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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

Lee S. Alford, Circuit Court Judge

Appellate Case No. 2014-000821

The Winthrop University Trustees for the  
State of South Carolina, ..... Respondent,

v.

Pickens Roofing and Sheet Metals, Inc., ..... Appellant.

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RECORD ON APPEAL VOLUME II

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1 (WHEREUPON, trial continued on March 19, 2014)

2 THE BAILIFF: All rise, come to order.

3 MR. SHEALY: May it please the Court, Your Honor.

4 THE COURT: Yes, sir.

5 MR. SHEALY: I just handed those up. I don't  
6 think we have any dispute, the rules requirement to  
7 tender my objections and tender them to the Court at  
8 the same time. I don't believe we have any dispute at  
9 all. I just wanted to mention that Your Honor.

10 THE COURT: Okay.

11 MR. SHEALY: Your Honor, also just by way of  
12 housekeeping I want to introduce my colleague Lyndey  
13 Zwing, who has not been with us until today.

14 MS. ZWING: Good morning.

15 THE COURT: Morning.

16 MR. VOGT: I have another Rule 32 designation.

17 (Handed up to the judge.)

18 THE COURT: Do you usually do that right in the  
19 middle of a trial?

20 MR. VOGT: I think the rule requires one day  
21 notice.

22 THE COURT: I know it does, but it doesn't mean  
23 that you have to do the day of or the day before.

24 MR. VOGT: We're not certain we will even read  
25 that deposition, it is just more of a matter --

1 THE COURT: You give it to him then he has got to  
2 have enough time. Nothing prevents you from doing it  
3 a little ahead of time.

4 MR. VOGT: He has been aware for quite some time  
5 we would potentially be reading a the deposition.

6 THE COURT: All right. Ready to proceed?  
7 Anything need we to take up out of the presence of the  
8 jury at this time?

9 MR. VOGT: No, Your Honor.

10 MR. SHEALY: No, Your Honor.

11 THE COURT: Please bring the jury in.

12 (WHEREUPON, the jury enters the courtroom.)

13 THE COURT: Good morning, madam forelady and  
14 members of the jury panel. I hope you had a pleasant  
15 night last night. We are ready to resume with the  
16 trial at this time.

17 Counsel.

18 MR. VOGT: The plaintiff calls Fire Marshal John  
19 Dunlop.

20 JOHN DUNLOP, called as a witness, having been duly  
21 sworn by the clerk, was examined and testified as

22 follows:

23 DIRECT EXAMINATION

24 BY MR. VOGT

25 Q Please tell us your name and where you live?

1 A John Dunlop. I live at 1638 River Glen Court, Rock  
2 Hill, South Carolina.

3 Q Who do you work for?

4 A I work for the State Fire Marshal's office.

5 Q And what is your position with the fire?

6 A I am Deputy State Fire Marshal.

7 Q How long have you been a Deputy State Fire Marshal?

8 A Six years.

9 Q And what did you do before you were a Deputy State Fire  
10 Marshal?

11 A I worked at Fort Jackson Fire Department for 32 years  
12 and I retired and the last 21 years I was an inspector.

13 Q And you were an inspector for the Fort Jackson Fire  
14 Department?

15 A Yes, sir.

16 Q In South Carolina what authority has jurisdiction over  
17 a state building as to the interpretation and enforcement of the  
18 South Carolina Building and Fire codes?

19 A The fire marshal's office.

20 Q And as Deputy State Fire Marshal are you charged with  
21 enforcing -- interpreting and enforcing the South Carolina  
22 Building and Fire codes for a certain area of the state?

23 A Yes, sir.

24 Q What area do you work at?

25 A I work in Fairfield, Chester, Lancaster and York

1 Counties.

2 Q And York County includes Winthrop University?

3 A Yes, sir.

4 Q At some point in time did you become aware of a fire  
5 that occurred at Winthrop University on March 6, 2010?

6 A Yes, sir.

7 Q How did you become aware of the fire?

8 A I received a phone call from Miss Stuart at Winthrop  
9 informing me that Owens Hall was on fire.

10 Q And what did you do when you found out about the fire?

11 A I called my supervisor to see what I should you do and  
12 I was told to go see why the sprinkler system did not operate.

13 Q And what did you determine?

14 A The fire never got in to the building to activate the  
15 sprinkler system.

16 Q Now, when you were there was any part of your role to  
17 investigate the fire?

18 A No, sir.

19 Q At the time of the March 6, 2010 fire had South  
20 Carolina adopted the International Fire Code?

21 A Yes, sir.

22 Q And the International Fire Code does it have provisions  
23 relating to fire safety during the construction and demolition  
24 of a building?

25 A Yes, sir.

1 Q And does Chapter 14 of the International Fire Code  
2 adopt provisions of NFPA 241?

3 A Yes, sir.

4 Q And what edition NFPA 241 was in effect as of the March  
5 6, 2010 fire?

6 A I'm not sure.

7 MR. VOGT: Can I approach, Your Honor?

8 THE COURT: Yes.

9 Q Let me hand you what has been marked for identification  
10 Plaintiff's Exhibit 61?

11 Do you recognize that sir?

12 A Yes, sir.

13 Q And what edition is that?

14 A 2000.

15 Q And was that the edition that was enforced at the time  
16 of the 2010 fire?

17 MR. SHEALY: Objection, leading.

18 A I am not sure.

19 Q Okay.

20 THE COURT: Counsel has objected. Let me rule on  
21 it.

22 MR. VOGT: I'm sorry, Your Honor.

23 THE COURT: It's harmless leading, overruled.

24 Q Let me show you, sir, if I can to refresh your  
25 recollection and affidavit that you supplied in connection with

1 this fire. Would that help you refresh your recollection?

2 A Yes, sir.

3 MR. SHEALY: Your Honor, I would object. May we  
4 approach?

5 THE COURT: Yes, sir

6 (WHEREUPON, there was an off the record  
7 discussion.)

8 Q Deputy Dunlop, I am going to hand you a copy of the  
9 affidavit and if you could just read it to refresh your  
10 recollection as to which edition of NFPA 241?

11 A 2000.

12 Q So what you have in front of you, exhibit 61, is that a  
13 2000 edition of NFPA?

14 A Yes, sir.

15 Q Your Honor, the plaintiff moves exhibit 61 -- moves the  
16 Court to admit exhibit 61 into evidence?

17 MR. SHEALY: Objection.

18 THE COURT: Objection?

19 MR. SHEALY: May we approach.

20 THE COURT: Yes, sir.

21 (WHEREUPON, there was an off the record  
22 discussion.)

23 THE COURT: I will sustain the objection, counsel.

24 Q Deputy Dunlop, does 2000 edition NFPA 241 define the  
25 scope of the standard?

1 A Yes, sir.

2 Q Does it do so at 1.1 of the standard?

3 A Yes, sir.

4 Q Can you can you read the scope of the standard?

5 A Could I have some light?

6 MR. VOGT: You can leave the lights on if you  
7 would.

8 A "This standard shall apply to structures in the course  
9 of construction, alteration, or demolition, including those in  
10 underground locations."

11 Q And does the standard also define the purpose?

12 A Yes, sir.

13 Q What is the purpose of NFPA 241?

14 A "This standard is intended to prescribe minimum  
15 safeguards for construction, alteration, and demolitions  
16 operations in order to provide reasonable safety to life and  
17 property from fire during such operations."

18 Q And does it also set forth how the statute applies?

19 A Yes, sir.

20 Q Where does it do that?

21 A This standard -- 1.3.1.

22 Q Can you read that for us?

23 A "This standard provides measures for preventing or  
24 minimizing fire damage during construction, alteration and  
25 demolitions operations."

1 Q In your opinion as Deputy State Fire Marshal would NFPA  
2 241 apply to the demolition?

3 A Yes, sir.

4 MR. SHEALY: Objection. Move to strike. Calls  
5 for a legal conclusion and the witness has not been  
6 properly qualified as expert.

7 THE COURT: Sustained.

8 MR. VOGT: Your Honor, may I approach.

9 THE COURT: Yes, sir.

10 (WHEREUPON, there was an off the record  
11 discussion.)

12 Q Deputy Dunlop, as part of your duties as Deputy Fire  
13 Marshal are you required to enforce the fire code including  
14 Chapter 241?

15 A If I have dealings with that type of work, yes.

16 Q And as part of your duties as Deputy State Fire Marshal  
17 is it your duty to interpret the applicable fire code?

18 A Yes, sir.

19 MR. VOGT: Your Honor, I offer Deputy Fire  
20 Marshal John Dunlop as an expert as to the application  
21 of NFPA 241 in this case.

22 MR. SHEALY: Your Honor, would you permit --

23 THE COURT: Voir dire, certainly.

24 MR. SHEALY: Voir dire on the qualification?

25 THE COURT: Yes, sir.

1 VOIR DIRE EXAMINATION

2 BY MR. SHEALY:

3 Q Deputy Dunlop, as the Deputy State Fire Marshal you  
4 weren't required to demonstrate knowledge of NFPA 241 to obtain  
5 your credential, were you?

6 A No, sir.

7 Q All right. And in fact this is the first time in your  
8 career you have been asked to give any opinions as to the  
9 application of NFPA 241, correct?

10 A As a state fire marshal, yes.

11 MR. SHEALY: Thank you. Your Honor, based upon  
12 that I don't believe that the witness has the  
13 appropriate experience or background to provide  
14 opinions about NFPA 241.

15 DIRECT EXAMINATION

16 BY MR. VOGT:

17 Q You indicated that you had not done that in your role  
18 as state fire marshal?

19 A Yes, sir.

20 Q Have you done that previously?

21 A Yes, sir.

22 Q Where?

23 A At the Fort Jackson Fire Department.

24 Q And have you also -- were you also familiar with  
25 section 8.3.3 of NFPA 241?

1 A Yes, sir.

2 Q Where did you become familiar with that?

3 A In the past when I was at Fort Jackson Fire Department  
4 and also when this case came up.

5 MR. VOGT: Your Honor, again, I tender the  
6 witness. I believe he has sufficient background and  
7 experience as well as it's his duties as Deputy State  
8 Fire Marshal to interpret NFPA 241.

9 THE COURT: Wish to be heard?

10 MR. SHEALY: Yes, sir, may I cross examine  
11 further?

12 THE COURT: Yes, sir.

13 VOIR DIRE EXAMINATION

14 BY MR. SHEALY CONT'D:

15 Q Deputy Dunlop, when you were at Fort Jackson you had a  
16 different code that you went by, correct?

17 A Yes, sir.

18 Q It was something in the department of defense manual?

19 A Yes.

20 Q Okay. It wasn't NFPA 241?

21 A No, sir. It was all of the NFPA codes because the  
22 Federal Government adopts NFPA codes in there entirety.

23 Q Okay.

24 MR. SHEALY: Your Honor, may I approach the  
25 witness with his deposition?

1 THE COURT: Yes.

2 MR. SHEALY: May I open it?

3 THE COURT: You may open it.

4 Q Deputy Dunlop, I am handing you the original of your  
5 deposition that was taken on January 6, 2014. If you will turn  
6 with me to page 61 starting on line two. Do you see that?

7 A All right. The question posed then, "As I understand  
8 earlier, this is the only time that you ever been asked to  
9 provide an opinion about the application of NFPA 241 in any  
10 circumstance, correct." Answer, "While I have been with the  
11 fire marshal's office." Question, "Now have you done that in  
12 some other capacity? Yes, sir. "

13 Question. "All right. Tell me about that. Answer "at  
14 the Fort -- Fort Jackson."

15 Now, going over to the next page -- well, before we get  
16 there. Going down to the end of page 61, starting on line 24  
17 "Unlike the state fire marshal" -- this is your answer. "Unlike  
18 the state fire marshal's office when we had new construction at  
19 the fort we were involved from the start. When they first  
20 decided, hey, we are going to build a building we would go the  
21 meetings with everybody when they were designing the building.

22 After we would review the plans and give our input to it and  
23 we would also stop by the construction site from time to time  
24 because there is some things that you have to look at before the  
25 building is completed. So you can see it is in put in right and

1 that's what we use to do."

2 Question, "Okay, did that require you to be familiar with  
3 NFPA 241?" Answer, "No. We had a different code we went by."

4 Was that the answer you gave?

5 A Yes, sir.

6 Q Okay.

7 MR. VOGT: Your Honor, I would object. To be fair  
8 to the witness we need to read the rest of that  
9 testimony.

10 THE COURT: Read the rest of it counsel.

11 MR. SHEALY: I'm happy to keep going, Your Honor.

12 THE COURT: Keep going.

13 Q Question, "Okay. It's a department of defense manual."

14 Question, "All right. So I can't remember the number of it.

15 So, again my question is whether or not this was the only  
16 time you ever been asked to opine about the application of NFPA  
17 241?" Answer, "That I can remember, yes."

18 MR. VOGT: Your Honor --

19 DIRECT EXAMINATION

20 BY MR. VOGT:

21 Q Deputy Dunlop, I thought you had said the Department of  
22 Defense manual included the NFPA sections, correct?

23 A Yes, sir.

24 Q And isn't it part of your duty -- in addition to  
25 that -- isn't it part of your duty as the Deputy State Fire

1 Marshal to interpret the code whether it will be for this  
2 lawsuit or any other matter?

3 A Yes, sir.

4 Q And in connection with this lawsuit, you have  
5 interpreted the code, correct?

6 A Yes.

7 Q And the Deputy State Fire Marshal is assigned by the  
8 state fire marshal jurisdiction over certain counties, correct?

9 A Yes, sir.

10 Q And a those counties include York which include  
11 Winthrop University, correct?

12 A Yes, sir.

13 Q And that's what you have done in this case, correct?

14 A Yes, sir.

15 MR. SHEALY: Your Honor, I can go further with the  
16 cross examination qualifications if you permit.

17 THE COURT: If you wish.

18 VOIR DIRE EXAMINATION

19 BY MR. SHEALY:

20 Q Deputy, you were contacted to be involved in this case  
21 by Winthrop's lawyers, correct?

22 A Yes, sir.

23 Q Okay. And typically what you do is as the Deputy State  
24 Fire Marshal you do yearly inspections of state buildings to  
25 make sure while they are in operation people are not violating

1 the fire code, right?

2 A Yes, sir.

3 Q You are looking for things like you plugged two  
4 extension cords together and that violates the fire code, right?

5 A Yes, sir.

6 Q You are not typically involved in interpreting the fire  
7 code after a fire has happened and being contacted by a lawyer  
8 for a plaintiff in a lawsuit, correct?

9 A This has been the first time.

10 Q Yes, sir.

11 MR. SHEALY: Your Honor, I have no further  
12 questions as to qualification.

13 DIRECT EXAMINATION CONT'D

14 BY MR. VOGT:

15 Q If any citizen of the State of South Carolina contacted  
16 you would you provide interpretation of the code?

17 A Yes, sir.

18 THE COURT: Counsel, I don't find he has any  
19 specific knowledge or sufficient knowledge to be  
20 qualified as an expert in interpreting that particular  
21 section.

22 He has never done it before. Really hasn't worked  
23 with it before and hasn't had an occasion to make a  
24 finding on it before as to any specific facts. Simply  
25 coming in after the fact and come in and look at the

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facts, I don't find him sufficient to be qualified to render an opinion as to that section.

MR. VOGT: May I be heard, Your Honor.

THE COURT: Yes, sir.

MR. VOGT: Your Honor, the State Fire Marshal's office --

THE COURT: I don't care who the fire marshal is, what his designation is. If he has never does this and he has never done it before I don't think he has any specific qualifications to do it today for the purposes of this lawsuit.

MR. VOGT: Okay.

THE COURT: That is my finding. Yes, he has to enforce the code. He's never enforced this specific provision, run across or done anything with it before, and we heard his description of what he typically does on his job. And so, without some specific knowledge about this section, why it is there, what it covers and that sort of thing, I don't know that he has anything to share as an expert with the jury as to that section. That's my feeling. All right. That's my ruling.

MR. VOGT: All-right.

DIRECT EXAMINATION CONT'D

BY MR. VOGT:

1 Q Deputy Dunlop, are you familiar with NFPA section 8.3.3  
2 of 241?

3 A Yes, sir.

4 Q And what does that provision state?

5 A "Yard storage. Yard storage of equipment to be  
6 installed or combustible construction materials shall not be  
7 stored closer than 30 feet from the structure under construction  
8 or alteration.

9 Q Thank you.

10 MR. VOGT: Your Honor, may I approach?

11 THE COURT: Yes.

12 (WHEREUPON, there was an off the record  
13 discussion.)

14 Q Deputy Dunlop, if we stay with section 8.3.3 and NFPA  
15 241, what does yard storage means?

16 MR. SHEALY: Objection. Calls for a legal  
17 conclusion.

18 THE COURT: If he knows I think he can give his  
19 opinion about it. If he can explain what to him it  
20 means he can do that. Go ahead.

21 Q Deputy you can --

22 A To me yard storage is any storage that is outside of a  
23 building.

24 Q And what does combustible construction materials mean?

25 MR. SHEALY: Objection. Calls for a legal

1 conclusion.

2 THE COURT: I will allow him to give his opinion.

3 A Combustible --

4 THE COURT: Wait just a second. Citing his 32  
5 years of experience and his 21 years as fire  
6 inspector, and working in that field for 32 years and  
7 his current job, I will allow him to give his opinion.  
8 Go ahead.

9 A Combustible is anything that will burn.

10 Q Is roofing paper a combustible?

11 A Yes, sir.

12 Q Roofing shingles combustible?

13 A Yes, sir.

14 MR. VOGT: Thank you, sir.

15 MR. SHEALY: No questions, Your Honor.

16 THE COURT: Thank you, sir. You may stand down.

17 MR. JETT: Your Honor, at this time the plaintiffs  
18 would call Wesley Love.

19 WESLEY LOVE, called as a witness, having been duly  
20 sworn by the clerk, was examined and testified as  
21 follows:

22 DIRECT EXAMINATION

23 BY MR. JETT:

24 Q Good morning, sir. Could you please state your full  
25 name for the jury?

1 A Wesley Stuart Love.

2 Q And Mr. Love, where are you employed?

3 A Winthrop University.

4 Q What is your position as Winthrop University?

5 A I am a project manager with facilities management.

6 Q How long have you been employed by Winthrop?

7 A I just started my 13th year.

8 Q Could you briefly explain to the jury your background,  
9 education, degrees earned?

10 A I have a bachelor of science in architecture from  
11 Clemson University and I have a masters in business  
12 administration from Winthrop University.

13 Q And prior to going to work at Winthrop University what  
14 sort of positions did you hold?

15 A I did a lot of work for commercial construction  
16 companies out of Charlotte, North Carolina, I did some  
17 residential building in Clover. I also worked for a lumber  
18 yard, drove a concrete truck, did some landscaping work. It  
19 covered a lot of basis in the construction industry. I also did  
20 some work for the Clover School District during summers and  
21 Christmas breaks and those kinds of their maintenance department  
22 as well.

23 Q Who do you report to at Winthrop University?

24 A Walter Hardin.

25 Q And if you could briefly for the jury please explain

1 what your title and position is as project manager of Winthrop?

2 A A lot of what I have to do is work with architects,  
3 engineers, contracts, suppliers. We have to work together with  
4 the university administration and faculty and staff to get a  
5 project together, get those specifications, drawings and any  
6 documents done so we can get a project bid and get a contract  
7 with the contractor to complete that project.

8 I also helped on some maintenance projects with our  
9 maintenance department depending if they need some extra help or  
10 need an outside contractor or vendor to help complete that  
11 project. It is kind of a broad spectrum.

12 Q Since you have been employed by Winthrop have there  
13 been many construction projects or other projects that you have  
14 been involved with?

15 A Yes. We have done literally millions of dollars worth  
16 of work since I was hired at Winthrop.

17 Q Can you briefly describe some of those projects that  
18 you have been involved in at Winthrop?

19 A Some of the major projects I worked with, I help build  
20 our campus center. It is 128,000 square foot building. It  
21 houses our food court, post office, residence life and those  
22 kinds of departments. I helped build the west center which is  
23 our physical education building. It has a pool, a gymnasium, a  
24 running track. I helped with utility projects on campus.  
25 Helped with some athletic complex, softball and baseball. I

1 also helped with, you know, small renovations, office  
2 renovations, roofing projects. Very broad spectrum.

3 Q Is it fair to say you covered everything from new  
4 construction to repair work?

5 A Yes.

6 Q And in 2009, 2010 timeframe were there construction  
7 projects on going at Winthrop?

8 A Yes.

9 Q Were some of those new construction?

10 A Yes.

11 Q And were some repair work?

12 A Yes.

13 Q Do you specifically recall the Bancroft project that  
14 was on going in 2009/2010?

15 A Yes.

16 Q What was your role specifically with the Bancroft  
17 reroofing project?

18 A I was the project manager on that job.

19 Q As the project manager for the Bancroft reroofing job  
20 what specifically did you do?

21 A I kind of monitored the job to see how progress was  
22 going. I would have been involved with the design process with  
23 our consulting engineer. I would have been involved with the  
24 bidding of that project. So I just kind of kept track on things  
25 and how the job was going. Probably would have helped review

1 the payouts and things when they came through.

2 Q Now, you mentioned the bid process. Do you recall when  
3 this project went out to bid?

4 A It would have been probably early fall of '09.

5 Q Early fall of 2009?

6 A Yes.

7 Q Now, Mr. Love, are you familiar with the contract that  
8 was signed between Winthrop University and the contractor on the  
9 project?

10 A I know some portions of it. I know roughly what the  
11 state requires to be in those documents. I didn't specifically  
12 review those or sign those myself.

13 Q Who was the contractor that was hired for the Bancroft  
14 reroofing contract?

15 A Pickens Roofing.

16 Q Mr. Love, have you seen the project specifications for  
17 this project?

18 A Yes.

19 Q And if you know are the specifications part of the  
20 contract?

21 A Yes.

22 Q You described the bid process, once the contractor was  
23 hired was there any changes made to the original contract?

24 A I remember one major change order.

25 Q What was that major change order?

1 A When we did our pre-bid conference with our contractors  
2 and our engineers we had outlined two areas on the building  
3 where they would be able to have lay down and access. As we  
4 were starting that project and had our pre-construction  
5 conference the current president of the university said that  
6 they would rather not see construction when they came in the  
7 front entrance of campus so therefore we took away one of the  
8 storage and lay down areas that that they had. The change order  
9 reflected that in that they had less access to the building and  
10 would have a different arrangement of both removal of the old  
11 roof and then of course replacement with the new materials.

12 Q Is there any additional compensation for the change  
13 order?

14 A Yes.

15 Q Do you recall how much that compensation was?

16 A May be in the neighborhood of 20,000. I don't remember  
17 the exact number.

18 Q And did Winthrop view that change order and the  
19 accompanying compensation as fair?

20 A I don't remember having any arguments about it, no.

21 Q So it was fair to the university to pay more because of  
22 the change order?

23 A Yes.

24 Q Other than the one laid down area that you just  
25 described, was there any other area provided to Pickens Roofing

1 for temporary storage?

2 A I think the only other area we would have offered up  
3 would be have been a parking lot area at our maintenance shop.  
4 We had a fenced in area there and we had locks and materials in  
5 there with lots of different contractor, so it was a secured  
6 area that anybody could use.

7 Q That area was about half a mile away from Bancroft  
8 Hall, is that right?

9 A Yes.

10 Q Mr. Love, do you recall how long the anticipated  
11 duration of the Bancroft reroofing project was to be?

12 A I think the original contract period was probably 120  
13 days.

14 Q Now a moment ago, Mr. Love, you mentioned I believe an  
15 early bid process something about hiring a consultant. Was a  
16 consultant hired for this particular job?

17 A Yes.

18 Q Do you recall who that consultant was?

19 A Stafford Consulting Engineers.

20 Q Had you worked with Stafford Consulting in the past?

21 A Yes.

22 Q What specifically is a consultant hired to do for  
23 Winthrop University?

24 A In this scenario, they would have written a set of  
25 specifications. They would have presented a set of design

1 documents, and they would help us get those together. Get that  
2 approved by the state, and then put that forward for a bid  
3 process. That would be what we would do on the job and how we  
4 would do it.

5 Q So is Winthrop University responsible for supervising  
6 the consultant?

7 A Yes.

8 Q In what way?

9 A Well, we would go to them and present them our needs,  
10 our scope of work and what we hoped to accomplish with the job  
11 and then they would come up with the project and the solution  
12 and help us hire the contractor for that job.

13 Q So, would it be fair to say that the consultant is sort  
14 of a middle man between the university and its contractors?

15 A In some aspects, yes.

16 Q So in this particular project you had Stafford  
17 Engineering as your consultant, correct?

18 A Yes.

19 Q And now did Stafford -- how did they communicate with  
20 Winthrop University?

21 A Via a phone call or e-mail, or both depending on the  
22 situation.

23 Q Did they ever prepare something like a written report  
24 for Winthrop University?

25 A Yes, in this scenario this was one of the firms that we

1 would hire. They would do inspection reports and they would  
2 come to the job site and monitor the job and then send us a  
3 report every time they were present.

4 Q Do you recall how many reports were issued by Stafford  
5 engineering to Winthrop during the course of the Bancroft  
6 reroofing project?

7 A No, I do not know an exact number.

8 Q Was there a certain periodic time in which the reports  
9 were issued?

10 A We probably hired them for "X" amount of inspections  
11 during the job. So they probably did -- they were probably very  
12 close together at the beginning of the job and probably spread  
13 out a little more as they got going and were you know moving  
14 along through the project.

15 MR. JETT: If I may approach the witness, Your  
16 Honor?

17 THE COURT: Yes, sir.

18 Q Mr. Love, I will hand you what has been marked as  
19 Plaintiff's Exhibit 60 and ask you to take a look at this and  
20 tell me if you recognize this document.

21 A Yes. This is a Stafford Consulting inspection report.

22 Q So just looking through that particular report, could  
23 you outline for the jury the types of things that are pointed  
24 out in a typical inspection report to Winthrop?

25 A They always look at what materials are being placed on

1 the job. If there is a detail work with flashing or codes or  
2 dormers or details involved, they would take a look at those and  
3 document the installation process.

4 They usually give an overview of what is going on that  
5 day and where they are headed the next few weeks on the project.

6 Q So is it fair to say that Stafford Engineering is  
7 issuing reports based on quality and workmanship type issues?

8 A Yes.

9 Q The report, exhibit 60 I have handed to you, what is  
10 the date of that report?

11 A The e-mail was sent Tuesday, February 9th and it looks  
12 like it was for a site visit on February the 4th of 2010.

13 Q Now, as you know Mr. Love we are here in court today  
14 for a fire that occurred on March 6, 2010.

15 Based on your knowledge of these events was there --  
16 was that the last report that was issued?

17 A As far as I know, yes, this is the last one I have in  
18 the file.

19 Q That's the last report that was issued to Winthrop  
20 University prior to the fire of March 6, 2010?

21 A Yes.

22 Q So it is roughly give or take thirty days before the  
23 fire?

24 A Yes.

25 Q Mr. Love, do you recall March 6, 2010?

1 A Yes.

2 Q Do you recall the day of the week that was?

3 A Saturday.

4 Q On March 6, 2010 how far along was the Bancroft  
5 reroofing project?

6 A I wouldn't know a percentage, but we were approaching  
7 completion. We had been working on it for quite some time.

8 Q Now if you could, could you explain the layout of  
9 Bancroft Hall to the jury?

10 A Yes, Bancroft hall is a C-shaped building. It has  
11 original portion and then there is a fire wall where an annex  
12 was built on to it. That building attaches to Owens Hall which  
13 was a new construction that we had done. Part of that Owens's  
14 project was to provide handicapped access for Bancroft Hall so  
15 therefore there was a connector between the two buildings. So  
16 you have a C-shaped building and then over to one side at one  
17 end is the Owens Hall.

18 Q So in using your term, C-shaped building, if Bancroft  
19 starts at the top and makes a C-shape, is the Owens Hall  
20 connected at the bottom of the C?

21 A Yes.

22 Q Where did Pickens start their project?

23 I apologize it was probably a poor question. If we are  
24 referring to that C-shape building, the bottom where it connects  
25 with Owens, did Pickens start at the top or the bottom?

1 A I would say they would start at the top.

2 Q And they were working there way around the building?

3 A Yes.

4 Q You also just mentioned a connector with Owens Hall, is  
5 that right?

6 A Yes.

7 Q Can you describe for the jury how those two buildings  
8 were connected?

9 A What we had to do was build Owens Hall and provide the  
10 structure with landings that attach to Bancroft Hall. We had to  
11 explode those corridors so that you had -- the people could go  
12 back and forth between the two building. We also provided  
13 elevator tower that would serve both of those buildings.

14 Owens is independent structurally, but there is a  
15 component there that attaches the two buildings together.

16 Q And exteriorly -- on the exterior part the connects, is  
17 there a flat roof that connects the two buildings?

18 A Yes.

19 Q What is that flat roof made out of, if you know?

20 A We would have a steel super-structure with steel  
21 decking then you would have some IsoBoard and I believe the roof  
22 membrane TPO.

23 Q What is the TPO?

24 A Its a -- I don't know the exact term, but it's a  
25 plastic-type membrane. It's very thin.

1 Q Plasticized rubber?

2 A Yes. I don't know the exact definition TPO.

3 Q Mr. Love, did you ever during the Bancroft reroofing  
4 project, did you ever go out onto the roof while the Pickens  
5 roofing company was working?

6 A Yes.

7 Q And what time of day would you go out on to the roof  
8 typically?

9 A It varied, depending on what all we had going on in  
10 campus.

11 Q Is it fair to say you went out during the work day?

12 A Yes, during work hours, yes.

13 Q So, were you ever on the roof when employees of Pickens  
14 were not on the roof?

15 A No. I tried to go up there with them so I could talk  
16 to them and see how the day was going. What their schedule was  
17 like.

18 Q As far as access to the roof was there any interior  
19 access to the roof?

20 A We had several scuttles on Bancroft and then a scuttle  
21 on Owens Hall where I could go out on to the roof.

22 Q When you talk about a scuttle is that like a little  
23 hatch?

24 A A roof hatch, yes.

25 Q Are those roof hatches open, typically?

1 A No, we keep those closed.

2 Q And how do you keep those closed?

3 A Most of them have some sort of locking mechanism on  
4 them and they all are locked to a corridor door with locked  
5 doors.

6 Q So there are locked doors leading to a corridor and  
7 then there is a lock on the hatch that goes to the roof?

8 A Yes, on the Bancroft proper there is a set of doors on  
9 the top of the stair that leads to the attic space. Everything  
10 is locked along the way.

11 In Owens there is a locked door to the mechanical rooms  
12 and then a locked hatch on to the roof.

13 Q During the week prior to the fire were there any other  
14 ongoing construction or other types of projects going on in  
15 either Bancroft or Owens Hall?

16 A No.

17 Q And you would be the person that would know if there  
18 was another project going on in either Owens or Bancroft Hall?

19 A One of the people, yes.

20 Q All right. Let me direct your attention more  
21 specifically now to March 6, 2010. Do you recall that day  
22 specifically?

23 A Yes.

24 Q At some point I am assuming you received a phone call  
25 that informed you there was a fire on campus, is that right?

1 A Yes.

2 Q Could you explain to the jury sort of how that went as  
3 you recall?

4 A We were at a birthday party for one of my little  
5 cousins with the children and one of the guys from the boiler  
6 room called and said he had heard that the one of the buildings  
7 was on fire on campus.

8 Q And did you return to campus that day?

9 A Yes.

10 Q Describe the scene when you first arrived at campus?

11 A When I first got there obviously the emergency  
12 personnel, the fire trucks, our police officers were getting  
13 organized and trying to figure out what the scenario was and  
14 what we needed to do. Of course everybody was making sure that  
15 the students and everybody were safe. I wouldn't say chaotic,  
16 but you could imagine in an emergency situation what was going  
17 on.

18 Q Lots of fire personnel?

19 A Yes. Yes.

20 Q Do you recall how long those fire personnel were on  
21 scene that weekend?

22 A I am not sure, but I know it was well over 24 hours.  
23 They were there for quite some time.

24 Q Safe to say they were fighting the fire throughout the  
25 evening into the next day?

1 A Yes.

2 Q So, when you came back for your regular work day on  
3 Monday morning, was that a regular work day for you?

4 A It was a little different because we were trying to  
5 figure out where we were going to head next with losing an  
6 academic building. What we needed to do to keep the students  
7 safe and keep open for business. So we had a different day on  
8 that Monday.

9 Q When you say keep open for business, obviously Winthrop  
10 is in the business of running a school. How was the business,  
11 so to speak, affected on that Monday morning?

12 A If I remember right, we actually canceled classes that  
13 day because it was a scenario where everything was taking place  
14 in the heart of campus. We wanted to be sure that everybody was  
15 safe and we wanted to be sure the direction we were headed with  
16 the remediating that situation.

17 Q So were you involved in calling any of the mitigation  
18 services or anything like that?

19 A No.

20 Q What did you specifically do on that Monday when you  
21 returned to work?

22 A I was given the task of working with one of our  
23 consulting firms, Multi Vista and we were to document the two  
24 buildings.

25 Q And how did you go about documenting those two

1 buildings?

2 A We took photographs literally of everything that  
3 existed there.

4 Q What sort of thing did you observe?

5 A You know, we went in classrooms, we went in offices, we  
6 went around the job site. We took pictures of desks, computers  
7 stations, classrooms, of course the exterior of the building.  
8 We documented all the damage that had taken place because of the  
9 fire.

10 Q Now, we know specifically and here is an overhead shot  
11 that we have been referring to for quite a bit during our  
12 presentation of the trial.

13 We talked about the Bancroft Hall and the Owens Hall  
14 being connected there, correct?

15 A Yes.

16 Q Are there other buildings that are connected in some  
17 form or another to Bancroft Hall?

18 A I believe there is a breezeway that connects the top of  
19 your screen, Bancroft to Kinard Hall. There is also a breezeway  
20 on the right side of the screen that connects Bancroft to  
21 Margaret Nance Dormitory.

22 Q Now, prior to March 6, 2010, do you recall the last  
23 time you were actually on the roof of Bancroft Hall?

24 A Yes, I believe it you was Monday of that week.

25 Q And so the fire occurred on Saturday, right?

1 A Yes.

2 Q When you were up there were Pickens employees working?

3 A Yes.

4 Q And what did you observe when you were up there?

5 A They were working on shingles. They were working on a  
6 couple of the dormers that we had to replace. Of course they  
7 had some vaili (phonetics) metal and hip and ridge metal and  
8 things they were working on, and some flashing. There was quite  
9 of bit going on.

10 Q Did they have any supplies up there when you observed  
11 them working?

12 A Yes.

13 Q Did you -- do you recall specifically going to the flat  
14 roof, that is circled, on that Monday prior to the fire?

15 A I went up on the roof. I don't -- I didn't go to a  
16 specific area. I just observed what was going on on the whole  
17 project.

18 Q Mr. Love, did anyone from Pickens roofing company ever  
19 specifically ask you or anyone that you are aware at Winthrop  
20 University if they could store materials on that flat roof  
21 between Owens and Bancroft Hall?

22 A No.

23 MR. JETT: Thank you. I have nothing further at  
24 this time.

25 MR. SHEALY: May it please the Court.

1 THE COURT: Yes.

2 CROSS EXAMINATION

3 BY MR. SHEALY:

4 Q Mr. Love, you said on that day that you went up March  
5 the 1st, you don't recall specifically where you were on the  
6 roof that day and where you saw materials?

7 A I most likely went out the hatch on Owens Hall, and I  
8 know they were working on that end of the building at that time.

9 Q All right. And your testimony was you don't remember  
10 seeing the materials they were working with, the flashing, the  
11 metal stored on the flat roof?

12 A There were materials there. Of course there is  
13 materials there. They are working on that area, yes.

14 Q Okay. And the flat roof that is up on the screen that  
15 is circled, there were materials, metal materials, that they  
16 were using. You saw those stored there on the flat roof that  
17 day?

18 A I saw what they were using for the day, yes.

19 Q Okay. And just so I am clear, I don't want to argue  
20 with you, but you saw them on the flat roof that day?

21 A Yes, they were working on that end of the building and  
22 then we go to a transition area. We had lots of roof lines  
23 coming together, and that was the area -- that was the end of  
24 the building that they were working on during that portion of  
25 the job.

1 Q But what I am specifically asking you, do you recall  
2 seeing that they had metals stored on the flat roof that day,  
3 March 1st?

4 A I saw what they were using for the day. I don't know  
5 what storing -- you need to tell me what you mean by storing.

6 Q Fair enough. You saw it present on the flat roof that  
7 day?

8 A Yes.

9 Q Fair enough. You didn't feel like it was your  
10 responsibility to -- acting on Winthrop's behalf to check on any  
11 safety issues, did you?

12 A No.

13 Q Except perhaps to make sure that the access point on  
14 the ground was safe for pedestrians and things like that?

15 A Yes, where they had there lay down area was a main  
16 pedestrian corridor, so of course I would have paid attention in  
17 that interaction between students and faculty and contractors.

18 Q You certainly didn't consider yourself the fire  
19 prevention program superintendent for this project, did you?

20 A No.

21 Q You are not aware of any Winthrop employee being  
22 designated with that title?

23 A No.

24 Q Okay.

25 MR SHEALY: No further questions. Thank you Mr.

1 Love.

2 MR. JETT: Just briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. JETT:

5 Q Mr. Love, when you saw materials on the flat roof did  
6 you know they were being stored there overnight?

7 A No.

8 MR. JETT: I have nothing further, Your Honor.

9 THE COURT: Anything further?

10 MR. SHEALY: No.

11 THE COURT: Thank you, sir, you may stand down.

12 MR. JETT: May the witness be excused, Your Honor?

13 THE COURT: Any objection counsel?

14 MR. SHEALY: No.

15 THE COURT: Thanks for coming. You may be  
16 excused.

17 THE WITNESS: Thank you.

18 (Witness excused.)

19 MR. VOGT: We would call Larry Renner, Your Honor.

20 LARRY RENNER, called as a witness, having been  
21 duly sworn by the clerk, was examined and testified as  
22 follows:

23 DIRECT EXAMINATION

24 BY MR. VOGT:

25 Q Can you tell us your name, please?

- 1 A Pardon.
- 2 Q Can you tell us your name, please?
- 3 A Larry Renner.
- 4 Q Mr. Renner, where do you live?
- 5 A Greenville.
- 6 Q Where in Greenville?
- 7 A 1301 Glenforest Drive, Greenville, South Carolina.
- 8 Q You have a soft spoken voice so I may ask you to speak  
9 up, just so you know.
- 10 A I had cancer removed from my vocal cords, so I can't  
11 talk very loud.
- 12 Q Okay. Thank you sir.
- 13 You were previously identified as the safety director  
14 for Pickens Roofing, is that correct?
- 15 A Yes.
- 16 Q How have you work for Pickens?
- 17 A About 16 years.
- 18 Q And how long have you held the position of safety  
19 director?
- 20 A About 16 years.
- 21 Q And were you also a supervisor?
- 22 A Yes.
- 23 Q Were you also a superintendent?
- 24 A Yes.
- 25 Q Any other positions you held at Pickens Roofing?

1 A Very many hats. Pickens Roofing is a small company so  
2 we all have multiple jobs.

3 Q What was your duties as safety director?

4 A To check to see general safety conditions of the crews,  
5 make sure the ladders are set up properly, that the ladders are  
6 in working order, follow hazards if they were tied off, warning  
7 flags.

8 MR. VOGT: Your Honor, is there a way to amplify  
9 his voice?

10 THE COURT: If he talks into the mic it might help  
11 a little bit.

12 Q And if you need a drink of water we can get you some  
13 water.

14 A Yes, that helps.

15 Q Now, prior to the working for Pickens what did you do?

16 A I worked at BBA.

17 Q And what did you do at BBA?

18 A BBA in Simpsonville, South Carolina, is five different  
19 technologies. Each one is a little bit different.

20 Q I am just going to move up a little bit. And you may  
21 have to repeat some of yours answers just for the benefit of the  
22 jury, is that okay?

23 A Yes.

24 Q I will get you to lean over to the mic. You are talking  
25 out this way and the mic is over there.

1           What is BBA? I am not familiar with that.

2           A     It's a British company.

3           Q     What did you do there?

4           A     Multiple jobs. It's kind of hard to explain. It's a  
5 non-woven industry.

6           Q     Non-woven meaning textile?

7           A     Somewhat, yes. Some of it is textile, some of is not.  
8 Some of it is extruded products. None of it is is a finished  
9 product.

10          Q     And what what did you do prior to working for that  
11 company?

12          A     I worked for J.A. Piper Roofing in Greenville.

13          Q     And how long did you work for that roofing company?

14          A     About 18 years.

15          Q     And what was your position there?

16          A     From A to Z. I started out laborer and ended up as the  
17 first non-family estimator.

18          Q     At any time either at that company or at Pickens, did  
19 you ever provide training to either Pickens employees for  
20 example, as to the proper storage of combustible roofing  
21 materials?

22          A     Yes.

23          Q     And what type of training did you provide?

24          A     Like gasoline you do not store it inside of the  
25 vehicle. It should be stored on the back with safety cans, not

1 plastic cans.

2 Q Anything other than gasoline?

3 A Well, just general LP gas, you can't have a tank within  
4 20 to 25 foot of an occupied building.

5 Q So you have keep a tank that has propane a certain  
6 distance away from the building?

7 A Right. Occupied building. If unoccupied there is not  
8 really a limit. If it is occupied then yes.

9 Q So you have to keep it a distance because there a risk  
10 of of fire involved?

11 A Right.

12 Q And what other types of training did you provide  
13 Pickens employees as to the storage of combustible materials?

14 A I am not quite sure.

15 Q Do you know what combustible means?

16 A Yes.

17 Q What does that mean?

18 A Flammable.

19 Q Okay. Would it be something that can burn?

20 A Oh, yes.

21 Q So for instance, rolls of roofing paper are  
22 combustible, right?

23 A Yes.

24 Q Shingles are combustible, right?

25 A Yes.

1 Q Wooden pallets are combustible?

2 A Right.

3 Q Did you ever provide any training to Pickens employees  
4 as to the storage, proper storage for roofing paper, shingles,  
5 wooden pallets, those type of things?

6 A Oh, yes. The weight limit. Yes.

7 Q Take your time. Take your time. We have plenty of  
8 time.

9 A Yes.

10 Q And what type of training did you provide?

11 A The different -- liquid combustibles.

12 Q Okay.

13 Q Liquid combustibles. What else?

14 A About being stored, where they shouldn't be exposed to  
15 a direct sun light during the summertime they can catch on fire.

16 Q What type of liquid combustibles are we talking about?

17 A Adhesives, cleaners.

18 Q Did you provide any training during your 16 years at  
19 Pickens with respect to the storage of roofing paper, shingles,  
20 wooden pallets?

21 A Went over the MSDS with them.

22 Q There is a MSDS for each of those items?

23 A Yes.

24 Q And what do they tell you that you then told your  
25 employees about with respect to the proper storage of those

1 items?

2 A Well, that depends on what type of material you are  
3 referring to. You pull the MSDS on each one of them.

4 Q What instruction did you provide or what training did  
5 you provide to the Pickens employees as to proper storage of  
6 roofing paper?

7 A The proper storage of roofing paper for us is mainly a  
8 coverage and not being near a heat source.

9 Q Are you familiar with any provision of the South  
10 Carolina Fire Code?

11 A Somewhat.

12 Q What provisions of the South Carolina Fire Code apply  
13 to Roofing work?

14 A I am not sure about the headings.

15 Q Can you describe any that you recall?

16 A As far as roofing work?

17 Q Yes, sir.

18 A Yes, sir, like fire watch. Be using a ---

19 Q Fire watch is somebody is using a torch on the roof  
20 somebody else has to stand and watch to make sure they don't  
21 start a fire?

22 A Correct, and also use an infrared to check for hot  
23 spots and after you are done for the day you still have a fire  
24 watcher that checks.

25 Q So what other than a fire watch, do you recall with

1 respect to the South Carolina Fire Code that relates to roofing  
2 operations?

3 A About having a charged fire extinguisher within 10 to  
4 20 foot of operation.

5 Q A charged fire extinguisher within 20 feet of  
6 operations?

7 A Yes, sir.

8 Q What else?

9 A If you have a generator you got to have -- any  
10 motorized equipment, then you have to have a fire extinguisher  
11 also.

12 Q I'm sorry I didn't here that. Take a drink and take  
13 your time?

14 A Whenever you have motorized equipment on the roof you  
15 have to have a charged fire extinguisher.

16 Q So another fire extinguisher rule?

17 A Well, you don't always have a generator, but you might  
18 have a roof cutter, something that is motorized.

19 Q Are you familiar with any provisions of the South  
20 Carolina Fire Code that relate to the proper storage of  
21 combustible construction materials?

22 A Just like I was referring to a little while ago about  
23 LP gases, part of our job and gasoline and safety containers.

24 Q Are you familiar at all with NFPA 241?

25 A I read part of it. I am not familiar with the whole

1 thing. I can not sit here and recite it.

2 Q What part have you read?

3 A I read part of the section about the having a fire plan  
4 of action.

5 Q Did you read any of the sections that relate to the  
6 storage of combustible construction materials?

7 A I'm sorry I couldn't hear you. You had you back to me.

8 Q I'm sorry, I walked away. That is my fault.

9 Did you read any sections that related to the storage  
10 of combustible construction materials?

11 A Yes, sir.

12 Q Which section?

13 A I could not honestly sit here and recite it for you.

14 Q Let me show you NFPA 241, the 2000 edition. Have you  
15 read any portion of that?

16 A Yes, sir, parts of it does look familiar.

17 Q When did you first read any section of NFPA 241?

18 A I cannot honestly answer that.

19 Q Do you know if you read it before the March 6, 2010  
20 fire?

21 A I really -- well, we go to so many different plants and  
22 stuff and businesses. A lot of times they will have their own  
23 safety program and we will be required to read their literature  
24 so I can not with any degree honestly answer that.

25 Q Your deposition was taken in this case. Do you recall

1 that?

2 A Yes.

3 Q And do you recall if you had read any section of the  
4 NFPA 241 before your deposition?

5 A Well, the initials NFN (sic) National Fire Protections  
6 Association that's the way I know it. The 224 -- 241, I'm not  
7 sure exactly about that paragraph.

8 Q Okay. If I can, I just want to sort of refresh your  
9 recollection as to that. But first let me show you section  
10 8.3.3 of NFPA 241 and I can find that for you if you like, sir,  
11 and it also on the screen if that helps you.

12 Have you ever read that section before; how it relates  
13 to yard storage of equipment to be installed or combustible  
14 construction materials?

15 A Yes, sir. I read this. I am not sure if it was in  
16 this document, but I read this paragraph before.

17 Q When did you read it?

18 A I don't know.

19 Q Now, I showed it to you during the deposition, do you  
20 remember that?

21 A Yes, sir.

22 Q Had you read it before your deposition?

23 A I'm not really sure.

24 Q Did you ever train Pickens employees with respect to  
25 proper storage of combustible construction materials?

1 A Some of the material that we were referring to earlier.

2 Q Not the gasoline, not the propane. I'm talking about  
3 combustibles, for instance roofing paper or shingling?

4 A Roofing paper and shingles mainly in an area to keep  
5 them out of the weather because they are not that highly  
6 flammable.

7 Q Is there a proper distance that those types of  
8 combustible materials should be kept from a building?

9 A Not that aware of.

10 MR. SHEALY: Objection. Calls for a legal  
11 conclusion.

12 THE COURT: Overruled, you may answer.

13 A Not that I am aware of.

14 Q Okay. Can you turn to the first page -- I'm sorry, it  
15 is probably the third page. Is NFPA 241 in front of you?

16 Are you familiar with the Bancroft reroofing project?

17 A Somewhat. I was not in charge of that one.

18 Q You weren't one of the superintendents?

19 A Well, as I stated earlier, we're a small company so we  
20 overlap. Can not be everywhere at the same time.

21 Q What was your role on that project?

22 A Just overlap. We all overlap in case one person misses  
23 something then the other one hopefully will catch it.

24 Q So on occasion you would be out there?

25 A Yes.

1 Q And at all times you were the safety director, right?

2 A Everyone is a safety director.

3 A Everybody is a safety director?

4 A Like I said, we are a small company so everybody has  
5 multiple jobs.

6 Q So for instance Matthew Pruitt was a safety director?

7 A He would be in charge -- he would be aware of safety.

8 Everybody is aware of the safety because construction is a  
9 dangerous industry.

10 Q But Matthew Pruitt, Brandon Lusk were they teaching  
11 others as to proper roofing safety?

12 A If they were aware of it, yes. If they seen something  
13 unsafe.

14 Q Okay. Your role as safety director -- I know what you  
15 are saying is everybody from Pickens should be aware of safety,  
16 right?

17 A Yes, sir.

18 Q That is a general standard for your company?

19 A Right.

20 Q What I am asking you about now is your specific role as  
21 the safety director. That is one of your titles, right?

22 A Yes, sir.

23 Q And what I am trying to understand is what type of  
24 training you provided people like Matthew Pruitt, Brandon Lusk,  
25 Randy Pruitt, as to the proper storage of roofing paper and

1 shingles, wooden pallets, those types of things during a  
2 construction project?

3 A They would not be stored near an open flame. That is  
4 just the main part.

5 Q Is that the extent of the instruction that you  
6 provided?

7 A As far as that, yes, sir.

8 Q Would you agree with me that the Bancroft Hall project  
9 included the demolition of an existing roof?

10 A Pardon. Could you repeat that one more time, please.

11 Q Sure. The Bancroft job included the demolition of an  
12 existing roof, right?

13 A Yes, sir.

14 Q That was part of Pickens work, right, demolition?

15 A Yes, sir.

16 Q And then it also included reroofing the building,  
17 correct?

18 A Yes, sir.

19 Q And NFPA 241 the title of which is safeguarding  
20 construction alteration and demolition operations. Do you see  
21 that?

22 A Which paragraph?

23 Q It's just the title.

24 A I see it.

25 Q And it says the scope of this is the standard shall

1 apply to structures in the course of construction, alteration or  
2 demolition including those in underground locations. That is

3 1.1. Did I read that correctly?

4 A Yes, sir.

5 Q As safety director do you have understanding when NEPA  
6 241 applies to Pickens's work?

7 A Do I have understanding of when it applies?

8 Q No, if it applies.

9 A Oh, if it applies.

10 Q If it applies to Pickens's work?

11 A From what I read, yes, sir.

12 Q Pickens was doing among other things demolishing the  
13 old roof and putting a new roof, right?

14 A Replacement, right.

15 Q So this standard would apply, correct?

16 A My interpretation.

17 Q And you're the safety director of the Pickens, correct?

18 A One of the safety officers, yes.

19 Q Who other than you at Pickens would have another  
20 interpretation of 241?

21 A I would assume that everybody would have a different  
22 interpretation. It's up to the individual.

23 Q So, for instance, with respect to the storage of  
24 materials you might have one interpretation as to where  
25 materials should be stored and Randy Pruitt might have a

1 different one. Is that fair?

2 A Yes, sir.

3 Q Okay. And you might have one that is different from  
4 Matthew Pruitt?

5 A Yes, sir, because we are all individuals. We all  
6 interpret things differently.

7 Q So Pickens really has no method of directing its  
8 employees to adhere to provisions of NFPA 241?

9 A No, sir, because normally the job superintendent would  
10 designate the lay down areas.

11 Q Right.

12 A And what you are referring to is the storage area, is  
13 that correct?

14 Q Yes.

15 A We refer to as a lay down area, okay, or staging area  
16 and it would be designated.

17 Q That's designated as part of the contract, right?

18 A Yes, sir.

19 Q And the contract says that you are supposed to store  
20 your materials only in those areas, right?

21 A That -- during the pre-construction meetings, some  
22 times there is a deviation from what's in the actual contract.  
23 It might be due to other contractor's work and the general  
24 superintendent would direct us to store in a different area, or  
25 the customer might have clients coming in and didn't want us to

1 be set up in that area. So there are some deviations.

2 Q Did any of that happen with respect to the Bancroft  
3 project?

4 A I am not sure. I was not the project manager on that  
5 one.

6 Q Where were the lay down areas for the Bancroft Hall  
7 project?

8 A I'm aware of what I consider the main. I was not  
9 totally involved job, once again.

10 Q I am sorry, we are losing your voice again.

11 A Pardon me. Once again I just overlapped onto that job.

12 Q Sure. Understood. And were you out there on occasion?

13 A Yes.

14 Q And how did you get on the roof?

15 A Ladder. Ladder go up to the inside. Excuse me, you  
16 are talking on Bancroft? There was really two projects.

17 Q This project included Bancroft, right?

18 A Bancroft one went up on a ladder on that one.

19 Q What other project were you referring to?

20 A Right next door. The new construction.

21 Q That was after the fire though, right?

22 A No, sir, that was before the fire.

23 Q The Owens Halls project?

24 A Yes, sir.

25 Q Pickens roofed the Owens Hall building?

1 A The flat roof.

2 Q When did they roof the flat roof at Owens?

3 A Before the fire.

4 Q Okay. So if we look at the overview -- do you  
5 recognize that as the overview of the building? The yellow, the  
6 C-shape or U-shape Bancroft Hall?

7 A I am still trying to get my bearings.

8 Q Sure.

9 A No, sir. I hate to tell you but ---

10 THE COURT: Go ahead and dim the lights.

11 A It's a little faded for me. Okay. Yes, sir.

12 Q Now, do you recognize this as Bancroft?

13 A Not really. I wasn't on that job that much.

14 Q Okay. Where was the flat roof that you are referring  
15 to?

16 A The new construction it was next door to it.

17 Q Is that Owens here?

18 A No, sir, that doesn't look like it.

19 Q Is the flat roof you are talking about part of this  
20 project or a different project?

21 A A different project.

22 Q The campus center?

23 A I am not sure of the name of it. Just new construction  
24 right next door. Leitner construction was the general  
25 contractor.

1 Q There was a flat roof between Bancroft and Owens, do  
2 your recall that?

3 A Pardon.

4 Q There was a flat roof Bancroft Hall and Owens Hall?

5 A I had never seen a flat roof until I'd seen the  
6 pictures from the fire. Is that the one you are referring to?

7 Q Yes, sir.

8 A No, sir, I was not aware of that.

9 Q You are aware of it now, right?

10 A Yes.

11 Q Okay. And was that part of Pickens work?

12 A Not that I am aware of, but once again I was not the  
13 project manager in charge of that one.

14 Q Sure. Now Clint Robinson was the project manager; is  
15 that right?

16 A Yes, sir.

17 Q Was it his responsibility to conduct a pre-project  
18 safety conference?

19 A Yes, sir.

20 Q And was that done in this case?

21 A I am not sure.

22 Q Okay. Did you attend it?

23 A No, sir.

24 Q Who is suppose to attend that conference?

25 A Normally the project manager. He's the one that

1 handled the contract, knows the specifications.

2 Q Should all the superintendents attended as well?

3 A No, sir, that would just about be impossible because of  
4 so many jobs going on.

5 Q So yesterday Randy Pruitt was identified as a foreman  
6 and superintendent, Troy McCall as foreman and superintendent  
7 and several others?

8 A All right.

9 Q Were they all required to attend the pre-construction  
10 safety meeting?

11 A Pre-construction -- I'm not familiar with that part on  
12 this job. Some jobs have to have weekly mandatory that  
13 construction meetings that GC puts on.

14 Q I am talking about --

15 A It's somewhat confusing.

16 Q Sure. Sure. If you see the booklet in front of you.  
17 Pickens had a safety manual, right?

18 A Yes, sir.

19 Q And you help put that together?

20 A Yes, sir.

21 Q Okay, and in that manual don't it require that the  
22 Pickens employees working on the job attend a pre-job safety  
23 meeting?

24 A Could you restate that you were walking away and  
25 talking.

1 Q I'm sorry. That is my you fault. Sorry about that.  
2 Does the safety manual which you put together don't that require  
3 a pre-job safety conference?

4 A I believe so and I did not put the whole thing  
5 together. I just had some input on it.

6 Q So you were the safety director but you weren't  
7 necessarily involved in that conference, right?

8 A Well, one of the safety officers. You referred to me  
9 as director. I'm one the officers.

10 Q Okay.

11 A Like I said we're a small company, so we all overlap.  
12 Have multiple titles.

13 Q So, your not the safety director, you're just one of  
14 the safety officers?

15 A I am one the safety officers.

16 Q And everybody that works there is a safety officer?

17 A No, sir.

18 Q Who are the safety officers?

19 A Like myself, Ben Pickens, Clint Robinson, Jim Pickens.

20 Q Okay. So, if you turn to the third page of exhibit  
21 five.

22 A Is this the exhibit you are referring to?

23 Q Yes, sir?

24 Q There is a title called pre-job planning. Safety  
25 should be considered in pre-job planning conferences.

1 A Yes, sir.

2 Q The following subjects should be discussed and then  
3 there is a seven different items, right?

4 A Yes, sir.

5 Q Included in that is the storage of materials on site,  
6 right, under number three?

7 A Yes, sir.

8 Q For the Bancroft job who was responsible for conducting  
9 that pre-job planning conference?

10 A That would have been Clint on that one. Clint  
11 Robinson. He was the project manager on that one.

12 Q Okay. Who was suppose to attend the pre-job planning  
13 conference?

14 A That would have been Clint.

15 Q Just Clint?

16 A Clint Robinson, right.

17 Q Okay. And how was that information suppose to be  
18 was any information gleamed from that meeting suppose to be  
19 provided to the employees like Matthew Pruitt, Brandon Lusk,  
20 people like that?

21 A Yes.

22 Q Who is suppose to do that?

23 A That would be the project manager who attended the  
24 safety meeting.

25 Q Okay. Now, did you read the specifications for this

1 project?

2 A No, sir. Once again, it was not my project.

3 Q Who was the person who should have read the  
4 specifications?

5 A The project manager, Clint.

6 Q So it was Clint's responsibility?

7 A Yes, sir.

8 Q Anybody else?

9 A No, sir. Just so many projects going on. You would  
10 spend all your time literally sitting there reading  
11 specifications. That is why the project manager is responsible  
12 for. He quoted the job, he bid the job, he should know special  
13 considerations.

14 Q So as project manager if there were two approved  
15 locations for the storage of materials is Clint required to make  
16 sure that all the Pickens employees follow that?

17 A Yes, sir.

18 Q So if there was lay down area at the front of the  
19 building and one in the parking lot should all the materials  
20 been stored there?

21 A Yes, sir, if that was the case he would have conveyed  
22 that information to them.

23 Q As the safety -- one of the safety officers at Pickens  
24 was it Pickens' policy to allow for the storage of combustible  
25 construction materials, such as roofing paper and shingles on a

1 flat roof that adjoined a building under construction?

2 A Generally, if it is on the same plane and it belongs to  
3 the same owner, yes, sir.

4 Q What does that mean, same plane?

5 A Same level.

6 Q Okay. So if there is a flat roof that is below the  
7 adjoining building that would be improper?

8 A Yes, sir. If you would -- if it is on the same plane  
9 you would not carry material across and go down 10, 15 foot  
10 knowing you got to turn back around and bring it back 10, 15  
11 feet. That would be counterproductive in staging your materials.

12 Q So, was it proper to store or stage materials I think  
13 your saying such as roofing paper and shingles on a flat roof  
14 that was below the pitch roof of Bancroft Hall?

15 A I don't know the level, the distance.

16 Q If you had a ladder and you had to walk down the ladder  
17 approximately five feet was it appropriate?

18 A I would have to visually look at it.

19 Q Why don't we show him the picture. Can you see that  
20 from where you are sitting Mr. Renner?

21 A Yes, sir. I am just trying to make it out between all  
22 the debris.

23 Q Do you see the pitched roofs here?

24 A Right. Yes, sir.

25 Q Do you see a ladder here? Have you ever seen that flat

1 roof before?

2 A No, sir.

3 Q Would it be appropriate for Pickens to store materials  
4 such as roofing paper, and shingles on this flat roof?

5 A From this angle?

6 Q Would it help if you came out and look at it?

7 A Yes.

8 Q Can he do that, Your Honor?

9 THE COURT: Yes, sir.

10 Q You can get closer if you need to.

11 A Are you referring to the roof on the right or the left,  
12 that is my question?

13 Q I'm saying the one on the left is Bancroft, the right  
14 is Owens Hall.

15 My question is, was it appropriate for materials that  
16 were going to be put on the Bancroft to be stored on this flat  
17 roof that is below the pitched roof of Bancroft and Owens?

18 A I would think not. That is second guessing whoever was  
19 on the job. Like I said, I was not there all that time.

20 Q But as safety officer at Pickens you would think it was  
21 not appropriate, is that correct?

22 A Right.

23 Q Did you ever see -- were you ever on the roof during  
24 this project?

25 A One time.

1 Q Okay. Do you recall seeing this portion of the roof?

2 A No, sir.. I didn't go all the way over the whole  
3 building. Just where they were actually at, looking at their  
4 setup.

5 Q Is it ever appropriate to store trash on a roof during  
6 a reroofing project?

7 A Some times you store trash on a roofing project,  
8 because you have to wait on students or pedestrians to get out  
9 of the way underneath you where you can get it down. Some times  
10 customers actually specify when you can actually remove it  
11 because they don't want the heavy equipment disrupting there  
12 employees or students. So, yes, some times you do have to  
13 temporarily store it.

14 Q Okay. And are there any provisions in the code that  
15 relate to the storage of trash on a roof?

16 A I'm not quite following you there.

17 Q Sure. Doesn't NFPA 241 also mandate how and when --  
18 how you must treat waste and combustibles and debris?

19 A I would have to look at the whole article. As I said  
20 earlier, I am not that familiar with it.

21 Q The specifications of this job are exhibit number one.  
22 In that on page 1700-3 it required compliance with NFPA 241 for  
23 removal of combustible waste materials?

24 A I have not read the specifications on this job as  
25 stated earlier.

1 Q I understand, I understand, and at any time prior to  
2 today were you aware that NFPA 241 also had provisions relating  
3 to the storage or removal of combustible waste materials and  
4 debris from a roofing project?

5 A No, sir.

6 Q Does Pickens have a copy of NFPA 241?

7 A Yes, sir.

8 Q Where is it?

9 A It would be in the office.

10 Q Whose office?

11 A In the estimator's office.

12 Q So if anybody at Pickens wanted to they would have been  
13 able to go back to 241 and read the applicable code provisions,  
14 right?

15 A Right.

16 Q Would you expect Clint Robinson as project manager to  
17 have done that in this case since the specification specifically  
18 called out NFPA 241?

19 A That would be speculation on my part of what he would  
20 or would not are done. I don't know --

21 Q Take a drink sir?

22 A It would be speculation on my part because I don't know  
23 what his prior knowledge would be.

24 Q Okay.

25 A If he already was aware of it or not.

1 Q If he wasn't aware of those provisions that I read in  
2 the specifications, as project manager should he have gone and  
3 read the NFPA that was in your office?

4 A Yes, sir.

5 Q I show you earlier NFPA 241, there is provisions in  
6 NFPA 241 under 5.4 for waste disposal. Have you ever read those  
7 before?

8 Specifically sir, I am going to ask you about 5.4.1  
9 one which states "Accumulations of combustible waste material,  
10 dust and debris shall be removed from the structure and its  
11 immediate vicinity at the end each work shift or more frequently  
12 as necessary for safe operations."

13 Did I read that properly?

14 A Yes, sir.

15 Q Were you aware of this provision at the time of the  
16 Bancroft Hall project?

17 A Yes, sir, but not necessarily this. This is like a  
18 general clause in most construction jobs and manufacturing.

19 Q And that should be done in every case, you should never  
20 store combustible waste materials on the roof, is that right?

21 A Combustible --

22 Q At every Pickens' job should you always take the trash  
23 of the roof at the end of the day?

24 A No, sir, once again, like I stated earlier it depends  
25 on the customers. Sometimes due to traffic flow of pedestrians

1 they would want us to wait for a specific day, like come out on  
2 Saturday and they would shut down then and remove our debris.

3 Q Sure. And in this job wasn't there a lay down area  
4 that had a dumpster in the front of the building?

5 A I am not sure about that.

6 Q If you look at the photographs. If you dim the lights.  
7 I believe it is exhibit 59. Do you recognize that a a  
8 photograph of the lay down area at the front of Bancroft Hall?

9 A I recognize fencing, but the buildings in the  
10 background, no sir, not really. Like I said, I wasn't there  
11 frequent.

12 Q Sure. I will show you a series of photos to see if you  
13 recognize it, and these are all exhibit 59. This shows a lift  
14 in. Do you see the fenced in area and the lift?

15 A Yes, sir.

16 Q Do you recognize that as Bancroft Hall?

17 A Yes, sir.

18 Q You do, okay. So, does that refresh your recollection  
19 that there was a lay down area that had a dumpster in it in the  
20 front of building?

21 A I am not sure about the dumpster. I just remember  
22 there was a chain-linked fence and a Porto John and the mailbox.

23 Q But there would have been no inhibition for any of the  
24 workers to be able to take trash off the roof every day, right?

25 A Pardon.

1 Q Because there was a fenced in area, the concern you had  
2 was well, if there are students walking by or something like  
3 that, some times some people will tell us we don't need to take  
4 the trash off the roof every day. In this case there was  
5 fenced-in area where the trash could be either put into a  
6 dumpster or something else, right?

