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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas for the Fifth Judicial Circuit

The Honorable William W. Wheeler, III, Circuit Court Judge

Appellate Case No.: 2026-001127
Trial Court Case No.: 2020-CP-40-03915

ATC Site Construction, LLC,

Respondent,

v.

NKD, Inc.,

Appellant.

RECORD ON APPEAL

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Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 4288
 Date: 07/12/2022
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC**

Type	Date	Description	Quantity	Rate	Total
Service	06/07/2022	BHJ: Review/analyze discrepancy issue with Pay App 20 and possible credit to NKD for \$61,587.00 for deceleration lane that was potentially never, in fact, credited	1.30	\$295.00	\$383.50
Service	06/12/2022	BHJ: Correspond via email with office of expert witness Steve Moore regarding invoice for additional work conducted by Mr. Moore	0.10	\$295.00	\$29.50
Total					\$413.00
Payment (07/21/2022)					-\$413.00
Balance Owing					\$0.00

Detailed Statement of Account**Current Invoice**

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
4288	07/12/2022	\$413.00	\$413.00	\$0.00

Account	Balance
Service First Trust IOLTA Balance	\$0.00
Total Account Balance	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 4353
 Date: 08/09/2022
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	07/05/2022	NMT: Draft Consent Motion to Amend; prepare exhibits and cover sheets to Amended Answer; finalize Second Amended Answer for distribution	0.80	\$125.00	\$100.00
Service	07/05/2022	BHJ: Correspond via email with counsel for ATC and Geo-Systems regarding NKD's filing of Second Amended Complaint and requesting consent from ATC and Geo-Systems as to same	0.20	\$295.00	\$59.00
Service	07/07/2022	NMT: Create dropbox with all production and discovery material to date and share the same with Robert Osborne, counsel for Geosystems	0.80	\$125.00	\$100.00
Service	07/07/2022	BHJ: Phone call from counsel for Geo-Systems regarding status of discovery, NKD's proposed Amended Complaint with claims against Geo-Systems	0.20	\$295.00	\$59.00
Service	07/12/2022	BHJ: Correspond via email with counsel for ATC regarding ATC's consent to amendment of complaint and addition of claims against Geo-Systems	0.20	\$295.00	\$59.00
Service	07/20/2022	BHJ: Correspond via email with office of counsel for ATC Site Construction regarding depositions of NKD witnesses; review/compile list of witnesses to depose from ATC Site Construction and correspond via email with counsel for ATC regarding same	0.80	\$295.00	\$236.00
Service	07/20/2022	BHJ: Correspond via email with counsel for Geo-Systems regarding status of consent to proposed amended Complaint	0.10	\$295.00	\$29.50

Service	07/25/2022	NMT: Finalize and file Consent Order to file Second Amended Answer and counterclaims	0.50	\$125.00	\$62.50
Service	07/25/2022	NMT: Draft and revise supplemental interrogatory and production responses and create dropbox regarding the same	1.50	\$125.00	\$187.50
Service	07/25/2022	BHJ: Finalize Amended Answer and Counterclaims adding Geo-Systems to case; finalize draft of Consent Order permitting same for filing with Court	1.00	\$295.00	\$295.00
Service	07/28/2022	BHJ: Conference regarding deposition strategy and scheduling; coordinating damages figures with NKD Accountant	0.20	\$295.00	\$59.00

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	07/25/2022	L&A CC Payment to Charleston County Clerk of Court for Consent Order to file Second Amended Answer and Claims	1.00	\$31.74	\$31.74

Total **\$1,270.24**

Payment (07/17/2022) **-\$1,270.24**

Balance Owing **\$0.00**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
4353	08/09/2022	\$1,278.24	\$1,278.24	\$0.00

Account	Balance
Service First Trust IOLTA Balance	\$0.00
Total Account Balance	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 4409
 Date: 09/09/2022
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC**

Type	Date	Description	Quantity	Rate	Total
Service	08/03/2022	NMT: Telephone call to Richland County Clerk's office regarding Consent Order	0.20	\$125.00	\$25.00
Service	08/08/2022	BHJ: Phone call and email to Richland County Clerk of Court regarding status of Court's review and entering of Consent Order to allow NKD to amend Answer and Counterclaims	0.20	\$295.00	\$59.00
Service	08/09/2022	NMT: Receive Order from Court regarding Motion to Amend; finalize and electronically file Amended Answer and Counterclaims and exhibits with Court	0.40	\$125.00	\$50.00
Service	08/09/2022	NMT: Telephone call with Skye at MGC regarding deposition dates and scheduling; emails with Trippett Bonneau regarding the same	0.40	\$125.00	\$50.00
Service	08/09/2022	BHJ: Receipt and review of Consent Order entered by Court granting NKD Motion to Amend Complaint to add Geo-Systems as party; finalize Amended Complaint for filing with Court	0.20	\$295.00	\$59.00
Service	08/10/2022	NMT: Email to Opposing Counsel regarding depositions and 30(b)(6) topics	0.10	\$125.00	\$12.50
Service	08/12/2022	NMT: Email with Robert Osborne regarding service of Crossclaim against Geosystems	0.20	\$125.00	\$25.00
Service	08/12/2022	BHJ: Correspond via email with counsel for GeoSystems regarding NKD's Cross Claims against GeoSystems, acceptance of service of same	0.20	\$295.00	\$59.00
Service	08/12/2022	BHJ: Conference regarding depositions of ATC and NKD witnesses	0.20	\$295.00	\$59.00
Service	08/17/2022	NMT: Docket deposition for Plaintiff's deponents	0.20	\$125.00	\$25.00

Service	08/22/2022	NMT: Email from Trippett Bonnet regarding depositions; email to Nick Leventis and Karl Haslinger regarding scheduling depositions	0.20	\$125.00	\$25.00
Service	08/24/2022	NMT: Emails with Trippett Boineau and Skye Kinder regarding deposition logistics and scheduling	0.20	\$125.00	\$25.00
Service	08/30/2022	BHJ: Conference regarding preparation/planning/strategy for upcoming depositions	0.60	\$295.00	\$177.00
Service	08/30/2022	ERL: Direct litigation team regarding comprehensive list of next steps	0.50	\$375.00	\$187.50
Total					\$ 3 00
Payment (08/22/2022)					-\$ 3 00
Balance Owing					\$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
4409	09/09/2022	\$838.00	\$838.00	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 4464
 Date: 10/10/2022
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC**

Type	Date	Description	Quantity	Rate	Total
Service	09/01/2022	BHJ: Tasks related to planning and preparation for upcoming depositions, including telephone calls and emails with client Nick Leventis, Carolina Contracting, and Asphalt Paving & Maintenance Co., revising task list of items needed for depositions and damages calculation and analysis, email to clients Nick Leventis and Karl Haslinger regarding same	4.00	\$295.00	\$1,180.00
Service	09/01/2022	AGC: Creation of case management chart following meeting with Ellis Lesemann and Ben Joyce regarding tasks that need to be accomplished; circulate to attorneys and paralegals	0.70	\$125.00	\$87.50
Service	09/01/2022	NMT: Email to Trippett Bonneau regarding depositions and scheduling suggestions; telephone call to Mike Barb, CPA to set up conference call regarding damages; circulate invite and dial in instructions for call	0.50	\$125.00	\$62.50
Service	09/02/2022	NMT: Review status of all production and inventory items needing follow up	2.90	\$125.00	\$362.50
Service	09/02/2022	NMT: Review of all emails from September 1 through September 2 regarding production and lien waivers; email to Skye Kinder regarding deposition dates for ATC and docket the same	0.40	\$125.00	\$50.00
Service	09/02/2022	BHJ: Receipt and review of emails from client Nick Leventis regarding HUD for initial closing of lots, and three (3) lien waivers from replacement road and site contractors	0.30	\$295.00	\$88.50
Service	09/06/2022	BHJ: Phone conference and email with Mike Barb, CPA regarding NKD general ledgers for River Shoals to assist with damages calculations	0.30	\$295.00	\$88.50

		and analysis			
Service	09/07/2022	BHJ: Tasks related to due diligence of potential asset sale of ATC Site Construction including phone call and email correspondence with counsel for ATC; drafting of letter to counsel for ATC to confirm details of asset sale and ensure means of paying judgment; review/analyze SC Code related to motion for writ of prejudgment attachment as way to protect NKD's interests; correspondence via email with client Karl Haslinger regarding same	2.60	\$295.00	\$767.00
Service	09/08/2022	NMT: Draft subpoena, cover letter, and exhibits to Robert Oswald, CPA; email the same to all counsel and clients; prepare service of the same	0.80	\$125.00	\$100.00
Service	09/08/2022	BHJ: Continued tasks related to due diligence of potential asset sale of ATC Site Construction including (i) review prior production of ATC tax returns and redacted financials from company accountant Robert Oswald CPA, (ii) review of ATC application to LLR for Group 5 Contractor Classification and Net Worth Attestation, and (iii) insurance coverage identified by ATC; conference regarding same; (iv) preparation of subpoena to Mr. Oswald for information related to asset purchase agreement under negotiation and all financials for ATC from Sept 2013 - present	1.50	\$295.00	\$442.50
Service	09/08/2022	BHJ: Finalize subpoena to Robert Oswald CPA (accountant for ATC) and letter serving same	0.20	\$295.00	\$59.00
Service	09/12/2022	NMT: Review of all Pleadings and update index to prepare file for next steps	0.50	\$125.00	\$62.50
Service	09/13/2022	ERL: Prepare and revise final notice to ATC's counsel; confer regarding escrow amount with Mr. Haslinger; review of documents relating to additional subcontractor	1.40	\$375.00	\$525.00
Service	09/13/2022	BHJ: Draft letter to counsel for ATC regarding final request for information as to ATC asset sale and forthcoming filing of motion for prejudgment writ of attachment; research pertinent South Carolina case law and code provisions regarding obtaining prejudgment writ of attachment; begin drafting motion for prejudgment writ of attachment	5.50	\$295.00	\$1,622.50
Service	09/13/2022	BHJ: Review invoices and damages documentation related to repair vendors; calculate same and draft itemized damages spreadsheet	1.00	\$295.00	\$295.00
Service	09/13/2022	ERL: Communications with expert witnesses	0.30	\$375.00	\$112.50
Service	09/13/2022	ERL: Compile and prepare itemization of interim damages	0.30	\$375.00	\$112.50

Service	09/13/2022	BHJ: Correspond via email with expert witness Steve Moore, P.E. regarding Gearig Civilworks records and request for phone conference to discuss same after his review	0.20	\$295.00	\$59.00
Service	09/14/2022	BHJ: Conference regarding damages calculation; invoices from LG Utility Contractors, Inc. & Asphalt Paving and Maintenance Co., Inc.	0.30	\$295.00	\$88.50
Service	09/14/2022	NMT: Telephone call and email with Susan Leitner at NKD regarding invoices from LG Utility Contractors; sent email confirming the same and providing my contact; create Nextpoint link for Susan to upload invoices	0.30	\$125.00	\$37.50
Service	09/14/2022	NMT: Call to Asphalt Paving and Maintenance and left message for John regarding invoices	0.10	\$125.00	\$12.50
Service	09/14/2022	BHJ: Correspond via email with office of counsel for ATC regarding depositions of ATC witnesses, including Robert Oswald (CPA for ATC) and Jonathan Whitehead	0.20	\$295.00	\$59.00
Service	09/14/2022	BHJ: Conference regarding previous subpoenas issued by ATC to eight (8) vendors; request to supplement discovery responses with subpoena productions	0.20	\$295.00	\$59.00
Service	09/14/2022	BHJ: Conference regarding ATC subcontractor, Gearig Civilworks, and Gearig's involving in soil cement mix and grading; potential addition to lawsuit as defendant; correspond via email with clients Karl Haslinger and Nick Leventis regarding same	0.40	\$295.00	\$118.00
Service	09/14/2022	BHJ: Review of ATC document production for any additional records or references as to extent of Gearig Civilworks involvement with roadwork at River Shoals and as subcontractor of ATC	0.80	\$295.00	\$236.00
Service	09/14/2022	BHJ: Prepare initial draft of Affidavit of client Karl Haslinger as required by statute to be filed in support of Motion for Prejudgment Attachment against ATC; select and compile proposed exhibits to utilize in support of Affidavit	2.40	\$295.00	\$708.00
Service	09/14/2022	BHJ: Continue preparation of draft of Motion for Prejudgment Attachment against ATC to be filed with Court; selection and compiling of exhibits to utilize in support of same	2.60	\$295.00	\$767.00
Service	09/14/2022	ERL: Review of S&ME reports; prepare for call with Chad Bruorton; review of documents relating to Gearig Civilworks; conference call with Mr. Bruorton regarding status and next steps; provide update to Mr. Haslinger	1.10	\$375.00	\$412.50

Service	09/15/2022	NMT: Review of all proposed deponents; multiple communications with Skye from MKG to work on scheduling; emails to clients regarding the same; Telephone calls with Susan Leitner regarding depositions; Receive production of invoices from Susan Leitner and organize the same in Nextpoint; telephone call to Asphalt paving regarding invoices and locate all invoices to total lien waiver; review of potential filings and exhibits for Motion for ☐ rit and Affidavit of Karl Haslinger	2.50	\$125.00	\$312.50
Service	09/15/2022	BHJ: Review invoices from repair contractors and general ledgers from Mike Barb; prepare answer to supplemental interrogatory identifying Asphalt Paving and Maintenance Co. witness and calculation of damages; compile associated supplemental document production	1.50	\$295.00	\$442.50
Service	09/15/2022	BHJ: Review/analyze ☐ substantial completion ☐ references in Contract Documents and review pertinent case law and secondary sources regarding interpretation of ☐ standard completion ☐ for purposes of finalizing calculation of liquidated damages claim	2.50	\$295.00	\$737.50
Service	09/15/2022	BHJ: Correspond via email with office of Mike Barb, CPA for NKD, regarding general ledgers for River Shoals	0.20	\$295.00	\$59.00
Service	09/15/2022	BHJ: Conference regarding supplementation of discovery responses and producing updated damages calculation and documentation on behalf of NKD	0.30	\$295.00	\$88.50
Service	09/17/2022	NMT: Update Discovery Index and organize files on system	1.90	\$125.00	\$237.50
Service	09/19/2022	BHJ: Conference regarding addition of Gearig Civilworks as party on claims of negligence/gross negligence and violation of the South Carolina Unfair Trade Practices Act	0.30	\$295.00	\$88.50
Service	09/19/2022	BHJ: Correspond via email with counsel for ATC Site Construction and Geo-Systems regarding request for consent to amending NKD's Answer to add Gearig Civilworks as party on claims of negligence and violation of the South Carolina Unfair Trade Practices Act	0.20	\$295.00	\$59.00
Service	09/20/2022	BHJ: ☐ inalize drafts of ☐ irst Sets of Interrogatories and ☐ irst Sets of Requests for Production for service on Geo-Systems	1.20	\$295.00	\$354.00
Service	09/21/2022	NMT: Draft correspondence to Robert Osborne serving discovery requests; update index with served discovery and docket deadline; email to all parties regarding discovery requests	0.60	\$125.00	\$75.00

Service	09/21/2022	BHJ: Correspond via email with counsel for ATC regarding ATC asset purchase agreement and phone conference to discuss same and protection of NKD's interest	0.20	\$295.00	\$59.00
Service	09/23/2022	BHJ: Correspond via email with ATC accountant, Robert Oswald, regarding outstanding subpoena response	0.20	\$295.00	\$59.00
Service	09/26/2022	NMT: Create spreadsheet to calculate damages as incurred from three vendors; email summary of the same to team; email opposing counsel and organize conference call	1.20	\$125.00	\$150.00
Service	09/26/2022	ERL: Prepare for call with counsel for ATC; conduct conference call; review of damages calculation	0.60	\$375.00	\$225.00
Service	09/26/2022	BHJ: Prepare for initial phone conference with counsel for ATC regarding ATC asset sale and measures to protect NKD's interest	0.40	\$295.00	\$118.00
Service	09/26/2022	BHJ: Conduct initial phone conference with counsel for ATC regarding ATC asset sale and proposal for escrow of funds to protect NKD's interest	0.30	\$295.00	\$88.50
Service	09/26/2022	BHJ: Conference following discussion with counsel for ATC regarding calculation of substantial completion date and liquidated damages including prejudgment interest rate; review/analyze pertinent case law related to assignment of prejudgment interest to liquidated damages claims	0.80	\$295.00	\$236.00
Service	09/26/2022	BHJ: Correspond via email with clients Karl Haslinger and Nick Leventis regarding phone conference to discuss recent discussion with counsel for ATC regarding ATC asset sale and NKD interim damages calculation	0.10	\$295.00	\$29.50
Service	09/27/2022	NMT: Emails with Trippett Boineau regarding NKD depositions	0.20	\$125.00	\$25.00
Service	09/27/2022	NMT: Telephone call to Robin Hoffman at Carolina Contracting and email regarding corresponding invoice for check	0.20	\$125.00	\$25.00
Service	09/27/2022	BHJ: Conduct legal research regarding extent of evidentiary basis needed / standard of review for motion for prejudgment writ of attachment against ATC	0.50	\$295.00	\$147.50
Service	09/27/2022	BHJ: Phone conference with clients Karl Haslinger and Nick Leventis regarding recent discussions with counsel for ATC regarding asset sale, damages calculation, and upcoming depo	1.10	\$295.00	\$324.50

Service	09/27/2022	BHJ: Correspond via email with counsel for ATC regarding forthcoming damages calculation production and phone conference on 09/30/22 to further discuss escrow of funds	0.20	\$295.00	\$59.00
Service	09/27/2022	BHJ: Continued work on analysis and calculation of interim damages calculation; draft letter to counsel for ATC regarding same and request for ATC to escrow funds from asset sale	2.50	\$295.00	\$737.50
Service	09/27/2022	ERL: Prepare for conference call; conduct conference call with Mr. Leventis and Mr. Haslinger; assemble and calculate damages; revise letter to opposing counsel regarding proposed escrow	1.90	\$375.00	\$712.50
Service	09/28/2022	NMT: Create reports for fees, bills, and expert costs for settlement discussions, review all deponents and create chart of potential scheduling and email the same to all parties to include Robert Osborne on the discussions on scheduling; bates label supplemental production and produce invoices and waivers from contractors; serve correspondence relating to escrow	2.30	\$125.00	\$287.50
Service	09/28/2022	BHJ: Prepare Motion to Compel subpoena response of Robert M Oswald II CPA (ATC accountant) and compile exhibits in support of same	0.90	\$295.00	\$265.50
Service	09/28/2022	BHJ: Conference regarding interim calculation of damages for purposes of negotiating escrowing of funds by ATC after asset sale; continued/finalize calculation and drafting of spreadsheet and letter regarding same; confirm upcoming phone conference with counsel for ATC to discuss same	1.50	\$295.00	\$442.50
Service	09/30/2022	ERL: Prepare for call with opposing counsel regarding damages and escrow agreement; conduct call and discuss next steps	0.60	\$375.00	\$225.00
Service	09/30/2022	BHJ: Receipt and review of email from counsel for Geo-Systems regarding coordinating of upcoming depositions of witnesses from ATC and NKD	0.10	\$295.00	\$29.50
Service	09/30/2022	BHJ: Phone call with counsel for ATC regarding ATC's proposal of escrowing funds from asset sale to protect NKD's interests; internal conference prior to and afterwards to discuss same	0.60	\$295.00	\$177.00
				Total	\$15,452.00
				Payment (10/31/2022)	-\$15,452.00
				Balance Owing	\$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
4464	10/10/2022	\$15,452.00	\$15,452.00	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 4524
 Date: 11/03/2022
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	10/03/2022	NMT: Electronically file Motion to Compel Subpoena Response against Robert Oswald with exhibits (5)	0.30	\$125.00	\$37.50
Service	10/03/2022	BHJ: Finalize draft of Motion to Compel Subpoena Response of Robert M Oswald II CPA (ATC accountant) and file same with Court; correspond with Mr. Oswald and counsel via email providing copy of same	0.30	\$295.00	\$88.50
Service	10/03/2022	BHJ: Receipt and review of Answer to Amended Complaint filed by Defendant Geo-Systems Testing and Design	0.20	\$295.00	\$59.00
Service	10/04/2022	BHJ: Conference regarding postponement of depositions until Gearig Brothers appears in case and files responsive pleading; correspond via email with counsel of record regarding same and obtain consent to amendment to add Gearig Brothers	0.50	\$295.00	\$147.50
Service	10/04/2022	BHJ: Receipt and review of emails from counsel for ATC regarding preservation and setting aside of funds to protect NKD's interest; conference regarding same	0.30	\$295.00	\$88.50
Service	10/04/2022	ERL: Review of proposal for set aside of funds by counsel for ATC; forward to clients for consideration and comment; consider appropriate terms for counterproposal; confer regarding deposition status and strategy	0.70	\$375.00	\$262.50
Service	10/05/2022	ERL: Prepare and implement next steps in litigation to add additional subcontractor, calculate	0.30	\$375.00	\$112.50

		damages, and schedule depositions			
Service	10/05/2022	BHJ: Correspond via email with clients Karl Haslinger and Nick Leventis regarding postponement of depositions until after appearance of Defendant Gearig Bros	0.10	\$295.00	\$29.50
Service	10/06/2022	ERL: Review of update from counsel for ATC; provide written response; confer with counsel for ATC to confirm that asset sale is being closed but monies will not be released and that set aside will occur	0.50	\$375.00	\$187.50
Service	10/07/2022	ERL: Detailed conference with opposing counsel regarding status of asset sale and sale proceeds; prepare confirmation notice to opposing counsel to memorialize the status and commitments made	0.60	\$375.00	\$225.00
Service	10/10/2022	ERL: Confer with opposing counsel regarding status of proposal to set aside funds pending outcome of case	0.20	\$375.00	\$75.00
Service	10/10/2022	BHJ: Conference regarding revisions to draft Motion for Preliminary Injunction of Attachment and Affidavit of Karl Haslinger; Revise/finalize draft of Motion for Injunction of Attachment and Affidavit of Karl Haslinger	1.50	\$295.00	\$442.50
Service	10/11/2022	BHJ: Correspond via email with counsel for ATC regarding ATC's proposal for setting aside and preservation of funds in the amount of \$2,500,000 to protect NKD's interests	0.20	\$295.00	\$59.00
Service	10/11/2022	ERL: Tasks and conferences relating to confirmation of set aside; confer with clients regarding same	0.40	\$375.00	\$150.00
Service	10/13/2022	BHJ: Begin drafting of proposed Escrow Agreement for ATC setting aside \$2.5M of funds for pendency of litigation to protect NKD's interests	1.50	\$295.00	\$442.50
Service	10/17/2022	BHJ: Draft Consent Order regarding setting aside and preservation of \$2,500,000 of funds by ATC Site Construction to circulate amongst counsel for consent/approval and prior to filing same with Court	1.50	\$295.00	\$442.50
Service	10/18/2022	BHJ: Review elements and pertinent case law regarding the South Carolina Unfair Trade Practices Act to assess cause of action against Gearig Civilworks; draft Consent Order and amended pleading with Third-Party Complaint against Gearig Civilworks for circulation amongst counsel of record for review and consent; review/confirm corporate form, licensee status, and registered agent with Georgia Secretary of State	3.00	\$295.00	\$885.00

Service	10/24/2022	ERL: Prepare Consent Order Preserving and Protecting \$2.5m in Funds from ATC Asset Sale; confer with counsel for Geo-Systems regarding status of case, recent asset sale, consent order, and other next steps in the case; transmit proposed consent order to clients for review	2.20	\$375.00	\$825.00
Service	10/26/2022	ERL: Communications with client regarding consent order; confirm approval of Mr. Leventis	0.20	\$375.00	\$75.00
Service	10/31/2022	BHJ: Conference regarding amended claims against Gearig; AIA Contract provisions related to ATC and NKD's competing damages claims	0.30	\$295.00	\$88.50
Service	10/31/2022	BHJ: Draft detailed initial discovery requests to serve on Gearig Civilworks, including Interrogatories and Requests for Production	1.80	\$295.00	\$531.00
Service	10/31/2022	BHJ: Revise/finalize draft of Third Party Claims against Gearig Civilworks; conference regarding same	0.30	\$295.00	\$88.50
Service	10/31/2022	ERL: Review of contract provisions relevant to claims; review of proposed Second Amended Complaint; follow-up with opposing counsel regarding Consent Order to set aside funds	0.40	\$375.00	\$150.00

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	10/03/2022	L&A CC Payment to Charleston County Clerk of Court for Motion to Compel Subpoena Response from Robert Oswald	1.00	\$31.74	\$31.74

Total	\$5,524.24
Payment (11/10/2022)	-\$5,524.24
Balance Owning	\$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
4524	11/03/2022	\$5,524.24	\$5,524.24	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 4578
 Date: 12/07/2022
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC**

Type	Date	Description	Quantity	Rate	Total
Service	11/15/2022	ERL: Communications regarding status of consent order	0.20	\$375.00	\$75.00
Service	11/17/2022	BHJ: Review SM&E reports to incorporate specific details from same into amended pleading with new claims against Gearig	1.50	\$295.00	\$442.50
Service	11/30/2022	NMT: Create comparison versions of proposed order	0.20	\$125.00	\$25.00
Service	11/30/2022	BHJ: Compare proposed Consent Orders prepared by ATC and NKD to submit to Court for Protection of \$2,500,000 from ATC Asset Sale; prepare edits to proposed Order from ATC	0.60	\$295.00	\$177.00
Service	11/30/2022	ERL: Review and finalize Amended Complaint	0.40	\$375.00	\$150.00
Total					\$661.50
Payment (12/12/2022)					-\$661.50
Balance Owing					\$0.00

Detailed Statement of Account**Current Invoice**

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
4578	12/07/2022	\$869.50	\$869.50	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 4641
 Date: 01/05/2023
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	11/18/2022	BHJ: Receipt and review of email from counsel for ATC regarding Consent Order for Preservation of \$2,500,000 generated from recent asset sale	0.10	\$295.00	\$29.50
Service	12/01/2022	BHJ: Correspond via email with counsel for ATC and Geo-Systems regarding proposed amended pleading adding Gearig Civilworks and request for consent from parties as to same	0.20	\$295.00	\$59.00
Service	12/01/2022	BHJ: Confer regarding proper Gearig Civilworks entity to sue and add to lawsuit; confirm with Georgia LLR and Secretary of State	0.40	\$295.00	\$118.00
Service	12/01/2022	ERL: Review of revisions to Consent Order; confer with Mr. Leventis regarding status	0.30	\$375.00	\$112.50
Service	12/02/2022	NMT: Review strategy and case status with litigation team and develop next action steps	0.30	\$125.00	\$37.50
Service	12/07/2022	NMT: Draft Consent Order and prepare attachments for filing third amended complaint; electronically file consent order with proposed complaint and attachments	1.10	\$125.00	\$137.50
Service	12/07/2022	BHJ: Review, revise, and finalize Consent Order to submit to Court to allow NKD's amended pleading and addition of Gearig Civilworks LLC as Defendant to case	0.20	\$295.00	\$59.00
Service	12/12/2022	BHJ: Finalize drafts of written discovery requests to send to newly-added defendant, Gearig Civilworks, LLC, including First Set of Interrogatories and First Set of Requests for Production	1.00	\$295.00	\$295.00

Service	12/15/2022	NMT: Finalize and electronically file Third Amended Complaint and Exhibits	0.50	\$125.00	\$62.50
Service	12/16/2022	BHJ: Finalize amended pleading on behalf of NKD with claims against Gearig Civilworks, LLC for filing with Court and initial discovery requests to Gearig Civilworks, LLC and letter serving same to Gearig Civilworks, LLC	0.30	\$295.00	\$88.50
Service	12/16/2022	NMT: Draft and file Summons; draft correspondence for service on Gearig; finalize discovery requests to gearig; Serve Gearig	1.80	\$125.00	\$225.00
Service	12/22/2022	ERL: Prepare and revise Consent Order Under Seal and Agreement for Preservation and Protection of Funds; provide draft for client review; prepare Authorization to Confirm Minimum Balance; provide status update to opposing counsel	1.80	\$375.00	\$675.00
Service	12/23/2022	ERL: Confer with Mr. Haslinger; review damages calculations; communications with Mike Barb, CPA; review of witness list to determine order of depositions	0.70	\$375.00	\$262.50
Service	12/27/2022	BHJ: Correspond via email with insurance adjuster for Gearig Civilworks regarding request to provide copies of pertinent pleadings and context as to coverage for Gearig Civilworks	0.20	\$295.00	\$59.00
Service	12/27/2022	NMT: Track service of Third-Party Complaint and calendar deadline for Gearig to Answer	0.20	\$125.00	\$25.00
Service	12/27/2022	ERL: Prepare and revise Consent Order Under Seal and Authorization; confer with Mr. Buchanan regarding edits and steps necessary to finalize document	0.70	\$375.00	\$262.50
Service	12/28/2022	ERL: Confer with Mr. Haslinger regarding status and next steps	0.30	\$375.00	\$112.50
Service	12/29/2022	BHJ: Receipt and review of Answers filed by Geosystems and ATC to recently amended pleading filed on behalf of NKD with cross/counter claims against Geo-Systems and third party claims against Gearig Civilworks	0.20	\$295.00	\$59.00

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	12/15/2022	Applied Building Sciences Invoice No. 900.22004-03: expert consulting	1.00	\$175.00	\$175.00
				Total	\$2,154.50

Payment (01/12/2023)	- \$2,54.50
Balance Owing	\$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
4641	01/05/2023	\$2,854.50	\$2,854.50	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 4707
 Date: 02/09/2023
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC**

Type	Date	Description	Quantity	Rate	Total
Service	01/03/2023	NMT: Receive and review Geosystems Answer to Amended Answer, Counterclaims, and Cross-claims for claims that may need a response	0.20	\$175.00	\$35.00
Service	01/03/2023	NMT: Receive and review ATC's Answer to Amended Answer, Counterclaims, and Cross-claims for claims that may need a response	0.20	\$175.00	\$35.00
Service	01/05/2023	BHJ: Correspond via email with counsel for newly-added defendant Gearig Civilworks regarding Gearig's request for extension to file answer and to obtain prior discovery exchanged between parties	0.20	\$375.00	\$75.00
Service	01/06/2023	AGC: Receipt of notification from clerk of court regarding case on trial roster for week of February 6; look up roster to determine case is #19; create and circulate Outlook invite regarding roster meeting on February 6 and deadline to file motion and order for continuance on January 30	0.20	\$325.00	\$65.00
Service	01/09/2023	NMT: Review of Discovery production and create Dropbox for Rett Kendall as attorney for Gearig; email to Myra Rutland regarding subpoena responses not produced by Plaintiff; discuss strategy for depositions with Ellis R. Lesemann and begin execution of the same; email to Rett's paralegal Melissa sharing discovery index and productions	1.40	\$175.00	\$245.00
Service	01/09/2023	ERL: Prepare and revise Consent Order; planning relating to deposition schedule; provide update and response to inquiry from Mr. (Nick) Leventis	0.70	\$450.00	\$315.00
Service	01/09/2023	ERL: Confer with expert witness (Mike Barb) regarding background of case and issues relating to damages	0.60	\$450.00	\$270.00

Service	01/10/2023	BHJ: Conference regarding damages documentation to provide to NKD accountant Mike Barb for review	0.20	\$375.00	\$75.00
Service	01/10/2023	NMT: Analyze and collect documents related to damages and prepare Dropbox of the same for Mike Barb; analyze documents needed to prove damages and create list of action items	1.70	\$175.00	\$297.50
Service	01/11/2023	NMT: Identify additional invoices, tax records, and documents for production and pull into Nextpoint to prepare for production; begin coding of documents; identify witnesses per discussion with Ellis Lesemann for depositions and draft email regarding the same to all parties	1.10	\$175.00	\$192.50
Service	01/12/2023	NMT: Emails with all parties regarding deposition dates; email with Rett Kendall regarding discovery previously produced and provided to his firm	0.30	\$175.00	\$52.50
Service	01/13/2023	NMT: Emails with Melissa Taylor regarding potential deponents and identity of witnesses	0.30	\$175.00	\$52.50
Service	01/13/2023	NMT: Receive Geo-Systems Answer to Cross-Claims and review for items needing a response	0.20	\$175.00	\$35.00
Service	01/16/2023	NMT: Organize all production to date; compile documents not produced; code documents in Nextpoint; bates and finalize documents for production; draft responses to requests for production; draft correspondence regarding the same; create dropbox of documents to be produced and produce the same via email and US Mail to all parties	3.80	\$175.00	\$665.00
Service	01/16/2023	NMT: Emails with Miriam Tinsley regarding discovery requests to and from Gearig; docket deadlines regarding the same; update discovery spreadsheet regarding the same	0.30	\$175.00	\$52.50
Service	01/16/2023	BHJ: Finalize NKD's Supplemental Responses to Requests for Production to all parties and Letter serving same to counsel	0.20	\$375.00	\$75.00
Service	01/16/2023	BHJ: Correspond via email with counsel for Gearig regarding NKD's discovery requests to Gearig, including First Set of Interrogatories and First Set of Requests for Production	0.20	\$375.00	\$75.00
Service	01/17/2023	NMT: Emails from Rett Kendall regarding Gearig discovery responses and request for extension; docket the same	0.20	\$175.00	\$35.00
Service	01/17/2023	BHJ: Receipt and review of Requests for Admission served by Gearig on all parties, including NKD	0.20	\$375.00	\$75.00
Service	01/17/2023	BHJ: Additional correspondence via email with	0.20	\$375.00	\$75.00

		counsel for Gearig Civilworks regarding NKD Inc.'s First Set of Interrogatories and Requests for Production to Gearig			
Service	01/20/2023	NMT: Create Dropbox of items evidencing financial damages	0.30	\$175.00	\$52.50
Service	01/23/2023	NMT: Draft Responses to requests to Admit from Gearig	1.10	\$175.00	\$192.50
Service	01/25/2023	BHJ: Conduct meeting with clients Karl Haslinger and Nick Leventis and Steve Riley from Barb & Company P.A. to discuss damages categories and calculations and educate CPA experts on scope of assignment / role in assisting NKD	1.30	\$375.00	\$487.50
Service	01/25/2023	ERL: Prepare for conference call with damages expert witness; conduct call; discuss status with clients	1.40	\$450.00	\$630.00
Service	01/26/2023	NMT: Call Paul Gunter with Clerk of Court and confirm case has been pushed out 180 days and removed from the roster; edit responses to requests to admit from Gearig	0.40	\$175.00	\$70.00
Service	01/26/2023	BHJ: Revise/edit and finalize NKD's Answers to Gearig Civilworks' Requests for Admission for service upon counsel for Gearig Civilworks	0.20	\$375.00	\$75.00
Service	01/27/2023	NMT: Schedule and docket Zoom meeting for NKD Accountants; email to accountants regarding the same	0.20	\$175.00	\$35.00
Service	01/30/2023	NMT: Emails with team and update Zoom meeting to discuss damages	0.20	\$175.00	\$35.00
				Total	\$4,375.00
				Payment (02/21/2023)	-\$4,375.00
				Balance Owing	\$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
4707	02/09/2023	\$4,375.00	\$4,375.00	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 4768
 Date: 03/09/2023
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC**

Type	Date	Description	Quantity	Rate	Total
Service	02/03/2023	AGC: Receipt of motion hearing on motion to compel subpoena response of Mr. Oswald; docket same on firm calendar	0.10	\$325.00	\$32.50
Service	02/06/2023	NMT: Review emails from accountants and schedule Zoom call to discuss damages calculations	0.20	\$175.00	\$35.00
Service	02/06/2023	NMT: Confirm Roster status on Motion to Compel ATC Accountant (#22 Back up Roster)	0.10	\$175.00	\$17.50
Service	02/06/2023	ERL: Confer with opposing counsel regarding Consent Order to Set Aside Funds; prepare requested edits; create comparison version; transmit to Mr. Haslinger with explanation of status and request for review	1.10	\$450.00	\$495.00
Service	02/06/2023	ERL: Prepare for call with expert witnesses Mike Barb and Steve Riley; review damages theory and strategy; legal research of South Carolina law regarding liquidated damages	2.30	\$450.00	\$1,035.00
Service	02/07/2023	NMT: Revise Responses to Requests to Admit and prepare for service; draft subpoena to Ameris Bank to prepare damages calculations	0.90	\$175.00	\$157.50
Service	02/08/2023	NMT: Draft Notice of Subpoena to all parties and revise subpoena to reflect compliance with new SC Rules of Civil Procedure	0.40	\$175.00	\$70.00
Service	02/09/2023	AGC: Download Gearig's Motion to Dismiss Third Party Complaint and circulate to Ellis Lesemann and Ben Joyce; briefly research derivative liability case law	0.20	\$325.00	\$65.00
Service	02/09/2023	MAS: Review pleadings on file in connection with response to Gearig Civilworks, LLC's Motion to Dismiss	0.50	\$325.00	\$162.50

Service	02/09/2023	BHJ: Receipt and review of Motion to Dismiss filed by Gearig based on alleged improper claim of derivative liability	0.10	\$375.00	\$37.50
Service	02/09/2023	BHJ: Receipt and review of Motion to Dismiss filed on behalf of Gearig as to ATC's cross claims on basis of failure to serve summons with cross claims	0.10	\$375.00	\$37.50
Service	02/10/2023	NMT: Revise Notice of Subpoena, letter, and subpoena to Ameris Bank; send email regarding the same to all parties; revise NKD's Answers to Gearig's Requests for Admission; draft letter to Rhett Kendall regarding the same and email to all parties regarding NKD's Answers	1.20	\$175.00	\$210.00
Service	02/10/2023	BHJ: Finalize subpoena to Ameris Bank and letter serving same	0.20	\$375.00	\$75.00
Service	02/10/2023	BHJ: Finalize draft of NKD's Answers to Gearig Civilworks' First Set of Requests for Admission and letter serving same to counsel for Gearig Civilworks	0.20	\$375.00	\$75.00
Service	02/14/2023	ERL: Confer with Mr. Haslinger regarding proposed revisions to Consent Order and final set of changes needed to get Consent Order ready for filing; make final revisions and prepare comparison version; send to opposing counsel with summary of final revisions	0.90	\$450.00	\$405.00
Service	02/14/2023	NMT: Draft discovery Responses to Gearig	1.10	\$175.00	\$192.50
Service	02/16/2023	NMT: Research additional information as requested by Ameris Bank and provide the same to assist in subpoena response; review emails and list of possible deponents; send detailed email to opposing counsel regarding order and length of depositions	1.00	\$175.00	\$175.00
Service	02/20/2023	BHJ: Telephone call and emails with counsel for ATC regarding proposed Consent Order for Setting Aside and Preservation of \$2.5M in funds	0.40	\$375.00	\$150.00
Service	02/22/2023	NMT: Telephone call and email with Denise Stupka at Ameris Bank regarding subpoena	0.20	\$175.00	\$35.00
Service	02/22/2023	BHJ: Additional emails with counsel for ATC regarding proposed language of Consent Order for Setting Aside and Preservation of \$2.5M in funds	0.20	\$375.00	\$75.00
Service	02/27/2023	BHJ: Phone call with counsel for NKD regarding proposed final revision to language of proposed Consent Order to Set Aside and Preserve \$2.5m in funds; conference regarding same	0.30	\$375.00	\$112.50
Service	02/28/2023	NMT: Review rules of court and telephone call	0.20	\$175.00	\$35.00

