Inc., 223 S.C. 421, 430, 76 S.E.2d 301, 306 (1953). In general, “it is the duty of the court to sustain verdicts when a logical reason for reconciling them can be found.” *Daves v. Chary*, 355 S.C. 216, 231, 584 S.E.2d 423, 430 (Ct. App. 2003). Specifically, “[a] jury’s verdict should be affirmed if it is possible to do so and carry into effect the jury’s clear intention.” *Id.* at 234, 584 S.E.2d at 432 (internal quotations and citations omitted). Thus, when “determining whether any verdict is inadequate or excessive . . . the court must give ‘substantial

deference' to the jury's determination of damages.” *Jolly v. Fisher Controls Int'l, LLC*, ___ S.C. ___, ___ S.E.2d ___, 2024 WL 3882708, at *2 (S.C. Aug. 21, 2024) (citations omitted). The trial court must further “justify its ruling by giving ‘compelling reasons’ for invading the jury's province.” *Id.* (citation omitted).

Rule 59 provides that a new trial may be granted “in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State.” *See* Rule 59(a), SCRCP. One basis upon which the Court may grant a new trial absolute is if the verdict is against the weight of the evidence. *See South Carolina State Highway Dept. v. Clarkson*, 267 S.C. 121, 127, 226 S.E.2d 696 (1976). The Court may order a new trial under this standard if it concludes that the jury’s verdict is contrary to the fair preponderance of the evidence and that justice was not done by the jury’s verdict. *See id.* at 124-28 (affirming trial judge’s grant of new trial made on this ground). In this regard, a trial court does not abuse its discretion in granting a new trial even when the evidence conflicts. *See id.* at 126-27 (“the testimony was in conflict on the issues of fact,” so “the finding of the trial judge has support in the evidence” and “there was no abuse of discretion . . . in granting a new trial”). Moreover, a trial court may order a new trial when the verdict is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, partiality, corruption, or other considerations not reflected by the evidence affected the amount awarded. *See Sanders v. Prince*, 304 S.C. 236, 238-39, 403 S.E.2d 640, 642 (1991) (reversing trial court’s denial of a new trial because jury verdict was so grossly excessive as to indicate passion, prejudice or other improper motive); *Small v. Springs Indus. Inc.*, 292 S.C. 481, 487, 357 S.E.2d 452, 455 (1987) (verdict was based upon improper considerations not found in the evidence); *Krepps v. Ausen*, 324 S.C. 597, 607, 479 S.E.2d 290, 295 (Ct. App. 1996).

The Court finds the verdict is grossly excessive in that there is no evidence to support it and, therefore, the verdict was the result of passion, caprice, prejudice, partiality, corruption or other considerations not reflected by the evidence such as confusion and/or misunderstanding of the evidence. *See Jolly*, 2024 WL 3882708, at *2. There is no trial evidence supporting any verdict over \$33,105.91, which would have been the maximum contractual damages recoverable by the Plaintiffs based on the evidence presented because evidence of the Court's directed verdict of \$50,000 on delay damages was not submitted to the jury. Therefore, at most, the contract damages under the Mediated Settlement Agreement were \$33,105.91, which consisted of \$27,555.91 in retainage on East West Park Project and \$5,550.00, or the net amount of the Change Order. The Plaintiffs also asked the jury to make an award to Moats Construction related to its inability to obtain bid bonds because the County did not rescind its termination of the Toxaway Contract. The County argued at directed verdict, at the close of all evidence, and again during post-trial motions that there was no evidence by which the jury could determine such damages and that such damages were speculative. Consequently, the remaining amount of \$378,999.09 is not only unsupported by the evidence, but there is no evidence in the record upon which the jury could have relied to support the amount awarded.

Therefore, this Court finds and concludes that a new trial is warranted under these circumstances because the verdict is grossly excessive and was clearly the result of passion, caprice, prejudice, partiality, corruption or other considerations not reflected by the evidence such as confusion and/or misunderstanding of the evidence.

III. "THIRTEENTH JUROR" DOCTRINE

Additionally, and alternately, I find that the County is entitled to a new trial based upon the "thirteenth juror" doctrine. The "thirteenth juror" doctrine is a vehicle by which the trial court

may grant a new trial absolute when it finds the evidence does not justify the verdict. *Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d 690 (1995); *see also Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990) (affirming trial court's order granting a new trial under the thirteenth juror doctrine where the evidence did not justify the verdict); *McEntire v. Mooregard Exterminating Servs., Inc.*, 353 S.C. 629, 631, 578 S.E.2d 746, 747 (Ct. App. 2003) (same); *Sorin Equipment Co., Inc. v. Firm, Inc.*, 323 S.C. 359, 363-64, 474 S.E.2d 819, 822 (Ct. App. 1996) (same). In other words, South Carolina's "thirteenth juror" doctrine entitles the trial judge to sit, in essence, as the thirteenth juror when he or she finds the evidence does not justify the verdict, and then to grant a new trial based solely "upon the facts." *Norton v. Norfolk Southern Ry. Co.*, 350 S.C. 473, 567 S.E.2d 851 (2002). As the "thirteenth juror," the trial judge can hang the jury by refusing to agree to the jury's otherwise unanimous verdict. *See id.*

For the reasons set forth above, the Court finds that the evidence at trial does not justify the verdict.

IV. MOTIONS FOR JNOV AND NEW TRIAL NISI

The County also argued that it is entitled to a JNOV pursuant to Rule 50(b), SCRCP or a new trial *nisi additur* or *remittitur*.

A court should only grant a JNOV when the evidence presented at trial is insufficient to support the jury's verdict. *See Rogers v. Norfolk Southern Corp.*, 343 S.C. 52, 59, 538 S.E.2d 664, 668 (Ct. App. 2001), *aff'd as modified*, 356 S.C. 85, 588 S.E.2d 87 (2003). "A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). Here, the Court has found that a new trial is warranted because the award was grossly excessive and based upon passion, caprice and/or other improper considerations in light of the evidence propounded. Therefore, the Court declines

to grant the County's Motion for JNOV, as this matter is more properly addressed as one for a new trial.

Likewise, the Court denies the County's Motions for New Trial *Nisi Additur* and *Remittitur*. "When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice or prejudice." *Waring v. Johnson*, 341 S.C. 248, 256, 533 S.E.2d 906, 910 (Ct. App. 2000) (citing *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 431 S.E.2d 557 (1993)). To this end, "[i]f the amount of the verdict is so grossly inadequate or excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives, the trial judge is required to grant a new trial absolute." *Id.* (citations omitted). Since this Court finds that a new trial is warranted because the verdict was grossly excessive and was clearly the result of passion, caprice, prejudice, partiality, corruption or some other improper motives in light of the evidence presented at trial, the Court declines to exercise its discretion in granting a new trial *nisi*, as a new trial absolute is required under these circumstances. *See Waring*, 341 S.C. at 257, 533 S.E.2d at 911; *see also Jolly*, 2024 WL 3882708, at *2 (stating that the "'merely inadequate or excessive' standard distinguishes cases in which a trial court may grant a new trial *nisi* from cases in which the trial court may not do so because the verdict is 'grossly inadequate or excessive,' indicating the verdict was not based on the evidence and the law" (citations omitted)).

V. CONCLUSION

Based on the foregoing, this Court finds and concludes that the County is entitled to new trial absolute pursuant to Rule 59, SCRCP because the verdict was grossly excessive and not

supported by the evidence. The verdict was clearly the result of passion, prejudice, caprice, and other improper considerations. *See Krepps*, 324 S.C. at 607, 479 S.E.2d at 295; *Sanders*, 304 S.C. at 238-39, 403 S.E.2d at 642; *Small*, 292 S.C. at 487, 357 S.E.2d at 455. I further find and conclude that the County is entitled to a new trial absolute under the “thirteenth juror” doctrine, in which a trial court may grant a new trial absolute when it finds the evidence does not justify the verdict. *See Bailey v. Peacock*, 318 S.C. at 13, 455 S.E.2d at 690; *Folkens*, 300 S.C. at 254, 387 S.E.2d at 267 (1990); *McEntire*, 353 S.C. at 631, 578 S.E.2d at 747; *Sorin Equipment Co., Inc.*, 323 S.C. at 363-64, 474 S.E.2d at 822.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Anderson County is entitled to a new trial absolute.

IT IS SO ORDERED.

**THE HONORABLE R. LAWTON MCINTOSH
COURT OF COMMON PLEAS, TENTH JUDICIAL CIRCUIT**

<judicial e-signature and date found on a subsequent page>



Anderson Common Pleas

Case Caption: Russell Moats , plaintiff, et al VS Anderson County , defendant, et al

Case Number: 2020CP0400085

Type: Order/JNOV

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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Anderson, SC CDC, CP/BS

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

Moats Construction, Inc.,)

Plaintiff,)

vs.)

Anderson County, Rusty)

Burns, Matt Schell, and)

Holt Hopkins,)

Defendants.)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Civil Action No.: 2020CP0400085

VERDICT FORM

I. Breach of Contract

1) As to Plaintiffs claim for Breach of Contract, we the jury unanimously find as follows:

☒ A For the Plaintiff in the amount of Four hundred thousand
thirteen one hundred five (\$ 412,105) [Actual Damages]

☐ B For the Defendant

R-000013

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Anderson, SC COC, CP/BS

2) As to Defendant Anderson County's Counterclaims, we the jury unanimously find as follows:

☒ A For the Defendant in the amount of One thousand nine hundred (\$ 1900.00) [Actual Damages]

☐ B For the Plaintiff

Heidi Meyer
Juror # 92
Foreperson

April 19, 2024

Anderson, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Moats Construction, Inc. and Russell
Moats,

Plaintiffs,

vs.

Anderson County, Rusty Burns, Tommy
Dunn, Matt Schell, Holt Hopkins, Mike
Foreman, Rita Davis, and Steve Newton,

Defendants.

Civil Action No.: 2020-CP-_____

SUMMONS

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served on you, and to serve a copy of your Answer to said Complaint upon the subscriber at his office at 2519 Devine Street, Suite A, Columbia, South Carolina, 29205, within thirty (30) days of the date of service, exclusive of the day of such service; if you fail to answer the said Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the said relief demanded in the Complaint.

GOODWYN LAW FIRM, LLC

s/ T. Jeff Goodwyn, Jr.

T. Jeff Goodwyn, Jr. (73789)

C. David Beale, Jr. (102917)

2519 Devine Street, Suite A

Columbia, SC 29205

(803) 251-4517

jgoodwyn@goodwynlaw.comdbeale@goodwynlaw.com

Attorneys for Plaintiff

Columbia, South Carolina
January 10, 2020**R-000015**

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Moats Construction, Inc. and Russell
Moats,

Plaintiffs,

vs.

Anderson County, Rusty Burns, Tommy
Dunn, Matt Schell, Holt Hopkins, Mike
Foreman, Rita Davis, and Steve Newton,

Defendants.

Civil Action No.: 2020-CP-_____

COMPLAINT

(JURY TRIAL REQUESTED)

COMES NOW, Plaintiffs, Moats Construction, Inc. and Russell Moats, by and through their undersigned attorney, complaining of the Defendant above-named, would respectfully show unto the Court, the following:

1. Plaintiff Moats Construction, Inc. ("Moats") is a South Carolina domestic corporation.
2. Plaintiff Russell Moats ("Russell Moats") is a resident of Anderson County.
3. Defendant Anderson County ("Anderson") is a governmental entity and may be served through Rusty Burns as county administrator and is subject to the jurisdiction and venue of this court.
4. Moats and Anderson entered into a contract for the construction of the East West Parkway ("East West Contract") on August 17, 2016.
5. Moats and Anderson entered into a contract for the construction of the Toxaway Project ("Toxaway Contract") on July 7, 2017.

R-000016

6. Anderson failed to provide construction plans, drawing and specifications for construction of the East West Project, specifically that the plans were not compliant with the applicable Americans with Disabilities Act (“ADA”) construction requirements.
7. Anderson failed to apply for and receive the necessary South Carolina Department of Transportation (“SCDOT”) permits as required under the East West Contract.
8. Anderson failed to timely respond to Moats’ requests for clarification and information related to the ADA and SCDOT permit issues for the East West Project.
9. Anderson failed to timely update design based on bid plan deficiencies for the East West Project.
10. Anderson failed to timely process change orders and pay applications submitted by Moats for the East West Project.
11. Anderson failed to compensate Moats for work that was performed due to changes requested by Moats for the East West Project.
12. Anderson failed to timely provide design updates leading to loss of productivity and causing Moats to work out of sequence for the East West Project.
13. Anderson failed to properly identify underground utilities, water lines, and gas lines for the East West Project which caused additional costs and delays for Moats.
14. Employees and officials of Anderson County made false and defamatory statements concerning the delays in the East West Project casting the blame on Moats for the East West Project and the Toxaway Project.
15. Anderson failed to adequately provide storm water permits for the Toxaway Project as provided by the Toxaway Contract.

16. Anderson failed to adequately provide design permits for the Toxaway Project as provided by the Toxaway Contract.

17. Anderson failed to adequately provide an asbestos permit for the Toxaway Project as provided by the Toxaway Contract.

18. Moats and Anderson mediated their disputed in March 2018 and entered into a mediated settlement agreement dated March 29, 2018 (the “Mediated Settlement Agreement”).

19. Anderson has failed to comply with all of the terms outlined in the Mediated Settlement Agreement.

20. In choosing a contractor to perform the Toxaway Project, Anderson failed to follow the proper bidding procedures set forth in S.C Code §11-35-1530 for the bidding of public projects.

21. As a result, even though he was the low bidder on the Toxaway Project, Moats was not chosen as the contractor for this job.

22. Moats has attempted to get documents related to the Toxaway Project from Anderson County pursuant to a valid FOIA request, which Anderson County has refused.

23. Moats has attempted to get documents related to the East West Project from Anderson County pursuant to a valid FOIA request, which Anderson County has refused.

FOR A FIRST CAUSE OF ACTION

(Breach of Contract – Mediated Settlement Agreement)

24. Plaintiff realleges the facts and matters set forth above in this pleading and incorporates the same herein by reference.

25. Anderson failed to pay Moats \$15,000 pursuant to paragraph 3 of the Mediated Settlement Agreement.

26. Anderson is in violation of paragraph 4 of the Mediated Settlement Agreement by failing to pay Moats \$50,000 as required therein.

27. Anderson is in violation of paragraph 9 of the Mediated Settlement Agreement by failing to provide Moats with ADA compliant plans and drawings.

28. For the above stated reasons, Anderson is in breach of the Mediated Settlement Agreement and liable to Moats for all actual, consequential and punitive damages flowing therefrom in an amount to be determined at trial.

FOR A SECOND CAUSE OF ACTION

(Defamation)

29. Plaintiff realleges the facts and matters set forth above in this pleading and incorporates the same herein by reference.

30. Rusty Burns, as an employee and/or official of Anderson County, made false and defamatory statements about Plaintiffs.

31. Tommy Dunn, as an employee and/or official of Anderson County made false and defamatory statements about Plaintiffs.

32. Matt Schell, as an employee and/or official of Anderson County made false and defamatory statements about Plaintiffs.

33. Holt Hopkins, as an employee and/or official of Anderson County made false and defamatory statements about Plaintiffs.

34. Mike Foreman, as an employee and/or official of Anderson County made false and defamatory statements about Plaintiffs.

35. Rita Davis, as an employee and/or official of Anderson County made false and defamatory statements about Plaintiffs.

36. Steve Newton, as an employee and/or official of Anderson County made false and defamatory statements about Plaintiffs.

37. These false statements were made with actual malice and/or made in reckless disregard for the truth and with conscious knowledge of the falsity of the same and impugned Moats' and Russell Moats' fitness for their trade.

38. As a direct and proximate result of the aforesaid defamation by Defendants, Plaintiffs have sustained loss of reputation, a loss of earning capacity, humiliation, embarrassment and emotional and mental suffering.

39. Plaintiffs are also entitled to punitive damages against Defendants for the intentional and willful conduct described herein to punish and deter and to make an example. Plaintiffs further asks for the costs of this action to be leveled upon Defendants.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract – East West Contract)

40. Plaintiff realleges the facts and matters set forth above in this pleading above and incorporates the same herein by reference.

41. Anderson is in breach of the East West Contract for failing to provide construction plans, drawing and specifications for construction of the East West Project, specifically that the plans were not compliant with the applicable ADA 2010 Standards.

42. Anderson is in breach of the East West Contract for failing to apply for and receive the necessary SCDOT permits as required under the East West Contract.

43. Anderson is in breach of the East West Contract for failing to timely respond to Moats' requests for clarification and information related to the ADA and SCDOT permit issues for the East West Project.

44. Anderson is in breach of the East West Contract for failing to timely update design based on bid plan deficiencies for the East West Project.

45. Anderson is in breach of the East West Contract for failing to timely process change orders and pay applications submitted by Moats for the East West Project.

46. Anderson is in breach of the East West Contract for failing to compensate Moats for work that was performed due to changes requested by Anderson for the East West Project.

47. Anderson is in breach of the East West Contract for failing to timely provide design updates leading to loss of productivity and causing Moats to work out of sequence for the East West Project.

48. Anderson is in breach of the East West Contract for failing to properly identify underground utilities and water lines for the East West Project which caused additional costs and delays for Moats.

49. As a result of breaching of the contract as stated above, Anderson is liable to Moats for all actual, consequential and punitive damages allowed by law in an amount to be determined at trial.

FOR A FOURTH CAUSE OF ACTION
(Breach of Contract – Toxaway Contract)

50. Plaintiff realleges the facts and matters set forth above in this pleading above and incorporates the same herein by reference.

51. Anderson is in breach of the Toxaway Contract for failing to adequately provide storm water plans and permits for the Toxaway Project as provided by the Toxaway Contract and Cardno, Inc.

52. Anderson is in breach of the Toxaway Contract for failing to adequately provide an asbestos survey and change order for the Toxaway Project as provided by the Toxaway Contract.

53. Anderson then terminated Moats for cause after Anderson's failures listed in Paragraphs 45 and 46.

54. As a result of breaching of the contract as stated above, Anderson is liable to Moats for all actual, consequential and punitive damages allowed by law in an amount to be determined at trial.

FOR A FIFTH CAUSE OF ACTION
(Violation of Bidding Procedures §11-35-1530)

55. Plaintiff realleges the facts and matters set forth above in this pleading above and incorporates the same herein by reference.

56. In choosing a contractor to perform the Toxaway Project, Anderson failed to follow the proper bidding procedures set forth in S.C Code §11-35-1530 for the bidding of public projects.

57. As a result, even though he was the low bidder, Moats was not chosen as the contractor for this job.

58. Because of this failure to comply with the proper bidding procedures set forth in §11-35-1530, Anderson is liable to Moats for the profits it would have received from performing this job in an amount to be determined at trial.

FOR A SIXTH CAUSE OF ACTION
(Violation of FOIA §30-4-30)

59. Plaintiffs reallege the facts and matters set forth above in this pleading above and incorporates the same herein by reference.

60. Moats sent a FOIA request to Anderson County requesting information related to both the Toxaway and East West Projects on September 19, 2017.

61. Moats sent a FOIA request to Anderson County requesting information related to both the Toxaway and East West Projects on February 26, 2019.

62. On May 1, 2019, Anderson County responded to both of these requests, refusing to provide any documents subject to the request.

63. Because of this failure to comply with the FOIA request pursuant to §30-4-30, Moats is entitled to injunctive relief, declaratory judgement, and reasonable attorney's fees, costs, and other expenses incurred as a result of having to litigate this matter.

WHEREFORE, Plaintiff requests a trial by jury and prays for judgment against the Defendants for all actual, consequential and resulting damages including, but not limited to, all lost wages, mental anguish, harm to reputation, lost profits, an award for punitive damages, and for all other damages found to be fair and reasonable as determined by this Court in an amount to be determined at trial including all pre-judgment interest as allowed by law. Plaintiff further requests that he be awarded his attorneys' fees and costs in this matter.

GOODWYN LAW FIRM, LLC

T. Jeff Goodwyn, Jr.

T. Jeff Goodwyn, Jr., Esq. (73789)

C. David Beale, Jr., Esq. (102917)

2519 Devine Street

Suite A

Columbia, S.C. 29205

(803) 251-4517

(803) 251-4527 facsimile

jgoodwyn@goodwynlaw.com

dbeale@goodwynlaw.com

Attorneys for Plaintiff

Columbia, South Carolina
January 10, 2020

R-000023

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Moats Construction, Inc. and Russell Moats,

Plaintiff,

vs.

Anderson County, Rusty Burns, Tammy Dunn,
Matt Schell, Holt Hopkins, Mike Foreman, Rita
Davis and Steve Newton

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2020-CP-04-00085

**ANSWER AND COUNTERCLAIM OF
DEFENDANT ANDERSON COUNTY**

Defendant Anderson County (hereinafter "Anderson County") respectfully submits this Answer to the Complaint filed against it and for response states as follows.

FOR A FIRST DEFENSE

1. Anderson County denies each and every allegation of the Complaint unless specifically admitted, modified, or explained herein.
2. Paragraphs 1 and 2 of the Complaint are admitted on information and belief.
3. Answering paragraph 3 of the Complaint, Anderson County admits that it is a government entity but all remaining allegations are denied.
4. Paragraphs 4 and 5 of the Complaint are admitted.
5. Paragraphs 6, 7, 8, 9, 10, 11, 12, and 13 of the Complaint are denied.
6. Paragraph 14 of the Complaint does not require a response from Anderson County but to the extent it seeks recovery from Anderson County, it is denied.
7. Paragraphs 15, 16, and 17 of the Complaint are denied.
8. Paragraph 18 of the Complaint is admitted.

9. Paragraphs 19 and 20 of the Complaint are denied.
10. Paragraph 21 of the Complaint is denied.
11. Paragraphs 22 and 23 of the Complaint are denied.
12. In answering paragraph 24 of the Complaint, all prior responses are re-alleged and incorporated herein by reference.
13. Paragraphs 25, 26, 27, and 28 of the Complaint are denied.
14. In answering paragraph 29 of the Complaint, all prior responses are re-alleged and incorporated herein by reference.
15. Paragraphs 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 of the Complaint do not require a response from Anderson County but to the extent they seek recovery from Anderson County, they are denied.
16. In answering paragraph 40 of the Complaint, all prior responses are re-alleged and incorporated herein by reference.
17. Paragraphs 41, 42, 43, 44, 45, 46, 47, 48, and 49 of the Complaint are denied.
18. In answering paragraph 50 of the Complaint, all prior responses are re-alleged and incorporated herein by reference.
19. Paragraphs 51, 52, 53, and 54 of the Complaint are denied.
20. In answering paragraph 55 of the Complaint, all prior responses are re-alleged and incorporated herein by reference.
21. Paragraphs 56, 57, and 58 of the Complaint are denied. Further responding, Anderson County denies that the referenced statutes applies either to the County or the claims raised by the Plaintiff.

22. In answering paragraph 59 of the Complaint, all prior responses are re-alleged and incorporated herein by reference.

23. Paragraphs 60, 61, 62, and 63 of the Complaint are denied.

FOR A SECOND DEFENSE

24. Plaintiff's claims are barred, in whole or in part, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, because the Complaint fails to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE

25. Anderson County asserts that any damages caused to Plaintiff are the fault and responsibility of the Plaintiff for which Defendants are not responsible.

FOR A FOURTH DEFENSE

26. Anderson County asserts that any damages claimed by Plaintiff were not proximately caused by Anderson County.

FOR A FIFTH DEFENSE

27. Anderson County asserts defenses of set-off, credit, and recoupment.

FOR A SIXTH DEFENSE

28. Anderson County affirmatively pleads estoppel as same may be applicable.

FOR A SEVENTH DEFENSE

29. Anderson County affirmatively pleads that Plaintiff's claims are due to be dismissed based upon Plaintiff's failure to satisfy contractual conditions precedent.

FOR AN EIGHTH DEFENSE

30. Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

FOR A NINTH DEFENSE

31. Anderson County adopts and incorporates all defenses asserted or to be asserted by the other defendants to the Plaintiff's claims and causes of action.

FOR A TENTH DEFENSE

32. Anderson County asserts that Plaintiff's Complaint should be dismissed as Plaintiff did not exhaust all applicable administrative remedies, including those provided by the Anderson County Procurement Code.

FOR AN ELEVENTH DEFENSE

33. Anderson County asserts that Plaintiff's Complaint should be dismissed as Plaintiff failed to effect proper service on it and should be dismissed pursuant to Rule 12(b)(5), SCRCP.

FOR A TWELFTH DEFENSE

34. Anderson County specifically reserves the right, subject to leave of court, to amend its Answer to assert any defense, avoidance or affirmative defense, which may become apparent during the course of litigation.

**FOR A THIRTEENTH DEFENSE
BY WAY OF COUNTERCLAIM**

35. Each and every allegation previously stated in paragraphs 1 through 34 are re-alleged herein.

36. The parties entered into a binding Settlement Agreement in March of 2018 wherein Plaintiff agreed to complete work related to the East Park Project and the Toxaway Project.

37. Plaintiff failed to complete the work thereby breaching the Settlement Agreement.

38. As a result of the Plaintiff's breach of the Settlement Agreement, Anderson County incurred costs and damages in performing the work called for in the Settlement Agreement through its own forces and/or other contractors to complete the project.

39. Anderson County is entitled to recover for any and all damages arising from Plaintiff's breach.

FOR A FOURTEENTH DEFENSE
BY WAY OF COUNTERCLAIM

40. Each and every allegation previously stated in paragraphs 1 through 39 are re-alleged herein.

41. Anderson County is entitled to set off any amounts that may be found to be owed, including recoupment of costs and expenses associated with the correction and completion of Plaintiff's work.

WHEREFORE, Anderson County, by and through counsel, having answered the allegations of the Complaint hereby requests that this action be dismissed with prejudice with all costs being taxed against Plaintiff.

s/John W. Davidson

John W. Davidson, SC Bar No. 8494

Nexsen Pruet, PLLC

1230 Main Street, Suite 700

PO Drawer 2426 (29202)

Columbia, SC 29201

Telephone: 803.540.2023

Facsimile: 803.727.1427

jdavidson@nexsenpruet.com

Attorneys for Anderson County

April 9, 2020

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

) IN THE COURT OF COMMON PLEAS

) Civil Action No.: 2020-CP-04-00085

Moats Construction, Inc. and Russell)

Moats,)

Plaintiffs,)

vs.)

Anderson County, Rusty Burns, Tommy)

Dunn, Matt Schell, Holt Hopkins, Mike)

Foreman, Rita Davis, and Steve Newton,)

Defendants.)

**ANSWER TO COUNTERCLAIM OF
DEFENDANT ANDERSON COUNTY**

COMES NOW, Plaintiffs, Moats Construction, Inc. and Russell Moats, by and through their undersigned attorney, and respectfully submits this Answer to Counterclaim of Defendant Anderson County. In support of their answer, Plaintiffs respectfully show unto the Court, the following:

FOR A FIRST DEFENSE

1. Plaintiffs deny each and every allegation of the Complaint unless specifically admitted, modified, or explained herein.
2. Plaintiffs admit paragraph 36 insofar as the parties entered into a Settlement Agreement in March of 2018. However, Plaintiffs deny any agreement to complete work which was not contingent upon Defendant's specific performance of their end of the Settlement Agreement.
3. Plaintiffs expressly deny paragraphs 37, 38, 39, 40, and 41.

FOR A SECOND DEFENSE

4. Defendant's claims are barred pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

5. Plaintiffs reserve the right, subject to leave of court, to amend its Answer to include any additional defenses or affirmative defenses which may become apparent during the course of litigation.

WHEREFORE, Plaintiffs request that this action by way of Counterclaim be dismissed with prejudice with costs and any other relief deemed appropriate by this Court being assessed against Defendant.

GOODWYN LAW FIRM, LLC

T. Jeff Goodwyn, Jr.

T. Jeff Goodwyn, Jr., Esq. (SC Bar #:73789)

C. David Beale, Jr., Esq. (SC Bar #:102917)

2519 Devine Street

Suite A

Columbia, S.C. 29205

(803) 251-4517

(803) 251-4527 facsimile

JGoodwyn@Goodwynlaw.com

DBeale@Goodwynlaw.com

ATTORNEYS FOR PLAINTIFF

May 11, 2020
Columbia, South Carolina

R-000031

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
	)	Civil Action No.: 2020-CP-04-00085
Moats Construction, Inc. and Russell	)	
Moats,	)	
	)	
Plaintiffs,	)	<u>MOTION TO CHANGE VENUE</u>
	)	
vs.	)	
	)	
Anderson County, Rusty Burns, Matt	)	
Schell, Holt Hopkins,	)	
	)	
Defendants.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs, by and through their undersigned counsel, pursuant to S.C. Code §15-7-100 and §15-7-110, hereby move for an order changing venue of this trial currently scheduled for the week of April 9, 2024 and show the court as follows. Pursuant to S.C. Code §15-7-100, the court may change the place of trial if there is reason to believe that a fair and impartial trial cannot be had there or the convenience of witnesses and the ends of justice would be promoted by the change. For the reasons set forth below, Plaintiffs contend that he will not be able to receive a fair trial in Anderson County and that the ends of justice would be promoted by a change in venue.

Plaintiffs seek a transfer of venue to Greenville or Spartanburg County, a county that is reasonably convenient for the witnesses who live in Anderson County and a county that does not have the inherent conflicts and bias that exist in Anderson County. Plaintiffs also show that a motion to change venue may be brought at any time prior to trial and that the age of this case is not a valid ground to deny the motion. *Bryan v. Richardson*, 124 S.C. 731, 240 S.E.2d 92 (S.C.

R-000032

1962) (since the statute fixes no time at which the motion to change the place of trial shall be made, we hold that there was no abuse of discretion in granting the change in this case). This motion is supported by the pleadings, the attached affidavit of Russell Moats as Exhibit “A” and the facts as established in the case.

One of the named defendants in this case is Anderson County and Plaintiffs will be asking for substantial sums of money to be paid by Anderson County. Anderson County is funded, of course, in large part by the taxpayers of Anderson County. Plaintiffs have legitimate concerns about an Anderson County jury being fair and impartial when they are being asked essentially to have themselves, as the local taxpayers, to pay Plaintiffs for the wrongs of their county officials. It is reasonable to think that Anderson County jurors will lean the way of Anderson County on the issue of liability or if they find against Anderson County on the issue of liability, they will be reluctant to require Anderson County to pay the substantial monetary award being sought by Plaintiff for fear of their taxes going up or county services being reduced because a large judgment had to be paid. Whether these fears are justified or not, it is reasonable to think that the average Anderson County juror will be affected by these fears and be biased in Anderson County’s favor. A transfer of venue to Greenville or Spartanburg County will eliminate any potential of this bias.

In addition to these reasons, other defendants and witnesses in the case include Rusty Burns, the County Administrator, Holt Hopkins, the Deputy County Administrator, and Brian Richardson, the facilities manager for Anderson County. These witnesses hold significant and influential county positions. It is reasonable to think that Anderson County jurors may feel reluctant to find against Anderson County itself or these individuals for fear of retaliation by these influential county leaders, whether justified or not, leading to a bias against Plaintiffs.

Lastly, Russell Moats has heard a local radio news broadcast on WAIM, 1230 AM, specifically the Rick Driver show, speak directly of this case on his radio show in the past two weeks leading up to the scheduled trial date. On its website, WAIM touts the Rick Driver show as Anderson's most listened to local talk show. Russell Moats has heard multiple negative comments about him and his company on this show and believes that an Anderson County jury will be bias against Plaintiffs as a result.

As shown above, there are inherent natural conflicts and bias in favor of Anderson County for a case tried before Anderson County jurors. In addition, the most popular local talk show is making negative comments about Plaintiffs in the weeks leading up to the scheduled trial date. A transfer of venue to Greenville or Spartanburg Counties eliminates these inherent conflicts associated with having Anderson County as a defendant and having influential county officials testifying on Anderson County's behalf as well as eliminating any bias that may come from the local radio making negative comments about Plaintiffs. At the same time, the change of venue will not have any significant effect on the convenience of the witnesses since Greenville and Spartanburg are very close to Anderson.

For the above reasons, ends of justice would be promoted by a change of venue by eliminating any chance that an Anderson County jury would not be fair and impartial due to the inherent conflict associated with having Anderson County as a defendant and having influential county officials testifying on Anderson County's behalf. Transferring venue will also eliminate any possible influence of the local talk radio shows while at the same time preserving the convenience of the witnesses. As a result, Plaintiff respectfully asks the court to transfer venue of this trial to Greenville or Spartanburg Counties.

Respectfully submitted,

GOODWYN LAW FIRM, LLC

s/T. Jeff Goodwyn, Jr.

T. Jeff Goodwyn, Jr. (73789)

2309 Devine Street

Columbia, SC 29205

(803) 251-4517 Phone

(803) 251-4527 fax

jgoodwyn@goodwynlaw.com

Attorney for Plaintiff

Columbia, South Carolina
April 10, 2024

R-000035

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Moats Construction, Inc. and Russell Moats,

Plaintiffs,

v.

Anderson County, Rusty Burns, Matt Schell,
and Holt Hopkins,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2020-CP-04-00085

**DEFENDANT ANDERSON COUNTY'S POST-
TRIAL MOTIONS FOR JUDGMENT
NOTWITHSTANDING THE VERDICT, OR IN THE
ALTERNATIVE A NEW TRIAL ABSOLUTE OR
NEW TRIAL PURSUANT TO THE "THIRTEENTH
JUROR DOCTRINE", NEW TRIAL NISI ADDITUR
OR NEW TRIAL NISI REMITTITUR**

Defendant Anderson County ("Anderson County" or the "County"), by and through its undersigned counsel, hereby moves, pursuant to Rule 50 of the South Carolina Rules of Civil Procedure, for a Judgment Notwithstanding the Verdict ("JNOV"), or in the alternative, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, for a New Trial Absolute; or a New Trial *Nisi Additur* or *Remittitur*. For the reasons set forth below, Defendant's Motions should be granted.

STATEMENT OF UNDISPUTED FACTS

By way of background, the parties entered into two separate contracts for work in Anderson County. One contract was for the removal and remediation of Toxaway Mill (the "Toxaway Contract" or the "Toxaway Project") and the other contract was for the construction of the East West Parkway (the "East West Contract" or the "East West Project"). Disputes arose between the parties relating to the work under both contracts, and the disputes were mediated in March 2018. As a result of the mediation, the parties entered into a binding Mediated Settlement Agreement on March 29, 2018 (attached hereto as Exhibit A) wherein Plaintiffs

R-000036

agreed to complete work related to the East West Project and the Toxaway Project pursuant to the terms contained in the Mediated Settlement Agreement. The Mediated Settlement Agreement resolved all disputes between the parties regarding the Toxaway Project and East West Project, with the exception of the claim for retainage remaining on the East West Project. The undisputed testimony and evidence was that Moats Construction eventually walked off of the project. Moats Construction alleged that the forms could not be constructed in accordance with the plans and specifications, and Anderson County responded that the forms could be constructed according to the plans with only a few minor revisions to the forms. Nevertheless, Moats Construction walked off of the job without completing it. After walking off of the project, Plaintiffs brought this action alleging the County breached the Mediated Settlement Agreement. The County counterclaimed for the costs incurred in the completion of the East West Project based upon its position that Plaintiffs, after being given multiple change orders and a plan to finish both projects in the Mediated Settlement Agreement, abandoned work on the East West Project before the completion of their contracted-for work.¹

At the close of Plaintiffs' case, the Court granted various Directed Verdicts in favor of Anderson County, including but not limited to, that the claims for breach of the East West Project contract and the Toxaway Project contract were resolved by the Mediated Settlement Agreement, Plaintiffs' claims for punitive damages were not recoverable from Anderson County,

¹ In addition, Plaintiffs alleged a cause of action for a violation of S.C. Freedom of Information Act, which Anderson County denies. This cause of action was not tried as the Court ruled that such FOIA claims are tried by the judge and not a jury. This action will be tried, if at all, at a later date.

and that Plaintiffs were not entitled to lost profits. The Court also directed a verdict against Anderson County as to the \$50,000 delay damages contained in the Mediated Settlement Agreement which is also the subject of these Post-Trial Motions.

However, the breach of contract of the Mediated Settlement Agreement and the County's counterclaim were submitted to the jury for deliberation. On April 19, 2024, the jury returned a verdict in favor of Plaintiffs on the Breach of Contract of the Mediated Settlement Agreement claim and awarded Plaintiffs \$412,105.00 in damages; and with regard to the County's counterclaim, the jury returned a verdict for the County and awarded the County damages of \$1,900.00.

The County hereby files the following post-trial motions follow, which are timely made within ten days of the verdict.

ARGUMENT

I. This Court Should Enter Judgment for Anderson County Notwithstanding the Verdict.

Pursuant to Rule 50(b), SCRCP, Anderson County moves the Court for JNOV. A court should grant a JNOV when the evidence presented at trial is insufficient to support the jury's verdict. *See Rogers v. Norfolk Southern Corp.*, 343 S.C. 52, 59, 538 S.E.2d 664, 668 (Ct. App. 2001), *aff'd as modified*, 356 S.C. 85, 588 S.E.2d 87 (2003). Here, the evidence is insufficient to support the jury's verdict of liability as to the Plaintiffs' breach of contract claim and damages awarded as a matter of law. *See McEntire v. Mooregard Exterminating Servs., Inc.*, 353 S.C. 629, 632–33, 578 S.E.2d 746, 748 (Ct. App. 2003) ("A directed verdict is warranted when the case presents only questions of law and should be allowed only if the evidence would not be legally sufficient to

sustain a verdict for the opposite party. The question of whether the evidence adduced by a party can support a verdict in the party's favor is a question of law.” (internal quotation marks and footnotes omitted)).

A. Insufficient Evidence Establishing the Breach of Contract Cause of Action

As argued by Anderson County in its motion for directed verdict at the close of Plaintiffs’ case and renewed at the close of all evidence, considering the evidence in the light most favorable to Plaintiff as is required,² Anderson County is entitled to JNOV because the evidence at trial is insufficient to support the jury’s finding of liability as to Anderson County.

1. Changes to and Performance under the East West and Toxaway Contracts Cannot Constitute a Breach of the Mediated Settlement Agreement as a Matter of Law.

While Plaintiff elicited trial testimony that the County failed to perform under the East West and Toxaway Contracts, this testimony was and is irrelevant to the breach of contract cause of action that was submitted to the jury. While the parties dispute the performance under these contracts, it is undisputed that both the East West Parkway Contract and the Toxaway Project contracts (and any events and issues surrounding the performance of those contracts) were compromised into the Mediated Settlement Agreement in 2018, except for the retainage remaining on the East West Project. It is a basic premise of contract law that “[u]pon the execution of a valid substituted agreement, the original agreement becomes merged into it and

² See *Turner v. Medical Univ. of S.C.*, 430 S.C. 569, 846 S.E.2d 1 (Ct. App. 2020) (stating that the circuit court must view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion and must deny the motion when either the evidence yields more than one inference or its inference is in doubt).

is extinguished.” 30 S.C. Jur. Contracts § 73; *see also, e.g.*, 17A C.J.S. Contracts § 580 (“Upon the execution of a valid and legal substituted agreement, the original agreement merges into it and is extinguished, and a failure to perform the substituted agreement will not revive the old agreement.”). Thus, any evidence of alleged past nonperformance under the old agreements cannot as a matter of law form the basis of Plaintiffs’ breach of contract claim or support the verdict on the breach of contract claim.³

2. There is no Trial Evidence or Testimony that the County Failed to Perform Regarding the Retainage of the East West Project.

Further, to the extent the retainage was the remaining issue following the Mediated Settlement Agreement in 2018, there is no evidence that the County failed to perform. To the contrary, the trial testimony and evidence establishes that it was Plaintiffs—and not the County—that breached the agreement in this regard by walking off the project and failing to complete the

³ In any event, the evidence at trial conclusively established that the County did not breach the earlier contracts, in that: (1) as issues were encountered on the projects that may have impacted Plaintiffs’ work, Moats Construction was paid change orders and granted extensions of time; (2) the County’s designers made revisions to the drawings to address issues of concern to Moats Construction with the plans; (3) Anderson County paid the pay applications consistent with the contract which required that the payments be made for work actually performed and the disputed portions of the pay applications for resolved and paid by Anderson County in the initial payment provided for in the Mediated Settlement Agreement. *See* Def. Ex. 1 Tab 27 (providing that the payment to Moats Construction in April 2018 were for the remaining amount of Pay Applications No. 5 and No. 6). In regard to the Toxaway Project, the County was actively working to obtain requisite stormwater and asbestos permits for the removal of the debris piles at the Toxaway Project. The evidence establishes that Moats Construction was informed that it could do no work other than removing brush from the debris piles until those permits were in place. However, Moats Construction moved forward anyway and removed debris in violation of the contract. Thus, the evidence at trial established that if anyone was in breach of the Toxaway Contract, it was Moats Construction—and not the County. However, the Mediated Settlement Agreement resolved these performance issues.

forms necessary for the completion of the remaining work to be completed at the East West Project. Therefore, to the extent the verdict was based upon the retainage evidence, the verdict is not supported by the evidence.

3. There is No Trial Evidence or Testimony Establishing that Anderson County Breached the Mediated Settlement Agreement.

Further, there was likewise no evidence at trial establishing that Anderson County breached the terms of the Mediated Settlement Agreement. Rather, the trial evidence conclusively proves:

- That Anderson County paid Moats Construction the payment required under Paragraph 6 at the release of the Notice to Proceed before the start date which was the ONLY term of the Mediated Settlement Agreement that contained an explicit time for performance;
- That the Mediated Settlement Agreement did not set a time for the payment of the delay damages and it did not set a time for the payment of the \$15,000 change order; and that the County issued the Change Order on the date of the Notice to Proceed and it was to be paid as the work was completed;
- That the \$50,000 delay damages contained no time for payment;
- That Paragraph 9 regarding the ADA provided that Moats Construction would build it according to the ADA if the design drawings complied with the ADA;
- That there is no evidence that the East West Park is in a violation of the Americans with Disabilities Act today. The letter from Sandy Hanebrink only provides that the areas noted in her 4-30-2019 letter were solely of observations of noncompliant areas on that date and while additional work and or repair work was ongoing. Hanebrink's letter and her testimony confirmed that her work in April 2019 did not include any review of the drawings. Moreover, the only testimony as to the current compliance with the ADA was from Matt Schell who testified that the it was in compliance today.
- That the Toxaway project would only begin upon the approval of the East West Project by the County; and that the East West project was not completed so there was no obligation to begin the Toxaway project under the Mediated Settlement

Agreement.

4. Evidence of Non-performance under the Contract by Moats Construction Precludes the Breach of Contract Verdict as a Matter of Law.

At trial, the Court granted a Directed Verdict as to non-payment of the \$50,000 delay damages. The Court granted the directed verdict over the objection and argument of Anderson County that the time for performance was not explicitly included in the Mediated Settlement Agreement and that Moats Construction had already breached the Mediated Settlement Agreement before the payment was to be made. The testimony was clear that the Mediated Settlement Agreement was breached by Moats Construction walking off the job prior to the payment for the change order and the delay damage. It is a fundamental rule of contract law that the first nonperforming party cannot maintain an action against the other party for a subsequent failure to perform. See, e.g., *See Cont'l Mortg. Invs. v. Quail Run Assocs.*, 280 S.C. 409, 417, 312 S.E.2d 272, 277 (Ct. App. 1984) ("It is settled that a party who precludes the other from performing under the contract cannot avail himself of such non-performance."); *Mozingo & Wallace Architects, L.L.P. v. Grand*, 379 S.C. 478, 484, 666 S.E.2d 267, 270 (Ct. App. 2008) (noting a "party who seeks to recover damages for breach of a contract must show that the contract has been performed on his part" (citation omitted)); *Hubbard v. Woodmen of the World*, 125 S.C. 154, 118 S.E. 418, 419 (1923) (citation omitted) ("Where a contract embodies mutual and interdependent conditions and obligations, and one party either disables himself from performing, or prevents the other from performing, or repudiates in advance his obligations under the contract and refuses to be longer bound thereby, communicating such repudiation to the other party, the latter party is not only excused from further performance on his part, but

may, at his option, treat the contract as terminated for all purposes of performance, and maintain an action at once for the damages occasioned by such repudiation, without awaiting the time fixed by the contract for performance by the defendant.”); 17B C.J.S. Contracts § 672 (“Where mutual promises, which constitute consideration for each other, are concurrent or dependent, the failure of one party to perform may be treated as a breach and will ordinarily discharge the other, and the person who has broken the contract cannot enforce it or recover on it.”). Thus, the trial evidence of Moats Construction’s breach excused the performance of Anderson County and no further performance was required. Therefore, the breach of contract verdict is not supported by the evidence as a matter of law.⁴

In sum, the trial evidence does not support the breach of contract verdict, and, therefore, Anderson County respectfully asks this Court to grant its Motion for JNOV and direct a verdict in favor of Anderson County on the breach of contract claim as a matter of law. *See, e.g., Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009) (“The elements for breach of contract are the existence of the contract, **its breach**, and the damages caused by such breach.” (emphasis added)).⁵

⁴ In the alternative, the County moves pursuant to Rule 59(e), SCRCP, to alter or amend the Court’s ruling denying the County’s Motion for directed verdict as to the non-payment of the \$50,000 delay damages. *See Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Under the rule, “[a] party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Id.* As have been recognized by the South Carolina Supreme Court, “[t]here is nothing inherently unfair in allowing a party one final chance not only to call the court’s attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument.” *Id.* at 22, 602 S.E.2d at 779.

⁵ Should the Court choose not to enter a judgment notwithstanding the verdict, in the alternative,

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B. Insufficient Evidence of Damages

The evidence as to damages is further insufficient to support the jury's verdict as a matter of law. Over the objection of Anderson County, the Court ruled that the Plaintiff could argue to the jury that it should award damages in an amount determined by the jury for Anderson County's alleged failure to rescind its Termination of the Toxaway Contract based upon its impact on the Plaintiffs' ability to obtain bid bonds. Defendants argued at directed verdict and again at the close of all evidence that there was no evidence by which the jury could determine such damages and that such damages are speculative, at best. Plaintiff introduced no evidence of any damages suffered by Plaintiff related to the bid bonds and, in fact, it could not because the bid bond only secures the ability to bid on a public project—and NOT that it would have been awarded the project.

Additionally, Anderson County maintains that the inability to obtain bid bonds was not the result of the actions or inactions of Anderson County. The unconverted evidence was that the statement of Contractors Surety Group's denial of bid bonds to Plaintiff was related only to the failure of Plaintiff to supply required information to support the issuance of the bid bonds. See Def. Ex. 1 Tab 23 (Moats 01475). It specifically lists the reasons for the denial and none of those reasons mention or even relate to Anderson County. It says:

A synopsis of the reasons for denial is provided herein:

1. Personal credit remained locked after repeated attempts. Unable to continue underwriting.

Anderson County respectfully asks this Court to order a new trial based on the JNOV standard. See Rule 50(b), SCRCP (providing that the trial court may grant a new trial instead of a JNOV in response to a motion for JNOV).

2. Preponderance of open lawsuits shown in Westlaw inquiry, specifically New Beach Construction Partners, Inc. and claim against Travelers Casualty and Surety, Doug Proctor and AT&T.
3. Requested amount of surety support was \$400,000 above previously completed largest job.
4. Lack of CPA prepared financial statements.
5. Lack of bank line of credit
6. Lack of requested personal and corporate tax returns

See Def. Ex. 1 Tab 23 (Moats 01475).

Here, there was simply no evidence upon which the jury could reasonably calculate any damages for any of these alleged lost bids. *See, e.g., Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 434, 717 S.E.2d 765, 781 (Ct. App. 2011) (“The determination of damages may depend to some extent on the consideration of contingent events if a reasonable basis of computation is afforded, permitting a reasonably close estimate of the loss.” (citing *Piggy Park Enters., Inc. v. Schofield*, 251 S.C. 385, 391–92, 162 S.E.2d 705, 708 (1968))). The speculative nature of the evidence of these damages is therefore insufficient to support the jury damages verdict as a matter of law. *See generally Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981) (“Generally, in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy.”); *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 434, 717 S.E.2d 761, 781 (Ct. App. 2011) (“The existence, causation, and amount of damages cannot be left to conjecture, guess, or speculation.”); *Mellen v. Lane*, 377 S.C. 261, 287, 659 S.E.2d 236, 250 (Ct. App. 2008). (“Actual or compensatory damages include compensation for all injuries which are naturally the proximate result of the alleged wrongful conduct of the defendant.”).

II. In the Alternative, the Court Should Order a New Trial Absolute.

If the Court denies Anderson County's Motion for JNOV, Anderson County moves, in the alternative, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure for a new trial absolute. Rule 59 provides that new trial may be granted "in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State." See Rule 59(a), SCRCP.

A. The Verdict is Against the Weight of the Evidence.

The Court may grant a new trial absolute if the verdict is against the weight of the evidence. See *South Carolina State Highway Dept. v. Clarkson*, 267 S.C. 121, 127, 226 S.E.2d 696 (1976). The Court may order a new trial under this standard if it concludes that the jury's verdict is contrary to the fair preponderance of the evidence and that justice was not done by the jury's verdict. See *id.* at 124-28 (affirming trial judge's grant of new trial made on this ground). A trial court does not abuse its discretion in granting a new trial when the evidence conflicts. See *id.* at 126-27 ("the testimony was in conflict on the issues of fact," so "the finding of the trial judge has support in the evidence" and "there was no abuse of discretion . . . in granting a new trial"). Here, as outlined above, the verdict is contrary to the fair preponderance of the evidence. If the breach of contract verdict was based on any conduct by the County prior to the entry of the Mediated Settlement Agreement, this was a clear error of law. Further, the clear preponderance of the evidence at trial established that the County did not breach the Mediated Settlement Agreement. Thus, not only was the verdict contrary to the fair preponderance of evidence, but justice was not done by the verdict.

B. The Court Should Grant a New Trial Pursuant to the “Thirteenth Juror” Doctrine.

Separately, under the “thirteenth juror” doctrine, a trial court may grant a new trial absolute when it finds the evidence does not justify the verdict. *See Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990) (affirming trial court’s order granting a new trial under the thirteenth juror doctrine); *McEntire*, 353 S.C. at 631, 578 S.E.2d at 747 (same); *Sorin Equipment Co., Inc. v. Firm, Inc.*, 323 S.C. 359, 363-64, 474 S.E.2d 819, 822 (Ct. App. 1996) (same). In other words, South Carolina’s “thirteenth juror” doctrine entitles the trial judge to sit, in essence, as the thirteenth juror when he or she finds the evidence does not justify the verdict, and then to grant a new trial based solely “upon the facts.” *Norton v. Norfolk Southern Ry. Co.*, 350 S.C. 473, 567 S.E.2d 851 (2002). As the “thirteenth juror,” the trial judge can hang the jury by refusing to agree to the jury's otherwise unanimous verdict. *See id.*

As already stated, the facts developed at trial clearly establish that the earlier contracts were resolved by the Mediated Settlement Agreement and that the County did not fail to perform under this new agreement—to the contrary, Plaintiffs breached the Mediated Settlement Agreement. Moats Construction was given every opportunity to build the forms for the sidewalk to the plans and was also told by Holt Hopkins, Assistant Administrator for Anderson County that only a few revisions to the forms were needed and it would be acceptable to the County. Despite that, Moats Construction’s response was to tear out its forms and leave the job. Thus, this Court should exercise its authority as the thirteenth juror because the evidence does not justify a breach of contract verdict for the Plaintiff. Moreover, as noted previously, any evidence that was elicited to support for the entirely speculative lost bid damages falls woefully short as a matter

of law, and because there is no evidence to support the jury's damages on the breach of contract claim, the Court should exercise its authority as thirteenth juror in this respect, as well.