7 A It could be, yes. Some times the fence is used just  
8 like a privacy fence. The customers don't want everybody to  
9 walk by and see construction going on.

10 Q Okay. Was trash ever stored on the roof during the  
11 Bancroft Hall project?

12 A I couldn't honestly answer that. Like I said I was  
13 there but maybe once or twice.

14 Q Do you recall a lift breaking down during the course of  
15 the Bancroft Hall project?

16 A No, sir, I am not aware of that.

17 Q Do you recall when I took you deposition, correct?

18 A Yes, sir.

19 Q And you testified under oath during that deposition,  
20 right?

21 A Yes, sir.

22 MR. VOGT: May I Your Honor?

23 THE COURT: Yes.

24 Q All right. I will you ask you questions about this.  
25 During your deposition which was July 12th of last year, I asked

1 you, okay, line two of page 62. "Okay, so were there every any  
2 jobs that you done at Winthrop where trash as you defined it was  
3 appropriately stored on a roof during the course of job?"

4 What was your answer?

5 A On line two.

6 Q Let me try to help you here. I am going read the  
7 questions and then you can read your answer. Okay.

8 A Okay.

9 Q Your answer is on line seven -- I'm sorry, line six.  
10 I'll ask -- I will read the question again. Now that  
11 we are on the same page. " Were there ever any jobs that you  
12 did at Winthrop where trash as you defined it, was appropriately  
13 stored on a roof during the course of a job?" What was your  
14 answer?

15 A On line seven?

16 Q Yes, sir. Line six, sir, is your answer.

17 A Question, sir do you recall at some point during the  
18 Bancroft Hall a wall broke down --

19 Q Sir, we are just going to do like a question and answer  
20 form. I am going to read you the questions and you will read  
21 your answers. Unless you rather me, I can read them for you if  
22 it is hard for you to see the writing.

23 A I do need glasses.

24 MR. VOGT: Is that acceptable, Your Honor.

25 THE COURT: Yes.

1 Q The question was, "So were there any jobs that you did  
2 at Winthrop where trash as you defined it, was appropriately  
3 stored on a roof during the course of a job?" Your answer was,  
4 "Yes." My next question was, "Okay. Which job?" Answer, "This  
5 one right here." Because you couldn't get the lull up to the  
6 building at the time because of the mud." Question. "Okay.  
7 Bancroft?" Answer, "yes." Question, "All right. And when did  
8 that occur in relation to the fire?" Answer, "That one I would  
9 be speculating on because like I said --

10 A Excuse me, I don't know think we are on the same page.  
11 Are we on page 63?

12 Q Sixty-two, sir.

13 A You put me on 63 that is why I couldn't --

14 Q That's okay. My fault. We will get to the 63. That's  
15 my fault.

16 A Okay, page 62.

17 Q "Were there ever any jobs you did at Winthrop where  
18 trash as you defined it was appropriately stored on the roof  
19 during the course of job?"

20 What was your answer?

21 A "Yes."

22 Q Yes, is that correct?

23 A Yes.

24 Q And then I asked you, "Which job?" What was your  
25 answer?

1 A "This one right here."

2 Q "This one right here because you couldn't get the lull  
3 up to the building at the time because of the mud, right?"

4 A "Okay."

5 Q And then I asked a question, "Okay. Bancroft?" And you  
6 said "Yes." And I asked you when that occurred in relation to  
7 the fire and you weren't sure. So then I asked you on page 63,  
8 starting on line six, "So you recall at some point during the  
9 Bancroft Hall job that a lull broke down and that prevented  
10 materials from being lifted on to the roof?" Answer nine, "The  
11 job site was too muddy."

12 Question, "The job site was too muddy so you couldn't  
13 get materials on the roof?" What was your answer?

14 A "Off."

15 A "Off the roof", right?

16 Q "Off the roof". And I said, "Off the roof. And the  
17 materials you couldn't get off the roof was trash?" And the  
18 answer was?

19 A "Yes, what we considered trash."

20 Q What do you consider trash?

21 A Leftover material, waste, when we cut, that we no  
22 longer need to perform the job.

23 Q So for instance like the wrapping the shingles come in?

24 A Yes.

25 Q Pieces of roofing paper?

1 A Yeah.

2 Q Where was it store?

3 A I am not sure on Bancroft.

4 Q Does this refresh your recollection about being more  
5 involved in this job then you call today?

6 A No, sir, because as I stated earlier, I was mainly with  
7 the flat roof next door.

8 Q Okay.

9 Q I actually went up on this one I think one time, maybe  
10 two at the most.

11 Q But you saw this obviously during one of those one or  
12 two visits?

13 A Yes, sir.

14 Q Where trash was being stored on the roof?

15 A Well, you see from one side to the other.

16 Q Doesn't that violate the code section we just read?

17 A Let me clarify. Whenever I am there I look over I see.  
18 I wasn't there at the end of day so I don't know if they removed  
19 it or not. I was not there the first thing in the morning  
20 because I am still at the shop trying to get the crews out.

21 Q Didn't I ask you whether they could get the material  
22 off the roof?

23 A Which question was that, number 13?

24 Q Page 63, ten. I said -- what I just read to you.

25 A Yes, sir, it was stored on the roof.

1 Q All right. My question on line 16, "And so where was  
2 it stored?" Your answer on line 17 was what?

3 A It was stored on the roof."

4 Q Where was it stored on the roof?

5 A On the roof. That was the answer.

6 Q Was it stored on the flat roof?

7 A No, sir, not according to this. I'm not sure where at  
8 in the deposition we were at this point.

9 Q Well, because I'm trying to understand in my mind, you  
10 had Bancroft Hall pitch roofs, right?

11 A Yes, sir.

12 Q And you have trash material that was collected during  
13 the job and you couldn't get it off because the lift was broken,  
14 right, and you told me it was stored on the roof. Where could  
15 you store that type of trash on a pitched roof building?

16 A On a pitched roof building, if it's wrappers and stuff  
17 like that, you could tie it up and put the bundles of shingles  
18 on top of it to weigh it down.

19 Q Okay, so leave it somewhere on the roof, put shingles  
20 on top of it.

21 A To weigh it down and keep it from blowing away and  
22 becoming a hazard.

23 Q Another option might be storing it on flat roof that  
24 adjoins the building, right?

25 A That depends on the circumstances if you got to go back

1 and get it back up.

2 Q Would it have ever been appropriate to store that trash  
3 on that flat roof that you saw previously?

4 A I did not actually see. I am more of a person I have  
5 to look at things to make that decision.

6 Q Okay. At any time when you were on site these one or  
7 two times that you now recall, did you see anything stored on  
8 the flat roof between Bancroft and Owens.

9 A Like I said earlier I'd never seen that roof until this  
10 fire.

11 Q Is it appropriate for Pickens workmen to throw trash  
12 off the roof?

13 A Not if it is over 20 -- if it is over 20 foot you still  
14 have to have a ground guy to watch. Someone to make sure no  
15 pedestrians is walking back and forth.

16 Q So Bancroft -- the Bancroft roof was much higher than  
17 20 feet, right?

18 A Yes, sir, I believe so.

19 MR. VOGT: Thank you. Mr. Renner. I appreciate  
20 it.

21 MR. SHEALY: Briefly Your Honor.

22 CROSS EXAMINATION

23 BY MR. SHEALY:

24 Q Mr. Renner, you mentioned some requirements that you  
25 are aware of when you are using a torch on the roof, right?

1 A Yes, sir.

2 Q You mentioned a fire watch?

3 A Yes, sir.

4 Q All right, and assume that a roofer is using a torch on  
5 a roof for whatever they are doing, what does the law require in  
6 terms of the fire watch? Once they stopped using the torch how  
7 long is a fire watch suppose to stay to watch the roof?

8 A Generally a minimum of thirty minutes if you are using  
9 infra ray to look for hot spots.

10 Q Okay. Thank you.

11 MR. SHEALY: No further questions?

12 MR. VOGT: The witness can be excused.

13 THE COURT: Thank you, for coming, sir. You maybe  
14 excused at this time. Thank you.

15 All right counsel, probably a good time for a  
16 break. We have been at it for a little over an hour  
17 and a half. Madame forelady and members of the jury  
18 panel, we will take a short recess at this time. You  
19 may refresh yourselves.

20 (WHEREUPON, jury leaves the courtroom.)

21 THE COURT: I want to clear up just one thing on  
22 the record out of the presence of the jury. As far as  
23 the Deputy State Fire Marshal is concerned, I think I  
24 made it pretty clear I didn't think he had any  
25 particular expertise with regard to these particular

1 sections you were asking about, about interpreting  
2 them. His interpretations of them, reasons for their  
3 adoption and what they were designed for. I don't  
4 think he could do that and so, as far as his expertise  
5 in that area would have been no help at all to the  
6 jury. That's why I ruled that way.

7 I did let him testify. Essentially I find him  
8 qualified to give an opinion or give his opinion as to  
9 what is combustible material because essentially I did  
10 find him qualified having sufficient expertise as an  
11 expert insofar as being able to define what  
12 combustible materials are if he worked in fire and  
13 fire fighting and that sort of thing and all that for  
14 32 years before he became deputy fire marshal, 21  
15 years as inspector, certainly he had the expertise to  
16 give his opinion as to what that is, which the jury is  
17 free to accept or reject. So essentially, I find him  
18 qualified with expertise in that field such that he  
19 can give an opinion on the record. I want the record  
20 to be clear about that. That his opinion on that  
21 might be helpful to the jury and they would be free to  
22 accept or reject according to instructions of the  
23 Court. I just want to clear that up on the record.

24 Now, anything else we need to take up out of the  
25 presence of the jury at this time?

1 MR. VOGT: Your Honor just scheduling. We talked  
2 yesterday about an offer of proof. We have an  
3 additional live witness we intend to put on next, Mr.  
4 Hardin and then we have a lengthy transcript that we  
5 are going to read. At that point, Your Honor, the  
6 next witness that we would have would be our expert.  
7 What I would like to do is I will take some time while  
8 Mr. Jett reads that deposition and prepare the offer  
9 of proof or the proffer of his testimony, and I would  
10 anticipate somewhere around we probably be done -- if  
11 we go lunch -- that deposition will take an hour and a  
12 half probably at least to read. So that would put us  
13 in the 3:30, 4 o'clock range and I would like to be  
14 prepared at that time to offer his testimony.

15 THE COURT: All right. I am trying to do some  
16 scheduling in my own head so we can maximum the use of  
17 our time. I would -- let's do that. We will take our  
18 break and then we will come back and we will take your  
19 witness. Let's see what time we are there and then  
20 may go right ahead and do the deposition. The jury  
21 will be able to hear that better before lunch than  
22 after lunch in my experience sitting up there. So we  
23 may do that and probably will and then you do whatever  
24 you want to during that time and you would have the  
25 additional lunch hour, and then we will come back and

1 take his proffer and then go straight into his  
2 testimony. We'll keep the jury sitting back there a  
3 little bit. I may give them a little extra time to do  
4 the proffer. The proffer shouldn't take more than  
5 about 10, 15 minutes or so, right?

6 MR. VOGT: I would anticipate it would be longer,  
7 Your Honor.

8 THE COURT: I don't want to hear his whole  
9 testimony.

10 MR. VOGT: No, no. His whole testimony will be  
11 several hours.

12 THE COURT: Critical part of it. We can stay with  
13 that. We would need to know his expertise of course  
14 and how he is qualified and lay a foundation for that,  
15 and then of course give his opinion. All right. Keep  
16 it as brief as we can. I want to keep this thing  
17 moving.

18 MR. VOGT: That will likely be our last witness,  
19 Your Honor.

20 THE COURT: Oh, really. Okay.

21 MR. VOGT: So I would like to do, if possible, I  
22 truly think after we read the deposition and get this  
23 one done, and do the proffer we will be towards the  
24 end of the day and I would like to bring him back  
25 tomorrow morning. And then the only other possibly

1 thing we might do is read a deposition transcript  
2 which is short -- if we read it at all -- which is  
3 half an hour. Something like that.

4 THE COURT: Well, I will utilize this day. I can  
5 tell you that.

6 MR. VOGT: Okay.

7 THE COURT: I will utilize this day. If that  
8 means working late we will. I will utilize this day,  
9 so keep that in mind.

10 MR. VOGT: Sure.

11 THE COURT: And I want to finish this trial this  
12 week. I think we can do it. So I want to get that  
13 done at least the liability portion of it. If the  
14 jury decides in favor of the plaintiff on the  
15 liability issue then of course we will have to get  
16 started with some damages, but I want to at least  
17 finish the liability. We might be able to finish that  
18 tomorrow, it seems like to me, as far as liability  
19 issue is concerned. Because a lot of the defense  
20 witnesses have already testified and that should  
21 shorten it up considerably.

22 All right, let's take our short break and come  
23 back and take your live witness and probably take the  
24 deposition before lunch.

25 MR. VOGT: Okay.

1 THE COURT: Thank you.

2 (WHEREUPON, there was a short recess.)

3 THE BAILIFF: All rise.

4 THE COURT: Thank you, you may be seated.

5 Bring the jury in please.

6 (WHEREUPON, the jury enters courtroom.)

7 THE COURT: Ready to proceed counsel?

8 MR. VOGT: The plaintiff call Walter Hardin.

9 WALTER HARDIN, called as a witness, having been  
10 duly sworn by The Clerk, was examined and testified as  
11 follows:

12 DIRECT EXAMINATION

13 BY MR. VOGT:

14 Q State your full name for the jury?

15 A Walter Anderson Hardin.

16 Q Be where do you live sir?

17 A I live in Rock Hill.

18 Q And Mr. Hardin, how are you currently employed?

19 A I am the associate vice president facilities management  
20 at Winthrop University.

21 Q And how long have you been employed by Winthrop?

22 A Twenty-seven years on March the 7th.

23 Q And did you hold the same title in March of 2010?

24 A I did.

25 Q And prior to working at Winthrop what did you do?

1           A     I built commercial truck bodies in Rock Hill for our  
2 family.

3           Q     Can you describe for us just generally your duties and  
4 responsibilities as the vice president of the facilities  
5 management?

6           A     I am in charge of most of the physical things on  
7 campus. We do the construction from little projects on up.  
8 Also under me is the maintenance and operations, custodial  
9 warehouse, trades, repair stuff.

10          Q     How many people report to you?

11          A     Direct reports I have about five.

12          Q     And who do you report to?

13          A     I report to the vice president for finance who is Jay  
14 P. McKee.

15          Q     Can you describe for us just in a broad sense some of  
16 the changes that have taken place on Winthrop's campus in the  
17 last decade or so?

18          A     Last ten years at Winthrop's campus has been a very  
19 busy time, construction period. We have been implementing a  
20 master plan that was started in 1993 which we were towards the  
21 end of around that time. It's been very, very busy.

22          Q     Give us some idea of the number of projects, number of  
23 building that were constructed and renovated?

24          A     Well, we had built about five new buildings, a new  
25 baseball park. We had renovated the pedestrian ways. We moved

1 -- we changed the streets around so we can move the cars to the  
2 perimeter of the campus, so that the campus core would become  
3 more of pedestrian area. Renovated half a dozen buildings.  
4 Just a constant thing. We have over 60 buildings total, so it  
5 as always something.

6 Q Does Winthrop do it own building or does it hire third  
7 parties to do that?

8 A We hire thirty parties through contract.

9 Q Are there any limitations with respect to the type of  
10 contractors that Winthrop can hire?

11 A Well, we select all of our contractors through a state  
12 bid process.

13 Q And are the contractors required to have certain  
14 licenses and certifications?

15 A Yes, and usually specific to the project.

16 Q So for a roofer to bid on a project does it have to be  
17 licensed?

18 A Yes.

19 Q In the 2009/2010 timeframe, can you tell us what  
20 projects were ongoing?

21 A At take time we were in construction of our new  
22 DiGeorgio Campus Center which was twenty -- gosh, I guess it  
23 ended up being about 29 million, and it was in process. We were  
24 doing the pedestrian way, which we call scholars walk which had  
25 a garden and a lot of different vistas and road changes and

1 infrastructure changes and it was about six million.

2 We were finishing up some stuff out at our ball park  
3 and doing some general renovation projects at other different  
4 facilities.

5 Q Was the reroofing project that we talked a lot about  
6 does that fall under that category?

7 A Yes, it was also going on at that time.

8 Q Can you give us a little history about Bancroft when it  
9 was built?

10 A Bancroft was originally built in 1909 and it was a  
11 residence facility. It had an addition which we call the  
12 Bancroft Annex. It was built sometime around the late sixties  
13 or early seventies. It changed to an academic facility in the  
14 late eighties and it has been used for primarily faculty offices  
15 and academic departments such as English and Religion and  
16 History, and in the early 2000's we were wanting to have a  
17 building that was nothing but classrooms and that's when we  
18 began the process of programing and design of strictly a  
19 classroom building which we called Owens Hall.

20 Q Okay. And when was the -- can you describe for us a  
21 little bit what -- when you say strictly a classroom building,  
22 what type of facility Owens was?

23 A Owens had large lecture hall spaces, two of those and  
24 it had about eight fifty-seat classrooms and about six or seven  
25 25-seat seminar rooms. It wasn't an office building. The idea

1 of that building was not to belong to any single dean or any  
2 single college because they are all careful with sharing their  
3 space.

4 Q And when was that Owens Hall project completed?

5 A 2007.

6 Q Okay, and was it the summer of 2007?

7 A I think we opened it the fall term of 2007.

8 Q And the reroofing project at Bancroft, how did that  
9 come about?

10 A Well, the old building, the 1909 and the addition had  
11 an old asbestos transite shingle roof on it and it had become  
12 discolored and transite, some of that material is a cementitious  
13 material and as it ages it gets brittle and a lot of slates --  
14 transite slates were broken. And also when we built the new  
15 building it never matched up because they were side by side.

16 Q As part of the project did the old roof have to be torn  
17 off and demolished?

18 A Correct.

19 Q And what type of roof was put on?

20 A We put on an asphalt shingle roof, the architectural  
21 type that matched the roof on Owens.

22 Q So the idea is you have these academic buildings that  
23 look similar as far as appearance?

24 A Right.

25 Q Okay. Is exhibit two that is in front of you a copy of

1 the contract that Winthrop entered into for the reroofing  
2 project?

3 A Yes.

4 Q And as part of that, does the specifications become  
5 part of that contract?

6 A Yes.

7 Q And are those exhibit one?

8 A Yes.

9 Q You didn't sign the contract for Winthrop, right?

10 A No, I did not.

11 Q Are you familiar generally with the terms and  
12 conditions?

13 A Generally.

14 Q All right. And did the terms and conditions of the  
15 contract set forth places where Pickens would store materials  
16 during the course of the work?

17 A We had a change order up front right before we got  
18 started to change where the materials were stored is and where  
19 could they be stored.

20 Q Where could they be stored?

21 A We stored the materials in two spots. There was a lay  
22 down area on the front of Bancroft and we had a site about --  
23 oh, gosh, a half a mile or so away to store off site materials.

24 Q Did the contract allow Pickens to store materials on  
25 the flat roof between Pickens and Owens?

1 A No.

2 Q I am sorry, between Bancroft and Owens?

3 A No.

4 Q Did anyone from Pickens ever approach you or anyone  
5 working on your behalf to ask if they can store materials like  
6 roofing paper and shingles or wooden pallets on the flat roof  
7 between Bancroft and Owens?

8 A No.

9 Q Now, Mr. Love testified earlier and he talked about a  
10 consulting -- Stafford Engineering?

11 A Correct.

12 Q Was was Stafford's role in the project?

13 A Stafford is a water proofing and roofing consultant  
14 that we used to design the project. They created plans and  
15 specifications for the project and helped us through the bid.

16 Q And so Stafford put together or help put together  
17 exhibit number one?

18 A Yes.

19 Q And as part of exhibit one we have been talking a lot  
20 about specific specifications. If you can turn to 1400-3 of  
21 exhibit one and the subpart is D. I would like you to read,  
22 which states "No inspector shall have the power to waive the  
23 obligations upon the contractor to furnish good material and do  
24 good work as herein prescribed.

25 Did I read that correctly?

1 A Correct.

2 Q Okay. Are you familiar with that?

3 A Yes.

4 Q What does that mean?

5 A That means the contractor was responsible for that  
6 portion of the work.

7 Q And who was the contractor in this case?

8 A Pickens Roofing.

9 Q Was Pickens also responsible per the specifications in  
10 the contract to comply with all applicable codes, laws and  
11 ordinances?

12 A Yes.

13 Q Did anybody from Winthrop ever say, you can do your  
14 roofing project but not comply with code?

15 A No.

16 Q We heard from Wes Love, but if you can just briefly  
17 describe his responsibilities for this project?

18 A Wes Love is our project manager and that was one of his  
19 projects at the time.

20 Q Is he responsible for overseeing Pickens work?

21 A No.

22 Q What is his job?

23 A He helps coordinate with them, coordinate with our  
24 schedules and helps if they have any problems.

25 Q Do you have any roofers on staff at Winthrop?

1 A No.

2 Q Now, you worked -- you, being actually Winthrop, has  
3 worked on a significant basis with Pickens, correct?

4 A Yes.

5 Q And they were awarded a number of bids over the years,  
6 correct?

7 A Correct.

8 Q After this fire does Winthrop continue to work with  
9 Pickens?

10 A Pickens is a good roofing company. We didn't want this  
11 one mistake penalize them from bidding on future work with us.

12 Q Has Pickens chosen to continue to bid for jobs?

13 A Yes.

14 Q Now, when did you become aware of the fire?

15 A It was about -- it was a little after three on that  
16 day. I was at the beach with my wife and my daughter and got a  
17 phone call from the guy that was the head of maintenance and  
18 operations at the time, telling me that he had gotten a call  
19 from the Winthrop police saying that there was smoke coming out  
20 of Owens Hall, and they needed him to come in and he was at a  
21 band competition with his son and he was down the interstate a  
22 ways and was wondering if I could go in. I told him I was six  
23 hours away by the time I could go pack up my bags and get in the  
24 car and head back, and that he needed to go. So he did.

25 Q This -- this -- so, when you got in the car and you

1. came up, when did you first arrive?

2. A I didn't arrive until Sunday, midday.

3. Q And what was your focus when you returned to campus?

4. A Getting back in business.

5. Q Can you describe for us generally the disruptions this  
6. fired caused to Winthrop?

7. A Well, if you can imagine, I was at the beach on the  
8. coast and I get this call and I didn't think it was going to end  
9. up being what it was. And that evening, I realized that, okay,  
10. you are going to go there tomorrow and everybody is going to  
11. look at you and say what are you going to do now. So, that's  
12. all I could think about all night and I was making plans like  
13. what is the first thing I do. What is the second thing I do,  
14. and so, as I was coming back down the road I was making plans  
15. and making phone calls with my cell phone trying to gather a  
16. team of people of all of our constituents and different people  
17. that I felt I needed just to try and get back in business.

18. Q We had a lot of discussion about a flat roof between  
19. Owens and Bancroft.

20. A Right.

21. Q Was the flat roof part of Owens?

22. A Yes.

23. Q And that was not part of the Bancroft Hall reroofing  
24. project, right?

25. A No.

1 Q Are you familiar generally with the dimensions of that  
2 flat roof?

3 A It is about the size of this area right in between this  
4 desk and here and there. (Indicating). It is pretty small area.

5 Q So, was it possible to store combustible construction  
6 materials on the flat roof between Bancroft and Owens so they  
7 were 30 feet from Bancroft?

8 A No.

9 Q Was it possible to store those materials so they were  
10 30 feet from Owens?

11 A No.

12 A Should Pickens have been storing roofing materials on  
13 the flat roof between he Owens and Bancroft.

14 A No.

15 MR. SHEALY: Objection. Calls for legal  
16 conclusion.

17 THE COURT: Well, objection is after his answer  
18 counsel. If you stand up and make your objection I  
19 would be aware of it.

20 MR. SHEALY: Sure. I move to strike. I didn't  
21 realized he had answered.

22 THE COURT: I will sustain the objection.

23 Q Thank you Mr. Hardin.

24 MR. VOGT: No further questions at this time.

25 MR. SHEALY: May it please the Court.

1 THE COURT: Yes, sir.

2 CROSS EXAMINATION

3 BY MR. SHEALY:

4 Q Mr. Hardin just a couple of questions. I have to hook  
5 up this machine.

6 The reroofing of Bancroft as I understand it, it was  
7 more for cosmetic reasons, is that right?

8 A That was part of it.

9 Q The former president of Winthrop didn't like, I guess  
10 there was a lichen growing on the roof?

11 A Yes, that was part of it.

12 Q Okay. Just kind of gave the building kind of an older  
13 look?

14 A Yes.

15 Q And those old shingles had asbestos in them as you  
16 mentioned, correct?

17 A Yes.

18 Q And so you all eventually selected Pickens Roofing to  
19 do that job, right?

20 A Yes.

21 Q You did the bid. Sent out the bid and some time in  
22 2009?

23 A Yes.

24 Q Okay. And then as the project began it was again, the  
25 president that was concerned about the look on the ground which

1 is why there was a change from two lay down areas to one,  
2 correct?

3 A Actually it was two onsite to one onsite and one  
4 offsite.

5 Q I am sorry. Yes. There was the storage area in what  
6 we you all call the fairgrounds. Right?

7 A Right.

8 Q That wasn't change?

9 A That was new. That would have been added.

10 Q That was added, but there was originally two areas  
11 right next to Bancroft?

12 A Correct.

13 Q And that was shrunk down to one, right?

14 A Yes.

15 Q Now -- and Stafford was a company that you all had  
16 worked with on previous occasions to design the specification  
17 and then inspect?

18 A Periodically, yes.

19 Q Okay. Now, do you recall that Stafford performed those  
20 inspections about once a month as the project was progressing?

21 A Approximately.

22 Q And no one at Winthrop was tasked with performing any  
23 kind of daily inspections on the project, correct?

24 A No.

25 Q Is that right?

1 A That's correct.

2 Q Okay. And so since no one with at Winthrop was tasked  
3 with performing any kind of daily inspections I presume that no  
4 one at Winthrop was designated the fire prevention program  
5 superintendent for the project, is that right?

6 A That was handled through our specifications through  
7 Stafford which puts that responsibility on the contractor.

8 Q Can you point to a place in the contract where the term  
9 fire prevention superintendent is used?

10 A I don't think it's specifically said like that.

11 Q All right. It is not mentioned at all in the contract,  
12 is it?

13 A Not in the AIA contract.

14 Q Or the specifications for that matter?

15 A Specifications -- I would have to look.

16 The owner will provide inspections during the work.  
17 Such inspections maybe periodic or daily. The words "supervise"  
18 and "inspect" wherever used herein in connection with the duties  
19 or activity of the owner shall in no way, expressed or implied,  
20 relieve the contractor from his responsibilities for the safety  
21 of the workmen, the preservation of the work or the proper  
22 performance under this contract. The owner shall not be  
23 responsible for the safety of the workmen, safeguarding of the  
24 work, or the proper performance of the contractor."

25 Q Right, that's what the specifications says?

1 A Right.

2 Q And I think the jury has heard that. But the  
3 specification doesn't make any reference to Winthrop designating  
4 a fire program -- fire prevention program superintendent?

5 A Not to my knowledge.

6 Q Okay. And Bancroft during this project was still being  
7 used while the reroofing was going on?

8 A That's correct.

9 Q All right. And as you said this is one of main the  
10 faculty office buildings on campus?

11 A Yes, and it was then too.

12 Q Now, switching subjects. Your department deals with  
13 all the maintenance issues on campus, right?

14 A Yes.

15 Q Okay. And you have maintenance contracts with  
16 different vendors for say heating and air conditioning systems,  
17 mechanical equipment, elevators, things like that?

18 A We have a combination of in-house and contracted  
19 contractors.

20 Q All right, but one of your elevator vendors was or is  
21 Southern Elevator, correct?

22 A That's correct.

23 Q All right, and they are under contract to come and  
24 perform routine maintenance, correct?

25 A Correct.

1 Q And when they do that you are to get some sort of  
2 documentation or paperwork documenting they were there doing  
3 what they were suppose to do?

4 A Correct.

5 Q And that paperwork is filed away and something you  
6 maintain among the university's maintenance records, right?

7 A Correct.

8 Q Okay. I want to point you to Defendant's exhibit six.  
9 And can you see it from where you are?

10 A Yes.

11 Q Is this the kind of record or report you get from  
12 Southern Elevator after they perform some maintenance work?

13 A I do not deal directly with the elevator contractor.  
14 My director of maintenance and operations does, and I don't see  
15 these on a normal basis, but that looks like that would be  
16 Yes.

17 Q Okay.

18 A You'll also noticed he checked quite a few elevators  
19 that day.

20 Q Right. This at least appears to be dated March 4th,  
21 right?

22 A Right.

23 Q It look like it was originally dated March 4th, right?

24 A Yes.

25 Q Then it was dated March 5th.

1 MR. VOGT: Objection, Your Honor.

2 THE COURT: Sustained.

3 MR. SHEALY: Yes.

4 THE COURT: Are you testifying.

5 MR. SHEALY: I am not.

6 THE COURT: All right. Sustained.

7 BY MR. SHEALY:

8 Q But this is a record you maintained for the maintenance  
9 of various elevators?

10 A Right.

11 Q And does this indicate that Owens was one of the  
12 elevators that was checked?

13 A Yes.

14 Q Okay. You have no knowledge of what their maintenance  
15 work involved though, do you?

16 A No.

17 Q Now, the flat roof that covers the inner section of  
18 Owens Hall and Bancroft Hall, are you aware there is a fan  
19 protruding from the exterior wall into that space that provides  
20 exhaust for the elevator in Owens Hall?

21 A Yes.

22 MR. SHEALY: That's all I have. Thank you, very  
23 much.

24 MR. VOGT: I just have a couple of follow up.

25 REDIRECT EXAMINATION

1 BY MR. VOGT:

2 Q Where is the mechanic room for the elevator at Owens?

3 A It's on the third floor right next to the elevator  
4 shaft.

5 Q And in order to get to the flat roof you have to go  
6 from the third floor through an attic?

7 A Yes.

8 Q Are the doors to the attic locked?

9 A Yes.

10 Q So no part of the mechanical system for the elevator is  
11 in the attic, right?

12 A No part of it. That's is correct.

13 Q No part of the mechanical system for the elevator is on  
14 the roof, right?

15 A That is correct.

16 Q Mr. Shealy asked you about safety programs and you were  
17 looking through the specifications and if you could turn to  
18 1500-3.

19 A Okay.

20 Q We read this a number of times as well. Could you read  
21 for us on that subpart L, the introductory paragraph.

22 A Subpart L.

23 Q 1500-3 it starts "Initiate, maintain" --

24 A Yeah, "Initiate, maintain and supervise all safety  
25 precautions and programs in connection with the work. Take all

1 necessary precautions for safety of, and provide the necessary  
2 precaution to prevent damage, injury or loss to all employees on  
3 the work and other persons who maybe affected thereby. All the  
4 work and all materials or equipment to be incorporated therein,  
5 whether in storage on or off site.

6 Q You don't have to read all of them. I will ask you  
7 first about the introductory paragraph. So that language  
8 initiate, maintain and supervise all safety precautions and  
9 programs is directed to who?

10 A To the contractor.

11 Q So Pickens was required to initiate, maintain and  
12 supervise all safety precautions and programs, correct?

13 A Right.

14 Q And that subpart four of that, also which states comply  
15 with all applicable laws, ordinances, rules, regulations and  
16 orders of any public body having jurisdiction for the safety of  
17 persons and property or to protect them from damage, injury or  
18 loss. Who is that directed to?

19 A Contractor.

20 Q Did Winthrop rely upon the licensed roofer in this  
21 instance to comply with all applicable laws that applied to  
22 roofing and demolition work?

23 A Yes.

24 MR. VOGT: Thank you.

25 THE COURT: Thank you, sir. You may stand down

1 sir..

2 Do you want to proceed with the deposition,  
3 that's fine. How long is the deposition?

4 MR. VOGT: It will be between an hour and a half  
5 and two hours, Your Honor.

6 THE COURT: All right.

7 MR. VOGT: I think actually the time of the  
8 deposition was two hours or three. It maybe longer.

9 THE COURT: Well, I don't want you to speed read  
10 it and I don't want you to read that slow either. I  
11 think it is going to be better to do this deposition  
12 before lunch rather than after lunch. I think all of  
13 us will be more alert before lunch then after lunch,  
14 so let's go ahead and get it out of the way. We run a  
15 little later in getting lunch.

16 MR. VOGT: Mr. Jett is going to read as I  
17 discussed and I will step out. Thank you.

18 THE COURT: Counsel approach one second.

19 (WHEREUPON, there was an off the record  
20 discussion.)

21 THE COURT: Counsel, let me give the jury an  
22 explanation.

23 Madame forelady and members of the jury panel, you  
24 are about to hear now a deposition which will be read  
25 to you and counsel will read the parts, the attorney

1 that are asking the question and also the witness  
2 responding to the questions. The deposition -- I will  
3 explain to you what a deposition is. A deposition is  
4 a witnesses sworn statements. They are put under  
5 oath. They are asked questions under oath. It is  
6 done in a different places then the courtroom, but  
7 they put under oath by a person who is authorized to  
8 administer an oath. The question is actually taken  
9 down just like in a court room where a court reporter  
10 was taking then down. Then they are sealed until now  
11 when the deposition is opened and read to you in this  
12 court.

13 This testimony is entitled to it same  
14 consideration. It is to be judged as to credibility  
15 and weight and otherwise considered by you in the same  
16 way as if the witness were present and gave from the  
17 witness stand the testimony you are about to hear and  
18 read from the deposition. It is then for you the jury  
19 to determine the effect, the value, the weight and the  
20 truth of this testimony given in the deposition. In  
21 other words, you consider this like you would any  
22 other testimony given during the course of the trial  
23 and weigh it the same, judge if for credibility in the  
24 same manner.

25 All right, you may proceed sir.

1 MR. JETT: Thank you, your Honor.

2 (WHEREUPON, following was read.)

3 Vu Nguyen, first being duly sworn, was examined  
4 and testified as follows.

5 DIRECT EXAMINATION BY

6 MR. SHEALY:

7 Q Mr. Nguyen, you have been named as a witness in a  
8 lawsuit and so I am here to take your deposition and to find  
9 some things out about you and the information you may have that  
10 may be pertinent to the issues in this case.

11 I imagine you had your disposition taken, in fact you  
12 mentioned off the record that you just come out of some other  
13 depositions. I imagine you've had your disposition taken  
14 several times; is that correct?

15 A Unrelated to this, yes.

16 Q Yes. Well, I am going to do as most lawyers do just  
17 ask you a series questions first to get to know you a little  
18 bit.

19 A Okay.

20 Q And then moving into your involvement with Winthrop and  
21 particularly the roofing project on Bancroft Hall.

22 If I ask you in I questions today that you find to be  
23 vague or confusing or if I use words that you do not know please  
24 let me know and I will do the best I can to rephrase the  
25 question. It is not my attention to the to tie and confuse you

1 or anything. If you answer the question I am going to assume  
2 that you understood it. Is that fair?

3 A That's fair.

4 Q Okay. And if you will do as I am doing now provide  
5 your answers to my questions verbally at sufficient volume for  
6 our court reporter to take down our answer, that will make for a  
7 clean record and we will do the best we can not to talk over  
8 each other so that our record makes sense. Okay?

9 A Yep. Sounds good.

10 Q All right. Thank you. All right Mr. Nguyen, could you  
11 state your full name for the record?

12 A Vu T. Nguyen.

13 Q And where are you from originally?

14 A I am originally from Vietnam.

15 Q And did you -- when did you emigrant to this country?

16 A 1976.

17 Q And where have you lived since you ever been living in  
18 the United States?

19 A Charleston, South Carolina; Houston, Texas; Galveston,  
20 Texas and Clemson, South Carolina.

21 Q All right. And where are you --

22 A And then currently Charlotte, North Carolina.

23 Q That was my next question. How long have you lived in  
24 Charlotte?

25 A 17 years.

1 Q Have you ever -- I didn't hear you mention it, but have  
2 you ever lived in York County?

3 A I have not.

4 Q Do you have family in York County?

5 A I do not.

6 Q And when you emigrated to the United States were you an  
7 adult or a child?

8 A A child.

9 Q And so where did you get your -- where did you finish  
10 your education?

11 A Clemson University.

12 Q And what degree did you obtain from Clemson?

13 A A Bachelor of Science and Engineering.

14 Q And have you had --

15 A Civil Engineering. Sorry.

16 Q Have you had any post graduate training?

17 A I have not.

18 Q How about your high school education, where did you  
19 finish that?

20 A Charleston, South Carolina, Garnet High School.

21 Q And when did you get your degree from Clemson?

22 A December 1996, in December.

23 Q And are you -- are you a licensed engineer?

24 A No.

25 Q Since leaving Clemson can you describe for me sort of

1 your employment history?

2 A Yes. I interviewed for Stafford Consulting Engineers  
3 who was Robert M. Stafford at the time and its my first and  
4 current job. I have been doing it for the past 17 years while  
5 living in Charlotte and our firm does everything from roof  
6 surveys, roof and leak investigations and roof design and we  
7 administer construction projects.

8 Q Okay. Do you hold any kind of credentials or licensure  
9 either issued by the State of North Carolina or South Carolina  
10 or some other State?

11 A I do. I am not issued by north or South Carolina but  
12 by a national institute, it's the RRC, registered roof  
13 consultant.

14 Q Okay. And that is -- that credential is issued by what  
15 authority?

16 A RCI, they are Registered Consultants Institute. It's a  
17 national agency. A national program if you will.

18 Q All right. And how long have you had that credential?

19 A I I have had that credential, let me think for a  
20 second. Four years, five years. Somewhere in that  
21 neighborhood.

22 Q What was it that caused you to obtain the credential?

23 A Well, that's -- that's a nationally recognized  
24 certification within the roofing industry and it is an  
25 eight-hour exam that you have to take and you have -- you have

1 to take so much experience within the industry from design to  
2 field work, inspections and just everything involved in a  
3 roofing project.

4 Q Okay. Are there other credentials that you could  
5 get that pertain to the work that you do with Stafford?

6 A Yes. I am an engineer in training. That's what they  
7 call a EI. And that's basically another eight-hour exam that  
8 you take and pass before you move to the next step which is a PE  
9 exam where you become licensed. So I have -- so that's the  
10 other state issued certification that I have.

11 Q All right. So you are -- you are an EI?

12 A Uh-huh. That's correct.

13 Q And how long have you been that?

14 A Since 1997.

15 Q And are you working towards getting your PE?

16 A Yes.

17 Q When do you expect to obtain that?

18 A I am eligible to take the test and have been -- just  
19 haven't been able to do it, but that's always -- that's on the  
20 list of things to accomplish.

21 Q Okay, and if you did that would you -- would you get  
22 the licensure through the state of North Carolina?

23 A That's correct.

24 Q All right. Any credentials or licensure that you hold  
25 that is issued by the State of South Carolina?

1 A Well, the EI was issued. The exam was taken in South  
2 Carolina and issued originally from South Carolina.

3 Q Okay. Then did you have -- is there some sort of  
4 reciprocal recognition of it in North Carolina?

5 A There is. There is, yeah.

6 Q What drew you to this particular industry, to the  
7 roofing industry and the particular work that you do?

8 A Well, it really started off just -- I didn't know a  
9 whole lot about the industry and what it entails and it was  
10 related to my field of study, which was civil engineering and I  
11 was occur use so I applied to the job with Stafford and it sort  
12 of steam rolled from there. From the very beginning just to  
13 look at roofs and really being challenged by the work. And over  
14 time it became more than just roofing. It became a complete  
15 building enclosure and that's kind of where I'm at right now.

16 Q All right. And do I understand that Stafford -- sort  
17 of the scope of the kind of surfaces that it provides involve  
18 keeping water out of an enclosure?

19 A That is correct.

20 Q Okay. Not just from the roof, but walls, foundation  
21 all the way around?

22 A That is correct.

23 Q Okay. How many offices does Stafford have?

24 A Well, let me clarify a little bit here. Stafford was,  
25 who we were -- who we were up to about three years ago and we

1 still have to operate under that name just because of current  
2 client's. But three years ago we were acquired by Terracon  
3 Consultants and right now we have moved offices into the larger  
4 Terracon facility. And Terracon has -- I don't know, their  
5 offices are all over the U.S. I think it's -- I know it's more  
6 than fifty offices around the country. Part of that is with  
7 just Stafford.

8 We had an office up in Raleigh and one down in Florida  
9 and we still have those offices. We're just now Terracon.

10 Q Okay. So you had Charlotte, Raleigh and then Florida?

11 A That's correct.

12 Q Now, other offices for Stafford?

13 A Yes, that's correct.

14 Q Okay. And Terracon, is the scope of what Terracon does  
15 larger than what Stafford does or did?

16 A Yes.

17 Q Tell me what Terracon is about?

18 A Terracon is a consulting firm that has four divisions.  
19 The divisions break out into geotechnical engineering,  
20 environmental engineering, materials testing and then there is a  
21 facilities. And facilities is where Stafford falls into.

22 Q Okay. And are there other aspects of the facility --  
23 to the facilities, consulting other than what you have done  
24 traditionally?

25 A Yes. And part of it is us growing into -- growing this

1 part of the business but we he do a lot of testing, water  
2 testing on windows, ASTM-type standardized testing. We also,  
3 have uplift chambers that we've built and been able to do those  
4 types of testing as well. So we -- we are growing into the  
5 testing side ever facilities.

6 There is also the PCA side. That is the property  
7 condition assessment that the facility side does as well.

8 Q And tell me what that is, what that involves?

9 A That's basically a consultant, an engineer or project  
10 manager who can go out and as access the existing conditions  
11 ever a building. We look at the enclosure. Anything  
12 waterproofing related. We look at the mechanics to see -- just  
13 to see how old the building is and the equipment that run the  
14 building. And a lot of times PCA's are done because someone is  
15 trying to purchase a building and they want to know what they  
16 are getting.

17 Q Okay. And do you get involved in that type of work now  
18 or are things strictly with the water proofing side of things?

19 A I have done very little, had very little to do with the  
20 PCA side of things.

21 Q Okay. Do you work with other people, if there is a  
22 particular project you are consulting on, do you work with other  
23 people at Stafford or do you handle that project all yourself?

24 A We -- I typically oversee the whole project, if it is  
25 my project, but I will have an inspector that may come out and

1 do site visits for me and occasionally say, if I am tied up with  
2 seven things we have other project managers as well that can  
3 step into various rolls within a project.

4 Q Where -- over what geographic area have you worked over  
5 time that you have been involved with Stafford and Terracon?

6 A I have been primarily in North and South Carolina, but  
7 I have gone as far as LA. I have gone as far down south as  
8 Miami and as far north as Minneapolis in and we also have a con-  
9 track with U.S. army reserves and still do. But the work we did  
10 for them involved us all going over Kentucky; Kentucky, Georgia,  
11 various central states, Tennessee and those areas.

12 Q Okay. To do what you do have you had to get familiar  
13 with particular states building codes requirements and other  
14 regulations that pertain to roofing?

15 A Yes, sir.

16 Q And you would say that your -- since the majority of  
17 your work has been North and South Carolina would you say you  
18 are pretty familiar with what the building code requirements are  
19 in South Carolina?

20 A Yes, I am.

21 Q All right. Have you testified in court before?

22 A In court I have not.

23 Q Now in what -- how many times have you given your  
24 deposition previously?

25 A Twice.

1 Q And what were the circumstances of those prior  
2 depositions?

3 MR. SHEALY: Your Honor, I hate to interrupt. May  
4 I confer with counsel.

5 THE COURT: Certainly.

6 Q Okay. Now how long has Stafford had a relationship  
7 with Winthrop University.

8 A I started working with Winthrop almost right off the  
9 bat. It was probably back in '98 or '99. Probably '98, and that  
10 was my first project and prior to that I am not sure if or how  
11 many projects we had with them.

12 Q All right. But since '98 have you been sort of the  
13 principal contact for Stafford when Winthrop has had a project  
14 that has called Stafford to assist with?

15 A That is correct.

16 Q Okay. And how many different projects have you  
17 consulted with Winthrop on?

18 A A lot. I don't know. I don't have a number, but I'd  
19 have to guess somewhere fifty projects or more.

20 Q Wow. Okay.

21 A And they range, you know, from just doing a survey or  
22 writing a report or just looking at some documents, and to roof  
23 replacements and design and everything.

24 Q Okay. Were you involved when Owens Hall was  
25 constructed?

1 A Owens Hall being the -- now, there is some name  
2 differences in there, but Owens Hall was that the new  
3 construction.

4 Q That's -- as I understand it and I have just been in  
5 these buildings within the last week?

6 A Yes. Right.

7 Q Yeah, as I understand it Owens Hall was constructed in  
8 2007?

9 A Uh-huh, okay.

10 Q It adjoins to the much older Bancroft Hall?

11 A Yes.

12 Q Does that comport with your understanding?

13 A Yes, that is correct.

14 Q Okay. Were you involved in any way in the construction  
15 of Owens Hall?

16 A I was asked to do some inspections as to the roof, as  
17 that roof was being put down.

18 Q Okay. You didn't -- you didn't develop the  
19 specification for the roof at that project is that correct?

20 A That is correct.

21 Q All right. So you just came in and didn't inspections  
22 of the work as it was in progress?

23 A Yes.

24 Q Okay.

25 A Actually I don't think I was involving during but we

1 were asked once it was done.

2 Q All right. And what findings if you recall, what  
3 findings did you make?

4 A I would have to look at the report.

5 Q All right. And I think I got a copy of that?

6 A Yeah.

7 Q But did you do one report?

8 A I recall one report. I don't know how many we have  
9 done for the new construction.

10 Q Okay. I think you are aware that sort of a central  
11 focus in the current lawsuit that we are involved in concerns a  
12 flat roof?

13 A Yes.

14 Q That sort of adjoins as I understand it, is where Owens  
15 Hall adjoins the Bancroft building or the Bancroft Annex. Is  
16 that -- does that comport with your understanding?

17 A Yes.

18 Q Okay. Was the roof -- was that flat roof installed  
19 during construction ever Owens Hall in 2007?

20 A Was the flat roof installed with new construction, is  
21 that what you are asking?

22 Q Yes.

23 A That was part of the new construction.

24 Q Okay. Are you familiar with the roofing systems that  
25 was installed there?

1 A Yes.

2 Q Okay. What were the components -- or what was the --  
3 what was that roofing system made up of?

4 A The roofing system is a TPO, single-ply fully adhered  
5 -- well, I think it is fully adhered, but it is basically over  
6 some insulation.

7 Q All right. So the deck below the insulation is what on  
8 the flat roof?

9 A That I do not recall.

10 Q Okay. There is a -- there is a layer of insulation and  
11 what is the insulation, what is the material that the insulation  
12 is made up of?

13 A I do not know what that material is. I know typically  
14 if I had to guess it would be polyisocyanurate insulation.

15 Q Do you know approximately how long that layer ever  
16 insulation would have been on the flat roof when it was  
17 constructed?

18 A No, I do not.

19 Q And then the TPO is a membrane that is on top of the  
20 insulation layer?

21 A That is correct.

22 Q All right. And TPO stands for what?

23 A It's a scientific chemical name that I haven't  
24 committed that to memory.

25 Q Okay.

1 A The industry knows it as TPO.

2 Q Okay. And TPO, I know that there is another kind of  
3 flat roof system, bituminous membrane, correct?

4 A Yes.

5 Q All right. And TPO is different than the bituminous  
6 membrane, correct?

7 A That's correct.

8 Q And what are the differences? What different  
9 characteristics do the two types of membrane have?

10 A Well, I will start with the TPO is more -- it's a white  
11 -- typically a white or light colored membrane. It is a single-  
12 ply and it has -- it's usually fully adhered or mechanically  
13 attached as a means for securement.

14 In the case of Owens, I believe it was a fully adhered  
15 system, so adhesives are used to glue it down to the substrate.

16 Q And that substrate in this case would have been that  
17 layer of insulation?

18 A That's correct.

19 Q Okay. What is the adhesive that is used?

20 A What is the adhesive? Its -- I'm not sure how to  
21 answer. It's sort of a clear looking glue. It's a solvent or  
22 water based adhesive, basically.

23 Q Okay. But you don't know the name of these chemicals?

24 A Well there -- no, I don't know the name of the  
25 chemicals.

1 Q Okay.

2 A In the way the TPO is put down is in sheets and where  
3 the sheets lap -- overlap each other, it's is heat welded.

4 Q Okay.

5 A For a mod bit roof system this is a bituminous  
6 material. It is usually referred to in the industry as two-ply  
7 mod bit system.

8 It comes with a base layer that is bituminous.  
9 Modified bituminous sheet and then a second layer which is a cap  
10 sheet with granules on it. And it's essentially the same as a  
11 base layer, but it has got these granules on the top side of it.

12 Q Okay. But that's not what was on the flat roof of the  
13 Annex?

14 A That's correct.

15 Q Okay. As I understand the contractor that was involved  
16 in the building of Owens and the roof -- insulation of the roof  
17 system on Owens was not Pickens Roofing and Sheet Metal,  
18 correct?

19 A The contractor, the general contractor or --

20 Q Well --

21 A Could you --

22 Q Well, was Leitner Construction the general contractor  
23 for the construction of Owens?

24 A Yes.

25 Q All right. And was there some other roofing

1 subcontractor other than Pickens Roofing and Sheet Metal that is  
2 was involved in the insulation of the roofing system including  
3 the flat roof on Owens?

4 A I do not recall who that was. I do not that is true  
5 was Pickens but I am not sure who that was.

6 Q Okay. What involvement have you had over the course of  
7 your career with Pickens Roofing and Sheet Metal?

8 A I know their project managers over time just through  
9 working on projects with them and most of my projects with them  
10 have been through Winthrop. In the first project I worked with  
11 them it was on the building in '99. It was the Rutledge Building  
12 it is sort of a -- we had been -- we have been with Winthrop  
13 several projects a year typically.

14 Q Okay. And have you worked with Pickens since the fire  
15 that is the subject of this lawsuit?

16 A Yes.

17 Q At Winthrop?

18 A Yes.

19 Q What projects managers can you recall working with that  
20 were associated with Pickens?

21 A Client's Robinson, he was the main contact and actually  
22 the only project manager that I worked with throughout -- I mean  
23 he was the main, the point guy. There was also Robert Pickens  
24 that I dealt with occasionally.

25 Q Okay. Anybody else other than those two gentleman?

1 A Let me think for a second I am sure if I saw some names  
2 but offer the top of my head those are the only guys that I  
3 recall.

4 Q All right. Just generally speaking what has your  
5 experience been like working with Pickens as a roofing  
6 contractor?

7 A They are a good contractor.

8 Q In terms of their attention to matters involving safety  
9 how would you characterize that?

10 A It varied from project to project what is required as  
11 far as safety goes, but generally speaking they did a good job.

12 Q Now, the project that this lawsuit grows out of  
13 involving the reroofing of Bancroft Hall. Do you understand  
14 that?

15 A Yes.

16 Q And as I walk through these buildings I understand  
17 Bancroft is sort of a U-shaped building. That Owens was sort of  
18 built inside of and sort of they connect to each other. Is that  
19 your understanding?

20 A That's correct.

21 Q Okay. And Bancroft is a pretty old building as I am  
22 told?

23 A Yes.

24 Q How did you get involved in reroofing Bancroft Hall?

25 A We have a -- at the time we had a contract with the

1 university for them to use us whenever there was a building that  
2 needed roofing type projects.

3 Q All right.

4 A And so they requested it.

5 Q And so how would you find out its time to reroof  
6 Bancroft Hall?

7 A Well, it would be based on the leaks that they were  
8 having and whether or not repairs would fix the leaks and third,  
9 it would be how old that roof is. Some times you can do repairs  
10 to buy some life other times it's just -- it's just to old.

11 Q This particular project though in 2009 and ten do you  
12 remember what the impetus was for Bancroft being reroofed?

13 A Yeah,, I do remember there was one part of it was  
14 because it was old, another part being there was asbestos  
15 transit panels on there. And there was also discussions about  
16 the aesthetics of it. There was some growth that was appearing  
17 on the roof and that was part of the reason.

18 Q All right. Now as part of your -- the scope of your  
19 relationship with Winthrop, were you suppose to do sort of  
20 periodic roofing surveys of all the buildings at Winthrop, or I  
21 mean was there some sort of schedule by which you --

22 A No.

23 Q Okay. So this decision to reroof Bancroft did not come  
24 after some sort of regular regularly scheduled inspection that  
25 you would have done, it was just -- you were just told they

1 wanted to reroof Bancroft is that correct?

2 A That's correct.

3 Q Okay. Now in this case did you -- what involvement did  
4 you have in putting together the specifications for the new  
5 roof?

6 A For the new roof at Bancroft the replacement roof?

7 Q Yes.

8 A I did the field work and I generate details and the  
9 specifications.

10 Q Okay. And you used the specifications -- well, you  
11 used for the proposed contract conditions, you used some  
12 standardized AIA documents, correct?

13 A The contract documents between who?

14 Q Well, for instance the -- what I am talking about is  
15 the general conditions?

16 A Yes.

17 Q The supplementary conditions those were -- you started  
18 with the standard AIA contract documents?

19 A Yes.

20 Q And then did you modified them yourself to suit the  
21 project?

22 A Yeah, the front end consisted of the general conditions  
23 but some of it was standard. Other parts of it like the  
24 supplemental conditions were based on what we felt was required  
25 for the project as well as some input from the university.

1 Q And did you have assistance from a lawyer or anyone  
2 else for that matter in developing the proposed contract terms?

3 A Not from a lawyer, no.

4 Q What assistance did you have from others in putting  
5 those proposed contract documents together?

6 A Well, we -- assistance being assistance from the client  
7 as far as what they want in it and that would be a form of  
8 assistance.

9 Q Okay.

10 A And then in house review from our peers.

11 Q Your peers as Stafford?

12 A Yes.

13 Q All right. But have you -- do you have anyone on staff  
14 whose job it is to sort of develop particular contract language  
15 to a proposed client?

16 A There isn't anyone who has that specific job but the  
17 senior management level folks are the ones who evaluate and  
18 implement language.

19 Q Okay. In the specific itself cover what aspects of the  
20 project?

21 A I don't understand the question.

22 Q That is a bad question. The specifications for the  
23 project my understanding that it, for instance, covered what  
24 materials needed to be used, correct?

25 A Yes, that's correct.

1 Q Okay. And then there were provisions and I got, and I  
2 got it, I mean we just talked about -- and I'm just -- I'm not  
3 trying to be unfair to you by asking this you this. I am just  
4 trying to have have a general discussion with you. But did the  
5 specifications also talk about the manner by which the project  
6 was to be undertaken, not just the materials, but the way that  
7 the project would have been undertaken?

8 A Yes. Yeah. There is language in there for that. For  
9 instance, I don't know specifically in those documents but we  
10 included language in the specs that would say for instance, work  
11 can be done at eight a.m. to six p.m. just depending on what the  
12 client needed.

13 Q Okay. And I guess the where I am going with all this  
14 is I am trying to get a mental picture of how you develop the  
15 specifications.

16 A Yes.

17 Q Do you start from whole cloth? Do you go by something  
18 if, you know, you got an template in house, that sort of thing?

19 A Well, typically for a client like Winthrop where we  
20 sort of already developed the front-end section we will take  
21 that and modify it.

22 Q All right. Okay. All right. And so because -- and  
23 because you had had a long standing relationship with Winthrop  
24 you had things to go by, documents to go by?

25 A That's correct.

1 Q All right. If you -- if a brand new client came to you  
2 would you develop and wanted you to develop a specification for  
3 a roofing project, would you develop that just from scratch or  
4 do you have some sort of template or software that helps you put  
5 all this together?

6 A We have a master spec that has a lot of standard  
7 language. We wouldn't necessarily use everything or any of it.  
8 It just depends on the client and the need. We do have -- the  
9 first think I normally do for a new client is I would find out  
10 if they have something that they already have in place and we  
11 don't want to stray far from what the requirement is.

12 Q Right.

13 A In the event they do not have any then we will generate  
14 a front end section for them.

15 Q Okay. Now the master spec that you are talking about  
16 is that something that Stafford Consulting developed?

17 A No.

18 Q Where does that come from?

19 A That -- there's an institute called CSI that develops  
20 those. That language.

21 Q And what does CSI stand for?

22 A I don't know, I should but I don't.

23 Q Okay. All right. So you have -- you have something to  
24 go by and you make modifications of, sort of that template to  
25 suit the need of a particular client?

1 A That's correct.

2 Q All right. And I want to go through some of the  
3 documents with you more specifically in a minute. But I want  
4 you just to -- I got a few more general questions for you.

5 A Okay.

6 Q The way this project was going to be conducted I mean,  
7 did you put out the request for bids?

8 A Yes.

9 Q And so you coordinated all of that for Winthrop?

10 A That's correct.

11 Q All right. And I believe you conducted a pre bid  
12 meeting?

13 A Yes.

14 Q What was the purpose of the prebid meeting?

15 A The pre-bid meeting something to go over the scope of  
16 work and to walk the site with the bidder and answer any  
17 questions or clarify any confusion.

18 Q And this is a pretty standard procedure that you follow  
19 when you have a project like this?

20 A Yes, it is.

21 Q How long does a pre-bid meeting typically take?

22 A Two hours.

23 Q All right. And then Pickens Roofing was a successful  
24 bidder, correct?

25 A That's correct.

1 Q And did you -- were you the person that determined  
2 whether bids were responsive, did you make that determination?

3 A Yes.

4 Q And did you -- were you the person responsible for  
5 deciding to who the bid would be awarded?

6 A Yes.

7 Q What role --

8 A Let me clarify that a little bit. We make a  
9 recommendation and then the university decides.

10 Q Okay.

11 A Based on my recommendation.

12 Q And who at the university did you work with?

13 A I worked with several folks. I don't recall who was  
14 the the most involved, but Wes Love has been a project manager  
15 for a while. Probably him. Ben Roach is who I worked with the  
16 longest starting with the very first project and Walter Hardin.

17 Q Okay. Those were your primary contacts?

18 A That's correct.

19 Q And so some -- one of them would convey to you the  
20 university's decision whether or not to accept your  
21 recommendation?

22 A That's correct.

23 Q On what contractor would receive the bid?

24 A Yes.

25 Q Okay. Once the bid is awarded what is the next step?

1 A Once the bid is awarded we he generate a construction  
2 contracts between the owner and the contractor. And we secure  
3 bonds, performance of payment bonds and the insurance  
4 certificates and once all is out of the way, we set up a pre-con  
5 meeting, pre-construction meeting.

6 Q Okay. All right. Before we get to the  
7 pre-construction meeting is there room in -- after the bid is  
8 awarded is, there room for the contractor to negotiate  
9 particular terms of the contract itself?

10 A No, not really because that changes the -- you can talk  
11 about certain things that -- that they may or may not be able to  
12 do, but you can't say for instance, change the system, negotiate  
13 a different system.

14 Q All right. And I mean the bid has draft construction  
15 documents attached to it right, the request for bids?

16 A Draft drawings.

17 Q Well, I know it has drawings detail?

18 A Yes.

19 Q But it has --

20 A Oh, okay. Yeah, a draft of the construction  
21 contracts?.

22 Q Yes.

23 A Yes.

24 Q Okay. The supplementary conditions all of that stuff  
25 is part of the bid package that is --

1 A Correct.

2 Q That the contractors are responding to?

3 A Yes.

4 Q All right. Now, I know that there was a change order  
5 that was negotiated, but I you don't know whether it was before  
6 the original contract was signed. I assume it was after the  
7 original contract was signed.

8 A That's correct.

9 Q Okay. All right. So we will talk about that in just a  
10 second, but -- all right. So you get the construction contract  
11 signed, you get the bonds and the certificates in place and then  
12 you have a pre-construction meeting?

13 A Yes.

14 Q And did you conduct that?

15 A Yes.

16 Q When would that have taken place?

17 A It would have taken place once, once the contracts are  
18 fully executed, probably not long after that.

19 Q What -- so what topics are covered in the  
20 pre-construction meeting?

21 A At the pre-con meeting we talk about the crew. We talk  
22 about submittals, project submittals. We talk about staging and  
23 setting up. We talked about safety. We talked about schedule  
24 and quality of work and we establish contracts. Did I say  
25 schedule already?

1 Q You did.

2 A Schedule. Okay, lead response, emergency-type  
3 scenarios and access.

4 Q Do you -- do you develop an agenda for that meeting  
5 with the topics you just described?

6 A Yes.

7 Q Okay. And does that become part of the file that you  
8 maintain for the project?

9 A The agenda no. The agenda is something I sort of have  
10 as talking points.

11 Q Okay but you -- and that's not something that you make  
12 part of your file after the meeting is over?

13 A No.

14 Q Do you remember this particular construction, pre  
15 construction meeting with representatives from Pickens roofing?

16 A I remember that it happened. The details of it is  
17 vague.

18 Q All right. What was discussed in terms of stage go at  
19 the pre construction meeting?

20 A I remember we talked about -- and I know there was some  
21 discussion about issues staging on one end of the building and  
22 they wanted to be able to stage from a -- I think a second area.  
23 That's all I recall.

24 Q Okay. Do you remember whether the original  
25 specification, the original conditions called for two staging

1 areas?

2 A I don't recall what the specs or what the pre-bid  
3 meeting required of them. I think there was only one and I  
4 can't be sure of that.

5 Q Okay. Do you remember what the -- you know, we  
6 mentioned a change order?

7 A Yes.

8 Q Do you remember what the circumstances were that gave  
9 rise to a change order being negotiated?

10 A I think that the change order has to do he with with  
11 limited access, I don't know I'd have to look at it.

12 Q Okay. All right. Well, we will look at it together?

13 A All right.

14 Q You mentioned that safety was discussed at the meeting.  
15 What sort of particular topics did you discuss involving safety?

16 A Well, typically we would talk about protecting your  
17 work area if they -- if they had a ladder on the ground or  
18 materials on the ground to fence that off or to rope it off so  
19 that people don't enter that space.

20 Q Okay.

21 A We talk about tying -- we talk about tying off folks,  
22 the guys doing the work so there's a fall protection issue  
23 there. And we talk about protecting the general public as they  
24 are coming in and outside the building and making sure that when  
25 we are working offer entrances that we don't -- that that's

1 monitored.

2 We also talk about if there is hot work to be done on  
3 the project that there needs to be a fire extinguisher within  
4 reach. And then if there is hot work that's done there usually  
5 needs to be a minimum, "X" amount, sixty minutes, usually fire  
6 watch. Okay.

7 Q Now, was there a particular lay down area that was  
8 called for in the contract?

9 A Yes. In the contract it is coming back to me a little  
10 bit. But I remember if you are standing in front of the  
11 building and facing, it was the space to the left corner.

12 Q Okay. All right. So if the building is shaped like a  
13 "U" --

14 A Yes.

15 Q Your outside the "U" --

16 A Yes.

17 Q And in the middle is that --

18 A I'm at the bottom of the "U" looking up at the  
19 building.

20 Q Right. Okay.

21 A So on the right side of the corner of the building.

22 Q Okay. And that was going to be the -- was that going  
23 to be the lay down area for the --

24 A Yes.

25 Q -- storage of construction materials?

1 A That's correct.

2 Q Okay. Now, how are those materials to be transported  
3 from that lay down area to the roof itself?

4 A They use a hoist. It was basically a vehicle that had  
5 an arm that would reach carrying the materials up to the top.

6 Q Okay. And so what sort of materials would typically be  
7 hoisted up to the roof?

8 A For the areas they were working on that would be the  
9 shingles and the roll of felt and the sheet metal that would go  
10 with it.

11 Q Okay, now the -- was any part of the roof that day that  
12 Pickens Roofing was reinstalling, was it all pitched roof or  
13 were there any flat roof sections?

14 A There was -- there was one. No, I am sorry. There  
15 were several. There was -- the pitched roof at the front of the  
16 building. If you are looking at the "U" shaped building that  
17 bottom horizontal section of the "U" shaped area. As you are  
18 looking at my hand at the top of that was a low sloped section,  
19 and then there were some lower roof areas over the front  
20 entrance that was like a --

21 Q A porch?

22 A A porch, yeah.

23 Q Okay. But the vast majority of the roof on this  
24 building is a pitched roof situation?

25 A That's correct.

1 Q There are dormer windows that I think were going to  
2 have have copper?

3 A Yes.

4 Q Sheets installed over the tops of the dormers, correct?

5 A That's correct.

6 Q All right, any sheet metal going anywhere else?

7 A Sheet metal around the perimeter of the building where  
8 the shingles stops and then there is sheet metal that went over  
9 the edge.

10 Q Okay. Is that flashing?

11 A Yes, flashing.

12 Q There were also hips -- hip flashing and valley  
13 flashing that were on.

14 Q Okay. Is the hip flashing is that at the peak?

15 A Yes.

16 Q Okay. Take cover the peak of the roof?

17 A That's correct.

18 Q Okay. And the valley flashing is, as it sounds like,  
19 is metal that goes into the lowest part of the two adjoining  
20 pitches?