Detailed Statement of Account

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
4768	03/09/2023	\$3,797.50	\$3,797.50	\$0.00

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 4824
 Date: 04/10/2023
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	03/01/2023	BHJ: Receipt and review of subpoena to Ameris Bank served by ATC via email	0.10	\$375.00	\$37.50
Service	03/02/2023	ERL: Confer with Mr. Haslinger regarding status and finalization and approval of consent order to set aside funds	0.30	\$450.00	\$135.00
Service	03/03/2023	BHJ: Receipt and review of ATC's Responses to Gearig Civilworks' Requests for Admission	0.20	\$375.00	\$75.00
Service	03/06/2023	BHJ: Conference regarding upcoming depositions, expert witness development, reconfiguration of pleadings to address Gearig's dispositive motions, and other general case development items; begin review of procedural rules and case law pertinent to Gearig's Motions to Dismiss	1.70	\$375.00	\$637.50
Service	03/06/2023	NMT: Meet with attorneys to discuss strategy for depositions; finalizing discovery; and preparing for August trial; receive Med Ex from Ameris Bank in response to subpoena; email to Kimberly Russell at Ameris Bank to resolve issues needing clarification with subpoena response; email to court to remove motion to compel from roster	0.80	\$175.00	\$140.00
Service	03/06/2023	BHJ: Correspond via email with counsel for all parties regarding NKD's intention to file Motion pursuant to Rules 14(c), 19, and 20 to have Gearig joined as first party defendant and reconfiguration of case caption to address Gearig's Motions to Dismiss	0.30	\$375.00	\$112.50
Service	03/07/2023	NMT: Docket hearing on Gearig Motion to	1.50	\$175.00	\$262.50

		Dismiss; telephone call with Skye at MGC to schedule depositions; emails regarding depositions; draft notices of depositions (x4)			
Service	03/07/2023	NMT: Draft Answers to Gearig Interrogatories	2.80	\$175.00	\$490.00
Service	03/07/2023	BHJ: Letter to counsel for Gearig Civilworks regarding status of Gearig Civilworks' outstanding discovery responses	0.30	\$375.00	\$112.50
Service	03/07/2023	BHJ: Correspond via email with counsel for ATC regarding finalizing of draft Consent Order for ATC to Set Aside \$2.5m in ☐ unds	0.20	\$375.00	\$75.00
Service	03/07/2023	BHJ: ☐ ollow up correspondence via email with counsel for all parties regarding request for consent to NKD's proposed Motion under Rules 14(c), 19, and 20 to join Gearig as first party defendant and reconfigure case caption to resolve/cure issue in Gearig's Motions to Dismiss	0.20	\$375.00	\$75.00
Service	03/08/2023	NMT: Draft Responses to Gearig Requests for Production; send email to all parties regarding Gearig's outstanding discovery responses; prepare exhibits for motion to join and draft coversheets and finalize compressed pdfs of exhibits for filing; electronically file Motion to Join Parties	2.30	\$175.00	\$402.50
Service	03/08/2023	BHJ: Conferences regarding Gearig's Motions to Dismiss and filing Motion on behalf of NKD pursuant to Rules 14(c), 19, and 20 to join Gearig as first party defendant	0.50	\$375.00	\$187.50
Service	03/08/2023	BHJ: Draft Motion to Join Geo-Systems and Gearig Civilworks as first party defendants pursuant to Rules 14(c), 19, and 20; review/analyze procedural rules and case law pertinent to Motion; finalize Motion for filing with Court	3.80	\$375.00	\$1,425.00
Service	03/08/2023	BHJ: ☐ ollow up email to counsel for ATC regarding finalizing edits to Consent Order for ATC to Set Aside \$2.5m in ☐ unds and filing same with Court	0.20	\$375.00	\$75.00
Service	03/09/2023	NMT: Draft email to Court regarding Motion to Join and request that it be scheduled with other pending motions	0.30	\$175.00	\$52.50
Service	03/09/2023	NMT: Telephone call to Richland County Clerk regarding filing under seal; file proposed order under seal	0.40	\$175.00	\$70.00
Service	03/10/2023	BHJ: Telephone call with counsel for ATC regarding reconfiguring of case caption to address and resolve Gearig Civilworks' Motions to Dismiss	0.20	\$375.00	\$75.00

Service	03/13/2023	NMT: Telephone call and email to Ameris Bank regarding subpoena response and lack of records	0.30	\$175.00	\$52.50
Service	03/15/2023	BHJ: Telephone call with counsel for Gearig Civilworks regarding Gearigs' Motions to Dismiss and potential reconfiguration of case caption and claims	0.40	\$375.00	\$150.00
Service	03/20/2023	BHJ: Telephone call with counsel for Geo-Systems regarding reconfiguration of case caption and alignment of parties; NKD's claimed damages; and scheduling of mediation	0.30	\$375.00	\$112.50
Service	03/20/2023	BHJ: Conference regarding scheduling of mediation; updating discovery responses to serve to all parties	0.30	\$375.00	\$112.50
Service	03/20/2023	BHJ: Telephone call with counsel for ATC regarding Gearig Civilworks' Motion to Dismiss based on lack of derivative liability	0.30	\$375.00	\$112.50
Service	03/20/2023	NMT: Email to Clerk of Court and telephone call regarding adding Motion to Roster; review online pleadings in preparation of hearing	0.30	\$175.00	\$52.50
Service	03/20/2023	BHJ: Plan and prepare for upcoming hearing with Court regarding two (2) Motions to Dismiss filed by Gearig Civilworks; review and analyze pertinent case law and procedural rules	3.00	\$375.00	\$1,125.00
Service	03/20/2023	BHJ: Attend hearing on two (2) Motions to Dismiss filed by Gearig Civilworks	0.70	\$375.00	\$262.50
Service	03/21/2023	NMT: Receive Ameris Bank Subpoena response; import files from CD to Nextpoint; review and code production in Nextpoint; export files for production; draft index of production; draft supplemental responses to requests for production	1.80	\$175.00	\$315.00
Service	03/22/2023	ERL: Tasks relating to scheduling of status conference and filing of Consent Order to Set Aside Funds	0.20	\$450.00	\$90.00
Service	03/27/2023	BHJ: Review/analyze proposed Order prepared by Gearig granting Gearig's Motions to Dismiss; review/analyze applicable procedural rules cited in Order; correspond via email with counsel for ATC regarding same	1.00	\$375.00	\$375.00
Service	03/28/2023	BHJ: Prepare edits on behalf of NKD to Gearig's proposed Order granting Motions to Dismiss without prejudice; correspond via email with counsel for Gearig regarding same	0.70	\$375.00	\$262.50
Service	03/29/2023	NMT: Draft deposition notices for ATC witnesses (15)	1.00	\$175.00	\$175.00

Service	03/30/2023	BHJ: Receipt and review of email from counsel for NKD with comments on edits to proposed Order granting Motion to Dismiss Gearig Civilworks without prejudice; review final draft of proposed order submitted to Court by counsel for Gearig via email	0.30	\$375.00	\$112.50
Service	03/31/2023	NMT: Draft correspondence to opposing counsel regarding depositions; emails to all parties regarding depositions; serve all deposition notices to all parties	0.50	\$175.00	\$87.50

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	03/03/2023	Ameris Bank Invoice No. 2023036: subpoena response documents	1.00	\$89.91	\$89.91
Expense	03/08/2023	L&A CC Payment to Richland County Clerk of Court - Motion to Join Defendants ☐ iling ☐ ee	1.00	\$31.74	\$31.74
Expense	03/09/2023	L&A CC Payment to Richland County Clerk of Court - ☐ iling ☐ ee for Proposed Order	1.00	\$31.74	\$31.74
Expense	03/21/2023	L&A Check 1963 to Barb & Company, P.A.: CPA/ expert consultant retainer	1.00	\$3,500.00	\$3,500.00

Total **\$11,400.00**

Payment (04/17/2023) **-\$11,400.00**

Balance Owing **\$0.00**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
4824	04/10/2023	\$11,490.89	\$11,490.89	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 4881
 Date: 05/11/2023
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	04/07/2023	ERL: Confer with expert witnesses regarding damages allegations, liquidated damages, prejudgment interest, and related matters	0.80	\$450.00	\$360.00
Service	04/12/2023	BHJ: Review ATC's proposed Third Party Complaint to add Gearig Civilworks' back to case as defendant and Consent Order granting same; provide consent on behalf of NKD for filing with Court	0.20	\$375.00	\$75.00
Service	04/17/2023	NMT: Schedule meeting and set up Zoom for deposition preparation; obtain court reporter for April 24 & 25th depositions	0.50	\$175.00	\$87.50
Service	04/17/2023	BHJ: Correspond via email with expert witness, Steve Moore, regarding upcoming depositions of John Henderson and Glenn Gentry of ATC and coordinating phone conference with Mr. Moore to discuss and prepare for same	0.20	\$375.00	\$75.00
Service	04/19/2023	ERL: Confer with Mr. Moore regarding status and issues to cover during upcoming depositions	0.40	\$450.00	\$180.00
Service	04/19/2023	BHJ: Conduct phone conference with expert witness, Steve Moore, to discuss and prepare for upcoming depositions of John Henderson and Glenn Gentry of ATC	0.40	\$375.00	\$150.00
Service	04/19/2023	BHJ: Correspond via email with counsel for Gearig Civilworks regarding upcoming depositions of John Henderson and Glenn Gentry of ATC	0.10	\$375.00	\$37.50
Service	04/19/2023	BHJ: Conference regarding task list of items to	0.30	\$375.00	\$112.50

		address and prepare for upcoming depositions of ATC witnesses, John Henderson and Glenn Gentry			
Service	04/20/2023	NMT: Identify and locate deposition exhibits;	4.20	\$175.00	\$735.00
Service	04/20/2023	BHJ: Tasks related to preparation for upcoming depositions of John Henderson and Glenn Gentry; begin review Geo-Systems and other parties' document productions and select pertinent records to utilize as potential exhibits during depositions; begin drafting outline of questions for deposition of John Henderson	3.10	\$375.00	\$1,162.50
Service	04/21/2023	ERL: Prepare for conference with Mr. Leventis and Mr. Haslinger; conduct conference call regarding upcoming depositions and case status; review of issues and strategy	1.60	\$450.00	\$720.00
Service	04/21/2023	NMT: Create notebooks for potential trial exhibits and deposition exhibits	5.40	\$175.00	\$945.00
Service	04/21/2023	BHJ: Correspond via email with counsel for Geo-Systems and respond to inquiry regarding itemized repair costs and damages incurred by NKD; conference regarding same	0.60	\$375.00	\$225.00
Service	04/21/2023	BHJ: Continued tasks related to preparation for upcoming depositions of John Henderson and Glenn Gentry; continue review of Geo-Systems and other parties' document productions and select pertinent records to utilize as potential exhibits during depositions; continue drafting outline of questions for deposition of John Henderson	2.50	\$375.00	\$937.50
Service	04/21/2023	BHJ: Video call with clients Nick Leventis and Karl Haslinger regarding upcoming depositions of John Henderson and Glenn Gentry of ATC	1.00	\$375.00	\$375.00
Service	04/22/2023	ERL: Prepare for deposition of John Henderson; review and analysis of exhibits; prepare questions	3.90	\$450.00	\$1,755.00
Service	04/23/2023	NMT: Prepare for depositions of John Henderson and Glenn Gentry; create file folders of all exhibits	5.50	\$175.00	\$962.50
Service	04/23/2023	ERL: Prepare for deposition of John Henderson; review of contract documents, testing results, road specifications, and related documents	7.50	\$450.00	\$3,375.00
Service	04/23/2023	BHJ: Continued preparation for upcoming depositions of John Henderson and Glenn Gentry of ATC; review and compile pertinent records to introduce as exhibits to depositions; revise/edit outline of questions for deposition of John Henderson	4.70	\$375.00	\$1,762.50
Service	04/24/2023	NMT: Prepare exhibits for Glenn Gentry	1.20	\$175.00	\$210.00

		deposition; create Nextpoint Litigation Database			
Service	04/24/2023	ERL: Prepare for deposition of John Henderson; travel to Columbia; conduct Day 1 of deposition; return to Charleston; prepare for Day 2 of deposition	11.40	\$450.00	\$5,130.00
Service	04/24/2023	BHJ: Continued preparation for deposition of Glenn Gentry, Owner of ATC; draft summary analysis of deposition of John Henderson of ATC; draft/finalize letter to counsel for ATC regarding request for production of John Henderson's personal file related to River Shoals as disclosed during his deposition	4.30	\$375.00	\$1,612.50
Service	04/25/2023	NMT: Identify and move potential trial exhibits to separate Nextpoint folder and identify documents by Bates number	1.50	\$175.00	\$262.50
Service	04/25/2023	BHJ: Conduct deposition of ATC owner, Glenn Gentry in Columbia; attend site visit at River Shoals with client Nick Leventis to meet witness Scott Moore of Carolina Contracting including travel to and from Columbia	8.50	\$375.00	\$3,187.50
Service	04/25/2023	ERL: Prepare for deposition; conduct Day 2 of deposition of John Henderson; attend deposition of Glenn Gentry; conduct site visit following road and utility repairs; witness interview with Scott Moore	10.10	\$450.00	\$4,545.00
Service	04/25/2023	BHJ: Prepare/review outline of questions for deposition of Glenn Gentry; finalize exhibits to introduce during Mr. Gentry's deposition	2.00	\$375.00	\$750.00
Service	04/26/2023	BHJ: Conferences regarding serving supplemental discovery requests on certain issues disclosed during recent deposition of John Henderson of ATC	0.30	\$375.00	\$112.50
Service	04/27/2023	NMT: Review of discovery requests for Persimmon Hill requests; review of production to confirm production of certain items listed in email from Ellis Lesemann; email to Ellis Lesemann regarding supplemental production	1.50	\$175.00	\$262.50
Service	04/28/2023	BHJ: Draft Supplemental Interrogatories and Requests for Production to serve ATC Site Construction for certain information disclosed during depositions of John Henderson and Glenn Gentry	0.60	\$375.00	\$225.00
Service	04/28/2023	BHJ: Draft subpoena to send to Nexton, Inc. (sitework and soil cement subcontractor of ATC for Persimmon Hill)	0.30	\$375.00	\$112.50

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	04/01/2023	Barb & Company, P.A. Invoice 0103458: expert consulting fees (March)	1.00	\$3,825.00	\$3,825.00
Expense	04/28/2023	Applied Building Sciences Invoice No. 900.22004-04: expert consulting	1.00	\$120.00	\$120.00

Discount 15.0% (-\$5,151.13)

Apply 15% courtesy discount

Total \$29,229.37

Payment (05/15/2023) -\$29,229.37

Balance Owning \$0.00

Detailed Statement of Account**Current Invoice**

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
4881	05/11/2023	\$29,229.37	\$29,229.37	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 4943
 Date: 06/07/2023
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	05/01/2023	NMT: Emails with Plaintiff's counsel's office regarding deposition dates and subpoena responses; draft subpoena to Nexton; draft notice of service of subpoena to all parties; draft supplemental requests for production	2.80	\$175.00	\$490.00
Service	05/01/2023	BHJ: Receipt and review of Answer filed on behalf of Geo-Systems to pleading of ATC	0.20	\$375.00	\$75.00
Service	05/02/2023	BHJ: Revise drafts of NKD's Supplemental Interrogatories and Requests for Production to ATC and finalize letter to opposing counsel serving same	0.60	\$375.00	\$225.00
Service	05/03/2023	BHJ: Phone call to counsel for ATC and correspond via email with counsel for all parties regarding ATC's Motion to Amend pleadings and reconfiguring pleadings to lock in claims against Gearig Civilworks	0.40	\$375.00	\$150.00
Service	05/04/2023	NMT: Discuss needs for depositions of Karl Haslinger and Nick Leventis; draft email to Trippett Boineau regarding depositions and docket the same	0.30	\$175.00	\$52.50
Service	05/10/2023	NMT: Review deposition dates and email to team regarding strategy and dates	0.20	\$175.00	\$35.00
Service	05/10/2023	NMT: Review, code, and Bates label Carolina Contracting Subpoena response; create dropbox with responsive materials	1.50	\$175.00	\$262.50
Service	05/12/2023	NMT: Receive and download deposition transcripts; create Dropbox of the same and	0.50	\$175.00	\$87.50

		share with expert and clients			
Service	05/15/2023	NMT: Multiple emails and reviews for scheduling depositions	0.50	\$175.00	\$87.50
Service	05/18/2023	NMT: Emails with opposing counsel and clients regarding depositions	0.30	\$175.00	\$52.50
Service	05/22/2023	BHJ: Correspond via email with counsel for ATC regarding procedural posture and entering of ATC's Answer to NKD's Counterclaims and Third Party Claim against Gearig; review ATC's amended pleading capturing same	0.40	\$375.00	\$150.00
Service	05/24/2023	NMT: Emails with Nick Leventis and representatives of MGC regarding Mr. Leventis' deposition	0.30	\$175.00	\$52.50
Service	05/24/2023	NMT: Identify exhibits and create timeline for deposition preparation	3.80	\$175.00	\$665.00
Service	05/25/2023	BHJ: Correspond via email with counsel for all parties requesting consent to NKD's Fourth Amended Answer, Counterclaims, and Cross Claims and Consent Order for entry of same	0.20	\$375.00	\$75.00
Service	05/25/2023	BHJ: Draft NKD's Fourth Amended Answer, Counterclaims, and Cross Claims and Consent Order reconfiguring claims against Gearig/Geo-Systems and updating liquidated damages calculation; conference regarding procedural posture of pleadings	1.50	\$375.00	\$562.50
Service	05/26/2023	NMT: File proposed consent order regarding 4th amended answer and counterclaim	0.30	\$175.00	\$52.50
Service	05/26/2023	NMT: Prepare index of potential deposition exhibits; prepare deposition transcript notebooks; complete timeline of events	3.50	\$175.00	\$612.50
Service	05/30/2023	BHJ: Conference regarding deposition prep of Karl Haslinger and Nick Leventis; documents to review and provide clients	0.20	\$375.00	\$75.00
Service	05/30/2023	SA: Prepare multiple binders of potential deposition exhibits in preparation of meeting; prepare deposition transcript exhibit notebooks	3.00	\$175.00	\$525.00
Service	05/31/2023	BHJ: Update draft of NKD interim damages calculation in preparation of producing supplemental discovery response regarding same	0.30	\$375.00	\$112.50
Service	05/31/2023	AGC: Create spreadsheet of NKD's payments to ATC	0.40	\$325.00	\$130.00
Service	05/31/2023	BHJ: Review email production of NKD to locate and confirm first initial notice provided by Mr. Leventis to ATC of cracking with roadways	0.60	\$375.00	\$225.00

Service	05/31/2023	BHJ: Follow up via email with counsel for ATC regarding status of production of John Henderson's physical file maintained in office	0.10	\$375.00	\$37.50
Service	05/31/2023	BHJ: Conference regarding calculating total payments made to ATC Site Construction; review ledgers provided by Barb & Associates to back up calculations	0.30	\$375.00	\$112.50
Service	05/31/2023	ERL: Prepare with Mr. Haslinger and Mr. Leventis for depositions; review of documents and verify damage calculations; identify issues to be addressed during deposition; travel to and from Charleston	9.80	\$450.00	\$4,410.00

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	05/10/2023	Garber Reporting Service Invoice No. 26080: deposition/transcript of John Henderson (Day 1)	1.00	\$1,692.90	\$1,692.90
Expense	05/10/2023	Garber Reporting Service Invoice No. 26084: deposition/transcript of John Henderson (Day 2)	1.00	\$1,472.36	\$1,472.36
Expense	05/26/2023	L&A CC Payment to Richland County Clerk of Court - Order filing fee	1.00	\$31.74	\$31.74

Total	\$12,512.00
Payment (06/14/2023)	-\$12,512.00
Balance Owing	\$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
4943	06/07/2023	\$12,512.00	\$12,512.00	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 4999
 Date: 07/08/2023
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	06/05/2023	BHJ: Conference regarding upcoming deposition of client Karl Haslinger and tasks to complete for preparation for same	0.20	\$375.00	\$75.00
Service	06/05/2023	NMT: Confirmation emails with all parties regarding deposition of Karl Haslinger; email to Karl Haslinger confirming the same	0.20	\$175.00	\$35.00
Service	06/05/2023	BHJ: Review deposition transcript of John Henderson of ATC in preparation of upcoming deposition of client Karl Haslinger; notate pertinent excerpts for discussion with Mr. Haslinger in advance of deposition	2.80	\$375.00	\$1,050.00
Service	06/05/2023	BHJ: Review/analyze AIA Contract with ATC in preparation of upcoming deposition of client Karl Haslinger; notate pertinent provisions for discussion and preparation with Mr. Haslinger in advance of deposition	1.00	\$375.00	\$375.00
Service	06/05/2023	BHJ: Review of expert reports produced by ATC and NKD in preparation of deposition of client Karl Haslinger; notate pertinent excerpts from reports regarding repair scope for discussion and preparation with Mr. Haslinger in advance of deposition	1.00	\$375.00	\$375.00
Service	06/05/2023	BHJ: Prepare detailed memorandum for client Karl Haslinger to review in advance of deposition with breakdown of (i) liability theories as to ATC, Geo-Systems, and Gearig; (ii) pertinent provisions from AIA Contract with ATC; (iii) opinions on repair scope by expert witnesses; and (iv) damages sought by NKD; provide to Ms.	2.00	\$375.00	\$750.00

		Haslinger via email along with copy of prior affidavit executed by John Henderson regarding Change Order #11			
Service	06/06/2023	ERL: Assemble materials for client meeting; travel to Columbia; meet with Mr. Haslinger and Mr. Leventis to prepare for deposition; attend and conduct deposition of Mr. Haslinger; discussion of strategy and next steps; return to Charleston	13.20	\$450.00	\$5,940.00
Service	06/07/2023	BHJ: Conference following deposition of client Karl Haslinger to discuss action items and task list for remaining discovery and mediation	0.50	\$375.00	\$187.50
Service	06/07/2023	BHJ: Telephone call and email with counsel for Gearig regarding Gearig's responses to NKD's discovery requests	0.20	\$375.00	\$75.00
Service	06/07/2023	BHJ: Telephone calls and correspond via email with counsel for ATC regarding logistics of mediation, depositions of ATC's expert and Jonathan Whitehead; conference regarding same	0.60	\$375.00	\$225.00
Service	06/09/2023	BHJ: Review/analyze Geo-Systems Answer to ATC's amended pleading filed with Court	0.20	\$375.00	\$75.00
Service	06/14/2023	BHJ: Review/analyze Gearig's Answer to ATC's pleading filed with Court	0.30	\$375.00	\$112.50
Service	06/15/2023	BHJ: Conference regarding logistics for deposition of ATC's expert witness, discovery responses outstanding from Gearig Civilworks	0.20	\$375.00	\$75.00
Service	06/16/2023	BHJ: Correspond via email with counsel for ATC regarding status of confirming mediation with mediator Bill Lyles	0.20	\$375.00	\$75.00
Service	06/19/2023	NMT: Emails with Skye Henderson regarding depositions; draft Notice of Deposition; draft correspondence relating to deposition; serve notice of deposition; schedule court reporter; draft subpoena to Rimkus Consulting Group and correspondence regarding the same to the Rimkus Consulting Group; email Jeanne Lyles regarding mediation	1.80	\$175.00	\$315.00
Service	06/19/2023	ERL: Tasks and conferences relating to witnesses and depositions	0.40	\$450.00	\$180.00
Service	06/19/2023	BHJ: Correspond via email with counsel for Gearig Civilworks regarding Gearig's witness identification in upcoming Answers to Interrogatories	0.20	\$375.00	\$75.00
Service	06/20/2023	NMT: Email to all parties regarding second subpoena to Rimkus Consulting	0.20	\$175.00	\$35.00
Service	06/22/2023	BHJ: Correspond via email with counsel for ATC	0.20	\$375.00	\$75.00

regarding status of ATC's outstanding responses to NKD's supplemental discovery requests and request to retrieve/produce John Henderson's personal file related to River Shoals

Service	06/22/2023	NMT: Call and email Judge's Clerk Bailey regarding proposed consent order efiled on May 26th, 2023	0.30	\$175.00	\$52.50
Service	06/26/2023	NMT: Receive and process deposition transcript of Karl Haslinger; email transcript to clients; create dropbox and send transcript Steve Moore; email transcript to Steve Riley	0.60	\$175.00	\$105.00
Service	06/28/2023	ERL: Prepare for call with expert witnesses (Mike Barb and Steve Riley); conduct call regarding damages	1.10	\$450.00	\$495.00
Service	06/30/2023	BHJ: Review Consent Order entered granting leave for NKD's amended pleading; review/ finalize for filing with Court NKD's amended pleading, including counterclaims against ATC and cross claims against Geo-Systems and Gearig	0.30	\$375.00	\$112.50
Service	06/30/2023	BHJ: Draft Motion to Compel to file against ATC related to ATC's failure to produce: (i) personal physical file of John Henderson; and (ii) responses to NKD's Supplemental Interrogatories and Requests for Production	0.70	\$375.00	\$262.50

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	05/31/2023	Barb & Company, P.A. Invoice 0104037-IN: expert consulting fees (April and May)	1.00	\$975.00	\$975.00
Expense	06/01/2023	Applied Building Sciences Invoice No. 900.22004-05: expert engineer consulting fee	1.00	\$2,520.00	\$2,520.00

Total **\$14,627.50**

Payment (07/13/2023) **-\$14,627.50**

Balance Owing **\$0.00**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
4999	07/08/2023	\$14,627.50	\$14,627.50	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 5063
 Date: 08/03/2023
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	07/01/2023	NMT: Finalize Fourth Amended Answer and Counterclaims and exhibits for filing	0.30	\$175.00	\$52.50
Service	07/03/2023	BHJ: Follow up email to counsel for Gearig Civilworks regarding status of Gearig's discovery responses and NKD's request for 30(b)(6) deposition of Gearig	0.20	\$375.00	\$75.00
Service	07/03/2023	NMT: Finalize and EC file Amended Answer and Counterclaim and Motion to Compel	0.80	\$175.00	\$140.00
Service	07/03/2023	BHJ: Finalize draft of Motion to Compel with exhibits to file with Court against ATC Site Construction related to NKD's Supplemental Discovery Requests	0.70	\$375.00	\$262.50
Service	07/03/2023	BHJ: Finalize draft of NKD's Amended Answer, Counterclaims, and Third Party Claims for filing with Court	0.40	\$375.00	\$150.00
Service	07/11/2023	NMT: Review Bill Lyles calendar for mediation	0.20	\$175.00	\$35.00
Service	07/11/2023	BHJ: Additional correspondence via email with counsel for Gearig Civilworks regarding status of Gearig's discovery responses	0.10	\$375.00	\$37.50
Service	07/11/2023	BHJ: Conference regarding deposition of ATC Site Construction's expert witness, Mark Rhodes	0.10	\$375.00	\$37.50
Service	07/12/2023	NMT: Emails with Jeannie Lyles and counsel for all parties for NKD mediation; email to Rimkus regarding deposition location	0.40	\$175.00	\$70.00
Service	07/13/2023	NMT: Emails with all parties and Bill Lyles office	0.30	\$175.00	\$52.50

		regarding mediation scheduling			
Service	07/13/2023	BHJ: Correspond via email with First Citizens Bank representative to confirm protected and readily liquid funds of \$2.5M remain in ATC Site Construction's account	0.20	\$375.00	\$75.00
Service	07/13/2023	BHJ: Conference regarding potential mediators and mediator selection	0.20	\$375.00	\$75.00
Service	07/14/2023	NMT: Review of emails from all parties regarding mediation; email and telephone call to John Cuttino's office regarding the same	0.30	\$175.00	\$52.50
Service	07/14/2023	BHJ: Receipt and review of ATC Site Construction's Notice of Deposition of Nick Leventis as served by counsel for ATC via email	0.10	\$375.00	\$37.50
Service	07/17/2023	NMT: Email to Rimkus regarding deposition prepayment and change in location; emails regarding September mediation	0.40	\$175.00	\$70.00
Service	07/17/2023	BHJ: Correspond via email with counsel for ATC Site Construction regarding expert discovery and depositions	0.20	\$375.00	\$75.00
Service	07/17/2023	BHJ: Correspond via email with counsel for Gearig Civilworks regarding request for 30(b)(6) deposition of Gearig and status of Gearig's outstanding discovery responses	0.20	\$375.00	\$75.00
Service	07/18/2023	BHJ: Phone call and email with counsel from ATC Site Construction regarding ATC's recent Answer to NKD's Counter Claims	0.20	\$375.00	\$75.00
Service	07/18/2023	BHJ: Receipt and review/analysis of Geo-System's Answer to NKD's Third Party Claims filed with Court	0.20	\$375.00	\$75.00
Service	07/24/2023	NMT: Emails with all parties regarding mediation dates	0.30	\$175.00	\$52.50
Service	07/25/2023	NMT: Emails with all parties regarding mediation; email to clients regarding mediation date; email to mediator to place a hold on September 27; emails to Susan Leitner, Steve Moore, and Chip Bruorton regarding depositions; review of file for information on additional deponents listed	1.20	\$175.00	\$210.00
Service	07/26/2023	NMT: Email with John Cuttino and Jeanne Lyles regarding mediation dates	0.20	\$175.00	\$35.00
Service	07/27/2023	ERL: Confer with Mr. Haslinger regarding status and strategy	0.40	\$450.00	\$180.00
Service	07/27/2023	NMT: Emails with Ellis Lesemann, Ben Joyce, and Chip Brounorton regarding deposition parameters; emails with Skye Kinder and Trippett	0.60	\$175.00	\$105.00

Boineau regarding mediation ; review court roster					
Service	07/28/2023	BHJ: Additional follow up email with counsel for Gearig Civilworks regarding status of Gearig's discovery responses	0.20	\$375.00	\$75.00
Service	07/28/2023	BHJ: Conference regarding remaining discovery items and depositions	0.40	\$375.00	\$150.00
Service	07/28/2023	NMT: Meeting with Ellis Lesemann to discuss strategy, depositions, mediation, and case needs; texts with Nick Leventis regarding schedule; email to court regarding trial roster; emails with mediator regarding new dates; email to Rimkus regarding deposition of Mark Rhodes and location change	2.70	\$175.00	\$472.50
Service	07/28/2023	BHJ: Review/analyze Answer to NKD's Third-Party Complaint filed on behalf of Gearig Civilworks	0.20	\$375.00	\$75.00
Service	07/31/2023	NMT: Review emails from all counsel and court; review updated roster and ensure NKD has been removed; update calendar to reflect the same; email to all counsel regarding roster and potential mediation dates	0.50	\$175.00	\$87.50

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	06/27/2023	Garber Reporting Service Invoice No. 30758: deposition/transcript of Karl Haslinger	1.00	\$1,018.70	\$1,018.70
Expense	06/30/2023	Barb & Company, P.A. Invoice 0104505-IN: expert consulting fees (June)	1.00	\$1,365.00	\$1,365.00
Expense	07/28/2023	Barb & Company, P.A. Invoice 0104667-IN: expert consulting fees (July)	1.00	\$585.00	\$585.00

Total	\$5,133.70
Payment (12/06/2023)	-\$5,133.70
Balance Owing	\$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
5063	08/03/2023	\$5,933.70	\$5,933.70	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 5118
 Date: 09/08/2023
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	08/01/2023	NMT: Draft Amended Notice of Deposition of Mark Rhodes; emails to all counsel regarding mediation dates in November; email to Skye regarding depositions they wish to schedule; serve notice of deposition of Mark Rhodes; email Chad Bruorton regarding deposition and schedule call regarding the same	0.80	\$175.00	\$140.00
Service	08/02/2023	NMT: Email with all counsel regarding mediation scheduling; email clients regarding the same; email Barbara Gonzalez regarding amended notice of deposition for Mark Rhodes; email Garber court reporting to cancel Rhodes deposition in Columbia; email Huseby court reporting to schedule Rhodes deposition in Atlanta; telephone call to Susan Leitner regarding deposition; draft letter with amended Notice of Deposition to mail to opposing counsel	0.90	\$175.00	\$157.50
Service	08/02/2023	BHJ: Additional correspondence via email with counsel for ATC regarding deposition of ATC expert witness, Mark Rhodes	0.20	\$375.00	\$75.00
Service	08/03/2023	ERL: Confer with Mr. Brounerton regarding recent developments and status of case; anticipated issues of discussion during upcoming testimony and related items	0.70	\$450.00	\$315.00
Service	08/10/2023	NMT: Email to John Cuttino regarding November 14 mediation; email to all parties regarding the same; email to Skye Kinder regarding deposition dates and parameters to meet deadlines; draft amended deposition notice for Mark Rhodes; email the same to all parties; cancel Atlanta court	1.20	\$175.00	\$210.00

		reporter and location; reschedule Columbia court reporter and location; emails and telephone calls with Rimkus regarding deposit for deposition; pay the same			
Service	08/10/2023	NMT: Create category in Nextpoint for Mark Rhodes' deposition and begin review for potential exhibits	0.40	\$175.00	\$70.00
Service	08/10/2023	BHJ: Finalize Second Amended Notice of Deposition of Mark Rhodes and Letter serving same to counsel for all parties	0.20	\$375.00	\$75.00
Service	08/14/2023	NMT: Review and convert Henderson deposition in preparation for Rhodes deposition; deposition preparation	3.50	\$175.00	\$612.50
Service	08/15/2023	BHJ: Telephone call from counsel for ATC Site Construction regarding upcoming deposition of ATC expert Mark Rhodes	0.20	\$375.00	\$75.00
Service	08/15/2023	NMT: Telephone call from Trippet regarding Rhodes deposition; review calendar and send email to team regarding potential new dates and strategy; emails to Liz Davidson regarding rescheduling and remaining depositions; continue deposition prep	0.90	\$175.00	\$157.50
Service	08/15/2023	BHJ: Additional follow up email to counsel for Gearig Civilworks regarding Gearig's outstanding discovery responses and NKD's request to take 30(b)(6) deposition of Gearig	0.20	\$375.00	\$75.00
Service	08/16/2023	NMT: Deposition scheduling emails	0.50	\$175.00	\$87.50
Service	08/16/2023	BHJ: Receipt of and review/analyze Answers and Responses served by Gearig Civilworks to NKD's First Set of Interrogatories and First Set of Requests for Production	0.50	\$375.00	\$187.50
Service	08/16/2023	BHJ: Conduct internet footprint of Gearig Civilworks' prior Chief Financial Officer, David Leehy, who allegedly served prior subpoena response to NKD on behalf of Gearig; confer internally regarding noticing deposition of Mr. Leehy	0.50	\$375.00	\$187.50
Service	08/16/2023	BHJ: Additional correspondence via email with counsel for Gearig confirming receipt of Gearig's discovery responses and request to take deposition of Travis Gearig	0.10	\$375.00	\$37.50
Service	08/17/2023	NMT: Emails with Cameron Stephenson regarding the deposition of Travis Gearig	0.20	\$175.00	\$35.00
Service	08/18/2023	NMT: Draft Third Amended Notice of Deposition for Mark Rhodes; draft notice of deposition for Travis Gearig; serve all notices of deposition via	0.80	\$175.00	\$140.00

email; schedule court reporter					
Service	08/21/2023	NMT: Prepare for deposition of Nick Leventis before receiving notice of cancellation; create calendars of September and October and send to all parties in attempts to facilitate in scheduling remaining depositions	1.50	\$175.00	\$262.50
Service	08/21/2023	ERL: Confer with Mr. Leventis; reschedule deposition due to injury; confer with opposing counsel regarding scheduling issues affecting depositions and circumstances relating to ☐ ane Abernathy	0.50	\$450.00	\$225.00
Service	08/21/2023	BHJ: Conference regarding remaining depositions in case to complete prior to mediation	0.30	\$375.00	\$112.50
Service	08/22/2023	NMT: Cancel Court reporters for cancelled depositions	0.10	\$175.00	\$17.50
Service	08/28/2023	NMT: Emails with Skye Kinder regarding deposition of Mark Rhodes and various other depositions	0.20	\$175.00	\$35.00

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	08/10/2023	Rimkus Consulting Group Invoice: Retainer for deposition of Plaintiff's expert, Mark Rhodes	1.00	\$3,860.10	\$3,860.10
Total					\$7,150.10
Payment (12/06/2023)					-\$7,150.10
Balance Owing					\$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
5118	09/08/2023	\$7,150.10	\$7,150.10	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 5179
 Date: 10/09/2023
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	09/05/2023	BHJ: Correspond via email with counsel for Geo-Systems regarding deposition of ATC's expert witness Mark Rhodes	0.10	\$375.00	\$37.50
Service	09/06/2023	NMT: Telephone call with Nick Leventis regarding rock blasting and depositions; email to Ellis Lesemann regarding the same	0.20	\$175.00	\$35.00
Service	09/08/2023	NMT: Emails regarding depositions of Nick Leventis to Sky Kinder	0.20	\$175.00	\$35.00
Service	09/14/2023	NMT: Emails with Sky Kinder regarding depositions	0.20	\$175.00	\$35.00
Service	09/15/2023	NMT: Draft Deposition Notice for Mark Rhodes; emails with all parties regarding the same; email to Court reporter	0.50	\$175.00	\$87.50
Service	09/19/2023	NMT: Emails with Karl Halsinger and Nick Leventis regarding scheduling depositions and mediation; review of calendar for potential alternative dates due to Mr. Leventis' daughters wedding; telephone call Nick Leventis and subsequent conversation with Ellis Lesemann regarding the same	0.90	\$175.00	\$157.50
Service	09/21/2023	NMT: Review and organization of files to prepare for depositions and mediation	2.50	\$175.00	\$437.50
Service	09/22/2023	NMT: Review and organization of files in preparation of depositions and mediation; draft index of all relevant documents that could be used as potential exhibits	4.50	\$175.00	\$787.50

