THE STATE OF SOUTH CAROLINA
In the Supreme Court

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.~~ Petitioner

---

APPENDIX VOLUME II

Kirby D. Shealy III, SC Bar No. 11556
Lyndey Ritz Zwingelberg, SC Bar No. 100804
Adams and Reese LLP
1501 Main Street, Fifth Floor
Post Office Box 2285 (29202)
Columbia, South Carolina 29201
(803) 254-4190
Attorneys for ~~Appellant~~ Petitioner

Other Counsel of Record:

Zachary M. Jett, Esquire
Peter M. Vogt, Esquire
Butler Weihmuller Katz Craig, LLP
11605 North Community House Road, Suite 150
Charlotte, NC 28277
(704) 543-2321
Attorneys for Respondent

RECEIVED
NOV 21 2016
S.C. SUPREME COURT

INDEX

Order Denying Petition for Rehearing A-1

Decision of the Court of Appeals A-2

Appellant's Petition for Rehearing A-23

Respondent's Return to Appellant's Petition for Rehearing A-42

Record on Appeal A-56

Brief of Appellant A-1542

Brief of Respondent A-1596

Reply Brief A-1654

A Yes, sir.

Q Now, some of these specifications tell Randy Pruitt how to put on the sheet metal?

A That's correct. It should be in the specifications.

Q But a big part of these specifications also sets forth things like quality requirements, inspection of work requirements, temporary facility controls and protection requirements.

Should Randy Pruitt have been familiar with those sections?

A He would been advised of those sections and when he needed to know what he needed to know he would have been informed.

Q Who would have informed him of that?

A I would have done so, Clint would have informed him, Ben Pickens Jr.

Q I am sorry. I didn't mean to interrupt you. So for instance if you turn to 1500-3. We read this several times today and I know you have been here?

A Yes.

Q But I will read it again. Sub-part L.

A Okay.

Q It states, "Initiate, maintain and supervise all safety precautions and programs in connection with the work. Take all necessary precautions for the safety of, and provide the necessary precaution to prevent damage, injury or loss to:" You

go down to sub-part three, "Other property at the site adjacent thereto." Skip down to four, "Comply with all of the applicable laws, ordinances, rules and regular laws and orders of any public body have jurisdiction for the safety of persons or property or to protect them from damage, injury or loss."

Did I read that correctly?

A Yes, sir.

Q So, Randy Pruitt was suppose to initiate, maintain and supervise all safety precautions and programs in connection with the work?

A The part he was working on, yes, sir.

Q Does he have the requisite background and experience to do that?

A I would think he does. Yes, sir.

Q Did he receive any training from your company that told him what, for instance, the applicable laws, ordinances, rules regulations and orders of any public body have jurisdiction for the safety or persons or property or to protect them from damage, injury or loss, with respect to roofing work?

A He would know certain parts of it. I'm sure that we have instructed him about items falling from the roof, safety, pedestrians below the roof. Items similar to those.

Q Prior to starting the work Pickens knew that it was limited to two areas for storage, correct?

A I wasn't aware of that, but I am now; two areas of

storage.

Q At the time you weren't aware of, so now you are aware you were limited to a parking lot and temporary storage area in front of the building?

A Right on the ground storage, right.

Q And there is nothing in the specifications that allow Pickens to store construction materials on the flat roof between Bancroft and Owens, correct?

A I don't know that how that's excluded or not. I would say I am not aware. I don't know that.

Q But Randy Pruitt as superintendent would know it?

A I don't know that he would know that either.

Q How about Clint Robinson as project manager?

A He might. I just can't speak for him.

Q What are the applicable laws, ordinances, rules and regulations that apply to roofing work of the type carried out by Pickens in connection with the Bancroft reroofing project?

A We got several manuals that we can reference, dictionary-type things that we can go to.

Q What are those?

A We don't know all of the statements that they say. There is OSHA regulations, there is National NRCA, National Roofing Association. There is various resources that we can access.

Q OSHA regulations are related to employee safety?

A Yes, sir.

Q Did you say the NRCA?

A Yes, sir.

Q That's the National Roofers --

A National Roofing Conference Association.

Q That is a voluntary organization that roofers join, right?

A Right.

Q And NRCA doesn't promulgate any codes, does it?

A Well, they can give access to them.

Q Sure. So did Pickens roofing use the access they had through the NRCA to determine what codes apply to the Bancroft reroofing project?

A I am sure we did. I am sure that is something that I wasn't involved in, but Ben Pickens Jr. and Clint were involved in.

Q Are you familiar with the South Carolina Fire Code?

A I know there is a code.

Q Does the South Carolina Fire Code apply to the work carried out by Pickens Roofing in connection with the reroofing project at Bancroft Hall?

A Yes, sir. I am sure there are parts that are.

Q I show you, NFPA 241, section 8.3.3 of chapter 241, it states, "Yard storage of equipment to be installed or combustible construction materials shall not be stored closer

than 30 feet from the structure under construction or alteration."

What did Pickens do to comply with NFPA 8.3.3 during the course of its work with the Bancroft Hall project?

A The storage area on the ground closest to the building was adjacent to the building and then coming away from the building. So that was our area for storage on the ground.

Q Right. So were all the combustible -- first off, do you know what combustible means?

A Yes, something --

MR. SHEALY: Objection, calls for a legal conclusion.

A Something that is capable --

THE COURT: If you are going to object, stand. I don't know what you're talking about. I'll overrule the objection in any event.

Q Go ahead. Do you know what combustible means, sir?

A Yes, sir.

Q It means something that can burn, right?

A Yeah.

Q Pickens -- did Pickens store all its combustible materials further then 30 feet from the building?

A That lay down area as I recall had a dumpster at one point in time, it had some metal, some old stuff that came off the roof, had shingles in it, various products going up, coming

down, and all all different types of materials.

Q Were you aware of this provision prior to this fire?

A Not exactly that particular point, no, sir.

Q Were you aware that there were rules requiring Pickens to store materials in a certain manner?

A In a way, yes, sir, but not this particular point.

Q And what was -- you said in a way. What way were you familiar with it?

A For instance, like gasoline. You don't have that stored on the roof or on the site. We keep that off site if we were using it. Things that would be similar to gasoline.

Q Anything else?

A Well, the propane, soldering cylinders.

Q How about combustible roofing materials such as roofing paper, roofing felt, shingles, are you aware of any rules that apply to Pickens work with respect to storing those materials?

A No, sir. Those are the materials that are ongoing on the roof and once they are on the roof they are there as well. So they are subject to the elements; the shingles, felt paper.

Q There is a difference between having a shingle on the roof and a bundle of shingles, correct?

A Well, the bundle of shingles is a bundle of shingles that hasn't been installed.

Q Right, and a bundle of shingles typically would have plastic covering over it, right?

A Yes, sir.

Q And rolls of roofing felt is different then a thin layer of roofing felt under a shingle, right?

A It's the same material.

Q Same material. And wooden pallets they are not installed on the roof, right?

A No, sir.

Q Should there ever been wooden pallets on the flat roof?

A There were no wooden pallets on the flat roof.

Q You were here for Mr. Robinson's testimony, correct?

A Yes, sir.

Q And you heard that although he couldn't say precisely on the day before the fire, but at times there were either one large pallet or two pallets?

A Yes, sir.

Q And it had among other things, shingles, metal, roofing paper; is that improper?

A Well, I disagree with that because I don't think there were any shingles. I know there were no shingles or pallets. They were just metals items.

Q How do you know that?

A Because I remember not the day prior when I was there, but I remember earlier in the week when I had seen the area that it was just metal items there on that roof.

Q Were you here for Matthew Pruitt's testimony?

A I was.

Q And Matthew Pruitt testified that he retrieved shingles, roofing paper and metal from that area?

A Right.

Q You heard that?

A I heard that.

Q If there were shingles and roofing paper on the flat paper (sic) a day before the fire was that improper?

A Could you repeat that.

Q If there were shingles and roofing paper stored on the flat roof the day prior to the fire was that improper?

A Well, it was not on there. I don't agree with his statement either.

Q I am not asking you to weigh the evidence, or judge whether that is right or wrong. I am asking if there were shingles and roofing paper on the flat roof was that improper?

A No, I don't it would be improper.

Q Why is that?

A It's not on there. Shingles weren't on there.

Q I know you think that shingles weren't on the roof. I understand that.

A Okay.

Q But what I am asking is a different question, and I am not trying to berate you or anything like that. But if there were shingles and roofing paper on the flat roof was that

improper?

A I don't think it would be improper.

Q Okay. Why?

A Well, if it's not overloaded. If it is not too heavy the weight would be more of a concern then the material to me.

Q You are not familiar with the codes relating to the storage of those type of materials, is that a fair statement?

A I am not real familiar with that code phrasing.

Q You are the president of Pickens Roofing and certainly you can designate tasks. Is there somebody at Pickens Roofing who has knowledge regarding proper storage of combustible roofing materials, like shingles and roofing paper?

A Again, cousin Ben Pickens Jr.

Q Anybody else?

A And possibly Clint Robinson, project manager.

Q You were here for Mr. Robinson's testimony. He said he didn't have that knowledge, correct?

A Right. Right.

Q And Mr. Ben Pickens has passed away. How about these other superintendents; Troy McCall, Randy Pruitt, Mr. Feister?

A I don't know that they would. I can't speak for them.

Q Well, were they suppose to know? Were they suppose to know, somebody at Pickens as to applicable codes?

A Say again that part.

Q Were these project superintendent; Mr. Pruitt, Mr.

McCall, Mr. Robinson, Mr. Feister were they suppose to know the applicable codes and laws that relate to the storage of combustible construction materials during a reroofing project?

A Yes, sir.

Q Who was responsible at your company to make sure they knew?

A Possibly the project manager or my cousin, Ben Pickens Jr.

Q Project manager being Clint Robinson?

A Yes, sir.

Q Now, you said you are familiar with the flat roof. You said you were up there the week before. Can you describe the flat roof for me?

A It's maybe 10 by 12 with a little additional four foot by eight or ten feet with a slope to a drain port.

Q Sometimes call scupper?

A Right.

Q All right. Were you here earlier when we showed photographs of the fire at its earlier stages and you can see the fire through the scupper?

A Yes.

Q Is that what you are talking about?

A Yes.

Q And can you describe the adjoining roofs? They were pitched roofs, correct?

A That's correct.

Q And they were actually three sets of them, correct?

A Maybe four.

Q Maybe four. How far were they from the surface of the flat roof?

A Maybe 25 to 30 inches.

Q Which section?

A This flat roof to the upper section.

Q On the Bancroft side of the roof you had to use a ladder to get down to the flat roof?

A There was a ladder there. You couldn't step off without that. That might have been more than 30 inches at that point.

Q I will show you exhibit 15 in your book sir?

A What was that, page exhibit?

Q On that tab, I believe -- I will help you.

A Okay.

Q It is also up on the screen if that is easier for you to see.

A Okay.

Q How far was the flat roof from the pitched roof with the ladder?

A I think on that side it's a little more. It is probably about four feet, four and a half feet.

Q You couldn't just step down from this roof onto the

flat roof?

A No, sir. Not at that point you couldn't, but I think on the other corner you could.

Q On this corner here?

A Yes, sir. Right in there.

Q How about this side?

A Maybe that side too.

Q How about the area in front?

A I don't quite remember how high that was. It is probably the same as where the ladder is.

Q Did you ever go on this roof?

A The flat roof?

Q Yes, sir.

A Yes, sir.

Q Why were you there?

A To see what we had on it. At one time we put material there that we were working on.

Q When was that?

A Probably the first part of that week in March.

Q Let's go down to the overview?

On the day before the fire where was your company working? I will it let you use this (indicating). You just press it. There you go.

The yellow part is Bancroft, right?

A Yeah, okay, it was right here.

Q On the far side away from the flat roof, right?
A Right.
Q Okay. So the work was approaching the flat roof, right?
A Right.
Q The roof was complete from this end of the building all the way to here, right?
A All the shingles were not in place, no, sir.
Q Okay. Other than the shingles?
A There was probably flashing metal to be done too.
Q So there was still shingling to be done, correct?
A Right.
Q How did you get on the roof?
A From the two ladders on the front.
Q In this area?
A More towards the center, right.
A That is the area where there is a porch over the entry.
A Correct.
Q And then there is another ladder going up to the roof?
A That's correct.
Q When you go out to the job site you were there to inspect the work, right?
A Yes, sir.
Q Was the flat roof part of the work?
A That connected, tied in the two buildings from Bancroft

annex to Owen.

Q I understand it connected, but that section of the roof wasn't being roofed by --

A No, sir.

Q --- by your company, right?

A Which part again?

Q The flat roof?

A No, sir.

Q That wasn't part of the project. So if the work is going on in here, why are you walking down here and seeing what is on the flat roof?

A To put material there that was metal that we were going to be using within the next several days. It was not just a lay down storage area for just long term use. It was going to be used. We bring metal out and use it over the next few days. Also metal is expensive. We don't want to leave it on the ground.

Q Rolls of felt paper, were they on the flat roof?

A No, sir.

Q Were you here for Randy Pruitt's testimony?

A Yes, sir.

Q Is it possible for Pickens to keep its combustible construction materials thirty feet from the building if they used the lay down area in front of the building?

A Was that possible did you say?

Q Yes, sir.

A Yes, sir, for the parts that we stored on the ground.

Q So if Pickens wanted to they could have stored roofing paper, shingles, metal, anything associated with the job in the lay down area. There is sufficient room for it?

A Yes, sir.

Q Did Winthrop provide Pickens with everything it needed to do the job in accord with the contract specifications?

A The other lay down area would have been helpful.

Q Your company received more money though because you were limited to one lay down area, right?

A Yes.

Q Did the fact that you had one lay down area cause your company to do anything different with respect to carrying out this job?

A It made it a little more difficult. Hand carry the material further.

Q Right. And as a result your company made more money, right?

A Yes, sir.

Q But did the fact that there was one lay down storage area did that inhibit Winthrop's (sic) ability to carry out their work in accord with the project's specification?

A No, sir.

Q Did it inhibit Pickens's ability to carry out the work

in accordance with all applicable codes and law?

A No, sir.

Q Did anybody from Winthrop or anyone working on Winthrop behalf ever tell you or anybody working for you that it was acceptable to store combustible construction materials on the flat roof between Owens and Bancroft?

A No.

Q Who at Pickens initiated and maintained and supervised the safety precautions and programs in connection with the Bancroft roof?

A Larry Renner.

Q Is he another superintendent for this job?

A He looked after some parts of it.

Q Do you know if Mr. Renner has any familiar with NFPA 241?

A No, sir, I don't.

Q The specifications actually call out, NFPA 241, with respect to this disposal of combustible waste materials and debris do they not?

A I haven't read that part.

Q Why don't you look at 1700-3 of exhibit one and we also have it on the screen if that helps. It's a little small. I will find that page for you.

A Yeah, if you can find that for me.

Q NFPA section 3.4 A of the specifications state,

"Progress Cleaning, general: Clean project site and work areas daily, including common areas. Coordinate progress cleaning for joint-use areas where more than one installer has worked. Enforce requirements strictly. Dispose of material lawfully." And then number 1, "Comply with the requirements in NFPA 241for removal of combustible waste materials and debris.

Did I read that accurately?

A Yes, sir.

Q Who at your company was responsible for insuring that Pickens work complied with those sections of NFPA 241?

A Our various foremen and superintendents would be required.

Q So Mr. Pruitt, Mr. McCall, Mr. Robinson, Mr. Fister?

A Yes.

Q They all should have familiarity with those requirements, right?

A In knowing to remove the waste materials daily and debris.

Q In accordance with NFPA 241?

A Yes, sir. I know removal of the materials. I'm not familiar exactly with that 241.

Q At the time this contract was entered into did Pickens have a copy NFPA 241?

A I am not sure. I don't know.

Q Who would know at your company?

A Ben Pickens Jr. would know.

Q How about Larry Renner, the safety director?

A He might know, yes, sir.

Q Should he know?

A I think he should know. Yes, sir.

Q Mr. Renner should have been familiar with the NFPA section 8.3.3 that I showed you also earlier?

A Well, I am not sure if he is or not.

Q As a safety director should 8.3.3 as part of the South Carolina Fire Code should Mr. Renner be familiar with it?

A I would think so. I just can't say for sure that he would.

Q If you can turn to 1400-3 subpart C, under inspection of the work. We read this before and I will try and read it fast. "The words supervise and inspect whenever used herein in connection with the duties or activity of the owner shall in no way, expressed or implied, relieve the contractor from his responsibilities for the safety of the workmen, the preservation of the work or proper performance under this contract. The owner shall not be responsible for the safety of the workmen, the safeguarding of the work, or the proper performance of the contractor."

Did I read that accurately?

A Yes, sir.

Q Are you familiar with that provision?

A Yes, sir.

Q What is your understanding of that provision?

A That we are responsible for the carrying out of the job and the work.

Q You can't rely on Winthrop or anybody else to inspect and supervise your work, correct?

A Right.

Q Pickens and Pickens' responsibility alone to make sure Pickens met specifications set forth in the contract, right?

A Yes, sir.

Q Now, you told me that no one that you are aware of from Winthrop or anyone acting on its behalf told Pickens that it can store combustible materials on the flat roof, right?

A They didn't. I don't remember any one way or the other. No comment.

Q Well, if you read 1.6 (D), it says: "No inspector shall have the power to waive the obligations resting upon the contractor to furnish good material and do good work as herein prescribed."

A Yes, sir.

Q So no one can waive contract specifications, right?

A Yes, sir.

Q Now, how did you happen to be out on the job site -- I am sorry before I ask you about that. There was testimony about a shingle subcontractor?

A Yes, sir.

Q Was there a shingle -- did Pickens hire a shingle subcontractor for part of the work?

A I wasn't familiar with that part of the project, but if we did there again Ben Pickens Jr. would know about that.

Q You prepared crew locations sheets, correct?

A Parts of them, yes, sir.

Q And I think we looked at one today, exhibit 11. Is that right?

A Say that last part again.

Q Exhibit 11. Turn to exhibit 11.

A Okay.

Q Can you describe exhibit 11 for us?

A It's a crew location for March 1st, 2010 to March the 7th, 2010.

Q So, does this set forth all the Pickens crews that worked that week?

A Yes, sir.

Q And you were responsible for the metal crews, is that right?

A That's correct.

Q And metal crews are the bottom portion of this?

A That's right.

Q And the top crews are what?

A They are the built up roofings, single ply, flat

roofing.

Q Where is the crew location sheet for the shingle work?

A We didn't have one. If it was subcontractor it didn't go in this book.

Q Is there any document -- is there any way that Pickens can tell us whether a Pickens subcontractor was on the roof the day or the week before the fire?

A Well, I was there the day before and nobody was there.

Q Were they there on the day of the fire?

A No, sir.

Q How do you know that?

A We didn't have anybody working that day. I can't say nobody was on the roof.

Q Does Pickens schedule its subcontractor's work?

A They were already -- I think they had completed what they had to do until we got out ahead of them on the metal work.

Q So -- and so you believe that Pickens subcontractor wasn't on the roof the week of the fire?

A Right. We probably got records somewhere that may state that. Clint Robinson might know. I wasn't involved in that part.

Q And you were here for Mr. Robinson's deposition, right?

A Yes.

Q I'm sorry, his testimony. And you heard him say that

he was unsure whether it was Deans -- is that who it was?

A Yes.

Q You took the photographs that have been marked an exhibit six and seven, right?

A I think that's ones I took. Yeah, I took six and seven.

Q And just tell us there wasn't any shingle work that was going on that week, right?

A That's right, not from any subcontractor.

Q What are all those shingles doing on the roof on exhibit six?

A Those are going to be used on the area that is shown in seven.

Q No shingle crew had been on the roof that entire week?

A To my knowledge no.

Q How long were those all those shingles in six, how long had they been on the roof?

A I don't know how long they been up there.

Q Who put them there?

A I guess it was the shingle subcontractor.

Q Did the shingle subcontractor store shingles on the flat roof?

A No, sir.

Q How do you know that?

A The last I saw there were no shingles on the flat roof.

Q Did you go look at the flat roof the day before the fire?

A No, sir.

Q You did not, right?

A No, I did not.

Q And when were you on the roof before that day?

A Probably one of the earlier days in the week. I don't know exactly which day.

Q Does the crew location sheet help you identify when you would have been on site?

A No, it wouldn't.

Q As the president you don't have to keep track of your time?

A No, sir.

Q I understand that. Should all those shingles been left on the roof for that long?

A Yes, sir. They we on the roof ready to be installed when the time comes and you have a lift. You want to utilize the lift while it is there to get the material up and then you stack them accordingly along the ridge so they don't move.

Q Did you hear Brandon Lusk testify today?

A Yes, sir.

Q Did you hear him testify that the lift was gone?

A Yes, sir.

Q Go back to six for a second. Do you notice anything in

exhibit six with respect to Mr. Pruitt?

A He is on the roof there behind the dormer.

Q He has an arm in a sling?

A Yes, sir, it looks like that.

Q Is he roped off?

MR. SHEALY: Objection. Relevance.

THE COURT: What is relevance, counsel?

MR. VOGT: Well, Your Honor, this is the president of Pickens Roofing. I think that it is relevant to explore how Pickens enforces it's own safety rules.

THE COURT: I don't see that is relevant to this. Lets move on.

Q Did you find out how Mr. Pruitt had been hurt?

A Yes, sir.

Q How did he get hurt?

A He slipped on a piece of felt. I don't know exactly how, but that's what he said.

Q After the fire did you have any discussion with the Pruitts or Mr. Lusk regarding what was on the roof, flat roof?

A I don't recall exactly because all of us knew what was on the flat roof.

Q Does Pickens have an internal standard that would prohibit the storage of roofing paper on the flat roof?

A No, sir.

Q For any reason?

A Sir?

Q I'm not talking about a code or standard. I am talking about what Pickens does.

A Could you restate the question.

Q That was very poor question. I apologize.

Randy Pruitt testified that you told him that it was okay to store materials on the flat roof. You were here for that, right?

A Yes, sir.

Q And Randy Pruitt said that in addition to metals there was also rolls of felt roofing paper. Your were here for that, right?

A I heard that, yes, sir.

Q Is that proper?

A I wouldn't see anything wrong with it, but to my knowledge we didn't have any felt there.

Q Would you defer to the knowledge of the superintendent as to what was on the flat roof the day prior to the fire? Would you defer to the knowledge of the project superintendent as to what was on the flat roof the day prior to the fire?

A Yes, sir.

Q Remember I took your deposition?

A Yes, sir.

Q Remember I asked you if there should have been combustible materials located on the flat roof between Bancroft

and Owens?

A I can't recall the exact question.

Q Okay.

MR. VOGT: Your Honor, may I open the transcript?

THE COURT: Yes, you may.

Q Sir, will you turn to page 87. Are you there, sir?

A Yes, sir.

Q If you go to line 17, I asked the question, "Do you know what combustible materials means?" Can you read your answer?

A Yes, sir. Answer, "I know."

Q I said, "Okay" and then how did you respond?

A I said, "I know metal is not."

Q Next question was, "Right, and my question is should there have been combustible materials stored on the flat roof located between Bancroft and Owens Hall?"

A I said, "Right. Right."

Q "On March 5th, 2010?" Your answer.

A "Right no we --"

Q And I said, "There should not have been, right?" and what was your answer?

A Answer, "Yeah, we shouldn't have anything like that."

Q All right. Does that he are fresh your recollection with respect to Pickens standard as to the storage of combustible materials on the flat roof?

A Well, not a whole lot. It does not.

Q Well, can you read line 22. I will read line you 22 on page 88.

Question was, "All right. So, so on the day of the fire there were roofing paper rolls on the flat roof between Bancroft and Owens that would not have been proper, correct?" Can you read your answer.

A "Right, and I don't think there were any there."

Q So you agree that it wouldn't have been proper to store roofing paper rolls on the flat roof, correct?

A It would not have been proper or --

Q You agree that it was not proper to store roofing paper rolls on the flat roof, correct?

A I don't agree with that one hundred percent, no, sir.

Q Would you agree with it when you testified in --

A I think I was not fully agreeing with it then either.

Q You said right --

A Yeah.

Q And I don't there were any there?

A Right.

Q Does the right answer the question I was asking you a hypothetical, if there were paper roofing rolls on the roof that wouldn't have been proper, correct?

A I just don't think there were any there.

Q Should there have been paper roofing rolls on the flat

roof?

A I don't there should have been and I don't think there were.

Q I understand that. If there were that violated your own company standards, right?

A I can't say that either.

Q Who can say it other than the president of Pickens Roofing?

A We got -- as I say we got various people that are in charge of different things. My cousin Ben Pickens Jr. would more about a lot of things. I know a lot about things that he wouldn't.

Q Do you think your cousin Ben told Randy Pruitt who worked under you that it was okay to store roofing rolls, paper rolls on the flat roof?

A I don't know if he did or not. I can't say.

MR. VOGT: Thank you, very much, sir.

THE WITNESS: Yes, sir.

MR. SHEALY: May it please the court.

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. SHEALY:

Q I will try to plug this in again and see if it works this time.

Mr. Pickens, just a couple of background questions. When

was Pickens Roofing formed?

A 1904.

Q And that was formed by whom?

A Great grandfather.

Q Your great grandfather?

A Yes.

Q And has it been in business in Spartanburg since that time?

A It started in Easley, South Carolina and moved to Spartanburg in the early 20's.

Q An over that span of time Pickens has done a fair amount of work for Winthrop University?

A Yes, sir.

Q As of point of the March 6th, 2010 do you have any idea how many projects Pickens had done for Winthrop?

A Probably either the new work or repair work eight -- seven to ten.

Q All right, and then since that time do you know how many projects Pickens has done?

A That was from which date again.

Q March 6th, 2010?

A Okay. Its probably been five or six.

Q All right. And I would ask you the soldering done -- the soldering of metal is done by whom at Pickens?

A On this job it was by Robert Pickens.

Q All right. And Robert is your son?
A That's correct.
Q You were shown a crew location sheet earlier, correct?
A Yes, sir.
Q Okay. And I got that shown up on the screen. What part of that crew location sheet were you responsible for?
A That lower portion.
Q All right. And the crews that are listed on the lower portion are those sheet metal crews?
A That's correct.
Q Okay. And Randy Pruitt is one of sheet metal crews?
A Yes, sir.
Q And do the columns -- what do the columns next to his name or the entries next to his name what do they indicate?
A That's the location where he worked on that particular day.
Q All right. Now, who else at Pickens would have filled in information on the crew location sheet as of March of 2010?
A Ben Pickens Jr.
Q All right. And would he have filled in some of the information at the top?
A Yes. Yes, sir.
Q Now Troy McCall, what kind of crew did he run?
A Built-up flat roofing crew.
Q And so he was there on Bancroft on Monday and Wednesday

and Thursday?

A That's what it says. Yes, sir.

Q Now, I notice in the Wednesday and Thursday and Friday in addition under Winthrop its says Roddy on those three days, on Thursday and Wednesday it says Bancroft in addition to Roddy?

A Correct.

Q Was Roddy a different project?

A It was a different dorm, yes, sir. A different building.

Q So, how many projects were you all working on at Winthrop University as of March of 2010?

A Those two and also the campus, the campus life facility. We might not be working but it was ongoing at that time.

Q Okay, so the three projects sort of ongoing at the time?

A Right.

Q All right. And the photographs that you took, you took those on the March 5, 2010, correct?

A Right.

Q Why did you take photographs?

A I take photographs periodically. There is no certain timeframe, but it was just the day I had my camera and took some.

Q All right. And I am showing you Defendant's Exhibit

ten. Is that a photograph that you took on March 5, 2010?

A Yes, sir.

Q All right. And then Defendant's Exhibit 11, this is what you have been shown several times. This is the photograph showing the crew in progress?

A Yes, sir.

Q And do you know what time of day you were there?

A I think it was between 12:30 and 1:00, 1:15.

Q Okay. So about an hour, hour and fifteen minutes?

A Maybe 45 minutes to an hour, between 12:30 and 1:15.

Q And during the time that you were there were any other people on the roof?

A I didn't see any other people.

Q And were you aware that any other people were scheduled to be on the roof?

A No, I was not.

Q Now, after the fire, what were you asked by Winthrop University in terms of material to provide them with a list of material that you lost in the fire?

A I came up with a list of the metal material that we lost and I gave it to Ben Pickens Jr. and I'm not sure who requested it.

Q All right. You don't know whether it was somebody at Winthrop or not?

A No, sir.

Q But Ben Pickens Jr. asked you to provide that?
A Right.
Q Okay, and did you hand write a list of what Pickens lost in the fire?
A Yes.
Q I show you exhibit 42, and is this that handwritten list?
A Yes, sir, that's it.
Q And were you asked specifically what metal you lost or were you asked what material you lost?
A I just had what we lost and it was all metal.
Q Okay, and you provided this to Ben Pickens Jr. so he could give it to Winthrop?
A Yes.
Q Now, the materials that is listed there do you know if all of that was on the flat roof at the time of the fire or whether some of that was already installed?
A Some of those items were already in place.
Q Okay. You also in your on handwriting, did you sort of note the kind of work that was done on a particular day on jobs that you were paying attention to?
A I did. I did.
Q Okay. And I will show you a document. Defendant's Exhibit two and ask if you can identify that?
A That's my little -- just notes to my records of the

dates and briefly number of men and hours and what we were doing.

Q Okay. And this is several pages, correct?

A Several what?

Q Several pages long?

A Yes, sir. Right.

Q All right. Now, if we look at the bottom of the second page on February 23rd, what did you write there?

A Two and nine and a half 5th door, Robert solder number four.

Q All right, and who is Robert that you are referring to there?

A That is Robert Pickens.

Q What other notations did you make between that date and the date of the fire about soldering work?

A I don't think there was any other notations of solder. We didn't solder anything until way later.

Q So, the 23rd of February was the last day that soldering work was done on Bancroft?

A Yes, sir.

Q All right.

MR. SHEALY: That is all the questions I have. Thank you. Mr. Pickens please answer any further questions that Mr. Vogt may have.

MR. VOGT: Thank you, I have just a few.

REDIRECT EXAMINATION

BY MR. VOGT:

Q When you were preparing that list, you set forth the items that you believe were lost in the fire, did you ask the project superintendent what was lost?

A No, sir, because I knew what it was. I knew what we had.

Q You didn't ask Randy Pruitt?

A No, sir.

Q Did you ask Brandon Lusk, or Matthew Pruitt?

A No, sir.

Q You knew those were the last people on the flat roof though, right.

A They were working up there that day. They were the last ones on the roof, yeah.

Q Exhibit number two that listed the dates all the work was done that is just for the sheet metal crews, right?

A That's correct.

Q That doesn't list any work that was done with respect to shingles, right?

A Right.

Q And I think you said that before the fire you had done seven or ten jobs for Winthrop and after the fire five or six jobs, is that right?

A When we say before the fire we have done jobs prior to

that and also after that.

Q So this lawsuit came about and your company kept bidding on jobs at Winthrop, right?

A Yes, sir and doing repair work to. I am counting repair work as well.

Q So, that's been Pickens choice, right? Winthrop is a good customer?

A Mutual, yes, sir.

Q It is a mutual decision, right?

A Yes.

Q And can you estimate for us how much money your company has made from doing work for Winthrop University?

A I have to look back at records. I can't say right off.

Q For instance the campus center was a very large job?

A It was a good size job, yes, sir.

Q This job, to reroof Bancroft $370,000?

A Right, yes, sir.

Q Can you tell us how how much the campus center job was?

A Remember like I said, Ben Pickens Jr. handled the billing and paperwork, but it ways probably in that same ballpark as Bancroft, if not a little more.

Q Much bigger roof though, wasn't it?

A It is different type of roof. Yes, sir, it was bigger.

Q And so Pickens chooses to work for Winthrop because it is profitable, right?

A Yes, sir. Yes, sir.

MR. VOGT: Thank you, sir. Subject to recall that's all I have.

MR. SHEALY: No further questions.

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

MR. VOGT: Can I go see if the witness is here.

THE COURT: Yes, sir.

MR. VOGT: May I approach?

THE COURT: Yes, sir.

(Whereupon, there was an off the record discussion.)

MR. JETT: Your at this time the plaintiff calls Sergeant James Howe, III.

JAMES HOWE, III, called as a witness, having been duly sworn by the clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JETT:

Q Sergeant Howe, will you state your full name for the record?

A James O. Howe, III.

Q Where are you currently employed, sir?

A Winthrop University Police Department.

Q How long have you been so employed?

A In April it will be 13 years.

Q Prior to joining Winthrop Police Department did you work for any other police department?

A Yes, sir. I did. I policed for seven and a half years for the Rock Hill Police Department.

Q Prior to joining that department were you involved in any branch of the military?

A Yes, sir. I served for a total of 28 years in the United States Air Force.

Q Now, sir I will take your attention back to March 6, 2010. What was your position at that time with Winthrop Police Department?

A I was a shift sergeant with the baker shift, one of the day shifts.

Q Could you explain to the jury your duties of shift sergeant?

A Absolutely. I am responsible for overseeing the operations of my shift which is composed of two officers and a dispatcher. On that particular day though our regular dispatcher was on leave so it was myself and two other officers that were working that Saturday. And my duties actually would be to insure that we are enforcing the laws of South Carolina, policies of the university itself, conducting patrol procedures. Just over all providing police service for the campus and the surrounding student population.

Q Now, specifically do you recall working on March 6,

2010?

A Yes, sir, I do.

Q Do you recall what time you came to work that day?

A I came in a little bit before six a.m.. We work a 12-hour shift.

Q And at some point that day did you receive an emergency dispatch?

A Yes, sir, I did.

Q Do you recall about what time that was?

A Let's see, it was around 2:40 I believe in the afternoon. It came in the from the emergency operation center. It was relaid to our dispatch.

Q And do you remember where were you when you received that call?

A I believe I was in the office at that time.

Q And which office are you talking about?

A That would be the Winthrop University Police Department.

Q And just so the jury is clear is Winthrop University a full-fledged police department?

A Yes, it is. Every one of our officers has been to the South Carolina Criminal Justice Academy.

Q And so you received a call at around what time did you say?

A I want to say around 2:40. Is a copy of my report in

here by chance?

Q We will just go off your memory for right now.

A I believe it was 2:40 or so in the afternoon.

Q And were you dispatched -- what do you recall about the call coming in?

A Officer Charles Yerder (phonetics) was manning the desk and came across and said he had just received a call that a fire had been reported in the Owens Building on campus. At that point in time myself and officer Jim Troy, another officer on duty, were on dispatched to go on and see if we locate this particular fire.

Q And did you locate the fire?

A Yes, we did. I got there approximately two minutes after being dispatched. We were told that the fire, or the smoke was coming from around the roof line where Owens Hall adjoins or joins up to the Bancroft Hall Annex and word was you could see smoke at the roof line. So as I came around the corner I did observe the smoke there and advised dispatch that I could confirm that there was smoke at that location.

Q And specifically which building are we talking about?

A Owens Hall is one of the academic buildings on campus and it was attached to, shared a common roof line with the Bancroft Hall Annex which is composed primarily of office space for faculty members.

Q What did you do upon arriving at the scene?

A I am sorry, sir.

Q What did you do when you arrived at the scene?

A I checked out that I had arrived on scene. That I was checking the perimeter and that I did see the smoke at the roof line. At that point I asked dispatched to go ahead and request fire to be dispatched to our location.

Q Did you make entry into Owens Hall?

A Yes, I did.

Q Can you explain to the jury what happened after you entered Owens Hall?

A I entered the building to make that there was nobody else in the building. Make sure it you was clear and to look for the source of the smoke, it was coming out of the roof line. So I entered down at the bottom of the building, went up the stairs checking all the offices and rooms in the vicinity. Continued upstairs, to the third floor. As I got higher up in the building smoke began to increase the higher up I went in the building. I have been advised that fire was already in route. They had already been dispatched by the emergency operation center, so they were already coming out.

Q So when you were completing your entry into the building and as you progressed up the level did you see anyone inside the building?

A No, sir, I did not. There was nobody else in the building. I will say this though, the fire alarm had not been

activated. But I did not encounter anybody in the building as I made entry and conducted my search.

Q Is the fire alarm an audible alarm?

A Yes, sir, it is.

Q Is that attached with the sprinkler system or is it a different system?

A I think they are combined. I am not expert on that particular bit of equipment. I know where the panel is and what to look for should there be alarm or whatever, but I am not sure if the sprinklers are tied into the alarms themselves. I really don't no.

Q Do you recall if the sprinkler system were going off?

A No, they were not. There was no flowing. The audible alarm at that time.

Q Did you mention a moment ago that fire was already on route as you were making your initial entry, is that correct?

A That is correct. As soon as I observed the smoke I did ask to have fire dispatched to our location, but sergeant -- he is a sergeant now, but at the time Officer Yerder advised that they were already in route and they arrived a few minutes later. I don't know exactly what time they actually rolled up on the scene, but they were in route.

Q What happened you when you excited the building?

A I exited the building. I also needed to check the Bancroft building as well because they are attached. So I

immediately began checking the perimeter to make sure nobody else was in that particular set of buildings either, in those office spaces. And it was my job to go ahead and establish a perimeter with the other officer that responded as well and whoever else was coming to the scene in order for fire to be able to do what they needed to do.

Q Did you encounter anyone in the Bancroft building?

A Yes, I did. There was at least one professor in a office down that way and then as I came back around again there were two other faculty members at one of the windows observing the building in question, Owens Hall. I had to ask them to please vacate.

Q At some point after you established the perimeter did you then met the fire department?

A Well, actually, I was checking when I heard that fire was arriving. I went in, as did Officer Troy, we went back in with them up to through building to try and help them to try and locate the source of the fire. And again, I accompanied my group up to the third floor again.

Q How did the fire fighters get into Owens Hall?

A I let them in. I can't remember if the door was unlocked at that time or not, the main door going into the building. I know that we made entry. I don't know if I had to unlock it or not. I really can't recall, but I did accompany them up to the top in case they needed access anywhere else that

might have been locked. I had a set of keys with me.

Q Did you observe the firemen locate any fire inside Owens Hall?

A As we got up to the top of the building, up to the third floor area, about the forth floor area, there is entry way into an attic area. There is equipment up there and that type of thing and they requested entry. I opened the door. I had to because it was locked and they went in to the attic area itself.

Q So you after you made it to the third floor -- just so we are clear, there was set of double doors that you opened?

A Yes, sir.

Q And you opened those doors for the fire department?

A That is correct, sir.

Q And those doors were locked?

A Yes, sir.

Q All right. Sergeant Howe, as part of your official duty did you provide a written statement to anyone after this fire?

A That is correct, Captain Otis Driggers requested that I provide him with a written statement of what had transpired during the course of the incident. I provided him with a copy but it was dated in October. I submitted it some time after the fact upon his request.

Q And if you would look at tab 42 in the book in front of you. I believe that is a copy of the statement that you

offered?

A Yes, sir, that is my statement.

Q And you already anticipated my question. There is a date at the bottom of that. What is the date?

A Yes, sir, I actually signed it on October 6, 2010.

Q And could you explain why there is a delay between March and October, the date on that statement?

A Captain Driggers requested the statement and then I provided to it to him when he did make that request.

Q Did you refer to any notes or other memorandum in preparing this?

A I sure did. I went back to the original report, the incident report that I prepared since I was the one that responded to the call initially and I primarily just transcribed my original report to this form to provide to Captain Driggers.

Q At some point Officer Howe, can you explain to the jury what you did after the fire fighters took control of the scene?

A I left the building. I am not a trained fire fighter so I went ahead -- went ahead and accurate cop accomplished my assigned duties which again, was to make sure that perimeter was set so the fire fighters that responded to the scene could operate unimpeded and that nobody got to close to what was going on that did not need to be in the cantonment area up there.

Q Do you recall how late you were outside Owens Hall that evening?

A I believe I was there until probably seven o'clock, between seven and eight o'clock. I believe I did work a couple hours over that particular night.

Q Were there other emergency personnel on scene that day?

A Oh, absolutely. I want to say that as the evening progressed pretty much every Rock Hill Fire Department unit was on the scene, and there were also a number EMS workers there too. There was a host of other folks that were there in some official capacity whether they were with the university or whatever but there was a lot of folks there from various agencies.

Q Do you recall if you returned to Owen Hall's area the following day?

A Yes, I had come back to work the following day. Again, that was the focal point of all of our efforts because the fire department was still out there and of course we had still had to maintain our perimeter restricting traffic to and from and around the building while they continued to do whatever things they needed to do to continue to fight the fire, put it out and make sure it was out.

Q Do you recall how long you were on the scene the day following, on Sunday?

A At least until six. I may have been there a couple hours later. I think they brought me in an hour earlier that day, but I can't remember exactly when I left that evening.

Q Were fire fighting activities still ongoing when you left?

A Yes, they were. I don't think they ceased active -- active efforts there until around eight o'clock or so because the night shift sergeant made an entry into the incident report saying that fire left that night I want to say around eight o'clock or so.

MR. JETT: Court's indulgence, Your Honor.

THE COURT: Yes.

MR. JETT: I have nothing for you at this time Sergeant Howe.

MR. SHEALY: Sergeant Howe, my name is Kirby Shealy and I have no questions for you. Thank you.

THE WITNESS: Thank you.

THE COURT: You may step down. Do you wish to have him excused.

MR. JETT: Yes, Your Honor, the witness might be excused.

THE COURT: Thank you for coming, you may be excused at this time.

THE WITNESS: Thank you, Your Honor.

THE COURT: I take it there are no other witnesses prepared for today.

MR. VOGT: I am sorry Your Honor no.

THE COURT: I told him I have a whip out but he

didn't listen to me I guess. I wanted to keep moving on this case a little faster, but in any event we are going to go ahead and adjourn for the day. I will ask you to be back in jury room ready to go in the morning let's say about 9:15. About 9:15 in the morning. Please, again, do not discuss the case or try to find out anything about the case, electronic means, etc. Please have a pleasant night and be back in the jury room at 9:15.

(WHEREUPON, the jurors leave the courtroom.)

THE COURT: I hope you have enough lined to keep us busy tomorrow.

I will be here around nine or so if something comes up or you need me before then. We will be ready to started at 9:15.

Is there anything we need to take up at this time.

MR. VOGT: Your Honor, and I hate to do this, because we talked about this as far as expert testimony. What I would like to offer to the Court is an offer of proof from Dan Arnold with respect to his opinion as to how this it fire could not have occurred without combustibles being on the roof or spread to the adjoining roofs. And I think that would be best served if that was out of the hearing of the jury.

THE COURT: We can probably do that, but I will

tell you now, counsel, the problem you got in this case is I haven't heard anything to indicate to me what ignited this fire.

MR. VOGT: That's right.

THE COURT: And I don't care who your expert witness is, if it is guru of the world, is going to be able to come in here and tell us that. I don't care who the expert is. But he can come in here and testify if he is properly -- proper testimony on the ground work laid to establish him as an expert with regard to whatever his testimony is going to be in this case, and he can testify that -- if that's his testimony and he is qualified to testify to that based on whatever the materials we are talking about, combustible materials, if he can testify about that and say that once the fire started that it was spread further and higher and done more damage or would have been worse if there were combustible materials on there. I think he may be able -- I think he can probably go there. Okay. Assuming that he can lay a proper foundation for that testimony. But for him to come in here and say for this fire to start it had to be started because they left combustible materials up there, you're not getting there.

MR. VOGT: That's why, Your Honor, I would like to

do it by way of an offer of proof because I think it would be --

THE COURT: Why didn't you bring him this afternoon. We can do that now. You want to do that while the jury is sitting back here.

MR. VOGT: He is in Miami unfortunately. I believe he is getting in here tonight. He is from Atlanta, Your Honor, but he was out of town. But he absolutely will testify that the fire would not have spread to the adjoining roofs but for the combustibles being there.

The question I would like to ask him by way of offer of proof is how can you express the opinion that this fire would not have occurred if you don't know the source of ignition for this fire, and I would like the Court to hear that.

THE COURT: Maybe it is a lighting strike that came down on a clear night. I don't how you get there really. I don't know how you get there. Even if there was combustible material up there on the roof something has to get it started.

MR. VOGT: Absolutely, Your Honor, but --

THE COURT: And I don't know, just because it was sitting up there on the roof and we got a dispute about exactly what was up there, but even if you had

some material that would be classified as combustible under the fire code, South Carolina has adopted, I still don't know how just sitting up there how you are gong to get there.

MR. VOGT: And Your Honor, that is why I want him to be able to explain it to you by way of an offer of proof. For me to attempt, I can certainly tell you all that basis of that opinion and we did some of that in the motion for summary judgement, but I think given the --

THE COURT: It doesn't take a whole lot to get by a summary judgement, but it takes more than that to get to the jury.

MR. VOGT: Understood, Your Honor.

