

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2006-CP-39-1826

J. Scott KunstRespondent,

v.

David LoreeAppellant.

**2nd SUPPLEMENTAL RECORD ON APPEAL
VOLUME II**

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1 give you any instructions as to how to conduct jury
2 deliberations. It could be a matter of consensus
3 among you or you can try to organize it. I don't
4 know because I've never been on a jury and because
5 I'm not allow to go into the jury room while the jury
6 is deliberating or it would be an automatic mistrial.
7 So, I don't know how y'all arrive at questions -- at
8 the answers other than by mutual agreement and
9 discussing it.

10 So, when you get into your jury room, make sure
11 everybody has the opportunity to be heard. If during
12 your deliberations you have any questions, then you
13 may write those down and you can give them to the
14 bailiff to present to me. I am hopeful that you
15 won't have any questions, that my charge will answer
16 all of your questions, however, you may have some and
17 you're welcome to give them to me to answer.
18 Sometimes, I can answer questions that are posed and
19 sometimes I can't. Also, when and if the jury
20 reaches a unanimous verdict, you will sign the
21 verdict form and you will let the bailiff know that
22 you've reached a unanimous verdict.

23 Now, I'm leaning forward a little bit because I
24 anticipate we're going to argue and charge here in a
25 little bit. The only matter remaining, evidentiary

1 matter remaining, is the reading into the record a
2 deposition transcript. Now, I told you earlier in
3 the trial that a deposition is an out-of-court
4 statement made by witnesses under oath in
5 anticipation of trial. In many instances, it's made
6 as a part of discovery, that is as people are going
7 through the process of learning what the other party
8 is saying, what they're opposing.

9 Now, at certain times, it may come to pass that
10 those depositions are used at trial. You heard
11 depositions used at trial to clarify and/or impeach a
12 witness's testimony already. In this instance, we
13 have an unavailable witness, that is a witness that
14 is outside of the subpoena power of the parties in
15 this case. And that witness will not be available to
16 testify. So, the parties have determined certain
17 portions of that — of the transcript, the deposition
18 transcript which should be read to you, which can be
19 read to you, which will be read to you. Again, those
20 deposition transcripts are just like any other piece
21 of evidence that you receive in a case; just like any
22 other testimony. You decide if it's valuable or not.
23 You decide if it's credible or not. All right.
24 Having said that, we'll proceed.

25 Mr. Kunst, I believe it's your case, sir.

1 **MR. KUNST:** Thank you, Your Honor. If it
2 pleases the Court, the Plaintiff would like to read
3 from the deposition of Richard Gaby.

4 **THE COURT:** Okay. All right. Who is going to
5 read? Who is going to play the role of Mr. Gaby?

6 **MS. HILTON:** I will, Your Honor.

7 **THE COURT:** All right. Ms. Hilton, if you will
8 come forward please, ma'am, you can take a seat on
9 the witness stand.

10 Do the parties concede, stipulate, that Mr. Gaby
11 was under oath at the deposition at the taking of the
12 same?

13 **MR. SMITH:** Yes, Your Honor.

14 **MR. KUNST:** Yes, Your Honor.

15 **THE COURT:** All right. We will forgo the
16 reading of the swearing of the witness and there will
17 be a stipulation that he was under oath at the time.

18 Okay. You may begin, Mr. Kunst.

19 **MR. KUNST:** Are you ready, Ms. Hilton?

20 **MS. HILTON:** Yes.

21 **MR. KUNST:** Please begin reading the first part
22 of the line.

23 (WHEREUPON, the deposition of Richard Gaby was
24 read into the record by Ms. Hilton.)

25 **MS. HILTON:** Question by Mr. Kunst —

1 **THE COURT:** And here's what I would like you
2 do. I'd like you to read the question, then you can
3 read the answer to the question, okay?

4 **MR. KUNST:** Yes, sir, Your Honor.

5 **MS. HILTON:** We can just go back and forth?

6 **THE COURT:** Tell you what, if that's the way
7 y'all rehearsed doing it, you just do it. Just make
8 clear what the question is and what the answer is
9 okay. All right. Go ahead. You may proceed.

10 **MS. HILTON:** Question by Kunst: Who is David
11 Loree?

12 **Answer:** He works for us.

13 **Question:** Do you recognize his business card?

14 **Answer:** Yeah.

15 **Question:** Do you need time to review it for
16 accuracy?

17 **Question:** When did Loree first begin working
18 for you?

19 **Answer:** Spring of 2005.

20 **Question:** What is his official job title?

21 **Answer:** He doesn't have an official job title.
22 He does anything I ask him to do.

23 **Question:** Does he no longer serve in the
24 capacity as indicated on that business card?

25 **Answer:** He does to some degree.

1 **Question: Does he serve as an executive**
2 **protection administrator for you?**

3 **Answer: Yes, on some levels, he does.**

4 **Question by Mr. Kunst: Based on the contract**
5 **that you signed, was there any stipulation for**
6 **withholding reimbursement based on progress?**

7 **The Witness: I paid every invoice that was**
8 **submitted to me other than the last one.**

9 **Question: At any time, did you order an**
10 **independent audit of your account with Kunstwerke?**

11 **The Witness: I don't recollect.**

12 **Question by Mr. Kunst: Did you order him to**
13 **contact, as his employer, any subcontractors,**
14 **vendors?**

15 **Answer: We were trying to ascertain how monies**
16 **were being handled.**

17 **Question: Did you ask him to contact other**
18 **clients of Kunstwerke?**

19 **Answer: No.**

20 **Question: Are you aware that he did?**

21 **Answer: No.**

22 **Question by Mr. Kunst: Do you have any**
23 **information regarding whether or not Scott Kunst has**
24 **been caught co-mingling his clients money?**

25 **The Witness: I don't know how I'd have a -- no,**

1 I don't.

2 Question by Mr. Kunst: Has Scott Kunst
3 embezzled money from all of his clients to your
4 knowledge?

5 Answer: I have no knowledge of that.

6 Question by Mr. Kunst: Do you have any
7 information as to whether or not funds that you
8 disbursed to Kunstwerke were spent on luxury cars or
9 foreign trips?

10 Answer: No.

11 Question: Have you ever asked Mr. Loree to make
12 physical —

13 Mr. Smith: To be clear, you're saying you have
14 no knowledge of that?

15 The Witness: I have no knowledge.

16 Mr. Kunst: That was understood.

17 Mr. Smith: I want it clear for the record.

18 Question by Mr. Kunst: Have you ever asked
19 Mr. Loree to make physical threats to anyone of his
20 employees?

21 Answer: Absolutely not.

22 Question: Did Scott Kunst ever go to jail to
23 your knowledge?

24 Answer: I have no knowledge.

25 Question: Do you have any reason as you sit

1 here to believe that Scott Kunst is going to jail as it
2 relates to your project?

3 Mr. Smith: Object to the form.

4 Mr. Stern: Object to the form of the question.

5 I'm sorry.

6 MS. HILTON: Is that okay?

7 THE COURT: Is that the objection you wish to
8 lodge, Mr. Smith?

9 MR. SMITH: No, that was an objection to the
10 form, but she can finish reading the answer.

11 THE COURT: You may continue.

12 (WHEREUPON, Ms. Hilton continues reading
13 deposition of Richard Gaby into the record.)

14 MS. HILTON: The Witness: I have no basis to
15 answer that.

16 Question by Mr. Kunst: Do you have today as you
17 sit here any specific knowledge that Scott Kunst has
18 embezzled funds with you?

19 Mr. Smith: You can answer that.

20 The Witness: We have a judgment against Scott
21 Kunst.

22 Question by Mr. Kunst: Is that the default
23 judgment?

24 Answer: Is that what it was, default judgment?

25 Question by Mr. Kunst: Do you know how large

1 that judgment is?

2 Answer: I don't have a recollection.

3 Have you ever seen this affidavit before?

4 Answer: I have not.

5 Question: Do you have any information regarding
6 an insurance policy as stated in the third line from
7 the bottom that was taken out on your house?

8 Answer: I do not.

9 Have you ever referred to Scott Kunst as a
10 criminal?

11 Answer: I have no recollection.

12 As you sit here today, do you have any knowledge
13 regarding money missing from other Kunstwerke
14 projects?

15 Answer: No, I do not.

16 Mr. Smith: Meaning you don't have knowledge or
17 way or the other?

18 The Witness: I have no knowledge.

19 Question: Do you have any knowledge of dummy
20 invoices that you may or may not have received?

21 Answer: I do not have any knowledge.

22 Question by Mr. Kunst: You may have answered
23 this question, but refresh my memory, you have not
24 performed a reconciliation of your Kunstwerke
25 account?

1 **Mr. Smith: Answer.**

2 **The Witness: I have no knowledge or**
3 **recollection.**

4 **Question: Has Mr. Loree ever said to you, his**
5 **employer, that he believed that 400,000 had been**
6 **embezzled from you?**

7 **Answer: I don't recollect.**

8 **Question: Did you ask him to do something**
9 **insofar as determining the payment of subcontractors,**
10 **suppliers, that sort of thing?**

11 **Answer: We were trying to ascertain the facts.**

12 **Question: But did you ask him to do that?**

13 **Answer: Yes.**

14 **Question: The questions you've been asked here**
15 **today about amounts and contracts and accounts and**
16 **reconciliations, are those questions more properly**
17 **directed to Mr. Loree?**

18 **Answer: Most of them, yes.**

19 **THE COURT: Does that conclude the deposition of**
20 **Mr. Gaby?**

21 **MR. KUNST: That concludes the deposition**
22 **testimony of Richard Gaby.**

23 **THE COURT: You have another witness whose**
24 **deposition you'd like to read?**

25 **MR. KUNST: Yes, Your Honor. The Plaintiff**

1 would ask that the deposition of Barbara Van
2 Andel-Gaby be read.

