

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2012-CP-20-401
Appellate Case No. 2013-001386

Carol Reid Smallwood, Barbara Reid Strickland, Ann Reid Hamlin,
William L. Reid, III, Judith Lawrence Medlin,
Frances Patterson LawrenceAppellants,

v.

Helen M. Lee, Linda Lee and Joe Lee, Jr., as Co-Trustees of the
Joseph H. Lee, Sr. Family Trust U/WRespondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

COUNTY OF FAIRFIELD)

C. A. No.: 2012-CP-20-401

Carol Reid Smallwood, Barbara)
Reid Strickland, Ann Reid Hamlin,)
William L. Reid, III, Judith)
Lawrence Medlin, and Frances)
Patterson Lawrence,)

Plaintiffs,)

ORDER

v.)

Helen M. Lee, Linda Lee and Joe)
Lee, Jr. as Co-Trustees of the)
Joseph H. Lee, Sr. Family)
Trust U/W,)

Defendants.)

11/7/13 Betty Jo Beckham
Betty Jo Beckham, Clerk of Court,
Fairfield County, South Carolina, do
hereby certify this is a true copy of
the original on file in this office.
Clerk of Court

This action was before me on April 18, 2013, and involves a claim for a prescriptive easement between adjacent landowners over property situated in Fairfield County. The Plaintiffs are owners of a timber tract known as the Reid property (or "Henry Place"). The Plaintiffs allege that the historic and sole access to their property has been over and across the residential property of the Defendants and that the Defendants have denied the Plaintiffs access to conduct forestry operations.

At the trial of this case, Tom Patrick, a forester employed by the Plaintiffs since 1983, testified that the Plaintiffs' property contained a "forty-year crop" which required planting or seeding at the crop's inception, thinning of the timber after sixteen years, and then access every six to eight years for maintenance until the crop is harvested at maturity after forty years of

growth. Patrick testified that the most recent timber harvest took place in 1992 and that seeding took place in 1994. In 2009, the Defendants denied the Plaintiffs access for thinning of the crop. Judith Medlin, age 67, testified that she had accessed the Reid property eight times in her lifetime, including 1959, 1966, and 1981. Medlin testified that the purpose of her visits were to make sure trees were growing properly and were in good health. William Reid, III, testified that he did not remember the dates he accessed the Reid property prior to the last ten years, but that he had accessed the property four times since 2001 to investigate reports of hunters on the property.

To establish an easement by prescription, the party asserting the right must show: (1) the continued and uninterrupted use or enjoyment of a right for a full period of twenty years; (2) the identity of the thing enjoyed; and (3) that the use or enjoyment was adverse or under a claim of right. Jones v. Daley, 363 S.C. 310, 609 S.E.2d 597 (S.C.App. 2005), citing Horry County v. Laychur, 315 S.C. 364, 367, 434 S.E.2d 259, 261 (1993).

CONTINUAL USE REQUIREMENT

This Court finds that the Plaintiffs have not met their burden of establishing a continued use for the full period of twenty years. In Jones, the Court of Appeals held that, in order to satisfy the continual use requirement, the use must only be of a reasonable frequency as determined from the nature and needs of the claimant. Jones at 318. The element of continued use does not require the use thereof every day for the statutory period or even on a weekly or monthly basis; but simply the exercise of the right more or less frequently according to the nature of the use and needs of the claimant. The Plaintiffs maintain that, applying Jones, their use must only be as frequent as the forty-year crop dictates. While Jones held that the claimant need not



establish daily use or even weekly or monthly use, nothing in the Jones decision suggests that usage separated by six to eight years or even sixteen years is a reasonable frequency. This Court finds that the Plaintiffs have failed to meet the continual use requirement for a prescriptive easement.

UNINTERRUPTED USE REQUIREMENT

The Court of Appeals has held that physical and verbal acts may interrupt the required period of use. The servient owner may interrupt the prescriptive period by engaging in "overt acts, such as erecting physical barriers, which cause a discontinuance of the dominant landowner's use of the land, no matter how brief." Kelley v. Snyder, 396 S.C. 564, 573, 722 S.E.2d 813, 818 (S.C.App. 2012), quoting Pittman v. Lowther, 363 S.C. 47, 50, 610 S.E.2d 479, 480 (2005). In addition to physical barriers, verbal threats which convey to the dominant landowner the impression the servient landowner does not acquiesce in the use of the land, are also sufficient to interrupt the prescriptive period. Kelley at 573.

At the trial of this case, witnesses for each landowner testified that a fence was erected in the Defendant's pasture in 1992, obstructing the path alleged by the Plaintiffs. Tom Patrick testified that Joe Lee, the deceased husband of Defendant Helen M. Lee, instructed him to redirect his forestry equipment to avoid the fence. Defendant Helen M. Lee testified that, in response to requests in 2009 by Tom Patrick, she verbally objected to her property being used for access to the Reid property. The Plaintiffs avoided use the Defendants' property following her objection. This Court finds that the physical act of erecting a fence in 1992 and verbal objections in 1992 and 2009 were sufficient to interrupt any prescriptive period.

IDENTITY OF THE THING ENJOYED

In order to establish an easement by prescription, a claimant is required to prove the identity of the thing enjoyed. This element requires a claimant to establish the presence of the road or path allegedly used for access. Plaintiffs' witnesses were each asked during direct examination to use a marker with black ink to indicate on separate maps the alleged path each recalled taking across the Defendants' property. Judith Medlin marked a path on one map which followed the Defendants' gravel driveway to the residence and continued south through a pasture before heading east to the Reid property. William Reid, III, and Tom Patrick marked a similar direction, south before heading east to the Reid property. Tom Patrick marked a second path, east from the Defendants' driveway and then south to the Reid property, which he testified was used after 1992. All three Defendants, however, denied during testimony that any path or road existed across their property.

This Court finds that the Plaintiffs have not met their burden of establishing the identity of the thing enjoyed. There was no evidence offered at trial that the map drawings in evidence, while similar in cardinal direction, mark the same path. There was no testimony that gravel, pavement, or other lasting characteristic across the Defendants' pasture which would identify a specific path. Evidence of the second path used after 1992 is inconsistent with the burden of proof. Thus, this Court finds that the Plaintiffs have failed to establish a required element of a prescriptive easement.

CLAIM OF RIGHT

The Plaintiffs allege that their use of the Defendants' property has been under claim of right rather than adverse. A party claiming a prescriptive easement under a claim of right "must

demonstrate a substantial belief that he had the right to use the parcel or road based upon the totality of circumstances surrounding his use.” Kelley at 574. A claim of right is without recognition of the rights of the owner of the servient estate. Paine Gayle Properties, LLC v. CSX Transp., Inc., 400 S.C. 568, 584, 735 S.E.2d 528, 537 (S.C.App. 2012). The asking and obtaining of permission, whether from the tenant or owner of the servient estate, stamps the character of the use as not having been adverse, or under claim of right, and therefore as lacking that essential element which was necessary for it to ripen into a right by prescription. Paine Gayle at 584. Paine Gayle also held that use by express or implied permission or license, no matter how long continued, cannot ripen into an easement by prescription. Id.

At the trial of this case, Judith Medlin and Tom Patrick testified that permission was sought from Defendant Helen M. Lee or her deceased husband, Joe Lee, to use their property for access to the Reid property. Helen M. Lee also testified that she had been asked by Tom Patrick and received letters from the Plaintiffs’ attorney requesting access. Each time that access was needed for timber services, permission was sought from the Lees. This Court finds that the Plaintiffs’ use could not be adverse or under claim of right because, by requesting access from the Defendants, the Plaintiffs have demonstrated recognition of the rights of the Defendants. This Court further finds that the Plaintiffs’ use of the Defendants’ property to conduct forestry operations was with express permission or license, thus unable to ripen into a prescriptive easement.

TACKING PREVIOUS USE

The Plaintiffs allege that the Defendants’ property has been used for access for a period exceeding one hundred years. The Court of Appeals has held that tacking of periods of

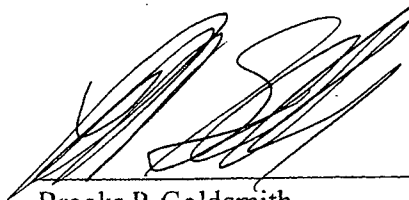
prescriptive use is permitted where there is a transfer between the prescriptive users of either the inchoate servitude or the estate benefitted by the inchoate servitude. Kelley, at 575. A party's use must meet all requirements throughout the twenty-year period and, if tacking is used, the use by the previous owners must also meet the requirements of a prescriptive easement. Morrow v. Dyches, 328 S.C. 522, 528, 492 S.E.2d 420, 424 (S.C.App. 1997). This Court finds insufficient evidence that any use by the Plaintiffs' predecessors-in-interest satisfied the elements of a prescriptive easement.

CONCLUSION

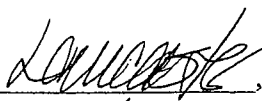
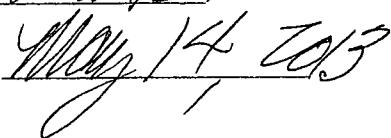
This Court finds that the Plaintiffs have failed to meet the required burden of proof for a prescriptive easement.

THEREFORE, the requested relief is DENIED and judgement shall be entered in favor of the Defendants.

IT IS SO ORDERED.



Brooks P. Goldsmith
Presiding Judge
Sixth Judicial Circuit


_____, South Carolina
Date: 

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

DOCKET NUMBER: 2012-CP-20- 401

Carol Reid Smallwood, Barbara
Reid Strickland, Ann Reid Hamlin,
William L. Reid, III, Judith Lawrence
Medlin, Frances Patterson Lawrence

Plaintiffs

v.

Helen M. Lee, Linda Lee and Joe
Lee, Jr. as Co-Trustees of the Joseph
H. Lee, Sr. Family Trust U/W

Defendants

2012 OCT -2 P 2:36
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

COMPLAINT
Prescriptive Easement
(Non-Jury)

The plaintiffs above named, complaining of the defendants named above, alleges:

1. The plaintiffs are seized and possessed as tenants in common of interests in the following described real property, to wit:

All that certain piece, parcel, tract or plantation of land, together with any improvements thereon, lying, being and situate on the waters of Little River, containing 127 acres, more or less, of which 116 acres are located in Fairfield County, and of which 11 acres are located in Chester County, said 127 acre tract being known and designated as the "Henry Place" of the Estate of William L. Reid, Deceased, and being more particularly described as follows: Beginning at X Hickory S. 71 degrees W. 22.50 to a stone, thence 33 1/2 degrees W. 43.25 to a stone, thence N. 8 1/2 degrees E. To a stone and pointer, thence S. 89 degrees E. 7.55, thence S. 12 1/2 degrees E. 26.25, thence N. 78 1/2 degrees E. thence S. 12 degrees E. 27.40, thence N. 76 degrees 1.60 and thence S. 19 1/2 degrees E. 8.80 to the beginning, all as will more fully appear upon reference to a plat thereof made by W. B. Thompson, of date October 31, 1888.

TMP #: 006-00-00-013 (Fairfield County)
074-00-00-004 (Chester County)

2. The defendants are seized and possessed as trustees of the following described real property, to wit:

All that certain piece, parcel or tract of land, with any improvements thereon, lying, being and situate on the eastern side of State Road 12-16, partly in Chester County and partly in Fairfield County, shown and designated as 142.55 acres on a plat prepared by Michael R. Mills, RLS, dated February 14, 1995, and recorded in the Office of the Clerk of Court of Fairfield County in Plat Slide 530, at page 1100, and in the Office of the Clerk of Court for Chester County in Plat Cabinet C, at Slide 63, at page 7. Pursuant to Section 30-5-250 of the Code of Laws of South Carolina, reference to said plat is hereby craved for the particulars as to the metes, courses, distances, shapes, measurements and boundaries of said tract.

