

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

App. Case No. 2013-000020
Case No. 2011-CP-10-3241

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AUG 29 2013

SC Court of Appeals

Keith Roberts and LOT 12 YELLOW HOUSE, L.L.C.. Appellants,

vs.

Randall J. Drew Respondent.

RECORD ON APPEAL - VOL 1 of 3; Pages 1 - 390

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) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-10-3241

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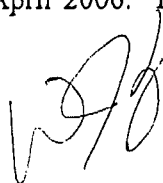
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undeveloped in 2005, but Roberts planned to construct a house and a dock there and sell the Property for a profit.

Roberts signed a contract to purchase the Property from Stone for \$525,000 on July 9, 2005. Prior to the closing, the S.C. DHEC Office of Ocean and Coastal Resource Management ("DHEC-OCRM") revoked the dock permit because the U.S. Navy claimed it owned marshland adjacent to the Property over which a dock would be built. Stone hired Charleston lawyer Mary Shahid to bring an action in the Administrative Law Court ("ALC Case") in efforts to have the permit reinstated. Judge Ralph King Anderson, III issued an Order in the ALC Case in June 2005, ruling that the dock permit was to be reinstated because the Navy had not proven its ownership claim of the marshland adjacent to the Property.

Prior to the closing, Roberts was aware of the ALC Case and issues related to the dock permit resulting from the Navy's claim of ownership of the adjacent marshland, as he discussed the same with Drew. Roberts knew OCRM had revoked the dock permit because of the Navy's claim and reissued it pursuant to the ALC Order. Roberts maintains that, prior to the closing, Drew advised him the transaction was "good to go," and the Navy's claim of ownership of the adjacent marshland was invalid and should not impact the ability to maintain a dock at the Property. According to Roberts, he proceeded with the purchase based on Drew's advice.

The closing took place on August 17, 2005, at which time Roberts received title to the Property, as well as the dock permit, in exchange for \$475,000. Roberts later transferred title to the Property to Plaintiff Lot 12 Yellow House, LLC, a company Roberts had recently formed. Roberts then built a dock at the Property in or around September 2005 and began construction of a house in April 2006. Plaintiffs obtained a \$1.065 million construction loan secured by the

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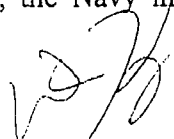
Property. Sometime in 2006, Roberts began marketing the Property for sale and signed a contract to sell it for \$2.2 million (the "Contract"). This deal was set to close in January 2007.

On November 13, 2006, Roberts received an email from real estate agent Chuck Mims indicating the Navy considered the dock a trespass over a certain portion of the marshland adjacent to the Property. It also demanded that Roberts remove the dock. The email was a forward from Susan Bryant, the prospective purchaser's real estate agent. In it, Bryant stated "[w]e have a serious issue regarding the lawsuits with the Navy... I received a phone call from E. R. Nelson, I believe, who told me the dock has to be removed and to call the Navy's attorney..." Roberts read this email on or around November 13, 2006.

On November 16, 2006, Bryant sent Mims a letter formalizing the prospective purchaser's concern regarding the Navy's claim and its impact on the ability to maintain a dock at the Property. The letter noted the Navy's claim and stated the matter must be resolved in order for the purchase to go forward. Roberts read this letter on or around November 16, 2006, and he was aware the Navy was again asserting its claim of ownership of the marshland adjacent to the Property.

Shortly thereafter in December 2006, Roberts retained lawyer Shahid to investigate these issues. The issues were not resolved, and on January 18, 2007, the prospective purchaser canceled the Contract, citing the Navy's claim of ownership of the marshland adjacent to the Property and its potential impact on the ability to maintain a dock there. As a result, Roberts maintains he lost potential profits from the sale.

In March 2007, Roberts attended a meeting with Randy Drew and lawyers from the Navy. At the meeting, the Navy insisted the dock was built over marshland it owned and



demanding Roberts remove it. On June 26, 2007, Shahid forwarded Roberts a letter she received from the U.S. Department of Justice ("DOJ"), along with a response to the DOJ she sent on Roberts' behalf. Roberts received Shahid's letter and the attached correspondence around this time. The letter from the DOJ accused Roberts of trespassing over its marshland via the dock, demanded the dock be removed, and threatened to sue for damages in the event Roberts failed to remove it.

The U.S. Attorney's office then wrote Roberts on August 8, 2007, again maintaining the dock acted as a trespass over land the Navy owned and threatening to seek damages and other relief if Roberts failed to remove it. On January 20, 2008, Roberts emailed Randy Drew asking Drew to contact him to discuss the situation. Roberts asked Drew to call him, stating "[T]hese people just won't go away." Roberts also forwarded Drew the threatening letters he received from the federal government. In January 2008, Roberts also sought counsel regarding the Navy's claim from another lawyer, Clay Walker. On January 30, 2008, the Navy, via an email to Walker, again threatened to file suit against Roberts if he did not remove the dock. Roberts received the email that day.

On February 6, 2008, the DOJ wrote Drew regarding the Navy's claim to the marshland adjacent to the Property. The letter reiterated the Navy's pursuit of its claim, demanded the removal of the dock, and threatened to sue Roberts if he refused to do so. Roberts received and reviewed this letter shortly after Drew received it.

On February 29, 2008, Roberts wrote United States Senator Lindsey Graham regarding the situation. In the letter, Roberts stated he was being "threatened by the U.S. Attorney," and acknowledged the government was threatening to seek damages and other recovery against

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Roberts if he failed to remove the dock. Roberts also stated: "[T]his controversy was going on for years before I bought the property, and even though I was under the impression that it was a 'done deal,' it has once again reared its ugly head." Roberts characterized the situation as "serious" when he wrote Senator Graham on February 29, 2008.

Sometime prior to April 29, 2008, Roberts wrote consultant Wayne Beam, Ph.D., asking for help regarding the issues regarding the Navy's claim and dock permit. Specifically, Roberts asked Beam to convince the U.S. Department of Defense and DOJ to cease and desist from their efforts to have the dock removed. Roberts was prepared to pay Beam \$80,000 for his services.

All of the above took place prior to May 3, 2008, the latest date the statute of limitations could have been triggered in order for the Plaintiffs to have timely filed their Complaint.

In February 2009, the Navy filed a *Lis Pendens* on the Property and lawsuit in federal court seeking damages and an injunction ordering the dock be removed. The Property has since been subject to foreclosure, and First Citizens Bank now owns it. Roberts retained separate counsel in that lawsuit, which remains pending as the parties are waiting for a ruling on Cross Motions for Summary Judgment. In the federal case, Roberts maintains the Navy's claim of ownership of the marshland adjacent to the Property is invalid, and the Navy has no grounds to seek the removal of the dock. According to the Plaintiffs, Roberts first became aware of a potential claim against Drew in April 2010, when a judge in the pending federal case questioned whether anyone had put Drew on notice of a potential malpractice claim.

The Plaintiffs filed this legal malpractice action against Drew on or about May 3, 2011. According to the Plaintiffs, Drew improperly advised Roberts to proceed with the closing, and failed to advise Roberts not to buy the Property. The Plaintiffs allege they have suffered

damages as a result. Specifically, the Plaintiffs maintain Drew assured Roberts on multiple occasions prior to closing that the Navy's claim would not pose a problem with the ability to maintain a dock at the Property. The Plaintiffs maintain that purchasing the Property pursuant to Drew's advice has caused them to incur significant damages, including the money Roberts spent to purchase the Property and lost profits on the failed sale.

SUMMARY JUDGMENT STANDARD

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; Epstein v. Brown, 363 S.C. 372, 375, 610 S.E.2d 816, 817 (2005) (citing Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438-439 (2003); Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537, 545 (1991)). In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party. Id. Citing Dawkins v. Fields, 354 S.C. 58, 115, 580 S.E.2d 433, 545 (2003). Nevertheless, "when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Hackworth v. Greenville County, 371 S.C. 99, 102, 637 S.E.2d 320, 322 (Ct.App. 2006) (citing Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 355, 559 S.E.2d 327, 336 (Ct.App. 2001)).

CONCLUSIONS OF LAW



Legal malpractice actions are subject to a three year statute of limitations. S.C. Code § 15-3-530. Pursuant to the discovery rule, the period for bringing a malpractice claim begins to run from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence. Epstein v. Brown, 363 S.C. 372, 610 S.E.2d 816 (2005) (citing Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996) and S.C.

Code. § 15-3-535). Reasonable diligence requires a party to act with some promptness where the facts and circumstances of the wrong would put a person of common knowledge and experience on notice that his rights had been violated or that some claim against another party might exist. "The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed." Epstein at 376 citing Berry v. McLeod, 328 S.C. 435, 492 S.E.2d 794 (Ct.App. 1997). In other words, the statute of limitations begins to run when a reasonable person of common knowledge and experience would be on notice that a claim against another party might exist. The fact that the injured party might not comprehend the full extent of the damage is immaterial. Dean v. Ruscon Corp., 321 S.C. 360, 363-364, 468 S.E.2d 645, 647 (1996); *see also* Wiggins v. Edwards 314 S.C. 126, 442 S.E.2d 169 (1994).

Roberts maintains Drew assured him the Navy's claim that it owns the marshland adjacent to the Property was invalid and would not hinder the ability to maintain a dock there. According to the Plaintiffs, Drew should have advised Roberts not to proceed with the transaction. The Plaintiffs maintain that purchasing the Property pursuant to Drew's advice has caused them damages. The statute of limitations began to run when Roberts knew or should have known Drew's advice provided at closing was incorrect, and when following this advice caused the Plaintiffs to incur damages, as the statute of limitations for a malpractice claim begins to run from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence. Epstein at 376 citing Berry v. McLeod, 328 S.C. 435, 492 S.E.2d 794 (Ct.App. 1997).

 Roberts knew the advice Drew provided prior to closing (that the Navy's claim would not cause issues with the ability to maintain a dock at the Property) was incorrect in late 2006 when Roberts was informed the Navy was pursuing its claim of ownership of the subject marshland.

Further, by January 2007, following Drew's advice had caused Roberts to lose profits on the Contract. A reasonable person in Roberts' situation would have been aware of a potential claim against Drew in January 2007.

From December 2006 through February 2008, the Navy vigorously pursued its claim and repeatedly demanded Roberts remove the dock and threatened to sue Roberts for damages if he failed to do so. Roberts was fully aware of this and actively contested the Navy's demands. He even sought advice and assistance from outside counsel and a U.S. senator in efforts to resist the Navy's position. According to Roberts, had Drew advised him prior to closing it was likely the Navy's claim could cause such issues with the dock and/or advised him not to purchase the Property, Roberts would not have suffered damages by spending money to buy the Property or from the loss of the Contract, nor would he have been subjected to contesting the Navy's claim throughout 2007 and the early parts of 2008. A reasonable person under these circumstances would have known of a possible claim against Drew by April 2008 at the very latest.

The Plaintiffs maintain Roberts did not know of a potential claim against Drew until the judge in the pending federal case mentioned something regarding placing Drew on notice of a potential claim in April 2010. According to the Plaintiffs, despite Roberts' knowledge and defense of the Navy's claims since 2006, Drew repeatedly assured Roberts the dock permit was valid and the Navy's claim of ownership of the adjacent marshland was invalid. The Plaintiffs allege Roberts had a right to rely on Drew's assurances, which eliminates any "knowledge of an injury" sufficient to trigger the statute of limitations.

 This argument is unpersuasive because the ultimate validity of the Navy's claim is not germane to when Roberts knew or should have known of a potential claim against Drew.

Adopting the "right to rely" argument would mean a cause of action against Drew has not yet accrued, as it remains unclear whether his advice regarding the validity of the Navy's claim was correct. Importantly, the Navy's *pursuit of its claim*, regardless of its validity, caused Roberts' to lose profits on the failed Contract in 2007, as well as other damages the Plaintiffs claim in this lawsuit. If the federal court determines the Navy does not own the subject marshland, the Plaintiffs' situation in this regard is unchanged. A ruling in Roberts' favor would not undo the alleged damage the Plaintiffs have incurred as a result of following Drew's advice. Notwithstanding any assurances Drew provided, any reasonable person in Roberts' position would have known of a possible claim against Drew in 2007 when the Contract fell through, causing alleged damages in the form of lost profits.

Regardless of when Roberts subjectively knew he had a potential claim against Drew, and viewing the facts in a light most favorable to the Plaintiffs, Roberts clearly should have known by January 2007, and certainly no later than April 2008. By that time, Roberts was aware that Drew's advice regarding the Navy's claim and its impact on the ability to maintain a dock at the Property was incorrect, as the Navy vigorously pursued its claim and demanded removal of the dock beginning in 2006. Moreover, the Plaintiffs allegedly incurred significant damages in January 2007 as a result of purchasing the Property pursuant to Drew's advice when the prospective purchaser canceled the Contract and the Plaintiffs were unable to sell the Property. The Plaintiffs filed the Complaint on or about May 3, 2011, more than three years after they knew or should have known of a potential claim against Drew. Therefore, the statute of limitations bars the Plaintiffs' claims.

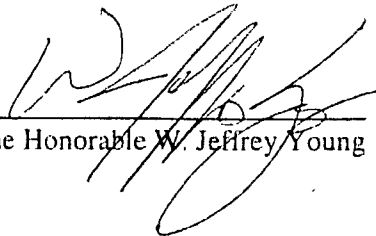


Based on the analysis set forth above, and viewing the facts in the light most favorable to the Plaintiffs, the Defendant's Motion for Summary Judgment is GRANTED.

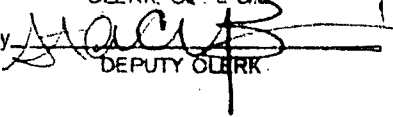
IT IS SO ORDERED!!

Sumter, South Carolina

19 Oct, 2012


The Honorable W. Jeffrey Young

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, CP & GS

By 
DEPUTY CLERK

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
KEITH ROBERTS AND LOT 12 YELLOW
HOUSE, LLC,
Plaintiffs,
vs.
RANDALL J. DREW,
Defendant.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-10-3241

ORDER DENYING THE PLAINTIFFS
MOTION TO ALTER OR AMEND
ORDER GRANTING SUMMARY
JUDGMENT

2012 DEC 21 AM 9:08
JULIE J. HARRIS
CLERK OF COURT
BY

This matter came before this Court on the Plaintiffs' Motion to Alter or Amend the Order Granting Summary Judgment to the Defendant. After reviewing the applicable pleadings and briefs, the Court denies the Plaintiffs' Motion to Alter or Amend the Order Granting Summary Judgment to the Defendant.

The Defendant filed a Motion for Summary Judgment on or about April 24, 2012. The Defendant and Plaintiffs filed briefs in support of their positions regarding the Defendant's Motion, and the Honorable W. Jeffrey Young heard oral arguments in Charleston, South Carolina on July 23, 2012. Judge Young granted the Defendant's Motion, and an Order was filed to that effect on October 24, 2012. Plaintiffs filed the subject Motion to Alter or Amend the Order Granting Summary Judgment on or about November 2, 2012.

The Order Granting Summary Judgment provides that the statue of limitations bars the Plaintiffs claims against Defendant Randall Drew. In short, the Order provides the Plaintiffs knew or should have known of a potential claim against Defendant Drew by April 2008 at the very latest. The Plaintiffs filed the Complaint on or about May 3, 2011, more than three years



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later. As a result, the Plaintiffs failed to file the Complaint within the applicable three year statute of limitations.

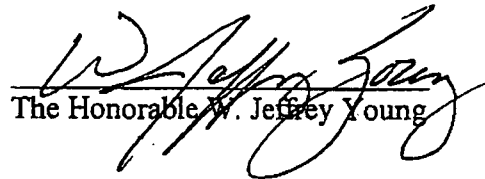
The Court has thoroughly considered the arguments raised in Plaintiffs' Motion to Alter or Amend and holds that despite these arguments, the Plaintiffs knew or should have known about the existence of a claim against the Defendant by April 2008 at the very latest. The Plaintiffs filed their Complaint on or about May 3, 2011. As a result, the three year statute of limitations bars the Plaintiffs' claims.

The Plaintiffs' Motion to Alter or Amend the Order Granting Summary Judgment in favor of the Defendant is therefore DENIED.

IT IS SO ORDERED!!

Sumter, South Carolina

18 Dec, 2012


The Honorable W. Jeffrey Young

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-

Keith Roberts and LOT 12 YELLOW
HOUSE, L.L.C.,

Plaintiff,

vs.

Randall J. Drew,

Defendant.

COMPLAINT
(Jury Trial Demanded)

(Professional Negligence)
(Breach of Fiduciary Duty)
(Breach of Contract)

FILED
2011 MAY -5 PM 12:01
JULIE J. ARMSTRONG
CLERK OF COURT

Complaining of the above-named Defendant, by and through their undersigned counsel, Plaintiffs, Keith Roberts and LOT 12 YELLOW HOUSE, L.L.C., on information, belief, and established facts, would respectfully show to this honorable Court the following:

SUMMARY OF THE CASE

This legal malpractice action arises from Defendant's errors in the handling of a commercial real estate closing for Plaintiffs involving the acquisition from a private individual of a deepwater lot with a dock permit, which Defendant knew that Plaintiffs intended to develop with the construction of a residential house and dock and then sell for a profit. The claims are based upon Defendant's errors in failing to locate and discover information on record in Berkeley County that showed the United States owned the portion of the subject property over which the dock was later constructed and therefore that the Seller did not have good and marketable title. Plaintiffs borrowed money to acquire and develop the property; constructed a residential dwelling and a dock; lost an opportunity to sell the dwelling and dock for a substantial profit of a little more than \$1M; were sued by

the United States Navy to remove the dock; and then were sued by their lender in a foreclosure action on a note that would have been paid off if the sale had gone through.

PARTIES¹.

1. Plaintiff, Keith Roberts, is a citizen and resident of Charleston County, South Carolina.
2. Plaintiff, LOT 12 YELLOW HOUSE, L.L.C., is a Limited Liability Corporation, organized and formed under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.
3. Defendant, Randall J. Drew, is, upon information and belief, a citizen and resident of Charleston County, South Carolina, and is licensed to practice law and render legal services in South Carolina.

JURISDICTION

4. This Court has jurisdiction over these matters based upon Article V of the South Carolina Constitution, S.C. Code Ann. §§ 36-2-802 and 36-2-803, and its plenary powers.

VENUE

5. Venue in this Court is proper as Defendant, Randall J. Drew, is, upon information and belief, a citizen and resident of Charleston County, South Carolina, and maintains offices in and provides legal services for clients in Charleston County, South Carolina.

FACTS

6. Defendant, Randall J. Drew (Drew), is an attorney with experience in handling real estate closings and who had handled other real estate closings for Plaintiff, Keith Roberts (Roberts), prior to the subject closings that are at issue in this lawsuit.

7. At some point prior to closing, Roberts advised Drew of his interest in acquiring for development purposes, a particular deep water lot located in Berkeley County, South Carolina, that he understood had a dock permit for a dock on deepwater, which was suitable for his development plans. The subject property, referred to as Lot 12, is located on Yellow House Road in Berkeley County adjacent to Yellow House Creek, and which was purportedly owned by Thomas Stone ("the Seller").

8. Drew was retained by Roberts to represent him in the closing and purchase of Lot 12 and assignment of the dock permit from the Seller, including in the scope of the representation, an obligation to search the title and verify that the Seller had clear title to all of the subject property including the area for the dock on Yellow House Creek.

9. Drew, as counsel for Roberts, handled the closing on the sale of the property.

10. Prior to the closing, Drew failed to advise Roberts that the Seller was not able to deliver a marketable title and general warranty deed, free of encumbrances, due to the land owned by the United States Government upon which the dock was to be built. If Drew had provided this information to Roberts prior to the closing, Roberts would not have borrowed the money to acquire the property; closed on the agreement to purchase the property; constructed and maintained the building and dock on the subject property; been sued by the United States Navy to remove the dock; and would not have been foreclosed upon by the lender.

11. Prior to the closing, Drew failed to advise Roberts that the Seller had failed to disclose the material fact that the area where the dock was to be built was owned by the United States Government. If Drew had provided this information to the Plaintiffs prior to the closing, Roberts would not have borrowed the money to acquire the property; closed

on the agreement to purchase the property; constructed and maintained the building and dock on the subject property; been sued by the United States Navy to remove the dock; and would not of been foreclosed upon by the lender.

12. Prior to the closing, Drew failed to advise Roberts that the Seller had failed to disclose the material fact that the United States Government could file a lawsuit against the property owner to have the dock removed. If Drew had provided this information to Roberts prior to the closing, Roberts would not have borrowed the money to acquire the property; closed on the property; constructed and maintained the building and dock on the property; been sued by the United States Navy to remove the dock; and would not of been foreclosed upon by the lender.

13. Prior to the closing, Drew failed to advise Roberts that the Seller had failed to disclose the material fact that there is an historical easement crossing over the property, potentially allowing access by others. If this information had been provided to Roberts prior to the closing, Roberts would not have closed on the property. If Drew had provided this information to Roberts prior to the closing, Roberts would not have borrowed the money to acquire the property; closed on the agreement to purchase the property; constructed and maintained the building and dock on the subject property; been sued by the United States Navy to remove the dock; and would not of been foreclosed upon by the lender.

14. Drew represented Roberts and LOT 12 YELLOW HOUSE when Roberts conveyed title to LOT 12 YELLOW HOUSE prior to the construction of the residential dwelling and dock on the subject property, which cost approximately \$925,000 to construct.

15. LOT 12 YELLOW HOUSE entered into an agreement to buy and sell real estate with a certain purchaser for \$2,200,000, which would have resulted in an approximate profit of a little over \$1,000,000.

16. Prior to the closing on LOT 12 YELLOW HOUSE's sale of the property for \$2,200,000, the purchaser discovered that the dock encroached upon properties owned by the United States Navy, and therefore refused to close on the property.

17. The United States Navy subsequently demanded that Plaintiffs remove and dismantle the dock.

18. Drew assured Plaintiffs that they had good title to the subject Lot 12.

19. The United States Navy subsequently filed suit seeking injunctive relief for trespass on its lands and damage to its lands and property, including a claim to vacate the premises and remove all property, structures, and the dock.

20. To mitigate the damages caused by Drew, Plaintiffs retained counsel and paid thousands of dollars in attorneys fees and litigation costs to defend the lawsuit brought by the United States Navy.

21. Had Drew properly performed the title search for Lot 12 prior to the closing, the United States Navy's ownership of a portion of the subject property would have been discovered, Drew would have provided to Roberts an accurate report advising that the Seller did not have good and marketable title, and with that information Roberts would not have purchased Lot 12, but instead would have invested those funds into other aspects of his lucrative development projects. Alternatively, Roberts is entitled to the benefit of his bargain concerning the lost profits on the lost sale of the house and dock he and LOT 12

YELLOW HOUSE constructed on the subject property, based on Drew's assurances that the Seller had good and marketable title as he engaged Drew to so certify.

FOR A FIRST CAUSE OF ACTION
(Legal Professional Negligence)

22. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.

23. At all times relevant hereto, Plaintiffs had an attorney-client relationship with Roberts.

24. The scope of the attorney-client relationship included a) searching the title to Lot 12 to ensure the Seller had good and marketable title, b) certifying to Roberts that the Seller held good title to Lot 12, c) preparing the deed to convey the property, d) handling the closing on a commercial real estate transaction to ensure all necessary documents were executed properly, and e) recording the Seller's deed on Lot 12 to Roberts.

25. Upon agreeing to represent Plaintiffs, Drew impliedly represented that (a) he possessed the requisite degree of learning, skill and ability necessary to the practice of the profession that other attorneys ordinarily possess; (b) would exercise the best professional judgement; and (c) would exercise reasonable and ordinary care and diligence in the use and application of skill and knowledge to the handling of the real estate closing for Plaintiffs.

26. By virtue of their attorney client relationship, Drew owed duties to Plaintiffs, including the duty to protect, preserve and advance Plaintiffs' rights and interests by possessing and exercising that degree of care, skill and learning which other reasonable and competent attorneys would be expected to possess and exercise under the same or similar circumstances.

27. Drew had a duty to examine the Seller's title to Lot 12.

28. Drew, in examining title to Lot 12, functioned as an advisor to Plaintiffs, and had a duty to advise Plaintiffs whether Seller's title to Lot 12 was marketable.
29. Drew had a duty to advise Plaintiffs of any reasonable doubt or potential defects as to the sufficiency of Seller's title for Lot 12.
30. Drew had a duty to advise Plaintiffs that the Seller's title to Lot 12 was not good and not marketable.
31. Drew had a duty to advise Plaintiffs not to proceed with the purchase of Lot 12 because Seller's title to those properties was not good and not marketable.
32. Drew had a duty to Plaintiffs to provide competent and prudent legal services when he certified to Plaintiffs that the Seller held good title to Lot 12.
33. A competent examination of the Seller's title to Lot 12 prior to the closing would have revealed to a reasonably competent attorney that the Seller did not have full and complete title to Lot 12, and therefore did not have marketable title to Lot 12.
34. Seller's title to Lot 12 was unmarketable because Plaintiffs' acquisition of the subject property is, was, and actually did subject Plaintiffs to litigation on the claims of others who have outstanding property interests.
35. Based upon the state of the publically filed documents, determination of the status of Seller's title to Lot 12 did not involve Drew's exercise of professional judgment.
36. Drew's errors in searching the title to Lot 12 were not a result of the exercise of professional judgement, but were instead errors resulting from Drew's failure to exercise ordinary skill and knowledge.

37. Drew failed to meet the minimum standard of care and thereby breached his duties to perform competent and prudent legal services to Plaintiffs when he failed to competently examine the Seller's title to Lot 12.

38. Drew failed to meet the minimum standard of care and thereby breached his duties to perform competent and prudent legal services to Plaintiffs when he failed to report to Roberts the true state of the title for Lot 12.

39. Drew failed to meet the minimum standard of care and thereby breached his duties to perform competent and prudent legal services to Plaintiffs when he failed to advise Plaintiffs that the Seller's title to Lot 12 was not good and not marketable.

40. Drew failed to meet the minimum standard of care and thereby breached his duties to perform competent and prudent legal services to Plaintiffs when he failed to advise Plaintiffs not to proceed with the purchase of Lot 12 because Seller's title to those properties was not good and not marketable.

41. Drew failed to meet the minimum standard of care and thereby breached his duties to perform competent and prudent legal services to Plaintiffs when he failed to ensure the Seller had good and marketable title to Lot 12.

42. Drew failed to meet the minimum standard of care and thereby breached his duties to perform competent and prudent legal services to when he inaccurately certified to Plaintiffs that the Seller held good title to Lot 12.

43. Drew failed to meet the minimum standard of care and thereby breached his duties to perform competent and prudent legal services as would an ordinary and reasonable attorney under similar circumstances.

44. Drew failed to meet the minimum standard of care and thereby breached his duties to perform competent and prudent legal services and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner in such other particulars as the evidence in this case may demonstrate.

45. As a direct and proximate cause of Drew's actions, Plaintiffs relied on Drew's certification of the Seller's title and proceed with the closings on Lot 12, paying to Plaintiffs' detriment substantial sums for property that is not unmarketable.

46. No reasonably prudent buyer would have would have paid the value Plaintiffs paid for Lot 12 containing the defects in the title.

47. Plaintiffs' loss of the benefit of their bargain on the acquisition value of Lot 12 are the natural consequences of Drew's breach of his duties to Plaintiffs because such damages were reasonably foreseeable at the time of Drew accepted the legal representation of Plaintiffs in these commercial real estate closings.

48. As a direct and proximate cause of Drew's actions, Plaintiffs have been damaged actually, specially, incidentally, and consequentially in an amount to be more specifically proven at trial.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duties)

49. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.

50. At all times relevant hereto, Drew had and owed fiduciary duties to Plaintiffs.

51. Drew's fiduciary duties included, but were not limited to, but the duties of competence and loyalty, as well as the duty to act single-mindedly in preserving, protecting and advancing the rights and interests of Plaintiffs.

52. Drew failed to meet the minimum standard of conduct and thereby breached his fiduciary duties to provide competent and prudent legal services as would ordinary and reasonable attorneys under similar circumstances.

53. Drew failed to meet the minimum standard of conduct and thereby breached his fiduciary duties when he failed to advise Plaintiffs of any reasonable doubt or potential defects as to the sufficiency of Seller's title for Lot 12.

54. Drew failed to meet the minimum standard of conduct and thereby breached his fiduciary duties when he failed to advise Plaintiffs that the Seller's title to Lot 12 was not good and not marketable.

55. Drew failed to meet the minimum standard of conduct and thereby breached his fiduciary duties when he failed to advise Plaintiffs not to proceed with the purchase of Lot 12 because Seller's title to those properties was not good and not marketable.

56. Drew failed to meet the minimum standard of conduct and thereby breached his fiduciary duties to provide competent and prudent legal services when he certified to Plaintiffs that the Seller held good title to Lot 12.

57. Drew failed to meet the minimum standard of conduct and thereby breached his fiduciary duties to Plaintiffs and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner in failing to provide competent representation to Roberts in direct contravention of Rule 1.1 of the South Carolina Rules of Professional Conduct.

58. Drew failed to meet the minimum standard of conduct and thereby breached his fiduciary duties to Plaintiffs and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner in such other particulars as the evidence in this case may demonstrate.

59. As a direct and proximate cause of Drew's actions breaching his fiduciary duties, Plaintiffs have been damaged actually, specially, incidentally, and consequentially in an amount to be more specifically proven at trial.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract)

60. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.

61. Plaintiffs entered into a contract with Drew, the terms of which Drew agreed and contracted to provide competent and prudent legal services regarding representation of Plaintiffs in the closing and purchase of Lot 12 and assignment of the dock permit from the Seller, including in the scope of the representation, an obligation to search the title and verify that the Seller had clear title to all of the subject property including the area for the dock on Yellow House Creek.

62. Plaintiffs fulfilled all necessary preconditions of the contract, if any, with Drew.

63. Drew breached his contract with Plaintiffs when he failed to advise Plaintiffs of any reasonable doubt or potential defects as to the sufficiency of Seller's title for Lot 12.

64. Drew breached his contract with Plaintiffs when he failed to advise Plaintiffs that the Seller's title to Lot 12 was not good and not marketable.

65. Drew breached his contract with Plaintiffs when he failed to advise Plaintiffs not to proceed with the purchase of Lot 12 because Seller's title to those properties was not good and not marketable.

66. Drew breached his contract with Plaintiffs when he certified to Plaintiffs that the Seller held good title to Lot 12.

67. As a direct and proximate result of Drew's breach of contract, Plaintiffs have been damaged actually, specially, incidentally, and consequentially in an amount to be more specifically proven at trial.

TRIAL BY JURY

68. Plaintiffs demand a jury trial on all claims and issues so triable.

EXPERT AFFIDAVIT

69. Pursuant to S.C. CODE ANN. § 15-36-100(B) (2006), attached hereto and incorporated herein by reference as **Exhibit 1**, is the affidavit of Brian L. Boger, J.D., an expert witness licensed in South Carolina with substantial experience in real estate closings and related matters, and which specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

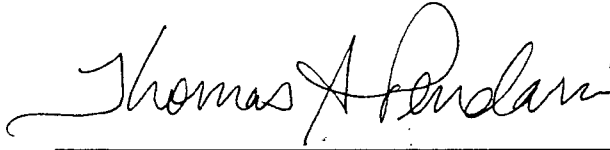
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Keith Roberts and LOT 12 YELLOW HOUSE, pray for a judgment against Defendant, Robert J. Drew, as follows:

- A. General damages in an amount to be determined by jury;
- B. Special damages for attorneys fees paid to other attorneys to defend the lawsuit by the United States Navy;
- C. Special damages for attorneys fees paid to examine the title to the subject property in conformity with the proof;
- D. Special damages for attorneys fees paid to defend the foreclosure suit brought by the lender;
- E. Loss of the value of the Plaintiffs' purchase price and funds invested into the development and maintenance of the subject property;
- F. Loss of earnings and profits from the planned development in conformity with the proof; and
- G. Costs of this lawsuit and other relief as this Court deems just and proper.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, reading "Thomas A. Pendarvis". The signature is fluid and cursive, with a large initial "T" and "P".

Thomas A. Pendarvis (SC Bar # 064918)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
843.524.9500 Tel.
843.524.9501 Fax.
Thomas@PendarvisLaw.com
www.PendarvisLaw.com

Attorney for Plaintiffs

Beaufort, South Carolina

May 3, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	CIVIL ACTION NO. 2011-CP-10-
Keith Roberts and LOT 12 YELLOW	)	
HOUSE, L.L.C.,	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF BRIAN L. BOGER, J.D.
vs.	)	
	)	
Randall J. Drew,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED BEFORE ME, Brian L. Boger, J.D. who, being duly sworn,
states that:

1. My resume, summarizing my professional qualifications, is attached as **Exhibit 1**.
2. I am an attorney licensed to practice law in the State of South Carolina since 1976.
3. My office is known as the LAW OFFICES OF BRIAN L. BOGER located at 1331 Elmwood Ave., Suite 210, Columbia, South Carolina.
4. My areas of practice and expertise involve real estate and consumer law.
5. I have been retained by PENDARVIS LAW OFFICES, P.C. with offices in Beaufort, South Carolina as an Expert Witness in this matter on behalf of Plaintiffs, LOT 12 YELLOW HOUSE, L.L.C. and Keith Roberts.
6. In rendering my opinion I have reviewed the available evidence of the kinds of factual sources and legal authorities customarily relied upon by experts in the field of legal ethics, attorney malpractice, and the liability of lawyers and law firms. I have had full access to all of the factual materials available, as well as the COMPLAINT filed in the above-captioned action.



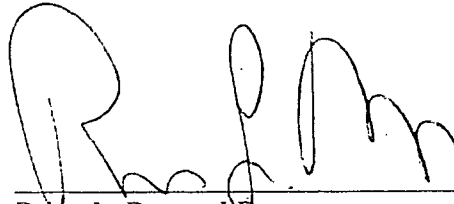
7. It is my expert opinion to a reasonable degree of certainty that
- a. Randall J. Drew ("DREW") had an attorney-client relationship with Keith Roberts and later with LOT 12 YELLOW HOUSE, L.L.C. (collectively "ROBERTS") wherein DREW provided legal advice, representation, and services with regard to a real estate closing on a particular deep water lot with a dock permit for a dock on deepwater, which was suitable for ROBERTS' development, located at Lot 12 on Yellow House Road in Berkeley County, South Carolina ("Lot 12").
 - b. The scope of the attorney-client relationship included 1) searching the title to Lot 12 to ensure the Sellers had good and marketable title, 2) certifying to ROBERTS that the Sellers held good title to Lot 12, 3) preparing the deeds to convey the property, 4) handling the closing on a commercial real estate transaction to ensure all necessary documents were executed properly, and 5) recording the Sellers' deeds on Lot 12 to ROBERTS.
 - c. DREW had a duty to examine the Sellers' title to Lot 12.
 - d. DREW, in examining title to Lot 12, functioned as an advisor to ROBERTS, and had a duty to advise ROBERTS whether Sellers' title to Lot 12 was marketable.
 - e. DREW had a duty to advise ROBERTS of any clouds upon the title or potential defects as to the sufficiency of Sellers' title for Lot 12.
 - f. A competent examination of the Sellers' title to Lot 12 prior to the closing would have revealed to a reasonably competent attorney that the Sellers did not have full and complete title to Lot 12, and therefore did not have marketable title to Lot 12.
 - g. Sellers' title to Lot 12 was unmarketable because ROBERTS' acquisition of the subject property is and was likely to subject ROBERTS to the risk of litigation or

the claims of others who have outstanding property interests.

- h. Had DREW properly performed the title search for Lot 12 prior to the closing, the defects in the title would have been discovered, DREW would have provided to ROBERTS an accurate report and information advising that the land upon which the dock was to be built was owned or could be claimed to be owned by the United States Government.
- i. Based upon the state of the publically filed documents, determination of the status of Sellers' title to Lot 12 did not involve ROBERTS's exercise of professional judgment.
- j. DREW's errors in searching the title to Lot 12 were not a result of the exercise of professional judgement, but were instead errors resulting from DREW's failure to exercise ordinary skill and knowledge.
- k. DREW failed to meet the minimum standard of care and thereby breached his duties to perform competent and prudent legal services to ROBERTS when he failed to competently examine the Sellers' title to Lot 12.
- l. DREW failed to meet the minimum standard of care and thereby breached his duties to perform competent and prudent legal services to ROBERTS when he failed to report to ROBERTS the true state of the title for Lot 12.
- m. DREW failed to meet the minimum standard of care and thereby breached his duties to perform competent and prudent legal services to ROBERTS when he failed to advise ROBERTS that the Sellers' title to Lot 12 was not good and not marketable.
- n. ROBERTS's loss of the benefit of its bargain on the acquisition value of Lot 12 are

the natural consequences of DREW's breach of his duties to ROBERTS because such damages were reasonably foreseeable at the time DREW accepted the legal representation of ROBERTS in this commercial real estate closing.

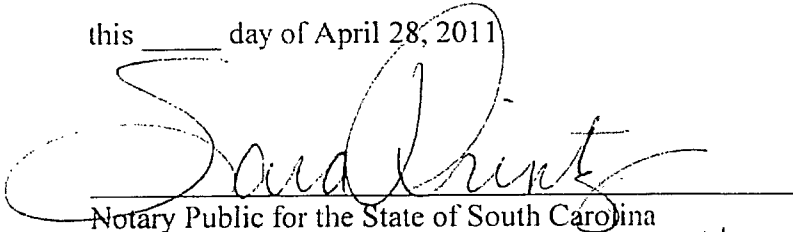
The Affiant further sayeth not.



Brian L. Boger, J.D.
Affiant

SWORN TO AND SUBSCRIBED BEFORE ME

this ____ day of April 28, 2011



Notary Public for the State of South Carolina

My Commission Expires: 8-14-2011

Curriculum Vitae

NAME: BRIAN L. BOGER

ADDRESS: 1331 ELMWOOD AVE. SUITE 210
PO Box 65
Columbia, SC 29202
e-mail: brian@brianboger.com
Website: www.brianboger.com

TELEPHONE: 803-252-2880

FAX: 803-254-5025

EDUCATION: B.A. DEGREE, UNIVERSITY OF VIRGINIA, 1973

LEGAL EDUCATION: J.D. UNIVERSITY OF SOUTH CAROLINA, 1976

PROFESSIONAL WORK HISTORY:

1976 TO OCTOBER, 1979:

ASSOCIATE, LAW OFFICES OF CROMER AND CRAIG
1225 PICKENS STREET
COLUMBIA, S.C.
GENERAL PRACTICE, EMPHASIS ON REAL ESTATE AND
CIVIL TRIAL WORK

OCTOBER 1979 TO JANUARY 1984:

BEGAN OWN PRACTICE WITH APPROXIMATELY 50% OF
WORK IN RESIDENTIAL REAL ESTATE CLOSING AND
50% CIVIL TRIAL WORK

JANUARY 1984 TO 1992

PRACTICE MIX CHANGED TO APPROXIMATELY 60% REAL
ESTATE AND 40% CIVIL TRIAL WORK

1992 TO 2001

PRACTICE MIX CHANGED TO APPROXIMATELY 80% REAL
ESTATE AND 20% CIVIL TRIAL WORK INCLUDING
FORECLOSURES AND PROBATE WORK

2001 TO PRESENT

BEGAN HANDLING CONSUMER CASES. FORECLOSURE

DEFENSE, PREDATORY LENDING MATTERS. BECAME
ACTIVE IN THE NATIONAL ASSOCIATION OF CONSUMER
ADVOCATES

PUBLICATIONS AND OTHER BAR ACTIVITIES:

1981-1985	SPEAKER, FAMILY LAW SOUTH CAROLINA TRIAL LAWYERS ASSOCIATION CONVENTION
1986	CHAIRMAN, FAMILY LAW COMMITTEE SOUTH CAROLINA TRIAL LAWYERS ASSOCIATION
1986	MODERATOR, SC BAR ASSOCIATION CONTINUING LEGAL EDUCATION TOPIC: A REAL ESTATE PRACTITIONERS GUIDE TO REAL ESTATE
1989	COMMISSIONED BY THE SOUTH CAROLINA REAL ESTATE COMMISSION TO WRITE THE LEGAL CHAPTERS (16) OF <u>THE SOUTH CAROLINA REAL ESTATE COMMISSION MANUAL.</u>
1996	BEGAN AS THE REAL ESTATE LEGAL ADVISOR ON TALK RADIO EVERY SUNDAY MORNING
1997	BEGAN HOSTING A TALK RADIO PROGRAM FOR ONE HOUR EACH SUNDAY ENTITLED "TALK LEGAL" ON NEWS TALK STATION WVOC, 560
1998	TAUGHT COURSE, "KEYS TO SUCCESS IN A REAL ESTATE TRANSACTION IN SOUTH CAROLINA" FOR NATIONAL BUSINESS INSTITUTE, JANUARY, 1998
1998	AUTHORIZED LECTURER TO WACHOVIA EMPLOYEES IN THE LOAN ORIGATION DEPARTMENT (NORTH AND SOUTH CAROLINA EMPLOYEES)
1998	TAUGHT COURSE "SOUTH CAROLINA TITLES AND TITLE INSURANCE", MARCH, 1998
1998	TAUGHT COURSE "PARALEGAL'S ROLE IN REAL ESTATE TRANSACTION IN SOUTH CAROLINA, AUGUST, 1998
2000	MODERATOR AND SPEAKER FOR SOUTH CAROLINA BAR SPONSORED SEMINAR "KEYS TO SUCCESSFUL REAL ESTATE TRANSACTION"
2004	ONE OF THE AUTHORS FOR THE SC BAR ASSOCIATION'S BOOK ENTITLED <i>SOUTH CAROLINA DAMAGES</i> . MR. BOGER'S SECTION OF THE BOOK WAS ON DAMAGES AS IT RELATES

TO REAL ESTATE CONTRACTS.

- 2005 APPOINTED AS STATE COORDINATOR FOR THE NATIONAL ASSOCIATION OF CONSUMER ADVOCATES
- 2006 PUBLISHED ARTICLE IN THE SOUTH CAROLINA TRIAL LAWYERS MAGAZINE. ARTICLE TITLED "THE REAL ESTATE APPRAISAL OVERVALUATION PHENOMENON"
- 2006 ELECTED TO BOARD OF GOVERNORS OF THE SOUTH CAROLINA TRIAL LAWYERS ASSOCIATION
- 2007 SPEAKER AT THE SC BAR CONVENTION ON CONSUMER LAW. TOPIC: OVERVALUATION OF REAL ESTATE: AMERICAN DREAM OR AMERICAN NIGHTMARE?
- 2007 SPEAKER AT THE SC TRIAL LAWYERS ASSOCIATION CONVENTION. TOPIC: REAL ESTATE: HOW HARD CAN IT BE?
- 2009 ONE OF THE AUTHORS FOR THE SC BAR ASSOCIATION'S FOLLOW UP BOOK, *SOUTH CAROLINA DAMAGES, VOLUME TWO*. SPEAKER AT THE SEMINAR CONCERNING THE PUBLICATION
- 2010 SPEAKER AT CONSUMER LAW CLE TRAINING SPONSORED BY SOUTH CAROLINA APPLESEED LEGAL JUSTICE CENTER, TOPIC: MORTGAGE LITIGATION: WINNING FOR YOUR CLIENT
- 2011 PUBLISHED NOVEL: *SOUTHERN FATE*

JURISDICTION

5. Paragraph 4 contains a conclusion of law to which Defendant Drew is not required to respond.

VENUE

6. Paragraph 5 contains a conclusion of law to which Defendant Drew is not required to respond.

FACTS

7. In response to Paragraph 6, Defendant Drew admits only that he is a licensed South Carolina lawyer who has handled real estate closings for Keith Roberts, including the subject closing. Defendant Drew denies all remaining and/or inconsistent allegations.

8. In response to Paragraph 7, Defendant Drew admits only that the Plaintiff expressed interest in acquiring the subject property, which had a dock permit at the time, was referred to as Lot 12 on Yellow House Road in Berkeley County and owned by Thomas Stone. Defendant Drew denies all remaining and/or inconsistent allegations.

9. In response to Paragraphs 8-9, Defendant Drew admits only that he oversaw the closing whereby the Plaintiffs purchased the subject property from Thomas Stone, and denies all remaining and/or inconsistent allegations.

10. Defendant Drew denies Paragraphs 10-13.

11. Defendant Drew is without knowledge and information sufficient to form an opinion as to Paragraphs 14-17 and therefore denies the same.

12. In response to Paragraph 18, Defendant Drew admits only that upon information and belief, the Plaintiffs received good title to the subject property following the closing at issue. Defendant Drew denies all remaining and/or inconsistent allegations.

13. Defendant Drew is without knowledge and information sufficient to form an opinion as to Paragraph 19, and therefore denies the same. Further responding, Defendant Drew refers to the lawsuit referenced in Paragraph 19.

14. Defendant Drew is without knowledge and information sufficient to form an opinion as to the veracity of Paragraph 20 and therefore denies the same.

15. Defendant Drew denies Paragraph 21.

AS TO THE FIRST CAUSE OF ACTION
Legal Professional Negligence

16. Defendant Drew re-alleges all proceeding paragraphs as if repeated herein verbatim.

17. In response to Paragraph 23, Defendant Drew admits only that he oversaw the closing whereby the Plaintiffs purchased the subject property from Thomas Stone. Defendant Drew denies all remaining and/or inconsistent allegations.

18. Paragraphs 24-32 contain conclusions of law to which Defendant Drew is not required to respond. To the extent he is required to respond and/or said Paragraphs state or imply any liability on his behalf, Defendant Drew denies the same.

19. Defendant Drew denies Paragraphs 33-48.

AS TO THE SECOND CAUSE OF ACTION
Breach of Fiduciary Duties

20. Defendant Drew re-alleges all proceeding paragraphs as if repeated herein verbatim.

21. Paragraphs 50-51 state conclusions of law to which Defendant Drew is not required to respond. To the extent he is required to respond and/or said Paragraphs state or imply any liability on his behalf, Defendant Drew denies the same.