3 THE COURT: Barbara Van Andel-Gaby?

4 MR. KUNST: Yes.

5 THE COURT: Okay.

6 MR. KUNST: May I approach?

7 THE COURT: Yes, sir, absolutely.

8 (WHEREUPON, the deposition of Barbara Van
9 Andel-Gaby was read into the record by
10 Ms. Hilton.)

11 MS. HILTON: Question: Do you own a home
12 designed by me at The Reserve at Lake Keowee in
13 Pickens County, South Carolina?

14 The Witness: Yes.

15 Question by Mr. Kunst: How often do you visit
16 that home?

17 Answer: It varies, but about a month out of the
18 year.

19 Question: Four weeks a year?

20 Answer: Witness nods head affirmatively.

21 Question: Do you appear here today voluntarily
22 or by subpoena?

23 Answer: By subpoena, right?

24 Mr. Smith: I'll object to the form. It's
25 basically calling for a legal conclusion that my

1 client is not competent to answer.
2 Mr. Stern: Same objection.
3 Mr. Smith: She's here by agreement and then
4 your subpoena was served after our agreement.
5 Question by Mr. Kunst: What is an executive
6 protection administrator?
7 Answer: I don't know.
8 Question: Is Mr. Loree still employed by you?
9 Answer: Yes.
10 Question: Has he been continually employed by
11 you since March 2006 until present?
12 Answer: Yes.
13 Question by Mr. Kunst: Did Mr. Loree ever speak
14 to you regarding his relationship with me
15 directly?
16 Answer: No.
17 Question: Did he ever report to you directly
18 regarding the construction of the house at Lake
19 Keowee?
20 Answer: No.
21 Question: As a signer of the contract, did you
22 make any effort to ascertain whether all weekly
23 billings were reimbursed?
24 Mr. Smith: Object to form. She can answer that
25 question if she knows.

- 1 Question by Mr. Kunst: You can answer it.
2 Answer: I don't know. I'm not involved.
3 Question: You say you're not involved? This
4 may answer that question, but just to be sure,
5 at any time, have you asked Mr. Lorce or anyone
6 else to do a full audit of your Kunstwerke
7 Construction account?
8 Answer: No.
9 Question: Have you asked Mr. Loree or anyone
10 else to do a full reconciliation of your
11 Kunstwerke Construction account?
12 Mr. Smith: Object to form, but to the extent
13 you can, you may answer.
14 The witness: I have no idea.
15 MR. SMITH: I think you actually skipped a page
16 MS. HILTON: Okay. Where is that?
17 MR. SMITH: Page 12, Lines 4 through 10.
18 MS. HILTON: Page 12?
19 MR. SMITH: Yes, ma'am.
20 MS. HILTON: What lines?
21 MR. SMITH: Four through 12 — I'm sorry, 4
22 through 10.
23 MS. HILTON: I think I did read it, but I'll
24 read it again.
25 MR. SMITH: I'm sorry if you did. I must have

1 missed it.

2 (WHEREUPON, the deposition of Barbara Van
3 Andel-Gaby continued to be read into the record
4 by Ms. Hilton.)

5 MS. HILTON: Question by Mr. Kunst: Did Mr.
6 Loree ever speak to you regarding his relationship
7 with me directly?

8 Answer: No.

9 Question: Did he ever report to you directly
10 regarding the construction of the house at Lake
11 Keowee?

12 Answer: No.

13 Question: Do you have any information as you
14 sit here today whether or not Scott Kunst has
15 embezzled money from all of his clients?

16 Answer: I do not know.

17 Question: Do you have any information as you
18 sit here today whether or not any of your
19 personal funds intended to go towards your house
20 on Lake Keowee went towards luxury cars or
21 foreign trips?

22 Answer: I do not know.

23 Question: Have you ever instructed Mr. Loree to
24 make personal threats against anyone?

25 Answer: Absolutely not.

1 Question: Based on your knowledge, is Scott
2 going to jail?
3 Answer: I do not know.
4 Question by Mr. Kunst: Did you ever instruct
5 David Loree to use the word jail time in
6 reference to Scott Kunst?
7 Answer: No.
8 Have you heard David Loree ever refer to Scott
9 Kunst as a criminal?
10 No.
11 Have you instructed him to state that to anyone
12 else?
13 Mr. Smith: To state what?
14 Mr. Kunst: That Scott Kunst is a criminal.
15 The witness: No.
16 Question begins: My question to you relates to
17 that. Do you have any information or evidence
18 that 400,000 has been taken from the Gaby
19 project?
20 Answer: I have no knowledge of any of this.
21 Question: At any time since March 2006, did you
22 instruct David Loree to contact all of
23 Kunstwerke clients?
24 Answer: No.
25 Question: Did you ask David Loree to do an

1 investigation of Scott Kunst's financial
2 matters?

3 Mr. Stern: Object to the form of the question.

4 Mr. Smith: Join.

5 The witness: I have no knowledge.

6 MR. SMITH: Tracy, you forgot Page 22 as well.

7 MS. HILTON: I'm sorry?

8 MR. SMITH: And Page 24 and Page 20.

9 MS. HILTON: Oh, really. I didn't have a tab on
10 that, I'm sorry.

11 MR. SMITH: And 27.

12 MS. HILTON: Okay. If you can give me the
13 pages one at a time, I'll read it.

14 MR. SMITH: Page 22, Lines 6 through 12.

15 (WHEREUPON, the deposition of Barbara Van
16 Andel-Gaby continued to be read into the record
17 by Ms. Hilton.)

18 MS. HILTON: Question: During the time you
19 spent at your lake home at Lake Keowee in 2006, did
20 you hear any rumors regarding Scott Kunst regarding
21 financial matters?

22 Answer: In 2006?

23 Question: Yes.

24 Answer: I have no memory of that.

25 MR. SMITH: Page 24, 17 through 24.

1 MS. HILTON: Okay. I didn't have that
2 highlighted. 17 through 24?

3 MR. SMITH: Yes.

4 MS. HILTON: 24, 17 through 24?

5 MR. SMITH: Yes, ma'am.

6 (WHEREUPON, the deposition of Barbara Van
7 Andel-Gaby continued to be read into the record
8 by Ms. Hilton.)

9 MS. HILTON: Question: Exhibit 4, the following
10 is a transcript of a hearing presented by David
11 Loree. It's a default damages hearing in a case
12 involving Richard Gaby and Barbara Van Andel v.
13 Scott. Did you testify in this hearing?

14 Answer: No.

15 Question: Were you present?

16 Answer: No.

17 MR. SMITH: Page 26, 10 through 13.

18 (WHEREUPON, the deposition of Barbara Van
19 Andel-Gaby continued to be read into the record
20 by Ms. Hilton.)

21 MS. HILTON: Question by Mr. Kunst: Do you have
22 an outstanding damage award against me personally at
23 Kunstwerke?

24 Mr. Smith: You may answer if you know.

25 The Witness: Yes.

1 MR. SMITH: Page 26, Lines 23 to over the next
2 page through Line 3.

3 MS. HILTON: Twenty-two through?

4 MR. SMITH: Three on the next page.

5 (WHEREUPON, the deposition of Barbara Van
6 Andel-Gaby continued to be read into the record
7 by Ms. Hilton.)

8 MS. HILTON: Did you ever ask Mr. Loree to make
9 sure that Kunstwerke was paid everything it was due
10 as signer of the contract?

11 Mr. Smith: Object to the form. If you know,
12 you may answer.

13 The Witness: I don't know. I'm not involved in
14 the financial side of things.

15 MR. SMITH: And Page 29, 7 through 13.

16 MS. HILTON: Really? Lines again?

17 MR. SMITH: Seven through 13.

18 MR. KUNST: Your Honor, may we pause for a
19 moment?

20 THE COURT: Yes. We're getting some water for
21 you.

22 MS. HILTON: Seven through 13?

23 MR. SMITH: Yes, ma'am.

24 (WHEREUPON, the deposition of Barbara Van
25 Andel-Gaby continued to be read into the record

1 by Ms. Hilton.)

2 MS. HILTON: Question: Did you hear at that
3 same time the possibility from someone other than
4 David Loree that there may be an account balance
5 owed?

6 Answer: I have no knowledge of anything.

7 Question: When you say you have no knowledge,
8 you do not recall or you have no knowledge?

9 Answer: I don't have any knowledge.

10 MR. SMITH: That's all.

11 THE COURT: Anything else?

12 MR. KUNST: That's all from this witness, Your
13 Honor.

14 THE COURT: Okay. You may step down. That
15 you.

16 Anything further from the Plaintiff?

17 MR. KUNST: That's it, Your Honor.

18 THE COURT: Okay.

19 MR. KUNST: The Plaintiff rests, Your Honor.

20 THE COURT: Okay. Good enough.

21 MS. WRIGHT: Defense rests, Your Honor.

22 THE COURT: Okay. Good enough. Y'all have s
23 motions, I presume?

24 MS. WRIGHT: Yes, we do.

25 THE COURT: Okay.

1 MS. WRIGHT: In the presence of the jury, Your
2 Honor?

3 THE COURT: Ma'am?

4 MS. WRIGHT: You want me to make my motion for
5 directed verdict in the presence of the jury?

6 THE COURT: No, no, no, no, ma'am. Don't. I
7 didn't know if you had anything you wanted to put
8 into the record, any evidence to put into the record?

9 MS. WRIGHT: No, Your Honor.

10 THE COURT: All right.

11 Ladies and gentlemen, at the point in time which
12 the parties rest, it is incumbent upon me to take up
13 matters of law. There may be motions that need to be
14 made and I need to resolve them before we move
15 forward. There are also matters that we need to
16 discuss before we begin our argument and charge.
17 It's not going to take us long. We got here early
18 this morning and we talked through a lot of the
19 issues that we needed to to get to argument and
20 charge, but I must necessarily from a procedural
21 perspective hear arguments now.

22 So, I ask you to retire to your jury room.
23 Don't discuss the case. When we come back, we'll go
24 into argument and charge on the law. Okay. Please
25 don't discuss the case.

1 (WHEREUPON, the jury left open court at
2 approximately 10:00 a.m.)