C. The Verdict Was the Result of Passion, Prejudice or Caprice.

In addition, Anderson County moves the Court for a new trial absolute because the verdict was clearly the result of passion, prejudice, or caprice. *See Krepps v. Ausen*, 324 S.C. 597, 607, 479 S.E.2d 290, 295 (Ct. App. 1996). The trial court must grant a new trial absolute when the verdict is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, partiality, corruption, or other considerations not reflected by the evidence affected the amount awarded. *See Sanders v. Prince*, 304 S.C. 236, 238-39, 403 S.E.2d 640, 642 (1991) (reversing trial court's denial of a new trial because jury verdict was so grossly excessive as to indicate passion, prejudice or other improper motive); *Small v. Springs Indus. Inc.*, 292 S.C. 481, 487, 357 S.E.2d 452, 455 (1987) (verdict was based upon improper considerations not found in the evidence).

Given that Plaintiff only elicited evidence and testimony regarding damages of lost bids—in other words purely speculative damages—a verdict totaling \$412,105 for breach of contract can only be the result of passion, prejudice or caprice. There is no evidence supporting any verdict over \$83,105.91, which is the maximum contract damages that can be recovered by the Plaintiff based on the evidence presented. Specifically, Plaintiffs presented evidence that the contract damages under the Mediated Settlement Agreement were \$83,105.91 and consisted of \$5,550.00 (the net amount of the Change Order) \$27,555.91 in retainage on East West Park Project, and the \$50,000 in delay damages based upon the directed verdict granted by the Court

over the objection of Anderson County. Therefore, the remaining amount of \$328,999.09 must, by necessity, be related solely to the termination/bid bond loss argued by the Plaintiff. That amount is simply unsupported by any evidence. Again, there is no competent evidence that such alleged damages are the result of an action or inaction of Anderson County and additionally there is no evidence of the impact even if it was proximately caused by Anderson County.

D. Erroneous Admission of Irrelevant and Prejudicial Evidence, and Other Trial Errors.

The Court should grant a new trial because Anderson County was severely prejudiced by various procedural errors, such as the admission of evidence as to Moats Construction's inability to obtain bid bonds. *See Creighton v. Coligny Plaza Ltd. Partnership*, 334 S.C. 96, 512 S.E.2d 510 (Ct. App. 1998) (providing that evidentiary errors resulting in prejudice can be a basis on which a trial court may grant a new trial). As discussed above, these bid bonds bear no relationship to any losses of work or lost profits of Moats Construction, even if Moats has provided any evidence of what those losses may have been. There is no reasonable certainty that Moats Construction would have submitted the bids, would have been the low bidder, would have been found responsive and responsible, would have been awarded the work, and would have made a profit. Each of these elements would have to have been proven with reasonable certainty before the any losses from these bid bonds would have been remotely calculable, much less reasonably certain.

These and other procedural errors, in the aggregate, combined to violate Anderson County's right to due process and a fair trial. As a result, a new trial should be ordered. *See Howard v. State Farm Mut. Auto. Ins. Co.*, 316 S.C. 445, 448-49, 450 S.E.2d 582, 584-85 (1994)

(granting a new trial upon introduction of evidence of post-denial conduct).⁶

III. In the Alternative, the Court Should Grant New Trial *Nisi Remittitur* or *Additur*.

In the alternative, the County moves the Court to grant a new trial *nisi*, either *remittitur* due to the excessive nature of the award of damages for the breach of contract claim to the Plaintiffs or *additur* due the inadequacy of the award of damages to the County for its counterclaims.

If the jury's verdict is either inadequate or excessive, the trial judge has wide discretionary power to grant a new trial *nisi*. See *Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d 690 (1995); see also *McCourt by and through McCourt v. Abernathy*, 318 S.C. 301, 457 S.E.2d 603 (1995) (trial judge alone has power to grant new trial *nisi* when he finds amount of verdict to be merely inadequate or excessive); *Rush v. Blanchard*, 310 S.C. 375, 426 S.E.2d 802 (1993). The grant or denial of a motion for a new trial *nisi* rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. See *Waring v. Johnson*, 341 S.C. 248, 256, 533 S.E.2d 906, 910 (Ct. App. 2000) (citing *Krepps by Krepps v. Ausen*, 324 S.C. 597, 479 S.E.2d 290 (Ct. App. 1996); *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996)). A new trial *nisi* is one in which a new trial will be granted unless the party opposing it complies with a condition set by the court. *Id.* at 257, 533 S.E.2d at 911 (citing *Elliott v. Black River Elec. Coop.*, 233 S.C. 233,

⁶ The County further moves pursuant to Rule 59(e), SCRCP, to alter or amend the Court's decision to allow allegations of lost bids before the jury. See *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). This Court should grant a new trial for the reasons already provided in the section explaining the basis for JNOV.

104 S.E.2d 357 (1958)). “When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice or prejudice.” *Id.* (citing *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 431 S.E.2d 557 (1993)). To this end, “[i]f the amount of the verdict is so grossly inadequate or excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives, the trial judge is required to grant a new trial absolute.” *Id.* (citations omitted). In granting a new trial *nisi*, the trial court does not impose its will on a party by substituting its judgment for that of the jury, but may give the party an option in the way of additur or remittitur or, in the alternative, a new trial. *Id.* (citation omitted).

The consideration of a motion for a new trial *nisi* requires the court to consider the adequacy of the verdict in light of the evidence presented. *Waring*, 341 S.C. at 257, 533 S.E.2d at 911.

A. Remittitur

The County respectfully moves the Court to grant a new trial *nisi* remittitur of the jury verdict award of \$412,105 for Plaintiffs’ breach of contract claim, as it is clearly excessive in view of the evidence at trial. *See South Carolina Farm Bureau Mutual Insurance Company*, 324 S.C. 149, 478 S.E.2d 57 (1996) (providing that if an award of damages is not grossly excessive so as to warrant a new trial absolute, the award may still be deemed excessive such that a new trial *nisi* remittitur may be granted). As argued by the County in its Motions for JNOV and New Trial Absolute above, the verdict of the jury in this case is clearly excessive and is not supported by the

evidence.

As emphasized previously, the jury verdict for breach of contract could have only been based upon Plaintiffs' arguments and allegations that Moats Construction lost the ability to obtain bid bonds. Not only is this pure speculation but the evidence at trial did not tie any lost bonds to the County. Further, Plaintiffs provided no evidence or reasonable calculations of what those damages could even be. Thus, the damages awarded is clearly excessive, especially because Plaintiffs' alleged contractual damages are \$83,105.91 (including the \$50,000 delay damages directed by the Court), which is the only competent evidence of damages the jury had before it. *See, e.g., Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009) ("In a breach of contract action, damages serve to place the non-breaching party in the position he would have enjoyed had the contract been performed." (citation omitted)).

Given that Plaintiffs failed to produce any competent evidence of the amount of damages upon which the jury could have awarded \$412,105, it is appropriate for the Court to exercise its broad discretion and grant the County a new trial *nisi remittitur*, offering at most, \$83,105.91 for Plaintiffs' breach of contract claim.

B. Additur

A new trial *nisi additur* may be ordered when the verdict is merely insufficient based on the evidence. *Waring*, 341 S.C. at 257, 533 S.E.2d at 911 (citation omitted). The jury verdict of \$1,900 for the County's counterclaims is obviously inadequate. At trial, the County established \$18,592 in damages for the Duncan Concrete work, First Impressions landscaping work, Mosely Paving and Irrigation Service and Repair. The County testified that this work was included in

Moats Construction's scope of work and had to be completed. In light of the evidence at trial, the County was not adequately compensated at trial for its counterclaims and the court should suggest an additur of \$18,592. See e.g., *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984) (court did not abuse its discretion in granting patient a new trial *nisi* on damages unless ophthalmologist agreed to an *additur*, where judge stated appropriate reasons in his order and it could not be argued that patient was adequately compensated by jury verdict).⁷

CONCLUSION

Based on the foregoing, Defendant Anderson County respectfully asks this Court to enter judgment notwithstanding the verdict in favor of the County; or in the alternative grant the County a new trial absolute, grant a new trial based on the "thirteenth juror" doctrine; or grant a new trial *nisi additur* in the amount of \$18,592 and *remittitur* in the amount of at most \$83,105.91.

⁷ In the alternative, the County respectfully asks this Court to alter or amend the judgment of the jury pursuant to Rule 59(e), SCRCP, to reduce the amount to, at most, \$83,105.91 and/or increase the amount of the jury award for the County to \$18,592.

Defendant Anderson County requests an in-person hearing on these motions.

Respectfully submitted,

s/ John W. Davidson

John W. Davidson, SC Bar No. 8494

MAYNARD NEXSEN PC

1230 Main Street, Suite 700

Columbia, South Carolina 29201

803.771.8900

jdavidson@maynardnexsen.com

Attorneys for Defendant Anderson County

April 29, 2024

EXHIBIT A

Mediated Settlement Agreement

MEDIATED SETTLEMENT AGREEMENT
SUBJECT TO ANDERSON COUNTY COUNCIL APPROVAL

Settlement reached this 29th day of March 2018, by and between Moats Construction Company and Anderson County regarding the East West Park Project as follows:

1. That the contract sum to date is \$324,761.28.
2. Moats has been paid the lump sum of \$248,003.23 to date.
3. Moats is entitled to an additional \$15,000.00 for additional changes in the work and will submit backup for the \$15,000.00 and a Change Order for \$15,000.00 will be issued by Anderson County before the start date.
4. Moats shall be entitled to an additional \$50,000.00 for delay damages.
5. Moats will remobilize on the project on the start date (not before 4/17/18) set forth in the Notice to Proceed issued by Anderson County and the work shall be complete within 30 calendar days of the start date subject to weather or unforeseen conditions.
6. Moats shall be paid a lump sum of \$26,155.89 on or before the start date set forth in the Notice to Proceed
7. Moats shall submit as-built drawings and comply with any other contractual requirements for final payment of the remaining monies due under the contract.
8. The water line installed by Moats is warranted by Moats and its surety bond as set forth in the contract documents and Moats and or its surety agrees to make any repairs to the water line after notice to Moats.
9. Moats' work shall comply with ADA requirements provided that the design drawings issued to Moats complied with ADA requirements.
10. All other terms and conditions of the contract remain in place.
11. The above agreement is subject to Anderson County Council approval at their April 17, 2018 council meeting, or earlier, and the undersigned Anderson County Attorney, Leon Harmon, agrees to recommend this proposed settlement to Anderson County Council.
12. The parties agree on specification submittals as set forth in Exhibit A attached hereto and incorporated herein by reference.



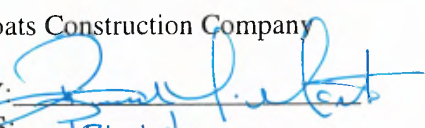
R-000056

13. The parties further agrees that subject to Anderson County Council's approval of the East West Park Project, Anderson County and Moats Construction Company agree on the following settlement terms on the Toxaway Project.

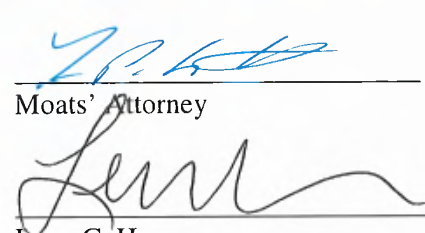
- a. Anderson County will rescind its termination letter.
- b. Anderson County will reinstate Moats contract less the \$59,000.00 previously paid.
- c. Moats will remobilize on the project on or after June 1, 2018 as directed by the Notice to Proceed issued by Anderson County.
- d. A Change Order will be issued to implement and comply with a stormwater permit.
- e. Anderson County will issue a change order for an abatement permit and abatement pursuant to the original bid.
- f. The termination for convenience clause will be deleted from said contract.
- g. Moats compensation under said contract shall be limited to the balance remaining in the contract subject to written change orders issued in accordance with the contract documents.
- h. No work will proceed without air monitoring being in effect.
- i. All other terms and conditions of said contract shall remain in place.

14. The parties are responsible for their own costs expenses and attorneys' fees related to these projects and disputes.

Moats Construction Company

BY: 

IPS: T. Bircjale


Moats' Attorney

Leon C. Harmon

Anderson County Attorney

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East West Parkway Phase 1 and 2 Submittals

Section	Spec	Submittal	Received
12 93 00 (02870)	Site Furnishings	Specification Drawing: Detail drawing of product including overall dimensions and options Samples: Various component samples available upon request	no X
		Qualifications: <u>Installer must submit evidence of a successful installation history with comparable materials and designs specified</u>	no
		Test Reports: submit the following reports directly to the Owner from the testing services with copy to contractor: 1. Graduation test reports on borrowed material 2. <u>Field reports, in-place soil density tests</u> . 3. One optimum moisture-maximum density curve for each type of soil compacted	no OWNER TO TEST.
31 20 00	Earth Moving	The Contractor shall submit samples of all materials from off-site sources to the testing laboratory at least ten (10) calendar days prior to use in the work. The Contractor shall not deliver or use any material for off-site sources until written approval is received from the Engineer based upon test results showing compliance with these specifications. On-site excavated material, including fill and topsoil, if available, may be submitted for testing.	no NO OFFSITE
		In accordance with the General Requirements, submit samples, materials certifications, manufacturer's product data and test reports as hereinafter required: 1. Bituminous concrete design mix 2. Manufacture data on pavement marking paint 3. Sieve analysis on subbase and base material	no OK
32 12 00	Flexible Paving	In accordance with the General Requirements, submit samples, materials certifications, manufacturer's product data and test reports as hereinafter required: 1. Submit concrete design mix	no Submit Load Tickets OK
32 16 00	Curbs, Gutters, Sidewalks, and Driveways	Shop drawings for water supply assembly including backflow preventer and booster pump if needed	no Already Submitted
32 80 00	Irrigation		no

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		yes	no
	Contractor to provide three (3) sets of drawings and specifications which depict system design, distribution piping, valves, and coverage	yes	no
	Maintenance and Operating Instructions: The Contractor shall furnish the owner a written and detailed description for the care and maintenance of the irrigation system. Such instructions shall include, but not be limited to, specific instructions for the operation of controller clock, periodic inspection of double check valve, draining of the main line, etc., for winterizing, and periodic inspection of heads and spray patterns. The Contractor shall also furnish the Owner with a set of reproducible "As-Built" drawings, which show precise locations of piping, wiring, heads, and valves. Such instructions and "As-Built" drawings shall accompany the Contractor's request for final review for establishing a date of acceptance of irrigation system and shall be subject to Engineer's review and approval	yes	no
	Substitutions: Substitutions will be permitted only upon proof that the specified material or product is not obtainable. Present alternate material or product having the same and equivalent characteristics to the Engineer for approval with an equitable adjustment of contract sum.	yes	no
32 92 00	Material Samples: Submit to Owner's Representative, three 1-gallon sized zip lock plastic bags full of each of the following: 1. Mulch (except lawn mulch) 2. Topsoil	yes	no
	In accordance with the General Requirements, submit samples, materials certifications, manufacturer's product data and test reports as hereinafter required	yes	no
33 40 00	Product data for drainage pipe, gasket material, and any of the miscellaneous drainage items	yes	no
	Shop drawings for concrete storm drainage manholes, sediment chambers, and drainage basins including frames, covers, grates, and underground detention structures	yes	no

EXHIBIT A (2)

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-04-00085

Moats Construction, Inc. and Russell)

Moats,)

Plaintiffs,)

vs.)

Anderson County, Rusty Burns, Tommy)

Dunn, Matt Schell, Holt Hopkins, Mike)

Foreman, Rita Davis, and Steve Newton,)

Defendants.)

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO MOTION FOR
JNOV, NEW TRIAL UNDER THE
THIRTEENTH JUROR DOCTRINE
AND FOR A NEW TRIAL NISI
REMITTITUR**

COMES NOW, Plaintiffs, Moats Construction, Inc. and Russell Moats, by and through their undersigned attorney, and respectfully submits Memorandum in Opposition to Defendants Motion for JNOV, new trial under the thirteenth juror doctrine and for a new trial nisi additur or remittitur and respectfully shows the Court the following.

A. There was ample evidence introduced at trial to support a finding that Defendant breached the contract.

In response to Defendant's argument that the court should enter judgement notwithstanding the verdict ("JNOV"), Plaintiff would show that the evidence presented at trial was more than sufficient to support the jury's verdict that Defendant breached the mediated settlement agreement. First, the court felt so strongly about a breach of the mediated settlement agreement that it granted directed verdict with respect to the \$50,000 in delay damages in paragraph 4. The other questions remaining for the jury were whether the mediated settlement agreement was breached by

Defendant failing to pay the retainage, the \$15,000 change order, issuing a letter rescinding the termination letter and allowing Moats to proceed to complete the Toxaway project.

The evidence was ample that Anderson County did not make these payments, reinstate the Toxaway contract, rescind the termination letter and went so far as to file a bond claim against Plaintiff causing substantial actual and consequential damages to Plaintiff, his business, and his goodwill. Defendants actually admitted that they did not make these payment under the contract, pay the retainage, reinstate the Toxaway contract, or rescind the termination letter. Defendant did not dispute failing to abide by these terms, but rather attempted to justify failing to perform these terms by arguing that Plaintiff simply walked off the job without justification. The jury apparently believed Plaintiff had justification for not finalizing the job. Both parties argued that the other breached the mediated settlement agreement and the jury answered the question actually finding that both parties did awarding damages as they saw it. As a result, Defendant's motion for JNOV should be denied.

With respect to Defendant's argument that Plaintiff can not maintain his breach of contract action because he breached the contract first, Plaintiff would show that the evidence at trial shows that he did not. There was strong evidence that he did not walk off the job, but rather could not complete the job because it could not be completed using the plans provided by Defendant. Multiple witnesses including the designer, Natasha Sexton, agreed which is consistent with the intent of the *Spearin* doctrine. See *Hill v. Polar Pantries*, 219 S.C. 263, 64 S.E.2d 774 (1951). There was evidence that the subsequent contractor poured the concrete walkways more than once only to have to tear them out because they were not ADA compliant. To further illustrate this, the most recent inspection of the walkways by Sandy Hanebrink after they were last poured shows

that they are not ADA compliant today meaning Plaintiff was correct and totally justified in not attempting to pour them again.

In addition, Defendant breached the contract first by failing to pay the \$50,000 within a reasonable period and by failing to issue the letter rescinding the Toxaway termination. Further, Defendants did not seek nor did the court give a jury instruction that if the jury thought Plaintiff breached the contract first, they could not find that Defendant breached. For these reasons, the court should deny Defendant's JNOV motion on these grounds.

B. Evidence of damages was sufficient to support the jury's award and with a general verdict form, the court can not speculate as to what the amount awarded represents.

With respect to Defendants argument about the insufficiency of evidence on damages, Plaintiff first notes that counsel for Plaintiff did not argue for lost profits in closing argument at the court's instruction. Counsel for Plaintiff only pointed out in closing that refusing to rescind the termination letter and making a claim on Plaintiff's bond and refusing to release it negatively affected the company and asked the jury to award appropriate damages, but nothing more.

The jury is allowed to award all damages available in a breach of contract case which include actual or general damages, special damages, incidental or consequential damages (which would include lost profits), punitive damages, damages for loss of goodwill, and attorney's fees. *See South Carolina Damages, Second Edition, Ch. 5, Contract Damages, pp. 107 – 111.* The issue of punitive damages, attorney's fees and lost future profits did not go to the jury, and the jury had the opportunity to award damages for all other categories. In addition, damages need not be proven to a mathematical certainty or that a party must produce evidence of the exact amount of damages suffered. *See Whisenant v. James Island Corp.*, 277 S.C. 10, 281 S.E.2d 794 (1981); *Jones v. Thomas & Hill, Inc.*, 265 S.C. 66, 216 S.E.2d 871 (1975).

The verdict form used in this case was a general verdict form with one blank to indicate a damage award as opposed to a special verdict form that would have allowed the jury to allocate portions of their award to each available category of damages. Because of this, it is not possible to determine what amounts the jury allocated to each category and it would be speculation to try to make any such determination. Defendants argue that the lost bid evidence was used to calculate the damages awarded, but there is no possible way to determine this with a general verdict form. Defendant has no way to tell where the amount of damages came from. In order to challenge any particular category of damages, Defendant had an obligation to request a special verdict form asking the jury to make an award for each category of damages.

Where a case is submitted to the jury on two or more issues and a general verdict is returned, the verdict will be upheld if it is supported by at least one issue. *Dropkin v. Beachwalk Villas Condominium Association, Inc.*, 644 S.E.2d 808, 373 S.C. 360 (S.C. App. 2007); *Anderson v. West*, 270 S.C. 184, 188, 241 S.E.2d 551, 553 (1978). It would be inappropriate to assume that a portion of the amount awarded on a general verdict form is to compensate Plaintiff for a category of damages that did not go to the jury or was not argued for by Plaintiff. As a result, the court should not attempt to interpret the amount of the verdict as something the jury was not to be considering. For these reasons, the court should deny Defendants motion for JNOV on these grounds.

C. Defendant's Motion for a New Trial Absolute should be denied as the verdict is not contrary to the weight of the evidence.

As stated in Defendant's motion, the court can order a new trial if the court concludes that the jury's verdict is contrary to the fair preponderance of the evidence and that justice was not done by the jury's verdict. The court heard Defendant's directed verdict motions and decided that

there was sufficient evidence the Defendant breached the contract to deny them. Plaintiff refers to the evidence cited in the above arguments to support his argument that the evidence fairly leans his way. There is ample evidence that Plaintiff was justified in not finishing the walkways given the ADA issues the County and their designer could not remedy and that Defendant was not justified in paying the \$50,000, the \$15,000, the \$27,155.92 in retainage, issuing the letter rescinding the termination of the Toxaway project and reinstating him on that job. For these reasons, the court should deny Defendant's Motion for a New Trial Absolute.

D. Defendant's Motion for a New Trial based on the Thirteenth Juror Doctrine should be denied as the evidence does justify the verdict.

The standard for this motion is very similar to the previous motion argued immediately above. They both essentially require that the court determine that the evidence was not sufficient to support the verdict. Plaintiff incorporates the above arguments and citations to evidence offered herein by reference. For the reasons argued in paragraph C above, the court should deny Defendant's Motion for a New Trial based on the Thirteenth Juror Doctrine.

E. The verdict was not shockingly disproportionate to the injuries suffered and was not procured by passion, prejudice or caprice.

The jury's award was not caused by passion, prejudice or caprice as is required to grant a new trial absolute pursuant to *Krepps v. Ausen*, 324 S.C. 597, 607, 479 S.E.2d 290, 295 (Ct. App. 1996). As stated above, the jury is allowed to award all damages available in a breach of contract case which include actual or general damages, special damages, incidental or consequential damages (which would include lost profits), punitive damages, damages for loss of goodwill, and attorney's fees. See *South Carolina Damages, Second Edition, Ch. 5, Contract Damages, pp. 107*

– *III*. The issue of punitive damages, attorney’s fees and lost future profits did not go to the jury, and the jury had the opportunity to award damages for all other categories.

Defendant argues that no verdict over \$83,105.91 is supported (\$50,000 in delay damages, \$27,555.91 in retainage and \$5,550 in the net amount of the change order). If this were true, this means that Plaintiff would not be entitled to any damages at all for the termination letter not being rescinded or the Toxaway project being reinstated. Plaintiff would not be entitled to damages from any other category of damages allowed by law for the other breaches as well.

Plaintiff testified that having to report on subsequent bid applications that he had been previously terminated from a government job had a huge negative effect on his business, destroying his company’s goodwill and essentially putting him out of business. The outstanding bond claim also prevented him from being able to even bid on new work. The loss of goodwill, consequential damages, and general damages is supported by evidence received by the jury on damages and cannot fairly be said to have been caused by passion, prejudice or caprice. The damage to his goodwill caused by the failure of the Defendant to rescind his termination letter is significant and the jury apparently believed it had significant value based on the value of these jobs and the jobs Plaintiff testified he had regularly performed in the past.

Plaintiff testified that he had slowly built his company up over a number of years building his bonding capacity to over \$600,000 meaning that he had been doing jobs to fill this bonding capacity for a number of years. A jury can reasonably infer from the profit margins they were aware of and the approximate amount of business he conducted the approximate amount of damages Plaintiff sustained to his goodwill in the aftermath of Defendant’s actions. To say he is entitled to nothing for the damage to his goodwill would completely deprive Plaintiff of an entire category of damages he is entitled to. Defendant did not move for directed verdict on goodwill

going to the jury and can not now argue that he must get zero dollars for the damages caused by his client to Plaintiff's goodwill. For the above reasons, the court should deny Defendant's motion for a new trial on these grounds.

F. The court should not grant a new trial due to the admission of the bid bonds.

The bid bonds were legitimate documents showing how bonds were bid, the information required to be provided and showed how Defendant's failure to rescind the termination letter and their filing of a bond claim damaged Plaintiff's goodwill. It also provided evidence as to the size jobs Plaintiff was bidding on, the profit margins he makes on jobs and was able to bid on giving the bonding capacity he should have had. This is reasonable evidence on how Plaintiff's goodwill was affected. The jury was not asked to consider this as evidence of lost profits and no charge for lost profits was given. It cannot fairly be said that the introduction of this evidence resulted in any prejudice or enough prejudice to merit granting a new trial and as a result, the court should deny Defendant's motion on these grounds.

G. The court should not grant a new trial Nisi Remittitur or Additur as the size of the verdict is reasonably appropriate.

Defendant is asking the court to grant a new trial nisi Remittitur with respect to the jury's verdict against it and a new trial nisi additur with respect to the jury's verdict against Plaintiff. Plaintiff addresses both of these motions in this section.

"In South Carolina, the proper amount of actual damages is left almost entirely to the trial jury and the trial judge. Substantial deference will be given to the jury's determination of damages." *See South Carolina Damages, Second Edition, Ch. 5, Contract Damages, p. 10.* "The trial judge also must find compelling reasons for interfering with the verdict." *Id., p.10.*

With respect to the motion for a new trial nisi remittitur, again, Plaintiff sees nothing so excessive that would justify a new trial nisi remittitur. As argued previously in response to Defendant's motion for new trial absolute, Defendant argues that no verdict over \$83,105.91 is supported (\$50,000 in delay damages, \$27,555.91 in retainage and \$5,550 in the net amount of the change order). If this were true, this means that Plaintiff would not be entitled to any damages at all for the termination letter not being rescinded or the Toxaway project being reinstated. Plaintiff would not be entitled to damages from any other category of damages allowed by law for the other breaches as well.

Plaintiff testified that having to report on subsequent bid applications that he had been previously terminated from a government job had a huge negative effect on his business, destroying his company's goodwill and essentially putting him out of business. The outstanding bond claim also prevented him from being able to even bid on new work. The loss of goodwill, consequential damages, and general damages is supported by evidence received by the jury on damages and the amount of the damages cannot fairly be said to have been excessive. The damage to his goodwill caused by the failure of the Defendant to rescind his termination letter is significant and the jury apparently believed it had significant value based on the value of these jobs and the jobs Plaintiff testified he had regularly performed in the past.

Plaintiff testified that he had slowly built his company up over a number of years building his bonding capacity to over \$600,000 meaning that he had been doing jobs to fill this bonding capacity for a number of years. A jury can reasonably infer the approximate amount of damages Plaintiff sustained to his goodwill in the aftermath of Defendant's actions with this testimony, the profit margins shown on the bid bonds and the size of these East-West and Toxaway jobs. To say

he is entitled to nothing for the damage to his goodwill would completely deprive Plaintiff of an entire category of damages he is entitled to and clearly sustained damages to.

With a general verdict form with one blank for damages that Defendant agreed to, it would be speculation as to what the jury did to arrive at the total figure. The evidence submitted, however, does support damages above this \$83,105.91 amount. Defendant did not move for directed verdict on goodwill going to the jury and cannot now argue that he must get zero dollars for the damages caused by his client to Plaintiff's goodwill. For the above reasons, the court should deny Defendant's motion for a new trial on these grounds.

While Plaintiff believes that the amount of this verdict should stand in its entirety, should the court be inclined to grant a motion nisi remittitur, Plaintiff would suggest a modest reduction to reflect the damage to its goodwill, actual damages, general damages and consequential damages.

With respect to Defendants motion for additur for the verdict against Plaintiff, Plaintiff sees no compelling reason for the court to grant this motion. Defendant's damages were based on having to have someone else finish a job that it was prepared to pay Plaintiff \$15,000 to complete. Defendant did not pay Plaintiff this \$15,000 to Plaintiff and used a portion of it to pay the person who did saving them money.

Defendant also claimed some work was substandard that was in dispute and some of which, the irrigation system, Plaintiff provided a warranty for. Defendant never asked Plaintiff to make the repairs and it was argued that Defendant has no right to seek payment for these claimed damages. There is nothing compelling about these issues to justify a new trial nisi additur and this court should deny this motion.

GOODWYN LAW FIRM, LLC

T. Jeff Goodwyn, Jr.

T. Jeff Goodwyn, Jr., Esq. (SC Bar #:73789)

2309 Devine Street

Columbia, S.C. 29205

(803) 251-4517

(803) 251-4527 facsimile

JGoodwyn@Goodwynlaw.com

ATTORNEYS FOR PLAINTIFFS

July 19, 2024

Columbia, South Carolina

R-000069

State of South Carolina
County of Anderson

Court of Common Pleas

Russell Moats	)	
	)	
Plaintiff,	)	Transcript of Record
v.	)	2020-CP-04-00085
	)	
Anderson County	)	
	)	
<u>Defendant.</u>	)	

April 15-19, 2024
Anderson, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge; and a jury.

A P P E A R A N C E S:

T. Jefferson Goodwyn, Jr., Esquire
Attorney for the Plaintiff

J. Victor McDade, Esquire
Attorney for the Defendant

John W. Davidson, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

R-000070

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1-4	Plaintiff's		X
8-10	Plaintiff's		X
1, Tab 1-5	Defendant's		X
1, Tab 6-31	Defendant's		X
2, 3, 4	Defendant's		X
11	Plaintiff's	X	
12	Plaintiff's		X
13	Plaintiff's		X
14-20	Plaintiff's		X
21-24	Plaintiff's		X
25	Plaintiff's		X
26-27	Plaintiff's		X
28-31	Plaintiff's		X
32	Plaintiff's		X
34-41	Plaintiff's		X
42	Plaintiff's		X
43	Plaintiff's		X
44	Plaintiff's		X
5	Defendant's		X

- - -

P R O C E E D I N G S

- - -

THE COURT: All right. My understanding is there's been certain exhibits that have been admitted to?

MR. GOODWYN: Yes, Your Honor.

THE COURT: All right. Do you want to put your plaintiff's on the record, and everybody else on the record after that?

MR. GOODWYN: I'm not quite done numbering them.

THE COURT: Do what?

MR. GOODWYN: We're not quite done numbering them. I think it would easier to start with the defendant's because we've already done that side.

THE COURT: No. You start with yours ---

MR. GOODWYN: Sure.

THE COURT: --- the plaintiff's side.

MR. GOODWYN: Okay.

THE COURT: While we're doing that, any standard or burden of proof other than preponderance in this case, except punitives? I think punitives is coming in.

MR. DAVIDSON: Judge, I'm not aware of any.

THE COURT: I'm not aware of any either.

1 MR. GOODWYN: Alright, Your Honor.

2 THE COURT: You got it, Mr. Goodwyn?

3 MR. GOODWYN: Yeah. The ones that we've agreed
4 on so far, do you want me to describe the exhibit
5 as -- as we're going through it?

6 THE COURT: I want enough specificity that you
7 can either agree or disagree from both you two.

8 MR. GOODWYN: Okay. Exhibit 1 is a -- the
9 termination letter from the Toxaway Project; letter
10 dated June 21, 2017.

11 THE COURT: You don't have to -- just wait and
12 we'll go over each one.

13 MR. GOODWYN: Exhibit 2 is an e-mail chain
14 between Matt Schell and Natasha Sexton dated
15 April 14, 2017, and it's ending on that date. It's
16 a series of e-mails ending on that date.

17 Exhibit 3 is an e-mail from Michael Foreman to
18 Gail Jeter and some others copied on it dated
19 June 15, 2017. These were copies that I put on
20 there.

21 Exhibit 4 is the -- Cardno is the name of the
22 company, C-a-r-d-n-o, company's letter to Michael
23 Foreman related to the work Cardno was doing dated
24 June 7, 2017.

25 Exhibit 5 is -- it's a -- yeah, this is an

1 e-mail related to the asbestos abatement. It's a --
2 it's a job that he applied for along with the -- the
3 bid -- the request for bid information attached to
4 it dated -- this e-mail is May 8, 2019.

5 Again, this similar Exhibit 6, rather, is
6 another bid application dated April 10, 2019. And
7 April the ---

8 Exhibit 7 is another bid. Trying to find a
9 date on this one. I don't see a date. Yeah,
10 approved 7/24 of '18.

11 Exhibit 8 is an e-mail chain between Russell
12 Moats, Natasha Sexton, Matt Schell, and some others.
13 It's February 10, 2017.

14 Exhibit 9 is a group of pictures collectively
15 marked as -- as one exhibit. Let's see here. Looks
16 like 36 pages of photographs.

17 And then Exhibit 10 is a letter from -- it's
18 Touch the Future is the name of the organization,
19 but Sandy Hanebrink is the author of the letter
20 dated April 30, 2019.

21 THE COURT: So that's Plaintiff's Exhibits 1
22 through 10; is that correct?

23 MR. GOODWYN: Yes, Your Honor.

24 THE COURT: From the county's perspective, do
25 those stipulate to be admissible without objection?

1 MR. DAVIDSON: Your Honor, the two that I would
2 have an objection to are Exhibit 6 and Exhibit 7,
3 which are bids for other projects in 2019.

4 THE COURT: Six and seven?

5 MR. DAVIDSON: No. Excuse me, five and six --
6 five, six, and seven.

7 THE COURT: Five, six, and seven you would
8 object to?

9 MR. DAVIDSON: Yes, sir.

10 THE COURT: Okay. Will you pull those out,
11 please, sir? You just need to lay a foundation for
12 them.

13 MR. GOODWYN: Yes, Your Honor.

14 THE COURT: So that would be Plaintiff's 1
15 through 4 and 8 through 10; is that correct?

16 MR. DAVIDSON: That's correct.

17 THE COURT: And you're stipulating those are
18 admissible without objection?

19 MR. DAVIDSON: Yes, sir.

20 THE COURT: Mr. McDade?

21 MR. MCDADE: Your Honor, it's represented to me
22 that those don't have anything to do with the
23 defamation cause of action. To the extent that
24 that's correct, I don't object. If it does have
25 anything to do with it, then I do object because

1 I've never seen any of those before, except for the
2 photos that we got this week, which I don't object
3 to.

4 (Plaintiff's Exhibit Nos. 1 through 4 and 8
5 through 10 have been received into evidence without
6 objection.)

7 THE COURT: All right. From the county's
8 perspective, do you have exhibits you want to
9 stipulate?

10 MR. DAVIDSON: I do, Your Honor. So we -- we
11 have a binder that has been marked as Defendant's
12 Exhibit 1 that contains 31, I think, tabs in it. Do
13 you mind if approach -- come up to go through it?

14 THE COURT: Sure.

15 MR. DAVIDSON: So there is a -- there is a
16 trial exhibit list that's the front page of that
17 binder. The -- we have removed from that Exhibit 6
18 and 7.

19 THE COURT: Six and seven?

20 MR. DAVIDSON: Yes, sir. Which -- excuse me.
21 Exhibit 1, Tab 6, and Exhibit 1, Tab 7.

22 THE COURT: All right. Mr. Goodwyn, do you
23 agree with that?

24 MR. GOODWYN: Yes, Your Honor.

25 THE COURT: Mr. McDade?

1 MR. MCDADE: Yes, Your Honor.

2 THE COURT: Okay. So Exhibit 1, Tabs 1 through
3 31, exclusive of 6 and 7, will be admitted without
4 objection.

5 (Defendant's Exhibit Nos. Exhibit 1, Tabs 1
6 through 31, exclusive of 6 and 7, were received into
7 evidence without objection.)

8 MR. DAVIDSON: Thank you.

9 THE COURT: All right. Mr. McDade.

10 MR. MCDADE: Yes, Your Honor. I have three
11 exhibits. They're Defendant's Exhibit 2, which is a
12 newspaper article from the Independent Mail.

13 Exhibit No. 3, which are -- which is an e-mail
14 chain that Mr. Moats produced during his deposition.

15 And Defendant's Exhibit No. 4, which is another
16 e-mail chain, which he produced during his
17 deposition. They are -- all of three of those are
18 exhibits to his deposition.

19 THE COURT: Mr. Goodwyn, do you stipulate those
20 are admitted without objection?

21 MR. GOODWYN: Yes, Your Honor.

22 THE COURT: Mr. Davidson?

23 MR. DAVIDSON: No objection.

24 THE COURT: All right. Defendant's 2, 3, and 4
25 will be admitted without objection.

1 (Defendant's Exhibit Nos. 2, 3, and 4 were
2 received into evidence without objection.)

3 THE COURT: All right. Mr. Goodwyn, are you
4 ready for opening statements?

5 MR. GOODWYN: Yes, Your Honor.

6 MR. DAVIDSON: Your Honor, one matter. The
7 sequestering of the witnesses has caught my client
8 representative who's going to be Leon Harman.

9 THE COURT: I'd like for Mr. Thayer to sit up
10 here. That would be good. I could put him in jail.

11 MR. DAVIDSON: I could live with that.

12 THE COURT: He was my law clerk.

13 MR. DAVIDSON: I just don't want to have
14 somebody who's not sitting with us.

15 THE COURT: I mean, whoever y'all want. I
16 mean, if Leon's going to be a witness. You know, a
17 representative like -- like law enforcement
18 representative, you know, their witness has a right
19 to be in the courtroom.

20 MR. GOODWYN: Yeah, I don't object. If he's
21 the representative, he has a right to be here, so...

22 THE COURT: Leon, do you want stay or let
23 Mr. Thayer. Either way.

24 THE COURT: Do you have an objection to any of
25 that?

1 MR. MCDADE: No, Your Honor.

2 THE COURT: All right. Anything from the
3 plaintiff before we bring the jury in?

4 MR. GOODWYN: I don't think so, Your Honor.

5 THE COURT: From the defense?

6 MR. DAVIDSON: No, sir.

7 THE COURT: From you, Victor?

8 MR. MCDADE: No, Your Honor.

9 THE COURT: All right. Mr. Bring them in,
10 please, sir.

11 (At 2:17 p.m., jury entered the courtroom.)

12 THE COURT: All right. Madam forelady, ladies
13 and gentlemen, those of you who requested to have
14 pad and pen, do you have them?

15 THE JURORS: (Collectively:) "Yes, sir."

16 THE COURT: Very good. All right. Would you
17 swear the jury in, please, ma'am?

18 THE CLERK: Yes, sir. May it please the Court?
19 Would y'all please stand and raise your right hands?

20 THE JURORS: (Complying.)

21 THE CLERK: Do you and each of you solemnly
22 swear or affirm that you shall well and truly try
23 the issues joined in the case of *Moats Construction,*
24 *Inc., and Russell Moats v. Anderson County,*
25 *defendants, et al,* and a true verdict render

1 according to the law and evidence? If you will,
2 please say, "I do."

3 THE JURORS: (Collectively:) "I do."

4 THE CLERK: Thank you. You can all take a
5 seat.

6 THE JURORS: (Complying.)

7 THE COURT: All right. Ladies and gentlemen,
8 we're about to begin the trial of *Moats*
9 *Construction, Inc., and Russell Moats v. Anderson*
10 *County, Rusty Burns, Matt Schell, and Holt Hopkins.*
11 I told you a little bit about it at the beginning,
12 and it's basically plaintiff says that the county
13 didn't abide by an agreement they reached, and the
14 county says that the plaintiff didn't abide by the
15 agreement they reached. The county also says that
16 he had been defaming one or more of the individual
17 defendants. I'll let them tell you more about that.

18 Now, ladies and gentlemen, I don't know if any
19 of you have ever been involved in a trial, whether
20 it be civil, like this case is, or criminal, like
21 the other side of the court is, but I would imagine
22 that each and every one of you has watched on TV
23 something which purports to be a trial. Let me
24 dispel any preconceived notions that you may have
25 that you bring with you to the court today. Trials

1 are not like TV. They're not like they are in the
2 movies. They're not settled in five little minute
3 vignettes. They're also very slow, methodical, and
4 deliberate, but they're -- trials are a fundamental
5 part of our democracy, ladies and gentlemen.

6 Now, each one of these lawyers, like all
7 lawyers when they're sworn in, take an oath to
8 zealously represent their clients before the Court.
9 And you can expect no less from these fine attorneys
10 today, but they're also officers of the court. So
11 you can expect that they will be professional and
12 competent and ethical in their dealings with one
13 another, with me, and any witness that comes before
14 the Court.

15 Now, you just took an oath where you swore or
16 affirmed that you'd be fair and impartial. That
17 means that the parties, the Court, and attorneys
18 have a right to expect and demand of you that you
19 will be fair and that you will be impartial and that
20 you will make your decision based on the testimony
21 and evidence in accordance with the law I will give
22 you at the end of this case.

23 Now, what I'm telling you now is not the law
24 that you will apply. That will be given to you at
25 the end of the case before you begin your

1 deliberations. This is basically like a road map so
2 you can understand where you are at any given point
3 throughout this case.

4 Let me say something about those of you who are
5 taking notes. Be careful. Don't become so
6 engrossed in your note taking that you don't watch
7 people while they're on the stand. Sometimes in
8 making a determination of what we call the
9 credibility of the witness, credibility of the
10 evidence, as to whether or not their testimony
11 should be believed or disbelieved. The way they
12 react on the stand will give you some vital
13 information towards that analysis. So if you're so
14 engrossed in your notes, you may forget about it or
15 you may not see it.

16 Madam forelady, also just because something may
17 appear in one of your juror's notes doesn't mean it
18 trumps somebody else's mem -- their memory of that.
19 Some people are better listeners. Some people are
20 better note takers. If you have something in your
21 juror's notes that somebody's memory differs, that's
22 why they're called deliberations. Okay?

23 Now, you have been selected in this case
24 because you either expressly or by your silence
25 represented that you can be fair and impartial. You

1 are what we call the sole judges of what the facts
2 are in this case. No one, including this Court, has
3 the right to invade your province as being the sole
4 judges of the facts. In other words, what your
5 verdict is going to be. Therefore, if any time
6 throughout the course of this trial I say anything
7 or I do anything which seems to indicate to you how
8 you are to find the facts or the verdict you're to
9 reach, I'm going to ask you, but also instruct you,
10 to disregard it. Our State constitution does not
11 allow me to have an opinion or state my opinion
12 about the facts of the case. You and you alone will
13 make that determination. And you will make it by
14 listening to the evidence and testimony that you
15 hear from this witness stand and any exhibits that I
16 allow into evidence and applying the law that I will
17 give you at the end of the case when you're given
18 this charge on the law.

19 Don't be influenced by anything that you see
20 outside the presence of the courtroom. I remind you
21 that you're not to read, hear, or see anything about
22 this case. You're not to speak with anybody about
23 this case and no one is to speak to you. If anybody
24 tries to talk to you about this case, which I doubt
25 will happen, but if they do, say, "I'm a juror. I

1 can't talk to you." If they continue after that,
2 get their name and I will deal with it. Okay?

3 Now, ladies and gentlemen, the law that makes
4 you the sole judges of the facts makes me the sole
5 judge of the law, which means that you will have to
6 apply the law as I give it to you. If I'm wrong, we
7 have a Court of Appeals or a Supreme Court who will
8 quickly correct my errors in instructing you on the
9 law.

10 However, what I give you and tell you what the
11 law is, you must accept it as being the law in this
12 case. And you may not and shall not be concerned
13 with what you'd like it to be or what you think it
14 should be, but only what it is. I remind you, don't
15 engage in early deliberations. Don't engage in
16 independent jury research. You're not to read,
17 hear, or see anything about this case.

18 Now, ladies and gentlemen, in all cases, and
19 this is no different, there are five phases. In
20 just a minute, there will be opening statements by
21 the plaintiff and by the defense attorneys.

22 After which, the plaintiff, who has the burden
23 of proving their claim, will go first when they
24 present their case.

25 After the plaintiff presents their case, the

1 county will present its case and it has the burden
2 of proving its claim back against the plaintiff.

3 After -- and then the individuals have the
4 right to present their affirmative defenses in this
5 case, as well. And they have the burden of proving
6 those.

7 After we have the presentation of the evidence,
8 the lawyers will then give you closing arguments.

9 I'll charge you on the law, and then you'll
10 begin your deliberations. I tell you that so you
11 kind of know where we are at any given time.

12 Madam forelady, I have a tendency to go long in
13 the courtroom. My court reporter can verify.
14 Sometimes you'll need a break before I break. If
15 you need one or anybody needs one, tell me and I
16 will stop. If I call you back to the courtroom
17 before you're ready, say we're not ready. This is
18 not an endurance contest. Okay?

19 If you need anything, our bailiff, if he can,
20 will give it to you. Do not talk to the bailiff
21 about the case or ask him questions about the case.
22 He's not allowed to talk to you about it in any form
23 or fashion. Okay?

24 Also, if any of you can't hear or see anything
25 that goes on throughout the course of this trial,

1 immediately raise your hand and we'll replay it
2 again so you can hear it and understand it. Okay?

3 With that being said, ladies and gentlemen,
4 lawyers, in addition to being zealous
5 representatives of their client's interests in the
6 courtroom, also have an ethical obligation to object
7 anytime they feel like there's evidence that's being
8 presented that's not admissible or there's an
9 improper procedure being followed in the courtroom.
10 I suspect that it'll be the same in this case.
11 Suffice it to say, madam forelady, ladies and
12 gentlemen, that's just the procedure that's followed
13 in all cases.

14 Madam forelady, to the extent I let you stay in
15 the courtroom and listen to my rulings on the
16 objections or the fact that there was an objection,
17 is not and may not be the subject of the jurors'
18 deliberations. That is just the process followed in
19 any case. If any of your jurors tries to interject
20 that into your deliberations, it'll be your job to
21 make sure it is not brought up.

22 In this case, as I told you, the plaintiff has
23 the burden of proof. And that burden of proof is
24 what we call "a preponderance of the evidence." Let
25 me give you a definition so you understand what it

1 is. A preponderance of the evidence simply means
2 the greater weight of the evidence. It is evidence
3 which as a whole shows that the facts sought to be
4 proven is more likely than not true.

5 If you'll consider a set of scales being equal,
6 if you consider the plaintiff's burden of proof, if
7 they tilt ever so slightly in favor of plaintiff,
8 then the plaintiff would have met their burden of
9 proof.

10 If they stay equal or tilt in the opposite
11 direction in favor of the defendants, one or both,
12 then the plaintiff would have failed in their burden
13 of proof and your verdict will be not for the
14 plaintiff.

15 Likewise, the county has asserted a claim back
16 against the plaintiff. The same burden of proof
17 applies to their claim. It's by the preponderance
18 of the greater weight of the evidence. Instead of
19 giving you a set of scales, I heard somebody
20 describe it the other day. If you have a football
21 team on the 50-yard line, if they get over the
22 50-yard line no matter how small, they have met that
23 burden of proof. That's just to give you an idea
24 about what it is.

25 Obviously, you can't weigh evidence. And

1 you -- and it's a literal process that you'll go
2 through and you'll use your good sense and your
3 experiences in life when you go back and talk about
4 the evidence and determine whether or not the
5 plaintiff met his burden of proof, the county's met
6 its burden of proof, or the individuals have met
7 their affirmative defenses.

8 With that being said, madam forelady, I'm going
9 to send you out for one second for the sole purpose
10 of asking these lawyers whether or not I've said
11 something incorrectly or I need to correct something
12 I told you. You won't have a chance to sit down
13 more than likely, unless you decide to. We'll bring
14 you back out here for opening statements. If you'll
15 go to your jury room, please.

16 (At 2:28 p.m., jury left the courtroom.)

17 THE COURT: Any additions or exceptions from
18 the plaintiff?

19 MR. GOODWYN: No, Your Honor.

20 THE COURT: From the defense?

21 MR. DAVIDSON: None, Your Honor.

22 MR. MCDADE: None, Your Honor.

23 THE COURT: Very good. All right. Are y'all
24 ready?

25 MR. MCDADE: Yes, sir. Can we take just a

1 bathroom break real quick?

2 THE COURT: Yeah, go ahead.

3 MR. MCDADE: If we don't go now, we may not.

4 THE COURT: If you got gray hair and we don't
5 let you, you're in trouble so go ahead.

6 (From 2:29 to 2:32 p.m., brief recess.)

7 THE COURT: All right. Are y'all ready to go?

8 MR. MCDADE: Yes, sir.

9 THE COURT: Bring them in.

10 (At 2:33 p.m., jury entered the courtroom.)

11 THE COURT: Mr. Goodwyn, plaintiff ready for
12 opening statements?

13 MR. GOODWYN: Yes, Your Honor.

14 THE COURT: Alright, sir.

15 MR. GOODWYN: Thank you. Good afternoon. It's
16 good to finally get going here. My name is Jeff
17 Goodwyn. I know I introduced myself in the voir
18 dire. This is Russell Moats, my client. He's the
19 owner and operator of Moats Construction, Inc. He
20 and his company brought this lawsuit against
21 Anderson County and three individual defendants --
22 Rusty Burns, Holt Hopkins, and Matt Schell.

23 Let me give you just an overview of -- of the
24 case as a whole. There's a lot of little details
25 that we'll get into throughout the course of the

1 trial, but at the end of the day it's fairly simple.

2 As the judge told you, this is a construction
3 contract dispute. My client, Russell Moats, of
4 Moats Construction, Inc., was hired to do two jobs
5 for the county. One of them was to build a park.
6 Some of you may be familiar with the East-West Park
7 Project. This is a layout of it, a schematic of it.
8 And I'll show you some more in a minute, but let me
9 show you, if I can, some photographs of what we're
10 talking about here.

11 This is -- you can see from this photograph,
12 this is from the road looking kind of back up that
13 little hill there. The sidewalk winds around up to
14 that parking lot. This is the bottom part of the
15 park. This is a major part of what we'll be talking
16 about today. You can see a little retaining wall on
17 the left there. That's how it -- that's how it
18 looks today -- or not today. There's some -- you
19 know, there's cones there. Not there, but it's
20 completed now, but that's pretty close to how it
21 looks.

22 This picture is the same area. Just looking
23 back down from -- from the parking lot back towards
24 the road. So you can get an idea of kind of how it
25 looks like from both sides.

1 And here is another picture at a different time
2 of year. You can see the grass is green. You can
3 see that retaining wall is not yet in in this
4 picture. It's just -- they dug out some of the
5 embankment there.

6 So that's -- that's a big part of what we're
7 talking about here today, is -- is that project,
8 what were the issues with that project, and how it
9 got resolved, and where it went from there, and
10 what -- what the damages are.

11 The other project is called -- I think the
12 judge mentioned -- it's the Toxaway Mill Project.
13 It was a cleanup project that Mr. Moats and his
14 company were hired to do. There was -- there were
15 permitting issues with the Toxaway Mill Project.
16 There was some asbestos out there. There was a
17 storm water permit that you have to get. If you've
18 never been in construction, you're not going to know
19 what the process is. It can be very complicated
20 sometimes. It can be very -- you know, like I said,
21 these permitting issues are issues that most people
22 don't know, but you'll -- but you'll hear about
23 them.

24 On that project, it was the county's
25 responsibility to get the permit. The permits were

1 supposed to be in the county's name. They were
2 supposed to get them. Mr. Moats did what he was
3 supposed to do, was working the project, and they
4 terminated him with a -- with a letter of
5 March 21st -- excuse me -- not March -- June 21,
6 2017, saying he didn't get the appropriate permits,
7 but it wasn't his responsibility to get the permits.

8 Needless to say, there was a dispute, but
9 before he filed suit, before he got into litigation
10 about this, he -- he hired some attorneys and they
11 decided, and the county agreed, that they would
12 mediate the case. It's a -- a mediation is
13 different than a trial. It's different than an
14 arbitration. Arbitration is like a mini trial
15 before a judge.