Service	09/24/2023	NMT: Complete index and identification of exhibits for depositions	1.50	\$175.00	\$262.50
Service	09/25/2023	NMT: Deposition preparation for Mark Rhodes;	4.50	\$175.00	\$787.50
Service	09/26/2023	NMT: Confirm deposition of Mark Rhodes with all parties and court reporter; continue to identify exhibits and prepare for deposition; outline issues with Rhodes report	6.50	\$175.00	\$1,137.50
Service	09/26/2023	ERL: Prepare for deposition of Mark Rhodes	3.50	\$450.00	\$1,575.00
Service	09/27/2023	ERL: Prepare for deposition of Mark Rhodes; travel to Columbia; conduct deposition and obtain concessions of liability towards all three counterclaim defendants; return to Charleston	10.90	\$450.00	\$4,905.00
Service	09/27/2023	NMT: Prepare for Travis Gearig deposition	2.90	\$175.00	\$507.50
Service	09/28/2023	BHJ: Plan and prepare for upcoming deposition of Travis Gearig of Defendant Gearig Civilworks	3.50	\$375.00	\$1,312.50
Service	09/28/2023	NMT: Prepare for Travis Gearig Deposition; identify exhibits for deposition; draft deposition outline; participate in client update meeting; schedule depositions for Nick Leventis, Steve Moore	4.50	\$175.00	\$787.50
Service	09/29/2023	BHJ: Continued preparation for deposition of Travis Gearig of Defendant Gearig Civilworks; revise outline of proposed questions and review/analysis of proposed exhibits	1.20	\$375.00	\$450.00
Service	09/29/2023	NMT: Identify additional exhibit for deposition of Travis Gearig and send to Ben Joyce for use in deposition; emails and telephone calls with Skye Kinder regarding depositions; send DocuSign to Nick Leventis for Bruorton deposition; send email confirming deposition of Nick Leventis	0.90	\$175.00	\$157.50
Service	09/29/2023	BHJ: Conduct deposition of Travis Gearig of Defendant Gearig Civilworks, including travel to/from Columbia, SC	7.00	\$375.00	\$2,625.00

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	09/29/2023	Mileage Reimbursement: BHJ travel to/from Columbia for deposition of Gearig Civilworks (240 miles □ \$.65/mile)	1.00	\$156.00	\$156.00

Total **\$16,276.00**
Payment (12/06/2023) **-\$16,276.00**

Balance Owing **\$0.00**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
5179	10/09/2023	\$16,276.00	\$16,276.00	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 5240
 Date: 11/08/2023
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	10/02/2023	NMT: Review files and exhibits returned from depositions and organize in preparation of Nick Leventis deposition	0.80	\$175.00	\$140.00
Service	10/03/2023	NMT: Identify exhibits used in Gearig and Rhodes deposition; update exhibit list and prepare for Nick Leventis deposition	1.50	\$175.00	\$262.50
Service	10/09/2023	NMT: Email to Nick Leventis regarding materials for deposition prep; review drobox for items previously shared with client; begin identifying materials via Nextpoint search for emails from Nick Leventis	0.80	\$175.00	\$140.00
Service	10/11/2023	BHJ: Conference regarding upcoming deposition of client Nick Leventis	0.20	\$375.00	\$75.00
Service	10/11/2023	NMT: Review all emails in preparation of Nick Leventis deposition; identify and pull emails from Nick Leventis and create indexed binder of the same; add additional exhibits to master exhibit list	6.50	\$175.00	\$1,137.50
Service	10/12/2023	BHJ: Cursory review of deposition transcript of Joe Smith (Geo-Systems) and prepare memorandum for client Nick Leventis' deposition preparation of pertinent testimony of Mr. Smith and defense themes of both Geo-Systems and Gearig Civilworks	1.50	\$375.00	\$562.50
Service	10/12/2023	NMT: Review deposition of Mark Rhodes and highlight appropriate sections to assist in preparing Nick Leventis for deposition; telephone call with Nick Leventis regarding deposition preparation	2.50	\$175.00	\$437.50

Service	10/24/2023	NMT: Send DocuSign for Chad Bruorton deposition to Nick Leventis; email to Steve Moore regarding deposition; email to Chad Bruorton regarding deposition; emails from Mike Huffstetler and Nick Leventis regarding Brouerton engagement ; discussions with legal team regarding remaining depositions	1.00	\$175.00	\$175.00
Service	10/25/2023	ERL: Confer with Mr. Huffstetler; confer with Mr. Leventis; confer with Mr. Haslinger; confer with Mr. Bruorton; additional conference with Mr. Leventis; conference with Susan Leitner; tasks relating to deposition scheduling	2.50	\$450.00	\$1,125.00
Service	10/25/2023	NMT: Discuss emails from Mike Huffstetler with team; confirm mediation of November 14; telephone call to Susan Leitner regarding deposition	0.50	\$175.00	\$87.50
Service	10/26/2023	NMT: Schedule Zoom call with Steve Moore; email to Trippett Bouineau regarding retainer for Chad Bruorton Deposition	0.50	\$175.00	\$87.50
Service	10/30/2023	ERL: Tasks and conferences relating to mediation and depositions; confer with Mr. Staley	0.50	\$450.00	\$225.00
Service	10/31/2023	ERL: Confer with Mr. Leventis regarding status and deposition; coordinate with all counsel regarding scheduling	0.80	\$450.00	\$360.00
Service	10/31/2023	NMT: Emails with all counsel regarding depositions and docket new deposition dates; review of previous production and responses to discovery requests to determine additional production needed	1.10	\$175.00	\$192.50

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	10/18/2023	Garber Reporting Service Invoice No. 31900: deposition/transcript of Mark Rhodes	1.00	\$1,399.16	\$1,399.16
Expense	10/31/2023	Garber Reporting Service Invoice No. 32058: deposition/transcript of Travis Gearig	1.00	\$784.98	\$784.98

Total	\$7,111.64
Payment (12/06/2023)	-\$7,111.64
Balance Owing	\$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
5240	11/08/2023	\$7,191.64	\$7,191.64	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 5305
 Date: 12/06/2023
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	11/01/2023	BHJ: Correspond via email with counsel for ATC regarding status of outstanding discovery responses of ATC	0.10	\$375.00	\$37.50
Service	11/01/2023	ERL: Prepare for call; conduct Zoom meeting with Mr. Moore in order to prepare for upcoming deposition; confer with Mr. Leventis regarding same	1.60	\$450.00	\$720.00
Service	11/01/2023	BHJ: Review and assemble emails between parties related to substantial completion and Geosystems geotechnical report; correspond via email with expert witness Steve Moore regarding same in preparation for his upcoming deposition	1.00	\$375.00	\$375.00
Service	11/02/2023	NMT: Coordinate Zoom call for damages meeting with Steve Riley; identify order of all exhibits in preparation for depositions; review emails and other files to determine activity on project in 2022; create timeline of documents from 2022; telephone call and email to Richland County; FOIA request to Richland County	1.80	\$175.00	\$315.00
Service	11/02/2023	BHJ: Revise and update draft of detailed timeline and summary of events related to River Shoals from late 2020 - early 2022 to assist with (i) liquidated damages analysis, (ii) preparation for upcoming depositions of Nick Leventis, (iii) preparation for upcoming deposition of expert witness Steve Moore, and (iv) mediation	5.00	\$375.00	\$1,875.00
Service	11/02/2023	BHJ: Participate in conducting conference call with Steve Riley at Barb & Associates regarding damages analysis for upcoming mediation	0.90	\$375.00	\$337.50

Service	11/03/2023	NMT: Revise timeline of events; draft email/memorandum regarding timeline on mechanic's lien reduction and posting of cash bond	0.60	\$175.00	\$105.00
Service	11/06/2023	ERL: Confer with Ms. Mungo regarding NKD litigation and related issues	0.60	\$450.00	\$270.00
Service	11/06/2023	ERL: Prepare for mediation	0.50	\$450.00	\$225.00
Service	11/06/2023	ERL: Communications with Mr. Leventis and Mr. Huffstetler regarding personal counsel	0.30	\$450.00	\$135.00
Service	11/06/2023	NMT: Organize Zoom meeting with Steve Moore; emails and telephone calls with Steve Moore regarding deposition; telephone call with Nikole Mergo regarding Nick Leventis deposition; emails with all parties regarding depositions; telephone calls and emails with Richland County regarding FOIA request for approvals and permits	0.80	\$175.00	\$140.00
Service	11/07/2023	ERL: Confer with Mr. Haslinger regarding depositions, damage calculations, and upcoming mediation	0.40	\$450.00	\$180.00
Service	11/07/2023	NMT: Met with Ellis Lesemann regarding needs to prepare for depositions and mediation and additional documents needed; telephone call with Richland County Ombudsman regarding FOIA; draft letter and check to Richland County Ombudsman; to and from FedEx for FOIA payment submittal; receive file from Steve Moore and download the same; review Steve Moore file and organize in NextPoint in anticipation of deposition and mediation; produce Moore file to all parties; revise and prepare notebooks for Nick Leventis deposition preparation	3.80	\$175.00	\$665.00
Service	11/07/2023	ERL: Prepare for call with Steve Moore; conduct call with Steve Moore to prepare for expert deposition	1.30	\$450.00	\$585.00
Service	11/08/2023	NMT: Revise all exhibits in system to match exhibit notebook indices; communications with Liz Davidson at MGC for exhibits for Steve Moore deposition	2.50	\$175.00	\$437.50
Service	11/08/2023	ERL: Attend and conduct deposition of Steve Moore, PE; confer with Mr. Haslinger regarding mediation and related issues; travel to/from deposition	9.50	\$450.00	\$4,275.00
Service	11/08/2023	ERL: Meet with Mr. Leventis and Ms. Mergo to discuss case and prepare for deposition	2.50	\$450.00	\$1,125.00
Service	11/09/2023	BHJ: Communications with counsel for all parties and mediator regarding upcoming mediation on November 14th	0.30	\$375.00	\$112.50

Service	11/09/2023	NMT: Emails with Sky Kinder regarding mediation address and confirmation; email Nikole Mergo regarding mediation and email link to important documents; confer with Benjamin Joyce regarding mediation needs; receive court notice regarding trial roster; review roster and reach out to other parties on roster to determine if trial will move forward on December 4; review discovery responses for disclosure of Steve Riley and additional information to be supplemented prior to trial if mediation unsuccessful; create and circulate zoom for meeting with Steve Riley damages expert	1.80	\$175.00	\$315.00
Service	11/09/2023	BHJ: Correspond via email with Steve Riley at Barb & Associates CPAs regarding analysis of NKD's damages and interest calculations for upcoming mediation	0.10	\$375.00	\$37.50
Service	11/09/2023	BHJ: Conduct phone conference with Steve Riley (Barb & Associates) and Ellis Lesemann to review damages and interest calculations in preparation of upcoming mediation	0.90	\$375.00	\$337.50
Service	11/09/2023	ERL: Receive jury trial roster notification; assessment and identification of tasks to prepare for trial and mediation; communications with witnesses regarding remaining depositions to confirm availability; prepare for mediation	0.80	\$450.00	\$360.00
Service	11/09/2023	ERL: Conference call with Mr. Riley; analysis regarding damages, including repair costs, liquidated damages interest, carrying costs, prejudgment interest, and related items; obtain and modify exhibits of damages for use during upcoming mediation	0.90	\$450.00	\$405.00
Service	11/10/2023	ERL: Attend and conduct deposition of Mr. Leventis; confer with Mr. Haslinger regarding status; confer with Ms. Mergo regarding status	11.20	\$450.00	\$5,040.00
Service	11/10/2023	NMT: Email legal team regarding trial roster position and status; assist with exhibits for Nick Leventis Deposition	0.50	\$175.00	\$87.50
Service	11/10/2023	BHJ: Prepare draft of detailed mediation brief on behalf of NKD to submit to mediator John Cuttino in advance of upcoming mediation	3.80	\$375.00	\$1,425.00
Service	11/11/2023	NMT: Prepare for mediation by identifying potential exhibits to attribute liability and damages to each defendant	1.50	\$175.00	\$262.50
Service	11/11/2023	ERL: Prepare for mediation; assemble presentation; review brief for mediator	2.50	\$450.00	\$1,125.00
Service	11/12/2023	ERL: Prepare for mediation	3.20	\$450.00	\$1,440.00

Service	11/14/2023	BHJ: Additional correspondence via email with Susan Leitner and Richard Young regarding depositions of Ms. Leitner and Mr. Young	0.10	\$375.00	\$37.50
Service	11/14/2023	NMT: Communications from Ellis Lesemann regarding additional exhibits and coordinate production and delivery of the same	0.30	\$175.00	\$52.50
Service	11/14/2023	ERL: Prepare for mediation; travel to Columbia; conduct mediation; confer with client; return to Charleston	10.50	\$450.00	\$4,725.00
Service	11/15/2023	BHJ: Correspond via email with counsel for ATC Site Construction and other Defendants regarding depositions of Susan Leitner, Richard Young, Scott Moore, Stephen Staley, and Chad Bruorton	0.30	\$375.00	\$112.50
Service	11/16/2023	BHJ: Additional correspondence via email with Susan Bell Leitner and Richard Young confirming upcoming depositions and conference call to prepare for same	0.20	\$375.00	\$75.00
Service	11/16/2023	BHJ: Prepare/finalize draft of subpoena to Steve Ackerman (Ackerman Consulting Engineers) for copy of entire file and physical core samples and letter serving same to Mr. Ackerman	0.40	\$375.00	\$150.00
Service	11/16/2023	AGC: Draft cover letter and subpoena to Ackerman Consulting Engineers; prepare Exhibits A and B to subpoena; prepare certificate of authenticity; email subpoena and cover letter to Mr. Ackerman; email subpoena and cover letter to opposing counsel	0.40	\$325.00	\$130.00
Service	11/17/2023	BHJ: Receipt and review of Motion for Continuance from Trial Roster filed by ATC Site Construction	0.10	\$375.00	\$37.50
Service	11/17/2023	BHJ: Receipt and review of Motion for Summary Judgment filed by Gearig Civilworks as to ATC's Third Party Claims	0.10	\$375.00	\$37.50
Service	11/20/2023	BHJ: Return telephone call from counsel for Gearig Civilworks regarding Gearig's interest in resuming settlement negotiations following mediation, inquiry of potential global demand to all parties by NKD	0.20	\$375.00	\$75.00
Service	11/20/2023	BHJ: Review and analysis of invoices from Carolina Contracting to break down utility vs. road related costs; draft email to Scott at Carolina Contracting regarding same; conduct phone call with Scott at Carolina Contracting regarding same and confirm amounts of utility vs. road related costs from Carolina Contracting	2.00	\$375.00	\$750.00
Service	11/20/2023	BHJ: Begin preparation of NKD's damages	0.80	\$375.00	\$300.00

breakdown and post mediation global settlement demand to send to all parties and mediator John Cuttino					
Service	11/21/2023	AGC: Telephone call with Mr. Ackerman regarding cement soil samples and production of documents in response to subpoena; email to Mr. Ackerman requesting he provide a list of sources upon which he relied in lieu of providing documents	0.30	\$325.00	\$97.50
Service	11/21/2023	BHJ: Continued preparation of NKD's damages breakdown and review/analysis of underlying back up documentation to support same	0.70	\$375.00	\$262.50
Service	11/22/2023	BHJ: Receipt and review of Gearig's Second Set of Interrogatories regarding NKD's SCUTPA claim	0.10	\$375.00	\$37.50
Service	11/22/2023	BHJ: Receipt and review of Motion for Summary Judgment filed by Gearig Civilworks; assess grounds for opposition to same	0.20	\$375.00	\$75.00
Service	11/22/2023	BHJ: Receipt and review of ATC's supplemental discovery responses with production of B&K Grading and Paving, LLC's proposal dated October 23, 2023 for road repair cost	0.30	\$375.00	\$112.50
Service	11/27/2023	BHJ: Correspond via email with counsel for ATC regarding status of ATC's outstanding responses to NKD's supplemental discovery requests	0.20	\$375.00	\$75.00
Service	11/27/2023	BHJ: Plan and prepare for upcoming depositions of Susan Bell Leitner (LG Utility Contractors) and Richard Young (Carolina Tap & Bore); draft outline for deposition preparation conference with Ms. Leitner and Mr. Young and assemble potential exhibits to review with Ms. Leitner and Mr. Young	2.80	\$375.00	\$1,050.00
Service	11/27/2023	BHJ: Conduct deposition preparation phone conference with Susan Bell Leitner (LG Utility Contractors) and Richard Young (Carolina Tap & Bore) in advance of upcoming depositions of Ms. Leitner and Mr. Young; correspond via email following conference and provide Ms. Leitner and Mr. Young with pertinent records for review in advance of depositions	0.90	\$375.00	\$337.50
Service	11/27/2023	BHJ: Correspond via email with counsel for all parties regarding deposition of Steve Ackerman, Susan Bell Leitner, and Richard Young	0.10	\$375.00	\$37.50
Service	11/27/2023	NMT: Review LGU production and previously produced materials for deposition exhibits and preparation; draft index regarding the same; assist Benjamin H. Joyce with conference call to prepare deponents; emails with all parties	1.50	\$175.00	\$262.50

regarding future depositions					
Service	11/27/2023	ERL: Confer with Ms. Leitner and Mr. Young	0.70	\$450.00	\$315.00
Service	11/28/2023	BHJ: Conduct deposition of Susan Bell Leitner of LG Utility Contractors in Columbia, SC at office of counsel for ATC Site Construction, including travel from and return to Charleston, SC	7.00	\$375.00	\$2,625.00
Service	11/28/2023	BHJ: Draft Supplemental Answer to ATC's Interrogatories identifying David Crapps of LG Utility Contractors as additional witness who can testify as to defective site conditions and sewer line repair work completed	0.30	\$375.00	\$112.50
Service	11/28/2023	BHJ: Correspond via email with counsel for ATC Site Construction regarding ATC's request to take deposition of David Crapps of LG Utility Contractors	0.10	\$375.00	\$37.50
Service	11/29/2023	BHJ: Conduct deposition of Richard Young of Carolina Tap & Bore in Columbia, SC at office of counsel for ATC Site Construction, including travel from and return to Charleston, SC	7.00	\$375.00	\$2,625.00
Service	11/29/2023	BHJ: Telephone call with counsel for Geo-Systems regarding Geo-Systems inquiry of resuming settlement negotiations separately from other Defendants	0.10	\$375.00	\$37.50
Service	11/29/2023	BHJ: Finalize Supplemental Answer to ATC's Interrogatories identifying David Crapps of LG Utility Contractors as additional witness and letter serving same to counsel for all Defendants	0.10	\$375.00	\$37.50
Service	11/29/2023	NMT: Draft letter to serve discovery responses; finalize and serve supplemental discovery responses; emails with all counsel regarding depositions; email with Trippett Bonneau regarding SME agreement and deposition	1.40	\$175.00	\$245.00
Service	11/30/2023	BHJ: Correspond via email with mediator John Cuttino regarding reengaging his services to convey global settlement demand on behalf of NKD of \$2,950,000.00	0.20	\$375.00	\$75.00
Service	11/30/2023	BHJ: Telephone call and email to David Leehy, former CEO of Gearig Civilworks, regarding arranging deposition of Mr. Leehy	0.30	\$375.00	\$112.50
Service	11/30/2023	BHJ: Correspond via email with Steve Ackerman of Ackerman Consulting Engineers regarding subpoena response and deposition request	0.20	\$375.00	\$75.00
Service	11/30/2023	NMT: Calculate interest for loan and create spreadsheet of the same for damages summary; update damages summary; draft supplemental answers to interrogatories; emails to all counsel	2.60	\$175.00	\$455.00

regarding additional depositions

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	11/28/2023	Mileage Reimbursement: BHJ travel to/from Columbia for deposition of Susan Leitner (230 miles @ \$.65/mile)	1.00	\$149.50	\$149.50
Expense	11/28/2023	Garber Reporting Service Invoice No. 32348: deposition/transcript of Steve Moore	1.00	\$1,114.35	\$1,114.35
Expense	11/29/2023	Mileage Reimbursement: BHJ travel to/from Columbia for deposition of Richard Young (230 miles @ \$.65/mile)	1.00	\$149.50	\$149.50
Expense	11/30/2023	Garber Reporting Service Invoice No. 32430: deposition/transcript of Nick Leventis	1.00	\$910.15	\$910.15

Discount 10.0% (-\$4,065.60)

Apply 10% courtesy discount

Total \$36,590.40

Payment (01/25/2024) -\$36,590.40

Balance Owing \$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
5305	12/06/2023	\$36,590.40	\$36,590.40	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 5377
 Date: 01/12/2024
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	11/30/2023	SA□: Begin drafting Answers to Third-Party Defendant Gearig's Second Set of Interrogatories	0.30	\$175.00	\$52.50
Service	12/01/2023	NMT: Emails with all counsel regarding Chad Bruorton Deposition'; telephone call with Skye Kinder regarding Chad Bruorton Deposition	0.30	\$175.00	\$52.50
Service	12/04/2023	ERL: Attend roster meeting; confer with opposing counsel; provide update to Ms. Mergo and Mr. Leventis	4.20	\$450.00	\$1,890.00
Service	12/04/2023	NMT: Emails with Liz Davidson and Myra Rutland regarding Chad Bruorton deposition; email to Chad Bruorton regarding the same	0.30	\$175.00	\$52.50
Service	12/05/2023	NMT: Email from Liz Davidson regarding deposition of Chad Bruorton; docket deposition details; email to Chad Bruorton regarding deposition notice; draft answer to Gearig's supplemental discovery requests	0.90	\$175.00	\$157.50
Service	12/06/2023	NMT: Email Myra Rutland regarding deposition of Mr. Staley and docket the same; receive and download Nick Leventis deposition transcript; email Myra Rutland and Liz Davidson regarding Ackerman subpoena response; receive and download Ackerman subpoena response and cursory review of the same; draft answers to Gearig supplemental discovery requests; draft answers to Gearig interrogatories and requests for production; review of documents to include in supplemental production	3.40	\$175.00	\$595.00
Service	12/10/2023	ERL: Legal research relating to claims for	0.90	\$450.00	\$405.00

liquidated damages					
Service	12/11/2023	Emails and telephone calls with Richland county regarding lack of □OIA response; confirm Chad Bruorton deposition; prepare materials for deposition; update exhibit books for NKD	2.10	\$175.00	\$367.50
Service	12/12/2023	SA□: Begin drafting Response to Plaintiff's Supplemental Discovery Requests	0.50	\$175.00	\$87.50
Service	12/12/2023	ERL: Prepare for and conduct deposition of Chad Bruorton; travel to/from Columbia	6.90	\$450.00	\$3,105.00
Service	12/12/2023	NMT: Receive supplemental interrogatories and docket response to the same; review of missing information and outstanding motions that need to be resolved to push matter forward	0.40	\$175.00	\$70.00
Service	12/13/2023	SA□: Begin drafting Responses to Plaintiff's Requests to Admit	0.30	\$175.00	\$52.50
Service	12/13/2023	BHJ: Phone call with former Gearig employee David Leehy regarding deposition request and prior subpoena response served by Gearig	0.20	\$375.00	\$75.00
Service	12/14/2023	NMT: Receive and review □OIA response from Richland County and note deficiencies and note needs for additional items to request	1.50	\$175.00	\$262.50
Service	12/15/2023	BHJ: Telephone call from counsel for ATC regarding recent Requests for Admission served by ATC related to mechanics lien issues	0.10	\$375.00	\$37.50
Service	12/15/2023	NMT: Emails with Denique Brooks at Richland County Ombudsman's office and amend □OIA to include everything Richland County Engineering Department and Planning Department would have in file from January 2022 through the present date	0.30	\$175.00	\$52.50

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	11/30/2023	Barb & Company, P.A. Invoice 0104667-IN: expert consulting fees (November)	1.00	\$825.00	\$825.00

Total	\$□,140.00
Payment (01/25/2024)	-\$□,140.00
Balance Owing	\$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
5377	01/12/2024	\$8,140.00	\$8,140.00	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 5487
 Date: 02/08/2024
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	01/02/2024	NMT: Review Steve Ackerman Subpoena response and review Ackerman invoice; send email to Myra Rutland concerning the discrepancies in Mr. Ackerman's invoice and what was produced; revise and update Responses to Requests to Admit and Answers to Interrogatories; review supplemental discovery requests and email clients regarding the same	1.60	\$175.00	\$280.00
Service	01/02/2024	NMT: Identify and prepare potential exhibits for Steve Staley deposition to include review of previously produced documents	1.80	\$175.00	\$315.00
Service	01/03/2024	Emails with Myra Rutland regarding Ackerman subpoena response	0.20	\$175.00	\$35.00
Service	01/04/2024	NMT: Review of all production for communications and references to Stephen Staley in preparation of deposition; draft deposition outline	3.80	\$175.00	\$665.00
Service	01/05/2024	NMT: Finalize outline for Stephen Staley deposition; prepare all exhibits for deposition	4.10	\$175.00	\$717.50
Service	01/09/2024	NMT: Receive email from Trippett Boineau regarding cancellation of Stephen Staley's deposition and remove from schedule; email to Steve Ackerman regarding discrepancies in billing and production of subpoena response; email with Paul Greathouse regarding date certain procedure; review of internal calendars and judge rosters to determine preference for weeks for date certain; email team with the same	1.50	\$175.00	\$262.50

Service	01/10/2024	ERL: Confer with Mr. Haslinger regarding status; communications with opposing counsel regarding potential date certain	0.40	\$450.00	\$180.00
Service	01/12/2024	NMT: Emails with all parties regarding deposition of Stephen Staley; finalize and serve NKD's Responses to ATC's Requests for Admission	0.30	\$175.00	\$52.50
Service	01/16/2024	NMT: Receive and review deposition notice for Stephen Staley and subpoena to Stephen Staley; confirm docketing and Zoom information	0.20	\$175.00	\$35.00
Service	01/17/2024	NMT: Receive email from Garber Court reporting regarding Chad Bruorton deposition transcript and download the same; email deposition transcript to clients	0.20	\$175.00	\$35.00
Service	01/19/2024	NMT: Email with Richland County Ombudsman Office regarding FOIA request; draft letter and check and FedEx the same to Richland County to receive FOIA response	0.30	\$175.00	\$52.50
Service	01/23/2024	NMT: Emails with Skye Kinder regarding Stephen Staley deposition and Zoom information; docket the same	0.10	\$175.00	\$17.50
Service	01/24/2024	NMT: Receive and review emails from Court regarding hearings on pending motions (x3); docket the same and docket deadlines for memorandums; review pleadings motions are based on; create litigation database and build documents to be used as exhibits at trial; organize documents to be produced;	2.20	\$175.00	\$385.00
Service	01/25/2024	NMT: Review emails and files and compile documents for supplemental production; draft answers to interrogatories; draft answers to supplemental discovery requests; Draft supplemental answers to interrogatories; emails with Mike Barb and Karl Haslinger regarding information requested from opposing counsel	3.80	\$175.00	\$665.00
Service	01/26/2024	NMT: Review of discovery produced to verify all production	1.50	\$175.00	\$262.50
Service	01/29/2024	BHJ: Correspond via email with counsel for ATC regarding upcoming hearing on Motion to Compel against ATC and status of ATC's outstanding discovery responses, including John Henderson's personal physical file	0.40	\$375.00	\$150.00
Service	01/29/2024	BHJ: Conference regarding upcoming hearing on Gearig Motion for Summary Judgment and trial preparation tasks	0.80	\$375.00	\$300.00
Service	01/29/2024	MAS: Review Gearig Civilworks, LLC's Motion for Summary Judgment; begin drafting Opposition to	1.50	\$325.00	\$487.50

		Motion; meet with Mr. Lesemann regarding trial preparation and pending motions			
Service	01/29/2024	Receive and review ATC discovery responses and production; emails with Richland County Ombudsman's office regarding □OIA request and materials; meeting with team for trial preparation; draft supplemental discovery responses; telephone calls to 4 attorneys' offices to determine position on trial roster	3.20	\$175.00	\$560.00
Service	01/30/2024	ERL: Status call with Ms. Mergo; settlement discussions with counsel for ATC	0.80	\$450.00	\$360.00
Service	01/30/2024	MAS: Continue drafting Opposition to Gearig Civilworks, LLC's Motion for Summary Judgment; review transcript of deposition of Steven Moore	3.00	\$325.00	\$975.00
Service	01/30/2024	ERL: Confer with Mr. Staley regarding upcoming deposition; confer with Ms. Mergo regarding status and upcoming events	0.60	\$450.00	\$270.00
Service	01/30/2024	BHJ: Correspond via email with counsel for Geo-Systems Testing & Design regarding Geo-Systems' Answers to Interrogatories served by NKD	0.20	\$375.00	\$75.00
Service	01/30/2024	NMT: Review of materials needed for trial presentations, exhibits, and preparation and create order list; review of all filings and communications from Rett Kendall to address his questions regarding Motion for Status Conference; review and prepare exhibits from ATC for Stephen Staley deposition; revise Stephen Staley deposition outline; email Athena at Richland County Clerk of Court to request juror list; review documents for production, code and bates NKD 6371-6530; produce the same	4.10	\$175.00	\$717.50
Service	01/31/2024	BHJ: Review trial subpoenas served by Geo-Systems Testing & Design; conference regarding trial subpoenas to be served on behalf of NKD to list of witnesses	0.20	\$375.00	\$75.00
Service	01/31/2024	BHJ: □nalize Answer to Interrogatory on behalf of NKD identifying John Scott of Asphalt Paving & Maintenance and Letter serving same to opposing counsel	0.20	\$375.00	\$75.00
Service	01/31/2024	MAS: Continue drafting Opposition to Gearig Civilworks, LLC's Motion for Summary Judgment; review Memorandum in Support of Gearig's Motion; continue review of evidence in the record relating to standard of care and breach of applicable duty of care; review testimony from Steven Moore and Mark Rhodes relating to deficiencies and damage; conduct legal research	4.30	\$325.00	\$1,397.50

of South Carolina law relating to unfair trade practices claim

Service	01/31/2024	AGC: Draft proposed Air Dire for trial	1.20	\$325.00	\$390.00
Service	01/31/2024	NMT: Trial preparation; email to Robert Osborn regarding discovery requests; draft supplemental interrogatory responses; draft trial preparation outline; review of items necessary for trial and submit order list of the same; draft witnesses list with updated contact information; telephone calls to potential witnesses to inform of potential dates for trial; finalize supplemental document production; draft and serve supplemental discovery responses	4.20	\$175.00	\$735.00

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	01/02/2024	Ackerman Consulting Engineers, LLC Invoice No. 24-80-002: document production and delivery to McAngus Goudelock Courie per subpoena request	1.00	\$760.00	\$760.00
Expense	01/08/2024	Garber Court Reporting Invoice No. 32731: deposition/transcript of Susan Bell Leitner	1.00	\$411.20	\$411.20
Expense	01/10/2024	Garber Court Reporting Invoice No. 32753: deposition/transcript of Richard Young	1.00	\$396.65	\$396.65
Expense	01/18/2024	Garber Court Reporting Invoice No. 32825: deposition/transcript of Robert (Chad) Bruorton, PE	1.00	\$894.60	\$894.60
Expense	01/19/2024	L&A Check No. 2180 to Richmond County: OIA Request fee	1.00	\$69.99	\$69.99

Total **\$13,051.44**

Payment (04/10/2024) **-\$13,051.44**

Balance Owing **\$0.00**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
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5487	02/08/2024	\$13,059.94	\$13,059.94	\$0.00
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Please make all amounts payable to:
Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 5546
 Date: 03/11/2024
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	02/01/2024	MAS: Continue drafting Memo in Opposition to Gearig's Motion for Summary Judgment; continue legal research of South Carolina law relating to duties owed by subcontractor and issues relating to economic loss rule; review relevant reports from S&ME	3.20	\$325.00	\$1,040.00
Service	02/01/2024	NMT: Draft supplemental discovery responses identifying new witness in accordance with conversation with Asphalt Paving; finalize witness contact list; code and Bates label Richland County □OIA response; prepare for the deposition of Stephen Staley	2.90	\$175.00	\$507.50
Service	02/02/2024	MAS: Continue drafting Memo in Opposition to Gearig's Motion for Summary Judgment; continue legal research of South Carolina law relating to duties owed by subcontractor and issues relating to economic loss rule; review relevant reports from S&ME	2.80	\$325.00	\$910.00
Service	02/05/2024	NMT: Check rosters for addition of Motion for Summary Judgment against NKD by Gearig; telephone calls and emails with Athena Boror regarding the same and to remove Motion from roster; telephone call with Judge Newman's office regarding continuance; email all parties regarding the same; draft proposed order of continuance; electronically file proposed order of continuance	1.90	\$175.00	\$332.50
Service	02/06/2024	NMT: Receive email notifications and download newly filed pleadings; review emails from all parties regarding mediation, depositions, and trial (x20); draft subpoena and letter to B&K Paving;	1.50	\$175.00	\$262.50

Service	02/06/2024	BHJ: Correspond via email with expert witness Steve Moore regarding equipment roster produced by ATC	0.20	\$375.00	\$75.00
Service	02/06/2024	BHJ: Review recent document production and discovery responses produced by ATC; correspond via email with counsel for ATC regarding same and NKD's Motion to Compel	0.80	\$375.00	\$300.00
Service	02/07/2024	BHJ: Prepare for hearing before Court on NKD's Motion to Compel; Gearig and Geo-Systems Motions for Summary Judgment as to claims by ATC, review respective parties court filings and memorandums of law in support of Motions	0.50	\$375.00	\$187.50
Service	02/07/2024	BHJ: Appear for hearing before Court on NKD's Motion to Compel and Gearig and Geo-Systems Motions for Summary Judgment as to claims by ATC	1.30	\$375.00	\$487.50
Service	02/07/2024	ERL: Tasks and conferences relating to resumed mediation	0.50	\$450.00	\$225.00
Service	02/07/2024	NMT: Finalize subpoena and letter to B&K Paving and serve the same	0.30	\$175.00	\$52.50
Service	02/09/2024	NMT: Emails with all parties regarding mediation and docket the same	0.30	\$175.00	\$52.50
Service	02/13/2024	BHJ: Conference regarding upcoming mediation and allocation of damages to parties for Carolina Contracting and Coogler Construction repair invoices	0.60	\$375.00	\$225.00
Service	02/13/2024	BHJ: Follow up email to counsel for ATC regarding status of supplemental production of John Henderson personal file	0.10	\$375.00	\$37.50
Service	02/13/2024	NMT: Receive, review and organize ATC's supplemental production in preparation of resumed mediation (850 pages); review file and organize previous notes; calculate damages for mediation; telephone call with Carolina Contracting to go through each line item of all invoices to determine if charge was related to sewer or road work	4.50	\$175.00	\$787.50
Service	02/14/2024	ERL: Confer with Mr. Leventis regarding mediation, settlement strategy, and next steps	0.70	\$450.00	\$315.00
Service	02/14/2024	ERL: Prepare for mediation; conduct mediation; communications with Mr. Huffstetler and Ms. Mergo; review of possibility of appointing Special Referee for case	6.50	\$450.00	\$2,925.00
Service	02/14/2024	NMT: Emails with all parties regarding Ackerman deposition (x4); emails regarding John Scott deposition (x2); continue review of ATC	2.60	\$175.00	\$455.00

		production; internet research on Jonathan □ hitehead and email to Jonathan □ hitehead			
Service	02/15/2024	BHJ: Conference regarding trial being heard through special referee as opposed to jury trial	0.10	\$375.00	\$37.50
Service	02/19/2024	NMT: Emails with Skye Kinder and Robert Osborne regarding Ackerman Deposition	0.20	\$175.00	\$35.00
Service	02/19/2024	BHJ: Telephone calls to foreman and site contractors from Asphalt Paving & Maintenance regarding identifying as witnesses on behalf of NKD	0.20	\$375.00	\$75.00
Service	02/19/2024	BHJ: Review upcoming common pleas terms for potential rescheduled trial weeks to discuss and coordinate with client and witnesses	0.10	\$375.00	\$37.50
Service	02/20/2024	BHJ: Correspond via email with counsel for Geo-Systems regarding (i) status of Geo-Systems Answers to Interrogatories and (ii) deposition of Steve Ackerman	0.20	\$375.00	\$75.00
Service	02/20/2024	BHJ: Revise and finalize draft of Supplemental Answer to Interrogatory identifying Tripp Owings (Asphalt Paving & Maintenance) and James Rodgers (Carolina Contracting) as witnesses on behalf of NKD	0.30	\$375.00	\$112.50
Service	02/20/2024	NMT: Revise and serve supplemental discovery responses; draft correspondence and email regarding the same to all counsel	0.50	\$175.00	\$87.50
Service	02/20/2024	BHJ: Receipt and review of response to NKD subpoena provided by B & K Grading and Paving	0.20	\$375.00	\$75.00
Service	02/20/2024	BHJ: Receipt and review of email from Judge Coble with rulings on Geo-Systems and Gearig's Motions for Summary Judgment as to cross claims asserted by ATC	0.10	\$375.00	\$37.50

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	02/06/2024	Garber Reporting Invoice No. 32958: deposition/transcript of Stephen Staley	1.00	\$838.82	\$838.82