3 THE BAILIFF: The jury is secured, Your Honor

4 THE COURT: Okay.

5 Yes, ma'am.

6 MS. WRIGHT: Your Honor, the Defense moves for
7 directed verdict on the grounds that the Plaintiff
8 has not proven the elements of slander per se.
9 It's -- slander per se requires that the Plaintiff
10 prove that either Mr. Loree charged him with the
11 commission of a crime of moral turpitude, contraction
12 of a loathsome disease, adultery, unchastity, or
13 unfitness in business or occupation. There has been
14 no witness testimony to any of these items. In fact,
15 Plaintiff's own witnesses, Mr. Goad and Mr. Alfonzo,
16 indicated that they had been told that Mr. Loree had
17 no problems with Mr. Kunst as a builder or home
18 design. And because this is the Plaintiff's case in
19 chief on slander per se, we move that the case be
20 dismissed.

21 THE COURT: All right. Thank you. I
22 respectfully deny the same. The standard for review
23 of the directed verdict motion is to review the same
24 in the light most favorable to the nonmoving party
25 and not to weigh the sufficiency of the evidence, but

1 merely to ascertain the existence of evidence. I
2 think taking the evidence in the light most favorable
3 to the Plaintiff, there was suggestion that the
4 Defendant may have said something that impugned his
5 fitness to conduct business. Therefore, on that
6 basis, I respectfully deny the same.

7 MS. WRIGHT: Thank you, Your Honor. Just for
8 housekeeping, I had added directed verdict motions
9 concerning qualified privilege. We had addressed
10 that in chambers.

11 THE COURT: Okay. And I'll address that on the
12 record as well. Is there anything else you need to
13 put on the record?

14 MS. WRIGHT: No, Your Honor.

15 THE COURT: Okay. I know that when we began the
16 case, there was a motion in limine to amend the
17 pleadings. I told you at the time that I thought
18 that that was a fairly academic matter and that I
19 would take it up after having heard all of the
20 evidence.

21 One of the things that I was looking at
22 specifically is whether the amendment would change in
23 any way, shape or form the presentation of the case,
24 the manner and the method of presentation of evidence
25 and/or the tactical positions of either parties.

1 It's clear to me after having heard the evidence in
2 this case that no prejudice at all is upon either
3 party from amendment to the pleadings. Matter of
4 fact, from the evidence, it appears that the issue of
5 truth and qualified privilege in the underlying
6 factual allegations were present from inception of
7 this action, actually, were known to the parties
8 prior to the inception of the action. Testimony
9 clearly was that Plaintiff knew that Mr. Loree was an
10 agent of the Gaby's. He said that directly on direct
11 examination.

12 Also, the — it's clear that from all the
13 pleadings from all the submissions in this case that
14 the relationship between the Gaby's and Mr. Loree was
15 clear and fully disclosed at inception. Therefore, I
16 find with respect to qualified privilege, there is no
17 prejudice that visits upon the Plaintiff or the
18 Defendant from the amendment of the pleadings in
19 accordance with established law the amendments should
20 be liberally granted. I find again, no legal
21 prejudice and I find no actual prejudice.

22 With respect to the amendment for truth, again,
23 there is — the record is replete with discussions,
24 arguments, orders which discuss the truth as an
25 absolute defense. I will also say that in the

1 pleadings, there's an allegation of the falsity of
2 representations that were made and there was a denial
3 of the falsity of those representations, which
4 indicates to me that whether you characterize it as
5 an affirmative defense or not, it certainly was
6 affirmatively asserted in the initial pleadings in
7 this case. I also tell you it's entirely academic
8 inasmuch as it's the Plaintiff's burden of proof to
9 demonstrate the falsity of the — the falsity of the
10 statements that were made.

11 Therefore, it is this Court's opinion that
12 whether it's amended or not really has no practical
13 effect in the way this case has even been presented
14 or the charge that will be given to the jury.
15 Therefore, inasmuch as it is academic and innocuous,
16 I will allow the amendment.

17 Anything additional?

18 MR. SMITH: Yes, Your Honor.

19 THE COURT: Yes, sir.

20 MR. SMITH: Given your ruling that qualified
21 immunity is a defense in this matter, we would ask
22 the Court to recognize as a matter of law the
23 Defense's qualified immunity applies in many cases in
24 South Carolina is a matter of law not a matter of
25 fact whether qualified immunity applies. And if the

1 Court finds that qualified immunity applies, we would
2 ask the defense for the Plaintiff be dismissed.

3 THE COURT: Okay. Do you have any position
4 that, Mr. Kunst?

5 MR. KUNST: I do not, Your Honor.

6 THE COURT: Okay. I have read with some
7 interest the case law on defamation in the State of
8 South Carolina as well. It's unclear. I've read the
9 cases to which you refer, also, read cases where it's
10 a matter for the jury. I think in this case inasmuch
11 as this has been a tortured litigation that has taken
12 place over the last nine years, it has gone to the
13 appellate level and back, that we are better served
14 to not direct verdicts or summarily make any
15 decisions in this matter. If I'm wrong, the Court of
16 Appeals or Supreme Court can overturn me, but, at
17 least, they will have an evidentiary and a decision
18 from a jury that will serve the purposes of the
19 ultimate resolution of this case.

20 In this matter, I think it's appropriate to have
21 the jury make that determination. I've allowed the
22 amendment and then the jury as a matter of fact will
23 make a determination, first of all, as to whether he
24 was acting within the scope of his agency and whether
25 he enjoys the qualified privilege of acting outside

1 the scope.

2 MR. SMITH: I understand. Thank you, Your
3 Honor.

4 THE COURT: All right. Okay. All right, sir.
5 Anything before we go in front of the jury?

6 MR. KUNST: Nothing more, Your Honor.

7 MR. SMITH: Could we take about a two-minute
8 break?

9 THE COURT: I'm definitely going to take a break
10 before we get started.

11 MR. KUNST: Your Honor, I will make a motion for
12 a directed verdict.

13 THE COURT: Oh, you're going to make one?

14 MR. KUNST: Yes, sir.

15 THE COURT: Okay. Go ahead and make one.

16 MR. KUNST: Okay. Your Honor, the Plaintiff
17 moves for a motion of directed verdict because the
18 Defendant has failed to prove the defense of truth
19 and privilege over the last three days. The specific
20 statements are there. The ones that were read in the
21 beginning. They had an obligation to not just have
22 truth, but provable truth. They called one witness.
23 They had no experts. Mr. Loree specifically on many
24 instances not only didn't deny, he just simply said I
25 couldn't recall. A couple of times, he said I may

1 have said such things. When you look at every
2 slander regarding insurance policy, the dummy
3 invoices, the stealing money or money missing, the
4 400,000 from the Gaby's or from all the other
5 clients, there is not one item of truth or evidence
6 submitted by the Defense this week in any one of
7 those statements.

8 THE COURT: Okay. All right. Thank you, Mr.
9 Kunst, I appreciate it. And on the same basis upon
10 which I denied the directed verdict motion from the
11 Defendant, I respectfully deny the Plaintiff's as
12 well. Viewing the evidence in the light most
13 favorable to the nonmoving party, there is evidence
14 in the record which demands a jury decision on those
15 very same matters.

16 MR. KUNST: Thank you, Your Honor.

17 THE COURT: All right. Let's take a break.
18 (WHEREUPON, a short break was taken.)

19 THE COURT: All right. Let's bring in the jury.
20 (WHEREUPON, the jury came into open court at
21 approximately 10:20 a.m.)

22 THE COURT: All right. Ladies and gentlemen,
23 we're going to get closing arguments like I told you
24 at the beginning of the case. Closing arguments,
25 just like opening arguments, are not evidence.

1 You've already heard all of the evidence that you
2 will receive in this case. Arguments are simply
3 that. They are the particular party's attempt to
4 persuade you to their respective positions.

5 What will happen is the Plaintiff will have the
6 opportunity to begin and open, then the Defense will
7 have the opportunity to respond. The Plaintiff will
8 then have closing arguments. Now, I have spoken to
9 the parties and they've agreed — in fact, they
10 suggested that I give them a time limit, which I have
11 elected to do happily.

12 So, the Plaintiff will argue for no more than 15
13 minutes initially. The Defense will have the
14 opportunity to respond for no more than 20 minutes.
15 And then the Plaintiff will have five residual
16 minutes to reply and to close. So collectively, it's
17 no more than 40 minutes. I'll be watching the clock.
18 I know you will, too. After we have heard arguments,
19 I'll give you a charge on the law and that should be
20 about 20 minutes, I suspect. At that point, then
21 I'll allow you to go back to begin your deliberations
22 of the case.

23 Having said that, ladies and gentlemen, I defer
24 to Mr. Kunst.

25 You may begin, sir.

CLOSING STATEMENT

1
2 **MR. KUNST:** Thank you, Your Honor. If it plea
3 the Court?

4 **THE COURT:** Yes, sir.

5 **MR. KUNST:** Good morning, ladies and gentlem
6 it's been a long three days. We made it, thank you.
7 As I stated on Tuesday morning, someone is always
8 attempting to get a result that the truth would not
9 afford them. Sometimes the lies that they tell are
10 so bad that they can destroy good people. That is
11 why we have defamation law. And that is why this
12 case is so important. How do you stop someone from
13 going around accusing you of things you didn't do?
14 How do you stop them? If David Loree didn't say the
15 things that he said, how would our lives be
16 different?

17 According to the law, defamation occurs when
18 there's a false, defamatory statement made about
19 someone and unproven communications with a third
20 party. I remind you, the law states it doesn't have
21 to be just one person. It could be just one person.
22 If that defamation imputes unfitness in business,
23 then damages are assumed.

24 When David Loree came to town to fix things, the
25 truth didn't matter. You heard him admit that he is

1 not a detective and has no expertise in financial
2 matters. He's not accountant, auditor or CPA. You
3 heard David Loree admit that he never saw or read the
4 Gaby contract with Kunstwerke. He has shown you that
5 he understands nothing about a reimbursement
6 contract. The Gaby contract placed into evidence
7 states funds are due upon receipt at weekly billing
8 seeking reimbursement. His supposed investigation
9 did not even consider the crux of the contract,
10 reimbursement. He never looked at the last weekly
11 billing for reimbursement. You heard me ask him.

