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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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

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

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Moats Construction, Inc. and Russell Moats,

Appellants,

v.

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

Respondents.

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RECORD ON APPEAL  
(VOLUME 2 OF 3)

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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.

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April 8, 2026  
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1 Q. All right. So I want to ask you: In your  
2 deposition, you and I had what I would consider a  
3 little bit of an unusual conversation, but we talked  
4 about -- we talked about the sign. Do you remember  
5 that?

6 A. I do.

7 Q. Yeah. And you -- you asked me stuff about what  
8 if my name was on a sign and somebody took it off.  
9 I -- you know, I would not care. Some days I would  
10 like for it to be taken off, but I guess the answer  
11 that I got that I was a little bit perplexed by is I  
12 asked you if your sign -- your logo's up and 5, 10,  
13 15 years, 20 years from now somebody takes it down,  
14 and you told me that would be defamation.

15 MR. GOODWYN: Your Honor, I'm going to object  
16 to this line of questioning. I think he can ask him  
17 the question, but just ask him what he asked him in  
18 the past and what was said in the past at a  
19 deposition. That's an improper use of deposition.  
20 He's just got to ask him a question ---

21 Mr. MCDADE: I think I can ask him.

22 MR. DAVIDSON: --- and if he gives a different  
23 answer, then he can impeach him.

24 THE COURT: You need to follow the rules. I  
25 think it's 614, please, sir. It's 613.

1 MR. MCDADE: Your Honor, may I give it to him?

2 THE COURT: Yes, sir.

3 MR. MCDADE: Can we open it?

4 THE COURT: Yes, sir, you may.

5 BY MR. MCDADE:

6 Q. Here's a copy of your deposition. If you would  
7 look at the bottom of page 44.

8 A. (Complying.)

9 Q. You see the -- the line 21 ---

10 A. Yes, sir.

11 Q. --- on page 44?

12 A. Yes, sir.

13 Q. Okay. I asked you a question: "So if you  
14 leave your sign on a project and somebody comes  
15 along 5, 10, 15, 20 years from now, that's  
16 defamatory if they paint over your sign or remove  
17 your sign?" What was your answer?

18 MR. GOODWYN: Your Honor, again, I'm going to  
19 object. He can't just read out of his deposition.  
20 He's got to ask him questions. If he's inconsistent  
21 with the deposition, then he can impeach him. He  
22 can't just ask him to read out of his deposition.

23 MR. MCDADE: Did I not ask -- that's what I  
24 just asked.

25 THE COURT: Y'all step up here.

1 MR. MCDADE: I can't do it two ways.

2 (Sidebar discussion.)

3 BY MR. MCDADE:

4 Q. All right. Mr. Moats, in your deposition on  
5 September the 29th, 2021, did I ask you ---

6 MR. GOODWYN: Your Honor, again, that's ---

7 THE COURT: Overruled. Go ahead.

8 MR. MCDADE: What do you want me to do?

9 THE COURT: No.

10 BY MR. MCDADE:

11 Q. Did I ask you that if your sign, your logo or  
12 your sign was taken down 5, 10, 15, or 20 years  
13 later, would that be defamation? Did you tell me it  
14 would be?

15 A. Do you want me to read it?

16 Q. No, sir. I want you to answer that question,  
17 and then we'll go from there.

18 A. Okay. Well, it's kind of long answer, but I  
19 said, "Sure. Why wouldn't it be? I mean, you're  
20 talking 5, 10, 15 years. I mean, you know, there's  
21 some projects like this building in particular that  
22 has a contractor's name on it that built it,  
23 architect, counsel county members that have all went  
24 down there and took a chisel and chiselled off the  
25 contractor's name, but, you know, you could probably

1 still see it. Would that be defamatory? Whoever  
2 did that?"

3 Q. Okay. Then we talked about, "Are you required  
4 to keep your sign up or your tribute sign up  
5 forever?" Okay.

6 A. Then you asked me -- you asked me if they're  
7 required to keep the sign or the logo up forever,  
8 and I said, "No. It wasn't forever. It was while  
9 the project was ongoing."

10 Q. Okay. So you would agree that we looked at the  
11 picture. You would agree that your complete logo is  
12 whited out?

13 A. It's painted over. I got a good picture of it  
14 where you can still see the logo under the paint.

15 Q. Okay. The picture that we have, you can't see  
16 anything of the Moats logo, correct?

17 A. Yeah, that's correct.

18 Q. Okay. So if somebody rides by -- because you  
19 talked about people riding by. If somebody rides by  
20 and sees that, basically they see something white  
21 there on a white sign?

22 A. I don't know what they see, but I had people  
23 make comments to me that saw it.

24 Q. Okay. That's hearsay.

25 A. I mean, that -- that's what I see.

1 Q. That's a white sign, correct?

2 A. Well, it's a white sign that looks like it has  
3 a real clean spot on the bottom right hand  
4 corner ---

5 Q. Okay.

6 A. --- like somebody took an eraser.

7 Q. So you think they're going to look at it and  
8 say that clean spot is Moats?

9 A. I guess if they had common knowledge of a job  
10 site and they've been going by there every day like  
11 a lot of people do going to work or school or  
12 whatever and they look over there and say, oh, it's  
13 a park or people that walk up and down. There's  
14 thousands of people that use that walking trail, the  
15 bike trail that you could go over there. I've seen  
16 people myself go over there and just stare at that  
17 board because they're looking at the -- what it's  
18 going to be -- what it's going to be. So they're  
19 looking at that design and that plan, and they see  
20 that big SGA right there and they used to see our  
21 logo beside it. And then all of a sudden they come  
22 back and they just see the SGA and they've got to  
23 wonder what happened ---

24 Q. All right.

25 A. --- because you can still see our logo under

1 the paint.

2 Q. You -- you weren't on that project at that  
3 point, right?

4 A. At what point?

5 Q. At the point that you say that you saw that it  
6 was painted over?

7 A. No, sir. I was not.

8 Q. You were gone, right?

9 A. I remember taking the picture and we were gone  
10 at that point.

11 MR. MCDADE: Okay. Thank you.

12 THE COURT: Redirect.

13 MR. GOODWYN: Thank you, Your Honor.

14 THE COURT: Hang on. Madam forelady, are y'all  
15 okay? Do you need a break?

16 THE FORELADY: I think we're good.

17 THE COURT: Is everybody okay? Does anybody  
18 need a break?

19 THE JURORS: (Negative responses.)

20 THE COURT: Okay. All right.

21 REDIRECT EXAMINATION

22 BY MR. GOODWYN:

23 Q. Hey, Russell, I want to go back over a couple  
24 of topics here that were addressed on direct.

25 First, I want to ask you some questions about

1 this settlement agreement, the mediated settlement  
2 agreement. When you're mediating with a party like  
3 the county, you're in a position where you can reach  
4 what you hope is an agreement, but you still have to  
5 wait for the county counsel to approve it; is  
6 that -- isn't that right?

7 A. That's the first time I've ever done something  
8 like that. I mean, normally, so that's what I  
9 experienced.

10 Q. Okay.

11 A. I'm saying it makes sense that the county  
12 attorney and the county administrator only act on  
13 the counsel's behalf.

14 Q. Okay.

15 A. They have to ultimately approve it.

16 Q. All right. Was it your understanding that the  
17 entire agreement needed to be approved by the  
18 county ---

19 A. Yes.

20 Q. --- by the county counsel rather?

21 A. Yes, sir.

22 Q. All right. And paragraph 11 here -- see if I  
23 can get it on here -- indicates that -- says, "The  
24 above agreement is subject to Anderson County  
25 Counsel approval at their April 17, 2018, counsel

1 meeting or earlier."

2 And the above agreement relates to the  
3 East-West Parkway Project, correct? We're just  
4 talking about paragraph 11, paragraphs 1 through 10  
5 deal only with East-West. The Toxaway Project is on  
6 the next page, paragraph 13, correct?

7 A. Correct.

8 Q. All right. Then you read paragraph 13,  
9 "Parties further agree that subject to Anderson  
10 County's approval of the East-West Park Project,  
11 then Toxaway is approved which prevents the county  
12 counsel from approving a settlement of -- of the  
13 Toxaway Project, but not the East-West or vice  
14 versa. They have to approve both settlements for  
15 either one to go forward.

16 And Mr. Davidson was having -- trying to get  
17 you to agree to an interpretation where subject to  
18 county counsel's approval of the completion of the  
19 East-West Park Project. That's not what it says, is  
20 it?

21 A. No, sir.

22 Q. It says, "Approval of the East-West Park  
23 Project," which the settlement reached on the  
24 previous page. Is that your interpretation?

25 A. Is what my interpretation?

1 Q. That this language means if the county counsel  
2 approves this East-West Park settlement, then the  
3 Toxaway settlement is in effect, as well?

4 A. Well, yeah, it is all one agreement so it all  
5 had to be -- like I said, before I never would've  
6 signed it if they hadn't agreed on both -- all of  
7 the -- all the stipulations. I mean, they were  
8 trying -- they were trying to make it sound like  
9 it's two separate agreements and one was contingent  
10 on the other, and that's just not how it was.

11 Q. Right. All right. And back to question 4 --  
12 or not question 4, but paragraph 4 of the mediated  
13 settlement agreement about the \$50,000 in damages.  
14 Mr. Davidson was asking you was there any -- any  
15 time frame for the \$50,000 to be paid, implying that  
16 it could never be paid if there's not a time line on  
17 there. Did you expect it to be paid in a reasonable  
18 amount of time?

19 A. I did. I -- I expected that if we were out  
20 there actively and diligently working on the job,  
21 and I think I said this before already, that they  
22 would go ahead and, you know, issue the  
23 reinstatement and rescind the letter and issue the  
24 change orders and that would -- they would've been  
25 doing that. I wish someone -- I was making a good

1 faith effort to honor my part of the deal of the  
2 agreement and I expected them to do the very same.

3 Q. All right. Did the payment of the \$50,000 for  
4 delay damages have anything to do with a good faith  
5 effort on your part or any other contingency?

6 A. No. It didn't.

7 Q. All right. Did you expect that money to be  
8 paid in a reasonable amount of time?

9 A. I did.

10 Q. After the approval from county counsel?

11 A. I did.

12 Q. All right. This suit -- this lawsuit itself is  
13 pretty old. Filed in 2020. So about two years --  
14 at least two years after the mediated settlement  
15 agreement. Do you think that was beyond a  
16 reasonable amount of time to pay that \$50,000?

17 A. Yes, sir.

18 Q. Here we are right at six years now since the  
19 signing of the mediated settlement agreement. Have  
20 you still -- still haven't received that \$50,000,  
21 have you?

22 A. I have not.

23 Q. All right. And, again, I want to ask you -- I  
24 know we talked about this, but you -- Mr. Davidson  
25 asked you some questions about the \$15,000. The

1           \$15,000 was for the additional work, correct?

2           A.     Correct.

3           Q.     And you did that additional work, correct?

4           A.     We did.

5           Q.     All right.  And I want to ask you some  
6           questions about -- about paragraph 9.  There was  
7           some discussion about that and about -- about the  
8           suggestion that -- you didn't have to make it ADA  
9           compliant.  This paragraph required -- didn't  
10          require you to make it ADA compliant.

11                    If it wasn't -- well, yeah, if it wasn't -- if  
12          your -- if you would've laid that concrete, laid  
13          that sidewalk down and it was not ADA compliant, is  
14          it -- did you ever get any indication that that  
15          would be acceptable by the county?

16          A.     No.  That -- that -- that's -- that was the  
17          whole reason why they had their whole crew out there  
18          to inspect it.

19          Q.     Okay.  What was the point in inspecting it if  
20          it was going to be fine if it wasn't ADA compliant?

21          A.     Right.

22          Q.     Why do you need to inspect -- inspect for ADA  
23          compliance?  And, again, you drove by and took  
24          pictures -- let me do this first -- pictures of --  
25          and this is after you left, right?

1 A. Yes, sir.

2 Q. You took pictures of concrete sidewalks being  
3 torn out, correct?

4 A. I did.

5 Q. Does that indicate to you that they were still  
6 worried about ADA compliance?

7 A. It did. You know, driving down the road, I'd  
8 see something like that and thought that was  
9 interesting, so I stopped in and took a picture of  
10 it.

11 Q. All right. All right. And you received --  
12 just got to back up a second. You received this  
13 letter. I think Mr. Davidson showed you. Zoom out  
14 a little bit. April 25, 2018. This is the notice  
15 to proceed letter with the \$26,000 check; isn't that  
16 right?

17 A. It is.

18 Q. So the county counsel did meet on April 17th of  
19 that year and approved the agreement as it was  
20 written in the agreement. This check was written,  
21 what, a few days later, maybe a week after that.  
22 Any idea why that \$50,000 check wasn't cut at the  
23 same time?

24 A. No, sir.

25 MR. GOODWYN: All right. You were asked some

1 questions about the Toxaway Project, about the --  
2 about the permits that were not obtained by the  
3 county. I want to show you some e-mails related to  
4 that.

5 These would be 21, 22, 23, and 24.

6 THE COURT: What numbers are those, please?

7 MR. GOODWYN: Twenty-one, 22, 23, and 24. And  
8 they're e-mails related to the permitting of the  
9 Toxaway Project. I'd like to go ahead admit these.

10 MR. DAVIDSON: I don't have any objection.

11 THE COURT: So Plaintiff's 21 through 24  
12 admitted without objection from the county?

13 MR. DAVIDSON: Yes, sir.

14 THE COURT: Does ---

15 MR. MCDADE: No objection, Your Honor.

16 THE COURT: Okay. Admitted without objection.

17 (Plaintiff's Exhibit Nos. 21-24 were received  
18 into evidence.)

19 BY MR. GOODWYN:

20 Q. All right. Russell, I want you to look at  
21 these e-mails. I'm just going to take them in order  
22 in which we labelled them.

23 How does this e-mail -- or what is significant  
24 about this e-mail as it relates to the asbestos or  
25 storm water permits?

1 A. So this is an e-mail that we actually got  
2 through a FOIA request that we had made and that  
3 was ---

4 Q. Well, hey, I'm sorry. We're not going to talk  
5 about that.

6 A. Okay. A request -- a request we made. That's  
7 how we got the document. It wasn't in our contract  
8 or anything. And so this is an e-mail from Gail  
9 Jeter with Cardno, which was the engineer of record  
10 for the Toxaway job.

11 Like I said before, she -- they were -- Cardno  
12 was kind of like SGA or Natasha Sexton with the  
13 park. They -- they were designing and implementing,  
14 administering the contract for the county. So they  
15 were a subcontractor for the county or that's who  
16 the county had selected to take care of this project  
17 for them.

18 This is an e-mail from Gail Jeter, who I think  
19 was the lead on that on this project for them, to  
20 Michael Foreman who was -- I believe -- I want to  
21 say -- I really didn't know his role, planning  
22 director maybe for Anderson County.

23 But, anyway, this is his project so, I mean, he  
24 was the point of contact with the county for this  
25 project. And this is -- I want to say before --

1 right before we bid on the project and this is -- do  
2 you want me to read it?

3 Q. Well, hang on one second. I just want to --  
4 yeah, well, go ahead. I mean, there's a highlighted  
5 portion here, but what is -- what is significant  
6 about this and why is it important to the discussion  
7 about the permitting?

8 A. Well, it just talks about -- it says I found  
9 enough information in the reports that she sent and  
10 I think it's smart to be cautious. I think that you  
11 need to include a paragraph and an RFP, which is a  
12 request for a proposal or request for bid, same  
13 thing pretty much, that states that asbestos was  
14 found onsite, indicated the types, and that a good  
15 faith effort was made to remove all of it. And this  
16 is referring to the previous phases that we were not  
17 a part of.

18 However, there's a poss -- always a possibility  
19 that some could be buried in the debris that's left  
20 onsite. And, then, I highlighted this for you guys,  
21 everybody. It says the contractor needs to be alert  
22 to the possibility and ready to take appropriate  
23 steps if suspected asbestos is found.

24 Q. Is that how you proceeded?

25 A. That is exactly how we proceeded.

1 Q. So you did -- you were alert to the possibility  
2 that asbestos may be found?

3 A. Right. So it -- you know, I mean, it sounds  
4 like to me what they're say is -- I mean, it was not  
5 in our contract. So what that meant was, you know,  
6 if the contractor observes or sees any suspect  
7 material that they're supposed to, you know, let --  
8 let somebody know so that we can take steps to  
9 remove it.

10 Q. Okay. All right. And this -- this next  
11 e-mail, Exhibit 22, Plaintiff's Exhibit 22, it's  
12 from you to Barry Duncan and Robert Carrol and Paul  
13 Holden. What are you telling them here or at least  
14 what about this e-mail is significant to this  
15 conversation?

16 A. Well, so I got asked by Paul earlier, and he  
17 may testify later, but he was my site supervisor,  
18 superintendent, project manager for a while -- a  
19 good while with me or Moats Construction, but he was  
20 also my asbestos supervisor.

21 So for anybody to touch or permit or remove any  
22 asbestos containing materials in South Carolina, you  
23 have to be licensed. And you have to be licensed  
24 not only as a worker, but you also have to have a  
25 supervisor over that work. So no one -- no one

1 worker can actually go out and remove. There has to  
2 be a supervisor there as well onsite.

3 And like I stated before, the supervisor can be  
4 the worker. They can actually do the removal  
5 themselves if they want to. So, I mean, it is a  
6 process where you have to go through a lengthy class  
7 and be certified by the State and you have to have a  
8 license. Then you have to maintain that license  
9 every year, like you have to be recertified all the  
10 time.

11 So that's what he -- that's one role he played  
12 in our company. And so he reviewed these documents  
13 before we bid on them. And we had these questions  
14 that we presented to the county before we bid. So  
15 the last e-mail was dated April of 2017. This is  
16 May the 3rd, so we had not at that point bid on a  
17 project. And I'm asking all of these questions. In  
18 particular, on number four about, "Will any new  
19 permits, DHEC demolition, storm water, or Anderson  
20 Count demolition permits be required?"

21 Q. Okay.

22 A. We contacted SC DHEC and no one could give us a  
23 straight answer so far.

24 Q. All right. And did you ever get a straight  
25 answer on that question?

1 A. No.

2 Q. But you were instructed to begin work anyway,  
3 correct?

4 A. Correct.

5 Q. All right. This next e-mail is dated May 11,  
6 2017. What is significant about this e-mail?

7 A. So it's -- this e-mail is an internal e-mail --  
8 well, I say internal. It's from a county employee,  
9 Michael Foreman, who is the lead, it's his project,  
10 to Gail Jeter from Cardno. And it says, "Reference  
11 asbestos survey Toxaway."

12 And it says, "Regarding your contract," meaning  
13 Cardno's contract with the county. It says, "Adjust  
14 your estimate as necessary to include storm water  
15 permitting as well as asbestos inspection as  
16 discussed below."

17 Q. Okay. All right. So this is significant why?  
18 Just to show the conversation?

19 A. Well, it's -- it's -- it's showing that they  
20 were responsible for the storm water permitting,  
21 one, and at that point they didn't have an asbestos  
22 inspection completed. Therefore, they couldn't get  
23 an asbestos permit because you had to have an  
24 inspection or the survey that I talked about earlier  
25 in order to get the permit.

1 Q. Okay. I think I understand what you're saying.  
2 All right. And this last section here. What is  
3 significant about this highlighted section?

4 A. This is from Gail Jeter, again, for Cardno. I  
5 believe it's to Mike Foreman. I'm pretty sure. I  
6 think it's just a thread. So, yeah, to Mike --  
7 Michael Foreman, and she's asking if the removal cab  
8 and contractor, which is us, is going to handle the  
9 storm water issue, permitting, et cetera. It takes  
10 a bit, so they need to get started in order to get  
11 the permit for an early June start.

12 Q. Okay. All right. All right. This last e-mail  
13 I want to show you dated June 16, 2017. You're  
14 writing this to Michael Foreman. What is  
15 significant about this exchange?

16 A. So I remember the day that I did this because I  
17 was trying to get -- I was trying to get Michael to  
18 send us something formally, I remember, after I  
19 received -- I got -- I got an e-mail with an updated  
20 asbestos report, but it was after we already started  
21 work on the project. And there was -- there was an  
22 attachment to this e-mail and it was that report,  
23 but it -- it had been completed after we had already  
24 started and we just started a week before. I think  
25 he talked earlier. Somebody did. I can't remember

1 if it was John or -- about what day that we had  
2 started and the dates that we had finished or those  
3 dates of the termination letter.

4 Q. Right.

5 A. And -- and it says -- so I'm letting Mike  
6 Foreman know. Mike sent this to me and he sent me  
7 the report or I was copied in it I think actually  
8 from whoever was hired to do the report, but I told  
9 him that it was the first time I'd seen the  
10 report -- the asbestos report.

11 Q. Okay.

12 A. And so I'm letting him know that if you apply  
13 for a permit today, you know, you have to give DHEC  
14 ten-days notice. They require at least ten days.  
15 Sometimes they'll turn a permit around quicker than  
16 that ---

17 Q. Sure.

18 A. --- but they require at least ten days from the  
19 time that they issue the permit. And we only had a  
20 very short period of time to do this project.

21 Q. Okay. And just to -- just to maybe refresh  
22 your recollection about the dates. The termination  
23 letter was June 21, 2017, and it says you were  
24 directed to stop work June 19, 2017. This e-mail  
25 about the asbestos report is three days before that,

1 June 16, 2017.

2 A. Yep. And so, you know, with all of this -- all  
3 of this going on and coming about, we had a week  
4 into this project, nobody would tell us that we  
5 needed to stop work. I was fine to stop work if we  
6 needed to. That was not a problem. I could stop  
7 work. It was going to cost us money because I had  
8 equipment on the job and it was lined up, but, you  
9 know, generally, if it was -- if it was an error on  
10 their part, you know, hopefully, they would  
11 compensate us for the downtime that we were there.  
12 We already had -- I mean, we had, you know, I don't  
13 know, a half million dollars sitting on that job in  
14 equipment ---

15 Q. Okay.

16 A. --- and -- and, you know, to do the job or  
17 more. And so I was fine with stopping work. I just  
18 needed something formal from the county saying, hey,  
19 you need to stop work while we address these  
20 permitting issues, but I never got that. And, you  
21 know, instead -- well, instead I got a termination  
22 letter.

23 I did finally get, though, an e-mail from Mike  
24 Foreman saying to stop work, which is what I was  
25 trying to get him to do. I said, "Send us something

1 saying stop work if you want us to stop work.

2 Otherwise, we're going to continue to work," you  
3 know.

4 Q. Okay. All right. Let me ask you about one  
5 other thing Mr. Davidson asked you about. He  
6 mentioned that if you had just poured this sidewalk  
7 and finished the job, you would've gotten your  
8 retainage. Do you remember that discussion?

9 A. Yes, sir.

10 Q. First, can you tell the jury what retainage is?

11 A. So, generally, like in private construction,  
12 most general contractors or owners will retain --  
13 it's different amounts, but on average, I mean, it's  
14 10 percent usually, I'd say on average. If it's --  
15 if it's a public job, it's like -- like I said  
16 earlier, three-and-a-half percent I think is what  
17 they engineered. Engineer requires generally 10  
18 percent, and it's the amount of money, 10 percent of  
19 the contract price.

20 Q. So just -- just let me see if I can understand  
21 what you're saying. If you submit an invoice for a  
22 pay request for \$1,000, they wouldn't pay the full  
23 thousand. They'd only pay 10 percent, 900? They  
24 would keep 100 until the end of the job? Is that  
25 what you're saying?

1 A. So -- so if you have \$100,000 project and you  
2 submit an invoice one month for \$10,000, they would  
3 retain a thousand dollars of it.

4 Q. They would pay you nine?

5 A. Right. And then they'd hold that money in  
6 trust, you know, to make sure that everything is  
7 installed and they accept it and it's completed.  
8 And then at the end of the project, they release  
9 that retainage to you.

10 Q. Okay. So you get paid at the end of the  
11 project?

12 A. Correct.

13 Q. Was there some retainage money on the East-West  
14 Project job that you were expected to get if you had  
15 been able to -- if you had good designs and you were  
16 able to complete the project?

17 A. There was.

18 Q. About how much?

19 A. I believe it was 10 percent of the contract  
20 price. And at that point, I think in the mediated  
21 settlement agreement, it was 324, so ---

22 Q. Ten percent of that amount?

23 A. It would've been 10 percent of that amount.

24 Q. Okay. Had the design drawings been right, you  
25 laid this sidewalk in, were you expected to get that

1 10 percent?

2 A. We did.

3 Q. Okay. And 324 is about another 32,000 or so?

4 A. Yes, sir.

5 MR. GOODWYN: Okay. All right. That's all I  
6 have, Your Honor.

7 THE COURT: Are you asking for re-redirect -- I  
8 mean, recross?

9 MR. DAVIDSON: Yes, sir.

10 THE COURT: Subject to the redirect.

11 MR. DAVIDSON: Yes, sir.

12 RECCROSS-EXAMINATION

13 BY MR. DAVIDSON:

14 Q. Mr. Moats, I'm going to show you Exhibit 21.

15 Do you see that?

16 A. Yes, sir.

17 Q. All right. So I want to make sure I understand  
18 what you said on this one. Did I understand you to  
19 say that -- well, let me -- let me -- so what we're  
20 talking about here is a suggestion from an e-mail  
21 from Gail Jeter to Mike Foreman at the county saying  
22 that you need to include a paragraph that states  
23 that asbestos was found onsite, indicate the types,  
24 and good faith effort, all of that, right? I mean,  
25 that's what she's suggesting gets put into the

1 contract, the RFP; is that correct?

2 A. Correct.

3 Q. I might be wrong, alright, because I was -- did  
4 you say that it wasn't in the contract?

5 A. That's exactly right. So this -- like they had  
6 already put out the job for bid at that point.

7 Q. Okay.

8 A. I mean, so the RFP or the request for bids had  
9 already been put out, issued, you know, for bid. I  
10 can't remember the exact bid date it was or when  
11 they awarded it, but, you know, the notice to  
12 proceed I'm thinking was around June the 1st.

13 Q. All right. I'm going to -- I'm going to put  
14 back up Exhibit 1, Defendant's Exhibit 1, Tab 1.  
15 Okay. Let me get it arranged here. It's in this  
16 notebook. Is that -- are you -- do you agree with  
17 me that's what that is? Can you tell?

18 A. Yes. Yeah, it looks like Robert's writing.

19 Q. Okay.

20 A. We talked about this earlier.

21 Q. Yeah, so this is the -- this is the contract.  
22 Let me -- let me show you. So now we're at Exhibit  
23 A, specifications, correct?

24 A. Correct.

25 Q. Okay. So that under scope -- under the Number

1 3 scope of work, says all work is going to be in  
2 accordance with Anderson County's Voluntary Cleanup  
3 contract, right?

4 A. It does.

5 Q. It does. Okay. Next -- the next paragraph  
6 begins, "The scope of work will include coordination  
7 with Cardno, county staff, and DA to remediate all  
8 remaining debris onsite?"

9 A. Right. I don't even think that they included  
10 that voluntary cleanup contract that says addendum  
11 B, but they didn't include that in the RFP ---

12 Q. Okay.

13 A. --- for us to review. You know what I mean?  
14 So we could see what exactly was in the -- I think  
15 all that was, the voluntary cleanup contract was  
16 their previous work they had done out there.

17 Q. Okay.

18 A. I think -- I think because I remember seeing  
19 some pictures about it.

20 Q. Okay. And I appreciate that. That wasn't  
21 where I was going, but the next paragraph says,  
22 "During previous cleanup activities on the site,  
23 visible asbestos containing materials were observed  
24 and removed. A good faith effort has been made by  
25 the county at the time to remove all ACMs. However,

1           there is a possibility that additional ACMs remain  
2           onsite within the debris piles. The company should  
3           be alert to the possibility of additional ACMs  
4           onsite and should be ready to take appropriate steps  
5           with Cardno's guidance if suspected asbestos is  
6           located." Did I read that right?

7           A.     That's correct.

8           Q.     Okay. Now, that's -- that's really what she  
9           was saying -- what Gail Jeter was saying in this  
10          e-mail, which is Exhibit 21, isn't it?

11          A.     It is.

12          Q.     Okay. So it did make it in the contract?

13          A.     Well, I mean I don't know. I don't know. I  
14          mean, that could've been taken from the previous  
15          contract. They may've had two or three contracts  
16          out there, you know. I mean, she might've -- it  
17          might've just been a cut and paste or a copy and  
18          paste. I mean, it probably had the same language in  
19          the -- it had several projects out there and several  
20          other contracts before we got there doing the same  
21          exact thing.

22          Q.     Okay. I appreciate that, but that really  
23          wasn't my question. It's in -- that language is in  
24          the contract, right?

25          A.     It is.

1 Q. Okay.

2 A. But, you know, the keyword there is  
3 "possibility."

4 Q. Okay. But it's -- I'm just saying it's in the  
5 contract, right?

6 A. It is.

7 Q. Okay. All right. Referring now to Plaintiff's  
8 Exhibit No. 23, the highlighted portion. And this  
9 is -- this is your highlight; is that right?

10 A. It is.

11 Q. Okay. And this is an e-mail from Mike Foreman  
12 to Gail Jeter May 11, 2015. And the highlighted  
13 portion is Mike saying, "Regarding your contract,  
14 adjust your estimate as necessary to include storm  
15 water permitting, as well as the asbestos inspection  
16 as discussed below," correct?

17 A. Correct.

18 Q. Okay. So that was going to be the  
19 responsibility of Cardno?

20 A. Correct.

21 Q. Both storm water and asbestos?

22 A. Correct.

23 Q. Okay. And I guess that was in response to the  
24 e-mail chain below where Gail Jeter asked Mike  
25 Foreman in pertinent part. I'm just going by the

1 highlighted stuff.

2 Gail is asking, "Also, is the selected removal  
3 cab and contractor going to handle the storm water  
4 issues, permitting, et cetera? It takes a bit, so  
5 they'll need to get started in order to get the  
6 permit for an early June start."

7 So she's asking that question, and Mike Foreman  
8 is responding and telling her to include that  
9 estimate in her contract for Cardno, right?

10 A. Yeah, I think she actually responds. I think  
11 there may be another e-mail. I don't know. Do you  
12 got a date or like a time ---

13 Q. A time? 10:04?

14 A. --- like 10:04 on the other one. What's the  
15 time on the other one?

16 Q. Yeah, hang on. I'm sorry. Let me try to  
17 get -- can you see that 5:14 on the 10th?

18 A. Okay. That -- that's the e-mail.

19 Q. Yeah. Do you have both of the e-mail headings  
20 there?

21 A. No. Can you scroll up? Is it below it or  
22 above it? I'm guessing that's below it.

23 Q. I'll tell you what. How about if I just walk  
24 over there and show it to you?

25 A. Yeah, that might work better.

1 Q. And then we'll come back and show it to -- show  
2 it to everybody on the screen.

3 A. Okay. So do you want this back? I don't think  
4 the e-mail or the exhibit is here that shows the  
5 reply e-mail after May the 11th at 10:04 a.m.  
6 because the questions asked May the 10th at  
7 5:14 p.m. And I don't know that he -- I -- I -- I  
8 think he replied, but I don't know if you got the  
9 exhibit that shows that.

10 Q. Well, I'm -- this was one y'all introduced, so  
11 I'm just asking that. So let me -- let me try  
12 to ---

13 A. I want -- I want to say it was A through K or  
14 something like that.

15 Q. So -- all right. So this -- so everybody sees  
16 it's a two-page -- two-page exhibit. Okay. And  
17 it's an e-mail -- an e-mail chain that ends with  
18 Mike Foreman responding to Gail Jeter on Thursday,  
19 May the 11th, 2017, at 10:04.

20 And in that he get -- he responds that you  
21 highlighted to regarding your contact, "Adjust your  
22 estimate as necessary to include storm water  
23 permitting as well as inspection as discussed  
24 below."

25 A. Right. So I guess he's answering her question

1 in that.

2 Q. Okay. So just to make sure I got it. So he is  
3 responding to her question about whether the  
4 contractor is going to be responsible for storm  
5 water and asbestos. Well, is it storm water and  
6 asbestos? No. It's just storm water. And he's  
7 responding included in the Cardno estimate to do?

8 A. That's the way I understand it.

9 Q. Okay. So that's Cardno's responsibility?

10 A. Yes, sir.

11 MR. DAVIDSON: Okay. The -- I think that's  
12 all -- that's all the questions I have.

13 THE COURT: Mr. McDade.

14 MR. MCDADE: Nothing else, Your Honor.

15 THE COURT: Thank you. You may step down.

16 THE WITNESS: Thank you, sir.

17 (Witness excused.)

18 THE COURT: All right. Madam forelady, ladies  
19 and gentlemen, it's a good time to go ahead and end  
20 for the day. I ask that you leave your notes, for  
21 those that are taking them, in the jury room.

22 I'll remind you not to watch or hear or listen  
23 to anything on this case if it happens to be out  
24 there. Do not speak with anybody about this case,  
25 including amongst yourselves. And if somebody

1 attempts to talk to you, tell them you're on the  
2 jury. If they continue to do so, let me know. I  
3 hope you have a nice evening.

4 THE FORELADY: 9:30?

5 THE COURT: 9:30. Thank you. Sometimes I'm a  
6 little bit slow, but I apologize.

7 (At 4:49 p.m., jury left the courtroom.)

8 THE COURT: How many more witnesses do you  
9 anticipate?

10 MR. GOODWYN: I have Sandy Hanebrink and  
11 Natasha Sexton coming first thing in the morning.

12 THE COURT: I'm sorry?

13 MR. GOODWYN: I have Sandy Hanebrink and  
14 Natasha Sexton coming first thing in the morning.  
15 They'll be fairly quick I believe. And then the  
16 other parties, Rusty Burns, Matt Schell, and Brian  
17 Richardson, and maybe one other, but they're going  
18 to go a lot quicker.

19 THE COURT: Okay. So you're going to call  
20 those and potentially you reserve the right to call  
21 the other defendants. Is that what you're telling  
22 me?

23 MR. GOODWYN: Well, yeah. Everybody I just  
24 mentioned, I think I'm going to have to call.

25 THE COURT: I mean, I'm not making you make a

1 decision. I just want to make a plan as to having  
2 your witnesses available and ready to go.

3 MR. GOODWYN: We've talked about that some.

4 MR. DAVIDSON: Yeah, I think -- I think  
5 everybody he mentioned is here except for Brian --  
6 Brian Richardson.

7 MR. GOODWYN: And I told him I'd give him a  
8 heads up.

9 MR. DAVIDSON: He's about 15 minutes away.

10 THE COURT: Okay. Just have them on standby.

11 MR. DAVIDSON: Yes, sir.

12 THE COURT: Sounds like it will be probably at  
13 least tomorrow afternoon at the latest probably.  
14 Anything from the plaintiff before we break for the  
15 day?

16 MR. GOODWYN: No, Your Honor.

17 THE COURT: From the county?

18 MR. DAVIDSON: No, sir.

19 THE COURT: From the individuals?

20 MR. MCDADE: No, Your Honor.

21 THE COURT: Thank you, guys. See y'all in the  
22 morning at 9:30.

23 (At 4:52 p.m., proceedings concluded for the  
24 day.)

25 April 17, 2024

1 THE COURT: Good morning. Are you ready to go?

2 MR. GOODWYN: I'm ready.

3 THE COURT: Anything before we get started?

4 MR. GOODWYN: I don't think so.

5 MR. DAVIDSON: No, sir.

6 THE COURT: From the county?

7 MR. MCDADE: No, sir.

8 THE COURT: All right. Would you bring the  
9 jury in, please?

10 (At 9:40 a.m., jury entered the courtroom.)

11 THE COURT: Good morning.

12 THE JURORS: (Collectively:) Good morning.

13 THE COURT: I hope everybody had a nice  
14 evening. I'm going to ask you like I told I would.  
15 During the break, has anybody read, heard, or seen  
16 anything about this case? If so, raise your right  
17 hand.

18 THE JURORS: (No responses.)

19 THE COURT: Has anybody spoken to you about  
20 this case or have you spoken to anyone about this  
21 case?

22 THE JURORS: (No responses.)

23 THE COURT: Excellent. Thank you very much.  
24 Mr. Plaintiff, I know that -- or, Mr. Goodwyn, I  
25 know you have a witness who's in a wheelchair.

1 MR. GOODWYN: Yes, Your Honor.

2 THE COURT: And, madam clerk, how do you want  
3 to set that up?

4 THE CLERK: I think that's as far as we can get  
5 it, but I believe if we move that chair, she could  
6 sit at the end of the table if that's fine with the  
7 Court.

8 THE COURT: It's fine. Does anybody have a  
9 problem with that? If y'all need to move, y'all  
10 can. Just make sure to set it up so she can be  
11 heard. And, again, if y'all can't hearing during  
12 the process, let me know. Mr. Goodwyn, are you  
13 ready?

14 MR. GOODWYN: Yes, Your Honor.

15 THE COURT: All right. Would you bring in your  
16 next witness?

17 (Witness approached.)

18 THE COURT: Would you swear her in, please?

19 THE CLERK: Ma'am, would you please raise your  
20 right hand?

21 THE WITNESS: (Complying.)

22 THE CLERK: Do you swear or affirm the  
23 testimony you're about to give to be the truth, the  
24 whole truth, and nothing but the truth?

25 THE WITNESS: I do.

1 THE CLERK: Thank you.

2 THE COURT: And if you would, do you mind  
3 pulling that microphone a little bit closer to you  
4 if it will go?

5 THE WITNESS: I don't think it will go.

6 MR. GOODWYN: I think we figured, that's as  
7 long as it goes.

8 THE COURT: All right. Tell me -- tell me your  
9 name again.

10 THE WITNESS: Sandra Hanebrink.

11 THE COURT: Can y'all hear her okay?

12 THE JURORS: (Affirmative responses.)

13 THE COURT: All right. If you can't, raise  
14 your hand. Thank you, ma'am.

15 THE WITNESS: Yes, sir.

16 Okay. All right. Sorry. Has she been sworn  
17 in, Your Honor?

18 THE COURT: Yes, sir.

19 SANDRA HANEBRINK,  
20 having been produced and first duly sworn as a  
21 witness on behalf of the Plaintiff, then testified  
22 as follows:

23 DIRECT EXAMINATION

24 BY MR. GOODWYN:

25 Q. Okay. Ms. Hanebrink, my name is Jeff Goodwyn.

1 We met just a minute ago out in the courtroom in the  
2 lobby there. We called you as a witness today just  
3 to ask you questions about your involvement in this  
4 case. And I know it's been a while. It's been a  
5 number of years. I hope your memory is good enough  
6 to kind of remember your involvement in this case.  
7 We've been referring to you as "Sandy." I think --  
8 do you go by Sandy or Sandra?

9 A. Sandy.

10 Q. Okay. And I've been mispronouncing your name  
11 "HANE-brink," but it's actually "Hanna-brink,"  
12 right?

13 A. Correct.

14 Q. Okay. All right. So tell us a little bit  
15 about your background. How old are you?

16 A. I'm 58.

17 Q. And how far did you go in school? Did you  
18 graduate high school?

19 A. I graduated from occupational therapy school  
20 from the University of South Carolina.

21 Q. Okay. What year?

22 A. '97.

23 Q. All right. And tell us a little bit about your  
24 career after college.

25 A. Since college, I've worked in a number of

1 roles. As an occupational therapist, doing  
2 technology and accessibility, consulting. I've  
3 worked in the hospital, school systems, and federal  
4 government. And then I run a nonprofit here in town  
5 called Touch the Future. And we do assisted  
6 psychology, accessibility, and research development  
7 on new technologies to improve the lives of people  
8 with disabilities.

9 Q. Okay. And how long have you -- how long have  
10 you been in that -- in that role with the  
11 accessibility consultant?

12 A. Probably since about 1990.

13 Q. Okay. All right. So that's -- here we are.  
14 That's 20 -- no, 34 years now, so -- okay. And when  
15 you say accessibility consulting, there's -- there's  
16 been some testimony today about what you do. Can  
17 you just describe for the jury what you do in the  
18 accessibility consulting area?

19 A. It really depends on the project. A lot of  
20 times I'll work with contractors. I'll work with  
21 local governments, businesses to look at existing  
22 facilities and how we can improve accessibilities so  
23 that people with disabilities can participate as  
24 well, or I'll work from all the way from conception  
25 where they'll have me consult with the design that

1 they're proposing and how to make sure that they  
2 create routes and -- and facilities that include  
3 people with disabilities.

4 Q. Okay. And how did you get involved with the  
5 East-West Park Project?

6 A. That project had gone through a number of  
7 phases, so I don't even remember. It's been over  
8 ten years I think since the concept started.

9 Originally, the first thing I was asked about  
10 was just to provide input. We were doing a lot with  
11 bicycles and hand cycles and stuff in the community  
12 at that time and looking at how to include how  
13 people who use hand cycles, people who use  
14 wheelchairs, and use an adaptive bike to be able to  
15 be out on green ways and things like that.

16 And one of the -- I don't even know if it was  
17 one of the designing -- the firms that were looking  
18 at putting in a bid to do designs had contacted me  
19 about what was a turning radius needed for hand  
20 cycles. So that was a first -- the first thing I  
21 can recall being asked about in particular for this  
22 project.

23 Q. Okay. And was there a -- who was the -- who  
24 was the original contractor on this job?

25 A. I have no idea.

1 Q. Are you -- are you familiar with Moats  
2 Construction?

3 A. I -- I know Moats has been involved with the  
4 project, but I'm -- I'm not sure on which phases.

5 Q. Okay. Did you come out and -- well, maybe I  
6 should ask it this way. Let's kind of go back. Was  
7 there a period of time where you did some as-built  
8 measurements of -- for ADA compliance as far as the  
9 slope of the sidewalks and the tilt of the  
10 sidewalks?

11 A. Yeah, I did a couple of times. I'm not sure if  
12 it was after phase 1 or phase 2 or in between there  
13 because there were, I believe, three phases on this  
14 project, maybe four. And I wasn't part of all of  
15 it, only if they called me. So, like, I came out  
16 when the -- I'm saying upper, the side that's closer  
17 to Highway 81, to come out and look at measurements  
18 of sidewalks and the route going from the parking  
19 lot down to the green way. And the green way being  
20 the State's green way that runs along the connector,  
21 so I did measurements there when it was being  
22 formed, and then again after.

23 And then I wasn't really involved with anything  
24 until I got -- I guess it was about five years ago,  
25 I got an e-mail, which was not unlike any e-mails

1 that I've gotten on this project, that came from, I  
2 believe, Mr. Moats. And it was to me and a bunch of  
3 people at the county asking about looking at a job  
4 site, which I offered, you know, that to do it for  
5 them or the county, which was similar to what I've  
6 done on this project. Sometimes I did stuff for the  
7 county; sometimes for a contractor. That's not  
8 unlike a lot of projects that I do.

9 And it was still a construction site, so I just  
10 looked at what was there at the time, so I didn't  
11 have -- I wasn't part of the plan. I didn't have  
12 access to the plan, so I don't know if things were  
13 built to plan or what. I just measured what was  
14 there, assuming that it was a spot check ---

15 Q. Okay.

16 A. --- so that it could be completed.

17 Q. All right. So fair to say that your -- your  
18 role was not to make sure that what was built was  
19 according to the plan. It was just to check to see  
20 if it was ADA compliant?

21 A. Correct.

22 Q. Okay. This is a -- it's what we previously  
23 marked as Plaintiff's Exhibit 10. Can you see that?

24 A. Yes.

25 Q. Okay. If you need me to zoom in, let me know.

1 This is a Touch the Future document dated April 30,  
2 2019. Is that a -- is this a report you prepared?

3 A. Yes.

4 Q. Okay. All right. So you, obviously, were out  
5 there doing some inspections around this time; is  
6 that fair to say?

7 A. Correct.

8 Q. All right. I want to -- this is, at least what  
9 I believe is, the last involvement you had, but I  
10 kind of want to back up and show you some other  
11 photographs. And just to kind of refresh your  
12 recollection about what we're talking about here.  
13 This -- does this -- does that look familiar?

14 A. Yes.

15 Q. Okay. Is that part of the East-West Project --  
16 Park Project that you were surveying to check to see  
17 if it was ADA compliant?

18 A. That looks like it's the lower part.

19 Q. Okay. And was that -- were you testing that  
20 section for ADA compliancy?

21 A. Yes.

22 Q. Okay. And I have a couple of photos here. You  
23 can -- let me go back to that photo for a second.  
24 Can you see this retaining wall over here?

25 A. Yes.

1 Q. Okay. And is that you over here?

2 A. Yes.

3 Q. And what is this yellow device here?

4 A. It's a smart level, a digital level.

5 Q. Okay. Does that -- will that tell you what  
6 the -- what the grade is of a -- of a -- of a flat  
7 surface?

8 A. Yes.

9 Q. Okay. Is that what you use to determine  
10 whether or not the ---

11 A. That's -- that's what I use to determine what  
12 the slopes and cross slopes are.

13 Q. Okay. And what's going on in this picture?  
14 What is the other fellow doing?

15 A. Well, it was like I said, the site was still  
16 under construction, so there -- there were people  
17 still working.

18 Q. Okay. Do you know who was doing this work, or  
19 not necessarily the name of the individual, but what  
20 company or organization was performing the work?

21 A. I do not.

22 Q. Okay. And who asked you to come out to measure  
23 these -- measure the slopes during this period?

24 A. The e-mail came from Mr. Moats, but it copied  
25 everybody from the county. So -- so Mr. Moats is

1 who sent the e-mail, but I just assumed it was just  
2 part of the ongoing, trying to make sure everything  
3 was finalized.

4 Q. Was there a -- I know you said you came out  
5 multiple times. Was there a time where you came out  
6 at someone's direction other than Mr. Moats?

7 A. Yes.

8 Q. Okay. Who -- who else asked you to come out?

9 A. I've been out there for different contractors  
10 and the county.

11 Q. All right. And this is I think -- excuse me.  
12 This is a picture we just looked at here, the next  
13 picture. Is that you, as well?

14 A. Yes.

15 Q. Taken about the same time it looks like?

16 A. Yeah, I was only there for like an hour or  
17 two that day.

18 Q. Okay. All right. And was there a -- was there  
19 ever a time that you measured the sidewalks at the  
20 East-West Park in the area that we're looking at  
21 here where you found it was totally ADA compliant?

22 A. There were sections. There were different  
23 phases of it that were compliant, and then there  
24 were some areas that weren't, and that's what's  
25 documented in the report.

1 Q. Okay. And that report's in April of 2019.  
2 This construction's going on in 2017 and '18, as  
3 well. Were you also out there during those periods?

4 A. I think I was out there earlier than that. I  
5 was involved in the beginning. And then a lot of  
6 work went on and different phases went on, and I  
7 wasn't part of it all. And then -- and then the  
8 last part that I was on that day.

9 Q. Okay. All right. So do you ever recall a time  
10 where concrete -- sidewalk concrete that had been  
11 laid had to be torn up?

12 A. Yes.

13 Q. And why was that? Why were those sections of  
14 sidewalk torn up?

15 A. Because the -- they had -- they were either too  
16 much slope or cross slope.

17 Q. Okay. Did the -- well, let me ask it this way:  
18 Was there anybody other than you out there measuring  
19 slopes or cross slopes, or was the ---

20 A. Yes.

21 Q. --- information clear?

22 A. Yes. There was people out from the county and  
23 from the -- all the contractors were doing their  
24 own, and we were comparing. Like -- like on this  
25 day, we always compare two levels to make sure it's

1 not an error of the device.

2 Q. Right.

3 A. So, you know, we always try to make sure  
4 there's two levels there.

5 Q. Okay. All right. So anytime -- anytime it was  
6 agreed that the sidewalks were out of -- out of  
7 compliance, it would not -- it wasn't just you. It  
8 was more than one person agreeing to that?

9 A. Yes.

10 Q. All right. Do you know how many times  
11 sidewalks had to be torn up and relaid?

12 A. No, I don't.

13 Q. But at least once that you recall?

14 A. At least.

15 MR. GOODWYN: All right. I'm going to share  
16 with you an e-mail. And I can't remember where we  
17 are on exhibit numbers.

18 THE REPORTER: You're down to 24.

19 MR. GOODWYN: So this will be 24 or 25?

20 THE REPORTER: Twenty-five.

21 MR. GOODWYN: Okay. All right. Your Honor,  
22 I'd ask to go ahead and admit Plaintiff's Exhibit  
23 25. It's an e-mail.

24 THE COURT: Exhibit 25. Is there an objection?

25 MR. MCDADE: No, Your Honor.

1 THE COURT: Okay. Thank you. It's admitted  
2 without objection. Exhibit 25?

3 MR. GOODWYN: Yes, Your Honor. It's an e-mail  
4 dated January 31, 2017.

5 (Plaintiff's Exhibit No. 25 was received into  
6 evidence.)

7 BY MR. GOODWYN:

8 Q. Ms. Hanebrink, can you read that?

9 A. Yes.

10 Q. What is this document?

11 A. It's an e-mail that looks like from Natasha  
12 Sexton and I and Matt Schell ---

13 Q. Okay.

14 A. --- from the county.

15 Q. All right. And this top one, it says it's from  
16 you, correct?

17 A. Right.

18 Q. And to Natasha Sexton copying you and Matt  
19 Schell, correct?

20 A. Correct.

21 Q. All right. And what are you -- what are you  
22 telling them at this point?

23 A. So if something is steeper than 5 percent, if  
24 the run is steeper than 5 percent, then it's  
25 considered a ramp. And if it's a ramp, then you

1 have to have ramp features, which include level  
2 landings at the top and bottom, handrails. And then  
3 depending on elevation, potentially edge protection.

4 And so what I'm talking about on this is, it  
5 looks like referring to plans potentially. Not  
6 indicating, you know, specifying if they -- you  
7 know, specifics of if it's to be built under 5  
8 percent or if it exceeds 5 percent that there has to  
9 be.

10 And so, usually, when I'm working with  
11 contractors on designs to ensure that something gets  
12 built, it's -- we recommend that they are very clear  
13 specified, you know. Typically, it's assumed that  
14 if something is built, it's going to be built to --  
15 to standards, but the standards are -- you know,  
16 could be 5 percent or less, which means it's not a  
17 ramp. Or if it exceeds 5 percent, then it is a  
18 ramp.

19 And when there's not indications for handrails  
20 in that, it's usually assumed that's supposed to be  
21 under 5 percent, but to ensure that the people on  
22 the ground doing things know, we also encourage them  
23 to put in the comments that what the runs and cross  
24 slopes should be.

25 Q. Okay. So it sounds like -- just to make sure I

1 understand what you're saying -- if you're having a  
2 sidewalk without handrails or level areas, they have  
3 to be below 5 percent?

4 A. Correct.

5 Q. Okay. And if it is over 5 percent, then it's  
6 considered a ramp and you have to have handrails and  
7 ramps at the top and the bottom?

8 A. Level landings.

9 Q. I'm sorry. Level landings. Yes. All right.  
10 So if you have a longer sidewalk like the type we  
11 have here, some sections -- some sections can be  
12 more than 5 percent, as long as you have these level  
13 landings and the handrails, correct?

14 A. Correct.

15 Q. All right. And would that have been one way to  
16 remedy the -- the issue with the 5 percent?

17 A. Without -- certainly, you can have sections  
18 that are under 5 percent and sections that have  
19 ramps. That happens all the time. But, yeah, that  
20 could be a remedy. It just really depends on -- I  
21 don't know specifically in the plans, you know,  
22 where they're talking about. Sometimes it's harder  
23 because of terrain and what other elements are tying  
24 in. Because once you put handrails up, then, you  
25 know, you can't cut through. You know, so it really

1 depends on the design.