16 A mediation is a voluntary process where you
17 sit down and you try to work out your disputes.
18 There's a professional mediator that's good at
19 getting people to come together and resolve your
20 disputes, and so that's why did. They had two
21 projects. There were issues on both projects, and
22 so they decided to mediate the case. And they --
23 and they reached a settlement. And I'll show you
24 the settlement agreement.

25 We're going to be looking at a number of

1 exhibits over the course of -- of the day. This
2 binder is a binder that's been put together by the
3 parties, and it has a number of exhibits. This is
4 just for your information. Again, you'll have all
5 of this back in the jury room at the end of the
6 trial, but this is Exhibit 1, Defendant's Exhibit 1.
7 It has a number of 20-something exhibits in here
8 that'll -- will be referred to as a tab in Exhibit
9 1.

10 Let's see here. I'm going to see if I can work
11 this a little bit. I'm zoomed out. Okay. All
12 right. So I'm going to try to zoom in a little bit
13 so you can see a little bit more about this
14 agreement. It's really a two-page agreement. That
15 is it. Those are the signatures right there.

16 Page 1 deals with a -- the resolution of the
17 East-West Park Project. And page 2 is that one
18 paragraph, deals with the resolution of the Toxaway
19 Project. So you can see the -- not every provision
20 of this agreement was violated. Just some. And
21 that's -- that's what I want to go over here. You
22 can see they -- they refer -- refer to the contract
23 price, the -- how much has been paid.

24 And then number three, that's an issue. "Moats
25 is entitled to an additional \$15,000 for additional

1 changes in the work and will submit a backup for the
2 \$15,000, and a change order for \$15,000 will be
3 issued by Anderson County before the start date."
4 That never happened. Never got paid that \$15,000.
5 So that's one of the issues that we're here for
6 today.

7 Number four, "Moats shall be entitled to an
8 additional \$50,000 in delay damages. And, again,
9 I'll go into some of the reasons for the delays in a
10 minute, but I wanted to hit this first. That's a
11 big issue in this case. The county never paid that
12 \$50,000 with no -- no explanation.

13 And then the other issue is this -- let me see
14 if I can scoot this up here a little bit. Look at
15 paragraph 9. "Moats shall work and comply with all
16 ADA requirements provided that the design drawings
17 issued to Moats complied with the ADA requirements."
18 That's a big issue I want to talk about that more in
19 just a minute so you'll understand what that means.

20 And now on the second page here, the Toxaway
21 Project, the whole idea was since he had been
22 terminated, Anderson County would (a) Anderson
23 County will rescind its termination letter. They'll
24 put him back on the job.

25 Then Anderson County will reinstate Moats.

1 They'll -- Moats will remobilize. Basically, just
2 get going on the project again. Anderson County
3 never rescinded the termination letter. Anderson
4 County never did (a). So without a rescind -- a
5 rescinding of the termination letter, Moats could
6 never get back on the job at all. So that's a big
7 issue -- the big issue with the settlement with
8 respect to the Toxaway Project. Anderson just never
9 did the first thing, so he couldn't get going. And
10 that's a very significant issue for a number of
11 reasons.

12 One of them, you'll hear Mr. Moats testify,
13 first, he didn't get to go back to work and make the
14 money.

15 Second, having a -- having been terminated from
16 a job, especially, a job with a public project, when
17 you go to apply for future jobs, one question on
18 most applications is, "Have you ever been terminated
19 from a job?" Now he's got to say "yes," because
20 they didn't rescind the termination. So that's a
21 big deal for him. That's one of the -- one of the
22 things that has hurt his company tremendously since
23 this is -- is the way they treated him. You know,
24 they -- his position is that he was terminated from
25 this job through no fault of his own. They didn't

1 get the permits. Then they agreed to rescind the
2 termination, but they just didn't do it for no -- no
3 rational reason that we're aware of.

4 So those are -- that's kind of the case in a
5 nutshell, but I want to get into a little more
6 detail so you can know what to expect as we go
7 along. I want to talk a little bit about what
8 was -- what was really going on with this East-West
9 Park Project.

10 These are -- these are the actual drawings that
11 the architect made, and this is an important point
12 that I didn't -- didn't mention. One of the most
13 important points is that Moats Construction did not
14 prepare these drawings. This was done by a
15 professional architect that the county hired.

16 Natasha Sexton is her name, and she worked for
17 a couple of different companies throughout this
18 process and made multiple revisions of these plans.
19 This is the 2015 -- July 2015 version, so this kind
20 of gives you an idea of how old all of this is.

21 This -- this started back in 2015. There's
22 a -- there's a 2016 version here. And then a --
23 there's some revisions in here. And then another
24 2017 version here. And that's important because
25 there's a principle in the law that if the

1 contractor builds something to the specifications
2 that the owner gives him, you can't hold him
3 responsible. You can -- if somebody gives a
4 contractor a plan that's not accurate that's faulty
5 somehow, you can't blame the contractor if he builds
6 it in accordance with the plans. Makes sense.
7 That's important here because Moats did not prepare
8 these plans.

9 I want you to look at this. This is important.
10 The picture I showed you a minute ago is of the
11 parking lot looking back down towards the road.
12 Look at the shape of the sidewalk as it comes down.
13 All right. Just hold that thought for a minute
14 because that's -- that's important. I'm going to
15 show you how that changed over time and why it had
16 to change over time.

17 All right. Here it is. Yeah, this is
18 important, too. You don't have to be an expert to
19 understand what's going on here, but it's important
20 to know a little bit about what's going on. This is
21 what's called the "elevation page" of this diagram.
22 And I know you've heard a little bit about the ADA.
23 It's the Americans with Disability Act. It's the
24 thing -- it's the act that requires, you know,
25 handicap bathrooms, handicap access, you know, in

1 most public places. There are a few exceptions, but
2 you're going to hear a lot about that. You're going
3 to hear a lot about just the ADA generally, but in
4 particular, what's important in public parks is --
5 is the slope of sidewalks, parking areas, picnic
6 areas that cannot be tilted too much. They can't be
7 sloped too much because people in wheelchairs and
8 people with handicaps it's hard to walk and that
9 makes since.

10 Mr. Moats -- Moats Construction got these
11 original plans. And right away, there's issues
12 here. He knew. The architect knew this was going
13 to have to be a park that was ADA compliant, but
14 this was a -- one issue I want to point out and
15 Mr. Moats can tell you about it more, but this is a
16 little -- a little pad here for a picnic table.

17 And if you look at the differences in the -- in
18 the heights, the elevations here, they're about 6
19 inches difference between one corner and the other,
20 and it's about 8 feet Mr. Moats will testify to. I
21 mean, 6 feet, or, no, about 8 -- you'll testify to
22 that. You can read this better than I can, but the
23 point is is that half a foot was too much over 8
24 feet. It's too steep. It doesn't sound like a lot,
25 but according to the ADA it's too steep, so...

1 And he recognized that right off the bat.
2 There are problems with this ADA rise from the
3 beginning, and he brought that to their attention at
4 the beginning, so...

5 And there were other problems, especially with
6 the slope of these sidewalks. And you can see from
7 the picture that it's a -- it is a hill. It's not
8 a, you know, huge steep hill, but it's steep enough
9 to be a violation of the ADA if you don't do it
10 right.

11 So let's go back to this picture. Look at the
12 shape of the sidewalk. That's not the shape of the
13 sidewalk you saw in the picture. And let's -- I'm
14 going to try to do this because I don't have -- I
15 don't have two easels, but you can see here. I'll
16 hold this up. Talking about this curb here. You
17 can see how different that is. The different shape
18 that is than this shape. It's longer. It has that
19 long curve there. And it had to be designed. Why
20 did it have to be designed? Because the sidewalk
21 was too steep the way they had it.

22 So Mr. Moats had them redesign it this one
23 time. There was some other revisions, the 2016. He
24 created the forms for the -- for the sidewalks. If
25 you understand what I mean, you basically put

1 railings on the side. If you've ever seen a
2 sidewalk, you put wood or metal or whatever your --
3 whatever you want the shape of the sidewalk to be
4 in, and then you pour the concrete, and then you can
5 remove the forms later after it's dried.

6 So he tried to do it. It doesn't work. He
7 knows somebody that's local who's -- let me -- she
8 is handicapped herself, but she's very knowledgeable
9 with the ADA. Knows how to measure the slope of an
10 existing sidewalk. Her name is Sandy Hanebrink.
11 You'll hear about her. You'll see some pictures of
12 her doing her thing.

13 She has a level that comes out and tells you
14 exactly where the slope is, and it couldn't be done.
15 It just -- he laid them just as the plans said. She
16 came out. It's not ADA compliant. So he tells her,
17 and they go back to the drawing board again. And he
18 does that a time or two.

19 They go to the mediated settlement agreement.
20 Go to the mediated -- mediation conference. This is
21 in March of 2018 now where they actually entered
22 into this mediated settlement agreement that you
23 saw. And so in late 2017, she developed some other
24 plans and you can see this -- the curve, the
25 sidewalk was very different than the 2015 plans,

1 even different than the 2017 -- '16 plans.

2 And so at the mediated settlement, this was --
3 this was important. I want to go back to that and
4 show you what I'm talking about and show you this
5 paragraph 9 again. All right. It's at the very
6 bottom. "The Moats shall comply with ADA
7 requirements provided that the design drawings
8 issued to Moats comply would ADA requirements." And
9 again, it's after the mediated settlement agreement.
10 They didn't pay the 15,000. They didn't pay the
11 50,000.

12 So he goes back out there within a day or two
13 of the mediated settlement agreement and gets his
14 crews back out there trying to now go back to these
15 new plans, the 2017 plans, to do it again. So he
16 lays his forms out again, and he gets Sandy
17 Hanebrink out there to come measure. Still not in
18 compliance with the ADA.

19 So he goes back to the county. He's like, "Not
20 in compliance, guys. It's still not there. We got
21 to do something." We got to -- you know, he was
22 asking for what's called a "change order." If you
23 have a contract for a certain amount and then
24 something comes up that costs you more, it's not
25 your fault. You ask for a change order so they can

1 pay you more. He knew he was going to have to redo
2 all of that again. They ignored him. No response.

3 So at that point, there's nothing more he could
4 do. He's not going to -- he hasn't poured the
5 concrete because he knew it would be out of
6 compliance. And he has it -- there's nothing more
7 he can do, so he -- he stopped work.

8 Then, the county was stuck. They went out and
9 they got some county workers, maybe some other
10 workers to finish this job. And you can see --
11 well, let me tell you this first. I'm going to show
12 you this. I'll zoom out a little bit maybe. That's
13 Sandy Hanebrink right there on the left with her
14 little level. They're digging out this bank back
15 there because they knew they needed more length on
16 the path to lower the slope. There she is again
17 with her level.

18 But I want to show you a good picture, which I
19 think you've -- yeah, this is a pretty good picture
20 here of this retaining wall. Whoops. There we go.
21 See at the back there. And then I think one of the
22 other ones I showed you earlier. That's before this
23 retaining wall was built. And then, again, after
24 the retaining wall was built.

25 If you look in these drawings, the 16 and 17

1 drawings, there's no retaining wall. They had to --
2 they realized that's the only way they could do it
3 to make it ADA compliant. They had to -- there's a
4 big problem for us once you see that telephone pole
5 right there above the retaining wall, but you
6 couldn't move that. If you could, it would be very
7 expensive so they had to build a retaining wall to
8 shore up the ground under that so a telephone pole
9 would stay, but they needed that extra length to
10 make it ADA compliant. The only way to do it was
11 put in a retaining wall. They didn't want to pay
12 him for that. They just told him, "No. You're the
13 problem, Mr. Moats. You're the problem." No. It's
14 the designs are the problem. It's always been the
15 problem. It's been revised three or four times.

16 And then after that and he left the job, then
17 they come back. He'll testify that he's very
18 interested in what was going to happen with this
19 job. He lives here in Anderson so he can ride by it
20 regularly. He saw their crews pouring, tear up
21 concrete two, three, four times after he left. So
22 they were having the same difficulties he had
23 getting it ADA compliant, but they're blaming him.
24 They've asked you to have him pay their contractors
25 to do the job that they couldn't even do right for

1 three or four times that they asked him to do by
2 plans that were inaccurate from the beginning, even
3 the revisions were. Again, no retaining wall in any
4 of these plans. That's the only way it could be
5 done, and we know that now.

6 Now, this case -- this case is more than that.
7 As the judge told you, this case is -- this case
8 is -- is -- it's about defamation, as well. I want
9 to -- I want to say a little bit about what happened
10 after -- after Mr. Moats left the job. After they
11 came in and did the work. Like I said, the county
12 did not ever issue that rescission of the termination
13 letter, so he had a problem bidding on other jobs.

14 You might've heard of a bond for insurance
15 companies -- not insurance companies -- for
16 construction companies. It's basically insurance
17 that a contractor has to have to get certain jobs,
18 especially government work, especially big -- bigger
19 contracts. If you don't perform the job and it
20 costs the county money, then they can file a claim
21 on your insurance or your bond.

22 Well, the county did that after he left. After
23 all the county's inaccurate drawings, they went and
24 filed a claim on his bond. Never sent any
25 supporting documentation for it, but just filed a

1 claim. And that's problematic because it's out
2 there for the public to see. Anybody that he's --
3 he's bidding on a future job, they can see that he's
4 got a pending bond claim. That's a big problem.
5 Can't get jobs like that.

6 In addition, his insurance company or the
7 bonding company wouldn't write him a bond if he has
8 a pending claim. Well, Anderson, they filed a
9 claim, but they never submitted any documentation.
10 So for two years, he sat there with no -- no way to
11 even resolve the bond claim. Finally, after two
12 years, he contacted his insurance company and said,
13 "If they're not going to submit anything, y'all got
14 to drop this," which they did finally after two
15 years.

16 But my point is, is that he suffered greatly
17 for two years. Not with this termination letter not
18 being rescinded. Not being able to have a bond.
19 He's out there not being able to work like he used
20 to. And it, ultimately, killed -- lost his -- lost
21 his workers, lost his crews, and he's basically out
22 of the construction business now.

23 In addition to that, we have a defamation
24 claim. This is -- let me -- let me try to get you
25 to understand at least what a defamation claim is.

1 Some -- some people don't know what it is, but it's
2 basically if you tell lies about somebody that hurts
3 their reputation, you have defamed them.

4 And Mr. Moats had a good reputation coming into
5 this job. Moats Construction had a good reputation
6 coming into these two jobs. And during the course
7 of this work, you know, his position and the
8 evidence will show, is that the county and its
9 staff, it's employees went out of their way to hurt
10 his reputation. They knew that the -- that the
11 East-West Park Project was taking a lot longer than
12 it should.

13 At some point, I don't know if you're familiar
14 with the Independent Mail. It's a news organization
15 here in this area. They asked Rusty Burns, "What's
16 the hold up? What's going on?" The first thing out
17 of his mouth is, "Speak with the contractor. It's
18 the corrector's issue." No. It's your drawings.
19 It's the drawings that you gave the contractor.
20 That's the issue.

21 This is a -- an article published in February
22 of 2018. It's -- again, this is about a month or
23 two before the mediated settlement agreement. And
24 he says, "There's been disputes with the
25 contractor," which it was not the contractor that's

1 the hold up here, "which are being resolved," Burns
2 said. "There have been issues with the
3 rights-of-way, sewer lines, and lastly the area was
4 survey -- or resurveyed to make sure it was
5 compliant with the Americans with Disabilities Act."

6 The second part is true. It was the ADA. That
7 was the ADA issues. That was -- that was the issue,
8 but to open up by saying -- by blaming the
9 contractor, that's not the case. It was the county
10 -- the county's architect. That was the problem.
11 So we have an issue with -- with Mr. Burns and what
12 he's publicly saying about Moats Construction.

13 We have -- I'm going to show you these signs.
14 Mr. Moats has an issue with the way they handled the
15 signage. And I'll show you this. This -- well, let
16 me see if I can get a better -- here we go -- a
17 better shot here. There's some glare on that, isn't
18 there. You can see it well enough I think. This is
19 the sign posted by the East-West Park Project. And
20 you see this little logo here, the "M," and it's
21 got, you know, a South Carolina logo looks like, but
22 anyway, that's the Moats Construction logo. So
23 he's -- they are putting him out there as he's the
24 contractor on the job. And you can see it a little
25 better right there.

1 Mr. Moats contends that in the wake of all
2 this, they go and paint over his -- his -- you can
3 see the same sign. Now his logo has been painted
4 over. If you look closely, you can see it's -- they
5 didn't paint well enough and it's kind of bleeding
6 through. So anybody that's going by there looking
7 at this is going to know that they terminated
8 Mr. Moats. Something happened with Mr. Moats. It's
9 unfavorable for Mr. Moats and Moats Construction
10 specifically.

11 Matt Schell, one of the other defendants in the
12 case, you'll see. I'm not going to get into too
13 much detail about the e-mail. It's pretty long.
14 It's a -- basically, a two-page tirade in an e-mail
15 to him, to other coworkers, and other people about
16 this case making Mr. Moats look bad. And, again,
17 we'll get into more of that once we get into the
18 case.

19 So to kind of wrap up here. I think you have a
20 good picture of what this case is about. Why we're
21 here. You're going to hear a lot -- a lot about
22 kind of the lead up to the mediated settlement
23 agreement. Mr. Moats isn't saying he wasn't paid
24 what he was owed prior to the mediated settlement
25 agreement, so that's -- you're going to hear issues

1 that were going on. Once they got to that
2 mediation, kind of all of those past issues were
3 resolved. There was a -- I think you may have seen
4 in the mediated settlement agreement, he was
5 supposed to get \$26,000 for work yet completed.
6 They just hadn't paid for it yet. They did pay
7 that, so we're not -- we're not saying that.

8 It's the 15,000 that they didn't pay for. The
9 50,000 for delayed damages that -- that they didn't
10 pay for. We got the recision of the termination
11 letter that they didn't do. And, of course,
12 paragraph 9 that says Mr. Moats is supposed to
13 complete the job in accordance with the ADA if he's
14 given ADA compliant diagrams, which he wasn't. And,
15 of course, all the aftermath. You know we have the
16 defamation. All of this took him to a place where
17 he essentially lost his company, lost his -- lost
18 his way of life. He'll go into detail about that.

19 But I look forward to putting on the case for
20 you. And I do -- I briefly mentioned this, but I
21 think I need to say this because I'm not allowed
22 to -- this is my only chance to open here. There
23 are counterclaims. Like I said, they are -- the
24 county is asking you to make Mr. Moats pay for their
25 workers to finish the job. From our point of view,

1 it doesn't make sense for two reasons. One, as I
2 said, the law says if they provide inaccurate
3 diagrams, you can't blame the contractor. Two,
4 Mr. Moats didn't bill them for doing that. If he
5 had come in and done it and somebody else had to
6 come redo it, that would be a different story.

7 He went in after the mediated settlement
8 agreement, put his forms and it could not be
9 compliant with the ADA. Like I said, it had a
10 retaining wall that needed to get put in, but they
11 wouldn't let him do that. Somebody else did that
12 work, but they got paid for it by the county.
13 There's not reason in the world Mr. Moats should be
14 paying them. That doesn't make sense. So at the
15 end of this case, I'm going be asking you to make an
16 award for Mr. -- Mr. Moats and Moats Construction's
17 favor and to deny the county's counterclaims. Thank
18 you.

19 THE COURT: Mr. Davidson.

20 MR. DAVIDSON: Thank you, Your Honor. I
21 appreciate y'all's time today. I'll try to be
22 brief. We're here because there was a dispute over
23 two projects that Mr. Moats was doing in his
24 construction company, Moats Construction, were doing
25 for Anderson County. They spanned over about a

1 four-year period, I guess. You know, it started
2 with bidding and design in 2015 on the East-West
3 Project.

4 And then later in 2017, Mr. Moats got a second
5 job for the county on the Toxaway Project. You'll
6 hear through the testimony, probably even from
7 everybody, he didn't finish either one of those
8 projects. Neither one of them were ever finished by
9 Moats Construction.

10 Now, I think everybody will agree that -- in
11 the testimony that there's probably no construction
12 project that's perfect. It's probably not perfectly
13 designed and it's probably not perfectly built, but
14 they generally get finished and the problems get
15 taken care of.

16 In this case, that really didn't happen. What
17 he -- what the testimony I think you're going to
18 hear is, that the problems that arose or the issues
19 that were found were generally around a couple of
20 things -- the ADA project on the ADA work on the
21 East-West, and then we'll talk about Toxaway in a
22 minute.

23 But on Toxaway, it really had to do with the
24 work that was -- you'll hear that the work that was
25 done by Moats early on in that project exceeded what

1 was allowed to be done at that point until the
2 additional permits from DHEC were allowed and were
3 approved. So because of that, that's how the --
4 that's how the termination began.

5 Well, let's step back for just a second. There
6 were any number of times during the East-West
7 Project that the county and its engineers and its
8 architects were helpful and responded to the claims
9 and issues that Mr. Moats said he was having
10 building the project. They agreed they had things
11 redesigned. They had -- you know, they gave some
12 change orders to extend the time period by which it
13 should be built. None of those resulted in the
14 project getting finished. Okay. None of it ever
15 did.

16 So the problem that we end up with is we got a
17 project that's just not getting done. And then we
18 have to take steps then to do more and more things
19 that cost more and more money to the county. And
20 you'll hear testimony that the project really
21 should've taken about 90 days. Certainly, the first
22 part of it should've taken about 90 days. Should've
23 been finished in December of 2016.

24 And by the time of the mediated settlement
25 agreement, we're into March of 2018 and it's still

1 not finished. It's not finished that far along.

2 The Toxaway Project, to change gears for just a
3 second, that was background on East-West. The
4 Toxaway project is a shorter duration project that
5 was awarded to Moats while the East-West Project was
6 going on. Okay. So, you know, at that point,
7 they're still working together. You know, East-West
8 has its problems. He's still gets awarded the
9 contract to do Toxaway.

10 The Toxaway Project, and you probably -- you
11 may be familiar with that -- with that old mill.
12 There were several piles of debris on that site that
13 had to be removed. And you'll hear testimony that
14 the county had a grant to help get that removed and
15 to clean it up.

16 The piles had been there for a fair amount of
17 time so that the brush was growing up on those
18 projects. The work on the Toxaway Project was
19 essentially to haul off that material. But because
20 it was an old mill, there was a lot of asbestos that
21 had been a part of the first -- you know, of the
22 original demolition of the -- of the site that
23 resulted in -- in those piles.

24 So asbestos is highly regulated and there had
25 to be a DHEC approval if the brush piles contained

1 asbestos on what to do with them. And the
2 consultant for the county is actively working with
3 DHEC to get that approval in place.

4 At the request of Mr. Moats, the county allowed
5 him, you'll hear, to go out and cut these brush
6 piles, cut the brush away from the piles so that
7 it -- you know, that could be done early on while
8 we're waiting on the approval.

9 The problem is they didn't stop there. Okay.
10 They hauled off, according to the Moats' testimony
11 and billings, about \$60,000 worth of hauling of
12 materials offsite. When the county learned of that,
13 they had to stop that work because the approval from
14 DHEC on how to handle the asbestos was not in place
15 at that point. It wasn't an issue for the brush
16 pile. It's an issue for hauling it off. And
17 that -- you'll hear that that's why that project was
18 terminated.

19 Now, fast forward a little bit into March of
20 2018 when we had the mediated settlement agreement.
21 Let me -- let me pull this up for just a second. So
22 the mediated settlement agreement dealt with both of
23 the projects. And it -- it set out how it -- how we
24 were going to finish them both. Okay. This is how
25 we're going to finish them both. We've spent two

1 years arguing about stuff. Now let's get it done.
2 Let's -- let's finish both of these projects. And
3 it started out with agreements with Mr. Moats on
4 cost that he said he incurred on the early part of
5 East -- the East-West. So those payment were
6 going -- were going to happen.

7 Now, let's -- let's look a little bit closer
8 because I -- I want you to not have the wrong
9 impression here. So you'll see that the initial --
10 the \$15,000 for changes were -- were going to be
11 issued when the backup for those changes were
12 submitted. Okay? So I want you to understand that
13 there was something that had to happen before they
14 got paid. It had to be -- the backup for that had
15 to be submitted.

16 Then the additional \$50,000 for delay damages,
17 I think the document will show on the testimony will
18 be that there's not a time period on having that
19 done before any work started. What there was a time
20 limit on was that in Number 6, that he would be paid
21 \$26,155.89 on or before the start date set in the
22 notice to proceed. And you're going to see and hear
23 -- see documents and hear testimony that that's
24 exactly what happened. That was paid in -- about
25 April the 25th of 2018. Just a couple of days after

1 the county counsel approved the settlement. That
2 started the 30-day time period then for Moats to
3 finish East-West, and you can see that in Number 5.

4 Although they'd -- they had the same, you know,
5 they had -- they had worked out this agreement.
6 It's going to go forward. We're finally going to
7 get these two projects complete. Mr. Moats is going
8 to be able to be the one and his company is going to
9 be the ones who will be able to complete the
10 projects. Then they go out and we have the same
11 arguments over again about whether or not the
12 drawings can be built. Okay?

13 Mr. Moats then went to the county and asked --
14 some might say demanded, I guess. We'll see what
15 the testimony is -- that the county come out and
16 approve the forms. Well, that's -- that's not the
17 county. I mean, they're not the contractor.
18 They're not the ones that build the thing. So
19 you'll -- you'll see the contract provides that the
20 means and methods are for the contractor, not for
21 the county to tell him how to do it. That's what
22 the contractor does.

23 And despite that, you'll hear that Holt Hopkins
24 from the county did try to go out and work with him
25 -- work to -- you know, and meet with him and talk

1 about the forms and look at the elevations. They
2 had people shoot the elevations out there. And, you
3 know, they weren't that far off in certain areas.

4 It wasn't going to -- you know, and everybody
5 said, look, it can't -- well, I shouldn't say
6 everybody, but -- but the people from the county and
7 the county's folks that looked at it said, yes,
8 this -- this design can work. You can build it to
9 this design. And I think everybody was hopeful that
10 that was going to happen, but it wasn't. It didn't
11 go -- it didn't happen.

12 Moats pulled off of that job. Moats
13 Construction left the job. The county waited around
14 for a few weeks, a few days, some period of time to
15 see if they were going to return. They did not, so
16 they had to finish the job. So the county did incur
17 some additional costs, you know, in finishing that
18 job, and we have included those in our claim.

19 The Toxaway Project, then you'll see in
20 paragraph 13, that subject to the county counsel's
21 approval of the East-West Project, Anderson County
22 and Moats would agree on the following settlement
23 terms on the Toxaway Project:

24 Anderson County will rescind its termination
25 letter. It'll reinstate the contract list, what had

1 already been paid. Moats will remobilize on or
2 after June 1st of 2018 as directed by a notice to
3 proceed by Anderson County.

4 The -- we never got to that point. Moats had
5 walked away from the East-West Project, which was
6 part in parcel, you'll hear, of this settlement
7 agreement. And so because -- because they had
8 breached that settlement agreement, then that took
9 away all -- took away the rights on Toxaway.

10 Now, it's a jumbled up mess if you get into the
11 weeds of the thing, but -- but the simple and
12 simplest understanding of it, I think you'll --
13 you'll see from the -- from the evidence and
14 documents and testimony is that there were multiple
15 opportunities through this job for the projects to
16 be completed. Even if they weren't on time, they
17 could've been completed and have been completed and
18 paid for by the county, but it never happened. It
19 never happened.

20 In that -- the blame for that, I think you'll
21 -- you'll hear and it's certainly our position, is
22 not on the county for that. You're going -- you're
23 going to see change orders that double the cost of
24 the East-West Parkway to do the -- to do the
25 project. And even that didn't get -- didn't get the

1 job completed.

2 So my -- my hope is that this trial goes much
3 easier than -- than the whole project has and that
4 we will be good stewards of your time and effort.
5 And we appreciate you being here and help us get
6 this resolved.

7 So you understand who we are. It's not really
8 important because what's important is the claim and
9 the trial, but my name is John Davidson and I
10 represent Anderson County, not on the -- on the
11 defamation claims, but on the contract claims.
12 Okay.

13 Shirley Raven is our paralegal, and she will
14 keep me -- keep me straight. If I do something
15 wrong, you'll see her correct me.

16 And then our representative is the county
17 attorney, Leon Harman. And we -- we really
18 appreciate your time and look forward to working
19 with you to get this resolved. Thanks.

20 THE COURT: Mr. McDade.

21 MR. MCDADE: Hey. Good afternoon, madam
22 forelady, members of the jury. I've sort of been
23 over in the wilderness over there I feel like, but I
24 represent -- in the defamation part of this case, I
25 represent Rusty Burns, Matt Schell, and Holt

1 Hopkins. Mr. Burns is the administrator for
2 Anderson County. The other two individuals work
3 with the county. Holt Hopkins, I don't think,
4 worked on this project much -- much if at all, but
5 let me talk just for a few minutes about the
6 defamation part of it.

7 The judge will instruct you at the end of the
8 case that defamation is a false defamatory
9 statement. It can be liable if it's in writing. It
10 can be slander if it's verbal, but it has to damage
11 the reputation of the party who's bringing the
12 action. It has to be published to a third-party.
13 And I would submit to you that the e-mail chains
14 that you will see that are the basis, according to
15 Mr. Moats, they were three things that were a basis
16 that he produced of the defamation.

17 He -- he produced the news article -- excuse
18 me -- the news article, which I'll go over in a few
19 minutes, and he produced two e-mails chains. Those
20 e-mail chains were to people on this project. They
21 were people that worked on this project, knew about
22 this project, and they dealt only with the issues
23 dealing with this project. So we would submit that
24 those were not published, but the most important
25 thing is truth is always a defense. If you say

1 something about someone and it's true, that's not
2 defamation.

3 Now, you will see because I want to go over
4 this -- this news article. I want to produce that
5 up there. And -- and, basically, this is -- this is
6 what Mr. Burns said. And you see that this is an
7 independent mail article. It's sort of a service
8 that they provided where readers could -- could
9 write in and say, okay, we've got this question and
10 we want to know what's going on. And you can see
11 that they're talking about the connector park. And
12 they ask him, "What -- what are the causes of the
13 delays?" And you see on there it says that there
14 had been disputes with the contractor, which are
15 being resolved. It doesn't say that the contractor
16 caused anything. It just says that we have -- we
17 have disagreements.

18 And it also went through a list of other things
19 that he contributed to the delay. None of which had
20 said anything about Mr. Moats, so I would submit to
21 you that that's simply a disagreement.

22 Now, I believe when Mr. Moats testifies, he's
23 going to testify that it's not unusual for -- on a
24 project like this, for there to be disputes. In
25 fact, it's pretty common that there are going to be

1 disputes. There's disputes about whether somebody
2 should do something, whether it's included under the
3 contract, what the price of it is. There are all
4 sorts of areas for disputes, but doesn't make it
5 defamation. That's simply a disagreement.

6 And we know in our private lives that if we
7 have disagreements with other people, that's not
8 defamation. That's just a disagreement that we
9 have. And I submit to you that that is not
10 defamation. That's what Mr. Moats alleges that
11 Rusty Burns did that was defamatory. I would submit
12 to you that that's nothing defamatory. That's just
13 a disagreement.

14 The second thing had to do with the sign. Now,
15 what Mr. Moats will tell you when he testifies is
16 that he left the project. He decided that he wasn't
17 going to be on the project anymore. So when he
18 walks off and he says that somebody -- he says
19 "they." You didn't hear anybody that did it. You
20 didn't hear anybody that ordered it. What you heard
21 from the attorney was "they" decided to paint over
22 it.

23 And I submit to you that when we took Mr. Moats
24 deposition and he testified under oath, he thought
25 that Holt Hopkins did it. And then we took Holt

1 Hopkins deposition. "Did you paint over that sign?"

2 "No."

3 "Did you tell anybody to paint over that sign?"

4 "No."

5 They don't know who painted over that sign,
6 whether it even had anything to do with the county.

7 And then the last thing again is the e-mails.
8 I would ask that you look at those e-mails. You'll
9 be able to see those. And those, again, are to
10 people within the project talking about problems
11 that was on the project. So we submit to you that
12 there was no defamation.

13 Now, I will tell you that Mr. Moats, and he
14 would tell you, that his perception is and he
15 testified that if you say anything negative about my
16 company, that's defamation. You'll see that he was
17 asked in his deposition, "If you have a sign out
18 there and 5, 10 years in the future, 15 years in the
19 future, somebody goes out there and paints over it,
20 is that defamation?"

21 "Well, yes, that's defamation."

22 So he's certainly -- he's certainly within his
23 right to feel however he wants to feel, but I think
24 you'll find that there's a significant disconnect
25 between what he feels is deposition -- defamation

1 and what the judge will instruct you is defamation.

2 So I ask that you keep your attention. That's
3 my part in the case. It's probably going to be a
4 little bit broken up because some of these witnesses
5 are going to testify about both, but we will do our
6 best to present this efficiently so that you can get
7 on with your lives. And we certainly appreciate
8 your participating in this process.

9 THE COURT: All right. Madam forelady, you've
10 been going for a few minutes. Would you like a
11 quick break or would you like to keep going with
12 opening statements?

13 THE FORELADY: Keep going.

14 THE COURT: Keep going?

15 THE FORELADY: Yes, sir.

16 THE COURT: Very good. All right. Call your
17 first witness.

18 MR. GOODWYN: My client would like a short
19 break if that's alright, a quick bathroom break.

20 THE COURT: Well, five minutes.

21 MR. GOODWYN: Yes, sir.

22 THE COURT: Take them back to the jury room,
23 please, sir.

24 (At 3:24 p.m., jury left the courtroom.)

25 THE COURT: Would you call your first witness.

1 MR. GOODWYN: Yes, Your Honor. I call Russell
2 Moats.

3 THE COURT: Yes, sir.

4 THE CLERK: Would you please come forward and
5 raise your right hand?

6 THE WITNESS: (Complying.)

7 THE CLERK: Do you swear or affirm the
8 testimony you're about to give will be the truth,
9 the whole truth, and nothing but the truth?

10 THE WITNESS: I swear.

11 THE CLERK: Thank you, sir. Please take a seat
12 there at the witness stand.

13 THE WITNESS: (Complying.)

14 THE COURT: All right. Go ahead.

15 MR. GOODWYN: Thank you, Your Honor.

16 RUSSELL MOATS,
17 having been produced and first duly sworn as a
18 witness on behalf of the Plaintiff, then testified
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. GOODWYN:

22 Q. Russell, will you please state your full name
23 for the record?

24 A. Russell Tyson Moats.

25 Q. Okay. And how old are you?

1 A. About to turn 46, 45.

2 Q. Very good. And are you married?

3 A. I am.

4 Q. What's your wife's name?

5 A. Laura.

6 Q. Very good. How long have you been married?

7 A. Almost 20 years.

8 Q. Nice. Children?

9 A. Two. Two boys.

10 Q. And how old are they?

11 A. Sixteen and 13.

12 Q. Very good. Very good. Are you from the

13 Aiken -- the Anderson area?

14 A. All my life.

15 Q. Yeah. Where did you grow up?

16 A. Western side of Anderson, the lakeside.

17 Q. Did you graduate high school in this area?

18 A. Westside High School.

19 Q. What year?

20 A. 1996.

21 Q. Did you go to college?

22 A. Went to Clemson University.

23 Q. Did you graduate?

24 A. I never -- never did get my degree. No. Civil

25 engineering.

1 Q. You studied civil engineering, though?

2 A. Civil engineering.

3 Q. All right. And what did you do when you left
4 Clemson?

5 A. I worked for several heavy highway companies.
6 I worked for my father's business up until I was 20,
7 21.

8 Q. Okay.

9 A. And then worked for several heavy highway --
10 heavy construction infrastructure companies.

11 Q. Okay.

12 A. And then started my own business, actually with
13 my father, in 2002.

14 Q. And what kind of business?

15 A. Construction.

16 Q. All right. You said in 2002?

17 A. 2002.

18 Q. All right. So that's about 22 years ago now?

19 A. Correct.

20 Q. All right. And what kind of work did you and
21 your father do?

22 A. We started out doing small jobs. Started out
23 with just a pickup truck, an old Dodge pickup truck
24 that we bought in one of his old trial machines. I
25 was still going to school at that time, kind of on

1 and off going to college, but working.

2 Q. Right.

3 A. He had sold his business to his partner and his
4 partner's children, two sons. They were a good bit
5 older than I was. They kind of wanted to do their
6 own thing, so -- and so we just decided to start
7 this little construction company.

8 Q. All right. How long did your father continue
9 to operate the business with you?

10 A. Until 2008.

11 Q. Okay.

12 A. When we had -- there was what they call the
13 "great recession."

14 Q. Yes. I recall.

15 A. So he decided to pretty much retire then.

16 Q. Sure.

17 A. We had, you know, like a housing bubble. And
18 we had a number of contractors and stuff that owed
19 us money and it was just like a -- trying to collect
20 money and he was -- I guess grown tired of doing
21 that part of it, so...

22 Q. Okay. All right. So he retired. So tell me
23 this, Moats Construction, Inc., the company we're
24 here today about, when was that company formed?

25 A. It con -- like we converted to an S-Corp, I

1 think, in 2005 I want to say.

2 Q. So four year ---

3 A. Excuse me. 2015.

4 Q. Okay. So after your father left the company?

5 A. Yes, sir.

6 Q. Okay. But before the two jobs that we're
7 talking about in this case?

8 A. Yes, sir.

9 Q. Okay. And who were the owners of Moats
10 Construction, Inc.?

11 A. I'm the sole ---

12 Q. The sole shareholder?

13 A. A hundred percent. Yes, sir.

14 Q. Okay. Had you always been ---

15 MR. MCDADE: Can you get closer to the
16 microphone? I'm having trouble hearing.

17 THE COURT: Yes, sir.

18 THE WITNESS: I can get closer. Sorry.

19 THE COURT: Just pull it to you a little bit
20 closer. There you go.

21 BY MR. GOODWYN:

22 Q. All right. So I think I was asking him who the
23 ownership of Moats Construction, Inc., was. Could
24 you repeat your answer? I don't think they heard
25 it.

1 A. I'm 100 percent owner.

2 Q. Okay. And you've always been ever since 2015?

3 A. I have.

4 Q. Okay. All right. Do you own any -- do you own
5 any real property in Anderson County?

6 A. Yes, sir.

7 Q. All right. And, well, let me ask you about
8 Moats Construction, Inc. Around the time that you
9 were bidding on the East-West Park Project and the
10 Toxaway Mill jobs, how -- how big was Moats
11 Construction, Inc., in terms of employees and crews?
12 I know you had some crews that you used to
13 subcontract some jobs to, so about how big were you?

14 A. So before my dad stepped out of the picture in
15 2008, we had a number of employees, and we kind of
16 downsized after that just because everything got so
17 slow. And it was just kind of a struggle to stay
18 operating and maintaining or retain employees, like,
19 for a period of years, a number of years.

20 And then made it through that, you know, and
21 started picking up maybe in 2010 or 2011 a little
22 bit. That was a struggle through those years. And
23 then -- but still very small, you know, and started
24 just kind of slowly adding employees and trying to
25 build a crew, you know.

1 Q. Right.

2 A. And then we started doing some public work in
3 2013.

4 Q. Okay.

5 A. Because it was just -- we were hesitant or I
6 was hesitant at that point about doing the same type
7 of work just because it was so -- it could be so
8 inconsistent, and public work was just more
9 consistent. And then as long as you did --
10 generally, as long as you did your work diligently,
11 you know, you got paid.

12 Q. Okay.

13 A. Didn't have to worry about that part of it. So
14 that was kind of the, you know, what made it
15 attractive for us to start doing public ---

16 Q. So did the company grow ---

17 A. --- public work.

18 Q. --- when you started doing public work?

19 A. It did.

20 Q. Okay.

21 A. And, you know, for anybody who doesn't know
22 that is, I mean, private work is more or less
23 individuals or working for other general contractors
24 or, you know, public work is mainly working for the
25 government. You know, just somebody who doesn't

1 know the difference.

2 Q. All right. Had you -- prior to bidding and
3 getting the Toxaway Mill and the East-West Park
4 Project job, had you ever done any work for Anderson
5 County?

6 A. I hadn't.

7 Q. Tell the jury a little bit about that.

8 A. Yeah, so we actually worked all over the state
9 of South Carolina for a time. A small crew that
10 would go -- we would go to different counties. Work
11 for different various counties all over South
12 Carolina -- Newberry County, Lancaster County,
13 Charleston County, Kershaw, Abbeville -- different
14 schools and things like that that we worked for.

15 Different state agencies we worked for from the
16 DNR to the DOT. And these were small projects that
17 were kind of -- and we kind of -- you can't start
18 out doing large projects. You have to have
19 experience. I mean, a customer wants to see that
20 you have experience. And, also, once they get over
21 a certain size, bonds are required for projects.
22 Generally, that's over \$50,000 to \$100,000, that
23 range.

24 Q. All right. And I know I talked about bonds in
25 my open, but I want you to explain to the jury

1 what -- what a bond is. What do you have to do to
2 get a bond. And, again, you were about -- you were
3 starting to explain what types of projects you
4 needed them for. Can you explain that to the jury?

5 A. Right. So in general, I mean, with enough
6 liquidity, somebody can get a -- obtain a bond if
7 they have enough cash, but that doesn't necessarily
8 mean that they'll be hired by, like, say, a
9 government agency.

10 Q. What is a bond, though? Just for somebody that
11 doesn't know anything about them.

12 A. A bond is a surety that pretty much says if you
13 were to default on your obligations under our
14 contract, that that bond is in place to cover any --
15 any kind of negligence or, you know, liability that
16 might arise from that default.

17 Q. Okay. So I think when you testified, you can
18 tell me. But when you have enough cash to back
19 yourself, you can get a bond with cash or you can
20 get an insurance company to do it?

21 A. Yeah. Correct. Anybody can do that, but, you
22 know, you also -- and this is required for
23 licensing, too, is you have to have experience and
24 you have to sign affidavits of experience where, you
25 know, you've been in business for so many years and

1 you've done, you know, "X" number of jobs for "X"
2 amounts of money, descriptions of those jobs so that
3 you're -- well, the licensing body can license you
4 or a customer can approve you for the work.

5 Q. Okay.

6 A. Because anybody can get a bond, but not
7 necessarily everybody has the experience to do the
8 work.

9 Q. All right. And you had the -- I'm assuming you
10 had to have a bond for certain jobs -- for certain
11 public jobs?

12 A. Correct.

13 Q. Did you say \$50,000?

14 A. It varies from the agency or the body of
15 politic, which in this case would be Anderson
16 County. They have different procurement ordinances
17 from county to county. There's 46 counties in South
18 Carolina, so each one of them has a different
19 procurement policy ---

20 Q. Okay.

21 A. --- or code. And then cities have different
22 codes, as well, so it can vary. They -- sometimes
23 they weigh bonds up to a certain amount and
24 sometimes they require them just for anything.

25 Q. All right. And who is your bond with?

1 A. With a company called Direct Surety.

2 Q. And is that -- did you use that same company
3 for every job you needed a bond for?

4 A. We started off with one bonding company and
5 they were kind of more, I guess, high risk because
6 we just started doing that. And then we moved to
7 Direct Surety because they wrote the bonds directly.
8 That's why, hence the name, Direct Surety. They had
9 in-house underwriters.

10 Q. I understand what you're saying. All right.
11 And before the East-West Project job, did you -- did
12 you have to put up a bond?

13 A. Yes, sir.

14 Q. Okay. And that was the Direct Surety bond you
15 were talking about?

16 A. Yes, sir. For any -- any of the larger
17 projects we had to bond.

18 Q. Okay. All right.

19 A. But to answer your question about Anderson
20 County, we started doing some small jobs for them.
21 Mainly house demolition packages projects.

22 Q. Okay.

23 A. I want to say 2013 and 2014, something like
24 that. We did a number of those.

25 Q. Okay. So ---

1 A. They would -- they would have maybe five to ten
2 plus houses in a package. They would get grant
3 funding, and they would put these packages out.
4 They are usually like derelict houses, you know,
5 that -- that were -- had code violations, you know,
6 or burnt.

7 Q. Demolition jobs, is that what ---

8 A. Demolition jobs. Yes, sir.

9 Q. Okay. So you had experience working for
10 Anderson County prior to bidding on ---

11 A. I did.

12 Q. --- these two jobs?

13 A. Yes, sir.

14 Q. Did you ever have any issues with working with
15 Anderson County prior to these two jobs?

16 A. We had what I thought was a really good
17 relationship up until these two projects.

18 Q. Okay. About -- can you estimate how many
19 projects you -- you worked with Anderson County on
20 prior to ---

21 A. I want -- I want to say there was more than
22 five.

23 Q. Okay. All right. And had you worked with
24 Rusty Burns before?

25 A. I had. Well, not really worked with him. I

1 mean, just -- I don't think I ever even -- the only
2 time I every came in any kind of contact. He signed
3 all the forms -- signed off on all the forms.

4 Q. And who is Rusty Burns? What was his position
5 with the county?

6 A. He's the county administrator.

7 Q. Okay. So who had -- who had been your main
8 contact with the county?

9 A. Usually, it was Robert Carrol.

10 Q. Pardon?

11 A. Usually, the purchasing director. He's also
12 the central services director for Anderson County.

13 Q. Okay. All right. So let's talk about this --
14 the East-West Park Project. How did you come to
15 learn about the project?

16 A. We responded to a bid -- invitation to bid.
17 Well, it really wasn't an invitation to bid. It was
18 something that was published on the county's
19 purchasing website I guess. And I'm not sure if
20 somebody within the county alerted us to that. I
21 mean, they have to publish that in a -- in the state
22 publication that they put out called SCBO. And I'm
23 not sure who ran across it there or just across
24 their website, but we had been doing that type of
25 work and we had kind -- kind of grown a crew that

1 did that -- specialized in that type of work.

2 We had done a couple of projects for the City
3 of Anderson that were very similar to that. They
4 were what's called a hardscape project, which has to
5 do with a lot of concrete or pavers and landscaping,
6 sidewalks, and things like that.

7 Q. All right.

8 A. So we -- we had a crew that we had built that
9 specialized in that type of work, and they
10 specifically specialized in ADA construction because
11 one of the only city roads or roads in the city that
12 are ADA compliant is West Church Street. It's the
13 first one we did for the City of Anderson.

14 And then we did the Pocket Park, the Church
15 Street Park, which is right here on the other side
16 of Main Street.

17 Q. Okay. So what ---

18 A. And so ---

19 Q. I'm sorry. Go ahead.

20 A. --- so we responded to that invitation to bid
21 and procured a bid bond for the project and bid on
22 the project in 2000 -- I want to say 2015.

23 Q. Okay. I'm going to show you these documents in
24 a minute, but I want to ask you first about -- you
25 mentioned something about one of your crews having

1 ADA experience?

2 A. That's correct.

3 Q. Okay. So had you performed jobs in the past
4 that required knowledge of ADA rules with respect
5 to, you know, paving and sidewalks, that kind of
6 thing?

7 A. We had. We were -- matter of fact, they had
8 just came off this park project across the street
9 right here where it was very heavily ADA compliant.

10 Q. Okay. All right. So the ADA compliance was
11 nothing new to you coming into this job; is that
12 fair to say?

13 A. That's correct.

14 Q. All right. This -- this is, what I'm showing
15 you now, is Tab 2 of Defendant's Exhibit 1. It's a
16 notice of award where you were awarded the East-West
17 Parkway Project.

18 THE COURT: What's that exhibit number?

19 MR. GOODWYN: Yes. So Tab 2 of Defense
20 Exhibit 1.

21 THE COURT: Thank you, sir.

22 BY MR. GOODWYN:

23 Q. All right. I don't know. Can you -- you have
24 a TV screen you're looking at right there. All
25 right. I don't know if you can read it. It's kind

1 of small. I'll zoom in a little bit. All right.
2 So 159,604.75. And then what is to include the
3 following: So this -- this is a -- this 106,015 and
4 a \$38,000 number, that is what comprises the 159; is
5 that right?

6 A. Yes, sir.

7 Q. Am I reading that right? Okay. All right.
8 And this is a point that was made in defense
9 counsel's open, but by the time you got to the
10 mediated settlement agreement in March of 2018, they
11 paid you a lot more than 159, correct?

12 A. Yes, sir.

13 Q. Because of -- because of why? Just generally.

14 A. The change orders on the job.

15 Q. Okay. All right. And can you just explain to
16 the jury about that. You know, you have -- and let
17 me just turn the page and show you this. This is
18 Tab 3 of Defendant's Exhibit 1. This is the actual
19 contract, correct?

20 A. Yeah, if you can zoom out a little bit.

21 Q. Oh, I'm sorry.

22 A. Yeah. Yeah.

23 Q. It's not a great copy of if, but I think this
24 is the best all of us had. So that's the contract.
25 And when you -- you go into a contract and you go

1 into a job and you find something that's not going
2 work about it. Explain the change order process for
3 the jury just so they can understand what that is
4 and how that works.

5 A. So with all projects, but especially when
6 there's public funds, you had -- you have a bid
7 process where different companies bid on the project
8 based on the plans and specifications for that
9 project.

10 Q. Okay.

11 A. The plans can be fairly general or detailed.
12 Generally, the specifications are exactly what they
13 are. They're pretty specific to the project. So
14 you have to formulate your bid based on the
15 specifications and the plans. And if there's a gray
16 area, sometimes there will be allowances for things.
17 There may be alternates for other things that the
18 customer or the owner might want to add or deduct.
19 But in general, you bid on a project based on the
20 plans and specifications for the project and
21 nothing -- nothing else. So that's how you, like I
22 said, formulate the bid and pricing overhead,
23 profit.

24 And if you encounter, you know, something a lot
25 of times if it's just a -- something minor that is

1 a -- it's an added cost to the contractor, a lot of
2 times they'll overlook it, you know, just to keep
3 from having to request a change order. I know our
4 policy has always been that until it's something
5 that really costs, you know, becomes cost prohibited
6 for us, you know, a lot of times we won't say
7 anything about the added cost until it becomes
8 significant -- significant costs or something to
9 justify a change order. You know, or if it's
10 something that really delays the project beyond our
11 control. That's also -- it's not -- not -- so
12 change orders aren't necessarily just monetary.
13 They're also -- they also have to do with time.
14 Generally, in a project, a construction project,
15 time's of the essence.

16 Q. Right. And there was, you know, the discussion
17 in my open and then Mr. Davidson's open -- opening
18 about the delay. I mean, you know, the Independent
19 Mail news article. That was the question that the
20 reader had was why there's such a delay of this
21 project. And there were a number of change orders.
22 And the suggestion at least from Mr. Davidson was
23 that, "Well, it's this -- you'll pay more than twice
24 the original amount of the contract and it still
25 wasn't done, opining there was something wrong with

1 the way you did it.

2 I want to walk -- I don't want to go through
3 every change order in detail. There's 11 of them,
4 but we have a summary here of the change orders.
5 That's under Tab 8 of Defense Exhibit 1. I want you
6 to look at it, and I'm going to zoom in on this so
7 everybody can read them as we're going through it.
8 Can you see and read that okay?

9 A. I can.

10 Q. Okay. All right. And I want to talk about
11 these and I want you to explain these change orders.
12 And let me ask you this before we get going down
13 this list. These are all change orders that were
14 approved, correct?

15 A. I'm not sure about approval on some of them.
16 I'm not -- I'm not sure about -- I don't think --
17 maybe 8, 9, 10, and 11. I don't know if any of
18 those were approved.

19 Q. Okay. All right. Well, let's -- let's talk --
20 let's go through them here. There are some other
21 supports for these where there's a more detailed
22 explanation of what these change orders were behind
23 and we can look at those if you need to, but there's
24 a summary of the change order on this summary page
25 that may be enough, but let's look at it. Number 1,

1 underbrush/mow adjacent row an extra \$1500. Was
2 that approved?