TMP #: 006-00-00-011 (Fairfield County)
074-00-00-003 (Chester County)

3. Jurisdiction of this matter is properly laid in Fairfield County inasmuch as the real property rights as pleaded herein are substantially in Fairfield County.

4. The plaintiff's real property is landlocked with no direct access to a public road and their historic and sole access to their property has been over and across the property of the defendants as described above.

5. The defendants have refused the plaintiffs their right to cross the defendants' land utilizing the access easement, which they have used for a period in excess of twenty years.

6. That the plaintiffs have used the easement in question pursuant to acquiescence by the defendants and their predecessors until the present time and as a result are unable to conduct forestry operations for the benefit of their tract.

7. The plaintiffs have the right to use of the easement in question for ingress, egress and regress based on prescription and have openly done so for a period in excess of twenty years.

8. The plaintiffs are therefore entitled to an easement by prescription and are entitled to the

right of unimpeded access to their lands from State Road 12-16 across the lands of the defendants until it ultimately terminates on their tract, as described above, and vice versa.

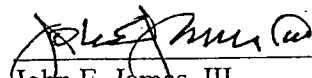
WHEREFORE, the plaintiffs pray for an Order of this court granting the following relief:

1. Granting to the plaintiffs an easement by prescription from State Road 12-16, crossing the aforementioned lands of the defendants, to the lands of the plaintiffs.

2. That the defendants, their agents, servants, employees, attorneys, heirs and assigns, and the like, be permanently prohibited from interfering with the plaintiff's right, title, use and possession of an easement for ingress, egress and regress, over and through the defendants' property as described herein, from State Road 12-16, to the property of the plaintiffs.

3. For such other and further relief as the court deems just and proper.

DATED this 2 day of Oct., 2012.



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STATE OF SOUTH CAROLINA)
)
 COUNTY OF FAIRFIELD)
)
 Carol Reid Smallwood, Barbara)
 Reid Strickland, Ann Reid Hamlin,)
 William L. Reid, III, Judith)
 Lawrence Medlin, and Frances)
 Patterson Lawrence,)
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)
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 Plaintiffs,)
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 v.)
)
 Helen M. Lee, Linda Lee and Joe)
 Lee, Jr. as Co-Trustees of the)
 Joseph H. Lee, Sr. Family)
 Trust U/W,)
)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE SIXTH JUDICIAL CIRCUIT

C. A. No.: 2012-CP-20-401

ANSWER

2012 DEC 18 A 10:50
 FAIRFIELD COUNTY
 CLERK OF COURT
 BETTY JO BECKHAM

The Defendants, Helen M, Lee, Linda Lee and Joe Lee, Jr. as Co-Trustees of the Joseph H. Lee, Sr. Family Trust U/W, answering the Complaint of the Plaintiff would respectfully show:

1. Any allegation not hereinafter admitted, qualified, or explained is denied and strict proof demanded thereof.
2. The Defendants admit the allegations contained in paragraphs one (1) through three (3) of the Complaint.
3. The Defendants deny the allegations contained in paragraph four (4) of the Complaint.
4. The Defendants deny the allegations contained in paragraph five (5) of the Complaint.

The Plaintiffs have no express or implied easement across the Defendants' land and have not

enjoyed use the Defendants' land for access since prior the death of Joseph H. Lee, Sr., on January 14, 1999.

5. The Defendants deny the allegations contained in paragraph six (6) of the Complaint.

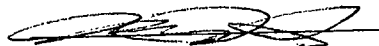
6. The Defendants deny the allegations contained in paragraph seven (7) of the Complaint.

The Plaintiffs have not had continued and uninterrupted use or enjoyment of access across the Defendants' property for the full statutory period of twenty years.

7. The Defendants deny the allegations contained in paragraph eight (8) of the Complaint.

THEREFORE having fully answered, the Defendants pray that the Complaint be dismissed with costs and attorney's fees.

Respectfully submitted,



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Rock Hill, South Carolina
December 14, 2012

1 STATE OF SOUTH CAROLINA

2 -----x

3 Carol Reid Smallwood, Barbara Reid
4 Strickland, Ann Reid Hamlin, William L.
5 Reid, III, Judith Lawrence Medlin,
6 Frances Patterson Lawrence

7 Plaintiffs,

8 Case No.

9 -against-

2012-CP-20-401

10

11 Helen M. Lee, Linda Lee and Joe Lee,
12 Jr. as Co-Trustees of the Joseph H.
13 Lee, Sr. Family Trust U/W

14 Defendants.

15 -----x

16 April 18, 2013

17 Chester, S.C.

18

19 B E F O R E:

20 HONORABLE BROOKS P. GOLDSMITH

21

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

23 JOHN E. JAMES, III, Esquire

24 Attorney for the Plaintiffs

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KEVIN M. HOPE, Esquire
Attorney for the Defendants

Aileen Butler
Official Court Reporter

	I N D E X				
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Judith Medlin				
4	Mr. James	7		31	
5	Mr. Hope		20		
6	William L. Reid				
7	Mr. James	32			
8	Mr. Hope		37		
9	Thomas Patrick				
10	Mr. James	50			
11	Mr. Hope		61		
12	Helen Lee				
13	Mr. Hope	102			
14	Mr. James		119		
15	Linda Lee				
16	Mr. Hope	126		131	
17	Mr. James		130		
18	Joey Lee				
19	Mr. Hope	132			
20	Mr. James		134		
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6	Plf's 3	Photograph		7
7	Plf's 4	Photograph		7
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9	Plf's 6	Photograph		7
10	Plf's 7	Photograph		7
11	Plf's 8	Photograph		7
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13	Deft's 1	Photograph	102	
14	Deft's 2	Receipt	102	117
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1 THE COURT: All right, Smallwood versus Lee.
2 Plaintiff ready today?

3 MR. JAMES: Yes, Your Honor, we were
4 marking some exhibits, but we were ready to
5 proceed.

6 THE COURT: And the defendant is ready.

7 MR. HOPE: Yes, Your Honor.

8 THE COURT: What about you all doing this
9 for me. Why don't each of you take about two or
10 three minutes and tell me what the case is about
11 and your positions regarding the issues in the
12 case.

13 MR. JAMES: Thank you, Your Honor.

14 Your Honor, this is a case concerning
15 a prescriptive easement claim by my clients who
16 own a piece of property to the east of the
17 property owed by the defendants, who are the Lee
18 family. Our property is landlocked. Has no
19 direct access to a public road and we contend
20 that we have met the elements for a prescriptive
21 easement and our testimony will show that we
22 have met those elements and we do have a right of
23 access across the property that belongs to the
24 Lee family.

25 THE COURT: All right.

1 MR. JAMES: That is pretty much it in a
2 nutshell.

3 THE COURT: Okay.

4 MR. HOPE: Good morning. Kevin Hope from
5 Jim Woods office in Rock Hill.

6 I am representing all of the defendants in
7 this case.

8 The property that is in discussion in this
9 case is adjoining each other. The plaintiff's
10 own the track that is east of the Lee track and
11 the Lee track is a residential property.

12 The plaintiff's track is a timber property
13 where I understand and I think the testimony will
14 show no one lives. There is wooden timber on the
15 property and they are seeking a prescriptive
16 easement across the defendant's property.

17 It is our position that there is not a
18 standing path across the defendant's property and
19 that they won't be able to establish a continued
20 and uninterrupted use of the property. We think
21 the testimony will show that.

22 Thank you, Your Honor.

23 THE COURT: All right. Plaintiff call your
24 first witness.

25 MR. JAMES: Your Honor, can we mark our

Judith Medlin - Direct Examination by Mr. James

1 exhibits?

2 THE COURT: Have you all agreed on these.

3 MR. JAMES: Yes, Your Honor.

4 MR. HOPE: Yes.

5 (Plaintiff's Exhibits 1-8, Photographs,
6 received into evidence as of this date.)

7 MR. JAMES: Your Honor, I would like to call
8 Judith Medlin as our first witness.

9 JUDITH MEDLIN, called as a witness, having
10 been duly sworn by the clerk, was examined and
11 testified as follows:

12 THE CLERK: State your name for the record.

13 THE WITNESS: My name is Judith Reid
14 Lawrence Medlin.

15 DIRECT EXAMINATION

16 BY MR. JAMES:

17 Q. Miss Medlin you stated your name for the record.
18 Would you tell me your address please, ma'am?

19 A. 303 Harden Street, Columbia, South Carolina.

20 Q. And you are here as a witness for the plaintiff.
21 Are you one of the owners of the property?

22 A. Yes.

23 Q. And this is for the Reid property; is that
24 right?

25 A. Yes, it is.

1 Q. I would like for you to give for the Court's
2 information just kind of a brief history of your family
3 relationship and your family's historical ownership of
4 this property that we are talking about?

5 A. This property was purchased by my grandfather
6 William Larry Reid in 1912 and it passed to his three
7 children. I mean to his widow first and then to his
8 three children and then to the children, his
9 grandchildren and I am one of his grandchildren.

10 Q. Miss Medlin, if you would, this is Plaintiff's
11 Exhibit Number 1, is a copy of a plat, of not only the
12 plat of the Reid property but it also got a denotation
13 of where your property is?

14 A. Yes.

15 Q. Does this look familiar to you?

16 A. Yes, it is.

17 Q. And can you point out where the Reid property is
18 and I am going to give this to the Court for their
19 information, but I got a copy for you to look at.

20 A. All right. The Reid property there has the name
21 Carol Smallwood on it first. I think Carol Reid
22 Smallwood, Barbara Reid Strickland that backs the
23 property there. Those are my cousins. And my sister
24 and I also own this. Our names just don't appear on
25 that plat.

1 Q. So you and your cousins and your sister own this
2 track of land?

3 A. That's correct.

4 Q. And can you show to the Court or tell the Court
5 where the Lee property is and where the residential
6 property is on the Lee track?

7 A. The Lee track is, as the way I am looking on the
8 map it is to the left of our property and the circle
9 there 2.3 acres is the residential property.

10 Q. 2.3 acres?

11 A. Yes.

12 Q. That kind of gives a road map, at least a general
13 over view of what we are looking at.

14 A. Yes.

15 Q. Miss Medlin, I will ask you a rude question. How
16 old are you?

17 A. I am sixty-seven.

18 Q. And what year were you born?

19 A. 1946.

20 Q. Now, as far as this property does it have any
21 direct access to a road, your property?

22 A. No.

23 Q. No public --

24 A. No public road leads to this property.

25 Q. And as far as your recollection has it always

1 been that way?

2 A. Yes.

3 Q. Okay. And as far as your track of land, yours
4 and your cousins and your sister's track of land, what
5 the primary use of your property?

6 A. We grow timber on this property.

7 Q. Are there any structures, any houses, cabins
8 anything like that on the property?

9 A. No.

10 Q. You use it mostly for timber harvesting and
11 things like that?

12 A. Yes, there have been times there have been
13 hunters on the property also.

14 Q. Now in that light, how often does this track of
15 land need to be accessed?

16 A. Well, it needs to be accessed when the timber is
17 planted and inspection by the man we have in charge of
18 looking after our timber. We go in and check on it.

19 It has to be thinned, but timber takes a while to
20 grow so we don't go look at it every day or, you know,
21 even some times yearly. But we access it as needed.

22 Q. Is it fair to say that substantial amounts of
23 times can pass between times that you need to go look at
24 the property or do anything on it?

