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Jun 22 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

CASE NO. 20-CP-22-00600
CASE NO. 20-CP-22-00601

Sunset Lodge, LLC,Appellant,

v.

Town of Pawleys Island,.....Respondent.

and

Franklin D. Beattie, as trustee of the Franklin D. Beattie
Preservation Trust,Appellant,

v.

Town of Pawleys Island,.....Respondent.

APPELLANTS' PETITION FOR REHEARING
(amended)

Appellants Sunset Lodge, LLC and Franklin D. Beattie, as trustee of the Franklin D. Beattie preservation trust request that the court rehear the appeal and revise its opinion with respect to the points set out below.¹ The grounds for this petition, respectfully submitted, are that the court overlooked the following points or matters:

1. The court misapprehended numerous aspects of both the factual and legal context of the case, which had an important bearing on the central issue of the reasonable amount of reasonable attorney's fees which should be awarded.

2. In deciding the matter de novo, the court did not properly assess or reassess the factors it was required to consider, did not follow the preferred methodology, erroneously disregarded 73% of the hours submitted, and failed to make any upward adjustment of the hours or the rate. As a consequence of this oversight and the other factual and legal oversights, the court determined a fee award that was grossly inadequate.

¹ For many of the same reasons, the landowners would welcome rehearing or other correction of the companion appeal, which is an appeal from an inadequate fee award following the town's withdrawal of its second set of attempts to condemn substantially the same thing.

The instant appeal simply involves more time and money, and involves more overlooked matters that need to be corrected for future purposes, including ongoing threats of the town to sue a third time.

The amount recovered, without interest, five years after prevailing, falls far short of what was actually expended. The landowners cannot afford to continue to spend more resources trying to obtain the fee awards than the ultimate fee awards themselves recognize. Thus the fee award purpose of the EDPA has been defeated in both cases.

The landowners must still be prepared to oppose the third set of similar suits the town has announced within the month preceding this petition here in 2026.

There are significant errors in the other appeal that seemingly minimize what was involved and appear more than once. One is a statement that the landowners filed complaints in January and the town "swiftly" withdrew its second condemnation attempts in February.

Rather, the landowners filed complaints in November. The landowners then did more work, including filing amended complaints in January.

The town unilaterally withdrew its second condemnation attempts, not because the landowners had filed complaints, but because the judge preliminarily granted summary judgment on the first set of attempts in December.

3. The court made a number of statements which may be mistaken for innuendo, a number of misstatements, and a number of legal errors, and failed to rule on some issues, all of which, whether taken together or separately, need to be corrected for future and other purposes affecting the landowners, no matter whether the result is corrected or not and no matter whether the opinion is unpublished or not.

4. Not only should the opinion not be unpublished, it is not allowed to be under the Appellate Court Rules.

5. An award of fees for the appellate work was requested, and argued by the parties, but not ruled upon. It would save large amounts of time to have a ruling, rather than prepare petitions in order to find out.

MEMORANDUM

Brief Background

This is a dispute over a fee award. Three landowners prevailed in 2021 in stopping three condemnation attempts by the town council (Henry, Holliday, Green, Carter and Zimmerman) of the Town of Pawleys Island.

As required by law, the landowners brought their own three suits to stop the town council's attempts to condemn three oceanfront easements on the landowners' completely private property, where they had family beach houses.

The circuit court held that not only was the condemnation that the town council authorized not the same as what the town then immediately sued for, but the dishonest failure to fully consider the actual needs of the town in relation to the true burdens on the landowner doomed the validity of the authorization in any event.

Under the order granting summary judgment to the landowners, the condemnation notices themselves were held incurably defective because, despite prior acute knowledge of the easement features to which the landowners objected, the town council obtained false appraisals of the easements by deliberately omitting the offensive easement features in the description given to the town's appraiser.

Then the town delayed providing the false appraisals to the landowners while suing each of them. The town made unequivocally false certifications regarding the providing of the appraisal in the condemnation papers themselves.²

The town's dishonest behavior was an overlapping basis for most of the multiple theories on which the landowners challenged the condemnation attempt. There was no ruling by any judge in the case against any of the theories presented. The landowners did not lose a single motion in the entire case on any subject.