3 A. Yeah, so if I can go back to the beginning --
4 the very beginning before we ---

5 Q. Sure.

6 A. --- when the county issued the notice to
7 proceed. So we originally bid on the project in
8 2015. And we -- we weren't awarded the project
9 until 2016, the fall of 2016.

10 I had Mr. Robert Carrol, County Purchasing
11 Director, he called me and asked me if I could come
12 over to his office to talk about that project. And
13 take it, this a year prior. So we had bid on for a
14 year prior. And I guess for whatever reason, the
15 county tabled it.

16 I believe it was because the property that this
17 park sat on was owned by Duke Power, and they were
18 leasing or they were in some kind of lease agreement
19 with Duke Power. So they had put the project out to
20 bid and received all their bids, but they never
21 awarded it to anybody.

22 And so they came to us because we were the low
23 bidder, not because there was anything else special
24 about us, but we were the low bidder and asked us
25 if -- Mr. Robert asked us if we were good with our

1 pricing, if we still were interested in doing the
2 job. And so I told him we'd look at the numbers,
3 material pricing. There were a lot of plants and
4 landscaping, stuff like that that we didn't know if
5 they had gone up or not, things like that. And then
6 we would let him know.

7 So I had a meeting with him in his office
8 across the street at the historic courthouse. And
9 he asked me, you know, if we were good and if we
10 still wanted to do it. I said, "Sure." We looked
11 at the numbers. You know, and we were fine with
12 everything. The only issue that I saw with the
13 project was you got some of the sidewalks and stuff
14 tying -- tying into the East-West Parkway bike path.

15 Q. Now, at that point, when you -- when you bid
16 the job, had you received any of these architectural
17 plans?

18 A. The only plans that we had were the original
19 plans that we used to bid on the job.

20 Q. Okay.

21 A. They were the ones that were designed by Milone
22 and MacBroom.

23 Q. Okay.

24 A. I don't even know if Natasha Sexton had -- had
25 anything to do with the design, but I do know

1 somehow she wound up with those drawings because she
2 was selected by the county and Matt Schell to
3 administer the contract for the project.

4 Q. Okay. Now, this -- these drawings have the
5 Milone and MacBroom logo on here. This -- they're
6 dated July 9, 2015. Are these those original
7 drawings you're talking about?

8 A. Yes, sir. I believe so.

9 Q. Okay. All right.

10 A. And this project was cut up into three phases.
11 Phase 1 was the upper parking lot.

12 Q. This one up here?

13 A. Phase 1.

14 Q. Can you see this okay? Do you need me to ---

15 A. I can kind of see it.

16 THE COURT: You can move it closer if you'd
17 like.

18 THE WITNESS: I can see it well enough.

19 MR. GOODWYN: Is that better?

20 THE WITNESS: Yeah, I can see it well enough.

21 MR. GOODWYN: Can y'all ---

22 THE WITNESS: Yes. So on the upper right,
23 that's the upper parking lot. That was phase 1.
24 And then as you move to the lower parking lot ---

25 BY MR. GOODWYN:

1 Q. This lower parking lot?

2 A. That was phase 2.

3 Q. Okay.

4 A. And everything in the middle was phase 3.

5 That was -- and so they were going to phase this
6 project in based on some funds that they were
7 receiving -- some matching funds I think. Some of
8 it was matching. I think they got a large grant
9 from the South Carolina Parks Department ---

10 Q. Okay.

11 A. --- so but they were going to phase the project
12 in depending on how they received those funds.

13 Q. All right. So explain to the jury this
14 \$159,000 number that we saw, what was that supposed
15 to cover -- phase 1, phase 2, all three phases?

16 A. It was supposed to cover phase 1.

17 Q. That's just this upper parking lot?

18 A. Correct. And then they were adding some -- I
19 believe they were adding some planting -- different
20 plantings and stuff like that.

21 Q. Okay.

22 A. So that -- there were -- there were some
23 alternates in the bid, and so they added some of
24 those alternates I believe to get to that number.

25 Q. Sure. I know we've -- we've been talking a lot

1 about this sidewalk down here and this -- the
2 reworking of that as part of phase 2, correct?

3 A. Yes, sir.

4 Q. So it sounds like -- was there a -- were you
5 hired later for phase 2?

6 A. We were. So what happened was, this was
7 supposed to be the -- and I believe Mr. Davidson in
8 his opening had talked about this project only
9 originally supposed to be -- supposed to take
10 90 days.

11 Q. Sure.

12 A. Well, the only part of it that was supposed to
13 take 90 days was that first phase, the upper parking
14 lot.

15 Q. The upper parking?

16 A. The upper parking lot. So -- and we started
17 that project, I want to say, in October, middle of
18 late October, maybe end of September. I can't
19 remember. Anyway, there is immediately a change
20 order number one.

21 Q. To do -- well, wait a minute. When you say a
22 change order, I mean, I don't know. I'm thinking
23 that sometimes it's -- it's the contractor that's
24 asking for a change order. Can it go both ways
25 where the owner is asking for changes as you're

1 going along?

2 A. Yes, sir. It can. If the owner sees something
3 they want to add, change, they can -- they can issue
4 a change order or change order directives, you know,
5 to change the work or to add work or deduct work if
6 they want to.

7 Q. All right. So this first change, this
8 underbrush/mow adjacent row, that \$1500, was that a
9 change order that you asked for or was that what
10 Anderson County asked for?

11 A. Matt Schell with Anderson County asked for it.

12 Q. You said Matt Schell?

13 A. Matt Schell.

14 Q. Okay. Was Matt your original contact with
15 this -- with this job?

16 A. He -- he was who Robert told me was going to be
17 the point of contact for the project. He was with
18 the parks department.

19 Q. Who's Robert? You said Robert.

20 A. Robert Carrol, the purchasing manager.

21 Q. Okay. Thank you.

22 A. And he immediately wanted to take out some
23 additional trees that were there, some pine trees,
24 that he thought was going to be an issue -- would've
25 been an issue in the second phase or the third

1 phase. And then he also wanted to brush, mow,
2 another section of the leashed area that was
3 overgrown. So he wanted to clean it up.

4 Q. Okay.

5 A. And so that -- of course, that added time and
6 money to the contract.

7 Q. All right. This line item 2, ALT, what is
8 that? What does that mean, maybe for you to
9 look at ---

10 A. So that's a large number. What that was ---

11 Q. Here's the backup page for it if that helps
12 refresh your recollection.

13 A. Right. So what that was, it's a \$99,000 change
14 order, a large change order for that size project
15 because the original amount was only 159.

16 What that was, we had started the project and
17 we were completely on schedule to complete it within
18 90 days, probably less than 90 days. We were going
19 to be finished with the project late November, early
20 December, but all of that came to a standstill when
21 Matt Schell contacted Sandy Hanebrink, and she is
22 who we refer to commonly as the ADA lady and not
23 someone we employed ---

24 Q. Right.

25 A. --- but somebody that the county -- she had

1 actually worked for the county. And I believe for a
2 time had an office with the county, Anderson County,
3 where she would review plans and she was kind of a
4 consultant for the county for projects to make sure
5 that they were ADA compliant.

6 Q. Is this her in this picture here?

7 A. It is.

8 Q. Okay. And that -- I guess that would be --
9 it's not the best pictures of her I guess, but maybe
10 all we have. Anyway, okay, so the county contacted
11 Sandy Hanebrink about what?

12 A. About some possible issues with some sidewalks
13 that had been installed, and they wanted to make
14 sure -- they wanted her blessing.

15 Q. The sidewalks that have been installed?

16 A. On phase 1.

17 Q. Phase 1 that y'all had installed?

18 A. Correct.

19 Q. Okay.

20 A. And when they did that, it pretty much ground
21 the whole project to a halt and they stopped it.

22 Q. Okay.

23 A. We couldn't pave the parking lot. We couldn't
24 do anything else.

25 Q. You were waiting to get Sandy Hanebrink to give

1 her approval on what had been done?

2 A. That's correct.

3 Q. Okay. How long did that take ---

4 A. Well, it didn't happen.

5 Q. --- or did she approve it?

6 A. It didn't happen.

7 Q. Okay.

8 A. It didn't happen. So after that, there were a
9 number of issues I guess that were discovered with
10 phase 1.

11 Q. When you say "issues," do you mean ADA issues?

12 A. No. There were other issues. There were some
13 permit issues like the sidewalk that ties in from
14 that upper parking lot down to the existing bike
15 trail along the East-West Parkway.

16 Q. You're talking about up here?

17 A. Yes, sir.

18 Q. Okay.

19 A. It was one, it was not ADA compliant. We had
20 already installed that sidewalk, and it was not ADA
21 compliant, but we put it in. We installed it
22 exactly how it was drawn.

23 We have issues -- I mean, we have e-mails with
24 Natasha saying we have concerns about it. We don't
25 know -- we don't think it's going to be ADA

1 compliant because the difference in elevation.
2 They're building a park up on a hill and this
3 walkway and parkway, you know, cars travel on. They
4 have this bike trail beside it. It's way down here,
5 and they're building a park up here, so ---

6 Q. I'm sorry. Hang on a second just to make sure
7 we understand what is going on. This is the road
8 out here, the East-West Connector, correct?

9 A. That's correct.

10 Q. And this -- this is the bike -- the paved
11 bikeway?

12 A. Yes, sir. That's correct.

13 Q. Now, was that paved bikeway there before you
14 began work or was that part of your job to install
15 that paved bikeway?

16 A. It was. It was there when they built the --
17 originally -- well, I think it was actually put in
18 after they finished the parkway.

19 Q. It was not part of your work?

20 A. Not part of our work.

21 Q. Okay. You were supposed to tie into it with
22 the sidewalk?

23 A. Correct.

24 Q. Okay. Tell me about Sandy Hanebrink, what she
25 did and found?

1 A. Right. So, well, the issues there were the
2 East-West Parkway is a state road. So -- and in
3 South Carolina, we have city streets or city roads,
4 county roads and state roads. That is a state road,
5 so that means it's maintained by the State of South
6 Carolina DOT. You can't touch it or anything in the
7 right-of-way without an encroachment permit. You
8 can't do anything without that permit first. You
9 know, you can't put a driveway in. You can't poke a
10 hole in it. You can't dig -- you know, dig in the
11 right-of-way. You can't do anything to damage that
12 because it's public property.

13 Q. Did you need an encroachment permit for this
14 phase 1?

15 A. We did. And -- and then, so it was discovered
16 that the county had not obtained that permit at all
17 prior to construction on the project.

18 Q. This is probably an important point. And whose
19 responsibility is it to get that encroachment
20 permit?

21 A. It would've been the county's.

22 Q. All right. So how did that affect what Sandy
23 Hanebrink did?

24 A. Well, we -- we, effectively, at that point
25 could not do any work inside the right-of-way, and

1 this project abutted that right-of-way, so we
2 couldn't encroach on it. We couldn't do anything to
3 it. Matter of fact, the concrete we had installed,
4 we couldn't even -- technically, couldn't even tear
5 it out and replace it.

6 Q. Because it was in the right-of-way?

7 A. Right. A portion of it was in the
8 right-of-way.

9 Q. How far to the right-of-way did it go?

10 A. It was probably 50 percent of that walkway was
11 in the right-of-way.

12 Q. Okay. Maybe -- hang on a second. Is this --
13 is this line the right-of-way?

14 A. It -- it should have an "RW."

15 Q. Okay. It says controlled acces. Yeah, 85-R?

16 A. Yeah, 85 feet from the center line of the road.

17 Q. "RW" means right-of-way?

18 A. Yes, sir.

19 Q. All right. So anything inside this line, you
20 needed a permit?

21 A. Correct.

22 Q. Okay.

23 A. So and on top of that, ADA requires different
24 portions of a public space to be ADA compliant, not
25 just the walkways in general. So Sandy had them

1 redesign another area of that parking lot with van
2 accessibility. I believe it was the lower corner of
3 that parking lot, the very -- the lowest corner.

4 Q. Up here or over here?

5 A. Right there. The lowest corner of the parking
6 lot. That was redesigned. The van accessibility on
7 the upper side was redesigned or had to be
8 redesigned at that point, so...

9 Q. Are those the changes that are part of change
10 order no. 2, that \$99,000?

11 A. No. Those are just issues with phase no. 1 ---

12 Q. Okay.

13 A. --- that -- that prompted change order no. 2.

14 So we had all this equipment out there and all
15 these men out there, which cost us a couple of
16 thousand dollars a day just to employ them, have
17 them on the job, not to include all the equipment we
18 had on the job. And that was the only the project
19 that we had for them to do, because usually what we
20 would do is, as we were nearing the end of a project
21 or a contract, we would be bidding on another
22 contract so we could just move them from, you know,
23 place to place. They can't sit idle because it
24 costs us too much money just to, you know, sit
25 around and twiddle their thumbs or, you know, do

1 busy work or something like that. So we have to
2 move them from project to project like any other
3 company.

4 Q. Okay.

5 A. So in an effort -- and we thought it was a good
6 faith effort on their part to keep us on the
7 project, they -- you know, we said there's phase 2.
8 You know, they were hinting towards awarding us the
9 phase 2 portion of it anyway. We had bid on it. It
10 was part of the original bid.

11 Q. You're out there anyway?

12 A. We were the low bidder on it, as well, so they
13 went ahead and issued that change order so we could
14 start construction on it. And that's what the
15 change order no. 2 is about.

16 Q. Okay. The change order no. 2, was -- was it
17 just about modifying issues with this upper parking
18 lot?

19 A. It had nothing to do with that.

20 Q. Okay. What did -- what did it ---

21 A. It was just the construction of the lower
22 parking lot.

23 Q. All right. So that's part of phase 2?

24 A. Correct.

25 Q. So basically it modified ---

1 A. It was phase 2.

2 Q. Okay. So instead of issuing you -- issuing you
3 a separate phase 2 contract, they just modified the
4 contract for phase 1?

5 A. And made it a change order.

6 Q. Okay. So the suggestion that, oh, they -- they
7 paid you twice as much as the contract for this
8 \$150,000 project, and you still couldn't get it
9 done, that's -- that doesn't make any sense. This
10 is a whole separate phase ---

11 A. That's not true.

12 Q. --- that's added on to the first order?

13 A. Yeah, that's not true at all.

14 Q. Okay. All right. Now, that we got that
15 straight, let's talk about these other change
16 orders, you know, two -- that's just the three and
17 four. Are those related to phase 1 or phase 2?

18 A. So number 3 is what I just described to you,
19 the concrete parking. They added some ADA simple
20 van access parking.

21 Q. The upper -- upper parking lot?

22 A. The upper parking lot.

23 Q. Okay.

24 A. The phase 1, so they added that to make it ADA
25 compliant.

1 Q. Okay.

2 A. That's something that Sandy wanted and Matt and
3 Natasha agreed to.

4 Q. Okay.

5 A. It had nothing to do with our original bid or
6 original contract. It's something they wanted to
7 add.

8 And then the 22,000 for the accessible route
9 improvements to the East-West Connector playground
10 and picnic area, that area was not designed at all
11 to be ADA compliant.

12 Q. All right. Now, I mentioned something about
13 that in my opening and I wanted to ask you about
14 that. This is one diagram. It's got -- shows you
15 how many feet each area was supposed to be.

16 And then there's, I believe, this diagram.
17 This has the elevations on it; is that correct?

18 A. Yes.

19 Q. Do you see those numbers?

20 A. Yes, sir. The grading plan.

21 Q. All right. I mentioned it in my opening. Did
22 you find any issues with the -- this diagram -- this
23 architectural plan with respect to ADA compliance?

24 A. We did. So -- and I believe, originally, I
25 think this -- that area was added and that was part

1 of the addition, like, our original bid was 106.

2 Q. I'm sorry. Which area was added?

3 A. The -- the picnic area right in the middle
4 where you have the grades.

5 Q. So this picnic area or this one?

6 A. A little bit up from there.

7 MR. GOODWYN: Well, maybe -- Your Honor, is it
8 okay if he comes and kind of shows?

9 THE COURT: Yes, sir. Either way.

10 THE WITNESS: (Complying.)

11 BY MR. GOODWYN:

12 Q. All right. If you could, show the jury what
13 you're talking about when you say the picnic area
14 was added.

15 A. Okay. So this was the phase 1 for the project,
16 the upper parking lot. This is the phase 2 lower
17 parking lot.

18 Q. Sure.

19 A. And you had a walkway that tied into each side
20 or the bike trail on the upper end and the lower
21 end.

22 In the middle was phase 3. The picnic area and
23 this area, they were going to put a playground.
24 They wanted to do part of this picnic area. They
25 did not want to do this. They didn't want to do

1 this. They wanted to do part of this picnic area,
2 so that it kind of highlighted or hashed out that
3 area in the original bid for this phase.

4 The only problem is, and there's some notes on
5 the original drawings that say -- that talk about --
6 that talk to ADA accessibility. The only problem
7 is, you can -- you can put it on here in a note or
8 you can talk about it. You can put a line with an
9 arrow that says, you know, has to be less than 5
10 percent or less than 2 percent, but unless it's
11 designed to be that way, and all the contractor can
12 do is go by the design. So we had elevations here.
13 That's what these numbers are. They are a number of
14 feet above sea level.

15 Q. Sure.

16 A. This is 751.7. This is 751.2. That's a
17 difference of about 6 inches. It makes a difference
18 in about 10 feet, which is significant because 2
19 percent and 5 percent is relatively flat, almost
20 flat.

21 Q. Let's -- let's -- I want you to explain that
22 to -- to them. I know you and I have talked about
23 it. I understand what it is, but to somebody that
24 hasn't dealt with this. They need to understand
25 what we're talking about here with these

1 percentages. And you say that we're talking about
2 the grade, like this -- this is flat. This will be
3 a zero percent ---

4 A. Correct.

5 Q. --- is that fair to say?

6 A. Any level is zero.

7 Q. Okay. So what -- what is 5 percent and what is
8 2 percent?

9 A. Okay. So the ADA, which is a Federal
10 requirement, requires a running slope, like as
11 you're walking down a walkway, to be 5 percent or
12 less. The cross slope, which is left to right ---

13 Q. And how is that measured? I'm sorry.

14 A. Usually, they measure it -- you can measure it
15 with like a level, like a site level. You just
16 calculate and get the percentage there, but most of
17 the time people do it with a digital level.

18 Q. And let me just -- if it's a percent, is
19 that -- is that the same thing as degrees? If it's
20 45 percent, is that 45 degrees?

21 A. No.

22 Q. Okay. So that's a different measurement?

23 A. Yeah, it's 1 foot and a hundred feet.

24 Q. Okay. So one, like one out of ---

25 A. One foot in a hundred feet is 1 percent.

1 Q. Is 1 percent. So 5 feet of 100 feet is 5
2 percent?

3 A. (Affirmative response.)

4 Q. I got it. So if this is the sidewalk and you.
5 If it's if it's angled, it has to be less than 5
6 percent grading, is that what you're saying?

7 A. Correct.

8 Q. Okay. And then what about the 2 percent?

9 A. Two percent is left to right.

10 Q. So if it's tilted, is that what you're saying?

11 A. Correct.

12 Q. Okay.

13 A. So most all your sidewalks you see out here on
14 Main Street, they're going to be almost flat and ADA
15 compliant. And you see all the handicap ramps that
16 the DOT puts in, they tear out, you know, good
17 sidewalks and they put in these brand new sidewalks
18 and the -- at all the intersections, it's because
19 they have to meet that requirement. Now, they do.

20 Q. I see what you're saying.

21 A. This is a relatively new -- I'd say new maybe
22 in the last 15, 20 years. Anderson County adopted
23 this policy, I don't know, a decade or more ago,
24 that they were going to be 100 percent ADA
25 compliant. And I believe that may have arisen out

1 of a lawsuit maybe where someone got hurt and the
2 sidewalk they got hurt on was not ADA compliant.

3 Q. Okay. Well, the ADA issues that you notice
4 with this original drawing, did you bring that to
5 the attention of Anderson County?

6 A. We did.

7 Q. Okay. You can have a seat for now.

8 A. (Complying.)

9 Q. All right. And what was the response?

10 A. Well, when I got a response from Natasha, when
11 it ---

12 Q. Again, Natasha was who?

13 A. She was the architect of record, so she was
14 responsible for the project. She was the person
15 selected and the firm selected to administer the
16 contract.

17 Q. Okay.

18 A. So they were paid by Anderson County to come
19 out and make sure the work was done correctly and to
20 approve payment applications and change orders and
21 different things like that.

22 Q. All right. And her -- is this -- is it Natasha
23 Sexton? Is that her last name?

24 A. Natasha Sexton.

25 Q. Okay. All right. So -- and what did -- what

1 was Natasha Sexton's response to you showing her
2 issues with the ADA with her drawing?

3 A. She -- I really didn't get very many good
4 responses. I mean, I think there's some e-mails
5 where we are trying to explain, hey, we have an
6 issue here.

7 And, you know, we would form -- as a matter of
8 fact, that first sidewalk that went down to the
9 East-West Parkway, we had an issue. We wanted her
10 to approve the form or come out and inspect it and
11 approve it. And we didn't get a response back for
12 three days. We had it -- we had it formed, ready to
13 pour. Guys waiting around. Just, you know,
14 couldn't do anything else. And it took her three
15 days to respond back. Those are in some e-mails
16 that we have.

17 Q. Okay. And then -- all right. So I'm going
18 through these change orders here. Change order 5,
19 remove forms, regrade, and reform. Were those the
20 forms you were talking about for the sidewalks?

21 A. That -- that was, actually, I believe in that
22 picnic area. We had formed all of that up. Had
23 it -- had graded it. Formed it. There's -- it was
24 pretty cut up. I mean, there's some radiuses and
25 things, so it takes a lot -- a little bit of time to

1 do that stuff. If was in a wet area. I mean, a low
2 area so every time it rained, it would be wet and
3 have to rework it. And anytime you're bending form
4 work, like wood or any kind of composite form work,
5 if it rains on it and it gets wet, it gets deformed,
6 you have to reform it.

7 Q. So is this the change order you requested or
8 was it they requested?

9 A. That was the change order I think that we
10 requested because they changed the grades down
11 there. So, originally, like I just showed, that
12 picnic pad where they were going to set a picnic
13 table was 6 inches out of level like this. So when
14 you set your drink on it, it may -- it may slide off
15 the table. I mean, that's how far out it was
16 originally.

17 Q. All right. And this -- which area are we
18 talking about with change order 5?

19 A. That would've been this picnic area, I believe.

20 Q. Okay.

21 A. Well, it's an additional plants, too, it looks
22 like. So they added some plants and, yeah, a picnic
23 area.

24 Q. Okay.

25 A. Walkway -- there's a walkway they added.

1 Q. All right. Change order 6, design changes.
2 There's nothing more on the description other than
3 that. \$30,852 was a design change. Do you remember
4 what designs were changed and who changed the
5 designs? Was that the owner -- the owner requested
6 design changes or did you request design changes?

7 A. So these -- I think this was -- it includes --
8 I can't see the whole document.

9 Q. Oh, I'm sorry. You may see it over here.

10 A. Yeah, yeah. Okay. Yeah. So I'm not sure
11 exactly what all that was. Maybe -- it says 1, 2,
12 3, 4, and 5. I don't know if that's the total. I'm
13 not -- I'm really not sure. I think what that is --
14 I think I know exactly what that is.

15 That was for -- so the sidewalk that we had
16 poured, the one that we had to wait on her to
17 approve, the form work on -- we had to tear all of
18 that out. We had to demo all of that concrete.
19 There were sections of the curbing we had to remove
20 because they were putting these new pads in.

21 Q. Okay. So this wasn't an ADA issue. They just
22 wanted to add some pads and make the sidewalk go
23 somewhere different.

24 A. Well, the sidewalk was an ADA issue. That's
25 why it had to be tore out.

1 Q. Okay. All right. Well, was that part of the
2 design change -- change order?

3 A. Yes, sir. I believe so.

4 Q. Okay. All right. Then we go ---

5 A. There should be -- I believe there's a detail
6 of that, too. I believe Matt showed the detail of
7 that \$30,000. I'm sure it's in the ---

8 Q. Maybe. I'll try to find it. I don't have it
9 right here.

10 A. --- discovery or something.

11 Q. Anyway, but changes 7 and 8 are for additional
12 time, design change -- excuse me -- weather related
13 delays, and conflict with PNG Natural Gas.

14 A. Okay.

15 Q. Weather related delays, obviously, you don't
16 control the weather, correct?

17 A. So those two change orders we requested, we
18 never got -- never received a response back for
19 either one of them. We sent them to Natasha, and
20 that's when our equipment had sat on that project
21 for months.

22 And they redesign -- had to redesign both
23 phases. After we started on phase no. 2, as soon as
24 we got there down and started installing curb work.
25 We had our surveyors come in to do the staking on it

1 as well, just like phase 1. Immediately Natasha
2 told us to stop work, that they were having to
3 redesign that whole parking lot and everything down
4 there.

5 Q. All the -- you're talking about the lower
6 parking lot?

7 A. The lower parking lot.

8 Q. Okay. And this ---

9 A. And -- and they didn't have their DOT
10 encroachment permit for it either. Since it was cut
11 up into phases, they had a -- they had to have a
12 separate encroachment permit for that phase, and
13 they didn't have that either.

14 Q. Did you -- did Moats Construction install the
15 lower parking lot?

16 A. We did.

17 Q. Okay. Now, this \$198,000 change order, that's
18 a big one, of course. Lower parking lot, unsuitable
19 soils. Explain to the jury what that means.

20 A. We ran into a lot of rock on -- on the lower
21 parking lot because this -- like I said, this, you
22 know, it was on top of a hill. So we ran into some
23 rocks. We had to rip a lot rock out. There was a
24 big cut on one side of it, meaning we had to remove
25 a lot of soil to get down to the grade we needed to

1 get down to. And so we ran into a lot of rock, and
2 there's soil that couldn't be used, so we had to
3 remove from the site.

4 Q. Okay.

5 A. Matter of fact -- matter of fact, there's still
6 some rock up there that we ripped out that they used
7 for some landscaping.

8 Q. Okay.

9 A. At the first -- first phase.

10 Q. All right. But you did all of that work,
11 correct?

12 A. We did.

13 Q. Were you paid -- paid to do it?

14 A. No, sir.

15 Q. They didn't -- okay. All right. So number 10
16 is additional time, change order, and then another
17 smaller one, October 5th, traffic control to
18 complete concrete wall, additional survey, staking
19 -- staking a walk, \$1500 for regrading and reforming
20 walk to East-West.

21 A. So then number 10 ---

22 Q. Eleven. Oh, go ahead, yeah.

23 A. Number 10 is after -- after they had redesigned
24 both phases, and they had -- I believe they -- they
25 had their encroachment permit for phase 1. They

1 still had not gotten an encroachment permit for
2 phase 2, though. We went ahead and started work
3 back out there installing, curbing and plants and
4 sidewalks and things like that. We started
5 installing the sidewalk, which this -- this sidewalk
6 on the second phase had been redesigned, I think,
7 three times, three or four times.

8 Q. And you're talking about the sidewalk. I want
9 to make sure we're talking about the same thing.
10 Are you talking about this lower sidewalk? Can you
11 see this? Are you talking about this lower
12 sidewalk?

13 A. Yes. So this lower sidewalk was the original
14 design, but they redesigned this sidewalk about -- I
15 know three times.

16 Q. Okay. I'm holding what's been marked as --
17 well, this is Exhibit 20 or Tab 28(b) of Defense
18 Exhibit 1. It's the 2016 drawings here. Is this
19 that same sidewalk redesigned?

20 A. It is.

21 Q. Okay. So this is a ---

22 A. I'm not sure if that was the second time or the
23 last time they ---

24 Q. Well, this is -- there's a 2017 version, as
25 well. You can take a look at that, but you were

1 just saying -- you were referring to this last
2 change order, there was some redesigning that had to
3 be done?

4 A. So they had redesigned it and -- the second
5 time, and they said it was -- Natasha said it was
6 good. She -- she hired a ---

7 Q. Well, first -- first before, why did they
8 redesign?

9 A. Because they -- because -- because she realized
10 that none -- none of the park had been originally
11 designed to be ADA compliant, because originally
12 Milone and MacBroom had just created a concept
13 drawing for Anderson County and their county counsel
14 to approve pretty much. I mean, that's all it was.
15 There was not -- there wasn't enough detail to it to
16 actually build it.

17 So I think once she started on the project and
18 we started seeing the different issues with the
19 permitting and the issues with phase 1, she realized
20 that the whole thing -- none of it had been
21 originally designed to be ADA compliant at all.

22 Q. Okay. This is a March 17, 2017, drawing. Can
23 you see it? Is this another -- again, another
24 redesign of that same curb?

25 A. Yeah, I believe that was the final.

1 Q. Okay. All right. So let's -- so we've gone
2 through these change orders. Many of them were
3 asked for by the county, correct?

4 A. Yes, sir.

5 Q. And, in fact, this was -- many of them are not
6 just change orders. They were an award of the
7 contract for phase 2, right?

8 A. Correct.

9 Q. Isn't that what you said?

10 A. Correct. Yes, sir.

11 Q. Okay. All right. And in phase 2, like phase
12 1, had ADA issues, correct?

13 A. It did.

14 Q. All right. I want to -- we're going to -- I
15 want to get you to the mediated settlement agreement
16 or the mediation leading up to the mediated
17 settlement agreement, but let's kind of -- I want to
18 kind of finish talking about the issues with the
19 East-West Park Project, and then shift gears over to
20 the Toxaway Project, and then get up to the mediated
21 settlement agreement. I'm just trying to keep this
22 conceptually as easy as possible for everybody
23 because I know it can get kind of confusing.

24 All right. So at this point, I mean,
25 October 5, 2017, you know, we just had a very large

1 change order August 7, 2017, for these soils.

2 October 5th we had a smaller one.

3 A. None of them was ever approved. I mean, there
4 was a lot of -- I mean, that 198, that wasn't
5 approved, I mean.

6 Q. Okay.

7 A. I think that was something that we just showed
8 them that we requested that, you know, because we
9 had had significant costs to that point, I mean.
10 And that was something that we had put in a request
11 for. None of that was ever approved. I mean, we
12 never received that money.

13 Q. So you had to eat that cost and check with that
14 soil?

15 A. We ate a lot more than that.

16 Q. Okay. And I know you went to the mediation. I
17 know everybody made compromises to settle, but I
18 just -- but we kind of -- that -- that's what I want
19 to get at is kind of where you were with the
20 East-West Park Project leading up to the -- to the
21 mediation. You had issues with this change order
22 that wasn't approved, you're saying, right?

23 A. Right.

24 Q. All right. And what about delay damages? Had
25 you asked for any delay damages?

1 A. We had not until that time. So going back to
2 that change order no. 9, that was August 7th of
3 2017. We were awarded that Toxaway Mill job, I
4 believe, in the spring or early summer of 2017.

5 Almost immediately when we started that job,
6 and they wanted us to be complete with that job on
7 June the 30th. Almost immediately, we were
8 terminated from that job.

9 Q. All right. Well, let's -- let's -- let's talk
10 about that. That's kind of -- I think we've kind of
11 got the East-West Park Project kind of in focus as
12 to where we are leading up to the mediation.

13 Let's talk about the Toxaway Mill site. What
14 was that job or what type of a job was it?

15 A. Toxaway Mill is a former -- it's a former
16 textile mill. It's over on the eastside of Anderson
17 off Gossett Street and kind of like going toward
18 Anderson University. There used to be two mills
19 that sat side by side up there, Toxaway and
20 Riverside Mill. And they had -- a number of years
21 ago, they cleaned up or remediated Riverside Mill,
22 and Toxaway was left and it was a larger site. It
23 was a lot. There was a lot more debris on that
24 site. A lot more -- there's more -- there were more
25 structures there. I believe it burned, so a lot of

1 that material had not been abated or removed that
2 may have been hazardous or not hazardous, you know.
3 Sometimes you don't know if you have a structure or
4 something that's burned, especially a large one. It
5 burns and things get mixed together, and you don't
6 know -- you really don't know what's there. So we
7 had experience cleaning up mill sites, and so we bid
8 on that project.

9 And we were also at that point in time, we were
10 abatement contractors also. We had been abatement
11 contractors for a while. What I mean by "abatement"
12 is hazardous materials abatement where a contractor
13 comes in and safely removes and disposes of
14 hazardous material.

15 Q. And that was your job?

16 A. Well, we -- we were contractors, but that's --
17 that's something we did. So we did it in
18 conjunction with our demolition work that we did all
19 over South Carolina.

20 Q. Okay. And you had experience in demolition, as
21 well?

22 A. We did.

23 Q. Okay. All right. This is marked as Tab 1 to
24 Defendant's Exhibit 1. Is this the Toxaway Mill
25 contract? Maybe I can zoom in a little bit.

1 A. Yes, sir. It looks like it.

2 Q. Okay. This is dated June 7, 2017. So this
3 was ---

4 A. Yeah, you can see Moats Construction, LLC.
5 It's probably because we were in their system as
6 Moats Construction, LLC, before we incorporated in
7 2015. So we had -- we'd done a number of projects
8 before then under that name.

9 Q. All right.

10 A. And I think that was just a ---

11 Q. Typo maybe?

12 A. Yeah, a typo ---

13 Q. Okay.

14 A. --- probably on their part. We didn't fill
15 that out. They did.

16 Q. Okay. All right. And I'm going to show you
17 what's been marked as Plaintiff's Exhibit 4. Do you
18 recognize this document here?

19 A. Yes.

20 Q. What is this document?

21 A. This is a document that I was able to get ahold
22 of through a FOIA request after all this happened.
23 All this -- this disputing and kind of bickering
24 back and forth.

25 Q. Who is Card -- Cardno?

1 A. Cardno was -- they were the engineer that
2 Anderson County had hired. They're a government,
3 like, environmental engineering firm.

4 Q. Okay.

5 A. They had hired them to kind of design and
6 administer the Toxaway Mill job, kind of like SGA
7 and Natasha Sexton.

8 Q. Okay.

9 A. That's -- that would be -- they acted in that
10 capacity.

11 Q. So they would kind of design it, and you would
12 actually do the work?

13 A. Correct.

14 Q. Okay.

15 A. So these different firms like SGA and Cardno,
16 they would, generally, like a county or city will
17 put these contracts out for professional services to
18 these different firms. They do it -- they do it to
19 legal firms, also. And -- and these legal firms or
20 architectural firms or engineering firms that give
21 them different rates and pricing -- contract pricing
22 to do things like this.

23 Q. Okay.

24 A. So Anderson had hired them to do this type of
25 work for them. I think Anderson County was actively

1 getting grants to clean up different mill sites
2 around Anderson County ---

3 Q. Okay.

4 A. --- former mill sites. And I know they'd been
5 working pretty actively over in Piedmont, Pelzer.
6 And this is -- this is Toxaway. It's kind of ---

7 Q. Okay.

8 A. --- kind of another one that they wanted to get
9 cleaned up.

10 Q. And can you read this highlighted -- this --
11 that highlighted section for us?

12 A. It says, "Cardno will provide the above
13 documents and services for erosion and sediment
14 necessary to assist Anderson County in obtaining
15 approvals and permits from SC DHEC so that
16 construction can occur. Permits will be in Anderson
17 County's name and permit fees will be the
18 responsibility of the county."

19 Q. All right. And this is a letter from Cardno to
20 Michael Foreman, the manager for planning and
21 community development of Anderson County, correct?

22 A. Yes, sir.

23 Q. All right. Is this why you believe Anderson
24 County was responsible for obtaining the permits in
25 this case for the Toxaway Mill Project?

1 A. Well, I knew that beforehand.

2 Q. Okay.

3 A. And but -- before we even bid on the project.
4 And as a matter of fact, before we bid on the
5 project, we had several e-mails to Mike Foreman and
6 John Batson. John Batson is the storm water -- or
7 was -- or I believe he still is -- Storm water
8 director for Anderson County. We had e-mails to
9 them asking them about that specific thing because
10 we had not seen any -- any kind of erosion control
11 measures in the contract documents.

12 We -- then we also had e-mails to DHEC to try
13 to see if there was an active, what's called a NPDES
14 permit. And I got a very limited response back from
15 them ---

16 Q. Okay.

17 A. --- about it, so -- but we made the effort
18 nonetheless to try to figure out if there were
19 permits in place. We knew that it was not our
20 responsibility because we never do a project where
21 we have to have -- we have to provide those permits.
22 It's the -- it's the owner's responsibility to do
23 that. The permit by itself can cost 5- or \$10,000
24 and it can take a while to get it.

25 Q. Okay.

1 A. And usually an engineer has to be the one to
2 submit it.

3 Q. All right. So it's fair to say that you were
4 not supposed to get the asbestos or the storm water
5 permits. So what -- how did your work progress?
6 Did you -- I understand that you did start work at
7 the Toxaway Mill Project.

8 A. That's correct.

9 Q. And what happened?

10 A. So I got a call from Robert Carrol, and I just
11 happened to be on that park project. I remember
12 this very well. And he asked me about the Toxaway
13 Mill job. And he said, "Russell, we need to be
14 finished with this thing by June 30th because we got
15 these grant funds, you know, that are -- we're
16 relying on, so we've been wanting to be through with
17 the work by June 30th."

18 And I said, "Well, as long as everything is
19 good, it shouldn't be a problem," I mean, you know,
20 but ---

21 Q. I'm sorry. And I may have misunderstood. Who
22 told you -- who was telling you this?

23 A. Robert Carrol did.

24 Q. And Robert Carrol was who?

25 A. Is the purchasing director, central services

1 director.

2 Q. Do you consider him your boss from the county?

3 A. I dealt with Robert a lot. We had a good ---

4 Q. Okay. Did he have authority to tell you to do
5 this stuff?

6 A. I had a good relationship with him. He did.
7 He was the purchasing director, yeah.

8 Q. Okay. All right. So they wanted it done by
9 the end of June, the county did. And did you start
10 working based on their request for you to start
11 working.

12 A. I did. They wanted me to work -- be working
13 immediately. I think there's a number of e-mails
14 alluding to that, also. They wanted us out there
15 immediately like, you know, fighting fire.

16 Q. So when -- about when did you start work?

17 A. I want to say June the 1st.

18 Q. Okay.

19 A. They were going to give us 30 days.

20 Q. Well, if the contract date was June 7th of
21 2017, about when do you think you would've started
22 in relation to signing the contract?

23 A. The next day.

24 Q. Okay. So y'all were ready to go?

25 A. We were. Yeah, we -- yeah, so we were putting

1 equipment on the job and we were going to start and
2 we did.

3 Q. Okay.

4 A. We hauled -- I -- I forgot how many loads there
5 were that we hauled off ---

6 Q. Right.

7 A. --- within, I think, a week before they
8 terminated the contract.

9 Q. Right. So had you not been terminated, could
10 you have gotten the job done by June 30th?

11 A. We could have easily.

12 Q. Okay. All right. And I'll show you what's
13 been marked as Plaintiff's Exhibit 1. And this is a
14 letter from Anderson County dated June 21, 2017. Do
15 you recognize this letter?

16 A. Yes, sir.

17 Q. Let me get a little closer. I'll try to get a
18 little closer. All right. What is this letter?

19 A. This is a termination letter from Anderson
20 County signed by its administrator, Rusty Burns.

21 Q. All right. And this is -- the contract was
22 signed June 7th. This is 14 days after you -- you
23 signed the contract. They're already terminating
24 you after they're begging you to get started on this
25 job, right?

1 A. That's right.

2 Q. All right. And why were they terminating you?

3 A. They were terminating us because we did not
4 have an asbestos permit or a storm water permit.

5 Q. All right. And, again, whose responsibility
6 was it to get those permits?

7 A. It was theirs.

8 Q. All right. Do you feel that they were
9 justified in terminating you from this job?

10 A. No. And I immediately picked up the phone and
11 called Rusty Burns, I had his number, and told him
12 that he was jumping the gun on issuing that letter.
13 And he told me to come up to his office and talk to
14 him about it.

15 Q. Okay.

16 A. So that's what I did.

17 Q. All right. What was the conversation?

18 A. I mean, I explained to him exactly what I just
19 explained to the Court.

20 Q. Okay. All right. I see the cost or the
21 contract price for the job, \$223,000. Does that
22 sound about right?

23 A. That's correct.

24 Q. All right. How much of that were you paid?

25 A. We were paid -- we were paid \$59,000.

1 Q. Okay.

2 A. And so the 223 we knew was going to be the base
3 number for the project, but there -- there was an
4 asbestos report done completed, which is a survey
5 where a licensed what they -- what they call
6 "building inspector" licensed by DHEC. He comes out
7 to say a building or structure or property, and
8 he'll do an inspection where he goes around and
9 observes different materials and takes samples of
10 different materials and different locations.

11 They send that material off to a lab that does
12 a couple different tests on the material to
13 determine if it is asbestos or not, contains any,
14 and to what degree or percentage it contains that
15 material, and then they provide you a report or a
16 survey.

17 There was a survey completed, but it was old.
18 And in order to get a permit for asbestos removal
19 per DHEC, that report has to be within the last
20 three years. The report that they provided was a
21 lot older than that. They had already completed
22 some work out there previously.

23 Q. Oh, so that's where they were -- they were
24 relying on a report that was too old?

25 A. Well, yeah, it was more than three years old.

1 So we couldn't -- we could not take that report,
2 submit it to DHEC for a permit, even if we wanted to
3 because it was outside the three years.

4 Q. And they couldn't either?

5 A. Right. Nobody could. So it had to be
6 resurveyed.

7 Q. Okay.

8 A. But so what we did -- what we did know, they
9 had this project laid out in a map and it was mapped
10 out where they had surveyed different piles of
11 materials and, you know, so we knew that -- and they
12 were going to have an air monitor out there.

13 The guy's name was -- it was Emerald Air. I
14 think his name was James Kelley. And I've got a
15 voicemail from him that I'd given for discovery
16 where he leaves me a message on my -- matter of
17 fact, I still have it on my phone -- where he tells
18 me he's out there to air monitor to make sure
19 there's no asbestos in the air as we work, but he
20 really don't know what he's supposed to be doing out
21 there.

22 Q. Okay. All right. So with the payment of -- I
23 think you said about \$59,000 from the county for the
24 work you had done at the Toxaway Mill Project, were
25 you still claiming any additional money was owed?

1 A. I mean, just that we had set aside the time to
2 do that work. And matter of fact, you know, I was
3 going to get one of my customers to sign an
4 affidavit or come up here and testify. I know
5 affidavits aren't admissible in court. That's what
6 I've been told by you. But we gave up one job to do
7 this job for the county that we had scheduled to do
8 for this customer.

9 Q. Which job?

10 A. It -- the customer is Dakota Contracting.
11 They're out of Greenville. It's a good customer of
12 ours. We did a lot of grading work for them,
13 clearing and grading work for them. They built
14 custom log homes.

15 Q. But you blocked out this time so you couldn't
16 do that other job?

17 A. Right.

18 Q. So this was like a missed opportunity cost?

19 A. That's exactly right. So -- and as a result,
20 we have not -- I think I've done one job for him.
21 He -- he moved on. He got another contractor to do
22 his work for him after that ---

23 Q. Okay.

24 A. --- so I lost a whole ---

25 Q. All right.

1 A. --- I lost a whole customer over it.

2 Q. All right. So in going ---

3 A. And we -- and we also didn't bid on any other
4 work because we had this scheduled to do. So, I
5 mean, there was a lot of problems that it caused.

6 Q. Missed opportunities and issues?

7 A. Right.

8 Q. So going into this mediated -- the mediated
9 settlement agreement or the mediated -- alleged
10 mediated settlement agreement, kind of got the
11 Toxaway issues teed up. You've been terminated from
12 a job and you felt wrongfully so. And on the
13 East-West Project side, you were having issues with
14 the lower sidewalk. That was a big one and then you
15 had some other issues, the soil and all of that
16 coming into it.

17 Okay. Let's walk through this mediated
18 settlement agreement and kind of talk about what
19 y'all resolved. This is -- making sure we
20 understand. This is before any litigation was ever
21 filed, correct?

22 A. Yes, sir.

23 Q. You're trying to be reasonable, trying to get
24 it worked out; is that fair to say?

25 A. Well, yeah, the whole termination with the

1 Toxaway created a whole different kind of heartburn
2 with us. So not only did -- we were having all
3 these issues on this park project, but the county
4 had terminated that contract that had cost us a
5 significant amount of money on top of all the money
6 we had lost on this park project.

7 So we all -- the relationship at this point is
8 deteriorating rapidly. So we, nevertheless, stayed
9 out there on the park project working, trying to
10 work through the issues on it. And we stayed out
11 there. We got all the curbing installed and
12 sidewalks, except for this walkway going down to the
13 East-West Connector because we couldn't do anything
14 with it because there was no encroachment permit,
15 for one, so we couldn't even touch that area. And
16 for two, they didn't -- they didn't have a final
17 design for it.

18 Q. A final design that would be ADA compliant?

19 A. Correct.

20 Q. Okay.

21 A. And when -- when they did, they had a second --
22 a second design, which you showed earlier. We
23 started doing the grading for it, and that's when we
24 ran across the gas line that nobody knew was there.
25 I say gas line. It's a gas main. Luckily, we

1 didn't cut it, and -- but nobody knew it was there.
2 We just happened to --- happened to ---

3 Q. Where approximately was it? Can you show the
4 jury on the schematic at least approximately where
5 this gas line is?

6 A. So the gas line ran just right here, right
7 across -- the power line and it was right under this
8 power line.

9 Q. But it was not on any of the -- any of the
10 architectural drawings?

11 A. No. It wasn't located. There was no tracer
12 wire to locate it. And we contacted -- we got some
13 e-mails with Piedmont Natural Gas where we contacted
14 them and even on their maps, some of their maps
15 didn't show it.

16 Q. Was it an active line or an old line?

17 A. It was an active line.

18 Q. Okay. And did it have to get moved or how was
19 that resolved?

20 A. They did. They had to relocate it.

21 Q. How long did that take?

22 A. It took a while. I don't know.

23 Q. Are we talking days or weeks?

24 A. It took several weeks from what I remember.
25 They had -- because they had to bury it deeper, a

1 lot deeper.

2 Q. Okay.

3 A. I can't remember exactly what they did. It's
4 been seven years ago.

5 Q. Right. They took care of it, but it was -- it
6 was a delay?

7 A. And we took pictures of it. You know, we took
8 pictures of, you know, discovering it. And so the
9 sidewalk was actually below it. So the finished
10 grade at the top of the sidewalk would've been below
11 this -- this gas line.

12 Q. Okay.

13 A. So that's why they had to relocate it. They
14 had to -- they had to bury it deeper.

15 Q. All right. I'm going to -- I'm sorry. I want
16 to back up to the Toxaway Project for a second.
17 There was something that Mr. Davidson mentioned in
18 his opening I want you to address. It was about
19 removing certain types of material from the Toxaway
20 Project and that you should've known that you
21 weren't supposed to move other types of material
22 without the permits in place. What say you to that
23 argument?

24 A. Well, we didn't know where the materials were.
25 I mean, unless we visually observed it and it

1 happened to be somebody who knew what to look for.
2 It's what's called "suspect material," so some
3 materials you -- that you can just easily identify
4 if you know what you're looking at. I mean, a lot
5 of people wouldn't -- wouldn't have any idea.

6 Just like if you've ever been through the Mill
7 Hill, all the -- a lot of the houses still have
8 asbestos roofing tile and siding on it. That's
9 really, really common and something that's easy --
10 easy to identify. And it's something called suspect
11 material.

12 So if you see something like that, you know
13 that they, hey, that pile -- the way they had this
14 contract written up was the abatement that they
15 wanted to do was based on visual observation. I
16 mean, so if you saw something, you pick it up. You
17 would have a worker, a licensed worker. It has to
18 be licensed through the state.

19 Q. Licensed to do what?

20 A. To remove the material.

21 Q. Asbestos material?

22 A. To touch it even. Yes, sir.

23 Q. Okay.

24 A. So and we had the licensed employee to do that.

25 Q. All right. I just want to make sure I

1 understand and the jury understands this is that,
2 this licensed worker is trained to be able to
3 identify asbestos containing material just by
4 looking at it?

5 A. Well, his supervisor is. I mean, he has -- so
6 they had a separate line item in the contract for a
7 supervisor, and we priced it per hour, and the
8 worker. One supervisor; one worker.

9 Q. And ---

10 A. And the supervisor could be the worker if they
11 wanted to be.

12 Q. All right. Well, I guess this is -- maybe the
13 first question here. Did you -- to be doing that
14 work in the first place, do you have to have the
15 asbestos permit already in place?

16 A. You're supposed to have -- if you -- that's the
17 thing about this contract was so confusing, kind of,
18 I guess, because they wanted you to remove it if you
19 saw it, but they didn't -- when they issued the
20 contract to us, there was nothing in the contract,
21 that \$223,000, that said anything about abatement.

22 Q. Okay.

23 A. If you go back and look at the original bid
24 documents for the contract, that \$223,000 was just a
25 base price to remove the debris. It was dirt,

1 brick, concrete, old textile fabric. That kind --
2 that type of material.

3 Q. Did it say anything about asbestos?

4 A. It did. And we gave -- and we gave a
5 separate -- if -- it said if asbestos is found
6 onsite, then this is what it will cost to remove it.

7 Q. It's extra cost?

8 A. Extra cost. Right.

9 Q. Did you find any asbestos containing material?

10 A. We never did while ---

11 Q. Okay.

12 A. --- in the work that we were doing.

13 Q. All right. So when you were working, did you
14 believe that you were working in violation of any
15 permitting issues?

16 A. No. Because we weren't -- we weren't doing any
17 abatement. You have to have a permit to abate, and
18 we weren't doing abatement. We were just removing
19 these piles of debris.

20 And then there's also an air monitor out there,
21 which an air monitor is somebody who comes out to a
22 job site like this. He has these pumps that pump
23 air and cartridges that -- that -- that -- it's kind
24 of like a vacuum really that vacuums the air up into
25 these cartridges. So if there are any kind of

1 airborne fibers or anything like that, which is what
2 asbestos is, then they can detect it.

3 Q. Okay.

4 A. So he was -- he was to be onsite the entire
5 time we were working to make sure there's no fibers
6 being released, I guess.

7 Q. You never found -- you don't think you removed
8 any asbestos. Is that -- is that what you're
9 saying?

10 A. I mean, he was out -- he was out there. I
11 never really saw his report or anything.

12 Q. But, anyway, as far as you know ---

13 A. Right.

14 Q. --- no asbestos was found in the material ---

15 A. Correct.

16 Q. --- y'all removed?

17 A. That's correct. Yeah, we never removed any
18 asbestos. We never touched any asbestos as far as I
19 know.

20 Q. Okay.

21 A. Just everything we hauled off was like dirt and
22 brick.

23 Q. Okay.

24 A. And we've got pictures of all of that stuff
25 when we started -- the day we started.

1 Q. All right. Let's talk about this mediated
2 settlement agreement. It's signed and dated
3 March 29, 2018. The first page, items 1 through 12,
4 deals with the East-West Park Project. Items 13 --
5 item 13 deals with the Toxaway Project. Is that
6 your understanding?

7 A. Yes, sir.

8 Q. Okay. All right. Let's go through each of
9 these line items together.

10 A. Well, if -- if we can back up. You asked me
11 before this how it got to here.

12 Q. Yeah, yeah, I want to want make sure we
13 understand where we are.

14 A. So in describing the park, that's what I was
15 trying to get to with the whole -- with the whole
16 walkway and the gas line.

17 Q. Right.

18 A. So we were trying to install that walkway and
19 we were trying to complete that project for Anderson
20 County like they wanted us to, even though we had
21 these other issues on this other project.

22 And we kept having issues like the gas line and
23 the design issues, the grades, things like that, no
24 encroachment permits, stuff like that, so we
25 requested two other change orders. I think

1 they're -- I want to say they're eight and nine,
2 maybe seven and eight, seven and eight or eight and
3 nine.

