

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Mikell R. Scarborough, Master-In-Equity

Appellate Case No. 2024-000788

RECEIVED

Aug 12 2026

SC Court of Appeals

Balfour Beatty Construction, LLC, Appellant,

v.

Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation,
Defendants,

And

Library Associates, LLC, Third-Party Plaintiff,

v.

Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc., Third-Party Defendants.

Of which Library Associates, LLC is the Respondent.

SUPPLEMENT TO THE RECORD ON APPEAL – VOLUME 2 OF 22

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

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

*Attorneys for Appellant Balfour Beatty
Construction, LLC*

The Law Office of Jesse Sanchez, LLC
Jesse Sanchez, Esq. (S.C. Bar No. 101906)
751 Johnnie Dodds Boulevard, Suite 200
Mount Pleasant, SC 29464
(843) 814-8181
jesse@jessesanchezlaw.com

Bundy McDonald, LLC
W.H. Bundy, Jr., Esquire (S.C. Bar No. 1012)
1516 Old Trolley Rd, 2nd Floor
Summerville, SC 29485
walter@bundymcdonald.com

*Attorneys for Respondent Library
Associates, LLC*

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“Supp. R.” refers to this Supplement to the Record on Appeal, submitted electronically pursuant to the Court’s June 23, 2026 Order granting Respondent leave to file an electronic supplemental record. The Supplement contains materials from the proceedings below designated by Respondent that do not appear in the printed Amended Record on Appeal, together with the complete versions of voluminous exhibits whose first pages appear in the printed Record (cross-referenced under “Printed R-”). Library Associates, LLC’s Filing of March 13, 2024 Hearing Exhibits appears in full in the printed Record at R-8793 to R-9825 and is not duplicated here.

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1 Q. All right. And then you take that --
2 once you compiled it on this job, did you send
3 that to home office for review?

4 A. I would have given it to Nick and David
5 Simonton for review.

6 Q. Okay. And how? Would you physically
7 hand it to them?

8 A. No. I don't know if I would hand it to
9 them or e-mail it to them. We sat in the same
10 office; so I don't know how I would have given it
11 to him.

12 Q. Did you send it to the accounting folks
13 in Charlotte?

14 A. I would not have because I wouldn't have
15 done anything with it until it was approved by
16 the -- certified by the architect.

17 Q. Sure. Okay. So you would gather the
18 information, just so just I understand, of the
19 cost of the work that Balfour Beatty contended in
20 that particular progress -- we're going to go
21 through the pay applications in a second -- but I
22 just want to understand the process right now,
23 given that you didn't read the contract -- which
24 is, you would gather it up, and you would give it
25 to Mr. Spano or Mr. Simonton when he was there,

1 or the other two gentlemen when they were there;
2 is that right?

3 A. Yes.

4 Q. And then do you know what they did with
5 it?

6 A. Well, they would review it and tell me
7 to send it -- ask me to make a change or they
8 would review it and I would send it to the
9 architect and the owner or the owner's rep, Jim
10 Clements.

11 Q. All right. So they would review it; you
12 would review it, and then you all would send
13 the -- what you contended to be cost of the work
14 to the architect and to Mr. Clements, correct?

15 A. Yes.

16 Q. And you also understood that there was a
17 bank inspector there, correct?

18 A. Yes, Steve Iver (ph).

19 Q. Say that name again.

20 A. Steve Iver.

21 Q. Steve Iver. What did you understand the
22 purpose of Mr. Iver was?

23 A. My -- so there was a bank on the
24 project, right. My understanding was that
25 Steve's job was to protect the interests of the

1 lender, the bank lender. And what exactly
2 protect the interest means, it'd probably be a
3 bunch of different things, but he was there to
4 look out for them as the lender.

5 Q. Sure. Because you knew, when you were
6 running these pay applications, that ultimately
7 they were going to be sent to a lender for
8 funding, correct?

9 A. Yes.

10 Q. And then at some point, you would wait
11 to get the signed pay application or certified
12 pay application by the architect, correct?

13 A. I don't know about -- what do you mean
14 by wait?

15 Q. I mean, that would be the next step.
16 After you sent it to Mr. Clements and the
17 architect and the bank inspector came, what
18 you-all expected the next step to be was, if the
19 architect -- if it complied with the provisions
20 of the contract documents, the architect would
21 certify it and send it back to the owner,
22 correct?

23 A. My recollection was that -- yeah, she
24 would send it to the owner. She wouldn't send
25 it -- we'd probably be copied on that e-mail,

1 saying, Kim, I've certified the payment
2 application. But I don't ever remember her
3 sending it to me and then do anything with it. I
4 remember she sent it to Kim.

5 Q. Yeah. The architect would certify it
6 and send it to the owner, correct?

7 A. That's my -- yeah.

8 Q. Because the architect's contract is with
9 the owner, right?

10 A. Correct, yes.

11 Q. Okay. And then now, you, Balfour had a
12 certified pay application. You-all created it.
13 We're going to look at it in a second -- and now
14 at this point, it would be certified by the
15 architect and put up for payment, correct?

16 A. Yes.

17 Q. Okay. And that's what the contract
18 documents required prior to the owner being
19 responsible to pay anything is that architect
20 certification?

21 A. I told you I didn't read the contract,
22 that portion of the contract.

23 Q. Fair enough. And then, after the
24 architect certifies it, you understood that it
25 went to the bank and then the bank would fund the

1 draw, right?

2 A. Yeah. I knew that happened.

3 Q. Okay. And then once Balfour Beatty
4 received the funds, the amounts that the
5 architect had certified, you-all, to the extent
6 you included subcontractor costs in that draw,
7 you-all would then pay your subcontractors?

8 A. Yes.

9 Q. Is that correct?

10 A. Yes.

11 Q. And how would that work?

12 A. How would that work? So we would notify
13 the accounting team that --

14 Q. I'm not trying to cut you off, but the
15 pronoun -- I just want to get rid of the pronoun
16 first. You would notify the accounting team or
17 somebody else?

18 A. Nick Starcevic would notify the
19 accountant -- the project accountant, who is
20 primarily a woman named Candace Ash, that the
21 following payment applications were able to be
22 paid for. And it would be the -- it would be the
23 pay apps less retainage of what was in the draw.
24 He would -- you would notify her of which ones
25 that were approved.

1 Q. And the pay applications themselves
2 physically had attached to them -- the pay
3 applications that you-all sent to the owner
4 physically had attached to them the pay
5 applications that your subcontractors would send
6 to you-all?

7 A. Yeah. I would print them all out.

8 Q. That's exactly right. And just for
9 benefit of clarity, just because it's owner
10 subcontracts -- owner pay application 35, it may
11 contain subcontractor X, pay application 2?
12 Sometimes those numbers don't line up, correct?

13 A. Right. Well, a subcontractor wasn't --
14 you know, Balfour Beatty has been on-site and had
15 a progress building every month. So the
16 subcontractor -- you know, the painter wasn't
17 there when we were digging dirt so he wouldn't
18 have a payment application.

19 Q. All right, sir.

20 MR. MCDONALD: I'm going to mark
21 for ID purposes Defendant's Exhibit 2.

22 (DFT. EXH. 2 was marked for
23 identification.)

24 MR. MCDONALD: May I approach the
25 witness, Your Honor?

1 THE COURT: You may.

2 BY MR. MCDONALD:

3 Q. I hand you what's been marked as
4 Defendant's 2. I would first ask you if you
5 recognize that document?

6 A. Yes.

7 Q. All right. And what do you recognize it
8 to be?

9 A. Our payment application for the period
10 of February of 2018.

11 Q. And is it a true, accurate, and complete
12 copy of the pay application for the period of
13 February 1st, '18 through February 28th, '18?

14 A. It appears to be, yes.

15 Q. All right. And as we just went over,
16 you-all create these documents at or about the
17 time of February 2018, right? You're creating
18 these documents for this pay period, correct?

19 A. Yes.

20 Q. And you create them in the ordinary
21 course of your business. This is how y'all get
22 paid, right?

23 A. Yes.

24 Q. On this job is how y'all got paid,
25 right?

1 A. Yes.

2 MR. MCDONALD: All right. Your
3 Honor, at this time I would move into evidence
4 Defendant's Exhibit 2.

5 MR. HILDEBRAND: No objection.

6 THE COURT: Without objection.

7 MR. MCDONALD: May I approach, Your
8 Honor?

9 THE COURT: Sure. Thank you, sir.

10 (DFT. EXH. 2 was admitted into
11 evidence.)

12 BY MR. MCDONALD:

13 Q. All right. Mr. Dooley, I have a number
14 of these pay applications, but what I would like
15 to do -- and you said this is a pay application
16 for February of '18, right?

17 A. Correct.

18 Q. All right. And another way that you can
19 identify this is by the pay application number,
20 correct?

21 A. Yes, number 35.

22 Q. Number 35. All right. Now, what I
23 would like to do is walk the Judge through this
24 document -- not the entirety of it, but I'm more
25 focused on the G702 and the 703. Okay?

1 A. Okay.

2 Q. All right. So what we start off with
3 here, this document is first created by the
4 Balfour team. This one has already been -- this
5 one has been certified by the architect, correct?

6 A. Her signature is on here, yes.

7 Q. Excuse me?

8 A. Her signature is on the front page, yes.

9 Q. And that means she certified it,
10 correct?

11 A. Yes.

12 Q. Okay. But the G702, y'all -- Balfour
13 originally creates that, right?

14 A. Yes.

15 Q. All right. And we've got the original
16 contract sum. We've got change orders that are
17 identified on here, contract sum and date, total
18 completed, got retainage, which is 10 percent,
19 right?

20 A. Yep.

21 Q. All right. And then the math adds up.
22 You say, how much have we earned? How much is
23 retainage, right? If you take out your-all's
24 position on how much you've earned, right? You
25 start with that?

1 A. Uh-huh.

2 Q. Correct?

3 A. Yes.

4 Q. And that's line item 6 on the right-hand
5 side, correct?

6 A. Well, line item 6 is the amount less
7 retainage.

8 Q. Oh, excuse me. The total completed
9 store to-date, number 4?

10 A. That's number 4, yes.

11 Q. And then you reduce the retainage?

12 A. Yes. That's number 5.

13 Q. Then you get to 6, right?

14 A. Yep.

15 Q. And that's the \$51 million number,
16 right?

17 A. Correct.

18 Q. And then you subtract the amount you've
19 been paid?

20 A. Well, that's the amount previously
21 billed, not necessarily paid.

22 Q. All right. Well, we'll look at the
23 certification in a second.

24 A. Okay.

25 Q. But that's how you arrive at your

1 \$859,241.51, correct?

2 A. Right.

3 Q. All right. Now, then if we go over --
4 and before this thing can be certified by the
5 architect, Balfour Beatty, or some human being
6 from Balfour Beatty, has to sign this, correct?

7 A. Correct.

8 Q. Okay. Now, do you know whether or
9 not -- well, strike that. It says, the under --
10 are you familiar with this certification over
11 here?

12 A. Yes.

13 Q. Okay. Are you familiar with South
14 Carolina law and the requirements of the
15 certification?

16 A. I don't know the difference between
17 South Carolina law versus any other place.

18 Q. Fair enough. But did you sign this on
19 March 5th, 2018?

20 A. That's my signature, yes.

21 Q. Okay. And did you read this
22 certification prior to signing it?

23 A. Yes.

24 Q. Okay. It says, the undersigned
25 contractor certifies that, to the best of the

1 contractor's knowledge, information, and belief,
2 the work covered by this application for payment
3 has been completed in accordance with the
4 contract documents. Let's stop there. Did I
5 read that correctly?

6 A. Correct.

7 Q. All right. So the first thing you-all
8 are certifying is, the work we're trying to get
9 paid for has been completed in accordance with
10 the contract documents, right?

11 A. Yes.

12 Q. Okay. And the contract documents are
13 the A133, the 201, the plans, the specs, the
14 addenda, the change orders? Those are contract
15 documents, right?

16 A. Yes.

17 Q. Okay. That's the first thing y'all are
18 certifying to the owner in order to get paid,
19 right?

20 A. Correct.

21 Q. We've done the work correctly; is that
22 right?

23 A. Correct.

24 Q. That all amounts have been paid by the
25 contractor for work for which previous

1 certificates for payment were issued and payments
2 received from the owner. Did I read that
3 correctly?

4 A. You did read it correctly.

5 Q. All right. So the second certification
6 that you-all have made to the owner in order to
7 get paid is, everything that you've paid us
8 to-date, okay, we've paid out, right?

9 A. Yeah, that's what it reads.

10 Q. That's what it says, right? And that
11 goes back to your qualification earlier -- and I
12 appreciate the qualification -- that the previous
13 certificates for, that doesn't necessarily --
14 that number doesn't reflect payment; but if
15 you-all had received payment, that would be the
16 only way that you could certify this particular
17 provision, right?

18 If they had paid it, that would be the
19 only way you could certify it, if you paid it
20 out, correct?

21 A. If we received the money, you mean?
22 Yes, correct.

23 Q. Okay. So we now know that your
24 certification, since you've signed it, it says
25 that we've gotten the money and we paid it,

1 right, as of -- this is March 5th, 2018, right?

2 A. That's what it says.

3 Q. Okay. And then the last certification,
4 and that current payment shown herein is now due.
5 Did I read that correctly?

6 A. You did.

7 Q. So the third certification you-all are
8 making is that, if we're attaching back up for
9 payment, right, on this pay application, it's
10 due, correct?

11 A. Correct.

12 Q. All right. Are you familiar with South
13 Carolina law on what Balfour Beatty has to do if
14 they're going to back charge a subcontractor or
15 withhold sums from a subcontractor? Do you know
16 anything about that?

17 A. I do not.

18 Q. Let's go to the second page, G703. Now,
19 Mr. Dooley, for the purposes of my questions, I
20 fully understand taking an electronic document
21 and make copies of copies and that the numbers
22 themselves may at times be tough to read.

23 I'm not as focused on the numbers as I
24 am about the organization. So you can explain to
25 the Judge, as the Balfour Beatty pay application

1 gentleman, what these things mean generally.

2 Okay?

3 A. Okay.

4 Q. Is that fair? All right. So on the
5 left-hand side -- well, let me back up. As a
6 preliminary matter, what this is, what these two
7 pages is, is basically referred to as a schedule
8 of values, right?

9 A. Yes.

10 Q. Okay. And the contract requires at the
11 time of contract, the construction manager, the
12 contractor, Balfour, whatever you want to call
13 them, to come up with a schedule of values and
14 submit it to the architect for approval, correct?

15 A. Yes.

16 Q. And that's how you guys bill against the
17 in-progress billing?

18 A. Correct.

19 Q. All right. And in the schedule of
20 values, there's obviously a line item. There's a
21 line number, and of course, that goes 1 through
22 66. But there's also a division number. Do you
23 see that?

24 A. I do.

25 Q. All right. And what the division number

1 is, is that stays consistent throughout each pay
2 application, correct?

3 A. I don't -- that's generally true.
4 There's --

5 Q. Okay. And when I say number, I mean
6 that the HVAC and the plumbing is going to be
7 division 15B?

8 A. All the way through, yes.

9 Q. Well, it's got to be. That's the only
10 way can keep up with it in accounting, right?

11 A. There's a couple of spec sections that I
12 was curious that they were broken out. Like,
13 there were multiple people that were in, like,
14 specialties, for example, but that's why I
15 answered your question generally speaking. But,
16 yes, they're consistent.

17 Q. They're consistent throughout?

18 A. Correct.

19 Q. So if you wanted to find a particular
20 division, you would go to that column, right?

21 A. Correct.

22 Q. All right. And then in the work
23 description, all that does is it assumes that the
24 people aren't going to memorize all the divisions
25 and you can go over and see what is the work. It

1 doesn't identify the name of the subcontractor,
2 but it identifies what -- what portion of the
3 work they're in, correct?

4 A. Correct.

5 Q. All right. In the first column, you've
6 got the original amount. That's the original
7 contract amount, correct?

8 A. Correct.

9 Q. All right. Then you've got the change
10 order column, right?

11 A. Yes.

12 Q. All right. Then you've got a column
13 called budget transfers. Do you see that?

14 A. I do.

15 Q. Were you involved in the budget
16 transfers?

17 A. Yeah. Yes. I have made adjustments in
18 that column before, yes.

19 Q. Okay. But were you the one that figured
20 out what a budget transfer is on this job?

21 A. I wasn't the one.

22 Q. And do you know whether or not budget
23 transfer, if that term is found on the contract
24 documents anywhere?

25 A. I don't know.

1 Q. And then you've got current amount,
2 correct?

3 A. Correct.

4 Q. That column, okay. Then you have from
5 previous pay applications. We looked at that
6 earlier. That's column D, right?

7 A. Yes.

8 Q. All right. And this is the important
9 part. Then you get to the this period column,
10 right?

11 A. Correct.

12 Q. That's what you-all are looking for, for
13 this period?

14 A. Right.

15 Q. Now, there are a couple of things I want
16 to be clear on. That this period column E is not
17 less retainage. That's the full amount, right,
18 because we have a different column for retainage?

19 A. Yes. There's a different column for
20 retainage.

21 Q. Okay. So if the Court in this action
22 looks at the subcontractor pay applications,
23 their pay applications that they submit to you
24 are going to be less retainage, correct?

25 And my point is, that number is not

1 going to add up. This period number is not going
2 to add with that sub bills because their pay
3 application has already been a subtracted
4 payment? And you can look at one if you need to.

5 A. Yeah. I mean, that sounds right.

6 Q. Okay.

7 A. I can look at one.

8 Q. All right. So what you would do is you
9 would just simply -- if you were trying to make
10 those numbers add up, you would just take 10
11 percent off the this period work and that would
12 match up the subcontractor's pay application,
13 correct?

14 A. Correct.

15 Q. Okay. All right. Then you've got a
16 total complete and stored to-date. You've got a
17 percentage complete, and you've got a balance to
18 finish, and finally, you have a retainage; is
19 that right?

20 A. Correct.

21 Q. Okay. And in this particular one, it is
22 for a total amount certified of \$859,241.51,
23 correct? Front page.

24 A. Could you read the amount again? Sorry,
25 I was on the page review.

1 Q. \$859.241.51.

2 A. That's what -- that's correct, payment
3 due.

4 Q. All right. The fourth page of this
5 document is the lien waiver, correct?

6 A. The conditional partial?

7 Q. Yes, sir. Contractor's conditional
8 partial waiver of release of lien; is that
9 correct?

10 A. Yep.

11 Q. Okay. And that's your signature, right?

12 A. That is.

13 Q. Okay.

14 MR. MCDONALD: Your Honor, I have
15 pay applications 36 and 41, and I'm more than
16 willing to go through the rigmarole of each one.
17 If counsel for Balfour is not going to object,
18 then I'll go ahead and mark them, and we'll move
19 through them as quickly as possible.

20 THE COURT: Okay. 36 through 41?

21 MR. MCDONALD: Yes, sir.

22 THE COURT: All right.

23 MR. MCDONALD: Well, excuse me.

24 36, 39, 40 and 41 because there's different
25 signatures. I'm just going to go through his

1 signature.

2 THE COURT: Okay. Those are --

3 MR. MCDONALD: 36.

4 THE COURT: 36, 39.

5 MR. MCDONALD: 39, 40 to 41, yes,

6 Your Honor.

7 MR. HILDEBRAND: What's the

8 question?

9 THE COURT: The question is whether
10 or not there's any objection. He just wants to
11 submit them like that. Do you want to have him
12 just verify his signatures on there, Mr. Dooley,
13 Mr. McDonald?

14 MR. HILDEBRAND: I still don't
15 understand what the question is.

16 MR. MCDONALD: Yes, I can.

17 Do you want me to go through all the
18 questions with him, with each pay application, or
19 do you -- can I just put them all in front of him
20 and say, is this a true and accurate copy? Is
21 this your signature? Are you okay with that?

22 MR. HILDEBRAND: Sure. He can --
23 you can ask him to identify them, and is this
24 your signature?

25 THE COURT: Yeah.

1 MR. HILDEBRAND: Absolutely.

2 MR. MCDONALD: Thank you.

3 THE COURT: Okay.

4 MR. MCDONALD: All right, sir. I'm
5 going to mark for ID purposes pay application 36
6 as Defendant's 3.

7 THE COURT: Okay.

8 (DFT. EXH. 3 was marked for
9 identification.)

10 MR. MCDONALD: Pay application 39,
11 Defendant's 4 for ID purposes.

12 (DFT. EXH. 4 was marked for
13 identification.)

14 MR. MCDONALD: Pay application 40,
15 Defendant's 5 for ID purposes.

16 (DFT. EXH. 5 was marked for
17 identification.)

18 MR. MCDONALD: 41, Defendant's
19 Exhibit 6 for ID purposes.

20 (DFT. EXH. 6 was marked for
21 identification.)

22 BY MR. MCDONALD:

23 Q. Mr. Dooley, in an effort to save some of
24 your time, I'm going to hand these all to you at
25 once. The question is going to be whether you

1 recognize them answer first. Okay? Take your
2 time. Do you recognize it?

3 A. Yes, sir.

4 Q. Okay. And do they contain your
5 signature?

6 A. Yes, sir. On the payment application,
7 there's a check for lien waivers. Do you want me
8 to do that?

9 Q. On the payment application, it contains
10 your signature?

11 A. They do, yes.

12 Q. And the lien waivers were included in
13 the pay application?

14 A. I didn't actually go to a lien waiver
15 page. Do you want me to go through and do that
16 real quick?

17 Q. I don't need you to do it, but if you
18 would feel more comfortable doing that, go ahead.

19 A. Well, I just -- so we're on the same
20 page.

21 Q. All right. That's fine. Are you good?

22 A. Yes.

23 Q. Did you verify that's your signature on
24 those documents?

25 A. Yes, sir.

1 Q. All right. And are they truth and
2 complete, accurate copies of pay applications 36,
3 39, 40, and 41?

4 A. They appear to be.

5 MR. MCDONALD: At this time, I
6 would move these documents into evidence, Your
7 Honor.

8 MR. HILDEBRAND: No objection, Your
9 Honor.

10 THE COURT: Without objection.
11 Very good.

12 (DFT. EXH. 3, 4, 5 and 6 were
13 admitted into evidence.)

14 BY MR. MCDONALD:

15 Q. All right, sir. Briefly, Exhibit 3,
16 which is pay application 36, that follows pay
17 application 35, correct? It's the period of
18 March 1, 2018 to March 31, 2018; is that right?

19 A. Yes, sir.

20 Q. Okay. Do you know whether or not
21 Exhibit 2, which was pay application 35, was
22 actually funded by the other?

23 A. I don't know.

24 Q. You don't know. All right. And this
25 document here, pay application 36, contains your

1 signature under that certification, correct?

2 A. It does.

3 Q. Okay. What would you have done to make
4 sure, prior to signing this, that the amounts
5 that have been paid to you-all, to Balfour, had
6 actually been paid to your subcontractors from a
7 previous pay application?

8 A. I wouldn't have done anything in that
9 regard. That would have been Nick Starcevic's
10 responsibility.

11 Q. Okay. Did you physically walk into
12 Mr. Starcevic's office and say, Mr. -- Nick or
13 whatever you called him, I'm about to certify
14 this thing, and I just want to make sure we paid
15 our subs?

16 A. Correct. Nick would -- I would have --
17 the way you've described it is correct. I would
18 have asked Nick and said, Nick, is this good to
19 go? Is this true? And he would have told me yes
20 or no.

21 Q. And you would have relied on what
22 Mr. Starcevic told you prior to certifying this
23 pay application?

24 A. Correct.

25 Q. Because you were the one going under

1 oath, right?

2 A. I'm the one that signed the document,
3 yes.

4 Q. Under oath, right?

5 A. Well, I didn't know that's what -- yes.

6 Q. Okay. So you relied on Mr. Starcevic to
7 say, listen, we've got -- the money we got was
8 paid to our subs?

9 A. Right. Or Mr. Spano and Simonton at the
10 time, whoever was in there, or the accountant
11 also. I don't know because they didn't actually
12 write the check. They would have to get that
13 report from the accountant.

14 Q. So you would have expected them to do
15 their due diligence prior to telling you, you're
16 good to go under oath, and sign this document?

17 A. Correct.

18 Q. And if they had told you, you know what?
19 Just between us, we're holding some of the subs'
20 money, you wouldn't have certified it, right?

21 A. I guess I never thought of that.

22 Q. But if they would have told you that?
23 We've got the subs' money from the owner and
24 we're not going to pay them. We need you to go
25 ahead and certify this pay application so we can

1 get more money, you wouldn't have certified it?

2 A. Yes, that's the -- that's how that
3 reads. So I don't think there -- I don't recall
4 like ever being asked to do that; so I never put
5 much thought into it.

6 Q. Okay. All right. Do you know whether
7 or not Balfour Beatty received the \$1,236,286.71?

8 A. I don't know.

9 Q. All right. Exhibit 4. This is pay
10 application 39, and you've already verified that
11 that was your signature; is that correct?

12 A. Correct.

13 Q. And it was the same process -- this was
14 for the pay period of June 1, 2018 through June
15 30, 2018, correct?

16 A. Correct.

17 Q. And was the same process followed -- you
18 relied on your superiors to confirm that what you
19 were certifying to be true under oath was in fact
20 true?

21 A. Correct.

22 Q. Okay. And this pay application is in
23 the amount of \$2,203,493.42. Did I read that
24 correctly?

25 A. \$2,203,493.42.

1 Q. That's right. And do you know whether
2 that money was paid?

3 A. No.

4 Q. Pay application 40, Exhibit 5. You
5 verified that's your signature, correct?

6 A. Yes.

7 Q. All right. And was the same process for
8 pay application 40, which is a period of July 1,
9 2018, through July 31, 2018, that you relied on
10 your superiors to confirm that what you were
11 going under oath to certify was true, was in fact
12 true?

13 A. Correct.

14 Q. And this is the amount of \$1,014,305.39?

15 A. That is the balance.

16 Q. Okay. Do you know whether that money
17 was paid?

18 A. By the owner?

19 Q. Yes, sir.

20 A. I'm sorry. I don't know regardless. I
21 don't know what -- I don't know regardless.

22 Q. Do you have a specific recollection,
23 each pay application, of going and talking to
24 your superiors, or is that just something you
25 think you did?

1 A. Do I have a specific?

2 Q. About having that conversation. All
3 right. I'm about to sign it. I got my pen out.

4 A. About each and every one, I guess I
5 don't have a specific recollection.

6 But it was reviewed by the -- like, when
7 we would -- when we would make this copy, the
8 whole team would sit down to review it between
9 the architect, the -- the architect, the owner,
10 Mr. Rickard (ph), myself, Nick, and then whether
11 it was Tim or Dave at the time.

12 We would all review it together through
13 that process. But the actual question of walking
14 into their office and saying, hey, show me where
15 all of these guys got paid, I don't remember
16 specifically doing that every time.

17 Q. And the architect and Jim and the owner,
18 they didn't --

19 A. They didn't --

20 Q. -- they didn't review whether you-all
21 had paid your subcontractors, right?

22 A. Correct, yes.

23 Q. And that's why have this certification,
24 right?

25 A. Right.

1 Q. All right. 41. This is pay application
2 August 1, 2018 through August 31st, 2018, and
3 verify this is your signature, correct?

4 A. Yes.

5 Q. And is it true that, with regard to this
6 pay application, you relied on your superiors to
7 tell you that going under oath to certify -- to
8 execute the certification was in fact true? You
9 relied on your superiors for that, correct?

10 A. Yes.

11 Q. Same as all the other ones? Same as all
12 the other pay applications?

13 A. Yes.

14 Q. All right. Do you know whether this
15 money was funded, \$1,261,496.89?

16 A. No.

17 Q. All right. And this is through August
18 31st of 2018, right? Pay application 41?

19 A. Yes, sir.

20 Q. And you leave Labor Day, right?

21 A. This would have been one of the last
22 things that I ever did for Balfour Beatty.

23 Q. Gotcha. Because Labor Day is the one
24 that's -- that's beginning in September, right?

25 A. Yep.

1 Q. Okay. What involvement did you have
2 with entering the information in the daily logs?

3 A. Very minimal. Like, maybe if a
4 superintendent asked me to do it for him, I would
5 do it, but that wouldn't -- like, if I did it ten
6 days over the course of the two and a half years
7 I was there. And if I did -- if I did that many
8 it would have been because somebody handed me a
9 report to actually enter and to construct.

10 Q. Okay. Did you review the contract
11 documents to make a determination as to what was
12 required of Balfour Beatty to put in its daily
13 logs?

14 A. I remember reading it at one point.
15 This -- all this time later, I don't remember
16 what it reads.

17 Q. Okay. Take a look. There's a bunch
18 of --

19 MR. MCDONALD: May I approach the
20 witness, Your Honor?

21 THE COURT: You may.

22 BY MR. MCDONALD:

23 Q. All right. There's a bunch of notebooks
24 here that are Balfour's notebooks. I believe
25 what they've done, sir, is at tab 56, which is

1 now Plaintiff's Exhibit 56 is a portion of the
2 contract documents. And if you would, sir, when
3 you get there, if you would let me know.

4 A. Tab 56, sir?

5 Q. Yes, tab 56 is my understanding.

6 A. I am on -- what I see is Exhibit B and
7 Exhibit A.

8 Q. Yeah, tab 56?

9 A. Yes, sir.

10 Q. Okay.

11 A. I'm sorry, Exhibit 16 and Exhibit A.

12 Q. Okay. And that is the A133; is that
13 right?

14 A. And the document says A133 at the top.

15 Q. Okay. And would you turn to section
16 2.3.2.7?

17 A. 2.3.2.7?

18 Q. Yes, sir.

19 A. I'm on it.

20 Q. All right. And is that the provision
21 that you reviewed prior to whatever minimal --
22 however minimal it may have been, prior to you
23 doing any daily logs for some superintendent?

24 A. Excuse me, sir. You said 2.3.2.7?

25 Q. Yes, sir.

1 A. Okay. Let me read this.

2 Q. Yeah. Take your time.

3 A. Can you please rephrase your question?

4 Q. Is that the section that you reviewed,
5 section 2.3.2.7, that you just referenced in your
6 earlier testimony --

7 A. I recall reading this before.

8 Q. Okay. And I'm sorry, let me finish my
9 question, otherwise the record is not going to
10 make any sense.

11 A. Sorry.

12 Q. Is this section, section 2.3.2.7, the
13 section that you reviewed prior to doing any
14 daily logs?

15 A. No. I would have reviewed this article
16 primarily because of my responsibility to, on a
17 monthly basis or otherwise agreed to by the
18 owner, the construction manager submit written
19 progress reports to the owner, architect, showing
20 percentages of completion and other --

21 COURT REPORTER: Can you slow down
22 because you're reading very fast.

23 THE COURT: She's trying to take
24 down what you're saying.

25 THE WITNESS: I would have read --

1 I would have read this article to research my
2 responsibility for the monthly report that was
3 submitted with the payment applications, not the
4 daily logs, which is also mentioned in this
5 paragraph below.

6 BY MR. MCDONALD:

7 Q. So did you just stop reading after the
8 first sentence?

9 A. No. I'm sure that I read it all. I
10 just did stop reading after the first sentence.

11 Q. Well, no, but at the time you reviewed
12 it?

13 A. Gotcha. No, I would have read the whole
14 paragraph.

15 Q. All right. And can you read the second
16 sentence, albeit much slower?

17 A. Yes. The second sentence?

18 Q. Yes, sir.

19 A. On a monthly basis or otherwise --

20 Q. Excuse me, the third sentence, sir.

21 A. I'm sorry. The construction manager
22 shall also keep and make available to the owner
23 and architects a daily log containing a record
24 for each day of whether portions of the work in
25 progress, number of workers on-site,

1 identification of equipment on-site, problems
2 that might affect progress of the work,
3 accidents, injuries, and other information
4 required by the owner.

5 Q. In the minimal daily logs that you
6 authored, did any of the ones that you authored
7 include information that would have fallen under
8 problems that might affect progress of the work?

9 A. I don't know.

10 Q. Okay. And if I were to set in front of
11 you all the daily logs of the project, you
12 wouldn't be able to identify them because you
13 only did a couple of them?

14 A. Which ones I wrote?

15 Q. No, the entirety of them.

16 A. Oh. I mean, I would know what they are.

17 Q. Okay.

18 A. But did I actually -- I didn't actually
19 offer them.

20 Q. But you will be able to identify them?

21 A. I guess I'm misunderstanding the term
22 "identify them".

23 Q. Yeah. Tell me whether these are the
24 daily logs or not.

25 MR. MCDONALD: Your Honor, with the

1 Court's permission, what I would like to do is
2 mark the box because it's got four daily logs
3 that -- for ID purposes for right now -- that are
4 identified as 2015, 2016 binder one of four and
5 so on and so forth.

6 THE COURT: Just go ahead and
7 get -- I'll tell you what, give him a sample.
8 Just bring one out and give him a samples, so he
9 can identify it.

10 MR. MCDONALD: How about this? I'm
11 going to hand you the daily log. May I approach,
12 Your Honor?

13 THE COURT: Sure.

14 BY MR. MCDONALD:

15 Q. Are you able to identify those, is going
16 to be question, just so you're thinking about it
17 while you're -- while you're going through them.
18 That the daily logs -- the Balfour Beatty daily
19 logs for the Hotel Bennett project.

20 A. These look to be the daily log reports
21 that were published from the software called
22 Constructware; and, yes, I have a couple in my
23 hand.

24 Q. Okay. And those daily logs, is it -- it
25 may be self-evident, but you-all keep those in

1 the ordinary course of your business at or about
2 the time that they incurred?

3 A. I'm sorry, repeat your question.

4 Q. Do you fill them out every day?

5 A. The superintendents are supposed to.

6 Q. Okay. And maybe sometimes it's the next
7 day, and maybe sometimes it's the day of. But in
8 order to keep up with them, you've got to fill
9 them out as the days go along?

10 A. Correct. And we would -- and even like
11 if it was the next day, like, we would require
12 the subcontractors to turn them in daily. So at
13 the end of the day, the sub -- the superintendent
14 comes in the next morning and fills it out for
15 what happened the day prior, previous. But yes.

16 Q. And y'all do -- well, when you were with
17 Balfour, y'all did that on every job you worked
18 on, right?

19 A. We did that on -- yeah, on my other
20 projects, I did, yes.

21 Q. And as we just read, the contract on
22 this job, in fact, requires it, right?

23 A. Right.

24 MR. MCDONALD: All right. Your
25 Honor, at this time, I would move the daily logs

1 into evidence as Defendant's Exhibit 7, 8, 9, and
2 10. I'm just going to -- I'm not going to be
3 lazy. I'm just going to mark all four of them.

4 THE COURT: All right. Any
5 objection there?

6 MR. HILDEBRAND: So these are --
7 let me understand. These are all the daily logs
8 that have been produced for the project?

9 MR. MCDONALD: The 2015, I believe.
10 He's got the folder. '16, '17. Well, he's got
11 the folders. I think it's '15, '16, '17, '18 and
12 '19 are Bates stamped as produced.

13 THE COURT: Okay.

14 MR. MCDONALD: And previously
15 identified by the witness.

16 THE COURT: Are they divided by
17 year?

18 MR. MCDONALD: Yes, sir.

19 THE COURT: Okay.

20 MR. MCDONALD: I think '15 and '16
21 are together because '15 had a --

22 THE COURT: It was shorter? Okay.

23 MR. MCDONALD: That was 7, 8, 9 and
24 10.

25 THE COURT: Are you comfortable

1 that that's what they are?

2 THE WITNESS: Yes, yes. I'm
3 comfortable that these are the daily reports.

4 THE COURT: Very good.

5 Mr. Hildebrand, any objection?

6 MR. HILDEBRAND: I certainly have
7 no reason to dispute Mr. McDonald's
8 representation that that's what they are. I
9 haven't reviewed them. If they aren't complete
10 or whatever, then I'll have to take that up at a
11 later point. But at this point, no, no
12 objection.

13 THE COURT: Okay. All right. I'll
14 allow it, Defendant's 7, 8, 9 and 10.

15 BY MR. MCDONALD:

16 Q. And I'm going to hand you these
17 stickers, Mr. Dooley. And if you would put 7 on
18 '15 and '16 and so on and so forth. I believe
19 that's the easiest way to do it just so we're not
20 on top of each other.

21 MR. MCDONALD: Your Honor, I have
22 less than two minutes.

23 THE COURT: That's fine.

24 THE WITNESS: I'm sorry, you wanted
25 me to start with 7 on 2015 through 2016?

1 BY MR. MCDONALD:

2 Q. Yes, sir, whatever the binder one is.

3 A. Right. So Bates 1275 and 276 --

4 Q. It should be a binder one of --

5 A. Oh, I see it here, yes, yes.

6 Q. Thank you.

7 (DFT. EXH. 7, 8, 9 and 10 were
8 marked for identification and admitted into
9 evidence.)

10 MR. HILDEBRAND: I'm sorry, before
11 we go on, can you tell me exactly -- I didn't
12 write it down.

13 MR. MCDONALD: Yes, sir.

14 MR. HILDEBRAND: -- what we've got.
15 What is what?

16 MR. MCDONALD: 7, 8, 9, and 10.

17 MR. HILDEBRAND: What is 6?

18 MR. MCDONALD: 6 is --

19 THE COURT: 6 was pay app number
20 41.

21 MR. HILDEBRAND: What are the other
22 ones?

23 MR. MCDONALD: Yeah. 7 is '15 and
24 '16 daily logs books. 8 is --

25 MR. HILDEBRAND: 2015 and 2016?

1 THE COURT: Correct.

2 THE WITNESS: Yes, sir.

3 MR. MCDONALD: 8 is '16 and '17
4 daily logs. 9 is '17 continued daily logs and 10
5 is '18 and '19 daily logs.

6 MR. HILDEBRAND: All right.

7 BY MR. MCDONALD:

8 Q. All right. Mr. Dooley, when you showed
9 up in March of '16, you understood that you were
10 about to embark on work on a five-star luxury
11 hotel; is that correct?

12 A. Absolutely.

13 Q. And when you showed up in March of 2016,
14 you didn't have any responsibility for any
15 preconstruction activities?

16 A. Correct.

17 Q. All right. And you didn't engage in any
18 constructability review by Balfour of the
19 architect's plans and specifications?

20 A. I did not.

21 Q. All right. When you were with Balfour,
22 did you ever use the term yourself, internal
23 change order?

24 A. Yes.

25 Q. And how did you use it? What is an

1 internal change order? Let me ask it that way.

2 A. Well, so an ICO would be -- like, let's
3 say we were moving something from contingency
4 to -- like, if we held our own contingency or if
5 we had the contractor's contingency, we're going
6 to move that into a subcontractor's contract for
7 work they needed to do or to a general
8 requirement of some sort, we would create an
9 internal change order, so there would be a paper
10 trail of it if the accounting team ever asked
11 about it.

12 Q. Any other reasons, while you were at
13 Balfour, that you would have utilized an internal
14 change order or ICO?

15 A. So if the scope of work would have been
16 bought out, and we had like -- I don't know --
17 like toilet accessories, and we had like the
18 money in the toilet accessory division 10
19 specification, we would -- or spec number, which
20 is how that division number is worked out on the
21 pay app. We would do an -- and the drywall guy
22 agreed to do it, we would do an ICO and write it
23 over to him.

24 Q. Wait. So we've got Balfour contingency
25 money and we've got a situation where you-all

1 hadn't bought out that particular division? You
2 might utilize an internal change order in those
3 instances?

4 A. We would use it then.

5 Q. Okay. Any other instances?

6 A. We would use it if we changed -- if we
7 made a decision to change who was handling a
8 certain portion of scope. Like, if the concrete
9 guy and the masonry guy, they're always going to
10 have like -- it's an internal struggle about
11 who's got the embeds, right?

12 Q. Sure.

13 A. And so if you decide, well, this guy is
14 going to do these embeds and they're going to do
15 these embeds and they do an internal change order
16 and move the embeds from one person to the other
17 and then --

18 Q. So that would be -- we'll call that
19 scope shift; is that fair?

20 A. Scope shift, that's a nice word.

21 Q. Okay. Any other -- when you were at
22 Balfour, any other use of internal change orders?

23 A. So an internal change order would be the
24 forum for a back charge, but I don't know if I
25 ever really did one for a back charge.

1 Q. Okay. You never did one?

2 A. I don't -- if you have one in your hand
3 that shows that I did one, I'm going to believe
4 you that I did it. But I don't -- I had a
5 manager who handled those disputes. That wasn't
6 my job.

7 Q. Gotcha. So that was a superior?
8 Starcevic, Spano, somebody else?

9 A. Yeah.

10 Q. All right. Do you know what Balfour
11 Beatty utilizes these daily reports for?

12 A. There is an abundance of reasons. Would
13 you like me to give you some examples?

14 Q. Please.

15 A. Well, it's a contract requirement, so
16 that we're appeasing that requirement by filling
17 it out. We might not always have all of the
18 information that was required, but -- or at least
19 making the attempt to document manpower and
20 weather and equipment.

21 We would also use it in order to track
22 subcontractor progress. On a building that size,
23 we'd need to figure out, okay, we have 10
24 drywallers and they're able to knock out a floor,
25 how many -- how many drywallers do we have to

1 knock out that floor? So if we have 20, can we
2 do two floors?

3 So in order to do some sort of internal
4 review there, we tracked weather obviously, even
5 though there's -- you don't need (inaudible) to
6 do that. There's plenty of other services to do
7 that. The only time that I ever really looked at
8 it was to go back and check what happened on like
9 a Saturday, like, if I wasn't here that Saturday
10 and I came in on Monday.

11 A lot of times if I worked that
12 Saturday, I would type a big, long e-mail to send
13 to the superintendents so that they had my
14 reports, so they can put that into the daily
15 report; and then also so anybody else who wasn't
16 on-site that Saturday knew what was up for Monday
17 morning, so kind of internal communication.
18 Those are the best examples that I can come up
19 with.

20 Q. Okay. So you-all or the superintendent
21 creates the daily report about what happened on
22 the job that day, correct?

23 A. Yes.

24 Q. And the purpose of it is to make sure
25 that there's a record as to -- if there's ever an

1 issue in the future, as to what happened on that
2 day, correct?

3 A. Yeah. That's one of the reasons for it,
4 yeah.

5 Q. And one thing you-all do is you use it
6 to make a determination if some subcontractor
7 says, another subcontractor did this, you can go
8 back to the daily reports and see if they were
9 even on the site. You can see what the -- what
10 was going on on that day if there's an allegation
11 made in the future, right?

12 A. I guess you could.

13 Q. Okay. In fact, they're the best
14 evidence of what went on that day because that's
15 the only written report about what went on that
16 day, correct?

17 A. That's the only consistent report. I
18 don't want to put words in your mouth, sorry.

19 Q. That's the only written report as to
20 what occurred on that job that day, that's a
21 chronicle of every day, right? That's the daily
22 report?

23 A. The one that Balfour Beatty produces.
24 Some of our subcontractors probably had their
25 superintendents fill out their own daily reports

1 that they logged also.

2 Q. I'm just talking about Exhibits 7
3 through 10 that we put in evidence. That's the
4 Balfour Beatty daily report, right?

5 A. You're saying that's -- you're saying,
6 that's the only daily report that Balfour Beatty
7 has?

8 Q. Yeah, that's the only daily report that
9 Balfour Beatty creates?

10 A. Yeah, that's correct.

11 Q. So that's the best evidence of what
12 happened that day because it's the only one that
13 exists?

14 A. Correct.

15 Q. Okay. All right. Now, I believe you
16 testified in your deposition that you spoke to
17 Mr. Doran, and the only reason I remember is you
18 got a T-shirt or something?

19 A. Yeah. I still have it.

20 Q. Okay. And is that the last time you
21 spoke to Mr. Doran?

22 A. Yeah, June of '18 -- July of '18.

23 Q. And what about Mr. Huyghe?

24 A. I had never spoken with him.

25 Q. Okay. And what about Mr. McAuliffe?

1 A. I've never even heard that name.

2 Q. Okay. So you never heard of
3 Mr. McAuliffe, you never heard of Mr. Huyghe, and
4 you spoke to Mr. Doran once in June of '18?

5 A. Let me -- I have heard the name.
6 McAuliffe. I've never spoken to him. Heard the
7 name Huyghe, never spoken to him. I have met
8 Mark Doran.

9 Q. Okay. In June of '18?

10 A. Probably July.

11 Q. July '18?

12 A. Yeah.

13 Q. And you got a T-shirt?

14 A. Yeah.

15 Q. All right.

16 MR. MCDONALD: Thank you very much,
17 Your Honor.

18 THE COURT: All right.

19 MR. KELLY: Your Honor, I hate to
20 throw a curve ball. I have a few questions, too.

21 THE COURT: All right. Let me see
22 if there's any redirect before I do that.

23 Anything?

24 MR. BYRD: Not yet.

25 THE COURT: Okay. All right. Go

1 ahead, Mr. Kelly.

2 MR. KELLY: Thank you, Your Honor.

3 THE COURT: Yes, sir. Britt Kelly
4 representing? Remind me.

5 MR. KELLY: David Allen Company.

6 THE COURT: David Allen Company.

7 Thank you, sir.

8 CROSS-EXAMINATION

9 BY MR. KELLY:

10 Q. Mr. Dooley, I'm Britt Kelly. I
11 represent David Allen Company.

12 A. How are you doing today?

13 Q. I'm doing well. How are you doing?

14 A. Good.

15 Q. I don't think I will be long. I just
16 kind of want to understand what David Allen
17 Company's role was on the job, and I understand
18 you were the assistant project manager?

19 A. Yes.

20 Q. Did you interact with your
21 subcontractors on the project?

22 A. I did.

23 Q. Was David Allen Company a subcontractor
24 on the project?

25 A. Yes.

1 What was the matter that you testified in?

2 A. I testified many, many moons ago in a
3 case between a client, a homeowner against a
4 drywall contractor, just as a witness to what I
5 saw when I -- they asked me to come look at the
6 house, tell them what I saw as far as the drywall
7 work. That's all that was about.

8 Q. Okay. Have you been involved as a
9 witness or has any other project that you've been
10 involved in, to your knowledge, with Balfour
11 Beatty been involved in litigation?

12 A. No.

13 Q. Have you ever testified in any
14 litigating matter with regard to Balfour Beatty?

15 A. No.

16 MR. HILDEBRAND: Your Honor, may I
17 have just a couple of minutes to confer with my
18 co-counsel to make sure?

19 THE COURT: Sure. Okay.

20 MR. HILDEBRAND: All right. Your
21 witness.

22 MR. BUNDY: Thank you.

23 CROSS-EXAMINATION

24 BY MR. BUNDY:

25 Q. Mr. Spano, how are you?

1 A. I'm okay. I've been better.

2 Q. Good. Do you still work with Balfour
3 Beatty or don't you or do you?

4 A. I do. May I elaborate?

5 Q. Pardon me?

6 A. I can elaborate a little bit. I'm in
7 the process of shifting to a different division
8 with Balfour. That's the reason my address was
9 Florida. I just moved out of Johns Island.

10 Q. So where are you living now?

11 A. It's called Seffner, Florida. It's a
12 suburb of Tampa, Florida. It was within the last
13 two weeks.

14 MR. BUNDY: I'm done.

15 THE COURT: You're done? All
16 right. Well, this might be a good time to take a
17 break for lunch.

18 MR. HILDEBRAND: Sounds good.

19 THE COURT: Let's come back at
20 1:30. Okay. Very good.

21 MR. BUNDY: Can we get the next
22 witness or what's going to happen next?

23 THE COURT: Yeah. Who would that
24 be, Mr. Hildebrand?

25 MR. HILDEBRAND: Well, this throws

1 me off the schedule a little bit because
2 Mr. Bundy had said he was going to be --

3 THE COURT: Two days and he took
4 two minutes.

5 MR. HILDEBRAND: Right.

6 MR. BUNDY: Well, I recall an
7 e-mail you got from Mr. Hildebrand when he said
8 he wouldn't give us his witnesses the next day,
9 that he changed course mid-witness. So I made a
10 change.

11 THE COURT: He might do that, too.
12 All right. Are you prepared to go forward at
13 1:30?

14 MR. HILDEBRAND: I've got some
15 other evidence that I can introduce, but then
16 I've got -- yes, sir, I do have some depositions
17 that I would like to introduce.

18 THE COURT: Okay.

19 MR. HILDEBRAND: And I've got a
20 video deposition I would like to introduce. So,
21 yes, and then I can call another witness that
22 will take about two hours to get here. But I
23 think that we'll be okay until then; so we can
24 proceed.

25 THE COURT: Okay. Do you want to

1 call that witness and see if he can't come? Who
2 would that be? Can you tell me who that is?

3 MR. HILDEBRAND: Oh, yeah,
4 absolutely. Mark Doran.

5 THE COURT: Okay. Should be the
6 next live witness?

7 MR. HILDEBRAND: Yes, sir.

8 MR. KELLY: Your Honor, before
9 Mr. Spano is excused, I may have 10 or 15
10 minutes.

11 THE COURT: You want to talk to
12 Mr. Spano?

13 MR. KELLY: Yes, sir.

14 THE COURT: All right. Mr. Spano,
15 Mr. Kelly has got some questions for you. I let
16 you go too soon.

17 CROSS-EXAMINATION

18 BY MR. KELLY:

19 Q. Mr. Spano, my name is Britt Kelly. I
20 represent David Allen Company.

21 A. Yes.

22 Q. You were here yesterday when I asked
23 Mr. Dooley some questions, correct?

24 A. I was.

25 Q. It's going to be pretty similar to that.

1 as we sit here today, in South Carolina without a
2 license?

3 A. No, sir.

4 Q. Okay. So you're not practicing
5 architecture. You're not a licensed architect.
6 And do you -- but you are going to testify to a
7 reasonable degree of architectural certainty,
8 that Buck Lindsay committed malpractice? Is that
9 what you're going to do?

10 A. I'm not sure if that's what I've been
11 asked to do.

12 Q. Is that what you're going to do, if you
13 were asked to do it? If I were to ask you now,
14 do you have an opinion to a reasonable degree of
15 certainty that Buck Lindsay or WLA, his firm, to
16 a reasonable degree of architectural certainty,
17 committed malpractice, was negligent in this
18 case, what would your answer be?

19 A. I'm not sure how to answer that at this
20 juncture.

21 Q. You're on the witness stand, sir. We've
22 been waiting two years to hear you testify.

23 A. I cannot say malpractice. I do not know
24 whether that is the case or not. All I can do is
25 tell you from my experience, what -- the actions

1 that took place on the job by the design team,
2 how they affected the outcome of the project.
3 Now, I am not in the position to tell you that's
4 malpractice.

5 Q. Okay.

6 MR. BUNDY: Your Honor, I object to
7 this witness testifying. If that's what -- if
8 what he's going to do is come in here and simply
9 be another advocate for the plaintiff's position,
10 they've already got lawyers. You're not licensed
11 to practice law, are you?

12 THE WITNESS: No.

13 MR. BUNDY: So he's not licensed to
14 practice law. He's reviewed the facts, and what
15 he's going to do -- and I assume you're going to
16 let him do it, but I've got to make a record.

17 THE COURT: I'm with you.

18 MR. BUNDY: His report that we've
19 got in this case, the title --

20 MR. HILDEBRAND: Your Honor, may I?

21 MR. BUNDY: No, no. I'm making an
22 objection. I'm making my record.

23 THE COURT: Go ahead and make your
24 record.

25 MR. HILDEBRAND: Okay.

1 didn't hear you. Can you repeat yourself?

2 A. Yeah. So this is a change order towards
3 the end of the project. It was an allowance --
4 we were reconciling allowance. There were four
5 metal grills in the dining area and under the
6 stairs. We were working through design trying to
7 figure this out, and the supplier -- the designer
8 could never get comfortable with the drawings and
9 the pricing that we were submitting.

10 They sourced a manufacturer that had
11 terms, specific terms for these grills. In here,
12 we specified that it's as specified on their
13 supplier's quote. It's 10 and 12 weeks from
14 approval and funding, lead times varied, and will
15 be provided when deposited receipt and shop
16 drawings are approved.

17 Q. Okay.

18 A. The manufacturer required 50 percent up
19 front, with the balance due prior to shipping,
20 and we specified that that would have to take
21 place for the supplier to release the drawings.

22 Q. Okay.

23 A. And I don't believe the owner ever paid
24 the deposit up front, and they were never
25 released.

1 MR. BUNDY: Objection, relevance.

2 THE COURT: Okay. Not issued, not
3 paid; is that right?

4 THE WITNESS: That's right.

5 THE COURT: All right. So no
6 expense here?

7 THE WITNESS: No expense.

8 THE COURT: All right. Objection
9 noted. Go ahead.

10 BY MR. HILDEBRAND:

11 Q. So this one should be struck; is that
12 right?

13 A. Well, yeah. There may be a small cost
14 for some mirrors.

15 Q. All right.

16 MR. HILDEBRAND: We will strike
17 that one, Your Honor.

18 THE WITNESS: All right. 255.

19 BY MR. HILDEBRAND:

20 Q. Yes.

21 A. Add trim to conceal pocket door header.
22 This is August 31st, 2018. This is at -- as
23 requested by the owner. This was reviewed
24 on-site and requested by the owner to add a
25 casing to conceal the pocket door header.

1 was clearly added. I don't know why.

2 Q. Okay. All right.

3 A. 261, revision three, allowance
4 reconciliation with the accordion doors.
5 November 15, 2018 --

6 MR. BUNDY: Same objection.

7 A. -- \$71,723.42, accordion doors. These
8 are revisions to the accordion doors. I honestly
9 do not know if these were installed or not.
10 There was a portion of it that the revision --
11 the revised front work that was, I believe,
12 similar, but they required the deposit up front.

13 I know the doors were fabricated. I
14 don't know if they were installed. The prep work
15 had to be sent to the subcontractor. He -- the
16 mill worker installed it, and I don't know if he
17 ever --

18 MR. BUNDY: Objection.

19 A. -- received it. We were never paid for
20 that.

21 MR. BUNDY: Move to strike the
22 testimony. Doesn't know, and in fact, I'm told
23 that they didn't do it. So I can do this on
24 cross-examination since he doesn't want me to
25 point these things out.

1 THE COURT: All right. The doors
2 were -- as far as you know, the doors were made,
3 but --

4 THE WITNESS: The doors were made,
5 waiting for the prep work. The prep work never
6 was delivered because they didn't accept the
7 change order.