22. Defendant Drew denies Paragraphs 52-59.

AS TO THE THIRD CAUSE OF ACTION
Breach of Contract

23. Defendant Drew re-alleges all proceeding paragraphs as if repeated herein verbatim.

24. In response to Paragraph 61, Defendant Drew admits only that he oversaw the subject closing whereby the Plaintiffs purchased the property at issue from Thomas Stone, and that certain duties and obligations as South Carolina law prescribes were associated with the oversight of the closing. Defendant Drew denies all remaining and/or inconsistent allegations and denies Paragraph 61 completely to the extent it states or implies any liability on his behalf.

25. Defendant Drew is without knowledge and information sufficient to form an opinion as to Paragraph 62, and therefore denies the same.

26. Defendant Drew denies Paragraphs 63-67.

TRIAL BY JURY

27. Defendant Drew demands a trial by jury of Plaintiffs' claims in this lawsuit.

EXPERT AFFIDAVIT

28. In response to Paragraph 69, Defendant Drew admits only that the Plaintiffs have filed an affidavit of Brian L. Boger in an apparently attempt to satisfy the requirements of S.C. Code § 15-36-100, *et seq.* Defendant Drew denies all remaining and/or inconsistent allegations of Paragraph 69. Defendant Drew does not admit that the affidavit is sufficient for purposes of the statute.

PRAYER FOR RELIEF

29. Defendant Drew denies the paragraph beginning "WHEREFORE," including all subparts, that constituting the remainder of the Plaintiffs' Complaint.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:
(Failure to State a Claim)**

32. SCRCF 12(b)(6) bars the Plaintiffs' claims because the Complaint fails to state facts sufficient to constitute a cause of action for which relief may be granted against Defendant Drew.

**FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:
(Statute of Limitations)**

33. The statute of limitations bars the Plaintiffs' claims against Defendant Drew.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:
(Failure of Service)

34. The Plaintiffs' claims against Defendant Drew are barred because the Plaintiffs have not perfected service of the Complaint on Defendant Drew.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:
(Unclean Hands)

35. The doctrine of unclean hands bars or may bar the Plaintiffs from recovery against Defendant Drew.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:
(Failure to Adhere to S.C. Code Ann. § 15-36-100, *et seq.*)

36. The Court should dismiss the Complaint with prejudice to the extent it fails to comply with S.C. Code Ann. § 15-36-100, *et seq.*

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:
(Waiver and/or Estoppel)

37. The doctrines of waiver and/or estoppel bar or may bar the Plaintiffs' claims against Defendant Drew.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:
(Failure to Mitigate)

38. The Plaintiffs' claims are or may be barred because they failed to mitigate their damages as required by law.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:
(Comparative Negligence)

39. The damages the Plaintiffs sustained, if any, were or may have been due to and caused by and were a direct and proximate result of their own negligence, carelessness, recklessness, willfulness and wantonness, and recovery should be barred or reduced in proportion to the Plaintiffs' negligence.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:
(Intervening and Superseding Negligence)

40. If Defendant Drew was negligent, which he specifically denies, the injuries and damages the Plaintiffs sustained, if any, were due to and caused by and were the direct and proximate result of the intervening and superseding negligence of other(s).

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:
(Adherence to Standard of Care)

41. The Court should dismiss the Complaint because Defendant Drew at all relevant times, adhered to the standard of care in his oversight of the subject closing.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:
(Punitive Damages Unconstitutional)

42. The Complaint, to the extent it seeks punitive or exemplary damages, if any, is in violation of Defendant Drew's rights under the United States Constitution and the Constitution of the State of South Carolina. Therefore, the Complaint fails to state a cause of action upon which either punitive or exemplary damages may be awarded.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:
(Lack of Proximate Cause)

43. The Plaintiffs' claims against Defendant Drew are barred because none of Defendant Drew's acts proximately caused the Plaintiffs' alleged damages.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:
(Assumption of the Risk)

44. The Plaintiffs' claims against Defendant Drew are barred because Plaintiffs assumed the risk of the government making a claim for the marshland when Plaintiffs purchased the subject property.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:
(Judgmental Immunity)

45. Defendant Drew is immune from liability to the Plaintiffs for acts and omissions committed based on an honest exercise of professional judgment.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:
(Reservation/Non-Waiver)

46. Defendant Drew reserves any additional and further defenses as may be revealed by additional information obtained during the course of discovery and investigation and as are consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully responded to the Plaintiffs' Complaint, Defendant Drew asks this Court to dismiss the same with prejudice, for all costs associated with this action, and for such and other further relief as the Court deems just and proper.

[Signature Page to Follow]

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: 

DAVID W. OVERSTREET

State Bar No.: 16965

ANDREW W. COUNTRYMAN

State Bar No.: 72700

Attorneys for Defendant Randall J. Drew

40 Calhoun Street, Suite 400
Charleston, South Carolina
(843) 727-0307

Defendant.

CERTIFICATE OF SERVICE

42

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

KEITH ROBERTS and LOT 12)
YELLOW HOUSE, LLC,)
Plaintiff,)
vs.) Case No.: 2011-CP-10-3241
RANDALL J. DREW,)
Defendant.)

TRANSCRIPT OF PROCEEDINGS
HEARING ON MOTIONS
HEARD BEFORE JUDGE ROGER YOUNG
ON JULY 23, 2012

ROLAYNE M. VOLPE, CCR, RPR
Court Reporter for the State of South Carolina at Large
Post Office Box 342
Summerville, South Carolina 29484

A P P E A R A N C E S

For the Plaintiff:

THOMAS A. PENDARVIS

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500 Carteret Street, Suite A
Beaufort, South Carolina 29902-5066
(843) 524-9500
thomas@pendarvislaw.com

For the Defendant:

ANDREW W. COUNTRYMAN

Carlock Copeland & Stair, LLC
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 727-0307
acountryman@carlockcopeland.com

HEARING ON MOTIONS
2011-CP-10-3241, Roberts v Drew
July 23, 2012

I N D E X

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E X H I B I T S

DESCRIPTION	PAGE

(No exhibits were marked during the proceedings.)

Reported By:

Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

HEARING ON MOTIONS
2011-CP-10-3241, Roberts v Drew
July 23, 2012

1 The above-styled cause came on for hearing on
2 the 23rd day of July, 2012, at 2:40 p.m., before Judge
3 Roger Young, Judge at Large, presiding over the Circuit
4 Court for the County of Charleston, when the following
5 proceedings were had and entered of record, to wit:

6 PROCEEDINGS

7 THE COURTROOM DEPUTY CLERK: 2011-3241, Roberts
8 versus Drew.

9 MR. COUNTRYMAN: Afternoon, your Honor.

10 THE COURT: Good afternoon.

11 MR. COUNTRYMAN: My name is Andy Countryman. I
12 represent the Defendant. This is my client, Mr. Randy
13 Drew.

14 MR. PENDARVIS: Court's indulgence, just a
15 moment while I get this --

16 THE COURT: Yeah, I'll give you a moment.

17 MR. COUNTRYMAN: I filed my Brief about a month
18 ago. Do you --

19 THE COURT: Yeah, I glanced over it. This was
20 the house that was purchased about the land, and the
21 neighbors not being nice about it.

22 MR. COUNTRYMAN: You got it.

23 THE COURT: Y'all can be seated.

24 MR. COUNTRYMAN: Thank you, your Honor.

25 MR. PENDARVIS: Thank you, your Honor.

 Reported By:
 Rolayne M. Volpe, CCR, RPR
 Official Court Reporter for the State of South Carolina

HEARING ON MOTIONS
2011-CP-10-3241, Roberts v Drew
July 23, 2012

1 THE COURT: All right. Who's motion?

2 MR. COUNTRYMAN: This is my motion, your
3 Honor. Again, Andy Countryman, for the Defendant.
4 It's a Motion for Summary Judgment. This is a legal
5 malpractice action that arises out of a real estate
6 closing that took place back in August, 2005. Mr. Drew,
7 my client here, he's a real estate lawyer in Mount
8 Pleasant. The Plaintiff in this case is Mr. Keith
9 Roberts. Mr. Roberts is a general manager at Cooper
10 Dodge up in Summerville. They knew each other --

11 THE COURT: This is Mr. Pendarvis?

12 MR. PENDARVIS: Yes, your Honor, Thomas
13 Pendarvis, for the Plaintiffs.

14 THE COURT: All right.

15 MR. COUNTRYMAN: Back in 2005, Mr. Roberts
16 found a parcel of undeveloped property out near
17 Daniel Island. It was on Yellow House Creek. Found the
18 property as advertised, as a deep water lot; decided he
19 wanted to buy it and develop it. He hired Mr. Drew to
20 oversee the closing.

21 Now, there's an issue, as you're probably aware
22 of, that relates to the dock permit. At the time that
23 Mr. Roberts bought the property, there was a dock permit
24 in place. The issue related to the Navy's claim of
25 ownership to marshland adjacent to the property. For

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1 our purposes, the marshland is completely different --
2 from a title perspective, than the actual title, but,
3 nonetheless, both parties were aware of this issue
4 regarding the Navy. The Navy said: We own this piece
5 of property next to your property. You can't build a
6 marsh [sic] over it. Well, that --

7 THE COURT: About the --

8 MR. COUNTRYMAN: I'm sorry. You can't roll
9 the dock over the marsh. And that issue was actually
10 litigated in Columbia, under Judge Anderson's
11 Administrative Law Court, in 2005 before Mr. Roberts
12 commenced with the purchase. The Navy didn't
13 participate in that hearing, so the Judge ordered: I
14 can't really tell who owns the property. The Navy
15 didn't prove that it owns it. The dock permit is
16 therefore reinstated.

17 Mr. Roberts proceeds to purchase the property.
18 Long story short, after the purchase of the property,
19 Mr. Roberts builds a dock and a house there, and then
20 tries to sell it. In the process of doing so, he got a
21 big construction loan, which is now in foreclosure.
22 Because in late 2006, when the property was being
23 marketed, he actually found a buyer who wanted to pay
24 2.2 million dollars for the property that the Roberts
25 bought for 475. So Roberts thought this was a good

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1 deal, was going to proceed with this purchase. Well, in
2 early January --

3 THE COURT: 2.5 was with the house and
4 everything?

5 MR. COUNTRYMAN: It was 2.2 --

6 THE COURT: When he bought it, it was 400,000,
7 but with the house and everything --

8 MR. COUNTRYMAN: He bought it for 475, had a
9 million dollar construction loan, and then he was going
10 to sell it for 2.2.

11 In early 2007, the prospective buyer began
12 digging around and figured out that the Navy was still
13 maintaining that it owned this marshland and was,
14 therefore, going to make it difficult for a dock to
15 exist, even though it had already been constructed. At
16 that point, the buyer cancelled the contract. And
17 fast-forward a couple of years later, the Navy ended up
18 filing a suit, which is still pending in federal court
19 here in Charleston, seeking to have the dock removed and
20 seeking damages against Mr. Roberts.

21 Now, there are a lot of facts that I didn't go
22 over that might be important. But for today's purposes,
23 Mr. Roberts' allegation against Mr. Drew is that Mr.
24 Drew failed to properly advise him regarding the risks
25 in proceeding with the purchase of this property.

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1 Specifically, Roberts believes Drew failed to tell him
2 that the Navy would or could come back and assert its
3 claim. Mr. Drew obviously disputes that he's liable,
4 and what the parties exactly said, they don't really
5 agree on. But for today's purposes, we're going to go
6 with what

7 Mr. Roberts says Mr. Drew advised him.

8 And in his deposition, Mr. Roberts said: My
9 conversations with Mr. Drew were all based on one thing
10 and one thing only: I would be able to put a dock on
11 and across the marsh. He assured me numerous times that
12 I would not have a problem. This was at or prior to the
13 closing. Plaintiff filed this lawsuit in May of 2011.
14 My understanding from reading the affidavit that
15 Plaintiff's counsel filed today, an affidavit of the
16 Plaintiff, is that the Plaintiff believes that the
17 statute was triggered in April of 2010 when Judge Houck
18 in the pending federal case made a comment regarding
19 putting the lawyer on notice. I can't believe that that
20 argument will hold any type of water under the scrutiny
21 and standards that are in place in South Carolina
22 regarding when the three-year statute starts to run.
23 The statute starts to run when the person --

24 THE COURT: Knew or should have known.

25 MR. COUNTRYMAN: -- knew or should have known

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1 that a claim might exist. Not that a claim does exist,
2 but when a claim might exist.

3 The Epstein versus Brown is one of the seminal
4 cases in the state that discusses that in the context of
5 a legal malpractice action. And it actually
6 differentiates between the way some states look at this
7 versus our state, and it's pretty clear that in the
8 context that we're dealing with today, a legal
9 malpractice case, the statute starts to run when the
10 client -- assuming the client of a reasonable person of
11 ordinary intelligence under those same facts and
12 circumstances, would realize there might be a claim.
13 And one of the key elements that the Court discussed in
14 Epstein versus Brown is, when did the client incur
15 damages. And, in this case, the Plaintiff is alleging
16 over a million dollars in damages. There are two
17 primary elements; thereof, the first, is the \$475,000
18 purchase price. Mr. Roberts maintains that he paid that
19 out-of-pocket, and so that happened back before the
20 closing in 2005. Mr. Roberts is also seeking damages in
21 lost profits via the contract to sell the property for
22 2.2 million dollars. And those lost profits, he alleges
23 are \$415,000. Back in 2006, early 2007, Mr. Roberts
24 also hired another local attorney to help with these
25 issues once they arose again, and he paid that lawyer

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1 about \$500, was Mr. Roberts' deposition testimony.

2 The key issue is what was the allegedly
3 negligent advice, when did the Plaintiff or when would
4 someone in the Plaintiff's shoes have known that that
5 advice was wrong, and what damages did that advice
6 cause, and when did those damages occur? The advice was
7 given at closing. According to Mr. Roberts, Mr. Drew
8 told him: There was no problem with the purchase. Go
9 ahead and build it. Buy it; build the dock; you won't
10 have a problem. The Navy is not going to come in and
11 make a claim. A few months after the closing and he
12 started initiating this claim again, and over the
13 ensuing years, began to write threatening letters,
14 threatening to file suit, threatening to seek damages --
15 was making a claim. The only difference is, he hadn't
16 actually filed one. But he did file suit in 2009 or
17 2010.

18 But for our purposes, the important element is
19 when were the damages incurred? The damages were
20 incurred, A, on the date of the closing, B, in 2007,
21 when the 2.2 million dollars contract fell through, and
22 also in 2006, 2007, when Mr. Roberts obtained separate
23 counsel to deal with these issues.

24 Again, I need to address that Plaintiff's
25 assertion in the affidavit that he did not personally

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1 have any idea that there could have been a claim against
2 Mr. Roberts -- or Mr. Drew, is not really material based
3 on our standard. Any person in Mr. Roberts' shoes who
4 bought this piece of property for development purposes,
5 claims he relied on his lawyer who told him there would
6 be no issues, and then shortly after that, had those
7 same issues about which they were worried and incurred
8 almost a million dollars in damages, more than five
9 years ago, has no basis to claim that the statute failed
10 to run and --

11 THE COURT: What was the date of the closing?

12 MR. COUNTRYMAN: August 17, 2005.

13 THE COURT: And what was date that the 2.2
14 million dollar deal fell through?

15 MR. COUNTRYMAN: January, 2007.

16 THE COURT: And when did he retire -- and then
17 retained separate counsel in December?

18 MR. COUNTRYMAN: December, 2006.

19 THE COURT: Okay.

20 MR. COUNTRYMAN: Because what actually happened
21 is during the process of negotiations between --

22 THE COURT: The Navy fell through, is --

23 MR. COUNTRYMAN: Right. The Navy's claim made
24 it fall through because when Roberts was negotiating
25 with the prospective buyer, the buyer did his own

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1 analysis and said: What's the deal with the Navy's
2 claim here? And so Roberts went and retained another
3 lawyer to look into the issues.

4 THE COURT: So your latest date that could have
5 been -- possibly is January of 2007, is what you are
6 estimating?

7 MR. COUNTRYMAN: That might not be the latest
8 date. It think that's a key date. That's when he
9 incurred the majority of his alleged damages, or at
10 least part of it. But my Brief details a number of
11 factual events that take place up until the Navy filed
12 its lawsuit in February of 2009, which includes Roberts
13 receiving multiple E-mails from the Navy, and the
14 Department of Justice, seeking to have him remove the
15 dock and threatening to sue for damages. Mr. Roberts
16 also wrote Lindsey Graham in 2008 -- in February, 2008,
17 asking him for help. Mr. Roberts admitted in his
18 deposition that by that time, in February of 2008, he
19 considered this a serious issue. Roberts also looked at
20 retaining a local Ph.D. who had some specialized
21 knowledge in these areas in April of 2008, which, again,
22 was more than three years, that the Complaint was filed,
23 so --

24 THE COURT: What was the date that the
25 Complaint was filed?

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1 MR. COUNTRYMAN: May 3, 2011. I think in
2 Plaintiff's Brief, he said it was May 5, 2011. And
3 there's no trigger that the Plaintiff -- to which the
4 Plaintiff points other than this April, 2010, comment by
5 Judge Houck, in which Judge Houck says: Knowing all
6 these facts and circumstances, did anybody put the
7 lawyer on notice? Plaintiff is looking at that solely
8 as the trigger. And, again, that just doesn't hold
9 water based on our objective standard in South Carolina.

10 And I'd also note that I looked at Plaintiff's
11 Brief -- I just got it about five minutes ago. -- it's
12 about 28 pages.

13 THE COURT: Do I have a copy of that?

14 MR. PENDARVIS: I have a copy for you, your
15 Honor.

16 THE COURT: Okay.

17 MR. PENDARVIS: Would you care for it now?

18 THE COURT: Please.

19 MR. COUNTRYMAN: It, really, in my opinion,
20 attempts to muddy the waters and notes various issues of
21 fact that are obviously designed to avoid summary
22 judgment here. But I want to make sure that the focus
23 remains on when Mr. Roberts knew or should have known
24 about a potential claim against Mr. Drew, and I think
25 it's really clear that by early 2008, there was a

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1 full-bore claim that Mr. Drew was having -- that
2 Mr. Roberts was having to defend. He had paid others to
3 defend, and he was -- just for whatever reason, didn't
4 choose to bring the claim against Mr. Drew.

5 And Plaintiff also brings up this estoppel
6 argument, which basically says: I had lawyers
7 throughout this time that were telling me that the
8 Navy's claim was invalid, and that these issues would
9 get resolved. Well, A, that's not really true because
10 regardless of these lawyers' assertions, the --

11 THE COURT: That would be his -- his
12 malpractice suits against them, possibly.

13 MR. COUNTRYMAN: Potentially. But that's
14 really not material, because even if Mr. Drew, providing
15 this advice, during this time, the Navy's claim was in
16 place, and the dock could not be used, and the property
17 could not be sold.

18 Notwithstanding that, if the Court follows that
19 line of thinking, then no cause of action has yet
20 accrued against Mr. Drew because the federal case is
21 still pending. So I rest with that for now, your Honor,
22 and listen to Plaintiff's counsel. Thank you.

23 THE COURT: All right. Thank you.
24 Mr. Pendarvis.

25 MR. PENDARVIS: Good afternoon, your Honor.

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1 Good to see you again. Thomas Pendarvis for the
2 Plaintiffs, Keith Roberts and his LLC, Lot 12 Yellow
3 House, LLC.

4 It's remarkable that we didn't hear a lot
5 about Mr. Keith Roberts' right to rely on his lawyer,
6 Mr. Drew, and the statements and assurances that he was
7 given throughout the course of this. I wasn't there, so
8 the -- the very important case that's cited in this
9 Brief called Smith versus Hastie, it cites a case called
10 True versus Monteith. And the crux of the Plaintiff's
11 opposition to this Motion for Summary Judgment is this,
12 your Honor, to accept the Defendant's Motion for Summary
13 Judgment, we have to charge the Plaintiff -- layperson
14 -- with legal knowledge that you and I and others in the
15 room may see things as lawyers that other laypeople
16 don't see. And we would have to charge this layperson,
17 not only with three years of law school education, but
18 we'd also have to charge that he is not entitled to
19 believe his own lawyer. The Smith/Hastie case is
20 absolutely on point with this in so many respects, and
21 I'll elaborate to the Court where this fits in. Smith
22 versus Hastie, Mrs. Smith and her husband were planning
23 some -- doing some estate planning. Her lawyer said --
24 and this is all through the Smith/Hastie Opinion -- her
25 lawyer says to -- she and her husband at time: I've got

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1 a great plan. We're going to set up what's called a
2 Family Limited Partnership. You're going to add all of
3 your personal assets, contribute those to this Family
4 Limited Partnership, and they'll be -- the testimony
5 was: You'll have your cake and eat it too. You'll be
6 able to --

7 THE COURT: I remember when those came up
8 several years ago.

9 MR. PENDARVIS: In that context, the testimony
10 from Mrs. Smith was: At the time, before she
11 contributed these assets to this Family Limited
12 Partnership, she said to her lawyer: Now, if, you know,
13 there starts to be marital problems or a divorce, am I
14 going to be okay? And the lawyer -- she testified, the
15 lawyer told her: Yeah, you'll be fine. Years go may
16 by. It was in the early '90s, '92, all the assets were
17 contributed, and Defendants in that -- what became later
18 a malpractice case said: Well, you knew in 1992 when
19 you contributed all your assets, that you lost them.
20 You no longer had title to them. And you knew there was
21 a mistake by the lawyer. You knew right then and there
22 you had a claim. Time goes by, 1996, '97, her husband
23 and her are having some difficulties, and her husband is
24 talking to the same lawyer who did the estate planning,
25 and they decide they're going to file a petition to kick

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1 her out of the Family Limited Partnership.

2 In 1998, she goes to meet this lawyer, and the
3 lawyer says: We're going to do these things -- and
4 within two years of that comment -- from the lawyer,
5 we're going to kick you out of the family partnership --
6 she filed a lawsuit. A motion -- before I got in the
7 case, a motion for summary judgment was filed and
8 granted dismissing the malpractice case.

9 When we argued the appeal, it was in effect --
10 based on True/Monteith, a client's entitled to rely on
11 the legal advice and assurances their lawyers give them.

12 THE COURT: And I can understand that the
13 lawyer, really, is just trying to put them off to get
14 past the statute of limitations. But tell me about when
15 she hired the other counsel in December of 2006.

16 MR. PENDARVIS: Well, she didn't hire other
17 counsel in 2006. What the testimony -- and the
18 deposition transcripts are in front of your Honor --
19 what the testimony reveals is starting around that time,
20 in 2007 -- actually, the summer of 2007, the Navy starts
21 raising questions. My client consults with Mr. Drew,
22 and Mr. Drew from that moment in time, when he was first
23 contacted about the Navy problems until as late as
24 February of this year in his deposition, has had the
25 unwavering position that he made no errors, he did --

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1 there was no mistakes made, and his position that was
2 discussed in the federal lawsuit -- in his deposition in
3 the federal lawsuit, was that the Navy never established
4 its -- the location of the marsh that it contended it
5 took in 1965 when this condemnation proceeding happened.
6 And, therefore, just a brief little --

7 THE COURT: Is that still being litigated?

8 MR. PENDARVIS: Yes, sir.

9 MR. COUNTRYMAN: Yes, sir.

10 THE COURT: What if it should turn out in the
11 federal case that the Navy doesn't own that land? And
12 there will certainly be no malpractice at that point.

13 MR. PENDARVIS: Well, your Honor, let me answer
14 that..

15 THE COURT: Well, then, it just seems that all
16 this is for naught. I mean, the question is, should I
17 stay this case until the federal case is --

18 MR. PENDARVIS: Well, let me answer that in two
19 ways. First of all, your Honor, there are two sets of
20 notice issues that we're dealing with. We have a
21 constructive notice -- reasonable person standard -- and
22 we have an actual notice standard. So certainly from
23 the date Judge Houck said words to the effect of -- and,
24 you know, whether there was a malpractice action, you
25 know, lawyers on notice, that type of thing, it provided

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1 my client with actual knowledge.

2 THE COURT: The judge in that case is not the
3 one who establishes that date. The factual situation --

4 MR. PENDARVIS: That's correct. But faced with
5 that charge from the judge and that knowledge that --

6 THE COURT: Well, certainly, we can go past
7 that, that's for sure.

8 MR. PENDARVIS: That's exactly right. So in
9 the matter of actual knowledge, we concede April of
10 2010. This case was filed in May, 2011. So what the
11 reality is, the client found me right after that, and
12 this case was filed.

13 But as to constructive knowledge is where this
14 two-fold inquiry, this Epstein, and a long line of
15 cases, that it's basically two separate things. It's
16 actual damage and -- and knowledge -- this is a quote
17 from Epstein: Under the discovery rule, the statute of
18 limitations begins to run from the date the injured
19 party either knows or should know by the exercise of
20 reasonable diligence that a cause of action exists for
21 wrongful conduct. And the point that I'm making and the
22 point that True/Monteith and Smith/Hastie affirms is
23 that a client's -- layperson, a client, is entitled to
24 rely on what their lawyer says. In Mr. Drew's
25 deposition in the federal case, as in September, 2009,

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1 all the way through his deposition in this case, the
2 position has always been: I didn't make an error.
3 The Navy's record of -- public record in Berkeley County
4 doesn't sufficiently establish precisely what property
5 the Navy took in 1965, and, therefore, my advice was
6 within the standard of care. And we'll analogize one
7 other thing, your Honor, based on the difference in the
8 position taken by the Defendant and the expert for the
9 Plaintiff.

10 The expert for the Plaintiff says that the
11 advice that should have been given was essentially a red
12 light: Don't do it. The advice that Mr. Drew contends
13 he gave was a yellow light: Proceed with caution. Navy
14 could do something -- and I want to come back to that in
15 a moment. The position that my client's testimony of
16 what Mr. Drew told me was a total green light: Go for
17 it. You're going to be fine. You've got a valid dock
18 permit. And this part, to understand why my client
19 would be -- it would be reasonable for my client to rely
20 on this as a layperson and under the standard of review
21 and in the light most favorable to Mr. Roberts, is this:
22 Tommy Stone was the owner of this property. Mr. Stone
23 applied for a dock permit and got it. He's attempting
24 to sell this property to a neighbor, who didn't
25 ultimately buy it. But this neighbor is inquiring about

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1 the property and the dock -- apparently for the
2 neighbor's son-in-law, and he makes a call to the
3 neighbor. A Captain Zoolockus (phonetic), if I'm not
4 butchering that name. Captain Zoolockus, the Navy
5 person, gets this phone call, and he -- the Navy learns
6 that OCRM has issued a dock permit. The Navy contacts
7 OCRM. Provides OCRM with information about the title of
8 this property and their takings in 1965. OCRM, in turn,
9 files a notice of revocation proceeding against
10 Mr. Stone. I'm not sure if your Honor knows the parties
11 that were involved in the OCRM. But this Mary Shahid,
12 S-h-a-h-i-d -- Mary Shahid was OCRM's lead counsel for
13 years and at the time relevant to this proceeding had
14 recently left OCRM and was in private practice.
15 Mr. Stone hires Mary Shahid to defend OCRM's attempt to
16 revoke this permit. She prevails. The Navy decided not
17 to participate in the hearings for the Administrative
18 Law Court in Columbia on this revocation appeal process.
19 And without the benefit of the Navy's full package of
20 information, I'll call it, OCRM loses. The
21 Administrative Law Court requires OCRM to reinstate the
22 permit, that decision comes down in June -- let's say
23 May, June, of 2005, my person -- my client, Mr. Roberts,
24 is aware of his property, and is aware of the OCRM
25 proceeding, and the very piece of advice he's testified

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1 that he came to see Mr. Drew about is: In light of this
2 OCRM and this ALJ Order, can I build a dock and proceed?
3 And the advice he got was, according to my client:
4 Sure. This dock permit is a valid permit. Mr. Drew
5 testified that he spoke with Ms. Shahid, who had
6 obviously a wealth of experience --

7 THE COURT: Well, I guess it's a valid dock
8 permit, but it may be built on somebody else's land.

9 MR. PENDARVIS: That's correct. That's
10 correct. But the point that -- the advice that my
11 client got was: It's a green light. Proceed with the
12 purchase. You're good to go. And throughout the entire
13 process, the testimony is outlined in detail in -- in
14 the memorandum and in the deposition testimony,
15 throughout the entire process, beginning when the
16 Navy -- when the first issues about the Navy arose,
17 Mr. Drew told my client: They're wrong. The Navy
18 hasn't established they own this marsh, number one.
19 Number two, your permit is valid. It's a state
20 proceeding; it's been confirmed by the Administrative
21 Law Court.

22 Now, we lawyers might look and say: Well, wait
23 a minute, that doesn't affect the title to the marsh.
24 And we lawyers might have a different analysis. But as
25 to whether a layperson, believing his client's [sic]

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1 advice, to suggest otherwise, as the Court pointed out
2 in Smith versus Hastie, as well as True versus Monteith,
3 would require the client, number one, to have some legal
4 education, we've covered that part, and to not believe
5 his lawyer, and maybe go get a second opinion.

6 THE COURT: Well, isn't that what happened,
7 though, in December of 2006?

8 MR. PENDARVIS: No, sir. I didn't get back to
9 that point. Right after that, the first time my client
10 got counseled -- independent counsel was Ms. Mary
11 Shahid. He spoke with Ms. Shahid about the permits, and
12 she told him: The appeal process had -- Ms. Shahid --
13 let me say this. Ms. Shahid never said: There was
14 problems with your closing. Were you told this? Were
15 you told that? She didn't say that. She said -- and in
16 her deposition and in Mr. Roberts' testimony about his
17 conversations with Ms. Shahid was: Your permit is good.
18 The dock permit is a valid permit. She didn't give
19 specific advice on whether there was -- the Navy owned
20 the property or not.

21 But he doesn't get other -- my client doesn't
22 get any other counsel other than Mr. Drew until
23 February, 2009, Mr. Stan Barnett was retained in -- to
24 defend the Navy proceedings.

25 MR. COUNTRYMAN: That's not true, your Honor.

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1 I'm sorry to interrupt you, but he got counsel from
2 Clay Walker in 2008.

3 MR. PENDARVIS: Well, yeah, that's right. He
4 did talk to attorney --

5 THE COURT: He knew something was up, and he
6 went and talked to another attorney?

7 MR. PENDARVIS: Well, he had -- he had an
8 attorney talking to -- there was an attorney, Fran
9 Trapp, at the U.S. Attorney's Office that was writing
10 these letters; and throughout this entire process,
11 Mr. Drew is saying to him: Everything is fine. And the
12 same deposition testimony that was given by Mr. Drew,
13 was that the Navy still hadn't established its ownership
14 of this marsh, number one. The Berkeley County records
15 don't reflect the Navy's ownership of this marsh. And
16 my client, all the way through this process, is
17 believing his attorney, that everything is fine. And it
18 wasn't until Judge Houck said what he said in this
19 proceeding that the actual notice was triggered. Now, I
20 will say --

21 THE COURT: Well, that goes back to the
22 question I asked a little while ago: Why should we not
23 wait until the federal court case is resolved in saying
24 who has the title to the property? It may be that he's
25 done nothing wrong because he ended up being right.

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1 MR. PENDARVIS: Well, the position taken at the
2 end -- and this is Exhibit 11 to the Memorandum. The
3 position that Mr. Barnett on the behalf of Mr. Roberts
4 has taken in the federal court is not that the Navy
5 doesn't own the marsh. They've had to kind of adjust
6 the reality. They've seen the title, and the position
7 taken in the Exhibit 11 to the -- to the Memorandum I've
8 submitted, is a Memorandum in Opposition to the Motion
9 for Summary Judgment that Mr. Roberts' attorney,
10 Mr. Barnett, submitted to the federal court, and it was
11 filed, I believe, December, 2009. And, in essence, your
12 Honor, what it says is: Equity should not allow the
13 federal government to require Mr. Roberts to remove the
14 dock. The position he's taken is not that the Navy
15 doesn't own the marsh. So we've got two things that --

16 THE COURT: Okay. So that's -- the title is
17 not the problem.

18 MR. COUNTRYMAN: The title is not the problem,
19 your Honor. I think Plaintiff's counsel might be
20 confusing the issue. The issue is not whether the Navy
21 owns the property or owns the marshland. The issue is,
22 is the Navy going to claim that it owns the property?
23 Because the Navy's claim is what has caused Roberts the
24 problem. The Navy doesn't definitively own the
25 property. That's still being litigated. The issue is,

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1 when did it arise that the Navy was going to pursue its
2 claim. And that happened very shortly after the
3 closing. The next question is, when did Roberts incur
4 damages based on the Navy raising this claim?

5 MR. PENDARVIS: Well, your Honor, I didn't
6 interrupt Mr. Countryman. I've got some other things I
7 need to finish on.

8 THE COURT: All right. Go ahead. I'll give
9 you ample time.

10 MR. PENDARVIS: I understand. And the point,
11 though, as to the Stay question your Honor asked, is
12 that there's clearly -- my client would have to testify
13 and swear that he got actual notice of the legal
14 malpractice claim in April, 2010, so the statute is
15 running on it. Number two, he's incurred damages since
16 then, and that's why this case was filed. And, third,
17 his own lawyer in the federal court, having seen the
18 actual papers on the marsh ownership, is not able to
19 take position that the Navy doesn't own that marsh
20 property. And the sad thing is, your Honor, it's only a
21 piece of the dock. It's not even the whole marsh. It's
22 probably just the last third, right before the pierhead
23 in the deep water, that portion is the part that's been
24 taken. So there's really not a way to Stay this thing,
25 unless the Court can do it.

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1 But the core of -- back to the summary judgment
2 question, your Honor. There's counsel all the way
3 through this thing. No one has ever said to Mr. Drew,
4 until the judge, that your lawyer made an error.
5 That -- in fact, the Brief -- the Memorandum I just
6 cited to you, outlines the specific advice that's
7 forming the basis of this claim, that the Memorandum
8 says, he --

9 THE COURT: But that's just one side's Brief on
10 it.

11 MR. PENDARVIS: Sure. Certainly. But, I mean,
12 he's, in essence, conceding -- but, in essence, he's
13 having to concede that he, you know, had counsel through
14 the closing process. And the point of all this is, your
15 Honor, at no point in time did Mr. Drew ever say: By
16 the way, there might be a claim. You know, I -- there
17 might be an argument that I made a mistake. You might
18 want to get your own attorney. In fact, we're told in
19 reverse. The message he's getting the entire time is:
20 This dock permit wins it. Ms. Shahid says so; Mr. Drew
21 told Mr. Roberts that Mr. Drew -- about his phone calls
22 to the Navy and all these things that are assuring the
23 client -- legally, that the Navy's position is wrong.
24 And that's the position that's been taken throughout the
25 entire federal lawsuit that the Navy's position was

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1 wrong, and he was relying on his lawyer's statements
2 that the Navy's just wrong.

3 And, therefore, if my client is not entitled --
4 if the client has to get a second opinion, then the
5 whole system fails, because what if the second lawyer's
6 opinion isn't right? Do you need to get a third
7 opinion? Do you need to get a fourth opinion? Where
8 does it stop? And that's why the Court said in True and
9 in Smith v Hastie, that a client is entitled to rely on
10 the lawyer's statements. If he'd said something
11 contrary, send a letter to my client saying: You might
12 want to look into this. There might be a claim you may
13 have against me. Whole different issue. But that
14 wasn't the case here.

15 THE COURT: All right.

16 MR. COUNTRYMAN: I didn't mean to interrupt,
17 Thomas. I apologize.

18 Briefly, your Honor, there's no standard
19 objective or subjective that says that a lawyer has to
20 tell his client when there's a potential claim against
21 him, and that's not really pertinent for the purpose of
22 the statute. Here again, the issue is: When did the
23 Navy decide to raise its claim? Because Mr. Roberts
24 says: Mr. Drew, you told me that the Navy wasn't going
25 to come make a claim, so I built a dock and a house to

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1 resell.

2 Well, shortly after that, the Navy did make the
3 claim, and regardless of whether Mr. Drew told
4 Mr. Roberts that the Navy's claim would ultimately fail,
5 the mere fact that the Navy made the claim, cost Roberts
6 almost a million dollars, according to Roberts, by 2007,
7 more than three years before he filed a Complaint. I
8 would also note Epstein versus Brown discusses --

9 THE COURT: So there's no question, though, it
10 was in January of 2007, a 2.2 million dollar deal fell
11 through?

12 MR. COUNTRYMAN: Yes, your Honor.

13 THE COURT: Any question?

14 MR. PENDARVIS: No. Other than tempered by the
15 assurances he got from his lawyer that that Navy claim
16 is not valid.

17 THE COURT: But, I mean, wouldn't -- you've got
18 to agree with me, I would think, that every time you're
19 getting ready to sell something and the buyer backs out
20 because they see there's a problem, and it's 2.2 million
21 dollars, then that should raise a red flag that there is
22 a problem.

23 MR. PENDARVIS: There isn't any question, your
24 Honor, that my client was aware of the Navy's issue.
25 That was the reason --

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1 THE COURT: I'm saying, that is a real
2 issue when a 2.2 million dollar claim -- or deal falls
3 through.

4 MR. PENDARVIS: It is.

5 THE COURT: I mean, red flags should be flying.

6 MR. PENDARVIS: And for us lawyers, it would.

7 THE COURT: I think when anybody loses 2.2
8 million dollars, red flags fly.

9 MR. PENDARVIS: Well, actually, the net loss
10 wasn't 2.2. It would have been more like the net of
11 900,000, but it was significant --

12 THE COURT: That was a significant loss.

13 MR. PENDARVIS: I will agree with the Court
14 that there was a significant loss. But he comes back to
15 his lawyer immediately, and all through the process his
16 lawyer's assuring him, it's just not valid. The Navy's
17 claim -- they haven't established it. In fact, there
18 was a letter referenced in the Memorandum -- a letter to
19 Senator Graham -- my client helped Mr. Drew put it
20 together. All the way through the process, my client
21 trusted this Mr. Drew to -- that was going to guide him,
22 and if there was any argument, any question, that
23 Mr. Drew wanted to trigger a statute of limitations and
24 get this -- have his client either bring a claim or not,
25 that's -- that's the point --

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1 THE COURT: I just -- I just -- I don't care
2 whether you're a laymen or lawyer, when you lose
3 \$900,000, you know, maybe it's time to say I need to
4 seek other counsel. Maybe I can't rely on my attorney.
5 He's not duty-bound to stay with Mr. Drew from this
6 point forward.

7 MR. PENDARVIS: No question --

8 THE COURT: He has an obligation to look into
9 it. He can't go in with blinders and say, I'm just
10 going to trust whatever Mr. Drew tells me from this
11 point forward. I just lost \$900,000; I think I'm going
12 to go talk to somebody else.

13 MR. PENDARVIS: First, it was an opportunity
14 for a sale. And you're right, he lost it. But the
15 point that I really want to focus on True and Smith v
16 Hastie is that the Court said: You have a right to
17 rely. If the lawyer said: Hey, there might be an
18 argument that I made a mistake. You lost this thing.
19 They said it was something different than what I told
20 you. But he got the total reverse. He got the
21 assurances: They're wrong.

22 THE COURT: Well, I don't know that he has a
23 right to rely. I'd be daggum if I'm going to rely on
24 somebody after I lost \$900,000.

25 MR. COUNTRYMAN: And, your Honor, what is there

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1 to rely on if at that point you've already incurred
2 these lost profits which are a primary element of the
3 damages? And I'll state for the record, that it looks
4 like Plaintiff's counsel is trying to imply the
5 continuous representation rule as a trigger for the
6 statute, which basically says, if a lawyer represents a
7 client on -- under the continuous representation rule,
8 the statute is tolled during the period when an attorney
9 continues to represent the client on the same matter out
10 of which the alleged malpractice arose. And Epstein
11 specifically refuses to adopt that rule and sticks to
12 the discovery rule and says it's an objective standard
13 when one person with reasonable intelligence in the
14 Plaintiff's shoes have known of a potential claim. Not
15 the full extent, not the full extent of the damage or
16 the full extent of the claim, but the claim might exist.
17 In this situation, you have less than two years after
18 this closing, the Plaintiff fully realizing that
19 whatever advice was given that the Navy is not going to
20 make the claim that the ownership is invalid really
21 doesn't matter because the damages have been incurred,
22 and at that point, the issue is: Should the lawyer have
23 advised me to proceed or not to proceed with this
24 transaction? And as Mr. Pendarvis has pointed out,
25 Roberts maintains: Mr. Drew, you should have told me

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1 not to proceed with this transaction, and because you
2 did not do that, I incurred almost a million dollars
3 worth of damages, majority of which include these lost
4 profits on the 2007 contract.

5 THE COURT: Yes, sir.

6 MR. PENDARVIS: Your Honor, to do so requires
7 the Court -- to grant this motion, requires the Court to
8 ignore the Supreme Courts express ruling. It said:
9 Absent of the facts, the client should be able to follow
10 this advice -- let me restate. I'll read the whole
11 paragraph. The client should not be expected to
12 investigate an attorney's loyalty every time the
13 attorney provides the client with counsel the client
14 dislikes. Instead, absent of the facts, the client
15 should be able to follow his advice without fear the
16 attorney is not acting in the client's best interest.

17 We have not heard one single thing on why the
18 client is not entitled to rely on the express advice his
19 lawyer was giving that everything was fine, there was
20 -- the Navy was not going to be able to establish a
21 claim, even when the Navy lawsuit happened. Throughout
22 the entire thing: Nope. No question. My client knew
23 the Navy had an issue. No client -- he lost the sale on
24 the real estate. But throughout the entire process, the
25 attorney is making affirmative statements assuring --

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1 telling the client: It's going to be okay. The Navy is
2 not going to be able to establish its claim. Why is it
3 the client can't rely on that? I mean, on the estoppel
4 side, I agree --

5 THE COURT: I just think when you lose a
6 million bucks, it's time to look at other issues, and I
7 think you may --

8 Y'all got a lot for me to read here. And I
9 intend to read it. I've got to read that Smith case.

10 Last word, I'll give you two minutes each.

11 MR. PENDARVIS: One housekeeping matter.

12 THE COURT: Yes.

13 MR. PENDARVIS: I provided your Honor one of
14 the exhibits, exhibit of Brian Boger, the Plaintiff's
15 expert; and Mr. Boger's affidavit contains some exhibits
16 that weren't included in the one I gave you, and these
17 are the exhibits, and I -- I'm going to just ask the
18 Court. These --

19 THE COURT: This beats the last record I had.
20 I had a complaint filed three weeks ago that was a
21 hundred-something pages with 900 pages of attachments.
22 You might beat this.

23 MR. PENDARVIS: Well, let me say this, your
24 Honor, and maybe we can resolve this logistically.
25 Mr. Boger's affidavit goes through the history of the

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1 events that talks a lot about the 1965 takings and some
2 things. I don't know that your Honor --

3 THE COURT: I don't need that. Everything I
4 need to know starts in August 17th of 2005.

5 MR. PENDARVIS: And --

6 THE COURT: Because that's when your client and
7 this gentleman closed a loan, and from that point is
8 where we need to look at.

9 MR. PENDARVIS: And, really, for what it's
10 worth, for the time period, it ends May 5th, '08, which
11 is three years before this lawsuit was filed. So
12 anything that happened between May 5, '08, and the
13 filing of the lawsuit, is well within the statute for
14 purposes of filing the Complaint --

15 THE COURT: You're saying May 5th of '08 is
16 three years behind --

17 MR. PENDARVIS: Yes, sir, that's three years
18 before --

19 That's right. Three years before the Complaint
20 was filed.

21 THE COURT: Right. I'm looking at what
22 happened between August 17, 2005, and May 4th of 2008.

23 MR. PENDARVIS: We think that's the relevant
24 time period.

25 THE COURT: Do you agree that that's the

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1 relevant --

2 MR. COUNTRYMAN: Yes, sir.

3 MR. PENDARVIS: And I'll just represent
4 to the Court, your Honor. If you dig through this, if
5 you -- Mr. Countryman and defense counsel have a copy of
6 all these exhibits. If you think you need documents, I
7 can ship it wherever you are, or I can give it to you
8 now. Whichever you --

9 THE COURT: You can give it to my clerk.

10 (Documents handed to the law clerk.)

11 MR. PENDARVIS: Let the record represent that
12 I'm passing up two three-ring binders of exhibits from
13 Mr. Boger's deposition. Thank you, your Honor.

14 THE COURT: Yes, sir. I'll give you two
15 minutes too.

16 MR. COUNTRYMAN: Thank you, your Honor. This
17 is not a very complicated case for the purposes of the
18 statute of limitations, when it started to run. The
19 issue is, again, simple: When did the alleged
20 negligence occur? That would have been when Mr. Drew
21 advised Mr. Roberts to proceed with his transaction,
22 according to Mr. Roberts.

23 Next issue, when did Mr. Roberts -- when should
24 he have known that that advice was bad? At the latest,
25 when this 2.2 million dollar contract fell through.

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1 Notwithstanding all the previous and subsequent threats
2 by the federal government.

3 And then issue three: When was he damaged by
4 this allegedly negligent advice? A, at the closing when
5 he paid 475, and, B, at least the amount of lost
6 profits, which he's claiming as a primary element of his
7 damages.

8 And I would further state that the Right to
9 Rely argument, again, is a bit of a red herring because
10 the issue is, was the Navy going to make a claim? Not
11 whether the Navy's claim is valid. If the issue is the
12 validity of the Navy's claim, that's not determined yet,
13 so there's no cause of action yet accrued against
14 Mr. Drew. The Plaintiff can't have it both ways.

15 THE COURT: All right. Thank you, gentlemen.
16 Y'all have been to mediation; right?

17 MR. PENDARVIS: We're still working.

18 Proposed orders or --

19 THE COURT: Yeah. If y'all can both give me a
20 proposed order within 30 days.

21 MR. PENDARVIS: Thank you, your Honor.

22 THE COURT: Thank you.

23 MR. COUNTRYMAN: And I have a copy of the
24 Epstein case if you would like it.

25 MR. PENDARVIS: I have a copy of the Smith

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1 case.

2 THE COURT: I bet you do. Please provide me a
3 copy of those. Thank you.

4 Y'all have a nice afternoon.

5 (The hearing of this cause concluded at
6 3:22 p.m., on July 23, 2012.)