4 And we sent those to Natasha Sexton. And at --
5 and at that point, Brian Richardson because Matt
6 Schell was off the project. And both of those were
7 ignored. We never got the response. We never got a
8 response for them that said no, yes, maybe. We got
9 nothing.

10 Q. So that's the weather related delay and the
11 conflict with PNG Natural Gas?

12 A. Correct. And I think we were just asking
13 for -- I don't -- I don't even think we were asking
14 for money. We were just asking for time that was
15 beyond our control. So we never got even a reply
16 back regarding those.

17 So because of those kind of issues like that,
18 the issues we're having with Natasha Sexton. And at
19 that point, I think she just left SGA and she
20 started her own company called Sexton Design, who, I
21 guess, took over the project, but I don't know how
22 that worked. I don't know if they had a contract
23 with SGA. I don't know how it morphed into a
24 contract with Sexton Design, but somehow it did.
25 And so -- because she was still on the project.

1 And because of those kind of issues like that
2 and the cost that we had incurred, we -- we had to
3 hire an attorney to try to mitigate our liabilities
4 at that point, I guess.

5 Q. Okay. Who did you hire? It wasn't -- not --
6 not me, correct?

7 A. Holder, Padgett, Little -- yeah, Holder,
8 Padgett, Littlejohn + Prickett.

9 Q. And did they represent you at the mediation?

10 A. They had done some work for me, you know,
11 previously. Just different -- different things
12 contracturally, and, yeah, they represented us at
13 mediation.

14 MR. GOODWYN: Okay. All right. This is going
15 to take a little while, Your Honor. I'm just -- if
16 you want to stop at 5:00.

17 THE COURT: Yeah, let's do that. I think that
18 right now would probably be a good place to break.

19 MR. GOODWYN: Good stopping point. Yes.

20 THE COURT: All right. Go ahead and step down
21 if you don't mind.

22 THE WITNESS: Sure.

23 THE COURT: All right. Madam forelady, ladies
24 and gentlemen, I'm going to go ahead and break us
25 for the day. If you're taking notes, please leave

1 those notes in the jury room. They'll be under lock
2 and key.

3 I'd like to start at 9:30 in the morning. Is
4 there any reason why we can't -- anybody can't be
5 here before that?

6 THE JURORS: (Negative responses.)

7 THE COURT: I want to remind you not to watch,
8 listen, or hear anything about this case. Don't
9 talk to anybody about the case. We'll see you in
10 the morning at 9:30. Thank you very much.

11 (At 4:56 p.m., jury was excused for the day.)

12 THE COURT: All right. Mr. Moats, you may not
13 speak with anybody during the break. Not only not
14 your attorney, because you can't talk to him about
15 your testimony, but anybody. Do you understand
16 that?

17 THE WITNESS: Yes.

18 THE COURT: All right. Anything from the
19 plaintiff before we break?

20 MR. GOODWYN: No, Your Honor.

21 THE COURT: From the county?

22 MR. DAVIDSON: No, Your Honor.

23 THE COURT: Individuals?

24 MR. MCDADE: No, Your Honor.

25 THE COURT: See y'all tomorrow at 9:30.

1 (At 4:57 p.m., proceedings concluded for the
2 day.)

3 April 16, 2024

4 THE COURT: Anything from the plaintiff before
5 we get the jury in?

6 MR. GOODWYN: No, Your Honor.

7 THE COURT: Very good. Mr. Moats, you haven't
8 spoken with anybody over the break about your
9 testimony, have you?

10 THE WITNESS: No, sir.

11 THE COURT: Very good. Mr. Davidson, anything
12 from the county before we get started?

13 MR. DAVIDSON: No, Your Honor.

14 MR. MCDADE: No, Your Honor.

15 THE COURT: All right. Very good. Can you
16 bring the jury in for me?

17 (At 9:45 a.m., jury entered the courtroom.)

18 THE COURT: Good morning, ladies and gentlemen.
19 I hope you had a nice evening. Does everybody have
20 the pad and pen they were using yesterday?

21 THE JURORS: (Affirmative responses.)

22 THE COURT: Great. Let me ask you before we
23 get started. Over the break, have you read, heard,
24 or seen anything about this case? If so, would you
25 raise your hand.

1 THE JURORS: (No responses.)

2 THE COURT: Also, during the break, has anybody
3 spoken to you about this case?

4 THE JURORS: (Negative responses.)

5 THE COURT: Excellent. Thank you very much.
6 Mr. Goodwyn, plaintiff ready to proceed?

7 MR. GOODWYN: Yes, Your Honor.

8 THE COURT: Okay. Mr. Moats, would you come
9 back around? You're still under oath.

10 THE WITNESS: (Complying.)

11 DIRECT EXAMINATION CONTINUED

12 BY MR. GOODWYN:

13 Q. All right. Russell, I think when we were --
14 left off yesterday, we were talking about kind of
15 where we were leading up to the mediation that
16 ultimately resulted in the mediated settlement.

17 I wanted to ask you about this one -- this one
18 e-mail here. This was the one I showed you earlier.
19 It's a document that's no objection to. It's an
20 e-mail chain ---

21 THE COURT: Would you identify it by number,
22 please?

23 MR. GOODWYN: It has not been numbered yet.
24 Where are we on the plaintiff's exhibits?

25 THE COURT: Mr. McDade, any chance you've got

1 it?

2 MR. MCDADE: No, Your Honor. If they'll
3 stipulate it has nothing to do with the defamation,
4 I don't mind it coming in.

5 MR. GOODWYN: I'll mark this as Plaintiff's
6 Exhibit 11.

7 THE COURT: Exhibit 11?

8 MR. GOODWYN: Yes.

9 THE COURT: Thank you. What is -- what is that
10 exhibit, please, sir?

11 MR. GOODWYN: It's an e-mail chain, the last
12 one dated November 15, 2017.

13 BY MR. GOODWYN:

14 Q. Let's see. All right. This is an e-mail you
15 were -- let me kind of go to the beginning. I think
16 it's in reverse chronological order here.

17 All right. February 9, 2017, is kind of when
18 this chain starts. And this is -- it says the
19 original e-mail is from Paul. It says
20 PHolden@MoatsConstruction.com. Who is that?

21 A. That's my supervisor.

22 Q. Okay. For the East-West Project?

23 A. Site superintendent supervisor.

24 Q. Okay. All right.

25 A. He was a project manager, too.

1 Q. And he's writing, looks like, Natasha Sexton an
2 e-mail. Well, this is the middle one. I'm sorry.
3 The bottom one is -- is -- is the first one from
4 Natasha to -- to the group. Sorry if this is not
5 clear. Let's try to zoom in a little bit.

6 A. I can see it.

7 Q. I'm sorry. All right. "I have not received
8 the photo Russell mentioned to Matt regarding ADA
9 compliancy. We will be reissuing complete phase 1
10 drawings tomorrow morning and want to make sure all
11 of the issues are addressed. Please let me know as
12 soon as possible of any field issues." That's what
13 Natasha writes the group on February 8, 2017,
14 correct?

15 A. Yes, sir.

16 Q. All right. So at that point, is it fair to say
17 that -- that revisions of the original drawings had
18 been made and the architect Natasha Sexton was
19 making further revisions?

20 A. Yes, sir, it was. I mean, it was -- so that
21 was February 9, 2017, about five months after we
22 started the job.

23 Q. Okay.

24 A. Should've been like a 60 to 90-day job. So
25 here we're in February of 2017, five months later

1 and, you know, still making revisions to the first
2 phase of the procedure.

3 Q. All right. Then Paul responds that same day
4 letting her know what some -- some of the things
5 that you guys did, that you'd be waiting for the new
6 documents.

7 And then let's look back. The next, Matt
8 Schell responds that same day that he says, "I'm
9 handling the paperwork side of counsel approved
10 change order." I'm sorry if you can't see this.
11 "There will be -- need to be some price revisions
12 based on Natasha's changes."

13 It says -- I'm not really understanding what it
14 says here about the original amount being moved for
15 use. And he wants us to move forward seamlessly.
16 Is that a fair paraphrase in what he's saying there?

17 A. Yes.

18 Q. Okay. All right. Then there's a response from
19 Natasha Sexton later that day indicating that she's
20 having issues with her computers getting the --
21 getting the drawings printed out; is that right?

22 A. Yeah. Well, it says they're finding the
23 drawings right now, which we took that to mean
24 their -- the elevations they were trying to make
25 everything work out, but the changes in the

1 elevations on the project were so -- so large in
2 elevation, so there's a big change between certain
3 points on the -- the property.

4 They didn't have enough space. They were
5 confined to this one little area, which was a
6 right-of-way that they were leasing from Duke Power
7 and they were trying to make all these walk --
8 walking trails ADA compliant. But in order to do
9 that, you have to stretch them out. You have to
10 wind them, you know, make them meander in order to
11 do that, and they were having problems with it,
12 so...

13 Q. Okay. I want to ask you about these -- the
14 drawings. So tell me this: These large full-size
15 drawings here, did you actually receive a copy of
16 these full-size drawings or did you just have
17 smaller versions?

18 A. Well, the bid documents that -- the bid
19 documents that we would've received were in like PDF
20 format.

21 Q. Okay.

22 A. So and, you know, we could have them printed
23 off in a larger format to review.

24 Q. All right. Now, these documents, these
25 architectural drawings, they're not hand drawn.

1 This is drawn via computer, correct?

2 A. It's computer generated.

3 Q. All right. And the file that -- that the
4 computer has, is it -- what's it known as?

5 A. Different architects and engineers use
6 different systems, different software.

7 Q. Is it ---

8 A. It can be in -- you know, usually it's a CAD,
9 computer aided design.

10 Q. CAD, does that stand for computer aided design?

11 A. It does.

12 Q. Okay. So CAD file, is that important to have
13 when doing any type work like this?

14 A. Nobody's building anything these days without a
15 CAD file. Everything is constructed in CAD or
16 something similar to CAD where you have points that
17 are -- that a survey -- a surveyor uses that have
18 generated data points that they use to stake
19 different lines and grades or points if they're
20 building a building, you know.

21 Q. Did Anderson County or Natasha Sexton ever
22 provide you the CAD file for this project?

23 A. They did not.

24 Q. Do you know why they did not?

25 A. It's our understanding that she never had a CAD

1 file because ---

2 Q. Why wouldn't she have -- go ahead.

3 A. She never had a CAD file because the company
4 that she worked for previously that originally had
5 the contract with Anderson County to produce a park
6 for the counsel's review and approval, they had shut
7 their doors in Greenville, closed their office in
8 Greenville and moved back to Connecticut.

9 Q. Is that ---

10 A. And she worked for Milone and MacBroom, and we
11 really don't know how she even got the file. The --
12 the -- the -- I think she just used the drawings and
13 they were PDF scans is what I understand from our
14 survey engineer, Steve Branyon.

15 Q. Okay. All right. All right. So let's get to
16 this -- this mediation where you entered into the
17 mediated settlement agreement.

18 A. If I can add one thing?

19 Q. Sure.

20 A. I actually spoke to her former boss at Milone
21 and MacBroom about this. That's how I got the
22 information I do.

23 MR. DAVIDSON: Your Honor.

24 THE COURT: Sustained. That's hearsay. Ladies
25 and gentlemen, please disregard that.

1 BY MR. GOODWYN:

2 Q. All right. Let's talk about this mediated
3 settlement agreement. Going into the agreement --
4 excuse me -- going into the mediation rather, were
5 you seeking more than what you ultimately settled
6 for at the mediation settlement agreement?

7 A. We were.

8 Q. Is it fair to say that what came out of the
9 mediation and what's in this mediated settlement
10 agreement is a compromise of -- of what both sides
11 wanted?

12 A. It's an extreme compromise on my part.
13 Something I did not want to do that I was compelled
14 to do just because I -- I was -- my representation
15 that I had at the time, you know, talked me into
16 doing it, so I went along with it.

17 At the same time I was, you know, I was
18 reluctant. I mean, this is something that I didn't
19 do lightly. I didn't take it lightly. And they
20 were a customer of ours, a good customer. I mean,
21 Anderson County spends millions of dollars yearly on
22 capital projects. It's not somebody we -- we just
23 wanted to, you know, stop doing business with. We
24 had a good relationship up until then. I did my
25 very best to try to mitigate all the issues that I

1 could until I just couldn't -- couldn't financially
2 stand it anymore. And they cost us a significant
3 amount of money, a lot larger than what we were --
4 what we agreed to, you know, in the mediated
5 settlement agreement. And at that point, I just
6 wanted to finish.

7 We -- we rarely do we ever not finish a
8 project. It has to be some kind of just very
9 extenuating circumstance comes about to cause us to
10 not -- like this that causes us to not finish a
11 project.

12 Q. Okay.

13 A. Even -- even if added cost to us. We like to
14 at least finish the project. And, yes, so I was
15 forced to compromise. What I did, I didn't want to
16 do that at the time, but I did.

17 Q. All right. Was part of your compromise this
18 change order no. 9 for the unsuitable soil, that
19 \$198,000 figure?

20 A. No, it wasn't. That was something we had
21 requested prior to the mediation that was never
22 acknowledged. They never even -- like I said
23 yesterday, they never even said that they had
24 received it. We never got an e-mail back saying
25 they received it. They never said yes. They never

1 said no. They never said, you know, go fly a kite
2 or nothing.

3 Q. Okay. But you ultimately resolved that and all
4 of your other claims at the mediation for what's in
5 the mediated settlement agreement?

6 A. We thought we had.

7 Q. Okay. All right. Let's talk about this.
8 Let's go through it line by line. This won't take
9 too long. Contract's up-to-date, \$324,761.28; is
10 that's -- that's accurate?

11 A. Yes.

12 Q. Okay. And Moats has been paid lump -- a lump
13 sum of \$248,003.23. Was that accurate at the time?

14 A. I believe so.

15 Q. All right. So Moats is entitled to an
16 additional \$15,000 for additional changes in the
17 work and will submit backup for the \$15,000 and a
18 change order for \$15,000 will be issued by Anderson
19 County before the start date.

20 All right. Let's talk about that and what that
21 means. First, what is the start date? What was
22 your understanding of the start date? You'd
23 obviously already started the project. It just --
24 what does it mean?

25 A. Well, it's -- it's when you start work on the

1 project. When you actually mobilize your equipment,
2 material to start -- start work.

3 Q. I mean, would it be better to say the restart
4 date because you'd already started and you stopped
5 to get to this mediation. And you were going to
6 start again after the mediation?

7 A. Right, to restart work.

8 Q. Is that what you're talking about?

9 A. To restart work on the job because we had
10 stopped work, ultimately, because we had all the
11 issues and -- and we really could not do anymore out
12 there. We had -- we had completed every item on the
13 project, except for paving the parking lots. They
14 were -- they were ready to pave. Stones down. It
15 was graded, rolled, and compact. Everything was
16 ready, I mean, and this one sidewalk. That was the
17 only thing that remained, but we couldn't do any --
18 anything else because of the design issues, the
19 permit issues, the gas line issues, the change order
20 issues. We couldn't do anymore work on the project.
21 That -- that -- that's why we had to stop.

22 Q. All right. So what -- what is your
23 understanding of what this \$15,000 is for?

24 A. That \$15,000 was for -- there was a pipe. It
25 was a concrete pipe that went under the new walkways

1 that was tied into the existing bike trail and
2 encroachment, SCDOT right-of-way.

3 There was a pipe there we'd already installed.
4 The problem was, we installed it grade as it was
5 designed. But when they went back and redesigned
6 the walkway again, the grades were lower so there
7 was a conflict with that pipe. It had to be lowered
8 because they lowered the sidewalk, and so the pipe
9 had to be lowered because the sidewalk was
10 encountering the top of the pipe pretty much.

11 Q. All right.

12 A. And so we had to remove and reinstall that
13 pipe. We had to resurvey the entire area. Pay our
14 surveyor to come out and resurvey and stake the
15 whole area. We had to regrade the entire area. And
16 then we had to go back and meticulously stake the
17 sidewalk every 5 feet, which normally you stake a
18 sidewalk maybe every 25 or 50 feet, depending on if
19 it's a straight line or radiuses or whatever, but we
20 had to go and meticulously every 5 feet stake that
21 sidewalk. So we had a grade to go by because every
22 5 feet is how it's measured for ADA compliance. So
23 we did that. Had to pay our surveyor to do that.
24 Then we had to -- we had -- ourselves, we had to
25 confirm all of that in-house with our survey

1 instruments, reform the walkway or form the walkway.
2 And -- and that's -- that's what that \$15,000 was
3 for.

4 Q. All right. Was that work that you just
5 described performed after the mediated settlement
6 agreement was reached?

7 A. It was.

8 Q. And you had reformed the sidewalk that you
9 discussed. Hadn't poured the concrete, correct?

10 A. We refused to pour anymore concrete out there
11 at the expense of us or the county, you know,
12 because we had already had installed and removed so
13 much out there. You know, we were tired of doing
14 that and it was going to be a cost to us because
15 we're paying for the material. And they already
16 are, you know, bickering with us about change orders
17 and not wanting to pay anymore money, and so we
18 didn't want another cost to us so we told them that
19 they were going to have to sign off on the formwork
20 before we poured it. We weren't going to pour
21 anymore concrete out there without their approval.

22 Q. Did you have a meeting with Holt Hopkins out
23 there on the site after you had put in the forms to
24 discuss whether or not they were good with it as it
25 was to pour?

1 A. After we had it surveyed and we formed it, we
2 called them in, and we -- we actually surveyed it
3 ourselves to, you know, grades and to the visual
4 level. We had visual levels. And -- and we told
5 them, just like we told them in the mediation, that
6 this cannot be put in and be 100 percent ADA
7 compliant. It's mostly ADA compliant in areas, but
8 then there are other areas where it's out and we
9 told them that over and over in mediation in that
10 room right outside this courtroom in that
11 arbitration room. And they were adamant about the
12 fact that their design was their design and it was
13 going to be good.

14 Q. Okay.

15 A. And it was correct. And so as long as we
16 installed it just like it was designed, then they
17 would not have an issue.

18 Q. Did Holt Hopkins or anyone else from the county
19 get -- put you with -- in touch with somebody that
20 said it could be done correctly?

21 A. They did. Holt Hopkins, he's over Anderson
22 County roads and bridges. He's also, I think, the
23 interim county administrator.

24 Q. And was he -- was he managing the project after
25 the mediation -- after the mediated settlement

1 agreement?

2 A. He stepped in when it came to the sidewalk. He
3 brought some of his employees with him. I think
4 there was some field engineers that he had that
5 works for the county that came out with their survey
6 instruments to survey the sidewalk. They confirmed
7 the exact same thing.

8 Holt was out there onsite and he told me, he
9 said -- and I've known Holt for a long time. Tried
10 to work with him. Wanted to get through this thing.

11 And he said, "Just lower it here a little bit.
12 Raise it here. Just make it work."

13 I said, "Well, if you do that, it's not going
14 to be to the designed grade like they want it to
15 be." I said, "If you raise it here, it's going to
16 lower it here and it's going to be -- it's going to
17 out of spec or out of specification, so it's not
18 going to be as designed. So then we'll be
19 responsible for it if -- if we pour the concrete and
20 it's out somewhere. It's not going to be to the
21 correct grade like you guys wanted." I said, "I
22 can't do that. I've got to stay strictly to the
23 design. And if this design doesn't work, it doesn't
24 work, you know. That's why you're here."

25 Q. All right. And then what happened after that?

1 Why did it breakdown -- you know, there have been
2 many revisions to the drawing and the plans leading
3 up to this. And I believe there -- my understanding
4 is there were revisions after you stopped working on
5 the job. Why -- why not another round of revisions?
6 What happened for it to break down right there?

7 A. Well, at that point, we had spent two weeks out
8 there, which we knew it was going to take us a while
9 to do that. It was go to take -- it was going to
10 take ten times longer to put that sidewalk in than
11 it was going to to pave the parking lots. It
12 would've taken two days maybe to pave those parking
13 lots. A day for the top parking lot and maybe a day
14 for the lower parking lot. And then the project's
15 done, except for the sidewalk. So, essentially,
16 we're fighting over a sidewalk. A sidewalk, that's
17 why we're here.

18 Q. Right.

19 A. And, you know, we -- and this had been going on
20 for a long time. And the reason why immediately
21 when Holt told me that and there didn't seem like
22 there was going to be any kind of the solution at
23 the time. I contacted my attorney to let him know
24 what was going on and -- Lee Prickett, and told Lee.

25 I said, "Lee," I said, "this is exactly what we

1 were talking about in the mediation. It's not going
2 to work, so now we've got all this time here and
3 they're not wanting to sign off on this sidewalk.
4 It's unsafe here. You've got a thousand steel pins
5 sticking up out of the ground where people have run
6 up and down this walking trail. They use this
7 parking lot to access this bike trail and stuff." I
8 said, "Somebody -- if we leave it out here, somebody
9 trips and falls on it, somebody's going get hurt
10 bad." You know, I said, "I don't want to leave it
11 out here like this. It needs to be poured. You
12 know, you need to talk to them. You need to talk to
13 Leon Harman, the county attorney, and try to
14 convince them that they need to take responsibility
15 for this thing, or if they can just put handrails
16 up, it's all they had to do."

17 Q. All right. Well, if you'll explain that.
18 What's the -- why -- why are handrails a solution?

19 A. Well, if you can't meet ADA requirements, you
20 just install handrails. There's four handrails, but
21 a lot of times people don't want to do that because
22 of the cost. They're -- they're expensive.

23 Q. All right. So there was a solution, the
24 handrails, but they didn't want to do that?

25 A. Exactly.

1 Q. Okay. All right. Did you feel like you had
2 done what you needed to do to be entitled to that
3 \$15,000 in paragraph 3?

4 A. We did and we knew there was going to be
5 additional work out there to do, and we had
6 already -- we had done some more work out there. We
7 spent a lot more time on it than we had planned on.
8 I know that sounds like a lot of money for a
9 sidewalk and the changes, but when you're talking
10 about you've got five or six guys, a whole crew out
11 there, and equipment. You know, we -- we have a lot
12 of overhead. I mean, all of this -- all this sounds
13 like a lot of money, but it's not when you got, you
14 know ---

15 Q. And I think you said you had to move a pipe, as
16 well; is that right?

17 A. Yeah, we had to -- we had to remove a concrete
18 pipe. I'm not talking about, you know, I don't know
19 how much it was. I think it was like 80 or 100 feet
20 of concrete pipe. We had to excavate it, remove it,
21 and then reset it with a -- with a laser, you know,
22 a pipe laser. And so, you know, we have spent a lot
23 more time out there on the sidewalk, though, than we
24 did with that pipe.

25 Q. All right. Was -- go ahead. I'm sorry.

1 A. And so, you know, on top of all that, they had
2 not honored any part of the mediated settlement
3 agreement except for the \$26,000 which they owed us.
4 That was -- that \$26,155.89 was money they owed us.
5 That was for some of the work we had already
6 completed on the job they had not paid for.

7 Q. Okay. I want to ask you -- I want to ask you
8 about that, but let's kind of go -- let's go in
9 order here.

10 Number four, "Moats shall be entitled to an
11 additional \$50,000 for delay damages." Did you ever
12 receive that check?

13 A. We did not.

14 Q. Are there any conditions after that -- after
15 that line indicating that you don't get the \$50,000
16 if you don't complete the project or if you don't do
17 this?

18 A. No. It was our impression that how we
19 interpreted this and, really, it was my agreement.
20 I mean, that was the only way I was going to agree
21 to it in the mediation. They were going to pay
22 that -- as soon as we got back out there to start --
23 to start work, they were going to pay that amount to
24 us.

25 Q. All right.

1 A. We expected to wait on that. I mean, they have
2 protocols in the finance department and things have
3 to be approved by the counsel, and so we expected
4 there to be a delay, maybe a couple of weeks or
5 something like that. But if we were out there
6 working, diligently working on the project and
7 honoring our end of the agreement, we expected them
8 to honor theirs.

9 Q. Okay. All right. So did the county approve
10 this mediated settlement agreement to your
11 understanding?

12 A. Yes.

13 Q. You received this \$26,155 check, correct?

14 A. We did. Yeah, it was, I think, maybe a week
15 later. A week or so later.

16 Q. A week after the mediated settlement agreement
17 was signed?

18 A. Something like that.

19 Q. Did you ever receive any explanation as to why
20 you received the \$26,000 check but not the \$50,000
21 check?

22 A. Well, the \$26,000 was money they had owed us
23 for a while that they had not paid us.

24 Q. Right.

25 A. And we were -- and that was, kind of, you know,

1 just remembering it because it was, you know, six
2 years ago. You know, we had put in a pay
3 application. And that was another issue we were
4 having with Natasha, communication and her
5 administration of the project, where we would submit
6 things to her, and it would take a while to get them
7 back or get an answer back or get an e-mail back or
8 confirmation back.

9 It's the same thing -- it was starting to
10 become the same thing with the end of this project
11 with the paving applications and things like that,
12 change orders. We never received responses back
13 for, so that \$26,000 had been out there for a while.

14 Q. I know, but my point here is regardless of
15 whether the 26,000 was owed or not, both the \$26,000
16 -- the county agreed to pay both the \$26,000 figure
17 and the \$50,000 in the mediated settlement
18 agreement. You got one of those checks, but not the
19 other. Was there any explanation as to why you
20 didn't get the \$50,000 check?

21 A. No, sir.

22 Q. Okay. Did you ever receive an explanation as
23 to why you didn't get the \$15,000 check?

24 A. We did not.

25 Q. Did you make any inquiries as to where this

1 money was? Why hadn't they paid it?

2 A. We did. We had several e-mails with our
3 counsel at that time, Lee Prickett, about it. And,
4 you know, said, hey, you know, what's going on? You
5 know, they haven't -- they haven't -- really they
6 haven't done anything but write a check, that one
7 check, and so they haven't honored any other
8 stipulation in the mediated settlement agreement.

9 Q. Okay. All right. Number five, "Moats will
10 remobilize on the project on the start date, not
11 before 4/17/18 set forth in the notice to proceed
12 issued by Anderson County. And the work shall be
13 complete within 30 calendar days of the start date,
14 subject to weather or unforeseen conditions." Did
15 you mobilize or remobilize as you were supposed to?
16 I didn't catch that until just now.

17 A. We did. I mean, we did as soon as we got the
18 notice to proceed.

19 Q. All right. And, obviously, we know the work
20 was not completed, and you've explained why it
21 wasn't completed.

22 A. I did. And I actually have some e-mails --
23 some other e-mails I believe about -- about this
24 regarding this because we were hesitant to even
25 remobilize because we were expecting a lot of these

1 issues to be, you know, stipulations to be executed
2 like the recision of the termination letter. All --
3 all these other provisions in this document, they
4 had not done so we -- we were hesitant to go back
5 out there again. And we have e-mails of him saying,
6 "Hey, what's going on? You know, they say they want
7 to start on the first, you know, we need to have
8 some of this stuff from them."

9 Q. But you did -- you did remobilize though?

10 A. We did anyway.

11 Q. And you did get the \$26,000 check?

12 A. We did.

13 Q. All right. It says, "Moats shall submit
14 as-built drawings and comply with any other
15 contractual requirements for final payment on the
16 remaining monies due under the contract."

17 Well, that -- assume that didn't happen because
18 you didn't -- you couldn't finish it because of the
19 ADA issues; is that correct?

20 A. That's correct.

21 Q. All right. "The waterline installed by Moats
22 is warranted by Moats and his surety bond as set
23 forth in the contract documents. And Moats' surety
24 agrees to make any repairs to the waterline after
25 notice to Moats." Did you honor that warranty?

1 A. I did.

2 Q. Were there any issues with the -- with the
3 waterline?

4 A. If I can back up to number seven where it
5 says -- talks about as-built drawings because I
6 don't think -- very few people know what as-built
7 drawings are.

8 Q. Yeah, I mean, explain that ---

9 THE COURT: Just one second. Just one second.
10 Do you have an objection?

11 MR. DAVIDSON: That's not responsive to the
12 question.

13 THE COURT: I'm sorry?

14 MR. DAVIDSON: That -- what Mr. Moats is saying
15 is not responsive to the question that he was asked.

16 MR. GOODWYN: I can -- I can withdraw the
17 question and ask him another.

18 MR. DAVIDSON: All right.

19 BY MR. GOODWYN:

20 Q. Can you please explain to the jury what
21 as-built drawings are in case they don't understand?

22 A. So as-built drawings are drawings that are of
23 the actual work installed because work does change.
24 A project, you know, there are changes in a project
25 or can be. You know, like they stated earlier, no

1 project's perfect. And it's not and there's changes
2 all the time.

3 So as-built drawings are the drawings that are
4 generated at the end of the project. There's a new
5 survey done. Like I say, if you go out here and
6 build up a road or a sidewalk, it may be designed
7 one way, but there may be changes along the way.
8 And so just, for instance, an example was this West
9 Church Street job that started out that we did and
10 there was -- the engineer that worked for the City
11 at that time had not -- the City had never installed
12 a street that was 100 percent ADA compliant. So the
13 original drawings we got for that job was nowhere
14 close to being ADA compliant, so he was constantly
15 changing that job.

16 Q. Okay.

17 A. So -- and it's the survey at the end of the job
18 that shows the changes that were made and what's
19 actually built in the field.

20 Q. All right. Fair enough. Had you been able to
21 get the sidewalk in ADA compliance, would you have
22 been owed additional money on the contract beyond
23 the 50,000 and the 15,000 that was provided for in
24 the mediated settlement agreement?

25 A. Ask the question one more time.

1 Q. Right. I mean, let's just say the revised
2 plans from Natasha Sexton were perfect and you could
3 get the sidewalk in and it was ADA compliant. Would
4 you have been owed additional money from the county
5 other than the \$50,000 and the \$15,000 that was
6 agreed to in the mediated settlement agreement?

7 A. No. I wouldn't think so. I mean, what we
8 agreed to in the settlement agreement was what we
9 agreed to.

10 Q. Okay. And that was to finish out the project?

11 A. Right.

12 Q. Okay. All right. All right. Paragraph 9 of
13 the mediated settlement agreement, "Moats shall
14 work -- excuse me -- Moats' work shall comply with
15 ADA requirements provided that the design drawings
16 issued by -- issued to Moats complied with ADA
17 requirements." And I know we talked about this.
18 And did the drawings, design drawings, issued to you
19 comply with the ADA?

20 A. They did not.

21 Q. Okay. So all other terms of the contract will
22 remain in place. That's referring to the original
23 contract; is that correct?

24 A. I can't -- you may need to scroll down. Is
25 that ten?

1 Q. That's -- yeah, oh, I'm sorry. Yeah. Sorry.
2 Can you see it?

3 A. I can.

4 Q. Yeah, paragraph 10. So the other terms and
5 conditions of the contract, that's the original
6 contract, correct?

7 A. Correct.

8 Q. Okay. All right. And the above agreement is
9 subject to Anderson County's counsel approval, which
10 you said was approved. The agreement was approved.
11 You received the \$26,000 check shortly thereafter,
12 but nothing else, correct?

13 A. Correct.

14 Q. And the parties agree on specifications
15 submitted as set forth in Exhibit A attached to this
16 agreement. And this is the Exhibit A?

17 A. Yes, sir.

18 Q. Okay. All right.

19 A. You may need to turn it so you can ---

20 Q. Yeah.

21 A. If you want to go through it, I mean, we can go
22 through it.

23 Q. If you -- tell you what. I think I need to
24 take it out of the binder to get it in this little
25 projector. All right. Is it -- I'm going zoom in

1 so we can read it. All right. Is there anything of
2 significant importance about the contents of Exhibit
3 A here?

4 A. No. This is all my handwriting as far as the
5 mark ups on it. After we had our mediation, we went
6 over to Mr. Harman's office at the other courthouse
7 over there across the street, and we met through
8 this. And a lot of this did not apply. That's why
9 it's marked through.

10 Q. I gotcha.

11 A. It was irrelevant. So then we had notated the
12 things that were, so that's what that was. It's
13 kind of the details of the different aspects of the
14 project.

15 Q. Right. Did you follow the -- these details as
16 set forth in Exhibit A.

17 A. We did.

18 THE COURT: Where is that in the trial
19 documents, please?

20 MR. GOODWYN: It is Exhibit 8 to Tab 4 of
21 Defendant's Exhibit 1.

22 THE COURT: To the mediated agreement?

23 MR. GOODWYN: Right.

24 THE COURT: Thank you.

25 BY MR. GOODWYN:

1 Q. All right. Second page of the mediated
2 settlement agreement in paragraph 13. This is
3 related to the Toxaway Project, resolution of the
4 Toxaway Project; is that right?

5 A. Yes, sir.

6 Q. All right. Paragraph 13(a). Anderson County
7 will rescind its termination letter. Was that ever
8 done?

9 A. No, sir.

10 Q. Were you ever provided a reason why it wasn't
11 done?

12 A. No, sir.

13 Q. All right. "And Anderson County will reinstate
14 Moats less the 59,000 previously paid." Did that
15 take place? Were you reinstated?

16 A. No, sir.

17 Q. "Moats will remobilize on the project after
18 June 1, 2018, as directed by the notice to proceed
19 issued by Anderson County." Paragraph C, was there
20 notice to proceed ever issued by Anderson County?

21 A. No, sir.

22 Q. Were you ever given an explanation why a notice
23 to proceed was never ---

24 A. We were not.

25 Q. "A change order -- a change order will be

1 issued to implement and comply with a storm water
2 permit." Was that ever done?

3 A. So we e-mailed back and forth about this.

4 Q. Who -- who is we?

5 A. Me -- myself and Lee Prickett.

6 Q. Okay.

7 A. They had to hire the engineer that was involved
8 at Cardno, I believe it was. They had to actually
9 design this storm water, what they needed (a) to put
10 in a temporary (inaudible.) And they had to design
11 that and had to submit the permit because they
12 didn't have, and so we had to have a drawing of that
13 so we knew what the additional work was going to be.

14 So they did get that to us, and we priced it.
15 It was a good bit of grading that had to be done and
16 we had to install like a skimmer for it, things like
17 that. So and then we had to install a silk fence,
18 construction entrances. So it was a good bit of
19 work that had to be done, and so we had to provide
20 them pricing for that.

21 Q. Did you?

22 A. We did that.

23 Q. Okay.

24 A. And we have an e-mail that says it was
25 approved, that work -- that additional work for that

1 project was approved, but we never received ---

2 Q. So after ---

3 A. --- anything.

4 Q. --- are you saying that after the mediated
5 settlement agreement, you priced this additional
6 work, got it approved, but they still never issued a
7 notice to proceed order and they never rescinded the
8 termination letter?

9 A. That's correct. So there are e-mails in there
10 between -- and I believe the exhibits between myself
11 and Lee Prickett about this, that he's communicating
12 with, I believe, Leon Harman about it. And, yeah,
13 because I remember there being one issue about a
14 trash rack on top of an outlet structure and we were
15 trying to save them some money. It's about a \$2,000
16 difference, and so I remember that part of it.

17 Q. So you tried it. You did your part. Is that
18 what you're saying?

19 A. To the best I could.

20 Q. All right. "The termination for convenience
21 clause will be deleted from the contracts." I guess
22 that's nothing for anybody to do. That's just
23 something that's stated; is that -- that fair?

24 A. Yeah, I'd like to make a point to that, though,
25 because in the original termination letter, they

1 could have -- in the original contract, they could
2 have just terminated us for convenience. Every --
3 almost every contract that we have dealt with,
4 whether by a public body, they have that in their
5 contracts. They can just terminate anytime they
6 want to, the contract, for convenience.

7 They didn't do that, though. They
8 terminated -- they terminated the contract for cause
9 and they listed that cause as it being storm water
10 permit and asbestos permit.

11 Q. Okay. "Moats compensation under said contract
12 shall be limited to the balance remaining in the
13 contract subject to written change orders issued in
14 accordance with the contract documents." Obviously,
15 that never happened. You never -- they never let
16 you go back to work, so there was no other
17 compensation; is that right?

18 A. Correct.

19 Q. All right. "No work will proceed without air
20 monitoring being in effect." You didn't go back to
21 work, so there was no -- that was not an issue. Is
22 that fair to say?

23 A. Yes, sir.

24 Q. Then, again, all of the terms, the conditions
25 of the contract, shall remain in effect for the

1 Toxaway contract.

2 Paragraph 14, "Parties are responsible for
3 their own cost and attorneys fees related to these
4 projects in dispute."

5 Okay. I want to move on and kind of talk to
6 you about the aftermath of all this. What happened
7 to you, your company, what you know about how the
8 East-West Project, the sidewalk, how that was
9 finalized.

10 And what I want to do is kind of start because
11 a lot of those questions are answered in these
12 photos. And I'm going to go through these photos.
13 I'm just going to go them one by one. It's about 35
14 photos. Some of them you'll be able to easily
15 explain or quickly explain. Other ones that may
16 require some more explanation about kind of when it
17 was, all of that.

18 So let's just kind of go through these and kind
19 of explain to the jury what each of these photos is.
20 All right. What are we looking at in this photo?

21 A. So this is a worker. I'm not sure if it's a
22 County worker. It's probably a subcontractor. They
23 had, from our observation after this, because we
24 would go by there just to check and see if they were
25 making any progress on the sidewalk. And, I mean,

1 it's a -- it's a busy thoroughfare. Anybody that
2 lives in Anderson knows exactly where this is at.
3 If they live on that side of town, it's East-West
4 Parkway. It goes from Clemson Boulevard over to
5 Highway 81, right, close to T.L. Hanna.

6 So and then the intersect -- the intersecting
7 roads is fairly busy roads. It's Kings Road. So
8 it's that dense neighborhood around it. Pretty
9 heavily traveled road, especially at certain times
10 of the day.

11 So, you know, we'd go by there all the time.
12 All you have to do is glance over and you can see
13 what's going on. So we wanted to kind of document
14 with them, too, just to see how it unfolded ---

15 Q. Sure.

16 A. --- and -- and just finished out. And so they
17 were -- I don't know if they had -- I think they had
18 County crews working up there doing various things.
19 And then they also had subcontractors that they
20 used, vendors that they use ---

21 Q. Sure.

22 A. --- landscapers and irrigation companies out
23 there.

24 Q. Well, first, let me ask: Is this picture, was
25 it taken before or after you stopped working the

1 East-West Project.

2 A. This is well after.

3 Q. Okay. And tell me this: Well, this appears to
4 be that curve where the retaining wall was
5 ultimately sought; is that right?

6 A. Yeah, it's the curb where the retaining wall
7 was installed and then there's a telephone pole that
8 the photo doesn't show, but it's up by the worker's
9 head.

10 Q. Well, I think it's -- is that what kind of the
11 tall grass is covering it up a little bit? Oops, I
12 can't -- you can't see it.

13 A. Yeah, you can -- you can kind of see it in that
14 photo.

15 Q. Okay.

16 A. And -- and then this is Sandy Hanebrink. I
17 believe you pronounce her name "Hanna-brink."

18 Q. Yeah, what is the proper pronunciation?

19 A. I believe it's "Hanna-brink."

20 Q. "Hanna-brink." I keep saying "HANE-brink."

21 A. I believe it's "Hanna-brink."

22 Q. "Hanna-brink." Okay. Sorry.

23 A. So she owns a company called "Touch the Future"
24 that I kind of explained yesterday that ---

25 Q. Right.

1 A. --- I don't know that she was directly employed
2 by the county. I think she was working as a
3 consultant for a while with Anderson County. From
4 what I understand, she had an office at one time
5 that they provided for her so that she could review
6 and consult on these types of projects. This is
7 out -- this is her out there just going over the
8 sidewalk to check it to see if it's ADA compliant.

9 Q. Okay. And before we go any further about this,
10 I think it's important -- I think we've touched on
11 it, but I want to make sure I understand the
12 retaining wall that was ultimately installed, Moats
13 Construction never installed any restraining walls,
14 correct ---

15 A. Correct.

16 Q. --- with respect to this sidewalk project?

17 A. There were no retaining walls on the drawings.

18 Q. Okay. And that's my next question. On any of
19 the drawings, the 2015 drawings, the '16 or the '17,
20 or any of the revisions thereof, was there ever a
21 retaining wall shown in those drawings?

22 A. No, sir.

23 Q. All right. And here we are after you're off
24 the job, they're installing retaining walls,
25 correct?

1 A. Yes, sir.

2 Q. All right. What are we seeing in this picture?

3 A. This is Sandy checking, I believe, the running
4 slope of the sidewalk ---

5 Q. Okay.

6 A. --- with her digital levels. It's a digital
7 level, so...

8 Q. Okay.

9 A. She's wheelchair bound, so I don't know that
10 she's -- she uses a wheelchair. She's handicapped,
11 so ---

12 Q. Okay.

13 A. --- she comes out. I believe that's how she
14 got into the business of doing this, just kind of an
15 advocate I guess.

16 Q. Okay. All right. And what are we looking at
17 here?

18 A. That looks like the finished retaining wall
19 they installed for the sidewalk.

20 Q. Okay.

21 A. And that -- there's the telephone pole that I
22 referred to.

23 Q. Right.

24 A. Some other landscaping that -- like some mulch
25 above the wall because the slope is so steep, you

1 can't maintain it. So they had to put some mulch on
2 it looks like.

3 And then there's a lot of sod in the area.
4 Originally, it was not -- have any sod. It was just
5 grass. There was no sod in our drawings in that
6 area that I remember. So they sodded the entire
7 area. They did a lot more work here than when they
8 finished it out than was actually on the drawings.

9 Q. Okay.

10 A. Not that -- they would not have done that
11 anyway, but it was not in our contract to do -- to
12 do that work.

13 Q. All right. This is photo 4. This is a black
14 and white photo. Again, the no -- no retaining wall
15 at this time. Was this during your time working on
16 this project or after you stopped working?

17 A. This was after we had already left. Yeah, we
18 never actually poured the concrete for that walkway.

19 If you look at the cones right there ---

20 Q. Right.

21 A. --- our work stopped right there originally,
22 but they actually tore that section out. That's on
23 this side of those cones back about, I don't know,
24 maybe 10 feet from there, but we had originally
25 stopped our -- our work at those cones ---

1 Q. Why did you stop ---

2 A. --- and then we had the rest of it formed.

3 Q. Yeah, did you form it after the cones but just
4 not pour it?

5 A. We did. It was completely formed.

6 Q. And I believe you testified earlier, you didn't
7 pour it because the grades weren't ADA compliant?

8 A. Correct. Yeah, so we -- we would check the top
9 of the forms and so you use like a large level, a
10 digital level.

11 Q. Okay. This photograph, this next one so
12 photograph 5. Is this -- well, you said you never
13 poured down this area, so this must've been after
14 you left this job; is that right?

15 A. Yeah, that's not our work. Some of the form
16 works -- that little section in the middle is not
17 like it was designed, but I believe they put a rock
18 bed down. I believe there's rocks in there, but,
19 yeah, that's after they had installed it. And from
20 what I understand, I'm not sure if their -- I
21 believe their own in-house crew did it that works
22 for roads and bridges.

23 Q. Okay.

24 A. Because they tried to get someone else to do
25 it, but they couldn't.

1 Q. All right. And this -- this is a very similar
2 picture, correct? Maybe -- it might be the same
3 picture. Next picture, you -- this is -- is this in
4 that same area?

5 A. It is. So we took this photograph because
6 those pink dots are where the sidewalk was being
7 surveyed. That's why they're there, so they --
8 that's where they surveyed it, but you notice it's
9 roughly 4 to 5 feet apart because that's how you --
10 per the rule on how you're supposed to survey a
11 sidewalk for ADA compliance.

12 Q. Okay.

13 A. It's supposed to be every 5 feet.

14 Q. Okay. And this -- you mean, these dots here,
15 here, and here?

16 A. Right.

17 Q. Okay. This is just a picture of part of the
18 elevation. It's not really what I wanted to ask you
19 about here. What is this -- well, I'm going to skip
20 this and come back to it. What is this a photo of?

21 A. So that's a photo of the park -- that lower
22 parking lot on Kings Road, and it's a picture of the
23 sign that the county had placed out there on the --
24 right there on the corner of Kings and East-West
25 Parkway.

1 Q. Okay.

2 A. The county had -- we had an e-mail where they
3 e-mailed us wanting our -- our logo, and we -- we
4 didn't know why, but at the time we just assumed it
5 was something to do with the park or something, so
6 we sent them like a PDF of our logo.

7 Q. Is that your logo?

8 A. Yes, sir.

9 Q. It's not looking great. It's easier to see
10 when it's not on this. Maybe that'll help. But
11 that's your logo on the sign?

12 A. Yes, sir. It's right beside the SGA Architects
13 logo.

14 Q. And I think it might be easier to see here.
15 Maybe not. There we go. That's a little better.
16 All right. And these photos -- this photo here,
17 same sign. Where is your logo?

18 A. Yeah. So we were just -- we were -- we were
19 kind of -- we couldn't believe that the county or
20 somebody with the county had done that.

21 MR. MCDADE: Your Honor, there's no testimony
22 or evidence that anybody from the county painted
23 over that.

24 THE COURT: Sustained.

25 BY MR. GOODWYN:

1 Q. What is your understanding of how your logo was
2 painted over?

3 A. We assumed that ---

4 MR. MCDADE: Your Honor, again, that was his
5 assumption.

6 THE COURT: I'll sustain that. You can't
7 assume.

8 BY MR. GOODWYN:

9 Q. All right. Do you know of any reason why
10 anybody other than the county would paint over your
11 logo?

12 MR. MCDADE: Objection, Your Honor. He's
13 asking for a speculative.

14 THE COURT: Sustained.

15 BY MR. GOODWYN:

16 Q. Did you paint over your logo?

17 A. No, sir.

18 Q. Did you ask anybody to paint over your logo?

19 A. We did not. We had been out there for -- that
20 sign had been out there for, I don't know, two years
21 with our logo on it.

22 Q. Did you have any other enemies at this time
23 that would want to paint over it?

24 A. No.

25 MR. MCDADE: Objection, Your Honor. They're

1 asking again from a speculative.

2 THE COURT: Sustained.

3 BY MR. GOODWYN:

4 Q. All right. What is this photo of here? I'm
5 going to zoom out again so you can kind of see the
6 whole thing. Do you remember what this area is or
7 picture was from?

8 A. Yeah, so it's a picture of another issue that
9 they had out there, a design issue on that park.

10 Q. Where -- what part of the park?

11 A. There's -- this lower parking lot, phase 2.
12 There was a culdesac that came off of another road
13 that went and tied into the upper parking lot.

14 Q. Do you think you could show the jury on the
15 architectural drawings what part of the park you're
16 talking about?

17 A. Sure.

18 Q. Speak up a little bit.

19 A. So it would be this -- it would be this
20 culdesac right here.

21 Q. Okay.

22 A. And lower parking lot, second phase. It tied
23 into this other road here. I can't remember the
24 name of the road.

25 Q. Okay.

1 A. But, anyway, so there was a ditch that had
2 originally -- a drainage ditch that had originally
3 went around the culdesac and drained off into this
4 field right here. And when they designed the lower
5 parking lot, they didn't put anything in there for
6 drainage so that the water would drain under the new
7 parking lot entrance.

8 Q. All right. Is this the standing water that
9 resulted?

10 A. Yep. And that was the result. It had nowhere
11 to go.

12 Q. Was that ever fixed?

13 A. I mean, at that point, it had not been. We had
14 explained that to them and tried to get them to ---

15 Q. And when -- about -- I guess was this picture
16 taken before or after you stopped working the
17 project?

18 A. I believe it was right at the end. I'm not
19 sure exactly when it was. It was after I believe.

20 Q. If it was fixed, you didn't fix that?

21 A. Correct.

22 Q. And the problem -- is it your testimony that
23 this problem was a design defect because there were
24 no drains installed?

25 A. Yes, sir. That's correct.

1 Q. All right. And there's a few pictures here.
2 These next few pictures of the same area?

3 A. Yes, sir.

4 Q. All right. And what about this photograph?

5 A. So that -- all of that is work we installed,
6 except for the finished paving, of course. You can
7 see where the water runs across the asphalt right
8 there.

9 Q. Right.

10 A. And they had -- and they had divided that
11 depression in the curb so the water would flow
12 across the asphalt, but they didn't account for --
13 for anything else outside of that, or, you know, so
14 anyway, that's the result.

15 Q. Okay. All right. And this is a picture. It
16 looks like the sidewalk leading up to the retaining
17 wall area?

18 A. Yes, sir. You can see that the sidewalk, the
19 different colors in the concrete.

20 Q. You're talking about between here and here?

21 A. Yes, sir.

22 Q. Yeah, why -- why are they different colors?

23 A. So we didn't -- again, we didn't install. We
24 didn't pour the concrete. We had formed it, but we
25 never poured it. So, originally, they poured this

1 sidewalk one time all of it, and then they went back
2 and poured, demolished this section, and repoured it
3 again for some reason.

4 Q. Okay. And you were watching this in your
5 inspections of the property after you stopped the
6 job. Is that what you're saying?

7 A. Yes, sir.

8 Q. Okay.

9 A. So it's a public -- it's public property, so, I
10 mean, we would go out there ---

11 Q. Sure.

12 A. --- and just take pictures of it, so...

13 MR. DAVIDSON: Your Honor, I've probably let
14 this go on a little bit too long. We're talking
15 about stuff that occurred after the -- after
16 Mr. Moats left the job. I don't think that's
17 relevant to whether or not he breached the agreement
18 or Anderson County breached the agreement. I don't
19 see where we're going with this.

20 THE COURT: What's the relevance?

21 MR. GOODWYN: It's particularly relevant in
22 that our argument is ---

23 THE COURT: Hang on. Hang on. Madam forelady,
24 would you take your jury back to the jury room,
25 please?

1 THE FORELADY: Yes.

2 THE COURT: And, madam forelady, you can go
3 ahead and take your morning break. If y'all need
4 anything, it'll probably be about a 15-minute break.

5 THE FORELADY: Thank you.

6 THE COURT: Yes, ma'am.

7 (At 10:39 a.m., jury left the courtroom.)

8 THE COURT: Alright, sir.

9 MR. GOODWYN: It's particularly relevant
10 because our argument is that Mr. Moats could not
11 pour this concrete and make it ADA compliant in
12 accordance with the design plans that he had
13 received.

14 After he left, it's important that we're able
15 to show that the subsequent contractor, they
16 couldn't do it either. They had to pour it, tear it
17 back up.

18 THE COURT: How does show that?

19 MR. GOODWYN: It shows that they used the same
20 designs that he was using, and they couldn't do it
21 either. They had to modify it, build a retaining
22 wall to make it longer. That shows that he was
23 right. That shows that he could not have done it.
24 It's ---

25 THE COURT: Hang on. Yes, sir. I'm not sure

1 how that shows it.

2 MR. GOODWYN: Well, it's probative to that.

3 MR. DAVIDSON: Your Honor, frankly, I don't
4 think they can -- they would -- they would have
5 personal knowledge that the work was done according
6 to the same drawings or who did it or why the
7 decision was made to do it.

8 Mr. Moats left the job in late June of 2018.
9 The project was going to get finished one way or the
10 other. I don't think that the fact that there were
11 sets of concrete that were two different colors or
12 anything else is going to tell him that that means
13 that the drawings were bad. I just don't think
14 we're getting anywhere with this.

15 MR. GOODWYN: Well, let me put it this way. I
16 understand his point about he doesn't know
17 necessarily what was going on on the inside with new
18 contractor. Those witnesses will be called later.

19 I'm getting him to tell me what these pictures
20 are. And he's telling me these are pictures that we
21 took after he left the job showing where concrete
22 had been poured and torn up.

23 THE COURT: I got that. I've yet to hear the
24 relevance.

25 MR. GOODWYN: Right. Again, it's relevant

1 because it's going to tie in.

2 THE COURT: Your base -- your basis for saying
3 the relevance a minute ago is something that he
4 can't testify to. He hasn't laid a foundation for
5 it. Let me say that.