THE COURT: And so that's the problem you have. I will listen to him. I will take the proffer, but I don't want the jury sitting back there while I'm doing that. When are you going to offer him?

MR. VOGT: Well, we were going to call the deputy state fire marshal first, Your Honor. We can probably do it at lunch time.

THE COURT: We do it while we are eat, is that what your saying?

MR. VOGT: We will have three other witnesses possibly tomorrow, maybe four.

THE COURT: You better have enough to go all day. I will not do this a second day. I already told you, it's not the way I run a court. Okay. I will not do it at your convenience.

MR. VOGT: Your Honor, I will do it any time you want judge.

THE COURT: I want to keep going. I would have went to six tonight.

MR. VOGT: I agree.

THE COURT: And there is no reason for this, particularly when I am trying to finish the case in a week,

MR. VOGT: Sure.

THE COURT: I don't know what you are use to. I am not use to taking two weeks on this type of case.

MR. VOGT: Your Honor, we can push his testimony to Thursday if need be because there is still a two-hour deposition to read. There is at least three or four other witnesses that we can do tomorrow and we then can do the proffer after that tomorrow, if that makes sense.

THE COURT: Maybe. I'll tell you what I would rather do. I would rather have him here and do the proffer may be tomorrow afternoon if you run out of stuff.

MR. VOGT: Okay.

THE COURT: And he can testify Thursday morning, as long as we get a proffer in.

MR. VOGT: Sure.

THE COURT: If you are going to proffer him, maybe we can do that. I guess some of the defense witnesses have already been called so that will shorten it up some, I think.

MR. VOGT: And I don't at this point, Your Honor, there is one other Pickens employee we may call, Larry Renner.

THE COURT: I am not saying you wouldn't. I am just saying, even if the defense calls him it would be limited in what you have to question about because they've already been on the stand for direct and cross and so that ought to shorten the time period up. But do whatever you want. I think the best thing to do might be to that witness here so we can proffer his testimony and if run out of everything else in the tomorrow afternoon late then we can do this proffer and send the jury on home. That is what I would suggest. Either that or we will have to do a long lunch hour or something for the jury to keep them from sitting around. I will work with you on it, but I want to fill up these days and utilize all the time

that we got.

MR. VOGT: Thank you, Your Honor, and I did have one other procedural matter. With respect to reading depositions in your court, Your Honor, is there a preferred method.

THE COURT: Do it anyway you want to. If you want to get somebody to read a part, they can sit on the stand read the part. The attorneys can go over there part and have somebody up here and answer for them.

MR. VOGT: Or we can just read it?

THE COURT: Or you can just read it. Whatever you want to do. I will leave it up to the individual attorneys how you to do it.

Some times it is more effective if you got somebody else reading part of the witness, but I have no problem you have reading the question and answer if that's the way you do that.

MR. VOGT: Thank you, Your Honor.

THE COURT: Do you have a problem with that?

MR. SHEALY: I have no problem. However he and I will confer and we will come up with something that works.

THE COURT: Sometimes you put the paralegal on the stand up there. I'm kidding. Probably be better if you all do it. All right.

Is there anything else we need to take up today?

MR. SHEALY: Nothing from the defendant.

MR. VOGT: No, Your Honor.

THE COURT: Okay, see you in the morning.

* * *.

(WHEREUPON, court was adjourned for the day.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
FEB 05 2015
SC 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.

RECORD ON APPEAL VOLUME II

Kirby D. Shealy III
Lyndey Ritz Zwingleberg
Adams and Reese LLP
1501 Main Street, Fifth Floor
Columbia, South Carolina 29201
(803) 254-4190
Attorneys for Appellant

Peter W. Vogt
Zachary Mason Jett
BUTLER PAPPAS
11620 N. Community House Road
Charlotte, North Carolina 28277
(704) 543-2321
Attorneys for Respondent

INDEX

Jury Verdict rendered March 21, 2014 6

Judgment for Damages filed March 21, 2014 10

Complaint filed September 5, 2012 13

Answer filed October 5, 2012 61

Plaintiff's Motion in Limine filed March 16, 2014 67

Transcript of Proceedings pp. 1 - 901 90

Jury Selection 95

Pre-Trial Motions 144

Plaintiff's Opening Statement 235
Defendant's Opening Statement 250

Otis Driggers Direct Examination 270
Cross Examination 295
Redirect Examination 310

Randall Pruitt Direct Examination 313
Cross Examination 345
Redirect Examination 352

Brandon Lusk Direct Examination 356

Matthew Pruitt Direct Examination 377
Cross Examination 395

Clint Robinson Direct Examination 396
Cross Examination 428
Redirect Examination 430

Robert Pickens Direct Examination 431
Cross Examination 468
Redirect Examination 475

James Howe Direct Examination 477

John Dunlop Direct Examination....497
Voir Dire....504
Direct Examination Continued....507
Voir Dire Continued....508
Direct Examination Continued....509

Wesley Love Direct Examination....513
Cross Examination....529
Redirect Examination....532

Larry Renner Direct Examination....533
Cross Examination....566

Walter Hardin Direct Examination....572
Cross Examination....583
Redirect Examination....589

Vu Nguyen Deposition....593

Dan Arnold Direct Examination....669
Voir Dire....675
Direct Examination Continued....679
Voir Dire Continued....708
Direct Examination Continued....710
Cross Examination....767
Redirect Examination....773

Defendant's Motion for Directed Verdict....788

Plaintiff's Closing Argument....810
Defendant's Closing Argument....826
Plaintiff's Rebuttal....840

Jury Charge....848

Jury Verdict....884

Defendant's Post-Trial Motions....887

Wesley Love Direct Examination....889

Walter Hardin Direct Examination....902

Prescott May Direct Examination....923

Jay Summer Direct Examination....929

Mac Leitner Direct Examination 933

John Murphy Deposition 937

Defendant's Motion for Directed Verdict 945

Plaintiff's Closing Argument 966
Defendant's Closing Argument 968
Plaintiff's Rebuttal 969

Jury Charge 970

Jury Verdict 975

Defendant's Post-Trial Motions 977

Plaintiff's Exhibits

1 991
2 1162
4 1231
6 1232
7 1233
9 1234
10 1236
11 1237
13 1238
14 1239
15 1240
16 1241
18 1242
23 1243
24 1290
40 1345
40A 1347
41 1354
42 1355
43 1356
44 1357
45 1358
46 1359
47 1360
48 1361
51 1362
52 1363

52A....1364
52B....1365
52C....1366
52D....1367
54....1368
54A....1369
54B....1370
54C....1371
54D....1372
54E....1373
54F....1374
54G....1375
56....1376
58....1377
59A....1379
59B....1380
59C....1381
59D....1382
59E....1383
59F....1384
64B....1385
64C....1386
64D....1387
64E....1388
64F....1389
64G....1390
64H....1391
64I....1392
64J....1393
64K....1394
64L....1395
64M....1396
64N....1397
64O....1398
64P....1399
64Q....1400
64R....1401
64S....1402
64T....1403
64U....1404
64V....1405
64W....1406
64X....1407
64Y....1408
64Z....1409
64AA....1410

64BB 1411
64CC 1412
64DD 1413
64EE 1414
64FF 1415
64GG 1416
67 (Damages Binder) ..... FILED SEPARATELY

Defendant's Exhibits

6 1417
10 1418
11 1419
12 1420
13 1422
14 1424
15 1426
16 1428
17 1430
18 1432
19 1434
20 1436
21 1438
22 1440
23 1442
24 1444
25 1446
26 1448
27 1450
28 1452
29 1454
30 1456
31 1458
32 1460
33 1462
34 1464
35 1466
36 1468
37 1469
38 1470
39 1471
40 1472
41 1473

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

THE BAILIFF: All rise, come to order.

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

THE COURT: Yes, sir.

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

THE COURT: Okay.

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

MS. ZWING: Good morning.

THE COURT: Morning.

MR. VOGT: I have another Rule 32 designation.

(Handed up to the judge.)

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

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

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

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

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

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

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

MR. VOGT: No, Your Honor.

MR. SHEALY: No, Your Honor.

THE COURT: Please bring the jury in.

(WHEREUPON, the jury enters the courtroom.)

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

Counsel.

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

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

DIRECT EXAMINATION

BY MR. VOGT

Q Please tell us your name and where you live?

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

Q Who do you work for?

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

Q And what is your position with the fire?

A I am Deputy State Fire Marshal.

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

A Six years.

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

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

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

A Yes, sir.

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

A The fire marshal's office.

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

A Yes, sir.

Q What area do you work at?

A I work in Fairfield, Chester, Lancaster and York

Counties.

Q And York County includes Winthrop University?

A Yes, sir.

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

A Yes, sir.

Q How did you become aware of the fire?

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

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

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

Q And what did you determine?

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

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

A No, sir.

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

A Yes, sir.

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

A Yes, sir.

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

A Yes, sir.

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

A I'm not sure.

MR. VOGT: Can I approach, Your Honor?

THE COURT: Yes.

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

Do you recognize that sir?

A Yes, sir.

Q And what edition is that?

A 2000.

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

MR. SHEALY: Objection, leading.

A I am not sure.

Q Okay.

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

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

THE COURT: It's harmless leading, overruled.

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

this fire. Would that help you refresh your recollection?

A Yes, sir.

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

THE COURT: Yes, sir

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

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

A 2000.

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

A Yes, sir.

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

MR. SHEALY: Objection.

THE COURT: Objection?

MR. SHEALY: May we approach.

THE COURT: Yes, sir.

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

THE COURT: I will sustain the objection, counsel.

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

A Yes, sir.

Q Does it do so at 1.1 of the standard?

A Yes, sir.

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

A Could I have some light?

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

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

Q And does the standard also define the purpose?

A Yes, sir.

Q What is the purpose of NFPA 241?

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

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

A Yes, sir.

Q Where does it do that?

A This standard -- 1.3.1.

Q Can you read that for us?

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

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

A Yes, sir.

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

THE COURT: Sustained.

MR. VOGT: Your Honor, may I approach.

THE COURT: Yes, sir.

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

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

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

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

A Yes, sir.

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

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

THE COURT: Voir dire, certainly.

MR. SHEALY: Voir dire on the qualification?

THE COURT: Yes, sir.

VOIR DIRE EXAMINATION

BY MR. SHEALY:

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

A No, sir.

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

A As a state fire marshal, yes.

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

DIRECT EXAMINATION

BY MR. VOGT:

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

A Yes, sir.

Q Have you done that previously?

A Yes, sir.

Q Where?

A At the Fort Jackson Fire Department.

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

A Yes, sir.

Q Where did you become familiar with that?

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

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

THE COURT: Wish to be heard?

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

THE COURT: Yes, sir.

VOIR DIRE EXAMINATION

BY MR. SHEALY CONT'D:

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

A Yes, sir.

Q It was something in the department of defense manual?

A Yes.

Q Okay. It wasn't NFPA 241?

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

Q Okay.

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

THE COURT: Yes.

MR. SHEALY: May I open it?

THE COURT: You may open it.

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

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

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

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

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

that's what we use to do."

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

Was that the answer you gave?

A Yes, sir.

Q Okay.

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

THE COURT: Read the rest of it counsel.

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

THE COURT: Keep going.

Q Question, "Okay. It's a department of defense manual." Question, "All right. So I can't remember the number of it.

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

MR. VOGT: Your Honor --

DIRECT EXAMINATION

BY MR. VOGT:

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

A Yes, sir.

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

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

A Yes, sir.

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

A Yes.

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

A Yes, sir.

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

A Yes, sir.

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

A Yes, sir.

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

THE COURT: If you wish.

VOIR DIRE EXAMINATION

BY MR. SHEALY:

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

A Yes, sir.

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

the fire code, right?

A Yes, sir.

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

A Yes, sir.

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

A This has been the first time.

Q Yes, sir.

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

DIRECT EXAMINATION CONT'D

BY MR. VOGT:

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

A Yes, sir.

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

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

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:

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

A Yes, sir.

Q And what does that provision state?

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

Q Thank you.

MR. VOGT: Your Honor, may I approach?

THE COURT: Yes.

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

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

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

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

Q Deputy you can --

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

Q And what does combustible construction materials mean?

MR. SHEALY: Objection. Calls for a legal

conclusion.

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

A Combustible --

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

A Combustible is anything that will burn.

Q Is roofing paper a combustible?

A Yes, sir.

Q Roofing shingles combustible?

A Yes, sir.

MR. VOGT: Thank you, sir.

MR. SHEALY: No questions, Your Honor.

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

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

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

DIRECT EXAMINATION

BY MR. JETT:

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

A Wesley Stuart Love.

Q And Mr. Love, where are you employed?

A Winthrop University.

Q What is your position as Winthrop University?

A I am a project manager with facilities management.

Q How long have you been employed by Winthrop?

A I just started my 13th year.

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

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

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

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

Q Who do you report to at Winthrop University?

A Walter Hardin.

Q And if you could briefly for the jury please explain

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

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

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

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

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

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

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

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

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

A Yes.

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

A Yes.

Q Were some of those new construction?

A Yes.

Q And were some repair work?

A Yes.

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

A Yes.

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

A I was the project manager on that job.

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

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

the payouts and things when they came through.

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

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

Q Early fall of 2009?

A Yes.

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

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

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

A Pickens Roofing.

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

A Yes.

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

A Yes.

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

A I remember one major change order.

Q What was that major change order?

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

Q Is there any additional compensation for the change order?

A Yes.

Q Do you recall how much that compensation was?

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

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

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

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

A Yes.

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

for temporary storage?

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

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

A Yes.

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

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

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

A Yes.

Q Do you recall who that consultant was?

A Stafford Consulting Engineers.

Q Had you worked with Stafford Consulting in the past?

A Yes.

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

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

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

Q So is Winthrop University responsible for supervising the consultant?

A Yes.

Q In what way?

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

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

A In some aspects, yes.

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

A Yes.

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

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

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

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

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

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

A No, I do not know an exact number.

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

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

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

THE COURT: Yes, sir.

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

A Yes. This is a Stafford Consulting inspection report.

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

A They always look at what materials are being placed on

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

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

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

A Yes.

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

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

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

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

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

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

A Yes.

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

A Yes.

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

A Yes.

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

A Saturday.

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

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

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

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

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

A Yes.

Q Where did Pickens start their project?

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

A I would say they would start at the top.

Q And they were working there way around the building?

A Yes.

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

A Yes.

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

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

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

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

A Yes.

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

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

Q What is the TPO?

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

Q Plasticized rubber?

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

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

A Yes.

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

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

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

A Yes, during work hours, yes.

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

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

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

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

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

A A roof hatch, yes.

Q Are those roof hatches open, typically?

A No, we keep those closed.

Q And how do you keep those closed?

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

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

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

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

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

A No.

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

A One of the people, yes.

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

A Yes.

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

A Yes.

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

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

Q And did you return to campus that day?

A Yes.

Q Describe the scene when you first arrived at campus?

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

Q Lots of fire personnel?

A Yes. Yes.

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

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

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

A Yes.

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

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

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

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

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

A No.

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

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

Q And how did you go about documenting those two

buildings?

A We took photographs literally of everything that existed there.

Q What sort of thing did you observe?

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

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

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

A Yes.

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

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

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

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

Q And so the fire occurred on Saturday, right?

A Yes.

Q When you were up there were Pickens employees working?

A Yes.

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

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

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

A Yes.

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

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

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

A No.

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

MR. SHEALY: May it please the Court.

THE COURT: Yes.

CROSS EXAMINATION

BY MR. SHEALY:

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

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

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

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

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

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

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

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

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

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

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

A Yes.

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

A No.

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

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

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

A No.

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

A No.

Q Okay.

MR SHEALY: No further questions. Thank you Mr.

Love.

MR. JETT: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. JETT:

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

A No.

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

THE COURT: Anything further?

MR. SHEALY: No.

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

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

THE COURT: Any objection counsel?

MR. SHEALY: No.

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

THE WITNESS: Thank you.

(Witness excused.)

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

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

DIRECT EXAMINATION

BY MR. VOGT:

Q Can you tell us your name, please?

A Pardon.

Q Can you tell us your name, please?

A Larry Renner.

Q Mr. Renner, where do you live?

A Greenville.

Q Where in Greenville?

A 1301 Glenforest Drive, Greenville, South Carolina.

Q You have a soft spoken voice so I may ask you to speak up, just so you know.

A I had cancer removed from my vocal cords, so I can't talk very loud.

Q Okay. Thank you sir.

You were previously identified as the safety director for Pickens Roofing, is that correct?

A Yes.

Q How have you work for Pickens?

A About 16 years.

Q And how long have you held the position of safety director?

A About 16 years.

Q And were you also a supervisor?

A Yes.

Q Were you also a superintendent?

A Yes.

Q Any other positions you held at Pickens Roofing?

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

Q What was your duties as safety director?

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

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

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

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

A Yes, that helps.

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

A I worked at BBA.

Q And what did you do at BBA?

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

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

A Yes.

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

What is BBA? I am not familiar with that.

A It's a British company.

Q What did you do there?

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

Q Non-woven meaning textile?

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

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

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

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

A About 18 years.

Q And what was your position there?

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

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

A Yes.

Q And what type of training did you provide?

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

plastic cans.

Q Anything other than gasoline?

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

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

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

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

A Right.

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

A I am not quite sure.

Q Do you know what combustible means?

A Yes.

Q What does that mean?

A Flammable.

Q Okay. Would it be something that can burn?

A Oh, yes.

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

A Yes.

Q Shingles are combustible, right?

A Yes.

Q Wooden pallets are combustible?

A Right.

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

A Oh, yes. The weight limit. Yes.

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

A Yes.

Q And what type of training did you provide?

A The different -- liquid combustibles.

Q Okay.

Q Liquid combustibles. What else?

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

Q What type of liquid combustibles are we talking about?

A Adhesives, cleaners.

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

A Went over the MSDS with them.

Q There is a MSDS for each of those items?

A Yes.

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

items?

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

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

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

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

A Somewhat.

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

A I am not sure about the headings.

Q Can you describe any that you recall?

A As far as roofing work?

Q Yes, sir.

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

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

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

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

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

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

Q A charged fire extinguisher within 20 feet of operations?

A Yes, sir.

Q What else?

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

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

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

Q So another fire extinguisher rule?

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

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

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

Q Are you familiar at all with NFPA 241?

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

thing. I can not sit here and recite it.

Q What part have you read?

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

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

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

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

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

A Yes, sir.

Q Which section?

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

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

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

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

A I cannot honestly answer that.

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

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

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

that?

A Yes.

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

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

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

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

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

Q When did you read it?

A I don't know.

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

A Yes, sir.

Q Had you read it before your deposition?

A I'm not really sure.

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

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

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

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

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

A Not that aware of.

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

THE COURT: Overruled, you may answer.

A Not that I am aware of.

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

Are you familiar with the Bancroft reroofing project?

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

Q You weren't one of the superintendents?

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

Q What was your role on that project?

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

Q So on occasion you would be out there?

A Yes.

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

A Everyone is a safety director.

A Everybody is a safety director?

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

Q So for instance Matthew Pruitt was a safety director?

A He would be in charge -- he would be aware of safety. Everybody is aware of the safety because construction is a dangerous industry.

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

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

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

A Yes, sir.

Q That is a general standard for your company?

A Right.

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

A Yes, sir.

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

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

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

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

A As far as that, yes, sir.

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

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

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

A Yes, sir.

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

A Yes, sir.

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

A Yes, sir.

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

A Which paragraph?

Q It's just the title.

A I see it.

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

apply to structures in the course of construction, alteration or demolition including those in underground locations. That is 1.1. Did I read that correctly?

A Yes, sir.

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

A Do I have understanding of when it applies?

Q No, if it applies.

A Oh, if it applies.

Q If it applies to Pickens's work?

A From what I read, yes, sir.

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

A Replacement, right.

Q So this standard would apply, correct?

A My interpretation.

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

A One of the safety officers, yes.

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

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

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

different one. Is that fair?

A Yes, sir.

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

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

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

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

Q Right.

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

Q Yes.

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

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

A Yes, sir.

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

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

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

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

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

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

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

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

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

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

A Yes.

Q And how did you get on the roof?

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

Q This project included Bancroft, right?

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

Q What other project were you referring to?

A Right next door. The new construction.

Q That was after the fire though, right?

A No, sir, that was before the fire.

Q The Owens Halls project?

A Yes, sir.

Q Pickens roofed the Owens Hall building?

A The flat roof.

Q When did they roof the flat roof at Owens?

A Before the fire.

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

A I am still trying to get my bearings.

Q Sure.

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

THE COURT: Go ahead and dim the lights.

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

Q Now, do you recognize this as Bancroft?

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

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

A The new construction it was next door to it.

Q Is that Owens here?

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

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

A A different project.

Q The campus center?

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

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

A Pardon.

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

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

Q Yes, sir.

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

Q You are aware of it now, right?

A Yes.

Q Okay. And was that part of Pickens work?

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

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

A Yes, sir.

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

A Yes, sir.

Q And was that done in this case?

A I am not sure.

Q Okay. Did you attend it?

A No, sir.

Q Who is suppose to attend that conference?

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

handled the contract, knows the specifications.

Q Should all the superintendents attended as well?

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

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

A All right.

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

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

Q I am talking about --

A It's somewhat confusing.

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

A Yes, sir.

Q And you help put that together?

A Yes, sir.

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

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

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

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

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

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

Q Okay.

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

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

A I am one the safety officers.

Q And everybody that works there is a safety officer?

A No, sir.

Q Who are the safety officers?

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

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

A Is this the exhibit you are referring to?

Q Yes, sir?

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

A Yes, sir.

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

A Yes, sir.

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

A Yes, sir.

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

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

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

A That would have been Clint.

Q Just Clint?

A Clint Robinson, right.

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

A Yes.

Q Who is suppose to do that?

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

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

project?

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

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

A The project manager, Clint.

Q So it was Clint's responsibility?

A Yes, sir.

Q Anybody else?

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

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

A Yes, sir.

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

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

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

flat roof that adjoined a building under construction?

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

Q What does that mean, same plane?

A Same level.

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

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

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

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

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

A I would have to visually look at it.

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

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

Q Do you see the pitched roofs here?

A Right. Yes, sir.

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

roof before?

A No, sir.

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

A From this angle?

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

A Yes.

Q Can he do that, Your Honor?

THE COURT: Yes, sir.

Q You can get closer if you need to.

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

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

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

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

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

A Right.

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

A One time.

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

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

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

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

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

A I'm not quite following you there.

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

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

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

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

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

A No, sir.

Q Does Pickens have a copy of NFPA 241?

A Yes, sir.

Q Where is it?

A It would be in the office.

Q Whose office?

A In the estimator's office.

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

A Right.

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

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

Q Take a drink sir?

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

Q Okay.

A If he already was aware of it or not.

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

A Yes, sir.

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

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

Did I read that properly?

A Yes, sir.

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

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

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

A Combustible --

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

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

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

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

A I am not sure about that.

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

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

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

A Yes, sir.

Q Do you recognize that as Bancroft Hall?

A Yes, sir.

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

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

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

A Pardon.

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

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

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

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

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

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

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

A Yes, sir.

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

A Yes, sir.

MR. VOGT: May I Your Honor?

THE COURT: Yes.

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

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

What was your answer?

A On line two.

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

A Okay.

Q Your answer is on line seven -- I'm sorry, line six.

I'll ask -- I will read the question again. Now that we are on the same page. " Were there ever any jobs that you did at Winthrop where trash as you defined it, was appropriately stored on a roof during the course of a job?" What was your answer?

A On line seven?

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

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

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

A I do need glasses.

MR. VOGT: Is that acceptable, Your Honor.

THE COURT: Yes.

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

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

Q Sixty-two, sir.

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

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

A Okay, page 62.

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

What was your answer?

A "Yes."

Q Yes, is that correct?

A Yes.

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

A "This one right here."

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

A "Okay."

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

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

A "Off."

A "Off the roof", right?

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

A "Yes, what we considered trash."

Q What do you consider trash?

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

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

A Yes.

Q Pieces of roofing paper?

A Yeah.

Q Where was it store?

A I am not sure on Bancroft.

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

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

Q Okay.

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

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

A Yes, sir.

Q Where trash was being stored on the roof?

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

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

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

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

A Which question was that, number 13?

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

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

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

A It was stored on the roof."

Q Where was it stored on the roof?

A On the roof. That was the answer.

Q Was it stored on the flat roof?

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

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

A Yes, sir.

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

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

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

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

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

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

and get it back up.

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

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

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

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

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

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

Q So Bancroft -- the Bancroft roof was much higher then 20 feet, right?

A Yes, sir, I believe so.

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

MR. SHEALY: Briefly Your Honor.

CROSS EXAMINATION

BY MR. SHEALY:

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

A Yes, sir.

Q You mentioned a fire watch?

A Yes, sir.

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

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

Q Okay. Thank you.

MR. SHEALY: No further questions?

MR. VOGT: The witness can be excused.

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

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

(WHEREUPON, jury leaves the courtroom.)

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Oh, really. Okay.

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

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

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

MR. VOGT: Okay.

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

MR. VOGT: Sure.

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

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

MR. VOGT: Okay.

THE COURT: Thank you.

(WHEREUPON, there was a short recess.)

THE BAILIFF: All rise.

THE COURT: Thank you, you may be seated.

Bring the jury in please.

(WHEREUPON, the jury enters courtroom.)

THE COURT: Ready to proceed counsel?

MR. VOGT: The plaintiff call Walter Hardin.

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

DIRECT EXAMINATION

BY MR. VOGT:

Q State your full name for the jury?

A Walter Anderson Hardin.

Q Be where do you live sir?

A I live in Rock Hill.

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

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

Q And how long have you been employed by Winthrop?

A Twenty-seven years on March the 7th.

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

A I did.

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

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

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

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

Q How many people report to you?

A Direct reports I have about five.

Q And who do you report to?

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

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

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

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

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

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

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

A We hire thirty parties through contract.

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

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

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

A Yes, and usually specific to the project.

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

A Yes.

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

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

infrastructure changes and it was about six million.

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

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

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

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

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

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

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

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

Q And when was that Owens Hall project completed?

A 2007.

Q Okay, and was it the summer of 2007?

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

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

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

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

A Correct.

Q And what type of roof was put on?

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

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

A Right.

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

the contract that Winthrop entered into for the reroofing project?

A Yes.

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

A Yes.

Q And are those exhibit one?

A Yes.

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

A No, I did not.

Q Are you familiar generally with the terms and conditions?

A Generally.

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

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

Q Where could they be stored?

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

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

A No.

Q I am sorry, between Bancroft and Owens?

A No.

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

A No.

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

A Correct.

Q Was was Stafford's role in the project?

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

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

A Yes.

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

Did I read that correctly?

A Correct.

Q Okay. Are you familiar with that?

A Yes.

Q What does that mean?

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

Q And who was the contractor in this case?

A Pickens Roofing.

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

A Yes.

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

A No.

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

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

Q Is he responsible for overseeing Pickens work?

A No.

Q What is his job?

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

Q Do you have any roofers on staff at Winthrop?

A No.

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

A Yes.

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

A Correct.

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

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

Q Has Pickens chosen to continue to bid for jobs?

A Yes.

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

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

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

came up, when did you first arrive?

A I didn't arrive until Sunday, midday.

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

A Getting back in business.

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

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

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

A Right.

Q Was the flat roof part of Owens?

A Yes.

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

A No.

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

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

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

A No.

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

A No.

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

A No.

MR. SHEALY: Objection. Calls for legal conclusion.

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

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

THE COURT: I will sustain the objection.

Q Thank you Mr. Hardin.

MR. VOGT: No further questions at this time.

MR. SHEALY: May it please the Court.

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. SHEALY:

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

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

A That was part of it.

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

A Yes, that was part of it.

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

A Yes.

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

A Yes.

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

A Yes.

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

A Yes.

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

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

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

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

A Right.

Q That wasn't change?

A That was new. That would have been added.

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

A Correct.

Q And that was shrunk down to one, right?

A Yes.

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

A Periodically, yes.

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

A Approximately.

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

A No.

Q Is that right?

A That's correct.

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

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

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

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

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

A Not in the AIA contract.

Q Or the specifications for that matter?

A Specifications -- I would have to look.

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

Q Right, that's what the specifications says?

A Right.

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

A Not to my knowledge.

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

A That's correct.

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

A Yes, and it was then too.

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

A Yes.

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

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

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

A That's correct.

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

A Correct.

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

A Correct.

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

A Correct.

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

A Yes.

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

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

Q Okay.

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

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

A Right.

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

A Yes.

Q Then it was dated March 5th.

MR. VOGT: Objection, Your Honor.

THE COURT: Sustained.

MR. SHEALY: Yes.

THE COURT: Are you testifying.

MR. SHEALY: I am not.

THE COURT: All right. Sustained.

BY MR. SHEALY:

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

A Right.

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

A Yes.

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

A No.

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

A Yes.

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

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

REDIRECT EXAMINATION

BY MR. VOGT:

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

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

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

A Yes.

Q Are the doors to the attic locked?

A Yes.

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

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

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

A That is correct.

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

A Okay.

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

A Subpart L.

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

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

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

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

A To the contractor.

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

A Right.

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

A Contractor.

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

A Yes.

MR. VOGT: Thank you.

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

sir.

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

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

THE COURT: All right.

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

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

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

THE COURT: Counsel approach one second.

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

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

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

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

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

All right, you may proceed sir.

MR. JETT: Thank you, your Honor.

(WHEREUPON, following was read.)

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

DIRECT EXAMINATION BY

MR. SHEALY:

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

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

A Unrelated to this, yes.

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

A Okay.

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

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

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

A That's fair.

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

A Yep. Sounds good.

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

A Vu T. Nguyen.

Q And where are you from originally?

A I am originally from Vietnam.

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

A 1976.

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

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

Q All right. And where are you --

A And then currently Charlotte, North Carolina.

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

A 17 years.

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

A I have not.

Q Do you have family in York County?

A I do not.

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

A A child.

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

A Clemson University.

Q And what degree did you obtain from Clemson?

A A Bachelor of Science and Engineering.

Q And have you had --

A Civil Engineering. Sorry.

Q Have you had any post graduate training?

A I have not.

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

A Charleston, South Carolina, Garnet High School.

Q And when did you get your degree from Clemson?

A December 1996, in December.

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

A No.

Q Since leaving Clemson can you describe for me sort of

your employment history?

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

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

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

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

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

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

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

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

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

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

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

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

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

A Uh-huh. That's correct.

Q And how long have you been that?

A Since 1997.

Q And are you working towards getting your PE?

A Yes.

Q When do you expect to obtain that?

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

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

A That's correct.

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

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

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

A There is. There is, yeah.

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

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

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

A That is correct.

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

A That is correct.

Q Okay. How many offices does Stafford have?

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

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

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

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

A That's correct.

Q Now, other offices for Stafford?

A Yes, that's correct.

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

A Yes.

Q Tell me what Terracon is about?

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

Q Okay. And are there other aspects of the facility -- to the facilities, consulting other than what you have done traditionally?

A Yes. And part of it is us growing into -- growing this

part of the business but we he do a lot of testing, water testing on windows, ASTM-type standardized testing. We also, have uplift chambers that we've built and been able to do those types of testing as well. So we -- we are growing into the testing side ever facilities.

There is also the PCA side. That is the property condition assessment that the facility side does as well.

Q And tell me what that is, what that involves?

A That's basically a consultant, an engineer or project manager who can go out and as access the existing conditions ever a building. We look at the enclosure. Anything waterproofing related. We look at the mechanics to see -- just to see how old the building is and the equipment that run the building. And a lot of times PCA's are done because someone is trying to purchase a building and they want to know what they are getting.

Q Okay. And do you get involved in that type of work now or are things strictly with the water proofing side of things?

A I have done very little, had very little to do with the PCA side of things.

Q Okay. Do you work with other people, if there is a particular project you are consulting on, do you work with other people at Stafford or do you handle that project all yourself?

A We -- I typically oversee the whole project, if it is my project, but I will have an inspector that may come out and

do site visits for me and occasionally say, if I am tied up with seven things we have other project managers as well that can step into various rolls within a project.

Q Where -- over what geographic area have you worked over time that you have been involved with Stafford and Terracon?

A I have been primarily in North and South Carolina, but I have gone as far as LA. I have gone as far down south as Miami and as far north as Minneapolis in and we also have a con track with U.S. army reserves and still do. But the work we did for them involved us all going over Kentucky; Kentucky, Georgia various central states, Tennessee and those areas.

Q Okay. To do what you do have you had to get familiar with particular states building codes requirements and other regulations that pertain to roofing?

A Yes, sir.

Q And you would say that your -- since the majority of your work has been North and South Carolina would you say you are pretty familiar with what the building code requirements are in South Carolina?

A Yes, I am.

Q All right. Have you testified in court before?

A In court I have not.

Q Now in what -- how many times have you given your deposition previously?

A Twice.

Q And what were the circumstances of those prior depositions?

MR. SHEALY: Your Honor, I hate to interrupt. May I confer with counsel.

THE COURT: Certainly.

Q Okay. Now how long has Stafford had a relationship with Winthrop University.

A I started working with Winthrop almost right off the bat. It was probably back in '98 or'99. Probably '98, and that was my first project and prior to that I am not sure if or how many projects we had with them.

Q All right. But since '98 have you been sort of the principal contact for Stafford when Winthrop has had a project that has called Stafford to assist with?

A That is correct.

Q Okay. And how many different projects have you consulted with Winthrop on?

A A lot. I don't know. I don't have a number, but I'd have to guess somewhere fifty projects or more.

Q Wow. Okay.

A And they range, you know, from just doing a survey or writing a report or just looking at some documents, and to roof replacements and design and everything.

Q Okay. Were you involved when Owens Hall was constructed?

A Owens Hall being the -- now, there is some name differences in there, but Owens Hall was that the new construction.

Q That's -- as I understand it and I have just been in these buildings within the last week?

A Yes. Right.

Q Yeah, as I understand it Owens Hall was constructed in 2007?

A Uh-huh, okay.

Q It adjoins to the much older Bancroft Hall?

A Yes.

Q Does that comport with your understanding?

A Yes, that is correct.

Q Okay. Were you involved in any way in the construction of Owens Hall?

A I was asked to do some inspections as to the roof, as that roof was being put down.

Q Okay. You didn't -- you didn't develop the specification for the roof at that project is that correct?

A That is correct.

Q All right. So you just came in and didn't inspections of the work as it was in progress?

A Yes.

Q Okay.

A Actually I don't think I was involving during but we

were asked once it was done.

Q All right. And what findings if you you recall, what findings did you make?

A I would have to look at the report.

Q All right. And I think I got a copy of that?

A Yeah.

Q But did you do one report?

A I recall one report. I don't know how many we have done for the new construction.

Q Okay. I think you are aware that sort of a central focus in the current lawsuit that we are involved in concerns a flat roof?

A Yes.

Q That sort of adjoins as I understand it, is where Owens Hall adjoins the Bancroft building or the Bancroft Annex. Is that -- does that comport with your understanding?

A Yes.

Q Okay. Was the roof -- was that flat roof installed during construction ever Owens Hall in 2007?

A Was the flat roof installed with new construction, is that what you are asking?

Q Yes.

A That was part of the new construction.

Q Okay. Are you familiar with the roofing systems that was installed there?

A Yes.

Q Okay. What were the components -- or what was the -- what was that roofing system made up of?

A The roofing system is a TPO, single-plied fully adhered -- well, I think it is fully adhered, but it is basically over some insulation.

Q All right. So the deck below the insulation is what on the flat roof?

A That I do not recall.

Q Okay. There is a -- there is a layer of insulation and what is the insulation, what is the material that the insulation is made up of?

A I do not know what that material is. I know typically if I had to guess it would be polyisocyanurate insulation.

Q Do you know approximately how thing that layer ever insulation would have been on the flat roof when it was constructed?

A No, I do not.

Q And then the TPO is a membrane that is on top of the insulation layer?

A That is correct.

Q All right. And TPO stands for what?

A It's a scientific chemical name that I haven't committed that to memory.

Q Okay.

A The industry knows it as TPO.

Q Okay. And TPO, I know that there is another kind of flat roof system, bituminious membrane, correct?

A Yes.

Q All right. And TPO is different then the bituminious membrane, correct?

A That's correct.

Q And what are the differences? What different characteristics do the two types of membrane have?

A Well, I will start with the TPO is more -- it's a white -- typically a white or light colored membrane. It is a single-ply and it has -- it's usually fully adhered or mechanically attached as a means for securement.

In the case of Owens, I believe it was a fully adhered system, so adhesives are used to glue it down to the substrate.

Q And that substrate in this case would have been that layer of insulation?

A That's correct.

Q Okay. What is the adhesive that is used?

A What is the adhesive? Its -- I'm not sure how to answer. It's sort of a clear looking glue. It's a solvent or water based adhesive, basically.

Q Okay. But you don't know the name of these chemicals?

A Well there -- no, I don't know the name of the chemicals.

Q Okay.

A In the way the TPO is put down is in sheets and where the sheets lap -- overlap each other, it's is heat welded.

Q Okay.

A For a mod bit roof system this is a bituminous material. It is usually referred to in the industry as two-ply mod bit system.

It comes with a base layer that is bituminous. Modified bituminous sheet and then a second layer which is a cap sheet with granules on it. And it's essentially the same as a base layer, but it has got these granules on the top side of it.

Q Okay. But that's not what was on the flat roof of the Annex?

A That's correct.

Q Okay. As I understand the contractor that was involved in the building of Owens and the roof -- insulation of the roof system on Owens was not Pickens Roofing and Sheet Metal, correct?

A The contractor, the general contractor or --

Q Well --

A Could you --

Q Well, was Leitner Construction the general contractor for the construction of Owens?

A Yes.

Q All right. And was there some other roofing

subcontractor other than Pickens Roofing and Sheet Metal that is was involved in the insulation of the roofing system including the flat roof on Owens?

A I do not recall who that was. I do not that is true was Pickens but I am not sure who that was.

Q Okay. What involvement have you had over the course of your career with Pickens Roofing and Sheet Metal?

A I know their project managers over time just through working on projects with them and most of my projects with them have been through Winthrop. In the first project I worked with them it was on the building in'99. It was the Rutledge Building it is sort of a -- we had been -- we have been with Winthrop several projects a year typically.

Q Okay. And have you worked with Pickens since the fire that is the subject of this lawsuit?

A Yes.

Q At Winthrop?

A Yes.

Q What projects managers can you recall working with that were associated with Pickens?

A Client's Robinson, he was the main contact and actually the only project manager that I worked with throughout -- I mean he was the main, the point guy. There was also Robert Pickens that I dealt with occasionally.

Q Okay. Anybody else other than those two gentleman?

A Let me think for a second I am sure if I saw some names but offer the top of my head those are the only guys that I recall.

Q All right. Just generally speaking what has your experience been like working with Pickens as a roofing contractor?

A They are a good contractor.

Q In terms of their attention to matters involving safety how would you characterize that?

A It varied from project to project what is required as far as safety goes, but generally speaking they did a good job.

Q Now, the project that this lawsuit grows out of involving the reroofing of Bancroft Hall. Do you understand that?

A Yes.

Q And as I walk through these buildings I understand Bancroft is sort of a U-shaped building. That Owens was sort of built inside of and sort of they connect to each other. Is that your understanding?

A That's correct.

Q Okay. And Bancroft is a pretty old building as I am told?

A Yes.

Q How did you get involved in reroofing Bancroft Hall?

A We have a -- at the time we had a contract with the

university for them to use us whenever there was a building that needed roofing type projects.

Q All right.

A And so they requested it.

Q And so how would you find out its time to reroof Bancroft Hall?

A Well, it would be based on the leaks that they were having and whether or not repairs would fix the leaks and third, it would be how old that roof is. Some times you can do repairs to buy some life other times it's just -- it's just to old.

Q This particular project though in 2009 and ten do you remember what the impetus was for Bancroft being reroofed?

A Yeah,, I do remember there was one part of it was because it was old, another part being there was asbestos transit panels on there. And there was also discussions about the aesthetics of it. There was some growth that was appearing on the roof and that was part of the reason.

Q All right. Now as part of your -- the scope of your relationship with Winthrop, were you suppose to do sort of periodic roofing surveys of all the buildings at Winthrop, or I mean was there some sort of schedule by which you --

A No.

Q Okay. So this decision to reroof Bancroft did not come after some sort of regular regularly scheduled inspection that you would have done, it was just -- you were just told they

wanted to reroof Bancroft is that correct?

A That's correct.

Q Okay. Now in this case did you -- what involvement did you have in putting together the specifications for the new roof?

A For the new roof at Bancroft the replacement roof?

Q Yes.

A I did the field work and I generate details and the specifications.

Q Okay. And you used the specifications -- well, you used for the proposed contract conditions, you used some standardized AIA documents, correct?

A The contract documents between who?

Q Well, for instance the -- what I am talking about is the general conditions?

A Yes.

Q The supplementary conditions those were -- you started with the standard AIA contract documents?

A Yes.

Q And then did you modified them yourself to suit the project?

A Yeah, the front end consisted of the general conditions but some of it was standard. Other parts of it like the supplemental conditions were based on what we felt was required for the project as well as some input from the university.

Q And did you have assistance from a lawyer or anyone else for that matter in developing the proposed contract terms?

A Not from a lawyer, no.

Q What assistance did you have from others in putting those proposed contract documents together?

A Well, we -- assistance being assistance from the client afar as what they want in it and that would be a form of assistance.

Q Okay.

A And then in house review from our peers.

Q Your peers as Stafford?

A Yes.

Q All right. But have you -- do you have anyone on staff whose job it is to sort of develop particular contract language to a proposed client?

A There isn't anyone who has that specific job but the senior management level folks are the ones who evaluate and implement language.

Q Okay. In the specific itself cover what aspects of the project?

A I don't understand the question.

Q That is a bad question. The specifications for the project my understanding that it, for instance, covered what materials needed to be used, correct?

A Yes, that's correct.

Q Okay. And then there were provisions and I got, and I got it, I mean we just talked about -- and I'm just -- I'm not trying to be unfair to you by asking this you this. I am just trying to have have a general discussion with you. But did the specifications also talk about the manner by which the project was to be undertaken, not just the materials, but the way that the project would have been undertaken?

A Yes. Yeah. There is language in there for that. For instance, I don't know specifically in those documents but we included language in the specs that would say for instance, work can be done at eight a.m. to six p.m. just depending on what the client needed.

Q Okay. And I guess the where I am going with all this is I am trying to get a mental picture of how you develop the specifications.

A Yes.

Q Do you start from whole cloth? Do you go by something if, you know, you got an template in house, that sort of thing?

A Well, typically for a client like Winthrop where we sort of already developed the front-end section we will take that and modify it.

Q All right. Okay. All right. And so because -- and because you had had a long standing relationship with Winthrop you had things to go by, documents to go by?

A That's correct.

Q All right. If you -- if a brand new client came to you would you develop and wanted you to develop a specification for a roofing project, would you develop that just from scratch or do you have some sort of template or software that helps you put all this together?

A We have a master spec that has a lot of standard language. We wouldn't necessarily use everything or any of it. It just depends on the client and the need. We do have -- the first think I normally do for a new client is I would find out if they have something that they already have in place and we don't want to stray far from what the requirement is.

Q Right.

A In the event they do not have any then we will generate a front end section for them.

Q Okay. Now the master spec that you are talking about is that something that Stafford Consulting developed?

A No.

Q Where does that come from?

A That -- there's an institute called CSI that develops those. That language.

Q And what does CSI stand for?

A I don't know, I should but I don't.

Q Okay. All right. So you have -- you have something to go by and you make modifications of, sort of that template to suit the need of a particular client?

A That's correct.

Q All right. And I want to go through some of the documents with you more specifically in a minute. But I want you just to -- I got a few more general questions for you.

A Okay.

Q The way this project was going to be conducted I mean, did you put out the request for bids?

A Yes.

Q And so you coordinated all of that for Winthrop?

A That's correct.

Q All right. And I believe you conducted a pre bid meeting?

A Yes.

Q What was the purpose of the prebid meeting?

A The pre-bid meeting something to go over the scope of work and to walk the site with the bidder and answer any questions or clarify any confusion.

Q And this is a pretty standard procedure that you follow when you have a project like this?

A Yes, it is.

Q How long does a pre-bid meeting typically take?

A Two hours.

Q All right. And then Pickens Roofing was a successful bidder, correct?

A That's correct.

Q And did you -- were you the person that determined whether bids were responsive, did you make that determination?

A Yes.

Q And did you -- were you the person responsible for deciding to who the bid would be awarded?

A Yes.

Q What role --

A Let me clarify that a little bit. We make a recommendation and then the university decides.

Q Okay.

A Based on my recommendation.

Q And who at the university did you work with?