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R E P O R T E R ' S C E R T I F I C A T E

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF BERKELEY)

I, **ROLAYNE M. VOLPE**, Certified Court Reporter, CCR,
and Registered Professional Reporter, RPR, do hereby
certify that the transcript of the foregoing proceedings
accurately reflects the events that occurred before me
to the best of my ability at the time and place set out
on the caption hereto, the witnesses having been duly
cautioned and sworn, or affirmed, to tell the truth, the
whole truth, and nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for,
related to, nor employed by any of the parties to the
action in which these proceedings were taken or to any
attorney or counsel employed by the parties hereto, nor
financially interested, directly or indirectly, in the
outcome of this action.

CERTIFIED AND SIGNED on this 6th day of March, 2013.

Sl: Rolayne M. Volpe

ROLAYNE M. VOLPE, CCR, RPR
Certified Court Reporter and
Registered Professional Reporter

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Official Court Reporter for the State of South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs. CIVIL ACTION NO. 2:09-CV-428-CWH

KEITH ROBERTS and LOT 12 YELLOW HOUSE, LLC,

Defendants.

DEPOSITION OF: KEITH ROBERTS

DATE: August 25, 2009

TIME: 11:10 AM

LOCATION: Law Offices of
United States Attorney's Office
151 Meeting Street, Suite 200
Charleston, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: TERRI L. BRUSSEAU, RPR
Certified Realtime Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Roberts_Keith_-_underlying 090825

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21
22
23
24
25

STIPULATION

It is stipulated by and among Counsel that this deposition is being taken in accordance with the Federal Rules of Civil Procedure; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the witness waives reading and signing of this deposition.

* * * * *

KEITH ROBERTS

being first duly sworn, testified as follows:

EXAMINATION

BY MS. TRAP:

Q. Mr. Roberts, just a few preliminary matters. If you need to take a break, let us know. This is going to be so short, it's improbable. Also, please answer not like this.

A. Yes, ma'am. Got you.

Q. So she can put it on the record. If there's anything that I ask, any question that you don't understand, just ask me to restate and I'll be happy to do that.

A. Okay.

Q. And don't answer something that you

1 don't understand. We're just trying to get the
2 facts here so let's just start. Are you ready?

3 A. Yes, ma'am.

4 Q. Okay. Can you please give us your name
5 for the record.

6 A. Keith Roberts.

7 Q. And your address?

8 A. , Mount
9 Pleasant.

10 Q. And how long have you lived there?

11 A. About ten years.

12 Q. Do you own that house?

13 A. Yes, ma'am. Well, no, me and the bank.

14 Q. You and the bank, okay. Do you live
15 there alone?

16 A. No, my wife and daughter and my son.

17 Q. And your occupation?

18 A. Car dealer.

19 Q. And how long have you been a car
20 dealer?

21 A. Oh, Lord, I've been in the car business
22 about 30 years and a dealer about ten.

23 Q. Lot 12 Yellow House, can you tell me
24 how you came to find this property?

25 A. Through a friend of mine. He was

1 wanting to have a piece of property on the water
2 and he found it.

3 Q. And who is that?

4 A. Pat Cogan.

5 Q. When you say he wanted to have a piece
6 of property on the water, what do you mean by that?

7 A. Well, he was looking for a piece of
8 property to build on and either live in or sell it,
9 build and sell it.

10 Q. Okay. Pat Cogan was looking for a
11 piece of property to live in or sell?

12 A. Yes.

13 Q. And how did you become involved with
14 Pat Cogan's property?

15 A. Well, I became his partner in a deal.

16 Q. Okay. And what was your intention with
17 the property?

18 A. To sell the property.

19 Q. To sell the property?

20 A. Yes, ma'am.

21 Q. Does that mean to develop and to sell
22 the property?

23 A. Yes, ma'am.

24 Q. When you purchased the property, who
25 did you purchase it from?

1 A. A gentleman named Tommy Stone.

2 Q. Did you ever talk to Mr. Stone?

3 A. At closing, yes, ma'am.

4 Q. But not before closing?

5 A. No.

6 Q. So he made no representations to you

7 prior to closing?

8 A. No, ma'am.

9 Q. Did you have a real estate agent?

10 A. Yes, ma'am.

11 Q. Who was your real estate agent?

12 A. Cheryl Hill, I think that's her name.

13 Q. And did Mr. Stone have a real estate

14 agent?

15 A. Yes, ma'am. I have no clue who that

16 was.

17 Q. You purchased the property on August

18 the 12th, 2005?

19 A. Okay.

20 Q. Okay. I think that's right.

21 A. It was around then.

22 Q. How long was the property under

23 contract prior to that?

24 A. I have no clue.

25 Q. You don't know -- when did you first

1 see the property?

2 A. I think it was July.

3 Q. Okay. Did you have any knowledge about
4 the problems with the permit, dock permit?

5 A. It was brought up, yes, ma'am.

6 Q. Prior to your purchasing the property?

7 A. A week or two prior, yes.

8 Q. And what was the context of that?

9 A. Just that there was a dock permit
10 issued, revoked and reissued again.

11 Q. And did you have any knowledge as to
12 why it was revoked? And I'm talking about the
13 period of time prior to your purchasing the
14 property.

15 A. Okay, ask me one more time.

16 Q. I mean, obviously you know a whole lot
17 more about that dock permit at this juncture --

18 A. Right.

19 Q. -- than you did on August the 12th,
20 2005. Do you recall what you knew then about the
21 dock permit?

22 A. Just that it was revoked and Mr. Stone
23 appealed that decision and then he went before an
24 administrative law judge, and it's all what I read,
25 and then it was reinstated.

1 Q. What did you read?

2 A. I was given the -- all the documents
3 regarding the dock permit and the -- you know, I
4 guess the case, you know, before the administrative
5 law judge.

6 Q. That was prior to your purchasing the
7 property?

8 A. Yes.

9 Q. Did you get legal advice regarding the
10 dock permit?

11 A. Well, I had my closing attorney and he
12 told me that there was a dock permit and should be
13 fine.

14 Q. And what did you pay for the property?

15 A. 475,000 dollars.

16 Q. And then you ultimately deeded the
17 property to Lot 12 Yellow House, LLC?

18 A. Yes, ma'am.

19 Q. Did Lot 12 Yellow House, LLC pay
20 anything for the property?

21 A. I can't recall. I'd have to ask Randy.

22 Q. Who are the members of the LLC?

23 A. Just me.

24 Q. Just you?

25 A. Yes, ma'am.

1 Q. And do you know why you put the
2 property in an LLC?

3 A. Just Randy and I discussed it and it
4 just -- we didn't want it in my name personally
5 because it was a business deal.

6 Q. The Lot 12 and the house and the dock
7 were all for commercial purposes?

8 A. I wouldn't say commercial purposes, no,
9 ma'am.

10 Q. You didn't intend to live there?

11 A. No, ma'am.

12 Q. You intended to sell it for someone
13 else to live there?

14 A. Yes, ma'am.

15 Q. I didn't mean commercial in terms of
16 you meant it to be a store but it was a business
17 venture?

18 A. Yes, ma'am.

19 Q. That was my question. So you own a
20 hundred percent of the LLC?

21 A. Yes, ma'am.

22 Q. Are there any more that --

23 A. I'm pretty sure I do. I mean, I don't
24 want to seem like I'm not knowledgeable but I'm
25 pretty sure that I'm just the only one in the LLC.

1 Q. If there were any other member, who
2 would that be?

3 A. I don't know if I put my wife or Pat in
4 there or not, I'd have to call Randy and ask him.

5 Q. Pat just testified that he was not a
6 member.

7 A. Well, he must not be then, no, ma'am.

8 Q. Okay. But your wife might be?

9 A. She may be but -- and again, I'd have
10 to ask Randy.

11 Q. Is there anybody else it would possibly
12 be?

13 A. No, ma'am.

14 Q. Do you have any mortgages on the
15 property?

16 A. Yes, ma'am.

17 Q. Could you tell me about those?

18 A. I've got a mortgage with First Citizens
19 for 1,157,000 dollars.

20 Q. Is that in your name personally or the
21 LLC's name?

22 A. Yes, ma'am.

23 Q. Your name personally?

24 A. Yes, ma'am.

25 Q. And what are the payments on that?

1 A. 5200 dollars a month.

2 Q. Does the LLC have any other assets
3 besides Lot 12?

4 A. No, ma'am.

5 Q. Now I want to talk about the house a
6 little bit. Mr. Cogan just testified that he built
7 the house, is that correct?

8 A. Yeah.

9 Q. And the purpose of building the house
10 was to sell the house?

11 A. Yes.

12 Q. And what was the cost to build the
13 house?

14 A. Right now 1,157,000 dollars.

15 Q. Okay. That includes the purchase price
16 of the land and the dock?

17 A. No, ma'am.

18 Q. Just the house?

19 A. Yes. Including the interest and
20 payments and all that, yes.

21 Q. And who have you tried to market the
22 property with?

23 A. I think it's Agent Owned Realty. It
24 was a friend of mine, Chuck Mimms, had it and we
25 had a contract on it and of course the contract

1 fell through and he had it for quite some time and
2 a man by the name of Matt Trainer, and I'm not sure
3 the name of his company, but he's marketing it now.

4 Q. And how much is it on the market for?

5 A. I -- we've changed it so many times,
6 ma'am, I'm not sure what we've got it. I'm not
7 sure right now.

8 Q. And is your understanding that the
9 house -- who lives in the house?

10 A. Pat Cogan.

11 Q. But Pat has another house? Mr. Cogan
12 just testified that he sometimes spends the night
13 there and has some furniture there but he doesn't
14 cook there, he has another house that he lives in.

15 A. I don't think he cooks much anyway.
16 But I guess, I'm sure he has another house.

17 Q. Does he pay rent to live there?

18 A. No, ma'am.

19 Q. Is the electricity on?

20 A. Yes, ma'am.

21 Q. In whose name is that?

22 A. Well, it was in my name at the
23 beginning but, I mean -- and the bills go to that
24 address so I'm not sure if the electricity stayed
25 in my name or if we put it in Pat's name.

1 Q. Who pays the electric bill?

2 A. Pat does.

3 Q. But is the purpose for Pat to live in
4 the house or the house to be sold?

5 A. House to be sold.

6 Q. Does Pat pay any rent?

7 A. No, ma'am.

8 Q. The dock. Palmetto Dock and Salvage
9 built the dock?

10 A. Yes, ma'am.

11 Q. Did you contract with them to build the
12 dock?

13 A. Yes.

14 Q. And when did you have the dock built,
15 do you remember?

16 A. Do you have the paperwork?

17 Q. The invoice here is 11/21/05.

18 A. It was probably a couple months before
19 that.

20 Q. And how long did it take them to build
21 the dock?

22 A. I'm guessing a month.

23 Q. Okay. At a cost of 82,890 dollars?

24 A. That was their part of it, yes, ma'am.

25 Q. And what was the other part?

1 A. We had to put a well in for water to
2 get the water out there and then the electric --
3 the electricity itself had to be run, there was
4 piping that they put in but we had to put the --
5 Pat did, did that, he's pretty handy, and he did
6 that, the electricity, the well, the getting the
7 electricity run out there. Pat did all that.

8 Q. The well for the house and the dock?

9 A. No, ma'am, just for the dock. The well
10 for the house was up by the house.

11 Q. And how much additional was that?

12 A. I'm guessing another 20, 25,000
13 dollars.

14 Q. Are there any boats at the dock?

15 A. Yes, ma'am.

16 Q. Do you know whose boats they are?

17 A. Pat's, Bob, I can't remember his last
18 name, and Dale Cumbee.

19 Q. Do they pay anything to board their
20 boats at the dock?

21 A. No, ma'am.

22 Q. Have there been any other boats at the
23 dock?

24 A. There was -- Matt Trainer had his boat
25 there for some time, I'm not sure exactly, probably

1 three or four months. It's not there anymore.

2 Q. Did he pay anything to keep his boat
3 there?

4 A. No, ma'am.

5 Q. So who's paying the electric bill now?

6 A. Pat.

7 Q. I'm going to need to make copies of
8 this permit again. Would you please turn to Page 4
9 of 8. This is the dock permit for your dock, is
10 that correct, the dock at Yellow House?

11 A. The dock permit permitted to Tommy
12 Stone.

13 Q. Did you eventually -- did you have the
14 dock permit changed into your name?

15 A. Yes, ma'am.

16 Q. Was there anything -- any material
17 changes to what Mr. Stone had?

18 A. I -- no, there was none.

19 Q. So the general conditions would have
20 been the same?

21 A. I would imagine so, yes.

22 Q. Would you look at General Condition 4.

23 A. Um-hum. Yes, ma'am.

24 Q. Did you read this -- read your permit
25 or read Mr. Stone's permit or read these general

1 conditions?

2 A. I read them, yes, ma'am.

3 Q. Prior to building your dock?

4 A. Um-hum. Yes.

5 Q. Number 4, is there any thought that you
6 might need a permit from the Corps of Engineers?

7 A. It was my understanding that the permit
8 was granted and it went through all the proper
9 channels including the Corps of Engineers before
10 the -- I guess OCRM approved the dock permit.

11 Q. Okay.

12 A. It's the same -- I've got a -- the
13 house that I live in has a dock and I had a dock
14 permit and I had the dock built and basically we
15 went through the same thing. I hired a firm to get
16 the dock permit for me. In this case I didn't have
17 to because there was already a dock permit. And I
18 just went through the same procedures with the
19 exception of hiring a firm and it was a dock
20 building company, I think it was Docks-R-Us or
21 someone, I paid them 475 dollars and they went
22 through the necessary steps to get the permit.
23 And, you know, I'm not an attorney but, I mean, I
24 just -- you know, I gave the permit to my dock
25 builder, looked at it and said, listen, can you

1 build this dock permit -- dock? And he said, I
2 need a placard. I said, well, can you get one?

3 Q. What's a placard?

4 A. I guess it's something you've got to
5 put out there -- it's a permit but I guess it goes
6 on the -- they have to have it to build the dock.
7 And they went through those necessary steps and
8 built the dock.

9 Q. You don't know who they got the placard
10 from?

11 A. I would imagine --

12 Q. Coastal Council?

13 A. I would imagine, yes, ma'am.

14 Q. Look at Number 5. Did you understand
15 prior to building your dock that you could not --
16 that the permit did not give you the right to cross
17 someone else's land?

18 A. Ma'am, this is the same permit that
19 I've got for the house I live in and if I'm not
20 mistaken the marsh is owned by the state or the
21 federal government and my dock crossed there same
22 as my neighbor's on the left side and the guy
23 across the street from me -- creek from me, excuse
24 me.

25 Q. Is that Lot 12 are you talking about?

1 A. No, the house I live in.

2 Q. Okay.

3 A. I mean, it's the same deal.

4 Q. So that was your understanding of it?

5 A. Yes, ma'am.

6 Q. And did you have a title search done

7 for the house and lot -- for the lot?

8 A. Yes, ma'am.

9 Q. Did you have a title search done for
10 the marsh and the building of the dock?

11 A. Yes, but I think it was after all this
12 stuff came up, I don't -- I don't think it was done
13 prior to. I could be mistaken. I know that I've
14 got one here and I'm sure that that was done after
15 all, you know, the questions started arising.

16 Q. Oh, really? Okay.

17 A. I'm pretty sure now. I mean, I may be
18 wrong but I don't want to state untruth. It was
19 done February of '06 -- well, '07. Oh, that's my
20 property is recorded in '06.

21 Q. So after the dock was built then was
22 when you had the title search on the marsh?

23 A. Yeah.

24 MR. BARNETT: Just for the record,
25 you've been referring to a document. Would you

1 describe what that is and give the precise date.

2 You gave a year.

3 MS. TRAP: We can put it in the record
4 if you want to.

5 THE WITNESS: Edisto Title Services.
6 And it was a title search that was done November
7 14, 2007. Lot 12, Yellow House place.

8 MS. TRAP: Why don't we just go ahead
9 and put that in as an exhibit. That's the easiest
10 way to deal with that.

11 (PLF. EXH. 1, Critical Area Permit, was
12 marked for identification.)

13 (PLF. EXH. 2, Memorandum dated 11/14/07
14 to Randall Drew from Todd Balish, was marked for
15 identification.)

16 BY MS. TRAP:

17 Q. Did you have any knowledge that the
18 United States owned or may have owned property
19 adjacent on the marsh prior to your building the
20 dock?

21 A. No, ma'am.

22 Q. Did you have any knowledge that the
23 United States may have had a claim to the marsh?

24 A. I knew there was something because of
25 the issue with the permit. You know, I knew that

1 the United States was -- I guess -- well, I guess
2 maybe I guess I did know that there was an issue
3 that the United States was claiming to have some
4 rights there and then the issue was resolved based
5 on the reinstatement of the dock permit.

6 Q. Did someone tell you that it was
7 resolved?

8 A. No, ma'am, I looked at the dock -- they
9 gave it to me. They gave me the documents in black
10 and white.

11 Q. Did you ever seek permission of the
12 United States to cross the marsh?

13 A. I thought that's what that permit was.

14 Q. Okay.

15 A. Again, I'm not an attorney so I had to
16 go by what, you know --

17 Q. But did you hire an attorney to look at
18 these documents?

19 A. Oh, yes, ma'am, same attorney I hired
20 when I closed on the property on the dock when I
21 built my dock at the house in Brickyard. I mean,
22 it was -- I thought it was the same thing. I mean,
23 you've got a dock permit, you can build a dock.

24 Q. Have you ever been told not to trespass
25 on the land or not to cross the marsh?

1 A. By who?

2 Q. By the United States.

3 A. In the letter. I mean, I've gotten a
4 letter.

5 Q. And do you continue to use the dock
6 after the letter?

7 A. I walk out on it frequently, yes,
8 ma'am.

9 Q. What is your relationship with
10 Mr. Cogan?

11 A. We've been friends for 19, 20 years, a
12 long time.

13 Q. Do you own any other property besides
14 Yellow House and the home you live in?

15 A. I have a mountain -- I've got a -- a
16 friend of mine and I own a piece of property up in
17 West Virginia. And I have a piece of property --
18 just a piece of dirt in Summerville and the house
19 that I live in, that's it.

20 MS. TRAP: We might as well make this
21 an exhibit too.

22 (PLF. EXH. 3, Proposal, was marked for
23 identification.)

24 BY MS. TRAP:

25 Q. Charleston Dock Company, this proposal

1 they gave you, 187,000 dollars to remove the dock,
2 is that correct --

3 A. Yes, ma'am.

4 Q. -- should you not prevail in this
5 matter? What are you -- or what is your real
6 estate person representing regarding -- to
7 potential buyers regarding the dock?

8 A. What is he representing to them?

9 Q. Um-hum.

10 A. That there is an issue with the dock.

11 Q. Did you ever see a tax map sheet
12 showing the ownership of properties abutting Lot
13 12?

14 A. I think there's one on the dock permit,
15 yes, ma'am.

16 Q. They have GIS but they don't appear to
17 have the -- is that the only -- this is Page 8 of 8
18 that we're looking at in the dock permit?

19 A. Yes, ma'am.

20 Q. Is that the only tax map sheet that
21 you've seen?

22 A. Yes, ma'am.

23 Q. Have you ever seen one that shows who
24 owns the properties?

25 A. Yeah, the heirs of Mingo, Heyward and

1 so on and so forth, yes.

2 Q. Have you ever seen who owns this
3 property right here, this Tract Number 59?

4 A. I don't recall.

5 Q. I will -- let me go get --

6 A. I did see it. You had it on a big
7 screen in the room back here when Randy, Drew and I
8 came in here.

9 Q. Okay. Is that the first time you had
10 seen that?

11 A. Yes.

12 Q. And what did it say on the big screen
13 who owned that?

14 A. I guess the United States.

15 Q. Insurance. Do you maintain insurance
16 on the property?

17 A. Yes, ma'am.

18 Q. What sort of insurance do you maintain?

19 A. Homeowners insurance.

20 Q. Liability insurance as well?

21 A. Yes, ma'am.

22 MS. TRAP: Thank you. I have no
23 further questions.

24 EXAMINATION

25 BY MR. BARNETT:

1 Q. I just want to ask you, you mentioned
2 that you saw a blow-up of a tax map sheet
3 presumably that's a Berkeley County tax map sheet
4 at a meeting. Was that here in the U.S. Attorney's
5 office?

6 A. Yes.

7 Q. Do you remember what month and year
8 that was?

9 A. Do you? I don't.

10 Q. Okay. All right.

11 A. It was probably a year and a half ago.

12 Q. Okay. So 2007, sometime in 2007?

13 A. I would think, yes, sir.

14 Q. Was it after that that this -- the
15 Edisto Title Services, Inc. report was done?

16 A. Yes.

17 Q. Okay.

18 A. Yes, it was. It was after.

19 Q. So this was done after you all met with
20 the U.S. Attorney's office?

21 A. Yes.

22 MR. BARNETT: Okay. That's all I have.
23 I just wanted to get those dates straight.

24 (The deposition was concluded at 11:30
25 AM.)

1 CERTIFICATE OF REPORTER

2
3 I, Terri L. Brusseau, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither
9 related to nor counsel for any party to the cause
10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto
12 affixed my official seal this 8th day of September,
13 2009 at Charleston, Charleston County, South
14 Carolina.

15
16
17
18
19 Terri L. Brusseau, RPR, CRR
20 My Commission expires
21 March 24, 2016.
22
23
24
25

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF SOUTH CAROLINA
3 CHARLESTON DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 vs. CIVIL ACTION NO. 2:09-cv-428-CWH

7 KEITH ROBERTS and LOT 12
8 YELLOW HOUSE, LLC,

9 Defendants.
10

11 DEPOSITION OF: THOMAS STONE

12 DATE: September 16, 2009

13 TIME: 10:02 a.m.

14 LOCATION: Law Offices of United States
15 Attorney
16 151 Meeting Street, Suite 200
17 Charleston, SC

18 TAKEN BY: Counsel for the Plaintiff

19 REPORTED BY: LISA F. WALKABOUT,
20 Court Reporter
21
22
23
24
25

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF
3 UNITED STATES OF AMERICA:

4 UNITED STATES ATTORNEY
5 BY: JOHN H. DOUGLAS
6 151 Meeting Street, Suite 200
7 Charleston, SC 29401
8 (843) 727-4381
9 John.douglas@usdoj.gov

7 ATTORNEYS FOR THE DEFENDANTS
8 KEITH ROBERTS and LOT 12 YELLOW HOUSE,
9 LLC:

9 SMITH, BUNDY, BYBEE & BARNETT, P.C.
10 BY: STAN BARNETT
11 1037 Chuck Dawley Boulevard, Suite 100,
12 Building F
13 Mount Pleasant, SC 29464
14 (843) 881-1623
15 stanleyb@s3blaw.COM

13 (INDEX AT REAR OF TRANSCRIPT)

1 STIPULATION

2 It is stipulated by and between Counsel
3 that this deposition is being taken in accordance
4 with the Federal Rules of Civil Procedure; that all
5 objections as to Notice of this deposition are
6 hereby waived; that all objections except as to
7 form are reserved until the time of trial; and that
8 the witness waives reading and signing of this
9 deposition.

10 * * * * * * * * * *

11 THOMAS STONE

12 being first duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. DOUGLAS:

15 Q. All right, Mr. Stone, my name is John
16 Douglas as you know.

17 A. Yes, sir.

18 Q. I'm here representing the United
19 States. Mr. Barnett is here, he's representing
20 Mr. Roberts and Mr. Cogan and a net -- a company
21 that they own. The United States government is
22 suing them over a dock that was built that crosses
23 over government property.

24 A. Yes, sir.

25 Q. At least that's our allegation, there

1 are disputes on that maybe. Anyway, that's the
2 reason we're here and that's the reason for the
3 lawsuit.

4 I'm -- I'm just here to find out what
5 you have to say and -- and what you would call --
6 say if you -- in court if you were called to
7 testify, what you might know about what went on.
8 I'm not trying to confuse you or trick you or
9 anything.

10 Nevertheless, I may ask a question that
11 doesn't seem entirely clear to you, either you
12 didn't hear part of it or I may have said it in
13 such a fashion that you don't really understand
14 what I'm asking. If that happens, please stop me,
15 ask me to either repeat it or to explain what
16 I'm -- I'm asking you because I want to make sure
17 that you're answering the question I'm asking;
18 okay?

19 A. Okay.

20 Q. All right. Likewise, she's taking down
21 what you're saying, so you need to say either yes
22 or no. I mean, right now, you're doing like we all
23 do in conversation where you're agreeing with me
24 by --

25 A. Nodding and --

1 Q. -- nodding your head --

2 A. -- I need to say yes?

3 Q. Right, you need to say yes or no. Have
4 you ever done a deposition before?

5 A. No, sir.

6 Q. Okay, that's the basic ground rules,
7 but if at any time you're confused or you want
8 clarification or if you need a break to go to the
9 bathroom or whatever, get some water, let me know,
10 and we'll stop; okay?

11 A. I will.

12 Q. You said you've never been deposed
13 before. Have you ever testified in court?

14 A. Yes, a court case over the dock permit
15 with OCRM.

16 Q. That was the Administrative Law --

17 A. Yes, sir --

18 Q. -- Court?

19 A. -- in Columbia.

20 Q. All right. And that's the only time
21 you've been in court?

22 A. Yes, sir.

23 Q. This is a question, a series of
24 questions, I ask of everyone, I don't mean to
25 accuse you of anything in particular, but have you

1 had anything alcoholic to drink today?

2 A. No, sir.

3 Q. Have you taken any drugs today?

4 A. No, sir.

5 Q. Has your doctor prescribed any
6 medication for you that you should have taken today
7 that you have not taken today?

8 A. No, sir.

9 Q. Do you know of any reason why you're
10 not -- wouldn't be able to give clear and
11 straightforward answers today?

12 A. No, sir.

13 Q. In preparing for the deposition today,
14 did you talk to any lawyers other than that phone
15 call to me to ask me why I was calling, bothering
16 you?

17 A. Mary Shahid with McNair Law Firm.

18 Q. Okay, and she represented you in your
19 dock permit?

20 A. She did.

21 Q. Without -- I don't want you to tell me
22 anything that you and she talked about during your
23 conversation -- okay -- but did you meet with her
24 face to face or just a telephone call?

25 A. Telephone call on that. I have met

1 with her face to face on another incident last
2 week, but not concerning this.

3 Q. Okay, I don't want to hear about that.
4 Have you signed any written statements in regard to
5 the dock in question here after the Administrative
6 Law de -- Court's decision? And I'm talking about
7 written statements, I'm not talking about a deed or
8 any sort of agreement with subsequent purchasers,
9 but a written statement about setting forth what
10 happened.

11 A. No, sir.

12 Q. Have you made any recorded statements
13 like to a tape recorder?

14 A. No, sir.

15 Q. In preparing for the deposition today,
16 did you read any transcripts or read any statements
17 that were made by other witnesses?

18 A. No, sir.

19 Q. In preparing for the deposition today,
20 did you look at any photographs or aerial
21 photographs or maps?

22 A. No, sir.

23 Q. Okay. Can you please give me your full
24 name?

25 A. Thomas Harris Stone.

1 Q. That's a good middle name, my middle
2 name too. What's your date of birth?

3 A. 10-7-60.

4 Q. And where were you born?

5 A. Charleston.

6 Q. I know we served you there, but what is
7 your current address?

8 A. , Isle of Palms.

9 Q. And your home telephone number?

10 A. 886-8142.

11 Q. Here's an odd one, your mother's maiden
12 name.

13 A. Myers, M-Y-E-R-S.

14 Q. And what's your first name?

15 A. Beryl, B-E-R-Y-L.

16 Q. Just briefly, can you summarize your
17 educational background?

18 A. Porter-Gaud and finished at Wando High
19 School. That's it.

20 Q. You haven't had any technical training
21 or any on-the-job training since then?

22 A. No, I went into the oil business with
23 my father after high school.

24 Q. Are you married?

25 A. I am.

1 Q. How many times have you been married?

2 A. Two.

3 Q. On your first marriage, who was that
4 to?

5 A. Isabel Norris.

6 Q. Do you have any children by that
7 marriage?

8 A. Yes, one, 27-year-old son.

9 Q. What's his first name?

10 A. Harris.

11 Q. Harris, good name. And how did that
12 marriage end, in a divorce or --

13 A. Divorce.

14 Q. What year were you divorced?

15 A. Don't know.

16 Q. And your second marriage, who was that
17 to?

18 A. Mary Green.

19 Q. Are you still married to Green, Mary --

20 A. Yes.

21 Q. All right. And do you have any
22 children by Mary?

23 A. No.

24 Q. You said you went into the oil business
25 with your father right after you graduated from

1 Wando?

2 A. Yes, sir.

3 Q. How long did you work in the oil
4 business with him?

5 A. I want to say 14 years.

6 Q. Okay.

7 A. That's close.

8 Q. What were you doing basically?

9 A. Answer the phone, book work, drive
10 trucks. We had a Coast Guard contract and the
11 public school contract, so I maintained both of
12 those.

13 Q. Okay. What sort of oil business was
14 it? Was it -- is it --

15 A. Fuel oil, diesel fuel, kerosene, stove
16 oil.

17 Q. No -- did you say gasoline?

18 A. No gasoline.

19 Q. No gasoline, okay.

20 A. No.

21 Q. And you worked there for 14 years.

22 Why'd you stop?

23 A. I got into the boat trailer business,
24 was doing that while I was working for him and then
25 started my own business. And I've been doing that

1 since.

2 Q. In terms of boat trailer business, what
3 do you -- what do you actually do?

4 A. We do repair work and sell new trailers
5 and take used ones on trade, repair them and sell
6 them.

7 Q. In your -- when you started your own
8 business, was that a sole proprietorship?

9 A. Yes.

10 Q. And what's the name of that business?

11 A. The Trailer Shop.

12 Q. That's direct. Where's The Trailer
13 Shop located?

14 A. 748 King Street, Mount Pleasant, 29464.
15 It's in the industrial block off of Coleman
16 Boulevard.

17 Q. How many people work at The Trailer
18 Shop?

19 A. My son and me.

20 Q. Have -- well, I'll skip that one. Have
21 you ever been arrested?

22 A. Yeah, when I was maybe 18, 19, a
23 disorderly conduct that was dropped.

24 Q. Well, let's see, there are very few 18-
25 or 19-year-olds that are not disorderly. There are

1 those that are arrésted for it and those that are
2 not.

3 All right, tell me in your own words
4 just as a story how you became involved with the
5 property -- I'm going to call it Lot 12 Yellow
6 House, okay, the place that had you a dock permit
7 given to you by OCRM for -- that piece of property.
8 How'd you become involved with it?

9 A. Well, there's a landing on Clements
10 Ferry Road that I've used to hunt for -- since I
11 was 15 years old. And I was getting ready to
12 launch my boat, and I was talking to the owner of
13 this property. And a colored man was eavesdropping
14 on the conversation.

15 Our conversation switched to waterfront
16 property. And incidentally, he's a drunk. He
17 walked across the street and said, I heard you-all
18 talking about waterfront property. My sister has
19 3.2 acres a mile from here for \$125,000, deep
20 water.

21 So I said, how soon can I meet you?
22 And he said, well, how about tomorrow? I picked
23 him up the next day. As soon as I opened the truck
24 door to let him in, he said, I made a mistake on
25 the price, it's 135. I said, no problem. So I

1 figured he's making \$10,000.

2 Q. Right.

3 A. So he took me up to the property,
4 showed me the property, gave me his sister's phone
5 number who lives in New York, she's a school
6 teacher. We talked each night like ten o'clock
7 when she finished work. It was heir's property.

8 It took me, I think, a little bit over
9 a year before I could seal the deal on the
10 property. So I told her, there's going to be three
11 contingencies. The main one is I need to get a
12 dock permit, I have to have a perk site and I have
13 to hire an attorney to get clear cut title.

14 I said, if I can secure these three
15 things, I want to buy the property. She said that
16 was fine. She gave me permission to pursue the
17 dock permit, which I did. And I secured the permit
18 on the 23rd of July of '01.

19 Q. Okay, just to interrupt you a second,
20 how long before July was it that you met -- or that
21 you first had this conversation about the property?
22 Roughly; I mean, I'm not going to hold you to the
23 week or anything.

24 A. Just a guess, six to seven months.

25 Q. Okay.

1 A. Because I looked this up, I closed on
2 that property on the 21st of January, '02, so I
3 think I was working on this permit -- that's a
4 guess -- six months or so.

5 Q. And you got the dock permit in 2000 or
6 July 2001?

7 A. July 23rd, 2001.

8 Q. Then --

9 A. So that was one of my contingencies
10 taken care of. I --

11 Q. The next one was the problem with the
12 heir's property?

13 A. Correct.

14 Q. Okay.

15 A. And I hired Rob Donaldson, who was my
16 closing attorney. He researched it, he felt like
17 this would not be a complex deal. Here again, this
18 is what I looked up. There were three parties
19 involved. It was Robert Smith, Ruth Phillips and
20 Mildred Scantlebury.

21 Q. Those were the heirs that were going --

22 A. Those were the heirs.

23 Q. And so Rob Donaldson cleaned that up
24 for you?

25 A. Yeah, and he said there should be no

1 problem. And I was able to get title insurance,
2 you know, I had -- of course, I had the property
3 surveyed, I got someone out there to do the perk
4 test. They said there would be no problem with
5 that.

6 Q. Okay. And so Rob Donaldson handled
7 the -- the title search and the clearing up
8 of the -- of the title and the closing?

9 A. Correct.

10 Q. When you were investigating getting
11 this property, what was your plan for dealing with
12 the property once you owned it?

13 A. To sell it, make some money.

14 Q. Okay, you were going to set it up to be
15 as a -- as a commercial venture, not something you
16 were going to living on --

17 A. No.

18 Q. -- but something you were going to do
19 just to turn it and make a --

20 A. My -- my wife wasn't interested in
21 living out there.

22 Q. Okay.

23 A. But I knew how deep this water was,
24 which is very, very rare in this area, the depth of
25 the water. That's what appealed to me. The

1 cleaning up aspect of it, I liked doing stuff like
2 that to make it look nice.

3 Q. Right.

4 A. That's just a challenge that I like to
5 do.

6 Q. Okay, so your plan was sort of --

7 A. Clean --

8 Q. -- in your part time away from work,
9 like weekends or whatever, you were going to clean
10 up the property and get it ready for resale?

11 A. Exactly, exactly.

12 Q. Did you plan to build any -- any house
13 on it or anything before you sold it or just to
14 clean it up and get it set up for someone else to
15 step in at that point?

16 A. Just clean it up and sell it.

17 Q. Okay. Did your plan in that regard
18 stay the same up until you sold the property?

19 A. Yes.

20 Q. We've seen a letter from a guy Leopold
21 Lowell --

22 A. Yeah.

23 Q. -- to the commanding officer of the
24 Navy base.

25 A. Yeah.

1 Q. Have you seen that letter before?

2 A. Yeah, he started this whole thing. He
3 got it all brewing.

4 MR. DOUGLAS: Okay, can you go ahead
5 and run me off about six --

6 THE WITNESS: You don't need a copy for
7 me. I've got too many of them.

8 (PLF. EXH. 1, Letter to Captain R. M.
9 Zalaskus from Lowell Leopold dated June 16, 2004,
10 was marked for identification.)

11 BY MR. DOUGLAS:

12 Q. We're doing this for the record to get
13 it in.

14 A. Okay.

15 Q. I know you just -- you don't need one
16 of them to frame at home.

17 A. That's one I don't have framed. And
18 when she finishes, I'll talk and give you -- give
19 you my thoughts on that.

20 Q. Okay, I'm going to hand you a letter
21 that's been marked as exhibit 1 (Tendering). Do
22 you recognize that?

23 A. Oh, yeah.

24 Q. And that's from Mr. Lowell to the
25 commanding officer at the Navy --

1 A. Right.

2 Q. -- base?

3 A. Right. He -- and I wrote this note,
4 and I'm -- I'm not certain of this. I don't know
5 if Lowell Leopold was interested in buying my lot
6 or was he interested in buying the adjacent lot
7 which belonged to Glenn Campbell from Atlanta, a
8 guy in the insurance business, but when we were
9 talking, he said, did you have a dock permit? And
10 I said, yes, I've got a dock permit, I can show you
11 the permit.

12 Well, apparently, that wasn't enough
13 for him, and he notified the Navy to confirm that
14 the dock per -- was the dock permit going to be
15 valid. That's how this whole thing started. He
16 draw -- drew notice to the dock permit with the
17 Navy. This is how it started.

18 And then I have July 28th, '04, we've
19 got the 7th -- were there two letters here?

20 Q. There was a letter back from the
21 commanding officer to Mr. --

22 A. To No -- Lowell.

23 Q. Yeah.

24 A. Okay, well, that's the one -- that's
25 the one that I'm -- I'm referring to. And I've got

1 a date on that of the 28th, July 28th, '04.

2 Q. Okay. Do you have a copy of that
3 letter?

4 A. Yeah.

5 Q. Actually, we're probably going to go
6 through all of those if you'll -- you want me to go
7 ahead and copy those and I'll give you the
8 originals back, and we'll work from there?

9 A. Okay, let's see, this is the in -- all
10 of this packet is information from Mr. Drew, Keith
11 Roberts' closing attorney. He Emailed this to my
12 real estate agent, and he had the copy in there.
13 Yeah, that's the letter I'm referring to
14 (Tendering).

15 Q. Okay, well, let me see, are these
16 the --

17 A. This is from -- I got these last week.
18 This is from his closing attorney.

19 Q. Right, okay. Well, I'm going to go
20 ahead and copy that. And you also brought other
21 documents with you that came from your --

22 A. My files, like --

23 Q. -- files?

24 A. -- when we talked --

25 Q. Right.

1 A. -- you asked me to get anything I
2 thought was pertinent.

3 Q. Right.

4 A. I did.

5 Q. I'm going to copy those too. We'll
6 just move all at once, and I'll keep them in two
7 separate files for you so we don't confuse the two.
8 We'll take just a short break while we get this
9 done.

10 (A recess transpired.)

11 (PLF. EXH. 2, Letter to Lowell Leopold
12 from R. M. Zalaskus dated 28 Jul 2004, was marked
13 for identification.)

14 BY MR. DOUGLAS:

15 Q. When we left off, we were discussing
16 the letters back and forth between the --
17 Mr. Leopold and the Navy?

18 A. Uh-huh.

19 Q. And you identified the one that Leopold
20 sent to the commanding officer.

21 A. Correct.

22 Q. I'm handing you exhibit 2 (Tendering),
23 which is a letter from the commanding officer back
24 to Mr. Leopold.

25 A. Okay.

1 Q. Have you seen that letter before?

2 A. I have.

3 Q. When did you first see that? I mean,
4 I'm not -- I'm not asking precise dates, but
5 generally, when Mr. Leopold got this letter, did he
6 come and show it to you at that time or did you
7 find out about it a little later.

8 A. I mean, probably within a week or two.

9 Q. He brought it to you and said this --
10 the Navy wouldn't let him build a dock?

11 A. Yeah, in so many -- well, I don't know
12 if that was the -- I don't know if that was his
13 words or that he would be hesitant about buying the
14 property without knowing that he can build a dock.

15 Q. Right.

16 A. Okay?

17 Q. Okay.

18 A. Even though he knew there was another
19 dock out there. There is a dock out there.

20 Q. I understand that. And let's...

21 (PLF. EXH. 3, Copy of General
22 Engineering & Environmental, LLC Plat, was marked
23 for identification.)

24 BY MR. DOUGLAS:

25 Q. All right, I'm going to show you

1 exhibit 3, which is a survey done of the area in
2 2007 by GEL Engineering which shows, I believe, the
3 property --

4 A. Uh-huh.

5 Q. -- belonged to Thomas Stone --

6 A. Correct.

7 Q. -- with a dock that had already been
8 built on it at that point in 2007. And there's a
9 dock at --

10 A. It would be on Ahrens' property --

11 Q. -- seaward --

12 A. -- right here (Indicating).

13 Q. And do you know Paul Ahrens?

14 A. Yes.

15 Q. And that's the dock you were talking
16 about, the other dock --

17 A. Yes.

18 Q. -- that's shown on this?

19 A. And then this would be (Indicating) the
20 man from Atlanta that I didn't know if Noel -- I
21 mean, yeah, Lowell Leopold was interested in his
22 lot or my lot.

23 Q. Okay, and you're talking about the
24 Glenn Campbell lot between your lot and Mr. Ahrens'
25 lot?

1 A. That's correct.

2 Q. Okay, all right.

3 A. And I want to say that -- and I don't
4 know how long ago -- Glenn Campbell sold this lot
5 to -- or gave it to maybe his son-in-law. I know a
6 relative of Lowell Leopold ended up buying that
7 lot.

8 Q. Or ended up owning the lot?

9 A. Ended up owning it.

10 Q. Okay.

11 A. Because Glenn ended up selling that
12 lot. And we would talk on the phone, you know, I
13 talked to him plenty of times about the property.

14 Q. Okay, you said a son-in-law. Is
15 that -- was that the son-in-law of Mr. Leopold or
16 Mr. Campbell?

17 A. No, Mr. Leopold.

18 Q. Okay, so his son-in-law wound up, by
19 whatever method, owning the Campbell lot?

20 A. Correct.

21 Q. So did Mr. Leopold, when he -- after he
22 discussed that with you, did you have any further
23 negotiations with him about selling the lot to him
24 or did he just drop out of the picture?

25 A. He dropped out of the picture.

1 Q. When he showed you the letter from the
2 Navy, what did you do next?

3 A. I didn't need to do anything. I got a
4 letter from OCRM. On the 20th, '04, OCR -- OCRM
5 notified me that the dock construction placard will
6 not be issued until matter resolved, meaning they
7 have re -- OCRM has received the letter from the
8 Naval Weapons Station, so they have contacted me
9 saying that my dock permit is on hold August the
10 20th, '04.

11 Q. Okay, what did you do then?

12 A. I, well, hired an -- an attorney, Mary
13 Shahid and, you know, in so many words, said, I've
14 never sued anybody, but if my dock permit is taken
15 away, they'll be taking away about a quarter of a
16 million dollars from me. Whatever -- whatever I
17 need to do -- whatever I need to do to secure the
18 dock permit so I can sell this piece of property,
19 we need to do it.

20 Q. Okay, those are your documents back
21 (Tendering).

22 A. Okay, that's good, thank you.

23 MR. DOUGLAS: Stan, there's a copy for
24 you (Tendering).

25 BY MR. DOUGLAS:

1 Q. So you hired Mary Shahid, and she
2 appealed the revocation?

3 A. Yes.

4 Q. Presumably, then, you've seen the --
5 well, let's go back one step just to tidy things
6 up.

7 (PLF. EXH. 4, Critical Area Permit, was
8 marked for identification.)

9 BY MR. DOUGLAS:

10 Q. We've all seen it, but this is exhibit
11 4 (Tendering). Is that your dock permit that was
12 given to you by OCRM?

13 A. Yes, sir, it looks like it. A little
14 bit difference on the dates. I've got dock permit
15 issued on July 23rd, '01. I signed it on August
16 6th, '01. I don't know.

17 Q. But that does appear to be your
18 signature?

19 A. Oh, yeah, definitely.

20 (PLF. EXH. 5, Final Order and Decision,
21 was marked for identification.)

22 BY MR. DOUGLAS:

23 Q. All right, and I'm handing you exhibit
24 5, the Administrative Law Court's decision
25 reinstating your permit?

1 A. Correct.

2 Q. And you recognize that?

3 A. Absolutely.

4 Q. After you got the Administrative Law

5 Court's decision -- well, let me step back.

6 Between the time that OCRM notified you that your

7 dock permit would not be put into effect, they

8 weren't going to give you a placard --

9 A. Uh-huh.

10 Q. -- until the time that you got the

11 decision from the Administrative Law Court, had you

12 engaged in any attempts to market the property?

13 A. I would say yes.

14 Q. Okay, did you have a broker at that

15 point or what were you doing?

16 A. Yes, I had a broker.

17 Q. Who was your broker?

18 A. Jamie Huff with Read & Read.

19 Q. Did you have any -- any potential

20 buyers come up during that time frame that you

21 recall?

22 A. I don't recall. And, you know, also,

23 after I cleaned up the property, I attempted to --

24 I can't tell you the date that I started marketing

25 it, but after the property was cleaned up and I

1 couldn't do any more and the dock permit is secure,
2 I'm trying to sell the property, I want to get out
3 of it.

4 Q. Right.

5 A. I don't -- I can't tell you the dates,
6 if I, you know, slowed down in between the time of
7 the revocation and the court hearing, if I slow --
8 slowed down on selling it. I knew I couldn't sell
9 it for my full asking price without having the dock
10 permit reinstated --

11 Q. Right.

12 A. -- so I don't know how active we were,
13 I can't -- I don't remember, I can't say.

14 Q. Once you got the ALC permit, though,
15 did you go back into active marketing?

16 A. Yes.

17 Q. I mean, from the extent that you may
18 have not been as active where, you were --

19 A. Right.

20 Q. -- full board?

21 A. Right, because we ha -- we have done
22 everything we can do. We went to court, we had
23 this dock permit reinstated, so -- you know, it
24 cost me whatever it cost, a lot of money, to get it
25 reinstated, so, yeah, I'm actively trying to sell

1 it.

2 Q. Okay. From the time that OCRM notified
3 you your permit was either revoked or on hold until
4 you finally sold the property, did you ever contact
5 the Navy to see if you could get permission to
6 cross their property?

7 A. No, I didn't contact the Navy, no.

8 Q. Just to make sure that I understand --

9 A. You know, re -- if you don't -- let me
10 stop you one mo -- one second.

11 Q. Sure.

12 A. Repeat that question if you don't mind.

13 Q. After -- from the time that OCRM sent
14 you the -- the notice that your permit was going to
15 be revoked --

16 A. Revoked, right.

17 Q. Or let's go a step backwards: From the
18 time that Mr. Leopold came to you and showed you
19 the letter from the commanding officer of the
20 weapons station and said that they -- that you
21 couldn't cross Navy property, from that time until
22 you actually sold the property, did you contact
23 anyone at the Navy to see if you could get
24 permission to cross Navy property?

25 A. I didn't, no.

1 Q. Okay.

2 A. Possibly my attorney, I -- I don't
3 know.

4 Q. So far as you know, did your attorney
5 contact anyone?

6 A. I'm sure she -- she talked to the Navy
7 or had some kind of correspondence with the Navy.

8 Q. Okay. I don't want to get into your
9 discussions with her, but do you have any documents
10 or anything to -- to demonstrate a contact with the
11 Navy?