12 Do you believe the funds the Gaby's wired were
13 earmarked for specific invoices?

14 He said, Yes.

15 I asked him. I asked him is that the premise
16 you based your investigation on?

17 He said, Yes.

18 Folks, the premises was false. He didn't even
19 read the contract before going out and making false
20 statements to other clients, subcontractors,
21 suppliers, many who had nothing to do with the Gaby
22 project. He went over the line. When I asked him if
23 he had contact with Covington, Mike Parham, Ed Coco
24 and my investigator, Tom Hickey, he denied it. His
25 response was maybe, perhaps.

1 You heard me testify that the week David Loree
2 came to town every client stopped reimbursing my
3 company. You have seen evidence that the collective
4 amount owed by all these clients exceeded \$500,000.
5 In 52 other weeks of business prior to that time, no
6 client missed a weekly statement. No reimbursement.
7 I spent your valuable time this week providing facts
8 and evidence directly related to specific statements
9 that David Loree made. How did they spend your time
10 this week? Mud slinging. For two hours, you heard
11 nothing but my taxes, my tax issues. Tax issues that
12 were created by the chaos David Loree caused.

13 By the way, no clients testified that David
14 Loree said anything about my taxes. No client over
15 the last three days testified that they told David
16 Loree that there was money missing or stolen from
17 their projects. Mr. Covington, he was a little
18 belligerent at the time, but he said, I don't recall
19 ever speaking to Mr. Loree. Who was their only
20 witness? A woman from the South Carolina Department
21 of Revenue who was only on the stand for five
22 minutes. I asked her did she have any proof that I
23 stole money? She didn't.

24 Let's talk about my witnesses. You heard
25 testimony from the Gaby's just now. They are the

1 alleged victims of these problems or crimes that
2 David Loree communicated to others. They know
3 nothing about it. They had no proof. Do you
4 remember Glenn Alfonzo? You heard Glenn Alfonzo
5 testify that David Loree told him as others were
6 standing around, quote, I'm not supposed to be
7 telling you this, but to give you an idea of some of
8 the criminal things that Scott has been doing, David
9 Loree had referenced an insurance policy for the Gaby
10 project and claimed that Scott Kunst took out a
11 policy, billed the Gaby's and intentionally canceled
12 the policy the next day so that he, Scott Kunst,
13 could keep the money. There, David Loree was being
14 reckless. He had no reason to discuss the insurance
15 policy with the copper guy even if it were true,
16 which it wasn't, particularly as he stated with
17 others standing around.

18 Glenn Alfonzo also testified that David Loree
19 stated to him that quote, Scott Kunst had taken money
20 from his other clients and that money was missing
21 from these other projects. You heard Glenn Alfonzo
22 testify what David Loree said to him. As Glenn wants
23 it to read on the record, quote, I recall David Loree
24 referring to Scott Kunst as a criminal on more than
25 one occasion. You heard me ask David Loree if he

1 referred to Scott Kunst as a criminal when speaking
2 to Glenn Alfonzo.

3 What was Loree's response? Don't recall.

4 I asked David Loree, Is Glenn being untruthful?

5 His response, No, I just don't recall if I said

6 it.

7 I asked David Loree if he told Glenn I took out
8 an insurance policy and billed the Gaby's for it and
9 then canceled it.

10 You heard David Loree's response, Don't recall.
11 Can't say if I did or didn't.

12 I asked David Loree if he told Glenn that money
13 was missing from other clients.

14 David Loree's response, Don't recall.

15 Ladies and gentlemen, Glenn Alfonzo recalls it.

16 Kevin Goad, the window guy, you heard him state
17 that David Loree represented to him that he was a
18 former detective and was in the process of
19 investigating my — Scott Kunst's financial dealings
20 with his clients. You also Kevin Goad say that David
21 Loree stated to him, quote, Scott Kunst had taken
22 \$400,000 from the Gaby project and that his other
23 clients had a similar situation. You heard Kevin
24 Goad say that David Loree told him that money was
25 missing from Parham, Covington, Coco and Hickey.

1 Named clients specifically. You heard Kevin Goad say
2 that David Loree told him that, quote, Scott Kunst
3 had provided his client with dummy invoices from
4 dummy companies to take money from his clients.
5 Kevin Goad testified that David Loree's lawyer, Sandy
6 Stern, told him that Scott was going to jail.

7 You heard Kevin Goad say that David Loree
8 implied that he had reconciled the Gaby/Kunstwerke
9 account and the accounts of other clients had also
10 been reconciled. I asked David Loree on Tuesday if
11 he told Kevin that he had reconciled the Gaby account
12 and that other client accounts had been reconciled.

13 David Loree's response, Unknown, nine years ago.

14 Kevin Goad also testified that David Loree
15 stated to him that money Scott Kunst had taken from
16 his clients was spent on his personal speculative
17 project. David Loree stated that progress in the
18 speculative project had stopped because Scott's
19 clients had stopped paying Scott all together. And
20 as a result, there was no money available to be
21 illegally transferred from his clients. David Loree
22 stated that he was in contact with Hickey and that a
23 lot of money had been taken from Hickey as well.
24 David Loree appeared to know a great deal about
25 Hickey and the speculative project. I asked David

1 Loree on Tuesday did he tell Kevin that money from
2 his clients was spent on the speculative project.

3 David Loree's response, Don't recall.

4 Ladies and gentlemen, Kevin Goad recalls. You
5 know what else? Kevin Goad wasn't even involved in
6 the Hickey project. Ladies and gentlemen, David
7 Loree showed reckless disregard for my rights, made
8 these false blanket statements and needs to be held
9 liable for the damage it caused my reputation and
10 career.

11 I broached the subject with you yesterday, it's
12 a touchy subject, but there's \$400,000 to
13 subcontractors that I personally guaranteed. I also
14 incurred legal debt of \$640,000 through loans and
15 legal fees to a law firm. I'm missing self-made
16 capital that was in my business that allowed me to do
17 my work that will place me back in business, start
18 again, hopefully, is 1.6 million. The total is 2.6
19 million dollars, \$2,640,000. These are the actual
20 damages, folks. They are what they are.

21 There's such a thing as punitive damages that
22 you will hear about. And that punishes reckless
23 behavior in an effort to stop this kind of conduct in
24 the future. That's in your discretion. I just need
25 it to get going again. I'm almost finished.

1 Mr. Smith asked me yesterday why did I not just
2 declare bankruptcy? He doesn't get it. None of them
3 do. I gave good people my word that I would not give
4 up until everyone is paid, made whole. It has been
5 my responsibility to introduce the evidence in this
6 case. I now pass that responsibility on to you. It
7 is now your job to end this nine year nightmare.
8 Thank you.

9 **THE COURT:** Mr. Smith.

10 **MR. SMITH:** May it please the Court?

11 **THE COURT:** Yes, sir.

12 **CLOSING STATEMENT**

13 **MR. SMITH:** Good morning. We don't get to talk
14 directly very much, so when I do, I find it an honor
15 to do that. When we started this trial Tuesday, I
16 believe it was, I ask you to remember two things.
17 First, that a court of law has determined that
18 Mr. Kunst took \$400,000 from the Gaby's that should
19 have been paid to subcontractors and suppliers.
20 Second, I ask you to remember that you will see
21 absolutely no evidence whatsoever that Dave ever made
22 disparaging remarks about Mr. Kunst design or
23 construction work.

24 The Judge will tell you about the law that you
25 must follow. I just want to bring one thing to your

1 attention. Mr. Kunst brought this lawsuit.
2 Mr. Kunst decided to bring a lawsuit for something
3 called slander per se. It's a little different than
4 just slander. Because that's what Mr. Kunst chose to
5 sue Dave for, it is Mr. Kunst's burden, as the Judge
6 will tell you, to prove by a preponderance of the
7 evidence that Mr. Lorce said one of the following
8 kinds of things about Mr. Kunst. That Mr. Kunst
9 either committed a crime of moral turpitude, that
10 Mr. Kunst has contracted a loathsome disease, that
11 Mr. Kunst had committed adultery, that Mr. Kunst is
12 unchaste or that Mr. Kunst is unfit in his business
13 or occupation. Mr. Kunst had to show that Dave
14 actually made these statements. But he's given no
15 evidence that he said any of those list of things,
16 which are the very things that he must have said some
17 of those things. Instead, you've heard a lot of
18 theories and a whole lot of stories.

19 But here's what the uncontroverted facts of this
20 case have shown. Dave has never said anything bad
21 about Mr. Kunst business of design and construction.
22 In fact, I think you heard that he said Mr. Kunst
23 builds beautiful houses. Dave just stated he wished
24 he kept his books a little better. If you've got
25 \$100,00 flowing through your accounts as Mr. Kunst

1 claimed, you might need a bookkeeper.

2 Dave was asked by his boss to investigate what
3 was happening at the project site. I have a boss,
4 some of you may have bosses and when they ask us to
5 do something, we generally do it because we need our
6 jobs. We want our jobs. So, Dave came up and he
7 asked Mr. Kunst a very simple question, very simple.
8 Bring me an invoice, show me the check where you paid
9 it. We've sent you -- my boss has sent you over
10 2.5 million dollars and we want to see that you've
11 been paying because we're getting notices that things
12 are not being paid. This is very simple. It does
13 not have to be as complicated as some want to make
14 it. You bring an invoice. You show where you paid
15 it. That would have been the end of this matter.

16 But instead, Mr. Kunst didn't do that.
17 Presumably, Mr. Kunst still can't do that. So, he
18 disappeared, leaving Dave with the task of unraveling
19 who had been paid and who had not been paid. Dave
20 had to call these subcontractors, Dave had to call
21 these vendors to determine whether or not he had been
22 paid by Mr. Kunst. Dave did only what he needed to
23 do and only talked to those folks who were around the
24 projects that he was involved in. And Mr. Kunst has
25 produced absolutely no evidence to contradict these

1 basic facts.