The common facts presented by the landowners included lack of necessity of the easement. Lack of necessity was presented on two levels: (i) inclusion of more features in the easement than were necessary, namely unnecessary scope, and (ii) seeking any easement at all when no easement at all was necessary.

The circuit judge established as undisputed fact on summary judgment, (i) that all three landowners had offered an easement with all the features stated by the town to be necessary in the town's summary judgment brief (which included no mention of "public access"), but that the town's condemnation attempt sought features far in excess, and (ii) that, with respect to the

² Failure to provide a summary of appraisal, as required by statute, before negotiating, has been held to be "bad faith," invalidating condemnation. Cf. City of Marietta, 302 Ga. 645 (2017)(superseding, but not rejecting, determination of Court of Appeals that failure to provide summary of appraisal, as required by statute, before negotiating, was "bad faith," invalidating condemnation).

“renourishment” which had been represented to be reason for the easement, the town had completed the renourishment without any easement at all from the landowners, after “publicly determining that the easements were ‘not necessary.’”

The landowners submitted a fee petition based on 686.9 hours between dates in June 2020 and January 2021, and after many proceedings, this grew to 950.5. The circuit judge made an award based on 125 hours. The landowners’ appeal therefrom was commenced about four years ago as of this writing in 2026, and was recently ruled upon by this court in an unpublished opinion. This court increased the hours to 250.

Brief Argument

1. This court misapprehended both the factual and legal context of the case, which had an important bearing on the central issue of the reasonable amount of reasonable attorney’s fees which should be awarded.

The court mostly understood what the town did wrong, but did not correctly apprehend the full legal context, what it took to get all the defenses³ prepared and presented, and to subsequently pursue the fees.

A. The dispute for which the landowners prepared included objection to any public access on their private property at all, not merely wildly too much public access.

The court overlooked one of the fundamental and major issues in the case, “public access.” This hot-button issue informed the work done on the case and the high stakes of the litigation.

³ The landowners were defending their family homes and property, but the peculiar procedural context of condemnation required them, when sued by the town in three separate lawsuits, to file complaints as plaintiffs, within a critical statutory 30-day deadline, to commence their own three separate lawsuits to stop the town lawsuits.

There were thus six lawsuits involved in the first round of attempts by the town. As a consequence, in their lengthy three (3) amended complaints, the landowners had to first prove what the town was doing.

This court correctly observed that there were numerous problems with the scope of the easements and that what the town improperly tried to take under eminent domain was “overbroad” and “wildly broad.”

However, the easements were not objectionable in appropriating, as stated by this court, “overly broad public access,” or “wildly broad public access.”

They were objectionable in appropriating any public access at all. This is a serious issue. It has caused big trouble on the west coast of Florida, the east coast of Florida, and parts of the coasts of New Jersey and North Carolina

The completely private property which the town tried to subject to perpetual public access easements was exclusively just that – private, residential property. What the town sought to impose and appropriate was no different from imposing a 50’-70’ wide perpetual easement for recreation, or any other purpose, by the general public, in the front or back yard of all three judges of the panel, to be suffered by their children, grandchildren, and all subsequent generations. It was not a matter of degree.

The property was not subject to any public access. The landowners disputed that there was any right or need to subject the property to public access. The issue of “any public access at all” was a major issue, but it remained subterranean because the town never mentioned it once.

The issue justified serious opposition and obviously required research, preparation, and presentation, some of which may not have been noticed, because numerous other objectionable features of the attempted easements were also swept in by the town’s broad acts of dishonesty.

This court correctly noted the more-than-just-“troubling” attempt to condemn easements vastly different from the very limited work easements that had been represented in writing in the town council’s “you can trust us” letters to all owners.

This court has properly noted that the town tried to take something different from what had been represented publicly, different from what had been authorized in a public council meeting, different from what had been represented to the appraiser, and different from what had been appraised by the appraiser.

What it appears the court missed was the larger sinister scheme. The town had collected easements by cajoling over 100 other largely absentee owners and had been avoiding, at all costs, admitting publicly, and definitively, that those easements did, indeed, impress all the subject properties with permanent public access, thus ruining the titles of those other owners forever.