2 Q. Okay. And who is Natasha Sexton?

3 A. She's a landscape architect.

4 Q. Okay. Was she the designer for this project?

5 A. I don't think she was the original designer. I  
6 think she came in later.

7 Q. Okay. And did you have discussions with her  
8 about what you just testified to about the  
9 possibility of having handrails in sections that  
10 were more than 5 percent?

11 A. I don't recall on that for sure. I know she  
12 was at one of the first meetings where we're  
13 checking onsite for the forms and layout in designs  
14 with the ---

15 Q. So from -- from your ---

16 A. You know, it's been ten years.

17 Q. Right. From your experience, are designers  
18 like Natasha Sexton, are they generally aware of ADA  
19 requirements?

20 A. I would think so, yeah.

21 Q. Okay. I would think so.

22 A. I mean, our engineers put their seal on saying  
23 that things are compliant.

24 Q. Okay. All right. This -- I'm going to kind of  
25 take another look at this April 2019 report that you

1 prepared. Looks like -- did you prepare it for  
2 Russell Moats? Is this -- when you have it  
3 addressed to him, is that ---

4 A. Yes. He's who asked me to come out that day.

5 Q. Okay. And what did you find not com -- not  
6 compliant? Do you -- if you need me to scroll.

7 A. I would have to look at the report. I think  
8 there -- there were sec -- there were some elements  
9 that were compliant. As you can see, it says I  
10 found no issues.

11 And then there were some areas where it looked  
12 like the ground surface, there was some levelling  
13 stuff that sometimes can be pressed down or scraped,  
14 you know, redone easily without totally  
15 deconstructing. And then -- and then there were  
16 sections ---

17 Q. Well, let's -- I'm going to direct your  
18 attention to this paragraph here. It says parking  
19 space one.

20 A. Right.

21 Q. Did you find any issues or ADA issues with  
22 parking space one?

23 A. Yeah. It says parking space one has a raised  
24 area in the space that should be 2 percent. And  
25 there's standing water with residual sediment. So

1 that tells us that -- that it's not slip resistant  
2 if there's sediment and if water can stand there.

3 Q. Okay.

4 A. And parking -- and accessible parking spaces  
5 are required to have 2 percent correction so that  
6 their level -- so that when someone's van is parked  
7 and you're deploying the ramp, that they'll deploy  
8 the lift or ramp safely or like someone like me who  
9 transfers from my wheelchair to a car, it's level  
10 and it makes it for a safe transfer.

11 Q. Okay. How long have you been in a wheelchair?

12 A. Since 1987.

13 Q. Okay. I'm assuming that's why you got into  
14 these issues to some degree?

15 A. Yes.

16 Q. Okay. All right. So you understand the  
17 importance of having these features correct, these  
18 compliant features?

19 A. Yes.

20 Q. All right. Can you take a look at this  
21 section? Hang on a second. This last paragraph I  
22 think goes on to the next page. Can you take a look  
23 at that. And you don't have to read it word for  
24 word. Just describe to us what you're talking about  
25 there.

1 A. Well, in the -- just under where it says  
2 exception, that one section is -- is compliant. And  
3 then what -- the last paragraph where you have the  
4 pedestrian route beginning at the existing concrete  
5 in front of the parking leading down to the parkway  
6 and walking right around, it doesn't start at a  
7 level landing. And the slope is greater than 5  
8 percent, so which means it's a ramp.

9 Q. It cannot -- can we -- can I put this up here?  
10 Is this the -- is this the section we're talking  
11 about? If I get it straight. That picture we saw  
12 before, is that the section you're referring to?

13 A. Just above the -- it looks like right there  
14 near the retaining wall.

15 Q. Right. Over -- over here?

16 A. Yes.

17 Q. Kind of going up -- going towards the parking  
18 lot?

19 A. It's hard to say. Like I say, it's been five  
20 years, so -- but based on that description, it  
21 appears to be correct.

22 Q. Okay. All right. So that section had a -- had  
23 a slope greater than 5 percent. And, I'm sorry,  
24 what else did you say? Was there any 2 percent  
25 violations?

1 A. Where the slip area where it turns because the  
2 run is going, but the run also become the cross  
3 slope because it's a bidirectional area. And that's  
4 where because it's going like this and then curves  
5 that it creates ---

6 Q. It's both a run and a cross?

7 A. Correct.

8 Q. I see what you're saying. Okay. All right.  
9 So if no work has been done to the -- to that area  
10 since April 30, 2019, since you did this report, and  
11 that's how it is today, then it's out of -- out of  
12 compliance today. Is that -- would that be fair?

13 A. Unless some miraculous settling has happened,  
14 yes.

15 Q. Okay. Are you aware of any -- of any kind of  
16 accounting authorized that the contractor who  
17 finished this work, who laid the concrete that  
18 exists today, to go ahead and lay it down in a way  
19 that's not ADA compliant?

20 A. No. I don't know any of that kind of stuff.  
21 I'm not part of any of those e-mails.

22 Q. Okay. Do you have any idea why you went  
23 through so many measurements and changes and tearing  
24 up the concrete and putting it back down only to end  
25 up with a product that's not compliant?

1 A. Well, this area is different than the area I  
2 measured before, so this was a different phase.

3 Q. Okay. So this -- this area here is -- you  
4 measured that area, correct?

5 A. I did.

6 Q. And that's just that corner where the -- where  
7 the retaining wall was?

8 A. Where the retaining wall got put in.

9 Q. Okay. And that's that same area we just --  
10 that's that same side -- well, that's the retaining  
11 wall, correct, down here?

12 A. Yes.

13 Q. And that's that same -- so you measured that  
14 area?

15 A. That's the last area that I measured.

16 Q. Okay. All right. Did you ever -- were you  
17 ever asked to give approval to or sign off on the  
18 existing sidewalk system at the East-West Connector  
19 Parkway?

20 A. No. The only thing I did is they would call me  
21 and like ask -- like I said, they asked for, you  
22 know, specifics on how much space predesign they  
23 needed for turning hand cycles. I came out when  
24 they were forming on the first part phase at the  
25 upper -- at the total opposite end as this.

1           And then after the work was done, check things  
2           to verify what needed adjustments or if it was okay  
3           or not. And then I wasn't part of anything until I  
4           got the request to come check this, which I thought  
5           was just the contractor verifying that he had done  
6           the work right before he turned it over to the  
7           county. I wasn't aware that he didn't do the work  
8           when I was requested to measure.

9           Q.     Okay. And do you know who did do the work?

10          A.     I don't know who did the work. No.

11                 MR. GOODWYN: All right. That's all I have,  
12                 Your Honor.

13                 THE COURT: Cross-examination.

14                 MR. DAVIDSON: Thank you, Your Honor.

15                                 CROSS-EXAMINATION

16                 BY MR. DAVIDSON:

17                 Q.     Good morning. I'm John Davidson. I represent  
18                 the county. Thank you for being here. I'm going to  
19                 try to be very brief with you. Just want to make  
20                 sure I understood a couple of things from -- from  
21                 the testimony that you just gave.

22                         Your work on the earlier -- your earlier work  
23                 on the -- on the project was consulting or answering  
24                 questions on the turn radius of the hand cycles,  
25                 right?

1 A. Correct.

2 Q. Anything other than that?

3 A. Not -- not pre. That -- that was the only  
4 questions, and that was on the con -- the -- one of  
5 the contractor. I believe it was one of the  
6 contractors that were looking to bid on.

7 Q. Okay.

8 A. The plans had not been finalized at that point.  
9 They were looking for, like, what was possible at  
10 that point.

11 Q. Okay. And you believe that was a contractor?

12 A. I believe so. It wasn't someone from the  
13 county.

14 Q. Okay. All right. The -- and understanding  
15 this -- this all happened a long time ago, so I know  
16 we're testing your memory a little bit. Appreciate  
17 it. But the work then that you did later to go --  
18 that you just described going out to look at the  
19 upper parking area or at the upper area, you  
20 measured sidewalks or what were you measuring on  
21 that?

22 A. So at that -- the first time I went out, it was  
23 still being formed. Nothing had been paved and the  
24 concrete was in, so we were looking at the grading  
25 had basically been done and some forms were done.

1 So we were looking at what -- what was proposed  
2 going to be possible. And then at that point, they  
3 had also started thinking about the next phase. And  
4 so we're still looking at what needed to be done now  
5 that -- so that that piece of the project could be  
6 done.

7 And then without having to undo and redo things  
8 as they phase in the next couple of phases of adding  
9 facilities. So the first time I was there, it was  
10 still mud. You know, it was -- it was just graded.

11 And then after that, they had the concrete was  
12 poured and they had me come out and measure and look  
13 at things to see how the compliance was. And that  
14 once they had finished the -- you know, putting the  
15 concrete in.

16 Q. Okay. When you were -- when you were looking  
17 at phase one. And so in that upper area you were  
18 just describing, both in the mud and later after it  
19 was poured, what -- were you comparing it to  
20 drawings or were you just -- I don't mean just, but  
21 was it drawing reviewed or were you doing field  
22 measurements?

23 A. Mostly what I do is measuring what's there at  
24 the time.

25 Q. Okay.

1 A. There were drawings and stuff that they sent  
2 for me to, like, make sure we were understanding,  
3 you know, when I measured something I was describing  
4 it where it was.

5 Like, I remember doing like a section of the  
6 sidewalk that -- of the pedestrian route that goes  
7 in front of the parking spaces and where the  
8 accessible spaces would be, and they had truncated  
9 domes, which are the -- looks like Lego block tops  
10 that are there and the sidewalk.

11 And there was portions of it that had cross  
12 slope, but then there were portions that was 36  
13 inches of it that was under 2 percent and had a  
14 continuous rung. And I remember drawing something  
15 on either a photo or a plan or something -- I can't  
16 recall exactly -- saying that it technically met the  
17 standard because it was 36 inches wide there.

18 As long as there's a continuous rung. It can't  
19 be like 36 here and then jump over and be 36 here  
20 because wheelchairs don't go sideways. It would  
21 have to be continuous.

22 The biggest issues were going down to the --  
23 were -- there were some up on the parking lot area  
24 if I recall. There were some cross slope issues,  
25 but the bigger issues were the route going down to

1 the -- the green space way where there were either  
2 cross slope or sections that exceeded 5 percent, so  
3 which would make them ramps. And I -- you know, I  
4 remember measuring that.

5 I remember talking about, like, that e-mail  
6 that he showed making sure as you do the next phases  
7 that the plans are clear. That to eliminate any  
8 future issues so that, you know, it says it's to be  
9 designed at under 5 percent or not to exceed 2  
10 percent or something like that. Or if there were  
11 sections that were going to have ramps, you know,  
12 because of the terrain, if they there were going to  
13 be ramp elements, then to specify what those  
14 elements are.

15 Q. Okay. So what you are suggesting -- and I just  
16 want to make sure I understand. What you're  
17 suggesting is that the plans call out and say it  
18 should be less than 5 percent and the cross section  
19 should be less than two?

20 A. Yeah.

21 Q. Okay. Let me ask you this if I could.

22 Ms. Hanebrink, I'm going to show you and then I'll  
23 -- I'll put it up here, but I'd like for you to be  
24 able to look at this for a second, and then I'll try  
25 to put it up for everybody to see.

1 A. Sure.

2 Q. Okay. So do you agree that we're looking at  
3 a -- kind of like the full-size drawing of the  
4 East-West Parkway, phase 1, parking lot revisions?

5 A. That's what it says.

6 Q. Okay. And at the bottom, it is grade plan  
7 phase 1, L-103, correct?

8 A. Yes.

9 Q. So what we're looking at -- what we're looking  
10 at is the East-West -- the full-size drawing  
11 East-West Parkway, phase 1, parking lot revisions,  
12 and we're looking specifically at grading plan phase  
13 1, sheet L-103.

14 THE COURT: What exhibit number?

15 MR. DAVIDSON: This is Exhibit 28.

16 THE COURT: Okay.

17 BY MR. DAVIDSON:

18 Q. Now, I want to call your attention briefly  
19 to -- so do you see the note. Is that note up in  
20 the upper right-hand corner?

21 A. Yes. It says, "Please review the notes at  
22 bottom of the sheet prior to starting work. All  
23 slope limitations must be strictly adhered to."

24 Q. Okay. And then down in the lower left-hand  
25 corner. You -- could you read that out?

1 A. Sure. "Please review all spot elevations and  
2 layout dimensions before starting any new work.  
3 Horizontal alignment of all hardscaped paved areas  
4 may have been adjusted in response and as-built  
5 surveyed. Check all spot elevations. Spot  
6 elevations have been updated in response to as-built  
7 survey. Review thoroughly. See civil drawings for  
8 details on erosion control, storm water drainage,  
9 and traffic control. No walkway to exceed  
10 4.9 percent running slope. No walkway or ADA  
11 parking to exceed 1.5 cross slope. All ADA parking  
12 areas and required landings are to be less than  
13 1.5 percent slope in all directions. All bench and  
14 bike parking areas are to be less than 1.5 slope in  
15 all directions. All the ADA parking spaces in  
16 access of are to be constructed of concrete and are  
17 to be 1.5 percent slope in all directions.

18 Q. Okay. Thank you for -- sorry to make you read  
19 that. I appreciate you reading that in. Is that --  
20 are those notes what you were talking about to  
21 include in the drawings?

22 A. Yes.

23 Q. All right. Thank you for that. The -- your  
24 letter dated April the 30th that -- that we've been  
25 talking about earlier, that was simply a field

1 measurement exercise, right?

2 A. Yes. It was that day and time. That's what  
3 was present at that day and time.

4 Q. Okay. And that was on the lower part of the  
5 project?

6 A. That was a totally different piece that I had  
7 not been part of.

8 Q. And is that the only time you've been out  
9 there?

10 A. Yes.

11 Q. Okay.

12 A. For that section.

13 Q. For that section. The lower -- the lower area?

14 A. Yes.

15 Q. Okay. All right. And that was -- and I think  
16 you even say it in your -- in your exhibit that you  
17 did not review any plans for that?

18 A. I did not.

19 Q. And if I refer back to exhibit -- Plaintiff's  
20 Exhibit 10, which was your -- see that -- that's  
21 your letter on the 30th, right?

22 A. Yes.

23 Q. Okay. This last -- this last section here, "I  
24 did not have plans to review during this onsite  
25 assessment and cannot speak to what -- to if what

1 exists is built to plan."

2 A. Correct.

3 MR. DAVIDSON: All right. I appreciate your  
4 time. That's all I have for you. Thank you, Your  
5 Honor.

6 THE COURT: Mr. McDade.

7 MR. MCDADE: I don't have any questions, Your  
8 Honor.

9 THE COURT: Alright, sir.

10 MR. GOODWYN: Thank you, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. GOODWYN:

13 Q. Reading -- Ms. Hanebrink, you were reading  
14 the -- the plans. The plans show what to build,  
15 where to build it, and has elevations, all that.  
16 And then it has a note that says, basically, build  
17 it in an ADA compliant manner?

18 A. Correct.

19 Q. If the plans themselves don't allow what's  
20 possible to build it in an ADA compliant manner, how  
21 is that resolved or do you know?

22 A. So in -- in certain situations where it can't  
23 be built to plan, in my experience then a change  
24 order is usually established. And so that they  
25 can -- can look at why, you know.

1           So, for instance, I've got on projects where by  
2 pure elevation, it should be able to be done, but  
3 then you hit a granite thing, right, and so you  
4 can't grade, or you start construction and then you  
5 find out that what was marked for utilities was off,  
6 and they ran utilities in a different location.

7           I'm not aware that any of that happened at this  
8 site that I was told. So based on design, you know,  
9 it's where the design is. And then if a contractor  
10 comes into a situation where it can't be built by  
11 design, typically, they stop work until a new design  
12 is fixed.

13       Q.    Okay. And this is the original 2015 plans.  
14 And what you were shown was one of the revisions in  
15 2016. And these are the 2017 plans. Were you aware  
16 that this -- this project had been redesigned  
17 multiple times?

18       A.    I'm aware there were different phases and many  
19 times there's multiple phases. There's always  
20 multiple designs, but as far as why it was  
21 redesigned, I'm not aware of any of that.

22       Q.    Okay. Did you -- I know you talked about  
23 Natasha Sexton. Did you have any discussions with  
24 her about any redesigns of this -- the East-West  
25 Park Project?

1 A. To my -- gosh, it's been ten years. To my best  
2 recollection, what we were looking at was because we  
3 did a site inspection and it was steeper, was  
4 looking at how, you know, what was the possible fix,  
5 given what was already in place.

6 The other discussion was on different phases  
7 that hadn't existed yet, like what -- what were some  
8 strategies or ideas, like, if we wanted to add a  
9 playground or if we wanted to add restrooms, you  
10 know. So, you know, what would be considerations or  
11 make things easier for families with children with  
12 disabilities or parents with disabilities. Those  
13 are more of the conversations that I had with  
14 Natasha.

15 Q. Okay. So it sounds like you were not involved  
16 in actually redesigning the portions of the  
17 project ---

18 A. Yes.

19 Q. --- other than just conversations with Natasha?

20 A. They were just basic conversations, yeah, with  
21 what -- and recommendations to make sure that things  
22 are clear on the plans.

23 Q. Okay.

24 A. Like in that e-mail that you showed to make  
25 sure it clearly states so that there's not question,

1           you know, so if it does need to be a ramp that the  
2           ramps are just, you know, described and that you're  
3           designing not to the standard, but you met the  
4           design. The standard is 2 percent and they -- it  
5           calls for one and a half. Or the standard is 5  
6           percent, and it calls for four and a half. And that  
7           way it would allow for some error when they pour  
8           concrete or the temperature changes or -- or  
9           whatever, so that they make sure they're staying  
10          under the standard.

11           MR. GOODWYN: Okay. That's all I have.

12           THE COURT: May this witness be excused?

13           MR. DAVIDSON: Yes, Your Honor.

14           MR. GOODWYN: Yes, Your Honor.

15           THE COURT: Thank you, ma'am.

16           THE WITNESS: Thank you.

17           (Witness excused.)

18           THE COURT: Yes, sir.

19           MR. GOODWYN: Your Honor, I call Natasha  
20          Sexton.

21           THE CLERK: Please come forward and raise your  
22          right hand.

23           THE WITNESS: (Complying.)

24           THE CLERK: Do you swear or affirm the  
25          testimony you're about to give to be the truth, the

1 whole truth, and nothing but the truth?

2 THE WITNESS: I do.

3 THE CLERK: Thank you. Please come around and  
4 take a seat at the witness stand.

5 THE COURT: Was that right hand or left hand?

6 THE WITNESS: I'm a lefty.

7 THE COURT: Would you redo the oath with your  
8 right hand, please?

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

12 THE WITNESS: I do.

13 NATASHA SEXTON,  
14 having been produced and first duly sworn as a  
15 witness on behalf of the Plaintiff, then testified  
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. GOODWYN:

19 Q. All right. Ms. Sexton, thanks for coming down  
20 this morning. My name is Jeff Goodwyn. I represent  
21 Russell Moats. Ask you some questions about your  
22 knowledge of your involvement in the East-West Park  
23 Project primarily, but let me just ask a few  
24 questions about your background. How old are you?

25 A. I'm 47.

1 Q. And tell me -- tell us about your education.

2 A. I went to Wren High School here locally and  
3 then Clemson University for my degree.

4 Q. And what kind of a degree?

5 A. A degree in landscape architecture.

6 Q. Okay. What have you been doing in your  
7 professional career since college?

8 A. For the most part, practicing landscape  
9 architecture.

10 Q. Okay. And who have you worked with? I know  
11 it's ---

12 A. There's a lot.

13 Q. --- my understanding it's been a number.

14 A. Oh, yeah. So I started, I worked for Arbor  
15 Engineering. Then Seamon Whiteside and Associates.  
16 Then I worked for Milone and MacBroom, SGA  
17 Architecture, and then currently employed with  
18 Sexton Design and Development.

19 Q. Okay. That's your own company?

20 A. It is.

21 Q. Okay. All right. Tell us about your  
22 involvement with the East-West Park Project. How  
23 did it start?

24 A. It has been a while, so please forgive me  
25 because memory is always a little bit questionable,

1 especially when it's eight, ten years ago on a  
2 project.

3 Q. Fair enough.

4 A. I believe I was working with Milone and  
5 MacBroom at the time. Matt Schell of Anderson  
6 County, who I've known and worked with before, gave  
7 me a call about this park project that they had.  
8 And so we, you know, looked at it and we started to  
9 give me a proposal and started working on it.

10 Q. And was -- were there any other designers other  
11 than you involved from -- from the very beginning?

12 A. We had other designers on our team internally  
13 at Milone and MacBroom, but I do not believe there  
14 was another firm associated with it.

15 Q. Okay. So the -- this, at least, is the first  
16 plans. I tell you what, I don't want to take this  
17 off of here if I don't have to. Can you come down  
18 and take a look at this?

19 A. Of course.

20 Q. Do you recognize this July 9, 2015 full-size  
21 drawing that we marked as -- this is Defense  
22 Exhibit 128(a).

23 A. It looks familiar. I haven't seen them in  
24 years so I couldn't guarantee this is exactly the  
25 same, but it does look like the exhibit.

1 Q. It's the 2015 version. Is this the first  
2 version?

3 A. I have no idea. It's been ---

4 Q. Been that long?

5 A. --- years. Yes. I do an average of 30 to 35  
6 projects a year, so it's definitely been a while.

7 Q. Okay. All right. Fair enough. Okay. You can  
8 have a seat. I just wanted to get you to take a  
9 look at that.

10 A. (Complying.)

11 Q. All right. The -- did the project have any --  
12 any issues with the compliance with the Americans  
13 with Disability Act, with the ADA?

14 A. Yes. There's always problems with ADA in  
15 pretty much every project we do because there's a  
16 lot of topography in this area and ADA requires very  
17 specific (inaudible) for different types of grade  
18 change, different types of access. So we were, you  
19 know, I just remember working on different ADA  
20 components of this one several times because the  
21 ADA -- ADA can be a very complex piece of  
22 legislation.

23 Q. Okay. And did you make a number of redesigns  
24 for this project?

25 A. Yes. There were multiple revisions as we had

1 site information, additional ADA commentary code  
2 revisions.

3 Q. Okay. And these revisions, were they to try to  
4 resolve the issues that you were having or that  
5 everyone was having with ADA compliance?

6 A. Yes. That was one of -- you know, there was --  
7 every time we do a project, there's always multiple  
8 drawings, revisions that happen both during the  
9 design process and then during the construction  
10 process as we're answering RFIs. And I don't care  
11 how great your survey is, the -- the ground is  
12 always going to be a little bit different than what  
13 we show on our drawings. And so we always are  
14 constantly working with contractors to correct  
15 those.

16 Q. Okay. I'm going to -- well, let me -- let me  
17 just kind of walk through a little bit. Do you --  
18 do you know Russell Moats of Moats Construction?

19 A. Yes.

20 Q. Okay. Is this Mr. Moats here?

21 A. It is.

22 Q. How long has it been since you've seen him?

23 A. Oh, my gosh, probably at least eight years,  
24 maybe longer. Whenever this -- you know, this  
25 project concluded.

1 Q. Okay. So this -- this is -- the last time you  
2 saw him was involved with this project?

3 A. Correct.

4 Q. Okay. All right. Was there -- there was a  
5 time when Mr. Moats was working on this project?

6 A. Correct.

7 Q. And was there a time when he left and somebody  
8 else came in?

9 A. I believe so, but my -- that was about the time  
10 that I was -- my contract had finished, as well. So  
11 I did not -- I don't remember the full ending of  
12 this because there was a lot -- it drug on forever.  
13 It was a long project. Some projects take a long  
14 time. So I do not remember specifically at what  
15 point another contractor was brought in, but that's  
16 my understanding is it was someone at some point.

17 Q. Okay. I'll represent to you that the evidence  
18 in this case is showing that Mr. Moats left the  
19 project approximately April to May of the 2018.  
20 Does that sound about right?

21 A. I guess. Sure.

22 Q. Okay.

23 A. I'm so sorry.

24 Q. Okay.

25 A. I'm not sure I can tell you what happened

1 two-weeks ago, so this far back in my project  
2 history database is a little bit challenging.

3 Q. All right. And you were with Milone and  
4 MacBroom when this -- when you first designed the  
5 project, correct?

6 A. Correct.

7 Q. And then you went to SGA?

8 A. Correct.

9 Q. And you made some revisions, correct?

10 A. So SGA held the construction administration  
11 contract for this project. Milone and MacBroom held  
12 the design contract for this project.

13 When I left Milone and MacBroom, they --  
14 normally, you would not have different firms, but  
15 Milone and MacBroom closed their Greenville office.  
16 So there was a -- the closest office was in  
17 Connecticut, so it did not make sense for them to  
18 continue, so they relinquished their construction  
19 admin portion of that to SGA.

20 Q. Okay. When you left Milone and MacBroom, were  
21 you able to take the CAD file associated with this  
22 project?

23 A. I believe they did let me -- I mean, I'm pretty  
24 sure we did have the original CAD file.

25 Q. Do you typically give the CAD file to the

1 contractor so they can use it and ---

2 A. Quite frequently, yes.

3 Q. Do you recall ever doing that -- did you give  
4 the CAD file to Russell Moats of Moats Construction  
5 in this case?

6 A. I'll be honest, I do not remember.

7 Q. All right.

8 A. We don't give them unless they ask, and I don't  
9 remember specifically if Russell asked for it.

10 MR. GOODWYN: Okay. All right. Your Honor,  
11 mark Plaintiff's Exhibit 26 is the SGA architecture  
12 contract of August 8th of 2018, and 27 is the  
13 proposal dated July 20th of 2018.

14 THE COURT: What was 27?

15 MR. GOODWYN: The SGA proposal.

16 THE COURT: And those are admitted from the  
17 county without objection; is that correct?

18 MR. DAVIDSON: Yes, Your Honor.

19 THE COURT: Individuals?

20 MR. MCDADE: No objection, Your Honor.

21 THE COURT: Admitted without objection.

22 (Plaintiff's Exhibit Nos. 26 and 27 were  
23 received into evidence.)

24 BY MR. GOODWYN:

25 Q. All right. Ms. Sexton, try to get this on

1 here. All right. Is this the proposal that you  
2 sent to the county ---

3 A. Yes. It appears to be.

4 Q. --- in 2018?

5 A. As far as I can tell.

6 Q. All right. Okay. All right. So at this  
7 point, you were still with SGA?

8 A. Correct.

9 Q. All right. And it's July 2018 and Mr. Moats  
10 was off the job in April or May of 2018. This would  
11 be after he left. Somebody else was on the job, but  
12 you're still being asked to -- or you're still  
13 asking them to hire you; is that right? I can move  
14 it if you need me to move it.

15 A. Yes. This was providing landscape architecture  
16 design services for the completion of the project.  
17 There were two phases of this project. Moats was  
18 awarded phase 1. Phase 2 was a completely separate  
19 project that had not been awarded for design.

20 Q. Okay. Well, I'm -- maybe I'm a little  
21 confused. Can you come down here and look at this  
22 for me? I'm going to ask you some questions about  
23 this. This is the entire East-West Parkway.

24 A. Correct.

25 Q. And it's marked phase 1, phase 2, phase 3. And

1           it looks like it was all designed at the beginning,  
2           maybe built at different times, but designed at the  
3           beginning.

4           A.     This is a master plan.

5           Q.     Okay.

6           A.     So -- and this is part of why we do this on the  
7           design side, because what you may need changes.  So  
8           we originally did full design starting with the  
9           master plan and we did full design.  You'll notice  
10          there's not as many details on this set as there  
11          typically would be on the construction drawing set  
12          so that the county could phase it.

13                 The county often -- even if they have a design,  
14                 they will go back because things take longer to use  
15                 changes what they want.  So if they had a design  
16                 that worked this time, they may decide to change it  
17                 before the next one, which is what happened in this  
18                 case.  We had a design agreement master planned out,  
19                 but then the county decided to change what they  
20                 wanted.  They wanted that second portion to be  
21                 redesigned.

22          Q.     Okay.  All right.  So is it fair to say then  
23          that the contractor could not use this plan to build  
24          it?  This is just a master plan.  He would need a  
25          more detailed plan than this?

1 A. No. This would have all it would need to build  
2 for the phases if they were planning on building at  
3 that time, which is phase 1.

4 Q. Okay. So you're saying phase 1, which is ---

5 A. So to pour the concrete, there's no details for  
6 that, which is phase 3.

7 Phase 1, this set -- this was a set that was  
8 issued for permitting, and I don't know if this was  
9 a set that was issued for permitting. The  
10 contractor would've built off of the set that was  
11 issued for permitting. The contractor would've had  
12 a set that was stamped and sealed. These are not  
13 stamped and sealed, which means this would've been  
14 not a set that the contractor would've used for  
15 construction documents.

16 Q. Okay. And -- but you say if this had been  
17 stamped and sealed, maybe I should ask it this way:  
18 This has everything a contractor needs for phase 1  
19 construction, but not phase 2 and 3?

20 A. Well, so it's not stamped and sealed, but I  
21 can't guarantee that. I'd had to look at whatever  
22 the stamped and sealed drawings were to say if it  
23 was because that's -- we issue a lot of different  
24 types of drawings during a project.

25 Q. Okay. All right. So this -- when you say ---

1 A. This has been stamped and sealed.

2 Q. --- stamped and sealed, this is what you mean  
3 by that?

4 A. Correct.

5 Q. This document doesn't even have that?

6 THE COURT: What exhibit number is that,  
7 please, sir?

8 MR. GOODWYN: This is Defense Exhibit 1, Tab  
9 28.

10 THE COURT: Okay.

11 MR. GOODWYN: Here we go, 28(b).

12 BY MR. GOODWYN:

13 Q. All right. This is a revision, looks like  
14 dated 11/29/16. Is that --- is that ---

15 A. That's what -- yes. This was a very long and  
16 drawn out project.

17 Q. Sure.

18 A. So that would've been within that time frame  
19 that we were working on this one.

20 Q. All right. And does this version have  
21 everything a contractor would need to build phase --  
22 phases 1 and 2?

23 A. It should've had everything that was required  
24 for him to build phase -- the phases he was  
25 contracted to do. This has significantly more spot

1 elevations than we would typically put on a  
2 construction document. We would actually expect  
3 there to be less documentation needed usually in  
4 terms of the grading plan.

5 Q. Okay. All right. And -- all right. So -- and  
6 just -- we're kind of -- I want to make sure we're  
7 kind of looking at the same thing. I know they  
8 can't see you right. We may have to adjust that.  
9 I'm looking ---

10 A. This is this parking lot here.

11 Q. Okay. This is this upper part?

12 A. Correct.

13 Q. Okay. So is there anything -- it looks like  
14 everything in this revision deals with that upper  
15 parking lot? Is that ---

16 A. They -- if the lower parking lot was included  
17 in this one, then it would've been red clouded.

18 Q. It would've been what?

19 A. Red clouded. It's a revision cloud. So  
20 usually, when we make a change, we will -- we'll  
21 show what's been revised ---

22 Q. I gotcha.

23 A. --- to make it clear for the contractor so they  
24 know what's new. And I do not see the blow up for  
25 the lower portion in this stuff.

1 Q. Okay. So there's not in this -- in this large  
2 set?

3 A. Nope.

4 Q. Okay. All right. And does it matter which way  
5 you roll it up?

6 A. No.

7 Q. Okay. All right. So what are we looking at?  
8 We'll hold it up a little bit so they can see. What  
9 are we looking at here?

10 A. This should be the lower portion. It's a site  
11 plan.

12 Q. Okay. Again, not stamped here?

13 A. Correct.

14 Q. What -- maybe explain the process then. That  
15 2016 revision, it was stamped. This one's not.  
16 What does it mean? This -- do you print -- produce  
17 these large sets and then give them to the  
18 contractor. Is that how that works?

19 A. No. We give them to the county to give it to  
20 them.

21 Q. So is the county your client?

22 A. Yes.

23 Q. Okay. All right. But this is part of the  
24 revision that -- that you made to the lower section,  
25 is that correct, whether they got it stamped and

1 sealed and all that?

2 A. Yeah, so we stamp and seal them. And if it's  
3 not stamped and sealed, then that typically will  
4 indicate that it is an earlier set, because we -- I  
5 don't put my seal on it until it is ready to go for  
6 permitting or ready to be built if there's not a  
7 permit needed because that's me saying that I, as a  
8 licensed landscape architect, is going to stand  
9 behind.

10 When it's a project set and we're still working  
11 out the kinks, which happens. We have to do that.  
12 It's a process. It's not -- you can't design  
13 something immediately, get it right the first time  
14 every time, and your client has to look at it  
15 because there's cost implication. So we don't put a  
16 stamp and seal until it's finished.

17 Q. Okay. All right. Well, let me ask you this.  
18 I just want you to look at the shape of this lower  
19 sidewalk here. It's been compared to ---

20 A. Oh, it drastically changed due to ADA.

21 Q. Okay. And that was -- that was my question.  
22 So what -- what was the -- what was the ADA issues  
23 with this lower sidewalk, the one that we're talking  
24 about here?

25 A. Okay. Keep in mind, it has been a minute since

1 I touched this project, so I'm not going to promise  
2 that everything I say is exactly right because it's  
3 been several years.

4 But if I remember correctly, the biggest issue  
5 was that we did not have grading information on the  
6 existing walk we were tying into when we started the  
7 project. When we received that information, it was  
8 too -- too much of a difference to be able to do  
9 this type of approach. It wasn't flat enough for  
10 the ADA compliance.

11 Q. Okay. When you mean you didn't have grade  
12 information, what does that mean?

13 A. I mean the surveyor did not pick up -- I mean,  
14 I can't remember if it's because it wasn't built at  
15 this time -- I mean, it's been a long time -- or if  
16 it just was not -- the scope doesn't carry that far.  
17 We did not have accurate information on what the  
18 existing spot elevations were on the sidewalk.

19 Q. All right. Look up at the TV screen if you  
20 would. Is this the area that we're talking about  
21 here?

22 A. Yes.

23 Q. Okay. All right. And there -- is there a  
24 retaining wall on that drawing or any of the  
25 drawings that you had?

1 A. On this one, no.

2 Q. All right. And was it -- did you happen to  
3 look to see if there was one?

4 A. I don't know. I know there was conversations  
5 at one point about whether or not we would need one,  
6 and I honestly do not remember where we ended up on  
7 that.

8 THE COURT: Would you identify it by exhibit  
9 number for me, please, sir?

10 MR. GOODWYN: I'm sorry. Which ---

11 THE COURT: The plans.

12 MR. GOODWYN: Yeah, the plans are all --  
13 Defense Exhibit 1 has 28 and they're (a), (b), and  
14 (c).

15 THE COURT: It's all -- okay.

16 MR. GOODWYN: Yeah, the 2015 plans are (a), the  
17 2016 plans are (b), and the 2017 plans are (c).

18 THE COURT: Okay. Thank you.

19 BY MR. GOODWYN:

20 Q. All right. So at least on the 2017 plans here,  
21 is there a retaining wall indicated on ---

22 A. That's the other parking lot. That's the upper  
23 parking lot.

24 Q. Oh, this is 16. Thank you. All right. Is  
25 there a retaining wall indicated on this?

1 A. This is not -- do you have the grading plan?

2 Q. Okay. So let's ---

3 A. This is a site plan. This is the layout plan.

4 Q. Is this the grading?

5 A. This is the grading plan. There is not one  
6 indicted on this. I also am not sure this is the  
7 final set.

8 Q. Okay. All right. Fair enough.

9 A. And, again, I remember there being  
10 conversations. Often -- again, when you're doing  
11 grading and working the sites, the grade information  
12 that we had was pre-disturbance. The site has been  
13 disturbed some from construction activity.

14 Q. Okay.

15 A. Dirt moves. There's always little adjustments  
16 that get made. Sometimes we'll show a wall that's  
17 not -- I got a project right now that we showed a  
18 wall in our plans. And we got out there and  
19 realized that the grades were just a little bit  
20 different and didn't actually need a wall.

21 Q. Okay. All right. You can have a seat for now.

22 A. (Complying.)

23 Q. All right. So why was the retaining wall  
24 ultimately installed?

25 A. I would assume it is because there was a

1 steeper grade and there was concerns with erosion.

2 Q. Okay. All right. And this is what we've  
3 marked as Defense Exhibit 26 just a minute ago. Do  
4 you recognize this document?

5 A. I do.

6 Q. What is it?

7 A. It's a contract for professional services for  
8 SGA.

9 Q. Okay.

10 A. I'm assuming that would be the one for  
11 construction admin services, but, again, not  
12 100 percent sure.

13 Q. Right. And this the day -- what's the date?

14 A. August 8, 2018.

15 Q. Okay.

16 A. It's a different date, so I'm not even sure  
17 what that one is.

18 Q. So I'm just -- yeah. I'm just kind of  
19 wondering. SGA had been involved in this project  
20 for -- since before this time, correct?

21 A. Correct.

22 Q. And why -- why is there a new contract in  
23 August of 2018?

24 A. I do not know. I'd have to look at it and see  
25 because it's about the time that I left the firm

1           shortly after that.

2           Q.     Okay.  And do you want to ---

3           A.     I might not have been involved in that  
4           contract.

5           Q.     All right.  Do you want to review it?

6           A.     Sure.  I have no idea what this contract is  
7           for.  I'm looking for a scope of services, which I  
8           don't see because this was -- I'm not sure I was  
9           with SGA at this point in time.

10          Q.     Okay.  This -- what we've marked as Plaintiff's  
11          Exhibit 27.  This is the proposal less than a month  
12          or a few weeks before that contract.  Would that  
13          help you?

14          A.     Oh, okay.  So, yes, I believe this was the  
15          project of completion of the CA for the phase 1 and  
16          phase 2 project.  This was around the time I left  
17          their company, so that's where I'm not 100 percent  
18          sure because I ---

19          Q.     Okay.

20          A.     --- was not fully engaged at that point and it  
21          was -- it was a transitional time for me within the  
22          company.

23          Q.     Right.  And I'm going to show you some other  
24          documents that may help refresh your -- refresh your  
25          recollection about the time line.

1 A. Be nice because it's been a while.

2 MR. GOODWYN: All right. Your Honor, I'm going  
3 to mark Plaintiff's Exhibit 28 a site visit report  
4 from Sexton Design dated January 23, 2019;  
5 Plaintiff's Exhibit 28 is an e-mail ---

6 THE COURT: Twenty-eight or 29?

7 MR. GOODWYN: Twenty-eight is the site visit  
8 report; 29 is an e-mail dated October 5, 2018; 30 is  
9 another e-mail that's dated February 1, 2018; 31 is  
10 another e-mail dated February 2, 2018; I'm sorry.  
11 This is a duplicate. Yeah, it's a duplicate. So 31  
12 will be an e-mail August 30, 2018. And that's all  
13 of them.

14 THE COURT: That's an e-mail?

15 MR. GOODWYN: Yes, Your Honor.

16 THE COURT: Any objection to that being  
17 admitted from the county?

18 MR. DAVIDSON: No objection.

19 THE COURT: Sir?

20 MR. DAVIDSON: No objection.

21 MR. MCDADE: No, Your Honor.

22 THE COURT: So 28, 29, 30, and 31 will be  
23 admitted without objection.

24 (Plaintiff's Exhibit Nos. 28, 29, 30, and 31  
25 were received into evidence.)

1 MR. GOODWYN: Thank you, Your Honor.

2 THE COURT: Yes, sir.

3 BY MR. GOODWYN:

4 Q. All right. Ms. Sexton, I'm going to show you  
5 these documents in an effort to try to help you  
6 refresh your recollection kind of about the time  
7 line. I know it's been a long time ---

8 A. It has been.

9 Q. --- since all this happened. All right. I'm  
10 going to try to do this chronologically. All right.  
11 So here -- this is -- this is Plaintiff's ---

12 A. Okay. Yes.

13 Q. --- Exhibit 30. It's an e-mail dated  
14 February 1, 2018. It's an e-mail to Brian  
15 Richardson and Leon Harman. Does he go by Leon or  
16 do you know?

17 A. I do not know.

18 Q. Okay. Anyway, you're working on the job here.  
19 And I want to ask you more questions about the  
20 e-mail in a minute, but, clearly, you're still  
21 working this project at that point, correct?

22 A. This was a project that started and stopped  
23 multiple times, which also made it a little bit more  
24 challenging.

25 Q. I understand. All right. And then the next

1 e-mail, chronologically at least, is Plaintiff's  
2 Exhibit 31. It's an e-mail dated August 30, 2018.

3 All right. And then the next e-mail August --  
4 excuse me -- October 5, 2018, is Plaintiff's Exhibit  
5 29. And so, clearly, you're still working this  
6 project as of October 2018.

7 And then this is a site visit report. This is  
8 on Sexton Design and Development letterhead.

9 A. I had already left SGA. And SGA subcontracted  
10 their stuff to me to do the CA.

11 Q. Okay. Since you had been on the job the whole  
12 time, it made sense.

13 A. And it had been such a long and drawn out fun  
14 project.

15 Q. Fair enough. Fair enough. Okay. So does that  
16 help kind of refresh your recollection ---

17 A. Yes.

18 Q. --- as to the time line on this?

19 A. Yes.

20 Q. Okay. So let me talk to you about these  
21 e-mails then. This is going back to February 2018.  
22 And this is before Mr. Moats left in April or May of  
23 2018. What are you -- what are you saying here in  
24 this -- in this e-mail?

25 A. We had gotten everything surveyed. And if I

1 remember correctly, we were overlaying the survey's  
2 data of the as-built with the design data of what  
3 was anticipated.

4 Q. All right. Is the -- is the property not  
5 surveyed to begin with?

6 A. The property is surveyed multiple times  
7 throughout a construction project. You survey it  
8 initially for your type and base information, which  
9 is what we work off for the design.

10 Then the contractor usually surveys throughout  
11 the process to set their stakes and grade lines and  
12 know where they are.

13 And then we always require an as-built survey  
14 at the end of the project to make sure that what was  
15 built matches what was designed.

16 Q. Okay.

17 A. And then if we have issues throughout the  
18 project, which we always do, we have -- I mean,  
19 everybody has surveyors that are on a project that  
20 come out and give you spot information here or data  
21 here.

22 Q. Okay. All right. So look down here at this  
23 second paragraph here where it says "Brian." You're  
24 talking to Brian Richardson at this point?

25 A. Uh-huh.

1 Q. Was he the project man -- could you -- I'm  
2 sorry. Can you say a word for the court reporter to  
3 get? She -- she needs a word. I know you meant yes  
4 when you nodded.

5 A. Oh, yes.

6 Q. She needs a word. Yeah, so you're asking --  
7 Brian, is he the project manager for Anderson County  
8 at this point?

9 A. I believe so.

10 Q. Okay. And what are you -- what are you asking  
11 him here?

12 A. Celia at the county at that point did their ADA  
13 reviews for the site compliance, and so I asked her  
14 to review the drawings and make sure that they're  
15 compliant.

16 Q. Who is Celia?

17 A. She worked with the county. I don't ---

18 Q. Okay. All right. So you're asking somebody  
19 from the county to review your designs to make sure  
20 they're ADA compliant?

21 A. Yes. It's common practice.

22 Q. Okay. And then after the county or Celia --  
23 Celia approves them, then they're given to the  
24 contractor? Is that how it works?

25 A. No. This isn't for a construction document

1 that we're working on. This is kind of like an  
2 as-built thing if they're ---

3 Q. Okay.

4 A. And I don't know what all was built or done at  
5 this point. I'd have to -- I'd have to go through a  
6 bunch of drawings and figure out where we were on  
7 everything because sometimes like this, we may or  
8 may not have given them to the contractor. We don't  
9 typically give that to the contractor when we're  
10 overlaying as-built with our existing, unless  
11 there's an issue. So that's -- I'm not sure ---

12 Q. Okay.

13 A. --- if it was something we would have given to  
14 Moats or not.

15 Q. All right. Let me just ask you generally. If  
16 an architect or designer like yourself, you know,  
17 issues plans for a builder to build, does it -- does  
18 it mean if the -- let me start over with that  
19 question.

20 When you issue design plans for a builder to  
21 build off of, and your job is to, in part, to make  
22 sure that what's built is ADA compliant?

23 A. It is to make sure that what is built matches  
24 up with the plans and that that is ADA compliant.

25 Q. Okay. Did -- is it possible that the plans

1 that you issue, if built as -- as designed, would  
2 not be ADA compliant?

3 A. If you're talking about the very first set of  
4 designs, yes, and we found deficiencies in them.

5 Q. Okay.

6 A. We corrected those throughout the process.  
7 This is -- plans go through multiple different  
8 reviews. We go through code reviews. We go through  
9 these with the client. We do a lot of internal  
10 reviews. There's also a lot of components to them.  
11 Construction is a multi-layered complex.

12 So this is a, you know, common practice. You  
13 have your -- every change that's made, there's also  
14 a change order associated with that where the  
15 contractor charges more money for the delays that  
16 have caused the additional concrete or the  
17 additional scopes.

18 Q. Fair enough. And, again, as you -- as you  
19 testified I think, there were multiple revisions to  
20 the plans in this case to accommodate for these ADA  
21 issues?

22 A. Uh-huh.

23 Q. Is that a yes?

24 A. Yes.

25 Q. Okay. And, again, I'm sorry. It's just -- I

1 know you mean yes and they probably do too, but she  
2 needs a word to put in the transcript.

3 All right. This is a -- an e-mail. This is  
4 Plaintiff's Exhibit 29 from October 5, 2018, to  
5 Brian Richardson and Jeremiah Sexton. I'm assuming  
6 that's a relative?

7 A. That is my business partner and husband.

8 Q. Okay. And ---

9 A. He is copied on almost every e-mail from my  
10 company because we are business partners, so almost  
11 every e-mail you see from me with have him copied  
12 and vice visa.

13 Q. Is he a designer also?

14 A. Actually, no. He's a general contractor.

15 Q. Okay. Perfect. Match made in heaven, huh?

16 All right. Then the third recipient here is Chris  
17 with Capital Construction. Who is Chris with  
18 Capital Construction?

19 A. He is another general contractor. He had just  
20 finished up a project that -- I think he finished up  
21 a project or he was working on a project for  
22 Anderson County that we were involved in and they  
23 wanted to make sure -- we often, as designers, will  
24 send different things out to different people to see  
25 if they're interested, especially when we're having

1 a hard time on small projects getting bids in.

2 Q. Okay.

3 A. We have a lot of bids cancel because we didn't  
4 have enough numbers come in.

5 Q. Okay. And what are you asking Chris on this  
6 e-mail?

7 A. I'm asking if he's interested in bidding it.

8 Q. Well, and you say, "Attached is a bid form and  
9 drawings associated with a small concrete project in  
10 Anderson County. Is this small concrete project,  
11 the pouring of this sidewalk what you're talking  
12 about?

13 A. I would think so because the attachments are  
14 showing that, and it wouldn't be anything that  
15 wasn't in the bid in the standard bid announcement.

16 Q. Okay. All right. Do you know if Chris with  
17 Capital or Capital Construction took this job?

18 A. I do not remember.

19 Q. Okay. All right. So this is your site visit  
20 report of January 23, 2019, correct?

21 A. Correct.

22 Q. And this is, what, three years into this  
23 project now?

24 A. At least. Maybe more.

25 Q. Okay. All right. And are you the author of

1 this report?

2 A. Yes.

3 Q. All right. And what is the purpose of the site  
4 visit report?

5 A. It's to give our client, the county, an update  
6 on the status of construction, what happened, you  
7 know, in the field, what's -- if we see anything  
8 that deviates from the drawings or we see anything  
9 that is a discrepancy.

10 Q. Okay.

11 A. We are not contractors. We are, you know,  
12 landscape architects. We don't direct construction.  
13 We -- the contractor does not work for us. It is  
14 just an observation of what we see.

15 Q. Fair enough. All right. And what are you  
16 telling the county or Brian Richardson in this site  
17 visit report?

18 A. That the concrete forms are installed and we  
19 had checked the horizontal layouts and spot verified  
20 specific places and went and just double checked to  
21 see if that the number matched up with what the  
22 number on the plans showed.

23 Q. All right. And it's just to make sure because  
24 most of us are not contractors in here. The  
25 concrete forms, what is -- what is that?

1 A. So that's before you pour concrete, you build  
2 your forms usually out of wood. And so if you go  
3 and look and see, you know, basically shows you the  
4 concrete is going. So we can double check the  
5 horizontal layout, meaning how long is this or how  
6 wide is this to make sure, like, it's a five-foot  
7 sidewalk the whole way or whatever it happens to be.

8 Q. Okay. And is this inspection site visit  
9 inspecting the forms, is that always done before  
10 concrete's poured on a sidewalk?

11 A. Most of the time, yes.

12 Q. Okay. All right. And so -- all right. So  
13 what else are you telling me?

14 A. That we attempted to check the slopes, which  
15 would be the horizontal and vertical and that we  
16 attempted to get the running slopes, but we couldn't  
17 get very accurate readings. And so the contractor  
18 -- contractor needed to verify that all the running  
19 slopes were less than 5 percent and cross slopes  
20 were less than 2 percent.

21 Q. Okay.

22 A. The -- and, you know, make a note that the  
23 radiuses appear to be tighter than what was  
24 provided, but we are not surveyors. This is just  
25 visually. It looks tighter to me, so we weren't --

1 anything that looks a little bit different, we  
2 always make note of and that way the county, as the  
3 owner, can choose whether or not they want to get a  
4 surveyor out there to verify it or if it's something  
5 that doesn't concern them.

6 Q. Okay. In this sentence here where it starts  
7 "the forms," what does that say?

8 A. "Those forms are approved, assuming finished  
9 slopes are below 5 percent while running slopes and  
10 below 2 percent for all cross slopes."

11 Q. All right. So were you being -- were you asked  
12 to come out and do this site visit?

13 A. I would assume so, but I don't remember.  
14 Typically, we do inspect the forms prior.  
15 Typically, you'll have -- and it depends on the site  
16 and the job, but you'll have your architect engineer  
17 or (inaudible) come out and inspect the forms.

18 You also typically have the building inspector  
19 that comes out and inspects the forms. We do not  
20 perform the role of the building inspector. We  
21 perform the role of the designer to ensure that  
22 what's on the designed plan is met.

23 Q. Okay. And is it fair to say that at least at  
24 this point in January of 2019, the county was still  
25 concerned about making sure that the sidewalks in

1 the East-West Park Project were ADA compliant?

2 A. Yes. That would be my understanding.

3 Q. Okay. All right. And then you have some  
4 pictures attached here that are not the best quality  
5 on this copy, but this is just you showing the forms  
6 that you observed and measured or attempted to  
7 measure at least?

8 A. Uh-huh.

9 Q. Is that a yes?

10 A. Correct. Yes. Sorry.

11 Q. Thank you. Okay. Did you come back out after  
12 those -- the sidewalks were actually laid to test to  
13 see whether they actually did meet the ADA  
14 requirements?

15 A. I would think so, but I do not -- I mean, like  
16 I'm hoping you got paperwork because I do not  
17 remember.

18 Q. Okay.

19 A. I tend to block out projects after a while.

20 Q. And do you know Sandy Hanebrink?

21 A. I do.

22 Q. I guess you ran into her in the hallway there?

23 A. Yes. I know Sandy.

24 Q. Okay. And have you spoken to her about this  
25 project ---

1 A. I have not.

2 Q. --- since. Okay. And have you seen her  
3 report ---

4 A. I have not.

5 Q. --- from April 2019?

6 A. No.

7 Q. Okay. So you -- if she says that the sidewalks  
8 are not in compliance, do you have any reason to  
9 dispute that?

