

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

RECEIVED

APR 27 2016

R. Lawton McIntosh, Circuit Court Judge

SC Court of Appeals

Case No. 2013-CP-37-0575
Appellate Case No. 2015-001672

Duke Energy Carolinas, LLC

Respondent,

v.

Randall S. Hiller and Janet C.
Hiller,

Appellant.

RETURN TO MOTION TO STRIKE

The Respondent, Duke Energy Carolinas, LLC, (hereafter "Duke Energy"), opposes the Motion to Strike served by the Defendant on or about April 14, 2016. The Motion moves to strike numerous items from Respondent's Designation of Matter.

Rule 210(c), SCACR, provides as follows:

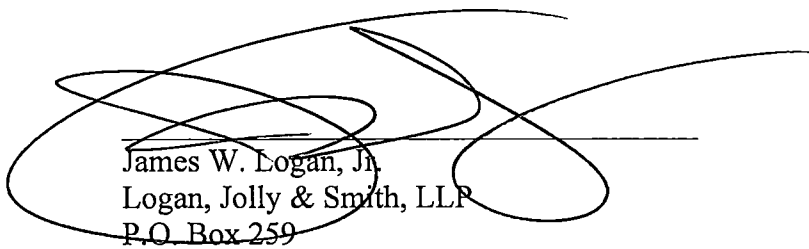
The Record on Appeal shall include all matter designated to be included by any party Under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include **matter which was not presented** to the lower court or tribunal. (Emphasis added.)

Rule 209(b), SCACR, provides that “the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits or other materials which may be properly included in the Record on Appeal.”

This matter came before the lower court on the Respondent’s Motion to Enforce Settlement Agreement, filed on April 3, 2015, a copy of which is attached hereto as Exhibit 1. The filing included detailed grounds and argument, as well as ten (10) exhibits supporting the Motion. At the hearing on the Motion, held on May 12, 2015, undersigned counsel referenced the filed Motion and its ten (10) exhibits and discussed the same at length. (See Transcript of Record, attached hereto as Exhibit 2.) In addition, the undersigned introduced two (2) additional exhibits to the lower Court. As clearly shown by the transcript, all of these documents were presented to and considered by the lower Court **WITHOUT OBJECTION**. Therefore, any issue concerning the Court’s consideration of those exhibits is not properly before this Court. *See Abba Equipment, Inc. v. Thomason*, 335 S.C. 477, 517 S.E.2d 235 (Ct.App.1999) (an appellant must make a specific objection to evidence to preserve the issue for appeal); *Buist v. Buist*, 410 S.C. 569, 766 S.E.2d 381 (2014) (an issue cannot be raised for the first time on appeal but must have been raised to and ruled upon by the trial court to be preserved).

The Respondent has not sought to introduce any documents or “matter which was not presented to the Court.” Each and every one of the designated materials are “portions of the transcript, pleadings, orders, exhibits or other materials which may be properly included in the Record on Appeal.” In addition, each of these materials were “presented to the lower court” and addressed by the parties at the hearing. Based thereon, the Appellant’s Motion to Strike should be denied.

Respectfully submitted,



James W. Logan, Jr.
Logan, Jolly & Smith, LLP
P.O. Box 259
Anderson, SC 29622
Telephone 864-226-1910
Fax 864-226-1931
logan@loganjollysmith.com
Attorneys for Respondent

Dated: 4/25/2014

Other Counsel of Record:
Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, SC 29609
(864) 232-0026
Attorney for Appellant

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Duke Energy Carolinas, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Randall S. Hiller and Janet C.)
 Hiller,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 C. A. NO.: 2013-CP-37-575

FILED OCONEE, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2015 APR 3 AM 11 47

NOTICE OF MOTION AND MOTION TO ENFORCE SETTLEMENT AGREEMENT

TO: Randall S. Hiller, Attorney for Defendants

PLEASE TAKE NOTICE that the Plaintiff, Duke Energy Carolinas, LLC, (hereafter “Duke Energy”), will move this Court in ten days or as soon as it may be heard thereafter for an Order compelling enforcement of the Settlement Agreement signed by all parties and their counsel on September 2, 2014. This Motion is made pursuant to Rules 43 (k) and 41.1, SCRCP, as well as legal precedent regarding enforcement of settlement agreements.

BACKGROUND

On September 2, 2014, the parties participated in mediation. After lengthy negotiations, the parties reached a settlement agreement. The settlement agreement was reduced to writing and signed by the parties and their counsel. (Exhibit 1). The signed document set forth the clear and specific terms of the settlement agreement between the parties. *Id.* Thereafter, the mediator, Eric K. Englehardt, signed and filed a Proof of ADR report, indicating that the case was “fully settled.” (Exhibit 2).

As of November 25, 2014, the Defendants had failed to comply with all the terms of the settlement agreement to which they had agreed. (Exhibit 3). The Defendants responded on



November 26, 2014. (Exhibit 4). On December 22, 2014, the Defendants informed Duke Energy that the work had been completed. (Exhibit 5). Upon inspection, Duke Energy determined that the work had not been completed and notified the Defendants accordingly. (Exhibit 6). The Defendants responded on December 30, 2014. (Exhibit 7). On February 6, 2015, Duke Energy representatives along with their attorney met with the Defendant, Randall S. Hiller, at the property in question on Lake Keowee in an effort to resolve all remaining issues. Duke Energy documented the results of that meeting in its letter to the Defendants dated February 12, 2012. (Exhibit 8). The Defendants responded by letter dated February 18, 2015 (Exhibit 9) by basically telling Duke Energy that they will perform the work they agreed to do when they get around to it. Duke Energy responded with its letter of March 18, 2015. (Exhibit 10).

LEGAL ANALYSIS

Duke Energy seeks an Order of this Court enforcing the settlement agreement between the parties pursuant to SCRCP 43 (k), which states:

(k) Agreements of Counsel. No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP. (emphasis added).

The purpose of Rule 43(k) is: [T]o prevent fraudulent claims of oral stipulations, and to prevent disputes as to the existence and terms of agreements and to relieve the court of the necessity of determining such disputes, which it has been said are often more perplexing than the case itself. The time of the court should not be taken up in controversial matters of this character. *Ashfort Corp. v. Palmetto Constr. Group, Inc.*, 318 S.C. 492, 495, 458 S.E.2d 533, 535 (1995) (quoting 83 C.J.S. Stipulation § 4 (1953)); *see also, Motley v. Williams*, 374 S.C. 107, 111, 647 S.E.2d. 244, 246 (Ct. App. 2007) (stating the application of Rule 43(k) will help avoid disputes

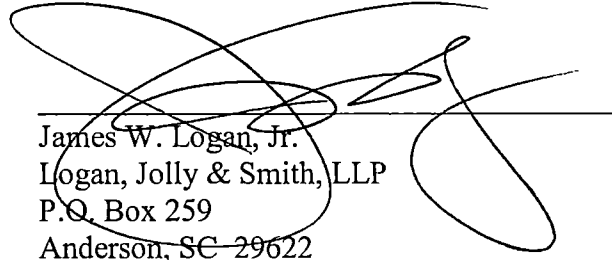
regarding the terms of settlement). Settlement agreements are reviewed by the circuit court in much the same way as contracts. *Patricia Grand Hotel, LLC v. MacGuire Enters.*, 37234, 640, 643 S.E.2d 692, 695 (Ct. App. 2007). When “an agreement is clear and capable of legal construction, the courts [sic] only function is to interpret its lawful meaning and the intent of the parties as found within the agreement.” *Messer v. Messer*, 359 S.C. 614, 628, 598 S.E. 2d 310, 317 (Ct. App. 2004). When an agreement is plain and unambiguous, the court does not have the authority to modify its terms. *Patricia Grand Hotel*, 372 S.C. at 640, 643 S.E.2d at 695.

Applying the law to the facts and current procedural posture of the case, it is clear that SCRCP 43 (k) applies to the binding nature of settlement agreements. It is further clear that of the three options available in SCRCP 43 (k), the parties hereto have an agreement between counsel that affects the proceedings in this action and which has been reduced to writing and signed by the parties and their counsel. The Court should view this settlement agreement in the same way and under the same scrutiny that it would afford a contract. There are no ambiguous terms; indeed there is no dispute between the parties as to the terms, rather the Defendants seek to nullify what Duke Energy considers a binding contract under both the Rules of Civil Procedure and legal precedent and/or modify the terms of that contract.

CONCLUSION

Duke Energy respectfully requests an Order of the Court compelling the enforcement of the settlement agreements attached hereto. Duke Energy reserves the right to further supplement this Motion with a Memorandum of Law and/or additional arguments at the hearing on this matter.

Respectfully submitted,



James W. Logan, Jr.
Logan, Jolly & Smith, LLP
P.O. Box 259
Anderson, SC 29622
Telephone 864-226-1910
Fax 864-226-1931
logan@loganjollysmith.com
Attorneys for Plaintiff

Dated: 4/1/15

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS


Case No. 2013-CP-37-575

Duke Energy Carolinas LLC,)
)
Plaintiffs,)
)
vs.)
)
Randall S. Hiller and Janet C. Hiller,)
)
Defendants.)

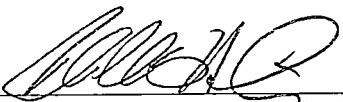
MEMORANDUM OF AGREEMENT

At mediation on 2 September 2014, the parties agreed to resolve this dispute as follows:

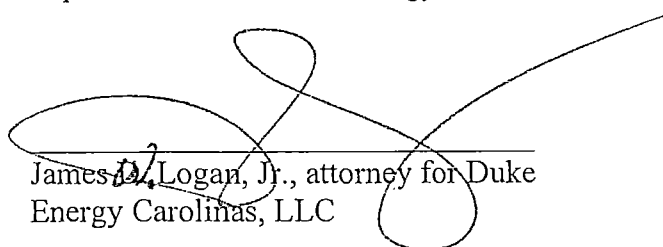
- 1) Duke will place the existing dock, at the Hillers' cost, at the dock location shown on the Stephen Edwards & Associates survey of 19 May 2011 closest to lot 2.
- 2) Duke agrees to waive the permit application for a second dock on the Hillers' property for a period of five years. Duke will agree to approve the application as previously negotiated and shown on the Stephen Edwards & Associates survey of 19 May 2011, unless regulations change for reasons outside of Duke's control that make approval of the application impossible. Duke will make the Hillers aware of any regulatory changes that require a change to the approved permit at least 30 days prior to their going into effect. The Hillers are responsible for resubmitting their application on an annual basis or this portion of the settlement agreement is moot.
- 3) The Hillers will pay Duke \$379.70.
- 4) The parties will dismiss all claims and counterclaims with prejudice and enter into a mutual release/settlement agreement to be drafted by counsel for Duke.
- 5) This agreement will be confidential to the fullest extent possible by law.