8 THE COURT: The prep work wasn't
9 delivered; so I assume the doors were not
10 delivered?

11 THE WITNESS: I assume the doors
12 were not delivered.

13 MR. HILDEBRAND: Okay. We will
14 take this out then, Your Honor.

15 THE COURT: All right.

16 MR. BUNDY: So what now? 61 is
17 coming out?

18 THE COURT: Strike.

19 MR. HILDEBRAND: Yes.

20 THE WITNESS: 262, RFI 1004, TV
21 wall revisions. This is August 31st, 2018 for
22 \$15,635. This is revisions. There's a corner
23 stack of rooms, 315, 415, 515. The layout was
24 changed after it was framed.

25 It had to be demoed, selectively

1 noted. Anything further?

2 MR. HILDEBRAND: Can you give me
3 just one minute, Your Honor?

4 THE COURT: Sure.

5 MR. HILDEBRAND: No further
6 questions, Your Honor.

7 MR. BUNDY: Obviously, I'm not
8 going to finish today, but I would request the
9 Court's indulgence to allow me to ask
10 approximately a half a dozen questions?

11 THE COURT: Okay. All right.

12 CROSS-EXAMINATION

13 BY MR. BUNDY:

14 Q. Mr. Starcevic, how are you?

15 A. Doing fine.

16 Q. Good. We met in your deposition, right?
17 So you know who I am, right?

18 A. Yes, sir.

19 Q. Okay. What I'm getting ready to ask you
20 is not personal to you. These are questions I
21 have to ask. Okay?

22 A. Fair.

23 Q. All right. Where are you going to today
24 when you leave? Are you going back home?

25 A. I am going to work.

1 Q. Okay. And where do you work?

2 A. At SunCap Property Group. It's in Park
3 Circle in North Charleston.

4 Q. North Charleston. Okay.

5 A. I may stop at my house. I've got --

6 Q. I'm just trying to establish what you
7 are doing this weekend. Okay. Does that company
8 have anything to do with Balfour Beatty?

9 A. No, sir.

10 Q. Does it have anything to do with the law
11 firm representing Balfour Beatty?

12 A. As far as I know, they don't.

13 Q. Are you related to anyone at Balfour
14 Beatty that you would need to speak to over the
15 weekend?

16 A. No.

17 Q. By blood or marriage?

18 A. No.

19 Q. Okay. So there would be no requirement
20 for you to call them for any reason at all?

21 A. Correct.

22 Q. I mean, even if you had a 911 emergency,
23 you'd probably call the emergency room. You
24 wouldn't call BBC?

25 A. I would call 911 if there's a 911

1 emergency.

2 Q. Okay. And the same is true of the law
3 firm that represents Balfour Beatty. You're not
4 represented by them, are you?

5 A. No.

6 Q. Okay. And they're not your personal
7 attorneys, and you're not personally represented
8 by anybody over there, and you're not related by
9 blood or marriage to anybody over there so
10 there's no reason to be talking to any of those
11 people?

12 A. That's right.

13 Q. Okay. The Judge is going to admonish
14 you that you are under oath and you remain under
15 oath and you're not to speak with anyone at
16 Balfour Beatty, the lawyers, or anybody about
17 this case at all, right, until you get back here
18 on Monday and you talk to me. Okay?

19 A. Okay.

20 Q. I just want you to be aware that this is
21 very serious. And I want you to take it
22 seriously, and I know you will, but I want to
23 remind you. Okay?

24 A. Okay.

25 MR. BUNDY: I will see you Monday.

1 THE COURT: All right,
2 Mr. Starcevic.

3 MR. BUNDY: Did I give the
4 admonition?

5 THE COURT: I think Mr. Bundy has
6 covered what I -- in great detail what I would
7 ask that you do, which is, we -- I told them
8 yesterday that we were going to try to break
9 around lunchtime today.

10 He does have some questions for you that
11 he's going to ask you on cross-examination. We
12 are going to resume this trial Monday morning at
13 9:30 a.m. Can you be here Monday morning?

14 THE WITNESS: Can I check?

15 THE COURT: Yeah. Because I'm
16 going to -- you're going to be here at some point
17 in time. So let me know.

18 THE WITNESS: Yeah. I understand
19 that. I just wasn't expecting to be --

20 MR. BUNDY: And, Mr. Starcevic, to
21 be fair to you, tell them you're going to be gone
22 all day and you might be gone Tuesday.

23 MR. MCDONALD: Your Honor, while
24 we're waiting, can I do a quick housekeeping
25 matter?

1 THE COURT: Sure.

2 MR. MCDONALD: Yesterday, you
3 admitted over objection to a PowerPoint from the
4 third witness, Huyghe.

5 THE COURT: Mr. Huyghe, yeah.

6 MR. MCDONALD: And all of those
7 objections were in that directive. But I'm not
8 going to re-comment on that.

9 THE COURT: Right.

10 MR. MCDONALD: But we don't know
11 what was handed up to you, and during that
12 process, he was unable to testify as to certain
13 slides.

14 THE COURT: Yeah. The owner stuff,
15 I struck, just so you know. Anything that was in
16 there that we didn't cover, I just drew a line
17 right through my document.

18 MR. BUNDY: This is what I would --
19 do you mind checking this against yours? I just
20 would not want you to have something that's not
21 in evidence.

22 THE COURT: Yeah. Well, frankly,
23 if it said owner, I think I struck it. But I
24 will be glad to take a look, sure.

25 MR. BUNDY: That's my copy.

1 MR. HILDEBRAND: May I see what
2 Mr. Bundy gave you, Your Honor?

3 THE COURT: Sure.

4 MR. BUNDY: Now, that's a different
5 witness. That's a different witness.

6 THE COURT: That's the stuff from
7 Mr. McAuliffe. That's what I did. If I wasn't
8 going to hear it, I struck through it. Do you
9 want me to verify it again?

10 MR. BUNDY: I guess this is Mr.
11 McAuliffe. Okay. I'm sorry. I've got the wrong
12 one.

13 THE COURT: No. This is McAuliffe.

14 MR. BUNDY: Okay. That's
15 McAuliffe. So that's the stuff you struck.

16 THE COURT: Yes, sir.

17 MR. BUNDY: I thought you struck
18 all owner stuff as well --

19 THE COURT: I pretty much did.

20 MR. BUNDY: -- in the one --

21 THE COURT: Owner causes for delays
22 and additional costs.

23 MR. BUNDY: Okay.

24 THE COURT: That was stricken.

25 MR. BUNDY: But wasn't there also

1 owner causes for delays in the last fellow that
2 testified? He also tried to do the same thing,
3 as I recall.

4 MR. HILDEBRAND: I don't think he
5 struck it. He just asked him to move on.

6 THE COURT: Yeah. I will check
7 that, too.

8 MR. BUNDY: Okay. Thank you. I
9 just don't want something -- since the state has
10 now decided I have to keep up with the exhibits,
11 which I think is a huge, huge mistake on their
12 part.

13 THE COURT: I know. I wouldn't be
14 surprised if stuff doesn't disappear.

15 MR. BUNDY: Well, I know it. They
16 ought to pay the court reporters more money so
17 they can keep up with all this.

18 THE COURT: Well, I'm sure they'd
19 like that. Scored another point for the record.
20 Yeah, I think that was done.

21 MR. BUNDY: All right. Thank you,
22 Your Honor.

23 THE COURT: Yeah, I struck that.

24 Nick, what did you find?

25 THE WITNESS: All day Monday and

1 all day Tuesday?

2 THE COURT: Hopefully not, but how
3 about Monday morning?

4 THE WITNESS: I'll be here Monday
5 morning.

6 THE COURT: If we can get started,
7 we can get you out of here.

8 THE WITNESS: I'll be here Monday
9 morning if y'all tell me to be here.

10 THE COURT: All right.

11 MR. BUNDY: I'll tell you what will
12 make it quicker, if you just continue to say,
13 yes, Mr. Bundy.

14 THE COURT: All right. Let's
15 resume Monday morning at 9:30. Thank you.

16 (The hearing was concluded at
17 12:48 P.M.)

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

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

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

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

Witness my hand, I have hereunto
affixed my official seal on June 29, 2022 at
Charleston, Charleston County, South Carolina

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Jennifer M. Adams
Court Reporter And Notary Public
My commission expires: 03/15/2032

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

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

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

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

23

24

25

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

2
3 ON BEHALF OF PLAINTIFFS:

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

13
14 ON BEHALF OF DEFENDANT LIBRARY ASSOCIATES:

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

24 ON BEHALF OF DEFENDANT WATSON ELECTRICAL:

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

31 ON BEHALF OF DEFENDANT OLD NORTH STATE & LITHKO:

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

1

ON BEHALF OF DEFENDANT DAVID ALLEN COMPANY:

2

KELLY LAW FIRM, LLC

3

BY: RUSSELL BRITTON KELLY, ESQ.

4

689 King Street

5

Charleston, SC 29403

6

Britt@kellylawsc.com

7

8

ON BEHALF OF DEFENDANT METROPOLITAN LIFE:

9

BUIST BYARS & TAYLOR, LLC

10

BY: G. HAMLIN O'KELLEY, ESQ.

11

652 Coleman Boulevard

12

Suite 200

13

Mt. Pleasant, SC 29464

14

Hamlin.okelley@buistbyars.com

15

16

17

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1 THE COURT: All right, folks. So
2 we are day one, week two Balfour Beatty vs. The
3 Library Associates. We were on break on
4 Mr. Starcevic's testimony.

5 Nick, do you want to come on up?

6 THE WITNESS: Yes, sir.

7 THE COURT: Assume the position
8 over here if you would.

9 Any matters that we need to take up
10 before we commence this morning? Mr. Hildebrand,
11 for the plaintiff?

12 MR. HILDEBRAND: I don't think so,
13 Your Honor. But for clarification, we will not
14 go into next week, correct?

15 THE COURT: Correct. Yes. We've
16 got this week to go. I do have two weeks
17 reserved for y'all at the end of October, first
18 week of November. I'm hoping we can get most of
19 this case done this week. But anyway, we shall
20 see. Any matters to take up before we --

21 MR. BUNDY: A few, Your Honor.

22 THE COURT: Okay. All right.

23 MR. BUNDY: Did you get Mr. Terry's
24 e-mail?

25 THE COURT: I have not seen it, no.

1 MR. BUNDY: Mr. Terry sent an
2 e-mail on Sunday about 10 o'clock in the morning
3 saying that he had COVID.

4 THE COURT: Okay. All right.

5 MR. BUNDY: And he was -- asked you
6 for a continuance or said, if he couldn't get a
7 continuance -- I didn't quite understand, he was
8 going to move for one. Because he didn't want
9 the case as it related to his -- to my
10 counter-claim for conspiracy to start without him
11 being here. And I certainly don't want that
12 either.

13 THE COURT: Right.

14 MR. BUNDY: But it occurred to me,
15 one, a continuance is premature because
16 Mr. Hildebrand hadn't finished his case yet.

17 THE COURT: Right.

18 MR. BUNDY: That's one. Two, I
19 think it would be a mistake to start my case at
20 all, okay, because we're going to start my -- the
21 case is going to -- we've already got dates set
22 for October, right?

23 THE COURT: Right.

24 MR. BUNDY: If this case takes two
25 or three more days, right, then we've only got

1 two days left. Okay? The benefit of going
2 forward would be two more days of trial. That
3 would be the benefit.

4 The risk of going forward is that every
5 day we've been in Court up until this point will
6 be useless and will get reversed on appeal, okay,
7 because regardless of what anybody tries to tell
8 me now, okay, if I put in one shred of evidence,
9 I ask somebody what their name is and Mr. Terry
10 is not here, he is going to take the position on
11 appeal, that he didn't have the right of
12 confrontation because once my case starts, my
13 case includes the claim for civil conspiracy.

14 In evidence that I'm putting in first,
15 the witness may not appear to be a civil
16 conspiracy element, but it may well be. Okay?

17 THE COURT: Okay.

18 MR. BUNDY: And if you proceed, I'm
19 satisfied that we will be back in Charleston
20 doing this whole case all over again regardless
21 of the outcome. So the risk of loss is maybe a
22 day or two at trial -- well, the risk of loss is
23 losing everything.

24 THE COURT: Sure.

25 MR. BUNDY: The benefit is an

1 additional day of trial, and we're not in that
2 big of a hurry.

3 THE COURT: All right.

4 MR. BUNDY: So that would be my
5 request.

6 THE COURT: I'm with you on that
7 one.

8 Mr. Hildebrand?

9 MR. HILDEBRAND: Your Honor, I
10 think that might be premature. What I would
11 suggest -- and I don't mean to speak out of
12 school -- that, perhaps we can get Mr. Terry on
13 the phone. I think it would be appropriate
14 before Mr. Bundy starts his case.

15 But what I said -- I talked to Don
16 yesterday. I said, Don, is there any way we can
17 work this out? You certainly would have the
18 right to call any witnesses that you want to
19 at -- later on when you're putting on your case.

20 I said, maybe what you can do also is
21 just get a copy of the transcript from this week,
22 and to the extent that you wanted to
23 cross-examine a witness, then maybe you could
24 reserve your right to do that. And he said,
25 well, I really hadn't thought about that, Tom. I

1 said, that might be a good idea in lieu of a
2 continuance.

3 But I would say, let's not address a
4 hypothetical at this point. Let's see what --
5 where we get. I absolutely do want to go forward
6 with the -- with their case, Judge, because I
7 don't want this thing to extend beyond the next
8 two weeks after that.

9 I hope that there's some things we can
10 do to shave that down. But I definitely don't
11 want to extend it beyond that. So I want to make
12 this as judicious a time as we can of what we
13 have.

14 THE COURT: All right. I'm with
15 you. Let me just say this. I think he and Al
16 Windle work in the same firm, do they not?

17 MR. HILDEBRAND: That's exactly
18 right.

19 THE COURT: I kept up with
20 Mr. Windle last week about Mr. Terry's condition
21 with Al. I saw him in the restroom. And I just
22 asked him how he was doing, and he was starting
23 to cough is what I heard as of Wednesday. So it
24 wasn't sounding good.

25 But the reason I originally set this up

1 was, I think y'all -- we talked about it. We
2 would have the -- these two parties going at each
3 other for two weeks and then the potential for
4 two weeks of subs. Well, we've gotten rid of a
5 lot of subs.

6 So I think that frees us up on our time
7 in the next two weeks. But, again, we're still
8 on the plaintiff's case. So I think we ought to
9 just press forward on with the plaintiff's case,
10 and then I will address the issue. But I had not
11 seen the request as of yet.

12 MR. BUNDY: Just for the record, I
13 want to be very clear about this.

14 THE COURT: Yeah.

15 MR. BUNDY: I'm sorry that
16 Mr. Terry is ill. I regret it. But that's his
17 problem and not my client's problem. My client,
18 if we're required to go forward with him not
19 here, regardless of whatever problem solving
20 procedures we try to go through with, will be
21 prejudiced. There's no reason to go forward,
22 none at all.

23 And I'm not going to accommodate
24 Mr. Terry. I'm not going to accommodate
25 Mr. Hildebrand. I'm going to insist that my

1 client's rights are protected. And there's no
2 way to do that as long as there's a counterclaim
3 when I start proceeding against Mr. Terry's
4 client.

5 Additionally, Mr. Steele Windle doesn't
6 represent Watson Electric. He only represents --
7 Steele only represents two others. Old North
8 State Masonry and --

9 THE COURT: Lithko, right?

10 MR. BUNDY: And the other one,
11 whoever it is.

12 THE COURT: Lithko, I think it is.

13 MR. BUNDY: And he's appearing pro
14 hac vice. So if Mr. Terry can't be here,
15 Mr. Windle, I don't know how he handles a case
16 without his local counsel being at trial.

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

19 MR. BUNDY: So we've got all kind
20 of problems if we try to save a day or two of
21 time.

22 THE COURT: All right. Well, we'll
23 cross that road when we get there.

24 MR. BUNDY: Okay. Thank you.

25 THE COURT: We've also got some

1 weather to deal with this week. But let's just
2 see how we do. As long as we can get to the
3 courthouse and back.

4 MR. BUNDY: Your Honor, I have a
5 couple other things, but we can do them later.
6 I'd just as soon get started.

7 THE COURT: All right. Very
8 good.

9 CROSS-EXAMINATION

10 BY MR. BUNDY:

11 Q. Good morning, Mr. Starcevic, how are
12 you?

13 A. Good morning, fine.

14 Q. I guess you picked up, I don't hear very
15 well. I probably talk too loud, and I do that
16 because I can't hear. So nothing personal if I
17 talk loud to you. Okay?

18 A. Yes, sir.

19 Q. All right. Tell me what you did
20 regarding this matter between the time you got
21 off the witness stand and right this minute as
22 related to this case. What have you done with
23 regard to this case?

24 A. Nothing.

25 Q. You haven't looked at any documents?

1 A. No, sir.

2 Q. You haven't talked to anybody about this
3 case?

4 A. No, sir. I got -- received a phone call
5 and told him I was sequestered and couldn't talk.

6 Q. Who called you?

7 A. Jeff Sandine.

8 Q. Jeff Sandine called you?

9 A. I didn't have his number. He called me
10 this -- Friday afternoon. I told him I was
11 sequestered and couldn't talk.

12 Q. Well, thank you for that. Do you know
13 whether Mr. Sandine was even aware that you were
14 going to -- that you were on the witness stand?

15 A. I don't.

16 Q. Was he in court?

17 A. No, sir.

18 Q. Okay. Do you know if he's in
19 constant -- if he's in communication with his
20 other employees --

21 A. I don't.

22 Q. -- who would have been in court?

23 A. I don't.

24 Q. We know he's got a telephone because he
25 called you, right?

1 A. Yes, sir.

2 Q. Okay. So he could have called other
3 people involved in this case in determining
4 independent of the witness under -- on the
5 witness stand who had been admonished, to find
6 out he wasn't supposed to call you. He could
7 have done that, right?

8 A. He could do anything.

9 Q. Okay. Now, you left the employ of
10 Balfour Beatty when?

11 A. April of this year.

12 Q. April of 2021, right?

13 A. Yes.

14 Q. Left employment, left BBC; is that
15 correct?

16 A. Correct.

17 Q. All right. And it's now September, so
18 five months ago?

19 A. Yes.

20 Q. All right. Now, after you left the
21 employment of Balfour Beatty, did you talk to
22 anyone that worked at Balfour Beatty from April
23 of 2021 until last Friday when you got on the
24 witness stand? Did you talk to anybody at
25 Balfour Beatty?

1 A. Yes, sir.

2 Q. All right. Tell me -- list for the
3 Court, if you will, the people that you talked
4 to.

5 A. Tim Spano.

6 Q. All right. When did you talk to Spano?

7 A. Infrequently.

8 Q. No. Infrequently is not a date. When
9 did you --

10 A. I don't remember each date. We had
11 projects that I had information on, I had to talk
12 to Tim about. He would call me. I don't
13 remember the specific dates.

14 Q. But you didn't work for them anymore.
15 Why was he calling you?

16 A. Because I left on good terms, and I
17 wanted to help Balfour Beatty and the things that
18 Tim and I were working on. I had information
19 that he didn't have. So Tim would call me and
20 say, hey, why -- you know, what's going on with
21 this project? Do you remember this? And I would
22 answer and tell him.

23 Q. Specifically, what project are you
24 talking about?

25 A. The Ryder Hotel on Meeting Street and

1 the 564 King Street renovation.

2 Q. And what were your duties on those jobs?

3 A. Project manager.

4 Q. Were you project manager on both of
5 them?

6 A. Yes, sir.

7 Q. And what were his duties on this job?

8 A. He was a superintendent.

9 Q. Okay. So you were his boss when you
10 left?

11 A. I wasn't his boss. We were -- he
12 managed the field; I managed the office.

13 Q. When did those jobs start?

14 A. The Ryder started about -- we had a long
15 mockup period. Construction started in January
16 of 2020, I believe.

17 Q. January of 2020, you were the project
18 manager for Ryder?

19 A. Yes.

20 Q. And explain what Ryder is to me.

21 A. It's the new hotel on Meeting Street.

22 Q. All right. And when did you leave that
23 job?

24 A. When I left Balfour Beatty.

25 Q. Pardon me?

1 A. When I left Balfour Beatty.

2 Q. And what was the status of construction?
3 What was the completion? How far along was the
4 job?

5 A. It was 95 percent complete. There was a
6 punch list and final closeouts.

7 Q. And is that a luxury hotel?

8 A. It's a high-end hotel.

9 Q. Is it a luxury hotel, Mr. Starcevic?

10 A. Define luxury.

11 Q. Is it a five-star hotel?

12 A. No, sir.

13 Q. And what other jobs -- the other job
14 that you mentioned that he called you about after
15 you left the employ, was what?

16 A. 564 King Street.

17 Q. Pardon me?

18 A. 564 King Street.

19 Q. 564 King?

20 A. Yes, sir.

21 Q. And what was your title on that job?

22 A. Project manager.

23 Q. All right. And what was his position on
24 that job?

25 A. Superintendent.

1 Q. And what was the nature of that work?

2 A. It was a historical renovation.

3 Q. A historical renovation?

4 A. Yes, sir.

5 Q. Specifically, tell me what -- any
6 renovation you do down in Charleston is going to
7 be historical renovation. That doesn't tell me
8 much at all. What kind of work is it?

9 A. It was an old building that hadn't been
10 occupied in a period of time.

11 Q. Who owns the building?

12 A. Asana owns it now.

13 Q. Who?

14 A. Asana Partners out of Charlotte owns it
15 now, and we were converting the upper two floors
16 into short-term rental units and just prepping
17 the first floor for new retail.

18 Q. What's the square footage of the
19 building?

20 A. About 3400 square feet, I believe.

21 Q. 3400?

22 A. 3400, yes, sir.

23 Q. What's square footage of the Bennett
24 Hotel?

25 A. I can't remember off the top of my head.

1 Q. And who was the previous owner of this
2 building? Do you know?

3 A. Of which building?

4 Q. King Street.

5 A. I don't know. We got involved when
6 Asana bought it.

7 Q. Pardon me?

8 A. We got involved when Asana Partners
9 bought it.

10 Q. Okay. And what was -- what was the
11 construction contract price?

12 A. Just over a million dollars.

13 Q. And what was the construction price of
14 the Bennett Hotel?

15 A. Final or --

16 Q. Just pick a number, whatever number you
17 think it was. It doesn't matter.

18 A. It was around 54 million, I believe.

19 Q. So it was probably 54 times bigger, if
20 you just use money as an example?

21 A. Sure.

22 Q. And what was the amount of the Ryder
23 Hotel? What was the price of that?

24 A. Around 8 million.

25 Q. Huh?

1 A. 8, around 8 million.

2 Q. So any other projects you worked on
3 after Bennett Hotel for Balfour Beatty before you
4 left?

5 A. Yeah, quite a few.

6 Q. Well, name a few.

7 A. The Kiawah Island Senior Living.

8 Q. Okay. Kiawah Senior Living. And what
9 was your status on that? What was your job?

10 A. I would have been the project manager.

11 Q. Would have been. Okay. And what type
12 of -- was that new construction?

13 A. New construction.

14 Q. And your client was the Beach Company?

15 A. No, sir.

16 Q. Who was your client?

17 A. It was Big Rock Partners.

18 Q. Okay. And what was the contract price
19 on that job?

20 A. We hadn't executed a GMP yet. We were
21 very close to prior to the pandemic. And it
22 would have been around 100 million.

23 Q. What do you mean, it would have been?

24 A. The contract value would have been
25 around 100 million. We didn't execute it. The

1 pandemic hit and they set it back because senior
2 living was kind of --

3 Q. So you didn't do that project?

4 A. It hasn't -- I did not do it. I was
5 involved in the preconstruction. We had a
6 preconstruction agreement, and we were getting
7 ready to start it.

8 Q. I'm sorry, I was confused. I thought
9 you said that that was a job you did while you
10 worked for Balfour Beatty?

11 A. No. It was a job I was involved with.

12 Q. Involved with it. Okay. All right. So
13 if you talked with Balfour Beatty -- to somebody
14 at Balfour Beatty about a project. Let's say it
15 was 800 million dollars, would you be able to say
16 you were involved in that project if all you did
17 was talk to them about it? Is that an
18 involvement as far as you're concerned?

19 A. Depends on my level of talking. No, I
20 wouldn't say that's true.

21 Q. So you were in fact not the project
22 manager on the Kiawah project because the Kiawah
23 project never got built?

24 A. I was the project manager during the
25 preconstruction portions of the project.

1 Q. Okay. That's fine, Mr. Starcevic. All
2 right. What other jobs did you do for Balfour
3 Beatty during that period of time?

4 A. We did the upfit for the Beach Company
5 headquarters at the Sergeant Jasper project.

6 Q. All right. Working for John Darby?

7 A. Not directly.

8 Q. Do you know John?

9 A. I've met him.

10 Q. And what was your job on the upfit for
11 the Beach Company?

12 A. Project manager.

13 Q. And what was the price of that job?

14 A. Around 4 million dollars.

15 Q. And explain that work to me.

16 A. It was an interior upfit for their
17 headquarters on the fifth and sixth floor of the
18 office building of the Jasper. There's a
19 residential tower, parking deck, and an office
20 tower.

21 Q. All right. What was the square footage
22 part of the building you worked on?

23 A. I don't remember.

24 Q. All right. What else?

25 A. On the jobs I was involved with, I

1 believe that was it.

2 Q. Okay.

3 A. We did a bunch of preconstruction on a
4 number of jobs, but that's it.

5 Q. Well, preconstruction is not actually
6 building anything, is it? That's why they call
7 it "pre"?

8 A. Correct.

9 Q. Okay. So after you left the Bennett
10 Hotel and before you left Balfour Beatty in April
11 of 2021, you were the project manager on a 4
12 million dollar renovation for the Beach Company
13 up at Sergeant Jasper. You were the project
14 manager for the Ryder Hotel. Which, did you say
15 it was an 8 million dollar job? I can't
16 remember.

17 A. Roughly.

18 Q. An 8 million dollar job. And you were
19 the project manager on a little renovation over
20 on King Street which you think was about a
21 million dollars?

22 A. That's right.

23 Q. Is that correct?

24 A. That's correct.

25 Q. All right. So back to Mr. -- who's the

1 gentleman that called you that you talked to?

2 I've forgotten his name.

3 A. Jeff Sandine.

4 Q. Sandine. That's the fellow that called
5 you about the Ryder job?

6 A. No.

7 Q. Okay. Who is the fellow you talked to
8 about the Ryder job? Everybody has got the same
9 last name in this case as far as I'm concerned.
10 Everybody has got an "S" in their name, and I
11 have a very hard time keeping all of these people
12 straight.

13 A. That's all right. Tim Spano.

14 Q. Tell me one more time who you talked to
15 about the job. What was his name?

16 A. Tim Spano.

17 Q. Spano. Okay. And was Spano the
18 superintendent on all the jobs that we've been
19 talking about that you've worked on?

20 A. Tim was the general superintendent in
21 Charleston.

22 Q. On all of them?

23 A. Yes. He oversaw the field.

24 Q. All right. So what we're back to now
25 is, we've established the -- would that be the

1 full range of projects that you would have talked
2 to with Mr. Spano about -- from the time you left
3 Balfour Beatty until the time you testified
4 Friday?

5 A. Of projects that were under
6 construction?

7 Q. No, sir, that's not my question. The
8 full range of projects?

9 A. I talked to Tim about all kinds of
10 projects. There were other jobs that we were
11 doing preconstruction on.

12 Q. No, sir. All right. We're going to be
13 here until Friday.

14 A. I don't understand the question, what
15 was the range?

16 Q. I want to talk to you about jobs you
17 have actually worked on and done construction on,
18 not preconstruction.

19 A. Okay.

20 Q. Construction.

21 A. Gotcha.

22 Q. Are we okay?

23 A. Understood.

24 Q. All right. We've named construction
25 jobs you worked on. You've named them. I

1 haven't. I have no idea what you did between the
2 time you left Balfour Beatty and the time you
3 took the witness stand last Friday. Okay? We
4 started out this conversation -- I'm trying to
5 find out who you talked to at Balfour Beatty
6 during that period of time. You started with
7 Mr. Spano.

8 I want to know, okay, as it relates to
9 jobs that you have actually done construction
10 work on -- which would include the Bennett Hotel,
11 which would include every job that you've worked
12 on since you left, which would include the upfit
13 job you did in Charlotte, which would include any
14 job that you worked on at Balfour Beatty while
15 you were an employee there.

16 It includes the air conditioner you put
17 in up in Charlotte. Okay? I want to know,
18 during that time period between the time of April
19 and Friday, what projects did you discuss with
20 Mr. Tim Spano that you had constructed?

21 MR. HILDEBRAND: Objection, Your
22 Honor, on relevance. We will be here for a
23 month. I just don't understand.

24 THE COURT: I'm going to allow it.
25 Go ahead. He is trying to focus in on what

1 projects were discussed. I'm okay with that. Go
2 ahead.

3 MR. HILDEBRAND: Okay.

4 THE WITNESS: And then I'm sure I
5 talked to Tim about Hotel Bennett.

6 BY MR. BUNDY:

7 Q. Okay.

8 A. I don't remember what we talked about,
9 but I -- when Tim and I talked, we talked for a
10 period of time. And we talked about everything
11 we've done and anything he's working on. I'm
12 sure it came up.

13 Q. Did you keep any notes of any of those
14 conversations --

15 A. No, sir.

16 Q. -- as it related to Hotel Bennett?

17 A. No, sir.

18 Q. Were you ever asked in the conversation
19 with him to discuss Balfour Beatty damages or
20 your testimony?

21 A. No, not my testimony.

22 Q. Did you ever review any documentation
23 with him related to the Balfour -- to the Bennett
24 Hotel?

25 A. From Tim Spano?

1 Q. Yes.

2 A. Or with Tim Spano? No.

3 Q. Okay. So we've taken care of Spano.

4 Who else? What other employees of Balfour Beatty

5 did you talk to during that same period, same

6 question. Do you understand the question?

7 A. I do.

8 Q. Okay. Well, who else?

9 A. Tyre Moore.

10 Q. Who?

11 A. Tyre Moore.

12 Q. Can you spell that for me?

13 A. T-Y-R-E M-O-O-R-E.

14 Q. What is his job?

15 A. He's a project engineer. He was not
16 involved with -- he worked for me under the
17 Ryder, 564 King Street. He wasn't involved with
18 the hotel; so I didn't talk to him about the
19 hotel at all, if that's what you're getting at.

20 Q. All right. Good. And as a project
21 engineer, that doesn't mean he's an engineer,
22 right, an actual engineer?

23 A. No. But he had an engineering degree.

24 Q. Huh?

25 A. He had an engineering degree.

1 Q. Oh, he did? Good. Who else did you
2 talk to?

3 A. Currently with Balfour, I talked to John
4 Heuer.

5 Q. John Heuer. All right. Now, I may have
6 misunderstood what you said. If you said current
7 employees, I didn't -- did you say you talked --
8 I don't want to limit this, if you're limiting it
9 to current employees. I want to know all
10 employees, past or present of Balfour Beatty you
11 talked to during that period, not just current
12 employees. Okay?

13 A. Okay. I talked to Alec Dooley.

14 Q. Well, we're not finished with Heuer yet.
15 I'm going to do them one at a time. Now, John
16 Heuer, he is a lawyer?

17 A. Yes, sir, to my understanding.

18 Q. He is corporate counsel for Balfour
19 Beatty?

20 A. My understanding, yes, sir.

21 Q. He's at that table right over there?

22 A. That's right.

23 Q. Okay. He's not your lawyer, is he?

24 A. No, I don't have a lawyer.

25 Q. Have you ever -- has he ever represented

1 you in any cases?

2 A. Personally?

3 Q. Yes.

4 A. No.

5 Q. Do you know whether he's licensed to
6 practice law in South Carolina?

7 A. I don't know.

8 Q. Okay. Tell me what you talked to
9 Mr. Heuer about between the time you left the
10 employment and the time you took the stand on
11 Friday.

12 A. I called him to ask when I would need to
13 be here, and he told me they were still working
14 that out, but to keep the weeks that we're here
15 open.

16 Q. Okay. When did that call take place?

17 A. About three weeks ago.

18 Q. Why did you call him?

19 A. Because I wanted to know.

20 Q. Why didn't you call Hildebrand?

21 A. Because I wanted to reach out to John.
22 I know John. We've, you know, worked together
23 for 10 years.

24 Q. Fair enough. All right. Who else did
25 you talk to?

1 A. Alec Dooley.

2 Q. Alex Dooley?

3 A. Alec.

4 Q. Alec, A-L-E-C?

5 A. Yes.

6 Q. All right. Who is Mr. Dooley?

7 A. He was the assistant project manager.
8 He's no longer with Balfour Beatty.

9 Q. All right. When did he leave the
10 employ?

11 A. I don't remember.

12 Q. When was it?

13 A. About a year and a half ago. I don't
14 remember when he left.

15 Q. How long were you on the --

16 A. It was towards the end of the year of --
17 I don't know. It was either -- it was about a
18 year and a half ago, I think.

19 Q. Oh, he left about a year and a half ago?

20 A. Maybe a little bit more.

21 Q. Okay. Do you know why he left?

22 A. To go work for his family business in
23 Ohio.

24 Q. Okay. And what did y'all -- why did he
25 call you? What was the nature of those

1 conversations?

2 A. We're friends, and we catch up
3 frequently.

4 Q. Did you talk about the Bennett Hotel?

5 A. I'm sure we did.

6 Q. Okay. Did you review any documents with
7 him or prepare any testimony --

8 A. No, sir.

9 Q. -- or look at any notes?

10 A. No, sir.

11 Q. Okay. Who else did you talk to?

12 A. Randy Bowden.

13 Q. I'm sorry, who?

14 A. Randy Bowden.

15 Q. Who is he?

16 A. He's another project manager with
17 Balfour Beatty -- formerly with Balfour Beatty.

18 Q. Formerly?

19 A. I had no conversations about the hotel.
20 He didn't work on it.

21 Q. Okay. Why did he leave Balfour Beatty,
22 if you know?

23 A. I don't know. You'd have to ask him.

24 Q. Who else did you talk to?

25 A. Nick Wegener, still with Balfour Beatty.

1 Didn't talk about the hotel. He didn't work on
2 it.

3 Q. Okay. Who else did you talk to?

4 A. I believe that's it.

5 Q. Okay. Did you talk to Mr. Hildebrand
6 during that period?

7 A. Yes, sir.

8 Q. Okay. What did you talk about?

9 A. About when I needed to be -- the case,
10 when I -- when he would -- when I would have to
11 be here.

12 Q. Did you talk about your testimony?

13 A. I didn't talk about my testimony. I
14 hadn't testified.

15 Q. Huh?

16 A. I didn't have a testimony at the time.

17 Q. Well, did he talk to you about the case
18 other than when you had to be here? Did he talk
19 to you about what your testimony would be? Did
20 he give you an indication of what the questions
21 were going to be? Did you give an indication of
22 what the answers were going to be? That's what
23 I'm trying to get to.

24 A. No, I didn't tell him what my answers
25 were going to be.

1 Q. Did he tell you what the questions were
2 going to be?

3 A. We talked about the case.

4 Q. Tell me what you can recall.

5 A. We talked about when I would have to be
6 here, approximately how much time I would need to
7 spend here. We talked about some of the RCOs
8 that were in question.

9 Q. Which ones?

10 A. The list that we went through yesterday.
11 We talked about what -- about which ones have
12 been thrown out, who had been settled. That's
13 generally what we talked about.

14 Q. Okay. When did that conversation occur?

15 A. Maybe two weeks ago.

16 Q. How long did it take?

17 A. Half an hour, maybe less.

18 Q. And how many other times did you talk to
19 Mr. Hildebrand during that period in preparing
20 for your testimony.

21 A. That's really it, just twice.

22 Q. Huh?

23 A. Just twice.

24 Q. What was the other time you talked to
25 him?

1 A. The other time was about a week ago. We
2 talked about the same, about the RCOs, about what
3 was in question, about -- that's really it.

4 Q. And was the RCO book already prepared at
5 that time?

6 A. I don't know.

7 Q. He didn't show it to you?

8 A. I saw it. So there were RCOs in the
9 book. I don't know if it was the same book I
10 looked at.

11 Q. Where did y'all meet?

12 A. Talked to him on the phone the first
13 time and we met at his office the last time.

14 Q. So in total, how much time do you think
15 you were with Mr. Hildebrand preparing for your
16 testimony last Friday?

17 A. About an hour and a half. I didn't meet
18 with him last Friday. Are you talking about my
19 testimony last Friday, preparing for the
20 testimony?

21 Q. Yeah.

22 A. About an hour and a half.

23 Q. Okay. What other times did you spend
24 with him preparing for anything else --

25 A. That's it.

1 Q. -- or doing anything else?

2 A. That's it.

3 Q. That's it?

4 A. Yeah.

5 Q. All right. I hand you what's entitled
6 response to RFP, which what does RFP stand for?
7 Do you know?

8 A. Request for proposal.

9 Q. Okay. Hotel at Marion Square,
10 Charleston, South Carolina, November 6th, 2016,
11 Bennett Hospitality matrix program management
12 service.

13 A. 2013.

14 Q. Pardon me?

15 A. Mine says 2013.

16 Q. I'm sorry, I don't have my glasses on.
17 Thank you. I stand corrected. I can't hear and
18 I can't see. All right. 2013, Balfour Beatty
19 Construction. Do you see this?

20 A. Yes.

21 Q. Do you recognize it?

22 A. Yeah, I'm sure I do.

23 Q. All right. When was the first time you
24 saw it?

25 A. I don't remember.

1 Q. When was the last time you saw it?

2 A. Right now. I mean, this is --

3 Q. Between these two times, do you know how
4 many other times you looked at it?

5 A. A handful. We had a copy of it in the
6 office.

7 Q. Okay. And when was -- did you see the
8 job -- did you see this requested proposal before
9 the Hotel Bennett contract was signed with
10 Library Associates?

11 A. Me, personally?

12 Q. Yes, you personally.

13 A. No. I wasn't involved with the project
14 before this contract was signed.

15 Q. All the questions I'm going to ask you,
16 I'm going to be asking you personally. I'm not
17 familiar with questions that you would ask that
18 weren't -- I'm going to ask you just personal
19 questions. Okay?

20 We're having a conversation. Okay? We
21 don't need to qualify it with personally. I'm
22 ask you: Did you see this contract -- this
23 document before the contract was signed with
24 Library Associates? Yes or no?

25 A. No. I was not involved before the --

1 before it was signed.

2 Q. Thank you.

3 A. Before the contract was signed.

4 Q. Thank you. All right. I hand you these
5 documents and ask if you can identify these
6 documents. They all come together as one group.

7 A. Okay. Do you want me to read them?

8 Q. No, sir. I'd just like you to look at
9 them first to yourself, just look through them.
10 All I'm going to do is ask you if you can
11 identify them first.

12 A. Okay. Yeah, I'm familiar with them.
13 Without reading all -- every page, they look
14 familiar.

15 Q. Have you ever seen those documents
16 before?

17 A. Yes.

18 Q. All right. When was the first time you
19 saw them?

20 A. As they were being prepared.

21 Q. All right. When did the preparation
22 begin?

23 A. I don't remember a date.

24 Q. For the record, tell me what those
25 documents are and what you believe them to be.

1 A. I believe these are volume 1, 2 and 3 of
2 the consolidated claim and volume 4, which is
3 schedule -- a complete schedule.

4 Q. And whose consolidated -- whose claim is
5 it?

6 A. I believe this is Balfour Beatty's
7 claim.

8 Q. Okay. And who are they making a claim
9 to?

10 A. Library Associates.

11 Q. All right. And do they first make --
12 the claims on this job, first go to the
13 architect?

14 A. I don't know.

15 Q. You don't know?

16 A. Yeah. The contract should specify that.

17 Q. Pardon me?

18 A. The contract should specify who the
19 claims go to.

20 Q. Yes, sir, it should. And do you know
21 what it says?

22 A. I don't, without pulling it out.

23 MR. BUNDY: Okay. Your Honor, I
24 would like to go ahead and move these into
25 evidence, please.

1 THE COURT: All right. So these
2 will be Defendant's next numbers. They're
3 volumes 1, 2, 3 and 4. Is that what we have?

4 MR. BUNDY: Yes, Your Honor. I
5 think we should put an exhibit sticker on them.
6 What I would like to do is, I like to mark
7 separate stuff with separate exhibit numbers.
8 I'm not into --

9 THE COURT: Yeah, no. I'm okay
10 with that. If memory serves me right, we had
11 Defendant's 10 is, I think, where we were, wasn't
12 it?

13 THE WITNESS: Do you want to go in
14 order?

15 MR. MCDONALD: Yes, sir, Your
16 Honor. We're 1 through 10; so the first one will
17 be 11.

18 THE COURT: All right. Very good.

19 MR. BUNDY: Your Honor, for the
20 record, these were also exhibits in depositions;
21 so I'm going to put the sticker next to it.

22 THE COURT: Okay.

23 MR. BUNDY: So that way it doesn't
24 get confusing --

25 THE COURT: We can identify them

1 that way.

2 MR. BUNDY: -- with the deposition
3 testimony. And the first exhibit will be what?

4 THE COURT: No. 11, I think you
5 said, right?

6 MR. MCDONALD: This will be No. 11.

7 (DFT. EXH. 11 was marked for
8 identification.)

9 MR. BUNDY: All right. The next
10 exhibit will be volume 2, No. 12.

11 (DFT. EXH. 12 was marked for
12 identification.)

13 MR. BUNDY: The next exhibit will
14 be volume 3 of -- yeah, volume 3, Exhibit 13.

15 (DFT. EXH. 13 was marked for
16 identification.)

17 MR. BUNDY: And, lastly, this will
18 be volume 4, which is Exhibit 14.

19 (DFT. EXH. 14 was marked for
20 identification.)

21 MR. BUNDY: Move to introduce into
22 evidence, Your Honor, Defendant's Exhibits 11,
23 12, 13 and 14 into evidence.

24 THE COURT: All right. Any --

25 MR. HILDEBRAND: No objection, Your

1 Honor.

2 THE COURT: Without objection, very
3 good. Thank you.

4 (DFT. EXHS. 11 through 14 were
5 admitted into evidence.)

6 BY MR. BUNDY:

7 Q. Can you and I agree that when we use the
8 name of consolidated claim, that what we're
9 talking about is the is Exhibits 11 --
10 Defendant's Exhibits 11, 12, 13 and 14?

11 A. Yeah, I believe so. There are three --
12 there are four volumes.

13 Q. I don't want you to believe it. I
14 either want you to tell me what you -- what I
15 need to call these exhibits for you to understand
16 what I'm talking about. Do you want me to name
17 the number every time or can we agree it's the
18 consolidated claim? It don't matter to me.

19 A. We can call volumes 1 through 4 the
20 consolidated claim, yes.

21 Q. Moving forward, if I say consolidated
22 claim, we're not going to be arguing about what
23 that means, are we?

24 A. No.

25 Q. Okay. Thank you. Now, when did you

1 start working -- well, let me ask you this: What
2 was your role in the preparation of the
3 consolidated claim?

4 A. I was involved in putting them together,
5 accumulating documentation, accumulating, you
6 know, various information to help put that
7 together.

8 Q. Okay. Well, I think, you know, probably
9 a secretary or somebody else in the
10 administrative department was involved in putting
11 it together. In other words, putting holes in
12 the pages and putting these little brass things
13 on there.

14 That's not what I'm -- I don't need to
15 talk to that person. Okay? When I say
16 involvement in the claim, I want to know what you
17 did substantively that found its way into this
18 claim? What were your duties and
19 responsibilities, if any?

20 A. I pulled together information from
21 subcontractors. I helped organize the
22 information in it, helped provide information to
23 our teams. I was very involved in putting
24 information into that consolidated claim.

25 Q. All right. And you said you helped.

1 Who did you help? Who else did you help?

2 A. Mr. Hildebrand, Tim Spano, Dave
3 Simonton, Casey Thompson, our whole team that
4 worked on putting this together.

5 Q. The whole team doesn't work. I don't
6 know who the team was. I need to know the
7 individual names, to the best of your information
8 and belief, because you're under oath. If you
9 don't remember who was on the team, just say it.
10 If you do, I would like to know their terms.

11 A. Sure. So Dave, Tim, Tom Hildebrand,
12 John Heuer, Casey Thompson. I believe that's it.

13 Q. Okay. And that's the universal people
14 that created this claim?

15 A. My understanding.

16 Q. And when did you start working? How
17 much time -- how many hours did you spend, did
18 you devote in preparation for this?

19 A. I don't know.

20 Q. Can you give me any idea at all?

21 A. I do not. I cannot. A lot.

22 Q. A lot. Okay. A lot of hours depends on
23 what you're doing. If you're having fun, they go
24 really fast; if you're not having fun, it seems
25 like a lot, and it may not be.

1 A. Sure.

2 Q. So a lot doesn't really do much for me
3 either.

4 A. That's right.

5 Q. Okay. So if you could just -- well,
6 let's do it this way. When did you start working
7 on the claim?

8 A. I don't remember.

9 Q. Was this the largest claim that you had
10 worked on -- well, strike that. Was what your
11 prior experience in preparing claims under a cost
12 plus contract with a guaranteed maximum sum?

13 A. Zero.

14 Q. Zero. Thank you. All right. And what
15 did you do to inform yourself about how to
16 prepare the claim? Did you have a lunch and
17 learn --

18 A. No.

19 Q. -- over claim preparations?

20 A. We didn't have a lunch and learn over
21 claim preparations.

22 Q. Okay. So how did you go about informing
23 yourself about what your duties were and what was
24 necessary to prepare a claim?

25 A. We -- I was asked to pull together

1 information, to pull together relevant costs, to
2 evaluate costs that should be in the claim.

3 There was no training involved in how to put
4 together the claim.

5 Q. Well, who told you what to get that they
6 wanted? In other words, you say you pulled
7 together information.

8 You're just saying that somebody came to
9 you and goes, okay, Nick, go pull together some
10 information and they didn't tell you what they
11 wanted? They didn't tell you what format they
12 wanted it in? They just left it entirely up to
13 you? You're not saying that, are you?

14 A. We put together an outline for the
15 claim.

16 Q. And who put that outline together?

17 A. So I think either John Heuer or Tom
18 Hildebrand did, put together an outline. And we
19 talked about the --

20 Q. Let me stop you there.

21 A. Excuse me?

22 Q. The first thing that happened was the
23 lawyers gave you an outline of what they wanted
24 you to do?

25 A. I don't know that that's true. I may

1 have drafted one originally or -- and there was a
2 couple iterations of how the claim should be put
3 together.

4 Q. I thought you just said the lawyers
5 prepared the outline?

6 A. They prepared the outline. I don't know
7 that they told me initially how to do it. They
8 may have edited my outline. It was -- I mean, we
9 passed a number of iterations back and forth.

10 Q. Do you have copies of that outline?

11 A. I don't.

12 Q. Has it been produced in discovery?

13 A. I don't know.

14 Q. Have you been asked to look for it as a
15 part of discovery?

16 A. No, sir.

17 Q. All right. So you -- there was an
18 outline. Is that the first thing that happened
19 in the claim preparation?

20 A. I believe so.

21 Q. Okay. And, again, you don't remember
22 when that was?

23 A. It would have been March or April after
24 the hotel is completed.

25 Q. Okay. So March?

1 A. Probably within the -- you know, a
2 couple months after the hotel was complete.

3 Q. Pardon me?

4 A. Within a couple months after the hotel
5 was complete.

6 Q. Okay. So that would have been? You
7 think March or April of that year?

8 A. '18; is that right?

9 Q. Huh?

10 A. '18.

11 Q. 2018. Okay. Would you look at Exhibit
12 11? And this is in evidence. It's a letter to
13 Buck Lindsay, and it says reconsolidated claim
14 preliminary. Do you see that?

15 A. Yeah.

16 Q. What's the date of that letter?

17 A. March 6, 2019.

18 Q. '19?

19 A. '19.

20 Q. So you were off about a year?

21 A. Sorry about that.

22 Q. That's okay. I just think it's
23 important that we know. This kind of information
24 is hard to find the truth if you've got missed
25 dates. Okay. So now we know what about when you

1 started working on this claim?

2 A. Pardon?

3 Q. What do we know about when you started
4 working on this claim? Now, you said that you
5 started about the time the claim was presented.
6 You thought it was in January or March of '18.
7 It turns out it's dated March of '19. So when
8 was it that you started work?

9 A. So it would have been January through
10 March of '19.

11 Q. Of '19. Okay. So this was after the
12 substantial completion date, right?

13 A. Yes.

14 Q. Okay. So you started working on the
15 claim sometime after substantial completion, and
16 you -- it was -- the preliminary claim was
17 presented in March of '19. What day in March?

18 A. 6th.

19 Q. 6th. Okay. So, really, you're talking
20 about two months, right? Between the time of
21 substantial completion -- this was late December.
22 Really, you didn't work -- did you work on New
23 Years Day on this claim?

24 A. I did not.

25 Q. Okay. And you've got a birthday in

1 February. I think it's the 17th. Did you work
2 on your birthday? Do you recall?

3 A. If it was during the week, I would have.

4 Q. Okay. So you probably had about 60 days
5 to work on this claim between the time they first
6 told you they wanted you to do it and the time it
7 was actually presented to the architect; is that
8 correct?

9 A. I don't know. It may have -- I may have
10 started late 2018. It was around that time
11 period.

12 Q. So was it 90 days?

13 A. Could be 90 days.

14 Q. Could be 90 days?

15 A. Yeah.

16 Q. Could be 60?

17 A. Could be 60.

18 Q. Okay. So somewhere between 90 and 60
19 days. Okay. Now, what portions of this claim --
20 if you need all four of them, I will hand them up
21 to you and ask you which portions of the claim
22 you provided. What information did you provide
23 in these claims? Or in this consolidated claim
24 by reference to exhibit number, please.

25 A. Let's see. Exhibit No. 11, I likely

1 pulled together this report from our
2 accounting -- from our accounting software for
3 the extended general conditions, the
4 subcontractor claims, some or if not most of the
5 change orders, RCOs and CCDs, some of
6 miscellaneous entitlement related materials and
7 some of the schedule.

8 Q. Okay. What about the other three
9 volumes?

10 A. Each of them have an index.
11 Notification logs. This is -- this is all in the
12 items that I listed before. So I went through
13 the index and said which ones I was involved with
14 or provided information in.

15 So, general conditions, section 1,
16 section 2, section 3, section 4, probably parts
17 of section 5, parts of section 7, and maybe
18 section 8, which is the schedule.

19 Q. Okay. And those were prepared by you?

20 A. Not in its entirety. I supported the
21 preparation of them.

22 Q. You supported the preparation. All
23 right. What else? Go to the next volume.

24 A. That's it. That's all. That's the
25 index, and it's --

1 Q. What is that set of volumes there?

2 A. That's -- so this is 7, section 7, which
3 is support for entitlement. Section 7 is
4 miscellaneous entitlement related to materials
5 that's in volume 2 for your Exhibit 12.

6 Q. Okay.

7 A. And I believe Exhibit 13 is a
8 continuation of that.

9 Q. Okay.

10 A. And volume 4 is section 8.

11 Q. Okay. Who would have reviewed your work
12 product, if anyone, before it went in this --
13 found its way into this consolidated claim?

14 A. Probably Tim Hildebrand, Taylor Morris,
15 John Heuer, maybe Tim, Dave Simonton.

16 Q. But mostly lawyers?

17 A. I don't know whether it was mostly or --

18 Q. Okay. Well, was your interaction mostly
19 with lawyers when it came to the review and
20 preparation of this claim?

21 A. I'm sorry?

22 Q. Was your interaction with lawyers
23 primarily in regards to the preparation of this
24 claim? Did you mostly meet with lawyers after
25 you gave them the information that you were

1 requested in an outline?

2 A. We all met together.

3 Q. Who is all?

4 A. Dave, Tim, Tom and Taylor.

5 Q. Okay. And how many people in that group
6 are lawyers?

7 A. Two.

8 Q. And how many are not lawyers?

9 A. Two.

10 Q. So what portions did the lawyers prepare
11 that you didn't prepare?

12 A. I don't know what they prepared. We
13 pulled together most of the information, as did
14 Taylor.

15 Q. Is there anything in this claim that
16 you're aware of that came exclusively from the
17 lawyers that you saw no backup for, that you
18 didn't go back and check to see if there was
19 backup for?

20 A. I'm not sure, no, sir.

21 Q. Did you check to see if the accounting
22 was accurate, that Mr. Casey Thompson had
23 accurately compiled these numbers?

24 A. Casey and I worked together. He would
25 have had the final say.

1 Q. All right. Did you review the contract
2 terms to determine whether or not the claim
3 complied with the contract -- the requirements of
4 the contract?

5 A. Me, personally, no, not for that
6 purpose.

7 Q. Well, this is a contract case, correct?

8 A. I don't know that.

9 Q. You don't know?

10 A. No.

11 Q. Gotcha. And you're not a lawyer?

12 A. No.

13 Q. You're not an engineer?

14 A. No.

15 Q. And not an architect?

16 A. No.

17 Q. Okay. And you didn't read the contract
18 before you prepared -- or in preparation for this
19 claim?

20 A. In preparation of this claim? I
21 probably read it. I didn't read it for that
22 purpose.

23 Q. Okay. Well, if you were preparing the
24 claim, why would you look at the contract for
25 other than that purpose?

1 A. I reviewed the contract frequently, but
2 I didn't review it to determine if that was how
3 to prepare the claim.

4 Q. Okay. So you did review the contract to
5 determine how to prepare the claim?

6 A. I don't -- I reviewed the contract as we
7 were preparing the claim.

8 Q. Okay. But you don't know whether that
9 review was specifically related to claim
10 preparation?

11 A. I'm sure it was.

12 Q. You're sure it was?

13 A. Yeah.

14 Q. Okay. All right. Do you know what
15 happened to that claim with what -- turn to the
16 first volume, if you would, and look at the
17 letter, the cover letter, I guess, would be one
18 way to characterize it.

19 A. Okay.

20 Q. Are you with me? Who is the letter
21 from?

22 A. David Simonton.

23 Q. Okay. And who is it to?

24 A. Buck Lindsay.

25 Q. Huh?

1 A. Mr. Buck Lindsay.

2 Q. Okay. And he is the architect on this
3 job?

4 A. Yes.

5 Q. And do you know why this letter was sent
6 and this consolidated claim was sent to Buck
7 Lindsay?

8 A. I believe it's because it's who the
9 claims are supposed to be sent to. But I don't
10 know.

11 Q. But you're not sure?

12 A. I'm not a hundred percent sure on -- I
13 believe that's why it was sent to him.

14 Q. And do you have any knowledge at all
15 about what Mr. Lindsay was supposed to do once he
16 got the claim?

17 A. You could look at the contract. He's
18 probably supposed to review it and, you know,
19 judge his entitlement on it, render his opinion
20 on it.