Total	\$10,511.12
Payment (04/10/2024)	-\$10,511.12
Balance Owing	\$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
5546	03/11/2024	\$10,588.82	\$10,588.82	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 5610
 Date: 04/11/2024
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	03/01/2024	NMT: Follow up on deposition of representative from Asphalt Paving; receive and review proposed order from GeoSystems; telephone call to Skye Kinder regarding deposition of Steve Ackerman; emails with all parties regarding deposition of Steve Ackerman; Nextpoint search and review of potential exhibits for Ackerman deposition	1.80	\$175.00	\$315.00
Service	03/04/2024	NMT: Prepare potential exhibits for Ackerman deposition	1.00	\$175.00	\$175.00
Service	03/04/2024	BHJ: Plan and prepare for upcoming deposition of Steve Ackerman, ATC consulting expert engineer, review/analyze report and subpoena response materials and prepare draft of outline of questions for Mr. Ackerman	2.80	\$375.00	\$1,050.00
Service	03/04/2024	BHJ: Appear for and conduct deposition of Steve Ackerman, ATC consulting expert engineer	3.50	\$375.00	\$1,312.50
Service	03/05/2024	NMT: Review additional exhibit from Steve Ackerman deposition and update to include in trial exhibits; email to Celleste Mallet regarding Ackerman Subpoena response	0.40	\$175.00	\$70.00
Service	03/05/2024	BHJ: Correspond via email with B & K Grading regarding response to subpoena served by NKD	0.20	\$375.00	\$75.00
Service	03/11/2024	NMT: Review Invoices from S&ME and confirm charges	0.10	\$175.00	\$17.50
Service	03/14/2024	NMT: Check trial rosters and email to Paul Gunter regarding appearance on trial roster; telephone	0.40	\$175.00	\$70.00

		call with Tripp Owings with Asphalt Paving regarding deposition and scheduling call with attorneys to prepare			
Service	03/15/2024	BHJ: Phone call with Tripp Owings of Asphalt Paving & Maintenance regarding counsel for ATC's request to conduct deposition of representative from Asphalt Paving & Maintenance	0.20	\$375.00	\$75.00
Service	03/20/2024	NMT: Online research regarding prior versions of Richland County Land Development Regulations	0.30	\$175.00	\$52.50
Service	03/28/2024	NMT: Receive Ackerman deposition transcript and congruent file management	0.30	\$175.00	\$52.50

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	03/01/2024	Gallivan White & Boyd, PA Mediation Invoice: John Cuttino's mediator services for two days of mediation (split between parties)	1.00	\$1,710.34	\$1,710.34
Expense	03/01/2024	Expert/Consultant: S&ME Invoice No. 1214249: expert consulting fee - preparation for deposition (partial payment / ATC responsible for payment of actual deposition time)	1.00	\$1,941.50	\$1,941.50
Expense	03/11/2024	Expert/Consultant: S&ME Invoice No. 1222021: expert consulting fee - review of Staley deposition	1.00	\$187.50	\$187.50
Expense	03/11/2024	Expert/Consultant: S&ME Invoice No. 1216400: expert consulting fee - continued preparation for deposition	1.00	\$625.00	\$625.00
Expense	03/28/2024	Veritext, LLC Invoice No. 7294504: deposition/transcript of Stephen A. Ackerman, P.E.	1.00	\$647.85	\$647.85

Total **\$3,377.19**

Payment (05/07/2024) **-\$3,377.19**

Balance Owning **\$0.00**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
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5610	04/11/2024	\$8,377.19	\$8,377.19	\$0.00
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Please make all amounts payable to:
Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 5670
 Date: 05/18/2024
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC**

Type	Date	Description	Quantity	Rate	Total
Service	04/01/2024	BHJ: Receipt and review of email from general counsel for B & K Grading regarding B & K Grading Subpoena Response	0.10	\$375.00	\$37.50
Service	04/12/2024	NMT: Emails with Skye Kinder regarding deposition of John Scott and pending removal to arbitration	0.20	\$175.00	\$35.00
Service	04/17/2024	BHJ: Receipt and review of email from counsel for ATC regarding proposed arbitrators	0.10	\$375.00	\$37.50
Service	04/25/2024	NMT: Save trial exhibit and update index regarding the same; revise and finalize answers to supplemental interrogatories; Arbitrator research and begin draft memo of the same	1.50	\$175.00	\$262.50
Service	04/29/2024	NMT: Revise Answers to all interrogatories and discovery responses that have not been served to date; update excel workbook with discovery responses and insurance information for all parties	2.50	\$175.00	\$437.50

Total	\$10.00
Payment (06/03/2024)	-\$10.00
Balance Owning	\$0.00

Detailed Statement of Account**Current Invoice**

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
5670	05/18/2024	\$810.00	\$810.00	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 5729
 Date: 06/10/2024
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	05/06/2024	NMT: Emails with all parties regarding arbitration	0.20	\$175.00	\$35.00
Service	05/22/2024	NMT: Receive and review emails regarding arbitration (x8)	0.40	\$175.00	\$70.00
Service	05/23/2024	BHJ: Phone call with counsel for Geo-Systems regarding upcoming status conference with Judge Newman at Richland County Courthouse in Columbia	0.10	\$375.00	\$37.50
Service	05/24/2024	ERL: Address issues with expert witness (Chad Bruorton)	0.30	\$450.00	\$135.00
Service	05/24/2024	BHJ: Attend mandatory status conference with Judge Newman at Richland County Courthouse in Columbia; discuss referral of case to arbitration with Judge Newman and forthcoming submission of consent order to Court to confirm same	5.00	\$375.00	\$1,875.00
Service	05/31/2024	NMT: Receive and review order from court regarding arbitration	0.20	\$175.00	\$35.00

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	05/29/2024	Mileage Reimbursement: BHJ travel to/from Columbia for status conference with Judge Newman (230 miles @ \$.67/mile)	1.00	\$154.10	\$154.10
Expense	05/30/2024	Applied Building Sciences Invoice No. 900.22004-09: expert engineer consulting fee	1.00	\$175.00	\$175.00

Total	\$2,516.60
Payment (06/17/2024)	-\$2,516.60
Balance Owing	\$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
5729	06/10/2024	\$2,516.60	\$2,516.60	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 5785
 Date: 07/10/2024
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC**

Type	Date	Description	Quantity	Rate	Total
Service	06/20/2024	ERL: Tasks and conferences relating to arbitrator selection	0.50	\$450.00	\$225.00
Service	06/26/2024	BHJ: Correspond via email with counsel regarding letter to be sent to proposed arbitrator panel	0.10	\$375.00	\$37.50
Service	06/28/2024	BHJ: Review mechanics lien and cash bond figures; correspond via email with Matthew Rupert and Karl Haslinger regarding same	0.30	\$375.00	\$112.50
Total					\$375.00
Payment (07/23/2024)					-\$375.00
Balance Owing					\$0.00

Detailed Statement of Account**Current Invoice**

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
5785	07/10/2024	\$375.00	\$375.00	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 5835
 Date: 08/09/2024
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC**

Type	Date	Description	Quantity	Rate	Total
Service	07/02/2024	NMT: Compile potential witness list for arbitration from discovery responses; receive and review emails regarding arbitration; emails to potential witnesses for conflicts on arbitration dates	1.50	\$175.00	\$262.50
Service	07/10/2024	NMT: Emails with all parties regarding arbitration and consent order	0.30	\$175.00	\$52.50
Service	07/11/2024	NMT: Emails with all parties regarding arbitrators and consent order	0.20	\$175.00	\$35.00
Service	07/22/2024	NMT: Emails from all parties regarding arbitration; docket arbitration status call	0.30	\$175.00	\$52.50
Service	07/26/2024	NMT: Emails and telephone calls regarding scheduling arbitration location and planning	0.50	\$175.00	\$87.50
Service	07/26/2024	BHJ: Conference regarding NKD's proposed witness list for arbitration	0.20	\$375.00	\$75.00
Service	07/26/2024	ERL: Prepare for and conduct preliminary hearing with arbitrator	0.80	\$450.00	\$360.00
Service	07/27/2024	ERL: Confirm witness availability for arbitration	0.40	\$450.00	\$180.00

Total	\$1,105.00
Payment (11/10/2024)	-\$552.50
Payment (11/12/2024)	-\$552.50
Balance Owing	\$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
5835	08/09/2024	\$1,105.00	\$1,105.00	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 5889
 Date: 09/17/2024
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC**

Type	Date	Description	Quantity	Rate	Total
Service	08/07/2024	NMT: Receive and download SME Subpoena Respnse to MGC	0.40	\$175.00	\$70.00
Service	08/12/2024	NMT: Communications with conference center and hotel staff to book arbitration in Columbia	0.40	\$175.00	\$70.00
Service	08/12/2024	NMT: Receive subpoena response from ATC and import into Nextpoint	0.40	\$175.00	\$70.00
Service	08/16/2024	NMT: Email to Hyatt to book arbitration and outline details	0.20	\$175.00	\$35.00
Service	08/20/2024	NMT: Emails regarding hotel and arbitration contracts	0.20	\$175.00	\$35.00
Service	08/27/2024	NMT: Reimport ATC SME Subpoena Response to correct errors in uploading	0.20	\$175.00	\$35.00
Total					\$315.00
Payment (11/10/2024)					-\$157.50
Payment (11/12/2024)					-\$157.50
Balance Owing					\$0.00

Detailed Statement of Account**Current Invoice**

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
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5889	09/17/2024	\$315.00	\$315.00	\$0.00
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Please make all amounts payable to:
Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 5933
 Date: 10/07/2024
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	09/19/2024	ERL: Provide update to counsel for Mr. Leventis	0.20	\$450.00	\$90.00

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	09/11/2024	L&A Check 2383 to Hood Law Firm, LLC: Arbitration Panel initial deposit	1.00	\$3,250.00	\$3,250.00

Total \$3,340.00**Payment (11/10/2024) -\$1,670.00****Payment (11/12/2024) -\$1,670.00****Balance Owing \$0.00****Detailed Statement of Account****Current Invoice**

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
5933	10/07/2024	\$3,340.00	\$3,340.00	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
Charleston, South Carolina (SC) 29403
(843) 724-5155

INVOICE

Invoice # 5961
Date: 10/24/2024
Due Upon Receipt

NKD, Inc.
100 Hagen Court
Lexington, SC 29072

2204.001

NKD, Inc. - Contract Dispute with ATC Site Construction, LLC

Type	Date	Description	Quantity	Rate	Total
Expense	11/01/2024	□ omble Bond Dickinson Invoice: Arbitrator Panel Deposit Required for Arbitration (\$145,000.00 total; 1/4 split for \$36,250/per party) (NKD initial deposit of \$3,250.00 already paid)	1.00	\$33,000.00	\$33,000.00
Expense	11/01/2024	Hllton Hotel Columbia Center: Conference Room 1 Rental (\$300/day □ food/other fees) (estimated total)	1.00	\$3,500.00	\$3,500.00
Expense	11/01/2024	Hllton Hotel Columbia Center: Conference Room 2 Rental (\$300/day □ food/other fees) (estimated total)	1.00	\$3,500.00	\$3,500.00
Expense	11/01/2024	Hllton Hotel Columbia Center: Guest Room 1 Ellis Lesemann (\$180/night) (estimated total)	1.00	\$1,600.00	\$1,600.00
Expense	11/01/2024	Hllton Hotel Columbia Center: Guest Room 2 Ann Cunniffe (\$180/night) (estimated total)	1.00	\$1,600.00	\$1,600.00

Discount	-\$10.00
Apply \$180.00 for discrepancy in payments	
Total	\$43,020.00
Payment (11/10/2024)	-\$21,510.00
Payment (11/12/2024)	-\$21,510.00
Balance Owing	\$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
5961	10/24/2024	\$43,020.00	\$43,020.00	\$0.00

Outstanding Balance to be 1/2 split between the Clients:

Karl Haslinger: (\$23,980.00)

Nick Leventis: (\$23,980.00)

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 5973
 Date: 11/04/2024
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC**

Type	Date	Description	Quantity	Rate	Total
Service	10/01/2024	NMT: Emails from Robert Osborne regarding depositoin of Scott Moore; email with other parties regagrding the same; docket potential dates	0.30	\$175.00	\$52.50
Service	10/02/2024	NMT: Draft Consent Scheduling Order for Arbitration Deadlines	1.20	\$175.00	\$210.00
Service	10/07/2024	NMT: Emails with Robert Osborne regarding deposition of Scott Moore and update claendar regardig the same	0.10	\$175.00	\$17.50
Service	10/07/2024	ERL: Confer with opposing counsel; update call with Mr. Haslinger regarding witness availability, 30(b)(6) deposition, and settlement offer from Geo-Systems; provide client update; strategy for upcoming hearing	0.80	\$450.00	\$360.00
Service	10/08/2024	NMT: Email from Robert Osborne and docket date for potential 30(b)(6) deposition of NKD	0.10	\$175.00	\$17.50
Service	10/09/2024	ERL: Analysis of deposition of Mr. Leventis; prepare for boom call with counsel for Mr. Leventis; conduct meeting	1.70	\$450.00	\$765.00
Service	10/09/2024	ERL: Develop hearing task list and organize preparations for upcoming hearing	0.80	\$450.00	\$360.00
Service	10/09/2024	NMT: Meeting with Ellis Lesemann to prepare and create strategy and tasks lists for arbitration	0.50	\$175.00	\$87.50
Service	10/14/2024	NMT: Review of emails from all counsel regarding 30(b)(6) deposition of NKD and arbitration; email to all counsel submitting signed arbitration agreement	0.30	\$175.00	\$52.50
Service	10/16/2024	NMT: Tasks related to payment of arbitration deposit; review deadlines for briefs, witness lists, and other needs for arbitration; docket deadlines	1.40	\$175.00	\$245.00

		from Administrative Order; telephone calls and emails with Garber court reporting regarding availability for arbitration			
Service	10/16/2024	ERL: Preparation tasks for arbitration proceeding	0.40	\$450.00	\$180.00
Service	10/18/2024	NMT: Review of file and NextPoint for documents and exhibits relevant to Scott Moore Deposition; create exhibits; emails with opposing counsel regarding deposition	2.80	\$175.00	\$490.00
Service	10/20/2024	NMT: Finalize exhibits for deposition of Scott Moore; make deposition notebooks (x4); review of witnesses	2.50	\$175.00	\$437.50
Service	10/21/2024	ERL: Prepare for deposition of Scott Moore; conduct deposition of Scott Moore	2.40	\$450.00	\$1,080.00
Service	10/21/2024	NMT: Telephone calls and emails with Convention Center (Kelly) regarding logistics, lunch and beverage package menus for arbitration; review menus and price points; confirmation of logistics with court reporter for arbitration; email to all parties and arbitrators regarding logistics for reporter and menus for arbitration	1.50	\$175.00	\$262.50
Service	10/22/2024	NMT: Emails with Trippett Boineau and Rhett Kendle regarding arbitration logistics	0.30	\$175.00	\$52.50
Service	10/23/2024	NMT: Begin analysis of file and documents in preparation of deposition and meeting with client	0.40	\$175.00	\$70.00
Service	10/24/2024	BHJ: Review email from attorney for Stanley Martin regarding closing of home in River Shoals and Mechanics Lien discrepancy; review materials provided by attorney for Stanley Martin; conference regarding filing of Amended Cash Bond to Release Mechanic's Lien filed by ATC	0.40	\$375.00	\$150.00
Service	10/24/2024	NMT: Telephone call with Karl Haslinger to confirm meeting for deposition prep; Research mechanic's lien issue; telephone call with Rob at Richland County Register of Deeds regarding the same; revise release of mechanic's lien; prepare exhibits; telephone call with Gayle at Harvey & Kalini regarding same	2.50	\$175.00	\$437.50
Service	10/24/2024	NMT: Depo prep	4.00	\$175.00	\$700.00
Service	10/25/2024	NMT: Telephone calls with Celeste at Parker Poe and Veritext court reporting to obtain rough draft of deposition transcript of Scott Moore; emails from Rhett Kendall and Trippett Boineau regarding subpoenas and witnesses; emails with all parties regarding fees for arbitration; exhibit books	1.20	\$175.00	\$210.00

Service	10/25/2024	ERL: Travel and preparations for 30(b)(6) deposition of NKD	8.50	\$450.00	\$3,825.00
Service	10/28/2024	NMT: Update discovery index to reflect 30(b)(6) notices to NKD; email to Nicole Mergo regarding details for deposition	0.30	\$175.00	\$52.50
Service	10/28/2024	NMT: Update exhibits with Sewer Test Results; email the same to Karl Haslinger; emails to Nicole M with deposition information; update damages chart	0.60	\$175.00	\$105.00
Service	10/28/2024	ERL: Prepare for 30(b) deposition of NKD; prepare outline of allegations; confer with Mr. Haslinger	3.20	\$450.00	\$1,440.00
Service	10/29/2024	BHJ: Assist with compiling potential exhibit(s) for 30(b)(6) deposition of NKD (Karl Haslinger)	0.20	\$375.00	\$75.00
Service	10/29/2024	NMT: Potential exhibits and answer questions needed for deposition and arbitration	1.50	\$175.00	\$262.50
Service	10/29/2024	MAS: Begin drafting NKD's Pre-Hearing Brief; conduct legal research relating to claims for negligence and for violation of South Carolina Unfair Trade Practices Act and establishing the potential for repetition of unfair and deceptive acts; review client documents relating to history and scope of the Project; review Affidavit of Steven Moore and relevant portions of deposition testimony; conference with Mr. Lesemann relating to Pre-Hearing Brief and strategy for addresses factual background and issues	7.20	\$350.00	\$2,520.00
Service	10/29/2024	ERL: Prepare for 30(b)(6) deposition; confer with Mr. Haslinger; conduct deposition and dismantle attempted arguments presented by other parties	8.90	\$450.00	\$4,005.00
Service	10/29/2024	BHJ: Correspond via email with counsel for ATC regarding deposition of Ross Travis	0.10	\$375.00	\$37.50
Service	10/30/2024	MAS: Continue drafting NKD's Pre-Hearing Brief; continue review of client documents relating to scope of work and role of the parties associated with the project and the discovery and extent of defects; review relevant deposition testimony from witnesses in connection with NKD's claims	6.60	\$350.00	\$2,310.00
Service	10/31/2024	MAS: Continue drafting Pre-Hearing Brief; conduct legal research relating to mechanic's lien statute; continue review of key documents in connection with factual background and claims	2.70	\$350.00	\$945.00

Total **\$21,115.00**

Payment (11/20/2024) **-\$10,007.50**

Payment (12/03/2024) -\$10,007.50
Balance Owing \$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
5973	11/04/2024	\$21,815.00	\$21,815.00	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 5998
 Date: 11/26/2024
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	11/01/2024	AGC: Summarize approximately 14 deposition transcripts with ☐ estlaw CoCounsel AI feature and save to file for trial preparation	3.00	\$325.00	\$975.00
Service	11/01/2024	NMT: Review deadlines under arbitration order; draft NKD's identification of witnesses and produce the same to all parties; review all parties identification of witnesses	1.50	\$175.00	\$262.50
Service	11/01/2024	MAS: Continue drafting NKD's Pre-Hearing Brief; continue review of deposition testimony from the witnesses in connection with the scope of work and defects involving the roadways and utilities	6.10	\$350.00	\$2,135.00
Service	11/04/2024	MAS: Continue drafting NKD's Pre-Hearing Brief; continue review of deposition testimony from the witnesses in connection with the scope of work and defects involving the roadways and utilities	6.80	\$350.00	\$2,380.00
Service	11/05/2024	NMT: Emails with Cameron Stephens and Myra Rutland regarding arbitration logistics; notify witnesses of arbitration dates and location; draft identification of exhibits; prepare 3 deposition notebooks with summaries	3.50	\$175.00	\$612.50
Service	11/05/2024	MAS: Continue drafting NKD's Pre-Hearing Brief; continue review of deposition testimony relating to road and utility repairs	5.20	\$350.00	\$1,820.00
Service	11/06/2024	MAS: Continue drafting NKD's Pre-Hearing Brief; review relevant provisions of Contract Documents relating to ATC's breaches; review transcript of deposition of Mark Rhodes relating to ATC's breaches and failures; conduct legal research	5.20	\$350.00	\$1,820.00

		relating to duty and standard of care in connection with negligence claims against ATC, Geo-Systems, and Gearig			
Service	11/06/2024	NMT: Exhibit List and emails with all parties regarding production of the same	1.50	\$175.00	\$262.50
Service	11/07/2024	MAS: Continue drafting Pre-Hearing Brief; continue review of documents in the record relating to Defendants' involvement in defective roadways and utilities	6.80	\$350.00	\$2,380.00
Service	11/07/2024	NMT: Exhibit list	2.80	\$175.00	\$490.00
Service	11/08/2024	SGH: Conference with Ms. Stewart regarding analysis of Mechanics Lien statute as related to failure to perform a contract; analysis of South Carolina and federal case law regarding mechanics liens, substantial performance, and liquidated damages	1.70	\$300.00	\$510.00
Service	11/08/2024	MAS: Continue drafting NKD's Pre-Hearing Brief; review Rimkus Consulting Report, S&ME Reports, and Ackerman Consulting Engineers' Report	8.10	\$350.00	\$2,835.00
Service	11/09/2024	MAS: Continue drafting NKD's Pre-Hearing Brief; conduct legal research of South Carolina caselaw finding owner was justified in withholding payments to contractor and Mechanic's Lien statute; review NKD's 30(b)(6) deposition testimony relating to unfair trade practices and damages	2.60	\$350.00	\$910.00
Service	11/11/2024	ERL: Prepare for call; conduct call with Hagen Leventis, Athena Leventis, and Nikole Mergo	0.90	\$450.00	\$405.00
Service	11/11/2024	NMT: Telephone call to Josh Rabon regarding certifications to DHEC; review supplemental loan records sent by client and bates label and produce the same; emails with all parties regarding exhibit lists; identify, gather, and label in order NKD's physical exhibits;	3.20	\$175.00	\$560.00
Service	11/11/2024	MAS: Continue drafting Pre-Hearing Brief; continue review of relevant testimony from 30(b)(6) Deposition of NKD	7.60	\$350.00	\$2,660.00
Service	11/12/2024	AGC: Cull references to deposition excerpts from Pre-Hearing Brief and create master list of references for purpose of making exhibit cover sheets; organize references to deposition excerpts chronologically for each deposition witness and eliminate duplicate references; create cover sheets exhibits; create exhibits of deposition excerpts for Pre-Hearing Brief; upload exhibits into Dropbox folder for sharing with	4.00	\$325.00	\$1,300.00

arbitrators					
Service	11/12/2024	ERL: Prepare and complete NKD's Pre-Hearing Brief and Exhibits	6.50	\$450.00	\$2,925.00
Service	11/12/2024	NMT: Prepare highlighted deposition excerpts for prehearing brief; assist with exhibits to prehearing brief; review ATC and Gearing exhibits for compilation in accordance with Order; emails with Myra Rutland regarding exhibits for arbitration; review document production for bates; review damages calculations for prehearing brief	7.50	\$175.00	\$1,312.50
Service	11/12/2024	MAS: Continue drafting Pre-Hearing Brief relating to NKD's claim for damages; assemble exhibits to to Brief; edit and revise Pre-Hearing Brief	8.20	\$350.00	\$2,870.00
Service	11/13/2024	MAS: Review Pre-Hearing Briefs submitted by ATC, Gearing, and Geo-Systems for arguments, legal authority, claims, and defenses; prepare outline and summary of issues raised in each Pre-Hearing Brief in advance of arbitration hearing; conduct legal research relating to delay damages and proof of damages for negligence claim	5.90	\$350.00	\$2,065.00
Service	11/13/2024	NMT: Master Exhibit list, Arbitration Prep	9.50	\$175.00	\$1,662.50
Service	11/13/2024	ERL: Confer with counsel for Civil Engineering of Columbia regarding conducting witness conference with Mr. Rabon	0.60	\$450.00	\$270.00
Service	11/14/2024	NMT: Complete Master exhibit lists and exhibits	7.50	\$175.00	\$1,312.50
Service	11/14/2024	ERL: Develop and confirm schedule and sequence of NKD's witnesses	1.50	\$450.00	\$675.00
Service	11/14/2024	ERL: Confer with witness sewer/utility witness David Craps	0.60	\$450.00	\$270.00
Service	11/14/2024	ERL: Analysis of testimony of Steven Ackerman, PE	0.70	\$450.00	\$315.00
Service	11/14/2024	MAS: Prepare direct examination outlines for Chad Bruorton, Richard Young, and Stephen Staley; review deposition testimony of each witness in connection with anticipated direct examination testimony	8.60	\$350.00	\$3,010.00
Service	11/15/2024	ERL: Conduct Preliminary Hearing with Arbitration Panel	0.80	\$450.00	\$360.00
Service	11/15/2024	ERL: Prepare for conference with Mr. Rabon and Mr. Pierce; conduct witness conference with Engineer of Record Josh Rabon	0.60	\$450.00	\$270.00
Service	11/15/2024	ERL: Prepare for conference with Expert witnesses Chad Bruorton and Steve Moore' conduct witness conference with Mr. Haslinger	1.70	\$450.00	\$765.00

Service	11/15/2024	ERL: Prepare direct examination outlines for NKD witnesses	2.30	\$450.00	\$1,035.00
Service	11/15/2024	ERL: Confer with counsel for ATC regarding sequence of proceeding, liquidated damages, and settlement status	0.60	\$450.00	\$270.00
Service	11/15/2024	ERL: Prepare and finalize exhibit list	0.50	\$450.00	\$225.00
Service	11/15/2024	MAS: Continue drafting direct examination outline for Chad Bruorton; prepare direct examination outlines for Scott Moore; review deposition testimony of each witness in connection with anticipated direct examination testimony	4.20	\$350.00	\$1,470.00
Service	11/15/2024	NMT: Trial prep	6.00	\$175.00	\$1,050.00
Service	11/16/2024	ERL: Prepare for arbitration; assemble examinations and opening statement; hearing strategy; review of expert reports and depositions	4.90	\$450.00	\$2,205.00
Service	11/17/2024	ERL: Prepare for arbitration; conferences with Mr. Haslinger; prepare direct and cross examination outlines; prepare demonstratives; finalize damage summaries; review exhibits and evidence; prepare opening statement and visual presentations	11.80	\$450.00	\$5,310.00
Service	11/17/2024	MAS: Prepare direct examination outlines for Karl Haslinger and Stephen Moore; review joint exhibits and incorporate references to joint exhibits into direct examination outlines; conduct legal research relating to liquidated damages	8.10	\$350.00	\$2,835.00
Service	11/17/2024	NMT: Trial Prep	1.00	\$175.00	\$175.00
Service	11/18/2024	SGH: develop chart of interest payments by NKD to Ameris Bank from August 2019 to May 2021	0.50	\$300.00	\$150.00
Service	11/18/2024	JTP: Loading and organizing all relevant materials into Trialpad on iPad for Ellis' use at Arbitration	2.00	\$375.00	\$750.00
Service	11/18/2024	NMT: Trial Prep	3.10	\$175.00	\$542.50
Service	11/18/2024	ERL: Prepare for arbitration; travel to Columbia; confer with Mr. Haslinger	12.50	\$450.00	\$5,625.00
Service	11/18/2024	MAS: Prepare Master Exhibit List Index with description of relevant information contained in Arbitration Exhibits 1 - 190; review Contract Documents relating to additional obligations and available remedies for breach; continue drafting brief relating to liquidated damages as non-exclusive remedy; review transcript of deposition of Nick Leventis and draft NKD's counter-designation of deposition testimony; conduct legal research of South Carolina law relating to damages recoverable for negligence not arising	8.30	\$350.00	\$2,905.00

out of a contractual obligation					
Service	11/19/2024	ERL: Prepare for and conduct first day of arbitration; prepare for second day of arbitration	15.50	\$450.00	\$6,975.00
Service	11/20/2024	ERL: Prepare for second day of arbitration; conduct second day of arbitration; direct and redirect examinations of Josh Rabon, Richard Young, David Craps, Steve Moore; prepare for third day of arbitration	16.80	\$450.00	\$7,560.00
Service	11/21/2024	ERL: Conduct Day 3 of Arbitration; examination of Scott Moore, Steven Ackerman, Mark Rhodes, and Chris Coogler	15.70	\$450.00	\$7,065.00
Service	11/21/2024	MAS: Prepare NKD's designation of testimony from the deposition of Stephen Staley; review Pre-Hearing Brief for references to relevant portions of Mr. Staley's deposition to be designated; draft email correspondence to counsel of record relating to NKD's Designation	0.50	\$350.00	\$175.00
Service	11/21/2024	NMT: Review document production and emails for August 2, 2021 letter to ATC	1.00	\$175.00	\$175.00
Service	11/22/2024	ERL: Prepare for fourth day of arbitration; conduct cross examination of John Henderson, cross examination of Bob Jennings, cross examination of Joe Smith, and rebuttal testimony of Mr Haslinger; complete hearing and return to Charleston	11.50	\$450.00	\$5,175.00
Service	11/25/2024	Develop outline for argument on liquidated damages after abandonment; analysis of South Carolina, Fourth Circuit, and related federal case law regarding same	3.70	\$300.00	\$1,110.00
Service	11/25/2024	NMT: Create exhibit of deposition designations of Steven Staley; Emails and telephone calls with court reporter and Celeste at Parker Poe regarding exhibits and transcript; create sharefile for court reporter including new exhibits introduced at trial; emails with Hotel to collect all invoices and receipts; draft memo/email to Alden Stair dividing expenses between parties	3.10	\$175.00	\$542.50
Service	11/25/2024	ERL: Conduct Post-Hearing Conference with Arbitration Panel and opposing counsel	0.90	\$450.00	\$405.00
Service	11/25/2024	ERL: Confer with Mr. Haslinger regarding status and strategy	0.40	\$450.00	\$180.00
Service	11/26/2024	NMT: Create sharefile of admitted exhibits	0.90	\$175.00	\$157.50
Service	11/26/2024	ERL: Provide updates to Ms. Mergo, Ms. Leventis, and Mr. Haslinger; analysis and strategy for post-hearing briefs	0.70	\$450.00	\$315.00

Service	11/26/2024	ERL: Review and assemble deposition designations for Stephen Staley deposition; circulate and confirm with opposing counsel	1.20	\$450.00	\$540.00
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Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	11/04/2024	Veritext, LLC Invoice No. 7842090: deposition/transcript of James Scott Moore	1.00	\$805.45	\$805.45
Expense	11/04/2024	Veritext, LLC Invoice No. 7840689: 30(b)(6) deposition/transcript of NKD (Karl Haslinger)	1.00	\$1,144.23	\$1,144.23
Expense	11/22/2024	Final Invoice from Hilton Hotel Columbia Center: Conference Room 1 Rental (\$1,944.00 total) Client paid \$3,500 estimated; Refund \$1,556.00	1.00	-\$1,556.00	-\$1,556.00
Expense	11/22/2024	Final Invoice from Hilton Hotel Columbia Center: Conference Room 2 Rental (\$1,944.00 total) Client paid \$3,500 estimated; Refund \$1,556.00	1.00	-\$1,556.00	-\$1,556.00
Expense	11/22/2024	Final Invoice from Hilton Hotel Columbia Center: Guest Room 1 Ellis Lesemann (\$1,353.96 total) Client paid \$1,600 estimated; Refund \$246.04	1.00	-\$246.04	-\$246.04
Expense	11/22/2024	Final Invoice from Hilton Hotel Columbia Center: Guest Room 2 Ann Cunniffe (unused) Client paid \$1,600 estimated; Refund \$1,600	1.00	-\$1,600.00	-\$1,600.00
Expense	11/23/2024	Food/Beverage Receipts from Ruth's Chris Steakhouse during Arbitration: \$1,541.29 total (1/4 split between parties)	1.00	\$385.32	\$385.32
Expense	11/26/2024	Applied Building Sciences Invoice No. 900.22004-10: Steve Moore arbitration preparation and arbitration testimony	1.00	\$13,675.32	\$13,675.32

Total	\$106,374.70
Payment (11/27/2024)	-\$10,007.50
Payment (12/02/2024)	-\$42,271.00
Payment (12/03/2024)	-\$53,107.30
Balance Owing	\$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
5998	11/26/2024	\$106,374.78	\$106,374.78	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Lesemann & Associates LLC

418 King Street, Suite 301
 Charleston, South Carolina (SC) 29403
 (843) 724-5155

INVOICE

Invoice # 6052
 Date: 01/13/2025
 Due Upon Receipt

NKD, Inc.
 100 Hagen Court
 Lexington, SC 29072

2204.001**NKD, Inc. - Contract Dispute with ATC Site Construction, LLC****Services**

Type	Date	Description	Quantity	Rate	Total
Service	11/29/2024	ERL: Legal research of issues raised by Arbitration Panel for treatment in Post-Hearing Brief	1.50	\$450.00	\$675.00
Service	12/03/2024	NMT: Scan exhibit 200 and update master exhibit file link; email to court reporter regarding exhibits and transcript for post trial deadlines	0.30	\$175.00	\$52.50
Service	12/03/2024	SGH: begin draft of post-hearing brief, including introduction, witnesses, and outline of argument; legal research on liquidated damages provisions within contracts; confer with Mrs. Stewart on strategy for brief	3.30	\$300.00	\$990.00
Service	12/04/2024	NMT: Emails with Garber Court reporting regarding transcripts; download and prepare transcripts; download and review exhibits; telephone calls with Paul Greathouse at Garber court reporting regarding logistics on transcripts, exhibits, and invoicing and correcting transcripts; pull correct exhibits and compare with transcripts; summarize 3 witness testimonies	4.50	\$175.00	\$787.50
Service	12/04/2024	SGH: analysis of South Carolina and fourth circuit case law regarding liquidated damages, prejudgment interest, and reasonableness of same; further develop outline of argument in post-hearing brief, including parenthetical citations to identified case law	3.00	\$300.00	\$900.00
Service	12/05/2024	ERL: Review and revise Release of Gearig in exchange for \$150,000 payment	1.80	\$450.00	\$810.00
Service	12/05/2024	NMT: Continue review of all exhibits in transcript	2.80	\$175.00	\$490.00

		and send corrections to court reporter			
Service	12/05/2024	SGH: analysis of case law in other jurisdictions on prejudgment interest on liquidated damage amount; review of arbitration hearing transcripts in order to identify testimony pertaining to liquidated damages, reasonable costs, delay and deficiency, etc; review of full testimony of John Henderson	5.40	\$300.00	\$1,620.00
Service	12/05/2024	MAS: Continue drafting NKD's Post-Hearing Brief; review relevant provisions of Contract and Contract Documents relating to additional obligations and available remedies	1.50	\$350.00	\$525.00
Service	12/06/2024	MAS: Continue drafting NKD's Post-Hearing Brief	0.80	\$350.00	\$280.00
Service	12/09/2024	MAS: Continue drafting NKD's post-hearing brief; conduct legal research of South Carolina law relating to calculation of liquidated damages and relating to proof of proximate cause element of negligence claim	2.70	\$350.00	\$945.00
Service	12/09/2024	NMT: Receive and download corrected transcripts and review and correct all exhibits and update sharefile regarding the same; emails to court reporter regarding updates and corrections needed	2.80	\$175.00	\$490.00
Service	12/10/2024	NMT: Email to all parties regarding deadlines for post trial briefs	0.20	\$175.00	\$35.00
Service	12/10/2024	MAS: Continue drafting Post-Hearing Brief; begin review of relevant portions of hearing transcript; conduct legal research of South Carolina law and other jurisdictions relating to the issues of recovery of actual damages as separate and distinct from delay damages, and arguments relating to allocation of delay damages	6.10	\$350.00	\$2,135.00
Service	12/10/2024	NMT: Review Nick Leventis deposition designations from all parties and highlight in pdf all designations; prepare and edits to admitted exhibit folder	2.30	\$175.00	\$402.50
Service	12/11/2024	NMT: Complete redactions on Nick Leventis transcript	0.50	\$175.00	\$87.50
Service	12/11/2024	MAS: Continue review of arbitration hearing transcript relating to issues identified by the panel for inclusion in post-hearing submission	0.60	\$350.00	\$210.00
Service	12/12/2024	NMT: Make corrections to Nick Leventis' deposition excerpts in accordance with Robert Osborne's instructions; circulate revisions via email to all parties; receive invoices for transcripts and telephone calls to Garber Court Reporting regarding questions pertaining to invoice and lack	1.80	\$175.00	\$315.00

		of exhibit linking; review transcripts and point out examples of typos to Garber for correcting			
Service	12/12/2024	MAS: Review relevant portions of hearing transcript and exhibits relating to calculation of prejudgment interest and duration of liquidated damages in connection with Post-Hearing Brief	1.10	\$350.00	\$385.00
Service	12/13/2024	NMT: Email to Russell Jeter and Trippet Boineau requesting approval of deposition excerpts and exhibit file	0.10	\$175.00	\$17.50
Service	12/13/2024	MAS: Conduct legal research of South Carolina law and secondary sources relating to establishing liability for delay and circumstances requiring apportionment; continue drafting Post-Hearing Brief	4.90	\$350.00	\$1,715.00
Service	12/16/2024	MAS: Continue drafting Post-Hearing Brief and review of arbitration hearing transcript; continue legal research relating to issues addressed by Panel to be included in post-hearing submission, including duration of liquidated damages and calculation of damages	7.10	\$350.00	\$2,485.00
Service	12/17/2024	MAS: Continue drafting Post-Hearing Brief and review of arbitration hearing transcript; conduct legal research of the Mechanic's Lien statute relating to recovery of attorney's fees and costs by prevailing party; continue legal research relating to issues addressed by Panel to be included in post-hearing submission	3.40	\$350.00	\$1,190.00
Service	12/18/2024	MAS: Continue drafting Post-Hearing Brief; review hearing transcript relating to damages	5.90	\$350.00	\$2,065.00
Service	12/19/2024	ERL: Tasks relating to settlement with Gearig Civilworks	0.30	\$450.00	\$135.00
Service	12/19/2024	MAS: Continue drafting Post-Hearing Brief; legal research relating to proximate cause and set off	4.00	\$350.00	\$1,400.00
Service	12/22/2024	MAS: Continue drafting Post-Hearing Brief; continue legal research relating to project abandonment and retainage issue	4.30	\$350.00	\$1,505.00
Service	12/23/2024	MAS: Continue drafting Post-Hearing Brief; incorporate references to hearing transcript and exhibits; conduct legal research relating to interest calculation and damages	7.50	\$350.00	\$2,625.00
Service	12/23/2024	ERL: Revise and finalize Post-Hearing Brief	10.50	\$450.00	\$4,725.00

Expenses

Type	Date	Description	Quantity	Rate	Total
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Expense	12/05/2024	S&ME, Inc. Invoice No. 1260011: Expert witness Chad Bruorton's arbitration preparation and attendance	1.00	\$3,819.13	\$3,819.13
Expense	12/11/2024	Garber Reporting Service Invoice No. 36032: original transcript of arbitration hearing (Day 1: 11/19/24) (\$6,321.68 total; 1/4 split between 4 parties)	1.00	\$1,580.42	\$1,580.42
Expense	12/11/2024	Garber Reporting Service Invoice No. 36033: original transcript of arbitration hearing (Day 2: 11/20/24) (\$6,059.02 total; 1/3 split between 3 parties)	1.00	\$2,019.68	\$2,019.68
Expense	12/11/2024	Garber Reporting Service Invoice No. 36034: original transcript of arbitration hearing (Day 3: 11/21/24) (\$6,625.97 total; 1/3 split between 3 parties)	1.00	\$2,208.66	\$2,208.66
Expense	12/11/2024	Garber Reporting Service Invoice No. 36035: original transcript of arbitration hearing (Day 4: 11/22/24) (\$5,642.45 total; 1/3 split between 3 parties)	1.00	\$1,880.82	\$1,880.82
				Total	\$41,506.21
				Payment (01/14/2025)	-\$20,753.10
				Payment (01/27/2025)	-\$20,753.11
				Balance Owing	\$0.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
6052	01/13/2025	\$41,506.21	\$41,506.21	\$0.00

Please make all amounts payable to:

Lesemann & Associates LLC, 418 King Street, Suite 301, Charleston, SC, 29403

Exhibit C

Affidavit of Ellis R. Lesemann, Esq.