B. Some other troubling behavior of the town was missed.

This court does properly find the approach of the town troubling, at best, in the following respects, all of which complicated the case:

- (i) Making false representations in writing about the nature and scope of the easements;
- (ii) Initially presenting easements applying to the whole lot and house;
- (iii) Rejecting reasonable easements offered by the objecting landowners;
- (iv) For purposes of condemnation, passing a false authorizing resolution;
- (v) Alternatively, promptly trying to condemn something other than as authorized;
- (vi) For purposes of condemnation, concealing information from the appraiser and misrepresenting the easement to him;
- (vii) Commencing condemnation actions by serving false, inconsistent condemnation notices;

(viii) Arguing that the landowners' challenge actions opposing the second set of condemnation suits against the landowners was mooted by withdrawal of the second set of condemnation attempts, but indicating an intent to sue the landowners for a third time;

(ix) Never admitting that what it had done was wrong; and

(x) As part of the dishonest procurement of the appraisal, trying to base the monetary aspects of the condemnation attempt on a false and inapplicable valuation.

However, this court overlooked at least two more very important aspects of the town's conduct of the litigation which made it "problematic" and increased the time and attention the landowner's counsel had to devote to it. (xi) The town argued that the availability of attorney's fees excused repetitive lawsuits and then opposed attorney's fees categorically, and in amount. (xii) The town also argued that the landowners' second set of three challenge actions should be discontinued, over their objection, as moot, because all the relief sought in the first set of challenges was achieved. However, the town then argued in opposing the fee application in the first set of challenges (the instant appeal) that only temporary relief, and thus, limited success, was achieved.

The landowners' counsel clearly had to "chase numerous rabbits" one at a time.

2. In deciding the matter de novo, the court did not properly assess or reassess the factors it was required to consider, did not follow the preferred methodology, erroneously disregarded 73% of the hours submitted, and failed to make any upward adjustment of the hours or the rate. As a consequence of this oversight and the other factual and legal oversights, the court determined a fee award that was grossly inadequate.

In addition to overlooking some of the legal context and troubling conduct of the litigation by the town, the court makes some mistakes, ambiguous generalizations and misattributions in what at first appears to be cursory procedural background of the case.

However, it is not clear here whether the account is intended to bear on the result. Incorrectly minimizing what was involved in the suit and getting some of it wrong, the court's account of the matter needs correction.

This court correctly stated that it could make its own de novo determination of the fee, but also that multiple errors controlled the circuit judge's decision, which is basis for reversal for "abuse of discretion," as that term is defined. This court also correctly clarified that the fee contract or fee arrangement between the lawyer and clients does not control in using various factors to make a ground-up determination of a reasonable fee.

However, if for some reason, in coming up with 250 hours, the court means actual hours, and does not accept the sworn submission of over 950 actual hours based on regularly kept records and the landowners' counsel's direct personal involvement in every bit of it, the court does not directly say so.

If so, this court still devotes little attention to adding up the actual hours, based on the real case, and all of the real case. If on the other hand, there is actual time spent which is determined to not be "reasonable," this is ordinarily handled by subtracting down, rather than spontaneously selecting a number.

That is, subtraction can be done, if appropriate, based on the total work done in the case and any particular work found to be of poor quality, to be unnecessary at the time the decision to perform it was made, or to be unreasonably interposed or submitted. Additionally, there is a circumstance not present here: if there are claims which are (i) not based on overlapping facts and (ii) which are actually determined against the fee applicant on the merits, time for those matters can be segregated. In going through this analysis explicitly, rather than by innuendo that

does not disclose assumptions based on error, a real-world determination can be made of hours actually and reasonably spent.

The court clearly does not adequately explain why over 700 hours – 73% of the hours submitted -- are omitted from its calculus.

Even if the landowners' counsel's solemnly sworn account of hours devoted to the matter were to be completely disregarded, the court does not look at the total work in the case, the Record on Appeal of over 1475 pages (each page of which is pregnant with time-intensive content),⁴ the reasonableness of everything the landowner's lawyer did, and the lawyer's thorough explanation in the fee petition of the case and of the work done.

Rather, the court devotes some isolated attention to the details of billings, and what can be determined about what was done at certain parts of the day.