2 One thing Mr. Kunst does continue to bring up is
3 that we didn't put anybody on the stand to say that
4 Dave didn't say these things. Well, the legal answer
5 is it's not our burden to do that. It's his burden
6 to show they were said, not ours to say it wasn't
7 said. But what he's asking me to do is impossible.
8 I could call 10,000 people to come up here and say I
9 never heard Dave say that because you're trying to
10 prove something that didn't happen. It's like trying
11 to prove -- I mean, you're trying to prove something
12 that didn't happen. So, I could have brought in
13 10,000 people to sit up there and say nope, never
14 heard say those things, but we thought that would be
15 a waste of our time and your time.

16 And while we'll submit to you that Dave has not
17 slandered per se Mr. Kunst at all. He has not said
18 he's contracted a loathsome disease, is unchaste,
19 he's committed adultery. We think the evidence shows
20 that if there were statements made by Dave in the
21 course of his investigations, those statements were
22 true. For example, the \$400,000 you continue to hear
23 about, that was proven to a court. Now, I know
24 Mr. Kunst thinks that court was corrupt, but it was
25 proven to a court. The IRS and Department of

1 Revenue, he also thinks that they're wrong. But they
2 have also decided that he has been less than truthful
3 in his financial dealings.

4 Now, in South Carolina, the law protects someone
5 like Mr. Kunst — I'm sorry, the law protects
6 somebody like Dave from being sued by somebody like
7 Mr. Kunst. And that's called qualified immunity.

8 And the judge will tell you about that. But, in
9 essence, it means that if you make a good statement,
10 a good faith statement and you have an interest to be
11 upheld and the statement is limited in scope to the
12 purpose, its proper occasion, publication and proper
13 to people — it's very technical — it's not very
14 technical and legal, but it basically says if you're
15 doing your job, if your boss tells you to do
16 something and you go do that and you're investigating
17 it and you say some things one way or the other,
18 you're not liable for slander. Otherwise, none of us
19 could ever do our jobs because we'd all be afraid
20 we're going to be sued all the time. That's what's
21 happened here. And ladies and gentlemen, the law in
22 South Carolina is clear. It protects employees in
23 doing their job from being sued for slander per se.

24 Now, one of the elements of defamation is
25 damages. And Mr. Kunst's responsibility was to come

1 in here with reasonable certainty. We don't think
2 he's been damaged at all, but if he has, it is his
3 job to show you with reasonable certainty the amount
4 of damages he has suffered, he's actually suffered.
5 Well, you've heard nothing of credible evidence of
6 what he's actually suffered in damages. What you've
7 heard is him say well, I think about 2.6 million
8 dollars. Well, I wish someone would give me 2.6
9 million dollars, too. The damages portions of a
10 trial — I don't know if any of y'all have ever been
11 in a civil trial, but the damages portion of a trial
12 is often the longest and most tedious part of a trial
13 because you have to show with certainty — they have
14 to show to a jury how he's been damaged.

15 Well, what's happened here? Mr. Kunst in a
16 typical fashion has just said well, I'm missing 2.6
17 million dollars. Show me how. Well, it's in the
18 books. If you look at the big blue book, it's in
19 there. Just show me the books. Again, he's coming
20 in here and just saying y'all give me 2.6 million
21 dollars. And he said the actual damages, he just
22 told you, they are what they are. Well, okay, show
23 us. Show us what they are. That's his burden to do.
24 And if he doesn't do that, you can't award damages to
25 him because he hasn't met that burden. He's passed

1 out magazine articles. He's shown you models.
2 Beautiful houses. What has he not shown at all? How
3 he came up with 2.6 million dollars, how that was
4 calculated down to the penny. And as we have seen,
5 he has trouble doing that.

6 Finally, he talks about lost income. Lost
7 income, under South Carolina law, you have to prove
8 with more than reasonable certainty. You have to
9 show how you would have lost that income. And we
10 know he hasn't done that. In fact, he has testified
11 that he was no longer going to take clients anymore.
12 He was just going to go build spec houses. And we
13 talked about yesterday a theory called mitigation.
14 If he thought he was owed money by any of these
15 clients — and that's not a part of this lawsuit, by
16 the way, but if he thought he was, he could have
17 filed a lien at any time he wanted to and that would
18 have been resolved in about 90 days, instead of 20
19 lawsuits nine years later. That tells you a little
20 bit about what he's really after here.

21 But finally, and most importantly on the
22 damages, he said 2.6 million dollars. The one thing
23 he hasn't told you is how Dave Loree caused him 2.6
24 million dollars in damages. He has to show you that.
25 He has not done that. This lawsuit is about

1 Mr. Kunst seeking revenge for his loss in the Gaby
2 lawsuit and in the other lawsuits that he'll claim
3 victory in, but has not shown any victory.

4 The evidence will show that Mr. Kunst has spent
5 nine years writing letters to the, I believe he
6 called it the general public and writing a 300 page
7 book that he publishes on the internet about how bad
8 the judges in South Carolina are and how everybody's
9 out to get him. But one thing has been shown clearly
10 here, it's never Scott's fault. And I'm not sure
11 whether Scott actually believes this or not. And if
12 it wasn't for so many lies being caught up in the
13 middle of this, we could have an academic discussion
14 about whether if he firmly believes that ground is
15 wet and water is dry, is it true to him. But no
16 matter how much he believes it, if it's not true,
17 it's simply not true. He has brought about his own
18 issues.

19 If Mr. Kunst had simply provided documentation
20 to show he had spent the money the way it was
21 supposed to be spent and not on his houses and not on
22 his cars and not on a myriad of other things where he
23 was spending this money out of his corporate account,
24 we wouldn't be here today. Mr. Kunst's projects
25 crumbled because he finally ran out of other people's

1 money and he has only himself to blame.

2 Wrapping up, Mr. Kunst reminds me of my Aunt
3 Mary. Let me tell you about my Aunt Mary -- my great
4 aunt, actually, my grandmother's sister. My great
5 Aunt Mary had been married, I think, 10 or 11 times.
6 Nobody actually knows how many times she was actually
7 married. And I love my great Aunt Mary, don't think
8 I don't, but right before she passed away, we were
9 having a real candid conversation one day and we were
10 talking about all the number of husbands she's had.
11 A few of them passed away. It would be a fool to
12 marry her. But she actually believed that every one
13 of those husbands were wrong and every divorce was
14 their fault. Now, the evidence would tend to favor
15 that out of 10, 11, maybe 12 times, we don't know how
16 many times she was married, it wasn't the other
17 person every single time when you go through that
18 many.

19 Well, that resonates with me here. Every single
20 failure is somebody else's fault. It's Dave's fault,
21 it's the lawyer's fault, it's the judge's fault, it's
22 his client's fault. All these people, all these
23 people all over Greenville, all over Pickens have
24 decided -- got together, apparently, and decided they
25 are going to go against Mr. Kunst. But not once is

1 it Mr. Kunst's fault.

2 Folks, Dave was simply doing his job. As I told
3 you when we started, a court of law determined that
4 Mr. Kunst had taken \$400,000 that should have been
5 paid to subcontractors, that should have been paid to
6 painters, to steel companies, to cabinet makers, and
7 he took that money and he used it somewhere else.
8 And there's no evidence at all, other than some
9 convoluting, well, this was not the way this —
10 there's no evidence. It's clear, the courts have
11 found he should have paid the cabinet makers, he
12 should have paid the steel folks, he didn't do it.
13 And there's absolutely no evidence that Dave ever
14 made any disparaging remarks whatsoever about
15 Mr. Kunst's design or construction work. To the
16 contrary. And now Mr. Kunst wants to blame everybo
17 else.

18 Mr. Loree ask that you find that he did not
19 commit slander per se against Mr. Kunst and that,
20 certainly, Mr. Kunst was not damaged to 2.6 million
21 dollars by Mr. Loree simply doing his job. He was
22 simply doing what his boss asked him to do. And the
23 law in South Carolina says he's not liable for
24 slander for doing that.

25 Thank y'all for sitting so patiently for the

1 last couple of days. I know it's been an ordeal. I
2 appreciate your attention and your service.

3 THE COURT: Yes, sir, Mr. Kunst.

4 MR. KUNST: Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 CLOSING STATEMENT

7 MR. KUNST: Thank you, folks. I wasn't going to
8 bring this back out again, but since Mr. Smith
9 brought it up. In my right hand is every financial
10 record from the Kunstwerke Corporation,
11 reconciliation of bank statements, every transaction,
12 every expenditure of the Gaby project, every project
13 in spreadsheet form with codes I used to audit from
14 the firm in New York City. I know how to audit. I
15 prepared this so they could audit fairly quickly if
16 they wanted to. It's been filed in this courthouse
17 since the beginning of this case.

18 Mr. Smith made a comment about preponderance of
19 the evidence, that the burden's on me. Let me just
20 explain something, I'm sure the judge will,
21 preponderance means in civil 50 percent of that
22 scale. If you believe that I have been harmed by
23 Mr. Loree and you're 51 percent more certain, 51/49,
24 you have decided for me. That's what that means.

25 He brought up the — again, the \$400,000

1 judgment. When you go back and look at the evidence.
2 there's several documents. There are a lot of legal
3 documents, look at those. I ask you to look at my
4 letter of April 12th, 2007. It shows that there was
5 not \$400,000. If there was, they would have brought
6 in — had an expert sit here and tell you that.