**BEFORE THE ARBITRATION PANEL
IN THE MATTER OF**

ATC SITE CONSTRUCTION, LLC,
Claimant,
vs.
NKD, INC.,
Respondent and Counterclaimant,

**AFFIDAVIT OF
ELLIS R. LESEMAN, ESQUIRE**

PERSONALLY APPEARED BEFORE ME, Ellis R. Lesemann, Esquire, who being first
duly sworn, deposes and states as follows:

1. I am a litigation attorney practicing with the law firm Lesemann & Associates LLC, in Charleston, South Carolina. I was admitted to the South Carolina Bar in 1998 and have handled business disputes and real estate litigation for more than 26 years.

2. Since February of 2020, I have served as lead counsel for NKD, Inc. (“NKD”) in the above-captioned matter. This matter was initiated by ATC Site Construction, LLC (“ATC”), who unsuccessfully attempted to obtain a mechanics’ lien and foreclose upon NKD’s development project known as “River Shoals” located in Richland County, South Carolina.

3. The matter was submitted to arbitration by the consent of the parties. On January 22, 2025, the Arbitration Panel issued an Interim Award. This Affidavit is submitted in support of NKD's Petition for Attorney's Fees and Costs as the prevailing party in this proceeding.

4. As a result of the Interim Award, ATC has no entitlement to a mechanics' lien against NKD and its property. The reasons for this are the Panel's determinations that: (i) ATC breached the construction contract with NKD; (ii) NKD incurred \$1,261,787.83 in actual damages due to the defective work performed by ATC and ATC's subcontractors, including Gearig

Civilworks, LLC; (iii) the conduct of ATC was confirmed to be the proximate cause of NKD's damages; (iv) ATC did not undertake to make any repairs, causing NKD to have to fund the repairs; and (v) ATC "did not progress the work in a diligent manner," resulting in a liquidated damages award of \$365,000.00.

5. Throughout the case, ATC denied any liability to NKD for any damages and sought to place River Shoals into foreclosure by seeking a mechanic's lien in the amount of \$884,473.84. NKD did not pay ATC this amount because ATC owed NKD a significantly higher amount of actual damages and liquidated damages. ATC's own expert admitted that ATC's work was defective and required repair. The Arbitration Panel found that ATC did not perform the work in a diligent manner and was liable for liquidated damages, albeit in a reduced amount.

6. It appears undisputed that ATC, as a result of the Interim Award, does not have "some entitlement to the mechanic's lien." From my review of the Interim Award, NKD received a "favorable decision" on liability. The Arbitration Panel found ATC liable for damages that far exceed the amount ATC claimed to be owed. Also, NKD placed a cash bond into court exceeding \$1.1m so that ATC's claim of lien would not prevent the sale of lots after NKD self-performed through other contractors to bring the project to substantial completion.

7. In preparing its petition for fees and expenses, it is my understanding that NKD is not entitled to seek an absolute award of all fees and expenses incurred, but rather just those incurred in successfully defending against the lien. Under the circumstances, however, NKD's defense was the same as its counterclaim: ATC's work was so faulty and so delayed that ATC owed NKD money, not the other way around. As a result, the amount of fees and expenses that were incurred in successfully defending against the lien were substantial.

SUMMARY OF FEES AND EXPENSES REQUESTED

8. Following a review of all time entries and expenses, the amount of fees and expenses incurred in successfully defending against the lien that are requested in a supplemental award from the Panel are as follows:

FEES TO DEFEND MECHANICS' LIEN	\$224,456.50
EXPENSES TO DEFEND MECHANICS' LIEN	\$93,085.31
TOTAL FEES AND EXPENSES	\$317,541.81

A complete description and itemization of each time entry and expense being requested is set forth within the Itemization of Fees and Expenses that is attached as Exhibit A to NKD's Petition.

9. The amount requested is 43% less than what NKD actually incurred. Specifically, NKD has paid Lesemann & Associates \$431,640.00 in attorney's fees and has incurred and paid \$123,670.41 in expenses, for a total of \$553,310.41. The actual amounts of fees and expenses incurred are documented in the invoices sent to NKD, all of which were paid and are attached to NKD's Petition as Exhibit B.

10. This reduction resulted from me conducting a line-by-line review of every time entry and every expense incurred. The remaining entries are those that were incurred in defending against the mechanics' lien, which as noted above was fully intertwined with NKD's proof of actual damages and liquidated damages as this was NKD's defense. Each time entry and expense has also been reviewed and, whenever applicable, removed or adjusted to confirm relevance, reasonableness, accuracy, and lack of duplication.

11. A significant number of deletions, reductions or adjustments have been made to bring the amount requested in line with the provisions of S.C. Code 29-5-10, including the following:

- The hourly rates for each timekeeper have been kept at their original amount, although the hourly rates charged to NKD increased during the several years that the matter was pending;
- Entries for the first mediation and other pre-suit tasks that were undertaken before the lien claim was filed have been removed;
- The \$7,500 expense for the attempted neutral expert who did not conduct any testing and did not communicate with anyone at Richland County has been removed;
- All travel time to/from Columbia and all mileage expenses have been removed, so that the rates and expenses align with what would be charged by similar legal counsel located in the Midlands;
- The time entries and expenses relating to NKD's affirmative claims against Gearig Civilworks and Geo-Systems have been removed, as these were not specifically pursued as part of the defense of the lien claim;
- The fees and expenses relating to discovery requests, motions to dismiss, and motions for summary judgment generated by or relating to Gearig Civilworks or Geo-Systems have been removed, as well as entries relating to the settlement with Gearig;
- The fees and expenses incurred to ensure that ATC did not become "judgment proof" following its asset sale have been removed;
- Expenses incurred for consultation with NKD's CPA (Barb & Co.), who did not testify, relating to damages, interest expense, and related matters have been removed;
- All time entries for timekeepers at Lesemann & Associates with lesser or occasional involvement, including Taylor Powell, Grace Heaton, and Stacy Villarose, have been removed;
- The request for fees and expenses stops at the point that the Interim Award was received and does not include any fees relating to the Motion to Correct the Interim Award or NKD's Fee Petition; and
- Numerous entries were reduced or were removed if they did not tie to the core issue of proving that ATC caused damages in excess of what ATC claimed to be owed and, therefore, was not entitled to a mechanics' lien.

LIKELIHOOD OF PRECLUSION OF OTHER EMPLOYMENT

12. Our firm was not required to turn down other cases as a result of accepting this case. However, the time demands and constraints presented by this case leading up to the arbitration hearing were significant and required that meaningful sacrifices be made.

AMOUNT INVOLVED AND RESULTS OBTAINED

13. The case involved a significant amount of actual damages and liquidated damages, as well as substantial project risk with the lender and a potential foreclosure and auction of a substantial property in which millions of dollars had been invested. The Panel found in favor of NKD and ordered ATC to pay repair damages, liquidated damages, and pre-judgment interest, which prevented any right on the part of ATC to enforce a lien or foreclose on the project. ATC is not entitled to receive any money, so there is no lien.

14. The total amount awarded to NKD, before offsets, was \$1,624,403.88. ATC denied that a penny of damages were due to NKD and refused to repair work that every expert witness in this case acknowledged was defective. The results obtained from the fees and expenses incurred were positive and NKD: (i) took over the project when ATC abandoned the job in a defective, incomplete and delayed state; (ii) avoided a loan default with its lender by refinancing the construction loan; (iii) corrected ATC's defective work; (iv) obtained PTOs and achieved substantial completion by paying other contractors out of pocket after ATC refused to conduct any repairs; (v) sold lots to Stanley Martin and avoided a complete failure of the project; (vi) proved and received an interim award in the gross amount of \$1,624,403.88, minus offsets but subject to correction for potential additional amounts due; and (vii) successfully defended against ATC obtaining and enforcing a mechanics' lien.

FEE CUSTOMARILY CHARGED FOR SIMILAR LEGAL SERVICES

15. The hourly rates and number of hours of each timekeeper who has billed any time on this matter are set forth in the itemization attached to NKD's Petition. Although the rates charged to the client were increased over the course of the litigation, the hourly rates requested in the Petition are kept at their original amounts with no increases. I believe these hourly rates to be reasonable and comparable to the rates charged by other attorneys with similar experience for similar legal services in the Midlands area and in Richland County, where I have handled several matters in litigation over the course of my legal career. I have also worked for different law firms who have offices in Columbia and know that these firms charge higher rates for less experienced attorneys that are requested in NKD's Petition.

NOVELTY AND DIFFICULTY OF THE QUESTIONS INVOLVED

16. The case was complex, involving claims, counterclaims, cross claims, and third-party claims among multiple parties in connection with the installation of the roadways and utility systems at the River Shoals subdivision in Richland County. Although the issues are not necessarily novel, they do require knowledge, skill and experience to litigate them effectively.

17. The case was document intensive. The parties exchanged over 8,300 separate documents during discovery, all of which were reviewed. A substantial amount of associate and paralegal billable time was spent on tasks relating to document production, including the review of documents produced by both parties and third parties in connection with this proceeding and the culling of the body of the documents down to the 202 exhibits that were jointly marked by the parties and entered as stipulated exhibits at the arbitration hearing.

18. This case involved parties, witnesses, and expert witnesses who were geographically dispersed. There were depositions of fifteen (15) witnesses, which required

extensive preparation, coordination amongst the parties and witnesses, and travel time. Each of these witnesses had knowledge and testimony that spoke to the issue of whether ATC was entitled to a mechanics' lien. As a result, the time incurred for each deposition should be recoverable by NKD.

SKILL REQUISITE TO PERFORM THE SERVICE PROPERLY

19. This proceeding involved a four-day arbitration hearing during which the parties presented fifteen (15) live witnesses and submitted deposition designations for two additional witnesses. Skill is required to handle that number of witnesses, including one witness who had never been referenced or disclosed, in a short time frame. Additionally, this case required skill to due to technical nature of the standards and specifications applicable to the correct installation of the roadways and utility systems that were not followed.

TIME DEVOTED TO PERFORMING LEGAL SERVICES

20. I have been responsible for directing the representation of NKD in this proceeding from the outset of the litigation. During the most intensive preparations leading up to the arbitration hearing, I delegated specific tasks to the additional timekeepers who provided associate and paralegal support.

21. The associate support was focused in the areas of document review, deposition preparation, legal research, and legal writing. I conducted most of the depositions and all of the examinations of the witnesses at the arbitration hearing. I was also necessarily involved in document review, legal research and legal writing due to the breadth and complexity of the issues involved. Paralegal support was provided for areas of document organization and logistical coordination, as well as providing assistance in preparing for the 4-day arbitration hearing.

22. The case was litigated vigorously by both sides. The amount in controversy, whether viewed solely in terms of the NKD's claim for breach of contract, on ATC's mechanic's lien claim, or as an aggregate, was significant and material.

TIME LIMITATIONS IMPOSED BY THE CLIENT OR CIRCUMSTANCES

23. There were no time limitations imposed by the client or the circumstances. The parties were allowed modifications to the scheduling order whenever requested.

NATURE AND LENGTH OF RELATIONSHIP WITH THE CLIENT

24. I have worked continually with Mr. Haslinger since 2011 and have handled eight litigation matters or disputes for his entities and his family. This includes a construction matter relating to defective brick that was used in the construction of his personal residence, which was favorably settled.

EXPERIENCE, REPUTATION AND ABILITY OF COUNSEL

25. For the past 26 years, I have represented clients in contract disputes. In 1994, I received my undergraduate degree from the South Carolina Honors College at the University of South Carolina after spending two years in the Honors Program at the University of Michigan at Ann Arbor. Thereafter, in 1998, I completed the four-year joint degree program in Law and International Business Studies (JD/IMBA) at the University of South Carolina and was admitted to the South Carolina bar in November 1998.

26. Over my career, I have worked with five law firms: (1) as an associate with Haynsworth Baldwin Johnson & Greaves LLC from August 1998 until May 2000; (2) as an associate with Nelson Mullins Riley & Scarborough LLP from May 2000 until January 2005; (3) as an associate and then as a partner with Parker Poe Adams & Bernstein LLP from January 2005 until October 2011; (4) as a partner with Harvey & Vallini, LLC from October 2011 until January

2014; and (5) as the owner of Lesemann & Associates LLC (formerly Lesemann & Barks LLC) from January 2014 until the present.

27. I have worked extensively in business litigation and real estate disputes for 27 years. During my practice, I have been listed or recognized by Chambers USA, Best Lawyers in America, Super Lawyers, the Multi-Million Dollar Advocates Forum, the Charleston Business Magazine, the Greenville Business Journal, and have been rated AV by Martindale Hubbell.

28. Two other attorneys working under my direct supervision have also been involved in the representation of NKD: (i) Michelle A. Stewart; and (ii) Benjamin H. Joyce.

29. Michelle Stewart graduated from the College of Charleston in 2008 and obtained her law degree from the Charleston School of Law in 2012. Ms. Stewart has twelve years of legal experience in the areas of civil litigation, business disputes, and appeals, as well as disputes with state and local governments. Ms. Stewart also handles a wide variety of transactional matters. She joined Lesemann & Associates LLC in March 2014.

30. Benjamin Joyce graduated from the University of Georgia and obtained his law degree from the Charleston School of Law in 2012. Prior to entering private practice, he served as a law clerk to South Carolina Circuit Court Judge George C. James, Jr., who now serves on the Supreme Court of South Carolina. Mr. Joyce previously worked with Hood Law, the McNair Law Firm, and Burr Forman LLP. He has experience in civil matters involving commercial contracts, business torts, real property and land use disputes, product liability, premises liability, and general negligence.

31. Additionally, two paralegals working under my direct supervision have been involved in tasks directly related to the litigation of this matter: (i) Nina Thomas; and (ii) Ann Cunniffe.

32. Ms. Thomas has an undergraduate degree from the University of South Carolina and obtained her Core Registered Paralegal certification from the National Federation of Paralegals in 2011. She has extensive paralegal experience, having worked for a large regional insurance defense firm, a boutique personal injury firm, prominent criminal defense firms, and a regional firm handling public finance, governmental counsel, and construction litigation.

33. Ann Cunniffe graduated from the University of South Carolina School of Law in 2003. She served as a law clerk to circuit court judge, the Honorable Judge Howard P. King, in Sumter, South Carolina. Ms. Cunniffe has legal experience in the areas of civil litigation, personal injury, and disputes with state and local governments. Ann is currently a licensed and practicing attorney after returning to active status. When we hired her away from Burr Forman, she had been working as a paralegal while also running an event business. For purposes of this fee petition, we have kept all of Ann's time at a paralegal rate, even though she is now a practicing attorney.

WHETHER FEE IS FIXED OR CONTINGENT

34. The fee arrangement with NKD is not contingent or fixed but is based upon the time devoted to the matter charged at hourly rates plus expenses.

CONCLUSION

In successful defense of the mechanic's lien claim, which was accomplished by proving damages exceeding the amount claimed by ATC, NKD has incurred \$224,456.50 in attorney's fees, along with \$93,085.31 in expenses to prevail in the defense of this action, for a total of \$317,541.81. As noted above, this amount is 43% less than the full amounts incurred.

[SIGNATURE PAGE TO FOLLOW]

FURTHER AFFIANT SAYETH NOT.

Ellis R. Lesemann

Ellis R. Lesemann, Esquire

SWORN to and subscribed before me
this 28th day of February, 2025

J. Grace Benko

Notary Public for the State of South Carolina

My commission expires: 8/10/2032

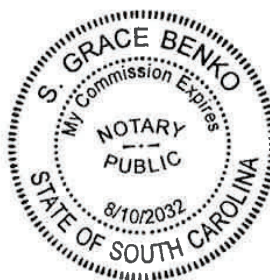


Exhibit D

Affidavit of Bonum Sams Wilson, III, Esq.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
ATC Site Construction, LLC,)
Claimant,)
vs.)
NKD, Inc.,)
Respondent, Counterclaimant,)
And Third-Party Respondent.)
_____)
ATC Site Construction, LLC,)
Third-Party Claimant,)
Vs.)
Geo-Systems Design & Testing, Inc., Gearig)
Civil Works, LLC,)
Third-Party Respondents)
_____)

**AFFIDAVIT OF
BONUM S. WILSON, III**

PERSONALLY appeared before me the below undersigned, who being duly sworn,
deposes and says:

1. I reside at 1055 Bulow Point Rd, Johns Island, SC 25455.
2. Since 1998 I have owned and operated Wilson, Heyward & Reeser, a small law firm engaged in primarily construction litigation, personal injury defense and mediation, typically employing 3-4 attorneys and 1.5-2 paralegals. Prior to 1998, I was a member of Wise & Cole, then Pratt, Thomas, Pierce, Epting & Walker since 1984, and am a member of the South Carolina bar practicing in all state and federal courts, and have held an AV preeminent rating for many years.

BW

3. Fee arrangements over the past 40 years of my practice have been varied; hourly for insurance/institutions in long standing relationships, hourly for individual and entities on a single case or series of cases, fees contingent upon recovery, and blended contingency upon prevailing with lower hourly rates.

4. I have mediated nearly 3,000 cases, a significant number of which involved legal fees either pursuant to state law or federal statutes and indemnity claims of various types, and mediated disputes contesting legal fees themselves. I have litigated on rare occasions disputes regarding legal fee recovery.

5. I am familiar with Lesemann & Associates professionally and consider Ellis R. Lesemann preeminent in the areas of his practice, both in reputation and experience. The experience, reputation, and ability of the attorneys who represented NKD support the reasonableness of the fees and expenses that are requested in the petition.

6. I am aware of the Lesemann & Associates hourly rates and have awareness of other firm's hourly rates serving as privately retained counsel in such matters, specifically including construction defect and payment disputes. I have examined the record of time spent, rates, and entries in the matter at hand, both in terms of what was actually charged and paid by NKD as well as the reduced amount that NKD seeks in connection with successfully defending against the mechanics' lien brought by ATC.

7. I have reviewed the numerous pleadings regarding the action, the nature and extent of the claims, counterclaims and crossclaims made, and the outcome achieved in settlement and the interim arbitration order of January 21, 2025. From my review of the award, it is my understanding that ATC was not successful in enforcing its lien because the amounts owed to NKD

for actual damages and liquidated damages exceed the amounts claimed by ATC. On that basis, ATC has no lien and owes a sizeable award to NKD.

8. I have been made aware of the long-standing relationship between counsel and client including the letter of retention and amendments to the hourly fee terms since retention by NKD, Inc. five years ago. I am aware that Mr. Lesemann has represented at least one of the principals of NKD (Karl Haslinger) on other matters, including construction- related matters. I have examined the detailed time entries of Lesemann & Associates in prosecution and defense of this matter including all rates charged by counsel and paralegals. The fee was not fixed or contingent, but was charged and paid on an hourly basis plus expenses.

9. The original February 20, 2020 hourly rate of \$350/\$250/\$125 for Mr. Lesemann/junior counsel/paralegals was well within or below the norms of the time, including rates charged in Richland County and the Midlands generally for such work. Junior counsel all had at least six years of experience. The time expended by Lesemann & Associates would appear to be significant in a law firm of its relative size, and the challenges of both the field work done through COVID-19, and providing the advice necessary to achieve a positive outcome in the light of the status of the project when litigation commenced.

10. I have reviewed the third-party costs for experts in this matter and their reports and bills which appear to be conservative in time, charges, and relevancy to the underlying action, and have retained some of those identical experts in our practice both past and present. Those fees/costs are typical in the construction litigation industry and even were essential in light of the apparent status of the construction project at the time prior to completion when the dispute manifested itself. The opinions of the experts appear to have been a necessary and appropriate component of proving that ATC was not entitled to obtain and enforce a mechanics' lien due to

the need to correct the underlying work as well as the delays encountered. I note that ATC's expert conceded that the work did not meet the standards and specifications of the contract.

11. While I have not reviewed the 15 depositions taken, the number does not seem duplicative or extraordinary in a case of this size and type.

12. The claims, counterclaims and crossclaims, (including 4 amendments,) lien, bond and summary judgement motions reflect the complex nature of the dispute amongst the parties, and reflects the need for highly competent and experienced counsel such as those all parties retained.

13. I have considered the approximate one million dollar claim of ATC and the pursuit of a minimum seven figure claim by NKD to determine if the total amount of legal fees and third-party expenses was justified in defense and pursuit of the claims against all parties.

14. I have reviewed an itemization of the fees and expenses being requested by NKD as well as Mr. Lesemann's affidavit in support of the Petition. It is noted that the hourly rates in the Petition were kept at their original levels, which underscores the reasonableness of the amounts. A review of these materials also indicates that NKD has made a significant reduction to the amount being requested in the Petition to what was part of the defense and defeat of the lien claim, which was premised upon the argument that pace and quality of the work performed by ATC resulted in more damages to NKD than what ATC claimed to be owed on its mechanics' lien claim. From review of Mr. Lesemann's affidavit in comparison to the invoices, I see that the Petition includes deductions made relating to fees attributable to affirmative claims against other parties (Geo-Systems and Gearig Civilworks) as well as discovery requests and motions practice that were specifically generated by those parties.

15. However, seeing that ATC sought to prove in the proceeding that it was Geo-Systems, and not ATC who was at fault for the defects in the roads, depositions and other tasks relating to these parties also become part of NKD's defense against the mechanics' lien, seeing that ATC was attempting to show that it had no fault and owed zero damages.

16. I am familiar with the factors set forth under Rule 1.5 of the South Carolina Rules of Professional Conduct relating to the reasonableness of an attorney's fee. Regarding the "time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly," I believe that the requested fee is reasonable as to these factors. The matter had a degree of complexity, as indicated by the number of fact witnesses, expert witnesses, and parties involved. While the issues were not novel, they were complex and require experience to litigate properly.

17. I do not see evidence that the acceptance of this case precluded other employment by Mr. Lesemann or his firm, but am aware that the matter required significant preparation and culminated in a week-long arbitration in which all tasks were handled by Mr. Lesemann. This leads me to conclude that NKD's legal counsel staffed the case efficiently and appropriately as other parties had multiple attorneys present and participating during the hearing and earlier depositions.

18. As noted above, I believe that the fees and expenses that are sought through NKD's position are similar or less than those customarily charged in the locality of the Midlands region for similar legal services. This is particularly true in light of the fact that NKD does not seek any increases in the hourly rates during the course of the multi-year proceedings.

19. The amount involved in the case were significant. The repair costs approximated \$1.3m and the Project did not reach substantial completion until several years after the substantial completion date. Also, NKD faced a significant level of project risk due to ATC's effort to enforce

a lien of more than \$800,000 while the project was not compliant with the road standards and the utilities were not functional. In this regard, the results obtained were beneficial, as NKD successfully defended against the lien, was able to achieve substantial completion and sell lots to Stanley Martin, recovered approximately 98% of the repair costs, and achieved an award of liquidated damages, which is rare, albeit in an amount that was less than what was requested.

20. In terms of the remaining factors, I am not aware of any time limitations imposed by the client or by the circumstances, other than the difficulties that were presented by the project losing traction during the COVID-19 pandemic. As noted above, I have personal knowledge that Mr. Lesemann has a longstanding professional relationship with the client that includes a variety of matters.

21. The net recovery of an award and settlement of approximately \$900,000 does, in my opinion, warrant spending and recovering \$317,541.81, as any failure to fully and properly defend NKD against what could have been more than 1-million-dollar award against NKD, as well as entitlement on the part of ATC to enforce a mechanics' lien and then foreclose on the entire project. NKD was successful in its defense of the mechanics' lien by proving that the damages caused by ATC were expected to be and were in fact materially larger than the amount ATC claimed to be owed. This appears to be the reason why NKD withheld payment, which was justified in light of the Interim Award.

22. NKD was successful in its defense against the mechanics' lien and achieved a sizeable award against ATC. The result of the proceeding based on the interim award by the arbitrators is that ATC has no entitlement to a mechanics' lien.

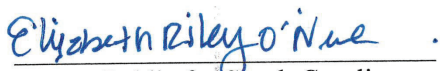
f2w

By: 
Bonum S. Wilson, III
P.O. Box 13177
Charleston, SC 29422

Charleston, South Carolina

Dated: February 28, 2025

SWORN to before me this 28th
Day of February, 2025


Notary Public for South Carolina


Printed Name

My Commission Expires: 

Exhibit E

Order Awarding Attorneys' Fees and Costs in Balfour Beatty Construction, LLC v. Library Associates, LLC, et al.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2019-CP-10-01108
Balfour Beatty Construction, LLC,	)	
Plaintiff,	)	
v.	)	ORDER AWARDING ATTORNEYS'
	)	FEES & COSTS
Library Associates, LLC; and Metropolitan	)	
Life, a New York Corporation	)	
Defendants,	)	
_____	)	
Library Associates, LLC,	)	
Third-Party Plaintiff,	)	
v.	)	
Lithko Contracting, LLC, <i>et al.</i>	)	
Third-Party Defendants.	)	
_____	)	

This matter came before the Court on Library Associates, LLC's Petition for Attorneys' Fees and Costs, filed November 6, 2023. In its Petition, Library provided William H. Bundy Jr.'s affidavit to support its claim for attorneys' fees and costs in the amount of \$2,026,278.55. Library also provided the affidavit of Marvin D. Infinger, Esquire to support the reasonableness of its claim to attorneys' fees. A hearing was held on April 2, 2024 at which time Mr. Infinger testified.

REASONABLENESS OF FEES AND COSTS

Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (1991) set forth the six-factor test to determine the award of attorneys' fees based upon: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Applying these factors to this case, I find:

1. This has been a very complex construction case which required protracted litigation. This matter involved multiple subcontractor claims and mechanics liens. This case was filed in 2019 and subsequently involved a five-week trial in the Fall of 2021.
2. Library's counsel devoted thousands of hours in its efforts to resolve this case.
3. Library's counsel of record, William H. Bundy, Jr. and Brent McDonald, maintain an excellent professional reputation in the South Carolina Bar.
4. The contingency of compensation factor is not relevant as Library's counsel was paid an hourly rate not conditioned upon the outcome of the case.
5. The outcome obtained by Library's counsel was a beneficial result for their client. The Order of October 6, 2023 awarded a judgment of \$3,320,329.00 in favor of Library Associates, LLC against Balfour Beatty Construction, LLC under the breach of contract and breach of contract accompanied by a fraudulent act causes of action. Significant to this court's determination of attorney fees, Library successfully defended against a Mechanic's Lien cause of action sought by Plaintiff Balfour Beatty Construction, LLC.
6. Mr. Bundy and Mr. McDonald's hourly rates of \$400 and \$350 are below the customary hourly rate charged for litigation of this nature and complexity and by attorneys of similar professional standing. As testified by Marvin D. Infinger, (who this court finds both highly credible and imminently qualified), a customary hourly rate for an attorney of Mr. Bundy's caliber is \$600 and \$450 for Mr. McDonald – a 50% increase above the billed hourly rate.

Based upon these findings, the court concludes Library Associates, as the prevailing party in the defense of the mechanic's lien case, is entitled to an award of attorney's fees. SC Code §15-27-10 (a).

REDUCTION OF FEES AND LODESTAR ENHANCEMENT

After the hearing, and despite its objection to Mr. Infinger's affidavit as untimely, Balfour Beatty submitted the Affidavit of Franklin Worrell, a certified financial forensic accountant and CPA. Mr. Worrell reviewed the invoices submitted by Library's counsel and placed the invoices into 5 Groups which he concluded led to a 74.5% overstatement in the amount of time expended in defending the mechanics lien claim. This court disagrees with his assessment.

In *Maybank v. BB&T Corporation*, 416 S.C. 541, 787 S.E.2d 498 (2016), the Supreme Court approved a twenty percent fee reduction after a showing of unrelated or unreasonable costs. This Court adopts the Supreme Court's ruling in *Maybank* and reduces Library Associates' award of attorneys' fees by thirty percent (30%). The court concludes a 30% reduction in fees is warranted based upon the fact multiple claims were presented and tried in this matter; however, the clear majority of time expended by the parties during the 5 week trial of this case was spent trying the Plaintiff's mechanics lien foreclosure action on which Defendant's prevailed.

Also in *Maybank*, the Supreme Court upheld a lodestar fee enhancement of fifty percent. While the facts in this case differ from *Maybank*, "a lodestar figure is designed to reflect the reasonable time and effort involved in litigating a case and is calculated by multiplying a reasonable hourly rate by the reasonable time expended." *Layman v. State*, 376 S.C. 434, 457, 658 S.E.2d 320, 332 (2008).

Upon review of the memorandum, affidavit and testimony of Marvin Infinger, this Court finds there exists good cause, considering the complex litigation and successful outcome achieved by Library's counsel, to award a lodestar fee enhancement of fifty percent to the rate of the attorneys' fees incurred. Accordingly, Mr. Bundy's hourly rate is hereby set at \$600 per hour and Mr. McDonald's at \$450 per hour.

ASSESSMENT OF ATTORNEY'S FEES AND COSTS

Library Associates' Petition for Attorneys' Fees was submitted on November 6, 2023 in the amount of \$2,026,278.55. Substantial other costs were included in its petition which ultimately sought over \$50 Million Dollars in damages.

After application of the thirty percent fee reduction to Library's requested amount of \$2,026,278, the court finds the sum of \$1,418,395 as the amount of attorney's fees. This sum is then subject to the lodestar fee enhancement of Fifty Percent, which this Court finds results in an award of \$2,127,592 in attorney's fees.

In addition, the court grants Library Associates' Petition for an award of Costs in the amount of \$655,197 which is the amount of costs submitted by Sam Hadley as Library's financial expert witness. Ms. Hadley's testimony was crucial to understanding the amounts of time and figures placed into the record and finds this cost to be reasonable and properly awarded in this action. See *Maybank*, supra. The remaining costs, the majority of which include loan costs both past and projected, are denied as consequential damages not allowed under the parties' contract.

Upon review of the memoranda, affidavits, and invoices submitted by Library Associates' counsel and in application of the *Glasscock* factors, and in consideration of the arguments, memoranda and affidavits submitted, this Court determines that an award of \$2,782,789 in attorneys' fees and costs is both reasonable and equitable to award Library Associates.

IT IS THEREFORE ORDERED that this Court hereby awards the sum of \$2,782,789.00 in attorneys' fees and costs to Library Associates and hereby issues its Form 4 Order in that amount as judgment on the attorney's fees and costs.¹

¹ Following the preparation of this order, the Court received a Supplemental Affidavit of Additional costs and fees from Kim Brown on behalf of Library Associates. The affidavit seeks an additional \$191,369.90 for costs incurred since submission of the attorney's fees and affidavit of November 6, 2023. The majority of these fees and costs were

IT IS SO ORDERED!

Mikell R. Scarborough
Master in Equity, Charleston County

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CASE # 2020-03091-S08

spent preparing for and attending the post-trial motions hearing held on April 2, 2024. The Court will not award these additional fees and costs at this time but reserves a decision on their award at a later time.



Charleston Common Pleas

Case Caption: Balfour Beatty Construction LLC VS Library Associates LLC ,
defendant, et al
Case Number: 2019CP1001108
Type: Order/Attorney Fees

So Ordered

s/Mikell R. Scarborough 3062

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ELECTRONICALLY FILED: 2024-04-12 11:23:09 PM CHARLESTON NC COMMON PLEAS SC CASE# 2019CP1001108

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
ATC SITE CONSTRUCTION, LLC,	)	Case No.: 2020-CP-40-03915
	)	
Plaintiff,	)	
	)	NKD, INC.’S REPLY REGARDING
vs.	)	PENDING MOTIONS
	)	
NKD, INC.,	)	
	)	
Defendant.	)	
	)	
	)	

Defendant NKD, Inc. (“NKD”) was the prevailing party on Plaintiff’s cause of action for foreclosure of mechanics’ lien. This is not subject to dispute. At the conclusion of the arbitration, Plaintiff ATC Site Construction, LLC (“ATC”) was liable to NKD for \$785,717.93 and, therefore, was not entitled to foreclose its lien. Since the Arbitration Panel determined that the mechanics’ lien could not be enforced against NKD, the Arbitration Panel was legally required to also determine that NKD was the prevailing party for purposes of an award of attorney’s fees under S.C. Code § 29-5-10. This outcome is dictated by clear, established precedent:

- **“[I]n a mechanics’ lien action the defendant is entitled to an award of attorney fees as the prevailing party if it is determined that a mechanics’ lien cannot be enforced against it.”¹**
- **“Clearly, under the statute a party is entitled to recover attorney’s fees if she prevails in defending against the lien.”²**

¹ See *EFCO Corp. v. Renaissance on Charleston Harbor, LLC*, 370 S.C. 612, 617–18, 635 S.E.2d 922, 924–25 (Ct. App. 2006); see also *Seckinger v. Vessel Excalibur*, 326 S.C. 382, 388, 483 S.E.2d 775, 777–78 (Ct. App. 1997); see also *Se. Realty & Const., Inc. v. Burdge*, 2005 WL 7085177, at *2–4 (S.C. Ct. App. Dec. 9, 2005) (reversing erroneous decision by Special Referee C. Allen Gibson, Esq., who wrongfully refused to award attorney’s fees to property owner who prevailed on contractor’s claim to foreclose upon mechanics’ lien).

² *Utilities Const. Co. v. Wilson*, 321 S.C. 244, 250, 468 S.E.2d 1, 4 (Ct. App. 1996).

This is not a “common law test;” it is binding precedent applying the relevant statute. The Arbitration Panel was unquestionably aware of this precedent. The Chair of the Arbitration Panel, C. Allen Gibson, Esq., was personally: (i) counsel of record in the *EFCO* case; and (ii) the Special Referee in the *Burdge* case.³ In *Burdge*, Mr. Gibson improperly refused to award attorney’s fees to the property owner against whom it was determined that a mechanics’ lien could not be enforced. His refusal was reversed by the South Carolina Court of Appeals because the applicable statute and case law interpreting it mandated that he enter a fee award in favor of the property owner. He was forced to correct his error upon remand. Mr. Gibson’s prior error is the exact same one that the Arbitration Panel committed here, even though NKD brought the clear and binding precedent to their attention. The Arbitration Panel intentionally refused to follow the law and, as a result, decimated NKD’s recovery in an unjust manner. This was more than a mistake. It was a manifest disregard and a perverse misconstruction of the law that the Court can and should correct.

I. THE ARBITRATION PANEL’S LACK OF SUBJECT MATTER JURISDICTION IS DISPOSITIVE OF THE PRIOR FEE REQUESTS, WHICH MUST BE RESOLVED BY THE COURT IN WHICH THE ACTION WAS BROUGHT

Whether an arbitration panel may exercise authority that is expressly reserved for determination “by the court” is a threshold issue. S.C. Code § 29-5-10(a) mandates that a fee award “*must be determined by the court* in which the action is brought.” See S.C. Code § 29-5-10(a) (emphasis added). This action was filed in this Court. The mandatory language raises the question of whether the arbitration panel lacked subject matter jurisdiction to award attorney’s fees pursuant to S.C. Code § 29-5-10(a).

³ *EFCO* and *Burdge* both arose and were decided after the most recent revision to S.C. Code § 29-5-10, which occurred in 1999. These cases, and the others cited in this brief, are not a “common law test.” They are decisions applying and interpreting the statutory fee provisions applicable to mechanics’ lien claims.

ATC, relying on *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994), argues that the reference to “the court in which the action is brought” is simply a venue designation and that the arbitration panel had authority to award fees because the case was referred to arbitration. ATC’s argument fails for several reasons. First, Section 29-5-10(a) mandates that attorney’s fees “must be determined by the court in which the action is brought.” This is not permissive language. If the statute were read as permitting fee determinations by any court or panel, Section 29-5-10(a)’s language specifying that the attorney’s “fee must be determined by the court in which the action is brought” is meaningless. Second, ATC’s reliance on *Dove* is misplaced. In *Dove*, the court held that a workers’ compensation appeal was filed in the proper court system but in the wrong county. ATC relies on *Dove* based on ATC’s misinterpretation of the mandatory language of S.C. Code § 29-5-10(a) as “simply grant[ing] venue.” However, the question presented in the pending motions is whether the arbitration panel had authority to award attorney’s fees that the statute expressly reserves for determination by the court. The decision in *Dove* has no application to the threshold issue presented here.

Furthermore, ATC argues that the consent order gave arbitrators the power to decide all motions “as though they were circuit court judges.” See ATC Mem. p. 10. Subject matter jurisdiction cannot be conferred by consent of the parties, and the Court is required to take notice of its absence regardless of whether the issue was raised below. See, e.g., *Bunkum v. Manor Props.*, 321 S.C. 95, 99–100, 467 S.E.2d 758, 761 (Ct. App. 1996); *S.C. Dep’t of Soc. Servs. v. Tran*, 418 S.C. 308, 314, 792 S.E.2d 254, 257 (Ct. App. 2016). Calling arbitrators “circuit court judges” does not override the legislative mandate reserving fee determinations under S.C. Code § 29-5-10(a) for “the court.”

II. THE PREVAILING PARTY DETERMINATION WAS A MANIFEST DISREGARD AND A PERVERSE MISCONSTRUCTION OF THE LAW

In addition to the statutory grounds for vacatur under S.C. Code § 15-48-130(a), South Carolina law recognizes that an award will be vacated when the arbitrator exceeds his or her powers and/or manifestly disregards or perversely misconstrues the law. *See C-Sculptures, LLC v. Brown*, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013) (vacating award where arbitrator was apprised of an unambiguous, clearly applicable South Carolina statute but refused to apply it); *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009) (“An arbitrator’s award may be vacated when the arbitrator exceeds his or her powers and/or manifestly disregards or perversely misconstrues the law.”)