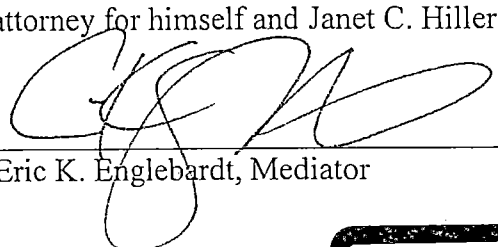
Representative of Duke Energy



Randall S. Hiller, individually and as attorney for himself and Janet C. Hiller



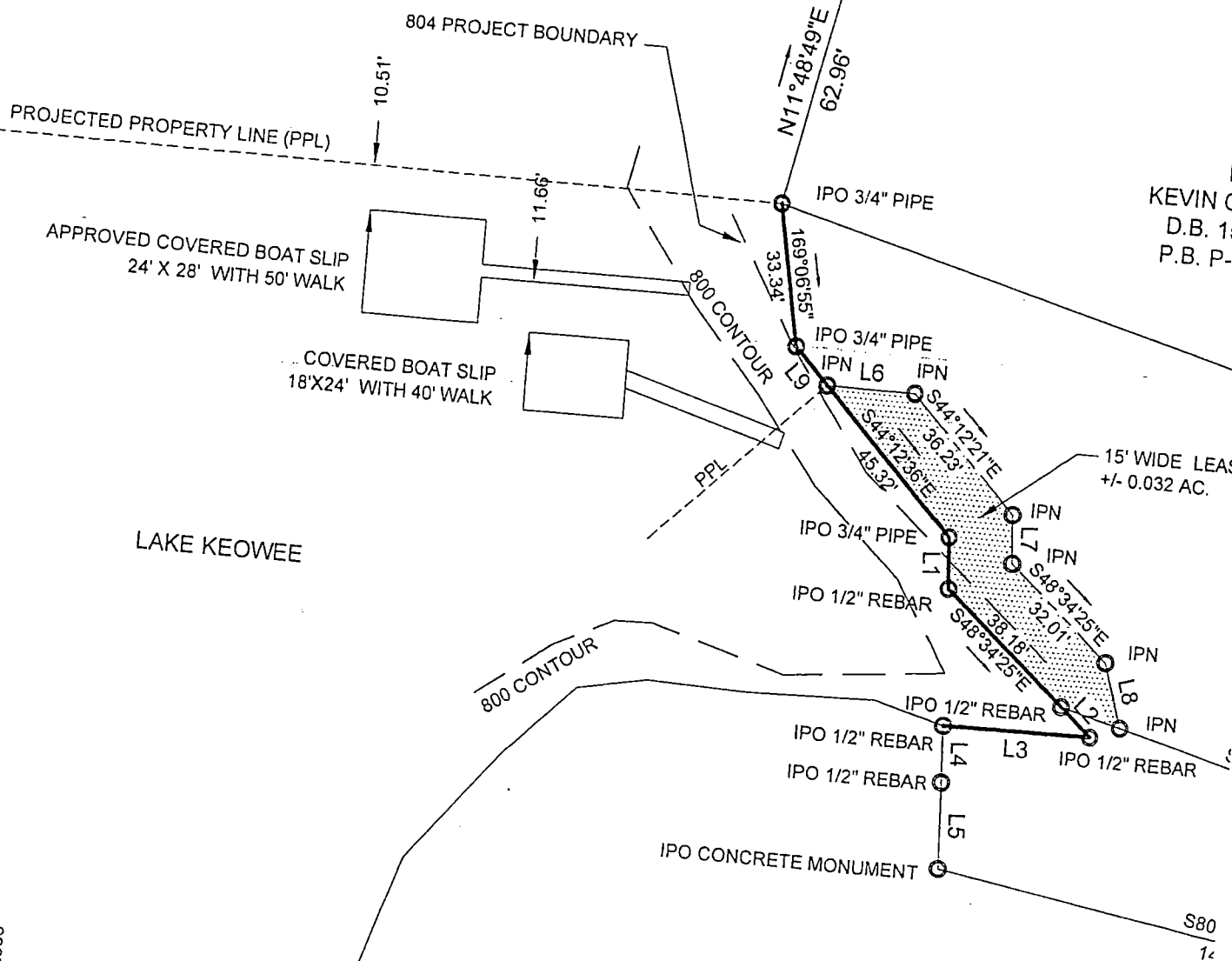
James D. Logan, Jr., attorney for Duke Energy Carolinas, LLC



Eric K. Englehardt, Mediator



LO
 KEVIN C. V
 D.B. 1566
 P.B. P-37



REF. PLAT BY
 LANDRITH SURVEYING
 DATED 06-14-2006

LOT 1
 CRAIG & HAZEL DANCE
 D.B. 1594 PG. 72
 P.B. B-200 PG. 10

NOTES

- 1) REFERENCES
 -D.B. 1573 PG. 270
 -P.B. B-146 PG. 2
 -TAX MAP NUMBERS: 179-00-02-007 & 179-00-02-020
- 2) ACREAGE SHOWN INCLUDES ALL RIGHT-OF-WAYS AND OR EASEMENTS.
- 3) THIS PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS, RIGHT-OF-WAYS AND OR RESTRICTIONS THAT A CURRENT TITLE SEARCH MAY DISCLOSE.
- 4) IPN ARE 5/8" REBAR UNLESS LABELLED OTHERWISE ON PLAT.

SURVEY FOR

HILLER DOCK PERMIT

OCONEE COUNTY, SOUTH CAROLINA

STEPHEN R. EDWARDS & ASSOCIATES, INC.
 1432 W. MAIN ST. - WEST UNION, S.C. - 29696
 (864) 718-1120

DATE: 05-19-2011

JOB NUMBER: 11-050

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

Case No. 2013-CP-37-575

Duke Energy Carolinas, LLC
Plaintiff,

vs.

Randall S. Hiller and Janet C. Hiller,
Defendants.

ADR COMPLIANCE FORM

Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

PURSUANT TO the Court's Standing Order for Alternative Dispute Resolution dated April 30, 2014.

A. _____ I certify that this case is exempt from ADR for the following reasons and the parties wish to exercise that exemption: _____.

Plaintiff(s)/Attorney for Plaintiff(s)

Defendant(s)/Attorney for Defendant(s)

Print Name

Print Name

Phone/Fax

Phone/Fax

Date: _____

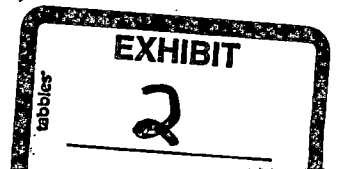
B. 1. Alternative Dispute Resolution (ADR) was conducted in the form of:
Mediation

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):
Eric K. Englebardt

3. The ADR was conducted on 2 September 2014

4. As a result of ADR, this case should be considered (please check one):



- (x) Fully settled (please check one):
 () by Consent Judgment, to be filed by _____, or
 (Name of Designee)
 (x) by Voluntary Dismissal to be filed by Defendant,
 (Name of Designee)
- () Partially Settled
 () At an impasse
 () In need of further ADR. (I am/___ not willing to continue as neutral.

5. Representative of Plaintiff X was present
 Defendant X was present.

Other participants were:

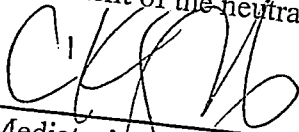
- X Attorney for Plaintiff: James W. Logan, Jr.
X Attorney for Defendant: Randall S. Hiller
 - Representatives for insurance carrier
 - Guardian Ad Litem _____
 - Expert _____
 - Others: _____

6. Choice of the neutral was by:
X Stipulation
 ___ Court Order

7. The total number of hours spent in ADR was: 3.6 hours

8. The total neutral fees were \$1,080.00 (approximately)

Further comment of the neutral:



 Mediator's Signature

Eric K. Englehardt
 Print Name

Print Name

864-552-4624/864-282-5944
 Phone/Fax

Date: September 3, 2014



James W. Logan, Jr., Esquire
E-mail: logan@loganjollysmith.com

November 25, 2014

1805 North Boulevard
Anderson, SC 29621
Telephone: 864-226-1910
Facsimile: 864-226-1931

Mailing Address
Post Office Box 259
Anderson, SC 29622

www.loganjollysmith.com

Randall S. Hiller
Randall S. Hiller, PA
850-B Wade Hampton Boulevard
Greenville, SC 29609

Re: Duke Energy Carolinas, LLC v. Randall S. Hiller and Janet C. Hiller
C. A. No.: 2013-CP-37-575

Dear Randy:

I recently learned that this matter has yet to be resolved. At the mediation on September 5, 2014, you agreed to the following terms:

- 1) pay Duke Energy the sum of \$379.70;
- 2) you and your wife execute a Projected Property Line Approval Letter;
- 3) allow Duke to place, at your expense, the existing dock for attachment to your Lot 1B;
- 4) agree to a Stipulation of Dismissal of all claims, including all Defendants' counterclaims; and
- 5) in exchange for the above, Duke would issue permits for two (2) docks with the permit for the second dock to have a duration of five years.

Items (1) and (2) above have been accomplished. The balance of these items has not been completed.

I am further advised that, as agreed, you met Jack Huddish of Duke along with the contractor chosen by Duke, i.e. Bobby Fendley of Carolina Dock, at your property on Friday after the mediation, i.e. September 5, 2014. Thereafter, you instructed Mr. Fendley not to perform the work via email on September 22, 2014. I have also been furnished the enclosed photographs showing the incomplete status of this work, as well as the fact that your dock has broken loose from its attachment. The first four photographs were taken November 18, 2014, the remaining photographs were taken on October 23, 2014.

Since this agreed upon work has not been performed, Duke must insist that the following work you authorized to be done on your property be

EXHIBIT

3

tabbles

performed by Duke's contractor, i.e. Carolina Dock, at your expense. Duke will make contact with Carolina Dock and inform you when Carolina Dock is available to begin this work. The following is a list of the work that must be performed and completed within 30 days of notification of when Carolina Dock can begin their work:

- construct a 4' x 20' fixed pier and attach floating portion of dock at the end of the pier at the correct location and angle as discussed on September 5, 2014 (only 10' of the 20' long pier has been built);
- anchor the floating portion of dock using anchor poles versus anchor cables;
- remove construction debris from within the 800 pbl;

Upon the satisfactory completion of this work, Duke Energy Lake Services will perform a final inspection to determine if permits can then be issued.