21 Q. Do you know if he ever responded?

22 A. I don't.

23 Q. Do you know whether or not filing a
24 claim and having an architect's decision is a
25 condition precedent to filing a lawsuit?

1 A. I do not.

2 Q. Do you know what condition precedent
3 means?

4 A. Yes.

5 Q. What does it mean to you?

6 A. It means, is that something has to
7 happen to filing a lawsuit.

8 Q. Right.

9 A. The requirement.

10 Q. And if the precedent thing doesn't
11 happen, the next thing can't happen?

12 A. I don't know that to be true.

13 Q. You don't know that to be true. But you
14 know what a condition precedent is?

15 A. That's right.

16 Q. Okay. Well, let me ask you this: Is
17 putting the first floor in on the Bennett Hotel a
18 condition precedent to putting on the second
19 floor?

20 A. Yes.

21 Q. Okay. So is that -- is there anything
22 else that you would like to tell me or that you
23 think would help inform the Court about your
24 involvement in the claim preparation in this
25 case?

1 A. I don't think so. I've been through it.

2 Q. Okay. Because, you know, I'm just
3 here -- if you've got something you need to tell
4 the Judge and you don't think you're getting out
5 your whole story and you think I'm maybe not
6 treating you right, now is your chance to tell
7 the Judge what you think I may have left out and
8 forgotten to ask you so that he could understand
9 what you did in this claim because it's important
10 that we know what you did involving this claim.
11 Okay?

12 A. Understood. I think I told you I was
13 involved in preparing it and pulling the
14 documentation together. Did I have the final say
15 on it? No, but I was involved.

16 Q. Okay. All right, sir. Let's --

17 A. Can I set these aside?

18 Q. Pardon me?

19 A. Can I set these aside?

20 Q. Sure, sure. Now, I would like to hand
21 you Exhibits 7, 8, 9 and 10. Can you identify
22 these exhibits for the record, Mr. Starcevic?
23 Well, they've already been identified. Can
24 you -- do you know what they are is the question?

25 A. They say they're daily logs.

1 Q. And what do you say they are?

2 A. No, they say they're daily logs.

3 Q. But what do you say? I want to know
4 what you say they are? Are they the daily logs?

5 A. These look like daily reports.

6 Q. On the Hotel Bennett?

7 A. Yeah.

8 Q. Okay. Do you need to check every book?

9 A. I can assume they're daily logs if they
10 say they're daily logs.

11 Q. Who would they be, Balfour Beatty?
12 Balfour Beatty is the one who says they're the
13 daily logs.

14 A. No, I'm sorry. Without checking every
15 one, these look like the daily logs that we put
16 together.

17 Q. All right. In your preparation, in your
18 duties for the preparation of the consolidated
19 claim, did you review the documents contained in
20 the exhibits, the daily logs that we just looked
21 at, Exhibit 8, 9, 10 and 11?

22 A. Not in its entirety.

23 Q. Did you look at them at all?

24 A. I'm sure I looked at a few daily logs
25 along the way.

1 Q. Pardon me?

2 A. I'm sure I looked at a few daily reports
3 along the way. So I have probably reviewed a
4 handful of these.

5 Q. No, no, no, that's not my question. I
6 didn't ask you whether or not you did any of
7 them. I asked you whether or not, in preparing
8 for the consolidated claim, you went back and
9 reviewed any of them?

10 A. Any of the daily reports?

11 Q. Yes, the daily reports.

12 A. Yeah. I said I reviewed a handful of
13 them.

14 Q. A handful. How many is a handful?

15 A. 40, 50.

16 Q. Okay. How many do you think you -- if
17 you took a book -- that's certainly less than one
18 book, right?

19 A. That's right.

20 Q. Okay. So roughly maybe an inch of
21 paper?

22 A. I don't know how many inches. 40 or 50
23 daily reports.

24 Q. Okay. So how many -- which 40 or 50
25 daily reports did you look at?

1 A. I don't remember. Ones that were
2 specific to me, looking back and validating
3 something or checking some information.

4 Q. Give me an example of what you would
5 have looked back to validate?

6 A. I can't pull a good one for you. If we
7 said we were doing something and I wanted to go
8 check and make sure those people were there, I
9 went back and looked at the daily report.

10 Q. So you did that? You went back and
11 checked the daily reports to make sure they were
12 consistent with the consolidated claim?

13 A. A couple times. I said a handful of
14 times, right?

15 Q. Now, the daily reports, by virtue of
16 their name, can you agree with me, they're made
17 on a daily basis or pretty much on a daily basis?

18 A. Pretty much on a daily basis.

19 Q. They weren't all made at the end of the
20 job, right?

21 A. That's right.

22 Q. Okay. And is it correct that you would
23 defer to what's in the daily report as opposed to
24 what you now might remember some five years later
25 as to what actually occurred on that day?

1 A. For what's in here?

2 Q. Yes.

3 A. I don't know that I would contest what's
4 in here. It's depending on what information
5 we're talk.

6 Q. What basis would you have to contest
7 what's in the daily report?

8 A. Well, it's one person's accounting of
9 what happened that day. It's not everybody's.

10 Q. All right. Now, that one person is an
11 employee of Balfour Beatty?

12 A. Yes, sir.

13 Q. Now, you said the other day that you
14 move up the ladder, so to speak, at Balfour
15 Beatty, based on the merit, right? The better
16 job you do, the faster you go up the ladder?

17 A. Sure.

18 Q. Is that fair?

19 A. Yeah.

20 Q. Okay. Now, in Balfour Beatty's -- in
21 the company Balfour Beatty, which is more valued,
22 honesty or deceit?

23 A. Honesty.

24 Q. Or deceit? You've got two choices in my
25 questions.

1 A. I said honesty.

2 Q. Honesty. Okay. So is there any
3 incentive to employees of Balfour Beatty to be
4 deceitful in these documents?

5 A. No.

6 Q. Okay. And in fact, isn't it true that
7 they're not only prepared by somebody, but they
8 are handed out to you and other people to review
9 contemporaneous or they're available to you on a
10 fairly contemporaneous basis, and you have the
11 absolute right to change those daily reports if
12 you thought them to be inaccurate at the time?

13 A. They were available to us.

14 Q. Okay. So if you went to a daily report
15 and the report said, the weather today was sunny,
16 okay, 80 degrees, and you look outside and it's
17 snowing, okay, you would probably change that
18 daily report if you had seen it; is that correct?

19 A. If I had seen it, yeah, I would have.

20 Q. Okay. What if you went back and looked
21 at the records of Noah, of the weather records
22 and it said it was snowing? Would you change it
23 then or would that not be good enough?

24 A. Pardon?

25 Q. So are daily reports mentioned or copied

1 anywhere in the consolidated claim? Is there one
2 single reference in the consolidated claim, the
3 daily report, that you're aware of?

4 A. I'm not -- I don't know. I don't know
5 how to answer that.

6 Q. Okay.

7 A. I don't know if the word daily report is
8 mentioned there. And just to be clear, I didn't
9 review the daily reports daily.

10 Q. Okay. That's fine. I'm more interested
11 in whether you reviewed them when you prepared or
12 had a responsibility comparing portions of the
13 consolidated claim. That's really what I'm
14 interested in. What daily reports you reviewed
15 then is what I'm interested in.

16 A. Yeah. I don't remember which ones. I
17 just broadly reviewed some of them.

18 Q. All right. If you were asked to put
19 something in that report, in that consolidated
20 report, which you knew was contradictory to the
21 daily reports on that day -- and by
22 contradictory, I mean, not true, would you have
23 still put in the not true information in the
24 consolidated claim when there was a daily report
25 that said otherwise?

1 A. If someone told me to put something?

2 Q. If you read a daily -- let's start
3 again. Did you look at the final consolidated
4 claim?

5 A. Did I look at it? Yeah.

6 Q. Did you read it?

7 A. Did I review every page? No.

8 Q. Okay. You didn't read it.

9 A. Yeah. I mean, there's a lot of just
10 records.

11 Q. Sure. I get it. It's a big complicated
12 report. So you didn't review it from end to end,
13 you just sort of skimmed over it, right?

14 A. In its final form?

15 Q. Yeah, in its final form.

16 A. That's right.

17 Q. The one that was going to be sent to the
18 architect.

19 A. That's right.

20 Q. Because the architect is not going to
21 get the draft. He's only going to get one copy,
22 right?

23 A. I would probably agree with you.

24 Q. Okay. And presumably, when you make a
25 claim, you want your best claim to be the one you

1 send in and not the one three claims back, right?

2 A. Yeah, that's accurate.

3 Q. So the claim that was sent in was
4 y'all's best shot at the claim, was the one you
5 made?

6 A. I don't know. That's not --

7 Q. Okay. That's fine. Let's go back to my
8 question. In reviewing the claim, however much
9 you reviewed it, if you had discovered there was
10 a statement in the claim, which contradicted the
11 facts that stayed in the daily report, would you
12 have brought that to anyone's attention? Yes or
13 no?

14 A. Yes. If that circumstance that you
15 outlined happened, I would have.

16 Q. And it didn't occur, did it?

17 A. Not that I am aware of.

18 Q. Do you know whether the lawyers reviewed
19 the claim for what was sent out?

20 A. Do I know?

21 Q. Yes.

22 A. I wasn't there; so I don't know what
23 they did or didn't do. I'd hope so.

24 Q. Do you know if Mr. Simonton reviewed it
25 before it went out? He signed the letter.

1 A. Again, I would hope he did, but I
2 didn't -- you know, I can't --

3 Q. You don't know what happened after the
4 architect got it?

5 A. No, sir.

6 Q. Okay. All right. Let's go back and --

7 THE COURT: Do you want to take a
8 break now?

9 MR. BUNDY: Sure.

10 THE COURT: Let's go ahead and do
11 that. Let's take five.

12 MR. HILDEBRAND: Thank you very
13 much.

14 (A recess transpired.)

15 THE COURT: All right. Let's
16 proceed.

17 BY MR. BUNDY:

18 Q. Mr. Starcevic, I want to go back and
19 revisit your work history before you went to work
20 on the hotel. That's you, right?

21 A. That's me.

22 Q. Okay. In 2009, you were 22 years old
23 and you graduated in 2009. You're 22 years old.
24 You graduated from Chapel Hill with a bachelor's
25 of science in management and society; is that

1 correct?

2 A. Yes, sir.

3 Q. All right. What is the society part of
4 this degree?

5 A. It's psychology a little bit. It's just
6 a business degree.

7 Q. And then management, what is the
8 management aspect of this degree?

9 A. Business management.

10 Q. What are you managing?

11 A. I didn't manage anything in school
12 except for my personal experience. I didn't
13 manage anything in school.

14 Q. No, but I'm saying --

15 A. You're learning how to manage. You're
16 learning --

17 Q. No, no. What I'm trying to understand
18 is -- and I'm sorry I don't ask clear questions.
19 I was talking about your degree, and I would like
20 to know what courses you took or the education
21 you received regarding management and what it was
22 you were being taught to manage. Does that help
23 you?

24 A. Sure. I don't really know how to answer
25 that question. We took anything from statistics

1 to psychology classes. It's a broad
2 undergraduate degree where you learn a little bit
3 about everything.

4 Q. All right. And which of those skills
5 did you use in building the Hotel Bennett?

6 A. A little bit of all of them. I also
7 learned a lot during my entrepreneurship in
8 college as well, a lot of on-the-job training.

9 Q. Well, I want to just focus on the --
10 through graduation from college right this
11 minute.

12 A. Gotcha.

13 Q. So did you take any construction
14 management courses as part of your degree?

15 A. No.

16 Q. Did you take any carpentry courses?

17 A. No.

18 Q. Did you take any scheduling courses?

19 A. No.

20 Q. Okay. Did you take any legal courses?

21 A. No.

22 Q. Did you take any engineering courses?

23 A. No.

24 Q. Did you take any courses on how to
25 interpret contracts?

1 A. As part of my degree, no, sir.

2 Q. Did you take courses on the AIA suite of
3 documents and how to interpret them?

4 A. No.

5 Q. Okay. Now, when you were growing up,
6 did you work in the construction industry?

7 A. Yes.

8 Q. Tell me what you did.

9 A. I worked for a residential builder.

10 Q. Doing work?

11 A. Doing miscellaneous -- seminating
12 builders, doing miscellaneous things around
13 jobsites. Whatever the superintendent needed me
14 to do, I did.

15 Q. This was during high school?

16 A. Yes, sir.

17 Q. You were a common laborer?

18 A. Yes.

19 Q. And you got paid 8 bucks an hour or 10
20 bucks an hour?

21 A. I don't remember what I got paid but
22 somewhere around there. It wasn't much.

23 Q. All right. Then you went to work for
24 Clear Channel Radio as an ad salesman for eight
25 months?

1 A. I also worked for a developer in college
2 as an intern.

3 Q. Okay. What was the name of the
4 developer?

5 A. It's called 3D out of Pennsylvania.

6 Q. 3D. And they were in Pennsylvania?

7 A. Yes, sir.

8 Q. And when did you work for them?

9 A. Between my junior and senior year.

10 Q. And in North Carolina, you worked for
11 them?

12 A. Outside of Philadelphia.

13 Q. In Philadelphia -- outside of
14 Philadelphia?

15 A. Yes, sir.

16 Q. Okay. So you worked during the summers
17 for them?

18 A. I worked -- it was a summer internship.

19 Q. Summer internship for a developer in
20 Philadelphia?

21 A. Yes.

22 Q. Okay. And what did you do for them?

23 A. A little bit of everything. Marketing,
24 did some layout, helped manage some properties,
25 just a little bit of everything.

1 Q. Did you build any hotels?

2 A. I worked in a hotel. They owned hotels;
3 so I worked -- we didn't build any hotels, but I
4 worked --

5 Q. Pardon me?

6 A. We didn't build any hotels, but I worked
7 for -- in his hotels.

8 Q. Well, what did you do working in those
9 hotels?

10 A. Marketing, did some miscellaneous, you
11 know, punch stuff after people would check out.
12 They asked me to look at things in rooms and in
13 their common areas and just a little bit of
14 everything for them.

15 Q. But were the hotels in service? Were
16 people staying in the hotel?

17 A. Yes.

18 Q. Okay. So somebody would check out, and
19 you would go do a punch list on --

20 A. I would go look at, you know, things --
21 rooms for damages, rooms for just miscellaneous
22 management things.

23 Q. So were you a hotel engineer?

24 A. A hotel engineer?

25 Q. Yeah.

1 A. I don't know what a hotel --

2 Q. Were you a maintenance engineer in a
3 hotel?

4 A. I did a little bit of everything for the
5 hotel.

6 Q. Did you make the beds?

7 A. No.

8 Q. Okay. Now, so you had that extensive
9 experience in Philadelphia, and then you went to
10 work for Clear Channel. And what did you do for
11 them?

12 A. I sold radio advertising.

13 Q. Okay. All right. Then, when you were
14 working for Clear Channel, you -- I think, is
15 that when you met Mr. Spano?

16 A. No.

17 Q. Who did you meet when you worked for
18 Clear Channel? Did you meet somebody that worked
19 for Balfour Beatty while you were working for
20 Clear Channel?

21 A. I did.

22 Q. Who was that?

23 A. Pat Dean.

24 Q. Pat Dean. Okay. I'm sorry. Again, I
25 have a hard time with all of these names. You

1 met Pat Dean. And that was in Charlotte?

2 A. Yes.

3 Q. And what was Mr. Dean's position with
4 Balfour Beatty Construction then?

5 A. I believe he was the president of the
6 local office or vice president. He was the
7 business unit leader, actually, I think.

8 Q. Was he president, you think?

9 A. No, I don't think he was. I think John
10 Woodcock was. I believe he was the business unit
11 leader. I'm not sure his exact position.

12 Q. You're not sure. Okay. How about John
13 Rankin? Did you ever meet Rankin?

14 A. I met John.

15 Q. And he used to work for Balfour Beatty?

16 A. In the Raleigh office, I believe.

17 Q. And was he responsible -- he wasn't
18 responsible for the Bennett Hotel, was he?

19 A. Not that I'm aware of.

20 Q. Did he supervise any of the work at the
21 Bennett Hotel?

22 A. Did he supervise any of the work?

23 Q. Yes. Are you having a hard time
24 understanding me?

25 A. Not that I'm aware of.

1 Q. Pardon me?

2 A. Not that I'm aware of.

3 Q. Okay. It's not really necessary to
4 repeat every question if you understand it. A
5 yes or no answer is just fine.

6 A. Sometimes it helps me understand it
7 better.

8 Q. I don't want you to be confused.

9 A. All right.

10 Q. So you met Mr. Dean. How did you meet
11 Mr. Dean?

12 A. We coached football together.

13 Q. And what grade?

14 A. It was eighth grade, I believe.

15 Q. Was it like a Pop Warner kind of thing?

16 A. Middle school team. The middle school I
17 played for, his son went to.

18 Q. Do you have a son on a team or
19 something?

20 A. No. I went to school there and wanted
21 to give back to the community; so I helped out in
22 my spare time.

23 Q. Charlotte Day? Was it Charlotte Day or
24 one of those teams?

25 A. Holy Trinity.

1 Q. Huh?

2 A. Holy Trinity.

3 Q. Okay. So it's my understanding that,
4 while working as the assistant -- you were
5 assistant coach under Mr. Dean?

6 A. We were both assistant coaches.

7 Q. Okay. So the school had its own coach,
8 hired coach and y'all --

9 A. He was a parent as well.

10 Q. Gotcha. So he was a parent?

11 A. Yes.

12 Q. Okay. So you met Dean, and as I
13 understand it, you talked to him about what he
14 did. He talked to you. Y'all got to be friends
15 and then his -- what he did for a living came up,
16 right?

17 A. Yes.

18 Q. All right. And as a result of that new
19 friendship, did he offer you a job, or did he ask
20 you to apply for a job? How did it come to pass
21 that you went to work for Balfour Beatty?

22 A. He introduced me to the project
23 executive, Josh Ballimont.

24 Q. Josh?

25 A. Ballimont.

1 Q. Can you spell it?

2 A. B-A-L-L-I-M-O-N-T.

3 Q. Okay. And what was his job? What was
4 Josh's job?

5 A. I think he was a senior project manager
6 or a project executive. He ran the SPG Group
7 downtown in Charlotte.

8 Q. In Charlotte. Okay. Did you meet Tony
9 Stoneking then? Did you ever meet Tony
10 Stoneking?

11 A. I have met Tony Stoneking, but not then.

12 Q. Okay. He used to work in the Raleigh
13 division for Balfour Beatty; is that right?

14 A. Yes.

15 Q. And he wasn't responsible for managing
16 the Hotel Bennett, was he?

17 A. He helped out a little bit.

18 Q. He did? When was that?

19 A. When we needed some help or when we had
20 questions, he would come down and look at our
21 operations and support the team.

22 Q. All right. And when was that? What
23 time period?

24 A. He made -- I don't know if it was
25 quarterly or twice a year. He would come down

1 and then he would -- he came down a few times
2 during the structure -- when we were building the
3 structure.

4 Q. How long would he stay?

5 A. A day. Tony was an early riser. He'd
6 drive down in the morning and get there around 7
7 a.m. and stay for a portion, if not longer, of
8 the day, longer if we needed him to.

9 Q. Was he still coming to the job when you
10 finished the job, or had he quit coming?

11 A. No. He wasn't there then.

12 Q. Had he retired by then?

13 A. I don't know, is he -- if he is retired.

14 Q. Okay. So how many times during the
15 course -- let's do it this way. Let's just use
16 December as the substantial completion. I
17 believe that would be December of what year?
18 '18?

19 A. '18.

20 Q. Okay. Prior to December of '18, what is
21 your best recollection of Mr. Stoneking being on
22 the job?

23 A. The last time he was on the job?

24 Q. Prior to -- yeah, the last time he was
25 on the job relative to the date of completion of

1 the job?

2 A. I don't remember.

3 Q. Would it have been within six months of
4 the --

5 A. Probably within six months.

6 Q. Okay. And how many times was he on the
7 job during -- you were on the job the whole --
8 well, you were on the job from the concrete slab
9 poured on the second floor to the end, right?

10 A. That's right.

11 Q. March until --

12 A. January or whenever.

13 Q. Whatever it was. How many times do you
14 think he came to the job that you were aware of?

15 A. 15-ish plus or minus.

16 Q. 15. Okay. And is it fair to say, you
17 would have known he was going to be on the job?
18 I mean, he was a big shot and he needed -- you
19 expected to know he was coming?

20 A. Yeah. He didn't ask my permission. But
21 he would --

22 Q. Right.

23 A. Sometimes he would come down, and I
24 wasn't there. I don't know that I knew about
25 every trip.

1 Q. All right. During the job, did you
2 report to him? Did you send him any reports?
3 Did you send him updates and all of that, or was
4 he involved in the job in that way?

5 A. He had access to them. I didn't send
6 him any.

7 Q. He had access?

8 A. Right.

9 Q. But you don't have any firsthand
10 knowledge about what he did when he was not on
11 the job relative to the job?

12 A. No.

13 Q. Okay. All right. And how about
14 Mr. Russell Brockelbank? He used to work for
15 Balfour Beatty, right?

16 A. He may still.

17 Q. Okay. Was he responsible for managing
18 the Hotel Bennett job?

19 A. Not that I'm aware of.

20 Q. Okay. Did he supervise the construction
21 at the Hotel Bennett job?

22 A. I don't believe so.

23 Q. All right. Are you a licensed general
24 contractor in the State of South Carolina?

25 A. No.

1 Q. Okay. Now, you -- let's go back to
2 where we were. So you then -- you applied for a
3 job or you had a meeting? How did -- just
4 explain the process. I'm just curious.

5 A. Applied for the job, met with Josh, met
6 with some of the team members, and they offered
7 me a position with Balfour Beatty.

8 Q. Okay. And you quit your radio job?

9 A. I already had.

10 Q. You already had?

11 A. Yeah.

12 Q. Okay. So how long were you unemployed?

13 A. About a month.

14 Q. Okay. So your first position was called
15 what?

16 A. Project coordinator.

17 Q. Project coordinator. And you were an
18 hourly employee?

19 A. Yes.

20 Q. Okay. What were you paid by the hour?

21 A. I don't remember.

22 Q. I assume it was minimum wage at least,
23 right?

24 A. I don't know that it was minimum wage,
25 but it came out to, I believe, around 45, \$50,000

1 a year.

2 Q. Okay. And what does it take to be
3 titled the project coordinator by Balfour Beatty?
4 What education, experience do you have to have in
5 order to be titled the project coordinator?

6 A. They've got people with all different
7 kinds of education, experience as project
8 coordinators. So I don't know that there's a
9 minimum requirement.

10 Q. What are the minimum requirements --

11 A. I don't know if there is one.

12 Q. -- to be a project coordinator?

13 A. I don't know what the minimum
14 requirements are.

15 Q. Well, clearly you don't have a degree in
16 construction. Clearly you don't have to have an
17 engineering degree. Clearly you don't have to
18 have any construction experience, and clearly you
19 don't have to have a general contractor's license
20 because they gave you a job as project
21 coordinator, right?

22 A. That's right. I was the project
23 coordinator because they don't hire project
24 engineers if you don't have project experience.
25 They don't hire you as a project engineer, with

1 that title, if you don't have a construction
2 management degree, an engineering degree, or
3 prior experience in the construction industry.
4 So as an entry-level position, they hire you as a
5 project coordinator.

6 Q. Okay. So the name informs -- the name
7 of your title informs your coworkers, who may not
8 know you, okay? They know immediately if you're
9 a project coordinator, that you don't have any
10 construction experience and are not an engineer,
11 right?

12 A. I don't know that to be -- I don't
13 know -- it doesn't inform them of anything other
14 than I'm a project engineer.

15 Q. All right.

16 A. Or project coordinator.

17 Q. Well, in order to be a project engineer,
18 you have to at least have some construction
19 experience, right?

20 A. Typically, yes.

21 Q. Well, tell me about the atypical
22 situations.

23 A. I don't know of any --

24 Q. Name somebody who's a project engineer
25 that has no --

1 A. I don't know anybody that is.

2 Q. Okay. All right. So you were 23 years
3 old at that time in November of 2010, and your
4 first project was a rooftop AC unit install; is
5 that right?

6 A. Yeah, I believe so.

7 Q. And you took no in-house training
8 courses during -- for that job, right, at that
9 time?

10 A. For that specific project?

11 Q. Yes.

12 A. I didn't take a course on how to install
13 a rooftop A/C unit.

14 Q. All right. In late 2011, you're 24
15 years old, and you became a project engineer,
16 right?

17 A. Yes.

18 Q. All right. And that was roughly after a
19 year?

20 A. About so, yeah.

21 Q. All right. Tell me what project
22 experience you had that went -- it got you from
23 project coordinator to project engineer other
24 than the rooftop A/C unit install?

25 A. We did a project -- small projects, and

1 whether it was a rooftop A/C commissioning a
2 tenant upfit, we were -- our SPG Group is -- did
3 a lot of stuff. We were very nimble, had a lot
4 of different experiences, and just a number of
5 projects. That rooftop A/C unit probably took
6 less than a week.

7 Q. All right. And then, once you became
8 the project engineer, you did a tenant upfit for
9 one bank tower in Bank of America in Charlotte,
10 right?

11 A. Yes, sir.

12 Q. And --

13 A. Amongst others.

14 Q. Pardon me?

15 A. We upfit -- there were 30 floors in the
16 building. We upfit all -- or we upfit 29 of
17 them.

18 Q. Did you upfit all 29 of them?

19 A. I was involved in 12 of them.

20 Q. Okay. So those upfits -- what is an
21 upfit? What did you do?

22 A. You have a shell, right, walls, the
23 floor.

24 Q. Cold, dark shell?

25 A. What's that?

1 Q. Cold, dark shell?

2 A. Pretty much. We did the cold, dark
3 shell --

4 Q. Are you familiar with that term?

5 A. Yes, sir. We did the cold, dark shell,
6 and we also did the upfit. So it wasn't
7 completely a cold, dark shell. But after the
8 corner shell team came through, we handled all
9 the install of the A/C, basically through the fit
10 and finish.

11 Q. All on one single at a time?

12 A. We had multiple floors going on at the
13 same time.

14 Q. Okay. Were you able to do more than one
15 floor at a time?

16 A. Yes.

17 Q. Did you do more than one floor at a
18 time?

19 A. Yes. Our team did.

20 Q. And you were the project -- you were the
21 project engineer for that entire period until
22 2012, right?

23 A. I got a promotion, I believe, in 2012.

24 Q. So in 2012, your between the years --
25 from 2012 to 2014, you were 25 to 27. And during

1 that period, you became senior project engineer,
2 and you worked on the Merrill Lynch interior
3 upfit, right?

4 A. And others.

5 Q. Huh?

6 A. And others.

7 Q. And others. Okay. That's fine. And
8 you didn't mention any of this in your
9 deposition, but that's fine. So the training
10 courses that you had when you became a project
11 engineer and then a -- well, a project engineer.
12 You had something called lunch and learn; is that
13 right?

14 A. That's right.

15 Q. All right. And how many of lunch and
16 learns did you do in a year?

17 A. Probably six to eight.

18 Q. Okay. And who organized the lunch and
19 learns?

20 A. It was sometimes jobsite specific, and
21 sometimes it was the office, the main office.

22 Q. All right. And would y'all go to a
23 fancy restaurant and have lunch and learns? Or
24 did you do it at the office?

25 A. We didn't go to any fancy restaurants.

1 They either catered lunch into our construction
2 site office, at the office. It was all over.
3 Sometimes we would go on field trips and go to
4 the subcontractor's office and see what they did
5 there.

6 Q. And these would be subcontractors that
7 y'all regularly did business with?

8 A. Yeah, for the most part. Or engineers.

9 Q. Would y'all just pick subs out of phone
10 books and they would come in to have lunch and
11 teach you how to do --

12 A. That's right, or engineers as well,
13 consultants.

14 Q. How long would those last typically?

15 A. They're lunch; so one to two hours.

16 Q. Okay. And part of it was just taking up
17 eating, I assume, since it was lunch?

18 A. And they are boxed lunches, and a lot of
19 times they would talk as we were eating. So that
20 was a typical lunch and learn.

21 Q. Okay. So other than lunch and learn,
22 and you said they lasted two hours. So that
23 would be roughly somewhere between 12 and 16
24 hours a year of lunch and learns. Did you do
25 that every year?

1 A. Yeah. We -- until we moved to
2 Charleston, it -- that was pretty typical.

3 Q. Okay. And when you came to Charleston
4 in 2014, right?

5 A. That's right.

6 Q. All right. So you did lunch and learns
7 from 2011 to 2014, which is three years?

8 A. That's right.

9 Q. Okay. So three times six would be 18.
10 Three times eight would be 24. So somewhere
11 between 18 and 24 hours of lunch and learns you
12 did before you went to Daniel Island in 2014 when
13 you were 27 and -- you were 27 years old, and you
14 stayed there until you were 28. And that was
15 through 2015, right?

16 A. That's right.

17 Q. And you were under who? Who was your
18 boss at Daniel Island?

19 A. Tim Spano.

20 Q. Tim Spano.

21 A. Now, are you implying that I -- all I
22 did was lunch and learn during that time period?

23 Q. Mr. Starcevic, you don't get to ask
24 questions. I'm going to ask you the question,
25 and if the question is not proper, normally

1 somebody will object, and the Judge will issue a
2 ruling. But until you hear from the Judge, if
3 you don't mind, just answer my questions, please.

4 Other than lunch and learn, what other
5 courses or education did you receive during the
6 period of 2011 through 2014?

7 A. We had quite a few. We had yearly.

8 Q. Had what?

9 A. Yearly off-site seminars for your job
10 title. We had the project engineer and a two to
11 three day meeting every year. We had all kinds
12 of courses available to us. We had review an
13 RFI. We had to review a submittal. We had to
14 basically do everything you needed to within
15 that -- within your job title.

16 Q. You had them available to you. Did you
17 take them all?

18 A. Sure.

19 Q. You took every one of them?

20 A. Most of them. I mean, there's a -- you
21 know, we will call it 200 courses available to
22 us. And I took the ones that I -- you know, my
23 manager and I felt were applicable to my job.

24 Q. And are those courses given by the
25 University of Balfour Beatty? What educational

1 institution did --

2 A. They actually had a BBI -- or Balfour
3 Beatty University as we called it.

4 Q. Okay. Where is that located?

5 A. There's a training. It's a digital
6 database, and there was a training leader at the
7 time that coordinated all of these and made sure
8 all the appropriate teachers and educators were
9 available to us.

10 Q. Okay. And are these all Balfour Beatty
11 employees?

12 A. Not all of them.

13 Q. Okay. Are they consultants who teach?
14 I'm just trying to understand. That's all.

15 A. Yes, it's everybody. I mean, there's
16 consultants. There's engineers. There's design
17 professionals. Some were in-house; some were put
18 on by the trainer, by the --

19 Q. Do you get any certificates for this
20 in-house? Do they give you a little certificate,
21 a gold star or something when you finish one?

22 A. I didn't get any gold stars, but you got
23 a certificate of completion.

24 Q. Okay. And how many certificates of
25 completion did you get?

1 A. I don't know.

2 Q. A box full?

3 A. Sure.

4 Q. Now, did you take the -- I assume
5 there's a course on how to manage a 50 million
6 dollar cost plus contract the guaranteed maximum
7 sum and how to do the accounting, right?

8 A. That's -- there's no course on how to
9 manage a 50 million dollar cost plus job.

10 Q. Is there a course on the AIA documents?

11 A. Yes.

12 Q. Okay. And what is the nature of that
13 course?

14 A. It's a general course on how to read and
15 where to get your AIA documents. There the -- we
16 had a database of AIA documents that were
17 available to us. There's a course on how to get
18 to that database, how read to them, a general
19 understanding of them.

20 Q. And did you take that course?

21 A. Yes.

22 Q. Do you know how many different AIA
23 document forms there are?

24 A. No, I don't.

25 Q. Do you know how long AIA has been around

1 issuing documents?

2 A. I don't know how long they've been
3 around. I imagine a while.

4 Q. Are you aware there are volumes and
5 volumes of treatises on the interpretation of AIA
6 documents?

7 A. No.

8 Q. Had you ever, prior to this job, been
9 involved with a job that had -- or used the
10 contract documents that were used and modified,
11 in this case, specifically, those outlined in
12 Plaintiff's Exhibit 56, AIA document A133-2009;
13 AIA document 201-2007 edition. Specifically,
14 these document as amended. These documents have
15 been amended.

16 A. As amended?

17 Q. Did you ever work on a project in any
18 capacity that had these form documents used for
19 the construction?

20 A. I don't remember which documents were
21 used at Simmons Park. If there was a 133 or a
22 133 Exhibit A. I don't remember. But it was a
23 GMP project; so it would have been some form of
24 this agreement -- not this agreement. It was --

25 Q. Okay. Does it matter -- do you

1 recognize that different contracts, different
2 projects have different terms --

3 A. Yes.

4 Q. -- specific to that project?

5 A. Yes.

6 Q. Okay. So you would agree with me that
7 because there was a specific term in the Simmons
8 Pointe job, if it doesn't appear in the Bennett
9 Hotel job, it doesn't apply to this contract?

10 A. That's right. Each job has specific
11 terms that are negotiated for that project.

12 Q. So whatever experience you have with a
13 different set of documents, okay, unlike the ones
14 you're holding in your hand, would not inform you
15 about these documents, would it?

16 A. No. You would have to read the contract
17 for you to negotiate about that project.

18 Q. There you go.

19 A. Most of it is similar.

20 Q. There you go. Did you read it?

21 A. Yes.

22 Q. When did you read it?

23 A. A number of times. I always had it --

24 Q. And the first time you read?

25 A. I don't remember.

1 MR. HILDEBRAND: Your Honor, he's
2 not letting him finish his answer before he asks
3 the next question.

4 MR. BUNDY: I'll withdraw the
5 question.

6 THE COURT: Let him finish. Yeah.
7 Go ahead.

8 THE WITNESS: I always had it
9 available to me, and I read through it. In that
10 two to three month introductory period, I had the
11 documents available to me. It's a long document.
12 I obviously don't -- can't memorize each word and
13 so I kept it available.

14 BY MR. BUNDY:

15 Q. All right. And two things in your
16 answer, I didn't ask if you'd memorized it. I've
17 been reading them for 42 years. Okay. This
18 ain't my first rodeo. All right? And I don't
19 happen to remember it. Okay?

20 Every time I start a case, I read them
21 all over again, okay, even though it's the same
22 form. That's what I do. What I want to know is
23 what you did. Okay? What I want to know is,
24 when was the first time you read -- I didn't ask
25 you whether it was available to you. The Bible

1 is available to you, but I don't know that you've
2 read it from cover to cover. I want to know when
3 you read these contract documents the first time,
4 if you recall?

5 A. Within my first two months being on the
6 project.

7 Q. And did you read them all from front to
8 back?

9 A. Front to back, yes.

10 Q. Okay. You read completely through it?

11 A. Yes.

12 Q. All right. On the table here, we have
13 all of the -- on the floor, we have the plans and
14 some specifications, I believe. When's the first
15 time you read those?

16 A. The original set?

17 Q. Yeah.

18 A. Began on -- they were available to me in
19 the first couple months of me being on the
20 project or while I was finishing up Simmons Park.
21 So I got familiar with them.

22 Q. As of the day you started on this job in
23 May of 2015, when you were 28 years old, was this
24 the most complicated construction contract you
25 have ever been involved with as it relates to the

1 terms of the contract, the document you're
2 holding?

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

4 Q. As it relates to the plans that we're
5 looking at here on the floor, is this the most
6 complicated set of plans you had ever worked on
7 before?

8 A. The original set?

9 Q. Yes, the original set.

10 A. No, sir.

11 Q. What was the other job that you did that
12 was more complicated than this one?

13 A. Simmons Park was complicated.

14 Q. Okay. All right. Tell me what the
15 construction was -- what type of construction
16 Simmons Park was?

17 A. It was a wood-frame building wrapped
18 around the precast parking deck, 360-some odd
19 units on -- that abutted a pond.

20 Q. It's a precast parking deck, right?

21 A. Yes.

22 Q. Is that the first parking deck you'd
23 ever worked on?

24 A. Yes.

25 Q. At 28 years of age?

1 A. First precast parking deck at a
2 building.

3 Q. Well, actually, you worked on the
4 parking deck when you were 20 -- you would have
5 been 27, 28; so the parking deck is precast
6 construction. And you say a wood-framed building
7 is constructed around it; is that correct?

8 A. Yes, sir.

9 Q. Now, is that stick-built construction?

10 A. Yes, sir.

11 Q. Framers?

12 A. Yes, sir.

13 Q. Hammers swinging?

14 A. Yes, sir.

15 Q. What is the -- what are the floors like?
16 Are they trusses, wooden trusses?

17 A. Wood trusses.

18 Q. Pre-engineered wooden trusses?

19 A. Yes, sir.

20 Q. So it's not poured-in-place concrete?
21 There are no sleeves, okay, right?

22 A. There are no concrete sleeves, that's
23 correct.

24 Q. Okay. Well, we both know it's much
25 harder to put a sleeve in a wooden floor than it

1 is a concrete slab. Isn't it much harder to put
2 a sleeve in a wooden floor than a concrete slab?

3 A. I don't -- I don't know that that's
4 true.

5 Q. Oh, so --

6 A. You put it in after the fact. You put
7 it in after it.

8 Q. Well, is it true or is it not true that
9 if you put a floor in out of floor and you have
10 to come back later and put something up through
11 that floor, that it's easier to do that than it
12 is to do the same thing with a precast
13 construction that has a post-tension system like
14 the Hotel Bennett?

15 A. It wasn't -- the Hotel Bennett wasn't
16 precast flooring --

17 Q. (Inaudible).

18 A. It depends on the circumstance, I mean.

19 Q. I'm sorry, poured-in-place. Okay.

20 We'll just agree that wood is easier, and we'll
21 move on.

22 A. I don't -- I didn't say it was easier.

23 Q. Oh, it's harder. Okay. Which is it?

24 A. Each job has its own set of circumstances
25 that make it harder.

1 Q. Gotcha. All right. So tell me on those
2 contracts, what does the line -- do you see the
3 line in the margin? Do you see those lines in
4 the left-hand margin? Look through the contract.
5 Do you see the lines in the left-hand margin?

6 A. Yeah.

7 Q. Go through the pages and tell me if you
8 see any lines in the left-hand margin?

9 A. I see them.

10 Q. You do?

11 A. Yes.

12 Q. All right. And what do those represent?

13 A. It typically means that a portion has
14 been modified or edited.

15 Q. Modified as what?

16 A. Typically means that area has been
17 modified or edited from its original version.

18 Q. Okay. What's the original version? The
19 printed, standard form?

20 A. That's my understanding.

21 Q. Okay. Did you go back to determine, and
22 did you compare the original printed language to
23 the amended language to determine what the
24 changes were?

25 A. No.

1 Q. Okay. Why not?

2 A. Because I had the final version.

3 Q. So you didn't need --

4 A. The previous version didn't matter.

5 Q. So you didn't need to know what was in
6 the previous version to understand the changes
7 and the significance in the changes from the
8 original version?

9 A. No.

10 Q. Okay. Fair enough.

11 MR. BUNDY: Your Honor, what's the
12 next exhibit number?

13 THE COURT: And let me ask you:
14 You mentioned Exhibits 7, 8, 9 and 10. Those
15 were the daily log sheets. Did you move those
16 in, or --

17 MR. BUNDY: They've already been
18 in.

19 THE COURT: They're in evidence?

20 MR. BUNDY: They're already in
21 evidence.

22 THE COURT: Okay. All right. I
23 just wanted to make sure.

24 MR. BUNDY: The next exhibit, Your
25 Honor, is?

1 THE COURT: No. 15.

2 MR. BUNDY: 15?

3 THE COURT: Yes, sir.

4 (DFT. EXH. 15 was marked for
5 identification.)

6 BY MR. BUNDY:

7 Q. All right. Mr. Starcevic, do you
8 recognize or could you identify Defendant's
9 Exhibit 15 for identification?

10 A. It's a letter to Mr. Jim Clements. It
11 says, the Hotel at Marion Square consolidated
12 claim draft.

13 Q. And what's the date of it?

14 A. January 2nd.

15 Q. And who is Jim Clements?

16 A. He was the owner's rep on the project.

17 Q. And Mr. Clements, that's the -- the
18 first page of the consolidated claim, which I
19 believe, for the record is Exhibit 11.

20 A. 11. Okay.

21 Q. All right. Now, you said Jim Clements
22 was the owner's representative?

23 A. Yes.

24 Q. Okay. And this is dated January 2nd,
25 2019, and it's not signed. It just says, Balfour

1 Beatty, right?

2 A. Yes.

3 Q. And underneath it, we've got numerous
4 copy recipients, but since it's titled draft, do
5 you know if this letter was ever sent?

6 A. I do not.

7 Q. It, for the record, is also BBC e-mails
8 with Bates number 01738069 through 71; is that
9 correct.

10 A. Yes.

11 Q. All right. Now, Mr. Clements, he was
12 the gentleman you referred to on Friday as the
13 messenger, right? That's who you were talking
14 about?

15 A. The owner's rep.

16 Q. Okay. But you referred to him as a
17 messenger, right?

18 A. Okay.

19 Q. Did you or did you not?

20 A. If you say I did, I did.

21 Q. You don't remember?

22 A. I don't remember exactly what I called
23 him.

24 Q. Okay. Now, the letter that -- in the
25 consolidated claim. Let's turn to the first --

1 let's turn to the consolidated claim. I want you
2 to compare this letter, Exhibit 15 for
3 identification to the first letter --

4 A. Can I set this down?

5 Q. Sure -- in Exhibit 11. Okay? They look
6 similar, do they not? They're not the same but
7 they're similar. They're both entitled
8 consolidated claims. One of them is referred to
9 as a draft, and the other one is the one that was
10 finally sent. Is that a fair characterization?

11 A. That's from -- from the subject up, they
12 look similar.

13 Q. Okay. And in the one, two, three --
14 third paragraph in the draft, what is the claim
15 amount?

16 A. \$17,045,850.67.

17 Q. Okay. And in the claim letter itself
18 that was sent -- when is that?

19 A. March 6.

20 Q. March 6th, roughly -- February, March,
21 roughly 60 days later, what's the claim amount
22 now?

23 A. I don't see it on the title, on the
24 page.

25 Q. There's no claim amount on this?

1 A. I don't see it on the letter.

2 Q. It's not in the letter at all? There's
3 no claim amount in the letter in the consolidated
4 claim? There's no claim amount in the letter?

5 A. Not on these two pages that I see.

6 Q. Let me see those for a second. Okay.
7 You were involved in this. And so what I need to
8 know is -- take all the time you need -- what is
9 the claim? What is the amount of the claim that
10 accompanies the March 6th, 2019 letter, Exhibits
11 11, 12, 13 and 14, which are in evidence?

12 MR. BUNDY: Your Honor, while he is
13 looking, may I move to introduce Exhibit 15 into
14 evidence?

15 MR. HILDEBRAND: No objection, Your
16 Honor.

17 THE COURT: Without objection.

18 (DFT. EXH. 15 was received in
19 evidence.)

20 THE WITNESS: Mr. Bundy, I don't
21 know that it's in here. It says it's a response
22 to a letter from Buck Lindsay that requested that
23 Balfour Beatty Construction provide additional
24 supporting data on the claim. Additionally, he
25 referenced -- it looks like it's support for a

1 letter that was sent to us from Buck Lindsay.

2 BY MR. BUNDY:

3 Q. A letter that was sent to you from?

4 A. That's what this -- that's what the
5 letter says. In that letter, it says, this
6 letter -- an attachment is being sent to you in
7 response to your letter dated February 4, 2019.

8 In that letter, you acknowledge receipt
9 of the preliminary consolidated claim letter that
10 was sent by Balfour Beatty Construction dated
11 January 25, and you requested that Balfour Beatty
12 Construction provide additional supporting data
13 on that claim.

14 Additionally, you reference the final
15 determination of substantial completion, which
16 subject we will address in a separate letter from
17 this response. So this looks like it's support
18 that was requested.

19 Q. Okay. And do you know whether the claim
20 that's being supported is a \$17,045,850.67?

21 A. I don't.

22 Q. You don't what it's --

23 A. I don't know what it was -- I don't know
24 what this is in response to.

25 Q. Okay. That's fine.

1 A. It's a letter from Buck Lindsay.

2 Q. Okay. That's fine. All right. We're
3 looking for Plaintiff's -- well, is it in
4 evidence?

5 THE WITNESS: Exhibit 12, this one?

6 MR. MCDONALD: There you go. Right
7 there.

8 BY MR. BUNDY:

9 Q. Okay. If you would, tell the Judge what
10 you've got in your hand.

11 A. Balfour Exhibit 12, amended meeting
12 submitted RCOs.

13 Q. Do we have another copy of this for the
14 Judge?

15 THE COURT: I've got one right
16 here. I do have one.

17 MR. BUNDY: We're going to be quite
18 a while going through these. I need you to be
19 able to follow along.

20 THE COURT: Sure. Okay.

21 BY MR. BUNDY:

22 Q. All right. Who prepared this
23 compilation of RCOs?

24 A. This book?

25 Q. Yes.

1 A. I don't know.

2 Q. When was the first time you saw it in
3 its present form? Not the individual RCOs but
4 this assemblage of documents in its present form?

5 A. In this form, I think Friday.

6 Q. Friday of last week?

7 A. Yeah. I got -- I saw -- this form, I
8 believe I saw Friday for the first time.

9 Q. Okay. And when on -- before you took
10 the stand?

11 A. No, when it was handed to me on the
12 stand.

13 Q. Okay. So the first you ever saw this
14 assemblage of documents was when you were on the
15 witness stand and asked to identify it?

16 A. That's right. I saw the RCOs when I met
17 with Tom. We talked about it before. I don't
18 know if it was in this form.

19 Q. Right. And that's why I want to be very
20 specific with you. This assemblage -- do you
21 understand what I mean by assemblage, right?
22 This set of documents, this compilation of
23 documents, the first time you saw it was Friday
24 and you were already on the witness stand?

25 A. I believe so.

1 Q. All right. And nobody had discussed
2 this assemblage of documents with you before?
3 You may have discussed some of them, okay,
4 individually, but you had never sat down with
5 anybody and discussed the entire assemblage with
6 them?

7 A. Not the entire assemblage.

8 Q. Okay. All right. Who prepared this
9 set -- this assemblage of documents? Because you
10 identified them as the RCOs on this job, right?

11 A. Yes.

12 Q. All right. How were you able to
13 identify an assemblage of documents you had never
14 seen before you took the witness stand?

15 A. Because we went through each one, and
16 they -- we read the RCO number and the amount.

17 Q. Okay. So it wasn't until you went
18 through all of them, having seen them for the
19 first time in this format, that you were identify
20 them as the RCOs; is that fair?

21 A. They're all documents that either I
22 prepared or a team has prepared; so I had seen
23 them before.

24 Q. All right. Let's go to number 27.

25 A. Okay.

1 Q. Now, this is for -- dated -- the backup
2 letter is to Mrs. Brown January 13, 2016, and
3 it's for a change order for No. 27 in the amount
4 of \$124,000, additional work towards the
5 following qualifications, correct?

6 A. Correct.

7 Q. And the request for change order is
8 unsigned on the second page; is that correct?

9 A. Correct.

10 Q. But it is signed by Tim Spano?

11 A. Correct.

12 Q. You did not get a copy. Why is that?

13 A. I believe this is because it was before
14 I was on the project.

15 Q. So you didn't prepare this?

16 A. I did not prepare this.

17 Q. Okay. Are you aware that a time
18 extension was agreed to on this item?

19 A. Yes.

20 Q. Okay. And what was that time extension
21 agreed to? What was the agreed upon time
22 extension?

23 A. I believe it was 20 days.

24 Q. Okay. And this is asking for
25 additional -- is this asking for more time over

1 and above the 20 days?

2 A. No. I believe this predated the version
3 that was agreed to.

4 Q. I'm just trying to understand what
5 you're asking for, right? So is this change
6 order a request -- is this a document a request
7 in this case at this time for more than 20 days
8 that have already been granted?

9 A. I don't know. I don't think it's a
10 request for an additional 20 days. I think it's
11 just a request for a dollar amount.

12 Q. And let's talk about what this claim is
13 made up of. Is it not made up a Gulf Stream
14 claim of 115,969.21?

15 A. I believe so.

16 Q. And do you know whether they've been
17 paid for that or whether they've settled that
18 out?

19 A. I believe they've been paid for it.

20 Q. Who paid it?

21 A. I believe Balfour Beatty did.

22 Q. You believe Balfour Beatty did. Let's
23 talk about your belief regarding payment. You
24 haven't worked at Balfour Beatty since whenever
25 you left. I think we established earlier when

1 that was. And we know what conversations you've
2 had. You have not conferred with the accounting
3 department to know what was paid or has been paid
4 at least since you left, right?

5 A. That's right.

6 Q. So you don't know anything that
7 transpired with regard to this case, payments,
8 settlements, whatever as it relates to after you
9 left?

10 A. Yeah, in the last five months.

11 Q. Now, is the same thing true of what
12 happened after you left the job, or is it just
13 true for after you left Balfour Beatty because
14 those are two different days, right?

15 A. Just after I left Balfour Beatty.

16 Q. Okay. So between the time you left the
17 job and left Balfour Beatty was -- how long a
18 period was that? A couple years?

19 A. A year and a half, could be almost two
20 years.

21 Q. Okay. So during that year and a half,
22 while you weren't working on the Bennett Hotel,
23 you were still involved in the case and knowing
24 what was paid, how many had been paid, who had
25 been paid, and what was owed, correct?

1 A. That's correct.

2 Q. And you were involved in preparing a
3 claim?

4 A. That's correct.

5 Q. Okay. How much of your time, from a
6 percentage standpoint do you think you spent
7 working on the Bennett Hotel after you left the
8 Bennett Hotel job?

9 A. It varied. For the first couple months
10 after, quite a bit. Maybe 50 percent.

11 Q. 50 percent. What job did you go to?

12 A. We were doing preconstruction for the
13 Kiawah Senior Living, and we started working on
14 the upfits and other smaller projects.

15 Q. Right. Let me stop you. So for the
16 first couple months, you did two things after you
17 left the job for Balfour Beatty. One, you worked
18 on precontract stuff on a retirement facility at
19 Kiawah Island Company that never came to pass,
20 correct?

21 A. I believe they just broke ground last
22 week.

23 Q. Are you working on the job?

24 A. No, sir.

25 Q. So we're going to have to -- you're

1 going to parse every single word I say, right?

2 So we're going to be here all day. All I'm

3 trying to get you to agree with me --

4 MR. HILDEBRAND: Objection, Your

5 Honor. That's --

6 MR. BUNDY: Your Honor, I mean --

7 MR. HILDEBRAND: -- improper and an
8 inflammatory statement.

9 THE COURT: I'm going to sustain
10 that objection. Ask him the question. He can
11 answer it. If you're not happy with the answer,
12 you can rephrase the question.

13 BY MR. BUNDY:

14 Q. All right. The first two months after
15 you left the hotel, you worked on two things for
16 Balfour Beatty. One was preconstruction work on
17 a retirement home that you never worked on again
18 before you left Balfour Beatty?

19 A. That I was never involved in the
20 construction on.

21 Q. Thank you. The other half of that time
22 for approximate 60 days, you spent working on the
23 Bennett Hotel claim paperwork, whatever you want
24 to call it?

25 A. We were doing preconstruction for the

1 other upfit project. So the two jobs we worked
2 on preconstruction for, and the other percentage
3 of the time was on the claim.

4 Q. But you think that was 50 percent of
5 your time?

6 A. Plus or minus.

7 Q. Okay.

8 A. Maybe a little bit less, maybe a little
9 bit more at certain times.

10 Q. 20, 25 hours a week?

11 A. Roughly.

12 Q. Okay. And tell me what you did during
13 those -- that two months for 20 to 25 hours a
14 week working on the Hotel Bennett job claim?

15 A. Assemblage of all these documents, RCOs,
16 pulling costs together, reviewing information,
17 and all the documents and volumes we went through
18 before, pulling together -- pulling those
19 together, reviewing subcontractor claims,
20 reviewing costs from the subcontractors, change
21 events, cost events.

22 Q. And were you working with the lawyers
23 during that period?

24 A. Yes, sir.

25 Q. And that would be Mr. Heuer and

1 Mr. Hildebrand and whoever else was in his
2 office?

3 A. Heuer and Hildebrand, yes, sir.

4 Q. And how much of the 50 percent of that
5 25 hours a week would you spend with the lawyers?

6 A. Not often. Most of it was a phone call
7 or we reviewed what we needed to put together.

8 Q. And your direction for what to do came
9 from whom again?

10 A. Mr. Heuer and Mr. Hildebrand,
11 ultimately.

12 Q. Now, after the 60 days has passed, am I
13 to assume that your time on the claim started to
14 diminish?

15 A. Yes, sir.

16 Q. Okay. And what was the next sort of
17 phrase or what -- give me -- tell me how you
18 worked on the job as you -- until you finally
19 quit working on it, I guess, until you left the
20 job -- until you left the employer?

21 A. Dave Simonton kind of took over more of
22 the responsibility as construction on the other
23 project when the other project started. So, you
24 know, after whatever that period was, five, six
25 months, it went down to, you know, 10 to 15 hours

1 a week if not less.

2 Q. Okay.

3 A. Depending on what was needed.

4 Q. Does anything stand out in your mind
5 during that period that you did that was sort of
6 more important or more difficult? Anything that
7 stands out in your mind at all about that period
8 of time and the work you did?

9 A. No. It was all important.

10 Q. Okay. And would you go to -- would you
11 go to Charlotte to get this information? Where
12 did you get the information from?

13 A. Where did I get what information? That
14 I was pulling together?

15 Q. Yeah.

16 A. Most of it was on our -- on our digital
17 database or cloud database or from other
18 subcontractors. We'd request the information
19 from them.

20 Q. Sure. And you could get that -- you
21 could access that anywhere as long as you had a
22 computer, right, and access to the --

23 A. That's right.

24 Q. Okay. Let's talk a minute about
25 documents. What is Egnyte? What is the Egnyte

1 site?