25 A. Yes.

1 Q. Okay. And I am assuming from your answer that
2 the timber has been harvested over the years; is that
3 correct?

4 A. It has been harvested. The last time it was
5 harvested was in the 90's and it was replanted then.
6 But it was harvested in the 60's and prior to that I
7 don't have personal recollection of it.

8 Q. Now, as far as your experience concerning the
9 access to the property during these timber harvests, do
10 you have any knowledge of how the loggers or the forest
11 people got to your track?

12 A. It was accessed through the Lee's property.

13 Q. And I think you may have answered this question,
14 but how long has it been accessed by loggers and
15 forestry people, to your knowledge?

16 A. I know it was accessed that way in the 60's and
17 in the 90's and for harvesting and planting in the 90's.

18 Q. And how about you personally, I asked you that
19 question about your age for a reason.

20 Tell me about your personnel experience in
21 accessing your property?

22 A. We would go periodically. Usually in the summer
23 time to the Fairfield property and I know I have been, as
24 a young child when they were planting. I have been in
25 the late 60's we were there and other times in the 80's

1 and 90's and even in this century.

2 Q. Okay. All right. Have you ever used any other
3 access to this property?

4 A. Never.

5 Q. And again when the timber is growing is it
6 correct that there is no great need to get to the
7 property for periods of time?

8 A. That is correct.

9 Q. Have you ever been obstructed or refused to
10 access your property?

11 A. Not until recently.

12 MR. JAMES: Your Honor, I have Plaintiff's
13 Exhibit Number 3 that I will hand to you. I will
14 hand you 3 and 4?

15 (WHEREUPON, documents were handed to
16 the Court.)

17 THE COURT: All right.

18 MR. HOPE: No objection, Your Honor.

19 Q. Miss Medlin --

20 MR. JAMES: Kevin, do you want to come and
21 watch her?

22 Your Honor, could I give you a copy right
23 now and let her draw on the exhibit.

24 THE COURT: Sure. Certainly.

25 MR. JAMES: Maybe you can follow

1 along. And I will give you the originals.

2 THE COURT: Okay.

3 Q. Miss Medlin, this is Court's Exhibit number 4 and
4 this is a picture of 1959 aerial photograph. This is
5 the photograph from far away and this is a blown up
6 picture of the property, the Lee property, and also the
7 Reid track. If you would -- and I know this thing is
8 far off, but if you would draw a picture and I think you
9 can see it with the way the circular drive. If you can
10 draw a circle around the tracks?

11 MR. JAMES: Your Honor, if the record would
12 reflect Miss Medlin has drawn a picture
13 identifying the extended portion surrounding the
14 track itself.

15 A. Do you want me to do both tracks.

16 Q. Yes. Miss Medlin, this a blown-up picture --
17 first of all you testified that you had gone down to the
18 property when you were younger?

19 A. Yes.

20 Q. Now this is a picture of a 1959 picture of the
21 aerial picture of the property.

22 Would you be familiar with this property in
23 1959?

24 A. Yes.

25 Q. Did you ever travel down over to your track in

1 1959? I think you would have been 13, 14 year old.

2 A. Yes.

3 Q. Okay. What I would like to ask you to do would
4 be to draw arrows to show how you accessed your
5 property.

6 Try not to obliterate the actual road itself just
7 off to the side.

8 (Witness draws on exhibit.)

9 MR. JAMES: Let the record reflect Miss
10 Medlin has drawn arrows showing her access from
11 and across the Lee property over to the Reid
12 track.

13 Q. Now Miss Medlin, where you have drawn arrows is
14 there any roadway or anything that you can identify to
15 show where the road is?

16 A. There is a light path along this track. I tried
17 to put the arrows beside it.

18 Q. Okay.

19 MR. JAMES: Your Honor, if it is all right
20 with you I will give that to you. This is
21 Plaintiff's Number 4, I believe.

22 THE COURT: All right.

23 MR. JAMES: And that was the 1959. That was
24 number four. This is the 1966 aerial photograph.
25 This is a 1966 photograph, Your Honor.

1 THE COURT: Which exhibit is it? Are you

2 MR. JAMES: Exhibits five and six.

3 Q. Miss Medlin, if you would, this is the far away
4 picture. If you would draw a circle around the tracks
5 where the Lee track and the Reid track are.

6 (WHEREUPON, the witness marks the exhibit.)

7 MR. JAMES: Your Honor, I will show you
8 Plaintiff's Exhibit Number 5 which is a far away
9 picture.

10 THE COURT: Okay.

11 MR. JAMES: This is a blown-up or zoomed in
12 parcel. This, Your Honor, is Plaintiff's Number
13 6.

14 Q. And if you would Miss Medlin, again this is
15 1996, if you could show where this easement, how you
16 access the property across the Lee property.

17 (WHEREUPON, the witness marks the exhibit.)

18 Q. And Miss Medlin, these arrows that you have drawn
19 they are not directly on the roadway themselves are
20 they?

21 A. No, they are beside the road.

22 Q. And can you explain the nature of the easement or
23 the pathway that you identified?

24 A. It's like a lane. There is a driveway and lane.
25 It is like a lane. And sort of you can see, you know,

1 where trucks, pick-up trucks, have been down through
2 that way, the established road.

3 MR. JAMES: Your Honor this is Plaintiff's
4 Number 6.

5 THE COURT: Thank you.

6 MR. JAMES: Your Honor, I got Plaintiff's
7 Number 7 and 8.

8 Q. This Miss Medlin is a aerial photograph and these
9 are all from the USDA. And this is an aerial photograph
10 of the 1981 picture and this one is far, far away. But
11 can you draw a picture around the properties for the
12 Court's reference.

13 MR. JAMES: And Your Honor, I apologize for
14 the faintness of our markings.

15 Your Honor, this is Plaintiff's Exhibit
16 Number 7.

17 Q. This is a blown-up picture of the property.
18 Can you again draw arrows showing the pathway
19 easement that you have accessed?

20 (WHEREUPON, the witness marked the exhibit.)

21 Q. And all of these renderings that you have done
22 today do they show the pathway across the Lee track onto
23 the Reid track?

24 A. To the best of my ability to read that and see
25 where those are, yes.

1 Q. Now Miss Medlin, we talked earlier about your
2 experience yourself about crossing over these
3 properties. Tell me not only -- we are not talking
4 about the forestry operations, but telling me about your
5 personnel experience about crossing through this
6 easement to get to your track.

7 How long ago have you been out there and how many
8 times and things like that?

9 A. Well, I know I have been probably eight times in
10 my life. As I say as a young child and several times in
11 more recent years we would drive through on the property
12 all the way to the edge of our line.

13 Q. You have already marked the 1959 aerial map.
14 Were you familiar with that property in 1959?

15 A. I don't know that I had seen a map of it in 1959,
16 but I had been on the property and I always been knowing
17 that we had land in Fairfield County.

18 Q. Did you use that actual access?

19 A. Yes, we did.

20 Q. I would imagine you road with somebody else since
21 you were just a young teenager?

22 A. Yes.

23 Q. Who would have been with you?

24 A. My mother and my father, and lots of times my
25 uncle or my aunt we would go in the summer when

1 everybody could get together and access the property.

2 Q. To your knowledge is that how they themselves
3 accessed the property?

4 A. Yes.

5 Q. And when would be -- you also marked the 1966
6 plat or map. Did you have occasion to use -- to enter
7 the property using that pathway during those times?

8 A. Yes.

9 Q. Okay. And the same for the 1981?

10 A. Yes.

11 Q. Did you have a personally were you ever by any
12 overt act or any obstruction denied access to the
13 property using that particular route?

14 A. No.

15 Q. Okay. Now -- and you said that as far as you
16 know -- as far as you know how did your family access
17 the track before your time?

18 A. The same way I indicated on the map.

19 Q. Okay. Do you have any other recollection of any
20 other way?

21 A. No.

22 Q. Any other access?

23 A. No, sir.

24 Q. Okay. Now, as far as the right to access this
25 property, do you feel like you have a right to use it?

1 A. Yes.

2 Q. And can you tell me why?

3 A. Because there is no public road to this property
4 and this is traditionally the road -- the route that we
5 always used.

6 Q. As far as you know can you recollect any other
7 route?

8 A. No.

9 Q. Now, as far as the use of the route itself I
10 believe you may have testified to this, but how often
11 does it have to be accessed based on the nature of the
12 track that you own?

13 A. It does not have to be accessed yearly. We
14 access it to make sure the trees are growing properly
15 and there are no insects or diseases. It has to be
16 thinned periodically, but that's after maybe ten years
17 of growth.

18 Q. So there can be long stretches of time that you
19 don't need the access?

20 A. Yes.

21 Q. Or your agency to work the timber operation
22 themselves?

23 A. That's correct.

24 MR. JAMES: Okay. Those are all the
25 questions I have for this witness Your Honor.

Judith Medlin - Cross Examination by Mr. Hope

1 THE COURT: Cross examination.

2 MR. HOPE: May it please the Court.

3 CROSS EXAMINATION

4 BY MR. HOPE:

5 Q. Good afternoon Miss Medlin. You testified you
6 live at 303 Hardin Street?

7 A. That's correct.

8 Q. Where is that located? What county?

9 A. Richland County.

10 Q. Richland County. Do you live by yourself?

11 A. Yes.

12 Q. How long have you lived there?

13 A. Since anyone 1978.

14 Q. You testified that you are one of the
15 grandchildren of William Larry Reid?

16 A. That's correct.

17 Q. Do you have any other siblings?

18 A. I have a sister Francis Lawrence. Francis
19 Patterson Lawrence.

20 Q. You testified today that you have no direct
21 access to the property except for coming across the Lee
22 property is that correct?

23 A. That's correct.

24 Q. And your testimony today you said that you need
25 access to the property when timber is planted, when it

1 'is thinned. Is there any other time that you need
2 access to the property?

3 A. When it is harvested.

4 Q. When it is harvested. You were born in 1946, is
5 that correct?

6 A. That's correct.

7 Q. You testified you remember going out to the
8 property when you were a little girl is that right?

9 A. Yes.

10 Q. Do you remember how old you were?

11 A. Well, I know I was under ten years old when I
12 went there and later years also in my teens, when I was
13 a teenager.

14 Q. Who were you with when you went out to the
15 property?

16 A. I was with my mother and father most of the time
17 but I also been in more recent years.

18 Q. At under ten years old what would be the purpose
19 for going out to the property?

20 A. Trees were being planted and we were checking on
21 them.

22 Q. Did you plants any trees yourself?

23 A. No, I didn't.

24 Q. You may have testified to this fact but is there
25 any residence on your property?

1 A. No.

2 Q. Is there any structure at all?

3 A. No.

4 Q. Once you access your property how do you get
5 around on your property?

6 A. Walking.

7 Q. By walking?

8 A. Yes, through the woods.

9 Q. Did you walk across the Lee's property?

10 A. No, we drove across it.

11 Q. Did you drive across it every time?

12 A. Yes.

13 Q. And you were with your parents driving across it,
14 is that correct?

15 A. Yes.

16 Q. Where did you park?

17 A. At the edge of the forest.

18 Q. On your property or on the Lee's property?

19 A. I couldn't tell you for sure but it was either on
20 ours or straddling ours or on theirs?

21 Q. You testified that you accessed the property at
22 other times in the 80's and 90's?

23 A. Yes.

24 Q. Do you remember the years?

25 A. Probably in -- I don't know the exact years --

1 '85, '94, I think.

2 Q. Well, let's see. In anyone '59 you testified
3 that you accessed the property in - - let's see. You
4 testified that you accessed the property in 1959, is
5 that correct?

6 A. Yes.

7 Q. And you accessed the property by a vehicle in
8 1959, correct?

9 A. Yes.

10 Q. What type of vehicle?

11 A. A Chevrolet.

12 Q. You remember the model?

13 A. I think we had a '57 Chevrolet.

14 Q. And you drove the '57 Chevrolet across the Lee's
15 property down the path where you drew arrows on that one
16 exhibit, is that correct?