10 A. No.

11 Q. Okay. Do you know if the -- if the county or  
12 anybody, Brian Richardson, the project manager, ever  
13 gave approval to the contractor to pour the  
14 concrete, pour these forms, or leave the sidewalks  
15 as they were knowing they were not compliant with  
16 the ADA?

17 A. Not that I know of.

18 Q. Okay. This lower section of the sidewalk that  
19 we've been talking about. Do you know -- let me see  
20 if I can get this picture up again. This lower  
21 section that we've been talking about, do you know  
22 if that section was ever torn out once it had been  
23 poured?

24 A. I believe it was torn out more than once, if I  
25 remember correctly, this whole process because it

1 is -- it is an area with a difficult grade area to  
2 get right. And I believe there were change orders  
3 that were approved for that work ---

4 Q. Okay.

5 A. --- but, again, I'm not 100 percent sure.

6 Q. All right. And these tear outs, was it because  
7 of the ADA issues?

8 A. I believe so.

9 Q. Okay. Who do you know -- is it Alexander -- is  
10 it Zuendt?

11 A. Zuendt. Yes.

12 Q. Who is that?

13 A. He's a civil engineer.

14 Q. Okay. Was he involved in this project?

15 A. I believe he did some consulting work.

16 Q. Okay. Did you do anything with him?

17 A. Possibly. We've worked together on multiple  
18 different projects, so...

19 MR. GOODWYN: Okay. All right. That's all I  
20 have, Your Honor.

21 THE COURT: Cross-examination.

22 MR. DAVIDSON: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. DAVIDSON:

25 Q. Good morning. I'm John Davidson. I represent

1 Anderson County.

2 A. Good morning.

3 Q. I want to ask a few questions. I don't think  
4 it will be very long, but I appreciate you being  
5 here to help us out.

6 I'm going to ask. A minute ago you were  
7 talking about some sections of the sidewalk that you  
8 thought had been torn out several times or more than  
9 one time possibly due to ADA compliance; is that  
10 correct?

11 A. Correct. And, potentially, other construction  
12 issues. It's been a long time since I've touched  
13 this project. I do remember there were -- there was  
14 ADA. There was also some drainage. There were a  
15 couple of other concerns from a construction  
16 standpoint that should've been in my construction  
17 reports.

18 Q. Okay. Let me -- let me ask you: Is it -- just  
19 as a general matter, is it unusual for ADA sidewalks  
20 that are -- that have to be ADA compliant to have to  
21 be redone -- torn out and redone on a project?

22 A. No. It's not unusual.

23 Q. Okay. Is that ---

24 (Brief interruption.)

25 THE COURT: Would you like some water?

1           A JUROR:  Yes.

2           THE COURT:  Tell you what, let's stop and let's  
3 take our morning break.

4           Mr. Bailiff, would you get them some water,  
5 please?

6           (At 11:16 a.m., jury left the courtroom.)

7           (From 11:15 to 11:32 a.m., brief recess.)

8           THE COURT:  Mr. Goodwyn, anything from the  
9 plaintiff before we get started?

10          MR. GOODWYN:  No, Your Honor.

11          THE COURT:  From the county?

12          MR. DAVIDSON:  No, sir.

13          MR. MCDADE:  No, sir.

14          THE COURT:  Bring the jury in, please, sir.

15          (At 11:33 a.m. jury entered too the courtroom.)

16          THE COURT:  Mr. Davidson.

17          BY MR. DAVIDSON:

18          Q.    All right, Ms. Sexton, a few other -- a few  
19 other questions.  When -- when you were testifying  
20 earlier, you looked at several sets of plans  
21 including the plan that's -- that's hanging up there  
22 that'll -- how do you say it?

23          A.    Milone and MacBroom.

24          Q.    Milone and MacBroom.  And, also, the  
25 Defendant's Exhibit 1, Tab 28, (b) and (c), correct?

1 A. Correct.

2 Q. And I think there was some question of whether  
3 certain of those drawings were stamped and sealed,  
4 correct?

5 A. Yes.

6 Q. Okay. Let me ask you this: Do you -- is there  
7 any doubt in your mind that the -- that you provided  
8 and what was used to build those, the improvements  
9 at the East-West Parkway, were based upon stamp and  
10 issued for construction drawings?

11 A. No.

12 Q. Okay. So that that was -- and I asked it in  
13 the negative, so I should ask it in the positive so  
14 -- so we're clear. There was a full set of stamped  
15 and sealed drawings that were used to build that --  
16 that project; is that correct?

17 A. Yes.

18 Q. Okay. Thank you. We were -- before we took a  
19 break, we were talking about whether it was unusual  
20 on an ADA-type project to have to tear out sidewalks  
21 or other items. Is that unusual?

22 A. No, it is not.

23 Q. Okay. Is -- does that mean -- because things  
24 had to be torn out, does that mean that the drawings  
25 were bad?

1 A. Not necessarily.

2 Q. Okay. What else could it be?

3 A. It could also be construction errors. It is  
4 difficult if we have, you know, slopes. If it's  
5 designed to 4.8 percent slope, trying to maintain  
6 that can be very difficult. So often the -- you  
7 know, that's why we take forms and why we do the CAs  
8 trying to minimize it. But even once it's poured,  
9 there can be, you know, areas where it might creep  
10 over 5 percent, you know, for a portion and then  
11 it'll be ripped out and repoured.

12 Q. All right. So the -- let me ask you a couple  
13 of other things. You -- you talked about or you  
14 were asked some questions about a retaining wall on  
15 the site.

16 A. Correct.

17 Q. Was that a design issue? Do you know if that  
18 was designed or was that added later by the county?

19 A. I believe it was added later by the county, but  
20 it could have -- we did not design -- I don't design  
21 retaining walls. My license does not allow for us  
22 to design retaining walls that are over 32 inches in  
23 height or I think it's 42 based on the top of the  
24 footer, so we try very hard to avoid designing any.  
25 It might show something on the plan, but it also --

1           there's a lot of fieldwork that happens with  
2           retaining walls specifically.

3           Q.    Okay. All right. Ms. Sexton, I'm going to  
4           show you -- this is Exhibit 28 for just a minute so  
5           you can see the 28. Do you agree with me that  
6           that's Exhibit 28?

7           A.    Yes.

8           Q.    Okay. Thank you. And this is -- trying to get  
9           this straight, and I don't seem to be able to do it.  
10          There we go. So Exhibit 28 is a site visit. Is  
11          that what you called it?

12          A.    Yes. Site visit report.

13          Q.    Okay. And so tell me -- help us all  
14          understand. What is a form review? What does that  
15          mean?

16          A.    That means we go out visually. We look at the  
17          form work to see does it look like what's on the  
18          drawing, are the forms the right depth based on the,  
19          you know, depth of the concrete supposed to be. We  
20          take our site level with us, which is a smart level  
21          to try to check the slopes for ADA and for -- and  
22          for other design issues, so that hoping to alleviate  
23          having to remove as much concrete if it doesn't  
24          necessarily match up.

25                    We take our measuring tape and we check the

1 horizontal, which is the width and the length. So  
2 if the sidewalk is supposed 5 feet wide, we'll run a  
3 tape and see what does that interior form to  
4 interior form measure. So if it's only measuring 4  
5 and a half feet, we -- it's a lot easier to get a  
6 contractor to move a wooden form over 6 inches then  
7 it is to rip it out and re-pour it when it's -- you  
8 know, when it's not quite where it's supposed to be.

9 Q. Okay. And what we're talking about are the  
10 forms into which the concrete is poured, correct?

11 A. Correct.

12 Q. Okay.

13 A. It's usually 2-by-4s sets on the ground, kind  
14 of nailed in 2-by-4s with 2-by-8s.

15 Q. Okay. Now, the idea is at of that form will be  
16 the finished area -- the finished level of concrete?

17 A. Yes. That is correct.

18 Q. Okay. So I notice on here that you say at  
19 the -- and I'm pointing to a line here. And I'll  
20 blow it up so everybody can see it. It says, "Forms  
21 are approved assuming finished slopes are below  
22 5 percent for all running slopes and below 2 percent  
23 for all cross slopes." Did I read that right?

24 A. Correct.

25 Q. Okay. So -- so does that mean that -- well,

1 tell me what that means. Does that mean the  
2 contractor has to confirm that those -- that those  
3 slopes are correct?

4 A. Yes.

5 Q. Okay.

6 A. And -- and this is the thing is that every  
7 contractor, every designer, if you're a licensed  
8 professional -- licensed contractor or licensed  
9 landscape architect, you have a responsibility to  
10 the ADA. We have to design it so that it meets ADA,  
11 and contractors have to build it so that it meets  
12 ADA.

13 Often, my drawings will show a 1.5 percent  
14 cross slope, but there may be things within the  
15 field. It might not pay attention. It's hard to  
16 get that right. 1.5 percent is very flat, so that's  
17 where they are required to make it, you know, match  
18 as well. Even if there's something that they don't  
19 necessarily, you know, see, we're still bound by the  
20 full ADA on both sides.

21 Q. Okay. And I think you mentioned during the --  
22 I think it was you that said that sometimes tearing  
23 out a -- a -- a sidewalk for an ADA purpose may turn  
24 into a change order or a design change; is that  
25 correct?

1 A. That is correct.

2 Q. Okay. And did that -- and that happened on  
3 this project?

4 A. That is correct.

5 Q. Okay. As part of -- as part of your work on  
6 this project, did you approve the change order  
7 request and review those?

8 A. I reviewed those and gave my opinion to the  
9 county.

10 Q. Okay. And I -- I don't mean to be rude, but  
11 just so that the court reporter can -- we get the  
12 record right. So you -- so you did participate in  
13 the change order review and process?

14 A. Yes.

15 MR. DAVIDSON: Okay. All right. I think  
16 that's all I have. Thank you.

17 THE COURT: One second. Mr. McDade.

18 MR. MCDADE: I don't have any questions, Your  
19 Honor.

20 THE COURT: Mr. Goodwyn.

21 MR. GOODWYN: Yes, Your Honor. Your Honor, I'd  
22 like to move to admit Plaintiff's Exhibit 32, which  
23 is a regular 8-and-a-half-by-11 set of plans. I  
24 believe it's a 2017 version.

25 THE COURT: Any objection from the county?

1 MR. DAVIDSON: Your Honor, I have no objection,  
2 other than I don't know if that would be a full set  
3 or not, but for what they are, they're fine. I  
4 don't have any problem with that.

5 THE COURT: Do you object or do you not object?

6 MR. DAVIDSON: I do not object.

7 MR. MCDADE: Do not object, Your Honor.

8 THE COURT: Admitted without objection.

9 MR. GOODWYN: Thank you, Your Honor.

10 (Plaintiff's Exhibit No. 32 was received into  
11 evidence.)

12 REDIRECT EXAMINATION

13 BY MR. GOODWYN:

14 Q. Ms. Sexton, I want to ask you a few questions  
15 here. We looked at these 2017 drawings. So they --  
16 there's an issue about them being stamped and  
17 sealed. I just wanted to go ahead and get these in.

18 This is going to be difficult because they are  
19 very -- some of the print's very small. I don't  
20 even know if this is going to work. Let me turn it  
21 this way -- if I can find it. Okay. Well, maybe I  
22 had that wrong. What's the date.

23 A. It is says 2016.

24 Q. Okay. It's a 2016 version?

25 A. Uh-huh.

1 Q. Okay. I'm sorry. And what's the -- can you  
2 see the date?

3 A. It's 11/29/2016, I believe.

4 Q. Okay. I gotcha. All right. And then let me  
5 zoom back out. All right. And this is the top  
6 portion. This is phase 1?

7 A. Correct.

8 Q. Okay. More phase 1?

9 A. Correct.

10 Q. All right. And this is -- this -- is this  
11 phase 2?

12 A. Correct. Yes.

13 Q. Lower parking lot?

14 A. Uh-huh.

15 Q. And, again, was there any retaining wall issued  
16 on the plan here?

17 A. There is not.

18 Q. Okay. Same thing here?

19 A. Correct.

20 Q. All right. I did want to ask you. Let me --  
21 I'm going to use the big version because the little  
22 version's very difficult to read. You were asked  
23 some questions by Mr. Davidson. Oh, I'm sorry. It  
24 may not have been you. Let's try this. Thank you.  
25 This is -- I'm sorry. I got the wrong set. This is

1 the 2017.

2 All right. There's some notes on these plans.  
3 It says you referred to the notes at the bottom  
4 prior to starting the work. These are the notes at  
5 the bottom, correct?

6 A. Correct.

7 Q. And it talks about the building in accordance  
8 with the ADA guidelines or the ADA requirements,  
9 correct?

10 A. Correct.

11 Q. All right. And, again, just because it says  
12 that, doesn't mean it's physically possible; is that  
13 -- is that fair to say?

14 A. So it -- correct. It does not necessarily mean  
15 that; however, that is, you know, a large part of  
16 what we try to do is everywhere we can, we double  
17 check our math as much as possible, which is  
18 standard practice.

19 Q. Sure. Okay. And I'm looking here. This --  
20 the date on this -- on this set of plans is  
21 11/29/16. That may be the other one we saw here.  
22 And it's -- it's got a section for revisions here.

23 A. Correct.

24 Q. Can you see that?

25 A. Yes.

1 Q. All right. It says revision 1 in parentheses,  
2 ADA 12/1 of '16. What does that mean?

3 A. That's means that we had something that was an  
4 ADA issue that was caught in the field that we --  
5 I'm assuming it was in the field because the  
6 revision date would've been after construction  
7 started, and that we were allowed to plan  
8 accordingly to correct the issue.

9 Q. Okay. So ---

10 A. Which would've led to a change order, which,  
11 basically, cost the county more money ---

12 Q. Sure.

13 A. --- because that's the change of -- change of  
14 scope.

15 Q. Okay. So this -- the original date of this --  
16 these plans were 11/29 of '16, which was -- again,  
17 this was a revision of the original 2015 plans.

18 A. Correct.

19 Q. And then the 2016 plans were revised in  
20 December of 2016, and then later on February 9th of  
21 2017.

22 A. Correct.

23 MR. GOODWYN: Okay. All right. I just wanted  
24 to make sure. All right. I think that's all I have  
25 for this witness.

1 THE COURT: All right. May this witness be  
2 excused?

3 MR. DAVIDSON: Can I just look at the last  
4 exhibit just for a second?

5 THE COURT: Sure.

6 MR. DAVIDSON: I may have a question.

7 RECROSS-EXAMINATION

8 By MR. DAVIDSON:

9 Q. Ms. Sexton, I am putting up a page from  
10 Plaintiff's Exhibit No. 32. Can you see -- well,  
11 the answer is "no." You can't see that very well.

12 A. I can see it some. What is -- depends on how  
13 detailed of a question you have.

14 Q. Okay. So is this ---

15 MR. DAVIDSON: Your Honor, may I just walk up  
16 and show her this so we can read some of these  
17 dates?

18 BY MR. DAVIDSON:

19 Q. So can you read the revision date on here?  
20 What's the latest revision date?

21 A. It does not show a revision date.

22 Q. Okay. So what is the date of it?

23 A. That would be 2016.

24 Q. Okay. Are you aware of any changes to that  
25 drawing?

1 A. That drawing was revised, but I do not know  
2 what the -- the final time line on that was because  
3 that was the connection to the lower portion that we  
4 had. The grades were -- were challenging. There  
5 was some ADA -- some components that kept reworking  
6 on that lower portion.

7 Q. Okay. So that drawing -- this drawing may've  
8 been changed that we were just looking at?

9 A. Correct.

10 Q. Okay. Do you have any concerns that the phase  
11 2 drawing at final -- when it was finally done, was  
12 capable of being built?

13 A. No.

14 MR. DAVIDSON: Okay. Nothing further, Your  
15 Honor. Thank you.

16 MR. GOODWYN: Just in response to that last  
17 question, Your Honor.

18 THE COURT: Briefly.

19 FURTHER REDIRECT EXAMINATION

20 BY MR. GOODWYN:

21 Q. You were asked whether the phase 2 drawing,  
22 whether that last phase 2 drawing was capable of  
23 being built. It exists today, correct?

24 A. Correct.

25 Q. So it was built, correct?

1 A. Correct. I do not know if it was built  
2 according to our plans.

3 Q. Okay.

4 A. So I -- that's just where I can't guarantee  
5 that it's something onsite now was not ADA  
6 compliant. I cannot tell you if that was a design  
7 flaw or a construction flaw without having an  
8 adequate survey.

9 Q. All right. And you testified earlier that the  
10 -- that lower sidewalk that we looked at was torn  
11 out a couple of times that you know of for ADA  
12 reasons?

13 A. Correct.

14 MR. GOODWYN: Okay. All right. That's all I  
15 have, Your Honor.

16 THE COURT: May this witness be excused?

17 MR. GOODWYN: Yes, Your Honor.

18 MR. DAVIDSON: Yes, Your Honor.

19 MR. MCDADE: Yes, Your Honor.

20 THE COURT: Thank you, ma'am. You are excused.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 THE COURT: Next witness, please.

24 MR. GOODWYN: Plaintiff calls Matt Schell.

25 THE CLERK: Sir, would you please come forward

1 and raise your right hand?

2 THE WITNESS: (Complying.)

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

6 THE WITNESS: Yes, ma'am.

7 THE CLERK: Please take a seat at the witness  
8 stand.

9 THE WITNESS: (Complying.)

10 MATT SCHELL,  
11 having been produced and first duly sworn as a  
12 witness on behalf of the Plaintiff, then testified  
13 as follows:

14 DIRECT EXAMINATION

15 BY MR. GOODWYN:

16 Q. Mr. Schell, how are you?

17 A. All right. How are you, sir?

18 Q. Very good. What is your position with the  
19 county?

20 A. Parks department manager.

21 Q. How long have you been the parks department  
22 manager?

23 A. Since 2009.

24 Q. All right. And you were the parks department  
25 manager during this East-West Park Project?

1 A. Correct.

2 Q. Did you have anything to do with the Toxaway  
3 Mill Project?

4 A. No, sir.

5 Q. All right. Tell us a little bit about the  
6 inception of this East-West Park Project. How did  
7 it get started?

8 A. There was -- Francis Crowder was a counsel  
9 member at the time. The East-West Parkway was a --  
10 had a bike line that went along the side of it, and  
11 there was a lot of people that were using it. So  
12 there was a desire to put a park in that space to  
13 help give a leisure opportunity for people to come  
14 and park and walk or have a resting place in -- in  
15 their journeys.

16 Q. All right. And I'm assuming, ultimately, the  
17 county approved -- approved the project?

18 A. Correct.

19 Q. Couldn't have gotten started unless they did;  
20 is that -- is that right?

21 A. Correct.

22 Q. All right. And who was the contractor hired to  
23 construct the project?

24 A. To construct it was Moats.

25 Q. Moats Construction?

1 A. Correct.

2 Q. And who was -- who designed the project?

3 A. Milone and MacBroom and then Natasha as the  
4 lead.

5 Q. And how did y'all find Natasha Sexton and  
6 Milone and MacBroom?

7 A. I personally did not have any involvement with  
8 securing Milone and MacBroom or Natasha. I think  
9 that originated forward without me as far as having  
10 them as a design firm for that design.

11 Q. All right. Was -- did somebody with the county  
12 go hire Milone and MacBroom?

13 A. The county did. Correct.

14 Q. Okay. So is it fair to say it's the county's  
15 responsibility to hire the architect and draw the  
16 plans, not ---

17 A. Correct.

18 Q. --- not the contractors?

19 A. Correct.

20 Q. Okay. All right. So tell me when this plan  
21 got started. I understand -- we've heard some  
22 testimony, at least from Mr. Moats, about phase 1,  
23 phase 2, phase 3, that kind of thing. Did you --  
24 was Mr. Moats first hired to construct phase 1?

25 A. Correct.

1 Q. And then phase 2, was he ultimately awarded the  
2 job for phase 2, as well?

3 A. Awarded as a -- as an alternate for pieces  
4 extended from the phase 1 award to a -- to Moats.

5 Q. I'm sorry?

6 A. It wasn't necessarily an award. It was an  
7 alternate taken on from the phase 1 original award.

8 Q. So like a change order?

9 A. Correct.

10 Q. Okay. I think we looked at those change orders  
11 earlier, but those change orders reflect the fact  
12 that phase 2 was given to Moats Construction, as  
13 well?

14 A. Yes.

15 Q. Okay. And I understand that you were not the  
16 project manager for the East-West Park Project the  
17 entire time; is that right?

18 A. Correct.

19 Q. All right. At what point did you -- did you  
20 get out and you were no longer the project manager?

21 A. Around February or end of February, beginning  
22 of March.

23 Q. Of what year?

24 A. Sixteen or ---

25 Q. Probably '17?

1 A. Seventeen. I started in '16.

2 Q. All right. Because we know just to kind of get  
3 our time line. Started in '16, and the mediation  
4 was in March of '18. You're thinking would be ---

5 A. I was on the project about six months ---

6 Q. Okay.

7 A. --- so it was awarded in August of '16. And  
8 then end of February, possibly the beginning of  
9 March was my last communications.

10 Q. All right. All right. And then I'm just  
11 looking at these change orders once again. This is  
12 a summary of the change orders. Let's see if it'll  
13 zoom for us or focus. Let's try this. Well, it's  
14 not focusing very well for us, but I'm looking at  
15 this. It's November 18th of 2016, that's the alt --  
16 the \$99,000. That's for the phase 2; is that right?

17 A. Essentially, yes.

18 Q. You still would've been involved in the project  
19 at that point?

20 A. Correct.

21 Q. Okay. All right. So why were you removed as  
22 the project manager?

23 A. So to put a fresh face on the project so that  
24 we could complete the project and move forward.

25 Q. Why did the project need a fresh face?

1 A. It became -- became a little stressed or tense  
2 at times between Russell and myself from his  
3 perspective as the contractor and my perspective as  
4 -- as a county representative looking after our  
5 funds and the -- and the overall project itself.

6 Q. Okay. How was this fund paid for? Was it  
7 taxpayer dollars? Was it a grant?

8 A. There were grants and there were certainly  
9 county funds that -- that went into it.

10 Q. Do you remember how much grant money was  
11 received at this point?

12 A. I don't recall.

13 Q. All right. And what were the discrepancies or  
14 issues that you had with Mr. Moats during your time  
15 as project manager?

16 A. Initially, the issues -- the first issue that  
17 happened with Russell Moats and myself was that he  
18 poured a section of concrete that was not a part of  
19 the original bid design or the bid project of what  
20 he was awarded.

21 And when it -- when that was brought to his  
22 attention, he was bothered at the fact that he felt,  
23 ultimately, we were going to pour the sidewalk and  
24 he should be reimbursed for it. He should be paid  
25 for it anyway.

1 I explained to him, it's well-documented,  
2 that's not something I have the authority just to  
3 unilaterally approve. He poured something that was  
4 not contracted by the county, so there's no  
5 requirement or obligation for the county just to pay  
6 him \$2,020 for something that we didn't ask for.

7 And upon subsequent meetings with Moats onsite  
8 to discuss the different change orders or additions,  
9 he continued to bring up the payment of that \$2,000.

10 Q. Okay. And can you show the jury on this design  
11 what -- what you're talking about?

12 A. This being phase 1, he poured this section of  
13 concrete for the sidewalk, which would've directed  
14 people and been involved in phase 3 components, when  
15 we were only trying to pour the park we were trying  
16 to pave, establish the parking area here, as well as  
17 the sidewalk and connection down to the East-West  
18 Parkway, and then entertaining these picnic areas.  
19 So this had no -- no purpose in -- in phase 1.

20 Q. Okay. It's on the drawing, but it just -- like  
21 you said, it was supposed to be poured later when  
22 phase 3 was ---

23 A. There was -- there was zero callout for this  
24 section of concrete to be -- there was -- it was not  
25 in the unit pricing. It was not called out on

1 the -- on the plan that he bid on to install that  
2 section of concrete.

3 Q. All right. Is this section being constructed  
4 as of today?

5 A. No. It actually looks vastly different now  
6 because we've made changes to what phase 3 would  
7 look like.

8 Q. All right. Does this sidewalk tie into  
9 anything that is constructed in that area?

10 A. We have since moved the restroom from the  
11 original proposed location up into this area. So  
12 this -- there is a restroom here now in this -- in  
13 this area which does tie it to the sidewalk for ADA  
14 accessibility.

15 Q. Okay. All right. So it's fair to say that  
16 that sidewalk was ultimately needed for the project?

17 A. In a much later day and in a different form and  
18 fashion.

19 Q. Okay. So if you weren't going to pay him to do  
20 it, you were going to pay somebody at some point to  
21 do it, right?

22 A. That was a section of the park design that was  
23 not -- it was not guaranteed it was going to go in  
24 that way. There was of no -- what you're looking at  
25 is a design that shows a rectangular space. There's

1 no rectangular space. There's a bathroom in its  
2 place. We had no commitment to that sidewalk  
3 because we had no firm plans for what was going to  
4 go in phase 3.

5 Q. All right. I'm talking about as of today, that  
6 sidewalk is needed. Somebody would've poured that  
7 and you would've paid for it?

8 A. Correct.

9 Q. Okay. All right. So you had that issue. What  
10 other issues did you have with Mr. Moats and Moats  
11 Construction before you left?

12 A. There were work performance issues related  
13 specifically to how he handled landscape material.  
14 There were concerns over how to handle root balls,  
15 how low they were planting root balls, how -- how  
16 they were address -- handling the -- the root system  
17 on the palm burlap tree. And that's actually  
18 documented in one of the -- one of the exhibits.

19 Q. Right. I was going to ask ---

20 A. There was a general -- there was a general  
21 argumentative nature of Mr. Moats in e-mails. There  
22 was -- when we would address change order issues  
23 over -- over clarifications with Natasha, the  
24 designer, I mean, we would -- everything addressed,  
25 everything he was asked to do above and beyond the

1 original scope due to a plan based discrepancy, he  
2 was -- there was a change order to support, but  
3 there was just a general -- general argumentative  
4 tone about him onsite. He was not onsite as much  
5 as -- as Paul and his crew was onsite, so a lot of  
6 the interactions with Moats was through his --  
7 through his two or three people that he had onsite  
8 and then the -- between Paul onsite or Josh,  
9 information was relayed to Moats. And then Moats  
10 would respond kind of outside looking in, and that's  
11 where some of the discrepancies, some of the  
12 discussions, some of the disputes would just stem  
13 from that.

14 Q. Okay. I'm sorry. One more question going back  
15 to this sidewalk. Did you ever pay him that \$2000  
16 for the sidewalk?

17 A. I don't believe that I approved that pay before  
18 -- by the time that I left, but I don't -- I don't  
19 know if it was ever paid, but up until the last time  
20 I left, I was still not approving that for -- for  
21 payment.

22 Q. All right. So if -- if the county never paid  
23 him for that, then y'all got a free sidewalk; is  
24 that -- that fair to say?

25 A. No.

1 Q. All right. This, what we've marked as  
2 plaintiff's exhibit -- or excuse me -- Defendant's  
3 Exhibit 4, this is kind of an e-mail that you may've  
4 been referring to the exhibit. Is this the -- this  
5 is an e-mail from you dated ---

6 A. Can you work to try to focus that?

7 Q. Yeah, this is not focusing like it was. I'm  
8 going to zoom out and then zoom back in. Yeah,  
9 there we go. I'm going to zoom back in a little  
10 but. It auto focuses, but sometimes it doesn't do  
11 it.

12 All right. So is this kind of the beginning of  
13 this e-mail you were talking about where you're  
14 talking to Russell. Then all these other people are  
15 copied on it?

16 A. That's not the beginning of the e-mail.

17 Q. Well, it's not the beginning of the thread.

18 A. Okay.

19 Q. This is the -- the long portion I think. This  
20 is kind of going back to the beginning.

21 A. Correct. That's the beginning.

22 Q. Right. But this is the document you were  
23 referring to, right?

24 A. Correct.

25 Q. Okay. And does this lay out all the -- all the

1 issues that you claim to have had with Russell at  
2 least at this time?

3 A. This doesn't lay out the issues. This lays out  
4 the -- a response from Anderson County to Russell  
5 Moats as to why -- to his -- to his claims that  
6 the -- why things are -- when certain things are not  
7 approved for payment, this is laying out all the  
8 reasons. So this is -- so flip to -- you were on  
9 one e-mail earlier and now you're on a different  
10 one.

11 Q. Right.

12 A. So which one ---

13 Q. Yeah, I'll turn to whatever page you want.  
14 This is I think where I started.

15 A. You started there and then you went to the  
16 other e-mail, so what is your question, please?

17 Q. I'm just asking you: Without reading a two,  
18 two-and-a-half page e-mail into the record here,  
19 does this e-mail summarize most of the issues that  
20 you had with Russell Moats during this time?

21 A. Without reading the e-mail, I wouldn't be able  
22 to respond "yes" or "no." This is the e-mail that  
23 you referred to as a two-page tirade, correct?

24 Q. What are you saying?

25 A. In the opening statements, I thought you called

1           it a two-page tirade. Is this the e-mail that  
2           you're talking about?

3           Q. I think it -- if you'll take your time and look  
4           at it.

5           A. Right. Well, I mean, I don't know if the jury  
6           would like to hear the written ---

7           Q. Oh, I'm not asking you to read it.

8           A. --- read -- read out. I mean, I'll read it  
9           out.

10          Q. Well, you can. I'm just saying -- I was just  
11          asking you if it summarizes the issues you had with  
12          Russell Moats. And you said, "Well, I'd have to  
13          read it."

14          A. This e-mail summarizes the review of the payout  
15          for -- for 003.

16                 THE REPORTER: For what?

17                 THE WITNESS: For 003, for pay app 3. So this  
18                 is just a -- this is a -- a -- a well -- a long  
19                 worded, but very detailed account of why either  
20                 things in his change order were not approved or --  
21                 or related to issues specifically to pay app 3.

22                 It recalls conversations onsite with his crew.  
23                 It recalls conversations with him. I put a lot of  
24                 details into help give him some merit to why the  
25                 county was not opting to pay certain things or if we

1 had to disagree on whether something was completed.

2 I think in the pay app, there were things that  
3 he was asking for that weren't completed. And so  
4 this was a -- in the nature of the relationship that  
5 where it was going with Russell Moats and I, I spent  
6 a lot of time being very detailed and having  
7 well-thought responses so that nothing could be  
8 misinterpreted. So all this is is a very detailed  
9 kind response to why we were doing what we are  
10 doing.

11 BY MR. GOODWYN:

12 Q. Okay. All right. Thank you. Were there some  
13 issues relating to the compliance with the Americans  
14 with Disability Act, the ADA?

15 A. Yes.

16 Q. All right. And what portions of the project  
17 are we talking about? Are we talking about phase 1,  
18 phase 2, or both?

19 A. The portions I'm most familiar with are on  
20 phase 1.

21 Q. Okay. And I understand the timing -- the  
22 timing of you leaving. Maybe -- maybe explain that  
23 for the jury. How -- how much were you involved in  
24 phase 2?

25 A. Minimally.

1 Q. Had -- had any work begun on phase 2 by -- by  
2 the time you were replaced by Brian Richardson?

3 A. Yes. Phase 2 was -- phase 2 was ultimately  
4 granted to Russell Moats so he could continue to do  
5 work on the site while some of the revisions were  
6 taking place on phase 1.

7 Rather than have him completely stop work on  
8 while -- without knowing the length of time it was  
9 going to take to address some of the issues related  
10 to what the scope of work was for Moats on phase 1  
11 or for the project as a whole, there was an award --  
12 there was -- well, the first change order was for --  
13 for the under brushing, which a change order is not  
14 a bad word.

15 A change order was something that Moats was  
16 able to secure additional money for to make the site  
17 look better on his initial mobilization. So \$1500  
18 to help to bush hog and cut down the sapping trees  
19 behind the park in the right-of-way is only going to  
20 improve the park. So there's no -- there's no  
21 hardship there. It's just additional money for --  
22 for the contract. That was -- that was change order  
23 one.

24 THE COURT: Hang on for a second. May I see  
25 the attorneys up here?

1 (Sidebar discussion.)

2 THE COURT: Madam forelady, let's take five  
3 minutes. If you'll go back to the jury room.

4 THE FORELADY: Thank you.

5 (At 12:12 p.m., the jury left the courtroom.)

6 THE COURT: I sent the jury out because we have  
7 a juror who keeps falling asleep. It was the one  
8 choking a minute ago. My preference would be to  
9 take him off the jury and put the next alternate in  
10 his place. I offer that to the attorneys. They  
11 want to talk to their clients, and y'all do the  
12 same.

13 MR. GOODWYN: Do we know which one the first  
14 alternate is? There's a woman and a man.

15 THE COURT: The first alternate in this case is  
16 Kyle Tate; is that right?

17 THE CLERK: Yes, sir.

18 MR. GOODWYN: Your Honor, my client would  
19 object to dismissing that juror.

20 THE COURT: Sir?

21 MR. GOODWYN: My client would object to  
22 dismissing that juror.

23 THE COURT: Well, I'm going to overrule his  
24 objection. I'm going to take him off. It's my  
25 prerogative. And I'm going to put the first

1 alternate on. I can't have jurors sleeping during  
2 the trial. I note your objection, but I'm going to  
3 do it. If I'm wrong, I'm wrong.

4 Let me ask you this: For the record, do you  
5 want to state the reason for your objection? You  
6 don't have to, but you certainly have -- I'll give  
7 you a chance if you want to.

8 MR. GOODWYN: My client -- we want -- we want  
9 the first 12 jurors. We think that juror would be a  
10 better juror for my client.

11 THE COURT: Do what?

12 MR. GOODWYN: We believe that juror would be a  
13 better juror for my client.

14 THE COURT: You think a sleeping juror would be  
15 a better juror than other people?

16 MR. GOODWYN: Could be.

17 THE COURT: Okay. I disagree with that. I'm  
18 going to replace him. Let me just tell you, if I'm  
19 wrong, if y'all object, I'm going to do it anyway,  
20 as well. I just can't imagine that a juror who  
21 keeps sleeping throughout the course can be of any  
22 value to you for deliberations in this case. I note  
23 the plaintiff's objection. And if the county wants  
24 to lodge an objection, put it on the record.

25 MR. DAVIDSON: We don't have an objection.

1 THE COURT: Do you have an objection?

2 MR. MCDADE: No, Your Honor.

3 THE COURT: And the procedure in the statute is  
4 put the first alternate on, which I'm going to do.  
5 I don't want to embarrass the guy.

6 MR. GOODWYN: I was going to suggest it may be  
7 a good time to take a lunch break when they come  
8 back in.

9 THE COURT: No. Y'all are slow as y'all can  
10 be, so I'm getting this case moving.

11 Well, let me ask y'all this: I'm going to --  
12 I'm not changing it. I'm going to do it. Either  
13 I'm going to go out in the hallway. I don't want to  
14 bring him in here and just single him out and  
15 embarrass him, but if you don't want me to do it in  
16 the hallway; however, you want me to do it.

17 MR. GOODWYN: It doesn't matter to me.

18 THE COURT: It doesn't? Okay. I do note your  
19 objection and it's on the record. If I'm wrong, I'm  
20 wrong. Y'all have a problem if I go out and talk to  
21 him?

22 MR. MCDADE: No, Your Honor.

23 THE COURT: Okay.

24 MR. DAVIDSON: No, Your Honor.

25 (Brief recess.)

1 THE COURT: Anything else before we get started  
2 from the plaintiff other than your objection?

3 MR. GOODWYN: No, Your Honor.

4 THE COURT: Anything from the county before we  
5 get started?

6 MR. DAVIDSON: No, Your Honor.

7 MR. MCDADE: No, Your Honor.

8 THE COURT: All right. Would you come around  
9 here?

10 THE WITNESS: (Complying.)

11 THE COURT: Would you bring the jury in,  
12 please, sir?

13 (At 12:19 p.m., jury entered the courtroom.)

14 THE COURT: Mr. Goodwyn.

15 MR. GOODWYN: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 BY MR. GOODWYN:

18 Q. All right. Mr. Schell, were there any -- I  
19 think I was asking you about any ADA issues that had  
20 come up in the project while you were on the job?

21 A. Correct. There were.

22 Q. Is it -- did you -- I think -- I can't remember  
23 how far we got. Were there any ADA issues?

24 A. Yes, sir.

25 Q. Okay. Were there ADA -- I think you said

1 primarily were involved in phase 1 and a little bit  
2 in phase 2, correct?

3 A. Correct.

4 Q. Were there ADA issues involved in phase 1?

5 A. There were ADA issues from plan set and from a  
6 workmanship standpoint. Yes.

7 Q. Okay. And so these ADA issues, did they  
8 require a redesign of the plans?

9 A. They required either a redesign of a specific  
10 area or a rework by the contractor. Yes.

11 Q. Okay. Were there multiple sets of plans like  
12 this issued by Natasha Sexton? I know she had --  
13 she was with Milone -- Milone and MacBroom and then  
14 she went to SGA on then on her own. Regardless of  
15 who she was with, did she issue multiple sets of  
16 design plans throughout this project?

17 A. Yes. As is typical.

18 Q. Okay. All right. If the -- if the contractor  
19 builds whatever is to be built according -- in  
20 accordance with the plans and it's not ADA  
21 compliant, is that the contractor's responsibility  
22 or the designer's responsibility?

23 A. It's the designer's responsibility if the plans  
24 do not meet the ADA requirement, but there's also --  
25 in the plans, if there's a discrepancy, the

1 contractor is supposed to contact the designer at  
2 any discrepancy to the client as the first step.

3 Q. All right. And is the builder supposed to  
4 build in compliance in a -- well, maybe I should  
5 word it this way: Is the builder allowed to deviate  
6 from the design plans?

7 A. No.

8 Q. Are they supposed to build it in accordance  
9 with the plans?

10 A. They're supposed to build it in accordance with  
11 the plans. Correct.

12 Q. Okay. All right. And I think I understood you  
13 to stay right before we broke, there was some  
14 redesign work that had to be done on phase 1. And  
15 to keep -- that was going to take some time to keep  
16 Moats and his crews from being idle. He was  
17 directed to start work on phase 2?

18 A. There wasn't a complete stop to phase 1. It  
19 was just while there was a stall in certain specific  
20 areas to address minor grade changes or -- or -- or  
21 redesign. There was more than enough to keep them  
22 busy with phase 1 and starting on phase 2.

23 Phase 2, the county was still working through  
24 plan revisions for the entire site as well as  
25 specific to that -- to that area, but it wasn't a

1 complete stop work order on phase 1.

2 Q. Okay. And were there some frustrations with  
3 the -- about the delays in the -- how the project  
4 was progressing?

5 A. From Anderson County's side?

6 Q. Sure.

7 A. It's part of the -- part of the pay the claim  
8 on -- there's revisions that take place. There's  
9 stalls. There's unforeseen circumstances. There's  
10 a -- there's always changes from a plaintiff  
11 environment to a built environment, so there's  
12 nothing that was nontypical. So frustrations, I  
13 would say no.

14 Q. All right. Do you know Sandy Hanebrink? I  
15 believe I'm pronouncing it right.

16 A. Very well.

17 Q. All right. And she's testified and we -- I  
18 think we all know what she does. How long have you  
19 known Sandy Hanebrink?

20 A. I've known Sandy Hanebrink since 2010.

21 Q. Okay. And how many projects has she done ADA  
22 consulting on for you?

23 A. More than a dozen.

24 Q. Okay.

25 A. I mean, more than a dozen.

1 Q. All right. So do you -- do you respect her  
2 work?

3 A. Highly respect her work.

4 Q. So I understand you weren't completely --  
5 completely on the job for phase 2, but did  
6 Ms. Hanebrink come out and inspect phase 2 or any  
7 work that had been done on phase 2?

8 A. I wasn't there for the -- when she came out to  
9 phase 2.

10 Q. Okay. What about phase 1?

11 A. Yes.

12 Q. Okay. And did she find any ADA violations for  
13 phase 1?

14 A. One specific was a -- the ramp on the sidewalk  
15 that was drawn one way. Moats identified it as  
16 noncompliant and altered it and put in a different  
17 ramp in an effort of good faith, trying to do a nice  
18 thing.

19 But at the end of the day, he also then  
20 compromised himself and had some of his own errors  
21 in that same ramp. So in that situation, he didn't  
22 follow the plan. And when his solution to the plan  
23 went in, it was arguably deniable.

24 Q. So was that ramp torn up and put back in?

25 A. No, sir.

1 Q. Okay. It was found to be close enough?

2 A. In Sandy's testimony, she talked about it.  
3 Like, technically, it complied with ADA because it  
4 was -- ADA is a requirement of 36 inches with a --  
5 with a clear running path. And so that's how  
6 collectively we opted to accept Moats' work, even  
7 though with a little bit more time, the entire  
8 five-foot wide sidewalk could've been the same  
9 compliant running slope.

10 Q. Okay. So at the end of the day, it was deemed  
11 to be compliant?

12 A. At the end of the day, it was deemed to be  
13 compliant, yes.

14 Q. Okay. All right. Was -- was it your  
15 understanding that this entire East-West Park  
16 Project was to be strictly ADA compliant?

17 A. The entire project, all construction moving  
18 forward for the past 25 years is supposed to be  
19 ADA compliant, so yes.

20 Q. All -- all county projects you're saying?

21 A. All -- all -- there's -- ADA has -- has been  
22 around for more than 25 years, so projects in  
23 general, yes.

24 Q. Okay. I understand. And this is maybe a  
25 stupid question, but is this -- is that something

1 that all government bodies have to do or is that  
2 something just making everything ADA compliant,  
3 that's something that Anderson County has adopted?

4 A. It's a federal action.

5 Q. So you're saying every -- every governmental  
6 entity has to build in accordance with the ADA?

7 A. That's tricky now in my realm to answer.

8 Q. Okay. All right. But it sounds like if you're  
9 building a project, you try to make it ADA  
10 compliant ---

11 A. Yes.

12 Q. --- regardless of ---

13 A. You're required to -- you're required -- now,  
14 when I say "you," that's whoever that applies to  
15 because there are -- there are projects and I don't  
16 want to get into the gray area of those weeds, but  
17 Anderson County, being a governmental agency, will  
18 not build something unless it's ADA compliant.

19 Q. Okay. And what are the consequences if they do  
20 build something that's not ADA compliant?

21 A. It is a -- if it's not ADA compliant, somebody  
22 could make a claim against the county. U.S. Access  
23 Board would get involved, maybe the DOJ until  
24 something is resolved.

25 Q. Okay. Do you believe that the East-West Park

1 Project is 100 percent ADA compliant today?

2 A. Yes.

3 Q. All right. And did you see -- have you seen  
4 Sandy Hanebrink's April 2019 report? And I can  
5 scroll up if you need to.

6 A. (Reading.) All right. Scroll up.

7 Q. There's more on the second page.

8 A. So -- and what's the date on this?

9 Q. April 30, 2019. It was complete by then,  
10 wasn't it?

11 A. I lost track of dates since I was not involved  
12 in the project at that point.

13 Q. Okay. If it was complete by then, if this  
14 survey report was conducted on what we're looking at  
15 today essentially, the final product, would you  
16 agree that it's not 100 percent ADA compliant?

17 A. I don't know what work was completed by this  
18 time or if anything more was created post, so I  
19 truly can't answer that question.

20 Q. No, I'm not asking. I know you don't remember  
21 exactly when it was completed, but I'm saying if it  
22 were completed before April of 2019, then today it  
23 would not be ADA compliant. Would you agree with me  
24 on that?

25 A. I would agree with you on that.

1 Q. All right. And had you been the project  
2 manager at that time, what would you have done if  
3 you knew the as-built was not ADA compliant?

4 A. Then we would revisit a contractor and bring in  
5 the designer to investigate what is out of  
6 compliance. We would've evaluated whether there was  
7 a design issue or a workmanship issue.

8 Q. Would you have directed that the portions that  
9 were not ADA compliant be torn out and put back in  
10 an ADA compliant manner?

11 A. If it's a design related error, then it would  
12 move to a change order and it would be a redesign  
13 and it would put in ADA compliant.

14 If it was designed ADA compliant and put in  
15 incorrectly, then it would be ripped out and  
16 replaced at the contractor's expense.

17 Q. Either way, it would be ripped out. It's just  
18 who pays for it, that's -- that's the question.

19 A. Correct.

20 Q. Okay. All right. Fair enough. Who was  
21 responsible for getting the encroachment permits for  
22 the East-West Park Project?

23 A. I don't know if we assigned -- we didn't  
24 assign -- it was not the county -- it's ultimately  
25 the county's responsibility, unless it was assigned

1 to be the contractor's responsibility. How it was  
2 set up to be in the contract, I can't speak to. I  
3 don't know if it was defined as to whose  
4 responsibility it was to secure that permit.

5 Q. Okay. Is it important for the contractor to  
6 have the -- the CAD file associated with the -- with  
7 the plans?

8 A. It's important for the contractor to have  
9 whatever they need in order to build a project,  
10 whatever project that is.

11 Q. Is it important for the contractor to have the  
12 CAD plans?

13 A. Projects are built without CAD plans. So,  
14 again, I -- I can't say that I would require a CAD  
15 drawing to go to every contractor and build a  
16 project. That -- that -- the needs of a contractor  
17 are handled and addressed with the design team that  
18 we've put in place.

19 MR. GOODWYN: All right. I want to ask you to  
20 look at your deposition. Your Honor, do you care if  
21 I open it?

22 THE COURT: You can open it.

23 BY MR. GOODWYN:

24 Q. Thank you. This was your deposition. You were  
25 deposed, let's see, October 26th of 2022. Does that

1 sound about right?

2 A. Sure.

3 Q. If you would, turn to page 80 -- 85. Are you  
4 there?

5 A. Yes, sir.

6 Q. All right. I'm -- I'm going to read the  
7 question, and you read the answers if you would.  
8 And I'm just going to -- we're going to read the  
9 last line of page 85 to the -- looks like the fifth  
10 line of 87.

11 My question to you was: "Do you know anything  
12 about the CAD file for the East-West Park Project?  
13 Who had it? Where it was? Where it was kept? That  
14 kind of thing." Your response?

15 A. Your question is on what line? What number?

16 Q. Starting on -- starting on line 25 of page 85,  
17 turning over to lines 1 and 2 of 86.

18 A. Okay.

19 Q. All right. So I'll read it again. "Do you  
20 know anything about the CAD file for the East-West  
21 Park Project? Who had it? Where it was kept? That  
22 kind of thing." And your response?

23 A. "It would've been with Natasha."

24 Q. "All right. Did you ever possess it?"

25 A. "No. I don't have CAD on my computer."

1 Q. "Okay."

2 A. "But it would've been given to -- I believe it  
3 would've been given to -- well, I can't say that. I  
4 don't know if it was given to Russell Moats or not."

5 Q. "Well, should it have been given to Russell  
6 Moats?"

7 A. "I believe -- I mean, you're asking me to --  
8 whether it should or shouldn't in order for him to  
9 have it surveyed. He can't get it off PDFs, so  
10 there's a CAD file that would have had to be able to  
11 build the project, so ---"

12 Q. "So you're saying that Moats as a contractor  
13 would have needed the CAD file to properly build the  
14 project?"

15 A. "I'd say correct."

16 Q. "Okay. Since you didn't have it, he would've  
17 had gotten it from the designer?"

18 A. "When you say CAD, there's a -- there's  
19 obviously some file that would need in order to  
20 build the project. That would've come from Natasha,  
21 not from us."

22 Q. "Okay. But something more than just a PDF?"

23 A. "Right."

24 Q. All right.

25 A. That response to that though and this dialog,

1           towards the bottom is where I clarified I don't  
2           exactly know what Moats needs as a contractor to  
3           build the project.

4           Q.     All right.

5           A.     So I'm just clarifying the fact that in this  
6           situation, here at the very bottom end is where I  
7           explain I do not know what actually he needs. Auto  
8           CAD is what drawings -- what design -- designs are  
9           done in, but what is actually produced to give Moats  
10          or any contractor or design plan, there needs to be  
11          survey information. I don't know how that's -- I  
12          don't know how that's given to him, produced to him,  
13          if there's actually a CAD file. That I do not know.

14          Q.     Okay.

15          A.     But from that design -- from something from  
16          Natasha is how he's able to build the park. It's  
17          how he's able to build anything.

18          Q.     Okay. Do you have any information about who  
19          finished the job out after Russell Moats left the  
20          job?

21          A.     Specifically, no.

22          Q.     Was it the county employees or a private  
23          contractor?

24          A.     Specifically, I do not know who finished the  
25          project.

1 Q. Do you know if it was the county or a private  
2 contractor?

3 A. I do not know who finished the project.

4 Q. I hear you. I'm just saying...

5 A. Okay. Just ---

6 Q. Yeah.

7 A. -- clarifying.

8 Q. Some people say that, and they go, well, I  
9 don't know any individuals, but I knew he worked for  
10 the county, you know. You may have some information  
11 about whether county employees did any work on this  
12 project after Mr. Moats left or not. Do you know if  
13 any county employees did any work on this project  
14 other than the -- a management role.

15 A. Specifically, no.

16 Q. Okay.

17 A. Generally, no. I do not know who finished or  
18 completed the ramp down to East-West.

19 Q. Okay. Who managed -- well, let me ask it this  
20 way. You've already testified Brian Richardson took  
21 your place ---

22 A. Correct.

23 Q. --- after ---

24 A. --- six months.

25 Q. --- after about six months. And then did Holt

1 Hop -- Holt Hopkins get involved as a manager at  
2 some point?

3 A. Yes, sir. He did.

4 Q. Okay. And then after Holt Hopkins got out, who  
5 was managing the project after him?

6 A. I don't know if there was a PM after Holt.

7 Q. Okay. Do you know who the project manager was  
8 when the project was finalized?

9 A. No.

10 Q. Okay. You were just kind of -- you were out of  
11 it at that point?

12 A. Yes.

13 Q. All right. Do you know if the -- that -- let  
14 me get the picture out.

15 This sidewalk here and this area leading up to  
16 this parking lot, do you know if that sidewalk was  
17 laid and torn out?

18 A. I was not involved in that project, so I don't  
19 know what was ripped out or what was replaced or if  
20 it was or if it wasn't.

21 Q. Okay. Fair enough. Ask you a few questions  
22 kind of going back a little bit about the inception  
23 of this project. Did you know Natasha Sexton prior  
24 to this -- this project?

25 A. Yes.

1 Q. Okay. What was your relationship with her?

2 A. I have no relationship with her. She attended  
3 Clemson in the same landscape architectural program  
4 that I -- that I was in. She was two years ahead of  
5 me in -- in the azelaic studio project when I was in  
6 second year.

7 Q. Okay. So you just knew her as a co-student?

8 A. Co-student, yes.

9 Q. Okay. You ever -- you ever babysit her  
10 children?

11 A. No. She was married with children when she was  
12 at Clemson.

13 Q. Okay. But you never babysat her children?

14 A. No, sir. I never babysat her children.

15 Q. Did you ever make any recommendations about  
16 what vendors to use at Anderson County?

17 A. I made a recommendation for Pilot Rock Table  
18 Furnishing and offered a -- a source for that table.  
19 I facilitated an issue with an inability to find  
20 certain trees on Natasha's plant list for the park,  
21 and found them at certain nurseries and forwarded  
22 that information on to Natasha for review and  
23 approval and -- but that's -- that's all I recall.

24 Q. Okay. But you said you had some issues with  
25 some trees that were put in at the East-West Park

1 Project?

2 A. I did that -- I did mention that earlier, but  
3 what I was referring to now is on Natasha's planting  
4 plan, it has a variety of tree material, plant  
5 material, flowers, mulch, all sorts of details from  
6 a landscape plant and from the beautification of it.