A I worked with several folks. I don't recall who was the the most involved, but Wes Love has been a project manager for a while. Probably him. Ben Roach is who I worked with the longest starting with the very first project and Walter Hardin.

Q Okay. Those were your primary contacts?

A That's correct.

Q And so some -- one of them would convey to you the university's decision whether or not to accept your recommendation?

A That's correct.

Q On what contractor would receive the bid?

A Yes.

Q Okay. Once the bid is awarded what is the next step?

A Once the bid is awarded we he generate a construction contracts between the owner and the contractor. And we secure bonds, performance of payment bonds and the insurance certificates and once all is out of the way, we set up a pre-con meeting, pre-construction meeting.

Q Okay. All right. Before we get to the pre-construction meeting is there room in -- after the bid is awarded is, there room for the contractor to negotiate particular terms of the contract itself?

A No, not really because that changes the -- you can talk about certain things that -- that they may or may not be able to do, but you can't say for instance, change the system, negotiate a different system.

Q All right. And I mean the bid has draft construction documents attached to it right, the request for bids?

A Draft drawings.

Q Well, I know it has drawings detail?

A Yes.

Q But it has --

A Oh, okay. Yeah, a draft of the construction contracts?.

Q Yes.

A Yes.

Q Okay. The supplementary conditions all of that stuff is part of the bid package that is --

A Correct.

Q That the contractors are responding to?

A Yes.

Q All right. Now, I know that there was a change order that was negotiated, but I you don't know whether it was before the original contract was signed. I assume it was after the original contract was signed.

A That's correct.

Q Okay. All right. So we will talk about that in just a second, but -- all right. So you get the construction contract signed, you get the bonds and the certificates in place and then you have a pre-construction meeting?

A Yes.

Q And did you conduct that?

A Yes.

Q When would that have taken place?

A It would have taken place once, once the contracts are fully executed, probably not long after that.

Q What -- so what topics are covered in the pre-construction meeting?

A At the pre-con meeting we talk about the crew. We talk about submittals, project submittals. We talk about staging and setting up. We talked about safety. We talked about schedule and quality of work and we establish contracts. Did I say schedule already?

Q You did.

A Schedule. Okay, lead response, emergency-type scenarios and access.

Q Do you -- do you develop an agenda for that meeting with the topics you just described?

A Yes.

Q Okay. And does that become part of the file that you maintain for the project?

A The agenda no. The agenda is something I sort of have as talking points.

Q Okay but you -- and that's not something that you make part of your file after the meeting is over?

A No.

Q Do you remember this particular construction, pre construction meeting with representatives from Pickens roofing?

A I remember that it happened. The details of it is vague.

Q All right. What was discussed in terms of stage go at the pre construction meeting?

A I remember we talked about -- and I know there was some discussion about issues staging on one end of the building and they wanted to be able to stage from a -- I think a second area. That's all I recall.

Q Okay. Do you remember whether the original specification, the original conditions called for two staging

areas?

A I don't recall what the specs or what the pre-bid meeting required of them. I think there was only one and I can't be sure of that.

Q Okay. Do you remember what the -- you know, we mentioned a change order?

A Yes.

Q Do you remember what the circumstances were that gave rise to a change order being negotiated?

A I think that the change order has to do he with with limited access, I don't know I'd have to look at it.

Q Okay. All right. Well, we will look at it together?

A All right.

Q You mentioned that safety was discussed at the meeting. What sort of particular topics did you discuss involving safety?

A Well, typically we would talk about protecting your work area if they -- if they had a ladder on the ground or materials on the ground to fence that off or to rope it off so that people don't enter that space.

Q Okay.

A We talk about tying -- we talk about tying off folks, the guys doing the work so there's a fall protection issue there. And we talk about protecting the general public as they are coming in and outside the building and making sure that when we are working offer entrances that we don't -- that that's

monitored.

We also talk about if there is hot work to be done on the project that there needs to be a fire extinguisher within reach. And then if there is hot work that's done there usually needs to be a minimum,"X" amount, sixty minutes, usually fire watch. Okay.

Q Now, was there a particular lay down area that was called for in the contract?

A Yes. In the contract it is coming back to me a little bit. But I remember if you are standing in front of the building and facing, it was the space to the left corner.

Q Okay. All right. So if the building is shaped like a "U" --

A Yes.

Q Your outside the "U" --

A Yes.

Q And in the middle is that --

A I'm at the bottom of the "U" looking up at the building.

Q Right. Okay.

A So on the right side of the corner of the building.

Q Okay. And that was going to be the -- was that going to be the lay down area for the --

A Yes.

Q -- storage of construction materials?

A That's correct.

Q Okay. Now, how are those materials to be transported from that lay down area to the roof itself?

A They use a hoist. It was basically a vehicle that had an arm that would reach carrying the materials up to the top.

Q Okay. And so what sort of materials would typically be hoisted up to the roof?

A For the areas they were working on that would be the shingles and the roll of felt and the sheet metal that would go with it.

Q Okay, now the -- was any part of the roof that day that Pickens Roofing was reinstalling, was it all pitched roof or were there any flat roof sections?

A There was -- there was one. No, I am sorry. There were several. There was -- the pitched roof at the front of the building. If you are looking at the "U" shaped building that bottom horizontal section of the "U" shaped area. As you are looking at my hand at the top of that was a low sloped section, and then there were some lower roof areas over the front entrance that was like a --

Q A porch?

A A porch, yeah.

Q Okay. But the vast majority of the roof on this building is a pitched roof situation?

A That's correct.

Q There are dormer windows that I think were going to have have copper?

A Yes.

Q Sheets installed over the tops of the dormers, correct?

A That's correct.

Q All right, any sheet metal going anywhere else?

A Sheet metal around the perimeter of the building where the shingles stops and then there is sheet metal that went over the edge.

Q Okay. Is that flashing?

A Yes, flashing.

Q There were also hips -- hip flashing and valley flashing that were on.

Q Okay. Is the hip flashing is that at the peak?

A Yes.

Q Okay. Take cover the peak of the roof?

A That's correct.

Q Okay. And the valley flashing is, as it sounds like, is metal that goes into the lowest part of the two adjoining pitches?

A That's correct.

Q Okay. Now did you all talk about in your pre construction meeting once the materials got up onto the roof how they would be dealt with before being installed?

A I don't recall.

Q Okay. You don't have any recollection of a discussion regarding how the materials would get from the place where they were being hoisted to the various areas where work was going on?

A For a roof like that it would seem to me that you would -- you would bring it up daily. There wasn't a place that you would be able to store it so you would have to bring up what you needed for the day and do the work.

Q Okay. And your -- well your responsibility to Winthrop also in addition to developing -- well, specification and other things that you already described it involved periodic inspection of the work as it was going on, is that correct?

A That's correct.

Q How often were you to conduct inspections?

A It varies depending on the type of work that was being done, but I -- we have a certain number of inspections included in our scope of work and I don't recall what that was.

Q All right. I have seen in your file some sort of formal inspection reports that had pictures attached to them and some narrative description of what is depicted in the pictures. Are those sorts of reports that you were required to generate periodically?

A Yes, that's correct.

Q All right. Would you also have other informal inspections as the work was going on?

A It's possible. If we were on site to look at something

else, somebody may drop by just to see what was going on and -- and possibly didn't want to use one of the inspections, so just kind of stopped by and looked and moved on.

Q Okay. Do you recall specifically how many inspections were -- you were required to perform as part of your obligation to Winthrop?

A I do not.

Q Did you perform all of the inspections?

A I performed some inspections. I don't know if I did all of them.

Q All right.

A Because I -- there was another project manager and some technicians that were involved as well, so if memory serves right I think they did a few.

Q Tell me what was involved in those periodic inspections. I mean was there a particular protocol that you followed?

A Basically for these inspections you go up there to observe insulation and you just see if they are doing it, installing these components in accordance with the scope of work described in the specs.

Q Okay. And how would you get onto the roof?

A We would normally use the same access that the contractors used, so in this case the ladders.

Q All right. So the -- and the ladders were placed

where?

A Where I recall the ladders were being placed was on the front side of the building where the canopy was. There was a ladder from there up to the canopy, and then from the canopy to the main roof.

Q So it was sort of a two-step process?

A Yes.

Q Climb one ladder to the top of and you say the canopy that porch you mentioned earlier?

A Yes, the porch.

Q And then another ladder up to the building of the -- the top level of the roof of the building?

A That's correct.

Q And then from there you were able to -- how were you able to get around all parts of the Bancroft roof?

A You would -- you could walk to -- you had access to all the areas that were in our scope of work and you would walk along the ridge.

Q Okay. Were there any -- was there any scaffolding installed on the ridge?

A No.

Q Were there any areas where the sections of Bancroft roof were not at the same height?

A Yes.

Q Where were they?

A The "U"shaped building. Let me do this. The "U" shaped building, right.

Q Yes, sir.

A As you got up and you walked around this way.

Q Yes, sir.

A There was a wall that separated two sections.

Q Okay.

A And to access that wall you had to get up and over that to access the other side of the roof you had to get up and over a parapet wall.

Q Okay. That's what I was looking -- a parapet wall?

A Yes.

Q How tall was that parapet wall?

A Six feet, four to six feet. Somewhere around there.

Q Okay. All right. Now to get to the section of the roof that adjoined Owens Hall you would have to go over that parapet wall, correct?

A That's correct.

Q But my understanding was Owens Hall does not connect to Bancroft through the Bancroft Annex. Is that your understanding?

A Yes, that's correct.

Q Okay. So when I say they are adjoined, it is possible to walk from Owens through the Bancroft Annex and be in Bancroft Hall without ever walking out doors. Is that your

understanding?

A That's correct.

Q Okay. From the roof level, the pitched roof on Owens drops down to the flat roof over the annex and then you can climb back up and be on the pitched roof of Bancroft, is that correct?

A That is correct.

Q Okay. And that -- in that respect the building adjoin each other?

A Yes.

Q All right. So to get back to getting up on the roof. Get up on the porch and go to the top of Bancroft Hall?

A Yes.

Q Take a left, then walk down that wing that goes all the way down towards Bancroft and Owens are next to each other?

A Yes.

Q Okay. And there is one parapet wall?

A Yes.

Q Okay. You may have answered this already, but how tall is that parapet wall?

A I said four to six feet. I think it is more closer to four. Six feet I can't see over that and I remember being able to climb that.

Q Okay. So you -- it was high enough where you had to climb over it?

A Yes.

Q Was there any -- during the construction process, was there any structure or scaffolding or anything that was put in place to facilitate getting over that parapet wall?

A I believe there was. I don't recall what that was that was one /-FRT items that we discussed is how to get back and forth over that area. And I seen -- I don't know if they did but I recall them talking about putting up some sort of platform to get materials back and forth.

Q Okay. Were there any other walls, parapet walls, that go along the arm of Bancroft Hall that goes down to Owens?

A I don't think so.

Q Were there any other parapet walls between where the lay down area was and immediately above that on the roof? Were there any other parapet walls between that point and Owens Hall other than the one you already described?

A No.

Q All right. So when you would go up to the roof would you walk the entire lent of the ridge?

A Not necessarily. These inspections are done on what the contractors are doing. So if they were working on say one half of the building we don't necessary walk on the half that is not being worked on.

Q Okay. Now, as I understand, parts of this project involves the removal of asbestos shingles?

A Yes.

Q And because they contained asbestos was there a particular protocol that needed to be followed during their removal?

A Yes.

Q Did Pickens do that part of the project?

A They did not.

Q What is involved in getting those asbestos shingles off?

A They -- you have to get an asbestos trained -- some asbestos trained people to come out and abate it, to handle it and to take it off the roof. Let me back up a bit.

There was some asbestos inside the building as well and they had to encapsulate or they had to -- yeah, encapsulate areas to abate the stuff on the inside. I think the Pickens did remove the asbestos on the roof and took it off the roof and then to separate dumpsters.

Q Okay. And once it did that, what was left up there?

A Once the asbestos shingles are removed there is also organic felt that gets removed at the same time and once that is removed it is just the wood decking.

Q Okay, so there is a decking on the Bancroft. Well, first the rafter truss structure that hold up the --

A Yes.

Q The roof in Bancroft they all wooden?

A No. There was the section once you cross over the parapet wall on the other side of the parapet wall it is all wood, and on the other side of that parapet wall the side that adjoined or is connected through the annex to Bancroft or Owens.

Q To Owens.

A That section they had some gypsum plank decking over I think, some steel trusses that were, yeah, over some steel trusses.

Q Okay. My assumption is that there is more modern construction?

A Yes.

A All right. The wood, wooden decking and wooden trusses are all older construction methods.

A Yes.

Q All right. So given that you had different sub sets on different sections on Bancroft Hall, was the same roofing system going to be installed on all of the pitched roof systems -- sections?

A Yes.

Q All right. Describe for me the components of that roofing system?

A On the side that was all wooden it's a -- you roll down new felt and you just nail the shingles to -- straight through to everything on the wood deck.

Q All right.

A On the other side where you have the gypsum plank boards you needed a substrate so we had to add plywood over that area and we also needed to vent the bottom side so the plywood was installed over the two by fours wood blocking to that ran parallel with the slope.

Q Okay.

A And then on top of the plywood is the same system, felt and shingle, nail through everything.

Q All right so now the system on Owens, on the pitched roof section ever Owens is a different --

A Yes.

Q Different system correct?

A That's correct.

Q Okay. Describe the components of that system?

A That starting at the top were shingles and then you had felt underlayment and then there is a nail base board that is a vented nail base board. And basically what that is, it is a composite board being two components. It has either got plywood or OSB over some manufactured shims that is also bond to ISO insulation.

Q Okay. All right, and that's a -- I am sorry.

A Over metal decking.

Q Over metal decking?

A Yes.

Q Okay. It is that sort of the state of the art for

commercial pitched roofing systems?

A You see that a lot.

Q Okay. So what was going on on Bancroft is not as sophisticated as that. It's the same sort of roofing system you may see in a residential application?

A Yes.

Q Okay. The spec for the Bancroft reroofing did they call for a particular kind of felt paper?

A It called for 15 or 30 pound saturated felt.

Q Okay. And what is the purpose of the felt paper?

A That provides -- its two part. It is a slip sheet for the shingles so you don't have a shingles sticking to the deck and it is also generally as a temporary water protection.

Q Okay, and after the shingles are installed I guess it supplements the water protection that the shingles provide?

A Yes.

Q Okay. The felt paper that was called for, does it have a particular fire rating or does the manufacturer give the information as to how it responds to the presence of fire?

A I don't know. I don't know if there is anything related to fire on these items. I know that they are organic or tar saturated felt so there is likely some literature or just general knowledge that those things will burn.

Q All right. Now, the specifications that you wrote on up for the reroofing of Bancroft did the building code mandate

the use of any particular materials that went into the reroofing?

A No. Well the building code does have a set of requirements for roofing systems so if you had for instance, slope that was a certain steepness you had to have certain layers of felt underlayment.

Q Okay. But in terms of the kinds of materials, the kind of tar paper, the kind of felt paper, the kind of shingles that you used, does the building code mandate anything in particular?

A It usually calls for some sort of UL class, A, B or C.

Q Okay.

A Rates or classification, fire classification system.

Q All right. And what -- do you know what UL classification was the specification called for?

A A.

Q All right. Describe for me what the UL classification means?

A What that is, is the flame spread of a roof system so that if it measures how quickly a fire moves on the surface of a roof or on, you know, on the top side rather than below deck.

Q Okay.

A So, it's the rate of burn above the deck.

Q Is that a classification that is promulgated by Underwriters Laboratories?

A That's correct.

Q And what did your understanding -- and what's you're your understanding of what Underwriters Laboratories does?

A They're a testing agency. They handle safety as far as materials go and its -- at the deal with fire. They also deal with with numerous other products.

Q Okay. Now, did you -- did anyone at Winthrop University have input on what class of --

A No.

Q -- shingle or what class of roofing system to install?

A No.

Q And was the underwriter laboratory classification was it of the roofing system itself or of the shingles?

A Well, there are some UL standards for shingles. I don't know if there were UL standards for felt but I do -- I know there are UL standards for shingles. Yeah, and that's --

Q And that -- what was being installed was -- well, let me back up. Are there UL standards for sort of all of the components put together?

A Yes, the UL class A, B or C is for the assembly.

Q All right. And did your specification call for a UL class A assembly?

A Yes.

Q Okay. So it is not just the shingles but it is everything put together?

A Everything above the deck.

Q Everything above the deck?

A Right. Well let me back up. Whenever you are looking for a UL class A roof cover what we put down is down to deck level. But you have to look at the type of deck that you have in order to see if the entire assembly includes the deck meets a UL class A. There are other factors like slope that would determine if you end up with an A, B or C.

Q All right. And is class A the best, I guess?

A Yes.

Q Okay. Do you know what characteristics give a roofing assembly class A versus another class?

A I think it is -- how quickly it spreads in terms of hours.

Q Okay. But you do not know -- but you do not know what the threshold is?

A No, I don't, not right off hand.

Q All right. Okay. Mr. Nguyen, I want to ask you just generally, there has been an allegation made in this case that Pickens Roofing in the course of reroofing Bancroft was storing shingles and some felt paper along with some pieces of metal, sheet metal or flashing on that flat roof that we have been talking about that covers the Annex?

A Yes.

Q Are you aware of that?

A Yes.

Q Okay. You were aware that -- that, were you aware that it was storing materials on the flat roof section during the project?

A No.

Q Now, did you ever look, inspect the area where the flat roof was?

A Not the flat roof itself, but yes in that area.

Q All right. And when you inspected in that area were there any materials stored on the flat roof itself?

A I don't recall.

Q Don't know one way or the other?

A No.

Q And do you know when, when during a project you conducted an inspection that put you in view of the flat roof?

A When, as in dates?

Q Yeah.

A I don't know. I mean, I couldn't recall a date in that -- you know, where I would be over there.

Q How many times would you have been over there conducting inspections?

A I don't know. I mean it just depended on what they were doing that day.

Q All right, now you don't recall one way or the other whether you saw roofing materials stored on the flat roof, correct?

A That's correct.

Q If you had seen that would you have been surprised by that?

A No.

Q Why?

A Because if a contractor has an area that he can work in that makes things easier for him, he will try to use it and if I -- if the owner said, don't use it for whatever reason, then that would be something that I would report. But if -- if they were allowed to use it I wouldn't be surprised.

Q Okay.

A And I don't know if there was any discussion taken place about whether or not it could be used or not. So if I was inspecting that area I would look down and I saw buckets and that's not the first time I'd seen something like that.

Q Okay. If you saw such a thing would you inquire of the owner as to whether or not the owner allowed that to happen?

A Normally I would, if I knew something about it.

Q Okay. All right. So, but as I understand it in this case, you don't recall one way or the other whether you ever saw roofing materials stored on the flat roof over the Annex?

A That's correct.

Q So you don't know whether you had any kind of conversation with anybody representing Winthrop about that because you don't know whether you ever saw that?

A That's correct. That's correct.

Q Okay. Do you recall -- after the fire occurred did anyone talk to you about the flat roof --

MR. SHEALY: Your Honor, may I interrupt. Sorry counsel.

THE COURT: While they are doing that why don't everybody stand up and stretch.

(Continuation of reading the deposition.)

Q Okay. All right. Did any fire investigator ever talk to you after the fire?

A No. No.

Q So you were not talked to by anybody with the Rock Hill Fire Department?

A Let me think for a second. I don't -- I don't know to be honest. I want to say that there was may be one big group discussion that they all had after the fire and I just don't recall if we -- if I sat face to face with someone. But I remember we were all in a big room and it was more of a where do we go from here.

Q Right.

A And there was probably some discussions with the Rock Hill Fire department or may be Winthrop's own fire department folks. I don't recall that there was an actual Rock Hill Fire Department person.

Q Okay. And do you remember anything else about the

conversation, I mean I know you said the focus was on --

A Yeah.

Q -- where do we go from here?

A Right. No.

Q And you were involved heavily in mitigating the problem?

A Yes.

Q And I understand that with respect to Owens it was so new that the decision was made to just go back to the same contractor that had originally installed the -- that had worked on Owens originally, is that right?

A I thought it was Pickens, but I don't know.

Q Now -- and I'm sorry, with respect to the general contractor with the construction crew?

A Oh, yes, that 's correct.

Q They went back to Leitner Construction?

A That's correct.

Q But Pickens actually did the reroofing of Owens?

A I believe that was right.

Q Okay. And Pickens prepared the damaged section -- Pickens repaired the damaged section of Bancroft and finished Bancroft correct?

A Yes, that is correct.

Q Okay. And I know there was other remediation done in the interior?

A Right.

Q Of both buildings. Were you involved in over seeing any ever that?

A No.

Q Okay. We received a copy of your file and I understand that you produced -- your office has produced these multiple files and I got bates label copy of that and I just want to ask you a couple of things?

A Sure.

Q About first the document that bates label, Pickens 982, through 990. And it is date January 20th 2008.

A Okay.

Q Can you identify that?

A Well, I don't know if it's mine but I am trying to absorb the rest of what this says.

Q Okay. What was produced to me appears to be both materials from the original construction of Owens.

A Okay.

Q And then the subsequent reroofing of Bancroft and the reroofing of Owens. This document that I have shown you can you tell me what it concerns?

A If I could take a minute.

Q Sure.

A Okay. So this is Owens, yeah I recall this, yeah.

Q And what I described to you as may be -- as one

document could be two separate things. I mean we -- the first page is a letter from you to Ben Roach, correct?

A Yes. Uh-huh.

Q Date January 28th, 2008. It make a reference to a September 20th 2007 field observation report does it not?

A Yes, uh-huh.

Q All right. And that is the document that is immediately behind it?

A That's correct.

Q Okay. Now, just so that I am clear, the field observation report that starts on Pickens 983, describes the project as Bancroft Hall, but my believe that that's actually Owens?

A That is correct.

Q Okay.

A Because this is why I asked you at the beginning.

Q Yes.

A When we first started this that there was some confusion about which one was Owens because it started off being Owens Bancroft because of how they tied in.

Q Yeah.

A And I think they -- okay.

Q You confirmed what I thought?

A Okay. Good.

Q I didn't think for a moment that there was work

actually going off on Bancroft Hall --

A That's correct.

Q -- roof back in roof 2007, but because the two buildings adjoin each other back in 2007 there were some interchanging of the two names?

A Right, that's correct.

Q Okay. And in Pickens 987 one of the observations made in the September 20th, 2007 field report is an overflow scuppers that have not been installed in the single-ply roof areas.

The picture that is depicted there is that the flat roof section that is -- was later involved in the fire?

A Yes.

Q Okay. And you already described that was not a -- a bituminous flat roof?

A That's correct.

Q Okay. Now, ultimately as of January 2008 the contractor had not addressed the punch list items from that construction, correct?

A That's correct.

Q Do you remember the most punch list items were eventually dealt with, if ever?

A I do not.

Q Okay. The instructions to bidders that was issued for the Bancroft reroofing?

A Yes.

Q Form AIA -- an AIA form was used for that as well, correct?

A I don't -- I mean, I assume you looked at the documents and I can tell -- and can tell, but I don't recall.

Q Let me see if I can put a complete version of this to you for you. Is that a pretty substantial packet the instructions to bidders?

A It's pretty detailed, yes.

Q So let me just take this whole pack over to you because there is no way for me to tell when where one thing ends?

A Sure.

Q And one thing is -- all right, I am showing to you to start with Pickens 1160 the document that follows that?

A Okay.

Q To my eyes this is the -- this is what's issued to the world?

A Yes.

Q To my eyes this is the -- this is is what issued to the world?

A Yes.

Q We invite you to bid on this project?

A That's correct.

Q Okay. All right. Is -- did you have to get the invitation signed by the state engineer or did Winthrop University do that?

A Winthrop. The way this process works I generate the documents and once the state engineer reviews the documents and approves it we address all the comments and everything I send to him -- I send to, he signs this here and I modify however he wants, date and everything.

He signs it. And then it falls on either Stafford or the state engineer depending on what he wants to do to put this into publication.

Q Okay. Do you remember in this particular circumstances whether it was Stafford or the state engineer that did it?

A Normally Stafford does it for Winthrop.

Q Okay. All right. And so the documents that -- or the pages that follow that --

A Yes.

Q -- comprise of all the instructions to a potential bidder how to respond?

A That's correct.

Q Okay. And this is -- what was used here is an AIA form document, A701, the 1977 edition?

A That's correct.

Q And that form is modify?

A Which form.

Q Huh?

A Which form are you saying?

Q The form that we just -- that I mentioned the AIA?

A Right.

Q A-701 was modified with supplemental instructions and with specific instructions for this project, correct?

A Right. And really these documents here now, this is coming back to me as far as what this document entails, but this here is mandated by the state and they the state makes the modifications to it so we -- this is all sort of cookie cutter stuff that is in front of every state project.

Q Okay. But you know that -- I mean you pull the forms up and you know that the state is going to require --

A Yes.

Q -- those forms?

A That's correct.

Q All right. So thumb back and where you get started to the parts of these instructions that you generated?

A All right. Let's see.

Q And I will just represent to you that I am giving these to you to show to you or showing these to you in the order in which they came to me?

A Yes. So this summary is where we start. Let me see here. Yes, this is it. This is where we start.

Q All right. So when you say this, you are talking about Pickens 1218 and the pages that follow, correct?

A That's correct.

Q All right. And there is a whole lot to that?

A Yes.

Q Yes, including the sketches that you did?

A That's correct but these in particular, let me see. I believe that these were not part of the document. This is -- would have been field work that I did. They weren't part of the document that ended up there.

Q All right. Let's see. Let's talk about where the -- does the document end up here?

A Yes.

Q Okay. So let's --

A This would be my field notes.

Q All right. So let's -- the documents ends. The instructions to bidder -- no, no, no, I'm sorry. The document that you generated?

A Yes.

Q But for proposed bidders ends at Pickens 1306?

A Right.

Q Okay.

A Yes.

Q All right. So then what follows in this packet of materials 1307 is your field work that you did before the specification was drawn up?

A Correct.

Q Okay. All right. Did your field work after Winthrop tell you we want to reroof Bancroft?

A That's correct.

Q Okay. And this is just part of what -- this is the part of the process that you engage in to develop the specifications?

A That's correct.

Q Okay. All right. And so your field notes comprise two pages?

A Yes.

Q Okay. And those are Pickens 1307 and 1308 and then behind that is a sketch that you drew?

A This is a sketch that Winthrop provided to me and I used to verify dimensions.

Q Okay. All right. And is this sort of an aerial view of Bancroft Hall?

A Yes.

Q Okay. And it is upside down U in that sketch, correct?

A Correct.

Q All right. And that's Pickens 1309, so at the top of the 1309 is the porch that you described earlier?

A Yes.

Q Okay. And the lay down area that was eventually used is located where on Pickens 1309?

A It's top right of this page.

Q Okay. Top right hand corner?

A Yes.

Q Okay. All right. And the parapet wall that you mentioned is it depicted on Pickens 1309?

A It is. It's on the right-hand side of the sheet of the page, and show you right here.

Q A horizontal line, cross-hatched?

A Yes.

Q Okay. All right let me ask you this, is the flat roof that we talked about that's an issue in this lawsuit. Is it depicted on Pickens 1309?

A It is not.

Q Is the area where -- do you know where Pickens was doing work the week before the fire?

A I do not.

Q Okay. All right. So behind Pickens 1309 looked like some detailed drawings. Are are these drawings that you made?

A They are.

Q Okay. These are details of what?

A These are details. It is from the field work. This is the edge condition of the --

Q Okay, it's Pickens 1310?

A Yes, and this one is of the -- what you call the more modern section of the Bancroft Hall, the area that has the gypsum plank decking.

Q Okay. So you are just trying to describe visually what you got in place before we do this project?

A That's correct.
Q Okay. All right. And so more ever that is going on 1311?
A Yes.
Q Okay. And 1312?
A Yes.
Q 1313, now 1314, is this something different?
A Yes.
Q Okay. Is this a detail for the work that needs to be done?
A Yes, this is details that I generate by hand and I pass along for CAD drawings.
Q All right. And so that's also the case with respect to Pickens 1315, 16, 17, 18 and 19?
A Yes.
Q And -- and 20?
A Yes.
Q Okay. All right. Now, there's a series of photographs that start on Pickens 1325, are -- are these photographs, were they he taken during the course of the reroofing project?
A They were taken during the initial field work.
Q Okay. So before the reroofing begins?
A That's correct.
Q All right. Okay. All right. Is this just part of your field work package?

A Yes.

Q Okay. And then Pickens 1356 looks to me to be a report from the pre-bid conference, is that correct?

A That is correct.

Q Okay. Now, what I will confess to you that what I have not seen in these materials is any kind of record of the pre-construction conference?

A Okay.

Q Do you recall making any such record and -- I mean, we talked about this earlier?

A Right.

Q That the agenda was not something you kept in the file, correct?

A Right. Typically I am suppose to have a pre-con minutes, but it's possible that this is each one of those that kind of fell through the cracks.

Q Okay.

A As far as writing that down.

Q All right. I have you thumb through the information to see if you can find the change order that we were discussing earlier. You got to Pickens 1435 and this is the change order we were talking about earlier?

A Yes.

Q Okay. All right looking at the information and the information that follows it. Which includes some e-mails that

look likes on Pickens 1439. Does this help you sort of remember the circumstances that gave rise to the change order?

A Let me take a minute.

Q Yes, sir.

A Okay. Yeah, it does.

Q All right tell me what you remember about that now that you looked at it?

A Basically, what this e-mail says is what I -- what I've drawn back on memory here. I don't know if it's written into the documents, and maybe it's on the pre-bid minutes but there was suppose to be two areas of staging and I believe one area was eliminated because of how in view it would be.

Q Okay.

A And so that was eliminated and because it was eliminated they were restricted to one staging location and that would have caused them to traverse back and forth more than they would have to, slow production, and so they asked for a change order.

Q All right. And when the change order was made the change was made the change was made to the approved lay down areas or staging areas after the original contract was signed, right?

A That's correct.

Q Okay. And that change was made by Winthrop, correct?

A That's correct.

Q Do you remember where the two original staging areas were going to be?

A I believe that they were going to stage here which they ended up doing.

Q All right. Now, I turned you back to Pickens 1309 and you already pointed out that the staging area that was eventually used was at the top right hand corner of that sketch, correct?

A That's correct.

Q All right. So in addition to that staging area where was the other one going to be?

A In the top left corner.

Q Okay.

A Of the page.

Q All right. And that is the one on the top left corner is that the one that was eliminated?

A That's correct.

Q And that gave rise to the change order?

A Yes.

Q All right. And these documents I represent to you starting at Pickens 1561 have been going back -- look to be the inspections reports, I think sort of in reverse date order for this project. Does that appear to be your understanding?

A Yes.

Q Okay. So the final inspection report is dated June 22,

2010, is that correct?

A Yes.

Q All right. I believe that is post-fire, right?

A I believe so.

Q I will just represent to you the fire was on March 6, 2010?

A Okay.

Q Okay. So if we go back in time or if we go back behind these, there is a document, Pickens 1581, is that a log of each inspection that was performed?

A Yes.

Q Okay. Is that a document that you prepared or as a result of your file materials or is that a Winthrop document?

A Yes, it is part of Stafford's.

Q Okay. And this is a -- you keep this kind of log for every project showing inspections were done?

A That's correct.

Q Okay. And as I read this the first inspections date or the first inspection was October 19th and 22nd of 2009, correct?

A Yes.

Q And then, were you the inspector on that date?

A I was.

Q All right. And there are five columns on this. The next column says two date PM, is that project manager?

A That is.

Q All right. And then so -- when you performed one of these inspections you submit the inspection report to the project manager?

A Yes.

Q And does the project manager sign off on it and give it back to you?

A He -- he reviews it and -- yeah, in a sense he signs off on it.

Q All right. And then it says date. There is a date that you get it back from the project manager that you notate, correct?

A Yes.

Q And then date mailed. To whom is the inspection report mailed?

A It's mailed to recipient. Recipients are listed here.

Q Okay.

A And this this case it was Wes Love of the University and Clint Robinson --

Q Okay.

A -- with Pickens.

Q All right. So -- but Wes Love was the project manager?

A Yes.

Q Okay. So it is given to him. He gives it back and then you mail it out to both?

A No. No. No. It's mailed out to him and that's it.

Q Okay.

A Yeah. So I'm the project manager and once I am done with it --

Q I see.

A -- it goes to our secretary and it is mailed out to these folks in the final.

Q Okay. All right.

Question by Mr. Vogt: These folks being?

A Winthrop, Wes Love with Winthrop and Clint Robinson with Pickens.

MR. VOGT: Thank you.

Q So all right. So the date to the project manager that is an internal --

A Yes.

Q -- review?

A That's correct.

Q At Stafford?

A That's correct.

Q All right. And so for instance, the first line you were the inspector?

A Right.

Q Right. And so it doesn't have to go to you because you got it already?

A That's correct.

Q Okay. All right. So then you mailed it out on

11-5-09?

A Yes.

Q All right. Then the next inspection was what day?

A July. What does that say? Is that 7-25? I am having a hard time seeing it. It looks like a seven, but it seems like it is out of sequence. That is a 11. Yeah, it is probably more like a 11.

Q Okay. I mean, who knows, but I think your guess is pretty good.

A Well, that says 12/3 so that has got to be a 11/25.

Q Okay. And who was the inspector on that date?

A Tom Seymour.

Q And he is writing the reports to you?

A Yes, he submits the report to me.

Q But he is someone that you supervise at Stafford?

A He's an inspector.

Q Okay. And it was submitted to you on December 3rd of 2009 and then you mailed it out the next day it looks like?

A Yes.

Q Okay. All right. And then the next one is is the following month, December 21st of '09?

A Yes.

Q Who who was the inspector then?

A Ken Ford.

Q Is he another inspector for Stafford?

A He is.

Q And so that one goes out on -- that one is mailed on January 24th, 2010, correct?

A Yes.

Q Now, it looks like another inspection about a week later. Do you know why there was just a brief interval between Mr. Ford and then you appear to be the inspector on December 29th?

A I don't know why but generally what we do is if the work becomes repetitious because there are periodic inspections, we try to time our inspections with with work that may be changes and requires some attention.

For instance, if they are moving from one section -- if we will do an inspection at the beginning of one section and we will look at, establish what needs to be done, discuss issues and handle those items, let the contractor roll with it and then plan for the next inspection. Say they -- they run into a detailed area that may require our presence there and we show up at that particular instant.

Q All right. So the dates when these occur it is not random, it is just when it makes logical sense to be out there?

A That, and it could be random. It just depends on how the project goes and some times you want to do random inspections so that a contractor doesn't get a pattern of when you are showing up.

Q Okay.

A So it -- some of it may be because of where they are with the work and the type of work they are doing and other times it may be hey, lets go check up on them and see what is going on.

Q Okay. And then January 13, 2010, who is the inspector that looks at it now?

A Alex Montgomery.

Q So that's the third different person that looked at the project, correct?

A Yes.

Q And again all of these people are submitting their reports to you?

A Yes.

Q Okay. And the last person to be there from Stafford before the fire would be whom?

A It would be this one here, this line.

Q Yes, sir.

A Ken Ford.

Q That was February 4th of 2010?

A Yes.

Q Okay. Now, you are not able to say what areas of the roof these other inspectors walked on during their inspections are you?

A I might have an idea from the photos and may be from

some discussion.

Q Okay. Now, would they be required to photograph every part of the roof that they walked on?

A No.

Q All right. Now, immediately behind what we were -- well, not immediately behind, but Pickens 1587 appears to be the observation report from Ken Ford prepared on February the 4th, 2010, is that correct?

A Yes.

Q Okay. Just two pages?

A Yes.

Q Okay. Can you tell where from those two pages where Mr. Ford travelled on Bancroft roof?

A This one is hard to tell. Let me see. Okay. This is the penthouse so I know where that is.

Q Where is the penthouse?

A The penthouse.

Q All right. So you were starting to say where the penthouse was and I referred you back to Pickens 1309. Okay. Go ahead?

A All right. So on this 1309 the penthouse is on the left side of the University U-shaped building, upside down U-shaped building.

Q Yes.

A It's on the left side and it's shown with a box with

with, you know, diagonal lines through the corner.

Q Okay. And so that's on the inside pitch of the U?

A Yes.

Q And it's a square with a "X" through it?

A Yes.

Q Okay. Now, at that point do you know sort of in February 2010, do you know how far along Pickens was in the reroofing of Bancroft Hall?

A I don't, but I can look at the rest of the report and I see this is the parapet wall and I am looking at 1588 item number five.

Q Okay.

A Right. In that photo I can see the parapet wall and I can tell you that this roof area that's sort of unfinished in this photo.

Q Yes.

A I can tell you that -- that is the section of the parapet wall on 1309, referring to 1309 it is on the lower right hand side of the roof.

Q Okay. So it's below the parapet wall that you identified on 1309?

A Yes.

Q And it is on the outside pitch?

A It is actually on the inside pitch.

Q Oh, inside pitch?

A Yeah. Yeah. This area you are seeing right here.

Q All right. Let me ask you this, what familiarity, if any, do you have with the standard known as NFPA 241?

A I have heard of it. I don't know much about it.

Q Okay. Do you no whether there is any reference to that standard in the construction contract for reroofing of Bancroft?

A I don't.

Q Okay. If it is do you know how it came to be in there?

A If it is, then it may have been from previous documents, just one of those standard items that are on all projects.

Q Okay. So you were aware of, you said you heard of NFPA 241, what does it concern -- do you what it concerns?

A Fire.

Q Okay.

A Fire requirements, or safety fire issues.

Q Do you know the specifics, or any of the specific standards that NFPA 241 calls for?

A Sprinklers.

Q Okay. With respect to construction operations are you familiar with NFPA -- with with what NFPA 241 calls for?

A No.

Q Okay. How common is it for in the course of roofing -- in the course of roofing contract for you to see shingles laying across the ridge of the building?

A I think that is a pretty normal.

Q Okay and in your experience why is that roofers would lay packs ever shingles across a ridge? And it is at the ridge because that's where -- that's the only place you could put it without it slide go down.

Q Okay. What about metal, pieces ever metal flashing, do you see roofers lay pieces ever metal flashing across the ridge in the same fashion?

A I've seen it. It is not something I would recommend.

Q Okay. What kind of -- do you recommend for roofers to do with pieces of metal flashing?

A For basic all materials really, is to install it as they are putting it down on a roof that steep.

Q Okay. Do you have particular recommendations that you would make to roofers with respect to overnight storage of materials?

A To secure it.

Q Okay. And secured it against what?

A Secure it against wind uplift, sliding anything like that.

Q All right.

A And secure it with regards to protecting it from the weather.

Q So if it's secured, if there are uninstalled roofing materials on the roof and they are secured up there, is it okay

for them to be up there overnight?

A Only if they secure it and store it in such a way that it doesn't overload certain areas, but that's typically more for a low slope roof and not a steep slope roof. A steep slope roof like this one if a contractor asked me if they can store it up there I wouldn't recommend to store it on a steep slope roof.

Q Well, what about -- well you said a low sloped roof?

A Yes.

Q Is that flat roof considered a low sloped roof?

A Yes, that's correct.

MR. JETT: Cross examination by Mr. Vogt.

Q Mr. Nguyen, the specifications for this job were previously marked as exhibit number two and I am going to ask you some questions about that.

A Okay.

Q Okay. The specifications for Bancroft Hall are made part of the contract, correct?

A That's correct.

Q Can you turn to -- I'm sorry the specifications that were marked as exhibit number 1, do you see that?

A Yes.

Q Okay. I have a bound copy in front of me. And the specifications are part of the contract correct?

A That is correct.

Q And the the contractor which would -- any contractor

which would include Pickens Roofing in this case is bound to follow the specifications, correct?

A That is correct.

Q The meeting minutes for the pre-bid conference are made part of the specifications, right?

A Some times it is done as part of the addendum which would make it part of -- I am not sure if that's the case.

Q Why don't you take a moment and read what that section of exhibit one that I have in front of you and if you can tell me whether the pre-bid minutes were made part of the contract in this case?

A Okay. The only way to know is if there was an addendum that was issued.

Q Okay. Lets -- and we can go through the contract that we have already done with the Pickens' folks. Let's just assume for a moment that they agreed that the pre-bid meeting minutes were part of the contract?

A Okay.

Q Item 32 on page four indicates materials storage will be at a nearby offsite location, correct?

A That is correct.

Q All right. At any time did any one from Pickens ever ask you if they could store materials anywhere other than the near by offsite location?

A At the pre-con meeting.

Q Okay. And that was the -- that's what led to the change order?

A That's correct.

Q And the change order did not allow for storage of materials on the flat roof of the adjoined Bancroft, correct?

A The change order, no, it did not.

Q Okay. And by -- in staying with the pre-bid minutes, number three, under B on page four of seven, indicates that the contractor will be responsible for all precautions necessary to protect the building, building occupants, contents, and personnel from damage or injury from his operations.

Did I read that correctly?

A Yes.

Q Did that remain in effect throughout the course of the project?

A Are you asking me if the contractor did that or are you asking me if this clause --

Q That clause, yes.

A Yes, that's correct.

Q Okay. Now, as part of the contract, again staying with just the pre-bid minutes for that moment, page six of seven, number 22 indicates contractor will be required to comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons and property.

Did I read that currently?

A Yes.

Q Was that clause in effect throughout the course of this project?

A Yes.

A At any time did anybody from Pickens Roofing -- at any time did anybody ask you from Pickens roofing whether they could not adhere to the South Carolina building code.

A No.

Q Now, as part of the specifications that you put together starting at 1500, is there a series of sections relating to a program relating to safety, correct?

You can feel free to read as much of it as you want. I am going to ask you you specifically about 1.9 the various sections in there all the way through L?

A Yes.

Q So one of the things that Pickens was required to do was initiate, maintain, and supervise all safety precautions and programs in confession with the work, correct?

A That's correct.

Q Under L-4, Pickens was responsible for complying with all applicable laws, ordinances, rules, regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss, correct?

A Correct.

Q 1.9 D indicates that or states, prior to starting work, obtain approval from the owner for locations of work operations at ground level such as material storage, hoisting, dumping, et cetera. Restrict work to approved locations. Other then the one location that we already talked about the change order, was there any other locations that was approved by the owner or anyone else to allow Pickens to store materials on the flat roof between Owens and Bancroft?

A No.

Q That's all I have. Thank you.

THE COURT: All right, madame forelady, members of the jury panel, we are going to go ahead and get lunch. A little late lunch maybe. It's a couple of minutes after two. What I am going to ask you to do is to be back in the jury room ready to go at about -- well, there is some matters we have to take up with counsel. We don't need you to sitting back in the jury room while we do that. So we will take a little bit longer than normal for lunch, so that you won't be back there. Let's reassume, I will ask you to be back in the jury room ready to go at 3:30, that's about an hour and 25 minutes. So if you get lunch and be back at three -- excuse me, 3:30. Thank you.

(WHEREUPON, the jury leaves the courtroom)

THE COURT: Counsel, go get some lunch and come back and do the proffer. Let's go ahead and get some lunch and be back about five after three and we can do the proffer at that time.

(Court was in recess for lunch.)

THE COURT: Counsel ready to proceed?

MR. VOGT: The plaintiff would like to proffer Daniel Arnold with respect to the scope of his expert testimony.

THE COURT: All right.

DANIEL ARNOLD,, called as a witness, having been duly sworn by The Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VOGT:

Q Will you please tell us your name.

A My name is Daniel Arnold.

Q How are you employed?

A I am a fire protection engineer with Seneca Fire Engineering.

Q What is the nature of your company's business?

A We provide fire protection engineering consulting services.

Q Are you the owner of the business?

A I am.

Q Are there any other employees at Seneca Fire Engineering?

A There are no other technical employees at Seneca.

Q Please tell the Court the extent of your education?

A I have a bachelor of science degree in fire protection engineering from University of Maryland in 1980 and have been a registered fire protection engineer for 30 -- more than 30 years and all the continuing education that comes with those registrations.

Q Can you describe some of that continuing education requirements?

A Course work involving building construction, fire protection systems, testing of fire tests, building codes, life safety codes. All of the technical aspects that is the discipline of fire protection engineering.

Q And can you give us a brief example of the nature of the assignments that you get involved in?

A It includes design of fire protection features for buildings, working with architects, owners, contractors in constructing buildings and doing processes safely. It involves loss investigations, is a great deal of which I have been doing the last ten years of my practice, and design and analysis.

Q Does your work include fire spread analysis and building and fire code analysis?

A Yes, that's an integral part of fire protection

engineering. As part of our training we not only how fires start and originate and grow, but how they spread and involve systems and buildings and affect both the structures they occur in as well as the people who are in the building. So all of that fire safety umbrella is encompassed in fire protection engineering.

Q So part of being a fire protection engineer is understanding how buildings are put together?

A Absolutely.

Q And how they react under fire?