6 MR. GOODWYN: He can -- well, he can -- I don't
7 want to have to recall him if I don't have to.
8 These other witnesses will testify ---

9 THE COURT: You got to call who you got to
10 call.

11 MR. GOODWYN: Oh, I know. I know. I know.

12 THE COURT: But you just said to me as to what
13 that drawing -- I mean, that picture shows is
14 something that without further foundation on his
15 part, I'm going to sustain the objection because he
16 doesn't know.

17 MR. GOODWYN: Okay. Then I'll just have to ask
18 him what is this a picture of. Is that -- is that
19 -- is that fair enough? I mean, it's a ---

20 THE COURT: I mean, I'm not trying to give you
21 anticipatory rulings.

22 MR. GOODWYN: Right.

23 THE COURT: I mean, I just don't know. I'm not
24 smart enough to do that.

25 MR. GOODWYN: Okay.

1 THE COURT: As worded, I'm going to sustain his
2 objection. Okay?

3 MR. GOODWYN: Okay.

4 THE COURT: Alright, guys.

5 MR. MCDADE: Your Honor, I don't -- I don't
6 know that those pictures have any relevance.
7 There's no reason to ask him what they're of, unless
8 it's something relevant.

9 THE COURT: I'm not -- again, I'm not going to
10 try to ward him off. He's going to ask his
11 questions. You just got to stand up and object. If
12 they're not relevant again, you stand up again. I
13 know you know how to do that.

14 All right. I'm giving you a hard time. Let's
15 take our morning break. Again, Mr. Moats, you can
16 step down. Don't talk to anybody about your
17 testimony. Let's come back, say, five till. Okay.

18 (From 10:43 to 10:58 a.m., recess was had.)

19 THE COURT: Yes, sir.

20 MR. DAVIDSON: Your Honor, Mr. Harman had to go
21 pick up his car.

22 THE COURT: Does he have a bond? Did you put
23 up a bond?

24 MR. DAVIDSON: He's kind of shifty, but we're
25 just going to keep him over there.

1 THE COURT: Come around, brother.

2 MR. DAVIDSON: Thank you.

3 THE COURT: All right. Anything from the
4 plaintiff before we bring the jury back?

5 MR. GOODWYN: No, Your Honor.

6 THE COURT: From the county?

7 MR. DAVIDSON: No, Your Honor.

8 THE COURT: From the individuals?

9 MR. MCDADE: No, Your Honor.

10 THE COURT: Thank you. Would you bring the
11 jury in, please, sir?

12 (At 11:00 a.m., jury entered the courtroom.)

13 THE COURT: Mr. Goodwyn.

14 MR. GOODWYN: Thank you, Your Honor.

15 BY MR. GOODWYN:

16 Q. Mr. Moats, I'm going to go back and ask you a
17 question about this one photograph here of the -- of
18 the plans. If I can find it. Here we go.

19 Photograph 8, tab of the -- or excuse me --

20 Photograph 8 of Plaintiff's Exhibit 9. What is this
21 a photograph of?

22 A. Yeah. I think that's the lower parking lot,
23 phase 2, after it had been redesigned.

24 Q. Okay. And what is significant about this
25 photograph and these elevations that are shown in

1 this photograph?

2 A. So we had noticed when we were installing these
3 new sidewalks, and I believe this is like a bench
4 pad for like a park bench.

5 Q. Right.

6 A. So this is a sidewalk that runs along the back
7 of the curb. And, normally, you don't see all these
8 spot elevation grades on a job like this. I mean,
9 and it definitely -- on the original drawings, they
10 didn't exist. The reason why it's significant is
11 because they had to go and redesign this entire
12 phase of this project, and they wanted to make sure
13 it was 100 percent ADA compliant.

14 So they put all these spot elevations on here,
15 even in the parking lot, which we'd never seen in a
16 parking lot before. They put like the percentage
17 grades, you know, 2.0 percent, 2.5 percent, 1.5
18 percent. So they were trying to establish, you
19 know, the ADA requirement, you know, for the parking
20 lot, as well as the sidewalks.

21 What we noticed on this that was really
22 significant, and we had to just build it in the
23 field differently, was that the elevations that were
24 circled, 739.41 and 739.12 ---

25 Q. Right.

1 A. --- those spots are about three-foot apart,
2 which is roughly the width of this stand right here.

3 Q. Right.

4 A. And they're 4 inches out of level, so it was
5 like a hole right there.

6 Q. Is that ADA compliant?

7 A. It wouldn't -- no, sir. It wouldn't have been.
8 And, you know, so the significance about it and the
9 relevance about it was, you know, not only did we
10 notice things like this in the original drawings,
11 but we also noticed things like this in the revised
12 drawings that they had revised for us ---

13 Q. I gotcha.

14 A. --- and errors like that.

15 Q. Okay. All right. We're going to kind of --
16 approximately, when was this photograph taken?

17 A. It was taken some time after we had left the
18 job.

19 Q. Okay. And what does it show?

20 A. It shows some concrete that been demolished and
21 removed to be repoured.

22 Q. Okay. Is this a close up shot of the same
23 section?

24 A. Yes, sir, it is.

25 Q. All right. Again, I think we've -- I think you

1 testified about this section earlier, correct?

2 A. Yes, sir. I'm not sure if I testified about
3 that section. That's where that walkway that we
4 refused to pour ties into the new -- well, the
5 existing bike path at East-West.

6 Q. Is this the bike path back here?

7 A. It is.

8 Q. And it looks like this is an asphalt section
9 over here, and then it turns into concrete for a
10 section; is that right?

11 A. Correct.

12 Q. All right. Do you know why they didn't just
13 leave it asphalt? Why they wanted it concrete for
14 some of those sections?

15 A. They wanted it to be ADA compliant. So I
16 believe some of the asphalt was ---

17 THE COURT: Do you have an objection stated?

18 MR. DAVIDSON: Yes, sir, I do. Mr. Moats, it
19 seems like he's beginning to testify on why someone
20 else did something on that job after he left.

21 MR. GOODWYN: That's not what I was ---

22 THE COURT: No, sir. Don't interrupt him,
23 please.

24 MR. GOODWYN: Okay.

25 THE COURT: Go ahead. Finish it out.

1 MR. DAVIDSON: That was it. Now, I understood.
2 I know I interrupted his answer and what he was
3 going to go in more, but that's certainly the way it
4 started out was why do -- do you know why they did
5 that? And he started to speculate to that.

6 THE COURT: To the extent that he was
7 testifying ---

8 MR. GOODWYN: Well ---

9 THE COURT: Please don't interrupt me.

10 MR. GOODWYN: I'm sorry. I just wanted to
11 respond.

12 THE COURT: Well, I'm going to give you an
13 opportunity, but don't interrupt me again. Okay?

14 MR. GOODWYN: Yes, sir.

15 THE COURT: All right. To the extent that he's
16 going to testify as to what somebody else did
17 without a foundation, I sustain his objection.
18 Okay. You wanted to say something?

19 MR. GOODWYN: Right. I just (a) I want to make
20 sure he understands the ruling on that, so he
21 doesn't try to do that.

22 THE COURT: And we'll make sure that he does.

23 MR. GOODWYN: Right. And my -- my point was
24 and I just want to make sure he understands the
25 question. I'm not asking about what anybody did

1 after he left. I'm asking -- because this was part
2 of the original design, and I'm asking about the
3 original.

4 THE COURT: I don't need to hear that argument.
5 Ask the question. Okay?

6 MR. GOODWYN: Okay.

7 BY MR. GOODWYN:

8 Q. So what I'm asking about -- what I was asking
9 about is in the original design, this was -- was it
10 designed like this from the beginning to have
11 concrete -- excuse me -- yeah, concrete along this
12 section of the asphalt path?

13 A. I don't think it was in the original design. I
14 think that -- I'm not sure. I'm really not sure if
15 that was in the original design or not.

16 Q. Okay.

17 A. But changing from asphalt to concrete, I don't
18 recall.

19 Q. That's fine. All right. All right. So make
20 sure I'm doing this correctly. All right. And,
21 again, this was a photograph of what?

22 A. That was -- it's a section of concrete that we
23 had installed that someone has removed and replaced.

24 Q. From this section up here?

25 A. Yes, sir.

1 Q. All right. And this is a porta potty. Why --
2 why is this significant?

3 A. I really don't know, honestly.

4 Q. Okay. All right. All right. This is like
5 kind of a different angle of the same picture from
6 before?

7 A. Yes, sir.

8 Q. Same thing. Another close up shot of that
9 removed section?

10 A. It is.

11 Q. I think we've gone over these pictures from
12 before. It might even be the same picture or a
13 similar picture of them digging out the area where
14 the retaining wall was, correct?

15 A. Yes.

16 Q. All right. And, again, Sandy Hanebrink making
17 her measurements, correct? We talked about that
18 one. Again, is that Sandy Hanebrink making more
19 measurements?

20 A. It is.

21 Q. Okay. And what is this a picture of?

22 A. That is a picture of that -- almost the entire
23 sidewalk removed that had been installed.

24 Q. Okay.

25 A. Previously.

1 Q. And about what time frame was this? Is this
2 before or after you ---

3 A. It was after we left the project.

4 Q. After. All right. All right. Yeah, this is
5 the same or similar picture as before showing the
6 sidewalk that we talked about. Let me get back to
7 that. And this photograph here, is this before or
8 after you left -- left the job?

9 A. That was after I left and that was the concrete
10 that was poured where -- where we had formed it up.
11 That was the first -- the first attempt I guess.

12 Q. Okay.

13 A. Best way to describe it.

14 Q. And looks like before the retaining wall was
15 installed?

16 A. Before -- before the retaining wall.

17 Q. Okay. Again, this is a similar picture that we
18 looked at just a minute ago. And this is just a
19 different angle of the same -- same area; is that
20 fair?

21 A. The same area, but it looks like they had
22 placed the concrete there.

23 Q. This area here that had been torn up ---

24 A. Yes.

25 Q. --- is now repoured?

1 A. Yes, sir.

2 Q. Okay. All right. This looks like -- you tell
3 me. What is this area?

4 A. I think it's a different angle from one of the
5 previous pictures of that section that had been
6 removed.

7 Q. All right. Looks like the retaining wall is in
8 place at that point; is that correct?

9 A. Yes, sir.

10 Q. And what is this a photograph of?

11 A. That's a section that one of your previous
12 pictures were -- that section had been removed. We
13 had -- we had installed part of that, like the area
14 in front of the cones. And I think I -- I mentioned
15 something about that earlier where there's two cones
16 that sat in that picture, but they had -- they
17 installed everything below that -- below that last
18 cone I guess, and it had been -- looks like they
19 removed it. Somebody removed it or demoed --
20 demolished it for removal and replacement.

21 Q. All right. This picture?

22 A. Correct. So we -- we had originally installed
23 the work from where that -- the cone's laying down.

24 Q. This cone?

25 A. Yes, sir. Over to the -- over to the edge

1 stand of the curb right there ---

2 Q. Okay.

3 A. --- to the corner.

4 Q. To here?

5 A. Yes, sir. About, you know, about 10 feet
6 because a parking space is 9-foot wide, but that's a
7 handicap parking space I believe, so it would be
8 wider. It's about 11 feet I guess. So they --
9 11 feet of that, we would've installed -- somebody's
10 removed the remaining part of it.

11 Q. Okay.

12 A. They would've installed it or somebody would've
13 installed it.

14 Q. All right. And this picture?

15 A. Yes, sir. I think it's just a different angle
16 of the same -- same sidewalk that had been removed
17 that we did not install.

18 Q. Okay. And this -- I think we talked about this
19 picture. It's a picture of the sign kind of at the
20 beginning of the project.

21 A. Yes, sir. I think that that -- I think that
22 was after they left that sign up for a good while.

23 Q. Okay.

24 A. Until -- it was up there for a long time.

25 Q. All right. Did you -- well, let me ask you

1 this. Do you recognize this document? Well, I'm
2 sorry. Kind of old habit there. I've got a machine
3 right here to show us all, and I'm going to walk up
4 there and give it to you. Sorry about that.

5 Do you recognize this document? And if you
6 need me to zoom in or move it to a certain section,
7 let me know. Can you read it from that distance?

8 A. It's a little blurry.

9 Q. I'll try to zoom in for you.

10 A. Yes.

11 Q. What is this document?

12 A. So Touch the Future is a company that this
13 former consultant or Anderson County had used on
14 this project.

15 Q. Who's the consultant?

16 A. Sandy Hanebrink.

17 Q. Okay. And that's who we looked at in the
18 pictures?

19 A. Correct. So, originally, when I testified, I
20 think yesterday, regarding the first phase of the
21 project was stopped or almost like halted everything
22 we were doing was Anderson County contacted this
23 lady to have her come out and inspect the sidewalks
24 on the first phase. And I guess they had trusted,
25 you know, her with those types of, you know, things

1 and decisions and surveys. You know, they just
2 wanted to make sure they were in compliance, so --
3 and she said, "No. You have to do this, and this,
4 and this, you know, in order to be -- have it
5 compliant," so that's what they did and that's why
6 they issued the change orders on that first phase.

7 So we asked her to come out and take a look at
8 this sidewalk that had been installed that was out
9 there.

10 Q. You're talking about the final version of
11 sidewalk, the sidewalk that's -- that's there --
12 that's there today?

13 A. No. The sidewalk that's there today that we
14 had refused to pour because we knew that it wasn't
15 going to be ADA compliant ---

16 Q. Okay.

17 A. --- so we asked her if she'd go out there and
18 take a look at it and, you know, provide a report
19 and let us know if it's ADA compliant or not. And
20 that's what she does. That's her ---

21 Q. Okay.

22 A. --- forte ---

23 Q. And is this ---

24 A. --- and that's her job.

25 Q. --- is this her report of April 30, 2019?

1 A. It is.

2 Q. All right. And did she find areas of the
3 sidewalk that are in place today that are not ADA
4 compliant?

5 A. She did.

6 Q. All right. And this report -- I don't
7 necessarily need you to go through all of that. I
8 think Ms. Hanebrink is going to testify tomorrow.
9 She can testify to that.

10 All right. So at this point, we have a
11 sidewalk out there that Ms. Hanebrink says is not
12 ADA compliant. You could've done that, right?

13 A. I could've done that.

14 Q. If you knew the county was going to accept
15 that, you could've -- you could've done that just
16 fine and been off the project and everything ---

17 A. Completed and everything, if we had known that
18 that would had been acceptable.

19 Q. All right. Okay. I'm going to ask you about
20 some other -- other documents and some e-mails.
21 You've testified already about what happened
22 after -- after all of this kind of -- you know, what
23 happened to your company, that kind of thing.

24 I want you to kind of explain to the jury after
25 you left the job, what happened to your company and

1 how -- how -- how did it -- how did it progress?
2 What -- what were the effects of all this, basically
3 is what I'm saying.

4 A. The effects of it were it put our company out
5 of business. Currently, we don't have any
6 employees. We're not bidding on any jobs. The
7 effects were devastating as far as what -- you know,
8 what happened after this job and, you know, it
9 was -- because after this job, we had employees --
10 we had to continue to employee -- we've got the --
11 the crew that we had out there, you know.

12 We were not a big company. Never were a really
13 big company. We had in the past, I had grown the
14 company from being really nothing as we primarily
15 were subcontractors for other general contractors.
16 So we were the people who went out and actually
17 performed -- sub performed all the work and had all
18 of the in-house skilled labor, I guess, to perform
19 the work. And so we would go -- like go to
20 contractors if somebody needed a particular type of
21 work done.

22 We were licensed, you know, in different
23 fields -- utilities and grading and asphalt paving,
24 concrete paving, masonry, steel construction. And
25 so you had that skill -- skilled labor to do that,

1 and I grew the company and I grew the crews from
2 nothing. And we kind of weathered that 2008
3 recession, and then we got -- we got into public
4 contracting and ---

5 Q. Right. And you described all of that. I
6 really wanted you to focus on what after -- after
7 this job. And I think you've already addressed that
8 to some degree, and I want to ask you some more
9 specific questions.

10 A. Well, yeah, I was just trying to -- I was just
11 trying to explain to the Court that we used to be
12 subcontractors, and we got into doing public --
13 public contracting and then we became a prime
14 contractor. A prime contractor is somebody who has
15 control of the master contract with the owner, so we
16 became prime contractors.

17 Q. Okay. And I think you've testified some about
18 the bonding situation and the need to have bonds,
19 that kind of thing. I wanted to ask you a question
20 about your bonding after this, after you left the
21 East-West Project job.

22 I'm going to show you an e-mail dated April 15,
23 2019, about a year or so after this from Horace
24 Neighbors with Direct Surety. Do you recognize this
25 e-mail?

1 THE COURT: Is that an exhibit number?

2 MR. GOODWYN: Not yet. It hasn't been
3 introduced yet.

4 THE COURT: Let's go ahead and mark it, please,
5 sir.

6 MR. GOODWYN: Okay. Twelve.

7 (Plaintiff's Exhibit No. 12 was marked for
8 identification.)

9 THE WITNESS: So, yes, I recognize it.

10 BY MR. GOODWYN:

11 Q. Okay. All right. And it -- it's an e-mail
12 from who to who?

13 A. From Horace Neighbors with Direct Surety to
14 myself at RT Moats of MoatsConstruction.com.

15 MR. GOODWYN: All right. I'd like to go ahead
16 and introduce this as Plaintiff's Exhibit 12.

17 THE COURT: Any objection?

18 MR. DAVIDSON: I don't have an objection, but
19 could we have the -- is there a Bates number on
20 that?

21 MR. GOODWYN: I don't know. I don't think it's
22 on this copy here. I'll put it on the screen. Is
23 your screen working?

24 MR. DAVIDSON: Yes.

25 (Plaintiff's Exhibit No. 12 was received into

1 evidence.)

2 BY MR. GOODWYN:

3 Q. Okay. All right. So Mr. Moats, what is -- I
4 want to make sure I'm going in order here. Both of
5 these e-mails are on April 15, 2019. You have an
6 e-mail at 10:03 a.m. going to -- looks like -- it
7 says, "Good morning, Jan." And you write, "I hope
8 you are doing well. I wanted to check on these two
9 bid bond applications." Is that what you're asking
10 her?

11 A. Yes.

12 Q. And Jan, who is she with?

13 A. So I dealt with several different reps, company
14 reps, with the surety company.

15 Q. Okay. That's what I was asking.

16 A. So they would've received a bond -- a bid bond
17 application. So you have to have a bid bond to even
18 bid on a public project. That doesn't include your
19 performance and your payment bond.

20 There are three different types of bonds. You
21 have to have a bid bond in the form of cash or
22 certified check for -- to -- just to bid on a public
23 job. And then if you're awarded that job, then you
24 have to -- you have to furnish a performance bond,
25 which guarantees your work that it'll be done

1 correctly, and then a payment bond that'll guarantee
2 that your subcontractors and your suppliers will be
3 paid.

4 Q. Okay.

5 A. So we -- we always have to apply for the bid
6 bond ---

7 Q. Sure.

8 A. --- and they have to approve it first.

9 Q. So what is -- what's the response from Direct
10 Surety to your inquiry about your bonds?

11 A. It just says that, "We presented you and your
12 company's financial information to many surety
13 companies. The answer from the surety company is we
14 will consider once the UCC-1 is removed," which is a
15 business fine. UCC is commercial credit.

16 Q. All right. So what ---

17 A. Uniform -- uniform commercial credit.

18 Q. And what UCC filing was out there which
19 would -- which needed to be removed?

20 A. So different financial institutions, they
21 submit UCC filings for, like, all sorts of different
22 financial transactions, but, primarily, when there's
23 a debt involved, a lot of times.

24 So what the UCC filing that had been submitted
25 was Anderson County had filed a performance bond

1 claim against our company for not finishing the
2 East-West Parkway Park, and so that was an
3 outstanding bond claim. And by having that filed as
4 a UCC filing, the underwriters for the surety
5 companies, it was coming up just like when you pull
6 somebody's credit to determine whether or not
7 they're creditworthy or not. They would determine
8 the creditworthiness of our company if we were --
9 would be able to bond a project.

10 Q. Did that UCC filing affect your ability to get
11 bonds for future work?

12 A. It killed our bond. We couldn't bond. We were
13 un-bondable at that point.

14 Q. Okay. All right. And then the next paragraph
15 says, "We need your help to help you. It appears
16 this relates to the Toxaway Mill Cleanup Project.
17 Is there a reason -- is there a resolution to this
18 project?"

19 A. Yes. So they were aware of that project just
20 because we were always very transparent with them
21 about everything. You have to be. I mean, there's
22 no hiding -- you don't hide anything, you know. And
23 they see everything related to your company. They
24 want all your financial statements, all your credit,
25 everything.

1 That's the only way you can become bondable.
2 That's why you don't have a ton of people out there
3 that are, what's considered, I guess, bona fide
4 contractors, which are bondable companies. I mean,
5 some of them say -- there're different types of
6 bonds for contractors, but these types of surety
7 bonds are not something that you just go out and get
8 overnight. You have to be an established
9 contractor. You have to be an established company.
10 You have to have a background and a history of, you
11 know, performing on projects and having successful
12 projects.

13 So, I mean, this is something that I -- it took
14 me years to get the company to this point to where
15 it was bondable just to have it become un-bond --
16 un-bondable.

17 Q. Okay. Did you, in the times around this
18 project and after, submit bid bond requests to
19 Direct Surety for various projects?

20 A. We were actively trying to find work for our
21 guys. I mean, that's what I was trying to get to
22 with the whole prime contractors thing. We were
23 actually the contractors that performed the work, so
24 we had a lot of skilled labor that we employed
25 in-house.

1 And these guys, they're not cheap. I mean,
2 they're -- you know, they -- they get paid well, so
3 we had to find work for them to do. And where we
4 had -- excuse me -- over the prior months while we
5 were waiting on this job to be redesigned over and
6 over, we had made work up for them to do. And it's
7 all different, you know, property that someone may
8 have owned or other small jobs, side jobs, and
9 stuff. We just tried to find work for them to do.

10 And after this job, you know, there was no
11 money coming in from this job anyway, so we had to
12 find other work for -- for our crew to do and -- but
13 there was no work. Our work that we were -- had
14 been used to doing was public work and, you know, we
15 had -- we always had -- there was always another
16 jobs for them to go to. And we worked, like I said,
17 all over the state if we had to. We didn't like to,
18 but, you know, that's one reason why we were trying
19 to work with Anderson County because we didn't want
20 to go down to Charleston and work. We were trying
21 to stay home. Trying to stay close, you know.

22 Q. Right.

23 A. People have families and -- excuse me -- kids.

24 Q. Let me show you mark what I'll mark as
25 Plaintiff's Exhibit 13. What this document?

1 A. This is a bond for -- a bond request -- bid
2 bond request for the Snow Outdoor Center across from
3 White Beach at Clemson University.

4 Q. Okay. What date is this?

5 A. April the 10th, 2019.

6 Q. All right. And it's a bid bond request and
7 you're requesting a bid bond from your surety
8 company?

9 A. Yes, sir.

10 Q. That's Direct Surety?

11 A. Yes, sir.

12 MR. GOODWYN: Okay. Your Honor, I'd like to
13 move -- admit this in as Plaintiff's Exhibit 13.

14 THE COURT: Any objection?

15 MR. DAVIDSON: Your Honor, can I look at it?

16 THE COURT: Yes, sir.

17 MR. DAVIDSON: Could we approach for just a
18 second?

19 THE COURT: Yes, sir.

20 (Sidebar discussion.)

21 THE COURT: All right. That'll be admitted
22 subject to our discussion. Number 13, Counsel?

23 MR. GOODWYN: Yes, sir.

24 THE COURT: Thank you.

25 (Plaintiff's Exhibit No. 13 was received into

1 evidence.)

2 BY MR. GOODWYN:

3 Q. All right. Mr. Moats, I'm going to put it on
4 the screen. So this is a bond application looks
5 like dated 4/9 of 2019; is that right?

6 A. Yes, sir.

7 Q. And what -- and you write on these -- on these
8 bids, you know, the estimated bid amount \$385,000.
9 That's the total bid contract price?

10 A. Yes, sir.

11 Q. If you got the job, that would be the total
12 amount to be paid?

13 A. It's an estimated bid amount. So we have to
14 estimate the job and, I mean, it's subject to, you
15 know, reviewing the project and the plans and
16 everything. I mean, it can change. Generally, it
17 doesn't go above that though because what you're
18 asking for is approval for that amount.

19 Q. Sure. And the -- do you have to indicate on
20 the bid request form what your profit on this job is
21 expected to be?

22 A. Yes, sir.

23 Q. Is that down here on the profit line?

24 A. It is.

25 Q. All right. Did you get this job?

1 A. We did not.

2 Q. Do you know why you didn't get this job?

3 A. We couldn't get a bid bond for it.

4 Q. Okay. Did that happen more than once?

5 A. It happened for two years.

6 MR. GOODWYN: All right. I've got -- Your
7 Honor, we'll have to have some other similar
8 documents with handwriting I think we'll need to
9 redact. It's going to take a -- take a second.

10 THE COURT: Just one second. Madam forelady,
11 would you go back to the jury room? We've just got
12 a couple of administrative matters to take up
13 outside of your presence, please.

14 THE FORELADY: Okay.

15 (At 11:31 a.m., jury left the courtroom.)

16 THE COURT: Okay. Let's go ahead and list
17 those for the record. Have y'all looked at them?

18 MR. DAVIDSON: I've seen them.

19 THE COURT: You haven't seen them?

20 MR. DAVIDSON: I have seen them.

21 THE COURT: What numbers are they?

22 MR. GOODWYN: Fourteen through 20.

23 THE COURT: Fourteen through 20. And so from
24 the county, is there any objection for admissibility
25 of 14 through 20?

1 MR. GOODWYN: Do you want to see the redacted
2 versions before you say that?

3 MR. DAVIDSON: Yes, please.

4 MR. GOODWYN: Here you go.

5 THE COURT: All right. Do you have any
6 objections to 14 -- plaintiff's proposed 14 through
7 20?

8 MR. DAVIDSON: Well, Your Honor, for what they
9 stand for, it -- it -- it is simply a bid bond
10 request. It doesn't correlate into ---

11 THE COURT: I'm not asking for an explanation.
12 Do you have an objection?

13 MR. DAVIDSON: Well, I would object to it as
14 irrelevant, first of all. I don't think that -- I
15 don't think it complies with -- I don't think it
16 makes any -- anything that's at issue in our case
17 more or less likely by coming in.

18 THE COURT: What's -- what's the relevance of
19 these, please, sir?

20 MR. GOODWYN: It shows the damages, the harm
21 that's been caused to him.

22 THE COURT: How does it show -- how does it do
23 that?

24 MR. GOODWYN: It shows the efforts that he's
25 made to try to get new work after this and because

1 of the -- the actions ---

2 THE COURT: Is there any other evidence other
3 than jury speculating that the reason he didn't get
4 these jobs is because of this that you're going to
5 present?

6 MR. GOODWYN: We have the termination letter
7 that was not issued, the file on his bond claim, the
8 bond claim which is part of this, which is a -- a
9 big part of this.

10 THE COURT: I'm sorry?

11 MR. GOODWYN: The county filed a claim on his
12 bond. And because he had a claim on his bond, he
13 couldn't get new bonds. And he had -- so that --
14 that's -- that's the big issue here. He was unable
15 to get a bond in the future because of the bond
16 claim. They claimed he breached the contract.

17 THE COURT: I know that that's what you're
18 saying, but is there any evidence of that? I mean,
19 is there anything that says that the reason we're
20 not giving him a bond is because of this bond claim.
21 Right now from what I'm hearing, it's just we've got
22 to speculate that's the reason.

23 MR. GOODWYN: Well, his testimony is that he's
24 denied these bond claims and the document that we
25 just entered into evidence about this UCC claim.

1 This is -- this is -- goes directly to that.
2 Exhibit 12, his bonding company was saying the
3 answer from the surety companies, we'll -- we'll
4 consider your bond request once the UCC is removed.

5 THE COURT: Let me see it.

6 MR. GOODWYN: (Complying.)

7 THE COURT: What's the UCC-1?

8 MR. GOODWYN: That's when the -- it's a filing
9 you file, so basically the world can see what you're
10 saying about somebody. They filed a bond claim and
11 they chose to file it with the UCC. And anybody
12 that's looking up your, essentially, credit as a
13 business. It's like a credit score for a business.
14 They can look and see an outstanding claim.

15 MR. DAVIDSON: If I could, you said -- do you
16 mean the county filed?

17 MR. GOODWYN: Yes.

18 MR. DAVIDSON: The county didn't file a UCC on
19 anything. That's not what they did. They -- they
20 put the bonding company on notice. The county
21 doesn't file UCC-1s. It doesn't have a security
22 interest in it. It makes a claim.

23 MR. GOODWYN: But the e-mail indicates it's
24 related to the case, though.

25 THE COURT: It doesn't say that. It just says

1 UCC-1. Well, sorry, it does say ---

2 MR. GOODWYN: But it appears this relates to
3 the Toxaway Cleanup Project.

4 THE COURT: Who is this?

5 MR. GOODWYN: That's his bonding company.

6 Direct Surety is his bonding company.

7 MR. DAVIDSON: Your Honor, if there is a UCC-1,
8 it was not filed by the county. There's not a UCC-1
9 that I've seen. Now, there's a couple of thousand
10 pages of documents. I'm not seeing UCC-1 on this at
11 all.

12 MR. GOODWYN: I -- I don't -- I don't have it.
13 I just know that the surety company based their
14 decision on the UCC-1, which they say is related to
15 this case.

16 THE COURT: Well, I mean, that's what they say?

17 MR. DAVIDSON: Well, that's also hearsay.

18 THE COURT: Hearsay, or, I mean, you're
19 stipulating. Right now, what cause of action are
20 you asking for these damages for?

21 MR. GOODWYN: This is part of the breach of
22 contract.

23 THE COURT: What breach of contract can you get
24 them for? Right now, you have a breach of contract
25 for the mediation contract. You have breach of

1 contract for the East-West contract. Breach of
2 contract for the Toxaway contract. And loss of
3 future work does not fall under any recognizable
4 damages for any of those breach of contract cases.

5 MR. GOODWYN: It's a consequential damage.

6 THE COURT: Sir?

7 MR. GOODWYN: I would argue it's a
8 consequential damage to the -- to the breach of
9 contract.

10 THE COURT: No, sir. I'm -- you can give me a
11 case that says it is, I'll look at it, but I don't
12 think it's recognizable damages for those causes of
13 action.

14 MR. GOODWYN: I think ---

15 THE COURT: And you have somebody -- listen,
16 there's all kind of problems. There's this guy.
17 Are you going to stipulate to this being admissible
18 or not? It's UCC-1. Hearsay. It's all kind of
19 issues out here, guys. I'm just telling you, I
20 looked at it. That's why I wrote it down a minute
21 ago, the contract, either causes of action. And I
22 just don't -- unless you can give me some authority
23 that's something you can get as a result of the
24 breach of contract, then ---

25 MR. GOODWYN: I can -- I can do some research

1 at the break on that ---

2 THE COURT: Okay.

3 MR. GOODWYN: --- but my understanding is you
4 can always get consequential damages from a breach
5 of contract. I think that's pretty -- pretty well
6 established in the law. You know, the contract
7 itself, it may provide for specific damages, but if
8 the breach causes you other harm in other ways, then
9 you're entitled to that.

10 MR. DAVIDSON: Your Honor, and I'll pull up --
11 I don't know that I pulled up the right case. For
12 any sort of lost profits, and I guess that's what
13 we're talking about here, to be -- to be
14 recoverable, they've got to be between the parties
15 and to the contract. They're going to have to be
16 foresee -- reasonably foreseeable as a consequence
17 of a breach.

18 And most of those claims are lost profits
19 between two parties where one breaches the thing
20 that's going to create the -- like the item that's
21 going to create the profit. So you breached, that
22 project doesn't go forward, and the other party is
23 able to get the profits or at least argue that they
24 can get lost profits based on that.

25 We're a total step removed from that. It's not

1 lost profits on either East-West or Toxaway for the
2 mediated settlement. It's lost profits on work that
3 he has to go bid for and get and then make a profit
4 on. So on top of it not being lost profit, it's
5 then incredibly speculative to ever get to that
6 point.

7 THE COURT: Well, first, I don't think it's
8 recognizable. Second, that's -- it's a hearsay
9 statement from somebody else coming into this case.
10 You haven't raised that so, obviously, that's not a
11 concern of yours. But in my mind, it just doesn't
12 go as to one of your recognizable damages. Now, if
13 you prove me wrong, I'm glad for you -- to give you
14 an opportunity to do that.

15 MR. GOODWYN: Okay. At lunch, I'll look up
16 some cases.

17 THE COURT: Or -- and you may not want to do
18 this. I'm going to give you the option. You can
19 put it in evidence. If I find it's not, I'm going
20 to strike it and I'll tell the jury to strike it.

21 MR. GOODWYN: Okay. So I'll proffer it
22 essentially? Is that what you're saying?

23 THE COURT: I think at this juncture, if you
24 want to admit it, you're saying -- your -- your
25 objection is based on relevance?

1 MR. DAVIDSON: Yes, sir. The initial objection
2 was based on relevance. Now, later on, we did -- I
3 mean, as we're talking about this I understand, but
4 the issue as to the UCC-1, I think, is -- is also, I
5 mean, it's also troubled by hearsay. I think it
6 violates the hearsay rule, but, yeah -- but I think
7 it's -- and it's also relevant to that and it goes
8 to damages that are not recoverable under these
9 causes of action.

10 THE COURT: Proffer it right now.

11 MR. GOODWYN: Okay. I was really going to ask
12 him no more about these 14 through 20 as I did 13,
13 and just say these are bond bids that you made and
14 didn't get the jobs for. That's really all I was
15 going to say about those.

16 THE COURT: Other than that one -- first, we
17 had a bench -- I just want to put this on the
18 record. Under Exhibit 13, we had a bench meeting
19 that there was an objection to the handwritten notes
20 which were redacted, and then they're admitted after
21 that. The current objection is to Exhibit 14 ---

22 MR. GOODWYN: Fourteen through 20.

23 THE COURT: Well, the only one I'm looking at
24 right now is 14, right, that has that neighbors
25 saying the UCC-1 ---

1 MR. GOODWYN: No. That was the previously
2 admitted -- that -- that was Exhibit 12 that was
3 previously admitted, and I was just using that to
4 support my argument that these are relevant.

5 THE COURT: That's already in the record?

6 MR. GOODWYN: Twelve is, yes. That -- that
7 document, the e-mail.

8 THE COURT: I have it written down as 14.

9 MR. GOODWYN: This is 14 through 20.

10 THE COURT: That's 12.

11 MR. GOODWYN: Right.

12 THE COURT: Twelve is admitted without
13 objection.

14 MR. GOODWYN: Right.

15 THE COURT: Okay. Well, if it's admitted
16 without objection, then you can go ahead. Now, look
17 at -- as to 14, did you look at 14 through 20 to see
18 if he can put that into evidence?

19 MR. DAVIDSON: Yes, sir. I looked at those.

20 THE COURT: Any objections?

21 MR. DAVIDSON: Yes, sir.

22 THE COURT: What is your objection?

23 MR. DAVIDSON: Your Honor, the same objection
24 we mentioned earlier. I believe it's -- it's
25 irrelevant to this matter. The -- to the extent

1 they contain hearsay, we have objections to that.
2 And that it goes to a -- a type of damage that is
3 not recoverable under these causes of action.

4 THE COURT: May I see them, please, sir?

5 MR. GOODWYN: (Complying.)

6 THE COURT: Do you take a position one way or
7 the other, Mr. McDade?

8 MR. MCDADE: Your Honor, I agree with
9 Mr. Davidson. I -- I -- I don't know how you can
10 testify that your -- your bond was denied because of
11 something that's not stated on the document. That's
12 clearly hearsay or speculation, but we don't know.
13 There may be other claims, any other issues with any
14 other entities out there.

15 THE COURT: Do you have anybody from the surety
16 company that you're planning on testify?

17 MR. GOODWYN: No, Your Honor.

18 THE COURT: Just him?

19 MR. GOODWYN: Yes, Your Honor. And this is --
20 keep in mind, this is a bond application that he
21 filled out himself. This is ---

22 THE COURT: Oh, I understand, but it had to be
23 rejected, right?

24 MR. GOODWYN: Right. And he -- he would
25 testify that they were rejected.

1 THE COURT: Well, he can say that they were
2 rejected, but he can't say ---

3 MR. GOODWYN: Fair enough.

4 THE COURT: --- why they were rejected. I
5 don't know that they're damages. I'm going to let
6 them in for the limited purpose of those were bond
7 applications he filed that were -- that -- that was
8 not accepted. He can't testify why. And I might
9 strike them from the record later if that's what you
10 want to do. You just take that chance. Okay?

11 MR. GOODWYN: Okay.

12 THE COURT: And that -- and the reason I would
13 do that, Mr. Goodwyn, is because it's -- it involved
14 claims or damages that are not recoverable.

15 MR. GOODWYN: Okay.

16 THE COURT: I don't know of any other reason I
17 would do that.

18 MR. GOODWYN: I'm going to paperclip these
19 together, just so we'll know they're with that
20 group.

21 THE COURT: Okay. So for the record, I've
22 admitted 14, 15, 16, 17, 18, 19, and 20 as being
23 bond bid applications by the plaintiff that were
24 rejected solely for that purpose.

25 (Plaintiff's Exhibit Nos. 14-20 were received

1 into evidence.)

2 MR. GOODWYN: Right.

3 THE COURT: Okay.

4 MR. GOODWYN: And I don't think we testified at
5 all about that. That may be the only question I'd
6 ask him.

7 THE COURT: I don't think he has either.

8 MR. GOODWYN: I'll just ask him that question.

9 THE COURT: All right. So at this juncture, I
10 guess, and I'll leave it up to you as to whether you
11 want to try to do it in front of the jury or not.
12 I'll leave it up to you. Okay. If you do and I
13 come back later and strike it, I'm going to tell
14 them why I did it.

15 MR. GOODWYN: Okay.

16 THE COURT: But you -- for the jury to consider
17 it, they're going to have to hear at some point,
18 right?

19 MR. GOODWYN: Right.

20 THE COURT: All right. Are we good? Any --
21 any issues from the county?

22 MR. DAVIDSON: It's going to be kind of hard to
23 un-ring the bell.

24 THE COURT: No. It won't be hard. I'll tell
25 them that I struck it because it's not relevant if I

1 find that's what it is.

2 MR. DAVIDSON: Okay.

3 THE COURT: In fact, my -- my view of it is
4 when you do that, it's kind of more detrimental than
5 not. Any other -- any other matters?

6 MR. GOODWYN: Just -- I was just thinking
7 scheduling. I'm not going to be too, too much
8 longer here. Wrap this up and go into some issues
9 about defamation claims.

10 THE COURT: Say that again.

11 MR. GOODWYN: The -- the defamation claims. I
12 haven't really asked him much about that. I need to
13 get into that. But other than that, we're getting
14 pretty close to finishing. I'd like to finish my
15 direct before lunch.

16 THE COURT: I'd like for you to, too.

17 MR. GOODWYN: Yes, sir.

18 THE COURT: All right. You ready to go?

19 MR. GOODWYN: Yes, sir.

20 THE COURT: Now, Mr. Davidson, are you going to
21 put anything on the record, Mr. Davidson?

22 MR. DAVIDSON: No, Your Honor. I'm okay with
23 your ruling.

24 THE COURT: Bring the jury in, please, sir.

25 (At 11:53 a.m., jury entered the courtroom.)

1 THE COURT: Alright, sir.

2 MR. GOODWYN: Thank you, Your Honor.

3 BY MR. GOODWYN:

4 Q. Russell, I was asking you some questions. I
5 had asked you one question about Plaintiff's Exhibit
6 13, this bid bond application. And there's -- we
7 marked and have admitted Exhibits 14 through 20,
8 which are additional bid bond requests; is that
9 correct?

10 A. Yes.

11 Q. All right. Are they similar to Exhibit 13?

12 A. They are.

13 Q. Okay. Were all of these denied, as well?

14 A. They were.

15 Q. Okay. All right. I want to ask you some
16 questions now. We're talking about the East-West
17 Project -- East-West Park Project and the Toxaway
18 Mill Project and the mediated settlement agreement
19 for the most part.

20 I want to ask you some questions now about your
21 claim of defamation against Rusty Burns, Matt
22 Schell, and Holt Hopkins. I just want to kind of go
23 in order. You -- I know we talked or at least we
24 discussed about in our open about this news report
25 in the Independent Mail. For those who don't know,

1 what is the Independent Mail?

2 A. It used to be a newspaper in Anderson. It's a
3 local newspaper.

4 Q. Okay. Do they -- do they issue news stories in
5 print or just on the internet or both or do you
6 know?

7 A. Both.

8 Q. Okay. This copy that we've marked as Defense
9 Exhibit 2. It looks like the internet version; is
10 that right?

11 A. Yes, sir.

12 Q. All right. And looks like it's dated
13 February 1, 2018. I don't know if you can see that
14 small on here.

15 A. I can see it.

16 Q. Okay. All right. And what is your issue with
17 Rusty Burns' response to this question about why
18 there are delays in the East-West Connector Project?

19 A. Well, my issue was -- my issue was even coming
20 across it. I can't remember if somebody brought
21 it -- I want to say somebody brought it to my
22 attention that -- that had seen it. I don't follow
23 the Independent Mail personally a lot, but not these
24 days anyway. So I think somebody mentioned it to
25 me. I can't remember if they sent it to me or what

1 to let me know ---

2 Q. Okay. Well, regardless of how you got it ---

3 A. Right. Well, so it was an answer to the
4 question is what it was. It was actually the entire
5 title of the article, which says, "What happened to
6 the East-West Connector Park?" ---

7 Q. Okay.

8 A. --- and then the question and the subsequent
9 answer.

10 Q. Okay. And what about the answer do you contend
11 impuned your reputation -- or your company's
12 reputation?

13 A. Well, it says in the second paragraph that
14 there have been disputes with the contractor. And
15 the part of that that I have a problem with is that
16 they're pointing the finger of blame at us, the
17 contractor, for the problems with the park. And,
18 clearly, was not our -- you know, our fault that
19 there were issues with that park, but it also says
20 that they're being resolved, but they were not. And
21 they were not being resolved.

22 Q. Okay. And, in fact ---

23 A. So that's not -- that's not a true fact. You
24 know, that's not a true statement.

25 Q. Okay. Then it goes on to say, "There have been

1 issues with rights-of-way sewer lines, and last week
2 the area was resurveyed to make sure it was
3 compliant with the Americans with Disability Act.

4 Now, the issue -- the comment about it being
5 resurveyed and the Americans with Disability Act
6 issue, that was -- that's true. It was resurveyed
7 because of issues, correct?

8 A. Well, that -- well, that didn't -- well, I
9 guess in a way that part of that is true is kind
10 of -- it says issues with rights-of-way. I'm just
11 assuming that's probably that encroachment permit
12 issue I had talked about.

13 Q. Well, right. But my point here is, that
14 comment about the Americans with Disability Act and
15 a resurvey, that wasn't about you. That was more of
16 a comment towards the architect who may've not
17 surveyed it correctly. Is that -- is that fair? Or
18 are you taking issue with the resurvey comment?

19 A. I mean, I believe that was a true statement.
20 It was being resurveyed.

21 Q. Okay.

22 A. Yeah.

23 Q. All right. So it sounds like you're -- you're
24 saying your issue is that the first thing -- the
25 first problem is the contractor?

1 A. Right.

2 MR. MCDADE: Your Honor, I object to
3 characterizing his testimony. He can answer the
4 question.

5 THE COURT: I sustain that.

6 BY MR. GOODWYN:

7 Q. All right. I'm going to move on then to the
8 defamation issue you have with Matt Schell. We've
9 talked about this e-mail. Mr. Shell's attorney
10 talked about this e-mail chain in his opening. It's
11 a long e-mail chain between Matt Schell, Natasha
12 Sexton, Glen Brill, Paul Holden with your company,
13 Robert Carrol, and Rusty Burns; is that correct? At
14 least that's who's on this portion of the thread.

15 A. That's correct.

16 Q. All right. It is a long multipage e-mail here.

17 THE COURT: What exhibit number is that?

18 MR. GOODWYN: This is Defense Exhibit 4.

19 BY MR. GOODWYN:

20 Q. And we can go through this in as much detail as
21 you want, but I just want you to explain to the jury
22 what your issue with Matt Schell is, why you believe
23 he's defamed you in this e-mail?

24 A. Okay. Well, that -- like read -- reading the
25 entire e-mail, I kind of -- I kind of remember the

1 e-mail. So my issue with Matt Schell was, this is
2 the first time I'd ever worked with Matt Schell at
3 Anderson County. He works for the parks department.

4 And it seemed like from the -- I guess day one
5 that, you know, there -- we had changes that he
6 wanted to -- he -- I -- I don't know. He wanted to
7 make all these changes to the type of plannings, and
8 then we have a change order one before we even
9 stepped foot on the job, you know, that he wanted to
10 do. And when we're out there, it seemed like
11 everything that we did, I mean, this is not our
12 first landscaping job or park job.

13 Q. Right. Can I interrupt you for just a second?
14 I want to ask you a little background question so
15 the jury kind of understands the relationship with
16 you and Matt Schell and how that developed. You
17 testified Matt Schell was the original project
18 manager, correct?

19 A. Correct.

20 Q. Did he -- was he replaced by someone else at
21 some point during the project?

22 A. He was.

23 Q. Who was he replaced by?

24 A. Brian Richardson.

25 Q. Okay. And do you know why he was replaced?

1 MR. MCDADE: Objection, Your Honor. He's not a
2 part of that process.

3 THE COURT: What's your response?

4 MR. GOODWYN: Did you receive any
5 information ---

6 THE COURT: No, sir. No, sir. What is your
7 response to his objection?

8 MR. GOODWYN: Well, I will withdraw that
9 question then and just ask a new question.

10 THE COURT: Okay. It's sustained. Thank you.

11 BY MR. GOODWYN:

12 Q. Did you receive any information about why Matt
13 Schell was removed and Brian Richardson took his
14 place?

15 MR. MCDADE: Objection, Your Honor. That would
16 be hearsay.

17 MR. GOODWYN: Well, no. I would ---

18 THE COURT: Sustained. Hold on. Is that Matt
19 Schell?

20 MR. GOODWYN: Pardon?

21 THE COURT: Did you say -- is your question the
22 Mr. Schell comments? Ask your question again.

23 MR. GOODWYN: Yeah, I asked if he received any
24 information about why Matt Schell was removed and
25 Brian Richardson ---

1 THE COURT: I will sustain that. Rephrase your
2 question, please.

3 BY MR. GOODWYN:

4 Q. All right. Did you -- was your relationship
5 with Matt Schell strained?

6 A. It was.

7 Q. Do you believe that contributed to why he was
8 replaced as project manager?

9 A. I do.

10 MR. MCDADE: Objection, Your Honor. He's
11 leading him now.

12 THE COURT: Sustained.

13 BY MR. GOODWYN:

14 Q. All right. All right. Well, go ahead. Go
15 ahead and continue. I interrupted you going down
16 that line. You were explaining why you believed
17 this e-mail is -- was defamatory towards you?

18 A. Well, there were a lot of e-mails back and
19 forth between myself and Matt early on regarding ---

20 Q. And I'm not asking about those. I'm talking
21 about this e-mail. You know, but go ahead.

22 A. I'm just trying to establish the relationship.

23 Q. Yeah, sure.

24 A. So kind of where -- how we got to where we got
25 to. There were a lot of things that he -- he wanted

1 that -- like plants -- like trees and plants that
2 they had specified in the original drawings that --
3 we had like, I think, three or four different
4 nurseries that we worked with that we bought plants
5 from. And -- and they all were telling us, hey, we
6 don't have this or we can't get it. It's something
7 that was different about the species, you know, or
8 they couldn't get it in that size or something like
9 that. We would go back and forth with Matt, and
10 he's, you know, acts like he knows where to get
11 them.

12 I said, "If you know where to buy it, we'll buy
13 it from there, you know." It was things like that.
14 So it was just kind of a lot of back and forth that
15 usually when we'd go do a job, I mean, you know, we
16 just -- everything is specified the way it's
17 specified and it's pretty easy to get. Like I said,
18 we've done several parks before this one.

19 And, anyway, so through that and then through
20 the ADA issues, which like I said, he is the one who
21 called Ms. Sandy out there to inspect everything.
22 That created more of a strain, and there was a lot
23 of finger pointing there at us like it was our
24 fault. And, you know, we were adamant that
25 ourselves -- it wasn't our fault and we were trying

1 to explain that to them and that's why we were
2 having these meetings with them to try to say, hey,
3 we didn't design the park. You know, we just built
4 it. We're just the contractor building it, you
5 know, so don't blame us for it.

6 And things like in this e-mail right here, I'm
7 just looking at a part of it, but I see something
8 about and he made a really big deal about this out
9 there on the job. We were planting these trees and
10 the root ball was up out of the ground a little bit
11 and we did that for a reason because we're the
12 grading contractor, grading -- grading the work, you
13 know, moving the dirt around.

14 And we knew that there was a sidewalk that had
15 to go be installed at that area, and we were
16 installing it. Usually, you install the root balls
17 in the finish grade, you know, or just a -- just a
18 little bit higher sometimes or lower, you know,
19 depending on the slope a lot of times. So he would
20 be out there on the job more or less trying to tell
21 us how to do our job.

22 And I didn't think that that was his place to
23 do that. You know, what I mean? If there's an
24 issue with the work, you know, let us know, but, you
25 know, he's out there trying to tell my guys exactly

1 how to do things. And so, anyway, that -- that
2 created a strain.

3 So we had a lot of back and forth e-mails
4 about, you know, things like that and about the
5 change orders where he didn't think that what we
6 were charging for the change orders was fair and,
7 you know, and he was trying to get us to assume some
8 of the cost for having to tear some of the concrete
9 out and replace it. And, I mean, I just told him we
10 were not going to do that. You know, it wasn't our
11 place to.

12 Q. Do you -- do you believe Matt Schell in any way
13 mischaracterized your work or your -- your
14 performance on the job in this e-mail?

15 MR. MCDADE: Your Honor, again, that's a
16 leading question, and he hasn't answered anything
17 about what he says the defamation at this point.

18 THE COURT: I sustain your objection.

19 BY MR. GOODWYN:

20 Q. All right. What about this e-mail do you
21 contend is defamatory towards you personally or
22 Moats Construction?

23 A. Well, he's working with an employed contractor
24 by the county, for one, and he's telling them, you
25 know, agreeing with her. Also, because they were

1 working together that we were the problem and we
2 were the issue and we were the cause of other issues
3 on the project.

4 Not only that, but all of these other people
5 that are copied in this e-mail that work for the
6 county.

7 Q. And did you dispute those positions?

8 A. Yeah, we did.

9 Q. Okay. When Matt Schell was saying you're
10 the -- you're to blame for this, that, and the
11 other, these issues raised on you, and you're --
12 you're disputing them?

13 A. We did.

14 Q. Are you claiming that -- that was defaming you?

15 A. We did, yeah, because they were pointing the
16 finger at us and they're making a false, you know,
17 false accusation against us in kind of a malicious
18 way.

19 Q. Okay. All right. Fair enough. All right. Is
20 there anything else you wanted to add about Matt
21 Schell and your defamation claims as to Matt Schell?

22 A. Just that there's more than just that e-mail.

23 There was -- there were some other e-mails,
24 different, I think, county vendors and contractors
25 and regarding Matt Schell.

1 Also, there were some other FOIA requests that
2 we made that were -- that we didn't get information
3 back or they were denied.

4 Q. All right.

5 A. We don't have all of that information that we
6 would like to have.

7 Q. All right. I'm going to show ---

8 MR. DAVIDSON: Your Honor, can we approach?

9 MR. GOODWYN: I'm sorry.

10 THE COURT: Hang on. Do you have an objection?

11 MR. DAVIDSON: Yes, I do. Could we approach?

12 THE COURT: Yes, sir.

13 (Sidebar discussion.)