21 A That's correct.

22 Q Okay. Now did you all talk about in your pre  
23 construction meeting once the materials got up onto the roof how  
24 they would be dealt with before being installed?

25 A I don't recall.

1 Q Okay. You don't have any recollection of a discussion  
2 regarding how the materials would get from the place where they  
3 were being hoisted to the various areas where work was going on?

4 A For a roof like that it would seem to me that you would  
5 -- you would bring it up daily. There wasn't a place that you  
6 would be able to store it so you would have to bring up what you  
7 needed for the day and do the work.

8 Q Okay. And your -- well your responsibility to Winthrop  
9 also in addition to developing -- well, specification and other  
10 things that you already described it involved periodic  
11 inspection of the work as it was going on, is that correct?

12 A That's correct.

13 Q How often were you to conduct inspections?

14 A It varies depending on the type of work that was being  
15 done, but I -- we have a certain number of inspections included  
16 in our scope of work and I don't recall what that was.

17 Q All right. I have seen in your file some sort of  
18 formal inspection reports that had pictures attached to them and  
19 some narrative description of what is depicted in the pictures.  
20 Are those sorts of reports that you were required to generate  
21 periodically?

22 A Yes, that's correct.

23 Q All right. Would you also have other informal  
24 inspections as the work was going on?

25 A It's possible. If we were on site to look at something

1 else, somebody may drop by just to see what was going on and --  
2 and possibly didn't want to use one of the inspections, so just  
3 kind of stopped by and looked and moved on.

4 Q Okay. Do you recall specifically how many inspections  
5 were -- you were required to perform as part of your obligation  
6 to Winthrop?

7 A I do not.

8 Q Did you perform all of the inspections?

9 A I performed some inspections. I don't know if I did  
10 all of them.

11 Q All right.

12 A Because I -- there was another project manager and some  
13 technicians that were involved as well, so if memory serves  
14 right I think they did a few.

15 Q Tell me what was involved in those periodic  
16 inspections. I mean was there a particular protocol that you  
17 followed?

18 A Basically for these inspections you go up there to  
19 observe insulation and you just see if they are doing it,  
20 installing these components in accordance with the scope of work  
21 described in the specs.

22 Q Okay. And how would you get onto the roof?

23 A We would normally use the same access that the  
24 contractors used, so in this case the ladders.

25 Q All right. So the -- and the ladders were placed

1 where?

2 A Where I recall the ladders were being placed was on the  
3 front side of the building where the canopy was. There was a  
4 ladder from there up to the canopy, and then from the canopy to  
5 the main roof.

6 Q So it was sort of a two-step process?

7 A Yes.

8 Q Climb one ladder to the top of and you say the canopy  
9 that porch you mentioned earlier?

10 A Yes, the porch.

11 Q And then another ladder up to the building of the --  
12 the top level of the roof of the building?

13 A That's correct.

14 Q And then from there you were able to -- how were you  
15 able to get around all parts of the Bancroft roof?

16 A You would -- you could walk to -- you had access to all  
17 the areas that were in our scope of work and you would walk  
18 along the ridge.

19 Q Okay. Were there any -- was there any scaffolding  
20 installed on the ridge?

21 A No.

22 Q Were there any areas where the sections of Bancroft  
23 roof were not at the same height?

24 A Yes.

25 Q Where were they?

1 A The "U" shaped building. Let me do this. The "U"  
2 shaped building, right.

3 Q Yes, sir.

4 A As you got up and you walked around this way.

5 Q Yes, sir.

6 A There was a wall that separated two sections.

7 Q Okay.

8 A And to access that wall you had to get up and over that  
9 to access the other side of the roof you had to get up and over  
10 a parapet wall.

11 Q Okay. That's what I was looking -- a parapet wall?

12 A Yes.

13 Q How tall was that parapet wall?

14 A Six feet, four to six feet. Somewhere around there.

15 Q Okay. All right. Now to get to the section of the  
16 roof that adjoined Owens Hall you would have to go over that  
17 parapet wall, correct?

18 A That's correct.

19 Q But my understanding was Owens Hall does not connect to  
20 Bancroft through the Bancroft Annex. Is that your  
21 understanding?

22 A Yes, that's correct.

23 Q Okay. So when I say they are adjoined, it is possible  
24 to walk from Owens through the Bancroft Annex and be in Bancroft  
25 Hall without ever walking out doors. Is that your

1 understanding?

2 A That's correct.

3 Q Okay. From the roof level, the pitched roof on Owens  
4 drops down to the flat roof over the annex and then you can  
5 climb back up and be on the pitched roof of Bancroft, is that  
6 correct?

7 A That is correct.

8 Q Okay. And that -- in that respect the building adjoin  
9 each other?

10 A Yes.

11 Q All right. So to get back to getting up on the roof.  
12 Get up on the porch and go to the top of Bancroft Hall?

13 A Yes.

14 Q Take a left, then walk down that wing that goes all the  
15 way down towards Bancroft and Owens are next to each other?

16 A Yes.

17 Q Okay. And there is one parapet wall?

18 A Yes.

19 Q Okay. You may have answered this already, but how tall  
20 is that parapet wall?

21 A I said four to six feet. I think it is more closer to  
22 four. Six feet I can't see over that and I remember being able  
23 to climb that.

24 Q Okay. So you -- it was high enough where you had to  
25 climb over it?

1 A Yes.

2 Q Was there any -- during the construction process, was  
3 there any structure or scaffolding or anything that was put in  
4 place to facilitate getting over that parapet wall?

5 A I believe there was. I don't recall what that was that  
6 was one /-FRT items that we discussed is how to get back and  
7 forth over that area. And I seen -- I don't know if they did  
8 but I recall them talking about putting up some sort of platform  
9 to get materials back and forth.

10 Q Okay. Were there any other walls, parapet walls, that  
11 go along the arm of Bancroft Hall that goes down to Owens?

12 A I don't think so.

13 Q Were there any other parapet walls between where the  
14 lay down area was and immediately above that on the roof? Were  
15 there any other parapet walls between that point and Owens Hall  
16 other than the one you already described?

17 A No.

18 Q All right. So when you would go up to the roof would  
19 you walk the entire lent of the ridge?

20 A Not necessarily. These inspections are done on what  
21 the contractors are doing. So if they were working on say one  
22 half of the building we don't necessary walk on the half that is  
23 not being worked on.

24 Q Okay. Now, as I understand, parts of this project  
25 involves the removal of asbestos shingles?

1 A Yes.

2 Q And because they contained asbestos was there a  
3 particular protocol that needed to be followed during their  
4 removal?

5 A Yes.

6 Q Did Pickens do that part of the project?

7 A They did not.

8 Q What is involved in getting those asbestos shingles  
9 off?

10 A They -- you have to get an asbestos trained -- some  
11 asbestos trained people to come out and abate it, to handle it  
12 and to take it off the roof. Let me back up a bit.

13 There was some asbestos inside the building as well and  
14 they had to encapsulate or they had to -- yeah, encapsulate  
15 areas to abate the stuff on the inside. I think the Pickens did  
16 remove the asbestos on the roof and took it off the roof and  
17 then to separate dumpsters.

18 Q Okay. And once it did that, what was left up there?

19 A Once the asbestos shingles are removed there is also  
20 organic felt that gets removed at the same time and once that is  
21 removed it is just the wood decking.

22 Q Okay, so there is a decking on the Bancroft. Well,  
23 first the rafter truss structure that hold up the --

24 A Yes.

25 Q The roof in Bancroft they all wooden?

1 A No. There was the section once you cross over the  
2 parapet wall on the other side of the parapet wall it is all  
3 wood, and on the other side of that parapet wall the side that  
4 adjoined or is connected through the annex to Bancroft or Owens.

5 Q To Owens.

6 A That section they had some gypsum plank decking over I  
7 think, some steel trusses that were, yeah, over some steel  
8 trusses.

9 Q Okay. My assumption is that there is more modern  
10 construction?

11 A Yes.

12 A All right. The wood, wooden decking and wooden trusses  
13 are all older construction methods.

14 A Yes.

15 Q All right. So given that you had different sub sets on  
16 different sections on Bancroft Hall, was the same roofing system  
17 going to be installed on all of the pitched roof systems --  
18 sections?

19 A Yes.

20 Q All right. Describe for me the components of that  
21 roofing system?

22 A On the side that was all wooden it's a -- you roll down  
23 new felt and you just nail the shingles to -- straight through  
24 to everything on the wood deck.

25 Q All right.

1 A On the other side where you have the gypsum plank  
2 boards you needed a substrate so we had to add plywood over that  
3 area and we also needed to vent the bottom side so the plywood  
4 was installed over the two by fours wood blocking to that ran  
5 parallel with the slope.

6 Q Okay.

7 A And then on top of the plywood is the same system, felt  
8 and shingle, nail through everything.

9 Q All right so now the system on Owens, on the pitched  
10 roof section ever Owens is a different --

11 A Yes.

12 Q Different system correct?

13 A That's correct.

14 Q Okay. Describe the components of that system?

15 A That starting at the top were shingles and then you had  
16 felt underlayment and then there is a nail base board that is a  
17 vented nail base board. And basically what that is, it is a  
18 composite board being two components. It has either got plywood  
19 or OSB over some manufactured shims that is also bond to ISO  
20 insulation.

21 Q Okay. All right, and that's a -- I am sorry.

22 A Over metal decking.

23 Q Over metal decking?

24 A Yes.

25 Q Okay. It is that sort of the state of the art for

1 commercial pitched roofing systems?

2 A You see that a lot.

3 Q Okay. So what was going on on Bancroft is not as  
4 sophisticated as that. It's the same sort of roofing system you  
5 may see in a residential application?

6 A Yes.

7 Q Okay. The spec for the Bancroft reroofing did they  
8 call for a particular kind of felt paper?

9 A It called for 15 or 30 pound saturated felt.

10 Q Okay. And what is the purpose of the felt paper?

11 A That provides -- its two part. It is a slip sheet for  
12 the shingles so you don't have a shingles sticking to the deck  
13 and it is also generally as a temporary water protection.

14 Q Okay, and after the shingles are installed I guess it  
15 supplements the water protection that the shingles provide?

16 A Yes.

17 Q Okay. The felt paper that was called for, does it have  
18 a particular fire rating or does the manufacturer give the  
19 information as to how it responds to the presence of fire?

20 A I don't know. I don't know if there is anything  
21 related to fire on these items. I know that they are organic or  
22 tar saturated felt so there is likely some literature or just  
23 general knowledge that those things will burn.

24 Q All right. Now, the specifications that you wrote on  
25 up for the reroofing of Bancroft did the building code mandate

1 the use of any particular materials that went into the  
2 reroofing?

3 A No. Well the building code does have a set of  
4 requirements for roofing systems so if you had for instance,  
5 slope that was a certain steepness you had to have certain  
6 layers of felt underlayment..

7 Q Okay. But in terms of the kinds of materials, the kind  
8 of tar paper, the kind of felt paper, the kind of shingles that  
9 you used, does the building code mandate anything in particular?

10 A It usually calls for some sort of UL class, A, B or C.

11 Q Okay.

12 A Rates or classification, fire classification system.

13 Q All right. And what -- do you know what UL  
14 classification was the specification called for?

15 A A.

16 Q All right. Describe for me what the UL classification  
17 means?

18 A What that is, is the flame spread of a roof system so  
19 that if it measures how quickly a fire moves on the surface of a  
20 roof or on, you know, on the top side rather than below deck.

21 Q Okay.

22 A So, it's the rate of burn above the deck.

23 Q Is that a classification that is promulgated by  
24 Underwriters Laboratories?

25 A That's correct.

1 Q And what did your understanding -- and what's you're  
2 your understanding of what Underwriters Laboratories does?

3 A They're a testing agency. They handle safety as far as  
4 materials go and its -- at the deal with fire. They also deal  
5 with with numerous other products.

6 Q Okay. Now, did you -- did anyone at Winthrop  
7 University have input on what class of --

8 A No.

9 Q -- shingle or what class of roofing system to install?

10 A No.

11 Q And was the underwriter laboratory classification was  
12 it of the roofing system itself or of the shingles?

13 A Well, there are some UL standards for shingles. I  
14 don't know if there were UL standards for felt but I do -- I  
15 know there are UL standards for shingles. Yeah, and that's --

16 Q And that -- what was being installed was -- well, let  
17 me back up. Are there UL standards for sort of all of the  
18 components put together?

19 A Yes, the UL class A, B or C is for the assembly.

20 Q All right. And did your specification call for a UL  
21 class A assembly?

22 A Yes.

23 Q Okay. So it is not just the shingles but it is  
24 everything put together?

25 A Everything above the deck.

1 Q Everything above the deck?

2 A Right. Well let me back up. Whenever you are looking  
3 for a UL class A roof cover what we put down is down to deck  
4 level. But you have to look at the type of deck that you have  
5 in order to see if the entire assembly includes the deck meets a  
6 UL class A. There are other factors like slope that would  
7 determine if you end up with an A, B or C.

8 Q All right. And is class A the best, I guess?

9 A Yes.

10 Q Okay. Do you know what characteristics give a roofing  
11 assembly class A versus another class?

12 A I think it is -- how quickly it spreads in terms of  
13 hours.

14 Q Okay. But you do not know -- but you do not know what  
15 the threshold is?

16 A No, I don't, not right off hand.

17 Q All right. Okay. Mr. Nguyen, I want to ask you just  
18 generally, there has been an allegation made in this case that  
19 Pickens Roofing in the course of reroofing Bancroft was storing  
20 shingles and some felt paper along with some pieces of metal,  
21 sheet metal or flashing on that flat roof that we have been  
22 talking about that covers the Annex?

23 A Yes.

24 Q Are you aware of that?

25 A Yes.

1 Q Okay. You were aware that -- that, were you aware that  
2 it was storing materials on the flat roof section during the  
3 project?

4 A No.

5 Q Now, did you ever look, inspect the area where the flat  
6 roof was?

7 A Not the flat roof itself, but yes in that area.

8 Q All right. And when you inspected in that area were  
9 there any materials stored on the flat roof itself?

10 A I don't recall.

11 Q Don't know one way or the other?

12 A No.

13 Q And do you know when, when during a project you  
14 conducted an inspection that put you in view of the flat roof?

15 A When, as in dates?

16 Q Yeah.

17 A I don't know. I mean, I couldn't recall a date in that  
18 -- you know, where I would be over there.

19 Q How many times would you have been over there  
20 conducting inspections?

21 A I don't know. I mean it just depended on what they  
22 were doing that day.

23 Q All right, now you don't recall one way or the other  
24 whether you saw roofing materials stored on the flat roof,  
25 correct?

1 A That's correct.

2 Q If you had seen that would you have been surprised by  
3 that?

4 A No.

5 Q Why?

6 A Because if a contractor has an area that he can work in  
7 that makes things easier for him, he will try to use it and if I  
8 -- if the owner said, don't use it for whatever reason, then  
9 that would be something that I would report. But if -- if they  
10 were allowed to use it I wouldn't be surprised.

11 Q Okay.

12 A And I don't know if there was any discussion taken  
13 place about whether or not it could be used or not. So if I was  
14 inspecting that area I would look down and I saw buckets and  
15 that's not the first time I'd seen something like that.

16 Q Okay. If you saw such a thing would you inquire of the  
17 owner as to whether or not the owner allowed that to happen?

18 A Normally I would, if I knew something about it.

19 Q Okay. All right. So, but as I understand it in this  
20 case, you don't recall one way or the other whether you ever saw  
21 roofing materials stored on the flat roof over the Annex?

22 A That's correct.

23 Q So you don't know whether you had any kind of  
24 conversation with anybody representing Winthrop about that  
25 because you don't know whether you ever saw that?

1 A That's correct. That's correct.

2 Q Okay. Do you recall -- after the fire occurred did  
3 anyone talk to you about the flat roof --

4 MR. SHEALY: Your Honor, may I interrupt. Sorry  
5 counsel.

6 THE COURT: While they are doing that why don't  
7 everybody stand up and stretch.

8 (Continuation of reading the deposition.)

9 Q Okay. All right. Did any fire investigator ever talk  
10 to you after the fire?

11 A No. No.

12 Q So you were not talked to by anybody with the Rock Hill  
13 Fire Department?

14 A Let me think for a second. I don't -- I don't know to  
15 be honest. I want to say that there was maybe one big group  
16 discussion that they all had after the fire and I just don't  
17 recall if we -- if I sat face to face with someone. But I  
18 remember we were all in a big room and it was more of a where do  
19 we go from here.

20 Q Right.

21 A And there was probably some discussions with the Rock  
22 Hill Fire department or may be Winthrop's own fire department  
23 folks. I don't recall that there was an actual Rock Hill Fire  
24 Department person.

25 Q Okay. And do you remember anything else about the

1 conversation, I mean I know you said the focus was on --

2 A Yeah.

3 Q -- where do we go from here?

4 A Right. No.

5 Q And you were involved heavily in mitigating the  
6 problem?

7 A Yes.

8 Q And I understand that with respect to Owens it was so  
9 new that the decision was made to just go back to the same  
10 contractor that had originally installed the -- that had worked  
11 on Owens originally, is that right?

12 A I thought it was Pickens, but I don't know.

13 Q Now -- and I'm sorry, with respect to the general  
14 contractor with the construction crew?

15 A Oh, yes, that's correct.

16 Q They went back to Leitner Construction?

17 A That's correct.

18 Q But Pickens actually did the reroofing of Owens?

19 A I believe that was right.

20 Q Okay. And Pickens prepared the damaged section --

21 Pickens repaired the damaged section of Bancroft and finished  
22 Bancroft correct?

23 A Yes, that is correct.

24 Q Okay. And I know there was other remediation done in  
25 the interior?

1 A Right.

2 Q Of both buildings. Were you involved in over seeing,  
3 any ever that?

4 A No.

5 Q Okay. We received a copy of your file and I understand  
6 that you produced -- your office has produced these multiple  
7 files and I got bates label copy of that and I just want to ask  
8 you a couple of things?

9 A Sure.

10 Q About first the document that bates label, Pickens 982,  
11 through 990. And it is date January 20th 2008.

12 A Okay.

13 Q Can you identify that?

14 A Well, I don't know if it's mine but I am trying to  
15 absorb the rest of what this says.

16 Q Okay. What was produced to me appears to be both  
17 materials from the original construction of Owens.

18 A Okay.

19 Q And then the subsequent reroofing of Bancroft and the  
20 reroofing of Owens. This document that I have shown you can you  
21 tell me what it concerns?

22 A If I could take a minute.

23 Q Sure.

24 A Okay. So this is Owens, yeah I recall this, yeah.

25 Q And what I described to you as may be -- as one

1 document could be two separate things. I mean we -- the first  
2 page is a letter from you to Ben Roach, correct?

3 A Yes. Uh-huh.

4 Q Date January 28th, 2008. It make a reference to a  
5 September 20th 2007 field observation report does it not?

6 A Yes, uh-huh.

7 Q All right. And that is the document that is  
8 immediately behind it?

9 A That's correct.

10 Q Okay. Now, just so that I am clear, the field  
11 observation report that starts on Pickens 983, describes the  
12 project as Bancroft Hall, but my believe that that's actually  
13 Owens?

14 A That is correct.

15 Q Okay.

16 A Because this is why I asked you at the beginning.

17 Q Yes.

18 A When we first started this that there was some  
19 confusion about which one was Owens because it started off being  
20 Owens Bancroft because of how they tied in.

21 Q Yeah.

22 A And I think they -- okay.

23 Q You confirmed what I thought?

24 A Okay. Good.

25 Q I didn't think for a moment that there was work.

1 actually going off on Bancroft Hall --

2 A That's correct.

3 Q -- roof back in roof 2007, but because the two  
4 buildings adjoin each other back in 2007 there were some  
5 interchanging of the two names?

6 A Right, that's correct.

7 Q Okay. And in Pickens 987 one of the observations made  
8 in the September 20th, 2007 field report is an overflow scuppers  
9 that have not been installed in the single-ply roof areas.

10 The picture that is depicted there is that the flat  
11 roof section that is -- was later involved in the fire?

12 A Yes.

13 Q Okay. And you already described that was not a -- a  
14 bituminous flat roof?

15 A That's correct.

16 Q Okay. Now, ultimately as of January 2008 the  
17 contractor had not addressed the punch list items from that  
18 construction, correct?

19 A That's correct.

20 Q Do you remember the most punch list items were  
21 eventually dealt with, if ever?

22 A I do not.

23 Q Okay. The instructions to bidders that was issued for  
24 the Bancroft reroofing?

25 A Yes.

1 Q Form AIA -- an AIA form was used for that as well,  
2 correct?

3 A I don't -- I mean, I assume you looked at the documents  
4 and I can tell -- and can tell, but I don't recall.

5 Q Let me see if I can put a complete version of this to  
6 you for you. Is that a pretty substantial packet the  
7 instructions to bidders?

8 A It's pretty detailed, yes.

9 Q So let me just take this whole pack over to you because  
10 there is no way for me to tell when where one thing ends?

11 A Sure.

12 Q And one thing is -- all right, I am showing to you to  
13 start with Pickens 1160 the document that follows that?

14 A Okay.

15 Q To my eyes this is the -- this is what's issued to the  
16 world?

17 A Yes.

18 Q To my eyes this is the -- this is is what issued to the  
19 world?

20 A Yes.

21 Q We invite you to bid on this project?

22 A That's correct.

23 Q Okay. All right. Is -- did you have to get the  
24 invitation signed by the state engineer or did Winthrop  
25 University do that?

1 A Winthrop. The way this process works I generate the  
2 documents and once the state engineer reviews the documents and  
3 approves it we address all the comments and everything I send to  
4 him -- I send to, he signs this here and I modify however he  
5 wants, date and everything.

6 He signs it. And then it falls on either Stafford or  
7 the state engineer depending on what he wants to do to put this  
8 into publication.

9 Q Okay. Do you remember in this particular circumstances  
10 whether it was Stafford or the state engineer that did it?

11 A Normally Stafford does it for Winthrop.

12 Q Okay. All right. And so the documents that -- or the  
13 pages that follow that --

14 A Yes.

15 Q -- comprise of all the instructions to a potential  
16 bidder how to respond?

17 A That's correct.

18 Q Okay. And this is -- what was used here is an AIA form  
19 document, A701, the 1977 edition?

20 A That's correct.

21 Q And that form is modify?

22 A Which form.

23 Q Huh?

24 A Which form are you saying?

25 Q The form that we just -- that I mentioned the AIA?

1 A Right.

2 Q A-701 was modified with supplemental instructions and  
3 with specific instructions for this project, correct?

4 A Right. And really these documents here now, this is  
5 coming back to me as far as what this document entails, but this  
6 here is mandated by the state and they the state makes the  
7 modifications to it so we -- this is all sort of cookie cutter  
8 stuff that is in front of every state project.

9 Q Okay. But you know that -- I mean you pull the forms  
10 up and you know that the state is going to require --

11 A Yes.

12 Q -- those forms?

13 A That's correct.

14 Q All right. So thumb back and where you get started to  
15 the parts of these instructions that you generated?

16 A All right. Let's see.

17 Q And I will just represent to you that I am giving these  
18 to you to show to you or showing these to you in the order in  
19 which they came to me?

20 A Yes. So this summary is where we start. Let me see  
21 here. Yes, this is it. This is where we start.

22 Q All right. So when you say this, you are talking about  
23 Pickens 1218 and the pages that follow, correct?

24 A That's correct.

25 Q All right. And there is a whole lot to that?

1 A Yes.

2 Q Yes, including the sketches that you did?

3 A That's correct but these in particular, let me see. I  
4 believe that these were not part of the document. This is --  
5 would have been field work that I did. They weren't part of the  
6 document that ended up there.

7 Q All right. Let's see. Let's talk about where the --  
8 does the document end up here?

9 A Yes.

10 Q Okay. So let's --

11 A This would be my field notes.

12 Q All right. So let's -- the documents ends. The  
13 instructions to bidder -- no, no, no, I'm sorry. The document  
14 that you generated?

15 A Yes.

16 Q But for proposed bidders ends at Pickens 1306?

17 A Right.

18 Q Okay.

19 A Yes.

20 Q All right. So then what follows in this packet of  
21 materials 1307 is your field work that you did before the  
22 specification was drawn up?

23 A Correct.

24 Q Okay. All right. Did your field work after Winthrop  
25 tell you we want to reroof Bancroft?

1 A That's correct.

2 Q Okay. And this is just part of what -- this is the  
3 part of the process that you engage in to develop the  
4 specifications?

5 A That's correct.

6 Q Okay. All right. And so your field notes comprise two  
7 pages?

8 A Yes.

9 Q Okay. And those are Pickens 1307 and 1308 and then  
10 behind that is a sketch that you drew?

11 A This is a sketch that Winthrop provided to me and I  
12 used to verify dimensions.

13 Q Okay. All right. And is this sort of an aerial view  
14 of Bancroft Hall?

15 A Yes.

16 Q Okay. And it is upside down U in that sketch, correct?

17 A Correct.

18 Q All right. And that's Pickens 1309, so at the top of  
19 the 1309 is the porch that you described earlier?

20 A Yes.

21 Q Okay. And the lay down area that was eventually used  
22 is located where on Pickens 1309?

23 A It's top right of this page.

24 Q Okay. Top right hand corner?

25 A Yes.

1 Q Okay. All right. And the parapet wall that you  
2 mentioned is it depicted on Pickens 1309?

3 A It is. It's on the right-hand side of the sheet of the  
4 page, and show you right here.

5 Q A horizontal line, cross-hatched?

6 A Yes.

7 Q Okay. All right let me ask you this, is the flat roof  
8 that we talked about that's an issue in this lawsuit. Is it  
9 depicted on Pickens 1309?

10 A It is not.

11 Q Is the area where -- do you know where Pickens was  
12 doing work the week before the fire?

13 A I do not.

14 Q Okay. All right. So behind Pickens 1309 looked like  
15 some detailed drawings. Are are these drawings that you made?

16 A They are.

17 Q Okay. These are details of what?

18 A These are details. It is from the field work. This is  
19 the edge condition of the --

20 Q Okay, it's Pickens 1310?

21 A Yes, and this one is of the -- what you call the more  
22 modern section of the Bancroft Hall, the area that has the  
23 gypsum plank decking.

24 Q Okay. So you are just trying to describe visually what  
25 you got in place before we do this project?

1 A That's correct.

2 Q Okay. All right. And so more ever that is going on

3 1311?

4 A Yes.

5 Q Okay. And 1312?

6 A Yes.

7 Q 1313, now 1314, is this something different?

8 A Yes.

9 Q Okay. Is this a detail for the work that needs to be  
10 done?

11 A Yes, this is details that I generate by hand and I pass  
12 along for CAD drawings.

13 Q All right. And so that's also the case with respect to  
14 Pickens 1315, 16, 17, 18 and 19?

15 A Yes.

16 Q And -- and 20?

17 A Yes.

18 Q Okay. All right. Now, there's a series of photographs  
19 that start on Pickens 1325, are -- are these photographs, were  
20 they he taken during the course of the reroofing project?

21 A They were taken during the initial field work.

22 Q Okay. So before the reroofing begins?

23 A That's correct.

24 Q All right. Okay. All right. Is this just part of  
25 your field work package?

1 A Yes.

2 Q Okay. And then Pickens 1356 looks to me to be a report  
3 from the pre-bid conference, is that correct?

4 A That is correct.

5 Q Okay. Now, what I will confess to you that what I have  
6 not seen in these materials is any kind of record of the pre-  
7 construction conference?

8 A Okay.

9 Q Do you recall making any such record and -- I mean, we  
10 talked about this earlier?

11 A Right.

12 Q That the agenda was not something you kept in the file,  
13 correct?

14 A Right. Typically I am suppose to have a pre-con  
15 minutes, but it's possible that this is each one of those that  
16 kind of fell through the cracks.

17 Q Okay.

18 A As far as writing that down.

19 Q All right. I have you thumb through the information to  
20 see if you can find the change order that we were discussing  
21 earlier. You got to Pickens 1435 and this is the change order  
22 we were talking about earlier?

23 A Yes.

24 Q Okay. All right looking at the information and the  
25 information that follows it. Which includes some e-mails that

1 look likes on Pickens 1439. Does this help you sort of remember  
2 the circumstances that gave rise to the change order?

3 A Let me take a minute.

4 Q Yes, sir.

5 A Okay. Yeah, it does.

6 Q All right tell me what you remember about that now that  
7 you looked at it?

8 A Basically, what this e-mail says is what I -- what I've  
9 drawn back on memory here. I don't know if it's written into  
10 the documents, and maybe it's on the pre-bid minutes but there  
11 was suppose to be two areas of staging and I believe one area  
12 was eliminated because of how in view it would be.

13 Q Okay.

14 A And so that was eliminated and because it was  
15 eliminated they were restricted to one staging location and that  
16 would have caused them to traverse back and forth more than they  
17 would have to, slow production, and so they asked for a change  
18 order.

19 Q All right. And when the change order was made the  
20 change was made the change was made to the approved lay down  
21 areas or staging areas after the original contract was signed,  
22 right?

23 A That's correct.

24 Q Okay. And that change was made by Winthrop, correct?

25 A That's correct.

1 Q Do you remember where the two original staging areas  
2 were going to be?

3 A I believe that they were going to stage here which they  
4 ended up doing.

5 Q All right. Now, I turned you back to Pickens 1309 and  
6 you already pointed out that the staging area that was  
7 eventually used was at the top right hand corner of that sketch,  
8 correct?

9 A That's correct.

10 Q All right. So in addition to that staging area where  
11 was the other one going to be?

12 A In the top left corner.

13 Q Okay.

14 A Of the page.

15 Q All right. And that is the one on the top left corner  
16 is that the one that was eliminated?

17 A That's correct.

18 Q And that gave rise to the change order?

19 A Yes.

20 Q All right. And these documents I represent to you  
21 starting at Pickens 1561 have been going back -- look to be the  
22 inspections reports, I think sort of in reverse date order for  
23 this project. Does that appear to be your understanding?

24 A Yes.

25 Q Okay. So the final inspection report is dated June 22,

1 2010, is that correct?

2 A Yes.

3 Q All right. I believe that is post-fire, right?

4 A I believe so.

5 Q I will just represent to you the fire was on March 6,  
6 2010?

7 A Okay.

8 Q Okay. So if we go back in time or if we go back behind  
9 these, there is a document, Pickens 1581, is that a log of each  
10 inspection that was performed?

11 A Yes.

12 Q Okay. Is that a document that you prepared or as a  
13 result of your file materials or is that a Winthrop document?

14 A Yes, it is part of Stafford's.

15 Q Okay. And this is a -- you keep this kind of log for  
16 every project showing inspections were done?

17 A That's correct.

18 Q Okay. And as I read this the first inspections date or  
19 the first inspection was October 19th and 22nd of 2009, correct?

20 A Yes.

21 Q And then, were you the inspector on that date?

22 A I was.

23 Q All right. And there are five columns on this. The  
24 next column says two date PM, is that project manager?

25 A That is.

1 Q All right. And then so -- when you performed one of  
2 these inspections you submit the inspection report to the  
3 project manager?

4 A Yes.

5 Q And does the project manager sign off on it and give it  
6 back to you?

7 A He -- he reviews it and -- yeah, in a sense he signs  
8 off on it.

9 Q All right. And then it says date. There is a date  
10 that you get it back from the project manager that you notate,  
11 correct?

12 A Yes.

13 Q And then date mailed. To whom is the inspection report  
14 mailed?

15 A It's mailed to recipient. Recipients are listed here.

16 Q Okay.

17 A And this this case it was Wes Love of the University  
18 and Clint Robinson --

19 Q Okay.

20 A -- with Pickens.

21 Q All right. So -- but Wes Love was the project manager?

22 A Yes.

23 Q Okay. So it is given to him. He gives it back and  
24 then you mail it out to both?

25 A No. No. No. It's mailed out to him and that's it.

1 Q Okay.

2 A Yeah. So I'm the project manager and once I am done  
3 with it --

4 Q I see.

5 A -- it goes to our secretary and it is mailed out to  
6 these folks in the final.

7 Q Okay. All right.

8 Question by Mr. Vogt: These folks being?

9 A Winthrop, Wes Love with Winthrop and Clint Robinson  
10 with Pickens.

11 MR. VOGT: Thank you.

12 Q So all right. So the date to the project manager that  
13 is an internal --

14 A Yes.

15 Q -- review?

16 A That's correct.

17 Q At Stafford?

18 A That's correct.

19 Q All right. And so for instance, the first line you  
20 were the inspector?

21 A Right.

22 Q Right. And so it doesn't have to go to you because you  
23 got it already?

24 A That's correct.

25 Q Okay. All right. So then you mailed it out on

1 11-5-09?

2 A Yes.

3 Q All right. Then the next inspection was what day?

4 A July. What does that say? Is that 7-25? I am having  
5 a hard time seeing it. It looks like a seven, but it seems like  
6 it is out of sequence. That is a 11. Yeah, it is probably more  
7 like a 11.

8 Q Okay. I mean, who knows, but I think your guess is  
9 pretty good.

10 A Well, that says 12/3 so that has got to be a 11/25.

11 Q Okay. And who was the inspector on that date?

12 A Tom Seymour.

13 Q And he is writing the reports to you?

14 A Yes, he submits the report to me.

15 Q But he is someone that you supervise at Stafford?

16 A He's an inspector.

17 Q Okay. And it was submitted to you on December 3rd of  
18 2009 and then you mailed it out the next day it looks like?

19 A Yes.

20 Q Okay. All right. And then the next one is is the  
21 following month, December 21st of '09?

22 A Yes.

23 Q Who who was the inspector then?

24 A Ken Ford.

25 Q Is he another inspector for Stafford?

1 A He is.

2 Q And so that one goes out on -- that one is mailed on  
3 January 24th, 2010, correct?

4 A Yes.

5 Q Now, it looks like another inspection about a week  
6 later. Do you know why there was just a brief interval between  
7 Mr. Ford and then you appear to be the inspector on December  
8 29th?

9 A I don't know why but generally what we do is if the  
10 work becomes repetitious because there are periodic inspections,  
11 we try to time our inspections with with work that may be  
12 changes and requires some attention.

13 For instance, if they are moving from one section -- if  
14 we will do an inspection at the beginning of one section and we  
15 will look at, establish what needs to be done, discuss issues  
16 and handle those items, let the contractor roll with it and then  
17 plan for the next inspection. Say they -- they run into a  
18 detailed area that may require our presence there and we show up  
19 at that particular instant.

20 Q All right. So the dates when these occur it is not  
21 random, it is just when it makes logical sense to be out there?

22 A That, and it could be random. It just depends on how  
23 the project goes and some times you want to do random  
24 inspections so that a contractor doesn't get a pattern of when  
25 you are showing up.

1 Q Okay.

2 A So it -- some of it may be because of where they are  
3 with the work and the type of work they are doing and other  
4 times it may be hey, lets go check up on them and see what is  
5 going on.

6 Q Okay. And then January 13, 2010, who is the inspector  
7 that looks at it now?

8 A Alex Montgomery.

9 Q So that's the third different person that looked at the  
10 project, correct?

11 A Yes.

12 Q And again all of these people are submitting their  
13 reports to you?

14 A Yes.

15 Q Okay. And the last person to be there from Stafford  
16 before the fire would be whom?

17 A It would be this one here, this line.

18 Q Yes, sir.

19 A Ken Ford.

20 Q That was February 4th of 2010?

21 A Yes.

22 Q Okay. Now, you are not able to say what areas of the  
23 roof these other inspectors walked on during their inspections  
24 are you?

25 A I might have an idea from the photos and may be from

1 some discussion.

2 Q Okay. Now, would they be required to photograph every  
3 part of the roof that they walked on?

4 A No.

5 Q All right. Now, immediately behind what we were --  
6 well, not immediately behind, but Pickens 1587 appears to be the  
7 observation report from Ken Ford prepared on February the 4th,  
8 2010, is that correct?

9 A Yes.

10 Q Okay. Just two pages?

11 A Yes.

12 Q Okay. Can you tell where from those two pages where  
13 Mr. Ford travelled on Bancroft roof?

14 A This one is hard to tell. Let me see. Okay. This is  
15 the penthouse so I know where that is.

16 Q Where is the penthouse?

17 A The penthouse.

18 Q All right. So you were starting to say where the  
19 penthouse was and I referred you back to Pickens 1309. Okay.  
20 Go ahead?

21 A All right. So on this 1309 the penthouse is on the  
22 left side of the University U-shaped building, upside down  
23 U-shaped building.

24 Q Yes.

25 A It's on the left side and it's shown with a box with

1 with, you know, diagonal lines through the corner.

2 Q Okay. And so that's on the inside pitch of the U?

3 A Yes.

4 Q And it's a square with a "X" through it?

5 A Yes.

6 Q Okay. Now, at that point do you know sort of in  
7 February 2010, do you know how far along Pickens was in the  
8 reroofing of Bancroft Hall?

9 A I don't, but I can look at the rest of the report and I  
10 see this is the parapet wall and I am looking at 1588 item  
11 number five.

12 Q Okay.

13 A Right. In that photo I can see the parapet wall and I  
14 can tell you that this roof area that's sort of unfinished in  
15 this photo.

16 Q Yes.

17 A I can tell you that -- that is the section of the  
18 parapet wall on 1309, referring to 1309 it is on the lower right  
19 hand side of the roof.

20 Q Okay. So it's below the parapet wall that you  
21 identified on 1309?

22 A Yes.

23 Q And it is on the outside pitch?

24 A It is actually on the inside pitch.

25 Q Oh, inside pitch?

1 A Yeah. Yeah: This area you are seeing right here.

2 Q All right. Let me ask you this, what familiarity, if  
3 any, do you have with the standard known as NFPA 241?

4 A I have heard of it. I don't know much about it.

5 Q Okay. Do you know whether there is any reference to that  
6 standard in the construction contract for reroofing of Bancroft?

7 A I don't.

8 Q Okay. If it is do you know how it came to be in there?

9 A If it is, then it may have been from previous  
10 documents, just one of those standard items that are on all  
11 projects.

12 Q Okay. So you were aware of, you said you heard of NFPA  
13 241, what does it concern -- do you what it concerns?

14 A Fire.

15 Q Okay.

16 A Fire requirements, or safety fire issues.

17 Q Do you know the specifics, or any of the specific  
18 standards that NFPA 241 calls for?

19 A Sprinklers.

20 Q Okay. With respect to construction operations are you  
21 familiar with NFPA -- with with what NFPA 241 calls for?

22 A No.

23 Q Okay. How common is it for in the course of roofing --  
24 in the course of roofing contract for you to see shingles laying  
25 across the ridge of the building?

1 A I think that is a pretty normal.

2 Q Okay and in your experience why is that roofers would  
3 lay packs ever shingles across a ridge? And it is at the ridge  
4 because that's where -- that's the only place you could put it  
5 without it slide go down.

6 Q Okay. What about metal, pieces ever metal flashing, do  
7 you see roofers lay pieces ever metal flashing across the ridge  
8 in the same fashion?

9 A I've seen it. It is not something I would recommend.

10 Q Okay. What kind of -- do you recommend for roofers to  
11 do with pieces of metal flashing?

12 A For basic all materials really, is to install it as  
13 they are putting it down on a roof that steep.

14 Q Okay. Do you have particular recommendations that you  
15 would make to roofers with respect to overnight storage of  
16 materials?

17 A To secure it.

18 Q Okay. And secured it against what?

19 A Secure it against wind uplift, sliding anything like  
20 that.

21 Q All right.

22 A And secure it with regards to protecting it from the  
23 weather.

24 Q So if it's secured, if there are uninstalled roofing  
25 materials on the roof and they are secured up there, is it okay

1 for them to be up there overnight?

2 A Only if they secure it and store it in such a way that  
3 it doesn't overload certain areas, but that's typically more for  
4 a low slope roof and not a steep slope roof. A steep slope roof  
5 like this one if a contractor asked me if they can store it up  
6 there I wouldn't recommend to store it on a steep slope roof.

7 Q Well, what about -- well you said a low sloped roof?

8 A Yes.

9 Q Is that flat roof considered a low sloped roof?

10 A Yes, that's correct.

11 MR. JETT: Cross examination by Mr. Vogt.

12 Q Mr. Nguyen, the specifications for this job were  
13 previously marked as exhibit number two and I am going to ask  
14 you some questions about that.

15 A Okay.

16 Q Okay. The specifications for Bancroft Hall are made  
17 part of the contract, correct?

18 A That's correct.

19 Q Can you turn to -- I'm sorry the specifications that  
20 were marked as exhibit number 1, do you see that?

21 A Yes.

22 Q Okay. I have a bound copy in front of me. And the  
23 specifications are part of the contract correct?

24 A That is correct.

25 Q And the the contractor which would -- any contractor

1 which would include Pickens Roofing in this case is bound to  
2 follow the specifications, correct?

3 A That is correct.

4 Q The meeting minutes for the pre-bid conference are made  
5 part of the specifications, right?

6 A Some times it is done as part of the addendum which  
7 would make it part of -- I am not sure if that's the case.

8 Q Why don't you take a moment and read what that section  
9 of exhibit one that I have in front of you and if you can tell  
10 me whether the pre-bid minutes were made part of the contract in  
11 this case?

12 A Okay. The only way to know is if there was an addendum  
13 that was issued.

14 Q Okay. Lets -- and we can go through the contract that  
15 we have already done with the Pickens' folks. Let's just assume  
16 for a moment that they agreed that the pre-bid meeting minutes  
17 were part of the contract?

18 A Okay.

19 Q Item 32 on page four indicates materials storage will  
20 be at a nearby offsite location, correct?

21 A That is correct.

22 Q All right. At any time did any one from Pickens ever  
23 ask you if they could store materials anywhere other than the  
24 near by offsite location?

25 A At the pre-con meeting.

1 Q Okay. And that was the -- that's what led to the  
2 change order?

3 A That's correct.

4 Q And the change order did not allow for storage of  
5 materials on the flat roof of the adjoined Bancroft, correct?

6 A The change order, no, it did not.

7 Q Okay. And by -- in staying with the pre-bid minutes,  
8 number three, under B on page four of seven, indicates that the  
9 contractor will be responsible for all precautions necessary to  
10 protect the building, building occupants, contents, and  
11 personnel from damage or injury from his operations.

12 Did I read that correctly?

13 A Yes.

14 Q Did that remain in effect throughout the course of the  
15 project?

16 A Are you asking me if the contractor did that or are you  
17 asking me if this clause --

18 Q That clause, yes.

19 A Yes, that's correct.

20 Q Okay. Now, as part of the contract, again staying with  
21 just the pre-bid minutes for that moment, page six of seven,  
22 number 22 indicates contractor will be required to comply with  
23 all applicable laws, ordinances, rules, regulations and orders  
24 of any public body having jurisdiction for the safety of persons  
25 and property.

1 Did I read that currently?

2 A Yes.

3 Q Was that clause in effect throughout the course of this  
4 project?

5 A Yes.

6 A At any time did anybody from Pickens Roofing -- at any  
7 time did anybody ask you from Pickens roofing whether they could  
8 not adhere to the South Carolina building code.

9 A No.

10 Q Now, as part of the specifications that you put  
11 together starting at 1500, is there a series of sections  
12 relating to a program relating to safety, correct?

13 You can feel free to read as much of it as you want. I  
14 am going to ask you you specifically about 1.9 the various  
15 sections in there all the way through L?

16 A Yes.

17 Q So one of the things that Pickens was required to do  
18 was initiate, maintain, and supervise all safety precautions and  
19 programs in confession with the work, correct?

20 A That's correct.

21 Q Under L-4, Pickens was responsible for complying with  
22 all applicable laws, ordinances, rules, regulations of any  
23 public body having jurisdiction for the safety of persons or  
24 property or to protect them from damage, injury or loss,  
25 correct?

1 A Correct.

2 Q 1.9 D indicates that or states, prior to starting work,  
3 obtain approval from the owner for locations of work operations  
4 at ground level such as material storage, hoisting, dumping, et  
5 cetera. Restrict work to approved locations. Other than the  
6 one location that we already talked about the change order, was  
7 there any other locations that was approved by the owner or  
8 anyone else to allow Pickens to store materials on the flat roof  
9 between Owens and Bancroft?

10 A No.

11 Q That's all I have. Thank you.

12 THE COURT: All right, madame forelady, members of  
13 the jury panel, we are going to go ahead and get  
14 lunch. A little late lunch maybe. It's a couple of  
15 minutes after two. What I am going to ask you to do  
16 is to be back in the jury room ready to go at about --  
17 well, there is some matters we have to take up with  
18 counsel. We don't need you to sitting back in the  
19 jury room while we do that. So we will take a little  
20 bit longer than normal for lunch, so that you won't be  
21 back there. Let's reassume, I will ask you to be back  
22 in the jury room ready to go at 3:30, that's about an  
23 hour and 25 minutes. So if you get lunch and be back  
24 at three -- excuse me, 3:30. Thank you.

25 (WHEREUPON, the jury leaves the courtroom)

1 THE COURT: Counsel, go get some lunch and come  
2 back and do the proffer. Let's go ahead and get some  
3 lunch and be back about five after three and we can do  
4 the proffer at that time.

5 (Court was in recess for lunch.)

6 THE COURT: Counsel ready to proceed?

7 MR. VOGT: The plaintiff would like to proffer  
8 Daniel Arnold with respect to the scope of his expert  
9 testimony.

10 THE COURT: All right.

11 DANIEL ARNOLD,, called as a witness, having been  
12 duly sworn by The Clerk, was examined and testified  
13 as follows:

14 DIRECT EXAMINATION

15 BY MR. VOGT:

16 Q Will you please tell us your name.

17 A My name is Daniel Arnold.

18 Q How are you employed?

19 A I am a fire protection engineer with Seneca Fire  
20 Engineering.

21 Q What is the nature of your company's business?

22 A We provide fire protection engineering consulting  
23 services.

24 Q Are you the owner of the business?

25 A I am.

1 Q Are there any other employees at Seneca Fire  
2 Engineering?

3 A There are no other technical employees at Seneca.

4 Q Please tell the Court the extent of your education?

5 A I have a bachelor of science degree in fire protection  
6 engineering from University of Maryland in 1980 and have been a  
7 registered fire protection engineer for 30 -- more than 30 years  
8 and all the continuing education that comes with those  
9 registrations.

10 Q Can you describe some of that continuing education  
11 requirements?

12 A Course work involving building construction, fire  
13 protection systems, testing of fire tests, building codes, life  
14 safety codes. All of the technical aspects that is the  
15 discipline of fire protection engineering.

16 Q And can you give us a brief example of the nature of  
17 the assignments that you get involved in?

18 A It includes design of fire protection features for  
19 buildings, working with architects, owners, contractors in  
20 constructing buildings and doing processes safely. It involves  
21 loss investigations, is a great deal of which I have been doing  
22 the last ten years of my practice, and design and analysis.

23 Q Does your work include fire spread analysis and  
24 building and fire code analysis?

25 A Yes, that's an integral part of fire protection

1 engineering. As part of our training we not only how fires  
2 start and originate and grow, but how they spread and involve  
3 systems and buildings and affect both the structures they occur  
4 in as well as the people who are in the building. So all of  
5 that fire safety umbrella is encompassed in fire protection  
6 engineering.

7 Q So part of being a fire protection engineer is  
8 understanding how buildings are put together?

9 A Absolutely.

10 Q And how they react under fire?

11 A Absolutely. Over decades our building codes have  
12 evolved over fire safety as an integral part of how we build our  
13 structure and how we built our society.

14 Q With respect to the fire code analysis, what have you  
15 done education or otherwise over the years to allow you to  
16 provide advice and opinions with respect to that issue?

17 A Well, fire codes and building codes are an integral  
18 part of our training and expertise and fire protection engineer.  
19 It is part of what we are tested in for our registration and  
20 it's a daily part of our practice.

21 I have been doing that kind of work for, like I said,  
22 for over three decades.

23 Q And specifically, have you had instances where you have  
24 interpreted NFPA provisions?

25 A Sure. Absolutely. In fact I sat on NFPA technical

1 committees that form the documents that are proffered to become  
2 those standards and codes.

3 Q And specifically have you testified with respect to  
4 opinions regarding NFPA 241?

5 A I have.

6 Q Can you give us an example?

7 A Two examples that come to mind would be a historic  
8 church in New York City that was being reroofed and they had a  
9 fire during the reroof and caused a significant amount of damage  
10 and loss of that structure. Another one I can think of is a  
11 library at the University of Georgia that experienced a fire  
12 during a reroof.

13 Q And both of those cases involved interpretation of NFPA  
14 241 provisions?

15 A Yes, 241 is a standard that deals with projects under  
16 renovations, construction and alteration and the provisions of  
17 that are applied to how work is conducted in buildings,  
18 renovation and alterations.

19 Q Did either of those cases involve specifically NFPA 241  
20 8.3.3 regarding yard storage?

21 A Certainly a topic. That numeral has changed over the  
22 years as they revise that standard over the last 30 years, but  
23 that topic of safely storing yard storage has already been in  
24 the fire codes.

25 Q Can you describe for us how you keep current with

1 respect to building and fire codes?

2 A Well, it's daily part of my practice as well as my  
3 participation in building code organizations and committees that  
4 develop those standards as well as my continuing education as  
5 part of my registrations, my engineering registrations.

6 Q Do you currently hold any professional designation with  
7 respect to the field of fire protection?

8 A I do.

9 Q What is it?

10 A I'm a registered fire protection engineer in 14 or 15  
11 states including South Carolina.

12 Q And you anticipated my question. You are professional  
13 engineer in South Carolina?

14 A I am.

15 Q When did you first receive your professional  
16 engineering designation?

17 A 1985, I think.

18 Q What do you have to do to obtain that designation?

19 A We have to have an accredited engineering degree. You  
20 have to practice for four or five years under the supervision  
21 and control of a practicing engineer. You have to submit  
22 applications and separate testing and not unlike what other  
23 professionals do to secure their professional licenses.

24 Q Earlier in your career you worked by the name of  
25 company by the name of Roth Jensen, is that correct?

1 A Yes, I did.

2 Q All right, and is that where you gained much of your  
3 training?

4 A Well, I work for them almost 20 years so certainly I  
5 practiced with them for a long time, both before and after I had  
6 employment with other firms.

7 Q Right. I think I asked you. I'm not quite sure. Did  
8 I ask you how many states you are licensed in as a professional  
9 engineer?

10 A I don't think -- I may have offered that. I think it's  
11 14 or 15.

12 Q Okay. And are you a member of professional  
13 organizations that concern building and fire codes?

14 A I am.

15 Q What association?

16 A I'm a member of the National Fire Protection  
17 Association, known as NFPA. I am a member and on the board of  
18 directors and numerous committees of the society of fire  
19 protection engineers, which is our technical societal  
20 engineering organization. We offer training and standards and  
21 other things.

22 I am member of National Society of Professional  
23 Engineers. I am member of the International Code Congress and  
24 was a member of the Legacy Organization that form the ICC, which  
25 includes the Standard Building Code Congress and Building

1 Official Congress of American, building code committee, and I  
2 sat on a number of state advisory code committees over the  
3 years.

4 Q Do you currently teach in connection with any of those  
5 areas of your expertise?

6 A Not academically. I do prepare and do seminars and  
7 short courses and sessions for other engineers and for  
8 continuing of others.

9 Q I think you told us about a couple cases that you were  
10 involved in, but I want to make sure. Have you ever been  
11 qualified as an expert to testify at trial as to fire code and  
12 the analysis of building and fire codes?

13 A I have.

14 MR. VOGT: Your Honor, at this time I would like  
15 to tender Daniel Arnold as an expert in the field of  
16 fire protection and fire spread and building fire code  
17 analysis.

18 THE COURT: Voir dire.

19 MR. SHEALY: Just briefly.

20 VOIR DIRE EXAMINATION

21 BY MR. SHEALY:

22 Q Just so I am clear though, Mr. Arnold, your work does  
23 not involve the determination of the cause and origin of a fire,  
24 correct?

25 A My practice includes knowledge of -- you say cause --

1 knowledge of how fires start. I am not an origin and cause  
2 investigator. I am licensed professional engineer. I often  
3 work in concert with the origin and cause investigator providing  
4 technical support, insight and collaboration on there efforts,  
5 but I'm an origin and cause investigator. Is that what I  
6 understood the question.

7 Q Well, and just so I understand, you are not the person  
8 that says this is how the fire started in a cause and fire  
9 investigation? That would be the cause and origin investigator?

10 A Well, I haven't done that in this instance in terms of  
11 what the competent ignition source for this fire was. That is  
12 correct. The fire we are talking about today.

13 I participated in origin and cause investigations over  
14 the years of my practice, but I didn't do that in this regard.

15 Q All right.

16 MR. SHEALY: Your Honor, I have no objection to  
17 Mr. Arnold being qualified as an engineer, fire  
18 spread.

19 I do have an objection to his being qualified  
20 in code interpretation because I think that that calls  
21 for legal conclusions based on discussions we already  
22 had. To the extent that he is called upon -- may be  
23 called upon in the trial of this case to interpret  
24 codes that have the force of law, again, I would say  
25 the witness is not the proper person to provide such

1 interpretation. That should come from the Court.

2 THE COURT: Well, I am going to find him qualified  
3 as a professional engineer with expertise in fire  
4 protection and analysis, and so -- and I don't think  
5 you have any objection to that, counsel.

6 What he will be allowed to testify to though is  
7 another matter. We will have to see. But I find him  
8 qualified as expert in that field and he can testify  
9 as an expert in that field. As far as the code  
10 section I will just have to wait and see. If there is  
11 some explanation he can give the jury with regard to  
12 terms and that, I will allow him to do that, but I  
13 don't think he is going to be able to testify about  
14 what the law is. He will be able to testify about any  
15 facts and give his factual opinion about the facts.  
16 He can give the jury explanation with regard to terms  
17 and that. He can give his opinion as to those. I  
18 will certainly allow him to do that because I think  
19 that will be helpful to the jury to be able to do  
20 that.

21 MR. VOGT: I want to make sure I am clear, judge.  
22 Well, perhaps we can do it after we go through the  
23 balance of it.

24 THE COURT: I need to see what the facts he is  
25 basing on. What his testimony is going to be.

1 MR. VOGT: Sure.

2 THE COURT: And I stick to my original position  
3 and that is that I don't think that he is going to be  
4 able to testify concerning the origin of the fire.  
5 How it started. Nobody else is able to do it,  
6 including people that are trained to do it. And I  
7 don't think he will be able to do it. But I will  
8 listen. I always have an open mind, but I think that  
9 with regard to conditions that would lead to a spread  
10 of the fire and what it takes the fire to reach some  
11 magnitude and that sort of thing, he certainly may be  
12 able to testify concerning that. As I told you  
13 earlier, if he is qualified to do that and I think he  
14 is qualified to do that, if you lay some foundational  
15 background for it.

16 Let's go with that and you can make your objection  
17 if you want to.

18 MR. VOGT: And Your Honor, just as a preface, I  
19 think the distinction Mr. Shealy was attempting to  
20 articulate was origin and cause. But I think the true  
21 distinction is the source of ignition.

22 Mr. Arnold is not going to testify as to the  
23 source of ignition.

24 THE COURT: That is the one and the same to me.

25 MR. VOGT: Well, if I can I will let him explain

1 that.

2 THE COURT: I don't see how you are going to get  
3 to ignition, when I can think of at least 30 things  
4 that could have started this fire and all of them  
5 would be pure speculation. You can't go there.  
6 That's what I am telling you. You will not be able to  
7 speculate about the cause of the fire and how it  
8 started. I don't think he will be able to do it.  
9 Maybe I'll have a clairvoyant moment here today, but  
10 thus far --

11 MR. VOGT: It could be that I am just articulating  
12 it improperly. We will let the witness do it.

13 Let me just pick up and will try to do somewhat of  
14 a compressed version of your testimony.

15 DIRECT EXAMINATION

16 CONT'D BY MR. VOGT:

17 Q Can you explain generally what you did in connection  
18 with your assignment to investigate the March 6, 2010 fire at  
19 Winthrop?

20 A Well, certainly I visited the site and observed the  
21 conditions as I found them. I took note of damaged patterns,  
22 difference of damage in the materials.

23 THE COURT: Excuse me, if I can interrupt. When  
24 did you do that?

25 THE WITNESS: About three or four days after the

1 fire.

2 THE COURT: Okay. Go ahead.

3 THE WITNESS: It was the week following. Fire  
4 suppression had been completed. It wasn't immediately  
5 after. Took note of those observations. I observed  
6 photographs that were made available by the fire  
7 department. Of particular interest photographs that  
8 were taken early in the event. One by an eye-witness  
9 of a journalism student which was an important factual  
10 observation as to the nature of the fire that was  
11 observed on the flat roof.

12 I researched and confirmed my understanding how  
13 flat roofs, TPO roofs and these types of roofs are  
14 tested and burn when tested in accordance with ASTM  
15 standards that deal with those tests. I have that  
16 working knowledge and understanding of how those roofs  
17 burn absent other combustibles and what the nature  
18 and circumstances of what that combustion is. Compare  
19 that with the photographs and the damage and from that  
20 it is clear to me there had to been combustibles on  
21 that roof in order to do two things. One, result in  
22 the fire that was observed by the eye-witness early in  
23 the fire before any fire department intervention. And  
24 secondly, secondly create the damaged products and  
25 building components that I observed and that -- I can

1 show you in photographs. That's a real brief summary.

2 BY MR. VOGT:

3 Q Let me just walk you back a little bit and I know we  
4 are trying to do this in a somewhat summary.

5 A If I'm talking too fast please let me know.

6 Q You didn't make a determination as to origin and cause,  
7 correct?

8 A Origin and cause is a term that is generic. I didn't  
9 make a determination as to what the competent ignition source  
10 for this fire was. That was not in the scope of my  
11 determination. But as to this fire, and by this fire I mean the  
12 fire I observed in the photograph and the fire that spread to  
13 damage of this building, this fire was caused by combustibles  
14 stored on that roof that became ignited by unknown source. That  
15 -- I guess that is a different way to say it.

16 Q Let's lay a little more groundwork for that. You had  
17 indicated --

18 MR. VOGT: If I could, Your Honor?

19 THE COURT: Yes, sir.

20 A These are not in the record yet, but they will be.  
21 There a series of photographs 64-A through 64-GG, 33  
22 photographs, which I don't believe there is any objection to.

23 MR. SHEALY: When they are offered I will have no  
24 objection.

25 MR. VOGT: And if helps the Court we can put these

1 up on the screen, Your Honor. I think you have seen  
2 these before throughout the trial.

3 Q Why were these photographs of the early stages of the  
4 fire important with respect your investigation?

5 A Well, as 64-C, what is important -- and this is a  
6 photograph that was taken by the eyewitness student is my  
7 understanding -- you can see the flame height judged by the  
8 scupper as compared to this six foot window, and that flame  
9 height -- and I can show you later -- is somewhere between two  
10 and a half to three feet tall. That flame height is greater  
11 than you would expect from a TPO roof absent combustibles stored  
12 on it. So that as well as other things we will talk about is  
13 physical evidence that indicates and supports my opinion there  
14 was combustibles on this roof.

15 Q And again, we are going to get there, I just want to  
16 make sure the Court understands the significance of the scupper  
17 indicates what as far as the elevation of the roof itself?

18 A The scupper gives a sense on the outside of the  
19 elevation of the flat roof relative to the exterior wall of the  
20 building that is really the drain sprout from the flat roof as  
21 it goes to out to the exterior drain. And you can see flames  
22 through that scupper as well as above the wall above that, as  
23 compared to the six-foot window on the adjacent Hall.

24 MR. VOGT: Now, Your Honor, much of -- not much,  
25 some of Mr. Arnold's opinion in this case will also

1 describe how the fire spread as a result of the  
2 building construction. I think we can be here an  
3 awfully long time if we go through all that.

4 THE COURT: I don't think I have a problem with  
5 his testimony so far.

6 MR. VOGT: Okay.

7 THE COURT: When I say a problem, I mean as far as  
8 admissibility is concerned.

9 MR. VOGT: Okay. I am trying not to jump around  
10 too much, judge, and I am also trying to be fast.

11 Q You found out during the course of your investigation  
12 that the roof was made of TPO?

13 A Yes. I think at one point it was TPO is when I came to  
14 learn. I think I may have said in my deposition EPDM, but it  
15 was a flat membrane type roof.

16 Q Okay. And did you determine the dimensions of the flat  
17 roof?

18 A Generally its about -- its kind of shaped like the  
19 state of -- what state would that be, Idaho or Oklahoma. It's  
20 about five foot by ten foot, by twenty, twenty-four feet,  
21 generally.

22 Q And did you also determine the distance from the TPO  
23 roof to the adjoining pitched roofs?

24 A They varied, but they are between two and three feet.

25 Q And so you developed an opinion through the course of

1 your investigation as to how the fire spread from the TPO roof  
2 to adjoining roofs?

3 A Yes.

4 Q What is the basis of that opinion?

5 A Factors such as the elevation of the lowest burning on  
6 the roof, burn patterns and destruction of building products in  
7 that window of damage. Things like melted aluminum, deformed  
8 and distended steel. Aluminum melts at 1200 degrees Fahrenheit,  
9 1100 to 1200 degrees Fahrenheit. And we had a portions of that  
10 roof where the aluminum melted and gone. And we had portions  
11 where there was virgin unmelted aluminum. So looking at these  
12 differential damage of products give you an ability to say there  
13 was a fuel at that location sufficient to cause that thermal  
14 damage.

15 Q And if you can, it may help the Court if you identify a  
16 few of the photographs that depict those conditions which help  
17 form the basis of your opinion as to fire spread?

18 A Mr. Vogt, can I have a glass of water?

19 Q Yes.

20 A Thank you. Here is one. This is at the corner between  
21 the wide and shorter part of the roof and you will see right  
22 here a piece of aluminum still remaining that's melted on either  
23 side of that aluminum piece. Those are closer up photographs.

24 Additionally at the steel beam that forms that angle has  
25 the paint and the tip of that is discolored indicating it had

1 | been direct flame impediment on that beam. And there is also  
2 | some completely consumed two by eight dimensional lumber  
3 | completely consumed along that corner. And the amount of energy  
4 | and heat release rate necessary to make that occur is  
5 | substantial. And I know that the energy that would be residual  
6 | in just TPO roof alone would not be sufficient BTU's or heat in  
7 | duration to cause that damage. So based on that it is clear to  
8 | me that in this general area there was combustibles in addition  
9 | to what the TPO roof, naked of anything else, would be able to  
10 | bring to bear in this area.

11 | Q TPO roof is combustible, right?

12 | A Components of TPO roof burn, yes.

13 | Q If a fire started on that TPO roof but there were no  
14 | other combustibles other than roof assembly itself, would -- how  
15 | high would the flame be at, approximately?

16 | A Inches. TPO roofs and any flat roofs are tested per  
17 | ASTM E108, which is the fire test for roof assembly, roofs are  
18 | -- over decades have been problematic for our building fire  
19 | safety because we don't want fires to go from room to roof to  
20 | roof from embers depositing on them. So there fire tests  
21 | criteria that apply to construction of roofs. And there is  
22 | tests that get done to demonstrate that performance, standard  
23 | tests that roofs must met, and they involve exterior flame  
24 | impingement and measuring or assessing the resulting flame  
25 | spread on that roof.

1           So to answer your question, all those tests are done in  
2 incline position with the wind back against them with a  
3 ten-minute flame on that roof and we get very, very little flame  
4 spread for a class A roof.

5           I am probably giving you too much information.

6           Q     But that's if the TPO roof is a class A roof?

7           A     It can be, yes. I believe it was in this case. That's  
8 what I understood it to be. So in a horizontal position you get  
9 less wind spread because it is not tilted.

10          Q     If I took a roofer's torch and ignited the TPO, would a  
11 fire spread to the adjoining pitch roofs?

12          A     No, it would self-extinguish.

13          Q     Why is that?

14          A     Because TPO surface is mills thick, you know, so it  
15 doesn't have the ability to reheat and generate surface burning.  
16 The way it burns it melts ahead from frame front and burns as it  
17 goes. In a horizontal position it doesn't have the ability to  
18 heat as it goes to melt it as it continues. So, I am confident  
19 it would have self-extinguished.

20                 If you went up there and you threw a match on it  
21 nothing would happen.

22          Q     Same with a cigarette?

23          A     Yeah. There is not enough competent ignition energy to  
24 make that happen.

25          Q     So in this case why is the source of ignition relevant

1 to your investigation as to how the fire occurred and spread to  
2 the adjoining pitched roofs?

3 A Well, we know the fire occurred and the photographs  
4 from the witness statement clearly show a fire early in  
5 discovery, that is of nature beyond what a TPO roof would  
6 support, whatever the cause of ignition -- whatever the source  
7 of ignition was, as opposed to cause. That's a term I want to  
8 be precise on, as to the means of ignition. Ignition energy. I  
9 have no idea what the ignition energy was for this fire.

10 Q Right. So during the course of this investigation you  
11 received information as to the where the fire originated?

12 A The area correct.

13 Q And that is something that you typically rely on during  
14 the course of your investigation as fire protection engineer?

15 A I rely on it and also take note to the extent I observe  
16 things from an engineer perspective that may not be consistent  
17 with the origin cause investigators, whatever facts they are  
18 basing that on. I don't take that blindly and I saw nothing in  
19 this case that was inconsistent with that area of origin.