South Carolina law is clear that where a lien cannot be enforced, the owner is the prevailing party. ATC argues that it “proved entitlement” to a mechanics’ lien because it was allowed an offset against NKD’s total damages, even though it was liable to NKD for a net amount of \$785,717.93. However, a contractor cannot recover fees without “some entitlement” to enforce its lien, which ATC does not have. *See* S.C. Code § 29-5-10(b) (providing that “[f]or purposes of the award of attorney’s fees, the determination of the prevailing party is based on one verdict in the action” and “[o]ne verdict assumes some entitlement” to the lien”). South Carolina precedent has established a bright-line rule showing that when a lien cannot be enforced, no fees are recoverable by the contractor. It is the property owner who is entitled to fees in every such case. The arbitration panel was presented with forty years of unbroken South Carolina precedent demonstrating that, where the lien was not enforced, the contractor was denied fees. No decision by a South Carolina court has found a contractor to be entitled to an award of attorney’s fees under S.C. Code § 29-5-10 without some net judgment in its favor.

The arbitration panel was presented with clear statutory language and controlling authority providing that “[c]learly, under the statute a party is entitled to recover attorney’s fees if she prevails in defending against the lien.” See *Utilities Const. Co. v. Wilson*, 321 S.C. 244, 250, 468 S.E.2d 1, 4 (Ct. App. 1996) (citing S.C. Code § 29-5-10(a)). Nevertheless, the arbitration panel awarded attorney’s fees to ATC under S.C. Code § 29-5-10 that cannot be reconciled with the language of the statute and applicable law. The final award (attached as Exhibit I) did not make any findings of fact concerning whether ATC was entitled to enforce the mechanics’ lien. The arbitration panel’s disregard for clear, controlling precedent in awarding fees contrary to the plain language of the statute is the type of perverse misconstruction and manifest disregard of the law that is grounds for vacatur. *C-Sculptures*, 403 S.C. at 56, 742 S.E.2d at 360; *Gissel*, 382 S.C. at 241, 676 S.E.2d at 323; see also *Waldo v. Cousins*, 442 S.C. 662, 665, 901 S.E.2d 276, 278 (2024) (vacating arbitration award and confirming that award can be vacated where the arbitrator exceeded his power by “manifestly disregarding or perversely misconstruing the law governing the dispute.”) As these prior cases make clear, the Court can and should vacate or modify an arbitration award when applicable law has been manifestly disregarded or perversely misconstrued, which is what occurred here on the issue of attorney’s fees. ATC argues it is “exceedingly rare” to vacate an award for manifest disregard or perverse misconstruction of the law. The arbitration panel’s errors in rendering the award warrant vacatur on these grounds. The arbitrators were presented with an unambiguous statute, forty years of unbroken South Carolina precedent, and a clear statement of the required outcome on the issue of attorney’s fees under the statute.

The arbitration panel manifestly disregarded or perversely misconstrued South Carolina law by awarding attorney’s fees under S.C. Code § 29-5-10 to a contractor who breached its

contract, abandoned the project, filed a wrongful mechanics' lien, and was ordered to pay the owner, and where the arbitrators lacked authority to even determine the award of fees that is statutorily reserved for "the court." Vacatur of the fee decision is warranted.

III. CONTROLLING SOUTH CAROLINA LAW ENTITLES NKD, NOT ATC, TO AN AWARD OF ATTORNEY'S FEES

It has been established law in South Carolina for decades that it is the "enforcement" of the lien which confers the right to attorney's fees, as opposed to the assertion of a lien. ATC's first cause of action asserted against NKD is for the Foreclosure of Mechanics' Lien. *See* ATC's Complaint, attached as Exhibit A. ATC failed to enforce a lien against NKD because, due to defective work and project abandonment, ATC was determined to owe NKD a net amount of \$785,717.93. In other words, ATC could not enforce or foreclose upon a lien because ATC was not actually owed a debt. The fact that ATC cannot enforce a lien against NKD is confirmed by the Consent Order for Interim Relief Pending Final Judgment (attached as Exhibit B), the filing of the Notice of Release of Cash Bond (attached as Exhibit C) and the filing of the Notice of Cancellation of Lis Pendens (attached as Exhibit D). The reason that the Consent Order required ATC to file the Release of Cash Bond and the Cancellation of Lis Pendens is because ATC had no right or entitlement to enforce a lien based on the outcome of the arbitration. Thus, ATC did not prevail on its cause of action for Foreclosure of Mechanics' Lien.

South Carolina precedent establishes that fees are awarded to a property owner who successfully avoids foreclosure of a mechanics' lien. As the South Carolina Court of Appeals confirmed in 1996, "[a] fair interpretation of the text of the statute convinces us that **it is the enforcement of the lien which confers the right to attorney fees**, and not the joinder of an attempted enforcement with another non-statutory cause of action on which the lienor prevails." *See Utilities Const.*, 321 S.C. at 247–48, 468 S.E.2d at 2 (emphasis added). It is a clearly defined

principle of law in South Carolina that, “in a mechanics’ lien action the defendant is entitled to an award of attorney’s fees as the prevailing party if it is determined that a mechanics’ lien cannot be enforced against it.” As confirmed in *EFCO*:

Our supreme court has defined a “prevailing party” as “one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered.” “[I]n a mechanics’ lien action the defendant is entitled to an award of attorney fees as the prevailing party if it is determined that a mechanics’ lien cannot be enforced against it.”

EFCO Corp. v. Renaissance on Charleston Harbor, LLC, 370 S.C. 612, 617–18, 635 S.E.2d 922, 924–25 (Ct. App. 2006) (emphasis added; footnotes omitted; copy attached as Exhibit E).

The clearly established principle set forth in *EFCO Corp.*, incorporates prior decisions, including decisions by the South Carolina Supreme Court. One of the cases cited by the Court of Appeals in *EFCO* was its prior decision in the case of *Seckinger v. Vessel Excalibur*, which confirms the legal principle that an owner is the prevailing party for purposes of an award of fees if it is determined that the lien cannot be enforced against it:

Thus, the court of appeals concluded in a mechanics’ lien foreclosure action the party in whose favor the decision or verdict on liability is rendered is the prevailing party for purposes of awarding attorney fees. *See Utilities Const. Co. v. Wilson*, 321 S.C. 244, 468 S.E.2d 1 (Ct.App.1996). According to *Heath*, “a party need not be successful as to all issues in order to be found to be a prevailing party.” *Heath*, 302 S.C. at 182, 394 S.E.2d at 711; *see Utilities Const. Co.*, 321 S.C. at 248–49, 468 S.E.2d at 3–4. **Therefore, in a mechanics’ lien action the defendant is entitled to an award of attorney fees as the prevailing party if it is determined that a mechanics’ lien cannot be enforced against it.**

See Seckinger v. Vessel Excalibur, 326 S.C. 382, 388, 483 S.E.2d 775, 777–78 (Ct. App. 1997) (emphasis added). While ATC continues to argue that NKD is attempting to apply a “common law test,” the *Seckinger* court was construing how S.C. Code § 29-5-10 is applied, not providing advisory opinions about the common law.

This clear and controlling legal principle has also been cited in unreported decisions of the South Carolina Court of Appeals. In *Se. Realty & Const., Inc. v. Burdge*, 2005 WL 7085177, at *2 (S.C. Ct. App. Dec. 9, 2005), the Court of Appeals reversed the decision of the Special Referee that refused to award legal fees to a property owner who avoided foreclosure of a mechanics' lien. In ruling that the owner was entitled to fees, the Court of Appeals stated:

Therefore, in a mechanics' lien action the defendant is entitled to an award of attorney fees as the prevailing party if it is determined that a mechanics' lien cannot be enforced against it.

Se. Realty & Const., Inc. v. Burdge, 2005 WL 7085177, at *2 (S.C. Ct. App. Dec. 9, 2005).

Additional decisions confirm that it is the outcome of the "enforcement of the lien" that controls the issue of attorney's fees under S.C. Code § 29-5-10. For example, in the case of *Utilities Const. Co. v. Wilson*, the property owner was entitled to an award of attorney's fees even though the contractor received a judgment in its favor because the contractor was not entitled to foreclose upon the lien at the conclusion of the case:

S.C. Code Ann. § 29-5-10 affords a mechanic or contractor who deals with the owner of real property a lien for labor and materials, and provides that "[t]he costs which may arise in enforcing or defending against the lien under this chapter, including a reasonable attorney's fee, may be recovered by the prevailing party." **A fair interpretation of the text of the statute convinces us that it is the enforcement of the lien which confers the right to attorney fees, and not the joinder of an attempted enforcement with another non-statutory cause of action on which the lienor prevails.**

Utilities Const. Co. v. Wilson, 321 S.C. 244, 247-48, 468 S.E.2d 1, 2-3 (Ct. App. 1996) (emphasis added; copy is attached as Exhibit F). As with the cases cited above, the Court of Appeals is interpreting and applying the statute, rather than articulating some allegedly inapplicable common law test. Although the wording of the statute has evolved over time, the legal principle relevant here has not. In a mechanics' lien action, the defendant is entitled to an award of attorney fees as the prevailing party if it is determined that a mechanics' lien cannot be enforced against it.

IV. THE ARBITRATION PANEL WAS AWARE OF, BUT REFUSED TO APPLY, CONTROLLING, GOVERNING LAW

There is compelling evidence that the Arbitration Panel was aware of, but refused to apply, this clear principle of applicable law. NKD's Opposition to ATC's Motion for Attorney's Fees provided the Arbitration Panel with all of the necessary governing case law concerning the determination of the prevailing party. A copy of NKD's Opposition to ATC's Motion for Attorney's Fees as submitted to the Arbitration Panel is attached as Exhibit H. All of the applicable precedent was cited but was ignored.

Furthermore, the chair of the Arbitration Panel in this case was C. Allen Gibson, Esq. Previously, Mr. Gibson was counsel of record for the general contractor in *EFCO Corp.* The decision by the Court of Appeals in *EFCO Corp. v. Renaissance on Charleston Harbor, LLC* confirmed that “[i]n a mechanics’ lien action the defendant is entitled to an award of attorney fees as the prevailing party if it is determined that a mechanics’ lien cannot be enforced against it.” *Id.*, 370 S.C. at 618, 635 S.E.2d at 925 (emphasis added). Based on his involvement in that case, Mr. Gibson was clearly aware of this binding and well-established principle of law.

However, it was Mr. Gibson's involvement in another matter, the *Burdge* case, which provides compelling evidence that the established legal principles relevant to this case were manifestly disregarded or perversely misconstrued. In *Burdge*, which was a dispute involving an unsuccessful effort by a contractor to enforce a mechanics’ lien against a property owner, Mr. Gibson was the Special Referee. *See Se. Realty and Const., Inc. v. Burdge*, 2005 WL 7085177 (S.C. Ct. App. Dec. 9, 2005). Mr. Gibson granted a directed verdict to defendants on the contractor's claim to foreclose upon the mechanics’ lien, but refused to award them attorney's fees and denied their motion to reconsider.

On appeal, the South Carolina Court of Appeals reversed Mr. Gibson's ruling due to clear legal error on the issue of attorney's fees. The analysis provided by the Court of Appeals is instructive:

In the context of statutes allowing attorney fees, our supreme court has defined a "prevailing party" as "[t]he one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered."

Thus, the court of appeals concluded in a mechanics' lien foreclosure action the party in whose favor the decision or verdict on liability is rendered is the prevailing party for purposes of awarding attorney fees.

Therefore, in a mechanics' lien action the defendant is entitled to an award of attorney fees as the prevailing party if it is determined that a mechanics' lien cannot be enforced against it.

[. . .]

Given the special referee directed a verdict in favor of Appellants, he held as a matter of law, not based on a "mere technicality," that Southeastern could not enforce its mechanics' lien against Appellants.

Based on this ruling, Appellants successfully defended against the lien and were, thus, the "prevailing parties" on the mechanics' lien cause of action.

Accordingly, we find the special referee erred in denying Appellants' request for attorney's fees.

REVERSED AND REMANDED.

Burdge, 2005 WL 7085177, at *2–4 (internal citations omitted; emphasis added; copy attached as Exhibit G). In confirming why Mr. Gibson's decision was clear error and could not be sustained, the Court of Appeals cited the same legal authorities that NKD cited to the Arbitration Panel that Mr. Gibson chaired. Seeing that the Chair of the Arbitration Panel was personally reversed by the Court of Appeals on this exact same issue, it is clear that the Arbitration Panel manifestly disregarded or perversely misconstrued binding legal authority and recommitted the same legal

error that was made in *Burdge*, which resulted in an injustice to the property owner in that case. The Court of Appeals forced Mr. Gibson to correct the same error that was committed in this case a second time.

NKD informed the Arbitration Panel that a contractor has never recovered an award of attorney's fees under S.C. Code § 29-5-10 without receiving a net judgment in its favor **and** prevailing on its request to foreclose the mechanics' lien. In its written submission, NKD included a detailed list of every decision over the past 40 years, which clearly shows that a contractor who does not prevail on their claim to enforce a lien cannot be the prevailing party under S.C. Code § 29-5-10. The Arbitration Panel ignored all of it. ATC's claim to foreclose upon a mechanics' lien indisputably failed. When a substantial award in favor of NKD was entered, the lien bond was released and the lis pendens was cancelled. None of this would have occurred unless NKD had prevailed on the lien claim. ATC claimed to be owed a debt and sought to foreclose upon NKD's property, but failed to prove it was owed a debt. ATC's work was so defective and so delayed due to the intentional abandonment of the project that NKD was awarded \$785,717.93 in **net** actual damages, liquidated damages, and prejudgment interest. The damages award in favor of NKD, which ATC did not ask this Court to vacate, precluded ATC from enforcing and foreclosing on its lien, which was the purpose of the first cause of action, which is why the cash bond securing the lien was *voluntarily* released and the lis pendens was *voluntarily* cancelled.

CONCLUSION

The fee award in favor of ATC should be vacated along with the Arbitration Panel's refusal to award fees to NKD for one of two reasons: (i) the Arbitration Panel lacked subject matter jurisdiction to decide the issue; or (ii) the Arbitration Panel's decision was premised upon a manifest disregard or a perverse misconstruction of applicable law. Upon correction of the

Arbitration Panel's plainly unjust decision on the issue of attorney's fees, a hearing on NKD's request for attorney's fees is requested.

Respectfully submitted,

By: s/ Ellis Lesemann
Ellis R. Lesemann (S.C. Bar No. 15315)
erl@lalawsc.com
Robert T. Bonds (S.C. Bar No. 106271)
rtb@lalawsc.com
LESEMANN & ASSOCIATES LLC
418 King Street, Suite 301
Charleston, SC 29403
(843) 724-5155

March 27, 2026
Charleston, South Carolina

Attorneys for Defendant NKD, Inc.

EXHIBIT C

Release of Cash Bond After NKD Prevailed on Mechanics' Lien Claim

STATE OF SOUTH CAROLINA	)	IN THE REGISTER OF DEEDS
	)	
COUNTY OF RICHLAND	)	
	)	
ATC SITE CONSTRUCTION, LLC,	)	
	)	RELEASE OF CASH BOND
Plaintiff,	)	
	)	
vs.	)	
	)	
NKD, INC. and AMERIS BANK,	)	
	)	
Defendants.	)	

The undersigned does hereby declare and confirm that the Cash Bond filed by NKD, Inc. ("NKD"), which released the Mechanics' Lien filed by ATC Site Construction, LLC ("ATC"), shall now be released and disbursed. The Mechanics' Lien and Cash Bond related to the following property (the "Property"):

All that certain piece, parcel or tract of land, with any improvements thereon, situate, lying and being near Cane Creek near the City of Columbia, County of Richland, State of South Carolina on the southerly side of Clemson Road (S.C. Highway S-40-52), SHOWN AS CONTAINING 94.804 ACRES, MORE OR LESS, being more fully shown on that certain plat prepared for NKD, Inc. by Belter & Associates, Inc. dated November 11, 2004, last revised November 29, 2004, and recorded in the Office of the Register of Deeds for Richland County, in Plat Book 1011 at page 2011, and having such Metes, bounds and measurements as shown on said plat. All measurements being more or less.

Being the same property conveyed to NKD, Inc., c/o 100 Hagen Court, Lexington, SC 29072, by deed of Louise O' Sheal Younginer, Steven F. O'Sheal, Richard S. O'Sheal, and John M. O'Sheal, by and through their Attorney in Fact, Donald E. Lovett (under a Limited Durable Power of Attorney recorded November 4, 2003, in Record Book 871, at page 2861), collectively the "GRANTORS," dated December 29, 2004, and recorded December 31, 2004, as Instrument Number 2004106317 in Record Book 1011 at Page 1976, Office of the Register of Deeds for Richland County, SC.

TMS # 04300-04-10 (Major Portion)
RO4300-04-10
Address: 94.8 acres, O' Sheal Road, Irmo, SC 29063

2025032980 07/16/2025 09:41:01-103 Release - Bond Discharge Mech Lien
 Fee: \$10.00 County Tax: \$0.00 State Tax: \$0.00
 John T. Hopkins II
 Richland County R.O.D.

WHEREAS, the Mechanics' Lien was initially filed by the undersigned on behalf of ATC on or about June 11, 2020, in Book 2496, Page 2754, as Instrument Number 2020026823, in the Register of Deeds for Richland County; and being in the amount of \$884,473.84;

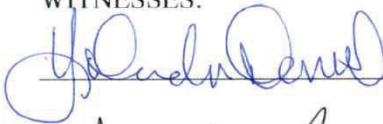
WHEREAS, that such Mechanics' Lien was reduced in amount by the Consent Order Reducing Mechanics' Lien of ATC Site Construction, Inc. down to \$847,236.20, which Consent Order was entered by the Honorable Michael S. Holt on February 3, 2022;

WHEREAS, on March 14, 2022, NKD paid and filed a Cash Bond in the amount of \$1,129,648.27 releasing the Property from the Mechanics' Lien, in accordance with the provisions of S.C. Code § 29-5-110, which Cash Bond was paid and filed with the Register of Deeds for Richland County, as Instrument Number 2022014536 as shown at in Book R 2725, Page 19; and

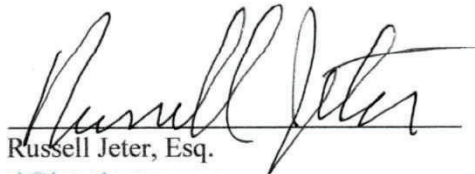
WHEREAS, in accordance with the Consent Order for Interim Relief Pending Final Judgment entered on July 11, 2025 by the Honorable Daniel M. Coble (the "Consent Order for Interim Relief"), the Cash Bond shall now be released and disbursed in accordance with the terms of the Consent Order for Interim Relief;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that, in accordance with terms of the Consent Order for Interim Relief, the Register of Deeds for Richland County shall release and disburse the Cash Bond in the amount of **One Million One Hundred Twenty-Nine Thousand Six Hundred Forty-Eight Dollars and Twenty-Seven Cents (\$1,129,648.27)** by check made payable to "**Lesemann & Associates, LLC, as Attorneys for NKD, Inc.**"

WITNESSES:




By:



Russell Jeter, Esq.

rj@jeterlawsc.com

P.O. Box 7425

Columbia, SC 29405

(843) 724-5155

Attorney for ATC Site Construction, LLC

July 16, 2025

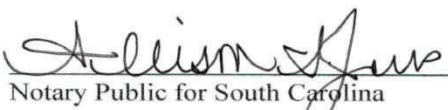
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

PERSONALLY appeared before me, the undersigned witness, and made oath that she saw the named **Russell Jeter, Esq.** sign, seal and as his act and deed deliver the within written instrument, that I am not a party or beneficiary of the transaction, that I am signing as a subscribing witness, and that I witnessed **Russell Jeter, Esq.**, sign this Release of Cash Bond.

Sworn to before me this 16 day of July, 2025:


Notary Public for South Carolina

My commission expires: 10.31.2033



EXHIBIT D

*Notice of Cancellation of Lis Pendens
filed after NKD Prevailed on Mechanics' Lien Claim and Obtained Award of \$785,717.93*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
ATC SITE CONSTRUCTION, LLC,	)	
	)	C.A. No.: 2020-LP-40-00611
Plaintiff,	)	
	)	
vs.	)	NOTICE OF CANCELLATION
	)	OF LIS PENDENS
NKD, INC., and AMERIS BANK,	)	
	)	
Defendants.	)	
	)	

NOTICE IS HEREBY GIVEN that the Lis Pendens filed on August 18, 2020, by Plaintiff ATC Site Construction, LLC ("Plaintiff") against Defendants NKD, Inc., and Ameris Bank ("Defendants"), associated with the case captioned ATC Site Construction, LLC v. NKD, Inc., And Ameris Bank, Civil Action No. 2020-LP-40-00611, is hereby cancelled and of no further force or effect.

The real property covered and affected by this Lis Pendens is the following real property located in Richland County, South Carolina:

All that certain piece, parcel or tract of land, with any improvements thereon, situate, lying and being near Cane Creek near the City of Columbia, County of Richland, State of South Carolina on the southerly side of Clemson Road (S.C. Highway S-40-52), shown AS CONTAINING 94.804 ACRES, MORE OR LESS, being more fully shown on that certain plat prepared for NKD, Inc. by Belter & Associates, Inc. dated November 11, 2004, last revised November 29, 2004, and recorded in the Office of the Register of Deeds for Richland County, in Plat Book 1011 at page 2011, and having such Metes, bounds and measurements as shown on said plat. All measurements being more or less.

Being the same property conveyed to NKD, Inc., c/o 100 Hagen Court, Lexington, SC 29072, by deed of Louise O'Sheal Younginer, Steven F. O'Sheal, Richard S. O'Sheal, and John M. O'Sheal, by and through their Attorney in Fact, Donald E. Lovett (under a Limited Durable Power of Attorney recorded November 4, 2003, in Record Book 871, at page 2861), collectively the "GRANTORS," dated December 29, 2004, and recorded December 31, 2004, as

Instrument Number 2004106317 in Record Book 1011 at Page 1976, Office of the Register of Deeds for Richland County, SC.

TMS # 04300-04-10 (Major Portion)

RO4300-04-10

Address: 94.8 acres, O'Sheal Road, Irmo, SC 29063

Respectfully submitted,

By: s/ Russell Jeter

Russell Jeter (SC Bar No.: 2997)

rj@jeterlawsc.com

Post Office Box 7425

Columbia, SC 29205

***Attorney for Plaintiff ATC Site
Construction, LLC***

July 15, 2025

Columbia, South Carolina

EXHIBIT H

*Copy of NKD's Opposition to ATC's Motion for Attorney's Fees
Submitted to the Arbitration Panel*

**BEFORE THE ARBITRATION PANEL
IN THE MATTER OF**

ATC SITE CONSTRUCTION, LLC,	)	
	)	
Claimant,	)	
	)	
vs.	)	NKD, INC.’S OPPOSITION TO ATC
	)	SITE CONSTRUCTION, LLC’S
NKD, INC.,	)	PETITION FOR ATTORNEY’S FEES
	)	
Respondent and Counterclaimant,	)	
	)	

The determination of the prevailing party under S.C. Code § 29-5-10 does not involve arithmetic when the contractor has no entitlement to a mechanics’ lien at the conclusion of the case. In this proceeding, it is undisputed that Claimant ATC Site Construction, LLC (“ATC”) has no entitlement to a mechanics’ lien, as ATC currently owes Respondent NKD, Inc. (“NKD”) at least \$785,717.93, based on the current version of the Interim Award, plus interest.

For a contractor to ever be determined the prevailing party for purposes of an award of attorney’s fees under S.C. Code § 29-5-10, the contractor must have “some entitlement to the lien.” This is because the one verdict rule, which is what sometimes brings arithmetic into play, “assumes some entitlement to the lien.” *See* S.C. Code § 29-5-10(A). Therefore, based on the plain wording of the statute, as well as a half century of precedent outlined below, a contractor who has no entitlement to a lien cannot be the prevailing party. Under South Carolina law, it is the owner who is the prevailing party “whenever it is determined that a mechanic’s lien cannot be enforced against it,” which is what occurred here.

A contractor cannot breach a contract, be required to pay \$785,717.93 in damages, have no entitlement to a lien, and then be awarded attorney’s fees as a purported prevailing party. When addressing this issue, it is immaterial that the Panel awarded NKD less in liquidated damages than

had been requested and also applied offsets. The only impact of the reductions was to make the amount of ATC's loss less significant than it otherwise could have been. The reductions do not convert ATC's loss into a win, as no lien was or will be enforced against NKD. This fact alone establishes NKD as the prevailing party entitled to an award of attorney's fees and costs, which have been itemized and requested in a separate submission.

FACTUAL BACKGROUND

In responding to ATC's suggestion that it was the prevailing party in this case, a review of the underlying facts is instructive. If ATC's work had been performed correctly and within a reasonable time, no dispute would have been necessary. In total, ATC worked on the project for a period of 994 days and received at least \$4,562,176.86 in payments from NKD, a substantial portion of which was to pay for work that ATC did incorrectly or never completed. Months after the date of Substantial Completion had passed, it was apparent that ATC was not progressing the work in a diligent manner. As the defects continued to manifest, NKD notified ATC that the costs to correct ATC's defective work along with the liquidated damages would exceed any amounts owed to ATC. The Interim Award proves that NKD's statement and its position were correct.

After a failed mediation, ATC filed a mechanic's lien action against NKD, but did not propose or make any repairs. The mechanic's lien created a cloud over NKD's title over the property and froze any further funding under the construction loan with Ameris Bank. To keep the project from dying on the vine, NKD had to refinance the construction loan. NKD also had to incur an additional \$1,305,789.00 in project expenses to repair and bring the project to substantial completion. During the delay period, NKD paid interest on the construction loans amounting to \$1,027,008.78, and incurred attorney's fees and expenses of \$553,310.41 up through February 28, 2025. To allow for finished lots to be sold, NKD also had to file a cash bond in the amount of

\$1,129,648.27, which allowed NKD to mitigate damages and pay down the construction loan.¹ The cash bond has been deposited with the Richland County Clerk of Court dating back to April 19, 2022, bearing zero interest.

At the end of the day, NKD proved that ATC's work was defective. NKD also proved that the amount owed to NKD far exceeded the amount ATC claimed to be due for ATC's prior work that was materially defective, delayed and incomplete. Although the Panel did not award the full amount of damages requested, the Interim Award unequivocally confirms NKD as the prevailing party, as there is no entitlement to a lien. This gives NKD (not ATC) a mandatory right to recover attorney's fees and expenses incurred in defending against ATC's claim.

ARGUMENT

In determining whether to award attorney's fees and costs under the mechanic's lien statute, the focus is confined solely to the procedure outlined in the mechanic's lien statute and caselaw interpreting the statute. *See Southeastern Realty & Const., Inc. v. Burdge*, No. 2005-UP-622, 2005 WL 7085177, at *3 (S.C. Ct. App. Dec. 9, 2005) (confirming that in a mechanic's lien action **"the defendant is entitled to an award of attorney fees as the prevailing party if it is determined that a mechanic's lien cannot be enforced against it."**) (emphasis added). Having availed itself of the mechanic's lien statute, which imposed a cloud over NKD's title, forced a refinance of the construction loan due to resolve the default triggered by the filing of the lien, and improperly created a threat of foreclosure, ATC intentionally deployed the full leverage of the mechanics' lien

¹ The filing and maintenance of the cash bond is another reason why NKD is the prevailing party. If the property has been released from the lien by "bonding out," the lien is no longer enforced against the property. *See Keeney's Metal Roofing, Inc. v. Palmieri*, 345 S.C. 550, 555, 548 S.E.2d 900, 902 (Ct. App. 2001) (reversing trial court's refusal to award fees to owners who were determined to have been the "prevailing party" in the mechanics' lien action because the lien could not be enforced against the property due to the filing of a bond).

statute against NKD. However, as ATC is not entitled to enforce a mechanics' lien against NKD, the consequences of having failed to enforce the claimed lien are now due.

South Carolina law is clear:

“[I]n a mechanic’s lien action the defendant is entitled to an award of attorney fees as the prevailing party if it is determined that a mechanic’s lien cannot be enforced against it.”

See, e.g., EFCO Corp. v. Renaissance on Charleston Harbor, LLC, 370 S.C. 612, 618, 635 S.E.2d 922, 925 (Ct. App. 2006); *Seckinger v. Vessel Excalibur*, 326 S.C. 382, 388, 483 S.E.2d 775, 778 (Ct. App. 1997) (same).

ATC cannot cite to a single case in which a contractor failed to enforce a lien against an owner but was determined to be the prevailing party for purposes of a fee award under S.C. Code § 29-5-10. The reason for this is that such an outcome is contrary to applicable law. ATC’s argument has never been adopted in a reported or unreported decision, whereas NKD’s position has been adopted in each case when it is determined that a lien cannot be enforced. ATC is not entitled to receive something that applicable law does not permit.

I. THERE ARE ZERO INSTANCES IN THE REPORTED OR UNREPORTED DECISIONS BY SOUTH CAROLINA COURTS IN WHICH A CONTRACTOR RECOVERED ATTORNEY’S FEES UNDER S.C. CODE § 29-5-10 WHEN NO LIEN IS ENFORCED

Under South Carolina law, the award of fees to the prevailing party in a mechanic’s lien action is automatic and mandatory. *See* S.C. Code §§ 29-5-10 and -20; *see also T.W. Morton Builders, Inc. v. von Buedingen*, 316 S.C. 388, 403, 450 S.E.2d 87, 95 (Ct. App. 1994) (holding that the award of fees to the prevailing party under Section 29-5-10 is mandatory, but the amount of the fee to be awarded is left to the sound discretion of the court). An exhaustive review of South Carolina jurisprudence confirms there are no instances in which a contractor (like ATC) has been

awarded attorney's fees as a prevailing party under the mechanic's lien statute when there was no lien ultimately enforced against the owner.

Below is a summary of reported and unreported decisions on this topic that were issued over the past forty (40) years. As indicated by the decisions listed below, the contractor is never entitled to attorney's fees when the lien is not enforced, at least in part, based on some net judgment or award in favor of contractor:

Year	Case	Was there "Some Entitlement to a Lien"?	Was Party Seeking Lien Entitled to Fees?
1984	<i>D.A. Davis Const. Co. v. Palmetto Properties, Inc.</i> , 281 S.C. 415, 315 S.E.2d 370 (1984)	YES	YES
1985	<i>Sentry Eng'g & Const., Inc. v. Mariner's Cay Dev. Corp.</i> , 287 S.C. 346, 338 S.E.2d 631 (1985)	YES	YES
1992	<i>A.V.A. Const. Corp. v. Palmetto Land Clearing, Inc.</i> , 308 S.C. 377, 418 S.E.2d 317 (Ct. App. 1992)	NO	NO
1994	<i>T.W. Morton Builders, Inc. v. von Buedingen</i> , 316 S.C. 388, 450 S.E.2d 87 (Ct. App. 1994)	YES	YES
1994	<i>Maddux Supply Co. v. Safhi, Inc.</i> , 316 S.C. 404, 450 S.E.2d 101 (Ct. App. 1994)	NO	NO
1995	<i>Cedar Creek Properties v. Cantelou Assocs., Inc.</i> , 320 S.C. 483, 465 S.E.2d 774 (Ct. App. 1995)	NO	NO
1996	<i>Utilities Const. Co. v. Wilson</i> , 321 S.C. 244, 468 S.E.2d 1 (Ct. App. 1996)	NO	NO
2001	<i>Keeney's Metal Roofing, Inc. v. Palmieri</i> , 345 S.C. 550, 548 S.E.2d 900 (Ct. App. 2001)	NO	NO
2002	<i>Lauro v. Visnapuu</i> , 351 S.C. 507, 570 S.E.2d 551 (Ct. App. 2002)	YES	NO
2004	<i>Zepso Const., Inc v. Randazzo</i> , 357 S.C. 32, 591 S.E.2d 29 (Ct. App. 2004)	YES	YES

Year	Case	Was there "Some Entitlement to a Lien"?	Was Party Seeking Lien Entitled to Fees?
2004	<i>Zahn v. Allen</i> , 2004 WL 6251614 (S.C. Ct. App. Apr. 19, 2004)	YES	YES
2004	<i>Lynn Whitsett Corp. v. Norbord S.C., Inc.</i> , 2004 WL 6331127 (S.C. Ct. App. May 18, 2004)	NO	NO
2005	<i>JRS Builders, Inc. v. Neunsinger</i> , 364 S.C. 596, 614 S.E.2d 629 (2005)	YES	NO
2005	<i>Southeastern Realty & Const., Inc. v. Burdge</i> , 2005 WL 7085177 (S.C. Ct. App. Dec. 9, 2005)	NO	NO
2006	<i>EFCO Corp. v. Renaissance on Charleston Harbor, LLC</i> , 370 S.C. 612, 635 S.E.2d 922 (Ct. App. 2006)	NO	NO
2006	<i>Lancaster v. Sanders</i> , 2006 WL 7287902 (S.C. Ct. App. Dec. 20, 2006)	YES	YES
2008	<i>Mozingo & Wallace Architects, L.L.P. v. Grand</i> , 379 S.C. 478, 666 S.E.2d 267 (Ct. App. 2008)	YES	YES
2011	<i>Witt Gen. Contractors, Inc. v. Farrell</i> , 2011 WL 11734314 (S.C. Ct. App. May 4, 2011)	YES	YES
2015	<i>Mevers Kitchens & Baths, LLC v. Maryann Wagner & Stipp Contracting, LLC</i> , 2015 WL 5836884 (S.C. Ct. App. Oct. 7, 2015)	YES	YES
2017	<i>Terlizzi Home Improvement, LLC v. Boheler</i> , 2017 WL 4786434 (S.C. Ct. App. July 5, 2017)	NO	NO
2019	<i>Carolina Comfort Specialists, LLC v. Weddle</i> , 2019 WL 2290475 (S.C. Ct. App. May 29, 2019)	YES	YES
2020	<i>United Tank Servs., Inc. v. United Indus. Grp., Inc.</i> , 453 F. Supp. 3d 826 (D.S.C. 2020)	NO	NO
2022	<i>Brown Contractors, LLC v. McMarlin</i> , 2022 WL 1162809 (S.C. Ct. App. Apr. 20, 2022)	NO	NO

Year	Case	Was there “Some Entitlement to a Lien”?	Was Party Seeking Lien Entitled to Fees?
2023	<i>Kitchen Planners, LLC v. Friedman</i> , 432 S.C. 267, 851 S.E.2d 724 (Ct. App. 2020), <i>aff’d as modified</i> , 440 S.C. 456, 892 S.E.2d 297 (2023)	NO	NO
2023	<i>Marsh Waterproofing, Inc. v. Steeple Dorchester Ltd.</i> , 2023 WL 3614306 (S.C. Ct. App. May 24, 2023)	YES	YES

As indicated by decades of precedent, both before and after S.C. Code § 29-5-10(A) was amended, whenever there is not an entitlement to a lien, the owner is always the prevailing party as no lien is enforced in favor of the contractor. In other words, in every instance when the answer to the question in the third column is “no,” the answer in the fourth column is always “no.” There are no exceptions or anomalies, and none should be created by the Panel to unjustly benefit ATC. There is no entitlement to a lien and, therefore, no entitlement to fees on the part of ATC.

II. AS ATC DOES NOT HAVE “SOME ENTITLEMENT” TO THE MECHANIC’S LIEN, THE “ONE VERDICT” RULE DOES NOT APPLY

As indicated by the reported and unreported decisions by the courts of South Carolina, it would be unprecedented to deem ATC the prevailing party under the mechanic’s lien statute. These cases confirm that when the mechanic’s lien fails, the claim ends and fees are awarded to the party defending against the lien. Under South Carolina law, a party who successfully defends against the mechanic’s lien may recover reasonable attorney’s fees and costs. *See* S.C. Code § 29-5-10 (“The costs which may arise in enforcing or defending against the lien under this chapter, including a reasonable attorney’s fee, may be recovered by the prevailing party”). Section 29-5-10 sets forth guidance for determining who is the “prevailing party:”

For purposes of the award of attorney's fees, the determination of the prevailing party is based on one verdict in the action. **One verdict assumes some entitlement to the mechanic's lien** and the consideration of compulsory counterclaims.

See S.C. Code § 29-5-10 (emphasis added). All "prevailing party" provisions, including S.C. Code § 29-5-10, are interpreted under South Carolina law such that the prevailing party is "[t]he one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered." *Seckinger*, 326 S.C. at 388, 483 S.E.2d at 777-78 (confirming that "in a mechanic's lien action the defendant is entitled to an award of attorney fees as the prevailing party **if it is determined that a mechanic's lien cannot be enforced against it**") (emphasis added). A party does not need to be successful as to all issues in order to be found to be a prevailing party. *Id.*

ATC proclaims to be the prevailing party in enforcing the mechanic's lien on the alleged basis that "[t]he Interim Award awarded ATC \$838,685.95." That amount, however, was not an award to ATC but rather a reduction to the damages awarded to NKD in the amount of \$1,624,403.88. In determining the prevailing party, the question is whether the prevailing party is the one who avoided the mechanic's lien and obtained an award of repair damages, liquidated damages, and prejudgment interest, or the one who has no entitlement to the mechanic's lien and was ordered to pay \$785,717.93. The statute must be applied faithfully regardless of ATC's subjective measure of success. The courts "are not at liberty, under the guise of construction, to alter the plain language of the statute by adding words which the Legislature saw fit not to include." See *Shelley Const. Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 28-29, 336 S.E.2d 488, 491 (Ct. App. 1985) (recognizing that the court's "duty is to apply the [mechanic's lien] statute according to its own terms"). If the Panel had awarded no damages to NKD, or had awarded damages to

NKD in a gross amount that was less than \$838,685.95, then the outcome may have been different, as ATC would have had “some entitlement to the lien” in that hypothetical case. However, that is not what occurred here. Accordingly, South Carolina law requires that ATC’s Fee Petition be denied and requires an award to NKD, who successfully defended against the lien.