17 A. Yes.

18 Q. You described the access as a light path, didn't
19 you?

20 A. Like a dirt road, but not gutted. Just a dirt
21 road.

22 Q. What kind of things did you see on the Lee's
23 property as you were driving across it?

24 A. I first saw gravel driveway and then just hard
25 packed dirt.

1 Q. Was there a residence on the Lee property at the
2 time?

3 A. Yes.

4 Q. To get to your property did you have to go down a
5 driveway belonging to the Lee's?

6 A. Yes.

7 Q: And was that driveway leading to their residence?

8 A. Yes.

9 Q. Did you drive just continuing past the house?

10 A. We circled the house.

11 Q. Why did you circle the house?

12 A. That's the way the road went.

13 Q. Do you have Plaintiff's Exhibit Number 6 with
14 you?

15 MR. HOPE: May I see it Your Honor.

16 Q. Now this is Plaintiff's Exhibit Number 6. In
17 your testimony you drew these lines, didn't you?

18 A. Yes, I did.

19 Q. With a magic marker?

20 A. Yes.

21 Q. Looking at your drawing did you draw arrows
22 around the house?

23 A. Around the back side of the house.

24 Q. Well you said in your testimony a moment ago that
25 you circled the house didn't you?

1 A. I did.

2 Q. Did you draw that on the map?

3 A. No, I did not draw it.

4 Q. Why not?

5 A. Because I don't -- because I don't remember
6 'seeing the front of the house. I pictured going around
7 the side of the house but not making a 360 degree
8 circle.

9 Q. When you circled the house, where did you go from
10 there?

11 A. Down a lane..

12 Q. A lane?

13 A. Yes.

14 Q. What do you mean by a lane?

15 A. A light travelled road.

16 Q. Was it paved at all?

17 A. No.

18 Q. Was there gravel laid out?

19 A. No.

20 Q. Do you know if the Lee's made a path across their
21 property?

22 A. I don't know if they made a path across their
23 property.

24 Q. You testified that you could see where pick-up
25 trucks had been. Was this a grassy area where pick-up

1 trucks were going?

2 A. No.

3 Q. Just hard packed dirt?

4 A. Yes.

5 Q. When you would go out to your property did your
6 family just take one vehicle?

7 A. The times I remember we had one, yes.

8 Q. And you testified that you been out there you
9 know eight times in your life, is that correct?

10 A. Yes.

11 Q. You testified that you and your family would go
12 out there when everybody would get together in the
13 summertime?

14 A. Yes.

15 Q. Was this a family gathering?

16 A. Yes.

17 Q. Was it a family reunion?

18 A.. No.

19 Q. Describe the gathering for me?

20 A. My aunt and my uncle would be here. Some times
21 we would go with my father and just my mother. Some
22 times we had a pick-up truck among us and we all get in
23 the back.

24 Q. Did you go down there for any particular event
25 like someone's birthday?

1 A. No.

2 Q. Was there any forestry operations going on during
3 the summertime?

4 A. The tree planting I remember being very hot when
5 we did that. I mean when we went to see that was being
6 done.

7 Q. Well, was the purpose of your visit for a family
8 gathering or was it for planting trees?

9 A. It was to see the property.

10 Q. So it wasn't for a family gathering?

11 A. No.

12 Q. You testified that you believe you have a right
13 to come across the Lee's property, is that right?

14 A. That's correct.

15 Q. And you testified that the reason why you think
16 you have that right is because there is no public road,
17 is that right?

18 A. That's correct.

19 Q. Do you remember at any time in your life time
20 asking for permission to come across the Lee's property?

21 A. No.

22 Q. You never asked for permission?

23 A. No.

24 Q. Do you remember any of your family members asking
25 for permission?

1 A. Yes.

2 Q. Who asked for permission?

3 A. Well, I personally called Miss Lee in recent
4 years to not really ask permission but to say we have
5 the right to cross your property. I did not ask for
6 permission. I was asking -- I was telling her that we
7 needed to thin our timber and we needed to come through.

8 Q. When you say Miss Lee, is that Helen Lee?

9 A. Yes, it is.

10 Q. Is she in courtroom today?

11 A. I never met her before but I assume that is Miss
12 Lee and I spoke to her on the telephone once.

13 Q. Are you familiar with where her residence is?

14 A. Yes.

15 Q. And is it on the Lee property that you seen in
16 the maps today?

17 A. Yes.

18 Q. Do you know if Miss Lee lives with anybody else?

19 A. No.

20 Q. No, you know or no she doesn't?

21 A. I don't know.

22 Q. In the times that you visited the property in a
23 vehicle, all of them were in a vehicle correct?

24 A. Yes.

25 Q. And you had to go down the Lee's driveway to get

1 to your property. Did anyone at the residence on the
2 Lee's property acknowledge you?

3 A. The dogs did.

4 Q. The dogs did. At no time did anybody come out
5 and waive to you or point you in a particular direction?

6 A. No.

7 Q. Just dogs came out?

8 A. I didn't -- don't know that I saw them. I heard
9 them.

10 Q. Now, you testified that you talked to Miss Lee on
11 the phone. That you called her. Do you remember when?

12 A. Within the pass five years, I think.

13 Q. Do you remember what year?

14 A. No.

15 Q. Was it more than a year?

16 A. Yes.

17 Q. More than three years?

18 A. Possibly.

19 Q. What time of year was it?

20 A. I don't recall.

21 Q. Describe the conversation that you had with Miss
22 Lee?

23 A. Well, I just said that I understood Mr. Patrick
24 was having difficulty accessing the timber that needed
25 to be thinned and that we wanted her to acknowledge our

1 right to cross the property.

2 Q. And what was the response?

3 A. Basically no.

4 Q. Did she just say no or did she say something
5 else?

6 A. She had an attorney.

7 Q. Did she tell you that she didn't want you coming
8 across the property?

9 A. Well, yes.

10 Q. Did she tell you why?

11 A. No.

12 Q. How did the conversation end?

13 A. I said well --

14 Q. You said what?

15 A. I will either talk to her attorney or deal with
16 matters further. I don't remember exactly what I said.

17 Q. Now you testified that you accessed the property
18 in 1959, 1966 and 1981, is that correct?

19 A. That is correct.

20 Q. And a total of about eight times that you recall?

21 A. Yes.

22 Q. How old were you in 1981?

23 A. In '81 I was about with thirty-five. That's about
24 right?

25 Q. Were you married at the time?

Judith Medlin - Redirect Examination by Mr. James

1 A. Yes.

2 Q. Did you have a family?

3 A. Yes.

4 Q. And what was the purpose of your access in '81?

5 A. To check on the timber. Walk the property.

6 Q. What is involved in checking on the timber?

7 A. Seeing how the trees look. How tall they are.

8 Whether they look like they need thinning or have

9 diseases.

10 Q. Do you have any forestry experience?

11 A. No.

12 Q. Do you have any degrees or certification in
13 biology?

14 A. No.

15 MR. HOPE: No further questions Your Honor.

16 THE COURT: Any redirect.

17 MR. JAMES: Just a quick question, Your
18 Honor.

19 REDIRECT EXAMINATION

20 BY MR. JAMES:

21 Q. Miss Medlin, as far as your knowledge in addition
22 to your personnel visits to the property there were
23 timber operations going on from time to time also during
24 these periods of time, correct?

25 A. That's correct.

1 MR. JAMES: That's all I have Your Honor.

2 THE COURT: All right. Thank you, ma'am.

3 You may step down.

4 THE COURT: Call your next witness.

5 MR. JAMES: Your Honor I call William Reid
6 III.

7 WILLIAM L. REID, III, called as a witness,
8 having been duly sworn by The Clerk, was examined
9 and testified as follows:

10 THE CLERK: State your name for the record,
11 please.

12 THE WITNESS: William Larry Reid, III

13 DIRECT EXAMINATION

14 BY MR. JAMES:

15 Q. Mr. Reid, could you give us your address, please?

16 A. 106 Plymouth Circle, Oakridge, Tennessee.

17 Q. And how long have you lived in Tennessee?

18 A. I have lived there since first grade.

19 Fifty-seven -- that is fifty years approximately.

20 Q. So you are not as knowledgeable about this piece
21 of property as Miss Medlin in that you don't live here,
22 is that fair statement?

23 A. That's correct.

24 Q. Have you accessed the property yourself before?

25 A. Yes, sir.

1 Q. And would you please tell the Court where that
2 came from? How that came to be?

3 A. In childhood not many times because we lived five
4 hours away, we would access it. Come down Miss Lee's
5 driveway and pass her house and go across the field
6 there and her road system intersected right there.

7 (Indicating.)

8 Q. And do you have a recollection of approximately
9 when that was? How old you were?

10 A. I don't remember it. It was very infrequently
11 until say the last 10 years or 15 years.

12 Q. In your earlier years did you --

13 MR. JAMES: If Your Honor please, I will
14 get one of these?

15 THE COURT: All right, sir.

16 Q. This is Plaintiff's Exhibit Number 6 and I know
17 that Miss Medlin has drawn on this.

18 Without trying to put words in your mouth can you
19 explain the route that you came?

20 A. Right. This is this Old Douglas Road over
21 here. (Indicating).

22 You enter the driveway and it is straight for a
23 period and then it curves around to the residence and
24 you can either -- it is a loop around the house, so you
25 could go to the front or the back and go pass the house

1 and kind of through the field there and that's where our
2 road (indicating) see the outline of our road on our
3 property there.

4 Q. And you can testify to this from your personal
5 knowledge around this time, is that fair, 1966?

6 A. Yes, by way of my childhood that is always the
7 way.

8 Q. All right. Thank you.

9 Now, you testified that you been on the property
10 in the past ten years or so. Can you explain the
11 circumstances surrounding that?

12 A. Yes. We become aware from our forester that
13 hunters have been on the property cutting shooting lanes
14 from aerial photography and so that was early 2000, 2001
15 timeframe and we went to the property to visually -- to
16 physically and personally inspect it.

17 Q. All right. I will show you Plaintiff's Exhibit
18 Number 2, which is a copy of the Fairfield County aerial
19 tax map.

20 First of all can you show --

21 MR. JAMES: And Your Honor I will give you
22 you a copy also to follow.

23 THE COURT: Okay.

24 MR. JAMES: While he marks it.

25 Q. Can you show to the Court just out of curiosity

1 sake where the shooting lanes are?

2 A. They are I would characterize them as crow's
3 feet. There would be a like a hunting stand at the
4 intersection of the lanes and they had cut the trees so
5 they would have a clear shot shooting deer. Crow's feet
6 here. Another one down here as well. Pretty nice
7 facility.

8 Q. My point in asking you that you had to
9 investigate the report that somebody was cutting timber,
10 is that correct?

11 A. That's correct.

12 Q. And how did you access the property to get to it?

13 A. The same way I just showed. Down Miss Lee's
14 driveway and across the field. Here is the road system
15 on the property and you see how it kind of comes out
16 like this and you go across like this and this is
17 Douglas Road there.

18 Q. Okay.

19 MR. JAMES: Your Honor I will give that to
20 you.

21 THE COURT: All right.

22 MR. JAMES: That is Plaintiff's Number 2
23 Your Honor.

24 Q. Now, like I say you haven't had any extensive
25 experience of crossing this property like Miss Medlin

1 has, but do you have any knowledge how your family, your
2 predecessors had crossed the property?

3 A. That is the only way I am aware it has ever been
4 accessed.

5 Q. Are you aware of any time that the access across
6 this easement was ever obstructed or any overt act that
7 prevented you or anybody in your family to your
8 knowledge the easement could not be used?

9 A. No, not until this matter here.

10 Q. And to your knowledge, to the best of your
11 knowledge, how long has this easement been utilized by
12 your current owners and the predecessors?

13 A. Since it was purchased by our family a hundred
14 years ago, 1912.

15 Q. And as far as the -- as far as your ability,
16 yours and your cousins ability to cross this land and I
17 guess your sisters have ownership interest too. Explain
18 to the Court if you could why you think you have the
19 untethered ability to cross over the property?

20 A. Because it is the historical access and there is
21 no other public road access.

22 Q. You think you have a right to cross the property?

23 A. Yes, sir.

24 MR. JAMES: That is all I have for this
25 witness.

1 THE COURT: Cross examination.

2 MR. HOPE: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. HOPE:

5 Q. Good afternoon Mr. Reid.

6 A. Good afternoon.

7 Q. You testified that you lived in Tennessee since
8 the first grade, is that right?

9 A. Yes, sir.

10 Q. Before that where did you live?

11 A. I lived in Alabama and North Carolina.

12 Q. Did you ever live -- have you ever lived on any
13 location that are shown on plats that you have seen
14 today?

15 A. No, sir.

16 Q. How many times do you think you ever been out to
17 the property in Fairfield County that overlaps Chester,
18 how many times do you think you would been out there in
19 your lifetime?

20 A. I would guess five times.

21 Q. Five times. Can you give me the years?

22 A. Once probably in childhood when I would say in my
23 teen years and then I probably been there four times
24 since 2001.

25 Q. Now, you testified the reason you were going out

1 to the property was to investigate some cutting of
2 timber on the property?

3 A. Yes, sir.

4 Q. When was that?

5 A. Around 2001, 2002.

6 Q. Was each the four times that you been out to the
7 property to investigate hunters being out on the
8 property?

9 A. Primarily to inspect the timber and just for
10 enjoyment. Enjoy walking when I have been in the area.

11 Q. When you go out there are you by yourself?

12 A. I have been with my cousins and I have been by
13 myself.

14 Q. Who are your cousins?

15 A. Children of Judith Lawrence and her husband.

16 Q. When you go out to the property do you walk or do
17 you drive?

18 A. I drive the car to it.

19 Q. What type of car?

20 A. I have sedan.

21 Q. It is passenger car?

22 A. Passenger car, four door sedan.

23 Q. So in the four times since 2001 that you have
24 been out there you driven your car past the Lee's
25 residence?

1 A. Yes.

2 Q. Are you aware of who lives in that residence?

3 A. Yes.

4 Q. Who lives in that residence?

5 A. Helen Lee.

6 Q. Have you met Helen Lee?

7 A. Yes.

8 Q. When was the last time you talked to Helen Lee?

9 A. Probably two years ago.

10 Q. And before that?

11 A. Probably another year or two before that.

12 Q. And what was the purpose of talking to her?

13 A. I would be just to be respectful I would knock on
14 her door and let her know I am going across. I realized
15 she might live alone. I don't know if she lives alone
16 or not but just out of respect to let her know I was in
17 the area.

18 Q. What do you mean when you say knock on the door
19 out of respect?

20 A. To let her know I was there. To not startle her.

21 Q. To not startle her.

22 A. To be respectful.

23 Q. Were you able to reach her by knocking on the
24 door?

25 A. Some times yes. Some times no.

1 Q. Did you have a conversation with her when she did
2 answer?

3 A. Yes. Just common pleasantries.

4 Q. When was the last time that you been out to your
5 property?

6 A. Probably two years.

7 Q. Did you see Miss Lee then?

8 A. No.

9 Q. Has anybody given you permission to come across
10 the Lee's property?

11 A. It is just the traditional historical way the
12 property is accessed.

13 Q. What does that mean?

14 A. I feel we are entitled to a right. I believe
15 South Carolina has a law if you have landlocked property
16 you cannot be prohibited access to it for pleasure or
17 for business.

18 Q. Your property is not entirely landlocked is it?

19 A. Yes, sir. It is entirely landlocked from public
20 roads.

21 Q. Is it your testimony today that the only way
22 anybody has ever accessed your property is by coming
23 across the Lee's property?

24 A. Yes, sir.

25 MR. JAMES: Beg the Court's indulgence, Your

1 Honor.

2 Q. I am showing you what is marked as Plaintiff's
3 Exhibit Number 2. And I believe this is the image that
4 you just recently drawn on.

5 If you could take a look at that for me and tell
6 me what this is? What is this that I am pointing to?

7 A. It looks like a logging road.

8 Q. A logging road.

9 A. For this property.

10 Q. Where on the map is your property?

11 A. My property is right here (indicating). It's
12 labeled as number 13.

13 Q. And where you marked these hunting lanes is that
14 on your property?

15 A. Yes.

16 Q. Well, would you agree that this road leads to
17 those hunting lanes?

18 A. No.

19 Q. It doesn't? Your testimony is that this road
20 that you indicated as a logging road doesn't lead to the
21 hunting lanes?

22 A. Yes, sir.

23 Q. What do you see here on the map?

24 A. It comes close. I think there may even be a
25 ravine there. I am not sure.

1 Q. Do you have any personal knowledge that hunters
2 have come across Miss Lee's property?

3 A. Yes.

4 Q. What personal knowledge?

5 A. I had the property leased in 2000's for a period
6 of years and the hunters accessed it that way.

7 Q. You had your property leased for the hunters to
8 access for hunting purposes is that right?

9 A. Yes, sir.

10 Q. Did you tell them they could come across the
11 Lee's property?

12 A. That's the way they had been coming across. One
13 of them was a neighbor.

14 Q. Well, did anyone tell them they could come an
15 across the Lee's property?

16 A. I do not know. It wasn't an issue. It was just
17 understood.

18 Q. How was it understood? Did you have any family
19 that had gone across the Lee's property?

20 A. Yes.

21 Q. When you accessed the property first in your life
22 during your teens, who were you with?

23 A. With my father.

24 Q. With your father. Were you in a vehicle with
25 your father?

1 A. Yes.

2 Q. Was it the only vehicle traveling with you?

3 A. Yes. Yes.

4 Q. Do you recall how your father would gain access
5 to the property?

6 A. Down the driveway and across the field.

7 Q. Do you know if he ever spoke to any of the Lee's
8 about coming across their property?

9 A. I do not recall.

10 Q. What do you think?

11 A. I would assume he would be respectful and let
12 them know he is coming across.

13 Q. Would you in your teens in riding with your dad
14 just go across anybody's property without permission?

15 A. It's only case I had where I had a piece of
16 property that couldn't be accessed by a public road.

17 Q. I want to ask you more about this logging road
18 shown on Plaintiff's Exhibit Number 2.

19 In any of the times that logging operations have
20 happened on your property have loggers used that road?

21 A. I do not know. I do not think so.

22 Q. Do you recall providing an affidavit to the
23 Court?

24 A. Yes.

25 Q. Do you recognize this as that affidavit?

1 (WHEREUPON, a document was shown to the
2 witness.)

3 A. Yes.

4 Q. Can you read for me paragraph number three in
5 that affidavit?

6 A. "Since the track is timber land, we do require
7 constant access but do need to reach the property from
8 time to time for timber operations. Our most recent
9 timber harvest was done in 1992 and access was reached
10 through the defendant's Lee property. Reforestation was
11 done in January 1994, and again access to the Henry
12 Place" -- that's what we call it. "Inspection visits
13 to the property have used the Lee property access
14 exclusively.

15 Q. So this is a sworn statement from you that the
16 most recent timber harvest was done in 1992, is that
17 correct.

18 A. Yes, sir.

19 Q. Reforestation was done in January in 1994. What
20 does reforestation mean?

21 A. Replanting of the trees.

22 Q. And did you do that yourself?

23 A. No.

24 Q. You had someone else do it?

25 A. Yes.

1 Q. And that is '92 and '94 is the last time timber
2 operations have occurred on your property, is that
3 correct?

4 A. Yes. Its due -- the first thinning of timber is
5 due in 16 years.

6 Q. Are you familiar with what the Lee property looks
7 like today?

8 A. Yes, sir.

9 Q. So if you drove out there today you would
10 recognize the Lee residence?

11 A. Yes.

12 Q. Aside from the Lee's residence is there anything
13 else on the property?

14 A. I believe there is a barn. Probably some little
15 storage building.

16 Q. A barn and storage building. Do you recall a
17 fence being out there?

18 A. Yes.

19 Q. What kind of fence was it?

20 A. Just for live stock.

21 Q. Was it a wooden fence? Was it chain link?

22 A. I believe it is like barbwire, but I am not for
23 certain. It was not a chain link.

24 Q. Where was the fence on the property? Can you
25 show me on the Plaintiff's Exhibit Number 2.

1 A. Right there. (Indicating)

2 Q. Can you draw it on Plaintiff's Exhibit Number 2.
3 I would like you to draw, if you can, from your
4 recollection the outline of the fence.

5 A. That was only part of the fence I was concerned
6 with. There is a fencing on the property here.

7 Q. Well, you have drawn a mark perpendicular to the
8 marker that you had drawn earlier, haven't you?

9 A. Yes.

10 Q. So does the fence interrupt your access to your
11 property across the Lee's?

12 A. You have to open the gate to go through it.

13 Q. How long has that fence been there?

14 A. I do not know.

15 Q. Has it been there as as long as you can recall?

16 A. It has been there since 2002.

17 Q. The fence has been there since 2002?

18 A. I do not know.

19 Q. Okay,. Have you ever asked Miss Lee or anyone
20 else for access across the Lee's property? .

21 A. I have let her know I was going across the
22 property.

23 Q. And what was her response?

24 A. Just pleasant. Common pleasantries.

25 Q. Well, what did she say?

1 A. I don't remember.

2 Q. Did she say don't come across my property?

3 A. No.

4 Q. What did she say?

5 A. Have a nice day. Something to that effect. It
6 was just common pleasantries.

7 Q. Now, in your affidavit paragraph seven you
8 mention something called Red Cloud Drive. What is that?
9 Paragraph seven.

10 A. That is -- are you familiar with google maps on
11 the internet.

12 Q. Is that what you recall seeing on google maps?
13 (Indicating)?

14 A. The version I have, yes, that is it and it shows
15 more. Actually continues over here on to my property.

16 Q. When you are out at -- or the times that you have
17 been out to the Lee property, are there any signs that
18 say Red Cloud Drive?

19 A. I do not know.

20 Q. Is it a state road?

21 A. No.

22 Q. Is it paved at all?

23 A. No, sir.

24 Q. How did it get there?

25 A. I do not know where that came from.

1 Q. Have you or your family referred to it as Red
2 Cloud Drive?

3 A. No.

4 Q. What have you referred to it as? What do you
5 call that path?

6 A. The Lee's property.

7 Q. Describe the path for me beyond the Lee's
8 residence? Just describe it for me?

9 Q. You go pass the house and you can see it right
10 here, kind of go across here. You see how there is a
11 driveway. It kind of comes up right there. You
12 continue there at that point?

13 Q. Well, is this this area here on the map is that
14 paved?

15 A. That is gravel.

16 Q. It is gravel. Is that a driveway?

17 A. Yes.

18 Q. Is there any gravel beyond the Lee residence?

19 A. A little bit beyond.

20 Q. A little bit beyond. Did somebody put it there
21 or was it just scattered?

22 A. I'd say it was deposited there by a truck.

23 Q. Did it lead to anything?

24 A. It leads out to the pasture. It is a
25 continuation of the access.

1 Q. Is there grass out in this area beyond the Lee's
2 residence?

3 A. Yes.

4 Q. Is there anything else beside grass? Any other
5 trees or any other objects?

6 A. No, not in the path.

7 Q. Would you describe it as a yard or pasture?

8 A. It is a pasture.

9 Q. Now in your affidavit you describe the Henry
10 place. What is the Henry's place?

11 A. That is what we refer to our track as because
12 that is who it was purchased from.

13 Q. Do you remember the name of the original owner
14 last name Henry?

15 A. Yes. I think the party that owned it the last
16 name was Henry. That is why we refer to it as the Henry
17 place.

18 It had a home place on it at one point but as far
19 as I can tell there is no signs of it any more.

20 Q. Since Mr. Henry lived on that property and then
21 sold it to your family has anyone else resided on that
22 property?

23 A. No, not in the last one hundred and one years.

24 Q. One hundred and one years. So the only purpose
25 in the last one hundred and one years was for removing

1 timber is that correct?

2 A. And deer hunting.

3 Q. And deer hunting?

4 A. And pleasure.

5 Q. Do you know if anybody deer hunts on the Lee's
6 property:

7 A. I do not know.

8 MR. HOPE: No further questions, Your Honor.

9 MR. JAMES: No questions, Your Honor.

10 THE COURT: You may step down. Call your
11 next witness.

12 MR. JAMES: Your Honor I call Tom Patrick.

13 Thomas Patrick, called as a witness, having
14 been duly sworn by the clerk, was examined and
15 testified as follows:

16 THE CLERK: Please state your name for the
17 record.

18 THE WITNESS: Thomas Alexander Patrick, III.

19 DIRECT EXAMINATION

20 BY Mr. JAMES:

21 Q. Mr. Patrick would you state your address.

22 A. 35 Killian Trail, Winnsboro.

23 Q. All right. And Mr. Patrick, you appear pursuant
24 to a subpoena that I sent to you is that correct?

25 A. That's correct.

1 Q. And would you explain to the Court what your
2 occupation is?

3 A. I have had a consulting forestry business here in
4 Fairfield and in the surrounding counties since 1979.

5 Q. And as far as your connection with the Reid track
6 or they call it the Henry place, would you explain to
7 the Court how long you have been working that track or
8 if you have been and what your connection has been?

9 A. I have been working for the Reid family since
10 1983.

11 Q. And have you had the occasion to maintain or keep
12 up the forestry track called the Henry place?

13 A. Yes I, have.

14 Q. And this is the parcel that is directly to the
15 east of the Lee property?

16 A. That is correct.

17 Q. Now, when you originally were hired to do the
18 forestry work for the Reid family what were your
19 instructions on how to access that property?

20 A. I can't remember whether somebody -- it seems to
21 me that someone actually took me there the first time I
22 went there and if they didn't we found it on aerial
23 photography or I was told how to get there.

24 Q. Did you ever access the property over the years?

25 A. I have accessed the property many times.

1 MR. JAMES: Your Honor, this is actually a
2 rendition of the aerial photograph I am going to
3 ask Mr. Patrick to draw his route that he would
4 use to get there.

5 THE COURT: All right.

6 Q. Mr. Patrick, if you would show the route that you
7 would use to get to and across the Lee property and get
8 over to the Reid property?

9 A. Well, it is actually been two different ways over
10 the years because of some new fence construction during
11 a period of time that we did not just it for forestry
12 operations. But initially it was something along the
13 lines of there. (Indicating) And then some time between
14 must have been early 90's there was a new fence built on
15 the Lee property and a gate was put up somewhere along
16 in here and we were asked to - - no, no, I am sorry.
17 Somewhere -- I really don't know exactly where it was,
18 but we ended up coming in more along the lines of
19 something like that. So there have been two different
20 ways that we have crossed the pasture.

21 This is the road system on the Reid track. It
22 has been there since I have been involved with the
23 property. And we had always come in either to this
24 point and gone across the field. But for years the
25 original road bed always came down to the south and then

1 turned east across the field, but always coming back in
2 by this point right here. (Indicating.)

3 Q. And you mention that you were asked to change the
4 route in the early 90's?

5 A. That's correct.

6 Q. Who asked you to do that?

7 ~~A. Joe Lee. He had some cows and he had I think~~

8 sort of expanded some pasture or done something
9 different as far as fencing.

10 Q. And you were happy to accommodate him?

11 A. I was. You really could drive across there about
12 anywhere you wanted to go, but this was somewhat, you
13 know, evident on the ground. It is not as evident from
14 the aerial photograph. With periods of non use grass
15 would just grow over that because it was in the open in
16 the pasture.

17 Q. But you could tell where were you going when you
18 drove over?

19 A. Definitely tell where it was.

20 Q. Now, if you would Mr. Patrick you are a
21 professional forester. Could you explain to the Court
22 what is involved in for example harvesting a track like
23 the Reid property just in forestry terms?

24 A. Well, just in general forestry or growing pine
25 timber it is about forty year crop. Generally your

1 first thinning is at about age 16. Then a couple of
2 other thinnings on eight-year intervals and then about
3 eight years later generally somewhere close to forty you
4 would typically consider the trees as mature and
5 generally harvest it.

6 Q. So, after say for example it is time to harvest
7 the trees and you clear cut the trees, what type of
8 operation -- how long does that take?

9 A. It all depends on the size of the crew. A track
10 that size would take anywhere from three to five weeks
11 and if you -- wet weather might cause you to move out
12 and have to come back a month or two later or some other
13 point in time.

14 Q. So, first you clear cut the track. That takes
15 three to five weeks generally.

16 What is the next step?

17 A. About a year later you would do site preparation.
18 Aerially applied herbicides. After competition sprouts
19 back a couple of months later you can do a control-burn
20 and then that would generally be -- the site
21 preparation would usually be in August or September.
22 Control burn in October or November. February or March
23 of the following year you plant the new trees.

24 Q. And the aerial herbicides obviously that is not
25 accessed by the ground. That is accessed by air planes?

1 A. Well, you take the service equipment that goes
2 along with that operation into the property.

3 Q. How long generally for a track like this would
4 that take?

5 A. Well, the setup could take a couple of trips. A
6 couple of days to get the set-up done back the way we
7 use to do it in early 90's. Now, it's all with GPS so
8 it doesn't take long. But the actually application
9 would depend on the winds. It has to be done in a no
10 wind situation.

11 Some times you may sit on a track for a week and
12 not spray an acre and other times you might do the whole
13 track in one sitting. One day. I can't remember
14 exactly how long it took.

15 Q. A control burn would take how long?

16 A. Just a day.

17 Q. Just a day?

18 A. You might be in there a day or two ahead of time
19 where the forest commission would be putting in the fire
20 breaks in preparation for that control burn.

21 Q. And as far as the replanting, this process that
22 would come after the burn is that right?

23 A. That's correct.

24 Q. And how long would that take?

25 A. Depending on the size of the crew. I can't

1 remember what size crew we had in there but a large crew
2 we might have planted that in a day or it may have taken
3 a couple of days.

4 Q. After that, what is the need to access the track
5 say for example this track?

6 A. For most of the next 16 years you really can't
7 even walk through the property. It is basically, you
8 know, young stand of pines. There is really not much to
9 do.

10 Q. So --

11 A. It would generally be about 16 years before you
12 would have an another reason really to go back in there.
13 If there were insect problems the South Carolina
14 Forestry Commission would be flying over the county and
15 I would be notified if there were issues that needed to
16 be addressed. Issues that needed to be addressed that
17 you could only pick up from aerial protection.

18 Q. So for a period of 16, 16 or so years it is not
19 uncommon to have really no real need of access to the
20 property is that correct?

21 A. Pretty much mostly just recreational use. If you
22 had a hunting lease or something like that but as far as
23 forestry operations there would be nothing during that
24 period.

25 Q. As far as 16 years what happens when 16 years

1 passes?

2 A. Generally it should be ready for the first
3 thinning.

4 Q. And first thinning means cutting select trees?

5 A. Really opening access and spreading the trees
6 further apart so that the more dominant ones can grow
7 faster.

8 Q. And how long would that normally take for a track
9 of this size?

10 A. With today's operations two to three weeks.

11 Q. And then what happens after that?

12 A. Then you are back on more of an 8 year -- 6 to 8
13 year interval between forestry operations. Maybe some
14 mid rotation or treatments or some more active forest
15 management starts to begin at that point.

16 Q. So, at that the point after the 16 years there is
17 another extended period time where there is no real need
18 to access the property?

19 A. That's correct.

20 Q. So, then after eight years is the time to clear
21 cut the property?

22 A. No. Thin it. Grow it eight more years more than
23 likely thin it again and then six to eight more years it
24 will be ready.

25 Q. As far as your access to this property, wasn't it

1 your testimony that from 1983 until Mr. Lee asked you to
2 change the route you accessed it by going through the
3 southern route, is that right?

4 A. That is correct.

5 Q. And would you just in your own words explain how
6 you accessed or entered the property and where you went
7 and how you got across to the Reid property?

8 A. It was an identifiable route and the only way
9 that I knew how to get there. You came in and sort of
10 went up the driveway that goes to the house. Turns
11 south. The road sort of skirted off or was the eastern
12 most part of the circular driveway and went across the
13 pasture and then in toward the Reid property.

14 Q. Was there an identifiable pathway or coarse that
15 you could follow as far as your access?

16 A. Yes. Yes, there was.

17 Q. And prior to being asked to change the route did
18 you know of any other way to get to the Reid property?

19 A. One of the first things that I did and I was
20 really working by myself at that time. Any time I
21 picked up a new property one of the first things you do
22 is walk the boundary lines. Try to establish access.
23 Where has this property been accessed from in the past
24 and in the process of checking boundary lines and
25 familiarizing myself with this track, which involved a

1 timber cruise and just all the customary things that you
2 would do to map and learn a piece of property, I never
3 found any evidence of access from any other point.

4 Q. As far as -- and I think you may have testified
5 to this, but as far as when you initially were hired
6 your impression was this is how the family got to the
7 property. Is that a fair statement?

8 A. It is.

9 Q. And --

10 MR. JAMES: The Court's indulgence, Your
11 Honor.

12 Q. As far as you know just the timber -- timber on
13 the property is basically a timber track; is that
14 correct?

15 A. Just like most of Fairfield County.

16 Q. You don't know of any structures or houses or
17 cabins on the property?

18 A. No.

19 Q. And your only need to access the proper was for
20 timber uses?

21 A. That was my only reason to be there.

22 Q. Now, Mr. Reid had mentioned that he had gotten
23 notice of some hunters cutting timber on the property.
24 Were you the one that was notified about that as manager
25 of the property?

1 A. I think someone in my office actually picked this
2 up when we gotten new photography we would file it and
3 you know, make copies of the individual tracks and put
4 it in the file and it was pretty obvious from the wigth
5 of the shooting lanes that someone was going way beyond
6 taking some liberties with cutting trees that they
7 should not be cutting.

8 Q. And I know Mr. Reid has pointed out these tracks,
9 this looks like these straight lines on the Reid
10 property is that fair assessment?

11 A. That's correct.

12 Q. And what did you or your employee do when you
13 discovered about these shooting lanes?

14 A. I had somebody go up there and just make initial
15 observation what the problem was. They came back and
16 gave me their assessment of it. We later went back and
17 the two us did an inventory to come up with some sort of
18 damage done and ended up collecting for some
19 unauthorized cutting of trees.

20 Q. And when you went back did you use the access
21 that you were asked to use or did you use the old time
22 access?

23 A. I can't say for sure about that, but I suspect we
24 used the new -- the more recent route that we had.

25 Q. But as far as up until that time that you were

1 asked to change the route that was the only route, the
2 southern route, historical route, was the only way that
3 you accessed the Reid property; is that right?

4 A. That is correct.

5 Q. And before that time have you ever been
6 obstructed or refused to use the historical route?

7 A. No.

8 Q. And you been instructed as far as you know that
9 was the way to go?

10 A. It was the only way I knew. It was the only road
11 going into the property.

12 MR. JAMES: Those are all questions I have
13 for this witness, Your Honor.

14 THE COURT: Can I see that map that you have
15 been writing on and referring to.

16 (WHEREUPON, the map was handed to Judge and
17 then handed back to Mr. James)

18 MR. JAMES: Thank you, Your Honor.

19 THE COURT: Your witness.

20 MR. HOPE: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MR. HOPE:

23 Q. You testified that you have been servicing the
24 plaintiff's property since 1983; is that right?

25 A. That is correct.

1 Q. And you were hired by the plaintiff's to conduct
2 forestry operation on their property; is that right?

3 A. Forest management services, yes.

4 Q. How long have you been in forest management
5 services?

6 A. I graduated with a degree in forestry in 1976 and
7 I ever been in forestry since that time. But I started
8 my own business here in South Carolina 1979.

9 Q. Do you have any other partners of the business?

10 A. No other partners.

11 Q. Do you have any employees?

12 A. I do.

13 Q. How many employees?

14 A. Right now I only have one.

15 Q. One employee. Who is that person?

16 A. Joseph Wilson.

17 Q. Is he here today?

18 A. No.

19 Q. You testified that in the early 90's a gate was
20 put up and Joe Lee asked you to change the route across
21 his property; is that right?

22 A. That is correct.

23 Q. So before the early 90's, how many times had you
24 accessed the property?

25 A. Dozens.

1 Q. You started working for the plaintiffs in 1983;
2 is that right?

3 A. That's correct.

4 Q. Would you agree that the last time that the
5 property was cut over or harvested was in 1992?

6 A. I thought it was 93, but it might have started in
7 '92 and finish in '93, but somewhere in that timeframe.
8 Yes.

9 MR. HOPE: The Court'S indulgence, Your
10 Honor.

11 THE COURT: All right.

12 Q. Had you been familiar with the plaintiff's
13 property before 1983?

14 A. No.

15 Q. Did you know the plaintiffs before 1983?

16 A. No.

17 Q. Did you know Miss Lee before 1983?

18 A. I am quite sure I didn't, but somewhere along
19 that same period of time I did meet Miss Lee and her
20 husband Joe and I had done forestry work for her family
21 as well and I don't remember exactly the sequence of
22 when I met.

23 Q. When is the first forestry work that you did for
24 the plaintiffs?

25 A. They had two tracks in the immediate area up

1 there and I can't remember which one we actually worked
2 on first. That was thirty years ago. But they became
3 clients in I believe 1983. I am quite certain that was
4 the year. And over the course of the next several years
5 all of their property had really been neglected for a
6 number of years and needed attention. So I had a lot of
7 activity on both of their properties over a three or
8 four-year period in the mid 80's.

9 Q. Do you recall the date that you first came across
10 the Lee property?

11 A. Nothing other than like I said about 1983. I
12 believe.

13 Q. Do you recall if it was early 1983?

14 A. No, I don't.

15 Q. But you testified that if you are planting trees
16 you do that generally in the spring; is that right?

17 A. Winter and into spring. Some times it even goes
18 into April, but the prime window would really be
19 February.

20 Q. Do you recall what it was that you did for the
21 plaintiffs in 1983?

22 A. We harvested a lot of timber on all of their
23 properties.

24 Q. So it was already standing timber on on their
25 property in '83?

1 A. Yes.

2 Q. And you cut it down and took it off the property?

3 A. We thinned the property and really didn't start
4 clear cutting anything for a number of years later.

5 Q. When did you clear cut it?

6 A. Well, we clear cut the Henry place in '92, '93.
7 I think it spanned a couple of years there because I
8 seem to remember having to move out because of weather
9 at least one time.

10 We planted new trees back in '94. That probably
11 would have been in February or March. We would have
12 done the site preparation in '93. So we would have
13 generally waited about a year before we site prep so
14 yes, sir, the timber would have been harvested in '92.

15 Q. So, you agree with testimony that you heard today
16 that the last harvesting was in 1992?

17 A. That is correct.

18 Q. Now, when you harvest the property are you by
19 yourself?

20 A. I don't actually cut the trees down. There is a
21 logging crew.

22 Q. You have a logging crew?

23 Q. I don't have a logging crew, but I sell the wood
24 to one of the timber companies. Georgia Pacific,
25 International Paper Warehouse, whoever is the highest

1 bidder and they send in a crew and we supervise the
2 operation.

3 Q. Are you familiar with the process step by step of
4 harvesting wood off the property?

5 A. I am very familiar with it.

6 Q. What type of equipment is required?

7 A. Skidders, machines that cut the trees down,
8 loaders, logging trucks. Quite a bit of equipment.

9 Q. Can you describe a skidder for me?

10 A. Once trees are cut down it pulls them to a
11 loading deck.

12 Q. Is it like an claw that would pick up the tree
13 and put it in back in the truck?

14 A. No, it wouldn't put it in back of the truck. It
15 would have a grapple on the back of it today and it
16 would pick the tree up and pull it to a location, a
17 central location where a loader would then pick it up
18 and put it on a truck.

19 Q. Sounds like pretty large equipment?

20 A. It is large equipment.

21 Q. How do you get it to the plaintiff's property,
22 the Henry place?

23 A. Drive it down the road.

24 Q. What road?

25 A. The road that goes there. The only road I ever

1 known.

2 There are two different routes across the pasture
3 but the road only comes off of Douglas' road. The paved
4 road is one place and it only goes into the Reid tract
5 one place and you connect the dots two different ways.
6 But there is only one way that I ever been aware of to
7 get there.

8 Q. Show me on the map what road. What road did you
9 take equipment across in 1992?

10 A. In 1992, and I had some custom photography taken
11 at that time, if it is here in the courtroom I can
12 clearly show the road. Can I ask for that?

13 MR. JAMES: One second.

14 (WHEREUPON, a document was handed to the
15 witness.)

16 A. These pastures, if they weren't use for a few
17 months grass would grow back right across them.

18 Q. Using this marker can you show me the one road or
19 the two roads on the property? Just draw with a solid
20 line.

21 A. The original road was something like that and the
22 more recent road was something like that. (Indicating.)
23 It should show very clearly on the custom photography
24 that I had at the time and that is the redraft. As you
25 can see it has been clear cut and you can't see any

1 evidence of new trees yet. So this was another piece of
2 property I was working on the west side of the Lee
3 property and doing work on it the same time and this
4 photograph is obviously taken of that track, but you can
5 see the Reid track right there and you can see the
6 logging road covered up. But you can see it going right
7 there. But the old original road is below that.

8 Q. Do you see Miss Lee's residence on this?

9 A. I do. It is right there. (Indicating.)

10 Q. Can you circle it for me. Okay. So if I
11 understand correctly you are testifying you would come
12 off of Anderson?

13 A. Douglas road I think they call it in Chester.

14 Q. So you would come off of that road and then
15 either -- well at one time you are testifying you would
16 go south and then east; is that correct?

17 A. That is correct, that road right down there.

18 Q. Do you see a road on this picture?

19 A. Well, I see the road that we had been asked to
20 use right there.

21 Q. Well, there is other testimony today, they didn't
22 use the word road. They used the word pasture.

23 How did a road get there?

24 A. It doesn't show up on the aerial photograph
25 because grass has grown back up across that. But if you

1 are out there on the ground you can see evidence of
2 where the road went across the pasture.

3 Q. How heavy is this equipment that you are using to
4 harvest the timber? You can estimate it?

5 A. I don't know how many thousands of pounds each
6 piece weighs, but it is a lot. But not so heavy that it
7 can't go across bridges and be transported on the road
8 system.

9 Q. Well, if you drove it across the lawn would it
10 effect the grass at all?

11 A. It has very wide tires and the weight is
12 distributed and it does not leave a lot -- no, it
13 doesn't rut.

14 Q. Are they tires or are they tracks like on a tank?

15 A. Tires.

16 Q. Tires. The same way that you get in you go out,
17 right?

18 A. That is correct.

19 Q. So if you are harvesting timber and you are
20 living the Henry place you are taking logs with you; is
21 that right, or the loggers are?

22 A. They stay in there. The log trucks come and go
23 until they are through or need to move out and then they
24 move the equipment out.

25 Q. Would you agree that is a lot of weight if you

1 are carrying logs in the back of a truck?

2 A. I think 82,000 pounds I believe is the maximum
3 allowable on the roads and the trucks way about 30,000
4 pounds. Yeah, so 25 tons of wood.

5 Q. When you are moving this timber what type of
6 foundation is optimal for your vehicles; paved, dirt,
7 gravel?

8 A. Most woodland road systems is dirt. Almost all
9 of it.

10 Q. Well, this is a pasture on the Lee property,
11 right, not dirt? This is pasture, would you agree?

12 A. Right. Underneath the grass is the dirt.

13 Q. Well sure. There was grass on the Lee property
14 before you came there with the trucks, correct?

15 A. Right. It would grow back over the road system
16 over time, but once that road system becomes compacted I
17 mean you don't change the route you go on a regular
18 basis. Usually you stick to an old roadway.

19 Q. How many times would your vehicles go in and out
20 during harvesting?

21 A. Hundreds.

22 Q. Across the Lee property?

23 A. Uh-huh.

24 Q. That would tear up the grass, wouldn't it?

25 A. Tear it up. A month later if it rained a few

1 times the grass would green back up and grow right
2 across it.

3 Q. Well, did it remove the grass? Hundreds of times
4 you are moving these trucks across the property does it
5 effect the grass at all?

6 A. While you are doing it it does but permanently,
7 no.

8 Q. Well, if you haven't been on the property in 16
9 years would there be grass there or would there be a
10 road there?

11 A. There would be both.

12 Q. A grass road?

13 A. Yes.

14 Q. Is it a pasture or is it a road?

15 A. It is a grass road across a pasture.

16 Q. Do you know of any other grass roads?

17 A. Lots of them. I work on them every day.

18 Q. Grass roads?

19 A. Grass roads.

20 Q. You testified that in the early '90's Joe Lee
21 asked you to change your direction across the property;
22 is that right?

23 A. That is correct.

24 Q. Describe that conversation for me?

25 A. I really don't remember the specifics of the

1 conversation.

2 Q. Did you talk to him personally?

3 A. He put up some fence and was using a little
4 different pasture configuration or something and he had
5 already put a gate up that provided for a more direct
6 access route across the pasture to the origination of
7 the road on the Reid track.

8 Q. Well, did he come to you or did you go to him?

9 A. I probably went up there doing some sort of
10 preparation for the sale that was coming up and probably
11 ran into him on the property.

12 I can't remember whether he called me to tell me
13 that. I knew Joe well. He may have very well have
14 called me and told me what he had done. I can't
15 remember.

16 Q. And when you are talking about Joe do you mean
17 Helen Lee's late husband.

18 A. Yes.

19 Q. Do you recall when he died?

20 A. I couldn't tell you the year, no.

21 Q. But you knew him well?

22 A. I knew him pretty well. I had helped him with
23 several things and we were very cordial. He was cordial
24 to me and I was certainly cordial to him.

25 Q. What type of fence was constructed on the

1 property?