A Absolutely. Over decades our building codes have evolved over fire safety as an integral part of how we build our structure and how we built our society.

Q With respect to the fire code analysis, what have you done education or otherwise over the years to allow you to provide advice and opinions with respect to that issue?

A Well, fire codes and building codes are an integral part of our training and expertise and fire protection engineer. It is part of what we are tested in for our registration and it's a daily part of our practice.

I have been doing that kind of work for, like I said, for over three decades.

Q And specifically, have you had instances where you have interpreted NFPA provisions?

A Sure. Absolutely. In fact I sat on NFPA technical

committees that form the documents that are proffered to become those standards and codes.

Q And specifically have you testified with respect to opinions regarding NFPA 241?

A I have.

Q Can you give us an example?

A Two examples that come to mind would be a historic church in New York City that was being reroofed and they had a fire during the reroof and caused a significant amount of damage and loss of that structure. Another one I can think of is a library at the University of Georgia that experienced a fire during a reroof.

Q And both of those cases involved interpretation of NFPA 241 provisions?

A Yes, 241 is a standard that deals with projects under renovations, construction and alteration and the provisions of that are applied to how work is conducted in buildings, renovation and alterations.

Q Did either of those cases involve specifically NFPA 241 8.3.3 regarding yard storage?

A Certainly a topic. That numeral has changed over the years as they revise that standard over the last 30 years, but that topic of safely storing yard storage has already been in the fire codes.

Q Can you describe for us how you keep current with

respect to building and fire codes?

A Well, it's daily part of my practice as well as my participation in building code organizations and committees that develop those standards as well as my continuing education as part of my registrations, my engineering registrations.

Q Do you currently hold any professional designation with respect to the field of fire protection?

A I do.

Q What is it?

A I'm a registered fire protection engineer in 14 or 15 states including South Carolina.

Q And you anticipated my question. You are professional engineer in South Carolina?

A I am.

Q When did you first receive your professional engineering designation?

A 1985, I think.

Q What do you have to do to obtain that designation?

A We have to have an accredited engineering degree. You have to practice for four or five years under the supervision and control of a practicing engineer. You have to submit applications and separate testing and not unlike what other professionals do to secure their professional licenses.

Q Earlier in your career you worked by the name of company by the name of Roth Jensen, is that correct?

A Yes, I did.

Q All right, and is that where you gained much of your training?

A Well, I work for them almost 20 years so certainly I practiced with them for a long time, both before and after I had employment with other firms.

Q Right. I think I asked you. I'm not quite sure. Did I ask you how many states you are licensed in as a professional engineer?

A I don't think -- I may have offered that. I think it's 14 or 15.

Q Okay. And are you a member of professional organizations that concern building and fire codes?

A I am.

Q What association?

A I'm a member of the National Fire Protection Association, known as NFPA. I am a member and on the board of directors and numerous committees of the society of fire protection engineers, which is our technical societal engineering organization. We offer training and standards and other things.

I am member of National Society of Professional Engineers. I am member of the International Code Congress and was a member of the Legacy Organization that form the ICC, which includes the Standard Building Code Congress and Building

Official Congress of American, building code committee, and I sat on a number of state advisory code committees over the years.

Q Do you currently teach in connection with any of those areas of your expertise?

A Not academically. I do prepare and do seminars and short courses and sessions for other engineers and for continuing of others.

Q I think you told us about a couple cases that you were involved in, but I want to make sure. Have you ever been qualified as an expert to testify at trial as to fire code and the analysis of building and fire codes?

A I have.

MR. VOGT: Your Honor, at this time I would like to tender Daniel Arnold as an expert in the field of fire protection and fire spread and building fire code analysis.

THE COURT: Voir dire.

MR. SHEALY: Just briefly.

VOIR DIRE EXAMINATION

BY MR. SHEALY:

Q Just so I am clear though, Mr. Arnold, your work does not involve the determination of the cause and origin of a fire, correct?

A My practice includes knowledge of -- you say cause --

knowledge of how fires start. I am not an origin and cause investigator. I am licensed professional engineer. I often work in concert with the origin and cause investigator providing technical support, insight and collaboration on there efforts, but I'm an origin and cause investigator. Is that what I understood the question.

Q Well, and just so I understand, you are not the person that says this is how the fire started in a cause and fire investigation? That would be the cause and origin investigator?

A Well, I haven't done that in this instance in terms of what the competent ignition source for this fire was. That is correct. The fire we are talking about today.

I participated in origin and cause investigations over the years of my practice, but I didn't do that in this regard.

Q All right.

MR. SHEALY: Your Honor, I have no objection to Mr. Arnold being qualified as an engineer, fire spread.

I do have an objection to his being qualified in code interpretation because I think that that calls for legal conclusions based on discussions we already had. To the extent that he is called upon -- may be called upon in the trial of this case to interpret codes that have the force of law, again, I would say the witness is not the proper person to provide such

interpretation. That should come from the Court.

THE COURT: Well, I am going to find him qualified as a professional engineer with expertise in fire protection and analysis, and so -- and I don't think you have any objection to that, counsel.

What he will be allowed to testify to though is another matter. We will have to see. But I find him qualified as expert in that field and he can testify as an expert in that field. As far as the code section I will just have to wait and see. If there is some explanation he can give the jury with regard to terms and that, I will allow him to do that, but I don't think he is going to be able to testify about what the law is. He will be able to testify about any facts and give his factual opinion about the facts. He can give the jury explanation with regard to terms and that. He can give his opinion as to those. I will certainly allow him to do that because I think that will be helpful to the jury to be able to do that.

MR. VOGT: I want to make sure I am clear, judge. Well, perhaps we can do it after we go through the balance of it.

THE COURT: I need to see what the facts he is basing on. What his testimony is going to be.

MR. VOGT: Sure.

THE COURT: And I stick to my original position and that is that I don't think that he is going to be able to testify concerning the origin of the fire. How it started. Nobody else is able to do it, including people that are trained to do it. And I don't think he will be able to do it. But I will listen. I always have an open mind, but I think that with regard to conditions that would lead to a spread of the fire and what it takes the fire to reach some magnitude and that sort of thing, he certainly may be able to testify concerning that. As I told you earlier, if he is qualified to do that and I think he is qualified to do that, if you lay some foundational background for it.

Let's go with that and you can make your objection if you want to.

MR. VOGT: And Your Honor, just as a preface, I think the distinction Mr. Shealy was attempting to articulate was origin and cause. But I think the true distinction is the source of ignition.

Mr. Arnold is not going to testify as to the source of ignition.

THE COURT: That is the one and the same to me.

MR. VOGT: Well, if I can I will let him explain

that.

THE COURT: I don't see how you are going to get to ignition, when I can think of at least 30 things that could have started this fire and all of them would be pure speculation. You can't go there. That's what I am telling you. You will not be able to speculate about the cause of the fire and how it started. I don't think he will be able to do it. Maybe I'll have a clairvoyant moment here today, but thus far --

MR. VOGT: It could be that I am just articulating it improperly. We will let the witness do it.

Let me just pick up and will try to do somewhat of a compressed version of your testimony.

DIRECT EXAMINATION

CONT'D BY MR. VOGT:

Q Can you explain generally what you did in connection with your assignment to investigate the March 6, 2010 fire at Winthrop?

A Well, certainly I visited the site and observed the conditions as I found them. I took note of damaged patterns, difference of damage in the materials.

THE COURT: Excuse me, if I can interrupt. When did you do that?

THE WITNESS: About three or four days after the

fire.

THE COURT: Okay. Go ahead.

THE WITNESS: It was the week following. Fire suppression had been completed. It wasn't immediately after. Took note of those observations. I observed photographs that were made available by the fire department. Of particular interest photographs that were taken early in the event. One by an eye-witness of a journalism student which was an important factual observation as to the nature of the fire that was observed on the flat roof.

I researched and confirmed my understanding how flat roofs, TPO roofs and these types of roofs are tested and burn when tested in accordance with ASTM standards that deal with those tests. I have that working knowledge and understanding of how those roofs burn absent other combustibles and what the nature and circumstances of what that combustion is. Compare that with the photographs and the damage and from that it is clear to me there had to been combustibles on that roof in order to do two things. One, result in the fire that was observed by the eye-witness early in the fire before any fire department intervention. And secondly, secondly create the damaged products and building components that I observed and that -- I can

show you in photographs. That's a real brief summary.

BY MR. VOGT:

Q Let me just walk you back a little bit and I know we are trying to do this in a somewhat summary.

A If I'm talking too fast please let me know.

Q You didn't make a determination as to origin and cause, correct?

A Origin and cause is a term that is generic. I didn't make a determination as to what the competent ignition source for this fire was. That was not in the scope of my determination. But as to this fire, and by this fire I mean the fire I observed in the photograph and the fire that spread to damage of this building, this fire was caused by combustibles stored on that roof that became ignited by unknown source. That -- I guess that is a different way to say it.

Q Let's lay a little more groundwork for that. You had indicated --

MR. VOGT: If I could, Your Honor?

THE COURT: Yes, sir.

A These are not in the record yet, but they will be. There a series of photographs 64-A through 64-GG, 33 photographs, which I don't believe there is any objection to.

MR. SHEALY: When they are offered I will have no objection.

MR. VOGT: And if helps the Court we can put these

up on the screen, Your Honor. I think you have seen these before throughout the trial.

Q Why were these photographs of the early stages of the fire important with respect your investigation?

A Well, as 64-C, what is important -- and this is a photograph that was taken by the eyewitness student is my understanding -- you can see the flame height judged by the scupper as compared to this six foot window, and that flame height -- and I can show you later -- is somewhere between two and a half to three feet tall. That flame height is greater then you would expect from a TPO roof absent combustibles stored on it. So that as well as other things we will talk about is physical evidence that indicates and supports my opinion there was combustibles on this roof.

Q And again, we are going to get there, I just want to make sure the Court understands the significance of the scupper indicates what as far as the elevation of the roof itself?

A The scupper gives a sense on the outside of the elevation of the flat roof relative to the exterior wall of the building that is really the drain sprout from the flat roof as it goes to out to the exterior drain. And you can see flames through that scupper as well as above the wall above that, as compared to the six-foot window on the adjacent Hall.

MR. VOGT: Now, Your Honor, much of -- not much, some of Mr. Arnold's opinion in this case will also

describe how the fire spread as a result of the building construction. I think we can be here an awfully long time if we go through all that.

THE COURT: I don't think I have a problem with his testimony so far.

MR. VOGT: Okay.

THE COURT: When I say a problem, I mean as far as admissibility is concerned.

MR. VOGT: Okay. I am trying not to jump around too much, judge, and I am also trying to be fast.

Q You found out during the course of your investigation that the roof was made of TPO?

A Yes. I think at one point it was TPO is when I came to learn. I think I may have said in my deposition EPDM, but it was a flat membrane type roof.

Q Okay. And did you determine the dimensions of the flat roof?

A Generally its about -- its kind of shaped like the state of -- what state would that be, Idaho or Oklahoma. It's about five foot by ten foot, by twenty, twenty-four feet, generally.

Q And did you also determine the distance from the TPO roof to the adjoining pitched roofs?

A They varied, but they are between two and three feet.

Q And so you developed an opinion through the course of

your investigation as to how the fire spread from the TPO roof to adjoining roofs?

A Yes.

Q What is the basis of that opinion?

A Factors such as the elevation of the lowest burning on the roof, burn patterns and destruction of building products in that window of damage. Things like melted aluminum, deformed and distended steel. Aluminum melts at 1200 degrees Fahrenheit, 1100 to 1200 degrees Fahrenheit. And we had a portions of that roof where the aluminum melted and gone. And we had portions where there was virgin unmelted aluminum. So looking at these differential damage of products give you an ability to say there was a fuel at that location sufficient to cause that thermal damage.

Q And if you can, it may help the Court if you identify a few of the photographs that depict those conditions which help form the basis of your opinion as to fire spread?

A Mr. Vogt, can I have a glass of water?

Q Yes.

A Thank you. Here is one. This is at the corner between the wide and shorter part of the roof and you will see right here a piece of aluminum still remaining that's melted on either side of that aluminum piece. Those are closer up photographs.

Additionally at the steel beam that forms that angle has the paint and the tip of that is discolored indicating it had

been direct flame impediment on that beam. And there is also some completely consumed two by eight dimensional lumber completely consumed along that corner. And the amount of energy and heat release rate necessary to make that occur is substantial. And I know that the energy that would be residual in just TPO roof alone would not be sufficient BTU's or heat in duration to cause that damage. So based on that it is clear to me that in this general area there was combustibles in addition to what the TPO roof, naked of anything else, would be able to bring to bear in this area.

Q TPO roof is combustible, right?

A Components of TPO roof burn, yes.

Q If a fire started on that TPO roof but there were no other combustibles other than roof assembly itself, would -- how high would the flame be at, approximately?

A Inches. TPO roofs and any flat roofs are tested per ASTM E108, which is the fire test for roof assembly, roofs are -- over decades have been problematic for our building fire safety because we don't want fires to go from room to roof to roof from embers depositing on them. So there fire tests criteria that apply to construction of roofs. And there is tests that get done to demonstrate that performance, standard tests that roofs must met, and they involve exterior flame impingement and measuring or assessing the resulting flame spread on that roof.

So to answer your question, all those tests are done in incline position with the wind back against them with a ten-minute flame on that roof and we get very, very little flame spread for a class A roof.

I am probably giving you too much information.

Q But that's if the TPO roof is a class A roof?

A It can be, yes. I believe it was in this case. That's what I understood it to be. So in a horizontal position you get less wind spread because it is not tilted.

Q If I took a roofer's torch and ignited the TPO, would a fire spread to the adjoining pitch roofs?

A No, it would self-extinguish.

Q Why is that?

A Because TPO surface is mills thick, you know, so it doesn't have the ability to reheat and generate surface burning. The way it burns it melts ahead from frame front and burns as it goes. In a horizontal position it doesn't have the ability to heat as it goes to melt it as it continues. So, I am confident it would have self-extinguished.

If you went up there and you threw a match on it nothing would happen.

Q Same with a cigarette?

A Yeah. There is not enough competent ignition energy to make that happen.

Q So in this case why is the source of ignition relevant

to your investigation as to how the fire occurred and spread to the adjoining pitched roofs?

A Well, we know the fire occurred and the photographs from the witness statement clearly show a fire early in discovery, that is of nature beyond what a TPO roof would support, whatever the cause of ignition -- whatever the source of ignition was, as opposed to cause. That's a term I want to be precise on, as to the means of ignition. Ignition energy. I have no idea what the ignition energy was for this fire.

Q Right. So during the course of this investigation you received information as to the where the fire originated?

A The area correct.

Q And that is something that you typically rely on during the course of your investigation as fire protection engineer?

A I rely on it and also take note to the extent I observe things from an engineer perceptive that may not be consistent with the origin cause investigators, whatever facts they are basing that on. I don't take that blindly and I saw nothing in this case that was inconsistent with that area of origin.

MR. VOGT: Your Honor we have -- I have a lot of photographs that I would typically show him on that issue.

THE COURT: I don't have a problem with his testimony on that.

MR. VOGT: Okay.

THE COURT: You know, what he testified to based on his knowledge would be a matter for the jury to way and determine his credibility and what he is saying, that and subject to cross examination. Any expert witness the defense wishes to put up which might take a different view.

I don't have a problem with his testimony there. Let's do this. Let's don't have him -- while we are just trying to finish up his proffer right quick, I am not trying to stop you from objecting when we get into the testimony actually before the jury but, stay away from his construing the code. Construing code. Now terms within the code, explanation of what they mean something like that, I don't have a problem within his expertise, but not have him basically determine what the law of the case is. But I think if there are terms in there, words in there that he's familiar with and knows about that, that might be helpful to the jury that he can give his explanation or definition of what he understands the definition of that to be. I want you to stay away from actually saying what is allowed or prohibited by the code.

MR. VOGT: Well, Your Honor, I am trying to picture how I can ask this question without implicating the code. If I were to ask him after

showing NFPA 8.3.3, are you saying that I can't ask him if that had been adopted by the state of South Carolina?

THE COURT: Oh, you can ask him that.

MR. VOGT: Okay.

THE COURT: I don't want him to say that if they had this up there this violated this section of the code. Then we will get into an issue that might be fertile ground for appeal --

MR. VOGT: Right.

THE COURT: -- if the Appellant Court were to determine if that was a question of law.

MR. VOGT: If I ask him a hypothetical question whether the storage of roofing paper and shingles on the flat roof violated code, would that be acceptable?

THE COURT: I think he can give his opinion on that. I think he can give his opinion on that.

MR. VOGT: Your Honor, unless you have more questions I think essentially those are the three areas where Mr. Arnold will be proffered as an expert. One as to fire spread. One as to what you heard about the means of ignition versus without a means of ignition this fire could not be started on a TPO roof. And three, in a hypothetical scenario this is the code, 8.3.3., would it be violated if roofing

materials were placed on there.

THE COURT: The last one I'm having a little problem with.

What's your position?

MR. SHEALY: Your Honor, I don't see that there is any logical difference between what you told him he couldn't say and then just putting if in front of it. To me that's still a commentary, an opinion of law. It's just put in a hypothetical form. It's just doing an in-run around what you indicated you would not allow.

MR. VOGT: Your Honor, if I may. We are not asking an opinion as to the ultimate issue of law. We are asking an opinion as to the ultimate issue of fact, which precisely allowed by 702, 703 and 704. The law in this case, there is no dispute, South Carolina had adopted NFPA 241. The fire marshal testified that this morning as far as what is the applicable code and in actually in all the motions the defendant acknowledged that.

There is no dispute about what the law is. He is simply saying this is his application which is issue of fact.

THE COURT: I am just walking a tight line between. I don't want to allow you to go into

something that is going to get this case tried again, should you be successful.

MR. VOGT: And I think that's really the issue that was discussed in that Knoke case, where the Court allowed the fire marshal shall to testify as to code and code violations as to the absence of smoke detectors.

THE COURT: I had read a couple of things that indicated having an expert opine by what the law might be and whether it violates the law or not is not allowed. The Knoke case seems to let him go a little further then that, but -- I think it is possible to compromise on it -- and I will hear from both of you on this if you want to be heard. I think what I might allow you to do is to let him acknowledge that section, whether he reads it or you read it and then ask him whether this flat roof between the buildings is within thirty feet of a building, and the thing is what bothers me about it is, and the reason I think there needs to be something presented to the jury on what that means is that instead of me just simply charging the jury this section they don't know what that means. They don't what yard is, and they don't know if you say something on the yard can't be within thirty feet of a building, well does that include a

connector to the building and a flat surface between the two buildings storing stuff in there is still within within thirty feet, but a jury might not understand it. And I think they are entitled to know that otherwise this will be very misleading.

MR. VOGT: And Your Honor, if it helps I can continue the proffer of Mr. Arnold is prepared to testify as to the meaning of yard storage under the NFPA.

THE COURT: I will probably let him do that. He can testify as to what his understanding of yard storage. That he's got a lot of expertise in that field I am sure, having worked on these codes. I will allow him to do that. But also to clarify whether a flat roof between these two buildings that construction is being performed would be within thirty feet of the building, so that -- so that the jury will understand that.

Do you want to be heard?

MR. SHEALY: Your Honor, I don't think I can quarrel with the witness asking whether or not the area in the flat roof is within thirty feet of a building. That is a factual observation that is observable by this witness or any witness, quite frankly.

THE COURT: Right. I will let him ask him that and I will let him ask -- explain what yard storage means to him. Explain that, that is what is written in that code. What it means and technically -- technically that is kind of interpreting it, but it's also a term which needs an explanation and I don't want to be in a position to have to charge the jury on it because I'm afraid I might get into a charge on the facts on it if I start trying to expand on the statute, unless there is something somewhere that explains what it is, then I think he should be able to explain it and I don't think that's certainly not prejudicial to the defense.

MR. SHEALY: I -- well, Your Honor, I would just make the same objection that I made, calling for legal conclusion when terms like that -- when witnesses have been asked what those terms mean. Because those are terms that have legal significance to a standard that the plaintiff is holding up as the standard that was violated. That would be the objection.

THE COURT: Well, he won't be testifying that he violated this. He would simply explain what that term means to him in which he is familiar with --

MR. SHEALY: Right.

THE COURT: And I don't really see how that's...

MR. SHEALY: Your Honor, we just don't have law

professors come in and tell us what the words in a particular statute mean. We rely on the Court to explain to the jury. If the word has a particular meaning that the law recognizes then the Court gives it that. If it doesn't then the law in this State is that words should be given there plain --

THE COURT: Words -- no. The Court can't explain those terms. If they are legal terms the Court can give further definition of those legal terms. I will give it right out of Black Laws Dictionary. You have seen the Supreme Court do the same thing.

MR. SHEALY: I certainly have. Yes, sir.

THE COURT: So we can do that, but we can't do it with these technical terms that are in a code like yard storage. Nobody knows what that means, and it's not something you can pull out a legal dictionary. So it is not a question of a legal terms. It's a question of these technical terms, which the jury needs to have some explanation of what it means.

MR. SHEALY: And again, Your Honor, the section has the force of law. It is the law, so --

THE COURT: Nobody seems to know it though. Not a single person has testified, has any idea what it is, the code sections we are talking about. So how do we expect the jury to know.

You got all your people here work with it every day and supposedly know it, but all of a sudden they don't know anything. Never even seen it before. Yeah, it's probably in the office somewhere. Never even seen it. Not my area. You got all your key people and everybody else that work out there on the job none of them know what it is.

Had a fire marshal in here. Really hadn't worked with it until he was asked to do that by plaintiff's counsel in preparation for a lawsuit and he has been in it for thirty something years.

MR. SHEALY: Yes, sir.

THE COURT: So how do we expect a jury, a lay jury to sit over there to know.

I'm amazed. Doing all these projects and everything and all these safety officers, superintendents, owners and everybody else and fire marshals, don't even know what the section is. It's amazing to me. But in any event, that's where we are. It is what it is.

MR. VOGT: Your Honor, may the witness step down?

THE COURT: He may.

(Witness excused)

Is there somewhere that the term is defined so the Court can charge them on it?

MR. VOGT: Your Honor, NFPA.

THE COURT: Is there any definitions in the code?

MR. VOGT: Really Mr. Arnold should be the one to explain this to you, and he can tell you how it gets there. There is a NFPA 1, is where that definition is taken from, and NFPA 1 defines yard storage as "storage of commodities in an outdoor area."

Now this is 2006 NFPA 1. The NFPA code, the IFC was a 2006 edition. Do you remember International Fire Code incorporates by reference NFPA provisions as we are talking about them. The one that was in effect was the 2000 addiction. I believe what Mr. Arnold will testify is that this was the definition used within his field of expertise and then codified, NFPA 1 in 2006. That continues to be the definition of yard storage today.

THE COURT: Well, why don't we just let him not define it and I will charge the jury this definition when I charge the jury. But that's -- and it says storage of commodities in and outdoor area. Of course a roof counts as an outdoor area. It's not just in a yard, so that helps to some extent. Still doesn't explain it satisfactory.

MR. VOGT: I think he can explain it though, Your Honor, and I think that's what the intent of 702 is.

We know what the law is in this case. Explaining the particular interpretation is not telling the jury what the law is. He is applying a certain set of facts to determine if it is a violation. That's assisting the trier of fact to understand a technical issue and this is certainly a technical issue. Because I don't know judge, when you hear all this testimony and then an hour charge or something like that, hour and a half charge, we read a definition the jury has never heard of before.

MR. SHEALY: We do that in every trial. We give the jury legal terms that they never heard before.

THE COURT: I will do this. I will stick to this. I'll charge this definition. It's broad enough for you to education the jury in your final argument. You can refer to this definition, tell them what it means.

MR. VOGT: In my closing?

THE COURT: Yes. And so you will know what I am going to charge them on that as far as the definition is concerned and you can say what it means in your opinion. This means any outdoor area. I understand what you are saying, but that's not really going to add anything if he says it is outdoor area. This says it is outdoor area.

MR. VOGT: Well, it does, Your Honor, because out

door area encompasses anything outdoors.

THE COURT: Year. That's what this means. You can't store it in an outdoor area within thirty feet of a building.

MR. VOGT: Right.

THE COURT: That's the key.

MR. VOGT: Right.

THE COURT: Is it within thirty feet of a building, not whether it's outdoor storage. Okay.

MR. VOGT: And that's why I think -- I think he's the person best equipped to explain that.

THE COURT: We already agreed he can say that. He can't argue with that because it's a factual determination.

MR. VOGT: There are some areas, Your Honor, that outdoors are excluded, like a courtyard or something like that. But I understand. You heard enough from me.

THE COURT: I think this gives you enough to be able to present your case satisfactory and that's what I am looking at, without him interpreting the language of the statute, essentially the statute. I don't know if these technical regulations should be considered statutes or law, or not. I think these highly technical regulations ought to allow for more

explanation from experts then of course just sheer questions of law. Legal terms it's a different matter. These aren't legal terms by any stretch of the imagination.

MR. VOGT: Your Honor, I just want to make sure I am clear because I don't want to do this in the middle of a couple of hours of direct. I want to make sure I understand what I am allowed to ask him with respect to NFPA 241. For instance, can I ask him about what's the purpose of NFPA 241 as se forth in NFPA 241? Because right now it's not even in evidence.

The fire marshal said that is the law in the State of South Carolina, but it didn't come in to evidence. So for instance, can I ask him how does it apply? It tells us how it is applied right in the statute. Does it apply to buildings that are being -- demo activities of reroofing.

THE COURT: I think he can say that. That's within his area of expertise.

MR. VOGT: All right.

THE COURT: That is what he does. He advises people and come up with plans and knows that. I think it is within his expertise.

MR. VOGT: Okay. So Your Honor, is the question you want me to avoid whether Pickens violated code by

storing combustibles on the roof? Even in a hypothetical question, is it a violation to store these materials on the roof? Is that what I'm not suppose to ask him?

It seems to me I should be able to ask him the hypothetical question, Your Honor. If the Court's ruling earlier this day with respect to the fire marshal is that he was not qualified to answer that question, and I believe Mr. Arnold clearly is qualified.

THE COURT: Why don't we do this. That's the question. If I allow you to ask that question he is going to object to it, from defense, and then that becomes an appellate issue as to whether he is in fact saying somebody violated the law. That's suppose to be a conclusion of law. That's his position. And he maybe right. He may not be right. But he maybe right about that. I think some others are of the same opinion; that it might be that he can't testify that it's a violation of the law, and so, I think you have to do it a different way. That is, that I think you should be able to ask him that hypothetical, but be very careful to say it is only as to the hypothetical conclusion with regard to an ultimate issue for the jury on the factual, not a legal issue. Therein comes

the fine dividing line that you have to make.

I think that you can get there the same way by clarifying the statute section, the language of the statute, that is it within thirty feet of a building under construction and then go on in to what these combustible materials, why you believe they were on there and what it would cause and the reason you believed that these combustible materials were up there -- the construction materials were there. I think you can get there the same way. It's just not as direct. But it might be in contravention of what's allowed in these cases in which event I would be reversed by appellate courts and that is what I trying to avoid, to see this case tried a second time on an error of law.

What I think you should be able to do and what you are allowed to do might be two different things. Okay. And so, I want to be as safe as I can on this as far as my ruling is concerned, and try to get it right so you don't have to do it a second time and so I think you will have to go that way.

I will not allow you to ask him is this a violation of law. Basically what you can ask him about is this a violation of this code section, which has the force of law if they didn't. I'm not going to

allow you to ask him that. I know you would like to ask him, I think you should be able to ask him. But, I think that maybe in contravention of the law as it is in this State, so we need to stay away from there. You will have to go around about way of doing it, but I think you can accomplish the same thing.

MR. VOGT: Your Honor, I will do my best and if I ask a question that you think --

THE COURT: If you get an objection I will not sustain it.

MR. VOGT: I want the Court to know I will do my best in that regard.

THE COURT: I know you want to get there. That's the ultimate issue. You would like to have him testify. But I am just saying I think that's possibly a reversible error that I might make, so I will not allow it. But we already defined where you can go with this witness and I think you can get where you want to go, other than what was the energy source that ignited the fire. You can't go there because he can't say.

MR. VOGT: We have no intention of it.

THE COURT: He can testify to whatever else about it. All right. We pretty clear?

MR. VOGT: Yes.

THE COURT: Let's bring the jury in and try to get started and I would like to finish his testimony today if we can. I know you like to get his testimony in today because he is probably charging you a little bit.

(WHEREUPON, the jury enters the courtroom)

THE COURT: Ready to proceed?

MR. VOGT: The plaintiff calls Daniel Arnold.

DANIEL ARNOLD, called as a witness, having been duly sworn by the clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VOGT:

Q Will you please tell us your name?

A Daniel Arnold.

Q And how are you employed?

A I am a fire protection engineer.

Q And what is company are you employed by?

A I am employed at Seneca Fire Engineering.

Q What is the nature of that company's business?

A We provide fire protection engineering consulting services. That's what we do.

Q Can you outline for the jury your background with respect to your education?

A I have a bachelors of science degree in fire protection

engineering. I got that in 1980.

Q What type of work does Seneca Fire do?

A We provide consulting services to contractors, to owners, architects, to builders in constructing and designing buildings and facilities for fire safety. We are involved in developing programs and safety management plans and I also do loss investigation analysis.

Q Can you give us a few examples of the type of assignment you received with respect to analyzing fire spread?

A Well, the ones that come to mind immediately that are similar to the issues in this case, would be a historic church in Manhattan, that experienced a major fire during a roof renovation project. Another one would be a library at the University of Georgia, that had a similar -- had a fire during another roofing project.

Q And as far part of your work in those part of cases do you analyze applicable building and fire codes?

A I do.

Q How many years have you performed fire spread analysis and building and fire code analysis?

A Over thirty years. It's have been part of my practice since I began in this industry.

Q With respect to fire code analysis, what have you done education or otherwise over the years to allow you to provide advice and opinions with respect to those issues?

A Well, fire spread and fire development is part of my education and training and it has been part of my practice for thirty years. Also as part of my registrations I have.

Continuing education every year for the last thirty years and those topics are among all of the fire safety topics that I practice in.

Q The same type of thing you do with respect to expertise as to fire spread analysis?

A It is very similar.

Q What do you do to keep current in the area of building and fire codes?

A Continuing education, annually attend and provide short courses and also it's just what I you do every day, is kind of analysis. I participate in building code seminars. I sit on technical committees that are responsible for, or advising on building code development and I'm a member of a number of organizations who developed a technical foundation for the codes that are adopted by jurisdictions.

Q Do you currently hold any professional designation with respect to the field of fire protection engineering?

A I do.

Q What is it?

A Im a registered professional engineer in 13 or 14 states.

Q What do you have to do to obtain that designation?

A You have to have the requisite educational background. You have to practice for a number of years under the direct supervision of a practicing --then practicing engineer. You sit for your board, your examinations and successfully pass those boards and then you submit an application and all those background checks and then your accepted by each individual state as being able to provide engineering services within that state.

Q Are you a professional engineer in the State of South Carolina?

A I am.

Q When did you first receive your professional engineering designation?

A In 1985.

Q Are you a member of any professional organizations that relate to building and fire code?

A I am.

Q And what is it?

A I'm a member of the National Fire Protection Association and I have sat on number of technical committees that develop code and standards under their influence.

Q What is the National Fire Protection Association?

A It is the -- how do I say it briefly. It is the organization responsible for promulgating all the codes and standards -- not all. Many of the fire safety codes and

standards that we adopt and we -- they benefit as a society. So they publish and are responsible for the technical development of hundred of codes and standards that are adopted in building code and adopted by jurisdictions.

Q And I think I cut you off. I wasn't sure if you were complete when I asked you are you a member of a professional organizations. Are there other other than the NFPA?

A Yes, I'm a member, actually on the Board of Directors for the SFPE, which is the Society of Fire Protection of Engineers. I am the member International Code Congress and was member of Legacy Organization which form the the ICC, which are are other building code organizations, SPCCI, and OCA. I'm a member of the National Society of Professional Engineers and a number of other state and local building fire code and fire safety organizations and committees.

Q Are you active in those organizations?

A I am.

Q Do you currently teach in connection with any of the area of your expertise?

A I do. It's not usually for me to hold several seminars and short courses throughout the year. I am not academic teaching but I do professional development for other engineers. I would say younger engineers who are trying to learn a particular aspect I will do some of that.

Q Have you ever qualified as an expert to testify at

trial as to fire spread and the analysis of building and fire codes?

A I have.

MR. VOGT: Your Honor, the plaintiff would tender Daniel Arnold as an expert in the field fire protection and fire spread and building and fire code analysis.

MR. SHEALY: Cross examination as to qualifications?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. SHEALY

Q Mr. Arnold, you don't -- your work does not involve the determination of the cause or origin of a fire, correct?

A It can and some times does. In this instance I have not done any work involve the means of ignition of this fire, so by cause and origin, but what ignited the fire I have not.

MR. SHEALY: Your Honor, may I approach the witness with a copy of his deposition.

THE COURT: Yes.

MR. SHEALY: May I unseal it?

THE COURT: Yes.

Q Mr. Arnold, if you turn with me to page ten, the deposition that was taken of you on December 6, 2013.

A Yes, sir.

Q All right, and if you will look at line 15, question was posed to you then, "Okay. And what I was really sort of getting at is, how much of what you do looks at investigating the cause and origin of a fire post loss as opposed to consulting with a building or architect as to how to design a fire suppression system or a fire protection or fire prevention scheme?"

Answer, "Let me clarify. My current work does not include determining origin and cause. I provide engineering support to origin and cause investigators as part of my work."

Is that the answer you gave?

A Yes. I think it went on to explain further, but that's what you read. That's correct.

Q All right, so not just in this case, but your current work doesn't involve determining cause and origin of fires?

A As I indicated later, I am not a licensed origin and cause investigator in any state.

Q Yes, sir.

A And that's what I say later in this testimony. That's correct. I'm not a licensed origin and cause investigator, I'm licensed a profession engineer. And that is the distinction that I was trying to draw here.

Q Thank you.

MR. SHEALY: Your Honor, I have no objection to Mr. Arnold qualifications as a fire spread, fire

suppression engineer. I would object to his qualifications -- or object to him being qualified as expert in code analysis because I think that involves determining legal issues in the case.

THE COURT: All right.

Do you want to ask any more questions?

MR. VOGT: No, Your Honor.

THE COURT: I find him qualified as a professional engineer fire safety and fire spread and you may proceed from there.

MR. VOGT: Thank you, Your Honor.

THE COURT: He is so qualified.

DIRECT BY MR. VOGT CONT'D:

Q Now, Mr. Arnold, you are being paid for your professional services that you render in this matter?

A I am being paid for my time, yes.

Q At what rate?

A My rate is $280 an hour.

Q What was the scope of your assignment with respect to the March 6, 2010 fire at Winthrop?

A I was asked to review the circumstances of the fire, review the fire and get an understanding of the circumstances of it and why it caused the damage that it caused.

Q Can you tell us when you first arrived approximately at the site?

Q It was approximately I'm going to say three to four days after the fire. The fire was suppressed and the scene was stable. There was no ongoing fire suppression activity, but it had not yet -- they had not yet started any demolition to do any remediation?

Q During the course of your onsite part of your work, did you gather information?

A Yes.

Q What type of information did you gather?

A I gathered information related to the circumstances I saw; things like damage patterns, difference of damage between certain types of building components, metal versus wood versus other products, spread and burn patterns, as well as -- and photographed all that. I dimensioned and sketched and gain that body of information. Basically the physical conditions that I observed.

Q Did you interact with any of the public officials or anybody like that with respect to their investigation?

A I don't recall if public fire officials were there at the time. They may have been there, but I certainly interacted with origin and cause investigators who were there and they provided me information they had gathered up to that date from their investigation.

Q Did you review any documents that you received at any course during your investigation with respect to the Rock Hill

Fire Department Investigator report?

A Yeah, I reviewed the report. I reviewed the photographs that they provided as part of that report or provided separately. Yes.

Q Did you obtain copies of interviews which were attached to that report?

A I did.

Q Let's go back just for a second. Can you describe a little more slowly the conditions that you saw when you first visited the site?

A Well, I observed where the things like the lowest area of burning. In a fire like this involves a slanted roof. The field of damage on the slanted roof you kind of look and gain an understanding where the fire started.

We all have a sense that fire spreads vertically up. So a roof like this you try to see where the part of lowest burning was to give you a sense where -- if not where the fire started, where the lowest part was. That gives you a sense of may be the origin area, and in this case that was consistent with what the origin investigators saw as well.

I also either there, or shortly thereafter, was shown or became in possession of a photograph that was taken by an early eye-witness before the fire department arrived. That was very important piece of evidence in me understanding the nature of the early fire in this case.

Q Is that type of information that you as a fire protection engineer analyzing fire spread typically rely on during the course of investigation?

A Absolutely.

Q You mentioned earlier about the area of origin. Did you receive information from these other investigators as to the area of origin?

A I did.

Q Did you make an independent determination as to the area of origin?

A I saw nothing that was inconsistent with that determination that they offered, which was it had occurred on -- has become to be known as the flat roof between the two halls.

Q And describe the the flat roof with respect to dimensions? What it is made of that type of thing?

A The flat roof is a location at two junctures of two buildings, that where roofs come down and it is about shape like the state of Oklahoma, sort of about five feet in the short side, ten feet elsewhere and about 20 to 25 feet long.

Q Now, in preparation for your testimony today did you prepare an illustration, an animation that would allow you to better describe your findings?

A I did.

Q Can you describe how the animation was put together?

A Sure. I worked with an animator and developed the

issues that I wanted to demonstrate and show and from that with the drawings and other information -- photographs that I had taken -- we developed an animation to characterize the flat roof and the observations I made relative to the flat roof.

Q And as part of that there was, I believe, a number of photographs that were made part of that?

A I think I included thirty or thirty-five photographs that I made -- may have refer to. So I included those in to the animation just for simplicity.

Q And were these all photographs that you either took yourself or obtained during the course of your investigation of others?

A They were.

Q So, if we start with the animation?

MR. SHEALY: Your Honor, may we approach.

THE COURT: Yes, sir.

THE COURT: Madame forelady and members of the jury panel, there is a matter I need to take up with counsel at this time. It will probably take a few minutes. Please retire to the jury room.

(WHEREUPON, jury leaves the courtroom.)

THE COURT: Okay.

MR. VOGT: If you turn off the lights I think it will play it better. I think I can do this. Here we go.

Your Honor, at any point during the presentation, I can stop it and then show photographs.

THE WITNESS: You have to wait until the preset stops to show photographs. You can stop the amination at any time.

THE COURT: Defense counsels needs to be able to see it before you show it to the jury.

MR. VOGT: Yes. Oh, yeah. I am just trying to get it to run, Your Honor. There we go.

(WHEREUPON, photographs were shown.)

THE COURT: You may have to stand down and run it.

MR. VOGT: For instance Your Honor, we get to the point where it depicts the flat roof and then there is a series of photographs which we show all these are exhibits and not objected to.

MR. SHEALY: Your Honor, a couple of objections. First to start off with this photograph here, Mr. Arnold, has not laid any kind of foundation for any knowledge of the exact composition of this roof. He said he thought it was something else in his deposition. He'd come to find out it was TPO, but there are other different kinds of compositions. Different amounts of insulation and he hasn't laid the foundation for that. The beginning of this goes from a photograph taken early in the fire. There is smoke

visible, no flames and then we move to straight in to there are flames. The photograph that he relies on for the flame was taken 45 minutes after the first photograph that he he relies on. In fact he stated on the record an error, a factual error. The photograph he is relying on is not taken before the fire department gets there. It is taken 45 minutes after they get there. And so this animation is riddled with factual errors and I object to it being played for the jury.

MR. VOGT: Your Honor, just because this animation doesn't show the composition of the flat roof other than there is a metal deck and a covering over it. The point of this slid is the composition of the roof above it to explain the fire spread. As far as initial photographs all those photographs have already been entered into evidence. They were taken and they are part of the fire department report.

THE COURT: What is this suppose to depict this one up on the screen now?

MR. VOGT: How do I get the photographs?

THE WITNESS: You have to go back.

MR. VOGT: Your Honor, can he step down so we can get this working better.

THE COURT: Sure.

MR. SHEALY: Your Honor, it's this transition that is erroneous.

MR. VOGT: Your Honor, this is a demonstrative aid. There's nothing representative of this other than as to how the fire spread. It's not relevant as to whether it is 45 minutes or hour later. We're simply showing how the fire spread and the conditions met by the fire fighters at the scene.

THE COURT: Shouldn't there be an explanation this is 45 minutes later?

MR. VOGT: Your Honor, nobody can say when the fire actually initiated. It's when the fire was discovered.

THE COURT: I am talking about between the smoke and the fire. His objection is it looks like you are going straight from the smoke to the flames which means a big combustion right then and he's saying this was actually 45 minutes later, which is misleading to the jury. And I'm saying shouldn't that be clear that this second photograph is 45 minutes later if in fact it is.

MR. VOGT: I don't know the basis of saying it's 45 minutes later, Your Honor, but we can start at -- we don't need the overall view I don't believe. We can skip that amination view. In my view it's not

relevant. We can start with the fire shown on the flat roof.

Again, this is not evidence. It's simply used to illustrate the conditions of the building, how they were made --

THE COURT: I understand that. It just can't be misleading. The Court has to make that determination.

MR. VOGT: Sure. Sure.

THE COURT: There are some cases on it. There are some things that the Court has to consider in deciding whether it fairly represents whatever it's suppose to represent even though it's a demonstrative aid. Does it fairly represent as far as what it's suppose to depict and it is based on accurate measurements, etc, etc, and so, and that's what we are looking at.

MR. VOGT: Your Honor, all these photographs were entered into evidence by stipulation and Chief Driggers testified about that.

THE COURT: I don't have any question about the photographs, but what was that last one you were showing? What was suppose to depict?

MR. VOGT: The compensation of the roof panels. Why don't you explain.

THE WITNESS: I just thought this was a useful aid to explain some of my observations to a lay person.

That is the only reason for doing that. These photographs were a way of giving context. If you zoom on a small item you don't have context where it is taken in the big view, sometimes you lose -- it's not instructive.

MR. VOGT: He was asking about the last slide.

THE WITNESS: The last slide, my only point I was interested in discussing this (indicating). This is from inside the building that shows the fire did not go within, into the interior of the building. It shows the fire did not go within, into the interior of the building. That it involved the roof assembly. This is a close up of that. This is the roof that's above that shows the heat to the underside of the decking, with no damage to the structure below. This is just damage on the decking.

This is a sprinkler that's operated to cool this area and is driven by the heat. This is the peak of the roof. So that was the purpose of that slide. Not the construction of the flat roof. I didn't have any interest in that.

MR. SHEALY: Your Honor, there are other errors actually with that last slide because the roof that the ladder descends from is Bancroft and the record before this jury is that Bancroft was just a shingled

over -- there was no insulation. It was just a shingle over nail board and what he's showing is the insulation layer, shingle layer, that's on Owens. That's on the other side.

Your Honor, there are errors no matter where we look here.

MR. VOGT: Your Honor, that's not accurate. What people may have been calling Bancroft, the roof covering and we have photographs of it -- let's show those photographs -- in that is area is precisely what is depicted in that.

MR. SHEALY: I don't disagree that that is the composition of the roof on the other side of the flat roof. It is just not on that side.

THE COURT: He's not saying that's the flat roof, are you, that last photograph?

THE WITNESS: He was just trying to have a way to explain the concealed nature of the fire between the shingles and the steel deck and the difficulty of how the fire spread to involved that, trapped, if you will, polyisocyanate insulation and the difficulty which it was to suppress.

THE COURT: Does that last photograph intend to show the makeup of the rubberized roofing?

THE WITNESS: No, sir.

THE COURT: Or what is underneath it?

THE WITNESS: No, sir.

THE COURT: What is it suppose to show again.

THE WITNESS: The flat roof?

THE COURT: No, that last photograph. That last part of the animation.

MR. VOGT: The general way -- the way the fire spread to involve the roof assembly and how the roof assembly that burned was different --

THE COURT: Not suppose to show the makeup of the roof on the flat roof?

Mr. Vogt: No, sir.

THE COURT: The makeup of whatever is underneath the rubberized coating?

MR. VOGT: No, sir.

THE COURT: But Your Honor, it is depicted. I mean it is depicted with a cutaway. What I am saying though is the cutaway of the pitched roof is erroneous because it is on the wrong side. This is all Bancroft. This is all Bancroft here, and the evidence before this jury is that Bancroft roof doesn't have the layer of insulation like Owens had. See Bancroft hardly burned. It is Owens that burned which is to the right side of the roof. Owens burned. That's where all the damage is, because of the construction

of the roof. But he has got that cutaway on the wrong side.