2 A. It's our cloud-based document storage
3 site.

4 Q. Okay. And what use of it was made on
5 this job?

6 A. It was backup for documents.

7 Q. What documents?

8 A. Some, you know, personal -- not
9 personal, but some, you know, things that we were
10 working before we got the change orders, had the
11 change order backup, had the executed version of
12 some change orders.

13 It was more flexible than Constructware;
14 so we used -- that's where we kept things that we
15 were working on. That's where we kept pay
16 application backup. Anytime we needed to send a
17 link because the file was too big, it was on.
18 Egnyte. It was just kind of our data storage
19 website.

20 Q. Did the owner have access to the Egnyte
21 website?

22 A. I believe at certain points they did and
23 at certain parts they did.

24 Q. So they had limited assess?

25 A. I believe that's correct.

1 Q. Okay. Did they ever have access to
2 portions, and then later in the job or after the
3 lawsuit was filed, denied access to those same
4 portions of Egnyte?

5 A. Probably or potentially, yeah. I don't
6 remember specific instances.

7 Q. Well, what about change order backup?
8 Would they have been -- are you aware of any
9 situations where they were -- had access to
10 change order backup, and then, when they went to
11 go look at it again, it was gone or otherwise
12 unavailable?

13 A. I believe I remember that.

14 Q. And how did that come to pass?

15 A. I don't know how it came to pass.

16 Q. Well, it wasn't at your direction, was
17 it?

18 A. What's that?

19 Q. It wasn't at your direction, was it?

20 A. Was it at my direction? No.

21 Q. It wasn't at your direction that they
22 were no longer -- the owner was no longer to have
23 access to information they previously had access
24 to?

25 A. No.

1 Q. That was not your decision?

2 A. It was not my decision.

3 Q. Who made that decision?

4 A. I don't remember who made that decision.

5 Q. And do you have an opinion, is that --
6 whether or not that's a fair way to do business?

7 A. I don't.

8 Q. You don't have an opinion --

9 A. No, sir.

10 Q. -- or you don't know?

11 A. I don't have an opinion on whether
12 that's fair or not. Some things about, you know,
13 lawsuits and claims do not -- I don't know enough
14 about.

15 Q. Sure. So it's not something that came
16 up in that BS of management and society?

17 A. Or any of my training.

18 Q. Or any of your training at Balfour
19 Beatty?

20 A. Yeah. They don't teach you on how to
21 resolve lawsuits.

22 (DFT. EXH. 16 was marked for
23 identification.)

24 Q. Gotcha. Okay. I believe the next
25 Exhibit is Defendant's 16. I show you Exhibit

1 16. Okay. Do you see Exhibit 16?

2 A. Yes.

3 Q. All right. And can you identify it for
4 the Court, please?

5 A. Request for change order number 27,
6 thousand-year storm, zero dollars in 20 days.

7 Q. Can you identify this as a Balfour
8 Beatty document?

9 A. Yes.

10 MR. BUNDY: I move to introduce
11 this into evidence as Defendant's Exhibit 15.

12 THE COURT: 16.

13 MR. BUNDY: 16.

14 MR. HILDEBRAND: 16. No objection.

15 THE COURT: Without objection.

16 (DFT. EXH. 16 was received in
17 evidence.)

18 BY MR. BUNDY:

19 Q. All right. Let's read -- I'm going to
20 read this, okay, and you tell me if I'm reading
21 it wrong.

22 A. Okay.

23 Q. Ms. Brown, January 26th, 2016. We are
24 submitting here with our request for change order
25 027. Now, isn't that the same number we were

1 looking at under -- in the book?

2 A. Yes, sir.

3 Q. Tab 27?

4 A. Yes.

5 Q. Okay. In the amount of zero dollars to
6 provide additional work in accordance with the
7 following qualifications. Balfour Beatty is
8 requesting a time extension of 20 days, and it's
9 signed by Tim Spano.

10 How do we get -- we're really not
11 supposed to ask a witness how or why, but I'm
12 going to ask you. How do we get from zero
13 dollars in 20 days to January 26, 2016, and now
14 we're faced with a letter that predates that
15 letter, asking for \$124,000. How does that work,
16 Mr. Starcevic?

17 A. So this change order, from what I
18 understand, was the initial amount submitted for
19 \$124,000 and -- \$124,089 in 20 days. The owner
20 did not have insurance on the dirt, and so they
21 told us that we should pay that \$124,000 or
22 \$118,352 out of contingency.

23 After review some time later, we
24 determined that we didn't feel that was the right
25 question, so we reintroduced the \$124,000. I

1 believe there's another request for change order
2 after this date. So that's how.

3 Q. So that was just a good faith dispute?

4 A. I don't know that.

5 Q. You don't think the owner is acting in
6 good faith when he disputed it?

7 A. I'm not saying that.

8 Q. Well, I asked you if it was a good faith
9 dispute, if the parties, Balfour Beatty and
10 Library Associates had a dispute over the
11 contract, how the contract was to be interpreted,
12 right?

13 A. Sure.

14 Q. Do you have any evidence here today that
15 Library Associates acted in bad faith?

16 A. No.

17 Q. In taking that position?

18 A. No.

19 Q. Okay. And the contract allows for
20 disputes, doesn't it?

21 A. Yes, sir.

22 Q. Okay. It's not your position, is it,
23 that because an owner disagrees with the
24 contractor that the owner is automatically wrong,
25 is it?

1 A. No.

2 Q. Okay. All right. Now, the other --
3 other than the -- let's look at the -- I want to
4 look at this markup. What makes up this
5 \$124,089.19? Do you know?

6 A. Two cost items, \$2,383.15. 115,969.21,
7 plus markup of 5,736.83.

8 Q. So if we break it down, 115,969.21 is
9 for Gulf Stream. 2,338.15 is for BBC. And what
10 was that for? Labor and materials or what is
11 that for?

12 A. It says it's for a 6 inch diesel pump.

13 Q. Okay. And then there's BBC markup.
14 What is that?

15 A. That's a markup profit, overhead.

16 Q. Okay. So BBC then marks up profit and
17 overhead or whatever on the previous -- the sum
18 of the previous two numbers; is that correct?

19 A. And cost of work.

20 Q. Okay.

21 A. Yes.

22 Q. All right. Let's go to the next one,
23 tab number 75. What is this about?

24 A. Interior markup tab additions.

25 Q. And how is that broken out?

1 A. \$5,713, plus markup.

2 Q. All right. And this isn't signed. I
3 assume there is a signed copy of this somewhere,
4 or is there?

5 A. That's a good assumption.

6 Q. Okay. Can you tell me for sure that you
7 ever actually signed it and sent it to them?

8 A. I can't without looking and reviewing
9 whether it was. My assumption is it was.

10 Q. Okay. Let's look at the next one. This
11 would be number 88. What is this for?

12 A. Concrete change orders from Lithko.

13 Q. Okay. And it's made up of a claim for
14 Lithko of 53,221.04?

15 A. 53,221.04, yes, sir.

16 Q. And then BBC marks that amount up,
17 right?

18 A. Yes, sir.

19 Q. And this markup, they didn't actually --
20 there's no labor and materials to this markup?
21 It's just purely a percentage?

22 A. That's right.

23 Q. Something the subcontractor did, right?

24 A. That's right.

25 Q. All right. Do you know anything about a

1 pass-through agreement, a tolling and
2 pass-through agreement in this case?

3 A. The tolling and pass-through agreement?

4 Q. Yeah.

5 A. I'm not sure what you're referencing.

6 Q. So the name tolling and pass-through
7 agreement doesn't ring a bell with you in this
8 case?

9 A. I'm not sure what a tolling and
10 pass-through agreement is.

11 Q. Okay. All right. Are you aware of any
12 agreements between Balfour Beatty and any of its
13 subcontractors whereby Balfour Beatty was going
14 to prosecute claims on behalf of the
15 subcontractors?

16 A. I don't really understand how you're
17 arriving -- there was agreements that we would
18 pass along claims to the owner. I think our
19 contract is that agreement as well.

20 Q. But is there an additional agreement
21 other than the subcontract itself?

22 A. I think that's the main agreement.

23 Q. Okay. So just to make sure I understand
24 what your understanding is, your understanding is
25 that the subcontractor contains the provisions

1 that relate to Balfour Beatty's ability to pass a
2 subcontractor claim on through to the Library
3 Associates?

4 A. I believe so. Initially, yes.

5 Q. Okay. And you, as you sit here today,
6 are any -- unaware of any other agreements that
7 speak to that process?

8 A. To that specific process?

9 Q. Yes.

10 A. Now, there were settlement agreements
11 that we had with subcontractors.

12 Q. Right. Okay. But I'm talking -- not a
13 settlement agreement.

14 I'm talking about a specific agreement
15 between Balfour Beatty and any one of its
16 subcontractors which provide for a method for the
17 subcontractors, for Balfour to prosecute the
18 subcontractors' claims, and for those claims to
19 be handled pursuant to the terms of that
20 agreement which is not the subcontract agreement?

21 A. I believe there was a joint defense
22 agreement or something along those lines. I
23 don't know the specifics of it.

24 Q. Okay. Well, maybe I made it harder on
25 you than it should have been. There's a joint

1 defense and pass-through agreement, I think --

2 A. Okay.

3 Q. -- is probably the full title of the
4 document. Are you familiar with that?

5 A. I don't know that that's what it's
6 called, but I know that there's a joint defense
7 agreement.

8 Q. Have you ever read it?

9 A. I don't know that I've read it in its
10 entirety. I don't believe I've read the whole
11 thing.

12 Q. Were you involved in the signing of it
13 or the --

14 A. No, sir.

15 Q. Did you ever discuss it with anybody?

16 A. Not really. I've heard about it.

17 Q. When you prepared the documents for this
18 claim that you passed on and they would have
19 found their way ultimately to the claim, then you
20 were not aware of the pass-through agreement?

21 A. I don't know what you're calling a
22 pass-through agreement. There's a joint defense
23 agreement. I don't -- I'm not aware of a
24 pass-through agreement or what you're
25 referencing.

1 Q. All right. Let's look at the letter.
2 The letter is dated from Mr. -- the next one is
3 number 88, right?

4 A. Yes.

5 Q. That's the one we're on now, Lithko,
6 right?

7 A. Yes.

8 Q. And the letter is dated March 7, 2019,
9 and that's your signature at the bottom, right?

10 A. Yes.

11 Q. All right. Let's look at the
12 additional -- it sets forth a claim of \$56,000
13 and change order requests and things are
14 attached, right?

15 A. Yes.

16 Q. All right. Now, let's go to the change
17 order request. The first one is dated, it looks
18 like, April 26th, 2016, correct?

19 A. Yes.

20 Q. All right. So that's roughly two years
21 and 11 months after the change order request,
22 correct?

23 A. Yes.

24 Q. All right. Are you aware that there are
25 any time limitations for making a claim under the

1 contract?

2 A. There are time limitations on certain
3 things, but I'm not aware that we can't submit a
4 change order. There's a time limitation on when
5 we can submit the amount of the cost of work.

6 Q. Okay. So you're not aware that there's
7 a time limitation on giving the owner notice of a
8 claim?

9 A. I believe there's a provision.

10 Q. And what does it say?

11 A. I don't know. You would have to read
12 it.

13 Q. Do you know whether it's notice of a
14 condition precedent to such a claim?

15 A. No.

16 Q. You don't know that?

17 A. Yeah, you would have to read it.

18 Q. Would you defer to the contract?

19 A. I would.

20 Q. Okay. Thank you. But isn't it true
21 that most of the dates -- and you can look
22 through it, but it looks like to me -- like,
23 here's a date that's June of 2015. Now, we are
24 four years out. Do you see any dates of any of
25 this work referenced that was -- had been done

1 any sooner or closer to the date of the request
2 in say two, two and a half years?

3 A. Without doing the math, and these were
4 all structure related; so it would have been two
5 years prior to the date the letter was written.

6 Q. Okay. Are you the one who prepared or
7 provided these document?

8 A. I'm the one that wrote this change
9 order.

10 Q. Okay. And when you wrote the claim and
11 prepared the documents, did you go back and look
12 at the contract to see what was required in the
13 contract to make the claim proper within the
14 terms of the contract?

15 A. It's a change order, so I didn't. I
16 pulled together any outstanding costs from Lithko
17 that had not been settled, determined that they
18 were -- should be passed along to the owner or
19 not and issued a change order form.

20 Q. Okay. So is the answer to my question,
21 no, you didn't go back and look at the contract
22 to determine whether or not--

23 A. In this instance, I don't --

24 Q. Pardon me?

25 A. In this instance, I don't believe I did.

1 (DFT. EXH. 17 was marked for
2 identification.)

3 Q. Okay. Do you know whether or not -- no,
4 I will strike that. All right. Let's go to the
5 next one. I'm going to hand you a document
6 that -- well, first, let me just ask you if you
7 can identify this document for the record,
8 please.

9 A. Application and certificate for payment
10 to Library Associates from Balfour Beatty, pay
11 application number 18 for September 1, 2016 to
12 September 30, 2016.

13 Q. Okay. Do you see anybody's signature on
14 here that you recognize?

15 A. I see my signature and I see Jennifer
16 Faulkinberry's signature.

17 Q. So is it correct, this is a true and
18 accurate copy of the pay request?

19 A. Yes. I would imagine everything in
20 there is as I've submitted it.

21 MR. BUNDY: Your Honor, we would
22 move to introduce -- this would be pay
23 application number 18 dated October 19, 2016. I
24 believe it's No. 17.

25 THE COURT: Exhibit 17.

1 MR. BUNDY: And I move to introduce
2 this into evidence.

3 MR. HILDEBRAND: No objection, Your
4 Honor.

5 THE COURT: Without objection.

6 MR. BUNDY: No objection?

7 THE COURT: Without objection.

8 MR. BUNDY: All right.

9 (DFT. EXH. 17 was admitted into
10 evidence.)

11 THE COURT: What was the date
12 again? I'm sorry.

13 MR. BUNDY: I'm sorry, the date the
14 architect signed it was on October 19, 2016.

15 THE COURT: Okay.

16 MR. BUNDY: The date it was
17 submitted was for the period 9/1/2016 to
18 9/30/2016. I'm sorry, Judge, here's a copy for
19 you.

20 THE COURT: Okay. Thank you.

21 BY MR. BUNDY:

22 Q. All right. Let's look at this document.
23 This is your signature, correct?

24 A. Yes.

25 Q. All right. And I would like to read you

1 what's above your signature and see if I'm -- I'll
2 get you tell me whether I'm reading this
3 properly. The undersigned contract, and that
4 contractor is identified as Balfour Beatty
5 Construction, LLC, and you're signing on their
6 behalf as the project manager; is that correct?

7 A. I'm signing this document, yes.

8 Q. Pardon me?

9 A. I'm signing this, yes.

10 Q. As the project manager for Balfour
11 Beatty, LLC?

12 A. Yes.

13 Q. Okay. And in the chain of command on
14 site, you were, what, number three, four?

15 A. On site? Two, three.

16 Q. Okay. So it would have been reasonable
17 for Library Associates to have relied on you to
18 have sufficient knowledge to make such a
19 certification?

20 A. For this pay application?

21 Q. Yes.

22 A. Yeah, yes.

23 Q. And you believe that you had sufficient
24 knowledge to make such a certification?

25 A. That's why I signed it.

1 Q. Okay. And before you signed it, did you
2 make sure that everything here was accurate and
3 truthful?

4 A. We all did. We all met the architect,
5 owner's representation, owner. We all met and
6 reviewed this document before I signed it.

7 Q. No, sir. And I understand that other
8 people signed it, but they didn't sign it -- they
9 didn't sign this part of it. You signed this
10 part of it.

11 We undersigned contractor, certifies
12 that to the best of contractor's knowledge,
13 information and belief, the work covered by this
14 application for payment has been completed in the
15 course of the contract documents, that all
16 amounts have been paid by the contractor for work
17 for which previous certificates, payments were
18 made -- were issued and payments received from
19 the owner and that the current payment shown is
20 now due. Is that what it says?

21 A. That's what it says.

22 Q. All right. And you certified that to be
23 true?

24 A. Yes.

25 Q. And what does that certification -- when

1 you certify it to be true, what does that mean to
2 you?

3 A. To me, it means that we all met,
4 reviewed the pay application for the amounts that
5 were due and agreed on the amounts that we were
6 requesting. That's what it means.

7 Q. Okay. But that's not what it says, is
8 it?

9 A. No, sir.

10 Q. There's nothing in here that says we --
11 it doesn't say, we all met, and we did all of
12 these things. What it says is, the undersigned
13 contractor certifies.

14 A. Yes, sir.

15 Q. Nowhere in this document does it say, we
16 all met and decided this is what we were going to
17 do. What this says is, we, the undersigned
18 contractor, certified to the best of the
19 contractor's knowledge, et cetera, et cetera,
20 right? That's what it says, right?

21 A. Yeah. But you asked me what it meant to
22 me.

23 Q. Okay. Tell me what it means to you
24 then.

25 A. And that's -- there is a process. We

1 review the pay application. We submit the -- we
2 submit a draft copy of it. We have the draft
3 copy. We all walk the jobsite. We sit down and
4 review each individual line item.

5 The architect, the owner and owner's rep
6 and our team all sit down -- and the bank rep,
7 all sit down and review the information and the
8 amount that we're requesting, and we all process
9 the pay application. It's a standard way of
10 doing business.

11 Q. You don't have -- I think we've
12 established that you don't have a general
13 contractor's license in South Carolina?

14 A. That's correct.

15 Q. So you haven't taken the test to be a
16 general contractor?

17 A. That's correct.

18 Q. And so you haven't been schooled on the
19 laws regarding payments by general contractors to
20 subcontractors and certified pay requests, have
21 you?

22 A. Schooled, no.

23 Q. Yes. You haven't been taught what the
24 law is?

25 A. That's correct.

1 Q. Okay. So none of your learning lunches
2 were about the South Carolina law and the
3 obligation of contractors to pay subcontractors?

4 A. I don't believe so.

5 Q. And in none of your learning lunches
6 then, you would have learned that it is a
7 misdemeanor and punishable as a crime in South
8 Carolina to certify that you have paid a
9 subcontractor money you previously received and
10 not paid them. Is this the first you've ever
11 been aware of that?

12 A. Yes, sir.

13 Q. Okay. And if you had known that, would
14 you have been more careful about what you were
15 certifying?

16 A. That's a tough question, to go back in
17 time and under -- and say what I would have and
18 wouldn't have done. If I was breaking the law, I
19 certainly wouldn't have done it. And I don't
20 know that that's the case.

21 Q. Well, if you don't know what the speed
22 limit is, it's hard to know how fast to legally
23 drive, right?

24 A. That's correct.

25 Q. Okay. But have you ever been stopped by

1 a highway patrolman and he says, you were
2 speeding and you go, no, I wasn't because I don't
3 know what the speed limit was?

4 A. No, I've never -- that's never happened
5 to me.

6 Q. Okay. And you don't understand, that's
7 a defense to a speeding ticket, do you?

8 A. No.

9 Q. All right, sir. So how do you interpret
10 this language, that all amounts have been paid by
11 the contractor for work for which previous
12 certificates of payment were issued and payments
13 received from the owner? How do you interpret
14 that? What does that mean to you?

15 A. And that current payment shown as due.

16 Q. Well, that's another obligation. I just
17 want you to tell me what these words mean. Okay?
18 What do these words mean to you, that all amounts
19 have been paid by the contractor for work for
20 which previous certificate for payment were
21 issued and payments received from the owner.
22 What does that mean to you?

23 A. It means -- it means that all amounts
24 have been paid by the contractor for which
25 previous certificates for payment were at issue

1 and payments received from the owner.

2 Q. Well, does it mean that, in the previous
3 pay request, you asked for \$1,000 for a
4 subcontractor. Okay? I owe subcontractor XYZ
5 1,000 bucks. Owner pays you the 1,000 bucks.
6 Does it mean that you are going to pay that
7 \$1,000 to that subcontractor?

8 A. If they are owed the 1,000, yes.

9 Q. Well, if they weren't owed the \$1,000,
10 why would you put it on the pay request?

11 A. Because that's what they requested.
12 There's certain circumstances where the
13 subcontractor isn't -- if there's a back charge
14 where subcontractor two is owed a portion of that
15 money or there's an unsettled amount, then maybe
16 they're not owed the full \$1,000.

17 Q. Okay. All right.

18 A. And some -- part of that payment has to
19 go to somebody else to settle their pay request.

20 Q. So your understanding of the law in
21 South Carolina is, is that you, the general
22 contractor, can -- to use my example, get a bill
23 from subcontractor ABC for \$1,000. You put it on
24 a pay request to the owner. I -- the BC has
25 requested \$1,000. You pay me, owner, the 1,000

1 bucks.

2 But then you, the general contractor,
3 can keep part of that money because there's a
4 dispute between either you and ABC or ABC and
5 another subcontractor. Y'all can keep that
6 money, right, and not have to pay it?

7 A. I don't know. I don't really say it
8 that way. I'm saying, we're requesting X number
9 of dollars for X percent complete and that we're
10 owed that money. That's what this is. And
11 everybody that reviewed this agreed. That's what
12 I'm saying.

13 Q. Are you obligated to pay that money to
14 the subcontractor once the owner pays you?

15 A. I don't know South Carolina law.

16 Q. Okay. Well, does it seem fair to you
17 that a general contractor could take money that
18 belongs to ABC Construction, 1000 bucks the owner
19 gave to pay ABC Construction and yet the general
20 contractor doesn't pay ABC Construction the
21 \$1,000. Does that seem fair to you?

22 A. I think if that subcontractor has a
23 reason that they're not owed the full \$1,000, if
24 somebody else performed work on their behalf or
25 there's a dispute, that they're not owed that

1 full amount. They don't need to pay that full
2 amount.

3 Q. And then my next question to you then
4 is, if they aren't owed the money, what gives
5 Balfour Beatty the right to ask the owner to pay
6 it?

7 A. I don't -- because there's a percent
8 complete and an amount billed that -- we're
9 certifying that this work is X percent complete
10 and we (inaudible) completed that. The owner
11 doesn't necessarily understand. The bank doesn't
12 necessarily understand any internal change orders
13 or any internal disputes that we have with the
14 subcontractors.

15 Q. Okay. So y'all keep a different
16 accounting for the subcontractors basically?

17 A. Not necessarily. I'm just saying that
18 there may be -- that subcontractor may have \$100
19 of that \$1,000 that is owed to another
20 subcontractor. To ensure that other
21 subcontractor gets paid, we don't -- we hold
22 that.

23 Q. Okay. Are you aware of any statutory
24 requirements in the State of South Carolina that
25 a contractor, if he is going to do just what you

1 proposed, is legally obligated to tell the owner
2 that's what he's doing?

3 A. I'm not.

4 Q. Nobody ever told you that?

5 A. I'm not aware of that step. Whatever
6 you're referencing, I'm not aware of.

7 Q. You've never -- you don't know anything
8 about that?

9 A. I'm not saying I don't know anything
10 about it. I don't know what it is.

11 Q. You don't know what what is?

12 A. I don't know what -- can you ask the
13 question again?

14 Q. Yes. Are you aware that in South
15 Carolina, as part of the same statute which makes
16 it a misdemeanor not to pay your subs, that the
17 statute goes on to say, if you're going to money
18 for subcontractors and not pay them, you're
19 required to tell the owner.

20 I'm not taking the money you gave me to
21 pay that subcontractor. I'm not going to pay
22 that subcontractor because I have a dispute with
23 that subcontractor. Are you aware of that?

24 A. I'm not aware of that.

25 Q. Okay. If you had known that, what, if

1 anything, would you have done differently with
2 regard to doing pay requests regarding this
3 project?

4 A. I probably would have sent more notice
5 on the owner.

6 Q. And how many would you have had to have
7 sent?

8 A. I'm not sure.

9 Q. A dozen?

10 A. I don't know that.

11 Q. What about lien waivers? What is a lien
12 waiver on a claim waived?

13 A. It's a waiver, whether conditional or
14 unconditional of whoever sign its lien rights.

15 Q. It's a waiver of lien right or claim
16 right, correct?

17 A. Yes.

18 Q. Turn to the last page, please, of this
19 exhibit. Are you with me?

20 A. I'm with you.

21 Q. All right. And this was part of the
22 documentation that you were required to produce
23 in order to get paid, right?

24 A. Yes.

25 Q. All right. And this is part of the

1 documentation that you tell us, everybody agreed
2 that -- we're all agreeing, this money ought to
3 be paid. It wasn't just you. Everybody agreed
4 it ought to be paid, right? It's a team effort.
5 You, the architect, owner, everybody. We all
6 agreed this needed to be paid.

7 A. This amount needed to be paid.

8 Q. Well, the --

9 A. Whether that --

10 Q. Well, the amount of the pay request
11 needed to be paid.

12 A. What's that? The amount in --

13 Q. The pay request needed to be paid.

14 A. -- this pay request needed to be paid,
15 yeah.

16 Q. Okay. Why do you think there are lien
17 waivers on jobs with each progress payment?

18 A. I'm sorry?

19 Q. Why do you think, if you know, there are
20 lien waivers on construction jobs for every
21 product of the work that's done up through the
22 progress payment?

23 A. To certify the amount they're
24 requesting.

25 Q. Well, don't they also say -- well, it

1 says what it says. We'll talk about what it says
2 in a minute. What use is made of the lien waiver
3 by the owner and the bank when they consider
4 paying a pay request, if any?

5 A. What use does the owner and bank make?

6 Q. Yeah. Why do they want this piece of
7 paper, Mr. Starcevic?

8 A. It's a condition of payment. It's --
9 you're releasing your liens for the payment, a
10 condition, if they get paid, that they're
11 releasing their lien rights for the amount that
12 they're requesting, for what is in that request.

13 Q. All right. Now, let's read it. Lithko,
14 for and in consideration for payment of sum of
15 \$350,000. Now, this was attached to this pay
16 request, right? This is the -- this \$350,000 is
17 included in this pay request, right?

18 A. I would assume so.

19 Q. Okay. So in order for the owner and the
20 bank to be willing to pay your subcontractor for
21 its work, the subcontractor has to agree, does he
22 not that, that this will make us straight? You
23 won't owe me any more money forever and a day up
24 through the day I sign this lien waiver. That's
25 what it says, isn't it?

1 A. It's saying that -- I believe it's
2 saying for the \$350,000 -- \$350,221, that's what
3 they're waiving their lien rights upon receipt.

4 Q. Okay. All right. Let's read it.

5 A. It says, will -- have been. It's
6 struck, and it says, will be paid.

7 Q. All right. Let's read it. Hereby
8 releases, waives and quitclaims to contractor,
9 owner and their respective successors and signs,
10 all liens, lien rights, claims, or demands of any
11 kind, whatsoever, which lienor now has or might
12 have against contractor and/or owner and/or the
13 buildings on the improvements on the premises
14 labor and services performed and furnished for
15 the construction of any improvements thereon
16 except for retainage and open change order
17 requests or disputes identified as follows.
18 What's is in the blank?

19 A. None.

20 Q. Does that mean that, as of this day, all
21 they're saying I'm entitled to is this \$350,000
22 and retainage, and that's it. And I waive
23 forever and a day anything that I did before I
24 took this money. That's what they're saying,
25 isn't it?

1 A. That's what this is saying. That's what
2 this lien waiver is saying.

3 Q. All right. Let's go on. The
4 undersigned has the right and authority to excuse
5 the partial lien waiver for release of lien on
6 behalf of the owner. This is a waiver of all
7 lien rights and other claims this lienor has
8 against the property, the contractor and the
9 owner for all labor, materials and services
10 performed, on and on and on and on. Okay?

11 The undersigned acknowledges that the
12 contractor and owner and other parties have a
13 right to rely upon this waiver and release and
14 that making any false statements shall constitute
15 perjury and be punished -- and can be punished in
16 accordance with the laws in the State of South
17 Carolina. And it's sworn to be the truth,
18 correct?

19 A. Correct.

20 Q. Do you know what perjury is,
21 Mr. Starcevic?

22 A. Yes.

23 Q. Okay. Now, this is dated what day?
24 What's the period for this? It was back in --

25 A. September.

1 Q. -- for the period of September?

2 A. Of 2016.

3 Q. Okay. Let's look at this letter in tab
4 88. Are you with me?

5 A. I'm with you.

6 Q. This is a request -- they say they're
7 owed \$56,000, right? Now, the work that they're
8 claiming goes back to when? Does it predate
9 September of 2016?

10 A. Yes.

11 Q. Okay. So this lien waiver is a lie, is
12 it not?

13 A. I don't know that it's a lie. I'm --
14 this is -- it says --

15 Q. Well, let me -- I will back up. I will
16 withdraw the question.

17 A. It's set for retention and open change
18 order requests.

19 Q. I'll withdraw the question. The lien
20 waiver is not a lie. The claim is a lie because
21 the claim has been waived under oath under
22 penalty of perjury; isn't that true?

23 A. This is an open change order, and it's
24 the same except for retention and open change
25 order request.

1 Q. The release says none. There are no
2 open change orders as of this date. They're done
3 with that. I will ask you again. Isn't this
4 request for money a lie and doesn't it contradict
5 the line waiver?

6 A. Again, I'm not an attorney. I don't
7 know how to interpret that. There's open change
8 orders. So there's a lot of open change orders
9 that we submitted with our pay applications. I'm
10 not going to say -- sit here and say it's a lie
11 because there was no open change orders.

12 Q. All right. Let's go to number --

13 MR. BUNDY: Your Honor, do you want
14 to take a break? Are you ready for lunch?

15 THE COURT: Is now a good time to
16 break?

17 MR. BUNDY: It's fine with me. I'm
18 going to be here all afternoon. But 12:15 is as
19 good a time as any.

20 THE COURT: All right. Let's go
21 ahead and take it now. Let's come back at 1:30.

22 MR. BUNDY: If you'll admonish the
23 witness, Your Honor.

24 THE COURT: Sure. Mr. Starcevic,
25 just don't talk to anybody. We went through that

1 last week. All right. Thank you. Let's come
2 back about 1:30.

3 (A recess transpired.)

4 MR. BUNDY: Your Honor, I have
5 something to bring up before we begin.

6 THE COURT: All right, sir.

7 MR. BUNDY: Thank you. Your Honor,
8 we just received -- it was just filed -- a motion
9 of continuance.

10 THE COURT: Okay.

11 MR. BUNDY: What the motion says,
12 it says, this is motion by Lithko, Watson, and
13 Old North State, by and through undersigned
14 counsel, pursuant to the South Carolina Rules of
15 Civil Procedure, pursuant to Rule 7.

16 I hereby move for an order continuing
17 the trial involving the defendant, third-party
18 Library Associates, Inc., the conspiracy claims
19 in the case until the term of October 25th. In
20 support of this motion, they would state the
21 following, Terry's counsel for third-party
22 defendants.

23 Now, he is counsel for all third-party
24 defendants. Library is scheduled to begin its
25 case relating to its conspiracy claims beginning

1 on or about September 21, 2021 -- which is
2 incorrect.

3 THE COURT: Okay.

4 MR. BUNDY: That's an incorrect
5 statement of fact.

6 THE COURT: Okay. All right.

7 MR. BUNDY: Three, Terry tested
8 positive on September 17th.

9 MR. HILDEBRAND: Bill, I can't hear
10 you, I'm sorry.

11 THE COURT: That Mr. Terry posted
12 positive on September 17th.

13 MR. BUNDY: He tested positive on
14 the 17th. He's unable to attend the trial.
15 Four, third-party defendants, by this motion,
16 seek a continuance of any other portion of the
17 trial. Third-party defendants will be prejudiced
18 if a continuance is not granted. Now, this is
19 exactly the set up that I told you was coming.
20 Here's the set up. Okay?

21 THE COURT: Okay.

22 MR. BUNDY: One, I would ask the
23 record to reflect that Steele Windle is not here.
24 He has not been here all day.

25 THE COURT: Right.

1 MR. BUNDY: He's not even dressed
2 to sit in front of the bar. He's coming in in
3 tennis shoes or whatever, which is fine, if
4 you're not dressed. Why somebody -- I mean,
5 Terry has been here maybe one day. These
6 gentlemen have a large law firm or large enough
7 to send somebody, if they want somebody to
8 observe this trial out here. Okay?

9 And Mr. Steele who was the primary
10 lawyer for Old North State and Lithko prior to
11 the case. And the only reason that Terry is in
12 this case is because the two law firms merged and
13 Lithko -- and Steele brings his two big clients,
14 they merge.

15 And since Steele can't practice law in
16 South Carolina without pro hac vice status, he
17 needed Terry. Terry already had Watson. So
18 that's how this was all set up.

19 THE COURT: Okay. All right.

20 MR. BUNDY: So what they're trying
21 to do, and what they're going to accomplish
22 unless we do something to prevent it is, they're
23 going to set up a scenario where this somehow
24 will be turned into a part of the conspiracy
25 trial. Okay? This portion of it.

1 THE COURT: Okay.

2 MR. BUNDY: So they're going to
3 take the position that things that are said now
4 are somehow relative to the conspiracy and that
5 although that's not what we're trying, they've
6 been prejudiced thereby, I guarantee it.

7 THE COURT: Okay. All right.

8 MR. BUNDY: So how do you deal with
9 that? I would respectfully request that you
10 e-mail both of these gentlemen today, okay, and
11 tell them, if they want to see what's going on in
12 this trial, they need to send somebody down here
13 and watch. And if they don't do it, that's on
14 them. That's not on you.

15 Two, that you are not going to proceed
16 with my case at all, conspiracy or otherwise
17 because you can't try my case and cut out the
18 conspiracy. Okay? If they were move to sever
19 these case, which would be the appropriate motion
20 if they knew what the rules were, they would have
21 moved to sever the cases and then move for a
22 continuance.

23 I don't believe grounds exist under our
24 rule to sever these cases. In fact, I think a
25 conspiracy case is the epitome of what you could

1 never sever because the whole concept of a
2 conspiracy case is an agreement by and among all
3 of these people.

4 So, one, I would like you to now just
5 maybe take a minute and send an e-mail to
6 Mr. Terry and tell him what's going on down here
7 because he doesn't have the -- I don't know what
8 you would call it -- good grace to send somebody
9 down here.

10 Windle Steele (sic) won't even show up.
11 They're trying from a distance to set you up for
12 a mistrial, and I object to it. And it can be
13 prevented. You don't have to let it happen to
14 you. So I would respectfully request that we do
15 that now before we proceed any further. Because
16 I'm liable to ask some question of this witness.

17 THE COURT: Okay.

18 MR. BUNDY: You and I both know how
19 the Court of Appeals is.

20 THE COURT: All right.

21 Acknowledged.

22 Mr. Hildebrand, any position on this
23 continuance request?

24 MR. HILDEBRAND: My only comment
25 is, I don't know that -- that Al Windle can

1 attend without his sponsor, so to speak, in
2 attendance with him. I don't know if it's --

3 THE COURT: I think he -- my
4 personal opinion is, I believe that he can. But
5 he's still subject to our rules and --

6 MR. HILDEBRAND: Okay. Good.

7 THE COURT: -- as is the sponsoring
8 attorney who, in this case, is Don Terry.

9 MR. HILDEBRAND: Maybe we can get
10 him on the phone, Your Honor. I mean, I'm happy
11 to do that in chambers or otherwise or maybe we
12 can just get him on the speaker phone now and
13 find out what is going on. The guy does have
14 Covid.

15 THE COURT: Yeah. I did see
16 that -- after you brought it to my attention, I
17 did see the motion was filed, I think, yesterday.
18 It was somewhere around noon, lunchtime,
19 something like that. Well, excuse me, the motion
20 was not filed until just now.

21 MR. BUNDY: Right.

22 THE COURT: The request was made by
23 e-mail yesterday.

24 MR. BUNDY: But to be clear, what
25 my position is --

1 THE COURT: Right.

2 MR. BUNDY: -- this also can't be a
3 stalking horse to get them a continuance. They
4 are in their case.

5 THE COURT: Yeah.

6 MR. BUNDY: They need to proceed
7 with their case. If this is just some device or
8 scheme to get him continuance, I object.

9 THE COURT: I hear what you're
10 saying.

11 The plaintiff wishes to move forward
12 with its case, does it not?

13 MR. HILDEBRAND: Absolutely, yeah.

14 THE COURT: Okay. All right.

15 Well, we are going to do that. And then what I
16 was going to do was reserve until the end of the
17 day as to how I was going deal with the
18 continuance request when it came in.

19 It's now come in. I'm not going to get
20 them on the phone. It's totally within --
21 they're grown men. They know whether or not they
22 want somebody to be in here and listen to what
23 goes on. I'm not going to baby these people, you
24 know. I've got other lawyers hanging out in the
25 back of the room because they're concerned for

1 their clients, and I fully understand that.

2 So anyway, but I will address it, and I
3 appreciate you bringing it to my attention. I
4 will address it. Y'all are aware of it. I
5 hadn't heard from anybody else, but I want to
6 make sure that at least -- and Mr. O'Kelley was
7 here this morning. He told me he had a hearing
8 at 2 o'clock today.

9 So he will be out at that point in time.
10 And I note Mr. Kelly is still here on behalf of
11 his client. He's taken part in this case. I
12 don't know any other lawyers in the case other
13 than the ones that are participating in this
14 matter. So I am disinclined to grant the
15 continuance outright.

16 I am inclined to, depending on how far
17 we go with this case because we're going to press
18 forward with the plaintiff's case. I may well
19 grant your motion before you proceed. I'm
20 leaning towards doing that. I just want you to
21 know because I don't want them to be prejudiced.

22 MR. BUNDY: I don't want them
23 either.

24 THE COURT: They certainly have the
25 right to send somebody down here. I don't think

1 I need to tell them that because they've got more
2 than two lawyers at that firm.

3 MR. BUNDY: I don't want them to be
4 prejudiced, but I don't want to be prejudiced.

5 THE COURT: Absolutely.

6 MR. BUNDY: And I would be
7 prejudiced if I had to divide up my case so he
8 can carve out civil conspiracy.

9 THE COURT: I'm with you. I'm with
10 you. All right. So based on that, let's
11 proceed, and we will address that at the end of
12 the day. Okay?

13 MR. BUNDY: Thank you.

14 THE COURT: Very good.

15 (DFT. EXH. 18 was marked for
16 identification.)

17 MR. BUNDY: Your Honor, I would
18 move now to introduce into evidence Defendant's
19 Exhibit 18, which is this chart.

20 THE COURT: 18 is the chart,
21 Mr. Starcevic's background. All right. Any
22 objection to that? It's going to be hard to put
23 in the record, but -- do you have a smaller copy
24 of that?

25 MR. BUNDY: I do.

1 THE COURT: All right. Why don't
2 we mark that as the exhibit, and y'all can put
3 that in in lieu of the large document.

4 MR. HILDEBRAND: Your Honor, I
5 don't believe this is a full and accurate
6 representation nor synopsis of all of his
7 experience. I think the record speaks for
8 itself, and I think it's inappropriate to --
9 there's no -- there's nothing to be gained here.
10 You heard the testimony. You've heard what he --
11 how he answered the questions.

12 And for this to come in as substantive
13 evidence or demonstrative evidence or anything
14 else, it's -- it's not a summary of data. It's
15 just his answers to some of the questions without
16 all of his background and everything else that
17 he's done. So I don't think it's appropriate,
18 and I would object.

19 THE COURT: All right. I'm going
20 to overrule it. I'll allow it. I don't see any
21 prejudice to it. But it's just a compilation
22 of -- it's a timeline of Mr. Starcevic's records
23 and employment while at Balfour Beatty. And it's
24 not a full record, I will acknowledge that.
25 Okay?

1 (DFT. EXH. 18 was received in
2 evidence.)

3 MR. HILDEBRAND: Thank you.

4 MR. BUNDY: Thank you, Your Honor.

5 THE COURT: That was No. 18?

6 MR. BUNDY: Yes, Your Honor.

7 BY MR. BUNDY:

8 Q. Mr. Starcevic, it's true, is it not, you
9 did not prepare the estimate on this job?

10 A. I'm sorry?

11 Q. It's true, is it not, that you did not
12 prepare the estimate for this job?

13 A. That's correct.

14 Q. That's true?

15 A. True.

16 Q. It's true, is it not, that you did not
17 prepare the bid for this job?

18 A. Correct.

19 Q. It's true, is it not, that you were not
20 involved in the request for proposal?

21 A. True.

22 Q. It's true, is it not, that you did not
23 see the original request from Library Associates
24 to the contractors?

25 A. Ever?

1 Q. Well, okay. Did you ever see it?

2 A. Yes.

3 Q. When did you first see it?

4 A. Towards the latter end of the project.

5 Q. What?

6 A. Towards the latter end of the project.

7 Towards -- at the end of the Hotel Bennett
8 project I saw it.

9 Q. Okay. So at the end of the hotel
10 project, you saw it for the first time? The
11 request for proposals were brought in?

12 A. Yeah, I believe. Somewhere in the
13 middle to end of the project.

14 Q. And what use did you make of that
15 information?

16 A. I can't remember. I just remember
17 seeing it.

18 Q. You were aware there were other
19 contractors invited to respond to the request for
20 proposal?

21 A. Yes. I don't know who those contractors
22 are.

23 Q. You don't know who they were? Okay. So
24 this wasn't a sole source job? We had other
25 contractors who were willing to build this hotel.

1 A. Is that a question?

2 Q. Yes. We had other contractors who were
3 willing to build this hotel, yes or no?

4 A. I don't know.

5 Q. You don't know. Okay. So let's go to
6 tab 103 of the ROCs, Balfour Exhibit 12. RCOs,
7 excuse me. All right. This is MOD 5 mechanical
8 revisions; is that correct?

9 A. Let me get there.

10 Q. December 16, 2017 letter to Ms. Brown?

11 A. Yes, sir.

12 Q. And the BMCC claim is \$276,838.84; is
13 that correct?

14 A. Yes.

15 Q. And the BMCC markup is 13,419,07; is
16 that correct?

17 A. The BBC markup is, yes.

18 Q. Okay. Is this claim still pending? Is
19 Balfour Beatty still seeking this money?

20 A. I believe we discussed Friday that we
21 were not. I'm not sure. There was a whole
22 discussion on their claim being assigned. I
23 don't know.

24 Q. Okay. Well, you were -- you testified
25 in direct, at least initially, that Balfour

1 Beatty was trying to collect the money, did you
2 not?

3 A. That was a pretty confusing part
4 yesterday, where you had purchased their claim or
5 their assignment of claim. The work was
6 performed, and to my knowledge, Balfour Beatty
7 has not been paid for it.

8 Q. Well, regardless of the confusion that
9 you may have encountered, it questions an
10 objection. I want to know what you said. Do you
11 remember what you testified to, on direct
12 examination, before any interruptions, under
13 oath, about whether or not Balfour Beatty was
14 trying to collect \$290,257.91 from Library
15 Associates?

16 A. Prior to me being --

17 MR. HILDEBRAND: I'm going to have
18 to object.

19 THE COURT: Just one second.

20 Yes, sir, go ahead.

21 MR. HILDEBRAND: Your Honor, he
22 doesn't -- he's here to explain the RCOs and
23 whether, to his knowledge, that they've been paid
24 or not.

25 The decision of whether we are seeking

1 to collect those is not within his parameters of
2 his authority. So I don't think it's appropriate
3 to be asking him what Balfour, when he's no
4 longer an employee of Balfour, what our position
5 is on this. It's not binding. So I don't know
6 the relevance.

7 THE COURT: All right.

8 MR. BUNDY: Your Honor, at this
9 point, I would move to strike his entire
10 testimony of Friday. He testified at several
11 times during Friday, they hadn't been paid this,
12 they haven't been paid that.

13 I objected, and you overruled the
14 objection, and you let him testify. And now his
15 lawyer, his speaking agent is saying to you that
16 he doesn't know whether they've been paid or not.
17 That makes all of his testimony completely
18 irrelevant. What is -- what could it possibly be
19 relevant to.

20 THE COURT: All right. I'm going
21 to note the objection. Let me say this. I have
22 to -- I have to presume that this witness can
23 only testify as to his own personal knowledge.
24 His testimony was that he left the employment of
25 Balfour Beatty in April --

1 THE WITNESS: Yes, sir.

2 THE COURT: -- 2021?

3 THE WITNESS: Yes, sir.

4 THE COURT: And so I assume, from
5 that time on, he's got no knowledge of what's
6 happened other than what got him here today to be
7 a witness. Any payment that would have been
8 received would only have come during his
9 knowledge, during the period of employment.

10 MR. BUNDY: But we're here today
11 about a claim, and they have to prove their case.
12 And they put up a witness who doesn't know who's
13 been paid, as evidenced, from who has been paid.

14 THE COURT: No, I'm not going to --

15 MR. BUNDY: Okay.

16 THE COURT: I'm not going there.

17 MR. BUNDY: Okay.

18 THE COURT: He can testify to it,
19 and you're on cross-examination.

20 MR. BUNDY: Okay.

21 THE COURT: And one of the problems
22 from being on cross is, you've got to live with
23 the answers sometimes. So watch what the
24 questions are.

25 BY MR. BUNDY:

1 Q. Can you testify under oath today as you
2 sit here, whether or not Balfour Beatty is asking
3 the Judge to award \$290,257.91 to Balfour Beatty
4 on behalf of claim under tab 103 in Exhibit 12?

5 A. I don't know.

6 Q. Okay. Let's go to number 118. All
7 right. 118 is 21,036.56; BMC portion is 20,064;
8 BBC markup is 972.56. As you sit here today, is
9 it your testimony under oath that Balfour Beatty
10 is seeking \$21,036.56 against Library Associates
11 as reflected in tab 118 of Exhibit 12 introduced
12 by Balfour?

13 A. Again, I don't know what's happened
14 since I left the employment; so I don't know.

15 Q. Okay. All right. Let's look at number
16 21 -- excuse me, number 122. Okay. Now, looking
17 under -- well, this is for \$1,012,042; is that
18 correct?

19 A. Correct.

20 Q. Okay. What is -- the coversheet says
21 the time is requested. How much time is being
22 requested for this delay?

23 A. I don't remember the exact number of
24 days. I don't remember. It was written down
25 somewhere in the claim. I don't remember. My

1 recollection was it was around 61 days, but I
2 don't remember the exact number.

3 Q. My question to you was, what time
4 request is made in the claim? Point to me in the
5 claim where a request for time is being made for
6 a specific number of days. That's all I'm
7 asking.

8 A. I don't see it in here.

9 Q. So there is no specific request for a
10 specific number of days in claim tab 122, Exhibit
11 12, Balfour Exhibit 12; is that correct?

12 A. Yes. In this tab, I don't see a request
13 for timing.

14 Q. You don't see anything?

15 A. No.

16 Q. All right. Where is the backup for the
17 general conditions claim of \$321,255?

18 A. The cost per floor is on page 3, the
19 summary.

20 Q. What does it look like? Can you show it
21 to me?

22 A. Right here. It's a summary, and then
23 I've got general conditions on the top line.

24 Q. Structural delay claims, general
25 conditions. That's just a line item, right?

1 General conditions 321,255. Is there any --
2 where's the backup with that number?

3 A. I don't know. I don't have it here.

4 Q. You don't have it there; so it's not in
5 the RCO. There's no backup for almost one-third
6 of a million dollars.

7 A. It's not in this. It's not in what's
8 here.

9 Q. All right. If you would, let's go to
10 the Sunbelt invoices. Do you see Sunbelt
11 invoices?

12 A. Yes.

13 Q. All right. I would like you to turn
14 on -- five pages in on the left-hand side. It's
15 dated 7/13/16. Do you see that? Sunbelt
16 Rentals? Do you need some help with that?

17 A. Yes, I see it.

18 Q. All right. And Sunbelt Rentals
19 apparently rented some property, and they sent it
20 to a jobsite at Simmons Park, 200 Pier View
21 Drive, Charleston, South Carolina 29492. Did
22 y'all move the Bennett Hotel during the this job?

23 A. No, sir.

24 Q. Okay. So this is -- you're asking my
25 client to pay for rental equipment on the Simmons

1 Park job?

2 A. No, sir.

3 Q. Pardon me?

4 A. Not that I'm aware of.

5 Q. Well, why is it in here if you're not
6 asking for it?

7 A. We have multiple accounts with Sunbelt.
8 They must have included the wrong jobsite on it.

9 Q. Well, I understand you had multiple
10 accounts, but does my client owe Balfour Beatty
11 for equipment that was used on other jobs?

12 A. No.

13 Q. Okay. Was this equipment charged -- are
14 you trying to collect it now?

15 A. I'm not trying to collect anything.

16 Q. Is it part of the claim that you made
17 under tab 122 as shown in Balfour Beatty's
18 Exhibit 12?

19 A. I believe this is a mistake, that
20 this -- my understanding is, this was delivered
21 to the jobsite and was -- and they just charged
22 it to the wrong job.

23 Q. Sunbelt charged it to the wrong job?

24 A. They sent us the invoice for the wrong
25 job.

1 Q. Okay. So Sunbelt invoiced the wrong
2 job?

3 A. That's right.

4 Q. All right. And that's based on hearsay?

5 A. Sure, yeah.

6 Q. And who told you that?

7 A. What's that?

8 Q. Who told you that Sunbelt invoiced the
9 wrong job?

10 A. Well, we didn't have -- Simmons Park was
11 complete in July 13, 2016.

12 Q. And the same would be true of the next
13 one?

14 A. Yes.

15 Q. Did y'all have any obligation to keep
16 accurate records?

17 A. Yes.

18 Q. And did you?

19 A. Did our best.

20 Q. Does the contract say all you have to do
21 is your best, or does it say you have to keep
22 accurate records? Or do you know what the
23 contract says?

24 A. We'd have to refer to the contract,
25 where it says on record keeping.

1 Q. All right. Lithko. \$383,720, and this
2 is for Lithko, correct?

3 A. Yes.

4 Q. Is the backup -- well, strike that.
5 Pasco, 6,262. Do you know whether or not this
6 6,262 is part of the claim being made against my
7 client in this lawsuit at this time?

8 A. No.

9 Q. You don't know?

10 A. I don't know what's happened since we --
11 since I left employment with Balfour Beatty.

12 Q. \$35,782 from BMCC. Do you know whether
13 that claim is currently being made against my
14 client at this time by Balfour Beatty?

15 A. Same answer. I don't know.

16 Q. Okay. The BBC markup is based on the
17 total of the numbers above, is it not?

18 A. Yes, sir.

19 Q. Okay. So if the BMCC number of 35 comes
20 out, Pasco number of 6 comes out necessarily, the
21 markup would go down?

22 A. Yes.

23 Q. Do you know whether the architect
24 reviewed this claim, this delay claim initially?

25 A. They did.

1 Q. And did he in fact deny it for being
2 late, approximately one year past the actual date
3 of delay?

4 A. I don't know. That's why -- what they
5 said in reviewing, she -- Jennifer did. I don't
6 believe Buck did.

7 Q. So you don't know if the architect gave
8 a ruling on December 4, 2017, denying the claim?

9 A. I believe the architect gave a ruling in
10 which they felt we were owed the time and wanted
11 to split the amount, by the letter in front of
12 me.

13 Q. The best evidence of that would be
14 what's in the letter and not your recollection,
15 right?

16 A. Yeah, what Jennifer Faulkinberry
17 recommended in an e-mail or letter.

18 Q. Okay. Let's go to number 159,
19 Exhibit 12. Was there a proposal related to this
20 alleged additional work?

21 A. For FF&E changes, yeah, there should
22 have been.

23 Q. Okay. Is the proposal attached to the
24 claim?

25 A. No, sir.

1 Q. Is there any backup for any of these
2 costs in the claim?

3 A. It should be on the proposal.

4 Q. Huh?

5 A. It should be on the proposal.

6 Q. Okay. But the proposal is not in here?

7 A. Not in this tab. There's marked
8 exhibits on it, Exhibit X, Exhibit B, Exhibit C
9 and Exhibit D.

10 Q. What was the original proposal for,
11 242,633?

12 A. I don't know that that's true. The
13 original estimate -- hold on. No. We had the
14 original estimate for the scope of work that was
15 in the job originally, and then we had a revised
16 estimate with all of these items listed. And we
17 were requesting the delta.

18 Q. Is it your testimony that all of this
19 work was done?

20 A. To the best of my knowledge, this work
21 was done.

22 Q. Is it your -- do you know whether this
23 work was actually paid for by BBC?

24 A. I do not know.

25 Q. Do you know whether BBC, if they hadn't

1 paid it, are going to pay it?

2 A. I can't speak for BBC, what they're
3 going to do.

4 Q. All right. Let's look at tab number
5 161.

6 A. I do believe this work has been paid
7 for, but I'm not sure.

8 Q. Tab number 161 --

9 A. I'm here.

10 Q. -- for 17,376. Is it your testimony
11 that Balfour Beatty is now claiming \$8,928 on
12 behalf of BMCC?

13 A. Again, same answer. I don't know what's
14 happened since April.

15 Q. And the same answer would be true as to
16 Precision Walls? You don't know about the 7,644
17 either?

18 A. That's for BMCC, yes.

19 Q. Okay. And if none of those charges are
20 actually paid by Balfour Beatty, then the markup
21 would go away, would it not?

22 A. I don't know.

23 Q. You don't know whether or not a
24 contractor is or is not entitled to markup on
25 work that was not done?

1 A. I'm not saying this work wasn't done.

2 Just work wasn't --

3 Q. Not paid?

4 A. Not paid.

5 Q. Do you know whether or not Balfour
6 Beatty is entitled to a markup on work that they
7 have not paid for?

8 A. That we have not paid for or were
9 requesting payment?

10 Q. Paid for?

11 A. Yeah. I don't know.

12 Q. I guess we'd go to the contract, right?

13 A. That's -- yes.

14 Q. Let's go to 178, Liberty Lights. Are
15 you with me?

16 A. I'm with you.

17 Q. Do you know whether Wesley was paid or
18 has been paid the \$2,142?

19 A. I don't believe this is all for Wesley,
20 but -- I'm not even sure if this is Wesley.
21 You're right, it is. I don't know if they've
22 been paid.