20 MR. VOGT: Your Honor we have -- I have a lot of  
21 photographs that I would typically show him on that  
22 issue.

23 THE COURT: I don't have a problem with his  
24 testimony on that.

25 MR. VOGT: Okay.

1 THE COURT: You know, what he testified to based  
2 on his knowledge would be a matter for the jury to weigh  
3 and determine his credibility and what he is saying,  
4 that and subject to cross examination. Any expert  
5 witness the defense wishes to put up which might take  
6 a different view.

7 I don't have a problem with his testimony there.  
8 Let's do this. Let's don't have him -- while we are  
9 just trying to finish up his proffer right quick, I am  
10 not trying to stop you from objecting when we get into  
11 the testimony actually before the jury but, stay away  
12 from his construing the code. Construing code. Now  
13 terms within the code, explanation of what they mean  
14 something like that, I don't have a problem within his  
15 expertise, but not have him basically determine what  
16 the law of the case is. But I think if there are  
17 terms in there, words in there that he's familiar with  
18 and knows about that, that might be helpful to the  
19 jury that he can give his explanation or definition of  
20 what he understands the definition of that to be. I  
21 want you to stay away from actually saying what is  
22 allowed or prohibited by the code.

23 MR. VOGT: Well, Your Honor, I am trying to  
24 picture how I can ask this question without  
25 implicating the code. If I were to ask him after

1 showing NFPA 8.3.3, are you saying that I can't ask  
2 him if that had been adopted by the state of South  
3 Carolina?

4 THE COURT: Oh, you can ask him that.

5 MR. VOGT: Okay.

6 THE COURT: I don't want him to say that if they  
7 had this up there this violated this section of the  
8 code. Then we will get into an issue that might be  
9 fertile ground for appeal --

10 MR. VOGT: Right.

11 THE COURT: -- if the Appellant Court were to  
12 determine if that was a question of law.

13 MR. VOGT: If I ask him a hypothetical question  
14 whether the storage of roofing paper and shingles on  
15 the flat roof violated code, would that be acceptable?

16 THE COURT: I think he can give his opinion on  
17 that. I think he can give his opinion on that.

18 MR. VOGT: Your Honor, unless you have more  
19 questions I think essentially those are the three  
20 areas where Mr. Arnold will be proffered as an expert.  
21 One as to fire spread. One as to what you heard about  
22 the means of ignition versus without a means of  
23 ignition this fire could not be started on a TPO roof.  
24 And three, in a hypothetical scenario this is the  
25 code, 8.3.3., would it be violated if roofing

1 materials were placed on there.

2 THE COURT: The last one I'm having a little  
3 problem with.

4 What's your position?

5 MR. SHEALY: Your Honor, I don't see that there is  
6 any logical difference between what you told him he  
7 couldn't say and then just putting it in front of it.  
8 To me that's still a commentary, an opinion of law.  
9 It's just put in a hypothetical form. It's just doing  
10 an in-run around what you indicated you would not  
11 allow.

12 MR. VOGT: Your Honor, if I may. We are not  
13 asking an opinion as to the ultimate issue of law. We  
14 are asking an opinion as to the ultimate issue of  
15 fact, which precisely allowed by 702, 703 and 704.  
16 The law in this case, there is no dispute, South  
17 Carolina had adopted NFPA 241. The fire marshal  
18 testified that this morning as far as what is the  
19 applicable code and in actually in all the motions the  
20 defendant acknowledged that.

21 There is no dispute about what the law is. He is  
22 simply saying this is his application which is issue  
23 of fact.

24 THE COURT: I am just walking a tight line  
25 between. I don't want to allow you to go into

1 something that is going to get this case tried again,  
2 should you be successful.

3 MR. VOGT: And I think that's really the issue  
4 that was discussed in that Knoke case, where the Court  
5 allowed the fire marshal shall to testify as to code  
6 and code violations as to the absence of smoke  
7 detectors.

8 THE COURT: I had read a couple of things that  
9 indicated having an expert opine by what the law might  
10 be and whether it violates the law or not is not  
11 allowed. The Knoke case seems to let him go a little  
12 further then that, but -- I think it is possible to  
13 compromise on it -- and I will hear from both of you  
14 on this if you want to be heard. I think what I might  
15 allow you to do is to let him acknowledge that  
16 section, whether he reads it or you read it and then  
17 ask him whether this flat roof between the buildings  
18 is within thirty feet of a building, and the thing is  
19 what bothers me about it is, and the reason I think  
20 there needs to be something presented to the jury on  
21 what that means is that instead of me just simply  
22 charging the jury this section they don't know what  
23 that means. They don't what yard is, and they don't  
24 know if you say something on the yard can't be within  
25 thirty feet of a building, well does that include a

1 connector to the building and a flat surface between  
2 the two buildings storing stuff in there is still  
3 within within thirty feet, but a jury might not  
4 understand it. And I think they are entitled to know  
5 that otherwise this will be very misleading.

6 MR. VOGT: And Your Honor, if it helps I can  
7 continue the proffer of Mr. Arnold is prepared to  
8 testify as to the meaning of yard storage under the  
9 NFPA.

10 THE COURT: I will probably let him do that. He  
11 can testify as to what his understanding of yard  
12 storage. That he's got a lot of expertise in that  
13 field I am sure, having worked on these codes. I will  
14 allow him to do that. But also to clarify whether a  
15 flat roof between these two buildings that  
16 construction is being performed would be within thirty  
17 feet of the building, so that -- so that the jury will  
18 understand that.

19 Do you want to be heard?

20 MR. SHEALY: Your Honor, I don't think I can  
21 quarrel with the witness asking whether or not the  
22 area in the flat roof is within thirty feet of a  
23 building. That is a factual observation that is  
24 observable by this witness or any witness, quite  
25 frankly.

1 THE COURT: Right. I will let him ask him that and  
2 I will let him ask -- explain what yard storage means  
3 to him. Explain that, that is what is written in that  
4 code. What it means and technically -- technically  
5 that is kind of interpreting it, but it's also a term  
6 which needs an explanation and I don't want to be in a  
7 position to have to charge the jury on it because I'm  
8 afraid I might get into a charge on the facts on it if  
9 I start trying to expand on the statute, unless there  
10 is something somewhere that explains what it is, then  
11 I think he should be able to explain it and I don't  
12 think that's certainly not prejudicial to the defense.

13 MR. SHEALY: I -- well, Your Honor, I would just  
14 make the same objection that I made, calling for legal  
15 conclusion when terms like that -- when witnesses have  
16 been asked what those terms mean. Because those are  
17 terms that have legal significance to a standard that  
18 the plaintiff is holding up as the standard that was  
19 violated. That would be the objection.

20 THE COURT: Well, he won't be testifying that he  
21 violated this. He would simply explain what that term  
22 means to him in which he is familiar with --

23 MR. SHEALY: Right.

24 THE COURT: And I don't really see how that's...

25 MR. SHEALY: Your Honor, we just don't have law

1 professors come in and tell us what the words in a  
2 particular statute mean. We rely on the Court to  
3 explain to the jury. If the word has a particular  
4 meaning that the law recognizes then the Court gives  
5 it that. If it doesn't then the law in this State is  
6 that words should be given there plain --

7 THE COURT: Words -- no. The Court can't explain  
8 those terms. If they are legal terms the Court can  
9 give further definition of those legal terms. I will  
10 give it right out of Black Laws Dictionary. You have  
11 seen the Supreme Court do the same thing.

12 MR. SHEALY: I certainly have. Yes, sir.

13 THE COURT: So we can do that, but we can't do it  
14 with these technical terms that are in a code like  
15 yard storage. Nobody knows what that means, and it's  
16 not something you can pull out a legal dictionary. So  
17 it is not a question of a legal terms. It's a  
18 question of these technical terms, which the jury  
19 needs to have some explanation of what it means.

20 MR. SHEALY: And again, Your Honor, the section  
21 has the force of law. It is the law, so --

22 THE COURT: Nobody seems to know it though. Not a  
23 single person has testified, has any idea what it is,  
24 the code sections we are talking about. So how do we  
25 expect the jury to know.

1           You got all your people here work with it every  
2           day and supposedly know it, but all of a sudden they  
3           don't know anything. Never even seen it before.  
4           Yeah, it's probably in the office somewhere. Never  
5           even seen it. Not my area. You got all your key  
6           people and everybody else that work out there on the  
7           job none of them know what it is.

8           Had a fire marshal in here. Really hadn't worked  
9           with it until he was asked to do that by plaintiff's  
10          counsel in preparation for a lawsuit and he has been  
11          in it for thirty something years.

12          MR. SHEALY: Yes, sir.

13          THE COURT: So how do we expect a jury, a lay jury  
14          to sit over there to know.

15          I'm amazed. Doing all these projects and  
16          everything and all these safety officers,  
17          superintendents, owners and everybody else and fire  
18          marshals, don't even know what the section is. It's  
19          amazing to me. But in any event, that's where we are.  
20          It is what it is.

21          MR. VOGT: Your Honor, may the witness step down?

22          THE COURT: He may.

23                         (Witness excused)

24          Is there somewhere that the term is defined so the  
25          Court can charge them on it?

1 MR. VOGT: Your Honor, NFPA.

2 THE COURT: Is there any definitions in the code?

3 MR. VOGT: Really Mr. Arnold should be the one to  
4 explain this to you, and he can tell you how it gets  
5 there. There is a NFPA 1, is where that definition is  
6 taken from, and NFPA 1 defines yard storage as  
7 "storage of commodities in an outdoor area."

8 Now this is 2006 NFPA 1. The NFPA code, the IFC  
9 was a 2006 edition. Do you remember International  
10 Fire Code incorporates by reference NFPA provisions as  
11 we are talking about them. The one that was in effect  
12 was the 2000 addition. I believe what Mr. Arnold will  
13 testify is that this was the definition used within  
14 his field of expertise and then codified, NFPA 1 in  
15 2006. That continues to be the definition of yard  
16 storage today.

17 THE COURT: Well, why don't we just let him not  
18 define it and I will charge the jury this definition  
19 when I charge the jury. But that's -- and it says  
20 storage of commodities in and outdoor area. Of course  
21 a roof counts as an outdoor area. It's not just in a  
22 yard, so that helps to some extent. Still doesn't  
23 explain it satisfactory.

24 MR. VOGT: I think he can explain it though, Your  
25 Honor, and I think that's what the intent of 702 is.

1 We know what the law is in this case. Explaining the  
2 particular interpretation is not telling the jury what  
3 the law is. He is applying a certain set of facts to  
4 determine if it is a violation. That's assisting the  
5 trier of fact to understand a technical issue and this  
6 is certainly a technical issue. Because I don't know  
7 judge, when you hear all this testimony and then an  
8 hour charge or something like that, hour and a half  
9 charge, we read a definition the jury has never heard  
10 of before.

11 MR. SHEALY: We do that in every trial. We give  
12 the jury legal terms that they never heard before.

13 THE COURT: I will do this. I will stick to this.  
14 I'll charge this definition. It's broad enough for  
15 you to education the jury in your final argument. You  
16 can refer to this definition, tell them what it means.

17 MR. VOGT: In my closing?

18 THE COURT: Yes. And so you will know what I am  
19 going to charge them on that as far as the definition  
20 is concerned and you can say what it means in your  
21 opinion. This means any outdoor area. I understand  
22 what you are saying, but that's not really going to  
23 add anything if he says it is outdoor area. This says  
24 it is outdoor area.

25 MR. VOGT: Well, it does, Your Honor, because out

1 door area encompasses anything outdoors.

2 THE COURT: Year. That's what this means. You  
3 can't store it in an outdoor area within thirty feet  
4 of a building.

5 MR. VOGT: Right.

6 THE COURT: That's the key.

7 MR. VOGT: Right.

8 THE COURT: Is it within thirty feet of a  
9 building, not whether it's outdoor storage. Okay.

10 MR. VOGT: And that's why I think -- I think he's  
11 the person best equipped to explain that.

12 THE COURT: We already agreed he can say that. He  
13 can't argue with that because it's a factual  
14 determination.

15 MR. VOGT: There are some areas, Your Honor, that  
16 outdoors are excluded, like a courtyard or something  
17 like that. But I understand. You heard enough from  
18 me.

19 THE COURT: I think this gives you enough to be  
20 able to present your case satisfactory and that's what  
21 I am looking at, without him interpreting the language  
22 of the statute, essentially the statute. I don't know  
23 if these technical regulations should be considered  
24 statutes or law, or not. I think these highly  
25 technical regulations ought to allow for more

1 explanation from experts then of course just sheer  
2 questions of law. Legal terms it's a different  
3 matter. These aren't legal terms by any stretch of  
4 the imagination.

5 MR. VOGT: Your Honor, I just want to make sure I  
6 am clear because I don't want to do this in the middle  
7 of a couple of hours of direct. I want to make sure I  
8 understand what I am allowed to ask him with respect  
9 to NEPA 241. For instance, can I ask him about what's  
10 the purpose of NEPA 241 as set forth in NEPA 241?  
11 Because right now it's not even in evidence.

12 The fire marshal said that is the law in the State  
13 of South Carolina, but it didn't come in to evidence.  
14 So for instance, can I ask him how does it apply? It  
15 tells us how it is applied right in the statute. Does  
16 it apply to buildings that are being -- demo  
17 activities of reroofing.

18 THE COURT: I think he can say that. That's  
19 within his area of expertise.

20 MR. VOGT: All right.

21 THE COURT: That is what he does. He advises  
22 people and come up with plans and knows that. I think  
23 it is within his expertise.

24 MR. VOGT: Okay. So Your Honor, is the question  
25 you want me to avoid whether Pickens violated code by

1 storing combustibles on the roof? Even in a  
2 hypothetical question, is it a violation to store  
3 these materials on the roof? Is that what I'm not  
4 suppose to ask him?

5 It seems to me I should be able to ask him the  
6 hypothetical question, Your Honor. If the Court's  
7 ruling earlier this day with respect to the fire  
8 marshal is that he was not qualified to answer that  
9 question, and I believe Mr. Arnold clearly is  
10 qualified.

11 THE COURT: Why don't we do this. That's the  
12 question. If I allow you to ask that question he is  
13 going to object to it, from defense, and then that  
14 becomes an appellate issue as to whether he is in fact  
15 saying somebody violated the law. That's suppose to  
16 be a conclusion of law. That's his position. And he  
17 maybe right. He may not be right. But he maybe right  
18 about that. I think some others are of the same  
19 opinion; that it might be that he can't testify that  
20 it's a violation of the law, and so, I think you have  
21 to do it a different way. That is, that I think you  
22 should be able to ask him that hypothetical, but be  
23 very careful to say it is only as to the hypothetical  
24 conclusion with regard to an ultimate issue for the  
25 jury on the factual, not a legal issue. Therein comes

1 the fine dividing line that you have to make.

2 I think that you can get there the same way by  
3 clarifying the statute section, the language of the  
4 statute, that is it within thirty feet of a building  
5 under construction and then go on in to what these  
6 combustible materials, why you believe they were on  
7 there and what it would cause and the reason you  
8 believed that these combustible materials were up  
9 there -- the construction materials were there. I  
10 think you can get there the same way. It's just not  
11 as direct. But it might be in contravention of what's  
12 allowed in these cases in which event I would be  
13 reversed by appellate courts and that is what I trying  
14 to avoid, to see this case tried a second time on an  
15 error of law.

16 What I think you should be able to do and what you  
17 are allowed to do might be two different things.  
18 Okay. And so, I want to be as safe as I can on this  
19 as far as my ruling is concerned, and try to get it  
20 right so you don't have to do it a second time and so  
21 I think you will have to go that way.

22 I will not allow you to ask him is this a  
23 violation of law. Basically what you can ask him  
24 about is this a violation of this code section, which  
25 has the force of law if they didn't. I'm not going to

1 allow you to ask him that. I know you would like to  
2 ask him, I think you should be able to ask him. But,  
3 I think that maybe in contravention of the law as it  
4 is in this State, so we need to stay away from there.  
5 You will have to go around about way of doing it, but  
6 I think you can accomplish the same thing.

7 MR. VOGT: Your Honor, I will do my best and if I  
8 ask a question that you think --

9 THE COURT: If you get an objection I will not  
10 sustain it.

11 MR. VOGT: I want the Court to know I will do my  
12 best in that regard.

13 THE COURT: I know you want to get there. That's  
14 the ultimate issue. You would like to have him  
15 testify. But I am just saying I think that's possibly  
16 a reversible error that I might make, so I will not  
17 allow it. But we already defined where you can go  
18 with this witness and I think you can get where you  
19 want to go, other than what was the energy source that  
20 ignited the fire. You can't go there because he can't  
21 say.

22 MR. VOGT: We have no intention of it.

23 THE COURT: He can testify to whatever else about  
24 it. All right. We pretty clear?

25 MR. VOGT: Yes.

1 THE COURT: Let's bring the jury in and try to get  
2 started and I would like to finish his testimony today  
3 if we can. I know you like to get his testimony in  
4 today because he is probably charging you a little  
5 bit.

6 (WHEREUPON, the jury enters the courtroom)

7 THE COURT: Ready to proceed?

8 MR. VOGT: The plaintiff calls Daniel Arnold.

9 DANIEL ARNOLD, called as a witness, having been  
10 duly sworn by the clerk, was examined and testified as  
11 follows:

12 DIRECT EXAMINATION

13 BY MR. VOGT:

14 Q Will you please tell us your name?

15 A Daniel Arnold.

16 Q And how are you employed?

17 A I am a fire protection engineer.

18 Q And what is company are you employed by?

19 A I am employed at Seneca Fire Engineering.

20 Q What is the nature of that company's business?

21 A We provide fire protection engineering consulting  
22 services. That's what we do.

23 Q Can you outline for the jury your background with  
24 respect to your education?

25 A I have a bachelors of science degree in fire protection

1 engineering. I got that in 1980.

2 Q What type of work does Seneca Fire do?

3 A We provide consulting services to contractors, to  
4 owners, architects, to builders in constructing and designing  
5 buildings and facilities for fire safety. We are involved in  
6 developing programs and safety management plans and I also do  
7 loss investigation analysis.

8 Q Can you give us a few examples of the type of  
9 assignment you received with respect to analyzing fire spread?

10 A Well, the ones that come to mind immediately that are  
11 similar to the issues in this case, would be a historic church  
12 in Manhattan, that experienced a major fire during a roof  
13 renovation project. Another one would be a library at the  
14 University of Georgia, that had a similar -- had a fire during  
15 another roofing project.

16 Q And as far part of your work in those part of cases do  
17 you analyze applicable building and fire codes?

18 A I do.

19 Q How many years have you performed fire spread analysis  
20 and building and fire code analysis?

21 A Over thirty years. It's have been part of my practice  
22 since I began in this industry.

23 Q With respect to fire code analysis, what have you done  
24 education or otherwise over the years to allow you to provide  
25 advice and opinions with respect to those issues?

1 A Well, fire spread and fire development is part of my  
2 education and training and it has been part of my practice for  
3 thirty years. Also as part of my registrations I have.

4 Continuing education every year for the last thirty  
5 years and those topics are among all of the fire safety topics  
6 that I practice in.

7 Q The same type of thing you do with respect to expertise  
8 as to fire spread analysis?

9 A It is very similar.

10 Q What do you do to keep current in the area of building  
11 and fire codes?

12 A Continuing education, annually attend and provide short  
13 courses and also it's just what I you do every day, is kind of  
14 analysis. I participate in building code seminars. I sit on  
15 technical committees that are responsible for, or advising on  
16 building code development and I'm a member of a number of  
17 organizations who developed a technical foundation for the codes  
18 that are adopted by jurisdictions.

19 Q Do you currently hold any professional designation with  
20 respect to the field of fire protection engineering?

21 A I do.

22 Q What is it?

23 A Im a registered professional engineer in 13 or 14  
24 states.

25 Q What do you have to do to obtain that designation?

1           A     You have to have the requisite educational background.  
2     You have to practice for a number of years under the direct  
3     supervision of a practicing --then practicing engineer. You  
4     sit for your board, your examinations and successfully pass  
5     those boards and then you submit an application and all those  
6     background checks and then your accepted by each individual  
7     state as being able to provide engineering services within that  
8     state.

9           Q     Are you a professional engineer in the State of South  
10    Carolina?

11          A     I am.

12          Q     When did you first receive your professional  
13    engineering designation?

14          A     In 1985.

15          Q     Are you a member of any professional organizations that  
16    relate to building and fire code?

17          A     I am.

18          Q     And what is it?

19          A     I'm a member of the National Fire Protection  
20    Association and I have sat on number of technical committees  
21    that develop code and standards under their influence.

22          Q     What is the National Fire Protection Association?

23          A     It is the -- how do I say it briefly. It is the  
24    organization responsible for promulgating all the codes and  
25    standards -- not all. Many of the fire safety codes and

1 standards that we adopt and we -- they benefit as a society. So  
2 they publish and are responsible for the technical development  
3 of hundred of codes and standards that are adopted in building  
4 code and adopted by jurisdictions.

5 Q And I think I cut you off. I wasn't sure if you were  
6 complete when I asked you are you a member of a professional  
7 organizations. Are there other other than the NFPA?

8 A Yes, I'm a member, actually on the Board of Directors  
9 for the SFPE, which is the Society of Fire Protection of  
10 Engineers. I am the member International Code Congress and was  
11 member of Legacy Organization which form the the ICC, which are  
12 are other building code organizations, SPCCI, and OCA. I'm a  
13 member of the National Society of Professional Engineers and a  
14 number of other state and local building fire code and fire  
15 safety organizations and committees.

16 Q Are you active in those organizations?

17 A I am.

18 Q Do you currently teach in connection with any of the  
19 area of your expertise?

20 A I do. It's not usually for me to hold several seminars  
21 and short courses throughout the year. I am not academic  
22 teaching but I do professional development for other engineers.  
23 I would say younger engineers who are trying to learn a  
24 particular aspect I will do some of that.

25 Q Have you ever qualified as an expert to testify at

1 trial as to fire spread and the analysis of building and fire  
2 codes?

3 A I have.

4 MR. VOGT: Your Honor, the plaintiff would tender  
5 Daniel Arnold as an expert in the field fire  
6 protection and fire spread and building and fire code  
7 analysis.

8 MR. SHEALY: Cross examination as to  
9 qualifications?

10 THE COURT: Yes.

11 VOIR DIRE EXAMINATION

12 BY MR. SHEALY

13 Q Mr. Arnold, you don't -- your work does not involve the  
14 determination of the cause or origin of a fire, correct?

15 A It can and some times does. In this instance I have  
16 not done any work involve the means of ignition of this fire, so  
17 by cause and origin, but what ignited the fire I have not.

18 MR. SHEALY: Your Honor, may I approach the  
19 witness with a copy of his deposition.

20 THE COURT: Yes.

21 MR. SHEALY: May I unseal it?

22 THE COURT: Yes.

23 Q Mr. Arnold, if you turn with me to page ten, the  
24 deposition that was taken of you on December 6, 2013.

25 A Yes, sir.

1 Q All right, and if you will look at line 15, question  
2 was posed to you then, "Okay. And what I was really sort of  
3 getting at is, how much of what you do looks at investigating  
4 the cause and origin of a fire post loss as opposed to  
5 consulting with a building or architect as to how to design a  
6 fire suppression system or a fire protection or fire prevention  
7 scheme?"

8 Answer, "Let me clarify. My current work does not  
9 include determining origin and cause. I provide engineering  
10 support to origin and cause investigators as part of my work."

11 Is that the answer you gave?

12 A Yes. I think it went on to explain further, but that's  
13 what you read. That's correct.

14 Q All right, so not just in this case, but your current  
15 work doesn't involve determining cause and origin of fires?

16 A As I indicated later, I am not a licensed origin and  
17 cause investigator in any state.

18 Q Yes, sir.

19 A And that's what I say later in this testimony. That's  
20 correct. I'm not a licensed origin and cause investigator, I'm  
21 licensed a profession engineer. And that is the distinction  
22 that I was trying to draw here.

23 Q Thank you.

24 MR. SHEALY: Your Honor, I have no objection to

25 Mr. Arnold qualifications as a fire spread, fire

1 suppression engineer. I would object to his  
2 qualifications -- or object to him being qualified as  
3 expert in code analysis because I think that involves  
4 determining legal issues in the case.

5 THE COURT: All right.

6 Do you want to ask any more questions?

7 MR. VOGT: No, Your Honor.

8 THE COURT: I find him qualified as a professional  
9 engineer fire safety and fire spread and you may  
10 proceed from there.

11 MR. VOGT: Thank you, Your Honor.

12 THE COURT: He is so qualified.

13 DIRECT BY MR. VOGT CONT'D:

14 Q Now, Mr. Arnold, you are being paid for your  
15 professional services that you render in this matter?

16 A I am being paid for my time, yes.

17 Q At what rate?

18 A My rate is \$280 an hour.

19 Q What was the scope of your assignment with respect to  
20 the March 6, 2010 fire at Winthrop?

21 A I was asked to review the circumstances of the fire,  
22 review the fire and get an understanding of the circumstances of  
23 it and why it caused the damage that it caused.

24 Q Can you tell us when you first arrived approximately at  
25 the site?

1 Q It was approximately I'm going to say three to four  
2 days after the fire. The fire was suppressed and the scene was  
3 stable. There was no ongoing fire suppression activity, but it  
4 had not yet -- they had not yet started any demolition to do any  
5 remediation?

6 Q During the course of your onsite part of your work, did  
7 you gather information?

8 A Yes.

9 Q What type of information did you gather?

10 A I gathered information related to the circumstances I  
11 saw; things like damage patterns, difference of damage between  
12 certain types of building components, metal versus wood versus  
13 other products, spread and burn patterns, as well as -- and  
14 photographed all that. I dimensioned and sketched and gain that  
15 body of information. Basically the physical conditions that I  
16 observed.

17 Q Did you interact with any of the public officials or  
18 anybody like that with respect to their investigation?

19 A I don't recall if public fire officials were there at  
20 the time. They may have been there, but I certainly interacted  
21 with origin and cause investigators who were there and they  
22 provided me information they had gathered up to that date from  
23 their investigation.

24 Q Did you review any documents that you received at any  
25 course during your investigation with respect to the Rock Hill

1 Fire Department Investigator report?

2 A Yeah, I reviewed the report. I reviewed the photographs  
3 that they provided as part of that report or provided  
4 separately. Yes.

5 Q Did you obtain copies of interviews which were attached  
6 to that report?

7 A I did.

8 Q Let's go back just for a second. Can you describe a  
9 little more slowly the conditions that you saw when you first  
10 visited the site?

11 A Well, I observed where the things like the lowest area  
12 of burning. In a fire like this involves a slanted roof. The  
13 field of damage on the slanted roof you kind of look and gain an  
14 understanding where the fire started.

15 We all have a sense that fire spreads vertically up.  
16 So a roof like this you try to see where the part of lowest  
17 burning was to give you a sense where -- if not where the fire  
18 started, where the lowest part was. That gives you a sense of  
19 may be the origin area, and in this case that was consistent  
20 with what the origin investigators saw as well.

21 I also either there, or shortly thereafter, was shown  
22 or became in possession of a photograph that was taken by an  
23 early eye-witness before the fire department arrived. That was  
24 very important piece of evidence in me understanding the nature  
25 of the early fire in this case.

1 Q Is that type of information that you as a fire  
2 protection engineer analyzing fire spread typically rely on  
3 during the course of investigation?

4 A Absolutely.

5 Q You mentioned earlier about the area of origin. Did  
6 you receive information from these other investigators as to the  
7 area of origin?

8 A I did.

9 Q Did you make an independent determination as to the  
10 area of origin?

11 A I saw nothing that was inconsistent with that  
12 determination that they offered, which was it had occurred on --  
13 has become to be known as the flat roof between the two halls.

14 Q And describe the the flat roof with respect to  
15 dimensions? What it is made of that type of thing?

16 A The flat roof is a location at two junctures of two  
17 buildings, that where roofs come down and it is about shape like  
18 the state of Oklahoma, sort of about five feet in the short  
19 side, ten feet elsewhere and about 20 to 25 feet long.

20 Q Now, in preparation for your testimony today did you  
21 prepare an illustration, an animation that would allow you to  
22 better describe your findings?

23 A I did.

24 Q Can you describe how the animation was put together?

25 A Sure. I worked with an animator and developed the

1 issues that I wanted to demonstrate and show and from that with  
2 the drawings and other information -- photographs that I had  
3 taken -- we developed an animation to characterize the flat roof  
4 and the observations I made relative to the flat roof.

5 Q And as part of that there was, I believe, a number of  
6 photographs that were made part of that?

7 A I think I included thirty or thirty-five photographs  
8 that I made -- may have refer to. So I included those in to the  
9 animation just for simplicity.

10 Q And were these all photographs that you either took  
11 yourself or obtained during the course of your investigation of  
12 others?

13 A They were.

14 Q So, if we start with the animation?

15 MR. SHEALY: Your Honor, may we approach.

16 THE COURT: Yes, sir.

17 THE COURT: Madame forelady and members of the  
18 jury panel, there is a matter I need to take up with  
19 counsel at this time. It will probably take a few  
20 minutes. Please retire to the jury room.

21 (WHEREUPON, jury leaves the courtroom.)

22 THE COURT: Okay.

23 MR. VOGT: If you turn off the lights I think it  
24 will play it better. I think I can do this. Here we  
25 go.

1 Your Honor, at any point during the presentation,  
2 I can stop it and then show photographs.

3 THE WITNESS: You have to wait until the preset  
4 stops to show photographs. You can stop the animation  
5 at any time.

6 THE COURT: Defense counsels needs to be able to  
7 see it before you show it to the jury.

8 MR. VOGT: Yes. Oh, yeah. I am just trying to  
9 get it to run, Your Honor. There we go.

10 (WHEREUPON, photographs were shown.)

11 THE COURT: You may have to stand down and run it.

12 MR. VOGT: For instance Your Honor, we get to the  
13 point where it depicts the flat roof and then there is  
14 a series of photographs which we show all these are  
15 exhibits and not objected to.

16 MR. SHEALY: Your Honor, a couple of objections.  
17 First to start off with this photograph here, Mr.  
18 Arnold, has not laid any kind of foundation for any  
19 knowledge of the exact composition of this roof. He  
20 said he thought it was something else in his  
21 deposition. He'd come to find out it was TPO, but  
22 there are other different kinds of compositions.  
23 Different amounts of insulation and he hasn't laid the  
24 foundation for that. The beginning of this goes from  
25 a photograph taken early in the fire. There is smoke

1 visible, no flames and then we move to straight in to  
2 there are flames. The photograph that he relies on  
3 for the flame was taken 45 minutes after the first  
4 photograph that he he relies on. In fact he stated on  
5 the record an error, a factual error. The photograph  
6 he is relying on is not taken before the fire  
7 department gets there. It is taken 45 minutes after  
8 they get there. And so this animation is riddled with  
9 factual errors and I object to it being played for the  
10 jury.

11 MR. VOGT: Your Honor, just because this animation  
12 doesn't show the composition of the flat roof other  
13 than there is a metal deck and a covering over it.  
14 The point of this slid is the composition of the roof  
15 above it to explain the fire spread. As far as  
16 initial photographs all those photographs have already  
17 been entered into evidence. They were taken and they  
18 are part of the fire department report.

19 THE COURT: What is this suppose to depict this  
20 one up on the screen now?

21 MR. VOGT: How do I get the photographs?

22 THE WITNESS: You have to go back.

23 MR. VOGT: Your Honor, can he step down so we can  
24 get this working better.

25 THE COURT: Sure.

1 MR. SHEALY: Your Honor, it's this transition that  
2 is erroneous.

3 MR. VOGT: Your Honor, this is a demonstrative  
4 aid. There's nothing representative of this other  
5 than as to how the fire spread. It's not relevant as  
6 to whether it is 45 minutes or hour later. We're  
7 simply showing how the fire spread and the conditions  
8 met by the fire fighters at the scene.

9 THE COURT: Shouldn't there be an explanation this  
10 is 45 minutes later?

11 MR. VOGT: Your Honor, nobody can say when the  
12 fire actually initiated. It's when the fire was  
13 discovered.

14 THE COURT: I am talking about between the smoke  
15 and the fire. His objection is it looks like you are  
16 going straight from the smoke to the flames which  
17 means a big combustion right then and he's saying this  
18 was actually 45 minutes later, which is misleading to  
19 the jury. And I'm saying shouldn't that be clear that  
20 this second photograph is 45 minutes later if in fact  
21 it is.

22 MR. VOGT: I don't know the basis of saying it's  
23 45 minutes later, Your Honor, but we can start at --  
24 we don't need the overall view I don't believe. We  
25 can skip that amination view. In my view it's not

1 relevant. We can start with the fire shown on the  
2 flat roof.

3 Again, this is not evidence. It's simply used to  
4 illustrate the conditions of the building, how they  
5 were made --

6 THE COURT: I understand that. It just can't be  
7 misleading. The Court has to make that determination.

8 MR. VOGT: Sure. Sure.

9 THE COURT: There are some cases on it. There are  
10 some things that the Court has to consider in deciding  
11 whether it fairly represents whatever it's suppose to  
12 represent even though it's a demonstrative aid. Does  
13 it fairly represent as far as what it's suppose to  
14 depict and it is based on accurate measurements, etc,  
15 etc, and so, and that's what we are looking at.

16 MR. VOGT: Your Honor, all these photographs were  
17 entered into evidence by stipulation and Chief  
18 Driggers testified about that.

19 THE COURT: I don't have any question about the  
20 photographs, but what was that last one you were  
21 showing? What was suppose to depict?

22 MR. VOGT: The compensation of the roof panels.  
23 Why don't you explain.

24 THE WITNESS: I just thought this was a useful aid  
25 to explain some of my observations to a lay person.

1 That is the only reason for doing that. These  
2 photographs were a way of giving context. If you zoom  
3 on a small item you don't have context where it is  
4 taken in the big view, sometimes you lose -- it's not  
5 instructive.

6 MR. VOGT: He was asking about the last slide.

7 THE WITNESS: The last slide, my only point I was  
8 interested in discussing this (indicating). This is  
9 from inside the building that shows the fire did not  
10 go within, into the interior of the building. It  
11 shows the fire did not go within, into the interior of  
12 the building. That it involved the roof assembly.  
13 This is a close up of that. This is the roof that's  
14 above that shows the heat to the underside of the  
15 decking, with no damage to the structure below. This  
16 is just damage on the decking.

17 This is a sprinkler that's operated to cool this  
18 area and is driven by the heat. This is the peak of  
19 the roof. So that was the purpose of that slide. Not  
20 the construction of the flat roof. I didn't have any  
21 interest in that.

22 MR. SHEALY: Your Honor, there are other errors  
23 actually with that last slide because the roof that  
24 the ladder descends from is Bancroft and the record  
25 before this jury is that Bancroft was just a shingled

1 over -- there was no insulation. It was just a  
2 shingle over nail board and what he's showing is the  
3 insulation layer, shingle layer, that's on Owens.  
4 That's on the other side.

5 Your Honor, there are errors no matter where we  
6 look here.

7 MR. VOGT: Your Honor, that's not accurate. What  
8 people may have been calling Bancroft, the roof  
9 covering and we have photographs of it -- let's show  
10 those photographs -- in that is area is precisely what  
11 is depicted in that.

12 MR. SHEALY: I don't disagree that that is the  
13 composition of the roof on the other side of the flat  
14 roof. It is just not on that side.

15 THE COURT: He's not saying that's the flat roof,  
16 are you, that last photograph?

17 THE WITNESS: He was just trying to have a way to  
18 explain the concealed nature of the fire between the  
19 shingles and the steel deck and the difficulty of how  
20 the fire spread to involved that, trapped, if you  
21 will, polyisocyanate insulation and the difficulty  
22 which it was to suppress.

23 THE COURT: Does that last photograph intend to  
24 show the makeup of the rubberized roofing?

25 THE WITNESS: No, sir.

1 THE COURT: Or what is underneath it?

2 THE WITNESS: No, sir.

3 THE COURT: What is it suppose to show again.

4 THE WITNESS: The flat roof?

5 THE COURT: No, that last photograph. That last  
6 part of the animation.

7 MR. VOGT: The general way -- the way the fire  
8 spread to involve the roof assembly and how the roof  
9 assembly that burned was different --

10 THE COURT: Not suppose to show the makeup of the  
11 roof on the flat roof?

12 Mr. Vogt: No, sir.

13 THE COURT: The makeup of whatever is underneath  
14 the rubberized coating?

15 MR. VOGT: No, sir.

16 THE COURT: But Your Honor, it is depicted. I  
17 mean it is depicted with a cutaway. What I am saying  
18 though is the cutaway of the pitched roof is erroneous  
19 because it is on the wrong side. This is all  
20 Bancroft. This is all Bancroft here, and the evidence  
21 before this jury is that Bancroft roof doesn't have  
22 the layer of insulation like Owens had. See Bancroft  
23 hardly burned. It is Owens that burned which is to  
24 the right side of the roof. Owens burned. That's  
25 where all the damage is, because of the construction

1 of the roof. But he has got that cutaway on the wrong  
2 side.

3 THE WITNESS: Your Honor, I am just trying to show  
4 that this construction was, and these nailers had the  
5 insulation that created the concealed nature of the  
6 fire. Nothing more than that. Bancroft, Owens, just  
7 saying the fire spread because of that feature and the  
8 fire got into that feature via the the flat roof.

9 THE COURT: How about his objection this is not --  
10 what is your objection again? I don't which is which  
11 as far as the building is concerned. He's trying to  
12 show that building, whatever it is. What is that  
13 building?

14 MR. SHEALY: Your Honor, I am saying this is  
15 Bancroft. This is area we were working on still. It  
16 is not shingled yet. This is still Bancroft. Owens  
17 -- the building that has the massive damage is over  
18 here (indicating). It's not really visible, but  
19 almost the entire roof of Owens burned.

20 THE COURT: What is the difference if he shows  
21 that if it burned too.

22 MR. SHEALY: Oh, he can show this picture. Sure.  
23 It's the animation that is erroneous.

24 MR. VOGT: Actually Your Honor, Mr. Shealy, he is  
25 wrong -- primarily wrong, because this is where --

1 this the Bancroft roof that U-shape. This was not  
2 part of Pickens work for this job. That is what they  
3 use to call the Annex. But it's not really relevant,  
4 Your Honor.

5 We are not talking about -- all we're showing is  
6 this is how the fire spread.

7 The relevant part is how does it get off that flat  
8 roof to these adjoining pitched roofs. And that's  
9 what all this animation is suppose to illustrate for  
10 the jury. That's it.

11 THE COURT: What is still your objection now?

12 MR. SHEALY: Well, Your Honor, I have multiple  
13 objections. I mean, again, one of my major concerns  
14 is the way this animation begins. It is --

15 THE COURT: All right. Let's eliminate that. We  
16 will start with the -- we can do it one of two ways.  
17 Either we can start with the smoke and then said 45  
18 minutes later this is what you see, or if you want to  
19 just start with the fire and go from there.

20 MR. VOGT: We can start with there. Judge, the 45  
21 minute thing is based off a timestamp that's on  
22 photograph. We don't even know if the camera's clock  
23 was correct. All he did was ask was there a time  
24 stamped. Yeah. It doesn't mean the clock was  
25 correct. I can't imagine how many digital cameras in

1 this country don't have the right time. It's not  
2 relevant to this explanation.

3 THE COURT: Well, it is, I think because --

4 MR. VOGT: But I have no problem eliminating the  
5 first slide and starting with the fire at the flat  
6 roof.

7 THE COURT: If your saying you go from this to  
8 this almost immediately, there's a big difference  
9 between that and you go from this to this in 45  
10 minutes. There is a big difference in explaining how  
11 fast the fire spread.

12 MR. VOGT: We are not talking about speed of the  
13 fire spread, Your Honor. All we're showing is, with  
14 the slides, the height of the flame from the flat  
15 roof, indicating as you heard, that there were  
16 combustibles there. It has nothing to do with the  
17 speed of fire.

18 THE COURT: I understand that. Counsel says it is  
19 misleading if you go from this straight to this. Like  
20 you get the smoke and you get this. Like it suddenly  
21 blew up there.

22 MR. VOGT: We can start with just the fire photos.

23 THE COURT: What's the other objection?

24 MR. SHEALY: Well, Your Honor, if we -- I don't  
25 know exactly what he is saying when we start with just

1 the fire photos, how much of that eliminates what I am  
2 talking about. But the cutaway of the roofing system  
3 which also showed -- the cutaway of the roofing system  
4 on the pitched roof which also shows a cutaway of the  
5 roofing system on the flat roof, there is a slide that  
6 shows that and that I believe is erroneous and  
7 misleading.

8 THE COURT: You don't agree that that's --

9 MR. VOGT: No, I don't Your Honor, and it's  
10 irrelevant, but if it's erroneous --

11 THE COURT: It's relevant, counsel, the makeup of  
12 that flat roof, you have got something that burns  
13 underneath.

14 MR. VOGT: He's not talking about the flat roof.

15 THE COURT: Yeah, he is. He's saying you haven't  
16 got the makeup of the flat roof right. He doesn't  
17 know what the flat roof --

18 MR. VOGT: Your Honor, the testimony in this case  
19 has been by a number of individuals that it's a TPO  
20 roof and that's all that depicts. It doesn't depict  
21 the thickness of the insulation. There is no question  
22 it was over metal decking. It simply shows a roof  
23 covering over metal decking. That's not in dispute.

24 MR. SHEALY: Your Honor, it does depict the  
25 thickness of the insulation, and TPO roofs have -- can

1 have different compositions underneath.

2 We've had testimony saying well they are fully  
3 adhered and there are some partially adhered and that  
4 there are chemicals that are used to do that. Here,  
5 there is three dimensional (indicating). This is  
6 apparently the membrane and then there is items  
7 underneath and we haven't established what those are.  
8 That's a problem.

9 MR. VOGT: Your Honor, it has been established.  
10 It's insulation underneath TPO over metal decking and  
11 that's what it depicts. I'm not saying the precise  
12 thickness of anything. If we wanted to make it  
13 misleading we would have made it very skinny. You're  
14 simply trying to take away demonstrative evidence that  
15 will help the jury understand the testimony.

16 THE COURT: I think it's fine to do that, and  
17 certainly there is no objection except it can't be  
18 misleading. That's the only thing, as long as it  
19 makes a fair representation and it's not misleading to  
20 the jury then this is good way to go, as far as  
21 demonstrative aid is concerned. But it can't be  
22 misleading.

23 I think you might be better off to go without the  
24 demonstrative aid and just use pictures, whatever  
25 pictures were taken to show what he is trying to

1 illustrate.

2 What's going to happen is if I allow it to come in  
3 then we will have to probably start it with a picture  
4 with the fire and then he is going to on cross  
5 examination question every single thing about it and  
6 then that is going to be confusing to the jury too and  
7 probably take away the effectiveness of it.

8 MR. VOGT: Your Honor, the only thing that this  
9 does, and I think it is critical to let him explain  
10 his testimony, is it shows that that -- it shows  
11 three-dimensions. The photographs don't do that.  
12 This is simplest way to explain the photographs.

13 MR. SHEALY: Your Honor, we have dozens of  
14 photographs from every vantage point. I think we can  
15 give this jury the three-dimensional aspect of this  
16 flat roof area because we have got lots of  
17 photographic evidence and it's in the record.

18 MR. VOGT: That's really not the point. We're  
19 entitled to use demonstrative evidence. It's not  
20 being offered as an exhibit.

21 THE COURT: I told you, you can't be misleading.  
22 You can't misrepresent. It has got to be accurate at  
23 least to the extent to portray what it is you are you  
24 are trying to portray.

25 MR. VOGT: And I don't think it is, Your Honor.

1 For instance, the thing about the fire there is no  
2 evidence in the record of that as far as the delay of  
3 fire. That is just something you called off -- what  
4 he called metadata.

5 MR. SHEALY: These photographs with their metadata  
6 are in evidence..

7 MR. VOGT: But you have to trust the camera. It  
8 doesn't matter, Your Honor. We are not making any  
9 claim that there is significance from seeing the first  
10 smoke to the fire.

11 Is that correct, Mr. Arnold?

12 MR. ARNOLD: That's correct.

13 THE COURT: I think we can explain that to the  
14 jury about it. Have you ask him about it being 45  
15 minutes later, if it indicates it is 45 minutes later.  
16 It makes a big difference I think.

17 That part can be cleared up. How about the part  
18 where we don't know the exact component of the flat  
19 roof.

20 MR. VOGT: Your Honor, may I speak to Mr. Arnold a  
21 moment, I think he is trying to suggest a solution.

22 THE WITNESS: I don't need this. I can do that  
23 from photographs, if you stop at fixed stopping point  
24 before this slide comes up and then have the  
25 photographs thereafter that would be adequate.

1 MR. VOGT: Okay.

2 THE WITNESS: That would be adequate. So if you  
3 back it up there is a stopping point before this  
4 occurs.

5 THE COURT: All right, let me ask you about he is  
6 objecting to -- the other objection was about you are  
7 saying portraying in one picture, one building, which  
8 is really the other building.

9 MR. VOGT: Your Honor, that's what he is talking  
10 about here, and he is saying these panels right here,  
11 but it is really not relevant to his opinions as to --

12 THE COURT: We are not going to use that.

13 MR. VOGT: We won't use it. But we have to be  
14 able to go back. I think to take it out will take  
15 some work. I don't want to show it.

16 THE WITNESS: Just stop it.

17 MR. VOGT: I don't know if I will be able to do  
18 it.

19 THE COURT: Well, they don't know what it is if  
20 you don't explain it. I mean if you accidentally hit it  
21 you can cut it off. They are not going to know what  
22 it is if you don't explain it.

23 MR. SHEALY: I want to correct --

24 THE COURT: Something from the space station  
25 hanging out.

1 Yes, sir.

2 MR. SHEALY: I want to correct something. I don't  
3 want to have misled the Court because my client,  
4 certainly, they have been on the roof. They tell me  
5 that this assembly is indeed correct.

6 So this is the only thing I have to object to.  
7 (Indicating).

8 This assembly, at least right there by the ladder  
9 is correct, but again, I think it's still  
10 objectionable because of the cutaway.

11 THE COURT: Well, what's your objection to that  
12 again? You say you don't know exactly what's  
13 underneath the rubberized cover. I will have to call  
14 it that rather than these initials because I'm not  
15 sure what that means. I am not familiar with the  
16 terms.

17 MR. SHEALY: Yes, sir. Neither am I. But I do  
18 know there are multiple different ways that they can  
19 be constructed and it has not been established  
20 precisely what the thickness of the insulation was.  
21 Whether they were nailer boards underneath the  
22 rubberized membrane. What the adhesive was, and so  
23 this -- there is not a factual foundation that is in  
24 this record that would allow for this to accurately  
25 represent the composition of this flat roof from the

1 metal deck up to the membrane.

2 THE COURT: Well, there was some confusion about  
3 that. Nobody could say for sure, I don't think. A  
4 couple of people testified about it and you know, one  
5 thought there might be a little bit of some kind of  
6 insulation or adhesive in there and there was question  
7 about that and whether it was easily burned or  
8 whatever. Maybe we will just stay away from that and  
9 just stay away from that photograph and go back and  
10 then we can utilize it and then just as far as the  
11 first two is concerned as long as you explained to the  
12 jury that the second picture concerning the fire was  
13 taken later than the smoke, so it won't look like it's  
14 almost instantaneous.

15 MR. SHEALY: The witness has already said to this  
16 jury that he relied -- and he has shown the photograph  
17 -- he has said that he relied upon a photograph that  
18 was taken before the fire department got there and  
19 that's not true. It is just an error of fact.

20 THE COURT: The smoke was there.

21 MR. SHEALY: The smoke was certainly there, but  
22 the -- Your Honor the photograph, the close-up  
23 photograph showing flames that then becomes the basis  
24 of the animation showing flames, that photograph  
25 showing flames was taken 45 or 40 minutes after the

1 fire department had gotten there. It is long after  
2 the first photograph showing the smoke. And we know  
3 when that photograph was taken because the clock is in  
4 the middle of the picture, and I can show you --  
5 the way I can prove, Your Honor, that the time stamp  
6 on the photograph is right is because it correlates  
7 exactly with the clock in the picture.

8 MR. VOGT: If he thinks that is relevant he can  
9 cross examine Mr. Arnold on that. That information  
10 that he just described to you has absolutely zero  
11 relevance as to his opinion about the fire spread and  
12 that the fire would not start on the flat roof and  
13 spread to those adjoining roofs. All those pictures  
14 do is illustrate, hey, this is the fire.

15 THE COURT: Well, it is significant if that  
16 picture of the flames was taken 40, 45 minutes after  
17 the fire department got there or whether it was taken  
18 before they got there.

19 MR. VOGT: He can ask him that.

20 THE COURT: It is significant if he says that's  
21 his testimony, but you can cross examine him.

22 MR. VOGT: Right, he can ask him if that's  
23 significant.

24 MR. SHEALY: Certainly I can cross examine. It is  
25 just the issue now of how we use this demonstrative

1 aid and, again, I have great problems with the  
2 transition from the first photograph showing smoke to  
3 there is a photograph showing the flames that he  
4 already talked about. It makes it look like those  
5 things were happening at the same time.

6 THE COURT: That's what I am saying. I would  
7 require that to be clarified.

8 MR. VOGT: But Your Honor, the exhibits that he's  
9 talking about are already in evidence. Chief Driggers  
10 explained what he saw, and if the timeline is  
11 significant that's cross examination. We can start at  
12 the second slide showing just the fire. The only  
13 slide they saw was the first slide with the smoke off  
14 in the distance, and they've seen that photograph a  
15 lot.

16 I mean, I will be happy to go back and try to  
17 rework this. Take them out, so there is no chance of  
18 error. Take the first slide out. If you wanted to  
19 take the second slide out we can do that.

20 THE COURT: You are talking about possible taking  
21 out the first and second and the last.

22 MR. VOGT: No, the first slide and the last slice.  
23 The second slide, Your Honor, are photographs of the  
24 fire.

25 THE COURT: As long as it is clear when it was

1 taken, counsel. If we take out the last one and if we  
2 take out the first one and when you get the flame, you  
3 know, as long as it is clear when that picture was  
4 taken I don't have a problem with that.

5 MR. VOGT: It was taken when the firemen were on  
6 the roof. I don't think anyone can't see the firemen  
7 on the roof.

8 THE COURT: So they were already on the scene?

9 MR. VOGT: Yeah.

10 THE COURT: So that just needs to be clarified.  
11 As long as you do that I don't have a problem with it.  
12 All right, let's go with that.

13 Do you need some time to do that?

14 MR. VOGT: Your Honor, my technical skills are not  
15 very good. It will take me some time.

16 THE COURT: Well --

17 MR. VOGT: Can we start in the morning and just  
18 get it right.

19 THE COURT: No, no, no. Don't try that again.

20 MR. VOGT: I'm not trying anything, Your Honor.  
21 But we are going to be here a long time.

22 THE COURT: I don't believe your trying. I mean,  
23 I'm not losing -- you'll lose way to much time. You  
24 should have showed him this before and we could dealt  
25 with this and could you have dealt with it when we

1 didn't have the jury sitting out there. You don't do  
2 that. You just don't do that. Spring it on him and  
3 let him see it on the same time everyone else sees it,  
4 even if it's a demonstrative aid.

5 MR. VOGT: I wasn't aware of any rule that  
6 requires us to show demonstrative aids ahead of time  
7 and I just got it --

8 THE COURT: If it's got technical things in it  
9 that are suppose to represent a significant part of  
10 the case you do, because somebody has to make the  
11 determination whether you will be able to utilize it  
12 or not. There are some requirements to be able to use  
13 it. Otherwise you can come up with something that  
14 show most anything. You know, you can come up with  
15 demonstrative aid that is totally false.

16 MR. VOGT: What he has come up with, Your Honor,  
17 is --

18 THE COURT: I'm not saying it is. I know that  
19 there are some good things he wants to show the jury  
20 that will highlight his testimony and illustrate it.  
21 I don't have a problem with that. But I am saying you  
22 could. So you can't just spring it on the other side.

23 MR. VOGT: I apologize, and I shared everything  
24 with Mr. Shealy as I got it. I apologize. I really  
25 didn't anticipate getting this late.

1 MR. SHEALY: And Your Honor, I have no thought  
2 that Mr. Vogt had any intention to spring it on me.

3 THE COURT: It's not your observation. It's mine  
4 when I am trying to move this trial here.

5 MR. SHEALY: Yes, sir.

6 THE COURT: It's not the federal court where they  
7 try three civil cases a year. You know, that would be  
8 a little bit different. I could just take all the  
9 time I want and take two hours for lunch, but we don't  
10 have that luxury here.

11 Is there another way to cut it off when you need  
12 to cut it off?

13 What about if the witness stands over there and  
14 works the thing himself.

15 MR. VOGT: There's no way to plug it over there,  
16 is there?

17 THE COURT: No, I'm talking about him going over  
18 there. As long as he speaks loud enough for the court  
19 reporter.

20 MR. VOGT: Sure.

21 THE COURT: Can you work it that way?

22 THE WITNESS: I can. I would like to run it  
23 through so I know exactly where you want me not to  
24 continue. It involves starting, letting it sit and  
25 that's where we start it from.

1 THE COURT: Why can't we just go ahead and start  
2 it off at the second one and that will be -- you can  
3 explain it. You can even explain it that the fire  
4 department has already arrived and certainly he can  
5 cover it on cross examination if he needs to, and then  
6 we can go from there and take out the last one, or  
7 stop it before you get the last one. That should take  
8 care of it.

9 MR. VOGT: And Your Honor, I got to tell you right  
10 now, I am not sure what I said other than this is an  
11 animation that has 33 photographs in it.

12 I don't think we even talked about the first  
13 slide. If the court reporter has to I don't know if  
14 the court reporter can tell -- did we? I don't think  
15 we even we got to the first slide.

16 THE COURT: We didn't get to the animation. Start  
17 it at the second part of it, second frame of it.  
18 Okay.

19 MR. VOGT: Your Honor, can we take five, ten  
20 minutes just so I can get it and try to make sure I  
21 don't ---

22 THE COURT: Yes. Okay. Stand down. Don't  
23 discuss the case the same as if you were still on the  
24 stand. Please don't discuss the case with anybody.

25 THE WITNESS: Yes, sir.

1 THE COURT: You can talk to him how to work that  
2 thing but don't talk about the case.

3 THE WITNESS: Okay.

4 (WHEREUPON, there was a brief recess.)

5 THE COURT: Are we ready to go, counsel?

6 MR. VOGT: I will try Your Honor.

7 THE COURT: Bring them this please.

8 (WHEREUPON, the Jury enters the courtroom.)

9 THE COURT: Counsel ready to proceed?

10 Let me give the jury an explanation. We are going  
11 to have demonstrative aid presented to you. It will  
12 contain some pictures that have been admitted into  
13 evidence and some other parts on the slide in there.  
14 Again, it is not evidence in this case. It is a  
15 demonstration, a demonstrative aid.

16 Please proceed.

17 MR. VOGT: Yes.

18 DIRECT EXAMINATION

19 BY MR. VOGT CONT'D:

20 Q Mr. Arnold, can you explain to us the demonstrative aid  
21 that we are going to see?

22 A Yes. Based on the information I gathered as part of my  
23 investigation, including photographs, drawings, specifications,  
24 other information. I prepared -- worked with an animator to  
25 prepare an animation to orient me and us to photographs and

1 other things I used to explain the basis for my opinions.

2 Q And what information did you use, for instance, for  
3 part of the building here with the respect to the dimensions of  
4 the building and those types of things?

5 A I used drawings and photographs that were produced to  
6 me as part of this matter. They were part of the record.

7 Q So we have a movie portion of it, essentially a movie  
8 portion that is 3-D, right?

9 A Correct..

10 Q And then there are photographs that are interspersed  
11 that are actually will be exhibits in this case?

12 A Okay. Yes, sir.

13 Q All right.

14 MR. VOGT: Your Honor, we had marked Plaintiff's  
15 Exhibits 64-B and 64-GG and I don't believe there is  
16 any objection to those. May I enter those into  
17 evidence now?

18 MR. SHEALY: No, objection.

19 THE COURT: In evidence without objection.

20 (Plaintiff's Exhibits 64B-64GG, photographs,  
21 received in evidence as of this date.)

22 MR. VOGT: That way I don't have to stop and  
23 introduce each exhibit, Your Honor.

24 Q So, I will start the animation, Mr. Arnold. Can you  
25 explain what we are looking at?

1           A     This is just a view of the area. The flat roof is seen  
2 representing a photograph -- that will come up any minute --  
3 give you a sense of orientation.

4           This is a photograph that you should pause it.

5           Q     Do you want to explain what was in the photograph that  
6 was 64-B?

7           A     That was a photograph taken after the fire department  
8 arrived that represents the character of the fire that was  
9 observed on the flat roof. And the purpose of that was just to  
10 show it's -- the character of that fire as observed in that  
11 photograph.

12          Q     And why was that important in your investigation?

13          A     Primarily because of flame heights. This item right  
14 here is what is referred to as a scupper. It is really the  
15 drain, the gutter if you will, from the flat roof.

16                 Water that collects in that flat roof flows out of this  
17 scupper, or this whole, and enters into this downspout down to  
18 the ground. So, that is a sense of where the floor, if you  
19 will, of the flat roof exists, and that's really just for scale.  
20 That is why this photograph was important to me.

21          Q     Okay, and as we go along if you want me to stop the  
22 animation just tell me.

23          A     Okay.

24          Q     What do we see here?

25          A     That is another photograph. What I have done, this

1 window here (indicating) is six foot tall. So I just slid the  
2 scale over to give you a sense of sort of a vision of how tall  
3 those flames are in terms of height. As you can see, they are  
4 somewhere short, two and a half to three feet tall in height at  
5 the time this photograph was taken. This photograph was taken  
6 after the fire department arrived. You can tell that by this  
7 window here is being opened which the fire department did. You  
8 will see a photograph over here and it is open as well to allow  
9 smoke that had migrated in the flooring to get out of the  
10 building. But the importance of this photograph is that if it  
11 was just solely a TPO roof, or just a flat roof absent of  
12 combustibles you wouldn't have this kind of flame height on that  
13 roof. That's why this was important to me as indication that  
14 there was was something more on that roof than just the roof  
15 assembly itself.

16 Now, this is just a kind of give an orientation how the  
17 flat roof sat and was oriented between these buildings. So here  
18 you can see --

19 Q I'm sorry.

20 A That's fine. The scupper you saw on the animation, the  
21 scupper here is we talked about the drains, that we saw the  
22 flames coming outside. And this is the flat roof. I indicated  
23 it's the shaped kind of like the state of Oklahoma.

24 This is a ladder that gets you down to the flat roof  
25 that you access this area through a hatch that is over on this

1 side of the building. So you climb up a hatch, climb over this  
2 roof, down this ladder on to this area.

3 There is a number of slides I took that show this area.

4 Q And all these photographs are 66-B through 66-GG.

5 A Right.

6 Q What do you see in this photograph that was important?

7 A Well, what was important to me is this characterizes  
8 how the fire spread within the roof. As you can see -- I am  
9 sorry, should I just continue.

10 Q Go ahead.

11 A As you see this is roofing panels, these four by eight  
12 sheets of roofing panels -- of panels consist of a plywood or a  
13 OSB, or oriented strand board nailer to attach the shingles to  
14 and then it has some sleepers on it and you will see in it in a  
15 later photograph and then you see this white foam which is  
16 called polyisocyanate. It's an insulation. It insulates the  
17 roof from the building below it. It's energy insulation. And  
18 it will smoulder and burn. It is a combustible, as is the OSB.

19 So what you can see here is you see these trail marks,  
20 these marks between sheets, but yet no burning on the top side  
21 and then you see down here, you see this discoloration on the  
22 top of the metal deck. That's an indication that the fire was  
23 concealed or trapped if you will, between the shingles or the  
24 top of the roof and the metal decking which formed the ceiling  
25 below. So that's why I wanted to show this photograph.

1 Q What does this photograph show?

2 A This is just a photograph that shows the scupper and  
3 the condition of of the roof as I found it, of the flat roof.  
4 It had been processed. It had been cleaned of debris, but  
5 that's just for orientation. And again you can see this is  
6 indication of the foam plastic or the poly. I just call it poly  
7 insulation and again, this is the felt paper which is an asphalt  
8 impregnated paper that is placed underneath these shingles.  
9 That's just for orientation I think.

10 Again, that's a close up. That gives you a sense of  
11 how that foam and that wood is constructed and they come as an  
12 assembly. They come as a unit already attached.

13 Q Okay. What do these photographs telling you about how  
14 the fire spread in this case?

15 A Well, as you can see -- well, you can see there is low  
16 burning in this area along this brick wall and you will see on  
17 some later photographs that indicate substantial burning  
18 consistent with the photograph that we saw before up through the  
19 scupper. Flame height of two and a half to three feet of some  
20 duration. It burned a long time at that location because the  
21 fire department was already there and had opened windows. So  
22 there was a substantial amount of fuel on that rood. That's  
23 what this shows me.

24 Q What about this photograph?

25 A This is the peak of the roof and you can see these

1 holes here where the fire finally got to broke out and kind of  
2 was able to lap out through that OSB, through that plywood  
3 decking. And you will see on the other side it's very limited  
4 burning. Because again, the flames travel up and they only  
5 travel down nearest as competently or as aggressively. They  
6 will, but it is much slower.

7 Q What does this photo depict?

8 A This is a large steel member. I think it was two by  
9 eight. An eye-beam. An eight or ten inch eye-beam.

10 What is interesting here this still has it's prime  
11 color on it. As we get down to the corner you can see it starts  
12 losing it's color. The paint is burn off of it and at the very  
13 end you will it's discolored. That indicates that steel had  
14 been heated substantially when it holds a discoloration after it  
15 is subsequently cooled.

16 Q And what does that tell you with respect to how this  
17 fire spread?

18 A Well, that in this area there must have been a fuel  
19 source, enough combustibles or fuel or energy, in my sense, to  
20 create that amount of damage, or create that observation.

21 Q What does this photo depict?

22 A This is closer view of that same observation of the  
23 steel beam, the discoloration on the end around this corner and  
24 notice that this is aluminum kind of trim here and here  
25 (indicating) that wraps that corner that holds a piece of

1 flashing down. And I just point it out because you will see on  
2 the other side that aluminum is no longer there.

3 Q And why is that significant?

4 A Well, aluminum melts at between -- depends on the  
5 alloy, between 1000 to 1200 hundred degrees Fahrenheit. So it  
6 takes a very high temperature and some duration, enough time, to  
7 cause a aluminum to melt.

8 We cook with a aluminum pans and we put them on our  
9 stove and they don't melt. But if you leave them on long enough  
10 and high enough they eventually will.

11 This is what I was talking about. You see this little  
12 piece right here (indicating) is a piece of aluminum that was  
13 melted. It to use to exist along here as it wrapped that  
14 corner. That was a -- we call it differential damage, where we  
15 have damage to a material that is different. Had to have enough  
16 energy to cause that damage. So that was an observation again  
17 consistent with there being additional combustibles on this roof  
18 beyond what would normally be provided by just a flat roof.

19 Q What does this photograph tell us?

20 A This is an other side of the roof. You can see there's  
21 a two by four -- there's a better photograph. Looked better  
22 when it was smaller. There's wood here that holds this on and  
23 some of these dimensional lumber which was two by eight -- if I  
24 remember correctly -- was completely consumed. They weren't  
25 just burned on the outside, they were burned completely through.

1 Again, that's an indication of substantial fire for a  
2 substantial duration at that location.

3 I think that is all of them for that slide.

4 Q Now, as a result you described for us observations you  
5 made with respect to the fire spread.

6 Did you form an opinion as to how the fire spread from  
7 the flat roof to the adjoining pitched roof?

8 A Yeah, it spread via entrance in to that -- the  
9 underside of this soffit is ventilated. It's open. It has got  
10 vents not unlike most homes have them in order to provide air  
11 movement on the back of these shingles up to the peak in order  
12 to keep them cool, so they don't fail early. And that was the  
13 path. That fire got in to that cavity we looked at through that  
14 vented soffit and that soffit is located in the area where this  
15 intense burning was. That's my observations. The path of fire  
16 spread from the flat roof in to the roof structure that caused  
17 the damage.

18 Q So the information you're gathering from your  
19 observations of the burn patterns, damage to the roof, did it  
20 lead you to conclude that there was something else on the roof  
21 other than the flat roof?

22 A Yes, sir.

23 Q And what was it?

24 A Combustibles of sufficient quantity and energy to cause  
25 this damage that I saw.

1 Q So, as a result of your investigation did you form an  
2 opinion as to whether this fire, this fire could have started on  
3 the flat roof if there were not other combustibles present?

4 MR. SHEALY: Objection.

5 THE COURT: Sustain the objection, counsel.

6 MR. VOGT: Your Honor, may I approach.

7 THE COURT: Yes, sir.

8 (Whereupon, there was an off the record  
9 discussion.)