THE WITNESS: Your Honor, I am just trying to show that this construction was, and these nailers had the insulation that created the concealed nature of the fire. Nothing more than that. Bancroft, Owens, just saying the fire spread because of that feature and the fire got into that feature via the the flat roof.

THE COURT: How about his objection this is not -- what is your objection again? I don't which is which as far as the building is concerned. He's trying to show that building, whatever it is. What is that building?

MR. SHEALY: Your Honor, I am saying this is Bancroft. This is area we were working on still. It is not shingled yet. This is still Bancroft. Owens -- the building that has the massive damage is over here (indicating). It's not really visible, but almost the entire roof of Owens burned.

THE COURT: What is the difference if he shows that if it burned too.

MR. SHEALY: Oh, he can show this picture. Sure. It's the animation that is erroneous.

MR. VOGT: Actually Your Honor, Mr. Shealy, he is wrong -- primarily wrong, because this is where --

this the Bancroft roof that U-shape. This was not part of Pickens work for this job. That is what they use to call the Annex. But it's not really relevant, Your Honor.

We are not talking about -- all we're showing is this is how the fire spread.

The relevant part is how does it get off that flat roof to these adjoining pitched roofs. And that's what all this animation is suppose to illustrate for the jury. That's it.

THE COURT: What is still your objection now?

MR. SHEALY: Well, Your Honor, I have multiple objections. I mean, again, one of my major concerns is the way this animation begins. It is --

THE COURT: All right. Let's eliminate that. We will start with the -- we can do it one of two ways. Either we can start with the smoke and then said 45 minutes later this is what you see, or if you want to just start with the fire and go from there.

MR. VOGT: We can start with there. Judge, the 45 minute thing is based off a timestamp that's on photograph. We don't even know if the camera's clock was correct. All he did was ask was there a time stamped. Yeah. It doesn't mean the clock was correct. I can't imagine how many digital cameras in

this country don't have the right time. It's not relevant to this explanation.

THE COURT: Well, it is, I think because --

MR. VOGT: But I have no problem eliminating the first slide and starting with the fire at the flat roof.

THE COURT: If your saying you go from this to this almost immediately, there's a big difference between that and you go from this to this in 45 minutes. There is a big difference in explaining how fast the fire spread.

MR. VOGT: We are not talking about speed of the fire spread, Your Honor. All we're showing is, with the slides, the height of the flame from the flat roof, indicating as you heard, that there were combustibles there. It has nothing to do with the speed of fire.

THE COURT: I understand that. Counsel says it is misleading if you go from this straight to this. Like you get the smoke and you get this. Like it suddenly blew up there.

MR. VOGT: We can start with just the fire photos.

THE COURT: What's the other objection?

MR. SHEALY: Well, Your Honor, if we -- I don't know exactly what he is saying when we start with just

the fire photos, how much of that eliminates what I am talking about. But the cutaway of the roofing system which also showed -- the cutaway of the roofing system on the pitched roof which also shows a cutaway of the roofing system on the flat roof, there is a slide that shows that and that I believe is erroneous and misleading.

THE COURT: You don't agree that that's --

MR. VOGT: No, I don't Your Honor, and it's irrelevant, but if it's erroneous --

THE COURT: It's relevant, counsel, the makeup of that flat roof, you have got something that burns underneath.

MR. VOGT: He's not talking about the flat roof.

THE COURT: Yeah, he is. He's saying you haven't got the makeup of the flat roof right. He doesn't know what the flat roof --

MR. VOGT: Your Honor, the testimony in this case has been by a number of individuals that it's a TPO roof and that's all that depicts. It doesn't depict the thickness of the insulation. There is no question it was over metal decking. It simply shows a roof covering over metal decking. That's not in dispute.

MR. SHEALY: Your Honor, it does depict the thickness of the insulation, and TPO roofs have -- can

have different compositions underneath.

We've had testimony saying well they are fully adhered and there are some partially adhered and that there are chemicals that are used to do that. Here, there is three dimensional (indicating). This is apparently the membrane and then there is items underneath and we haven't established what those are. That's a problem.

MR. VOGT: Your Honor, it has been established. It's insulation underneath TPO over metal decking and that's what it depicts. I'm not saying the precise thickness of anything. If we wanted to make it misleading we would have made it very skinny. You're simply trying to take away demonstrative evidence that will help the jury understand the testimony.

THE COURT: I think it's fine to do that, and certainly there is no objection except it can't be misleading. That's the only thing, as long as it makes a fair representation and it's not misleading to the jury then this is good way to go, as far as demonstrative aid is concerned. But it can't be misleading.

I think you might be better off to go without the demonstrative aid and just use pictures, whatever pictures were taken to show what he is trying to

illustrate.

What's going to happen is if I allow it to come in then we will have to probably start it with a picture with the fire and then he is going to on cross examination question every single thing about it and then that is going to be confusing to the jury too and probably take away the effectiveness of it.

MR. VOGT: Your Honor, the only thing that this does, and I think it is critical to let him explain his testimony, is it shows that that -- it shows three-dimensions. The photographs don't do that. This is simplest way to explain the photographs.

MR. SHEALY: Your Honor, we have dozens of photographs from every vantage point. I think we can give this jury the three-dimensional aspect of this flat roof area because we have got lots of photographic evidence and it's in the record.

MR. VOGT: That's really not the point. We're entitled to use demonstrative evidence. It's not being offered as an exhibit.

THE COURT: I told you, you can't be misleading. You can't misrepresent. It has got to be accurate at least to the extent to portray what it is you are you are trying to portray.

MR. VOGT: And I don't think it is, Your Honor.

For instance, the thing about the fire there is no evidence in the record of that as far as the delay of fire. That is just something you called off -- what he called metadata.

MR. SHEALY: These photographs with their metadata are in evidence..

MR. VOGT: But you have to trust the camera. It doesn't matter, Your Honor. We are not making any claim that there is significance from seeing the first smoke to the fire.

Is that correct, Mr. Arnold?

MR. ARNOLD: That's correct.

THE COURT: I think we can explain that to the jury about it. Have you ask him about it being 45 minutes later, if it indicates it is 45 minutes later. It makes a big difference I think.

That part can be cleared up. How about the part where we don't know the exact component of the flat roof.

MR. VOGT: Your Honor, may I speak to Mr. Arnold a moment, I think he is trying to suggest a solution.

THE WITNESS: I don't need this. I can do that from photographs, if you stop at fixed stopping point before this slide comes up and then have the photographs thereafter that would be adequate.

MR. VOGT: Okay.

THE WITNESS: That would be adequate. So if you back it up there is a stopping point before this occurs.

THE COURT: All right, let me ask you about he is objecting to -- the other objection was about you are saying portraying in one picture, one building, which is really the other building.

MR. VOGT: Your Honor, that's what he is talking about here, and he is saying these panels right here, but it is really not relevant to his opinions as to --

THE COURT: We are not going to use that.

MR. VOGT: We won't use it. But we have to be able to go back. I think to take it out will take some work. I don't want to show it.

THE WITNESS: Just stop it.

MR. VOGT: I don't know if I will be able to do it.

THE COURT: Well, they don't know what it is if you don't explain it. I mean if you accidently hit it you can cut it off. They are not going to know what it is if you don't explain it.

MR. SHEALY: I want to correct --

THE COURT: Something from the space station hanging out.

Yes, sir.

MR. SHEALY: I want to correct something. I don't want to have mislead the Court because my client, certainly, they have been on the roof. They tell me that this assembly is indeed correct.

So this is the only thing I have to object to. (Indicating).

This assembly, at least right there by the ladder is correct, but again, I think it's still objectionable because of the cutaway.

THE COURT: Well, what's your objection to that again? You say you don't know exactly what's underneath the rubberized cover. I will have to call it that rather than these initials because I'm not sure what that means. I am not familiar with the terms.

MR. SHEALY: Yes, sir. Neither am I. But I do know there are multiple different ways that they can be constructed and it has not been established precisely what the thickness of the insulation was. Whether they were nailer boards underneath the rubberized membrane. What the adhesive was, and so this -- there is not a factual foundation that is in this record that would allow for this to accurately represent the composition of this flat roof from the

metal deck up to the membrane.

THE COURT: Well, there was some confusion about that. Nobody could say for sure, I don't think. A couple of people testified about it and you know, one thought there might be a little bit of some kind of insulation or adhesive in there and there was question about that and whether it was easily burned or whatever. Maybe we will just stay away from that and just stay away from that photograph and go back and then we can utilize it and then just as far as the first two is concerned as long as you explained to the jury that the second picture concerning the fire was taken later then the smoke, so it won't look like it's almost instantaneous.

MR. SHEALY: The witness has already said to this jury that he relied -- and he has shown the photograph -- he has said that he relied upon a photograph that was taken before the fire department got there and that's not true. It is just an error of fact.

THE COURT: The smoke was there.

MR. SHEALY: The smoke was certainly there, but the -- Your Honor the photograph, the close-up photograph showing flames that then becomes the basis of the animation showing flames, that photograph showing flames was taken 45 or 40 minutes after the

fire department had gotten there. It is long after the first photograph showing the smoke. And we know when that photograph was taken because the clock is in the middle of the picture, and I can can show you -- the way I can prove, Your Honor, that the time stamp on the photograph is right is because it correlates exactly with the clock in the picture.

MR. VOGT: If he thinks that is relevant he can cross examine Mr. Arnold on that. That information that he just described to you has absolutely zero relevance as to his opinion about the fire spread and that the fire would not start on the flat roof and spread to those adjoining roofs. All those pictures do is illustrate, hey, this is the fire.

THE COURT: Well, it is significant if that picture of the flames was taken 40, 45 minutes after the fire department got there or whether it was taken before they got there.

MR. VOGT: He can ask him that.

THE COURT: It is significant if he says that's his testimony, but you can cross examine him.

MR. VOGT: Right, he can ask him if that's significant.

MR. SHEALY: Certainly I can cross examine. It is just the issue now of how we use this demonstrative

aid and, again, I have great problems with the transition from the first photograph showing smoke to there is a photograph showing the flames that he already talked about. It makes it look like those things were happening at the same time.

THE COURT: That's what I am saying. I would require that to be clarified.

MR. VOGT: But Your Honor, the exhibits that he's talking about are already in evidence. Chief Driggers explained what he saw, and if the timeline is significant that's cross examination. We can start at the second slide showing just the fire. The only slide they saw was the first slide with the smoke off in the distance, and they've seen that photograph a lot.

I mean, I will be happy to go back and try to rework this. Take them out, so there is no chance of error. Take the first slide out. If you wanted to take the second slide out we can do that.

THE COURT: You are talking about possible taking out the first and second and the last.

MR. VOGT: No, the first slide and the last slice. The second slide, Your Honor, are photographs of the fire.

THE COURT: As long as it is clear when it was

taken, counsel. If we take out the last one and if we take out the first one and when you get the flame, you know, as long as it is clear when that picture was taken I don't have a problem with that.

MR. VOGT: It was taken when the firemen were on the roof. I don't think anyone can't see the firemen on the roof.

THE COURT: So they were already on the scene?

MR. VOGT: Yeah.

THE COURT: So that just needs to be clarified. As long as you do that I don't have a problem with it. All right, let's go with that.

Do you need some time to do that?

MR. VOGT: Your Honor, my technical skills are not very good. It will take me some time.

THE COURT: Well --

MR. VOGT: Can we start in the morning and just get it right.

THE COURT: No, no, no. Don't try that again.

MR. VOGT: I'm not trying anything, Your Honor. But we are going to be here a long time.

THE COURT: I don't believe your trying. I mean, I'm not losing -- you'll lose way to much time. You should have showed him this before and we could dealt with this and could you have dealt with it when we

didn't have the jury sitting out there. You don't do that. You just don't do that. Spring it on him and let him see it on the same time everyone else sees it, even if it's a demonstrative aid.

MR. VOGT: I wasn't aware of any rule that requires us to show demonstrative aids ahead of time and I just got it --

THE COURT: If it's got technical things in it that are suppose to represent a significant part of the case you do, because somebody has to make the determination whether you will be able to utilize it or not. There are some requirements to be able to use it. Otherwise you can come up with something that show most anything. You know, you can come up with demonstrative aid that is totally false.

MR. VOGT: What he has come up with, Your Honor, is --

THE COURT: I'm not saying it is. I know that there are some good things he wants to show the jury that will highlight his testimony and illustrate it. I don't have a problem with that. But I am saying you could. So you can't just spring it on the other side.

MR. VOGT: I apologize, and I shared everything with Mr. Shealy as I got it. I apologize. I really didn't anticipate getting this late.

MR. SHEALY: And Your Honor, I have no thought that Mr. Vogt had any intention to spring it on me.

THE COURT: It's not your observation. It's mine when I am trying to move this trial here.

MR. SHEALY: Yes, sir.

THE COURT: It's not the federal court where they try three civil cases a year. You know, that would be a little bit different. I could just take all the time I want and take two hours for lunch, but we don't have that luxury here.

Is there another way to cut it off when you need to cut it off?

What about if the witness stands over there and works the thing himself.

MR. VOGT: There's no way to plug it over there, is there?

THE COURT: No, I'm talking about him going over there. As long as he speaks loud enough for the court reporter.

MR. VOGT: Sure.

THE COURT: Can you work it that way?

THE WITNESS: I can. I would like to run it through so I know exactly where you want me not to continue. It involves starting, letting it sit and that's where we start it from.

THE COURT: Why can't we just go ahead and start it off at the second one and that will be -- you can explain it. You can even explain it that the fire department has already arrived and certainly he can cover it on cross examination if he needs to, and then we can go from there and take out the last one, or stop it before you get the last one. That should take care of it.

MR. VOGT: And Your Honor, I got to tell you right now, I am not sure what I said other than this is an animation that has 33 photographs in it.

I don't think we even talked about the first slide. If the court reporter has to I don't know if the court reporter can tell -- did we? I don't think we even we got to the first slide.

THE COURT: We didn't get to the animation. Start it at the second part of it, second frame of it. Okay.

MR. VOGT: Your Honor, can we take five, ten minutes just so I can get it and try to make sure I don't ---

THE COURT: Yes. Okay. Stand down. Don't discuss the case the same as if you were still on the stand. Please don't discuss the case with anybody.

THE WITNESS: Yes, sir.

THE COURT: You can talk to him how to work that thing but don't talk about the case.

THE WITNESS: Okay.

(WHEREUPON, there was a brief recess.)

THE COURT: Are we ready to go, counsel?

MR. VOGT: I will try Your Honor.

THE COURT: Bring them this please.

(WHEREUPON, the Jury enters the courtroom.)

THE COURT: Counsel ready to proceed?

Let me give the jury an explanation. We are going to have demonstrative aid presented to you. It will contain some pictures that have been admitted into evidence and some other parts on the slide in there. Again, it is not evidence in this case. It is a demonstration, a demonstrative aid.

Please proceed.

MR. VOGT: Yes.

DIRECT EXAMINATION

BY MR. VOGT CONT'D:

Q Mr. Arnold, can you explain to us the demonstrative aid that we are going to see?

A Yes. Based on the information I gathered as part of my investigation, including photographs, drawings, specifications, other information. I prepared -- worked with an animator to prepare an animation to orient me and us to photographs and

other things I used to explain the basis for my opinions.

Q And what information did you use, for instance, for part of the building here with the respect to the dimensions of the building and those types of things?

A I used drawings and photographs that were produced to me as part of this matter. They were part of the record.

Q So we have a movie portion of it, essentially a movie portion that is 3-D, right?

A Correct.

Q And then there are photographs that are interspersed that are actually will be exhibits in this case?

A Okay. Yes, sir.

Q All right.

MR. VOGT: Your Honor, we had marked Plaintiff's Exhibits 64-B and 64-GG and I don't believe there is any objection to those. May I enter those into evidence now?

MR. SHEALY: No, objection.

THE COURT: In evidence without objection.

(Plaintiff's Exhibits 64B-64GG, photographs, received in evidence as of this date.)

MR. VOGT: That way I don't have to stop and introduce each exhibit, Your Honor.

Q So, I will start the animation, Mr. Arnold. Can you explain what we are looking at?

A This is just a view of the area. The flat roof is seen representing a photograph -- that will come up any minute -- give you a sense of orientation.

This is a photograph that you should pause it.

Q Do you want to explain what was in the photograph that was 64-B?

A That was a photograph taken after the fire department arrived that represents the character of the fire that was observed on the flat roof. And the purpose of that was just to show it's -- the character of that fire as observed in that photograph.

Q And why was that important in your investigation?

A Primarily because of flame heights. This item right here is what is referred to as a scupper. It is really the drain, the gutter if you will, from the flat roof.

Water that collects in that flat roof flows out of this scupper, or this whole, and enters into this downspout down to the ground. So, that is a sense of where the floor, if you will, of the flat roof exists, and that's really just for scale. That is why this photograph was important to me.

Q Okay, and as we go along if you want me to stop the animation just tell me.

A Okay.

Q What do we see here?

A That is another photograph. What I have done, this

window here (indicating) is six foot tall. So I just slid the scale over to give you a sense of sort of a vision of how tall those flames are in terms of height. As you can see, they are somewhere short, two and a half to three feet tall in height at the time this photograph was taken. This photograph was taken after the fire department arrived. You can tell that by this window here is being opened which the fire department did. You will see a photograph over here and it is open as well to allow smoke that had migrated in the flooring to get out of the building. But the importance of this photograph is that if it was just solely a TPO roof, or just a flat roof absent of combustibles you wouldn't have this kind of flame height on that roof. That's why this was important to me as indication that there was was something more on that roof then just the roof assembly itself.

Now, this is just a kind of give an orientation how the flat roof sat and was oriented between these buildings. So here you can see --

Q I'm sorry.

A That's fine. The scupper you saw on the animation, the scupper here is we talked about the drains, that we saw the flames coming outside. And this is the flat roof. I indicated it's the shaped kind of like the state of Oklahoma.

This is a ladder that gets you down to the flat roof that you access this area through a hatch that is over on this

side of the building. So you climb up a hatch, climb over this roof, down this ladder on to this area.

There is a number of slides I took that show this area.

Q And all these photographs are 66-B through 66-GG.

A Right.

Q What do you see in this photograph that was important?

A Well, what was important to me is this characterizes how the fire spread within the roof. As you can see -- I am sorry, should I just continue.

Q Go ahead.

A As you see this is roofing panels, these four by eight sheets of roofing panels -- of panels consist of a plywood or a OSB, or oriented strand board nailer to attach the shingles to and then it has some sleepers on it and you will see in it in a later photograph and then you see this white foam which is called polyisocyante. It's an insulation. It insulates the roof from the building below it. It's energy insulation. And it will smoulder and burn. It is a combustible, as is the OSB.

So what you can see here is you see these trail marks, these marks between sheets, but yet no burning on the top side and then you see down here, you see this discoloration on the top of the metal deck. That's an indication that the fire was concealed or trapped if you will, between the shingles or the top of the roof and the metal decking which formed the ceiling below. So that's why I wanted to show this photograph.

Q What does this photograph show?

A This is just a photograph that shows the scupper and the condition of of the roof as I found it, of the flat roof. It had been processed. It had been cleaned of debris, but that's just for orientation. And again you can see this is indication of the foam plastic or the poly. I just call it poly insulation and again, this is the felt paper which is an asphalt impregnated paper that is placed underneath these shingles. That's just for orientation I think.

Again, that's a close up. That gives you a sense of how that foam and that wood is constructed and they come as an assembly. They come as a unit already attached.

Q Okay. What do these photographs telling you about how the fire spread in this case?

A Well, as you can see -- well, you can see there is low burning in this area along this brick wall and you will see on some later photographs that indicate substantial burning consistent with the photograph that we saw before up through the scupper. Flame height of two and a half to three feet of some duration. It burned a long time at that location because the fire department was already there and had opened windows. So there was a substantial amount of fuel on that rood. That's what this shows me.

Q What about this photograph?

A This is the peak of the roof and you can see these

holes here where the fire finally got to broke out and kind of was able to lap out through that OSB, through that plywood decking. And you will see on the other side it's very limited burning. Because again, the flames travel up and they only travel down nearest as competently or as aggressively. They will, but it is much slower.

Q What does this photo depict?

A This is a large steel member. I think it was two by eight. An eye-beam. An eight or ten inch eye-beam.

What is interesting here this still has it's prime color on it. As we get down to the corner you can see it starts losing it's color. The paint is burn off of it and at the very end you will it's discolored. That indicates that steel had been heated substantially when it holds a discoloration after it is subsequently cooled.

Q And what does that tell you with respect to how this fire spread?

A Well, that in this area there must have been a fuel source, enough combustibles or fuel or energy, in my sense, to create that amount of damage, or create that observation.

Q What does this photo depict?

A This is closer view of that same observation of the steel beam, the discoloration on the end around this corner and notice that this is aluminum kind of trim here and here (indicating) that wraps that corner that holds a piece of

flashing down. And I just point it out because you will see on the other side that aluminum is no longer there.

Q And why is that significant?

A Well, aluminum melts at between -- depends on the alloy, between 1000 to 1200 hundred degrees Fahrenheit. So it takes a very high temperature and some duration, enough time, to cause a aluminum to melt.

We cook with a aluminum pans and we put them on our stove and they don't melt. But if you leave them on long enough and high enough they eventually will.

This is what I was talking about. You see this little piece right here (indicating) is a piece of aluminum that was melted. It to use to exist along here as it wrapped that corner. That was a -- we call it differential damage, where we have damage to a material that is different. Had to have enough energy to cause that damage. So that was an observation again consistent with there being additional combustibles on this roof beyond what would normally be provided by just a flat roof.

Q What does this photograph tell us?

A This is an other side of the roof. You can see there's a two by four -- there's a better photograph. Looked better when it was smaller. There's wood here that holds this on and some of these dimensional lumber which was two by eight -- if I remember correctly -- was completely consumed. They weren't just burned on the outside, they were burned completely through.

Again, that's an indication of substantial fire for a substantial duration at that location.

I think that is all of them for that slide.

Q Now, as a result you described for us observations you made with respect to the fire spread.

Did you form an opinion as to how the fire spread from the flat roof to the adjoining pitched roof?

A Yeah, it spread via entrance in to that -- the underside of this soffit is ventilated. It's open. It has got vents not unlike most homes have them in order to provide air movement on the back of these shingles up to the peek in order to keep them cool, so they don't fail early. And that was the path. That fire got in to that cavity we looked at through that vented soffit and that soffit is located in the area where this intense burning was. That's my observations. The path of fire spread from the flat roof in to the roof structure that caused the damage.

Q So the information you're gathering from your observations of the burn patterns, damage to the roof, did it lead you to conclude that there was something else on the roof other than the flat roof?

A Yes, sir.

Q And what was it?

A Combustibles of sufficient quantity and energy to cause this damage that I saw.

Q So, as a result of your investigation did you form an opinion as to whether this fire, this fire could have started on the flat roof if there were not other combustibles present?

MR. SHEALY: Objection.

THE COURT: Sustain the objection, counsel.

MR. VOGT: Your Honor, may I approach.

THE COURT: Yes, sir.

(Whereupon, there was an off the record discussion.)

Q Mr. Arnold, was there physical evidence that there were other combustibles on the flat roof?

A Yes.

Q And can you describe -- how do you determine that there was combustibles on the flat roof?

A The physical evidence, and there is also testimony that I reviewed, both in the reports and depositions indicated there was combustibles on the flat roof.

Q And what combustibles did you learn about as you read deposition testimonies?

A There was felt paper and other associated roofing materials.

Q Now, as a result of your investigation did you determine the source of the ignition of this fire?

A I did not.

Q And is it your opinion that this fire -- how can you

have an opinion as to the fire spread without knowing how the fire -- what was the source of ignition for the fire?

A Well, we know the fire occurred.

Q Right.

A And we know the fire that did occur created the damage that we see and the observations that I already pointed out. For a fire of that magnitude and that substance to exist, to occur, you had to have fuel sufficient to do that.

The means of ignition in most fires while important it's often the fuel that's there that creates the damage. So, it's based on that. That my opinion is that but for those combustibles the damage that I saw and the spread of the fire to the roof wouldn't have occurred.

Q So, if I took a cigarette and I threw it down on the flat TPO roof and there was nothing else there what would happen?

A I would expect that fire to self-extinguish and certainly not create the fire that we see here.

Q Why?

A Because roofs are a regulated component of building construction. For hundreds of years we have been been concerned with fire spreading from building to building by embers landing on a roof, whether it be your neighbor's house or a building down the block. We burn cities down as a result of that. So the roof construction is regulated and protected against an

assault from fire above, and the an assault includes testing those materials for their ability to withstand those kinds of ignition sources.

Q So, if I took a roofer's torch and there were no other combustibles on that flat roof and I started a fire on that flat roof, would it spread to the adjoining pitched roofs?

A It would not. If you remove that torch it would not.

MR. SHEALY: Objection, Your Honor, lack of proper foundation.

THE COURT: Counsel approach.

(WHEREUPON, there was an off the record discussion)

THE COURT: Overruled.

MR. VOGT: Thank you, Your Honor.

Q Mr. Arnold, if I held a roofer'S torch and I started a fire on that flat TPO roof, in your opinion would it spread to the adjoining pitched roofs?

A In my opinion it would not.

Q Why not?

A Again, these roofs assemblies are tested for a particular fire scenario and they are tested just very quickly. In a pitched position with a gas flame attached to them for ten minutes and then the resulting flame spread is measured, and it has to met a certain criteria to pass, if you will. Those are more challenging orientations and conditions -- I should add

with a wind applied -- so that's a more challenging condition then you would expect from a flat roof with with a momentary or a few moments of assault, if you will, by a plumber's torch, or by a torch, or any flaming source.

If you dropped a match or a flaming piece of wood or a brand -- what we called brands in terms of fire safety it would -- it would -- my opinion it would not have spread and create the fire I saw in those photographs. It would spread, melt through the rubber roof and then eventually self-extinguish.

Q We can return to the amination if it helps. Does it help explain it further? What are we seeing in this part of the animation?

A I think we been through these, sir.

Q We've already been through these photographs. That's fine. What does this depict?

A This is just another view of the flat roof and a series of slides, and this is to just to help orient the slides because some times there are a small item and if you don't have a point of view they are difficult to interpret.

Q This photograph is another view of that same flat roof?

A That's correct.

Q And what does it tell you?

A If you see here this is that two by four -- excuse me, I think it was two by eight dimensional lumber that still

exists. It had a stucco covering on it and you will see that starting around here it is consumed. It no longer exists. It completely burn through. So that's an observation.

Q And what does that observation tell you?

A Again, sufficient energy and fuel to cause take damage.

Q It tells you that there was combustible on the flat?

A Correct. That's a closer view of that. You can see that burned lumber there. And this is the corner where the two -- I call them offset roofs, where there are different pitches of those roofs adjoin each other.

Q What does this photograph depict?

A This is a photograph of a fan and this fan was instructive because -- you will he see a photograph in a minute -- there is no -- there was no fire damage or heat within that exhaust fan that goes into the building, but there is thermal damage to this aluminum fan. Again, located in the same general proximity and again, that's another indication of sufficient fuel combustibles that caused take damage.

Q What does thermal damage mean?

A Damage by heat. Hot enough, long enough to cause the damage we see.

You can see this is melted aluminum around this shroud.

Q What is this photograph showing?

A This is a photograph that kind of shows the -- how the -- how do I explain this. Just the orientation of where the

boards met the eave of the roof. This is where that nailer I have been talking about sits and there is shingles on top of this. There was also a piece here (indicating) you can see it right here and it is completely consumed. These are the fasteners that hold that down and there are shingles and paper that go on to that.

I know why I showed this, you will see on the inside -- I have views on the inside that will show you what it looks like from the inside of the building at this location. That's why I included this photograph.

Q Next one, what's this photograph?

A That is to the left of the ladder as you face the wall and this comes down. You can see that while these markers here indicate that the fire is trying to break through the joints at those seams. That's why I included that. It showed the concealed nature of the fire under the shingles, under the paper, under the plywood, but yet above the steel deck. And it was very difficult fire to suppress. I assure you I am sure it was.

Q Was there anything improper in the way that roof was constructed at Owens Hall?

A No. Roofs when they are finished and they are installed they are designed for particular fire condition. Can't be designed for every fire condition, so we have controls to prevent fire conditions in circumstances that are not

designed for. That's kind of awkward way to say it, but no, I have no complaint with that roof assembly

Q Is there a class designation for that type of roof assemble?

A There are classes of roof performance level. We call them class A, B and C. I believe this was specified to be a class A roof which is the -- can't think of the correct word here -- which is the highest classification you can get. Doesn't mean it won't burn. Doesn't mean it's not perfect, but it's the best of available test parameters.

Q And what is that photograph?

A I think I am showing the fire departments suppression. I think they ripped this up in order to squirt water down underneath it. I think that's how they put this fire out. I think this was just a going out the other direction.

Q Okay. How about this one?

A This is the peek of the roof and it shows if you can see these burnt little areas as the fire finally got to the peak it came out the ridge vent and that's why I included this for. This is the top of the roof and you will see there is burning on one side but less burning -- I am sorry, this side there is burning. This side still has got shingles on it. Okay. I am sure this was stripped to convey it but generally that's why I am showing the peak of the roof.

I think that's it.

MR. VOGT: All right. We will stop there. It'll take it a moment, Your Honor.

THE COURT: Yes, sir.

Q So there are additional photographs that we may talk about as we go along.

Mr. Arnold, did you determine the precise amount of combustibles that were on the flat roof?

A No.

Q Was it important to you to determine the precise amount of combustibles on the flat roof with respect to your opinion that the fire would not have spread from the flat roof to the adjoining pitched roof?

A No.

Q Why?

A Well, we know there was sufficient combustibles to cause that spread based on the damage that I observed.

Q And explain again for me -- I think I asked you this. You didn't determine the source of ignition, right?

A I did not determine the mode.

Q Why wasn't that important to your opinion with respect to the spread of this fire?

A Again, the fire did occur. It occurred on the flat roof with sufficient magnitude, intensity and duration to cause the damage patterns that I have explained and observed. The manner in which that fire was ignited is unimportant to those

opinions.

Q So if you removed the fuel, would the fire have spread to the pitched roofs?

A No.

Q During the course of your investigation did you research any applicable codes relating to demolition and alteration activities during a construction project?

A Yes.

Q And what did you determine as a result of your research?

A The applicable codes involve the International Fire Code, which is an adopted code in the State of South Carolina. Within that code there are additional standards that are adopted by reference including NFPA 241, which is a standard on practices during construction renovation and repairs of a building. So there are fire prevention practices that are governed by those documents.

Q Is the International Fire Code is that part of the fire code?

A It's an adopted code within the State of South Carolina is there fire code.

Q And let me show you this document and ask that you describe it for us?

A This is selected sections from the International Fire Code, the 2006 addiction.

Q And which sections of that edition did you refer to?

A Chapter 14, which is entitled fire safety during construction and demolition.

Q Can you read for us the purpose of that section?

A Section 1401.2 "This chapter prescribes minimum safeguards for construction, alteration and demolition operations to provide reasonable safety to life and property from fire during such operations."

Q And what is the scope of this provision?

A The scope in 1401.1 states that this chapter, chapter 14 shall apply to structures in the course of construction alteration or demolition, including those in underground locations, compliance with NFPA 241 is required for items not specifically addressed herein.

Q And what does that last sentence mean. Compliance with NFPA 241 is required for items not specifically addressed?

MR. SHEALY: Your Honor, I will object. That calls for a legal conclusion.

THE COURT: Counsel approach.

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

Q Mr. Arnold, as of the time of this fire had South Carolina adopted NFPA 241?

A Yes, by reference through chapter 14 of the International Fire Code.

MR. VOGT: Your Honor, the International Fire Code Chapter 14, as well as Chapter 3 has been marked for identification as Plaintiff's Exhibit 62, I hereby move for introduction as an exhibit in this matter.

MR. SHEALY: Objection.

THE COURT: Denied counsel. It's not admissible.

Q Mr. Arnold, let me show you NFPA 241. I will put it up on the screen. Is this a copy of the 2000 edition of NFPA 241?

A It is.

Q And what is the purpose of NFPA 241?

A The title is standard for safeguarding construction alteration and demolition operations.

Q And what is the scope as per the standard?

A The standard shall apply to structures in the course of construction, alteration or demolition including those in underground locations.

Q And what is the application of this standard per the terms of NFPA 241?

A I don't understand that question.

Q The next section sets forth the application.

A Oh, I'm sorry. It states, "The standard provides measures for preventing or minimizing fire damage during construction, alteration and demolition operations.

The public fire department and other fire protection authorities shall also be consulted for guidance."

Do you want me to read it all, sir?

Q No, that is all. Thank you. And is there specific provision in the NFPA 241 which deals with the storage of equipment to be installed or combustible construction materials during the construction project?

A Yes, there are several. If you are referring to Chapter 8.3 which deals with construction material and equipment storage.

Q And within that general provision is there a provision which sets forth the standard for the storage of construction -- combustible construction materials as far as the proximity to a building?

A Yes, sir.

Q Okay, and which section is that?

A That is section 8.3.3.

Q Can you read it for us?

A Its states, "Yard storage of equipment to be installed or combustible construction materials shall not be stored closer then 30 feet from the structure under construction or alteration."

MR. VOGT: Your Honor, may I approach?

THE COURT: Yes.

(Whereupon, there was an off the record discussion.)

MR. VOGT: Thank you, Your Honor.

Q Mr. Arnold, what does combustible mean?

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

THE COURT: Overruled. You may answer.

A Combustible means things, items or products or materials that are able to combust or burn. Capable of burning in a lay term that we have. It can be applied and modified as we use it in the industry, but combustibles means things that are capable of burning.

Q Are roofing paper, shingles considered combustible construction materials?

A Yes, sir.

Q Wooden pallets used to store materials considered combustible construction materials?

A Yes, sir.

Q What does yard storage mean?

MR. SHEALY: Objection. Calls for legal conclusion.

THE COURT: Sustained.

Q Could you store combustible construction materials on the flat roof between Bancroft and Owens Hall further then 30 feet from either building?

A No, sir.

Q Is that possible?

A Not and still be on the flat roof.

Q Now, during the course of your investigation and your research of the applicable codes did you also find other code provisions that were implicated?

A Yes.

Q And where is that code provision set forth?

A Chapter 3 of the International Fire Code deals with general safety fire precautions.

Q Do you still have the 2006 edition of the International Fire Code in front of you?

A Selected sections. It's a much thicker book, but yes, sir.

Q I believe you told me earlier this contained Chapter 3 as well as Chapter 14?

A It does.

Q And what provision did you believe is also implicated?

A There is a provision that limits the storage and prohibits the storage of combustibles under eaves.

Q What provision is that? Did give you the --

MR. VOGT: May I approach, Your Honor?

THE COURT: Yes.

Q Did I leave the page out. Can you read that provision for us? First tell us what provision it is?

A The provision that deals with outside storage is section 315.3 of which includes a subsection which states, "Combustible materials stored or displayed outside of buildings

that are protected by automatic sprinklers shall not be stored or displayed under non-sprinkler eaves, canopies or other projections or overhangs."

Q And was -- were the Winthrop buildings protected by automatic sprinklers?

A They were.

Q Do automatic sprinklers protect buildings from fires that start on the exterior?

A No.

Q And based on your examination --

A I should say, no, unless they are specifically designed to do so.

Q Were there sprinklers designed to do so in this case?

A They were not.

Q And based on your examination of the fire scene could you make a determination that there were combustible materials stored under the eaves?

A I don't know exactly where the combustibles were on that roof because by the time I got there they had been consumed and/or moved during the fire department operations. But they were within proximately of those eaves sufficiently to allow the fire to get to the roof structure through that path, which is the exact path that this provision is guarding against because we recognize that is a troublesome location.

MR. SHEALY: Objection. Move to strike.

THE COURT: Counsel, approach just a minute.

(Whereupon, there was an off the record discussion.)

THE COURT: Madame forelady, and members of the jury panel, with regard to the last statement by the witness regarding about prohibited. Please disregard that statement. It will be stricken from the record. Disregard that statement. I sustain that objection. Give it no consideration whatsoever.

The instruction with regard to the law will be given by the Court at the conclusion of the case and that is what you are to go by as far as the law is concerned.

Please proceed.

Q What was -- what is the hazard, that section 315.3.1 of the International Fire Code was designed to protect against?

A That provision recognizes the opportunity of a fire to spread from outside a building to inside a building via ventilated eaves. Therefore it prohibits storage at that location recognizing that is a location of some ability for fire to spread from outside a building within a building.

MR. SHEALY: Objection. Move to strike.

THE COURT: I sustain the objection for the same reason. Again, with regard to statement about prohibited. Again, that will be stricken from the record.

Madame forelady and members of the jury disregard the last statement about prohibition. Again, that's a matter of law for the Court to provide to you at the conclusion of the case. Disregard that statement all together.

MR. VOGT: Can I ask the question again and direct the witness not to use that phrase, Your Honor?

THE COURT: I think he has answered the question, but I've asked the jury not to consider it. That statement.

MR. VOGT: Okay. Thank you, Your Honor.

Q Now, during the coarse of your investigation did you become aware that there was a storage area outside of Bancroft Hall?

A Yes.

Q And have you seen photographs of that?

A I have.

Q Was it possible to store combustible construction materials more than thirty feet from the building within that laid down area?

A Yes.

Q You had a number of additional photographs. I think we skipped over some on of them. I want to make sure we have the opportunities tie to the jury to hear how those photographs assisted you in forming your opinion in this case.

You told us before you had looked at a photograph that was on the exterior of the building.

A Yes, sir.

Q And you said well, there is going be a photograph of the interior so I wanted to show you that.

A I just included this to show the location of where the fire assaulted, if you will, affected th outside of the eave. This is vented eave and this is the end of the eave as it goes down, so I included this just to show that there was no fire spread within the building because it was largely noncombustible, meaning it was framed with metal.

Q What is that photograph of?

A That's a closer up view of that. That's the top of the brick wall and that's the vented soffit, if you will from the inside.

Q Does that tell you that the fire originated on the exterior the building?

A It does.

Q What is that photograph of?

A That's a photograph of the underside of the steel deck from inside the building showing the discoloration of the steel from being heated from the fire above. And will you see -- well, that's what it shows.

Q What's that a photograph of?

A Just a closer view of that discolored and damaged steel

decking.

This shows the separation between where one panel was involved in fire from above, but the adjacent panel -- did not spread to the adjacent panel. So I just included that to show the differential shall fire patterns there.

Q Is that another view of the same thing?

A It is.

Q Is that another overview of it?

A That's the peak of the roof from below.

Q That's the opposite of the photograph you had earlier showing the outside view of it?

A Generally, yes, sir.

Q What is that a photograph of?

A That shows one of panels that had been removed by the fire department presumably during their suppression. It shows what these panels were actually constructed like.

That's a is closer up view. If you can back up one for me.

A Yes.

Q It's upside down. So here is the plywood or OSB board. Here are the sleepers. We call them sleepers -- that provide the vents, the air path to keep the shingles cool. This is the insulation that is attached to the roof deck upside down. So I just included that to show a clean photograph of that assembly.

That's just a close-up of the sleepers and of the insulation?

Q What is that photograph of?

A That photograph shows the -- it shows the smoke venting from the concealed space below the shingles and above the sealed deck. The hot gasses and smoke exit somewhere and it exits in this case pushing back down through the eaves and this is what this is showing the smoke coming out of that location.

Q Okay.

A That is just another close up of panel.

Q All right. Thank you.

Now, Mr. Arnold, you expressed an opinion in this case that the fire would not have spread from the flat roof to the adjoining pitched roofs but for the presence of combustibles, correct?

A Yes.

Q Do you hold that opinion to a reasonable degree of engineering certainty?

A I do.

Q Do you hold all the opinions you have expressed today to a reasonable degree of engineering certainty?

A I do.

MR. VOGT: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. SHEALY:

Q Mr. Arnold, I just got a few questions. Mr. Arnold, you mentioned that roofing assemblies carry different ratings, correct?

A Correct.

Q All right, and you mentioned that roofing assembly on Owens the building that suffered the most fire damage in this case, its roofing assembly carried a Class A rating, is that right?

A That's my understanding based on discussions with Winthrop and review of some documents, and generally that's the roof that would be existing on a building of this type.

Q And shingles carry similar ratings, correct?

A They do, individually and as part of an assembly.

Q An individually they are rated the same way as an assembly; A, B, C, correct?

A They may carry that rating only if used in an assembly, but I think you are generally correct. If they are used in a class A assembly then they carry the Class A rating.

Q All right. And you looked at -- you looked at the materials list for the shingles and roofing assembly that went on Owens and you looked at the shingles, roofing assembly that went on Bancroft as part of your investigation, correct?

A I became familiar with those, yes, sir.

Q And you aware that the shingles that were going on Bancroft carried a Class A rating?

A I believe that is correct.

Q And those were the shingles that were being installed by Pickens Roofing, correct?

A I believe that is correct.

Q Now, in your testimony earlier you mentioned that there was one photograph of a student -- had been taken by a student before the fire department got there that was particularly instructive to you, correct?

A Yeah, all those photographs that show the flat roof were instructive because of the nature of the fire that I observed on that flat roof. Whether they were taken by the student or taken some point later.

Q Right, but the one you focused on though, that you sort of based your animation on was the close-up showing the flames above the scupper, that you could see through the scupper, right?

A Right, at that moment in time that's the flame height represented by that photograph.

Q Right. And it was that notion of the flame height that was of great importance to you in terms of being able to opine that's what caused the fire to spread to the adjoining roofs, right?

A It was one factor along with all the other things that I looked at including differential damage, the totality of my analysis. Certainly a flame height is supportive of everything

else that I saw.

Q All right. Now, if I show you -- I think when we first got started there was photograph like this -- the jury has seen before -- on the screen you see black smoke there, correct?

A I do.

Q All right. And you see some white or grayish smoke, correct? See it at the roof line on Owens.

A This you are talking about?

Q Yes, sir.

A It appears to be, yes, sir.

Q Okay, and if we look at this photograph, 15, Defendant's 15, we see that white smoke coming out of the ridge on Owens there, correct?

A It appears to be a whitish smoke. It's hard to tell where it's coming out of, but I see what you are referring to. You are referring to this right here, correct?

Q Right. We don't see the flames through the scupper there, correct?

A Not that distance you cannot, correct.

Q The scupper is right there, isn't it?

A The scupper is right there, yes, sir.

A Okay. This photograph based upon the clock in the picture was taken about three o'clock in the afternoon, correct?

A It would indicate, yes, sir.

Q And this based upon your review of all the records --

you said you reviewed the fire departments records, correct?

A Photographs, yes, sir.

Q This is within ten minutes of the fire department learning that there's a fire, correct?

A I believe that is correct.

Q And if we look, I mean just to sort of look at this. All right. We have about three o'clock on that clock and if we look at the time stamp on the imagine itself it's 2.59 p.m., correct?

A Yes, sir.

Q Okay.

A I am not a metadata expert, but that's what it shows.

Q Okay, so it would appear at least based on what I am showing you, that time the stamp given by the digital camera matches actually what is depicted on the clock in the picture, right?

A It appears to, yes, sir.

Q And so we don't see those flames that were so important to your analysis in the scupper, right?

A Not from that distance you did not. That's correct.

Q Okay. Now, again, show you that clock. This is about three minutes later, would you agree with me?

A I will.

Q Okay. And then we got tons of white smoke, right?

A Yes. Well, tons -- it is greyer then white -- and

smoke -- yes, the photograph shows what it shows. I don't what to ...

Q Okay. Now, if we look at Defendant's Exhibit 27, this photograph shows that as of about 12 minutes after three we have fire trucks there. So the fire department is there, right?

A Yes.

Q Okay. They are not just where I was pointing earlier. They are -- there's a ladder already up on the roof, right?

A Yeah, there is a ladder extended towards the roof. Yes, sir.

Q And we see that grey smoke again coming out of the top of Owens Hall, right?

A Yes, it appears to be coming from the top. It's hard to tell if it's seeping through the shingles or through the vents, but yeah, there is this greyish smoke that is located here and also the other side, correct.

Q And it looks like it is coming right our of the very peek of Owens Hall, right?

A Correct.

Q Okay. Now, we look at exhibit 28, this is the photograph that you sort of based your animation on, right?

A Well, that is a photograph that is included in my animation and this flame height is what I was focusing on to give a sense of the combustibles that must have been there to create that flame. Yes, sir.

Q Now, if we look at when this photograph was taken -- this was taken at 3:43 about 35 minutes after we know the fire department is there, correct?

A Yes.

Q And we know that the smoke that has been coming out of Owens long before we've seen the flames as high as we see in this photograph. We didn't see any flames at all previously, did we?

A From those views of those photographs. And I agree with you. Go back to the photograph. You will see the window to the right -- I think I indicated in my prior testimony is open. This window is open and this window was open indicating the fire department were in there getting smoke out of that upper floor.