23 Q. Do you have any evidence that the owner
24 requested Balfour Beatty to store these 72 car or
25 light fixtures?

1 A. Evidence? Not in this tab. But the
2 owner directed us to.

3 Q. Is part of Balfour Beatty's means and
4 methods, the procurement and storage of
5 materials?

6 A. Yes, that's part of our means and
7 methods.

8 Q. All right. Let's go to Exhibit tab 184.

9 A. Yes.

10 Q. All right. You're requesting 57,467.82.
11 Do you know whether Premier Exteriors has been
12 paid 18,810?

13 A. No, I don't.

14 Q. Do you know whether First Choice Glass
15 has been paid 20,486?

16 A. I don't.

17 Q. What did BMCC -- Balfour Beatty incur
18 that entitles them to 15,550?

19 A. That's labor and prep for the storm. We
20 had laborers on site to --

21 Q. And have they paid for that?

22 A. I believe so.

23 Q. Okay. And would the markup go down if
24 they have not paid Premier Exteriors or First
25 Choice Glass?

1 A. I'm not sure.

2 Q. Okay. All right. Let's go to the next
3 one, 212, Robert Thomas Decorative.

4 A. Yep.

5 Q. Do you know who paid Robert Thomas?

6 A. I believe we did. I don't know about
7 for this -- for this amount, but I believe
8 Balfour did.

9 Q. You believe Balfour did?

10 A. Yeah.

11 Q. But you don't know it for a fact?

12 A. I don't know it for a fact. You'd have
13 to check the records.

14 Q. Okay. And if we checked the records and
15 it showed Library Associates paid it, then
16 Library Associates wouldn't have to pay it again
17 to Balfour Beatty, would they?

18 A. So, yeah. I mean, I don't think they
19 would have to pay for it twice.

20 Q. Thank you. So we've agreed that Library
21 Associates doesn't have to pay Balfour Beatty
22 twice for work. Can we also agree that they're
23 not entitled to markup that they don't pay for?

24 A. They're not entitled to markup that they
25 don't pay for?

1 Q. Right.

2 A. Again, we would have to --

3 Q. Balfour Beatty is not entitled to markup
4 work that they didn't pay for?

5 A. We would have to check the contract on
6 how that works.

7 Q. Okay.

8 A. If they paid something direct and we
9 still did all of the records and send the
10 overhead, you know.

11 Q. Right.

12 A. If we performed the work and they
13 performed it under that, are we still entitled a
14 fee? I'm not sure.

15 Q. Sure. But we don't need to check the
16 contract to agree that they don't have to pay for
17 work twice?

18 A. Well, so I don't -- this isn't
19 necessarily asking them to pay for it twice.
20 This is the -- this is the increased cost because
21 we had already delivered metal brackets to the
22 site. So I don't know if they paid for the
23 original metal brackets. I don't know -- I don't
24 know what they paid for it.

25 Q. Let's put aside this specific tab, and

1 let me just ask you a general question. Can you
2 and I even agree today, Library Associates
3 doesn't have to pay Balfour Beatty twice for the
4 same work?

5 A. Well, this is a little --

6 Q. No, I'm not talking about this
7 particular work.

8 A. Because it's two sets of brackets.

9 Q. Pardon me?

10 A. We produced two sets of brackets. So we
11 produced the ones from Robert Thomas, and we
12 produced the ones for Tate. It's kind of like
13 paying for the same thing twice, but it wasn't
14 on -- it wasn't under our direction. I wouldn't
15 ask them to pay for Robert Thomas's scope twice.
16 We can agree to that.

17 Q. As a general proposition, can you and I
18 agree -- put aside Robert Thomas. Forget Robert
19 Thomas. Can you and I agree that Balfour Beatty
20 Construction Company is not entitled to be paid
21 twice by Library Associates for the exact same
22 work?

23 A. Again, that's not -- for the exact same
24 work?

25 Q. Yes.

1 A. We produced the exact same work
2 described? I'm not going to ask them to pay for
3 the same bracket twice.

4 Q. But that's not the question.

5 THE COURT: I'm with you. I think
6 he just answered it.

7 MR. BUNDY: Well, let me try it
8 again.

9 THE COURT: Yep, yep.

10 BY MR. BUNDY:

11 Q. Forget the brackets. Forget about them.
12 I don't want to talk about brackets. I want to
13 talk about this job. Do you agree or do you not
14 agree that Library Associates is not required to
15 pay Balfour Beatty twice for the same work?

16 A. Again, I'm going to say that's going to
17 happen every time.

18 Q. Okay. That's fine.

19 A. Because there's a circumstance like the
20 brackets --

21 Q. That's fine.

22 A. -- where it's the same scope, but it was
23 approved incorrectly. And in that case, they
24 should have to pay for both sets of brackets.

25 Q. All right. Let's go to 221. I'm sorry,

1 I missed one. All right. What does 215 show?

2 A. (Inaudible) lighting controls.

3 Q. Okay. Is there a second page to --

4 A. I don't see it.

5 Q. It says one of two. Is there a second
6 page to this letter?

7 A. There should be. I don't see it,
8 though.

9 Q. Do what?

10 A. I do not see it.

11 Q. Number 221 -- go back to the 221. What
12 is this for?

13 A. Additional tinting of Hope's store front
14 windows.

15 Q. All right. This letter is unsigned.
16 It's dated February 6th, 2018. Can you testify
17 here under oath that that letter was actually
18 sent to Library Associates?

19 A. This specific one, no.

20 Q. All right. Let's go to 223. 3,304,
21 guest room 603, wall concrete. What
22 subcontractor would this be for?

23 A. Precision Walls.

24 Q. Precision Walls. And do you know
25 whether Balfour Beatty has paid Precision Walls

1 for this?

2 A. I do not.

3 Q. 227, warehousing and handling of
4 mirrors, \$9,169. Does Balfour Beatty have any
5 obligation, when products are delivered, to
6 inspect them for damage and install them
7 undamaged?

8 A. Do we have an obligation to inspect them
9 for damage and install them undamaged?

10 Q. Without damage. Let's take away the
11 second part. Does Balfour Beatty have any
12 obligation, under the contract when it is shipped
13 the materials, to inspect them for damage?

14 A. Not all of them. There were 200 and
15 some-odd materials.

16 Q. Just some of them?

17 A. You can't expect us to inspect all of
18 them re-box them and store them. But it's
19 unreasonable. We did inspect a portion of them.

20 Q. All right. Number 244, do you see that
21 one? It doesn't have a tab. It's 244. It comes
22 next.

23 A. It's got a tab, or mine does.

24 Q. Yours does?

25 A. Yeah.

1 Q. Okay. And that's a credit, right?

2 A. Yes.

3 Q. All right. Did the owner disagree with
4 the amount of that credit?

5 A. I'm not sure.

6 Q. Okay. Exhibit 6. Explain this to me.

7 A. SI10 ballroom wall change? Is that the
8 one we're talking about?

9 Q. The additional lights to elevators is
10 what I'm talking about.

11 MR. HILDEBRAND: I'm sorry, what
12 are we on?

13 MR. BUNDY: It's 246.

14 THE WITNESS: Mine is out of order.

15 BY MR. BUNDY:

16 Q. Did we miss one?

17 A. Mine is out of order. I think everybody
18 else fixed theirs.

19 Q. Huh?

20 A. Everybody else fixed theirs yesterday,
21 and I didn't.

22 Q. I gotcha.

23 A. So 246 SI67 elevator cab finishes. It's
24 for millwork revisions, electrical revisions, a
25 revised handrail in the elevators and updated

1 elevator cab millwork.

2 Q. All right. Do you know whether Watson's
3 shop drawings were correct or not?

4 A. Watson's shop drawings?

5 Q. Yes, for the lighting in the elevator.

6 A. No. Watson wouldn't have produced shop
7 drawings for lighting in the elevator. They
8 listed their product data.

9 Q. Okay. So it's your testimony, Watson
10 didn't reduce any drawings related to the
11 electrical in the elevators?

12 A. Shop drawings?

13 Q. Shop drawings, yes, sir, shop drawings.

14 A. No. They, in all likelihood, product
15 data for what fixture was going to be installed.

16 Q. What are shop drawings?

17 A. Typically shop drawings are drawings
18 that show how something is built. It's a
19 document subcontractor's use to clarify or show
20 to the design team how something is going to come
21 together.

22 Q. Who creates shop drawings?

23 A. The subcontractor.

24 Q. Who's responsible for the accuracy of
25 the shop drawings?

1 A. That's the -- the accuracy? Well, the
2 architect would use it and ensures they're
3 accurate.

4 Q. The architect is responsible for the
5 accuracy of the shop drawings?

6 A. Everybody is responsible for it. The
7 subcontractor submits it to us. We review it.
8 We submit to the architect for the ultimate
9 review. The architect returns it.

10 Q. So it's your belief in the construction
11 industry, when an architect reviews a shop
12 drawing and he misses a mistake, it's the
13 architect responsibility?

14 A. Depends on the mistake.

15 Q. Depends on the mistake. Does it depend
16 on whether the mistake is caught or not or
17 whether the mistake exists?

18 A. Depends on the circumstance. I mean,
19 ultimately, we're responsible for what's on the
20 drawings. A lot of -- we submit drawings with
21 the expectation the architect reviews them and
22 thoroughly. If something is missed, it really
23 depends on what's missed, if it -- and whose
24 responsibility it is.

25 Q. Do you know if your opinion conflicts

1 with the contract documents, what they say?

2 A. No, I -- go ahead.

3 Q. Okay. Well, do you know whether your
4 opinion that you just gave conflicts with what
5 the contract documents say?

6 A. No.

7 Q. You don't know. And do you know whether
8 the opinion you just gave contradicts a general
9 understanding of the construction industry, which
10 has been in existence -- for an understanding
11 that's been in existence for at least 50 or 60
12 years?

13 A. I mean, the general understanding is
14 that ultimately, we're responsible to install
15 what's on the -- what's on the contract
16 documents.

17 Q. Who's responsible?

18 A. That that -- the contractor and the
19 subcontractors are.

20 Q. So the subcontractors are responsible
21 for their shop drawings?

22 A. Generally speaking, they're responsible
23 for it and they're responsible for the contract
24 documents.

25 Q. Who is responsible for an error in the

1 shop drawings that the architect does not
2 discover in his review of the shop drawings?

3 A. It depends. If we're asking a question
4 in the shop drawings, if we're asking how should
5 we install this because the documents don't say,
6 then I would say the architect is responsible.
7 If it's wrong based on the contract documents,
8 then the subcontractor and contractor are
9 probably responsible.

10 Q. Okay. And you would say that not as an
11 architect but as someone with a degree in
12 management and society, correct?

13 A. That's my degree, and that's what I'm
14 saying.

15 Q. And you're not an architect?

16 A. I'm not architect.

17 Q. And you haven't -- and you can't tell me
18 what the document say as it relates to this? So
19 you don't remember what they say?

20 A. The drawings or the contract?

21 Q. The documents, the contract documents.

22 A. I don't know exactly what it says.

23 Q. Do you know whether the contract
24 documents even speak to shop drawings?

25 A. I think we're responsible for producing

1 them.

2 Q. Yeah. But my question to you was -- and
3 I will ask it one last time -- is the architect
4 responsible for a shop drawing that he reviews
5 and he doesn't find an error made by the
6 subcontractor or contractor that produced the
7 drawing? Who's responsible for the mistake if
8 the architect doesn't discover it? The architect
9 or the contractor?

10 A. I'm not sure.

11 Q. You're not sure?

12 A. No, I'm not sure.

13 Q. We can go back to the documents to
14 decide, right?

15 A. That's right.

16 Q. Do you understand that a contract is a
17 device whereby people identify risks and then
18 share or allocate those risks --

19 A. That's right.

20 Q. -- between the two of them?

21 A. That's right.

22 Q. Okay. And you understand that that
23 allocation of risk changes the price of a
24 contract, correct?

25 A. Sure.

1 Q. And if people allocate risks, they have
2 to have enough experience to know what those
3 risks are so they can properly allocate them,
4 correct?

5 A. That's right.

6 Q. Okay. So it behooves someone like by
7 Balfour Beatty, when they sign a contract that's
8 provided to him in a request for proposal, to put
9 it in front of somebody who knows enough to know
10 if those risks are being reallocated?

11 A. Can you ask that again?

12 Q. Sure. It behooves a general contractor
13 like Balfour Beatty, when they're provided a
14 contract from an owner, okay, that changes --
15 let's say, the standard document.

16 To carefully review those documents to
17 determine if the risks have been reallocated, if
18 there's more risk on the contract than there
19 normal would be, so they can make an informed
20 about whether they want to enter into the
21 contract or not; is that a fair statement?

22 A. Yes.

23 Q. And nobody made Balfour Beatty sign this
24 contract, did they?

25 A. Not that I'm aware of.

1 Q. Okay. And Balfour Beatty had in-house
2 counsel to review this contract before it was
3 signed?

4 A. Yes.

5 Q. And it was negotiated; is that correct?

6 A. My -- it was before I was on the
7 project, but my assumption is, yes.

8 Q. All right. Let's go to 249, Exhibit 12.
9 This is a ballroom wall change, \$4,838.77. Do
10 you know whether or not Balfour Beatty has paid
11 Premier Exteriors?

12 A. On this one specifically, no.

13 Q. All right. And if they hadn't paid it,
14 they're not entitled to the 290.32 in markup, are
15 they?

16 A. Again, the work was performed. Are we
17 entitled to fee and overhead from that? I'm not
18 sure.

19 Q. All right. Number 250, has this amount
20 been paid to First Choice Glass?

21 A. I don't know.

22 Q. Okay. Number 251. Do you have any
23 explanation as to why this letter by Dooley is
24 not signed?

25 A. No, sir.

1 Q. He left the job, what, about three days
2 after this? He left, I believe, on Labor Day of
3 this year; is that correct?

4 A. I do not know that. I do not believe
5 that's true, though.

6 Q. Do you know who prepared this letter?
7 Do you think Mr. Dooley actually prepared this
8 letter?

9 A. The contents of it?

10 Q. Yeah.

11 A. He likely prepared it.

12 Q. Okay. Number 253, Exhibit 12. Add
13 crown and rotunda, right?

14 A. Right.

15 Q. And that would be a Low Country Case and
16 Millwork claim?

17 A. Request for change order, yes.

18 Q. And this request for change order came
19 from Balfour Beatty?

20 A. We submitted it.

21 Q. All right. So this is a change order
22 initiated by Balfour Beatty because they were
23 being called upon to do what they consider to be
24 extra work -- or their subcontractor was?

25 A. Yes.

1 Q. Isn't it true that the interior design's
2 disposition was, that had always been in the
3 plans?

4 A. I believe the interior designer --

5 Q. That they believed that Low Country
6 missed this work in their estimate, and it was
7 always part of their work?

8 A. I believe the interior designer had said
9 that it could be interpreted that that was in the
10 plans.

11 Q. Okay. Could be interpreted?

12 A. Yes.

13 Q. Now, are you aware of the provisions in
14 this contract, which say that, if there's any
15 discrepancy or dispute, that the contractor is
16 assumed to have bid the most expensive and the
17 highest quality -- I mean, and the most quality.
18 Are you familiar with that provision?

19 A. If there's two things shown, we're
20 expected to have one or -- to have the higher end
21 of the two.

22 Q. Exactly. So the owner knows, if there's
23 any problems, y'all have bid -- he's told you to
24 bid the higher, more expensive, higher quantity
25 because that's just what you agreed to do, right?

1 A. That's right.

2 Q. Okay.

3 A. We're not talking specifically with this
4 change order, but, yes, generally, you're
5 correct.

6 Q. And that same provision is not only in
7 the general conditions, it's in your subcontract
8 with the general contractor, is it not?

9 A. Sure, yeah.

10 Q. And y'all passed this claim along to us.
11 Has it been paid?

12 A. I do not believe it has.

13 Q. Okay. And did Balfour Beatty look into
14 this to make a determination as to whether or not
15 Low Country was entitled to this additional work
16 because, in fact, they had missed the work?

17 A. That's not -- that's not what we -- we
18 did not believe that Low Country missed the work.
19 We believed they were owed it.

20 Q. You believe they were entitled to it?

21 A. Yes, sir.

22 Q. Okay. But if the architect or the Judge
23 ultimately decides that they're not -- that
24 you're not entitled to it, then clearly, under
25 your subcontract, Low Country is not going to be

1 entitled to it, right? They're going to -- it's
2 going to be sauce for the goose; sauce for the
3 gander, right?

4 A. I don't disagree with that. You would
5 have to look at how the provisions of the
6 contracts are worded.

7 Q. All right. Let's go to 255. Well,
8 let's go back to 254, I'm sorry. Are you with
9 me? 43,000 bucks. Explain this to me.

10 A. Is this the one we withdrew yesterday?

11 Q. Sir?

12 A. This is the one we withdrew yesterday?

13 Q. Oh, you withdrew it?

14 A. That's what I remember.

15 Q. And I've forgotten, why did you withdraw
16 it?

17 A. I don't believe this work was performed.

18 Q. All right. Well, there was a decorative
19 screen allowance, wasn't there?

20 A. Yes, sir.

21 Q. \$50,000?

22 A. Yes, sir.

23 Q. Did you give us our credit for the
24 50,000 bucks?

25 A. Yesterday?

1 Q. Yeah.

2 A. It's shown on this change order.

3 Q. Okay. Gotcha. But I thought you were
4 withdrawing the whole change order?

5 A. Again, this is the change order that we
6 submitted --

7 Q. That's you're withdrawing?

8 A. I can't speak to what we did yesterday.
9 I didn't make that decision.

10 Q. Gotcha.

11 A. This was the change order on August
12 21st, 2019. It had the credit in it.

13 Q. Okay. Let's go to the next one, the
14 255, trim for pocket doors. Has Low Country
15 Millwork been paid that number, 11,000 bucks?

16 A. I don't believe so, but I'm not a
17 hundred percent sure.

18 Q. Did you ever hear anyone say that this
19 header was not a result of any design change; it
20 just had to hide poor workmanship, that the
21 header was necessary to hide poor workmanship in
22 the installation of the pocket doors?

23 A. No one ever told us that.

24 Q. Pardon me?

25 A. No one ever told us that from the --

1 Q. Okay. Do you have an opinion as to
2 whether or not the header was required because of
3 poor workmanship?

4 A. The header? The added trim? It's for
5 the added trim around the header.

6 Q. Yeah, the added trim.

7 A. No. I have an opinion that this was
8 added because it wasn't shown on the design
9 drawings.

10 Q. Pardon me?

11 A. Mr. Bennett asked us to add this to
12 conceal the pocket doors headers.

13 Q. Right.

14 A. It wasn't show on the drawings; so we
15 didn't install it originally.

16 Q. Right.

17 A. He asked us to do it so we did it.

18 Q. Right. But if you did it and did it
19 poorly, and as a result of doing it poorly,
20 incurred additional costs, does he also owe the
21 additional work to get it correct?

22 A. No one said we did it poorly.

23 Q. Okay. You're not aware of anybody
24 saying that?

25 A. No, I don't -- I mean, they never told

1 me it was installed poorly.

2 Q. All right, sir. Let's look at number
3 258. Now, this letter from you is dated March
4 28, 2019, right?

5 A. Yes, sir.

6 Q. All right. What are the dates of the
7 backup from these subs for this work? Because
8 this letter is dated March 28, 2019, and that's
9 three months after the job was over, right?
10 Correct?

11 A. Three months after the substantial
12 completion.

13 Q. Substantial completion. You get a
14 letter wanting this extra money. Now, by this
15 time, you were no longer spending 50 percent of
16 your time between your other jobs and working on
17 the claim, right? Or were you still working on
18 the claim?

19 A. We were still working on the claim.

20 Q. Right. And this was part of the work
21 you were doing on the claim. You were going back
22 through the entire job and gathering up all the
23 information you could find about making claims
24 for additional money and time, right?

25 A. I was going back and gathering

1 information on the work that had not been paid
2 and that was owed, cost of the work.

3 Q. Right. And this work that had not been
4 paid, according to the backup, occurred during
5 what time period?

6 A. July of 17.

7 Q. What year?

8 A. July of 17, 2017.

9 Q. Okay.

10 A. August of 2018; so about five months
11 prior to this being submitted. March 28, 2019.

12 Q. All right, sir?

13 A. July 2nd of 2019; so over a year-plus
14 period of time.

15 Q. All right. Let's look at number RCO
16 259. This work was required by the Department of
17 Transportation, right?

18 A. Yes, sir.

19 Q. And it was a requirement of the street
20 closing permit that was obtained by Balfour
21 Beatty to use part of the street as a lay down
22 yard, right?

23 A. The mill and overlay was. This was an
24 existing faulty box in the storm box. This
25 wasn't because of the street closer.

1 Q. Okay. Who made you fix it?

2 A. The City.

3 Q. Okay. And did Balfour Beatty -- I mean,
4 did Library Associates make you fix it?

5 A. I believe they did as well. I mean,
6 I -- you know, we did it. We fixed it.

7 Q. Well, I understand you fixed it.

8 A. The City made us fix it.

9 Q. I understand you fixed it, but you want
10 us to pay for it, right?

11 A. That's right.

12 Q. Okay.

13 A. I don't want the City to pay for it.

14 Q. Pardon me?

15 A. The City is not going to pay for it.

16 Q. No, and neither are we. Okay? You got
17 a permit from the City of Charleston to build a
18 hotel?

19 A. That's right.

20 Q. In the name of Balfour Beatty?

21 A. That's right.

22 Q. And y'all engaged the City to use their
23 streets to make -- to build a construction. As
24 part of that agreement, you had to put it back
25 into -- put it back into repair, correct?

1 A. This is an underlying condition that we
2 didn't know anything about; we couldn't know
3 anything about.

4 Q. And that's an underlying condition and
5 dispute that you have with the City of Charleston
6 because the -- Library Associates never made you
7 do anything?

8 A. I believe this is a requirement.

9 Q. Pardon me?

10 A. This is a requirement. Somebody has to
11 pay us for the work.

12 Q. Well, and between Library Associates and
13 the contractor, who is supposed to meet the
14 requirements for building the building and
15 getting the permits and complying with the
16 permits?

17 A. This wasn't on the drawings. This -- I
18 don't understand how we would have known to do
19 this. It's an underlying condition. The owner
20 got the benefit.

21 Q. You apparently know a good bit about
22 construction. Do you know what an unforeseen
23 subsurface condition is? Type one, type two and
24 type three?

25 A. I don't know the difference between the

1 three.

2 Q. Of course you don't. Okay. Let's go to
3 number 260. Added wall covering. Now, this is
4 Quantum. Do you know whether this has been paid?

5 A. No, sir.

6 Q. The invoice refers to Merit Professional
7 Coating, right?

8 A. Yes.

9 Q. All right. Now, Merit was a predecessor
10 to Quantum; is that correct, or do you know?

11 A. Same company.

12 Q. Pardon me?

13 A. Same group. Quantum -- the owner of the
14 local Merit franchise bought it and named it
15 Quantum. So it's the same company.

16 Q. Different legal entity?

17 A. That's correct.

18 Q. Okay. Thank you. Do you know when that
19 took place, the change?

20 A. When the change? I don't remember.

21 Q. Well, if it took place before the date
22 of this backup, which is November of 2018, do you
23 have an explanation as to why we have something
24 on Merit Professional Coating?

25 A. No. If that's what's there, I don't

1 know why it's titled Merit.

2 Q. Let's go to 261, accordion door
3 reconciliation. This is out, right? Y'all have
4 removed this one, right?

5 A. I believe so.

6 Q. All right. He hasn't taken the oath.
7 Okay? So you don't get to nod to the lawyer over
8 here about your testimony. You look at me or the
9 Judge. Okay?

10 A. Okay. I thought you were asking it to
11 the Court, sorry.

12 Q. 261 is out. Do you have any problem at
13 all with testifying to a document and asking for
14 \$71,000 in open court and you have no idea
15 whether it's due or not? Does that bother you at
16 all?

17 A. Pardon?

18 Q. Does it bother you at all that you came
19 in here on Friday and testified my client owed
20 Balfour Beatty \$71,000 and had to withdraw it?

21 A. I don't believe I -- I don't believe I
22 testified on Friday that your client owed Balfour
23 Beatty \$70,000. I believe we agreed that the
24 work wasn't performed.

25 Q. Let me ask it to you this way. We've

1 gone through about half of this. Do you believe
2 this Exhibit 12 fairly represents what Balfour
3 Beatty is due, based upon taking hundreds of
4 thousands of dollars out of the claim just on
5 cross-examination and direct examination? Do you
6 think it's a fair representation, or is it full
7 of errors and mistakes?

8 A. I believe there are errors and mistakes.
9 I don't believe there -- I believe that the
10 majority of this is a good representation.

11 Q. The majority. Okay. Let's say it's 8
12 million dollars. If it's 6, is that close enough
13 for you?

14 A. That's not my call to make.

15 Q. Okay. Well, where in the contract does
16 it say that y'all can just simply come in and
17 make a claim and all you have to do is sort of
18 get the majority of it right? Don't you have to
19 get it all right?

20 A. Pardon?

21 Q. Don't you have to get your claims and
22 your numbers and your costs and your accounting
23 all right? The contract doesn't say you have to
24 get most of it right. You have to get it all
25 right, don't you?

1 A. I believe that. I believe the mistakes
2 are made as well.

3 Q. All right. TV wall revision number 262,
4 \$15,000. Do you know whether P Wall has been
5 paid 64?

6 A. I do not.

7 Q. All right. Let's go to -- that was 262.
8 This is 264. All right. Let's look at this one,
9 Pasco. Have they been paid the 79?

10 A. I don't believe they have.

11 Q. How about P Wall, the \$3,024?

12 A. Again, as I sit here today, I don't
13 believe they have, but I don't know.

14 Q. Okay. And as we said before, those
15 haven't been paid and they're not cost of the
16 work. The BBC markup goes down at least to that
17 extent, correct?

18 A. That's not what I said before; so I'm
19 not sure how the contract works, if we're owed a
20 fee on work that took place and overhead on work
21 that took place.

22 Q. Okay.

23 A. Just because the owner, if they did,
24 selected to pay a contractor direct, I don't know
25 if we're still owed overhead and fee on that

1 work. If we managed the work, if we ensured it
2 was performed, I don't know if we're owed a fee
3 or overhead. Just because the owner likely
4 didn't pay them directly, if they did. I don't
5 know if that's the case.

6 Q. 266, additional framing. You don't know
7 whether they paid P Wall, right?

8 A. No, sir.

9 Q. Let's look at the next one, which is
10 267, September 7, 2018. It's a letter from
11 Dooley, not signed; is that correct?

12 A. Yes.

13 Q. And is it true that the backup is 14
14 months prior to the date of the letter requesting
15 the change order?

16 A. This backup is --

17 Q. Pardon me?

18 A. This backup is -- it says, Tuesday,
19 August 14. This letter says, August 14 of 2018;
20 this letter says, September 7th, 2018.

21 Q. So what would it be?

22 A. There was another change. There's -- so
23 there's an initial change order request of June
24 14, 2017. There was a follow-up e-mail from
25 August 14, 2018.

1 Q. All right.

2 A. So, again, about three weeks of delta
3 between the letter -- between both of the e-mails
4 from Alec.

5 Q. All right. Exhibit 270.

6 A. 268 or 270?

7 Q. All right. Do you know whether the
8 \$47,000 has been paid to P Wall?

9 A. No, I don't. I believe it has, but I'm
10 not sure.

11 Q. And this work was in March, but the lien
12 and the complaint had already been filed, right?
13 Is that correct?

14 A. We would have to check the dates. If it
15 was prior to that, then yes.

16 Q. All right. Let's go back to 268 a
17 minute, I'm sorry.

18 A. Uh-huh.

19 Q. This was metal work at Camilla's Bar?

20 A. Yes.

21 Q. And under subs you've got SEAS, S-E-A-S.
22 Who is that?

23 A. I'm sorry, SEAS?

24 Q. Yes, sir.

25 A. Southeastern Architectural Systems.

1 Q. And what are they allegedly due, \$37,894
2 for?

3 A. For MT03, metal 03 and metal 04.

4 Q. And do you know if this work was
5 actually done?

6 A. Yes, sir, it was.

7 Q. Okay. Do you know if it was paid?

8 A. I do not.

9 Q. All right. 270, 271. Is that
10 including -- you don't know whether that was paid
11 either, do you?

12 A. No, sir.

13 Q. Okay. Let's go to 272, \$19,286.37. Was
14 this done?

15 A. Yes, sir.

16 Q. Was it paid?

17 A. I'm not sure. It's happened since I
18 left Balfour Beatty.

19 Q. David Allen tile charges, 273, \$111,000?

20 A. Yes, sir.

21 Q. This change order log starts -- or the
22 change order request log starts in 2016; is that
23 right?

24 A. Yes.

25 Q. And that was from the subcontractor to

1 the general contractor, right?

2 A. I believe so.

3 Q. Sir?

4 A. I believe so.

5 Q. Okay. So there was no notice given
6 to -- or at least this doesn't signify -- this
7 document would not have given Library Associates
8 notice of this work unless it had been forwarded
9 on to Library Associates; is that correct?

10 A. This document?

11 Q. Yes.

12 A. Correct. Unless this was forwarded onto
13 to Library Associates.

14 Q. Yes. When?

15 A. I don't know.

16 Q. Okay. Is it more likely than not, the
17 first time Library Associates saw this document
18 that had been transmitted to Balfour Beatty in
19 April of 2016, was, in fact, when it accompanied
20 this letter of -- what is the date? Is there a
21 date on this thing?

22 A. I don't see one.

23 Q. Okay. So who wrote this?

24 A. I did.

25 Q. You wrote it, right?

1 THE COURT: Who is it addressed to?

2 MR. BUNDY: It's addressed to --

3 THE WITNESS: Myself.

4 MR. BUNDY: He sent it to himself.

5 BY MR. BUNDY:

6 Q. Are you going to pay it? Because I will
7 be glad to let you pay it if you'd like.

8 A. I'm not going to pay it.

9 Q. Okay. Well, why did you send it to
10 yourself if you weren't going to pay it?

11 A. This is a mistake.

12 Q. Okay. Well, it's not -- okay. Do you
13 know it was sent?

14 A. Pardon?

15 Q. Do you know if it was even sent?

16 A. I believe. I would have to check
17 outgoing e-mails, and this may be a -- I may have
18 fixed it and sent the correct one. I'm not sure.

19 Q. You may have, yeah.

20 A. That's right.

21 Q. You may have. Do you really believe
22 that you may have sent an undated letter to
23 yourself?

24 A. Pardon? To myself?

25 Q. Do you really believe that you sent an

1 undated, unsigned letter to yourself?

2 A. No.

3 Q. Okay. Where is the one that you sent?

4 A. It's not in this -- it's not in this
5 tab.

6 Q. Wouldn't it make more sense, if you were
7 going to ask someone to pay \$111,000 in open
8 court, that you would at least have brought a
9 signed cover letter in that showed the letter was
10 delivered and not this ridiculous thing?

11 A. You're calling it ridiculous. I believe
12 it would make more sense if it was signed and
13 addressed to the right person.

14 Q. Yes, it would. Would it make more
15 sense?

16 A. It would make more sense.

17 Q. Okay.

18 A. I do believe this is cost of the work
19 that added to -- the owner got the benefit of,
20 and they should pay for it. I do believe that.

21 Q. Are unsigned, undated letters to
22 yourself kept in the ordinary and normal course
23 of Balfour Beatty's business?

24 A. No.

25 Q. Is this how y'all do business?

1 A. No.

2 Q. Is this an accurate record?

3 A. Pardon?

4 Q. Is this letter an accurate record?

5 A. This is not an accurate record.

6 MR. BUNDY: Okay. Your Honor, I
7 move to strike that. I mean, you know, we were
8 told on direct that all of these things were part
9 of the business records. I mean, we're getting
10 to a point now where I think there's an apparent
11 unreliability to all of this, and I would ask the
12 Judge to consider that you when you look at these
13 documents.

14 THE COURT: Mr. Hildebrand, do you
15 want to be heard?

16 MR. HILDEBRAND: Your Honor, that
17 might go to the weight of it; however, this
18 witness has testified that this was provided, and
19 in his view, his recollection, by the time he
20 left, it had not been paid for.

21 So I think he described it, but I could
22 certainly try to find the -- and I apologize. In
23 getting all of these documents together, I would
24 be shocked if there wasn't a couple in this one.
25 I apologize. I will see if I can get it

1 straightened out and get the e-mail that sent
2 this. And we can go from there.

3 THE COURT: That may be helpful
4 because it is in evidence, but it certainly is
5 questionable based on its origin from and to
6 whom, I would agree with that.

7 MR. BUNDY: Could I get a ruling,
8 Your Honor, that when his case -- when he closes
9 his case and says, I'm done, that he's done and
10 doesn't continue to get to send evidence in; and
11 we're not going to come in and try to fix things
12 and all of that? At some point, we've got to get
13 done with this case.

14 THE COURT: That's usually the way
15 it works.

16 MR. BUNDY: This is not discovery.
17 This is a trial.

18 THE COURT: I'm sure Mr. Hildebrand
19 agrees with that.

20 MR. HILDEBRAND: Well, Your Honor,
21 I agree that we try to put in the evidence as
22 best we can. But I also know that when the
23 defense puts up evidence, they may call somebody
24 and question something that we hadn't seen. And
25 there is some explanation that might be necessary

1 on redirect, and that's why you have redirect.

2 And I don't think Mr. Bundy can say
3 that -- change the rules of trials and evidence
4 about redirect. So I absolutely don't agree that
5 we are prohibited from responding to whatever
6 defenses he might put up there.

7 THE COURT: All right. I'm with
8 you. I'm with you. That's a whole different
9 process. But we're still in the plaintiff's case
10 and they have not yet rested; so they can
11 supplement it.

12 MR. BUNDY: I just wanted to make
13 sure that's the way it was going to go.

14 THE COURT: I hope so.

15 BY MR. BUNDY:

16 Q. All right. Let's go to 274. All right.
17 This is another undated letter that you wrote to
18 yourself?

19 A. That's what is shown here.

20 Q. Yes. 174 -- or excuse me, 274 in
21 Exhibit 12.

22 A. That's what we're looking at.

23 Q. We're looking at an undated letter you
24 wrote to yourself?

25 A. This is an undated letter addressed to

1 myself.

2 Q. Okay. Did you get it?

3 A. Pardon?

4 Q. Did you get it? Did you receive it?

5 A. Do you want to check the record?

6 Q. Sure. Did you get it?

7 A. Did I get the letter I sent to myself?

8 Q. Yeah.

9 A. I got the letter right here.

10 Q. All right. So where is the backup for
11 this \$30,537?

12 A. It's the last page of the attachment.
13 There should be work tickets accompanying it,
14 daily work tickets.

15 Q. And this occurred -- now, you were --
16 this would have been the period of time after the
17 job was substantially complete when you were
18 spending 50 percent of your time still working on
19 the paperwork at this job and working on other
20 jobs at Balfour Beatty, correct?

21 A. Yeah. This is when the owner was still
22 issuing a punch list after we completed the
23 architect's punch list.

24 Q. Okay. All right.

25 A. And this is our third punch list. We

1 talked about it Friday, that they had their
2 operator go through it after we had satisfied
3 those two punch lists.

4 Q. Do you know whether Quantum Coatings has
5 been paid this amount?

6 A. No, sir.

7 Q. All right. Let's just look at this.
8 This is just a summary of work, right?

9 A. Yes.

10 Q. There's no backup? There's no daily
11 reports here or nothing?

12 A. They're not in here. There's signed
13 work tickets for this work, but they're not --

14 Q. They're not in the claim, though?

15 A. They're not in this exhibit, no.

16 Q. And the best evidence of what happened
17 on a particular day would be the work orders on
18 that day, right?

19 A. The signed work tickets?

20 Q. Yes, yes. The best evidence of what
21 occurred are the signed work tickets, not a
22 compilation of documents we don't have in front
23 of us?

24 A. That's correct.

25 Q. Okay. And it wouldn't be fair not to

1 allow someone you were asking to pay \$30,000 --
2 it wouldn't be fair not to show them those
3 tickets so they could add them up themselves to
4 make sure they were properly added up, correct?
5 That wouldn't be fair, would it?

6 A. I don't know that it's fair or not.
7 But, I mean, the work was executed, and we
8 submitted a change order for it.

9 Q. All right. One of these says, for 1, 2
10 and 9, miscellaneous repairs -- okay. Out of
11 scope rework. What does that mean? That's from
12 11/5/18 to 11/26/18, out of scope rework.

13 A. That means that the operator,
14 Salamander, went through and put a punch list
15 together for work that he felt was -- Quantum
16 felt was out of their scope. But we agreed to
17 fix it, and the owner told us they'd pay for it.

18 Q. All right. And where are those punch
19 lists?

20 A. Pardon?

21 Q. Where are those punch lists?

22 A. Salamander delivered them to us via the
23 owner's rep.

24 Q. But are they in this courtroom?

25 A. They're not in this exhibit. I don't

1 know if they're in the courtroom.

2 Q. Would the best evidence of whether or
3 not the work was in or out of the scope of work
4 be to compare the punch list against the plans
5 and the plans and the punch list against the --
6 Salamander's complaints? I mean, that would be
7 the way to do it, wouldn't it?

8 A. The plans aren't going to show what's on
9 a punch list.

10 Q. Okay. All right. Well, the plans will
11 show what the scope of work is. If the
12 allegation is that the work was out of the scope
13 of work, the plans show the scope of work,
14 correct?

15 A. The allegation is that we had already
16 executed the punch list.

17 Q. Well, but this -- okay. But all I'm
18 doing is reading this. Out of scope of rework.

19 A. Right. He asked us to do something for
20 the third time when you've already authored that
21 you've done it for the first two times. That's
22 considered -- we consider that out of scope, and
23 our subcontractor considers that out of scope.

24 Q. But, again, you don't know whether this
25 has been paid for?

1 A. No, sir.

2 Q. Okay.

3 THE COURT: Let's take five
4 minutes.

5 (A recess transpired.)

6 THE COURT: All right, Mr. Bundy.

7 (DFT. EXH. 19 was marked for
8 identification.)

9 BY MR. BUNDY:

10 Q. Mr. Starcevic, I've handed you what's
11 been marked for identification as, I believe,
12 Defendant's Exhibit 19, correct?

13 A. Yes, sir.

14 Q. Can you identify this document?

15 A. It's a change order recorded to Merit
16 Group -- Merit Professional Credit Unions for
17 time and material, repainting \$19,309 - 319.11.

18 Q. All right. And the date of the change
19 order?

20 A. April 23rd, 2019.

21 Q. Pardon me?

22 A. April 23rd, 2019.

23 Q. Okay. This is after the job had been
24 substantially complete. Were you still doing 50
25 percent of your time handling these things?

1 A. Probably.

2 Q. You recognize this document?

3 A. Yeah, it looks familiar.

4 Q. And so --

5 MR. BUNDY: Your Honor, I move to
6 introduce this into evidence as Defendant's
7 Exhibit No. 19.

8 THE COURT: Defendant's 19. No
9 objection?

10 MR. HILDEBRAND: I don't know what
11 it is. It's not signed. I just don't know what
12 this is.

13 THE COURT: All right. Help me out
14 again. I know you laid some foundation. It's
15 from whom to whom?

16 BY MR. BUNDY:

17 Q. Did you prepare this document? Did you
18 fill it out?

19 A. It looks like it.

20 Q. So you prepared the document, and you
21 recognize it as a BBC document?

22 MR. BUNDY: It's just like
23 unsigned, like half the stuff y'all presented.

24 THE COURT: Okay. This is a BBC
25 document.

1 MR. HILDEBRAND: No objection.

2 THE COURT: Without objection.

3 Okay. Thank you, sir.

4 (DFT. EXH. 19 was received in
5 evidence.)

6 BY MR. BUNDY:

7 Q. So you prepared this? This is your
8 language?

9 A. Yeah, it appears so.

10 Q. I mean, it's a form, but you added
11 language?

12 A. Yeah. I added the value and what's
13 below the cost.

14 Q. All right. And did anybody help you do
15 this?

16 A. I don't remember, Mr. Bundy. I don't
17 remember who helped me do this.

18 Q. But you would have done it in the normal
19 course of your -- at that time, the normal course
20 of your work for Balfour Beatty, which was after
21 this job was over, go back and work on the
22 paperwork?

23 A. That's right.

24 Q. Okay. This is change order number 40.
25 Is that a numbering system by and between SBC

1 Group, LLC; PPA, Merit Professional Coatings; and
2 Balfour Beatty Construction?

3 A. Yes.

4 Q. Okay. There's not a change order number
5 relative to anything with the owner or any other
6 subcontractor? Everybody had their own numbers?

7 A. Yes.

8 Q. Okay. And there's not -- all of them
9 would have the same change orders, right?

10 A. That's correct.

11 Q. Okay. So the original previous contract
12 amount was a 1,001,342.11, and this was an add of
13 19,319.11. New contract amount now between SBC
14 Group and Balfour Beatty, as of the date of this
15 change order, April 23, 2019, which was
16 originally signed on June 29, 2015, is now
17 \$1,159,661.21, correct?

18 A. Assuming they had no problems and this
19 is fully executed, then that would be correct.

20 Q. Okay. But what we're looking at here
21 is, at the minimum, an offer that's being made by
22 Balfour Beatty to SBC Group?

23 A. Correct.

24 Q. We don't know whether they accepted your
25 offer, but you made the offer?

1 A. Correct. Assuming this was sent to
2 them, yes.

3 Q. Okay. And it says, it is desired -- it
4 being desirable to modify the work under the
5 above contract in accordance with the contract
6 documents. Now, the contract documents you're
7 referring to are subcontract documents, general
8 conditions. Everything is incorporated in your
9 subcontract, correct?

10 A. That's probably a fair statement.

11 Q. Okay. Because your subcontractor
12 incorporates, by reference, it includes all the
13 general conditions, the plans and the AIA 201,
14 B133, all of them, right?

15 A. There's some flow down from that.

16 Q. Okay. Some flow down or all flow down?

17 A. I believe all flow down. I mean,
18 they've got a marked up version of it, but --

19 Q. And, in fact, your subcontractors assume
20 all the responsibility that you -- that BBC has
21 to the owner, the subcontractor assumes that
22 responsibility, the same responsibility y'all
23 had, exactly the same, as it relates to their
24 scope of work?

25 A. Generally speaking, yes.

1 Q. Okay. Because, in fact, BBC doesn't
2 actually perform any work; they manage and they
3 keep up with money and they run schedules?

4 A. We perform miscellaneous work, but the
5 bulk of it is performed by subcontractors.

6 Q. It would be less than one hundredth of
7 one percent of a 60 million dollar job y'all
8 actually did on this job, right?

9 A. Yeah. It's a small percentage, yeah.

10 Q. All right. So it is necessary in the
11 interest of the parties -- in the interest of the
12 parties to the above-named contract to modify
13 said contract in particular as follows. Is that
14 standard language that's always in these forms?

15 A. I think so, but we can compare it to
16 other ones. But I don't know if that's been
17 modified.

18 Q. In fact, these are standard BBC
19 documents, and y'all attach them to the
20 subcontracts so these subcontractors will know
21 what to expect when they work on your job, what
22 their pay requests need to look like, what their
23 change orders are going to look like and all the
24 rest of it, right?

25 A. Most of the time, yes, sir.

1 Q. Yeah. Because that helps y'all manage
2 the job?

3 A. That's right.

4 Q. If everybody is using different forms,
5 it makes things more complicated?

6 A. That's right.

7 Q. Okay. All right. So CI number, what is
8 that, 3274. What does CI stand for?

9 A. Cost item numbers. It's a cost item
10 number.

11 Q. It's a cost coding thing?

12 A. We generate a cost in this system. It
13 assigns a number to it.

14 Q. And then the description is Quantum C
15 change order request, 118 slash time and
16 materials. It says T and M. It stands for time
17 and materials, paint, repaint, right?

18 A. Yes.

19 Q. And then the amount is \$19,319.11 as
20 stated above, and there's a budget code, right?

21 A. Yes.

22 Q. All right. Now, that budget code, what
23 budget is that?

24 A. Exactly whatever the number is.

25 Q. No. But what is the budget that's being

1 referenced here? What budget?

2 A. The first three digits are an internal
3 number determining what's the cost of work,
4 general conditions, any other -- 400 is our cost
5 of work.

6 Q. Okay.

7 A. The 509-9-1000 typically is whatever we
8 need.

9 Q. Okay.

10 A. That's how we set our internal budget
11 up, and that's where this cost code was assigned
12 to.

13 Q. Okay. And what does the .40 reference?

14 A. It's an internal number, labor or the
15 cost of work again.

16 Q. Okay. And are those budget codes, and
17 is that the budget referenced here the same
18 budget that Balfour Beatty uses for the contract
19 between Balfour Beatty and Library Associates, or
20 is there a sort of separate contract budget to
21 keep up with the subcontractors?

22 A. It's typically pretty -- it's pretty
23 much the same. There's a -- our budget is pretty
24 much how the payout is structured. And there's
25 not a -- really, it's separate.

1 We've got -- obviously, sometimes, there
2 are more than one contractor and one budget with
3 the owner. So they have different budget
4 numbers, but our budgets are typically set up
5 pretty similar to how the owner's payout is set
6 up.

7 Q. Does the owner have access to the budget
8 during the job?

9 A. What budget? Which budget?

10 Q. This budget. The budget referenced to
11 this number.

12 A. The cost codes?

13 Q. Yes.

14 A. Our internal cost? Not necessarily.

15 Q. Okay. So the answer is no, the owner
16 doesn't have access to it?

17 A. No.

18 Q. And I'm trying to understand, within the
19 world of budgets the owner's not entitled to look
20 at, whether there are distinctions or differences
21 in the budgeting Balfour Beatty does between the
22 owner and Library Associates and the budgeting
23 that Balfour Beatty does with its subcontractors?

24 A. I don't know that I follow that.

25 Q. Okay. Well, let me see if I can --

1 maybe I can help. I don't know. The schedule of
2 values between Balfour Beatty and Library
3 Associates is a number, right? Like the
4 painters, there's a number in there for the
5 painter. Let's just pick a number out of the
6 air, 2 million bucks, right?

7 A. Okay.

8 Q. And that's in the schedule of values,
9 and that's what's used by Balfour Beatty when
10 they ask for payment?

11 A. Correct.

12 Q. All right. Now, in a normal job --
13 well, not a normal job -- in a lump sum job, if
14 the painting budget, the painting line item on
15 the schedule of values was a million -- was 2
16 million dollars, what the contractor would do is
17 they would say, okay, I'm 50 percent complete
18 with the painting. I want a million dollars less
19 retainage, right? That's the way it would work?

20 A. Right.

21 Q. You've handled lump sum jobs, right?

22 A. Yes.

23 Q. Okay. Have you handled more lump sums
24 than cost plus, or is it about the same? I mean,
25 do you have any -- more experience in one than

1 the other?

2 A. No more experience in one than the
3 other.

4 Q. Okay. In a lump sum job, that budgeted
5 number -- or that number in the schedule of
6 values is not necessarily the same as the
7 subcontract amount between the general and the
8 sub, is it?

9 A. In a lump sum job?

10 Q. Yes.

11 A. Not necessarily.

12 Q. No, not necessarily. It doesn't have to
13 be, does it? I mean, it's not a contract
14 requirement?

15 A. No.

16 Q. Okay. And, in fact, a lump sum job
17 schedule of values -- based on the schedule of
18 values, permits a contractor to actually sort of
19 front-end load and get some money that he needs
20 to start a job?

21 A. You're putting words in our mouth. It
22 depends on the agreement.

23 Q. But let's then -- but the lump sum job
24 to get paid is definitely a percentage of the
25 work. The architect goes out and says, you're

1 not 50 percent complete with the painting, you're
2 only 20 percent complete; so I'm not going to
3 certify you the other 30 percent and all you're
4 going to get is that number, right?

5 A. They have the ability to do that.

6 Q. But in a cost-plus job, what you get in
7 a pay request is not a percentage of what's on
8 the schedule of values? Even though it may say
9 50 percent, what you really get is the cost
10 that's actually been incurred and the cost of the
11 work as defined in the contract, right?

12 A. The cost of the work as it's defined in
13 the contract.

14 Q. Correct?

15 A. I believe so.

16 Q. Okay. And that's different from a
17 percentage that you would get if you had a lump
18 sum contract? You actually have to show your
19 cost in a cost-plus job to get paid on a periodic
20 basis, and a lump sum job, you don't?

21 A. If your contract stipulates that, that's
22 correct.

23 Q. Okay. That's what these say. Okay.
24 So, when we look at pay requests and it says, for
25 instance, painting 50 percent complete, right, it

1 may well be 50 percent complete, but the painter
2 may not have spent 50 percent of the -- he may
3 not have spent a million dollars, right, to do
4 that work?

5 A. It could happen.

6 Q. Pardon me?

7 A. That could happen.

8 Q. Okay. And under that hypothetical, he
9 wouldn't be entitled to the million dollars. He
10 would only be entitled to whatever he actually
11 spent less whatever he'd been paid?

12 A. The painter, yes.

13 Q. Okay. That's all I want to understand.
14 So on a job like this, wouldn't it be -- would
15 you keep two sort of budgets so you could keep
16 straight with what the contractor's actual costs
17 were, or if you have -- I'll strike that
18 question.

19 Let's put it this way. If you have a
20 lump sum subcontract and a cost-plus general
21 contract, right, the subcontractors are being
22 paid based on the percentage of the work, right,
23 percent complete if you had a lump sum contract
24 with them, or are they?

25 A. Yeah. I guess in your hypothetical,

1 that's correct.

2 Q. Okay. Well, let's remove it out of the
3 realm of hypothetical.

4 A. All right.

5 Q. Did Balfour Beatty have lump sum
6 subcontracts, or did they have cost plus
7 subcontracts?

8 A. We would have to check. We would have
9 to look at it.

10 Q. Okay. All right. Let's assume that you
11 had lump sum -- didn't you do a -- you weren't
12 involved in the buyout, though, were you?

13 A. A little bit.

14 Q. You were?

15 A. Yeah.

16 Q. Okay. Well, in the buyout is when in --
17 for like in a GMP job, the buyout is when
18 everybody came up with a number and we all agree,
19 we're probably going to have to pay the painter
20 two million bucks to get him to do this job,
21 right?

22 So it comes time. You get the contract.
23 You don't have a painting subcontract yet. You
24 may have talked to some painters and all of that,
25 and in your budget, you may have used a million

1 9. You may have used 2.6, right, or whatever you
2 used?

3 But when it comes time to sign the
4 subcontract, that's when you go to them and say,
5 look, I understand you need some work. Okay? So
6 what we'll do is, you're going to sign a lump sum
7 contract with me for a million 9 or I'm going to
8 go down the street, right? So you have a lump
9 sum contract. What happens to that \$100,000 when
10 you buy out a subcontract for less than what you
11 put in your guaranteed maximum value? Do you
12 know?

13 A. You're going to buy out and pull buyout
14 savings.

15 Q. Buyout savings. Okay. So as you go
16 forward, once you've bought all these
17 subcontracts out, you have lump sum contracts
18 with the subs, but you have cost plus -- cost
19 plus general contract with the owner.

20 You're sending percent completion
21 numbers based on a lump sum contract into a cost
22 plus contract and asserting that you have or will
23 pay that money as a percentage of your
24 subcontract; is that correct?

25 A. We're saying -- we're reviewing a

1 subcontractor schedule of values for the work
2 that they've completed, including that in our
3 draw to the owner.

4 Q. Okay. Do you include things in the draw
5 to the owner in a cost plus contract to the owner
6 that you have not paid or are not going to pay?

7 A. Typically, no.

8 Q. Because, typically, that wouldn't be
9 right, would it?

10 A. Well, there -- we talked about this
11 earlier. There are cases where the scope was
12 complete; however, a part of that work --

13 Q. Right.

14 A. -- is owed to another subcontractor.

15 Q. Sure, sure. But our legislature has
16 written a law that contravenes that process,
17 right? So there's a little dispute about whether
18 that's okay or not. So at any rate --

19 MR. HILDEBRAND: Objection, Your
20 Honor, just to Mr. Bundy making comments.

21 MR. BUNDY: I will withdraw it.

22 THE COURT: All right.

23 BY MR. BUNDY:

24 Q. So back to the book, the budget
25 situation, I'm still a little confused on the

1 budget. Do you have to keep different budgets in
2 order to keep up with the different accounting
3 that has to take place when you have lump sum
4 subcontracts and a cost plus general contract?

5 A. Do you have to? I'm --

6 Q. Do you. It's not have to. Do you?
7 Does Balfour Beatty do that?

8 A. We have an internal budget software that
9 keeps -- that keeps an account for our cost.
10 It's not the same as what we put on the pay
11 application to the owner.

12 Q. Okay. That's solves the problem for me.
13 Now, I understand it. Okay. You have an
14 internal budget -- repeat that for me again.

15 A. No. We have an internal software that
16 manages our costs and our budgets that helps
17 accounting. It lets us know when invoices are
18 coming in. It tracks our budgets. And then we
19 have the pay application in the budget with the
20 owner. So two different software.

21 Q. So the numbers in the subcontractor
22 budget software are not necessarily the same
23 numbers you use to get paid by?

24 A. That's correct. I explained it earlier.
25 There may be two mixed metal subcontractors.

1 Q. Okay. I gotcha. I'm just trying to
2 understand it. Okay. So we have gone through --
3 we got through the budget, thank goodness. Let's
4 read the rest of it. This change order request
5 includes miscellaneous time and material items
6 from 11/5/18 to 11/26/18 period. Okay? Now, if
7 you would turn to tab 274, the one we were
8 talking about before I took a break -- before the
9 Judge allowed me to take a break.

10 A. Okay.

11 Q. Are we together?

12 A. I got it.

13 Q. All right. Let's look at the third page
14 that has the Quantum Coatings logo on it.

15 A. Okay.

16 Q. Okay. Do you see items -- I think it's
17 items 11/5/18 through 11/26/18. Do you see that?

18 A. I see it.

19 Q. Okay. Is that the first one?

20 A. Yeah. There's two with the same date.
21 They just break out different areas of the
22 building.

23 Q. Are those what's being referred to here
24 in Exhibit Defendant's 19?

25 A. I don't believe so. This says, change

1 order request number 118, and this is Quantum
2 change order request 120. So I believe they're
3 different.

4 Q. You believe they're different?

5 A. That's right.

6 Q. 11/5/18 to 11/26/18. Well, they have
7 the same date. 11/5/18 to 11/26/18. They have
8 the same date.

9 A. It's three weeks worth of work. They
10 were in all different places.

11 Q. Huh?

12 A. It's three weeks worth of work. They
13 were in all different places in the building.
14 They had a crew managing the Salamander punch
15 list, and it looks like we had a different crew
16 managing some other costs.