12 A. Well, I guess you could say in -- you
13 could say indirectly because, on the 28th, '04,
14 Mary Shahid wrote a response to this revocation. I
15 think it was -- let's see, I guess the letter was
16 written on November 22nd, '04. We did not receive
17 it until December of 9th, '04. So that is a -- a
18 combination of a res -- response from the Navy and
19 OCRM. So I don't know if she had direct contact
20 with the Navy or not.

21 Q. Okay, she presented your position to
22 OCRM, but you don't know if she contacted the Navy
23 directly?

24 A. Okay, yeah, that's the best way to put
25 it, yeah.

1 Q. Okay, just trying to make sure we're on
2 the same page here.

3 A. Yeah, let -- let's go that route.

4 Q. At what point did you first get any
5 contact from Keith Roberts about buying the
6 property?

7 A. I don't know when our first contact
8 was.

9 Q. Do you have any idea roughly how
10 long -- how long it was before closing?

11 A. I don't have a clue.

12 Q. Okay, did he -- did he have discussions
13 with you directly or did it come through a real
14 estate agent?

15 A. Through an agent.

16 Q. Okay.

17 A. I never met -- I -- to -- to my
18 knowledge, I never talked to Keith Roberts or met
19 Keith before the closing.

20 Q. Okay. And did you keep the same real
21 estate agent up until closing?

22 A. Yes, sir.

23 Q. Do you know if Keith Roberts had a real
24 estate agent or did he just deal through your real
25 estate agent if you know?

1 A. . Well, not -- he wouldn't have dealt
2 with my real estate agent. I --

3 Q. I mean, he -- he had to contact
4 somebody in or -- in order to submit an offer to
5 you. Would that have been your real estate agent
6 or how'd that come about?

7 A. I don't know.

8 Q. Okay.

9 A. I know that we both used the -- his
10 closing attorney at the real estate closing with my
11 agent present.

12 Q. Got you.

13 A. Okay?

14 Q. Okay. Who was your closing -- or who
15 was his closing attorney?

16 A. Somebody named Drew.

17 Q. Okay, Randall Drew was his closing
18 agent? Okay.

19 A. Right.

20 Q. And the whole processes of your dealing
21 with lot 12, you were represented by first Rob
22 Donaldson and then Mary Shahid. Did you have any
23 other attorneys that represented you during that
24 time?

25 A. No.

1 Q. Okay. Just a minute, I'm going to look
2 at your documents here.

3 (PLF. EXH. 6, Agreement to Buy and Sell
4 Real Estate, was marked for identification.)
5 BY MR. DOUGLAS:

6 Q. I'm handing you what's marked as
7 exhibit 6 (Tendering). Can you tell us what that
8 is?

9 A. This is a contract on the property with
10 Keith Roberts.

11 Q. And that's -- that is -- were there any
12 additional contracts on the sale of the property or
13 was that the one on which you used to close?

14 A. I think this is the one we used to
15 close. I'm almost certain it is, but I did look
16 for a contract on the day of the closing, but I
17 didn't get that from Mr. Drew, so I assume this is
18 what we used.

19 So it's a little bit before. It looks
20 like July 9th, '05, and we actually closed on this
21 property on the 17th of August, '05.

22 MR. DOUGLAS: I'm actually going to
23 need about three more.

24 THE WITNESS: I can answer your
25 question now about if he was represented by a real

1 estate attorney.

2 BY MR. DOUGLAS:

3 Q. Okay, sure.

4 A. Looks like Sheryl Hill with
5 Prudential -- Prudential Carolina Real Estate.

6 Q. Okay, real estate agent, you meant?

7 A. Real estate agent, when you asked that
8 question.

9 Q. Right.

10 A. That's who represented Keith.

11 Q. Okay. And you don't remember that,
12 you're just reading it from the document; is that
13 correct?

14 A. That's correct.

15 Q. Okay, thanks.

16 (PLF. EXH. 7, Assignment/Transfer Form,
17 was marked for identification.)

18 BY MR. DOUGLAS:

19 Q. I'll hand you exhibit 7 (Tendering),
20 which is -- came from the pile of documents that
21 Mr. Drew had sent to you from the closing. Do you
22 recall signing that?

23 A. Wait, this is transferring the permit
24 number to him, is it?

25 Q. That's what it appears to be, yes.

1 A. Yeah, I remember.

2 Q. Okay. In regard to transferring the
3 permit to Mr. Stone (sic), did -- did he or you
4 sign any other document in regard to the transfer
5 or just this one?

6 A. We signed -- we signed one other thing
7 concerning the dock and that's it.

8 Q. Okay, what was the other thing?

9 A. We agreed on a \$50,000 reduction in
10 price. He was going to pay full price of five and
11 a quarter, we reduced it to 475. I stated that,
12 you are getting the permit from OCRM, but if you
13 run into any kind of problems, maybe this \$50,000
14 will help you dealing with the dock if there's ever
15 an issue. He agreed to it, he initialed it, it's
16 written in the contract.

17 Q. Oh, okay, that's in the contract there?

18 A. Yes.

19 Q. Okay, hand that back to me, please.

20 A. (Tendering) Number 30, last thing
21 issued. You can see the full asking price on the
22 contract, you can see where it's scratched out and
23 it was reduced to 475 --

24 Q. Okay, that's --

25 A. -- and the contract, on Number 30,

1 contract not contingent on dock permit with two
2 signatures.

3 Q. Okay.

4 A. Even though he knew that I had the dock
5 permit and I handed him the dock permit, you know,
6 I said, well, you know, I don't know what will
7 happen here, if you want to sign this and initial
8 it where you can never come back at me, he was
9 receptive to it, he did it and that's the last --
10 last of it.

11 Q. Okay, so in item 30 under
12 contingencies, at the same time that you reduced
13 the price to 475, you-all also signed this --

14 A. Same --

15 Q. -- making it not contingent?

16 A. -- same day.

17 Q. You indicated that, I believe, you
18 hadn't met with Keith Roberts at all prior to the
19 closing?

20 A. To my knowledge at --

21 Q. So --

22 A. -- this time, no, sir.

23 Q. -- you didn't know him beforehand?

24 A. No, sir.

25 Q. Did you know Mr. Cogan, his partner in

1 this?

2 A. I didn't know he had a partner.

3 Q. Okay, do you know a Patrick --

4 A. And I didn't know that today either
5 when you mentioned it, I didn't know that.

6 Q. Okay, do you know -- do you know
7 Patrick Cog an?

8 A. Patrick Cogan?

9 Q. Cogan, C-O-G-A-N.

10 A. No.

11 Q. Have you talked to Keith Roberts any
12 since the closing?

13 A. No.

14 Q. Have you had any involvement with the
15 property since the closing other than when my
16 process server showed up with the Subpoena?

17 A. No. I road out one day just to see
18 what the property looked like and looked at the
19 house and looked at the dock, and nobody was there.
20 Just curious, but this is years ago, two years ago
21 or whatever.

22 Q. Probably 2007, something like that?

23 A. Don't know. Let's say 18 months ago,
24 how about that?

25 Q. Okay.

1 A. Okay.

2 Q. Some time ago?

3 A. Some time ago.

4 Q. More than a year, less than four?

5 A. That's good.

6 Q. In thinking back on the questions that
7 I've asked you, is there anything you want to add
8 to your answers or change any of the answers that
9 you've given?

10 A. No, sir.

11 Q. Okay, thank you very much. Mr. Barnett
12 has some -- may have some questions of you at this
13 moment?

14 EXAMINATION

15 BY MR. BARNETT:

16 Q. I do. You said you knew Paul Ahrens?

17 A. Yes.

18 Q. How do you know him?

19 A. He spends a lot of time or he was
20 spending a lot of time on his property. He had a
21 very junky, trashy looking piece of property, and
22 the people in the homeowners' association didn't
23 like the way it looked.

24 He came over to be friends with me when
25 I started working on my property. He said, let me

1 take you out on my dock, show you this view. You
2 know, he built the dock himself. He's like -- at
3 this time, I would say he was in his mid-seventies
4 late seventies, and he built the entire dock out of
5 cement and I understand by hand. Pilings, cement
6 walkway. So we just talked and that's how we met
7 that --

8 Q. He's in his mid-seventies?

9 A. I thought he was in his seventies when
10 I met him. I could be wrong, but I think he's in
11 his seventies.

12 Q. Did he tell you when he built the dock?

13 A. No. I knew it had been there a long
14 time, I remember him saying that.

15 Q. Okay, so all you remember him saying is
16 it had been there a long time?

17 A. Correct.

18 Q. Do you know what he did for a living?

19 A. Didn't know what he did for a living,
20 but I knew what his son did for a living. I think
21 he was a fireman maybe in Savannah, did not live
22 here.

23 Q. Was he affiliated with the Navy in any
24 way, his son?

25 A. Don't know --

1 Q. I'm just wondering --

2 A. -- if it was a federal -- don't know if
3 it was a federal -- I don't know that rings a bell,
4 but --

5 Q. Do you recall --

6 A. -- I'm not going to lock into that.

7 Q. Do you know his son?

8 A. I've met him.

9 Q. Okay, about how old is he?

10 A. Maybe thirties at the time.

11 Q. Do you recall anyone, whether it was
12 the son or the father or anyone else, telling you
13 that the son was in the Navy Reserves?

14 A. No, I don't remember that.

15 Q. All right.

16 A. Getting back to the fire thing, he -- I
17 don't know if he worked for the federal government
18 as a firefighter, I -- I don't know. I remember
19 something like that, but I don't --

20 Q. All right.

21 A. It's a long time ago.

22 Q. But he works in the Savannah area?

23 A. There again, I think that's what he
24 said.

25 Q. Okay.

1 A. We had one conversation.

2 Q. I got you.

3 A. That's it.

4 Q. All right. Is Mr. Ahrens, Sr., still
5 living?

6 A. Don't know.

7 Q. Just -- did he live on this property?

8 A. No.

9 Q. Where did he live --

10 A. Just --

11 Q. -- the father?

12 A. -- don't know.

13 Q. Okay.

14 A. He must not live too -- or actually,
15 no, I would say he lived in the North area.

16 Q. All right.

17 A. Because he met me out there one day,
18 and he wanted to give me a price on clearing my
19 property because they had heavy equipment --

20 Q. I see.

21 A. -- which trashed his lot along with
22 trucks and all, so he came out to look at my
23 property and put an estimate in on clearing it up
24 for me --

25 Q. I see.

1 A. -- or cleaning it up, so I think he
2 lives in the North area.

3 Q. All right. I think you testified to
4 John's questions to this effect, so I apologize if
5 I'm repeating, but I'm not sure, so I'm going to
6 ask you. Before the hearing at the Administrative
7 Law Court, did you did personally ever receive any
8 communication from the Navy regarding your dock
9 permit?

10 A. Answer is no.

11 Q. Do you have a listed phone number?

12 A. Sure.

13 Q. If I went to -- if I picked up the
14 telephone directory and --

15 A. Absolutely.

16 Q. You're in the phone book? Okay. You
17 attended the Administrative Law Court hearing, did
18 you not?

19 A. I was mighty nervous, a lot more
20 nervous than right now. It was terrible.

21 Q. But you were there the whole time?

22 A. Oh, yeah.

23 Q. Okay, how many days was it?

24 A. It was one day, but it was about six
25 hours, and I was like (Demonstrating). That was

1 terrible.

2 Q. Do you remember the judge?

3 A. I think Judge Anderson.

4 Q. Ralph King Anderson, III? He's a --

5 A. Wheelchair bound.

6 Q. Yeah, he's in a wheelchair.

7 A. Yes.

8 Q. Okay. Did anyone from the United
9 States Navy, so far as you can recall, testify at
10 the hearing?

11 A. No.

12 Q. Okay.

13 A. Which --

14 Q. Go ahead.

15 A. Can I elaborate?

16 Q. Yeah, absolutely.

17 A. -- which I thought was very, very odd
18 that no one was there. And also, I'm tickled to
19 death that the ruling was in my favor and that the
20 OCRM reinstated it, but there again, I felt like,
21 if there was a representative from the Navy, which
22 there should have been, I don't know that the
23 ruling would have been in my favor.

24 If they would have had a representative
25 in there and presented their case, which I felt

1 like that was the appropriate time, I don't think I
2 would have got the ruling.

3 Q. Well, do you know that or are you
4 just -- I mean --

5 A. I'm just stating what I think.

6 Q. It is possible that, if they were
7 actually asked to prove their case to the
8 Administrative Law Court, they would not have
9 proven it and maybe that's why they didn't send
10 anybody; is that possible?

11 A. I guess it's possible.

12 Q. Judge Anderson found in his order --
13 well, let me ask this --

14 A. Uh-huh.

15 Q. -- did Judge Anderson evidence any bias
16 against the Navy? Did he say bad things about the
17 Navy during the hearing that you recall?

18 A. No.

19 Q. Okay. I mean, he didn't indicate he
20 was a West Point graduate and still harboring some
21 animosity towards Navy people in general?

22 A. All I can tell you -- and you-all can
23 see the dates on it -- it must have been a complex
24 ruling for him because you can see what the court
25 date was and you can see how long it took for him

1 to rule on it and --

2 Q. July 3rd, 2005 was the ruling.

3 A. That's when I --

4 Q. Okay.

5 A. Yeah, and but, see, we went to court on
6 the 13th of April.

7 Q. Right.

8 A. And at the end of -- end of it, he
9 said, this is complex, I'm not going to be able to
10 rule today, I'm going to try to rule in a week.
11 And obviously, he couldn't do it.

12 Q. Okay.

13 A. So it was complex.

14 Q. All right. Now, he found -- he says --
15 I'm just going to read to you, you don't need to
16 pick it up, page 5, but you were at the hearing, so
17 I'm going to go ahead and read you this, I'm going
18 to ask you if you can remember just what your
19 recollection is about the evidence related to this
20 particular finding.

21 He says, However, the Judgment of the
22 United States District Court references 72.50
23 acres, but the records from the Berkeley County tax
24 assessor's office, obtained in 2004 during OCRM's
25 investigation of the Navy's claim, indicate a

1 parcel between Yellow House Creek and Respondent's
2 high-ground in excess of one hundred (100) acres.
3 Absent any properly proffered evidence from the
4 Navy to clarify or explain this discrepancy, this
5 Court cannot assume or conclude that the Judgment
6 applies to marsh impacted by the Respondent's dock
7 permit. Therefore, the Navy's claim of ownership,
8 which is the sole basis for OCRM's revocation, was
9 not properly substantiated before this Court.

10 Did the judge ask questions about that
11 in -- let me ask you this that. I mean, I -- I've
12 been before Judge Anderson a number of times --

13 A. I --

14 Q. -- and he asks questions.

15 A. He -- he does ask questions, but --

16 Q. Did he ask questions about that?

17 A. I -- I really don't remember.

18 Q. Did -- I mean, did he ask you --

19 A. You-all have -- you-all have to
20 remember --

21 Q. I'm sure.

22 A. -- I don't like -- this is fine, but I
23 have never been as nervous as I was going to court.
24 I -- I don't remember. I'm just being honest.

25 Q. That's all right.

1 MR. DOUGLAS: Right.

2 THE WITNESS: I mean, I just was just
3 petrified going up there, I -- you know, I could
4 barely say my name. And, you know, you go over
5 what you need to say, you know you're going to be
6 asked these questions, and I was like
7 (Demonstrating). That's -- I don't remember that.

8 BY MR. BARNETT:

9 Q. Did Judge Anderson seem to understand
10 what was going on?

11 A. Oh, yeah, sees --

12 Q. Did he seem like a sharp fellow?

13 A. Extremely, extremely smart, bright, on
14 top of it. This must be what he does or along with
15 many other things, but he -- he knows -- he seemed
16 to really know what he was doing.

17 Q. Would he -- and he did not say at the
18 end of the hearing how he was leaning, he didn't
19 give you any tip?

20 A. Oh, no.

21 Q. So when you left there --

22 A. Oh, no.

23 Q. -- you really didn't know, did you?

24 A. No, no.

25 Q. All right.

1 A. He just said, this -- in his --
2 whatever his words were, this is complex,
3 complicated, I cannot possibly make a ruling today.

4 Q. And three months later, he issues his
5 Order?

6 A. Yeah --

7 Q. Okay.

8 A. -- or close to that or whatever it is.

9 Q. I'm going to ask you one more time just
10 to test your memory, either in response to the
11 judge's questions or -- well, let me ask it in two
12 ways. Did the judge ask the lawyer for OCRM,
13 Ms. Riley, why there was nobody there from the Navy
14 to explain why the Navy thought the government
15 owned this property?

16 A. I actually -- and here's another one
17 I'm not positive. I think that question was
18 asked --

19 Q. Okay.

20 A. -- and --

21 Q. Do you remember what her explanation
22 was? Did she have an explanation?

23 A. I don't -- I don't know what her
24 response was --

25 Q. All right.

1 A. -- but I think that question was
2 asked --

3 Q. Okay.

4 A. -- because I think he felt that was --
5 I think he felt that was important to this case --

6 Q. Okay.

7 A. -- why -- why -- why aren't the three
8 of us that are involved in it present at the court
9 case?

10 Q. Well, there was sort of --

11 A. There was a missing -- there was a
12 missing body.

13 Q. It was sort of important to you, wasn't
14 it? I mean, you were having to pay for this
15 exercise.

16 A. Oh, quite a bit. You know Mary Shahid.

17 Q. I know Mary Shahid. How much did you
18 pay, what did it cost?

19 A. I want to say this thing -- well, she
20 was on retainer the whole time like attorneys are.
21 I don't know, I don't even -- I don't even want to
22 add it up. I'm -- I'm sure it cost well over
23 15,000 bucks.

24 Q. Okay, she was she was billing you by
25 the hour, in other words?

1 A. Oh, yeah.

2 Q. All right, and all -- that was all
3 happening because the Navy had made some claim to
4 ownership of some piece of property below the mean
5 high-water mark?

6 A. Yeah, all stemming from, just like we
7 talked about earlier, Lowell Leopold.

8 Q. But the Navy never bothered to come to
9 you personally about this?

10 A. Did not.

11 Q. It either --

12 A. All of this either went to Lowell
13 Leopold, Lowell Leopold giving me or my attorney a
14 copy of the letter that he received from the Navy
15 and then OCRM getting a copy of this, sending that
16 copy to Mary Shahid and in turn she giving it to
17 me.

18 Q. That's right, okay. And I -- it's been
19 established that they didn't send anybody, and I
20 would say they didn't bother to send anybody --

21 A. I'd say --

22 Q. -- to this hearing.

23 A. -- I'd say that also.

24 Q. How'd you feel about that? The people
25 that had put you in this position didn't bother to

1 send anybody to Columbia to testify --

2 A. Well --

3 Q. -- about what they said they owned,
4 how'd you feel about that?

5 A. Ac -- I actually felt that would be a
6 plus for our case that they weren't there, but
7 you're the one that started all of this incident
8 starting and brewing and ended -- ending up costing
9 me let's say \$15,000 to get a permit back that I've
10 had from 2001.

11 OCRM didn't give me my attorney fees
12 back after I won the court case, so I'm just
13 getting the same piece of paper I had from '01 back
14 and then \$15,000 less than --

15 Q. All right, so Judge Anderson issues his
16 Order on June 3rd, 2005, and the judicial law clerk
17 will stamp there at the bottom notice that it was
18 sent out that same day, which is a little bit
19 unusual, after that on June 3rd, 2005?

20 A. Yeah.

21 Q. Did you or did your lawyer communicate
22 to you that she had heard from the Navy? Did the
23 Navy in any way --

24 A. No.

25 Q. -- try to communicate with you --

1 A. No.

2 Q. -- about this? They didn't say to you,
3 don't you build that dock?

4 A. No.

5 Q. Okay.

6 A. Absolutely not.

7 Q. Did you ever hear from the Army Corps
8 of Engineers, saying, don't you build that dock?

9 A. I never remember anything about the
10 Army Corps of Engineers.

11 Q. Did you hear from anybody with the
12 United States government saying, don't you dare
13 build that dock?

14 A. No.

15 Q. Okay, and when did you sell this
16 property to Mr. Roberts?

17 A. August 17th, 2005.

18 Q. Okay.

19 A. And the only thing that -- and I'll say
20 this now -- the only thing that wasn't addressed or
21 question that you did not ask me, we did have the
22 per -- this whole ordeal must have taken 172 days
23 to have -- from the start to the finish, so we had
24 the permit extended with OCRM 172 days.

25 If Mr. Roberts did not want to build

1 the dock initially, he wanted to wait or if he
2 wanted to build his house first, we did have that
3 permit date extended.

4 MR. BARNETT: That's all I've got.
5 Thank you.

6 MR. DOUGLAS: Just one minute, I have
7 to get one more document. It will only take a
8 second.

9 (A recess transpired.)

10 (PLF. EXH. 10, Copy of J. M. Pease
11 Associates Plat, was marked for identification.)

12 EXAMINATION

13 BY MR. DOUGLAS:

14 Q. Okay, I'm going to hand you exhibit 10,
15 which is a reduced size copy of a plat -- or a
16 drawing I should call it -- and this is the full
17 size (Indicating) drawing --

18 A. Okay.

19 Q. -- which is from -- and I'll just
20 advise this is from the condemnation action filed
21 back in 1965 when the federal government obtained
22 its property interest in this property.

23 A. Uh-huh.

24 Q. Do you recall the OCRM attorney
25 introducing this drawing at the hearing in

1 Columbia?

2 A. I don't recall.

3 Q. Do you -- you recall her introducing
4 any drawing showing the property?

5 A. I don't recall, I don't know.

6 MR. DOUGLAS: Okay, no further
7 questions.

8 EXAMINATION

9 BY MR. BARNETT:

10 Q. Let me ask you this: Do you -- how
11 many times have you bought and sold property? Have
12 you done that a bunch of times?

13 A. No.

14 Q. Okay, all right. I mean, I have --

15 A. That's the first one I made -- I think
16 that's the first piece of property that I bought,
17 and then I bought -- took that money and bought an
18 island between Sullivan's Island and the Isle of
19 Palms.

20 Q. Right.

21 A. And have run into problems there too,
22 but --

23 Q. Between Sullivan's Island and -- all
24 right --

25 A. You know where the Boathouse Restaurant

1 is?

2 Q. I do.

3 A. I bought all the little hummocks --
4 they were marketing this four acres of high ground,
5 116 acres of marsh and then across the waterway.
6 And I bought a 75-acre island with 125 acres of
7 marsh.

8 Q. Okay.

9 A. So I've -- I've run into problems there
10 too, but we don't need to get into that today. You
11 could have another hour tomorrow we can talk about
12 that one.

13 Q. But you'd -- you used -- you used Rob
14 Donaldson to do the closing for the Yellow House
15 Creek property, right?

16 A. Yeah, and I used -- I also -- yeah, I
17 used Rob to close on the other one too.

18 Q. Okay.

19 A. So he's had two dealings with me.

20 Q. All right. Do you understand what they
21 do when they do the title search? I mean, how --
22 how familiar -- as a buyer, you're not a lawyer; I
23 know you're not in the legal business fortunately
24 for you, but what is your understanding of what the
25 closing attorney is supposed to do for you to make

1 sure you're getting good title?

2 A. Get title insurance, in case there was
3 an oversight on his part, I could always get my
4 initial investment back if you ran into a problem.

5 Q. All right.

6 A. In this particular case, even though he
7 called it heir's property, he felt like it would
8 not be complex because there were so few people
9 involved with it.

10 Q. All right. What does he do? What does
11 the lawyer do to check on the title himself? Are
12 you familiar with what they do?

13 A. I think he has an abstracter and they
14 research back X amount of years, how long they've
15 owned it, go beyond even the previous owner.

16 Q. They go to the courthouse?

17 A. Yeah.

18 Q. They look at what people have filed in
19 the courthouse as claims of ownership?

20 A. I think so.

21 Q. Okay. Well, just as a buyer. You've
22 bought property.

23 A. Right.

24 Q. As a buyer, would you expect the United
25 States government to bother to file in the

1 courthouse documents that show it claims it owns
2 property? Would you expect your government to do
3 that?

4 A. You would think so.

5 MR. BARNETT: Okay. All right, thanks.

6 EXAMINATION

7 BY MR. DOUGLAS:

8 Q. As long as it came up, can you give us
9 a short summary of what problems have developed
10 with the property you bought between Sullivan's and
11 the Isle of Palms?

12 MR. BARNETT: Do you want it call
13 Ms. Shahid first?

14 THE WITNESS: Just for fun?

15 BY MR. DOUGLAS:

16 Q. Just for fun. What problem has
17 developed on it?

18 A. Oh, Lordy, this is a lighter note. I
19 feel better now.

20 MR. BARNETT: Do you need to call your
21 counsel?

22 THE WITNESS: It was a good -- I didn't
23 want to buy both pieces of property, but it was at
24 Godley Auction Company, and he said he wouldn't
25 split the property up. So I had the four acres of

1 high ground researched, got OCRM out -- or DHEC out
2 there, excuse me. They said, there's nothing you
3 can do with this piece of property, absolutely
4 nothing, it floods, it's zoned in Sullivan's
5 Island, you just have little hummocks here, you
6 don't have a half acre together. He said, you
7 won't ever be able to do anything.

8 So I got real lucky, I bought -- ended
9 up breaking down, buying both pieces of property on
10 Monday, listed it on Wednesday, got two people in a
11 bidding war that Saturday. They ended up buying
12 the piece that was worthless for like \$56,000 more
13 than I was asking for it, so it was a great deal.
14 I was able to recoup my initial investment, and I
15 got the island that I wanted.

16 I pulled a houseboat, took a real high
17 tide and pulled a houseboat in on the marsh right
18 up next to my island, removed all the tanks, the
19 engines, you know, worked a tractor, block and
20 tackles, ropes, and got it positioned so you had a
21 beautiful view and then, behind you, you had a
22 75-acre island.

23 Well, of course, DHEC said that I had
24 damaged the marsh, that oil was leaking out. And I
25 had to get Mary to help me there also. Long story

1 short there, they forced me to remove the
2 houseboat, which I did. I had to meet with the
3 Corps of Engineers because this is a -- Corps has a
4 lien on this -- it's two dikes together, so I met
5 with three people from the Corps of Engineers.
6 They said I could put my houseboat at this
7 location.

8 I ended up finding another one, called
9 them back. I was able to pull my houseboat into
10 this island, block it. So I've been fined with
11 them for damaging the marsh, which it really wasn't
12 damaged. And then, I don't know, I guess you can
13 say I was a smart ass when they -- DHEC called and
14 said, you know, there's all kinds of oil leaking
15 and gas leaking. And I said, that's odd, there's
16 nothing on the boat, so I think you've made a
17 mistake or you didn't come out and research it so
18 we kind of got a little testy.

19 Q. Uh-huh.

20 A. And then he -- the last thing -- and
21 I've never heard another word back from them -- he
22 said, we see where you brought the big propane tank
23 over and put it in the marsh. And I said, do
24 you -- you think that could have floated up from
25 Hugo? It's in the middle of the marsh.

1 And they said, no, we had everything
2 removed. And I said, well, you missed one. So
3 the -- I was, again, a little bit of a smart ass,
4 and I said, I'll tell you what, I'm going to just
5 save you probably two, \$3,000. You call me when
6 you want to pick that tank up, and I'm going to
7 pick that tank up for you with my ropes and
8 tractors, and I'm going to walk it right to the
9 waterway and put it on the side of the waterway so
10 you come with a boat. You notify me, and you can
11 pick it up and I'll save you about \$3,000.

12 When I said that, I've never heard
13 another word from them. Everything's over, no more
14 problems, no more fines, no more run-ins, but I've
15 had -- I've had them --

16 MR. BARNETT: Who were you dealing
17 with?

18 BY MR. DOUGLAS:

19 Q. That --

20 A. Well, Jimmy Haddon with the Corps,
21 which I like him a lot, he --

22 MR. BARNETT: I mean at OCRM, DHEC, who
23 were you dealing with? I was curious.

24 THE WITNESS: I don't remember who
25 called. The -- the person I met that told me the

1 other property was, quote, you would never be able
2 to do anything with it, has worked with them --
3 colored guy that's worked with them for like 15
4 years.

5 MR. BARNETT: In enforcement?

6 THE WITNESS: Yeah.

7 MR. BARNETT: I know who you're talking
8 about, Brooks.

9 BY MR. DOUGLAS:

10 Q. Is the propane tank still there?

11 A. Still there. He never called me back,
12 so I called their bluff. And, you know, I didn't
13 like -- you know, I don't like being -- I did -- I
14 guess I did something wrong by pulling it in on a
15 high tide, but if it floats up without any kind of
16 source and no, you know, really equipment pulling
17 it, heavy equipment, why can't it just stay there?
18 But apparently, they didn't like it, and they
19 forced me to remove it.

20 Q. You're talking about the houseboat?

21 A. Yeah, but no follow up with the
22 propane.

23 Q. Are they -- that houseboat, that's not
24 the same houseboat you have now, it's a different
25 houseboat or same one?

1 A. Same one.

2 Q. Okay, you just moved it to a location
3 that the Corps said was fine?

4 A. Correct.

5 Q. And you now still own the island and
6 the houseboat is there?

7 A. Yes, sir.

8 Q. Are you living there or --

9 A. Huh-uh.

10 Q. Okay.

11 A. I live on --

12 Q. What do you --

13 A. -- live on front beach on the Isle of
14 Palms.

15 Q. What do you use it for?

16 A. Recreation, hunt, sleep over there
17 sometimes. I've got deer on the island, doves, and
18 I go over there about three times a week.

19 MR. DOUGLAS: Okay, no more questions.

20 Do you have any?

21 MR. BARNETT: No.

22 MR. DOUGLAS: We're done.

23 (The deposition was concluded at 11:15
24 a.m.)

25

1 CERTIFICATE OF REPORTER
2

3 I, Lisa F. Walkabout, Certified Shorthand
4 Reporter and Notary Public for the State of South
5 Carolina at Large, do hereby certify that the
6 foregoing transcript is a true, accurate, and
7 complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 17th day of September, 2009 at
13 Charleston, Charleston County, South Carolina.
14
15
16

17 _____
18 Lisa F. Walkabout
19 Court Reporter
20 My Commission expires
21 January 7, 2015
22
23
24
25

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTH CAROLINA
3 CHARLESTON DIVISION

4 UNITED STATES OF AMERICA,
5 Plaintiff,

6 vs.

CASE NO. 2:09-428-CWH

7 KEITH ROBERTS and LOT 12
8 YELLOW HOUSE, LLC,
9 Defendants.

10 UNITED STATES OF AMERICA,
11 Plaintiff,

12 vs.

Case NO. 2:09-1696-CW

13 KEITH ROBERTS and LOT 12
14 YELLOW HOUSE, LLC,
15 Defendants.

16 DEPOSITION OF: RANDALL J. DREW

17 DATE: September 30, 2009

18 TIME: 9:15 a.m.

19 LOCATION: UNITED STATES ATTORNEY'S OFFICE
20 151 Meeting Street
21 Charleston, SC

22 TAKEN BY: Counsel for Plaintiff

23 REPORTED BY: Karen V. Andersen,
24 Registered Professional Reporter

25 A. WILLIAM ROBERTS, JR. & ASSOCIATES

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(INDEX AT REAR OF TRANSCRIPT)

STIPULATION

It is stipulated by and among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent does waive reading and signing of this deposition.

* * * * *

(PLF. EXH. 1, Deed, was marked for identification.)

RANDALL J. DREW,

being first duly sworn, testifies as follows:

EXAMINATION

BY MR. DOUGLAS:

Q. Obviously you are aware I'm here representing the Government. Stan here is representing the defendants in this case.

A. Yes, sir.

Q. And I normally run through a whole rigmarole with witnesses. I will touch a little bit on it, although you are a lawyer. I've also been a witness before and it's a little bit different feeling being a witness than being a lawyer in one of

1 these proceedings. Have you ever been a witness
2 before?

3 A. No -- well, about 20 years ago.

4 Q. Okay. Any reason at all why you can't do
5 your deposition today or you can't give full answers?

6 A. Not that I know of.

7 Q. In preparing for the deposition today,
8 what have you done?

9 A. I searched my files to see if I had some
10 records that you requested. And I reviewed my search
11 file. Well, I reviewed the search file. I couldn't
12 actually put my hands on my note file, nor my actual
13 search file, although I do have some records scanned
14 in, none of which were correspondence between the
15 government.

16 Q. Were any of those memoranda or notes about
17 correspondences with the government?

18 A. No, sir; that's what I was looking for.

19 Q. Okay. Well, we will get around to what
20 you sent me a little bit later.

21 A. Okay.

22 Q. Have you done anything else?

23 A. Have I done anything?

24 Q. Have you spoken to anyone, for instance?

25 A. I spoke to Stan. Stan called me and asked

1 me if I had ever done a deposition, asked me if I had
2 any notes, same questions you had asked me on the --
3 what is that, the subpoena?

4 Q. Right.

5 A. And I told him the exact same thing I told
6 you.

7 Q. Okay. Did you talk to anyone else?

8 A. No, I don't believe so.

9 Q. Did you talk to Keith Roberts?

10 A. Oh, I'm sorry, yes, I did. I've spoken to
11 Keith Roberts. He's a friend of mine. I spoke to
12 him, I think, probably -- whenever you were deposing
13 him, he was coming down to be deposed by you.
14 Whatever that date was, he called me and asked me why
15 we transferred the property into the LLC. And I
16 said, because you had said it wasn't a personal
17 transaction, it was really supposed to be a business
18 transaction with your partner.

19 Q. Okay.

20 A. That was all.

21 Q. Have you talked to his partner, Patrick
22 Hogan, about this?

23 A. I've only spoken to him, I believe, once
24 at Stan's office probably had to be six months ago.
25 I don't really -- I don't really know him very well.

1 As a matter of fact, that's the first time I met him,
2 I think, Stan's office.

3 Q. In preparing for the deposition, have you
4 reviewed any items, other than the document that you
5 provided to me, the one page that you provided to me,
6 that any way relates to communications between you or
7 your client and the government?

8 A. Any way relates between -- I've reviewed
9 the letters that Fran sent me.

10 Q. Right.

11 A. I couldn't find -- I could find the fax
12 cover sheet, but I couldn't find the whole fax that
13 was sent to Ed Smith when I was out of the office
14 responding to, I believe, a July 7th letter; not
15 specifically dealing with correspondence with the
16 Government, no, sir.

17 Q. Okay. But you have reviewed your real
18 estate closing file?

19 A. Yes, I have.

20 Q. Do you have a separate file in regard to
21 the Lot 12 Yellow House, LLC, or is that in your
22 closing paper?

23 A. As far as forming the LLC?

24 Q. Right.

25 A. No, it's within -- all the files are

1 together.

2 Q. Okay.

3 A. The files had been closed out, since it's
4 four years old. I think I mentioned to you, we've
5 moved twice, I'm sad to say, should have only moved
6 once, but we had boxed everything. So everything
7 just gets combined, what's not scanned and shredded.

8 Q. Okay. Let me back up a little bit.

9 What's your complete name?

10 A. Randall, R-A-N-D-A-L-L, J. or Johnson,
11 Drew, D-R-E-W.

12 Q. What's your date of birth?

13 A. 2/5/60.

14 Q. And where were you born?

15 A. Philadelphia, Pennsylvania. That's
16 confidential.

17 Q. We won't let it out. What's your current
18 home address?

19 A. , Mount
20 Pleasant, 29466.

21 Q. If at any point you need to stop or get
22 some water, let me know and we will do that.

23 A. Okay.

24 Q. And the address we have where we served
25 you with the subpoena, that is your office?

1 A. They actually served me at my home
2 address.

3 Q. They did? Okay. They are more
4 industrious than I thought.

5 The office address that they went by, I
6 know your receptionist spoke to you about that, that
7 is your office address?

8 A. Yes.

9 Q. That's your single office address?

10 A. Yes, sir.

11 Q. What's your home telephone number?

12 A. We finally got a home line,
13 (843) 388-5397.

14 Q. I understand the delay. I know my home
15 phone number is 2; I just hold the 2 down.

16 A. For the last eight years, we didn't have a
17 land line, we only had cell phones. We just got the
18 Comcast.

19 Q. What's your social security number?

20 A. -7605.

21 Q. Very quickly run through your educational
22 background.

23 A. I went to Davis & Elkins College and got a
24 Bachelor of Science and -- Science and Marketing and
25 Bachelor of Science in management. Then I went to

1 Widener University and received a juris doctorate. I
2 received my real estate sales license in '81, real
3 estate broker's license in '88. My wife says I grew
4 up with an MLS book under my lap. And then, let's
5 see, I was licensed in South Carolina in '97;
6 Pennsylvania and the Virgin Islands in '98.

7 Q. You are talking your law license?

8 A. Yes, sir.

9 Q. The sales and broker licenses, what states
10 were those in?

11 A. Pennsylvania, and I have a broker's
12 license in South Carolina.

13 Q. Okay. I'm just a little curious, why do
14 you have a broker's license?

15 A. In South Carolina?

16 Q. Yeah.

17 A. The real estate commission was set up, as
18 I read the statute, that an attorney is able to
19 obtain a real estate commission in a transaction for
20 a client. However, the Real Estate Commission
21 doesn't agree with that. So in order to get a real
22 estate commission on a transaction, I went and took
23 the broker's license so that I could get the
24 commission on -- mainly on transactions we invest in.

25 Q. But you could have sued and clarified the

1 law.

2 A. I try not to fight the Government.

3 Q. And yet here we are?

4 A. I know.

5 Q. You are married?

6 A. Yes, sir.

7 Q. How many times have you been married?

8 A. One.

9 Q. How long --

10 A. As far as I've been told, that's all I'm
11 allowed to be married.

12 Q. How long.

13 A. Since 1990.

14 Q. And run through your work history, your
15 employment history as a lawyer?

16 A. As an attorney only?

17 Q. Yes.

18 A. Okay. As an attorney, I opened my office
19 in 2000. And since 2000, I've mainly focused on real
20 estate transactional work with -- also I do real
21 estate subdivisions, condominium under the Horizontal
22 Property Act, and commercial, commercial and
23 residential transactions. We've been in the top 20
24 in the state for the last eight years for production
25 of work with Lawyers Title. And we write for

1 Lawyers, Chicago and Fidelity National.

2 Q. When did you get your JD?

3 A. In '97.

4 Q. Between '97 and 2000, what were you doing?

5 A. Real estate development. I did -- while I
6 was in law school, I was working and I was doing real
7 estate development work. And I completed a -- well,
8 we started out doing a curative amendment on a site
9 for a 55 and older community on a golf course. Then
10 I ended up turning it into a condominium project for
11 55 and older. So we had 340 units that we were
12 developing. So while I was in law school we were
13 doing the development. Then I completed the
14 development. And we moved down here, and then I
15 looked for a location to start my practice and then
16 we started the practice.

17 Q. Okay. Is your practice pretty much
18 limited to real estate work?

19 A. I do estate planning, wills, trust and
20 some probate work. I don't do any litigation.

21 Q. About how much of your practice is
22 property work, generally interpreted?

23 A. I would say it's 90 percent or better.

24 Q. Has that been true since you opened your
25 office?

1 A. Yes. It was probably 100 percent up until
2 three years ago when we saw a need for people to have
3 wills, and at least simple estate planning, because
4 we had some clients that passed away without wills.

5 Q. Okay. Again this question is on my
6 checklist: Have you ever been arrested?

7 A. No, sir.

8 Q. You mentioned that Keith Roberts is a
9 friend of yours. How long have you been friends?

10 A. Let's see, our daughters -- we lived in
11 the same neighborhood and our daughters were in
12 gymnastics. Let's see, Tory was probably six. I
13 would say we've known each other for about eight
14 years.

15 Q. Have you handled any matters for Keith
16 other than the Lot 12?

17 A. I've refinanced his personal residence.
18 Let's see, he purchased an investment property, a
19 lot. I believe it was in Summerville. And there's
20 something else we did. I think I may have just done
21 the seller docs, seller documentation when he sold
22 the property in Summerville.

23 Q. Okay.

24 A. I think those are the only transactions.

25 Q. When did you first become involved with

1 Keith in regard to Lot 12 Yellow House?

2 A. Well, sometime between the time you put it
3 under agreement and the time you closed.

4 Q. Were you involved with the negotiations in
5 terms of the sales contract?

6 A. No, sir.

7 Q. So when you had the contract, he came to
8 you to deal with the closing?

9 A. I think specifically what probably
10 happened was, the real estate agent -- I'm pretty
11 sure the real estate agent sent me a fax saying
12 Keith, or an e-mail, saying Keith wants you to handle
13 this transaction.

14 Q. Okay.

15 A. That's one of the saddest parts of my
16 practice is I always get involved after -- seems like
17 I always get involved after the contract is signed,
18 and then they say, well, what does it say?

19 Q. What have I agreed to?

20 A. Yeah.

21 Q. Or you tell them, here's what you agreed
22 to.

23 A. That's right.

24 Q. Okay. All right. In terms of your
25 involvement, you were told that they wanted you to

1 handle the closing?

2 A. Ah-huh.

3 Q. And what would you have received from
4 either Keith or the real estate agent?

5 A. The agreement of sale.

6 Q. Okay. Did you get anything else at that
7 time?

8 A. I have to double-check. I think I
9 probably would have just received the agreement of
10 sale at that time, unless there was something -- I
11 don't know if I have that e-mail where she sent it to
12 me, but they normally send it to me e-mail. So I
13 think I would have just received a copy of the
14 agreement of sale.

15 Q. While you are looking, do you recall which
16 real estate agent --

17 A. That's what I was looking to see. Looks
18 like Jamie Hough, H-O-U-G-H, faxed it to me. Yeah,
19 they faxed it to me.

20 Q. Is that from Prudential or from Read &
21 Read?

22 A. Read & Read.

23 Q. Okay. When you had got the contract from
24 the real estate agent, what was the next thing that
25 you did?

1 A. Proceeded to search the title.

2 Q. And what do you do when you search a
3 title?

4 A. Well, first thing that we do is pull up
5 the current deed. And then from the current deed, we
6 search backwards through the chain of title and --
7 wait one minute. Somebody sent me that
8 administrative law judgment as well.

9 Anyway, we searched the title backwards
10 from that titleholder 40 years to find out if there
11 are any liens, encumbrances, in the chain of title.
12 I don't know if I received that before or after I did
13 the search.

14 Q. Okay. At some point prior to closing, you
15 received the administrative law court decision --

16 A. Yes.

17 Q. -- in regard to Mr. Stone's permit?

18 A. Yes, sir, I did.

19 Q. Okay. I'm going to hand you Plaintiff's
20 Exhibit 1.

21 A. Okay.

22 Q. And I'm not sure which of this comes from
23 which direction, because it was provided to us from
24 Mr. Barnett's office.

25 A. Okay.

1 Q. I believe the top few pages would be at
2 the conclusion of it, but then there's, about three
3 or four pages in, you start with a deed abstract.

4 A. Ah-huh.

5 Q. Starting from that going backwards, would
6 that have been your title search documents?

7 A. Yes, sir. We would search to see each of
8 these prior owners, if there were any liens,
9 encumbrances or transfers out on each of the prior
10 owners.

11 Q. Who mechanically would have done that;
12 would you have personally or did you have a paralegal
13 that did it?

14 A. I personally searched Keith's, I think,
15 because of the timing. I think I got the contract --
16 they must have been negotiating with it, because I
17 got the contract -- it looks like it was faxed to me
18 in July. So I think there was a timing issue. So I
19 physically searched the title myself.

20 Q. Okay. When you are searching a title, you
21 have the contract --

22 A. Ah-huh.

23 Q. -- so you know that Mr. Stone was planning
24 to sell it to Keith Roberts?

25 A. Ah-huh.

1 Q. Where do you mechanically go to search the
2 title?

3 A. The RMC office.

4 Q. This is in Berkeley County, so you go to
5 the RMC office in Berkeley County?

6 A. That's correct.

7 Q. Did you look at any other location other
8 than the RMC office records?

9 A. No, sir. Well, we looked at the judgment
10 indexes within that office.

11 Q. The judgment indexes are in the RMC office
12 in Berkeley County?

13 A. The judgment indexes are with the Clerk of
14 Court of Berkeley County.

15 Q. So you did go to the Clerk of Court's
16 office as well?

17 A. Yes.

18 Q. How far back do the judgment indexes go?

19 A. I'm not sure. In Berkeley County? Well,
20 Berkeley County and Charleston County moved around
21 some lines. I'm not sure. I know that I do more
22 searches in Charleston County, and they are in the
23 1800s we've picked up judgments and deeds. I know
24 I've picked up very old deeds for Berkeley County,
25 but I'm not sure how far back it goes.

1 Q. Okay. When you go to the judgment roll in
2 the Berkeley County Clerk of Court, I'm not a real
3 estate lawyer, I'm learning a little here, what does
4 it actually look like? What you have in the judgment
5 roll?

6 A. You have names that it's indexed under.
7 So you search the period of time when -- so if Stone
8 owned it from 2001 to 2007, 2001 to 2007 is
9 computerized, so you would simply type in his name.

10 Before the computerization, which I think
11 that's '97, but I'm not positive, you would look at
12 the name and the period of time they owned it to see
13 if there are any judgments against them. But the
14 judgments, see, judgments are only good for --
15 standard judgment is only good for 10 years. So I
16 would have only looked back 10 years on the judgment.

17 Q. Okay.

18 A. Because I looked to see if John Smith has
19 a judgment against Thomas Stone, because that
20 judgment would then attach to Thomas Stone, any
21 property he owns, therefore, he couldn't transfer it
22 free and clear to my client without that judgment.
23 So I would have not have looked in the judgment index
24 prior to 10 years.

25 Q. Looking at Exhibit 1 there, and we have

1 Bates stamped them down the bottom right with little
2 numbers so we can identify the pages, going back to
3 DTS024, there's a deed there from the sole surviving
4 heirs of Mingo Heyward.

5 A. Ah-huh.

6 Q. And that was deeded out -- what date is
7 that?

8 A. I think that's '77.

9 Q. Right, 1977. Can we tell from your title
10 work when Mingo Heyward acquired the property?

11 A. I think this is notes from Todd's title
12 work.

13 Q. I just noticed, in the pile of papers we
14 got from Stan, actually, the last page is an invoice
15 for the dock thing. That would not have been part of
16 your title search; right?