III. IN ADDITION TO HAVING NO “ENTITLEMENT TO THE MECHANIC’S LIEN,” ATC’S FEE PETITION IS DEFECTIVE AND CANNOT SERVE AS THE BASIS FOR ANY AWARD

The most obvious defect to ATC’s Fee Petition is that ATC did not prevail in enforcing the mechanic’s lien and therefore, is not entitled to an award of prevailing party costs and attorney fees. However, to the extent that the lien had not been bonded out and ATC had actually prevailed in foreclosing on its mechanic’s lien, which it did not, ATC would only be able to recover reasonable attorney’s fees actually attributable to a successful enforcement of the lien to be supported through adequate documentation. It is impossible to determine from ATC’s Fee Petition and accompanying affidavits what portion of the fees requested were attributable to enforcing the lien. Four attorneys were involved on behalf of ATC, resulting in a degree of overlap that must be taken into account in determining the reasonable number of hours to be compensated. Yet, ATC’s fee request is devoid of information to enable the Panel to determine duplication, redundancy, or excessiveness. As an example, ATC was often represented by four attorneys at depositions, only one of whom (Mr. Bonneau or Mr. James) would ask any questions. The deficiencies in ATC’s Fee Petition would have precluded the Panel from awarding the fees requested even if ATC had prevailed in enforcing the mechanic’s lien.

No information is provided to indicate what was specifically done by the attorneys during the time entries sought to be awarded. “The fee applicant has the burden of proving hours spent and how those hours were allotted to specific tasks, and the Court must ensure that the time is

reasonable and that the work billed by different attorneys is not duplicative.” *Nutramax Lab ’ys, Inc. v. Manna Pro Prods., LLC*, 2017 WL 6523616, at *4 (D.S.C. Dec. 21, 2017). Based on ATC’s Fee Petition and accompanying affidavits, the Panel cannot ensure that the time is reasonable and not duplicative. ATC’s Fee Petition provides no basis on which the Panel could determine what time was actually expended by counsel or whether it was reasonable. It would not be appropriate for the Panel to simply accept Mr. Jeter’s opinion as to the reasonableness of the hours reported in his Affidavit. *See Alexander S. By & Through Bowers v. Boyd*, 929 F. Supp. 925, 938 (D.S.C. 1995) (“The court may not simply accept as reasonable the number of hours reported by counsel”).

Duplication must be excluded from any fee award. *See Nutramax Lab ’ys, Inc.*, 2017 WL 6523616, at *4 (recognizing that “[a] party is certainly free to hire and pay as many lawyers as it wishes, but cannot expect to shift the cost of any redundancies to its opponent”). Thus, even if ATC were the prevailing party, the Panel should not compensate ATC’s counsel for hours which it finds “excessive, redundant or otherwise unnecessary.” *Alexander*, 929 F. Supp. at 938–39 (*citing Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). Even if it had prevailed, ATC fails to establish in its Fee Petition that the performance of work: (i) was not duplicative or excessive; (ii) was performed (rather than observed) by the attorney making the fee request; and (iii) was directly and reasonably related to the attempted enforcement of a mechanic’s lien against NKD. Accordingly, ATC has no entitlement to an award of attorney’s fees based on the submission that was provided, setting aside the fact that ATC has no right to fees in the first place.

CONCLUSION

For these reasons, ATC's Petition for an Award of Attorney's Fees should be denied and a supplemental award should be entered in favor of NKD in the amount of **\$317,541.81**, for attorney's fees and costs incurred in successfully defending against the mechanics' lien claim in accordance with S.C. Code § 29-5-10.

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March 7, 2025
Charleston, South Carolina

STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**

COUNTY OF RICHLAND CASE NO.: 2020-CP-40-03915

**** TRANSCRIPTION OF DIGITAL COURTROOM ****

March 19, 2026

BEFORE: Honorable Will Wheeler and

Daniel Coble

Atc SITE CONSTRUCTION, LLC,

Plaintiff,

vs.

Nkd, INC.,

Defendant.

APPEARANCES:

E. Russ Jeter, Esq.

George James, Esq.

Appearing for the Plaintiff.

Ellis Lesemann, Esq.

Robert Bonds, Esq.

Appearing for the Defendant.

Recorded by: Debra Copland-Sparrow, monitor

Transcriber: Natalie Dahl, RPR
SC Official Court Reporter
Registered Stenographer

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EXHIBITS

(NONE)

Transcript Legend

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
Phonetic (ph)	Indicates a phonetic word
(Inaudible)	Indicates word(s) are not discernable due to audio recording quality
(sic)	Word(s) said but may be incorrect

1 P R O C E E D I N G S

2 THE COURT: All right. That brings us to the
3 next case. And there are several -- several
4 motions, but they are all Atc Site Construction,
5 LLC, versus Nkd, Inc., and others.

6 Everybody come forward.

7 (A brief pause in the proceedings.)

8 THE COURT: Morning, everybody. So what I'm
9 looking at is a motion to vacate arbitration award,
10 a motion to -- two motions to confirm an
11 arbitration award, and I wonder if those aren't the
12 same motion appearing twice on the roster.

13 MR. JAMES: Were both of those motions to
14 affirm or confirm the award filed by Atc? Probably
15 is.

16 THE COURT: Yes.

17 MR. JAMES: It was just mistakenly filed
18 twice, yes, Your Honor.

19 THE COURT: I read them, and they looked like
20 they were the same.

21 And then a motion for attorney's fees by Atc,
22 and a motion for relief or release from mechanic's
23 lien by Nkd.

24 I'll be glad to hear from you. In what
25 order -- it seems to me that the motions to confirm

1 or not to confirm the arbitration award may help
2 resolve the last two motions.

3 MR. LESEMANN: Your Honor, that may. Ellis
4 Lesemann, Judge Wheeler. Good to meet you and to
5 appear before you.

6 I represent Nkd. We had filed the first
7 motion, and can provide some background. And I
8 think that might be a logical way to proceed. I
9 also can inform the Court that the mechanic's lien
10 issue itself is resolved. We were able to resolve
11 that through a consent order, and probably just
12 failed to let the clerk know to remove that. So,
13 really, it is sort of cross motions about an
14 arbitration order, Your Honor. And we're happy to
15 proceed in whatever order you see fit.

16 THE COURT: In that case, I mean, the motions
17 on either side of the same coin, essentially, to
18 confirm or vacate the arbitration award, and it
19 does appear that Nkd filed the first motion to
20 vacate. So I'll be glad to let you go first, and
21 just tell me whatever you need to.

22 MR. LESEMANN: Thank you, Your Honor. Thank
23 you, sir.

24 Again, Ellis Lesemann on behalf of Nkd, Inc,
25 which is nominally the defendant in the case, but

1 we've always considered ourselves to be the
2 plaintiff, and did, in fact, receive a judgment in
3 favor of Nkd -- or an award, I should say -- of
4 nearly \$800,000.

5 I want to introduce Robert Bonds to you,
6 Judge Wheeler.

7 And, good morning, Judge Coble. Thank you
8 for your service as well.

9 Mr. Bonds is co-counsel, and also Athena
10 Leventis, who is Nick Leventis' sister. Mr.
11 Leventis passed away in July of 2025. He was the
12 "N" in "Nkd." And the "K" was Karl Hassinger, his
13 long-time business partner.

14 This matter -- I first met Mr. Leventis on
15 Martin Luther King Day in January of 2020. By that
16 point, this project, which is a residential
17 development up on the -- on the bluffs of the Broad
18 River in the -- in the upper part of Richland
19 County. The project was already two years late.
20 It had cracks in the road. All of the sewer and
21 water pipes needed to be redone. It was a
22 disaster, and it was something that was of much
23 consternation to Mr. Leventis, who after a long
24 career had looked to retire. But this project,
25 unfortunately, took a lot, lot longer than it ever

1 should have. It had to be rebuilt.

2 And I mention that time, Your Honor, because
3 that was going right into the Covid pandemic, and
4 it made things extremely difficult to get things
5 accomplished, because you had to go back to
6 Richland County to get roads approved and
7 everything else like that.

8 So, lo and behold, after all of those years,
9 a project that started back in 2016 was finished in
10 2022. It was litigated. So, Your Honor, I know
11 you are already thinking about arbitration and the
12 standard of review that applies, and that's
13 important, but what I did want to point out to the
14 Court is that this matter was in this courthouse,
15 and it was up for trial. And for a couple of
16 reasons, one being Mr. Leventis' health, another
17 being just sort of the difficulty and the
18 complexity of a construction dispute, and otherwise
19 just the idea of managing the trial roster when you
20 have clients and folks that are from out of state,
21 expert witnesses and all of that.

22 Basically, at the last minute, this case was
23 sent to an arbitration panel. But it is not
24 something that the arbitration panel lived with and
25 developed and heard motions on and handled

1 discovery issues, and all of those sorts of things.
2 They were brought in at the end. Arbitration was
3 Plan B.

4 So, Your Honor, we've submitted some briefs
5 to Judge Coble, to Judge Coble's clerk. I know
6 that we'll make sure that we will get all of those
7 to you. I think those would be a benefit to you.
8 You are scheduled to hear a motion in a case where
9 we're talking about a project that lasted six
10 years, and a litigation that lasted about four. So
11 there's a lot of detail, and a lot of background.

12 But, at the same time, there's some ground
13 that doesn't have to be re-plowed. No one is
14 asking for this award to be vacated in its
15 entirety. There are some very specific issues that
16 are before the Court. It really focuses on
17 attorney's fees and on prejudgment interest.

18 Your Honor, again, the arbitration was held
19 over at the Columbia Hilton and Convention Center.
20 We booked a conference room, had about a
21 four-and-a-half day arbitration proceeding, which,
22 again, resulted in an award in favor -- not in
23 favor of the contractor -- in favor of the owner
24 for \$785,000, which included the expenses to
25 rebuild the roads. It included the expenses to

1 redo the sewer and the water pipes that were
2 cracked or installed incorrectly or broken during
3 construction, and other issues that came up.

4 It also included prejudgment interest, and it
5 also included liquidated damages, an amount we were
6 told we never would get, but we did it. It was a
7 thousand-dollars-per-day provision in the contract.
8 Again, they actually were three years late, but we
9 got a year's worth of those liquidated damages from
10 the arbitration panel.

11 So as a result of that case, there is no
12 mechanic's lien. The contractor is the plaintiff
13 because they came -- abandoned the job, filed a
14 mechanic's lien, claimed to be owed about
15 \$800-something thousand dollars. But while all of
16 the liquidated damages had already accrued, and
17 while you could already tell the roads were going
18 to have to be redone, and Richland County was
19 telling my client, We can't accept these roads,
20 because, eventually, they would become public
21 roads. The taxpayer has to support the conditions
22 of those roads. So they are very careful to make
23 sure that the roads are in perfect and good
24 condition when they are turned over.

25 So the outcome of that case was that an award

1 was in favor of my client. The contractor breached
2 the contract. The contractor breached the
3 warranty. The contractor failed to keep in proper
4 contact with Richland County. The contractor
5 failed to follow the specifications, both in the
6 contract and those in the Richland County Road
7 Standards Manual.

8 So who prevailed? Nkd prevailed. Not to the
9 amount they asked for, again, because they believed
10 that there was more delay that was caused by this
11 contractor than what the arbitration panel awarded;
12 but, fine.

13 There was an end result of about \$1.5 million
14 against which there was a setoff of amounts that
15 Atc was claiming for work that had to be redone,
16 for the roads that had to be redone, for the water
17 and sewer that had to be redone. That was treated
18 as a setoff, but the ultimate result was that
19 nearly \$800,000 award in favor of my client.

20 So at the conclusion of that case, is there a
21 mechanic's lien that can be enforced against the
22 property? No. You are not owed money, Atc. You
23 owe Nkd nearly \$800,000.

24 So although the standard for arbitrations is
25 different than the standard of review on a trial

1 before one of you, it is not insurmountable, and it
2 involves several aspects of the law that are
3 important here. One, if the arbitrators perversely
4 misconstrue the law, that should be vacated. If
5 they exceed their powers, that award should be
6 vacated. Or if they manifestly disregard the law,
7 that should be vacated.

8 Your Honor, I'm going to approach again,
9 because what we're looking at largely is an issue
10 of attorney's fees. As it turned out, the
11 arbitrators awarded \$228,000 in attorney's fees to
12 Atc. I'm going to get to that in a minute. Plus,
13 they denied an attorney fees award of over \$300,000
14 to Nkd, who, again, had to defend this action;
15 otherwise, they had a contractor who abandoned the
16 job, was claiming to be owed over \$800,000, and was
17 going to foreclose on their property causing a
18 significant financial ruin to them.

19 Instead, at the conclusion of the case, as
20 I've already stated, the arbitration panel says,
21 You know, you're right. You are owed money. You
22 don't owe that contractor anything. We'll give
23 them a setoff, but they are not entitled to any
24 money from you.

25 If a contractor is not entitled to any money

1 from the owner, they're not entitled to enforce the
2 lien. No one is going to go in front of Judge
3 Lawrence -- I just -- I thought it was Judge
4 Strickland, but now it is Judge Lawrence, the
5 Master in Equity for Richland County -- no one is
6 going before him for a foreclosure of the property,
7 because there is no lien. There is no entitlement
8 to the lien. When you owe the owner money, you
9 can't foreclose on their property.

10 The opposite is true. When you owe the owner
11 money and there's an award that enforces a
12 judgment, that's the lien. It's a judgment lien in
13 favor of the owner against the contractor.

14 So, Your Honor, if I may approach, I just
15 want to show you the statute (inaudible as Mr.
16 Lesemann steps away from the microphone.)

17 THE COURT: Thank you.

18 MR. LESEMAN: (Inaudible). So, Your Honor,
19 29-5-10. I've highlighted the relevant portion.
20 "The cost which may arise in enforcing or defending
21 against the lien under this chapter, including
22 reasonable attorney's fees" -- and I should say the
23 cost which may arise in enforcing or defending. I
24 may have missed that -- "including reasonable
25 attorney's fees, may be recovered by the prevailing

1 party. The fee must be determined by the court in
2 which the action is brought, but the fee and the
3 court cost may not exceed the amount of the lien."

4 Now, Your Honor, as you go onto the second
5 page, there's a somewhat unique provision under
6 29-5-10 that is going to be significant to the
7 decisions that you make in this case. It says,
8 "For purposes of the award of attorney's fees, the
9 determination of the prevailing party is based on
10 one verdict and the action. One verdict assumes
11 some entitlement to the mechanic's lien and the
12 consideration of compulsory counterclaims. The
13 party whose offer is closer to the verdict reached
14 is considered the prevailing party in the action.
15 If the difference between both offers and the
16 verdict is equal, neither party is considered to be
17 the prevailing party for purposes of determining
18 the award of cost and attorney's fees."

19 So, Your Honor, there is some math that
20 becomes involved when you start to look at what was
21 the outcome and, basically, what was -- what each
22 side was seeking. However, there is an extremely
23 significant caveat to that. And it says, "One
24 verdict assumes some entitlement to the mechanic's
25 lien." Not to a setoff. Not to an unpaid invoice.

1 It says "entitlement to the mechanic's lien,"
2 meaning you have the right -- because you're going
3 to be owed money, you have the right to go
4 foreclose on the owner's property because an amount
5 has been found in your favor. Not because you have
6 some claim for payment, or not because you received
7 a setoff.

8 And so, Your Honor, this is what the decision
9 will turn on, and we'll go through it in a minute.
10 I'm going to talk about that in a lot -- in some
11 good detail. But what I want to do first, Your
12 Honor, is I want to address a matter of
13 jurisdiction.

14 The jurisdiction arises on the first page of
15 that, and it says, "The fee must be determined by
16 the court in which the action is brought, but the
17 fee and the court cost may not exceed the amount of
18 the lien."

19 Now, admittedly, Your Honor, both sides made
20 a fee petition to the arbitration panel. The
21 arbitration panel adopted the fee petition from
22 Atc, and they denied the fee petition from my
23 client, Nkd. In further research -- and I'll tell
24 you how this really kind of came to mind for me.
25 Again, because the issue of jurisdiction is never

1 waived because parties can't -- litigants can't
2 create jurisdiction, and they can't deny
3 jurisdiction. It's like the rule about matter. It
4 can't be created, nor destroyed.

5 I do a lot of business disputes, and there is
6 a case called Palmetto Wildlife Extractors versus
7 Ludy. And, Your Honor, that case involved a
8 judicial -- a claim for expulsion. One member was
9 trying to expel another member from an LLC. And as
10 you may know, a lot of operating agreements with
11 LLCs include arbitration clauses, because the
12 members and the investors and the business want to
13 be able to utilize the arbitration venue or
14 mechanism as opposed to courts of law.

15 Well, it was much to my surprise, after doing
16 that type of work for a long time, that if you go
17 to have a member expelled from an LLC, you can't do
18 that in arbitration, even though probably nine out
19 of ten operating agreements call for that to
20 happen. The reason is if you go to the expulsion
21 statute, under the LLC Act it says that the circuit
22 court has to be the person that's going to rule
23 upon an expulsion. It says that's mandatory
24 language that can't be deferred or delegated or
25 transferred over to an arbitrator.

1 And as I looked at that case, and as I looked
2 at that statute, and I see the fee must be
3 determined by the court in which the action is
4 brought, it made me realize that there could well
5 be a jurisdictional issue here, one that would make
6 any proceedings in front of the arbitrator or the
7 arbitration panel relating to fees invalid. Again,
8 because "must" obviously is mandatory, and "court"
9 means court.

10 If there is a statute that says that
11 something has to be decided by a court, neither the
12 parties, nor even the court, are free to send that
13 to an arbitrator. The General Assembly has
14 dictated that is something that has to be resolved
15 by the court. And I have already admitted -- and
16 I'll fully admit -- that this is something that was
17 not brought to the arbitration panel's attention.
18 It is not something that was on the mind of either
19 side to the case. This is something that has come
20 up more recently.

21 But, again, subject matter jurisdiction, as
22 you know, can be raised at any time, even on
23 appeal. Because, ultimately, what happens is the
24 issue that had gotten decided is void once it's
25 determined that jurisdiction was lacking.

1 Now, just like with an LLC dispute,
2 arbitrators could decide other things. They can
3 decide whether there should have been a
4 distribution or not from the company, or other
5 sorts of issues or contract matters that come up,
6 just like arbitrators can decide, all right, is
7 there a damages claim? Is there a liquidated
8 damages claim? Is there a setoff? Those matters
9 are within the arbitrator's jurisdiction. But
10 based on the statute and the way I read it -- and I
11 think the only way it could be read -- is it said
12 that the fee must be determined by the court. So I
13 wanted to bring that up first.

14 Again, with full candor, this is not
15 something that was brought up to the arbitrator,
16 and this is not something that we argued. But in
17 recognition of that is what the statute says. We
18 need to make sure that the person that we're asking
19 to make a judgment or decision on something is the
20 proper party that has jurisdiction to do it.

21 So, speaking about jurisdiction, again,
22 arbitration is a convenient means. It's supposed
23 to be helpful to the parties. It's supposed to be
24 less expensive. It's supposed to be more quick. A
25 judge is not supposed to jump in and overturn an

1 arbitration just because they don't like the result
2 or they would have decided something differently.
3 But our supreme court has recognized that an
4 arbitrator's award may be vacated when the
5 arbitrator exceeds his powers and/or manifestly
6 disregards or perversely misconstrues the law.

7 Your Honor, there is several examples of
8 that. One is the Gissel v. Hart case. That is 676
9 S.E.2d, 320, from the supreme court in 2009. And I
10 have another case, Your Honor, that I'll approach
11 with. It's closer to the context of a construction
12 case. (Inaudible as Mr. Lesemann steps away from
13 the microphone.) also decided by the supreme court
14 (inaudible).

15 What I found is no matter how long you are a
16 lawyer, you keep learning things. And I thought
17 about that. I said, Perversely misconstrued? I
18 had not really heard that before. I've heard about
19 arbitrators exceeding their powers, and that part
20 of the standard. I heard about manifest disregard
21 of the law. But as I looked at it -- and, Your
22 Honor, you'll see on Page 3 of the opinion, I took
23 the liberty of just highlighting that language.
24 Again, this is in the Sea Sculptures, LLC, versus
25 Brown case in which an arbitrator's award was, in

1 fact, vacated based on the licensing statute.

2 What I kind of found as I went through is
3 when arbitration decisions are vacated, it often
4 results or relates to a statute being misapplied.
5 Because, again, you're not supposed to look under
6 every factual finding. You're not supposed to
7 second guess an arbitration panel in every respect.

8 But as indicated in Sea Sculptures versus
9 Brown, and Gissel v. Hart, if there is a perverse
10 misconstruction of the law, that arbitration award
11 should be vacated. And, again, we're not asking
12 for the court to vacate the decisions on damages,
13 liquidated damages. Those are parts that neither
14 side has asked the court to revisit.

15 These motions relate to the attorney's fees,
16 plus the prejudgment interest calculation, which by
17 themselves, Your Honor, total up to about \$580,000,
18 which was about the same amount after this improper
19 deduction of attorney's fees for my client's
20 recovery, was about how much they got after years
21 of delay, after going out-of-pocket, and all of the
22 things that happened.

23 So this is a significant issue. Really, the
24 justice was taken out of this outcome by this
25 decision on attorney's fees. And so it's

1 important, and it is one that falls on the court to
2 vacate it. Because, again, perverse
3 misconstruction of the law has occurred, as well as
4 manifest disregard of the law. So that word
5 "perverse," right, it has a social connotation to
6 it just because of how it normally gets used. But
7 what does it mean? Improper. Incorrect. Contrary
8 to the evidence or direction of the judge or on a
9 point of law. Wrongheaded. That is what perverse
10 means according to Merriam-Webster.

11 So if you have an improper, incorrect,
12 wrongheaded construction of the law, it's
13 meaningful, right. The court is really called upon
14 to step in in that case. And so when we look at it
15 -- and, again, you'll be informed, and we'll inform
16 you that the manifest disregard of the law is a
17 standard that calls for the moving party to show,
18 well, you need to show that they knew about the law
19 and that they just refused to apply it. We can
20 show that, too, Your Honor.

21 But, again, when you look at these cases, you
22 see it says you can -- you should vacate for
23 manifest disregard of the law, or for a party --
24 arbitrator exceeding their powers, or for perverse
25 misconstruction of the law. That's indicating that

1 each of those is a different thing. Each of those
2 is a different standard. They are not the same
3 thing.

4 So if it's "or" there could be a perverse
5 misconception, then there's not manifest
6 disregard, and vice-versa. So what did the panel
7 manifest disregard (inaudible as Mr. Lesemann steps
8 away from the microphone.) It says there has to be
9 some entitlement to the lien, meaning you can
10 proceed and foreclose. You can enforce. Not that
11 you are just entitled to get some money.

12 And, Your Honor, the EFCO Corporation versus
13 Renaissance on Charleston Harbor, that is a court
14 of appeals decision from 2006, which was after the
15 most recent revision to this mechanic's
16 lien/attorney fees status. So this case is coming
17 with the current version of the statute in place.

18 And if you look at, Your Honor, the
19 fourth page of the EFCO decision, I've highlighted
20 a portion. But I want to go up a little bit from
21 that. You will see language from 29-5-10. It is
22 right up at the top of the page, beginning with:
23 "A person to whom a debt is due for labor
24 performed." That is the language from 29-5-10.

25 It goes on beginning in Note 4: "Our supreme

1 court has defined a prevailing party as one who
2 successfully prosecutes the action or successfully
3 defends against it, prevailing on the main issue,
4 even though not to the extent of the original
5 contention, and is the one in whose favor the
6 decision or verdict is rendered and judgment
7 entered."

8 Now, counsel for Atc is going to tell you
9 that I'm trying to argue for a common law standard,
10 that I'm ignoring the statute. But I'm bringing to
11 Your Honor a case by our court of appeals that is
12 applying 29-5-10, and it's using that exact
13 language. What is a prevailing party?

14 And then the part goes on to say -- the court
15 of appeals says, "In the mechanic's lien action,
16 the defendant is entitled to an award of attorney's
17 fees as the prevailing party if it is determined
18 that a mechanic's lien cannot be enforced against
19 it." Which is what happened here. The arbitration
20 panel said, Yes, I recognize, Atc, that you are
21 claiming this amount. We're going to offset it
22 against what we're going to award Nkd. But the net
23 was nearly a \$800,000 award in favor of my client.
24 Therefore -- or in other words -- it was determined
25 that a mechanic's lien cannot be enforced against

1 Nkd. They can continue forward after all of the
2 delay, finally start to sell the lots to Stanley
3 Martin, finally start to recover some revenues
4 after all the delay and misfortune that befell them
5 through their unfortunate choice of this
6 contractor.

7 But that standard, that was before the
8 arbitration panel. That was manifestly
9 disregarded. They knew of it, they disregarded it,
10 and they also have perversely misconstrued it.
11 Because what they said is, Well, they are entitled
12 to some money, so we're going to give them an
13 offset. That is not what this says. That is not
14 what the courts say. And when the courts have been
15 clear, arbitrators are not free -- despite what
16 deference may exist under the law, they are not
17 free to disregard the law, and they're not allowed
18 to perversely misconstrue it.

19 So as we looked at it, who breached the
20 contract? The contractor. Who owed actual
21 damages? The contractor. Who owed liquidated
22 damages? The contractor. Who owed prejudgment
23 interest? The contractor. Who was the prevailing
24 party? The owner, Nkd. But that's not how this
25 arbitration panel decided it. They went in and

1 they said, Well, because we have cut the claim for
2 liquidated damages from three years to one year,
3 the contractor is closer to the outcome. The
4 contractor's claim is closer to the verdict, so
5 we're going to give them fees, even though they
6 weren't the prevailing party, as the court of
7 appeals and the supreme court have defined it, and
8 they aren't entitled to enforce the mechanic's
9 lien, as the court of appeals has said.

10 And in that Footnote 15 on that case, Your
11 Honor, the EFCO case, the court is citing to the
12 Seckinger (phonetic) case, and I believe another
13 one that I -- if we go back long enough --
14 actually, both court of appeals -- the Seckinger
15 case and the Cedar Creek case.

16 But, again, applicable law manifestly
17 disregarded, because that is what that means. When
18 you are trying to figure out, all right, well, what
19 does some entitlement to a lien mean, if you can't
20 enforce the lien against the owner, you don't have
21 some entitlement to it.

22 And so, Your Honor, I would like to bring
23 forward a hypothetical, because the math can get
24 confusing.

25 THE COURT: Thank you.

1 MR. LESEMANN: (Inaudible) of scenarios.
2 Hypothetical No. 1, Your Honor. This is a
3 different set of facts from our case. It is a
4 different set of numbers. But I want to have a
5 situation where the owner -- let's say it's a
6 seven-story office building out here on Main
7 Street, and it's quite valuable, and there is a
8 claim for \$20 million because of how poorly it was
9 constructed, and the contractor is claiming they
10 were owed \$150,000 after getting paid. And, again,
11 keeping in mind Atc was paid millions of dollars
12 for the work that had to be redone in this case.

13 But to continue with this hypothetical, let's
14 say that the arbitrator or the court decides that
15 the amount due to the contractor is \$1 dollar out
16 of the 150,000 that they claimed, and the amount
17 due to the owner is \$10 million out of the
18 \$20 million that they claimed. So the verdict
19 after the setoff would be \$9,999,999 in favor of
20 the owner.

21 So is the contractor entitled to enforce the
22 lien that they filed for the \$150,000? No. They
23 got some money. They got a one-dollar setoff.
24 They got a credit, but they can't enforce the lien.
25 In fact, they have a \$9.9 million judgment lien

1 against them. So it's the owner that would be
2 entitled to a lien; again, not a mechanic's lien.
3 When you look at the difference between the two
4 verdicts, the contractor is closer. We determine
5 that by saying, All right, their claim was for
6 \$150,000, were they closer to the \$9.9 million than
7 the owner at the \$20 million claim? Yeah, they
8 were closer.

9 So did the General Assembly intend for
10 29-5-10 to allow for a contractor who receives one
11 dollar on a \$150,000 claim as a setoff to get
12 attorney's fees from an owner to whom the
13 contractor messed up their project so badly that
14 they owe that owner \$9.9 million? Well, under the
15 arbitration panel's logic, which is obviously
16 supported by this contractor, the answer would be:
17 Yes, they would be entitled to attorney's fees.
18 That's wrongheaded. That is illogical. That's a
19 perverse misconstruction of the law, because there
20 is no entitlement to the lien. It is also a
21 manifest disregard of the law when we can look at
22 the standard that was announced in EFCO, and in
23 other cases, that says in a mechanic's lien action,
24 it is the defendant who is entitled to an award of
25 attorney's fees as the prevailing party, if it is

1 determined that a mechanic's lien cannot be
2 enforced against it. The arbitration panel knew
3 that. They ignored it. They refused it. Since
4 they gave a setoff to Atc, even though the award
5 was in favor of Nkd, they took \$228,000 of actual
6 damages. My client had to go out of their pocket
7 to redo the roads, to redo all of these utility
8 systems, and they got money taken out to pay for
9 attorneys.

10 I'll get to it in a minute, but they were
11 basically functioning as third and fourth chair
12 attorneys in this case. And I don't mean
13 disrespect to Mr. Jeter or Mr. Buchanan, who's not
14 here today. I'll get into that in a minute, but
15 there were other things about that fee award that
16 are wrong beyond the lack of jurisdiction, and
17 beyond the fact that it is a clear perverse
18 misconstruction of the law, and a manifest
19 disregard of the law.

20 So, Your Honor, I'll use the last drastic
21 example. If you go to Page 2 of the hypothetical,
22 in that case the contractor still claimed \$150,000.
23 The owner still claims \$20 million. Either the
24 panel or the judge, whoever is hearing it, or the
25 jury, decided that the contractor -- there was

1 \$149,000 due. And, again, the same number for the
2 owner; however, that contractor really messed up
3 that building and is liable for \$10 million to the
4 owner.

5 So, again, the verdict after setoff in this
6 example, again, would be zero. The contractor is
7 not entitled to any money. They can't enforce a
8 lien. The owner is entitled to \$9,851,000. So, no
9 mechanic's lien. No foreclosure for the
10 contractor. Judgment lien for the owner.

11 Let's look at the difference between the
12 claim and the verdict. That \$150,000 claim is
13 closer to the 9.85 million than the 20 million.
14 So, again, is this a situation -- because it's the
15 same outcome. There is still no entitlement to a
16 lien. So based on that, this contractor is also
17 not entitled to attorney's fees, because they can't
18 enforce a lien against the owner. That's what the
19 law says. There is no entitlement to the lien.
20 You received a setoff, and you received a setoff
21 for nearly everything that you are claiming should
22 be paid to you, but you still owe money. You are
23 still in the wrong. You still did more damage than
24 what you are owed, so that owner was right in not
25 paying it. Hey, you screwed up my building. It is

1 three years late. You misconstrued the roads.
2 You messed up the utilities. It is the same
3 situation.

4 On Page 3, Your Honor, that's where I show
5 you our numbers, and this is how the actual outcome
6 was perversely misconstrued, and the law was
7 manifestly disregarded. Atc's claim was for
8 \$847,000. My client's claim was for \$3.3 million.
9 Again, including liquidated damages per the
10 contract amount, including the damages for repair.
11 And I also included prejudgment interest on the
12 liquidated damages, because they were due going
13 back to 2019.

14 So by approaching and by asking for those
15 amounts, we had that amount. And, really, the
16 damages were higher than these. There was interest
17 in carrying costs and all sorts of things that
18 happened. But that's the amount.

19 Ultimately, the panel decided Nkd is owed
20 about 1.6 million. They awarded Atc the 848,000 --
21 and I say awarded. Again, it was not awarded; it
22 was a setoff. So what was the award of the verdict
23 after the setoff? \$785,717 in favor of Nkd. So is
24 Atc entitled to enforce a lien? No. Would Nkd
25 have a judgment lien against Atc if they hadn't

1 paid that amount? Yes, they would. However, Atc's
2 claim was closer to the ultimate outcome. But just
3 as in the two hypothetical examples, and just as
4 the EFCO case and the other decisions by the court
5 of appeals, and the plain language of 29-5-10 would
6 show you, if you don't have some entitlement to the
7 lien, it doesn't matter if you are closer. As EFCO
8 says, if you succeed, and they're not entitled to
9 enforce a lien against you, you are the prevailing
10 party, so you're entitled to the fees.

11 So, Your Honor, that is why there's been a
12 perverse misconstruction and a manifest disregard
13 of the law. So if you were to decide that the
14 matter was properly before the arbitration panel,
15 it needs to be vacated because of that perverse
16 misconstruction and that manifest disregard.

17 Separately, if you look at the plain language
18 of 29-5-10 and you say, You know what, the General
19 Assembly is saying that the fee must be decided by
20 the court in which the action is brought, I've got
21 to construe that literally, I can't change those
22 words, then the proceeding needs to be brought
23 before this court. And, again, it is easy enough
24 done as we have already have a pending case number.

25 I wouldn't ask Your Honor to decide that

1 today. This case is brand new to you. It also
2 would have been new to Judge Coble if he would have
3 heard it. I think maybe he had helped us with a
4 consent order here or there along the way. But I
5 think that would be something for you to really
6 decide the reasonableness. It's not something for
7 us to handle with other folks waiting, a full
8 docket waiting on you this afternoon. I think that
9 needs to be determined.

10 So when we look at that -- and, again, I want
11 to -- I want to add something else, Your Honor. If
12 you search all of the decisions under that Statute
13 29-5-10 and look at all of the outcomes, you'll
14 never find a case in which is a contractor lost,
15 where they owed money to the owner, and they got an
16 award of attorney's fees.

17 This case is unique in a bad way in that this
18 arbitration panel made a decision that was against
19 the statute, was against the law applying and
20 interpreting the statute, and is against decades of
21 case law. Because it's illogical, and it's
22 nonsensical. Why would you take away the damages
23 you are awarding to pay someone for a lien that
24 they can't enforce? Because, ultimately, they are
25 not entitled to it. They are not owed anything.

1 And it made a huge outcome. It was more than a
2 \$500,000 swing. So it's a very important issue,
3 that the law does give you jurisdiction to reach
4 and overturn.

5 So, Your Honor, that's the jurisdictional
6 argument. That's the perverse misconstruction and
7 the manifest disregard argument.

8 If Your Honor were to determine that you felt
9 like the General Assembly meant for, in a general
10 sense -- if you get over that jurisdictional issue,
11 if you think that is not a problem, and if you do
12 believe that a party that loses and owes \$785,000
13 ought to be able to get attorney's fees for a lien
14 they can't enforce, if you get over that issue,
15 there is still the problem of this award. This
16 award was exaggerated. It was -- it was insulting.
17 But more than that, it was itself a perverse
18 misconstruction and a manifest disregard of the
19 law.

20 When you look at an attorney's fee request it
21 needs to include (inaudible as Mr. Lesemann steps
22 away from the microphone.) was necessary. There
23 were a couple affidavits filed that kind of
24 followed through the Jackson factors.

25 But, Your Honor, that page I just handed to

1 you, that was the support provided to the
2 arbitration panel: \$5,000, \$20,000 there. So,
3 Your Honor, one page to support that was presented
4 for a \$228,000 attorney's fee.

5 And I want to back up a little bit. I got to
6 meet Mr. Jeter through this case, and also
7 Mr. Buchanan. They are great lawyers, and I've
8 enjoyed getting to know them. I want to tell you a
9 little bit about how this case was litigated.
10 Because of the nature of the claim, it triggered
11 Atc's insurance coverage, which involved Mr. James
12 and also Mr. Trippett Boineau from the McAngus,
13 Goudelock and Courie firm. So there are four
14 lawyers on the case.

15 So, again, what would make sense? It makes
16 sense for those insurance defense attorneys to do
17 as much as the work as possible because (inaudible)
18 come out of pocket for them, right? So that all
19 makes sense. And so Mr. James and Mr. Boineau
20 handled every deposition. They defended every
21 deposition. They asked every question during every
22 deposition. Mr. Jeter did spend about 15 to 20
23 minutes during the multi-day arbitration handling
24 one witness. And, again, I'm not criticizing that,
25 but that fee of \$280,000 includes fees for

1 Mr. Jeter and Mr. Buchanan to watch Mr. James and
2 Mr. Boineau to conduct depositions.

3 And, again, I'm not saying that that wasn't
4 worth it for the client. The client may have
5 wanted that. The client, obviously, wanted that,
6 because the gentlemen were there. But there were
7 four lawyers at a deposition, and the arbitration
8 panel reached into this damages award and took
9 money out in order to pay for the third and the
10 fourth lawyer that were observing. The arbitration
11 panel's justifications for this, they upset me.
12 But, again, that's not the standard. It's not
13 whether you upset counsel. But they said, Oh,
14 well, hey, Nkd, you asked for \$300,000. That's
15 because the whole case of me working involved us
16 having to prove, no, you can't foreclose on this
17 property; you owe us damages. You owe us
18 liquidated damages.

19 So the entire case -- everything that we
20 spent for me doing the work, doing all that stuff,
21 yeah, that was \$300,000, right. This claim for 228
22 was just for the third and the fourth attorneys.
23 Now, again, I work with -- Mr. Jeter filed the
24 mechanic's lien. Mr. Jeter and Mr. Buchanan and I
25 worked together to negotiate a set-aside when Atc

1 sold its assets while this case was pending. We
2 set aside an amount of the proceeds from that sale
3 so that there wouldn't be a judgment proof
4 situation once this case moved forward. They did
5 things.

6 The arbitration panel made no effort, no
7 analysis to say, Were you sitting and watching, or
8 were you doing something unique? They did things.
9 They created value for their client, certainty. I
10 don't mean to do anything untoward in my argument,
11 but the whole nature of attorney's fee is it's got
12 to be reasonable. And to take money out that had
13 to be spent to repair botched work, to pay for a
14 third and fourth attorney to observe a deposition
15 is a perverse misconstruction of the law relating
16 to attorney's fees. It was wrong. I told this
17 panel that, but they were kind of done with it.

18 There wasn't a hearing. They went through,
19 they looked at it. They had the one page that is
20 in front of you, plus they had an affidavit from
21 Mr. Buchanan and Mr. Jeter that didn't detail what
22 they did, it just said, hey, I think my rate is
23 reasonable.

24 I've been at this for a long time, and they
25 have. Mr. Jeter is an experienced construction

1 lawyer. But, again, Mr. Boineau and Mr. James were
2 doing a lot of work, other people were there, and
3 for the arbitration panel to deduct damages in this
4 circumstance when all they got was that one page --
5 \$17,000, \$8,000, you can see it -- when that is the
6 justification, that's completely inadequate.

7 The circuit court would have rejected that out of
8 hand saying, I can't do this. I can't award --
9 what was the \$17,000 for? What were you doing? It
10 was an outrageous outcome that showed a dereliction
11 of duty on the part of the arbitration panel, who
12 themselves are good construction lawyers. But the
13 court of appeals, those are good judges. Circuit
14 court judges, they're good judges. Everybody makes
15 mistakes. Everybody gets reversed from time to
16 time. And in this instance, this arbitration panel
17 botched 29-5-10. They missed the common law, even
18 though it was brought to their attention, which
19 means they manifestly disregarded it, and they
20 perversely misconstrued this outcome.