10 Q Mr. Arnold, was there physical evidence that there were  
11 other combustibles on the flat roof?

12 A Yes.

13 Q And can you describe -- how do you determine that there  
14 was combustibles on the flat roof?

15 A The physical evidence, and there is also testimony that  
16 I reviewed, both in the reports and depositions indicated there  
17 was combustibles on the flat roof.

18 Q And what combustibles did you learn about as you read  
19 deposition testimonies?

20 A There was felt paper and other associated roofing  
21 materials.

22 Q Now, as a result of your investigation did you  
23 determine the source of the ignition of this fire?

24 A I did not.

25 Q And is it your opinion that this fire -- how can you

1 have an opinion as to the fire spread without knowing how the  
2 fire -- what was the source of ignition for the fire?

3 A Well, we know the fire occurred.

4 Q Right.

5 A And we know the fire that did occur created the damage  
6 that we see and the observations that I already pointed out.  
7 For a fire of that magnitude and that substance to exist, to  
8 occur, you had to have fuel sufficient to do that.

9 The means of ignition in most fires while important  
10 it's often the fuel that's there that creates the damage. So,  
11 it's based on that. That my opinion is that but for those  
12 combustibles the damage that I saw and the spread of the fire to  
13 the roof wouldn't have occurred.

14 Q So, if I took a cigarette and I threw it down on the  
15 flat TPO roof and there was nothing else there what would  
16 happen?

17 A I would expect that fire to self-extinguish and  
18 certainly not create the fire that we see here.

19 Q Why?

20 A Because roofs are a regulated component of building  
21 construction. For hundreds of years we have been concerned  
22 with fire spreading from building to building by embers landing  
23 on a roof, whether it be your neighbor's house or a building  
24 down the block. We burn cities down as a result of that. So  
25 the roof construction is regulated and protected against an

1 assault from fire above, and the an assault includes testing  
2 those materials for their ability to withstand those kinds of  
3 ignition sources.

4 Q So, if I took a roofer's torch and there were no other  
5 combustibles on that flat roof and I started a fire on that flat  
6 roof, would it spread to the adjoining pitched roofs?

7 A It would not. If you remove that torch it would not.

8 MR. SHEALY: Objection, Your Honor, lack of proper  
9 foundation.

10 THE COURT: Counsel approach.

11 (WHEREUPON, there was an off the record  
12 discussion)

13 THE COURT: Overruled.

14 MR. VOGT: Thank you, Your Honor.

15 Q Mr. Arnold, if I held a roofer'S torch and I started a  
16 fire on that flat TPO roof, in your opinion would it spread to  
17 the adjoining pitched roofs?

18 A In my opinion it would not.

19 Q Why not?

20 A Again, these roofs assemblies are tested for a  
21 particular fire scenario and they are tested just very quickly.  
22 In a pitched position with a gas flame attached to them for ten  
23 minutes and then the resulting flame spread is measured, and it  
24 has to met a certain criteria to pass, if you will. Those are  
25 more challenging orientations and conditions -- I should add

1 with a wind applied -- so that's a more challenging condition  
2 then you would expect from a flat roof with with a momentary or  
3 a few moments of assault, if you will, by a plumber's torch, or  
4 by a torch, or any flaming source.

5           If you dropped a match or a flaming piece of wood or a  
6 brand -- what we called brands in terms of fire safety it  
7 would -- it would -- my opinion it would not have spread and  
8 create the fire I saw in those photographs. It would spread,  
9 melt through the rubber roof and then eventually  
10 self-extinguish.

11           Q    We can return to the animation if it helps. Does it  
12 help explain it further? What are we seeing in this part of the  
13 animation?

14           A    I think we been through these, sir.

15           Q    We've already been through these photographs. That's  
16 fine. What does this depict?

17           A    This is just another view of the flat roof and a series  
18 of slides, and this is to just to help orient the slides because  
19 some times there are a small item and if you don't have a point  
20 of view they are difficult to interpret.

21           Q    This photograph is another view of that same flat roof?

22           A    That's correct.

23           Q    And what does it tell you?

24           A    If you see here this is that two by four -- excuse me,  
25 I think it was two by eight dimensional lumber that still

1 exists. It had a stucco covering on it and you will see that  
2 starting around here it is consumed. It no longer exists. It  
3 completely burn through. So that's an observation.

4 Q And what does that observation tell you?

5 A Again, sufficient energy and fuel to cause take damage.

6 Q It tells you that there was combustible on the flat?

7 A Correct. That's a closer view of that. You can see  
8 that burned lumber there. And this is the corner where the two  
9 -- I call them offset roofs, where there are different pitches  
10 of those roofs adjoin each other.

11 Q What does this photograph depict?

12 A This is a photograph of a fan and this fan was  
13 instructive because -- you will see a photograph in a minute  
14 -- there is no -- there was no fire damage or heat within that  
15 exhaust fan that goes into the building, but there is thermal  
16 damage to this aluminum fan. Again, located in the same general  
17 proximity and again, that's another indication of sufficient  
18 fuel combustibles that caused take damage.

19 Q What does thermal damage mean?

20 A Damage by heat. Hot enough, long enough to cause the  
21 damage we see.

22 You can see this is melted aluminum around this shroud.

23 Q What is this photograph showing?

24 A This is a photograph that kind of shows the -- how the  
25 -- how do I explain this. Just the orientation of where the

1 boards met the eave of the roof. This is where that nailer I  
2 have been talking about sits and there is shingles on top of  
3 this. There was also a piece here (indicating) you can see it  
4 right here and it is completely consumed. These are the  
5 fasteners that hold that down and there are shingles and paper  
6 that go on to that.

7 I know why I showed this, you will see on the inside --  
8 I have views on the inside that will show you what it looks like  
9 from the inside of the building at this location. That's why I  
10 included this photograph.

11 Q Next one, what's this photograph?

12 A That is to the left of the ladder as you face the wall  
13 and this comes down. You can see that while these markers here  
14 indicate that the fire is trying to break through the joints at  
15 those seams. That's why I included that. It showed the  
16 concealed nature of the fire under the shingles, under the  
17 paper, under the plywood, but yet above the steel deck. And it  
18 was very difficult fire to suppress. I assure you I am sure it  
19 was.

20 Q Was there anything improper in the way that roof was  
21 constructed at Owens Hall?

22 A No. Roofs when they are finished and they are  
23 installed they are designed for particular fire condition.  
24 Can't be designed for every fire condition, so we have controls  
25 to prevent fire conditions in circumstances that are not

1 designed for. That's kind of awkward way to say it, but no, I  
2 have no complaint with that roof assembly

3 Q Is there a class designation for that type of roof  
4 assemble?

5 A There are classes of roof performance level. We call  
6 them class A, B and C. I believe this was specified to be a  
7 class A roof which is the -- can't think of the correct word  
8 here -- which is the highest classification you can get.  
9 Doesn't mean it won't burn. Doesn't mean it's not perfect, but  
10 it's the best of available test parameters.

11 Q And what is that photograph?

12 A I think I am showing the fire departments suppression.  
13 I think they ripped this up in order to squirt water down  
14 underneath it. I think that's how they put this fire out. I  
15 think this was just a going out the other direction.

16 Q Okay. How about this one?

17 A This is the peek of the roof and it shows if you can  
18 see these burnt little areas as the fire finally got to the peak  
19 it came out the ridge vent and that's why I included this for.  
20 This is the top of the roof and you will see there is burning on  
21 one side but less burning -- I am sorry, this side there is  
22 burning. This side still has got shingles on it. Okay. I am  
23 sure this was stripped to convey it but generally that's why I  
24 am showing the peak of the roof.

25 I think that's it.

1 MR. VOGT: All right. We will stop there. It'll  
2 take it a moment, Your Honor.

3 THE COURT: Yes, sir.

4 Q So there are additional photographs that we may talk  
5 about as we go along.

6 Mr. Arnold, did you determine the precise amount of  
7 combustibles that were on the flat roof?

8 A No.

9 Q Was it important to you to determine the precise amount  
10 of combustibles on the flat roof with respect to your opinion  
11 that the fire would not have spread from the flat roof to the  
12 adjoining pitched roof?

13 A No.

14 Q Why?

15 A Well, we know there was sufficient combustibles to  
16 cause that spread based on the damage that I observed.

17 Q And explain again for me -- I think I asked you this.  
18 You didn't determine the source of ignition, right?

19 A I did not determine the mode.

20 Q Why wasn't that important to your opinion with respect  
21 to the spread of this fire?

22 A Again, the fire did occur. It occurred on the flat  
23 roof with sufficient magnitude, intensity and duration to cause  
24 the damage patterns that I have explained and observed. The  
25 manner in which that fire was ignited is unimportant to those

1 opinions.

2 Q So if you removed the fuel, would the fire have spread  
3 to the pitched roofs?

4 A No.

5 Q During the course of your investigation did you  
6 research any applicable codes relating to demolition and  
7 alteration activities during a construction project?

8 A Yes.

9 Q And what did you determine as a result of your  
10 research?

11 A The applicable codes involve the International Fire  
12 Code, which is an adopted code in the State of South Carolina.  
13 Within that code there are additional standards that are adopted  
14 by reference including NFPA 241, which is a standard on  
15 practices during construction renovation and repairs of a  
16 building. So there are fire prevention practices that are  
17 governed by those documents.

18 Q Is the International Fire Code is that part of the  
19 fire code?

20 A It's an adopted code within the State of South Carolina  
21 is there fire code.

22 Q And let me show you this document and ask that you  
23 describe it for us?

24 A This is selected sections from the International Fire  
25 Code, the 2006 addition.

1 Q And which sections of that edition did you refer to?

2 A Chapter 14, which is entitled fire safety during  
3 construction and demolition.

4 Q Can you read for us the purpose of that section?

5 A Section 1401.2 "This chapter prescribes minimum  
6 safeguards for construction, alteration and demolition  
7 operations to provide reasonable safety to life and property  
8 from fire during such operations."

9 Q And what is the scope of this provision?

10 A The scope in 1401.1 states that this chapter, chapter  
11 14 shall apply to structures in the course of construction  
12 alteration or demolition, including those in underground  
13 locations, compliance with NFPA 241 is required for items not  
14 specifically addressed herein.

15 Q And what does that last sentence mean. Compliance with  
16 NFPA 241 is required for items not specifically addressed?

17 MR. SHEALY: Your Honor, I will object. That  
18 calls for a legal conclusion.

19 THE COURT: Counsel approach.

20 (WHEREUPON, there was an off the record  
21 discussion.)

22 Q Mr. Arnold, as of the time of this fire had South  
23 Carolina adopted NFPA 241?

24 A Yes, by reference through chapter 14 of the  
25 International Fire Code.

1 MR. VOGT: Your Honor, the International Fire Code  
2 Chapter 14, as well as Chapter 3 has been marked for  
3 identification as Plaintiff's Exhibit 62, I hereby  
4 move for introduction as an exhibit in this matter.

5 MR. SHEALY: Objection.

6 THE COURT: Denied counsel. It's not admissible.

7 Q Mr. Arnold, let me show you NFPA 241. I will put it up  
8 on the screen. Is this a copy of the 2000 edition of NFPA 241?

9 A It is.

10 Q And what is the purpose of NFPA 241?

11 A The title is standard for safeguarding construction  
12 alteration and demolition operations.

13 Q And what is the scope as per the standard?

14 A The standard shall apply to structures in the course of  
15 construction, alteration or demolition including those in  
16 underground locations.

17 Q And what is the application of this standard per the  
18 terms of NFPA 241?

19 A I don't understand that question.

20 Q The next section sets forth the application.

21 A Oh, I'm sorry. It states, "The standard provides  
22 measures for preventing or minimizing fire damage during  
23 construction, alteration and demolition operations.

24 The public fire department and other fire protection  
25 authorities shall also be consulted for guidance."

1 Do you want me to read it all, sir?

2 Q No, that is all. Thank you. And is there specific  
3 provision in the NFPA 241 which deals with the storage of  
4 equipment to be installed or combustible construction materials  
5 during the construction project?

6 A Yes, there are several. If you are referring to  
7 Chapter 8.3 which deals with construction material and equipment  
8 storage.

9 Q And within that general provision is there a provision  
10 which sets forth the standard for the storage of construction --  
11 combustible construction materials as far as the proximity to a  
12 building?

13 A Yes, sir.

14 Q Okay, and which section is that?

15 A That is section 8.3.3.

16 Q Can you read it for us?

17 A Its states, "Yard storage of equipment to be installed  
18 or combustible construction materials shall not be stored closer  
19 than 30 feet from the structure under construction or  
20 alteration."

21 MR. VOGT: Your Honor, may I approach?

22 THE COURT: Yes.

23 (Whereupon, there was an off the record  
24 discussion.)

25 MR. VOGT: Thank you, Your Honor.

1 Q Mr. Arnold, what does combustible mean?

2 MR. SHEALY: Objection. Calls for a legal  
3 conclusion.

4 THE COURT: Overruled. You may answer.

5 A Combustible means things, items or products or  
6 materials that are able to combust or burn. Capable of burning  
7 in a lay term that we have. It can be applied and modified as  
8 we use it in the industry, but combustibles means things that  
9 are capable of burning.

10 Q Are roofing paper, shingles considered combustible  
11 construction materials?

12 A Yes, sir.

13 Q Wooden pallets used to store materials considered  
14 combustible construction materials?

15 A Yes, sir.

16 Q What does yard storage mean?

17 MR. SHEALY: Objection. Calls for legal  
18 conclusion.

19 THE COURT: Sustained.

20 Q Could you store combustible construction materials on  
21 the flat roof between Bancroft and Owens Hall further than 30  
22 feet from either building?

23 A No, sir.

24 Q Is that possible?

25 A Not and still be on the flat roof.

1 Q Now, during the course of your investigation and your  
2 research of the applicable codes did you also find other code  
3 provisions that were implicated?

4 A Yes.

5 Q And where is that code provision set forth?

6 A Chapter 3 of the International Fire Code deals with  
7 general safety fire precautions.

8 Q Do you still have the 2006 edition of the International  
9 Fire Code in front of you?

10 A Selected sections. It's a much thicker book, but yes,  
11 sir.

12 Q I believe you told me earlier this contained Chapter 3  
13 as well as Chapter 14?

14 A It does.

15 Q And what provision did you believe is also implicated?

16 A There is a provision that limits the storage and  
17 prohibits the storage of combustibles under eaves.

18 Q What provision is that? Did give you the --

19 MR. VOGT: May I approach, Your Honor?

20 THE COURT: Yes.

21 Q Did I leave the page out. Can you read that provision  
22 for us? First tell us what provision it is?

23 A The provision that deals with outside storage is  
24 section 315.3 of which includes a subsection which states,  
25 "Combustible materials stored or displayed outside of buildings

1 that are protected by automatic sprinklers shall not be stored  
2 or displayed under non-sprinkler eaves, canopies or other  
3 projections or overhangs."

4 Q And was -- were the Winthrop buildings protected by  
5 automatic sprinklers?

6 A They were.

7 Q Do automatic sprinklers protect buildings from fires  
8 that start on the exterior?

9 A No.

10 Q And based on your examination --

11 A I should say, no, unless they are specifically designed  
12 to do so.

13 Q Were there sprinklers designed to do so in this case?

14 A They were not.

15 Q And based on your examination of the fire scene could  
16 you make a determination that there were combustible materials  
17 stored under the eaves?

18 A I don't know exactly where the combustibles were on  
19 that roof because by the time I got there they had been consumed  
20 and/or moved during the fire department operations. But they  
21 were within proximately of those eaves sufficiently to allow the  
22 fire to get to the roof structure through that path, which is  
23 the exact path that this provision is guarding against because  
24 we recognize that is a troublesome location.

25 MR. SHEALY: Objection. Move to strike.

1 THE COURT: Counsel, approach just a minute.

2 (Whereupon, there was an off the record discussion.)

3 THE COURT: Madame forelady, and members of the  
4 jury panel, with regard to the last statement by the  
5 witness regarding about prohibited. Please disregard  
6 that statement. It will be stricken from the record.  
7 Disregard that statement. I sustain that objection.  
8 Give it no consideration whatsoever.

9 The instruction with regard to the law will be  
10 given by the Court at the conclusion of the case and  
11 that is what you are to go by as far as the law is  
12 concerned.

13 Please proceed.

14 Q What was -- what is the hazard, that section 315.3.1 of  
15 the International Fire Code was designed to protect against?

16 A That provision recognizes the opportunity of a fire to  
17 spread from outside a building to inside a building via  
18 ventilated eaves. Therefore it prohibits storage at that  
19 location recognizing that is a location of some ability for fire  
20 to spread from outside a building within a building.

21 MR. SHEALY: Objection. Move to strike.

22 THE COURT: I sustain the objection for the same  
23 reason. Again, with regard to statement about  
24 prohibited. Again, that will be stricken from the  
25 record.

1           Madame forelady and members of the jury disregard  
2           the last statement about prohibition. Again, that's a  
3           matter of law for the Court to provide to you at the  
4           conclusion of the case. Disregard that statement all  
5           together.

6           MR. VOGT: Can I ask the question again and direct  
7           the witness not to use that phrase, Your Honor?

8           THE COURT: I think he has answered the question,  
9           but I've asked the jury not to consider it. That  
10          statement.

11          MR. VOGT: Okay. Thank you, Your Honor.

12          Q     Now, during the coarse of your investigation did you  
13          become aware that there was a storage area outside of Bancroft  
14          Hall?

15          A     Yes.

16          Q     And have you seen photographs of that?

17          A     I have.

18          Q     Was it possible to store combustible construction  
19          materials more than thirty feet from the building within that  
20          laid down area?

21          A     Yes.

22          Q     You had a number of additional photographs. I think we  
23          skipped over some on of them. I want to make sure we have the  
24          opportunities tie to the jury to hear how those photographs  
25          assisted you in forming your opinion in this case.

1           You told us before you had looked at a photograph that  
2 was on the exterior of the building.

3           A     Yes, sir.

4           Q     And you said well, there is going be a photograph of  
5 the interior so I wanted to show you that.

6           A     I just included this to show the location of where the  
7 fire assaulted, if you will, affected th outside of the eave.  
8 This is vented eave and this is the end of the eave as it goes  
9 down, so I included this just to show that there was no fire  
10 spread within the building because it was largely  
11 noncombustible, meaning it was framed with metal.

12          Q     What is that photograph of?

13          A     That's a closer up view of that. That's the top of the  
14 brick wall and that's the vented soffit, if you will from the  
15 inside.

16          Q     Does that tell you that the fire originated on the  
17 exterior the building?

18          A     It does.

19          Q     What is that photograph of?

20          A     That's a photograph of the underside of the steel deck  
21 from inside the building showing the discoloration of the steel  
22 from being heated from the fire above. And will you see -- well,  
23 that's what it shows.

24          Q     What's that a photograph of?

25          A     Just a closer view of that discolored and damaged steel

1 decking.

2 This shows the separation between where one panel was  
3 involved in fire from above, but the adjacent panel -- did not  
4 spread to the adjacent panel. So I just included that to show  
5 the differential shall fire patterns there.

6 Q Is that another view of the same thing?

7 A It is.

8 Q Is that another overview of it?

9 A That's the peak of the roof from below.

10 Q That's the opposite of the photograph you had earlier  
11 showing the outside view of it?

12 A Generally, yes, sir.

13 Q What is that a photograph of?

14 A That shows one of panels that had been removed by the  
15 fire department presumably during their suppression. It shows  
16 what these panels were actually constructed like.

17 That's a is closer up view. If you can back up one for  
18 me.

19 A Yes.

20 Q It's upside down. So here is the plywood or OSB board.  
21 Here are the sleepers. We call them sleepers -- that provide  
22 the vents, the air path to keep the shingles cool. This is the  
23 insulation that is attached to the roof deck upside down. So  
24 I just included that to show a clean photograph of that  
25 assembly.

1           That's just a close-up of the sleepers and of the  
2 insulation?

3           Q     What is that photograph of?

4           A     That photograph shows the -- it shows the smoke venting  
5 from the concealed space below the shingles and above the sealed  
6 deck. The hot gasses and smoke exit somewhere and it exits in  
7 this case pushing back down through the eaves and this is what  
8 this is showing the smoke coming out of that location.

9           Q     Okay.

10          A     That is just another close up of panel.

11          Q     All right. Thank you.

12                 Now, Mr. Arnold, you expressed an opinion in this case  
13 that the fire would not have spread from the flat roof to the  
14 adjoining pitched roofs but for the presence of combustibles,  
15 correct?

16          A     Yes.

17          Q     Do you hold that opinion to a reasonable degree of  
18 engineering certainty?

19          A     I do.

20          Q     Do you hold all the opinions you have expressed today  
21 to a reasonable degree of engineering certainty?

22          A     I do.

23                         MR. VOGT: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MR. SHEALY:

1 Q Mr. Arnold, I just got a few questions. Mr. Arnold,  
2 you mentioned that roofing assemblies carry different ratings,  
3 correct?

4 A Correct.

5 Q All right, and you mentioned that roofing assembly on  
6 Owens the building that suffered the most fire damage in this  
7 case, its roofing assembly carried a Class A rating, is that  
8 right?

9 A That's my understanding based on discussions with  
10 Winthrop and review of some documents, and generally that's the  
11 roof that would be existing on a building of this type.

12 Q And shingles carry similar ratings, correct?

13 A They do, individually and as part of an assembly.

14 Q An individually they are rated the same way as an  
15 assembly; A, B, C, correct?

16 A They may carry that rating only if used in an assembly,  
17 but I think you are generally correct. If they are used in a  
18 class A assembly then they carry the Class A rating.

19 Q All right. And you looked at -- you looked at the  
20 materials list for the shingles and roofing assembly that went  
21 on Owens and you looked at the shingles, roofing assembly that  
22 went on Bancroft as part of your investigation, correct?

23 A I became familiar with those, yes, sir.

24 Q And you aware that the shingles that were going on  
25 Bancroft carried a Class A rating?

1 A I believe that is correct.

2 Q And those were the shingles that were being installed  
3 by Pickens Roofing, correct?

4 A I believe that is correct.

5 Q Now, in your testimony earlier you mentioned that there  
6 was one photograph of a student -- had been taken by a student  
7 before the fire department got there that was particularly  
8 instructive to you, correct?

9 A Yeah, all those photographs that show the flat roof  
10 were instructive because of the nature of the fire that I  
11 observed on that flat roof. Whether they were taken by the  
12 student or taken some point later.

13 Q Right, but the one you focused on though, that you sort  
14 of based your animation on was the close-up showing the flames  
15 above the scupper, that you could see through the scupper,  
16 right?

17 A Right, at that moment in time that's the flame height  
18 represented by that photograph.

19 Q Right. And it was that notion of the flame height that  
20 was of great importance to you in terms of being able to opine  
21 that's what caused the fire to spread to the adjoining roofs,  
22 right?

23 A It was one factor along with all the other things that  
24 I looked at including differential damage, the totality of my  
25 analysis. Certainly a flame height is supportive of everything.

1 else that I saw.

2 Q All right. Now, if I show you -- I think when we first  
3 got started there was photograph like this -- the jury has seen  
4 before -- on the screen you see black smoke there, correct?

5 A I do.

6 Q All right. And you see some white or grayish smoke,  
7 correct? See it at the roof line on Owens.

8 A This you are talking about?

9 Q Yes, sir.

10 A It appears to be, yes, sir.

11 Q Okay, and if we look at this photograph, 15,  
12 Defendant's 15, we see that white smoke coming out of the ridge  
13 on Owens there, correct?

14 A It appears to be a whitish smoke. It's hard to tell  
15 where it's coming out of, but I see what you are referring to.  
16 You are referring to this right here, correct?

17 Q Right. We don't see the flames through the scupper  
18 there, correct?

19 A Not that distance you cannot, correct.

20 Q The scupper is right there, isn't it?

21 A The scupper is right there, yes, sir.

22 A Okay. This photograph based upon the clock in the  
23 picture was taken about three o'clock in the afternoon, correct?

24 A It would indicate, yes, sir.

25 Q And this based upon your review of all the records --

1 you said you reviewed the fire departments records, correct?

2 A Photographs, yes, sir.

3 Q This is within ten minutes of the fire department  
4 learning that there's a fire, correct?

5 A I believe that is correct.

6 Q And if we look, I mean just to sort of look at this.  
7 All right. We have about three o'clock on that clock and if we  
8 look at the time stamp on the imagine itself it's 2.59 p.m.,  
9 correct?

10 A Yes, sir.

11 Q Okay.

12 A I am not a metadata expert, but that's what it shows.

13 Q Okay, so it would appear at least based on what I am  
14 showing you, that time the stamp given by the digital camera  
15 matches actually what is depicted on the clock in the picture,  
16 right?

17 A It appears to, yes, sir.

18 Q And so we don't see those flames that were so important  
19 to your analysis in the scupper, right?

20 A Not from that distance you did not. That's correct.

21 Q Okay. Now, again, show you that clock. This is about  
22 three minutes later, would you agree with me?

23 A I will.

24 Q Okay. And then we got tons of white smoke, right?

25 A Yes. Well, tons -- it is greyer then white -- and

1 smoke -- yes, the photograph shows what it shows. I don't what  
2 to ...

3 Q Okay. Now, if we look at Defendant's Exhibit 27, this  
4 photograph shows that as of about 12 minutes after three we have  
5 fire trucks there. So the fire department is there, right?

6 A Yes.

7 Q Okay. They are not just where I was pointing earlier.  
8 They are -- there's a ladder already up on the roof, right?

9 A Yeah, there is a ladder extended towards the roof.  
10 Yes, sir.

11 Q And we see that grey smoke again coming out of the top  
12 of Owens Hall, right?

13 A Yes, it appears to be coming from the top. It's hard  
14 to tell if it's seeping through the shingles or through the  
15 vents, but yeah, there is this greyish smoke that is located  
16 here and also the other side, correct.

17 Q And it looks like it is coming right out of the very  
18 peak of Owens Hall, right?

19 A Correct.

20 Q Okay. Now, we look at exhibit 28, this is the  
21 photograph that you sort of based your animation on, right?

22 A Well, that is a photograph that is included in my  
23 animation and this flame height is what I was focusing on to  
24 give a sense of the combustibles that must have been there to  
25 create that flame. Yes, sir.

1 Q Now, if we look at when this photograph was taken --  
2 this was taken at 3:43 about 35 minutes after we know the fire  
3 department is there, correct?

4 A Yes.

5 Q And we know that the smoke that has been coming out of  
6 Owens long before we've seen the flames as high as we see in  
7 this photograph. We didn't see any flames at all previously,  
8 did we?

9 A From those views of those photographs. And I agree  
10 with you. Go back to the photograph. You will see the window  
11 to the right -- I think I indicated in my prior testimony is  
12 open. This window is open and this window was open indicating  
13 the fire department were in there getting smoke out of that  
14 upper floor.

15 Q In fact we got another photograph showing them actually  
16 in place on the roof, don't we?

17 A There they are, yes, sir.

18 Q Okay, and so the time stamp on that is 3:43. So you  
19 would agree with me that these photographs were not taken long  
20 before the fire department got there, or the early stages of the  
21 fire? It's been going now for 45 minutes or more?

22 A We don't know when the fire started, but nevertheless  
23 the flames that we see in these photographs is of a nature that  
24 would indicate there were combustibles at that location,  
25 correct.

1 Q Right. We see flames now 45 minutes after we saw smoke  
2 coming out of Owens?

3 A Correct.

4 MR. SHEALY: All right. I don't have any further  
5 questions for you. Thank you very much.

6 THE WITNESS: Thank you, sir.

7 REDIRECT EXAMINATION

8 BY MR. VOGT:

9 Q Mr. Arnold, is there any significance with respect to  
10 your opinions as to the time the fire was reported to the fire  
11 department and the time the flames are first seen through the  
12 scupper?

13 A No, sir.

14 Q Why not?

15 A Because the flames at the moment in time those  
16 photographs are taken are an indication of fuel that was burning  
17 at that moment in time.

18 Q And the dimensions of the flat roof, I think you  
19 described as being like the state of Oklahoma?

20 A Yes.

21 Q The fire damage that you saw that you base your opinion  
22 on the fire spread, where was that fire damage in relation to  
23 the scupper?

24 A It was approximately ten feet away from the scupper,  
25 near the -- if you remember the photograph that shows the steel

1 beam and differential damage to the aluminum -- the aluminum  
2 trim.

3 Q So would it surprise you no flames were seen through  
4 the scupper until the fire travel towards the scupper?

5 A No, not at all.

6 MR. VOGT: Thank you.

7 THE COURT: Thank you, sir.

8 THE WITNESS: Thank you, sir.

9 THE COURT: You may stand down, sir. Do you wish  
10 to have him excused?

11 MR. VOGT: Yes, at this time except for rebuttal.

12 THE COURT: You are excused at this time, sir.

13 Thank you.

14 THE WITNESS: Thank you.

15 THE COURT: Madame forelady and members of the  
16 jury panel, you will be relieved to hear we will go  
17 ahead and adjourn for the evening.

18 We have one more little deposition. I'm kidding.  
19 We are going to go ahead and recess for now. I am  
20 going to ask you please be back in the jury room in  
21 the morning at 9:30, at 9:30 in the morning. Please  
22 have a pleasant night tonight and be in the jury room  
23 ready to go at 9:30.

24 (WHEREUPON, the jury leaves the courtroom.)

25 THE COURT: All right. Anything we need to take

1 up out of the presence of jury from either side at  
2 this time?

3 MR. VOGT: Your Honor, tomorrow morning we may  
4 read the deposition of the Defendant's expert. We  
5 have only gotten the designate portion this morning.  
6 And after that I believe the plaintiff most likely  
7 will rest. I was just wondering as far as time wise,  
8 I don't know if you have any indication from the  
9 defendant how long he will take. I am concerned about  
10 getting the charge together and having time to do  
11 that.

12 THE COURT: You are suppose to already have it  
13 together. I'm suppose to already have it from both  
14 sides. I don't have it from either one.

15 I know what you are going to do, you'll hand me a  
16 fist full of them here at the last second and expect  
17 me to try and put it together at night.

18 MR. VOGT: Well, the only ones I am really  
19 concerned about are the ones primarily concerning the  
20 code. It is difficult to as assess how to draft them.

21 THE COURT: All you have to do is give me the code  
22 sections and I will read it. That's the best way I  
23 know and the definitions you want to give me about the  
24 code. Anything that you got that is included in the  
25 code that has been referred to here and discussed that

1 has applied in some way, either side is entitled to  
2 have whatever you wanted read to the jury. I will  
3 look at it and read it. But I'll discuss the charge  
4 with you, whatever you got together you can bring it  
5 to me. I'll meet with you in chambers in a few  
6 minutes and let everybody else leave. We can discuss  
7 the charges and I can go over what I anticipate  
8 charging and then you hand me up these particular code  
9 sections.

10 MR. VOGT: I will be happy to give you code  
11 sections.

12 THE COURT: My favorite peeve is lawyers hand me  
13 up a bunch of requests to charge after I pretty much  
14 gotten my charge together and then when I say this  
15 doesn't apply and this doesn't apply, oh, somebody in  
16 the office drew these up.

17 MR. VOGT: Isn't there a pattern jury instruction.

18 THE COURT: We don't use that in South Carolina.  
19 I wish they did.

20 MR. VOGT: Oh, I'm sorry. That's my mistake.

21 THE COURT: Pattern instruction would have to be  
22 approved by the Supreme Court as an accepted charge.  
23 We have pretty much most of our charge together. I've  
24 got certain things I charge in every case, if your  
25 talking pattern in that regard.

1 MR. VOGT: Right.

2 THE COURT: But we don't have approved charges,  
3 but I have regular charges about the evidence,  
4 credibility of the witnesses and burden of proof and  
5 evidence. Those kinds of things are standard, but  
6 specific to the case whatever you have.

7 MR. VOGT: I imagine you have one for breach of  
8 contract as well.

9 THE COURT: I have one, but I got to look at what  
10 you got.

11 MR. VOGT: I don't have those with me but we --

12 THE COURT: Why don't we go over what I got back  
13 in chambers.

14 MR. VOGT: I was going to give you had asked for  
15 the code provisions. I think they have been attached  
16 them to our motions before. This is International Fire  
17 Code. I can highlight the provisions if you like.

18 THE COURT: I am not charging the whole code.

19 MR. VOGT: I will be happy to highlight them. And  
20 I also had given you earlier, Your Honor, I don't know  
21 if you kept a copy of the definition of the yard  
22 storage.

23 THE COURT: I got it if you gave me.

24 MR. VOGT: I will give you this one.

25 THE COURT: I got it right here.

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MR. VOGT: I need to highlight that for you as well, Your Honor.

THE COURT: We will go back and run through these right quick.

MR. VOGT: I must admit -- I hope I can speak freely for a second -- I never thought we would get through this quickly.

THE COURT: What did I tell you Monday. I am on the record. Never take more than a week to try a civil case. But in any event I'm not saying we wouldn't do it in some cases. I try not to do it.

Let's talk in a minute back in chambers, we'll go over the charge. If you got somebody here that we can talk settlement about as well, I would like to do that. Haven't had opportunity now that I pretty much understand the case.

(WHEREUPON, court was in recess. )

1 (WHEREUPON, the trial continued on March 20, 2014)

2 THE BAILIFF: Come to order.

3 THE COURT: Thank you. Please be seated.

4 Counsel ready to proceed?

5 MR. VOGT: Your Honor, the only other evidence the  
6 plaintiff would put is to read the deposition of  
7 Richard Hargis and I think we have exchanged  
8 designations and objections and there are still  
9 objections to be ruled on.

10 THE COURT: Wonderful. Let's hear them now.

11 Why didn't you all tell me that. I could have  
12 been in here at nine o'clock hearing these things  
13 before the jury got back there.

14 MR. SHEALY: Your Honor, may it please the Court,  
15 we did work through a number of them. That's what we  
16 have been doing. We got down to what we could not  
17 work out.

18 THE COURT: I worked last night, you all couldn't  
19 work last night?

20 MR. SHEALY: We did, Your Honor.

21 MR. VOGT: Your Honor, a copy of that deposition I  
22 believe I handed up. I will give you another copy.

23 MR. SHEALY: Your Honor, I handed up a copy of our  
24 objections.

25 THE COURT: I got those. I just don't have the

1 deposition.

2 MR. SHEALY: Yes.

3 THE COURT: It doesn't mean much to me without the  
4 deposition.

5 MR. SHEALY: Your Honor, we have sort of an  
6 overarching objection to this deposition being read as  
7 cumulative evidence. The substance of Mr. Hargis's  
8 testimony is that he agrees that the cause could not  
9 be determined. He agreed with the general area of  
10 origin, so to that extent it is cumulative.

11 THE COURT: He also agreed that there had to be --  
12 as I recall your argument yesterday -- he also agreed  
13 that there had to be some combustible material up on  
14 that roof for the fire to reach the magnitude it did  
15 and get where it did on these other buildings, isn't  
16 that correct, that he agreed with that too?

17 MR. SHEALY: Well, I think there are some  
18 expressions to that effect in the deposition and so I  
19 have some -- also some more specific objections to the  
20 way that evidence would be presented by way of this  
21 deposition.

22 THE COURT: Well, I find that would be relevant,  
23 probative and I will allow it, the deposition of his  
24 testimony. Now, some of it may absolutely not be  
25 necessary to put in. I don't know.

1 MR. VOGT: Your Honor, much of this is about area  
2 of origin which he agrees to. He agrees the fire  
3 started on the flat roof. If the defendant wants to  
4 stipulate the fire started on the flat roof then we  
5 are only left with the questions regarding the spread  
6 issue that you talked about, which would cut it down  
7 even further:

8 MR. SHEALY: Your Honor, a lot of my objections  
9 have to do with the fact that he is being presented --  
10 if this deposition is read in, his credentials are not  
11 introduced to the jury. He can not be qualified as an  
12 expert based upon the way this deposition was taken.

13 THE COURT: Some one did not do that in the  
14 deposition?

15 MR. VOGT: Your Honor, what -- he read his  
16 designation, part of his designation had his CV  
17 attached to it, which is part of the deposition. I  
18 didn't qualify him during the deposition other than he  
19 does testify that he investigated I think it was  
20 something on the order of 3000 fires.

21 Let's see -- how many fires have you investigated?  
22 That's a difficult question. Probably at least 1500,  
23 2000 if not more. How many were involved in cause of  
24 origin, so on so forth.

25 Your Honor, the purpose of this deposition is that

1 my sense is based on some of the questioning yesterday  
2 is that despite Mr. Hargis's agreement as to area of  
3 origin, an argument may be made that the fire didn't  
4 originate on the roof. That's the only evidence in  
5 this case. I simply want the jury to understand that  
6 they had an expert on that scene and he didn't  
7 disagree and then he also didn't disagree as to the  
8 fire spread.

9 MR. SHEALY: Your Honor, my point -- my issue is  
10 that where Mr. Hargis is asked opinions in the flow of  
11 this that before he is ever asked about his  
12 qualifications, before he is ever presented as an  
13 expert because it was a just a discovery deposition.

14 THE COURT: My question to you is, can't I find  
15 him expert now and decide whether I am going to allow  
16 his testimony as an expert or not?

17 MR. SHEALY: Your Honor, you are the gatekeeper to  
18 determine whether he's an expert or not, but I think  
19 it would violate Rule 403 to confuse the jury to have  
20 him render opinions --

21 THE COURT: Nonsense. What else have you got?

22 MR. SHEALY: Your Honor, the first specific  
23 objection is as to page 18, lines three through six.

24 THE COURT: That's different then the question and  
25 answer I did not allow Mr. Arnold to testify to. That

1 question is a little different then that. This  
2 question, "Is it fair to say that in order for a fire  
3 to start on a flat roof you need combustibles in that  
4 area?" That's different then saying, did it start,  
5 basically start of it was combustibles.

6 MR. SHEALY: And Your Honor, here's the issue, is  
7 he doesn't ask this -- he doesn't ask this, do you  
8 believe to a reasonable degree of engineering  
9 certainty that you need combustibles in that area to  
10 start a fire.

11 THE COURT: Is that not asked anywhere in the  
12 deposition?

13 MR. VOGT: I asked him if he held his opinion as  
14 to the area of origin to a reasonable degree of  
15 certainty, Your Honor. I don't believe I asked him as  
16 to that particular opinion. I just wanted to hand up,  
17 Your Honor the supplemental -- the defendant's  
18 supplemental answers to the plaintiff's first set of  
19 interrogatories and the defendant's expert witness,  
20 which has his curriculum vitae.

21 THE COURT: Well, you can offer him as an expert  
22 witness before we start. If the deposition is read in  
23 the record you can offer him as an expert witness and  
24 I will glance at this just a little bit more, but if I  
25 am satisfied I will allow his testimony entered as an

1 expert in whatever he was suppose to testify and what  
2 you identify him as a witness and your responses to  
3 the interrogatories.

4 MR. SHEALY: Your Honor, I will object.

5 THE COURT: I understand you object. I am not  
6 asking if you object now, counsel. I don't understand  
7 you.

8 MR. SHEALY: I'm sorry. I was trying to let the  
9 Court know.

10 THE COURT: You already said your objection --

11 MR. SHEALY: Yes.

12 THE COURT: And I told you my position.

13 MR. SHEALY: Yes, sir.

14 THE COURT: Now you are tell me you are going to  
15 object because I take this position. That's not  
16 permitted under the rules.

17 MR. SHEALY: Understood, Your Honor.

18 THE COURT: I'm not happy with either one of you  
19 because I'm having to do this while the jury sitting  
20 back there this morning.

21 MR. SHEALY: Yes, sir.

22 THE COURT: I am not happy with either one of you  
23 because this could have been down last night, first  
24 thing this morning. I was here at 8:45. I don't know  
25 why we couldn't of done this before before the jury

1 was sitting back there.

2 I am not interested in your objection. It has  
3 already been made on the record. You can make it  
4 again, when it is presented again. But I won't argue  
5 and rule on the same thing two or three times with you  
6 because you don't like my ruling. Do you understand?

7 MR. SHEALY: Yes, sir. That's not my intention.

8 THE COURT: Yes, it was.

9 Mr. Vogt, you are offering him as an expert in the  
10 cause and origin investigation. So I mean you can  
11 offer him for that purpose only.

12 MR. VOGT: And Your Honor, do you want us to do  
13 that before we begin reading deposition.

14 THE COURT: Yes.

15 MR. VOGT: Okay, and then I would like to --  
16 should I move for that now, Your Honor?

17 THE COURT: No before the jury.

18 MR. VOGT: Before the jury, okay. I just want to  
19 make sure I had the procedure clear.

20 THE COURT: Now, let's deal with the other  
21 objection which was whether he stated to a reasonable  
22 degree of profession certainty whatever this -- as an  
23 origin investigator.

24 MR. VOGT: He did say in the deposition, Your  
25 Honor, that he held his opinion as to the area of

1 origin to a reasonable degree of engineering  
2 certainty. I did not ask him if he held his opinion  
3 as to the spread of the fire to a reasonable degree of  
4 engineering certainty.

5 THE COURT: Well, he wasn't even qualified as  
6 expert in that field, and so I will allow him only to  
7 testify with regarding to origin.

8 MR. VOGT: That's fine.

9 THE COURT: If he testified to a reasonable degree  
10 of professional certainty as to the origin of the fire  
11 then he can testify concerning that.

12 MR. VOGT: With that ruling, Your Honor, I think  
13 we can eliminate a great amount of his deposition  
14 testimony.

15 MR. SHEALY: Your Honor, I'm happy to confer with  
16 Mr. Vogt to see what else he wants to keep in.

17 MR. VOGT: It might be just a matter of several  
18 pages, Your Honor. If he states his conclusion as  
19 to --

20 THE COURT: Well, take it and see what you can do  
21 with it. If you want to start this case tomorrow,  
22 Saturday, Sunday?

23 MR. VOGT: No, sir. We are -- that is why I am  
24 trying to -- this is hour and a half. I think we can  
25 cut it down to 15 minutes.

1 THE COURT: I will take about ten minutes or so to  
2 let you do that. Let me know when you are ready.

3 MR. VOGT: Thank you, Your Honor.

4 (WHEREUPON, there was a brief recess taken.)

5 THE BAILIFF: Come to order.

6 THE COURT: Please be seated.

7 All right, where are we?

8 MR. VOGT: The parties have agreed to stipulate  
9 the fire originated on the flat roof and that will  
10 eliminate the Mr. Hargis's deposition and the  
11 plaintiff will rest.

12 THE COURT: Okay, so you are not putting anything  
13 in from the deposition -- offering anything, just  
14 stipulation?

15 MR. VOGT: Yes.

16 MR. SHEALY: That's correct.

17 THE COURT: That the fire started on the flat  
18 roof.

19 Why don't we do this. Rather than bring the jury  
20 out here and have you rest and send them back, why  
21 don't we consider -- we'll go ahead and consider that  
22 you have closed. Although you can do that formerly  
23 before the jury, before they come back in and we will  
24 go ahead and here the directed verdict motion at this  
25 time.

1 MR. SHEALY: May it please the Court.

2 THE COURT: Yes.

3 MR. SHEALY: Your Honor, we would move for a  
4 directed verdict on all issues before the Court on the  
5 grounds that the plaintiff has failed to prove the  
6 causation element that it had to prove in both breach  
7 of contract and the negligence claims.

8 There has been no evidence introduced as to how  
9 this fire began. What the plaintiff has been relying  
10 on is what is known as the spread theory of liability  
11 and that theory of liability has not been recognized  
12 in South Carolina. One of the reasons why, Your  
13 Honor, is because in South Carolina we continue to  
14 adhere to the rule that we do not recognize res ipsa  
15 loquitur. The spread theory of liability arose -- it  
16 was recognized in other states to deal with the  
17 problem that in many cases no one knows how a fire  
18 started, or some -- someone started the fire. They  
19 can't be found, and so then the theory is well, the  
20 fire was caused to spread by the defendant's  
21 negligence.

22 Your Honor, in South Carolina we continue to say  
23 that you got to show that but for some negligence of  
24 ours the fire would not have occurred. And if you  
25 can't get there your jumping the gun to talk about the

1 spread of the fire. The fact that we had combustible  
2 materials on the roof, if that is proven and there is  
3 evidence in the record from which the jury could  
4 certainly find that to be the case, but there is  
5 nothing indicating that they would -- it was  
6 foreseeable that they would ignite.

7 The fact that they are designed to resist fire in  
8 fact. They are not volatile materials that auto  
9 ignite or spontaneous combust and so there is the  
10 issue of lack of causing fact and lack of  
11 foreseeability. No one would think that these  
12 materials would cause a fire. They are the very  
13 materials that are going to be installed on the roof  
14 and so there are no more combustible than the roof or  
15 the other building components are.

16 And so for that reason, Your Honor, the  
17 plaintiff's causes of action both of which have a  
18 proximate cause element are fatally flawed and we  
19 would ask that this Court not send this matter to the  
20 jury and grant a directed verdict in favor of the  
21 defendant.

22 THE COURT: All right, thank you.

23 MR. VOGT: Your Honor, as the Court knows a motion  
24 for directed verdict must be viewed with the evidence  
25 most favorable to the non-injured party and clearly in

1 this case what the defendant is arguing is not that  
2 there is insufficient evidence, he is really arguing  
3 for the Court to create new law.

4 There is no case that addresses the spread issue.  
5 There is many, many cases in South Carolina that deal  
6 with negligence and breach of contract, and what we  
7 have in this case is but for the storage of materials  
8 on the flat roof this fire would not have spread.  
9 That is the evidence that has come in to Court. But  
10 for, that's the legal cause. Foreseeability looks at  
11 the foreseeability of the injury. The fire code for  
12 instance, it's soul purpose is to prevent fire. The  
13 fire code provision said you don't store materials  
14 within thirty feet of the building because fires can  
15 happen regardless of the means of ignition. And  
16 that's precisely the danger which those provisions are  
17 intended to protect against.

18 So the plaintiff has met both but for and  
19 foreseeability for both the contract claim and the  
20 negligence claim. Clearly under the contract there is  
21 no issue that there was only two places these  
22 materials were suppose to be stored and it wasn't on  
23 the flat roof. There is clearly a breach of contract,  
24 evidence to support a jury finding a breach of  
25 contract. But for those materials being on the flat

1 roof where they are not suppose to be this fire  
2 doesn't spread to the adjoining roofs. The contract  
3 also required expressly that Pickens adhere to the  
4 code. But for their failure to comply with code this  
5 fire does not spread to the adjoining buildings.

6 I think the evidence in this case clearly does not  
7 support a finding of direct verdict for the defendant.  
8 Frankly I think, Your Honor, it's negligence per se  
9 given the testimony in this case. There is no  
10 question there were materials stored within thirty  
11 feet of the building. There is admissions from the  
12 roofers, lots of conflicting testimony but at the end  
13 of the day there are admissions. It doesn't matter if  
14 they don't know the code or not. They are admissions.  
15 Clearly I believe the plaintiff has satisfied all the  
16 necessary elements for both breach of contract and  
17 negligence.

18 THE COURT: In looking at a motion for a directed  
19 verdict the Court is required to look at the evidence  
20 in a light most favorable to the party against whom  
21 the motion is being made.

22 In this case looking at the evidence in a light  
23 most favorable to the plaintiff, my ruling has a  
24 tendency to educate either side that is just the way  
25 it falls, but I'm required to put on the record

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everything I think that has been introduced on the plaintiff's side to support their theory of the case favorable to them.

First if of all as matter of law this would be an issue of novel impression probably in South Carolina. Nobody has handed me up any cases which even come close to the factual issues in this case. And that being presented first of all, contract in which the defendant agrees to abide by all of these regulations; fire regulations, safety regulations that are listed, all state law etc., and these regulations have the effect of state law. Full effect of state law. They have agreed to be bound by that. Therefore, a violation of those would be a violation of the contract if they didn't abide by them. That is number one, breach of contract. Still wouldn't be actionable unless that proximate caused damage to the plaintiff, and certainly in this case argument could be made that if these materials were not there the fire would not have been in the magnitude it was and caused all of the damage it caused and get into the eaves and underneath the roof of the buildings that the fire department would have had to spend a day and a half, or over a day -- more then 24 hours trying to put out this fire. It was difficult to put it out because it

1 was under the eaves and got under the layers and was  
2 difficult to get to. They had to pulled off shingles  
3 and everything to get to it. So the section prevents  
4 them from storing these materials under the eaves, et  
5 cetera, on this area, flat roof close to the eaves and  
6 certainly argue that without that certainly there  
7 would not have been anything like this damage to the  
8 buildings.

9 Secondly, we got testimony on the record from an  
10 expert, well qualified expert, who says on the flat  
11 roof a fire that started on flat roof with no other  
12 combustibles on there would have died itself. Would  
13 not have been of any significance and would have died  
14 out on its own unless there were other combustible  
15 materials which this fire would reach and make the  
16 fire greater magnitude, bigger, and therefore reach  
17 the height that it needed to reach in order -- and  
18 spread to the areas where the great damage occurred --  
19 greatest damage occurred, and so that was his  
20 testimony. Therefore -- and this is different then  
21 you got a home owner situation where they have created  
22 some risk and somebody suing them because materials  
23 they had, dust materials or other materials that they  
24 had created a risk. That if a fire was created, if  
25 there was a fire it's foreseeable then that this would

1 make the fire worse. Would spread and allow it to  
2 spread to other homeowner's property and that is  
3 different. That is not this situation. That is not  
4 at all this situation. And I would distinguish in the  
5 law and factually any of those cases which do not have  
6 to do with the commercial enterprise in which the  
7 very, the very structures and buildings that the  
8 defendant has been contracted to repair and building  
9 demolish part of it, take out part of the roof and put  
10 in a roof and these other things which bring in to  
11 play these regulations, fire and safety regulations,  
12 the very thing that the contract covers and what they  
13 are required to follow is different then finding some  
14 common law or duty, or some duty by somebody who  
15 creates a fire hazard or an opportunity for a fire to  
16 spread. That is different. That's not this  
17 situation. So we have to deal with this as a unique  
18 situation. But it deals with violation of the  
19 regulations which have the effect of the statute  
20 really because it has been approved by the legislature  
21 and it has force of law, and a violation of those is  
22 negligence per se.

23 So we don't have just a common law duty created by  
24 case law here. What we have here is a violation of  
25 the law, basically, and the defendant has agreed to

1 abide by the law in this contract. And of course he  
2 is bound by it in any event whether he agreed to be by  
3 contract or not. That's a matter of contract. He is  
4 still bound by it. And so if in this case it really  
5 does not matter how the fire started, if it started on  
6 the flat roof.

7 These statutes were designed to take away these  
8 combustible materials from proximity to where the  
9 project is going on, where the fire might spread or  
10 make a fire worse regardless of the cause and the  
11 source of the fire. How it ignited, the energy source  
12 really does not matter under this statute because its  
13 keep the combustibles away.

14 The testimony is, again, to repeat myself, on this  
15 flat roof an ignition -- a fire been ignited there it  
16 would have died out on its own without doing any real  
17 damage other than a little bit on the flat roof.  
18 Certainly would not have reached these buildings that  
19 were adjacent, in close proximity. Certainly this  
20 would be constituted as storage, yard storage, since  
21 it is in the open. It talks about being in the open.  
22 This is in the open. It can't be within thirty feet  
23 of where the work is going on, construction is going  
24 on. It is within thirty feet without any question.  
25 We had testimony on that and it clearly is. The Court

1 can observe that from the photographs that have been  
2 introduced, and the testimony of course of the  
3 witnesses certainly within thirty feet in violation of  
4 the statute and the purpose of the statute is clear.  
5 And so even if it's in an outside storage area, drop  
6 area, whatever you call it. It still can't be within  
7 thirty feet for that very reason; it can make a fire a  
8 lot worse if it is within close proximity to the work  
9 area. Buildings being worked on.

10 So I think this is kind of unique situation.  
11 Unique factual situation. Unique question of law in  
12 this case based on these facts. I don't think they  
13 are going to find any other case. I haven't seen any  
14 other case that comes close to the facts in this case.  
15 Therefore, I find it's a novel question not just on  
16 the homeowner's duty or common law duty. That's not  
17 the issue here. These are violations of statute which  
18 are negligence per se.

19 Then the question is, did it proximately cause the  
20 damage to the plaintiff in this case and based on the  
21 expert testimony I heard in this case which to me  
22 makes common sense -- is common sense, that if the  
23 fire started on the flat roof with no combustible  
24 materials stored on there and these workers had been  
25 gone for 23 hours. So they were not working on this

1 thing. An argument could be made if they had these  
2 combustible materials up there, the actual materials  
3 that they working with, then you don't get there. But  
4 they had been gone a day, 23 hours or so, so you might  
5 as well say a day. They have been gone for a day.  
6 This is on a Friday was it not.

7 MR. SHEALY: The fire was on Saturday.

8 THE COURT: Saturday. So they were gone for the  
9 weekend. They were not working on it over the  
10 weekend. They left about four o'clock on Friday and  
11 this is on Saturday. This happened on a Saturday  
12 about 23 hours later. So they were not working on  
13 Saturday and not working on Sunday. Monday would be  
14 the earliest they'd be back there. So materials if  
15 they were there they were stored up there, otherwise  
16 it would be required to take them down off the roof.  
17 And so -- and we got testimony obviously from some of  
18 the employees who had a reason to diminished the  
19 amount of combustible materials, construction  
20 materials that were left on there because. They had  
21 every reason to diminish that. But nevertheless  
22 there's testimony that there was combustible materials  
23 up there. And so any question about that creates an  
24 issue for the jury on that.

25 Then you come down again to proximate cause to the

1 Court. The jury certainly could find the combustible  
2 materials left up there were the real cause of damage,  
3 most of the damage that was done in this case. I  
4 don't think there is any question about that. They  
5 could find that. And you don't have to have the  
6 source of the fire, the source of the ignition to  
7 determine that. It doesn't matter how it starts. We  
8 don't know how it started. Probably will never know  
9 how it started and what the ignition source was. The  
10 question is though, a great amount of this damage,  
11 most of it, was done once the fire reached a certain  
12 height and got into the eaves and got into these  
13 buildings in which the defendant was working. And so  
14 the Court finds that it does not matter about the  
15 ignition source.

16 Although I would say this, the source would still  
17 be speculation, but the only testimony we got is, the  
18 only ones put on that roof were the workers for the  
19 defendant. The doors were locked. There was no roof  
20 access really unless someone went with a key and  
21 opened it up to get in there and climbed some ladder.  
22 I thought those were taken down by the defendant.  
23 They testified they took them down and put them on the  
24 truck. I don't know about that. They had a lay down  
25 area there, but that's what their testimony was. And

1 so, nobody would have had access to the roof unless  
2 somebody with a key went up there with a specific  
3 purpose to do that. Even so, I don't think we can  
4 totally rule that out. But it doesn't matter for the  
5 purpose of the Court's ruling, because I don't think  
6 we need to know the source of the ignition of the fire  
7 to determine the greatest amount of this damage may  
8 have been -- it will be up to the jury to decide that  
9 -- whether the great amount of this damage was caused  
10 by combustible materials left on the roof in violation  
11 of the statute by the defendant.

12 Therefore, I find there is substantial evidence  
13 from which the jury could infer the defendant breached  
14 a contract in this case, proximately resulting in  
15 damages to the plaintiff. And I find further that  
16 there is substantial evidence from which the jury  
17 could infer that the defendant was negligent and that  
18 that negligence proximately caused the damage,  
19 substantial amount of damage, the greatest amount of  
20 damage to the plaintiff. Those will be issues for the  
21 jury to determine whether the damage was a proximate  
22 cause by the defendant's conduct or neglect and the  
23 amount of that damage. So it will be issues for them.

24 That's the ruling. I deny the motion for a  
25 directed verdict on the breach of contract and the

1 negligence issues.

2 Anything else?

3 MR. SHEALY: Nothing further from the defendant.

4 MR. VOGT: Nothing, Your Honor.

5 THE COURT: I am trying to think if I want to say  
6 anything else for the record.

7 I will add one thing. As far as the factual  
8 evidence is concerned, there is evidence on the record  
9 that the defendant used a lift, a hydraulic lift to  
10 get materials up on this roof. It was difficult to  
11 get it up there. They had to carry it up by a ladder.  
12 There was some testimony they used that hydraulic lift  
13 while it was there to get the materials up on the  
14 roof. There is evidence that the lift was gone  
15 approximately thirty days or whatever it was --  
16 approximately thirty days before the day of the fire  
17 and that some of the materials, roofing materials,  
18 heavy roofing materials were put up there by the lift.  
19 There was some evidence the lift was gone and they no  
20 longer had that source to get these materials up on  
21 the roof except apparently by carrying them up on the  
22 ladder. And so that raises the issue about what was  
23 put up there. That's just speculation at this point.  
24 Something from which the jury could infer, whatever  
25 they wanted to infer from that.

1 All right, bring the jury in please. Now wait  
2 just a minute. I will read the stipulation to them.  
3 I will give them the stipulation and then you will  
4 close and then we'll go from there.

5 MR. SHEALY: Your Honor, I am not anticipating  
6 putting up evidence at this point.

7 THE COURT: None at all?

8 MR. SHEALY: None.

9 THE COURT: I will still need to run through this  
10 charge to make sure I got it all straight. I worked on  
11 it last night. I want to be sure I included  
12 everything.

13 (Jury entering)

14 THE COURT: Good morning, madame forelady, members  
15 of the jury panel. Again, I apologize for the delay  
16 of getting you out this morning. There was a matter I  
17 had to take up with counsel that took some period of  
18 time, but and as a result of that time we spent here  
19 the remaining testimony and evidence has been -- or  
20 the time it would take to get that in has been greatly  
21 reduced, so it has been beneficial.

22 I told you that what you would consider in this  
23 case in the way of evidence, one of those is  
24 stipulations of counsel. Agreement by counsel.  
25 Counsel have stipulated and agreed that the fire in

1 this case started on the flat roof. The fire started  
2 on the flat roof that is their stipulation. Again,  
3 you can consider that along with all of the evidence  
4 testimony and evidence, give it such weight as you  
5 determine to be appropriate once you begin your  
6 deliberations. All right.

7 MR. VOGT: Your Honor, the plaintiff rests.

8 THE COURT: All right. The plaintiff has rested.

9 MR. SHEALY: And Your Honor, we rest ourselves.

10 THE COURT: The defense rests.

11 THE COURT: All right, see I told you it was going  
12 to shorter it up.

13 Now -- what I got to do though now is I will have  
14 to send you back to the jury room. There are some  
15 matters I need to take up with counsel at the  
16 conclusion of all the testimony and evidence. We have  
17 just remaining final arguments with counsel and my  
18 instruction with regard to the law that applies. This  
19 will take us a little time to do that. I apologize  
20 again for you sitting back there.

21 The good news is we will definitely finish this  
22 part of the trial today and we will get it to you as  
23 soon as we can.

24 So if you retire back to the jury room.

25 (WHEREUPON, the jury leaves the courtroom.)

1 THE COURT: All right. I will hear you with any  
2 motion you wish to make at this time.

3 MR. VOGT: I am sorry, Your Honor.

4 THE COURT: I will hear you with regard to any  
5 motions.

6 MR. VOGT: The plaintiff has none.

7 MR. SHEALY: We have no other motions to make,  
8 Your Honor.

9 THE COURT: All right. Just give you the  
10 opportunity.

11 MR. SHEALY: Well, Your Honor just to make sure  
12 that I have not let something go, we would renew the  
13 motion that we just made on the same basis.

14 THE COURT: All right, and I'll deny it for the  
15 same reasons I gave earlier.

16 MR. VOGT: Your Honor, I am sorry, I'm not sure if  
17 this is appropriate time or not, but the plaintiff  
18 would move to strike the defense of comparative  
19 negligence here. There is no evidence in the record  
20 of any negligence on the part of Winthrop.

21 MR. SHEALY: May it please the Court. Your Honor,  
22 I asked several witnesses if they were the fire  
23 prevention program superintendent. Wes Love indicated  
24 that he was the person primarily responsible for this  
25 project. He said no, he's not that and that

1 requirement is imposed upon the owner by both the fire  
2 code and NFPA 241, for the owner to have such a  
3 person. And so we believe there is evidence that  
4 gives rise to comparative negligence defense that has  
5 been raised and we would ask that that motion be  
6 denied.

7 MR. VOGT: There is no evidence that even if that  
8 provision of NFPA 241 mandated Winthrop to have a  
9 person designated that, that that had anything to do  
10 with the -- this fire. There is nothing in those  
11 provisions that relate to storage of materials.

12 THE COURT: It has to do with having an overall  
13 person on the project, doesn't it, who is responsible  
14 for fire safety. And even though the contract doesn't  
15 relieve the defendant from responsibility to comply  
16 with all of the terms in safety, nevertheless if these  
17 regulations had the force of law then a violation of  
18 them is negligence per se, is it not?

19 MR. VOGT: Well, Your Honor, certainly as a  
20 general rule violation of the statute is negligence  
21 per se, but my argument here is there is no --

22 THE COURT: How can I say if there was somebody  
23 designated in there as the fire safety person for this  
24 project by the owner that they wouldn't have spotted  
25 this combustible materials on the roof if they had

1 been doing their job and told them to get them off the  
2 roof and move them away from these eaves if they are  
3 in fact close to these eaves. How can I say that.

4 MR. VOGT: I understand, Your Honor, but remember  
5 too this flat roof wasn't part of the project. So if  
6 you take a very strict interpretation --

7 THE COURT: Well, I think it was part of the  
8 project if they had materials up there and had use  
9 that because these slanted roofs and what have you.  
10 If they had to use that as an access point and that.  
11 You can't say that it's not part of it. It is part of  
12 it. I think the fact that whether the defendant --  
13 excuse me, the plaintiff is negligent in this case by  
14 not having somebody out there particularly with regard  
15 to the contract, which puts all the responsibility and  
16 relieves them of responsibility and -- nevertheless, I  
17 think the safest thing for me to do is go ahead and  
18 instruct the jury on it. That's an argument you can  
19 make.

20 MR. VOGT: My only point about the project, Your  
21 Honor, was this particular roof was not part of the  
22 Pickens project because it had already been roofed  
23 and so under the technical definition of NEPA 241 if  
24 you --

25 THE COURT: It's part of the project and they were

1 working there. Everybody knew they were working off  
2 of that flat roof as an access point, et cetera.

3 Your argument doesn't make any sense to me.

4 MR. VOGT: Okay.

5 THE COURT: It's all part of the project. If it  
6 weren't part of the project then ---

7 MR. VOGT: Maybe I am not explaining.

8 THE COURT: Maybe the defendant wasn't there.

9 MR. VOGT: Bancroft Hall was the project. The  
10 flat roof is part of Owens.

11 THE COURT: But it was part of the project they  
12 were working on and the argument is that Winthrop  
13 employees knew they were working there. They went up  
14 there. Wes Love went up there and looked at it. He  
15 knew they were working off of it. He doesn't seem to  
16 know what was up there, but he was up there and that's  
17 part of his job to go up there. If he wasn't  
18 designated fire safety person, to me with the code, he  
19 could have enforced it. Basically they said they farm  
20 that stuff out to the city and the fire department and  
21 whatever. Basically they hired out through them. But  
22 I don't -- they didn't have an in-house person that  
23 actually was on the project, fire safety person on  
24 there. So, I think that I need to go ahead and submit  
25 that issue to the jury.

1           You certainly can argue whether they had anybody  
2 designated as fire safety officer for the project,  
3 whatever the title is. You need to hand me up  
4 something on that so I can charge it, that section.

5           But in any event, you can certainly argue that  
6 had nothing to do with it. Not a proximate cause of  
7 the damage. But they can argue it did. Contributory  
8 negligence. That if that person had been doing there  
9 job under the statute and complied with the statute he  
10 might have noticed something and stopped what was  
11 going on whatever it was. I can't say. I think it's  
12 a matter for the jury.

13           MR. SHEALY: Your Honor, I would point you to  
14 defendant's proposed charge 12 that I handed up at the  
15 beginning of the trial.

16           THE COURT: Let me make sure I got that. I got  
17 that.

18           You got it in quotes, is that the section that you  
19 are referring to?

20           MR. SHEALY: Yes, Your Honor. What I attempted to  
21 do in jury charge 12 was put all of the applicable  
22 sections from both the fire code and NFPA 241, both  
23 that apply to the comparative negligence defense and  
24 that also apply to the plaintiff's claim all within  
25 one instruction.

1 THE COURT: I got that and I charged that. Let's  
2 do this though, when did you hand me up your code  
3 sections, did you do that this morning or did you  
4 e-mail those?

5 MR. VOGT: Last night I gave you the sections of  
6 the IFC definitions and also the NFPA 241 and I  
7 hi-lighted the once with respect to the plaintiff.  
8 There should be three separate documents I believe.

9 THE COURT: Are you talking about these jury  
10 charges, proposed jury charges?

11 MR. VOGT: Well, last night actually Your Honor, I  
12 gave you a set that had definitions.

13 THE COURT: Well, you did. I am just asking you  
14 didn't write them out for me.

15 MR. VOGT: I think we did in our jury charge.

16 THE COURT: Well, I don't think you did. What I  
17 meant for you all to do is give me the statute and  
18 sections written out that you wanted to charge to the  
19 jury, the definitions.

20 MR. VOGT: Okay. Your Honor, I am confused  
21 perhaps --

22 THE COURT: I may have something this morning. I  
23 got these. They appear to be more like definitions  
24 and the purpose of the statute. Is that what you  
25 talking about?