7 On that landscape material at one point, Moats  
8 was having a problem finding -- locating certain  
9 trees in a generally local area. So I went out to  
10 look at different trees to make recommendations to  
11 Natasha on what could go in place of those trees at  
12 the park.

13 Q. Okay.

14 A. And I don't know if that's what you're asking  
15 for.

16 Q. Well, I was really asking more did you have  
17 issues with how Moats and his workers were handling  
18 the trees?

19 A. Clearly, yes.

20 Q. Are those trees alive and well today?

21 A. I have not been by the park to -- to inspect  
22 how they're doing today or I don't know if things  
23 have been replaced. If they've been -- if they've  
24 been replaced or if they're thriving or if they're  
25 suffering, I have no idea.

1 Q. Okay. All right. Fair enough. Have you ---

2 A. I think there were -- I think I recall there  
3 was -- there was actually some replacements at one  
4 point, but specifics I don't know.

5 Q. Okay. Have you been involved in any other  
6 projects involving Russell Moats or Moats  
7 Construction?

8 A. No, sir.

9 Q. This is the only project you've ever been  
10 involved in?

11 A. Yes, sir.

12 Q. Are you aware of any other projects where Moats  
13 Construction performed where any concrete or  
14 sidewalks had to be ripped out and replaced?

15 A. Am I aware? Not off -- not specifically.

16 Q. Okay. Have you had ADA issues at projects  
17 prior to the East-West Park Project?

18 A. And post.

19 Q. Okay. Sounds like it's not uncommon to have  
20 ADA issues; is that fair to say?

21 A. It's not uncommon to have ADA issues, but it's  
22 also not uncommon and more so to have contractor  
23 installation issues.

24 Q. All right. Were there any ADA issues while you  
25 were still on the project involving any of the grade

1 of sidewalks?

2 A. Yes, sir.

3 Q. Was there ever a consideration to put in  
4 handrails in those flat landing areas to resolve  
5 those issues?

6 A. So the answer is "no" because on the issue  
7 of -- one issue is ten-foot section of concrete  
8 sidewalk that tipped to greater than 5 percent.  
9 That was a workmanship issue and had to be -- it  
10 was -- was agreed to by our designer to pay app, not  
11 to be approved. And we -- we -- the county  
12 supported that because it was greater than 5 percent  
13 and didn't follow the plan. That was on Moats as --  
14 as -- it was on Moats to replace on his -- on his  
15 own -- on his own dime.

16 Now, as recalling and reminding me of what  
17 Sandy spoke of earlier, just because you have a  
18 sidewalk that exceeds 5 percent, the solution isn't  
19 just a railing. You would need a flat level landing  
20 above and below, as well as guardrails. That  
21 actually starts to extend the length of the sidewalk  
22 rather than maintain underneath 5 percent slope. So  
23 the solution isn't just a handrail if the sidewalk  
24 exceeds 5 percent.

25 Q. Right. Okay. All right. And there aren't any

1 handrails or flat landing areas in the park as it is  
2 today, correct?

3 A. Yes, there are.

4 Q. Okay. Is it ---

5 A. There's landings. There's a landing at the top  
6 of every sidewalk, every ramp, there's a landing  
7 above and below.

8 Q. Are there any handrails?

9 A. No, sir. Not that I know of.

10 MR. GOODWYN: Okay. All right. That's all I  
11 have, Your Honor.

12 THE COURT: Can you do it ---

13 MR. DAVIDSON: I got like 2 minutes.

14 THE COURT: Sir?

15 MR. DAVIDSON: I only have just a couple  
16 minutes.

17 THE COURT: Okay. Go ahead.

18 CROSS-EXAMINATION

19 BY MR. DAVIDSON:

20 Q. Mr. Schell, you were asked a couple of  
21 questions about Ms. Hanebrink -- Hanebrink's  
22 April 30, 2019, report, right?

23 A. Correct.

24 Q. You were here -- I mean, you were a party, so  
25 you were here during her testimony, correct?

1 A. Correct.

2 Q. Do you recall whether or not she said that  
3 during -- that the project was still underway at the  
4 time she was there to do the inspection?

5 A. Correct.

6 Q. Okay. So it wasn't a completed project at that  
7 time for purposes of compliance with ADA either,  
8 correct?

9 A. Correct.

10 MR. DAVIDSON: That's all I have.

11 THE COURT: Any cross-examination from the  
12 individuals?

13 MR. MCDADE: Yes, Your Honor. Very briefly.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. MCDADE:

17 Q. Okay. Matt, I just have a few for you. If you  
18 would, tell the jury what the pay app is. I want to  
19 make sure they understand that.

20 A. The pay app is a process in which the  
21 contractor gets paid for work that they have  
22 completed.

23 Q. Okay. And that's the way he submits things and  
24 gets paid?

25 A. He submits a pay app or a designer would review

1           it, make the recommendation for payment and/or  
2           discuss with us, and then we would return either a  
3           revised pay app to him. And then if approved by  
4           both parties, then a check would be processed.

5           Q.     Okay. And if you would explain what -- what a  
6           change order is and how that works within a project  
7           like this.

8           A.     A change order is an agreement of payment above  
9           and beyond the contracted price, whether it's for  
10          something requested by us, as the client, us as --  
11          or us as the owner, to do something additional --  
12          add one tree or two trees or increase or do some  
13          under brushing to help overall improve the project  
14          or if there was a -- if there was anything -- any  
15          alteration to the plan of what he was expected to  
16          pay to build or complete, it would -- they would get  
17          reimbursed that money.

18          Q.     Okay. Does a contractor have to accept? What  
19          options does a contractor have with a change order?

20          A.     Well, typically, the process is, if we have an  
21          area of sidewalk we want to pour, for instance, we  
22          would ask for a -- a price to pour this section of  
23          concrete. There's no obligation for us to accept  
24          the price that Moats would offer. There's no  
25          obligation for him to -- to even accept the work.

1 He can opt not to take an alternate or change order  
2 or a discussion of additional funds.

3 Q. So there could be a negotiated price?

4 A. There can be a negotiated price or we could  
5 both part ways and not do whatever -- what it was  
6 that we had asked. A lot of times we'll ask how  
7 much would it cost to do this while you're there?  
8 Can you just -- what would this cost? And if it's  
9 too much, we would opt out. If it's something that  
10 we feel we can could afford or we can negotiate,  
11 then we would move forward.

12 Q. Okay. And if a contractor were to not comply  
13 with the plans, who -- who pays for that?

14 A. If the contractor ---

15 Q. If the contractor doesn't follow the plans and  
16 it needs to be changed, who pay for that?

17 A. The -- the contractor would ultimately pay for  
18 that.

19 Q. Okay. Is that the only situation where the  
20 change order where the contractor would be  
21 responsible ---

22 A. So the change order ---

23 Q. --- without more payment?

24 A. Correct.

25 Q. Okay. All right. Who chose the trees on this

1 project?

2 A. Natasha Sexton.

3 Q. Okay. And so what you're saying is that there  
4 was some difficulty in finding some of these trees?

5 A. Yes.

6 Q. And you were -- you were trying to help the  
7 project along by coming up with alternatives?

8 A. Facilitating on tree -- on specific trees to  
9 replacement trees, yes.

10 Q. Okay. And would that -- would that change and  
11 trees have to be approved by Natasha, or is that  
12 something as basically being the owner or  
13 representative of the owner, you could do?

14 A. I could do, but it was -- it was ultimately  
15 Natasha's call. I worked with Natasha to -- to find  
16 trees that were fair to that site in -- in  
17 replacement.

18 Q. All right. I want to ask you about -- we  
19 talked about yesterday in part of the trial, the  
20 Exhibit No. 3. Are you familiar with that one, the  
21 one that Joyce Mosstetler ---

22 A. Yes, sir.

23 Q. Okay. And so Joyce Mosstetler had sent an  
24 e-mail to Mr. Moats asking for payment?

25 A. Correct. Following up on the request for

1 payment.

2 Q. All right. And you forwarded it on to other  
3 folks. What was the reason for that?

4 A. So when Joyce -- Joyce copied me on the e-mail  
5 to Moats because she had spoken to Moats the month  
6 prior regarding payment. And by their e-mail, she  
7 was expecting a check from Moats. So she was  
8 following up saying, "I still haven't seen it.  
9 You're about to incur a late -- another late fee.  
10 I'd like to just -- see if you can get it in the  
11 mail to -- to save you that late fee because we've  
12 had the -- you've been in receipt of our picnic  
13 tables for -- for -- since December." I think it  
14 was about four and a half months. And so he was  
15 asking -- she was copying me on it to make me aware.

16 At that point, I was removed and replaced with  
17 Brian, so I copied -- I forwarded the e-mail on to  
18 Robert Carrol and Leon just so that they were  
19 obviously still involved in the project, so they  
20 needed to be made aware of that vendor was still not  
21 reimbursed.

22 Q. How did you know it was four and a half months?

23 A. Well, her e-mail states that you've been in  
24 receipt of the picnic table since December. I think  
25 the e-mail she sent was in April. Moats would've

1 ordered the equipment potentially in November in  
2 order to receive them in December. So at some  
3 point, it's -- it's just -- it's just a calendar.

4 Q. Okay. All right. And the last question I have  
5 for you, we've had some discussion of an issue with  
6 handling of the trees. Would you tell the jury of  
7 what you observed and why that was a problem?

8 A. Okay. So ball and burlap trees are trees that  
9 are grown -- field grown in -- in dirt. And then  
10 when they're excavated with the roots with the tree  
11 spade, they're carried to a site.

12 When the contractor digs a hole for a tree, the  
13 root ball can vary. If it's dug too deep and they  
14 have to back fill, it can -- it can become soft.  
15 And when it's watered in, it can actually sink.

16 So the handling of these, how the root ball,  
17 how the hole is -- is dug, how it's prepared is very  
18 important for the longevity and the health of the  
19 tree. And then when you -- so when you actually  
20 plant it, you -- you -- there's nursery standards  
21 that basically tell you you plant the tree ball 2  
22 inches higher than the surrounding grade so that any  
23 kind of settling that takes place over time is the  
24 tree, the top of the root ball will balance out with  
25 the surrounding grade and not be sunk.

1           If it's sunk because trees grow -- when the top  
2 tree roots grow, the majority of tree roots grow in  
3 the top 3 inches to 6 inches of soil, they become --  
4 they become -- it becomes like ponding pool, and  
5 then there's a balance between air and water and  
6 soil for these trees to thrive.

7           When I was -- when I was onsite and had and saw  
8 some of the handling of the trees, it was -- it was  
9 an alarm to me because they're using the tree trunk  
10 as a leverage bar. So when they're trying to roll  
11 it in the hole or roll it over to one side and pack  
12 underneath it and roll it back, this -- the cranking  
13 on this root -- on this tree trunk, it's lost three  
14 quarters of its root system and it's in something  
15 that might be 2 feet across and was used to growing  
16 8 feet across.

17           And that starts to loosen up the root ball and  
18 tears the root hairs and it starts -- and then the  
19 handling of the trunk, if the trunk's not properly  
20 protected, they're getting scarred from the machine.  
21 They're getting scarred from land over against rocks  
22 and dirt and just -- or hitting the machine when  
23 they're moving them around.

24           And so any kind of exposure -- this tree's  
25 already under stress because it's been -- it's

1 spayed. And then it's -- any kind of added stress  
2 or scratching of the bark opens up to whether it's  
3 fungus or pests, and it just -- and it puts the tree  
4 under additional stress.

5 So this -- all of this handling is documented  
6 in that e-mail from the site visit. And it further  
7 went on to have a placement of the trees when they  
8 had placed the trees when they were low, they had  
9 already cut the straps off so they were in their  
10 final location. And any kind of additional working  
11 is now done without the wire cage and the strapping.  
12 They're pulled up all intact. And so the trees  
13 become real loose in their own root systems.

14 Q. Okay. So I want to make sure we get some  
15 perspective here. I'm used to little small trees  
16 that you can carry around individually. What size  
17 trees are we talking job in a job like this?

18 A. I think the -- the root balls on those trees on  
19 the East-West Connector were a minimum of 500 pounds  
20 a piece. So when you have just a stick in the  
21 middle of it, there's very little holding -- holding  
22 that tree to its -- to the root ball.

23 Q. All right. And the last question is something  
24 I neglected. Joyce Mosstetler, who -- who is  
25 responsible for her being on the project?

1 A. The contract for the picnic tables came from  
2 Moats.

3 Q. Okay. Not from the county?

4 A. Correct.

5 Q. Not from you specifically?

6 A. Correct.

7 MR. MCDADE: Okay. Thank you. That's all I  
8 have.

9 MR. GOODWYN: Quickly, Your Honor.

10 THE COURT: Yes, sir.

11 REDIRECT EXAMINATION

12 BY MR. GOODWYN:

13 Q. Were there any (inaudible) on this job?

14 A. Yes.

15 Q. What -- what percent?

16 A. Specifically, I don't know.

17 Q. All right. And would that have been Mr. Moats  
18 at the end had he completed the job?

19 A. Correct.

20 MR. GOODWYN: Okay. That's all I have.

21 THE COURT: All right. Thank you, sir. You  
22 may step down.

23 (Witness excused.)

24 THE COURT: Madam forelady, ladies and  
25 gentlemen, I'm going to go ahead and call a lunch

1 break. Is everybody going to stick around downtown?  
2 Basically, just go for an hour, come back at 2:00.  
3 Does that everybody give enough time?

4 (Affirmative responses.)

5 THE COURT: If you would leave your notes in  
6 the jury room, we'll see you back at two o'clock.

7 (At 12:57 p.m., jury left the courtroom.)

8 THE COURT: Anything from the plaintiff before  
9 we break?

10 MR. GOODWYN: No, Your Honor.

11 THE COURT: Thank you, sir.

12 MR. DAVIDSON: No, Your Honor.

13 MR. MCDADE: No, Your Honor.

14 THE COURT: And I do note your objection for  
15 the record for the juror issue. We'll see y'all at  
16 two o'clock.

17 (From 12:58 to 2:00 p.m., lunch recess.)

18 THE COURT: For the record, before we broke for  
19 lunch, I had excused juror no. 1 because he was  
20 sleeping, and he had been sleeping earlier in the  
21 day. In fact, he choked and that's what caused him  
22 to go ahead and send them out. And he was sleeping  
23 yesterday. So all said and done, I just didn't  
24 think it would be a benefit to any deliberations  
25 that were had. That being said, anything from the

1 plaintiff before we bring the jury in?

2 MR. GOODWYN: Yes, Your Honor. I was  
3 discussing with Mr. Davidson. I did want to call  
4 Paul Holden for a very short rebuttal of some  
5 testimony that Matt Schell just gave. He is here.  
6 He is one of the witnesses that we listed, but not  
7 in discovery. One of the witnesses that I can't  
8 call on direct, but I want to call him on rebuttal  
9 for a very narrow issue of what Matt Schell  
10 testified.

11 THE COURT: So you want to call him out of  
12 order?

13 MR. GOODWYN: Yeah, I call him in rebuttal. I  
14 want to do it now because Matt Schell just  
15 testified. He's here. They don't have an objection  
16 to calling him now as opposed to later.

17 THE COURT: Do you have a problem with that?

18 MR. DAVIDSON: Well, Your Honor, he was not --  
19 he was not listed. He was -- he was excluded under  
20 -- on your ruling on my motion.

21 THE COURT: Well, and I agree that in your case  
22 in chief that would be the ruling. In reply, do  
23 I -- does he have to identify anybody who may be  
24 potentially a witness? I don't know. Is that  
25 something that would be ---

1           MR. DAVIDSON: Well, I hadn't -- honestly, I  
2           hadn't thought it through, but that would be  
3           different since they have been not identified.

4           THE COURT: Let me ask you this: At this  
5           juncture, what issue are you going to have him  
6           address?

7           MR. GOODWYN: Matt Schell testified that his  
8           relationship with Natasha Sexton, that is was purely  
9           professional. They knew each other at school and  
10          through their job they knew each other.

11          THE COURT: No. You're not getting into any  
12          personal stuff. If that's where this is going, I'm  
13          not going to allow that myself.

14          MR. GOODWYN: Well, let me -- can I ---

15          THE COURT: You can proffer, but I'm not going  
16          to allow it in front of this jury.

17          MR. GOODWYN: What I expect him to testify to  
18          is that they knew each other on the outside. They  
19          had a friendly relationship. They did favors for  
20          each other. Nothing romantic, but just that.

21          THE COURT: I'll let you proffer that. I'm not  
22          going to let that get in front of the jury. It's  
23          not relevant.

24          MR. GOODWYN: All right.

25          THE COURT: After you proffer him, you may

1 proceed -- you're going to have to move again. I  
2 might change my mind once I hear it, but my first --  
3 my first thing is no.

4 MR. GOODWYN: Might I just for the record,  
5 explain why we believe it's relevant?

6 THE COURT: Yeah, I tell you probably once you  
7 move again after you do your proffer, but if you  
8 want to do it now, fine. I just think it's getting  
9 too far field and it's not relevant and it's  
10 secondary. You did not listen, but go ahead.

11 MR. GOODWYN: Right. But we believe it's  
12 relevant because we believe Matt Schell's testimony  
13 is slanted towards protecting his -- somebody he's  
14 friends with, Natasha Sexton, as opposed to Russell  
15 Moats. He's slanting things her -- her way.

16 THE COURT: I doubt I'm going to let you do  
17 that. You can call him. Put it on the record, and  
18 then we'll go.

19 Tell the jury that we're having something we're  
20 taking up outside their -- hang on for a second.  
21 Hang on for a second.

22 I'm going to have him tell the jury we're  
23 taking up something outside of their presence, so  
24 it'll be a minute or two. Do you have a problem  
25 with that?

1 MR. GOODWYN: Yeah, that's fine.

2 THE COURT: Are y'all okay with week that?

3 MR. DAVIDSON: Yeah, that's fine.

4 THE COURT: Okay.

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

7 THE WITNESS: (Complying.)

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

11 THE WITNESS: I do.

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

14 THE WITNESS: (Complying.)

15 THE COURT: For the record, let me say this, as  
16 well. I know that I said I doubt I'll let him  
17 testify. I sequestered witnesses in this case, and  
18 he sat there and watched the last witness testify in  
19 the course of this trial.

20 MR. GOODWYN: He was here.

21 THE COURT: He was here. I watched him. I saw  
22 him myself.

23 MR. GOODWYN: There was a point at which I  
24 asked him to leave. I think it was before Matt  
25 Schell. He was here for Natasha Sexton, yes, and



1 A. He would come out and check on the progress of  
2 the park and come out to discuss any issues that  
3 arose through the construction of the park.

4 Q. All right. And what did you learn throughout  
5 this project about his relationship with Natasha  
6 Sexton?

7 A. They had both come out one day to discuss some  
8 ADA issues with the park and it was my understanding  
9 that Mr. Schell was the contract administrator who  
10 was responsible for executing the contract for the  
11 county and that Ms. Sexton was the designer of the  
12 park. So the two of them were there together to  
13 discuss some ADA issues that we had on the park.  
14 That was kind of how we ---

15 Q. Okay. So that's -- that's why they were out  
16 there?

17 A. That was the context of why they were there.  
18 Yes.

19 Q. Okay. So did you -- did you learn anything  
20 about -- about their relationship? And when I say  
21 "their relationship," was their relationship  
22 anything more than purely professional? And I'm not  
23 trying to imply they were in a romantic  
24 relationship. I'm just suggesting was it more than  
25 purely professional?

1 A. No. At the conclusion of that meeting, I was  
2 in my work truck sending some e-mails and stuff for  
3 another job I believe, and the two of them stayed at  
4 the park and -- and were having a conversation that  
5 I overheard and it seemed like they were, like, very  
6 familiar with one another to the point to where it  
7 -- it peeked my interest as -- I was like, you know,  
8 this sounds like a conflict of interest to me. They  
9 were talking about babysitting one another's  
10 children and, like, going places together I believe.

11 Q. Okay. Did it sound to you as if they had a  
12 relationship, either -- some type of nonprofessional  
13 relationship outside of their professional  
14 relationship?

15 A. That's what it seemed like. Yes.

16 Q. Okay. Did you relay that to Russell Moats?

17 A. I did.

18 Q. And why did you think that was a conflict of  
19 interest of sorts?

20 A. So I worked for large companies before in the  
21 past and we do a yearly conflict interest training  
22 and still do to this day. And when you have a  
23 person that's responsible for administering a  
24 contract and someone who has worked for that entity  
25 like that, that's -- that personal relationship

1 seems to be a source of problems. Most people in my  
2 industry, if that happens, we recuse ourselves from  
3 that contract.

4 Q. Okay. Did you think based on your -- your  
5 training, your understanding of the nature of  
6 conflicts that Ms. Sexton should've recused herself  
7 from this contract?

8 A. I'm not sure who should've recused themselves  
9 from what, but it -- it seemed strange to me that  
10 you had two people so close together, and then the  
11 third-party involved in it was a contractor. It  
12 just seems to me like if they were doing personal  
13 favors for each other outside of the job, what would  
14 they be doing for each other during the course of  
15 the job?

16 MR. GOODWYN: Fair enough. That's all I have,  
17 Your Honor.

18 THE COURT: All right. So are you moving for  
19 to allow him to testify?

20 MR. GOODWYN: Yes, Your Honor. I move to allow  
21 him to testify.

22 THE COURT: I'm going to deny that motion with  
23 all due respect.

24 THE WITNESS: No problem, Your Honor.

25 THE COURT: You can step down. For the

1 following reasons 403, potentially relevant. I  
2 don't think it's relevant. Even it is, I think it  
3 may be confusing or mislead the jury. I don't think  
4 the testimony is his opinion as to whether or not  
5 they should agree. It's certainly not admissible.  
6 I think it's not admissible; otherwise, it's hearsay  
7 and I think it's prejudicial and probative and it's  
8 just ---

9 And in addition, not to beat you up again. The  
10 gentleman was in the courtroom contrary to my  
11 sequester order and he wasn't listed as a witness.  
12 For all the above, I'm just going to exclude his  
13 testimony, but it's noted on the record. Thank you,  
14 sir.

15 THE WITNESS: Yes, sir.

16 THE COURT: You ready with your next witness?

17 MR. GOODWYN: Yes, Your Honor.

18 THE COURT: Okay. Anything else before we get  
19 started?

20 MR. GOODWYN: No, Your Honor.

21 MR. DAVIDSON: No, Your Honor.

22 MR. MCDADE: No, Your Honor.

23 THE COURT: All right. Bring the jury in.

24 (At 2:12 p.m., jury entered the courtroom.)

25 THE COURT: Good afternoon.

1 THE JURORS: (Collectively:) Good afternoon.

2 THE COURT: Would you call your next witness,  
3 please, sir?

4 MR. GOODWYN: Yes, Your Honor. I call Brian  
5 Richardson.

6 THE CLERK: Would you please come forward and  
7 raise your right hand?

8 THE WITNESS: (Complying.)

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

12 THE WITNESS: Yes, I do.

13 THE CLERK: Thank you, sir. Please take a seat  
14 at the witness stand.

15 THE WITNESS: (Complying.)

16 BRIAN RICHARDSON,  
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. Mr. Richardson, thanks for coming today. Tell  
23 me, who do you work for?

24 A. Anderson County.

25 Q. How long have you worked for Anderson County?

1 A. Almost 13 years, I believe, 12 and a half.

2 Q. And what's your position with Anderson County?

3 A. Facilities manager.

4 Q. All right. How long have you been the  
5 facilities manager?

6 A. I couldn't tell you exactly the dates. I was  
7 hired as a facility supervisor. Title changed to a  
8 manager at some point, but the job duties have  
9 pretty much been the same.

10 Q. All right. And I understand you had some  
11 responsibilities on this East-West Park Project?

12 A. Yes, sir.

13 Q. All right. And what was your title at that  
14 point?

15 A. I believe I was the facilities manager during  
16 that time.

17 Q. Okay. And had you -- facilities manager from  
18 the beginning of the project?

19 A. I -- I believe so.

20 Q. All right. There wasn't a time where Matt  
21 Schell was the project manager and you replaced him?

22 A. Yes. But my job title has -- was facilities  
23 manager.

24 Q. Oh, maybe I said it wrong. I was asking you  
25 specifically about the East-West Park Project.

1 A. Oh, I'm sorry.

2 Q. Maybe I didn't say that. I'm sorry. As far as  
3 the East-West Park Project goes, were you the  
4 project manager for that project the entire time or  
5 only portions of the time were you the project  
6 manager?

7 A. Only portions of the time.

8 Q. All right. Who was the first project manager?

9 A. I believe it was Matt Schell.

10 Q. Okay. And why did you replace Matt Schell?

11 A. I -- I was told, you know, at some point in the  
12 project to -- to take over the project and -- and  
13 manage it. The specifics of why I was put in  
14 charge, I -- I don't know. I was doing as I was  
15 told.

16 Q. Okay. All right. Did you have any  
17 conversations with Matt Schell about where you were  
18 on the project when you took over?

19 A. I -- I don't recall. I would -- I would  
20 imagine we may've had some conversations. I don't  
21 really remember. It's been so far ago.

22 Q. All right. So what needed to be done with  
23 the -- to complete the project or at least phase 1  
24 and phase 2 of the project when you got involved?

25 A. I believe there was still paving the lower --

1 the lower parking lot -- paving that parking lot and  
2 putting in the -- the sidewalk, the concrete path  
3 that connects that parking lot to the existing  
4 East-West bike trail. That was probably the major  
5 things that I remember.

6 Q. Okay. And what issues end up coming up and  
7 arising that prevented those tasks from being  
8 completed?

9 A. I don't -- I don't really recall there being  
10 any issues. It was just getting them finished, you  
11 know, getting them completed, getting the paving  
12 done, getting that connecting path put in. Just  
13 getting the work finished.

14 Q. All right. And was one of the issues the slope  
15 of the sidewalk, the steepness of the sidewalk was  
16 too much? It wouldn't comply with the ADA  
17 requirements?

18 A. I believe according to the drawings, it -- it  
19 would have, you know.

20 Q. All right. But in reality, could it be built  
21 that way?

22 A. I believe so.

23 Q. All right. Why do you believe that?

24 A. I think it wound up being complete that it  
25 was -- it was -- it's there.

1 Q. All right. We'll talk about that. Is there  
2 anything that Russell Moats or Moats Construction  
3 did that was -- that was wrong in the way they were  
4 constructing the sidewalks?

5 A. From what I remember, they didn't -- they  
6 didn't construct that sidewalk while I was the  
7 project manager.

8 Q. All right. So, I mean, I understand that  
9 the -- that sidewalk wasn't poured during -- at  
10 least that's what Mr. Moats' testimony was. Sounds  
11 consistent with your -- your recollection, as well,  
12 that the sidewalk was not poured while you were the  
13 manager, unless -- I don't know if we got to this  
14 part, but you were the project manager from the time  
15 you took over for Matt Schell up until the  
16 mediation; is that right?

17 A. I believe so. Yes.

18 Q. Okay. After the mediation, who took over?

19 A. Holt Hopkins.

20 Q. Okay. All right. So during the time that you  
21 were the construction manager or the project  
22 manager, Moats Construction did not pour that lower  
23 sidewalk?

24 A. No.

25 Q. Did they form it and try to -- try to find a

1 way to make it -- to make it work, but not actually  
2 pour it?

3 A. I believe so. Yes.

4 Q. Okay. And so is there anything that you could  
5 point to that showed that Moats Construction did  
6 anything wrong in the way they were constructing  
7 those walkways?

8 A. Could you repeat that?

9 Q. Sure. Is there -- is there anything that you  
10 can show or point to that would show that Moats  
11 Construction did anything wrong in -- in the way  
12 they were constructing the walkways?

13 A. No. They just never poured the concrete.

14 Q. Okay. And why didn't they pour the concrete?

15 A. I -- I don't know. I don't believe he thought  
16 he could get the grades correct.

17 Q. Okay. So it was an ADA issue ---

18 A. Correct.

19 Q. --- for ADA, right?

20 A. Correct.

21 Q. All right. And about how many times was --  
22 did Natasha Sexton come in and redesign or revise  
23 the plans during your tenure as project manager?

24 A. I don't believe at any time while I was the  
25 project manager. I don't think the plans changed.

1 Q. All right. So we have these 2015 plans, the  
2 original plans. You were not on the job at that  
3 time, right? That was Matt Schell's tenure?

4 A. I believe so, yeah. I wasn't on the job.

5 Q. Okay. You came in approximately when?

6 A. I think it was probably early 2017 maybe, maybe  
7 March of 2017.

8 Q. Okay. The mediation or the mediated settlement  
9 agreement that we've seen is dated March 29th of  
10 2018. And so about how many months before that had  
11 you been the project manager?

12 A. Before the mediation?

13 Q. Right.

14 A. I guess that would've been, I don't know, what,  
15 about a year, 12 months.

16 Q. Okay. All right. So the -- if you were -- if  
17 you came on board as project manager in 2017, some  
18 time early 2017, any of these 2016 revisions would  
19 not -- you would not have been part of; is that fair  
20 to say?

21 A. Yes.

22 Q. Okay. And then this 2017, March of 2017, this  
23 revision, would you have been part of that revision?

24 A. I don't recall. I don't -- I don't know.

25 Q. If you were, you don't recall?

1 A. Correct.

2 Q. Okay. Was it your understanding, though, that  
3 there had been a number of revisions to the plans  
4 during the project?

5 A. Yes.

6 Q. Okay. All right. And leading up to the  
7 mediation itself, was the issue with being able to  
8 actually pour this sidewalk in a way that was ADA  
9 compliant, was that one of the big issues going into  
10 the mediation?

11 A. I believe so. Yes.

12 Q. All right. And I think you said a minute ago,  
13 Mr. Moats' contention that it could not be done  
14 given the topography of the -- of the site; is that  
15 right?

16 A. That was his take I believe. Yes.

17 Q. Okay. And you believed it could be done?

18 A. Yes.

19 Q. All right. All right. And did you actually  
20 participate in the mediation?

21 A. I did. Yes, sir.

22 Q. All right. And what was your role in the  
23 mediation?

24 A. I -- I guess I was there as the -- as a  
25 representative from the county that had the most

1 recent knowledge of the product -- of the project.

2 Q. Okay. Who else was there?

3 A. Our attorney, Leon Harman.

4 Q. Okay. That's him here?

5 A. Yes.

6 Q. At the center table?

7 A. Yes.

8 Q. Okay. All right. So let's -- let me ask you  
9 about this. So you were the project manager for  
10 that year, so before the mediation. You were not  
11 the project manager immediately after the mediation,  
12 correct?

13 A. Correct.

14 Q. Can you speak to anything that happened after  
15 the mediation with respect to Mr. Moats' work at the  
16 project?

17 A. I had probably none to minimal involvement, you  
18 know, with -- with the project with -- with Moats or  
19 anything.

20 Q. Okay. So after Mr. Moats, Moats Construction  
21 left the job, did you come back in as project  
22 manager and finish it out?

23 A. I did not.

24 Q. Who did?

25 A. We had -- we didn't, per se, really have a

1 project manager I don't think. I think we probably  
2 just worked as a team and -- and pieced the -- you  
3 know, pieced the contractor here to do one part. I  
4 don't know that there was, per se, a project  
5 manager.

6 MR. GOODWYN: Okay. I'm going to show you some  
7 documents. Let me share them first.

8 All right. Your Honor, I've got a number of  
9 exhibits I'd like to introduce. The first one was  
10 Plaintiff's Exhibit 34, which is an e-mail,  
11 November 21st of '17.

12 THE COURT: It's an e-mail?

13 MR. GOODWYN: Yes, Your Honor.

14 THE COURT: And that's 34?

15 MR. GOODWYN: Yes, Your Honor.

16 THE COURT: Okay, sir.

17 MR. GOODWYN: Thirty-five is another e-mail,  
18 August 28th of 2018; 36 is another e-mail,  
19 August 15th of 2018.

20 THE COURT: Nineteen?

21 MR. GOODWYN: 2018.

22 THE COURT: Eighteen.

23 MR. GOODWYN: And 37 is an e-mail dated  
24 September 6, 2018; so 38 now is another e-mail dated  
25 July 24, 2018.

1 THE COURT: Fifteen?

2 MR. GOODWYN: Eighteen.

3 THE COURT: Eighteen. I'm sorry.

4 MR. GOODWYN: Thirty-nine is e-mail dated July  
5 13, 2018; 40 is another e-mail dated July 23, 2018;  
6 and the last one will be 41, is an East-West Parkway  
7 Concrete bid sheet.

8 THE COURT: Bid sheet?

9 MR. GOODWYN: Bid sheet. Yes, Your Honor. I'd  
10 like to admit all of these, 34 through 41.

11 THE COURT: Any objection from the county?

12 MR. DAVIDSON: No, Your Honor.

13 THE COURT: From the individuals?

14 MR. MCDADE: No, Your Honor.

15 THE COURT: Okay. Thirty-four, 35, 36, 37, 38,  
16 39, 40 and 41 will be admitted without objection.

17 (Plaintiff's Exhibit Nos. 34 through 41 were  
18 received into evidence.)

19 BY MR. GOODWYN:

20 Q. All right. Mr. Richardson, I'm going to show  
21 you some e-mails. The mediated settlement again was  
22 March -- signed March 20 -- it was March 29, 2018 if  
23 I'm not mistaken. Yes. All right. And I'm going  
24 to show you some -- some -- some e-mails here.

25 I think Mr. Moats left the job shortly after

1 that, April or May of 2018. And that's when Holt  
2 Hopkins stopped being the project manager, and then  
3 I'm asking you questions about your involvement  
4 after that period.

5 A. Okay.

6 Q. So this is August 28, 2018, an e-mail from  
7 Jennifer -- is it "Gos-null" "Gos-Nell" to you. And  
8 do you recognize this e-mail -- this e-mail chain?

9 A. Yes.

10 Q. Okay. What's -- what's going on in this e-mail  
11 chain?

12 A. I think it's probably -- I mean, it's hard to  
13 tell just -- I can only see like the top little bit  
14 of it.

15 Q. All right. Something about a contract. Is  
16 this the -- Jennifer Gosnell, looks like she's with  
17 S -- SGA Architecture. Are they talking about the  
18 contract to hire them for the job or rehire them for  
19 the job?

20 A. It -- it could be. I would assume that's what  
21 it is. Yes.

22 Q. Okay. All right. That's in August. And then  
23 August -- this is another -- another e-mail here  
24 from you to Jackie -- is it Partain?

25 A. Yes.

1 Q. Who is Jackie Partain?

2 A. She was my administrative assistant at the  
3 time.

4 Q. Okay. And then this lower e-mail again from  
5 SGA Architecture is Jennifer Gosnell saying, "Please  
6 find our attached proposal to complete the county  
7 administration for the East-West Parkway, phase 1  
8 and 2."

9 So, again, that's -- they're talking to you  
10 about contracts to -- for -- for the -- for the  
11 finishing of the East-West Park Project, correct?

12 A. Right.

13 Q. All right. Why are they contacting you? If  
14 you're not the project manager at the time, why are  
15 they contacting you about that?

16 A. Well, like I said, we didn't have a project  
17 manager, but in my role as the facility --  
18 facilities manager, that just kind of falls under  
19 some of my work scope or job duties.

20 Q. All right. Is there -- was there anyone other  
21 than you more familiar with finishing up the  
22 East-West Park Project after Moats left?

23 A. Probably not.

24 Q. Okay. All right. So who did actually complete  
25 the project?

1 A. Contractor wise?

2 Q. Yes.

3 A. I don't know that I know every -- I don't -- I  
4 mean, I don't know who all -- we brought in multiple  
5 contractors. Some of the work was -- was probably  
6 done in-house with -- with county staff.

7 Q. All right. Do you remember who poured the  
8 concrete for this sidewalk that nobody could seem to  
9 get right?

10 A. I believe it was Mike -- Mike Duncan.

11 Q. Was he a private contractor or in-house person?

12 A. No. He's a private contractor. We didn't --  
13 we did not do it in-house.

14 Q. Okay. All right. So if Mike Duncan is the --  
15 is the contractor then after Moats, can you explain  
16 to the jury kind of how that progressed? Just --  
17 did he lay the form, lay the concrete, and nailed it  
18 the first time?

19 A. I -- I -- I believe we had one issue where he  
20 had to come back and do a little bit of grinding,  
21 concrete grinding. We had one -- I think we had one  
22 little area that was off a little bit.

23 Q. All right. Is that -- is that what you call  
24 concrete grinding?

25 A. No, sir.

1 Q. All right. That's -- that's pulling out an  
2 entire section of sidewalk, correct?

3 A. It looks like it. Yes, sir.

4 Q. All right. And down here looks like concrete's  
5 been pulled out of that lower area; is that correct?

6 A. Yes.

7 Q. All right. And this -- there's -- Natasha  
8 Sexton, you were here for her testimony, correct?

9 A. No, I was not.

10 Q. Oh, that's right. You weren't here. I'm  
11 sorry. She recalled a couple of times of concrete  
12 getting pulled out. Do you -- is that -- is that  
13 fair, that concrete was poured and pulled out of  
14 that lower section?

15 A. I don't recall that pulling the concrete out.  
16 I recall Mike coming back and having to do some  
17 grinding, but I don't remember pulling it out.

18 Q. All right. What about this retaining wall that  
19 was installed? Do you recall the retaining wall ---

20 A. Yes, I do.

21 Q. --- that was installed?

22 A. Yes.

23 Q. Was that retaining wall on any of the plans?

24 A. It was not. No.

25 Q. Okay. So that's -- what was the purpose of the

1 retaining wall?

2 A. My grounds department supervisor, she just --  
3 she wanted to do that as an esthetics improvement  
4 and that was a clay bank, just, you know, hard -- it  
5 was hard to maintain that bank so it was more of a  
6 convenience of maintenance and just an esthetic  
7 improvement she wanted to do.

8 Q. Okay. Did -- when Mike Duncan came out and  
9 laid the forms for the lower section of sidewalk,  
10 did he ask anybody from the county to come out and  
11 approve that section as far as ADA compliance goes?

12 A. I don't recall. I don't remember if we did or  
13 if he did or not.

14 Q. Was -- were you -- was the county concerned  
15 about the park being ADA compliant at that point?

16 A. Sure.

17 Q. All right. Was it important for the project to  
18 be fully ADA compliant once completed?

19 A. Yes.

20 Q. Do you recall about when it was completed?

21 A. I don't recall total -- total completion.

22 Q. Well -- well, let me ask it this way: That --  
23 when was that -- the sidewalk that's in place now,  
24 when was that finalized? Was it in 2018?

25 A. I don't -- I don't recall. I don't know. I

1 don't remember the specific date or, yeah, I don't  
2 know.

3 Q. Do you have any records of that?

4 A. I'm not sure.

5 Q. Okay. Was it before April of 2019?

6 A. I don't recall.

7 Q. All right. If the -- if the sidewalk, as it's  
8 installed now, is not ADA compliant, what -- well,  
9 let me back up. Let me back up and ask you this:  
10 When the sidewalk was installed, was it measured to  
11 make sure it was ADA compliant?

12 A. I believe so. Yes.

13 Q. Okay. And do you know -- do you know who did  
14 that -- those measurements?

15 A. I do not recall.

16 Q. All right. Did you get Sandy Hanebrink out  
17 there to do it?

18 A. I did not.

19 Q. Okay. Why not?

20 A. I didn't have a reason to.

21 Q. Okay. Do you respect her -- her work in the  
22 ADA compliance area?

23 A. Sure. I've -- I've never worked with her. I'm  
24 not familiar with her work.

25 Q. Did she ever come out there during the time

1 where you were the project manager leading up to  
2 the media -- the mediation?

3 A. If she did, I don't believe I was onsite.

4 Q. Okay. Are you familiar with her April 30,  
5 2019, report about the -- about the -- the project  
6 as a whole, especially, the -- that lower section of  
7 sidewalk?

8 A. I don't remember -- recall seeing this. No.

9 Q. All right. I just represent to you that it  
10 indicates and she testified it was not in ADA  
11 compliance, this lower section of sidewalk, after  
12 everything that was gone through with Moats and all  
13 the revisions and a new contractor coming in, it's  
14 still not in compliance. So what -- if it's not in  
15 compliance now, what -- what do you think should be  
16 done?

17 A. It needs to be replaced or -- or made  
18 compliant. Not necessarily replaced.

19 Q. If it can be made compliant without  
20 replacement, you could do that too?

21 A. Sure.

22 Q. Okay. Fair enough. Who gave final approval  
23 for the completed work for the park for phase 2,  
24 especially that lower section of sidewalk that was  
25 giving everybody so much trouble?

1 A. I don't know that we had an end final approval.  
2 I don't know that we had that from anybody.

3 Q. Would you have paid Mike Duncan had it not --  
4 the work not been accepted by the county?

5 A. We should not have. No.

6 Q. All right. So was Mike Duncan paid?

7 A. I -- I would believe so. I don't recall if we  
8 did or not.

9 Q. Did you -- was it not your job to authorize the  
10 payment for Mike Duncan?

11 A. I possibly would have. Yes.

12 Q. You don't recall?

13 A. I don't recall. No.

14 Q. Okay. As far as you know, he was paid, though?

15 A. I would assume he -- I would assume he was  
16 paid.

17 Q. And did -- the work was deemed satisfactory and  
18 acceptable?

19 A. I believe so. Yes.

20 Q. All right. Prior to this project, did you have  
21 any experience working with ADA projects?

22 A. I'm sure I -- I'm sure I had. Yes.

23 Q. All right. Would you turn to page 34. You  
24 were deposed October 26, 2022; is that correct?

25 A. I believe so.

1 Q. All right. Are you there?

2 A. Thirty-four. Yes.

3 Q. Yeah, I'm reading line 6. Just read your  
4 answer when I'm done. My question was, "All right.  
5 Prior to this East-West Project, did you have any  
6 experience dealing with any ADA compliance issues?"  
7 What was your response?

8 A. "Not that I recall."

9 Q. Okay. Thank you. Do you have any knowledge as  
10 to why the \$50,000 agreed upon in the mediated  
11 settlement agreement wasn't paid?

12 A. I do not.

13 Q. Do you have any knowledge as to why the \$15,000  
14 provisions in the mediated settlement agreement  
15 wasn't paid?

16 A. I do not.

17 Q. All right. You were at the mediation? You  
18 were a representative. Did you have any  
19 responsibility in making sure that the terms of the  
20 mediated settlement agreement were complied with?

21 A. No. I don't believe so.

22 Q. Do you know who -- who did have responsibility  
23 for making sure those terms were complied with?

24 A. I would assume the next project manager or  
25 maybe the attorney. I -- I don't -- I don't know

1 for sure.

2 Q. All right. Let me show you this -- this  
3 photograph here. It's showing this large bottom  
4 section being -- section of sidewalk being torn out;  
5 is that right?

6 A. Yes.

7 Q. All right. That's more than just concrete  
8 grading or grinding?

9 A. I agree. Yes.

10 Q. All right. Was it fair to say that Mike Duncan  
11 or someone poured this concrete and it was -- it had  
12 to be torn out?

13 A. Yes.

14 Q. All right. And was it torn out for ADA  
15 compliance issues?

16 A. I would assume. Yes.

17 Q. Okay. Same question for these sidewalks up  
18 top.

19 A. Yes.

20 Q. And this -- this stretch of sidewalk here.

21 A. Yes.

22 Q. This is just a different shot of that other one  
23 I believe. Okay. All right. Had you ever managed  
24 any projects similar to this one prior to the  
25 East-West Park Project?

1 A. That's hard to say. I've managed a lot of  
2 projects. Maybe not -- I'm sure I probably did  
3 something similar. Exactly like this, maybe --  
4 maybe not.

5 Q. Why do you think you were chosen to manage this  
6 project?

7 A. I'm not sure.

8 Q. Did you learn of any friction between Matt  
9 Schell and Russell Moats?

10 A. I knew there was probably a little bit there.  
11 Yes.

12 MR. GOODWYN: All right. All right. That's  
13 all I have, Your Honor.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 BY MR. DAVIDSON:

17 Q. Mr. Richardson, following-up on that question.  
18 Was there any tension between you or Mr. Moats?

19 A. No, sir. Not that I believe.

20 Q. Okay. Is it fair to say that not much work was  
21 done on the East-West Park Project while you were  
22 the project manager?

23 A. Yes. That's correct.

24 Q. Okay. What -- do you recall any -- why that  
25 was?

1 A. I think there -- the -- like we said earlier,  
2 that Russell didn't believe that he could pour the  
3 bottom connecting sidewalk and get it in compliance.  
4 Other than that, I don't know what all of the delays  
5 were.

6 Q. Okay. Let me -- let me ask you for a minute.  
7 Did -- although, you testified you were not the  
8 project manager after the mediated settlement  
9 agreement, right?

10 A. Right.

11 Q. Did you still do -- have some responsibility or  
12 some work that you did out there?

13 A. After the mediation?

14 Q. Yes.

15 A. Very -- very minimal. I believe I was asked to  
16 go by and just, you know, check on progress. Not  
17 necessarily stop, but, you know, just see what work  
18 was going on. See if anybody was onsite, that type  
19 of thing.

20 Q. Okay. Who asked you to do that?

21 A. I -- I don't remember. It may have been  
22 Mr. Hopkins. I'm not sure.

23 Q. Okay. I'm going to -- I'm going to ask you to  
24 look at an exhibit in just a second. Did you keep  
25 any notes of your trips to the site?

1 A. I believe did. Yes, sir.

2 MR. DAVIDSON: Okay. Let me ask you if you  
3 recognize this, and then I'll identify it.

4 MR. GOODWYN: Is this in your binder?

5 MR. DAVIDSON: It is. It's Defendant's  
6 Exhibit 1, Tab 31.

7 BY MR. DAVIDSON:

8 Q. Can -- can you see anything? Is that ---

9 A. Yes, sir. Yes. Yep.

10 Q. Okay. Do you recognize that document?

11 A. I -- I do. That's definitely my handwriting.  
12 Yes, sir.

13 Q. Okay. And what is this?

14 A. It's probably where -- you know, where I went  
15 by and checked onsite, you know, just doing a ride  
16 by site visit and keeping a little log of it.

17 Q. Okay. And so what were you looking for when  
18 you went by the site?

19 A. Basically, from what I recall, just whether or  
20 not anyone was onsite and, you know, if work was  
21 taking place. Probably some weather conditions,  
22 type conditions, stuff like that, but mostly if  
23 there was any -- any activity onsite.

24 Q. Okay. So and your trips out there started  
25 on -- it says -- looks like Wednesday, 4/25?

1 A. Yes.

2 Q. Do you know -- do you know what year ---

3 THE COURT: Can you make that a little clearer?

4 I can't see it very well.

5 MR. DAVIDSON: Hang on. Let me see what I can  
6 do.

7 THE COURT: Maybe go in and out and in again.

8 MR. DAVIDSON: Is that better? Is that any  
9 better?

10 THE COURT: Yeah.

11 MR. DAVIDSON: Okay.

12 BY MR. DAVIDSON:

13 Q. All right. So -- so you have a note there,  
14 Wednesday, 4/25. "Notice sent to Moats 30 days to  
15 complete;" is that right?

16 A. Yes.

17 Q. Where does that come from?

18 A. I -- I don't recall.

19 Q. Okay. Was that information given to you?

20 A. Probably so. Yes.

21 Q. All right. Okay. So Thursday, 4/26, 8:00  
22 a.m., no one onsite, wet onsite; is that right?

23 A. Yes.

24 Q. Okay. So were you making -- and then -- then  
25 you got one at 11:15 a.m., e-mail from Russell about

1 -- is that contract?

2 A. I believe so. Yes.

3 Q. Okay. So was this your -- I mean, in addition  
4 to site visits, you were just keeping notes on what  
5 was going on?

6 A. I believe so. Yes.

7 Q. Okay. So as we flip through, you'll see --  
8 we'll see whether or not when you were onsite, other  
9 people were onsite?

10 A. Right.

11 Q. Okay. And I will show -- you know, I'll make  
12 this available to you any way that it's helpful, but  
13 it looks like the first -- on Tuesday, 5/1 -- is  
14 that -- is that showing on the screen? Towards the  
15 bottom of screen. Do you see that?

16 A. Yes.

17 Q. All right. Looks like that's -- is that the  
18 first -- is that the first time that you -- that you  
19 encountered people on the site when you were there?

20 A. According to my notes, I would say yes.

21 Q. Okay. Now, 5/2, was there anyone onsite?

22 A. I can't see it.

23 Q. Okay. Let me just take it out. Can you see  
24 that?

25 A. Yes, sir.

1 Q. Okay. All right. 5/3, you have a note. "No  
2 one -- at 4:45, no one onsite. Minimal work  
3 occurred." Did I see that right?

4 A. Yes, sir.

5 Q. Okay. All right. So work has begun by 5/3?

6 A. Yes.

7 Q. May the 3rd. Okay. And then it looks there  
8 are like people onsite during that -- during that  
9 week of May; is that right?

10 A. Yes, sir.

11 Q. Okay. Let me have you look down to the week of  
12 June -- it says Monday, 6/4. Do you see that?

13 A. Yes, sir.

14 Q. What -- what is the -- I see the no word.  
15 What's the word in front of that?

16 A. Sunny.

17 Q. Sunny. Okay. All right. So what is -- all  
18 right. "On 6/5, sunny. No work," but what is  
19 the -- what -- what's -- what's that say after that?

20 A. Small -- I don't know what that is. Excavator  
21 maybe. Small excavator offsite.

22 Q. Okay. So that's -- that says E-X-C? Is that  
23 what it is?

24 A. I think so.

25 Q. Okay. All right. But the rest of it, "No work

1 through 6/13," right?

2 A. Yes, sir.

3 Q. "6/14, sunny. No work." And then what does  
4 that other note say down?

5 A. I can't -- could you pull it down a little?

6 Q. My bad.

7 A. Yeah, there you go.

8 Q. I'm sorry.

9 A. Say that again, please.

10 Q. So what -- what is the note on 6/14?

11 A. "Sunny, no work. Spoke to Holt. Moats off job  
12 since last Friday, 6/8."

13 Q. Okay. All right. Then you have -- then you  
14 have another one on 6/19. What is that?

15 A. "Moats onsite. Remove concrete forms and  
16 truck. I guess remove truck. Sent e-mail to Leon,  
17 Robert, and Holt."

18 Q. Okay. That was to let them know that the --

19 A. That they were going to ---

20 Q. --- that the equipment was being moved?

21 A. Yes, sir.

22 Q. Okay. All right. Now, I think you said that,  
23 and correct me if I say this wrong, but you thought  
24 it was sort of a -- maybe it was a team approach.  
25 Nobody was specifically a project manager on getting

1 the rest of the project finished?

2 A. That's correct.

3 Q. Okay. Well, how much involvement did you have  
4 that you know of?

5 A. I mean, I can't -- I don't recall. Can't say  
6 specifically, but I would say probably a pretty good  
7 bit.

8 Q. Okay. So did you deal with any of the -- any  
9 of the people from SGA?

10 A. I probably did. I would think so.

11 Q. Okay. Do you have any specific recollection  
12 though?

13 A. I don't.

14 Q. Okay.

15 A. You're talking about to -- to finally just get  
16 it finished?

17 Q. Yes, sir.

18 A. Yeah, I'm sure we probably did, but I don't  
19 recall ---

20 Q. Okay.

21 A. --- or I did.

22 MR. GOODWYN: All right. That's all the  
23 questions I have, Your Honor.

24 MR. MCDADE: I don't have any questions, Your  
25 Honor.

1 THE COURT: Redirect?

2 MR. GOODWYN: No, Your Honor.

3 THE COURT: May this witness be excused?

4 MR. GOODWYN: Yes. From our point, I think  
5 they -- I'm not sure what he's going to do on the  
6 counterclaims, but as far as I'm concerned, yes.