17 A. No.

18 Q. Exhibit 1, last page, is not part of your
19 title search.

20 MS. TRAPP: I think this may have been the
21 title search that was done after.

22 THE WITNESS: Yeah. This is Todd's title
23 work, but the back title issue, this deed is the same
24 as what I would have had. It's at Y18295, I would
25 have to see that document to let you know, but I

1 think it was very old, Mingo.

2 BY MR. DOUGLAS:

3 Q. But that title was not in the package,
4 this package? It was in yours, your original?

5 A. That's what I said when we started, that I
6 could not find my notes on my title.

7 Q. Okay.

8 A. This is the one where I asked Todd to go
9 back after my work to see if I had missed something.
10 That's what this is.

11 Q. Okay. So from his package, we can't tell
12 when Mingo Heyward obtained title?

13 A. No, I would have to go to the RMC and put
14 Y18 at 294 and then I could tell you.

15 Q. Not having your title work, can you tell
16 whether you checked the judgment rolls on Mingo
17 Heyward?

18 A. I'm 99 percent sure I would not have
19 checked judgment rolls prior to 10 years. Because
20 the judgments I'm looking for would have been a
21 judgment -- the judgments I look for in the judgment
22 index deal with judgments against someone in the
23 chain of title that's still active. And the
24 judgments only last for 10 years in South Carolina.
25 So it wouldn't have been an index that -- I wouldn't

1 have searched Mingo on the judgment, yes, sir.

2 Q. Looking at Todd's title search, he did
3 not, as far as you can tell, did not check?

4 A. I specifically asked Todd to do a -- I
5 specifically sent Todd a letter, because I wanted to
6 find out if there was an issue with the title work
7 that I had completed. And since Todd does it every
8 single day -- wait a minute. Here we go. I asked
9 Todd, because of the judgment, asked Todd: Hello. I
10 need to order a 40-year search for Lot 12, Yellow
11 House, TMS Number 267000012 --

12 Q. Excuse me. Can you read a little more
13 slowly? She's got to --

14 A. You can make a copy of it.

15 Q. Let's do that.

16 A. It's not that long, but better than
17 reading it in. I'm sorry.

18 (Off-the-record conference.)

19 THE WITNESS: I wanted him to specifically
20 look for a 1969 judgment.

21 (PLF. EXH. 2, Fax Cover Sheet dated
22 10/15/07, was received and marked for
23 identification.).

24 BY MR. DOUGLAS:

25 Q. Tell us what this is.

1 A. This was a request to check on the title
2 work for Lot 12, Yellow House, that I sent to Todd
3 Balish at Edisto Title Services. And I asked him to
4 double check the 40-year search and to specifically
5 look for any easements or plats and a judgment from
6 the District Court in 1969.

7 Q. Okay. And Todd, is Todd a paralegal or an
8 attorney?

9 A. He is a title abstractor.

10 Q. And what response did you get back from
11 Todd?

12 A. The title search that we were just
13 reviewing.

14 Q. Okay. Exhibit 1 is what you got back?

15 A. Yeah. And there is a letter attached to
16 it. There's a letter attached to it that said
17 couldn't find anything, any judgments.

18 MR. BARNETT: As I recall, the first sheet
19 was from Edisto Title.

20 THE WITNESS: Here it is. I have it.

21 MS. TRAPP: You gave it to me. That's
22 what I had.

23 THE WITNESS: His response was: We have
24 run the chain of title back as far as we can go and
25 looked for possible deeds which might convey any

1 interest in marshlands, and find none. We have also
2 checked the Berkeley County Clerk of Court records
3 for any possible suits involving marshlands. And
4 based on the information given, we find none. We
5 might suggest you look for suits filed in District
6 Court. Should you have any questions, Todd.

7 MS. TRAPP: Do you want a copy of that?

8 MR. DOUGLAS: No, he read it in. That's
9 fine.

10 BY MR. DOUGLAS:

11 Q. Did you subsequently check with the
12 district court?

13 A. I did not.

14 Q. And prior to the closing, you had not
15 checked with the district court?

16 A. That's correct.

17 Q. Let me go back and recount, make sure I'm
18 still on the same page here. You got involved when
19 the real estate agent sent you the contract. You did
20 a title search. At some point in there, you
21 apparently can't recall exactly when, you got a copy
22 of the ALC's decision about the Stone permit. And
23 you discussed that with Keith Roberts?

24 A. I discussed it with Keith Roberts, Rob
25 Donaldson and Mary --

1 Q. Shahid?

2 A. Shahid. I always want to say Shad.

3 (ph.),

4 Q. Yeah. It's pronounced Shade (ph.) here.

5 I don't know if it is pronounced Shahid elsewhere.

6 A. That's what I always want to say.

7 Q. The odd part is, Peter's father had a
8 shade store, store they sold shades. If you wanted
9 to get shades in Charleston, the place you went was
10 Shahid's. That's probably why they got the
11 pronunciation that way. I don't know.

12 Anyway, you talked to Mary Shahid. You
13 talked to Rob Donaldson and to Keith?

14 A. Ah-huh.

15 Q. What did you do then about the permit, if
16 anything?

17 A. Well, after talking to Keith, I talked to
18 Stone, and asked him if he had any further contact
19 with the Government regarding the permit. Then I
20 spoke to -- I called -- I didn't know who was in
21 control of the purported marshlands, so I called the
22 RDA office. They referred me over to another office.
23 And then they referred me -- they gave me a number
24 for -- I spoke to RDA office. They referred me to
25 Linda Davis, who referred me to Robert Ryan or

1 Raymond Nelson. And I spoke to someone at that
2 office and they said that the permit had been
3 litigated.

4 Q. Can I see that? Is this the original?

5 A. This is the one thing you couldn't read, I
6 guess

7 Q. Right.

8 A. So from that, I asked -- then I had Stone
9 sign an affidavit saying he hadn't had any further
10 contact with the government regarding the permit.

11 Q. Okay. As I read this Post-it note that's
12 put on the fax cover sheet here: Not any contact
13 from government or person since put on market
14 pertaining to dock, Jamie Hough, see 364-1759.

15 That was a message from Jamie Hough?

16 A. That was when I called Jamie Hough, he was
17 representing Stone, regarding my conversation with
18 the naval station, I wanted to find out whether he
19 had any further contact. And then I asked him if he
20 would sign an affidavit, and he did.

21 Q. So this Post-it note is a memo here from a
22 conversation with Jamie Hough?

23 A. That's correct.

24 Q. Okay.

25 (PLF. EXH. 3, Letter dated 9/28/09, was

1 received and marked for identification.)

2 BY MR. DOUGLAS:

3 Q. I'm handing you Exhibit 3. If you can
4 tell us what those two documents are.

5 A. Okay. These are the -- after I received
6 your --

7 Q. Subpoena?

8 A. -- subpoena, sorry, I checked through my
9 files, and I couldn't find my notes regarding -- I
10 normally take notes on a yellow tablet when I'm
11 talking on the phone, but I couldn't find my notes
12 regarding the conversations listed on the fax cover
13 sheet attached hereto showing the RDA number, Linda
14 Davis, Robert Ryan and Raymond Nelson. So I wrote a
15 letter to you saying that this was all I was able to
16 find regarding the conversation and the list of
17 people, and that I hadn't had any contact with the
18 Government until I received a letter from Fran.

19 Q. Okay. And what you were told was,
20 according to the letter, was that the permit had
21 already been litigated?

22 A. That's correct.

23 Q. Do you know which person said that to you?

24 A. No, sir.

25 Q. Okay. So between the RDA, Linda Davis,

1 Robert Ryan and Raymond Nelson, and I can't read that
2 bottom -- is that a person's name on the 820?

3 A. Ryan.

4 Q. That's still Ryan?

5 A. Ah-huh.

6 Q. Among those individuals listed there, you
7 don't know which one told you --

8 A. No, sir, I do not. After my conversation,
9 I spoke to Mary Shahid.

10 Q. Right, who had represented Mr. Stone?

11 A. That's correct, because I wanted to find
12 out what her opinion was on the fact that they were
13 aware it had been litigated, what did that mean to
14 her. And she said that there hadn't been an appeal
15 and that she had reinstated the permit. And she sent
16 me the letter she sent to Curtis Joyner, I believe,
17 extending the permit time based on the delay during
18 the administrative law judge's, I guess, review or --

19 Q. Right. That was just a letter to OCRM --

20 A. Correct.

21 Q. -- documenting for the record that as a
22 matter of law, because it was on appeal, that the
23 period was extended as a matter of law?

24 A. That's correct.

25 Q. Okay.

1 (PLF. EXH. 4, Agreement to Buy and Sell
2 Real Estate, was received and marked for
3 identification.).

4 Q. I'm going to hand you Exhibit 4. Can you
5 tell us what that is?

6 A. Yes, sir. This appears to be the
7 agreement of sale between Keith Roberts and Thomas
8 Stone.

9 Q. Okay. How I understand these contracts
10 normally are entered into, and you can straighten me
11 out as we go --

12 (Off-the-record conference.)

13 BY MR. DOUGLAS:

14 Q. Ordinarily the property is listed for a
15 certain price. The buyer speaks to a real estate
16 agent who may represent the buyer or the seller in
17 the case. They complete a proposed contract, an
18 offer, as it were, of what they want in the contract,
19 and they submit that to the seller, who then either
20 makes changes to it or accepts it or rejects it.
21 Does that pretty much lay out the way this goes?

22 A. Yes.

23 Q. Okay. Looking at this exhibit, it appears
24 that someone originally wrote the contract price for
25 \$525,000, correct?

1 A. Yes, sir.

2 Q. Okay. That ordinarily would represent the
3 buyer's proposal to the seller, correct?

4 A. Ordinarily it would.

5 Q. You don't know in this instance who filled
6 out what, right, or have you discussed that?

7 A. I have not discussed it with them; no, I
8 really don't.

9 Q. And the date, original date on this at the
10 top is July 9th, 2005, correct?

11 A. That's correct. Well, is that an 8 or a
12 9?

13 Q. Well, all right, July 8th or July 9th.

14 A. Okay.

15 Q. Of 2005. And then in regard to the
16 purchase price, someone struck through it, but
17 \$475,000. And there's initials over the right dated
18 July 11th, '05 with THS, presumably Thomas Stone, and
19 what looks like an R circled, presumably representing
20 Keith Roberts. Is that your understanding of what
21 those are?

22 A. Yes, sir.

23 Q. And that would be the amendment to the
24 proposed selling price?

25 A. Yes, when both signatures were on it, yes.

1 I don't remember what the -- there's a number two on
2 there next to the price.

3 Q. Yeah, someone wrote number two.

4 A. I guess that's a second -- I guess -- I
5 don't know what that is. Okay.

6 Q. Yeah, someone wrote number sign and two.

7 A. Yeah, maybe a second offer or something.

8 Q. Okay. And, of course, at this point we
9 don't know when that was written on there actually,
10 do we? And, actually, let's see, if we look where
11 number two is written, the apparent pen that was used
12 to write that, it looks like on the second page in
13 the margin on the left, someone with that same pen
14 has apparently written -- put a star and said: Did
15 not use all 60 days due diligence.

16 A. Right. I don't know if that's a note
17 before or after.

18 Q. Right. Well, it's past tense, so -- do
19 you have the contract in your file?

20 A. That's what I was looking to see. I
21 thought I saw it earlier today.

22 Q. I thought I did too.

23 A. To answer your question, yes, I have it.
24 I should have brought that assistant I was talking
25 about earlier. Here it is. I don't have the one and

1 two on my copy on the first page. And I don't have
2 those notes in the margin on mine.

3 Q. Okay. So that appears to be that someone
4 came back and on this exhibit, wrote that later on?

5 A. That's what it appears.

6 Q. Okay. And since the note on the second
7 page is in the past tense, that likely it was written
8 after closing? Is that a reasonable interpretation
9 of it?

10 A. After closing, it could have been, yeah.
11 I don't know. I guess depends who wrote it. If it
12 was the agent, maybe they were trying to convince
13 somebody of something in saying, look, they didn't
14 even use the total due diligence. I don't know.
15 Sometimes trying to get these deals done, agents can
16 be aggressive.

17 Q. And looking on that second page, towards
18 the top, there's something written in: Can be
19 attached to septic/well system. And the initials of
20 the buyer and seller are there as well.

21 A. Ah-huh.

22 Q. That's July 11th as well, correct?

23 A. Yeah. Let me look at this one, see if
24 there are any differences.

25 Q. The copy you are looking at, that was the

1 one that was originally sent to you?

2 A. Yeah, July 11th, it looks like it was --
3 depending if their time was set right, 10:19 p.m.

4 Q. Well, we will get that in just a minute,
5 but at sometime on -- at least they dated it July
6 11th?

7 A. Yes.

8 Q. And buyer and seller initialed the change
9 having to do with the septic and well system.
10 Looking at your original -- you can look at either
11 one. This shouldn't be any different. There are
12 contingencies written in at the end of the contract,
13 correct?

14 A. Paragraph 30, correct.

15 Q. Right. Appears that there are five lines
16 written in in the original offer, and then there's a
17 change, or two changes rather, that the parties have
18 initialed. One is: Contract not contingent on dock
19 permit. And the second one is: Buyer is willing to
20 participate in a 1031 exchange at no expense to them.
21 And both of those changes are initialed and dated on
22 July 11th?

23 A. That's correct.

24 Q. Mr. Stone testified in his deposition that
25 when he received the offer, he countered taking

1 \$50,000 off of the price, basically in exchange
2 for including the provision that contract's not
3 contingent on the dock permit, because the
4 contingencies above says he was supposed to provide a
5 dock permit. And he put, contract not contingent on
6 dock permit, and initialed that. Is that consistent
7 with the documentation here?

8 MR. BARNETT: Object to the form.

9 BY MR. DOUGLAS:

10 Q. Go ahead and answer.

11 A. I wasn't involved in that negotiation. I
12 got it after the fact.

13 Q. You've been involved in negotiations of
14 this sort, have you not?

15 A. Of contracts, certainly, yes, sir.

16 Q. Many of them, right?

17 A. Yes, sir.

18 Q. Okay.

19 A. Not as many as I want it to be.

20 Q. And then according to the fax stamp on
21 this, the copy we have that's the exhibit was
22 transmitted by facsimile on July 11th at 10:19 p.m.
23 to someone, correct?

24 A. That's correct.

25 Q. Do you know who it was faxed to?

1 A. That's what I think -- do you have that
2 Read & Read form, the prior exhibit?

3 Q. Oh, the prior exhibit, yes. Actually, you
4 have the --

5 A. I think it was to Sheryl Hill. Here, I've
6 got it, to Sheryl Hill.

7 Q. Okay. Well, let's take a look at that.

8 A. Okay. Wait a minute. Read & Read sent it
9 to Sheryl Hill, it looks like 7/12 on this. So I
10 don't know how that bottom -- maybe it was faxed to
11 Tommy Stone at 7/11 and 7/12 to Sheryl Hill, because
12 there were three stamps on it.

13 Q. Right. This has the 7/12. It looks like
14 someone at Read & Read on July 12th faxed 12 pages to
15 Sheryl Hill at Prudential. We don't have -- this is
16 the only document that you were able to provide us.
17 You don't know what this was on top of, or can you
18 tell from your file what that was on top of?

19 A. I can't tell conclusively. I thought it
20 was on top of this agreement of sale.

21 Q. Well, that would be five pages.

22 A. So I don't know what else was faxed. I
23 can't tell how many pages were faxed to me, because I
24 was faxed on September -- so it looks like they were
25 given -- remember I said I thought I was involved in

1 eight in a transaction, so I had the search.

2 Q. Well, that's September date is this year.

3 A. Oh.

4 Q. That's your fax to me.

5 A. I'm sorry then. Never mind.

6 Q. Okay. You did the closing on August 17th,

7 so you would have been involved before then.

8 A. Yes. Sorry. Take that back.

9 Q. So you don't know what --

10 A. I can't tell for sure, no, I cannot.

11 Q. In regard to the phone conversation you've

12 talked about where you wrote these names and phone

13 numbers on this fax cover sheet, do you know what

14 date those took place on, I mean, other than it was

15 after July the 12th?

16 A. It was between the 12th and the closing

17 date.

18 Q. Okay. You don't know when?

19 A. I don't.

20 Q. Okay. What's the Exhibit Number on that

21 contract? You have the contract there, don't you,

22 the one that's marked? That's probably right there,

23 I think. Okay?

24 A. Exhibit Number is 4.

25 Q. Okay. Thanks.

1 A. I was looking to see if I had any
2 additional documents in the file that had that bottom
3 fax on it so we could put that document back
4 together. I believe based on the fax ledger, that --

5 Q. Does the copy of the contract that you
6 have there to your left, is the fax stamping on that
7 different from the stamping on the cover letter?

8 A. Well, the only problem I'm having is this
9 says Page 1 and this says Page 1. So I'm not certain
10 that I could put it together, but it appears that at
11 some point, Jamie Hough sent me the contract, the
12 permit for review. And the administrative law order
13 was then sent the day after, it appears from the fax
14 header.

15 Q. Okay.

16 A. So it looks like I had that information.

17 Q. Ordinarily when someone sends a closing to
18 you, do you get anything other than the contract or
19 is that pretty much it?

20 A. Typically at the beginning I would get the
21 contract, then I would get any -- if there's a house,
22 inspection reports, any other reports they are doing
23 within the contract. But at the initial, it's
24 typically just the contract.

25 Q. Okay. I understand that's going to vary

1 depending upon when you come into the process, I
2 guess?

3 A. That's correct.

4 (PLF. EXH. 5, Critical Area Permit, was
5 received and marked for identification.)

6 BY MR. DOUGLAS:

7 Q. I'm going to hand you what's marked as
8 Exhibit 5, which is the OCRM permit that Thomas Stone
9 had. You got a copy of this prior to closing,
10 correct?

11 A. That's correct.

12 Q. And you reviewed it?

13 A. Yes, sir.

14 Q. The bottom of this one is not Bates
15 stamped, but it's been filed with the court. In the
16 lower right-hand corner there is Exhibit 8 and page
17 numbers. Can you go to Exhibit 8, Page 4, which is
18 the general conditions.

19 A. Yes, sir.

20 Q. All right. General Conditions 4, 5 and
21 16 -- you can take your time to read them if you
22 want. 4, 5 and 16, in essence, state that the permit
23 doesn't give the permittee any property rights to
24 anyone else's property, doesn't convey any property
25 rights, and that the permittee is to use extreme care

1 to prevent any adverse or undesirable effects from
2 this work on the property of others. Correct?

3 A. That's correct.

4 Q. Okay.

5 (PLF. EXH. 6, Letter dated 6/16/04, was
6 received and marked for identification.)

7 BY MR. DOUGLAS:

8 Q. Just to do a little due diligence here,
9 and this may not amount to anything, but Plaintiff's
10 Exhibit 6, which is two letters, one from Lowell
11 Leopold to the commanding officer at the weapons
12 station. That was dated -- apparently they put the
13 stamp over the date, but it was received on June 21st
14 of 2004. And then there's a reply letter dated July
15 28th, 2004 from the commanding officer to Mr. Lowell
16 Leopold informing him that he cannot build a dock on
17 U.S. Government property. Have you seen these two
18 letters before?

19 A. Yes, sir.

20 Q. And when did you see them first?

21 A. Let's see if I have a date stamp on it.
22 It's sometime in -- I would believe it was sometime
23 in July, because that's after doing the title work.
24 Subsequent to the title work, we did the due
25 diligence on the permit itself, because the permit

1 deals with marsh. That's not highland, so it's not
2 something that's insurable.

3 Q. You were aware then prior to closing, both
4 of the permit, the appeal of the permit, the ALC's
5 decision, and these letters from the Navy saying that
6 there was no permission to build on Navy property?

7 A. I thought -- isn't this letter prior to
8 the litigation?

9 Q. This would have been back in 2004, before
10 dock was built, before the property was conveyed.

11 A. And before the administrative law
12 judgment.

13 Q. Before the administrative law judgment?

14 A. Yes.

15 Q. You were aware of the letter though?

16 A. I think Jamie Hough sent it to me.

17 Q. Okay.

18 (PLF. EXH. 7, Letter from E.R. Nelson to
19 Naval Weapons Command, was received and marked for
20 identification.)

21 (PLF. EXH. 8, Final Order and Decision,
22 was received and marked for identification.)

23 BY MR. DOUGLAS.

24 Q. I will take it one step further. I'm
25 going to hand you Exhibit 7, which is a file copy of

1 a letter from Mr. E.R. Nelson, Director of the Real
2 Estate Division, Naval Facilities Command, to a
3 Mr. Paul Ahrens. Have you seen that letter before?

4 A. No, sir, I do not believe I've seen this
5 letter.

6 Q. I will hand you Exhibit 8, which is the
7 decision from the administrative law court in regards
8 to Mr. Stone's permit.

9 A. Yes, sir.

10 Q. And this is the final order and decision
11 you spoke about before that you reviewed?

12 A. Yes, sir.

13 Q. And you reviewed that prior to the
14 closing?

15 A. Yes, sir.

16 Q. Going over to Page 6 of that decision --

17 A. Okay.

18 Q. -- in Paragraph 4, and he really should
19 call it Section 4, because he has more than one
20 paragraph in Paragraph 4, but where he indented the
21 secretary time, the administrative law judge writes:
22 Furthermore, OCRM's critical area permits do not
23 alter or affect the status of title of the State or
24 any person to lands below the mean highwater mark.
25 He sites the statute section.

1 Moreover, the permit itself sets forth the
2 following general condition. Then he quotes that:
3 That this permit does not convey, expressly or
4 impliedly, any property rights in real estate or
5 material nor any exclusive privileges; nor does it
6 authorize the permittee to alienate, diminish,
7 infringe upon or otherwise restrict the property
8 rights of any other person or the public, nor shall
9 this permit be interpreted as appropriating public
10 properties for private use.

11 Then he continues his comments:
12 Therefore, if Respondent were to build a dock upon
13 land owned by the Navy, the permit, even if it could,
14 does not grant Respondent any ownership rights to the
15 land.

16 Did I state that clearly?

17 A. Yes, sir.

18 Q. Okay. And you were aware of that, and
19 explained that to your client, that this was in
20 there?

21 A. Yes, sir.

22 Q. Okay.

23 A. Any of the permits that are issued by the
24 State or OCRM, they are a license. The State is also
25 entitled to come in and remove a dock, if it deems it

1 necessary, so I explained that to them.

2 (PLF. EXH. 9, Map, was marked for
3 identification.)

4 BY MR. DOUGLAS:

5 Q. Next I want to hand you Exhibit 9, which
6 is an image from the screen of Berkeley County GIS
7 Mapping Service.

8 A. Okay.

9 Q. Are you familiar with the Berkeley County
10 GIS Mapping Service?

11 A. Yes?

12 Q. Do you on occasion use it to locate
13 property?

14 A. Maybe as a starting point. It's not
15 typically -- it's not relied on. It's typically
16 not -- we've had it vary in acreage, meets and
17 bounds, drastically. I think one of the worst ones I
18 had was in Dorchester where the Collins tract was
19 listed as a 356, plus or minus, acre tract. It's
20 shown as -- or shown as a 356 acre tract, and it was
21 156.

22 Q. So it's a starting point?

23 A. Well, no, they had meets and bounds on
24 their graphic that showed 300 acres.

25 Q. Okay. It was just wrong?

1 A. It was just wrong.

2 Q. So you might use it as a starting point,
3 but --

4 A. We rely on plats.

5 Q. -- you wouldn't include it in your title
6 opinion?

7 A. No, sir.

8 Q. Okay. Got you. Looking at Exhibit 9, if
9 one were to look at this, you can see at the bottom
10 the tax assessor has identified that parcel on the
11 Tax Mapping System at 2670000059, correct?

12 A. Yes, sir.

13 Q. And they've identified it as belonging to
14 the U.S. Government?

15 A. Yes, sir.

16 Q. Do you know how the tax assessor would
17 have come to know that this property belonged to the
18 U.S. Government?

19 A. Well, they are supposed to take plats and
20 use plats to form their meets and bounds. I don't
21 have an idea how they specifically came to that
22 conclusion, because based on the four corners of the
23 judgment, you couldn't plot that legal description
24 that's shown here.

25 Q. Right. There's going to be some

1 discrepancies between what they've drawn here and
2 what existed on the declaration of taking from 1965,
3 is that what you're saying?

4 A. I'm saying that the declaration from
5 taking of 1965 is too vague to plot, so you
6 couldn't -- there's no starting point. So you
7 couldn't -- the GIS could not have possibly plotted
8 this from the taking. That would be impossible.

9 (PLF. EXH. 10, Declaration of Taking, was
10 marked for identification.)

11 (PLF. EXH. 11, Land Acquisition Map, was
12 marked for identification.)

13 BY MR. DOUGLAS:

14 Q. I'm now going to hand you Exhibit 10 and
15 11, which Exhibit 10 being the Declaration of Taking
16 filed in Civil Action 8795 in the Charleston Division
17 of the Eastern District of South Carolina, United
18 States of America vs. 72.5 acres of land, et cetera,
19 along with Exhibit A, and Exhibit 11, which we just
20 marked, is a reduced-size plat of Exhibit B to the
21 Declaration of Taking.

22 A. I didn't see any Exhibit B on the
23 Declaration of Taking.

24 Q. You don't remember seeing a reference in
25 there to Exhibit B?

1 A. There was no Exhibit B attached to the
2 judgment.

3 Q. You didn't see when you went and looked in
4 the Clerk of Court's office?

5 A. When I was delivered a copy of the
6 recorded --

7 Q. Okay.

8 A. -- judgment.

9 Q. Okay. Looking at what's marked Exhibit
10 B --

11 A. Yeah, no one has ever provided me with
12 this drawing.

13 Q. You have seen Exhibit A and the
14 Declaration of Taking though, correct?

15 A. Yes, sir, yeah. Exhibit A isn't the legal
16 description. That's just the list of property
17 owners.

18 Q. Right. Well, Exhibit A is a description
19 of a number of tracts of land, beginning with two,
20 three, four and so forth.

21 A. I see it, yes.

22 Q. And then there's a Schedule A attached to
23 Exhibit 8, which lists the properties owner and their
24 estimated just compensation, correct?

25 A. Yes.

1 Q. If we go to the parcel descriptions, it
2 says, for instance, Parcel 2, the first one -- let's
3 just skip over to Parcel 4 since that's the one dock
4 crosses. Parcel 4, the description there says that
5 it: Lies wholly within and is a part of St. Thomas
6 Parish, Berkeley County, South Carolina, as shown on
7 Bureau of Yards and Docks Drawing No. 1022237, and is
8 more fully described as follows, and then it gives a
9 meets and bounds description, correct?

10 A. Yeah, but you couldn't find that
11 without -- unless this was recorded.

12 Q. Okay.

13 A. It would be like I'm selling you a parcel
14 of ground 50 x 100 in Mount Pleasant.

15 Q. To be clear here, in order to know for
16 sure what property the Government took in 1965, you
17 would have to look at both Exhibit 10 and Exhibit 11?

18 A. In my opinion, yes, that's correct.

19 Q. And if you only had Exhibit 10 and that
20 was the only part that you had available, you would
21 not be able to locate the property?

22 A. That's correct. And I think that's what
23 the problem was with the administrative law order.
24 He said that this was too vague on its -- in its
25 form, it was too vague on the four corners of that

1 document to find that the Navy owned the ground.

2 Q. Do you know if anybody bothered to provide
3 the administrative law judge with a copy of the
4 drawing, exhibit marked as Exhibit 11 here?

5 A. I think that he was provided with a copy
6 of the judgment and it didn't have a copy of the
7 drawing attached to it. I don't think the Navy ever
8 took the time to send over a copy of that drawing.

9 Q. You don't think they did, or do you know
10 whether they did or not?

11 A. I can't tell from the order, but I can
12 tell if this is -- if this matches this, I can tell
13 from looking at this, he would not have had a
14 difficult time in ruling in the Navy's favor in the
15 very beginning when they -- didn't they revoke it
16 prior to 2004?

17 Q. You said ruling in the Navy, you
18 understand the Navy was not a party to that action?

19 A. Well, the Navy was notified, could have
20 spent 15 cents, or whatever it was at the time, to
21 send over a copy of the plan.

22 Q. But you understand they weren't a party to
23 the action?

24 A. I'm not -- I'm not a litigator, so I'm not
25 positive. All I know is that what the administrative

1 judge order said, that the permit was valid and that
2 he could not -- that the Navy did not show that they
3 owned the ground.

4 Q. He said the information before him was too
5 vague for him to tell?

6 A. Right.

7 Q. Now, you've indicated you researched the
8 title to Lot 12, and then you had Todd go back and
9 research the title to Lot 12 again, correct?

10 A. Lot 12, and I asked him specifically to
11 look for anything --

12 Q. In the marsh?

13 A. That's correct, because it's always --

14 Q. I'm sorry. Go ahead.

15 A. It's presumed that the State of South
16 Carolina owns it unless otherwise designated on
17 something.

18 Q. Okay. But when you did your original
19 title work for Mr. Roberts and the closing, at that
20 point, you didn't pay any attention to the chain of
21 title on the marsh? You didn't search the title for
22 the marsh?

23 A. I did not specifically do a -- I don't
24 specifically know what that's called, but I wasn't
25 specifically looking for a King's Grant or something

1 on the marsh. I wasn't specifically looking at the
2 marsh. I was looking at the title to the upland,
3 which is what I was going to insure for the title to
4 the property. And then I was also looking at the
5 permit, and the administrative law judge and the
6 parties who had been involved in the litigation of
7 that permit and the reinstatement of the permit as to
8 whether they thought it was still valid and whether
9 or not I could form opinion, and I thought it was a
10 valid permit based on -- I thought it was reasonable
11 to rely on an administrative law judge order.

12 Q. Okay. Just to clarify, I think I
13 understand your statement. Just to make sure it's
14 clear on the record, your title opinion just dealt
15 with the upland?

16 A. The title only deals with upland because I
17 cannot insure marsh.

18 (PLF. EXH. 12, Plat, was marked for
19 identification.)

20 BY MR. DOUGLAS:

21 Q. And I'm going to hand you what's marked as
22 Exhibit 12, which is a recent -- are you with me?

23 A. I'm just trying to read some of these
24 numbers. They are very small, Exhibit 12.

25 Q. This is a recent survey of Lot 12 Yellow

1 House, LLC's property, and the dock in its existing
2 position. Just to make sure I understand what's
3 going on here, when you did the title search for Lot
4 12, did it go down just to what's shown here as the
5 edge of marshland, that would be the beginning of the
6 dock?

7 A. Well, it's -- I took it off of -- we used
8 plats for conveyancing. So the plat, I believe,
9 bears Mingo, is the plat we use for conveyancing.
10 Here's Mingo.

11 Q. And let me see.

12 A. So it went 1001 feet down to marsh. So I
13 don't know on this line where those pins were fall on
14 your survey.

15 Q. Okay. This shows marshland at the end of
16 this tract, which is the one that you conveyed,
17 correct?

18 A. Yes, sir.

19 Q. Or handled the closing on. And there's an
20 iron pin at the upper right -- or excuse me, looking
21 at it as it sits there, the upper left end of that
22 parcel has an iron pin in it. And the surveyor here
23 found an iron pin at the edge of the marsh in
24 approximately that location. I guess we can't tell
25 for sure that's the same iron pin, right?

1 A. That's why I said I have to know that.

2 Q. But in general, what's shown on this as
3 ending at the iron pins there at the end of the marsh
4 and edge of the marsh was generally the same edge of
5 the property line that you handled the closing on?

6 A. Well, I don't see -- where are you saying
7 that; this old iron pin you are saying, this?

8 Q. I'm saying here there's by the code there,
9 that says that's an iron pin that was found when they
10 did the survey.

11 A. I have to know the distance on here to
12 tell you if that's correct.

13 Q. Okay.

14 A. So I can't tell.

15 Q. Let's speak a little more generically.
16 The line of the marsh here, assuming that's shown
17 accurately, would correspond basically to the end of
18 the parcel that you did the title search on?

19 A. Well, again, I can't tell the distance
20 on -- if you know the distance from these two points,
21 then I could answer that a little better, but I know
22 that this shows it ending at the marsh, the one we
23 conveyed.

24 Q. This shows the dotted line ends at the
25 marsh as well?

1 A. Is that what this delineation is showing
2 right here?

3 Q. If you look just above that, it shows edge
4 of marsh highland as shown on --

5 A. Okay.

6 Q. Et cetera. All right. Given the fact
7 that there may be some discrepancy in terms of the
8 exact location of the marsh when it was surveyed here
9 compared to when that plat was prepared, in essence,
10 your title search covered the highland portion ending
11 at the marsh, correct?

12 A. My title search --

13 Q. And your title opinion?

14 A. And my title opinion dealt with this plat,
15 a plat shown as Tract A on that plat. That's what it
16 dealt with, yes.

17 Q. Okay. Which is in approximately the same
18 location as this showing Lot 12 Yellow House, LLC?

19 A. Well, I hate to say it again, but without
20 that dimension, I can't really confirm that. It's
21 just a dotted line right now. I don't know the
22 scale.

23 Q. Going out here to where the dock is in the
24 marsh and then out at Yellow House Creek, did your
25 original title search and your opinion in any way

1 deal with chain of title for that property?

2 A. The title search, no, sir.

3 Q. Okay. In terms of determining the
4 ownership of this portion which is shown
5 cross-hatched on Exhibit 12, identified as U.S.
6 Government property, you spoke with the individuals
7 you've talked about, Mary Shahid, Donaldson --

8 A. Rob Donaldson.

9 Q. -- your client, you read the
10 administrative law judge's decision and you saw the
11 letters from Leopold to the CO and the CO to Leopold,
12 and you made those phone calls that are --

13 A. Right, noted.

14 Q. -- noted on that?

15 A. And we also had that letter from OCRM to
16 the Navy saying, you know, it's been appealed, we are
17 going to hold their placard and then -- so, yes, I
18 reviewed those documents. And I relied on the
19 administrative law judge's order that the permit was
20 valid. And based on his order, the State of South
21 Carolina was the one that he's presuming had the
22 jurisdiction to grant that permit.

23 (PLF. EXH. 13, Letter dated 7/7/08, was
24 received and marked for identification.)

25 BY MR. DOUGLAS.

1 Q. I hand you Exhibit 13, which is a letter
2 from July 7th of last year to you from Fran Trapp.
3 Do you recall that letter?

4 A. Yes, sir. Actually, this is the one that
5 I think I mentioned earlier. I was out of the office
6 and my assistant responded to -- is it Ed Smith? I
7 think Ed Smith is Fran's assistant, saying that I was
8 out of the office and respond. And then I believe I
9 gave Fran a call and said, let's get together and
10 figure out what's happening here.

11 Q. And we had a subsequent meeting, correct?

12 A. That's correct.

13 Q. That was here in this office?

14 A. That's correct.

15 Q. And you had received a couple of previous
16 letters from Ms. Trapp, correct?

17 A. I think that was -- no, I think that they
18 were sent to 940 Johnnie Dodds and not faxed, and
19 940 -- I was given -- I was building a new office
20 building. I gave my landlord, who I thought was a
21 friend of mine, over a year's notice. And he gave me
22 30 days notice to get out in October. So I was in a
23 temporary location until April of '08. So I think I
24 told Fran at the time that I had not received the
25 prior.

1 Q. So the first two letters that went to you
2 weren't delivered?

3 A. Right.

4 Q. And this one was faxed?

5 A. And then I got that. Subsequently, I did
6 get the backup that here was the letters. And I
7 think it may have gone to -- I think Mary may have,
8 after the fax, sent it to me, because I called her
9 and said, have you heard anything on this in July
10 of '08. And then she sent me the letter that she had
11 sent because she was -- I think she was sent the
12 letter first and then responded she wasn't -- sorry,
13 she wasn't representing any of the parties in the
14 transaction, she only represents Stone.

15 Q. Only represented him in regard to the
16 permit application?

17 A. That's correct.

18 Q. Okay. At no time, either by letter to the
19 Navy or letter to U.S. Attorney's Office, did you
20 allege to anyone that someone from the Navy had
21 explicitly given permission to your client to build
22 the dock, did you?

23 A. I haven't alleged now that they explicitly
24 gave me permission, no.

25 MR. DOUGLAS: If I can have just a moment

1 with my colleague here, and we will be right back in.

2 (A recess transpired.)

3 BY MR. DOUGLAS:

4 Q. You mentioned Keith Donaldson.

5 A. Rob.

6 Q. Rob Donaldson. What is Rob Donaldson's
7 role in this? Who did he represent?

8 A. He was the attorney who did the prior
9 closing before Stone.

10 Q. Right. Okay. And you said you had
11 communications with Mary Shahid about this. Were
12 those telephone communications or did she write you a
13 letter?

14 A. They were telephone communications and
15 then she gave me any correspondence she had between
16 OCRM and herself, yeah.

17 Q. Was she the one that wrote -- right, she
18 wrote a letter for you in connection with the closing
19 saying that there had been no contact, or really that
20 basically set forth what went on with the permit; is
21 that correct?

22 (PLF. EXH. 14, Dock Permit, was marked for
23 identification.)

24 BY MR. DOUGLAS:

25 Q. I'm going to hand you Exhibit 14. This is

1 dated the day of closing.

2 A. Yes.

3 Q. So presumably, it was done in conjunction
4 with closing, that is the top of this. And I'm
5 assuming these two went together, because they were
6 together in the materials that Mr. Stone provided to
7 us, but I don't know that for sure. The first is an
8 affidavit by Thomas Stone saying that he hadn't had
9 any contacts from the Government since the letter was
10 written on behalf of Mary Shahid. And apparently
11 attached to that was the letter July 12th, 2005 from
12 Mary Shahid; is that correct?

13 A. That's correct.

14 Q. And that you mentioned before, this was --
15 in essence, you were making sure that the Government
16 hadn't taken any positions, or at least the State
17 Government hadn't taken any positions about the
18 permit since the date that Mary Shahid wrote that
19 letter?

20 A. Well, I wanted to make sure that any
21 governmental agency hadn't taken any -- whether
22 Federal Government, State Government, something
23 hadn't happened since -- because I wasn't in the loop
24 yet, I wouldn't have been notified.

25 Q. Right. The July 12th, 2005 letter is the

1 one we spoke about before where Mary Shahid was
2 simply notifying OCRM that as a matter of law, the
3 permit was extended, correct?

4 A. That's correct.

5 Q. And then the additional affidavit is just
6 to ensure that Mr. Stone himself had not been
7 contacted by anybody from the Government, any
8 government, about the permit since that letter?

9 A. That's correct.

10 Q. Okay. But Mary Shahid did not send you a
11 letter independently of this in regard to the permit
12 or anything having to do with this case?

13 A. I do not believe she did.

14 MR. DOUGLAS: I don't have any other
15 questions. Do you have any?

16 EXAMINATION

17 BY MR. BARNETT:

18 Q. I do. Before the closing, Roberts and
19 Kevin bought the property from Stone. You said you
20 did something to check the title. You actually went
21 to the Berkeley County Courthouse; is what you said?

22 A. Berkeley County RMC's office.

23 Q. Do they call it Registrar of Deeds now?

24 A. Well, it was Registrar of Means
25 Conveyance.

1 Q. Well, there are two different things on
2 these deeds I was looking at. A few years ago, it
3 was RMC. Now they call themselves Registrar of
4 Deeds. Is there any difference in what they did?

5 A. No. All they do is keep a record.

6 Q. Okay. And you didn't find any record of
7 ownership by the United States Government on any part
8 of the property you were checking; is that right?

9 A. That's correct.

10 Q. Now, you said you looked for judgments?

11 A. That's correct.

12 Q. And you didn't find any judgments in your
13 search that were tied to the property that you were
14 searching the title for?

15 A. That's correct.

16 Q. And that would have been in the Clerk of
17 Court's office?

18 A. That's correct.

19 Q. But you said you only went back 10 years;
20 did I hear you right?

21 A. That's correct.

22 Q. Now, you knew at that time that you were
23 doing your title search and otherwise advising
24 Mr. Roberts, that there had been an issue involving
25 an assertion of ownership of some of the submerged

1 land, marsh area, by the United States Government.

2 You knew about that, right?

3 A. That's correct.

4 Q. As I heard you, you said you read Trip
5 Anderson's decision in the ALC case --

6 A. That's correct.

7 Q. -- from April 2005 filed June the 3rd,
8 2005. All right. And you read his conclusion.
9 Mr. Douglas read one of his statements, but on Page 7
10 he says that: The evidence did not establish that
11 the Navy is an adjoining land owner. Here it appears
12 that respondent does not share a boundary with the
13 Department of the Navy. More importantly, the 1969
14 judgment references a tract of land, but the evidence
15 did not establish what portion of the condemned
16 property is owned by the Navy.

17 Furthermore, the evidence did not
18 establish that the Navy even owns the disputed land.
19 The 1969 judgment did not clearly set forth that the
20 property upon which respondent's dock will lie is the
21 property that was condemned to the United States.

22 Here it is. You've talked about that with
23 Mr. Douglas in your answers, that you were aware of
24 this statement?

25 A. Yes, that's correct.

1 Q. All right.

2 A. So then based on that, South Carolina has
3 jurisdiction over marsh area unless otherwise
4 provided. So they were just in giving the permit to
5 cross over the marshlands.

6 Q. Okay. And you have looked subsequently at
7 what Mr. Douglas handed you, the Declaration of
8 Taking and the legal descriptions, including that of
9 Parcel Number 4; is that right?

10 A. That's correct.

11 Q. All right. If Trip Anderson in the
12 evidence that was provided to him at this hearing did
13 not have in his possession the plat that Mr. Douglas
14 showed you -- I don't remember the exhibit --

15 A. Exhibit B, I believe.

16 Q. Exhibit B called out on the Declaration of
17 Taking, right, but if he didn't have this, is there
18 anything wrong with his conclusion on Page 7 of his
19 order, that he couldn't tell what the Government
20 owned?

21 A. No, I think from the four corners of that
22 document, you can't place where that taking was --

23 Q. Okay.

24 A. -- without that plat.

25 Q. All right. But you didn't stop there, did

1 you? Didn't you contact the Navy trying to find
2 somebody --

3 A. Yes, sir.

4 Q. And what was the question you were asking
5 them?

6 A. I asked whether or not they were aware of
7 the permit for the Stone piece. And they said that
8 had already been litigated. And after that
9 conversation, I then spoke to Mary and said -- that's
10 where I wanted to find out if she had -- because I
11 knew that OCRM had sent a letter to the Navy saying
12 he's appealed it and there's an appeal period.
13 I don't have the letter in front of me.

14 Q. I'm asking you just about your
15 conversation with these folks in the Navy.

16 A. Yes.

17 Q. Did you make it plain to them, or as I
18 understand it, you made it plain to them that you
19 represented a guy who was wanting to building this
20 dock?

21 A. That's correct.

22 Q. They knew that?

23 A. That's correct.

24 Q. And you say you don't remember exactly who
25 it was you've talked to, but as I understand it from

1 these notations, it was either Mr. Nelson or
2 Mr. Ryan; is that correct?

3 A. That's correct.

4 Q. And they were in the same office?

5 A. I was given a number first from RDA. I
6 was referred by -- Linda Davis gave me a number for
7 them, and I believe they were both at that same
8 number.

9 Q. Are these these 820 numbers down here?

10 A. Yes.

11 Q. And Mr. Nelson, a letter that Mr. Douglas
12 showed you, signed as a director of the Real Estate
13 Division, something at the top, but I believe that
14 would show that he was with an outfit called the
15 Naval Facilities Engineering Command. Did you know
16 that that's who he was when you were talking to him,
17 whoever this was?

18 A. I was told by Linda Davis that either
19 Robert Ryan or Raymond Nelson were the parties that I
20 needed to discuss it with. And as I mentioned
21 earlier, I was not able to put my hands on my notes.

22 Q. Just want to be clear. So they knew that
23 you were speaking to them because you represented
24 somebody who wanted to build this dock; is that
25 right?

1 A. Yes, sir.

2 Q. And they never said to you: Your client
3 cannot build that dock, did they?

4 A. No.

5 Q. Did they say anything like that?

6 A. The only answer that I had, that I
7 remember very clearly, was that that permit had been
8 litigated. They were aware that it had been
9 litigated. And so that's when I went back to Mary to
10 find out if she had any other -- I wanted to find out
11 expiration of appeal periods. I wanted to find out
12 if it was settled law. And that's why I was relying
13 on the administrative law order.

14 Q. Okay. So you read Judge Anderson's
15 opinion?

16 A. Yes.

17 Q. You had been to the courthouse?

18 A. Yes.

19 Q. You contacted the Navy and talked to the
20 people to whom you were referred who could answer
21 your question about whether it was okay to build this
22 dock, right?

23 A. Yes.

24 Q. And based on the decision that Judge
25 Anderson made, based on, he says in his footnote, the

1 evidence that the Navy provided to the court, which
2 did not include witnesses, based on your
3 conversations with the Navy people to whom you were
4 referred, you advised your client that it was okay to
5 build the dock?

6 A. Based on the administrative law judge
7 order, the conversation with the people over at RDA
8 and the Navy, and the conversations I had with Mary
9 and her opinions on the permit and the validity now
10 of the permit based on the administrative law order
11 and the appeal period passing; I discussed all those
12 with my client.

13 Q. Now, at the time that you were doing all
14 this, you obviously were not an employee of the Navy;
15 is that right?

16 A. That's correct.

17 Q. You weren't in the Navy Reserves or
18 anything?

19 A. I've never been in any of the armed
20 forces.

21 Q. You were not a personal friend of whoever
22 the Secretary of the Navy was?

23 A. Don't have a clue who it would be.

24 Q. So you went to the resources to which you
25 were directed?

1 A. That's correct.

2 Q. And in your mind, that seemed like the
3 appropriate thing to do?

4 A. That's correct.

5 MR. BARNETT: That's all I've got.

6 EXAMINATION

7 BY MR. DOUGLAS:

8 Q. Looking at Exhibit 12, which is a recent
9 survey of the area. Okay? Presuming that this is
10 properly surveyed, okay, and that this parcel of land
11 shown as belonging to Lot 12 Yellow House, LLC is, in
12 fact, the property that you did the closing on, and
13 that the boundaries are accurate, at the end of the
14 property here, it goes into marshland. And then
15 further out, we have this boundary line, which is
16 taken from the 1965 drawing and Declaration of Taking
17 by which the government took the property. Okay?