1 MR. VOGT: Yes. There is a separate charge for  
2 that and then we also have --

3 THE COURT: Violation of statute charge?

4 MR. VOGT: Right. Right.

5 THE COURT: You give me a number but you didn't  
6 write it out.

7 MR. VOGT: Yeah, we did, Your Honor. NFPA 241 1.1.

8 THE COURT: This is 8.3.3 -- you don't have to  
9 put this on the record.

10 (Whereupon, there was an off the record discussion  
11 and a short recess taken.)

12 THE COURT: Counsel ready to proceed?

13 MR. SHEALY: Yes, Your Honor.

14 MR. VOGT: Yes, Your Honor.

15 THE COURT: Remember you got two arguments you can  
16 make.

17 MR. VOGT: Yes, sir.

18 THE COURT: Please bring the jury in.

19 (WHEREUPON, the jury enters the courtroom.)

20 THE COURT: Madame forelady, members of the jury  
21 panel, we are up to that part of the trial where  
22 counsel will make there final arguments to you and  
23 then I will instruct you upon the law that applies and  
24 the issues in this case. I will point out to you and  
25 I will do this maybe at the time I present the verdict

Plaintiff's Closing Argument

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1 form to you as well. What we have -- the decision you  
2 are to make insofar as the case is as to liability in  
3 this case. We are not getting into damages in this  
4 case. At this point we are getting into liability  
5 only and that will be a decision you will be making in  
6 this case and if damages are necessary that will be  
7 done separately. But you will be considering only on  
8 the liability issue.

9 I would ask you now to listen intently now as  
10 counsel address you in final argument.

11 MR. VOGT: May it please the Court.

12 THE COURT: Yes, sir.

13 MR. VOGT: Ladies and gentlemen of the jury, Saint  
14 Patrick's Day, you probably didn't realize you would  
15 see so many photographs of a flat roof where a fire  
16 started. I may have another opportunity to address  
17 you after Mr. Shealy has spoken, but if I don't I want  
18 to thank you now for your service.

19 I think at the very start of this case the judge  
20 indicated that our jury process is kind of the  
21 cornerstone of our judicial system and I believe that  
22 greatly. Not very many people have an opportunity to  
23 do what you have done this week. Now it is hard work.  
24 You had to listen to a lot of different testimony.  
25 Some of it is repetitive. You had to listen to people

1 read depositions. So I greatly appreciate and Mr.  
2 Jett appreciates, Winthrop appreciates all the  
3 attention and the time you spent with us, time away  
4 from your family, time away from your jobs. We  
5 understand the sacrifice and we be appreciate it. I  
6 know Mr. Shealy believes that as well.

7 At the start of this lawsuit I told you that  
8 Winthrop intended to prove seven things. Remember  
9 that. And I also told you I want you to hold me to  
10 it. So through the course of the next little while --  
11 I will try to be as brief as possible -- I will go  
12 through the seven items. And again, I want you to  
13 listen carefully. You heard all the evidence now. I  
14 want you -- you are going to weigh that evidence. The  
15 judge will instruct you how to weigh that evidence.

16 The first thing that I told you was the fire  
17 originated on the flat roof. Well, after a few days  
18 now the parties have stipulated and agreed. There is  
19 no question. Chief Driggers testified, if you recall,  
20 the fire started on the flat roof. There is no  
21 dispute about that.

22 There is also no dispute that when the fire was  
23 discovered Officer James Howell went in to Owens Hall.  
24 Made sure nobody was present. Came back out. Met the  
25 fire department and brought them up to the third floor

1 up to the attic and unlocked the doors to the attic.  
2 There is absolutely no evidence -- any other evidence  
3 that those doors were locked. The fire department  
4 then went out the hatch and started fighting the fire.  
5 There is no access to the roof because all the roofers  
6 -- we will go through their testimony in detail. They  
7 said, well, we take our ladders down at the end of the  
8 day. So fire starts on the flat roof. That was the  
9 first thing I was going to tell you, right. I also  
10 said we would prove that the flat roof was a TPO,  
11 plasticized rubber and that's important because of how  
12 this fire spread. I don't believe there is any  
13 dispute that this flat roof was a TPO plasticized  
14 rubber roof. Then the third thing I told you was that  
15 Pickens Roofing and Sheet Metals employees stored  
16 combustible roofing materials on the flat roof between  
17 Bancroft and Owens.

18 You heard a lot of testimony from a lot of  
19 different Pickens employees on that subject and I will  
20 take a few minutes and go through each one. The first  
21 person we put on the witness stand was Randy Pruitt.  
22 He had a number of different titles. He was a foreman  
23 of that metal crew that was working the day before the  
24 day the fire, so he was supervising his nephews,  
25 Brandon Lusk and Matthew Pruitt, but then he also was

1 according to the Clint Robinson, the project manager,  
2 a superintendent who had overall responsibility for  
3 the job. And later on we are going to talk about some  
4 of that contract provisions which required that  
5 Pickens to have a superintendent. So Randy Pruitt --  
6 Clint Robinson the project manager said Randy Pruitt  
7 was the superintendent and he was responsible to make  
8 sure this work was done in accordance with all the  
9 contract provisions and specification.

10 Immediately after the fire, within a couple of  
11 days, Chief Driggers interviewed him. What was on  
12 that flat roof when the fire started? And he told him  
13 at that time was, well, there was metal, but he also  
14 told him about rolls of felt paper, the roofing paper.  
15 He said he didn't smoke. Didn't mention anything else  
16 being on there other than those roofing materials  
17 which included roofing paper which is combustible.  
18 Combustion means something that can burn.

19 Now, when he got on the witness stand he said  
20 something different than originally. He said no  
21 paper. No paper rolls on roof. After we showed him  
22 his deposition testimony he went back, he admitted oh,  
23 yeah, there were rolls of roofing paper on there. All  
24 right. So, as we go through these witnesses I want  
25 you to look for consistency and inconsistency.

1 Consistency with what they said initially, what they  
2 said on the stand and what they said after they had  
3 portions of their depositions read to them.

4 So Randy Pruitt had no knowledge of the fire code.  
5 He was the superintendent for this job. He had  
6 absolutely no knowledge about NFPA 8.3.3 which we have  
7 seen, the yard storage provision. He had absolutely  
8 no knowledge. Maybe that's not his fault. He's not  
9 the the person who is suppose to train them. Larry  
10 Renner was, the safety director, or safety officer.  
11 He said everybody was a safety officer. Mr. Renner  
12 appeared not to have any working knowledge of NFPA  
13 241. So, you have superintendent on the roof who  
14 doesn't know the code. He knows there is only two  
15 places you are suppose to store material, on the  
16 ground in front of the building or in the parking lot  
17 half a mile away.

18 The next person we put on the stand was Brandon  
19 Lusk, his nephew. And Brandon's job was to put the  
20 metal down. Randy is hurt, he's in a sling. He is  
21 watching him and Brandon is going back and forth to  
22 the flat roof. After the fire he told Chief Driggers  
23 in addition to the metal there were combustibles  
24 there; rolls of roofing paper. On the witness stand  
25 he said, no Chief Driggers is wrong. Absolutely.

1 Chief Driggers is wrong. So a few days after the  
2 fire, paper. On the witness stand four years later no  
3 paper. Now, I think Brandon Lusk told us another very  
4 important fact and it's one more piece of this puzzle.  
5 If you remember there is a lift that they use to take  
6 material from that lay down area all the way up to the  
7 fourth floor and what he said was, well, it's hard  
8 work carrying those shingles and it is. Remember all  
9 those shingles all lined up at the ridge of the roof.  
10 He also said the lift was gone. All right. The lift  
11 was gone. He talked about some other crew being on  
12 the roof shingling. Remember that, I think he  
13 described them -- I'm not sure if he use the word  
14 Mexican, but I think that's how he described them. He  
15 said somebody else was on the roof. He didn't say  
16 that day before the fire, but it close proximity on  
17 the roof. But the lift is gone. So human nature is  
18 what? Before the lift leaves you are going to get all  
19 that material up on the roof. Right. I think that's  
20 critically important when you consider Clint  
21 Robinson's testimony. We first talked to Matthew  
22 Pruitt and we will get back to Matthew.

23 Mr. Robinson was the project manager, right. You  
24 remember I went through all the specifications with  
25 him, and we will see some of those in a minute. Did

1 you do this. Did you initiate a safety program. Were  
2 you aware of the crew's storage locations, yes. All  
3 right. He negotiated the change order that paid  
4 Pickens more money because they only had that one  
5 location to store the materials. He said, well,  
6 before the fire -- now he said he was last there maybe  
7 a week or so before the fire -- two pallets, two  
8 wooden pallets of material were on that flat roof.  
9 Storage is in front of the building, right. Why are  
10 there pallets of shingles, pallets of roofing paper,  
11 combustibles on the flat roof. I think you will  
12 recall that testimony. Essentially, because it saved  
13 Pickens money. He cut corners to save Pickens money.  
14 That ties into Mr. Lusk's testimony about the lift  
15 being gone. The lift is gone. The project manager is  
16 there. He doesn't want to take more man hours. He  
17 doesn't want to pay all those workers more to carry up  
18 one by one up a ladder. Put everything on the roof,  
19 finish the roof. Normally nothing would happen,  
20 right.

21 Matthew Pruitt, the third member of the crew is on  
22 the roof the day before the fire. Matthew told the  
23 fire marshal he had been on the flat roof. He told us  
24 he had been on the flat roof several times that day,  
25 going back and forth. Initially if you remember he

1           said just metal. Described a few different pieces of  
2           metal. Going back to his deposition testimony he  
3           said, after reading that there were shingles, roofing  
4           paper, nails and metal and went back and forth. So I  
5           think it's natural for the roofing crew to be unsure.  
6           I'm not trying to judge them. That's not my role.  
7           But I think it is human nature -- a large fire  
8           occurred. In the days immediately after the fire they  
9           weren't thinking about what was there, right. They  
10          just told Chief Driggers what was there. In this  
11          setting, this adversarial setting some times memories  
12          change and that's why we had to show them the  
13          deposition testimony to refresh their recollection  
14          about what they said. And what they said was there  
15          was combustibles on the roof, on the flat roof the day  
16          prior to the fire.

17                 Bobby Pickens. Mr. Pickens is the president of  
18                 Pickens Roofing. Pickens and Winthrop have had this  
19                 long term relationship. This is essentially a  
20                 business dispute between those two companies because  
21                 they continue to do business between them. Mr.  
22                 Pickens was up on the roof. He was the one that took  
23                 those few photographs. He didn't go look at the flat  
24                 roof that day. And initially he said, well, it's not  
25                 our standard. It's okay to store paper on the roof,

1 but even Mr. Pickens I had to show him his deposition  
2 and he had to tell us, well, no actually it was our  
3 standard not suppose to store paper on the roof. He  
4 said there wasn't any paper. I asked him how he knew  
5 that and he said, well, I don't think there was any  
6 paper.

7 Well, we know there was paper. We had testimony  
8 of all three of the crew members telling us there are  
9 combustibles on that roof.

10 So, we have the testimony of those three gentlemen  
11 on the roof. We also had the expert testimony of Dan  
12 Arnold. Mr. Arnold told you about his qualifications  
13 as to fire spread and fire protection, how he  
14 understands, as part of his background training and  
15 experience building systems -- roof systems and  
16 material, how the material burns. And he pointed out  
17 all those different photographs -- probably to many,  
18 I'm sorry -- of the damage on that flat roof that in  
19 his opinion showed there had to be combustibles on  
20 that roof. He didn't say the TPO is not combustible.  
21 What he said was, if you remember, you throw a  
22 cigarette on it nothing happens. If you hold a  
23 roofers torch to it you get a small flame height and  
24 then it self extinguished. In all the indicia of the  
25 burn patterns; the melted aluminum, the varying

1 degrees of burn on wood, all those little details he  
2 showed you told him in his opinion there had to be  
3 combustibles on that roof. It wasn't essential to him  
4 to know the amount of combustibles because we saw how  
5 the fire spread. There was enough combustibles on  
6 that roof to get to sufficient height to reach those  
7 pitched roofs. He didn't need to know the source of  
8 the ignition for the fire to opine that the fire  
9 spread as a result of those combustibles being on the  
10 roof. So as to number three, that I told you about --  
11 so the third thing I told you was Pickens Roofing and  
12 Sheet Metal employees stored combustible roofing  
13 materials on the flat roof. Between the testimony,  
14 the admissions, Mr. Arnold's testimony I think it's  
15 clear there were combustibles on that roof.

16 The fourth thing I said was the contract between  
17 Winthrop and Pickens required Pickens to comply with  
18 all applicable codes, ordinances and law and  
19 regulations. There is no dispute between these  
20 parties that there is contract. There was no dispute  
21 that the contract incorporated those specifications  
22 that they went over a number of times. There is no  
23 dispute that the contract required Pickens to follow  
24 code. There was a number of things in that contract  
25 that Pickens was required to do. They were required

1 to initiate, maintain and supervise all safety  
2 precautions and programs in connection with the work.  
3 Take all necessary precaution through safety of and  
4 provided the necessary precaution to prevent damage  
5 and injury. Go down to four, comply with all  
6 applicable laws. No one from Pickens could tell us  
7 who initiated, maintained and supervised safety  
8 procedure. Mr. Renner said Clint Robinson. Clint  
9 Robinson said it was Mr. Renner.

10 The specifications also said you can only store at  
11 approved location. Let's look at that real briefly.  
12 Prior to storing work obtain approval from owner for  
13 locations of work we gone through that at nauseam.  
14 Parking lot in front of the building. Change order  
15 limits them to one. They get paid more. There is no  
16 dispute about any of these provisions. All right.

17 The fifth thing that I told you we just covered.  
18 I told you there was only two areas where Pickens was  
19 suppose to store materials. The sixth thing was  
20 Pickens breached its contract and was negligent when  
21 it violated the fire code by storing its materials on  
22 the roof. So, the contract said store materials on  
23 the ground at the front of the building. Store  
24 materials out front. Clearly Pickens didn't do that.  
25 And they, like any other person, most times it

1 wouldn't make a difference, but clearly they were  
2 storing materials on the flat roof. We have all that  
3 testimony. We see the shingles on the ridge line.  
4 There is no dispute that's a breach. So the second  
5 part of that is Winthrop has to prove that proximately  
6 caused its damages.

7 First part of that is, we know combustibles were  
8 on the roof. The second part of that is, but for  
9 those combustibles being on the roof, the flat roof,  
10 the fire doesn't spread to the adjoining pitched roofs  
11 and again no dispute about where the fire originated.  
12 Mr. Arnold laid out in detail for you this is how the  
13 fire spread from that TPO roof to the pitched roofs  
14 above. The TPO roof alone could not sustain a fire  
15 that would reach the pitched roofs. You had to have  
16 combustibles there. Because of that Winthrop (sic)  
17 breached its contract by storing those materials. By  
18 taking that short cut they breached their contract.  
19 Negligence is a little different. We talked a lot  
20 about fire codes, if you remember, NFPA 8.3.3, which  
21 is adopted by the State of South Carolina. It  
22 references -- there is also reference to its scope,  
23 its application, the purpose of it. What the purpose  
24 of NFPA 241 is to prevent fires during the  
25 construction, alteration and demolition of the

1 projects. The purpose of the provision is to prevent  
2 fires. 8.3.3 is yard storage of equipment to be  
3 installed or combustible construction materials shall  
4 not be stored closer than 30 feet from the structure  
5 under construction or alteration.

6 Combustible construction materials, combustible  
7 means something that can burn. We covered that,  
8 right. The evidence is, I believe, there is  
9 combustible construction materials on that flat roof.  
10 Were they closer than thirty feet. We were told about  
11 the dimensions of that roof. There is no way to store  
12 materials on that roof and be more than thirty feet  
13 away. Ten yards. All right.

14 The first part of it, yard storage. I asked if  
15 you remember the deputy state fire marshal what does  
16 that mean and what John Dunlop says was it means open  
17 air outside storage. The judge is going to instruct  
18 you as to the definition of the code and I believe if  
19 you want to characterize it, what yard storage means,  
20 is outdoor storage. The roof is outdoor storage. All  
21 right. So, this code provision which is intended to  
22 prevent fire the reason, I submit to you, the purpose  
23 of it is you had buildings that have sprinkler  
24 systems. All these buildings had sprinkler systems.  
25 So if a fire happened inside the fire is controlled.

1 People don't get hurt. You have limited fire damage.  
2 But sprinkler systems don't protect from exterior  
3 fires. That's why you don't put during construction  
4 projects combustible construction materials close to  
5 the building. That's the purpose of those provisions  
6 and that's what Pickens violated and was negligent in  
7 when it carried out its work on this project.  
8 Violated code. A code created a duty. They didn't  
9 live up to that duty. Winthrop suffered a fire. That  
10 fire was foreseeable because that's what the code  
11 intended to prevent. And again, source of ignition,  
12 in this instance I asked Mr. Arnold, well how could  
13 you give that opinion if you don't know the source of  
14 ignition. And he said well, the means of ignition  
15 aren't important in this case because you need three  
16 things. You need fuel, oxygen and combustibles. And  
17 at the very start of this case I told you the lynch  
18 pin of Winthrop's case is the fuel. If you remove the  
19 fuel, if you remove the shingles, if you remove the  
20 roofing paper, this fire would never have spread to  
21 the adjoining buildings.

22 The seventh thing is really a reiteration of what  
23 we just talked about. But for the storage of those  
24 combustibles on the flat rubber roof this fire would  
25 not have occurred and spread to Bancroft and Owens.

1 There has been no testimony from any other expert to  
2 dispute Mr. Arnold's opinion. There has been no  
3 testimony from anybody to contest those opinions.

4 Cross examination elicited some responses but had  
5 nothing to do with the ultimate issue in this case of  
6 whether the fire could spread from the flat roof to  
7 the adjoining pitched roofs if there weren't  
8 combustibles there. So those were the seven things.  
9 We talked about each of them.

10 There is a couple of other things I want to talk  
11 to you about. One is, all the Winthrop folks that  
12 were involved in this project; Wes Love, Walter  
13 Hardin, they all said no one from Pickens ever came to  
14 them or anybody working on Winthrop's behalf and asked  
15 hey, can we store combustible construction materials  
16 on the flat roof. There has been no testimony other  
17 than Wes Love that never happened and Walter Hardin.  
18 All right. Mr. Love was on the roof about a week  
19 before and his testimony was well, I was on that roof.  
20 I saw people working in that area at times. He  
21 doesn't remember that specific day -- that week  
22 before, but he always saw him using the materials. He  
23 wasn't aware that they were storing the materials.  
24 There is a big difference. And again, no one, Clint  
25 Robinson didn't ask him, Randy Pruitt didn't ask him,

1 Bobby Pickens didn't ask him. No one asked him if  
2 they could store that material on the flat roof.

3 At the beginning of this case I gave you a couple  
4 of examples about rules and codes and laws that  
5 everyday all of us try to follow and some times we  
6 fail. Some times we don't follow, stop signs, speed  
7 limits. Simple examples. Most of the time nothing  
8 happens. There is no consequences. In this case  
9 there were consequences and the consequences were  
10 severe and this lawsuit is about trying to determine  
11 who is responsible for it. And a long time ago when I  
12 was in what they use to call grammar school, they had  
13 a course called civics and civics talked a lot about  
14 -- taught us a lot about our civil liberties, our  
15 rights. We spent a lot of time on that. But it also  
16 talked about duties. All right. And one of the  
17 things that we have in our system is jury duty. All  
18 right. And what jury duty entails is it gives ever  
19 injured party, it gives every defendant a level  
20 playing field. And to me that has always been the  
21 most important part of our system. Many, many  
22 countries you can't do this. You don't get a fair  
23 shake. This is unique. This is what makes our system  
24 great. A panel of 12 will look at the facts. A panel  
25 until of 12 will weigh the evidence. They have to put

1           aside any pre-conceived notions they have, and any  
2           bias and you get a verdict based on the facts.

3           The facts in this case, ladies and gentlemen, I  
4           submit to you are clear. There were combustibles on  
5           that roof. Pickens put the combustibles on that roof.  
6           There is nothing else on that roof. There is no  
7           testimony that there was anything else on the roof.  
8           No other projects going on. No reason for any  
9           maintenance people to be on the roof. The third floor  
10          elevator, mechanic roof is the closest thing. The  
11          third floor. All Winthrop is asking you is to take  
12          that evidence and apply it to the law the judge will  
13          provide you instructions on, and I think if you do you  
14          will find that Pickens breached its contract and that  
15          breach caused the damage suffered to Winthrop. I  
16          think you will find Pickens was negligent and that  
17          negligence caused the damage suffered by Winthrop.

18          Thank you again for your time. I appreciate your  
19          patience. I appreciate your hard work and I may be able  
20          to address you again after Mr. Shealy has.

21          Thank you, Your Honor.

22          THE COURT: Yes, sir. Counsel.

23          MR. SHEALY: May it please the Court.

24          THE COURT: Yes, sir.

25          MR. SHEALY: Ladies and gentlemen, somebody is

1 here today that you haven't seen before. This is Jim  
2 Pickens. You heard his name. His brother Ben who is  
3 now deceased and Bobby Pickens that you heard testify,  
4 they were the three owners of the company at the time  
5 that that this incident occurred. Just because he is  
6 here and you hadn't been introduced to him I thought I  
7 would introduce him to you. I am going to again plug  
8 in this machine.

9 And ladies and gentlemen, I will talk to you a  
10 little bit. I will be brief, but I will talk to you a  
11 little bit about the burden of proof in this case.  
12 You will hear that instruction from Judge Alford in  
13 just a few minutes about the burden of proof and Judge  
14 Alford may use this very illustration. But the  
15 plaintiff has got to prove its case by the  
16 preponderance of the evidence. The plaintiff has got  
17 to show you it is more likely then not that what it  
18 seeks to prove here is true. If you can't decide, if  
19 the scales if you will, remain even, the plaintiff  
20 hasn't carried its burden of proof. Certainly, if the  
21 evidence weighs in the defendant's favor then  
22 certainly the plaintiff has not carried its burden of  
23 proof. And one thing in particular that the plaintiff  
24 is unable to prove and I will talk to you about that  
25 later, but I told you in the beginning of this case.

1 that Pickens was being made a scape goat. Another way  
2 of saying that is it's some Monday morning  
3 quarterbacking going on here. So we have two  
4 theories. They said all right you breached your  
5 contract with us and you were negligent, and those are  
6 legal theories that you will hear explained by Judge  
7 Alford. But in both situations Pickens has duties to  
8 Winthrop. Has duties it agrees to under the contract.  
9 It has duties to act reasonably under the  
10 circumstances which is a duty that we all carry as we  
11 are walking around, to do what's reasonable. And when  
12 we breached that and then that causes damage to others  
13 that leads to legal liability.

14 Causation in the legal realm is a strange thing,  
15 and I will talk to you more about that. But you have  
16 to have both cause and fact, meaning but for something  
17 we did there wouldn't have been a fire. And then you  
18 have to also say, all right, was it foreseeable that  
19 there would be a fire based on what we did. Was that  
20 a foreseeable consequence of something we did or that  
21 we weren't suppose to do. So those are things I want  
22 to focus your attention on.

23 Let me talk to you first about this storage issue  
24 before we get really to the elephant in the room. You  
25 heard from Pickens employees and you'll note we didn't

1 put up any evidence because they called all of our  
2 witnesses. It's their burden of proof and you got all  
3 the evidence you need. Just because we didn't call  
4 any additional witnesses was just really looking out  
5 for your time. You heard everything you need to hear.  
6 But when you heard the Pickens employees testify Mr.  
7 Vogt made -- brought up a lot of inconsistencies in  
8 their testimony.. Showed them their depositions and  
9 things and certainly there were lots of  
10 inconsistencies in their testimony. But bear in mind  
11 this involved something that happened over four years  
12 ago. Several of these people don't work for Pickens  
13 any more. The person that probably knew the most  
14 about this job is deceased, Ben Pickens Jr.. So, if  
15 it was Pickens' intention to come in here and to try  
16 and make everything -- make everybody sing the same  
17 song, then you would have seen maybe more consistency.  
18 But these are folks that came in and just told you  
19 what they remember. And folks, these are folks that  
20 are not in there element in this courtroom. This is a  
21 place where I operate on a daily basis. Where Mr.  
22 Jett and Mr. Vogt operate on a daily basis. But it's  
23 certainly not where Randy Pruitt or Brandon Lusk  
24 operates on a daily basis. And if you heard there was  
25 a lot of confusion over what do you mean. What do you

1 mean. Sort of looking, why are we even here. We were  
2 doing our job. We were roofing this project like we  
3 do all the time and there was a fire that happen the  
4 next day. We weren't even there. So -- and the  
5 testimony about storage. You know, when asked what  
6 were you storing up there. Well, when are you talking  
7 about? When during the project? That changes from  
8 day-to-day. This is an ongoing project. Clint  
9 Robinson -- a great hey was made with Clint Robinson  
10 saying, yeah, we had some stuff up there. But he  
11 hadn't been up there on the roof for two weeks -- a  
12 week or two weeks before this happened. So, I mean  
13 the moment in time that he tells you we had stuff up  
14 there really isn't important. What is important is  
15 what did we have up there -- if it has any importance  
16 all, but what is up there when we leave work on March  
17 5, 2010.

18 Now, I will talk to you though about this contract  
19 provision that you have been shown multiple times.  
20 When they say that we breached our contract by storing  
21 stuff up there. That contract provision -- and you've  
22 seen it. But the emphasis hasn't been placed on this  
23 particular language, "Prior to starting work obtain  
24 approval from owner for locations of work operations  
25 at ground level." That's what the contract says and

1 that's what Winthrop is worried about.

2           You heard that the president was worried about  
3 aesthetics. That's why this roofing project was ever  
4 begun at the beginning. They are not worried about  
5 what Pickens is doing up on the roof. They are  
6 worried about how much of your operations are going to  
7 interfere with what people see on the ground and what  
8 students have to walk around. That's the import of  
9 that contractual provision that has been flashed to  
10 you multiple times. The contract which is huge, it's  
11 a standard state contract. It doesn't say anything  
12 about don't store stuff on the roof. It doesn't say  
13 anything like that in the contract. And you may not  
14 recall because it was a lengthy deposition, but Vu  
15 Nguyen, who was the roofing consultant -- that was the  
16 deposition that went for a couple of hours -- that  
17 Winthrop hired. Has used for multiple projects.  
18 There are a couple of things that are worth your  
19 focusing on. He says that storing things on the roof  
20 is common. How common is it for -- in the course of  
21 roofing contractors for you to see shingles packs  
22 laying across the ridge of a building. I think that's  
23 pretty normal. That's the way roofers do their stuff.  
24 You got to get stuff up there to work on. You can't  
25 carry one shingle at time. One nail at time.

1           So, Vu Nguyen recognizes that this is the way we  
2 do business and this is the way we have been doing  
3 business. This is the way we are going to continue to  
4 do business in the roofing industry. And Vu knows  
5 that's the way it happens.

6           Now, we move to the NFPA, the National Fire  
7 Prevention Association. This standard that has been  
8 talked about so much. So many witnesses. This is the  
9 way they were asked, what do you know about NFPA 241?  
10 Well, I don't know. I'm a roofer. Maybe I know  
11 things in there, but I don't know chapter and verse.  
12 I mean, what are you even talking about. And that's  
13 the way questions were. What do you know about the  
14 fire code. I have been practicing law 18 years. If  
15 somebody says well Kirby, what do you know about the  
16 South Carolina residential landlord/tenant act. Well,  
17 I can't recite it for you. What do know about the the  
18 probate code. I know it's there somewhere. But not  
19 anything I deal with, look at, on a day-to-day basis.

20           One of my law partners told me this story after  
21 he finished law school. He had been practicing for  
22 six months and he was at Sunday dinner and his great  
23 aunt said, well, Cravins, what's the speed limit in  
24 Hemingway and he said I got no idea. And she said,  
25 what do they all teach you all in law school. You

1 know, that's not the way it works.

2 Roofers know their business by being experienced,  
3 doing good work and these folks apparently do good  
4 work because Winthrop has been using them, Continues  
5 to use them to do things in a safe manner.

6 Now, what you haven't heard about -- but you will  
7 hear from Judge Alford, is that NFPA 241 standard and  
8 the fire code imposed duties on the owner, on  
9 Winthrop, to have a fire prevention program  
10 superintendent.

11 You heard me ask a couple witnesses did you serve  
12 in that role. No. No. We relied on Pickens to do  
13 that. Well, Pickens has its obligations, but the code  
14 relied on Winthrop to do those things and it didn't do  
15 those things. It wants you to sort of disregard that.  
16 It didn't have somebody looking out for the its  
17 obligations for safety to maintain its own property.  
18 Remember, that this building that we were working on  
19 for months was occupied. The grounds around it were  
20 being walked by the students and faculty, and just to  
21 say no, we're just going to close our eyes to anything  
22 that is going on that is unsafe because that's the  
23 roofing contractors job. That's not what the law  
24 requires. And so, Winthrop is sort of like wanting to  
25 have its cake and eat it too. We found a standard,

1           aha, we can hang on you because we suffered this  
2           substantial loss, that the deputy state fire marshal  
3           had never look at, didn't have know anything about to  
4           become the fire marshal. That Vu Nguyen, a roofing  
5           consultant, doesn't know anything about with respect  
6           to construction operations. Are you familiar with  
7           NFPA calls for? No. So, we found some standard to  
8           say you violated that standard, but we're not going to  
9           worry about the standards that apply to us. We are  
10          going to find that standard that applies to you all.

11                 No one really has testified except Dan Arnold --  
12           the very expensive code expert -- can site these  
13           provisions chapter and verse. But you got people --  
14           there is nothing about Walter Hardin or Wes Love,  
15           those guys are not incompetent people. They are doing  
16           a good job for Winthrop University, but they don't  
17           know those things. Vu Nguyen, their Roofing  
18           consultant doesn't know those things chapter and  
19           verse. So is it any wonder that Pickens former  
20           employees can't recite those things to you.

21                 Now, one other thing to bear mind is this  
22           particular standard talks about yard storage, and yard  
23           storage of materials shall not be any closer than  
24           thirty feet from the building under construction. You  
25           know, there is a difference. Common sense will tell

1 you there is a difference between storing something  
2 down on the ground where somebody passing by might  
3 mess with it, where cars drive by their equipment.  
4 It's easier for things down on the ground to be messed  
5 with, to potentially catch fire than it is on the  
6 roof. These are the materials that shortly are going  
7 to be part of the roof. We are not -- nobody is  
8 saying that we had gasoline up there or some sort of  
9 volatile explosive liquid or something. We had  
10 shingles, roofing paper -- if we had such things --the  
11 very things that are going to be on the roof. Nothing  
12 more combustible than the roof itself, on that roof.  
13 So, there's a difference between -- there's a reason  
14 why you worry about things being down on the ground.  
15 You know, one of the primary reasons that you heard  
16 testified why we would have metal up in there is  
17 because it tends to walk off if it's down on the  
18 ground. And that's consistent with again, what Vu  
19 Nguyen said that he advises roofers to do with metal.  
20 Secure it. Not store it on the ground, but secure it.  
21 Make sure it is not subject to sliding off. That's  
22 why they put it on the flat roof and that is actually  
23 what he told them to do. Don't store it on the  
24 pitched roof. So, what they were doing was consistent  
25 with what a roofing consultant would advise them to

1 do.

2 Now, supposedly this area is behind locked doors,  
3 a locked hatch and we are suppose to just assume that  
4 that was the case. That nobody had forgotten to lock  
5 the door behind them when they did something in  
6 mechanical area. We don't know. But we do -- we do  
7 have this -- I'm sorry. We do have this document,  
8 this Southern Elevator document that indicates the  
9 Southern Elevator was there working on the elevator --  
10 doing maintenance on the elevator.

11 I point out to you and you can make whatever  
12 inference -- draw whatever inference you can from the  
13 date. But that would appear to indicate that it was  
14 dated the fourth, then it was dated the fifth, then it  
15 was dated the forth again. Who knows. I can't give  
16 you anything more then that. That would be  
17 speculation, but you do have the only item up there  
18 that is mechanical on that roof is a ventilation fan  
19 for the elevator shaft. So, we are just suppose to  
20 assume that these doors were locked and the roof hatch  
21 was locked. One witness indicated that he seen over  
22 the course of time that he had been there people come  
23 out of that roof hatch. So, I just offer that to you,  
24 because again, Pickens is being -- you're being asked  
25 to hold Pickens responsible for a fire that took place

1 23 hours after it left work. Twenty-three hours  
2 later. When at most it had left shingles, roofing  
3 paper, things that are designed as witnesses said, not  
4 to catch fire but in fact resist fire. So that's the  
5 elephant in the room, is causation. Is proximate  
6 cause of this fire.

7 What Mr. Vogt put up there at the beginning, the  
8 seven things at the beginning of the case and what he  
9 showed you again, the seventh thing -- and I wrote  
10 this down -- that he said at the beginning of the case  
11 was, but for storage of combustibles the fire would  
12 not have occurred and spread to Bancroft and Owens.  
13 And that's exactly what he put back up there and said  
14 hold him to it. But he can't say that the fire  
15 wouldn't have occurred but for this storage of those  
16 materials because no one can determine what caused the  
17 fire. He's stuck with that. His own experts can not  
18 determine. Even Dan Arnold said I am not cause and  
19 origin expert. Ottis Driggers said, could not  
20 determine the cause. And they want you to say, oh,  
21 the causation of ignition is not important here. Of  
22 course if what you are thinking is well, since I can't  
23 prove the cause of ignition that it's not important.  
24 Just don't look at the person behind the curtain.  
25 That's not important. So we move to the spread. But

1 folks, if we don't have a fire to start with then we  
2 don't ever get to the spread of the fire and that's  
3 the problem. That's the whole case, is that you don't  
4 have a fire without ignition.

5 Mr. Vogt -- and I think this was just a slip of  
6 the mind, he said to you you need three things for a  
7 fire to occur; oxygen, fuel and combustibles. And he  
8 skipped over the fact the third thing is actually  
9 ignition. The fuel is the combustibles, but you need  
10 ignition and we don't have it. We don't know what it  
11 is.

12 So, you know all we have is -- to go on -- this is  
13 what this roof looked like. This is the back side of  
14 roof that we were working on on the day. These are --  
15 our guys were over here up on this other side. And  
16 there is some metal up there, and you have seen on the  
17 other side that they got their shingles. They got  
18 shingles up there and they are doing their work. And  
19 that's the only evidence we got of what it looked like  
20 up there on the roof. Even if they stored roofing  
21 paper, shingles on the flat roof, even if they weren't  
22 suppose to, it's not foreseeable that that is going to  
23 start a fire. Those very things are designed the way  
24 they are to resist fire. So -- so they fail on but  
25 for there being there the fire wouldn't have happened.

1 and they fail on the foreseeable. It has got to be  
2 foreseeable.

3 Now, I want to talk about Dan Arnold because if we  
4 just ignore ignition as the plaintiff wants you to do  
5 and get to Dan Arnold's notion that the fire would not  
6 have spread without combustibles being there.

7 Remember that he said that it was very important to  
8 his analysis that picture showing the flame height.

9 But he made a mistake. He thought that was early,

10 early, in the fire. That's what everything looked

11 like before the fire department got there. But it is

12 clear and you will see the pictures and you will see

13 all of the date stamps, the time stamps, what's going

14 on there is actually 45 minutes after the fire has

15 started. You don't see flames. You see smoke coming

16 up from that flat roof area and perhaps you know, he

17 said that TPO roof is indeed flammable. It is going

18 to produce smoke. But you have no basis, no factual

19 basis, to say you know what, Mr. Arnold, your analysis

20 is correct because his assumptions are wrong.

21 So, that's the defense. That is our view of the

22 case that we present to you all. I talked to you

23 about the burden of proof. Judge Alford will tell you

24 all of the law that applies here, but ladies and

25 gentlemen all anybody can ask of you in this case is

1 to apply your God given common sense. You don't leave  
2 that at the door when you walk in the courtroom.  
3 Apply that common sense to the law and the facts that  
4 you heard and if you do that I think you will find  
5 that you have no choice but to find for the defendant  
6 in this case.

7 Thank you.

8 THE COURT: Yes, sir.

9 MR. VOGT: Ladies and gentlemen, Mr. Shealy is  
10 absolutely correct. I did make a mistake. You need a  
11 source of ignition. I want to make sure understood  
12 that. I believe I said several times, the critical  
13 part of that fire triangle; oxygen, source of ignition  
14 and fuel is any one of those items. You take oxygen  
15 away there is no fire. You take combustibles away  
16 there is no fire. You take the source of ignition  
17 away there is no fire. This isn't an attempt by  
18 Winthrop to hide the ball. This is simply an attempt  
19 by the defendant, if you recall, I think he said his  
20 client is a scape goat -- to try to paint Winthrop in  
21 the light of a big, bad bully. And that's not the  
22 case. And that's not the relationship between these  
23 parties. They have a business relationship that  
24 continues. They have a dispute here and it's your  
25 duty to resolve it based on the facts, not innuendo.

1 Nothing else. Let me first address this whole notion  
2 of an elevator person. The defendant didn't call the  
3 elevator person. The defendant didn't call anybody  
4 from that company who serviced that elevator, whose  
5 document it was. That wasn't a Winthrop document.  
6 They could have. They chose not too. All right. The  
7 elevator mechanical room is on the third floor. To  
8 get to the roof you have to go through the locked  
9 doors and then the roof hatch. The defendant made a  
10 suggestion that we don't know if the doors were  
11 locked. James Howell, his testimony came, Officer  
12 James Howell at the end of very long day. Remember he  
13 came running in and he was huffing. We were trying to  
14 get him on the stand and get him out. Defendant  
15 didn't ask him one single question. He said I  
16 unlocked the doors for the fire department so they  
17 could get into the attic. That's the only evidence in  
18 this case. The absence of evidence is no evidence.

19 So, Mr. Shealy, who I respect very much, has to  
20 admit the inconsistencies in the roofers's statements.  
21 You can't expect Randy Pruitt, you can't expect  
22 Brandon Lusk to know the code provisions.

23 Pickens Roofing is a licensed roofing contractor.  
24 In order to be a licensed roofing contractor you have  
25 to know the rules that apply to your profession. It

1 may not be Brandon Lusk, it may not be Matthew Pruitt,  
2 may be not even Randy Pruitt. But how about Clint  
3 Robinson, the project manager. Clint Robinson who  
4 said he went through the specifications and if you  
5 recall there is specific provision in the  
6 specification that relates to 241. He didn't know  
7 anything about 241. I am not saying he is a bad  
8 person. I am not saying anybody from Pickens is a bad  
9 person. But they don't know the code that is related  
10 to their work. Roofing. It's their responsibility.  
11 The state mandates certain contracts and in those  
12 contract specifications it says contractors like  
13 Pickens have to comply with code. I think that is  
14 reasonable. If Pickens didn't think that was  
15 reasonable they wouldn't bid on the work. They  
16 wouldn't get all these jobs at Winthrop. It's give  
17 and take. You can't pick and choose. If you sign a  
18 contract you can't say, well, I don't really like that  
19 term. I don't really understand what it means and if  
20 something arises that implicates that term like  
21 storage, you can't stick your head in the ground and  
22 say, well, we're just roofers. That is not how a  
23 contract works. That is not how the code works. The  
24 code says outdoor storage. It doesn't say on the  
25 ground storage. Outdoor storage. On the roof is

1 outdoor storage. In that contract specifications  
2 there's a couple of clauses I want to point out to you  
3 and I know I read these many times. The word  
4 supervise and inspect wherever used herein in  
5 connection with duties or activity of the owner shall  
6 in no way, expressed or implied relieve the contractor  
7 of his responsibilities for the safety of the workmen,  
8 the preservation of work and proper performance under  
9 this contract. Owner shall not be responsible for the  
10 safety of the workmen, safeguarding of work or the  
11 proper performance of the contract.

12 Winthrop is not responsible for Pickens. It's  
13 like hiring any other licensed contractor, an  
14 electrician, a plumber. You hire an electrician you  
15 expect they know the code, right. The contract  
16 mandates it. You can't escape that provision. Sub  
17 part D, no inspector shall have the power to waive the  
18 obligations resting upon the contractor to furnish  
19 good material and good work as herein prescribed.

20 Mr. Shealy talked about Vu Nguyen. Vu Nguyen  
21 said he never saw materials on the flat roof. But it  
22 is not Mr. Nguyen's job as project engineer to make  
23 sure that Pickens is following the code. It is not  
24 his job to make sure that they are taking those types  
25 of safety precautions. His job is to make sure the

1 shingles are put up properly. Remember that report we  
2 showed you. To make sure the flashing is done  
3 properly. It is not his job to follow behind. The  
4 last time anybody from Stafford Engineering was on  
5 that roof was a month before the fire. Okay.

6 You know Mr. Shealy talked about scape goat during  
7 his opening statement and he mentioned it again today.  
8 I haven't heard that term in a long time, so I went  
9 back and kind of looked back where it came from, and  
10 where it came from was villages in Europe -- and this  
11 is very early, early times -- if there was a famine,  
12 or if there was a plague, often times the villagers  
13 would get together and they make a sacrifice of a  
14 person were they drive a person out of the village.  
15 All right. That is where the term scape goat comes  
16 from. So nothing in the term scape goat relates to  
17 this case because if anybody is trying to shift  
18 responsibility here away from their obligations under  
19 the code, away from their obligations under the  
20 contract it's Pickens. They are trying to blame Vu  
21 Nygen. They are trying to blame Winthrop. He said,  
22 well, the code requires a fire program manager and he  
23 asked Mr. Hardin about that, vice president of the  
24 facilities management. Mr. Hardin indicated well, how  
25 we meet our obligations under the code we hire a

1 licensed general contractor and then we have very  
2 detailed specifications which require them to -- among  
3 other things -- to comply with code.

4 In this case the issue is storage, notwithstanding  
5 what Mr. Shealy says about the meaning of the storage  
6 provision. I don't think there is any dispute here  
7 there is only two places they can store materials; on  
8 the ground and in the parking lot. The change order  
9 is a big issue of discussion before the contract even  
10 started. It wasn't like Clint Robinson wasn't aware  
11 that he couldn't use another location for storage. He  
12 knew. He negotiated more money for Pickens. So to  
13 suggest that Winthrop is responsible for this fire  
14 because it had a duty to go around and inspect on a  
15 daily basis Pickens's work stretches the imagination.  
16 And its certainly not part of the contract between the  
17 two parties. That's separate and distinct from the  
18 breach of contract which we talked about.

19 So, Mr. Shealy again talked a lot about the but  
20 for incident. I did say but for the storage of  
21 combustibles this fire would not have occurred or  
22 spread. This fire would not have occurred and spread  
23 to the adjoining pitched roofs. Mr. Arnold's opinion  
24 is unrefuted. I asked Mr. Arnold about this time  
25 difference. It wasn't relevant. There is no dispute

1 the fire started on the flat roof. The defendant  
2 stipulated to that. We know the fire started on the  
3 flat roof. What you've seen is the fire through that  
4 scupper and if you remember Mr. Arnold described is as  
5 the shape of Oklahoma. Well, what Chief Driggers said  
6 when he described the area of origin was the area  
7 closer to the ladder, further back. So naturally as  
8 the fire grew combusting the materials left on the  
9 roof by Pickens that's when the flames got higher.  
10 That's when the flames got to the pitched roof.  
11 That's when you would see it from the ground four  
12 stories below taking a picture going through that  
13 scupper. There's absolutely no inconsistencies with  
14 respect to Mr. Arnold's opinion. There has been no  
15 testimony from anybody else in this case that contest  
16 that.

17 The interesting thing about this whole notion of  
18 well, Winthrop can't prove the source of ignition so  
19 it shouldn't recover. It's merely a shield. It's an  
20 attempt to put aside the responsibility Pickens has to  
21 comply, put aside Pickens responsibility under the  
22 contract to store its materials in the appropriate  
23 places. So you need those three things to start a  
24 fire and I will get it right this time, oxygen, fuel  
25 and source of ignition. Take any one away, you don't

1 have a fire that would have occurred and spread to the  
2 adjoining pitched roofs.

3 Nobody disputed these are expert roofers who put  
4 down TPO roofs. Mr. Arnold's testimony that a fire on  
5 a TPO roof alone would not have spread. Pickens has  
6 put down those roofs many, many times. They know the  
7 composition of those roofs. They choose not to refute  
8 Mr. Arnold's opinion in that regard.

9 I thanked you earlier for your time and your  
10 patience. The only thing I want to leave you with is,  
11 this case is not about Winthrop University seeking  
12 people to be responsible for damages. This case is  
13 about Winthrop University proving a breach of contract  
14 that caused this damage. This case is about Winthrop  
15 University proving that Pickens Roofing's negligence  
16 breach of code caused its damages.

17 Fire is a foreseeable event when you store  
18 materials in such a manner that it violates the fire  
19 code. That is exactly what happened here. For that  
20 reason I ask for a verdict in favor of Winthrop  
21 University.

22 Thank you, again.

23 THE COURT: Madame forelady and members of the  
24 jury panel, you have heard final arguments of counsel.  
25 It is now time for me to charge you and instruct you

1 with regard to the law that applies to the issues in  
2 this case. You will not have these instructions  
3 written down for you back in the jury room to look at  
4 so you will have to call on your collective memories  
5 as to what I instruct you the law is.

6 Once you begin your deliberations if you still  
7 have some question or do not understand some part of  
8 the law or all of it for that matter, upon your  
9 request I will bring you back out in to the jury room  
10 and re-instruct you on any part of it which you need  
11 to be instructed. But I ask that you listen  
12 attentively now. It's rather lengthy, I will tell you  
13 that. It's not easy to understand and so I will ask  
14 for your undivided attention at this time.

15 In this case of course is Winthrop trustees for  
16 the State of South Carolina is the plaintiff, versus  
17 Pickens Roofing and Sheet Metals Incorporated, the  
18 defendant. Now Pickens Roofing and sheet Metals  
19 Incorporated is a corporation. Under our laws a  
20 corporation is treated the same as if it were a  
21 person. It may sue and be sued in a court of law. A  
22 corporation is entitled to have the same fair trial at  
23 your hands as a private individual would have. All  
24 persons including corporations stand equal before the  
25 law and to be dealt with as equals in a court of

1 justice.

2 I charge you also that of course who the parties  
3 in this case are makes absolutely no difference to you  
4 in your decision. Your decision is to be based solely  
5 and squarely on the testimony and evidence that comes  
6 in through the law and as the fact finders determine  
7 the truth of those facts and evidence and apply that  
8 to the law as instructed by the Court and to render a  
9 decision which is fair and impartial in this case  
10 regardless of who the party maybe. That is what our  
11 use justice system is all about.

12 Now, Pickens Roofing and Sheet Metal Incorporated  
13 and the defendant agrees and stipulates that all of  
14 its current and former employees who testified in this  
15 case and who worked in any capacity on the Winthrop  
16 project, which is the subject of this action, were  
17 employees of Pickens Roofing and Sheet Metal  
18 Incorporated acting within the scope of their  
19 employment. You will therefore not be concerned about  
20 this issue at all. They are part of the defendant in  
21 this case, their actions.

22 Madame forelady and members of the jury panel, you  
23 have heard the evidence and arguments of both parties.  
24 I will now explain the law to you that applies to this  
25 action.

1 Winthrop University, for the State of South  
2 Carolina, claim they have been injured by the actions  
3 of the defendant Pickens Roofing and Sheet Metals  
4 Incorporated. In bringing the lawsuit the plaintiff  
5 claims that the defendant should compensate them for  
6 their injuries and damages. Under our constitution  
7 and code of laws only you the jury can make the  
8 findings of facts in this case. I am not permitted to  
9 indicate to you how I may feel about the testimony and  
10 evidence that has been presented. Throughout this  
11 trial my intent has been to be fair and impartial  
12 towards each of the parties involved.

13 During the trial of this case we had testimony by  
14 way of depositions of a witness taken outside of the  
15 courtroom. The witness did not appear personally  
16 before you. The deposition was taken in a manner  
17 prescribed by law and you will consider the testimony  
18 from this deposition just as you would had the witness  
19 been on the stand testifying. You take this  
20 deposition testimony in connection with all of the  
21 other testimony and you assess the credibility of  
22 those witnesses and anything in the record that will  
23 aid you in so doing. You consider that evidence along  
24 with the testimony of the witnesses who have appeared  
25 in person and you determine from all of the evidence

1 in the case whether by exhibits, witnesses present or  
2 by deposition what the truth of this controversy is by  
3 the facts as you find them to be and by application  
4 of the law I am giving you at this time.

5 You heard the testimony of a witness who had  
6 special knowledge, skill, experience, training or  
7 education in a particular field who have given  
8 opinions as to matters in which he is skilled in.

9 Determining the weight to be given to such opinion you  
10 you should consider the qualifications and credibility  
11 of the expert witness and the reasons given for his  
12 opinion. You are not bound by such opinions. Give  
13 them the weight, if any, to which you deem entitled.

14 To determine the facts in this case you will have  
15 to evaluate the credibility, which means the  
16 believability of each witness. Some of the things you  
17 may consider as you decide whether or not to believe a  
18 witness's testimony about a particular matter include  
19 the following; what was the manner and appearance of  
20 the witness who testified, was he or she straight  
21 forward or hesitant in answering. Was the testimony  
22 of the witness consistent or inconsistent at any time.  
23 How did the witness come to know the facts that he or  
24 she testified to or what was his or her ability to  
25 know these is facts. Is there some reason a witness

1 would want to give testimony which would help or hurt  
2 one side or the other. In other words was the witness  
3 bias or prejudiced. Was the testimony of a witness  
4 strengthened or weakened by other testimony or  
5 evidence. You could believe as much or little of each  
6 witness's testimony as you think proper. You may  
7 believe the testimony of a single witness against many  
8 witnesses or just the opposite. Of course you do not  
9 determine the truth merely by counting the number of  
10 witnesses presented by each side. Throughout this  
11 process you have but one objective and that is to seek  
12 the truth regardless of its source.

13 Now the same constitution and laws which designate  
14 and make you the finders of the facts also makes me  
15 the soul and only instructor of the law. You must  
16 accept as correct the law as I give it to you. That  
17 means you should not be concerned with what you think  
18 the law should be, but only what I instruct you the  
19 law is now in this state.

20 The questions of fact which you are to determine  
21 are contained in papers which we call Pleadings. And  
22 action is commenced when the plaintiff files a  
23 Complaint against the defendant who in turn files an  
24 Answer. I am not going to read those papers to you,  
25 but I will comment on certain allegations and defenses

1 raised in both the Complaint and the Answer during  
2 this charge on the law.

3 The plaintiff has alleged two causes of action in  
4 their Complaint; negligence and breach of contract.  
5 Now, to state a cause of action for breach of contract  
6 the plaintiff must set forth in their Complaint three  
7 essential claims; first, that the parties entered into  
8 a valid contract, second, that the defendant breached  
9 the terms of contract in the manner set forth in the  
10 Complaint, and third that the defendant's breach of  
11 contract proximately caused damages to the plaintiff.

12 To state a cause of action against a defendant for  
13 negligence the law requires that the plaintiff to set  
14 out in their complaint three essential claims. These  
15 essentially claims are as follows; first, that the  
16 defendant was negligent in one or more of the ways  
17 stated in the Complaint. Later in this instruction I  
18 will explain to you what is meant by the word legal  
19 term negligence. Second, that the plaintiff was  
20 damaged and third, that the negligence of the  
21 defendant was the proximate cause of the plaintiff's  
22 damages. Later in this instruction I will explain to  
23 you what is meant by the legal term proximate cause.

24 Madame forelady and members of the jury panel,  
25 this case has been brought by the plaintiff, the

Jury Charge

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1 Winthrop University Trustees of the State of South  
2 Carolina against the defendant, Pickens Roofing and  
3 Sheet Metal Incorporated on the causes of action of  
4 negligence and breach of contract. The plaintiff,  
5 Winthrop University Trustees for the State of South  
6 Carolina has the burden of proving their claims in  
7 this case. They must meet this burden by proving  
8 their claims and damages by the greater weight or  
9 preponderance of the evidence. What we mean by the  
10 greater weight of the evidence can be illustrated by  
11 imagining a traditional set of scales such as those  
12 used by merchants in years past to weigh cloth and  
13 other goods. When the case begins the scales are  
14 even. After all the evidence has been presented if  
15 the scales should remain even or if they should tip  
16 even slightly in favor of the defendant then the  
17 plaintiff would have failed to met their burden of  
18 proof and your verdict would be for the defendant. If  
19 on the other hand the scales should tip even slightly  
20 in favor of the plaintiff then they would have met  
21 their burden of proof and your verdict would be for  
22 the plaintiff. Of course, there is no way to weigh  
23 evidence accept through the exercise of your own  
24 common sense and good judgement. It is entirely a  
25 mental process and the evidence that you should give

1 the most weight to is that which convinces you of its  
2 truth regardless of from what or what source -- or  
3 from what source it comes. However, you should not  
4 consider sympathy, passion or prejudice for or against  
5 any party when weighing the evidence.

6 Madame forelady and members of the jury panel, as  
7 I instructed you at the beginning of the trial the  
8 evidence which you are to decide the facts of this  
9 case consist of the following; the sworn testimony of  
10 the witnesses, both on direct and cross examination  
11 regardless of who called the witness. The exhibits  
12 which have been received into evidence will be taken  
13 back to the jury room for you to consider further in  
14 your deliberations and any stipulation of counsel.  
15 There has been stipulation of counsel. That was made  
16 known to you. You can consider that along with all  
17 the other evidence in the case and give it such weight  
18 as you deem appropriate.

19 I charge you that there are two kinds of evidence  
20 in a case, direct and circumstantial evidence. Direct  
21 evidence is proof of a fact such as the testimony of  
22 an eye-witness. Circumstantial evidence is indirect  
23 evidence. That is proof of a chain of facts from  
24 which you could find that another fact exists even  
25 though it is not been proven directly. You are

1 entitled to consider both kinds of evidence and the  
2 law permits you to give equal weight to both.  
3 However, it is up to you to decide how much weight to  
4 give any evidence. It is also up to you to decide  
5 whether a fact has been proved by circumstantial  
6 evidence. In making that decision you must consider  
7 all the evidence in the light of reason, common sense  
8 and experience.

9 I will charge you first with regard to the  
10 elements of a breach of contract. Plaintiff has  
11 alleged that the defendant breached the parties  
12 contract. A contract is an obligation which arises  
13 from actual agreement of the parties manifested by  
14 words, oral or written or by conduct. In order to  
15 prove that the defendant breached a contract plaintiff  
16 must prove to you by a preponderance of the evidence  
17 that there existed a binding contract between the  
18 parties that the defendant breached or unjustifiably  
19 failed to perform according to the terms of the  
20 contract and that plaintiff suffered damages as a  
21 direct and proximate result of the breach.

22 Now, in this case the parties agree that there was  
23 a binding contract in writing. The word breach as it  
24 applies to contract is defined as a failure without  
25 legal excuse to perform any promise which forms an

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1 oath or part of a contract, including the refusal of a  
2 party to recognize the existence of the contract or  
3 the doing of something inconsistent with its  
4 existence. When performance of a duty and under  
5 contract is due any nonperformance is a breach. In  
6 other words a party breaches a contract when he does  
7 not perform as he agreed to perform under the  
8 contract. A party's contractual duty is find in the  
9 obligation assumed by the party to the contract. A  
10 parties failure to comply with the contractual duty  
11 constitutes the breach. A breach occurs when a party  
12 refuses or neglects to perform some duty required by  
13 the terms of the contract. The plaintiff is entitled  
14 to recover only if you find that they have proved by  
15 the preponderance of the evidence that the defendant  
16 did in fact breach the contract between the two  
17 parties and that that breach resulted in proximate --  
18 was a proximate cause to the damage that is alleged by  
19 the plaintiff.

20 I charge you madame forelady and the members of  
21 the jury panel, that a mere fact that an accident  
22 happened standing along does not permit you to assume  
23 that someone had to have caused it. The fact that a  
24 party is damaged or the fact that an incident occurs  
25 is insufficient to prove negligence.

1 I will explain to you now what is meant by the  
2 word negligence. Negligence means that a person did  
3 not use the same amount of care that a person of  
4 ordinary reason and prudence would exercise in the  
5 same circumstances. The word careless means the same  
6 thing. It could be said that a negligent person has  
7 done something that a reasonable person would not have  
8 done if faced with the same situation or on the other  
9 hand that he or she failed to do something that a  
10 reasonable person would have done or both. To  
11 determine whether a particular act is negligent you  
12 should compare that act with the manner in which a  
13 person of ordinary reason and prudence would have  
14 acted in a similar circumstances.

15 Where the cause of the plaintiff's damages maybe  
16 reasonably at contributed to act for which the  
17 defendant is not liable to one for which it is liable  
18 the plaintiff has failed to carry the burden of  
19 establishing that the defendant's negligence was the  
20 proximate cause of this damage.

21 To recover in case the plaintiff must prove that  
22 the defendant was negligent. Even if you should find  
23 that the plaintiff has proved the defendant to have  
24 been negligent they would not be entitled to a verdict  
25 unless you further found that the defendant's

1 negligence was the proximate cause of the plaintiff's  
2 damages. Proximate cause does not mean the soul  
3 cause. The defendant's conduct can be a proximate  
4 cause if it was at least one of the direct concurring  
5 causes of damages. The law defines proximate cause to  
6 be something to chain ever events which in the end  
7 brings about the injury. In other words proximate  
8 cause is a direct cause without which the damages  
9 would not have occurred.

10 Madame forelady and members of the jury panel, I  
11 charge you that the South Carolina Legislature has  
12 adopted the International Fire Code. At the time of  
13 the subject fire the 2006 edition of the International  
14 Fire Code carried the force of law. The International  
15 Fire Code incorporates by reference Chapter 241 of the  
16 National Fire Prevention Association codes and  
17 standards which again have the force of law. The  
18 International Fire Code provision place certain duties  
19 on owners and contractors during a construction  
20 project.

21 Madame forelady and members of jury panel, I  
22 charge you that words used in a code or standard  
23 should be given there plain and ordinary meaning  
24 unless something in the code or standard requires a  
25 different interpretation. I charge you that you must

1 apply the plain and ordinary meaning of those terms to  
2 the facts in this case. With regard to the definition  
3 of combustible is defined in the Oxford dictionary as  
4 able to catch fire and burn easily.

5 Madame forelady and members of the jury panel, I  
6 charge you with regard to the National Fire Protection  
7 Association code section 241, with regard to its scope  
8 and purpose. National Fire Protection Association 241  
9 is the standard for safeguarding construction,  
10 alteration and demolition operations. Subsection 1.1  
11 regarding the scope, this standard shall apply on  
12 structures and in the course of construction,  
13 alteration or demolition including those in  
14 underground locations. Section 1.2 with regard to  
15 purpose. This standard is intended to prescribe  
16 minimum safeguards for construction, alteration,  
17 demolition operations in order to provide reasonable  
18 safety to life and property from fire during such  
19 operations. Section one subsection 3.1 -- excuse me.  
20 Let me get this right -- subsection 1.3.1 provides  
21 that this standard provides measures for preventing or  
22 minimizing fire damages during construction,  
23 alteration and demolition operations.

24 Demolition subsection 1-3-1 defines yard storage  
25 as storage of commodities in outdoor areas. The

1 International Fire Codes chapter three provides  
2 general precautions against fire. Subsection 301.1 as  
3 to scope provides as follows; the provisions of this  
4 chapter shall govern the occupancy and maintenance and  
5 of all structures and premises or precautions against  
6 fire and spread of fire.

7 Madame forelady and members of the jury panel, I  
8 charge you in the National Fire Protection Association  
9 241, subsection 8.3 -- well, no. Chapter 8 provides  
10 for safeguarding construction and alteration  
11 operations. Subsection 8.3 regards constructional  
12 material and equipment storage. Subsection 8.3.3  
13 provides for yard storage of equipment to be installed  
14 or combustible construction material shall not be  
15 stored closer than thirty feet from the structure  
16 under construction or alteration. Subsection 315.3.1  
17 of the International Fire Code provides as follows,  
18 storage beneath overhead projection from buildings,  
19 combustible materials stored or displayed outside of  
20 buildings that are protected by automatic sprinklers  
21 shall not be stored or displaced under non-sprinkler  
22 cage, canopies or other projections or overhangs.

23 I charge you with regard to NFPA 241 with regard  
24 to chapter seven, entitled fire protection. 7.1  
25 provides that the safety -- fire safety program and

1 overall construction of demolition fire safety program  
2 shall be developed, essential items to be emphasized  
3 include the following; one, good housekeeping. Two,  
4 on site security. Three, insulation of new fire  
5 protection system as construction progresses. Four,  
6 preservation of existing systems during demolition.  
7 Five, organization and training of on site fire  
8 preventing. Number six, development of a pre-fire  
9 plan with a local fire department. Seven, rapid  
10 communication. Eight, consideration of special hazard  
11 resulting from previous occupancies. Nine, protection  
12 of the existing structures and equipment from exposure  
13 fires resulting from construction, alteration and  
14 demolition operations.

15 Subsection 7.2 regards owner's responsibilities  
16 for fire protection. 7.2.1 provides as follows; the  
17 owner shall designate a person who shall be  
18 responsible for the fire prevention program and who  
19 shall insure that it is carried out to completion.  
20 7.2.1.1 provides as follows, this fire prevention  
21 program manager shall have the authority to enforce  
22 the provisions of this and other application fire  
23 protection standards.

24 Subsection 7.2.1.2 provides as follows; the fire  
25 prevention program manager shall have knowledge of the

1 applicable fire protection standards, available fire  
2 protection systems and fire inspection procedures.

3 Subsection 7.2.1.3 provides that inspection  
4 records shall be available for review by the authority  
5 having jurisdiction.

6 I am not sure if I defined this for you so let me  
7 go over this with you. In section 3.3.1.2 of the  
8 uniform fire codes, provides -- provides as storage of  
9 commodities in outdoor areas.

10 Madame forelady and members of the jury panel, I  
11 charge you that violation of regulation as adopted by  
12 state law constitute negligence per se. Therefore, if  
13 you find the defendant by and through its agents or  
14 employees had violated one or more state regulations  
15 the defendant would be negligent. However, the  
16 defendant can not be held liable unless that  
17 negligence was a proximate cause of the plaintiff's  
18 injuries. In this case the plaintiff -- excuse me,  
19 the defendant is also alleging that the plaintiff was  
20 negligent by violating a regulation in this case.  
21 Therefore, if you find that the plaintiff by and  
22 through its agents or employees had violated one or  
23 more state regulations the plaintiff would be  
24 negligent. However, again, you would consider whether  
25 that negligence was a proximate cause of the

1 plaintiff's damages.

2 Madame forelady and members of the jury panel, I  
3 charge you that negligence is not actionable unless it  
4 proximately causes the plaintiff's damage. Proximate  
5 cause is the efficient or direct cause of the alleged  
6 damages. Proximate cause requires proof of both  
7 causation and fact and legal cause. Causation and  
8 fact is proved by establishing the plaintiff's damages  
9 would not have occurred but for the defendant's  
10 negligence. Legal cause is proved by establishing  
11 foreseeability. The touchstone of proximate cause in  
12 South Carolina is foreseeability. That is the  
13 foreseeability of some damage from a negligent act or  
14 omission is a prerequisite to it being a proximate  
15 cause of the damage for which recovery is sought. The  
16 test of foreseeability is whether some damage to  
17 another is the natural and probable consequence of the  
18 complained of act. A defendant may be held for  
19 anything which appears to have been a natural and  
20 probable consequence of its negligence. For an act to  
21 be proximate cause of damages the damages must be a  
22 foreseeable consequence of the act. Foreseeability is  
23 not determined from hindsight, but rather from the  
24 defendant's perspective at the time of the complained  
25 of act. The law requires only reasonable foresight.

1           When the damages complained of are not reasonably  
2           foreseeable in the exercise of due care there is no  
3           liability.

4           It is not necessary for a plaintiff to demonstrate  
5           that the plaintiff should have foreseen his or her  
6           negligence would probably cause damage to someone.  
7           Negligent conduct is the proximate cause of damage if  
8           that damage is within the scope of the foreseeable  
9           risk of the negligence. While it is not necessary  
10          that the defendant must have contemplated or could  
11          have anticipated the particular event which occurred,  
12          liability can not rest on mere possibilities. A  
13          defendant can not be charged with that which is  
14          unpredictable or that which could not be expected to  
15          happen. A plaintiff therefore whose legal cause by  
16          establishing the damages in question occurred as a  
17          natural and probable consequence of the defendant's  
18          negligence. In determining whether a consequence is  
19          one that is natural and probable the defendant's  
20          conduct must be viewed in the light of the attendant  
21          circumstances. Proximate cause does not mean the soul  
22          cause. The defendant's conduct can be a proximate  
23          cause if it was at least one of the direct concurring  
24          causes of the alleged damages. The law defines  
25          proximate cause of the damages to be something that

1 produces a natural chain of events which in the end  
2 brings about the alleged damages. In other words  
3 proximate cause is the direct cause without which the  
4 damages would not have occurred. If the action would  
5 have happen as a natural and probable consequence even  
6 in the absence of the alleged breach then the  
7 plaintiff has failed to demonstrate proximate cause.  
8 Further, when the cause of plaintiff's damages may be  
9 reasonably attributed to the an act for which the  
10 defendant is not liable, as to one for which it is  
11 liable the plaintiff has failed to carry the burden of  
12 establishing that its damages were the proximate cause  
13 of the defendant's negligence.