7 THE COURT: Are you asking that he still  
8 remain?

9 MR. DAVIDSON: I think we're -- I don't think  
10 we'll need Mr. Richardson.

11 THE COURT: I'm going to excuse you. If they  
12 need you, they'll let you know.

13 THE WITNESS: Thank you.

14 THE COURT: Yes, sir.

15 MR. GOODWYN: Your Honor, I do want to reserve  
16 the right to recall him in response to any  
17 counterclaims that they had in the case that they  
18 make in defense of my case in chief. He can be  
19 excused.

20 THE COURT: All right. Sir, call your next  
21 witness.

22 MR. GOODWYN: I call Holt Hopkins.

23 THE CLERK: Would you raise your right hand?

24 THE WITNESS: (Complying.)

25 THE CLERK: Do you swear or affirm the

1 testimony you're about to give will be the truth,  
2 the whole truth, and nothing but the truth?

3 THE WITNESS: I do.

4 THE CLERK: Thank you, sir. Please see take  
5 seat at the witness stand.

6 THE WITNESS: (Complying.)

7 HOLT HOPKINS,  
8 having been produced and first duly sworn as a  
9 witness on behalf of the Plaintiff, then testified  
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. GOODWYN:

13 Q. Mr. Hopkins, who do you work for?

14 A. Anderson County.

15 Q. And what's your position with Anderson County?

16 A. I'm the deputy administrator.

17 Q. How long have you been the deputy  
18 administrator?

19 A. Since 2009.

20 Q. Okay. You were the deputy administrator during  
21 this East-West Park Project?

22 A. Yes.

23 Q. All right. Did you have any responsibilities  
24 with the Toxaway Mill Project?

25 A. No, I did not.

1 Q. All right. All right. And did you have -- and  
2 you've been here throughout the trial, so you've  
3 kind of heard the testimony. I don't want to replot  
4 old ground if we don't have to, but my understanding  
5 is Matt Schell was the project manager to begin  
6 with, Brian Richardson took over up to the mediated  
7 settlement agreement. Is that your understanding?

8 A. Correct.

9 Q. Did you take over as project manager after that  
10 period?

11 A. After the mediated settlement. Yes, sir.

12 Q. Okay. And then my understanding is that you  
13 were project manager until Russell Moats stopped  
14 working on the job?

15 A. Correct.

16 Q. Okay. All right. And so did you actually  
17 participate in the -- in the mediation that led to  
18 the mediated settlement agreement?

19 A. I did not.

20 Q. All right. And what was your understanding  
21 when you took over as project manager for Brian  
22 Richardson after the mediation? What was your  
23 understanding of your job? What were your marching  
24 orders?

25 A. To work with Mr. Moats to just finish up some

1 of the things that were in the settlement so we  
2 could wrap it up and close the project out.

3 Q. Okay. Did you receive a copy of the mediated  
4 settlement agreement?

5 A. Not the full thing. I just got like bullet  
6 points of what needed to be completed.

7 Q. Okay. What did those bullet points say?

8 A. If I remember, I don't know exactly, but I  
9 think it was a little bit of paving that had yet be  
10 done and finish the walking path that we have been  
11 talking about on the lower end.

12 Q. Okay. All right. And who gave you those  
13 bullet points?

14 A. My boss, Rusty Burns, the administrator.

15 Q. Okay. All right. So those bullet points were  
16 only to get the project finished, which was those --  
17 which was the paving and to finish out the sidewalk  
18 that we've been talking about?

19 A. Correct.

20 Q. Were there any instructions from Rusty Burns  
21 about making the \$50,000 payment for delay damages?

22 A. I will -- I don't remember exactly, but I  
23 think -- I -- I was under the impression the work  
24 had to get done before the -- all the -- all the  
25 money would be paid out.

1 Q. All right. Have you seen the -- the -- read  
2 the mediated settlement agreement?

3 A. I have seen it or parts of it.

4 Q. All right. So at the time they were saying you  
5 did not have a copy of the mediated settlement  
6 agreement. You just had the bullet points from  
7 Rusty?

8 A. Correct.

9 Q. All right. Did Rusty Burns tell you that -- or  
10 tell you that, "Let me know when it's finished, and  
11 then we're going to pay this \$50,000 and the  
12 \$15,000?"

13 A. I don't remember him giving me the exact  
14 details on the -- the amounts, but, you know, it was  
15 when we get finished -- once you get finished with  
16 those few items, then we can pay it and close out  
17 this contract.

18 Q. Okay. All right. Fair enough. Now, there is  
19 a term in the mediated settlement agreement, number  
20 6 here, says, "Moats shall be paid a lump sum of  
21 26,155.89 on or before the start date set forth in  
22 the notice to proceed." Did you have anything to do  
23 making sure that check was cut?

24 A. I did not.

25 Q. All right. Would that have been Rusty's

1 responsibility?

2 A. Yes.

3 Q. Okay. All right. With respect to the  
4 sidewalk, was it your understanding that the  
5 sidewalk that was to be laid needed to be ADA  
6 compliant?

7 A. Yes.

8 Q. All right. Would you have accepted or approved  
9 a sidewalk that was not ADA compliant?

10 A. During -- during the project, it was discussed  
11 back and forth. But to answer your question, down  
12 at the very end, the transition between the sidewalk  
13 and the -- or the -- the concrete path tying into  
14 the already existing bike path ---

15 Q. Right.

16 A. --- yeah, there was some discussion that, look,  
17 if you'll just make it ADA compliant down to that  
18 point, we'll be done here. Just -- just get it ADA  
19 compliant from point A to point B, B being the  
20 touching the -- the existing track.

21 Q. So let me show you this picture. This is the  
22 area we're talking about, right?

23 A. Yes.

24 Q. Okay. And this sidewalk winds down from the  
25 parking lot, then it kind of forks off right here,

1 the two sidewalks around this center unpaved area?

2 A. Correct.

3 Q. So when you say, "Make it ADA compliant from A  
4 to B," where is A and where is B?

5 A. Well, this is not the exact. I mean, the --  
6 these weren't -- that flower bed in the middle  
7 wasn't that big at the -- at the time.

8 Q. So that was a redesign at some point?

9 A. At some point after ---

10 Q. After Mr. Moats left?

11 A. --- after, yeah, or after the ---

12 Q. Right. Because you left the same time Moats  
13 left, right?

14 A. Correct.

15 Q. Okay. So after you and Moats left, this whole  
16 area was redesigned to create a larger ---

17 A. I don't -- I don't remember that larger area.

18 Q. Okay. So is it fair to say, though, that after  
19 you and Mr. Moats left, this area was redesigned to  
20 create a larger, non-paved or concreted area?

21 A. Correct.

22 Q. Okay. And do you know if -- was that  
23 redesigned like that to help with ADA compliance?

24 A. No idea.

25 Q. You don't know one way or the other?

1 A. I don't know why that was changed, no.

2 Q. Okay. All right. Fair enough. So, again,  
3 when you say you were just telling Mr. Moats to get  
4 it ADA compliant from point A to point B, where is  
5 point A and point B?

6 A. It was more on this lower -- on the right of  
7 the picture. Yeah, about where your pen is ---

8 Q. So this is ---

9 A. --- where it would've joined up to the trail.

10 Q. Right. This section here, this was the  
11 existing bike trail, correct?

12 A. Correct.

13 Q. And so you're saying just get it from the  
14 parking lot down to where it ties in here, ADA  
15 compliant, and you'll be good to go?

16 A. Yes, sir.

17 Q. And what was his response?

18 A. He continued to argue that he couldn't do it.  
19 He couldn't -- the plans weren't right and that he  
20 just couldn't ---

21 Q. Couldn't be done?

22 A. --- couldn't be done.

23 Q. Okay.

24 A. And I brought people out to confirm from my  
25 office to confirm that it could be done.

1 Q. Okay. Did you put those two people together?  
2 Did you put your people together with Mr. Moats?

3 A. I don't remember if they had a conversation  
4 with Mr. Moats or not. Once they advised me and we  
5 verified the math of it, then Mr. Moats and I talked  
6 about it.

7 Q. Okay. So after that, after Moats insisted that  
8 it could not be done, he stopped working, you  
9 stopped being the project manager. And according to  
10 Mr. Richardson, when he came in at least, he was the  
11 most knowledgeable person after that, if not the  
12 project manager. And Mike Duncan came in and poured  
13 it. Is that your understanding?

14 A. That's my understanding.

15 Q. Okay.

16 A. I wasn't involved at that point.

17 Q. All right. So at this point though, you know  
18 that area we just looked at was redesigned after  
19 you -- after you left, correct?

20 A. I'm assuming, yes, from what I remember. Yes.

21 Q. All right. And the concrete Mike Duncan poured  
22 was torn out at least once, right?

23 A. I wasn't involved.

24 Q. Pardon?

25 A. I wasn't out there. I wasn't involved.

1 Q. All right. Have you ---

2 A. I heard that, but I don't know that.

3 Q. Okay. You weren't there, but you heard that?

4 A. Correct.

5 Q. So -- and you heard Natasha Sexton's testimony  
6 that it was torn out at least twice. And then, have  
7 you seen Ms. -- Ms. Hanebrink's report that it's  
8 currently not in ADA compliance?

9 A. I don't know that I ever received a copy of it,  
10 but ---

11 MR. DAVIDSON: Objection, Your Honor.

12 THE WITNESS: --- I don't agree with that.

13 MR. DAVIDSON: I think that mischaracterizes  
14 the nature of that. I mean, we're talking about  
15 that she says it's -- it is not in compliance in  
16 April of 2019. I think -- I understood your  
17 question to be, it's not in compliance now.

18 MR. GOODWYN: Fair enough.

19 THE COURT: What is your objection?

20 MR. DAVIDSON: I'm sorry?

21 THE COURT: I didn't hear your objection.

22 MR. DAVIDSON: I said my objection is that it  
23 mistakes what the impact of that letter, and it is  
24 -- it's mischaracterizing what the letter is  
25 providing as it's being asked.

1 THE COURT: Overruled. You can go ahead.

2 BY MR. GOODWYN:

3 Q. Thank you. If in -- in hindsight, the fact --  
4 the fact that we just talked about it, Mike Duncan  
5 pouring it, having to tear -- tear it out, having to  
6 redesign that center portion, that fact that as of  
7 April of 2019 it was still not in compliance, would  
8 you agree with me that Russell Moats was right? It  
9 could not be poured within ADA compliance?

10 A. No. I don't agree with that because we were --  
11 I was out there and with the design he had and doing  
12 -- and doing the calculations, I believe it could be  
13 done.

14 Q. Okay. On paper, you say it could be done. In  
15 reality, was it ever done?

16 A. No. It wasn't done. It wasn't done while I  
17 was out there with Mr. Moats.

18 Q. Okay. Was ---

19 A. I believe it is in compliance now based on what  
20 I was told that the ---

21 Q. Right. But you haven't measured it?

22 A. I haven't measured it.

23 Q. You haven't seen Ms. Hanebrink's report,  
24 correct?

25 A. Not personally, no.

1 Q. Okay. But you also know there were redesigns  
2 that had to be done after Mr. Moats left, correct?

3 A. I don't know that either because, again, I  
4 haven't seen a drawing that matches that picture,  
5 but ---

6 Q. Well, you testified that center area was  
7 redesigned?

8 A. Yeah, I don't remember that center area being  
9 that big. That is correct. That's different from  
10 what I was ---

11 Q. Exactly.

12 A. --- out there on.

13 Q. After Moats left, changes were made. And if it  
14 is compliant now, it could be that that -- those  
15 were the changes that needed to be made to make it  
16 be able to be compliant? Is that fair?

17 A. It could be made compliant in a couple  
18 different ways, I'm sure. So that was one of them.

19 Q. Do you realize you could've put -- those  
20 portions that were steep handrails, could've been  
21 put up with landing pads on either end?

22 A. Yeah, but it didn't have to go to that.

23 Q. Okay. All right. Going back to the mediated  
24 settlement agreement. I know you testified it  
25 wasn't your responsibility to make the \$50,000

1 payment or the \$15,000 payment that Rusty Burns told  
2 you just let him know when the job was done, then --  
3 then they would make the payments?

4 A. That's correct.

5 Q. So what after all this happened with Mr. Moats,  
6 what did you report back to Mr. Burns?

7 A. I just report to him when Mr. Moats was onsite  
8 working. And, I mean, I had hopes that we -- we  
9 were going to get -- get it completed.

10 And then I don't remember how, but it was --  
11 Mr. Moats communicated to me something, either  
12 e-mail or phone call or something, that he's not  
13 coming back. We're done. And I reported that back  
14 to Mr. Burns. They took it from there.

15 Q. All right. Did Mr. Burns tell you whether or  
16 not he was going to pay the \$50,000?

17 A. We didn't discuss that.

18 Q. So let me kind of back up a little bit here.  
19 After the mediated settlement agreement, the county  
20 had to approve it I understand. Was it your  
21 understanding that the county did, in fact, approve  
22 the mediated settlement agreement -- county counsel  
23 rather?

24 A. It was my understanding that the counsel  
25 approved it, yes.

1 Q. Okay. And they issued -- issued the \$26,000  
2 check and the notice to proceed so Mr. Moats could  
3 come back. Did he, in fact, come back and attempt  
4 any work?

5 A. Yeah. He -- he set some forms up and was  
6 making progress I thought.

7 Q. All right. Did he -- I think there some  
8 testimony about moving a pipe. Did he move a pipe?

9 A. I don't remember the pipe while I was involved.

10 Q. I mean, were you out there -- I mean, is it  
11 possible he could've moved the pipe and you just  
12 didn't see it?

13 A. Could've. I wasn't out there the whole time,  
14 every hour that he was out there.

15 Q. Sure. Okay. All right. So -- and was there  
16 any traffic control that had to be done because  
17 there was being so close to the highway?

18 A. I don't remember any on that section of it  
19 because it was off the road.

20 Q. Far enough off the highway?

21 A. Yeah.

22 Q. Okay. All right. Did Mr. Moats put any forms  
23 for the sidewalk down?

24 A. He did.

25 Q. All right. And I think that's when you said

1 you had some people come out to see if it was going  
2 to be ADA compliant or not. And they said in this  
3 current state, the current position it would not be?

4 A. The -- the current -- the forms as they were  
5 were not going to be ---

6 Q. Right.

7 A. --- compliant, but -- but we made it up. And  
8 with the weight and everything, we could -- it could  
9 be done. It was going to be a very tight tolerance,  
10 but it could be done ---

11 Q. Okay.

12 A. --- to -- to maintain the 5 percent. That's  
13 what we were trying to do is maintain a 5 percent or  
14 less slope.

15 Q. Okay. And this was approximately when? Was  
16 this around May of 2018?

17 A. Yes.

18 Q. Okay. All right. I'm going to show you what's  
19 been marked as Tab 27 of plain -- of Defendant's  
20 Exhibit 1. And I have to zoom in on this a little.  
21 It's kind of small print. I got to zoom out. There  
22 we go.

23 All right. Trying -- you see this is  
24 expenditures -- a list of a summary of expenditures  
25 for the East-West Park Project. Mike Duncan, if

1 he is the one that finished this job out and laid  
2 that concrete, he wouldn't have been paid unless it  
3 was approved and accepted, correct?

4 A. I assume not, but I -- I didn't work with him,  
5 so I don't know.

6 Q. Well, I'm just saying you wouldn't have paid  
7 anybody if they hadn't approved -- if their work  
8 wasn't approved and accepted, correct?

9 A. Correct.

10 Q. All right. And so he was paid some money on  
11 January 4, 2019, and then February 1, 2019; is that  
12 right?

13 A. That's what it -- that's what it shows. Yes,  
14 sir.

15 Q. All right. And that's February 1st. Is all of  
16 February, all of March, and let's see. Ms. Hane --  
17 Hanebrink's report's April 30th, almost three full  
18 months before that, the contractor was paid to  
19 complete that work, right?

20 A. That's what that document showed. Yes.

21 Q. So if Ms. Hanebrink, did her inspection in  
22 April 2019, that would've been the work as it -- as  
23 it stood completed and as it looks today, correct?

24 A. I don't know that. I don't know -- I wasn't  
25 involved after Mr. Moats pulled off the job, so I --

1 I didn't deal with any of the numbers, paying, or  
2 anything.

3 Q. All right. Fair enough. Do you have any  
4 recollection of the roads and bridges crew coming  
5 out and trying to pour that concrete sidewalk?

6 A. I do not.

7 Q. After Mr. Moats left the job, did you remove or  
8 paint over Moats' logo on the sign at the East-West  
9 Park Project?

10 A. I did not.

11 Q. Did you direct anybody to remove or paint over  
12 that logo?

13 A. I did not.

14 Q. Do you know who did?

15 A. I do not.

16 Q. Do you believe it was someone from the county?

17 A. I have no idea.

18 Q. Were you given any instructions to paint over  
19 that sign by anyone else?

20 A. I wasn't.

21 Q. These calculations that you said you had  
22 somebody come out and run some calculations that  
23 said it could be -- the sidewalk could be laid  
24 according to ADA specifications and requirements, do  
25 you have those? Do you have those -- those -- all

1 that math you said that can be done?

2 A. We -- we didn't -- we didn't keep it. No. I  
3 mean, I -- I wouldn't know where it would be.

4 Q. All right. Did Mr. Moats of Moats Construction  
5 have his own surveyor come out and make sure these  
6 forms were going to lead to an ADA compliant  
7 sidewalk?

8 A. I believe he had a surveyor out there. Yes.

9 Q. All right. Do you remember who it was?

10 A. I don't know.

11 Q. Was it Steve Branyon? Does that sound  
12 familiar?

13 A. I don't -- I don't remember.

14 Q. Did you -- did you see the forms when they were  
15 in place?

16 A. I did.

17 Q. And they was staking about every 5 feet or so?

18 A. Yeah, approximately.

19 Q. This -- the \$15,000 in the mediated settlement  
20 agreement -- and, again, I know you didn't see this  
21 mediated settlement agreement. You were just given  
22 the bullet point marching orders from Rusty Burns.

23 Was there any specific mention in the marching  
24 orders you had as to how much money would be paid?

25 A. I could've been told, but I just -- I don't

1 really remember the details of that.

2 Q. And, again, what were the criteria you were  
3 told for the money being paid to Mr. Moats? What  
4 did he have to do to get the money that was promised  
5 in the mediated settlement agreement?

6 A. If I remember right, it was to finish parking  
7 lots and get that sidewalk in ---

8 Q. Okay.

9 A. --- down to the -- to the trail.

10 Q. All right. Were you offered -- or were you  
11 asked at any time to attend the mediation on behalf  
12 of the county?

13 A. No.

14 Q. Do you know why Brian was -- Brian Robinson was  
15 asked to go and not you?

16 A. Brian Richardson?

17 Q. Richardson. Thank you.

18 A. I -- I assume because he was the project  
19 manager at the time.

20 Q. Okay. Did you have any experience with park  
21 projects and ADA compliance prior to working on this  
22 East-West Park -- Park Project?

23 A. Minimal. We've -- we -- we've had to try to --  
24 any kind of sidewalk repairs and stuff in the roads  
25 and bridges department, we -- we would always have

1 to try to be compliant.

2 Q. Okay. And we may have gone over this. Did  
3 Mr. Moats tell you that the sidewalk could not be  
4 installed to be 100 percent ADA compliant?

5 A. He did. That was his argument.

6 MR. GOODWYN: Okay. That's all I have, Your  
7 Honor.

8 CROSS-EXAMINATION

9 BY MR. DAVIDSON:

10 Q. Mr. Hopkins, I'm going to ask you -- I'm going  
11 to ask you a few things. I have some follow-ups on  
12 what you -- what Mr. Goodwyn asked you about. So  
13 what -- what is it that you were -- that you did to  
14 try to get the project completed?

15 A. (No response.)

16 Q. I mean, you -- so that was your instruction,  
17 correct?

18 A. Correct.

19 Q. Okay. So did you work with Mr. Moats to try  
20 get that to happen?

21 A. Yeah, we -- we met a couple of times onsite.

22 Q. Okay.

23 A. And what I remember the most was just centered  
24 around the sidewalk, trying to finish the -- get the  
25 sidewalk poured.

1 Q. Do you recall when you met with him onsite?

2 A. The May time frame of that year, of '18.

3 Q. At the time you met with him, were the -- were  
4 the forms poured -- excuse me -- were the forms in  
5 place?

6 A. They were almost completed. I wouldn't say  
7 they went all the way to the full length of it, but  
8 most of them were in. Yes.

9 Q. All right. Now, did -- was there -- did  
10 Mr. Moats request that the county come out and  
11 approve his forms?

12 A. Yes. He -- he wanted us to actually check the  
13 forms before the concrete was poured and approve  
14 them before he would pour the concrete. And it was  
15 my feeling that he wanted me to -- well, one, we  
16 wouldn't be approving a product. We would just be  
17 approving his process. And we were just paying for  
18 the product, and I didn't feel comfortable directing  
19 his work. But I was there trying -- I was -- I felt  
20 like I was walking a fine line of not directing his  
21 work, but trying to work with him to get -- get the  
22 project completed.

23 Q. Okay. Do you feel like you worked closer with  
24 Mr. Moats on -- on this project trying to get it  
25 completed than you have with other contractors in

1 the past on projects?

2 A. I wouldn't say it was that much different,  
3 but...

4 Q. All right. So -- so when you went out -- now,  
5 understand what you just said that you don't approve  
6 the forms, but what did you do? You did go out and  
7 meet him, didn't you?

8 A. We measured it -- we measured it together. We  
9 talked about the areas that was going to be  
10 difficult to get in. I mean, he felt like it was  
11 impossible to get in -- in compliance. We talked  
12 about how we, you know, you might could lower it  
13 here and raise it here and various things to make  
14 it -- make it work out.

15 There was some issues about -- and I think  
16 Ms. Hanebrink brought it up during her discussion.  
17 There was that big wide area that was a little more  
18 difficult to figure out a way to make it work  
19 because it was not just going in a straight line.  
20 It was also kind of going to the side.

21 But if I remember right, I thought I offered a  
22 suggestion on, "If you'll do it this way, then we --  
23 we should be able to approve it in this area." I  
24 don't remember the details, though. I just vaguely  
25 remember that.

1 Q. Okay. So you suggested if we do this way,  
2 we'll be able to approve it?

3 A. We should be able to make it all work all the  
4 way up.

5 Q. Okay.

6 A. I mean, that was a small area that we were  
7 having to work through.

8 Q. So what was -- do you recall what Mr. Moats'  
9 response to that was?

10 A. He just insisted that it -- it could work and  
11 -- and the plans weren't right and that he couldn't  
12 make it work.

13 Q. Do you know if he tried to raise it here or  
14 lower it there as you -- as you described?

15 A. I think he did. I think he did for a day or  
16 two or, you know, for a -- for a while, we were  
17 working together. And he was just -- he was working  
18 towards trying to get to that point. And then it  
19 was like the next day, I'm done. I'm not going to  
20 try anymore.

21 Q. So he tried it a couple -- he tried it ---

22 A. He -- he worked on it for a while trying to get  
23 it.

24 Q. Okay. And then -- then just said he wasn't  
25 doing it anymore?

1 A. Right.

2 Q. Okay. Now, what -- what did you do after  
3 Mr. Moats left the job?

4 A. What do you mean?

5 Q. Well, what -- what happened to the project  
6 after that? Did you have any further involvement?

7 A. Not really. I went back to Mr. Burns and, you  
8 know, when I -- when I knew it was -- he wasn't --  
9 Mr. Moats was not coming back, I reported that to  
10 Mr. Burns. And I don't really know where it went  
11 from there or how long it was before our -- we  
12 started getting other people to come in and finish  
13 it.

14 MR. DAVIDSON: Okay. That's all the question I  
15 have, Mr. Hopkins. Thank you.

16 CROSS-EXAMINATION

17 BY MR. MCDADE:

18 Q. Mr. Hopkins, I just have a couple of questions  
19 for you. Are you familiar with the construction  
20 sign that was out on the Connector Park Project?

21 A. Vaguely.

22 Q. Okay. Do you recall it had a Moats logo on it?

23 A. I just remember that there was a project sign  
24 out there.

25 Q. Okay. Did you instruct anybody to go out and

1 paint over the Moats logo on that sign?

2 A. I did not.

3 Q. Did you do it yourself?

4 A. I did not.

5 Q. Do you have any knowledge as to who did that?

6 A. I do not.

7 Q. Do you have any knowledge as to why they did  
8 that?

9 A. I do not.

10 MR. MCDADE: Thank you. That's all I have.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MR. GOODWYN:

14 Q. Have you made any malicious or negative  
15 comments about Russell Moats or Moats Construction  
16 to anyone?

17 A. I have not.

18 Q. Nothing to Tim Cartee?

19 A. I don't -- I don't remember saying that. No.

20 MR. GOODWYN: That's all I have, Your Honor.

21 THE COURT: All right. Thank you, sir. You  
22 may step down.

23 THE WITNESS: Thank you.

24 (Witness excused.)

25 THE COURT: How many more witnesses do you

1 have?

2 MR. GOODWYN: Let's see...

3 THE COURT: Madam forelady, while they're doing  
4 that, y'all go ahead and take the afternoon break.

5 You need anything, let us know.

6 THE FORELADY: Thank you.

7 (At 3:28 p.m., jury left the courtroom.)

8 MR. GOODWYN: Rusty Burns, Leon Harman, and  
9 then I'll call Russell Moats for rebuttal.

10 THE COURT: You're not going to do that. We're  
11 going to have to cross that bridge. I'm not saying,  
12 you know, but right now, I don't think I'm going to  
13 let you do it. If you do, it's going to be very  
14 defined, and I want to hear it first. Okay.

15 MR. GOODWYN: Fair enough.

16 THE COURT: All right. Let's take a break.

17 MR. GOODWYN: Okay. How long, Your Honor? Did  
18 you say take a break?

19 THE COURT: Yes.

20 MR. GOODWYN: How long? How long do we have?

21 THE COURT: Ten minutes.

22 MR. GOODWYN: Okay.

23 (From 3:29 to 3:46 p.m., recess.)

24 THE COURT: All right. Anything from the  
25 plaintiff before we get started?

1 MR. GOODWYN: No, Your Honor.

2 THE COURT: From the county?

3 MR. DAVIDSON: No, Your Honor.

4 MR. MCDADE: No, Your Honor.

5 THE COURT: Bring them in.

6 (At 3:48 p.m., jury entered the courtroom.)

7 THE COURT: Call your next witness.

8 MR. GOODWYN: Thank you, Your Honor. I call  
9 Leon Harman.

10 THE CLERK: Would you please raise your right  
11 hand?

12 THE WITNESS: (Complying.)

13 THE CLERK: Do you swear or affirm the  
14 testimony you're about to give shall be the truth,  
15 the whole truth, and nothing but the truth?

16 THE WITNESS: I do.

17 THE CLERK: Please take a seat at the witness  
18 chair.

19 THE WITNESS: (Complying.)

20 LEON HARMAN,  
21 having been produced and first duly sworn as a  
22 witness on behalf of the Plaintiff, testified as  
23 follows:

24 DIRECT EXAMINATION

25 BY MR. GOODWYN:

1 Q. Mr. Harman, how are you?

2 A. Very well. Thank you.

3 Q. All right. What is your position with Anderson  
4 County?

5 A. I'm the county attorney.

6 Q. All right. And how long have you been county  
7 attorney?

8 A. I was, starting in August of 2014, the county  
9 attorney while I was with a law firm. I left the  
10 law firm in September of 2016 and became an employee  
11 of the county as in-house counsel.

12 Q. Okay. And does the county still use outside  
13 counsel for certain things?

14 A. For certain things, yes, sir.

15 Q. Okay. I see you have outside counsel today,  
16 Mr. Davidson, correct?

17 A. Yes, sir.

18 Q. Did you use Mr. Davidson for other tasks, as  
19 well, other than trials?

20 A. We have from time to time. Yes.

21 Q. Okay. All right. Tell about your involvement  
22 in the East-West Park Project. Did you -- were you  
23 familiar with it at all prior to the mediation?

24 A. Yes. My familiarity started prior to the  
25 mediation. I -- I think it started with a contact I

1 had for Mr. River Stillwell, who contacted me on  
2 behalf of Mr. Moats probably in the August or  
3 September 2017 time frame.

4 Q. All right. What was that conversation about?

5 A. It was about some issues that Mr. Moats had had  
6 with construction at the park.

7 Q. Okay. What -- what issues?

8 A. It had to do with getting the park A -- ADA  
9 compliant, issues with paving, issues regarding  
10 irritation. Just items that -- that were involved  
11 in constructing the park.

12 Q. All right. So -- but the ADA compliance issue,  
13 was one of the issues that was raised?

14 A. It was one is my recollection.

15 Q. All right. And what efforts did you make to  
16 try to resolve those issues?

17 A. Mr. Stillwell and I talked over the phone a  
18 couple of times. I know we met either a time or two  
19 and discussed those issues. And -- and they -- our  
20 meetings did not result in a resolution.

21 Q. All right. And did work continue to progress  
22 on the project despite the fact that there was this  
23 ongoing dispute?

24 A. I -- I do not know if work was ongoing at the  
25 time.

1 Q. Okay. All right. Did you have any other  
2 contact or involvement with Mr. Moats, his  
3 representatives, prior to the mediation?

4 A. Yes. Some time later, Mr. Lee Prickett became  
5 involved as a representative of Mr. Moats. And  
6 same, we -- we had discussions about those issues  
7 that Mr. Stillwell and I had talked about.

8 I -- I recall meeting with Mr. Prickett at  
9 least once, and it may've been more than once, and a  
10 number of phone calls that occurred prior to the  
11 mediation.

12 Q. Still -- still no resolution to these issues?

13 A. No. And my recollection is that Mr. Prickett  
14 requested mediation -- pre-arbitration mediation is  
15 my recollection.

16 Q. Okay. And, obviously, the county agreed,  
17 right?

18 A. Yes, we did.

19 Q. Okay. All right. Did you attend the  
20 mediation?

21 A. I did.

22 Q. Did you represent the county at the mediation?

23 A. I did.

24 Q. Did you have -- well, I think we need to --  
25 this is important. Generally speaking, at a

1 mediation, it's important to have representatives  
2 that have full authority to settle the case. Would  
3 you agree with that?

4 A. Yes. Up -- up to a point, I agree with that.

5 Q. Right. And I understand when you're dealing  
6 with the county or a governmental body and there's a  
7 county counsel that has to approve, you're not going  
8 not to have a whole county counsel come to a  
9 mediation. That's not realistic.

10 A. Correct. That's where I was headed ---

11 Q. Right.

12 A. --- with that answer.

13 Q. Right. I just wanted to explain that to the  
14 jury. That's -- that's not realistic. So you go  
15 into a mediation and you settle it with the  
16 understanding that the county must approve the terms  
17 of the settlement?

18 A. Correct.

19 Q. Is that -- is that right?

20 A. Correct.

21 Q. Is that your understanding coming into this  
22 mediation?

23 A. Yes. And -- and that's what that provision in  
24 the mediated settlement agreement ---

25 Q. Right.

1 A. --- was is my recollection.

2 Q. I'm going to ask you about that. Yes. So  
3 it can be a little awkward then if you're in the  
4 mediation, you don't have full settlement authority.  
5 You got to wait for the county to approve it. Did  
6 you get a certain amount of authority to go into the  
7 mediation with, with the understanding that you can  
8 probably get the county to approve it if it's within  
9 these parameters?

10 A. I think there were discussions about those  
11 parameters. I'm not going to go into those  
12 discussions ---

13 Q. And I'm not asking.

14 A. --- because they are protected by privilege ---

15 Q. Absolutely.

16 A. --- and I cannot waive the privilege.

17 Q. I'm not asking you to. I'm just -- just asking  
18 you, when you went to the -- to the mediation, you  
19 did have some general authority to settle. So  
20 understanding that the county would likely approve  
21 what you settled?

22 A. We had those discussions. Yes.

23 Q. Okay. All right. And who else was present  
24 with the county for the mediation?

25 A. I only recollect Brian Richardson ---

1 Q. Okay.

2 A. --- being at the mediation with me.

3 Q. All right. Then, again, did he have any  
4 involvement in the terms of the settlement or was  
5 that all you?

6 A. We -- we had discussions during the course of  
7 -- of the mediation, and I probably had discussions  
8 with other employees of the county during the course  
9 of that mediation.

10 Q. Okay. You're the one that actually signed the  
11 mediated settlement agreement, though, correct?

12 A. I did.

13 Q. Okay. All right. And once the county counsel  
14 approved the agreement, then the terms of the  
15 agreement were binding on the county, correct?

16 A. Yes.

17 Q. Okay. Just kind of generally speaking from  
18 your experience being an attorney for the county  
19 both in the private sector and directly for the  
20 county, for the county to -- or for a project to  
21 commence, a project the size of this, does the  
22 county counsel have to approve it?

23 A. I -- I -- I believe the county counsel did  
24 approve this project.

25 Q. Okay.

1 A. I -- I couldn't tell you when. I -- I -- I  
2 don't recollect a time.

3 Q. So the East-West Project was approved by the  
4 county?

5 A. It -- it would -- the county counsel would  
6 likely have approved the bid.

7 Q. Okay. Fair enough. All right. Let's talk  
8 then about the mediated settlement agreement here.

9 First page, would you agree at least the first  
10 12 items relate to the East-West Park Project and  
11 then the paragraph 13 relates to the Toxaway  
12 Project, correct?

13 A. That appears to be the case. Yes.

14 Q. And then paragraph 14 ---

15 A. Fourteen relates to both of them, I believe.

16 Q. Okay. Fair enough. All right. So the  
17 paragraphs 1 and 2, looks to be this kind of an  
18 agreement as to what's been -- what the contract sum  
19 is and what's been paid. I don't think there's any  
20 dispute about that. Would you agree?

21 A. I don't know of a dispute about those numbers.  
22 I think they were calculated during the course of  
23 the mediation if you will.

24 Q. Sure. All right. Now, this paragraph 3,  
25 "Moats is entitled to an additional \$15,000 for

1 additional changes in the work." That paragraph was  
2 related to what? What was your understanding of  
3 what additional work that was related to?

4 A. My recollection is that it -- it was related to  
5 some work that had been perhaps mentioned in a  
6 previous proposed change order. It had to do with  
7 work related to a walkway from the phase 2 part of  
8 the project down to the East-West bike -- bike path  
9 or walking path.

10 Q. All right. And you've been here the whole  
11 trial. Well, I guess you left for a half a day to  
12 go tend to -- to your car, but you've been here for  
13 most of the time, right?

14 A. Except for a couple of hours, I believe.

15 Q. All right. So is this -- this is the section  
16 of the project you're referring to? Same one we've  
17 been talking about most of the time?

18 A. Yes. I -- I believe that was the part that was  
19 referred to.

20 Q. Okay. All right. And was it your  
21 understanding that if Mr. Moats did that work, he'd  
22 be entitled to that \$15,000?

23 A. That's -- that's basically what it says. Yes.

24 Q. Okay. I just want to make sure we're on the  
25 same page.

1 A. Provided he submitted back up for the \$15,000  
2 and a change order for the \$15,000.

3 Q. All right. Now, the change order says the  
4 change order itself would be issued by Anderson  
5 County?

6 A. Correct.

7 Q. Doesn't say Mr. Moats would submit the change  
8 order, right?

9 A. Well, no. It doesn't say he would submit the  
10 change order.

11 Q. Well, that's what you said. That's not what  
12 the document says, though, right?

13 A. Well, it doesn't say who will submit it.

14 Q. It doesn't? It says, "A change order for  
15 \$15,000 will be issued by Anderson County." Does  
16 that not mean Anderson County will issue the change  
17 order?

18 A. Once we had it, yes. I believe -- I believe  
19 that is what it means.

20 Q. Okay. All right. And you've heard the  
21 testimony today from Mr. Hopkins that Moats did come  
22 out and make the forms, move the pipe, and got ready  
23 to pour the concrete. And then realized it's not  
24 going to be ADA compliant yet again, and didn't want  
25 to pour the concrete just to have to tear it back

1 up. So did that work right there not count towards  
2 earning that \$15,000?

3 A. That would not have been my call to make.

4 Q. Okay. Whose call would it be?

5 A. Project management.

6 Q. Okay. All right. Generally speaking, with  
7 this -- with this mediated settlement agreement,  
8 you're the county attorney. I understand that your  
9 job is to, you know, represent and advise the  
10 county. You don't necessarily have authority to be  
11 acting on behalf of the county. Is that fair to  
12 say?

13 A. That's -- that's a fair -- fair -- fair  
14 statement. Yes.

15 Q. Okay. So whose responsibility was it to make  
16 sure that the terms of the settlement agreement were  
17 complied with by Anderson County?

18 A. That would've been handled through the  
19 administrator's office.

20 Q. Okay. And who is the administrator?

21 A. Mr. Rusty Burns.

22 Q. Okay. Did you give Rusty Burns a copy of this  
23 mediated settlement agreement after it was signed?

24 A. I -- I feel sure he had a copy of it after it  
25 was signed.

1 Q. All right. And do you know if he was made  
2 aware that the county counsel approved the  
3 settlement agreement?

4 A. Yes.

5 Q. All right.

6 A. He would've been at the county counsel meeting  
7 where the counsel did approve it.

8 Q. Okay. The county administrator is always at  
9 the county counsel meetings?

10 A. Yes, sir.

11 Q. Okay.

12 A. I've only known him to miss one the entire time  
13 I've been the county attorney.

14 Q. Fair enough. I would think he'd be there too.  
15 All right. And do you know -- well, take that back.  
16 I'm going to show you what's been marked as Tab 19  
17 to Defendant's Exhibit 1. This is the April 25,  
18 2018, letter from office of the county attorney.  
19 This is from you, right?

20 A. Correct.

21 Q. To Mr. Moats' attorney, Lee Prickett, at the  
22 time saying, "Here's the check for \$26,000. Here's  
23 the notice to proceed," right?

24 A. Correct. And I think -- I think that was  
25 attached to the letter and sent to Mr. Prickett.

1 Q. Yeah, these are the attachments. The notice to  
2 proceed is attached and then the check, correct?

3 A. Yes, sir.

4 Q. Who wrote this check?

5 A. Can you drop it down just a little bit?

6 Q. Oh, I'm sorry. You can't see it at all, can  
7 you?

8 A. That's -- that's Mr. Jason Phillips, the county  
9 treasurer.

10 Q. Okay. He signed it. He wrote it out, as well?

11 A. I don't know who wrote it out. I -- I believe  
12 that to be his signature, though.

13 Q. Okay. And who directed him to write this  
14 check?

15 A. That would have probably come through the  
16 finance department.

17 Q. All right. And who's in the finance  
18 department?

19 A. Ms. Davis is -- is the chief financial officer  
20 of the county.

21 Q. Rita -- Rita Davis? Is that her name?

22 A. Ms. Rita Davis. Yes, sir.

23 Q. Okay. And does she have authority to write --  
24 write the checks that would satisfy the county's  
25 obligations of the mediated settlement agreement?

1 A. No. She does not write the checks. She  
2 provides the -- the information to the treasurer who  
3 -- who actually prepares the checks.

4 Q. Okay. So she tells the treasurer to write the  
5 checks. Well, who tells Rita Davis what -- what to  
6 tell the check writer?

7 A. That -- that would have been provided through  
8 Mr. Burns. I may have even provided her with --  
9 with a copy of the -- the mediated settlement  
10 agreement upon which to cut the check.

11 Q. All right. Did you have authority to tell Rita  
12 Davis to issue checks?

13 A. At the direction of the county administrator, I  
14 would have. Yes, sir.

15 Q. Okay. So if Mr. Burns asked you to tell Rita  
16 Davis, then that's authority?

17 A. Yes.

18 Q. Okay. So at the end of the day, though, it  
19 sounds like you're saying the ultimate authority for  
20 ordering these checks to be written was from Rusty  
21 Burns?

22 A. Well, the mediated settlement agreement had  
23 been approved by the county counsel. So you could  
24 say it was the county counsel who authorized this.

25 Q. All right. Okay. So if the county counsel

1 authorized this \$26,000 check on April 24th of 2018,  
2 why wasn't a \$50,000 check also cut about the same  
3 time?

4 A. There -- there was -- there was not a time  
5 period stated in this agreement for providing the  
6 \$50,000 check.

7 Q. Okay.

8 A. If you will -- I can refer you to paragraph 6.

9 Q. Sure.

10 A. It provides there that Moats will be paid the  
11 lump sum of 26,000 and some dollars on or before the  
12 start date set before -- set forth in the notice to  
13 proceed.

14 Q. Sure.

15 A. And there's no language like that in the  
16 \$50,000 paragraph.

17 Q. Right. So that meant the county had to pay  
18 that \$50,000 by when?

19 A. There's -- I -- I think our intention was that  
20 -- that Mr. Moats would complete the East-West  
21 Project, and then those payments would be made once  
22 he finished the \$15,000 provision in paragraph 3.

23 Q. It doesn't say that in the agreement, does it?

24 A. That's not specifically in there, but there --  
25 there is -- there is in paragraph 6 a time period to

1 pay the \$26,000.

2 Q. Oh, I agree with you on that, but there is no  
3 -- just because it doesn't -- just because it says  
4 there's no time deadline to pay the \$50,000, does  
5 that mean it doesn't have to be paid at all?

6 A. No. That's not what I said.

7 Q. You said -- you said it had to be -- it was  
8 going to be paid at the completion of the job.

9 A. Upon completion of the job.

10 Q. And it doesn't say that either, does it?  
11 Nothing in the agreement mentions that, does it?

12 A. Can you scroll me up on the ---

13 Q. Yeah, which paragraph do you want to look at?  
14 Go down?

15 A. Yes.

16 Q. Sorry. Yeah, that's got all 12 paragraphs.

17 A. No. There's -- there's not a statement in  
18 there that I see that says it will be paid at the  
19 conclusion of the job, but we would've paid that  
20 when -- when the job was concluded and -- and the  
21 retainage monies would've been paid.

22 Q. I'm not asking what you would've done. I'm  
23 asking what the agreement requires. It requires you  
24 to pay the money -- the county to pay the money for  
25 delay damages with no other conditions attached.

1           Would you agree with me on that?

2           A.     It says he shall be an entitled to an  
3           additional \$50,000 for delay damages.  That's  
4           specifically what it says.

5           Q.     Right.  And that doesn't mean pay it upon  
6           completion of the job, does it?  It doesn't say that  
7           at all.

8           A.     It doesn't mean pay it at the -- on or before  
9           the start date set forth in the notice to proceed.

10          Q.     And I'm not suggesting that it does.  I'm just  
11          saying two years, is that enough time to get that  
12          check paid?

13          A.     Well, the project never was completed.

14          Q.     Again, why do you keep saying it's contingent  
15          upon the payment of the completion of the project?

16          A.     Well, that's what the settlement agreement was  
17          -- was intended to do was to get the project  
18          completed.

19          Q.     Well, you're the county attorney.  If you  
20          didn't get the county's intentions in the agreement,  
21          whose fault is that?

22          A.     I don't know that it's anybody's fault.

23          Q.     Is it Mr. Moat's fault?

24          A.     I didn't say it was anybody's fault.

25          Q.     Okay.  But it's not in there.  If those were

1 your intentions to have the \$50,000 contingent upon  
2 the completion of the work, it's not in there,  
3 right?

4 A. No. It doesn't say contingent upon anything.

5 Q. Exactly.

6 A. Nor does it provide a date to ---

7 Q. Sure.

8 A. --- for it to be paid.

9 Q. So that means you don't have -- you can just  
10 put whatever contingencies you want. Is that what  
11 you're saying?

12 A. No. I didn't say we could add whatever  
13 contingencies we wanted.

14 Q. Is that not what you're doing, though?

15 A. I don't think it is. I think we had a specific  
16 date to get this project completed. Thirty calendar  
17 days from the start date to get it finished up and  
18 completed.

19 Q. Okay.

20 A. And had it been done, these amounts would've  
21 been paid.

22 Q. Okay. Let me ask you, was there a concern at  
23 the -- at the mediation about the possibility that  
24 county counsel would approve the settlement for the  
25 East-West Park Project, but not the Toxaway Mill

1 Project or vice versa?

2 A. I signed a confidentiality agreement as you do  
3 with any mediation. I -- I'm not going to get  
4 into the ---

5 THE COURT: Stop. Let me see the attorneys up  
6 here.

7 (Sidebar discussion.)

8 BY MR. GOODWYN:

9 Q. All right. Looking at the first page here. I  
10 think we agree that the first page relates to the  
11 settlement terms of the East-West Park Project, not  
12 the Toxaway Mill Project. It's the East-West Park  
13 Project, the first 12 items.

14 A. Correct.

15 Q. Okay. And then item 11 states that the  
16 Anderson County counsel or the agreement rather is  
17 -- the above agreement, the East-West Park Project  
18 settlement agreement, is subject to Anderson County  
19 counsel approval at their April 17, 2018, counsel  
20 meeting, right?

21 A. Correct.

22 Q. Okay. So that paragraph 11 states that the  
23 county counsel must prove -- approve the East-West  
24 Park Project portion of the settlement, correct?

25 A. That's what that paragraph says.

1 Q. Okay. Paragraph 13 then says, "The parties  
2 further agree that subject to Anderson County  
3 counsel's approval of the East-West Park Project,  
4 Anderson County must agree to the following  
5 settlement of the Toxaway Project."

6 A. Can you drop that down for me?

7 Q. Yep.

8 A. Yes. I see that line.

9 Q. All right. I'm reading that to mean that the  
10 county -- if the county approves the settlement of  
11 the East-West Park Project, then the parties agree  
12 to settle Toxaway as such. Is that not your  
13 reading?

14 A. When you say approve the East-West Park  
15 Project, are you talking about the approval of the  
16 first 12 items in the agreement?

17 Q. Right.

18 A. No. That's not my reading of that.

19 Q. Okay. All right. So what is your reading of  
20 it?

21 A. My reading of that is that once the East-West  
22 Park Project is completed within 30 days, then this  
23 will -- we will agree to these items ---

24 Q. All right.

25 A. --- for the Toxaway Mill site.

1 Q. It doesn't say that at all though, does it?  
2 Does it say if the -- if the East-West Park Project  
3 is completed within 30 days, then we'll settle the  
4 Toxaway Project and such? It doesn't say that.

5 A. No. It says county counsel's approval of the  
6 East-West Park Project, which we could've taken back  
7 to county counsel.

8 Q. So at the end of a project such as this, I  
9 understand the county counsel approves the project  
10 at the beginning to approve the spending of the  
11 money for the project. Does the counsel also have  
12 to approve the end of it?

13 A. (No response.)

14 Q. What is there to approve at the end?

15 A. I don't know that we approve typical projects  
16 at the end, but -- but we don't typically have  
17 mediated settlement agreements for projects. I --  
18 this might be the first one that I recall since I've  
19 been the county attorney.

20 Q. Okay. Would you agree with me, though, that  
21 paragraph 13 does not say that subject to Anderson  
22 County counsel's approval of the completion of the  
23 East-West Park Project? It just says approval of  
24 the East-West Park Project.

25 A. Correct.

1 Q. Now -- and there is no other provision in the  
2 agreement that says this Toxaway portion of the  
3 agreement is subject to approval of county counsel.

4 A. No. It was all in one document.

5 Q. Well, I know it's all in one document. I'm  
6 just saying paragraph 11 says the above agreement is  
7 subject to Anderson County counsel approval.

8 The Toxaway portion is below that, which in my  
9 mind, at least, it would not be part of it. Is that  
10 not your interpretation?

11 A. I think the counsel was approving both -- all  
12 14 paragraphs when -- when it approved this mediated  
13 settlement agreement.

14 Q. Okay. All right. Would you agree with me that  
15 Anderson County never issued -- never rescinded this  
16 termination letter?

17 A. I do not recall us doing that. No.

18 Q. All right. And did Anderson County do any of  
19 the other items it was required to in paragraph B --  
20 or 13(b) through (i)?

21 A. Not that I recall.

22 Q. All right. And, again, who was responsible for  
23 making sure that the county complied with the  
24 provisions of the mediated settlement agreement with  
25 respect to the Toxaway Mill Project?

1 A. I think that would have been through the  
2 administrator's office.

3 Q. Rusty Burns?

4 A. Yes, sir.

5 Q. Okay. All right. Was a -- any type of change  
6 order issued to you from Lee Prickett, Mr. Moats'  
7 attorney?

8 A. I think I have -- I think I have seen a change  
9 order regarding the \$15,000.

10 Q. Okay. All right. Did you file a claim on  
11 Moats Construction's bond after -- after Mr. Moats  
12 stopped working on the East-West Park Project?

13 A. Personally, I did not. No.

14 Q. Did somebody on behalf of the county?

15 A. I believe -- I believe a letter was sent to the  
16 bonding company.

17 Q. Is this the copy of that letter you're  
18 referring to?

19 A. Yes, sir.

20 Q. Why was this letter sent to Mr. Moats' bonding  
21 company?

22 A. My recollection is this later is dated July the  
23 20th. My recollection is there was a time  
24 requirement that we had to notify the bonding  
25 company if we were going to make a claim.

1 Q. Okay. And this is a letter making a claim  
2 against Mr. Moats' bond?

3 A. It doesn't specifically say we're making a  
4 claim against his bond.

5 Q. What does it say?

6 A. It says, "We're notifying the bonding company  
7 and that the county is undertaking to complete the  
8 work called for in the contract, and we will provide  
9 this information to you for your consideration and  
10 use. We will update you as the work is completed."

11 Q. All right. Did you provide the bonding company  
12 any information as you suggested you would in that  
13 letter?

14 A. I do not know.

15 Q. Did you -- did you ---

16 A. I did not. I personally did not.

17 Q. All right. Well, do you think you would've  
18 been involved as the county attorney in providing  
19 information on a bond claim?

20 A. I would -- I would imagine so.

21 Q. Okay. Is there anybody else -- are there any  
22 other county attorneys other than you?

23 A. Not at this time.

24 MR. GOODWYN: Okay. All right. I'd like to  
25 mark this as the next plaintiff's exhibit. Move to

1 have Plaintiff's Exhibit 42 admitted, Your Honor.

2 THE COURT: Any objection?

3 MR. DAVIDSON: No objection.

4 MR. MCDADE: No objection.

5 THE COURT: Admitted without objection.

6 (Plaintiff's Exhibit No. 42 was received into  
7 evidence.)

8 BY MR. GOODWYN:

9 Q. Do you know what affect -- what affect this  
10 type of letter has on a contractor's ability to get  
11 bonds?

12 A. I personally do not, no.

13 Q. What is your understanding of who recommends  
14 for approval a capital project for county counsel?  
15 What is that process?

16 A. I'm not sure which department that might  
17 generate out of in the county. It doesn't come from  
18 the county attorney's office.

19 Q. Okay. Will the county -- or maybe I should ask  
20 it this way: Is it improper for county counsel to  
21 approve a project after it's already started?  
22 Should they be approving it before it actually gets  
23 started?

24 A. Are you talking about any project that the  
25 county undertakes, any capital project that the

1 county undertakes?

2 Q. Yes.

3 A. I, quite frankly, am not real sure what all  
4 might fall within a capital project the way -- the  
5 way you asked the question. I know that there are  
6 limitations of monetary amounts that we are required  
7 to take to county counsel for approval.