14 THE COURT: Ladies and gentlemen of the jury,
15 I'm going to ask that you disregard anything about
16 FOIA, which is Freedom of Information Act. That is
17 something that's not a jury question. It's not
18 before this case, and so any testimony on that is
19 not relevant to this hearing whatsoever.

20 I'm going to ask you, please, sir, don't
21 mention that.

22 THE WITNESS: Okay.

23 BY MR. GOODWYN:

24 Q. All right. Mr. Moats, I'm going to direct your
25 attention to what's been marked as Defendant's

1 Exhibit 3. It's an e-mail chain with Matt Schell,
2 Joyce Mosstetler, Leon Harman, Rusty Burns, April of
3 2017, April 13th of 2017. What issues do you take
4 with this -- with this e-mail chain with respect to
5 Matt Schell?

6 A. So Matt wanted to purchase a certain type of
7 picnic table from a certain company.

8 Q. Sure.

9 A. A picnic table that he liked. I don't know if
10 he used it on some other parks or what it was. So
11 -- and I don't believe the picnic tables were even
12 in our contract, but I think he was adding that to a
13 change order or something. I really don't remember
14 exactly.

15 So the people at this, I think they're out of
16 Columbia. They had shipped these picnic tables for
17 the project and Matt wanted us to pay for them, but
18 he hadn't paid us for them. And so he's -- he's
19 going back to Ms. Joyce and telling her -- I can't
20 remember exactly what. I -- I guess it's not here,
21 I don't think. It may let you scroll down. Yeah,
22 the issue between the contractor and the sub who is
23 providing the picnic tables. They were not even our
24 sub. I mean, there was no issue. We just -- they
25 haven't been paid because we had not been paid. So,

1 I mean, he's trying to make it out like we don't pay
2 our bills.

3 Q. Okay. And you believe that ---

4 A. You know, we don't pay our bills. We're ---

5 Q. All right. And you believe that was false and
6 defamatory? Is that what you're saying?

7 A. Yes, sir, I do.

8 Q. Okay. All right. Do you believe that these
9 false and defamatory statements by Matt Schell have
10 tarnished your reputation?

11 A. Absolutely.

12 MR. MCDADE: Your Honor, again, he's leading
13 the witness.

14 THE COURT: Sustained. Please rephrase your
15 question.

16 MR. GOODWYN: But, Your Honor, that's the --
17 that's the -- that's the question for defamation.
18 He has to -- he has to testify his reputation was
19 hurt.

20 THE COURT: Just rephrase the question.

21 BY MR. GOODWYN:

22 Q. Do you believe your reputation has been hurt by
23 these statements from Matt Schell?

24 A. Yes, it has.

25 Q. And you're -- you're asking the jury to award

1 you a fair amount for the injury to your reputation?

2 A. Yes, sir.

3 Q. All right. Let's talk for a minute about Holt
4 Hopkins. I know you brought a defamation claim
5 against Holt Hopkins. What do you contend Holt
6 Hopkins did to defame you?

7 A. I believe Holt Hopkins removed our logo -- or
8 he didn't remove it, but he painted over our logo on
9 a job.

10 MR. MCDADE: Your Honor, it's the objection
11 that you ruled on earlier.

12 THE COURT: Unless you establish that he did
13 that, everything I've heard so far, nobody knows who
14 did it so I'll sustain your objection.

15 MR. GOODWYN: Simply because Holt Hopkins
16 denies it doesn't mean he can't ---

17 THE COURT: No, sir. You can't testify to some
18 speculation, unless you have some basis for it.

19 MR. GOODWYN: All right.

20 THE COURT: Everything I've heard so far,
21 nobody knew who did that, right?

22 MR. GOODWYN: No, it -- correct.

23 THE COURT: Correct, sir?

24 MR. GOODWYN: Correct.

25 THE COURT: Okay. I sustain the objection.

1 BY MR. GOODWYN:

2 Q. Okay. Let me ask you this: At the time --
3 well, first, let me go back and ask you. When did
4 you first notice that the Moats Construction logo
5 had been painted over on the sign out front of the
6 East-West Park Project?

7 A. Yeah, I -- I think it was right when we were --
8 it was right after we had left and pulled off the
9 job.

10 Q. Okay. And who had been the project manager up
11 to that point?

12 A. He was.

13 Q. Who's "he"?

14 A. Holt Hopkins.

15 Q. Okay. All right.

16 A. So we went from Matt Schell to Brian Richardson
17 with Natasha Sexton being the contract
18 administrator. And then Holt Hopkins, so he was the
19 last man on the job that I dealt with.

20 Q. Okay. Right up through the mediated settlement
21 agreement, correct?

22 A. Correct. And our logo had remained on that
23 project sign throughout the duration of the project
24 through all those other people.

25 Q. Well, I'm sorry. Let me -- let me back up.

1 Let me make sure we're clear on this. Matt Schell
2 was your original contact project manager, correct?
3 Is that right?

4 A. Correct.

5 Q. And then Brian Richardson took over from there?

6 A. Correct.

7 Q. He took it up to the mediated -- to the
8 mediation. And then Holt Hopkins picked it up after
9 the mediation; is that right?

10 A. Correct.

11 Q. Okay. So I just want to make sure we got that
12 right. Why do you think the sign being painted over
13 hurts you or Moats Construction's reputation?

14 THE COURT: Don't answer that.

15 MR. MCDADE: Objection, Your Honor. It calls
16 for speculation.

17 THE COURT: I sustain that objection.

18 MR. GOODWYN: Well, I mean, he can't describe
19 why he believes he's been defamed?

20 THE COURT: Just one second. Madam forelady,
21 I'm going to bring up some information I need to
22 discuss with them outside of your presence, please.

23 THE FORELADY: Yes, sir.

24 (At 12:14 p.m., jury left the courtroom.)

25 THE COURT: Mr. Goodwin, just because your

1 client believes it does not mean it's not
2 speculation.

3 MR. GOODWYN: Well, I wasn't asking that
4 question there. I was just asking ---

5 THE COURT: Yes, you were because I just -- he
6 just objected to it.

7 MR. GOODWYN: Well, I think -- well, let me ---

8 THE COURT: You asked him why does he think the
9 -- the thing was painted over, and then he objected
10 to that question.

11 MR. GOODWYN: No. The question at least I
12 thought I asked -- the question I was trying to
13 ask ---

14 THE COURT: Hang one. What was your
15 question -- what was your objection to the question?

16 MR. MCDADE: When he said, "What do you think
17 was the reason that was painted over?"

18 THE COURT: Right.

19 MR. MCDADE: It's the same one we had earlier.

20 MR. GOODWYN: That's not what I asked. Well, I
21 didn't mean to. If I asked that, I didn't mean to
22 ask it.

23 THE COURT: That is what you asked.

24 MR. GOODWYN: Then I withdraw that question
25 because I didn't mean to ask that question.

1 THE COURT: All right. Ask the question now,
2 and let's hear what you're going to say.

3 MR. GOODWYN: Yeah, I was asking, "Why do you
4 believe ---

5 THE COURT: Ask the question of him.

6 MR. GOODWYN: Right.

7 THE COURT: I meant ask him.

8 MR. GOODWYN: Right. Why do you believe that
9 with your logo being painted over, how does that
10 hurt your reputation?

11 THE WITNESS: May I answer?

12 MR. MCDADE: That's two.

13 THE COURT: Hang on. I think that if he says
14 the logo being painted over, he can say how that
15 hurts his reputation. I think that's different than
16 why was it painted over. That's a totally different
17 issue.

18 MR. MCDADE: It may be, but he may take the
19 ball and run with it and tell us why he does think
20 that.

21 THE COURT: Sir?

22 MR. MCDADE: He make take the ball and run with
23 it like he's done on several other questions and
24 tell us why, who he thinks did it ---

25 THE COURT: That's why we're doing the proffer

1 outside the presence of the jury right now. Okay?

2 MR. GOODWYN: I think a curative instruction.
3 You can instruct him not to go down that road.

4 THE COURT: No. Let's just ask him the
5 question asked and see where he goes. Okay? Ask
6 him the question again, please, sir.

7 MR. GOODWYN: Oh, how do you think your logo
8 being painted over affected your reputation -- you
9 or your company's reputation?

10 THE WITNESS: Well, because, you know, we had
11 been on the job for as long as we had and it had
12 been up there and then all of a sudden it was
13 removed. I would say, obviously, it was removed.
14 It wasn't painted over and, you know, in some way
15 that looked like a graffiti or something like that.
16 It was painted over to make it look like it was
17 removed, like we were removed from the job.

18 THE COURT: You can't go into why it was
19 painted over and what the meaning of it being
20 painted over. That's all speculation. He can say
21 what he thinks it did to his business.

22 MR. MCDADE: Your Honor, except if he gets into
23 any specifics. I sent interrogatories and request
24 to admit asking for financial records, all of
25 those -- tax returns and all of those things, I

1 never got an answer to it.

2 THE COURT: Well, that's a different objection.
3 What is your objection on that?

4 MR. MCDADE: If he's going to start talking
5 about a number based on anything to do with his
6 business, I asked for those things in discovery and
7 didn't get them. I asked him first thing for all
8 the damages and materials. I asked for specifically
9 what he thinks is defamation. I never got diddly
10 squat, except for that one newspaper article.
11 That's the only thing I got.

12 Then we got to his deposition, and he said,
13 "Oh, I got some e-mails." And he went out to his
14 truck and he said he had ten or two boxes or
15 whatever. He came back with those two e-mail
16 chains. So there's been a lot of time since his
17 deposition for them to produce whatever e-mails,
18 financial records, and other documents. So I'm here
19 today, we're trying the case, and I object to
20 anything that I didn't get in discovery.

21 THE COURT: I would sustain that. Are you
22 intending to bring up numbers as a result of this
23 business -- lack of business or being painted
24 over -- the sign being painted over?

25 MR. GOODWYN: No, Your Honor. I'm asking --

1 I'm going to ask the jury for a fair amount for the
2 injury to his reputation. I can't -- you know, it's
3 very difficult to quantify.

4 THE COURT: Let's just be clear with what we're
5 going to bring up, okay, so we don't do it in front
6 of the jury. I'm going to sustain any and all
7 objections as to why it was painted over.

8 MR. GOODWYN: Don't go into that.

9 THE COURT: I'm going to sustain the objections
10 as to a monetary figure resulting from that being
11 painted over. I'm going to allow him to testify
12 that he thought it hurt his business reputation and
13 why he thinks that. Okay. And then you're going to
14 stop right there. Okay. Everybody clear?

15 MR. GOODWYN: Yes, sir.

16 MR. MCDADE: And I don't want to object any
17 more.

18 THE COURT: I want you to object all you want
19 to.

20 MR. MCDADE: No, no, no, no. I'm not -- I
21 don't want him making me out to be a jumping jack
22 over and over and over again. So, you know, ask the
23 questions we talked about and we're good.

24 THE COURT: All right. Okay. Are we good?
25 Mr. Davidson, anything you want to add to this

1 fracas?

2 MR. DAVIDSON: No, sir. I'm good.

3 THE COURT: Thank you. All right. Would you
4 bring the jury back?

5 (At 12:20 p.m., jury entered the courtroom.)

6 THE COURT: All right. Madam forelady, ladies
7 and gentlemen of the jury, at the beginning of the
8 trial, I told you that lawyers have an obligation to
9 object. In this case, it's no different than any
10 other case. The fact that there are objections and
11 to the extent I let you see my rulings on them,
12 again, I'm going to remind you it's not proper for
13 the jury's deliberations. That's part of the
14 process. Okay. Very good. You may proceed.

15 MR. GOODWYN: Thank you, Your Honor.

16 BY MR. GOODWYN:

17 Q. Mr. Moats, I was going to ask you: How do you
18 believe that your logo -- your company's logo being
19 painted over on that sign affected your
20 reputation -- your company's reputation?

21 A. Well, because it had been out there on the sign
22 for as long as it had and all of our equipment had
23 been on the job and just general knowledge that the
24 public had of who was doing the project, working on
25 the project, especially, for as long as it -- it

1 was. You know, for it to be removed, whoever
2 removed it or whatever happened to it, I mean, it's
3 a high -- it's a very busy intersection. One of the
4 busiest, you know. I don't know if it's the
5 busiest. I'm sure it's not the busiest in the -- in
6 the county, but it's a very busy intersection,
7 East-West Parkway and Kings Road, for everybody who
8 lives in Anderson County, I think a lot of people --
9 the majority of people know where that's it. Not
10 far off of Clemson Boulevard. Not far -- too far
11 off Concord Road and Highway 81 North. All very
12 busy and heavily traveled areas in the county. The
13 sign's right out there on -- right out there on the
14 corner of the intersection.

15 And for that -- for something like that to take
16 place, I mean, not only did the county employees
17 that worked for the county have to ask questions
18 about why that may have happened and the county
19 employees a lot of people. One of the largest
20 employers in the county, I believe, is Anderson
21 County. And -- but not only their employees, but
22 also the general public, you know, which are a lot
23 of our customers, you know, or have been in the
24 past, potentially could've been in the future. You
25 know, for them to see something like that is -- I

1 mean, I just -- I know what my impression would be
2 if I -- if I saw something like that and what I
3 would -- I'd be wondering what happened, you know.

4 MR. GOODWYN: Okay. All right. All right,
5 Your Honor, I believe that's all I have for now.

6 THE COURT: All right. Very good. Let me see
7 the attorneys up here right quick, please.

8 (Sidebar discussion.)

9 THE COURT: All right. Madam forelady, just
10 working on logistics. I think we've reached a good
11 place to go ahead and call time of lunch break. I'm
12 going to ask that you be back in your jury room at
13 2:00 o'clock. We will resume testimony.

14 If you're taking notes, leave your notes in the
15 jury room. And I'll remind you not to speak amongst
16 yourselves or anybody about the case. We'll see you
17 back at 2:00 o'clock.

18 (At 12:24 p.m., jury left the courtroom.)

19 THE COURT: You can step down. I'm going to
20 remind you just -- you know the rules. Just don't
21 talk to anybody about your testimony.

22 THE WITNESS: Yes, sir.

23 THE COURT: All right. Gentlemen, any matters
24 from the plaintiff before we break for lunch?

25 MR. GOODWYN: No, Your Honor.

1 THE COURT: From the defense?

2 MR. DAVIDSON: No, Your Honor.

3 MR. MCDADE: No, Your Honor.

4 THE COURT: All right, guys, 2:00 o'clock. If
5 y'all want to stay in here over the lunch break, you
6 can.

7 MR. GOODWYN: I'm going out.

8 MR. DAVIDSON: Yes, sir, if we can.

9 THE COURT: You do want to stay?

10 MR. DAVIDSON: Yes, sir. If that's alright.

11 THE COURT: He says at the end of the trial,
12 you got to take him out to lunch.

13 MR. DAVIDSON: Yes, sir.

14 THE COURT: All right. See y'all at 2:00
15 o'clock.

16 (From 12:24 to 2:01 p.m., lunch recess.)

17 THE COURT: Mr. Goodwyn, anything before we get
18 started?

19 MR. GOODWYN: No, Your Honor.

20 THE COURT: From the county?

21 MR. DAVIDSON: No, sir.

22 MR. MCDADE: No, Your Honor.

23 THE COURT: By the way, I looked at it over
24 lunchtime. Future lost profits supposed to be an
25 element of -- what's the damages -- consequential

1 damages, loss of profit found, so I stand corrected.
2 All right. Any -- anything? No? Let's go ahead
3 and bring the jury in, please.

4 (At 2:02 p.m., jury entered the courtroom.)

5 THE COURT: If you'd come back around, please,
6 sir?

7 THE WITNESS: Yes, sir.

8 THE COURT: You're still under oath. County,
9 you're up for cross-examination.

10 MR. DAVIDSON: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. DAVIDSON:

13 Q. Hey, Mr. Moats. How are you?

14 A. Good.

15 Q. I want to walk you through just some of the
16 contract provisions, okay, some of the original ones
17 because although we have the mediated settlement
18 agreement, which I think takes care of most of the
19 issues and I think you testified to that, you did --
20 there were some disagreements during the project if
21 you agree. Tell me if you agree with this. There
22 were some disagreements with the project maybe over
23 retainage or inspection of and review of the pay
24 applications; is that fair?

25 A. I don't know if it's retainage. I don't think

1 there was any issues until the end, like after the
2 mediated settle -- settlement agreement because we
3 would -- we would not have gotten the retainage
4 until the project was closed out.

5 Q. Okay. Do you recall any e-mails where you said
6 that there was really no reason to continue to keep
7 retainage?

8 A. As long as the project -- seems like I do
9 remember something to that effect because they were
10 holding 10 percent. And I believe the required
11 amount for public projects was like 3.5 percent or I
12 think that's what's required maybe by the state
13 engineer's office, so that was part of that I think.

14 Q. Okay.

15 A. And they were -- they were holding 10 percent.
16 And we had -- it had just been it -- it had gone on
17 so long. You know what I mean? If there was any
18 kind of issue they had with holding that amount for
19 that work that was -- had been accepted and
20 approved, you know, we're like if you can't pay us
21 anything, at least pay us, you know, that retainage
22 or portion of it.

23 Q. Okay. Let me -- let me ask you. I'm going
24 to -- I'm going to use exhibit -- it's Defendant's
25 Exhibit 1. I'm going to start off with Tab 3.

1 Okay.

2 THE COURT: Tab 3?

3 MR. DAVIDSON: Tab 3. Yes, sir.

4 BY MR. DAVIDSON:

5 Q. Mr. Moats, this one is -- this is not the
6 greatest copy in the world I understand, but do you
7 recognize this document?

8 A. I do.

9 Q. Okay. And it is the East-West contract between
10 you and Anderson County, right?

11 A. Yes, sir.

12 Q. And I said "you." Of course, I mean Moats
13 Construction. Is it okay if I refer to it that way?

14 A. Yes, sir.

15 Q. Okay. All right. So during the time prior to
16 the mediated settlement agreement, the contract is
17 what -- this contract is what directed your work,
18 correct?

19 A. This contract and the drawings.

20 Q. Okay.

21 A. The bill drawings.

22 Q. Okay. That's fair. Now ---

23 A. Well, if I can back up. This contract and the
24 specifications and -- and the drawings.

25 Q. Yes, sir. Yes, sir. You anticipated what I

1 was going to -- what I was going to ask you. So
2 the -- let me do a couple of preliminary things
3 first. So you -- well, you can't see it, can you?
4 I want to get you to look with me at paragraph 1.

5 Paragraph 1 -- paragraph 1 provides, "The
6 contractor shall fully perform and execute all of
7 the work. And then it just -- it calls it the
8 work -- described in the scope of work attached
9 hereto and incorporated by reference up to the
10 standards and in accordance with the specifications,
11 the drawings, attached collectively and incorporated
12 by reference;" is that -- is that correct?

13 A. It is.

14 Q. Okay. So you'll -- so that's -- that what --
15 that's how you know -- that's the work you're doing
16 is what's on the -- what's on the specifications and
17 the scope of work?

18 A. Correct.

19 Q. Okay. Now, for the first part of the work,
20 which was phase 1; is that right? You -- the first
21 part of the work that you did was phase 1?

22 A. Correct.

23 Q. Okay. And the phase 1 completion date would've
24 been December the 15th of 2016, right?

25 A. That's correct.

1 Q. Okay. Well, let me -- let me ask you a couple
2 of other provisions in here that I think are
3 important. So provision 2(b) -- 2(b). And we'll
4 work to make sure everybody can read this or see it.
5 It says that the contract represents that -- excuse
6 me -- the contractor has rep -- represents that it
7 has investigated the conditions for the work prior
8 to submitting its proposal and any delays or damages
9 caused by adverse conditions which were capable of
10 being identified prior to the submission of the
11 contractor's proposal shall be at his own risk; is
12 that correct?

13 A. It is.

14 Q. Okay. Now, did you consider the status of the
15 drawings to be condition?

16 A. To be what condition?

17 Q. The condition of the work that's subject to
18 that provision.

19 A. We considered the drawings that we had bid on
20 to be the documents that we would be using to
21 construct the project.

22 Q. Okay. Now, in the payment provisions, I
23 want to ask you to look at paragraph 4. Let me get
24 that. I feel like I ought to be able to make these
25 things show up better than I do, but we'll see. Can

1 you see that okay?

2 A. Yeah, enough to read it.

3 Q. All right. So payment provision: "The county
4 shall make payments of the contract sum as adjusted
5 by unit prices for actual quantities of work in the
6 form of progress payments based upon applications
7 for payments submitted by the contractor." Is
8 that -- did I read that correctly?

9 A. Are you on (a) or (b), 4(a) or ---

10 Q. I was on 4(a).

11 A. 4(a). Okay. I was looking at (b).

12 Q. I can do it again. So 4(a) and it's headed
13 "County payment of contract sum." The county shall
14 make payment of the contract sum as adjusted by the
15 unit pricing of the actual quantities of work in the
16 form of progress payments based upon applications
17 for payments submitted by the contractor on a
18 monthly basis;" is that fair?

19 A. Yes, sir.

20 Q. Okay. Is that how you typically did it?

21 A. It is. Every 30 days. We would bill monthly.

22 Q. Okay. So you agree with me that the amount
23 that gets paid is for the actual work, right? The
24 actual work done?

25 A. That's usually how it goes.

1 Q. Okay. All right. So if -- if there is any
2 problem with the work, what happens then, and let's
3 look at -- let's look at number 6.

4 A. If I can -- add one thing. Sometimes the
5 contractors do bill for material. That's the only
6 other time where you might get a billing.

7 Q. Okay. 4(b). So if there are issues with
8 the -- with the -- with a portion of the pay
9 application, it can be rejected and returned to the
10 contractor for revision, correct?

11 A. You're looking at 4(b)?

12 Q. Yes, sir. And I can -- I can read it.

13 A. Incorrect applications. Gotcha.

14 Q. So incorrect applications for payment will be
15 returned to the contractor, correct?

16 A. Correct.

17 Q. So if there's a dispute over something on
18 the -- on the -- on a pay application and you've
19 been in the construction business, I think you'll
20 agree me that the pay applications will be returned
21 to you, maybe paid the undisputed amount, but then
22 in agreement on what's going to be paid and then
23 whether you can -- whether you can bill it
24 subsequently, right?

25 A. I've heard that happening, but in all the pay

1 applications we've -- applications we've ever
2 submitted to all the different customers we've had,
3 we've never had that happen. We've never billed for
4 any more. We actually bill for less than. We don't
5 even anticipate like ahead of time. We bill for
6 less. That way it's no questions because some of
7 the forms can be so aggravating to fill out and --
8 and get the numbers right. We just don't want to
9 haggle back and forth with a -- with an owner or
10 owner rep over, "Did we do that much work exactly?"
11 So we always estimate less than we actually install
12 for that reason.

13 Q. Okay. Well, let's talk about work that may be
14 incorrect. All right. For incorrect work, you
15 don't take the position that you're entitled to be
16 paid for work that was done incorrectly, do you?

17 A. Absolutely not.

18 Q. Okay. All right. Thank you, sir. Now,
19 paragraph 6. We've talked some about the county
20 approving things. The county -- paragraph 6
21 provides that the county shall have the right to
22 inspect the work, to evaluate the contractor's
23 compliance with the contract documents for the
24 county's sole benefit. And the right to inspect
25 shall not make the county responsible for the

1 compliance with the terms of the contract documents.

2 Do you see that?

3 A. I do.

4 Q. Okay. So do you under -- do you agree with me
5 then that the county had the right to inspect the
6 work or have the work done, and that's for its
7 benefit, not to tell you how to do the work?

8 A. I'm not sure if I understand the question. Did
9 they have a right to inspect? Is that what you're
10 asking?

11 Q. Yes, sir.

12 A. Yes, sir. Absolutely.

13 Q. Okay. All right. And -- but you agree with me
14 that you -- you control the work, correct? I mean,
15 you control your means and methods and how you --
16 how you do the work?

17 A. Correct.

18 Q. Okay. Now, if there were claims for extensions
19 of time. I'm going to ask you a couple of things
20 about that. Do you see that okay?

21 A. That's a lot better.

22 Q. Yeah, it sure is. So claims for extension of
23 time or for additional time. "If the contractor
24 wishes to make a claim for an increase in the time
25 to complete the work, written notice as provided

1 herein shall be given. The contractor's claim shall
2 include an estimate of the cost of delay on progress
3 of the work." Did I read that correctly?

4 A. Yes, sir.

5 Q. Okay. So there were several -- there were
6 several change orders that increased the contract
7 time, correct?

8 A. There were. Well, I mean, I think it's
9 important the rest of that paragraph is the ---

10 Q. Okay.

11 A. If you want me to read it, I can.

12 Q. "In the case of a continuing delay, only one
13 claim is necessary."

14 A. Correct.

15 Q. Okay. All right. So those -- those change
16 orders that included time, what information -- what
17 would you have submitted on the basis of that? Was
18 it anything other than the change order form?

19 A. Usually, I mean, there are e-mails involved.
20 So, I mean, I remember there were numerous e-mails
21 to Matt Schell regarding the additional work, you
22 know, square footage after we -- after we received
23 the drawings, that way we knew what was going to be
24 added.

25 And we have the quantities we were going to

1 quantify and, therefore, give him a price on it.
2 And then we just kind of estimated the time it was
3 going to take and we added that to the contract.
4 And there were some e-mails I think back and forth
5 regarding that. And I believe Matt even produced a
6 schedule a couple of times regarding those different
7 items because he had each individual one itemized if
8 I remember correctly.

9 And he just -- and then so we incorporated that
10 into the change order and it usually -- because
11 change orders have to be approved by county counsel,
12 you know, it was detailed. So I think they were
13 able to see exactly what the change was for, why --
14 why it was being changed.

15 Q. Let me show you this next provision. I want to
16 call your attention to paragraph 16.1. You got
17 that? Is it there?

18 A. (Affirmative response.)

19 Q. All right. 16.1, "The contractor shall
20 properly correct work failing to conform to the
21 requirements of the contract documents, whether
22 discovered before or after completion and whether or
23 not fabricated, installed, or completed." Did I
24 read that part right?

25 A. You did.

1 Q. Okay. "Cost of correcting such rejected work
2 including additional testing and inspection and
3 expenses made necessary thereby shall be at the
4 contractor's sole expense." Is that -- did I read
5 that right?

6 A. You did.

7 Q. Okay. So if there was work that did not
8 conform that had to be repaired or removed, that
9 would be done by you at your expense, correct?

10 A. If we had installed it incorrectly, you know,
11 from the design. I mean, if we had deviated from
12 the original design that we had to construct it
13 with, and say we -- we installed a sidewalk -- just
14 for example, we installed -- installed a sidewalk
15 that was, you know, in the wrong location or at the
16 wrong elevation or something like that. You know,
17 per the information that was provided to us to build
18 it, then yeah.

19 Q. Okay. All right. Now, I want to talk about
20 16.7 just for a little bit. And we're still going
21 through a little bit background here, but 16.7
22 provides, "If the county prefers to accept work
23 which is not in accordance with the requirement of
24 the contract documents, the county can do -- may do
25 so instead of requiring its removal or correction --

1 removal and correction, in which case the contract
2 sum will be reduced as appropriate and equitable.
3 Such adjustment shall be affected whether or not
4 final payment has been made."

5 So do you understand that to mean that if the
6 county prefers to not have the work redone or
7 corrected, it has that right under the contract?

8 A. The way I interrupt it is if they don't want to
9 accept it as is or if they want to accept it as is,
10 they want some kind of credit for it. That's --
11 that's what I ---

12 Q. Okay.

13 A. --- would interrupt it to be.

14 Q. So they -- sure. All right. That's a good
15 correction, but it's -- the county can -- can choose
16 to accept work that is not necessarily correct under
17 the contract if it so chooses?

18 A. Sure. Just like they did with the sidewalk.

19 Q. Okay. All right. Now, let me put these back
20 up before I mess up. I want to look quickly if we
21 can at the contract for the Toxaway Project. Okay.
22 So I'm at -- I'm now at Defendant's No. 1, Tab 1.
23 And I can -- I can zoom in or zoom out if you need
24 to, but do you recognize this contract?

25 A. I do.

1 Q. Okay. Is it the contract for Toxaway?

2 A. Yes, sir.

3 Q. Okay. Let's look at the -- the first page of
4 this one is a little different than -- than the
5 other contract, but so this in paragraph 1(a) has
6 similar language, does it -- doesn't it, that the --
7 that the contractor shall fully perform and execute
8 all the work necessary to complete the project; is
9 that correct?

10 A. Yes, sir.

11 Q. Okay. Now, paragraph 1(b) says that the
12 contractor shall perform all work in accordance with
13 federal, state, and local laws and regulations
14 regarding the abatement of asbestos and the removal
15 of materials containing asbestos, including but not
16 limited to, and then there's the statutory cites; is
17 that right?

18 A. Yes, sir.

19 Q. Okay. So you knew going in that the asbestos
20 regulations would have to be adhered to to perform
21 the contract, correct?

22 A. I did if there was asbestos present and that --
23 that says that in the contract, that, you know, if
24 it's present, then we have to adhere to those kind
25 of protocols.

1 Q. Okay.

2 A. So it has to be present and it has to be
3 identified.

4 Q. Right. So the -- so this was going to be a
5 pretty short term contract, correct?

6 A. They indicated that they wanted it done, you
7 know, very fast.

8 Q. Okay. So this is dated June the 7th, correct?

9 A. Yes, sir.

10 Q. And let me bring your attention to paragraph
11 2(b). "All of the services provided by the
12 contractor hereunder shall be performed and
13 completed on or before July 21, 2017;" is that
14 right?

15 A. Correct. Two weeks.

16 Q. Okay. Are those your initials by chance?

17 A. That's Robert Carrol.

18 Q. Robert Carrol. Okay. Great.

19 A. Matter of fact, all of that is Robert's
20 handwriting.

21 Q. Okay. Now, for that work, which was -- this is
22 the one that relates to the -- to the debris piles,
23 right, that were going to be moved up -- that were
24 going to be taken off from the site and disposed of,
25 correct?

1 A. Correct. It only refers to the debris piles.

2 Q. Only the debris piles. Yes. So for that work,
3 the contract amount was \$223,000, correct?

4 A. Yes, sir.

5 Q. Okay. Now, let me ask you, do you know who
6 Mike Foreman is?

7 A. Oh, yes.

8 Q. Who is Mike Foreman?

9 A. He's a former county employee.

10 Q. Okay.

11 A. And I'm not sure what department. I want to
12 say planning. I want to say he was in the planning
13 department.

14 Q. Okay. And he was involved in this project,
15 correct?

16 A. If that's what you want to call it.

17 Q. Now, so -- so do you recognize this e-mail?

18 A. I do.

19 Q. Okay. And you are copied on it, correct?

20 A. Yes, sir.

21 Q. Okay. And so it's written -- Mike Foreman
22 writes to someone named Gail Jeter at Cardno.com.

23 "Gail, I believe we just -- we have just about
24 everybody signed on the dotted line now.

25 "Russell, I want you to -- I know you want to

1 get started as soon as possible. K2D is available
2 as soon as this upcoming Monday for air monitoring.
3 Gail is awaiting word from DHEC regarding the storm
4 water permitting.

5 "Gail/David, please coordinate with Russell
6 scheduling forward;" is that right?

7 A. Yes, sir.

8 Q. Okay. So had -- had -- at this point, I assume
9 you had not done anything on the job, right?

10 A. I'm not sure. I can't remember the exact day
11 that we started, but I believe we had already
12 started work. I can't remember because I'm not
13 sure -- I can't remember the dates of the bonds and
14 the actual date we mobilized on the job. Probably
15 our tickets that we provided, that would probably
16 give you the very first ticket, maybe the first day
17 that we got on the job.

18 Q. Okay.

19 A. It was pretty fast.

20 Q. Sure. But you knew you wouldn't be able to
21 start work before the asbestos permits and the storm
22 water permit were in place, right?

23 A. No. We did not have that. And I had e-mails
24 where I e-mailed John Batson, the storm water
25 director for Anderson County, about the permit --

1 the storm water permit. And we had asked in other
2 e-mails to Robert Carrol about, you know, the storm
3 water permit.

4 The asbestos was something that they just
5 wanted us to provide separate pricing for in the
6 contract. Nobody even knew if there was any
7 asbestos out there. They didn't know. I mean,
8 this -- this is a -- if you think of an old mill
9 site, I mean, a lot of them are overgrown, kudzu,
10 and all kind of different vegetation. You can't see
11 what's there. You can't see the ground in a lot of
12 places, so you don't know what's there, especially
13 if it's been sitting there for a while.

14 So they had no idea what was out there. I
15 mean, the only way you could tell is to go out there
16 and disturb the site or remove the vegetation and
17 visually observe. If you don't see anything by,
18 like, visual observation, then you -- you can work.

19 It's kind of a real gray area. That's why they
20 have all these voluntary contracts, cleanup
21 contracts and provisions in those because you don't
22 know what's there so you have to put all sorts of
23 different things in place like air monitoring to
24 make sure that if you're out there working that
25 you're not encountering anything like asbestos.

1 I mean, a lot of stuff you can visually see,
2 like if it's hazardous materials, you know, like in
3 a drum or container or something like that, but
4 asbestos is a little bit different because it can be
5 polarized into something that doesn't even look like
6 a material. It looks like dirt, you know.

7 Q. Which brings up why you would need the air
8 monitoring before you ---

9 A. Which is why they --

10 Q. --- perform that work, correct?

11 A. Which is why they have the air monitoring out
12 there.

13 Q. Okay.

14 A. And ---

15 Q. Well, hang on for just a minute. So and this
16 says that K2D is available to start the air
17 monitoring as soon as this coming Monday, correct?
18 So they're not onsite now at the time of this
19 e-mail?

20 A. I can't remember. I think K2D is James Kelly.
21 They actually came to us because they didn't have
22 anybody to air monitor. And they -- we gave them
23 three different -- I think two or three different
24 companies, third-parties, had no affiliation with us
25 to air monitor, and they chose James Kelly I

1 remember because I have that voicemail that I
2 referred to yesterday about.

3 They got -- they got James out there, and he
4 calls me that day and says, "Hey, Russell. I'm out
5 here, but I don't know what I'm doing," because
6 there was no asbestos abatement going on.

7 Q. Thank you. But here was my question. Okay.
8 My question was: You -- you recognize that K2D,
9 you're told in this e-mail that they're going to do
10 the air monitoring and that they will be available
11 as soon as the upcoming Monday, correct? I can put
12 it back up here if you want me to.

13 A. Yeah. I mean, I said that, yeah.

14 Q. Okay.

15 A. I mean, I see the e-mail.

16 Q. So they're not there now. They were not there
17 at the time of the writing of this e-mail. They'll
18 be available on Monday?

19 A. Right.

20 Q. And, additionally, Gail is awaiting word from
21 DHEC regarding storm water permitting, correct?

22 A. Correct.

23 Q. Okay. So if Gail from Cardno is working on the
24 storm water permitting, that's -- that's what she's
25 doing. She's in charge of getting the storm water

1 permit, right?

2 A. Well, they were in charge of it. That was part
3 of their contract ---

4 Q. Okay.

5 A. --- with the county.

6 Q. Okay. So we don't have a dispute about that.
7 You weren't -- you weren't supposed to get the storm
8 water permits? That was going to be done by the
9 county or somebody on the county's behalf?

10 A. That's as far as we knew.

11 Q. Okay. And same with the asbestos. You just
12 had to comply, but whatever permitting was being
13 done by somebody else?

14 A. As far as we knew, correct.

15 Q. Correct. Okay. Now, some time between
16 June the 15th and June the 19th, you were given
17 approval to cut brush around some of the debris
18 piles, correct?

19 A. We had talked about this, the permitting, and
20 the way the DHEC regulation is, as long as you don't
21 disturb more than a certain area, size area, you
22 know, you can -- you can disturb that area up to a
23 certain square footage or acreage. This is just a
24 small site. We weren't -- the whole -- the whole
25 project was not but 2 acres. That was the entire

1 area that we might have cleaned up or cleared out
2 was 2 acres.

3 So I want to say it's an acre that you can
4 disturb, but, you know, at that point we thought
5 that Anderson County had a storm water permit. We
6 had e-mailed -- like I said, I already testified to
7 this. We -- we had e-mailed the storm water manager
8 for Anderson County. We had also e-mailed DHEC to
9 find out if there was an existing storm water permit
10 because of a NPDS permit, National Pollute and
11 Discharge Elimination system. That's what it stands
12 for and it's a federal permit. Well, it's required
13 by the federal government if you're going to disturb
14 more than a certain area or if your project is going
15 to be a certain size.

16 So I think it's important to remember that
17 there were two mills here at one time, and they had
18 been working on the other mill and there had been
19 other phases out there before us, so they had worked
20 on this main -- this mill cite in phases.

21 Q. Mr. Moats, my question, I think, was simply and
22 let me -- let me try to get back to it. Did you go
23 out and remove brush from the debris piles?

24 A. We did.

25 Q. Okay.

1 A. We did exactly what we were supposed to in our
2 contract.

3 Q. Okay. And you were -- you asked and were
4 allowed to do that prior to the permits being in
5 place?

6 A. Anderson County gave us the notice to proceed
7 on the project, and that's what we did.

8 Q. Okay. But when you said a minute ago that you
9 were checking with DHEC and -- and other people
10 about the storm water permits, you'd already been
11 told that there wasn't a storm water permit. We
12 were what -- "Gail is awaiting word from DHEC
13 regarding the storm water permitting," and that's on
14 June the 15th?

15 A. No. We had not and that's what I'm talking
16 about. When I'm referring to Michael Foreman, I
17 couldn't get a straight answer out of Michael on
18 whether -- whether or not there was. I asked in
19 multiple e-mails where's the storm water permit? Do
20 y'all have a storm water permit? Do you have a
21 storm water permit from your previous phase that you
22 did out there? Because they had been doing the same
23 kind of work out there previously in the past few
24 years. I mean, so we -- those permits can last for
25 years. I mean, I think -- I want to say three to

1 five years.

2 So I didn't know if they had an active permit
3 they were working under, but I -- I did my due
4 diligence as far as trying to establish whether or
5 not they had their permit. It wasn't even my
6 responsibility or my company's responsibility to
7 obtain or inquire about that permit. All we were
8 required to do is to do what we said we were going
9 to do in the contract per, you know, what we bid on.

10 So we bid on removing debris piles that were
11 out there. We also bin on a -- and gave an
12 alternate for asbestos abatement if we were to
13 encounter asbestos, and that's what we did.

14 Q. Okay. I hear you. This document that you were
15 copied on and that you said you've seen, you
16 received, tells you that Gail is awaiting word from
17 DHEC regarding the storm water permitting.

18 A. Correct.

19 Q. It can't be much clearer than that, can it?

20 A. Correct.

21 Q. Okay.

22 A. I believe we had stopped -- I think we had
23 stopped work there at one time. I mean, just now
24 thinking back on it because we worked out there for
25 like a week and that was it. So if it started on

1 the 7th and that was on the 15th and we -- we had
2 probably stopped because, you know, I guess we
3 raised enough questions where people were starting
4 to ask, "Well, do we have a storm water permit?"

5 Q. Mr. Moats, you had not started because it says,
6 "Russell, I know you want to get started as soon as
7 possible."

8 A. I believe we had already started.

9 Q. "And to get with -- Dale and David need to get
10 with you to schedule things going forward," correct?

11 A. I believe we had already started. I think you
12 can look at the tickets -- our dump tickets where we
13 hauled the material off. They'll tell you exactly
14 when we started.

15 Q. Well, so if you started and hauled off --
16 hauled stuff off, which I agree that you did. I
17 just don't agree on the timing I don't think ---

18 A. Yeah, I think we hauled 50 loads.

19 Q. --- based on these -- based on these documents,
20 but you hauled off materials before the permits were
21 in place?

22 A. We didn't.

23 Q. I'm not saying you're responsible for the
24 permits. I'm just saying you hauled it off before
25 the permits were in place, correct?

1 A. I don't know. I don't know when they got their
2 permits. Well, now we know they didn't even have a
3 permit. We know that now.

4 Q. And they told you that. They -- they told you
5 you did not -- they did not have a permit, correct?

6 A. Well, no, they didn't. Well, they did when
7 they terminated ---

8 Q. Do I need to put it back up here again?

9 A. --- when they terminated us, they -- they told
10 us that we were responsible for the permit, and
11 that's probably why they were terminating us.

12 Q. We'll talk about that in a second, but I want
13 to make sure we're clear. "Gail is awaiting word
14 for DHEC regarding the storm water permit." So they
15 told you the storm water permitting is being waited
16 on right now.

17 A. Right.

18 Q. Okay. Now ---

19 A. But we -- but we weren't working after that, so
20 I don't know how that's relevant.

21 Q. Now, let's talk about the notice of
22 termination. Okay. And I know you've talked about
23 that on your direct exam, but I want to -- I want to
24 walk through this a little bit.

25 "Dear, Mr. Moats" -- and this is June the 21st,

1 so six days after the June 15th e-mail that said
2 we're awaiting the storm water permitting. "As you
3 are aware, you were directed to stop work on the
4 referenced project on June 19, 2000 -- June 19,
5 2017. Work was proceeding on the project beyond
6 removal of brush on less than 1 acre in the absence
7 of an asbestos permit from DHEC and a storm water
8 permit." Did I read that right?

9 A. You did.

10 Q. Okay. "The directive to stop work was issued
11 immediately upon the county learning the extent of
12 these circumstances," right?

13 A. That's what it says.

14 Q. Okay. And this is the termination, correct?

15 A. That is the term -- termination.

16 Q. Okay. And the letter goes on to say, "It's the
17 county's position that work without appropriate
18 permits constitutes a material breach of contract
19 per Section 1 -- Section 41(b) of the contract,"
20 right?

21 A. Correct.

22 Q. Okay. Now, let's look at 41(b) real quick.
23 We're going to look at it again. Section 41(b)
24 says, "The contractor will perform all work in
25 accordance with federal, state, and local laws and

1 regulations regarding the abatement of asbestos and
2 the removal of materials," correct?

3 A. Where is that -- where is 41(b)?

4 Q. All right. Here we go. Section 4 at the top.
5 Okay?

6 A. I gotcha. I gotcha. 41(b).

7 Q. Paragraph 1, paragraph -- subparagraph (b).

8 A. Yes, sir.

9 Q. Okay.

10 A. We already saw that.

11 Q. All right. So we've already looked at that.

12 That -- that's saying your work has to conform.

13 It's got to be done in accordance with the asbestos
14 regulations?

15 A. Right. Yeah, the CFR is the code of federal
16 regulation that governs the area. It's an asbestos
17 regulation.

18 Q. Okay. Now, where here does it say that you
19 were responsible for getting the permits as you've
20 testified earlier?

21 A. I -- I don't know that it says it exclusively.
22 I just think it applies. Does it not? I mean,
23 that's how I interpret that.

24 Q. Well, it says -- it says, "That work was
25 proceeding in the absence of an asbestos permit and

1 storm water permit." It didn't say you failed to
2 get it. It says that your work was proceeding in
3 the absence of those permits.

4 A. Right. It does.

5 Q. Yeah. And you -- you knew you weren't
6 responsible for getting those permits. We talked
7 about that, right? It was -- it was somebody else's
8 responsibility?

9 A. Yeah, but it's a termination for cause. I
10 mean, they didn't say we're terminating your
11 contract because we feel like it. They said, "We're
12 terminating your contract because you don't have
13 the -- the permits." It what it says, does it not?

14 Q. No. It doesn't. If you can show me where it
15 says that you're being terminated because you don't
16 have the permits, I don't think you can. That's not
17 what the language of the letter says.

18 A. Well, in the second paragraph where it says
19 it's the county's position that work without the
20 appropriate -- appropriate permits constitutes the
21 material breach of contract. So, I mean, I'm sure
22 it's semantics and how you interpret that paragraph
23 or how somebody interprets that paragraph to me.

24 Q. You agree with me, though, there's no provision
25 in this letter. There's nowhere in this letter that

1 it says you're being terminated because Moats
2 Construction did not obtain the proper permits?

3 A. (No response.)

4 Q. We can read it again if you want to.

5 A. Yeah, I don't think it explicitly says that,
6 but that's what it implied.

7 Q. So ---

8 A. And to go back to your stop work ---

9 Q. No, sir. I'm done with that question.

10 A. Okay.

11 Q. Now, so that this letter goes on then to say,
12 "The county is willing to discuss with you payment
13 of work performed at the time of the issuance of the
14 stop work directive," correct?

15 A. What was the question?

16 Q. I asked if -- if -- the last paragraph of the
17 letter, "The county's willing to discuss with you
18 payment for the work performed as -- at the time of
19 any stop work directive -- of the stop work
20 directive," correct?

21 A. That's what it says.

22 Q. Okay. Now, did you then over time submit
23 your -- the -- the pay application for the work that
24 was done?

25 A. We did.

1 Q. Okay. And it was paid eventually, right?

2 A. Eventually, it was paid.

3 Q. \$59,000?

4 A. Correct.

5 Q. Now, the \$59,000 was for work -- assuming --
6 assuming you start some time on or around the 15th
7 and you're stopped on the 14th, that was \$60,000
8 worth of work in four days?

9 A. Correct.

10 Q. Okay.

11 A. And there again, we have all the tickets there.
12 You know, we had to provide all of those tickets for
13 back up for it. I think we hauled something like 50
14 or 60 loads of material off. And it was all weed by
15 the time, so -- and it was mostly I think brick and
16 concrete and dirt, you know, vegetation.

17 Q. Yes, sir. Now, I'm going to go back for a few
18 minutes. On the mediated settlement agreement,
19 which I think we've -- you and -- you and
20 Mr. Goodwyn talked about some, correct?

21 A. Yes, sir.

22 Q. Okay. Now, I think you agreed or you
23 testified -- excuse me -- earlier that you agree
24 with the contract sum to date of that being
25 \$324,761.28, correct?

1 A. Correct.

2 Q. And of that, you had been paid to date
3 \$248,003.23?

4 A. Correct.

5 Q. Okay. Now, the -- it then set up several
6 other -- there were several other paragraphs that
7 address what's going to happen on -- for the
8 completion of the East-West Project, correct?

9 A. Correct.

10 Q. Okay. So the next provision says, "Moats is
11 entitled to a 15 -- an additional \$15,000 for
12 additional changes in the work and will submit back
13 up for the 15,000 and a change order 15,000 will be
14 issued by Anderson County before the start date,"
15 correct?

16 A. Correct.

17 Q. Okay. Now, the 15,000 was for what additional
18 work?

19 A. So I believe I testified earlier what it was.
20 It -- so it was a piece of pipe or section of pipe
21 going under the new redesigned walkway that we had
22 to remove and replace. So it was -- it was being --
23 one of it was being lowered to accommodate this
24 sidewalk or walkway, and so we had to remove and
25 replace that pipe. We had to resurvey the entire

1 area right there. And then we had to grade that
2 area, and regrade it. And then we had to have it
3 resurveyed again in detail. That's what I was
4 talking about the sidewalk every five feet.

5 And then we had to re -- we had to form and I
6 believe there was some traffic control stuff in
7 there too I believe. They had added some traffic
8 control because they had just gotten their
9 encroachment permit, and so there were no drawings
10 that had anything to do with encroachment permits
11 from the DOT that required lane closures or anything
12 like that. So, you know, they had some traffic
13 control right there on the bike path, you know, so
14 we had to provide that so that's what it included.

15 Q. Okay. When was that work done?

16 A. Right after the first after we started.

17 Q. Okay. After the ---

18 A. I believe it was the first. I want to say it
19 was the first of -- I want to say it was the first
20 of April or first -- first of May I think.

21 Q. Okay. So that -- that work was done after you
22 returned to the job on the mediated settlement ---

23 A. Correct.

24 Q. --- from the mediated settlement agreement?

25 Okay. So when -- was there was a submittal for a

1 change order for that amount?

2 A. It was.

3 Q. Okay. When was that submitted?

4 A. I believe it was submitted when we submitted
5 the change order for the storm water work with
6 Toxaway. I believe it -- I want to say it's change
7 order no. 8.

8 Q. When you submitted the storm water work for
9 Toxaway?

10 A. Yeah, so in this mediated settlement agreement,
11 they agreed to rescind that termination letter. And
12 they call it a termination letter in the mediated
13 settlement agreement. So they agreed to do that and
14 they also agreed to reinstate us to perform the work
15 and finish the contract.

16 They also agreed to change orders relating to
17 the storm water work that was additional for that
18 project. Originally, there was no storm water work.
19 And with them applying for a new storm water permit,
20 the state required them to have some additional
21 measures in there to control the storm water. So
22 there's a storm water pond and there's also some
23 silk fencing and construction entrances that had to
24 be installed. And I testified to this earlier.

25 And so we had to provide pricing for that. The

1 pond had to have a skimmer in it. And I had to have
2 an outlet structure, like a concrete outlet
3 structure. Generally, you see this with sites that
4 where you're disturbing soil and maybe, you know,
5 running off into a creek or something or close to a
6 creek or you want to try to control that. So,
7 anyway, that's what that work was for. And so we
8 submitted the pricing for that, and I think we
9 submitted a change order at the same time.

10 Q. Okay. Do you know when that was?

11 A. It was right after this mediated settlement
12 agreement.

13 Q. Who would it have been submitted to? Where
14 would I find that?

15 A. I believe I gave it to Lee Prickett. He was my
16 attorney ---

17 Q. Okay.

18 A. --- and he forwarded it to Leon Harman.

19 Q. Okay. So you believe that -- you believe that
20 was submitted.

21 A. Oh, I know it was. I have e-mails. I just
22 looked at the e-mails yesterday.

23 Q. Okay. All right.

24 A. That's the only the reason -- the only reason I
25 can remember. I think it was change order 8. I

1 remember reading it yesterday.

2 Q. Change order 8?

3 A. I think so.

4 Q. Okay. I'm looking at change order 8. Is this
5 the change order you're referring to?

6 A. It may be nine. I may need to check nine.
7 Whichever one was \$15,000.

8 Q. Okay. All right. Well, we'll -- we'll circle
9 back to that.

10 A. I mean, I thought you just flipped through
11 that. I thought I saw it when you were flipping
12 through those other ones.

13 Q. Does that ---

14 A. It's 11. Right here. Yeah, I don't know. I
15 don't even know what this is. I don't know how that
16 was generated because it has a change order on it
17 that we submitted at that large change order for
18 198. Like I said, none of that stuff was ever
19 approved, so...

20 Q. Okay. All right. Well, we can -- we can -- we
21 can come back to that one. Let's -- let's keep
22 going.

23 Now, "Moats shall be entitled to an additional
24 \$50,000 for delayed damages," right?

25 A. Correct.

1 Q. Okay. Does that -- is there a -- I mean, I
2 think you -- you can agree with me looking at the
3 document. There's nothing on there that says by
4 what time that payment has to be made, correct?

5 A. We assumed it was before we mobilized back on
6 the job.

7 Q. Okay. I mean, but it -- but that provision
8 doesn't say that, does it?

9 A. It doesn't.

10 Q. Okay. Now, Moats No. 5. "Moats will
11 remobilize on the project on the start date not
12 before April 17, 2018, set forth in the notice to
13 proceed issued by Anderson County and the work will
14 be complete within 30 calendar days of the start
15 date subject to weather or unforeseen conditions."
16 Did I read that right?

17 A. Correct.

18 Q. Okay. So -- so Anderson County -- and we can
19 look down at paragraph 11. And look at paragraph
20 11. Let me get to it. Paragraph 11, do you agree
21 with me that that says that -- that it's going to
22 be -- that this whole agreement is subject to being
23 approved by the Anderson County Counsel at its
24 April the 8th -- 17th, 2018 meeting?