If you have any questions regarding this matter please do not hesitate to contact me.

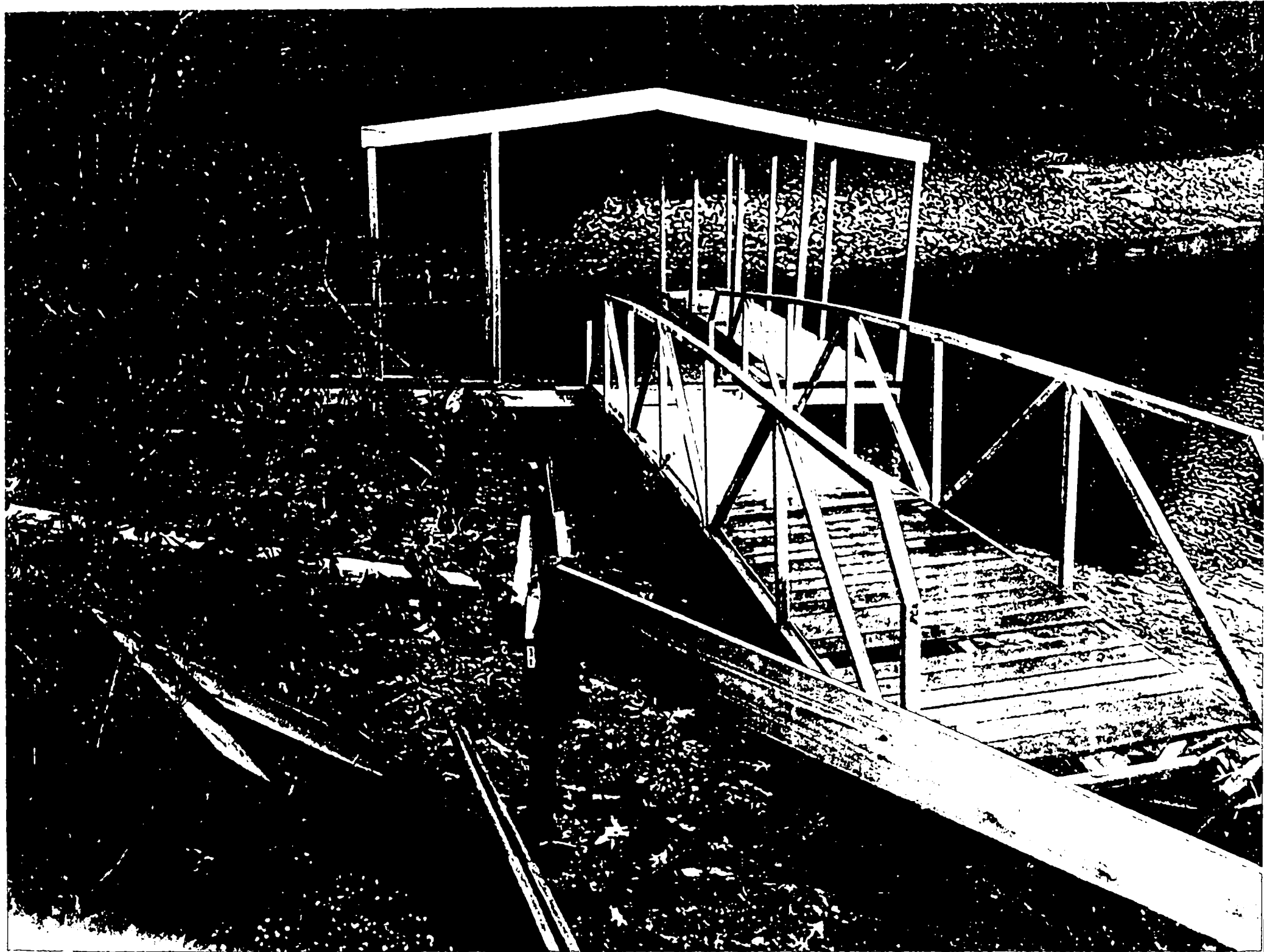
Yours very truly,

Logan, Jolly & Smith, LLP

James W. Logan, Jr.

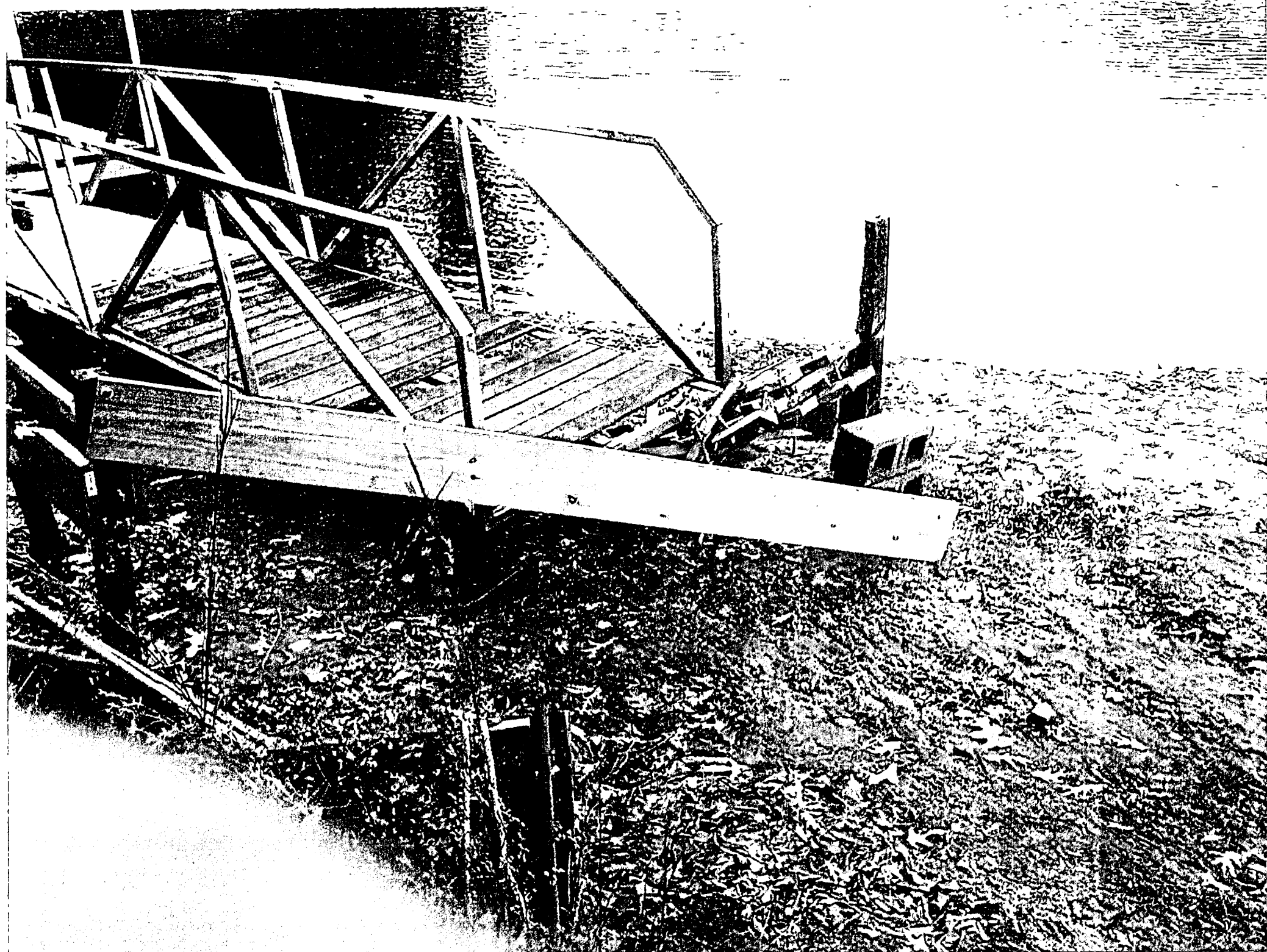
JWLjr/saj

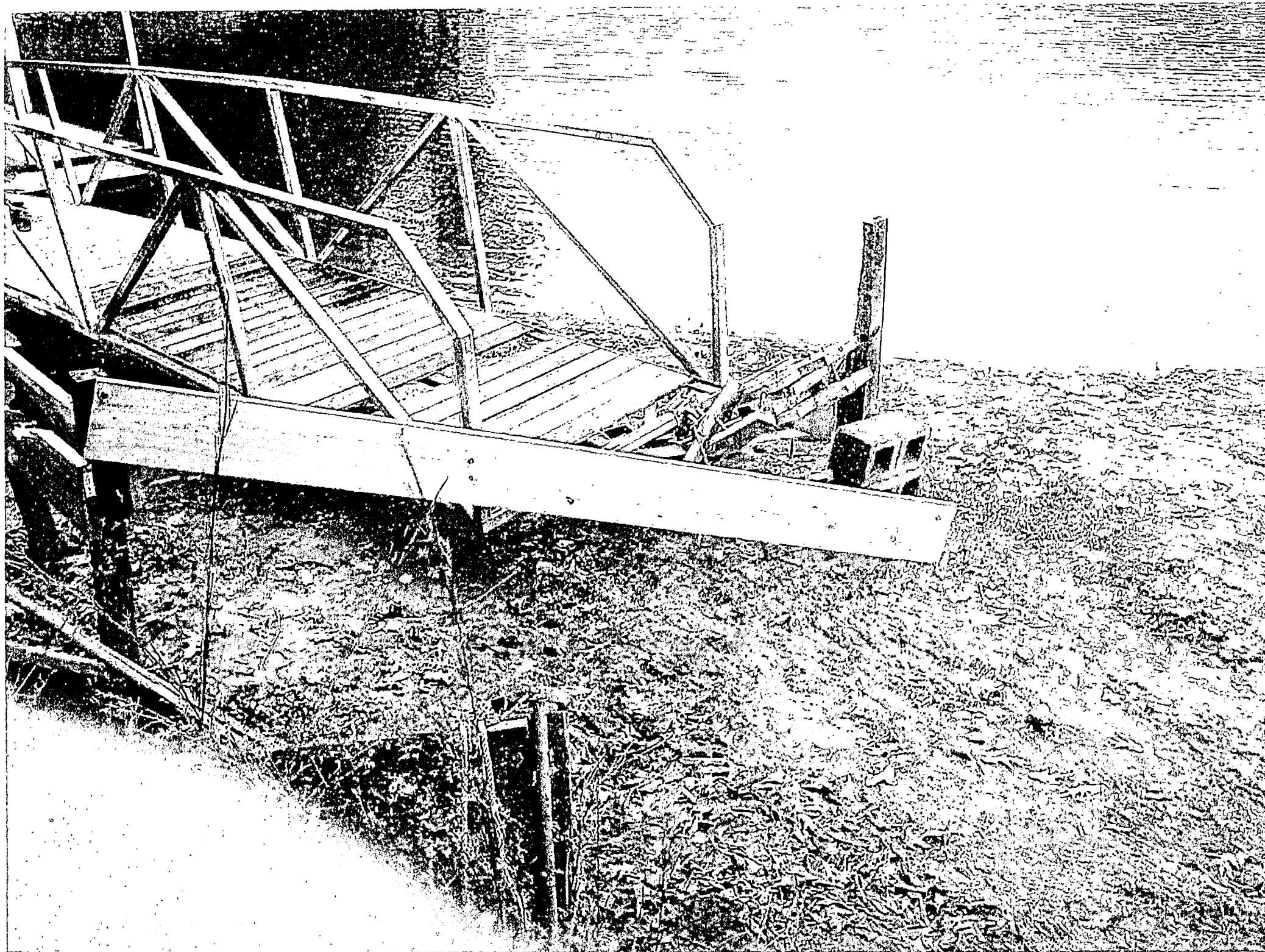
Bcc: Lauren Llamas (via email)
Joe Hall (via email)
Jack Huddish (via email)