7 There was an expert in this case. He didn't show up.

8 Crimes of moral turpitude. He said that I pled
9 defamation per se. Specifically, I did. A crime of
10 moral turpitude is a legal concept about community
11 standards and general sense of justice. Obviously,
12 criminal activity was imputed by what he said. He
13 was also wrong about the damages. He said I wasn't
14 specific. I don't have to be specific, specific to
15 the point that I'm showing you actual receipts.
16 There are records that show that \$500,000 was lost to
17 the clients. It's obvious that I had capital in a
18 company that was lost, too. All these things are
19 tangible numbers. Obviously, I had \$640,000 worth of
20 legal fees. But what he failed to tell you, if a
21 defamation is actual per se, then the law presumes
22 the defamed acted with common law actual malice and
23 that the plaintiff suffered general damages and that
24 such defamation is actual without proof of special
25 damages. Actual per se carries with it the

1 presumption that actual damages to reputation and
2 character and proximately resulted therefrom. And it
3 is not necessary to allege or to prove any actual
4 special damages.

5 Lastly, he said I could have filed a lien. Read
6 the lien threat letters and you determine if I was
7 free to file liens. He's mocked my writings to the
8 public. You're truly defamed is you're not like —
9 what was the name of his aunt? You're not like his
10 aunt, but you're truly defamed and you've been harmed
11 and you want to fix it, you're going to tell people
12 about it. You're going to write about it. You're
13 going to fight it. You're going to put it out there,
14 put the truth out there in every venue possible
15 because there's no guarantee a court of law is going
16 to consider it. You have — it explodes across the
17 landscape. Everybody hears it. I don't know who's
18 all heard this.

19 This was so bad — and when you file a
20 defamation suit, the decision is do you want to file
21 a suit because that will make it even more broadcast
22 to people. You have to make a decision. This was so
23 bad, exploded so big that there was nothing that you
24 would be presented this week that could harm me
25 anymore. There are nine years of fighting and mud

1 slinging that you've seen in the last few days, it's
2 not as bad as what David Loree originally said:
3 That's why we were willing to sue. You file all
4 these lawsuits because nine years later, all the
5 other lawsuits are going to be one, dismissed for a
6 hundred different reasons. And one person's going to
7 rise to the top. There's going to be one courtroom
8 nine years later where one man is going to win.
9 There's a reason why Mr. Loree is one man alone.
10 Thank you.

11 THE COURT: All right. Ladies and gentlemen,
12 the time has come now for me to give you a charge on
13 the law. It's going to take me about 20 minutes.
14 It's not too gosh awful dry. Does anybody need to
15 take a break before we get started?

16 (There was no response.)

17 THE COURT: Okay. All right, ladies and
18 gentlemen, when we first started the case, I advised
19 you that you had a duty as jurors and I had a duty as
20 the judge. Your duty as jurors is to determine what
21 the facts are in the case. I told you that I have no
22 opinion on the facts. That you have the sole and
23 exclusive authority and jurisdiction to determine
24 what the facts are in this case based on the evidence
25 that has been presented. If it at any time during

1 this case I have given you the indication that I have
2 an opinion about what the facts are or what you
3 should do, please disabuse yourself of that notion.
4 Forget about that because I honestly have no stake in
5 this case. I have no concern for the outcome of the
6 case. Again, my only concern is that it is a fair
7 trial for both parties.

8 Now, my role, obviously, as I've told you is the
9 judge of the law. When you took your oath at the
10 beginning of this case, you swore to accept the law
11 as I give it to you. Now, if you come into this
12 courtroom with any impression or any opinion about
13 what the law is or about what the law should be, then
14 I charge you now that, again, to forget about that
15 because under your oath, you must accept the law as I
16 give it to you in this case.

17 Now, ladies and gentlemen, in this case, the
18 Defendant has — excuse me. I apologize. The
19 Plaintiff has the burden of proving his case. The
20 Plaintiff has the burden of proving his case by a
21 preponderance of the evidence. Now, you may have
22 heard on television or in other cases that you may
23 have heard of or been involved in or other jury
24 trials different burdens of proof. In a criminal
25 case, you have proof beyond a reasonable doubt, which

1 is the highest level of proof that exist under the
2 law. Then you have another proof, clear and
3 convincing evidence, which we'll talk about in a few
4 minutes. In this instance, the Plaintiff has the
5 burden of proving his case of defamation by a
6 preponderance of the evidence.

7 Now, let me give you an example of that so
8 you'll understand. Preponderance of the evidence
9 is — means that you have proved that it is more
10 likely than not, greater than 50 percent. Now,
11 ladies and gentlemen, I give you the example of the
12 scales of justice. So, when the parties to this case
13 walk into this courtroom and begin to try this case,
14 those scales of justice are absolutely even. They
15 are not one going one way or the other. If at the
16 conclusion of this trial those scales are even, if
17 they remain even or if they have tipped, even
18 slightly in favor of the Defense, then you would find
19 that the Plaintiff has not met his burden of proof.
20 However, understand that if you find at the
21 conclusion of this trial that the scales have tipped,
22 even ever so slightly in favor of the Plaintiff, then
23 he will have met his burden of proof.

24 Now, ladies and gentlemen, when we're talking
25 about weighing evidence, obviously, you can't weigh,

1 physically weigh evidence. And it doesn't matter who
2 put more into the record, who put less into the
3 record. What matters is what you take away from the
4 evidence in its aggregate. And you'll determine what
5 evidence has weight, what weight it has, whether
6 witnesses were credible or not credible.

7 Now, ladies and gentlemen, when you were looking
8 at the witnesses and you decide whether they're
9 credible, that is whether they're believable, you'll
10 use your own common sense, your common knowledge in
11 determining that. You know that in your life and in
12 your common sense, you can look at a person, you can
13 listen to what they have to say, the manner in which
14 they deliver what they have said, what they said, how
15 they said it, their physical expression, their
16 mannerisms you can look at and determine whether they
17 have something to gain or something to lose from what
18 they said. And you can determine from all of that
19 whether a witness is credible or not.

20 Again, it is entirely up to you to determine
21 whether a witness is credible or not. And you will
22 decide — you can decide that a witness was credible
23 in some regard and, perhaps, not so credible in
24 another regard. You may accept a portion of his
25 testimony as very believable and decide that another

1 portion of his or her testimony was not believable
2 and discount it entirely.

3 The same is true with the value that you place
4 on evidence that was presented into the record. You
5 may decide some is very valuable and you may decide
6 that some is not so valuable. That is entirely
7 within your discretion. And you will take all of the
8 evidence that's been presented, you will decide
9 what's credible, you will decide what is valuable and
10 how valuable it may be and take all that and apply it
11 to the law as I give it to you and then determine
12 whether the Plaintiff has met his burden of proof in
13 this case.

14 Now, ladies and gentlemen, evidence will be
15 introduced in two different forms, two different
16 possible forms of evidence. Direct and
17 circumstantial. Now, I want you to understand that
18 the law does not prefer one over the other. Again,
19 it's just like any other form of evidence, you decide
20 what weight that either direct or circumstantial
21 evidence has. Direct evidence is that evidence which
22 immediately establishes a fact to be proven.
23 Circumstantial evidence is proof of a chain of facts
24 or proof of collateral facts that when taken together
25 prove the main fact to be asserted.

1 Now, that's a pretty simply definition, but I'm
2 going to give you an example again that may help you
3 conceptualize the two a little bit better. Let's say
4 that on a January evening, you're going to bed. You
5 walk past your front window or your front door and
6 you look on your front lawn or your front yard and
7 you see that there's no precipitation on the ground.
8 You go to bed. You wake up the next morning and you
9 walk past that very same door or window and you see
10 that there's a blanket of snow on the ground. You
11 also see in that blanket of snow footsteps which lead
12 to your door and then lead away.

13 Now, you've got direct evidence that it snowed
14 last night because the snow is right there and you
15 can pick it up and feel it and touch it. It's there.
16 It's immediately established. But you have
17 circumstantial evidence as well that someone, either
18 that evening or early that morning came to your door
19 and walked away. You can't see that person. You
20 can't touch them. You can't feel them. But you know
21 as a consequence of the timing of the snowfall and
22 the existence of the footsteps in the snow that
23 someone came to your door and walked away. That's
24 circumstantial evidence.

25 Now again, ladies and gentlemen, the law does

1 not prefer circumstantial over direct evidence or
2 direct evidence over circumstantial evidence. You
3 decide what value and what weight the evidence has.

4 Now, ladies and gentlemen, I'm going to discuss
5 with you now specifically the law as its relate to
6 defamation. I'm going to read a little bit to you.
7 I don't like to read because it suggest to you that,
8 perhaps, I'm too lazy to learn the law or, perhaps,
9 I'm not smart enough to remember it, but the fact of
10 the matter is we have very precise definitions of
11 legal terms. It's incumbent upon me to get it
12 precisely right. So if I read a little bit, I
13 apologize to you on the front end. I try not to, but
14 I may read just a little bit to you.

15 Ladies and gentlemen, as you know, it's on
16 secret, the Plaintiff has brought a case alleging
17 that he was defamed by the Defendant. Now, just
18 generally speaking, defamation -- in order to prove
19 defamation, the Plaintiff must prove the following
20 four elements: A false and defamatory statement was
21 made, the unprivileged publication was made to a
22 third party, the publisher was at fault, and the
23 Plaintiff suffered damages as a result. Those are
24 the four elements. Now, I'm going to go into those
25 in a little bit greater detail, but on the front end,

1 I just wanted to describe for you those four elements
2 so you can keep the rest of the definitions in
3 context. So, let's talk about it again. A false and
4 defamatory statement, an unprivileged publication
5 that it was published to a third person, the
6 publisher was at fault, and, four, that the Plaintiff
7 suffered damages as a result of the publication.

8 Ladies and gentlemen, the Plaintiff claims that
9 the Defendant communicated a defamatory statement
10 about the Plaintiff to another person. This action
11 is based on violation of the Plaintiff's right to
12 enjoy good reputation without false and defamatory
13 attacks. Defamatory language is language that tends
14 to injure or adversely affect the Plaintiff's
15 reputation. In order to recover in this case, the
16 Plaintiff must first prove that defamatory language
17 was communicated by the Defendant about the
18 Plaintiff. A defamatory statement is one which tends
19 to attack the honesty, integrity, virtue or
20 reputation of a person and exposes the person to
21 disgrace, public hatred, avoidance, contempt or
22 ridicule. A defamatory statement does not have to be
23 direct, open or positive attack. It may be merely a
24 suggestion or hint which is false and malicious, as
25 long as the meaning is plain.