8 Q. All right. This East-West Park Project, that  
9 was one of the types of projects that needed to be  
10 approved?

11 A. It would have gone to county counsel for  
12 approval. Yes, sir.

13 Q. All right. Did you ever meet with Russell  
14 Moats individually about ---

15 A. No.

16 Q. --- this issue?

17 A. No, sir.

18 Q. Would the county ever use Lee Prickett or his  
19 firm prior to the East-West -- or his involvement  
20 with this East-West Park Project?

21 A. Did the county use his firm?

22 Q. Right.

23 A. Not that I'm aware. No, sir.

24 Q. All right. What about since -- since he  
25 stopped being Mr. Moats' attorney?

1 A. No, sir. I have -- I have been involved with  
2 them in one other matter, but it was not -- they  
3 were not representing the county.

4 Q. I understand. Was there a -- would there have  
5 been a separate surety bond for both the Toxaway  
6 Project and the East-West Park Connector Project?

7 A. I would think so. I have -- I -- I do not know  
8 for sure, though.

9 Q. Would you -- if a bonding company asked for a  
10 status of a -- of a job, would that run through your  
11 office sometimes?

12 A. I don't recall ever corresponding with a  
13 bonding company about a job.

14 Q. Who is Robert Carrol? Is it Robert Carrol?

15 A. He's -- yeah, Mr. Carrol is -- is with the  
16 county. I'm trying to think of his exact title. I  
17 can't come up with it at the moment, but he's  
18 involved with purchasing, so he would be involved  
19 with bidding and -- and contract matters.

20 Q. Okay.

21 A. I think he's -- I think his title is central  
22 services manager. Might not have that exact, but I  
23 think it's -- that -- that's his title.

24 Q. All right. Do you recognize this document?

25 A. No, sir. I don't think I've ever seen that

1 document before.

2 Q. Do you recognize this signature down here?

3 A. That appears to be Mr. Carrol's signature.

4 Q. Okay.

5 A. It looks somewhat like mine ---

6 Q. Okay.

7 A. --- not too legible.

8 Q. Right, and mine. Is this type of record kept  
9 in the ordinary course of business with Anderson  
10 County?

11 A JUROR: We couldn't hear your question.

12 MR. GOODWYN: I'm sorry.

13 BY MR. GOODWYN:

14 Q. Is this type of record kept in the ordinary  
15 course of business in Anderson County?

16 A. I would think so, but it's not maintained by  
17 the county attorney's office.

18 MR. GOODWYN: Fair enough. Your Honor, let me  
19 show this. This would be 43. I ask that Exhibit 43  
20 be admitted into evidence.

21 A JUROR: Could that Exhibit be put up on the  
22 projector?

23 THE COURT: Ma'am?

24 A JUROR: Could that Exhibit 43 be put up on  
25 the projector?

1 THE COURT: Not until it's put into evidence.  
2 They can't put anything up in evidence until -- up  
3 on the projector until it's in evidence. Okay?

4 A JUROR: Okay.

5 MR. GOODWYN: Your Honor, I move to have  
6 Exhibit 43 admitted.

7 THE COURT: Any objection?

8 MR. DAVIDSON: No objection.

9 THE COURT: Any objection?

10 MR. MCDADE: No objection.

11 THE COURT: Forty-three is admitted without  
12 objection.

13 (Plaintiff's Exhibit No. 43 was received into  
14 evidence.)

15 BY MR. GOODWYN:

16 Q. Just to show the jury what we're talking about  
17 here. This is a document, Direct Surety, related to  
18 Moats Construction on the Toxaway Mill Project; is  
19 that right?

20 A. Are you asking me?

21 Q. Yes.

22 A. Could you ask that again?

23 Q. Yeah. It looks to be a project status  
24 request up here from Direct Surety ---

25 THE COURT: Can you clarify that? It looks a

1 little blurry.

2 MR. GOODWYN: Yeah, let me try to scan out and  
3 zoom back in a little bit and see if that works.  
4 That looks better. Yeah.

5 BY MR. GOODWYN:

6 Q. So does it appear to be a project status  
7 request from Direct Surety?

8 A. That's what's stated at the -- at the top of  
9 the document.

10 Q. All right. And you said -- you said Robert  
11 Carrol works for central services?

12 A. Yes, sir.

13 Q. And title down here, does that say central  
14 services DIR for director?

15 A. I think it is. Yes.

16 Q. Okay. Would that be, again, Robert Duval's  
17 signature?

18 A. Robert Carrol.

19 Q. Robert Carrol. Excuse me. All right. What  
20 does he write in the comment section?

21 A. It says, "Contractor failed to meet their  
22 obligations as required by mediation."

23 Q. Okay. All right. And with respect to the  
24 Toxaway Mill Project portion of the settlement  
25 agreement, what did -- what did Moats Construction

1 fail to do?

2 A. Well, they failed to complete the East-West  
3 Park Project.

4 Q. So they -- when I asked you what Moats failed  
5 to do with respect to the Toxaway Mill Project, you  
6 say he failed to complete the East-West Park  
7 Project. Is the East-West Park Project part of the  
8 Toxaway Mill Project?

9 A. No. They're two separate projects, but the  
10 introduction to paragraph 13 says, "The parties  
11 further agree that subject to Anderson County  
12 counsel's approval of the East-West Park Project,  
13 Anderson County and Moats Construction agree on the  
14 following settlement terms."

15 Q. Right. And Anderson County had already  
16 approved -- approved the East-West Park Project at  
17 the beginning and -- correct?

18 A. Well, they -- they had approved the -- the  
19 project initially. This, I think, refers to this  
20 settlement agreement and -- and getting the  
21 East-West Park Project completed.

22 Q. Okay. It doesn't say that, but that's what you  
23 think it means?

24 A. That's what I believe it means.

25 Q. Okay. All right. Well, other than that, is



1 completed.

2 Q. Okay.

3 A. And that would trigger then the remainder of  
4 the -- of the agreement.

5 Q. Now, let's -- let's look at that for a second.  
6 So this is -- the date of this agreement -- the date  
7 of the agreement is what?

8 A. The 29th day of March, 2018.

9 Q. All right. And the approval of the settlement  
10 agreement was going to be done by the county by what  
11 date according to Number 11?

12 A. April 17, 2018. And I believe that is the date  
13 on which the county counsel approved the agreement.

14 Q. Okay. So paragraph 5 says that Moats will  
15 remobilize onto the -- and we're talking about the  
16 East-West Project, correct?

17 A. Correct.

18 Q. All right. Moats will mobilize onto the  
19 project on the start date not before 4/17/18, which  
20 is the date of the county counsel meeting, correct?

21 A. Right.

22 Q. All right. And that -- so that start date will  
23 be in a notice to proceed issued by Anderson County  
24 and the work will be completed in 30 days, correct?

25 A. Correct.

1 Q. Now, so 30 days would be -- well, let me ask  
2 you. Exhibit 5 -- excuse me -- Defendant's Exhibit  
3 1, Tab 5. I said it wrong. It's not Tab 5. It's a  
4 later tab. Let me get to it. Tab 19. Defendant's  
5 Exhibit 1, Tab 19, do you recognize this letter?

6 A. Yes, sir.

7 Q. Okay. What is that letter?

8 A. That's a letter dated April the 25th, 2018,  
9 from me to Mr. Lee Prickett, enclosing the notice to  
10 proceed along with a check to Moats Construction in  
11 the amount of \$26,155.89.

12 Q. Okay. Does it provide when the -- when the  
13 30-day period starts?

14 A. It says this notice in payment under the  
15 mediated settlement now starts the 30-day period to  
16 conclude the work for phases 1 and 2 of the  
17 East-West Park.

18 Q. Okay. Now, the 30-day period, assuming it  
19 happens, will be when? End of May?

20 A. On or about May the 25th, I believe.

21 Q. Okay. Let's flip over to the sec -- I'm back  
22 on Defendant's Exhibit 1, Tab 4, again, the mediated  
23 settlement agreement.

24 A. Correct.

25 Q. Can you -- is that legible? Can you see that?

1 A. I can see that.

2 Q. Okay. If you would, look at paragraph 13(c)  
3 for me.

4 A. Correct.

5 Q. What does that provide?

6 A. It says, "Moats will remobilize on the project  
7 on or after June 1, 2018, as directed by the notice  
8 to proceed issued by Anderson County."

9 Q. Okay. So he cannot -- he cannot mobilize onto  
10 the Toxaway Project -- Moats Construction cannot  
11 mobilize on the Toxaway Project until June the 1st  
12 of 2018 or after?

13 A. Correct.

14 Q. Okay. And that would be after the completion  
15 date called for in -- in paragraph 5 of the mediated  
16 settlement agreement, correct?

17 A. Yes, sir.

18 Q. Okay. Now, you were -- you were asked some  
19 questions about the other payment provisions in the  
20 mediated settlement agreement as it applied to  
21 East-West Parkway, correct?

22 A. Yes.

23 Q. Okay. Under this agreement, and was it the  
24 county's intention to pay the \$15,000 change order  
25 for additional work when the change order and back

1 up was submitted and the work was done?

2 A. When the work was done, yes ---

3 Q. Okay.

4 A. --- if we had the back up and the change order.

5 Q. All right. It was the county's intention to  
6 pay it?

7 A. Yes, sir.

8 Q. All right. And you had agreed to pay it in the  
9 settlement agreement?

10 A. Correct.

11 Q. All right. Was it the county's intention to  
12 make the payment of the \$50,000 for delay damages?

13 A. Once the work was completed, yes, sir.

14 Q. Which had the work been completed, would've  
15 been timely, it would've been completed when, in  
16 30 days?

17 A. In 30 days from the date of my letter.

18 Q. The start date, right?

19 A. Correct.

20 Q. So late may. Some time in late May?

21 A. Correct.

22 Q. All right. Now, paragraph 6, the payment of  
23 the \$26,000, was paid, correct?

24 A. It was. Yes, sir.

25 Q. Okay. As the county -- as the county attorney,

1 can -- can you tell us if the county felt that by  
2 not completing the East-West Project that that was a  
3 breach of the mediated settlement agreement by Moats  
4 Construction?

5 A. By not completing the project?

6 Q. Yes, sir.

7 A. Yes.

8 Q. That was a breach of the agreement?

9 A. Yes, sir.

10 Q. Okay. And by the county -- and -- and so the  
11 county did not make the other payments because the  
12 work had not been completed; is that correct?

13 A. Correct.

14 MR. DAVIDSON: Okay. That's all the questions  
15 I have, Your Honor.

16 MR. MCDADE: I don't have any questions, Your  
17 Honor.

18 THE COURT: Redirect.

19 MR. GOODWYN: Nothing further.

20 THE COURT: Thank you, sir. You may step down.

21 (Witness excused.)

22 THE COURT: All right. Madam forelady, ladies  
23 and gentlemen of the jury, it's probably a good time  
24 to call it day, don't you think? Unless you want to  
25 keep going. Do you want to keep going?

1 THE FORELADY: No. It's okay.

2 THE COURT: If you would, put your pads in the  
3 jury room. 9:30 in the morning good for everybody?

4 THE FORELADY: Yes.

5 THE COURT: I remind you not to see, hear, or  
6 listen to or talk to anybody. See you in the  
7 morning.

8 (At 4:44 p.m., jury left the courtroom.)

9 THE COURT: You have one more in your case in  
10 chief?

11 MR. GOODWYN: Yes, sir. Unless you let me ---

12 THE COURT: We'll cross that bridge.

13 MR. GOODWYN: Yeah, we'll talk about that.

14 THE COURT: Do you have -- for my planning  
15 purposes, I'm not going to hold you to it, but from  
16 your perspective, how many witnesses do you think  
17 you may call?

18 MR. DAVIDSON: I intend -- I think I'm going to  
19 rely on what I've got from my witnesses on cross for  
20 most of it.

21 THE COURT: So you may not -- you may not  
22 present a case?

23 MR. DAVIDSON: No, I will. I mean, for what  
24 they said, I will need Rita Davis from the county.

25 THE COURT: Is she listed as a witness?

1           MR. DAVIDSON: She is. Mike Foreman, also  
2 listed. He's an employee of the county. And I  
3 think he may -- he may want to call him too, but he  
4 will be here in the morning. He has to be done  
5 tomorrow. He's got -- he's out of town Friday it at  
6 all possible.

7           THE COURT: I'm getting married Saturday. If  
8 y'all aren't done, I'm in trouble.

9           MR. GOODWYN: I say we get it to the jury by  
10 lunch maybe tomorrow.

11          THE COURT: You ain't going to get it to the  
12 jury by lunch tomorrow.

13          MR. GOODWYN: I think we can.

14          THE COURT: No chance. If you were arguing and  
15 charging in the morning, you would barely get  
16 through by lunch. Anyway, I'm not holding you to  
17 it. I'm just wanting to get a general idea. I  
18 think we'll probably finish testimony tomorrow for  
19 sure. Do you want to wait and make that call?

20          MR. MCDADE: No. I don't think I have anybody.  
21 Well, I don't know. Two of mine I need to call.

22          THE COURT: All right.

23          MR. MCDADE: If I did it on cross-examination,  
24 then I'm fine.

25          THE COURT: And I'm not holding you to it. I

1 just want to kind of get an idea.

2 All right, guys. Mr. Goodwyn, anything before  
3 we leave?

4 MR. GOODWYN: No, Your Honor.

5 THE COURT: Mr. Davidson?

6 MR. DAVIDSON: No, Your Honor.

7 MR. MCDADE: No, sir.

8 THE COURT: Can y'all give me about five  
9 minutes back here to chat with you for a minute?

10 MR. DAVIDSON: Sure.

11 MR. GOODWYN: One other thing I just wanted to  
12 ask -- my client was wondering. When you let that  
13 juror go, did the other group know why he was let  
14 go?

15 THE COURT: Yeah.

16 MR. GOODWYN: Okay.

17 THE COURT: They're are all in there and I -- I  
18 looked at him and I just basically said, you know,  
19 "I'm not trying to embarrass you. I don't want to  
20 bring you out there and embarrass you, but you've  
21 been sleeping." And I said, "I understand. I'm not  
22 trying to give you a hard time. A lot of this stuff  
23 is not the most interesting stuff in the world, but  
24 I got to let you go and put somebody else in your  
25 place."

1 MR. GOODWYN: Okay.

2 THE COURT: All right. Can I see the lawyers  
3 for a second?

4 (At 4:49 p.m., proceedings concluded for the  
5 day.)

6 April 18, 2024

7 THE COURT: Good morning. Anything from the  
8 plaintiff before we get started?

9 MR. GOODWYN: No, Your Honor.

10 THE COURT: You said no?

11 MR. GOODWYN: No, Your Honor.

12 THE COURT: Mr. Davidson?

13 MR. DAVIDSON: No, Your Honor.

14 MR. MCDADE: No, Your Honor.

15 THE COURT: Would you bring the jury in?

16 (At 9:37 a.m., jury entered the courtroom.)

17 THE COURT: Good morning. How is everyone?

18 THE JURORS: (Collectively:) Great.

19 THE COURT: Great. Let me ask you before we  
20 get started. During the break, has anyone read,  
21 heard, or seen anything about this case? If so,  
22 would you raise your hand.

23 THE JURORS: (No responses.)

24 THE COURT: Has anyone spoken to you about this  
25 case or have you spoken to anyone about this case?

1 If so, would you raise your hand.

2 THE JURORS: (No responses.)

3 THE COURT: Perfect. Thank you very much.

4 Would you call your next witness?

5 MR. GOODWYN: Plaintiff calls Rusty Burns, Your  
6 Honor.

7 THE CLERK: If you would, please raise your  
8 right hand.

9 THE WITNESS: (Complying.)

10 THE CLERK: Do you swear or affirm the  
11 testimony you're about to give shall be the truth,  
12 the whole truth, and nothing but the truth?

13 THE WITNESS: Yes, ma'am.

14 THE CLERK: Please take a seat at the witness  
15 stand.

16 RUSTY BURNS,  
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. Mr. Burns, how are you employed?

23 A. I'm employed by Anderson County.

24 Q. And what's your position with Anderson County?

25 A. County administrator.

1 Q. How long have you been the county  
2 administrator?

3 A. Fifteen years.

4 Q. And were you the county administrator during  
5 the East-West Park project and the Toxaway Mill  
6 Project that's involved in this case?

7 A. Yes, sir, I was.

8 Q. All right. The East-West Park Project, was it  
9 approved by the county at the beginning of the  
10 project before -- before it began?

11 A. Yes, sir, it was.

12 Q. And, also, was the Toxaway Mill Project  
13 approved by the county counsel?

14 A. Yes, sir.

15 Q. All right. What involvement did you have, if  
16 any, in the operations, the day to day operations of  
17 either of those projects?

18 A. Nothing day to day. General oversight.

19 Q. Okay. Were you aware of the issues that  
20 Mr. Moats had raised regarding ADA compliance at the  
21 East-West Park Project?

22 A. Yes, sir.

23 Q. And were you aware of all of design revisions  
24 that Natasha Sexton had to make to the design plans?

25 A. Yes, sir.

1 Q. All right. What -- what role, if any, did you  
2 have in the Toxaway Mill Project with respect to the  
3 permitting and the stop work order in any of those  
4 issues?

5 A. I would have to have approved the stop work  
6 order, but we've been trying to clean up all the old  
7 mill sites in Anderson County, so this was just one  
8 more that we were trying to clean up.

9 Q. Okay. Is the Toxaway Mill site cleaned up now?

10 A. Yes, sir.

11 Q. Okay. And did the county ultimately pull  
12 permits, the storm water and the asbestos permit to  
13 get it cleaned up?

14 A. I would assume so. Yes, sir.

15 Q. You don't -- you don't know that?

16 A. I would assume so. Yes.

17 Q. You don't know? You're assuming, but you don't  
18 know?

19 A. I'm assuming that we followed the law.

20 Q. I'm asking if you know. Well, again, I'm --  
21 I'm asking if you know. I'm not asking what you're  
22 assuming. Do you -- do you understand the  
23 difference?

24 A. I know that it has been cleaned up and it has  
25 been released for development by EPS. So, yes, sir,

1 I would assume that everything is in order.

2 Q. All right. Did you have any involvement with  
3 pulling the permits for the Toxaway Mill Project?

4 A. No, sir. I do not pull permits myself.

5 Q. All right. Did you have any involvement in  
6 replacing Matt Schell as the project director of the  
7 East-West Park Project with Brian Richardson?

8 A. Yes, sir, I did.

9 Q. Okay. Explain to the jury what -- what  
10 happened there. Why was there a replacement?

11 A. There seemed to be a clash of personalities. I  
12 thought a fresh face might alleviate some of the  
13 tension between the two.

14 Q. Okay. And -- and did it?

15 A. I don't think that Mr. Richardson had any  
16 issues while he was involved in the project.

17 Q. All right. So mission accomplished then,  
18 right?

19 A. That part of the mission was accomplished.  
20 Yes, sir.

21 Q. Right. Right. All right. So -- and, again, I  
22 know you were not the project manager. About how  
23 frequently would Brian Richardson report to you  
24 about what was going on with the East-West Park  
25 Project leading up to the mediation?

1 A. Periodically, but no set schedule.

2 Q. And did you -- what was your understanding of  
3 why this -- this final sidewalk that we've been  
4 talking about in phase 2 was not getting completed?

5 A. That there were disagreements on how that  
6 should be accomplished.

7 Q. Disagreements between who?

8 A. Against the county and Mr. Moats.

9 Q. Okay. And what was your understanding of what  
10 that disagreement was?

11 A. On whether something was ADA compatible or not.

12 Q. You mean the design plans?

13 A. Not necessarily the design plan. It could be  
14 the installation.

15 Q. All right. Well, the sidewalk I'm referring to  
16 I think -- I don't think anybody is disputing this.  
17 Mr. Moats never -- never poured it. He -- he put  
18 the forms in and measured what it would be if it --  
19 if it were poured, but never actually poured it.

20 A. That's my understanding. Yes, sir.

21 Q. Okay. And did you have an opinion as to  
22 whether or not it was an issue with the design plans  
23 not being ADA compliant or whether Mr. Moats' forms  
24 were not in compliance with the plans?

25 A. As I understand it, the forms were not in

1 compliance.

2 Q. All right. And who -- why do you believe that?

3 A. Because that's what I was told.

4 Q. Okay. All right. You understand that after  
5 Moats left the project, the designs were revised a  
6 couple of more times before it was finally laid  
7 down?

8 A. Yes, sir. I'm -- I'm aware that plans are  
9 constantly being revised. Yes, sir.

10 Q. All right. If the plan are so perfect, why  
11 were they being revised after Moats left?

12 A. I don't know. Maybe they had design issues  
13 when they actually began the process of pouring.

14 Q. Okay. Did somebody after -- well, let me back  
15 up a little bit. The testimony earlier was that  
16 Mike Duncan laid the final concrete sidewalk at the  
17 phase 2 of the East-West Park Project. Is that your  
18 understanding?

19 A. I understand that. Yes, sir.

20 Q. All right. And is it your understanding that  
21 he had to pour it -- it was pulled out once, twice,  
22 maybe three times?

23 A. I understood that from testimony given in this  
24 court. Yes, sir.

25 Q. All right. Before today, did you understand

1 that?

2 A. No, sir. I did not.

3 Q. This is a case going back to 2000 -- this is  
4 2018 when this was done, right?

5 A. Yes, sir.

6 Q. And all that time in the last six years, you  
7 haven't talked to anybody about what happened after  
8 Russell Moats left the job?

9 A. The job was completed. That was enough for me.

10 Q. Even after this lawsuit was filed, you know  
11 everything that Mr. Moats is asking, you still never  
12 went back and talked to anybody about what happened  
13 after Mr. -- Mr. Moats left?

14 A. The job was completed and so it wasn't  
15 necessary for me to go back and ask anybody  
16 anything. The park was open and people were  
17 enjoying it.

18 Q. All right. The county filed a -- sent a letter  
19 to Mr. Moats' bonding company claiming that the  
20 county was owed damages because of his work,  
21 correct?

22 A. Yes, sir.

23 Q. The county was claiming it was -- it was  
24 Mr. Moats' fault in all -- in all of this, correct?

25 A. I think it stated that the job was not

1 completed.

2 Q. Okay. And if it was -- if it was the design of  
3 the project that was the reason it wasn't completed,  
4 do you contend it's still Mr. Moats' fault it wasn't  
5 completed?

6 A. From what I understand, Mr. Moats left the job  
7 before it was completed.

8 Q. I don't think anybody is disputing that. That  
9 wasn't my question, though. My question is: If the  
10 reason the work wasn't completed was because the  
11 plans did not allow for an ADA compliant sidewalk to  
12 be constructed, how were you blaming Mr. Moats for  
13 that?

14 A. I'm not blaming anybody, but I don't know that  
15 that plans were not complete and ADA compliant.

16 Q. Well, you did blame Mr. Moats. You wrote a  
17 letter saying he left the job. He didn't do it.  
18 This is -- this is his fault for not finishing it.

19 A. No. The letter stated that the job was not  
20 complete.

21 Q. Right. But you're sending it to his bonding  
22 company, his insurance company implying, hey, he  
23 might be at fault. He left the job. He's the  
24 reason we might be asking you for money because he's  
25 to blame. Is that not the reason for the letter?

1 A. The reason for the letter is because the job  
2 was not completed.

3 Q. And what's the purpose in notifying his bonding  
4 company in the first place?

5 A. In case the county had to recoup money to  
6 finish the job.

7 Q. That would only be if Mr. Moats was at fault,  
8 correct?

9 A. We did not pursue that. We finished the job.

10 Q. All right. You finished the job. All right.  
11 Let's look at this letter. This is the letter that  
12 was sent to Mr. Moats' bonding company. Can you  
13 read it? Let me to zoom in a little bit.

14 A. Yes, sir. I can see it. Thank you.

15 Q. Second paragraph says, "This performance bond  
16 guarantees performance of the contract for the  
17 construction of the East-West Parkway Park. Work  
18 has commenced, but is no longer progressing. Moats  
19 Construction has informed Anderson County that it  
20 does not intend to complete the project. The  
21 parties participated in a mediation in late  
22 March 2018 to discuss and resolve the various claims  
23 and issues raised by the parties to do work to have  
24 the project completed."

25 All right. All of that's fair enough, right?

1 I don't think anybody is disputing that.

2 "Despite reaching an agreement during that  
3 mediation, Moats Construction now refuses to  
4 complete the project and has abandoned the project."

5 Is that not blaming Mr. Moats for the project  
6 not being completed?

7 A. I think it's a statement of fact that the  
8 project was not completed.

9 Q. No. It says Mr. Moats refuses to complete the  
10 project. It doesn't say the design plans don't  
11 allow him to complete the project. It says he's  
12 refusing to complete the project.

13 A. Yes, sir. That's exactly what it says.

14 Q. Without any explanation as to why, correct?

15 A. No, sir.

16 Q. All right. Let's -- let's kind of move onto  
17 the mediation. Do you participate in the mediation  
18 at all?

19 A. No, sir.

20 Q. Did you participate in the preparation for the  
21 mediation?

22 A. No, sir.

23 Q. So Leon Harman was the county representative --  
24 well, I guess Brian Richardson was the county  
25 representative, but Leon Harman was the county

1 attorney at the mediation?

2 A. Yes, sir.

3 Q. All right. Did Leon Harman give you a copy of  
4 the signed mediation agreement?

5 A. Yes, sir.

6 Q. And was it approved by the county counsel at  
7 that next county counsel meeting?

8 A. It was approved by county counsel. I think it  
9 was the next meeting, but it was definitely  
10 approved. Yes, sir.

11 Q. Okay. And this is the check, the \$26,000 check  
12 was issued ---

13 A. Yes, sir.

14 Q. --- on the 25th or so?

15 A. Yes, sir.

16 Q. So the county counsel would've had to approve  
17 it by then, right?

18 A. Yes, sir.

19 Q. Okay. All right. So let's look here. This is  
20 the mediated settlement agreement, agreed?

21 A. Yes, sir.

22 Q. All right. Get my calculator out here. All  
23 right. So the current -- excuse me -- the contract  
24 sum to date is 324,761.28. Is that -- that's what  
25 it says?

1 A. Yes, sir.

2 Q. What does that mean? Does that mean -- to me,  
3 it means if the project had been completed in full,  
4 that's how much would've been paid?

5 A. Yes, sir.

6 Q. Okay. But to date, it says Moats has been paid  
7 \$248,003.23, right?

8 A. Correct.

9 Q. All right. So that difference is 76,758.05 by  
10 my math. Does that sound about right?

11 A. Yes, sir.

12 Q. Okay. All right. Why -- well -- and would  
13 you -- was there any retainage withheld on this  
14 contract?

15 A. I believe there was. Yes, sir.

16 Q. Okay. Do you remember if it was 10 percent?

17 A. I think that's correct. Yes, sir.

18 Q. Okay. All right. So -- and this -- the  
19 \$50,000 in delay damages, that's not part of that  
20 contract sum, is it? That's just something the  
21 county agreed it owed because it was responsible for  
22 some delays?

23 A. My understanding. Yes, sir.

24 Q. Okay. All right. So let's -- let me ask you  
25 about this \$15,000 for additional changes in the

1 work.

2 A. Yes, sir.

3 Q. That's paragraph 3 that we've been talking  
4 about?

5 A. Correct.

6 Q. What was your understanding of what that  
7 \$15,000 was to be paid for?

8 A. Additional work.

9 Q. Okay. Fair enough. I believe I asked  
10 Mr. Harman yesterday if he received the change order  
11 from Mr. Moats' attorney. He said he did.

12 And I think Holt Hopkins testified Mr. Moats  
13 did come out and repair the pipe and put in the  
14 forms for the sidewalk, so he did some additional  
15 work, agreed?

16 A. I think -- I don't have -- I don't know whether  
17 he did all of the additional work or not.

18 Q. Well ---

19 A. My memory is foggy on that point.

20 Q. All right. And I will -- I think we all know  
21 he didn't pour that sidewalk.

22 A. Correct. Yes, sir.

23 Q. We know that because it wasn't going to be ADA  
24 compliant.

25 A. Correct.

1 Q. I don't that's an excuse, but he did some  
2 additional work, correct?

3 A. (Nonverbal response.)

4 Q. Was that a "yes"? I'm sorry.

5 A. I -- I think so. I'm not sure.

6 Q. Did Holt Hopkins tell you that he had done some  
7 additional work?

8 A. I don't recall that. No, sir.

9 Q. Okay. Did you hear testimony in this court  
10 today or yesterday about that?

11 A. Yes, sir.

12 Q. Okay. So now, at least at this point, your  
13 understand -- is it your understanding that he did  
14 do some additional work?

15 A. But not complete the work.

16 Q. I'm not -- I'm not asking.

17 A. Okay.

18 Q. I think we know he didn't complete the work ---

19 A. Yes, sir.

20 Q. --- but some additional work?

21 A. (Nonverbal response.)

22 Q. Okay. All right. And did -- did Leon Harman  
23 give you that change order he said he received?

24 A. I don't know whether I would've seen that  
25 change order. I would probably have to have signed

1 it.

2 Q. I'm assuming you didn't sign it?

3 A. Not if the work wasn't complete. No, sir.

4 Q. Okay. All right. Did you consider the fact or  
5 possibility that the reason the work wasn't complete  
6 was because the design plans were -- didn't allow  
7 for an ADA compliant sidewalk?

8 A. No, sir.

9 Q. Okay.

10 A. I considered the fact that the work was not  
11 complete.

12 Q. All right. That sounds like that's all you  
13 considered, right?

14 A. Yes, sir.

15 Q. All right. Let's talk about paragraph 4.  
16 "Moats shall be entitled to an additional \$50,000  
17 for delay damages."

18 Are -- well, let me ask you this first: Did  
19 you authorize the \$26,000 check to be issued?

20 A. That was really authorized directly by the  
21 actions of county counsel.

22 Q. All right. So when the -- so when the county  
23 counsel approved the settlement agreement, that was  
24 the authorization for whoever in the finance  
25 department to cut that check?

1 A. Yes, sir.

2 Q. Okay. So why wasn't the \$50,000 check cut at  
3 the same time?

4 A. Because I think work had to commence when the  
5 \$27,000, that that check was cut. That's when it  
6 commenced. I did not take that to mean that the  
7 50,000 would be cut at the same time.

8 Q. Okay. So did you -- it sounds like what you're  
9 saying is you determined when those checks were  
10 going to be cut; is that right?

11 A. The first one -- the first one was cut because  
12 it was stated in the mediation. The second one, the  
13 one that you're referring to is the 50,000 and it  
14 doesn't have a time period on it.

15 Q. Okay. So you can wait 10, 15, 20 years and pay  
16 it and it's totally fine?

17 A. No. I believe that he was given 30 days to  
18 complete the job, the remainder of the job. The  
19 intent was to pay him that during that part of the  
20 job.

21 Q. All right. Where in the mediated settlement  
22 agreement does it say anything about the \$50,000  
23 being contingent upon him finishing the job 30 days,  
24 anything like that?

25 A. Nowhere.

1 Q. Okay. So you just added that term yourself?

2 A. Yes.

3 Q. All right. The county, it's my understanding  
4 is that they -- all public parks such as the  
5 East-West Park Project needs to be ADA compliant?

6 A. Yes, sir.

7 Q. How long has that been true?

8 A. Since they passed the federal law.

9 Q. So since the ADA was passed ---

10 A. Yes, sir.

11 Q. --- the county has stuck -- striven to make all  
12 their parks ADA compliant?

13 A. We have striven to. Correct. Yes, sir.

14 Q. Okay. So when Mr. Moats was going back out  
15 after the mediation to try to finish this job up,  
16 was it important or necessary that the sidewalk he  
17 poured be ADA compliant?

18 A. Yes, sir.

19 Q. If he had poured a sidewalk that was not ADA  
20 compliant, should the county have asked him to tear  
21 it out and redo it in a way that is ADA compliant?

22 A. Yes, sir.

23 Q. Okay. I may have asked you this, but whose  
24 responsibility was it to pay this \$50,000 in delay  
25 damages? Was that yours or someone else's?

1 A. It was agreed to by the county counsel. I  
2 guess the timing of it would've been left up to me.

3 Q. All right. Is that deposition transcript still  
4 up there? If you could, turn to page 111. This is  
5 your deposition of October 26, 2022, correct?

6 A. I'm sorry. What was that page number again?

7 MR. GOODWYN: 111.

8 MR. MCDADE: Your Honor, I'd like to clarify.  
9 This is, I believe, the 30(b)(6) deposition, so he's  
10 there as a representative of the county. It's not  
11 technically his deposition.

12 MR. GOODWYN: Fair enough.

13 BY MR. GOODWYN:

14 Q. All right. Are you at page 111?

15 A. Yes, sir.

16 Q. All right. I'm going to read you -- I'm going  
17 to read -- I'm going to have you read a page and a  
18 half here. And I'll -- I'll read the questions and  
19 will you read the answers?

20 A. Yes, sir.

21 Q. All right. Question: Who was responsible for  
22 paying Moats Construction pursuant to that mediated  
23 settlement agreement?

24 A. The person who pays is the finance director  
25 upon the recommendation of someone.

1 Q. Okay. Who is the finance director?

2 A. Rita Davis, but she doesn't willy-nilly ---

3 Q. Right.

4 A. --- send out payments.

5 Q. Right. She has to be told?

6 A. Correct.

7 Q. Recommended by somebody?

8 A. Correct.

9 Q. Line 12.

10 A. Or is she -- or is she going by a contract and  
11 where she's -- where she receives an invoice or  
12 something like that.

13 Q. Okay. But she -- she physically cuts the  
14 check?

15 A. Yes.

16 Q. Who signs the check?

17 A. The treasurer signs the checks.

18 Q. Well, I'm still reading the transcript.

19 A. I'm sorry.

20 Q. Just -- my next question in the deposition on  
21 line 16 is, who signs the checks? What was your  
22 answer?

23 A. Well, a check like that, I would sign.

24 Q. All right. Okay. Would you be the one  
25 recommending that she cuts the check to?

1 A. Upon recommendation of somebody with the  
2 project. I just wouldn't sign off on a blank sheet  
3 of paper for fun.

4 Q. Sure. Sure. So you talked to your project  
5 manager and asked if it was appropriate to make ---

6 A. Yes.

7 Q. --- certain payments?

8 A. Yes.

9 Q. All right. And this case after the mediated  
10 settlement agreement, it would've been Holt Hopkins?

11 A. To the best of my recollection, it would have  
12 been Holt, but I just don't recall.

13 Q. Okay. If Holt Hopkins was the project manager  
14 at that point, that would've been the person who you  
15 would have been looking to?

16 A. Yes.

17 Q. All right. And if Holt told you don't make  
18 these payments, you would -- you wouldn't have made  
19 the payments. And if he ---

20 A. Nope.

21 Q. If he said make these payments, you would've  
22 made them?

23 A. Yes.

24 Q. All right. So at least back in 2022, you were  
25 saying Holt Hopkins had responsibility for this --

1 for the payments -- for the \$50,000 payment?

2 A. For the recommendation of the payment.

3 Q. All right. So if the county had agreed at the  
4 mediation and the county counsel had approved the  
5 payment of \$50,000, why does anybody need any other  
6 recommendation to pay -- to pay the \$50,000?

7 A. Are we talking about the \$15,000 change  
8 order ---

9 Q. Fifty.

10 A. --- or the \$50,000 change order?

11 Q. I know that sounds similar. I'm talking about  
12 paragraph for the \$50,000.

13 A. No.

14 Q. No what?

15 A. In that case, Mr. Hopkins would not be the  
16 person to recommend that, and I would have to sign a  
17 form that would go to the treasurer for the  
18 treasurer to sign Anderson County checks.

19 Q. All right. For that \$50,000?

20 A. Yes, sir.

21 Q. Okay. All right. As far as the county's  
22 commitments under the settlement agreement for the  
23 Toxaway Mill Project, the paragraph A, Anderson  
24 County will rescinded its termination ---

25 A. I can't see that, sir.

1 Q. Oh, I'm sorry. You're right. My fault. There  
2 you go. You got it? Under paragraph A, rescinding  
3 the termination letter, that's something you would  
4 do or is that something somebody other than you  
5 would do?

6 A. The way I understand that is that after the  
7 completion of the East-West Parkway Project, then we  
8 would return to county counsel and state that the  
9 project was complete and then we could proceed with  
10 the Toxaway Project.

11 Q. All right. Now, it doesn't say that in the  
12 agreement, does it?

13 A. The parties further agree that subject to  
14 Anderson County counsel's approval of the East-West  
15 Park Project, Anderson County and Moats Construction  
16 agree on the following settlement terms on the  
17 Toxaway Project.

18 Yes, sir. So that is after county counsel  
19 approves the East-West Parkway Project, we would  
20 begin with the Toxaway Project. Yes, sir.

21 Q. Well, the East-West Parkway Project has been  
22 approved at the beginning, right?

23 A. But it hadn't been completed.

24 Q. Sure. I think -- at least what I understood  
25 from Leon Harman yesterday is that the completion of

1 the project is never taken to county counsel.

2 That's -- if it's completed, it's completed.

3 There's nothing to approve.

4 A. Well, in this one it says the parties further  
5 agree that subject to Anderson County counsel's  
6 approval of the East-West Park Project, which means  
7 the completion of the East-West Park Project, then  
8 Toxaway can move forward is my understanding and the  
9 way I read that.

10 Q. All right. But the word completion is not in  
11 there, correct?

12 A. But the previous language before states that  
13 the East-West Parkway Project needs to be completed,  
14 then we would commence with the Toxaway Project.

15 Q. Where does it say that?

16 A. Well, that's the implication that I receive  
17 from that.

18 Q. All right. But it's certainly not explicitly  
19 stated in the agreement, correct?

20 A. The parties further agree subject to Anderson  
21 County counsel's approval of the East-West Park  
22 Project, Anderson County and Moats Construction  
23 agree on the following settlement terms on Toxaway.

24 I read that to believe that the Anderson County  
25 counsel had to accept the East-West Parkway Project.

1 Q. All right. It doesn't explicitly say that,  
2 though. Would you agree with me on that?

3 A. It's clear to me, sir.

4 Q. Just answer my question. Does it explicitly  
5 say that?

6 A. It does to me, sir.

7 Q. Okay. All right. I want to ask you a couple  
8 of questions about payments on -- for work that  
9 contractors do on projects generally.

10 My understanding of the process is when a  
11 contractor performs some work, they'll submit a pay  
12 application, then it's approved, and then it's paid.  
13 Is that the right -- did I explain that correctly?

14 A. Yes, sir.

15 Q. All right. So Mike Duncan performed this  
16 sidewalk work on the East-West Park Project after  
17 Mr. Moats left, correct?

18 A. Yes, sir.

19 Q. And he was paid for that work?

20 A. Yes, sir.

21 Q. All right. And this is a summary that the  
22 county has -- a summary of the payments on the  
23 East-West Park Project that the county has submitted  
24 into evidence. There we go. Can you see down here  
25 where Mike Duncan was paid?

1 A. Yes, sir, I do.

2 Q. And he was paid something on January 4th of  
3 2019, and then February 1st of 2019 was the last  
4 payment.

5 A. Yes, sir.

6 Q. All right. So that would mean he would've had  
7 to have finished the work, submitted a pay  
8 application, have it approved before those payments  
9 were issued?

10 A. Yes, sir.

11 Q. So is it fair to say that his work was finished  
12 before February 1st of 2019 if this last check was  
13 on February 1, 2019?

14 A. I'm not sure of the dates, but yes, sir.

15 MR. GOODWYN: Okay. All right. And, Your  
16 Honor, I ask to admit Plaintiff's Exhibit 44. It's  
17 a letter from Rusty Burns to South Carolina Parks,  
18 Recreation, and Tourism dated April 10, 2019.

19 THE COURT: Any objection from the county?

20 MR. DAVIDSON: No objection.

21 MR. MCDADE: No objection.

22 THE COURT: Admitted without objection.

23 (Plaintiff's Exhibit No. 44 was received into  
24 evidence.)

25 BY MR. GOODWYN:

1 Q. All right. Mr. Burns, I'm going to show you  
2 this letter. I'll -- I'll zoom out so you can kind  
3 of see the whole thing. This is a letter you wrote  
4 to South Carolina Parks, Recreation, and Tourism  
5 director April 10, 2019.

6 A. (No response.)

7 Q. Is this -- is this a letter that you wrote?

8 A. Yes. Yes, sir.

9 Q. All right. And what are you telling him in  
10 this letter? Well, first, let me back up. Who  
11 is -- why are you writing somebody at the South  
12 Carolina Parks, Recreation, and Tourism?

13 A. Because they would've had money involved in the  
14 project.

15 Q. Okay. Was this project -- the East-West Park  
16 Project paid for with grants?

17 A. Partially, yes, sir.

18 Q. Okay. Do you remember how much was grant  
19 money?

20 A. No, sir.

21 Q. All right. But the grants you're talking about  
22 were from South Carolina Parks, Recreation, and  
23 Tourism?

24 A. Yes, sir.

25 Q. Okay. So you're writing them just to update

1           them on the status of this project?

2           A.    Yes, sir.

3           Q.    Okay. All right. And so what are you -- what  
4           are you writing here in the first paragraph?

5           A.    We hope that in response to your March 12, 2019  
6           e-mail regarding the status update on the connector  
7           park ramp, please be advised that we have completed  
8           phase 2 ---

9           Q.    Okay. So that -- that's fine. So Mike Duncan  
10          finished on or before February 1st. Then  
11          April 10th, you're writing the South Carolina Parks,  
12          Recreation, and Tourism letting them know that it's  
13          finished?

14          A.    Yes, sir.

15          Q.    Okay. So is it fair to say that no -- at least  
16          as far as this -- that sidewalk on the bottom of  
17          phase 2 has not been altered since Mike Duncan  
18          finished his work in February or before February of  
19          2019?

20          A.    No, sir. Not to my recollection.

21          Q.    It hasn't been altered? I think the way I  
22          worded that, is it fair to say that that sidewalk  
23          has not been altered?

24          A.    Not to my recollection.

25          Q.    Okay. If -- if the -- if that sidewalk in

1 phase 2 that we've been talking about has been  
2 altered -- excuse me -- if that sidewalk in phase 2  
3 was not in ADA compliance, would it need to be torn  
4 out and replaced in a manner that is ADA compliant?

5 A. If -- if I was notified it was not in  
6 compliance, it would have to be torn out. Yes, sir.

7 Q. I'm notifying you.

8 A. Okay.

9 Q. Here -- this is Sandy Hanebrink's report of  
10 April 30, 2019. I believe you saw this earlier.

11 A. Yes, sir.

12 Q. Clearly saying at the bottom, that section is  
13 not in compliance.

14 A. Okay.

15 Q. Okay. How do you think that part of the  
16 project got approved as being ADA compliant?

17 A. They may have gone back and corrected it.

18 Q. You just said no work was done on it after  
19 April ---

20 A. I said not to my recollection.

21 Q. Okay. I see what you're saying. Somebody  
22 after Sandy Hanebrink's inspection April 30, 2019,  
23 somebody may have gone back and torn it out and  
24 re -- repoured it?

25 A. Yes, sir. They could have.

1 Q. And you wouldn't know about it?

2 A. I don't know about certain things.

3 Q. All right. Nobody's told you they've done  
4 that, have they?

5 A. If they have, I don't have a recollection of  
6 it.

7 Q. Nobody here today has testified that they've  
8 done that, correct?

9 A. Nobody that I've heard.

10 Q. Do you expect anybody else to come in here and  
11 testify that the sidewalk was torn out and replaced  
12 after April 30, 2019?

13 A. No, sir.

14 Q. Did you paint over Russell Moats' logo on the  
15 sign of the East-West Park Project?

16 A. No, sir.

17 Q. Did you direct anybody to paint over his logo?

18 A. I have no recollection of asking anybody to  
19 paint over that. No, sir.

20 Q. There's been some discussion about this -- some  
21 testimony about this Independent Mail report of  
22 February 1, 2018. Somebody asked what the cause of  
23 the delays of the East-West Park Project were.

24 The answer written by the paper says that you  
25 said, "Well, Anderson County administrator, Rusty

1 Burns, said there's been a lot of hurdles on the  
2 park that's connected to the parkway, once called  
3 the East-West Connector.

4 "There have been disputes with the contractor,  
5 which are being resolved. Burns said there have  
6 been issues with rights-of-way, sewer lines, and  
7 lastly the area was resurveyed to make sure it was  
8 compliant with the Americans with Disability Act,  
9 Burns said." Is that an accurate summary of what  
10 you said?

11 A. Yes, sir.

12 Q. Did you understand that those comments would be  
13 published in the Independent Mail?

14 A. Yes, sir.

15 Q. All right. What was your understanding of why  
16 the project was being resurveyed?

17 A. Projects are often resurveyed through another  
18 project to make sure things are right.

19 Q. All right. So sometimes the plans or the  
20 surveys that the plans are based on to begin with  
21 are not correct. Is that fair to say?

22 A. Sometimes they have to be revised. Yes, sir.

23 Q. All right. Did you have any experience with  
24 Russell Moats or Moats Construction prior to the  
25 East-West Park Project or the Toxaway Mill Project?

1 A. Personally or business-wise?

2 Q. With the county? Did he have county projects  
3 that you were involved in some way prior to ---

4 A. I believe testimony in this court that he done  
5 demolition work for the county in the past. Yes,  
6 sir.

7 Q. Oh, I'm asking you. I know -- I know he did  
8 the work. He said he did the work. Were you  
9 involve in that is what I'm asking.

10 A. No, sir.

11 Q. Okay. Did you have any -- well, let me ask you  
12 this: What was your relationship with Russell Moats  
13 and Moats Construction coming in to these two  
14 projects that we're here for today?

15 A. Just like with any other contractor, a good  
16 relationship.

17 Q. Okay. Was your relationship with Russell Moats  
18 soured during this -- during the East-West Park  
19 Project and the Toxaway Mill Project?

20 A. No. I don't have anything personal against  
21 anybody. I just like the project to be completed.

22 Q. All right. Do you blame Russell Moats for it  
23 not being completed in a timely fashion or the  
24 fashion that you expected?

25 A. I wish the project had been completed by

1 Mr. Moats and we wouldn't be here today.

2 Q. I'm not asking you that. I'm asking are you  
3 blaming Russell Moats for the fact that it wasn't  
4 completed as timely as you would've preferred?

5 A. I'm not blaming anybody. I wish the project  
6 had been completed by Mr. Moats and we wouldn't be  
7 here today.

8 Q. Well, the county is blaming him. The county  
9 has brought a lawsuit against him saying -- blaming  
10 him saying that he is responsible, or do you not  
11 agree with -- with that -- the allegations made from  
12 the county?

13 A. The county brought the lawsuit against  
14 Mr. Moats.

15 Q. Right. Mr. Moats brought this action against  
16 the county.

17 A. Yeah, but we didn't -- but the county did not  
18 bring an action against Mr. Moats; am I correct?

19 Q. Can I -- let me finish my question.

20 A. Yes, sir. Please.

21 Q. One thing that's important here. Usually good  
22 at anticipating my question, and you start answering  
23 your questions before I finish them. But for her  
24 sake so we can have a clean record, try to let  
25 me ---

1 A. I apologize. Yes, sir.

2 Q. All right. Russell Moats brought this action.  
3 The county counterclaimed against Mr. Moats saying  
4 he's at fault for the project not being completed  
5 and they -- they incurred expenses and costs of  
6 having to get it finished and blaming him. So you  
7 don't -- you weren't aware of that lawsuit?

8 A. I'm very aware of the lawsuit. My fault for  
9 misinterpreting that I thought you said that we  
10 brought a lawsuit. I apologize.

11 Q. Well, and maybe ---

12 A. That's my misunderstanding. We were responding  
13 to a lawsuit. Yes, sir.

14 Q. You -- well, maybe I should word it like this:  
15 The lawsuit was initiated by Mr. Moats ---

16 A. Yes, sir.

17 Q. --- and the county responded by bringing ---

18 A. Yes, sir.

19 Q. --- it's own claim.

20 A. Yes, sir. That is -- that is a fact. Yes,  
21 sir.

22 Q. Okay. And you understand that?

23 A. Yes, sir.

24 Q. Okay. And in that action, the county is  
25 blaming Mr. Moats ---

1 A. Yes, sir.

2 Q. Again, let me try -- let me finish my question  
3 before you answer.

4 In that action, the county is blaming Mr. Moats  
5 for the project not being completed in a timely  
6 fashion, correct?

7 A. Yes, sir.

8 Q. All right. So do you agree with that? Do you  
9 agree there are -- are you claiming Mr. Moats is the  
10 reason why the project wasn't completed timely?

11 A. No, sir. Moats left the job.

12 Q. Nobody is disputing that. I'm asking, are you  
13 blaming Mr. Moats for the project ---

14 A. I blame Mr. Moats ---

15 Q. --- not being completed? Please -- please let  
16 me finish my question.

17 All right. Are you blaming Mr. Moats for the  
18 project not being completed timely?

19 A. I blame Mr. Moats for not completing the job.

20 Q. All right. In light of the issues, the many,  
21 many revisions with the design plans, does that not  
22 factor into the equation at all in your mind?

23 A. I'm good?

24 Q. I'm finished with the question. You can  
25 answer.

1 A. I believe that there are many revisions and  
2 many construction projects. It's been my  
3 experience, we have construction projects occurring  
4 all the time. There are disagreements. There are  
5 disputes. Usually, they're worked out. I wish that  
6 had been the case this time.

7 Q. All right. In -- in light of Ms. Hanebrink's  
8 report that the final version, the version that's --  
9 appears to be the version that was put in by Mike  
10 Duncan, is not ADA compliant today. How can you  
11 blame Mr. Moats for not being able to pour an ADA  
12 compliant sidewalk?

13 A. I believe that I stated that I had no  
14 recollection of whether we went back to correct  
15 that.

16 Q. Right. Nobody has a recollection, right? Mike  
17 Duncan was paid to do it. There's no evidence that  
18 anybody else was paid to do anything. Nobody  
19 remembers anybody doing it. Is it not safe to say  
20 what Mike Duncan poured is what's there today?

21 A. I think it would be fair to say that what he  
22 put there today is there. I don't know whether work  
23 has been done to correct it or it's no longer in  
24 compliance because of the settling of the earth. I  
25 do not have those answers.

1 Q. All right. So you think the sidewalk could've  
2 come in compliance because of some magical settling  
3 that was perfecting made it ADA compliant?

4 A. No. But I would say that it could come out of  
5 compliance by settling of the earth.

6 Q. Okay. Do you have any records of any measures  
7 that were taken of the sidewalk shortly after Mike  
8 Duncan poured it to show that it's in ADA  
9 compliance?

10 A. I have no recollection of seeing any of those  
11 records. No, sir.

12 Q. You ever talked to anybody that said it was in  
13 ADA compliance?

14 A. I believe it was in ADA compliance.

15 Q. Without talking to anybody or seeing any  
16 records of it, how do you know?

17 A. Because I was told that it was in ADA  
18 compliance.

19 Q. By who?

20 A. By people who work for the county. I cannot  
21 remember who specifically.

22 Q. Okay. Have you said anything negative about  
23 Russell Moats since he walked off the job?

24 A. I might've muttered something under my breath.

25 Q. You never -- you never told anybody else that

1           you believe Russell Moats was the reason why the  
2           project wasn't completed?

3           A.     I don't think I had any discussions about the  
4           project until this lawsuit came up. I could be in  
5           error.

6           Q.     Have you maybe taken any actions to retaliate  
7           against Russell Moats?

8           A.     Absolutely not.

9           Q.     What do you know about Sandy Hanebrink?

10          A.     That she runs a nonprofit. That we made space  
11          available for her operation for a while while she  
12          got established.

13          Q.     All right. Do you respect her work in the ADA  
14          field?

15          A.     I do.

16          Q.     Do you remember when you first met Mr. Moats?

17          A.     I think I saw Mr. Moats on a piece of equipment  
18          behind the old courthouse tearing down a building.