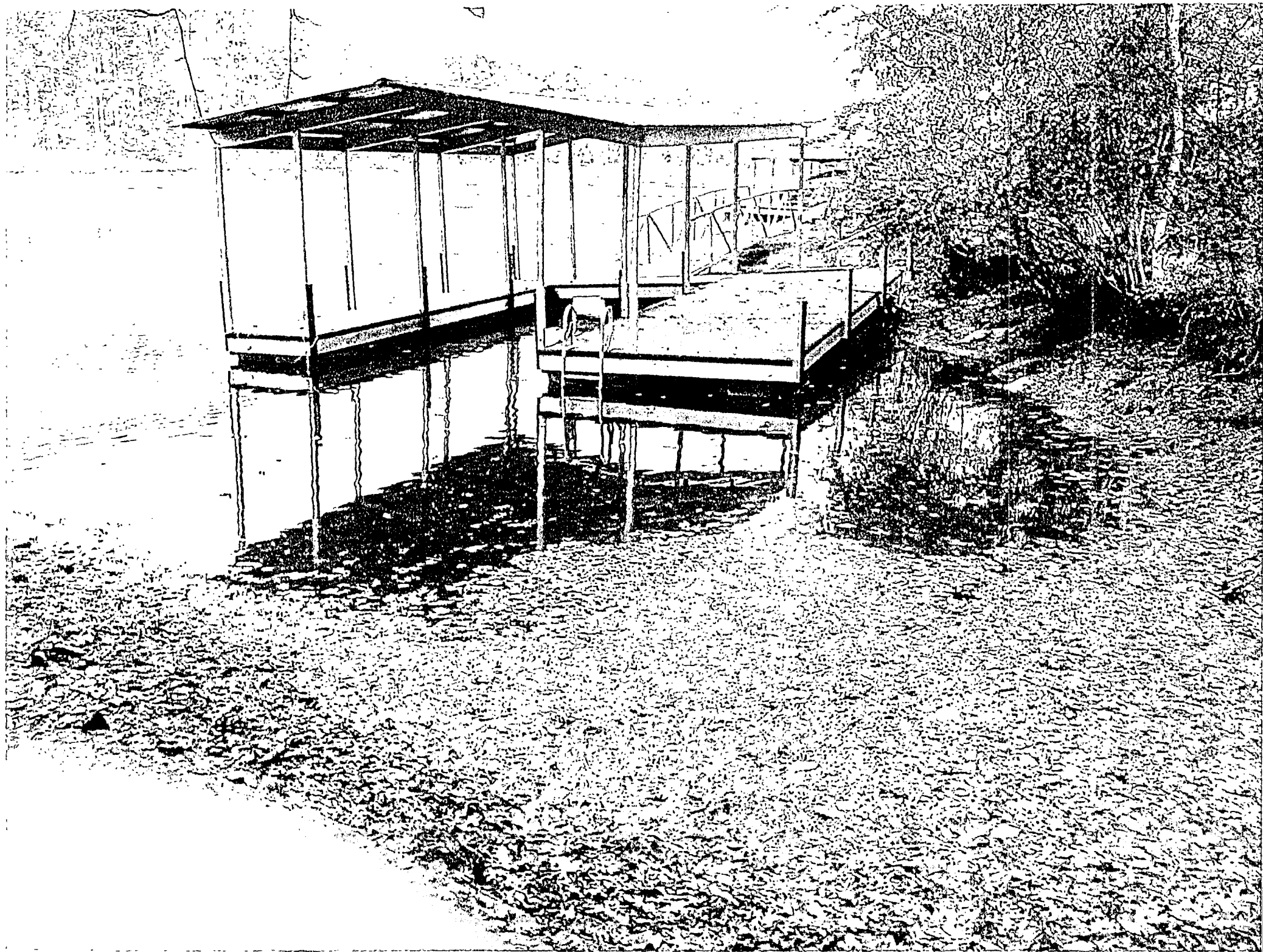




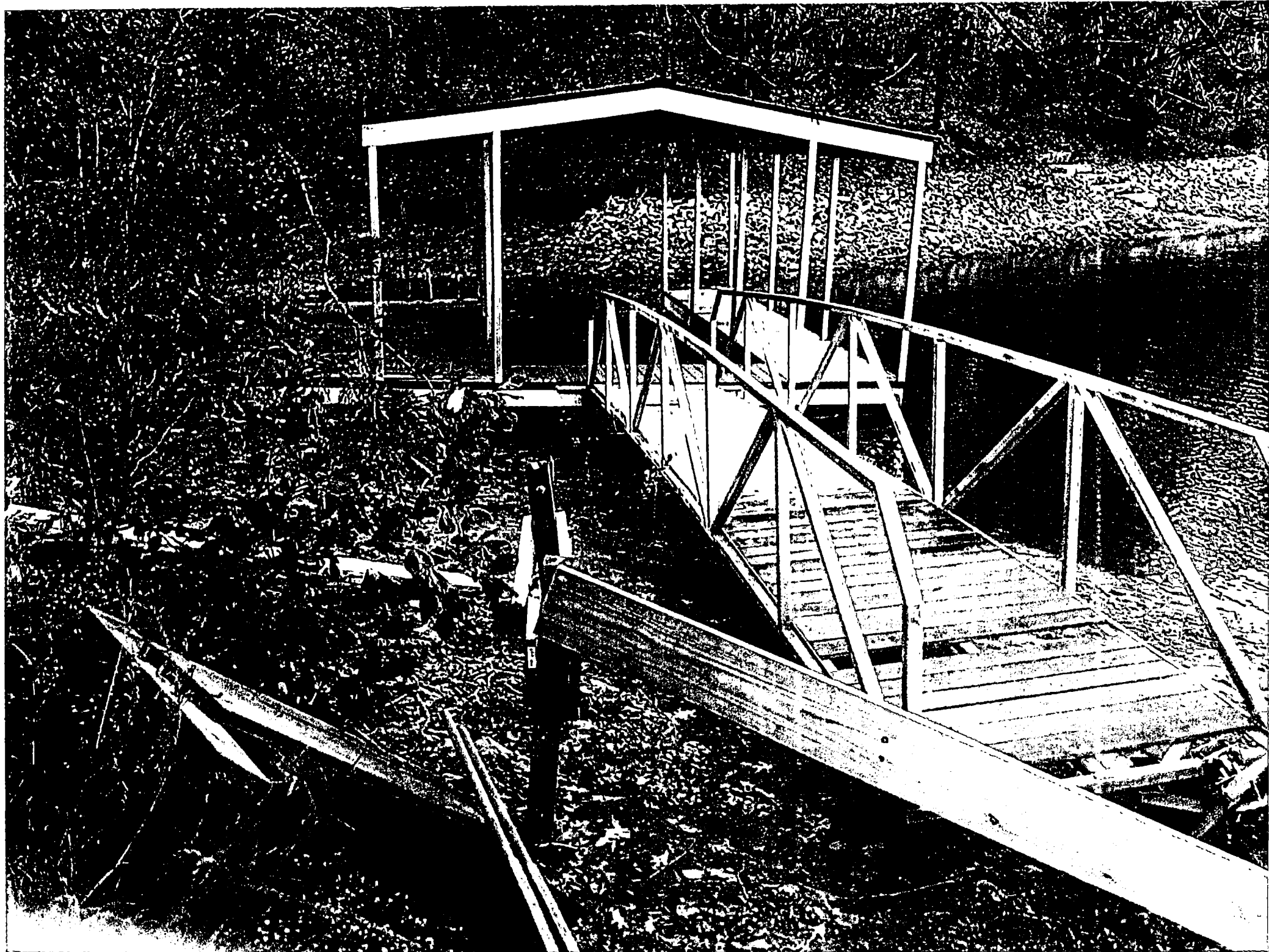
















RANDALL S. HILLER, P.A.
ATTORNEYS AT LAW
850-B WADE HAMPTON BOULEVARD
GREENVILLE, SOUTH CAROLINA 29609

RANDALL S. HILLER
EMAIL: rsh@rshpa.org

(864) 232-0026
Fax (864) 242-4692

November 26, 2014

James W. Logan, Jr., Esquire
Logan, Jolly & Smith
P.O. Box 259
Anderson, SC 29622

Re: Your letter of November 25, 2014

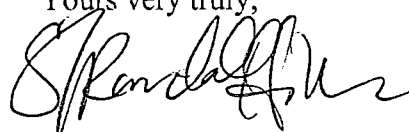
Dear Jim:

I received the above referenced correspondence regarding Duke Energy today, the day before Thanksgiving.