Q In fact we got another photograph showing them actually in place on the roof, don't we?

A There they are, yes, sir.

Q Okay, and so the time stamp on that is 3:43. So you would agree with me that these photographs were not taken long before the fire department got there, or the early stages of the fire? It's been going now for 45 minutes or more?

A We don't know when the fire started, but nevertheless the flames that we see in these photographs is of a nature that would indicate there were combustibles at that location, correct.

Q Right. We see flames now 45 minutes after we saw smoke coming out of Owens?

A Correct.

MR. SHEALY: All right. I don't have any further questions for you. Thank you very much.

THE WITNESS: Thank you, sir.

REDIRECT EXAMINATION

BY MR. VOGT:

Q Mr. Arnold, is there any significance with respect to your opinions as to the time the fire was reported to the fire department and the time the flames are first seen through the scupper?

A No, sir.

Q Why not?

A Because the flames at the moment in time those photographs are taken are an indication of fuel that was burning at that moment in time.

Q And the dimensions of the flat roof, I think you described as being like the state of Oklahoma?

A Yes.

Q The fire damage that you saw that you base your opinion on the fire spread, where was that fire damage in relation to the scupper?

A It was approximately ten feet away from the scupper, near the -- if you remember the photograph that shows the steel

beam and differential damage to the aluminum -- the aluminum trim.

Q So would it surprise you no flames were seen through the scupper until the fire travel towards the scupper?

A No, not at all.

MR. VOGT: Thank you.

THE COURT: Thank you, sir.

THE WITNESS: Thank you, sir.

THE COURT: You may stand down, sir. Do you wish to have him excused?

MR. VOGT: Yes, at this time except for rebuttal.

THE COURT: You are excused at this time, sir. Thank you.

THE WITNESS: Thank you.

THE COURT: Madame forelady and members of the jury panel, you will be relieved to hear we will go ahead and adjourn for the evening.

We have one more little deposition. I'm kidding. We are going to go ahead and recess for now. I am going to ask you please be back in the jury room in the morning at 9:30, at 9:30 in the morning. Please have a pleasant night tonight and be in the jury room ready to go at 9:30.

(WHEREUPON, the jury leaves the courtroom.)

THE COURT: All right. Anything we need to take

up out of the presence of jury from either side at this time?

MR. VOGT: Your Honor, tomorrow morning we may read the deposition of the Defendant's expert. We have only gotten the designate portion this morning. And after that I believe the plaintiff most likely will rest. I was just wondering as far as time wise, I don't know if you have any indication from the defendant how long he will take. I am concerned about getting the charge together and having time to do that.

THE COURT: You are suppose to already have it together. I'm suppose to already have it from both sides. I don't have it from either one.

I know what you are going to do, you'll hand me a fist full of them here at the last second and expect me to try and put it together at night.

MR. VOGT: Well, the only ones I am really concerned about are the ones primarily concerning the code. It is difficult to as assess how to draft them.

THE COURT: All you have to do is give me the code sections and I will read it. That's the best way I know and the definitions you want to give me about the code. Anything that you got that is included in the code that has been referred to here and discussed that

has applied in some way, either side is entitled to have whatever you wanted read to the jury. I will look at it and read it. But I'll discuss the charge with you, whatever you got together you can bring it to me. I'll meet with you in chambers in a few minutes and let everybody else leave. We can discuss the charges and I can go over what I anticipate charging and then you hand me up these particular code sections.

MR. VOGT: I will be happy to give you code sections.

THE COURT: My favorite peeve is lawyers hand me up a bunch of requests to charge after I pretty much gotten my charge together and then when I say this doesn't apply and this doesn't apply, oh, somebody in the office drew these up.

MR. VOGT: Isn't there a pattern jury instruction.

THE COURT: We don't use that in South Carolina. I wish they did.

MR. VOGT: Oh, I'm sorry. That's my mistake.

THE COURT: Pattern instruction would have to be approved by the Supreme Court as an accepted charge. We have pretty much most of our charge together. I've got certain things I charge in every case, if your talking pattern in that regard.

MR. VOGT: Right.

THE COURT: But we don't have approved charges, but I have regular charges about the evidence, credibility of the witnesses and burden of proof and evidence. Those kinds of things are standard, but specific to the case whatever you have.

MR. VOGT: I imagine you have one for breach of contract as well.

THE COURT: I have one, but I got to look at what you got.

MR. VOGT: I don't have those with me but we --

THE COURT: Why don't we go over what I got back in chambers.

MR. VOGT: I was going to give you had asked for the code provisions. I think they have been attached them to our motions before. This is Internation Fire Code. I can highlight the provisions if you like.

THE COURT: I am not charging the whole code.

MR. VOGT: I will be happy to highlight them. And I also had given you earlier, Your Honor, I don't know if you kept a copy of the definition of the yard storage.

THE COURT: I got it if you gave me.

MR. VOGT: I will give you this one.

THE COURT: I got it right here.

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.)

(WHEREUPON, the trial continued on March 20, 2014)

THE BAILIFF: Come to order.

THE COURT: Thank you. Please be seated.

Counsel ready to proceed?

MR. VOGT: Your Honor, the only other evidence the plaintiff would put is to read the deposition of Richard Hargis and I think we have exchanged designations and objections and there are still objections to be ruled on.

THE COURT: Wonderful. Let's here them now.

Why didn't you all tell me that. I could have been in here at nine o'clock hearing these things before the jury got back there.

MR. SHEALY: Your Honor, may it please the Court, we did work through a number of them. That's what we have been doing. We got down to what we could not work out.

THE COURT: I worked last night, you all couldn't work last night?

MR. SHEALY: We did, Your Honor.

MR. VOGT: Your Honor, a copy of that deposition I believe I handed up. I will give you another copy.

MR. SHEALY: Your Honor, I handed up a copy of our objections.

THE COURT: I got those. I just don't have the

deposition.

MR. SHEALY: Yes.

THE COURT: It doesn't mean much to me without the deposition.

MR. SHEALY: Your Honor, we have sort of an overarching objection to this deposition being read as cumulative evidence. The substance of Mr. Hargis's testimony is that he agrees that the cause could not be determined. He agreed with the general area of origin, so to that extent it is cumulative.

THE COURT: He also agreed that there had to be -- as I recall your argument yesterday -- he also agreed that there had to be some combustible material up on that roof for the fire to reach the magnitude it did and get where it did on these other buildings, isn't that correct, that he agreed with that too?

MR. SHEALY: Well, I think there are some expressions to that effect in the deposition and so I have some -- also some more specific objections to the way that evidence would be presented by way of this deposition.

THE COURT: Well, I find that would be relevant, probative and I will allow it, the deposition of his testimony. Now, some of it may absolutely not be necessary to put in. I don't know.

MR. VOGT: Your Honor, much of this is about area of origin which he agrees to. He agrees the fire started on the flat roof. If the defendant wants to stipulate the fire started on the flat roof then we are only left with the questions regarding the spread issue that you talked about, which would cut it down even further.

MR. SHEALY: Your Honor, a lot of my objections have to do with the fact that he is being presented -- if this deposition is read in, his credentials are not introduced to the jury. He can not be qualified as an expert based upon the way this deposition was taken.

THE COURT: Some one did not do that in the deposition?

MR. VOGT: Your Honor, what -- he read his designation, part of his designation had his CV attached to it, which is part of the deposition. I didn't qualify him during the deposition other than he does testify that he investigated I think it was something on the order of 3000 fires.

Let's see -- how many fires have you investigated? That's a difficult question. Probably at least 1500, 2000 if not more. How many were involved in cause of origin, so on so forth.

Your Honor, the purpose of this deposition is that

my sense is based on some of the questioning yesterday is that despite Mr. Hargis's agreement as to area of origin, an argument may be made that the fire didn't originate on the roof. That's the only evidence in this case. I simply want the jury to understand that they had an expert on that scene and he didn't disagree and then he also didn't disagree as to the fire spread.

MR. SHEALY: Your Honor, my point -- my issue is that where Mr. Hargis is asked opinions in the flow of this that before he is ever asked about his qualifications, before he is ever presented as an expert because it was a just a discovery deposition.

THE COURT: My question to you is, can't I find him expert now and decide whether I am going to allow his testimony as an expert or not?

MR. SHEALY: Your Honor, you are the gatekeeper to determine whether he's an expert or not, but I think it would violate Rule 403 to confuse the jury to have him render opinions --

THE COURT: Nonsense. What else have you got?

MR. SHEALY: Your Honor, the first specific objection is as to page 18, lines three through six.

THE COURT: That's different then the question and answer I did not allow Mr. Arnold to testify to. That

question is a little different then that. This question, "Is it fair to say that in order for a fire to start on a flat roof you need combustibles in that area?" That's different then saying, did it start, basically start of it was combustibles.

MR. SHEALY: And Your Honor, here's the issue, is he doesn't ask this -- he doesn't ask this, do you believe to a reasonable degree of engineering certainty that you need combustibles in that area to start a fire.

THE COURT: Is that not asked anywhere in the deposition?

MR. VOGT: I asked him if he held his opinion as to the area of origin to a reasonable degree of certainty, Your Honor. I don't believe I asked him as to that particular opinion. I just wanted to hand up, Your Honor the supplemental -- the defendant's supplemental answers to the plaintiff's first set of interrogatories and the defendant's expert witness, which has his curriculum vitae.

THE COURT: Well, you can offer him as an expert witness before we start. If the deposition is read in the record you can offer him as an expert witness and I will glance at this just a little bit more, but if I am satisfied I will allow his testimony entered as an

expert in whatever he was suppose to testify and what you identify him as a witness and your responses to the interrogatories.

MR. SHEALY: Your Honor, I will object.

THE COURT: I understand you object. I am not asking if you object now, counsel. I don't understand you.

MR. SHEALY: I'm sorry. I was trying to let the Court know.

THE COURT: You already said your objection --

MR. SHEALY: Yes.

THE COURT: And I told you my position.

MR. SHEALY: Yes, sir.

THE COURT: Now you are tell me you are going to object because I take this position. That's not permitted under the rules.

MR. SHEALY: Understood, Your Honor.

THE COURT: I'm not happy with either one of you because I'm having to do this while the jury sitting back there this morning.

MR. SHEALY: Yes, sir.

THE COURT: I am not happy with either one of you because this could have been down last night, first thing this morning. I was here at 8:45. I don't know why we couldn't of done this before before the jury

was sitting back there.

I am not interested in your objection. It has already been made on the record. You can make it again, when it is presented again. But I won't argue and rule on the same thing two or three times with you because you don't like my ruling. Do you understand?

MR. SHEALY: Yes, sir. That's not my intention.

THE COURT: Yes, it was.

Mr. Vogt, you are offering him as an expert in the cause and origin investigation. So I mean you can offer him for that purpose only.

MR. VOGT: And Your Honor, do you want us to do that before we begin reading deposition.

THE COURT: Yes.

MR. VOGT: Okay, and then I would like to -- should I move for that now, Your Honor?

THE COURT: No before the jury.

MR. VOGT: Before the jury, okay. I just want to make sure I had the procedure clear.

THE COURT: Now, let's deal with the other objection which was whether he stated to a reasonable degree of profession certainty whatever this -- as an origin investigator.

MR. VOGT: He did say in the deposition, Your Honor, that he held his opinion as to the area of

origin to a reasonable degree of engineering certainty. I did not ask him if he held his opinion as to the spread of the fire to a reasonable degree of engineering certainty.

THE COURT: Well, he wasn't even qualified as expert in that field, and so I will allow him only to testify with regarding to origin.

MR. VOGT: That's fine.

THE COURT: If he testified to a reasonable degree of professional certainty as to the origin of the fire then he can testify concerning that.

MR. VOGT: With that ruling, Your Honor, I think we can eliminate a great amount of his deposition testimony.

MR. SHEALY: Your Honor, I'm happy to confer with Mr. Vogt to see what else he wants to keep in.

MR. VOGT: It might be just a matter of several pages, Your Honor. If he states his conclusion as to --

THE COURT: Well, take it and see what you can do with it. If you want to start this case tomorrow, Saturday, Sunday?

MR. VOGT: No, sir. We are -- that is why I am trying to -- this is hour and a half. I think we can cut it down to 15 minutes.

THE COURT: I will take about ten minutes or so to let you do that. Let me know when you are ready.

MR. VOGT: Thank you, Your Honor.

(WHEREUPON, there was a brief recess taken.)

THE BAILIFF: Come to order.

THE COURT: Please be seated.

All right, where are we?

MR. VOGT: The parties have agreed to stipulate the fire originated on the flat roof and that will eliminate the Mr. Hargis's deposition and the plaintiff will rest.

THE COURT: Okay, so you are not putting anything in from the deposition -- offering anything, just stipulation?

MR. VOGT: Yes.

MR. SHEALY: That's correct.

THE COURT: That the fire started on the flat roof.

Why don't we do this. Rather than bring the jury out here and have you rest and send them back, why don't we consider -- we'll go ahead and consider that you have closed. Although you can do that formerly before the jury, before they come back in and we will go ahead and here the directed verdict motion at this time.

MR. SHEALY: May it please the Court.

THE COURT: Yes.

MR. SHEALY: Your Honor, we would move for a directed verdict on all issues before the Court on the grounds that the plaintiff has failed to prove the causation element that it had to prove in both breach of contract and the negligence claims.

There has been no evidence introduced as to how this fire began. What the plaintiff has been relying on is what is known as the spread theory of liability and that theory of liability has not been recognized in South Carolina. One of the reasons why, Your Honor, is because in South Carolina we continue to adhere to the rule that we do not recognize res ipsa loquitur. The spread theory of liability arose -- it was recognized in other states to deal with the problem that in many cases no one knows how a fire started, or some -- someone started the fire. They can't be found, and so then the theory is well, the fire was caused to spread by the defendant's negligence.

Your Honor, in South Carolina we continue to say that you got to show that but for some negligence of ours the fire would not have occurred. And if you can't get there your jumping the gun to talk about the

spread of the fire. The fact that we had combustible materials on the roof, if that is proven and there is evidence in the record from which the jury could certainly find that to be the case, but there is nothing indicating that they would -- it was foreseeable that they would ignite.

The fact that they are designed to resist fire in fact. They are not volatile materials that auto ignite or spontaneous combust and so there is the issue of lack of causing fact and lack of foreseeability. No one would think that these materials would cause a fire. They are the very materials that are going to be installed on the roof and so there are no more combustible then the roof or the other building components are.

And so for that reason, Your Honor, the plaintiff's causes of action both of which have a proximate cause element are fatally flawed and we would ask that this Court not send this matter to the jury and grant a directed verdict in favor of the defendant.

THE COURT: All right, thank you.

MR. VOGT: Your Honor, as the Court knows a motion for directed verdict must be viewed with the evidence most favorable to the non-injured party and clearly in

this case what the defendant is arguing is not that there is insufficient evidence, he is really arguing for the Court to create new law.

There is no case that addresses the spread issue. There is many, many cases in South Carolina that deal with negligence and breach of contract, and what we have in this case is but for the storage of materials on the flat roof this fire would not have spread. That is the evidence that has come in to Court. But for, that's the legal cause. Foreseeability looks at the foreseeability of the injury. The fire code for instance, it's soul purpose is to prevent fire. The fire code provision said you don't store materials within thirty feet of the building because fires can happen regardless of the means of ignition. And that's precisely the danger which those provisions are intended to protect against.

So the plaintiff has met both but for and foreseeability for both the contract claim and the negligence claim. Clearly under the contract there is no issue that there was only two places these materials were suppose to be stored and it wasn't on the flat roof. There is clearly a breach of contract, evidence to support a jury finding a breach of contract. But for those materials being on the flat

roof where they are not suppose to be this fire doesn't spread to the adjoining roofs. The contract also required expressly that Pickens adhere to the code. But for their failure to comply with code this fire does not spread to the adjoining buildings.

I think the evidence in this case clearly does not support a finding of direct verdict for the defendant. Frankly I think, Your Honor, it's negligence per se given the testimony in this case. There is no question there were materials stored within thirty feet of the building. There is admissions from the roofers, lots of conflicting testimony but at the end of the day there are admissions. It doesn't matter if they don't know the code or not. They are admissions. Clearly I believe the plaintiff has satisfied all the necessary elements for both breach of contract and negligence.

THE COURT: In looking at a motion for a directed verdict the Court is required to look at the evidence in a light most favorable to the party against whom the motion is being made.

In this case looking at the evidence in a light most favorable to the plaintiff, my ruling has a tendency to educate either side that is just the way it falls, but I'm required to put on the record

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

was under the eaves and got under the layers and was difficult to get to. They had to pulled off shingles and everything to get to it. So the section prevents them from storing these materials under the eaves, et cetera, on this area, flat roof close to the eaves and certainly argue that without that certainly there would not have been anything like this damage to the buildings.

Secondly, we got testimony on the record from an expert, well qualified expert, who says on the flat roof a fire that started on flat roof with no other combustibles on there would have died itself. Would not have been of any significance and would have died out on its own unless there were other combustible materials which this fire would reach and make the fire greater magnitude, bigger, and therefore reach the height that it needed to reach in order -- and spread to the areas where the great damage occurred -- greatest damage occurred, and so that was his testimony. Therefore -- and this is different then you got a home owner situation where they have created some risk and somebody suing them because materials they had, dust materials or other materials that they had created a risk. That if a fire was created, if there was a fire it's foreseeable then that this would

make the fire worse. Would spread and allow it to spread to other homeowner's property and that is different. That is not this situation. That is not at all this situation. And I would distinguish in the law and factually any of those cases which do not have to do with the commercial enterprise in which the very, the very structures and buildings that the defendant has been contracted to repair and building demolish part of it, take out part of the roof and put in a roof and these other things which bring in to play these regulations, fire and safety regulations, the very thing that the contract covers and what they are required to follow is different then finding some common law or duty, or some duty by somebody who creates a fire hazard or an opportunity for a fire to spread. That is different. That's not this situation. So we have to deal with this as a unique situation. But it deals with violation of the regulations which have the effect of the statute really because it has been approved by the legislature and it has force of law, and a violation of those is negligence per se.

So we don't have just a common law duty created by case law here. What we have here is a violation of the law, basically, and the defendant has agreed to

abide by the law in this contract. And of course he is bound by it in any event whether he agreed to be by contract or not. That's a matter of contract. He is still bound by it. And so if in this case it really does not matter how the fire started, if it started on the flat roof.

These statutes were designed to take away these combustible materials from proximity to where the project is going on, where the fire might spread or make a fire worse regardless of the cause and the source of the fire. How it ignited, the energy source really does not matter under this statute because its keep the combustibles away.

The testimony is, again, to repeat myself, on this flat roof an ignition -- a fire been ignited there it would have died out on its own without doing any real damage other than a little bit on the flat roof. Certainly would not have reached these buildings that were adjacent, in close proximity. Certainly this would be constituted as storage, yard storage, since it is in the open. It talks about being in the open. This is in the open. It can't be within thirty feet of where the work is going on, construction is going on. It is within thirty feet without any question. We had testimony on that and it clearly is. The Court

can observe that from the photographs that have been introduced, and the testimony of course of the witnesses certainly within thirty feet in violation of the statute and the purpose of the statute is clear. And so even if it's in an outside storage area, drop area, whatever you call it. It still can't be within thirty feet for that very reason; it can make a fire a lot worse if it is within close proximity to the work area. Buildings being worked on.

So I think this is kind of unique situation. Unique factual situation. Unique question of law in this case based on these facts. I don't think they are going to find any other case. I haven't seen any other case that comes close to the facts in this case. Therefore, I find it's a novel question not just on the homeowner's duty or common law duty. That's not the issue here. These are violations of statute which are negligence per se.

Then the question is, did it proximately cause the damage to the plaintiff in this case and based on the expert testimony I heard in this case which to me makes common sense -- is common sense, that if the fire started on the flat roof with no combustible materials stored on there and these workers had been gone for 23 hours. So they were not working on this

thing. An argument could be made if they had these combustible materials up there, the actual materials that they working with, then you don't get there. But they had been gone a day, 23 hours or so, so you might as well say a day. They have been gone for a day. This is on a Friday was it not.

MR. SHEALY: The fire was on Saturday.

THE COURT: Saturday. So they were gone for the weekend. They were not working on it over the weekend. They left about four o'clock on Friday and this is on Saturday. This happened on a Saturday about 23 hours later. So they were not working on Saturday and not working on Sunday. Monday would be the earliest they'd be back there. So materials if they were there they were stored up there, otherwise it would be required to take them down off the roof. And so -- and we got testimony obviously from some of the employees who had a reason to diminished the amount of combustible materials, construction materials that were left on there because. They had every reason to diminish that. But nevertheless there's testimony that there was combustible materials up there. And so any question about that creates an issue for the jury on that.

Then you come down again to proximate cause to the

Court. The jury certainly could find the combustible materials left up there were the real cause of damage, most of the damage that was done in this case. I don't think there is any question about that. They could find that. And you don't have to have the source of the fire, the source of the ignition to determine that. It doesn't matter how it starts. We don't know how it started. Probably will never know how it started and what the ignition source was. The question is though, a great amount of this damage, most of it, was done once the fire reached a certain height and got into the eaves and got into these buildings in which the defendant was working. And so the Court finds that it does not matter about the ignition source.

Although I would say this, the source would still be speculation, but the only testimony we got is, the only ones put on that roof were the workers for the defendant. The doors were locked. There was no roof access really unless someone went with a key and opened it up to get in there and climbed some ladder. I thought those were taken down by the defendant. They testified they took them down and put them on the truck. I don't know about that. They had a lay down area there, but that's what their testimony was. And

so, nobody would have had access to the roof unless somebody with a key went up there with a specific purpose to do that. Even so, I don't think we can totally rule that out. But it doesn't matter for the purpose of the Court's ruling, because I don't think we need to know the source of the ignition of the fire to determine the greatest amount of this damage may have been -- it will be up to the jury to decide that -- whether the great amount of this damage was caused by combustible materials left on the roof in violation of the statute by the defendant.

Therefore, I find there is substantial evidence from which the jury could infer the defendant breached a contract in this case, proximately resulting in damages to the plaintiff. And I find further that there is substantial evidence from which the jury could infer that the defendant was negligent and that that negligence proximately caused the damage, substantial amount of damage, the greatest amount of damage to the plaintiff. Those will be issues for the jury to determine whether the damage was a proximate cause by the defendant's conduct or neglect and the amount of that damage. So it will be issues for them.

That's the ruling. I deny the motion for a directed verdict on the breach of contract and the

negligence issues.

Anything else?

MR. SHEALY: Nothing further from the defendant.

MR. VOGT: Nothing, Your Honor.

THE COURT: I am trying to think if I want to say anything else for the record.

I will add one thing. As far as the factual evidence is concerned, there is evidence on the record that the defendant used a lift, a hydraulic lift to get materials up on this roof. It was difficult to get it up there. They had to carry it up by a ladder. There was some testimony they used that hydraulic lift while it was there to get the materials up on the roof. There is evidence that the lift was gone approximately thirty days or whatever it was -- approximately thirty days before the day of the fire and that some of the materials, roofing materials, heavy roofing materials were put up there by the lift. There was some evidence the lift was gone and they no longer had that source to get these materials up on the roof except apparently by carrying them up on the ladder. And so that raises the issue about what was put up there. That's just speculation at this point. Something from which the jury could infer, whatever they wanted to infer from that.

All right, bring the jury in please. Now wait just a minute. I will read the stipulation to them. I will give them the stipulation and then you will close and then we'll go from there.

MR. SHEALY: Your Honor, I am not anticipating putting up evidence at this point.

THE COURT: None at all?

MR. SHEALY: None.

THE COURT: I will still need to run through this charge to make sure I got it all straight. I worked on it last night. I want to be sure I included everything.

(Jury entering)

THE COURT: Good morning, madame forelady, members of the jury panel. Again, I apologize for the delay of getting you out this morning. There was a matter I had to take up with counsel that took some period of time, but and as a result of that time we spent here the remaining testimony and evidence has been -- or the time it would take to get that in has been greatly reduced, so it has been beneficial.

I told you that what you would consider in this case in the way of evidence, one of those is stipulations of counsel. Agreement by counsel. Counsel have stipulated and agreed that the fire in

this case started on the flat roof. The fire started on the flat roof that is their stipulation. Again, you can consider that along with all of the evidence testimony and evidence, give it such weight as you determine to be appropriate once you begin your deliberations. All right.

MR. VOGT: Your Honor, the plaintiff rests.

THE COURT: All right. The plaintiff has rested.

MR. SHEALY: And Your Honor, we rest ourselves.

THE COURT: The defense rests.

THE COURT: All right, see I told you it was going to shorter it up.

Now -- what I got to do though now is I will have to send you back to the jury room. There are some matters I need to take up with counsel at the conclusion of all the testimony and evidence. We have just remaining final arguments with counsel and my instruction with regard to the law that applies. This will take us a little time to do that. I apologize again for you sitting back there.

The good news is we will definitely finish this part of the trial today and we will get it to you as soon as we can.

So if you retire back to the jury room.

(WHEREUPON, the jury leaves the courtroom.)

THE COURT: All right. I will hear you with any motion you wish to make at this time.

MR. VOGT: I am sorry, Your Honor.

THE COURT: I will hear you with regard to any motions.

MR. VOGT: The plaintiff has none.

MR. SHEALY: We have no other motions to make, Your Honor.

THE COURT: All right. Just give you the opportunity.

MR. SHEALY: Well, Your Honor just to make sure that I have not let something go, we would renew the motion that we just made on the same basis.

THE COURT: All right, and I'll deny it for the same reasons I gave earlier.

MR. VOGT: Your Honor, I am sorry, I'm not sure if this is appropriate time or not, but the plaintiff would move to strike the defense of comparative negligence here. There is no evidence in the record of any negligence on the part of Winthrop.

MR. SHEALY: May it please the Court. Your Honor, I asked several witnesses if they were the fire prevention program superintendent. Wes Love indicated that he was the person primarily responsible for this project. He said no, he's not that and that

requirement is imposed upon the owner by both the fire code and NFPA 241, for the owner to have such a person. And so we believe there is evidence that gives rise to comparative negligence defense that has been raised and we would ask that that motion be denied.

MR. VOGT: There is no evidence that even if that provision of NFPA 241 mandated Winthrop to have a person designated that, that that had anything to do with the -- this fire. There is nothing in those provisions that relate to storage of materials.

THE COURT: It has to do with having an overall person on the project, doesn't it, who is responsible for fire safety. And even though the contract doesn't relieve the defendant from responsibility to comply with all of the terms in safety, nevertheless if these regulations had the force of law then a violation of them is negligence per se, is it not?

MR. VOGT: Well, Your Honor, certainly as a general rule violation of the statute is negligence per se, but my argument here is there is no --

THE COURT: How can I say if there was somebody designated in there as the fire safety person for this project by the owner that they wouldn't have spotted this combustible materials on the roof if they had

been doing their job and told them to get them off the roof and move them away from these eaves if they are in fact close to these eaves. How can I say that.

MR. VOGT: I understand, Your Honor, but remember too this flat roof wasn't part of the project. So if you take a very strict interpretation --

THE COURT: Well, I think it was part of the project if they had materials up there and had use that because these slanted roofs and what have you. If they had to use that as an access point and that. You can't say that it's not part of it. It is part of it. I think the fact that whether the defendant -- excuse me, the plaintiff is negligent in this case by not having somebody out there particularly with regard to the contract, which puts all the responsibility and relieves them of responsibility and -- nevertheless, I think the safest thing for me to do is go ahead and instruct the jury on it. That's an argument you can make.

MR. VOGT: My only point about the project, Your Honor, was this particular roof was not part of the Pickens project because it had already been roofed and so under the technical definition of NFPA 241 if you --

THE COURT: It's part of the project and they were

working there. Everybody knew they were working off of that flat roof as an access point, et cetera.

Your argument doesn't make any sense to me.

MR. VOGT: Okay.

THE COURT: It's all part of the project. If it weren't part of the project then ---

MR. VOGT: Maybe I am not explaining.

THE COURT: Maybe the defendant wasn't there.

MR. VOGT: Bancroft Hall was the project. The flat roof is part of Owens.

THE COURT: But it was part of the project they were working on and the argument is that Winthrop employees knew they were working there. They went up there. Wes Love went up there and looked at it. He knew they were working off of it. He doesn't seem to know what was up there, but he was up there and that's part of his job to go up there. If he wasn't designated fire safety person, to me with the code, he could have enforced it. Basically they said they farm that stuff out to the city and the fire department and whatever. Basically they hired out through them. But I don't -- they didn't have an in-house person that actually was on the project, fire safety person on there. So, I think that I need to go ahead and submit that issue to the jury.

You certainly can argue whether they had anybody designated as fire safety officer for the project, whatever the title is. You need to hand me up something on that so I can charge it, that section.

But in any event, you can certainly argue that had nothing to do with it. Not a proximate cause of the damage. But they can argue it did. Contributory negligence. That if that person had been doing there job under the statute and complied with the statute he might have noticed something and stopped what was going on whatever it was. I can't say. I think it's a matter for the jury.

MR. SHEALY: Your Honor, I would point you to defendant's proposed charge 12 that I handed up at the beginning of the trial.

THE COURT: Let me make sure I got that. I got that.

You got it in quotes, is that the section that you are referring to?

MR. SHEALY: Yes, Your Honor. What I attempted to do in jury charge 12 was put all of the applicable sections from both the fire code and NFPA 241, both that apply to the comparative negligence defense and that also apply to the plaintiff's claim all within one instruction.

THE COURT: I got that and I charged that. Let's do this though, when did you hand me up your code sections, did you do that this morning or did you e-mail those?

MR. VOGT: Last night I gave you the sections of the IFC definitions and also the NFPA 241 and I hi-lighted the once with respect to the plaintiff. There should be three separate documents I believe.

THE COURT: Are you talking about these jury charges, proposed jury charges?

MR. VOGT: Well, last night actually Your Honor, I gave you a set that had definitions.

THE COURT: Well, you did. I am just asking you didn't write them out for me.

MR. VOGT: I think we did in our jury charge.

THE COURT: Well, I don't think you did. What I meant for you all to do is give me the statute and sections written out that you wanted to charge to the jury, the definitions.

MR. VOGT: Okay. Your Honor, I am confused perhaps --

THE COURT: I may have something this morning. I got these. They appear to be more like definitions and the purpose of the statute. Is that what you talking about?

MR. VOGT: Yes. There is a separate charge for that and then we also have --

THE COURT: Violation of statute charge?

MR. VOGT: Right. Right.

THE COURT: You give me a number but you didn't write it out.

MR. VOGT: Yeah, we did, Your Honor. NFPA 241 1.1.

THE COURT: This is 8.3.3 -- you don't have to put this on the record.

(Whereupon, there was an off the record discussion and a short recess taken.)

THE COURT: Counsel ready to proceed?

MR. SHEALY: Yes, Your Honor.

MR. VOGT: Yes, Your Honor.

THE COURT: Remember you got two arguments you can make.

MR. VOGT: Yes, sir.

THE COURT: Please bring the jury in.

(WHEREUPON, the jury enters the courtroom.)

THE COURT: Madame forelady, members of the jury panel, we are up to that part of the trial where counsel will make there final arguments to you and then I will instruct you upon the law that applies and the issues in this case. I will point out to you and I will do this maybe at the time I present the verdict

form to you as well. What we have -- the decision you are to make insofar as the case is as to liability in this case. We are not getting into damages in this case. At this point we are getting into liability only and that will be a decision you will be making in this case and if damages are necessary that will be done separately. But you will be considering only on the liability issue.

I would ask you now to listen intently now as counsel address you in final argument.

MR. VOGT: May it please the Court.

THE COURT: Yes, sir.

MR. VOGT: Ladies and gentlemen of the jury, Saint Patrick's Day, you probably didn't realize you would see so many photographs of a flat roof where a fire started. I may have another opportunity to address you after Mr. Shealy has spoken, but if I don't I want to thank you now for your service.

I think at the very start of this case the judge indicated that our jury process is kind of the cornerstone of our judicial system and I believe that greatly. Not very many people have an opportunity to do what you have done this week. Now it is hard work. You had to listen to a lot of different testimony. Some of it is repetitive. You had to listen to people

read depositions. So I greatly appreciate and Mr. Jett appreciates, Winthrop appreciates all the attention and the time you spent with us, time away from your family, time away from your jobs. We understand the sacrifice and we be appreciate it. I know Mr. Shealy believes that as well.

At the start of this lawsuit I told you that Winthrop intended to prove seven things. Remember that. And I also told you I want you to hold me to it. So through the course of the next little while -- I will try to be as brief as possible -- I will go through the seven items. And again, I want you to listen carefully. You heard all the evidence now. I want you -- you are going to weigh that evidence. The judge will instruct you how to weigh that evidence.

The first thing that I told you was the fire originated on the flat roof. Well, after a few days now the parties have stipulated and agreed. There is no question. Chief Driggers testified, if you recall, the fire started on the flat roof. There is no dispute about that.

There is also no dispute that when the fire was discovered Officer James Howell went in to Owens Hall. Made sure nobody was present. Came back out. Met the fire department and brought them up to the third floor

up to the attic and unlocked the doors to the attic. There is absolutely no evidence -- any other evidence that those doors were locked. The fire department then went out the hatch and started fighting the fire. There is no access to the roof because all the roofers -- we will go through their testimony in detail. They said, well, we take our ladders down at the end of the day. So fire starts on the flat roof. That was the first thing I was going to tell you, right. I also said we would prove that the flat roof was a TPO, plasticized rubber and that's important because of how this fire spread. I don't believe there is any dispute that this flat roof was a TPO plasticized rubber roof. Then the third thing I told you was that Pickens Roofing and Sheet Metals employees stored combustible roofing materials on the flat roof between Bancroft and Owens.

You heard a lot of testimony from a lot of different Pickens employees on that subject and I will take a few minutes and go through each one. The first person we put on the witness stand was Randy Pruitt. He had a number of different titles. He was a foreman of that metal crew that was working the day before the day the fire, so he was supervising his nephews, Brandon Lusk and Matthew Pruitt, but then he also was

according to the Clint Robinson, the project manager, a superintendent who had overall responsibility for the job. And later on we are going to talk about some of that contract provisions which required that Pickens to have a superintendent. So Randy Pruitt -- Clint Robinson the project manager said Randy Pruitt was the superintendent and he was responsible to make sure this work was done in accordance with all the contract provisions and specification.

Immediately after the fire, within a couple of days, Chief Driggers interviewed him. What was on that flat roof when the fire started? And he told him at that time was, well, there was metal, but he also told him about rolls of felt paper, the roofing paper. He said he didn't smoke. Didn't mention anything else being on there other than those roofing materials which included roofing paper which is combustible. Combustion means something that can burn.

Now, when he got on the witness stand he said something different than originally. He said no paper. No paper rolls on roof. After we showed him his deposition testimony he went back, he admitted oh, yeah, there were rolls of roofing paper on there. All right. So, as we go through these witnesses I want you to look for consistency and inconsistency.

Consistency with what they said initially, what they said on the stand and what they said after they had portions of their depositions read to them.

So Randy Pruitt had no knowledge of the fire code. He was the superintendent for this job. He had absolutely no knowledge about NFPA 8.3.3 which we have seen, the yard storage provision. He had absolutely no knowledge. Maybe that's not his fault. He's not the the person who is suppose to train them. Larry Renner was, the safety director, or safety officer. He said everybody was a safety officer. Mr. Renner appeared not to have any working knowledge of NFPA 241. So, you have superintendent on the roof who doesn't know the code. He knows there is only two places you are suppose to store material, on the ground in front of the building or in the parking lot half a mile away.

The next person we put on the stand was Brandon Lusk, his nephew. And Brandon's job was to put the metal down. Randy is hurt, he's in a sling. He is watching him and Brandon is going back and forth to the flat roof. After the fire he told Chief Driggers in addition to the metal there were combustibles there; rolls of roofing paper. On the witness stand he said, no Chief Driggers is wrong. Absolutely.

Chief Driggers is wrong. So a few days after the fire, paper. On the witness stand four years later no paper. Now, I think Brandon Lusk told us another very important fact and it's one more piece of this puzzle. If you remember there is a lift that they use to take material from that lay down area all the way up to the fourth floor and what he said was, well, it's hard work carrying those shingles and it is. Remember all those shingles all lined up at the ridge of the roof. He also said the lift was gone. All right. The lift was gone. He talked about some other crew being on the roof shingling. Remember that, I think he described them -- I'm not sure if he use the word Mexican, but I think that's how he described them. He said somebody else was on the roof. He didn't say that day before the fire, but it close proximity on the roof. But the lift is gone. So human nature is what? Before the lift leaves you are going to get all that material up on the roof. Right. I think that's critically important when you consider Clint Robinson's testimony. We first talked to Matthew Pruitt and we will get back to Matthew.

Mr. Robinson was the project manager, right. You remember I went through all the specifications with him, and we will see some of those in a minute. Did

you do this. Did you initiate a safety program. Were you aware of the crew's storage locations, yes. All right. He negotiated the change order that paid Pickens more money because they only had that one location to store the materials. He said, well, before the fire -- now he said he was last there maybe a week or so before the fire -- two pallets, two wooden pallets of material were on that flat roof. Storage is in front of the building, right. Why are there pallets of shingles, pallets of roofing paper, combustibles on the flat roof. I think you will recall that testimony. Essentially, because it saved Pickens money. He cut corners to save Pickens money. That ties into Mr. Lusk's testimony about the lift being gone. The lift is gone. The project manager is there. He doesn't want to take more man hours. He doesn't want to pay all those workers more to carry up one by one up a ladder. Put everything on the roof, finish the roof. Normally nothing would happen, right.

Matthew Pruitt, the third member of the crew is on the roof the day before the fire. Matthew told the fire marshal he had been on the flat roof. He told us he had been on the flat roof several times that day, going back and forth. Initially if you remember he

said just metal. Described a few different pieces of metal. Going back to his deposition testimony he said, after reading that there were shingles, roofing paper, nails and metal and went back and forth. So I think it's natural for the roofing crew to be unsure. I'm not trying to judge them. That's not my role. But I think it is human nature -- a large fire occurred. In the days immediately after the fire they weren't thinking about what was there, right. They just told Chief Driggers what was there. In this setting, this adversarial setting some times memories change and that's why we had to show them the deposition testimony to refresh their recollection about what they said. And what they said was there was combustibles on the roof, on the flat roof the day prior to the fire.

Bobby Pickens. Mr. Pickens is the president of Pickens Roofing. Pickens and Winthrop have had this long term relationship. This is essentially a business dispute between those two companies because they continue to do business between them. Mr. Pickens was up on the roof. He was the one that took those few photographs. He didn't go look at the flat roof that day. And initially he said, well, it's not our standard. It's okay to store paper on the roof,

but even Mr. Pickens I had to show him his deposition and he had to tell us, well, no actually it was our standard not suppose to store paper on the roof. He said there wasn't any paper. I asked him how he knew that and he said, well, I don't think there was any paper.

Well, we know there was paper. We had testimony of all three of the crew members telling us there are combustibles on that roof.

So, we have the testimony of those three gentlemen on the roof. We also had the expert testimony of Dan Arnold. Mr. Arnold told you about his qualifications as to fire spread and fire protection, how he understands, as part of his background training and experience building systems -- roof systems and material, how the material burns. And he pointed out all those different photographs -- probably to many, I'm sorry -- of the damage on that flat roof that in his opinion showed there had to be combustibles on that roof. He didn't say the TPO is not combustible. What he said was, if you remember, you throw a cigarette on it nothing happens. If you hold a roofers torch to it you get a small flame height and then it self extinguished. In all the indicia of the burn patterns; the melted aluminum, the varying

degrees of burn on wood, all those little details he showed you told him in his opinion there had to be combustibles on that roof. It wasn't essential to him to know the amount of combustibles because we saw how the fire spread. There was enough combustibles on that roof to get to sufficient height to reach those pitched roofs. He didn't need to know the source of the ignition for the fire to opine that the fire spread as a result of those combustibles being on the roof. So as to number three, that I told you about -- so the third thing I told you was Pickens Roofing and Sheet Metal employees stored combustible roofing materials on the flat roof. Between the testimony, the admissions, Mr. Arnold's testimony I think it's clear there were combustibles on that roof.

The fourth thing I said was the contract between Winthrop and Pickens required Pickens to comply with all applicable codes, ordinances and law and regulations. There is no dispute between these parties that there is contract. There was no dispute that the contract incorporated those specifications that they went over a number of times. There is no dispute that the contract required Pickens to follow code. There was a number of things in that contract that Pickens was required to do. They were required

to initiate, maintain and supervise all safety precautions and programs in connection with the work. Take all necessary precaution through safety of and provided the necessary precaution to prevent damage and injury. Go down to four, comply with all applicable laws. No one from Pickens could tell us who initiated, maintained and supervised safety procedure. Mr. Renner said Clint Robinson. Clint Robinson said it was Mr. Renner.

The specifications also said you can only store at approved location. Let's look at that real briefly. Prior to storing work obtain approval from owner for locations of work we gone through that at nauseam. Parking lot in front of the building. Change order limits them to one. They get paid more. There is no dispute about any of these provisions. All right.

The fifth thing that I told you we just covered. I told you there was only two areas where Pickens was suppose to store materials. The sixth thing was Pickens breached its contract and was negligent when it violated the fire code by storing its materials on the roof. So, the contract said store materials on the ground at the front of the building. Store materials out front. Clearly Pickens didn't do that. And they, like any other person, most times it

wouldn't make a difference, but clearly they were storing materials on the flat roof. We have all that testimony. We see the shingles on the ridge line. There is no dispute that's a breach. So the second part of that is Winthrop has to prove that proximately caused its damages.

First part of that is, we know combustibles were on the roof. The second part of that is, but for those combustibles being on the roof, the flat roof, the fire doesn't spread to the adjoining pitched roofs and again no dispute about where the fire originated. Mr. Arnold laid out in detail for you this is how the fire spread from that TPO roof to the pitched roofs above. The TPO roof alone could not sustain a fire that would reach the pitched roofs. You had to have combustibles there. Because of that Winthrop (sic) breached its contract by storing those materials. By taking that short cut they breached their contract. Negligence is a little different. We talked a lot about fire codes, if you remember, NFPA 8.3.3, which is adopted by the State of South Carolina. It references -- there is also reference to its scope, its application, the purpose of it. What the purpose of NFPA 241 is to prevent fires during the construction, alteration and demolition of the

projects. The purpose of the provision is to prevent fires. 8.3.3 is yard storage of equipment to be installed or combustible construction materials shall not be stored closer than 30 feet from the structure under construction or alteration.

Combustible construction materials, combustible means something that can burn. We covered that, right. The evidence is, I believe, there is combustible construction materials on that flat roof. Were they closer then thirty feet. We were told about the dimensions of that roof. There is no way to store materials on that roof and be more than thirty feet away. Ten yards. All right.

The first part of it, yard storage. I asked if you remember the deputy state fire marshal what does that mean and what John Dunlop says was it means open air outside storage. The judge is going to instruct you as to the definition of the code and I believe if you want to characterize it, what yard storage means, is outdoor storage. The roof is outdoor storage. All right. So, this code provision which is intended to prevent fire the reason, I submit to you, the purpose of it is you had buildings that have sprinkler systems. All these buildings had sprinkler systems. So if a fire happened inside the fire is controlled.

People don't get hurt. You have limited fire damage. But sprinkler systems don't protect from exterior fires. That's why you don't put during construction projects combustible construction materials close to the building. That's the purpose of those provisions and that's what Pickens violated and was negligent in when it carried out its work on this project. Violated code. A code created a duty. They didn't live up to that duty. Winthrop suffered a fire. That fire was foreseeable because that's what the code intended to prevent. And again, source of ignition, in this instance I asked Mr. Arnold, well how could you give that opinion if you don't know the source of ignition. And he said well, the means of ignition aren't important in this case because you need three things. You need fuel, oxygen and combustibles. And at the very start of this case I told you the lynch pin of Winthrop's case is the fuel. If you remove the fuel, if you remove the shingles, if you remove the roofing paper, this fire would never have spread to the adjoining buildings.

The seventh thing is really a reiteration of what we just talked about. But for the storage of those combustibles on the flat rubber roof this fire would not have occurred and spread to Bancroft and Owens.

There has been no testimony from any other expert to dispute Mr. Arnold's opinion. There has been no testimony from anybody to contest those opinions.

Cross examination elicited some responses but had nothing to do with the ultimate issue in this case of whether the fire could spread from the flat roof to the adjoining pitched roofs if there weren't combustibles there. So those were the seven things. We talked about each of them.