18 A. Ah-huh.

19 Q. This portion, this property between the
20 highland and the boundary where the Government took
21 in 1965, to whom would that belong, in your opinion?

22 A. Well, as I said earlier, if this survey
23 matches the plat which I had the title work on, then
24 it would belong to South Carolina, State of South
25 Carolina.

1 Q. Okay. And in that particular finding then
2 of the administrative law judge that the Government
3 was not an adjacent property owner to then Mr. Stone
4 when he filed the permit, would, in fact, be correct,
5 because even assuming the Government took this land
6 properly, there's property of South Carolina between
7 the U.S. Government land and Mr. Stone's land?

8 A. But I'm not sure that this survey matches
9 the plat that was in evidence when --

10 Q. I'm asking you to assume that this was
11 properly surveyed, that the surveyor has drawn on
12 this the proper dimensions for the property that was
13 on the 1965 or the 1964 drawing by the Bureau of
14 Yards and Docks which was the basis for the taking
15 that was filed in 1965. And I also want you to
16 assume that this outline of Lot 12 Yellow House, LLC
17 has been properly platted by the surveyor on Exhibit
18 12. Then there is showing a gap here of marshland
19 between what was Mr. Stone's property when the permit
20 was issued and the Government property. And as you
21 just said, that would belong to the State of South
22 Carolina; is that correct?

23 A. That would be my assumption.

24 MR. DOUGLAS: Okay. I'm done.

25 EXAMINATION

1 BY MR. BARNETT:

2 Q. I do have one more. You have done, you
3 said, lots of title searches in South Carolina?

4 A. Yes.

5 Q. Have you in your title searching found
6 titles to property owned by the United States?

7 A. Yes.

8 Q. What is an example of that, which agency
9 is using the property?

10 A. Forestry service.

11 Q. And how is that recorded in the records?

12 A. By deed.

13 Q. The deed was actually in the records with
14 all the other deeds?

15 A. Deeds with plats.

16 Q. Any difference between how they were
17 reported and indexed vis-a-vis property owned by
18 private citizens?

19 A. Yes. This one was not indexed under all
20 the owners. And, yes, in the chain of title, we can
21 typically rely on the fact that if we go back through
22 a chain of title, we will be able to see each of the
23 owners and any out -- grants out from the parcels,
24 and that's what we would see, grant from John Smith
25 to Department of Forestry.

1 Q. So far as you know, there's nothing
2 prohibiting the United States Government from
3 recording its titles in the chain of title the way
4 other people do?

5 A. Oh, no, not that I know of.

6 Q. Would there be benefits to the United
7 States from having its titled recorded like other
8 people do?

9 A. Yes, because then it's a -- then somebody
10 doing a reasonable search of a property could
11 ascertain the ownership of the property and see that
12 the meets and bounds and the legal descriptions of
13 the properties, so that you don't have -- well, you
14 don't have people encroaching on government people.
15 You don't have the Government encroaching on other
16 property. And the Forestry is a good example,
17 because all of those takings, it cleaned up a lot of
18 lot lines in McClellanville, Awendaw, by their
19 recording of the plats.

20 Q. Assuming what the Government says is
21 correct, that they are not obliged legally to record
22 their title the way everyone else is, assuming that
23 the right, would it still be an exercise of due care,
24 do you think, for the Government to protect its own
25 interest by recording its title the way everyone else

1 does so it could be properly found?

2 A. Yes. I think it's -- I think we are in
3 this unreasonable situation right now because there
4 was no record indication of the Government owning
5 that property.

6 MR. BARNETT: Okay. Thank you.

7 EXAMINATION

8 BY MR. DOUGLAS:

9 Q. As an experienced real estate
10 practitioner, you are aware that the purpose for
11 filing deeds and other conveyances is to give notice
12 of ownership claims, correct?

13 A. Yes.

14 Q. Your client and you were both on notice
15 that the Government was claiming the property in
16 question prior to closing; were you not?

17 A. Yes.

18 MR. DOUGLAS: Nothing further.

19 MR. BARNETT: I am truly done.

20 (The deposition was concluded at 11:10
21 a.m.)

22

23

24

25

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to, nor counsel for, any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 30th day of September, 2009 at Charleston County, South Carolina.

Karen V. Andersen,
Registered Professional Reporter
My Commission expires:
September 14, 2016

1 STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
 2 COUNTY OF CHARLESTON) CASE NO. 11-CP-10-3241
 3
 4 KEITH ROBERTS AND LOT 12 YELLOW)
 HOUSE, LLC,)
)
 5 Plaintiffs,)
)
 6 vs.)
)
 7 RANDALL J. DREW,)
)
 8 Defendant.)

9 * * * * *

10 DEPOSITION OF: KEITH ROBERTS
 11 DATE TAKEN: Monday, November 14, 2011
 12 TIME: 10:00 a.m.
 13 PLACE: Suite 400, 40 Calhoun Street
 Charleston, SC
 14 REPORTED BY: TERI L. SAMPSON, RPR,
 15 Notary Public and Certified
 Live Note Reporter
 16

17 * * * * *

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25

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 CHARLESTON, SOUTH CAROLINA 29413-1784

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1 I N D E X

2

WITNESS: KEITH ROBERTS

3

Examination Page

4

BY MR. COUNTRYMAN. 7

5

REPORTER'S CERTIFICATE 152

6

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7

EXHIBITS:

8

Defendants's

9

Exhibit

Description

Page

10

1

Amended Notice of the
Deposition of Keith Roberts

8

11

2

Deposition of Keith Roberts

11

12

3

Agreement to Buy and Sell Real
Estate, Roberts 02015 through
02019

15

14

4

Final Order and Decision, Drew
00149 through 00174

28

15

16

5

July 12, 2005 letter to Curtis
Joyner from Mary Shahid, Drew
00186 through 00188

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17

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6

Settlement Statement, Drew
00244 through 00247 and 00250
through 00253

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20

7

Amortization schedule, Roberts
02001 and 02002

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8

August 22, 2005 letter to Keith
Roberts from Tess Rodgers with
attachments, Drew 00428 through
00429, 00141 through 00145 and
Cogan 00119 through 00121

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25

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6		00529 through 00530; and August 8,	
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27	28	Home Equity Line of Credit	
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1	EXHIBITS: (Continued)		
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7	35	Undated letter to Congressman Clyburn from Thomas Dickerson, Roberts 01418	133
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STIPULATIONS

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the reading and signing of the transcript is expressly reserved by the Deponent.

1 CHARLESTON, SOUTH CAROLINA, MONDAY, NOVEMBER 14, 2011

2 10:00 A.M.

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

4 - - - - -

5 WHEREUPON,

6 KEITH ROBERTS,

7 being first duly sworn, testified as follows:

8 EXAMINATION

9 BY MR. COUNTRYMAN:

10 Q Mr. Roberts, my name is Andy Countryman. I
11 represent the defendants in this legal malpractice case
12 that you and your LLC, Lot 12 Yellow House, LLC, have
13 brought. Are you familiar with that?

14 A Yes, sir.

15 Q And I know you've been deposed at least once
16 before, correct?

17 A Yes.

18 Q Is that the only time?

19 A There may have been one other. I can't --
20 it's kind of tough to remember.

21 Q Okay. But definitely in that federal case
22 that's related to this one?

23 A Yes, sir.

24 Q Okay. So you know a little bit about the
25 rules. Basically, I need to tell you that during the

1 deposition, if you have any questions about what I'm
2 saying, any issues with my questions, let me know, get
3 clarification from me, as opposed to from your lawyer
4 while the deposition is going on.

5 If we take break, which we can do whenever
6 you want, just don't talk to your lawyer about the
7 case.

8 A All right.

9 Q And as you can see, the court reporter is
10 taking down everything that we say, so it's important
11 that we try not to speak over each other and that we
12 give audible responses, and I'll do my best to give
13 clear questions. Fair enough?

14 A Yes.

15 Q And again, you're under oath and so I'm going
16 to assume that everything that you say is true,
17 accurate, and honest, to the best of your ability. Is
18 that fair?

19 A Yes.

20 Q And we'll look at some documents today, and
21 the first one is just going to be the notice of your
22 deposition. I'm not going to ask you to do anything
23 with it.

24 (Defendant's Exhibit 1 marked.)

25 BY MR. COUNTRYMAN:

1 Q As the process goes, the court reporter will
2 put a sticker on the documents and then I'll give them
3 to you to check out.

4 Can I get your full name for the record,
5 please.

6 A Keith Warren Roberts.

7 Q And where were you born?

8 A Halifax, Nova Scotia, Canada.

9 Q All right. How did you end up in the
10 Charleston area?

11 A By luck. I was -- I moved to Fort Lauderdale
12 from Philadelphia and a car dealer called and wanted me
13 to come up and work for him, so I moved my family up in
14 1984.

15 Q All right. And is your family still with you
16 in Charleston today?

17 A Yes.

18 Q I assume that's a wife?

19 A Yes.

20 Q What's her name?

21 A Kathleen.

22 Q Same last name as you?

23 A Roberts, yes.

24 Q Any kids over the age of 18?

25 A Two.

1 Q Where are they located?

2 A One is in Columbia going to college. She's
3 19. And one is living down the street in Charleston,
4 working down here at 22. I've got two other children,
5 also, that are from previous marriages.

6 Q For jury selection purposes, what's the name
7 of the child that is in Charleston?

8 A Keith Roberts, Jr.

9 Q Any other relatives that you have in
10 Charleston County over the age of 18?

11 A None.

12 Q Tell me about your employment history. I
13 know you said you were in the car business.

14 A I started in the mid '70s in Fort Lauderdale,
15 worked for a company called Powell Ford. I left them
16 and went to work for a gentleman named Jimmy Bryan
17 (ph). I worked for him from 1976 to 1984, when I left,
18 came to work for Gene Reed Toyota here in North
19 Charleston, and left Gene February 1st, 1992, and have
20 been with Ron Hoover ever since.

21 Q Have all of those jobs been sales positions?

22 A Management positions.

23 Q What's your educational background?

24 A High school, some college.

25 Q What college?

1 A Broward County Community College.

2 Q What kind of classes did you take there? Was
3 it for any specific degree program?

4 A No.

5 Q Do you know how much you completed?

6 A If a year, maybe a year.

7 Q And what's your current employment position?

8 A I am the general manager of Hoover Jeep
9 Chrysler Dodge in Summerville and partner in Hoover
10 Motors in Moncks Corner.

11 Q What do you mean when you say a partner at
12 Hoover Motors?

13 A I own part of the dealership.

14 Q And you know that this lawsuit that we're
15 here to talk about today relates to a piece of property
16 that you bought in -- I think it was in Berkeley
17 County, in Daniel Island, correct?

18 A Yes, sir.

19 Q And I have here a transcript of your
20 deposition that you gave in the federal case on August
21 25, 2009. Do you recall giving that deposition?

22 A Yes, sir.

23 Q I'm going to hand you a copy of it.

24 (Defendant's Exhibit 2 marked.)

25 BY MR. COUNTRYMAN:

1 Q And we're not going to go through it line by
2 line, but is it safe to --

3 MR. COUNTRYMAN: And, Thomas, I have a copy
4 for you, too, if you want it.

5 MR. PENDARVIS: Thank you very much.

6 BY MR. COUNTRYMAN:

7 Q Is it safe to assume that you were honest in
8 your testimony in this deposition?

9 A Yes, sir.

10 Q No reason to think that there would be any
11 inaccurate testimony?

12 A Correct.

13 Q And can you confirm the status of that
14 federal case? My understanding is that there was a
15 Motion for Summary Judgment that remains pending?

16 A Absolutely correct.

17 Q All right. What's your understanding of the
18 substance of that motion, what are you waiting for the
19 court to determine?

20 A Just remains -- it's pending still with Judge
21 Houck.

22 Q But what's the decision before the court,
23 what is the court deciding?

24 A I believe it's whether or not the Navy has
25 the right to have me take the dock down.

1 Q But you don't currently own the property,
2 correct?

3 A Correct.

4 Q The bank owns the property?

5 A Yes.

6 Q And in this deposition transcript, it says
7 that you found the property through your friend, Pat
8 Crogan (sic), is that correct?

9 A Cogan.

10 Q Cogan, I'm sorry.

11 A Yes.

12 Q I didn't see a lot of background about that
13 in the deposition transcript. Can you give me some
14 details as to how you and Mr. Cogan came upon this
15 piece of property?

16 A He found it, asked me if I wanted to go into
17 partnership with him on developing the property, and I
18 said yes.

19 Q Were you-all looking for a piece of property
20 to go into business regarding?

21 A Not particularly.

22 Q Had you-all discussed doing that before he
23 found this parcel of property?

24 A He wanted to do something along those lines.
25 When he found the property, he may have gone to a

1 couple of other people, and then he came to me and we
2 agreed to do the deal together.

3 Q Had you-all done any kind of deal like this
4 before?

5 A No, sir.

6 Q How was the deal supposed to be set up
7 between the two of you as far as financing?

8 A I provided the financing. He did all the
9 work.

10 Q What was the plan regarding profiting from
11 this deal?

12 A Split the profit.

13 Q Did you have any idea what the profits were
14 going to be before you bought the property?

15 A That would be a guess. No, sir.

16 Q But you didn't have any specific expectation
17 when you bought the property as to how much you would
18 make from it?

19 A I had an idea what we'd like, but not --
20 nothing that we had put down in writing or...

21 Q What would you have liked, what was that
22 idea?

23 A A couple million dollars.

24 Q To split between the two of you?

25 A Yes.

1 Q Did you have a budget as to how much you
2 wanted to pay for this piece of property?

3 A Yes.

4 Q What was that?

5 A 525,000.

6 Q And then I think you ended up paying 475 for
7 that?

8 A Yes.

9 Q Tell me how the price went to 475 from 525.

10 A When the contract came back, he had scratched
11 out the offer and it went to 475.

12 Q I'm going to give you a copy of what I think
13 is the contract you're referencing so we can look at
14 it.

15 (Defendant's Exhibit 3 marked.)

16 BY MR. COUNTRYMAN:

17 Q Take a look at that. And this looks to be a
18 contract dated July 9, 2005, is that right?

19 A Yes, sir.

20 Q And is this the contract that you signed to
21 purchase the property that we're talking about?

22 A Yes.

23 Q And it looks like it was signed between --
24 well, it's listed the buyer as Keith Roberts and the
25 seller was Thomas Stone, correct?

1 A Yes.

2 Q And then it says, "The property shall be
3 deeded in the names of Keith and Kathy Roberts."
4 Correct?

5 A Yes.

6 Q Is there a reason that Mr. Cogan's name is
7 not on this portion of the contract?

8 A No.

9 Q Was there -- was that part of the plan?

10 A To be honest with you, I can't remember why
11 it's not on there.

12 Q And if you look at the last page, is that
13 your signature where it says "buyer"?

14 A Yes.

15 Q And you signed that at 4:10 p.m. on July 9th,
16 2005?

17 A Yes.

18 Q And Cheryl Hill was a witness?

19 A Yeah.

20 Q Is that correct? Who is Miss Hill?

21 A Real estate agent.

22 Q Is she your agent?

23 A Yes.

24 Q Where did you sign this contract? Or a
25 better question, do you remember where you were when

1 you signed the contract?

2 A No.

3 Q And look at Section 3 on the first page, you
4 mentioned a minute ago that there was a price scratched
5 out and another price written down there, and that's
6 what I see. Do you remember, when you first saw the
7 contract, what price was written in section three?

8 A I would imagine 525, because that's what's
9 crossed out.

10 Q Well, when you got the contract with the 525,
11 did you discuss that with Mr. -- with Mr. Stone and
12 negotiate the price down to 475?

13 A Not that I can recall, no.

14 Q Did you ever discuss this property with
15 Mr. Stone prior to the closing day?

16 A No.

17 Q Were all the negotiations done between the
18 real estate agents?

19 A I believe so.

20 Q And I know the main issue that we're here to
21 discuss is the Navy's claim to the marshland adjacent
22 to the property and its impact on the ability to have a
23 dock at the property, correct?

24 A Yes.

25 Q You were aware prior to the closing that

1 there had been the administrative law decision
2 regarding the ownership or the Navy's claim to the
3 marshland adjacent to the property, were you not?

4 MR. PENDARVIS: Form objection. Answer if
5 you can.

6 A (Continuing) Can you repeat the question?

7 Q Sure. Were you aware of the administrative
8 law court's case -- strike that.

9 Were you aware of the administrative law case
10 regarding the Navy's claim of ownership to the
11 marshland adjacent to the property prior to closing?

12 A I was aware that --

13 MR. PENDARVIS: Form objection. I'm sorry.
14 I'm going to make an objection. Let me do that
15 and then you can answer.

16 A (Continuing) I was aware there was an issue
17 with the -- with the administrative law judge.

18 Q What was your understanding of that issue?

19 A That there were some issues with the dock
20 permit and -- with Mr. Stone and he had to go before
21 the administrative law judge, present his case, and
22 then the dock permit was reissued, reinstated,
23 reissued.

24 Q Who told you that information?

25 A I believe we got the information from Randy

1 Drew.

2 Q When?

3 A At some time in between July 9th and closing.

4 Q And closing took place, I think, on August
5 17, 2005, does that sound right?

6 A Sounds about right.

7 Q When did you first talk to Mr. Drew about
8 this transaction?

9 A About the transaction with the administrative
10 law judge?

11 Q About purchasing this -- potentially
12 purchasing this property.

13 A After Pat Cogan and I had discussed whether
14 or not we wanted to do a deal.

15 Q Do you know about when that was?

16 A Sometime in -- prior to July 9th of '05.

17 Q Do you know how long -- do you know how much
18 time passed between the time you and Mr. Cogan talked
19 about doing the deal and the time that you signed this
20 contract on July 9th, 2005?

21 A It may have been within 30 days.

22 Q Did you ever talk to Mr. Cogan about these
23 issues with the dock permit and the Navy's claim to the
24 marshland?

25 A Yes.

1 Q Before the closing?

2 A Yes.

3 Q How many times?

4 A It's hard to say.

5 Q Is it fair to say that was an ongoing issue
6 that the two of you were discussing?

7 A Yes.

8 Q What did you-all do besides talking to
9 Mr. Drew to get information about that issue, if
10 anything?

11 A We relied on the information from Randy Drew.

12 Q Aside from talking with Mr. Drew, did you-all
13 take any steps to learn more about that issue prior to
14 closing?

15 A No.

16 Q Didn't talk to anybody at the Navy?

17 A No.

18 Q Did you talk to your real estate agent about
19 it?

20 A I can't recall.

21 Q Do you know if you talked to Mr. Stone about
22 it?

23 A I did not.

24 Q Do you know if you talked to Mr. Stone's real
25 estate agent about it?

1 A I met him at the closing the first time.

2 Q Did you discuss this contract with Mr. Drew
3 before you signed it?

4 A Yes.

5 Q Where did that take place?

6 A I'm not sure if it was on the phone or in his
7 office.

8 Q Do you remember the substance of the
9 conversation?

10 A Regarding the contract?

11 Q Yes, sir.

12 A We had discussed that the price was dropped
13 to 475 based on the contract not contingent on a dock
14 permit.

15 Q When you say "we discussed," do you mean you
16 and Mr. Drew or you and Mr. Stone?

17 A Mr. Drew.

18 Q I guess the next question I have is, when you
19 signed the contract, did the contract look as it does
20 now, or were there alterations made to it?

21 A I can't recall.

22 Q Well, I see on this first page next to that
23 section about price a THS that looked to be dated
24 7/11/2005. Do you see that?

25 A Yes.

1 Q Do you know if that's Mr. Stone's initials?

2 A I would guess it was, but I don't know for a
3 fact.

4 Q Did you attend his deposition in the federal
5 case?

6 A No, sir.

7 Q He said in his deposition that the reduction
8 in price was specifically to relieve him of any
9 liability regarding the dock permit in the future. Did
10 you two discuss that?

11 A Mr. Stone?

12 Q Yes.

13 A Not that I can recall.

14 Q Did you discuss that with Mr. Drew?

15 A I discussed the dock permit issue with
16 Mr. Drew.

17 Q All right. Prior to closing, did you --
18 strike that.

19 When you say you discussed the dock permit
20 issue with Mr. Drew, did you discuss it with him prior
21 to closing in the context of reducing the price from
22 525 to 475?

23 A Probably.

24 Q You don't remember for sure?

25 A No.

1 Q To the best of your knowledge or
2 recollection, who initiated the reduction in price?

3 A Tommy Stone.

4 Q Do you remember if you discussed that with
5 him at the closing?

6 A The reduction?

7 Q Yes, sir.

8 A I don't believe I did.

9 Q Do you remember the closing?

10 A Yes.

11 Q Do you remember who attended?

12 A I believe it was Randy Drew, Mr. Stone, and
13 his real estate agent.

14 Q So can you tell me one way or another whether
15 you agreed to the reduction in price in exchange for a
16 release of liability of Mr. Stone related to any issues
17 that might arise regarding the dock permit?

18 A I believe I did.

19 Q The closing took place without incident, is
20 that fair to say? In other words, you received title
21 to the property at the closing?

22 A I don't recall if I received title at the
23 closing.

24 Q The result of the closing was that you
25 received title to the property?

1 A Yes.

2 Q If you look on, I think, page 4 of the
3 contract, there's some handwritten language, Section
4 30, that says "Contingencies."

5 A Yes, sir.

6 Q Whose handwriting is that, do you know?

7 A No, sir.

8 Q Is it yours?

9 A No.

10 Q Do you know whose initial that is on the
11 bottom left-hand corner where it says "buyer"?

12 A Mine.

13 Q I see where it says, "seller to provide any
14 and all information on lot to include copy of its
15 survey." Do you see that?

16 A Yes.

17 Q Did he provide you with a copy of a survey
18 prior to the closing?

19 A I believe so.

20 Q Did you review it personally?

21 A If I did, it was with Mr. Drew.

22 Q Do you know how many times you met with
23 Mr. Drew to talk about this deal before the closing?

24 A In person?

25 Q Yes.

1 A I don't remember the exact amount of time.

2 Q Do you remember discussing the survey with
3 him?

4 A Yes.

5 Q Do you remember the results or the substance
6 of those conversations? Were there any issues with the
7 survey that the two of you discussed?

8 A Not that I can recall.

9 Q Underneath that line, it looks like it says
10 "dock permit and wetlands studies within five days."
11 Do you see that?

12 A Yes, sir.

13 Q What does that -- what does that mean in the
14 context of this contract? I'm sorry. I probably
15 misread that. It looks like it says he was supposed to
16 include a copy of the dock permit?

17 A Yes.

18 Q Did you get a copy of the dock permit within
19 five days of signing the contract?

20 A Yes.

21 Q Was the dock permit active at that time, or
22 had it been --

23 A Yes.

24 Q It was? Do you remember when it was
25 rescinded or revoked or whatever you want to call it?

1 A Off the top of my head, no. I know it was
2 prior to me buying the property.

3 Q But after when you signed the contract?

4 A Beg your pardon?

5 Q But after when you signed this contract, do
6 you recall?

7 A I'm at a loss. I don't understand.

8 Q Was the dock permit valid and active at the
9 time when you signed this contract?

10 A Yes.

11 Q What prompted the inclusion of this language
12 about the dock permit in the contract then?

13 A I don't -- I don't know.

14 Q Going down a little further, I think you
15 referenced this note earlier, it says, "Contract not
16 contingent on dock permit." Do you see that?

17 A Yes.

18 Q Is that part of the contract that you agreed
19 to?

20 A Yes.

21 Q And again, if the dock permit was valid at
22 the time you signed the contract, do you recall why the
23 contingency language would be included in the contract?

24 A I would imagine it was because they had an
25 issue prior to.

1 Q Right. Did you know at the time what that
2 issue was?

3 A Yes.

4 Q What was it?

5 A That the government was saying -- let me
6 rephrase that. I knew there was an issue with the dock
7 permit, that there was an issue concerning the
8 government and the marshland, that's what I recall
9 about that.

10 Q Well, is it fair to say that at this time, at
11 this point in time today, we know that the government,
12 the Navy has said it owns the marshland and, therefore,
13 you don't have permission to build a dock there?

14 A Absolutely, at this day, I know that.

15 Q Did you know when you signed this contract
16 that the government was making or had made a claim of
17 that nature?

18 A I knew they had a claim of some nature, but
19 until -- until after all of this, when I started
20 really -- when we got into digging into it did I know
21 the magnitude of it.

22 Q And when you say when you got to digging into
23 it, what do you mean by that?

24 A Well, basically, the reason that we're here.

25 Q Which is what?

1 A Find out why I was not informed by my
2 attorney at the time, Mr. Drew, of the magnitude of the
3 claims of the government.

4 Q What did Mr. Drew tell you about the
5 magnitude of the claims of the government?

6 A When?

7 Q Before you bought the property.

8 A That there was an issue, that the issue had
9 been resolved by an administrative law judge, and that
10 it was good to go, it was good to buy the property.

11 Q Did he give -- he gave you a copy of the
12 order that came out of that administrative law case,
13 correct?

14 A I think Randy gave it to me. It was either
15 Randy or the real estate lady.

16 Q The agent?

17 A Yes.

18 Q Do you remember when you got that?

19 A No, sir.

20 Q I'll give you a copy of this.

21 (Defendant's Exhibit 4 marked.)

22 BY MR. COUNTRYMAN:

23 Q Is this the order that I was referencing and
24 that you acknowledged? I hope it is, because if not,
25 then I don't know where another one is.

- 1 A Yes.
- 2 Q Do you recall reviewing this order prior to
3 the closing?
- 4 A Yes.
- 5 Q Look at -- I think it's page 11. It's the
6 last page that contains text. And it looks to me like
7 it says that the dock permit is essentially ordered to
8 be reinstated. Do you see that? It's the last real
9 sentence.
- 10 A Page 11, I'm sorry, yes, sir.
- 11 Q Order that Permit No. OCRM-01-300-R issued to
12 Thomas Stone authorizing construction of a dock to
13 Yellow House Creek is reinstated?
- 14 A Yes.
- 15 Q And it looks like this order is dated June 3,
16 2005. Do you see that?
- 17 A Yes.
- 18 Q So this was executed and filed prior to the
19 execution of you-all's contract, correct?
- 20 A Yes.
- 21 Q Do you remember when the first time is that
22 you saw this order?
- 23 A No.
- 24 Q But you did see it prior to the closing?
- 25 A Yes.

1 Q And did you discuss it with Mr. Drew prior to
2 the closing?

3 A Yes.

4 Q Did you attend Mr. Drew's deposition in the
5 federal case?

6 A I don't believe so, no.

7 Q He testified that he called, I think, two
8 folks at the Navy to discuss this prior to the closing.
9 Do you know anything about that?

10 A I know about it because of what I've seen in
11 a lot of documentation. I can't recall if back then
12 Randy and I discussed it.

13 Q But you may have?

14 A We may have.

15 Q He said basically that he called, I think,
16 two people from the Navy and ended up talking to one of
17 them and the gist of the conversation was that the
18 issue had been litigated and that the Navy was not
19 going to pursue any claims on that marshland. Do you
20 remember if you had any discussions with Mr. Drew about
21 that?

22 A I don't know about that, but I know Randy
23 Drew told me, because of what he had found out, that I
24 was fine to buy that piece of property with a legal
25 dock permit.

1 Q You don't have any reason to believe that
2 Mr. Drew wasn't telling the truth when he testified
3 that he talked to people from the Navy and they told
4 him that the Navy didn't plan on pursuing the claims,
5 do you?

6 A I've known Randy a long time and I have no
7 reason to not believe him.

8 Q How long have you-all known each other?

9 A Let's see. Probably ten years.

10 Q How long before this transaction did you-all
11 meet each other? Strike that.

12 Describe your relationship. Has it been
13 professional, do you-all know each other socially?

14 A It was professional.

15 Q He has been your real estate attorney for a
16 number of transactions?

17 A Yes, sir.

18 Q Do you know how many?

19 A I'm guessing, six, seven.

20 Q This one for Lot 12 or for that Lot 12
21 property, do you know which number that one was?

22 A Again, it would be a guess, but I would have
23 to say five or six.

24 Q So you've done a few transactions with
25 Mr. Drew as your attorney since this one?

1 A Yes.

2 MR. PENDARVIS: Pause for a second. Let's go
3 off the record.

4 (Discussion off the record.)

5 BY MR. COUNTRYMAN:

6 Q Looking at this contract again, I see the
7 name Jamie Hough, H-o-u-g-h. Do you remember who that
8 is?

9 A I believe that's the real estate agent.

10 Q I think he was at Read & Read, that's what it
11 looks like from the contract. He was the listing
12 agent, so the seller's agent -- I'm sorry, that's not
13 right. Who is James Hough?

14 A From what I see here, the listing agent.

15 Q Did you ever talk to him before this
16 transaction?

17 A No, sir, at closing only. And honestly, I
18 don't even remember if he was there.

19 Q And we talked about the basis of this claim
20 and I understand what you're seeking in this lawsuit
21 and why you're trying to get it. But one point that I
22 wanted to clarify, did you, prior to purchasing this
23 property, expect to purchase the marshland, too, or did
24 you know that the marshland adjacent to the property
25 was not going to be a part of the property that you

1 were purchasing?

2 A I knew that the marshland could not be owned.

3 Q Was this the first dock permit that you had
4 ever received?

5 A No, sir.

6 Q How many others have you had?

7 A One.

8 Q Where was it?

9 A , Mt. Pleasant.

10 Q Is that personal residence?

11 A Yes.

12 Q Current personal residence?

13 A Yes, sir.

14 Q Tell me about getting that dock permit.

15 A I paid three or \$400 to either Docks
16 Unlimited or some dock company that walked the permit
17 through.

18 Q But no issues like the one in this case, I
19 assume?

20 A No issue.

21 Q All right. In his deposition in the federal
22 case, Mr. Stone said that, "Even though he knew that I
23 had the dock permit and I handed him the dock permit,
24 you know, I said, well, you know, I don't know what
25 will happen here. If you want to sign this and initial

1 it where you can never come back at me, he was
2 receptive to it, he did it, and that's the last of it."

3 I think you said you did not attend
4 Mr. Stone's deposition, but do you recall having a
5 conversation where Mr. Stone said words to that effect
6 to you?

7 A I don't believe that I had that conversation
8 with Mr. Stone.

9 Q Could that have come through Mr. Drew? Could
10 Mr. Drew have relayed that information to you?

11 A He could have, but I can't recall.

12 Q The problem is in Mr. Stone's deposition,
13 they don't ask him if he said that to you in person or
14 over the phone or how that information was related, so
15 I didn't know whether you had any information about
16 that. But do you know if that -- information to that
17 effect was related to you prior to the closing?

18 A I don't believe it was.

19 Q So you think Mr. Stone was not telling the
20 truth when he said that?

21 A I don't believe it was. I recall none of
22 those words.

23 Q Well, what about words to that effect?

24 A To the effect that I could never come back
25 against him?

1 Q Basically a release of liability of issues
2 related to the dock permit in exchange for the
3 reduction in price.

4 A The conversation basically was what was
5 written in the contract, was that the contract not
6 contingent on dock permit. That was why the reduction
7 in price.

8 Q Again, I'm trying to figure out the details
9 of that conversation. Did that take place in person,
10 was that something that was relayed by the real estate
11 agents or by the lawyers? Because it's not clear from
12 Mr. Stone's deposition. It's clear to me that he
13 believes that he relayed that information to you, but
14 it's not clear how that took place.

15 MR. PENDARVIS: Object to the form.

16 BY MR. COUNTRYMAN:

17 Q Do you recall how that information took
18 place?

19 A No, sir.

20 Q Or the relay of that information.

21 Is it fair to say that prior to the closing,
22 Stone was worried that you might make a claim against
23 him in the future related to the revocation of the dock
24 permit?

25 MR. PENDARVIS: Object to the -- form

1 objection.

2 A (Continuing) I have no idea.

3 Q But you were aware prior to the closing that
4 that was the reason for the reduction in price?

5 A The prior issue with the dock permit, yes.

6 Q When you attended the closing, did you
7 discuss the transaction with Mr. Drew that day before
8 the closing?

9 A I'm sure I did.

10 Q Do you remember doing that?

11 A I don't remember any specifics, no.

12 Q Well, in fairness, the reason I'm asking is
13 because the claims against Mr. Drew in this lawsuit
14 essentially are that he didn't advise you properly
15 regarding this transaction and the dock permit issue
16 specifically, so I'm trying to get all the information
17 I can from you as to what you remember about
18 conversations with him prior to the closing.

19 And I -- is it fair to say that your
20 understanding when you proceeded with the closing based
21 on your conversations with Mr. Drew was that you did
22 not own and would not own the marshland, but at the
23 time would be able to build a dock based on the dock
24 permit that had recently been reinstated?

25 A My conversations with Mr. Drew were all based

1 on one thing and one thing only, that if I bought this
2 property, I would be able to put a dock on and across
3 the marsh. He assured me not once, he assured me
4 numerous times, after whatever research he did, that I
5 would not have a problem, I had a legal dock permit.

6 Q And that dock permit did allow you to build a
7 dock, correct?

8 A Yes, sir.

9 Q And after the dock was built, new issues
10 arose about whether the dock permit would continue to
11 be valid based on the Navy's claim of ownership to the
12 marshland?

13 A If I'm correct, I believe the dock permit is
14 still legal.

15 Q Okay. And I know you're not -- you're not a
16 lawyer, correct?

17 A No, sir.

18 Q Don't have any specific expertise in title
19 work?

20 A Not at all.

21 Q And I know you'll have an expert that will
22 probably testify about these things, but what is your
23 understanding of what you think Mr. Drew should have
24 done or what you think Mr. Drew did not do that led to
25 what you think was inaccurate advice about the dock

1 permit issue?

2 A If I would have known that I would have the
3 issues with the federal government like I'm having and
4 like I've had, I never would have bought that property.

5 Q I understand that and I don't blame you for
6 that, but is there anything that you're aware of that
7 Mr. Drew did or did not do that would have led to you
8 knowing that information prior to purchasing the
9 property?

10 MR. PENDARVIS: Object to the form.

11 A (Continuing) Can you repeat that?

12 Q Sure. Are you aware of any document that
13 Mr. Drew failed to find that would have led to him
14 advising you that there may have been -- there may be
15 dock permitting issues in the future?

16 MR. PENDARVIS: Same objection.

17 BY MR. COUNTRYMAN:

18 Q I'll strike that question if you don't
19 understand it.

20 A Well, I'm kind of having a hard time
21 understanding it.

22 Q Do you have any understanding as to what you
23 think Mr. Drew improperly did or failed to do regarding
24 giving you the advice about purchasing the property?

25 A I guess I can best answer that by if Mr. Drew

1 had done what I know now he should have done, I
2 wouldn't be here.

3 Q And what is that?

4 A Advise me not to buy the property because
5 there's an -- there would have been an issue with it
6 with the United States.

7 Q Is there any piece of information, such as a
8 document or a phone call to someone, that either wasn't
9 found or didn't take place that should have been found
10 or should have taken place that would have led Mr. Drew
11 to the information that there could be a permitting
12 issue in the future?

13 A I don't know.

14 Q Because based on his deposition testimony and
15 what I think he'll testify to in this case, he had,
16 Mr. Drew had, a copy of the ALJ order that he gave to
17 you prior to closing, correct?

18 A Yes.

19 Q And based on his testimony in the federal
20 case, he called people at the Navy, who effectively
21 told him the Navy was not planning on pursuing the
22 claims because the matter had been litigated in the ALJ
23 case. If those things were true, do you have any
24 specific -- do you have any opinion as to what Mr. Drew
25 should have done, other steps he should have taken?

1 A Well, you have a copy of the ALJ case right
2 here, so he did what he was supposed to do. I don't
3 have a copy and I don't believe he has a copy of
4 anything of anyone that he talked to that said there's
5 no issue with that dock, they're good to go.

6 Q All right. So he should have noted or
7 documented his conversations with the people at the
8 Navy?

9 A I believe --

10 MR. PENDARVIS: Object to the form. Calls
11 for a legal conclusion.

12 BY MR. COUNTRYMAN:

13 Q You can still answer it.

14 MR. PENDARVIS: Answer it, if you can.

15 A Repeat it again, please.

16 Q All right. I'm just trying to find out what
17 specific things, and you might not have any -- you
18 might leave this up to your expert, but I'm asking you
19 as the plaintiff, what do you think Mr. Drew did or
20 failed to do regarding obtaining the proper information
21 to advise you on this transaction before the closing?

22 A I agree with you, I'm going to have to leave
23 that up to an expert. I'm not an expert in that.

24 Q So you don't know of any specific document
25 that he failed to find or any step that he failed to

1 take?

2 A Right.

3 Q That's fair. I'm not trying to trick you or
4 belabor a point. I just want to make sure that I know
5 where you stand on that.

6 All right. Before you bought the property
7 and during the closing or pre-closing process, what
8 were your plans regarding financing?

9 A I would buy the property with cash and
10 finance the building part of it with the bank.

11 Q Where were you going to get that cash?

12 A From my bank account.

13 Q How long -- strike that.

14 How much were you planning on spending on
15 construction costs prior to the closing? Did you have
16 a budget in mind?

17 A Yes. I believe it was 965, somewhere around
18 there, 980.

19 Q And then you ended up paying cash for the
20 property itself?

21 A Yes, sir.

22 Q And I think the contract says there was a --
23 it was supposed to close on or before September 9,
24 2005? You can look at it and see, if you'd like.

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

1 Q And then closing took place actually on
2 August 17th, 2005, correct?

3 A I guess.

4 Q Is there any reason why closing took place
5 around three weeks before the -- on or before the
6 closing date stated in the contract?

7 A I can't recall.

8 Q Were you trying to get it -- were you trying
9 to get closing accomplished quickly for any particular
10 reason?

11 A No particular reason, no, sir.

12 Q Do you recall who built the dock for you, the
13 company?

14 A I want it to say Charleston Dock & Marine.

15 Q Did you talk to any other companies about
16 building the dock out there?

17 A I didn't, no.

18 Q Did Mr. Cogan?

19 A He may have. I don't recall.

20 Q Do you know when either you or Mr. Cogan
21 first had discussions with that company about building
22 a dock at the property?

23 A I can't recall.

24 Q When you closed on the property, did you have
25 an understanding as to who owned the marshland adjacent

1 to it?

2 A Adjacent to the property or right --

3 Q The marshland that's at issue here.

4 A I believe I -- I believe -- I thought it was
5 the State of South Carolina.

6 Q Did you have an understanding as to what the
7 resolution was of the Navy's claim of ownership to that
8 marshland prior to closing?

9 A I don't understand what the resolution...

10 Q Well, when you closed, did you know or have
11 an understanding as to whether the Navy was still
12 claiming that it owned the property, or had the Navy
13 said South Carolina owns the property?

14 A I don't recall any of that. I know that when
15 I closed on the property, that I was advised that I
16 would not have an issue with the dock and the
17 marshland.

18 Q By Mr. Drew?

19 A Yes, sir.

20 Q Did he put any time reference with that, did
21 he tell you that the permit would be good for any
22 specific amount of time?

23 A Whatever was on the permit is how the time
24 frame would have gone.

25 Q Would you agree that the permit is a

1 revocable license that governing bodies use?

2 MR. PENDARVIS: Object to the form.

3 A (Continuing) I'm not an expert in that
4 field..

5 (Defendant's Exhibit 5 marked.)

6 BY MR. COUNTRYMAN:

7 Q Mr. Roberts, this is -- it looks to me to be
8 a letter from the McNair Law Firm. Have you seen this
9 before?

10 A Yes, sir.

11 Q Do you know when you first saw it?

12 A I can't recall.

13 Q Was it prior to closing?

14 A I can't recall if it was before or after the
15 closing.

16 Q If you look on page 2, which is the attached
17 portion to the letter, it looks like it's a letter from
18 Mary Shahid, and that's S-h-a-h-i-d, to Chris -- or
19 Curtis Joyner at DHEC and OCRM. If you look in the
20 last real paragraph, the last sentence says,
21 "Therefore, this permit will now expire on January 11,
22 2007." Do you see that?

23 A Yes.

24 Q Was your understanding when you purchased the
25 property that the dock permit would be valid until that

1 date, do you recall?

2 A I don't recall.

3 Q And you know Mary Shahid, is that correct?

4 A I've never met her personally. I've talked
5 to her on the phone.

6 Q She represented you at some point?

7 A She helped me out.

8 Q How so?

9 A I hired her. I believe I hired her, pretty
10 sure I paid her to do -- to get some information for
11 me.

12 Q What information?

13 A Probably this information here.

14 Q When you say "here," the information --

15 A Regarding the dock and the litigation with
16 the government and with the ALJ.

17 Q And you understand that she represented
18 Mr. Stone regarding that ALJ case?

19 A Yes.

20 Q Do you know if you talked to Miss Shahid
21 about the dock permitting issues prior to buying this
22 property?

23 A I don't believe I did.

24 Q And again, the contract provides for a due
25 diligence period of 60 days, but it looks like only 30

1 days passed between the date of the contract signing
2 and closing, but you said you didn't know of any
3 particular reason, is that correct?

4 A Correct.

5 Q Did you do any investigation on your own
6 about the dock permitting issues between the time you
7 signed the contract and the closing other than discuss
8 it with Mr. Drew?

9 A No, sir.

10 Q And at the time that you closed, can you
11 remember what your understanding was of what Mr. Drew
12 had done to look at those issues?

13 A My understanding was that Randy reviewed the
14 ALJ decision, I'm not sure if he made phone calls prior
15 to closing, but the only reason I closed is because
16 Randy said that after what he had, I guess,
17 investigated or read, that we were fine to go with the
18 property with a legal dock permit.

19 Q But you did know at that time that the Navy
20 had claimed ownership to the marshland adjacent to the
21 property?

22 A I don't believe so.

23 Q No? What was your understanding of the
24 issue, then?

25 A My understanding was what I read in the

1 administrative law judge's ruling, that the Navy had an
2 opportunity to prove that they had claim to property,
3 never showed up, and based on that and I would imagine
4 other things, the administrative law judge had no
5 other -- nothing he could do except say that the dock
6 permit -- or have the dock permit reinstated.

7 Q But you knew at that time that the Navy had,
8 at some previous point at least, made a claim of
9 ownership to that marshland?

10 A From what I read in the deal with Stone and
11 the administrative law judge.

12 Q And then, basically, the Navy didn't show up
13 to the ALJ case to stake its position?

14 A Correct.

15 (Defendant's Exhibit 6 marked.)

16 BY MR. COUNTRYMAN:

17 Q All right. Mr. Roberts, I've given you some
18 documents that relate to the closing itself. The first
19 couple of pages look to be the HUD-1 statement. Does
20 that look correct?

21 A Yes, sir.

22 Q If you look on the second page, it lists some
23 expenses or charges related to the transaction that you
24 paid to Mr. Drew under Line 1107, "Attorney's fees."
25 It looks like it says \$325. Do you see that?

1 A Yes.

2 Q Is it fair to say that you paid Mr. Drew \$325
3 for attorney's fees related to this transaction?

4 A Yes.

5 Q Did you pay him anything above and beyond
6 that or anything separate from that for advice
7 regarding the transaction?

8 A No.

9 Q Do you have any kind of retainer agreement
10 with Mr. Drew?

11 A No.

12 Q And Line 1110 says, "Owner's coverage,
13 \$475,000." Do you see that?

14 A Yes, sir.

15 Q Do you remember buying title insurance for
16 this property at the transaction?

17 A I believe so.

18 Q Have you made a claim with your title
19 insurance company regarding these issues?

20 A No, sir.

21 Q Do you know why not?

22 A I believe under the advice of Randy Drew, he
23 said I would not have a claim.

24 Q Do you know why that is?

25 A No.

1 Q I think you agreed with me earlier that you
2 did receive title to the property itself following the
3 closing, correct?

4 A Yes.

5 Q Look at the page that has the number 00250 on
6 the bottom right-hand corner. Is that the deed where
7 title was transferred from Mr. Stone to you?

8 A That's what it looks like, yes, sir.

9 Q And then sometime after that, you deeded the
10 property to Lot 12 Yellow House, LLC, correct?

11 A Yes.

12 Q Why did you do that?

13 A I was advised to do it by Randy.

14 Q Did he tell you why that would be a good
15 idea?

16 A Yes, but I certainly cannot remember.

17 Q Okay. Did you form that company for purposes
18 of owning this property?

19 A I believe so.

20 Q Does that company own anything today?

21 A Own anything?

22 Q Yes, sir.

23 A No, sir.

24 Q Has it ever owned anything besides this
25 property?

1 A No, sir.

2 Q Has it ever been used for any purpose other
3 than owning this property?

4 A Not that I recall, sir.

5 Q So is it fair to say that you do not recall
6 having a face-to-face discussion with Mr. Stone at the
7 closing about the dock permitting issues?

8 A I can't -- no, I don't think I did.

9 Q Is it possible that you did?

10 A I don't believe I did, no. I do recall
11 asking him, or Randy, one of us asking him if he had
12 had any conversations regarding the dock issue with the
13 Navy since the ALJ. His answer was no.

14 Q Was that the extent of the conversation?

15 A Yeah, yes.

16 (Defendant's Exhibit 7 marked.)

17 BY MR. COUNTRYMAN:

18 Q Mr. Roberts, this looks to be a document that
19 First Citizens Bank generated in August of 2005. Does
20 this relate to the loan that you took out for
21 construction costs or -- strike that.

22 Do you know what this is?

23 A I believe I had asked my banker, who was Sue
24 Berlack at the time, to print me out an amortization
25 schedule so that I would know what to charge for

1 lending -- or for buying the property. I didn't want
2 to just stroke a check for \$475,000. I was lending the
3 building -- the deal \$475,000, but I wanted to get
4 interest on top of that and that's what this was. I
5 didn't borrow the money. It was just something that
6 she had printed out for me. I said, "Give me something
7 so that I have something to look at so I know how much
8 interest to draw when we sell this property."

9 Q All right. So you didn't get a loan --

10 A No, sir.

11 Q -- from First Citizens for 475?

12 A Correct.

13 (Defendant's Exhibit 8 marked.)

14 BY MR. COUNTRYMAN:

15 Q Mr. Roberts, I've given you Exhibit No. 8.

16 Do you recognize this document? It looks to me to be a
17 letter transferring the dock permit to you or
18 confirming that the dock permit was transferred to you.