19          Q.     Okay. Do you remember who the prime contractor  
20          for that -- for that project was?

21          A.     No, sir. I don't recall that name.

22          Q.     Was Anderson County the owner of that property?

23          A.     Yes, sir.

24          Q.     Go back to this article with the Independent  
25          Mail for a minute. Isn't it true you were concerned

1 about the county's reputation when responding to  
2 this news reporter about the delays in the East-West  
3 Park Project?

4 A. I was responding so that the public would have  
5 information on where the park was at that point in  
6 time.

7 Q. Isn't it true you were concerned about the  
8 county's reputation when responding to this?

9 A. I was concerned about getting the facts out to  
10 the public. They asked a question. I think there  
11 were three reporters on that story, and so I was  
12 responding to that. I didn't call them and ask them  
13 to do that.

14 Q. That wasn't my question. I'm asking were you  
15 concerned about the county's reputation?

16 A. I was concerned about getting information out  
17 to the public.

18 Q. Again, were you concerned about the county's  
19 reputation? It's just a "yes" or "no."

20 A. I was concerned about getting the information  
21 out to the public.

22 MR. GOODWYN: I would object it's unresponsive.  
23 I think he has to answer "yes" or "no."

24 THE COURT: Overruled. I think he answered  
25 your question as best he can. Go ahead.

1 BY MR. GOODWYN:

2 Q. All right. Did you not consider that saying  
3 that "we're having disputes with the contractor," as  
4 the first reason for the delay would make the public  
5 think that the contractor, Mr. Moats, Moats  
6 Construction, was the main reason why the project  
7 was being delayed?

8 A. No, sir. I think we listed a whole lot of  
9 issues that were going on in the project. That was  
10 the first one stated. It is very common in  
11 construction projects to have disputes. We said  
12 that -- I think I said that we hoped that they would  
13 be resolved. That's no right, no wrong. We just  
14 have a difference of opinion.

15 Q. What -- did you have to approve of the  
16 preliminary designs and concepts for the East-West  
17 Park Project?

18 A. I was made aware of them, but -- but they were  
19 approved by counsel.

20 Q. Did you recommend that those designs be  
21 approved?

22 A. I recommended that the designs presented were  
23 there for county counsel to decide whether we should  
24 proceed. Yes, sir.

25 Q. Did county counsel ask you if you approved or

1 recommended that the counsel approve them?

2 A. The general concept of those plan, yes, sir, I  
3 did.

4 Q. Okay. Does the county have somebody review  
5 designs for ADA compliance?

6 A. We have an ADA compliance person on board, yes,  
7 sir, now.

8 Q. Who was that -- well, now. Did you have one  
9 back in 2015, '16, '17 when this project ---

10 A. In an unofficial capacity, we had Sandy  
11 Hanebrink, but we also relied on the engineers and  
12 landscape architects.

13 Q. All right. So we have a -- we have an  
14 architect, Natasha Sexton, presenting design plans  
15 and then the county would review those. Both would  
16 agree or they'd have to agree that they were ADA  
17 compliant?

18 A. Yes, sir.

19 Q. All right. Despite all of that, we still have  
20 four or five, six revisions?

21 A. Yes, sir.

22 Q. Okay. Did you ever direct any county employees  
23 to target Mr. Moats after all of this for any code  
24 violations or letters or summons?

25 A. No, sir.

1 Q. Do you know Barry Holcombe?

2 A. Yes, sir, I do.

3 Q. Who is Barry Holcombe?

4 A. He's the county building inspector.

5 Q. All right. Did you ever direct Barry Holcombe  
6 to take any adverse action against Mr. Moats or his  
7 companies?

8 A. I instruct Barry Holcombe to respond to  
9 complaints we receive from citizens about abandoned  
10 or buildings that don't meet code. Yes, sir. I do  
11 that quite frequently.

12 MR. GOODWYN: That's all I have, Your Honor.

13 THE COURT: All right. Madam forelady, let's  
14 take about five minutes, please, and then we'll  
15 bring you back.

16 THE FORELADY: Yes, sir.

17 (At 10:30 a.m., jury left the courtroom.)

18 (From 10:30 to 10:38 a.m., recess.)

19 THE COURT: Any matter from the plaintiff  
20 before we bring the jury back?

21 MR. GOODWYN: No, Your Honor, but my client's  
22 in the restroom.

23 THE COURT: Well, I'm going to bring the jury  
24 back in. Anything from defense?

25 MR. DAVIDSON: No, Your Honor.

1 MR. MCDADE: No, Your Honor.

2 THE COURT: Would you bring the jury back in,  
3 please, sir?

4 (At 10:40 a.m., jury entered the courtroom.)

5 THE COURT: Mr. Davidson.

6 MR. DAVIDSON: No questions.

7 THE COURT: No questions?

8 MR. DAVIDSON: No, sir.

9 THE COURT: Any questions?

10 MR. MCDADE: No questions, Your Honor.

11 THE COURT: All right. Thank you. You may  
12 step down.

13 (Witness excused.)

14 THE COURT: Call your next witness.

15 MR. GOODWYN: May we approach?

16 THE COURT: Sir?

17 MR. GOODWYN: May I approach?

18 THE COURT: Yes, sir.

19 (Sidebar discussion.)

20 THE COURT: Madam forelady, will you take the  
21 jury back to the jury room, please?

22 THE FORELADY: Yes, sir.

23 (At 10:42 a.m., jury left the courtroom.)

24 THE COURT: All right. Let's put this on the  
25 record. At the bench conference, plaintiff's

1           counsel asked if he be allowed to call his client  
2           back because I had stated earlier and ruled that the  
3           lost profits was not part of the elements of  
4           damages, and I was incorrect on that. And he wants  
5           to put him up to testify as to those. I think you  
6           have damages already in there that you put towards  
7           that and that was the bid -- no bid -- no -- the  
8           bid ---

9           MR. GOODWYN: Bid bond application.

10          THE COURT: --- bid bond applications. Excuse  
11          me. I can't ---

12          MR. GOODWYN: I know.

13          THE COURT: Well, what is it you're seeking to  
14          bring up?

15          MR. GOODWYN: Well, his testimony on that  
16          subject was curtailed to just -- he was only allowed  
17          to say these bid bond applications were denied. I  
18          think he has a right to expand on that and explain  
19          what that meant to his damages beyond just  
20          testifying to that.

21          THE COURT: Well, he is -- I just said to you  
22          it is not my job to point out to you what the law  
23          is. And it seems to me if I incorrectly ruled, you  
24          say, no, because this is actually a part of it and  
25          tell me where I was wrong.

1           MR. GOODWYN: Well, I thought I articulated  
2 that, and you wanted some authority, which I didn't  
3 have right in front of me, sound authority. And it  
4 sounds like the Court agrees that that is a proper  
5 form of damages.

6           THE COURT: And that was while he was still  
7 testifying?

8           MR. GOODWYN: Yes, Your Honor.

9           THE COURT: In the event -- if I said while he  
10 was still testifying, why didn't you correct it  
11 then?

12          MR. GOODWYN: I did. I made the argument and  
13 you said, "Well, I'm not sure. I'm not going to let  
14 him testify beyond just that limited scope now, but  
15 we'll -- we'll check on it later." You did check on  
16 it later and then you agreed with my position, so I  
17 think he's allowed to come back and expand on that  
18 testimony.

19          THE COURT: What's your position? You might  
20 have some merit on that.

21          MR. DAVIDSON: Your Honor, I mean, I think you  
22 -- you made the ruling at -- at the time. You've  
23 since now said that ---

24          THE COURT: I can't hear you.

25          MR. DAVIDSON: I'm sorry. I feel like I'm

1 yelling. I apologize.

2 THE COURT: It's okay.

3 MR. DAVIDSON: Your Honor, I think Mr. Moats  
4 has already testified. He's gotten in information  
5 about the bid bonds. I don't know what -- what more  
6 they want to do. I really think it's -- I mean,  
7 there's information in the document -- in the  
8 transcript already I think that would go towards the  
9 regular contract damages. These -- these damages  
10 are so speculative that -- that I don't think ---

11 THE COURT: Well, yeah.

12 MR. MCDADE: Your Honor, may I? I know I don't  
13 totally have a dot dog in this fight. My  
14 recollection was is that you told him before lunch  
15 that he couldn't do it. And my recollection is also  
16 that when you came back after you lunch, you  
17 would -- you told us, "You're right." And he  
18 testified all the way to the end of that day.

19 THE COURT: That's correct. That is correct.  
20 That's correct. He's -- he testified all Monday  
21 afternoon and all of -- all day Tuesday until five  
22 o'clock.

23 MR. GOODWYN: That was cross.

24 THE COURT: Sir?

25 MR. GOODWYN: I think that was cross. My -- my

1 understanding was that I didn't -- I didn't have a  
2 right to ask him those questions unless I cleared  
3 that with you in advance. We -- just when you came  
4 after lunch today and said, "Hey, I think you're  
5 right about that." You didn't say go back and you  
6 can ask him more questions than I -- than I  
7 previously limited you to. I'm asking -- then he  
8 was on cross. I couldn't do anything. That's why  
9 I'm asking to come back now because there's a lot  
10 of ---

11 THE COURT: Put him up on the stand. Let's see  
12 what he would testify to. I want you to proffer it.

13 MR. GOODWYN: Sure.

14 THE COURT: You're still under oath, Mr. Moats.

15 PROFFER EXAMINATION

16 BY MR. GOODWYN:

17 Q. Russell, I want to follow up with you on these  
18 bid bond applications. There were a number of them  
19 that we got that were -- that were put into evidence  
20 earlier. And I don't necessarily want to go through  
21 each one in detail with you right now, but generally  
22 speaking, I think you testified earlier that these  
23 bid bond applications were denied, correct?

24 A. That's correct.

25 Q. All right. I want to talk a little bit about

1           what that -- what that means to your -- the loss  
2           with future lost profits in terms of each one of  
3           those bid bond applications has a contract amount  
4           and then a profit amount that you expected to earn  
5           from these jobs. Why do you think you would've  
6           gotten these jobs?

7           A.     So we would've gotten those jobs because  
8           normally the low bidder is awarded the job, unless  
9           it's a very, very good reason not to award that  
10          contractor that job. And it has to be -- and then  
11          they can, you know, appeal that if they want to or  
12          contest that if they don't get awarded. Usually,  
13          the low bidder is awarded the project, but ---

14          Q.     Why were you -- why were you confident that you  
15          would've been the low bidder on these jobs?

16          A.     Because we target -- we have a specialty, and  
17          we had -- you know, I have grown this crew of  
18          skilled laborers and craftsman skilled laborers.  
19          I'd grown it from nothing. And they were very  
20          specialized. We did a specialized type of work.  
21          And most of all the other bona fide general  
22          contractors or prime contractors were very large  
23          contractors that we bid against. And they -- they  
24          did not have in-house capacity or employees to do  
25          that type of work, so they always subbed it out.

1 That was our competition.

2 Q. And so why does that mean you would've been the  
3 low bidder on these jobs?

4 A. Because we did everything in-house, so we did  
5 not have that overhead.

6 Q. Well, explain -- okay. So explain why having  
7 in-house employees is different, better, or will  
8 allow you to bid cheaper than guys that don't have  
9 in-house employees?

10 A. So we had our own tools and equipment, means  
11 and methods and so were we very -- a lot more  
12 efficient. It's something we did everyday. We bid  
13 on these jobs, same types of jobs all the time, so  
14 we knew, you know, very familiar with the pricing  
15 and how to price things and different prices of  
16 materials and how the market was running, you know,  
17 the price materials. We had all the vendors set up.

18 And general contractors normally just rely on  
19 our subcontractors for subcontract numbers and the  
20 subcontractors can mark that up. And then -- then  
21 the prime contractor marks that up ---

22 Q. Okay.

23 A. --- so there's a lot of, quote/unquote, fat, I  
24 guess, on top of ---

25 Q. Okay. Are you generally saying you have less

1 fat than these other general contractors?

2 A. Yes, sir.

3 Q. All right. Did you consistently win these  
4 types of bids during this period of time?

5 A. We did. I mean, generally if it was a job that  
6 we really wanted, you know, we need for -- you know,  
7 we needed it to -- if we were finishing up a  
8 contract, normally we would already be bidding on  
9 another contract or more than one. And we would  
10 just move those guys once they got to a certain  
11 point through a contract, they would, you know,  
12 hopefully start on another contract, get it started,  
13 and then we would move the guys along accordingly.  
14 So if we wanted a job, generally we could get it. I  
15 mean, we would be the low bidder.

16 Q. All right.

17 A. And matter of fact, I mean, we had done a  
18 number of jobs for Anderson County. And we had a  
19 groundbreaking at this park, and the county  
20 administrator called us the "county contractor"  
21 because we had been doing -- consistently been doing  
22 work for the county at that point and consistently  
23 been awarded jobs as the low bidder.

24 Q. All right. And this report, Exhibit 43, this  
25 Direct Surety project status request that the county

1           replied to and said that you had breached the  
2           mediated settlement agreement. Did this affect your  
3           ability to get bonds?

4           THE COURT: Say that again. I'm sorry.

5           BY MR. GOODWIN:

6           Q. Yeah, this is the -- his -- your surety  
7           company, Direct Surety, sent a status report request  
8           on the Toxaway Mill Project to the county. And this  
9           is the response the county gave them, correct?

10          A. Yes, sir.

11          Q. That we talked about with -- I believe it was  
12          Leon Harman. And the county stated that the  
13          contractor failed to meet their obligations required  
14          by mediation. Was that true?

15          A. No. It was not.

16          Q. And did it affect your ability to get bonds for  
17          these jobs that we were just talking about?

18          A. It did. It effectively -- we couldn't -- we  
19          were un-bondable like I stated earlier.

20                 And another thing was -- so in bonding, surety  
21          bonding, you have like an aggregate amount that they  
22          -- they place you at based on your credit worthiness  
23          and size of your company usually. So you gen -- you  
24          generally have to be worth whatever the bond amounts  
25          are. So if they -- if they have -- if you were --

1 if the contractor were to default and they needed to  
2 collect, then they could pretty -- pretty much  
3 liquidate everything you have, all your assets and  
4 they could recover that amount.

5 Q. Okay.

6 A. So there was an aggregate amount. And we were  
7 not a large contractor. We were a small contractor  
8 that was growing, so they would bump us up, you  
9 know, as we went and we -- we started out. I don't  
10 think we could bond but, you know, maybe \$300,000  
11 when we first started. You know, and at this point,  
12 we were close to a million.

13 Q. All right.

14 A. And so we could either bond one job at a  
15 million dollars or we could bond five jobs at  
16 \$200,000.

17 Q. I understand. So how much was the Toxaway  
18 bond?

19 A. The total Toxaway bond, I want to say, was  
20 230 ---

21 Q. Okay.

22 A. --- or sorry, 223. It was 223.

23 Q. Okay.

24 A. But they knew that there may be some additions  
25 to that because there were some alternates in that

1 contract.

2 Q. What -- what about the East-West bond? How  
3 much was that?

4 A. I think it was three -- I mean, \$325,000 ---

5 Q. Okay.

6 A. --- so that put us at ---

7 Q. Close to 15,000?

8 A. --- we're almost maxing out our bond capacity  
9 right there.

10 Q. All right. And with both of these bonds tied  
11 up -- tied up because of the -- what you're saying  
12 are untruths about you, tied up those bonds and your  
13 bonding capacity for an extended period; is that --  
14 is that correct?

15 A. Correct. Yeah, so even if we wanted to bond  
16 something, you know, we couldn't because these  
17 were -- these bonds were outstanding and they had  
18 not been released.

19 MR. GOODWYN: Okay. All right. That's --  
20 that's basically the extent of the testimony.

21 THE COURT: All right. Thank you, sir. You  
22 may step down.

23 (Witness excused.)

24 THE COURT: Look at your notes for me, madam  
25 court reporter. When we came back from lunch, where

1           were we? Can you tell?

2           THE REPORTER: Yes. I try to document. We  
3 came back and the cross-examination started on the  
4 15th, the afternoon at 2:03.

5           THE COURT: At 2:03?

6           THE REPORTER: Uh-huh. When we came back from  
7 lunch was when the cross started. The direct  
8 finished up before we left.

9           THE COURT: Let me ask you this: Is it ever --  
10 is speculative testimony ever relevant -- I mean,  
11 ever admissible?

12          MR. GOODWYN: If it's -- I think there is a  
13 question as to whether certain testimony is  
14 speculative.

15          THE COURT: There's no question it's  
16 speculative, but I'm saying is it admissible?

17          MR. GOODWYN: Speculative -- speculative  
18 testimony admissible? If it's deemed speculation, I  
19 would say no. I would submit that what he's saying  
20 is not speculation.

21          THE COURT: Well, I mean, you are asking the  
22 jury to award damages based on the facts that he  
23 would have, in fact, been awarded bids when there's  
24 nothing that you can do to prove that he would've  
25 gotten those bids. That's pure speculation.

1           MR. GOODWYN: His testimony is that he  
2 regularly received ---

3           THE COURT: I heard what he said and I take it  
4 for being the truth. It's still speculative as to  
5 whether -- it's no way to take it from the  
6 speculative realm because you don't know what  
7 would've happened. There's no way.

8           MR. GOODWYN: I don't think you have to show --  
9 you don't have to prove those types of damages with  
10 absolute certainty.

11          THE COURT: No. You don't have to prove it  
12 with certainty, I agree, but the fact that it's pure  
13 speculation that you're seeking to put the net --  
14 let me ask you this: The damages that you're  
15 seeking to put up, the lost profits, would be the  
16 net that would've been provided by the company as  
17 shown on those -- on those forms, right?

18          MR. GOODWYN: Correct.

19          THE COURT: So, first, the fact -- the expected  
20 question is whether his company would've been  
21 awarded the bid in the first place. Second, the  
22 net. That's probably less expected, but getting  
23 awarded the bids is speculative.

24          MR. GOODWYN: I see based on his history, he  
25 regularly got those bids.

1 THE COURT: But I think they got value ---

2 MR. GOODWYN: And I think there may be a  
3 question if he got every single one of these jobs.

4 THE COURT: I think there's value in not being  
5 able to use your -- your -- your bond, but the  
6 damages that you're seeking to use are just  
7 speculative damages. I'm not going to let you do  
8 that.

9 Now, I'll give you an opportunity to put up  
10 some damages, but that's -- the ones you're seeking  
11 is purely speculative because there's no way anybody  
12 could know based now if he would've gotten those  
13 bids. There's no way.

14 MR. GOODWYN: I understand what you're saying.  
15 Your Honor, part of this too is, you know, we -- we  
16 brought defamation claims, you know, against the  
17 individuals, but we've also named the county as a  
18 defendant on the defamation claims.

19 I think this is -- having him testify as to how  
20 this affected what he's saying are lies about him to  
21 his bonding companies has affected his reputation  
22 and his ability to get -- get bonding -- to get  
23 bonds in the future. So I'd like to be able to get  
24 him to testify about these -- these documents that  
25 have come in since he testified on that issue.

1 THE COURT: All right. And can you make this  
2 clear that you understand what I'm saying? To the  
3 extent you're saying that my damages are lost  
4 profits or that I'm using as lost profits, the net  
5 shown on these bid bonds ---

6 MR. GOODWYN: I can't argue that.

7 THE COURT: That's just pure speculation. And  
8 so I know you disagree with me, but I'm not going to  
9 let you do that.

10 I am going to let you testify as to very  
11 limited damages as to lost profits or the other, but  
12 it can't be those because it's pure speculation.  
13 Okay.

14 MR. GOODWYN: I understand.

15 THE COURT: Are you ready to go or do you need  
16 a minute?

17 MR. GOODWYN: I'm ready.

18 THE COURT: Sir?

19 MR. DAVIDSON: Well ---

20 THE COURT: Hang on. I -- I should've let  
21 y'all speak.

22 MR. DAVIDSON: No, that's okay.

23 THE COURT: Go ahead.

24 MR. DAVIDSON: Well, we can circle back on the  
25 damages if we need to, but there's -- there's no

1 complaint against the county on defamation itself.

2 The county ---

3 THE COURT: Yeah, it is.

4 MR. DAVIDSON: It lists Rusty Burns, Tommy

5 Schell, Matt -- Tommy Dunn, Matt Schell, Holt

6 Hopkins, Mike Foreman, and Rita Davis.

7 THE COURT: Well, let me ask you this,

8 Mr. Davidson.

9 MR. DAVIDSON: Yes, sir.

10 THE COURT: If you consider 15-7-77 -- what is  
11 it? What code section is it?

12 MR. DAVIDSON: I'd have to pull it up.

13 THE COURT: If you consider 15-77-60(17).

14 MR. DAVIDSON: Your Honor, I'm go to have to  
15 look it up. I don't have that.

16 THE COURT: That's where individual employees  
17 can be named based on actual fraud, actual malice,  
18 intent to harm, and crime or moral turpitude. If  
19 you don't have those factors, then they have to be  
20 removed and the county necessarily has to be made a  
21 party.

22 MR. DAVIDSON: All right. Your Honor, I will  
23 -- I'll have to look into that.

24 THE COURT: Well, it's no looking into it. I  
25 mean, that's just the facts. You can look at it,

1 but that's the law.

2 MR. DAVIDSON: Okay. Well, if that's your  
3 ruling, then -- then ---

4 THE COURT: It's not my -- well, it is my  
5 ruling because that's the law.

6 MR. DAVIDSON: I understand. Okay. Well, it  
7 certainly hasn't been portrayed that way. There's  
8 not been questions about the county and what the  
9 county has done to defame Moats. It's always been  
10 the individuals.

11 THE COURT: I gotcha. I note your objection  
12 for the record. I'm going to let you go forward.

13 MR. GOODWYN: Thank you.

14 MR. MCDADE: Your Honor, can I ask a question?

15 THE COURT: Yes, sir.

16 MR. MCDADE: Are you talking about 15-78-60?  
17 You said ---

18 THE COURT: Seventy.

19 MR. MCDADE: Seventy-eight, the court contract?

20 THE COURT: 15-78-60(17).

21 MR. MCDADE: Right. That's the one where  
22 there's individual with moral turpitude.

23 THE COURT: No, sir. Did I say 70? I'm wrong.  
24 It's 60.

25 MR. MCDADE: It's fine. And I was the same

1 place as Mr. Davidson was. I had to look that one  
2 up, but, Your Honor, I'm looking at the complaint.  
3 The complaint says -- in the preamble it says,  
4 "Employees and officials with Anderson County made  
5 false defamatory statements concerning the delays of  
6 East-West," but when we get to the meat of it, the  
7 defamation cause the action itself, it says Rusty  
8 Burns, Tommy Dunn ---

9 THE COURT: I got it. And the fact of the  
10 matter is, and you know it and I know it, you argued  
11 it before that to keep them as individuals in there,  
12 they have to meet the requirements of the code  
13 section you just pointed out. Otherwise, the county  
14 has to be substituted under the Tort Claims Act,  
15 correct?

16 MR. MCDADE: That is correct, Your Honor.

17 THE COURT: So you may disagree with my  
18 interpretation, but either they fall under the  
19 provisions of 17, which is actual fraud, actual  
20 malice, and intent to harm or crime of moral  
21 turpitude or the claims against the county under the  
22 Tort Claims Act. So I'm going to let you go forward  
23 on that. I know you disagree, but that's my  
24 interpretation of the statute.

25 MR. MCDADE: Well, what does that mean? Does

1 that mean that all the things that we've defended  
2 and disproved for lack of a better term, does that  
3 go out the window now because the county is the  
4 county ---

5 THE COURT: No. We had motions to be made and  
6 after the hearing the evidence, but that's just the  
7 way -- that's the way it always has been, right?

8 MR. MCDADE: He's still bound by the evidence  
9 he put up.

10 THE COURT: I agree. I agree he is.

11 MR. MCDADE: Okay. All right. That's all I'm  
12 concerned about. I don't want to start all over  
13 again.

14 THE COURT: No. We're not doing that. We're  
15 not doing that.

16 MR. MCDADE: Okay.

17 MR. GOODWYN: And to the extent I need to amend  
18 my pleadings to allege defamation ---

19 THE COURT: That's denied at this juncture.  
20 You put up your case for defamation. I'm not going  
21 to let you amend it at this juncture.

22 MR. GOODWYN: For the record, may I?

23 THE COURT: Yes, sir.

24 MR. GOODWYN: To the extent I need to move to  
25 amend my complaint to allege defamation against the

1 county with respect to these bond -- bonding issues,  
2 I would do it. I think that there's evidence in the  
3 record to show that the county is -- has  
4 committed ---

5 THE COURT: First, you can allege that. That's  
6 just not been part of your case in the defamation,  
7 and they haven't had a chance to respond to it so  
8 I'm denying that because it would not be fair to the  
9 county or to the individuals.

10 MR. MCDADE: Your Honor, can I add that what  
11 the evidence for the bid bonds, that's not  
12 defamation.

13 THE COURT: Understand. His allegation is that  
14 they improperly said that he had -- he had owed us  
15 money so they shouldn't put the information against  
16 his bonding company in the first place. I hear you.  
17 Hang on. Are you ready to go?

18 MR. GOODWYN: Yes, sir.

19 THE COURT: Okay. Bring the jury.

20 (At 11:04 a.m., jury entered the courtroom.)

21 THE COURT: All right. Mr. Goodwyn.

22 MR. GOODWYN: Yes, Your Honor. I call Russell  
23 Moats.

24 (Witness approached.)

25 THE COURT: Mr. Moats, you're still under oath.

1 And for the limited purpose we described, right?

2 MR. GOODWYN: Yes, Your Honor.

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION CONTINUED

5 BY MR. GOODWYN:

6 Q. All right. Russell, I have a few more  
7 questions here for you. We -- I want to ask you  
8 about this document that's -- that was testified to  
9 I think by Leon Harman. This is the Direct Surety  
10 project status request of February of 2019 related  
11 to the Toxaway Mill project. You see -- what is  
12 the -- what does the county say in the comment  
13 section about this -- this project?

14 A. It says, "The contractor failed to meet their  
15 obligation as required by mediation."

16 Q. Is that true?

17 A. No, sir.

18 Q. Do you believe you did meet your requirements  
19 as required by the mediated settlement agreement?

20 A. I did.

21 Q. All right. How -- how did this letter response  
22 related to the Toxaway Mill Project affect your  
23 ability to get bonds in the future?

24 A. We -- we could not get any bonds with this  
25 letter.

1 Q. Okay. And what -- maybe explain to the jury  
2 the process. Maybe you have a little bit, but when  
3 you get a bond on a project -- well, let me back up.  
4 Explain to the jury about bonding capacity, meaning,  
5 you know, if you -- if you have a total of a million  
6 dollars worth of bonding capacity, how does that  
7 work among your projects?

8 A. So I think I testified earlier that you have to  
9 provide a lot of financial statements and things  
10 like that to show that the company is the value of  
11 the company so they can take that into consideration  
12 and they can establish your -- what's called a bond  
13 line. And it's underwritten just, you know, just  
14 like you take out a loan or something like that.  
15 You have underwriters that review all of that  
16 information and then they determine at what -- what  
17 amount they're willing to essentially back you as a  
18 company to bond.

19 Q. Okay.

20 A. And that could be smaller companies have  
21 smaller lines.

22 Q. Sure.

23 A. Larger companies and corporations ---

24 Q. How much was your bond on the Toxaway Mill  
25 Project?

1 A. \$223,000.

2 Q. All right. And the fact that this -- well, you  
3 were saying was false information conveyed to your  
4 insurance or your bonding company was relayed, how  
5 did that affect that \$223,000 worth of your bonding  
6 capacity?

7 A. So it tied it up where we couldn't -- we could  
8 not take that amount and that -- put it towards  
9 another project. So you could max out your bond  
10 line, depending on the side of the project you're  
11 currently working on or how many projects you had,  
12 it could be one project or it could be multiple  
13 projects.

14 Q. Okay. So, yeah, that \$223,000 on the Toxaway  
15 Project, how much was your bond for the East-West  
16 Park Project?

17 A. 324,000 I think it was in the contract.

18 Q. Okay. And how did this letter that  
19 Mr. Davidson sent back in, what was this, June,  
20 July 20, 2018, related to you -- claim that you had  
21 refused to complete the project. How did that  
22 affect your East-West Project bond?

23 A. Well, it -- it made a claim against the bond.  
24 I mean, they ---

25 Q. Did it tie it up the same way it tied up the

1 Toxaway Mill bond?

2 A. Right. It tied it up indefinitely until there  
3 was some of clarification work, the project had been  
4 closed out, or there was some kind of resolution to  
5 what was going on.

6 Q. Okay. And did -- to your knowledge, did your  
7 bonding company ever receive anything from the  
8 county to follow-up on this letter?

9 A. Two years later, we went back to our bonding  
10 company because it had such a profound affect on our  
11 business. We went back to the bonding company and  
12 sent them multiple e-mails.

13 The -- the gentleman whose name is James  
14 Keeting that was handling this that filed all of  
15 this, the -- I think UCC filing and everything and  
16 he said, hey, you know, we can't -- we can't even  
17 operate at this point and we're trying -- we really  
18 need to bid on a job or something just to stay in  
19 business or just pay the bills.

20 And I said, you know, you guys have got to give  
21 us something that show, you know, we justified the  
22 claim. And he came back and said Anderson County  
23 never sent any backup information to support or  
24 justify the claim.

25 Q. Did they drop a bomb at that point?

1           MR. DAVIDSON: Your Honor, objection. That's  
2           hearsay.

3           THE COURT: I grant that motion. Sustain that  
4           motion.

5           BY MR. GOODWYN:

6           Q. Did your -- after that two-year period and this  
7           conversation with your bonding company, was your  
8           bond, at least at Toxaway, I mean the East-West Park  
9           Project bond released?

10          A. It was.

11          Q. Okay. Has the Toxaway bond ever been released.

12          A. Not to my knowledge.

13          Q. Okay. And I know you've testified, is it if  
14          you're not able to get a bond for a project, are you  
15          able to actually get a project or maybe, well, I  
16          should phrase it this way: Is -- is a bond a  
17          requirement to get future projects?

18          A. It is. For us it was because we were  
19          government contractors doing public work, and that's  
20          primarily what we did. I mean, we -- at that point,  
21          that was the -- that was the only projects that we  
22          targeted, you know, and tried to get. That was the  
23          way we were set up, so we had -- we had to have  
24          certain types of insurance and things like that.  
25          The company was set up to do that type of work, so

1 we had a lot of overhead just to have to do that  
2 kind of work. So we had to concentrate on those  
3 types of jobs.

4 Q. Okay. And what ultimately became of Moats  
5 Construction, Inc.?

6 A. I mean, it put us out of business.

7 Q. When did you go out of business?

8 A. I mean, the entity still operates. I guess the  
9 capacity that we still have our licenses and we  
10 still have insurance.

11 Q. Do you do work?

12 A. We had to sell some of our equipment to pay  
13 bills and we had no work, we had no employees,  
14 except for me if you can call me an employee, but, I  
15 mean, I'm not even on the payroll. I don't get a  
16 check because the company doesn't have money to pay  
17 me ---

18 Q. Okay.

19 A. --- so that was my livelihood.

20 Q. And when did that -- I mean, when did -- when  
21 did it get to the point where you're the only  
22 employee with no income coming into Moats  
23 Construction, Inc.?

24 A. Even after this, we did one or two jobs. Did a  
25 job for Clemson University. And we did one for

1 Colleton County.

2 Q. How were you able to get those jobs without  
3 bonds?

4 A. We -- well, we -- we were able to get the bonds  
5 for those jobs, but that was it. They were smaller  
6 jobs. And I -- I had two employees at that time  
7 when I did the Clemson job. I had one employee when  
8 I did the one for Colleton County.

9 Q. And so if I understand you correctly, sounds  
10 like you had some bonding capacity left, but not  
11 big -- the big -- you were out 5- or \$600,000 worth  
12 of bonding capacity?

13 A. We lost all our employees. I lost all of my  
14 crews guys. So I didn't have any way to do the  
15 work. I couldn't do it myself by myself.

16 Q. Is it fair to say you were able to bid on small  
17 jobs, but not bigger jobs?

18 A. We were for a time, but you have to maintain  
19 that bond line and you have to -- every quarter, you  
20 have to submit financial statements and things like  
21 that. It's -- you know, and in-house financial  
22 statements and things like that, we just couldn't do  
23 that to show where we were financially able to  
24 continue that bond line.

25 Q. You couldn't justify the bigger bond lines

1 after the business went down?

2 A. Correct.

3 MR. GOODWYN: All right. That's all I have,  
4 Your Honor.

5 THE COURT: Cross-examination.

6 MR. DAVIDSON: Yes, sir.

7 CROSS-EXAMINATION CONTINUED

8 BY MR. DAVIDSON:

9 Q. Mr. Moats, do I understand your testimony to be  
10 that the only reason you -- your bonding capacity  
11 was reduced was because of the two Anderson County  
12 projects, the East-West and Toxaway?

13 A. I'm sorry. The only reason why it was reduced?

14 Q. Yes.

15 A. Yes, sir.

16 Q. Okay. Did you ever approach a bonding  
17 company -- let me find the right name here -- other  
18 bonding companies than Direct Surety to provide  
19 bonds?

20 A. I don't remember that we did just because --  
21 the only -- the only reason why we went with Direct  
22 Surety originally was because they had in-house  
23 underwriting. So they weren't like a broker. We  
24 had been with one other bonding company before that  
25 called South Coast. All of these are out of

1 California. There -- it was South Coast Surety and  
2 they were more or less a broker. They didn't have a  
3 lot of control over the bonds.

4 And so I remember this well because I was -- I  
5 worked for Newberry County at the time. And I  
6 remember when we first got approved for a bond  
7 because we were doing some work for Newberry County,  
8 and the guy actually called me and he was an  
9 in-house underwriter. They wrote the bonds in-house  
10 and instead of shopping them. A lot of times these  
11 bonding companies will shop the bonds through  
12 various markets. And they make a percentage off of  
13 it, but these guys actually put up the money  
14 in-house and had the money was in-house and they  
15 agreed to take us on. And it was a big deal to us  
16 because it meant we could go out and perform public  
17 work, you know, on a bigger scale.

18 I mean, up to that point, we could only do a  
19 job up to like \$50,000. And after that. I think  
20 our bond line was -- originally, it was around  
21 300,000.

22 Q. Okay. Did -- at some point after, did you --  
23 well, so you had the bonding capacity with -- with  
24 Direct Surety. Did you ever shop for other bonding  
25 companies?

1 A. I want to say we did. I want to say we did.

2 Q. Do you know Matthew Clark with Contractor  
3 Surety Group?

4 A. Clark? I don't -- I don't recall.

5 Q. Okay. All right. I'm going to -- I'm going to  
6 show you a document. This is Defendant's Exhibit 1,  
7 Tab 23. Let me get it straight here. Can you see  
8 that?

9 A. I do. I do remember this.

10 Q. Okay. It so this is -- so this date is August  
11 the 2nd, 2018, right?

12 A. Correct.

13 Q. Okay. So shortly after the -- you pulled off  
14 of the East-West Parkway job, correct?

15 A. Correct.

16 Q. Okay. And you -- what's the purpose of this  
17 e-mail?

18 A. So we were trying -- we were trying to get a  
19 bond for this job, it was a Greenville Tech job, and  
20 it was a -- it was a good job that we really needed.

21 And that's -- the second paragraph is very true  
22 where Direct did change from -- I guess they took  
23 on -- it's kind of like a smaller business when  
24 you -- they start out, you know, and they give  
25 incentives I guess to customers and reduce fees and

1 things like that to get a customer base, and then  
2 somebody sees that they're doing well and they're  
3 taking their business from them and they buy them  
4 out.

5 I think that's what happened with Direct  
6 Surety, so they stopped the in-house bond writing.  
7 And, also, at that time not long after that, and  
8 that was another reason it was harder for us.

9 Q. All right. So you approached Contractor Surety  
10 about the possibility of placing bonds with them?

11 A. Yes, sir.

12 Q. All right. Now ---

13 A. And I believe they denied us because of the UCC  
14 filing that was out there.

15 Q. Okay. All right. Let's look. So -- okay.  
16 I'm still on the same exhibit, Defendant's 1, Tab  
17 23. So I'm going to be on the page that is marked  
18 "Moats." Here, let me show it to you. For clarity,  
19 it -- it has a Bates number of Moats 1466 on it. Do  
20 you see that?

21 A. Yes, sir.

22 Q. Do you agree with it? Is that -- is that  
23 right?

24 A. Yes, sir.

25 Q. Thanks. All right. So you're -- I guess this

1 is the next day now and you've got -- and you're  
2 writing. You -- you and Matthew Clark at Contract  
3 Surety Group are writing back and forth, right?

4 A. Yes, sir. It looks like it.

5 Q. Okay. So maybe this is the new e-mail chain.  
6 Let me flip back one more here. Let's go -- all  
7 right. Now, I'm on Moats 1468. Okay. You -- so at  
8 2:48, you write Matthew back -- or excuse me. Let's  
9 start at 2:41.

10 "Hey, Russell. I think I may -- I think I may  
11 have something." Hang on. I got to take these out.

12 "Hey, Russell. I think I may something for  
13 you. I will give you a ring later today day or in  
14 the morning if that suits;" is that correct?

15 A. Yes, sir.

16 Q. Okay. So picking up on that e-mail chain since  
17 we're reading it backwards. The next one is, so  
18 Matthew Clark writes you, "Russell, I have  
19 everything from Laura. I had quick look. It looks  
20 good. I'm going to -- I'm going to fully underwrite  
21 it myself this afternoon, and so it -- so that moves  
22 forward;" is that right?

23 A. Yes, sir. Yes, sir.

24 Q. Okay. Now, next, "Matthew, thanks for taking a  
25 look. Please let me know if you need anything

1 else."

2 So, now, later on, a little further into  
3 that -- into that pile on -- okay. Can you see the  
4 middle part of this? And I'm looking now at the  
5 Bates number Moats 1471. All right. Do you -- do  
6 you agree with 1471? Did you see that?

7 A. As far as ---

8 Q. Yeah, just so we're ---

9 A. Yes, sir. Yes, sir.

10 Q. --- so I'm clear in the -- in the record on  
11 what page I'm on.

12 It says, "Russell, I submitted your business to  
13 Standard Surety with competitive rates, and they  
14 don't have any issues with asbestos. What I think  
15 will happen is that Surety will support you on the  
16 two upcoming bids. In exchange, I think they will  
17 want you to retain a construction oriented CPA asap  
18 with the clear understanding he will do a 12/31/18  
19 review," correct?

20 A. That's what it says. Yes, sir.

21 Q. Okay. And then he goes on to say, "Some  
22 additional items I need are the complete tax returns  
23 for the two affiliated companies listed on the  
24 Contractor's Surety questionnaire," correct?

25 A. Yes, sir.

1 Q. What -- what affiliated companies are those?

2 A. We have another company that owns --  
3 essentially, like what -- what's called rolling  
4 stock, which are like -- it's equipment that's on  
5 the road like trucks. And it was some -- it was  
6 something that one of our accountants had advised us  
7 to do years ago just from a liability perspective,  
8 so -- so we did. It was an LLC that we just did at  
9 our equipment's like tagged in, registered in.

10 Q. All right. What about the -- what about the  
11 second company?

12 A. I mean, that would be Moats Construction I  
13 believe he's referring to.

14 Q. Is there another company that you were involved  
15 in besides those two?

16 A. That I'm involved in?

17 Q. Yes, sir.

18 A. I had another company. It's -- I'm not sure if  
19 we started it then or before or after. We  
20 definitely weren't operating that company then. I  
21 think we did have an entity like registered with the  
22 Secretary of State, but we weren't operating that  
23 company then.

24 And we didn't have any -- like we had no books  
25 or anything like that at that point in 2018, so I

1 don't think he was referring to that company. It's  
2 just a -- it's a waste recycling and sustainable  
3 products company that we -- that I've had.

4 Q. Is that Green Man?

5 A. It's called Green Man. Yes.

6 Q. All right. But you don't think that -- that's  
7 what he was talking about?

8 A. I don't think so because we just didn't have  
9 any -- I mean, we had just gotten the registration  
10 and we -- we use like containers in our construction  
11 business, and we were -- we had been for years doing  
12 it through our construction company. And we -- we  
13 were going to just start a new company and separate  
14 it at some point, but that's not what he's referring  
15 to there.

16 Q. Okay.

17 A. We had not ever -- we had not even filed any  
18 tax returns for that company at that time.

19 Q. Okay. So Green Man came later?

20 A. Yeah, it was later.

21 Q. Okay.

22 A. It was actually the result of all of this.

23 Q. Okay. So it's operating now?

24 A. It is. It has one employee.

25 Q. Okay. Is that you?

1 A. No. I have one other driver.

2 Q. Gotcha. Okay. All right. So -- so it looks  
3 like you keeping going out. Did you, ultimately,  
4 get these bid bonds from Contractor Surety?

5 A. We did not.

6 Q. Okay. Now ---

7 A. There's another e-mail where they're denying  
8 it. I don't know if you have it or not ---

9 Q. Okay.

10 A. --- because they get into our -- they had a  
11 problem with the -- the amount we had outstanding in  
12 our accounts receivable. And a lot of that stemmed  
13 from this action from -- from the money that -- the  
14 amount of money that Anderson County owed us.

15 Q. Okay. All right.

16 A. Initially, I guess it looked good to him, you  
17 know, but when -- when the underwriter got  
18 involved -- well, he said he was going to underwrite  
19 it himself, but he didn't. And it was -- that was a  
20 really -- I believe that was -- I can't remember  
21 exactly, but I want to say that was kind of the  
22 straw that broke the camel's back. I mean, we -- if  
23 they weren't going to do it, nobody was going to do  
24 it. Nobody else was going to write them, so...

25 Q. Okay. And that was totally related to the

1 receivables from Anderson County?

2 A. I don't know if it was totally. I don't know.  
3 I mean, everything I know and the UCC file that was  
4 outstanding.

5 Q. Okay. All right. I'm going to show you now in  
6 that same exhibit Bates number 1473. Do you see  
7 that?

8 A. I do. Yes.

9 Q. Okay. Show you the bates number. Excuse me.

10 A. Yes, sir.

11 Q. Okay. Again, this -- so starting from the  
12 bottom. On August 14, 2018, e-mail, 10:03 from  
13 Matthew Clark. I guess he calls you "boss"? Is  
14 that ---

15 A. He had been.

16 Q. Okay. "Before we go any further, the bonding  
17 company asked me about the following: New Beach  
18 Construction partners, Travelers Surety -- Casualty  
19 and Surety lawsuit, Doug Parker lawsuit, and AT&T  
20 South Carolina lawsuit," correct?

21 A. Yes, sir.

22 Q. Okay. So this certainly shows that they have  
23 concerns unrelated to simply Anderson County  
24 projects, correct?

25 A. It -- I mean, it does, but let me just -- I

1 mean, lawsuits are not -- I mean, we had -- I mean,  
2 we had stuff like that. Those are debt collections,  
3 except for the -- yeah, they're all debt -- well,  
4 no.

5 The AT&T thing was a utility that got cut. And  
6 that was actually -- it was dismissed because it  
7 wasn't our fault. So, I mean, it was just something  
8 they wanted us to pay for and we didn't pay for it.

9 I mean, I'll go through each one of them and  
10 explain them to you if you want me to, but it's not  
11 uncommon for a contractor to be sued or have to  
12 collect money. So that bonding company, we just  
13 provided a basic explanation to them.

14 Q. Okay. Well, and I think we talked about it.  
15 It's not unusual for there to be a dispute in a  
16 construction project, correct?

17 A. That's correct.

18 Q. Okay. Now, so New Beach was a collection  
19 action?

20 A. It was.

21 Q. Okay. Was there a counterclaim by New Beach?

22 A. There was.

23 Q. Okay. And did you collect anything against New  
24 Beach?

25 A. We did not.

1 Q. Did New Beach get a judgment against Moats  
2 Construction?

3 A. I believe they did. Yeah, they did.

4 Q. Has that been paid?

5 A. I don't think -- no, it has not. The  
6 construction company can't -- it has no money to pay  
7 it.

8 Q. Okay.

9 A. And it's a small judgment, but it's -- we still  
10 didn't have the money to pay it.

11 Q. All right. Let's look now at Bates number  
12 1475. You there? Do you see that?

13 A. I do.

14 Q. Okay. So this -- this is an e-mail from  
15 Matthew Clark to you, correct?

16 A. Yes, sir.

17 Q. August the 27th of 2018?

18 A. Correct.

19 Q. All right. So, "Good morning. We have  
20 prepared a sworn sequence of events statement  
21 leading through the denial of your request for  
22 surety support for the Greenville demolition of  
23 building 602, rehab -- excuse me -- rebid, et  
24 cetera. This statement is currently in the process  
25 of our -- in the possession of our legal counsel. A

1 synopsis of the reasons for the denial is provided  
2 herein."

3 And let's go through them. "Personal credit  
4 remained locked after repeated attempts. Unable to  
5 continue underwriting." Is that what that says?

6 A. Yes, sir.

7 Q. "Number two: Preponderance of open lawsuit  
8 showing in West Law inquiry including New Beach  
9 Construction Partners and claim against Travelers  
10 Casualty and Surety, Doug Proctor, and AT&T," right?

11 A. Yes, sir.

12 Q. Did I say that right?

13 A. It does.

14 Q. "Number three: Requested amount of surety  
15 support was \$400,000 above previously completed  
16 largest job," correct?

17 A. Correct.

18 Q. "Lack of CPA prepared financial statements,"  
19 correct?

20 A. Yes, sir. That's what it says.

21 Q. Yep. "Lack of bank line of credit"?

22 A. Correct.

23 Q. "Lack of requested personal and corporate tax  
24 returns"?

25 A. Correct.

1 Q. Okay. So this -- this e-mail from Matthew  
2 Clark, who you were applying for bonding, that is a  
3 denial and there's not one reason listed here for  
4 Anderson County at all, correct?

5 A. None that I see here. No, sir.

6 Q. Okay. So when you said that you lost all your  
7 bonding capacity because of Anderson County, that's  
8 not accurate. That's not right, is it?

9 A. It is.

10 Q. It's totally contrary to what is said in this  
11 e-mail, correct?

12 A. No.

13 Q. No?

14 A. No.

15 Q. Why not?

16 A. Well, what is -- what I'm saying is true. We  
17 did lose our bonding capacity.

18 Q. Oh, I don't doubt that -- I don't doubt  
19 that ---

20 A. And we -- and we reached out to another company  
21 to try to get the bonds written and, you know -- and  
22 they denied it, you know. So the only -- the only  
23 company we had out there to write bonds for so we  
24 could continue to work was Direct Surety, and they  
25 were denied -- they were denying it because of the

1 issues with Anderson County.

2 Q. But the company that you went to pick up your  
3 bond -- to -- to become your surety company declined  
4 you and stated it was for reasons that had nothing  
5 to do with Anderson County?

6 A. Right. Yeah, everything that had to do with  
7 Anderson County had a profound effect on our  
8 business. It did.

9 Q. So ---

10 A. It affected it in more than one way. All sorts  
11 of ways, financially, you know, from, you know,  
12 lawsuits standing. It affected our -- our work and  
13 performance on other jobs, everything.

14 Q. Okay. So ---

15 A. It made it -- it made it -- it made it to where  
16 we were unable to -- to get any kind of bonding from  
17 any other company.

18 Q. It made it so that you could not have -- you  
19 could not submit to the bonding company CPA prepared  
20 financial statements?

21 A. Yes, sir, it did.

22 Q. Anderson County -- how would Anderson County  
23 possibly have done that?

24 A. Because we -- well, I didn't have time. I  
25 didn't have time. I was the only -- I was the one

1 that would've done a lot of that work in the office  
2 normally. I mean, that's what I did. I had one  
3 other person, my wife, that's in -- that's in the  
4 office that does book work and stuff. Otherwise, I  
5 keep all my financial records and everything. I did  
6 not have time to do it. I -- and it took me -- I  
7 didn't have time to put everything together or, you  
8 know, reconcile the book so I could even get it to  
9 my accountant, which is Greg Owens. He's a CPA and  
10 he's -- he does a review of our books or has for  
11 years, and so we could even stay licensed. I didn't  
12 have even time to do that. I mean, I had to be on  
13 the jobs. I lost all my employees. And I was --  
14 and I was out of town a lot working, so...

15 Q. Mr. Moats, once again, there's -- there's  
16 nothing in this document that suggests anything  
17 having to do with Anderson County is the reason why  
18 you were denied?

19 A. Nothing that I saw.

20 Q. Okay. Is it true then that there are many  
21 other reasons other than a -- a job -- well, let me  
22 ask you this: You've had bonds in the past,  
23 correct? I mean, you -- you have to -- when you get  
24 awarded a bond -- or, well, let's talk about this  
25 for a second. So when you submit a bid, it has to

1 include a bid bond, correct?

2 A. That's correct.

3 Q. Okay. And so you first get a bid bond, which  
4 is a, what, five -- in an amount of 5 percent of  
5 the -- of the estimated bid?

6 A. I mean, it varies, but, normally, it's 5  
7 percent.

8 Q. Okay.

9 A. It has been as high as 20.

10 Q. Okay. So somewhere in there, but ---

11 A. Usually, it's five.

12 Q. --- a percentage of the bid amount ---

13 A. Correct.

14 Q. --- that you're going to hand in? Okay. So  
15 when -- then you hand him a bid and that bid gets  
16 reviewed by the county, whoever, whatever public  
17 entity you're giving it to, correct?

18 A. That's correct.

19 Q. Okay. And then other people in -- in your same  
20 line of work are going to submit those bids also?

21 A. That's correct.

22 Q. Okay. And so whoever is reviewing those bids  
23 is going to make an award to the person and the  
24 people that they find the most responsible and with  
25 the lowest bid generally?

1 A. Responsible and responsive is exactly how it's  
2 usually worded ---

3 Q. Okay.

4 A. --- but it's generally the low bid. I mean, if  
5 I want to put a percentage number on it, it's 99.9  
6 percent of the time it's the low bidder.

7 Q. It's going to be the low bidder?

8 A. Because the person's not in the bid. I mean,  
9 the entity is not even going to bid on the job if  
10 there's a chance that they're not going to, you  
11 know, be awarded the job.

12 Q. Okay.

13 A. I mean, the owner would have to have a very  
14 good reason and have legal reason not to award them  
15 the project.

16 Q. Okay. So on public work that requires -- that  
17 requires procurement that is awarded by low bid,  
18 it's not like you're going out and selling directly  
19 to somebody something. You've got to -- you've got  
20 to prepare a bid. You've got to wait for the award,  
21 and see -- well, you wait to see who is the low bid  
22 and then whether or not it's you, right? So there's  
23 several steps before that work becomes yours?

24 A. Correct. We never bid on a job where we were  
25 the low bidder and not been awarded the job.

1 Q. Okay. You ever been a nonresponsive or  
2 non-responsible bidder?

3 A. We did with the City of Anderson actually.

4 Q. Okay. They found you to be nonresponsive?

5 A. I don't know exactly what it -- what it was in  
6 their -- what it was. I can't remember exactly how  
7 they worded it. It may have been both. And we  
8 could -- we can go -- we can go into it if you want  
9 to. I'll be happy to explain it.