The court expresses anecdotal dubiousness, but no finding or conclusion, about some days on which the lawyer worked long hours. One 19.8-hour "day" was explained and affirmed in person at oral argument as a not atypical day in which the lawyer went to bed wearing the same thing he had woken up in and worked all day in.

Following is an off-the-cuff, nonexclusive, not-strictly-sequential, highly truncated list of things that unequivocally were required in the case.

It should be clear to lawyers and judges alike, that it would have taken – and did take -- the town itself more than 250 hours in its corresponding activities, in order to lose the case:

- (i) Receive and review three (3) sets of lengthy notices forming the pleadings of the three condemnation notices, including statute-driven language with deadlines and options, densely worded proposed conveyancing documents specific to each

⁴ The parties stipulated to not including the corresponding documents from all three cases, or else the Record would have been in excess of 4000 pages. In these cases, all the documents still had to be reviewed, generated, filed, forwarded, managed or repetitively touched by the landowners' counsel.

property, and accompanying annotated drawings not prepared by or at the behest of the landowners. Note variations or omissions of referenced pages, attachments or accompanying documents.

- (ii) Review the Eminent Domain Procedures Act.
- (iii) Request the three (3) different appraisals which were withheld and not served as required by law.
- (iv) Review three (3) different, property-specific, complicated, 60-page, late-received appraisal reports done on private property without permission or knowledge of owners.
- (v) Do many hours of appropriate research, consult with clients, and prepare three (3) multi-count challenge complaints to meet deadline imposed in the notices and under the EDPA.
- (vi) Serve three (3) sets of pleadings (in three different suits) on an “out-of-town” town whose attorney is unavailable to accept service. At some later point, prepare three (3) sets of amended complaints with expanded theories and facts, and allegations and exhibits documenting what the town had served in its commenced, but unfiled, condemnation suits.
- (vii) Research and review videos, minutes, newsletters, correspondence, etc. and prepare very precise “paper” discovery.
- (viii) Prepare and send three (3) notices of deposition of deceived appraiser concerning contents and circumstances of 180 pages of appraisal reports on three unique and different properties.
- (ix) Soon and later deal with multiple instances of town resistance to, noncompliance with, delay of, and obstruction of discovery. To the extent motions are required, make them in three (3) cases, and attend whatever hearings are necessary.
- (x) Throughout the cases, initiate and field numerous phone calls, e-mails, texts, or letters with clients, opposing counsel, confused or other court personnel, and others.
- (xi) Research three (3) detailed affidavits in support of summary judgment, with pinpoint references to public records which are first reviewed and analyzed.
- (xii) Research multiple grounds for summary judgment including novel theories and novel facts (e.g., town trying to condemn for a project already completed without the easements, effect of dishonest acts and concealment of activities, or actual changes either agreed or made to easements of others).
- (xiii) Prepare three (3) affidavits in support of motion for summary judgment.
- (xiv) Prepare three (3) motions for summary judgment.
- (xv) Personally attend to all triplicate electronic filings of sometimes confusingly similar papers (including exhibits) and payment of attendant filing fees in three (3) different cases, throughout almost all of the circuit court litigation.
- (xvi) Receive, calendar, review, analyze and research three (3) town motions to dismiss under rule 12(b)(6).
- (xvii) Receive, calendar, review, analyze and research three (3) town motions to require \$30,000,000 in bonds against landowner liability for maintaining challenge actions, citing no authority. Explain to worried clients (often in separate or multiple communications).
- (xviii) Prepare three (3) sets of memoranda in opposition to three (3) 12(b)(6) motions.