14 Now, if that wasn't complicated enough I can give  
15 you some more. As one of the defenses in this case  
16 the defendant alleges also that the plaintiff,  
17 Winthrop University was also negligent. And they have  
18 alleged the affirmative defense of comparative  
19 negligence complaining that the plaintiff was  
20 negligent and that such negligence was a legal cause  
21 of the plaintiff's damage. The defendant has the  
22 burden of proving negligence on the part of the  
23 plaintiff. If the plaintiff was negligent and the  
24 plaintiff's negligence was greater then the negligence  
25 of the defendant then the plaintiff may not recover

1 damages. If the plaintiff was negligent but their  
2 negligence was less than that of the defendant, then  
3 the plaintiff may recover damages but the amount of  
4 it's damages shall be reduced in proportion to the  
5 amount of their negligent. The defendant's defense  
6 essentially says this, even if the jury should find  
7 that I was at fault, the plaintiff was more at fault  
8 then I was and the fault of each of us combined and  
9 concurred with that of the other to act as the  
10 proximate cause of the accident without which the  
11 accident would not have happened. In other words it  
12 required the fault of each of us for the accident to  
13 have happened, but the plaintiff was more at fault  
14 then I was. As I said, the plaintiff has the burden  
15 of proving the negligence and fault if any of the  
16 defendant. The defendant has the burden of proving  
17 the negligence and fault, if any, of the plaintiff and  
18 the degree of such.

19 Where negligence has been established on the part  
20 of both the defendant and the plaintiff you must weigh  
21 or compare the respective contributions of each to the  
22 occurrence. You must consider the conduct of each  
23 person involved as a whole in order to determine  
24 whether one made a larger contribution then the other.  
25 In making such an allocation of fault you may consider

1 the following; whether the conduct was merely  
2 carelessness or whether it was done consciously with  
3 an awareness that negligence was involved. Two, the  
4 seriousness of the risk created by the conduct.  
5 Third, the relative closeness of the cause or  
6 relationship of the conduct and the damage. Fourth,  
7 any other facts and circumstances indicates which you  
8 find are appropriate on the question in comparing  
9 negligence.

10 Comparative negligence will defeat recovery by the  
11 plaintiff only if the plaintiff's fault was greater  
12 than the defendant's fault. Another way of saying  
13 this is to say that the plaintiff can recover only if  
14 their fault, if any, is less than or equal to that of  
15 the defendant. Therefore, in order to prevent a  
16 verdict in favor of the plaintiff injured by the  
17 negligence of the defendant the defendant has the  
18 burden of proving by the greater weight or  
19 preponderance of the evidence that the plaintiff was  
20 negligent and that the plaintiff's fault was greater  
21 than that of the defendant. Again, that fault would  
22 have to be a proximate cause of the plaintiff's  
23 damages.

24 If the defendant has failed in its burden of  
25 proving that the plaintiff was more negligent or at

1 fault then the plaintiff would be entitled to a  
2 verdict. However, if the defendant has proved that  
3 the plaintiff was to some degree negligent or at fault  
4 then the verdict would be reduced by the degree or  
5 consent of the plaintiff's own fault. This is so  
6 because I have told you where negligence has been  
7 established on the part of both the defendant and the  
8 plaintiff then you must weigh or compare the  
9 respective contributions of each party to the  
10 occurrence and I remind you again that the plaintiff  
11 has the burden of proving the fault or negligence of  
12 the defendant and the defendant has the burden of  
13 proving, again, the burden of proving by a  
14 preponderance of the evidence the negligence or fault,  
15 if any, of the plaintiff and negligence would not be  
16 actionable unless you further found it was proximate  
17 cause of damage to the plaintiff.

18 Madame forelady and members the jury panel,  
19 nothing that I may have said or done during the course  
20 of this trial has been in any way to express or  
21 suggest a view of the case, an opinion as to the  
22 facts, the weight of the evidence or the credibility  
23 of the witnesses. If any of my actions or words have  
24 seemed to so indicate, you will disregard such and  
25 form your own opinion as to these matters. I am

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1 required to declare the laws I've done through these  
2 instructions now being given to help guide you to a  
3 just and lawful verdict. Whether some of these  
4 instructions will apply would depend on what you find  
5 to be the facts. The fact that I instructed on  
6 various subjects in this case must not be taken as  
7 indicating an opinion to this court as to what you  
8 should find to be the facts or as to which party is  
9 entitled to your verdict. You have been selected as  
10 fair and impartial jurors sworn to impartially try and  
11 determine the facts of this case and when you complied  
12 with your acts to do so then no one will have the  
13 right to criticize your verdict and you will have  
14 fully discharged your duty as jurors. You are to  
15 decide this case according to the testimony you have  
16 heard from the lips of the sworn witnesses along with  
17 other evidence introduced during the course of the  
18 trial. I charge you as jurors you must decide the  
19 issues in this proceeding without bias, without  
20 prejudice to any party. You can for the allow  
21 yourself to be governed by sympathy, by prejudice, by  
22 passion, by public opinion or any other arbitrary  
23 factor. Both the plaintiff and the defendant have the  
24 right to expect that each of you will carefully and  
25 impartially consider all of the evidence in the case

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1 and you will follow the law as I have explained it to  
2 you.

3 Madame forelady and members of the jury, I charge  
4 you -- well, I charge the jury that the verdict of the  
5 jury must be unanimous verdict of all 12 jurors. All  
6 12 jurors must agree on the verdict which the  
7 foreperson will be authorized to write on behalf of  
8 the jury. Madame forelady, I charge you once you  
9 begin deliberations that you maintain some order in  
10 those deliberations. Make sure that everyone who  
11 wishes to participate and to be heard during those  
12 deliberations are allowed to do so.

13 Now, I have prepared for your use in the jury room  
14 a verdict form. I will go over that form with you. I  
15 think it is pretty self explanatory, but I will go  
16 over it with you at this time. It's a little more  
17 complicated than the usual verdict form, but it's not  
18 that complicated. On the verdict form you are  
19 instructed as follows at the top of the instruction,  
20 please respond to the following questions in writing.  
21 All of the jurors answers must be unanimous, you are  
22 so told. First thing you are asked to find number  
23 one, do you find that Pickens Roofing breached the  
24 terms of its contract with Winthrop and this breach  
25 was a proximate cause of Winthrop's damages. You are

1 asked to check yes or no. There are two blanks, one  
2 by yes and one by no. You put a check mark by that  
3 particular word.

4 Second, do you find that Pickens Roofing was  
5 negligent and such negligence proximately caused  
6 Winthrop damages. Again you are asked to put a check  
7 mark by either yes or no, whichever the jury  
8 unanimously finds. You are instructed at that time if  
9 you answered no to questions number one and two stop  
10 here and sign the verdict form on page two. That is  
11 on the next page.

12 Number three -- you would go to number three only  
13 if you answered yes to questions one and two. One or  
14 two -- yeah, one and two. I beg your pardon, that's  
15 right. Now number three, do you the jury find that  
16 Winthrop was negligent and such negligence proximately  
17 caused this damage. You would put yes or no. Again,  
18 put a check mark after that question. Then you are  
19 instructed if you answered yes then proceed on to  
20 question four and you are instructed on number four,  
21 only answer question four, if you answers to both  
22 question two and three were yes. Then you are  
23 instructed taken the combined negligence that  
24 proximately caused Winthrop damages as one hundred  
25 percent, what percentage of negligence is attributed

1 to Pickens Roofing and what percentage is attributed  
2 to Winthrop. And it is listed Pickens Roofing blank  
3 percentage mark. Then the next is Winthrop, blank  
4 percentage mark and then the total is one hundred  
5 percent. So the two amounts, the percentages you  
6 place for Pickens and Winthrop have to total one  
7 hundred percent whatever that amount is. Then you are  
8 asked to please sign and date the verdict form. You  
9 will sign on the line foreperson signature and date  
10 it. When you have completed the form you will notify  
11 the bailiff and I will bring you out to receive the  
12 verdict.

13 Now, at this time I will ask you to retire to the  
14 jury room, but do not yet begin your deliberations. I  
15 have to give counsel an opportunity to request  
16 additional instructions on the law. If I deem  
17 additional instructions are necessary you will be  
18 brought back out to the courtroom. If no additional  
19 instructions are necessary I will send to you by means  
20 of the bailiff the verdict form the exhibits which  
21 have been admitted into evidence and instructions to  
22 begin deliberating. Please do not begin deliberating  
23 until you get that instruction. Please retire to the  
24 jury room all except the two alternates. I will ask  
25 the two alternates not to go into the jury room at

1 this time but just wait outside the courtroom door for  
2 further instructions.

3 (WHEREUPON, the jury leaves the courtroom.)

4 THE COURT: Exceptions or additional request to  
5 charge from the plaintiff?

6 MR. VOGT: Yes, Your Honor. The plaintiff accepts  
7 to the charge with respect to comparative fault  
8 instruction and also those charges as to NFPA 7.1 and  
9 7.21 as to the owner's responsibility under the code.

10 THE COURT: I thought you all agreed we would.

11 MR. VOGT: I agreed to the language. I didn't  
12 agree -- I think I stated earlier your --

13 THE COURT: Your objection is the owner can't be  
14 liable, is that it?

15 MR. VOGT: I believe there is no evidence of  
16 negligence to submit that matter to the jury.

17 THE COURT: Okay. Well, this is the first time  
18 you raised it, but to extent you raise it I overrule  
19 the objection. I thought we all agreed that those  
20 were the sections that applied. It's up to the jury  
21 to determine whether or not the owner was negligent or  
22 not, but I certainly think they apply in this case and  
23 it's something the jury can consider. I think there  
24 is evidence from which the jury could infer the owner  
25 had violated some regulation which would be negligence

1 per se, and then it would be a question of whether  
2 that was in any way a proximate cause. You got a  
3 better argument on that than the defendant, but in any  
4 event whether it caused anything in this case just  
5 because they didn't have somebody ---

6 But in any event I overrule the objection. What  
7 else?

8 MR. VOGT: Your Honor, and I may have you misheard  
9 when you were -- and this isn't an objection. I was  
10 concerned about when you were reading the special  
11 interrogatories to the jury, I thought I heard you  
12 say, if you find yes on one and two, and two -- though  
13 you say no on one and two don't go to three. And I'm  
14 sorry, I don't have the final version in front of me.  
15 But my concern was you it could be a breach yes for  
16 the breach of the contract, no on negligence. And the  
17 way I thought I heard you read it --

18 THE COURT: Well, I don't disagree with you. If  
19 you answer no to one and two -- in other words if they  
20 don't find a breach of contract, and they don't find  
21 negligence on the part of the plaintiff -- excuse me,  
22 on the defendant, then you can stop.

23 MR. VOGT: No, no.

24 THE COURT: Then you have a verdict for the  
25 defendant.

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MR. VOGT: Right, I thought you said yes as to the comparative fault portion of it.

THE COURT: Yeah. Now we're getting down to comparative fault it reads as follows. You all read this before and so and you approved it. But do you the jury find Winthrop was negligent and such negligence proximately cause damages. Check one, yes or no. If you answered yes go to question four. So they had to have found in question three that the plaintiff is negligent.

MR. VOGT: No, I understand Your Honor, and I just maybe have misheard.

THE COURT: Did I say it wrong? I thought I read it.

What did you understand Mr. Shealy?

MR. SHEALY: Your Honor --

THE COURT: Did I read it correctly or not?

MR. SHEALY: I think you read it correctly.

MR. VOGT: It's stated -- and let me just read it again Your Honor to myself, because I thought you said or and then and.. Because they would only get to three if it's yes as to two, right?

THE COURT: Correct.

MR. VOGT: Okay. And I apologize. I just jumped up when I thought I heard and instead of an or.

1 THE COURT: All right. Do you have any problem  
2 with it now?

3 MR. VOGT: No, the form is correct.

4 THE COURT: Well, you don't have any problem with  
5 the form?

6 MR. VOGT: No.

7 THE COURT: Or the instruction? I overrule the  
8 other. I understand you don't think the plaintiff  
9 could have been negligent. That is fine. I overrule  
10 that. Go ahead.

11 MR. SHEALY: Just one, perhaps addendum and it  
12 maybe that I just didn't hear it. I did not hear you  
13 charge section 1-408.1 of the International Fire Code.

14 THE COURT: It's possible. Let me look back. I  
15 had it to read. Did I not read it?

16 MR. VOGT: I thought you read it Your Honor, but  
17 it is again it was a lot.

18 THE COURT: Can you look it up?

19 (WHEREUPON, the court reporter searched the  
20 record.)

21 THE COURT: All right, I will bring the jury back  
22 in and instruct them. Anything else?

23 MR. SHEALY: No, Your Honor.

24 (WHEREUPON, the jury enters the courtroom.)

25 THE COURT: Madame forelady, members of the jury

1 panel, I wasn't sure whether I instructed you on this  
2 or whether I might have left this out so I will give  
3 you this one additional instruction. It will be very  
4 brief.

5 The International Fire Code provisions place  
6 certain duties on owners and contractors during a  
7 construction project. Section 1-408-1.1 requires the  
8 owner to designate a person to be the fire prevention  
9 superintendent who shall be responsible for fire  
10 prevention program and insure that it is carried out  
11 through completion of the project.

12 That is the only additional instruction. Now you  
13 may retire back to the jury room again. Do not begin  
14 deliberating until you get that instruction. If there  
15 is no additional instruction necessary I will send you  
16 a verdict form and the exhibits, instruction to begin  
17 deliberating.

18 I understand that pizza just arrived. Please  
19 retire back to the jury room. The alternates again  
20 please do not go into the jury room.

21 (WHEREUPON, the jury retires to the jury room.)

22 THE COURT: Counsel, I really hadn't had this  
23 come up. Any exceptions to the charge that I just  
24 gave?

25 MR. VOGT: No, Your Honor.

Jury Charge

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1 MR. SHEALY: No, Your Honor.

2 THE COURT: I hadn't had this come up before, but  
3 we have these alternates. Since we have this  
4 bifurcated trial I think we got to keep them here  
5 because they can't take part in deliberations, so we  
6 have to put them somewhere else.

7 MR. VOGT: Is the library, okay?

8 THE COURT: Yeah, as long as nobody goes back  
9 there.

10 MR. VOGT: The other jury room is the --

11 THE COURT: Grand jury room. Yes, might put them  
12 in there. Okay, and give them something to eat. Give  
13 them some pizza because if we have another phase of  
14 this we will have to have them. Okay. Keep them.  
15 Okay. All right. Thank you we will be at ease.  
16 Counsel please go over with the court reporter and  
17 make sure you go all through the exhibits in evidence  
18 before they go back into the jury room.

19 (WHEREUPON, the jury started deliberations at  
20 1:35.)

21 (WHEREUPON, the jury sent out a note.)

22 THE COURT: They want two things read to them.  
23 One is definition of proximate cause and the other is  
24 they want to read back the last statement about she's  
25 got ICC. I think she meant the International Fire

1 Code. It says read your last statement. So, have to  
2 give them what they want. I will ask if want anything  
3 else while they are out here.

4 All right, I will charge them on the proximate  
5 cause charge and reread section 1408.1 one of the IFC,  
6 Internation Fire Code. She's got ICC. All right.  
7 Please bring them in.

8 (WHEREUPON, the jury enters the courtroom.)

9 THE COURT: Madame forelady and members of the  
10 jury panel, I got your note indicating the request  
11 that I re-instruct you on a couple of things. One is  
12 proximate cause. A re-instruction on proximate cause.  
13 I will do that and then the next one says you need ICC  
14 code read and you got in parenthesis your last  
15 statement.

16 THE FOREPERSON: The one you gave to us.

17 THE COURT: When I brought you back out?

18 THE FOREPERSON: It's when you went over 241. All  
19 those things that were in the contract and then you  
20 said the International Code which is for as far as I  
21 know it's for the world; but you said something in  
22 there about the owner's responsibilities and I wanted  
23 that one.

24 THE COURT: Is that the last statement that I  
25 charged?

Jury Charge

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1 THE FOREPERSON: Very last statement you made.

2 THE COURT: That's what I understood. Now, I will  
3 go over this and if you want more than that you will  
4 let you know.

5 THE FOREPERSON: Okay.

6 THE COURT: Let me go over that. I charged you  
7 previously the International Fire Code provisions  
8 place certain duties on owners and contractors during  
9 a construction project. Section 1408.1 requires the  
10 owner to designate a person to be a Fire Prevention  
11 Program Superintendent who shall be responsible for  
12 the fire prevention program and ensure that it is  
13 carried out through completion of the project.

14 Now, as to proximate cause, I charged you  
15 previously that even if you find that the plaintiff  
16 has proved the defendant to have been negligent they  
17 would not be entitled to a verdict unless you further  
18 found that the defendant's negligence was the  
19 proximate cause of the plaintiff's injuries.

20 Proximate cause does not mean the soul cause. The  
21 defendant's conduct can be a proximate cause if it was  
22 at least one of the direct concurring causes of the  
23 injury. The law defines proximate cause to be  
24 something that produces a natural chain of events  
25 which in the end brings about the injury. In other

1 words -- or damage. In other words proximate cause is  
2 a direct cause without which the damage would not have  
3 occurred. Okay. Anything else that you need while we  
4 are out?

5 THE FOREPERSON: No, that answers it.

6 THE COURT: If you need anything else you will let  
7 me know.

8 THE FOREPERSON: Thank you.

9 (WHEREUPON, the jury returns to the jury room and  
10 continues deliberations.)

11 THE COURT: Exception plaintiff?

12 MR. VOGT: No, Your Honor.

13 THE COURT: Defense?

14 MR. SHEALY: Your Honor, your charge the first  
15 time also included the discussion of foreseeability.

16 THE COURT: They didn't ask for that. They asked  
17 for proximate cause and I don't want to complicate it.  
18 I asked them if that is all they want and they said  
19 they wanted proximate cause and that's what I gave  
20 them.

21 MR. SHEALY: Yes, sir.

22 THE COURT: They had it all to start with, but you  
23 know, foreseeability and that sort of thing. They  
24 asked for proximate cause.

25 MR. SHEALY: Yes, sir.

1 THE COURT: I asked them when I finished do you  
2 want more that that. Do you need more than that and  
3 they said no.

4 MR. SHEALY: Yes, sir.

5 THE COURT: I know foreseeability is something  
6 they can consider on proximate cause, but they only  
7 asked me about proximate cause. My definition to  
8 define proximate cause.

9 MR. SHEALY: Yes, sir. I guess I would object to  
10 leaving out foreseeability from the discussion of  
11 proximate cause.

12 THE COURT: Well, they didn't tell me to recharge  
13 them on everything I charged them, counsel. I can't  
14 read their minds and figure out. Foreseeability may  
15 be a portion of that, but it is not in my proximate  
16 cause charge.

17 MR. SHEALY: Yes, sir.

18 THE COURT: Okay. They heard it all the first  
19 time. They asked me to proximate cause and when I  
20 finish reading and the forelady was shaking her head  
21 yes, so I figured that is all they want. I asked do  
22 you want any more then that.

23 We will make this a Court exhibits, please.

24 (Court's Exhibit 1, jury note, marked in evidence  
25 as of this date.)

Jury Verdict

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1 THE COURT: All right, we will be at ease.

2 THE BAILIFF: Come to Order.

3 THE COURT: I understand we have a verdict.

4 Please bring the jury in.

5 (WHEREUPON, the jury enters the courtroom at  
6 4:12.)

7 THE COURT: Madame forelady, have you and the jury  
8 reached a unanimous verdict in the case?

9 THE FOREPERSON: Yes, Your Honor.

10 THE COURT: Will you please hand the verdict form  
11 up to the bailiff.

12 All right, in the case of Winthrop University  
13 Trustees for the State of South Carolina versus  
14 Pickens Roofing and Sheet Metal Incorporated the  
15 verdict form reads as follows: Number one, do you the  
16 jury find that Pickens Roofing breached the terms of  
17 its contract with Winthrop, this breach was a  
18 proximate cause of Winthrop's damages, answer yes. Do  
19 you find that the Pickens Roofing was negligent, such  
20 negligence was a proximate cause of Winthrop's  
21 damages, answer yes. Do you find -- do you the jury  
22 find that Winthrop's was negligent, such negligence  
23 was the proximate cause of its damages, answer yes.  
24 Taking the combined negligence and proximate cause of  
25 Winthrop's damages as 100 percent what percentage of

1 negligence is attributable to Pickens Roofing and what  
2 percentage is attributed to Winthrop, and the jury  
3 finds Pickens Roofing 60 percent negligent and  
4 Winthrop 40 percent negligent for a total of 100  
5 percent.

6 Madame forelady, members of the jury panel if this  
7 be your verdict so say you all by raising your right  
8 hand. Thank you. You may put your hands down. Let  
9 the record reflect that all 12 jurors raised their  
10 right hand.

11 Any questions of the jury from the plaintiff?

12 MR. VOGT: No, Your Honor.

13 THE COURT: From the defendant?

14 MR. SHEALY: No, Your Honor.

15 THE COURT: Counsel, approach just a minute.

16 (WHEREUPON, there was an off the record discussion  
17 held at the bench.)

18 THE COURT: Madame forelady and members of the  
19 jury panel, I'm not sure you understood. I hope you  
20 understood. Having decided the liability issues we  
21 still have the damages portion of this. So, we  
22 bifurcated it because we could have saved a good many  
23 witnesses in that. If you decided the liability issue  
24 in favor of the defendant we would not have had to  
25 worry about damages, but since the liability issue is

1 there we of course got a second part of this trial.  
2 But that's why we bifurcated it, but now we have to go  
3 a little further with it which is fine. We will have  
4 to do that. And what I am going to do is I will work  
5 with counsel on a couple of things here and get a  
6 couple of witnesses here. We will try to get started  
7 this afternoon and then we'll go ahead into tomorrow  
8 on with it. I kept the alternates here. They are in  
9 a separate jury room and we put them back in the jury  
10 box when you come back because they will be qualified  
11 to hear on the damages portion. We still have two  
12 alternates in case something happens to any one of  
13 you. So what I am going to ask you to do at this time  
14 is retire back to the jury room. I know you've seen  
15 enough of it, but if you retire back to the jury room.  
16 If you want to take a break if someone wants to go out  
17 and smoke or if somebody wants to go out and get some  
18 fresh air we'll allow to you to. Thank you. It will  
19 be about 15 minutes.

20 (WHEREUPON, the jury retires to the jury room.)

21 THE COURT: Why don't you see if you can work  
22 anything out. If you can't work it out go ahead and  
23 get your witnesses lined up.

24 I didn't give a chance to make a motion.

25 MR. VOGT: The plaintiff does not.

1 MR. SHEALY: Your Honor, we would move for a  
2 judgement notwithstanding the verdict. We believe  
3 that the case never actually should have been  
4 submitted to the jury because it was never presented  
5 any evidence that -- on the issue of the causation of  
6 the fire.

7 THE COURT: The same motion as directed verdict  
8 motion?

9 MR. SHEALY: Yes, sir.

10 THE COURT: Well, I understand that and for the  
11 same reason I denied the motion for directed verdict I  
12 will deny it at this time. I do think that it is a  
13 novel issue of law for South Carolina, but I think it  
14 is an unusual fact pattern and and I think this is an  
15 appropriate way to present it to the jury.

16 In any event I'm not going back through all that.  
17 I think it's an appropriate issue for the jury to  
18 decide about the damages and so I deny your motion for  
19 judgement. All right. We will be in recess.

20 (WHEREUPON, court was in recess.)

21 THE BAILIFF: Come to order.

22 THE COURT: All right, bring the jury in please.  
23 We got the two alternates back with them so they will  
24 be sitting with them.

25 (WHEREUPON, the jury enters the courtroom.)

1 THE COURT: Madame forelady and members of the  
2 jury, we are not going to be here too long the rest of  
3 the day, but we wanted to do what we could today. We  
4 have a couple of witnesses available but we will not  
5 stay late.

6 The two alternates are back with the jury now and  
7 you all will sit on this part of the case as well.  
8 And same role, if an emergency develops with regard to  
9 one of first 12 jurors chosen you will automatically  
10 fill in for that juror. Madame forelady, you  
11 continue to be the forelady of that jury, if you will.

12 Now, we are to that part of the trial where the  
13 plaintiff will have to prove to you their damages in  
14 this case and of course they will do that with  
15 testimony and any exhibits they may have. So listen  
16 carefully as we begin.

17 Please proceed.

18 MR. VOGT: Your Honor, with our first witness?

19 THE COURT: Yes.

20 MR. VOGT: The plaintiff calls Wes Love.

21 WESLEY LOVE, called as a witness, having been duly  
22 sworn by the clerk, was examined and testified as  
23 follows:

24 DIRECT EXAMINATION

25 BY MR. JETT:

1 Q Good afternoon, sir. Could you please state your full  
2 name for the jury?

3 A Wesley Stewart Love.

4 Q Mr. Love, you testified earlier this week. Would you  
5 please remind the jury what your position was with Winthrop?

6 A Project manager for Winthrop University.

7 Q Mr. Love, in your prior testimony you discussed a  
8 little bit about some of the damages that occurred after the  
9 fire of March 6, 2010. Do you recall that?

10 A Yes.

11 Q All right. Please remind the jury what exactly your  
12 role was in the days that followed March 6, 2010?

13 A The primary role I had besides meeting with Walter and  
14 other official and trying to figure what we were going to do  
15 next. How we were going to will proceed with business. How we  
16 are going to remedy the situation. That Monday morning I was  
17 tasked with working with one of our contractors, Multi Vista.  
18 We went through the entire site, all the adjacent buildings and  
19 photographed everything that existed as it was; all the damage,  
20 all the things that weren't damaged. We literally documented  
21 everything via photograph.

22 Q And just for orientation purposes we talked a whole lot  
23 about Bancroft Hall and Owens Hall, but can you tell the jury  
24 what other buildings were around Bancroft and Owens Hall?

25 A Crawford, which is our health building, sits to the

1 front of Owens. We have Margaret Nance Dormitory that sits  
2 adjacent to that. The full length of Bancroft. Margaret Nance  
3 is almost the same shaped building. On the other side of the  
4 building there is an L-shaped building Kinard, which was a  
5 classroom building.

6 Q Were any of those buildings effected after the March 6,  
7 2010 fire?

8 A If I remember right I think Kinard had some smoke  
9 damage. The air handlers in that building faced Owens so they  
10 took in the smoke from the fire. So we had some remediation we  
11 had to do in there. I think we may have a few similar problems  
12 in Crawford because it was right there. But the bulk of the  
13 damage was in Bancroft Annex which is the portion up to the fire  
14 wall where the addition was made and of course Owens.

15 Q I am sorry, I was fumbling around there. At the top to  
16 the left of the yellow building which building is that?

17 A To the top and to the left would be Kinard.

18 Q How about to the south of the yellow building?

19 A The large building would be Margaret Nance Dormitory  
20 and then the small building a adjacent to that would be  
21 Crawford.

22 Q So in the days following -- the Monday following the  
23 fire -- - I apologize. Is this a photograph that you recognize?

24 A Sure.

25 Q Which building are we looking at here?

1 A On the left to the left the picture would be Kinard and  
2 the majority of the picture would be Owens, and to the far right  
3 would be to the end of Crawford.

4 Q Now Mr. Love I will take you through a series of  
5 pictures as I go through if you would just sort of photo by  
6 photo explain to the jury what we are looking at and what  
7 building we are in.

8 A Okay.

9 Q What is this a picture of?

10 A That would be the rear of Owens looking towards where  
11 the previous picture was taken.

12 That would be adjacent to the fire wall between  
13 Bancroft and Bancroft Annex looking at the roof of Owens. Off  
14 of Bancroft looking at the roof of Owens.

15 That would be one of our classrooms inside Owens. I  
16 wouldn't know a room number but they all were basically the same  
17 set up.

18 Q It looks like the ceiling has caved in here. Why is  
19 that Mr. Love?

20 A Water damage. Most of the rooms we went in if any  
21 ceiling was intact it was very little, but most looked like  
22 that.

23 Q And Owens Hall was that a -- that's the newer building  
24 on campus, right?

25 A Yes.

1 Q Is there a lot technology in those buildings?

2 A Yes. We set that up to be a multi-faceted classroom  
3 building. Meaning multiple majors could have classrooms in  
4 there. We set that up with smart-room technology so the  
5 professors have a large range of possibilities within those  
6 classrooms. This is of one our buildings where multiple  
7 departments use it so we tried to put everything we could he in  
8 the building to make ti completely accessible to everyone. It's  
9 not limited to an art department or a music department that has  
10 a very specific set of needs for a classroom.

11 That is another classroom. That is a typical situation  
12 we would see while we were photographing the building.

13 Q Are all three floors of Owens Hall academic classrooms?

14 A Yes.

15 Q Is that you in the background there?

16 A Yes.

17 Q What do you have tied around your waist?

18 A A rain coat.

19 Q Why did you have a rain coat?

20 A It was still pretty wet in portions of the building,  
21 both water still dripping from the ceiling cavities and mechanic  
22 equipment. There was also portions of the building where we  
23 stood in water the entire day taking our pictures.

24 Q And this is the Monday after the fire department?

25 A Yes. We started as soon as the site was cleared for us

1 by the fire department and the police department. So we we were  
2 probably there seven, seven thirty that morning once the work  
3 day began.

4 That's one of the many we call it a podium. It's a  
5 computer station. It's an interface between computers. I think  
6 they have like we use to have old on fashion projection screen  
7 now they have a whole series of things that are interactive with  
8 what they can present on the projector in the classroom. They  
9 can put documents on them, files off a computer. But that's a  
10 standard computer station for the smart classrooms. A lot of  
11 technology inside one of those.

12 Q Was each classroom equipped with a smart computer like  
13 this that you described?

14 A I think most of them were. Some of the larger  
15 classrooms were more lecture-style on the ground floor, but I  
16 would say pretty much every classroom had at least this much  
17 technology in it.

18 This would be a repeat. As you see up in the ceiling  
19 there is one of the projectors where the podium would interface  
20 with and we have the boards and the speakers and all those  
21 things that are part of that system. A repeat there.

22 Q This is just another example. Do you recall which of  
23 the three floors had the most damage?

24 A The upper floor had the most because it would have been  
25 the closest to the water and the fire itself. On the ground

1 floor water was in everything. It was in the wall cavities, it  
2 was in furniture, it was in the ceiling. But as you got to the  
3 top of the building you started get a lot more smoke damage  
4 where the air hammers had pumped the smoke into the building.  
5 So the third floor, the top of the building, had by far the most  
6 damage.

7 Q What are we looking at here Mr. Love?

8 A That's some of our art. We had a good bit of art in  
9 the building. Particularly in Bancroft a lot of the professors  
10 had their own art, had Winthrop art. But liberal arts school we  
11 have a lot of that throughout our building. Some of it's  
12 valuable, some of it is not.

13 Q So some of it is it student work as well as  
14 professional work?

15 A Yes.

16 Q Mr. Love, just for the sake of the jury I am just going  
17 to sort of scroll through these. If you see anything that  
18 catches your eye.

19 A Okay. That's one of the more common areas in the  
20 building. There are several areas where the students can gather  
21 or have a little meeting or just a casual conversation. That's  
22 one of the lobby -- the lobby-type areas in the building.

23 That would be one the telecom rooms. Probably there  
24 you have all the fire alarm panel and the switch and all the  
25 things for telephone and data. Quite a bit of equipment in

1 there.

2 That's called a patch panel. That is where all the  
3 data and telephone come in to the building via service and it is  
4 distributed to all the different points within the building.

5 Q Was this damaged?

6 A Yes, it was wet like everything else.

7 Q Can you dry out? Once those were wet were they able to  
8 be dried out?

9 A I don't know if that specifically was, but it's been my  
10 experience that drying out computers and a lot of those kind of  
11 things it may work, but it's never like you first get it.  
12 It's not a guarantee.

13 Q Another academic classroom?

14 A Yes.

15 Q Another accurate academic classroom?

16 A Yes.

17 Q And yet another?

18 A Yes, and these are probably on the upper floors. You  
19 can see there is no ceiling left. Quite a bit more debris and  
20 things on the floor. More equipment hanging from the ceiling.

21 That is one of the large lecture rooms I was  
22 discussing on the ground floor. There again you can see the  
23 difference, but everything in there was just as wet. Just  
24 didn't have -- the ceiling didn't quite fall in, but the  
25 equipment, the flooring, the walls, everything was -- you can

1 see the stains on the wall from the water in the wall cavities  
2 even on the ground floor.

3 That's the main lobby where you first come in on the  
4 ground floor. You can see the water dripping from all the  
5 sheetrock surface. That's a sculpture we installed when we  
6 dedicated the building which did make it through. But you can  
7 also see in several of the pictures where we have all the smoke  
8 and soot and things that washed down through the building. Lots  
9 of stuff was discolored. Everything was black from the smoke  
10 and the soot coming down with the water.

11 Q Is that actually standing water on the ground there?

12 A Yes. That would be another one of the computer podiums.  
13 You can see how wet everything is inside. All the technology  
14 was wet.

15 Q I am just going to keep moving along.

16 What building are we looking at now?

17 A Now you would be in what we call Bancroft Annex which  
18 is the portion of the building where Owens attached to Bancroft.  
19 That is probably on the ground floor.

20 Q And primarily what purpose or what sort of rooms were  
21 in the Bancroft Annex and regular Bancroft?

22 A At that time on the ground floor we had University  
23 College which is one of our colleges, but the primary function  
24 of that building would be offices. There there were a few small  
25 classrooms up on the upper levels, but most of it was offices

1 and resource areas.

2 Q So it was the primary area that your professors and  
3 teachers had their offices?

4 A Yes, it is one the buildings. Yes. And that's one of  
5 the offices on -- I think that is where you come in to the main  
6 level there and you can see water coming through the plaster  
7 ceilings.

8 When we went in the rooms we didn't disturb anything.  
9 We just opened the door and try to take a picture of every wall,  
10 every ceiling. If we found a computer station or a closet or  
11 book cases or something that had a lot of stuff with a lot of  
12 water we tried to make sure we documented everything. We didn't  
13 disturb or try to change anything as we went through.

14 Q And Mr. Love, you described some of the damage to the  
15 other buildings. What was the primary concern say for Kinard,  
16 the dormitory that was next door?

17 A Kinard is a classroom building and when you have smoke  
18 and other things coming in the building you want to make sure  
19 that the building is clean. A lot of people are sensitive and  
20 air quality is a big thing when we are providing a space for  
21 people to have classes or dormitory or whatever. You want to  
22 make sure that it's as clean and sanitary and as safe as you can  
23 possibly make it. If you have a building that smells like smoke  
24 and has smoke in it you are going to have to remedy that before  
25 you can offer that back out to the students.

1 Q And how about the Margaret Nance building?

2 A If I remember right most everything was okay in  
3 Margaret Nance. I don't ever remember us having to evacuate the  
4 students other than during the fire period. I think everything  
5 was okay in that building.

6 Q And how about Crawford? The student health center was  
7 in Crawford?

8 A Yeah, I don't remember a whole lot of damage there, but  
9 there again it was a smoke -- we wanted to be sure everything  
10 was clean and sanitary and the air quality was safe for the  
11 students and the staff.

12 Q So the real concern was the smoke that had been brought  
13 in by the outside air intakes for these various building?

14 A Yes, and Kinard is a building where it took on a lot of  
15 smoke. Those louvers faced the fire and it was just -- it just  
16 brought it in the building the whole time.

17 Q Were you the project manager for the rebuild of either  
18 Owens Hall or Bancroft Hall?

19 A No. I worked on a portion of the roof project for  
20 Bancroft but Ben handled the majority of the reconstruction.

21 Q And how about the purchase orders that the various  
22 contractors submitted. Would that come through you?

23 A No, I would have been aware of what was going on but  
24 Walter and Ben would have handled the majority of the purchase  
25 orders.

1 MR. JETT: Thank you, very much Mr. Love. I have  
2 no further questions.

3 MR. SHEALY: No questions, Your Honor.

4 THE COURT: Thank you, sir, you may stand down.

5 MR. JETT: Your Honor, may the witness be excused?

6 MR. SHEALY: No objection.

7 THE COURT: Thank you for coming. You maybe  
8 excused.

9 MR. JETT: Your Honor, at this time the plaintiffs  
10 would call Walter Hardin.

11 MR. SHEALY: Your Honor, I'm sorry, could we  
12 approach briefly.

13 THE COURT: Yes.

14 (WHEREUPON, there was an off the record  
15 discussion.)

16 THE COURT: Madame forelady and members of the  
17 jury the next witness will take a good bit longer than  
18 the first witness, so I know you all had a long day.  
19 All of us had. It is about 20 after five, so we will  
20 go ahead and recess for the day. I will ask you if  
21 you will be back in the jury room in the morning about  
22 9:15, about 9:15 everybody be there. We hope to  
23 finish this up tomorrow, and so for your planning  
24 purposes we plan to finish it up tomorrow. So, please  
25 enjoy your night tonight and be back in the jury room

1 9:15. Thank you.

2 (WHEREUPON, the jury leaves the courtroom.)

3 THE COURT: Counsel approach just a minute.

4 (Whereupon, there was an off the record  
5 discussion.)

6 THE COURT: Counsel, I will be here about nine in  
7 the morning if something comes up in the morning  
8 otherwise we will reassume the trial at 9:15  
9 everybody.

10 (WHEREUPON, court was in recess until March 21,  
11 2014.)

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1 (WHEREUPON, court resumed on March 21, 2014)

2 THE COURT: Counsel ready to proceed?

3 MR. SHEALY: Yes, Your Honor. Just for the record  
4 we had there was outstanding Motion in Limine that had  
5 not been dealt with. That has been resolved by the  
6 parties.

7 THE COURT: Was this about damages?

8 MR. SHEALY: It had to do with damages. We have  
9 worked all of those issues out.

10 THE COURT: Okay, very good.

11 MR. JETT: Your Honor, our first witness Walter  
12 Hardin who is going to lay the groundwork for all of  
13 this apparently his mother took ill. Supposedly he is  
14 on his way. Can I go try to call him again?

15 THE COURT: Yes, just be sure. You don't have  
16 anybody else?

17 MR. VOGT: We do, but he is the guy that is going  
18 to put all that in first.

19 THE COURT: Why don't you give him a call and see  
20 what his situation is.

21 MR. VOGT: Thank you sir.

22 THE COURT: We will be at ease until your witness  
23 arrives.

24 I think we are ready to proceed. Please bring the  
25 jury in.

1 (WHEREUPON, the jury enters the courtroom.)

2 THE COURT: Good morning. I hope you have a  
3 pleasant night last night.

4 We are now ready to proceed.

5 MR. JETT: Your Honor, at this time the plaintiff  
6 would call Mr. Hardin.

7 THE COURT: He was previously sworn so you  
8 continue to be sworn and under oath for your  
9 testimony.

10 DIRECT EXAMINATION

11 BY MR. JETT:

12 Q Good morning. Would you please re-introduce yourself  
13 to the jury.

14 A Walter Hardin, associate vice president for facilities  
15 management at Winthrop University.

16 Q Thank you. And were you here yesterday when Wes Love  
17 testified?

18 A Yes, I was.

19 Q Do you recall him testifying that most of the  
20 coordination and calling of the contractors for the rebuild  
21 would go through your office?

22 A That's correct.

23 Q Was he correct when he testified to that Mr. Hardin?

24 A Yes.

25 Q Mr. Hardin, could you please explain to the jury what

1 your role was as part of the post fire rebuild for Bancroft and  
2 Owens Hall?

3 A I was leading the team of people that were doing  
4 everything from the cleanup to the reconstruction.

5 Q And following the fire what was your -- what was your  
6 immediate response? Who did you call first?

7 A Well, I had several conversations with my boss and the  
8 chief of police and this was as I was traveling back from the  
9 beach. I also called a fire restoration service and began  
10 calling other people, lining up a team meeting for that Sunday  
11 afternoon. I called the original contractor that had finished  
12 building the Owens building just a year and a half or so before.  
13 Just trying to gather people that I could get.

14 Q Were many of those contractors still available who had  
15 completed Owens Hall in 2007?

16 A Yes.

17 Q Do you recall who the general contractor was on the  
18 2007 Owens Hall project?

19 A Leitner Construction.

20 Q Is that who you called following the fire?

21 A Yes.

22 Q Now, could you please explain to the jury how these  
23 various contractors were paid following the fire of March 6,  
24 2010?

25 A They were paid via purchase orders.

1 Q And how does purchase order process worked at Winthrop  
2 University?

3 A We are given a price and we do requisition and a  
4 purchase order is issued.

5 Q And so is the purchase order a Winthrop document?

6 A Yes, sir.

7 Q Is that a document that you review in the course of  
8 your regular business as vice president of facility management?

9 A Yes.

10 Q Do you recall about how many different contractors and  
11 subcontractors were out on site as part of the rebuild and  
12 cleanup process following the fire?

13 A It was close to forty.

14 Q Mr. Hardin, would it be fair to assume you couldn't  
15 rattle off all forty of those contractors?

16 A It would be safe to assume.

17 Q Well, if I were to show a piece of paper would that  
18 help refresh your memory as on who came out after the fire for  
19 part of the cleanup and rebuild?

20 A Yes.

21 MR. JETT: Your Honor, if I may approach the  
22 witness.

23 THE COURT: You may.

24 Q A few pieces of paper Mr. Hardin. Mr. Hardin, I will  
25 ask you if you would open that binder and just look through

1 those documents and see if you recognize those documents?

2 A Yes.

3 Q What do you recognize those documents to be Mr. Hardin?

4 A These are the purchase orders for the contractors to do  
5 the cleanup and replacement and repair to Owens and Bancroft.

6 Q Since Winthrop is a state university are some of these  
7 contractors on a state contract?

8 A Yes, some of them are.

9 Q And since they are on a state contract do they have set  
10 pricing that is set by the state?

11 A Some of them do, yes.

12 Q And do you recall off the top of your head how many of  
13 those contractors would have already have that state contract?

14 A No, it would be some.

15 Q All right. Mr. Hardin, in the front of that binder if  
16 you would look at the front cover of the binder I would ask you  
17 to look at that two-page piece of paper and tell us if you  
18 recognize that document?

19 A Yes.

20 Q What do you recognize that document to be?

21 A This is a list of all the purchase orders.

22 Q All the purchase order for all the contractors that  
23 were hired?

24 A Yes.

25 Q That a list of all the contractors that were hired for

1 the rebuild and cleanup process following the March 6, 2010  
2 fire, correct?

3 A Yes.

4 Q All right. Now that you have an opportunity to look at  
5 that list does that list refresh your recollection as to how  
6 much each of those contractors were paid?

7 A Yes.

8 Q Mr. Hardin, I apologize this may be some laborious, but  
9 if you could for the jury let's go down this list together. If  
10 you could briefly explain what each one of these contractors did  
11 and we will start with the very first contractor there on the  
12 list. I see AAA Environmental. Do you recall them being hired  
13 by Winthrop university?

14 A Yes.

15 Q Do you recall what they were hired to do?

16 A They did several things. They checked for mold.  
17 Mold was a big concern as we were trying to get the building  
18 dried out. They also had to test some materials for asbestos  
19 contain substances and then help with the remediation.

20 Q And do you recall how many AAA Environmental was paid  
21 for their services?

22 A \$11,981.

23 Q Next on the list it looks like we have Advance  
24 Communications Systems Incorporated. Were they were hired by  
25 Winthrop University following the fire?

1 A Yes.

2 Q Do you recall what their role was?

3 A They had provided the smart boards and the smart  
4 podiums.

5 Q So they were there to cleanup or --

6 A Yes.

7 Q -- or mitigate those items?

8 A Correct.

9 Q Do you recall how much they were paid for those  
10 services?

11 A 15,493.89.

12 Q Next on the list we have Advance Video Incorporated.  
13 Were they hired by Winthrop University as part of the  
14 restoration process?

15 A Yes, correct.

16 Q Do you recall what Advance Video Incorporated did for  
17 Winthrop University?

18 A They are kind of coordinators and they hook up stuff,  
19 do programming, interface things together, do design.

20 Q So more of a technology side of things?

21 A Technology. That was a very technical building.

22 Q So they were involved in some of those smart podiums  
23 that Mr. Love described yesterday?

24 A Yes.

25 Q Do you recall how much they were paid for their

1 services?

2 A \$19,660.60

3 Q Next on the list we have After Disaster. Were they  
4 hired by Winthrop University as part of the mitigation process?

5 A Yes.

6 Q What was After Disaster hired to do?

7 A They came in and picked up all the computers and CPU's  
8 and things that could be salvaged and they took them and took  
9 them all apart and put them in a convention oven and tried to  
10 salvage as much as they could.

11 Q So they were involved with the drying out of the  
12 computers?

13 A Correct.

14 Q Do you recall how much they were paid for their  
15 services?

16 A \$419,792.80.

17 Q Next on the list we have Alertus Technologies,  
18 Incorporated. Was Alertus Technologies hired by Winthrop  
19 University as part of the restoration process following the  
20 fire?

21 A Yes. Do you recall what they did?

22 A We have a system that is connected to our police  
23 department to alert the entire campus community in case there is  
24 active shooter or tornado or whatever. There's little boxes on  
25 the walls that go off and tell people what to do.

1 Q Sort of an emergency response system for those  
2 particular buildings?

3 A Yes.

4 Q Do you recall how much Alertus Technology was paid for  
5 their services?

6 A \$4,782.90

7 Q Next on the list we have Business Interiors by Staples.  
8 Do you recall what they were hired to do for Winthrop?

9 A That was for some tables. At the time we were buying  
10 furniture from several different people depending on what types  
11 they were and that was for some conference type tables.

12 Q And those were in the various conference rooms that  
13 were damaged?

14 A Yes.

15 Q Do you recall how much Business Interiors by Staples  
16 was paid for those services?

17 A \$6,580.26

18 Q Next I see Carolina Advanced Digital Incorporated.  
19 Were they hired by Winthrop University as part of the  
20 restoration process?

21 A Yes, they he were.

22 Q Do you recall what Carolina Advanced Digital  
23 Incorporated did for Winthrop University?

24 A Yes, they were also working with our IT department to  
25 help restore the extensive amount of smart technology in the

1 building.

2 Q So they assisted with more of the technology repair?

3 A Correct.

4 Q All right. How much was Advanced Carolina Digital  
5 Incorporated paid for there services?

6 A \$6,865.41

7 Q Next I see CWG Group. Were they hired by Winthrop  
8 University as part of the restoration process following the  
9 March 6, 2010?

10 A Yes.

11 Q Do you recall what CWG Group did for Winthrop  
12 University?

13 A They provided Winthrop window blinds for the Bancroft  
14 Annes.

15 Q How much were they compensated for the new blinds that  
16 were installed?

17 A \$8,201.07.

18 Q Next on the list Dustin Shores Photography. Was Dustin  
19 Shores Photography hired by Winthrop University as part of the  
20 restoration process?

21 A Yes.

22 Q What did Dustin Shores Photography do for Winthrop  
23 University?

24 A He had to redo the portrait of the Owens. The people  
25 who had given some of the money for the building.

1 Q That was a portrait hanging in the front Hall of Owens?

2 A Correct.

3 Q How much was Dustin Shores Photography compensated?

4 A \$802.50.

5 Q Electronic Restoration Services is the next contractor  
6 on the list. Was Electronic Restoration Services hired by  
7 Winthrop University as part of the restoration process following  
8 the fire?

9 A Yes.

10 Q What was the Electronic Restoration Services hired to  
11 do?

12 A Preserve documents. They brought in freezer trailers  
13 and they froze the documents because they were all wet. We're  
14 talking about faculties's doctoral papers and things --  
15 irreplaceable kind of things.

16 Q So these were types of documents would have been in the  
17 professor's offices in Bancroft Hall?

18 A Yes.

19 Q And they were concerned about their research and their  
20 papers?

21 A Research papers, all kinds of irreplaceable type items.

22 Q How much was Electronic Restoration Services  
23 compensated?

24 A \$101,373.52.

25 Q Next is EMS Analytical Incorporated. Was EMS Analytical

1 Incorporated hired by Winthrop University following the March 6,  
2 2010 fire?

3 A Yes.

4 Q What was EMS Analytical Incorporated hired to do?

5 A They did testing for samples taken by AAA  
6 Environmental, asbestos samples, mold samples. Things like  
7 that.

8 Q More health concerned?

9 A Health issues. Trying to verify that the space would  
10 be safe.

11 Q Safe for the students to occupy?

12 A Right.

13 Q How much was EMS Analytical Incorporated compensated?

14 A \$5,735.00.

15 Q Next is Environmental Holdings Group. Was  
16 Environmental Holdings Group hired by Winthrop University as  
17 part of the restoration process?

18 A Yes.

19 Q What was Environmental Holdings Group hired to do?

20 A They do remediation. They had to remove the asbestos  
21 containing materials in Bancroft Annex and do some mold issues  
22 in the main building.

23 Q How much was Environment Holdings Group compensated for  
24 their work following the fire of March 6, 2010?

25 A \$44,680.31.

1 Q Next is Gallery Up. Was Gallery Up hired by Winthrop  
2 University following the fire?

3 A Yes.

4 Q What was Gallery Up hired to do?

5 A Gallery Up was hired for framing, reframing art work  
6 that had been damaged.

7 Q Is this the art work that is in the Hallways of the  
8 building?

9 A Yes, there was art work throughout the building.

10 Q How much was Gallery Up compensated?

11 A \$2,353.79

12 Q Next is Hardy & Associates. Was Hardy & Associates  
13 hired by Winthrop University following the fire?

14 A Yes.

15 Q What was Hardy & Associates hired to do?

16 A They provided a lot of the furniture in the student  
17 lodge areas; tables, sofas, chairs. That type of thing.

18 Q All of those items had to be replaced?

19 A Yes.

20 Q How much was Hardy & Associates compensated?

21 A \$10,677.50

22 Q Next is Kreen window Covering. Was Kreen Window  
23 Covering hired by Winthrop university following the fire?

24 A Yes.

25 Q What were they hired to do?

1 A Replace some of the blinds in the Owens building.

2 Q How much were they compensated for the new blinds?

3 A \$892.92.

4 A Next is the Lewis Fence Company. Was Lewis Fence  
5 Company hired by Winthrop following the fire?

6 A Correct.

7 Q What were they hired to do?

8 A They put up the construction fencing right after the  
9 fire and moved it around for a little bit and then took it down.

10 Q So they put up a barricade so students could not get  
11 into these buildings. How much were they compensated for their  
12 work?

13 A \$11,100.

14 Q Next is Leitner Construction company. Was Leitner  
15 Construction Company hired following the fire?

16 A Yes.

17 Q What was Leitner Construction Company hired to do?

18 A They did several things in phases. Immediately they  
19 came in and stabilized the site. Tried to water proof the  
20 building as much as they could with tarps and different things  
21 and began to do some salvage work. Then they came in and did  
22 the reconstruction of the interior of Owens Hall and they also  
23 put back the permanent roof on Owens Hall and then they did  
24 another contract for restoration of Bancroft Annex.

25 Q So did Leitner Construction serve as the general

1 contractor for the overall rebuild?

2 A Yes.

3 Q How much was Leitner Construction Company compensated  
4 for their work following the fire?

5 A \$4,720,429.24.

6 Q Next on the list is Multimedia Services Incorporated.

7 Was Multimedia Services Incorporated hired by Winthrop  
8 University during the restoration process?

9 A Yes.

10 Q What were they hired to do?

11 A Multimedia -- I am trying to think.

12 Q And if you need to refer to the binder in front of you.  
13 I believe they would be tab number 23.

14 A They did the smart podiums.

15 Q So they assisted with the restoration of the smart  
16 podiums?

17 A Yes.

18 Q How much were they compensated for their work?

19 A \$31,098.62

20 Q Next on the list is Neal Prince Architects. Was Neal  
21 Prince Architects text hired following the fire during the  
22 restoration process?

23 A Yes.

24 Q What were they hired to do?

25 A Neal Prints was the original architect for the

1 construction of Owens Hall. They were hired to come back with  
2 the documents, put packages back together, reconvene the  
3 contractors and subcontractors and guide the put back.

4 Q How much was Neal Prince compensated?

5 A \$95,503.

6 Q Next on the list is NEO Corporation. Was NEO  
7 Corporation hired by Winthrop University during the restoration?

8 A Yes.

9 Q What were they hired to do?

10 A They did some environmental remediation in couple of  
11 buildings. Mainly in Owens Hall.

12 Q Did they also do some remediation work in the  
13 neighboring buildings?

14 A Yes.

15 Q How do you plead was NEO corporation compensated?

16 A \$\$3,605.93.

17 Q Next on the list is the Palmetto Air and Water Balance.

18 Were they hired by Winthrop University during the restoration  
19 process?

20 A Yes.

21 Q What were they hired to do?

22 A They do testing and balancing of the considerable and  
23 complex heating and air systems and water systems. They all  
24 have to be balanced.

25 Q Was that for Owens and Bancroft Hall?

1 A That was Owens and Bancroft. It was after the put  
2 back.

3 Q How much was Palmetto Air and Water Balance compensated  
4 for their work?

5 A \$17,975.

6 Q Next on the list is Paul Davis National Incorporated.  
7 Was Paul Davis National Incorporated hired by Winthrop  
8 University during the restoration?

9 A Yes.

10 Q What were they hired to do?

11 A They are disaster recovery specialist. They were the  
12 first people on the job that Monday. They came in and helped  
13 remove all the wet items and literally stripped the sheetrock  
14 and ceilings. Everything came out of the building and went down  
15 to the studs.

16 Q How much was Paul Davis National Incorporated  
17 compensated?

18 A \$909,544.70.

19 Q Next on the list is RPM Engineers. Was RPM Engineers  
20 hired by Winthrop University during the restoration?

21 A Yes.

22 Q What were they hired to do?

23 A They are an inspection services company and they did  
24 special inspections, Chapter 17 inspections.

25 Q What are Chapter 17 inspections?

1 A They are inspections like wells, things beyond just  
2 regular normal building inspections. Speciality items.

3 Q How much were they compensated?

4 A \$16,950.70.

5 Q Next, Service Plus South Incorporated. Was Service  
6 Plus South Incorporated hired by Winthrop University during the  
7 restoration process?

8 A Yes.

9 Q What were they hired to do?

10 A The fiber optic backbone for the campus daisy chains  
11 through buildings and it daisy chained through Owens Hall. So  
12 once Owens became inoperable they had to bypassed that so  
13 Service Plus came in and they bypassed that bad link in the  
14 chain, if you will, to get the campus network back up going  
15 downstream.

16 Q How much were they compensated Mr. Hardin?

17 A \$325.

18 Q Southern Computer Warehouse, were they hired by  
19 Winthrop University during the restoration process?

20 A Yes.

21 Q What were they hired to do?

22 A They were hired for various pieces of IT equipment.  
23 Small equipment.

24 Q The smaller equipment?

25 A Yes.

1 Q How much were they compensated?

2 A \$2,755.57.

3 Q Stafford Consulting Engineers were they hired by  
4 Winthrop University during the restoration process?

5 A Yes.

6 Q What were they hired to do?

7 A They were hired to help us with the waterproofing  
8 issues, the design and put back of the roofs systems.

9 Q How much were they compensated Mr. Hardin?

10 A \$5,451.86

11 Q Summit ECS. Was Summit ECS hired by Winthrop  
12 University during the restoration process?

13 A Yes.

14 Q When were they hired to do?

15 A I think did concrete testing.

16 Q Concrete testing?

17 A Yes.

18 Q How much were they compensated?

19 A \$570.

20 Q Troxell Communications were they hired by Winthrop  
21 University as part of the restoration process?

22 A Yes.

23 Q What were they hired to do?

24 A I am going to check.

25 Q Tab 35.

1 A They were hired for DVD recorders and intercom boxes.

2 Q That were in Owens Hall?

3 A Yes, and they with were hired by our IT department.

4 Q All right. How much were they compensated Mr. Hardin?

5 A \$5,924.29

6 Q Walker Electric Company were they hired by Winthrop  
7 University?

8 A Yes.

9 Q What were they hired to do?

10 A They were hired to put temporary lighting in the  
11 building.

12 Q How much were they compensated?

13 A \$907.50

14 Q White Office Furniture Limited, were they hired by  
15 Winthrop University during the restoration process?

16 A Yes.

17 Q What were they hired to do?

18 A They provided most of the furniture in the building;  
19 the classroom furniture. Of course it was primarily a classroom  
20 building. They also provided a lot of the furniture for the  
21 faculty offices which all had to be replaced as well; office  
22 chairs.

23 Q So all of the student classroom furniture as well as  
24 the professor's office furniture?

25 A Correct.

1 Q Both in Owens and Bancroft Hall. How much were they  
2 compensated Mr. Hardin?

3 A \$735,019.

4 Q Do you have a total amount that all of these  
5 contractors were paid as part the rebuilt process?

6 A \$7,223,343.14

7 Q Mr. Hardin, did you approach each of these purchase  
8 orders part of your job as vice president?

9 A Yes.

10 Q Did you find each of these purchase orders to be fair  
11 and reasonable?

12 A Yes.

13 Q And were each of these contractors paid for the work  
14 that they did?

15 A Yes.

16 MR. JETT: Your Honor, at this time I would move to  
17 offer composition exhibit number 67 into evidence.

18 MR. SHEALY: No objection, Your Honor.

19 THE COURT: It will be without objection.

20 (Plaintiff's Exhibit 67, Composition, received in  
21 evidence as of this date.)

22 Q Mr. Hardin, how did Winthrop University insure that the  
23 amounts it paid for the contractors who were cleaning the  
24 building, repairing the damages and replacing the fixtures was  
25 fair and reasonable?

1 A How did we assure it was?

2 Q Yes, sir.

3 A Well, one of the things was we had just done the  
4 building a couple years before so we had idea of what it should  
5 cost and some of the things were on state contract, most of the  
6 furnishings. Some were done by indefinite delivery contractors  
7 that we hired by multiplier against the national average cost  
8 which they bid for?

9 Q Mr. Hardin, do you recall how long Bancroft Hall was  
10 closed?

11 A The whole building -- Owens was out about nine months.  
12 Bancroft may have opened a little earlier than that for the  
13 faculty to get back in their offices. I don't remember exactly  
14 when but it would have been in the fall of 2010. Late fall  
15 probably.

16 Q So if the fire occurred on March 6, 2010 would it be  
17 fair to say that Bancroft Hall reopened for the fall semester?

18 A Some time during the fall semester. I don't think it  
19 was at the beginning of the semester. That's not my  
20 recollection anyway.

21 Q How about Owens Hall, would it be fair to say that  
22 didn't open until the following spring?

23 A Yes, that's when it reopened.

24 MR. JETT: Mr. Hardin, thank you, very much. I  
25 have no further questions for you.

1 MR. SHEALY: No questions for this witness.

2 THE COURT: Thank you, sir, you may stand down.

3 MR. VOGT: Your Honor, if the witness may be  
4 excused.

5 THE COURT: No objection. He may be excused at  
6 this time.

7 MR. JETT: Your Honor at this time the plaintiffs  
8 would call Prescott May.

9 PRESCOTT MAY, called as a witness, having been  
10 duly sworn by the clerk, was examined and testified as  
11 follows:

12 DIRECT EXAMINATION

13 BY MR. JETT:

14 Q Good morning, sir. Could you please state your full  
15 name for the jury?

16 A Prescott Lee May, III.

17 Q Mr. May, how are you currently employed?

18 A I am an architect.

19 Q Who are you employed by?

20 A LSPPP Associates.

21 Q Who were you employed by on March 5, 2010?

22 A Neal Prince Architects.

23 Q Has Neal Prints merged with your current company?

24 A Yes.

25 Q What is your current title?

1 A Vice president.

2 Q Did you hold that same title on March 6, 2010?

3 A I was president of Neal Prints Architects.

4 Q How long have you held that position?

5 A Three years as vice president, five years as president  
6 with Neal Prints and a partner for probably 20 years.

7 Q Could you briefly explain to the jury your educational  
8 background?

9 A I have a bachelor in design from Clemson University.

10 Q And how long have you been in the architect field?

11 A Thirty-three years.

12 Q Are you familiar with the fire that occurred on March  
13 6, 2010 at Winthrop University?

14 A Yes.

15 Q How did you first learn about that fire?

16 A I was trying to remember. My son went to school at  
17 Winthrop. I can't remember if he called me or if I saw it in  
18 the news. I do recall though that I received a call Monday  
19 morning following the fire by Walter Hardin to come and take a  
20 look at the job.

21 Q And when you say come to take a look at the job, did  
22 Mr. Hardin call Neal Prince Architects to come out as part of  
23 the restoration process?

24 A He did.

25 Q Do you recall what Neal Prince was asked to do for

1 Winthrop University?

2 A We were asked to help evaluate the damage to the  
3 building and to help the university construct the building.

4 Q Had you previously been involved with any of the  
5 architectural work for Winthrop University?

6 A Yes.

7 Q Specifically, do you recall which buildings you were  
8 involved with?

9 A Owens Hall was the primary building that we were  
10 involved with at Winthrop.

11 Q And that building opened in 2007, right?

12 A That's correct.

13 Q Fair to say you probably still had the drawing on hand  
14 in 2009?

15 A Yes.

16 Q Did Neal Prince in fact perform the services requested  
17 by Winthrop University?

18 A Yes.

19 Q Could you describe generally for the jury the  
20 architectural process following the fire of 2010?

21 A We visited the job site with Walter and some of his  
22 staff to evaluate the damage following the fire and brought  
23 together a team of engineering professionals to access the  
24 damage and to prepare a study for the university outlining the  
25 damages and what we felt the extent of those damages were.

1 Following that we were asked by the university to help  
2 reconstruct the building by providing updated drawings for the  
3 new construction. At the time there had been a code change  
4 which we needed to evaluate the impact of the code change on the  
5 building and provide drawings that were up to the current codes.

6 Q Generally speaking was Owens Hall rebuilt to match the  
7 original building?

8 A Yes.

9 Q Do you recall the length of time your firm was on site  
10 at Winthrop university following the fire?

11 A Yes.

12 Q How long was that?

13 A We were called on March the 8th and our final  
14 inspection of the building was in December of that year.

15 Q Did your company hire any subcontractors to assist with  
16 your work?

17 A Yes.

18 Q Do you recall how many subcontractors were hired by  
19 Neal Prince?

20 A The engineer firms were one for structural and one  
21 plumbing, mechanical, electrical and one for fire protection.

22 Q Did Neal Prince pay those subcontractors?

23 A We did.

24 Q Mr. May are you familiar with the purchase orders that  
25 were issued for the services that Neal Prince provided?

1 A Yes.

2 Q I will refer you to tab 25 in the book that is right in  
3 front of you which has previously been marked as Plaintiff's  
4 Exhibit number 67.

5 A Am I looking at the wrong tab?

6 Q There is A tab and a B tab.

7 A All right.

8 Q Do you recognize tab 25-A as one of the two purchase  
9 orders that was issued for the work performed by Neal Prince  
10 Architects?

11 A Yes.

12 Q What was the total amount for that purchase order?

13 A \$46,793.

14 Q And tab-B if you turn to that. Do you recognize that  
15 document as a purchase order issued for the services that Neal  
16 Prince Architects performed for Winthrop University?

17 A Yes.

18 Q How much is the total of that purchase order?

19 A \$48,710.

20 Q In your opinion Mr. May, were the services provided by  
21 Neal Prince Architects necessary and reasonable for Winthrop  
22 University?

23 A Yes, I believe so.

24 Q Was the amount charged by Neal Prince Architects  
25 reasonable for Winthrop University to pay?

1 A Yes.

2 Q Based on your experience in the industry and background  
3 of the industry was \$95,503 a fair and reasonable amount to  
4 charge Winthrop University for the services provided Neal Prince  
5 Architects?

6 A Yes.

7 Q Was your company fully compensated in that amount?

8 A They were.

9 MR. JETT: Thank you, very much Mr. May. I have no  
10 further questions for you.

11 THE WITNESS: Thank you.

12 MR. SHEALY: No questions for this witness.

13 THE COURT: Thank you, sir, you may stand down  
14 sir.

15 THE WITNESS: Thank you.

16 MR. JETT: May the witness be excused, Your Honor?

17 THE COURT: Thank you for coming. You may be  
18 excused at this time.

19 MR. JETT: Your Honor at this time the plaintiff's  
20 would call Jay Summer.

21 JAY SUMMER, called as a witness, having been duly  
22 sworn by the clerk, was examined and testified as  
23 follows:

24 DIRECT EXAMINATION

25 BY MR. JETT:

1 Q Good morning, sir.

2 A Good morning.

3 Q Would you please state your full name for the jury?

4 A Jay A. Summer Jr.

5 Q Sir, how are you currently employed?

6 A I am the director for large loss division for  
7 AfterDisaster.

8 Q How long have you been employed by AfterDisaster?

9 A Five years.

10 Q And prior to your employment with AfterDisaster were  
11 you previously in any mitigation services?

12 A Yes, sir.

13 Q How long have you been involved in the mitigation  
14 service industry?

15 A Twenty-seven years.

16 Q How long have you held your current title?

17 A Since I got there five years.

18 Q Do your responsibilities include reviewing invoices  
19 that are submitted to your customers?

20 A Yes, sir.

21 Q Were you familiar with the fire that occurred on March  
22 6, 2010 at Winthrop University?

23 A Oh, yes.

24 Q When did you first learn about that fire?

25 A Sunday. I don't have a calendar in front of me, but I

1 believe it was Sunday. I want to say the the fire happened  
2 Saturday. It was the next day Sunday.