There is a couple of other things I want to talk to you about. One is, all the Winthrop folks that were involved in this project; Wes Love, Walter Hardin, they all said no one from Pickens ever came to them or anybody working on Winthrop's behalf and asked hey, can we store combustible construction materials on the flat roof. There has been no testimony other than Wes Love that never happened and Walter Hardin. All right. Mr. Love was on the roof about a week before and his testimony was well, I was on that roof. I saw people working in that area at times. He doesn't remember that specific day -- that week before, but he always saw him using the materials. He wasn't aware that they were storing the materials. There is a big difference. And again, no one, Clint Robinson didn't ask him, Randy Pruitt didn't ask him,

Bobby Pickens didn't ask him. No one asked him if they could store that material on the flat roof.

At the beginning of this case I gave you a couple of examples about rules and codes and laws that everyday all of us try to follow and some times we fail. Some times we don't follow, stop signs, speed limits. Simple examples. Most of the time nothing happens. There is no consequences. In this case there were consequences and the consequences were severe and this lawsuit is about trying to determine who is responsible for it. And a long time ago when I was in what they use to call grammar school, they had a course called civics and civics talked a lot about -- taught us a lot about our civil liberties, our rights. We spent a lot of time on that. But it also talked about duties. All right. And one of the things that we have in our system is jury duty. All right. And what jury duty entails is it gives ever injured party, it gives every defendant a level playing field. And to me that has always been the most important part of our system. Many, many countries you can't do this. You don't get a fair shake. This is unique. This is what makes our system great. A panel of 12 will look at the facts. A panel until of 12 will weigh the evidence. They have to put

aside any pre-conceived notions they have, and any bias and you get a verdict based on the facts.

The facts in this case, ladies and gentlemen, I submit to you are clear. There were combustibles on that roof. Pickens put the combustibles on that roof. There is nothing else on that roof. There is no testimony that there was anything else on the roof. No other projects going on. No reason for any maintenance people to be on the roof. The third floor elevator, mechanic roof is the closest thing. The third floor. All Winthrop is asking you is to take that evidence and apply it to the law the judge will provide you instructions on, and I think if you do you will find that Pickens breached its contract and that breach caused the damage suffered to Winthrop. I think you will find Pickens was negligent and that negligence caused the damage suffered by Winthrop.

Thank you again for your time. I appreciate your patience. I appreciate you hard work an I may be able to address you again after Mr. Shealy has.

Thank you, Your Honor.

THE COURT: Yes, sir. Counsel.

MR. SHEALY: May it please the Court.

THE COURT: Yes, sir.

MR. SHEALY: Ladies and gentlemen, somebody is

here today that you haven't seen before. This is Jim Pickens. You heard his name. His brother Ben who is now deceased and Bobby Pickens that you heard testify, they were the three owners of the company at the time that that this incident occurred. Just because he is here and you hadn't been introduced to him I thought I would introduce him to you. I am going to again plug in this machine.

And ladies and gentlemen, I will talk to you a little bit. I will be brief, but I will talk to you a little bit about the burden of proof in this case. You will hear that instruction from Judge Alford in just a few minutes about the burden of proof and Judge Alford may use this very illustration. But the plaintiff has got to prove its case by the preponderance of the evidence. The plaintiff has got to show you it is more likely then not that what it seeks to prove here is true. If you can't decide, if the scales if you will, remain even, the plaintiff hasn't carried its burden of proof. Certainly, if the evidence weighs in the defendant's favor then certainly the plaintiff has not carried its burden of proof. And one thing in particular that the plaintiff is unable to prove and I will talk to you about that later, but I told you in the beginning of this case

that Pickens was being made a scape goat. Another way of saying that is it's some Monday morning quarterbacking going on here. So we have two theories. They said all right you breached your contract with us and you were negligent, and those are legal theories that you will hear explained by Judge Alford. But in both situations Pickens has duties to Winthrop. Has duties it agrees to under the contract. It has duties to act reasonably under the circumstances which is a duty that we all carry as we are walking around, to do what's reasonable. And when we breached that and then that causes damage to others that leads to legal liability.

Causation in the legal realm is a strange thing, and I will talk to you more about that. But you have to have both cause and fact, meaning but for something we did there wouldn't have been a fire. And then you have to also say, all right, was it foreseeable that there would be a fire based on what we did. Was that a foreseeable consequence of something we did or that we weren't suppose to do. So those are things I want to focus your attention on.

Let me talk to you first about this storage issue before we get really to the elephant in the room. You heard from Pickens employees and you'll note we didn't

put up any evidence because they called all of our witnesses. It's their burden of proof and you got all the evidence you need. Just because we didn't call any additional witnesses was just really looking out for your time. You heard everything you need to hear. But when you heard the Pickens employees testify Mr. Vogt made -- brought up a lot of inconsistencies in their testimony. Showed them their depositions and things and certainly there were lots of inconsistencies in their testimony. But bear in mind this involved something that happened over four years ago. Several of these people don't work for Pickens any more. The person that probably knew the most about this job is deceased, Ben Pickens Jr.. So, if it was Pickens' intention to come in here and to try and make everything -- make everybody sing the same song, then you would have seen maybe more consistency. But these are folks that came in and just told you what they remember. And folks, these are folks that are not in there element in this courtroom. This is a place where I operate on a daily basis. Where Mr. Jett and Mr. Vogt operate on a daily basis. But it's certainly not where Randy Pruitt or Brandon Lusk operates on a daily basis. And if you heard there was a lot of confusion over what do you mean. What do you

mean. Sort of looking, why are we even here. We were doing our job. We were roofing this project like we do all the time and there was a fire that happen the next day. We weren't even there. So -- and the testimony about storage. You know, when asked what were you storing up there. Well, when are you talking about? When during the project? That changes from day-to-day. This is an ongoing project. Clint Robinson -- a great hey was made with Clint Robinson saying, yeah, we had some stuff up there. But he hadn't been up there on the roof for two weeks -- a week or two weeks before this happened. So, I mean the moment in time that he tells you we had stuff up there really isn't important. What is important is what did we have up there -- if it has any importance all, but what is up there when we leave work on March 5, 2010.

Now, I will talk to you though about this contract provision that you have been shown multiple times. When they say that we breached our contract by storing stuff up there. That contract provision -- and you've seen it. But the emphasis hasn't been placed on this particular language, "Prior to starting work obtain approval from owner for locations of work operations at ground level." That's what the contract says and

that's what Winthrop is worried about.

You heard that the president was worried about aesthetics. That's why this roofing project was ever begun at the beginning. They are not worried about what Pickens is doing up on the roof. They are worried about how much of your operations are going to interfere with what people see on the ground and what students have to walk around. That's the import of that contractual provision that has been flashed to you multiple times. The contract which is huge, it's a standard state contract. It doesn't say anything about don't store stuff on the roof. It doesn't say anything like that in the contract. And you may not recall because it was a lengthy deposition, but Vu Nguyen, who was the roofing consultant -- that was the deposition that went for a couple of hours -- that Winthrop hired. Has used for multiple projects. There are a couple of things that are worth your focusing on. He says that storing things on the roof is common. How common is it for -- in the course of roofing contractors for you to see shingles packs laying across the ridge of a building. I think that's pretty normal. That's the way roofers do their stuff. You got to get stuff up there to work on. You can't carry one shingle at time. One nail at time.

So, Vu Nguyen recognizes that this is the way we do business and this is the way we have been doing business. This is the way we are going to continue to do business in the roofing industry. And Vu knows that's the way it happens.

Now, we move to the NFPA, the National Fire Prevention Association. This standard that has been talked about so much. So many witnesses. This is the way they were asked, what do you know about NFPA 241? Well, I don't know. I'm a roofer. Maybe I know things in there, but I don't know chapter and verse. I mean, what are you even talking about. And that's the way questions were. What do you know about the fire code. I have been practicing law 18 years. If somebody says well Kirby, what do you know about the South Carolina residential landlord/tenant act. Well, I can't recite it for you. What do know about the the probate code. I know it's there somewhere. But not anything I deal with, look at, on a day-to-day basis.

One of my law partners told me this story after he finished law school. He had been practicing for six months and he was at Sunday dinner and his great aunt said, well, Cravins, what's the speed limit in Hemingway and he said I got no idea. And she said, what do they all teach you all in law school. You

know, that's not the way it works.

Roofers know their business by being experienced, doing good work and these folks apparently do good work because Winthrop has been using them, Continues to use them to do things in a safe manner.

Now, what you haven't heard about -- but you will hear from Judge Alford, is that NFPA 241 standard and the fire code imposed duties on the owner, on Winthrop, to have a fire prevention program superintendent.

You heard me ask a couple witnesses did you serve in that role. No. No. We relied on Pickens to do that. Well, Pickens has its obligations, but the code relied on Winthrop to do those things and it didn't do those things. It wants you to sort of disregard that. It didn't have somebody looking out for the its obligations for safety to maintain its own property. Remember, that this building that we were working on for months was occupied. The grounds around it were being walked by the students and faculty, and just to say no, we're just going to close our eyes to anything that is going on that is unsafe because that's the roofing contractors job. That's not what the law requires. And so, Winthrop is sort of like wanting to have its cake and eat it too. We found a standard,

aha, we can hang on you because we suffered this substantial loss, that the deputy state fire marshal had never look at, didn't have know anything about to become the fire marshal. That Vu Nguyen, a roofing consultant, doesn't know anything about with respect to construction operations. Are you familiar with NFPA calls for? No. So, we found some standard to say you violated that standard, but we're not going to worry about the standards that apply to us. We are going to find that standard that applies to you all.

No one really has testified except Dan Arnold -- the very expensive code expert -- can site these provisions chapter and verse. But you got people -- there is nothing about Walter Hardin or Wes Love, those guys are not incompetent people. They are doing a good job for Winthrop University, but they don't know those things. Vu Nguyen, their Roofing consultant doesn't know those things chapter and verse. So is it any wonder that Pickens former employees can't recite those things to you.

Now, one other thing to bear mind is this particular standard talks about yard storage, and yard storage of materials shall not be any closer than thirty feet from the building under construction. You know, there is a difference. Common sense will tell

you there is a difference between storing something down on the ground where somebody passing by might mess with it, where cars drive by their equipment. It's easier for things down on the ground to be messed with, to potentially catch fire then it is on the roof. These are the materials that shortly are going to be part of the roof. We are not -- nobody is saying that we had gasoline up there or some sort of volatile explosive liquid or something. We had shingles, roofing paper -- if we had such things --the very things that are going to be on the roof. Nothing more combustible then the roof itself, on that roof. So, there's a difference between -- there's a reason why you worry about things being down on the ground. You know, one of the primary reasons that you heard testified why we would have metal up in there is because it tends to walk off if it's down on the ground. And that's consistent with again, what Vu Nguyen said that he advises roofers to do with metal. Secure it. Not store it on the ground, but secure it. Make sure it is not subject to sliding off. That's why they put it on the flat roof and that is actually what he told them to do. Don't store it on the pitched roof. So, what they were doing was consistent with what a roofing consultant would advise them to

do.

Now, supposedly this area is behind locked doors, a locked hatch and we are suppose to just assume that that was the case. That nobody had forgotten to lock the door behind them when they did something in mechanical area. We don't know. But we do -- we do have this -- I'm sorry. We do have this document, this Southern Elevator document that indicates the Southern Elevator was there working on the elevator -- doing maintenance on the elevator.

I point out to you and you can make whatever inference -- draw whatever inference you can from the date. But that would appear to indicate that it was dated the fourth, then it was dated the fifth, then it was dated the forth again. Who knows. I can't give you anything more then that. That would be speculation, but you do have the only item up there that is mechanical on that roof is a ventilation fan for the elevator shaft. So, we are just suppose to assume that these doors were locked and the roof hatch was locked. One witness indicated that he seen over the course of time that he had been there people come out of that roof hatch. So, I just offer that to you, because again, Pickens is being -- you're being asked to hold Pickens responsible for a fire that took place

23 hours after it left work. Twenty-three hours later. When at most it had left shingles, roofing paper, things that are designed as witnesses said, not to catch fire but in fact resist fire. So that's the elephant in the room, is causation. Is proximate cause of this fire.

What Mr. Vogt put up there at the beginning, the seven things at the beginning of the case and what he showed you again, the seventh thing -- and I wrote this down -- that he said at the beginning of the case was, but for storage of combustibles the fire would not have occurred and spread to Bancroft and Owens. And that's exactly what he put back up there and said hold him to it. But he can't say that the fire wouldn't have occurred but for this storage of those materials because no one can determine what caused the fire. He's stuck with that. His own experts can not determine. Even Dan Arnold said I am not cause and origin expert. Ottis Driggers said, could not determine the cause. And they want you to say, oh, the causation of ignition is not important here. Of course if what you are thinking is well, since I can't prove the cause of ignition that it's not important. Just don't look at the person behind the curtain. That's not important. So we move to the spread. But

folks, if we don't have a fire to start with then we don't ever get to the spread of the fire and that's the problem. That's the whole case, is that you don't have a fire without ignition.

Mr. Vogt -- and I think this was just a slip of the mind, he said to you you need three things for a fire to occur; oxygen, fuel and combustibles. And he skipped over the fact the third thing is actually ignition. The fuel is the combustibles, but you need ignition and we don't have it. We don't know what it is.

So, you know all we have is -- to go on -- this is what this roof looked like. This is the back side of roof that we were working on on the day. These are -- our guys were over here up on this other side. And there is some metal up there, and you have seen on the other side that they got their shingles. They got shingles up there and they are doing their work. And that's the only evidence we got of what it looked like up there on the roof. Even if they stored roofing paper, shingles on the flat roof, even if they weren't suppose to, it's not foreseeable that that is going to start a fire. Those very things are designed the way they are to resist fire. So -- so they fail on but for there being there the fire wouldn't have happened

and they fail on the foreseeable. It has got to be foreseeable.

Now, I want to talk about Dan Arnold because if we just ignore ignition as the plaintiff wants you to do and get to Dan Arnold's notion that the fire would not have spread without combustibles being there. Remember that he said that it was very important to his analysis that picture showing the flame height. But he made a mistake. He thought that was early, early, in the fire. That's what everything looked like before the fire department got there. But it is clear and you will see the pictures and you will see all of the date stamps, the time stamps, what's going on there is actually 45 minutes after the fire has started. You don't see flames. You see smoke coming up from that flat roof area and perhaps you know, he said that TPO roof is indeed flammable. It is going to produce smoke. But you have no basis, no factual basis, to say you know what, Mr. Arnold, your analysis is correct because his assumptions are wrong.

So, that's the defense. That is our view of the case that we present to you all. I talked to you about the burden of proof. Judge Alford will tell you all of the law that applies here, but ladies and gentlemen all anybody can ask of you in this case is

to apply your God given common sense. You don't leave that at the door when you walk in the courtroom. Apply that common sense to the law and the facts that you heard and if you do that I think you will find that you have no choice but to find for the defendant in this case.

Thank you.

THE COURT: Yes, sir.

MR. VOGT: Ladies and gentlemen, Mr. Shealy is absolutely correct. I did make a mistake. You need a source of ignition. I want to make sure understood that. I believe I said several times, the critical part of that fire triangle; oxygen, source of ignition and fuel is any one of those items. You take oxygen away there is no fire. You take combustibles away there is no fire. You take the source of ignition away there is no fire. This isn't an attempt by Winthrop to hide the ball. This is simply an attempt by the defendant, if you recall, I think he said his client is a scape goat -- to try to paint Winthrop in the light of a big, bad bully. And that's not the case. And that's not the relationship between these parties. They have a business relationship that continues. They have a dispute here and it's your duty to resolve it based on the facts, not innuendo.

Nothing else. Let me first address this whole notion of an elevator person. The defendant didn't call the elevator person. The defendant didn't call anybody from that company who serviced that elevator, whose document it was. That wasn't a Winthrop document. They could have. They chose not too. All right. The elevator mechanical room is on the third floor. To get to the roof you have to go through the locked doors and then the roof hatch. The defendant made a suggestion that we don't know if the doors were locked. James Howell, his testimony came, Officer James Howell at the end of very long day. Remember he came running in and he was huffing. We were trying to get him on the stand and get him out. Defendant didn't ask him one single question. He said I unlocked the doors for the fire department so they could get into the attic. That's the only evidence in this case. The absence of evidence is no evidence.

So, Mr. Shealy, who I respect very much, has to admit the inconsistencies in the roofers's statements. You can't expect Randy Pruitt, you can't expect Brandon Lusk to know the code provisions.

Pickens Roofing is a licensed roofing contractor. In order to be a licensed roofing contractor you have to know the rules that apply to your profession. It

may not be Brandon Lusk, it may not be Matthew Pruitt, may be not even Randy Pruitt. But how about Clint Robinson, the project manager. Clint Robinson who said he went through the specifications and if you recall there is specific provision in the specification that relates to 241. He didn't know anything about 241. I am not saying he is a bad person. I am not saying anybody from Pickens is a bad person. But they don't know the code that is related to their work. Roofing. It's their responsibility. The state mandates certain contracts and in those contract specifications it says contractors like Pickens have to comply with code. I think that is reasonable. If Pickens didn't think that was reasonable they wouldn't bid on the work. They wouldn't get all these jobs at Winthrop. It's give and take. You can't pick and choose. If you sign a contract you can't say, well, I don't really like that term. I don't really understand what it means and if something arises that implicates that term like storage, you can't stick your head in the ground and say, well, we're just roofers. That is not how a contract works. That is not how the code works. The code says outdoor storage. It doesn't say on the ground storage. Outdoor storage. On the roof is

outdoor storage. In that contract specifications there's a couple of clauses I want to point out to you and I know I read these many times. The word supervise and inspect wherever used herein in connection with duties or activity of the owner shall in no way, expressed or implied relieve the contractor of his responsibilities for the safety of the workmen, the preservation of work and proper performance under this contract. Owner shall not be responsible for the safety of the workmen, safeguarding of work or the proper performance of the contract.

Winthrop is not responsible for Pickens. It's like hiring any other licensed contractor, an electrician, a plumber. You hire an electrician you expect they know the code, right. The contract mandates it. You can't escape that provision. Sub part D, no inspector shall have the power to waive the obligations resting upon the contractor to furnish good material and good work as herein prescribed.

Mr. Shealy talked about Vu Nguyen. Vu Nguyen said he never saw materials on the flat roof. But it is not Mr. Nguyen's job as project engineer to make sure that Pickens is following the code. It is not his job to make sure that they are taking those types of safety precautions. His job is to make sure the

shingles are put up properly. Remember that report we showed you. To make sure the flashing is done properly. It is not his job to follow behind. The last time anybody from Stafford Engineering was on that roof was a month before the fire. Okay.

You know Mr. Shealy talked about scape goat during his opening statement and he mentioned it again today. I haven't heard that term in a long time, so I went back and kind of looked back where it came from, and where it came from was villages in Europe -- and this is very early, early times -- if there was a famine, or if there was a plague, often times the villagers would get together and they make a sacrifice of a person were they drive a person out of the village. All right. That is where the term scape goat comes from. So nothing in the term scape goat relates to this case because if anybody is trying to shift responsibility here away from their obligations under the code, away from their obligations under the contract it's Pickens. They are trying to blame Vu Nygen. They are trying to blame Winthrop. He said, well, the code requires a fire program manager and he asked Mr. Hardin about that, vice president of the facilities management. Mr. Hardin indicated well, how we meet our obligations under the code we hire a

licensed general contractor and then we have very detailed specifications which require them to -- among other things -- to comply with code.

In this case the issue is storage, notwithstanding what Mr. Shealy says about the meaning of the storage provision. I don't think there is any dispute here there is only two places they can store materials; on the ground and in the parking lot. The change order is a big issue of discussion before the contract even started. It wasn't like Clint Robinson wasn't aware that he couldn't use another location for storage. He knew. He negotiated more money for Pickens. So to suggest that Winthrop is responsible for this fire because it had a duty to go around and inspect on a daily basis Pickins's work stretches the imagination. And its certainly not part of the contract between the two parties. That's separate and distinct from the breach of contract which we talked about.

So, Mr. Shealy again talked a lot about the but for incident. I did say but for the storage of combustibles this fire would not have occurred or spread. This fire would not have occurred and spread to the adjoining pitched roofs. Mr. Arnold's opinion is unrefuted. I asked Mr. Arnold about this time difference. It wasn't relevant. There is no dispute

the fire started on the flat roof. The defendant stipulated to that. We know the fire started on the flat roof. What you've seen is the fire through that scupper and if you remember Mr. Arnold described is as the shape of Oklahoma. Well, what Chief Driggers said when he described the area of origin was the area closer to the ladder, further back. So naturally as the fire grew combusting the materials left on the roof by Pickens that's when the flames got higher. That's when the flames got to the pitched roof. That's when you would see it from the ground four stories below taking a picture going through that scupper. There's absolutely no inconsistencies with respect to Mr. Arnold's opinion. There has been no testimony from anybody else in this case that contest that.

The interesting thing about this whole notion of well, Winthrop can't prove the source of ignition so it shouldn't recover. It's merely a shield. It's an attempt to put aside the responsibility Pickens has to comply, put aside Pickens responsibility under the contract to store its materials in the appropriate places. So you need those three things to start a fire and I will get it right this time, oxygen, fuel and source of ignition. Take any one away, you don't

have a fire that would have occurred and spread to the adjoining pitched roofs.

Nobody disputed these are expert roofers who put down TPO roofs. Mr. Arnold's testimony that a fire on a TPO roof alone would not have spread. Pickens has put down those roofs many, many times. They know the composition of those roofs. They choose not to refute Mr. Arnold's opinion in that regard.

I thanked you earlier for your time and your patience. The only thing I want to leave you with is, this case is not about Winthrop University seeking people to be responsible for damages. This case is about Winthrop University proving a breach of contract that caused this damage. This case is about Winthrop University proving that Pickens Roofing's negligence breach of code caused its damages.

Fire is a foreseeable event when you store materials in such a manner that it violates the fire code. That is exactly what happened here. For that reason I ask for a verdict in favor of Winthrop University.

Thank you, again.

THE COURT: Madame forelady and members of the jury panel, you have heard final arguments of counsel. It is now time for me to charge you and instruct you

with regard to the law that applies to the issues in this case. You will not have these instructions written down for you back in the jury room to look at so you will have to call on your collective memories as to what I instruct you the law is.

Once you begin your deliberations if you still have some question or do not understand some part of the law or all of it for that matter, upon your request I will bring you back out in to the jury room and re-instruct you on any part of it which you need to be instructed. But I ask that you listen attentively now. It's rather lengthy, I will tell you that. It's not easy to understand and so I will ask for your undivided attention at this time.

In this case of course is Winthrop trustees for the State of South Carolina is the plaintiff, versus Pickens Roofing and Sheet Metals Incorporated, the defendant. Now Pickens Roofing and sheet Metals Incorporated is a corporation. Under our laws a corporation is treated the same as if it were a person. It may sue and be sued in a court of law. A corporation is entitled to have the same fair trial at your hands as a private individual would have. All persons including corporations stand equal before the law and to be dealt with as equals in a court of

justice.

I charge you also that of course who the parties in this case are makes absolutely no difference to you in your decision. Your decision is to be based solely and squarely on the testimony and evidence that comes in through the law and as the fact finders determine the truth of those facts and evidence and apply that to the law as instructed by the Court and to render a decision which is fair and impartial in this case regardless of who the party maybe. That is what our use justice system is all about.

Now, Pickens Roofing and Sheet Metal Incorporated and the defendant agrees and stipulates that all of its current and former employees who testified in this case and who worked in any capacity on the Winthrop project, which is the subject of this action, were employees of Pickens Roofing and Sheet Metal Incorporated acting within the scope of their employment. You will therefore not be concerned about this issue at all. They are part of the defendant in this case, their actions.

Madame forelady and members of the jury panel, you have heard the evidence and arguments of both parties. I will now explain the law to you that applies to this action.

Winthrop University, for the State of South Carolina, claim they have been injured by the actions of the defendant Pickens Roofing and Sheet Metals Incorporated. In bringing the lawsuit the plaintiff claims that the defendant should compensate them for their injuries and damages. Under our constitution and code of laws only you the jury can make the findings of facts in this case. I am not permitted to indicate to you how I may feel about the testimony and evidence that has been presented. Throughout this trial my intent has been to be fair and impartial towards each of the parties involved.

During the trial of this case we had testimony by way of depositions of a witness taken outside of the courtroom. The witness did not appear personally before you. The deposition was taken in a manner prescribed by law and you will consider the testimony from this deposition just as you would had the witness been on the stand testifying. You take this deposition testimony in connection with all of the other testimony and you assess the credibility of those witnesses and anything in the record that will aid you in so doing. You consider that evidence along with the testimony of the witnesses who have appeared in person and you determine from all of the evidence

in the case whether by exhibits, witnesses present or by deposition what the truth of this controversy is by the facts as you find them to be and by application of the law I am giving you at this time.

You heard the testimony of a witness who had special knowledge, skill, experience, training or education in a particular field who have given opinions as to matters in which he is skilled in. Determining the weight to be given to such opinion you you should consider the qualifications and credibility of the expert witness and the reasons given for his opinion. You are not bound by such opinions. Give them the weight, if any, to which you deem entitled.

To determine the facts in this case you will have to evaluate the credibility, which means the believability of each witness. Some of the things you may consider as you decide whether or not to believe a witness's testimony about a particular matter include the following; what was the manner and appearance of the witness who testified, was he or she straight forward or hesitant in answering. Was the testimony of the witness consistent or inconsistent at any time. How did the witness come to know the facts that he or she testified to or what was his or her ability to know these is facts. Is there some reason a witness

would want to give testimony which would help or hurt one side or the other. In other words was the witness bias or prejudiced. Was the testimony of a witness strengthened or weakened by other testimony or evidence. You could believe as much or little of each witness's testimony as you think proper. You may believe the testimony of a single witness against many witnesses or just the opposite. Of course you do not determine the truth merely by counting the number of witnesses presented by each side. Throughout this process you have but one objective and that is to seek the truth regardless of its source.

Now the same constitution and laws which designate and make you the finders of the facts also makes me the soul and only instructor of the law. You must accept as correct the law as I give it to you. That means you should not be concerned with what you think the law should be, but only what I instruct you the law is now in this state.

The questions of fact which you are to determine are contained in papers which we call Pleadings. And action is commenced when the plaintiff files a Complaint against the defendant who in turn files an Answer. I am not going to read those papers to you, but I will comment on certain allegations and defenses

raised in both the Complaint and the Answer during this charge on the law.

The plaintiff has alleged two causes of action in their Complaint; negligence and breach of contract. Now, to state a cause of action for breach of contract the plaintiff must set forth in their Complaint three essential claims; first, that the parties entered into a valid contract, second, that the defendant breached the terms of contract in the manner set forth in the Complaint, and third that the defendant's breach of contract proximately caused damages to the plaintiff.

To state a cause of action against a defendant for negligence the law requires that the plaintiff to set out in their complaint three essential claims. These essentially claims are as follows; first, that the defendant was negligent in one or more of the ways stated in the Complaint. Later in this instruction I will explain to you what is meant by the word legal term negligence. Second, that the plaintiff was damaged and third, that the negligence of the defendant was the proximate cause of the plaintiff's damages. Later in this instruction I will explain to you what is meant by the legal term proximate cause.

Madame forelady and members of the jury panel, this case has been brought by the plaintiff, the

Winthrop University Trustees of the State of South Carolina against the defendant, Pickens Roofing and Sheet Metal Incorporated on the causes of action of negligence and breach of contract. The plaintiff, Winthrop University Trustees for the State of South Carolina has the burden of proving their claims in this case. They must meet this burden by proving their claims and damages by the greater weight or preponderance of the evidence. What we mean by the greater weight of the evidence can be illustrated by imagining a traditional set of scales such as those used by merchants in years past to weigh cloth and other goods. When the case begins the scales are even. After all the evidence has been presented if the scales should remain even or if they should tip even slightly in favor of the defendant then the plaintiff would have failed to met their burden of proof and your verdict would be for the defendant. If on the other hand the scales should tip even slightly in favor of the plaintiff then they would have met their burden of proof and your verdict would be for the plaintiff. Of course, there is no way to weigh evidence accept through the exercise of your own common sense and good judgement. It is entirely a mental process and the evidence that you should give

the most weight to is that which convinces you of its truth regardless of from what or what source -- or from what source it comes. However, you should not consider sympathy, passion or prejudice for or against any party when weighing the evidence.

Madame forelady and members of the jury panel, as I instructed you at the beginning of the trial the evidence which you are to decide the facts of this case consist of the following; the sworn testimony of the witnesses, both on direct and cross examination regardless of who called the witness. The exhibits which have been received into evidence will be taken back to the jury room for you to consider further in your deliberations and any stipulation of counsel. There has been stipulation of counsel. That was made known to you. You can consider that along with all the other evidence in the case and give it such weight as you deem appropriate.

I charge you that there are two kinds of evidence in a case, direct and circumstantial evidence. Direct evidence is proof of a fact such as the testimony of an eye-witness. Circumstantial evidence is indirect evidence. That is proof of a chain of facts from which you could find that another fact exists even though it is not been proven directly. You are

entitled to consider both kinds of evidence and the law permits you to give equal weight to both. However, it is up to you to decide how much weight to give any evidence. It is also up to you to decide whether a fact has been proved by circumstantial evidence. In making that decision you must consider all the evidence in the light of reason, common sense and experience.

I will charge you first with regard to the elements of a breach of contract. Plaintiff has alleged that the defendant breached the parties contract. A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written or by conduct. In order to prove that the defendant breached a contract plaintiff must prove to you by a preponderance of the evidence that there existed a binding contract between the parties that the defendant breached or unjustifiably failed to perform according to the terms of the contract and that plaintiff suffered damages as a direct and proximate result of the breach.

Now, in this case the parties agree that there was a binding contract in writing. The word breach as it applies to contract is defined as a failure without legal excuse to perform any promise which forms an

oath or part of a contract, including the refusal of a party to recognize the existence of the contract or the doing of something inconsistent with its existence. When performance of a duty and under contract is due any nonperformance is a breach. In other words a party breaches a contract when he does not perform as he agreed to perform under the contract. A party's contractual duty is find in the obligation assumed by the party to the contract. A parties failure to comply with the contractual duty constitutes the breach. A breach occurs when a party refuses or neglects to perform some duty required by the terms of the contract. The plaintiff is entitled to recover only if you find that they have proved by the preponderance of the evidence that the defendant did in fact breach the contract between the two parties and that that breach resulted in proximate -- was a proximate cause to the damage that is alleged by the plaintiff.

I charge you madame forelady and the members of the jury panel, that a mere fact that an accident happened standing along does not permit you to assume that someone had to have caused it. The fact that a party is damaged or the fact that an incident occurs is insufficient to prove negligence.

I will explain to you now what is meant by the word negligence. Negligence means that a person did not use the same amount of care that a person of ordinary reason and prudence would exercise in the same circumstances. The word careless means the same thing. It could be said that a negligent person has done something that a reasonable person would not have done if faced with the same situation or on the other hand that he or she failed to do something that a reasonable person would have done or both. To determine whether a particular act is negligent you should compare that act with the manner in which a person of ordinary reason and prudence would have acted in a similar circumstances.

Where the cause of the plaintiff's damages maybe reasonably at contributed to act for which the defendant is not liable to one for which it is liable the plaintiff has failed to carry the burden of establishing that the defendant's negligence was the proximate cause of this damage.

To recover in case the plaintiff must prove that the defendant was negligent. Even if you should find that the plaintiff has proved the defendant to have been negligent they would not be entitled to a verdict unless you further found that the defendant's

negligence was the proximate cause of the plaintiff's damages. Proximate cause does not mean the soul cause. The defendant's conduct can be a proximate cause if it was at least one of the direct concurring causes of damages. The law defines proximate cause to be something to chain ever events which in the end brings about the injury. In other words proximate cause is a direct cause without which the damages would not have occurred.

Madame forelady and members of the jury panel, I charge you that the South Carolina Legislature has adopted the International Fire Code. At the time of the subject fire the 2006 edition of the International Fire Code carried the force of law. The International Fire Code incorporates by reference Chapter 241 of the National Fire Prevention Association codes and standards which again have the force of law. The International Fire Code provision place certain duties on owners and contractors during a construction project.

Madame forelady and members of jury panel, I charge you that words used in a code or standard should be given there plain and ordinary meaning unless something in the code or standard requires a different interpretation. I charge you that you must

apply the plain and ordinary meaning of those terms to the facts in this case. With regard to the definition of combustible is defined in the Oxford dictionary as able to catch fire and burn easily.

Madame forelady and members of the jury panel, I charge you with regard to the National Fire Protection Association code section 241, with regard to its scope and purpose. National Fire Protection Association 241 is the standard for safeguarding construction, alteration and demolition operations. Subsection 1.1 regarding the scope, this standard shall apply on structures and in the course of construction, alteration or demolition including those in underground locations. Section 1.2 with regard to purpose. This standard is intended to prescribe minimum safeguards for construction, alteration, demolition operations in order to provide reasonable safety to life and property from fire during such operations. Section one subsection 3.1 -- excuse me. Let me get this right -- subsection 1.3.1 provides that this standard provides measures for preventing or minimizing fire damages during construction, alteration and demolition operations.

Demolition subsection 1-3-1 defines yard storage as storage of commodities in outdoor areas. The

International Fire Codes chapter three provides general precautions against fire. Subsection 301.1 as to scope provides as follows; the provisions of this chapter shall govern the occupancy and maintenance and of all structures and premises or precautions against fire and spread of fire.

Madame forelady and members of the jury panel, I charge you in the National Fire Protection Association 241, subsection 8.3 -- well, no. Chapter 8 provides for safeguarding construction and alteration operations. Subsection 8.3 regards constructional material and equipment storage. Subsection 8.3.3 provides for yard storage of equipment to be installed or combustible construction material shall not be stored closer then thirty feet from the structure under construction or alteration. Subsection 315.3.1 of the International Fire Code provides as follows, storage beneath overhead projection from buildings, combustible materials stored or displayed outside of buildings that are protected by automatic sprinklers shall not be stored or displaced under non-sprinkler cage, canopies or other projections or overhangs.

I charge you with regard to NFPA 241 with regard to chapter seven, entitled fire protection. 7.1 provides that the safety -- fire safety program and

overall construction of demolition fire safety program shall be developed, essential items to be emphasized include the following; one, good housekeeping. Two, on site security. Three, insulation of new fire protection system as construction progresses. Four, preservation of existing systems during demolition. Five, organization and training of on site fire preventing. Number six, development of a pre-fire plan with a local fire department. Seven, rapid communication. Eight, consideration of special hazard resulting from previous occupancies. Nine, protection of the existing structures and equipment from exposure fires resulting from construction, alteration and demolition operations.

Subsection 7.2 regards owner's responsibilities for fire protection. 7.2.1 provides as follows; the owner shall designate a person who shall be responsible for the fire prevention program and who shall insure that it is carried out to completion. 7.2.1.1 provides as follows, this fire prevention program manager shall have the authority to enforce the provisions of this and other application fire protection standards.

Subsection 7.2.1.2 provides as follows; the fire prevention program manager shall have knowledge of the

applicable fire protection standards, available fire protection systems and fire inspection procedures.

Subsection 7.2.1.3 provides that inspection records shall be available for review by the authority having jurisdiction.

I am not sure if I defined this for you so let me go over this with you. In section 3.3.1.2 of the uniform fire codes, provides -- provides as storage of commodities in outdoor areas.

Madame forelady and members of the jury panel, I charge you that violation of regulation as adopted by state law constitute negligence per se. Therefore, if you find the defendant by and through its agents or employees had violated one or more state regulations the defendant would be negligent. However, the defendant can not be held liable unless that negligence was a proximate cause of the plaintiff's injuries. In this case the plaintiff -- excuse me, the defendant is also alleging that the plaintiff was negligent by violating a regulation in this case. Therefore, if you find that the plaintiff by and through its agents or employees had violated one or more state regulations the plaintiff would be negligent. However, again, you would consider whether that negligence was a proximate cause of the

plaintiff's damages.

Madame forelady and members of the jury panel, I charge you that negligence is not actionable unless it proximately causes the plaintiff's damage. Proximate cause is the efficit or direct cause of the alleged damages. Proximate cause requires proof of both causation and fact and legal cause. Causation and fact is proved by establishing the plaintiff's damages would not have occurred but for the defendant's negligence. Legal cause is proved by establishing foreseeability. The touchstone of proximate cause in South Carolina is foreseeability. That is the foreseeability of some damage from a negligent act or omission is a prerequisite to it being a proximate cause of the damage for which recovery is sought. The test of foreseeability is whether some damage to another is the natural and probable consequence of the complained of act. A defendant may be held for anything which appears to have been a natural and probable consequence of its negligence. For an act to be proximate cause of damages the damages must be a foreseeable consequence of the act. Foreseeability is not determined from hindsight, but rather from the defendant's perceptive at the time of the complained of act. The law requires only reasonable foresight.

When the damages complained of are not reasonably foreseeable in the exercise of due care there is no liability.

It is not necessary for a plaintiff to demonstrate that the plaintiff should have foreseen his or her negligence would probably cause damage to someone. Negligent conduct is the proximate cause of damage if that damage is within the scope of the foreseeable risk of the negligence. While it is not necessary that the defendant must have contemplated or could have anticipated the particular event which occurred, liability can not rest on mere possibilities. A defendant can not be charged with that which is unpredictable or that which could not be expected to happen. A plaintiff therefore whose legal cause by establishing the damages in question occurred as a natural and probably consequence of the defendant's negligence. In determining whether a consequence is one that is natural and probable the defendant's conduct must be viewed in the light of the attendant circumstances. Proximate cause does not mean the soul cause. The defendant's conduct can be a proximate cause if it was at least one of the direct concurring causes of the alleged damages. The law defines proximate cause of the damages to be something that

produces a natural chain of events which in the end brings about the alleged damages. In other words proximate cause is the direct cause without which the damages would not have occurred. If the action would have happen as a natural and probable consequence even in the absence of the alleged breech then the plaintiff has failed to demonstrate proximate cause. Further, when the cause of plaintiff's damages may be reasonably attributed to the an act for which the defendant is not liable, as to one for which it is liable the plaintiff has failed to carry the burden of establishing that its damages were the proximate cause of the defendant's negligence.

Now, if that wasn't complicated enough I can give you some more. As one of the defenses in this case the defendant alleges also that the plaintiff, Winthrop University was also negligent. And they have alleged the affirmative defense of comparative negligence complaining that the plaintiff was negligent and that such negligence was a legal cause of the plaintiff's damage. The defendant has the burden of proving negligence on the part of the plaintiff. If the plaintiff was negligent and the plaintiff's negligence was greater then the negligence of the defendant then the plaintiff may not recover

damages. If the plaintiff was negligent but their negligence was less than that of the defendant, then the plaintiff may recover damages but the amount of it's damages shall be reduced in proportion to the amount of their negligent. The defendant's defense essentially says this, even if the jury should find that I was at fault, the plaintiff was more at fault then I was and the fault of each of us combined and concurred with that of the other to act as the proximate cause of the accident without which the accident would not have happened. In other words it required the fault of each of us for the accident to have happened, but the plaintiff was more at fault then I was. As I said, the plaintiff has the burden of proving the negligence and fault if any of the defendant. The defendant has the burden of proving the negligence and fault, if any, of the plaintiff and the degree of such.

Where negligence has been established on the part of both the defendant and the plaintiff you must weigh or compare the respective contributions of each to the occurrence. You must consider the conduct of each person involved as a whole in order to determine whether one made a larger contribution then the other. In making such an allocation of fault you may consider

the following; whether the conduct was merely carelessness or whether it was done consciously with an awareness that negligence was involved. Two, the seriousness of the risk created by the conduct. Third, the relative closeness of the cause or relationship of the conduct and the damage. Fourth, any other facts and circumstances indicates which you find are appropriate on the question in comparing negligence.

Comparative negligence will defeat recovery by the plaintiff only if the plaintiff's fault was greater than the defendant's fault. Another way of saying this is to say that the plaintiff can recover only if their fault, if any, is less than or equal to that of the defendant. Therefore, in order to prevent a verdict in favor of the plaintiff injured by the negligence of the defendant the defendant has the burden of proving by the greater weight or preponderance of the evidence that the plaintiff was negligent and that the plaintiff's fault was greater then that of the defendant. Again, that fault would have to be a proximate cause of the plaintiff's damages.

If the defendant has failed in its burden of proving that the plaintiff was more negligent or at

fault then the plaintiff would be entitled to a verdict. However, if the defendant has proved that the plaintiff was to some degree negligent or at fault then the verdict would be reduced by the degree or consent of the plaintiff's own fault. This is so because I have told you where negligence has been established on the part of both the defendant and the plaintiff then you must weigh or compare the respective contributions of each party to the occurrence and I remind you again that the plaintiff has the burden of proving the fault or negligence of the defendant and the defendant has the burden of proving, again, the burden of proving by a preponderance of the evidence the negligence or fault, if any, of the plaintiff and negligence would not be actionable unless you further found it was proximate cause of damage to the plaintiff.

Madame forelady and members the jury panel, nothing that I may have said or done during the course of this trial has been in any way to express or suggest a view of the case, an opinion as to the facts, the weight of the evidence or the credibility of the witnesses. If any of my actions or words have seemed to so indicate, you will disregard such and form your own opinion as to these matters. I am

required to declare the laws I've done through these instructions now being given to help guide you to a just and lawful verdict. Whether some of these instructions will apply would depend on what you find to be the facts. The fact that I instructed on various subjects in this case must not be taken as indicating an opinion to this court as to what you should find to be the facts or as to which party is entitled to your verdict. You have been selected as fair and impartial jurors sworn to impartially try and determine the facts of this case and when you complied with your acts to do so then no one will have the right to criticize your verdict and you will have fully discharged your duty as jurors. You are to decide this case according to the testimony you have heard from the lips of the sworn witnesses along with other evidence introduced during the course of the trial. I charge you as jurors you must decide the issues in this proceeding without bias, without prejudice to any party. You can for the allow yourself to be governed by sympathy, by prejudice, by passion, by public opinion or any other arbitrary factor. Both the plaintiff and the defendant have the right to expect that each of you will carefully and impartially consider all of the evidence in the case

and you will follow the law as I have explained it to you.

Madame forelady and members of the jury, I charge you -- well, I charge the jury that the verdict of the jury must be unanimous verdict of all 12 jurors. All 12 jurors must agree on the verdict which the foreperson will be authorized to write on behalf of the jury. Madame forelady, I charge you once you begin deliberations that you maintain some order in those deliberations. Make sure that everyone who wishes to participate and to be heard during those deliberations are allowed to do so.

Now, I have prepared for your use in the jury room a verdict form. I will go over that form with you. I think it is pretty self explanatory, but I will got over it with you at this time. It's a little more complicated then the usual verdict form, but it's not that complicated. On the verdict form you are instructed as follows at the top of the instruction, please respond to the following questions in writing. All of the jurors answers must be unanimous, you are so told. First thing you are asked to find number one, do you find that Pickens Roofing breached the terms of its contract with Winthrop and this breach was a proximate cause of Winthrop's damages. You are

asked to check yes or no. There are two blanks, one by yes and one by no. You put a check mark by that particular word.

Second, do you find that Pickens Roofing was negligent and such negligence proximately caused Winthrop damages. Again you are asked to put a check mark by either yes or no, whichever the jury unanimously finds. You are instructed at that time if you answered no to questions number one and two stop here and sign the verdict form on page two. That is on the next page.

Number three -- you would go to number three only if you answered yes to questions one and two. One or two -- yeah, one and two. I beg your pardon, that's right. Now number three, do you the jury find that Winthrop was negligent and such negligence proximately caused this damage. You would put yes or no. Again, put a check mark after that question. Then you are instructed if you answered yes then proceed on to question four and you are instructed on number four, only answer question four, if you answers to both question two and three were yes. Then you are instructed taken the combined negligence that proximately caused Winthrop damages as one hundred percent, what percentage of negligence is attributed

to Pickens Roofing and what percentage is attributed to Winthrop. And it is listed Pickens Roofing blank percentage mark. Then the next is Winthrop, blank percentage mark and then the total is one hundred percent. So the two amounts, the percentages you place for Pickens and Winthrop have to total one hundred percent whatever that amount is. Then you are asked to please sign and date the verdict form. You will sign on the line foreperson signature and date it. When you have completed the form you will notify the bailiff and I will bring you out to receive the verdict.

Now, at this time I will ask you to retire to the jury room, but do not yet begin your deliberations. I have to give counsel an opportunity to request additional instructions on the law. If I deem additional instructions are necessary you will be brought back out to the courtroom. If no additional instructions are necessary I will send to you by means of the bailiff the verdict form the exhibits which have been admitted into evidence and instructions to begin deliberating. Please do not begin deliberating until you get that instruction. Please retire to the jury room all accept the two alternates. I will ask the two alternates not to go into the jury room at

this time but just wait outside the courtroom door for further instructions.