I did in fact comply with all of the terms of the agreement entered into at mediation. I contracted with a contractor to perform the installation of the fixed pier and extend the dock into the position agreed to with Mr. Huddish on site. Obviously, based upon the photographs you provided the contractor did not perform adequately.

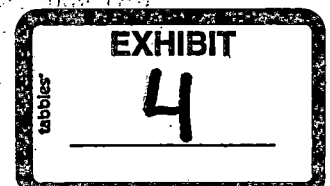
While I will make every effort to contact him today, due to the holiday schedule, it may very well not be corrected prior to your receiving this letter although I will insure that someone gets back out there and correctly attaches the dock to the pier as soon as practicable.

Yours very truly,



Randall S. Hiller

RSH/hk



Stephanie Jadrnicek

From: Randall S. Hiller <rsh@rshpa.org>
Sent: Monday, December 22, 2014 2:43 PM
To: Stephanie Jadrnicek
Subject: RE: Duke v. Hiller re Repairs

Please advise Mr. Logan that the repairs have been completed.

Randall S. Hiller
Randall S. Hiller, P.A.
Attorneys at Law
850 Wade Hampton Blvd.
Greenville, S.C. 29609
(864) 232-0026

CONFIDENTIAL & PRIVILEGED

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From: Stephanie Jadrnicek [mailto:stephanie@loganjollysmith.com]
Sent: Monday, December 22, 2014 2:26 PM
To: 'Randall S. Hiller'
Cc: Jim Logan
Subject: Duke v. Hiller re Repairs

Mr. Hiller,

Please see attached for correspondence from Mr. Logan regarding the status of repairs.

Thank you,

Stephanie Jadrnicek
Paralegal
Logan, Jolly & Smith, LLP
1805 North Boulevard
Post Office Box 259
Anderson, SC 29622
864-226-1910
864-226-1931 - Fax
stephanie@loganjollysmith.com

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Stephanie Jadrnicek

From: Stephanie Jadrnicek
Sent: Tuesday, December 30, 2014 11:29 AM
To: 'Jack.Hudish@duke-energy.com'
Cc: 'Llamas, Lauren Bowman'; 'Hall, Joe S'; Jim Logan (logan@loganjollysmith.com)
Subject: FW: Duke v. Hiller re Completion of Repairs
Attachments: Photos 12-30-14.pdf

Jack,

Please see below and attached for correspondence sent to Mr. Hiller.

Thank you,

Stephanie Jadrnicek
Paralegal
Logan, Jolly & Smith, LLP

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From: Stephanie Jadrnicek
Sent: Tuesday, December 30, 2014 11:28 AM
To: 'Randall S. Hiller'
Cc: Jim Logan (logan@loganjollysmith.com)
Subject: Duke v. Hiller re Completion of Repairs

(Sent on behalf of Jim Logan)

Dear Randy,

Following receipt of your email of December 22, I asked Duke to verify completion of your dock repairs. This work has not been completed as shown in the attached photographs, dated December 30, 2014. Please take all necessary steps to have this work completed immediately or Duke will have no alternative but to send out its contractor to complete this work and bill you accordingly per our original agreement at mediation.

Thank you,

Stephanie Jadrnicek
Paralegal
Logan, Jolly & Smith, LLP
1805 North Boulevard
Post Office Box 259



Anderson, SC 29622

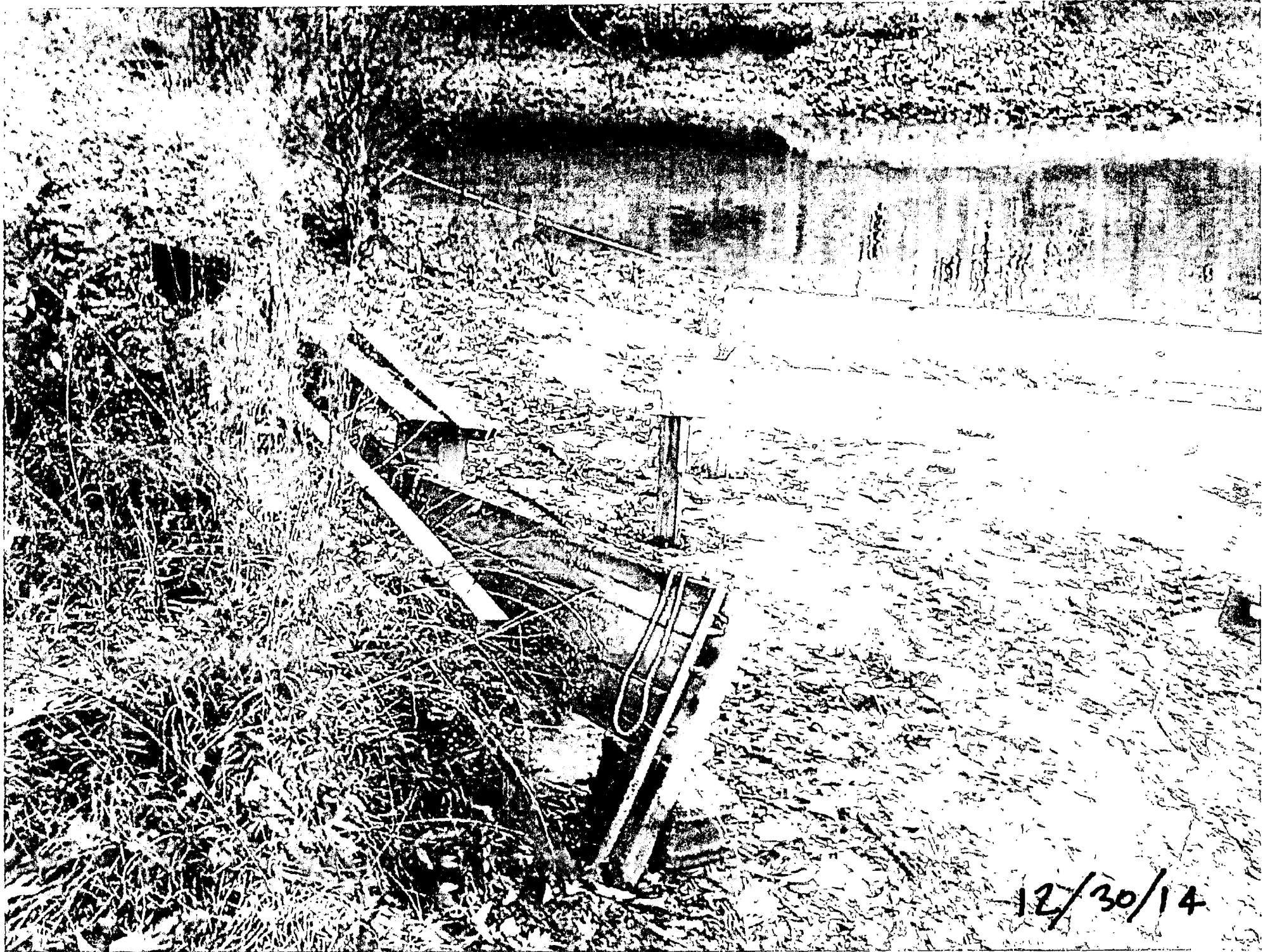
864-226-1910

864-226-1931 - Fax

stephanic@loganjollysmith.com

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12/30/14

RIGHT EDGE OF DOCK TO
ALIGN WITH BLUE MARK



RANDALL S. HILLER, P.A.
ATTORNEY AT LAW
850 WADE HAMPTON BLVD.
GREENVILLE, SOUTH CAROLINA 29609
(864) 232-0026
Fax: (864) 242-4692
rsh@rshpa.org

December 30, 2014

Via Electronic Mail

James W. Logan, Jr., Esquire
Logan, Jolly & Smith
P.O. Box 259
Anderson, SC 29622

Re: Duke Energy v. Randall S. Hiller, et al

Dear Jim:

I received a message today from your paralegal indicating the desire of Duke Energy to relocate the dock to the right towards the property line of my neighbor to the right.

Let me recount again what has transpired since our mediation. As you know at the mediation I expressed no knowledge of the time, expense or effort necessary to properly locate the dock and relied upon the representations made to me by Duke's representatives in agreeing to the thirty day time line. Everything that I personally was required to do within that time frame I did. That included meeting with Mr. Huddish the Friday following the conclusion of the mediation who had with him at that time a representative of a dock installation company.

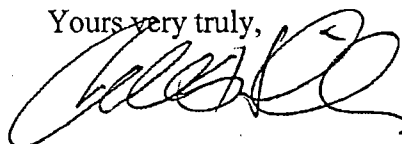
The representative indicated that he could not manufacture a fixed pier, as required to set the dock in the proper location, within the time frame which had been agreed upon during the mediation. He was likewise decidedly pessimistic about the possibility of even setting the dock on the fixed pier within that time frame but agreed to see if it was possible. At that meeting we physically laid out the dock insuring that it was "at least" far enough away from the imaginary line required from the joint property line with my neighbor to my right. I emphasize the words "at least" as that is the way it was represented to me at the time. In other words, I could not err to the right but I could err to the left. In fact, as we laid it out it was laid out with some error to the left to avoid any possibility of crossing the imaginary line to the right. At the conclusion of laying out the fixed pier and the ultimate location of the dock it was agreed that I would retain a contractor to construct the fixed pier and I would receive a quotation attaching the dock to the fixed pier.



I did that but the contractor who installed the fixed pier offered to attach the dock and I accepted rather than using two contractors.

As I understand the photos and the correspondence I received today, the complaint now is that the dock is too far off the imaginary line rather than over the imaginary line. Frankly, this is the first time that I have ever heard of Duke complaining about a dock being more inside the confines of the property lines than without it. Notwithstanding the fact that this was never expressed to me prior to my paying to have it placed, why would anybody complain about that? If I have to relocate the dock again this time it will not be at my contractor's expense. Please have someone explain to me why this would be a violation of any of the rules and regulations or our agreement.

Yours very truly,

A handwritten signature in black ink, appearing to read 'R. Hiller', written in a cursive style.