3 Q And did you personally receive a call from Winthrop  
4 University?

5 A I did receive information because my wife actually went  
6 to school there, and so I went down to the school and met with  
7 Mr. Hardin, Walter Hardin.

8 Q So you met directly with Walter Hardin after the fire?

9 A Yes.

10 Q And was AfterDisaster hired by Winthrop University?

11 A Yes, walter Hardin requested we do the electronic  
12 restoration part.

13 Q Could you briefly describe for the jury what the  
14 electronic restoration work entailed?

15 A Yes. Basically it's anything that has electricity that  
16 runs through it. I don't care if it's a computer or  
17 refrigerator or alarm system, whatever it is that has an  
18 electrical component to it, after a fire or flood we go in and  
19 access the damage and we do inventory control and take photos  
20 and then we restore it or we mark it as not cost effective to  
21 restore it.

22 That's kind of it in a nutshell. Some people call us  
23 glorified dishwashers, but actually we're just cleaning up  
24 everything and bringing it back to pre-loss or better condition.

25 Q Were those services necessary?

1 A Absolutely. You couldn't use the equipment like it was  
2 so ---

3 Q Do you recall how long AfterDisaster worked at Winthrop  
4 University following the fire?

5 A Three -- probably three to four weeks.

6 Q Was that a longer project than usual?

7 A No, it is about right for that. For that size and that  
8 quantity of pieces that is about right.

9 Q Did your company hire any subcontractors to assist with  
10 the work?

11 A Yes. There was a company called Impact Systems and I  
12 think they actually did service on the campus for some of their  
13 software projects and we utilized them for price and consult for  
14 replacement value.

15 Q All right. Are you familiar with the purchase order  
16 that was issued to Winthrop University?

17 A I mean -- I don't have it in front of me. I know they  
18 did. I don't see it in front of me.

19 Q If you would turn to tab number four in the book that  
20 is right in front of you.

21 A Okay. Yes.

22 Q Do you recognize that document?

23 A There is some multiple documents in here and the  
24 estimated cost documents for electronics.

25 Q And Mr. Summer in the front of that binder the very

1 front pocket.

2 A Yes, sir.

3 Q Tab number four indicates the various purchase orders  
4 and the total amount paid by Winthrop University. Is there a  
5 number listed on the page?

6 A Yes. I believe we had -- it seemed like there were two  
7 invoices initially and then another and they came if I remember  
8 correctly it was about 420,000. It looks right.

9 Q So the exact number of \$419,792.80 does that sound  
10 accurate?

11 A Yes.

12 Q Is that amount a fair and reasonable amount for  
13 AfterDisaster to charge Winthrop University?

14 A Yes.

15 Q Based on your background in the industry is that a  
16 typical price that you would charge for the amount of work that  
17 they did?

18 A Yes.

19 Q Was Afterdisaster in fact paid for that?

20 A Yes, we were.

21 Q They were paid in full for that amount?

22 A Yes. We were.

23 MR. JETT: Thank you, very much Mr. Summer. I  
24 no further questions for you.

25 MR. SHEALY: No questions for this witness.

1 THE COURT: Thank you, sir. You may stand down  
2 sir. Do you wish to have him excused?

3 MR. JETT: Yes, Your Honor.

4 THE COURT: Thank you for coming, you maybe  
5 excused at this time.

6 (Witness excused.)

7 MR. JETT: At this we would call Mac Leitner, Your  
8 Honor.

9 MR. SHEALY: Your Honor, may I confer with  
10 counsel?

11 THE COURT: Yes, sir.

12 MAC LEITNER, called as a witness, having been duly  
13 sworn by the clerk, was examined and testified as  
14 follows:

15 DIRECT EXAMINATION

16 BY MR. JETT:

17 Q Good morning, sir. Could you please state your full  
18 name for the jury.

19 A Sims MacDowd Leitner.

20 Q Mr. Leitner how are you employed?

21 A I work for Leitner Construction Company in Rock Hill.

22 Q How long have you been employed in that capacity?

23 A Since 1972.

24 Q Sir, what is your title at Leitner Construction  
25 Company?

1 A I am president of the company.

2 Q How long has Leitner Construction Company been in  
3 business?

4 A Since 1947.

5 Q Sir, are you familiar with the fire that occurred at  
6 Winthrop University on March 6, 201?

7 A Yes.

8 Q And when did you first learn about that fire?

9 A I got a telephone call at about somewhere around 11:30  
10 from Walter Hardin and I was in town and I saw the smoke from  
11 the fire and I went over there to the building.

12 Q Was that on the Sunday after the fire?

13 A No, this was Saturday. This was during the fire.

14 Q Okay. Had Leitner Construction Company been hired by  
15 Winthrop University in the past?

16 A Quite often, yes.

17 Q And so what capacity did Leitner Construction Company  
18 serve at part of the rebuild process for Winthrop University?

19 A We were the general contractors that basically helped  
20 the restoration people and then we did the rebuild.

21 Q And just briefly for the jury in your role as general  
22 contractor for the rebuild process, can you explain to them what  
23 all you did there on campus following the fire?

24 A Well, we started with the roof because basically the  
25 fire burned off the roof. We covered the roof and as the fire

1 restoration people did the demolition we aided them in whatever  
2 capacity we could at that time to just help them with the  
3 demolition and I think we supplied dumpsters and just basically  
4 courtesy maintenance type stuff that they would need during  
5 their process.

6 Q And then ultimately Leitner Construction helped with  
7 the actual rebuild and Bancroft and Owens Hall, is that correct?

8 A Yes.

9 MR. JETT: Your Honor, if I may approach the  
10 witness?

11 THE COURT: Yes, sir.

12 Q Mr. Leitner, there is a very large binder in front of  
13 you. I will not ask you to go through each and every one of  
14 these because it would take quite some time. But here if you  
15 would look on tab number 22 I will represent to you that Mr.  
16 Hardin has already testified as to the amount Leitner  
17 construction was compensated. If you could tell the jury based  
18 on the tab number 22 there, how much Leitner Construction  
19 Company was compensated for their services at Winthrop  
20 University?

21 A The total amount on this was \$4,720,429.24

22 Q Based on your experience in the industry was that a  
23 fair and reasonable amount to charge Winthrop University for the  
24 services provided by Leitner Construction Company?

25 A Yes.

1 Q And was Leitner Construction Company in fact paid for  
2 their services?

3 A Yes.

4 Q And have they been paid in full?

5 A Yes.

6 MR. JETT: I have no further questions for the  
7 witness. Your Honor.

8 MR. SHEALY: No questions Your Honor.

9 THE COURT: Thank you, sir. You may stand down  
10 sir.

11 MR. JETT: If the witness maybe excused, Your  
12 Honor.

13 THE COURT: Thanks for coming, you maybe excused  
14 at this time.

15 (Witness excused.)

16 MR. JETT: Your Honor, at this time our last  
17 witness is Mr. John Murphy with Paul Davis National.  
18 He is unavailable as he is in Milwaukee, Wisconsin, if  
19 we could briefly read into the transcript his  
20 deposition.

21 THE COURT: All right.

22 MR. JETT: If I may open the original.

23 THE COURT: Yes, sir, you may.

24 (WHEREUPON, the following was read from a  
25 deposition.)

1 DIRECT EXAMINATION

2 BY MR. JETT:

3 Q Good afternoon sir, if you would, could you please  
4 state your full name for the jury?

5 A My name is John Murphy.

6 Q Mr. Murphy, where are you currently employed?

7 A I'm currently employed with Paul Davis National.

8 Q How long have you been employed by Paul Davis National?

9 A Since January of 2005.

10 Q What is your current title?

11 A Director of operations for all operations in the field  
12 throughout the country.

13 Q How long have you held that position?

14 A Since the company started in 2005.

15 Q As director of operations are you privy to the billing  
16 practices of Paul Davis National?

17 A Yes, I am.

18 Q Okay. Sir, are you familiar with the fire of March 6,  
19 2010?

20 A Yes, I am.

21 Q How did you first learn of the fire of March 6, 2010?

22 A We received a call from our local Paul Davis office  
23 that was at the scene. The local Paul Davis office, seeing the  
24 size of the loss realized it was much larger than they could  
25 handle, and they contacted us. And I believe I received a call

1 on a late Saturday evening prior to the -- I guess it would have  
2 been probable March 7th or possibly 8th, and I arrived at  
3 Winthrop University early Sunday morning.

4 Q Do you recall what Paul Davis National was retained to  
5 do for Winthrop?

6 A Initially, we walked around the building and the campus  
7 and talked about what the immediate needs were from the  
8 university, and their immediate need was to help stabilize the  
9 adjacent buildings that were not directly affected by the fire,  
10 but had a lot of smoke odor. And these were dormitories, and  
11 they were concerned for the students, and just the irritating  
12 odor that was throughout the buildings.

13 Initially, we were asked to help deodorize those  
14 buildings and then once the deodorization process and starting  
15 mitigating the odors in those dormitories surrounding the main  
16 building where the fire was, Owens Hall, we started addressing  
17 the issues inside the building. And most of the issues that  
18 were most demanding at the time were water infiltration in the  
19 building and beginning the demolition for all the saturated  
20 drywall, saturated flooring, and a number of the items that were  
21 in there, papers, documents, books, things like that. And we  
22 had to get them out of there and into a stable environment.  
23 That was our initial scope.

24 Q Okay. Mr. Murphy, I am going to show a document that is  
25 under tab 28. Do you recognize this document, Mr. Murphy?

1 A Yes, I do.

2 Q What is this document?

3 A This is a contract between our company and Winthrop  
4 University.

5 Q Are there any attachments to this document?

6 A There were several attachments that became part of the  
7 document, yes.

8 Q And what are those attachments?

9 A The primary attachment is the initial scope of work.  
10 And that's always an accompaniment to our contract that spells  
11 out exactly what we've agreed to do within the main body of the  
12 contract. The second attachment to that was our fee schedule in  
13 case the work that was being done -- in case there was any  
14 change orders, we could use that fee schedule as a basis and a  
15 foundation for the changes.

16 Q Does the scope of work include, as part of this  
17 contract, include any other services other than those you  
18 previously described a moment ago?

19 A The scope of work further defines what our scope of  
20 work turned into. As I stated earlier, the scope of work that  
21 we initially were asked to do when we first got there expanded  
22 slightly after we were on the job for a day or two. And that  
23 scope, after we clearly defined it, was put into the scope of  
24 work.

25 Q As part of this initial contract, was there a contract

1 sum agreed upon between Paul Davis National and Winthrop  
2 University?

3 A Yes, there was.

4 Q And how much was that contract sum?

5 A 750,000.

6 Q And you mentioned that your initial scope of that work  
7 expanded?

8 A That's correct.

9 Q I'm going to ask the court reporter to show you a  
10 document also under tab 28. Do recognize that document, Mr.  
11 Murphy?

12 A Yes, I do.

13 Q All right. What is that?

14 A This is a change order that was required after we  
15 started work on the building. There was several conditions  
16 around the building that prevented the building from being  
17 watertight, and as subsequent rains came, the water was running  
18 inside the building. And since our initial scope identified the  
19 amount of water that we saw at the time that needed to be  
20 extracted, and after subsequent rains, more water got into the  
21 building.

22 So we had to continue trying to extract the water and  
23 try to set up barriers and way of getting water that was trapped  
24 between the inside of the building and the outside skin of the  
25 building and just trying to get that water out, or into an

1 environment where we could dry it.

2 Q Did that increase the contract sum?

3 A Yes, it did.

4 Q How much did it increase it by?

5 A \$15,640.

6 Q The next document, Mr. Murphy, also on tab 28, do you  
7 recognize that document?

8 A Yes, I do.

9 Q What is that document?

10 A This is the change order, what we identify as change  
11 order number two. And this was created -- well; I guess I would  
12 let you ask the question first.

13 Q Could you explain to the jury the purpose of this  
14 second change order?

15 A The second change order was the result of additional  
16 work that needed to be done to the structural frame members,  
17 mostly in the ceiling and the attic cavity, that were damaged by  
18 the fire. And we needed to produce an application called ice  
19 blasting. That is a way of applying a medium to the surface of  
20 the metal to clean it and make it ready for new paint surfaces.

21 Q And was that dry ice blasting necessary as part of your  
22 remediation efforts?

23 A Yes, it was.

24 Q Mr. Murphy, I am also going to show you another  
25 document under tab 28. What is this document?

1           A     This was an additional amount of time that was  
2 necessary to completely dry out the building. There was several  
3 dissimilar types of materials in the building and they dried  
4 differently, and we were finding that one part of the building  
5 that was an older part of the building had plaster on the walls  
6 with cementitious substrate and that was soaking wet. It just  
7 took several days more to dry, which was not part of our  
8 original scope. And we had -- we needed to keep our drying  
9 equipment there to ensure that the building was properly dried  
10 before we left. And this additional time was necessary to get  
11 those -- those areas that were difficult to dry to a point that  
12 we were comfortable that it was not going to cause a problem.

13           Q     So in total, you've identified three change orders; is  
14 that correct?

15           A     That is correct.

16           Q     After the third change order, what was the ultimate  
17 amount of the contract sum?

18           A     Contract sum was \$990,544.70.

19           Q     Do you recall how long Paul Davis National was at  
20 Winthrop University following the March 6, 2010 fire?

21           A     Approximately three weeks.

22           Q     At the conclusion of your work, Mr. Murphy, did you  
23 issue an application for payment at Winthrop University?

24           A     Yes, we did.

25           Q     This document has also been marked under tab 28. Mr.

1 Murphy, do you recognize these documents?

2 A Yes.

3 Q Could you explain to the jury what these two documents  
4 are?

5 A The first document is an application for payment using  
6 the AIA702703 format, which identifies the different components  
7 of the job and the requested draw or partial payment that this  
8 particular application is requesting for.

9 The second document is the follow-up payment or, in  
10 this case, the balance of the payment that was due.

11 Q And was Paul Davis National paid by Winthrop  
12 University?

13 Q Yes, we were.

14 A How much in total was Paul Davis National Paid by  
15 Winthrop University.

16 A The full amount, \$990,544.70.

17 Q In your opinion, as director of operations for Paul  
18 Davis National, were the services performed by Paul Davis  
19 National necessary to assist in restoring Winthrop University to  
20 its pre-fire condition?

21 A Yes.

22 Q Based on your experience withing the industry and  
23 specifically with Paul Davis National, was \$990,544.70 a fair  
24 and reasonable amount to charge Winthrop University for your  
25 company's services?

1 A Yes, it was.

2 MR. JETT: Thank you, I have no further questions  
3 Mr. Murphy.

4 May be excused, Your Honor.

5 THE COURT: Is there any questions from the  
6 depo from the defense. Apparently not.

7 MR. SHEALY: No, that will be all.

8 THE COURT: He couldn't answer your questions  
9 anyway.

10 MR. JETT: Your Honor, at this time the plaintiffs  
11 would rest.

12 THE COURT: Counsel approach just a minute.

13 (WHEREUPON, there was an off the record  
14 discussion).

15 THE COURT: Madame forelady, members of the jury  
16 panel, there are some matters we need to take up with  
17 counsel out of your presence at this time, and so this  
18 will take a little bit of time, but I think probably  
19 when we come back we will be to that part of trial  
20 where we will have final arguments and my instruction  
21 to you with regard to the law that applies as far as  
22 damages is concerned. But at this time we need 15 or  
23 20 minutes so I would ask you to retire to your jury  
24 room and you may refresh yourselves. Thank you.

25 (WHEREUPON, the jury leaves the courtroom.)

1 THE COURT: All right. I will hear you with  
2 regard to any motion you might wish to make at this  
3 time.

4 MR. SHEALY: May it please the Court. Your Honor,  
5 at this time we would renew the motion for a directed  
6 verdict that we made during the liability phase on the  
7 same grounds that the case should not have been sent  
8 to the jury because there was no evidence adduced as  
9 to how the fire started, therefore the defendant could  
10 not be held liable.

11 We would secondarily move at this time for a  
12 directed verdict because the plaintiff has failed to  
13 adduce any proof that -- as to how the defendant's  
14 breach of duty made the fire, made the damages worse.  
15 The plaintiff went forward on a -- on the theory of  
16 well, you made the fire worse. You caused the fire to  
17 spread. But they would have needed to have expert  
18 testimony to say, well, the damages would have been  
19 only this amount in the absence of your breach of duty  
20 and because of your breach of duty now they are this  
21 amount. And there was no evidence adduced in this  
22 phase or throughout the trial to give the jury a basis  
23 to make an award that comports with what the evidence  
24 is. So we believe that is a failure of proof on the  
25 damages evidence and we move for a directed verdict at

1 this time.

2 MR. VOGT: Your Honor, as to the -- I renew the  
3 same arguments as the first directed verdict motion as  
4 to cause. As to proof, there is proof from Dan Arnold  
5 that this fire would not have spread to the adjoining  
6 pitched roofs, meaning obviously there is no fire on  
7 the two pitched roofs there is no damage to the  
8 building other than to the flat roof.

9 There was also evidence that the fire would not  
10 have occurred which the Court did not allow into  
11 record. I believe there is an ample evidence, Your  
12 Honor.

13 THE COURT: All right. I think it probably gives  
14 me a good opportunity -- first of all, let me take the  
15 damages issue first. You know that is an argument you  
16 made to the jury I suppose with regard to damages, but  
17 the testimony during the primary trial on liability  
18 from the expert was that if you had a fire on that  
19 flat roof, and we have all the testimony from first  
20 Fire Chief Driggers and from the other persons who  
21 testified including the defendant's expert Arnold.  
22 All of the testimony is that the fire started -- and a  
23 stipulation from the defense, that the fire started on  
24 the flat roof and they could generally come up with a  
25 general area where on the roof it started.

1           There is also testimony from Mr. Arnold with  
2           regard to the height of the fire, flames and that he  
3           saw and that could not have gotten to that height or  
4           burn that hot unless there were materials left up on  
5           the roof, combustible materials on the roof at the  
6           time to serve as fuel for that fire. Otherwise his  
7           testimony was that any other small fire on that -- I  
8           will say rubberized roof because I am not familiar  
9           with all the terms and things that they use for these  
10          covers on the roof -- are rubberized or plastic rubber  
11          or whatever.

12          Nevertheless, his testimony was any fire that you  
13          put just directly on there without any other source of  
14          fuel would die out on its own without doing any real  
15          damage, except a little spot on the roof. That was  
16          there testimony. And so -- and there is testimony to  
17          indicate that the fire on the flat definitely occurred  
18          on the flat roof. There is the size of the flat roof  
19          that is all on the record and everything. And where  
20          this fire started was near the eaves of the roof. And  
21          so -- and the testimony was from Chief Driggers that  
22          the problem they had with the fire, and most of the  
23          damages caused because the fire got hot enough, high  
24          enough, to get in to the -- basically the vents I  
25          don't know if he said exactly like that but I

1 certainly think the expert Mr. Arnold did, got in to  
2 the vents which was high enough to get into the vents  
3 and in the eaves underneath the roof and that once it  
4 got in there it got in to those layers where the fire  
5 fighters couldn't get in to. I don't know the exact  
6 layers, but some layers in the roof that it got in  
7 between them and there was no way, that if it was  
8 contained just on the flat room area there and right  
9 on top of the -- right on top of the roof they could  
10 have easily put it out with very little damage  
11 comparatively, but because it was in those vented  
12 areas that went in to the multiple layers in there  
13 that they had to come in there and get a special tool  
14 to take off the shingles and tear off some roof and  
15 pour water in there to try and get to where it was  
16 and they had to keep fighting it. They could have put  
17 it out probably in a fairly short period of time but  
18 as it turned out they had to fight the fire for better  
19 than twenty-four hours. I don't remember exactly, but  
20 it was more than one day. I got started on the fire  
21 around three on the Saturday and Sunday afternoon  
22 until about seven or eight they pulled out. So this  
23 was probably thirty hours or so that they were in  
24 there fighting this fire and they were were pumping  
25 three different units, fire trucks or units, whatever.

1 Fire fighters were pumping three hundred gallons,  
2 three hundred a gallon a minute, I guess, into that  
3 fire for most of that period of time. Three separate  
4 units; one come in from Newport, two from Rock Hill,  
5 all pumping this water and that's where the real  
6 damage occurred. Most of damage occurred from water  
7 having been pumped in and it had to be pumped because  
8 of where the fire was located in the roof and they  
9 couldn't get in to and they had to keep pumping the  
10 water in there to try and put it out. Otherwise they  
11 could have gotten to it and put most of the fire out.  
12 So, that's the testimony. And so, I think the great  
13 majority of the damage came from the water rather than  
14 the fire even though the roof had to be put back  
15 because of substantial damage from the fire, but most  
16 of it was trying to put it out. And most of the  
17 damage was caused because the fire fighters couldn't  
18 get to the fire because of where it had gotten in  
19 there.

20 And on a flat roof the expert says there is no way  
21 you have a fire that gets that high, flames get that  
22 high, to get in to these vents and get into the area  
23 that they got in to underneath the roof. There is no  
24 way that happens without fuel on the roof. It had to  
25 come from some source.

1 We got testimony that there was some combustible  
2 material on that roof left by the defendant. Don't  
3 know how much. We got an admission. It got burned  
4 up. And Mr. Arnold testified that the heat from the  
5 fire had to get up to eleven or twelve hundred degrees  
6 Fahrenheit to do some of the damage that he observed  
7 in there on the metal, wood, two by eight beam, and  
8 other things that he saw. The fire had to get to the  
9 eleven, twelve hundred degrees Fahrenheit to do the  
10 kind of damage that he saw in there. He was able to  
11 demonstrate that with the pictures and that sort  
12 thing. And so, there had to be a fuel source for  
13 that. It probably would have put itself out if it was  
14 just a rubber roof on fire. Something started it. A  
15 fire started on the rubber roof just burning the  
16 rubber roof with no other fuel source that it would  
17 have died out on its own. That was his testimony. So  
18 is there plenty of testimony on the record from the  
19 expert and otherwise from which the jury can determine  
20 that this damage was caused by the fact that there was  
21 combustible materials left on the roof.

22 Now, so I think there is ample evidence that we  
23 have that the damages were caused -- you can attack  
24 any part of it that you wish, but everything that we  
25 have seen indicates -- all the testimony we had and

1 exhibits and all the testimony -- I don't think the  
2 defense put up any witnesses, did you? You cross  
3 examined some of your employees of the defendant.  
4 Didn't put up anything. And so, the only evidence  
5 that we got is that the great majority of the damage,  
6 virtually all the damage was caused by water fighting  
7 the fire. And that the fire had gotten high enough to  
8 get in to the vent space, the eaves, and gotten  
9 underneath there and they couldn't get to it. And it  
10 just took a long time, to keep a lot of water pumping  
11 in there. And if you go down through the various  
12 levels in the building, tremendous amount of water  
13 damage. They had to replace so much stuff in there  
14 including the electronics. Just happened to be a lot  
15 of electronics in this buildings -- these buildings.

16 So, I think there is plenty of evidence through  
17 the primary phase of the trial -- that is I don't want  
18 to say the primary phase of the trial -- in the  
19 liability stage of this trial which this jury heard  
20 the same thing, and they heard it all, for them to  
21 form a basis as to the damages and what caused them  
22 and how it was done and the amount of the damages. So  
23 I think there is plenty of evidence along with what  
24 they produced today in the damages part of the  
25 hearing.

1           So I deny your motion for a directed verdict with  
2 regard to damages. That will be a jury issue on that.  
3 Lets go back to the directed verdict motion. I glad  
4 you renewed because I want to restate my position for  
5 the Appellant Court to make sure they understand my  
6 position on that.

7           You know we came in to this -- and it has nothing  
8 to do with the directed verdict part of it, but we  
9 started out in the case and we never got any effort  
10 whatsoever by the defense to offer anything.

11          Participate in any meaningful way in any negotiation  
12 to try and settle this case. Been a total roadblock  
13 from the beginning. And even though the defense has  
14 six million dollars in insurance coverage, and even  
15 though the contractor has got exposure for one point  
16 three million -- whatever the damages might be, if  
17 that's what it turns out to be -- whatever the jury  
18 decides. For the excess they got personal exposure  
19 for that, the company does. And in spite of that the  
20 plaintiff willingness to try and negotiate the case,  
21 the defense has total stronghold that and that's the  
22 right of the defendant. Absolutely right of the  
23 defendant to do that. But then we go through and I  
24 guess the defense is relying solely on a directed  
25 verdict. That's the way it appears to me. The

1 directed verdict stage. But yet I told the defense  
2 that the case -- we were at the close of the  
3 plaintiff's case, before I heard any legal arguments.  
4 I told the defense the case will probably go to the  
5 jury on the theory that I am about to go over. I told  
6 the defense that. I told you that and encouraged you  
7 again if it was going to the jury you don't know what  
8 a jury is going to do with it and urged the parties to  
9 see if they could resolve it some way which would be  
10 satisfactory. The defense again absolutely refused to  
11 do that. Then we got through with it. And we got a  
12 verdict by the jury. I then urged parties again to  
13 see if they can work something out on this and the  
14 defense absolutely refused again. Stonewalled again.  
15 Absolutely refused to do it, to even negotiate. And  
16 so, you know that's where we are now.

17 And so let me give you my position why I think it  
18 is correct for it to go to jury and correct for the  
19 Court to deny your motion for a directed verdict.

20 First of all, I did not allow, which the plaintiff  
21 tried over and over again particularly with the expert  
22 they tried over and over to get a cause of the fire  
23 in. And their basis for that was, their expert could  
24 testify that this rubberized roof in and of itself if  
25 something was put on that roof only to start a fire on

1 that roof whether it be -- they used examples of a  
2 cigarette, a match thrown over there, a blow torch --  
3 experts testified a blow torch for a minimum amount of  
4 time, some amount of time, wouldn't even start a fire  
5 that could reach the height of this one and reach the  
6 -- get into the eaves of this roof of the building to  
7 get into them. And so there had to be some fuel  
8 source on the roof which would allow that to happen.  
9 Their theory was this fire had to have some  
10 combustible material up there for the fire to start,  
11 and therefore the defendant was responsible for it.  
12 Because there was combustible material up there even  
13 according to the defense witnesses who were called by  
14 the plaintiff, but they are employees of the  
15 defendant. And so they are saying the fire had to  
16 start from this combustible material. Well, I didn't  
17 allow them to do that because I don't that is correct.  
18 The defense is quite right to object to that. And I  
19 said, you know, there is other possibly sources. But  
20 if you look at -- if you look at it, you got a flat  
21 roof. They are doing work up there. They left  
22 materials up there. I don't know what all they left  
23 up there, but the expert testified eleven or twelve  
24 hundred degree Fahrenheit fire burned up everything on  
25 there. So it burned it all up. I don't know what was

1 up there. And the only people who know what was up  
2 there on the 4th when they left there at four o'clock  
3 in the afternoon, the only people that know were the  
4 employees of the defendant. They are the only ones  
5 that know because we don't have any testimony from  
6 anybody else.

7 On the 5th when the fire occurred and the fire  
8 fighters got up there everything thing was burned up.  
9 Consumed. So we don't know what was up there. And  
10 that's the theory of the plaintiff, that it had to be  
11 some combustible materials up there but it was all  
12 burned up and there is no way to show exactly what  
13 they had up there.

14 Now, what is most likely source of the fire. Most  
15 likely source is something that the defendants left up  
16 there. Employees left up there. That is the most  
17 likely source because you had a locked building,  
18 locked doors to get out there. They left there four  
19 o'clock on a Friday and there is no evidence anybody  
20 else was on that roof whatsoever and it was all locked  
21 from the general public. It was locked at the time of  
22 the fire because the policeman had to let the fire  
23 fighters -- had to open it up for them to get up in  
24 there to fight the fire. Is it possible that someone  
25 else went up there, yeah, it's possible. But what

1 would they have done. Thrown a cigarette, match or  
2 something like that on the roof, flat roof if this is  
3 where the fire started. It appears that's highly  
4 unlikely to have occurred. Okay. Because it was  
5 locked up and everything and there is no evidence of  
6 anything else. And something about elevator people  
7 that went in there and they did some maintenance on  
8 the elevator, but that's down a floor and they didn't  
9 go up there on the roof. And again, there's  
10 stipulation and agreement that the fire started on the  
11 flat roof. Okay. And they went up there and they  
12 changed, there was a 4th on the work order or whatever  
13 they did, the report that they did the maintenance. A  
14 4th struck through with a 5th and then that struck  
15 through and put 4th. So there are two things happened  
16 there. Either he was confused as to what the date  
17 was. First thought it was the 4th, no, maybe it's the  
18 5th and then he changed it back to the 4th. He  
19 changed it because the fire occurred on the 5th. He  
20 put it back on the 4th. But originally the first  
21 thing he put on there was the 4th, remember. Changed  
22 to the 5th and then he changed back to the 4th. Even  
23 if you assume that didn't want to be there on the 5th,  
24 if you assume that, there is still no evidence that he  
25 did anything. As matter of fact Fire Chief Driggers

1 -- and more likely it was on the 4th rather than the  
2 5th because not to many of these people work on  
3 Saturdays, and it would be rare for them to work on  
4 Saturdays so it is assumed it is on the Friday -- but  
5 in any event, Driggers's says they checked the fan.  
6 That was the only part that was up on the roof, which  
7 is an exhaust fan from the elevator and it was --  
8 everything was fine. They ruled it out as a possible  
9 source of this fire. The wiring and all that was  
10 still intact. It wasn't even worn. So, they ruled it  
11 out as cause of the fire. And again, keep in mind the  
12 fire started on the flat roof away from the exhaust  
13 fan. But there is always a possibility that some  
14 other source came, and I think it is unlikely, but  
15 there is a possibility. Maybe from the fan. Maybe  
16 somebody somehow got up on the roof, smoked a  
17 cigarette or something like that. What else would  
18 they have done up there. So I can't rule that out.  
19 And I think the defense was correct to point that out.  
20 You can't say it's an absolute cause. You can say,  
21 you know, it more likely started from something the  
22 the defendants employees left up there. Some  
23 combustible material had to start the fire. It's more  
24 likely, but there is no way to say for sure and  
25 because of that I was not going to let his expert say

1 that was the cause of the fire, combustible material  
2 up there. I didn't let him say that. Even though I  
3 think if you look at all the evidence it is more  
4 likely that the fire was started from some combustible  
5 material because of what is left up there by the  
6 defendant's employees.

7 But now we get down to -- so I wouldn't let him  
8 testify to that. Wouldn't let him put that in. But I  
9 don't think it ends there simply because the defense  
10 is taking the position by the fire spread theory and  
11 some states have agreed to allow the fire spread  
12 liability and some do not. South Carolina has not  
13 taken a position. No cases are cited to the Court and  
14 I haven't seen any, where our State Court, our  
15 Appellant Courts have taken a position on that. So  
16 there is no authority in South Carolina on spread  
17 liability. They haven't taken a position. But this  
18 is not a spread liability case and I think that's  
19 where the defense misses the point. It's not a spread  
20 liability case. I repeat that for the record.

21 This is a case of a worksite. A worksite where  
22 these employees were hanging out on a flat roof and  
23 going there for breaks and they were keeping some  
24 materials up there, combustible materials. I don't  
25 know what they all were. They admitted some of them;

1 roll roofing, roll paper, roof paper, pallets, wood  
2 pallets up there. Something had to be on the wood  
3 pallets. Why would you have them up there. Oh, it's  
4 a little bit of metal stuff up there. Well, you  
5 wouldn't lay them right on the pallet. They would  
6 blow off. They would have to be tied down somewhere.  
7 They might blow off these aluminum pieces and that  
8 sort of thing. But that's the only thing the defense  
9 wanted to admit. But some of the employees already  
10 testified there was some other materials up there.

11 What's interesting to me is that they had a lift  
12 there and the lift was putting all these materials up  
13 there for them, heavy materials I might add. And  
14 undoubtedly there was a bunch of shingles put all the  
15 way across the roof. Heavy shingles put up there on  
16 that roof. They have been up there at least a week  
17 and they may very well have been up there ever since  
18 that mechanical lift left the job site thirty days  
19 earlier. And they could very well have put a lot of  
20 other stuff up on that roof while they had the lift  
21 available. I don't know that and I am not saying that  
22 is the case. I am just saying that is a possibility.  
23 I don't know what all is up there, but we know there  
24 were combustible materials left up there by the  
25 defense. They had them up there, stored up there.

1 And so -- so we are talking about a work site, not  
2 another building somebody had some where else. That  
3 this blew off and there was some -- some maintenance  
4 of a dangerous condition of another house adjacent or  
5 something that caught on fire and because of that it  
6 went on to another house and spread to another house  
7 or building. That's not this situation. And you got  
8 common law duty not to leave your -- or have your  
9 property in such a condition that it's not a fire  
10 hazard or allows a fire to spread because of a  
11 hazardous condition. That's not this situation.  
12 Okay. Here we got a contract. And it's not a common  
13 law duty that you're suing a homeowner or somebody who  
14 had a dangerous condition under common law because  
15 they violated the duty.

16 That is not the situation here. Here you got a  
17 contract. And you got a contractor who agreed under  
18 the contract to abide by all of the state regulations,  
19 fire regulations, other regulations, laws, et cetera,  
20 et cetera. He agreed by the terms of the contract and  
21 this is a standard state contract and it is required  
22 to do that. One of those -- and there are several  
23 that apply in this case -- one, you can't leave  
24 materials stored or combustible materials under eaves,  
25 overhangs and buttons (phonetics) and that sort of

1. thing. And yet it appears that this fire started near  
2 one. And that's where all the damage came from,  
3 inside once it got into these vents under the eaves  
4 and that sort of thing. So that is one.

5           Number two, you are not allowed to have materials  
6 stored on a building that you got working on. You not  
7 allowed to store it in an outdoor situation. It has  
8 to be at less thirty feet away. This couldn't have  
9 been thirty feet away because the whole flat roof--  
10 and it is outdoors and you can't get thirty feet away  
11 from the buildings and be on this site. And be on  
12 this flat roof. You can't do it. So it's a violation  
13 of that section and that section means something.  
14 Thirty feet away because you don't have combustible  
15 materials because then that can cause a lot more  
16 damage or cause a fire that spread to areas where you  
17 are trying to keep it away from. So it must mean  
18 something. And so, here we got a contract. The  
19 defendants -- there is evidence that the defendants  
20 did not comply with the terms of the contract. They  
21 breached it and as a result of that breach there were  
22 combustible materials on the flat roof on a work site.  
23 This was all part work site up there because they  
24 would spend a lot of time up there on that flat roof.  
25 Eating up there. Taking breaks up there and that sort

1 of thing. They had materials up there and going from  
2 those up steeper slopes on the side of the roofs. So  
3 this is a worksite we are talking about. Not somebody  
4 else's property over here that they created a hazard  
5 under common law duty, under fire spread liability.  
6 And the basis of my ruling in denying the directed  
7 verdict motion is, this is different from all that.  
8 That's why I said it's a novel impression case in  
9 South Carolina and the Appellant Court I am sure will  
10 get a look at it. But the fact of the matter is, you  
11 have a contract, breach of contract issues where the  
12 defendants alleged to have breached a contract and the  
13 jury found that they did in fact breach a contract.  
14 Number two, they got a negligence cause of action. In  
15 a negligence cause of action the jury looked at it.  
16 The defense alleged that the plaintiff, Winthrop  
17 University as an owner of the premises had the duty  
18 and responsibility to have under these same  
19 regulations, they are required to have a fire  
20 protection person, superintendent, whatever, to also  
21 be on the look out and supervise and look out for any  
22 problems, and they didn't have a person designated to  
23 do that and that person didn't do that because there  
24 was not such a person. And you have alleged they were  
25 negligent in failing to do that under the statute

1 because they violated that statute, or that  
2 regulation, they were also negligent. And the jury  
3 said yes, we agree. Okay. And you come down to the  
4 issue of proximate cause and I charged them on that.  
5 But you know, the plaintiff's conduct much harder to  
6 get proximate cause out of their conduct for not just  
7 having a supervisor around as the cause of the fire.  
8 The defendant breached of more than one regulation as  
9 alleged by the plaintiff and there is factual evidence  
10 of it much more closely in tune with proximate cause  
11 of the fire, or the damage caused by the fire. But  
12 nevertheless, the jury found both were negligent and  
13 the only way the plaintiff could have been negligent  
14 was they didn't have this person designated as a fire  
15 superintendent, protection superintendent, to be on  
16 the job supervising. The jury found both negligent  
17 and they found the defendant was sixty percent  
18 negligent, the plaintiff was forty percent negligent  
19 under the comparative negligence theory. And the only  
20 basis for them to be negligent is not complying with  
21 the regulation and the defense not complying with the  
22 regulations. And so, at any rate, obviously the jury  
23 found that each side was negligent in some way in  
24 failing to comply with the regulations that had a  
25 force of law in this case. And they divvied it up

1 under that. And so this is not a fire spread case.  
2 This is a contract case, breach of that contract. The  
3 breach, failing to comply with the statutory  
4 regulations.

5 The jury found proximate result in damage to the  
6 plaintiff. And that's what this case is about. Not  
7 on the spread liability, fire spread liability theory.  
8 And I think that's where the defense missed the boat  
9 on this one, in arriving at their assessment and  
10 refusing absolutely to recognize any liability  
11 whatsoever on their part and refusing to try to work  
12 this case out somehow prior to a jury verdict.  
13 But that's where we are. And they also found  
14 negligence.

15 So, I think it is a negligence case because of the  
16 maintenance of the work site, not from a spread  
17 liability theory. It is all part of the work site and  
18 all in close proximity to each other, connected up to  
19 each other. I don't see it is a spread liability case  
20 at all.

21 In any event, it is unique on its facts. There is  
22 no summary case that I saw for this one where it  
23 happen on a work site in getting in to eaves of a  
24 building which caused most of the damage. That they  
25 were working on it. It was a work site and working on

1 it. So that's -- I want to be sure if the Appellant  
2 Court looks at it that they understand the reason for  
3 my ruling in denying the motion for directed verdict  
4 and why I think that is a correct ruling. They can  
5 form their own opinion about it, but I think that is a  
6 correct ruling.

7 All right. I deny your motion for a directed  
8 verdict for the second time. Anything else?

9 MR. VOGT: No, Your Honor.

10 MR. SHEALY: No, Your Honor.

11 THE COURT: All right, then we are down to final  
12 arguments, correct?

13 MR. VOGT: Yes.

14 THE COURT: Let's go over the charge. I have some  
15 questions about the charge.

16 MR. VOGT: I don't know if we take a few minutes  
17 and go through it.

18 THE COURT: Come on back and let's look at what I  
19 got. Let's go back in chambers.

20 (Whereupon, there was an off the record  
21 discussion.)

22 THE BAILIFF: Come to order.

23 THE COURT: Counsel ready to proceed?

24 MR. VOGT: We have confirmed that exhibit number  
25 67 is in record.

Plaintiff's Closing Argument

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1 THE COURT: Okay.

2 MR. VOGT: And I also wanted to hand up the  
3 stipulation, I believe we gave it to you earlier; make  
4 that a court exhibit.

5 THE COURT: All right, we will make that a court  
6 exhibit.

7 (Court's Exhibit 2, stipulation, received  
8 in evidence as of this date.)

9 THE COURT: All right, please bring the jury in.

10 THE COURT: Madame forelady and members of the  
11 jury panel, we to the part of the damages trial, where  
12 counsel will make their final arguments to you.  
13 Please listen attentively now as they address you in  
14 the final argument.

15 MR. VOGT: If it please the Court.

16 THE COURT: Yes, sir.

17 MR. VOGT: Ladies and gentlemen of the jury, you  
18 will be pleased to know this is probably the last time  
19 you will hear from me, unless I have something to tell  
20 you after Mr. Shealy speaks to you.

21 I want to thank you again for all the hard work.  
22 We greatly appreciate the time you spent on this case,  
23 the manner in which you went about your work. It  
24 takes you away from family, takes you away from your  
25 jobs. We appreciate that and appreciate you

1 fulfilling your duty as jurors. It truly is the heart  
2 of our judicial system.

3 You did the yeoman's work yesterday in determining  
4 the liability. Today is still important in the  
5 damages phase of this case. Today you are going to be  
6 called upon to determine how much money did it cost to  
7 put Winthrop back into the same position it was prior  
8 to the fire. And so you heard a lot. We tried to  
9 make it as quick as possible and as efficient as  
10 possible. We put on a number of witnesses to do that  
11 for you. Wes Love kind of gave you the background of  
12 all the damage, all the water damage to the building,  
13 fire damage. Mr. Walter Hardin, vice president of  
14 Winthrop, he walked through all those thirty-seven odd  
15 contractors who Winthrop hired to do the work.  
16 Explained to you the work they did. His testimony was  
17 that all that work was fair, necessary and reasonable.  
18 We also wanted to make sure you had a sense of some of  
19 the bigger numbers with some of the contractors.  
20 That's why we had Mr. Leitner talk to you about the  
21 work the general contractor did, the restoration folks  
22 from AfterDisaster. Also, the deposition testimony  
23 that you heard from the contractor and finally the  
24 architect. And I know it's dry and I know it's  
25 tedious. Some people would say it's boring. It is

1 more of an accounting of those costs, and I believe  
2 the fair reading of that evidence is that Winthrop  
3 suffered \$7,223,343.14. Tough number to keep up in  
4 your head.

5 When you go to deliberate you will have the  
6 exhibit book which has that sheet with those numbers  
7 on it. And so that's what Winthrop asks you to do  
8 today. Weigh that evidence and I think if you  
9 consider it carefully you will find that those charges  
10 were fair, reasonable and necessary and there was no  
11 evidence to the contrary.

12 Again, I have three boys and I often talk to them  
13 about my job. Surprisingly none of them want to be  
14 lawyers. But what I always emphasis to them is that  
15 jury duty, trials, this type of thing, it's really,  
16 really, a unique part of our system. And I've dragged  
17 them to some of these things some times, and it's a  
18 great chance to participate in our society which most  
19 people don't get. And I know it's work and I know it  
20 takes you away from things you want to do and I  
21 greatly appreciate it and thank you very much. And I  
22 ask for a verdict in that amount; \$7,223,343.14.  
23 Thank you.

24 MR. SHEALY: May it please the Court.

25 Ladies and gentlemen, I will be very briefly. You

1 didn't hear us contest any of those numbers. The only  
2 thing that I have to say to you today is the way this  
3 case was tried in the first phase was to tell you  
4 that, well, what Pickens did made a fire worse. Made  
5 it spread. And you have been offered no way to  
6 determine what damages were caused by what Pickens did  
7 versus would have been caused anyway. And that's a  
8 complete failure of proof on the plaintiff's part.  
9 The plaintiff had an obligation to do that. And  
10 because you hadn't heard that we ask you to bring back  
11 a verdict of no damages because there has been that  
12 failure.

13 Certainly they suffered damages. There is no  
14 question about that. I am not saying they didn't  
15 suffer damages. But this is a legal -- legal and  
16 practical thing that you as the jury are suppose to be  
17 -- are suppose to be asked to do, is determine how  
18 much did they make it worse. You have no evidence  
19 from which to make that determination and so you can't  
20 award damages without that information.

21 Thank you, very much. And I appreciate your  
22 service very much as well, and for your listening to  
23 both sides. We appreciate your work.

24 THE COURT: Counsel.

25 MR. VOGT: Just briefly. Part of the evidence in

1 this case was from Dan Arnold. He talked about the  
2 how the fire spread from the flat roof to the  
3 adjoining roofs. As you recall, Mr. Arnold testified  
4 that a fire that started on the flat roof would self-  
5 extinguish. When asked about the torch he told us why  
6 that would happen, because of the nature of that TPO  
7 surface. Given that testimony I believe there is  
8 ample evidence for you to find that Winthrop suffered  
9 all the damage that we requested, that 7,223,343  
10 dollar figure. Thank you.

11 THE COURT: All right. Madame forelady and  
12 members of the jury panel, you have heard final  
13 arguments from counsel. I will now instruct you with  
14 regard to the law that applies to damages.

15 You previously determined liability in this case  
16 and now you are asked to determine the amount of  
17 damages suffered by the plaintiff in this case,  
18 Winthrop University.

19 I instruct you with regard to that the plaintiff  
20 must prove by preponderance or greater weight of  
21 evidence that the plaintiff suffered damages which  
22 were proximately caused by the defendant's actions.  
23 The plaintiff must prove damages by the preponderance  
24 of the greater weight of the evidence. This does not  
25 mean the plaintiff must prove damages to a

1 mathematical certainty or produce evidence of the  
2 exact amount of damages suffered.

3 However, the amount of damages can not be left to  
4 guesswork or speculation. Instead the evidence  
5 presented by the plaintiff must be enough to allow you  
6 to determine the amount of damages with reasonable  
7 certainty and accuracy. Actual damages are to  
8 compensate the plaintiff for the plaintiff's damages  
9 or loss and to put the plaintiff as near as possible  
10 in the same position that the plaintiff was in before  
11 the incident occurred.

12 In other words, actual damages would be the actual  
13 losses and expenses which the plaintiff has suffered  
14 because of the defendant's actions. The damages must  
15 be fair, reasonable and necessary.

16 Now, madame forelady and members of the jury  
17 panel, that is the extent of the damages instruction.  
18 I have prepared for you to use in the jury room a  
19 verdict form. It's very simple. The verdict form  
20 read as follows; we the jury find the damages in the  
21 amount of blank dollars. So once the jury has reached  
22 a unanimous verdict as to the amount of damages  
23 suffered by the plaintiff you'll simply write that  
24 figure in by the dollar sign in the blank provided,  
25 sign your name on the line before the foreperson's

Jury Charge

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1 signature, date it and knock on the door and let the  
2 bailiff know you reached a verdict and he will let me  
3 know and I will bring you back out to get that.

4 Now, let me say insofar as the negligence action  
5 you have split liability in that case, but you do not  
6 be concerned about that. What you are to determine is  
7 the total amount of damages suffered by plaintiff. If  
8 there should be any reduction in that that would be  
9 for the Court to determine. Not for you. You are to  
10 determine the total amount of damages suffered by the  
11 plaintiff and that is the amount that you write in  
12 there. Don't try to reduce it in any way. Just put  
13 the total amount. If there is any reduction in that  
14 the Court would take care of that. Just put the full  
15 amount of damages you find suffered by the plaintiff.

16 Thank you. Now, I will ask you to retire to the  
17 jury room. Do not begin to deliberating until I give  
18 counsel an opportunity to request additional  
19 instructions on the law. If no additional instructions  
20 are necessary I would send you by means of the bailiff  
21 the exhibits submitted in the record, verdict form and  
22 instruction to begin deliberating. Please do not begin  
23 deliberating until you get that instruction. Please  
24 retire to the jury room all except the two alternates.  
25 Again, I will ask you to wait outside the courtroom

1 door for further instructions. Thank you.

2 (WHEREUPON, the jury leaves the courtroom.)

3 THE COURT: Exceptions or additional requests?

4 MR. VOGT: No, Your Honor.

5 THE COURT: From the defendant.

6 MR. SHEALY: No, Your Honor.

7 THE COURT: All right. The only exhibit -- we  
8 only have the one exhibit.

9 MR. VOGT: That big binder.

10 THE COURT: Okay. We agree it has been admitted.  
11 Thank you. We will be at ease then. You can ask the  
12 bailiff just to hand that to them and they can begin  
13 deliberating and ask the alternates to come back in  
14 here.

15 (WHEREUPON, the alternate jurors enter the  
16 courtroom.)

17 THE COURT: You can stand right there if you will.  
18 As it turned out we made it through the second part of  
19 the trial as well without emergency regarding one of  
20 the first 12 jurors chosen. So it will not be  
21 necessary for you to participate in those  
22 deliberations or reach a verdict. So, this will  
23 conclude your service in this case also of course  
24 complete your service for the week because we will not  
25 start another trial this week.

1 I want to take this opportunity to thank you for  
2 your service. If an emergency had developed without  
3 alternates we would not have been able to finish the  
4 case. But with alternates even with a couple of  
5 jurors we could have substitute you and kept going and  
6 that is the reason we select alternates. I want to  
7 thank you for your service and the sacrifice you made  
8 this week to help make our justice system work. We do  
9 not take that sacrifice for granted. We deeply  
10 appreciate it.

11 You are you free to go at this time with our  
12 thanks. Again, this will complete your service for  
13 the week. You need not come back and you can turn  
14 your badges in and a check will be put in the mail in  
15 the near future for your service. Again, thank you  
16 very much and you are free to go.

17 THE COURT: We will be at ease.

18 (WHEREUPON the jury began deliberating at 11:43).

19 THE COURT: All right, we have a verdict. Please  
20 bring in the jury.

21 (WHEREUPON, the jury enters the courtroom at 12:32  
22 with a verdict)

23 THE COURT: Madame forelady and members of the  
24 jury, and the jury reached a unanimous verdict in this  
25 case?

Jury Verdict

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1 THE FOREPERSON: Yes.

2 THE COURT: Please hand the verdict form up to the  
3 clerk.

4 All right. In case of Winthrop University  
5 Trustees for the State of South Carolina versus  
6 Pickin's Roofing and Sheet Metals, civil action number  
7 2012-CP-46-3151, the jury find as follows: We the  
8 jury find the damages in the amount \$7,223,343.14.  
9 Madame forelady and members of the jury panel, if I've  
10 correctly read your verdict and that is your unanimous  
11 verdict will you all please raise your right hands.  
12 Okay, put your hands down. Let the record reflect that  
13 all 12 jurors raised their right hands.

14 Any questions of the jury panel from the  
15 plaintiff?

16 MR. VOGT: No, Your Honor.

17 THE COURT: From the defendant?

18 MR. SHEALY: No, Your Honor.

19 THE COURT: Madame forelady, members of jury  
20 panel, we appreciate your service this week. You have  
21 been here, you've been attentive. You have been here  
22 when you are suppose to be and been patient because  
23 we've gone through some down times in trial such as  
24 this which was necessary and I want to take this  
25 opportunity to thank you. This concludes your service

1 this week. We will not have time to start another  
2 trial this week. But we appreciate your service and  
3 sacrifice and we understand that you're being here as  
4 required you to be away from your jobs, family and  
5 other things that you feel are important for you to be  
6 doing. We understand that sacrifice. We deeply  
7 appreciate it. We do not take it for granted. We  
8 deeply appreciate you being here and your willingness  
9 to make that sacrifice. As I said to you before the  
10 jury system is the cornerstone of our system of  
11 justice in this country and we couldn't function  
12 without jurors such as yourselves who are willing to  
13 make those sacrifices necessary to help make this  
14 system work.

15 Thank you, very much. You are free to go at this  
16 time. A check will be put in the mail for your  
17 service this week in the very near future. Don't  
18 spend it all in one place.

19 Does anybody need anything to take to your  
20 employer showing you were you required to be here this  
21 week? Anybody else? Ms. Strait will provide that.

22 Again, thank you, very much for your service and  
23 your patience and you are free to go at this time.

24 (WHEREUPON, the jury leaves the courtroom)

25 THE COURT: All right. Any matter we need to take

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up out of the presence of the jury at this time from either side?

MR. VOGT: No, Your Honor.

MR. SHEALY: I have several motions.

THE COURT: All right.

MR. SHEALY: Your Honor, I move at this time for a judgement notwithstanding the verdict on the grounds that the case should not have gone to the jury during the liability phase for failing to prove how the fire started.

I would renew the motion also for a directed verdict because of the failure to prove what damages were caused by the spread of this fire, under the plaintiff's theory because of our materials being on the flat roof as opposed to what damages would have occurred anyway on that flat roof.

I also would move for a new trial absolute on the grounds that bifurcation in this case was inappropriate where the plaintiff was going forward on the theory that our materials caused the fire to be worse then it would have been otherwise. That forced the jury to consider proximate cause and damages separate from each other and it was inappropriate to do that. They were not considering damages when they were considering proximate cause and they were not in

1 a position to decide whether some damages were caused  
2 by our client's actions and some damages would have  
3 occurred otherwise.

4 I would also move for a new trial absolute based  
5 on the denial of our motion to strike the juror for  
6 cause.

7 And finally Your Honor, I would move that when  
8 judgement is entered in this case that it be governed  
9 by the comparative negligence determination. Even  
10 though there was a breach of contract finding, the  
11 duty upon which the plaintiff's relied that was part  
12 -- in the contract exists outside the contract. The  
13 contract merely just said you are to comply with the  
14 law and safety regulations. And in that situation  
15 because of the duty did not arise by contract, it  
16 existed outside of the contract, the comparative  
17 negligence determination should govern the judgement  
18 in this case, because there is truly no legal  
19 distinction in the breach of duty that is -- was  
20 occasioned in the breach of contract cause of action  
21 and the negligence cause of action in this particular  
22 case.

23 And so, we would ask if our other motions are  
24 denied that judgement be entered based upon the  
25 comparative negligence determination.

1 THE COURT: Counsel.

2 MR. VOGT: Your Honor, we renew the same arguments  
3 we made with respect to the earlier multiple motions  
4 with respect to the causation issue.

5 As to the argument of damages we offer we just  
6 heard that same argument with respect to the directed  
7 verdict. As the Court knows for a directed -- excuse  
8 me. Judge, notwithstanding the verdict it's a renewal  
9 of -- it's merely a renewal of a directed verdict  
10 motion. In reviewing a judgement notwithstanding the  
11 verdict, must be denied if the evidence shields more  
12 than one reasonable inference --

13 THE COURT: Take your time. Drink some more  
14 water.

15 MR. VOGT: First time I've been speechless all  
16 week, right, Your Honor.

17 In reviewing a judgement notwithstanding the  
18 verdict, must be denied if the evidence shields more  
19 than one reasonable inference or its inferences are in  
20 doubt. Should only be granted -- only if no  
21 reasonable jury could have reached the challenge  
22 verdict. I believe there is ample evidence in this  
23 case for a jury to have awarded the amount of damages  
24 it awarded.

25 As to the motion for a new trial absolute, the

1 contract -- as to the contract claim. The contract  
2 required not only the defendant to comply with all  
3 applicable codes, ordinances, but also the  
4 specifications which were part of the contract  
5 required among other things, Pickens to store its  
6 materials in two approved locations; one, a parking  
7 lot, and one in the front of the building. Nothing in  
8 the contract allowed it to store the materials on the  
9 flat roof.

10 In addition, all the testimony in this case is  
11 that no one from Winthrop or anyone acting on  
12 Winthrop's behalf ever authorized the storage of  
13 materials on the flat roof.

14 Moreover, I don't know there is any legal basis  
15 for the argument of a breach of code. A breach of  
16 contract relying on a breach of code means that you  
17 only apply the judgement for negligence. I obviously  
18 didn't research that issue. But just taking the  
19 factual stand -- situation in this case, I don't  
20 believe that is valid argument.

21 And the -- what was the other one. Oh,  
22 bifurcation. The objection as to bifurcation. There  
23 was an objection to bifurcation, but certainly not  
24 that objection was not made at that time. I don't  
25 think there is any prejudice to the jury in deciding

1 the issues of liability and the issue of bifurcation  
2 is well within the discretion of the trial Court.

3 THE COURT: I will take them one at time. I will  
4 start with the jury issue as I ruled earlier, out of  
5 jurors we had, the one juror -- there were two strikes  
6 for cause set forth by the defense. At the time we  
7 had the jurors from which the jury would be selected  
8 20 jurors and the alternates. He made two. At that  
9 time the defense made two requests to strike for  
10 cause. One of them was an employee of Winthrop and  
11 that fact alone even though that juror said could be  
12 fair and impartial, we struck that juror because that  
13 is too close of a connection. And so we did strike  
14 that juror for cause.

15 The other juror attended Winthrop and had talked  
16 to some other students or heard some professors make  
17 remark around the fire, or after the fire and that  
18 sort of thing. But we brought her up front. I  
19 brought her up front and I questioned her closely  
20 about that and asked her whether or not whatever she  
21 might have heard about it, if she could put whatever  
22 she heard about it before she came to court aside and  
23 decide the case solely on the sworn testimony and  
24 evidence that came in during the course of the trial  
25 and the Court's instruction on the law and she

1 answered that she could. And so there was no other  
2 close connection to Winthrop that would cause the  
3 Court to excuse her for cause. She said after I  
4 closely questioned her about it she could put anything  
5 she heard about it beforehand which was what -- three,  
6 four years ago. Three years ago, four years ago. If  
7 she could put that aside and decide it based on the  
8 evidence and on the sworn testimony that came in and  
9 the Court's instruction on the law. She said she  
10 could. So I declined to strike the juror for cause.  
11 Of course then the defendant had four peremptory  
12 strikes and I believe he struck her with the first  
13 peremptory strike, I believe, that he had. And so the  
14 juror was struck. Certainly no prejudice has been  
15 shown. None was raised by the defense at the time.  
16 Just said she should be struck for cause. And the  
17 defendant is required to show some prejudice to him,  
18 to the defense, and none been shown. None was raised  
19 at that time when the objection was made. None has  
20 been made now at the time that issue was raised again  
21 in the JNOV motion. And so the Court finds no  
22 prejudice to the defendant. The Court feels the  
23 decision was proper and the note the objection that he  
24 raises at this time -- well, I will put it this way.  
25 He never showed any prejudice at any time. The

1 earlier motion on the day the defendant showed  
2 absolutely no prejudice, even if the Court should have  
3 stricken the juror, which this Court doesn't think  
4 that it should have stricken the juror. Even if the  
5 Court should have stricken the juror the defense has  
6 shown no prejudice. That juror was struck with the  
7 first peremptory strike, so no prejudice to the  
8 defendant in any event.

9 Now, going back to -- I think I adequately  
10 addressed the issue concerning the fire itself and  
11 whether the Court should directed a verdict in favor  
12 of the defendant at that time. The Court reiterates,  
13 this is not a fire spread case. It is a case of a  
14 fire at the worksite, and the whole worksite there, is  
15 what it is. And so the Court denies the judgement  
16 JNOV on that basis. The Court has already previously  
17 ruled and I will deny it for the same reason I gave  
18 for a directed verdict motion made at the end of the  
19 damages case. I think I made it abundantly clear this  
20 Court's position on that and I think that is the  
21 correct position. It will be up to the Appellant  
22 Court to decide whether that is correct or not.

23 The -- again, it is not a fire spread case. Now  
24 there were two causes of actions submitted to the  
25 jury. Both sides agreed that those two causes of

1 action should be submitted. One of them is breach of  
2 contract. The other was on negligence. And I think  
3 the defense requested a comparative negligence charge  
4 on the negligence charge. And the Court gave that,  
5 and the jury came back with a sixty/forty split.  
6 Sixty percent against the defendant on that negligence  
7 charge.

8 However, I think the plaintiff has a right to  
9 select. They only get damages in one amount and the  
10 ultimate damages found by the jury is \$7,223,343.14.  
11 They have to select their cause of action. And I will  
12 ask you now, which cause of action you select?

13 MR. VOGT: Your Honor, if I may have a moment with  
14 counsel.

15 THE COURT: Yes, sir.

16 MR. VOGT: May we approach, Your Honor?

17 THE COURT: Yes.

18 (WHEREUPON, there was an off the record  
19 discussion.)

20 MR. VOGT: Your Honor, the plaintiff elects the  
21 contract cause of action.

22 THE COURT: Well, they have a right to select.  
23 You are only entitled to one set of damages. But they  
24 can select under which cause of action they wish to  
25 receive these damages, and they have elected the

1 contract cause of action, which is the full amount of  
2 damages is what they are entitled to, not have to be  
3 entitled to any offset. There is not any allegation  
4 that the plaintiff breached the contract, only the  
5 defendant breached it. And so that could have been  
6 submitted as well if the defendant had set forth that  
7 the plaintiff breached a contract also. But that was  
8 not determined in the contract that the plaintiff had  
9 to comply with any kind of state regulations and that  
10 sort of thing and to have this fire protection  
11 superintendent available on the project which is  
12 required, that was not part of the contract and not a  
13 term of the contract, so it doesn't enter into that.  
14 So you are entitled to select which one you want.  
15 Although, I think if for some reason on appeal the  
16 Court should decide that the breach of contract action  
17 doesn't apply, for whatever reason -- if they should  
18 decide that, but they thought the negligence action is  
19 the appropriate one then they could fall back to that  
20 one. So you are not eliminating it for appellant  
21 purposes. They can select if they choose not to  
22 recognize it or overturn the breach of contract, you  
23 can still go back to the negligence action. They  
24 would have to overturn it as well. Otherwise you  
25 would be entitled to that one.

1 All right. Now, let's see. So they have selected  
2 the contract cause of action. So the Court finds they  
3 are entitled to the entire amount of damages found by  
4 the jury. And what other motion did you make? I want  
5 to make sure I rule on everything.

6 MR. SHEALY: As I understand it, you denied both  
7 JNOV motions.

8 MR. VOGT: Correct.

9 THE COURT: Yes.

10 MR. SHEALY: And then you denied the motion for  
11 entry of judgement as governed by the comparative  
12 negligence determination.

13 THE COURT: Right.

14 MR. SHEALY: Yes, sir. The only thing that  
15 remains is the new trial absolute on bifurcation.

16 THE COURT: Okay. I need to address that.

17 Let me say this on the bifurcation. The only  
18 objection to the bifurcation stated by the defendant  
19 at the time was that the jury -- you thought the jury  
20 ought to know the full amount of the damages and that  
21 you were afraid that they would not -- the jury would  
22 not perceive the magnitude of the damages and the  
23 magnitude of any verdict in this case. In the event  
24 they rendered a verdict in favor of the plaintiff they  
25 wouldn't understand the magnitude of it. And that

1 they might not appreciate the magnitude of it just  
2 going on the liability issue. And I told you at that  
3 time that either side could raise on opening  
4 statement, or the Court could apprise them that we  
5 could have liability -- we are going to have liability  
6 in first phase and damage on the second phase. And I  
7 told you were free to raise the issue of damages, the  
8 full amount of damages, what's involved before the  
9 jury in opening statement. And the plaintiff said he  
10 intended to do that and he did. Certainly no  
11 prejudice to the defendant. And that was the only  
12 objection raised. So that objection was met and there  
13 is no prejudice to you because of that. But in case I  
14 need to do so, let me say that as I did at the time  
15 when I ruled on the motion, that I may be only had one  
16 other case in which I have done that -- divided a case  
17 into liability and damages. Because in all of those  
18 cases I thought we were going to bring the same  
19 witnesses back and just having to do some additional  
20 testimony from the same witnesses and we wouldn't be  
21 saving any time or effort in it by doing that. Even  
22 though if you got a verdict on liability for the  
23 defendant, you wouldn't go forward on the damages, but  
24 you really weren't saving any time or expense in doing  
25 that because you were going to have to call these same

1 witnesses. The same witnesses are going to be called,  
2 taking approximately the same amount of time --  
3 almost. So you wouldn't really be saying anything.  
4 There was no advantage in doing that.

5 In this case there was a lot of reason to do that  
6 because we had a list of witnesses which looked like  
7 probably forty to fifty witnesses long, potential  
8 witnesses in this case and probably more than half of  
9 them would be eliminated, or about half of them would  
10 be eliminated if the jury came back with a verdict for  
11 the defendant. We don't even get into the damages  
12 issue. And so it would save a lot of time and expense  
13 in the trial by going on the liability phase first  
14 because if the jury would come back on the liability  
15 in favor of the defendant that would be the end of it.  
16 We wouldn't have to go on to this long list of damages  
17 on the damages. We would save a lot of court time and  
18 expense, et cetera. So, it made sense to bifurcate in  
19 this case for that reason. And so -- and that was  
20 reason the Court bifurcated. Because most of the  
21 witnesses -- there were only two witnesses that I  
22 recall who testified during the liability phase who  
23 testified again in the damages case and their  
24 testimony was very limited on the damage part of it.  
25 So, that made total sense because if we had called all

1 these witnesses during the liability phase it would  
2 take much longer to try the case, it appears to me.  
3 So for all those reasons I think bifurcation was  
4 appropriate. I think it may be only the second time I  
5 done that since I have been on the bench. I didn't  
6 think the other cases were appropriate, but I thought  
7 this was an appropriate case for bifurcation. So  
8 again I deny your motion in that regard.

9 Anything else? Did I cover it all?

10 MR. SHEALY: That covers all of the defendant's  
11 motions, Your Honor.

12 THE COURT: All right. Well, thank you,  
13 gentlemen. You worked hard. Appreciate it. Thank  
14 you.

15 MR. SHEALY: Thank you, Your Honor.

16 MR. VOGT: Thank you, Your Honor.

17 (END OF TRANSCRIPT)

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I, the undersigned Aileen Butler, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 17th -21st days of March, 2014.

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

September 6, 2014

Aileen Butler