19 A Yes, sir.

20 Q Does that appear accurate?

21 A Yes.

22 Q Is it fair to say at least as of the day of
23 the closing -- I'm sorry, at least as of August 22,
24 2005, you had title to the property, as well as a dock
25 permit that had been transferred to your name?

1 A Yes.

2 Q Do you know if you received this dock permit
3 or a copy of it prior to the closing?

4 A I'm sure I didn't.

5 Q But you at least received it as of August 22,
6 2005 or whenever you received this letter shortly
7 thereafter?

8 A Yes. Couldn't have received it at closing.
9 It had not transferred at that -- at closing.

10 Q Right. Turn to the sixth page, the page that
11 says "General conditions" at the top of it. If I'm
12 counting correctly --

13 A I've got 4 of 8, 5 of 8, and then 8 of 8.

14 Q Four of eight.

15 MR. PENDARVIS: It says Exhibit 8, page 4 at
16 the bottom?

17 MR. COUNTRYMAN: Yes.

18 A (Continuing) Got it.

19 Q This is a page that states some general
20 conditions that go along with receiving this dock
21 permit. Is that accurate?

22 A With this particular dock permit?

23 Q Yes, sir.

24 A Okay.

25 Q Isn't that what it purports to be?

1 A I would imagine, yes, sir.

2 Q Do you see Item 5 where it says, "This permit
3 does not convey, expressly or impliedly, any property
4 rights in real estate or material nor any exclusive
5 privileges, nor does it authorize the permittee to
6 alienate, diminish, fringe upon, or otherwise restrict
7 the property rights of any other person or the public"?
8 Do you see that in paragraph 5?

9 A I see it.

10 Q And then paragraph 13 says, "The department
11 shall have the right to revoke, suspend, or modify this
12 permit," and then it gives some numbered items
13 following that.

14 A Yes.

15 Q Do you see that?

16 A Yes.

17 Q Is it fair to say that this dock permit was
18 not something that was necessarily permanent?

19 A I would say that any dock permit, based on
20 what I was told, is not permanent, not just this dock
21 permit.

22 Q All right. Look at the rest of the exhibit.
23 Can you -- I saw a number of copies of the permit in
24 the documents in this case. Can you recall whether
25 there are any pages of the permit that are missing?

1 A I can't recall, no, sir.

2 MR. PENDARVIS: Page 6 is out of order.

3 MR. COUNTRYMAN: Okay.

4 MR. PENDARVIS: If you look, it says 5 of 8,
5 8 or 8.

6 MR. COUNTRYMAN: I didn't want to get the --

7 MR. PENDARVIS: That's fine, Bates number.

8 MR. COUNTRYMAN: -- Bates numbers out of
9 order.

10 MR. PENDARVIS: I'm sorry. Questions to the
11 witness.

12 MR. COUNTRYMAN: That's all right.

13 BY MR. COUNTRYMAN:

14 Q But you knew when you were closing that
15 Mr. Drew couldn't guarantee that the dock permit would
16 be valid forever, correct?

17 A Yes. We had that conversation on a few --
18 numerous times, not just about this dock permit, but
19 about his dock permit and about my other dock permit.

20 Q And you knew when you were closing that the
21 dock permit would not give you any ownership rights to
22 that marshland, correct?

23 A Correct.

24 Q All right. So once the closing took place,
25 as relates to this lawsuit, tell me what happened next.

1 A After -- I'm sorry?

2 Q After the closing took place, you started
3 building a dock pretty soon after that, correct?

4 A Yes.

5 Q Do you remember when?

6 A '05.

7 Q I think it was in '05.

8 A Okay.

9 Q According to your previous deposition, I
10 think you stated that it was built around September of
11 2005 and cost about \$83,000.

12 A Okay, yes.

13 Q Does that sound right?

14 A Yes, sir.

15 Q Do you know how long it took to build?

16 A I would say less than 30 days.

17 Q Did you build your -- did you build the dock
18 at your residence?

19 A I didn't build it.

20 Q Well, you had a dock built?

21 A Yes.

22 Q It wasn't there when you bought the house?

23 A Correct. It was not there when I bought the
24 house.

25 Q I probably should have given you this

1 earlier, but...

2 (Defendant's Exhibit 9 marked.)

3 BY MR. COUNTRYMAN:

4 Q I don't mean to jump around, but I know we
5 mentioned the title insurance policy a few minutes ago.
6 Does Exhibit 9 look to be the title insurance policy
7 that you purchased when you bought this property? I
8 think the very last page says that Keith Roberts is the
9 insured.

10 A Yes, it does.

11 Q Do you recall ever seeing this before, this
12 document?

13 A I'm sure I have, yes, sir.

14 Q And you said earlier that you hadn't made a
15 claim on your title insurance policy because of advice
16 from Mr. Drew, correct?

17 A Yes.

18 Q Do you remember the basis of that advice?

19 A I believe it was because it was -- regarding
20 the marsh, not the land, because I -- as you stated, I
21 can't own the marsh.

22 Q So the title insurance policy insures the
23 marketability of the property itself, but not the
24 marshland, correct?

25 A That's my understanding.

1 Q So is it fair to say that you don't have any
2 issues with the marketability of the property itself?

3 A Oh, yes, I do.

4 Q Okay. Well, by "marketability," I mean, you
5 received clear title to that property following the
6 closing?

7 A Yes.

8 Q What do you mean when you say
9 "marketability"?

10 A I bought the property with a dock permit and
11 because of the issues I've got with the United States
12 Government and Navy, it's -- I just can't sell the
13 property now. Excuse me. I couldn't sell the property
14 prior to them taking it.

15 Q The value of the property is impacted by the
16 ability to build the dock at the property?

17 A Yes.

18 Q Do you know Paul Ahrens? I'm not sure if I'm
19 pronouncing that correctly.

20 A I don't know him. I know who he is.

21 Q He has a neighboring piece of property?

22 A Yes, sir.

23 Q And he has a dock, and it's my understanding
24 from looking at the documents, that he built his dock
25 over marshland that the Navy owns, is that correct?

1 A I --

2 Q Do you have an understanding as to whether
3 that's correct?

4 A Yeah. I have an understanding. The man has
5 a dock, yes, sir.

6 Q Do you know whether that dock is built over
7 property that the Navy owns?

8 A The Navy is claiming that also, yes.

9 Q Is he having the same issues with the
10 government as you are and being a defendant in a law
11 suit?

12 A No, sir.

13 Q Do you know why not?

14 A To the best of my knowledge, no, he is not.

15 Q Do you know why the Navy has not pursued
16 claims against him like they have against you?

17 A From what I recall and what I've read, his
18 time is coming.

19 Q Really? What do you mean by that?

20 A From what I've read, can't recall exactly
21 where it was, it just sticks in my mind that they're
22 going to come after me and then they're going after
23 him.

24 Q Do you know, is there somebody that got
25 ticked off at the Navy, or did something happen that

1 you're aware of that sparked the Navy's interest in
2 this marshland?

3 A No. Certainly wasn't me.

4 Q So you never had any conversation with anyone
5 at the Navy that would --

6 A With someone at the Navy?

7 Q Yes.

8 A No, sir.

9 Q Did you ever have any contact with anyone at
10 DHEC or OCRM about these permitting issues?

11 A I had a conversation with Curtis Joyner.

12 Q He was at OCRM, I believe.

13 A I don't know. That's why I'm trying to look
14 back. I seen his name in here. As a matter of fact,
15 there was a letter --

16 Q Look at Exhibit 5.

17 A Yes.

18 Q All right. What do you remember about that
19 conversation?

20 A I had called him on the advice from Ron
21 Hoover, who knows Curtis and just said, "Give him a
22 call and see if he can't help you." My conversation
23 was very short with Mr. Joyner. I asked him what he
24 recalled about it seeing as he was involved with it at
25 that time, and his response was -- I asked him why the

1 Navy did not show up. And his answer to me was, "I
2 think they were riding on the coattails of OCRM, us."
3 Now, what this meant, I don't know, but...

4 Q That doesn't make a lot of sense, does it?

5 A That's the only conversation I had with him
6 and -- or anyone.

7 Q Do you know when that conversation took
8 place?

9 A No, I can't recall.

10 Q This, again, might appear to be somewhat out
11 of order and I apologize.

12 (Defendant's Exhibit 10 marked.)

13 BY MR. COUNTRYMAN:

14 Q Exhibit 10 looks to be an invoice from
15 Palmetto Dock & Salvage, Inc.

16 A There you go.

17 Q That's the company that built the dock?

18 A Not Charleston, it's Palmetto Dock & Salvage,
19 thank you.

20 Q I wasn't trying to trick you on that.

21 A No, that's my mind, my memory.

22 Q And at the bottom of this -- it's an invoice
23 for \$82,890, correct?

24 A Yes, sir.

25 Q For the construction of the dock on the

1 property?

2 A Yes.

3 Q And it says, "Paid with Check No. 3173 on
4 11/29." Do you see that?

5 A Yes.

6 Q Did you just cut a check for that?

7 A Yes.

8 Q Mr. Cogan didn't pay for any of the
9 construction of the dock?

10 A I think I cut the check to Pat. I don't -- I
11 can't recall. Pat paid a lot of this stuff and then I
12 reimbursed him when I got the invoice.

13 Q Why was it done like that?

14 A I can't remember. I can't remember.

15 Q Did you think after the closing that once you
16 built the dock, that the Navy would leave you alone?

17 A I didn't think I had an issue with the Navy.

18 Q When did you start building the house?

19 A Best recollection, the early part of -- I
20 would say March or April of '06.

21 Q This might help you out on that.

22 A I'm trying to remember when I closed on --

23 Q Yeah.

24 A -- the loan.

25 (Defendant's Exhibit 11 marked.)

1 BY MR. COUNTRYMAN:

2 Q Does Exhibit 11 help you recall?

3 A I closed it on January 27th, it was shortly
4 after that we started construction.

5 Q Is Exhibit 11 a commercial note for the
6 advancement of funds used to construct the house on the
7 property?

8 A Yes, sir, that's what it looks like.

9 Q And it looks like on the first page, the
10 collateral pledge was at in
11 Charleston?

12 A Yes.

13 Q Where is that property?

14 A That was the name that we were calling the
15 lane, and it was later changed by someone else to Blue
16 Crab Court.

17 Q Okay. So this property is the
18 same property --

19 A Yes, sir.

20 Q All right. I was confused when I saw that
21 initially.

22 All right. So basically, you took out 1.065
23 million dollars to construct the home on the property?

24 A Yes.

25 Q And that money was secured by the property?

1 A Yes.

2 Q What were -- what was the term of the note?

3 It looks like it was a two-year note?

4 A 24 month, yes, sir.

5 Q What was your plan regarding paying the note?

6 A To pay it on a monthly basis until we
7 finished, built the property and sold it and paid it
8 off.

9 Q Was the loan just in your name?

10 A Yes, sir.

11 Q It looks like this copy is unsigned, but
12 you're the only borrower listed?

13 A Yes.

14 Q Did Mr. Drew oversee the closing for this
15 loan?

16 A Yes.

17 Q Any issues that you have with him regarding
18 that closing?

19 A No.

20 MR. PENDARVIS: Andy, can we take a break?

21 MR. COUNTRYMAN: Sure.

22 (Brief recess taken.)

23 BY MR. COUNTRYMAN:

24 Q Back on the record. We just took a quick
25 break. Here's another exhibit, Mr. Roberts.

1 (Defendant's Exhibit 12 marked.)

2 BY MR. COUNTRYMAN:

3 Q Is this the Quitclaim Deed where you deeded
4 the property from your name into the name of Lot 12
5 Yellow House, LLC?

6 A Yes, sir.

7 Q Did Mr. Drew's office prepare this deed?

8 A Yes.

9 Q Took care of the filing?

10 A Yes.

11 Q Do you have any issues with his handling of
12 this?

13 A No.

14 Q And this took place, the transfer to Lot 12
15 Yellow House, LLC, on or about January 27 of 2006,
16 according to the document. Does that sound correct?

17 A Yes, sir.

18 Q I know you said Mr. Drew advised you to form
19 the LLC, but did you have any personal reason why you
20 wanted to transfer the property to Lot 12 Yellow House,
21 LLC?

22 A Not -- no, not that I can recall.

23 Q But you did get the loan to finance
24 construction in your name and not Lot 12 Yellow House,
25 LLC's name?

1 A Yeah.

2 Q And then I assume at some point after that,
3 you started marketing the property for sale?

4 A No. I don't think it was right after we
5 started building it. It was --

6 Q Well, I just said at some point after that.

7 A Yes, yes.

8 Q When? Was it after construction was
9 completed?

10 A No, no. I want to say, and it's a guess, I
11 want to guess July -- August, September.

12 Q Of 2006?

13 A 2006.

14 Q Do you remember when construction of the
15 house began?

16 A I want to say February or March.

17 Q Do you remember how you marketed the
18 property?

19 A No.

20 Q Did you have an agent?

21 A Yes.

22 Q Was that Chuck Mimms?

23 A Chuck Mimms.

24 Q Do you remember when you signed him?

25 A No.

1 Q So you said you think you started marketing
2 the property, I think you said around August of 2006,
3 somewhere around there?

4 A Somewhere around there, yeah.

5 Q And then in October of 2006, you signed a
6 contract with Mr. Bowen, correct?

7 A Yes.

8 (Defendant's Exhibit 13 marked.)

9 BY MR. COUNTRYMAN:

10 Q I tried to find the best copy of this that I
11 could. Is Exhibit 13 that contract?

12 A Yes, sir.

13 Q And it's a contract where Mr. Bowen agreed to
14 purchase the property for 2.2 million dollars?

15 A Yes.

16 Q Did you ever have any personal contact with
17 Mr. Bowen or any of his representatives?

18 A No.

19 Q That was all done through your real estate
20 agent?

21 A Yes.

22 Q Do you remember how that 2.2 million dollar
23 price was reached? In other words, was it negotiated,
24 or was that the listing price?

25 A No. I'm pretty sure it was negotiated.

1 Q Do you remember what the listing price was?

2 A I think it was two four or two five.

3 Q Do you know whether Mr. Bowen was the first
4 person to put an offer on that property?

5 A I believe he was, yes, sir.

6 Q Do you know how long you placed the property
7 on the market prior to signing this contract, or do you
8 know how long the property had been on the market when
9 this contract was signed?

10 A I don't know that it was on the market. I
11 don't know that -- I'm not sure if it was on the market
12 or if someone in Chuck's office was looking for a piece
13 of property and he talked the -- or told the agent to
14 look at this. I can't recall.

15 Q And I'm sorry if I already asked you this,
16 but do you know if the house was completed at this
17 point?

18 A It was not.

19 Q So at this point, you were carrying the cost
20 of the construction loan?

21 A Yes.

22 Q Anything else? I assume utilities?

23 A It was not -- wasn't finished.

24 Q There wasn't electrical?

25 A Yeah. We carried the cost of that, yes.

1 Q Do you know who wrote this contract, whose
2 form it is? It was probably one of the real estate
3 agents.

4 A I think it was AgentOwned. Yes.

5 Q And if you look at what is marked as page 12
6 at the top right-hand corner, first page being page 7,
7 the signature page of the contract. Yeah, I think
8 that's the right one. Is that, to the best of your
9 knowledge, Mr. Bowen's signature?

10 A To the best of my knowledge, yes, sir.

11 Q And he signed it on 10/29 of '06, according
12 to this?

13 A Yup.

14 Q And then if you turn the page -- well,
15 actually, right above that, Item 28 says,
16 "Contingencies." It says, "These stipulations shall
17 preempt printed matter herein," and then it says,
18 "Addendums A and B are integral parts of this
19 agreement." Do you see that?

20 A Yes.

21 Q And then if you turn the page, there's
22 Addendum A. Did you review this before signing the
23 contract?

24 A Did I review it?

25 Q It looks like your initials are on it a few

1 times.

2 A Yeah.

3 Q Those are your initials, KR?

4 A That would be me.

5 Q Do you remember why Addendum A was made a
6 part of the contract?

7 A No, I don't.

8 Q When you signed this contract in October
9 of -- strike that.

10 I don't see where your signature is on the
11 signature page per se, but is it fair to say that at
12 some point, you signed this contract?

13 A I don't -- I honestly don't recall.

14 Q But you did enter into this contract with
15 Mr. Bowen, correct?

16 A Yes.

17 Q When you entered into this contract with
18 Mr. Bowen, did you have any knowledge of the Navy's
19 claim or intent to make a claim on the marshland that
20 might relate to dock permitting issues?

21 A No.

22 Q If you would turn three or four pages over,
23 you get to Addendum B.

24 A Yes.

25 Q There's typed language that is in the upper

1 middle portion of the page. It says, "The parties
2 agree as follows: This contract is contingent upon the
3 buyer's satisfaction with the information obtained from
4 the City or County planning and zoning departments and
5 OCRM regarding the property, as well as other
6 properties in the same general area, by 11/10/2006."

7 Do you see that?

8 A Yes, sir.

9 Q Were there any issues that you were aware of
10 with OCRM at the time that you-all signed this contract
11 that would have led to that language being included in
12 the contract?

13 A None.

14 Q Next sentence says, "The home inspection
15 shall be held upon completion of the construction with
16 at least 10 days prior notice from the builder." Do
17 you see that?

18 A Yes, sir.

19 Q Were there any specific concerns regarding
20 the home that you're aware of that may have prompted
21 the inclusion of this home inspection language?

22 A No.

23 Q The next sentence says, "Closing will occur
24 on or before January 8, 2007 or within 15 days of
25 completion satisfactory to the buyer, whichever is

1 later." Do you see that?

2 A Yes.

3 Q Do you remember when closing was ever
4 scheduled to take place?

5 A I thought it was -- he wanted to be in it
6 before the end of the year, but here it says on or
7 before January 8th.

8 Q Do you recall how much construction was left
9 to be completed when you-all signed this contract?

10 A Not a whole lot, but it was pushing it to get
11 it done by the end of the year.

12 (Defendant's Exhibit 14 marked.)

13 BY MR. COUNTRYMAN:

14 Q Exhibit 14, Mr. Roberts, looks to be an
15 email. Do you know whose email address
16 krcarman@aol.com is?

17 A That would be me.

18 Q That's yours, I thought so. And then is
19 ChuckandEdy@agentowned.com, is that Chuck Mimms?

20 A Yes.

21 Q Have you seen this email before?

22 A Yes.

23 Q What is it? Is it a forward to you of an
24 email that Chuck sent to Susan Bryant?

25 A It looks like it's a forward from Susan

1 Bryant to Chuck, it looks like.

2 Q At the top, it says from
3 ChuckandEdy@agentowned.com to your email address?

4 A Right. But below that, the original message
5 was from SKlavohn to ChuckandEdy.

6 Q Right. It looks like Chuck then forwarded
7 that message to you?

8 A Yes. He forwarded this to me, yes.

9 Q Do you remember reading this on 11/13/06?

10 A I would imagine, yes.

11 Q Okay. If you look in the text, I think it's
12 probably the third paragraph, it says, "We have a
13 serious issue regarding the lawsuits with the Navy.
14 Curtis Joyner at DHEC told us to talk to the Navy
15 person who is involved in the lawsuits. I placed a few
16 calls leaving messages this morning. I received a
17 return phone call from E. R. Nelson, I believe, who
18 told me the dock has to be removed and to call the
19 Navy's attorney." Do you see that?

20 A Yes.

21 Q Was this the first notification you had
22 subsequent to buying the property that the Navy was
23 going to potentially continue to pursue a claim that
24 could have an impact on the dock permit?

25 A I still never -- I mean, that's nothing

1 except phone calls right now, is what this is telling
2 me.

3 Q It says, "We have a serious issue regarding
4 the lawsuits with the Navy."

5 A Uh-huh (affirmative).

6 Q But is this the first time -- is it fair to
7 say that according to this email from Chuck Mimms to
8 Susan Bryant, that Chuck is telling Susan that there is
9 a serious issue regarding the lawsuits with the Navy
10 and that at least one person told Chuck that the dock
11 had to be removed?

12 A I think you're wrong. I think it's the other
13 way around. I think they told Susan.

14 Q I'm sorry, you're right. So Susan -- Chuck
15 told Susan that there was an issue with the Navy and
16 that at least someone had told Susan that the dock had
17 to be removed, correct?

18 A Right.

19 Q Prior to receiving this email, did anyone
20 from the Navy or otherwise tell you that there was an
21 issue with the Navy?

22 A Not that I recall, no.

23 Q Or that the dock had to be removed?

24 A No.

25 Q So this was the first notification you had of

1 renewed claims by the Navy?

2 A No. I've never received notification. It
3 was a conversation or an email. I've received no
4 notification from anybody that I had to take a dock
5 down.

6 Q All right. But is this the first instance
7 that -- I'm sorry. I'm confused. I mean, at some
8 point, the Navy told you you have to remove the dock,
9 correct?

10 A No, not up until this point, even right here,
11 the Navy did not tell me anything.

12 Q Right. And I'm not saying that it did.

13 A But that's what you just asked me.

14 Q No. I asked you whether this was the first
15 time that you had heard from anyone that there might be
16 an issue.

17 A Yes.

18 Q All right. So after the closing -- the
19 closing takes place August 2005, the dock gets built,
20 house gets built. And then you sign the contract in
21 October 2006 to sell the property, and then in November
22 of 2006, you were forwarded an email by the real estate
23 agent that told you there was a serious issue regarding
24 lawsuits with the Navy and that at least someone had
25 told the agent that the dock had to be removed,

1 correct?

2 A Yes.

3 Q And that -- that was the first time, that
4 being November 13th, 2006, the first time after closing
5 that anyone had told you that there may be that kind of
6 an issue?

7 A The first time it was brought up, yes.

8 Q Right, that's all I'm getting at. So what
9 happened when you got this email, or what did you do
10 when you received it?

11 A I'm sure I recalled Randy.

12 Q Do you remember calling him --

13 A I'm sure --

14 Q I'm sorry, I'm not trying to talk over you.

15 A I'm pretty sure I did, yes.

16 Q Do you remember what you said?

17 A He would have told me that, "There is no
18 issue with the Navy. It was litigated or -- with the
19 administrative law judge and you've got a legal dock
20 permit."

21 Q You said he would have told you that. Do you
22 remember whether he actually told you that?

23 A He has told me that many, many, many times,
24 yes, sir.

25 Q But do you remember that conversation in

1 November of 2006 after you received this email?

2 A Yes.

3 Q That was on the phone?

4 A Yes.

5 Q Did Mr. Drew say that he was going to take
6 any steps to investigate this issue?

7 A I believe he did. I believe he sent a copy
8 of the dock permit showing that it was a legitimate,
9 legal dock permit to either Chuck or to Susan Bryant.

10 Q Do you know whether he called E. R. Nelson,
11 who is listed in this email, the person that told --

12 A I can't remember if he did or didn't.

13 Q Do you know if you ever called Mr. Nelson?

14 A I never did, no, sir.

15 Q Do you know who Mr. Nelson is?

16 A Something to do with the Navy.

17 Q And then -- in the course of a lawsuit, the
18 parties exchanged written discovery, which is questions
19 and request for documents. And one of the questions I
20 asked is when did the Navy first demand that you remove
21 the dock, and your response was that it occurred in a
22 meeting in March 2007. Does that sound accurate?

23 A Yes.

24 Q Did you have contact with the Navy between
25 November 2006 and March of 2007 regarding this issue?

1 A I don't believe so, no.

2 Q What prompted that March 2007 meeting?

3 A I guess phone calls, letters, emails,
4 something along those lines, to Randy.

5 Q Okay.

6 (Defendant's Exhibit 15 marked.)

7 BY MR. COUNTRYMAN:

8 Q Mr. Roberts, this is a document that looks to
9 me to be a letter from Susan Bryant to Chuck Mimms
10 dated November 16th, 2006. Have you seen this before?

11 A I think I've seen it before.

12 Q Do you know if you saw it on or around
13 November 16th, 2006?

14 A If I did, it would have been then, yes, sir.

15 Q What's your understanding of what this
16 document is?

17 A A letter from Susan Bryant to Chuck Mimms.

18 Q Regarding what?

19 A The sale of the property.

20 Q And again, Miss Bryant represented Bowen?

21 A Yes.

22 Q In paragraph 8, or the paragraph that's
23 numbered 8, it says, "The ownership of the land/marsh
24 that the dock crosses appears to be in dispute with the
25 United States Government, Department of the Navy,

1 according to the records of SC DHEC, Berkeley County,
2 phone conversations and the correspondence from the
3 Navy and others. This is a matter of paramount
4 importance and must be addressed to the satisfaction of
5 the buyer before he will agree to purchase or to
6 proceed with the purchase of the property." Is that
7 what it says?

8 A Yes, sir.

9 Q At least in part?

10 A Yes.

11 Q What happened between the time you signed the
12 contract and this date of November 16th, 2006, where
13 this issue of the Navy claiming ownership of the
14 land/marsh arose?

15 A It's my understanding from the Exhibit 14
16 that Susan Bryant talked to Curtis Joyner, he told her
17 to call somebody at the Navy, and she made a phone call
18 to these people at the Navy and they're the ones that
19 told her that they had an issue.

20 Q Did you discuss this letter, Exhibit 15, with
21 Mr. Drew?

22 A I'm sure I did.

23 Q Do you remember specifically doing that?

24 A If there was ever an issue, yes, I did.

25 Q Do you know what the result of that

1 conversation was, or do you know what Mr. Drew told
2 you?

3 A Randy told me that, you know, we have in our
4 hands a legitimate dock permit, legal dock permit, and
5 based on the ALJ's decision, that we had a legal dock
6 permit.

7 Q Did he tell you whether he thought the Navy
8 owned the marshland?

9 A No.

10 (Defendant's Exhibit 16 marked.)

11 BY MR. COUNTRYMAN:

12 Q Do you recognize Exhibit 16? It looks to be
13 a letter from Mary Shahid at McNair to you?

14 A Yes.

15 Q November 28th, 2006?

16 A Yes.

17 Q The first sentence says, "You've asked for
18 information regarding the United States Navy claim of
19 ownership of marshes of Yellow House Creek," correct?

20 A Yes.

21 Q So is it fair to say that as of November
22 28th, 2006, that you were at least aware of the Navy's
23 claim of ownership of the marsh adjacent to the
24 property?

25 A Yes.

1 Q Why were you writing Miss Shahid --

2 A This, I believe, came from this and Randy and
3 I probably discussed the fact that we need to contact
4 or I need to contact, and I don't recall why I
5 contacted, rather than Randy, Mary, but I know they've
6 had conversations --

7 Q I'm sorry, were you done?

8 A -- regarding her opinion on the issues with
9 the dock.

10 Q Okay. Turn over to page 2, the third
11 paragraph under Item 6, it says, "Based on the
12 administrative law court's findings and the Navy's
13 inaction with regard to the Ahrens dock and this dock,
14 and absent a clear threat to national security" --

15 A Excuse me, where are we, page 2?

16 Q Yeah, page 2, it's the last paragraph.

17 A Oh, based on, okay, yes, sir.

18 Q It have says, "Based on the ALJ" -- "Based on
19 the administrative law court's findings and the Navy's
20 inaction with regard to the Ahrens dock and this dock,
21 and absent a clear threat to national security, it
22 would be very difficult for the Navy to sustain an
23 action to obtain removal of this dock. It also appears
24 unlikely that the Navy would initiate such action." Do
25 you see that?

1 A Yes.

2 Q Had you retained Mary Shahid at this point?

3 A I don't know.

4 Q But at least according to her letter here, it
5 looks to me like she believed that as of November 22,
6 2006, it was not that likely that the Navy would --
7 strike that.

8 Do you remember if there was any follow-up
9 conversation with Miss Shahid regarding this specific
10 letter?

11 A No. I don't recall.

12 (Defendant's Exhibit 17 marked.)

13 BY MR. COUNTRYMAN:

14 Q 17 looks to me to be a retention letter where
15 Miss Shahid signs you to be her client, essentially.
16 Is that correct?

17 A Yes.

18 Q Do you remember receiving this letter?

19 A Yeah, I do, yes.

20 Q Did she represent you for a time?

21 A I don't believe she did. I believe I paid
22 her and I think the reason for this was a lot of the
23 paperwork that she had was in storage and she had to
24 pay -- get the paralegal or someone to go get this,
25 because I remember her telling me it would take a few

1 days to get some information together, but she did not
2 represent me that I can believe in anything except
3 finding information. I've never met this lady face to
4 face.

5 Q Do you know if you have ever paid her for
6 legal services?

7 A I want to say yes, but I'm not sure. I'm
8 pretty sure I sent her a small check. I would have to
9 check my records.

10 Q You don't know if you have any bills from her
11 office, do you?

12 A I'm -- the number \$500 sticks in my head. I
13 may have paid her \$500. But again, I would have to
14 go -- I would have to go check. It would take five
15 minutes, but...

16 Q All right. Would you have a problem with me
17 looking at the material that she might have that
18 relates to her representing you, to the extent that she
19 did?

20 A No.

21 MR. PENDARVIS: Off the record.

22 (Discussion off the record.)

23 BY MR. COUNTRYMAN:

24 Q Mr. Roberts, my understanding was, when I saw
25 this letter, that you may have retained Miss Shahid to

1 help you resolve this issue with the Navy, but you're
2 saying you don't recall it.

3 A I recall wanting to, because she had -- she
4 had been involved in the Stone deal, but to the best of
5 my recollection, she didn't want to mess with the Navy,
6 so she bowed out, asked me to -- I don't think she
7 wanted to handle it.

8 Q And what was your understanding of the nature
9 of the Navy's claim at this point, December 6th, 2006?

10 A Well, my recollection was what was in these
11 other papers, and that was that they said they owned
12 part of the marsh, but I have to keep going back to
13 what I was told every time this came up, and that was
14 that we have a legal dock permit and they have got
15 nothing, they -- you know, we have a dock permit and
16 we're fine from -- for building that dock.

17 Q Did you ever ask anyone at the Navy for
18 permission to build the dock or to have it there after
19 it was built?

20 A Why would I do that?

21 Q If the Navy was staking the claim of
22 ownership of the marshland.

23 A The Navy never -- everything I had gotten was
24 talk or letters until I was served that lawsuit.
25 That's the first time that there was really any claim

1 that they legally made to me, Keith Roberts, or Yellow
2 House, LLC and Keith Roberts.

3 Q Yeah, I don't necessarily mean a claim
4 against you, but a claim of ownership of the marshland.

5 A Okay, you've lost me after that. Go ahead.

6 MR. COUNTRYMAN: I don't remember what my
7 question was.

8 (Record read.)

9 BY MR. COUNTRYMAN:

10 Q All right. I guess just to clarify, when I
11 used the word "claim" a minute ago, I think you thought
12 I was using it regarding the Navy making a claim
13 against you.

14 A Right.

15 Q I was referring to the Navy making a claim
16 that it owned the property. And just to clarify --

17 A You mean a conversation?

18 Q I mean anyone notifying you that the Navy was
19 saying that it owned the property as opposed to the
20 State of South Carolina owning the property, "the
21 property" being the marshland.

22 A The first information that I received
23 regarding that was that letter from Chuck Mimms that
24 Susan Bryant had wrote to him that he sent to me, that
25 there was an issue.

1 Q Was that one of the exhibits?

2 A Yes, sir.

3 Q Was that the email or the letter?

4 A The email.

5 Q Okay.

6 (Defendant's Exhibit 18 marked.)

7 BY MR. COUNTRYMAN:

8 Q 18 looks to be a letter from Susan Bryant to
9 Chuck Mimms. It's dated January 18th, 2006. But to
10 me, it makes a lot more sense if that was January 18th,
11 2007. Do you have any idea which date is correct?

12 A I would agree with you that it would be 2007.

13 Q And look at the third page.

14 A Yes, sir.

15 Q It says, "Release of agreement to buy and
16 sell real estate"?

17 A Yes, sir.

18 Q Do you know if that release was an attachment
19 or enclosure to this letter, or were they sent
20 together?

21 A I don't recall.

22 Q Well, is this letter basically a notification
23 that the seller -- I'm sorry, that the buyer, Bowen,
24 was canceling the contract to buy the property for 2.2
25 million dollars?

1 A Yes, sir.

2 Q Did you receive this letter on or about
3 January 18th, 2007?

4 A Yes.

5 Q And it lists eight reasons that the buyer was
6 backing out of the deal, correct?

7 A Yes.

8 Q And No. 1 says, "The seller will not be able
9 to deliver a marketable title and general warranty deed
10 free of encumbrances due to the land owned by the U.S.
11 Government upon which the dock is built." Do you see
12 that?

13 A I see it.

14 Q Is that referring to the Navy's claim of
15 ownership of the marshland adjacent to the property, or
16 were there other issues with the title to the property
17 itself that had arisen?

18 A I would reckon it has to be the issue with
19 the marsh, but I -- now I don't understand it, why the
20 marketable title and warranty deed...

21 Q Again, that's why I asked, did anything come
22 up regarding the title of the property itself?

23 A No.

24 Q So to the best of your knowledge, Item 1
25 relates to the Navy's claim of ownership --

1 A On the marsh, right, which has nothing to do
2 with the title.

3 Q Okay. And then Item 2 says, "The seller
4 failed to disclose the material fact that the dock was
5 built on land owned by the U.S. Government. If this
6 information had been provided to the buyer prior to the
7 contract, the buyer would not have entered into the
8 agreement to purchase the property." Do you see that?

9 A Uh-huh (affirmative). Yes.

10 Q Is it true that you didn't disclose that the
11 dock was built on land that the Navy claimed it owned?

12 A Again, I'll refer back to -- I don't know
13 about that, but I will tell you that when I bought this
14 property, I had a legal dock permit. The
15 administrative law judge ruled that the Navy had never
16 proved that they owned this. So he reissued a dock
17 permit. That's how I based and why I based -- why I
18 even bought this property.

19 Q I understand, but do you know what the basis
20 is of Item 2, the allegation of failure to disclose?

21 A There was nothing to disclose. The Navy
22 never proved to the ALJ that they had any ownership of
23 that property, that marsh. If I would have known that,
24 I wouldn't have bought the property.

25 Q If you had known what?

1 A That the Navy owned the marsh. It was my
2 belief that they did not.

3 Q In fairness, do you remember whether the ALJ
4 court determined that the Navy did not own the property
5 or just that it hadn't proven that it did?

6 A Had not proven that it did.

7 Q The ALJ order did not preclude the Navy from
8 making claims of ownership of that marshland in the
9 future, did it?

10 A I don't think so, no, sir.

11 Q Turn the page on this letter, Exhibit 18,
12 Item 6 says, "The buyer was not satisfied with the
13 preliminary home inspection, there were certain
14 material items not completed according to the plans
15 supplied by the seller." Do you know what items No. 6
16 refers to?

17 A No, because everything in that letter that
18 you showed me looked like he was happy with, everything
19 was acceptable.

20 Q Did you ever discuss with Bowen or any of his
21 representatives his dissatisfaction with the home
22 inspection?

23 A I did not, no.

24 Q Did you discuss that with your agent?

25 A Probably, yeah.

1 Q Do you recall your agent telling you what
2 those items that were not completed according to the
3 plans were?

4 A He would have discussed that with Pat Cogan,
5 who was the builder, so Pat would have had that
6 conversation with Chuck Mimms rather than Keith, me.

7 Q Do you remember talking to Pat about those
8 conversations?

9 A Yes.

10 Q What do you remember about that?

11 A That he said it was a bunch of malarkey,
12 everything that that man wanted, he corrected. If it
13 was an issue, whatever the issue, Mr. Bryant --
14 Mr. Bowen had was not an issue.

15 Q Did Pat say why he thought Item 6 was
16 included in this letter, then?

17 A I can't recall, no, sir.

18 Q Do you have an opinion as to why it was
19 included in the letter?

20 A No.

21 Q Do you think that it's -- that it was not a
22 legitimate basis for the buyer to list?

23 A I don't know what and why the man would think
24 it was not legitimate, whatever he was, you know --

25 Q You don't know --

1 A -- whatever his problems were.

2 Q You don't know what the problems were that he
3 was referencing?

4 A I don't recall what the problems were, no.
5 Again, I look at this letter --

6 Q What number is that?

7 A 15. Septic tank is acceptable, the zoning
8 issue is acceptable, the graveyard to the right,
9 acceptable, the access to 14 acres on the right side,
10 acceptable.

11 Q So Exhibit 15 doesn't give us any insight as
12 to what the home inspection issues were?

13 A No. It seemed like he was very happy with
14 everything on November the 16th.

15 Q And you don't recall what those specific
16 problems were?

17 A No.

18 Q No. 7 says, "The seller has not provided an
19 inventory list and the property specifications as
20 required by the contract." Do you know what that
21 refers to?

22 A No, sir.

23 Q Did you talk to your agent about that?

24 A I don't recall.

25 Q The next one says, "The seller has not

1 provided builder's warranty as required by the
2 contract." Do you know what that refers to?

3 A The builder's warranty.

4 Q Did you not provide the builder's warranty?

5 A If we didn't, I'm sure Pat did immediately
6 when he was asked to provide it.

7 Q All right. Is it fair to say that at least
8 according to this letter, Exhibit 18, that there were
9 eight reasons that the buyer cancelled the contract?

10 A Yes.

11 Q And that at least three of those reasons have
12 nothing to do with the Navy's claim of ownership of the
13 marsh adjacent to the property?

14 A At least three, yes.

15 Q Do you think that the contract would have
16 fallen through had the Navy's claim not been an issue?
17 In other words, would those items, 6 through 8, have
18 caused the contract to fall through had they been the
19 only issues?

20 A I don't believe so.

21 Q Why do you think that?

22 A Because I think the man had a reason he
23 wanted to buy the house.

24 Q Which was what?

25 A To put a 61-foot boat or 65-foot boat behind

1 the house.

2 Q And how did that impact his desire to
3 purchase the property?

4 A I believe he was -- he got scared.

5 Q What had happened by that time that would
6 have made him scared?

7 A The phone call that Susan Bryant made to the
8 Navy and what the Navy individual told her.

9 Q Did you ever talk to Mr. Bowen or his agent
10 about these eight listed grounds for cancelling the
11 contract?

12 A If I talked to anyone, it was never him or
13 the agent, it would have been Chuck.

14 Q Your agent?

15 A Yes.

16 Q Did you talk to -- I'm sorry.

17 A And again, it would have been Pat talking,
18 you know, probably doing most of the talking.

19 Q Why was that?

20 A Because he was aware and he's the one that
21 built the house, and as far as any preliminary home
22 inspection or builder's warranty would have come from
23 him.

24 Q All right. So he would have more information
25 about Items 6 through 8 on this January 18th, '07

1 letter than you?

2 A Yes.

3 Q When Bowen cancelled the contract, did you
4 immediately return the earnest money?

5 A No.

6 Q Why not?

7 A Because I believed we had a deal.

8 Q Tell me, then, what happened next with Bowen
9 and the status of the contract in the wake of this
10 January 18th, 2007 letter.

11 A I believe that Randy and I had conversations
12 regarding this because, of course, he had all of this
13 information, and we discussed that we -- we always
14 discussed that the Navy should have no claim on that
15 because of what the ALJ had -- when he rendered his
16 decision, and that we had a legitimate dock permit.
17 And I believe all of that was presented to Chuck,
18 Miss Bryant, and Mr. Bowen, and the letter from Mary
19 Shahid.

20 Q So what did you do when they asked you to
21 return the earnest money and said they wanted to cancel
22 the contract?

23 A I believe I told them no.

24 Q I'm guessing that's what prompted this letter
25 that I'm going to show you.

1 (Defendant's Exhibit 19 marked.)

2 BY MR. COUNTRYMAN:

3 Q Have you seen Exhibit 19 before?

4 A I guess I have. That's my writing at the top
5 of it, so, yes, sir.

6 Q It looks like you faxed this to Mr. Drew on
7 2/18/2007?

8 A Yes, sir.

9 Q What is -- what is this letter? It looks to
10 me to be a letter from the buyer's lawyer reiterating
11 why the contract is being cancelled and asking for
12 their earnest money back.

13 A That's what it looks like, yes, sir.

14 Q And on the first page, there are three bullet
15 points, and part of the first bullet point says that
16 "it has come to the buyer's attention that the United
17 States Government owns the marshlands abutting the
18 property, this claim of ownership could result in the
19 government's demanding that the seller's dock which
20 crosses the aforementioned marshlands be removed." Do
21 you see that?

22 A Yes.

23 Q And then Bullet Point 2 looks to reference
24 the dissatisfaction with the home inspection and it
25 says there were several material deviations from the

1 plans supplied by the seller. Do you see that?

2 A Yes.

3 Q And I assume that you don't have any specific
4 information regarding what deviations that bullet point
5 refers to?

6 A Correct.

7 Q And then Bullet Point No. 3 references the
8 failure to deliver the builder's warranty to the buyer.
9 Do you see that?

10 A Yes.

11 Q Where it says these were never delivered to
12 the buyer?

13 A Right.

14 Q And I think you said earlier, when we were
15 talking about the January 18th, '07 letter, that Pat
16 would have addressed the warranty issue immediately?

17 A Yes.

18 Q But at least according to this February 7th,
19 2007 letter, it doesn't look like the warranty had been
20 delivered. Do you have any information about that?

21 A No, sir.

22 Q Did you discuss this letter with Mr. Drew
23 once you faxed it to him?

24 A Yes.

25 Q Do you remember that discussion?

1 A Yeah. We discussed and I -- I'm sure we had
2 been discussing from the previous letter that I did not
3 want to return his earnest money, and then after
4 getting this, we, I'm sure, discussed it some more and
5 he probably -- he advised me that maybe I should.

6 Q And then did you?

7 A I'm sure he did. He's the one that held the
8 money.

9 Q Okay. Do you know if Mr. Drew ever called
10 Ben Hagood, who wrote this Exhibit 19 letter, to talk
11 about these issues?

12 A I don't recall.

13 Q Do you know whether you paid Mr. Drew
14 anything above and beyond the attorney's fees related
15 to the closing to help handle these issues with the
16 Navy's claim?

17 A I don't think I did, no, sir.

18 Q All right. So I think that takes us up to
19 about the March 2007 meeting that you referenced
20 earlier.

21 A Yes.

22 Q Tell me who attended that meeting.

23 A Randy Drew, myself, Fran Trapp, and there was
24 a slew of other ones that I have no clue who they were.
25 They were, I'm sure, Navy attorneys.

1 Q Who is Miss Trapp?

2 A Assistant U.S. attorney, I think she is, a

3 federal attorney, yes.

4 Q Where did that meeting take place?

5 A Downtown at the federal building.

6 Q And what was the purpose of that meeting?

7 A To discuss the issue of the dock being built

8 on what they call their lands, I guess --

9 Q And you said in your --

10 A -- the marsh.

11 Q I'm sorry.

12 A The marsh.

13 Q You said in your deposition in the federal

14 case that that meeting is when the Navy first demanded

15 that you remove the dock, is that correct?

16 A Oh, yeah, yes.

17 Q That's the first time?

18 A Uh-huh (affirmative).

19 MR. PENDARVIS: You need to say yes or no.

20 A (Continuing) Yes. I'm sorry. Yes.

21 Q Did the Navy threaten to sue you at that

22 meeting?

23 A I don't recall. They weren't very nice.

24 Q Doesn't sound as though they've been nice to

25 you through this whole thing.

1 A No, sir.

2 Q Do you remember whether the Navy threatened
3 to seek damages against you at that meeting, damages
4 from you?

5 A I don't recall. I -- I know that one of the
6 fellows sitting behind Miss Trapp near the end of it
7 just basically looked at me and said, "Look, we're
8 tired of talking to you, take the dock down." And I
9 went, "Mr. Drew?"

10 Q How did the meeting end?

11 A Randy had -- Randy was with me and we sat and
12 Randy just explained to them that there was nowhere
13 that he found in his research and the title searches
14 that the Navy had claim to any of that property.

15 Q What was the Navy's response to that?

16 A "Yes, we do. You didn't know where you were
17 looking. You didn't look in the right places."

18 Q Where did they say Mr. Drew should have
19 looked, if you can remember?

20 A I can't remember the exact place, but they --
21 I want to say they -- Miss Trapp told him she would fax
22 a copy of all of that information to him.

23 Q Did you talk about that with Mr. Drew
24 following the meeting, about whether he looked in the
25 right place?

1 A We probably discussed it outside and his
2 stance -- everything that Randy had ever done in this
3 transaction or any transaction has always been what I
4 considered -- you know, I mean, I believed him, trusted
5 him and that's why I continued to use him, that the
6 research that he did with the titles, the title for the
7 property did not show any of -- the government not
8 owning any of the land.

9 Q And then in that meeting, the government said
10 that Mr. Drew had not looked in the right place when he
11 did the title search, is that correct?

12 A I believe that's -- you know, maybe it's
13 different verbiage, but I believe that's the gist of
14 it.

15 Q Something to that effect. Do you remember
16 how long that meeting took or how long it lasted?

17 A I would guess a few hours.

18 Q At the end of the meeting, had any agreement
19 been reached?

20 A No.

21 (Defendant's Exhibit 20 marked.)

22 BY MR. COUNTRYMAN:

23 Q I've given you Exhibit No. 20, which looks to
24 be a letter from Mary Shahid to you dated July 26 of
25 2007. Does that sound accurate? Is that what this is?

1 A Yes.

2 Q And it says that she enclosed a letter from
3 the DOJ and then there's a letter enclosed from the
4 Department of Justice dated July 23, 2007, which is, I
5 think, on the fifth page, fifth page?

6 A Uh-huh (affirmative), yes.

7 Q Did you receive this July 23, 2007 letter
8 along with Miss Shahid's letter of July 26, 2007?

9 A Evidently around that date.

10 Q Right, but you got this letter from the
11 Department of Justice, Miss Shahid sent you the letter
12 from the Department of Justice?

13 A Yes.

14 Q Okay. And the letter from the DOJ, in the
15 first paragraph, second sentence, state that, "It has
16 come to our attention that the dock is constructed
17 across property owned by the United States." Do you
18 see that?

19 A Yes.

20 Q And then it goes on to say, "It appears that
21 the owner of TMS No. 267-00-00-012 in Berkeley County
22 trespassed and continues to trespass upon the lands of
23 the United States." Do you see that?