21 But separate from that, by failing to conduct
22 any analysis or even to care whether this work was
23 actually moving the ball, or just observing
24 somebody else moving the ball, that was wrong.
25 That needs to be overturned because it was a -- it

1 was an abuse of discretion, which is the standard
2 for the circuit court, and it is also exceeding
3 your powers. A judge can't go forward, an
4 arbitrator can't go forward and award fees without
5 making some effort to determine that they were
6 reasonable and necessary and appropriate and not
7 duplicative. These were -- and I'll probably mess
8 up the word -- quadruplicative, to have four
9 lawyers to do something, and then to pay the
10 attorneys that were there.

11 And I know they would have helped at a break,
12 and that they would have said this or that. But,
13 again, no court has ever awarded attorney's fees
14 for four people to watch a deposition. Some people
15 have been at this longer than me, but I've been at
16 it for 27 years, and you can never find an example
17 of the fee award that would do that.

18 So, Your Honor, for these reasons, here's
19 what we're asking the Court to do. First, we're
20 asking the Court to address that jurisdictional
21 issue and to determine whether it was appropriate
22 for any arbitrator to decide fees under 29-5-10,
23 when the General Assembly adopted a law that says
24 the fee must be decided by the court in which the
25 action is brought, which would be this court.

1 Secondly, Your Honor, we're asking for you to
2 vacate the findings and the conclusions relating to
3 the attorney's fees issue. And I don't want to
4 forget the prejudgment issue. I don't want to sit
5 down before I mention the prejudgment interest
6 issue.

7 So, secondly, Your Honor, again, when you
8 look at the language of the statute, and you look
9 at the case law adopting and interpreting that
10 statute, it's clear that when there is no ability
11 to enforce the lien, there's no entitlement to the
12 lien, and there's no attorney's fees. The court of
13 appeals in EFCO couldn't have been more clear on
14 that. And so we're asking you to vacate those for
15 further proceedings because Nkd is entitled to
16 fees. The award to Atc should be vacated, and that
17 should be the end of the story, because the statute
18 and the case law dictates they're not entitled to
19 fees. That doesn't need to be revisited. That
20 needs to be vacated.

21 But the denial of fees to Nkd, which, again,
22 based on the statute and the case law as the
23 prevailing party, that needs to be revisited. The
24 arbitration panel has issued their final award to
25 their close; their jurisdiction is over. And,

1 again, because of what the language is in 29-5-10,
2 that should be heard here. So we need to have --
3 and, again, are our fees reasonable? Do they
4 involve duplication? Were they reasonably incurred
5 with an attorney with appropriate experience, et
6 cetera? Those need to be determined. That's, I
7 think, beyond the scope of today's hearing, because
8 Your Honor first needs to address what the
9 arbitration panel did.

10 And, then, thirdly, Your Honor, even if there
11 were the ability, the jurisdiction, to grant fees
12 to a losing party, simply because they were closer
13 to the outcome in the owner's favor, this was a
14 dereliction of duty that was improper. You can't
15 award \$228,000 in fees without having any idea what
16 was done for that amount, after being told that
17 they were, basically, being charged largely for
18 observation. And, again, not taking away from the
19 discrete, unique tasks that were done. There is
20 some there, but that is probably \$20-, \$25-,
21 \$30,000 of fees; not \$228,000.

22 And, Your Honor, the last thing -- and I
23 appreciate your patience with my presentation --
24 there was a matter of prejudgment interest being
25 miscalculated. Now, the standard for that to be

1 review is different. If you see that there was a
2 miscalculation, you are allowed to correct that.
3 You know, there is not this idea you have to see it
4 was a manifest disregard of the law.

5 Your Honor, there was another party, Gearig
6 CivilWorks. They were a subcontractor that came in
7 to do what was called "the soil cement," which is
8 the underlayer under the asphalt, on top of the
9 road, as well as to assist with paving and other
10 things. They settled for \$150,000, Your Honor.
11 The proceeding went forward in December of 2025.
12 My client's damages were liquidated as of June of
13 2022 when the project was finished. When the
14 arbitration panel calculated prejudgment interest,
15 they treated that \$150,000 settlement that was on,
16 like, day three of the arbitration hearing as if it
17 had been received in June of 2022. So they
18 deducted it before calculating prejudgment
19 interest, rather than after. That is
20 inappropriate.

21 Those damages are traceable to Atc, because
22 Atc was the general contractor. Gearig was their
23 subcontractor. Although the \$150,000 was a setoff,
24 it should have been treated as a setoff when it was
25 received, not in a fictional earlier date when it

1 was not received. The difference is in the brief.
2 It is about \$34,000, due to the passage of time.
3 But, again, it should be setoff from the full
4 amount because my client had full loss of use of
5 that money. That loss of use is not for '22, '23,
6 '24 and most of 2025 is not affected by receiving a
7 settlement payment in January of 2026, when the
8 money finally came in. That was a miscalculation
9 that ought to be corrected, in addition to the
10 attorney fee issue that I have discussed, of
11 course, at some length.

12 So, Your Honor, with that -- and, again,
13 thank you. If you have not heard this case before,
14 there is a lot behind it. But that's the relief
15 that we're seeking. And, again, we will have the
16 opportunity either with Your Honor or working with
17 Judge Coble as the chief administrative judge, I
18 think that Nkd's fee award, we stand behind it. It
19 is in the record. It's been filed. But I think an
20 appropriate proceeding will likely be best at a
21 different hearing for that issue to come before the
22 Court. Because as it stands now, the Court first
23 needs to agree that based on the law, it was wrong
24 for the arbitration panel to refuse fees to my
25 client, and award them to a losing party.

1 So in those stages, and with that being our
2 request for relief, I thank you and ask you to
3 vacate this arbitration award in part, confirm it
4 in part, and to correct the calculation of the
5 prejudgment interest.

6 Thank you.

7 THE COURT: Thank you, Mr. Lesemann. And I
8 did read over all of the briefs this morning. It
9 is a long history.

10 One question for the jurisdictional argument.
11 Under the jurisdictional argument of 29-5-10(a)
12 that you have highlighted, if I were to agree with
13 that position, it is that the arbitration panel --
14 or no one has the authority to enter an attorney's
15 fee award, with the exception of the Court; am I
16 fair in characterizing it that way?

17 MR. LESEMANN: Yes, sir.

18 THE COURT: So if I addressed it, though
19 there is no analysis of how they handled the fee,
20 they just didn't have jurisdiction to handle the
21 fee?

22 MR. LESEMANN: The last part again, Judge
23 Wheeler, I'm sorry?

24 THE COURT: If I addressed it in that
25 fashion, as you've argued it, it doesn't matter

1 what the analysis of the fee is; you are saying
2 they didn't have the jurisdiction to award a fee?

3 MR. LESEMANN: Yes. Correct. Correct. Yes.
4 And that's why I brought that up first, is that it
5 basically would indicate the whole thing would need
6 to be redone. And so you would bypass their
7 analysis and either Your Honor, or whoever the
8 chief administrative judge is would assign it,
9 would go through a de novo analysis of that issue.

10 However, I think -- I see what you might be
11 saying in that -- I think I understood, because now
12 -- when I mentioned the fee award to Atc must be
13 just a done deal, I hear Your Honor. A circuit
14 court judge would need to look at it because,
15 again, it needs to be determined. Now, that could
16 be now. You could say, All right, I've looked at
17 it. I've looked at this language. I see what some
18 entitlement to the lien is. But if one judge
19 should decide all of those issues together, I
20 understood. And, yes, I think I'm answering your
21 question.

22 THE COURT: You are. It's an either/or
23 proposition.

24 MR. LESEMANN: Yes, sir.

25 THE COURT: Either they had it, or you have

1 to analyze how they came up with that figure.

2 MR. LESEMANN: Yes, sir.

3 THE COURT: Thank you very much.

4 MR. LESEMANN: Thank you.

5 THE COURT: Gentlemen, go ahead.

6 MR. JETER: Judge, I'm Russ Jeter from the
7 Richland County bar. Here with me is George James.
8 May it please the Court. I will handle most of the
9 arguments. Mr. James worked on the prejudgment
10 interest issue, and I would appreciate it if he
11 could address the Court on that?

12 THE COURT: Yes, sir, that would be fine.

13 MR. JETER: Your Honor, this is an appeal
14 from the arbitration award. And the standard of
15 review is absolutely critical in this case, and
16 it's been almost completely ignored by Nkd's
17 argument.

18 In this case the arbitration award is
19 considered by the supreme court to be conclusive.
20 In this case the supreme court has said the courts
21 will refuse to review the merits of an award
22 (inaudible) a constant invitation to jump into the
23 details of the merits, as Pittman Mortgage Company
24 versus Edwards that we cited in our brief.

25 There is a statute on vacation of arbitration

1 award, and its relief is extremely narrow. There's
2 nothing about reviewing the merits. It is the
3 misbehavior of the arbitrators that gets them an
4 award to vacate, where there was corruption, fraud,
5 or other undue means, is one example. Evident
6 partiality by an arbitrator is another one. They
7 exceed their powers. They decide issues that were
8 not part of the arbitration agreement is another.
9 There is nothing to go into the kind of detail
10 that's been argued here today at length that is
11 reviewable by this Court.

12 The rule -- the role of the courts is not to
13 review the record for factual or legal errors, but
14 the role of the court is to protect the parties
15 from wrongful behavior by arbitrators, stuff that
16 would not be anticipated, is unexpected. There's
17 none of that here.

18 These were three fine construction lawyers,
19 one of which was chosen by Mr. Lesemann. They were
20 highly experienced, highly knowledgeable, and
21 highly respectful. And they had plenty of
22 experience with mechanic's liens and construction
23 defect cases, and they rendered an award.

24 I think this is an award that no appellate
25 court would be concerned about, given all of the

1 protections from that kind of panel. So I don't
2 think that Nkd can meet any of these standards of
3 reviews in this case, and I think the Court should
4 keep that foremost in its mind in analyzing their
5 argument of what is the standard of review.

6 Let me start with -- I got their brief at
7 10 o'clock last night. I may need an opportunity
8 to review it and respond to it at some point, if
9 the Court will allow, but I think I can handle the
10 great majority of it.

11 It's fair to say that Nkd is desperate to
12 avoid the mechanic's lien statute itself, and the
13 prevailing party test that the General Assembly has
14 established for mechanic's lien cases. They want
15 no part of that because they clearly -- as the
16 panel found, and there can be no dispute about
17 it -- they clearly lose under the mechanic's lien
18 statute. The mechanic's lien statute is -- not
19 unique, but it is unusual. It is intended to
20 encourage pretrial reasonableness among the
21 parties. It wants to encourage settlements. One
22 of the cases they cite, Seckinger, makes that
23 point.

24 This is kind of an unique statute, and all of
25 the policy reasons that Mr. Lesemann argues that

1 makes it the result absurd are not at all absurd.
2 If viewed through the (inaudible) of the statute
3 is: How do we encourage reasonable conduct
4 pretrial by the parties to get this case settled?
5 And the way they do it is they look at your
6 pretrial position in the case. If you say the case
7 is worth 20 million, okay. You are hard to deal
8 with, can't get the case settled, but you have your
9 pretrial value of 20 million. If another party
10 values their case at 7- or 800,000, and that's what
11 their claim is -- mechanic's lien claim is, they
12 have been very reasonable. So it's the party whose
13 pretrial posture was closer to the final award who
14 gets attorney's fees.

15 All of these other reasons that he mentions
16 are outside the statute and not of concern to the
17 General Assembly in drafting the statute. They
18 were looking for people to be reasonable early on
19 and get the case settled. And so that prevailing
20 party for attorney's fees under the mechanic's lien
21 statute is the one whose pretrial position was
22 closest to the final award; something he didn't
23 mention at all in that lengthy argument.

24 Now, they have tried -- they lose on that.
25 Our pretrial award -- the band was a few thousand

1 dollars higher. I think it's -- I don't want to
2 mess up the numbers. We were very close to the
3 final award in our pretrial. They were about a
4 million or so off in their pretrial versus final
5 award. That's why we got attorney's fees. We were
6 much more reasonable from the get-go, and that is
7 what the statute is trying to infer.

8 They know that if this Court applies the
9 General Assembly's prevailing party test, that they
10 will lose. So they're desperate to avoid the
11 prevailing party's (inaudible) of the statute.

12 The first attempt they made for (inaudible)
13 statute is to cite the Seckinger case. That was a
14 court of appeals decision by Judge Howard, who I
15 thought was a great judge, in which he looked at
16 the statute and said, you know, okay, I see they
17 are trying to get people to be reasonable. I see
18 how the statute is set up, but I think you got to
19 make a pretrial offer of settlement citing the
20 statute in order for the statute to apply.

21 Well, neither party in this case made such an
22 offer. But he was very strict in triggering the
23 statute by requiring an offer of assignment to the
24 statute. And they cite that case and say, you
25 know, you -- the prevailing party test done by the

1 General Assembly doesn't apply here. Well,
2 Seckinger has been -- not officially overturned,
3 but its reasoning has been rejected by the supreme
4 court in two cases: The Brittles v. Tile
5 (phonetic) case, and the JRS Builders case that we
6 cited in our brief.

7 So that was attempt number one to avoid the
8 statute. Now they are trying to avoid the statute
9 by saying that because their award was more for
10 the, you know -- construction defects was more than
11 the award we got for the mechanic's lien, that
12 there's no entitlement to a mechanic's lien. Well,
13 that's not what the statute says.

14 They cite EFCO as the case that says if -- if
15 the construction defect claims are larger than the
16 mechanic's lien claim, you are not the prevailing
17 party, and you can't recover any attorney's fees.
18 Well, that's certainly not what the General
19 Assembly says, at all. But that is what EFCO --
20 but EFCO is dealing with this, it was dealing with
21 a party that didn't have a right to a mechanic's
22 lien. They had missed the statute of limitations.

23 So all of that argument based upon the EFCO
24 case, that he went into for a long time, is totally
25 irrelevant. Because EFCO -- there's no right to a

1 mechanic's lien, so you apply the common law. You
2 don't apply the statute, because they missed the
3 statute of limitation. That is all EFCO says.
4 Then, they cite Seckinger, which we've already
5 established has been overruled by the supreme court
6 on two occasions.

7 So they have nothing to -- they've offered
8 the Court no case that would say that the General
9 Assembly's approach to the prevailing party for
10 attorney's fees purposes doesn't apply. Of course
11 it does. This is a normal case. Often a
12 mechanic's lien case is going to be smaller than
13 construction defect. But for the attorney's fees
14 related to the mechanic's lien, it is -- the only
15 question is: Whose pretrial posturing was closest
16 to the final award? And that was clearly us.

17 (A brief pause in the proceedings.)

18 MR. JETER: Their second matter -- second
19 argument is the question of the subject matter
20 jurisdiction. And I worked on this pretty hard. I
21 saw the language in there that said that the
22 attorney's fees must be determined by the court in
23 which the lien was filed. But I've done a lot of
24 work on it, and I figured out exactly what was
25 going on there.

1 We cite to the Dove decision, an opinion by
2 Justice Toal from 1994, Dove versus (inaudible), a
3 supreme court decision, and it was concerned with
4 subject matter jurisdiction. And it went into
5 subject matter jurisdiction more than any other
6 case I could find. And, basically, what they
7 determined is jurisdictional statutes are different
8 from venue statutes, but they are often contained
9 in the same work, the same clause.

10 For instance, in the Dove case it said that
11 either party may appeal from the decision of the
12 commission to the court of common pleas -- to the
13 court of common pleas. That's jurisdiction.
14 Justice Toal examined that. That's one and done.
15 That part of the sentence is jurisdictional. It is
16 giving the one circuit court of South Carolina
17 jurisdiction to hear these appeals from this
18 commission.

19 But, then, the statute goes on to say, "In
20 the court of common pleas of the county in which
21 the alleged incident happened." She said that's
22 not jurisdictional; that's venue. So the first
23 part of the sentence says, "The Circuit Court of
24 South Carolina has jurisdiction," and that's where
25 subject matter jurisdiction comes. But the second

1 part says, "Of the county in where it was filed,"
2 and in our case where the mechanic's lien was
3 filed. That's venue, and venue can be waived.
4 Subject matter jurisdiction cannot be waived.

5 Now, I went back and looked. This says --
6 the language in this statute says -- talks about --
7 excuse me, let me get....

8 (A brief pause in the proceedings.)

9 MR. JETER: Talks about how it must be where
10 the county is.

11 I'm getting my statutes here mixed up. Let
12 me find --

13 I went back and looked at a couple of venue
14 statutes, Your Honor. This is 15-7-10. I'll get
15 you a copy in a second. Venue statutes are written
16 in terms of "must be tried." I've got another one
17 here, a second one, that uses the same language.
18 So the part on that language -- oh, here it is.

19 Also, I'll show you 15-7-20, which also uses
20 the language "must be tried." He harped on that
21 language saying it's mandatory. It's not. It's
22 venue. That is the way venue statutes are worded.
23 So the language in this case, that it must be where
24 the lien was filed, it's just venue language.

25 If you look at the mechanic's lien statute,

1 the jurisdictional -- the jurisdictional language
2 for mechanic's liens is found in 29-5-1-4. It
3 says, "The lien may be enforced by petition to the
4 court of common pleas." That's the precise kind of
5 jurisdictional language that was used in Dove.

6 And, then, the second part of that phrase of
7 "which the county in which the building or
8 structure is located is situated, is venue."
9 Jurisdiction is in the circuit court. But which
10 circuit court do you go to? And it directs you to
11 the venue where the building is located. But
12 that's just venue, which can be waived.

13 The key thing on jurisdiction is that the
14 Circuit Court of South Carolina has jurisdiction.
15 Then you get into venue and which of the circuit
16 courts do you go to. That is the Dove analysis,
17 and I've applied it to the mechanic's lien.

18 Now, he is saying that 29-5-10, the language
19 that he cited is subject matter jurisdiction.
20 There is no jurisdictional language in that section
21 of that code. None at all. It talks about how --
22 who is entitled to a mechanic's lien, and all of
23 that. There is no jurisdictional language in that
24 section which tells you the circuit court has
25 jurisdiction. All there is is some venue language

1 that says you've got to deal with attorney's fees
2 if the court -- in which the lien was filed. Well,
3 that's just venue. The jurisdiction of the court
4 to hear the mechanic's lien cases comes from
5 Section 140.

6 So this is not a subject matter jurisdiction
7 question that he's raised in that statute. It is a
8 venue question, and venue can be waived. And it
9 was waived in this case by them agreeing with us
10 and others to arbitrate the case, to stay this
11 case, and to have it arbitrated, and have the
12 arbitrators decide all motions as though they were
13 the circuit court. They made a motion for
14 attorney's fees, as did we, in the chosen venue of
15 arbitration, and they waived their right. They had
16 a right to have this court hear the attorney's
17 fees. That is correct venue for attorney's fees,
18 according to the statute; they waived that right.

19 THE COURT: If I could interject. Could
20 either one of you all -- I saw it was in a brief in
21 all of this, but is there any consent order or
22 other agreements where the parties collectively
23 entered into an arbitration? Or how did you all --
24 I can't find it. Could you all --

25 MR. JETER: It is Exhibit 1, I believe, to

1 our brief.

2 MR. LESEMANN: That's correct, Your Honor, it
3 was referred to arbitration.

4 THE COURT: Okay. So consent order to stay?
5 I think (inaudible).

6 MR. JAMES: Yes, Your Honor. George James
7 for Atc. It was entered by Judge Joycelin Newman
8 on July 10th.

9 THE COURT: Sorry to interrupt. I wanted to
10 be able to look at it while you were all talking.
11 Thank you.

12 MR. JETER: So that acts as a waiver of their
13 right to have the attorney's fees heard by this
14 court, but that can be waived because that's merely
15 venue. That has nothing to do with jurisdictional
16 (inaudible) of Section 140 that the circuit courts
17 of South Carolina can entertain the petition for
18 and grant an award of mechanic's liens.

19 So the Dove case says there is a two-part
20 analysis here, and it also says that venue can be
21 waived, but subject matter jurisdiction cannot. So
22 they are just wrong on subject matter jurisdiction.
23 I mean, this would create huge policy problems for
24 the courts if they can -- it would mess up sending
25 cases to arbitration. Especially if you get a

1 bunch of EIFS cases and your docket is overloaded,
2 his position would be you've got to hear the
3 attorney's fees, and that's just wrong. That's not
4 the case.

5 Your Honor, the third argument concerns the
6 amount of attorney's fees. Well, that is not
7 within the scope or review of this court. Your
8 scope of review is the arbitrators determined
9 attorney's fees, did they exceed their powers in
10 determining those attorney's fees? And the
11 question for exceeding powers is: Was there an
12 agreement that they would hear motions, such as
13 motions for attorney's fees, in deciding? And
14 there certainly was. That's exactly what this
15 court ordered. The arbitrators were empowered, and
16 this was their suggested motion and our suggested
17 motion to the court, that the arbitrators be
18 empowered to act as though they were the judges of
19 the court of common pleas in deciding motions.

20 Nkd put the issue of attorney's fees before
21 the panel pursuant to that order, consent order,
22 that they helped draft. And we did, too. And they
23 made their decision. And there's no question they
24 had the right to make that decision. We gave it to
25 them. This court gave it to them. So there's no

1 question that they are exceeding their powers and,
2 therefore, there is nothing for the court to review
3 with respect to attorney's fees.

4 Now, I could go into a lengthy personal
5 response to the attack by opposing counsel on
6 attorney's fees, but that's not the function of
7 this court. This court assigned that to the
8 arbitrators, and the only question this court
9 should have is: Did those arbitrators exceed their
10 powers? They did not. They made the decision on
11 attorney's fees pursuant to motion, just like both
12 sides directed they did, and that's the end of the
13 question for attorney's fees.

14 Your Honor, that is my presentation, but I
15 would ask that Mr. James speak to you about the
16 fourth issue.

17 THE COURT: Yes, sir.

18 MR. JAMES: Yes, Your Honor. George James
19 also for Atc. Just to clarify, Mr. Jeter was
20 handling the mechanic's lien issue, subject matter
21 jurisdiction issue, and the attorney's fees issue.
22 I will note that nowhere in the attorney's fees
23 being sought are any of McAngus, Goudelock and
24 Courie's fees, so Mr. Boineau's and my fees are not
25 being included in that request. It is just Mr.

1 Jeter's and Mr. Buchanan's.

2 As Mr. Jeter said, I've been asked to address
3 the prejudgment issue or prejudgment interest
4 issue. What may provide some comfort to the Court
5 is the arbitration panel entered an interim award
6 on January 21, 2025. Nkd, after receiving that
7 interim award, raised the same issue with the
8 calculation of prejudgment interest. That issue
9 was briefed, among others. The panel reviewed it,
10 considered it, and denied that they had
11 miscalculated the prejudgment interest. I equate
12 that to a 59(e) motion. It is clear that -- it's
13 clear that the panel had the authority to review
14 and consider this issue, and I think that has been
15 outlined by Mr. Jeter. That can remain
16 undisturbed. That should end the analysis, but
17 since it has been addressed, I will continue.

18 During the pendency of the arbitration,
19 Gearig CivilWorks entered into a settlement with
20 both Atc and Nkd for the amount of \$150,000. It
21 was agreed during the arbitration that that would
22 act as a credit or setoff for what was to be owed
23 to Nkd.

24 I think the case law is very clear that that
25 setoff should go to the benefit of the remaining

1 tortfeasor; here, Atc in regards to the
2 construction defect allegations. The payment of
3 150 -- or \$150,000, excuse me, reduces the award
4 for the harm that was caused. It does not reduce
5 the interest calculated therefrom. I think that is
6 made abundantly clear in the Butler case. There is
7 explicit text in there that says, "In this case,
8 the trial court should have awarded prejudgment
9 interest to subcontractor after determining the
10 amount the contractor owed the subcontractor."

11 Here, the amount owed would be the damages
12 award, and then the prejudgment interest should be
13 calculated from that total. It should not be after
14 the damages are calculated, prejudgment interest is
15 calculated, and then the setoff or credit from
16 Nkd's settlement is reducing that total.
17 Theoretically, that could mean that Gearig offered
18 \$150,000 on day one, and they just did not take it.
19 I'm not saying that happened here, but that creates
20 an absurd result that if that offer is out there,
21 they're allowed to sit on it and allow prejudgment
22 interest to accrue. I believe the correct
23 interpretation is for the setoff payment to go to
24 the damages or the harm, and then the prejudgment
25 interest be calculated, which is exactly what the

1 panel did.

2 Thank you.

3 THE COURT: Mr. Lesemann.

4 MR. LESEMANN: Thank you, Your Honor. I
5 appreciate it. I understand you have more of a
6 docket to go.

7 Your Honor, at the outset of counsel's
8 presentation, he stated that we were ignoring the
9 standard of (inaudible), and then proceeded to talk
10 to you about the statute. So one of the reasons
11 why I walked back and forth so much to the bench is
12 to provide you with cases and statutes and things
13 like that.

14 So there is a statute that deals with how and
15 when an arbitration award can be vacated, but as in
16 Gissel and Sea Sculptures, there is also a
17 non-statutory ground, and that non-statutory ground
18 has been recognized for decades. It is if the law
19 is manifestly disregarded or if a law is perversely
20 misconstrued, that an arbitration award must be
21 vacated.

22 Now, obviously, it is something up to your
23 discretion to determine whether those circumstances
24 have arisen, but I didn't ignore it. I brought it
25 to your attention. We talked about the

1 non-statutory ground, and then I explained why it
2 applies.

3 And then it was indicated to you that we're
4 trying to prevent the statute from being applied or
5 desperate several times, how desperate we were.
6 Also, not true. How many times did I talk about
7 29-5-10? All right. Let's look at it and see what
8 it says. Again, the jurisdictional issue -- it's
9 not a venue issue. We're not talking about whether
10 the Lexington County Court of Common Pleas or the
11 Richland County of Common of Pleas should hear this
12 issue. Those courts are equivalent, other than
13 they are (inaudible). The issue of a court and an
14 arbitration panel is not a decision of venue. One
15 is a court of record, and the other is a private
16 dispute resolution service. They aren't a matter
17 of venue. They are fundamentally different.

18 And so when you are looking through all of
19 the cases -- and thank you for spending a lot of
20 time reviewing those briefs -- when you look at it
21 and you see this Palmetto Wildlife case, that is
22 right on point. Now, it's not talking about
23 mechanic's liens and attorney fee awards, but it's
24 talking about when a statute says that a court must
25 decide something, a court has to decide it. So

1 we're not trying to figure out where a worker's
2 comp appeal ought to be, and whether it could be
3 heard here, or there. We're talking about when a
4 statute indicates that it is a court that must
5 decide something, and uses those words "must" and
6 "court."

7 In the specific context of deciding whether
8 that can even be sent to an arbitrator, even by
9 consent, that's a different issue. And that
10 Palmetto Wildlife case is what is valuable. The
11 Dove case, respectfully, is not valuable, talking
12 about a statutory appeal, which obviously would
13 have to go to circuit court, and then which one it
14 ought to go to. That case is completely
15 inapplicable.

16 But when you look at that Palmetto Wildlife,
17 and when you look -- again, what do the higher
18 courts always tells us to do? You have to
19 interpret the statute according to its plain and
20 ordinary meaning, and it does indicate a court in
21 which the action is brought must be the one that
22 decides fees. And, again -- so that we can have an
23 appropriate award, an appropriate resolution in the
24 case, that is why jurisdiction is important.

25 Now, again, talking about you don't have to

1 take my word for what the different grounds are, I
2 showed it to you. I showed you the Sea Sculptures
3 case. I talked about the Gissel case, and I gave
4 you the citation to it. It exists. So, you know,
5 that's why I feel like it's so important to bring
6 forward the cases, and even to highlight them to
7 show, again, that when the arbitrator exceeds his
8 or her powers and/or manifestly disregards or
9 perversely misconstrues the law, an award will be
10 vacated. So, there we got to that. That is the
11 non-statutory ground that is well recognized by the
12 supreme court. It exists.

13 So if you decide that jurisdiction did
14 arise -- and, again, jurisdiction can't be waived.
15 It can be raised at any time. If I had known this
16 at the time, we would have handled it differently,
17 but I didn't; now, I do.

18 So we're raising the issue of jurisdiction to
19 make sure that it's done correctly. We're not
20 doing this in a way other than how the General
21 Assembly told us how to do it.

22 So, then, I went into the wording of the
23 cases. And counsel said that those were -- those
24 issues were not of concern: The Seckinger case,
25 the EFCO case. There was also a Utilities

1 Construction Company versus Wilson case. I know
2 that the law is of concern to you, particularly
3 when you're trying to determine whether it was
4 manifestly disregarded or perversely misconstrued.
5 I can see the idea of, well, you know, arbitration
6 is in the lockbox, you can't look at it. Again, we
7 talked about reasons that the court has to.
8 Because arbitration, even if handled by
9 construction lawyers, can be imperfect. So we
10 talked about that law.

11 Atc just can't come before you and take the
12 same position that they did before the panel that
13 the applicable law is not of concern. Again, when
14 you look at the EFCO case, you'll see. What was it
15 applying? It was applying 29-5-10, not a common
16 law test. My client is not trying to disregard the
17 statute. We're trying to have it properly applied
18 in a way that is not a perverse misconstruction.

19 Because when you go and look at that EFCO
20 case, they didn't flip over to a common law test.
21 They thought, All right, well, EFCO doesn't have
22 the right to enforce the lien, so the owner is
23 entitled to attorney's fees. That is why it is
24 cited in the statute, and then it's cited in the
25 prevailing party language, and then it's cited

1 again in the mechanics lien. The defendant is
2 entitled to an award of attorney's fees as the
3 prevailing party, if it is determined that the
4 mechanic's lien cannot be enforced against it. So
5 that is what a mechanic's lien claim is, of course,
6 Your Honor. We want to enforce this claim. We
7 want to foreclose on the property, right. And a
8 mechanic's lien claim is not just we're owed money.
9 It is a claim to impose a right to foreclose on
10 somebody else's property because you claim that
11 they owe you money.

12 So when you fail, and you aren't in a -- when
13 you aren't entitled to foreclose on their property,
14 either because you waited too long or because you
15 claimed an improper amount, or because you lose,
16 you aren't entitled to enforce the mechanic's lien.
17 The law on that is clear. And, again, who is
18 asking to disregard it? The contractor is asking
19 to disregard it, as well as the arbitration panel
20 did disregard it. So we talked about that. The
21 owner received an award under the statute, again,
22 because there wasn't a right to enforce it.

23 One other case, Your Honor, since counsel
24 indicated that he wanted to hear, perhaps, about
25 more cases or felt like they shouldn't be applied

1 just as they are worded. The Utilities
2 Construction Company versus Wilson case, court of
3 appeals from 1996. So Wilson is the owner. "By
4 directing a verdict in favor of Wilson, the Court
5 found Utilities failed as a matter of law to prove
6 its right to foreclose the mechanic's lien." Not
7 that it is entitled some money, it failed to prove
8 it was entitled to foreclose the mechanic's lien.
9 "We, therefore, conclude Wilson was the prevailing
10 party on the mechanic's lien cause of action, as
11 she successfully defended the contractor's effort
12 to enforce the lien." Clearly, under the statute,
13 a party is entitled to recover attorney's fees if
14 she prevails in defending against the lien, citing
15 SC Code annotated 29-5-10."

16 So, Your Honor, I'm not ignoring the law. My
17 client isn't ignoring the law. We're not ignoring
18 the statute. We're not trying to hide from what it
19 says. We're trying to make sure that what it says
20 is not manifestly disregarded and perversely
21 misconstrued. I could give you more cases about
22 it, but they're clear. If you can't enforce the
23 mechanic's lien, i.e., there's no action before the
24 master in equity to foreclose on your property, you
25 have won. If you proved that because they did a

1 technical failure, you've won. If you prove that
2 because they screwed up your project so badly they
3 owe you money, you've won, because they can't
4 foreclose. That principle is basic.

5 I said it until I was blue in the face, and
6 in all of the briefings before the arbitration
7 panel, they missed it. It's a \$500,000 swing. It
8 is a big deal. It is not something just to say,
9 Well, you know, not for the court. Because, again,
10 there is the ability and the duty of a court when
11 it sees that a law has been manifestly disregarded
12 or perversely misconstrued to step in, and that is
13 what the cases talk about.

14 In Note 14 of EFCO as well, if you look at
15 those notes, that was a case that I handed up. It
16 talks about -- it is saying in Seckinger, it's
17 observing this definition of prevailing party is
18 applied in the context of statutes allowing
19 attorney's fees.

20 So, again, EFCO and Note 14, where it cites
21 to all of those other cases, the language in EFCO,
22 the language in Utilities Construction Company
23 versus Wilson, the language in Seckinger, and again
24 saying that is how you make that determination.

25 And I'm not asking you to ignore the statute,

1 because, again, that is why the statute says
2 "assuming some entitlement to the lien." And so if
3 you've got no entitlement to the lien, meaning you
4 can't foreclose because they owe you a hundred
5 bucks, or you can't foreclose because they don't
6 owe you a hundred thousand bucks, it doesn't matter
7 the amount. That is what I was attempting to show
8 through the hypothetical. They can't enforce it;
9 therefore, they didn't prevail; therefore, that
10 award of \$228,000 was wrong. It needs to be
11 vacated. Therefore, since my client succeeded in
12 defending their property from foreclosure, because
13 this contractor screwed up the project so badly
14 that they owed us \$800,000, that was the prevailing
15 party. The law on it is clear. So it had to be
16 perversely misconstrued, or manifestly disregarded,
17 or both in order for the result to be what it was.

18 So here we are asking -- you may decide that
19 the arbitrator had jurisdiction, but they botched
20 it. They missed this law, and they missed the case
21 law. It was presented to them. I even went
22 through every single case over the last 40 years
23 and explained to them how they were going to -- if
24 they granted that motion, they were going to adopt
25 a result that has never happened. A contractor has

1 never gotten an award where they lost the case and
2 couldn't enforce the lien. So it is important. It
3 is significant. It is a half million dollars.

4 So, Your Honor, again, the standard is there.
5 Your power is there. Your duty is there to go in
6 and make sure that these cases are rightfully
7 decided in those grounds.

8 Again, you don't look at facts. This isn't
9 looking at facts. This is looking at the law, and
10 correcting a clear error of law that wasn't just a
11 mistake. It was a perverse misconstruction of the
12 law. Because who could determine that you should
13 take away money that you are agreeing is owed for a
14 botched project, again, to pay for observational
15 attorneys, generally speaking?

16 And I apologize to Mr. Jeter if he felt that
17 was a personal attack. But on that last ground,
18 again, that award of \$228,000 without support,
19 without even asking, What was the \$228,000 for?
20 What was the \$10,000 for? A court or arbitration
21 panel cannot award fees on that basis. That's a
22 dereliction of duty, and it is exceeding their
23 powers, again, because any court has an obligation,
24 any arbitrator has an obligation to look at that,
25 rather than rubber stamp and sign off on something.

1 And, again, lastly, Your Honor, on the issue
2 of attorney's fees, again, you can look at that
3 issue. Mr. James argued it well. But we had the
4 loss of use of that money. This is an unusual
5 construction case in that my client went out of
6 pocket. Those weren't estimated amounts for
7 repair. Those were amounts that Nick Leventis and
8 Karl Hassinger had to borrow money so that they
9 could go do -- so this project could move forward.
10 Those were real numbers. They were out of pocket
11 that amount all of those years. To receive some
12 money four years later doesn't correct for the loss
13 of use. It is a setoff. No one is arguing that
14 it's not, but it is a setoff at that point with the
15 loss of use included. That was a \$34-, \$35,000
16 difference. So as we're looking at it, there is a
17 couple of issues that were mishandled by the
18 arbitration panel to that level, despite what all
19 the case law says and despite what the statutes say
20 to a \$580,000 swing.

21 So we're asking Your Honor to please correct
22 those errors, because you have the power to do it,
23 the case law is clear that you can do it, and you
24 should do it where the law was clear, but it was
25 ignored or perversely misconstrued.

1 Last thing I'll say, Your Honor, about the
2 miscalculation issue. Again, that's a different
3 standard. If you find that there's a math error,
4 you are allowed to correct that. That doesn't
5 require corruption or it's a -- it is a different
6 section of the arbitration act, whether federal or
7 South Carolina. So that standard is different.
8 But when you look at it -- and we're happy to
9 provide any more case law or further briefing or
10 anything that you may need, but you've already seen
11 a lot.

12 Again, that was a -- that was a punch in the
13 face, that outcome. And that can sometimes happen,
14 but when the punch in the face comes in ignorance
15 or in willful disregard or in failure to apply the
16 law correctly to do it in a wrong headed or
17 incorrect or illogical manner, that's what perverse
18 misconstruction is, and that is what this court is
19 here to correct.

20 So thank you again, and we ask that your
21 award be vacated and relevant to our (inaudible)
22 proceedings about attorney's fees.

23 THE COURT: Thank you, all. They were all
24 very well-done professional arguments and good
25 briefs.

1 Gentlemen, thank you, all.

2 Did you need any additional time?

3 MR. JETER: I have not read his brief. I
4 need to look through it, Your Honor, and see if
5 there's anything I need to respond to.

6 THE COURT: Could you let us know by next
7 Wednesday whether or not you need to? Is that --

8 MR. LESEMANN: Oh, Your Honor, obviously that
9 is up to the discretion that you get to exercise.
10 We would ask if there is an additional submission
11 that we be given two, three days to reply because
12 there could be new case law or other things in
13 there that we may want to reply to. I know it can
14 create a cycle, but....

15 THE COURT: Anything from anybody I would
16 like to have by next Friday --

17 MR. LESEMANN: Yes, sir.

18 THE COURT: -- under any circumstances, just
19 to keep it, you know....

20 Thank you, all. Thank you so much.

21 (Whereupon the digital courtroom audio
22 concluded.)

23

24

25

CERTIFICATE OF TRANSCRIBER

Case Name: Atc Site Construction v. Nkd, Inc.,

Case No.: 2020-CP-40-03915

Date of Hearing: March 19, 2026

I, Natalie Dahl, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording.

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

Natalie Dahl, RPR

CERTIFICATE OF COUNSEL

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

Respectfully submitted,

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SC Court of Appeals

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