Randall S. Hiller

RSH/ak



James W. Logan, Jr., Esquire
E-mail: logan@loganjollysmith.com

February 12, 2015

Via email and U.S. Mail

1805 North Boulevard
Anderson, SC 29621
Telephone: 864-226-1910
Facsimile: 864-226-1931

Randall S. Hiller
Randall S. Hiller, PA
850-B Wade Hampton Boulevard
Greenville, SC 29609

Re: Duke Energy Carolinas, LLC v. Randall S. Hiller and Janet C. Hiller
C. A. No.: 2013-CP-37-575

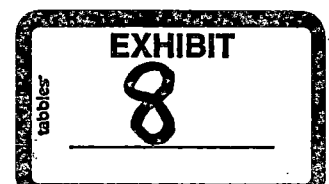
Mailing Address
Post Office Box 259
Anderson, SC 29622

Dear Randy:

Thank you for meeting us at your property on Lake Keowee on Friday, February 6, 2015 in an effort to resolve our remaining issues arising out of the mediated settlement of September 2, 2014. At that meeting, it was agreed that you would do the following:

www.loganjollysmith.com

1. Align the right side of your dock (looking from your house) with the stake on the other side of the cove that Joe Hall installed during that meeting (see enclosed photos);
2. Complete the fixed pier structure and cover with deck boards;
3. Anchor the walkway from the covered boat slip to the retaining wall at the 800 foot contour line (if the walkway is a few feet less than the 50 feet shown on the Stephen R. Edwards & Associates, Inc. plat dated 5/19/2011, Duke agreed to not raise an objection);
4. Anchor the dock securely using spud poles as opposed to anchor cables;
5. Clean up trash, cement block and damaged sea wall boards from below the 800 contour line; and
6. Contact Duke Energy when all is completed so the final inspection can be conducted and the dock tagged.



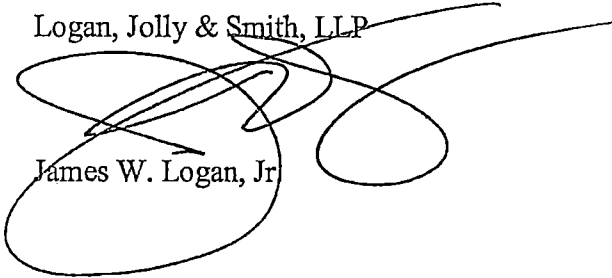
Finally, you agreed that all the work referenced above would be completed within 30 days of February 6, 2015.

If I have misstated the agreement in any way, please advise me immediately.

Yours very truly,

Logan, Jolly & Smith, LLP

James W. Logan, Jr



JWLjr/saj
Enclosures

Bcc: Lauren Llamas (via email)
Joe Hall (via email)
Jack Huddish (via email)

RANDALL S. HILLER, P.A.
ATTORNEYS AT LAW

850-B WADE HAMPTON BOULEVARD
GREENVILLE, SOUTH CAROLINA 29609

RANDALL S. HILLER
EMAIL: rsh@rshpa.org

(864) 232-0026
FAX (864) 242-4692

February 18, 2015

James W. Logan, Jr., Esquire
Logan, Jolly & Smith
P.O. Box 259
Anderson, SC 29622

Re: Randall S. Hiller and Janet C. Hiller vs. Duke Energy
C.A. No.: 2013-CP-37-575

Dear Jim:

I am in receipt of your letter of February 12, 2015. Prior to responding to the items set forth therein let me recap the events that have occurred since September 2.

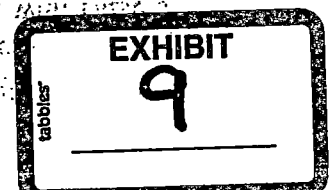
At the mediation I specifically stated that I had no relationship or contact with any type of dock contractor and was relying completely upon Duke's representation with regards to the timeframe necessary to complete the obligations I undertook at settlement. I met with Duke's representative on the Friday following the mediation as agreed. Duke brought with them a dock contractor as they had promised at mediation that could complete the task as required. Upon arrival, literally, the first thing out of the contractor's mouth was that it would not be possible for them to build or install the fixed portion of the dock within the timeframe allotted. The contractor was equally pessimistic, although not quite as firm, that they could not set the dock even if the fixed pier was installed within the time allotted. It was agreed that I would attempt to obtain a contractor to construct the fixed pier and Duke's contractor would attempt to meet the deadline in setting the dock.

While we were there the Duke representative and the contractor staked on the ground the line for the fixed pier support post that would place the dock in the position required.

As a result of the very short timeframe remaining after this meeting I was required to find a contractor who was available rather than the best contractor for the job. This proved to be a very difficult task but I was able to locate a crew and went with them to the site on the day that they set the support post specifically to insure that they put the post in the positions that had been staked by the Duke representative at our earlier meeting.

At the meeting we had at your request on February 6 the alignment of the dock requested by Duke on that date is at least 20 feet to the left of the alignment shown to me on September 5.

Despite this fact I will agree to angle the dock to the alignment posted by the surveyors flag at our meeting of February 6.

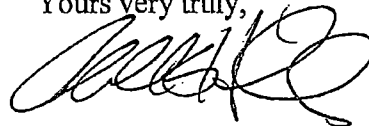


Whether I use spud posts or not will be entirely up to the recommendation of the contractor that I elect to perform that task. Nothing contained within our original settlement, Duke's Rules and Regulations or the docks to my left and right mandate the use of spud poles.

I will not be subjected to an arbitrary and unreasonable timeframe for the completion of that relocation. As indicated above the timeline originally suggested to me at mediation proved unreasonably short requiring me to retain a contractor that could do it rather than do it right. Apparently that expense has largely been wasted and I do not intend to waste any further money meeting a deadline rather than a proper and permanent solution.

I will work diligently and continuously to accomplish one final relocation of the dock and notify Duke upon its completion.

Yours very truly,

A handwritten signature in black ink, appearing to read "Randall S. Hiller", written in a cursive style.

Randall S. Hiller

RSH/ak



1805 North Boulevard
Anderson, SC 29621
Telephone: 864-226-1910
Facsimile: 864-226-1931

Mailing Address
Post Office Box 259
Anderson, SC 29622

www.loganjollysmith.com

James W. Logan, Jr., Esquire
E-mail: logan@loganjollysmith.com

March 18, 2015

Via email and U.S. Mail

Randall S. Hiller
Randall S. Hiller, PA
850-B Wade Hampton Boulevard
Greenville, SC 29609

Re: Duke Energy Carolinas, LLC v. Randall S. Hiller and Janet C. Hiller C. A. No.: 2013-CP-37-575

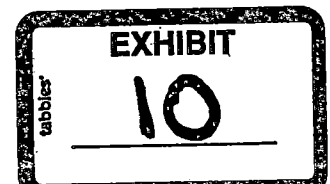
Dear Randy:

Recently, Duke Energy representatives checked your property on Lake Keowee to determine the status of work which you agreed to do as outlined in my letter of February 12, 2015. Attached are the photographs taken which show that no additional work has been done.

My letter of February 12, 2015, outlined exactly what you agreed to do and the timeframe that you agreed to do it in as a result of our meeting on February 6, 2015. Your subsequent letter of February 18, 2015, was not well-received by Duke Energy in which you basically said you would do this work when you get around to it. That time period is not acceptable to my client. This matter has been going on for years and it is time for it to come to an end.

I have been instructed by Duke Energy to inform you that unless each item set forth in my letter of February 12, 2015, is completed within ten (10) days from the date of this letter appropriate legal action will be taken to remove your property, including your dock, from Duke Energy's property. In addition, Duke Energy reserves the right to revoke any and all permits that have been issued to you in the past and no further permits will be issued for your property should you choose not to cooperate.

Duke Energy will not permit this condition in front of your lot and on its property to remain any longer.



Yours very truly,

Logan, Jolly & Smith, LLP

James W. Logan, Jr.

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

JWLjr/saj
Enclosures

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)
)
Duke Energy Carolinas, LLC,)
)
Plaintiff,)
)
vs.)
)
Randall S. Hiller and Janet C.)
Hiller,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
C. A. NO.: 2013-CP-37-575

Certificate of Service by Mail

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 APR 6 AM 9 55

The undersigned hereby states that she has this date served a copy of Notice of Motion and Motion to Enforce Settlement on behalf of the Plaintiff Duke Energy Carolinas, LLC by placing a copy in the United States Mail with first class postage affixed thereto, addressed as follows:

Randall S. Hiller, Esquire
Randall S. Hiller, PA
P.O. Box 1716
Greenville, SC 29602-1716



Stephanie Jadrnicek, Paralegal
Logan, Jolly & Smith, LLP
P.O. Box 259
Anderson, SC 29622
Telephone 864-226-1910
Fax 864-226-1931
stephanie@loganjollysmith.com

Dated: 4/1/15

1 State of South Carolina
2 County of Oconee

In the Court of Common Pleas

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Duke Energy Carolinas, LLC,
Plaintiff,

-vs-

Randall Hiller and
Janet Hiller,
Defendants.

2013-CP-37-575

May 12, 2015

Transcript of Record

B E F O R E:

The Honorable R. Lawton McIntosh, Judge

A P P E A R A N C E S:

James W. Logan, Jr., Esquire
Attorney for Plaintiff

Randall S. Hiller, Esquire
Pro Se

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter



I N D E X

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Witnesses

Page

RANDALL S. HILLER

11

Reporter's Certificate

20

E x h i b i t s

For the Plaintiff:

Marked	Description	I.D.	Admitted
11	Letter/attachments from Mr. Logan to Mr. Hiller dated May 7th	8	
12	Photograph of spud pole	9	

For the Defendant:

Marked	Description	I.D.	Admitted
	None offered.		

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 10:14 a.m.)

4 THE COURT: Mr. Hiller, Mr. Logan.

5 This is a motion to enforce settlement.

6 MR. LOGAN: That is correct, your Honor.

7 THE COURT: This is your motion, Mr. Logan.

8 MR. LOGAN: It is, your Honor.

9 THE COURT: All right.

10 MR. LOGAN: May it please the Court.

11 THE COURT: Yes, sir.

12 MR. LOGAN: I filed, on behalf of Duke Energy, a
13 motion to enforce settlement on April 1, 2015, with the
14 Court of this year. And attached to that motion were
15 ten -- are ten exhibits. Mr. Hiller was served with
16 that motion along with -- that was sent to the Court or
17 the clerk's office.

18 The first exhibit is the memorandum of agreement.
19 By way of background, Duke and Mr. and Ms. Hiller have
20 had a dispute among each other that has been going on
21 for years. And Mr. and Ms. Hiller own a place on Lake
22 Keowee. He is -- he and his wife have owned it for
23 years. Their children are grown. They basically have
24 no more use for it, don't use it is my understanding,
25 and it has -- I think he would like to dispose of it.