- (xix) Prepare three (3) memoranda in opposition to three (3) motions for \$30,000,000 in bonds.
- (xx) Travel six-hour round trip to out-of-town hearing of 12(b)(6) and \$30,000,000 motions.
- (xxi) Argue motions in person during pandemic with no hazard pay as at-risk person.
- (xxii) Deal with efforts of town to postpone summary judgment motion in “\$30,000,000 case” for a USC-Boston College football game, and file three (3) affidavits recapping procedural status and effects.
- (xxiii) Travel six-hour round trip to deposition of appraiser, but get “served” at town’s lawyer’s office with whole additional set of suits. (Not Dillard’s office. Dillard completely unfamiliar and not in the case at this point and will not be until much later.)
- (xxiv) During pandemic, depose appraiser who appraised the three (3) subject properties in 2020 and 109 other affected properties the year before under the same withholding of information and affirmative misinformation. Suspend uncompleted deposition for convenience of all. (Total deposition for three (3) cases would eventually take a total of 7-8 hours, including accommodations for appraiser’s disability, contrary to later public and judicial misrepresentations by town.)
- (xxv) Come back following week and finish deposition of appraiser.
- (xxvi) Prepare for hearing and argue summary judgment motions.
- (xxvii) Prepare proposed order (in triplicate?) and engage in various exchanges concerning same.
- (xxviii) Prepare three (3) fee affidavits meticulously setting forth solemnly sworn days and hours worked, and applying and explaining discounts. Present narrative on lawyer background, rate, nature of the case, complexity and difficulty, results obtained, demands on the lawyer, etc. (Possibly also submit proposed order?).
- (xxix) Receive, calendar, review, analyze and research three (3) town motions to reconsider, to have 3-4 months of fee discovery, and to set up live trial on fee application.
- (xxx) Over extended period of time, deal with various town attempts to pry into confidential billing records between landowners and their counsel while litigation remains open and third set of three lawsuits on same subject matter is publicly threatened. Also deal with interspersed town recastings of motion to reconsider.
- (xxxi) Periodically update fee petition with growing number of hours necessarily devoted to the matter.
- (xxxii) Argue against motions to reconsider and end up drafting proposed order and having exchanges concerning it.
- (xxxiii) Receive, review and analyze multiple filings of town with charts and “expert” affidavits of losing attorney and hired affiant attorney opposing fee petition regarding a “typical” case.
- (xxxiv) Receive and deal with fee order awarding about \$8000 each to Beattie and Sunset (virtually nothing for Stanton) for winning the case. Award is based on 125 hours total for all three cases, and only \$190 per hour.
- (xxxv) Spend about three years and a profound number of hours on appeal trying to recover fees while still being periodically threatened publicly with imminence of

third set of suits on the same thing, and the need to spend even more of an extremely limited inventory of time.

The court overlooked that 250 hours was a grossly deficient assessment of the time actually spent and provided no assertion that anything done was unreasonable. This court fails to upwardly adjust the below-market \$190 hourly rate, fails to provide any rate enhancement for split of the total resulting actual fee, and fails to provide any rate enhancement for the one-third discount.

The court's spontaneous award based on 250 hours of work is a discrete doubling of the very 125 hours the court had rejected as not being based on the actual case.

The landowners are deeply grateful for the doubling, and for the court's frankness in recognizing some of the town behaviors which had a bearing on the time spent. Respectfully, however, it is not enough to meet the spirit or the letter of the EDPA.

The court also does not enhance the rate for the burden and risk of handling three cases, or take into account the rare nature of the case or the singular result obtained.⁵ The court does not take into account the demands placed on the lawyer representing three clients from three different towns regarding property in a fourth location, during a pandemic, with limited assistance and new court rules.

3. The court made a number of statements which may be mistaken for innuendo, a number of misstatements, and a number of legal errors, and failed to rule on some issues, all of which, whether taken together or separately, need to be corrected for future and other purposes affecting the landowners, no matter whether the result is corrected or not and no matter whether the opinion is unpublished or not.

The matters referenced in the heading are as follows:

⁵ Few challenge cases are ever brought. Fewer are won. Of reported South Carolina cases, there are probably not more than a handful won in this century or the previous one. We are aware of none other than this one which were won on summary judgment. We are aware of none won by the town's lawyers, including its hired "fee expert."

A. The court makes no explicit finding about the propriety of any of the work or its connection to the court's spontaneous statement that an unspecified portion of the landowners' counsel's time was somehow "excessive."

B. The billing records examined set forth the time spent each day in tenths of hours, a reasonably specific summary of tasks done that day, often with considerable detail. The court mentioned its inability to determine the aspects of what the landowners' attorney did at different times on a certain day, or the time spent on each definable task of many on a given day.

However this does not explain a rejection of 73% of all time the lawyer billed to the clients and that the clients paid. Atomized billing records are not the sine qua non of a fee application or a fee award. Maybank v. BB&T, 416 S.C. 541, 787 S.E. 2d 498 (2016)(rejecting, in 42 single-spaced pages, argument that billing statements lacked necessary detail).