1 A statement, ladies and gentlemen, is not
2 defamatory if it is substantially true. Even if the
3 Defendant made the statement for no good purpose, was
4 inspired by ill will toward the Plaintiff and made
5 the statement solely for the purpose of harming the
6 Plaintiff, if the statement is true, the Plaintiff
7 cannot recover for defamation. Truth is an absolute
8 defense.

9 Next, the Plaintiff must prove that the
10 statement was communicated to someone other than the
11 Plaintiff and that the Defendant made the statement
12 knowing or reasonably expecting it to reach a third
13 person. Finally, the Plaintiff must prove that his
14 reputation was damaged by the defamatory statement.
15 The Plaintiff must prove that the damages naturally
16 and proximately resulted from the Defendant's
17 statement.

18 Actual damages are damages which compensate the
19 Plaintiff for the injury and put the Plaintiff in the
20 same position as he was prior to the defamatory
21 statement as much as is possible. General damages
22 include humiliation, hurt feelings, mental suffering,
23 injury to reputation and other types of injuries
24 which you cannot place — upon which you cannot place
25 a monetary value.

1 Now, ladies and gentlemen, damages must be
2 proven just like every other element of the cause of
3 action. They need not be proven to a mathematical
4 certainty, however, evidence must be sufficient to
5 establish what is fair, just and reasonable. The
6 Plaintiff must also prove special damages resulting
7 from the defamatory statement. Special damages are
8 monetary damages with respect to the property,
9 business, profession or occupation of the Plaintiff,
10 such as the loss of a job, the loss of customers, or
11 the loss of a business relationship as a result of
12 the injury to the Plaintiff's reputation:

13 Now, ladies and gentlemen, I'll explain to you
14 in a little bit slander per se. And I want you to
15 remember this, in a case for slander per se, the
16 requirement for the proof of special damages is not
17 necessary. And I will get to that in a second.

18 Ladies and gentlemen, I will tell you that if
19 you determine, if you determine that the Plaintiff
20 has proved his case and he should be awarded actual
21 damages, then you may consider awarding punitive
22 damages. Punitive damages are intended to punish the
23 Defendant and to attempt to ensure that neither the
24 Defendant or anyone else commit similar conduct in
25 the future.

1 In order to recover punitive damages, the
2 Plaintiff must prove by clear and convincing evidence
3 that the Defendant acted with actual malice in making
4 the defamatory statement. Clear and convincing
5 evidence is more than a preponderance or greater
6 weight of the evidence. As I've told you before,
7 with respect to the burden of proof for the cause of
8 action of defamation, the burden by a preponderance
9 of the evidence.

10 If you elect to consider punitive damages, then
11 the proof must be by clear and convincing evidence.
12 As I told you before, preponderance of the evidence
13 is 50 percent. Clear and convincing is just that,
14 clear and convincing evidence and it is greater than
15 preponderance of the evidence. But understand it is
16 less than the criminal burden of proof, which is not
17 at all at issue in this case. I only tell you this
18 by way of example, the burden of proof is beyond a
19 reasonable doubt. Punitive damages must be proven by
20 the intermediate level of clear and convincing
21 evidence.

22 Now, ladies and gentlemen, actual malice
23 involves a malicious intent or recklessness,
24 willfulness or wantonness. This means the
25 Defendant's statement was motivated by ill will, the

1 intent to injure the Plaintiff, or that the statement
2 was made with such recklessness as to show a
3 conscious indifference toward disregard of the
4 Plaintiff's right. In determining any appropriate
5 amount of punitive damages, you should consider the
6 nature of the Defendant's actions, the punishment, if
7 any, which should be given for those actions and the
8 ability of the Defendant to pay.

9 Now, ladies and gentlemen, in this instance, the
10 Plaintiff alleges that this is a case of slander per
11 se. Now, slander per se is distinguished from
12 general slander, that's general defamation. And if a
13 statement is slanderous per se, injury to the
14 Plaintiff is presumed and the Plaintiff does not have
15 to prove special damages. You will remember that I
16 told you that before that if it's slander per se, he
17 doesn't have to prove special damages.

18 Now, statements which charge the Plaintiff with
19 the commission of a crime of moral turpitude,
20 contraction of a sexually transmitted disease,
21 adultery, unchastity, or unfitness in the Plaintiff's
22 business or profession are slanderous per se. So if
23 you find that any of the statements charge a crime of
24 moral turpitude, contraction of a sexually
25 transmitted disease, adultery, unchastity, or

1 unfitness in the Plaintiff's business or profession,
2 then you may find that it is slanderous per se.

3 If you find that the statement was slanderous
4 per se, you should return a verdict for the Plaintiff
5 and must award the Plaintiff at least nominal actual
6 damages. Nominal actual damages means at least
7 something. It doesn't mean that it has to be a great
8 amount, but it can be a small amount. It just means
9 that you must award the Plaintiff something because
10 the damages are presumed under slander per se.
11 Nominal damages may only be a small or trivial sum.
12 Nominal damages are required because the law presun
13 that some actual damage to the Plaintiff's reputation
14 and character directly and proximately resulted from
15 the Defendant's defamatory statement.

16 Now, ladies and gentlemen, I also tell you that
17 the Defense alleges in this action that the Defendant
18 enjoyed a qualified privilege. That is that he was
19 the agent of a principle and acting in furtherance of
20 the principles, the main person's interest. In order
21 to prove that a qualified privilege exist, the
22 Defendant must prove by a preponderance of the
23 evidence — now, understand in this instance, the
24 Defendant must prove by a preponderance or a greater
25 weight of the evidence that the Defendant made the

1 statement in good faith. If the statement was made
2 with actual malice, that is with knowledge that the
3 statement was false, or with reckless disregard of
4 whether it was true or false, the Defendant cannot
5 claim a qualified privilege. The Defendant must also
6 prove that there was an interest to be upheld and the
7 statement was made solely to uphold the interest of
8 the Defendant or a third party. In addition, the
9 Defendant must prove that the statement was made at
10 the proper time. Finally, the Defendant must prove
11 that the statement was communicated in a proper
12 manner and only to the proper parties.

13 . . . You also note, ladies and gentlemen, that the —
14 that the Plaintiff alleges that the — excuse me,
15 that the Defense alleges that the Plaintiff did not
16 mitigate his damages in this case. When a Plaintiff
17 is injured or damaged by the wrongful act of another
18 person, it's the duty of the Plaintiff to reasonably
19 try to avoid and lessen the damages. Those damages
20 which may be avoided by the use of reasonable
21 efforts, care and prudence by the Plaintiff cannot be
22 the proximate result of the Defendant's wrongful act.
23 Therefore, the Plaintiff cannot recover for damage
24 which reasonably might have been avoided. The
25 efforts required by the Plaintiff must be determined

1 by the rules of common sense and fair dealing, what a
2 person of ordinary reason and prudence would do und
3 the same circumstances. The Plaintiff is not
4 required to use unreasonable efforts or great expense
5 to avoid or lessen the damage. The Defendant has the
6 burden of proving a failure to lessen damages on the
7 part of the Plaintiff by the preponderance or greater
8 weight of the evidence.

9 Now, ladies and gentlemen, I have here for you
10 the verdict form. And this verdict form is what you
11 will fill out in your deliberations — or in the jury
12 room during your deliberations. You will see it's a
13 very simple form. It starts with the caption of the
14 case entitled verdict. It says, we, the jury,
15 unanimously find as follows — understand it's a
16 unanimous decision. Any decision that you reach must
17 be unanimous. It can't be 11 to one or 10 to two.
18 It must be a unanimous decision. You must all agree
19 on that decision. Then you have a series of choices.

20 Now, I want to point out before I go over these
21 choices that they're in no particular order.
22 Yesterday, as we were hearing evidence, my law clerk
23 was preparing the verdict form and I was telling him
24 what I wanted on it. I didn't tell him in what order
25 because I don't have a preference as to what order.

1. What I don't want you to do is look at this and say
2 because it appears in this order, he must want us or
3 prefer us to make a certain determination. I don't.
4 It has to be in some order and it was just put in in
5 this way. So, don't deduce any calculation from me
6 any order which I present it.

7 The first one is a blank for the Defendant. If
8 you find that the Plaintiff has failed to meet his
9 burden of proof with respect to the cause of action,
10 then you would find for the Defendant and you would
11 check that. If you find for the Defendant, then you
12 would simply sign as foreperson of the jury, date it,
13 and tell the bailiff that you have come to a
14 unanimous decision.

15 But ladies and gentlemen, if you find that the
16 Defendant has met his burden of proof with respect to
17 defamation or if you find that he has proven
18 defamation per se under the definition that I have
19 given you, then you would check for the Plaintiff in
20 actual damages in the amount of. You will determine
21 what actual damages were proven by the preponderance
22 of the evidence in this case by a unanimous agreement
23 and put that number down. Again, if you find that it
24 was slanderous per se, then you must then award at
25 least nominal damages, some sum, can be small or

1 trivial, but it must be some sum.

2 Ladies and gentlemen, if you elect, if you
3 decide that the Plaintiff has met its burden of proof
4 and you award actual damages, then you may consider
5 punitive damages. So, if you do find for the
6 Plaintiff in this column and you award actual
7 damages, then you can consider punitive damages. And
8 you consider it under the law and under the rules as
9 I have given it to you in the charge. Once you have
10 come to a unanimous decision, again, you would sign
11 as foreperson of the jury, then date it, and let the
12 bailiff know you have come to a unanimous decision.

13 Now, ladies and gentlemen, I'm about to let you
14 begin your deliberations. I don't want you to start
15 quite yet, though, because the attorneys and the
16 parties have the opportunity to take exception to the
17 law that I've given to you or correct something that
18 I may have said. So, I need to give them the
19 opportunity to tell me how I messed up. Okay. And
20 if I messed up, I'll either bring you back out here
21 and give you — and correct the charge that I have
22 made or I'll send you additional instructions,
23 whatever is appropriate under the circumstances.