(WHEREUPON, the jury leaves the courtroom.)

THE COURT: Exceptions or additional request to charge from the plaintiff?

MR. VOGT: Yes, Your Honor. The plaintiff accepts to the charge with respect to comparative fault instruction and also those charges as to NFPA 7.1 and 7.21 as to the owner's responsibility under the code.

THE COURT: I thought you all agreed we would.

MR. VOGT: I agreed to the language. I didn't agree -- I think I stated earlier your --

THE COURT: Your objection is the owner can't be liable, is that it?

MR. VOGT: I believe there is no evidence of negligence to submit that matter to the jury.

THE COURT: Okay. Well, this is the first time you raised it, but to extent you raise it I overrule the objection. I thought we all agreed that those were the sections that applied. It's up to the jury to determine whether or not the owner was negligent or not, but I certainly think they apply in this case and it's something the jury can consider. I think there is evidence from which the jury could infer the owner had violated some regulation which would be negligence

per se, and then it would be a question of whether that was in any way a proximate cause. You got a better argument on that then the defendant, but in any event whether it caused anything in this case just because they didn't have somebody ---

But in any event I overrule the objection. What else?

MR. VOGT: Your Honor, and I may have you misheard when you were -- and this isn't an objection. I was concerned about when you were reading the special interrogatories to the jury, I thought I heard you say, if you find yes on one and two, and two -- though you say no on one and two don't go to three. And I'm sorry, I don't have the final version in front of me. But my concern was you it could be a breach yes for the breach of the contract, no on negligence. And the way I thought I heard you read it --

THE COURT: Well, I don't disagree with you. If you answer no to one and two -- in other words if they don't find a beach of contract, and they don't find negligence on the part of the plaintiff -- excuse me, on the defendant, then you can stop.

MR. VOGT: No, no.

THE COURT: Then you have a verdict for the defendant.

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.

THE COURT: All right. Do you have any problem with it now?

MR. VOGT: No, the form is correct.

THE COURT: Well, you don't have any problem with the form?

MR. VOGT: No.

THE COURT: Or the instruction? I overrule the other. I understand you don't think the plaintiff could have been negligent. That is fine. I overrule that. Go ahead.

MR. SHEALY: Just one, perhaps addendum and it maybe that I just didn't hear it. I did not hear you charge section 1-408.1 of the International Fire Code.

THE COURT: It's possible. Let me look back. I had it to read. Did I not read it?

MR. VOGT: I thought you read it Your Honor, but it is again it was a lot.

THE COURT: Can you look it up?

(WHEREUPON, the court reporter searched the record.)

THE COURT: All right, I will bring the jury back in and instruct them. Anything else?

MR. SHEALY: No, Your Honor.

(WHEREUPON, the jury enters the courtroom.)

THE COURT: Madame forelady, members of the jury

panel, I wasn't sure whether I instructed you on this or whether I might have left this out so I will give you this one additional instruction. It will be very brief.

The International Fire Code provisions place certain duties on owners and contractors during a construction project. Section 1-408-1.1 requires the owner to designate a person to be the fire prevention superintendent who hall be responsible for fire prevention program and insure that it is carried out through completion of the project.

That is the only additional instruction. Now you may retire back to the jury room again. Do not begin deliberating until you get that instruction. If there is no additional instruction necessary I will send you a verdict form and the exhibits, instruction to begin deliberating.

I understand that pizza just arrived. Please retire back to the jury room. The alternates again please do not go into the jury room.

(WHEREUPON, the jury retires to the jury room.)

THE COURT: Counsel, I really hadn't had this come up. Any exceptions to the charge that I just gave?

MR. VOGT: No, Your Honor.

MR. SHEALY: No, Your Honor.

THE COURT: I hadn't had this come up before, but we have these alternates. Since we have this bifurcated trial I think we got to keep them here because they can't take part in deliberations, so we have to put them somewhere else.

MR. VOGT: Is the library, okay?

THE COURT: Yeah, as long as nobody goes back there.

MR. VOGT: The other jury room is the --

THE COURT: Grand jury room. Yes, might put them in there. Okay, and give them something to eat. Give them some pizza because if we have another phase of this we will have to have them. Okay. Keep them. Okay. All right. Thank you we will be at ease. Counsel please go over with the court reporter and make sure you go all through the exhibits in evidence before they go back into the jury room.

(WHEREUPON, the jury started deliberations at 1:35.)

(WHEREUPON, the jury sent out a note.)

THE COURT: They want two things read to them. One is definition of proximate cause and the other is they want to read back the last statement about she's got ICC. I think she meant the International Fire

Code. It says read your last statement. So, have to give them what they want. I will ask if want anything else while they are out here.

All right, I will charge them on the proximate cause charge and reread section 1408.1 one of the IFC, Internation Fire Code. She's got ICC. All right. Please bring them in.

(WHEREUPON, the jury enters the courtroom.)

THE COURT: Madame forelady and members of the jury panel, I got your note indicating the request that I re-instruct you on a couple of things. One is proximate cause. A re-instruction on proximate cause. I will do that and then the next one says you need ICC code read and you got in parenthesis your last statement.

THE FOREPERSON: The one you gave to us.

THE COURT: When I brought you back out?

THE FOREPERSON: It's when you went over 241. All those things that were in the contract and then you said the International Code which is for as far as I know it's for the world, but you said something in there about the owner's responsibilities and I wanted that one.

THE COURT: Is that the last statement that I charged?

THE FOREPERSON: Very last statement you made.

THE COURT: That's what I understood. Now, I will go over this and if you want more than that you will let you know.

THE FOREPERSON: Okay.

THE COURT: Let me go over that. I charged you previously the International Fire Code provisions place certain duties on owners and contractors during a construction project. Section 1408.1 requires the owner to designate a person to be a Fire Prevention Program Superintendent who shall be responsible for the fire prevention program and ensure that it is carried out through completion of the project.

Now, as to proximate cause, I charged you previously that even if you find that the plaintiff has proved the defendant to have been negligent they would not be entitled to a verdict unless you further found that the defendant's negligence was the proximate cause of the plaintiff's injuries. Proximate cause does not mean the soul cause. The defendant's conduct can be a proximate cause if it was at least one of the direct concurring causes of the injury. The law defines proximate cause to be something that produces a natural chain of events which in the end brings about the injury. In other

words -- or damage. In other words proximate cause is a direct cause without which the damage would not have occurred. Okay. Anything else that you need while we are out?

THE FOREPERSON: No, that answers it.

THE COURT: If you need anything else you will let me know.

THE FOREPERSON: Thank you.

(WHEREUPON, the jury returns to the jury room and continues deliberations.)

THE COURT: Exception plaintiff?

MR. VOGT: No, Your Honor.

THE COURT: Defense?

MR. SHEALY: Your Honor, your charge the first time also included the discussion of foreseeability.

THE COURT: They didn't ask for that. They asked for proximate cause and I don't want to complicate it. I asked them if that is all they want and they said they wanted proximate cause and that's what I gave them.

MR. SHEALY: Yes, sir.

THE COURT: They had it all to start with, but you know, foreseeability and that sort of thing. They asked for proximate cause.

MR. SHEALY: Yes, sir.

THE COURT: I asked them when I finished do you want more that that. Do you need more than that and they said no.

MR. SHEALY: Yes, sir.

THE COURT: I know foreseeability is something they can consider on proximate cause, but they only asked me about proximate cause. My definition to define proximate cause.

MR. SHEALY: Yes, sir. I guess I would object to leaving out foreseeability from the discussion of proximate cause.

THE COURT: Well, they didn't tell me to recharge them on everything I charged them, counsel. I can't read their minds and figure out. Foreseeability may be a portion of that, but it is not in my proximate cause charge.

MR. SHEALY: Yes, sir.

THE COURT: Okay. They heard it all the first time. They asked me to proximate cause and when I finish reading and the forelady was shaking her head yes, so I figured that is all they want. I asked do you want any more then that.

We will make this a Court exhibits, please.

(Court's Exhibit 1, jury note, marked in evidence as of this date.)

THE COURT: All right, we will be at ease.

THE BAILIFF: Come to Order.

THE COURT: I understand we have a verdict. Please bring the jury in.

(WHEREUPON, the jury enters the courtroom at 4:12.)

THE COURT: Madame forelady, have you and the jury reached a unanimous verdict in the case?

THE FOREPERSON: Yes, Your Honor.

THE COURT: Will you please hand the verdict form up to the bailiff.

All right, in the case of Winthrop University Trustees for the State of South Carolina versus Pickens Roofing and Sheet Metal Incorporated the verdict form reads as follows: Number one, do you the jury find that Pickens Roofing breached the terms of its contract with Winthrop, this breach was a proximate cause of Winthrop's damages, answer yes. Do you find that the Pickens Roofing was negligent, such negligence was a proximate cause of Winthrop's damages, answer yes. Do you find -- do you the jury find that Winthrop's was negligent, such negligence was the proximate cause of its damages, answer yes. Taking the combined negligence and proximate cause of Winthrop's damages as 100 percent what percentage of

negligence is attributable to Pickens Roofing and what percentage is attributed to Winthrop, and the jury finds Pickens Roofing 60 percent negligent and Winthrop 40 percent negligent for a total of 100 percent.

Madame forelady, members of the jury panel if this be your verdict so say you all by raising your right hand. Thank you. You may put your hands down. Let the record reflect that all 12 jurors raised their right hand.

Any questions of the jury from the plaintiff?

MR. VOGT: No, Your Honor.

THE COURT: From the defendant?

MR. SHEALY: No, Your Honor.

THE COURT: Counsel, approach just a minute.

(WHEREUPON, there was an off the record discussion held at the bench.)

THE COURT: Madame forelady and members of the jury panel, I'm not sure you understood. I hope you understood. Having decided the liability issues we still have the damages portion of this. So, we bifurcated it because we could have saved a good many witnesses in that. If you decided the liability issue in favor of the defendant we would not have had to worry about damages, but since the liability issue is

there we of course got a second part of this trial. But that's why we bifurcated it, but now we have to go a little further with it which is fine. We will have to do that. And what I am going to do is I will work with counsel on a couple of things here and get a couple of witnesses here. We will try to get started this afternoon and then we'll go ahead into tomorrow on with it. I kept the alternates here. They are in a separate jury room and we put them back in the jury box when you come back because they will be qualified to hear on the damages portion. We still have two alternates in case something happens to any one of you. So what I am going to ask you to do at this time is retire back to the jury room. I know you've seen enough of it, but if you retire back to the jury room. If you want to take a break if someone wants to go out and smoke or if somebody wants to go out and get some fresh air we'll allow to you to. Thank you. It will be about 15 minutes.

(WHEREUPON, the jury retires to the jury room.)

THE COURT: Why don't you see if you can work anything out. If you can't work it out go ahead and get your witnesses lined up.

I didn't give a chance to make a motion.

MR. VOGT: The plaintiff does not.

MR. SHEALY: Your Honor, we would move for a judgement notwithstanding the verdict. We believe that the case never actually should have been submitted to the jury because it was never presented any evidence that -- on the issue of the causation of the fire.

THE COURT: The same motion as directed verdict motion?

MR. SHEALY: Yes, sir.

THE COURT: Well, I understand that and for the same reason I denied the motion for directed verdict I will deny it at this time. I do think that it is a novel issue of law for South Carolina, but I think it is an unusual fact pattern and and I think this is an appropriate way to present it to the jury.

In any event I'm not going back through all that. I think it's an appropriate issue for the jury to decide about the damages and so I deny your motion for judgement. All right. We will be in recess.

(WHEREUPON, court was in recess.)

THE BAILIFF: Come to order.

THE COURT: All right, bring the jury in please. We got the two alternates back with them so they will be sitting with them.

(WHEREUPON, the jury enters the courtroom.)

THE COURT: Madame forelady and members of the jury, we are not going to be here too long the rest of the day, but we wanted to do what we could today. We have a couple of witnesses available but we will not stay late.

The two alternates are back with the jury now and you all will sit on this part of the case as well. And same role, if an emergency develops with regard to one of first 12 jurors chosen you will automatically fill in for that juror. Madame forelady, you continue to be the forelady of that jury, if you will.

Now, we are to that part of the trial where the plaintiff will have to prove to you their damages in this case and of course they will do that with testimony and any exhibits they may have. So listen carefully as we begin.

Please proceed.

MR. VOGT: Your Honor, with our first witness?

THE COURT: Yes.

MR. VOGT: The plaintiff calls Wes Love.

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

DIRECT EXAMINATION

BY MR. JETT:

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

A Wesley Stewart Love.

Q Mr. Love, you testified earlier this week. Would you please remind the jury what your position was with Winthrop?

A Project manager for Winthrop University.

Q Mr. Love, in your prior testimony you discussed a little bit about some of the damages that occurred after the fire of March 6, 2010. Do you recall that?

A Yes.

Q All right. Please remind the jury what exactly your role was in the days that followed March 6, 2010?

A The primary role I had besides meeting with Walter and other official and trying to figure what we were going to do next. How we were going to will proceed with business. How we are going to remedy the situation. That Monday morning I was tasked with working with one of our contractors, Multi Vista. We went through the entire site, all the adjacent buildings and photographed everything that existed as it was; all the damage, all the things that weren't damaged. We literally documented everything via photograph.

Q And just for orientation purposes we talked a whole lot about Bancroft Hall and Owens Hall, but can you tell the jury what other buildings were around Bancroft and Owens Hall?

A Crawford, which is our health building, sits to the

front of Owens. We have Margaret Nance Dormitory that sits adjacent to that. The full length of Bancroft. Margaret Nance is almost the same shaped building. On the other side of the building there is an L-shaped building Kinard, which was a classroom building.

Q Were any of those buildings effected after the March 6, 2010 fire?

A If I remember right I think Kinard had some smoke damage. The air handlers in that building faced Owens so they took in the smoke from the fire. So we had some remediation we had to do in there. I think we may have a few similar problems in Crawford because it was right there. But the bulk of the damage was in Bancroft Annex which is the portion up to the fire wall where the addition was made and of course Owens.

Q I am sorry, I was fumbling around there. At the top to the left of the yellow building which building is that?

A To the top and to the left would be Kinard.

Q How about to the south of the yellow building?

A The large building would be Margaret Nance Dormitory and then the small building a adjacent to that would be Crawford.

Q So in the days following -- the Monday following the fire -- - I apologize. Is this a photograph that you recognize?

A Sure.

Q Which building are we looking at here?

A On the left to the left the picture would be Kinard and the majority of the picture would be Owens, and to the far right would be to the end of Crawford.

Q Now Mr. Love I will take you through a series of pictures as I go through if you would just sort of photo by photo explain to the jury what we are looking at and what building we are in.

A Okay.

Q What is this a picture of?

A That would be the rear of Owens looking towards where the previous picture was taken.

That would be adjacent to the fire wall between Bancroft and Bancroft Annex looking at the roof of Owens. Off of Bancroft looking at the roof of Owens.

That would be one of our classrooms inside Owens. I wouldn't know a room number but they all were basically the same set up.

Q It looks like the ceiling has caved in here. Why is that Mr. Love?

A Water damage. Most of the rooms we went in if any ceiling was intact it was very little, but most looked like that.

Q And Owens Hall was that a -- that's the newer building on campus, right?

A Yes.

Q Is there a lot technology in those buildings?

A Yes. We set that up to be a multi-faceted classroom building. Meaning multiple majors could have classrooms in there. We set that up with smart-room technology so the professors have a large range of possibilities within those classrooms. This is of one our buildings where multiple departments use it so we tried to put everything we could he in the building to make ti completely accessible to everyone. It's not limited to an art department or a music department that has a very specific set of needs for a classroom.

That is another classroom. That is a typical situation we would see while we were photographing the building.

Q Are all three floors of Owens Hall academic classrooms?

A Yes.

Q Is that you in the background there?

A Yes.

Q What do you have tied around your waist?

A A rain coat.

Q Why did you have a rain coat?

A It was still pretty wet in portions of the building, both water still dripping from the ceiling cavities and mechanic equipment. There was also portions of the building where we stood in water the entire day taking our pictures.

Q And this is the Monday after the fire department?

A Yes. We started as soon as the site was cleared for us

by the fire department and the police department. So we we were probably there seven, seven thirty that morning once the work day began.

That's one of the many we call it a podium. It's a computer station. It's an interface between computers. I think they have like we use to have old on fashion projection screen now they have a whole series of things that are interactive with what they can present on the projector in the classroom. They can put documents on them, files off a computer. But that's a standard computer station for the smart classrooms. A lot of technology inside one of those.

Q Was each classroom equipped with a smart computer like this that you described?

A I think most of them were. Some of the larger classrooms were more lecture-style on the ground floor, but I would say pretty much every classroom had at least this much technology in it.

This would be a repeat. As you see up in the ceiling there is one of the projectors where the podium would interface with and we have the boards and the speakers and all those things that are part of that system. A repeat there.

Q This is just another example. Do you recall which of the three floors had the most damage?

A The upper floor had the most because it would have been the closest to the water and the fire itself. On the ground

floor water was in everything. It was in the wall cavities, it was in furniture, it was in the ceiling. But as you got to the top of the building you started get a lot more smoke damage where the air hammers had pumped the smoke into the building. So the third floor, the top of the building, had by far the most damage.

Q What are we looking at here Mr. Love?

A That's some of our art. We had a good bit of art in the building. Particularly in Bancroft a lot of the professors had their own art, had Winthrop art. But liberal arts school we have a lot of that throughout our building. Some of it's valuable, some of it is not.

Q So some of it is it student work at well as professional work?

A Yes.

Q Mr. Love, just for the sake of the jury I am just going to sort of scroll through these. If you see anything that catches your eye.

A Okay. That's one of the more common areas in the building. There are several areas where the students can gather or have a little meeting or just a casual conversation. That's one of the lobby -- the lobby-type areas in the building.

That would be one the telecom rooms. Probably there you have all the fire alarm panel and the switch and all the things for telephone and data. Quite a bit of equipment in

there.

That's called a patch panel. That is where all the data and telephone come in to the building via service and it is distributed to all the different points within the building.

Q Was this damaged?

A Yes, it was wet like everything else.

Q Can you dry out? Once those were wet were they able to be dried out?

A I don't know if that specifically was, but it's been my experience that drying out computers and a lot of those kind of things it may way work, but it's never like you first get it. It,s not a guarantee.

Q Another academic classroom?

A Yes.

Q Another accurate academic classroom?

A Yes.

Q And yet another?

A Yes, and these are probably on the upper floors. You can see there is no ceiling left. Quite a bit more debris and things on the floor. More equipment hanging from the ceiling.

That is one of the large lecture rooms I was discussing on the ground floor. There again you can see the difference, but everything in there was just as wet. Just didn't have -- the ceiling didn't quite fall in, but the equipment, the flooring, the walls, everything was -- you can

see the stains on the wall from the water in the wall cavities even on the ground floor.

That's the main lobby where you first come in on the ground floor. You can see the water dripping from all the sheetrock surface. That's a sculpture we installed when we dedicated the building which did make it through. But you can also see in several of the pictures where we have all the smoke and soot and things that washed down through the building. Lots of stuff was discolored. Everything was black from the smoke and the soot coming down with the water.

Q Is that actually standing water on the ground there?

A Yes. That would be another one of the computer podiums. You can see how wet everything is inside. All the technology was wet.

Q I am just going to keep moving along.

What building are we looking at now?

A Now you would be in what we call Bancroft Annex which is the portion of the building where Owens attached to Bancroft. That is probably on the ground floor.

Q And primarily what purpose or what sort of rooms were in the Bancroft Annex and regular Bancroft?

A At that time on the ground floor we had University College which is one of our colleges, but the primary function of that building would be offices. There there were a few small classrooms up on the upper levels, but most of it was offices

and resource areas.

Q So it was the primary area that your professors and teachers had their offices?

A Yes, it is one the buildings. Yes. And that's one of the offices on -- I think that is where you come in to the main level there and you can see water coming through the plaster ceilings.

When we went in the rooms we didn't disturb anything. We just opened the door and try to take a picture of every wall, every ceiling. If we found a computer station or a closet or book cases or something that had a lot of stuff with a lot of water we tried to make sure we documented everything. We didn't disturb or try to change anything as we went through.

Q And Mr. Love, you described some of the damage to the other buildings. What was the primary concern say for Kinard, the dormitory that was next door?

A Kinard is a classroom building and when you have smoke and other things coming in the building you want to make sure that the building is clean. A lot of people are sensitive and air quality is a big thing when we are providing a space for people to have classes or dormitory or whatever. You want to make sure that it's as clean and sanitary and as safe as you can possibly make it. If you have a building that smells like smoke and has smoke in it you are going to have to remedy that before you can offer that back out to the students.

Q And how about the Margaret Nance building?

A If I remember right most everything was okay in Margaret Nance. I don't ever remember us having to evacuate the students other than during the fire period. I think everything was okay in that building.

Q And how about Crawford? The student health center was in Crawford?

A Yeah, I don't remember a whole lot of damage there, but there again it was a smoke -- we wanted to be sure everything was clean and sanitary and the air quality was safe for the students and the staff.

Q So the real concern was the smoke that had been brought in by the outside air intakes for these various building?

A Yes, and Kinard is a building where it took on a lot of smoke. Those louvers faced the fire and it was just -- it just brought it in the building the whole time.

Q Were you the project manager for the rebuild of either Owens Hall or Bancroft Hall?

A No. I worked on a portion of the roof project for Bancroft but Ben handled the majority of the reconstruction.

Q And how about the purchase orders that the various contractors submitted. Would that come through you?

A No, I would have been aware of what was going on but Walter and Ben would have handled the majority of the purchase orders.

MR. JETT: Thank you, very much Mr. Love. I have no further questions.

MR. SHEALY: No questions, Your Honor.

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

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

MR. SHEALY: No objection.

THE COURT: Thank you for coming. You maybe excused.

MR. JETT: Your Honor, at this time the plaintiffs would call Walter Hardin.

MR. SHEALY: Your Honor, I'm sorry, could we approach briefly.

THE COURT: Yes.

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

THE COURT: Madame forelady and members of the jury the next witness will take a good bit longer than the first witness, so I know you all had a long day. All of us had. It is about 20 after five, so we will go ahead and recess for the day. I will ask you if you will be back in the jury room in the morning about 9:15, about 9:15 everybody be there. We hope to finish this up tomorrow, and so for your planning purposes we plan to finish it up tomorrow. So, please enjoy your night tonight and be back in the jury room

9:15. Thank you.

(WHEREUPON, the jury leaves the courtroom.)

THE COURT: Counsel approach just a minute.

(Whereupon, there was an off the record discussion.)

THE COURT: Counsel, I will be here about nine in the morning if something comes up in the morning otherwise we will reassume the trial at 9:15 everybody.

(WHEREUPON, court was in recess until March 21, 2014.)

(WHEREUPON, court resumed on March 21, 2014)

THE COURT: Counsel ready to proceed?

MR. SHEALY: Yes, Your Honor. Just for the record we had there was outstanding Motion in Limine that had not been dealt with. That has been resolved by the parties.

THE COURT: Was this about damages?

MR. SHEALY: It had to do with damages. We have worked all of those issues out.

THE COURT: Okay, very good.

MR. JETT: Your Honor, our first witness Walter Hardin who is going to lay the groundwork for all of this apparently his mother took ill. Supposedly he is on his way. Can I go try to call him again?

THE COURT: Yes, just be sure. You don't have anybody else?

MR. VOGT: We do, but he is the guy that is going to put all that in first.

THE COURT: Why don't you give him a call and see what his situation is.

MR. VOGT: Thank you sir.

THE COURT: We will be at ease until your witness arrives.

I think we are ready to proceed. Please bring the jury in.

(WHEREUPON, the jury enters the courtroom.)

THE COURT: Good morning. I hope you have a pleasant night last night.

We are now ready to proceed.

MR. JETT: Your Honor, at this time the plaintiff would call Mr. Hardin.

THE COURT: He was previously sworn so you continue to be sworn and under oath for your testimony.

DIRECT EXAMINATION

BY MR. JETT:

Q Good morning. Would you please re-introduce yourself to the jury.

A Walter Hardin, associate vice president for facilities management at Winthrop University.

Q Thank you. And were you here yesterday when Wes Love testified?

A Yes, I was.

Q Do you recall him testifying that most of the coordination and calling of the contractors for the rebuild would go through your office?

A That's correct.

Q Was he correct when he testified to that Mr. Hardin?

A Yes.

Q Mr. Hardin, could you please explain to the jury what

your role was as part of the post fire rebuild for Bancroft and Owens Hall?

A I was leading the team of people that were doing everything from the cleanup to the reconstruction.

Q And following the fire what was your -- what was your immediate response? Who did you call first?

A Well, I had several conversations with my boss and the chief of police and this was as I was traveling back from the beach. I also called a fire restoration service and began calling other people, lining up a team meeting for that Sunday afternoon. I called the original contractor that had finished building the Owens building just a year and a half or so before. Just trying to gather people that I could get.

Q Were many of those contractors still available who had completed Owens Hall in 2007?

A Yes.

Q Do you recall who the general contractor was on the 2007 Owens Hall project?

A Leitner Construction.

Q Is that who you called following the fire?

A Yes.

Q Now, could you please explain to the jury how these various contractors were paid following the fire of March 6, 2010?

A They were paid via purchase orders.

Q And how does purchase order process worked at Winthrop University?

A We are given a price and we do requisition and a purchase order is issued.

Q And so is the purchase order a Winthrop document?

A Yes, sir.

Q Is that a document that you review in the course of your regular business as vice president of facility management?

A Yes.

Q Do you recall about how many different contractors and subcontractors were out on site as part of the rebuild and cleanup process following the fire?

A It was close to forty.

Q Mr. Hardin, would it be fair to assume you couldn't rattle off all forty of those contractors?

A It would be safe to assume.

Q Well, if I were to show a piece of paper would that help refresh your memory as on who came out after the fire for part of the cleanup and rebuild?

A Yes.

MR. JETT: Your Honor, if I may approach the witness.

THE COURT: You may.

Q A few pieces of paper Mr. Hardin. Mr. Hardin, I will ask you if you would open that binder and just look through

those documents and see if you recognize those documents?

A Yes.

Q What do you recognize those documents to be Mr. Hardin?

A These are the purchase orders for the contractors to do the cleanup and replacement and repair to Owens and Bancroft.

Q Since Winthrop is a state university are some of these contractors on a state contract?

A Yes, some of them are.

Q And since they are on a state contract do they have set pricing that is set by the state?

A Some of them do, yes.

Q And do you recall off the top of your head how many of those contractors would have already have that state contract?

A No, it would be some.

Q All right. Mr. Hardin, in the front of that binder if you would look at the front cover of the binder I would ask you to look at that two-page piece of paper and tell us if you recognize that document?

A Yes.

Q What do you recognize that document to be?

A This is a list of all the purchase orders.

Q All the purchase order for all the contractors that were hired?

A Yes.

Q That a list of all the contractors that were hired for

the rebuild and cleanup process following the March 6, 2010 fire, correct?

A Yes.

Q All right. Now that you have an opportunity to look at that list does that list refresh your recollection as to how much each of those contractors were paid?

A Yes.

Q Mr. Hardin, I apologize this may be some laborious, but if you could for the jury let's go down this list together. If you could briefly explain what each one of these contractors did and we will start with the very first contractor there on the list. I see AAA Environmental. Do you recall them being hired by Winthrop university?

A Yes.

Q Do you recall what they were hired to do?

A They did several things. They checked for mold. Mold was a big concern as we were trying to get the building dried out. They also had to test some materials for asbestos contain substances and then help with the remediation.

Q And do you recall how many AAA Environmental was paid for their services?

A $11,981.

Q Next on the list it looks like we have Advance Communications Systems Incorporated. Were they were hired by Winthrop University following the fire?

A Yes.

Q Do you recall what their role was?

A They had provided the smart boards and the smart podiums.

Q So they were there to cleanup or --

A Yes.

Q -- or mitigate those items?

A Correct.

Q Do you recall how much they were paid for those services?

A 15,493.89.

Q Next on the list we have Advance Video Incorporated. Were they hired by Winthrop University as part of the restoration process?

A Yes, correct.

Q Do you recall what Advance Video Incorporated did for Winthrop University?

A They are kind of coordinators and they hook up stuff, do programing, interface things together, do design.

Q So more of a technology side of things?

A Technology. That was a very technical building.

Q So they were involved in some of those smart podiums that Mr. Love described yesterday?

A Yes.

Q Do you recall how much they were paid for their

services?

A $19,660.60

Q Next on the list we have After Disaster. Were they hired by Winthrop University as part of the mitigation process?

A Yes.

Q What was After Disaster hired to do?

A They came in and picked up all the computers and CPU's and things that could be salvaged and they took them and took them all apart and put them in a convention oven and tried to salvage as much as they could.

Q So they were involved with the drying out of the computers?

A Correct.

Q Do you recall how much they were paid for their services?

A $419,792.80.

Q Next on the list we have Alertus Technologies, Incorporated. Was Alertus Technologies hired by Winthrop University as part of the restoration process following the fire?

A Yes. Do you recall what they did?

A We have a system that is connected to our police department to alert the entire campus community in case there is active shooter or tornado or whatever. There's little boxes on the walls that go off and tell people what to do.

Q Sort of an emergency response system for those particular buildings?

A Yes.

Q Do you recall how much Alertus Technology was paid for their services?

A $4,782.90

Q Next on the list we have Business Interiors by Staples. Do you recall what they were hired to do for Winthrop?

A That was for some tables. At the time we were buying furniture from several different people depending on what types they were and that was for some conference type tables.

Q And those were in the various conference rooms that were damaged?

A Yes.

Q Do you recall how much Business Interiors by Staples was paid for those services?

A $6,580.26

Q Next I see Carolina Advanced Digital Incorporated. Were they hired by Winthrop University as part of the restoration process?

A Yes, they he were.

Q Do you recall what Carolina Advanced Digital Incorporated did for Winthrop University?

A Yes, they were also working with our IT department to help restore the extensive amount of smart technology in the

building.

Q So they assisted with more of the technology repair?

A Correct.

Q All right. How much was Advanced Carolina Digital Incorporated paid for there services?

A $6,865.41

Q Next I see CWG Group. Were they hired by Winthrop University as part of the restoration process following the March 6, 2010?

A Yes.

Q Do you recall what CWG Group did for Winthrop University?

A They provided Winthrop window blinds for the Bancroft Annes.

Q How much were they compensated for the new blinds that were installed?

A $8,201.07.

Q Next on the list Dustin Shores Photography. Was Dustin Shores Photography hired by Winthrop University as part of the restoration process?

A Yes.

Q What did Dustin Shores Photography do for Winthrop University?

A He had to redo the portrait of the Owens. The people who had given some of the money for the building.

Q That was a portrait hanging in the front Hall of Owens?

A Correct.

Q How much was Dustin Shores Photography compensated?

A $802.50.

Q Electronic Restoration Services is the next contractor on the list. Was Electronic Restoration Services hired by Winthrop University as part of the restoration process following the fire?

A Yes.

Q What was the Electronic Restoration Services hired to do?

A Preserve documents. They brought in freezer trailers and they froze the documents because they were all wet. We're talking about faculties's doctoral papers and things -- irreplaceable kind of things.

Q So these were types of documents would have been in the professor's offices in Bancroft Hall?

A Yes.

Q And they were concerned about their research and their papers?

A Research papers, all kinds of irreplaceable type items.

Q How much was Electronic Restoration Services compensated?

A $101,373.52

Q Next is EMS Analytical Incorporated. Was EMS Analytical

Incorporated hired by Winthrop University following the March 6, 2010 fire?

A Yes.

Q What was EMS Analytical Incorporated hired to do?

A They did testing for samples taken by AAA Environmental, asbestos samples, mold samples. Things like that.

Q More health concerned?

A Health issues. Trying to verify that the space would be safe.

Q Safe for the students to occupy?

A Right.

Q How much was EMS Analytical Incorporated compensated?

A $5,735.00.

Q Next is Environmental Holdings Group. Was Environmental Holdings Group hired by Winthrop University as part of the restoration process?

A Yes.

Q What was Environmental Holdings Group hired to do?

A They do remediation. They had to remove the asbestos containing materials in Bancroft Annex and do some mold issues in the main building.

Q How much was Environment Holdings Group compensated for their work following the fire of March 6, 2010?

A $44,680.31.

Q Next is Gallery Up. Was Gallery Up hired by Winthrop University following the fire?

A Yes.

Q What was Gallery Up hired to do?

A Gallery Up was hired for framing, reframing art work that had been damaged.

Q Is this the art work that is in the Hallways of the building?

A Yes, there was art work throughout the building.

Q How much was Gallery Up compensated?

A $2,353.79

Q Next is Hardy & Associates. Was Hardy & Associates hired by Winthrop University following the fire?

A Yes.

Q What was Hardy & Associates hired to do?

A They provided a lot of the furniture in the student lodge areas; tables, sofas, chairs. That type of thing.

Q All of those items had to be replaced?

A Yes.

Q How much was Hardy & Associates compensated?

A $10,677.50

Q Next is Kreen window Covering. Was Kreen Window Covering hired by Winthrop university following the fire?

A Yes.

Q What were they hired to do?

A Replace some of the blinds in the Owens building.

Q How much were they compensated for the new blinds?

A $892.92.

A Next is the Lewis Fence Company. Was Lewis Fence Company hired by Winthrop following the fire?

A Correct.

Q What were they hired to do?

A They put up the construction fencing right after the fire and moved it around for a little bit and then took it down.

Q So they put up a barricade so students could not get into these buildings. How much were they compensated for their work?

A $11,100.

Q Next is Leitner Construction company. Was Leitner Construction Company hired following the fire?

A Yes.

Q What was Leitner Construction Company hired to do?

A They did several things in phases. Immediately they came in and stabilized the site. Tried to water proof the building as much as they could with tarps and different things and began to do some salvage work. Then they came in and did the reconstruction of the interior of Owens Hall and they also put back the permanent roof on Owens Hall and then they did another contract for restoration of Bancroft Annex.

Q So did Leitner Construction serve as the general

contractor for the overall rebuild?

A Yes.

Q How much was Leitner Construction Company compensated for their work following the fire?

A $4,720,429.24.

Q Next on the list is Multimedia Services Incorporated. Was Multimedia Services Incorporated hired by Winthrop University during the restoration process?

A Yes.

Q What were they hired to do?

A Multimedia -- I am trying to think.

Q And if you need to refer to the binder in front of you. I believe they would be tab number 23.

A They did the smart podiums.

Q So they assisted with the restoration of the smart podiums?

A Yes.

Q How much were they compensated for their work?

A $31,098.62

Q Next on the list is Neal Prince Architects. Was Neal Prince Architects text hired following the fire during the restoration process?

A Yes.

Q What were they hired to do?

A Neal Prints was the original architect for the

construction of Owens Hall. They were hired to come back with the documents, put packages back together, reconvene the contractors and subcontractors and guide the put back.

Q How much was Neal Prince compensated?

A $95,503.

Q Next on the list is NEO Corporation. Was NEO Corporation hired by Winthrop University during the restoration?

A Yes.

Q What were they hired to do?

A They did some environmental remediation in couple of buildings. Mainly in Owens Hall.

Q Did they also do some remediation work in the neighboring buildings?

A Yes.

Q How do you plead was NEO corporation compensated?

A $$3,605.93.

Q Next on the list is the Palmetto Air and Water Balance. Were they hired by Winthrop University during the restoration process?

A Yes.

Q What were they hired to do?

A They do testing and balancing of the considerable and complex heating and air systems and water systems. They all have to be balanced.

Q Was that for Owens and Bancroft Hall?

A That was Owens and Bancroft. It was after the put back.

Q How much was Palmetto Air and Water Balance compensated for their work?

A $17,975.

Q Next on the list is Paul Davis National Incorporated. Was Paul Davis National Incorporated hired by Winthrop University during the restoration?

A Yes.

Q What were they hired to do?

A They are disaster recovery specialist. They were the first people on the job that Monday. They came in and helped remove all the wet items and literally stripped the sheetrock and ceilings. Everything came out of the building and went down to the studs.

Q How much was Paul Davis National Incorporated compensated?

A $909,544.70.

Q Next on the list is RPM Engineers. Was RPM Engineers hired by Winthrop University during the restoration?

A Yes.

Q What were they hired to do?

A They are an inspection services company and they did special inspections, Chapter 17 inspections.

Q What are Chapter 17 inspections?

A They are inspections like wells, things beyond just regular normal building inspections. Speciality items.

Q How much were they compensated?

A $16,950.70.

Q Next, Service Plus South Incorporated. Was Service Plus South Incorporated hired by Winthrop University during the restoration process?

A Yes.

Q What were they hired to do?

A The fiber optic backbone for the campus daisy chains through buildings and it daisy chained through Owens Hall. So once Owens became inoperable they had to bypassed that so Service Plus came in and they bypassed that bad link in the chain, if you will, to get the campus network back up going downstream.

Q How much were they compensated Mr. Hardin?

A $325.

Q Southern Computer Warehouse, were they hired by Winthrop University during the restoration process?

A Yes.

Q What were they hired to do?

A They were hired for various pieces of IT equipment. Small equipment.

Q The smaller equipment?

A Yes.

Q How much were they compensated?
A $2,755.57.
Q Stafford Consulting Engineers were they hired by Winthrop University during the restoration process?
A Yes.
Q What were they hired to do?
A They were hired to help us with the waterproofing issues, the design and put back of the roofs systems.
Q How much were they compensated Mr. Hardin?
A $5,451.86
Q Summit ECS. Was Summit ECS hired by Winthrop University during the restoration process?
A Yes.
Q When were they hired to do?
A I think did concrete testing.
Q Concrete testing?
A Yes.
Q How much were they compensated?
A $570.
Q Troxell Communications were they hired by Winthrop University as part of the restoration process?
A Yes.
Q What were they hired to do?
A I am going to check.
Q Tab 35.

A They were hired for DVD recorders and intercom boxes.

Q That were in Owens Hall?

A Yes, and they with were hired by our IT department.

Q All right. How much were they compensated Mr. Hardin?

A $5,924.29

Q Walker Electric Company were they hired by Winthrop University?

A Yes.

Q What were they hired to do?

A They were hired to put temporary lighting in the building.

Q How much were they compensated?

A $907.50

Q White Office Furniture Limited, were they hired by Winthrop University during the restoration process?

A Yes.

Q What were they hired to do?

A They provided most of the furniture in the building, the classroom furniture. Of course it was primarily a classroom building. They also provided a lot of the furniture for the faculty offices which all had to be replaced as well; office chairs.

Q So all of the student classroom furniture as well as the professor's office furniture?

A Correct.

Q Both in Owens and Bancroft Hall. How much were they compensated Mr. Hardin?

A $735,019.

Q Do you have a total amount that all of these contractors were paid as part the rebuilt process?

A $7,223,343.14

Q Mr. Hardin, did you approach each of these purchase orders part of your job as vice president?

A Yes.

Q Did you find each of these purchase orders to be fair and reasonable?

A Yes.

Q And were each of these contractors paid for the work that they did?

A Yes.

MR. JETT: Your Honor, at this time I would move to offer composition exhibit number 67 into evidence.

MR. SHEALY: No objection, Your Honor.

THE COURT: It will be without objection.

(Plaintiff's Exhibit 67, Composition, received in evidence as of this date.)

Q Mr. Hardin, how did Winthrop University insure that the amounts it paid for the contractors who were cleaning the building, repairing the damages and replacing the fixtures was fair and reasonable?

A How did we assure it was?

Q Yes, sir.

A Well, one of the things was we had just done the building a couple years before so we had idea of what it should cost and some of the things were on state contract, most of the furnishings. Some were done by indefinite delivery contractors that we hired by multiplier against the national average cost which they bid for?

Q Mr. Hardin, do you recall how long Bancroft Hall was closed?

A The whole building -- Owens was out about nine months. Bancroft may have opened a little earlier then that for the faculty to get back in their offices. I don't remember exactly when but it would have been in the fall of 2010. Late fall probably.

Q So if the fire occurred on March 6, 2010 would it be fair to say that Bancroft Hall reopened for the fall semester?

A Some time during the fall semester. I don't think it was at the beginning of the semester. That's not my recollection anyway.

Q How about Owens Hall, would it be fair to say that didn't open until the following spring?

A Yes, that's when it reopened.

MR. JETT: Mr. Hardin, thank you, very much. I have no further questions for you.

MR. SHEALY: No questions for this witness.

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

MR. VOGT: Your Honor, if the witness may be excused.

THE COURT: No objection. He may be excused at this time.

MR. JETT: Your Honor at this time the plaintiffs would call Prescott May.

PRESCOTT MAY, called as a witness, having been duly sworn by the clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JETT:

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

A Prescott Lee May, III.

Q Mr. May, how are you currently employed?

A I am an architect.

Q Who are you employed by?

A LSPPP Associates.

Q Who were you employed by on March 5, 2010?

A Neal Prince Architects.

Q Has Neal Prints merged with your current company?

A Yes.

Q What is your current title?

A Vice president.

Q Did you hold that same title on March 6, 2010?

A I was president of Neal Prints Architects.

Q How long have you held that position?

A Three years as vice president, five years as president with Neal Prints and a partner for probably 20 years.

Q Could you briefly explain to the jury your educational background?

A I have a bachelor in design from Clemson University.

Q And how long have you been in the architect field?

A Thirty-three years.

Q Are you familiar with the fire that occurred on March 6, 2010 at Winthrop University?

A Yes.

Q How did you first learn about that fire?

A I was trying to remember. My son went to school at Winthrop. I can't remember if he called me or if I saw it in the news. I do recall though that I received a call Monday morning following the fire by Walter Hardin to come and take a look at the job.

Q And when you say come to take a look at the job, did Mr. Hardin call Neal Prince Architects to come out as part of the restoration process?

A He did.

Q Do you recall what Neal Prince was asked to do for

Winthrop University?

A We were asked to help evaluate the damage to the building and to help the university construct the building.

Q Had you previously been involved with any of the architectural work for Winthrop University?

A Yes.

Q Specifically, do you recall which buildings you were involved with?

A Owens Hall was the primary building that we were involved with at Winthrop.

Q And that building opened in 2007, right?

A That's correct.

Q Fair to say you probably still had the drawing on hand in 2009?

A Yes.

Q Did Neal Prince in fact perform the services requested by Winthrop University?

A Yes.

Q Could you describe generally for the jury the architectural process following the fire of 2010?

A We visited the job site with Walter and some of his staff to evaluate the damage following the fire and brought together a team of engineering professionals to access the damage and to prepare a study for the university outlining the damages and what we felt the extent of those damages were.

Following that we were asked by the university to help reconstruct the building by providing updated drawings for the new construction. At the time there had been a code change which we needed to evaluate the impact of the code change on the building and provide drawings that were up to the current codes.

Q Generally speaking was Owens Hall rebuilt to match the original building?

A Yes.

Q Do you recall the length of time your firm was on site at Winthrop university following the fire?

A Yes.

Q How long was that?

A We were called on March the 8th and our final inspection of the building was in December of that year.

Q Did your company hire any subcontractors to assist with your work?

A Yes.

Q Do you recall how many subcontractors were hired by Neal Prince?

A The engineer firms were one for structural and one plumbing, mechanical, electrical and one for fire protection.

Q Did Neal Prince pay those subcontractors?

A We did.

Q Mr. May are you familiar with the purchase orders that were issued for the services that Neal Prince provided?

A Yes.

Q I will refer you to tab 25 in the book that is right in front of you which has previously been marked as Plaintiff's Exhibit number 67.

A Am I looking at the wrong tab?

Q There is A tab and a B tab.

A All right.

Q Do you recognize tab 25-A as one of the two purchase orders that was issued for the work performed by Neal Prince Architects?

A Yes.

Q What was the total amount for that purchase order?

A $46,793.

Q And tab-B if you turn to that. Do you recognize that document as a purchase order issued for the services that Neal Prince Architects performed for Winthrop University?

A Yes.

Q How much is the total of that purchase order?

A $48,710.

Q In your opinion Mr. May, were the services provided by Neal Prince Architects necessary and reasonable for Winthrop University?

A Yes, I believe so.

Q Was the amount charged by Neal Prince Architects reasonable for Winthrop University to pay?

A Yes.

Q Based on your experience in the industry and background of the industry was $95,503 a fair and reasonable amount to charge Winthrop University for the services provided Neal Prince Architects?

A Yes.

Q Was your company fully compensated in that amount?

A They were.

MR. JETT: Thank you, very much Mr. May. I have no further questions for you.

THE WITNESS: Thank you.

MR. SHEALY: No questions for this witness.

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

THE WITNESS: Thank you.

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

THE COURT: Thank you for coming. You may be excused at this time.

MR. JETT: Your Honor at this time the plaintiff's would call Jay Summer.

JAY SUMMER, called as a witness, having been duly sworn by the clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JETT: