

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

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

vs.

Randall J. Drew Respondent.

RECORD ON APPEAL - VOL 2 of 3; Pages 391 - 676

PENDARVIS LAW OFFICES, P.C.
Thomas A. Pendarvis (SC Bar #64918)
Catherine B. Kerney (SC Bar #81429)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
(843) 524.9500 tel.
(843) 524.9501 fax.
Thomas@PendarvisLaw.com
Carey@PendarvisLaw.com

Attorneys for Appellants, Keith Roberts
and LOT 12 YELLOW HOUSE, LLC

CARLOCK, COPELAND & STAIR, L.L.P.
David W. Overstreet (SC Bar #16965)
Andrew W. Countryman
(SC Bar #72700)
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307 tel.
(843) 727-2995 fax.
doverstreet@carlockcopeland.com
acountryman@carlockcopeland.com

Attorneys for Respondent, Randall J.
Drew

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1 C E R T I F I C A T E

2 STATE OF SOUTH CAROLINA:

3 COUNTY OF BERKELEY:

4 I, TERI L. SAMPSON, Registered Professional
5 Reporter, Notary Public and Certified Live Note
6 Reporter, State of South Carolina at Large, certify
7 that I was authorized to and did stenographically
8 report the foregoing deposition; and that the
9 transcript is a true record of the testimony given by
10 the witness.

11 I further certify that I am not a relative,
12 employee, attorney or counsel of any of the parties,
13 nor am I a relative or employee of any of the parties'
14 attorney or counsel connected with the action, nor am I
15 financially interested in the action.

16 WITNESS MY HAND AND OFFICIAL SEAL this 21st day of
17 November, 2011, in the Town of Hanahan, County of
18 Berkeley, State of South Carolina.

19

20 Teri L. Sampson, RPR,
21 Notary Public and Certified
Live Note Reporter

22

My commission expires:
23 May 15, 2015

24

25

1 STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2 COUNTY OF CHARLESTON

3
4 KEITH ROBERTS AND LOT 12 YELLOW HOUSE, L.L.C.,

5 Plaintiff,

6 vs. CIVIL ACTION NO. 2011-CP-10-3241

7 RANDALL J. DREW,

8 Defendant.

9
10
11 DEPOSITION OF: RANDALL J. DREW

12 DATE: February 14, 2012

13 TIME: 11:05 AM

14 LOCATION: Law Offices of
15 Carlock, Copeland & Stair, LLP
16 40 Calhoun Street, Suite 400
Charleston, SC

17 TAKEN BY: Counsel for the Plaintiff

18 REPORTED BY: TERRI L. BRUSSEAU, RPR,
19 CERTIFIED REALTIME REPORTER

20 A. WILLIAM ROBERTS, JR., & ASSOCIATES

21 Fast, Accurate & Friendly

22 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376

23 Columbia, SC Greenville, SC Charlotte, NC
24 (803) 731-5224 (864) 234-7030 (704) 573-3919

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF
3 KEITH ROBERTS AND
4 LOT 12 YELLOW HOUSE, L.L.C.:

5 PENDARVIS LAW OFFICES, PC
6 BY: THOMAS A. PENDARVIS
7 500 Carteret Street, Suite A
8 Beaufort, SC 29901
9 (843) 524-9500
10 Thomas@PendarvisLaw.com

11 ATTORNEYS FOR THE DEFENDANT
12 RANDALL J. DREW:

13 CARLOCK, COPELAND & STAIR, LLP
14 BY: ANDREW W. COUNTRYMAN
15 40 Calhoun Street, Suite 400
16 Charleston, SC 29401
17 (843) 727-0307
18 acountryman@carlockcopeland.com

19 (INDEX AT REAR OF TRANSCRIPT)
20
21
22
23
24
25

1 STIPULATION

2 It is stipulated by and between Counsel
3 that this deposition is being taken in accordance
4 with the South Carolina Rules of Civil Procedure,
5 Rule 30; that all objections as to Notice of this
6 deposition are hereby waived; that all objections
7 except as to form are reserved until the time of
8 trial; and that the deponent does not waive reading
9 and signing of this deposition.

10 * * * * *

11 RANDALL J. DREW

12 being first duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. PENDARVIS:

15 Q. Mr. Drew, my name is Thomas Pendarvis.
16 We met just briefly before the deposition started.
17 I've been retained by Keith Roberts and an LLC he
18 has an interest in called Lot 12 Yellow House Road,
19 LLC in this matter that's been brought against you.

20 (PLF. EXH. 1, Second Amended Notice of
21 Deposition (Randall J. Drew, J.D.), was marked for
22 identification.)

23 BY MR. PENDARVIS:

24 Q. We're here for your deposition today
25 and I'm going to pass to you -- just a formality,

1 this is a copy of the Amended Notice of Deposition.
2 And let me ask before we get too far into it, have
3 you had -- other than the deposition in the federal
4 lawsuit, have you had your deposition taken before?

5 A. On this case or in any case?

6 Q. Any case.

7 A. Yes, I have.

8 Q. And I think there was a reference to
9 many years before that deposition there was another
10 deposition in which you've been involved?

11 A. Yes. It was an accident when I was in
12 my early twenties. My nephew got in an accident
13 and I was following in a car behind him. I had a
14 deposition taken then and I just had a deposition
15 taken in a case in a dispute with Cohen Drywall.

16 Q. Mr. Drew, you would agree with me,
17 wouldn't you, that no professional should
18 needlessly endanger their client or their patient?

19 A. Yes.

20 Q. And that would hold true that no lawyer
21 should needlessly endanger his client?

22 A. Yes.

23 Q. And you'd agree, wouldn't you, that a
24 client has a right to expect good care in the
25 handling of their legal matter?

1 A. Yes.

2 Q. And a client has a right to expect his
3 lawyer will investigate all the necessary facts and
4 research the necessary law before providing legal
5 advice, correct?

6 A. Yes.

7 Q. You would agree, wouldn't you, that
8 when there's any risk of material loss to your
9 client, that the lawyer should always follow the
10 rules, better to be safe than sorry?

11 MR. COUNTRYMAN: Object to the form.
12 You can still answer.

13 THE WITNESS: I'm not sure I
14 understand.

15 BY MR. PENDARVIS:

16 Q. During the course -- just some
17 housekeeping matters. During the course of the
18 deposition today if your attorney objects, unless
19 he instructs you not to answer the question you are
20 obligated to answer.

21 A. Okay.

22 Q. So let me restate the question.

23 A. Yes.

24 Q. You would agree with me, wouldn't you,
25 that when there is any risk of loss to your client

1 with regard to decisions made in the case, the
2 lawyer -- always prudent for the lawyer to follow
3 the rule it's better to be safe than sorry?

4 MR. COUNTRYMAN: Same objection.

5 THE WITNESS: It's best for the
6 attorney to give the advice to the clients.

7 BY MR. PENDARVIS:

8 Q. Would you agree that any risk of loss
9 is unacceptable if reasonable means could have been
10 used to eliminate or minimize the risk?

11 A. There are always inherent risks.
12 That -- I believe there are always inherent risks
13 so you make an educated judgment.

14 Q. If when considering the risk that
15 you've just testified, if there are reasonable
16 means to minimize or to eliminate the risk, it's
17 prudent for the lawyer to take those steps to
18 minimize or limit the risk, am I correct?

19 A. It's prudent to advise the client as to
20 the risk.

21 Q. And you would agree, wouldn't you, that
22 the greater the risk of injury to the client, the
23 greater the duty to provide care to avoid that risk
24 to the client as the lawyer, correct? Let me
25 restate that.

1 A. Yeah.

2 Q. You would agree, wouldn't you, that the
3 greater the risk of injury to the client, the
4 greater the duty for the lawyer to minimize or
5 eliminate the risk, correct?

6 A. I'm not sure that the attorney can
7 always minimize or remove the risk but they can
8 inform the client as to the risk.

9 Q. And the lawyer is someone people go to
10 to protect their interests, right?

11 A. Yes, sir.

12 Q. And a client should always be -- should
13 be able to always trust a lawyer he goes to for
14 help, right?

15 A. Yes.

16 Q. And when a client puts his or her legal
17 matters in the hands of a lawyer, they have the
18 right to assume that the lawyer will -- that the
19 client will receive safe and competent care in the
20 lawyer's handling of the legal matter, correct?

21 A. Did you say safe and competent?

22 Q. Yes, I did.

23 A. I believe they should have reasonably
24 competent care, yes.

25 Q. You would agree, wouldn't you, that if

1 the lawyer is careless and the careless act of a
2 lawyer causes financial harm to the client, the
3 lawyer is responsible for all the damage he causes,
4 correct?

5 A. If the lawyer's responsible for the
6 damage, yes.

7 Q. Yes. Let me estimate, take a wild
8 guess here. Have you been driving a vehicle for 20
9 years or more?

10 A. Yes, sir.

11 Q. And you're aware there's rules of
12 safety for driving cars, right?

13 A. Yes, sir.

14 Q. Like traffic signals?

15 A. Yes.

16 Q. And if there's a stop sign, everybody
17 knows, what do you do?

18 A. Stop.

19 Q. Stop. And that rule has been in place
20 for a long time, right, the stop sign rule?

21 A. Yes.

22 Q. And that the purpose of the stop sign
23 rule is to protect motorists?

24 A. And pedestrians.

25 Q. And pedestrians. And you follow the

1 safety rule, correct?

2 A. Yes.

3 Q. And you expect others to follow the
4 safety rule to stop at a stop sign, correct?

5 A. Yes.

6 Q. And if people do not follow the rule,
7 people can get hurt?

8 A. Yes.

9 Q. And no one should break the rule by
10 stopping at a stop sign, at least if they know
11 about the rule, correct?

12 A. Correct.

13 Q. And if someone is aware of the safety
14 rule to stop at a stop sign and chooses to not
15 follow that rule, they're reckless, aren't they?

16 A. Yes.

17 Q. Now, we lawyers have rules for client
18 protection, don't we?

19 A. Yes.

20 Q. Like safety rules, like making sure to
21 identify and tell a client about all the
22 limitations on the uses of property that a client
23 is considering purchasing?

24 A. Yes.

25 Q. And those rules to properly advise a

1 client about limitations on uses of real property
2 and appurtenances to the real property -- let me
3 back up. How would you describe an appurtenance?

4 A. Something that is attached to or
5 associated with property, real property.

6 Q. Is a dock an appurtenance?

7 A. I don't know whether a dock would come
8 under the definition or not. An appurtenance
9 transfers under a deed, a dock does not, a -- so I
10 would have to research that.

11 Q. I'm going to fast forward way out of
12 where my outline has me going. Are you aware that
13 the property that was -- the subject of the
14 engagement with Mr. Roberts, hired you to retain
15 this property on , are you aware
16 that -- can we just call that the property today?

17 A. Yes.

18 Q. Are you aware that First Citizens Bank
19 foreclosed on the loan and has acquired that piece
20 of property?

21 A. Yes.

22 Q. And were you aware of the bank's
23 efforts to limit their foreclosure just to the dirt
24 and not to include the dock because of the pending
25 federal litigation?

1 A. I am not aware.

2 Q. You're going to be looking at an order,
3 and I'm getting back to the appurtenance question
4 because the court ruled that foreclosure by First
5 Citizens Bank of the lot included the dock as well
6 because it's an appurtenance.

7 A. Okay.

8 Q. So does that -- well, I'll let you look
9 at the order before I ask you again about the
10 appurtenance. Now, these safety rules that we're
11 talking about for clients to advise them of, in
12 particular for a real estate transaction matter,
13 the safety rule regarding informing the client of
14 the limitations on the uses of a piece of property
15 are there to protect the client, correct?

16 A. I don't know whether they're really
17 called safety rules. That's just your terminology?
18 Okay.

19 Q. But you would agree --

20 A. Yes.

21 Q. -- those rules are there to make sure
22 the client understands the dynamics of their
23 matter, safety rules and what it is that a client
24 needs to be aware of before they purchase a piece
25 of property?

1 A. Yes, sir.

2 Q. And you were aware of this what we're
3 characterizing as a safety rule to explain to the
4 client the limitations on the uses of property at
5 the time you were representing Mr. Roberts with
6 regard to his desire to purchase the
7 property, correct?

8 A. Yes, sir.

9 Q. And, in fact, you did attempt to
10 identify to Mr. Roberts certain limitations on the
11 use of the property during your representation,
12 correct?

13 A. Yes, sir.

14 Q. And, in fact, after the Navy had made
15 claims that Mr. Roberts' proposed dock on the
16 Yellow House Road property was -- might constitute
17 a trespass over the Navy property, you again
18 attempted to identify and tell Mr. Roberts about
19 the limitations on the use of the property,
20 correct?

21 A. Yes.

22 Q. And, in fact, you told Mr. Roberts that
23 if he proceeded with the purchase of the property,
24 he would be able to build a dock on that property,
25 didn't you?

1 A. I told him that -- specifically I told
2 him that it was a revokable license, that there was
3 a valid permit at the time based on my discussion
4 with Mary Shahid and with -- and based on the
5 administrative law order.

6 Q. Did you ever discuss with Mr. Roberts
7 any issues related to trespass about the Navy
8 property or Navy's claimed property?

9 A. I specifically discussed with Keith
10 when he called me to tell me he wanted the
11 assignment of dock permit transferred the day of
12 closing and hand-delivered to the OCRM office, I
13 told him that the Navy still could make a claim in
14 the future and that they have big ships with guns
15 on them and I did not want to be in a battle with
16 the Navy. And he said, well, I'm going to start it
17 right away and get it done.

18 Q. Did you advise him of any risk that
19 would be associated if he proceeded with building a
20 dock?

21 A. I told him they could still make a
22 claim. I said they hadn't proved anything based on
23 the administrative law order, what I discussed with
24 Mary, but they could still make a claim.

25 Q. And back to our safety rule discussion.

1 The protection of the client's legal interest is
2 one of the most important things for a lawyer,
3 isn't it?

4 A. Yes.

5 Q. And you don't want your client exposed
6 to unreasonable dangers, do you?

7 A. No.

8 Q. And if there's anything really
9 dangerous to your client's legal interest, you'd
10 want to know about it, right?

11 A. Yes.

12 Q. And if there's anything really
13 dangerous to the client's legal interest, you'd
14 want the client to know about it, correct?

15 A. Correct.

16 Q. Same question for legal interest in a
17 potential piece of real property. If there were
18 dangers to the client's interest in the potential
19 item of real property the client was looking at
20 purchasing, you'd want to know about any dangers in
21 the client's intended use, correct?

22 MR. COUNTRYMAN: Object to the form.

23 BY MR. PENDARVIS:

24 Q. That was a poor question. Let me
25 restate that.

1 A. Okay.

2 Q. If there was anything really dangerous
3 to the client's legal interest in a parcel of real
4 property, you would want to know about it, correct?

5 A. I'm not -- dangerous?

6 Q. To the client's desire, the client's
7 intended purposes for the use of the property.

8 A. Well, yes.

9 Q. And that would include anything
10 dangerous to any limitations on the real property,
11 correct?

12 A. I would inform of any of record items.
13 I -- not necessarily know his intended use.

14 Q. And you would want to know if there was
15 anything dangerous or risky in the methods you used
16 to investigate the title to the real property your
17 client was considering, you'd want to know that,
18 right?

19 A. Can you restate that?

20 Q. Well, for example, if there were two
21 boxes of materials related to the client's matter
22 and you only looked at one of them and there's a
23 danger that there's something contained in the
24 second box material to the client's use of the
25 property, you'd want to tell the client, listen, I

1 didn't have a chance to look at Box Number 2,
2 correct?

3 A. Well, if it were dealing in real
4 property, I would have searched the real property.

5 Q. But if there was a risk or a danger in
6 the method you used to search the property, the
7 client should know about that danger or risk,
8 shouldn't they?

9 A. Yes.

10 Q. I mean, someone should have the job to
11 look through the materials to give the client the
12 advice about a piece of property, correct?

13 A. The attorney.

14 Q. And sometimes attorneys use -- in real
15 estate matters sometimes attorneys use others to
16 help them with the work such as title abstracters,
17 correct?

18 A. Yes, um-hum.

19 Q. We're going to go through a lot of
20 materials in the case today but I do want to kind
21 of get some concepts down and for these next
22 questions I want to propose a series of assumptions
23 and I'm asking you to agree that these are true and
24 correct but I'm going to ask you for purposes of
25 some questions of damage to assume some things that

1 you may not agree with, okay?

2 A. Okay. So it's a hypothetical?

3 Q. This is a hypothetical. And you're an
4 attorney, correct?

5 A. Yes, sir.

6 Q. So let's assume for this next question
7 in a legal malpractice case here in South Carolina
8 involving a lawyer's advice on a client's right to
9 build a dock as an appurtenance to a parcel of real
10 property, I'm going to ask you to assume these
11 facts: Assume that as part of the engagement
12 forming the attorney/client relationship the client
13 told the lawyer about the client's plans to
14 purchase a lot and build for resale purposes a
15 house and a dock which would have deep water
16 access. Assume that.

17 Assume that the seller of the property
18 was prepared to transfer a permit to build a dock
19 as part of the sales transaction. Assume that
20 prior to the sale there were questions about
21 whether the Navy had acquired a portion of the
22 marsh in front of the lot and whether the dock
23 permit included a right to build a dock over the
24 marsh that the Navy claimed it owned. Assume that
25 the lawyer advised the client that the dock permit

1 contained rights sufficient to allow the owner of
2 the lot and the permit to construct a dock over the
3 marsh all the way to the deep water,
4 notwithstanding the Navy's claim of ownership.

5 Assume that the client relying on the
6 advice purchased the property, constructed a house
7 and constructed a dock. Assume that as part of the
8 purchase of the lot and construction of the house,
9 the client borrowed funds to assist in the
10 construction of the house. Assume that the client
11 used his or its own funds to purchase the lot.
12 Assume the client obtained a contract to sell the
13 property that would have resulted in a net profit
14 of 915,000 dollars.

15 Assume that after signing the contract
16 the purchaser discovered the Navy's claim to
17 ownership and withdrew from the contract. Assume
18 the Navy brought a lawsuit against the client
19 asserting claims of trespass seeking to have the
20 dock removed and seeking actual and punitive
21 damages. Assume the client had to retain counsel
22 to defend the Navy -- the lawsuit brought by the
23 Navy.

24 Assume that the finance for the
25 construction of the house and dock -- excuse me?

1 Assume that the lender who financed -- who gave
2 funds to finance construction of the house and dock
3 brought a foreclosure action and was successful in
4 recovering the house and the lot and the dock as
5 well as recovering a personal deficiency judgment
6 against the client for 460,000 dollars.

7 Last assumption. Assume for this next
8 question that there's been a finding of liability
9 has been established, i.e., that the lawyer's
10 advice to the client was below the standard of
11 care. Assume those things. Here's the question --
12 here are the questions: You would agree with me
13 that one element of the damages would be the lost
14 sale profits from the house?

15 MR. COUNTRYMAN: Object to the form of
16 the question.

17 THE WITNESS: I don't practice in any
18 of this field so I wouldn't have knowledge of that.
19 I really don't know anything about litigation.

20 BY MR. PENDARVIS:

21 Q. That's okay. You would agree, wouldn't
22 you, that another element of damages would be the
23 amount of the attorney's fees the client incurred
24 in defending this suit brought by the Navy?

25 A. Again, I don't know how they do

1 damages.

2 Q. Well, you testified earlier that if a
3 mistake by the lawyer caused injury to the client,
4 the lawyer would be responsible for that injury.

5 A. Yes, but I --

6 Q. And I'll ask you to assume for these
7 questions with those fact assumptions that a
8 finding had been made the attorney made an error in
9 the advice given to the client and that based on
10 the advice the client had acquired the property,
11 spent these funds and these events have happened.
12 So in the setting where there's an established fact
13 that the lawyer was liable and made an error, I'm
14 asking you is it -- to you without your lawyer's
15 hand seem to be a reasonable -- one element of the
16 damage being the lost profits from the sale?

17 MR. COUNTRYMAN: Object to the form.

18 THE WITNESS: Again, I'm sorry, but
19 I -- I would think that you would -- everything
20 would just go to a jury and --

21 BY MR. PENDARVIS:

22 Q. Okay. You would agree that another
23 element of damages would be the amount of the
24 attorney's fees that the client incurred in
25 defending the foreclosure suit?

1 MR. COUNTRYMAN: Same objection.

2 THE WITNESS: Again, anything to do
3 with damages, I really wouldn't have knowledge on
4 how they set those. I haven't been involved in any
5 litigation.

6 BY MR. PENDARVIS:

7 Q. I need to ask these questions anyway.

8 A. Okay. I'm sorry.

9 Q. No apologies. We've all got our work
10 we've got to do. You would agree with me that
11 another element of damages would be the amount of
12 maintenance expenses the client incurred in
13 maintaining the property after the sale was lost,
14 wouldn't you?

15 MR. COUNTRYMAN: Same objection.

16 THE WITNESS: Same answer.

17 BY MR. PENDARVIS:

18 Q. You would agree, wouldn't you, that
19 another element of damages would be the amount of
20 the foreclosing bank's personal deficiency
21 judgement against the client?

22 MR. COUNTRYMAN: Same objection.

23 THE WITNESS: Again, it would be left
24 to the jury.

25 BY MR. PENDARVIS:

1 Q. Mr. Drew, I'm going to get into just
2 some sort of background questions now. Where do
3 you live?

4 A. Mount Pleasant.

5 Q. And your age?

6 A. I am 52.

7 Q. Marital status?

8 A. Married, two children.

9 Q. And your relationship to Mr. Keith
10 Roberts, if any? Could you describe it for me,
11 please?

12 A. Our daughters were in gymnastics
13 together so I guess I've known Keith for I would
14 say somewhere around eight years, maybe a little
15 more. We've gotten together on different
16 occasions. We watched the Super -- he came down to
17 my house and watched the Super Bowl when the
18 Panthers were in the Super Bowl. We used to -- I
19 used to live in Brickyard so I'd see him almost
20 every morning and wave to him and say hey. This
21 was the first real estate transaction I had
22 completed for him.

23 Q. Were you involved in Keith's purchase
24 of this home or refinancing of this home?

25 A. No, sir. Refinancing.

1 Q. And you understand you're under oath
2 today?

3 A. Yes, sir.

4 Q. Have you ever taken a deposition before
5 where you were the party asking the questions --
6 the attorney asking the questions?

7 A. No, sir.

8 Q. Now, although we're in a fairly
9 informal setting here, your answers have the same
10 force and effect as if we were sitting in front of
11 a jury.

12 A. Yes, sir.

13 Q. I'm going to be asking you some
14 questions today. I've already asked a few. If I
15 ask a question -- you've done a pretty good job so
16 far of asking me to repeat it or rephrase it if you
17 don't understand it, but I want to make sure you
18 and I are on the same -- we have an agreement that
19 if I ask a question and you give me an answer, that
20 would mean that you understood the question and
21 gave me a full and complete answer, is that fair?

22 A. Yes.

23 Q. So if you don't understand something
24 I'm asking, please don't answer, ask me to restate
25 it.

1 A. Okay.

2 Q. There are some rules for depositions
3 that our courts have established here in South
4 Carolina. Once you've been sworn in, you're not
5 able to speak with your attorney about your
6 deposition testimony so I'm your sole source of
7 clearing up any questions you've got about any
8 answers or anything.

9 A. You're the one asking the questions.

10 Q. That's right. So just another
11 housekeeping matter. If you need to take a break
12 at any time, we're not under a major endurance
13 contest, I expect we're going to move through --
14 although you may see there's a good bit of paper
15 over here, it's triple copies so it's really a
16 third of that I'm going to be asking about and a
17 big part of it, it's really very few questions but
18 some of it has got some volume so I will be passing
19 some documents to you in the course of the
20 deposition.

21 A. What do you want me to do with them
22 after --

23 Q. You and the Court Reporter have to deal
24 with that. Our Court Reporter is going to be in
25 charge of all the original copies. I'm going to be

1 doing my best during the course of today to pass to
2 your counsel a copy, a courtesy copy for Andy to
3 evaluate while I'm asking you questions.

4 A. Okay.

5 Q. Let's talk a little bit about your
6 professional qualifications. And just in the
7 backdrop, I have reviewed your testimony from the
8 federal case and I'm going to do my best to deal
9 with issues that are peripheral to that. Let me
10 ask you, are you able to adopt all the testimony
11 you gave in the federal matter in September of 2009
12 as part of your testimony here today?

13 A. Yes, sir.

14 Q. You gave some testimony about the state
15 bars in which you were admitted. Is it
16 Pennsylvania and South Carolina?

17 A. Pennsylvania, South Carolina and US
18 Virgin Islands.

19 Q. That's a good one. I could do some
20 Virgin Islands practice. Do you do much work in
21 the Virgin Islands?

22 A. No. We almost moved there.

23 Q. When we get to a break, I may ask you
24 some questions about that.

25 A. Okay.

1 Q. That's not really germane to this
2 testimony. Where did you go to law school?

3 A. Widener University in Delaware.

4 Q. And when did you finish?

5 A. '96.

6 Q. Were you involved in law reviews or any
7 journals that the school published?

8 A. No, sir. I was working at the time
9 full-time when I went to law school.

10 Q. Any -- do you remember your rank in the
11 class?

12 A. I believe I was in the top 10 percent
13 but I'm not positive. I didn't really keep that --
14 I didn't...

15 Q. After you finished, did you take any
16 bar exams immediately or what happened right after
17 you finished law school?

18 A. Yeah, I took -- which one did I take
19 first? I either took Pennsylvania or South
20 Carolina first. I think I took Pennsylvania first,
21 then South Carolina, then the US Virgin Islands.

22 Q. And what -- did you have a prior
23 relationship or contacts with South Carolina in
24 particular?

25 A. No, sir. I just always wanted to live

1 in the south.

2 Q. After you obtained your admission to
3 the bar of South Carolina particular, have you
4 obtained any specialty certifications?

5 A. No, sir.

6 Q. Maintain your CLE requirements?

7 A. Yes, sir.

8 Q. Has anyone ever filed a grievance
9 against you?

10 A. No, sir.

11 Q. Are you rated by Martindale-Hubbell?

12 A. I wouldn't -- I don't know.

13 Q. And where is your law office?

14 A. In Park West.

15 Q. Park West? Can you give me the -- get
16 a little summarizing of your law practice sequence
17 in the federal deposition. Have you thought about
18 that any more about the firms you practiced --
19 let's just start can you give me a brief history of
20 your practice since you've become admitted into the
21 State of South Carolina bar?

22 A. I opened my own office in the year
23 2000.

24 Q. And I remember your testimony that you
25 were doing a little bit of real estate development

1 in that time period?

2 A. Yes, sir.

3 Q. Can you describe a little bit of that?

4 A. Well, I received my real estate license
5 in 1981. I received my real estate broker's
6 license in or around 1988. I did real estate
7 development from 1983 through 2000.

8 Q. Okay. And then the law practice?

9 A. Yes, sir.

10 Q. Did you practice with anyone?

11 A. No, sir.

12 Q. Solo?

13 A. Always solo, yes, sir.

14 Q. Have you ever joined a firm?

15 A. No, sir.

16 Q. Have you ever shared office space or
17 had lawyers to consult with?

18 A. I have attorneys that I consult with
19 or -- and I have an attorney who if I'm tied up or
20 ill that can handle closings.

21 Q. How long have you been at your present
22 location?

23 A. April of 2008.

24 Q. And could you describe generally the
25 nature of your law practice?

1 A. Yes, it's primarily transactional real
2 estate law. I also do some probate work, Wills,
3 trusts and estate claiming.

4 Q. And if I recall your testimony, that
5 Wills, trust and estate planning activities were a
6 little later into your practice?

7 A. Yes, sir. It actually came about
8 because a few clients had passed away without a
9 Will.

10 Q. Have you been involved in assisting
11 clients in obtaining a dock permit?

12 A. In obtaining a dock permit? Yes, sir.

13 Q. You have? Tell me about that.

14 A. Well, typically I -- well, what I
15 normally do if it's an approved dock corridor, we
16 went -- I can't remember the attorney's name in
17 Hilton Head who was Greenwood's attorney but I
18 drafted the joint use dock agreements for the docks
19 for him. And John Wade is a surveyor on Isle of
20 Palms. I typically refer people to him because he
21 will do the survey work and walk it through OCRM
22 for them.

23 Q. And your role from what you described
24 was prepare the dock use agreement for the owners
25 or those who have access to the dock?

1 A. Right. Most of the -- most of the
2 subdivisions have what are called approved dock
3 corridors so it's just submitting the drawing to
4 OCRM, they've already approved the lines.

5 Q. Have you ever been involved in a
6 process with active involvement with OCRM on a dock
7 permit application?

8 A. Yeah, on Drew Lane I believe is what it
9 is, there was a series of docks that were -- and
10 walkways that were constructed illegally so I
11 helped a series of owners on that street. Mostly
12 they had to remove it. OCRM ended up getting GPS
13 coordinate systems and they basically went around
14 to different areas. Even though it was older
15 construction, they had to remove it.

16 Q. Okay. Have you been involved in any
17 appeals from denials of dock permits or people
18 objecting to the granting of a dock permit?

19 A. With -- only on the periphery. One of
20 my clients bought a cul-de-sac in River Town with I
21 believe there were six lots on it and he applied to
22 OCRM. One of the -- Michael Maucher, as a matter
23 of fact, I think, he's a local attorney, he didn't
24 want it to go there so he -- there was an appeal --
25 my client didn't appeal because he wasn't going to

1 build a dock then anyway so I referred him to Mary
2 Shahid and I think he left it at that.

3 Q. So if I'm understanding, he applied for
4 a dock permit and one was in the process of being
5 granted and a neighbor, someone objected --

6 A. Yes.

7 Q. -- and whether to appeal was -- you
8 referred this client to Miss Shahid --

9 A. Yes.

10 Q. -- to --

11 A. See if he wanted to appeal it.

12 Q. Do you use -- there's reference to
13 Mr. Todd Balish and his company?

14 A. Yes.

15 Q. Do you use other title abstracters
16 other than Mr. Balish?

17 A. Yes.

18 Q. Who are the abstracters you've used?

19 A. Let's see. Todd is Edisto. There's --
20 well, Rogers, Townsend & Thomas when we're doing
21 searches out -- generally out of the area because I
22 do a number of restaurants and so when they locate
23 in South Carolina they have searchers throughout
24 the state so we -- they're the point person and
25 then they just find an abstracter, I don't

1 necessarily know, it just comes through Rogers,
2 Townsend & Thomas.

3 Dorchester County, I can't think of his
4 name. I haven't used them in awhile because we
5 started using Rogers, Townsend & Thomas. I can't
6 think of his name. Monty. His name is not
7 really -- it's Monty -- he goes by Monty but his
8 name is something different. I can't think of what
9 the heck his real name is. But, anyway, he's in
10 Dorchester County.

11 Q. Is there any reasoning behind the
12 selection of Mr. Balish for the title search
13 involving the Blue Crab Road, Blue Crab Lane
14 property?

15 A. He's done a lot of very complicated
16 transactions with me on pieces that have moved in
17 and out of different counties and he's a very
18 knowledgeable searcher.

19 Q. And from what I ascertained from your
20 deposition in the federal case, Mr. Balish was not
21 involved in the initial title search that you
22 performed prior to the closing in 2005?

23 A. That's correct.

24 Q. This was a subsequent 2007 search that
25 Mr. Balish assisted you with?

1 A. That's correct.

2 Q. And I do want to touch a little bit on
3 your file records. And I saw your testimony where
4 there was some materials that -- your notes and
5 things of that nature from the initial title search
6 in 2005 that you were not able to recover?

7 A. Um-hum.

8 Q. Can you describe generally first what
9 is in -- was in the file? Let's assume when the
10 final event for the purchase was completed and the
11 title policy came in and you finished the last bit
12 of work, what would that file have originally
13 contained for Mr. Roberts?

14 A. It would contain the agreement of sale,
15 the -- any of the notes that I have from talking to
16 Mary, Rob Donaldson and the administrative law
17 order and the judgment and my search with the notes
18 on the search.

19 Q. And would have contained your notes
20 from telephone conversations with people involved
21 on the Navy side of the events?

22 A. It should have, yes.

23 Q. Do you maintain time and billing
24 records for your time in the matter?

25 A. No, sir.

1 Q. You don't?

2 A. Transactional.

3 Q. Do you use any database items, features
4 on the computer to maintain your client contacts
5 and things of that nature?

6 A. We have a software program but it does
7 not really keep a database. It's one of the things
8 we're working on right now, as a matter of fact.

9 Q. In 2005, describe how you were using
10 computers in your law practice.

11 A. 2005, we were using a software program
12 called SoftPro to generate the closing
13 documentation and we were using an archiving
14 scanning system to archive the files after they had
15 closed.

16 Q. Was your office doing the scanning?

17 A. Yes.

18 Q. To what type of device were they saving
19 this scanned material?

20 A. To a hard drive.

21 Q. And when the questions and the subpoena
22 was served in the federal case, you all went to the
23 hard drive to look to see if there were things --

24 A. Yes, sir.

25 Q. -- and the notes weren't on there?

1 A. No, sir.

2 Q. How about -- let's talk a little bit
3 about your relationship with the title insurance
4 companies. Do you issue policies for title
5 insurance companies?

6 A. Yes, sir.

7 Q. What companies do you issue policies
8 for?

9 A. Fidelity National, Commonwealth, which
10 is the -- what's the survivor of Lawyers Title and
11 Chicago Title.

12 Q. And Chicago Title?

13 A. Yes, sir.

14 Q. And how are you compensated from the
15 title insurance companies?

16 A. We get a percentage of the premium.

17 Q. Do you keep any particular records for
18 the title policy aspect of your law practice?

19 A. Yes, sir.

20 Q. Tell me what those are.

21 A. We keep -- well, we should have --
22 either we have or the title company archives the
23 title policy itself. We keep any affidavits that
24 we have and disclosures.

25 Q. Am I correct in understanding that the

1 title policy issued for the Blue Crab Lane property
2 did not include coverage for anything related to
3 the dock?

4 A. That's correct.

5 Q. So no claim was available to
6 Mr. Roberts about issues regarding the Navy's claim
7 to ownership of the marsh?

8 A. I suggested he make a claim but my
9 professional opinion is it's submerged ground and
10 they don't insure submerged.

11 Q. Have you created any special files for
12 this legal malpractice matter?

13 A. No, sir.

14 Q. Was there any -- as part of the
15 archiving process do you delete any materials from
16 your files when you close it?

17 A. Certain items may get deleted. Certain
18 items may not get scanned in properly either but I
19 don't -- maybe tell me the question again because
20 I'm --

21 Q. Well, I'm just trying to get an idea if
22 there was anything that was originally in the file
23 that was later destroyed or protocol deleted.

24 A. No. And can I back up to that other
25 question just for a second?

1 Q. Sure.

2 A. When you said a special file,
3 everything I pulled together for -- for the
4 discovery I just threw into a box so it's -- if
5 that's creating a separate file, it's just all in a
6 box now.

7 Q. I'm sorry, go ahead, I didn't mean to
8 interrupt.

9 A. So I just wanted to clarify that.

10 Q. And then there's something else I
11 should have said in our sort of housekeeping
12 moment. There's not a single question today that
13 I'm going to ask you that's going to seek any
14 communications between you and your counsel so if
15 there's anything that I'm asking that you think
16 involves what did you say to Andy or David or what
17 did they say to you, please ask me to restate it
18 because that's not what it's intended.

19 A. Okay.

20 Q. I'm not going to be asking you about
21 your communications with your counsel.

22 A. Okay.

23 Q. Included in that series of questions,
24 did you read anything to prepare for this
25 deposition today?

1 A. I read the -- I read Keith's deposition
2 and my deposition from the federal case.

3 Q. Did you review any other of the
4 depositions taken in the federal case?

5 A. No.

6 Q. Did you review any discovery responses
7 by any of the parties in this lawsuit?

8 A. Yes.

9 Q. What did you review?

10 A. Our response.

11 Q. Did you review any of the pleadings and
12 papers filed in the federal lawsuit?

13 A. No. I don't think so.

14 Q. Turning again briefly to your
15 relationship with Mr. Roberts. You testified that
16 this -- Mr. Roberts' acquisition of the Blue Crab
17 Lane property was the first transaction in which
18 you assisted Mr. Roberts as his counsel?

19 A. Yes, I believe it is.

20 Q. And then after that can you describe
21 for me the other significant events, like I think
22 you said the refinance. Were there any other
23 matters other than the refinancing of his home
24 property --

25 MR. COUNTRYMAN: Object to the form.

1 BY MR. PENDARVIS:

2 Q. -- in which you represented
3 Mr. Roberts?

4 A. Yeah, I'd have to look at my file to be
5 exhaustive. I think I did a lot purchase. I
6 refinanced his house, refinanced the lot to the
7 house.

8 Q. And you formed Lot 12 Yellow House,
9 LLC?

10 A. Yes, sir.

11 Q. Can you think of any other matters in
12 which you've been involved as counsel for
13 Mr. Roberts or his company?

14 A. I assisted him in some estate planning,
15 some retitling of some of his -- his house and I
16 think the lot.

17 Q. And you also --

18 A. I put his wife on.

19 Q. And you also handled the closing from
20 Keith Roberts' transfer of the Blue Crab Lane
21 property to Lot 12 Yellow House, LLC, correct?

22 A. I thought that was just a quit claim
23 deed we filed.

24 Q. Yes, but you handled that?

25 A. Yes, sir.

1 Q. And you prepared the quit claim?

2 A. Yes, sir.

3 Q. I'm going to represent to you that
4 Mr. Roberts' signed -- began his negotiations and
5 entered into a contract with Mr. Stone, Tommy
6 Stone, in July of 2005.

7 A. Okay.

8 Q. Do you know when you first opened the
9 file for Mr. Roberts about this property in
10 general?

11 A. I think it was the middle of July.

12 Q. Had he spoken to you prior to signing
13 the contract with Mr. Stone?

14 A. No, sir.

15 Q. He was in a group you testified in the
16 federal case who came to you with a contract that
17 had already been signed?

18 A. That's correct. Came to me by the
19 realtor, I believe.

20 Q. That was moving to one of my next --
21 other questions. It was a reference from the
22 realtor to you as your first relationship as a
23 client, Mr. Roberts?

24 A. Yes, sir.

25 Q. And prior to that you had met him -- if

1 I'm understanding correctly you had met him through
2 your daughters both being involved in a function?

3 A. Yeah, and he actually grew up in the
4 town next-door to where I grew up.

5 Q. Oh, neat. Okay. Before we get into
6 all these documents about the transaction, what did
7 Mr. Roberts tell you when he first contacted you?

8 Let me restate that. Describe your
9 first conversation with Mr. Roberts about the Blue
10 Crab Lane property.

11 A. My -- well, my first conversation was
12 really with the realtor who told me that Keith
13 wanted to use me and Keith wanted me to make sure
14 that it got done quickly because he was getting a
15 good deal so which is why I did the paper -- did
16 the title search with the time crunch. I think my
17 first conversation with Keith dealt with -- the
18 contract said no dock permit, not contingent on a
19 dock permit. And my first conversation with Keith
20 was he wanted me to talk to Mary about the dock
21 permit and that's the first I had heard about a
22 dock permit.

23 Q. Did he say anything to you about the
24 reason he was looking at this particular piece of
25 property?

1 A. No, sir.

2 Q. Did he have any conversation with you
3 that it was because it was a deep water lot with a
4 dock permit that that was the reason that they
5 were -- he was considering purchasing the property?

6 A. No, sir.

7 Q. Did he say anything about his plans for
8 the property after he acquired it?

9 A. No, sir.

10 Q. Did you understand he intended to build
11 a house on the property for resale?

12 A. No, actually I thought he was going to
13 flip it. Back in that market people were buying
14 things and then turning around and selling them the
15 next day for a lot more money so I didn't think --
16 I didn't know he was a builder.

17 Q. Are there any other things you can tell
18 me about the discussions at the outset of the
19 representation about the dock?

20 A. When you say the outset?

21 Q. Well, at the very first part of the
22 representation. You had mentioned that there
23 was -- you had seen the contract and there was a
24 provision in the contract that said it was --
25 contract for sale was not contingent upon the dock

1 permit.

2 A. Right.

3 Q. And I'm asking if there were any
4 further detailed communications with Mr. Roberts
5 about anything related to the dock at the early
6 part of your representation.

7 A. I believe Jamie Hough with I think it
8 was Reed & Reed, he sent me the administrative law
9 judge -- the administrative law order and the
10 reinstatement of the permit and a copy of the
11 letter from Mary to OCRM stating that -- the
12 extension of time. So then I talked to Keith and I
13 said, are you buying this with a permit or without
14 a permit? And then he asked me to talk to Mary
15 about the appeal period.

16 Q. I'm sorry to interrupt. What did he
17 say when you asked him that question, are you
18 buying this with or without a dock permit?

19 A. He wanted to find out whether the dock
20 permit was valid. And then it was -- before
21 closing our next conversation was when he asked me
22 to make sure that the dock permit was assigned at
23 closing because he wanted to start construction the
24 next day. And that's when I told him that the
25 permit is revokable and I don't want to -- that the

1 Navy could make a claim in the future and I don't
2 want to be in a fight with the Navy because they've
3 got big ships with guns on them. And my assistant
4 when she received your letter was flabbergasted
5 because of that, because she said you were very
6 blunt with warning him about it.

7 Q. But you knew he was going to start
8 construction the next day or that was his intent?

9 A. That was his intent.

10 Q. So what did that mean? That means you
11 understood that he wasn't going to flip the
12 property, correct?

13 A. He may have been putting -- I
14 thought he was going to put -- no, construction of
15 a dock.

16 Q. Okay.

17 A. I thought he was going to improve the
18 dock and then sell it. He didn't -- I never saw
19 any plans or anything about his house.

20 Q. I've done my best to get these in
21 sequence.

22 A. Okay.

23 Q. What I'm going to be passing you are
24 some of the -- where are my exhibit stickers? I'm
25 going to be marking a handful -- a few exhibits

1 that my understanding from the facsimile
2 transmission dates on these documents were all
3 transmitted to you on November -- excuse me, let me
4 restate that -- all transmitted to you on July 11,
5 2005.

6 A. Okay.

7 (PLF. EXH. 2, Agreement To Buy And Sell
8 Real Estate (For General Use And Lots/Acreage),
9 Barnett02944 to 02948, was marked for
10 identification.)

11 BY MR. PENDARVIS:

12 Q. And the first one I'm going to mark --
13 pass to you appears to be the agreement to buy and
14 sell real estate entered into between Mr. Roberts
15 and Mr. Stone. Take a moment and look through
16 that. I'm going to ask if this is a true and
17 correct copy to the best of your knowledge.

18 A. I don't know about these notes in the
19 border. Other than that, it appears to be.

20 Q. Okay. I do recall some testimony in
21 the federal deposition and again I'll do my best
22 not to go through all that again.

23 A. Okay.

24 Q. But I do recall some testimony about
25 notes in the margin about changes to the price and

1 the contingencies on the dock. Do you remember
2 that testimony in your federal case deposition?

3 A. On the agreement he was showing me at
4 the time?

5 Q. Yes, sir. In particular -- I'll tell
6 you what, let me help you a little bit. Let's go
7 to -- the bottom right corner has a Bates number on
8 it. It says Barnett 2947 is the next to the last
9 page of Exhibit 2.

10 A. Got it.

11 Q. I believe your testimony in particular
12 in the federal deposition dealt with that portion
13 that's got a star on the left corner that says
14 contract not contingent on dock permit --

15 A. Yes, sir.

16 Q. -- and initials. Do you recall that
17 discussion in your deposition?

18 A. Yes, sir.

19 Q. Did you have any conversations with
20 Mr. Roberts about his negotiations with Mr. Stone
21 on the dock permit contingency issue?

22 A. I believe he might have told me that's
23 why they reduced the price on the front because he
24 was -- he was buying it cash not contingent on the
25 dock permit.

1 Q. Did he tell you anything of his
2 conversations with Mr. Stone that dealt with the
3 value of the property as it was considered deep
4 water -- had access to deep water?

5 A. No. When the contract got to me, it
6 was fully negotiated and I don't think I
7 questioned -- I didn't have any -- I don't think I
8 questioned him about his negotiation of the
9 contract.

10 Q. Did Mr. Roberts ever volunteer any
11 information of that nature related to the
12 negotiations on the price with Mr. Stone?

13 A. Just that he thought he was getting a
14 very good price for it. That's why he wanted to
15 close quickly, he thought he was getting a very
16 good price.

17 Q. Did he express any concerns about the
18 dock permit to you, he being Mr. Roberts?

19 A. No. He just wanted to make sure the
20 appeal period had passed.

21 Q. Well, that seems sort of odd, appeal
22 period. I mean, what is -- I mean, in what context
23 did he discuss -- Mr. Roberts discuss with you an
24 appeal period?

25 A. Well, he knew there was a claim made by

1 the Navy for marsh in the prior -- because he had a
2 copy of the administrative law order and so he knew
3 there was a claim made by the Navy of the marsh and
4 that the administrative law judge had said they
5 failed to prove ownership of the marsh and
6 reinstated the permit and that Mary Shahid had
7 written a letter extending the permit and -- do you
8 have -- that's what -- I think they did this
9 agreement a month after the permit was reinstated
10 because of the appeal period.

11 Q. I'll tell you what might be a good
12 idea. Let me just pass to you a number of these
13 exhibits that were all sent to you on July 11th or
14 appears that way and we'll go through that.

15 A. Okay.

16 Q. Some of these documents may make my
17 questions a little more efficient.

18 A. Okay.

19 Q. So let me mark -- I'm going to identify
20 them as I pass them over.

21 (PLF. EXH. 3, Plat, Carolock-Drew00504
22 (sic), was marked for identification.)

23 BY MR. PENDARVIS:

24 Q. Exhibit 3 is a single-page document,
25 appears to be a plat of the plat of Land A and B

1 owned by heirs of Mingo Heyward. It's marked as
2 Exhibit 3. I'll ask you just a couple of
3 housekeeping questions and we'll get to the
4 substantive questions. Is this a copy of the fax
5 from Mr. Howe? How do you pronounce his name,
6 Hough?

7 A. Hough? I really thought it was -- I
8 thought he sent it to me on -- I thought it was the
9 12th he sent it to me but I know he sent me a
10 copy -- this was attached to the permit.

11 Q. Okay.

12 (PLF. EXH. 4, Fax Cover Letter dated
13 7/12/05 from Mary D. Shahid, with attachments,
14 Carolock-Drew00186 to 00196, was marked for
15 identification.)

16 BY MR. PENDARVIS:

17 Q. This document I passed to you is marked
18 as Exhibit Number 4. It's also a fax from
19 Mr. Hough and this one is dated July 12 and this
20 appears to be the letter from Miss Shahid to
21 Mr. Joyner at OCRM, is that --

22 A. Yes.

23 Q. Including the copy of the final order
24 and decision by the administrative law judge, is
25 that --

1 A. Yes.

2 Q. -- accurate? That's 4. Exhibit 4 is a
3 little bit out of sequence.

4 (PLF. EXH. 5, South Carolina Department
5 of Health and Environmental Control Office of Ocean
6 and Coastal Resource Management Critical Area
7 Permit for Thomas H. Stone, Carolock-Drew00197 to
8 00205, was marked for identification.)

9 BY MR. PENDARVIS:

10 Q. I'm passing you a copy of a document
11 marked as Exhibit 5, appears to be a copy of the
12 dock permit?

13 A. Yes.

14 Q. And just so I'm clear on the plats, the
15 document marked as Exhibit 3, did I understand you
16 believe that was an attachment on an exhibit to the
17 dock permit?

18 A. But I don't see it on there so I guess
19 I'm mistaken.

20 Q. Okay.

21 (PLF. EXH. 6, Declaration Of Covenants,
22 Conditions And Restrictions For Yellow House Place,
23 Carolock-Drew00482 to 00489, was marked for
24 identification.)

25 BY MR. PENDARVIS:

1 Q. This may be just housekeeping but here
2 is a document marked as Exhibit 6, appears to be a
3 covenants for the homeowners association --

4 A. Yes.

5 Q. -- that controls or is involved with
6 this property? 6. Trying to get an inventory of
7 what all came to you at the outset of the
8 representation.

9 A. Okay.

10 Q. Are you aware of any other items that
11 were sent to you in that July 11/July 12 time
12 period that relate to the Blue Crab Lane property?

13 A. Not off the top of my head I'm not.

14 Q. Let's start with the conversations with
15 Mr. Hough. Did you have a conversation with
16 Mr. Hough before he transmitted the materials that
17 are marked Exhibits 2 through 6 to your office?

18 A. No, I believe I actually had a
19 conversation with Sheryl Hill, the other agent.

20 Q. Okay.

21 A. And she's the one who told me that
22 Keith wanted me to represent him. And then I guess
23 she took -- gave Jamie the information to fax the
24 contract, the other information over to me.

25 Q. Okay. And can you describe your

1 conversation pertaining to Miss Hill?

2 A. I think it was just that brief, that
3 Keith wanted to use me to close the property, he
4 was going to be closing quickly, wasn't contingent
5 on any financing.

6 Q. And what was -- who was -- to whom did
7 you speak with next about this property or purchase
8 of the property?

9 A. I believe after I read the information
10 they sent me, I called Mary to ask her about the
11 validity since she was the dock guru about the dock
12 and she said that -- she referenced her letter and
13 said that OCRM had granted the reinstatement and
14 had also granted the extension of time to build the
15 dock.

16 Q. Which is outlined in Page 2 of the
17 extension issue?

18 A. Yes, sir.

19 Q. Page 2 of Exhibit 4?

20 A. Yes.

21 Q. Did you have any conversations with
22 Miss Shahid about the matters involved in the final
23 order and decision issued by the administrative law
24 judge?

25 A. Yes, and she said that it was final,

1 they had -- the appeal period had passed and that
2 he had a valid dock permit in her opinion.

3 Q. Did you ask her any questions about
4 whether the Navy's claim was valid, that it claimed
5 that it owned the marsh was valid? Let me restate
6 that.

7 Did you have any conversations with
8 Miss Shahid about whether the Navy's claim that it
9 owned a portion of this marsh affected by the dock
10 was a valid claim?

11 A. Yes.

12 Q. And what did she say?

13 A. She didn't feel it was. She felt it
14 had already -- it had gone on since I believe 2001
15 she said and so she thought all the appeals and
16 everything would have passed so they don't have --
17 they never substantiated their claim.

18 Q. And can you show me on the first page
19 of the order where the United States or the
20 Department of the Navy were parties to the lawsuit?

21 A. They were not.

22 Q. So why would the Navy have to prove
23 anything in a suit in which they were not involved?

24 A. Because the Navy was the one who
25 objected.

1 Q. And so is that a conclusion you reach
2 or a conclusion Miss Shahid provided for you?

3 A. That's what she advised me of.

4 Q. And your testimony in the federal case
5 was that you did no due diligence or investigation
6 of the marsh as part of the initial search and
7 evaluations done for Mr. Roberts in July of 2005?

8 MR. COUNTRYMAN: Object to the form.

9 THE WITNESS: I did not search the
10 marsh I believe is what I said.

11 BY MR. PENDARVIS:

12 Q. And by that, for the ladies and
13 gentlemen of the jury that may read this, we're not
14 talking about going out in the marsh?

15 A. No, search the title of the marsh, I'm
16 sorry.

17 Q. That's fine, I just want to make
18 sure -- some of us are not real estate lawyers and
19 we need to know these things.

20 A. Okay.

21 Q. So you understood from the order issued
22 by the administrative law judge and by
23 Miss Shahid's letter that there were concerns about
24 whether the Navy's claim were true, is that
25 correct?

1 MR. COUNTRYMAN: Object to the form.

2 THE WITNESS: Can you restate it?

3 BY MR. PENDARVIS:

4 Q. Well, based on what you saw in the
5 administrative -- excuse me, the final order and
6 decision by the administrative law judge that's
7 contained in Exhibit 4 and based on your
8 conversations with Miss Shahid and conversations
9 with Mr. Hough that there was at least an issue
10 about whether the Navy had a valid claim to owning
11 a portion of the marsh adjacent to the Blue Crab
12 Lane property, correct?

13 A. No. The issue was was the dock permit
14 valid and the answer was yes.

15 Q. Okay. Can the State of South Carolina
16 issue a dock permit of a property it does not own?

17 A. Yes, I think you can.

18 Q. Explain that for me, please.

19 A. I guess the State of South Carolina is
20 the presumptive owner of submerged ground and so
21 what they are issuing is a license to cross
22 submerged ground, so -- a dock permit is not
23 granting any interest in any ground that it's
24 crossing.

25 Q. And if I understand your testimony,

1 South Carolina is the presumed owner of submerged
2 ground. And by submerged ground for the jury's
3 benefit, are we talking about property from high
4 water mark to low water mark?

5 A. Yes, sir.

6 Q. Okay. So in that area of the marsh,
7 high water mark to low water mark, the presumed
8 owner is the State of South Carolina, is that
9 correct?

10 A. That's correct.

11 Q. And that in that the presumptive owner
12 as the State of South Carolina, the state has the
13 authority to issue a license to construct a dock
14 under certain conditions to cross the land owned by
15 the State of South Carolina to access water?

16 A. Correct.

17 Q. Fair statement?

18 A. Yes.

19 Q. If by king's grant an individual owned
20 the marsh, could the State of South Carolina issue
21 a dock permit across lands owned by another entity?

22 A. Not without --

23 MR. COUNTRYMAN: Object to the form.

24 BY MR. PENDARVIS:

25 Q. Excuse me?

1 A. I think they have to have -- might have
2 to have permission.

3 Q. So if we had a tract of land and the
4 marsh in front of the tract of land was owned by --
5 let me restate it so I get -- I just want to get
6 the understanding clear for me.

7 If a tract of high ground is owned by
8 Party A and adjacent to the tract of high ground
9 that's owned by Party A is marsh area that
10 separates the high ground from navigable stream and
11 that the marsh -- the portion of the marsh is owned
12 by Party B by king's grant, would the State of
13 South Carolina have the authority to grant the
14 Owner A of the high ground a dock permit to cross
15 B's land to access the navigable water?

16 A. Well, if it's submerged, I think
17 Culberg says the state still owns it even if
18 there's a king's grant. If it's high ground, then
19 it does not go with the marsh if there's a king's
20 grant and Culberg would say that the high ground is
21 then owned by another party.

22 Q. And when was Culberg issued?

23 A. 2000 -- early 2000.

24 Q. Okay. Let's change the hypothetical.
25 We'll use law school. I'm sorry, you wanted to say

1 something?

2 A. No, it's okay.

3 Q. We'll use law school terminology, black
4 acre property, the high ground, black acre is owned
5 by A. The marsh was deeded by the State of South
6 Carolina to Party B.

7 A. Okay.

8 Q. And the State of South Carolina no
9 longer owns the marsh. Under that hypothetical
10 would the State of South Carolina in its permitting
11 authority have the ability and the right to grant
12 A, the owner of black acre, a dock permit crossing
13 the marsh owned by B to access navigable water?

14 A. The reason I'm having trouble with the
15 hypothetical is there's an actual case in
16 Charleston County where -- at Ripley Light Marina,
17 the underlying, it's not -- the marina is not
18 navigable water, it was dredged. And there is a
19 grant from the -- to the developer of the Ripley
20 Light Marina. However, the State of South Carolina
21 still issued permits for another entity on the
22 other side and they were deemed to be valid so
23 that's why I'm having trouble with your
24 hypothetical.

25 Q. Okay.

1 A. I'd have to look it up.

2 Q. Well, let's change it up to a third
3 dynamic where -- back up.

4 You would agree, wouldn't you, that the
5 United States Government has the power to condemn
6 lands owned by individuals?

7 A. Yes.

8 Q. And you would agree, wouldn't you, that
9 the United States has the power to condemn lands
10 owned by States of the United States?

11 A. Yes.

12 Q. So in this third version of the
13 hypothetical, black acre owned by A and the marsh
14 between black acre and navigable water has been
15 condemned and taken by the United States
16 Government.

17 A. Okay.

18 Q. In that assumed hypothetical, can the
19 State of South Carolina grant a dock permit to the
20 landowner of black acre, Mr. A, to cross the lands
21 owned by the United States and to the navigable
22 water?

23 A. Well, I believe a dock permit states
24 that Corps of Engineers still may have
25 jurisdiction. So Corps of Engineers being

1 governmental authority, you may have to go an extra
2 step and get the Corps to sign off on it.

3 Q. Okay. Did you ever determine whether
4 the marsh adjacent to included
5 lands owned by the United States Government?

6 A. No.

7 Q. Why not?

8 A. Because the judgment that I had --
9 well, they never filed any plats, deeds, anything
10 on the regular record that anybody could find. But
11 when I was given the judgment by -- when I was
12 given the judgment -- on the four corners of the
13 judgment the legals are so vague that you can't
14 place them. And I think that's where the
15 administrative law judge had a problem because
16 there is no way to show what they were claiming.

17 Now, the federal government gave me
18 what they said was a survey of lands owned by the
19 federal government. However, when I talked to the
20 surveyor, he said he did not use the judgment in
21 order to obtain that survey, he used drawings
22 supplied to him by the Navy. So I sent him a copy
23 of the legal description and the judgment and he
24 said that wasn't what he used.

25 Q. All right. When did that -- who's the

1 surveyor that you just described in your
2 conversation with?

3 A. I think it's GEL they're called.

4 Q. GEL? And when was that conversation?

5 A. That was right after Keith and I met
6 with Fran Trapp and, I don't know, 12 other
7 attorneys.

8 Q. So this information was after Mr. --
9 sometime in 2007 or 2008?

10 A. 2007.

11 Q. After Mr. Roberts had acquired the
12 property?

13 A. That's correct.

14 Q. You know what, can I trade? I
15 marked -- I gave you my highlighted marked copy of
16 Exhibit 4.

17 (Off-the-record conference.)

18 BY MR. PENDARVIS:

19 Q. Mr. Drew, take a look at Exhibit 4.
20 Let's look at the issues -- and I'm turning now to
21 the final order and decision that's included as
22 part of the facts to you. You reviewed this entire
23 order, correct?

24 A. Yes.

25 Q. And this order -- did you understand --

1 what did you understand to be the basis for OCRM's
2 revocation of the license it had issued to
3 Mr. Stone to build a dock on this -- as part of
4 this dock?

5 A. Claim by the Navy that it owned marsh
6 in front of the property.

7 Q. Are you sure about that? Was it not
8 that the applicant had not accurately stated the
9 adjacent landowners -- I reference you now to a
10 footnote.

11 A. The Navy claimed that they owned the
12 marsh and weren't notified is what the technical
13 purpose of the revocation.

14 Q. Well, if we look at the seventh page of
15 the order, eleventh page of the facts marked as
16 Exhibit 4. The Corps is discussing -- and actually
17 starts on Page 6. The Corps is discussing the
18 Department, which is DHEC, relies on the language
19 in Regulation 30-8A to revoke the Respondent's
20 permit and that that regulation authorizes
21 revocation when materially erroneous or fraudulent
22 information has been provided by the applicant.
23 I'm summarizing here. Take your time and read it
24 if you need.

25 But isn't the basis of -- wasn't the

1 basis of OCRM's efforts to revoke this permit based
2 upon a claim that Mr. Stone had not identified the
3 Department of the Navy in his application for a
4 dock permit, i.e. Navy, as an adjoining landowner?

5 A. Well, I guess they've got a series of
6 issues here so... I didn't read it right before
7 the deposition.

8 Q. I understand. And I think the ninth --

9 A. Violated any terms?

10 Q. Yeah, I thought there was -- second
11 issue. Second issue on the first page, whether --
12 basically whether these regulations provided a
13 proper basis for the revocation. And I guess my
14 point is this: The Navy didn't seek this permit,
15 did they?

16 A. I'm sorry?

17 Q. The Navy did not seek a permit to cross
18 this marsh?

19 A. That's correct.

20 Q. It was Mr. Stone, correct?

21 A. That's correct.

22 Q. And why would the Navy need to attend
23 and appear at this ALJ hearing before the
24 administrative law judge?

25 A. Because they were the ones who had

1 claimed the ownership, which was the basis of the
2 nonnotice to the property owner.

3 Q. Was anybody making a claim the Navy did
4 not own the property?

5 A. I think Stone by virtue of -- Stone and
6 through the permitting would have, yes.

7 Q. Isn't the ultimate conclusion in this
8 order that the adjacent landowner to Mr. Stone's
9 lot is indeed the State of South Carolina, that the
10 Navy's acquisition didn't go all the way to the
11 high land and that truly the border of the high
12 land of the bordered the State
13 of South Carolina marshland?

14 A. And that the Navy didn't -- had no
15 showing of what they really do own, whether or not
16 that all the marsh in front of this was the State
17 of South Carolina, I think that's why it was
18 reinstated.

19 Q. Let's look at that. We see on the
20 third page of the order that the court had been
21 provided with a copy of a judgment of the United
22 States District Court, Charleston Division, dated
23 December 1, 1969 along with some pleadings and
24 exhibits and the judgment was issued in this matter
25 entitled United States of America versus 72.5 Acres

1 of Land More Or Less in the County of Berkeley,
2 State of South Carolina and it cites a Civil Action
3 Number, correct?

4 A. Are you on Page 7?

5 Q. I'm on Page 3 of the order. It's on
6 Page 5 of the facsimile. So -- take your time.
7 It's the middle part of the page. Take your time
8 and look at that.

9 A. Okay.

10 Q. And you see toward the end of Page 3
11 that the Court is concluding or acknowledging the
12 factual sequence of events after OCRM retained a
13 copy of the judgment that it sent its notice of
14 intent to revoke the permit to Mr. Stone.

15 A. Um-hum.

16 Q. And if you carry over to the next page
17 under the heading notice, it says the Navy's
18 ownership of the marshland was purportedly
19 established by the 1969 judgement referenced above.
20 And isn't it true that the order basically says
21 that the specific area acquired by the Navy, the
22 United States Government in 1969, was not firmly
23 established to the degree necessary to revoke this
24 permit? Is that a fair characterization of this
25 order?

1 A. Well, I think the way that Mary --

2 Q. Answer my question first and you can
3 describe how Mary -- because I'm asking you for a
4 fair interpretation of this order and then you can
5 describe all you want to about Mary.

6 A. I think the interpretation of the order
7 is that judgment doesn't show what the Navy owns.

8 Q. Okay. But there was no dispute the
9 Navy took some property in 1969, correct?

10 A. Right.

11 Q. So we know that the Navy has taken and
12 owns property in this area, fair statement?

13 A. Yes.

14 Q. And the question before this
15 administrative law judge was was there sufficient
16 showing of particularly which property the Navy
17 took as it related to this permit for DHEC's
18 attempt to revoke?

19 A. They should know.

20 Q. Does this court say anywhere in this
21 order that the Navy does not own any land adjacent
22 to this property?

23 A. They say that the Navy didn't show that
24 it owned the ground that the dock was crossing. It
25 says that the tract of land -- that the evidence

1 did not establish what portion of the condemned
2 property is owned by the Navy.

3 Q. But it doesn't say the Navy doesn't own
4 any property?

5 MR. COUNTRYMAN: Object to the form.

6 THE WITNESS: But it came to the
7 conclusion that it didn't affect the property of
8 this permit. If it had come to an alternative
9 decision, it wouldn't have reinstated the permit.
10 BY MR. PENDARVIS:

11 Q. This order goes on to reflect that on
12 Page 6 of the order it quotes general condition on
13 the permit. And if you need to take a look at the
14 permit, I'm going to represent to you that the very
15 first page in big bold giant letters, and we're
16 talking about Exhibit 5, it has stamped on it in
17 big bold letters see special conditions.

18 And the general conditions found on
19 Page 4 of Exhibit 5 includes Paragraph 4 of the
20 general conditions, which is quoted back into
21 the -- back to the order. The order quotes the
22 general condition that this permit does not convey
23 expressly or impliedly any property rights in the
24 real estate or material nor any exclusive
25 privileges nor does it authorize the permittee to

1 alienate, diminish, infringe upon or otherwise
2 restrict the property rights of any other person or
3 the public, nor shall this permit be interpreted as
4 appropriating public properties for private use.

5 Did you see that in the order?

6 A. Yes, sir.

7 Q. Did you discuss that with Mr. Roberts?

8 A. Yes, sir.

9 Q. What did you tell him about that
10 general condition of this permit?

11 A. Well, in both 4 and -- I told him that
12 it's a revokable license, in the event that you
13 are -- that a adjacent property owner claims that
14 you are blocking a portion of water that's
15 navigable, that they can petition to have the dock
16 removed and that in events of war specifically that
17 they can have a dock removed. But I have a client
18 who has a dock in Rivertowne where they had
19 neighbors who have claimed that they can use their
20 little boats and can navigate the water that his
21 dock is crossing into, tried to have him remove his
22 dock.

23 Q. Did you tell Mr. Roberts that the Navy
24 did not own any land between the high land on
25 and the water?

1 A. No. I told him that based on my --
2 based on my conversation with Mary and the
3 order that -- and from looking at the judgment, you
4 couldn't tell what the Navy owned.

5 Q. Did you tell Mr. Roberts what could
6 happen if the Navy did indeed own a portion of the
7 marsh and he built a dock --

8 A. I told.

9 Q. -- let me finish -- and if he built a
10 dock over the lot, the portion of the land owned by
11 the Navy?

12 A. I specifically told Keith that if they
13 made a claim that he would have a problem with the
14 dock and that -- again, that I -- I wouldn't want
15 to get in a battle with the Navy and he said he's
16 going to build a dock quickly and understood the
17 risk.

18 Q. And this conversation took place?

19 A. Before the closing.

20 Q. Before the closing. Did you ever
21 discuss or use the words just compensation or
22 takings with Mr. Roberts in regard to if the Navy
23 took action about the dock?

24 A. No.

25 Q. You never told Mr. Roberts, well, if

1 they take action and make you take the dock down,
2 they'll have to provide you just compensation for
3 taking your lot -- taking your dock?

4 A. No. That may have been -- he may have
5 talked to Stan about that. I would not have talked
6 to him about that.

7 Q. Have you ever told any client -- I'm
8 not asking for specific clients so we won't violate
9 attorney/client privilege but have you ever given
10 advice to any client that if the government takes
11 your dock, they'll have to pay for it?

12 A. No, sir.

13 Q. Have you ever been involved in any
14 condemnation matters?

15 A. Not as a litigator.

16 Q. As a landowner?

17 A. In a development that I was the
18 developer, I was not the landowner, the city took a
19 portion of the ground to put a sewer line in.

20 Q. And your role was what in that matter?

21 A. I was trying to get the subdivision
22 approved.

23 Q. So it's your testimony you never said
24 anything to Keith Roberts about taking or just
25 compensation?

1 A. No, sir.

2 Q. But notwithstanding the fact that you
3 had a copy of this administrative law judge's order
4 contained in Exhibit 4, you searched the title to
5 the property?

6 A. Yes.

7 Q. And at some point you searched or did
8 some due diligence on ownership of the marsh before
9 the closing?

10 A. I did the due diligence. I spoke to --
11 I looked at the judgment. I spoke to Rob
12 Donaldson, who did the prior closing. I spoke
13 to -- and I spoke to Mary about the validity of the
14 permit.

15 Q. Did you look in any of the Berkeley
16 County records about ownership or claims of
17 ownership in the marsh adjacent to
18 prior to the closing?

19 A. No.

20 Q. Earlier you gave some testimony about
21 this process and I'm referring now to the appeal
22 had been going on since 2001. Do you remember
23 that?

24 A. Yes, sir.

25 Q. What did you mean by the appeal process

1 had been going on since 2001 or did you mean that?

2 A. No, I did not mean that. If that's
3 what I said, I did not mean that. I said the
4 permitting process.

5 Q. Okay. That's my understanding too.
6 Mr. Stone applied for it in 2001 and it was
7 sometime until 2004 before the revocation process?

8 A. Yes.

9 Q. Okay. I just want to make sure we're
10 clear.

11 A. Yeah, sorry.

12 Q. I'm trying to limit all the paper I'm
13 passing to you.

14 A. Okay.

15 (PLF. EXH. 7, Plat, with attachments,
16 was marked for identification.)

17 BY MR. PENDARVIS:

18 Q. Mr. Drew, I'm going to pass to you what
19 I'm going to use what I'll call a composite exhibit
20 and I'm going to represent to you there's a chance
21 that there's some duplication in here but I wanted
22 to make sure I had -- it's Number 7. I want to
23 make sure I had a complete package. And what I'm
24 going to represent to you is that these materials
25 are all dated in the 1960s.

1 A. Okay.

2 Q. And I've got some questions. And there
3 will be some questions I'll be asking you that are
4 based -- I think we can help ourselves with the
5 Bates numbers. Candidly, the first two pages are
6 plats that I swear to you I cannot find where the
7 Bates numbers are, that's why I put them on the
8 top.

9 MR. COUNTRYMAN: Have you all produced
10 these?

11 MR. PENDARVIS: Everything has been
12 produced, hundred percent.

13 There's a Bates Number on this document
14 and I think it's -- do you want to take a break
15 before we get into this?

16 MR. COUNTRYMAN: That's fine. We've
17 been going an hour and a half.

18 (A recess transpired.)

19 BY MR. PENDARVIS:

20 Q. Mr. Drew, we're back on the record and
21 I've passed to you a package of material, composite
22 Exhibit 7 that includes some plats at the very
23 beginning and some other materials. And I'll --
24 why don't you take a minute and flip through that
25 and take a look at the materials so as I ask

1 questions you'll be in a position to know at least
2 what we're talking about. Let me know when you're
3 ready.

4 A. I'm ready.

5 Q. And again, I'm going to rely a little
6 bit on your deposition testimony in the federal
7 case. There was a good bit of discussion about
8 Exhibit B to one of the complaints or les pen dens.
9 Do you recall that, Exhibit B being the plat?

10 A. Yes.

11 Q. If you take a look, I'm going to
12 represent to you that the first two pages of
13 composite Exhibit 7 are two pages from a single
14 plat and the plats described as land acquisition
15 map for FBM replenishment facilities, US Naval
16 Base, Charleston, and it was prepared -- I'm going
17 to represent to you -- I've got a third page that
18 shows it prepared in April of 1964. Do you see
19 that?

20 And I'm going to represent to you that
21 the first two pages that are two pages of a single
22 expanded map are not marked Exhibit B but if you
23 take a look at the third page, it is a copy of the
24 page referenced in the federal deposition with
25 Exhibit B in the right-hand corner. Do you see

1 that, Exhibit B?

2 A. Um-hum.

3 Q. And you might want to use the first
4 plat, if it will help you, but do you see where the
5 first plat has on the first page of Exhibit 1 a
6 four with a circle on it? If you don't mind
7 reaching around, I might make this a little easier
8 for you. See that four, five, six and those are
9 the parcel -- I'm going to represent to you those
10 are listed later as parcel numbers, do you see
11 that, four, and right below that it says Mingo
12 Heyward, no plat found?

13 A. Um-hum.

14 Q. And if you move back to the document --
15 it's about eight or ten pages back. It says
16 Bennett 1909?

17 A. What's the Bates?

18 Q. Bennett.

19 A. Oh, Barnett.

20 Q. Barnett, excuse me, I said Bennett.
21 Barnett, 1909.

22 A. Okay.

23 Q. I want to make sure that we're talking
24 about the same piece of property. Is not Tract 4
25 Mingo Heyward plat the subject property that's now

1 known as or contains that
2 portion of the property?

3 A. If they're referencing it to -- if it's
4 referencing to this plat.

5 Q. Okay. Fair statement.

6 A. I just can't see the numbers on it is
7 all.

8 Q. The third page of Composite 7 has got a
9 little better -- it's a better blowup of the
10 property, let you take a look at that. Does that
11 help you in assistance?

12 A. Yes, I can see it.

13 Q. So am I correct that this Mingo Heyward
14 Lot 4 is the lot we're talking about in this
15 litigation?

16 A. Um-hum.

17 Q. That was a yes, sir?

18 A. Yes, sir.

19 Q. I know for the Court Reporter you have
20 to say yes and no.

21 A. Sorry.

22 Q. It's okay. The next page, the fourth
23 page is a complaint, is it not?

24 A. Yes.

25 Q. And the civil action number is what?

1 A. 8795.

2 Q. And if you will take a look at the
3 order of the administrative law judge marked
4 Exhibit 4, is not that the same civil action number
5 referenced in the ALJ, the administrative law judge
6 order? And this will be Page 3 of the order.

7 A. Yes.

8 Q. So I know you've testified you're not a
9 litigator and I will represent to you that the way
10 a lawsuit is commenced, federal and state, is with
11 the filing of the summons and complaint. Lis
12 pendens may be filed to protect property interest
13 but a -- the commencement of a lawsuit begins with
14 the filing of a summons and complaint.

15 So we're in agreement this document,
16 fourth page of Exhibit 7, is the complaint
17 referenced in the -- excuse me, the lawsuit
18 referenced in the administrative law judge order?

19 A. Yes, sir.

20 Q. But I will represent to you that this
21 administrative law judge order deals with a
22 judgment from -- we're looking at the complaint
23 that initiated it. And if you look on Page Barnett
24 1909, could you describe what is -- what are the
25 language on -- what does this represent?

1 A. The legal description, metes and
2 bounds.

3 Q. So with this description you would have
4 been able to determine --

5 A. No, sir.

6 Q. -- where this document was -- where
7 this parcel was?

8 A. No, sir.

9 Q. Why not?

10 A. There's not -- it's too vague. There's
11 not a point of beginning that you could find on the
12 record.

13 Q. Well, does it not -- if you had the
14 Bureau of Yards and Docks Drawing Number 1022237,
15 would you be able to locate that property?

16 A. I'd have to see that plan. But if this
17 is that plan, you could -- once you have this plan,
18 you could find it, yes.

19 Q. Okay.

20 A. But the judgment in and of itself is
21 too big.

22 Q. Did you understand in the questions
23 asked in the federal deposition that Exhibit B,
24 third page of Composite Exhibit 7 to your
25 deposition today, was part of the Berkeley County

1 records?

2 A. No. I did not. I don't think this is
3 part of the records.

4 Q. You don't think this Exhibit B was part
5 of the Berkeley County record?

6 A. No, sir.

7 Q. Wait a minute, I've got to find the
8 judgment. I want to ask you to take a look at
9 Barnett 00198. It's in the back of the document.
10 The document states Declaration of Taking?

11 A. Yes.

12 Q. Do you see where it references -- it's
13 harder to read but toward the bottom of the first
14 page of the Declaration of Taking, it references
15 the Y and D drawing numbers using the same numbers,
16 1022237?

17 A. Um-hum.

18 Q. And it says attached hereto and made --
19 as Exhibit B and made part hereof?

20 A. Yeah.

21 Q. And is your testimony that Exhibit B
22 was not included with this judgment?

23 A. Yes, sir.

24 Q. Even though you're looking at the third
25 page that says marked Exhibit B?

1 A. Yes, sir. I think that if you get a
2 certified copy off the record, it won't have
3 Exhibit B on it.

4 Q. Okay. Did you ask the Clerk of Court
5 to assist you in gathering all the materials
6 related to the judgment?

7 A. I don't think specifically. I think
8 specifically I just asked for that caption number.

9 Q. And you asked whom for the caption
10 number?

11 A. The Clerk of Court.

12 Q. And when was that?

13 A. In 2005.

14 Q. So your testimony is you went to the
15 Berkeley County Clerk of Court in 2000 -- in what
16 portion of 2005?

17 A. Prior to the closing.

18 Q. All right.

19 A. Prior to the closing I had a copy of
20 the judgment.

21 Q. And your testimony is the copy did not
22 contain Exhibit B?

23 A. That's correct.

24 Q. And did you produce that copy of the
25 judgment that was in your files?

1 A. I thought I did.

2 Q. Okay.

3 A. I also got another copy from the Navy
4 which also did not have a copy -- Exhibit B
5 attached to it.

6 Q. But you saw reference to Exhibit B?

7 A. Yes, sir.

8 Q. And why didn't you endeavor to get a
9 copy of it?

10 A. It wasn't recorded. It wasn't part of
11 the document. I don't know what reason it was left
12 out but it wasn't part of the document.

13 Q. You've given that testimony. I'm
14 asking why didn't you ask for the Clerk to locate
15 Exhibit B?

16 A. I don't know.

17 Q. And you would agree that with Exhibit B
18 you would be able to ascertain the location of the
19 property described in Parcel 4 marked as Barnett
20 1909?

21 A. Yes, and I think that's what I said in
22 the federal case.

23 Q. I understand that. I'm just saying
24 knowing that and knowing that there is a risk that
25 the Navy is claiming that they own property your

1 client wants to build a dock across, why didn't you
2 ask the Clerk of Court to help you find Exhibit B?

3 A. I believe I -- I believe I also asked
4 Rob Donaldson who had a copy of it to send it over
5 and there was no Exhibit B on his.

6 Q. I understand. I'm asking why you
7 didn't follow up with the Clerk of Court to get a
8 copy of Exhibit B prior to the closing in 2005.

9 A. I know that everyone had a very
10 difficult time finding this judgment. Even with
11 the caption, even with the case number finding it
12 was very difficult so I would have thought that
13 they -- that what I was delivered was the entire
14 document.

15 Q. And delivered, help me on that part.
16 What do you mean delivered?

17 A. When I received it, I would have
18 thought it was the complete document.

19 Q. Let's walk through the process. So how
20 did you go about asking the Clerk of Court for this
21 information?

22 A. Well, this -- okay, on the 2005
23 closing, I believe I was given a copy of it by Rob
24 Donaldson who did the search and in conjunction
25 with -- because I asked him for the backup for the

1 ALJ. Then in 2007, I was given a copy of it by the
2 Navy.

3 Q. So you didn't ask the Clerk of Court
4 for the information in 2005?

5 A. Because I asked the -- I didn't go to
6 the District Court, I asked the Clerk in Berkeley
7 County and they couldn't find it.

8 Q. I'll tell you what might be helpful for
9 me because we are bouncing all around and it may be
10 part of the way I'm asking questions.

11 A. Okay.

12 Q. Let's step back to the point in time
13 when you had received the materials referenced in
14 Exhibits 2 through 6.

15 A. Okay. Yes.

16 Q. The fax from the realtor. What did you
17 do next with regard to searching title on the
18 property or the marsh adjacent to the property?

19 A. Okay. On searching the property, I
20 searched the judgment index back ten years because
21 judgments are good for ten years and then I did a
22 40-year search on the actual lot itself.

23 Q. And the searches you did in the RMC
24 office of Berkeley County?

25 A. RMC office, yes.

1 Q. You would agree, wouldn't you, that a
2 judgment of a take by a court -- of a taking of
3 property by the United States Government lasts
4 longer than ten years, does it not?

5 A. It's not -- well, yes, because it's not
6 the same -- normally what happens if there's a
7 taking is there's an actual deed that's been
8 recorded. This is a very odd occurrence, this
9 judgment, simply being on the judgment role.

10 Q. But you don't have any -- you're not
11 making a claim in this lawsuit that the judgment
12 wherein the United States taking of these
13 properties in Berkeley County is somehow invalid,
14 are you?

15 A. No.

16 Q. So it's a valid taking and the
17 Government -- United States Government owns that
18 property, correct?

19 MR. COUNTRYMAN: Object to the form.

20 THE WITNESS: The Government has said
21 that they don't need to do anything further to file
22 the judgment.

23 BY MR. PENDARVIS:

24 Q. You're a real estate lawyer. Do you
25 believe that the government holds title to the

1 marsh adjacent to

today?

2 A. I don't think it's been decided today.
3 And in all of the real estate searches that I do,
4 this is the only one I've ever seen where there
5 hasn't been a deed, some other record on the
6 register's office rather than the Clerk.

7 Q. Well, now that you've seen the
8 judgment, Exhibit A identified the owners of the
9 property and the description of the property and
10 Exhibit B showing the plat, could you give an
11 opinion that the government does not own the
12 property that was taken as part of this United
13 States versus 72.5 Acres litigation in 1965 and
14 '66?

15 A. With this plat in hand --

16 Q. Yes, sir.

17 A. -- I'd have to, you know, get a little
18 bigger copy to measure it but I think I could track
19 the legal description if I had the plat.

20 Q. And your opinion would be assuming you
21 had a better -- able to better track it but in your
22 opinion would the United States Government have
23 title to this property adjacent to

24 ?

25 A. Well, I still have a question in my

1 mind because the survey that was completed doesn't
2 match the taking so I really would want to see what
3 the Federal Court decided.

4 Q. If you were drawing a title insurance
5 policy that somehow included the right to build a
6 dock over submerged lands -- and I understand that
7 the title policy that you issued did not include
8 that coverage but if you were asked to write a
9 title policy, would you provide -- list as an
10 exception the United States Navy's claim to a
11 portion of this marsh?

12 A. Possible claim?

13 Q. Yes.

14 A. Um-hum.

15 Q. That's a yes?

16 A. Yes. Sorry.

17 Q. But you didn't tell Mr. Roberts that
18 there was a -- the Navy had a claim to ownership of
19 this marsh, did you?

20 A. Yes, I told Roberts that the Navy had
21 made a claim and could make a claim. Yes, I
22 specifically told him that. Now, I did not have
23 this plat in hand at the time and this plat I still
24 believe is not of record.

25 Q. Would anything have changed in terms of

1 your advice to Mr. Roberts if you'd have had this
2 plat referenced as Exhibit B, these papers in your
3 hands at the time?

4 A. If I could follow that and it showed
5 that any portion -- if it could clearly show a
6 portion being owned by the Navy, yes.

7 Q. What would your advice have been if it
8 clearly showed a portion owned by the Navy?

9 A. Then I would have said then they
10 have -- they have a valid claim.

11 Q. And what would that have meant, a valid
12 claim with regard to building a dock over land over
13 which the Navy has a valid claim?

14 A. I would have told them that you risk
15 them telling you to remove it from the property.

16 Q. But you didn't tell Mr. Roberts that in
17 2005, did you?

18 A. I told Mr. Roberts that the Navy could
19 make a claim because they had already made a claim.

20 Q. Did you discuss with Mr. Roberts -- I
21 want to direct your attention to the last three
22 statements. Looking at the last two pages of
23 composite Exhibit 7.

24 A. Yes.

25 Q. Did you review this document prior to

1 the closing in August of 2005?

2 A. I don't think I read the entire
3 document, no.

4 Q. Did you read any portion of this
5 stipulation as it's styled on the last two pages
6 and it's Bates marked Barnett 03844? That's the
7 document. And my question is did you discuss any
8 portion of this with Mr. Roberts prior to closing
9 in August 2005?

10 A. No.

11 Q. Did you see this document prior to the
12 closing in August 2005, the stipulation?

13 A. I do not remember seeing the
14 stipulation.

15 Q. Would this document have changed your
16 opinion about the rights and ability of the permit
17 holder to build a dock over this marsh?

18 A. Well, not specifically being able to
19 note what the parcels were. I'm not sure that it
20 would have -- I don't know that I would have been
21 able to place it is my problem.

22 Q. Well, we have Parcel 4, which is the
23 heirs of Mingo Heyward property we looked at and
24 it's referenced -- let me start off by saying this
25 stipulation is referenced in Civil Action Number

1 8795.

2 A. Um-hum.

3 Q. Correct? United States of America
4 versus 72.5 Acres of Land, et al.?

5 A. Yes.

6 Q. So Parcel 4 in the complaint describes
7 the heirs of Mingo Heyward property?

8 A. If you had Exhibit B.

9 Q. Okay.

10 A. I would agree.

11 Q. So --

12 A. I don't believe Exhibit B is on the
13 record and that's why that taking is so vague.

14 Q. Because if you really get down to it,
15 this stipulation is the document, correct, that's
16 really at issue here because the heirs of Mingo
17 Heyward never owned the marsh, there was never a
18 claim -- back up.

19 You agree with me that Mingo Heyward
20 and his heirs never had a claim of right of
21 ownership of the marsh adjacent to what is now
22 , correct?

23 A. Well, then there wouldn't have been a
24 reason for a taking.

25 Q. Well, did you see how much they paid,

1 the heirs of Mingo Heyward? 19 bucks.

2 A. There you go.

3 Q. So there really wasn't a claim for
4 ownership of land, was there -- I mean of marsh,
5 was there?

6 A. Well, it was submerged.

7 Q. Submerged. And the real taking of the
8 marsh that affected this dock permit happened in
9 this stipulation when the United States Government
10 entered into a stipulation with the State of South
11 Carolina that the State would concede title to the
12 marsh to the United States Government in exchange
13 for the agreement by the government not to refrain
14 from any way permanently altering the tidelands?
15 Do you see that?

16 A. But what marsh is the problem.

17 Q. And your statement that the stipulation
18 applies to specifically Parcel 4, you relied
19 exclusively on whether Plat B was a public --
20 Exhibit B to the Declaration of Taking was of
21 public record, is that basically your position in
22 this lawsuit?

23 A. My position is that without Exhibit B,
24 you can't locate what marsh they took and that's in
25 the documents that were given to the administrative

1 law judge and the documents that I was delivered,
2 there was no Exhibit B and it was too vague, yes,
3 that's my --

4 Q. And your testimony is you didn't ask
5 for Exhibit B?

6 MR. COUNTRYMAN: Object to the form.
7 BY MR. PENDARVIS:

8 Q. Is that correct?

9 A. I don't know who I would have asked.

10 Q. Did you ask Mr. Donaldson for Exhibit
11 B?

12 A. I asked Mr. Donaldson for the entire
13 document and there was no Exhibit B.

14 Q. Okay. And when you got it without
15 Exhibit B, my question is did you ask for it?

16 A. There wasn't one.

17 Q. Okay. And did you ask anyone else for
18 a copy of Exhibit B?

19 A. No. Yes, I asked -- when -- well, the
20 only other time I asked for an exhibit was later
21 when I got the document from Fran Trapp and I said,
22 there's no Exhibit B attached here, I can't find
23 anything without Exhibit B.

24 Q. And that's the same position you were
25 in prior to the closing, correct?

1 A. That's correct.

2 Q. Did you rely on any other
3 communications or materials to advise Mr. Roberts
4 about whether to proceed with the purchase of this
5 lot?

6 A. I relied on the title exam I did on the
7 lot and I relied for the permit on Mary, who was,
8 still is, a -- the guru of docks. She worked for
9 OCRM, she knows her way in and out and around them.
10 And the administrative law order and the fact that
11 there was a valid transfer of that permit to Keith
12 so I talked -- and I also had made a phone call to
13 the Navy and they had advised me that the permit
14 had been litigated.

15 Q. And do you have a copy of the
16 correspondence from the Navy confirming that?

17 A. I just have a note which I should have
18 delivered to on my sheet saying that I had spoken
19 to Nelson and -- I can't remember the other --
20 there were three people. I think it was Linda
21 Davis referred me to Nelson or Raymond or --
22 Raymond Nelson. There were two guys that were in
23 the real estate department.

24 Q. Did any of those three people -- and
25 the real estate department you're referring to is

1 the real estate department of the Navy?

2 A. Yes.

3 Q. For the Charleston Naval Yard?

4 A. Yes.

5 Q. Did any of the Navy people confirm for
6 you in writing that they were not going to take
7 position on the dock?

8 A. No, they did not.

9 Q. So it's simply a telephone
10 conversation?

11 A. Yes, sir.

12 Q. Is that material to your advice to
13 Mr. Roberts on whether the dock permit was a viable
14 permit?

15 Let me restate that. Was your
16 conversation with the person with the Navy material
17 to your advice you gave Mr. Roberts?

18 A. Not at -- not per se. Mary's
19 representation about the permit was more of what I
20 relied on.

21 Q. Did you go onto the Berkeley County --
22 back up.

23 Is there a Web site in Berkeley County
24 where you can look at plats and things of that
25 nature, aerial photos of property?

1 A. Yes, Mapping GIS.

2 Q. Mapping GIS? Did you look at the
3 Mapping GIS materials prior to closing in August
4 2007 -- I mean, 2005. Excuse me.

5 A. I don't -- I don't typically start with
6 the Mapping unless there's a question about where
7 the lot is located. I normally would start with
8 the property clerk.

9 Q. At any point in your investigation of
10 these properties, the property or the marsh, did
11 you go to the GIS Web site at Berkeley County?

12 A. Prior to closing, I'd have to look at
13 my file. I don't specifically remember doing that,
14 no.

15 (PLF. EXH. 8, Document entitled
16 Berkeley County Viewer Map, Barnett00017, was
17 marked for identification.)

18 BY MR. PENDARVIS:

19 Q. I'm going to represent to you this was
20 from Mr. Barnett's materials.

21 A. Okay.

22 Q. And I'll also represent to you that
23 I've not seen a similar type document from your
24 production.

25 A. Okay.

1 Q. But I'm going to ask first off is this
2 part of what we're talking about? I see at the
3 very bottom the computer printout, it says GIS
4 County Berkeley SC. Does this appear to be
5 something from --

6 A. Yes.

7 Q. -- a map output from GIS system?

8 A. Um-hum. Yes, sir.

9 Q. And is this something from what you can
10 see that would be relevant to the

11 property we're talking about or can you tell?

12 A. It's rather difficult to tell from the
13 copy I have.

14 Q. Okay. The only reference I see is
15 Yellow House Place, looks like there's Yellow House
16 Road or something Yellow House is written on this.

17 A. Yeah, I see that.

18 Q. But back to the original question. You
19 don't -- your testimony is you did not go to the
20 GIS Berkeley County Web site as part of the -- your
21 due diligence in looking at the title and permit --

22 A. Searching the property.

23 Q. -- or the marsh?

24 A. I didn't -- I didn't search the marsh.

25 Q. Okay. Turning now to the specific

1 events in the closing on August -- do you recall
2 the closing being August 17, 2005?

3 A. That sounds correct.

4 (PLF. EXH. 9, Affidavit,
5 Carolock-Drew00253, was marked for identification.)
6 BY MR. PENDARVIS:

7 Q. I'm passing to you now a copy of a
8 document marked Exhibit 9 to your deposition and
9 this appears to be an affidavit Mr. Stone would
10 have signed?

11 A. It's -- no, in South Carolina you're
12 required to have an affidavit of values for
13 calculation of the deed stamp, that's all this is.

14 Q. Is that your signature at the bottom?

15 A. Yes.

16 Q. And this is just standard?

17 A. This is -- yeah, this is -- all this
18 does, you may -- some people do not like their
19 transactions recorded in the paper so they'll just
20 put ten dollars as a consideration on the front of
21 the deed and then the affidavit shows the real
22 consideration, that's all that is.

23 Q. Is that so the county can tax it,
24 things of that nature?

25 A. Yes.

1 Q. Describe the closing itself. Did
2 everyone come into your office on the 17th of
3 August 2005?

4 A. Yes.

5 Q. Mr. Stone and Mr. Roberts?

6 A. Yes.

7 Q. Were there any other individuals
8 present?

9 A. Sheryl Hill was there and I think Jamie
10 did not come. I'm not positive whether he came or
11 not. Sheryl Hill was there, I believe.

12 (PLF. EXH. 10, Assignment/Transfer
13 Form, Carolock-Drew00243, was marked for
14 identification.)

15 BY MR. PENDARVIS:

16 Q. Mr. Drew, I passed you a document
17 marked Exhibit 10. This appears to be some kind of
18 assignment. Is this a document to transfer the
19 ownership permit from Mr. Stone to Mr. Roberts?

20 A. Yes, sir.

21 Q. Is this common for waterfront property
22 to have dock permits?

23 A. Yes. I transfer the permit even after
24 the dock is constructed in case there's any
25 reconstruction that needs to be done.

1 Q. So this gave until sometime in January
2 2007 for the dock to be constructed on this parcel?

3 A. Yes.

4 Q. Nothing unusual about this transfer?

5 A. No.

6 (PLF. EXH. 11, Affidavit,
7 Carolock-Drew00249, was marked for identification.)
8 BY MR. PENDARVIS:

9 Q. Mr. Drew, I'm passing you now a
10 document marked as Exhibit 11 to your deposition.
11 This appears to be some type of statement or
12 affidavit given by Mr. Stone that he's not received
13 any contact -- I'll let you read it, that basically
14 has had no communications with anyone regarding the
15 dock or the dock permit since the letter written by
16 Miss Shahid.

17 A. Um-hum. Yes.

18 Q. Fair summary?

19 A. Yes.

20 Q. That's a little unusual, isn't it?
21 What prompted this need for this type document?

22 A. It came from -- I believe the request
23 came from Jamie, said that he was going to -- Stone
24 was going to sign a -- it was either Jamie or Clay
25 told Keith to get it. I don't remember.

1 Q. Clay? Clay Walker?

2 A. Clay Walker.

3 Q. He's an attorney in Columbia?

4 A. I thought he was with Keith's
5 dealership, I don't know. I know that Keith was
6 talking to him on some of this stuff as it was
7 going along.

8 Q. And so the request -- tell me, did you
9 prepare the document marked Exhibit 11?

10 A. We drafted this document, yes, sir.

11 Q. And you told me you think it was either
12 Jamie?

13 A. I thought I supplied a document where
14 someone asked me to prepare -- someone had called
15 our office and asked to prepare this document and
16 signed at closing.

17 Q. What was your understanding of why that
18 person wanted this type of document created?

19 A. Because Keith wasn't in the -- wasn't a
20 property owner or a dock holder so he would not
21 have been notified if there was anything happening
22 between Mary's letter and closing.

23 Q. Okay. Like an appeal by an adjacent
24 landowner?

25 A. Right, something else happening that he

1 wouldn't have known about.

2 Q. Why would that matter if the dock
3 contingency wasn't part of the contract to
4 purchase?

5 A. He wanted to make sure that there
6 weren't any issues.

7 (PLF. EXH. 12, Settlement Statement,
8 with attachments, Carolock-Drew00516 to 00528, was
9 marked for identification.)

10 BY MR. PENDARVIS:

11 Q. This is another composite exhibit --

12 A. Okay.

13 Q. -- Mr. Drew. This is -- there are a
14 number of things like a HUD statement and some
15 other forms that were signed. Take a moment and
16 look over -- actually, a copy of Exhibit 11 is in
17 here too.

18 A. Okay.

19 Q. But anyway, take a moment and look
20 through these.

21 A. Okay, so it looks like Sheryl Hill had
22 called me about Exhibit 11.

23 Q. And that's the note we're talking about
24 on the --

25 A. Yes, sir.

1 Q. Well, I'll just reference. Drew 00522
2 on the bottom right-hand corner?

3 A. Yes, sir.

4 Q. Is that like a phone note, just
5 happened to be copied on top of this document?

6 A. Yes, sir.

7 Q. Other than that phone note, are these a
8 fairly standard set of real estate closing
9 documents?

10 A. Yes, sir.

11 Q. Title opinion on the back, copy of the
12 title loan binder, title insurance binder?

13 A. I don't see the binder.

14 Q. It says private policy notice?

15 A. Yes. Those are --

16 Q. Anyway, fairly standard real estate
17 closing?

18 A. Yes, sir.

19 Q. Did Mr. Roberts tell you how he was
20 funding the purchase of this property?

21 A. Well, he said he wasn't going to
22 finance it. I think he said he was going to take
23 it out of the dealership.

24 (PLF. EXH. 13, Documents entitled
25 Randall J. Drew, LLC Trust Acct. Carolock-Drew00531

1 to 00538, was marked for identification.)

2 BY MR. PENDARVIS:

3 Q. I passed you the document marked as
4 Exhibit 13 to your deposition. This is another
5 composite exhibit of what appear to me and I'm
6 going to ask you to confirm this for me but these
7 appear to be copies of check stubs from -- trust
8 account checks from your law practice to the
9 various payees listed on the HUD statement?

10 A. Yes.

11 Q. Is that a fair characterization of
12 this?

13 A. Yes.

14 Q. And Mr. Stone received the first -- a
15 check in the amount of \$438,841.64, first page?

16 A. Yes.

17 Q. Would it refresh your recollection any
18 if I told you that Mr. Roberts sent -- the funds
19 Mr. Roberts sent you was withdrawn from his Bank of
20 America account?

21 A. I don't -- I'd have to -- I don't know.

22 Q. That's fair.

23 (PLF. EXH. 14, Title To Real Estate,
24 Carolock-Drew00250 to 00252, was marked for
25 identification.)

1 BY MR. PENDARVIS:

2 Q. This is another composite. Passing you
3 now a copy of a document marked Exhibit 14 to your
4 deposition. This is the deed from Mr. Stone to
5 Mr. Roberts, is that correct?

6 A. Yes.

7 Q. Who prepared this deed?

8 A. I did.

9 Q. And how was it -- help me on the
10 logistics of how it got -- Mr. Stone signed it at
11 the closing?

12 A. Yes.

13 Q. And the deed contains no reference to
14 the dock permit, does it?

15 A. No.

16 (PLF. EXH. 15, DHEC Invoice and
17 cancelled check, Barnett02051, was marked for
18 identification.)

19 BY MR. PENDARVIS:

20 Q. Mr. Drew, I'm handing you a document
21 marked Exhibit 15. Is this the transmittal form
22 and a copy of your check to DHEC to transfer the
23 deed? Excuse me, transfer the permit for the dock?

24 A. Yes.

25 (PLF. EXH. 16, Letter dated 8/22/05 to

1 Keith Roberts from Tess Rodgers, with attached
2 Assignment/Transfer Form, Carolock-Drew00428 to
3 00429, was marked for identification.)

4 BY MR. PENDARVIS:

5 Q. I'm passing you a copy of a document
6 marked Exhibit 16 to your deposition. Where did
7 you get this document?

8 A. I'm sorry, which --

9 Q. Do you know this Exhibit 16?

10 A. Well, the second part is from -- is --
11 we got it from DHEC, filled it out. The first part
12 is we got it from DHEC from -- or I guess Keith got
13 it from DHEC.

14 Q. I mean, do you believe Keith Roberts
15 gave you a copy of this letter from DHEC dated
16 August 22nd, 2005?

17 A. It probably came -- since the check and
18 the courier sent it down to OCRM from my office,
19 OCRM probably couriered it -- I think there was an
20 urgency so I think he had me courier it back to me
21 and then I gave it to him is probably what
22 happened.

23 Q. I just didn't see you were copied on
24 here. I'm just curious on how you got a copy of
25 it. Is that your handwriting at the top right-hand

1 corner?

2 A. That's not.

3 Q. How about the bottom right-hand corner
4 of Page 1 of Exhibit 16?

5 A. The Exhibit Number 4, 11 pages?

6 Q. Yes. Is that handwriting yours?

7 A. No. My handwriting is illegible.

8 Q. After the closing August 2005, we've
9 seen the transfer of the permit to DHEC -- OCRM,
10 part of DHEC, what was the next contact you had
11 with Mr. Roberts?

12 A. I believe when he asked me to
13 prepare -- create the LLC for him.

14 Q. Tell me about that conversation.

15 A. I think he just called me up and said,
16 can you create an LLC for me?

17 Q. Did he say why or why he wanted an LLC
18 or anything of that nature?

19 A. No. Well, I would have -- since he
20 wasn't going to sell it, we probably -- I would
21 probably have thought -- any time I discuss an LLC
22 with a client, I would tell them to get you some
23 additional protection against outside parties.

24 Q. And you said since he wasn't going to
25 sell it. What made you think Mr. Roberts wasn't

1 going to sell it?

2 Let me back up. It you're referring to
3 is the property?

4 A. Yes.

5 Q. And when you say --

6 A. Because at that time I think we also
7 started talking -- he was telling me he was going
8 to get a construction loan.

9 Q. And that was the first time you heard
10 of that, was after the closing in August of 2005?

11 A. I didn't know anything about building a
12 house until after the closing, that's correct.

13 Q. Did that discussion about building a
14 house take place during the phone call from
15 Mr. Roberts asking you to form an LLC?

16 A. I think it was a phone call where he
17 was applying to First Citizens for a construction
18 loan, that's why -- it sticks in my head that he
19 wanted to get the money back into the dealership
20 but -- and wanted to put it in an LLC. And I think
21 that's when he may have mentioned he was building
22 it with his friend Pat. But I actually thought
23 they were going to use the LLC as the partnership
24 agreement but I never drafted a operating agreement
25 for him.

1 Q. Are you talking about Pat Cogan?

2 A. Pat Cogan.

3 Q. Do you know Pat Cogan?

4 A. I do not.

5 Q. And what did Mr. Roberts tell you about
6 Pat Cogan?

7 A. He was his best friend and was building
8 a house and they were going to split the profits.

9 Q. And we're talking about a house on the
10 --

11 A. On the property.

12 Q. -- ? The property? And
13 were those conversations part of the conversations
14 leading up to the formation of the Lot 12 Yellow
15 House, LLC?

16 A. I'd have to look at the timing on the
17 Lot 12, LLC in conjunction with the financing but I
18 believe they were.

19 (PLF. EXH. 17, Handwritten note, with
20 attachments, Roberts02026 to 02036, was marked for
21 identification.)

22 BY MR. PENDARVIS:

23 Q. I'm passing to you now another
24 composite exhibit. This is marked Exhibit 17 to
25 your deposition. Correct me if I'm wrong, but

1 these appear to be materials related to the
2 formation of Lot 12 Yellow House, LLC?

3 A. That's correct.

4 Q. And you can count the page numbers, but
5 as you go back there are some handwritten notes
6 that says articles of organization. Is that your
7 handwriting?

8 A. No.

9 Q. Is that anyone in your office staff's
10 handwriting?

11 A. I don't believe so.

12 Q. How about two pages back from that?

13 A. No, it's not my handwriting.

14 Q. Do you know Lee Hoffman?

15 A. I do not.

16 Q. Okay. Do you recognize any of that
17 handwriting?

18 A. I do not.

19 Q. As to Page 2 of Exhibit 17, are
20 these -- is this a form you prepared?

21 A. Yes, sir.

22 Q. And submitted to the South Carolina
23 Secretary of State's office?

24 A. Yes, sir.

25 Q. Do you form a lot of corporations? Do

1 you form corporations as part of your law practice?

2 A. Yes, sir.

3 Q. And the date of filing toward the
4 bottom part of Page 2 of Exhibit 17 shows -- top
5 left-hand corner shows it was received on November
6 9th, 2005 and the bottom stamp shows it was filed
7 that same day?

8 A. Yes.

9 Q. Does that refresh your recollection as
10 to your conversations with Mr. Roberts about the
11 formation and the purpose behind the formation of
12 this LLC?

13 A. I believe it was protection. It
14 wasn't -- it wasn't a personal endeavor that he was
15 buying and flipping so I should have -- I would
16 have -- yeah, I would have suggested that he put it
17 in an LLC for protection to protect his other
18 assets from anything that he's doing out here.

19 Q. And what did Mr. Roberts tell you about
20 the development plans for this lot?

21 A. Just that Pat was the builder and Pat
22 was going to build the house and then they were
23 going to sell it and split the profits.

24 Q. Did you give him any advice about the
25 lot with regard to this LLC that's being formed?

1 A. I don't understand the question.

2 Q. In other words, Mr. Roberts
3 individually owned , that lot,
4 and he also individually owned this permit and you
5 were forming an LLC. Did you give Mr. Roberts any
6 advice about whether the property needed to be
7 conveyed to the LLC or any advice of that nature?

8 A. Well, once the LLC was formed, the
9 property would need to be quit claimed into the
10 LLC, yes.

11 (PLF. EXH. 18, Berkeley County Register
12 of Deeds Instrument Number 2006-00050297, with
13 attachments, Roberts01279 to 01284, was marked for
14 identification.)

15 BY MR. PENDARVIS:

16 Q. I'm passing you now another composite
17 exhibit marked as Exhibit 18. Are these materials
18 related to the quit claim deed from Mr. Roberts to
19 Lot 12 Yellow House, LLC?

20 A. Yes.

21 Q. And these were materials you prepared
22 for Mr. Roberts?

23 A. Yes.

24 Q. And you represented both Keith Roberts
25 and Lot 12 Yellow House, LLC?

1 A. Yes. It was a single member LLC.

2 Q. Were there any discussions about
3 whether Mr. Pat Cogan should be members in this or
4 not a member?

5 A. I didn't have any discussions with him
6 about it, best of my knowledge.

7 Q. Were you involved in -- let me back up.
8 Were you aware that Mr. Roberts found a
9 buyer for the property?

10 A. Not until I received a letter from
11 Ben -- he forwarded me a copy of a letter from Ben
12 Hagood, I guess is how you pronounce his name.

13 Q. Yes. I think we're talking about the
14 same person. And what did that letter say?

15 A. It said that the buyer was backing out
16 for -- out of an agreement of sale for a number of
17 reasons.

18 Q. And did you have any conversations with
19 Mr. Roberts about the claims by this -- I'm going
20 to represent to you that gentleman's name was
21 Robert Bowen.

22 A. Okay.

23 Q. Does that refresh your recollection
24 about the prospective purchaser of that lot?

25 A. Yes.

1 Q. Did you have any conversations with
2 Mr. Roberts about Mr. Bowen's desire to get out of
3 the contract?

4 A. Yes.

5 Q. Tell us about that.

6 A. I said that there is no issue of
7 marketability of title on Lot 12.

8 Q. Okay. Did you have any discussions
9 about the dock permit?

10 A. No. Well, I said, what happened?
11 Because I hadn't heard anything up until that point
12 in time so I didn't know there was any issue that
13 had arisen.

14 Q. What did Mr. Roberts say back to you
15 when you asked that question?

16 A. He said that -- he said that the Navy
17 is making a claim again.

18 Q. Did you have any other conversations
19 with Mr. Roberts about the effect of the Navy's
20 claim on Mr. Bowen's -- on the contract to purchase
21 that Mr. Bowen had entered?

22 A. Well, I asked him whether or not he had
23 given him the prior information.

24 Q. Whether Roberts had given Bowen the
25 information about --

1 A. The information when he purchased it,
2 the reinstatement of the permit. And I told him
3 that the marketability of title issue I don't agree
4 with because the taking, if there is a taking, did
5 not take any of Robert's ground, it took marsh that
6 he never was -- never was going to take title to.

7 Q. Did you describe -- at that point in
8 time was there -- the dock had been built, hadn't
9 it?

10 A. Yes. Well, it's my understanding the
11 dock and most likely the house at least was in some
12 sort of constructed state.

13 Q. And whether the dock was an
14 appurtenance, in other words, in the nature of a
15 fixture to the house, was -- did that have any
16 bearing on your opinion of marketability of the
17 lot?

18 A. Marketability of the lot is different
19 than marketability of title. Marketable title is
20 whether or not someone else is claiming an interest
21 in your property. No one was claiming an interest
22 in Keith's property. Marketability has to do with
23 whether there was something that was deterring him
24 being able to, you know, in any way or -- you know,
25 that's something different. There were a whole

1 bunch of factors like, you know, the market crashed
2 in 2007, you know, so there are a number of factors
3 that could have gone into marketability but
4 marketable title is a different issue.

5 Q. So is it your opinion that if there is
6 an appurtenance to a house that extends over
7 properties owned by others and if it is a legal
8 appurtenance, is it your opinion that a person
9 claiming an interest in property over which the
10 appurtenance is constructed, that that claim has no
11 bearing on marketability of title?

12 MR. COUNTRYMAN: Object to the form.

13 BY MR. PENDARVIS:

14 Q. That was a poor question. Let me get
15 sure we have some definitions.

16 A. Sure.

17 Q. You've described your opinion on what
18 is marketability of title.

19 A. Right.

20 Q. And I'm representing to you this legal
21 concept called an appurtenance includes the dock.
22 I'm just going to make that representation to you.
23 Is it your opinion that if someone -- that a
24 person's claim to title of property over which the
25 appurtenance is constructed has no bearing on

1 marketability of title of the entire property?

2 A. I don't -- it can't have any bearing on
3 the marketability of title because he has clear
4 title to his lot today and he had clear title when
5 he purchased it. Well, today he doesn't, I take
6 that back but --

7 Q. At the time?

8 A. Yes. I'm sorry.

9 Q. October 2006.

10 A. Yes.

11 Q. October 2006 is the date of this
12 contract. What is your opinion on the effect of
13 the dock -- assume for the moment -- I'm not asking
14 you to concede this, I'm asking you to assume for
15 the moment that the dock is constructed over the
16 lands owned by the Navy. Assuming that fact, that
17 this dock is attached on the landward side to the
18 property that is --

19 A. Um-hum.

20 Q. -- do you have an opinion on whether
21 the Navy's claim to certain portions of marsh over
22 which this dock is constructed has no bearing on
23 the marketability of title to the main lot itself?

24 A. That's correct. I do not believe it
25 does.

1 Q. Did Mr. Roberts provide you with a copy
2 of the contract he had with Mr. Bowen -- or excuse
3 me, Mr. Bowen had with Lot 12 Yellow House, LLC?

4 A. When he forwarded me a copy of the
5 letter from Hagood, I believe, yes.

6 (PLF. EXH. 19, Agreement To Buy And
7 Sell Real Estate Residential, Cogan00470 to 00481,
8 was marked for identification.)

9 BY MR. PENDARVIS:

10 Q. For the record purpose I'm going to
11 pass you a copy of that document. It's marked as
12 Exhibit 19. Is this -- do you recall looking at
13 this contract?

14 A. Yes. Well, actually the copy that I
15 thought was sent to me was fully executed. I'd
16 have to check my file.

17 Q. Did you give Mr. Roberts an opinion on
18 whether he had a claim for specific performance
19 against Mr. Bowen after receiving the letter from
20 Mr. Hagood?

21 A. I did not. I discussed with him the
22 fact that if he were to fight the contract, they
23 would most likely tie up the property for a period
24 of time so if he wanted to sell it, he'd be better
25 off negotiating release.

1 Q. Okay.

2 (PLF. EXH. 20, E-mail dated 4/3/07 to
3 Keith from Athena Manos, Roberts01851, was marked
4 for identification.)

5 BY MR. PENDARVIS:

6 Q. I'm passing to you now an e-mail marked
7 as Exhibit 20 to your deposition. This appears to
8 be communications between someone with --
9 Miss Manos with First Reliance Bank and Keith
10 Roberts regarding a refinance and there's a
11 reference in there to Teri at your office.

12 A. Um-hum.

13 Q. Did you handle the real estate closing
14 on the refinance of the loan for -- that was used
15 to construct the house on ?

16 A. Yes, sir, I believe I did.

17 Q. And that's the 1.1 million dollar loan
18 that's referenced in this --

19 A. I don't think this was the loan we
20 closed.

21 Q. Okay.

22 A. I thought the loan we closed was with
23 First Citizens, not First Reliance.

24 Q. Okay.

25 A. If I checked my files I could tell you

1 but I did close the refinance of it.

2 Q. And the -- just the loan amount
3 refresh -- I mean, is that approximately the loan
4 amount that was borrowed on the refinance in 2007?

5 A. Again, I'd like to look at the actual
6 mortgage that we closed but it sounds like it's in
7 that range.

8 Q. When was the first time you -- back up.
9 Did someone from the Navy or the United
10 States Department of Justice ever contact you about
11 this Blue Crab Lane and the dock?

12 A. Yes.

13 Q. About when was that?

14 A. 2007.

15 (PLF. EXH. 21, Letter dated 8/8/07 to
16 Mr. Keith Roberts from Fran Trapp,
17 Carolock-Drew00529 to 00530, was marked for
18 identification.)

19 BY MR. PENDARVIS:

20 Q. I'm going to pass you a document marked
21 as Exhibit 21 to your deposition and first ask does
22 that refresh your recollection on the date of the
23 first contact from the Department of Justice? And
24 for the record, you're looking at a copy of a
25 letter from Miss Fran Trapp dated August 8, 2007 to

1 Keith Roberts and has a cc on the second page to
2 you?

3 A. Yes.

4 Q. Was this the first contact you had
5 directly from the United States Government or
6 attorneys on its behalf about the Yellow House
7 property?

8 A. I believe so.

9 Q. Did you have any conversations with
10 Mr. Roberts after receiving this communication from
11 the United States Government?

12 A. Yes.

13 Q. Tell me about that, please.

14 A. I said that we should go meet with them
15 with the order and the permit and search and see
16 where we go from there.

17 Q. And what did Mr. Roberts say?

18 A. I don't know whether this is when he
19 had -- I think Clay knows Fran. I don't know
20 whether this is the time frame when he had Clay
21 talking to Fran but we met with them.

22 Q. Did you or Mr. Roberts -- or did you or
23 did you direct Mr. Roberts to respond to Miss Trapp
24 as requested in the third paragraph on the first
25 page of Exhibit 21?

1 A. I called her and we set up a meeting.
2 I know we had a meeting.

3 Q. Did you have more than one or just one
4 meeting with Miss Trapp?

5 A. I think we only had one.

6 Q. Did you decide to take any other action
7 in response to the letter marked as Exhibit 21
8 dated August 8th other than calling back to
9 Miss Trapp to set up a meeting?

10 A. No. Got together the information and
11 then after the meeting was when I referred him to
12 Stan Barnett.

13 (PLF. EXH. 22, Fax Cover Sheet dated
14 10/16/07 to Todd from Teri Baker,
15 Carolock-Drew00451, was marked for identification.)
16 BY MR. PENDARVIS:

17 Q. Well, let me pass you what's been
18 marked as Exhibit 22 to your deposition. This
19 appears to be a fax from your office to Mr. Balish
20 with Edisto Title Services?

21 A. Yes.

22 Q. I know Mr. Balish isn't on here but I'm
23 aware he's the principal person at Edisto Title
24 Services?

25 A. Yes.

1 Q. And this is the title search that you
2 referred to in your federal deposition?

3 A. Yes.

4 Q. It appears from the second paragraph of
5 this letter that it's -- the second sentence is
6 stated in the form of a conclusion, there is a
7 judgment showing how the Navy got the marsh in
8 front of the above property from the District Court
9 back in 1969. Did you tell -- this is Teri Baker?

10 A. Right.

11 Q. Did you tell Miss Teri Baker what to
12 put in the fax cover sheet that was sent to
13 Mr. Balish on October 16, 2007?

14 A. I believe I told her to -- no, not
15 specifically. What I think I -- I believe what I
16 told her was that I needed to find if there was
17 anything on record showing who owned the marsh.

18 Q. And is your testimony you didn't say
19 anything in the nature of --

20 A. I may have said, Teri, I'm trying to
21 find out if he can find this judgment. I may have
22 said that, yes. But what I -- the specific search
23 was I wanted to know who he thought owned the marsh
24 after the search.

25 Q. And you directed Miss Baker to ask

1 Mr. Balish to get copies of easements and plats?

2 A. Um-hum.

3 Q. And is the reason that you requested
4 plats is that you were -- recalled the plat missing
5 from Exhibit B?

6 A. Right.

7 Q. The federal papers?

8 A. Because there was nothing that
9 showed -- that I could find on record.

10 Q. Why did you think Mr. Balish was going
11 to be able to find it?

12 A. I didn't think he was going to be able
13 to find it but I wanted to go beyond myself and
14 find out what the story was.

15 (PLF. EXH. 23, Memorandum dated
16 11/14/07 to Randall Drew from Todd Balish,
17 Carolock-Drew00452, was marked for identification.)
18 BY MR. PENDARVIS:

19 Q. I'm passing you now a document marked
20 as Exhibit 23. It appears to be a memorandum from
21 Mr. Balish back to you responding to his -- your
22 request.

23 A. Um-hum.

24 Q. Do you recall receiving this document?

25 A. Yes, sir.

1 Q. Did you have any conversations with
2 Mr. Balish around the time of this November 14th
3 facsimile to your office?

4 A. I don't recall any conversations with
5 him other than sending him -- asking him to search
6 it.

7 Q. Did you follow up on his request in the
8 third paragraph that says we might suggest you look
9 for suits filed in District Court?

10 A. No, because I already had that
11 judgment.

12 Q. Okay. But you didn't have the plat
13 attached to the judgment?

14 A. That's correct.

15 Q. I'm not going to cloud up the exhibits
16 to your deposition. I'm going to represent to you
17 that by January 2008 there were communications
18 between Miss Trapp and Mr. Clay Walker in Columbia
19 that according to the e-mail communications are in
20 August of 2007 and by January 2008 Mr. Roberts is
21 directing Mr. Walker to have all communications go
22 to you.

23 A. Okay.

24 Q. So that's by January of '08.

25 A. That's where I thought -- I thought

1 there was a zone where I wasn't really in the loop.

2 Q. I'm going to let you take a look at
3 this. We're not going to mark it as an exhibit.
4 Here's a copy for you.

5 MR. COUNTRYMAN: If he's going to be
6 testifying about it, it needs to be an exhibit.

7 MR. PENDARVIS: Well, I mean, he wasn't
8 involved in communications.

9 MR. COUNTRYMAN: If he's going to be
10 testifying about it, it should be marked I think.

11 MR. PENDARVIS: All right. Exhibit 24.

12 (PLF. EXH. 24, E-mail chain dated
13 1/30/08 to Fran Trapp from Clay Walker,
14 Roberts02197 to 02198, was marked for
15 identification.)

16 MR. COUNTRYMAN: Are you going to ask
17 him questions about it?

18 BY MR. PENDARVIS:

19 Q. Well, not really, but does that refresh
20 your recollection of your noninvolvement between
21 August and January of 2008 -- August of 2007 and
22 August of 2008?

23 A. That's what I thought I remembered.

24 Q. Did you have any communications with
25 Mr. Clay Walker in that August 2007 to January 2008

1 time period?

2 A. I do not believe so. And I believe
3 that this Ed Smith, the paralegal for Fran,
4 actually had my address wrong. There was some
5 confusion where they were sending things.

6 Q. So if I'm understanding correctly the
7 sequence of things, we looked at Exhibit 21, an
8 August 8th letter from Miss Trapp directed to Keith
9 Roberts copied to you requesting a conference or a
10 follow-up phone call and you testified you set up a
11 meeting with them, with Miss Trapp?

12 A. I think that's where I had that void.
13 I think it was -- Keith was talking to Clay between
14 this letter and the February of 2008.

15 Q. So in response to the request from
16 Miss Trapp for a meeting or a telephone call, it's
17 your understanding that Mr. Clay Walker was
18 handling that request in dealing with Miss Trapp as
19 referenced in the Exhibit 24 e-mail chain?

20 A. Yes, sir.

21 (PLF. EXH. 25, Fax Transmission dated
22 2/25/08 to Terry for Randall J. Drew from Ed.
23 Smith, Paralegal Specialist, Carolock-Drew 00228 to
24 00230, was marked for identification.)

25 BY MR. PENDARVIS:

1 Q. I pass you now a document marked
2 Exhibit 25 to your deposition which appears to be a
3 fax from Mr. Ed Smith, a paralegal, to your
4 office -- actually to your assistant on February
5 25, 2008 again concerning the Lot 12 Yellow House
6 Road, LLC and that property?

7 A. Right. And what happened is my office
8 moved sometime in the end of 2007. I'd have to
9 look at the exact time. So I didn't get the
10 correspondence from Ed Smith. For some reason the
11 post office didn't forward that -- the mail. So
12 then he faxed it to me. Because that was still
13 going to my old address. I had already moved out
14 of there.

15 Q. And I see the position the Government
16 is taking, Miss Trapp is taking on the first page
17 is that no one is taking advantage of the
18 opportunity to meet that was offered in the August
19 2007 letter. Do you see that?

20 A. Right. And that's why I think after
21 this, this is when we -- I set up the meeting
22 because I hadn't received that correspondence.

23 Q. Did you have any conversations with
24 Mr. Roberts about the content of this letter we're
25 looking at marked Exhibit 25 to your deposition?

1 A. Yeah, this is when I said we should go
2 meet with them and take them the information and
3 see where we go from there.

4 Q. Did you have any conversations with
5 Miss Trapp around February 25th or so of 2008?

6 A. I believe I only spoke to Ed Smith on
7 setting up the meeting. I spoke with Fran at the
8 meeting.

9 Q. Did you receive any other information
10 from the United States Attorney's office that day?

11 A. I'm sorry, which day?

12 Q. I'm sorry. My apologies. This is
13 marked as a separate exhibit but it really ought to
14 be part of Exhibit 25. This is going to be marked
15 as Exhibit 26.

16 (PLF. EXH. 26, Drawing labeled
17 Attachment 2, Carolock-Drew00223, was marked for
18 identification.)

19 BY MR. PENDARVIS:

20 Q. But if you take a look at Exhibit 25,
21 it shows a fax transmission of February 25th, '08
22 and it has -- on the third page I think it says
23 enclosure and Page 4 is what I marked as Exhibit
24 26.

25 A. Okay.

1 Q. Is Exhibit 26, which appears to have
2 been an enclosure with Exhibit 25 or part of that
3 fax transmission, is this the reference to the plat
4 showing the dock on Lot 4, the heirs of Mingo
5 Heyward?

6 A. You're saying 26 was an enclosure of
7 25?

8 Q. Well, if you look at it, the fax line
9 at the very top, it's the exact same date, exact
10 same time and it says -- Exhibit 25 starts with
11 Page 1 and it says there's four pages. If you look
12 on the fax cover sheet, it says there's four pages.

13 A. Okay.

14 Q. And this appears to be the fourth page
15 and that was marked Exhibit 26.

16 A. Okay.

17 Q. Did you take a look at this plat that
18 was included with the February 25th letter from
19 Miss Trapp?

20 A. This is the one by GEL, GE
21 Environmental or whatever? Yes.

22 Q. You did?

23 A. And I called them and I asked them how
24 they prepared the survey and they told me it was
25 not off of the judgment, that it was off of the

1 drawings that were supplied to him by the Navy.

2 Q. Okay. Did you have any conversation
3 with Mr. Roberts about the import of the portion of
4 the fax that's marked as Exhibit 26?

5 A. After the meeting I said that if that
6 plan -- if that survey is correct, I don't know why
7 they didn't deliver it to us sooner because it
8 would have resolved the issue with the permit.

9 Q. Did you tell Mr. Roberts that the
10 federal government had a duty to deliver a permit
11 or a copy of this plat?

12 A. No, I did not. The federal government
13 made it very clear to us in the meeting they didn't
14 have a duty to do anything.

15 Q. Did you tell them that you wished you
16 had had a copy of this before the closing?

17 A. Yes.

18 Q. Why?

19 A. Well, because I said if it's out of the
20 judgment, then it shows where the judgment is
21 because on the four corners of the judgment, you
22 can't tell where it is. You can't tell where it is
23 and nobody could find the judgment to start with.
24 I had one in hand and you still couldn't tell what
25 it was taking.

1 Q. Did you help Mr. Roberts write letters
2 to people like Lindsey Graham, Senator Lindsey
3 Graham?

4 A. I gave him exhibits -- I suggested he
5 write a letter to Senator Graham.

6 Q. Did you help him draft the letter?

7 A. No. I gave him exhibits to add to the
8 letter. I don't think I was involved in the
9 drafting of the letter.

10 (PLF. EXH. 27, Letter dated 2/29/08 to
11 The Honorable Lindsay Graham from Keith Roberts,
12 Carolock-Drew00224 to 00226, was marked for
13 identification.)

14 BY MR. PENDARVIS:

15 Q. Given that we've talked at length about
16 the majority of the exhibits, the copy of the
17 letter to Mr. -- Senator Graham marked as Exhibit
18 27 to your deposition that I've just passed to you
19 does not contain all the exhibits on there.
20 They're referenced other places in your testimony.

21 A. Okay.

22 Q. But your testimony is you didn't assist
23 Mr. Roberts in preparing this letter but you did
24 help him gather some of the exhibits?

25 A. I suggested he write a letter to

1 Lindsey Graham and I gave him the exhibits that I
2 had in my hand -- in my possession.

3 Q. Mr. Roberts is telling Senator Graham
4 in the next to the last paragraph in this letter
5 that he was under the impression that this was --
6 I'm assuming the it he's referring to is this dock
7 permit issue was a, quote, done deal, close quote,
8 in the letter, do you see that?

9 A. Yes.

10 Q. Did you tell Mr. Roberts that based on
11 your conversation with the Navy that there was not
12 going to be any litigation about this lot permit?

13 A. Absolutely not. As I told you before,
14 I was concerned about it. I told him I was
15 concerned about it.

16 Q. Did you ever send Mr. Roberts a letter
17 prior to the closing that expressed your concerns
18 about the risks that were involved in acquiring
19 this property, believing he would be able to build
20 the dock without a problem?

21 A. No, but I thought he was a friend and I
22 talked to him as an attorney and as a friend and I
23 told him specifically that that's not an area that
24 I would want to get into an argument with. Even if
25 they didn't have a valid claim, they can still make

1 a claim and then you still have a problem.

2 Q. But your testimony, you chose not to
3 put that in writing to Mr. Roberts?

4 A. That's correct.

5 Q. I'm going to represent to you that
6 following the February 25th fax of the February 6th
7 letter, understand that logistical issues on that,
8 but following that I'm going to represent to you
9 that there was a meeting on February 7th which it
10 appears that you attended with Mr. Roberts. Do you
11 recall that?

12 A. Yes.

13 Q. Tell me about that meeting. First off,
14 where did it take place?

15 A. In the Federal Building downtown. I
16 don't know if it's called the Federal Building. I
17 think it's the BB&T building but the federal
18 government has a floor. So you go in, you have to
19 go through metal detectors and show your ID's and
20 then we were -- excuse me, Keith and I were led
21 into a large conference room with -- I think there
22 were 12 people on their side. And I was under the
23 impression from talking to Ed Smith and from the
24 correspondence that we were going to discuss the
25 issue, which in my mind meant if there was an issue

1 that had to be dealt with, they could issue -- they
2 could give us a license, they could give us a
3 permit, whatever needed to be done we could discuss
4 with them. But that's when they told us -- told
5 Keith that he was trespassing on the property.

6 Q. Then was there any discussion?

7 A. Well, yeah. Well, I tried to discuss
8 it with them and say that there hadn't been any
9 proof of the ownership of the ground and then they
10 had that plan on a large overhead, the survey.

11 Q. And this is Exhibit 26?

12 A. 26.

13 Q. Okay.

14 A. And I asked them where they obtained
15 that survey, what information he used to obtain
16 that survey and they said the judgment. And it
17 turned out it wasn't the judgment, it was plans,
18 but I didn't know that at the time. And then I
19 said to them, well -- I asked them why they waited
20 until the dock and the house were already completed
21 by a citizen of the United States, why would the
22 United States then decide to do something when they
23 know, they saw him build it. And they said that he
24 was trespassing, there was nothing they could do.
25 And I again suggested to them that there was

1 something they could do, it was a revokable license
2 but they could give him permission, they could
3 charge him rent, they could do a number of things
4 if they felt he was trespassing on their ground.
5 But they were unwilling for some reason to do it,
6 to look at anything.

7 Q. Did you ever -- during that meeting did
8 you say anything to the effect that there was no
9 proof that they owned this marsh?

10 A. I said there was no proof that they
11 owned the marsh, I said that the administrative law
12 judge had ruled that the permit was valid. And
13 they said, we're the United States Government, we
14 don't have to do anything.

15 Q. Did you tell them about your
16 communications with Mr. Nelson or the other people
17 in the real estate office?

18 A. Yes.

19 Q. What did they say?

20 A. They said, well, that was -- that was
21 not their position.

22 Q. Did they say whether that person had
23 the authority to say what you say he said?

24 A. They didn't say and he wasn't there. I
25 asked specifically. It was mainly attorneys and

1 someone -- one or two guys from the Navy.

2 Q. So Miss Trapp was there. Was
3 Mr. Douglas there?

4 A. Tom Douglas I believe was there and
5 about -- I think there were eight other attorneys
6 there.

7 Q. Did they ask for action on Mr. Roberts'
8 behalf to take down the dock? Let me rephrase
9 that. Did they ask you to do anything?

10 A. Yes. They said he was trespassing.
11 And I said, I don't believe he is trespassing. And
12 I said, in the event he were trespassing, he should
13 be granted permission. And so they said they're
14 going to demand that he -- I don't know whether
15 they said at that meeting whether they were going
16 to demand that he remove the dock but they said
17 they were going to send over copies of all the
18 information showing that they owned the ground.

19 Q. And after that meeting did you have any
20 other conversations with Mr. Roberts about what had
21 just happened in the meeting?

22 A. Yeah, I said that wasn't very good.
23 They weren't interested in negotiating at all or
24 dealing with us at all so I referred him to Stan
25 Barnett.

1 Q. Did you have any conversations with
2 Mr. Barnett about -- after you referred Mr. Roberts
3 to him for advice?

4 A. I went to -- yeah, I went to a couple
5 of meetings with Stan and I don't remember his
6 partner's name and that's when I met Pat Cogan for
7 the first time.

8 Q. Mr. Roberts attended a few of those
9 meetings?

10 A. Yes.

11 Q. And were those meetings prior to or
12 after the lawsuit was filed?

13 A. I don't know.

14 (PLF. EXH. 28, Letter dated 7/7/08 to
15 Randall J. Drew, Esquire from Frances C. Trapp,
16 Assistant United States Attorney, Barnett00044 to
17 00047, was marked for identification.)

18 BY MR. PENDARVIS:

19 Q. I hand to you now a document marked as
20 Exhibit 28 to your deposition. Is this a copy of a
21 letter you received from Miss Trapp following that
22 meeting in March of 2008?

23 A. Yes, I believe it is.

24 Q. Did you have any conversations with
25 Mr. Roberts about the contents of this letter

1 marked as Exhibit 28 to your deposition?

2 A. I believe I would have but I'm not sure
3 exactly when Stan was in the mix, what date.

4 Q. And what did you tell Mr. Roberts about
5 this letter?

6 A. I told him they're still claiming that
7 they owned the ground in front of -- the ground
8 that the dock is crossing.

9 Q. Did you have any discussions about the
10 content of the first paragraph on Page 2 about
11 wherein Miss Trapp states the United States'
12 position on the location of the information that
13 would show that this property had been taken in the
14 1960s?

15 A. All documents remain readily available?

16 Q. Yes, sir.

17 A. It's still my opinion that the document
18 that's readily available in the court house on
19 record is the judgment without the exhibit.

20 Q. Did you have any conversations on
21 whether it was appropriate for you to rely on the
22 information in the administrative law judge's order
23 that's referenced on the last page, Exhibit 3 -- I
24 mean, excuse me, Page 3 of Exhibit 28?

25 A. Yeah, I thought at the time that he

1 purchased the property that I had -- that it was,
2 you know, within my professional judgment to rely
3 upon the administrative law judge and the opinion
4 of Mary Shahid.

5 (PLF. EXH. 29, Handwritten document
6 dated 3/24/08 to Becky Filton from Keith Roberts
7 and Pat Cogan, with attachments, Roberts02194 to
8 02196, was marked for identification.)

9 BY MR. PENDARVIS:

10 Q. Passing you some materials marked as
11 Exhibit 29 to your deposition. And who is Becky
12 Filton?

13 A. I have no idea.

14 Q. Do you know if this is an office person
15 that works with Mr. Barnett?

16 A. I really don't know.

17 Q. The second page of this appears to be
18 an e-mail from you or Miss Baker on your behalf to
19 Mr. Roberts. Do you see that?

20 A. Yes.

21 Q. And is the third document of Exhibit 29
22 a copy of material that you sent to Mr. Roberts on
23 March of 2008?

24 A. I guess, yes.

25 Q. And do I understand the information on

1 this e-mail correct that you're directing
2 Mr. Roberts to -- and I'm going to use the phrase
3 here pull the Civil Action Number 8795 that's
4 listed on the attachment?

5 A. I think this had to do with --

6 Q. I'm not reading that right.

7 A. I don't know what this has to do with.

8 Q. Did you have any conversations with
9 Mr. Barnett about --

10 A. This was the whole -- this was the
11 whole -- this was when -- this had to do with the
12 government kept saying everything was so easy to
13 get and nobody can ever pull this document. And
14 any time I've gotten the document, it doesn't have
15 the attachment. But with this -- the point of this
16 was with this that the -- Pat went to try to go get
17 it for Barnett, I believe, and couldn't find it.
18 They couldn't find it for him.

19 Q. And this you're pointing to just for
20 the record is the third page of the letter --

21 A. I'm sorry, yes.

22 Q. -- from 1966?

23 A. Which has the caption of the case. The
24 point was the United States Government kept saying
25 everything is readily available, what's the matter

1 with you, and every time anybody tried to find it,
2 no one could ever find it.

3 (PLF. EXH. 30, Document entitled
4 LandAmerica, with attachments, Roberts 02313 to
5 02332, was marked for identification.)

6 BY MR. PENDARVIS:

7 Q. I pass you another composite exhibit
8 that's marked Exhibit 30 and I want to represent to
9 you this relates to another refinance, this one
10 with First Citizens Bank. Did you assist and
11 represent to Mr. Roberts in the refinance or the
12 finance in this collection of information?

13 A. I'm sorry, could you say that again?

14 Q. Let me restate it. It might be a
15 little easier just to flip to Roberts 02320.

16 A. Yes, sir.

17 Q. This appears to be a HUD statement on a
18 settlement on March 25, 2008?

19 A. Yes.

20 Q. And you were the attorney handling the
21 closing of that refinance, is that correct?

22 A. That's correct.

23 Q. And this shows a payoff of the first
24 mortgage of 1,046,580 dollars?

25 A. Yes. And First Citizens, not First

1 Reliance. I don't think he took that other deal he
2 sent me.

3 Q. Okay. Now, it appears that you are
4 continuing your involvement with Mr. Roberts with
5 regard to this Yellow House Road property?

6 A. Yes, sir.

7 Q. Let me get this right, Blue Crab Lane,
8 Yellow House, LLC property.

9 (PLF. EXH. 31, Letter dated 4/30/08 to
10 Lot 12 Yellow House, LLC from Stephen Crowell,
11 P.E., Environmental Engineer, Carolock-Drew00318 to
12 00319, was marked for identification.)
13 BY MR. PENDARVIS:

14 Q. I'm passing to you a document marked
15 Exhibit 31. It appears there were some issues
16 going on with some permits for -- I don't know if
17 I've got this right -- moving some soils around
18 here and they were looking for direct comments
19 about people in the neighborhood, which obviously
20 isn't directly related to the issues that we are
21 talking about with your meeting and the federal
22 government. But my question is, was Mr. Roberts
23 contacting you as his counsel throughout this time
24 period regarding this property, the Blue Crab Lane
25 property?

1 A. Well, he was contacting me to do
2 refinancing. I don't know if he was contacting me
3 for some sort of general representation.

4 Q. Well, this appears to be a fax from
5 Mr. Drew and at the top it says Hoover Dodge, where
6 Mr. Roberts works.

7 A. Yes.

8 Q. And this is a document you produced?

9 A. Yeah. He sent it to me. Yes, I agree
10 with you.

11 Q. At any point in time, May of 2008 or
12 before that date, did you ever indicate or give a
13 suggestion to Mr. Roberts that he may have a claim
14 against you for the way the lot -- your handling of
15 the closing?

16 A. No.

17 MR. COUNTRYMAN: Object to the form.
18 BY MR. PENDARVIS:

19 Q. Let me give you a better question
20 because Andy might be right, there might be a form
21 problem. At any point in time prior to today did
22 you have any communications or conversations with
23 Mr. Roberts in which he might have suggested or
24 indicated that you may have not handled the closing
25 on the Blue Crab Lane property properly?

1 A. The only conversation I had with him is
2 making a claim on his title insurance policy in
3 2007 but, no, I don't think I handled the closing
4 improperly. I think I did everything that a
5 reasonable attorney in this area would have done on
6 that closing. Matter of fact, I think I went over
7 and above because he was -- I thought of him as a
8 friend.

9 Q. Is there any materials that you
10 provided to Mr. Roberts that would have put him on
11 notice of a claim that he may have against you?

12 A. I don't follow the question.

13 Q. Well, did you ever -- are you aware of
14 any documents that you provided outside -- you've
15 just testified about your conversations. Are you
16 aware of any documents you provided to Mr. Roberts
17 that would have put a person of reasonable -- a
18 reasonable person on notice of a potential claim
19 against you?

20 A. No.

21 Q. I'm just trying to see if there's any
22 information that you would suggest that Mr. Roberts
23 having looked at or heard this information should
24 have known that he had a claim against me and
25 should have proceeded to timely file a lawsuit.

1 MR. COUNTRYMAN: Object to the form.

2 THE WITNESS: Well, I mean, you know,
3 if he thought something was -- if he thought there
4 was something that I did that would have caused the
5 buyer to back out in 2007 or 2006, then he
6 should -- then that should have made him aware of
7 an error of mine back in 2006, yes, that -- if
8 that's what you're asking me.

9 BY MR. PENDARVIS:

10 Q. But you told him to the contrary --

11 A. I did not. I told him --

12 Q. Let me say it. You told him that to
13 the best of your information there was no notice of
14 any Navy ownership of the marsh that was -- could
15 be located, correct?

16 MR. COUNTRYMAN: Object to the form.

17 THE WITNESS: Run that by me again.

18 BY MR. PENDARVIS:

19 Q. Well, I'm paraphrasing --

20 A. I understand.

21 Q. -- because I don't have a verbatim
22 statement of a recording in what you said to him
23 but throughout this entire proceeding and we're
24 going to continue into the federal lawsuit, your
25 statements to Mr. Roberts were of the effect that

1 there was no record notice in the Berkeley County
2 Court House of the Federal Government's claim to
3 ownership of the marsh, is that correct?

4 A. That's correct, but the claim is what
5 the problem is.

6 Q. Isn't the claim based on -- you've read
7 the complaint in this lawsuit, correct?

8 A. Yes.

9 Q. Isn't the claim essentially that there
10 are matters of public record that you didn't find
11 and that you should have told Mr. Roberts about
12 before he closed on the sale?

13 A. No, because I had a copy of the
14 judgment before the sale and it was referenced in
15 the administrative order as not being -- as being
16 too vague to have proven what the Navy owned is
17 what I said.

18 Q. But you testified earlier that you
19 never told Mr. Roberts that the Navy owns the marsh
20 in front of Blue Crab Lane and you need to be
21 careful if you build a dock because the Navy
22 definitely owns it.

23 MR. COUNTRYMAN: Object to the form.

24 THE WITNESS: That's because the Navy
25 still hasn't proven that the Navy owns it as far as

1 I know.

2 BY MR. PENDARVIS:

3 Q. So if the -- and you're aware of the
4 lawsuit the government has asserted -- filed
5 against Mr. Roberts and against Lot 12 Yellow
6 House, LLC, correct?

7 A. On the periphery.

8 Q. Yes. You're aware of it?

9 A. Yes.

10 Q. And you're aware that the government
11 has claimed that Mr. Roberts and Lot 12 Yellow
12 House, LLC has trespassed on its property?

13 A. Yes.

14 Q. So is it your belief that if the United
15 States District Court issues an order granting
16 summary judgment in favor of the United States
17 Government, finding that Mr. Roberts and Lot 12
18 Yellow House, LLC has committed a trespass, that
19 that would establish the Navy's ownership of that
20 portion of the marsh?

21 A. I -- well, that would, yes.

22 Q. But that's the same claim that they
23 made back in 2006 and 2004.

24 (Off-the-record conference.)

25 (A recess transpired.)

1 (PLF. EXH. 32, First Citizens
2 Commercial Note dated 4/28/09, French00008 to
3 00009, was marked for identification.)

4 BY MR. PENDARVIS:

5 Q. After a really, really short break,
6 Mr. Drew, I've passed you a copy of Exhibit 32.
7 This appears to be another note on a refinance and
8 I don't have the HUD statement. Did you represent
9 Mr. Roberts in the refinance in April of 2009?

10 A. I'm not sure because I don't see a
11 witness line or anything from it so I'm not sure.
12 I'd have to check my file. Sometimes bankers on
13 commercial transactions will simply have someone
14 come in and re-sign a note for a short extension.
15 It wouldn't necessarily need to re -- to record a
16 new mortgage.

17 Q. Did you receive a copy of the complaint
18 when the United States Government sued Mr. Roberts
19 and Lot 12 Yellow House, LLC?

20 A. What was the date?

21 (PLF. EXH. 33, Complaint, Roberts00383
22 to 00395, was marked for identification.)

23 BY MR. PENDARVIS:

24 Q. I'm passing you a copy of the complaint
25 itself and it apparently was filed June 25, 2009.

1 A. I believe I would have at least as
2 agent for Lot 12 Yellow House, LLC.

3 Q. At this point you had referred
4 Mr. Roberts to Stan Barnett to act as his counsel
5 in defending this lawsuit?

6 A. Yes, sir.

7 Q. Was Mr. Barnett communicating with you
8 throughout this -- during the course of this
9 lawsuit about the claims the Navy was making?

10 A. No, we only had -- I thought we only
11 had one meeting that he and his partner questioned
12 me and then I thought the only other time I talked
13 to Stan was the day before my -- a day or two
14 before my deposition.

15 Q. I saw a few e-mails relating to setting
16 up your deposition but other than that there was an
17 early substantive meeting where you testified and
18 met Mr. Cogan for the first time?

19 A. And I sat down with Stan and his
20 partners.

21 Q. And that was likely before this lawsuit
22 or do you recall?

23 A. In and around this time I would think.

24 Q. All right. During the course of the
25 lawsuit did Mr. Barnett ever provide you with any

1 materials the U.S. Government had offered in
2 support of its claim for trespass?

3 A. Yes, he sent over something. What did
4 he send over? He sent over a -- he sent over an
5 affidavit from an attorney, expert.

6 (PLF. EXH. 34, Preliminary Expert
7 Report Of C. Joseph Roof, Barnett01758 to 01788,
8 was marked for identification.)

9 BY MR. PENDARVIS:

10 Q. Is this -- I'm passing you now a copy
11 of what's been marked Exhibit 34. It's on the
12 front page styled as Preliminary Expert Report of
13 C. Joseph Roof?

14 A. Yes.

15 Q. Is this the document to which you just
16 referred?

17 A. Yes.

18 Q. Did you review this information?

19 A. I did.

20 Q. And did you develop any opinions or
21 responses to the conclusions reached by Mr. Roof?

22 A. Yeah, he -- he was holding in his
23 possession in making his determinations documents
24 that aren't of record again. Public records aren't
25 readily available. Item Number 2 C is what he was

1 relying on.

2 Q. Okay. Well, he does state right above
3 that that he reviewed the public records of
4 Berkeley County as they relate to the ownership of
5 real property.

6 A. Right.

7 Q. And he states in the paragraph below,
8 the C paragraph, that he describes what he reviewed
9 in the public records in Berkeley County, does he
10 not?

11 A. Yes.

12 Q. Did you have any -- so your thought was
13 that Mr. Roof was basing part of his opinion on
14 materials that weren't of public record?

15 A. That's correct.

16 Q. Was there any other criticisms or
17 statements?

18 A. Yes, everyone who searched -- I'm
19 not -- both. Everyone who has searched that
20 property has not come across that information that
21 he's talking about is readily available so I don't
22 believe him.

23 Q. And did you say anything of that effect
24 to Mr. Barnett?

25 A. I did.

1 Q. Specifically do you recall what you
2 told him, Barnett?

3 A. Yeah, I told him that he's relying on
4 the plat, which is not a public record, and that I
5 don't believe that he found all the information
6 that he says he found in the thing. He didn't
7 attach it so...

8 (PLF. EXH. 35, E-mail chain dated
9 8/24/09 to Cindy Glover from Stan Barnett,
10 Barnett00048, was marked for identification.)
11 BY MR. PENDARVIS:

12 Q. I pass you an e-mail chain marked as
13 Exhibit 35 to your deposition.

14 A. Okay.

15 Q. And apparently you're looking for some
16 deeds and I'm really asking about the attachments.
17 If you'd look at -- first off, who is Cynthia
18 Glover? Do you know who she is?

19 A. No.

20 MR. COUNTRYMAN: Cindy Glover.

21 BY MR. PENDARVIS:

22 Q. Cindy Glover.

23 A. Why does she sound familiar? I don't
24 know who she is.

25 Q. And I can't tell from this e-mail but

1 the beginning of it at the bottom is an e-mail
2 apparently from your office to -- krcarman is Keith
3 Roberts' e-mail address I'll represent to you. It
4 looks like -- it says here are the deeds, Teri is
5 looking for the search. That gets forwarded to
6 Stan Barnett and Stan Barnett's office is
7 forwarding something to Cindy Glover. And it may
8 be possible Cindy Glover is in the U.S. Attorney's
9 office, I'm not sure, but my question to you is do
10 you know what this robertstoyellowhouse.tif and
11 stonetroberts.tif documents are, the attachments?

12 A. That would have been their deeds.

13 Q. Scanned copies of deeds?

14 A. Scanned files.

15 Q. Did Mr. Barnett communicate with you as
16 he was preparing things like the Answer to the
17 government's Complaint?

18 A. I only remember that one big meeting
19 that we had.

20 Q. Do you remember any phone calls with
21 Mr. Barnett after the meeting and before your
22 deposition? And by phone calls, I mean phone calls
23 to Mr. Barnett.

24 A. I don't specifically remember any phone
25 calls to Stan but I remember Stan coming to my

1 office before the deposition.

2 Q. By February of 2010 I'm going to
3 represent to you that all of the activity in the
4 federal matter had finished, the parties had filed
5 their motions for summary judgment, which is a
6 motion. I understand you're not a trial lawyer but
7 that's a motion that parties file to ask the court
8 to rule as a matter of law an undisputed fact that
9 they either win or the other side loses.

10 A. Okay.

11 Q. And I'm going to represent to you that
12 the parties by the early part of 2010, the federal
13 government and Mr. Roberts and Yellow House Road
14 had filed their papers and also represent to you
15 that even as we sit here today the court has not
16 ruled on those motions. But in February of 2010,
17 was Mr. Roberts communicating to you about
18 financial issues with the property and his loans
19 with First --

20 A. Citizens?

21 Q. -- First Citizens?

22 A. Yes.

23 (PLF. EXH. 36, E-mail chain dated
24 2/1/10 to rdrew from krcarman, Carolock-Drew00279,
25 was marked for identification.)

1 BY MR. PENDARVIS:

2 Q. I'm going to pass to you an exhibit.
3 This one is marked Exhibit 36 to your deposition.
4 And what was Mr. Roberts telling you around this
5 time about the financial situation with his loans
6 on this lot and his house?

7 A. He was telling me that because of the
8 downturn in the auto business, he was having
9 trouble making the payments.

10 Q. Was he advising you that -- was he --
11 do you know if he had the property for sale,
12 marketing the property?

13 A. He didn't discuss that with me. What
14 he had discussed with me is that forbearance
15 agreement and the transfer of adding his wife on to
16 deeds.

17 Q. Including the deed to Lot 12 Yellow
18 House?

19 A. No.

20 Q. Just other matters?

21 A. Just their primary residence and I
22 think another lot he owned.

23 Q. So in the nature of estate planning
24 type things?

25 A. Yeah, right at the time only Keith had

1 the one lot and the other lot was -- and the house
2 was tenants in common so I added survivorship.

3 Q. And through the spring of 2010 you were
4 aware that Mr. Roberts was going into default on
5 his loan with First Citizens Bank & Trust?

6 A. Yes.

7 Q. And as agent for Lot 12 Yellow House,
8 you were served with a summons and complaint by
9 First Citizens when they brought a foreclosure
10 action?

11 A. Yes.

12 (PLF. EXH. 37, Letter dated 6/1/10 to
13 Randall J. Drew, Esquire from Thomas Waring, with
14 attached Consent To Order of Reference,
15 Carolock-Drew00502 to 00503, was marked for
16 identification.)

17 BY MR. PENDARVIS:

18 Q. I'm passing you now a document marked
19 as Exhibit 37 that does not contain the summons and
20 complaint but it contains a portion of that.

21 Let's just go ahead and mark this so
22 we'll have it.

23 (PLF. EXH. 38, Complaint
24 (Foreclosure/Non-Jury), with attachments,
25 French00001 to 00025, was marked for

1 identification.)

2 BY MR. PENDARVIS:

3 Q. I'm passing you now a document marked
4 Exhibit 38 that is the foreclosure complaint. You
5 were aware that First Citizens foreclosed on the
6 property?

7 A. Yes.

8 MR. PENDARVIS: Off the record just a
9 moment.

10 (Off-the-record conference.)

11 (A recess transpired.)

12 (PLF. EXH. 39, Master's Decree
13 (Deficiency Demanded), French00029 to 00039, was
14 marked for identification.)

15 (PLF. EXH. 40, Notice of Sale,
16 French00040 to 00042, was marked for
17 identification.)

18 (PLF. EXH. 41, Order Confirming
19 Deficiency Judgment Against Defendant, Keith W.
20 Roberts A/K/A Keith Roberts, French00045 to 00047,
21 was marked for identification.)

22 BY MR. PENDARVIS:

23 Q. I'm going to pass to you, Mr. Drew,
24 three documents from the First Citizens Bank &
25 Trust Company's lawsuit against Lot 12 Yellow House

1 and Mr. Roberts. First marked Exhibit 39 is a
2 Master's Decree, next marked as Exhibit 40 is a
3 Notice of Sale and finally marked as Exhibit 41 is
4 an Order Confirming Deficiency Judgment Against
5 Defendant, Keith W. Roberts A/K/A Keith Roberts. I
6 mentioned a moment ago when I was passing this
7 document to your counsel that it was going to be
8 marked as Exhibit 40 but it's actually 41 and here
9 it is, the formal exhibit.

10 Did Mr. Roberts discuss with you the
11 claims that First Citizens Bank was asserting
12 against him on the foreclosure matter? I'm sorry,
13 you were reading. Do you want me to restate the
14 question?

15 A. Go ahead.

16 Q. You've had a chance to look briefly
17 over Exhibits 39, 40 and 41?

18 A. Yes.

19 Q. Did Mr. Roberts discuss with you
20 anything related to the claim First Citizens Bank &
21 Trust Company was making against him in the
22 foreclosure matters?

23 A. Yes, and I referred him to Shawn
24 French.

25 Q. And what did Mr. Roberts tell you?

1 A. That -- well, actually he just said
2 that they were foreclosing on him.

3 Q. Did you discuss the principal amount of
4 the note that was due to First Citizens Bank &
5 Trust Company?

6 A. No.

7 Q. You were aware from the refinancing
8 that it was in excess of a million dollars?

9 A. Yes.

10 Q. And you've seen the order confirming a
11 personal deficiency judgment against Mr. Roberts in
12 the amount of 462,541 dollars, do you see that?

13 A. Yes, sir.

14 Q. Now, I want you to take a look at Page
15 7 of Exhibit 39.

16 A. Yes, sir.

17 Q. I'm going to represent to you that the
18 bank argued to the master in equity for Berkeley
19 County that the dock was not part of their loan and
20 the dock did not come with their foreclosure.
21 Could you read into the record the first full
22 paragraph on Page 7 of Exhibit 39, the master's
23 decree?

24 A. Starting without?

25 Q. Without.

1 A. Without conclusive evidence having been
2 presented by the Plaintiff to the contrary,
3 however, I find the dock, which is the subject
4 matter of the United States District Court Actions,
5 is an appurtenance to the property and ownership of
6 the dock will follow ownership of the land.

7 Q. And we know from Exhibit 40 that --
8 Exhibit 40 and 41 that the property was sold on
9 June 1, 2011 and that the bid price was 850,000
10 dollars, do you see that?

11 A. Um-hum.

12 Q. Leaving a deficiency of 462,000?

13 A. Yes.

14 Q. The bank now owns the dock and I'm also
15 going to represent to you, although I don't have a
16 copy of it, that Mr. Barnett has filed papers in
17 the Federal Court asking the Federal Court to
18 dismiss the action against Mr. Roberts because he
19 no longer owns the property. Have you discussed
20 those issues with Mr. Barnett?

21 A. No, sir.

22 Q. Are you aware that the United States
23 Government responded by saying that the trespass
24 was initiated and started by Mr. Roberts -- excuse
25 me. In response to the papers Mr. Barnett filed,

1 have you discussed with Mr. Barnett the Navy's
2 response?

3 A. No.

4 Q. Our final moment of housekeeping.

5 (PLF. EXH. 42, Transcript of deposition
6 of Randall J. Drew taken on 9/30/09, was marked for
7 identification.)

8 BY MR. PENDARVIS:

9 Q. Mr. Barnett, I'm passing to you a
10 condensed copy of what appears to be a transcript
11 of your deposition taken in the federal matters --

12 A. Yes, sir.

13 Q. -- on September 30, 2009. And again so
14 I'm not going to need to go through all the
15 questions and answers, you are adopting and
16 confirming this is your testimony?

17 A. Yes, sir.

18 Q. When someone buys a house with a dock
19 already attached to the property, is there a
20 separate deed for the dock?

21 A. No.

22 Q. So when a person buys the lot, they
23 have an ownership interest in the dock?

24 A. No, they should get a transfer of the
25 dock permit.

1 Q. To the extent the dock permit allows
2 the dock permit holder to use the dock, does that
3 represent a separate ownership interest apart from
4 the lot ownership?

5 A. The interest in the dock is separate
6 from the interest in the parcel.

7 Q. Will DHEC allow -- assume for the
8 moment you own a house adjacent to the waterfront.

9 A. Yes.

10 Q. Does DHEC allow me to have a dock
11 permit adjacent to your property that abuts your
12 property?

13 A. No.

14 Q. So it's got to be owner of the lot and
15 owner of the permit to have a dock, have to be the
16 same, correct?

17 A. Unless it were condominiumized, I would
18 believe so, yes.

19 Q. So your testimony with regard to DHEC's
20 dock permit issuance and maintenance is similar to
21 the ruling the judge made in the order, that
22 basically the dock follows the owner of the
23 property?

24 A. The dock interest is not part of the
25 real property. I don't necessarily agree with his

1 order because I believe you have to have -- if you
2 were to buy a property with a dock and you fail to
3 obtain a transfer of the dock permit and your dock
4 burns down, you're out of luck, you can't rebuild
5 it because you're not the record owner. You'd have
6 to reapply and do a new permit. So I don't agree
7 fully with his -- there's real property and then
8 there are personal property interests, licenses,
9 and I believe it falls within there, my opinion.

10 Q. Well, personal property can become real
11 property like a fixture, correct?

12 A. Yes, it can..

13 Q. And do you have -- is there a
14 distinction in the South Carolina law between a
15 fixture and an appurtenance as it pertains to
16 ownership of the real property to which either are
17 attached?

18 A. I'd have to research it.

19 Q. You would agree with me, wouldn't you,
20 a fixture can become part of the ownership interest
21 in the property to which the fixture is attached?

22 A. Yes.

23 Q. And you're just -- and I think your
24 testimony at the very outset of the deposition was
25 you're not certain whether that holds true with an

1 appurtenance?

2 A. That's correct.

3 Q. When you searched the judgment records
4 in Berkeley County in July of 2000 -- well, maybe
5 early August of 2005, your search would have only
6 taken you back to 1995, correct?

7 A. That's correct.

8 Q. And is it my understanding that you --
9 excuse me, is it correct to understand that
10 independent of your judgment search that you
11 testified in the federal matter and you've
12 testified earlier today, you did an independent
13 inquiry into the Federal Action 8795, the United
14 States versus 72.5 Acres?

15 A. I had a copy of it, yes.

16 Q. And that was from Mr. Donaldson?

17 A. Yes.

18 Q. Did you retain any records related to
19 the United States of America versus 72.5 Acres of
20 Land More Or Less, the Civil Action Number 8795
21 matter -- see if I can restate that. With regard
22 to the 8795 lawsuit that was filed in the 1960s?

23 MR. COUNTRYMAN: Object to the form.

24 BY MR. PENDARVIS:

25 Q. When you went to the Berkeley County

1 court in July of 2005, did you obtain any records
2 related to that lawsuit?

3 A. No, sir.

4 Q. You relied exclusively on what you had
5 from Mr. Donaldson?

6 A. Right, because I could not find it.

7 Q. Okay. So when you went to the Berkeley
8 County Clerk of Court's office, you did search for
9 information in addition to what Mr. Donaldson gave
10 you regarding the United States of America versus
11 72.5 Acres lawsuit?

12 A. When I went to Berkeley County, I did
13 the standard search for the property. I had a copy
14 of the judgment from Rob Donaldson and I -- I was
15 not able to obtain a copy from the Clerk of the
16 judgment.

17 Q. What did you do to seek -- did you seek
18 to obtain a copy of that judgment from the Clerk of
19 Berkeley County?

20 A. Yes.

21 Q. In July/August 2005?

22 A. 2005 with that notation, with the case
23 notation, the 8725. It doesn't show up on the roll
24 in the Clerk of Court's office. I guess it shows
25 up on the roll in the District Court's office.

1 Q. Am I understanding your testimony then
2 that the efforts you made to get a copy of the 8795
3 lawsuit when you went to Berkeley County's office
4 in July/August 2005 was limited to a search of the
5 roll --

6 A. Right.

7 Q. -- index on the system at the Berkeley
8 County Clerk's office -- RMC office?

9 A. That's correct.

10 Q. And you did not ask for any assistance
11 from anyone inside Berkeley County Clerk of Court's
12 office?

13 A. Yes, I gave them a copy of that caption
14 sheet which I believe is the same thing that Todd
15 Balish did because I gave him a copy of the caption
16 sheet.

17 Q. And what did you say when you gave this
18 to the Clerk?

19 A. I want -- I need a copy of this
20 judgment.

21 Q. And what did they say in response?

22 A. It didn't show up in the roll.

23 Q. Did they look at the same roll you had
24 looked at?

25 A. Yes.

1 Q. Did you ask them for -- since you had a
2 copy of the judgment, did you ask them could they
3 find the Exhibit B plat that showed --

4 A. No, as I said before, I did not.

5 Q. Okay. We looked at the affidavit of
6 Mr. C. Joseph Roof that was submitted in the
7 federal matter?

8 A. Yes.

9 Q. Did you prepare anything in writing to
10 rebut or respond to the statements in Mr. Roof's
11 affidavit?

12 A. Stan didn't ask me to.

13 Q. What did Stan tell you about his
14 thoughts on Mr. Roof's affidavit?

15 A. Well, he thought that he was out of
16 bounds as well, that he had looked -- you know,
17 I've done I don't know how many thousand closings
18 and I've never had a claim and I did the same
19 reasonable search and same reasonable search that
20 Rob Donaldson did and the same search that everyone
21 else did and no one else found any of the things
22 he's acting like are readily available so I
23 disagreed with him.

24 Q. And Mr. Barnett didn't ask you to
25 prepare a response affidavit?

1 A. No, sir.

2 Q. Last topic for today. Did you have any
3 conversations with Mr. Roberts right at or before
4 the time of the closing about whether he should try
5 to get some kind of something from Mr. Tommy Stone
6 about the permit or go back to Mr. Stone about some
7 condition that's part of the contract?

8 A. I don't understand the question.

9 Q. Well, there's a contingency or a
10 provision in the contract that says that the sale
11 of the property is not contingent on the dock.

12 A. Right.

13 Q. And your testimony is you weren't able
14 to find anything conclusive, I think is a fair
15 summary, about the United States Navy's claim to
16 ownership of the marsh, is that fair?

17 A. They hadn't proved it.

18 Q. With that lack of being able to
19 establish or not and rule out the Navy's claim to
20 ownership, did you go back to Mr. Roberts and say
21 you might better talk to Mr. Stone again about
22 getting some contingency or some assurance, some
23 guarantee about this dock before you close?

24 A. No.

25 MR. PENDARVIS: Nothing further. Thank

1 you for your time.

2 MR. COUNTRYMAN: I don't have any
3 questions.

4 (WHEREUPON, the proceedings concluded
5 at 3:12 PM.)

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SIGNATURE OF DEPONENT

DEPONENT: RANDALL J. DREW
DEPOSITION DATE: February 14, 2012
REPORTER: TERRI L. BRUSSEAU, RPR, CRR
CASE CAPTION: KEITH ROBERTS AND LOT 12 YELLOW
HOUSE, L.L.C. vs. RANDALL J. DREW

(Please return both Signature of Deponent pages)

I, the undersigned, RANDALL J. DREW, do
hereby certify that I have read the foregoing
deposition and find it to be a true and accurate
transcription of my testimony, with the following
corrections, if any:

PAGE	LINE	CHANGE	REASON
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SIGNATURE OF DEPONENT (CONTINUED)

DEPOSITION DATE: February 14, 2012
REPORTER: TERRI L. BRUSSEAU, RPR, CRR
CASE CAPTION: KEITH ROBERTS AND LOT 12 YELLOW
HOUSE, L.L.C. vs. RANDALL J. DREW

PAGE	LINE	CHANGE	REASON
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RANDALL J. DREW

Date

I, Terri L. Brusseau, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent pages within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.

Terri L. Brusseau,
Registered Professional Reporter,
Certified Realtime Reporter
My Commission expires
March 24, 2016.

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CERTIFICATE OF REPORTER

I, Terri L. Brusseau, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript, Pages 1 through 178, 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 21st day of February, 2012 at Charleston, Charleston County, South Carolina.

Terri L. Brusseau,
Registered Professional Reporter,
Certified Realtime Reporter
My Commission expires
March 24, 2016.

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 2011-CP-10-3241

KEITH ROBERTS AND LOT
12 YELLOW HOUSE, LLC

Plaintiffs,

vs.

RANDALL J. DREW,

Defendant.

* * * * *

DEPOSITION OF: MARY SHAHID, ESQUIRE

DATE TAKEN: Wednesday, April 25, 2012

TIME: 10:00 a.m.

PLACE: Carlock Copeland & Stair
40 Calhoun Street
Charleston, South Carolina

REPORTED BY: EVE WILBANKS
Registered Professional
Reporter, Certified LiveNote
Reporter and Notary Public

* * * * *

POST OFFICE BOX 21784

CHARLESTON, SOUTH CAROLINA 29413-1784

Shahid, Mary

A P P E A R A N C E S

REPRESENTING THE PLAINTIFFS:

THOMAS A. PENDARVIS, ESQUIRE
Pendarvis Law Offices, P.C.
500 Carteret Street, Suite A
Beaufort, SC 29902-5066
Tpendarvis@pendarvislaw.com

REPRESENTING THE DEFENDANT:

ANDREW W. COUNTRYMAN, ESQUIRE
DAVID W. OVERSTREET, ESQUIRE
Carlock, Copeland & Stair, LLP
40 Calhoun Street, 4th Floor
Charleston, SC 29401
Acountryman@carlockcopeland.com
Doverstreet@carlockcopeland.com

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Shahid, Mary

S T I P U L A T I O N S

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 waived by the Deponent.

MARY D. SHAHID, ESQUIRE, SWORN.

D I R E C T E X A M I N A T I O N

BY MR. COUNTRYMAN:

Q. Ms. Shahid, as you know, my name is Andy Countryman, and David Overstreet and I represent Randy Drew, who is the Defendant in a legal malpractice action brought by Keith Roberts and his LLC, Lot 12 Yellow House, LLC. Are you familiar with that case at all?

A. With the legal malpractice case?

Q. Yes, ma'am.

A. Only that you've told me about it.

Q. And I know that you're busy, you're working today, so I'm going to try to get you in and out as quickly as possible.

A. You don't have to rush. I'm fine.

Q. Well, if you do have any special needs, like you need to take a phone call or anything like that, let me know. This not an endurance contest, and, again, hopefully it won't take too

Shahid, Mary

1 long. I know you're an attorney, but are you
2 familiar with the deposition process?

3 A. I am.

4 Q. Have you ever been deposed?

5 A. One other time.

6 Q. Have you taken a deposition before?

7 A. Multiple.

8 Q. So you know the basic rules: You're
9 under oath; if you have any questions about a
10 question, ask me; we can take a break at any time;
11 give audible answers so that the court reporter
12 can take them down so there's no confusion later
13 on.

14 Let's start with just some basic contact
15 and background information. Can you give us your
16 full name and address?

17 A. Mary Duncan, D-U-N-C-A-N, Shahid,
18 S-H-A-H-I-D.

19 Q. And I'm going to present a couple of
20 documents throughout this morning.

21 A. Do you want me to give my address?

22 Q. Yes, go ahead.

23 A. , Charleston,
24 29407.

25 (Defendant's Exhibit No. 1 was marked

Shahid, Mary

1 for identification.)

2 Q. I'll give you a document that's a letter
3 with the Subpoena that I sent you.

4 A. Uh-uh. Let's make sure I complied.

5 Q. Well, my girl may have copied the
6 wrong -- I meant to give you a Subpoena compelling
7 you to be deposed today, not the document
8 production. But this is a Subpoena compelling you
9 to produce documents and you did produce documents
10 pursuant to that Subpoena.

11 A. Well, I probably didn't pay it close
12 enough attention. Let me say that the only
13 documents that I have in my possession at Nexsen,
14 Pruet, because I left McNair a year ago, which is
15 where I was when I represented both Thomas Stone
16 and Keith Roberts, the only documents I have in my
17 possession is another matter that Tommy Stone has.
18 But I have -- and you and I have discussed this
19 about the file being at McNair.

20 Q. Right. We received, I think,
21 484-some-odd pages from you, and those documents
22 were in response to our Subpoena.

23 A. That was at McNair, yeah. I have
24 compiled a few little pieces of paper here just to
25 get ready for the deposition.

1 Q. We'll look at those real quick in a
2 second. One more document real quick.

3 (Defendant's Exhibit No. 2 was marked
4 for identification.)

5 Q. This is just a copy of the Notice of
6 your Deposition.

7 MR. COUNTRYMAN: Thomas, do you need a
8 copy?

9 MR. PENDARVIS: No thank you.

10 BY MR. COUNTRYMAN:

11 Q. You currently work at Nexsen, Pruet?

12 A. Yes.

13 Q. What do you do there?

14 A. It's an administrative and environmental
15 practice, representing my clients and existing
16 firm clients on regulatory matters with DHEC and
17 the Corps of Engineers and other agencies.

18 Q. How long have you been doing that type
19 of work?

20 A. I've been doing that type of work in
21 private practice since 2002. I was also an
22 attorney for DHEC from '92 to 2002.

23 Q. I pulled this bio page from Nexsen,
24 Pruet. I'm going to mark that as well.

25 (Defendant's Exhibit No. 3 was marked

1 for identification.)

2 Q. And just briefly glance over it and let
3 me know if it's essentially accurate. If there's
4 anything that we need to add or take away, let me
5 know that as well.

6 A. It better be, because the Supreme Court
7 gets mad if it's not.

8 Q. I know they tell us to update our bios
9 regularly. And I probably don't do it as often as
10 I should. But you went to Vanderbilt --

11 A. I did.

12 Q. -- for undergrad and then USC for law
13 school?

14 A. Yes.

15 Q. Have you been practicing law in South
16 Carolina since 1984?

17 A. No -- yes, yes. I was thinking
18 Charleston. Columbia for a few years and then
19 Charleston.

20 Q. That's when you worked for OCRM or DHEC?

21 A. No. In Columbia, I was a judicial law
22 clerk for a Court of Common Pleas judge for about
23 three years. And then I came here and worked in
24 private practice for a couple years and then went
25 with DHEC.

1 Q. How long did you work for DHEC?

2 A. Let me think. '92 -- '91 to 2002.

3 Q. What did your duties include when you
4 worked for DHEC?

5 A. Originally, I was hired as an attorney
6 with the South Carolina Coastal Council. And
7 Coastal Council at that time was an independent
8 and relatively significant and powerful agency
9 that regulated all coastal development in the
10 eight coastal counties. Then in '93 or '94, they
11 adopted some extensive legislation that they
12 referred to as state government restructuring, and
13 that eliminated Coastal Council and moved its
14 functions into Department of Health and
15 Environmental Control. So I became a lawyer with
16 DHEC.

17 Q. Did your practice with DHEC involve dock
18 permitting at all?

19 A. Oh, yeah.

20 Q. In what capacity?

21 A. I defended agency permits and -- I was
22 counsel for -- Office of Ocean and Coastal
23 Resource Management became what was Coastal
24 Council within DHEC. And dock permitting was
25 probably 95 percent of what they did. And I

1 defended their permitting decisions. And believe
2 it or not, it was a very contentious area.

3 Q. Was it. How come?

4 A. Well, neighbors -- it's a use of -- it's
5 a use of a public resource, you know, tidelands,
6 tidal areas, creeks. And it's to facilitate
7 navigation and boat moorage. And people get upset
8 about it. And it's also objectionable to the
9 environmental community, the citizens groups.
10 Because dock -- you know, people don't try to use
11 community docks, but, instead, everybody -- every
12 single-family waterfront lot wants their own dock.

13 Q. What is the general process by which an
14 individual that owns property on the water wants
15 to -- can go about getting a dock permit?

16 A. They make application to the -- to DHEC.
17 Depending on what waterway they're located on,
18 they may have to get an individual permit from the
19 Corps of Engineers. If they don't need an
20 individual permit, I think there's some blanket
21 coverage that the Corps gives. And then the DHEC
22 process is a public process. You identify
23 adjoining property owners. That's targeted
24 notice. And then there's all kind of publications
25 of public notice. Comes off public notice,

1 comments are received and addressed, and then a
2 permit decision is made. It takes several months.

3 Q. And have you been involved in dock
4 permitting issues in your practice since you left
5 the public service?

6 A. Yes.

7 Q. And in what capacity have you been doing
8 that in your private practice?

9 A. I've represented, you know, individual
10 homeowners, trying to get permits or opposing
11 other people's permits. I've represented large
12 developers, trying to do bigger projects, such as
13 community docks and marinas; marinas for specific,
14 you know, multiuse development. You know, I've
15 pretty much done it all in terms of what kind of
16 issue can arise with a dock permit.

17 Q. All right. Well, tell me about your
18 involvement with Mr. Stone.

19 A. Um, Tommy came to see me at McNair
20 sometime in 2004, 2005. It's been several years.
21 So if the published record reflects a different
22 version of it, I would defer to that. But what I
23 remember is that his permit had been revoked, and
24 Leslie Riley, at the time, was the attorney for
25 OCRM. She's now at McNair.

1 Q. Oh, really?

2 A. Yeah. And Leslie told me -- I called
3 Leslie. I said, What's going on here? Because
4 the regulations governing revocation would
5 essentially require Tommy to have built the dock
6 out of compliance with the permit, which he didn't
7 do -- I mean, he hadn't built the dock -- he
8 didn't build the dock -- or to have lied in the
9 permitting process. I wish I brought a copy of
10 the regulations. There was one other --

11 Q. I have a copy of the Notice of Intent to
12 Revoke. That might help you.

13 MR. COUNTRYMAN: Let her mark that.

14 (Defendant's Exhibit No. 4 was marked
15 for identification.)

16 Q. This is a copy of the Notice of Intent
17 to Revoke.

18 A. And I had -- I just had a real issue
19 with the basis for revocation. Because there's a
20 regulation that governs revocation, and it
21 requires misrepresentation on the part of the
22 applicant. And the -- you know, obviously, I
23 guess the agency must have taken the position that
24 there was some misrepresentation about ownership
25 of the marsh and not identifying maybe the

1 Department of the Navy as an adjoining property
2 owner.

3 But believe it or not, before the use of
4 GIS was prevalent in all counties -- and I don't
5 think -- I think that was just happening around
6 the time that I met with Mr. Stone.

7 Q. Was that back in 2004?

8 A. Yeah. Yeah. I think my use of GIS
9 databases that the counties provide to search real
10 property records probably was sometime after 2006.
11 So before you had that tool, it would be very
12 difficult to detect a claim of ownership of the
13 marsh. Because you're searching the high ground
14 parcel when you do a title search. You're not
15 searching adjoining parcels.

16 Q. Explain who owns the marshland. How
17 does that process work?

18 A. That is an issue that I've had a lot of
19 legal experience in in terms of litigation. The
20 marsh is presumed to be owned by the State of
21 South Carolina. And there is a procedure -- a
22 judicial procedure that you have to go through to
23 rebut that presumption. And there's a long line
24 of cases dating back to the -- you know, late
25 1800's, basically, that addresses the high

1 standard that the courts apply when reviewing
2 private claims to marsh ownership.

3 Q. All right.

4 A. So, you know, there's this high
5 presumption that the state owns it. Presumption
6 is difficult to rebut. There's a code section
7 that sort of sets out the process for rebutting
8 the presumption. That same code section requires
9 that the agency and the Attorney General keep sort
10 of an inventory of marsh ownership claims, so
11 that's kind of the reason that code section needs
12 to be invoked so that somebody knows that, Hey,
13 this marsh is owned by somebody. And -- I can't
14 remember what my other thought on it was. Oh, and
15 then OCRM has a process whereby if -- they put an
16 application out on public notice and somebody
17 says, You know what, I own the marsh; I have a
18 grant to that marsh that the dock is coming over.

19 OCRM puts the application in abeyance
20 for 30 days and directs the person claiming the
21 marsh to file an action in accordance with the
22 code section. And if the action is filed, then
23 OCRM will hold the processing of the application
24 in abeyance. But under no circumstances do they
25 automatically deny an application just because

1 there's a claim of ownership of the marsh.

2 So with that -- all that background in
3 mind, I contacted Leslie Riley and I said, I just
4 think your agency is off base here in terms of
5 revoking the permit.

6 Q. With respect to that, is it accurate
7 that Mr. Stone obtained the dock permit under the
8 initial presumption that the State of South
9 Carolina owned the marshland and then the Navy, at
10 some point, claimed that it owned the marshland,
11 and based on that claim by the Navy, OCRM sent the
12 Notice of Intent to Revoke the permit?

13 MR. PENDARVIS: Object to the form of
14 the question.

15 A. That's my understanding.

16 Q. And take a look at the Notice of Intent
17 to Revoke. It might refresh your memory as to the
18 specific reason that the government made its
19 claim, and that OCRM revoked the permit. If you
20 look at the last sentence of the second paragraph,
21 it says, "Due to the fact that the Navy has
22 demonstrated a judicially declared title to this
23 marsh tract, DHEC-OCRM must revoke your permit."
24 Do you recall the basis of the Navy's claim of
25 ownership to that marshland adjacent to the

1 subject property?

2 A. They had been through some judicial
3 process, maybe a consent order, maybe in federal
4 court. And I'm not sure what entity represented
5 the state or spoke on behalf of the state in that
6 process.

7 Q. Let me give you another document that
8 might help you remember.

9 (Defendant's Exhibit No. 5 was marked
10 for identification.)

11 Q. I'm giving you what is marked as Exhibit
12 5. Can you identify this document?

13 A. Yes.

14 Q. What is it?

15 A. It looks like a letter I wrote, which is
16 a much better explanation than the one I just
17 provided.

18 Q. Look it over and we can walk through it
19 if you'd like, but I found this in the documents
20 that were produced in response to the Subpoena
21 that we sent to you or your ex-firm. And to me,
22 it looks like a pretty good summary of your
23 positions in the ALJ case where you represented
24 Mr. Stone.

25 A. It is. And I always had concerns,

1 enough concern to, you know, tell a client that
2 this was worth moving forward on. I always had
3 concerns about the validity of the alienation of
4 public trust lands through the instrument that was
5 used.

6 Q. That instrument being the consent order
7 back from the 1960s?

8 A. Right. Although it does say the
9 Attorney General was involved. I think probably a
10 better way to state my position is I felt like
11 there was a valid legal argument -- given the
12 wealth of case law on the alienation of public
13 trust lands, I felt like there was a valid legal
14 argument as to the validity of this transfer. And
15 whether or not it -- you know, you can transfer
16 marsh. Can you extinguish the public trust aspect
17 of marsh?

18 Q. My basic understanding of your argument
19 was that, A, the consent order did not have the
20 authority or did not have the power to actually
21 transfer the ownership of the marshland for a
22 number of reasons. And, B, there was an Exhibit B
23 to that consent order that delineated what
24 properties were affected, and that Exhibit B was
25 potentially not actually part of the public record

Shahid, Mary

1 that was attainable in the normal course?

2 A. Do I talk about that in this letter,
3 Exhibit B? I'm sorry. I know I'm not supposed to
4 ask you questions.

5 Q. That's okay.

6 A. Because I remember the issue about the
7 exhibit, but I'm not sure when I became aware of
8 it.

9 Q. What is your recollection of the issue
10 about the exhibit?

11 A. When I really began to look -- I had to
12 get all the documents from DHEC; when I began to
13 look at them, it was very difficult to determine
14 the actual property that was owned. There was
15 some discrepancy, maybe in the property
16 description versus the plat. There was a basis
17 upon which I concluded that the marsh ownership
18 actually was further out into the water, which
19 would allow a portion of the dock to be built over
20 marsh that wasn't conveyed to the Navy.

21 And, you know, along with this whole
22 issue of, did you alienate the public trust
23 interest in public tidelands, did you meet the
24 burden to do that when you're claiming marsh, is
25 this issue of, okay, what are the metes and bounds

1 of the marsh that you own? Those are both things
2 that the Navy has to establish to block a dock
3 permit.

4 And so there was some absence, there was
5 a reference to information that was not available
6 in the documents that I reviewed.

7 Q. If you look at the first section of your
8 letter under the heading "Revocation is
9 inappropriate under S.C. Code Sec. 49-39-220," my
10 understanding of the position in that section is
11 that the Navy's consent order did not meet the
12 requirements of that code section but, instead,
13 the Navy needed to obtain an order in a state
14 court action in order to effectively transfer that
15 property, that being the marshland, to the Navy's
16 ownership?

17 MR. PENDARVIS: Form objection.

18 A. That was my legal argument.

19 Q. Do you stand by that argument today?

20 A. A lot has happened in this case since
21 2004. And I think -- I'm not sure, but I think
22 that issue may be before Judge Houck or framed up
23 in some capacity.

24 Q. Tell me, what are the requirements of
25 48-39-220? And I have a copy of it if you'd like

1 to look at it.

2 A. So to put it in context, if I
3 represented somebody and they saw a permit on
4 public notice, they said, Wait a minute, I've got
5 a grant to that marsh, then I would immediately
6 notify OCRM through their procedure, and then OCRM
7 would direct me to invoke this remedy, at which
8 point I would -- what this section allows, it
9 provides a remedy to somebody claiming marsh. I
10 would draft a quiet -- I call them quiet title
11 actions. I would draft a quiet title action under
12 this remedy that -- that I would name DHEC and the
13 State of South Carolina by way of the Attorney
14 General as the Defendants to quiet title to the
15 marsh claim. And I would recite within the body
16 of that complaint the chain of title -- where it
17 originated from the Lords Proprietor or the state
18 or some sovereign and ended up in my client. So
19 that's how -- that's what I believe 48-39-220
20 allows. It doesn't really require, but it allows
21 -- if you want to -- if you want to assert -- if
22 you own the marsh and then you want to assert that
23 your interest is greater than the public's
24 interest in the marsh, this remedy allows you to
25 do it.

Shahid, Mary

1 Q. Your position was in the ALJ case that
2 the Navy did not meet the requirements of
3 48-39-220?

4 A. That was my position. I don't think
5 that ultimately was the reason that we prevailed.

6 Q. Okay. And just to take one step back,
7 in the event that someone would follow those
8 requirements, would anything be of record or
9 placed on record with the RMC's office, or would
10 only an order be placed on record with the clerk
11 of the court?

12 A. You would have an order with the clerk
13 of court. It's -- the record in the RMC office
14 would be the chain of title to the marsh that
15 existed. But the important aspect of this is the
16 notification aspect in 48-39-220-D.

17 Q. What does this subsection provide?

18 A. That the Attorney General shall notify
19 the department upon receipt of any suit, his
20 response to the suit and the final disposition of
21 the suit. The department will publish all such
22 notifications in the state register.

23 So it's some effort to provide general
24 notice to these claims of ownership. Because
25 people are blind-sided by these claims.

1 Q. And the Navy did not file a suit like
2 this pursuant to 48-39-220 regarding the marshland
3 adjacent to Mr. Stone's property, did it?

4 A. The paperwork I saw did not look like
5 the remedy provided under 48-39-220.

6 Q. All right. Continuing on in your
7 letter, the next subsection or subheading says,
8 "Revocation is inappropriate under S.C. Reg.
9 30-2(I)." Describe in layman's terms what the
10 position taken in that paragraph was.

11 A. I wonder what that regulation is? 2(I)?
12 Is it 2(I)?

13 Q. Yes, ma'am. I should have gotten a copy
14 of that for you.

15 A. That's all right. I don't know what
16 (2)(I) is -- if it's (2)(I) or 2-one. I guess it
17 is 2-one -- 2-one are definitions -- I'm sorry.
18 No. 30-2. I have no idea what that is. I'm
19 sorry. Okay.

20 Q. It looks like -- and you can correct me
21 if I'm wrong, that the position in that paragraph
22 is that the state has the exclusive right to
23 control land below the high water mark for the
24 public benefit and cannot permit activity that
25 substantially impairs the public interest in

1 marine life, water quality or public access.

2 A. Uh-huh (indicating an affirmative
3 response).

4 Q. Is that right?

5 A. That's right.

6 Q. And the position in that respect being
7 that the Navy's claim of ownership on that
8 marshland did not comport with the state's
9 exclusive right to control the marshland?

10 A. Right. That letter -- AG's opinion that
11 I'm relying upon was an opinion that they had
12 received in 2003 that was a very strong opinion
13 about the significance of the Public Trust
14 Doctrine and the high burden of alienation of that
15 doctrine.

16 Q. What does that doctrine say generally?

17 A. That lands below mean high water are
18 owned in trust by the state or sovereign for the
19 benefit of the public. And there had been a very
20 strong restatement of that in that AG's opinion.

21 Q. Why did the Navy's claim of ownership
22 not comport with that?

23 A. Well, if it did not -- if the Navy
24 couldn't tie what it did back to the procedure in
25 48-39-220, then it wouldn't comport with that. I

1 mean, in my sort of simplistic view, I don't doubt
2 that the Navy had an interest in the marsh -- some
3 marsh out there. I don't question that. They
4 obviously had a property interest. But what the
5 judicial declaration provides is that their
6 interest extinguishes the public trust interest.

7 Q. And I'm now looking at page No. 3 of
8 your letter, and it discusses the Equitable
9 Doctrines of Estoppel and Reliance. How do those
10 doctrines relate to your ALJ case with Mr. Stone?

11 A. Well, those are theories -- the ALJ has
12 invoked equitable remedies, that -- considers that
13 within their jurisdiction. You know, what I
14 remember about this case is Ahrens -- Paul Ahrens
15 was a neighbor -- I don't know if it was upstream
16 or downstream, but as you're facing the creek on
17 the left. Ahrens had a dock that clearly crossed
18 over into the Navy marsh. And nothing had ever
19 been done about the Ahrens dock.

20 Q. And that's A-H-R-E-N-S?

21 A. Yes. And I've also always taken the
22 position that no owner of public trust tidelands
23 or of tidelands should lay in wait and surprise
24 somebody with their ownership, that all -- you
25 know, all possible measures should be taken to

1 make the ownership known. Because what ends up
2 happening -- and it happens repeatedly, is that
3 people pay about -- the purchase price of a
4 waterfront lot is -- half of that price reflects
5 your ability to get access. So you're paying
6 twice as much for your property than you should if
7 you're blocked from getting access. And so those
8 claims kind of relate to my legal theory that I've
9 used in other cases, that you can't -- that there
10 are procedures in place by which notice of your
11 ownership can be given in a widespread fashion,
12 and you shouldn't be allowed to lay in wait and
13 surprise people.

14 Q. Is that what the Navy did here?

15 A. Well, the conduct of the Navy personnel
16 was difficult. Their conduct was difficult. It
17 was difficult for the agency; I know that by way
18 of my conversations with Leslie Riley. It was
19 difficult for me, because I called them to try to
20 find out what they were doing or what they were
21 going to do. And, you know, I think they took the
22 position that, We're the United States Navy. We
23 don't have to do anything special. I know that
24 they -- I know that they refused to come to court
25 -- they were requested to come to court, and they

1 refused to come to court to defend their claim,
2 which put OCRM in a very difficult position,
3 having revoked the permit and then not being able
4 to support the revocation.

5 And I know that I had one or two
6 conversations with them, and in both conversations
7 -- when I say "with them," it was probably with
8 the persons -- the people named in the letter
9 marked Exhibit 4. And the persons that I spoke
10 with said, We don't have to do anything. We're
11 not going to do anything.

12 Q. Why?

13 A. You know, they were very -- I don't know
14 how to describe this. But they were a little --
15 they were not very pleasant to deal with. It was
16 difficult to continue the conversation and ask
17 them why.

18 Q. Did you discuss the fact that there was
19 a dock extending from Mr. Ahrens' property over
20 the Navy's property?

21 A. I did. I said, I think you've got a
22 problem out here. It -- I said, Somebody like my
23 client, who hires an attorney to do a due
24 diligence property search and that attorney
25 doesn't come up with this information, who pays

1 waterfront prices for these properties, is going
2 to be surprised by this claim and, particularly,
3 because there's a dock right next door. I think
4 you have a problem. You haven't asked for that
5 dock to be removed. I need to know what your
6 intention is with my client. And the reply was,
7 We don't have to do anything. We're the Navy,
8 basically.

9 Q. So no subsequent information as to why
10 they did what they did?

11 A. No. Just a belief -- a belief that they
12 owned it and they didn't have to do anything about
13 that.

14 Q. In the conclusion paragraph of your
15 letter it says, "Based on the foregoing,
16 revocation of this permit is inappropriate and
17 unjustified." That's the first sentence of that
18 last paragraph. Do you agree with that position,
19 as we sit here today?

20 A. Well, a permit is a piece of personal
21 property that has great value. And to have a
22 permit revoked, the state is taking something away
23 from you that has great value. You know, so
24 that's my point there is, if you're going to
25 revoke a permit, you need to follow your

1 regulations and you need to establish a basis for
2 revocation. And I firmly believe my client had
3 done nothing to trigger revocation. One very
4 important piece of this is that every single OCRM
5 permit has a list of standard conditions,
6 boilerplate conditions, and one of those
7 conditions is, this permit in no way conveys
8 property rights; this permit is simply a license
9 from the state to build a dock on what we think
10 are public trust tidelands, but in no way does
11 this permit operate to extinguish or convey
12 additional property rights.

13 So given that boilerplate language, I
14 felt like it was inappropriate for OCRM to do the
15 bidding of the United States Navy. I know why
16 they did it.

17 Q. Why?

18 A. Well, I think the Navy, you know, came
19 in and threw a bunch of papers on somebody's desk
20 and yelled at them, you know. But I think it was
21 inappropriate.

22 Q. Take me from this point, the point being
23 when you sent this letter to OCRM, up to the ALJ
24 hearing.

25 A. Let me see when the ALJ hearing was.

1 Q. I'll give you a copy of the order and
2 that should give you some insight.

3 A. April 13, 2005, was the hearing.

4 MR. PENDARVIS: Andrew, are you going to
5 make the Code Section 48-39-220 an exhibit?

6 MR. COUNTRYMAN: That's No. 6.

7 (Defendant's Exhibit No. 6 was marked
8 for identification.)

9 MR. COUNTRYMAN: Number 7 is going to be
10 the order in the ALJ case.

11 (Defendant's Exhibit No. 7 was marked
12 for identification.)

13 Q. Is that appropriate nomenclature, ALJ
14 case?

15 A. Yeah. Okay. So on November 22nd, 2004,
16 if you look at Exhibit 4, that's when I responded
17 to the agency's Notice of Intent to Revoke.
18 Sometime after that they actually revoked. And I
19 don't remember what the procedures were back in
20 2004, but it was either 15 or 30 days from
21 revocation that I had to appeal. So I would
22 expect that my issue -- my case was filed with the
23 ALJ late 2004, early 2005. And as you can see,
24 you get on a very short leash because the hearing
25 was then in April of 2005.

1 Q. That's pretty quick.

2 A. Yeah.

3 Q. Was there any discovery that took place?

4 A. I'm embarrassed to say this. The rules
5 allow for discovery, but I think it was very late
6 and possibly immediately before the hearing that I
7 actually got hold of the OCRM documents. And I
8 did not do any depositions. And a lot of this is,
9 you know, not necessarily -- in some instances
10 it's just my neglect, in the sense that I put
11 something on my calendar and then get busy with
12 other stuff. But sometimes it's also a
13 cost-benefit decision you make for the client.

14 Q. I'm not here to grill you on that.

15 A. I know. But what I do remember is it
16 being a matter of days before the hearing before I
17 actually got to look at the documents that DHEC
18 had relied on.

19 Q. What did those documents tell you?

20 A. Well, it was -- this information pretty
21 much that was described --

22 Q. Information in Exhibit 4?

23 A. In Exhibit 4. Yeah. It was a Consent
24 Order signed and entered by Latimer, from the
25 Attorney General's office. It included reference

1 to property, and I remember there was a plat or a
2 piece of a plat.

3 Q. So that was included with the documents
4 that you received before the ALJ hearing?

5 A. Right.

6 Q. What did that plat show?

7 A. Enough for me to conclude that it --
8 that you couldn't -- that the metes and bounds --
9 that portions of our dock may have been outside of
10 the claim.

11 Q. Okay.

12 MR. COUNTRYMAN: I'm going to have the
13 court reporter mark this document.

14 (Defendant's Exhibit No. 8 was marked
15 for identification.)

16 Q. And I will tell you this document is
17 becoming a central part in this litigation. It's
18 referred to as Exhibit B. And my understanding is
19 it's Exhibit B to the 1965 Declaration of Taking,
20 Exhibit A being the metes and bounds description.
21 And my understanding is that the Navy's position
22 is that this Exhibit B to that 1965 Declaration of
23 Taking was effectively adopted by that 1969
24 Consent Order. And that this Exhibit B, along
25 with the metes and bounds description, shows that

1 the Navy owns the marshland adjacent to the Lot 12
2 Yellow House property. And my question is, is
3 this the plat that you were referring to a minute
4 ago?

5 A. I don't know.

6 Q. Do you recall having seen this plat
7 before?

8 A. I recall seeing a plat.

9 Q. But you don't know whether this is it?

10 A. I don't know whether this is it. Now,
11 if this was in the McNair file --

12 Q. It was.

13 A. Then, yeah, I saw it.

14 Q. Do you know when you may have seen it?

15 A. Just a few days before the trial.

16 Q. So do you think this was the plat that
17 you -- or this was at least a plat that you saw a
18 few days before the trial that may have been
19 included in the OCRM documents?

20 A. Yes.

21 Q. And can you tell me what impact this
22 plat has on your analysis of the Navy's claim of
23 ownership of the marshland adjacent to the
24 property?

25 A. Well, not anymore. But I can tell you

1 that --

2 Q. At the time.

3 A. I can tell you that the Judge
4 concluded -- Furthermore, the evidence indicates
5 that the parcel of marsh subject to the Navy's
6 claim is not directly adjacent to the respondent's
7 high ground. The marsh purportedly owned by the
8 Navy is separated from respondent's high ground by
9 another parcel of marsh presumably owned by the
10 State of South Carolina. Therefore, respondent
11 did not provide materially erroneous information
12 to OCRM.

13 So there was obviously -- and this order
14 wasn't appealed, so it's the law of the case, for
15 what that's worth. There was obviously some basis
16 for me to assert that. Now, whether it's shown
17 from this plat or not, I can't tell you.

18 Q. Was it your position in the ALJ hearing
19 that the Navy did not own the marshland adjacent
20 to the property or just that the Navy had not
21 established its ownership?

22 A. Okay. I had a conversation with OCRM's
23 attorney, Leslie Riley, prior to the hearing, and
24 she advised me that the Navy was refusing to come
25 to Columbia, and we were required, I think, to

1 discuss exhibits. And at that point, I objected
2 to anything that would have established the Navy's
3 claim. And I guess, basically, I was -- you know,
4 I'm assuming it was hearsay. Obviously some of it
5 came in because it's addressed in this order.

6 So your question is a good one. Was it
7 because they didn't establish it, or was it
8 because they didn't have it?

9 Q. Do you remember what your position was
10 with respect to that?

11 A. At a minimum, my position was because
12 they didn't establish it. Because I remember that
13 I was very clear that some of the documents had to
14 be -- I wasn't going to consent, and they were not
15 admitted. But I think that -- I wrote this order
16 for Judge Anderson. So that's why I'm looking at
17 the order. I know that I also, throughout this
18 process, argued that their interest had not been
19 established in accordance with what I thought was
20 the applicable procedure.

21 Q. Regardless of whether this Exhibit B --

22 A. Right.

23 Q. -- was on record?

24 A. Right.

25 Q. Can you turn to page 3 of the order and

1 look at the first full paragraph? It discusses --
2 in part it says, "The Navy refused and instead
3 provided OCRM with a copy of a judgment of the
4 United States District Court, Charleston Division,
5 dated December 1, 1969, along with some pleadings
6 and exhibits." The judgment was issued in the
7 matter entitled U.S. v. 72.50 Acres of Land,
8 Civil Action 8795.

9 A. Uh-huh (indicating an affirmative
10 response).

11 Q. Yes?

12 A. Yeah, I remember that.

13 Q. Do you know whether this Exhibit B was
14 one of the exhibits referenced in that paragraph?
15 In other words, did the Court consider Exhibit B,
16 which is our Exhibit 8, in rendering its decision
17 in the ALJ case?

18 MR. PENDARVIS: Object to the form.

19 A. You know, I don't recall, but I'm going
20 -- more likely than not it was part of all of
21 that, if I was looking at it.

22 Q. Well, if you had this Exhibit B prior to
23 -- strike that.

24 Can you recall whether this Exhibit B
25 was one of the pleadings or exhibits attached to

1 that 1969 order that is referred to in the
2 paragraph that we just looked at?

3 A. You know, if it was part of the
4 documents that came from the McNair file, then it
5 probably was attached to the order. I can't
6 recall specifically. There's a couple things I do
7 recall that makes me hesitant to give you a clear
8 answer. And the first is that there was a
9 discrepancy -- there was some confusion between --
10 the judgment is for 72 and a half acres, and
11 whatever plat I reviewed had a larger acreage
12 reference on it or something. And maybe that
13 wasn't a plat. I know I'm going around the block
14 trying to answer this.

15 Q. I know this took place a while ago, so I
16 understand.

17 A. Yeah. I had access to plats. They were
18 attached to all the other information that was
19 provided to OCRM. And if this was attached to
20 that information, this being Exhibit 8, and it was
21 in the McNair file, I'm going to -- I feel pretty
22 comfortable saying this was part of the order.

23 Q. Okay. So the document that we have
24 labeled Exhibit 8, which is -- which we referred
25 to previously as Exhibit B, was more likely than

1 not before the Court --

2 A. Yes.

3 Q. -- when it rendered its decision in the
4 ALJ matter?

5 A. Yes.

6 Q. And despite having that information, the
7 Court could not determine that the Navy owned the
8 marshland adjacent to the property; is that
9 correct?

10 A. That's correct.

11 Q. Why not?

12 A. I think that when the information was
13 admitted into evidence, it was admitted -- and
14 this would be in the transcript -- it was probably
15 admitted for the limited purpose, not of proving
16 the truth of the matter asserted, but of
17 demonstrating that information was provided to the
18 agency. So I think that may be the basis for
19 that.

20 Q. And kind of to recap, can you tell
21 whether Exhibit No. 8 shows whether the Navy owned
22 that marshland? And you may have already answered
23 this, but I want to make sure I'm clear on that.

24 A. I don't know which particular upland
25 parcel became -- is it the "Mingo Heyward no plat

1 found" parcel?

2 Q. Yes, I believe so.

3 A. That's beginning to ring a bell.

4 Looking at this document, I can't tell that the
5 marsh in front of the "Mingo Heyward no plat
6 found" parcel is owned by the Navy.

7 Q. And did the Navy have notice of the ALJ
8 hearing?

9 A. Oh, yeah. I didn't give them notice,
10 but Leslie Riley talked to them, asked them to
11 come to the hearing and was -- called me back, and
12 she was upset. She said, You wouldn't believe,
13 you know -- I think they were just very
14 heavy-handed in their dealings on this case and
15 they kind of beat her up on the issue too. And
16 they weren't coming.

17 Q. I guess she was stuck in a rough
18 position because they made a claim but then
19 there's a property owner that's trying to maintain
20 its property value.

21 A. She was, but I was very nice to her
22 through the whole process.

23 Q. What did she say about why the Navy
24 didn't attend?

25 A. I vividly remember this conversation.

1 She called me and said, They were terrible to deal
2 with; they were very rude, and they are refusing
3 to come. I've explained to them that I'm going to
4 have a difficult time -- I, OCRM, am going to have
5 a difficult time proving their claim with these
6 documents without their testimony, and they said
7 they weren't going to participate. And -- but it
8 wasn't -- it wasn't the nature of the conversation
9 that upset her as much as the way they talked to
10 her.

11 Q. Really?

12 A. That's what I remember.

13 Q. Do you know who she spoke with?

14 A. I'm sure it is the gentleman that
15 initiated all of this. That was her contact, the
16 one that brought the documents in or sent the
17 documents in and said the permits needed to be
18 revoked.

19 Q. Do you remember his name?

20 A. I'm not sure if it's Joseph -- I was
21 trying to remember his name. I'm going back to
22 the Notice of Revocation to see if that helps. I
23 do not remember his name, but I saw in the Notice
24 of Revocation --

25 Q. Yeah. Look in the middle of that second

1 paragraph, towards the bottom.

2 A. There was a Mike Mauk. That was who.

3 Q. Mike Mauk?

4 A. Yeah.

5 Q. What about Captain Zalaskus?

6 A. Yeah. I don't remember anybody talking
7 about Zalaskus.

8 Q. Well, what was the result of the ALJ
9 hearing?

10 A. The permit was reinstated.

11 Q. What did the Court determine regarding
12 the marshland and the Navy's claim of ownership to
13 it?

14 A. You know, I don't know if they went
15 there or not. You can let me know if I'm wrong,
16 but a large basis of the order is that the state
17 regulations which allow for revocation, OCRM did
18 not meet its burden of proof of showing that we
19 had done -- we, Thomas Stone, had done anything to
20 warrant revocation.

21 Q. Okay. Look at page 7 of that order,
22 second paragraph.

23 A. Oh, it appears that respondent does not
24 share a boundary with the Navy. More importantly,
25 the '69 judgment references a tract of land, but

1 the evidence did not establish what portion of the
2 condemned property is owned by the Navy.

3 Q. Do you know why the Court decided the
4 evidence did not establish what portion of the
5 land was owned by the Navy?

6 A. It could have been because of the
7 limited purposes that the evidence was received,
8 or it could have been something else. I mean, I
9 sort of remember restrictions on how the evidence
10 was going to be viewed. But, you know, that would
11 be in the transcript. I don't know.

12 Q. But is it fair to say that, in light of
13 this, the Court considered our Exhibit No. 8, as
14 well as some other pleadings and documents, in
15 determining that the 1969 judgment did not
16 establish what portion of condemned property the
17 Navy owned?

18 MR. PENDARVIS: Object to the form.

19 A. That's right. That's in that order.

20 Q. And then it says, "Furthermore, the
21 evidence did not establish that the Navy even owns
22 the disputed land. The 1969 judgment did not
23 clearly set forth that the property upon which
24 respondent's dock will lie is the property that
25 was condemned to the United States; is that right?

1 A. That's right.

2 Q. And I assume that was a position that
3 you and Mr. Stone took in that hearing?

4 A. That is the position we took.

5 Q. And is it fair to assume that the Navy
6 was aware of that position or that you were taking
7 that position prior to the hearing?

8 MR. PENDARVIS: Object to the form.

9 A. I think it's fair to assume that because
10 I know that -- I know -- I remember what Leslie
11 Riley recited to me as her conversation with the
12 Navy.

13 Q. Which was what?

14 A. That I challenged the revocation, that
15 we had a hearing set in front of the ALJ, that
16 these are the bases for my challenge. And in
17 order for her to defend against my challenge, she
18 needed the Navy to come and testify.

19 Q. And then this order also says that the
20 Navy received actual notice. You said earlier
21 that the Navy did receive notice of the hearing
22 and of your position, correct?

23 A. Yes. You know, and she may have
24 provided further information in direct response to
25 an inquiry by the Judge when we were there.

1 Q. So the long and short of it is, after
2 the ALJ hearing, the Court reinstated the dock
3 permit, correct?

4 A. They did, yes.

5 Q. Was there any knowledge or feeling or
6 belief regarding the Navy's plans moving forward
7 in the event that there was a dock built or the
8 permit was reinstated?

9 A. It was a subject of great concern to my
10 client. He intended to market and sell the
11 property, and he needed to make full disclosure.
12 I'm sorry. What was your question? Oh, what did
13 I do to figure out what the Navy's next move was?

14 Q. It may not have been a very clear
15 question. I'm trying to get a sense of how things
16 proceeded with regards to the Navy's claim after
17 this order. In other words, once this order was
18 rendered and the dock permit was reinstated, was
19 the sense that the Navy would or could come and
20 continue to make its claim or that the matter was
21 essentially closed and the Navy was not going to
22 continue to make it an issue?

23 MR. PENDARVIS: Object to the form.

24 A. Based on -- I mean -- I had follow-up
25 conversations with the Navy, at least one. And I

1 did that because I knew that the lot -- that Tommy
2 Stone was marketing and selling the property. And
3 I wanted to provide whatever information I could
4 to assess the risk. And I got the same response
5 that I got the first time, and maybe I'm confusing
6 the conversations. But I got the same response,
7 which was, We don't have to do anything.

8 Q. That response being from the Navy?

9 A. From somebody at the Navy -- and I
10 believe it was either Mauk, M-A-U-K, or another
11 individual. And I don't remember -- I know this
12 conversation was after -- was probably sometime in
13 2005.

14 Q. After the ALJ hearing?

15 A. Yes. And when the lot was being offered
16 for sale, and probably when Keith Roberts was
17 about to put it under contract.

18 Q. So is it fair to say that after the ALJ
19 hearing, the Navy's position regarding its claim
20 of ownership to the adjacent marshland had not
21 changed?

22 A. I think what's fair to say is that their
23 position that they were not going to do anything
24 continued, you know -- they continued to affirm
25 that position.

1 Q. Did the Navy continue to affirm its
2 position that it owned the marshland?

3 A. I mean, they would -- the conversation
4 was, We don't have to do anything. So I think
5 it's implied in here, Hey, we own it; we don't
6 have to do anything.

7 Q. The Navy never acquiesced that it did
8 not own the property or the marshland?

9 A. No. But they were very combative. I
10 mean, they are the Navy. I guess they're supposed
11 to be combative. But the conversations were not
12 easy. They were very combative and they were not
13 constructive conversations. But I was always very
14 honest with them.

15 Q. How so?

16 A. Like, My client owns this property; it's
17 being marketed and sold; we want to make full
18 disclosure. Part of that disclosure includes any
19 information you can give me about your intent.
20 And they were like, We don't have to do anything.

21 Q. So the Navy refused to give you any
22 information about its intent?

23 A. Yeah. They refused to respond to my
24 question.

25 Q. So how did you assess the risk moving

1 forward with respect to the dock permit?

2 A. Well, I mean, I think in the 2005, 2006
3 time period -- and I'm -- you know, at some point
4 it became something I wasn't involved in anymore.
5 But we disclosed -- we always disclosed when we
6 made disclosures -- and I helped Tommy with this,
7 and I talked to his real estate agents -- Here is
8 the deal: The Navy has got these documents.
9 These documents purport to claim this marsh to the
10 Navy. We got a dock permit, and the Navy tried to
11 revoke that dock permit. They don't want to see
12 the dock there. The dock obviously, in their
13 mind, must get in the way for whatever their
14 intended use is of the marsh. But in the course
15 of doing that, we got these determinations by the
16 ALJ. And these determinations kind of give you
17 the other side of the story as to the Navy's
18 ownership, you know, whether that ownership can
19 actually block dock permitting or not. So we
20 would give them all the information.

21 But I can honestly say, in the years
22 2005, 2006, when I would assess the risk, I
23 thought it was a low risk at that point that the
24 Navy was going to do anything. And that was based
25 on the whole history with OCRM, the trial, what I

1 knew about the Navy's communications with OCRM,
2 and my own communications with the Navy.

3 Now, probably sometime in -- so that was
4 2005, 2006. But at some point, the Navy -- the
5 Department of -- the Assistant U.S. Attorney sent
6 me a letter.

7 Q. What did that letter say?

8 A. It said, Your client -- You're involved
9 in trespass on U.S. government property.

10 Q. Was that the next involvement you had
11 with the issue after the ALJ hearing, or did you
12 keep in touch with Mr. Stone about it?

13 A. No. Stone sold the property to Roberts.
14 And I guess that was in 2005, 2006. I had an
15 attorney-client relationship with Roberts for a
16 short period of time in terms of advising him,
17 because I think Roberts probably -- I think, if I
18 remember correctly, Roberts also wanted to flip
19 the property.

20 Q. So this was after he purchased the
21 property, you represented him for a short time?

22 A. Yeah. It was -- I don't know that the
23 relationship was ever terminated. But when I went
24 and looked at the McNair file, it was a pretty
25 slender file.

1 Q. I think he testified that he may have
2 paid you \$500, but may not have formally retained
3 you, and there may have been some letters back and
4 forth. That's what I recall.

5 A. Yes. And I don't know. I think if he
6 paid me, I probably was retained. But, you know,
7 it was really to talk to him. Because his intent
8 was to flip the property. And it was really to
9 talk to him about what all of this meant. And,
10 you know, then at some point when I hadn't heard
11 from him in a long -- in several months and I
12 hadn't had any dealings with Tommy Stone in
13 several months on this issue, I did get a letter
14 from the Assistant U.S. Attorney and, you know,
15 that letter was sort of contradictory to any of
16 the assumptions I had made.

17 Q. How so?

18 A. Well, you know, I had --

19 Q. The assumption being that the Navy was
20 not going to make --

21 A. Yeah, we shouldn't have to do anything.
22 And at that point, I don't think I was
23 representing Keith, but I was a person that had a
24 lot of knowledge about these issues. And Keith
25 was talking -- you know, Keith was very concerned,

1 and he was talking to a lot of different lawyers.
2 and a lot of different consultants and
3 environmental professionals, and they would all
4 call me and we would talk it over.

5 Q. Well, going back to -- prior to the time
6 when Mr. Roberts bought the property, do you
7 remember talking with Randy Drew about the issue
8 at all?

9 A. I've read Mr. Drew's deposition, and I
10 know he says that we talked. I don't remember it,
11 but that doesn't mean we didn't talk.

12 Q. I'm going to give you a copy of a piece
13 of that transcript.

14 (Defendant's Exhibit No. 9 was marked
15 for identification.)

16 Q. I think it starts on the third page of
17 this document, down towards the bottom. The
18 question being, "Did you have any conversations
19 with Miss Shahid about the matters involved in the
20 final order and decision issued by the
21 Administrative Law Judge?"

22 Mr. Drew's response was, "Yes, and she
23 said it was final, they had -- the appeal period
24 had passed and that he had a valid dock permit, in
25 her opinion."

1 Does that refresh your recollection as
2 to whether you had that conversation?

3 A. I don't remember talking to him. But I
4 do not doubt that we had that conversation. I
5 mean, throughout the course of this whole thing,
6 anybody who was working for either Tommy or Keith
7 Roberts called me. So I don't doubt that we had
8 that conversation.

9 Q. And further down, he states, words to
10 the effect that, The order was issued and the
11 appeals process had passed. And based on those
12 items, you didn't think that the Navy was going to
13 continue to substantiate your claim?

14 A. Well -- and, you know -- as I look at
15 this, there's really two different issues here.
16 There's the validity of the dock permit, and then
17 there's the claim of ownership. The -- so when I
18 talk about all the appeals times had passed, I'm
19 talking about the fact that no challenge was made
20 --

21 Q. To the ALJ order?

22 A. -- to the ALJ order. So the dock permit
23 was valid.

24 Q. Right.

25 A. You know, that -- the dock permit is

1 still valid. I mean, what -- the question that's
2 out there is whether the dock constitutes a
3 trespass on lands owned by somebody else, not
4 whether the permit is valid.

5 Q. So you think it's likely that you did
6 have this conversation --

7 A. Oh, yeah.

8 Q. -- with Mr. Drew?

9 A. Yes, I do.

10 Q. Was there any other issue than the
11 Navy's claim of ownership to the marshland that
12 the dock permit -- or that OCRM had an issue with
13 the dock permit?

14 A. Any other --

15 Q. Any other grounds that OCRM wanted to
16 revoke the permit?

17 A. No. The permit was -- the revocation,
18 as I recall, was because a -- because OCRM thought
19 that Tommy Stone had a duty to identify the Navy
20 as adjoining property owners.

21 Q. Did you ever speak with Mr. Stone's real
22 estate agent? I think his name was Jamie Hough,
23 H-O-U-G-H.

24 A. I don't think so.

25 Q. So you would agree, then, that at the

1 closing when Mr. Roberts took title to the
2 property and was assigned the dock permit for Mr.
3 Stone, that that dock permit was valid?

4 MR. PENDARVIS: Form objection.

5 A. The dock permit was valid. In fact, the
6 agency had even extended it, I think. There's a
7 -- I think -- I'm not sure if it had a five-year
8 expiration or three-year expiration, because the
9 law has changed. But I think we -- there's a
10 statute that tolls permits when they're being
11 judicially challenged. And I think we got the
12 agency to confirm the effect of that tolling and
13 add more time to the permit. So it was valid.

14 MR. OVERSTREET: Let's go off real
15 quick.

16 (The deposition went off the record.)

17 (Defendant's Exhibit No. 10 was marked
18 for identification.)

19 BY MR. COUNTRYMAN:

20 Q. This was also in the documents we
21 received from McNair. It looks to be an Affidavit
22 of Robert Donaldson, that was signed and filed in
23 the ALJ case. Do you recall having seen this
24 before?

25 A. I know I've seen this, and I'm not

1 sure -- I probably -- yeah, it's got a McNair
2 document ID on it. I probably prepared this. But
3 Donaldson also testified for us.

4 Q. What did he testify to?

5 A. I think he testified about the due
6 diligence, his search of the property records.
7 And, you know, what was standard industry
8 practice. You don't detect -- at least before --
9 before the GIS capability got so sophisticated on
10 these county Websites, you could not typically
11 catch this marsh ownership claim through a
12 standard records search. And even if you did
13 catch it, there is always the presumption of state
14 ownership, that the state ownership -- the state
15 interest is greater than whatever private claim is
16 being made.

17 Q. And Mr. Donaldson represented Mr. Stone
18 when Mr. Stone purchased the property; is that
19 right?

20 A. That's right.

21 Q. And so he did the title search for that
22 closing when Stone purchased the property?

23 A. That's correct.

24 Q. And that title search did not reveal any
25 ownership interest of the Navy in the adjacent

1 marshland?

2 A. It did not. But he was searching Lot
3 12. He wasn't searching the marsh parcel. But he
4 says, There are no documents on record at the RMC
5 office to provide notice of the claim. You know,
6 that's true. I actually confirmed that in an
7 unreliable sort of way. But there aren't any
8 documents of record, if you look at the Berkeley
9 County Government GIS printout.

10 Q. Can we mark that?

11 A. Yeah. That is --

12 Q. Should we mark that cover page too?
13 Well, there's no deeds and plats. I think there
14 might be reference on there to an order, but no
15 deeds and plats.

16 (Defendant's Exhibit No. 11 was marked
17 for identification.)

18 A. And this may have all gone -- this
19 Affidavit may have gone to the issue of adjoining
20 property owners. I think maybe I was trying to
21 demonstrate to OCRM, you hire a real estate
22 attorney, you do your title work, you do your due
23 diligence, you know, these are the adjoining
24 property owners and we didn't have disclosure of
25 an adjoining property owner on the water side.

1 Q. So that was the position taken in Mr.
2 Donaldson's --

3 A. I think that was part of the reason we
4 got his Affidavit.

5 Q. I'm going to go through that for just
6 another second. Hold on to this Exhibit 11. If
7 you look at paragraph 3 of his Affidavit, the last
8 sentence says, "Further, there are no recorded
9 plats or surveys at the Berkeley County RMC which
10 indicate ownership by any entity other than the
11 State of South Carolina of the marsh abutting Lot
12 12." Is that accurate?

13 A. I had asked Rob to go back and do that
14 work, and I don't think he would -- yeah, I think
15 that's what he found.

16 Q. Do you know whether that's still
17 accurate today?

18 A. Well --

19 Q. Is that where Exhibit 11 comes in?

20 A. Yeah. So I --

21 Q. What is Exhibit 11?

22 A. Exhibit 11 is just a printout from the
23 Berkeley County real property search site. And so
24 I just went on-line trying to figure out what you
25 could find out.

1 Q. What were you searching?

2 A. Well, I actually wanted, first of all,
3 to see an aerial of this property, the Stone, now
4 Roberts, now Bank property.

5 Q. Right.

6 A. And then I wanted to see -- if you did a
7 GIS search today, what you would see. And what
8 you would see is there's a TMS number on a marsh
9 parcel out in the water, which, you know, could
10 give you an indication that you need to click on
11 that TMS number and get some information. So you
12 click on that TMS number, and there's no site
13 address available, there's no legal description.
14 On the tax books it's owned by the U.S.
15 government. There's no --

16 Q. Does it delineate what part of the U.S.
17 government?

18 A. No. It just says U.S. government. And
19 there's no deed book or plat deed recording date
20 -- there's no deed book and page, there's no plat
21 book and page, there's no deed recording date.

22 Q. Do you know when the Berkeley County
23 government GIS system went on-line?

24 A. I know that on these county GIS systems
25 they update them -- I don't know when they went

1 on-line. It seems like they were later than
2 Charleston County.

3 Q. Do you know when Charleston County went
4 on-line?

5 A. I don't. I know I started using it
6 around 2007, 2008. And with all these GIS
7 systems, they update them constantly. So even if
8 they were on-line back then, I don't know what
9 information they would have, is what I'm saying.

10 Q. When did you perform your search?

11 A. Yesterday. Yesterday.

12 Q. So according to your search, can you
13 tell who owns the marshland adjacent to Lot 12?

14 A. It says there's a marsh parcel and it's
15 owned by the United States government. But
16 there's no reference to deed book, plat page or
17 anything to give you any more information.

18 Q. Continuing on in Mr. Donaldson's
19 Affidavit, paragraph 4, the last sentence states,
20 "There are no documents on record at the RMC
21 office to provide notice of the United States
22 government's claim of ownership of the marsh."
23 Was that an accurate statement?

24 A. I know he did a search at my request, so
25 I assume that's an accurate statement at the time

1 he made it.

2 Q. So he did another search of just the
3 marshland after you asked him to?

4 A. Yeah. Oh, I don't know. Maybe --

5 Q. Or was that related to the initial
6 closing where Stone bought the property?

7 A. I feel like Rob went back and did more
8 work because he knew he was going to testify. But
9 when he says he reviewed the records in paragraph
10 3 of his Affidavit, he may be talking about what
11 he did for Tommy prior to the transaction.

12 Q. But based on his Affidavit --

13 A. Oh, here it is. "Upon being advised of
14 this pending contested case," paragraph 4, "I
15 searched for any recorded documents." So yeah,
16 that was a post-transaction search.

17 Q. Okay. So after the dock permitting
18 issues arose, you talked to Mr. Donaldson, who
19 became a witness for Mr. Stone, correct?

20 A. That's correct.

21 Q. And as part of his activity involved in
22 the case, he performed another search, this time
23 of the marshland adjacent to the property,
24 correct?

25 A. That's correct.

1 Q. Based on his search, he concluded that
2 there were no documents on record at the RMC's
3 office to provide notice of the United States
4 government's claim of ownership to the marshland
5 as of about 2005?

6 A. That's correct. And what often happens
7 in these cases, is that there may be records in
8 the tax assessor's office, but they're not in the
9 RMC office. And the -- most of what you rely on
10 in a real property search is what you find in the
11 RMC's office. And I have no knowledge what the
12 tax assessor had when all of this was going on.

13 Q. Is Mr. Donaldson a reputable attorney?

14 A. Oh, yeah.

15 Q. He's a real estate attorney?

16 A. He is. He's a very knowledgeable --

17 Q. Is he experienced?

18 A. -- coastal real estate attorney. He's
19 very experienced. I'm not sure. I may have
20 qualified him as an expert in that hearing. I
21 don't know.

22 Q. I don't have a copy of the transcript.
23 Do you know whether you have a copy of the
24 transcript -- or McNair might have it?

25 A. McNair should have it. If I wrote the

1 proposed order, McNair should have it.

2 Q. I might check on that, because they
3 didn't give me a copy of that.

4 A. I mean, what is interesting about Rob's
5 Affidavit is that the property was heirs'
6 property, so he did a fairly extensive title
7 search on the upland. He did not limit himself to
8 the 40-year rule.

9 Q. When you say the upland, you mean the
10 actual Lot 12?

11 A. Right.

12 Q. Was the ownership of Lot 12 ever at
13 issue?

14 A. No.

15 (Defendant's Exhibit No. 12 was marked
16 for identification.)

17 Q. I'm giving you Exhibit 12. It's a
18 little thicker than the other ones. But this
19 looks like to me a fax to you from Leslie at OCRM.
20 And I say that because of the first sheet and the
21 order in which the documents were sent to me. But
22 that may not be what it is.

23 A. No. It is. I got it in December, not
24 -- I guess I had it since December, didn't look at
25 it until right before the hearing. I don't know.

Shahid, Mary

1 Q. All right.

2 A. But, yeah. It looks like I got it in
3 December.

4 Q. What is the significance of this packet
5 of documents from OCRM?

6 A. I think this represents all of the
7 information that they were provided by the Navy
8 that became the basis for their revocation. The
9 Notice of Intent was November 22nd. So I probably
10 requested this -- when did I respond to the Notice
11 of Intent?

12 Q. I think it was in --

13 A. December?

14 Q. November, maybe?

15 A. December. I'm sorry. So she probably
16 sent me this to aid me in my response.

17 Q. It's not dated -- 12/17. So you used
18 these documents in preparing your response?

19 A. Yeah.

20 Q. If you look at the letter that's on page
21 2, it's a letter from the Navy to Ms. Riley. It
22 references some documents. It says, "Exhibit A
23 attached shows the property as subdivided today,
24 while Exhibit B reflects how the property was
25 subdivided at the time of the civil suit in 1965."

1 Do you see that?

2 A. Yeah.

3 Q. In the documents that I found, that
4 looked to me to be part of that material you
5 received, it included Exhibit A but did not
6 include Exhibit B?

7 A. Right.

8 Q. So my question would be --

9 A. I'm not sure I ever saw Exhibit B.

10 Q. My understanding is that Exhibit B is
11 our Exhibit 8. So I wanted to know whether you
12 received Exhibit B, which is our Exhibit 8, when
13 you received this letter from Ms. Riley?

14 A. It doesn't look like I did. And I have
15 a recollection of something being missing. And if
16 you look at this package of information that you
17 got from McNair, Exhibit A is definitely included.
18 There is no Exhibit B. But I know that at some
19 point I did see a plat.

20 Q. What is Exhibit A?

21 A. Exhibit A is a bunch of property
22 descriptions.

23 Q. Metes and bounds descriptions?

24 A. Yeah. Let's see. Yeah.

25 Q. Is it fair to say that after you

1 received this material from OCRM, that you still
2 took the position that the Navy did not establish
3 its ownership claim of the marshland?

4 A. Well, that revocation was inappropriate.
5 Well, I mean, Bruce Joseph from the Department of
6 the Navy General Counsel's office says, "We hope
7 that your agency may take judicial notice of this
8 documentation" -- I don't think that a state
9 agency can do that -- "to avoid having to file an
10 action in Circuit Court to quiet title." This
11 would undoubtedly result only in a waste of both
12 agencies' resources, as well as clog the Circuit
13 Court's docket.

14 Q. Was Mr. Joseph essentially agreeing that
15 48-39-220 applied to the Navy's claim of ownership
16 of the marshland here?

17 A. I think I interpreted it that way. He
18 just didn't want to do it.

19 Q. Right. And so in other words, when you
20 received these documents and reviewed them, in
21 spite of your review of these documents, you still
22 took the position that the Navy needed to have
23 that quiet title action in order to establish its
24 ownership claim?

25 A. Yeah. I think what I did was I took the

1 position that you've revoked a permit, it's a very
2 valuable permit, based on us -- somebody else
3 owning the property. And you're wrong. Legally,
4 OCRM, you're wrong. And there's a procedure that
5 needs to be followed, and it hadn't been followed.
6 Not only has it not been followed, but they're
7 refusing to follow it.

8 Q. Did you ever perform a search of the
9 title of the marshland?

10 A. Yesterday -- only yesterday's search.

11 Q. What would be involved in a search of
12 the marshland itself?

13 A. Well, you have to go back to the
14 original conveyance. You have to determine that
15 the conveyance came from the sovereign. Then you
16 have to determine what was conveyed and whether or
17 not there's clarity to the metes and bounds of the
18 marsh parcels. Many times there isn't. And that
19 becomes significant in determining whether your
20 client -- if your client is an upland property
21 owner, is affected by the conveyance. So, you
22 know, you really just -- it has to originate with
23 the sovereign. It cannot go back into the state.
24 If it goes back into the state, then the initial
25 sovereign is granted; it doesn't matter. Then

1 it's really determining the metes and bounds.

2 Q. But it's fair to say the title to the
3 marshland is completely different and separate
4 than the title to the upland?

5 A. That's correct.

6 Q. Would you expect a lawyer doing a title
7 search of the upland to also search the title to
8 the adjacent marshland in the normal case?

9 A. I mean, I've had lots of testimony
10 presented on this issue in various cases. And
11 that is not how they do a title search. However,
12 when there's an expectation of waterfront usage,
13 then they may need to do something else. And
14 that's when you get into this situation that Rob
15 Donaldson got into, where there's nothing on
16 record by which he could detect that the marsh was
17 privately -- there was a claim of ownership to the
18 marsh.

19 I think -- there's all kinds of
20 principles -- real estate law principles that
21 apply to what is an attorney's duty in a title
22 search. But I've also heard testimony that when
23 they know their client is buying a waterfront lot,
24 their duty expands a little bit. And then that's
25 where you get into this area of how difficult it

1 is sometimes to detect these claims because of the
2 lack of the normal public records substantiating
3 them.

4 Q. So is it fair to say that when the ALJ
5 matter was concluded, that there was still a known
6 risk that the Navy could continue to assert its
7 claim in the future?

8 A. Yeah. I mean, I don't think at any
9 point did I intend to minimize that risk. It's
10 the United States Navy. Back in 2004, 2005, we
11 were all very sensitive to Homeland Security
12 issues, not so much now. I never intended to
13 minimize that risk. But you have a valid permit;
14 you have a right to construct the dock. The Navy
15 has done nothing, despite being on notice, to
16 prevent you from constructing the dock. There are
17 equitable claims that can be made that would bar
18 the Navy from enjoining construction or requiring
19 removal. So, I mean, you know, I tried to provide
20 all of that information with anybody that I would
21 talk to about this.

22 MR. COUNTRYMAN: I'm hoping this is the
23 last document to show you.

24 (Defendant's Exhibit No. 13 was marked
25 for identification.)

1 Q. This is Exhibit 13.

2 A. Oh, yeah. I remember this.

3 Q. What is this?

4 A. This is my efforts, because something
5 was missing or because I didn't feel like the
6 information that I had been provided by OCRM, that
7 they had been provided by the Navy, was sufficient
8 information for us to figure all of this out,
9 maybe, or to have everything we needed. By the
10 date of this, this was pretrial, I guess I was
11 anticipating -- I'm making a lot of assumptions
12 here. But I think I was probably anticipating
13 that the Navy was going to testify, so I wanted
14 all the records.

15 Q. So this is a request to whom for what?

16 A. This is a follow-up letter to try to get
17 records on the lawsuit that gave rise to the
18 Consent Order -- or whatever it's called -- the
19 judgment. We wanted all the records.

20 Q. Do you remember what your response
21 received to this request was?

22 A. I do not. Janet Donahue was my
23 paralegal, so she handled this for me. And I had
24 actually asked Janet about this as I was trying to
25 remember this. Janet came into my office and she

1 said, I followed up on these records. They don't
2 -- the Court doesn't have them. They're directing
3 me to this place in Georgia. I've checked with
4 this place in Georgia. They can't pull the
5 records for us. The only -- they're not readily
6 accessible, but they have invited us there to look
7 for them, maybe, might have been the response.
8 And I said, You know, if they can't give us the
9 records -- if they can't pull them and give them
10 to us or at least identify them, I'm not going to
11 go on some fishing expedition for them.

12 Q. You mean driving to Georgia to look for
13 these things?

14 A. Yeah. Either there's a court file or
15 there isn't a court file. So that ended the
16 discussion.

17 Q. I'll tell you that the Plaintiff's
18 position in this case is that Mr. Drew did not
19 take sufficient action to discover what we now
20 call Exhibit B, which is Exhibit 8 to your
21 deposition. And one of the Plaintiff's specific
22 positions is that Mr. Drew did not take it upon
23 himself to request what you requested here from
24 the federal court. And is my understanding
25 correct that when you made this request to the

1 federal court, the federal court made the request
2 -- said, to get the records, you would have had to
3 drive to Georgia to get them?

4 MR. PENDARVIS: Object to the form.

5 A. And not only that, that we would not
6 only have to drive to Georgia to get them, that we
7 would have to search for them.

8 Q. Personally perform a search?

9 A. Yes. That's what I remember. And I was
10 highly motivated. Because in February, I didn't
11 know that the Navy wasn't coming, and I had taken
12 some client's money and was trying to get his dock
13 permit reinstated, and I was pretty highly
14 motivated to get as much information as I could.

15 Q. So if Exhibit B, which is Exhibit 8 to
16 your deposition, was on record and it was on
17 record with this federal court at the facility in
18 Georgia, and that was the only place where it was
19 on record, is it fair to say that Mr. Drew was
20 reasonable in not driving to Georgia to try to
21 find this record?

22 MR. PENDARVIS: Object to the form.

23 A. I mean, I didn't do it. But, you know,
24 the information that I remember was that there was
25 no guarantee once we got there. So I mean, I

1 remember Janet even saying, you know, Do you want
2 me to go do it? And I'm having to, you know,
3 assess what it's going to cost for this client,
4 and I don't know the outcome of the search. But I
5 think if we had known that we were going to come
6 up with something, maybe we would have done it,
7 but it was too uncertain.

8 Q. In retrospect, can you tell whether you
9 would have come up with something?

10 A. Oh, no. No. I don't know where you got
11 Exhibit B, though.

12 Q. Well, it's been provided from a number
13 of sources, but I can't tell whether it was on
14 record anywhere.

15 A. Okay.

16 Q. So is it fair to say that, to your
17 knowledge, Exhibit B is not on record with the
18 Berkeley County Clerk of Court?

19 MR. PENDARVIS: Object to the form.

20 A. Well, I relied on Rob Donaldson for
21 that.

22 Q. And that was his finding?

23 A. And in his Affidavit, he's reviewing the
24 stuff that the Navy provided.

25 Q. Is it fair to say that before the ALJ

1 hearing, you were provided a copy of Exhibit B,
2 which is Exhibit 8, by someone, but that you do
3 not recall Exhibit B or Exhibit 8 having been a
4 document of record?

5 A. I remember that the agency had a
6 full-sized plat, and I looked at that plat. I
7 wasn't ever able to get a copy of it, but I looked
8 at it. I don't know whether that full-sized plat
9 was Exhibit B or not.

10 Q. Do you know whether that full-sized plat
11 was on record?

12 A. I know it was something the Navy
13 provided OCRM. I don't know whether it was
14 recorded.

15 Q. And my perspective obviously is coming
16 from representing Mr. Drew, and he's been alleged
17 to have been negligent in representing Mr. Roberts
18 when he purchased the property. So I'm trying to
19 figure out if there's anything that Mr. Drew could
20 or should have done to have found Exhibit B. And
21 that leads me to the question, to your knowledge,
22 was Exhibit B on record back in 2005?

23 A. By "on record," do you mean was it a
24 recorded plat in Berkeley County RMC?

25 Q. Yes, ma'am.

1 A. Not to my knowledge, based on Rob
2 Donaldson's search and testimony.

3 Q. To your knowledge, in Rob Donaldson's
4 search and testimony, was Exhibit B on record
5 anywhere back in 2005?

6 MR. PENDARVIS: Object to the form.

7 A. No. I don't -- I mean, I know Exhibit B
8 is referenced in the information Leslie provided.
9 But I don't know where you would go to get Exhibit
10 B. By "Leslie," I mean OCRM counsel.

11 Q. Did you attend the closing where Mr.
12 Roberts purchased the property from Mr. Stone?

13 A. No.

14 Q. Do you remember sending Mr. Drew any
15 documents before the closing where Mr. Roberts
16 bought the property?

17 A. I don't specifically remember sending
18 Mr. Drew any documents. I remember many
19 conversations with Tommy Stone about full
20 disclosure and how to make full disclosure.

21 Q. If Mr. Drew says he received documents
22 from you, would you dispute that?

23 A. No. That would be consistent with me
24 telling Tommy Stone what he needed to do.

25 Q. You said you read Mr. Drew's deposition?

1 A. I did.

2 Q. Do you recall anything in it that you
3 disagreed with?

4 A. Can I look at it for a minute?

5 Q. Yeah. But the only thing I gave you was
6 a small excerpt.

7 A. I have a copy here.

8 Q. Oh, sure.

9 A. Just making sure he didn't attribute
10 something to me that --

11 Q. Sure --

12 A. -- I can't live with down the road.

13 Q. I won't hold you to every single word he
14 said, but I just wanted to know if there was
15 anything that stood out to you when you read it as
16 being inaccurate.

17 A. There -- I don't think anything stood
18 out as being inaccurate. Let me look at what you
19 handed me. Something did hit me. And maybe it
20 was just this qualification that -- and maybe it
21 was in the excerpt that you provided me in Exhibit
22 9. About appeals time passing and that -- that
23 wasn't -- I don't think I would have ever
24 represented to anybody that the Navy was barred
25 from ever asserting its claim again. I think when

1 I referred to the time passage and judicial
2 processes and everything, it was just with the
3 OCRM permit.

4 MR. COUNTRYMAN: I think this is
5 probably the last document. I know I said
6 that a second ago.

7 (Defendant's Exhibit No. 14 was marked
8 for identification.)

9 Q. I think you probably referenced this
10 letter a few minutes ago when you were discussing
11 your brief representation of Mr. Roberts when
12 these issues arose again.

13 A. 2007.

14 Q. 2007.

15 A. When I got this letter, I was scared to
16 death. My husband was a former U.S. Attorney. He
17 said, What are you scared of? I said, The
18 Department of Justice. He said, They're lawyers
19 just like you and me.

20 Q. Are you referring to the July 23, 2007,
21 letter?

22 A. Yes, where it says Department of
23 Justice, United States of America, United States
24 Attorney.

25 Q. What is the general substance of that

1 letter?

2 A. That I represented either Tommy Stone --
3 that I represented Tommy Stone, and that there's a
4 trespass and that I needed to come forward. I
5 just thought it was a scary letter.

6 Q. It is kind of scary.

7 A. But my husband put me at ease.

8 Q. There's a July 26, 2007 letter from you
9 to Fran Trapp at DOJ.

10 A. Uh-huh (indicating an affirmative
11 response). While I appreciate your offer to come
12 forward, I don't think it's a good idea. Now,
13 what I didn't remember is that this related to
14 Stone and not Roberts. I did not remember that.

15 Q. Well, it looks --

16 A. Do you think it related to Roberts too?

17 Q. Well, the first page of this exhibit is
18 a July 26, '07, letter from you to Keith Roberts.

19 A. Yeah. I felt like he needed to know
20 about it.

21 Q. So my understanding is that on July 26,
22 2007, you sent Mr. Roberts copies of those two
23 letters we just discussed?

24 A. Oh, yes. Yes.

25 Q. So as of July 26, 2007, Mr. Roberts was

1 aware of the Navy's continued claim of ownership
2 of the adjacent marshland?

3 A. Yes.

4 MR. COUNTRYMAN: I think that's all I
5 have.

6 MR. PENDARVIS: I've got some questions.
7 Do you want to take a break?

8 (The deposition went off the record.)

9 CROSS-EXAMINATION

10 BY MR. PENDARVIS:

11 Q. Good morning, Mary.

12 A. Hi, Thomas.

13 Q. We're back on. I did want to get
14 something to be part of the record with your
15 deposition.

16 MR. PENDARVIS: Eve can mark that.

17 (Plaintiff's Exhibit No. 1 was marked
18 for identification.)

19 Q. Mary, I've passed to you what I believe
20 to be a copy of the actual permit that was issued
21 to Mr. Stone. You've seen this before, correct?

22 A. I'm sure I have, yes.

23 Q. Could you direct me to where the general
24 exception -- you referenced in your testimony
25 earlier where there were certain conditions and

Shahid, Mary

1 exceptions; this permit does not, for instance,
2 convey title to property?

3 A. Right. It should be within the General
4 Conditions on page 4 of 8.

5 Q. In sub 5?

6 A. Yes.

7 Q. And sub 4 would deal with having to get
8 permits and other things from other agencies such
9 as the Corps of Engineers --

10 A. Yes.

11 Q. -- for the dock?

12 A. Yes.

13 Q. And in reference to -- I'm going to
14 bounce around a good bit because you have given a
15 good bit of testimony. I'm trying to proceed as
16 swiftly as we can. The final order and decision
17 that was marked as Defendant's Exhibit 7 is a --
18 focuses on a few questions I've got for you. Am I
19 correct in understanding that the -- this ALJ
20 order cannot extinguish any ownership rights the
21 U.S. government or the Navy may have in the marsh,
22 can it?

23 A. That the Administrative Law Court order
24 -- right, I think you are correct.

25 Q. It says whatever it says about the

1 revocation of the dock permit. But as to title to
2 the marsh, it can't take away -- if title was
3 properly vested to the Navy, this order cannot
4 take it away, is the question I've got?

5 MR. COUNTRYMAN: Object to the form.

6 A. I agree with that. I think probably the
7 way I review or interpret what the Judge did is
8 that whatever they gave OCRM in and of itself
9 doesn't establish that they own it.

10 Q. And I think this may be another way of
11 saying what you said earlier, in other words, that
12 the OCRM had not met its burden to establish
13 ownership of the marsh for the purpose of revoking
14 the permit?

15 A. Right. It really wouldn't be their
16 burden to establish ownership of the marsh. But
17 they didn't have sufficient grounds for
18 revocation.

19 Q. And would a ground for revocation
20 include ownership of the marsh?

21 A. It would include -- a ground for
22 revocation would include failure to properly
23 identify adjoining property owners.

24 Q. And I'd like to let you take another
25 look at Exhibit 8. I'm looking for it myself.

1 A. There's 8.

2 Q. And it might be easier, if you don't
3 mind -- I'm going to kind of indicate as we are
4 discussing. We're looking -- I'm going to
5 represent to you this bold line is the high
6 ground, and what's outside of this in the
7 hash-marked area is -- in reference to the other
8 part of the key on this plat, is the marsh area.

9 A. Uh-huh (indicating an affirmative
10 response).

11 Q. And I'm also going to represent to you
12 that the Mingo Heyward block at the bottom is the
13 -- identified as the subject Lot 12. Now, in that
14 context, if the arc of property taken by the Navy
15 is not abutting the high ground of Lot 12, would
16 that mean that the State of South Carolina is the
17 adjoining landowner for the purposes of a dock
18 permit if the State of South Carolina owned or
19 continued to own that piece of marsh?

20 A. That's correct.

21 MR. COUNTRYMAN: Form objection.

22 A. That's correct. In other words -- I
23 think what you're asking me -- and this is sort of
24 consistent with what I remember seeing -- is that
25 the boundary line -- the purported boundary line

1 came out beyond the critical line. And so there's
2 this gap of property between the critical line and
3 the purported boundary line, which my legal
4 position was that gap was owned by the State of
5 South Carolina.

6 Q. And therefore, in -- if the Navy's claim
7 to ownership of the marsh, as referenced in this
8 Exhibit 8, which originally was an Exhibit B to
9 some prior filings -- if the Navy's claim was
10 correct, then the owner of this lot and this dock
11 permit would be allowed to build up to the -- a
12 dock out over the Navy -- the marsh owned by the
13 State of South Carolina up to the edge of the
14 Navy's marsh, correct?

15 MR. COUNTRYMAN: Object to the form.

16 A. Well, OCRM is not going to permit a dock
17 that doesn't go to a water body. So -- the way I
18 interpreted it was that there was a portion of our
19 dock that did not cross the marsh purported to be
20 owned by the Navy. But, you know, a dock has to
21 go to a water body. I couldn't -- Mr. Stone would
22 not have been permitted just to stop a dock at
23 that line.

24 Q. And put in a kayak at high tide?

25 A. Right, yeah.

1 Q. And again, I'm bouncing around a little
2 bit on your testimony. You mentioned that there
3 was a code section that required, in essence, the
4 state or DHEC to maintain an inventory of
5 ownership claims in the marsh?

6 A. Well, that was probably a bad
7 description on my part. It's 48-39-220-D, and it
8 -- it's basically that any time somebody brings an
9 action under 220, the Attorney General is supposed
10 to notify the department of the action, its
11 response and the final disposition, and then the
12 department publishes all such notifications in the
13 state register. So that's some procedure for
14 notice.

15 Q. Did that code section exist in the 1965
16 to '67 time period?

17 A. Not according to the history. It says
18 it was -- well, that was part of the Coastal Zone
19 Management Act, which was passed in '77.

20 Q. So the Navy's ownership or claim to
21 ownership -- let me back up. The 1965 United
22 States of America versus 720 acres lawsuit would
23 not have been -- excuse me -- ALJ would not have
24 been required to utilize 48-39-220 to record
25 actions that took place prior to the enactment of

1 that statute?

2 MR. COUNTRYMAN: Object to the form.

3 A. I don't know if I can agree with that.

4 Because in all of these actions, we're dealing
5 with older documents that take different forms.

6 And then we sort of validate them through this
7 process. So I don't know if -- I don't know -- I
8 think that's kind of the ultimate legal issue in
9 some of this, is, you know, whether in the absence
10 of invoking 48-39-220, is the Navy's judicial
11 declaration -- does it completely extinguish the
12 state's interest in that marsh?

13 Q. Did you see a copy of the Consent Order,
14 the South Carolina Attorney General consented to
15 the taking of the marsh?

16 A. Yeah. That's in that material that
17 Leslie Riley faxed over to the McNair Law Firm.
18 That's an exhibit. Yes. Exhibit --

19 Q. In light of that document, how could the
20 state take a contrary position after it consented
21 to the taking of the marsh?

22 A. Well, it's a good question. But the
23 presumption of state ownership is so significant
24 that it requires scrutiny of the sovereign
25 conveyance. In other words, challenges can even

1 be made -- and I've seen this happen -- that --
2 what was it? A legislative grant; it was not a
3 sovereign's grant. So --

4 Q. But that's not a judicial consent, a
5 legislative grant; you would agree a legislative
6 grant is different than judicial consent?

7 A. Yes. This was a consent decree or
8 consent judgment in a federal court action in
9 which the Attorney General spoke on behalf of the
10 State of South Carolina. That is -- that's a
11 little bit unusual. You know, if you look at so
12 much of the litigation and the case law, they're
13 construing grants, not decrees.

14 Q. You would agree, wouldn't you, that the
15 United States government does not have to comply
16 with the various regulatory positions or
17 legislative enactments in the state legislatures
18 of the 50 states when it, the federal government,
19 desires to take property?

20 A. That's a good question. I don't know.
21 I know that -- would I agree with you that the
22 United States government has significant powers of
23 eminent domain?

24 Q. Would you agree the Supremacy Clause
25 would give the United States government -- the

1 Supremacy Clause of the United States Constitution
2 would give the United States government the power
3 to take state lands?

4 A. Yes. But I have a -- there's still a
5 question mark in my mind as to what procedure has
6 to be followed to extinguish the public trust
7 interest when you take state lands. Because
8 that's -- you know, that -- just that body of case
9 law.

10 Q. Doesn't the federal government have
11 public trust obligations to the citizens of the
12 United States?

13 A. I think -- maybe they do. You know,
14 maybe they do. But tidelands in South Carolina
15 are held in trust by the state, not by the federal
16 government.

17 Q. Unless they're taken by the federal
18 government, correct?

19 A. You know, I'll tell you what I'm
20 struggling with, and I'm not trying to be
21 difficult, because these are hard questions. What
22 I'm struggling with is, what does it take to
23 extinguish the public trust interest? Because
24 what the Navy did is they -- the United States
25 government took the land and extinguished the

1 public trust interest. They converted the public
2 trust tidelands to private use. They didn't
3 preserve the public trust interest. Had they
4 preserved the public trust interest, then we
5 wouldn't be here.

6 Q. You would agree with me that the federal
7 government cannot take lands except for the use of
8 the public, by the United States Constitution?

9 A. Well, that may be. And --

10 Q. So if they were taking it for the
11 public --

12 A. Then maybe they didn't extinguish the
13 public trust interest.

14 Q. That's my point. In other words, the
15 federal government can't take land that's going to
16 be a good shopping center and then sell it to you
17 as a developer, correct?

18 A. I don't know. The federal government
19 can't take land -- public -- ask me again.

20 Q. The public -- the federal government --
21 let me restate the question. Do you believe the
22 federal government has the power under the Takings
23 Clause to take land owned by a citizen or by the
24 state -- by a state for the purposes other than
25 the public benefit of the United States

1 government?

2 MR. COUNTRYMAN: Object to the form.

3 A. No. I think the -- I agree with you,
4 that their power would not allow them to take for
5 a private benefit. It would have to be for a
6 public benefit.

7 Q. And if the federal government decided
8 that a safety arc around a Naval weapons station
9 was a public benefit, that premise would give the
10 federal government the basis to acquire lands
11 under the Takings Clause, correct?

12 A. That's definitely a public benefit, so I
13 would think that would support a taking. I'm not
14 sure it extinguishes all other public uses,
15 though.

16 Q. But if the objective was to ensure
17 safety by keeping people out of the area, then
18 those public uses, i.e., the nonuse of this
19 property, would be grounds to support the takings?

20 A. It would be grounds to support the
21 takings.

22 Q. And in the ALJ proceedings, Mr. Stone
23 never challenged the actual ownership of the
24 marsh, did he?

25 MR. COUNTRYMAN: Object to the form.

1 A. I mean, I know that I threw out a lot of
2 challenges. And I believe that ownership was one
3 of the challenges that I made. Because, you know,
4 I think I argued that 48-39-220 was applicable and
5 hadn't been followed.

6 Q. But if the law -- the federal law giving
7 the United States government the ability to take
8 property was complied with, then it mattered not
9 whether 48-39-220 was complied with or not?

10 A. I think it mattered to me in 2004. I
11 mean, I think I've always believed that that
12 procedure was important in terms of the validity
13 of the Navy's claim.

14 Q. But in context, that procedure didn't
15 exist when the Navy acquired -- took the action
16 and filed the Takings Action in 1965?

17 A. That procedure didn't exist in most
18 instances, though, where marsh has been conveyed
19 by the sovereign. And I think the procedure was
20 implemented to -- I don't know why it was
21 implemented, but what it does is it gives you a
22 procedure to recognize the validity of those
23 conveyances, vis-a-vis public trust.

24 Q. And provision A, 48-39-220, is not a
25 mandatory provision. It says, Any persons

1 claiming an interest -- and I'm going to skip over
2 some of this -- may institute an action?

3 A. Right. It's not mandatory, except if
4 you want to stop a dock permit as the owner of the
5 marsh, then OCRM would require you to initiate
6 that action.

7 Q. But if the party claimed an ownership --
8 and I'm going to set aside the fact that the claim
9 is by a governmental entity of the United States
10 government; just dealing with this statute, if a
11 person chose not to challenge the dock permit
12 process and if a dock permit was issued and a
13 person had a claim of ownership in the marsh, this
14 statute wouldn't preclude that person from
15 bringing a lawsuit to say there was a trespass; is
16 that right?

17 A. Right. It would not preclude that
18 action.

19 Q. There was a lot of reference in your
20 testimony and in some of the other depositions
21 that have been given to what records were or were
22 not in the RMC office?

23 A. Correct.

24 Q. Do you know when the RMC office was
25 created for Berkeley County?

1 A. No.

2 Q. Are you aware that it was not created
3 until long after the Takings Declaration by the
4 United States government?

5 A. I'm not aware of that. But, boy, that
6 makes it awful hard to do a good search in
7 Berkeley County.

8 Q. And that all of the records from the
9 1965 through '69 time period would have been
10 only -- for state purposes, only have been able to
11 be recorded in the clerk of court office?

12 A. Okay. I was not --

13 Q. Were you aware of that?

14 A. I was not aware of that.

15 Q. But by the time this action was made
16 known to everyone -- and there were claims being
17 circulated in 2004 and early 2005 of a federal
18 lawsuit -- and the issue -- of a Takings Action
19 that had happened in the 60's, someone searching
20 title would have been duty-bound to go to the
21 clerk of court's office and not limit themselves
22 to the RMC office; is that correct?

23 MR. COUNTRYMAN: Object to the form.

24 A. You know, I don't know if they would be
25 duty bound or not. And I'm not sure that any

1 search of Lot 12 Yellow House Road would, by
2 necessity, lead to these documents.

3 Q. If the person doing the search admitted
4 under oath that he only went back ten years on
5 judgments because money judgments in South
6 Carolina only go ten years, and if the ten years
7 was happening in 2005, that person could not have
8 found materials recorded in the 1960s, could they?

9 A. That's correct, if they only went back
10 ten years.

11 Q. And I think you testified that it's
12 clear that the Navy does have some interest in the
13 marsh?

14 A. Oh, definitely.

15 Q. And regardless of whether something was
16 on record in terms of Exhibit 8, which is
17 originally Exhibit B to the United States
18 government's Takings Action in the '60s, this
19 information was in your files by February of 2006,
20 correct --

21 A. You know --

22 Q. -- -5, excuse me -- 2005?

23 A. I don't know if Exhibit B was in my
24 file.

25 Q. Well, looking at the Bates --

1 A. Well, it says Shahid.

2 Q. It does.

3 A. I guess it was.

4 Q. And it actually -- assuming everything
5 -- how was your file organized? Do you know how
6 the McNair files were organized?

7 A. Well, at McNair we had good paralegals
8 and secretaries. And we had, you know, sub files
9 to files. But Mary D. Shahid was not famous for
10 keeping very well organized files.

11 Q. Looking at Exhibit 12, which you
12 testified was the letter Ms. Riley faxed to you
13 with some pages, first off, the cover page of
14 Exhibit 12 doesn't reference how many pages were
15 there, does it?

16 A. It does not.

17 Q. So there's no way to tell whether the
18 group that has been assembled as Exhibit 12 really
19 is all of what was sent via fax by Ms. Riley to
20 you on December 17, 2004, is it?

21 A. That's correct.

22 Q. And we know that the Exhibit B by Bates
23 number appears to be 40 pages or so ahead of this
24 fax --

25 A. Okay.

1 Q. -- that's marked Exhibit 12?

2 A. It is, yeah.

3 Q. So if -- my understanding from your
4 testimony was that Mr. Drew called you before the
5 closing, when he represented Mr. Roberts in Mr.
6 Roberts' acquisition of this property from Mr.
7 Stone; isn't that correct?

8 A. No. I don't remember that conversation.
9 But I don't question that it happened if he
10 testified that it happened.

11 Q. And I see that you've been provided a
12 copy of Mr. Drew's testimony in this lawsuit.

13 A. Yes.

14 Q. Did you read his testimony that he gave
15 in the federal lawsuit?

16 A. No. It seems like I had some
17 conversations with Stan Barnett about the federal
18 lawsuit, but I don't think I've read anything.

19 Q. Just one of my little things -- I'm just
20 checking -- you're just not sure if someone
21 ordered a transcript for the ALJ hearing?

22 A. It would be very difficult to write that
23 order without the transcript. But that being
24 said, I'm sure -- you know, I wasn't at McNair
25 when these files were produced. But I am sure

1 that McNair would produce the transcript if it was
2 in the file.

3 Q. Did you ever speak with Keith Roberts
4 before Mr. Roberts acquired the property?

5 A. I spoke with Keith Roberts. I don't
6 know if it was before or after he acquired the
7 property.

8 Q. Was your conversation with Mr. Roberts
9 pretty close in time with your letter to Mr.
10 Roberts?

11 A. Which letter? There was one letter, but
12 that was in 2007.

13 Q. Right.

14 A. No. I think my conversation with him
15 was before that.

16 Q. Can you help me?

17 A. This is what I remember about it, is
18 that he had built the dock, and he was trying to
19 sell the property. And he wanted to talk to me
20 about, you know, how to represent the status of
21 the dock, basically.

22 Q. So that had to have been after he had
23 purchased the property?

24 A. Yeah, yeah.

25 Q. So prior to the closing --

1 A. Now, you know, for all I know, I could
2 have talked to him not as his attorney but as
3 Tommy Stone's attorney. I could have talked to
4 him prior to the closing. Because Tommy is a very
5 nervous individual, and he was very concerned
6 about doing exactly what he needed to do. And I
7 know I did talk to Keith Roberts on the phone.
8 And it's -- you know, Tommy could have asked me to
9 talk to him before the closing and tell him -- as
10 I'm saying, Tommy, we need to disclose this, this,
11 this, I can hear Tommy saying, Why don't you do
12 it? You can probably do it better than me.

13 Q. In terms of what -- the testimony that's
14 been given so far in both the Navy case and this
15 case would suggest that Mr. Drew was speaking with
16 you on behalf of Mr. Roberts prior to the closing,
17 and the conversations that took place, as you
18 suggested earlier or testified later, dealt with
19 conversations you had with Mr. Roberts after the
20 dock was built and leading up to the Navy lawsuit?

21 A. Okay.

22 Q. So certainly by the point in time you're
23 having conversations with Mr. Randy Drew prior to
24 the summer of -- closing in the summer of 2005,
25 the ALJ order had been issued, time for appeal had

1 expired, you were being asked about the status of
2 all of that, I understand from -- and the
3 testimony in your conversations with Mr. Drew, and
4 I think you've testified that, in essence, you
5 were telling him not whether the Navy could or
6 couldn't do something, but the time for the permit
7 appeal process had expired; is that fair?

8 MR. COUNTRYMAN: Object to the form.

9 A. Well, I don't remember those
10 conversations. I have read his deposition. I
11 think I would have to defer to him if he has a
12 recollection of them as to what I said. I guess
13 when I read what I said, I could sort of imagine
14 what I meant. But I don't know if that's fair in
15 this proceeding. I probably need to defer to him
16 on what I told him.

17 Q. Now, you told us a little bit about some
18 of the activities that were taking place as far as
19 preparing for the arguments in the hearing before
20 Judge Anderson, right?

21 A. Right.

22 Q. And this is -- I'm going to refer you
23 now to the Affidavit of Robert J. Donaldson, III,
24 that was marked as Exhibit 10.

25 A. I noticed it was -- it was in close

1 proximity to the hearing. Let me see. The date

2 --

3 Q. This is April 11, '05.

4 A. April 11. And the hearing was April
5 13th.

6 Q. Were you working with Mr. Donaldson as
7 to the contents of his Affidavit?

8 A. Probably. I mean, it looks like I
9 drafted it, you know, I'm sure with his input.
10 But that looks like a Charleston McNair doc number
11 on the bottom left-hand corner.

12 Q. All the attorneys in the room here --
13 we've all probably been in the situation where you
14 have a conversation with a witness, you
15 memorialize what you recall the witness is telling
16 you, you prepare a draft Affidavit, and you submit
17 it, saying, Is this an accurate statement of your
18 testimony? And hopefully, they'll either correct
19 it or sign it?

20 MR. COUNTRYMAN: Is that how you do it?

21 A. Something like that, yeah. I know that
22 he and I had extensive conversations. And
23 probably I was trying to avoid having to drag him
24 to Columbia because that would have been an
25 additional cost for Mr. Stone. As it ended up, he

1 came to Columbia. It may have been because I sure
2 didn't give Leslie Riley sufficient notice of this
3 Affidavit. If he signed it on April 11th and
4 we're going to trial April 13th, that may have
5 been why he had to come.

6 Q. And the last sentence in paragraph 6,
7 Mr. Donaldson says, "Had I known of the Navy's
8 claim and had the opportunity to understand their
9 position related to the construction of the
10 docks," plural, "I would not have advised Mr.
11 Stone to purchase Lot 12 when he only had
12 permission from the state to construct the dock."

13 A. It says that.

14 Q. Did you convey to provide a copy of this
15 Affidavit to Mr. Drew before the closing in 2005?

16 A. You know, probably not. I don't know
17 what I gave Mr. Drew, quite frankly. I know that
18 Donaldson's trial testimony was consistent with
19 this Affidavit. But I don't know what we gave, if
20 anything, to Mr. Drew.

21 Q. So certainly by the -- April, May of
22 2005, a substantial block of information about the
23 Navy's claim was known to all the parties involved
24 with the dock permit process --

25 MR. COUNTRYMAN: Object to the form.

1 Q. -- is that fair?

2 A. Well, if you're -- I mean, we knew that
3 the -- we knew that the Navy had contacted OCRM.
4 As a result, the permit was revoked, and we knew
5 what information -- written information that the
6 Navy had provided to OCRM. And all of that was
7 new information.

8 Q. So with this body of information -- and
9 I was trying to understand your testimony earlier,
10 as comparing somewhat more of a standard title --
11 an attorney's duties in terms of a standard lot
12 acquisition as compared to the attorney's duties
13 when the attorney knows the landowner intends to
14 use the waterfront --

15 A. Right.

16 Q. -- and in that context, would there be,
17 in your opinion, any additional duties with this
18 particular lot, given the information that was
19 involved in the permit process?

20 A. Well, I think any time your client is
21 purchasing property and they convey to you that
22 it's for waterfront use, it's to get a dock, that
23 that could create an additional duty for the
24 closing attorney or could add to the due
25 diligence. But I could tell you I've seen many,

1 many instances where very good closing attorneys
2 or real estate attorneys searching title aware of
3 the client's desire to use the property for -- to
4 get a permit for the process, can find nothing on
5 record and are blind-sided by later claims of
6 private ownership.

7 Q. Certainly, in this context, Mr. Drew
8 knew a good bit about what had gone on with the
9 Navy's claim; is that fair?

10 A. Yes.

11 Q. In your conversation with him?

12 A. Yes.

13 Q. Would --

14 A. I mean, that's fair just from -- I know
15 that one thing we always did is we provided
16 everybody this order, anybody that was interested
17 in the property. And we, you know, we stood by
18 ready to explain the procedure. Yeah, so if I did
19 that for Mr. Drew, he had that information.

20 Q. Did you have any conversations with Mr.
21 Drew about whether -- let me back up for a second.

22 Would the -- if the Navy takes this dock
23 down, would they have to pay Mr. Roberts, who
24 built the dock, the value of what they had taken?

25 A. So if I built a dock on your land, and

1 you removed it, and it was clear -- and I clearly
2 had no right to build that dock, I don't think you
3 would owe me any money.

4 Q. Conversely, if I built a dock and then
5 the government takes the property, they have to
6 pay me for that dock?

7 A. Yes, that's right.

8 Q. Did you have any conversations with Mr.
9 Drew about whether there would be a Takings claim
10 if Mr. Roberts, his client, purchased the property
11 and built a dock and if the Navy subsequently
12 brought an action to remove the dock?

13 A. I don't remember those conversations.
14 It would be a smart thing to say, but I don't
15 remember.

16 Q. In terms of real estate rights, can
17 someone make a binding statement about real estate
18 in a telephone or person-to-person conversation?

19 A. Well, I mean, matters of title are
20 matters of record. So I think that what's on
21 record is binding. I don't think what anybody
22 says, necessarily, can defeat what is on record.

23 Q. Doesn't the Statute of Frauds basically
24 prevent anybody who is making a claim that some
25 statement about real property has any binding

1 effect?

2 A. I mean, I just think when it goes to
3 matters of title -- record title is proof of
4 title. And statements outside of that may not
5 matter.

6 Q. In other words, if someone made a phone
7 call to some person at the Navy and that person
8 with the Navy said, We're not -- you can build the
9 dock over our property, would that bind the United
10 States government?

11 A. Oh, no, clearly not. Not if they had,
12 you know, fee simple title to their property, no.

13 Q. Would a lawyer --

14 A. I don't know. Now, wait a minute. Then
15 you get into, They gave me permission. What is
16 that called?

17 Q. License?

18 A. Not adverse possession -- yes.

19 Q. Or prescriptive easement?

20 A. Yeah. There's all kind of legal
21 theories, I guess, that would support the
22 propriety of building that structure over somebody
23 else's property. Now, I never had a conversation
24 with the Navy where they said build the dock. I
25 mean, in my conversations they just said, Please

1 tell me what actions you're going to take. What
2 are you going to do? They said, We don't have to
3 do anything.

4 Q. What would you have told someone who
5 would have asked you in the summer of 2005,
6 whether they should buy the dock or buy the
7 property with the intent to build a dock?

8 A. Well, I -- I mean, we always knew there
9 were risks. We knew that there were risks. In
10 2005, I believed, rightly or wrongly, that the
11 Navy's claim had not been perfected, and that the
12 permit had been reinstated, the permit had been
13 extended, the permit was valid, there was
14 authorization to build the dock; but we knew that
15 there were risks and that the Navy could assert
16 its claim and potentially cause a problem for the
17 property owner.

18 Q. Would you have written a letter to a
19 client that was asking you for advice about
20 whether to buy the dock that explained the risks?

21 A. I think I wrote a letter to Keith. I
22 think I did write one.

23 Q. In 2007?

24 A. Oh, I don't know when I wrote it. Not
25 in 2007. I don't -- did I write a letter in 2007?

1 Q. We were looking at -- I didn't write an
2 exhibit number down. It might be Exhibit 12.

3 MR. COUNTRYMAN: It's the last one, 14.

4 Q. This is July 26, 2007, letter?

5 A. I actually wrote one to Keith that he
6 asked for.

7 Q. Bear with me a second. I'm getting to
8 the end.

9 A. I'm fine.

10 Q. Excuse me. Bear with me.

11 A. Tommy Stone will not be as long-winded
12 as I am.

13 MR. COUNTRYMAN: If you find something
14 you need to print out, I can go print it.

15 BY MR. PENDARVIS:

16 Q. You never represented to Mr. Roberts
17 that there was no risk, that the Navy would not
18 proceed with actions if a dock were built?

19 MR. COUNTRYMAN: Object to the form.

20 Q. Those were some double negatives.

21 A. That's all right. After the dock was
22 built, it's my recollection that Keith retained me
23 for the limited purpose of providing him a written
24 product that he could provide to prospective
25 purchasers of the property. And I remember doing

1 a draft of that letter and circulating it to him.

2 I'm not sure what happened with that letter. Have
3 you got it?

4 MR. PENDARVIS: I think this is the
5 letter you're referring to.

6 (Plaintiff's Exhibit No. 2 was marked
7 for identification.)

8 A. Yeah. This is the letter that I wrote
9 for Keith.

10 Q. And is this sort of an assurance letter
11 that, based on the conditions, this is what was
12 known?

13 A. Well, you know, this is following what
14 was probably a second phone call. This is why I
15 made a second phone call to the Navy, to see what
16 their intent was. And that -- you know, you see
17 that paragraph under No. 6. And I believe at that
18 time --

19 Q. This is the second phone call to the
20 Navy?

21 A. Yeah. Keith wanted this information --
22 it's my understanding he purchased the property at
23 this point, and he had very quickly built the
24 dock, is what I understand. Then he retained me,
25 because he wanted information that he could

1 provide to -- that he could provide if he's asked
2 for it.

3 Q. To the purchaser?

4 A. Yeah. And he and I went back and forth
5 on this letter. That's what I remember. What I
6 couldn't remember is whether it was ever
7 finalized. That's what I don't remember, is
8 whether I ever signed a letter and we finalized
9 it. Because there was some give and take on the
10 letter. You know, so, Moreover, the conduct of
11 the Navy to date indicates that it's not likely to
12 take any further affirmative action to secure
13 removal of this dock.

14 I mean, I obviously felt that when I
15 wrote the letter. Would I do that today? No.
16 But I obviously believed that, based on my
17 discussions with the Navy, my discussions with
18 Leslie Riley, the whole proceeding before the ALJ,
19 et cetera. You know, the Navy was aware -- I
20 fully expected the Navy to stop construction of
21 the dock when we started it, and I think they knew
22 we started it. I think that was part of my
23 ongoing discussions with them.

24 Q. And was that based on the -- just the
25 tone of the conversations you had with the Navy?

1 A. Uh-huh (indicating an affirmative
2 response).

3 Q. They were being very difficult, I think
4 was your testimony?

5 A. Yeah. And I was trying to make an
6 effort to be completely forthcoming with them
7 about how important this was to these people, what
8 was going on, We need to know what you're going to
9 do. What is your position? You didn't show up --
10 at that time, not showing up to the ALJ hearing,
11 to me, was a very mixed signal on their part as to
12 what their actual intent was with the matter.
13 Letting the Ahrens dock sit there was a very mixed
14 signal.

15 Q. Well, based on what Mr. Donaldson says
16 in his Affidavit and based on your concern or
17 belief that the Navy was going to stop
18 construction of the dock, would you have warned
19 the client prior to purchasing the property that
20 there was a material risk that may take action?

21 MR. COUNTRYMAN: Object to the form.

22 A. Let me say, when I say I believed the
23 Navy was going to stop us, I don't even have an
24 independent recollection of that, but I'm looking
25 at this letter where I said the Navy was aware the

1 dock was under construction and took no action to
2 prevent the construction. So I think -- I'm going
3 to -- I'm not sure -- other than reading this
4 letter, I don't really have an independent
5 recollection of that. But as I read this
6 sentence, it came back to me that they didn't stop
7 us.

8 Q. If someone is getting ready to make a
9 significant investment in property, I think you
10 said sometimes it's twice the value based on the
11 waterfrontage of the lot, wouldn't it have been
12 prudent to warn the client of the risks --

13 MR. COUNTRYMAN: Object to the form.

14 Q. -- in writing?

15 MR. COUNTRYMAN: Same objection.

16 A. Yes. And I feel like we were all
17 involved, sort of in providing those warnings --
18 or at least providing the information that we had
19 in that regard.

20 Q. So you felt you sufficiently informed
21 Mr. Drew of the circumstances so he could advise
22 his client prior to the purchase in the summer of
23 2005?

24 A. I hope I did.

25 MR. PENDARVIS: Thank you for your time.

REDIRECT EXAMINATION

BY MR. COUNTRYMAN:

Q. A couple of quick follow-ups. Ms. Shahid, is it accurate that when Mr. Donaldson executed his Affidavit, that the dock permit was revoked?

A. That is correct.

Q. And regarding the letter of November 28, 2006, Plaintiff's Exhibit 2, did you say you could not recall whether that letter had been finalized?

A. That is correct. I know that Keith requested a letter, that I drafted a letter and that we e-mailed back and forth on drafts, but what I don't remember is whether it was ever finalized.

Q. This draft that's been marked exhibit -- Plaintiff's Exhibit 2, do you recall or can you tell me whether this is the most recent draft or were there drafts that were made after this one?

A. Yeah, I don't know.

Q. Looking at page 2 of that letter, the last paragraph contains information that you were just commenting about. But is it fair to say that as of November 28, 2006, your position was consistent with that last paragraph on page 2 of

Shahid, Mary

1 your letter?

2 A. Yes. I think I was feeling relatively
3 comfortable on November 28th, 2006, which is why I
4 was so upset to receive the letter that is Exhibit
5 14 back in 2007.

6 Q. So as of November 28, 2006, you were
7 comfortable that it was unlikely that the Navy
8 would restake its claim to the marshland, such
9 that it would disrupt the dock permit or the
10 construction of the dock?

11 A. You know, it's hard -- I know what has
12 happened since. I know it's been a complete
13 nightmare. The Department of Justice got
14 involved, Mr. Roberts has had to hire Stan
15 Barnett. There's been this protracted proceeding
16 in front of Judge Houck that, as far as I know,
17 hasn't been decided yet. So it's so different
18 now. The Navy is so much more -- it's just so
19 different now than what had occurred up to the
20 point of November 28, 2006.

21 Q. But at that point, that was your belief,
22 correct?

23 A. Yeah. I had a general comfort level
24 that while there were risks associated with
25 building this dock and that those risks were being

1 fully disclosed within this letter, including the
2 -- you know, the contents of the judgment, that
3 the Navy's actions, to date, kind of indicated
4 that they might not fool with it.

5 Q. In speaking of the Navy, how much time,
6 effort or money do you think would have been
7 involved on the Navy's behalf if it had chosen to
8 participate in the ALJ case?

9 A. Oh, it was a two-hour drive to Columbia,
10 about a four-hour hearing and a two-hour return
11 trip.

12 Q. Instead, the Navy decided to engage in
13 two federal lawsuits that have been pending for
14 over two years?

15 A. I didn't know there were two of them. I
16 knew there was at least one of them.

17 Q. Is it safe to say that, under those
18 circumstances, the Navy's choice to take that
19 course of action is more expensive and costly than
20 had it chosen to participate in the ALJ case?

21 A. Well, and it just seems -- yeah. And
22 there's so many other ways to resolve this, such
23 as, how about, give us limited permission to keep
24 the dock out there and if ever you want us to tear
25 it down because you think it's in the way, we

1 will. There's so much middle ground here.

2 Q. Do you know if any of those options have
3 been proposed to the Navy?

4 A. Oh, I mean, I know I've discussed them.
5 I don't know if I did -- if it was a proposal or
6 not. But certainly, I was trying to find out if
7 there was some middle ground.

8 Q. And the Navy wasn't receptive?

9 A. No. They gave me very little feedback.

10 Q. And I see you've brought a book of what
11 looks to be South Carolina Code Sections?

12 A. Yeah.

13 Q. What did you bring with you marked?

14 A. 48-39-220.

15 Q. The one we looked over earlier?

16 A. Yeah.

17 Q. Did you read in Mr. Drew's deposition
18 where he told Mr. Roberts before the closing that
19 the Navy has big ships with guns and he wouldn't
20 want to mess with the Navy?

21 A. That's kind of consistent with the
22 conversations that we've had with everybody. At
23 the end of the day, it is the United States Navy.

24 MR. COUNTRYMAN: That's all I have.

25 Thank you, ma'am.

1 RECROSS-EXAMINATION

2 BY MR. PENDARVIS:

3 Q. Just the last little bit; I want to make
4 sure I have a closure on your conversations with
5 Mr. Drew.

6 A. Which I don't remember.

7 Q. I know. To the best of your knowledge,
8 you believe that Mr. Drew's testimony about
9 that -- you're going to defer to him as to whether
10 they happened, and, if so, the contents?11 A. I don't have a direct recollection of
12 them. I do know I was called upon to provide this
13 information when Tommy was trying to sell the
14 property. So I don't doubt that I provided it in
15 some form, including talking to the closing
16 attorney. I just don't have a direct
17 recollection. So, yes, I would have to defer to
18 him as to what I said. And the things he said I
19 said sound like me.20 Q. Okay. How about, do you recall any
21 conversations with Mr. Drew after the closing in
22 August of 2005?

23 A. I really don't.

24 Q. Have you spoken to Mr. Drew about the
25 allegations in this lawsuit?

1 A. I don't think I have.

2 Q. Have you spoken to anyone else about the
3 allegations in this lawsuit?

4 A. I have spoken to Stan Barnett on
5 multiple occasions. And included in that was
6 information about this lawsuit, what he knew about
7 it.

8 Q. Tell me a little bit about those
9 conversations.

10 A. Well, you know, Keith got to Stan
11 through my referral. And I was just -- very much
12 wanted Stan to be successful in that suit. And I
13 don't know if it's been decided yet or not; I
14 wasn't able to get Stan on the phone. I know it's
15 been a long time.

16 Q. I can represent to you it's still
17 pending.

18 A. Is it? And so I mentioned to Stan that
19 I've been contacted by Andrew as a potential fact
20 witness in the case, and Stan gave me his belief
21 as to how a suit ended up being filed against Mr.
22 Drew. And what Stan told me was that somebody
23 from the Department of Justice argued to Houck
24 that somehow all of this was Drew's
25 responsibility, and that that prompted Mr. Roberts

1 to sue Mr. Drew. That was Stan's take on it, so
2 to speak.

3 MR. PENDARVIS: That's all I've got.

4 Thank you.

5 MR. COUNTRYMAN: Nothing else from me.

6 (The deposition concluded at 12:35 p.m.)
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