17 Q. How can you tell that from this change
18 order?

19 A. Because it says, different change order
20 numbers. This is change order number 118 right
21 here, COR118, and it says COR120 at the top of
22 the backup on 274. So we were trying not to
23 charge the owner for work -- for internal work.
24 They were requesting money that wasn't their
25 responsibility.

1 Q. Okay. It goes on to say, it
2 incorporates a wide variety of trades, including
3 Watson, Precision Walls, David Allen, and Pasco.
4 What is that? Is this your language, it
5 incorporates a wide variety of trades?

6 A. Yes, sir.

7 Q. What does that mean?

8 A. It means, miscellaneous things that --
9 whether, you know, Watson had to move the outlet
10 from here to there; P Walls had something they
11 had to go back and fix; David Allen, had some
12 grout. He had to clean off the wall. Pasco
13 moved a sprinkler head.

14 We didn't feel this was the
15 responsibility of the owner. It's just
16 miscellaneous things that Quantum had to go
17 through after they had already painted it once
18 and fixed.

19 Q. Okay. So this has nothing to do with
20 the Salamander punch list stuff?

21 A. I don't think so.

22 Q. Okay.

23 A. It shouldn't.

24 Q. All right. So what you're saying here
25 is that the painter had to go back because of the

1 work of a variety of trades: Watson, PWI, David
2 Allen and Pasco?

3 A. That's right.

4 Q. All right. This change order settles
5 outstanding cost items identified in change order
6 request 118 as shown on marked up 118 and so
7 forth.

8 Quantum acknowledged that the
9 subcontractors have reserved their right to
10 review these change order requests, and any
11 adjustments with the back charge subcontractors
12 will be corrected in a change order to Quantum
13 d/b/a Merit Professional Coatings.

14 Now, you wrote this, right?

15 A. That's correct.

16 Q. Are you saying here that these, this
17 118, or this \$19,319.11 is going to be back
18 charged to Watson, PWI, David Allen and Pasco,
19 and that Quantum acknowledges that the
20 subcontractors have reserved their rights to
21 review these change orders and any adjustments
22 with the back -- with the backed -- back charged
23 subcontractors.

24 So the back charge subcontractors are
25 named above: Watson, PWI, David Allen and Pasco;

1 is that correct?

2 A. Yes, sir.

3 Q. Okay. Quantum acknowledges that they
4 reserve their rights, and any adjustments will
5 be -- well, hold on. Here we go. Let's keep
6 going.

7 Quantum acknowledges that the
8 subcontractors have reserved their right to
9 review these change order requests and any
10 adjustments for back charges and will be
11 corrected in subsequent change orders to Quantum.
12 Now, what does that mean? I don't understand
13 that.

14 A. This means Quantum had a lot of
15 outstanding costs, and we were trying to get them
16 to continue to perform on the project. And so
17 the contractor and subcontractor, they alleged
18 had caused them extra work --

19 Q. Right.

20 A. -- had not responded or had not
21 responded to it. We were trying to get Quantum
22 paid for work that they'd performed.

23 Q. By the subcontractors who were the cause
24 of them having to do the extra work?

25 A. That's correct.

1 Q. Okay.

2 A. And so this is saying, should the
3 subcontractor come and prove that it was not
4 their issue, that Quantum understands that, and
5 that there's a forward adjustment. There's an
6 opportunity for an adjustment later.

7 Q. Was there an expectation that you had
8 that all of these back charged subcontractors,
9 none of them would be responsible for any of
10 Quantum's work?

11 A. Was there an expectation that none of
12 them would be responsible?

13 Q. Right. Because you say that, because
14 the subcontractors are reserving their rights --
15 the back charged subcontractors are reserving
16 their rights, I guess to come to you and say,
17 Nick, I didn't move that outlet. Nick, I didn't
18 do that. Okay?

19 So they painted it because a fellow that
20 works for Precision Walls got mad and kicked his
21 shoe in, right? So you might have had your --
22 you might have expected reallocation of this
23 \$19,000 by, among, and between the back charged
24 subcontractor, but you did not expect at the time
25 that they would all be able to come to you and

1 say -- and convince you, none of it was any of
2 our faults.

3 It was all either Quantum Coating's
4 fault or somebody else, and I don't know who it
5 was. You didn't expect that to happen, did you?

6 A. I didn't expect that to happen.

7 Q. Okay. And you knew that the \$19,000
8 that was going to be paid by these
9 subcontractors -- you didn't know exactly in what
10 proportion they were going to pay, but you knew
11 they were going to owe something?

12 A. No. I knew that Quantum performed
13 \$19,000 worth of work.

14 Q. Right.

15 A. And that they're alleging that these
16 subcontractors were responsible for their
17 portion.

18 Q. And you were agreeing with them?

19 A. We usually let the subcontractors settle
20 back charges amongst themselves. We facilitate
21 it. I wasn't really agreeing or disagreeing. I
22 was agreeing that Quantum was responsible and
23 performed this amount of work.

24 Q. Were you agreeing, on behalf of BBC, to
25 pay Quantum the \$19,000?

1 A. I was agreeing -- no, I was agreeing
2 that they were entitled to \$19,000.

3 Q. You were agreeing to what?

4 A. That they were entitled to \$19,000.

5 Q. From whom?

6 A. Pardon?

7 Q. From whom? Whom were they entitled to
8 19 --

9 A. I was agreeing that they had incurred an
10 additional \$19,319 in added costs.

11 Q. But who were supposed to pay them? Was
12 Balfour Beatty going to pay them? Because you're
13 the one that issued the change order.

14 A. I don't know where -- I don't know who
15 was going to pay them. We would -- It all depends
16 on where we are in our contract value. I wasn't
17 committing to anyone -- any Balfour or Library
18 Associates.

19 I wasn't saying anybody was going to pay
20 them. I was saying, this is agreeing that they
21 performed this work. There's no stipulation that
22 we're going -- my understanding is that there is
23 nothing in here that says they are going to be
24 paid \$19,319.

25 Q. It says, Nick, that the contract has

1 been increased by \$19,319.11. The contract has
2 been increased?

3 A. I agree.

4 Q. And the contract is between BBC and
5 Quantum?

6 A. That's right.

7 Q. You are now saying, we owe you, at some
8 point, another -- an additional \$19,000 on your
9 subcontract?

10 A. Assuming that we weren't over-budget or
11 assuming --

12 Q. Assuming what?

13 A. Assuming that we weren't over-budget and
14 still had money left in the contract, then yes.

15 Q. Why would the subcontractor not have to
16 pay you if you were over-budget for something he
17 did that you told him to do and he did it because
18 the other subcontractor damaged his work?

19 A. Can you ask that again?

20 Q. Huh?

21 A. Can you ask that again?

22 Q. Sure. If I can remember it. Why
23 wouldn't BBC have to pay a subcontractor for work
24 BBC directed it to do by virtue and authority of
25 its subcontract for damages caused by other

1 subcontractors regardless of what the budgetary
2 status was of Balfour Beatty's contract with
3 Library Associates? Why?

4 A. I don't know. I mean, I think we're
5 agreeing in this that this is the added work.

6 Q. You know, let's talk a minute about the
7 structure of this job. Library Associates is the
8 owner, right? Library Associates, owner, got it?
9 Balfour Beatty Construction. They are the
10 construction manager at risk. Can we agree to
11 that?

12 A. Yes.

13 Q. All right. A construction manager at
14 risk, by virtue of the language at risk, has
15 subcontracts with subcontractors, correct?

16 A. Correct.

17 Q. Okay. Those are subs. There is no
18 contract between the subs and Library Associates,
19 correct?

20 A. As far as I know.

21 Q. In fact, the general conditions say
22 that, Library Associates will not communicate
23 with your subcontractors, correct?

24 A. It does?

25 Q. Yes, it does. Y'all are in control of

1 your subcontracts, and if you, Balfour Beatty,
2 agree to pay a subcontractor for work on that job
3 and direct them to do the job, you owe them the
4 money, don't you, regardless of whether or not --
5 whatever caused that work? You owe it to them
6 because they don't have a contract with Library
7 Associates.

8 A. Okay.

9 Q. Isn't that true?

10 A. True.

11 Q. Okay. So if you -- if they signed this
12 agreement, this proposed change orders,
13 Library -- Balfour Beatty Construction Company
14 would owe -- because the work had already been
15 done, would owe Quantum Coatings \$19,319.11
16 regardless of the shake out between the
17 subcontractors?

18 A. Yeah.

19 Q. Okay. All right. Now, Balfour Beatty,
20 having a subcontract with these other
21 subcontractors, could clearly go to Watson
22 Electric and say, let me tell you something,
23 okay, I sent you this stuff. It's \$19,000.

24 I'm the project manager, and I think of
25 that \$19,000, 12 of it is your fault. I'm taking

1 \$12,000 out of your subcontract, and I'm going to
2 pay Quantum Coatings. And that way, your budget
3 doesn't get affected, right?

4 A. Right.

5 Q. And that's called project management,
6 isn't it? That's how you manage your project,
7 right?

8 A. Sure.

9 Q. Is that right?

10 A. Yes.

11 Q. Okay. And that, in fact, is what
12 Library Associates hired Balfour Beatty to do?

13 A. Amongst other things.

14 Q. Correct. But the -- it was a pretty big
15 part of your responsibility to manage the
16 subcontractors, right?

17 A. That's correct.

18 Q. Because if there was no manager here,
19 and Library Associates just let these people go
20 out and do whatever they wanted to, we probably
21 still wouldn't have a hotel, would we?

22 A. I agree with that.

23 Q. All right. So let's read on. It says,
24 the add to this contract, the result of this
25 change order is \$19,000, et cetera.

1 This change order constitutes full and
2 complete settlement of any and all costs referred
3 to and/or described herein, but not necessarily
4 limited to all applicable taxes, insurance, bond,
5 delivery, supervision, overhead profit and labor,
6 labor impact, materials, charges, delays,
7 acceleration, deficiency, or any other claims
8 that are afforded in the subcontract here,
9 delays, any and all claims associated with or
10 related to the work.

11 So is this your language or some
12 language a lawyer provided to you?

13 A. It's standard language on the change
14 orders.

15 Q. This language?

16 A. Yes.

17 Q. Provided by the lawyer?

18 A. I don't know who provided it, but it's
19 standard language on the change orders.

20 Q. Okay. Just reading it and knowing what
21 you know about the English language, can you
22 imagine anything that was left out when that was
23 written? Do you see any wiggle room in there to
24 asking for something more?

25 A. I'm not going to imagine or interpret

1 what is and what isn't left out.

2 Q. Right. Well, do you think the intent of
3 it was, I'm going to pay you the 19, leave me
4 alone? We're done here.

5 A. No, I don't think that was the intent.

6 Q. You don't think that was the intent?

7 A. No. I think it protects us, but I don't
8 think that was the intent of this. To say,
9 you've got an open change order that hasn't been
10 resolved. Just because I wrote you this change
11 order means you got me, that's not the intent.

12 Q. That's not what I asked you, but that's
13 okay.

14 A. Well, you asked me what the intent was,
15 right?

16 Q. Okay. Let's go to number 275.

17 A. I would also say that, I doubt they
18 return this undoctored at this point in the
19 project but --

20 Q. Sure. And your doubt is based on?

21 A. The number of change orders having that
22 language struck.

23 Q. Okay. Do you mean the number of change
24 orders the subcontractors struck?

25 A. Internal change orders to

1 subcontractors.

2 Q. Internal change orders?

3 A. Meaning, we issued the subcontractor the
4 change order, and some of them would read this
5 and say, I'm not agreeing to that and strike it.

6 Q. Okat. What are internal change orders?

7 A. It's a change order -- sorry, a CCO.

8 Q. No. But, I mean, is there a distinction
9 between change orders between you and your
10 subcontractors and BBC and the owner?

11 A. Yes.

12 Q. Okay. And y'all --

13 A. A change order from BBC to the owner is
14 different than a change order from BBC to the
15 sub.

16 Q. Right. And y'all euphemistically refer
17 to the substantive change orders between you and
18 your subcontractors as the internal change order?
19 That's just language y'all use?

20 A. No. We usually just call them
21 subcontractor change orders.

22 Q. Okay. Fine. So you've got
23 subcontractor change orders and you've got owner
24 change orders?

25 A. Yes.

1 Q. Okay. All right. Let's go to number
2 275. It looks like Quantum, P Walls, P Walls,
3 BMCC. Do you know if any of these were paid?

4 A. No, sir.

5 Q. No?

6 A. No, sir.

7 Q. Okay. Let's go to 276. What is the
8 story on this one?

9 A. Millwork change orders.

10 Q. Yeah. The millwork changes, Low Country
11 Case and Millwork.

12 A. Yeah. It's a handful of miscellaneous
13 change orders that written out here. Burnout
14 crown, number 1. Rotunda changes, bridal suite,
15 rosettes added, added corbels to the bridal
16 suite. They were not shown. Elevator cab
17 ceiling revisions.

18 Supplemental instruction number 72.
19 It's a private dining corner trim. Added a back
20 bend to (inaudible) another 50 doors, and room
21 719 and 819 for custom window valances and a
22 window back bend.

23 Q. All right, sir.

24 A. \$75,978.

25 Q. All right. Let's go to -- all right.

1 Let's go to 279.

2 A. Skipping through?

3 Q. Yeah, 279.

4 A. I'm there.

5 Q. All right. We've got a letter to Kim
6 Brown with no date and no signature, right? No
7 signer, right?

8 A. Correct.

9 Q. And you've -- do you opine that that was
10 done sometime between January and March of 2019
11 when you were doing the paperwork?

12 A. I would -- this was likely done late
13 March, early April.

14 Q. Okay. All right. Let's take this
15 portion of that. I want to go -- probably need
16 to pull these sheets out, the ones with the
17 columns and all.

18 A. Okay.

19 Q. Because what I want to do, Nick, is, I
20 want to take columns and compare them to what's
21 in the tabs. Okay?

22 A. All right.

23 Q. Because presumably, the columns have
24 some relationship to the tabs because that was --
25 well, let me ask you: Do the columns have any

1 relationships to the tabs?

2 A. Again, I haven't reviewed this, but this
3 is how we typically presented CCD change orders.
4 We would have each column, ours would be
5 numbered.

6 Number 1 would have a folder and would
7 have the cost. We would have this sheet penciled
8 with how much we previously billed, show the
9 delta. I haven't reviewed each one in here to
10 make sure that it aligns with this.

11 Q. I know you haven't. That's why we're
12 going through it now because we want to review it
13 now.

14 A. Okay.

15 Q. All right. The first one is number 1.
16 Now, does number 1 relate to A?

17 A. I don't know. Number 1 is CCD 46, and
18 there's -- sorry, A is CCD46. Number 1 here is
19 CCD7.

20 Q. Okay. So look down to -- look down to
21 number 11.

22 A. Yes.

23 Q. Is that it? I think I can help you.

24 A. Thank you.

25 Q. Because I've been through it.

1 A. Okay.

2 Q. Look at number 11. Is that A?

3 A. Well, there's another -- so there is
4 number 23, which is 46 as well. And, yes,
5 there's two 46s. Are any -- typically, anyone
6 that doesn't have a budget number would be this
7 page right here.

8 Q. Which page is that?

9 A. This is sub pin A in A. The only page
10 in there.

11 Q. Okay.

12 A. And what this doesn't show is -- this
13 doesn't show what has previously already been
14 billed to the owner.

15 Q. What do you mean? Go ahead.

16 A. So what -- if you look at 11, it's
17 3,676.

18 Q. Okay.

19 A. And then you look at revenue cost to
20 date, the first number is 6,259.

21 Q. Right.

22 A. My assumption is, is that we've already
23 been paid the delta between \$6,259 and \$3,676.
24 Sorry, we've already filled the delta between
25 those two in a prior month. Does that make

1 sense?

2 Q. No. This doesn't make sense at all.

3 A. So this is -- Exhibit A is our current
4 cost.

5 Q. And what is that?

6 A. That's how much labor we have spent on
7 the project.

8 Q. And what is that number?

9 A. On this budget code, \$6,259.

10 Q. Okay. That's the projected profit?

11 A. No. That is cost to-date. No profit,
12 no fee, no overhead. Cost to-date.

13 Q. And what does projected profit above it
14 mean?

15 A. That's based off a budget number.
16 There's no budget for it. Because we didn't --
17 this is added work so we didn't have a budget set
18 up for it and didn't have money from the owner
19 yet. They were asking us to do extra work. So,
20 as we talked about yesterday, we set up -- or
21 Friday, we set up a budget code for this added
22 work.

23 Q. Okay.

24 A. So we kept -- printed out the labor, an
25 accounting of the labor, attached it to the back

1 of this. It was typically a green box that said,
2 cost to-date less previous month cost to-date.
3 So this would be -- what is this -- March.

4 Cost through March 29, 2019, would be
5 less previous months, and the owner could refer
6 back, or we could show the owner, we've already
7 billed the cost between \$3,676 and what's shown
8 here.

9 Q. Okay. Nick, the problem with it is,
10 you're really not here to show the owner, you're
11 here to show the Judge, right?

12 And so I'm just simply trying to ask you
13 how His Honor is going to take these documents
14 and come up to a number? And I'd like to be able
15 to do it myself because I am trying to represent
16 my client. So let's go on then, and let's look
17 at B, and tell me what B relates to.

18 A. CCD7, dining room outlets for period
19 ending January 2019.

20 Q. Okay. And where is the backup for this
21 information?

22 A. Here.

23 Q. No, that's a summary of data inputs.
24 Where is the data input?

25 A. What we typically provided to the owner

1 is the CCD draw request. It's not in here.

2 Q. Right. And that may be part of the
3 problem because what you typically provide the
4 owner may not be what's typically provided in a
5 courtroom so the Judge can make a decision.
6 That's why we have rules of evidence. Okay? And
7 so I'm asking you: Where is the backup for this
8 summary?

9 A. The backup that we have here today is in
10 here. I'm not saying that that's everything,
11 right, or what we typically on a month-to-month
12 basis provided the owner.

13 Q. Nick, look through here. Some of these
14 are, like, number -- the tab E. I don't even
15 have anything behind tab F. Okay? And I don't
16 see any invoices or anything other than -- well,
17 I stand corrected.

18 Well, I mean, you go through here. I
19 don't see any backup until you get to G, which
20 has a guaranteed supply company invoice for
21 \$133.53 for dowel caulk, 795 Sandstone. Is there
22 any other -- did I miss something before we got
23 to the caulk invoice?

24 A. Not that I'm aware of.

25 Q. Okay. Do you know why we owe you for

1 that caulk, Nick?

2 A. CCD8. I don't remember what CCD8 was.
3 There were at least 46 of them. I'm not sure
4 which one it was. So I don't know.

5 Q. Take a minute, Nick, and look through
6 the rest of them and tell me if there's any
7 backup behind any of those summaries.

8 A. Behind the summaries, there's a
9 Southeastern Architecture Systems change order.

10 Q. How much is that?

11 A. Change order request, proposed amount of
12 this change order is \$4,316.

13 Q. And what is that for, Nick? When was
14 that work done?

15 A. That was shelving the owner wanted to
16 add on the rooftop bar. It looks like this work
17 was done in late January.

18 Q. Of what year?

19 A. 2019.

20 Q. Okay. And have y'all paid for that?

21 A. I do not know.

22 Q. Okay. All right. I believe that's all
23 I've got on this exhibit, Nick. I'm done with
24 that one. You don't mind if I call you Nick, do
25 you? We've been here long enough, I feel like

1 we're friends.

2 A. Do you want me to call you Bill?

3 Q. Sure. All right. Let's see where we
4 can go from here.

5 MR. BUNDY: Your Honor, I want to
6 move into another topic. I could use about five
7 minutes to get reorganized.

8 THE COURT: All right. Take your
9 time. Y'all take a break if you'd like.

10 (A recess transpired.)

11 (DFT. EXH. 20, was marked for
12 identification.)

13 MR. BUNDY: All right. This is
14 Plaintiff's Exhibit 20 for ID.

15 THE COURT: All right, sir.

16 BY MR. BUNDY:

17 Q. Mr. Starcevic, I'm handing you a
18 document that is at the bottom right-hand corner
19 marked BBC e-mails 00590106. Do you recognize
20 that as a BBC Bates stamp number?

21 A. Yes.

22 Q. Okay. You know what a Bates stamp
23 number is, right?

24 A. Sorry?

25 Q. You know what a Bates stamp number is,

1 right?

2 A. No. What's a Bates stamp?

3 Q. Okay. Do you recognize this document?

4 A. Yeah.

5 Q. All right. And your name is at the
6 bottom left-hand corner?

7 A. That's right.

8 Q. And the next page is just project
9 manager -- I guess, Starcevic project manager,
10 right? This is your work product?

11 A. It looks like it.

12 MR. BUNDY: Okay. Your Honor, I
13 would like to move this -- what number is it, 20?

14 THE WITNESS: You've got a 20 right
15 here.

16 MR. HILDEBRAND: No objection, Your
17 Honor.

18 THE COURT: Without objection.
19 Very good.

20 (DFT. EXH. 20 was received in
21 evidence.

22 BY MR. BUNDY:

23 Q. Let me briefly read the first paragraph
24 for you. First off, do you know when this was
25 prepared?

1 A. No, sir.

2 Q. No?

3 A. No, there's no date on it.

4 Q. But you know you did it?

5 A. I did.

6 Q. Did you do it in a response to a request
7 from anybody?

8 A. I don't know.

9 Q. To be clear, if it's in the claim
10 column, it is a number received from the subs
11 that says either delay claim, claim, or GC
12 extension. The design owner column is my
13 interpretation of whether it's an owner design
14 issue and should be included in the claim. These
15 numbers reported in the risk register -- what is
16 a risk register?

17 A. It's the register of all cost items.

18 Q. Why is it called a risk register? Just
19 because you are having -- you're at risk of
20 having to pay the cost?

21 A. It's the register and risk of receiving
22 a cost item.

23 Q. Okay. I also carry them over to the
24 consolidated claim tab on the attached. What is
25 a consolidated claim tab?

1 A. I also carried them over to the
2 consolidated -- I don't know what that is.

3 Q. Well, let's see if you and I can figure
4 it out.

5 A. All right.

6 Q. We've been referring to a consolidated
7 claim. Remember that --

8 A. Yeah.

9 Q. -- the big list behind you, right?

10 A. Yeah.

11 Q. Wouldn't this have been prepared about
12 the time you were working on the consolidated
13 claim at or about the time -- during the period
14 of time when you were off the job but were
15 spending 50 percent of your time to help with
16 closing out the paperwork?

17 A. Yeah, probably.

18 Q. Okay. So when you prepared this, the
19 job was over. You had been charged by your
20 superiors to analyze the consolidated claim and
21 give your opinion, as the project manager who had
22 been on this job probably as long as anybody,
23 right?

24 A. Yes.

25 Q. You were probably on this job longer

1 than anyone --

2 A. No.

3 Q. -- continuously?

4 A. No.

5 Q. No. Who was on longer?

6 A. Tim.

7 Q. Tim Spano?

8 A. Yes, sir.

9 Q. And he was there, what, another three
10 months?

11 A. Four or five months longer, I believe.

12 Q. Okay. But this job was your life
13 starting at your 28th year on this planet up
14 through about the 32nd year, right?

15 A. It sure was.

16 Q. Okay. Day in, day out?

17 A. Every day.

18 Q. All right. And going back to the notion
19 of succeeding on merit, your meritorious
20 response, or the appropriate response to this
21 request from your superiors would have been to
22 give your opinion and tell the truth as you knew
23 it?

24 A. Yeah.

25 Q. Okay.

1 A. That's accurate.

2 Q. I mean, you certainly didn't -- weren't
3 going to out to look to tell -- you were trying
4 to do the right thing?

5 A. Yes, sir.

6 Q. You were asking me what it was. I was
7 there as long as anybody, but for Spano; here's
8 my opinion as the project manager, right?

9 A. Yes.

10 Q. Okay. You go, I also care to
11 (inaudible) consolidated claim to have on the
12 attached. I'm not very confident in this number
13 because I don't know whether or not these subs
14 are going to join in our claim. Now, what does
15 that mean, join in our claim?

16 A. We had a claim, and I don't know if the
17 subs are going to join in on it.

18 Q. Okay. Support the claim. What does
19 that mean? Whether they're going to take your
20 side of it?

21 A. Support it.

22 Q. Agree with it?

23 A. They don't have to agree with it,
24 support it, provide us information and help.

25 Q. Well, usually, when you support

1 somebody, you generally are agreeing with them
2 and helping them, right? That's the definition
3 of support, right?

4 A. That's correct.

5 Q. Okay. So you didn't know whether they
6 were going to join. You didn't know if they were
7 going to be -- to join in on the claim. You
8 didn't know whether they were going to support
9 the claim or even collaborate --

10 A. Corroborate.

11 Q. -- or even corroborate, I apologize --
12 that they are owner design issues. So you don't
13 know what they're going to do?

14 A. I can't speak for a sub.

15 Q. Exactly. But you knew what you knew,
16 and you knew what Nick knew about what had gone
17 on on that job?

18 A. Yes, sir.

19 Q. Okay. So under the subcontractor, BMCC,
20 you put nothing down for design or owner because
21 you just didn't know?

22 A. Because all of their claim at any cost
23 that they were -- they felt stood out, they
24 thought they were owed. This was their claim
25 number that they sent to us, I believe.

1 Q. Right. But you say, the design owner
2 column is my interpretation of whether it was an
3 owner design issue and should be included in the
4 claim. That's what you said up above.

5 A. Yes.

6 Q. Okay. And so, was it your understanding
7 that, unless it was owner design claim, it should
8 not be included in the claim?

9 A. No.

10 Q. That's not what you're saying?

11 A. No. I'm saying, these are numbers that
12 we got sent to us called claims, right? And I
13 had a different understanding of a claim when we
14 were doing the project.

15 Outstanding change orders, when we're in
16 the heat of a project, to us were not called
17 claims. They were called change order requests.
18 Claims were typically delays, interruptions,
19 things that were outside the added cost of work
20 or directed by an owner or designer. That's kind
21 of the difference.

22 Q. Okay. But do you know how the contract
23 defines a change order?

24 A. This was an internal document. I wasn't
25 speaking to the contract. So, again, this is my

1 interpretation and how I broke it down. The
2 claim that we received from the sub was in this
3 column, and the owner design outstanding cost was
4 in this column.

5 Q. All right. Can we at least agree, this
6 is what it says and when BMC, you put the title
7 of the claim was a claim, the numbers, this is
8 the claim they were making, and you didn't put
9 anything in the square for design owner and you
10 made no notes? Can we at least agree that that's
11 what it says?

12 A. We can agree that there's nothing in the
13 design owner and there are no notes.

14 Q. All right. The next one is Watson. The
15 type of claim is a claim, and it's a million six,
16 913, and there's nothing there in that column for
17 design owner. Nothing in the block, right?

18 A. There is nothing in that block.

19 Q. And you have a note that at least
20 1,604,913 in their claim response. What does
21 that mean there?

22 A. It means that, when we asked them if
23 they had an outstanding claim, what it was,
24 because we were trying to pull together the total
25 number. And they sent to us, at least

1 \$1,604,913.

2 Q. Okay.

3 A. So that's what it says, at least
4 \$1,604,913, in their claim response.

5 Q. Sure. Okay. And if we go back -- we
6 now know that BMCC no longer has a claim -- BMCC
7 no longer has a claim, right?

8 A. Okay.

9 Q. Pardon me?

10 A. Okay.

11 Q. Okay. So the 6 million 5 is gone. We
12 know that Precision Walls, which is next, that
13 you didn't put anything in the block; didn't make
14 a note. They're also gone, right?

15 A. Okay.

16 Q. All right. Now, we get to Lithko. They
17 had a delay claim of \$449,401.20, and you put in
18 the column, design owner, the number \$35,835.06.
19 Does that mean that your interpretation of this
20 is that, of the \$449,401.20, that the owner
21 designer was responsible for \$35,835.06 of that
22 amount?

23 A. No, sir.

24 Q. All right. What does it mean?

25 A. It means that they had a \$449,401 claim,

1 delay claim, and they had \$35,835.06 in
2 outstanding cost items is what I believe that
3 means.

4 Now, I think this first column was their
5 structural delay claim, and I believe this
6 \$35,000 number are design owner driven costs.
7 That's probably one of these RCOs that we went
8 through. I'm not a hundred percent sure, but
9 that's what I believe.

10 Q. In your paragraph above, where is
11 outstanding cost items? I don't see that word.

12 A. Pardon?

13 Q. You just said 35,835.06 represented
14 outstanding cost items, and I'm just asking you,
15 I don't see outstanding cost items anywhere.
16 What I see is design slash owner.

17 A. Mr. Bundy, this is one e-mail. I'm sure
18 that we talked about it, and I could explain
19 myself to whoever I sent this to. Again, it's an
20 e-mail, so it was sent to somebody. This
21 isn't -- this doesn't have all the information
22 out there on how this is broken down. It's just
23 a summary.

24 Q. You can explain yourself to whoever you
25 sent it to?

1 A. That's right.

2 Q. You don't know who you sent it to?

3 A. It's not on here. I sent a lot of
4 e-mails over the last four years, five years.

5 Q. Can you explain it to me?

6 A. I just tried to.

7 Q. And you think I understand?

8 A. Do you?

9 Q. No. I think it's ridiculous.

10 A. Okay.

11 Q. So let's move on to David Allen,
12 extended GC. There's a claim number of \$222,359,
13 correct?

14 A. 222,359.

15 Q. And then there's a design number of
16 88796. What does that number mean? What does it
17 represent?

18 A. I believe it represents outstanding
19 costs for change order requests.

20 Q. Just out of curiosity, that language
21 doesn't appear in this chart anywhere, right?

22 A. Okay. It's not a change order request,
23 though. I don't understand the --

24 Q. All right. The next one is ONSM claim,
25 1,056,804, and there's nothing in the design

1 block and there's nothing in the notes, right?

2 A. Yes.

3 Q. Pasco, that's extended GCs for L9 and
4 L7, \$6,550. But Pasco is out, right? Or do you
5 know?

6 A. I don't know.

7 Q. And so the rest of these claims, Gulf
8 Stream, Lithko, Tate, LCCM, First Choice, Premier
9 Exteriors, Quantum, Norco, Trimark, Wesley, are
10 in the design owner column. And what do those
11 numbers represent?

12 A. I believe these represent outstanding
13 cost items, design changes or submitted change
14 orders to us that had not been reconciled with
15 the owner.

16 Q. All right. Under LCCM, it says,
17 includes change orders, we've written them, and
18 that's next to the \$113,000. What does that
19 mean?

20 A. That probably means that we had written
21 them a change order to either perform work or
22 whatever it is that we had not reconciled with
23 the owner yet or the owner had not agreed to it.

24 Q. Okay. Cook and Boardman would be the
25 same?

1 A. Yes, sir.

2 Q. Okay. C's, owner rejects slash disputes
3 this change order request. What's the
4 significance of that language?

5 A. It's pretty self-explanatory. The owner
6 rejected it or refused it, the change order that
7 we submitted.

8 Q. So are you implying by that, in this
9 particular block, that it doesn't -- that the
10 owner doesn't dispute the rest of the numbers?

11 A. No, sir.

12 Q. First Choice 23, no notation. Premier
13 Exteriors doesn't include wall prep for spec gap.
14 What does that mean?

15 A. Yeah. We talked a little bit about this
16 yesterday -- on Friday, where there was -- the
17 design documents had a built-in spec tolerance.
18 The stucco that was -- ended up being selected,
19 wasn't originally selected, had a smaller
20 tolerance.

21 Q. Right.

22 A. So there's a gap.

23 Q. Right.

24 A. And this number does not include that.

25 Q. Okay. Then you've got Quantum, \$48,000

1 bucks. You say in your note, not confident about
2 this number. Is it not high enough?

3 A. Just not confident about the number. I
4 don't know whether it's high or low. I'm just
5 not confident in it.

6 Q. Are you not confident because it's not
7 high enough or because it's too low or what?

8 A. I don't know. I don't remember whether
9 I thought this number was high or low. I
10 probably hadn't spent enough time with Quantum's
11 ultimate change orders.

12 (DFT. EXH. 21 was marked for
13 identification.)

14 BY MR. BUNDY:

15 Q. All right. Nick, I'm going to hand you
16 Defendant's Exhibit 21.

17 MR. BUNDY: Here you go, Judge.

18 THE COURT: Do you have an extra
19 copy of that? Exhibit 19, did you have an extra
20 copy of that?

21 MR. BUNDY: Exhibit 20?

22 THE COURT: Exhibit 19. The prior
23 one is the one I didn't get. The one we were
24 doing before the break.

25 MR. BUNDY: Okay. I don't know

1 where it is.

2 THE COURT: That's all right. We
3 will find it later.

4 MR. BUNDY: We are on Defendant's
5 21.

6 THE COURT: Defendant's 21. All
7 right.

8 MR. BUNDY:

9 Q. 21. All right. Let's go to the -- how
10 about look over this and tell me if you can --
11 first, if you can identify or if you recognize
12 this document?

13 A. It looks like an e-mail sent from Ryan.

14 MR. BUNDY: And for the record,
15 this is BBC e-mails, 00750043, 44, and 45. I
16 move to introduce it into evidence.

17 THE COURT: Any objection?

18 MR. HILDEBRAND: On 21?

19 THE COURT: 21, yes, sir.

20 MR. HILDEBRAND: No objection.

21 THE COURT: Without objection.

22 (DFT. EXH. 21 was received in
23 evidence.)

24 BY MR. BUNDY:

25 Q. Thank you. All right. This starts

1 from -- it starts on the -- I guess it's the
2 second page, and it will start in the back. It's
3 from Dale Winovich. And who was that?

4 A. It's product manager for Watson
5 Electric.

6 Q. Watson Electric. And he sent it to
7 David Stanton, and David Stanton's job on this
8 job was that?

9 A. Project executive.

10 Q. Project executive. All right. And are
11 you copied on this e-mail?

12 A. Yes, sir.

13 Q. Okay. David, per my walk through this
14 morning, it's clear the project is still
15 struggling to establish (inaudible). And this is
16 dated September of 2017; is that correct?

17 A. Yes.

18 Q. All right. And you were the project
19 manager on the job for this period?

20 A. Yes.

21 Q. And you've been on the job for
22 approximately how long?

23 A. A year plus or a year and a half at that
24 point, maybe longer.

25 Q. We continue to be re-tasked to multiple

1 different areas from changes, design detail
2 clarifications where predecessor work is
3 completed or clarified. As far as level 6, we've
4 had our overhead and in wall inspection since the
5 beginning of September.

6 I'm not sure how the feedback is, that
7 we continue to fail inspections. This is
8 inaccurate. We received an RFI on 9/16/17 to
9 demo down lights in the manager's apartment,
10 which as of today is still being framed. We also
11 received and priced SI -- let's see. It looks
12 like SI54 --

13 THE COURT: 54.

14 Q. -- which will rework the electrical in
15 the kitchen on the manager's apartment. These
16 are just typical and common examples of the work
17 disruptions that we are encountering every week
18 and are expected to accommodate with unplanned
19 manpower.

20 Level 9 in-wall is complete, and as
21 discussed plans, we are working on finishing
22 overhead light fixtures and mechanical equipment.
23 In walking the L9 and L6, they're still
24 incomplete or missing framing as well as
25 continual changes.

1 There's FCU re-work ongoing, soffit and
2 miscellaneous wall framing, rework ongoing.
3 David, we can continue to go in circles as to who
4 caused the issues, but to say that we are lacking
5 manpower and we are responsible for incorrect
6 work is over-generalized.

7 We continually rework and do the
8 incorrect framing, design clarifications and
9 changes. After today's walk and about a dozen
10 pictures of work, it was installed and is now
11 hanging or removed with no notice. I
12 respectfully disagree that notice of schedule has
13 activities overdue by 30 days as change orders,
14 rolling design issues are not effectively
15 accounted for in the schedule.

16 Okay. And then the response is from
17 Stanton to Ledford. Who was Ledford?

18 A. Senior project engineer in the field.

19 Q. Okay. And you are copied on that, too,
20 right?

21 A. Yes, sir.

22 Q. And it says, Ryan, can you send me all
23 open items that Watson has on BIM 360, right?
24 That's what it says?

25 A. Yes.

1 Q. All right. What is BIM 360?

2 A. It's a tracking device for using punch
3 deficiencies, open items.

4 Q. All right. And did BMCC provide BIM
5 services?

6 A. It's different. It's not -- it's not
7 information modeling, building information
8 modeling. This BIM 360 is not the building model
9 that we were talking about. BIM 360 is a
10 tracking system that we do in terms of punch
11 lists, completion lists --

12 Q. Gotcha.

13 A. It's all things where I say, hey, this
14 is not in the right place; assign a sub. They
15 get it.

16 Q. Okay. This is sort of a status of work
17 advice for where we are sort of thing?

18 A. Not really. It's more of a
19 communication tool between the contractor and
20 subcontractor.

21 Q. So with that -- is that BIM 360
22 available to the subcontractors to look at?

23 A. Yes, sir.

24 Q. Okay. And who inputs the information to
25 BIM 360?

1 A. Subcontractors typically can. They can
2 respond and say, hey, I need something done. The
3 contractor probably puts in most of it.

4 Q. Okay. But it's basically almost -- it's
5 basically almost like a chat room in a way for
6 all the subs and the generals to leave notes to
7 each other so they could say, I need to get this,
8 this, and this, and they can sort of find out
9 what everybody is doing? Is that a fair
10 description?

11 A. A little bit more sophisticated than a
12 chat room.

13 Q. Okay. Well, I don't do any of that.
14 I'm just asking.

15 A. We do it by room and say room 667,
16 you've got to move an outlet. You can take a
17 picture of it. There's all different kinds of
18 ways to use it.

19 Q. So it's not like they have -- I guess,
20 they don't have to go chase somebody down to find
21 out what they need to do in room 367? They can
22 get on BIM360 and say, you need to send an
23 electrician over here to move this?

24 A. Yeah. I don't know that it's a complete
25 list of everything they have to do, but it's a

1 tool.

2 Q. It's a tool? It's a management tool?

3 A. That's right.

4 Q. Okay. All right. And Ledford responds,
5 see attached BIM360 list for Watson's open items.
6 There are probably a few items on the lower floor
7 that can be marked as complete, but I know six
8 and seventh floor are up-to-date as of 3 p.m.
9 today.

10 While Kevin does attempt to stay on top
11 of issues, it's obvious that Watson and other
12 trades are overwhelmed by the amount of work to
13 complete. They simply don't have enough manpower
14 to handle the activities at hand.

15 As you know, it's a red herring to state
16 that design issues are holding up work. The
17 design issues are probably less than 10 percent
18 of the list. The bulk of the list contains
19 issues like fire caulking, moving outlets, or
20 lights that were not installed per the dimensions
21 on the contract drawings, missing, or covered up
22 devices.

23 There are over 66 issues that we have
24 caught so far just on level 7, just to allow us
25 to get an overhead inspections. It is due to

1 poor QC. What does QC stand for?

2 A. Quality control.

3 Q. That we are in the position now where
4 multiple trades must be involved to fix these
5 issues and disrupt the flow of work. BBC has
6 tried to help by going above and beyond, logging
7 literally thousands of issues into the BIM360,
8 trying to spoon feed these guys and help push the
9 job. Johnny and I have been on six and seven --
10 who's Johnny?

11 A. Johnny Irvine, superintendent.

12 Q. -- floors constantly trying to keep
13 these -- help -- trying to help these -- help
14 work these items off the list, but it's clear,
15 more qualified help is needed by Watson. Please
16 let me know if you need anything else. Okay?
17 Got it?

18 A. Got it.

19 Q. Have you ever seen this e-mail before?

20 A. I believe I've seen it.

21 Q. Okay. I took Ledford's deposition. Do
22 you think Ledford is an honest man?

23 A. Yes, sir.

24 Q. Okay. Do you know of any reason why he
25 would say something in here that wasn't true?

1 A. Yeah. Not intentionally, no. I think
2 Ryan, for better or worse, was probably pretty
3 fired up, that, you know, Watson was saying they
4 didn't have many issues.

5 I think this is -- and he doesn't
6 understand the entire consequence and everything
7 that's happening on the job, how Watson is being
8 pushed here, pushed there. The manpower is
9 spread out on that floor, constantly having to
10 skip rooms, come back. And it's -- he's probably
11 for more -- he's trying to push his work to get
12 done. That's what he was tasked with, and he's
13 pushing as hard as he can.

14 Q. Now, was he a field guy or an office
15 guy?

16 A. He was a field guy at this point.

17 Q. Okay. So let me see if I get this
18 right. You work in the office, and the guy that
19 works in the field is misinformed about what's
20 going on in the field?

21 A. I didn't say he was misinformed.

22 Q. Oh, he didn't understand?

23 A. I'm saying he probably didn't understand
24 the big picture.

25 Q. The big picture. He saw the trees, you

1 saw the forest; is that what we're saying?

2 A. I'm saying that he was looking at a
3 vacuum of level 6 and level 7 and what had
4 happened on level 6 and level 7.

5 Q. Well, one thing we can all be assured
6 of, you knew more about the job than Ryan did?

7 A. From a big picture, I would agree that I
8 knew more about what was going on with
9 communication with the owner, changes that were
10 coming.

11 Q. Sure.

12 A. These day-to-day issues, I wouldn't say
13 that I knew any more about them.

14 Q. And what was Mr. Stanton's job again?

15 A. Project executive.

16 Q. He was what?

17 A. Project executive.

18 Q. Project executive. Is that the guy that
19 got you this job?

20 A. No, sir.

21 Q. Is that the guy or is this somebody
22 else?

23 A. Somebody else.

24 Q. Okay. So the project executive on this
25 project, when he got a letter from Watson

1 Electric -- well, how big a subcontractor, 3 or 4
2 million bucks?

3 A. I don't remember.

4 Q. The project executive on this job, now,
5 he was above you, right?

6 A. Yes, sir.

7 Q. He was above you, your boss, right?

8 A. Right.

9 Q. And he could have chosen anybody on that
10 job, including you, to report back to him about
11 the statements that had been made by the
12 electrician, whether -- how many BIM360 things
13 they had, and what they're -- what this
14 particular person's on the job opinion was as to
15 Watson's letter, right? He could have picked
16 anybody he wanted to ask?

17 A. Absolutely.

18 Q. Absolutely. And he didn't have the good
19 sense to get you to do it, right?

20 A. This is a report. He asked for a report
21 on open items and BIM360. Ryan was a lot more
22 technically savvy in BIM360. He uses it on a
23 more daily basis than I do, and there's no reason
24 to ask me for it.

25 Q. But if your boss had just had enough

1 sense to know who to ask and who actually knew
2 how to run this job, he would have called the guy
3 who's 29 years old and asked him, and instead, he
4 called the field superintendent who was out there
5 every day. Had they fired Stanton yet?

6 A. No.

7 Q. Well, they ought to because he made a
8 big mistake. He should have called you.

9 A. He just asked me for a report.

10 Q. All right.

11 A. He said, can you send me all the open
12 items that Watson has on BIM360.

13 Q. I hear you.

14 A. He didn't ask to know -- how Watson was
15 performing on the job. He said, send me reports,
16 and Ryan felt obliged to respond to him.

17 Q. Okay. This was just a gratuitous
18 opinion given by the superintendent?

19 A. It was an opinion, absolutely.

20 Q. And he's wrong?

21 A. I'm not saying he's wrong. I'm saying
22 that he was probably fired up. He was probably
23 trying to get his floors done, and he responded
24 like this. And he sent it internally. He didn't
25 send it to the subcontractor. He sent it

1 internally.

2 Q. If it said internally, it's not true or
3 doesn't have to be true?

4 A. I didn't say that.

5 Q. No, I'm asking you. If it says
6 internally, is it still supposed to be true?

7 A. He has no reason to lie.

8 (DFT. EXH. 22 was marked for
9 identification.)

10 Q. Okay. Thank you. All right. Let's
11 look at exhibit -- what I will identify as 22.

12 A. Notice of delay and --

13 Q. Hold on one second. All right. This is
14 Exhibit 22, right?

15 A. Yes.

16 Q. All right. And what is the title of
17 this document?

18 A. Notice of delay and demand for cure.

19 Q. And who signed this document?

20 A. I did.

21 Q. As the project manager?

22 A. Yes, sir.

23 Q. Is this the standard form that's used by
24 BBC?

25 A. It's the standard form that we used on

1 this project.

2 Q. All right. And, in fact, it's demand --
3 notice of delay and demand for cure is sort of a
4 term of art in the subcontract, right? It has a
5 definition in the subcontract?

6 A. I believe so.

7 Q. Okay. And certain event have to occur
8 before your company would be contractually
9 entitled to issue such a notice, correct?

10 A. Contractually entitled to issue a
11 notice?

12 Q. Yes.

13 A. I believe that's correct.

14 Q. Pardon me?

15 A. I believe that's correct.

16 Q. Well, the contract doesn't allow you to
17 issue a notice to cure and demand -- of delay and
18 demand for cure when it's not delayed and there's
19 nothing to cure, does it?

20 A. Sure.

21 Q. Okay. So you would only send these
22 notices out when that condition actually existed?

23 A. Yes, sir.

24 Q. Okay. And there's a number of check off
25 things here. How many different boxes are there

1 in total to check off as evidence of default of
2 the subcontract, which, in fact, are, I believe,
3 outlined by paragraph and article? How many of
4 them are there?

5 A. Eight.

6 Q. How many?

7 A. Eight.

8 Q. I see 12.

9 A. Eight checked off.

10 Q. Okay. I asked you how many there was
11 altogether, but okay.

12 A. I thought you said checked off.

13 Q. No, I didn't mean to -- I apologize if I
14 did. There are 12 things you can put a
15 subcontractor in default for under the
16 subcontract. And this subcontractor might
17 have -- managed to get 8 out of 12, right?

18 A. No, sir. There are 12 things on this
19 list, the last one being other. I'm sure there
20 are other reasons they can be in default of the
21 subcontract. These are just ones that we
22 selected.

23 Q. Okay.

24 A. This isn't a full recap of their
25 subcontract.

1 Q. Okay. So they could make even more
2 mistakes than these?

3 A. Sure. Again, we can pull out the
4 subcontract and identify it.

5 Q. But the form -- the form, created by
6 Balfour Beatty, selected 12?

7 A. With the 12th being other to fill in.

8 Q. Eight out of 12 is what percentage?

9 A. Eight out of 12 is 75 percent.

10 Q. Okay. And if we were talking about a
11 batting average, you would be hitting 750,
12 correct?

13 A. We're not talking about batting
14 averages.

15 Q. So this is what --

16 A. If I were to read this list, if I only
17 listed the ones that they were in default for,
18 they'd be at 100 percent.

19 Q. Pardon me?

20 A. If I only put the ones that they were in
21 default of, were put on notice, I'd have to
22 include all of these. This is a standard form.

23 Q. Well, let's talk about what you believe
24 they were doing wrong. On 16 December 2016, how
25 long had you been on the job at that point?

1 A. Eight months.

2 Q. Eight months?

3 A. Yes.

4 Q. Okay. So had you turned -- let's see.

5 In December, you hadn't quite made -- were you 29
6 yet, or were you 30?

7 A. I don't know. I have no idea. Do you
8 want to do the math?

9 Q. But you were on the job at 28 or 29, and
10 within six months, you were issuing a notice of
11 delay and demand for cure to Old North State
12 Masonry, correct?

13 A. Yes, sir.

14 Q. All right. And presumably, before you
15 did that, you reviewed the subcontract and went
16 out and reviewed the work in the field?

17 A. Presumably.

18 Q. And presumably, you talked to the people
19 in the field?

20 A. Yes.

21 Q. All right. And what you said was that
22 they were in default. Now, what does that mean
23 in terms of -- what does that mean in terms of a
24 Balfour Beatty subcontract, when a subcontractor
25 is in default?

1 A. They're not performing.

2 Q. Okay. Is that a breach of that
3 subcontract?

4 A. It could be considered that, not --
5 yeah. It could be considered that they weren't
6 fulfilling their obligations as we saw it.

7 Q. And does the contract require that you
8 give subcontractors a notice of default, if in
9 fact, they are in default?

10 A. I don't know if it requires us to, but
11 it's an option.

12 Q. It's an option. Okay. So it's also an
13 option just to let them go and do defective work
14 that you know about and not put it -- give it to
15 their attention?

16 A. That's right.

17 Q. Okay. And how many times did y'all
18 exercise the option of allowing a subcontractor
19 to proceed with defective work without putting
20 them on notice of defective work?

21 A. I can't imagine we did it frequently,
22 Mr. Bundy.

23 Q. All right. First one, fully perform and
24 timely complete the work in accordance with the
25 subcontract. So at least as of September 16,

1 2016, Old North State Masonry was not fully
2 performing and timely completing its work in
3 accordance with the subcontract? True or not?

4 A. December 16.

5 Q. Excuse me, December 16. Is it true or
6 is it not true that, as of December 16, 2016,
7 you, the project manager on this job with Balfour
8 Beatty, the Bennett Hotel, put your
9 subcontractor, Old North State Masonry, declared
10 them in default for failing to fully perform and
11 timely complete its work in accordance with the
12 subcontract; is that true?

13 A. True.

14 Q. Okay. Is it also true that you put them
15 on default, notice of default for failing to
16 provide written assurances of complete and timely
17 performance?

18 A. True.

19 Q. Is it also true that you held them in
20 default and you believed it to be true, that they
21 were failing to coordinate its work with that of
22 the contractor and other subcontractors?

23 A. True.

24 Q. Is it also true they were failing to
25 provide sufficient labor, equipment, materials,

1 and supervision required for the proper and
2 complete performance of the work?

3 A. True.

4 Q. Is it true they were failing to correct
5 their defective work?

6 A. True.

7 Q. Is it true they weren't cleaning up
8 every day as required?

9 A. True.

10 Q. Is it true that they weren't protecting
11 the work and store materials from damage and
12 destruction and/or avoiding damage to the work or
13 materials of other trades?

14 A. True.

15 Q. All right. And down at the bottom, you
16 were directing them to correct deficiencies in
17 work and to distribute the field report 0245,
18 Hotel Marion Square, FR-2, right?

19 A. We were doing everything we could to get
20 their work complete as fast and as efficiently as
21 possible.

22 Q. Okay. Demand is hereby made to the
23 subcontractor commence and continue to cure the
24 aforementioned defaults within three business
25 days of receipt of this notice.

1 Failure to cure any defaults will cause
2 BBC to take those actions described in the
3 contract or any action permitted by law
4 including, without limitation, the remedies set
5 forth in articles 5 and 11, correct?

6 A. That's what it says.

7 Q. Do you know off the top of your head
8 what those remedies might be?

9 A. You can replace the subcontractor.

10 Q. There you go. You can fire them if you
11 wanted to?

12 A. You could if you want.

13 Q. All right. And did y'all get a payment
14 performance bond on your subcontractors?

15 A. I don't remember if we got one on this
16 one.

17 MR. BUNDY: Your Honor, I'd move to
18 put that in evidence. I don't know if I'd moved
19 or not, but I'm going to go ahead and --

20 THE COURT: You had not. Do you
21 want it in? This is Defendant's 22.

22 MR. HILDEBRAND: No objection.

23 THE COURT: Without objection.

24 (DFT. EXH. 22 was received in
25 evidence.)

1 (DFT. EXH. 23 was marked for
2 identification.)

3 BY MR. BUNDY:

4 Q. All right. Let's look at 23. Start at
5 the bottom, and it's from Joshua Beitz to you.
6 Who is Joshua Beitz, Nick?

7 A. Project manager for Lithko.

8 Q. So a director for the --

9 A. Project manager for Lithko.

10 Q. Okay. And Beitz is saying, Nick and
11 Tim, please see the attached release of
12 mechanic's lien from Doka. Who is Doka?

13 A. I think they were a form supplier.

14 Q. A supplier?

15 A. A supplier.

16 Q. And who did they supply to?

17 A. Lithko.

18 Q. Okay. So they were second to your
19 subcontractor?

20 A. Supplier type, provider, material.

21 Q. Okay. They weren't in contract with
22 Balfour Beatty?

23 A. No, sir.

24 Q. And they weren't in contract with
25 Library Associates, correct?

1 A. To my knowledge, they were not.

2 Q. All right. And they filed the lien on
3 my client's hotel, right?

4 A. Pardon?

5 Q. Doka, they filed a lien on my client's
6 hotel. Library Associates is my client.

7 A. Okay.

8 Q. Did they file a lien on my client's
9 hotel?

10 A. This says they had. I don't remember
11 all the liens that were filed.

12 Q. I'm not asking you to remember all of
13 them because there were a bunch of them filed. I
14 want to talk about the Doka lien, which is in
15 this e-mail. And he says, see the attached
16 release of mechanic's lien. Okay? So do you
17 think somebody would file a release for
18 mechanic's lien that was never filed?

19 A. No.

20 Q. Okay. So there must have been a lien,
21 and it must have been filed by Doka, correct?

22 A. It must have been.

23 Q. Is the filing of a lien by a material
24 supplier, a breach of the subcontract between
25 Balfour Beatty and the subcontractor?

1 A. I don't know.

2 Q. You don't know. Is the filing of a lien
3 by a subcontractor a breach that required the
4 general contractor or construction manager, in
5 this instance, to file a release of mechanic's
6 lien?

7 A. Pardon?

8 Q. Is the general contractor or the
9 construction manager, BBC, required to bond off
10 or otherwise satisfy liens filed on the project?

11 A. I believe the contract says that.

12 Q. Okay. And why?

13 A. I don't know why. It's just what the
14 contract says.

15 Q. Well, do you know what a lien is?

16 A. Yes, sir.

17 Q. Tell me what it is. What is your
18 understanding?

19 A. My understanding of a lien is, it's a --
20 the contractor performed work or supplied
21 material to the project, and they are holding
22 their rights to lien on the project.

23 A lien is basically their service that
24 they've -- not service they provide, but a lien
25 is basically telling someone or filing, that they

1 have not been paid or satisfied on their
2 contract.

3 Q. Something like that?

4 A. Yeah, something like that.

5 Q. What effect does the filing of a lien
6 have on the title to a piece of property? Do you
7 know?

8 A. I don't know all the effects that it
9 has.

10 Q. What effect does a lien have on the
11 ability of an owner, such as Library Associates,
12 to obtain a draw request once that lien has been
13 filed?

14 A. I'm not a hundred percent sure. I don't
15 know what they can and cannot do with a lien on
16 the property. That's probably in their agreement
17 with the bank.