1 But it's one of those things it's out of sight, out of
2 mind. And over the years his dock or docks that he has
3 had attached to the front of his property have
4 periodically been -- have periodically come loose, gone
5 out into the cove, created a navigational issue, and
6 Duke has had -- and also resulted in complaints from
7 the adjoining property owners as far as how that area
8 is maintained along with Lakeshore.

9 Multiple actions have been filed. We think we
10 come to agreements as to how it's going to be resolved,
11 and it does not get resolved. Never gets resolved. We
12 had a mediation on September 2, 2014. The mediator was
13 Eric Englehardt. It resulted in a memorandum of
14 agreement, which is attached to this motion as
15 Exhibit 1, and also a plat that shows where the docks
16 are to be located. And he wants permission to put in a
17 future dock sometime within the next five years.

18 Well, as a result of the mediation, the terms were
19 set forth in the memorandum of agreement and also in
20 subsequent letters once we started having problems
21 getting the agreement enforced.

22 Exhibit 1, as I say, is the memorandum and the
23 attached plat. Exhibit 2 is the ADR compliance form
24 signed by the mediator. Exhibit 3 is my letter to
25 Mr. Hiller dated November the 25th of 2014 after my

1 client advised me that this work that he agreed to do
2 in front of his property had not been done. I set out
3 the five components of the agreement in that letter
4 pointing out that only items one and two had been
5 completed.

6 It was agreed at the mediation that a few days
7 after the mediation, Mr. Hiller would meet a Duke
8 representative and the contractor chosen by Duke in
9 order to discuss and implement the agreed terms as far
10 as the location of the dock and how it would be
11 anchored as well as other things set forth in those
12 five points.

13 Well, unfortunately, I wasn't able to be there at
14 that meeting on the property. And Mr. Hiller decided
15 that he didn't want Duke's contractor to do it but
16 would get a contractor to do all of that work himself.
17 So that's how it was left, and with this letter of
18 November -- and that meeting occurred on September the
19 22nd as set forth on the first page of Exhibit 3.

20 Upon finding out that the work had not been done,
21 I sent Mr. Hiller the letter of November 25th, and I
22 told him in that letter not only what had not been done
23 but what was left to be done, and that's on the second
24 page. And I also attached several photographs that
25 showed the status of the dock work that had been done

1 at that particular point, which obviously shows that
2 the work had not been completed as had been
3 represented. And those are attached to Exhibit 3.

4 Mr. Hiller responds to my letter on November the
5 26th with his own letter saying that he had a
6 contractor to come out and supposedly do all the work
7 that was to be done, but obviously, as he says in the
8 second paragraph, based upon the photographs you
9 provided, the contractor did not perform adequately.
10 Well, it's the contractor's fault now. So he says he's
11 going to correct it.

12 Exhibit 5 is an e-mail of December 22nd to me from
13 Mr. Hiller or actually to my paralegal, Stephanie.
14 "Please advise Mr. Logan that the repairs have been
15 completed." So, in other words, his representation is
16 all the work has been done. Well, again, I contact my
17 client and asked them to send out a Lakeshore
18 representative to take photographs to see if, in fact,
19 the work had been done. And that is Exhibit 6 of my --
20 attached to my letter from, at my request, my paralegal
21 to Mr. Hiller advising him that, "Following receipt of
22 your e-mail of December 22nd, I asked Duke to verify
23 completion of the dock repairs. The work has not been
24 completed." I attached photographs again taken by the
25 Duke representative showing the status of the work at

1 that particular time. And you will see three
2 photographs attached, one of which includes the
3 alignment issue and also how it was moored.

4 Mr. Hiller responds with his letter of
5 December the 30th which is Exhibit 7, in which he
6 basically tells Duke, I'll get around to it when I can.
7 I respond with my letter of February 12th in which I
8 advised him that that was not acceptable. And I agreed
9 to meet with him -- this is my letter of February 12th,
10 which is Exhibit 8. I agreed to meet with Mr. Hiller
11 and a Duke representative on his property hopefully to
12 come to a final resolution of this matter in compliance
13 with the settlement agreement.

14 Following that meeting, which occurred on
15 February the 6th, I write to Mr. Hiller a letter of
16 February the 12th, which is Exhibit 8, and I point out
17 to him once again what had been agreed to at the
18 mediation in particular, number one, the alignment,
19 proper alignment of the dock, which would have been
20 done had a Duke contractor been used, and number four
21 on that list, anchoring the dock with what's called
22 spud poles. In the past the problem that he has had
23 with the dock breaking loose is that it's been anchored
24 in the cheapest way possible, just tying metal rope
25 around trees or on very unsubstantial metal spikes in

1 the ground. Spud poles would prevent that from
2 happening and are used when a property owner has
3 problems with his dock breaking loose from how it is
4 actually attached to the land. So I write that letter
5 following our meeting on site in which he agrees to do
6 these things and have that done.

7 Well, as soon as I write that letter or a few days
8 later, I get a letter back from him, which is
9 Exhibit 9, February the 18th of this year, in which he
10 basically says again, I'll get around to it when I can.
11 And Exhibit 10 is my letter to Mr. Hiller basically
12 telling him that that was not acceptable to Duke, and
13 unless the work was completed within ten days, we were
14 going to proceed with appropriate measures.

15 Now, in addition to that material, I wrote
16 Mr. Hiller. The latest correspondence is -- I'm going
17 to pass up to the Court. And I'd like for it to be
18 marked as whatever the next exhibit is.

19 (WHEREUPON, Plaintiff's Exhibit Number 11
20 was marked for identification.)

21 MR. LOGAN: And that is my letter to him of
22 May the 7th. "I received your e-mail of April the 27th
23 stating that the requirements have been completed."
24 All right. They're completed now, according to him.
25 For the third time they're completed. I sent another

1 Duke representative out -- this is either the third or
2 fourth time -- to take a look at what had been done and
3 to take photographs. And as I state in the letter, the
4 dock is not aligned correctly and spud poles were not
5 used to anchor the dock. And that is shown in the
6 photographs that are attached, and these were taken on
7 May 5th as referenced in the letter.

8 While he has completed the decking, the alignment
9 issue that we discussed while I was out there, it's not
10 properly aligned as he agreed to align it with the pole
11 across the way, and you will see how the dock is tied
12 to the lake. Spud poles are not used, and this type of
13 mooring to the lake is going to result in the same
14 problem that he has been having over the years,
15 creating a navigational issue, creating complaints to
16 Duke from the neighbors that the dock floats away, gets
17 up on other people's property and the shore, and,
18 therefore, they make their complaints known to Duke,
19 and all of that is in violation of the Shoreline
20 Management Guidelines.

21 The final exhibit I will pass up to the Court and
22 ask to be marked as the next exhibit is a picture of
23 what a spud pole looks like.

24 (WHEREUPON, Plaintiff's Exhibit Number 12
25 was marked for identification.)

1 MR. LOGAN: That's down into the lake bed. The
2 dock is able to rise up and down as the lake levels
3 change, and it avoids, as much as possible, the dock
4 breaking loose. And that's a picture of one that's
5 actually on the lake and is used when property owners
6 have problems of this nature.

7 Had a Duke contractor as was agreed upon been
8 used, that was the type of mooring, the type of
9 docking, and the type of alignment that would have been
10 already there. And it's not there. As far as I know,
11 that's the current status. It's not in accordance with
12 the agreement.

13 You will see that Mr. Hiller, as part of the
14 settlement agreement, had asked that Duke waive the
15 permit application for a second dock for a period of
16 five years. In other words, he wouldn't have to put in
17 a dock within a year of an application being made,
18 contrary to the otherwise established Lakeshore
19 Guidelines. His second dock is not there. But Duke
20 agreed because he was trying to sell the property, and,
21 obviously, he wants dock access. He wants a dock in
22 front of his property. He wants a permit for the dock
23 because it adds to the value of his property. The
24 problem is he's not willing to maintain that dock and
25 he's not willing to maintain it in accordance with the

1 terms of the agreement. I ask that the agreement be
2 enforced. Thank you, sir.

3 THE COURT: Mr. Hiller.

4 MR. HILLER: Excuse me, your Honor. I'm a little
5 surprised that nobody from Duke is here to testify, but
6 I intend to testify, if you want to swear me in,
7 because --

8 THE COURT: Do you swear or affirm to tell the
9 truth, the whole truth, and nothing but the truth?

10 MR. HILLER: I do.

11 **RANDALL S. HILLER,**

12 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

13 THE COURT: Go ahead.

14 MR. HILLER: Your Honor, I've owned this property
15 since 1993. For the first 25 years I didn't have any
16 problems. Never had a problem. In 2008, I subdivided
17 the lot just before -- or 2007 just before the
18 Shoreline Management Guidelines changed that would have
19 required a greater frontage. Subdivided the property,
20 ordered -- I mean requested a Duke dock permit, had a
21 dock installed, then went back and made the application
22 for the second dock permit. It was refused.

23 I filed a lawsuit against Duke. They ultimately
24 agreed to give me the second permit. That was in 2008.
25 Ever since then, your Honor, I mean, it is just a

1 constant, constant harassment and a constant -- I mean,
2 as Mr. Logan keeps pointing out, and he's making a big
3 deal about these spud poles. Every time I make an
4 agreement with Duke, as soon as the agreement is made,
5 they wait two months and then add ten conditions.

6 You have the settlement agreement in front of you.
7 Is there anything in there about spud poles? I had
8 never even heard of a spud pole until I met up there
9 three days after this or four days after this
10 mediation. I drove up here. I met with Mr. Hudish,
11 the Duke representative, and a contractor that he
12 brought because I had told them at the time of the
13 mediation that I don't do docks. I don't know anything
14 about docks. I don't have it. When I had it installed
15 originally, the contractor installed it, the same one
16 that made it. It was installed with cables just like
17 the dock on my right and the dock on my left. Both of
18 them have cables, cables running to the shore and a
19 fixed pier attached to the rising and lowering pier.

20 This dock had to be moved as a result of the
21 settlement of the original lawsuit, and Mr. Hudish and
22 the contractor, and as you'll see from my
23 correspondence back to Mr. Logan, the contractor they
24 brought said right out, I mean the minute we got there,
25 he said, "There's no way we can do this in 30 days."

1 He said, "I can't do it. We can't build the fixed pier
2 portion, it's not possible for it to be done within
3 30 days." So he and Mr. Hudish got out their tape
4 measures and physically measured the lines where the
5 dock would need to go. And then Mr. Hudish puts stakes
6 exactly where the fixed posts would have to be
7 installed. And I agreed with their contractor. He
8 said, "All we can do is set the dock, and I'll send you
9 a price." And, you know, Mr. Hudish, the contractor,
10 and I agreed that I would find a contractor to install
11 the fixed portion.