24 A Yes.

25 Q And then the next sentence, "The owners'

1 trespass onto the lands of the United States may
2 subject them to damages, both actual and punitive,
3 costs to remove any structures intruding onto the lands
4 of the United States and other remedies both equitable
5 and legal." Do you see that?

6 A Yes.

7 Q And you received this letter in July of 2007,
8 correct?

9 A Yes.

10 Q And at this point, was Miss Shahid
11 representing you, or was she just forwarding you a
12 letter that she received from the Department of
13 Justice?

14 A I'm sure she was just forwarding the letter.

15 Q What did you do when you received this
16 letter, if you can recall?

17 A Probably called Randy and sent it to him.

18 Q Do you remember doing that?

19 A Yes.

20 Q What did Mr. Drew say?

21 A He said the same thing that he said the
22 entire time that we've had this dealing, it's not --
23 they're wrong, they're not right.

24 Q And you --

25 A They have not proven that they own this

1 property.

2 Q Did you discuss with Mr. Drew the Navy's
3 threat to seek damages against you?

4 A Probably.

5 Q That would have been around the time when you
6 received that letter, July of 2007?

7 A Yes.

8 (Defendant's Exhibit 21 marked.)

9 BY MR. COUNTRYMAN:

10 Q All right. Exhibit 21 looks to be another
11 letter from the Department of Justice, but this time
12 it's a letter addressed to you. Is that right?

13 A Yes.

14 Q Look at the third page of Exhibit 21. It's a
15 letter addressed to Lot 12 Yellow House, LLC, care of
16 Mr. Drew, from the Department of Justice, is that
17 correct?

18 A Yes.

19 Q Both letters are dated August 8th, 2007?

20 A Yes.

21 Q And both letters contain the sentence, "The
22 owners' trespass on the lands of the United States may
23 subject them to damages, both actual and punitive,
24 costs to remove any structures intruding onto the land
25 of the United States and other remedies both equitable

1 and legal," correct?

2 A Yes.

3 Q And Mr. Drew was your registered -- was the
4 registered agent for Lot 12 Yellow House, LLC?

5 A I would imagine, yes. He was my lawyer.

6 Q Was he ever a member of --

7 A No.

8 Q Have there been any other members besides
9 you?

10 A No.

11 Q What did you do when you received this
12 letter?

13 A I can't recall. Probably talked to Randy,
14 but I can't recall.

15 Q You didn't remove the dock when you received
16 this letter, did you?

17 A No, sir.

18 Q And I may have asked you this before. Is the
19 dock still there?

20 A Yes.

21 Q But when you received this letter in August
22 of 2007, you knew that the Navy was asking you to take
23 the dock down and was threatening to try to seek
24 damages against you in the event that you refused to do
25 so, correct?

1 A Yes.

2 (Defendant's Exhibit 22 marked.)

3 BY MR. COUNTRYMAN:

4 Q I've given you Exhibit 22, which looks to me
5 to be a fax cover sheet from Mr. Drew to Edisto Title
6 Services and then a letter from Edisto Title Services
7 back to Mr. Drew and then what looks to be a title
8 abstract. And I'll tell you that I kind of put these
9 documents together from what we have, so it's not some
10 contiguous document. But have you seen -- are these
11 documents that comprise Exhibit 22 familiar to you?

12 A Yes.

13 Q Do you remember -- well, strike that.

14 To confirm, is the first page of Exhibit 22 a
15 request from Mr. Drew's office to Edisto Title Services
16 for a 40-year title search of the Lot 12 property?

17 A Yes.

18 Q Do you know why that request was made?

19 A I would imagine it was to go back as far
20 as -- 40 years to see if what the Navy was claiming
21 was -- was true.

22 Q Did Mr. Drew discuss this title search
23 request with you when he made it?

24 A Oh, I'm sure, yes, I'm sure we did together,
25 we wanted to have another one done.

1 Q Do you recall whether Mr. Drew performed the
2 initial title search himself or had an abstractor
3 perform it?

4 MR. PENDARVIS: Object to the form. Answer
5 if you can.

6 A (Continuing) I don't know. I can find out.

7 Q I think that he did it himself, but...

8 And then the second page of Exhibit 22 looks
9 to be a memo from Edisto Title Services to Mr. Drew
10 basically saying that Mr. Balish's search didn't find
11 any issues or anything conveying interest in the
12 marshlands?

13 A Yes, sir.

14 Q Did you discuss the results of the title
15 search with Mr. Drew?

16 A Yes.

17 Q Can you tell me about that discussion?

18 A It would have probably been they have --
19 there is no -- there is nothing here that shows the
20 Navy has any ownership in the land, in the marsh, that
21 it's what we've been saying, what he has been telling
22 me all along.

23 Q Do you know whether you paid for that title
24 search, or did Mr. Drew pay for it?

25 A I'm sure I paid for it.

1 Q Why do you think that?

2 A I paid for everything.

3 Q What do you mean? I mean, was Mr. Drew
4 trying to help you out with the situation and take care
5 of the title search?

6 A I'm sure he was trying to help me out with
7 the situation, but I know I -- I'm pretty sure I paid
8 for it. Randy may have paid for it, but I'm 99.9
9 percent sure I wrote him a check to pay for it.

10 Q Any idea how much it cost?

11 A Probably \$75, and that's a guess.

12 (Defendant's Exhibit 23 marked.)

13 BY MR. COUNTRYMAN:

14 Q It looks like Exhibit 23 is an email from you
15 to Mr. Drew dated January 30, 2008. Is that correct?

16 A Yes.

17 Q And it says, "How about giving me a call
18 after you receive this. These people just don't want
19 to go away." And then in the subject line, it looks
20 like you're forwarding one, maybe two letters to
21 Mr. Drew that you received regarding the Navy's claim.
22 Do you know what those letters were?

23 A Probably another threat from the Navy to me.

24 Q Do you know whether they were any of the ones
25 that we've already looked at or --

1 A They may have been. I don't know until I
2 were to go back and check, but --

3 Q Okay. Yeah, I just didn't see in the
4 documents where those letters were attached to it.

5 Do you know who Clay Walker is?

6 A Yes.

7 Q Who is that?

8 A He is the attorney for the dealerships.

9 Q For the car dealerships?

10 A Yeah.

11 Q Was he helping you out with some of these
12 issues?

13 A Yeah. I asked him to -- to help. I had
14 mentioned it to him, he said he knew Fran Trapp, so of
15 course, I said, "Hey, how about giving me a hand."

16 Q All right.

17 A "Sure."

18 Q Take a look at this document and that relates
19 to what you're talking about.

20 (Defendant's Exhibit 24 marked.)

21 BY MR. COUNTRYMAN:

22 Q Did you ever formally retain Mr. Walker to
23 represent you?

24 A No.

25 Q Do you recognize Exhibit 24?

1 A Yes.

2 Q What is it?

3 A It's an email from Fran Trapp to Clay Walker
4 and then another one from Clay to me and then another
5 from Clay or a second one from Clay it looks to Ed
6 Smith and Fran Trapp.

7 Q Is it fair to say that you received all of
8 these emails as a carbon copy on the January 30th, 2008
9 email from Clay to Fran?

10 A Yes.

11 Q What happened with Mr. Walker's involvement
12 with this claim?

13 A It's not his expertise, so he just asked me
14 to -- you know, "You need to talk to somebody else."

15 (Defendant's Exhibit 25 marked.)

16 BY MR. COUNTRYMAN:

17 Q 25 looks to be a letter from the Department
18 of Justice to Mr. Drew dated February 6th, 2008. Have
19 you seen this letter before?

20 A Yes.

21 Q Do you recall when?

22 A Yes.

23 Q When?

24 A Probably right close to February 6th, 2008.

25 Q And it says in the second paragraph on the

1 first page, "The dock constructed from Lot 12 to Yellow
2 House Creek crosses land owned by the United States
3 Government," correct?

4 A Yes.

5 Q And then, "By constructing this dock across
6 the United States property, your client has trespassed
7 upon the property of the United States," correct?

8 A Yes.

9 Q And then on the second page, the first real
10 paragraph, Fran Trapp, the Navy's lawyer, is
11 threatening to file a lawsuit seeking damages against
12 you, correct?

13 A Yes.

14 Q Including damages for trespass, costs to
15 remove the dock, restore the marsh, as well as punitive
16 damages, correct?

17 A Yes.

18 Q Did you start looking into how much it would
19 cost to tear the dock down?

20 A I did eventually, and at what time, I don't
21 know. I've got an estimate, which I'm sure you've got,
22 for \$187,000. At that -- I don't know what the time
23 frame was when I received that.

24 Q I don't recall either. It might be in our
25 documents. You don't remember, as we sit here right

1 now, whether that was before or after this --

2 A Oh, it was not before -- I'm pretty sure it
3 was not before this at all. No. I know it wasn't,
4 because I had -- still had no real reason to find out
5 how much it would cost because I believed that -- as
6 well as Randy did, that we were right based on all the
7 information that he had gotten.

8 (Defendant's Exhibit 26 marked.)

9 BY MR. COUNTRYMAN:

10 Q And I imagine you recognize Exhibit 26
11 because it looks like you wrote it.

12 A That's me, yup.

13 Q And is it safe to say that this is a letter
14 dated February 29, 2008 to Senator Lindsey Graham
15 asking for help regarding this issue?

16 A Yes.

17 MR. PENDARVIS: Without the exhibits, right?

18 MR. COUNTRYMAN: It does not have all the
19 exhibits, correct.

20 A (Continuing) Yeah. They're not there.

21 Q And the last page looks to be the response
22 from Senator Graham to you, is that correct?

23 A It was the first letter, yes, sir.

24 Q Sorry?

25 A It was the first letter. The back page?

1 Q Yes, sir.

2 A Yeah, it was the first letter that he sent
3 that he received -- that he was looking into the
4 matter. There was another one after this.

5 Q I may have overlooked that. Do you know when
6 that was written and/or what it said?

7 A I would say within 60 days of this letter.

8 Q Do you know what it said?

9 A Long and short of it, sorry.

10 Q Did it come to any conclusions?

11 A No. I can't recall.

12 Q Did you draft Exhibit 26, the letter that you
13 wrote, not the response letter?

14 A Oh, yeah, yes, sir.

15 Q And down towards the bottom, do you see where
16 it says, "I am now being threatened by the U.S.
17 attorney"?

18 A Yes.

19 Q "See letter dated February 6th, 2008 on
20 behalf of the Department of the Navy to bring suit for
21 damages and seek an injunction preventing me from using
22 the dock, et cetera"?

23 A Yes.

24 Q And then it looks like you enclosed a copy of
25 that letter, which I did not enclose or I didn't

1 attach, but you sent a letter -- you sent a copy of
2 that February 6th letter to Senator Graham?

3 A Yes.

4 Q And then the next sentence says, "This
5 controversy was going on for years before I bought the
6 property. Even though I was under the impression that
7 it was a done deal, it has once again reared its ugly
8 head." Is that what that says?

9 A Yes, sir.

10 Q So is it fair to say that at this time,
11 February 29, 2008, that the situation was a serious
12 issue in your mind?

13 A It was an issue and any time you get a letter
14 from the government threatening you the way they
15 threatened me, I would say it's a serious issue, but
16 when I'm reassured by my attorney over and over again
17 that we have -- we really have no issue, we are right
18 in this...

19 Q Is it fair to say that at this point, you
20 don't know whether you were right in this?

21 A Oh, no. Trust me, I believed that I was --
22 that we were right, based on Randy telling me that we
23 were right, I had -- you got to remember, you know,
24 this is my attorney, this is a guy that's done a lot of
25 closings for me, and I trusted him. And to this

1 letter, prior letters from the government, he still
2 believed that he was right in what he had Edisto Title
3 Search do a title search for.

4 Q And is it fair to say that you-all still
5 believed you were right and that was the basis of your
6 defense in the federal case?

7 A Yes, I still believe that we are right.

8 Q In the federal case -- or the judge in the
9 federal case is going to determine that?

10 A When he wakes up.

11 Q And it has been, what, over a year, two
12 years?

13 A April 28th, 2010 is when we went before the
14 Honorable Judge Houck. Everybody that knows Judge
15 Houck knows he's a cantankerous fellow. He does what
16 he wants to do when he wants to do it.

17 MR. COUNTRYMAN: I need to go back and look
18 for -- do you know if you produced that letter,
19 the second response letter from Senator Graham? I
20 may have overlooked it.

21 MR. PENDARVIS: I think so. I know if we got
22 it, we did, but...

23 MR. COUNTRYMAN: If you can find it and let
24 me know, I can print a copy, because I'd like to
25 check it out because I just overlooked it, if

1 that's the case.

2 MR. PENDARVIS: We have the March 12th
3 letter, is that the one that's attached?

4 MR. COUNTRYMAN: Yeah.

5 MR. PENDARVIS: That's all I've got.

6 BY MR. COUNTRYMAN:

7 Q Okay. All right. Mr. Roberts, if you can
8 locate that second response letter from Senator Graham
9 and give it to your attorney so he can --

10 A Yeah.

11 Q -- let me see it, I would appreciate that.

12 A Yeah.

13 Q And again, you said you don't recall what
14 conclusions it came to, if any?

15 A Just that he had looked into it and it really
16 didn't -- I don't think it came to any conclusion.

17 (Discussion off the record.)

18 (Brief recess taken.)

19 (Defendant's Exhibit 27 marked.)

20 BY MR. COUNTRYMAN:

21 Q I'll give you another document that I'll
22 represent to you looks to be closing documents from a
23 closing that took place in March 2008. Do you
24 recognize this Exhibit 27?

25 A Yes, sir.

1 Q What is it?

2 A Settlement statement for a closing.

3 Q Was this a refinance of the construction

4 loan?

5 A Yes.

6 Q And what were the terms?

7 A I'm pretty sure it was a year. Yes.

8 Q And this is the loan that ultimately got --

9 that the bank ultimately foreclosed on?

10 A No.

11 Q It's not? Help clear that up. All right.

12 It looks like there was a closing on March 28th, 2008,

13 and you paid off the construction loan that you got

14 from First Citizens back in 2006, correct?

15 A Yes.

16 Q And you refinanced for 1.046 million dollars?

17 A Yes.

18 Q Secured by a mortgage on the property?

19 A Yes.

20 Q And Mr. Drew oversaw that closing?

21 A Yes.

22 Q Do you have any issues with his services on

23 that closing?

24 A No, no.

25 Q Is there a reason Mr. Cogan didn't sign as a

1 party to any of these loans?

2 A No.

3 Q Did you ever ask him to?

4 A He may have been leveraged at the time. I
5 know he had some other property. That may have been
6 why it was just me.

7 Q What happened when this note expired?

8 A We did another one.

9 Q That would have been in 2009?

10 A Yes, sir.

11 Q So then in 2009, April or -- March or April,
12 did you sign another one-year note?

13 A No. It was a six-month note.

14 Q What happened when that six-month note
15 expired?

16 A That's when it started going downhill.
17 Couldn't pay for it.

18 (Defendant's Exhibit 28 marked.)

19 BY MR. COUNTRYMAN:

20 Q 28 looks like a home equity line of \$150,000
21 principal dated April 4, 2008 in your name, is that
22 correct?

23 A Yes.

24 Q What was this equity line taken out for?

25 A Some work on the house I'm sure.

1 Q Do you remember what work specifically?
2 A No. And I'm sure I used it to make payments.
3 Q On the note?
4 A Yeah yes.
5 Q Was that credit line secured by the property,
6 too?
7 A Yes.
8 Q What's the status of that credit line today?
9 It looks like it --
10 A Oh, it has been paid off.
11 Q Has it?
12 A Yes.
13 Q How and when did you pay it?
14 A When the -- at the end of this loan, when
15 they did the six-month loan, they paid it out. Or
16 should I say they closed it out.
17 (Defendant's Exhibit 29 marked.)
18 BY MR. COUNTRYMAN:
19 Q Do you recognize Exhibit 29?
20 A Yes.
21 Q What is it?
22 A It's a letter of engagement for Mr. Wayne
23 Beam's professional services.
24 Q Who is Mr. Wayne Beam?
25 A He was a --

1 Q Dr. Wayne Beam, I'm sorry.

2 A A -- got a brain lock -- lobbyist.

3 Q How did you get in touch with him?

4 A Someone that Pat knew recommended that we
5 talk to him, I think he was a retired general or
6 admiral and had some contacts in Washington, especially
7 with the military, and felt that he could help us get
8 the thing straightened out with the Navy.

9 Q The third sentence of that first paragraph
10 says, "You desire me to convince the U.S. Department of
11 Defense and the U.S. Department of Justice to cease and
12 desist from their efforts to have your existing private
13 recreational dock disassembled and removed." Is that
14 true?

15 A I'm missing that -- oh, okay, there it is,
16 first paragraph, yeah, yes.

17 Q Did you end up retaining Mr. Beam?

18 A We retained him, but didn't pay him a dime.

19 Q Why not, what happened?

20 A He -- I can't remember when, he sent us a
21 letter stating that basically he could get nothing
22 done.

23 Q So he wasn't able to help you?

24 A Correct.

25 Q Did you know when he sent you -- strike that.

1 Did you say that he sent you a letter saying
2 that --

3 A I'm pretty sure he did, yeah.

4 Q -- he couldn't get anything done?

5 A Pretty sure.

6 Q Do you know when that was?

7 A Sometime in '08 I would -- again, it's a
8 guess.

9 Q Sure.

10 A It was months -- months after this.

11 Q Okay. If you look at the first page, there's
12 some handwriting down towards the bottom.

13 A That was me.

14 Q What was that?

15 A He had written in there 85,000 and the
16 figures that he and Pat agreed on were 80,000. He
17 tried to slide one by us, I think.

18 Q So you were going to pay him 80,000 for his
19 services?

20 A Yes.

21 Q And then he indicated that he couldn't
22 satisfactorily help you, and so you did not pay him?

23 A Correct.

24 Q Has he made any kind of claim for payment?

25 A No. No. If you look on here, it says, "In

1 the event I do not deliver the results enumerated
2 above, you will owe me nothing." That was part of his
3 agreement.

4 Q When did you first retain Stan Barnett?

5 A I want to say February or March of '09, the
6 best of my recollection.

7 Q Did Mr. Drew suggest that you retain him?

8 A He suggested I retain somebody.

9 Q Was that before or after the Navy filed their
10 suit?

11 A After.

12 (Defendant's Exhibit 30 marked.)

13 BY MR. COUNTRYMAN:

14 Q Exhibit 30 looks to be a letter from the
15 Department of Justice to you dated July 7th, 2008 --
16 I'm sorry, not to you, to Mr. Drew. Do you recognize
17 Exhibit 30?

18 A Yes.

19 Q When did you first receive Exhibit 30?

20 A Somewhere around July 7th of '08.

21 Q The first paragraph looks to contain the
22 Department of Justice's assessment of the facts leading
23 up to July 7th, 2008. Can you read that paragraph and
24 tell me if there is anything incorrect factually.

25 A The only thing I think may be wrong may be

1 the date that we met with you and your client.

2 Q It says, "We met with you and your client on
3 March 7th, 2008, to discuss your client's trespass on
4 the property"?

5 A I'm not sure what the dates, exact dates
6 were.

7 Q Do you think it was close to March 7th, 2008?
8 Do you know what makes you question that date?

9 A Just from everything in my mind. I thought
10 it was '07, not '08. That's the only date. But,
11 again, it's probably in here somewhere.

12 Q That sounds right. That may be a typo.

13 A One thing I am, I ain't a liar. That's what
14 I think.

15 Q I'm not calling you a liar.

16 A No, I know that.

17 Q All right. The second paragraph of the
18 letter says, "I have recently learned that your client
19 has not only" -- I'm sorry. "I have recently learned
20 that your client not only has failed to remove the
21 dock, but that he is advertising his property for sale
22 as having a deep water dock to which an additional
23 pierhead can be added." It looks like the Navy had a
24 serious problem with that. Was that true, that at that
25 time, you were still advertising a deep water lot?

1 A Probably.

2 Q With potential dock access or dock use?

3 A Yes.

4 Q And then that paragraph goes on to say that
5 the Navy is in the process of drafting a lawsuit
6 against you.

7 A Okay.

8 Q And the last sentence of that paragraph says,
9 "Please be advised that your client's continued blatant
10 trespass across the United States subject your client
11 to punitive damages, as well as actual damages." Do
12 you see that?

13 A Yes.

14 Q Turn, if you will, to the second to the last
15 page, it's labeled Drew 215 at the bottom right-hand
16 corner. If you look in that first paragraph, towards
17 the bottom, I think it's the second to the last
18 sentence, it says, "In addition, it appears that your
19 client had actual knowledge of the United States
20 ownership of the property." Do you see that?

21 A Yes.

22 Q Do you know what that refers to?

23 A No.

24 Q Go down to the next paragraph and the last
25 sentence says, "He had many indications that the

1 property was owned by the United States and chose to
2 ignore that." Do you see that?

3 A Yes.

4 Q Do you know what indications that refers to?

5 A The only thing I can think would be the
6 problem with the -- Tom Stone initially.

7 Q If you go down to the second to the last
8 paragraph, it's a short paragraph, the second sentence
9 says, "Your client had actual knowledge of the United
10 States ownership of the land." That's the second time
11 that the Navy says that. But you don't have any
12 knowledge of what the Navy is referring to there? Or
13 do you remember what the Navy's position was regarding
14 you having actual knowledge of its ownership of the
15 land?

16 MR. PENDARVIS: Form objection.

17 A (Continuing) No.

18 Q And then the last paragraph asks you to --
19 I'm sorry, asks Mr. Drew to contact Trapp to discuss
20 the removal of the dock and then asks that you not use
21 the dock in any manner and that continuing to do so
22 could subject to you damages. Do you see that?

23 A Yes.

24 Q Do you know whether Mr. Drew contacted
25 Miss Trapp after receiving this letter?

1 A I can't remember if he did or didn't.

2 Q Did you continue to use the dock after you
3 read this letter?

4 A Probably.

5 Q What were you using the dock for at that
6 time?

7 A Pat was staying there, so he had his boat
8 over there.

9 Q Then in February 2009, the Navy filed its
10 lawsuit, is that right?

11 A Yes.

12 Q And I think we discussed that in April 2009,
13 you signed a short-term note that was -- trying to
14 avoid giving you more documents, but...

15 (Defendant's Exhibit 31 marked.)

16 BY MR. COUNTRYMAN:

17 Q Is Exhibit 31 the short-term note that you
18 referenced a few minutes ago?

19 A Yes.

20 Q Is this the note that the bank ultimately
21 foreclosed on or filed suit on?

22 A Yes.

23 Q I believe the mortgage is included, yeah.
24 Turn to page 3, and that's the mortgage securing this
25 note via the property, if you look at page 3?

1 A 12 Yellow House, LLC?

2 Q Yes.

3 A Yes.

4 Q Is that the mortgage that has been foreclosed

5 on?

6 A Yes.

7 (Defendant's Exhibit 34 (sic) marked.)

8 BY MR. COUNTRYMAN:

9 Q Do you recognize 34?

10 (Discussion off the record.)

11 (Defendant's Exhibit 32 marked.)

12 BY MR. COUNTRYMAN:

13 Q All right. Do you recognize No. 32?

14 A Yes.

15 Q What is it?

16 A An agreement to buy and sell real estate.

17 Q Is that an agreement to sell the property?

18 A Yes.

19 Q What happened with this contract? Strike

20 that.

21 Is it an agreement to sell the property for a

22 million dollars to the Lackeys?

23 A It's an agreement from the Lackeys to me to

24 buy the property for a million dollars, right.

25 Q And I assume that that transaction never was

1 consummated?

2 A Correct.

3 Q What happened?

4 A I can't remember. I can't remember whether
5 it was a dock issue or the fact that I wasn't taking a
6 million dollars for it.

7 Q How did -- all right. So is this just an
8 offer, a contract that the Lackeys signed?

9 A I think so, yes, sir.

10 Q All right. Turn to the second to the last
11 page, signature page. I don't see your signature. Do
12 you?

13 A Nope, not there.

14 Q So you did not enter into an agreement --

15 A No.

16 Q -- to sell the property to the Lackeys?

17 A No, sir.

18 Q But they offered to buy it for 1 million
19 dollars?

20 A Yes.

21 Q In September of 2009?

22 A Yes.

23 Q What would you have sold the property for in
24 September of 2009?

25 A Back then, my thoughts were probably a

1 million five.

2 Q How did you come to that number?

3 A What I had in it with my 475,000 that I paid
4 for it, plus the million one I owed the bank, I would
5 be right around a million five, so I wouldn't lose too
6 much. But right now, I would have sold it.

7 Q For a million?

8 A Today, yeah. But back then, my thoughts
9 would have been a million five.

10 Q Do you know if the Lackeys ever deposited the
11 earnest money that is listed on the first page?

12 A I don't recall.

13 (Defendant's Exhibit 33 marked.)

14 BY MR. COUNTRYMAN:

15 Q Mr. Roberts, do you recognize Exhibit 33?

16 A Yes, sir.

17 Q What is it?

18 A Forbearance agreement.

19 Q For what?

20 A The property.

21 Q For that last short-term loan?

22 A Yes.

23 Q What are the basics of this forbearance
24 agreement? Did it extend the time that you had to pay
25 the loan?

1 A I need to read it. Just give me a second to
2 read it.

3 Yes. They would forbear the loan through
4 April 3rd of '010.

5 (Defendant's Exhibit 34 marked.)

6 BY MR. COUNTRYMAN:

7 Q 34 is actually a series of letters. Looking
8 at the first page of Exhibit 34, do you recognize that
9 document?

10 A Yes.

11 Q What is it?

12 A It looks like it's a letter from Lowell
13 Leopold to Captain Zalaskus.

14 Q Is this what sparked the Navy's claim, to
15 your knowledge?

16 A No idea.

17 Q Do you know when you first saw this letter?

18 A I want to say -- I want to say this letter I
19 seen for the first time less than 30 days ago.

20 Q Really? When did you -- in what context did
21 you see it?

22 MR. PENDARVIS: And don't talk about anything
23 that we said.

24 A (Continuing) Repeat the...

25 Q Is it fair to say that your lawyer gave you

1 this document, the first page of Exhibit 34, for the
2 first time about 30 days ago?

3 A Either my lawyer or Pat, but I would say,
4 yes, that's -- about 30 days ago is when I first seen
5 this letter.

6 Q You're sure about that?

7 A Yes.

8 Q Turn to the second page of the exhibit. It's
9 another letter. This one is from Mr. Leopold -- I'm
10 sorry, from the Navy to Mr. Leopold. Have you seen
11 this letter before?

12 A Within the last 30 days the first time, yes.

13 Q So Mr. Stone never gave you copies of either
14 of those letters before you bought the property?

15 A No.

16 Q Turn to the next page, it looks like a copy
17 of the previous letter sent to Mr. Stone, a letter from
18 Zalaskus from the Navy. Have you seen page 3 of
19 Exhibit 34 before?

20 A Yes.

21 Q When?

22 A Within the last 30 days.

23 Q Did you know whose handwriting is on that
24 document?

25 A No, sir.

1 Q Do you know what Code 091 means? It's
2 written down by the signature block.

3 A No, sir.

4 Q Again, Mr. Stone never gave you a copy of
5 this letter before?

6 A No, no, sir.

7 Q Do you think had he done that, you would have
8 still bought the property?

9 A I don't know, but it sure would have made
10 me -- I probably would not have bought the property.

11 Q Is it fair to say that Mr. -- it looks like
12 Mr. Stone had that letter in his possession before the
13 closing. Is that fair?

14 A Yes.

15 Q And what's your understanding of the
16 substance of these letters that were -- we reviewed so
17 far in Exhibit 34?

18 A That Mr. Leopold had requested some
19 information whether or not he could put a dock out
20 there on his property and the Navy wrote him a letter
21 back and said no.

22 Q Turn the page, if you will, and I'm looking
23 at a letter from DHEC to Thomas Stone. It's labeled
24 Drew 449 on the bottom right-hand corner.

25 A Yes.

1 Q Have you seen this letter before?

2 A Yes.

3 Q When?

4 A Not quite sure. Probably around the time we
5 bought the property, when all the information was
6 coming from Stone.

7 Q Do you know if you received it before or
8 after the closing?

9 A Probably before.

10 Q Turn the page, if you will, it looks like
11 it's another letter from DHEC, this time to the Navy.
12 Have you seen this letter before? And for the record,
13 that's a letter dated August 19th, 2004.

14 A Yes.

15 Q Do you recall when you first saw this letter?

16 A Same time as the previous letter.

17 Q Which is right around the time of the
18 closing?

19 A Yes.

20 Q And do you know if you saw it before or after
21 the closing?

22 A Before.

23 MR. COUNTRYMAN: Let me take like a
24 five-minute break and then I might not have too
25 much longer.

1 (Brief recess taken.)

2 BY MR. COUNTRYMAN:

3 Q I may have asked you earlier, Mr. Roberts,
4 but do you recall whether you attended Mr. Drew's
5 deposition in the federal case?

6 A I did not.

7 Q You did not attend?

8 A Did not.

9 Q Have you read it?

10 A Yes.

11 Q Do you recall anything in it that you
12 disagree with?

13 A I can't -- not right now, I can't recall.

14 Q At one point in that deposition, Mr. Drew
15 said that he explained that the permit, the dock permit
16 is a license and the State can come in and revoke the
17 permit if it deemed necessary. Do you recall that?

18 A Yes.

19 Q That's a true statement, he explained that to
20 you?

21 A Oh, we've had that discussion many times,
22 yes.

23 Q He also said, "Based on the administrative
24 law judge order and the conversations I had with Mary,"
25 presumably Mary Shahid, "and her opinions on the permit

1 and the validity now of the permit based on the ALJ
2 order and the appeal period passing, I discussed all of
3 those with my client." Did Mr. Drew discuss those
4 things with you before the closing?

5 A Yes.

6 Q He also stated that -- I'm sorry. The
7 question was in his deposition, "Your client and you
8 were both on notice that the government was claiming
9 the property in question prior to closing, were you
10 not?" And Mr. Drew responded, "Yes." Do you agree
11 with that?

12 A Well, we knew there was an issue with the
13 Stone permit.

14 Q I'll give you -- again, I'm sorry for going
15 out of order.

16 (Defendant's Exhibit 35 marked.)

17 BY MR. COUNTRYMAN:

18 Q Do you recognize Exhibit 35?

19 A Yes.

20 Q What is it?

21 A I had an old buddy of mine that knew Jim
22 Clyburn, went to school with him, and in conversation,
23 we were just talking about this, and he says, "Look,
24 I'll write a letter if you want," and I'm like,
25 "Anything, I'm looking to reach out to anybody." And

1 he wrote a letter to Congressman Clyburn and, of
2 course, nothing.

3 Q I don't see a date on this letter. Do you
4 recall when it was written?

5 A Sometime in '08, probably June, July.

6 Q And you don't remember ever getting a
7 response from Mr. Clyburn?

8 A No, sir, never.

9 Q You definitely did not get a response from
10 him?

11 A Never did, no, I never got a response from
12 him.

13 Q Do you know whether Mr. -- or Senator (sic)
14 Clyburn respond to Mr. Dickerson?

15 A No, he never did.

16 Q Do you know what this handwriting is at the
17 bottom of the letter?

18 A No, never seen it.

19 (Defendant's Exhibit 36 marked.)

20 BY MR. COUNTRYMAN:

21 Q This is a document that I believe was
22 produced by your lawyers and it looks to be an
23 affidavit of yours, but I don't see that it's signed.
24 Do you recognize this document?

25 A I don't -- I mean --

1 Q You don't recognize it?

2 A I'm having a hard time recognizing it. I
3 mean, a lot of this stuff is -- I mean, I've seen, you
4 know, before in my letter to Graham and all of that.

5 Q Do you know whether you drafted this
6 document?

7 A This looks like it was Pat drafted it, it
8 looks like Cogan 009. I don't know if that's him or if
9 that's -- but it came from -- wherever it came from was
10 in 803.

11 Q So based on the fax stamp at the top?

12 A Yeah.

13 Q 803 fax number?

14 A Yeah.

15 Q Does Mr. Cogan have an 803 fax number?

16 A Not that I -- no.

17 Q Do you recognize that number?

18 A I don't, no.

19 Q So you don't recall drafting this and you
20 don't recall having seen this document before?

21 A I may have, but I sure don't remember, no.

22 Q Okay. I want to talk about your damages for
23 a bit. And what I'm looking at are your discovery
24 responses, which your lawyer drafted, which detail what
25 your damages are. And I want to go over those with

1 you. It says the contract price or the contract sale
2 price to Bowen of 2.2 million dollars, less the
3 purchase price of the lot of 475,000, less construction
4 costs of 700,000, less \$110,000 of real estate
5 commission, resulting in \$915,000 in lost profits on
6 the contract of Bowen.

7 A Okay, yes.

8 Q Did you calculate that?

9 A I'm sure I had something to do with it.
10 Those are all numbers that I have.

11 Q And you -- your position is that you're
12 entitled to recovery from Mr. Drew in that amount based
13 on the contract falling through?

14 A What I'm -- what I feel I'm due is -- and
15 that's why we requested a jury trial, is, you know,
16 what a jury of my peers decides.

17 Q And presumably at trial, you'll get to
18 testify as to what you think you're entitled to and
19 this is my chance to find out what that testimony is
20 going to be. So as we sit here today, I need you to
21 let me know what you think you're entitled to recover
22 for --

23 A I would say that that would probably be
24 something that I would need to discuss with my lawyer
25 as to give you a --

1 Q Sure.

2 A -- a number.

3 Q But in theory, do you think that you're
4 entitled to recover for lost profits on the contract
5 with Bowen?

6 A In theory?

7 Q Yes.

8 A In reality, yes.

9 Q Okay. How come? I'll put it in a different
10 way. Why do you think that in light of the fact that
11 Bowen said he never would have signed the contract had
12 he known about the Navy's claim of ownership of the
13 marshland?

14 A Repeat your question. I'm having a hard
15 time.

16 Q Okay. You're alleging almost a million
17 dollars that you're entitled to recover on losing the
18 contract with Bowen. You're saying, "Because I
19 couldn't go through with this deal, I lost out on about
20 \$900,000 in profit that I otherwise would have gained
21 had the deal gone through." You're saying that the
22 deal did not go through and that that is Mr. Drew's
23 fault and that, as a result, you should recover, among
24 other things, that lost amount of profits.

25 And my question is, in light of the fact that

1 Mr. Bowen said he never we would have entered into the
2 contract had he known about the Navy's claim, how can
3 you seek recovery of lost profits on that contract?

4 A Well, going back to the initial research and
5 title searches that were supposed to have been done
6 properly, if Randy had have found out, I never would
7 have had -- I never would have bought the property, so
8 I'm fine and God knows I would never be in this
9 situation, but the fact of the matter is we did, he
10 did, gave me the go ahead, advised me to buy it.

11 We went through the whole thing and we built
12 this property with the understanding of selling it.
13 Prior to any of this thing coming up, this man made an
14 offer. We accepted the offer. If none of this issue
15 was around, that's what we would have gotten. So I
16 reckon that's why I'm -- that's why I should get -- you
17 know, why I would be asking for that amount of money.

18 Q Okay. I guess my difficulty in understanding
19 that is it looks to me like the contract was based on a
20 false premise and that contract was based on property
21 not being owned by the Navy.

22 A Well, I guess I can go back to I bought the
23 property under false, you know, advice.

24 Q I understand that, and along those lines, you
25 could argue that you're entitled to damages on the

1 deficiency judgment or damages on the foreclosure, but
2 to me, that's different than lost profits from a
3 causation perspective. And I am trying to figure
4 out -- if you can help explain why you're entitled to
5 recover lost profits on a contract that the contracting
6 party said he would never have entered into had he
7 known about the Navy's claim.

8 A I can't give you a -- without thinking about
9 it quite some time, probably.

10 Q Let's talk about the foreclosure.

11 (Defendant's Exhibit 37 marked.)

12 BY MR. COUNTRYMAN:

13 Q Do you recognize 37?

14 A Yes.

15 Q What is it?

16 A It's an order confirming deficiency judgment
17 against me.

18 Q In the amount of \$462,541.19?

19 A Yes.

20 Q Have you paid anything on this deficiency
21 judgment?

22 A No.

23 Q Have you made any agreements with the bank
24 regarding paying that judgment?

25 A No.

1 Q Do you know whether the bank has taken any
2 steps towards recovering that judgment?

3 A They have not as of today.

4 Q Do you know whether the bank plans to?

5 A Probably.

6 Q Based on what? And I don't want to know
7 things that your lawyer -- because you have a lawyer in
8 the foreclosure case, don't tell me what you-all talked
9 about. But suffice it to say that you think -- you
10 expect the bank to --

11 A Come after me.

12 Q To recover on that deficiency judgment?

13 A Yes.

14 Q Do you have assets that could serve as a
15 source of recovery for that judgment?

16 A With the exception of my house, no. And the
17 house is in my wife's name, not my name, so, no.

18 Q Have you made any agreements or agreement
19 with First Citizens regarding any proceeds you obtained
20 from this lawsuit?

21 A No.

22 Q Do you know whether First Citizens knows
23 about this lawsuit?

24 A I know we've talked about it. I'm not sure
25 if they do.

1 Q You don't recall giving First Citizens any
2 rights to any proceeds that you may get from this
3 lawsuit?

4 A Correct.

5 Q Who is your lawyer in the foreclosure case?

6 A Shawn French.

7 MR. PENDARVIS: S-h-a-w.

8 BY MR. COUNTRYMAN:

9 Q And your discovery responses indicate that
10 you paid him about \$5,000 in attorney's fees?

11 A Yes.

12 Q Is that correct?

13 A Yes.

14 Q You've actually paid him?

15 A Yes.

16 Q Your responses also indicate \$60,000
17 attorney's fees incurred in defending the Navy suit,
18 and I think I saw somewhere where you paid
19 approximately half of that?

20 A Yes.

21 Q Is that right?

22 A Yes.

23 Q Is Mr. Barnett continuing to bill you or has
24 he agreed to not --

25 A He -- I'm sure he has. He's billing Pat. It

1 goes to Pat. And I have not asked Pat if he has billed
2 him. I think the last time, which was probably two
3 months ago, he still was receiving bills from him.

4 Q Why is Pat paying those bills?

5 A There's -- that was part of our agreement.

6 Q What kind of account are those bills paid
7 from?

8 A I would imagine his personal account. I
9 don't know.

10 Q Did you-all set up an account in the name of
11 Lot 12 Yellow House, LLC?

12 A Yes.

13 Q Who was eligible to write checks out of that
14 account?

15 A Me.

16 Q Not Pat?

17 A Not Pat.

18 Q Did you have any joint accounts with Pat
19 other than that?

20 A No.

21 Q Have you -- has Pat paid all of those -- I
22 think it was \$27,000 in legal fees to Mr. Barnett. Has
23 Pat pay the paid all of that, or have you paid some of
24 it and he's paid some of it?

25 A I'd have to look in my records. I may have

1 paid some, but he made the majority of it.

2 Q Did you reimburse him for any of that?

3 A I may have. I -- but -- I may have a little
4 bit, but not a bunch.

5 Q Has Mr. Barnett sent you any letters
6 regarding payment of those fees?

7 A No.

8 Q Has he taken any steps to get you to pay
9 those fees?

10 A Not as of today.

11 Q There's also listed as a damage "presently
12 unqualified maintenance expenses," and it says, "to be
13 determined." Do you know what that refers to?

14 A I'm sure it's upkeep of the house, lighting.

15 Q Do you have --

16 A Yard work.

17 Q Do you have any kind of numerical estimate
18 for how much that would be?

19 A No, sir.

20 Q But you're trying to recover that as a damage
21 in this case?

22 A Yes, sir.

23 Q Would it be fair to say that that would be
24 maintenance expenses that you may have incurred as a
25 result of not being able to sell the house as opposed

1 to maintenance expenses incurred before the house would
2 have been sold?

3 A I would probably say both.

4 Q How come?

5 A No. It wouldn't be both. It would be
6 incurred since we were not able to sell the house.

7 Q Do you have a date? I'm trying to figure out
8 when you think those costs would have started to
9 accumulate.

10 A No.

11 Q And you don't have any idea today how much
12 those costs would be?

13 A No.

14 Q Do you have any idea how much taxes would
15 have been on the sale of the property to Mr. Bowen?

16 A I'm sorry, taxes?

17 Q Right. When you have to pay taxes on --

18 A I have no -- no, I have no idea.

19 Q Are there any other damages that you're
20 trying to recover in this lawsuit that we haven't gone
21 over? Quantifiable damages, I would say.

22 A The fact that my hair was brown when this
23 started is not going to matter.

24 Q This was when, in 2004, 2005?

25 A Five.

1 Q Are you thinking, or is that a no?

2 A No.

3 Q And you-all have retained an expert, who is a
4 lawyer named Brian Boger. Have you talked to him
5 before?

6 A No, sir.

7 Q Have you talked to any other lawyers in this
8 case besides Mr. Pendarvis about the case?

9 MR. PENDARVIS: And my co-counsel.

10 BY MR. COUNTRYMAN:

11 Q And co-counsel?

12 A Yes.

13 (Discussion off the record.)

14 BY MR. COUNTRYMAN:

15 Q How did you come to find Mr. Pendarvis to be
16 your lawyer?

17 A Recommended from Ron Hoover.

18 Q And we discussed earlier what Mr. Drew may
19 have done or may not have done regarding looking at
20 these issues prior to the closing, and I think you said
21 that you couldn't identify anything specific that you
22 think he did or failed to do and that you were going to
23 rely on your expert to discuss that, is that correct,
24 or are you aware of any particular document he did not
25 find or any step that he did not take?

1 A Well, evidently he did not find what the Navy
2 is claiming and that is that they had ownership,
3 claimed ownership or they have ownership to the marsh.

4 Q And I understand that, but I'm -- are you
5 aware of any particular document that gives the Navy
6 ownership that Mr. Drew did not find?

7 A No.

8 Q Are you aware of any particular step Mr. Drew
9 could have taken that would have clarified this issue
10 prior to closing?

11 A No.

12 Q Do you have any expectation as to what the
13 result of the federal case is going to be, the pending
14 motion?

15 A No, no clue. I thought it would have been
16 done by now, but it's not.

17 Q If you win that motion, would you still think
18 you're entitled to damages from Mr. Drew?

19 A It's something I have to discuss with my
20 lawyer.

21 Q You don't have an opinion on it?

22 A No.

23 Q Now, I may have mischaracterized some --
24 strike that.

25 I may have misspoke on the attorney's fees

1 that were -- strike all of that. My apologies.

2 Did you attend any of the depositions in the
3 federal case other than your own?

4 A No.

5 Q Have you read any of the transcripts?

6 A Yes.

7 Q Which ones? I think you said Mr. Drew.

8 A A lot of them.

9 Q Anything you can recall from any of the
10 transcripts that you disagreed with as being accurate?

11 A No.

12 Q I can remember somebody testifying that they
13 were on the dock when it was being constructed and
14 waved at a Navy boat a couple of times when it passed
15 by. Do you remember who that was?

16 A Jimmy McMullen, James McMullen.

17 Q Was he the one that was building the dock?

18 A Yes.

19 Q He said that a boat was patrolling the creek
20 and Jimmy waved at the boat multiple times and no one
21 ever said anything to him.

22 A Correct.

23 Q And then you said you had no idea as to what
24 sparked the Navy's interest in asserting its claim, is
25 that right?

1 A No. I mean, that's right.

2 Q Did you read Mr. Cogan's deposition
3 transcript?

4 A Yes.

5 Q Anything you can recall that you disagreed
6 with in it?

7 A No.

8 Q And I think your lawyer had actually talked
9 about you potentially suing Mr. Stone at some point,
10 but then that did not happen. Do you have an
11 understanding as to why you haven't sued Mr. Stone?

12 A I can't remember. I know there was a reason
13 because we discussed it.

14 Q And I don't want to know what you two
15 discussed, but you don't have an understanding of what
16 the reason is?

17 A Right.

18 Q Your wife's name is Kathy, correct?

19 A Yes.

20 Q Is that your first wife?

21 A No.

22 Q Previous wives?

23 A Yes.

24 Q How many? I'm sorry, I have to ask these
25 background questions.

1 A There were three others.

2 Q Can you just tell me their names and where
3 they are.

4 A Cindy, I think her last name is Duffy. She's
5 in Florida and Pennsylvania, back and forth. Nancy,
6 don't know her last name now. Florida somewhere.

7 Q Do you recall her maiden name?

8 A No, I can't. No I can't. It was a very
9 short marriage. And Debbie, used to be Powell, but she
10 has been remarried six other times, so -- and she's in,
11 I think, Florida somewhere. But we're going on 25
12 years, so that was a long time ago.

13 Q All right. You and your wife have been
14 married 25 years?

15 A Yes.

16 Q Do you know her -- what's your wife's maiden
17 name?

18 A Dillon.

19 Q Other than this and the federal case or cases
20 which are pending right now, have you been a party to
21 any other lawsuit?

22 A Yes. There was an -- not an asbestos. LP
23 trim, ABTCO, when I built the home I live in now,
24 around the windows.

25 Q Was that a construction defect-type suit?

1 A Yes.

2 Q You were the plaintiff?

3 A It was a class over -- yeah.

4 Q You were a plaintiff in that?

5 A Yes.

6 Q Who was your lawyer?

7 A I can't recall their name.

8 Q Do you know whether you gave a deposition in

9 that case?

10 A No, I never did.

11 Q Do you have a Myspace, Facebook, Twitter

12 account?

13 A Facebook, I think, yeah.

14 Q Is it under your name?

15 A Yeah.

16 Q And have you ever been arrested?

17 A Probably.

18 Q Do you remember in the last 10 years?

19 A No.

20 Q Prior to that?

21 A Maybe 25 years ago.

22 Q Do you remember what it was for?

23 A Oh, God, probably DUI.

24 Q Do you know what the result of that arrest

25 was?

1 A Yeah, the judge slapped my hand, made me
2 write him letters every six months for two years.

3 Q Did you plead guilty?

4 A I think it was no contest.

5 Q Was that in Florida?

6 A Yes, sir.

7 Q And you've told me the truth today?

8 A Yes, sir.

9 Q Realize you've been under oath?

10 A Yup.

11 MR. COUNTRYMAN: All right. I don't think I
12 have anything else.

13 MR. PENDARVIS: Nothing from me.

14 (Deposition concluded at 2:12 p.m.)

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