18 Q. Do you know whether or not, when you
19 file a lien, you have to sign an affidavit and
20 swear under oath that the money is actually due?

21 A. I don't know that.

22 Q. Do you know whether it's filed with the
23 RMC office and becomes a public record for the
24 entire world to --

25 A. I do not know that.

1 Q. -- be put on notice of?

2 A. I do not know that.

3 Q. Do you know why Doka filed the lien?

4 A. They probably haven't been paid.

5 Q. And do you know whether or not Lithko
6 had been paid by Balfour Beatty?

7 A. I do not.

8 Q. Okay. If Lithko had been paid by
9 Balfour Beatty, should they have paid Doka?

10 A. I can't speak for Lithko.

11 Q. Okay. All right. Are lien releases
12 required -- strike that. Let me start again.
13 We've been talking about liens. What is -- you
14 know what a lien is now, or you told me what you
15 think a lien is. I would like to know now what
16 you think a release of lien is?

17 A. It's releasing your right to file a lien
18 for the amount that's in the release.

19 Q. Okay. All right. And do you know what
20 law is relevant to what is required in terms of
21 timeliness or the time of the filing of the lien?

22 A. I'm just going to say, no, I don't know
23 the law around it.

24 Q. So you're unaware that a lien has to be
25 filed, one, within 90 days of the last day you

1 did work on the job?

2 A. I'm aware of that.

3 Q. Did you know that?

4 A. I'm aware of that.

5 Q. Okay. So since you've got 90 days, do
6 you think it would behoove a lender to get a
7 release of lien before he pays money on a
8 project, because somebody could come in
9 afterwards and claim a lien? If he didn't have
10 the lien release, that lien would affect his
11 position and title. Are you aware of that?

12 A. I can't speak to that.

13 Q. Okay. So you really don't know what the
14 significance of the lien or the ramifications of
15 the filing of a lien are?

16 A. I don't know what benefits the lender
17 and what doesn't.

18 Q. So I guess you didn't have any lien
19 lunches?

20 A. Lien lunches?

21 Q. Lien lunches, where you learned about
22 liens at Balfour Beatty?

23 A. No.

24 Q. You said you had lunch and learn. Did
25 you have a lunch and learn about liens?

1 A. About what a lender requires?

2 Q. No, sir.

3 A. I'm sure we had lunch and learns on
4 whether --

5 Q. Oh, so you had one? Okay. So you had a
6 lender -- did you have a --

7 A. No.

8 MR. HILDEBRAND: Your Honor, he's
9 not letting him finish his answer. They're
10 talking over each other.

11 MR. BUNDY: I gotcha.

12 THE COURT: Go ahead. Let him
13 finish.

14 BY MR. BUNDY:

15 Q. All right. Let's go up a little bit.
16 Who is Candace?

17 A. Project accountant.

18 Q. Okay. And I have a hard time figuring
19 out who is writing who on these things. Okay.
20 Is this from you? Tim Spano is writing to
21 Candace; is that what's going on?

22 A. That's who he is addressing it to.

23 Q. Huh?

24 A. That's who he's addressing it to.

25 Q. Okay. I have a hard time with these

1 things.

2 A. Candace, this is the final meeting
3 release with Lithko's pay app number 16 for
4 October of 2016. We want to release this
5 funding. Let us know if anything else is needed
6 to cut the check. Thanks.

7 Q. Okay. So in order -- by release the
8 funding, he means pay them, I guess?

9 A. I would assume so.

10 Q. Okay. And Candace -- then you write
11 Candace, right?

12 A. Yes.

13 Q. Okay. And you send a copy to Sandeen
14 and whoever, Stanton or whoever. And the title
15 is, Marion Square satisfaction of mechanic's
16 lien.

17 Candace, we need to know if we have all
18 the required leases for Lithko through pay app
19 19. Did you mean releases because I -- y'all
20 didn't lease anything to Lithko, did you?

21 A. I assumes I meant releases.

22 Q. All right. Let's do it this way. This
23 is an assumption, but let's look in -- let's
24 drill down on the assumption. Did Balfour Beatty
25 Construction Company lease Lithko any property

1 that you know of?

2 A. Not that I know of.

3 Q. Okay. So then this notice could have
4 been a mistake. It should have said release,
5 right?

6 A. Yes, sir.

7 Q. Okay. And really, if we fill it out is,
8 we need to know if we have all the required
9 releases of liens for Lithko, right?

10 A. Okay.

11 Q. Through pay app 19. We need to hold
12 funds for potential back charges. What back
13 charges?

14 A. I don't know. Potential back charges.

15 Q. Okay. But what would they be for?

16 A. A number of things.

17 Q. Name one.

18 A. I don't know what these back charges
19 were for.

20 Q. You just know they were potential?

21 A. That's right.

22 Q. Okay. But we can release most of their
23 draws if all the required lien releases and all
24 the required releases have been received. Do you
25 know whether or not you ultimately got all the

1 required releases?

2 A. No, sir. I would imagine we did,
3 though.

4 Q. You would imagine you did. Okay. Now,
5 if you got the complete release and released all
6 the funds, based on the language we read earlier
7 today, if it was similar language, would Lithko
8 be entitled under that lien release to file any
9 more claims or have any -- make any more claims
10 against either BBC or Library Associates?

11 A. I don't understand.

12 Q. That's fine.

13 MR. BUNDY: Your Honor, I move to
14 put Exhibit 23 into evidence.

15 THE COURT: Exhibit 23?

16 MR. HILDEBRAND: No objection.

17 THE COURT: All right. Without
18 objection. I need a copy of that one, if you
19 have got it.

20 (DFT. EXH. 23 was received in
21 evidence.)

22 (DFT. EXH. 24 was marked for
23 identification.)

24 BY MR. BUNDY:

25 Q. All right. 23?

1 A. Got it. 24?

2 Q. Excuse me, is it 24?

3 A. 24 is the new one.

4 MR. BUNDY: This is, for the
5 record, BBC e-mails 01747917. I move to
6 introduce it into evidence.

7 MR. HILDEBRAND: No objection, Your
8 Honor.

9 THE COURT: Without objection. Got
10 it.

11 (DFT. EXH. 24 was received in
12 evidence.)

13 BY MR. BUNDY:

14 Q. All right. Look through it and we'll
15 try to get through it quick.

16 A. Okay.

17 Q. All right. The very last notes on --
18 I'm going to try to move along. At the top of
19 the first page, the last e-mail in this string,
20 it's from Tim Spano to you and others, right?

21 A. Yep.

22 Q. And it's entitled, Marion Square,
23 Lithko, demand for cure, right?

24 A. Yes.

25 Q. And what Spano says, regardless of the

1 pour, and that's P-O-U-R, look ahead, right?
2 That's what it says, regardless of the pour, look
3 ahead.

4 A. That's what it says.

5 Q. What he's talking about is pouring
6 concrete, right?

7 A. I do not know.

8 Q. Huh?

9 A. I do not know.

10 Q. Okay. Well, do you --

11 A. If he's assuming there's poor weather
12 coming or if he's looking at a pour schedule. I
13 don't know what he's talking bout.

14 Q. Well, poor is spelled P-O-O-R, if
15 something is in poor shape.

16 A. I understand that.

17 Q. If you're pouring something out of a
18 glass, it's P-O-U-R, or if you were pouring
19 concrete, it would be P-O-U-R.

20 A. I understand that.

21 Q. Okay. So what do you think this is,
22 pouring concrete, or is it poor concrete,
23 P-O-O-R?

24 A. I don't know.

25 Q. Okay.

1 A. I loved him to death, but it wouldn't be
2 the first time he made a spelling mistake.

3 Q. I gotcha. Do you recall calling him up
4 and saying, what are you talking about?

5 A. No.

6 Q. Are you talking about pouring concrete
7 or are you talking about poor workmanship?

8 A. No, I don't recall calling him and
9 asking him.

10 Q. Okay. The loss of decking. What is
11 decking?

12 A. Decking, it's formwork underneath the
13 slab.

14 Q. Okay. Into which concrete is poured,
15 P-O-U-R?

16 A. Correct.

17 Q. Okay. So does that give you any hint on
18 what he's talking about?

19 A. No. He could be forecasting before
20 looking at it. I'm reading this and saying, he
21 could be forecasting a poor look ahead, P-O-O-R.
22 If they saw weather coming, they're -- they're
23 not going to put decking up because there's a
24 poor weather coming. I don't know.

25 Q. I don't know either. The loss of

1 decking today will delay the structure and
2 ability to pull the schedule in. That's on
3 Lithko.

4 A. Yes, sir.

5 Q. What does that mean?

6 A. He's blaming Lithko.

7 Q. He's blaming Lithko for whatever it is
8 he's talking about?

9 A. For not being able to get ahead, and we
10 were doing everything we could to push our
11 subcontractors, Mr. Bundy.

12 Q. This is BBC e-mail 01746035.

13 MR. BUNDY: Your Honor, I think I
14 already got the last one in, didn't I?

15 THE COURT: It was in, yes.

16 MR. BUNDY: Did I get the last one
17 in?

18 THE COURT: It was in, yes.

19 (DFT. EXH. 25 was marked for
20 identification.)

21 MR. BUNDY: 25, I move to put into
22 evidence, Your Honor.

23 MR. HILDEBRAND: No objection.

24 THE COURT: Without objection.

25 (DFT. EXH. 25 was admitted into

1 evidence.)

2 BY MR. BUNDY:

3 Q. All right. And this is July 14, 2016 to
4 Spano, and you received a copy, right?

5 A. Yes.

6 Q. All right. And it's from a guy or a
7 gentleman named Chip Venable. He's the project
8 manager, it looks like, for Old North State
9 Masonry; is that correct?

10 A. Yes.

11 Q. All right. He writes, Mr. Spano, please
12 accept this letter as an official notice of delay
13 for the masonry scope of work. As of today, we
14 have demobilized from your job. When we arrived
15 on the job -- your job Monday, this week,
16 numerous areas were brought to you and your
17 team's attention for rebar, either completely
18 missing or in the wrong place.

19 This is not been corrected at this
20 point. Other area of delay are materials and
21 pour -- and post shores preventing us from
22 stocking out and performing our work. More
23 importantly, while on site this week, it has come
24 to our attention, that the grout, G-R-O-U-T,
25 holes, paren, detail S303-4, are missing in all

1 slabs currently poured.

2 What are grout pour? And it's not
3 P-O-O-R but P-O-U-R holes.

4 A. Pour holes?

5 Q. Yes.

6 A. It's holes in the slab. You stick rebar
7 ring in, it goes through the block, and you pour
8 from above down below.

9 Q. You pour grout to fill CMU units?

10 A. Yes, sir.

11 Q. Okay. And the way CMU units are laid,
12 the drillings don't lay up on top of each other
13 so the holes sometimes don't match up on the way
14 down, right? So you've got to have a way to fill
15 them up as you go up, right?

16 A. Yes.

17 Q. Okay.

18 A. I believe that's correct.

19 Q. And it is in fact the law, or the
20 building inspector, will not let you lay but so
21 many courses of CMU before you fill the bar; is
22 that correct?

23 A. To an extent, yes.

24 Q. No. It's a code -- it's a code
25 requirement --

1 A. There's various --

2 Q. -- to a specific number of feet. Are
3 you not aware of that?

4 A. No. There is a code. To an extent, he
5 won't let me go but so far.

6 Q. Okay. Do you know what that number is?

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

8 Q. And you know, don't you, that if you put
9 up more block that is allowed before you pour the
10 grout, you're going to have to take it down and
11 repour it, right?

12 A. That's right.

13 Q. Okay. And the grout holes allow for
14 that pour to take place so that it conforms with
15 the standard building code?

16 A. There's other ways to do it.

17 Q. And in this instance, the mason is
18 complaining that was not done?

19 A. No. He is complaining that the holes
20 were not there yet. He's not saying that he put
21 up too much.

22 Q. Whose job was it to put the holes in?

23 A. Lithko's.

24 Q. Huh?

25 A. Lithko's. This was in their scope of

1 work.

2 Q. And I presume you've some some document
3 somewhere where Mike Bennett or Kim Bennett Brown
4 or the architect told you, no, we will not allow
5 you to have pour holes on this job? Is that why
6 y'all didn't get Lithko to do it?

7 A. We did get Lithko to do it.

8 Q. All right. Did it delay the job?

9 A. The critical path?

10 Q. Sir?

11 A. The critical path?

12 Q. Yes.

13 A. Again, I don't know that it did or
14 didn't.

15 Q. If it did delay the critical path, that
16 would be on BBC as it relates to Library
17 Associates, and it would be on Lithko as it
18 relates to BBC, correct?

19 A. Yeah. There's a number of things that
20 go into it, but if they didn't do something they
21 were supposed to do, that's on us.

22 (DFT. EXH. 26 was marked for
23 identification.)

24 MR. BUNDY: 26. Number 26, Your
25 Honor, BBC e-mails 01746036. I move to introduce

1 this into evidence as Exhibit 26.

2 THE COURT: Okay.

3 MR. HILDEBRAND: No objection, Your
4 Honor.

5 THE COURT: Again, without
6 objection.

7 (DFT. EXH. 26 was received in
8 evidence.)

9 BY MR. BUNDY:

10 Q. All right. This exhibit, you were
11 copied on. It's another letter from Mr. Venable.
12 This was dated August 11, 2016, and it's
13 entitled, Marion Square Hotel, second notice of
14 delay. Do you see that?

15 A. Yes.

16 Q. Mr. Spano, please accept this letter as
17 our official second notice of delay to the
18 masonry scope of work. Once we complete the
19 basement and first floor CMU, we will be
20 demobilizing from the job. What does
21 demobilizing mean?

22 A. Leaving the job.

23 Q. All right. Did the schedule that you
24 were building this building by have a section in
25 it where Old North State Masonry was going to

1 leave the job, come back to the job, leave the
2 job, come back to the job, or did you expect,
3 according to the schedule if it were followed,
4 that they would be there pretty much
5 continuously?

6 A. When you lay a plan out, typically, you
7 want a subcontractor there continuously. I don't
8 think our schedule had the subcontractor leaving.

9 Q. We still do not have any clear direction
10 as to what is happening with the rebar. As an
11 update to the job schedule, we are still being
12 delayed due to rebar on second floor not being
13 installed per the drawings. Is that what it
14 says?

15 A. Yes, sir.

16 Q. This has caused a complete loss of
17 production this week. Is that what it says?

18 A. Yes.

19 Q. The missing grout pour holes is
20 impacting our grouting procedures, correct?

21 A. Yes.

22 Q. The last lift of CMU cannot be vibrated.
23 Now, what does that mean?

24 A. Exactly what it says, can't vibrate the
25 grout to make sure it gets into all the CMUs.

1 Q. Explain to the Judge what a vibrator is
2 for concrete purposes.

3 A. It's a device, placed down in the grout,
4 fill up the grout, usually at the bottom beam
5 vertically. You pour grout, and you vibrate it
6 in to make sure it fits all of the --

7 Q. And the purpose of that is two-fold, is
8 it not, to get the grout fully within the cells
9 but also to get the air out of the grout?

10 A. That's correct.

11 Q. Okay. But there's an art to that, like
12 everything else. You can also over-vibrate the
13 concrete and vibrate it --

14 A. Sure.

15 Q. -- so much it separates it and it's
16 useless?

17 A. That's right.

18 Q. Okay. And that's why you need the holes
19 so you'll -- so you're able to do it properly?

20 A. There's several ways do to it.

21 Q. Means, methods, and procedures, right?

22 A. Yes.

23 Q. Means and methods?

24 A. That's correct.

25 Q. Okay. But it's also a requirement in

1 the contract plans and specifications and the
2 building code?

3 A. Which we met.

4 Q. As you cannot fit the vibrator down to
5 the last lift. Well, if you can't fit it down to
6 the last lift, you can't vibrate the last lift;
7 so, therefore, the installation of the grout
8 would not be consistent with the plans and
9 specifications of the building code, correct?

10 A. Not true. The inspector would be there.
11 We made special accommodations so the inspector
12 could review it.

13 Q. We do understand your team is to have a
14 conversation with the inspector trying to resolve
15 this issue. Well, tell me about, what was the
16 issue that you were trying to resolve with the
17 building inspector?

18 A. We wanted -- this was the third party
19 inspector. We wanted to make sure that the grout
20 had made it to all -- all the CMU holes as
21 planned.

22 Q. I don't understand what the -- what is
23 the issue you're trying to resolve? The failure
24 to have grout, the way to put the grout in?

25 A. The failure to have it as the way it was

1 designed and planned. There's other ways to
2 remedy problems than the way it's designed in the
3 plans. Instead of taking the block down, we came
4 up with another way to do it.

5 Q. Are you telling me the design is
6 defective?

7 A. No, sir.

8 Q. Okay. So we're not going to blame this
9 on the architect?

10 A. I'm not blaming this on the architect.

11 Q. Okay. Well, we find something he did
12 right on the 50 million dollar hotel. So what
13 was the fix that y'all came up with or the
14 alternate course?

15 A. We left the top level of the CMU block
16 off, and they were able to get their grout pump
17 in, and that's how they filled up the last lift.
18 And then the inspector would come behind and
19 either do sound checks or ask us to spot check
20 places within the CMU.

21 Q. And would that procedure be a deviation
22 of standard practice and what was required in the
23 plans and specifications?

24 A. No, sir.

25 Q. So you didn't issue -- there wasn't an

1 RFI that would allow y'all to do it this way?

2 A. There may have been.

3 Q. There may have been?

4 A. There may have been. I don't -- I don't
5 remember.

6 Q. Okay. So there may have been an RFI, at
7 least maybe one on this job, that was a result of
8 the contractor not following the plans and
9 specifications and not understanding the plans
10 and specifications?

11 A. No, sir. If you're saying that we
12 deviated from the plans and specifications, I'm
13 not saying that. The plans and specifications
14 never say that you have to put a -- you have to
15 put a grout on from the floor above into the CMU
16 where the vibrator is. The plans and specs never
17 said that. Means and methods.

18 Q. Let's go on. However, we are losing
19 valuable time to the schedule due to the
20 confusion of rebar spacing, rebar not passing
21 through the floor, and our inability to vibrate
22 the last lift of CMU. Is that statement true?

23 A. It's their take on it. I don't know if
24 it's true or not. I don't believe that's true or
25 not.

1 Q. You can't deny it, can you?

2 A. What's that?

3 Q. You cannot deny it's true, can you?

4 A. I'm saying, this is the subcontractor's
5 point of view.

6 Q. What is your point of view,
7 Mr. Starcevic?

8 A. That we found out -- we figured out a
9 way to accomplish the task.

10 Q. No. Well, it also says, we are losing
11 valuable time. Is that a correct statement or
12 not?

13 A. From their original anticipated
14 duration, it probably took longer than they had
15 planned. And they also got paid for that.

16 Q. We expect that -- your team to take the
17 lead on this and make sure all parties concerned
18 have a clear understanding of the expectation
19 structurally to get the CMU walls built. Did
20 y'all get together with all parties and come to a
21 clear understanding at any point?

22 A. I believe so.

23 Q. All right.

24 A. These are things we -- we worked these
25 out on the site. This is atypical from a

1 (inaudible) job.

2 MR. BUNDY: If I haven't done it,
3 I'll move the last -- I think I've got it in
4 evidence already.

5 THE COURT: Yeah. 26, was in,
6 yeah.

7 (DFT. EXH. 27 marked for
8 identification.)

9 MR. BUNDY: All right. Exhibit 27
10 is BBC e-mail 01747431. I move to put it into
11 evidence.

12 THE COURT: Okay.

13 MR. HILDEBRAND: No objection.

14 THE COURT: Without objection. All
15 right.

16 (DFT. EXH. 27 received in
17 evidence.)

18 BY MR. BUNDY:

19 Q. All right. Let's go to the second page,
20 which is 01747432. Do you see that?

21 A. Yes.

22 Q. All right. Now, this is an e-mail from
23 John Heuer?

24 A. Heuer.

25 Q. Heuer, sorry. I apologize. Sent on

1 Monday, July 9th at 2:18. Now, he is the general
2 counsel for this company, BBC, right?

3 A. Senior vice president of legal.

4 Q. Pardon me?

5 A. Senior vice president of legal.

6 Q. And he is also general counsel, isn't
7 he?

8 A. Yes, sir.

9 Q. Okay. And the job is how far away from
10 completion in July 9, actual completion? It's
11 another, what, 15 months away, 16 months away?

12 A. Sounds about right.

13 Q. And you've been on the job how long as
14 of July 9?

15 A. Two months, a month and a half or a year
16 and a half.

17 Q. Okay. And the subject, the letter is to
18 Simonton, Spano, Starcevic, Alec Dooley, Pat
19 Dean. The subject here is Old North State
20 Masonry. Where this black is, was there typing
21 and wording in this before? Has this been
22 redacted?

23 A. It looks like it.

24 MR. BUNDY: Okay. Your Honor, I
25 don't know if this is something that you have

1 approved to be redacted or not, but have you --
2 do you remember it?

3 THE COURT: I don't, but let me see
4 it.

5 MR. BUNDY: Because I believe I
6 should be entitled to see it, but we can
7 certainly have a conference about it. I don't
8 believe it was on the privilege list either, Your
9 Honor.

10 THE COURT: I don't recall it. Do
11 you recall?

12 MR. HILDEBRAND: I don't, Your
13 Honor, sorry.

14 MR. BUNDY: You know, if I could
15 interrupt you, this might be a good time to stop.
16 I'm tired, and maybe y'all can figure this out,
17 and then we will come back tomorrow.

18 THE COURT: Okay. All right. It
19 clearly looks like it was redacted.

20 MR. BUNDY: Right. I just need to
21 know --

22 THE COURT: Since it's from
23 Mr. Heuer to these folks, that may well explain
24 that, but anyway, we will see. We will compare
25 it with what we have.

1 MR. BUNDY: I just need you to look
2 at it to make sure it's actually privileged.

3 THE COURT: Yeah. Do you want to
4 break for today?

5 MR. BUNDY: Yeah, if you don't
6 mind.

7 THE COURT: Yeah. It's a little
8 after 5. We can certainly do that.
9 Mr. Starcevic, it sounds like you may be back
10 tomorrow. Do you have a few more questions for
11 him?

12 MR. BUNDY: Yes, sir. I've got
13 about a half day.

14 MR. HILDEBRAND: Half day?

15 MR. BUNDY: Maybe a day; half day
16 at least. All you've got to do is say, yes,
17 Mr. Bundy, and it will go very quickly.

18 THE WITNESS: I'm trying.

19 THE COURT: All right. Well, why
20 don't we conclude for the day and come on
21 back -- let's come back tomorrow morning about 9
22 o'clock.

23 MR. BUNDY: 9 o'clock?

24 THE COURT: Yeah.

25 MR. BUNDY: What about the

1 continuance, Judge? What are we going to do
2 about that?

3 THE COURT: I will -- let me pull
4 that thing up a second. Hold on. So I don't
5 know. I'm assuming the plaintiff has got maybe
6 two more witnesses?

7 MR. HILDEBRAND: Yes, sir.

8 THE COURT: Does that sound right?

9 MR. HILDEBRAND: Yes, sir.

10 THE COURT: So it's going to take
11 tomorrow and some time into Wednesday --

12 MR. BUNDY: Yes, sir.

13 THE COURT: -- realistically?

14 MR. BUNDY: Probably Thursday, to
15 be honest with you.

16 THE COURT: Okay. Well, I think it
17 would probably easier -- based on that, it would
18 probably be easier enough just to go ahead and
19 grant the continuance --

20 MR. BUNDY: Right.

21 THE COURT: -- and come back -- at
22 one time, you had an issue with starting October
23 25th. Has that resolved?

24 MR. BUNDY: Yeah. I will be
25 finished fishing on Sunday. I will be here on

1 Monday.

2 THE COURT: Okay. All right. Very
3 good? So then why don't we -- let's just plan to
4 get through the plaintiff's case this week.
5 Okay? Sounds like it's going to take -- we've
6 got two more witnesses. This one is taking
7 longer than most, and the others may, I don't
8 know.

9 And then let's just plan to do it. So I
10 will grant his continuance for the plaintiff's
11 case -- excuse me, the defense case. And the
12 counter-claims wouldn't start until October 25th.
13 Okay.

14 MR. BUNDY: Well, my case, right,
15 yeah.

16 THE COURT: Your case. Okay. And
17 so I will need to let those subcontractors know,
18 but like I said, the -- one of the things I want
19 to do, I want to do some housekeeping. I don't
20 need to do that today. I may do that first thing
21 in the morning.

22 That one document had the list of all
23 the parties. We started going down the list of
24 who has now settled out. I may want to do that
25 with y'all tomorrow so just we're clear. But

1 we've certainly got a lot less subcontractors
2 than we initially had.

3 MR. BUNDY: I've got a couple other
4 suggestions, if you'd like to hear them, to how
5 we might move it along.

6 THE COURT: Okay. Well, I also
7 wanted to get from you a couple of documents that
8 I never got handed up today. 19 and 23 were the
9 two I was looking for.

10 MR. BUNDY: Okay. One is, you
11 know, what about -- when they finish their case,
12 I'm obviously going to have a motion or two to
13 make.

14 THE COURT: Sure.

15 MR. BUNDY: Do you want to handle
16 those, or do you want us to file briefs, or do
17 you want to do them on Friday? How do you want
18 to do all of that?

19 THE COURT: I want to play it by
20 ear, but depending on what time we finish up, if
21 it's Thursday, I will be glad to entertain them.

22 MR. BUNDY: We would be glad to go
23 forward on Friday. That way you could get it all
24 behind you and you can take -- you can think
25 about it over the 24th or from then. Now, the

1 other issue I would have or the other thing I
2 would suggest is, in our case-in-chief, we're
3 going to put in a good many video depositions of
4 various witnesses.

5 THE COURT: Okay.

6 MR. BUNDY: All of which are
7 unavailable, yada-yada, or otherwise under the
8 rule. It occurred to me that, since they're all
9 on video, right, that I could go ahead and we
10 could give them the portions we want to read.
11 They could supplement it with their portions, and
12 you could go and start watching depositions.

13 Because as I understand it, you're not
14 going to watch them in front of us anyway, right?
15 And so I could just -- I mean, you could have
16 them. I don't know -- you'd have to think about
17 that because if you start reading depositions,
18 he's going to take the position -- no, that's a
19 bad idea. I don't want to do that.

20 THE COURT: All right.

21 MR. BUNDY: I don't want to do
22 that.

23 THE COURT: That's the continuance
24 aspect of it. As long as y'all have got the
25 aspect of the -- as we did before, as long as

1 y'all got the aspect of the video deposition that
2 you intend to put into evidence.

3 MR. BUNDY: Right.

4 THE COURT: And, again, if I can
5 get it in that fashion, if there's a written
6 communication of it as well. If not, she's got
7 to take it and transcribe it.

8 MR. BUNDY: Most of my depositions
9 are video. I probably took -- 90 percent of mine
10 were video. All depositions I took were video
11 except for one or two that I took in the very
12 beginning.

13 THE COURT: Okay. Do you have a
14 written transcript with that?

15 MR. BUNDY: Absolutely. A written
16 transcript. We can get you anything you want.

17 MR. MCDONALD: Got your 23. I'll
18 try to find the other one.

19 THE COURT: All right. 19 was the
20 one we were missing. 23 was the one we had.

21 MR. MCDONALD: This is 23, and then
22 let me get you -- you know, what it was? It was
23 the change order 40, Quantum.

24 THE COURT: That's right.

25 So what I'm going to do -- what I'll do

1 is, I'll send out an e-mail this evening to Don
2 Terry, and I'm going to issue a Form 4 either
3 overnight or in the morning. I'm going to grant
4 it to the extent that this extends a continuation
5 of the case until the 25th, after the plaintiff
6 has rested.

7 MR. HILDEBRAND: Thank you, Your
8 Honor.

9 THE COURT: Okay. Just to be clear
10 on that.

11 MR. HILDEBRAND: Your Honor, I'd
12 like to -- we also have depositions that I'd -- I
13 want to put the other side on notice. It's been
14 over a week now, about the sections that we would
15 like to have from the deposition transcripts.
16 You said that you would like to read those.
17 That's fine. But I would like to get those in
18 evidence and the exhibits that go with them
19 because that would impact how much I've got to
20 call and things like that. So maybe we can do
21 that first thing in the morning.

22 THE COURT: Okay.

23 MR. HILDEBRAND: And I think that
24 you also were kind enough to say that, you're not
25 going to -- you're going to read the depositions,

1 but you will allow me to -- for 10 minutes max to
2 read the sections from the excerpts that I would
3 like to. So we can do that tomorrow morning or
4 we can do that after Mr. Starcevic.

5 THE COURT: I would like to get
6 Mr. Starcevic in and out of here the best we can.

7 MR. HILDEBRAND: Do you want to
8 wait on all of that until --

9 THE COURT: Yeah, let's hold off on
10 that. Okay? Let's just hold off. We can do
11 that on one of the breaks or in between witnesses
12 or whatever. I'm assuming you've got your other
13 witnesses here already?

14 MR. HILDEBRAND: Yes, sir.

15 THE COURT: But that's what I
16 assumed. All right, folks. Thank y'all very
17 much. I look to see you in the morning.

18 (The hearing was concluded at
19 5:15 P.M.)

20

21

22

23

24

25

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

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

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

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

Witness my hand, I have hereunto
affixed my official seal on July 12, 2022 at
Charleston, Charleston County, South Carolina

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

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

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

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

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

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25

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

2
3 ON BEHALF OF PLAINTIFFS:

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

13
14 ON BEHALF OF DEFENDANT LIBRARY ASSOCIATES:

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

24 ON BEHALF OF DEFENDANT WATSON ELECTRICAL:

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

31 ON BEHALF OF DEFENDANT OLD NORTH STATE & LITHKO:

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

1

ON BEHALF OF DEFENDANT DAVID ALLEN COMPANY:

2

KELLY LAW FIRM, LLC

3

BY: RUSSELL BRITTON KELLY, ESQ.

689 King Street

4

Charleston, SC 29403

Britt@kellylawsc.com

5

6

ON BEHALF OF DEFENDANT METROPOLITAN LIFE:

7

BUIST BYARS & TAYLOR, LLC

BY: G. HAMLIN O'KELLEY, ESQ.

8

652 Coleman Boulevard

Suite 200

9

Mt. Pleasant, SC 29464

Hamlin.okelley@buistbyars.com

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12

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1 THE COURT: I apologize for
2 starting late, but I can't apologize for the car
3 wreck on the corner down there. That was a new
4 one on me. I saw plenty of lawyers out there
5 taking photographs, though.

6 That was unbelievable. All right. Did
7 y'all want to do some housekeeping before we
8 start this morning or jump right in? I
9 apologize, Mr. Starcevic, but anyway. I got the
10 message about 8:30 that traffic was bad. I had
11 taken my wife to work at 7 a.m., and there was a
12 car wreck on every interstate exit from
13 Dorchester Road to Summerville.

14 So I'm sure it wasn't much fun coming
15 down this way today. So anyway, sorry to get
16 y'all in a hurry and ready to roll. Why don't we
17 just start rolling. Let's get back on -- unless
18 there's something we need to take up, why don't
19 we start rolling with Mr. Starcevic.

20 MR. BUNDY: I just want to make my
21 daily request --

22 THE COURT: Okay.

23 MR. BUNDY: -- for Balfour Beatty
24 to comply with the subpoena I issued before we
25 started this trial.

1 THE COURT: Okay.

2 MR. BUNDY: One of my
3 understandings is, is that they contest the
4 service. Okay?

5 THE COURT: Of the subpoena, yeah.

6 MR. BUNDY: So I'm going tomorrow
7 or whenever I can get to it, I'm going to serve
8 the South Carolina Secretary of State. I'm going
9 serve their registrative with service of process.
10 I'm going to get a subpoena in North
11 Carolina, and I'm going to serve every single
12 officer of that corporation. I'm going to serve
13 everybody that's been in this courtroom that
14 subpoena.

15 I'm going to get good service on one of
16 them unless I'm -- as a lawyer that's been doing
17 this for 42 years, simply don't know how. So I
18 just wanted to let the Court know that.

19 I do not have the documents. Those
20 documents were not subpoenaed by Sam Hadley.
21 They were subpoenaed by Bill Bundy. I have a
22 right to issue a subpoena as a lawyer, and I
23 would like it enforced. Thank you, Your Honor.

24 THE COURT: All right.

25 Mr. Hildebrand?

1 MR. HILDEBRAND: We've been through
2 this, Your Honor. And I'll tell you what, again,
3 we went through the audit process in depth, and
4 our accountant -- internal accountant, Casey
5 Thompson, will talk about that.

6 And an audit report that was generated
7 as a result of your orders. So a heck of a lot
8 of time went into that, and then the discovery
9 period is cutoff and the period for all experts
10 to have finalized their opinions has been cutoff.

11 We've gotten Ms. Hadley's report. I
12 took her deposition and asked her if she was
13 prepared to render her final opinions as required
14 by the scheduling order. She said yes. So,
15 again, I understood that that request was simply
16 to update the documents because of some of the
17 settlements that have taken place.

18 I don't think it's appropriate at this
19 point for me or the other side, under the guise
20 of a subpoena, to continue discovery in this
21 matter, and that's what Mr. Bundy is doing. He's
22 saying, okay, I can subpoena anybody to do
23 anything, despite the fact that discovery has
24 ended.

25 Regardless of all of that, Your Honor,

1 again, we went through a list the other day of
2 documents that you said, okay, Balfour, give us
3 these documents. And we went through that, and
4 we provided them.

5 So I disagree very strongly that a
6 subpoena is appropriate or allowable, one, under
7 the rules; two, particularly in the middle of the
8 trial; three, under the scheduling order in the
9 history that's already taken place in this
10 matter. So I know I'm repeating myself. I think
11 Mr. Bundy is probably repeating his self. But I
12 don't think it's appropriate. Thank you.

13 THE COURT: All right. And then
14 back to the request. Mr. Bundy, there was -- I
15 was looking on my list. There were one or two --
16 I think one or two, I believe if memory serves me
17 right, there were four items on the list.

18 And I'm pretty confident that Ms. Hadley
19 said she'd gotten at least the first two. But
20 there was some question, I think, about the cost
21 of the work. I think that's where you were
22 going.

23 MR. BUNDY: No, Your Honor.

24 THE COURT: All right.

25 MR. BUNDY: No. You missed my

1 point. Ms. Hadley did not issue the subpoena.
2 The subpoena -- those documents have to be
3 brought to me.

4 THE COURT: Okay.

5 MR. BUNDY: I'm entitled to see
6 them. The fact that he gave them to his sister
7 or Ms. Hadley or anybody doesn't comply with the
8 terms of the subpoena. That's all I'm asking
9 for. If I'm not entitled to them, I just need a
10 ruling so I can do it properly.

11 THE COURT: All right. It's a
12 trial subpoena that you seek, right?

13 MR. BUNDY: Yes, sir.

14 THE COURT: And it's for original
15 documents?

16 MR. BUNDY: Copies will do if
17 they'll sign the subpoena and say they're copies
18 of the -- I mean, the subpoena itself allows them
19 to say these are copies of the original -- these
20 are certified copies of the original. I'm not
21 trying to make it any more difficult than it is.

22 MR. HILDEBRAND: Your Honor, I
23 mean, I will tell you what, I feel like I'm being
24 whipsawed here because the other day I was told
25 that they wanted the Excel sheet. They didn't

1 want a PDF. They wanted a manipulated Excel
2 sheet which we provided them. I'll tell you
3 what, I'm just at a loss.

4 And for him to want -- all of the
5 documents in this have been produced
6 electronically. All of the documents to
7 Ms. Hadley have been produced electronically.
8 That's how she's reviewed the documents. I
9 don't -- I just don't feel it's appropriate, Your
10 Honor.

11 THE COURT: All right. Well, once
12 again, I'm looking for the subpoena, and I can't
13 find it. So it is -- we are at the point of
14 trial. I understand what you're requesting. It
15 would appear to me -- and I understand you want
16 the documents, not Ms. Hadley.

17 I think she wants it for her report, at
18 least she wanted it. The updated projected final
19 cost report was item number three and four was
20 BBC's identification of which expenses it
21 incurred and submitted to Library as cost of the
22 work. That's my recollection, as cost of the
23 work.

24 I don't know that I've ever seen
25 anything broken out that way. Is there anything

1 that has been determined to be, quote, "cost of
2 the work?" Have y'all done it in that fashion?

3 MR. HILDEBRAND: Yes, sir. We've
4 got a program that has that, and that's been
5 provided to Ms. Hadley.

6 THE COURT: That's been provided?

7 MR. HILDEBRAND: Yes, all four of
8 those. And I've got her accounting, and he's
9 here in Charleston. He can come in and talk --
10 my understanding is, from talking to him, all of
11 those have been provided.

12 THE COURT: Okay. All right. And,
13 Mr. Bundy, you disagree with that?

14 MR. BUNDY: You Honor --

15 THE COURT: Or you don't disagree
16 with that?

17 MR. BUNDY: I'm going to because
18 here's what I'm trying to get. What I'm trying
19 to avoid is, when Ms. Hadley gets on the witness
20 stand, it's going to be a swearing contest
21 between the unsworn lawyer and the sworn witness
22 about what she had or didn't have, what she was
23 provided and she wasn't provided.

24 This shouldn't be that complicated.
25 It's a trial subpoena. I've asked for documents.

1 Either you need to quash the subpoena or he needs
2 to provide the documents. The fact that somebody
3 else has got them and the fact that they're in an
4 electronic format is irrelevant.

5 THE COURT: All right. Well, I'm
6 going to quash the subpoena then. There's your
7 ruling.

8 MR. BUNDY: Okay. Thank you.

9 THE COURT: All right.

10 MR. BUNDY: Are you ready to go?

11 THE COURT: Yes sir.

12 CROSS-EXAMINATION

13 BY MR. BUNDY:

14 Q. Good morning, Mr. Starcevic.

15 A. Good morning, afternoon almost.

16 Q. I'm going to hand you one, two, three,
17 four, five documents that are comprised of pages.
18 They're all paper clipped together, and they're
19 all part of one document, request for proposal --
20 entitled, request for proposal for
21 preconstruction and construction management
22 services related to hotel at Marion Square,
23 Charleston, South Carolina.

24 I would like to you to look at this, not
25 every page, just look at the first page of each

1 one of these paper clipped documents. Okay? If
2 you'll tell me what the next -- the first one I
3 just read. What's the title of the second
4 document, if there's a title?

5 A. The first one, request for proposal for
6 preconstruction and -- preconstruction and
7 construction management services related to hotel
8 at Marion Square, Charleston, South Carolina.

9 That's the first one. The second one,
10 hotel, Marion Square project cost items matrix.
11 Third one, Marion Square Hotel, Charleston, South
12 Carolina, building systems narrative dated
13 October 15, 2013. I think this is the -- there's
14 six here. This is the fourth hotel at Marion
15 Square. It looks like a set of drawings.

16 The fifth is the AIA document 133. It
17 appears to be a draft. And the sixth is the AIA
18 document 201, the general conditions of the
19 contract for construction.

20 Q. All right.

21 A. Again, not filled out but appears to be
22 a draft.

23 Q. Okay. Have you ever seen these
24 documents before as a package of documents?

25 A. I can't say that I have.

1 Q. Okay.

2 A. I have all of them together in the same
3 place. I'm not sure.

4 Q. And they are -- the requested proposal
5 is dated -- okay. Well, on page number 3 of the
6 first part of it, request for proposal, there's a
7 thing that says, key dates are as follows. Do
8 you see that?

9 A. Yes, sir.

10 Q. All right. And under release, RFP.
11 What does that stand for?

12 A. Release request for proposal.

13 Q. Okay. Two builders, October 16, 2013.
14 Do you see that?

15 A. Yes, sir.

16 Q. All right. In 2013, what were you doing
17 for Balfour Beatty?

18 A. I was in Charlotte as probably a senior
19 project engineer.

20 Q. Okay. Deadline for questionnaire
21 October 25, 2013. Responses due from bidders
22 November 6, 2013. Do you see that?

23 A. Yes, sir.

24 Q. And then interview and award November of
25 2013. Do you see that?

1 A. Yes, sir.

2 Q. All right. When you were working for
3 Balfour Beatty during October through November of
4 2013, were you provided these documents for your
5 review?

6 A. No, sir.

7 MR. BUNDY: Your Honor, yesterday
8 when we adjourned, we were looking at Exhibit
9 No. 27?

10 THE COURT: Yes.

11 MR. BUNDY: And I believe we
12 adjourned, and you were going to inquire
13 regarding the redacted information on the second
14 page of that exhibit?

15 THE COURT: And we did, and we
16 determined that in fact we did -- or that it
17 should be redacted.

18 MR. BUNDY: Okay.

19 THE COURT: It's from Mr. Heuer to
20 counsel for Balfour Beatty, and it's to a bunch
21 of his employees with the company. So, yeah, I
22 did redact that, yeah.

23 MR. BUNDY: But I may discuss
24 what's been unredacted, may I not?

25 THE COURT: You may.

1 MR. BUNDY: Thank you.

2 BY MR. BUNDY:

3 Q. Do you have Exhibit 27 in front of you?

4 A. I probably do have it somewhere in this
5 pile. Do you have another copy?

6 Q. Do you have a copy?

7 A. I've given some copies away. I don't
8 know -- here it is. I got it.

9 Q. I just want to make sure it's --

10 A. It's Old North State Masonry.

11 Q. It's got an exhibit sticker on it from
12 this Court.

13 MR. BUNDY: It's going into
14 evidence; is that correct, Your Honor?

15 THE COURT: It should, yes.

16 MR. BUNDY: If it's not, I move it
17 into evidence. Any objection?

18 MR. HILDEBRAND: It was moved in.

19 THE COURT: I believe it is in
20 evidence, yeah.

21 BY MR. BUNDY:

22 Q. All right. Mr. Starcevic, you were a
23 copy recipient of Mr. John Howard's letter or
24 e-mail of July 9, 2018, were you not?

25 A. Yeah, Mr. Hoarder's letter?

1 Q. Pardon me?

2 A. Mr. Hoarder's e-mail?

3 Q. Yes. You were a copy recipient?

4 A. Yes.

5 Q. Okay. And did you receive the e-mail?

6 A. Assume so.

7 Q. Pardon?

8 A. I assume so.

9 Q. Did you read it?

10 A. Pardon?

11 Q. Did you read it?

12 A. I would assume I read it if he sent it
13 to me.

14 Q. And it related -- it says, the subject
15 is Marion Square, Old North State Masonry,
16 correct?

17 A. It does.

18 Q. And that's the hotel we're talking
19 about?

20 A. Yes.

21 Q. And Old North State Masonry was a
22 subcontractor on this job?

23 A. Yes.

24 Q. Turn over the page.

25 A. Yes, sir.

1 Q. On July -- refer to the bottom of the
2 next page, it says, on July 9, 2018, at 8:54
3 p.m., Nicholas Starcevic -- that's you, right?

4 A. Yes.

5 Q. -- responded, right?

6 A. Yes.

7 Q. All right. You got the e-mail at 4:21
8 p.m.; is that correct, or it was sent on 4:21
9 p.m. on July 9?

10 A. It was sent on 4:21 p.m. on July 9.

11 Q. And you responded at 8:54 p.m. on the
12 same day?

13 A. It was a late night.

14 Q. Pardon me?

15 A. It was a late night.

16 Q. Okay. And so you received the e-mail
17 some time between the time it was sent, 4:21 and
18 the time you responded at 8:54?

19 A. Yes.

20 Q. And how long did it take you to prepare
21 the information that's contained in your
22 response?

23 A. I would assume that this information had
24 already been prepared, but I don't know.

25 Q. Why would you assume it had already been

1 prepared?

2 A. Pardon?

3 Q. Why would you assume it had already been
4 prepared?

5 A. That's my assumption.

6 Q. But why? What is the basis of the
7 assumption?

8 A. Because I typically track costs. I
9 didn't create them out of nowhere.

10 Q. Okay. So this -- these back charges,
11 this list of back charges existed somewhere else,
12 and you just merely picked -- you just merely
13 went and pulled that out and sent it to him?

14 A. It may have, yes, sir.

15 Q. But it also may not have?

16 A. Okay.

17 Q. All right. Explain to me what you
18 understood you were supposed to provide with
19 regard to back charges on Old North State
20 Masonry?

21 A. I don't know what I was supposed to
22 provide. This is what I provided. I've got back
23 charges that I currently have.

24 Q. So you --

25 A. That's what I provided. I don't

1 remember what this e-mail said, what the request
2 was. All I have is --

3 Q. So you don't know what you were supposed
4 to have provided, but you know this is what you
5 provided?

6 A. Yes, sir.

7 Q. Okay. He could have been asking you
8 what your vacation days were going to be for this
9 year, but you decided to send him this; is that
10 what you're saying?

11 A. He could have, but I doubt it.

12 Q. Okay. But it's possible?

13 A. Anything is possible, Mr. Bundy.

14 Q. Sure. It's possible the general counsel
15 for Balfour Beatty would have written you at 4
16 o'clock in the afternoon and asking you when your
17 next vacation days were, and you sent him a list
18 of back charges from Lithko. Are you telling the
19 Court that's possible?

20 A. I don't know what he asked me is what
21 I'm telling the Court.

22 Q. All right. Stucco prep allowance. What
23 does that relate to?

24 A. That is -- that is a prep work that our
25 stucco subcontractor had to do because there was

1 a gap in our specification. Masonry walls are
2 allowed, a certain amount of movement and
3 tolerance.

4 And the stucco that was selected was a
5 very fine finish, had one-eighth of a tolerance,
6 masonry had a quarter inch or half inch, there
7 was a gap there. So we had to close that gap to
8 make sure there was a good finish on the stucco.
9 And that's what the allowance was.

10 Q. When were y'all first aware of this
11 gap -- that this gap was going to be involved in
12 this project?

13 A. I don't remember. I believe it was when
14 our stucco subcontractor reviewed the masonry in
15 place.

16 Q. And where did the \$100,000 number come
17 from?

18 A. I believe I created that.

19 Q. And tell the Judge how an allowance
20 works.

21 A. An allowance is a cost that is -- it's a
22 number, an estimate. It's an agreed upon amount.
23 If it's used -- if it's used, the subcontractor
24 accounts for the cost, and if there's anything
25 left over from it that's not spent, it comes back

1 to whoever holds the contract or whoever holds
2 the budget.

3 Q. Do sometimes people refer to that as a
4 plug number?

5 A. No.

6 Q. All right. So who was the agree -- who
7 was going to provide the \$100,000, Library
8 Associates? Who was going to -- who was putting
9 up the \$100,000 to fund the allowance?

10 A. At this point, I don't know that we
11 know -- we knew who was going to provide the
12 allowance. We knew that the subcontractor, the
13 stucco subcontractor had the tolerance, the day
14 we had to meet. And we were not sure, at this
15 point, who was responsible for the gap in that
16 spec.

17 Q. Did you contact the owner to tell them
18 that there was going to be a \$100,000 allowance
19 for this gap between the -- or for preparation
20 that was necessary?

21 A. I don't remember. I think at this point
22 we were trying to work it out amongst ourselves
23 and figure out -- we had to get the
24 subcontract -- the stucco subcontractor started,
25 and he wouldn't start on a wall that was not an

1 existing condition, that was not within his
2 tolerance.

3 And he also wouldn't start with an
4 assurance that he would get paid for the work.
5 So at the time we created this, I'm not sure that
6 we had alerted -- that we knew who was going to
7 be responsible, whether it was the architect, the
8 owner, our concrete subcontractor, our mason.

9 Q. That's a long answer to a question I did
10 not ask. My question is very simple. Did you or
11 did you not -- and you, I mean, BBC or anyone at
12 BBC, Balfour Beatty Construction, inform the
13 owner at or about the time you became aware of
14 the need for the stucco allowance, that there was
15 going to be a \$100,000 stucco allowance on this
16 job? Yes or no?

17 A. I don't remember, Mr. Bundy.

18 Q. Should you have?

19 A. If they were responsible for it, we
20 should have.

21 Q. If what?

22 A. If they were responsible for it, we
23 should have.

24 Q. Okay. But you didn't know at the time;
25 so you didn't notify them?

1 A. I don't -- I'm not saying I didn't
2 notify them. I'm saying I don't know if I --

3 Q. You don't know that you notified them?

4 A. Yes, sir.

5 Q. Okay. All right. Window opening
6 patching, \$4,680. Now, that is a back charge
7 from whom to whom? Who's back charging who?

8 A. I don't know who is back charging them.
9 I believe it's the stucco subcontractor having to
10 prep the window openings, but I'm not a hundred
11 percent sure.

12 Q. Does the stucco contractor have a
13 contract with the mason?

14 A. No.

15 Q. Pardon me?

16 A. No.

17 Q. Under what contractual or legal theory
18 would the stucco subcontractor be able to back
19 charge the mason?

20 A. Pardon?

21 Q. Under what contract theory would the
22 stucco contractor be legally able to back charge
23 the mason, a party with whom it had no contract?

24 A. What's a contract theory?

25 Q. Give me an explanation, in your own

1 words, to the best of your ability, as to how a
2 stucco contractor back charges a mason, a party
3 with whom it has no contractual relationship.

4 A. Via the contractor.

5 Q. Pardon me?

6 A. Via the general contractor.

7 Q. Via the general contractor?

8 A. They would -- yes, through us.

9 Q. What's via the general contractor?

10 A. Through us.

11 Q. What do you mean by through --

12 A. They would identify a cost that they
13 felt was -- not their responsible -- that they
14 were not responsible for, and they would contact
15 Balfour Beatty.

16 Q. I'm not familiar with the legal concept
17 of via, so you're going to have to explain that
18 me. Is the via legal concept something you
19 learned at lunch?

20 A. Pardon?

21 Q. Is the via legal concept something you
22 learned at lunch?

23 A. I don't know what a via legal concept
24 is, Mr. Bundy. I'm saying the stucco
25 subcontractor would have made a request for a

1 back charge through Balfour Beatty to the mason.
2 There you go.

3 Q. Right?

4 A. Yes, sir.

5 Q. There's a contract obligation between
6 Balfour Beatty and stucco subcontractor?

7 A. There is a contract obligation between
8 Balfour Beatty and the stucco subcontractor

9 Q. If the stucco subcontractor is damaged
10 or has to do additional work, the only party that
11 it can seek relief from is Balfour Beatty?

12 A. Or they can work something out directly
13 with the mason. We've had that happen before.

14 Q. I ask you again, as a matter of contract
15 and law and these documents that you were
16 supposed to be monitoring and taking care of, is
17 there any obligation, other than the obligation
18 that BBC owes to the stucco contractor to pay
19 them for work they have to do that's extra and
20 not in their subcontract?

21 A. I think you're -- I think that's
22 accurate.

23 Q. Thank you. Now, BBC has a contract with
24 the mason, correct?

25 A. Old North State Masonry.

1 Q. Pardon me?

2 A. Old North State Masonry, they do.

3 Q. Old North State Masonry. Under the
4 contract between BBC and the stucco guy, if the
5 stucco guy says to BBC, you owe me 4,600 bucks
6 because I had to do extra window work, BBC pays
7 you and then goes down to North State Masonry and
8 says, you owe us 4,600 bucks because you breached
9 your subcontract, and because you breached your
10 subcontract, I had to pay damages over here to
11 the stucco subcontractor; is that correct?

12 A. If Old North State Masonry is
13 responsible for the cost, then yes.

14 Q. So going back, window opening patching
15 is a back charge by Balfour Beatty against the
16 mason, Old North State Masonry?

17 A. Okay.

18 Q. Because that's what you were asked to
19 do, was it not? Or at least that's what you did.
20 You gave a list of the back charges.

21 A. I provided a list of back charges.

22 Q. It doesn't matter where this money that
23 they're back charging goes to entitle BBC for the
24 money. The money could go to somebody who got
25 hurt, and they had to pay them and just because

1 of something that -- the Old North State Masonry
2 did. It is irrelevant why there's this back
3 charge. It's a back charge. It exists, correct?

4 A. Correct.

5 Q. And it's up to BBC to collect its own
6 reimbursement for back charges. It's not up to
7 the stucco man to collect back charges from Old
8 North State Masonry, is it?

9 A. We require the stucco subcontractor to
10 support the effort. It ultimately --
11 contractually, it's our responsibility, but our
12 contract bears some responsibility on the stucco
13 sub.

14 Q. All right. Masonry walls rubbing, clean
15 up, patching, what does that relate to?

16 A. It's prep work.

17 Q. Pardon me?

18 A. Preparatory work, cleaning walls,
19 knocking extra stuff off walls.

20 Q. Is that a back charge?

21 A. It is identified as a back charge or
22 potential back charge.

23 Q. I don't see anything in here about
24 potential. It says back charges.

25 A. These were not settled at the time; so

1 everything is potential or pending at this point.

2 Q. At the time you issued this e-mail, were
3 these back charges or were they not?

4 A. They were potential back charges.

5 Q. It doesn't say potential back charges.

6 A. I'm telling you what they were.

7 Q. All right. So explain then again why
8 Old North State Masonry potentially was facing a
9 \$32,500 back charge. What did they do wrong?
10 What did they breach in their contract that
11 entitled BBC potentially to collect \$32,500?

12 A. It says, rubbing, clean up and patching.

13 Q. What?

14 A. The wall.

15 Q. What wall?

16 A. The masonry wall.

17 Q. Which ones?

18 A. I don't remember which ones. I'm sure
19 there was more than one. The masonry wall on the
20 outside of this building, Mr. Bundy.

21 Q. Where did you get the information to
22 come up with \$32,500?

23 A. I have no idea. Probably from the
24 stucco subcontractor, maybe from our own survey.
25 Without looking at it, I -- and looking at the

1 supporting information, it probably came. We did
2 surveys of walls; stucco subcontractor did
3 surveys of walls.

4 There may -- this is either an estimate
5 or an accounting of the actual work that was
6 performed. I don't remember the timeline on
7 whether the work had been performed or was
8 potential.

9 Q. Right. It's hard to analyze a back
10 charge without the backup, isn't it?

11 A. Pardon?

12 Q. It's hard or difficult to analyze a back
13 charge without the backup, is it not?

14 A. I would agree unless it's an estimate.

15 Q. Broken window, who broke what window?
16 Why is it a back charge and where was the window?

17 A. The window was on King Street. I
18 believe it was the fourth floor, and we contended
19 that the mason broke the window.

20 Q. Who is we?

21 A. Balfour Beatty.

22 Q. All right. Deduct CMU at CIP arch wall
23 on L2, \$1,356.30. What is the back charge for
24 and where is the work located?