25 A. Yes, sir.

1 Q. So it had to be approved. And then there would
2 be a notice to proceed issued after that approval,
3 correct?

4 A. Correct.

5 Q. Okay. Now, next -- the next paragraph,
6 paragraph 6. "Moats shall be paid a lump sum 26 --
7 of \$26,155.89 on or before the start date set forth
8 in the notice to proceed;" is that right?

9 A. Correct.

10 Q. Okay. Now, you agree with me that you received
11 that payment, correct?

12 A. We did.

13 Q. Okay. I'll come back to that one in a minute.
14 We can look at. I think we may have looked at it
15 already in -- in your direct, but there was a letter
16 from Leon Harman, the county attorney, to -- I think
17 to Lee Prickett transmit -- or maybe directly to you
18 transmitting the notice to proceed and the check,
19 correct?

20 A. I don't think -- I don't think -- I saw that
21 earlier. I don't think we ever even talked about
22 that, but there was a notice to proceed and a check.
23 I do remember that.

24 Q. Yeah, let me go ahead -- let me go ahead and
25 find it. I'll get it to you. I think I just heard

1 somebody say 19. I appreciate that. Let me put
2 this one back so I don't mess them up. Let's look
3 at 19. Can you -- can you read that okay? Can you
4 see it?

5 A. I can.

6 Q. Is that better?

7 A. Yes, sir.

8 Q. Okay. So dated April the 25th, 2018.

9 Addressed to Lee Prickett from Leon Harman.

10 "Dear, Mr. Prickett, enclosed please find the
11 notice to proceed in the referenced matter along
12 with a check to Moats Construction in the amount of
13 \$26,155.89. This notice of payment under the
14 mediated settlement now starts the 30-day period to
15 conclude the work for phases 1 and 2 of East-West
16 Park." Did I read that right?

17 A. Yes, sir.

18 Q. Okay. Now, the next page of that exhibit is --
19 that's the notice to proceed, correct?

20 A. What's the date on it?

21 Q. April 25, 2018?

22 A. Yeah, can you scroll down or zoom out?

23 Q. Oh, I'm sorry. Yeah, there you go.

24 A. Yeah, I can't remember. I think it was. I
25 don't know. I signed it. They were giving us

1 30 days to complete and we had assumed -- well, we
2 were -- we were ready to start and wanted to start
3 immediately because we were so done with that job
4 and wanted to be done with it and get it over with.
5 We were expected to start like on the 18th. I think
6 the next day. As long as counsel had approval, you
7 know, we were ready to start.

8 And then it went on for another, I guess, week
9 or so. We didn't know -- we weren't just waiting
10 around, you know. You know, like we weren't just,
11 you know, waiting around. We had other -- we had
12 some other things that we were doing. Some guys --
13 we were trying to keep our guys busy. That's one of
14 the things we were doing so, you know, they just
15 expected that as soon as they wrote this check, we
16 would be there the next day, you know.

17 So I think there were some e-mails to Lee
18 Prickett back and forth about that, like are they
19 going to issue this thing or are they going to
20 approve it? Because the counsel meeting was on the
21 17th and then we didn't hear anything. And, you
22 know, we were going to -- we were ready to be done
23 with it.

24 Q. Okay.

25 A. So ---

1 Q. So this next page here, this is the check,
2 correct, that was transmitted and received?

3 A. Right.

4 Q. Is that -- is that right?

5 A. Yes, sir.

6 Q. Okay. And -- and Moats -- Moats Construction
7 received that check from Mr. Prickett?

8 A. We did.

9 Q. Now, I think that got us through paragraph 6.
10 Paragraph 7, I understand your testimony to
11 generally be that the as-builts weren't done because
12 the project wasn't finished?

13 A. No, they're done. See, Brandon did them.
14 Well, he did everything he could and then he had all
15 the data for the new -- for the new -- the newly
16 design or redesigned walkway because he had to go
17 out there and stake it. So, I mean, he had the
18 points for the -- you know, top of the form. I
19 mean, because they were all that close, so would he
20 have gone back out there and shot it again after we
21 had poured it and removed the forms? He would've
22 done that. And then probably also shot the little
23 area around it, you know, just so he could show the
24 area being as-built, but he had -- Adam built a
25 survey of the entire project all the way to that

1 point.

2 Q. Well, he wouldn't have -- he wouldn't have been
3 able to do as-builts of something you didn't finish
4 building, right?

5 A. Correct. Yeah, which was only that walkway.

6 Q. Okay. So, now, let's talk about the ADA
7 provision for a minute. "Moats' work shall comply
8 with ADA requirements provided that the design
9 drawings issued to Moats complied with ADA
10 requirements." Did I read that right?

11 A. Yes, sir.

12 Q. Okay. So do you agree with me that what this
13 says is that you have to comply with ADA
14 requirements if the documents comply with ADA
15 requirements?

16 A. I believe that's what it says.

17 Q. Okay. What -- so if the drawings don't
18 require -- if they don't comply with ADA
19 requirements, you don't have to do it either,
20 correct?

21 A. You ask the question again ---

22 Q. Yeah.

23 A. --- one more time?

24 Q. Yeah. If the -- if the documents don't
25 require -- don't comply with ADA requirements, your

1 work wouldn't have to comply with the ADA
2 requirements, correct?

3 A. The documents don't comply? That -- yeah,
4 that -- that's what it says. "Moats' work shall
5 comply with ADA requirements provided that the
6 design drawings issued it."

7 Q. And it says, "Provided that the design
8 documents comply," correct?

9 A. Correct.

10 Q. Because we spent any number of months with --
11 with Moats Construction and Anderson arguing over
12 whether or not the drawings were sufficient to build
13 the project to ADA requirements or if they weren't,
14 right?

15 A. Correct.

16 Q. And we read in the contract a few minutes ago
17 that the county can make a decision to accept work
18 that may not -- that may not comply with the project
19 requirements if it so chooses, correct?

20 A. That's exactly right and that's what we were
21 trying to get them to do to accept it as it was as
22 it was designed. It was -- it was designed close,
23 but it was never going to be 100 percent and we went
24 over that and over that in mediation telling them
25 that it was not going to be 100 percent compliant.

1 We knew that it could not be.

2 Q. And so doesn't this provision take care of that
3 concern? It says that you don't have to comply if
4 the documents don't comply?

5 A. Correct.

6 Q. So what was the problem with just finishing
7 that sidewalk because you've -- the county -- this
8 agreement is providing that if you don't -- if your
9 work doesn't comply and the -- and the drawings
10 don't comply, they're still -- they're -- you're not
11 going to be responsible for it, right?

12 A. Right. But we also said, you know, in this
13 mediation and in e-mails back and forth that we
14 wanted them to approve the work and inspect and
15 improve the work just like they had, you know, been
16 doing before. In the project, when we wanted --
17 we -- we didn't want to pour without their approval.
18 I don't think we ever required to have them come out
19 and actually inspect everything before we poured it.
20 It wasn't a provision. That's now how the job was
21 done, but if I did have a concern about the area and
22 I got it in e-mails to Natasha and e-mails to Matt
23 Schell. If I had a concern or if I thought
24 something wasn't right or, you know, we would let
25 them know and we did that.

1 And we did the same thing in this case, you
2 know. We did the same thing before we started the
3 job, you know. I told Robert Carrol that. We said,
4 you know, if -- we're fine with the job. We're fine
5 with the cost and the pricing, but you have some
6 areas where you might want to take a look at and,
7 you know, changes can be made throughout the project
8 as we start. Not to say they're not going to cost
9 the county money to do that, but you can make the
10 changes as we go if you want to, if you want to go
11 ahead and start on the job, but we had an issue with
12 that phase 1 sidewalk, going down from the parking
13 lot to the walking path. And we had a problem with
14 the picnic area. And that progressed to the second
15 phase where we had continued issues.

16 Q. Okay. So you had issues early on?

17 A. Correct. And we didn't want to have to tear
18 concrete out. We didn't want any more cost at our
19 expense on this job. So we were going to have to
20 buy the concrete, and we were going to have to
21 finish it, provide a label for it. And if it wasn't
22 right and they decided they didn't want to accept
23 it, we were going to have to tear it out and do it
24 all over again. We were not going to do that. We
25 had already done that a number of times.

1 Q. All right. So, Mr. Moats, where in here does
2 it say that the county is required to approve your
3 forms?

4 A. I don't -- I don't know. You can look at the
5 whole document. Look at all the pages and we'll
6 see. I'm not sure if we put that in there or not.
7 I can't remember.

8 Q. All right. I mean, I'm happy to look through
9 it as much as you want.

10 A. But, yeah, like the exhibits. Look at the
11 exhibits and see if there's anything right there. I
12 don't know. I can't remember every word of the
13 exhibits.

14 Q. All right. The exhibit's we're referring to
15 just for everybody's clarification are the
16 specification exhibit -- excuse me -- the
17 specification submittal set forth on Exhibit A.
18 Okay. So this is Exhibit A. I think you testified
19 that the handwriting on this in red is yours; is
20 that right?

21 A. Yes, sir.

22 Q. Okay.

23 A. I think -- is there -- is there another page to
24 this?

25 Q. There's a second page after this one.

1 A. Yeah, I don't see anything on here that says
2 anything about them inspecting, you know, the form
3 work. I think that was a -- that was an e-mail that
4 I had told Lee. I said, "Lee," I said, "we would
5 like for them to inspect the form first before we
6 pour the concrete so we're not wasting material and
7 just prevent an issue."

8 I mean, it's -- so that's -- you see how the
9 sidewalk meanders and everything. It's pretty
10 intricate kind of form work. And it takes time to
11 do it. We didn't want to do it twice, so we're
12 trying to not have to do that. We didn't want to
13 waste -- any -- anymore tax dollars or any money.
14 We didn't want to cost us anymore money either.

15 So we had e-mails between the accounting
16 attorney and my counsel that said, hey, you know,
17 can you guys inspect the forms and approve them
18 before we pour the concrete? And they agreed to it.
19 And that's why -- the whole reason why Holt Hopkins
20 got involved.

21 Q. Well, I'm going to get to that. So, although,
22 it's not required under this agreement anywhere,
23 right? It's not on this agreement that the county
24 has to do that, but Mr. Hopkins did go out and meet
25 with you onsite and look at the forms, right?

1 A. He did.

2 Q. Okay. And I think he might've had a couple of
3 places where he said you might be a couple of inches
4 off one way or the other here or there. Take care
5 of that, and we're good, right?

6 A. No. He brought -- have you ever seen county
7 crews on the side of the road working on something?
8 We brought a whole county crew out there and they
9 surveyed it. I mean, they were, you know, pulling
10 measuring tapes and shooting with a level. They had
11 their own digital levels. I mean, it was an
12 operation. And so they were as concerned about this
13 walkway as I was.

14 Q. And so there were only a few spots that needed
15 to be corrected on the forms, correct?

16 A. A few sections. Mainly the sections you saw in
17 those pictures that were tore out and removed.

18 Q. Okay. So if they're only a few sections. You
19 got, what, 80-something thousand dollars sitting
20 there waiting on you when that work gets done and
21 then Toxaway. Why not just pour the concrete and
22 finish the sidewalk? Why -- why leave that job
23 because of that? After they came out there and did
24 what you asked them to do?

25 A. Yeah, Toxaway had already been ---

1 Q. I'm not talking about Toxaway. I'm talking
2 about why did you leave East-West? We'll get to
3 Toxaway in a minute?

4 A. We left East-West because they had not honored
5 any part of that mediated settlement agreement.
6 They set forward the \$26,000. They had not -- they
7 had not paid for -- we didn't expect the \$15,000
8 because we had to do that work, but we did expect
9 the delay damages. We did expect them to rescind
10 the termination letter. That was a big deal.

11 Q. Well, we'll get to that in a second.

12 A. Well, you asked me a question. I'm trying to
13 answer it.

14 Q. Okay. You're right. Go ahead.

15 A. So, I mean, we expected them to do both of
16 those things. We expected them to change the orders
17 for Toxaway. So they had not done any of that. And
18 on top of that, we told them that if we encounter
19 these issues out there on this project, when we get
20 out there and we're having the same issues, any --
21 and there's a letter from Lee Prickett, an e-mail, a
22 formal letter that says, you know, if we encounter
23 these issues out there and we get it formed and
24 we're ready to pour and we encounter these same
25 issues, we're going to ask for another change order

1 for the extra time in dealing with it. And we did
2 that. That's exactly what happened.

3 Formed the sidewalk. They would not accept it.
4 They wouldn't approve it. They wouldn't say -- they
5 wouldn't give us the go ahead to pour the concrete.
6 I mean, I think there's lot of e-mails in -- in the
7 discovery that talk about that, go back and forth
8 about that. And we're waiting on their approval to
9 pour the concrete. It's not that we just didn't
10 want to do it. We wanted to it as bad -- we wanted
11 to pour it as bad as anybody, but -- but, you know,
12 they wouldn't allow us to do it. They didn't want
13 us to pour unless it was right.

14 Q. You're the one that asked them to approve the
15 form, correct, because you just testified you didn't
16 want to pour concrete and then have to tear it out?

17 A. Yeah, but I wasn't the only one. I mean, they
18 wanted to do the same thing. They wanted to approve
19 it.

20 Q. We can ask the -- we can ask the county
21 witnesses about that at some point, but I go back to
22 my question. If there were a small section of that
23 sidewalk that the forms had to be adjusted, why not
24 adjust those things and get it poured and be done
25 with East-West? You said you wanted to be done with

1 East-West. Why not do it?

2 A. It wasn't a small section, number one.

3 Q. You just said it was a small section.

4 A. No. I said there were -- there were sections
5 of it. I said that small section, one -- one of the
6 small sections that you saw in the picture. I mean,
7 you saw the pictures like everybody else did. It
8 wasn't just a small section. It was one large
9 section at the top. And then the whole, like,
10 semicircle that tied into the bike path. They
11 removed it. It was not right.

12 Q. Okay. Mr. -- Mr. Moats, whether it's a small
13 section or it's a big section, let's quit -- I will
14 quit using adjectives to it. Why not adjust the
15 forms and the area that they suggested to you and
16 pour it and finish and collect your money on the
17 East-West?

18 A. Because we weren't assured and we didn't have
19 their assurance that we would be paid after we did
20 that. And I had zero faith and confidence in them
21 at that point to do anything that they said they
22 were going to do. So I didn't know if I did that,
23 that I was going to get paid or not. If they were
24 going to come back out there with their roads and
25 bridges crew, their engineering department, and they

1 were going to survey it or they were going to get a
2 third-party out there to survey it. It's going to
3 say that it's out of compliance and we're not going
4 to accept it and we're not going to pay for it.

5 Q. Mr. Moats, you had a contract, you had a
6 mediated settlement agreement that provided that
7 they were going to pay you for the work. You had
8 been paid \$248,000 for the work that had been done
9 out there. Nobody had tried to hit you with any
10 liquidated damages or anything else given the time
11 on it. They had done all kind of work out there.
12 Why not just finish it and be done?

13 A. I mean, you're talking about \$248,000 like it's
14 a lot of money for something like that. That -- I
15 mean, it cost me three times that to stay out there.

16 Q. It was \$248,000 was the amount of money that
17 you had been paid for the work that had been done,
18 right?

19 A. Correct.

20 Q. Okay. I'm saying there's more money to be
21 picked up. Why not finish the job and pick it up?

22 A. Because I didn't know if I was going to pick it
23 up. They had not done a thing that they said they
24 were going to do. Nothing. Zero ---

25 Q. Well, that's -- that's a -- that is a complete

1 overstatement ---

2 A. --- except for the \$26,000.

3 Q. --- right, because they certainly have done --
4 they certainly have paid you exactly what they told
5 you they would pay there. There is no time for the
6 payment on the \$15,000 that -- that doesn't relate
7 to the submittal. And I think you even mentioned
8 the work had to be done before it was going to get
9 paid. And -- and then the \$50,000 doesn't have a
10 time frame to it.

11 A. What's the question?

12 Q. Why not finish the job?

13 A. We ---

14 MR. GOODWYN: Your Honor, I object. He's asked
15 this three times.

16 THE COURT: I sustain the objection.

17 MR. DAVIDSON: Okay. I'll move on.

18 BY MR. DAVIDSON:

19 Q. But the job wasn't finished, right? You pulled
20 off that job.

21 A. It was not.

22 Q. Okay. Now, let's look at -- let's look at
23 paragraph 13. And this relates to Toxaway, correct?

24 A. Yes, sir.

25 Q. Okay. Now, paragraph 13. "The parties further

1 agrees that the subject to Anderson County Counsel's
2 approval of the East-West Park Project, Anderson
3 County and Moats Construction Company agree on the
4 following settlement terms for Toxaway," correct?

5 A. Correct.

6 Q. "Anderson County will rescind the termination
7 letter. It will pay -- it will reinstate the
8 contract \$59,000 -- at less the \$59,000. Moats will
9 remobilize on the project on or after June the 1st
10 of 2018," correct? And then several others, but
11 let's -- let's just go through these real quick; is
12 that right?

13 A. That's correct.

14 Q. Okay. Now, as we read this, don't you agree
15 with me that the county counsel has to approve the
16 East-West Park Project before there are any
17 obligations around Toxaway?

18 A. I suppose, yeah, they did.

19 Q. Okay. So if that project -- if East-West
20 doesn't get finished, counsel can't approve the
21 project?

22 A. No, sir. That is absolutely not how I
23 interpret that. It says April the 17th or 18th when
24 they would've had this counsel meeting, and they
25 were going to discuss this, I'm sure in the

1 executive session like they normally do. And I'm
2 sure they discussed this entire mediated settlement
3 agreement and they would've had to approve and agree
4 to it for it to be effective or executed.

5 Q. Okay. So you mentioned the county counsel
6 meeting, so that's in paragraph 11, right?

7 A. Yes, sir. The 17th, April 17th.

8 Q. Yeah, I'm sorry. You're right. April 17th.
9 So the above agreement is subject to Anderson County
10 Counsel approval at their April 17, 2018, counsel
11 meeting, correct?

12 A. Correct.

13 Q. And that's for this whole agreement?

14 A. Yes, sir.

15 Q. All right. Now, that's worded differently,
16 isn't it, than paragraph 13 that provides that the
17 parties agree that subject to Anderson County's --
18 Anderson County Counsel's approval of the East-West
19 Project.

20 A. I can't see it all. Right. So on their
21 approval of that project on the 17th, that the
22 following terms of the settlement agreement would
23 apply.

24 Q. Well, it doesn't say on the approval on the
25 17th, right?

1 A. It says ---

2 Q. That was the approval of the agreement?

3 A. It says on their approval.

4 Q. Of the project?

5 A. Subject to the Anderson County approval.

6 Q. Of the project -- of the East-West Park
7 Project, right?

8 A. That's what it says.

9 Q. Okay. So if that reading is correct, Anderson
10 County's obligations on Toxaway don't start until
11 the East-West Project is finished, correct?

12 A. No, sir. No, sir.

13 Q. If that reading is correct, it would be though,
14 wouldn't it?

15 A. No, sir. That is not correct and that is not
16 how we intended anything like that to be interpreted
17 in that mediated settlement agreement. If it had
18 been, I would never have agreed to that.

19 Q. That's the way it's written, though, isn't it?

20 A. I mean, it is worded a certain way, but it's
21 referring to the agreement for the East-West Park
22 Project.

23 Q. But you said it's worded a certain way, and
24 it's worded that it's based on the approval of the
25 East-West Project?

1 A. So, yes, it's going to be subject to how you
2 interpret that document. Your interpret -- your
3 interpretation of that document is to mean that no
4 approvals for Toxaway would be given until the
5 East-West Project is finished, completed by us, like
6 physically completed.

7 Q. Exactly.

8 A. And that is not -- that is not how the mediated
9 settlement went down. That is not what we agreed
10 to.

11 Q. I'm going to show you the settlement agreement
12 again. Okay. This is it, right?

13 A. Yes, sir.

14 Q. And it's signed by you on behalf of Moats
15 Construction?

16 A. That's correct.

17 MR. DAVIDSON: Okay. All right. Your Honor,
18 can I have just a minute to collect ---

19 THE COURT: Sir?

20 MR. DAVIDSON: Can I have just a minute to get
21 through some -- get through my documents and get
22 right back on it?

23 THE COURT: Madam forelady, would you take your
24 jury back to the jury, room, please?

25 THE FORELADY: Yes, sir.

1 (At 3:19 p.m., jury left the courtroom.)

2 THE COURT: You can step down.

3 THE WITNESS: Thank you.

4 (From 3:20 to 3:27 p.m., recess was had.)

5 (At 3:27 p.m., jury entered the courtroom.)

6 THE COURT: Mr. Davidson.

7 THE DEFENDANT: Nothing further, Your Honor.

8 THE COURT: Nothing further.

9 MR. MCDADE: Yes, sir.

10 THE COURT: All right.

11 CROSS-EXAMINATION

12 BY MR. MCDADE:

13 Q. All right. Mr. Moats, let me find these
14 exhibits. It's been a while since you -- it's been
15 a while since you testified about these subjects,
16 but and I wanted to ask you few a questions about
17 it. The photographs that we looked at earlier, who
18 took those photographs?

19 MR. GOODWYN: Your Honor, I'm going to object
20 and ask that he be a little more specific. There's
21 a lot of photographs in evidence.

22 BY MR. MCDADE:

23 Q. Okay. Well, you have a pile of them, and I
24 don't have. These photographs -- who took those?

25 A. Now, that photo in particular, I believe I -- I

1 took it.

2 Q. Okay. Were they all taken by you?

3 A. I don't know if all of them were.

4 THE COURT: Would you refer to the exhibit
5 number for me, please, sir?

6 BY MR. MCDADE:

7 Q. Okay. This is Plaintiff's Exhibit No. 9. Now,
8 primarily, I want to ask you about the two
9 photographs of the signs. And you know the ones I'm
10 talking about?

11 A. Yes, sir.

12 Q. Who took those?

13 A. I took those.

14 Q. Okay. Do you know when you took them?

15 A. I'm not sure exactly when. And -- it was after
16 we left. Some time after we left the project.

17 Q. How -- how -- how long after you left?

18 A. I really do not know. I can't -- I don't
19 remember. I would ride by there every once in a
20 while. Well, I mean, I'm always going down
21 East-West, or not as much down King, but East-West a
22 good bit, cutting over, and so I was able to kind of
23 observe what was going on and if they were finishing
24 the project or whatever. So that sign remained up.

25 And came by there one day, and I noticed it

1 looked like -- almost like somebody took an eraser
2 and, you know, because our logo was right there and
3 you could see it, but I noticed that our logo had
4 been removed. And I remember thinking I couldn't
5 believe that they would do something that was that
6 petty or somebody would.

7 Q. Okay. So we established I think earlier, we
8 don't know who did that to the sign.

9 A. Well, that's why I said "they." I don't know
10 who did it.

11 Q. Okay. So are these the same? These look like
12 they both have the logo on there. One's the full
13 sign and one's the edge.

14 A. Yes, sir.

15 Q. So these were obviously taken before it was
16 painted over?

17 A. Right. Correct.

18 Q. Okay. All right. So would you agree with me
19 that the two pictures we just looked at that did
20 have your logo and this picture that does not have
21 your logo, those weren't taken the same time,
22 correct?

23 A. No, sir. They weren't taken at the same time.
24 I mean, you know, they're date and time stamped. I
25 mean, we provided digital copies of them, so...

1 Q. You didn't provide digital copies to me, and I
2 sent discovery.

3 A. Well, we placed them in the sheriff file for my
4 attorney, so...

5 Q. You didn't do that. I never got a shared file
6 with this stuff on there, but would you agree with
7 me that the picture that shows your logo, the two
8 pictures that show your logo and the picture that
9 doesn't show your logo, those would not have been
10 taken at the same time, correct?

11 A. No, sir. Yeah, that's correct. They weren't.
12 Could you go back to the last picture? Okay.

13 Q. So did you take the one that you say is painted
14 over that does not show your logo?

15 A. I took all of them. I took all those pictures.

16 Q. Okay. Well, that was my first question.

17 A. Right.

18 Q. Okay. Do you know when you took the one that
19 does not show the logo?

20 A. I mean, that was after we left. I don't know
21 about the first one. I don't know if that was a
22 picture we had just taken of the project from the
23 road or what. I wouldn't know really without
24 looking at the -- I mean, I honestly probably have
25 it on my phone right there.

1 Q. Okay. When -- when did you leave? Was that --
2 did you say June of '18?

3 A. May of 2018 I think.

4 Q. Okay. Do you know how long it was after you
5 left?

6 A. I do not.

7 Q. Okay. All right. So let me ask you this:
8 When you left, you actually pulled your crew off the
9 job, correct?

10 A. We did.

11 Q. And you told the county you needed to get
12 somebody else to finish this job?

13 A. I don't know if we -- I don't -- I didn't say
14 any of that to the county I don't think, but I
15 believe we told our attorney. I don't think it was
16 in those certain words, but I believe I told him
17 that because of all the issues we had and them not
18 honoring the mediated settlement agreement and us
19 not -- just not being able to finish, I wouldn't --
20 there's an e-mail. There's an e-mail to Lee
21 Prickett that says everything. I don't know if it's
22 in an exhibit. I don't know. At this point, I
23 don't know what's been -- what you guys have because
24 I provided everything. All of this information.
25 There were boxes of e-mails and documents. I really

1 don't know what you have, but I know that there were
2 boxes.

3 Q. Well, let me tell you what I have. What --
4 what I have is is that I sent discovery and I got
5 the newspaper article is the only document I got.
6 We went to your deposition. And do you remember
7 that you went to your truck because you said you had
8 some e-mails, and you came back with these two
9 change -- two e-mail changes and that's all I have.

10 A. Yeah, I remember that because I remember the
11 deposition. And I remember going to my truck. And
12 I'm not sure if I had it. I don't know if the
13 e-mails, if I had them printed or I didn't have all
14 of that information. I just had some -- some of the
15 copies of stuff that we had originally given to the
16 first firm that we had handling the case.

17 Q. Okay. And we deposed you on September the 29th
18 of 2021. That's two and a half years ago. So let
19 me ask you this: Look at -- this is part of Exhibit
20 No. 4, Defendant's Exhibit No. 4. Okay. You see
21 that at the top? Is that something you sent Matt
22 Schell?

23 A. Yes, sir. It is.

24 Q. Okay. And so you say, "Matthew, this is
25 unfortunate but not a surprise. I am suspending all

1 work on the East-West Connector Park Project
2 effective today. Hopefully, we can have a mediation
3 meeting next week to try to resolve the issues.
4 Otherwise, we will remove all of our equipment from
5 the site and, quote, yes, you can get someone else
6 to finish your project." That's what you told him,
7 right?

8 A. That's my e-mail. Yes, sir. I was responding
9 to an e-mail he had written. I mean, that's what --
10 that was his words. I mean, he was threatening to
11 remove us from a project because they had given us
12 some drawings and we had installed some concrete per
13 the drawings and they were going to have to tear it
14 out.

15 Q. Okay.

16 A. I mean, read -- read the e-mail prior to that.

17 Q. Well, I -- that's what I'm going to get to.

18 All right. This is the first e-mail. These are the
19 ones you gave me. These are the first e-mails. Is
20 there anything on there from Matt Schell?

21 A. Just the pay application that I see.

22 Q. Okay. And then down at the bottom. Is there
23 anything on there from Matt Schell?

24 A. I mean, I don't see anything, except for it
25 says -- that's from Natasha.

1 Q. Okay. Well, that's page 5, correct?

2 A. Yes, sir.

3 Q. Okay. This is a five-page document. That's --
4 that's number five. Let's look at number four. And
5 I believe number four is your e-mail first. Okay.

6 This is page 4. All right. Is that February
7 the 23rd, 2017, at 5:43 p.m.?

8 A. It is.

9 Q. And that's you, correct?

10 A. Coming from that e-mail address or an e-mail
11 address that I had. Sure.

12 Q. Okay. And it's Matthew. That's -- that's what
13 you called him?

14 A. It is. I mean, this is an e-mail to Matthew
15 Schell, I mean, but it's showing the e-mails that I
16 wrote. You don't -- you don't have the ones that he
17 wrote?

18 Q. But I got them from you.

19 A. I'm asking if you have the e-mails.

20 Q. All I -- all I have is two e-mail chains that
21 you gave me at a deposition.

22 It's been two-and-a-half years for anybody to
23 get me boxes of e-mails or whatever e-mails we've
24 been referring to, but nobody has. So this is --
25 this is all I have?

1 A. Okay. I don't ---

2 Q. Okay.

3 A. --- I mean, I have some other e-mails.

4 Q. Okay. Well, we don't have them here. So
5 this -- this says, "Matthew, this is unacceptable."
6 And it talks about various prob -- various problems
7 that you had, issues that you had; is -- is that
8 correct?

9 A. It is. So the e-mail before this was actually
10 in an exhibit that I talked about earlier.

11 THE COURT: Would you answer the question that
12 he asked?

13 THE WITNESS: What was the question?

14 BY MR. MCDADE:

15 Q. The question is: This is your e-mail to
16 Matthew -- to Matt.

17 A. It's an e-mail from me to Matt.

18 Q. Okay. And it -- it talks about issues that you
19 had.

20 A. It does.

21 Q. All right. And let me ask you about those
22 issues. Did it talk about trees?

23 A. If you don't mind, just give me a second to
24 read it.

25 Q. Sure.

1 A. Yeah, it just says the root balls of the trees.

2 Q. Okay. Talks about trees. Does it talk about
3 an ADA area?

4 A. It does.

5 Q. Okay. Does it talk about rain days?

6 A. Yes, sir.

7 Q. Does it talk about concrete items?

8 A. It does.

9 Q. Okay. And those are issues that you said that
10 you had. Okay. So let's look at -- that's your --
11 your e-mail to him. Let's look at his response.
12 Okay. His response starts on page 2, so let's
13 look -- let's look at that.

14 And you -- you said earlier, I believe, and his
15 response is February the 24th, the same day, or 2017
16 at 12:20 a.m., so a little after midnight he
17 responded to your e-mail?

18 A. It looks like at midnight, after midnight.

19 Q. Yeah, just a little bit after midnight. Okay.
20 All right. And I believe you -- you characterized
21 it as being a bad e-mail or malicious or something
22 earlier in your direct testimony?

23 A. I don't think this is the same e-mail.

24 Q. Well, you said false allegations in a malicious
25 way. Does it -- does this -- is it -- is this a

1 malicious e-mail back to you?

2 A. I don't think -- I don't think that's the same
3 e-mail. That's what I was -- that's what I was
4 talking about. There was another e-mail that Jeff
5 had given me earlier to look at. We were talking --
6 we were talking about the defamation of Matt Schell,
7 and I don't think this is the same e-mail.

8 Q. Okay. So when your attorney was asking you
9 questions before lunch, it was e-mails and this was
10 Exhibit 4. I believe this is Exhibit 4. Is that
11 Exhibit 4?

12 A. I mean, that is Exhibit 4. It is.

13 Q. Okay. So when you said before lunch that there
14 was -- that there was false allegations in a
15 malicious way talking about this e-mail, were you
16 mistaken about the e-mail that you were referring
17 to?

18 A. Which e-mail? What exhibit number?

19 Q. Okay. We have two e-mails. Your attorney went
20 over e-mail no. 4. He identified it as Exhibit 4,
21 and I have notes from your responses to his
22 questions. And you said that he was making false
23 allegations in a malicious way. What I'm asking you
24 is: In this e-mail and I'm happy to have you look
25 at the whole thing. Tell me where there's false

1 allegations made in a malicious way because that's
2 what you testified to.

3 A. Yeah, so in the second paragraph of your
4 Exhibit 4 where he's -- this is an e-mail chain to
5 Robert Carrol, Rusty Burns, Leon Harman, Glen
6 Brill -- which is his boss. He's over the parks
7 department -- and Natasha Sexton, he says that he
8 formally accepted the hardscape items that Moats had
9 installed, even though they were built environmental
10 discrepancies is the way he worded it in relation to
11 the plan. That's just one example. That means that
12 we installed -- we installed it incorrectly.

13 Q. Okay. But is that a false allegation in a
14 malicious way?

15 A. It's a false allegation and I don't know how
16 else to take it.

17 Q. Okay.

18 A. How would you take it?

19 Q. Well, would you agree with me that if -- if --
20 if something -- if somebody with the county was
21 wrong and they told you something that was not true,
22 that's not necessarily defamation, is it?

23 A. It is. It is. It depends on the intent. If
24 it's -- the intent is malicious to do harm to
25 somebody like tarnish their reputation or confidence

1 somebody has in that party, which I think that
2 that's what he was doing. It's the first job he
3 ever worked with us on. He obviously didn't like
4 the work we were doing or the manner we were doing
5 it in. And by copying all -- all of these -- all if
6 the people in here, he was letting all of those
7 people know.

8 Q. Well, aren't all those people on the project?

9 A. They are.

10 Q. Okay. When they say we're -- we're paying
11 Moats this much money, they copied all those people,
12 correct?

13 A. Right. Yeah. Sure.

14 Q. If they said Moats did a good job on this, it's
15 copied to all those people?

16 A. I mean, in some cases it is.

17 Q. Okay. Or if it says that Moats did this and
18 we're going to accept it, that's communicated to all
19 of those people?

20 A. It is, but most of our communications were
21 between me, Matt, and Natasha.

22 Q. Well, isn't it common on a construction project
23 to keep people on the group to be copied on e-mails
24 so that they know what's going on?

25 A. It is. And so to keep people in this situation

1 were me, Natasha, and Matt.

2 Q. Okay.

3 A. Not -- not -- not anybody else.

4 Q. What about Matt's boss?

5 A. Glen Brill? Yeah, we had a meeting with him
6 over at that courthouse in the conference room, and
7 he couldn't figure out why we were even there.

8 Q. Okay. Or Robert Carrol?

9 A. And Robert is the securities director.

10 Q. Okay.

11 A. So he -- well, he submits the contracts and --
12 and makes recommendations to the counsel for
13 administration approval.

14 Q. So if Mr. Harman's on an e-mail, you think they
15 do that because they're trying to get you in trouble
16 in some way?

17 A. Well, he's the county attorney. Why else would
18 they involve the county attorney?

19 Q. Well, maybe he's in -- maybe he's involved in
20 the project or at least the mediation part of it.

21 A. Well, there was really no mediation at this
22 point. I mean, this is a -- this is a change order.
23 At this point, we were -- we were -- there were
24 changes getting made to projects, but these were
25 just change orders. We're not even at a point until

1 Matt suggested it in that e-mail that he would get
2 somebody else to do the work. And then that's kind
3 of where mine and his relationship fell apart. When
4 we sent this very long e-mail, very long e-mail.

5 Q. Which you didn't produce?

6 A. I did produce it and I'm pretty sure he has it.

7 Q. No, sir. So let me ask you this: You told me
8 in your deposition that you and Matt Schell got off
9 to a good start.

10 A. At first we did.

11 Q. Okay.

12 A. When we were in Robert Carroll's office, we did.

13 Q. You had a good relationship?

14 A. For about five minutes.

15 Q. I don't -- it was more than five minutes.

16 A. I don't remember.

17 Q. Okay. So when you sour with somebody, you sour
18 all the way back to the beginning?

19 A. No. No. I just remember that's how it was.

20 Q. Okay.

21 A. It -- it started off good at the beginning in
22 Robert's office where we were kind of going, you
23 know, into the contract. He was making changes to
24 shrubbery and trees and things like that. And he --
25 because he had never worked for us before. I don't

1 know why he felt like he had to bring a certain tone
2 to ---

3 Q. Did you say work for you?

4 A. No. With us. With us as a company before. I
5 mean, he's used to working with other people on
6 other projects. This is the first park project we
7 had done for Anderson County, so he had not worked
8 with us before. And he brought a certain tone and
9 attitude immediately to the job, like he was going
10 to direct everything we did. Matter of fact, and he
11 did stand over my guys and tell them how to handle
12 the trees.

13 Q. Did he -- did he tell them not hold the tree by
14 the trunk and compromise the root ball? Is that
15 when he was standing over them?

16 A. I don't know.

17 Q. You weren't there then, were you?

18 A. Yeah, I was there. I was ---

19 Q. You were there?

20 A. --- I was there, but I paid the site
21 superintendant to be there and supervise our
22 employees so I was not there all the time, but I was
23 there a lot of the time.

24 Q. My question is: Were you there when your
25 workers were pulling the tree around by the trunk

1 and compromising the root?

2 A. No.

3 Q. Okay.

4 A. No. We don't normally do that.

5 Q. All right. So let me ask you this: Is the
6 time when -- when you fell out, was it -- was there
7 a time when you did concrete and it was supposed to
8 be next to the parkway, the road, and it was on the
9 other side?

10 A. No, sir.

11 Q. And that had to be approved later?

12 A. No, sir.

13 Q. Was there a disagreement early on about
14 concrete and whether it was going to get paid or
15 not?

16 A. Absolutely. That's -- that's what we're
17 talking about.

18 Q. Okay. And that's when ---

19 A. He didn't ---

20 Q. --- the relationship went sour with him, isn't
21 it? When we -- when he told you that that wasn't
22 where it was supposed to be and -- and it wouldn't
23 be -- wouldn't be paid unless it was approved later?

24 A. No, sir.

25 Q. Okay. But when you start -- when that started,

1 when you had a problem, you've had a problem all the
2 way since then, correct?

3 A. I know what you're referring to. I mean, I
4 know exactly what you're referring to. You're
5 referring to a strip of sidewalk that was about
6 50 feet, 60 feet long, and it was on one side of the
7 upper parking lot, the first phase. And it was on
8 the drawings to install it. I mean, it was a
9 sidewalk on the outside of the curb where people
10 park. And it showed it on the drawings, so we
11 installed it.

12 The only thing is, they had a -- they had a
13 schedule of values with this project that has not
14 been produced or shown the entire time I've been up
15 there, but it showed -- it showed exactly how many
16 linear of a -- linear feet square footage. It
17 showed the number of plantings, number of trees,
18 everything. And -- but it didn't necessarily, you
19 know, say, you know, you -- it didn't say, hey,
20 don't install this sidewalk in this location, and
21 there was nothing on the plan that showed that you
22 weren't supposed to install that sidewalk, so we
23 did.

24 And not only that we were not supposed to, but
25 I didn't expect -- when I went and actually measured

1 the square footage and looked at it, I was like,
2 well, we did install more than we were supposed to,
3 but I didn't go to him and say, hey, you have to pay
4 for this. I didn't do that.

5 Q. All right.

6 A. If we had gotten paid for it, good. If not,
7 it's got to be installed. I mean, it's in -- it's
8 there on the drawing and inside the phase line so
9 why wouldn't you install it?

10 Q. So did Natasha Sexton design the trees there
11 where the trees were to be and what kind of trees?

12 A. I mean, that I have no idea because I don't
13 know at what point Natasha actually was involved in
14 the job.

15 Q. Okay. So you don't know that she was the one
16 that chose the trees?

17 A. No, I don't. I mean, I don't even know how she
18 was hired for the job.

19 Q. Okay. All right. Was the county the customer
20 in this deal?

21 A. The county was the owner of the project.

22 Q. Okay. Customer?

23 A. They were our customer.

24 Q. They're your customer. That's right. Do they
25 have the right to choose trees that they want on

1 their projects?

2 A. Sure.

3 Q. All right. So on that Exhibit No. 4, is there
4 anything else on there you -- you believe or
5 anywhere you believe that you were defamed, other --
6 other than a disagreement? Because as I understand,
7 your understanding of defamation is if somebody says
8 anything negative about your company, you consider
9 that to be defamation, correct?

10 A. No. That's not ---

11 Q. That's what you told me in your deposition.

12 A. That's not what I said. That's not what I
13 said. No. And I think you said that in your open
14 argument too, but it's -- I mean, my definition is
15 if it's done in a malicious way to harm somebody
16 else, to harm their reputation, then that's what I
17 would consider defamation ---

18 Q. Okay.

19 A. --- or to harm their company's reputation, you
20 know.

21 Q. So how do you know somebody's intent?

22 A. By the -- by the context in which it's written
23 or said.

24 Q. Okay. So let's look at -- let's look at the --
25 let's look at this newspaper article, because I

1 found it interesting that you said you had a problem
2 with the title, with the question, and with the
3 answer. What's wrong with the "A" team? What
4 happened with the East-West Connector Park? What
5 problem do you have with that?

6 A. Well, I mean, they're asking what happened to a
7 project that I'm a part of. I mean, why -- why
8 would -- why would they ask that question?

9 Q. Maybe they're a citizen and they want to know
10 when their park's going to open up?

11 A. Absolutely. So they're -- it sounds like -- it
12 sounds like a concerned citizen to me.

13 Q. But you said in response to your attorney's
14 question, "What issues do you have with that?" You
15 said, "The title, the question, and the answer."

16 A. Well, what I meant by that was, I have a
17 problem with the title because they're even having
18 to ask that question. You know, they're -- they're
19 having to ask what's wrong with it.

20 I have a problem with it as a taxpayer myself
21 in the county, you know, so -- but the question even
22 having to be asked, you know, what happened to a
23 project that's -- that we're paying for, you know,
24 or that I'm working on and I'm supposed to be
25 providing to the public.

1 And then there's -- there's -- there's a news
2 article about it, and then the answer to that was
3 not just we had issues with the park or we had
4 issues out there. But not only that, but we had
5 issues with the contractor. That's the biggest part
6 of that I have an issue with.

7 Q. Let's get to the question. That's the second
8 part. The question is a reader asked what was
9 holding up the progress on a park connected to the
10 East-West Parkway. Her husband rides bicycles and
11 runs on the pathways. He's going nuts trying to get
12 a hint of when the park will be done. That's not
13 defamatory to you, is it?

14 A. I don't think I said it was defamatory.

15 Q. You -- you said, "The title, the question, and
16 the answer." We've gone over the title and the
17 question. How are those defamatory to you?

18 A. You asked me what I had a problem with. Okay.
19 I didn't say that the title was defamatory. I
20 didn't say that the question was defamatory.

21 I said his explicit answer to it is what I
22 considered to be defamatory. He could've easily
23 said -- he could've easily left out, you know, the
24 issue of rights-of-way or right-of-ways and just
25 said that or sewer lines or gas lines, but he

1 didn't. He said -- the very first -- the very first
2 sentence in that third paragraph was there had been
3 disputes with the contractor.

4 Q. Okay. I think everybody in this courtroom
5 understands that there were disputes between you and
6 the county on this project, correct?

7 A. Correct.

8 Q. Everybody understands that. You told me in
9 your deposition, it's not unusual for there to be
10 disputes on a construction project.

11 A. There's not.

12 Q. Okay. So every time you've had a dispute with
13 somebody, did -- did you sue them for defamation or
14 claim that they defamed you?

15 A. No, I didn't.

16 Q. This is the first time, right?

17 A. This was the first and only time that it -- it
18 had some kind of damage like serious impact on not
19 only my business and my company, but my life in
20 general and that's what it did.

21 Q. Okay.

22 A. Or I would not have ever brought a defamation
23 case if it had not. If it had not been significant
24 and had that kind of impact, I wouldn't never have
25 pursued something like that. I'm not -- I mean, I

1 wouldn't have done that.

2 Q. So let's look at what you believe is
3 defamatory. There have been disputes with the
4 contractor and I know you read that part, but do you
5 read the part which says which are being resolved?

6 A. Which was false.

7 Q. Okay. This isn't quoted. This Rusty Burns was
8 talking to somebody in the newspaper and this is
9 what they printed. It's not in quotes, so it's not
10 those exact words, but he must've communicated that
11 there were disputes, but they're being resolved.
12 Isn't that positive?

13 A. I don't see any part of this article as
14 positive, not for me anyway.

15 Q. Even if they're resolved?

16 A. No. They -- they weren't resolved.

17 Q. Okay. But he said which are being resolved, so
18 he's not saying the contract is holding this up.
19 The contract -- he didn't say the contractor's doing
20 a bad job. He didn't say the contractor's a bad
21 guy. He just said we're having disputes. They're
22 being resolved. Isn't that positive or fairly
23 positive? It's certainly not negative.

24 A. Not to me.

25 Q. Not to you because it's you, right?

1 A. Not to me, especially when somebody removed our
2 logo from the project sign, too.

3 Q. Let me ask you this ---

4 A. There were a lot of things that happened. It
5 wasn't just this article.

6 Q. --- so let me ask you this: Have you had
7 communications with third-parties about your
8 disputes with the county?

9 A. Other people?

10 Q. Yes, sir.

11 A. Absolutely.

12 Q. Okay. Have you said things like we're
13 resolving our problems or are you blaming it all on
14 the county?

15 A. I blame -- I blame everything on the county.

16 Q. That's exactly right.

17 A. That's why -- that's -- that's the whole reason
18 why we're here.

19 Q. Is that defamation?

20 A. Not if it's true.

21 Q. Theirs is if it's true.

22 A. I'm sorry. What?

23 MR. GOODWYN: Objection. Argumentative.

24 MR. MCDADE: Well, isn't it true ---

25 THE COURT: Hang on. Hang on. He had an

1 objection?

2 MR. GOODWYN: I said, "Objection.
3 Argumentative."

4 MR. MCDADE: I'll withdraw it.

5 BY MR. MCDADE:

6 Q. Isn't it true that there were disputes with you
7 and the county and you were trying to get them
8 resolved? You went to mediation and got them
9 resolved?

10 A. I don't think at this point, there was not.
11 This is February the 1st, 2018.

12 Q. Okay. That was before mediation?

13 A. Right. That was before mediation.

14 Q. Okay. All right. And were there issues with
15 right-of-ways out there? Didn't say your issues,
16 but were there issues with right-of-ways?

17 A. As a matter of fact, at this point in time,
18 February the 2nd, 2018, I don't even know that I had
19 even retained anybody that -- I don't know. This
20 thing was just sitting idle, I mean.

21 Q. Well, does it say that the right-of-ways were
22 your -- your problem or your fault?

23 A. No. I mean, I just -- everything they imply --
24 implied was that it was. And every -- everything
25 they produced to us in -- in -- in their defense and

1 everything that -- all the communications, inner --
2 inner county communications, I mean, all of the
3 blame was directed to us.

4 Q. Okay.

5 A. So -- so why -- so why wouldn't -- why wouldn't
6 that article be taken in that context? I mean,
7 they've done nothing but blame us the entire time
8 we've been out there.

9 Q. We're -- we're talking about this one document.
10 Okay. The one document you produced in discovery,
11 that's what we're talking about. Does that say that
12 the right-of-ways or the sewer lines are your
13 problem? Did you even have anything to do with
14 sewer lines out there?

15 A. No. That sewer line is another issue that has
16 not -- hasn't even been discussed.

17 Q. Did -- did you -- did you have anything to do
18 with sewer lines on this project?

19 A. No, sir.

20 Q. Okay. So that wouldn't be you. And the area
21 being resurveyed to be compliant to make sure it's
22 compliant with Americans with Disabilities Act.
23 Does anybody say that that was you, that you were a
24 problem with that?

25 A. I don't think so. I mean, it says contractor

1 and then it's the same sentence.

2 Q. So as soon as it says contractor, it doesn't
3 matter what they say after that, that's bad?

4 A. I think so.

5 Q. Okay.

6 A. You're kind of guilty until proven innocent.

7 Q. How are you guilty until proven innocent?

8 A. I just -- that's just, I mean ---

9 Q. Because you're a contractor?

10 A. Yeah.

11 Q. Okay. Is that true with everybody you deal
12 with?

13 A. No. I don't think so. It's not the way I look
14 at things, but a lot of people -- that is the way a
15 lot of people do, especially if they're contractors.
16 I mean, they -- they vilify contractors. Every
17 contractor's out to get you. You know, it's just
18 not the case. I mean, people have bad experiences
19 with different people, but, you know, there are bad
20 people out there in every -- every different, you
21 know, business or sector.

22 Q. Okay. Let me ask you to look at Exhibit 3 and
23 I'm about -- I'm about through. You were asked what
24 the issue with that was and you said that they
25 wanted a particular table; is that correct?

1 A. Yes, sir.

2 Q. Okay. Is there any -- a problem with the
3 customer or the person on the other side of the
4 contract wanting a particular table?

5 A. Well, so, normally, in a project, if you have
6 something like an item like that, it's called out
7 specifically in the contract in the details, and,
8 you know, we want this brand. And so that's what
9 you -- that's what you, you know, put in your bid,
10 you know, as far as the money you have for that
11 particular item.

12 I don't even know. I can't remember if it was
13 maybe done through a change order where you want to
14 add picnic tables. I really can't remember if we
15 added it, but I think there were some bike racks
16 that we deducted and he was adding some picnic
17 tables. And that was the vendor he wanted to use,
18 and he wanted us to pay for it and he was going to
19 reimburse us through the contract and, you know, via
20 a change order.

21 So we didn't have to do anything. I guess she
22 was just -- Anderson County was a good enough
23 customer because it's a county. And so she just
24 shipped them to us. You know, we didn't -- I mean,
25 we didn't sign anything. We didn't -- she just

1 shipped the tables to us and shipped that quantity
2 of tables to us. We installed them.

3 And then she wanted to be paid. And we were
4 like, Joyce, well, we know you pay from the county
5 first. Usually, it's paid when paid.

6 Q. Right. Well, let me -- let me stop you because
7 I want to focus on defamation because I assumed when
8 your attorney asked you what was the issue with
9 Exhibit No. 3 that you were going to tell us what
10 the issue was with defamation because that was
11 produced to me at your deposition on the issue of
12 defamation. What does -- who pays for the table or
13 what table you get? How does -- how is that
14 defamation or is it?

15 A. Well, I mean, he's essentially -- this is an
16 e-mail thread, so everybody's copied in it.

17 Q. Well, I'm talking about the table. What does
18 the table have to do with defamation? I understand
19 it's the subject of the e-mail. Are you saying you
20 were defamed because they made you get a particular
21 table?

22 A. No. He says that we're five months overdue.
23 It says right here, "Robert, you know, please help
24 Joyce Mosstetler recover her fees from Russell
25 Moats. He's almost five months overdue," saying

1 that we're past due five months overdue and we're
2 not paying our bills.

3 Q. Okay.

4 A. Like we don't -- implying that we don't pay our
5 bills.

6 Q. He's -- he's -- he's passing on to -- to a
7 group on this project. He's passing on what was
8 give or put in an e-mail to you by Joyce Mosstetler.

9 A. But he had not even paid for the tables. The
10 county had not paid for them.

11 Q. Okay.

12 A. They had not paid for them so; and, therefore,
13 we couldn't pay her.

14 Q. Okay. Well, she asked -- aren't you supposed
15 to pay your sub? Is she a subcontractor of yours?

16 A. No. She was no subcontractor of ours.

17 Q. Okay.

18 A. This was a vendor that Matt chose and we went
19 along with it. We had another vendor that we were
20 going to buy them from. He wanted to use her.

21 Q. Okay. This -- this is an e-mail from her to
22 you. Why is she expecting you to pay her if
23 that's ---

24 A. Because that's what Matt told her. He told
25 her -- he told her that we would -- she would be

1 paid by the contractor. That's what he told her.

2 Q. But that's not in this e-mail?

3 A. I believe -- no. I believe there's e-mails
4 about it back and forth between me and Matt and I've
5 got e-mails to her also.

6 Q. Okay. This isn't sent to anybody but the group
7 working on the project, correct, or people with the
8 county?

9 A. People with the county, I'm sure. Yeah,
10 Natasha, yeah, Joyce.

11 Q. Okay. Everybody on here ---

12 A. She wasn't working -- she wasn't working,
13 thought. She was like a third-party. I mean, she
14 wasn't really, I mean, considered working on the
15 project. I mean, she was a -- she was a vendor
16 supply of material or a product.

17 Q. Okay. It's not sent to a third-party
18 unaffiliated with this project in any way, correct?

19 A. She wasn't affiliated with the project until
20 Matt made her -- made her affiliated. That was
21 his -- that was his choice. It was his vendor.

22 Q. Okay.

23 A. I just went along with it to make him happy.
24 That's what he wanted, so that's what I was trying
25 to do.