In a contingent-fee case, the attorney may keep no time records at all. Yet, without punishing or criticizing the attorney, an account of the work can be made, and estimates of time for the actual work can be considered, along with the nature of the case, the contingency of the compensation, and other factors.

The 1475-page record (not including supplementary materials, some under seal) is the tip of the iceberg in representing the time required in a case like this.

C. The court's mention of the landowner's "acrimony" is misplaced. There was none. The landowners had a case in which dishonesty was an issue, and the only way to address it was to do so factually, which was done.

D. The court's statement that the three cases were "essentially identical" oversimplifies the circumstances. The Record shows that each had different captions and signature blocks, different associated owner names, different associated property characteristics, and other factual

differences that had to be addressed. Three clients had to be consulted and updated. Three bills had to be prepared (a nonbillable activity). Everything had to be received and sent three times. In short, it takes more time and costs more money to handle three cases than one. It adds up.

E. The unpublished opinion fails to distinguish among the three different standards under the three different subsections of S.C. Code Ann. §28-2-510, and the Revels case. Revels only addresses one. Subsection 510(A), for challenges, is a “must award” statute, with an accompanying standard. Subsection 510(B), for nonchallenge condemnation trials, is a “may award” statute, with an accompanying standard. Subsection 510(C), for abandonments, is a “must award” statute, with an accompanying standard.

The instant case is a §510(A) case. The companion appeal is a §510(C) case. Revels was a §510(B) case.

F. Stating that Stanton “later clarified” that he was not seeking a one-third share of fees for himself is incorrect. It was in the 1/25/21 fee petition at the inception. (R.p. 932.)

G. The court got the date of the complaint and amended complaint wrong in the other appeal, suggesting an incorrect timeline, incorrect promptness on the part of the town, and an incorrect period during which work occurred. These misapprehensions likely bled into the instant opinion and the correction should be borne in mind.

H. The court cursorily describes the notice of deposition of Fabbri as if it were issued at a time that did not make sense; the court failed to notice that the notice was sent for both condemnation challenge actions, not only one. Both actions were pending at the time the deposition was pursued.

I. The court refers to a “43-page memorandum” as if it was primarily for the purpose of addressing the Fabbri deposition. Rather, its actual subject was dismissal, as moot, of the whole

challenge to the other set of attempts by the town. The court made no finding or statement as to whether the “43-page” filing was reasonable or not, or excessive or not.

J. The unpublished opinion states that the fee petition was “amended multiple times.” The court does not state whether this was unreasonable. The primary occasions for the amendments were to update the amount sought, because it continued to increase.

K. The court “noted concern” regarding the order’s uses of the town’s illegitimate construct, “non-prevailing claims,” but never clarified that this term was illegitimate, and provides no basis whatsoever for reducing hours or otherwise reducing a fee.

4. Not only should the opinion not be unpublished, it is not allowed to be under the Appellate Court Rules.

It was incorrect for the court to designate the opinion as unpublished. Rule 220(a), SCACR (confining opinion types to either published or “memorandum”), and Rule 220(b)(1), SCACR (limiting issuance of memorandum opinions to Supreme Court, and then only under four circumstances not present here).

5. An award of fees for the appellate work was requested, and argued by the parties, but not ruled upon. It would save large amounts of time to have a ruling, rather than prepare petitions in order to find out.

A ruling as referenced in the heading would be appreciated.

Respectfully submitted,

s/M. Baron Stanton
M. Baron Stanton
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ATTORNEY FOR APPELLANTS
Sunset Lodge, LLC and Franklin D. Beattie as
trustee

Date: September 21, 2026

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CERTIFICATE OF SERVICE

I, M. Baron Stanton, do hereby certify that I have, on this date, served the foregoing final **Appellants' Petition for Rehearing** upon the Respondent by causing a copy to be e-mailed in accordance with current rules to will@belserpa.com . The postal mailing address of the above addressee is:

William C. Dillard, Jr., Esquire
Post Office Box 96
Columbia, SC 29202

s/M. Baron Stanton
M. Baron Stanton

Date: June 21, 2026 (original June 18)