25 A. It was -- it's really a credit because

1 somebody -- because they actually poured that
2 arch in concrete.

3 Q. A credit to whom?

4 A. To Balfour Beatty.

5 Q. So this is \$1,356.30 that should have
6 come out of the subcontract between Balfour
7 Beatty and Old North State Masonry?

8 A. We felt it should have been more but
9 yes.

10 Q. And that was then no longer work that
11 was going to be done, and it would no longer be
12 cost of the work as it related to the owner's
13 contract with Balfour Beatty?

14 A. We paid someone else to do it.

15 Q. Who?

16 A. Lithko.

17 Q. You paid Lithko to put in the CIP arch
18 wall on L2?

19 A. Cast in place arch.

20 Q. You paid Lithko to do that?

21 A. Yes, sir.

22 Q. And How much did they charge?

23 A. I have no idea. More than this.

24 Q. Okay. Would it be more than that?

25 A. Yes, sir.

1 Q. Okay. So is the owner, under that set
2 of circumstances, do they owe the -- are they
3 entitled to the credit, and they pay the full
4 amount of what Lithko charges? Is that the way
5 it's billed?

6 A. I don't know how it's billed.

7 Q. Well, do you know what the contract says
8 about how its billed's?

9 A. I don't believe we charged the owner for
10 either.

11 Q. Okay. Move precast from basement and
12 Hutson to south. What does that mean?

13 A. It means we had precast in the basement.
14 We needed to clean out the basement for other
15 contractors to start in there, and this is the
16 cost to move it to where -- to the Hutson Street
17 so we could -- or this is the cost to move it
18 from the basement and Hutson Street to the south
19 side of the building.

20 Q. Why is it a back charge?

21 A. Because we performed the work.

22 Q. Do what?

23 A. Because Balfour Beatty performed the
24 work.

25 Q. Okay. So it's really a credit, not a

1 back charge?

2 A. No, sir. It's a back charge.

3 Q. It's a back charge because Old North
4 State refused to do the work?

5 A. Yes, sir.

6 Q. Okay. Why did they refuse to do the
7 work? Did they tell you?

8 A. They may not have been on site. They --
9 I don't remember why. They may not have felt it
10 was their obligation, but they refused to do the
11 work.

12 Q. This could have been a function of
13 supplementing Old North State's forces in order
14 to get work done in a timely fashion?

15 A. Yeah. I mean, they may have agreed to
16 allow us to do it, too. I don't quite remember
17 the circumstance. But we moved precast so the
18 work could get completed, and this was the cost.

19 Q. Then there's an e-mail from Simonton to
20 you at 9:14 p.m., which would have been within 20
21 minutes, correct?

22 A. Correct.

23 Q. So 20 minutes later, Simonton, right,
24 David Simonton -- he hasn't testified in this
25 case yet, has he?

1 A. I don't know. I haven't been here the
2 whole time.

3 Q. What was his position on the job?

4 A. Vice president of operations.

5 Q. Okay. And was he on the site?

6 A. Yes.

7 Q. All the time?

8 A. At this time he was.

9 Q. At that time he was. Was he your boss?

10 A. He would have been, yes, sir.

11 Q. Was he your boss when you left?

12 A. Yes, sir. Actually, no, he was not.

13 Q. Did you have any bosses by the time you
14 left, or were you pretty much running the
15 company?

16 A. I had bosses.

17 Q. All right. And he says, so what is the
18 stucco allowance? What did he mean by that? Do
19 you know?

20 A. I believe he was referencing the top
21 line of this chart.

22 Q. So he's pretty much asking you what I
23 just asked you?

24 A. Yes.

25 Q. Okay. And why didn't he know the answer

1 to that question?

2 A. You'd have to ask him.

3 Q. Okay. Are you surprised that he didn't
4 know it if he was on the job every day?

5 A. He wasn't on the job the entire time.

6 Q. Okay. Are you surprised he didn't
7 know --

8 A. He joined the project at a certain
9 point, and I'm sure he will testify to when he
10 joined the project. But he wasn't around during
11 the masonry installation, so that's why he was
12 asking.

13 Q. Are you surprised that, as of July 9,
14 2018, he did not know the answer to that question
15 without having to ask you?

16 A. No, sir. Again, as I just said, he
17 wasn't there when all of that work was being put
18 in place.

19 Q. And then, it looks like -- did he then
20 send you another e-mail a minute later?

21 A. I responded.

22 Q. I'm having a hard time reading this.
23 You respond a minute later saying, masonry wall
24 prep. Is that your response?

25 A. That's me.

1 Q. Okay. And you say, the stucco guys made
2 us write them an allowance to bill against?

3 A. Yes, sir.

4 Q. Which is what you just told me?

5 A. Yes, sir.

6 Q. You gave him the same explanation you
7 just gave me. All right. And then the question
8 was, okay, so they know about it. Was it all
9 spent? Do you know he's -- who he is referring
10 to when he says they?

11 A. I do not. I don't know who he's talking
12 about, the stucco sub or the mason.

13 Q. Well, What about the owner? Was he
14 talking about the owner?

15 A. Could have been.

16 Q. Okay. Was he talking about Balfour
17 Beatty?

18 A. You'd would have to ask Mr. Simonton.

19 Q. Was he talking about the architect?

20 A. I don't know, Mr. Bundy. I assume it
21 was either the stucco sub or the mason.

22 Q. Did you ever respond to this question?
23 Did you ever answer his question?

24 A. We may have talked about it in the
25 office. I don't know if I responded to him in

1 person.

2 Q. Okay. So let me ask you then: At -- as
3 of 7:19 p.m., 2/18, what was your answer, or what
4 would have been your answer to -- so they know
5 about it? What would you have said?

6 A. I probably would have said -- so they'd
7 know. That wasn't a question. But was it all
8 spent?

9 Q. Okay. Let me ask you this: Who was
10 they?

11 A. I don't know.

12 Q. Okay. Did you ever ask him at the time
13 when he sent you that e-mail who they was?

14 A. I don't remember. That was over three
15 years ago.

16 Q. And did you ask him the next day who
17 they was?

18 A. I don't remember. That was over three
19 years.

20 Q. As you sit here today, you still don't
21 know who he was referring to when he said they?

22 A. I'm assuming it was the stucco sub or
23 the mason.

24 Q. Okay. That's all I want to know. Then
25 the next question -- the question he asked you

1 was, based on, I guess, your opinion or your
2 assumption, I guess, one of the two, was it all
3 spent? What did that mean to you?

4 A. To me, that means it was all of the prep
5 allowance spent.

6 Q. Okay. And was it?

7 A. I believe so.

8 Q. Okay. Thank you.

9 MR. BUNDY: Is that 27?

10 THE WITNESS: 29, Exhibit 29?

11 THE COURT: 28 should be the next
12 one.

13 THE WITNESS: Mine is titled 29.

14 THE COURT: All right.

15 BY MR. BUNDY:

16 Q. Change order 32, right?

17 A. Yes, sir.

18 Q. All right. What's the number on it?

19 A. 29.

20 MR. BUNDY: I think that it's out
21 of order, but I don't care.

22 THE COURT: That's okay.

23 THE WITNESS: Do you want me to
24 make it an 8?

25 THE COURT: No. Just keep it the

1 same. Just call it 29.

2 (DFT. EXH. 29 was marked for
3 identification.)

4 BY MR. BUNDY:

5 Q. Can you identify Exhibit 29,
6 Mr. Starcevic?

7 A. Change order number 32 to Lithko from
8 Balfour Beatty. Operating elevators to punch 1
9 through 4 shafts, back charge from Otis.
10 Scheduling Otis operator to run the elevators in
11 order to complete concrete punch items and shafts
12 1 through 4.

13 Q. All right. And who signed this change
14 order on behalf of Lithko?

15 A. Mr. Michael Rohrer.

16 Q. Who signed it on behalf of Balfour
17 Beatty?

18 A. I did.

19 Q. And is the owner involved in this change
20 order at all?

21 A. Is the owner involved? No.

22 Q. Has the owner signed this change order?
23 Does the owner's name appear anywhere on the
24 change order?

25 A. No.

1 Q. Was the owner advised of this change
2 order?

3 A. I don't know that they were.

4 MR. BUNDY: Okay. Now I move to
5 introduce it as Exhibit 29.

6 MR. HILDEBRAND: No objection.

7 THE COURT: Without objection.
8 Okay.

9 MR. BUNDY: Without objection?

10 THE COURT: Yes.

11 (DFT. EXH. 29 was received in
12 evidence.)

13 (DFT. EXH. 28 was marked for
14 identification.)

15 BY MR. BUNDY:

16 Q. I hand you now what's been marked as
17 Defendant's Exhibit 28 for identification. Can
18 you identify the exhibit, please?

19 A. Change order number 34 dated April 7th
20 to Lithko.

21 Q. All right. And the change order is
22 between what parties?

23 A. Balfour Beatty and Lithko.

24 Q. And who signed it on behalf of Lithko?

25 A. Mr. Michael Rohrer.

1 Q. And who signed it on behalf of Balfour
2 Beatty?

3 A. Nick Starcevic, that's me.

4 Q. What's the day it was executed?

5 A. Fully executed, April 9th, 2019.

6 MR. BUNDY: Your Honor, I move to
7 introduce 28 as an exhibit into evidence.

8 MR. HILDEBRAND: No objection.

9 THE COURT: Without objection,
10 okay.

11 (DFT. EXH. 28 was received in
12 evidence.)

13 BY MR. BUNDY:

14 Q. Was the owner advised of this change --
15 the existence of this order?

16 A. I do not know that, Mr. Bundy. I don't
17 know.

18 Q. Does the owner's name appear anywhere on
19 this change order?

20 A. It does not, and it wouldn't.

21 Q. This is a change order that changes the
22 subcontract sum between Balfour Beatty and
23 Lithko, is it not?

24 A. It is.

25 (DFT. EXH. 31 was marked for

1 identification.)

2 Q. I hand you now what's been marked as
3 Exhibit 31 for identification. I ask you to
4 identify the document, please.

5 A. Change order number 31 dated April 7th.
6 Sorry, that's the contract dated April 7, 2015,
7 to Lithko from Balfour Beatty. Elevator 6, motor
8 replacement damage, Otis back charge.

9 Q. Okay. And who signed on behalf of
10 Lithko?

11 A. Michael Rohrer. And I signed it on
12 behalf of Balfour Beatty.

13 Q. And when was it signed by -- what day
14 was it signed by Lithko?

15 A. March 14, 2019.

16 Q. What was the status of the job in March
17 of 2019?

18 A. Close out.

19 Q. When was it signed by Balfour Beatty?

20 A. April 9, 2019.

21 Q. What was the status of the job on April
22 9, '19? The job, what was the status of the job?

23 A. Substantial completion had been reached.
24 I don't remember if we were still cleaning things
25 up, executing punch lists, but we were probably

1 off the project at that point.

2 Q. Do you know if y'all were even on the
3 job in April of 2019?

4 A. No, sir, I do not. I do not believe we
5 were.

6 Q. Okay. Is the owner's name anywhere on
7 this change order?

8 A. No.

9 Q. Did you advise the owner of the
10 existence of this change order?

11 A. I don't know if we did specifically.

12 Q. Okay.

13 A. It may have been in a Lithko pay
14 request.

15 Q. But you don't know?

16 A. I don't know.

17 MR. BUNDY: All right. I move to
18 introduce Exhibit 31.

19 MR. HILDEBRAND: No objection.

20 THE COURT: Without objection.

21 (DFT. EXH. 31 was received in
22 evidence.)

23 (DFT. EXH. 30 was marked for
24 identification.)

25 BY MR. BUNDY:

1 Q. I hand you now what's been marked for
2 identification as Exhibit 30 and ask you to
3 identify the document.

4 A. Change order number 33 to Lithko from
5 Balfour Beatty, back charge embassy walls,
6 stucco. From Mike Rohrer of Lithko, signed by
7 Michael Rohrer of Lithko, signed by Nick
8 Starcevic of Balfour Beatty; owner's name is not
9 on here.

10 Q. Okay. And it was signed along -- on the
11 same day as the previous Exhibit 31?

12 A. It was signed on April 9, 2019 by
13 Balfour Beatty.

14 Q. The same time as Exhibit 31, on the same
15 day?

16 A. Exhibit 31 was also signed on April 9,
17 2019, yes.

18 Q. So the answer is yes, thank you.

19 A. The answer is yes. The owner should
20 have been aware of that one.

21 MR. BUNDY: Okay. I move to
22 introduce that exhibit into evidence.

23 MR. HILDEBRAND: No objection, Your
24 Honor.

25 THE COURT: Defendant's 30, all

1 right.

2 (DFT. EXH. 30 was received in
3 evidence.)

4 (DFT. EXH. 32 was marked for
5 identification.)

6 BY MR. BUNDY:

7 Q. I hand you now Defendant's Exhibit 32
8 for identification. Can you identify the
9 exhibit, please?

10 A. Change order number 20 to Old North
11 State Masonry from Balfour Beatty signed by Joe
12 Anastasi, president of Old North State Masonry,
13 signed by Nick Starcevic of Balfour Beatty
14 Construction.

15 Q. All right. And it was signed by Old
16 North State Masonry on September 4, 2019?

17 A. September 4, 2019 by Old North State
18 Masonry, yes.

19 Q. And that was approximately nine months
20 after substantial completion?

21 A. Plus or minus.

22 Q. And Then you signed it roughly two weeks
23 later?

24 A. Yes, sir.

25 Q. Were y'all still on the job nine months

1 after substantial completion?

2 A. No, sir.

3 Q. Were you working into September of '19
4 still on behalf -- spending 50 percent of your
5 time with Balfour Beatty working on closing out
6 the paperwork on this job?

7 A. I don't remember the time percentage,
8 but I was still involved in the job.

9 Q. Let's go over change order number 20 in
10 a little detail if we might. The owner's name
11 does not appear on here, does it not? It does
12 not, does it?

13 A. It says the owner, omissions -- Old
14 North State Masonry claimed it acts or omissions
15 of the owner.

16 Q. Okay. But the owner's name -- okay, it
17 does appear. The owner's name -- the word owner
18 appears on this, but the owner's signature
19 appears nowhere on here?

20 A. That's correct.

21 Q. Was the owner given notice of this
22 change order?

23 A. I'm not aware if they were or were not.

24 Q. Okay. Now, let's start at the top.
25 This is change order number 20.

1 A. Yes.

2 Q. All right. And change order number 33
3 is dated in March of '19?

4 A. Yes, sir.

5 Q. Change order number 20 is dated
6 September of '19, some six months later?

7 A. Yes, sir.

8 Q. Do y'all work backwards in your
9 numbering system on change orders?

10 A. No, so each --

11 Q. Pardon me, let me finish.

12 A. Yes, sir.

13 Q. Or do you number your change orders
14 sequentially based on a calendar date?

15 A. That's what we do, and that's what we
16 did.

17 Q. Okay.

18 A. You're looking at two -- you're looking
19 at change orders for different subcontractors.

20 Q. I gotcha.

21 A. So Old North State Masonry's are
22 sequentially.

23 Q. I apologize.

24 A. Lithko's are sequentially. They would
25 not -- they were not out of order.

1 Q. I apologize, I didn't see that. Sorry.

2 A. That's okay.

3 Q. So we're now with Old North State
4 Masonry. Let's go through the change. It says,
5 date of this change is July 9, 2019, right?

6 A. Yes.

7 Q. But the change order was signed in
8 September of 2019. Why are there two dates? Why
9 is this change order allegedly effective two
10 months before it was signed?

11 A. I don't know.

12 Q. Does that make any sense to you?

13 A. Pardon?

14 Q. Does that make any sense to you?

15 A. It could be the date it was created. I
16 don't know.

17 Q. Don't the contract documents say, the
18 change order is not effective until it's signed
19 by both parties?

20 A. Yes, I believe.

21 Q. Okay. And so this change order, based
22 on the contract documents, could not have been
23 effective on July 9, 2019, because it wasn't
24 executed by both parties until as late as
25 September 19, 2019, correct?

1 A. Okay.

2 Q. Why would you back date a change order?

3 A. I didn't back date a change order.

4 Q. Oh, you didn't, okay.

5 A. I just told you, that's probably the
6 date when it was created.

7 Q. Does it say that?

8 A. Pardon?

9 Q. Does it say that the date of the
10 creation is July 9, 2019, or does it say, date of
11 this change order, July 9, 2019?

12 A. I would have to forward date change
13 orders for them to be executed. That's the date
14 its created, I've got to send it to the party,
15 and they've got to execute. And if all of that
16 happens on the same day, then these two have the
17 same dates. But that's not how it always works,
18 Mr. Bundy.

19 Q. Okay. I gotcha. The previous contract
20 amount is \$2,629,281, right?

21 A. Yes.

22 Q. Now the add/deduct, I don't see a
23 number. I see three letters. Capital T capital
24 B and capital D. What does that stand for?

25 A. I believe that means to be determined.

1 Q. Okay. And I don't see a new contract
2 amount. I see TBD. What does that stand for?

3 A. Same thing.

4 Q. So y'all signed a change order that did
5 not tell or would not tell anybody whether, one,
6 it was an additional change order or deducted
7 change order, nor would it inform anybody about
8 what the number was regardless of whether it was
9 add or deduct, right?

10 A. Correct.

11 Q. Okay. Was there a number that was
12 agreed upon at that time -- strike that. Don't
13 change orders require for a change order to be
14 effective, that the amount of the change order,
15 either addition -- an additur or deductive must
16 be established and agreed upon at the time of the
17 change order?

18 A. I don't believe that to be true.

19 Q. You don't think that's true?

20 A. No, sir.

21 Q. Okay. So you can -- do you understand
22 that contract change order to be a contract
23 modification?

24 A. Yes.

25 Q. Okay. And do you understand that

1 contract modification requires all the same
2 things that a contract requires?

3 A. Unless it's modifying the contract.

4 Q. Do you know what is required to have a
5 contract, what the elements of a contract are?

6 A. I don't. I don't know all the elements
7 that are required to have a contract.

8 Q. So you don't know that a contract is
9 simply an agreement between two parties in an
10 exchange for mutual promises, as long as it's
11 certain enough to be enforced? That's not your
12 understanding?

13 A. That's generally my understanding.

14 Q. Well, let's use that as your
15 understanding. How would you enforce this
16 contract because there's no consideration here?
17 There's no number. There's no dollar amount that
18 had been agreed upon.

19 A. There's language that's agreed upon.

20 Q. Okay. So that's where we're going to go
21 next. What was -- we're going to now read what
22 the understanding was. I'm going to read, and
23 you tell me if I'm wrong. ONSM claim due to acts
24 or omissions of the owner, \$1,139,509, right?

25 A. Yes, sir.

1 Q. All right. Now, that number was
2 available to put in the column under to be
3 determined, right? You could have put in the
4 \$1,139,500 add, and then that would have been a
5 new contract amount, right?

6 A. We could have.

7 Q. Okay. But you didn't do that?

8 A. No.

9 Q. Okay. What you did was, you entered
10 through this agreement, Balfour Beatty agrees to
11 include these change order requests in the
12 pending claim against the owner upon execution of
13 CCO 19 and 20. All right. This is 20, right?
14 This is number 20, right? This change order is
15 number 20, right?

16 A. Yes.

17 Q. Was 19 agreed to, or do you know?

18 A. I don't know.

19 Q. All right. I will hand you now ONSM
20 Bates number ONSM 0000099 and 100 and ask you, is
21 this change order number 19 executed by Old North
22 State Masonry on 9/4/19 and by you, Nick
23 Starcevic, on 9/19/2019?

24 A. Yes, sir.

25 MR. BUNDY: All right. Your Honor,

1 I move to introduce this document as the next
2 exhibit which would be -- I've got to see
3 where -- I premarked things.

4 THE COURT: It would be Defendant's
5 33.

6 MR. BUNDY: Well, I've already
7 premarked some.

8 THE COURT: Oh, okay, sorry.

9 MR. BUNDY: This would be 36, Your
10 Honor.

11 THE COURT: All right. Exhibit 36.

12 MR. HILDEBRAND: Do you have a copy
13 for me?

14 MR. BUNDY: Yeah.

15 (DFT. EXH. 36 was marked for
16 identification.)

17 MR. BUNDY: I would move to put 36
18 into evidence, Your Honor.

19 THE COURT: Okay. And did you want
20 32 in as well?

21 MR. BUNDY: Yes, Your Honor, 32 and
22 36. Move to enter 32 and 36. Any objection?

23 MR. HILDEBRAND: I didn't even have
24 a chance to look at it. Is this my copy?

25 MR. BUNDY: Yes, that's your copy.

1 MR. HILDEBRAND: So this is 36?

2 MR. BUNDY: Yes.

3 MR. HILDEBRAND: No objection, Your
4 Honor.

5 (DFT. EXH. 32 and 36 were received
6 in evidence.)

7 BY MR. BUNDY:

8 Q. All right. Let's go back to Exhibit 30,
9 the first one we were talking about. Was that --

10 A. 32.

11 Q. 32. And that's the change order 20,
12 correct?

13 A. Yes.

14 Q. Okay. Balfour Beatty agrees to include
15 these change order requests in the pending claim
16 against the owner upon execution of CCO 19 and
17 CCO 20. Was that -- did that condition occur?
18 Did that occur?

19 A. The execution of 19 and 20 did occur.

20 Q. So since both of those were executed, it
21 then effectuated the agreement that follows; is
22 that correct?

23 A. I assume effectuated means that it
24 executed or --

25 Q. Well, what it means is -- let's look at

1 it this way. What this says is that Balfour
2 Beatty agrees to do these things which means
3 include these change orders in the pending claim
4 against the owner upon the execution of CCO 19
5 and 20. Execution of CCO 19 and 20 is a
6 condition precedent to any obligation that
7 follows, correct?

8 A. Correct.

9 Q. And that condition precedent was met
10 because we now have in evidence the executed copy
11 of 19 and 20?

12 A. Correct.

13 Q. So now the agreement that follows is an
14 agreement that currently exists between Balfour
15 Beatty and Old North State Masonry?

16 A. Correct, unless something --

17 Q. Is that correct?

18 A. Unless something was executed after
19 this.

20 Q. The agreement was, it is agreed that
21 Balfour Beatty will receive 70 percent of any
22 monies recovered on the change order 20 from the
23 pursuit of the aforementioned claim but not
24 exceeding \$70,000.

25 ONSM agrees to fully support and defend

1 all submitted change orders, claims, costs,
2 delays, et cetera, to help recover monies
3 included in this claim. Notwithstanding the
4 foregoing, both parties reserve their respective
5 rights as specified in the joint defense
6 agreement dated June 19, 2019. Did I read that
7 correctly?

8 A. Yes.

9 Q. Is that the agreement between Balfour
10 Beatty -- or part of the agreement between
11 Balfour Beatty and Old North State Masonry?

12 A. Yes.

13 Q. All right. Who drafted this language?

14 A. I did not.

15 Q. It was provide to you?

16 A. Yes, sir.

17 Q. Was this document provided to you,
18 already filled it out, and you signed it, or did
19 you fill it out based on instructions you were
20 given?

21 A. I filled it out based on instructions I
22 was given.

23 Q. Okay. And where did those instructions
24 come from?

25 A. I don't remember exactly who sent it to

1 me. I would imagine my boss.

2 Q. Pardon me?

3 A. I would imagine my boss or someone at --
4 that was negotiating this.

5 Q. All right. Well, give me the universal
6 people, and by universal people, I mean, all the
7 people that would reasonably be presumed to have
8 given you this information. Clearly I wasn't one
9 of the persons in that universal, was I?

10 A. No. I said my boss.

11 Q. So which boss? You have more than one
12 boss.

13 A. It was either Jeff Sandeen, Dave
14 Simonton or John Heuer.

15 Q. Okay. So one of the three gentlemen --

16 A. Or Pat Dean.

17 Q. -- would have told you, Nick, here's
18 what you put in there and here's what you're
19 going to sign?

20 A. Yes, sir.

21 Q. You had no idea what the conversations
22 were leading up to this agreement or who they
23 were among and between?

24 A. Not really.

25 Q. You made no independent evaluation of

1 the contents of the joint defense agreement?

2 A. I made no independent --

3 Q. You didn't look at the joint defense
4 agreement before you signed this, did you?

5 A. Not before I signed this.

6 Q. Okay. And you had no knowledge -- did
7 you even have any knowledge that it existed when
8 you signed this?

9 A. I believe so. I'm not -- I don't
10 remember when I gained knowledge of it, but I
11 generally believed I knew there was a joint
12 defense agreement out there.

13 Q. Did you have any role in negotiating the
14 joint defense agreement?

15 A. No, sir.

16 Q. Are you a signator personally to the
17 joint defense agreement?

18 A. Never signed one like it.

19 Q. Did you obtain any independent legal
20 advice before you signed this document?

21 A. No.

22 Q. Did you rely on those who told you to
23 prepare and sign the document in agreeing to sign
24 the document?

25 A. Yeah. I trusted -- trusted those

1 persons.

2 Q. You did what you were instructed to do?

3 A. Yes, sir.

4 Q. And the only -- and what would have been
5 your options if you had said, no, I'm not signing
6 it? What options would have been available to
7 you?

8 A. I don't know. I didn't really consider
9 it.

10 Q. You never considered it?

11 A. That's correct.

12 Q. Do you think that -- if you had said no,
13 that that would have been something that would
14 have allowed you to go up the chain, so to speak,
15 in Balfour Beatty, or is saying yes something
16 that helps you move up the chain in Balfour
17 Beatty?

18 A. No, sir. I didn't -- I wasn't thinking
19 about that.

20 Q. Okay. Let's go to the rest of it.

21 Change order constitutes full and complete
22 settlement of any and all costs referred to
23 and/or described herein, including but not
24 necessarily limited to, all applicable taxes,
25 insurance, bond, delivery, supervision, overhead

1 and profit.

2 Labor, labor impact, materials, changes,
3 delays, acceleration and inefficiency, or any
4 claims therefore. And the subcontractor hereby
5 waives and all claims for such items associated
6 with or related to the work covered by this
7 change order.

8 All previous change orders and base
9 subcontract agreement and all conditions incurred
10 to date. Did I read that correctly?

11 A. I believe so.

12 Q. All right. Now, there is a line that
13 follows, and this line -- I'm going to read it
14 first. And it says, notwithstanding the
15 foregoing both parties reserve their respective
16 rights as specified by the joint defense
17 agreement dated June 19, 2019. Do you see that?

18 A. Yes.

19 Q. Do you see where that line has been
20 stricken through?

21 A. Yes.

22 Q. Does that mean to you it's no longer
23 part of this agreement?

24 A. It's the same line as above, but, yeah,
25 the redundant --

1 Q. Whose initial is that?

2 A. I believe that's Joe Anastasi. I don't
3 remember. I'm not a hundred percent sure whose
4 initial that is.

5 Q. All right. Joe Anastasi signed it
6 first, right? He signed it on September 4, 2019;
7 is that correct?

8 A. Yes.

9 Q. You signed it second two weeks later?

10 A. Yes.

11 Q. When you got it, it had the offer, so to
12 speak, because it -- it was an offer when you
13 sent it to them? It wasn't a signed agreement.
14 You were offering them a change order, correct?

15 A. The proposed change order.

16 Q. Correct?

17 A. The proposed change order.

18 Q. A proposed change order? You were
19 offering a proposed change order?

20 A. Yes.

21 Q. Do you understand that this -- striking
22 this out then constituted -- then this made this
23 a counter-offer, that Mr. Anastasi was not
24 agreeing to what had been offered? He was making
25 you a counter-offer by striking out language in

1 your offer. Did you understand that?

2 A. If he's the one that initialed that, I
3 didn't understand that. It was a counter offer.

4 Q. You didn't understand it?

5 A. No, sir.

6 Q. Okay. So you don't know -- you didn't
7 learn at lunch that an offer which is responded
8 to by a counter-offer is now off the table and no
9 longer available for acceptance? You never
10 understood that?

11 A. No. I just believed he was striking the
12 language because it was redundant.

13 Q. Okay. So you made -- was that a legal
14 decision on your part?

15 A. I don't make legal decisions.

16 Q. Well, why would you strike it because it
17 was redundant?

18 A. I didn't strike it.

19 Q. Oh, you're speculating as to why he
20 struck it?

21 A. Yeah, I'm speculating.

22 Q. Okay.

23 A. I don't know why he struck it.

24 Q. All right. Well, did it occur to you or
25 does it occur to you now that he might not have

1 been striking it because it was redundant but
2 because he only wanted the joint defense
3 agreement to relate to the information in
4 paragraph 1, but he didn't agree to have it
5 relate to information in paragraph 2? That
6 wouldn't be redundant, would it?

7 A. I don't know why he was thinking and why
8 he struck it.

9 Q. Well, you just speculated that he
10 thought it was redundant.

11 A. I speculated. I don't know.

12 MR. BUNDY: Your Honor, would you
13 direct the witness to please not speculate. It's
14 going to take us a long time. He's supposed to
15 testify under what he knows. I move to strike
16 the answer.

17 THE COURT: I will grant that.
18 Just --

19 MR. BUNDY: Please don't speculate.

20 THE COURT: Stay in your lane.

21 THE WITNESS: I'm usually good at
22 that.

23 BY MR. BUNDY:

24 Q. But you signed the document anyway, even
25 though it came to you with an initial amendment?

1 A. Yes, sir.

2 Q. So you had set whatever these terms are
3 on behalf of Balfour Beatty as written and as
4 received by you?

5 A. Yes, sir.

6 Q. Okay. What's the other exhibit you got?

7 A. 36.

8 Q. Let me see that exhibit. All right.
9 Let's look at 36. This change order 19 was
10 executed again on September 4 and again by you on
11 September 19; is that correct?

12 A. Yes.

13 Q. Tell me about September 19, 2019 in your
14 life. Was that a day where you signed a lot of
15 stuff to sort of clean up this contract?

16 A. Mr. Bundy, I don't -- I don't remember
17 the date.

18 Q. Well, where was your office in September
19 of '19?

20 A. In Charleston.

21 Q. Okay. And where would you have most
22 likely been when you signed all these documents?

23 A. I don't know. It was either here or
24 Charlotte.

25 Q. Okay. And in whose presence would you

1 more likely than not have signed this document?

2 A. You asked me not to speculate; so I
3 don't know.

4 Q. You don't know. That's perfect. I
5 don't know is a perfectly good answer. Ain't but
6 three answers to any question. I don't know, I
7 don't remember, and the truth. Okay?

8 A. Yes, sir.

9 Q. I just want one of those three.

10 MR. HILDEBRAND: Objection, Your
11 Honor. He can answer -- obviously, he can answer
12 a question as appropriate.

13 THE COURT: I'm going to allow it.
14 Noted but go ahead.

15 BY MR. BUNDY:

16 Q. The contract amount, the previous
17 contract amount is 2,560,540.89, correct?

18 A. Yes.

19 Q. And this one -- you had a number in this
20 one of \$68,740.20, right?

21 A. Yes.

22 Q. Let's look at the language that's asked
23 in the second paragraph. I'm going to read it
24 and tell me if I'm right.

25 This change order represents full and

1 final settlement on the change orders between Old
2 North State Masonry and Balfour Beatty
3 Construction specified below.

4 Although BBC contends that these costs
5 are due to acts or omissions of the owner for
6 which the owner is liable. BBC agrees to pay Old
7 North State Masonry 68,740.20 within 30 days of
8 the execution of this change order 19 by both
9 parties. Was that paid within 30 days?

10 A. I don't know.

11 Q. You don't know?

12 A. Not going to speculate.

13 Q. Right. You don't know?

14 A. No.

15 Q. Okay. I'm sorry, my hearing is not that
16 good.

17 A. You asked me to say I don't know or I
18 don't remember.

19 Q. Oh, I didn't hear you say I don't know,
20 I apologize. However, this payment is not in
21 admission of any liability by BBC, and BBC
22 reserves all right to reimbursements to these
23 costs by the owner. Do you know if this was
24 provided to the owner, this document?

25 A. No, sir.

1 Q. No, you don't know?

2 A. I don't know.

3 Q. Okay. Let's go down. It says, CI
4 number 3287. Do you know what that stands for?

5 A. Cost item number.

6 Q. Okay. Description, ONSM code
7 settlement, for settlement only. Where did that
8 language come from?

9 A. Old North State Masonry change order
10 settlement, for settlement only.

11 Q. Yeah. Who told you to put for
12 settlement only in the language?

13 A. I don't remember.

14 Q. Do you know why that's in here?

15 A. It's for settlement only. I'm not sure.

16 Q. Do you know what the reason that's in
17 there for?

18 A. No, sir.

19 Q. Is this a rare thing to see in a change
20 order from Balfour Beatty for settlement only?

21 A. We were -- I believe this was after we
22 had submitted the claim; so there were a bunch of
23 things that I didn't -- wasn't familiar with that
24 were happening.

25 Q. Okay. And then you've got a budget

1 code. What's that budget code for?

2 A. I believe that's for our masonry budget.

3 Q. Okay. Let's look at the -- let's look
4 at the language at the bottom.

5 This change order constitutes full and
6 complete settlement of any and all costs referred
7 to and/or described herein including but not
8 necessarily to all applicable laws, insurance,
9 bond, or supervision, overhead and profit, labor,
10 labor impact, materials, changes, delays,
11 acceleration, inefficiency, or any claims
12 therefore relating to the items specified in the
13 chart set forth above.

14 And subcontractor hereby waives and all
15 claims for such items associated with or related
16 to the work by this change order. Did I read
17 that correctly?

18 A. Yes.

19 Q. Does that mean that if any of these
20 items caused a delay in the job, that Old North
21 State Masonry is waiving any claims it has for
22 delay for anything listed in this change order?

23 A. I don't know.

24 Q. You don't know. Okay. Does it mean
25 that Old North State Masonry is waiving any

1 claims for supervision, overhead, profit, labor,
2 labor impact, materials, changes, acceleration,
3 and inefficiency as it relates to each and every
4 one of those items as a result of this change
5 order?

6 A. That wasn't the intent.

7 Q. Pardon me?

8 A. That wasn't the intent.

9 Q. That wasn't whose intent?

10 A. That wasn't our intent. This -- we
11 talked about this yesterday, Mr. Bundy.

12 Q. Wait, wait, wait.

13 A. And there's another one -- there's
14 another change order after this that says,
15 Balfour Beatty -- Balfour Beatty agrees to
16 include these change order requests in the
17 pending claim against the owner upon execution of
18 19 and 20. So I don't think their intent was to
19 waive rights to any claims, change orders,
20 delays, or inefficiencies caused.

21 Q. Okay. There are a lot of documents in
22 this case, and the contract says modifications.
23 They all stand on their own two feet. You're not
24 allowed to introduce parol evidence in law about
25 what you think the intent was, I don't believe in

1 a court of law; however, whether I'm right I am
2 wrong, I would like to restrict your answer to
3 the contents of this --

4 MR. HILDEBRAND: Objection, Your
5 Honor. Your Honor, if he has a question, then
6 just ask him the simple question. These
7 preparatory diatribes are inappropriate for him
8 to state what he thinks the law is, and then, at
9 the end, tag on a question. It's like it's on
10 the record that he's agreeing with all of his
11 preparatory comments.

12 I think he just needs to answer -- ask
13 him a simple question, not his interpretation of
14 the law, and all of his explanations. Just ask
15 him a simple question and let him answer it.

16 MR. BUNDY: I believe, with an
17 obstinate witness who refuses to answer a
18 straight question, who obfuscates and will not
19 speak clearly, that I need to inform the witness
20 of what I'm trying to get across to him.

21 He apparently has a lot of trouble
22 answering straight questions. But I will
23 withdraw all of that, and I'll start all over
24 again.

25 MR. HILDEBRAND: There we go again,

1 Your Honor. That's just so inappropriate.
2 This -- for him to berate this witness, I think
3 is harassment. This witness has been, I think,
4 very candid and very straightforward. That's
5 just inappropriate, Your Honor.

6 THE COURT: I'm going to overrule
7 you. Go ahead.

8 MR. BUNDY: Thank you, Your Honor.

9 BY MR. BUNDY:

10 Q. Now, you signed this document on behalf
11 of Balfour Beatty?

12 A. Yes, sir.

13 Q. You put in this document what you were
14 told to put in it?

15 A. Change order 19?

16 Q. Yes.

17 A. Yes.

18 Q. You were not told why, and you had
19 nothing to do with the negotiation of this -- of
20 the change order 19?

21 A. That's correct.

22 Q. You have no actual knowledge of what the
23 intent was of either party as a result?

24 A. This change order? That's correct.

25 Q. Okay. Now, let's talk about the change

1 order 19 itself, these items that are listed.

2 Now, these -- according to the change order, BBC
3 contends that these costs are due to actual
4 omissions of the owner for which the owner is
5 liable. Did I read that correctly?

6 A. Yes.

7 Q. All right. The first item in the change
8 order is bone white aluminum. What is the amount
9 allocated to bone white aluminum out of the
10 \$68,740.20?

11 A. Mr. Bundy, I don't remember the
12 allocations for any of these.

13 Q. Pardon me?

14 A. I don't remember the cost allocations
15 for any of these.

16 Q. Explain to me what acts -- or tell me
17 what acts or omissions of the owner occurred,
18 which BBC contends are the responsibility or the
19 liability of the owner as it relates to bone
20 white aluminum?

21 A. I can't remember.

22 Q. Okay. Same question for EWO ticket cut
23 stone due to footer height.

24 A. Yeah. There's a -- there was a footer
25 height shown on the architectural drawings and a

1 footer height shown on the structural drawings.
2 They conflicted. So there was extra work that
3 was required to make the stone work.

4 Q. And what's the amount? What portion of
5 this 68,740.20 is that number?

6 A. I don't remember.

7 Q. Deduct CMU at south arches. Let's do it
8 this way. I'm going to ask you three questions
9 about every one of these things. If you can
10 remember the three questions, we can go pretty
11 quickly.

12 A. Great.

13 Q. The first question is, what's the amount
14 allocated to the item we're discussing?

15 A. It's going to be, I don't remember for
16 all of them.

17 Q. All of them. Okay. So we're done with
18 that one.

19 A. Yes.

20 Q. Okay. The second question -- we're now
21 down to two questions.

22 A. Yeah.

23 Q. What was the act or omission of the
24 owner that Balfour Beatty contends makes the
25 owner liable for these alleged omissions and

1 errors?

2 A. Okay.

3 Q. Okay. Let's answer that as to all of
4 them.

5 A. What's the third one so I can just --

6 Q. Well, just answer that one question and
7 go all the way down and then we'll come back.

8 A. Okay. Deduct CMU at south arches, that
9 was a credit that we've already talked about. It
10 required stone. It required concrete. So
11 there's a cost increase there.

12 Cut precast due to concrete placed
13 wrong. I believe the concrete was -- this is,
14 again, a conflict in the structural and
15 architectural drawings. Concrete was shown one
16 elevation; however, the precast setting on the
17 architectural drawings was shown at a different
18 elevation.

19 Concrete dimensions growing, I don't
20 remember what that one was for. Damage precast
21 due to BBC moving because Old North State Masonry
22 refused to move. That's not due to an error or
23 omission by the owner. Relocating Old North
24 State Masonry and material out of the way is not
25 due to owner error or omission.

1 Rework corner due to drawing conflict.

2 I believe that one is self-explanatory. The
3 drawing is conflicting, and now the corners need
4 to be set.

5 Q. Let me stop you there. What drawing
6 conflict are we talking about?

7 A. Probably between the structural and
8 architectural drawings. There's quite a few
9 conflicts that structural said to do it one;
10 architecturally said another way, and it created
11 a conflict it how the stones should have been
12 produced and how it ended up.

13 Q. Okay. You started with the word
14 probably, and this talk about corner, right?

15 A. Yes, sir.

16 Q. So you don't know for sure, do you?

17 A. I know there was a drawing conflict.

18 Q. Okay. The drawings are right over here
19 on the floor. Could you come around and show us,
20 please?

21 A. I'm not going to be able to find it,
22 sir. I don't --

23 Q. Pardon me?

24 A. I'm not going to be able to find the
25 conflict. We'll be here all day.

1 MR. BUNDY: So for the record, can
2 we establish the drawings are here in front of
3 the witness. I've given him an opportunity to
4 look at them, and his testimony under oath is
5 he's not able to do it.

6 THE COURT: Noted.

7 MR. BUNDY: Okay. Thank you.

8 BY MR. BUNDY:

9 Q. All right. Let's move on.

10 A. Rework corner due to drawing conflict.
11 Remove and reinstall precast set to roof. I
12 don't remember exactly what that was for. Extra
13 work ticket cut stone due to footer height, same
14 as before. Footer height was shown at a
15 different height on the two drawings.

16 Q. But the drawings are here. Do you want
17 to show me?

18 A. Yeah, I can.

19 THE COURT: Do you want to take
20 five minutes and let him take a look?

21 MR. BUNDY: Sure.

22 THE WITNESS: Not really, but sure.

23 MR. BUNDY: Long as he does it by
24 himself.

25 THE WITNESS: Do you want to let me

1 do it in this five minutes or is this a break?

2 THE COURT: Let's take a break, and
3 then go ahead, come back, and take a look and see
4 what you can find. All right?

5 THE WITNESS: Can I look while
6 everybody else is on break?

7 THE COURT: Sure, absolutely.

8 (A recess transpired.)

9 THE WITNESS: So these are the
10 architectural drawings.

11 MR. BUNDY: If he could take the
12 stand, please.

13 THE COURT: Okay. Go ahead. You
14 found something? All right. Good.

15 THE WITNESS: Do you want me to go
16 back?

17 THE COURT: Sure. Go ahead and
18 have a seat.

19 BY MR. BUNDY:

20 Q. Okay. I don't need an explanation.
21 What I want you to do is give me the page number
22 identifying the plan sheet and the details that
23 you intend are in conflict.

24 A. I can't see it.

25 THE COURT: You will need to come

1 on down for that.

2 MR. BUNDY: You can come around. I
3 just want to be -- what I'm trying to tell you
4 is, I don't want a long explanation. I just want
5 to know which plan sheets you contend are in
6 conflict.

7 THE WITNESS: A622. Detail 5,
8 A622.

9 THE COURT: All right. So page
10 A622?

11 BY MR. BUNDY:

12 Q. And can you identify this sheet, please,
13 this sheet of drawings? Identify the sheet.

14 A. So it's architect drawing A622. We
15 identify them by bottom right dated -- let's see.
16 The date there is July 4, 2014.

17 Q. Okay. And then which sheet? 8622
18 detailed what?

19 A. 5.

20 Q. Detail 5. Okay. What's -- that's the
21 architectural?

22 A. That's the architectural.

23 Q. All right. And that conflicts with the
24 structural?

25 A. Here's the structural drawing dated --

1 this delays addendum December 1st, 2014.

2 Q. Hold on now. Issued 7/4/14, 100 plus,
3 11/06/14, edition 3, 12/01/14 sheet S-201, right?

4 A. Yes, sir. Addendum 3, December 1, 2014.

5 Q. Right. And what section?

6 A. Detail 3.

7 Q. Detail 3.

8 A. Which is what the drawings reference to
9 the same section.

10 BY MR. BUNDY:

11 Q. Okay. All right. So now let's move on.
12 That was which one you were talking about?

13 A. I don't know.

14 Q. The rework corner due to drawing
15 conflict?

16 A. No. That's splitter heading. That's
17 extra work ticket cut center due to footer
18 height.

19 Q. Point it to me.

20 A. EWO ticket cut center due to footer
21 height.

22 Q. Okay. And we don't know the number on
23 that, the dollar amount?

24 A. No, sir.

25 Q. Okay. All right. CCD number 3520,

1 flints?

2 A. Yep. That's a request by the owner to
3 add flints underneath the lights.

4 Q. And we don't know the number on that?

5 A. No, sir.

6 Q. Stucco build up due to exterior masonry
7 issues?

8 A. Yes, sir.

9 Q. Whose responsibility is that?

10 A. The owners.

11 Q. Okay. And why?

12 A. Because there was a spec app. We
13 discussed that.

14 Q. Okay. So that's the spec app that's the
15 allowance was for?

16 A. Part of the allowance, yes, sir.

17 Q. Okay. Which part?

18 A. I don't remember.

19 Q. Okay. WSI back charges, what is WSI?

20 A. Caulking subcontractor.

21 Q. Huh?

22 A. Our caulking subcontractor.

23 Q. Caulking subcontractor. WSI back
24 charges for window. I guess that's relocated
25 caulking?

1 A. Yes, sir.

2 Q. All right. And there are one, two,
3 three, four, five -- five of those, right?

4 A. Yes, sir.

5 Q. And how much are those worth?

6 A. I'm not sure.

7 Q. Okay. And they are due to owners
8 omissions and errors?

9 A. I'm not sure.

10 Q. Okay. Then you've got MS4 back charges
11 stair free mason delays. Is that an owner
12 problem?

13 A. I'm not sure.

14 Q. Okay. And do you know what the amount
15 of it is?

16 A. No, sir.

17 Q. MSI back charges for multiple MOBs.
18 That's mobilization, I guess?

19 A. Yes, sir.

20 Q. For stairs. Is that an owner
21 responsibility?

22 A. I believe as a result of the delays
23 incurred on the job.

24 Q. You believe. Okay. And those delays
25 you describe all of them to be owner, correct?

1 A. Yes, sir.

2 Q. Okay. So you disagree with the expert,
3 Mr. Doran, who said that at least one day of
4 delay was the responsibility of Balfour Beatty?

5 A. Yes, my opinion.

6 Q. Okay. Your opinion, he's wrong about
7 that?

8 A. No, sir.

9 Q. Huh?

10 A. No, sir.

11 Q. So he is right?

12 A. Pardon?

13 Q. Is Doran right or wrong that Balfour
14 Beatty is responsibility for at least one day of
15 delays?

16 A. I don't have an opinion on Mr. Doran.
17 You ask my --

18 Q. What is your opinion?

19 A. I believe the owner is responsible for
20 the delays.

21 Q. A hundred percent of them?

22 A. Yeah. I think they're responsible for
23 most of the delays. I'm not 100 percent, but I
24 haven't done a critical path analysis myself.

25 Q. Okay. So it's not an a hundred percent.

1 It's most of them, in your opinion. And what
2 percentage would that be? What percentage would
3 most of it be?

4 A. I don't have it pinned down to a
5 percent, Mr. Bundy. I believe the owner is
6 responsible for all the changes they incurred,
7 all the changes they imposed, delays they
8 incurred. I don't have a date, a number of days
9 or percentage. So it's hard to assign one.

10 Q. I'm restricting my question to delays.
11 Do you have an opinion as to whether or not the
12 owner is responsible for all the critical path
13 delays on this job?

14 A. I have an opinion. I don't have an
15 opinion on whether it's all or not.

16 Q. You don't have a what?

17 A. I don't have an opinion on whether it's
18 all or not.

19 Q. So is it some?

20 A. Yes.

21 Q. All right. So then we go on and down at
22 the bottom, change order constitutes full and
23 final -- I think we've been through all this. So
24 we're done with 36, I believe, right?

25 A. Yes.

1 (DFT. EXH. 37 was marked for
2 identification.)

3 Q. Okay. I hand you what's been now marked
4 for identification as Defendant's Exhibit 37, and
5 can you look at that, please?

6 MR. HILDEBRAND: I'm sorry, what
7 number is that?

8 MR. BUNDY: This is an e-mail
9 from --

10 THE COURT: 37 is the number.

11 MR. BUNDY: 37.

12 MR. HILDEBRAND: Thank you.

13 BY MR. BUNDY:

14 Q. This is an e-mail from you, subject
15 forward CMT masonry overage. What does CMT stand
16 for?

17 A. Construction material testing.

18 Q. July 22nd, 2017, 2:39 am, correct?

19 A. Yes, sir.

20 Q. And you sent it to Chip Venable. Who is
21 he?

22 A. Project manager for Old North State
23 Masonry.

24 Q. You sent it to Toby Holloway. Who is
25 he?

1 A. Toby Holloway is the -- he ran
2 operations for Old North State Masonry.

3 Q. You sent it to Tim Spano, who is he?

4 A. Tim Spano is employed by Balfour Beatty.

5 Q. David Stanton, who is he?

6 A. Employee of Balfour Beatty.

7 Q. Okay. And you -- the addressees, I
8 guess, are Chip and Joe. That's Chip Venable and
9 Joe Anastasi, right?

10 A. Yes.

11 Q. And you sent it as -- on behalf of
12 Balfour Beatty as the project manager on this
13 job?

14 A. I was the project manager at this point,
15 yes.

16 Q. And how long had you been on the job as
17 of July 22nd, 2017? You started in May of 2015,
18 it likes like.

19 A. So that would be just over two years.

20 Q. Okay. I'm going to read this and you
21 tell me if I'm reading it wrong. Chip and Joe,
22 see below from the owner and attached report,
23 take note that they have put us notice for
24 recovery of the testing overages due to poor
25 management by ONSM.

1 BBC subsequently is putting ONSM on
2 notice for this potential claim. BBC has already
3 put ONSM on notice multiple times for this
4 project for delays, quality and repairs.

5 Be advised that the current total for
6 stucco high build, a result of masonry walls
7 being out of plumb, is projected to exceed
8 \$200,000. This only accounts for the time and
9 material BBC has paid the stucco subcontractor to
10 correct the masonry walls that are out of plumb,
11 of which we fully intend to recover from ONSM.

12 Additional monies will have been spent
13 correcting on the interior side of the walls
14 where block is not plumbed. All direct and
15 indirect projected costs associated with these
16 issues will be presented to OSM in a claim when
17 they are verified.

18 Mr. Starcevic, did you write this?

19 A. Yes.

20 Q. Was it true when you wrote it?

21 A. Except for the last word, I said vetted,
22 not verified.

23 Q. Except for what?

24 A. I said vetted, not verified.

25 Q. Oh, I'm sorry. So this a true e-mail?

1 It's accurate?

2 A. I wrote this e-mail.

3 Q. You wrote it?

4 A. Yes.

5 Q. And at the time you wrote, you believed
6 it to be true and accurate?

7 A. I believe it to be true at the time.

8 MR. BUNDY: Okay. I move it to be
9 produced into evidence.

10 MR. HILDEBRAND: No objection.

11 THE COURT: Without objection.

12 (DFT. EXH. 37 was received in
13 evidence.)

14 (DFT. EXH. 33 was marked for
15 identification.)

16 BY MR. BUNDY:

17 Q. I hand you now Defendant's Exhibit 33
18 for identification.

19 MR. HILDEBRAND: What is this?

20 MR. BUNDY: 33.

21 BY MR. BUNDY:

22 Q. All right. Do you recognize this
23 e-mail?

24 A. It's an e-mail from Alec Dooley to Josh
25 Beach, who is project manager for Lithko; Nick

1 Starcevic with Balfour Beatty; Jennifer
2 Faulkinberry with WLA, the architect; Kirk
3 Stephens with David Allen; Martindale with
4 Balfour Beatty; Pete Waterfield with Balfour
5 Beatty, superintendent, and Gino Cassetto,
6 superintendent with Balfour Beatty.

7 It says, guys, per our conversation with
8 Lithko, before pouring into slab, we're going to
9 sweep around the drains to get the concrete one
10 inch below the lowest drain grate.

11 Lithko will be responsible for exposing
12 the weep holes before David Allen begins their
13 work. David Allen will install and slope mud bed
14 underneath the AC before they install their
15 mercury water proofing.

16 Lithko will be responsible for paying
17 David Allen to set their mud bed. If you have
18 any questions please, let me know, Mr. Alec
19 Dooley on January 26th, 2017, at 3:30 p.m.

20 Q. Okay. And Mr. Dooley, he was what,
21 project engineer?

22 A. He was project engineer or senior
23 project engineer.

24 Q. Senior project engineer. He was in the
25 field?

1 A. No, sir. He was in the office.

2 Q. Oh, he was in the office?

3 A. We had our engineers in the field quite
4 a bit. So Dooley did a little bit of both.

5 Q. Okay. Was the mud bed for which Lithko
6 he was to be responsible for paying David Allen
7 part of Lithko's original subcontract?

8 A. No, sir. This is a change.

9 Q. A change?

10 A. Yes, sir.

11 Q. And is this additional work that Lithko
12 was doing so David Allen could set their mud bed?

13 A. No, sir. We had a large format tile on
14 the pool deck and we couldn't meet the slopes
15 that the architect had designed. So we came up
16 with an alternate option because concrete doesn't
17 allow you to meet those slopes.

18 So we held it low and Lithko agreed to
19 hold the slab low and pay David Allen the extra
20 Mercury fee, the extra underlayment to meet those
21 slopes because you can manipulate this grout bed
22 better than you can concrete, and David Allen was
23 the person who could do it. So they agreed to
24 pay them to do and the architect agreed to this.

25 Q. Okay. And is this a result of

1 architectural error?

2 A. Yes, sir.

3 Q. Well, if this was a result of an
4 architectural error, notwithstanding as a result
5 of an architectural error, Lithko was going to be
6 responsible for paying David Allen; is that
7 correct?

8 A. Yes, sir.

9 MR. BUNDY: Okay. Your Honor I
10 move to introduce this into evidence?

11 THE COURT: Number 33?

12 MR. HILDEBRAND: No objection.

13 THE COURT: Without objection.

14 (DFT. EXH. 33 was received in
15 evidence.)

16 (DFT. EXH. 38 was marked for
17 identification.)

18 BY MR. BUNDY:

19 Q. All right. I hand you Defendant Exhibit
20 38 for identification and ask you to look through
21 it. I think it's more than one document. It's a
22 group of documents.

23 A. Change order number 6.

24 Q. Just look at them for me first. I will
25 get you to identify them in a minute.

1 A. Got it.

2 Q. Okay.

3 A. Got it.

4 Q. Okay. Is it true that change order on
5 Exhibit 3 -- what is it?

6 A. 8.

7 Q. -- 38 contains a change order 06 between
8 Premier and Balfour Beatty. It contains change
9 order 07 between Premier and Balfour Beatty. It
10 contains change order 8 between Premier and
11 Balfour Beatty. It contains -- and it contains
12 10 between Premier and Balfour Beatty, and it
13 contains 16 between Premier and Balfour Beatty;
14 is that correct?

15 A. Yes, sir.

16 Q. Can you identify these as part of the
17 project records?

18 A. Do you want me to tell you what they
19 are?

20 Q. Yes. Are these part of the project?
21 These are generated here. These are generated
22 by -- these are documents in this --

23 A. Yes, sir.

24 Q. -- this project, correct?

25 A. Yes, sir.