10 Q. Well, I just -- I'm just asking if that had  
11 happened.

12 A. It did. One time it happened the entire time  
13 I've been in business.

14 Q. Okay. Does that also impact your ability to  
15 get bid bonds?

16 A. It did not.

17 Q. So that didn't? That -- that being ---

18 A. No. No, it did not.

19 Q. --- being found to be nonresponsive did not do  
20 that?

21 A. It did not.

22 Q. Okay.

23 A. It has not.

24 Q. But being nonresponsive kept you from  
25 getting ---

1 A. And that -- and that was actually after all of  
2 this. That was actually after all of this. And --  
3 and that was actually because of this. That was  
4 because of this. We had -- we challenged them on  
5 that. It was during Covid, and the -- matter of  
6 fact, Mr. Goodwyn's the one who handled it for me.

7 Q. Okay. Mr. Moats, I'm going to hand you what's  
8 been marked as Defendant's Exhibit 5. Do you  
9 recognize that?

10 A. Yes, sir.

11 Q. Okay. What is that?

12 A. It's a notice of appeal where we appealed the  
13 determination of city counsel.

14 Q. Okay. Does it appear to be accurate?

15 A. I believe it is.

16 Q. Okay.

17 A. It's accurate as far as, like, what --  
18 what's -- what it says or ---

19 Q. Accurate that that's what it is?

20 A. Yes, sir.

21 MR. DAVIDSON: Okay. Your Honor, I move  
22 Exhibit No. 5 into evidence.

23 THE COURT: Any objections?

24 MR. GOODWYN: No objection.

25 MR. MCDADE: No objection, Your Honor.

1           THE COURT: Number 5 will be admitted without  
2 objection.

3           MR. DAVIDSON: Thank you.

4           (Defendant's Exhibit No. 5 was received into  
5 evidence.)

6 BY MR. DAVIDSON:

7 Q. Mr. Moats, I just got a couple of questions on  
8 this, and I want to make sure we're clear. So you  
9 had submitted a bid for demolition and cite  
10 restoration for a building located at 600 South Main  
11 Street in Anderson, correct?

12 A. Yes, sir.

13 Q. Okay. And that was to the city, not the  
14 county?

15 A. That was to the City of Anderson.

16 Q. Okay.

17 A. It was a building a couple of blocks down from  
18 here.

19 Q. Okay. There was a notice of decision issued by  
20 the city manager for the City of Anderson that did  
21 not -- that said the bid was not awarded to Moats  
22 based upon a determination of a non-responsible  
23 bidder; is that right?

24 A. Yes, sir.

25 Q. Okay. So you appealed that, right?

1 A. We did.

2 Q. You appealed it?

3 A. And I'm familiar with this. If you want to go  
4 through it, we can, but, I mean, everything is ---

5 Q. Okay. So the city counsel considered the  
6 appeal by Moats and reviewed the notice of decision.  
7 Based upon the review, it is the finding by city  
8 counsel that the bid by Moats was significantly out  
9 of line with other bids and there have been  
10 significant problems and recent projects done by  
11 Moats for the city, county, and New -- New Reach  
12 Construction Partners, Inc.; is that right?

13 A. It should be New Beach, but it's a typo.

14 Q. Okay. All right. So that wasn't just for a  
15 county project, was it? They didn't just list the  
16 county projects?

17 A. No. They listed the project. It was actually  
18 related to the county, so the New Beach project was.  
19 We can talk about that one, too.

20 MR. DAVIDSON: I think -- I don't think I have  
21 any other questions right now. Thank you.

22 MR. MCDADE: No questions, Your Honor.

23 THE COURT: No questions?

24 MR. MCDADE: No questions.

25 THE COURT: All right. Redirect.

1 MR. GOODWYN: No, Your Honor.

2 THE COURT: All right. Thank you, sir you may  
3 step down.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 MR. GOODWYN: Plaintiff rests, Your Honor.

7 THE COURT: The plaintiff rests?

8 MR. GOODWYN: Yes, sir.

9 THE COURT: All right. Madam forelady, ladies  
10 and gentlemen of the jury, the plaintiff rests,  
11 which means that he has presented his case in chief.  
12 I have some administrative matters to take up now.

13 And let me give the lay of the land. I'm going  
14 to send you back to your jury room. I may send you  
15 out to lunch. I may not. Let me just kind of get a  
16 check on that, but if you'll go back to your jury  
17 room right now, please. Thank you.

18 (At 11:43 a.m., jury left the courtroom.)

19 THE COURT: Mr. Davidson, motions?

20 MR. DAVIDSON: Your Honor, yes, sir. Anderson  
21 County moves for a directed verdict on all claims.  
22 And for the record, standard being that the circuit  
23 court will review the evidence and inferences that  
24 reasonably can be drawn from the evidence in the  
25 light most favorable to the opposing party.

1           The motion must be denied if the evidence  
2 yields more than one inference or if the inference  
3 is in doubt. We would say that based upon that  
4 standard, there is no inference that can be drawn  
5 from the evidence of Anderson County creates the  
6 East-West Project or the Toxaway Project. The  
7 issues encountered on the project may have affected  
8 Moats' work who Moats -- who's made change orders  
9 for all of that. And, ultimately, both -- disputes  
10 on both of those -- both of those issues went into  
11 the mediated settlement agreement. So the mediated  
12 settlement agreement, I would argue, is where the  
13 dispute lies and the -- and the first two -- the  
14 causes of action for the breach of separate  
15 contracts in the past should be dismissed for a  
16 verdict directed on him.

17           And if the Court wants to go forward, it should  
18 go forward only on the mediated settlement  
19 agreement, which contains the agreement reached by  
20 the parties. And then it also narrows the dispute  
21 quite a bit in going forward. I think it would be  
22 much less troublesome for the jury to -- to make  
23 light of.

24           THE COURT: Let me stop you there.  
25 Mr. Goodwyn, all the evidence presented in this case

1 stems from this mediation agreement. I don't know  
2 anything that I've heard that goes directly to the  
3 contract of the East-West or to Toxaway. If there  
4 is, tell me and I might be missing it, but I'm just  
5 not ---

6 MR. GOODWYN: Right. The only thing that I see  
7 and keep in mind the mediated settlement agreement  
8 has the terms that it has, but also paragraph 10  
9 says all other terms and conditions of the contract  
10 remain in place.

11 THE COURT: Sure.

12 MR. GOODWYN: So half of that. The only issue  
13 I have that would relate to the other terms of the  
14 contract is the retainage. I think the testimony  
15 has been it was 10 percent retainage. He would be  
16 entitled to that at the end of the project, and he  
17 has not received that. So I'd like to be able to  
18 ask in addition to the 15,000 and 50,000 in monetary  
19 damages that were not paid after the settlement  
20 agreement to be able to ask that retainage also.  
21 That was not specifically mentioned in the mediated  
22 settlement agreement, other than to say that the  
23 other terms and conditions of the contract remain in  
24 place.

25 THE COURT: There was issues of retainage

1 brought up.

2 MR. DAVIDSON: Yes, sir. Well, the retainage  
3 should just be mathematical, so it's going to be --  
4 it's going to be 10 percent.

5 THE COURT: Well, there's no retainage -- you  
6 would agree there's no retainage under the mediation  
7 settlement agreement.

8 MR. DAVIDSON: Except that it incorporates the  
9 provisions of the -- of the -- of the East-West  
10 Project, so, which, you know, which calls for  
11 retainage. I mean, it does say that it, you know,  
12 that ---

13 THE COURT: It says all the remaining ---

14 MR. DAVIDSON: Terms continue to apply.

15 THE COURT: --- remain in full force and  
16 effect. That was -- seems to me, that's just the  
17 contract for the East-West, not for the mediation.  
18 It's a different contract, right?

19 MR. DAVIDSON: Right, the East-West. So the  
20 mediated settlement agreement, though, does say that  
21 the parties -- all other terms and conditions of the  
22 contract remain in place, correct. So ---

23 THE COURT: Again, if the only thing -- the  
24 only thing Mr. Goodwyn is saying is, okay, I've got  
25 retainage under the East-West or the Toxaway.

1 MR. DAVIDSON: Yes, sir.

2 THE COURT: And the rest of them go into the  
3 mediation agreement, but those issues are still out  
4 there under the East-West contract. Is that not  
5 correct?

6 MR. DAVIDSON: Well, I think that the -- if the  
7 only thing that goes forward is a claim on  
8 retainage, I don't -- I think we can probably -- I  
9 mean, I think that's mathematical. We can figure  
10 out what that number is.

11 It's going to be 10 percent. And I don't think  
12 it's going to be the full amount because the full  
13 amount of work wasn't done. So that much retainage  
14 had not been held at that point, but assuming that  
15 the \$248,000 had been paid, it would be \$24,000  
16 in damages.

17 MR. GOODWYN: And that what's I'm saying. That  
18 is what I'm saying or whatever the math is.

19 MR. DAVIDSON: Yeah, those are round numbers,  
20 but -- so it's 10 percent of that. And I think, you  
21 know, I can certainly talk to my client, but I think  
22 that for purposes of going to the jury, it makes it  
23 much easier to only ---

24 THE COURT: Just to put it all in the mediation  
25 agreement?

1 MR. DAVIDSON: Yes.

2 THE COURT: I'm fine to do that. Let you put  
3 it under the mediation agreement and that would be  
4 simpler for everybody I think.

5 MR. GOODWYN: And I'm fine with that too, just  
6 saying that that's part of it. As long as he's not  
7 arguing, well, that wasn't in the mediated  
8 settlement. If we're saying it's all part of it.

9 THE COURT: So -- so we're clear on the record.  
10 I'll grant your motions directed to the East-West  
11 agreement and the Toxaway agreement with the  
12 stipulation that it's agreed upon by plaintiff's  
13 counsel that retainage under either one of those  
14 contracts is going to be argued in the mediation.  
15 Is that fair enough?

16 MR. DAVIDSON: That is fair. So I guess so  
17 long as we have the opportunity to argue what that  
18 amount is. I mean ---

19 MR. GOODWYN: We could probably agree to that.

20 MR. DAVIDSON: Okay.

21 THE COURT: The maximum amount would be 24,000,  
22 anything below that, right?

23 MR. GOODWYN: Well, I think it's a little bit  
24 more than that because of the way the math works  
25 out. And I -- can we just maybe do that over the

1 break and come back to you with a number?

2 THE COURT: Whatever the math. You're okay  
3 with that?

4 MR. DAVIDSON: Yes, sir, we are.

5 THE COURT: All right. So to that extent, it's  
6 -- it's granted.

7 MR. DAVIDSON: That's for both contracts,  
8 right?

9 THE COURT: Sir?

10 MR. DAVIDSON: That's for both East-West and  
11 Toxaway, correct?

12 THE COURT: Absolutely.

13 MR. DAVIDSON: All right.

14 MR. GOODWYN: Again, just for the record, we're  
15 asking for retainage on Toxaway, as well.

16 THE COURT: I'm sorry?

17 MR. GOODWYN: We're going to be asking for  
18 retainage on the Toxaway job, as well.

19 THE COURT: Well, that's what I understand  
20 everybody is agreeing to. Am I wrong?

21 MR. GOODWYN: I mean, we were just talking  
22 about the East-West. I just want to make sure it's  
23 on the record.

24 THE COURT: No, I was saying both. I said  
25 both.

1 MR. GOODWYN: Then I misheard -- I misheard  
2 you.

3 MR. DAVIDSON: Well, I think we probably -- I  
4 don't think there was retainage on Toxaway because  
5 it was paid after -- after the termination.

6 MR. GOODWYN: All right. Let's look at that.

7 MR. DAVIDSON: Yeah, I don't think you -- you  
8 don't -- you wouldn't normally hold -- you wouldn't  
9 normally hold retainage on a terminate -- on a  
10 payment after termination.

11 MR. GOODWYN: All right. We'll -- we'll come  
12 up with an agreement on that.

13 THE COURT: Hang on. Let me ask you this. I  
14 don't mean to interrupt you. Y'all have a problem  
15 with me letting the jury go to lunch and bring them  
16 back at two o'clock? I mean, that makes sense to  
17 me.

18 MR. GOODWYN: I don't have any problem with  
19 that.

20 MR. MCDADE: No problem.

21 MR. DAVIDSON: No problem.

22 THE COURT: Do you -- do you have a problem if  
23 I just have my bailiff go tell them to come back --  
24 be back a 2:00?

25 MR. DAVIDSON: Yeah, that's fine.

1 THE COURT: Do you mind telling them that?

2 THE BAILIFF: Be back at 2:00.

3 THE COURT: Be back at 2:00. Tell them to  
4 leave their notes in the jury room, please.

5 THE BAILIFF: Okay.

6 THE COURT: Alright, sir.

7 MR. DAVIDSON: Your Honor, we would further  
8 make -- include in our motion for directed verdict  
9 that the -- there is no evidence that would lead to  
10 an inference that the county has -- has breached any  
11 provision of the mediated settlement agreement.

12 The evidence is Anderson County paid to Moats  
13 the payment specifically required to be made at the  
14 start of the project in paragraph 6, and that was  
15 done. There's no dispute about the payment having  
16 been made.

17 These other provisions do not contain a day and  
18 time for payment, which would make it reasonable. I  
19 think that -- that would make it a reasonable time  
20 period for which that to be paid because the job was  
21 not completed. It never got to a point of having to  
22 make those payments, so we would move that that's  
23 the only reason -- or that is the only inference to  
24 be drawn from those.

25 THE COURT: I disagree with you. I mean, I

1 told you that yesterday and I still believe it.  
2 That \$50,000 was the qualified reasonable. I agree  
3 there's no time frame put in the contract.  
4 Reasonable time frame is to be determined on, but it  
5 certainly wasn't anything that said that we -- we  
6 will pay that if you complete this job. It said  
7 we'll pay it, so there's -- there is more than an  
8 inference that that money should've been paid. It  
9 was due to the plaintiff in this matter. So I'm  
10 going to deny your motion as to the 50,000.

11 MR. DAVIDSON: Okay. Your Honor, we further  
12 move for directed verdict that there's no evidence  
13 of a -- as to the ADA -- the ADA compliance issue in  
14 paragraph 9 of the mediated settlement agreement.  
15 The only inference there was Moats would only be  
16 held to comply with ADA if the drawings did. It  
17 wasn't -- it wasn't a separate requirement that he  
18 was going to have to comply if -- if there were a  
19 problem with the drawings.

20 THE COURT: Say that -- say your motion again.

21 MR. DAVIDSON: Yeah, it might be my inflection,  
22 so I'm not yelling.

23 So the -- the argument is under that the --  
24 under the paragraph 9, it says, "Moats will build it  
25 in compliance with the ADA if the plans -- it says

1 provided that the plans are to the ADA specs."

2 So separate and apart from whether the ADA is  
3 complied with, his con -- his contract did not  
4 require him to do that if it -- if to comply with  
5 the ADA if the drawings did not. So ---

6 THE COURT: Is there any evidence in the record  
7 that the drawings do not comply to the ADA.

8 MR. DAVIDSON: There is testimony that they did  
9 not comply.

10 THE COURT: From ---

11 MR. DAVIDSON: --- Mr. Moats.

12 THE COURT: Okay. What's your response?

13 MR. GOODWYN: That there's ample evidence in  
14 the record that the plans did not comply with the  
15 ADA. We know there were multiple revisions.

16 THE COURT: Sir?

17 MR. GOODWYN: We know there were multiple  
18 revisions of the plans leading up to the mediated  
19 settlement agreement. After the mediated settlement  
20 agreement, there was a new set of plans. We know  
21 those were not ADA compliant. He testified to that,  
22 but then Natasha Sexton said those plans were  
23 revised at least twice. Mike Duncan came in, poured  
24 that section twice -- it was torn out twice, and the  
25 plans were revised twice.

1           THE COURT: Yeah, I mean, let me ask you this:  
2 I remember Mr. Moats say something in the record  
3 saying that they're not compliant, but I don't think  
4 there's any one else who says they're not compliant  
5 and they -- there's other testimony that says it  
6 could be a matter of plans, it could be matter of  
7 construction. And so is there any testimony that  
8 says in this case this could cause the tear out that  
9 was because the plans only and not because it was  
10 improperly installed?

11           MR. GOODWYN: I think there's a strong  
12 inference that if the plans are being redesigned or  
13 re -- redone, then there must've been something  
14 wrong with the plans.

15           THE COURT: Well, that's fair.

16           MR. DAVIDSON: Your Honor, I don't think there  
17 was any testimony that that was that -- that that  
18 was probative that would actually tell you why the  
19 plans were redrawn.

20           The testimony from all the designers and from  
21 the county employees was that there were multiple  
22 revisions, some for ADA compliance early on, some  
23 for other things, but, again, that becomes part and  
24 parcel with the idea that we're not -- we're not  
25 arguing about a violation under -- or a breach of

1 the East-West Project. We're talking about the  
2 mediated settlement agreement, which has a different  
3 standard than the -- than the East-West Project  
4 because it specifically says -- I want to make the  
5 record here, "Moats work shall comply with the ADA  
6 requirements provided that the design drawings  
7 issued to Moats comply with the ADA requirements."  
8 So that's a lesser standard than was in the  
9 East-West contract.

10 Again, evidence of the county -- I mean,  
11 gratuitously, evidence that the county is trying to  
12 get -- get to a point where the project can just be  
13 finished and done. There's no evidence of what  
14 agreements there were with any subsequent  
15 contractors out there doing that.

16 So I -- I don't -- I think we're getting so far  
17 field of where we're going that it -- it -- I don't  
18 think that there's any evidence that can give an  
19 inference that the plans as the project was finished  
20 by others did not comply with the ADA. And I don't  
21 think that has any ---

22 THE COURT: There's no evidence at all about  
23 that.

24 MR. GOODWYN: I would like to respond to that.

25 MR. DAVIDSON: Okay. Well, I don't think

1           there's certainly any evidence that gives the  
2           inference that -- that -- that changes the idea that  
3           Moats' standard was lesser than others.

4           If the project -- we know that there -- there's  
5           a picture that's got some sidewalks torn out. Okay.  
6           I don't think there's anything that we can  
7           definitively say here's on why that was or -- or  
8           that the sidewalk being torn out was for some  
9           specific reason.

10          THE COURT: So what exactly are you asking me a  
11          directed verdict towards in regard to this present  
12          motion?

13          MR. DAVIDSON: That there is no evidence that  
14          that -- that the county -- hold on a second. Let me  
15          think through this for a second.

16          There is no evidence that -- that evidence of a  
17          breach by the county as to this -- as to this  
18          provision on the status of the drawings.

19          THE COURT: I'm denying that. I think that's  
20          -- that's a finding of facts. You can argue what  
21          you want to jury, but I'm not going to find that.  
22          I'd like to be heard -- I like to be heard -- the  
23          county be heard on the issue of alleged lost  
24          profits.

25          MR. DAVIDSON: Yes, sir. That was my next one.

1 THE COURT: Okay.

2 MR. DAVIDSON: All right. So we do make a  
3 direct -- directed verdict motion on the evidence of  
4 lost profits in this case. As to the case law, I'm  
5 going to specifically look at a case called *Foreign*  
6 *Academic & Cultural Exchange Services v. Tripon*.  
7 The site is 715 S.E.2d 331. It's a 2011-case.

8 And in that case as to lost profit damages, the  
9 Court said such damages must be at least reasonably  
10 certain. The proof must pass the realm of  
11 conjecture, speculation, or opinion not founded on  
12 fact and must consist of actual facts in which a  
13 reasonably accurate conclusion regarding the cause  
14 and the amount of the loss can be logically and  
15 rationally drawn.

16 The testimony we just went through about those  
17 lost profits certainly does not rise to that  
18 standard. The -- the testimony was, he wasn't able  
19 to get a bid and, historically, he did well in  
20 submitting bids. But then that is a huge jump from  
21 I'm going to get a bid bond. I'm going to prepare  
22 an estimate. I'm going to submit a bid. I'm going  
23 to have it reviewed by the public entity issuing it,  
24 and I'm going to be the award winner against the  
25 whole rest of the universe of contractors that may

1 be bidding on that job.

2 I think it is total speculation to suggest that  
3 the lost profits from a job that you didn't have --  
4 it's not like you had a job and lost it so those  
5 profits are lost. It's a job that you want to  
6 get -- that you want to get, but you have to bid on  
7 it and beat others out to get it. I think that's --  
8 that goes -- I mean, I think that's exactly what  
9 these kind of cases are for, and that this is much  
10 too speculative to be -- to be -- to stay in this  
11 case. I don't think ---

12 THE COURT: Mr. Goodwyn.

13 MR. GOODWYN: Yes, Your Honor. The plaintiff  
14 testified that he had an advantage over his  
15 competitors and he had his own crews. He didn't --  
16 he didn't have that second level of markup that all  
17 the other contractors had. He regularly was able to  
18 undercut these people and regularly got these bids.  
19 His testimony was -- was pretty clear that he  
20 regularly received these bids, and his company was  
21 on a -- on an upswing, regularly getting county  
22 work.

23 After this -- after his bonds got frozen, after  
24 the county breached this agreement and froze his  
25 bonds, everything dried up. And I think showing

1           what -- giving the jury an idea of what he was going  
2           to make in the future with these job bid bond  
3           applications is a fair measure of what his damages  
4           will be. It should be a question for the jury.

5           MR. DAVIDSON: Your Honor, he said what he was  
6           going to be making off of these bids. He's got to  
7           be awarded the bid before it ever happens. I think  
8           it's just -- that's a step too far.

9           THE COURT: Mr. McDade, do you want to be heard  
10          on this or you're just going to be heard later?

11          MR. MCDADE: On the ---

12          THE COURT: This -- this motion for directed  
13          verdict.

14          MR. MCDADE: On his motion? I agree with it.  
15          I believe it's all -- I believe it's speculative.

16          THE COURT: Let me say ---

17          MR. MCDADE: You can't get count on getting  
18          every bid that you submit.

19          THE COURT: I'm going to grant your motion as  
20          to lost profits, and I'll tell you why. The bid --  
21          I say the wrong terminology and I'm sorry. Buy bids  
22          or whatever those forms that he was submitting had  
23          the total amount of the bid and anticipated net gain  
24          that he would've -- he would've made if he got the  
25          job. Speculation comes in this case that he

1 would've got the job. I think there's nothing that  
2 he's testified to, even if we believe it, and I'm  
3 not saying we don't. I'm just saying if you take it  
4 for its absolute truth, takes it out -- that damages  
5 out of the realm of speculation. There's no way.  
6 It can't be speculation because there's no way for  
7 us to determine who would've gotten those bids in  
8 this case. Therefore, I think the standard that was  
9 articulated by Mr. Davidson is that you've got to  
10 show these damages to a reasonable degree of  
11 certainty and it must pass the realm of conjecture,  
12 speculation, or opinion not found in facts and must  
13 consist of actual facts that reasonably are accurate  
14 conclusions regarding the cause of the amount of  
15 loss that can be radically -- logically and  
16 radically drawn. It's not here, so I'm going to  
17 grant that motion as to any and all future damages  
18 based on the buy bids or the bid. What's the  
19 documents called? I'm sorry.

20 MR. GOODWYN: What -- what's what?

21 THE COURT: What are those documents that ---

22 MR. GOODWYN: Oh, bond bid applications.

23 THE COURT: Bond bid. I am so sorry. Bond  
24 bid. Other than the bond bid documents, there's no  
25 number of damages that's been asserted in this case

1           that I heard.

2           I think that probably an inability to bid is --  
3           is -- is worth -- is worth some kind of money.  
4           However, there's no evidence in this case in which  
5           the jury can determine that amount because it would  
6           be pure speculation they'd come up with an amount.  
7           It seems kind of to me that probably a comparison of  
8           before and after the ability to bid and inability to  
9           bid might be an appropriate approach, but it's not  
10          here in this case anyway. I'm granting the motion  
11          to future lost damages so that you can't argue those  
12          to the jury. Okay?

13          MR. DAVIDSON: Your Honor, Anderson County  
14          further makes a motion for directed verdict based  
15          upon the claim -- against the claim that Anderson  
16          County, by making -- that the actions of Anderson  
17          County have caused Mr. Moats to lose bonding  
18          capacity and to -- and to not be -- bid on anything.  
19          We just went through a back and forth on other  
20          reasons for which ---

21          THE COURT: I think there's questions of fact  
22          on that one. If you look at Exhibit 12. I remember  
23          the number. You got this UCC-1 filed and that's  
24          keeping you from getting your bond bids or whatever.  
25          It's a question for the jury. Those go to future

1 damages and so you can't argue those -- you can't  
2 argue those facts because it goes to future damages.

3 MR. DAVIDSON: Okay.

4 THE COURT: All right.

5 MR. DAVIDSON: Thank you, Your Honor.

6 THE COURT: Or lost profits rather.

7 MR. DAVIDSON: Right. So, additionally, we  
8 make a motion for directed verdict that there is no  
9 evidence that you could reasonably -- that you can  
10 infer that punitive damages are appropriate in this  
11 case against Anderson County as they've been pled.

12 THE COURT: Granted. You can't get punitive  
13 damages against the county. You don't ---

14 MR. GOODWYN: Well, I would -- I would respond  
15 by saying to the extent ---

16 THE COURT: You cannot get damages or punitives  
17 against the county. You just can't.

18 MR. GOODWYN: Well, you know, I mean, can we  
19 argue the Tort Claims Act?

20 THE COURT: I'm not saying individuals. I'm  
21 saying the county.

22 MR. GOODWYN: The county, yeah, I would agree  
23 tort ---

24 THE COURT: All right. So that's granted.

25 MR. DAVIDSON: That concludes my directed

1 verdict motions, Your Honor.

2 THE COURT: Thank you, sir.

3 MR. MCDADE: Your Honor, have you  
4 substituted ---

5 THE COURT: Can you come around here? I'm  
6 having a hard time hearing you from there.

7 MR. MCDADE: I'm having a hard time hearing.  
8 Is this better here?

9 THE COURT: That's fine. I just can't hear you  
10 over there.

11 MR. MCDADE: Well, I guess that makes sense  
12 since I couldn't hear from other there that you  
13 couldn't hear me over there.

14 Your Honor, have you substituted the county for  
15 the three individual defendants remaining?

16 THE COURT: Not yet.

17 MR. MCDADE: Okay. All right. Well, we  
18 certainly would not oppose that and would join in  
19 that.

20 Your Honor, the statute of limitations for both  
21 the Tort Claims Act and the defamation statute are  
22 both two years. So I would start with the two  
23 e-mail chains and that deals with the claims against  
24 Matt Schell. Those are all more than two years old.  
25 Those were the basis that we came into this case,

1 the only evidence that they had submitted of any  
2 defamation as to Matt Schell. I don't recall  
3 anything else being stated other than those e-mails.

4 And if anything was stated that Matt Schell did  
5 this or said this, it still has to rise to the level  
6 of defamation because I think one problem we have in  
7 this case, and it's certainly Mr. Moats' right to  
8 think about whatever he thinks, but I believe his  
9 definition of defamation and the statutory  
10 definition of defamation are two entirely different  
11 things. So we would argue that those e-mail chains  
12 are -- are barred by the statute of limitations.  
13 Those statements should not be considered in this  
14 case, that there are or no other statements by Matt  
15 Schell that have been attributed to him that would  
16 be defamatory.

17 Your Honor, I would also call your attention to  
18 the ---

19 THE COURT: Let me ask you this: When was this  
20 suit filed?

21 MR. MCDADE: 2020.

22 THE COURT: And what was the date of those ---

23 MR. GOODWYN: January 10th, Your Honor.

24 MR. MCDADE: January the 10th. These  
25 statements are in 2017, February of 2017.

1           And the other one is around -- is around the  
2 same date. Well, it's April of 2017, but they're  
3 all in 2017 so they're certainly more than -- more  
4 than two years old.

5           THE COURT: All right. I'd like --  
6 Mr. Goodwyn, I'd like for you to be heard on that.

7           MR. GOODWYN: Your Honor, these e-mails are in  
8 2017. I think they are -- I don't think I can argue  
9 they're not. You know, the suit was filed  
10 January 10th of 2020. We were expecting more --  
11 more than that to be presented today. The testimony  
12 didn't shake out like that. I think based on the  
13 e-mails alone, I can't argue statute of limitations.  
14 I can argue the merits of the content if you just  
15 want me to argue that, but, I mean, as far as  
16 statute of limitations goes.

17           THE COURT: Well, I mean, as far as the statute  
18 of limitation goes, if it's more than two years  
19 and -- and there's no discovery issue about them,  
20 the e-mails, which there is not because then I'm  
21 going to grant your motion as to statute of  
22 limitations. Okay.

23           MR. MCDADE: Okay. And that would -- I believe  
24 that would get Matt Schell out of it.

25           My -- my other argument is that if these aren't

1           defamatory, these are ---

2           THE COURT: Well, let me just say this: I'm  
3 going to confine to Mr. Schell right now. I also  
4 looked at the e-mails and I saw the testimony. They  
5 did not -- they don't constitute defamation. I  
6 think they don't rise to that level. So even if  
7 they're not barred by the statute of limitations,  
8 they are not defamatory, and so I grant your motion  
9 on that as to Mr. Schell.

10           MR. MCDADE: And, Your Honor, I -- I would add  
11 to that that the law of defamation requires that if  
12 it's against a private citizen, there has to be  
13 common -- there also has to be common law actual  
14 malice under the *Murray v. Holnam* case, 344 S.C.  
15 129, a Court of Appeals decision from 2001. There  
16 is no actual malice either, so I would add that  
17 as -- as a further ground for that.

18           THE COURT: Okay, sir.

19           MR. MCDADE: Two remaining things, Your  
20 Honor ---

21           THE COURT: Hang on. Mr. Goodwyn.

22           MR. GOODWYN: Well, I would just respond to  
23 that by saying that the question -- malice is a  
24 question for the jury.

25           THE COURT: I -- I -- I would agree that you're

1 right that malice is for the jury, but I am granting  
2 your motion for the statute of limitations and the  
3 fact that the statements in those e-mails does not  
4 rise to the level of being defamatory.

5 MR. MCDADE: Okay. Your Honor, the other two  
6 issues, one is the sign. I believe at one point ---

7 THE COURT: Mr. Hopkins, let me -- let me just  
8 go ahead and cut.

9 Do you agree with me, Mr. Goodwyn, there's  
10 absolutely no evidence in the record or any  
11 inferences that could be drawn that Mr. Hopkins had  
12 anything to do with that?

13 MR. GOODWYN: I can't agree to that because he  
14 was the project manager at the time. And it only  
15 stands to reason that the project manager would  
16 directed that Mr. Moats' name be painted -- be  
17 painted over, so I don't think that's ---

18 THE COURT: I'm going to grant the motion.  
19 There's no evidence at all from it. And I just  
20 don't think there's anything you can derive from it,  
21 even by inference.

22 MR. MCDADE: And, Your Honor, in addition ---

23 THE COURT: I would say also the fact that if  
24 in my view, and I might be wrong, but if you saw  
25 Mr. Hopkins out there painting over the sign, the

1 logo, that wouldn't be defamatory. They're just  
2 painting over the logo. I just don't see how that  
3 conduct rises to the level of being defamatory. So  
4 that's another ground I grant the motion on. Okay?

5 MR. MCDADE: Okay. Your Honor, the last thing  
6 is -- is the news article. And, again, I don't  
7 believe it's defamatory. If you say that there have  
8 been disputes with the contractor, which are being  
9 resolved, I don't see how you get that there's any  
10 malice or ill will that's required.

11 THE COURT: Well, let me stop you there and  
12 just ask Mr. Goodwyn if the fact the statement is  
13 true, which it was, that doesn't -- that is not  
14 defamatory, is it?

15 MR. GOODWYN: Well, I mean, it falls under  
16 defamation law. If you say something that's true,  
17 it's not defamatory by definition. We just contend  
18 that it's not true. They weren't -- there weren't  
19 disputes with the contractor. It was the plans did  
20 not allow for an ADA compliant sidewalk. And that  
21 was the reason for the delay. It's not that there  
22 were disputes with the contractor.

23 THE COURT: Obviously, it's a dispute with the  
24 contractor because you have a mediated agreement.  
25 That is inherently, there's a dispute or you

1           wouldn't have ---

2           MR. GOODWYN: Well, we're saying it implies  
3           that he's done something wrong.

4           THE COURT: Sir?

5           MR. GOODWYN: Just to say that there's disputes  
6           with the contractor implies that he's doing  
7           something wrong.

8           THE COURT: No. The only thing he said is we  
9           have a dispute with our contractor, which is  
10          being -- which is being resolved or something. He  
11          didn't say it's his fault. He did say there's no  
12          inference it's his fault.

13          MR. GOODWYN: I would suggest there's a strong  
14          inference. The very first thing out of his mouth as  
15          to what the delays are disputes with the contractor,  
16          so, I mean, I know, implying he's doing something  
17          wrong, which, in fact, it was there their own  
18          architect. They didn't -- he didn't say that the  
19          architect has messed up these drawings and the  
20          contractor can't do it. It just -- the contractor  
21          did something wrong.

22          MR. MCDADE: Your Honor, if I could add. There  
23          was ample testimony that disputes on a construction  
24          site are -- are the norm. They're certainly not  
25          unusual. And I would point out that this is -- this

1 is a citizen who called -- who called in. Three  
2 people wrote this article. We don't know whether  
3 that's the first thing that Mr. Burns said or not.  
4 He may've said something else before he said that,  
5 but what we do know is what's attributed to him that  
6 he owns is that there were disputes with the  
7 contractor, which are being resolved. And he talked  
8 about rain days. He talked about right-of-ways. He  
9 talked about sewer, which had nothing to do with  
10 Mr. Moats. And -- and he talked about all of those  
11 different issues on a construction site. How an  
12 unnamed contractor would be defamed by that is  
13 beyond my imagination.

14 THE COURT: Well, again, I think the statement  
15 he made was a truthful statement. He have a dispute  
16 with our contractor being resolved. I just don't  
17 think it rises to defamatory. And I think it does  
18 appear or apply to per se.

19 And with that being said, I certainly will  
20 grant on that basis, but also another ground for me  
21 that I looked at and I had this from my law clerk is  
22 that the only way to hold these individual  
23 defendants in is under 15-77-60(17) for there to be  
24 evidence that there was actual fraud, actual malice,  
25 there was an intent to harm or a crime of moral

1 turpitude. There's absolutely no evidence in the  
2 record from any of these employees or  
3 representatives of Anderson County of any of those  
4 factors.

5 And, therefore, under my understanding of the  
6 Tort Claims Act, the only way you can hold  
7 individuals in there is to have that kind of  
8 evidence -- actual fraud, malice, intent to harm, or  
9 crime of moral turpitude. And without it, they have  
10 to be dismissed from the suit and the county put  
11 stead, but still, there's no evidence at all so  
12 they're out on that basis alone. Okay?

13 MR. MCDADE: Okay. Thank you, Your Honor.

14 THE COURT: All right.

15 MR. MCDADE: Your Honor, can say would say --  
16 if there was an appeal in this case, can we  
17 substitute ---

18 THE COURT: Sir?

19 MR. MCDADE? Are you ruling that they should  
20 be -- the county should be substituted for them?

21 THE COURT: No. I think there's no evidence of  
22 defamation in this case for either one of them --  
23 from Hopkins, from the e-mails, or from the paper.  
24 The only thing about Mr. Burns was from the paper.  
25 The only thing about Mr. Schell was two e-mails.

1 And the only thing about Mr. Hopkins was he caused  
2 or did paint over the logo. And I don't think all  
3 of those don't constitute defamation at all.

4 MR. MCDADE: Okay. And if 17 -- if 58 -- if  
5 15-78-60(17) doesn't apply, then the Tort Claims Act  
6 requires that they be substituted.

7 THE COURT: Well, it does, but you also have  
8 from Mr. Schell the statute of limitations on that  
9 claim. You can't -- can't bring the county in on  
10 that.

11 MR. MCDADE: I guess my question is, do we  
12 substitute ---

13 THE COURT: I'm dismissing it -- I'm dismissing  
14 the individuals on the fact that there's no evidence  
15 of that. I'm also finding, though, that there's no  
16 evidence of defamation, so there's no substitution  
17 of the county needed because there's no defamation  
18 claims going to the jury.

19 MR. MCDADE: Okay.

20 THE COURT: Okay.

21 MR. MCDADE: Thank you, sir.

22 THE COURT: Yes, sir.

23 MR. DAVIDSON: Your Honor, can I ask for one  
24 clarification for just a second? So when I was  
25 going to call Matt -- Mike Foreman as my -- as one

1 of my witnesses when I get started, he was the  
2 project manager for lack of a better term on the  
3 Toxaway Project at the very beginning, but to the  
4 extent that -- that your ruling applies to the  
5 Toxaway contract also, I may not need to do that  
6 because we're -- we're not talking about breaches of  
7 that contract anymore, correct?

8 THE COURT: I think that you and, Mr. Goodwyn,  
9 tell me if I'm wrong. I thought you and Mr. Goodwyn  
10 just stipulated that the issue of any retainage of  
11 those contracts would be included in the mediation  
12 agreement, whether or not there's retainage on the  
13 Toxaway is something y'all ---

14 MR. GOODWYN: I just talked to him. We agree  
15 that the amount paid on -- with the termination of  
16 the Toxaway Project was the full amount that he was  
17 owed for the work he had done, so there's no  
18 retainage on the Toxaway Project. It's just the  
19 East-West Project.

20 MR. DAVIDSON: Okay. So we don't even need to  
21 go into the termination now?

22 MR. GOODWYN: No.

23 MR. DAVIDSON: Okay. I just wanted to -- I  
24 just wanted to make sure, so that shortens my  
25 presentation.

1 THE COURT: All right.

2 MR. GOODWYN: I have one other issue just --  
3 just for clarification. I have been arguing that  
4 these two exhibits, the -- this project status  
5 request for the county said the contractor failed to  
6 meet their obligation requirements under the  
7 mediation, that this was false and defamatory  
8 towards him, and then this -- the bond letter saying  
9 that he's -- he's walked off the job. He refuses to  
10 complete the job. That was false and defamatory  
11 towards him. I think we've alleged in our complaint  
12 that the defamation claim against the county, I  
13 think this -- this evidence would support that, so  
14 I'd like to be able to go to the jury on that.

15 THE COURT: Let me say this: I do want you to  
16 amend your complaint, but you tried it based on  
17 these statements of the conduct of three employees  
18 that you named. You did not present that as the  
19 basis for it.

20 MR. GOODWYN: That's was the basis. That's why  
21 I'm -- I'd like to ---

22 THE COURT: No, sir. That was part of the  
23 damages, but you didn't say it was for ---

24 MR. GOODWYN: I -- then I would move -- now  
25 move to amend my complaint. That was the

1 purpose ---

2 THE COURT: The same reason I won't let you do  
3 it then and I'm not going to do it now, is they have  
4 to have a chance to defend against it. You change  
5 it in the middle towards the end. I never heard one  
6 issue coming out about defamation, except for the  
7 individual employees at all. The other has to do  
8 with damages.

9 MR. GOODWYN: Well, I would -- I did ask him on  
10 the stand was -- were these statements false? Did  
11 that hurt your reputation? He said yes. That's why  
12 I asked him. And that's why I think you're allowed  
13 to move to amend to conform to the evidence at any  
14 time during a trial.

15 THE COURT: I think you are allowed if justice  
16 prevails in doing so. In this case, it doesn't. I  
17 don't think -- I don't think that first of all, the  
18 statements contained in those, they were presented  
19 from a damages perspective when you said it, but  
20 even if it's not true, I don't think it means it's  
21 defamatory. It doesn't make him unfit for doing his  
22 job. It just says that he's the one that causes. I  
23 don't see that as being unfit.

24 MR. GOODWYN: It's certainly not good for your  
25 reputation.

1 THE COURT: Sir?

2 MR. GOODWYN: It's not good for your reputation  
3 if somebody says you -- you breached a -- you  
4 breached an agreement with a -- on a job, I mean.

5 THE COURT: Well, that says he didn't complete  
6 the job.

7 MR. GOODWYN: And then -- right.

8 THE COURT: Right?

9 MR. GOODWYN: He -- no. He refused to -- he  
10 refused to complete the job, which he didn't. He  
11 didn't refuse to complete it. It was his argument  
12 the whole time is that the design doesn't allow him  
13 to complete it the way that they require it to be  
14 completed.

15 THE COURT: Well, I'm not going to let you --  
16 that may give you something to hang your hat on if  
17 you go up on the case. I think I'm right, but I'm  
18 not always I promise you.

19 MR. MCDADE: Your Honor, may I add something on  
20 that issue?

21 THE COURT: Absolutely.

22 MR. MCDADE: It's in -- it's in the record, but  
23 I want to make clear. I was not provided that  
24 document. It was not ever presented to me as being  
25 related to defamation. The only document I ever got

1 is Defendant's No. 2 in discovery.

2 I sent a first set of discovery. This is all I  
3 got. I sent a second set of discovery asking in  
4 interrogatories what has this person -- what have  
5 they said that's defamatory, when and where, what  
6 did they say? Financial statements and all of those  
7 things. I never got any of that stuff. So and to  
8 the extent that that was presented as to defamation,  
9 I certainly would've objected and asked the Court  
10 not to allow it in.

11 THE COURT: Mr. Goodwyn, any response to that?

12 MR. GOODWYN: Well, these documents don't  
13 relate to any of his clients. They are documents  
14 that Mr. Davidson himself sent the letter at the  
15 direction of Mr. Harman, and then the other one was  
16 Robert Carrol. Neither one of those individual are  
17 his clients.

18 THE COURT: Noted for the record. So at this  
19 juncture, defamation is out.

20 Okay. Going to the jury on retainage. I don't  
21 know why -- I said this to y'all yesterday -- why  
22 there's an issue of the \$50,000. I mean, we may  
23 have to hear that in the state's case, but I don't  
24 see an issue about that.

25 MR. DAVIDSON: Okay. We'll -- we'll ---

1 THE COURT: Sir?

2 MR. DAVIDSON: I said we'll -- we'll ---

3 MR. MCDADE: Discuss it.

4 MR. DAVIDSON: --- we'll -- we can discuss  
5 that. And then if we don't reap something, maybe we  
6 can argue it at the close of our -- and put all that  
7 on the record.

8 MR. GOODWYN: I -- I don't move for directed  
9 verdict now until they have a chance. I don't move  
10 for directed verdict now.

11 THE COURT: Yes, sir, you do.

12 MR. GOODWYN: Well, if I -- if I move for  
13 directed verdict now, will they have a chance to  
14 respond?

15 THE COURT: Well, that's a good question.  
16 Usually, you have the person resisting the claims  
17 doing the directed verdict motion saying you failed  
18 on the claim.

19 MR. GOODWYN: I mean, I can -- I can move, but  
20 I just -- I don't think it's proper until they have  
21 a chance to at least put up a case against me.

22 THE COURT: I think you're right. I think  
23 you're right, but you don't waive your right by not  
24 doing it I don't think, but ---

25 MR. GOODWYN: Right.

1 THE COURT: --- to the extent I would have  
2 allowed you to do so, you would've said what?

3 MR. GOODWYN: I would've argued -- moved for a  
4 directed verdict on paragraph 4, the breach of the  
5 \$50,000 damages. It's unambiguous. There are no  
6 conditions upon it. It should've been paid within a  
7 reasonable time and there's been no -- no rational  
8 explanation on why it wasn't.

9 THE COURT: And the only reason I asked you  
10 that, I had a Court of Appeals judge tell me she  
11 agreed with me on the record. I had told somebody  
12 they were covered under an issue going up on appeal,  
13 and she said that's not your job. It doesn't matter  
14 what you say, I make the decision or we make the  
15 decision, so it's in the record.

16 MR. GOODWYN: Thank you. Note to self on that  
17 one.

18 THE COURT: Yeah. All right. Other than that,  
19 any other matters from the county?

20 MR. DAVIDSON: No, Your Honor.

21 THE COURT: From the -- from the individuals?

22 MR. MCDADE: No, Your Honor. I don't have any  
23 issues now.

24 THE COURT: Any other matters from the  
25 plaintiff?

1 MR. GOODWYN: No, Your Honor.

2 THE COURT: All right. Two o'clock?

3 MR. GOODWYN: Yes, sir.

4 THE COURT: All right. See you guys at 2:00.

5 (From 12:27 to 2:02 p.m., lunch recess.)

6 THE COURT: All right. Before we get started,  
7 anything from the plaintiff?

8 MR. GOODWYN: No, Your Honor.

9 MR. DAVIDSON: Your Honor, Mr. Holt -- Holt  
10 Hopkins and Matt Schell have been dismissed, but  
11 wanted to stay and you have a sequestration order.

12 THE COURT: I'm glad for them to stay, but if  
13 they do stay, they can't testify.

14 MR. DAVIDSON: I don't plan on calling them.

15 THE COURT: Okay. All right. Bring the jury  
16 in, please.

17 (At 2:04 p.m., jury entered the courtroom.)

18 THE COURT: Mr. Davidson, is the county ready  
19 to proceed?

20 MR. DAVIDSON: We are, Your Honor.

21 THE COURT: Call your first witness.

22 THE DEFENDANT: I call Rita Davis.

23 THE CLERK: Please come around and raise your  
24 right hand.

25 THE WITNESS: (Complying.)

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

4 THE WITNESS: I do.

5 THE CLERK: Thank you. Please take a seat  
6 there at the witness stand.

7 THE WITNESS: (Complying.)

8 RITA DAVIS,  
9 having been produced and first duly sworn as a  
10 witness on behalf of the Defendant, then testified  
11 as follows:

12 DIRECT EXAMINATION

13 BY MR. DAVIDSON:

14 Q. Ms. Davis, I'm John Davidson.

15 A. Hi, John.

16 Q. I'm the -- I'm representing Anderson County in  
17 this. Can you hear me okay?

18 A. I've got my hearing aids turned all the way up,  
19 so, yes, sir.

20 Q. It's hard to hear on this side. And,  
21 apparently, I don't talk loud, so ---

22 A. I'm looking at your lips.

23 Q. --- I'm going to work hard at it. All right.  
24 Ms. Davis, can you give us your name for the record?

25 A. Rita Davis.

1 Q. Okay. Where do you work?

2 A. Anderson County.

3 Q. All right. Who do you work for?

4 A. Rusty Burns is my boss.

5 Q. Okay. So do you work for the county?

6 A. Yes, sir.

7 Q. Okay. What is your job at the county?

8 A. Chief financial officer.

9 Q. What does the -- what does the chief financial  
10 officer do for Anderson County?

11 A. Primarily responsible for monitoring the  
12 finances, working with the auditors for our year-end  
13 financial statements, preparing the budget that's  
14 presented to county counsel for adoption, and  
15 anything else that comes up -- paying the bills,  
16 payroll, things of that nature.

17 Q. Okay. So does the -- does your office handle  
18 payments to county vendors?

19 A. Yes, sir, it does.

20 Q. So for construction projects, is that still the  
21 same?

22 A. Yes, sir, it is.

23 Q. Okay. Did you have any involvement in the  
24 East-West Parkway Project?

25 A. We would have budgeted for it. Any invoices

1 for that project, would have come through finance  
2 for payment. Yes, sir.

3 Q. Okay. Now, how do you -- how do you keep the  
4 records of those payments?

5 A. We have, of course, accounts payable registers  
6 that show each check that's generated, the amount,  
7 the vendor, the general ledger account, and, you  
8 know, some purchase orders, et cetera.

9 Q. All right. Thank you. I'm going to show you  
10 an exhibit.

11 A. Okay.

12 Q. And it's going to pop up on the screen there in  
13 front of you.

14 A. High tech.

15 MR. DAVIDSON: And for the record, this is  
16 Defendant's Exhibit 1, Tab 27.

17 THE COURT: Twenty-seven?

18 MR. DAVIDSON: Twenty-seven. Yes, sir.

19 BY MR. DAVIDSON:

20 Q. Now, Ms. Davis, I can't get the whole thing on  
21 the screen at one time, okay, and have it be very  
22 legible.

23 A. Okay.

24 Q. So if you need something blown up or moved,  
25 tell me. All right.

1 A. Yes, sir.

2 Q. So can you see the top of that now?

3 A. Yes, sir, I can.

4 Q. All right. Can you tell me what that is?

5 A. That appears to be a spreadsheet summarizing  
6 expenditures related to East-West Parkway, phases 1  
7 and 2 it says.

8 Q. Okay. Do you know if this was generated by  
9 your office?

10 A. To my recollection, this would've been  
11 generated by Anna Artman of grants accountant.  
12 She's -- personal financial analyst is her job title  
13 because as I recall, grant money would have gone to  
14 a portion of this project, and she and another lady  
15 are responsible for tracking grant expenditures.

16 Q. Okay. And they're both in your office?

17 A. Yes, sir.

18 Q. Okay. So I want to make sure we're clear on a  
19 couple of things. Up at the -- up at the top, you  
20 see invoice 1 and 2?

21 A. Payout 1 and 2 or phase 1 and 2 are you talking  
22 about?

23 Q. Yes, ma'am. Hang on. I'm going try to get  
24 this so it's -- so, hopefully, the jury can see it,  
25 too. So phase 1 and 2 construction, do you see that

1 heading?

2 A. Yes, sir.

3 Q. Okay. And those -- what do those show under  
4 that?

5 A. That shows the application for payment that was  
6 presented to finance for payment and the appropriate  
7 invoice number, the amount of the application for  
8 payment, the check number that paid that  
9 expenditure, and the date of the check.

10 Q. Okay. And so what vendor is that at the top?  
11 Is that Moats Construction?

12 A. That appears to be so. Yes, sir.

13 Q. All right. So what was the total amount paid  
14 to Moats Construction according to this -- according  
15 to this?

16 A. For phase 1 and 2 construction, 274,159.12.

17 Q. Okay.

18 A. That includes, you know, the two mediation  
19 payments itemized for five and six.

20 Q. Okay. She's -- the court reporter is writing  
21 down everything you say. So when you give numbers,  
22 it might ---

23 A. Yes, sir.

24 Q. --- it might be easier to slow down a little  
25 bit ---

1 A. Yes, sir.

2 Q. --- if you don't mind.

3 A. No problem.

4 Q. Thank you. All right. So \$274,159.12 was paid  
5 to Moats Construction on the East-West Park Project,  
6 correct?

7 A. Yes, sir.

8 Q. And that included the mediation payment?

9 A. Yes, sir.

10 Q. Okay. Now, let me -- I'm going to have you  
11 look at a couple of other items. So Mike Duncan is  
12 shown as concrete work for pedestrian bike path; is  
13 that right?

14 A. Yes, sir.

15 Q. How much was paid to Mike Duncan?

16 A. \$9,450.

17 Q. All right. What about to First Impressions  
18 Landscaping?

19 A. That would've been \$5,242 I believe. I think  
20 it was the three invoices there. Do I need to  
21 itemize those separately, sir?

22 Q. Well, I was just looking for the total ---

23 A. Okay.

24 Q. --- but if you need to itemize them, that's  
25 fine. What about for irrigation services and

1 repair?

2 A. Yes. That would've been \$11,600.

3 Q. Okay. And for Moseley Brothers?

4 A. Moseley Brothers, 1,750.

5 Q. Okay. Were those -- so were those payments  
6 made? Those payments were made to those -- each of  
7 those vendors?

8 A. Almost definitely. Yes, sir. Through the  
9 finance office.

10 Q. Okay. Let me ask you if you agree with me that  
11 the amounts for each of those, that those several  
12 amounts that we just talked about, do they add up to  
13 \$28,042?

14 A. If you say so, sir.

15 Q. Well ---

16 A. I have never -- I have never -- I haven't  
17 independently summarized those.

18 Q. Can I give you a piece of paper ---

19 A. Sure.

20 Q. --- to do it if you don't mind?

21 A. Well, if Mr. Judge says you can.

22 Q. If the judge allows it. Certainly.

23 A. Okay. So we're talking about -- (witness adds  
24 figures). How much did you say, sir?

25 Q. I said \$28,042.