12 Now, I always understood this agreement to say
13 that the dock was going to be put in the location that
14 the survey said. Didn't say anything about it having
15 to be pretty or as nice as my neighbors. It just had
16 to be put in that location within 30 days. I hired the
17 contractor. I went up there with them the day they
18 installed the posts and watched them dig the holes and
19 install the fixed pier post right where the stakes had
20 been set by Duke's representative. Then they built the
21 frame and attached the dock to it directly out from
22 that. That's all I agreed to do. And we did exactly
23 what I agreed to do.

24 Only afterwards, apparently, and this was --
25 Mr. Logan says we have had problems with the dock. We

1 have. People -- I mean, it's been vandalized at least
2 four times. The cables have been physically cut right
3 at the dock where we can see what's still hanging, cut
4 twice. It was cut again in November. I sent the
5 contractor back up there. We completely rebuilt the
6 frame, reattached it. Although I didn't agree to do
7 all the other things that Mr. Logan keeps adding on and
8 added on in March, as I responded to him then, I said,
9 if I determine -- if I determine, if the contractor
10 determines the spud poles are necessary, I'll put them
11 in, but I don't -- that wasn't part of this settlement.
12 And it was determined it was not necessary. Cables are
13 in. They're on my property. They aren't in the lake.
14 They go to the dock just like the one on the right,
15 just like the one on the left. Went ahead and had them
16 finish the decking. That's the only thing that was
17 missing.

18 That dock is in alignment with where Duke Energy
19 said it had to be when I was out there with them. When
20 we went back out there in March, Mr. Hudish, this time,
21 not the time when I was up there with him before I
22 started construction, sent somebody over to the other
23 side of the lake and had them go put a stake in based
24 on where he was pointing after I had already put the
25 dock in, and had them put a stake on the other side of

1 the lake, which I told him then, I said, "That's
2 25 feet left of where you set this."

3 And, your Honor, if that dock needs to be turned,
4 it needs to be Duke's responsibility because I relied
5 on Duke Energy's specifically measuring and putting
6 stakes in the ground saying this is where your dock
7 needed to be. It is exactly there. And if Mr. Hudish
8 was here, he'd have to admit it.

9 So I have complied with everything I agreed to do,
10 and it's not Duke's prerogative to continuously add
11 additional obligations on me. I assure you, there's
12 not a single word in that Shore Management Plan that
13 talks about spud poles being required or mandated or
14 anything else. The dock is in place. It's properly in
15 place, and it's exactly where Duke asked me to put it
16 or told me to put it.

17 THE COURT: Let me ask you this, Mr. Hiller. How
18 did it go from Duke placing the existing dock to you
19 placing the existing dock?

20 MR. HILLER: Because the contractor they brought
21 said he couldn't do it in the time frame. They were
22 supposed to bring the contractor. They did bring a
23 contractor.

24 THE COURT: There was no time frame.

25 MR. HILLER: Oh, it was 30 days.

1 THE COURT: It didn't say it in here. Says, "Duke
2 will place the existing dock at the Hillers' cost at
3 the dock location shown on the Steven Edwards &
4 Associates survey of 19 May 2011 closest to Lot 2." It
5 doesn't have a time frame in there that I can see. And
6 there is time frames for being notified of the changes
7 in permit regs on number two, but that's a different
8 item.

9 MR. HILLER: Yeah. Well, it was always 30 days.
10 And Mr. Logan's and my correspondence would reflect
11 that fact. I bought -- at the mediation about trying
12 to get up there that very next Friday, but, you know, I
13 finally agreed to go that week, that Friday, to meet
14 with Mr. Hudish because of the 30-day timeline. And
15 it's in my letter back to Mr. Logan afterwards that,
16 you know, we all understood it to be 30 days.

17 And then, of course, after I met back up there
18 again and this time with Mr. Logan and Mr. Hudish and
19 he complained about the location and complained about
20 the fact that we hadn't put the decking on it, they
21 tried to put the 30-day time limit on me, too, at that
22 time. I wouldn't -- you know, I wouldn't agree with
23 that.

24 And, in fact, my letter back in February 10th, I
25 talk about the fact that because of the deadline the

1 first time, and because their contractor couldn't do
2 it, I had been forced to get whoever was available
3 rather than who I really wanted to do it to do it. I
4 hadn't really looked at this since the original time,
5 your Honor, but I don't think Mr. Logan -- you aren't
6 going to deny it was 30 days?

7 MR. LOGAN: I'm going to admit it's what's in
8 here.

9 And I will represent to the Court that I had no
10 idea that this discussion had gone on at the lake three
11 to four days after this mediation in which Mr. Hiller
12 wanted to have his own contractor do it for whatever
13 reason. I think I know what the reason is, but Duke --
14 the agreement was that Duke would go out there and
15 place the dock, put the dock there, do this work, put
16 those poles in so we wouldn't have this problem again.
17 And then for whatever reason, Mr. Hiller talks the
18 representative into letting his -- he wants his own
19 contractor to do it. If Duke's contractor had done
20 this as it was agreed to in the mediation and as I
21 recite in this, we wouldn't be here today because that
22 work would have been done at Mr. Hiller's expense.

23 So this is just a continuation of the same type
24 problem we have been having and representative --
25 representations of who agreed to do what.

1 I submit to you that what's in here in this
2 memorandum of agreement, there is no 30-day time
3 period. Duke wanted the work done, and they wanted it
4 done right so that they wouldn't continue to have these
5 problems with Mr. Hiller. And I don't know why he is
6 opposing -- this does nothing but enhance the value of
7 his property if it's done right. But apparently he
8 would rather argue with Duke and not do what he agreed
9 to do in the mediation than have it done properly so
10 that the property value is enhanced and we don't have
11 to be up here in front of the Court continuously.

12 MR. HILLER: Your Honor, like I said, I was
13 testifying, and I will testify and have testified that
14 it was not my idea not to use their contractor. It was
15 the contractor saying that he could not do the work in
16 front of Mr. Hudish within the 30 days that was
17 mandated. And, specifically, he said there was no way
18 he could build the fixed portion, and there was a
19 chance he wouldn't be able to actually set the dock
20 onto the fixed portion. There was going to be a
21 20-foot fixed portion, and then there is a 30-foot
22 prebuilt portion that's already attached to the dock.

23 It was not my idea. The last thing I wanted to do
24 was try to find somebody to go up to Lake Keowee and
25 put in those posts and fix it. But because he couldn't

1 do it, that's why I agreed to do it, and that's why
2 they placed the stakes so that I would know exactly
3 where to put it.

4 MR. LOGAN: Your Honor, all you have to do is look
5 at Exhibit 3. And I addressed this in my letter. I
6 said, "Thereafter, you instructed" -- he e-mailed the
7 contractor for Duke after that meeting on September the
8 22nd. I didn't know that. I didn't know it until I
9 wrote this letter of November 25th. He instructed the
10 contractor not to come out there.

11 THE COURT: All right, gentlemen. Thank you.
12 I'll take it under advisement and I'll issue an order.

13 (WHEREUPON, the hearing ended at 10:42 a.m.)

14 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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1 Certificate of Reporter
2

3 I, Diane L. Marcengill, Official Court Reporter
4 for the Tenth Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of a
7 portion of the proceedings had and evidence introduced
8 in the trial of the captioned case, relative to appeal,
9 in the Circuit Court for Oconee County, South Carolina,
10 on the 12th day of May 2015.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 September 28, 2015

16 *Diane L. Marcengill*

17 _____
18 Diane L. Marcengill, RPR, CRR
19 Circuit Court Reporter
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25

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

RECEIVED

R. Lawton McIntosh, Circuit Court Judge

APR 27 2016

SC Court of Appeals

Case No. 2013-CP-37-0575

Appellant Case No. 2015 - 001672

Duke Energy Carolinas, LLC..... Respondent

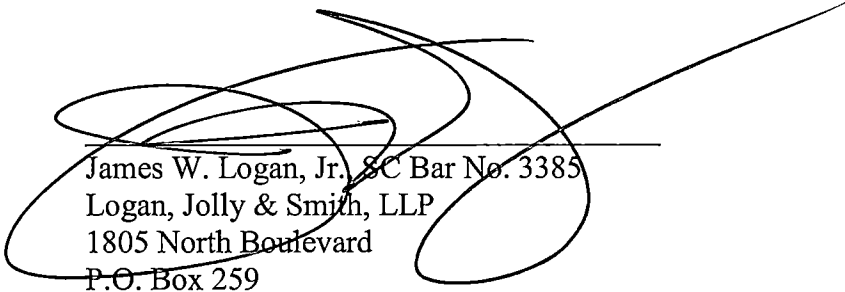
v.

Randall S. Hiller and Janet C. Hiller..... Appellants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Return to Motion to Strike was served
by first class mail, postage prepaid this 25th day of April, 2016, upon the following:

Randall Scott Hiller, Esquire
850-B Wade Hampton Blvd.
Greenville, SC 29609


James W. Logan, Jr. SC Bar No. 3385
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(864) 226-1910
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James W. Logan, Jr., Esquire
Email: logan@loganjollysmith.com

RECEIVED

April 25, 2016

APR 27 2016

SC Court of Appeals

1805 North Boulevard
Anderson, SC 29621
Telephone: 864-226-1910
Facsimile: 864-226-1931

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeal
1220 Senate Street
Columbia, SC 29201

Re: Randall S. Hiller and Janet C. Hiller, Appellants v. Duke Energy Carolinas, LLC, Respondent

Appellate Case No. 2015-001672

Mailing Address
Post Office Box 259
Anderson, SC 29622

Dear Ms. Kitchings:

www.loganjollysmith.com

Please find enclosed for filing the original and six (6) copies of the Respondent's Return to Motion to Strike and the Certificate of Service in the above referenced matter. Please return a clocked in copy of the same to me in the enclosed self-addressed stamped envelope.

If you have any questions, please do not hesitate to contact me.

With kind regards, I remain,

Yours very truly,

Logan, Jolly & Smith, LLP

James W. Logan, Jr.

JWLjr:krm

Enclosure(s)

cc: Randall Scott Hiller, Esquire (with enclosure)

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04/25/2016

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SC Court of Appeals

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