24 When it's time to begin your deliberations, I'm
25 going to send back with the bailiff this verdict

1 form. And when you receive this verdict form from
2 the bailiff, you may begin your deliberations, but
3 not until. And then after you receive the verdict
4 form, very close thereafter, you will receive all of
5 the evidence. The parties are going to go through
6 and do an inventory to make sure that you're getting
7 what was introduced into evidence, no more, no less
8 and then you'll have that evidence as well. It will
9 be coming to you probably between five and 10
10 minutes.

11 So, if you will, please return to your jury
12 room. Don't begin your deliberations quite yet.

13 (WHEREUPON, the jury left open court at
14 approximately 11:15 a.m.)

15 THE BAILIFF: The jury is secured, Your Honor.

16 THE COURT: Okay.

17 Exceptions to charge?

18 MR. SMITH: No, Your Honor.

19 MR. KUNST: No, Your Honor.

20 MS. WRIGHT: No, Your Honor.

21 THE COURT: Okay. All right. Ladies and
22 gentlemen, I'm going to deliver the verdict form to
23 the jury. Each of you did an exceptional job and I
24 thank you for your conduct during the trial of this
25 case. It was different, but it was enjoyable as

1 well. It had the potential not to be. It had the
2 potential to be very contentious, had the potential
3 to be uncivil. And I appreciate the gracious manner,
4 the professional manner in which all of you conducted
5 yourself. I don't know what the verdict would be,
6 but regardless, I congratulate both of you, all of
7 y'all having tried an excellent case. And I exclude
8 Mr. Lewis from all those comments.

9 MR. SMITH: We concur in the thanking, Your
10 Honor.

11 MR. KUNST: Thank you, Your Honor.

12 THE COURT: All right. Thank you.

13 If y'all will do in inventory, I am going to
14 discharge the two alternates in chambers.

15 (WHEREUPON, deliberations began at approxim
16 11:23 a.m.)

17 (WHEREUPON, Court was in recess awaiting a
18 verdict.)

19 (WHEREUPON, Court's Exhibits Nos. 1 & 2 were
20 marked for identification and received into
21 evidence.)

22 (WHEREUPON, Court's Exhibit No. 3 was marke
23 identification and received into evidence.)

24 THE COURT: I have a note from the jury. I'm
25 going to mark it as Court's Exhibit No. 3.

1 **MR. SMITH:** No objection, Judge.

2 **THE COURT:** Let me say while y'all are reading
3 that, you will see — you see that I included not
4 just the definition of slander per se, but the
5 definition of slander as well. That's because they
6 can't be read separate from one another. You must
7 have the definition of slander in order to have that
8 definition of slander per se. One read without the
9 benefit of the other doesn't make sense and it's not
10 a holistic answer to their question. That what I
11 have put in that charge is exactly what I charged
12 them verbally on the record.

13 **MR. SMITH:** That's what I was going to say, your
14 Honor. It looks like exactly what you charged
15 earlier.

16 **THE COURT:** It was. That's why I came back to
17 get my notes to make sure that I didn't substitute a
18 word. And if not mistaken, this is verbatim what I
19 told them. So, what I'm going to do is I'm going to
20 bring them in and I'm going to tell them exactly —
21 I've given you both because they can't be read
22 separate and distinct from one another. And tell
23 them that I'm giving it to them and that the
24 distinction to be drawn between slander and slander
25 per se is that if you find that — if you find that

1 the comments were slanderous, then you would look to
2 see if it fits the definition of slander per se. And
3 if you decide that, then the imposition of damages,
4 even nominal, is automatic and as the distinction to
5 be drawn between the two.

6 MR. SMITH: Your Honor, one quick word and I
7 not sure if it matters. It could be — and I hate
8 this phrase, but a distinction without a difference.
9 But there's no — there's no cause of action for
10 slander, so I don't know if they have the option to
11 just find slander.

12 THE COURT: I got you. I got you. Okay.
13 You agree with that?

14 MR. KUNST: Not sure, Your Honor. I would lea
15 that open.

16 THE COURT: All right. Well, I'm going to
17 explain it to them. I'm not going to deviate —
18 basically, I'm not going to deviate from my charge.
19 The verdict form gives them one option, okay. One
20 option.

21 So, if you would bring them in, please, sir.

22 (WHEREUPON, the jury came into open court at
23 approximately 1:55 p.m.)

24 THE COURT: Okay. Ladies and gentlemen, I ge
25 your note and I've marked it as Court's Exhibit No.

1 3.

2 Can you tell us again the definition of slander.
3 per se?

4 What I've done is I've taken the charge that I
5 delivered to you earlier and I've printed off the
6 definition of slander and slander per se. The reason I've
7 done both is they can't be read without the benefit of the
8 other because they work together. You understand that if
9 you find that the Plaintiff has met its burden of proof
10 with respect to slander, then you would make the
11 determination as to whether it fits the definition of
12 slander per se.

13 Now, the distinction to be drawn between slander
14 and slander per se is that if you determine that it's
15 slander per se under the definition that I give you, then
16 the imposition of damages, even if those are trivial or
17 nominal is automatic in that regard. And that's the only
18 distinction to be drawn from the effect of a finding of
19 slander per se as opposed to slander.

20 So, I'm going to give you the definition exactly
21 as I gave it to you on the record before for you to take
22 back with you, but I wanted to make sure you knew why I
23 was giving you both, because they must be read together.
24 Okay.

25 Ms. King, this is for you. I ask you to return

1 to your jury room and begin your deliberations.

2 (WHEREUPON, the jury left open court at
3 approximately 1:58 p.m.)

4 (WHEREUPON, deliberations continued.)

5 THE COURT: All right. We'll be in recess
6 until we hear from the jury. Thank you.

7 (WHEREUPON, Court was in recess awaiting a
8 verdict.)

9 (WHEREUPON, Court's Exhibit No. 4 was marked
10 identification and received into evidence.)

11 THE COURT: I'm informed the jury has come to
12 verdict. Are the parties ready to receive the
13 verdict?

14 MS. WRIGHT: Yes, sir, Your Honor.

15 MR. KUNST: Yes, sir, Your Honor.

16 MR. SMITH: Yes, sir, Your Honor.

17 THE COURT: All right. Bring them in, please.

18 (WHEREUPON, the jury came into open court at
19 approximately 3:10 p.m.)

20 THE COURT: All right. Madam Forelady, has the
21 jury reached a unanimous verdict, ma'am?

22 MADAM FORELADY: Yes, we have.

23 THE COURT: Okay. Would you hand the verdict
24 form to the bailiff, please?

25 Would you publish the verdict, please, ma'am?

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VERDICT

THE CLERK: In the case of J. Scott Kunst vs. David Loree, 2006-CP-39-1826, we, the jury, unanimously find as follows: For the Plaintiff for actual damages in the amount of one million dollars. Foreperson, Sharon King.

If this is your verdict and still your verdict, so say you all by raising your right hand.

(WHEREUPON, all members of the jury raised their right hand.)

THE COURT: All right. Counsel, Mr. Kunst, any additional matters of law or issues to take up for this jury?

MR. KUNST: No, Your Honor.

MR. SMITH: None for the jury, Your Honor.

THE COURT: Okay. Good enough.

All right. Ladies and gentlemen, thank you for your service. If you go back to your jury room, the bailiffs will take your badges and give you your phones back. I'll come back and dismiss you informally. It won't take long. I'm not going to take up anymore of your time. I just want to say thank you in an informal setting and give you the opportunity to ask me any questions if you have any. Okay.

1 (WHEREUPON, the jury left open court and was
2 excused at approximately 3:11 p.m.)

3 THE COURT: Any post-trial motions?

4 MR. SMITH: Yes, Your Honor. We would move
5 a remittitur to at least zero.

6 THE COURT: Okay.

7 MR. SMITH: Because the evidence did not support
8 the verdict and, certainly, the damages evidence did
9 not support such an award.

10 THE COURT: Okay. All right.

11 MR. SMITH: I'm sorry, South Carolina, is there
12 a time that you can file?

13 THE COURT: You have 10 days under the rules.
14 if you'd like to submit it in writing, you're welcome
15 to. If you want me to withhold any ruling at this
16 time.

17 MS. WRIGHT: If you would, please, Your Honor
18 I understand 10 days from today is the seventh, which
19 is a Sunday, so we would appreciate having until June
20 8th to get that to you.

21 THE COURT: That's fine.

22 MS. WRIGHT: Thank you, Your Honor.

23 THE COURT: All right. Okay.

24 Well, ladies and gentlemen, again, thank you for
25 having tried an excellent case. I certainly

1 appreciate it. Hope y'all have a great day. Thank
2 you.

3 MR. KUNST: Thank you, Your Honor.

4 MR. SMITH: Thank you, Your Honor.

5 (WHEREUPON, the proceedings were concluded.)
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CERTIFICATE OF REPORTER

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4 STATE OF SOUTH CAROLINA)
5 COUNTY OF GREENVILLE)
6
7

8 I, APRIL P. HERRON, Official Court Reporter fo
9 the Thirteenth Judicial Circuit of the State of South
10 Carolina, do hereby certify that the foregoing is a true,
11 accurate and complete Transcript of Record of the
12 proceedings had and evidence introduced in the trial of
13 the captioned case, relative to appeal, in the Court of
14 Common Pleas for Pickens County, South Carolina, on the
15 26-28 day of May, 2015.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18

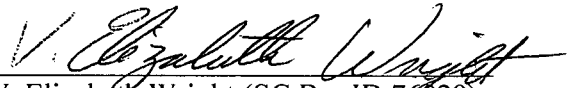
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20 October 12, 2015
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22 ~~APRIL P. HERRON, Court Reporter~~
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25

Certificate of Counsel

The undersigned Counsel for the Appellants certifies that the 2nd Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 21, 2017


V. Elizabeth Wright (SC Bar ID 76029)
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