2 A. My recollection is it was just sort of a wire
3 fence.

4 Q. A wire fence?

5 A. With steel metal fence posts. I can't be sure
6 know.

7 Q. Would that get in the way of your equipment?

8 A. Get in the way of it? I am sorry, I don't
9 understand the question.

10 Q. Would a fence impede your ability to bring that
11 equipment hundreds of times across the Lee's property?

12 A. If there wasn't a gate in it, yes.

13 Q. But there was a gate?

14 A. Yes.

15 Q. What type of gate?

16 A. Just a farm gate.

17 Q. Describe it for me?

18 A. I don't remember the color, but just a farm gate.

19 Q. Was it lockable?

20 A. I don't think he had a lock on it, I don't
21 believe.

22 Q. Did it have a latch?

23 A. I don't remember.

24 Q. You don't remember. Did you ever have to open
25 that gate to get your forestry equipment through?

1 A. Every single time a truck went in and out that
2 truck driver got out and opened that gate and shut it
3 behind him when there were cows in there which I think
4 was most of the time.

5 Q. Well, your testimony today was in '92 Joe Lee
6 asked you to redirect your access; is that correct?

7 A. That's correct.

8 Q. You testified that they put up a fence in '92,
9 right?

10 A. Some time prior to that. Between the previous
11 time that I had reason to be in there and going back for
12 this clear cut harvest, at some point during that period
13 of time a fence had been built.

14 Q. Well, you haven't harvested since '92, have you?

15 A. No.

16 Q. Well, if the fence was put there in or around '92,
17 why would you go through the fence if you had this other
18 access.

19 A. Maybe the fence had been built in 90. I don't
20 know what year the fence was built, but when we went
21 there to harvest in '92 the fence was there.

22 Q. Well, you were present during the harvesting,
23 right?

24 A. We made pretty daily inspections.

25 Q. So, you recall the fence being there the last

1 time you harvested?

2 A. There was a fence and gate that we were opening
3 and closing when we came back and forth from the job.

4 Q. At that time Joe had already asked you to go a
5 different direction; is that right?

6 A. To go that way.

7 Q. Yeah, why would you take your equipment through
8 the gate?

9 A. Why would we?

10 Q. Yeah, why if he asked you not to and put up the
11 gate?

12 A. No, he asked us to go through the gate.

13 Q. Well, you testified that he asked you to go this
14 other direction?

15 A. That is the other direction.

16 Q. Is that where he put his fence?

17 A. No, there would be a fence connected to the gate
18 on both sides of the gate.

19 Q. Do you recall any live stock being inside that
20 fence?

21 A. I really can't remember, but I seem to remember
22 my recollection is that the logging crew needed to open
23 and close the gate. The trucks as they came and went.
24 It was a big enough pasture I really don't remember and
25 I wasn't paying attention to cows. I don't remember

1 seeing cows.

2 Q. But if it is the case that somebody has to go
3 through a fence with a gate that has live stock if that
4 is the case somebody would have to close the gate each
5 time they go through it, right?

6 A. That's correct.

7 Q. So the live stock don't get out?

8 A. Right.

9 Q. How many conversations have you had with Joe Lee?

10 A. In my life time?

11 Q. Yes.

12 A. Dozens.

13 Q. When did you met him?

14 A. Some time by the mid eighties.

15 Q. So you were already doing forestry tree work for
16 the plaintiff's; is that right?

17 A. I think so.

18 Q. Started that in 1983 you met Joe Lee in the mid
19 eighties.

20 A. Through that meeting and some conversations
21 coming out of that meeting I started doing work forestry
22 work for Joe.

23 Q. I believe it was your testimony earlier there was
24 no other access for logging to the plaintiff's property;
25 is that correct?

1 A. None that I ever been aware of, no. Not in the
2 last thirty years and there was no evidence to me from
3 walking the perimeter of this property that there had
4 been. There was no evidence of any other access point.

5 Q. Well, it would only make sense if there is no
6 other access that you would in seeing this other plat
7 asked the owners could we come across the property, do
8 you agree?

9 A. It is not uncommon and I deal with these kinds of
10 properties all the time. Sometimes that is just the way
11 the properties have always been accessed. So I can't
12 remember whether I was told taken there, or described in
13 a letter or a phone call how to get to the property, but
14 I was told how to get there.

15 Q. Who told you how?

16 A. I don't remember whether it was one of the
17 original owners, Mr. Reid or Mr. Lawrence or someone
18 that I was initially in communication with about this
19 management of this property.

20 Q. How do you think they got permission to go across
21 the Lee's property if nobody asked him?

22 A. I think it had been understood for decades. As
23 far as I know I have been involved for three decades and
24 it had never been an issue until recently.

25 Q. I want to talk about this forty year crop that

1 you described. What is the starting process? What
2 starts the forty years?

3 A. I guess when you plant a new tree.

4 Q. You come back in 16 years to do a thinning; is
5 that right?

6 A. Uh-huh.

7 Q. So you started work for the plaintiff's in 1983;
8 is that right?

9 A. That's correct.

10 Q. There was already timber there so you cut it down
11 in '83 or around that time; is that correct?

12 A. Well, I said I thinned timber off of their
13 property in the mid '80's. We did not clear cut this
14 property.

15 Like I said it is around age forty trees are
16 mature. They pretty much grown as much as they are
17 going too and generally they are harvested. And then
18 you got site preparation, a reforestation process that
19 goes on for a few months and then you plant trees and it
20 is about a 16-year wait before you do your first
21 thinning.

22 Q. You may have told the Court this already, but
23 when did you first -- what year did you first plant
24 trees at the Henry place?

25 A. I believe 1994.

1 Q. Is when you first planted trees there; is that
2 correct?

3 A. That I first planted trees on the Henry place
4 1994.

5 Q. So the next thinning according to your testimony
6 would be 16 years from there, that would put us at 2010?

7 A. That is correct.

8 Q. That would be the next thinning and then your
9 testimony was every six to eight years, you do what?

10 A. After that your thinning again.

11 Q. Every six to eight years. So from 2010 which
12 would be the 16 year mark, another six to eight years
13 would be -- we haven't got there yet, have we?

14 A. No. We have been trying to access what has
15 needed to be thinned for several years now and haven't
16 been able to do it.

17 Q. Did you come across the property in 2010 to do
18 any thinning because I believe your testimony was --
19 tell me if I am wrong -- your testimony was the last
20 forestry work you did was in 1992?

21 A. And I stand by that. We have been trying to get
22 back in since 2010 and Mrs. Lee has objected.

23 Q. Trying to get in. Who objected?

24 A. Mrs. Lee.

25 Q. Miss Lee. You mean Helen Lee seated at the table

1 there?

2 A. Yes.

3 Q. She objected?

4 A. Yes.

5 Q. So you asked her to come across the property,
6 right?

7 A. I called her. I always notify somebody when I am
8 going across somebody's property. Just -- just -- I am
9 going to call someone if it is going to be near there
10 house and she is going to hear equipment.

11 For a number of years during my involvement with
12 this property nobody lived in the house. I think from
13 the very beginning Helen's mother-in-law or Joe's mom
14 lived in the house and after she passed away there was a
15 number of years I think nobody lived in the house and
16 then I really don't know the year that Mr. And Mrs. Lee
17 moved to the house on this property.

18 Q. Well, lets talk about 2010. When Miss Lee
19 objected what did she say?

20 A. She just said she didn't think she wanted us
21 going across -- the Reids going across her property any
22 more. Something to that effect. I don't remember her
23 exact words.

24 Q. Did she threaten to bring any lawsuit or
25 anything?

1 A. No.

2 Q. She just said I don't want you to coming across
3 the property?

4 A. She just said something to that effect.

5 Q. Have you contacted Miss Lee since 2010?

6 A. I called after she said that. I called Will Reid
7 and I just told him the basis of that conversation. I
8 told him what Mrs. Lee had said and I think -- I seem to
9 remember maybe six months or a year later I called Miss
10 Lee back one or time. I actually had a forester that
11 works with me go up there and walk the track and showed
12 it to perceptive buyer and if I remember right he
13 actually ran into Mrs. Lee. They had a conversation. I
14 think she re-emphasized her point. And at that point I
15 just had to pass that information along to the Reids and
16 let them -- make them aware of her resistance and really
17 it was at that point they began to decide how to
18 proceed.

19 Q. So, is your testimony that the only way you ever
20 accessed the Henry property is across the Lee property?

21 A. That is correct.

22 Q. In one of two ways, right?

23 A. That is correct.

24 Q. Are you familiar with the logging road? Have you
25 been here today during other testimony?

1 A. I have.

2 Q. Have you heard testimony about a logging road
3 that appears on this map?

4 A. I have.

5 Q. Are you familiar with what has been described as
6 the shooting lanes that is on the plaintiff's property?

7 A. I am.

8 Q. Have you been back there?

9 A. I have.

10 Q. What is this on the map?

11 A. That is the access road to I believe the old
12 Champion track.

13 Q. What does that mean?

14 A. Champion International Timber Company.

15 Q. Well, who owns this property, do you know?

16 A. I have no idea who owns this part of it.

17 (Indicating). I know that is was a Champion
18 International Paper and now I think Plum Creek.

19 Q. Have you ever been on that road?

20 A. No.

21 Q. Never?

22 A. No, never been on that road.

23 Q. Are you --

24 A. I take that back. I have actually been on that
25 the road near the Reid track line because I walked up

1 there that one time and I was curious if there had ever
2 had been access there and I walked up and I think Will
3 Reid reference to a gully there. For some reason I know
4 it has never come into the Reid track and I think there
5 is a land feature there that prevents that from
6 happening.

7 Q. What land feature?

8 A. A very deep gully.

9 MR. HOPE: The Court's indulgence Your
10 Honor.

11 No further questions Your Honor.

12 MR. JAMES: Nothing from me, Your Honor.

13 THE COURT: It looks like it is a good time
14 to take a lunch break. You may step down.

15 We will be recess this case until 2:30 and
16 the reason is I have got another hearing at 2:00.
17 I am not sure how long that hearing is going to
18 last. There are no witnesses in that case. It
19 is a motion to reconsider by the attorney
20 general on matter.

21 All right. We will be in recess until 2:30.

22 (Court stands in recess.)

23 THE COURT: Plaintiff ready to call your
24 next witness.

25 MR. JAMES: Your Honor, we rest our case.

1 MR. HOPE: May it please the Court. Your
2 Honor at this time I would like to move for a
3 verdict in our favor on the grounds that the
4 plaintiffs have failed to meet the elements for a
5 prescriptive easement. The elements for a
6 prescriptive easement are three.

7 First, the continued and uninterrupted use
8 for a full period of 20 years. Second element,
9 is proof of the identity of the thing enjoyed.
10 And third, is that the use was adverse or under a
11 claim of right.

12 Beginning with the first element the
13 continued and uninterrupted use for a full period
14 of 20 years, on the issue of continual use, the
15 plaintiff is relying on Jones v. Daley, 363 S.C.
16 310 and in the Daley case the facts are
17 distinguishable from this one, but in the Daley
18 case you had neighbors nearby property they
19 had for many years. I believe the testimony in
20 that case was for 35 years or as long as the
21 witnesses could remember this particular path had
22 been used and the case goes into the history
23 of who owned the property, the dominant estate --
24 I am sorry -- or the servient estate and in the
25 Daley case there was a description of the

1 property at one time as having been shoveled,
2 plowed, cleared and leveled for access, for
3 neighbors access, and in that case the dispute
4 arose when the owner of the servient estate
5 closed off this path that had been used for as
6 long as the witnesses could remember and had
7 another road through the servient estate. This
8 path that was being used had been widened into a
9 road, a full width road, I believe it was
10 described as in the Jones's case. Well the
11 plaintiff in that case was alleging that she
12 had been using that existing property for the
13 period of 20 years of continual use. Well, she
14 wasn't a resident of South Carolina. And what
15 the Court said in that case -- and it is still
16 good law -- is that it doesn't have to be daily
17 use. It doesn't have to be weekly or even
18 monthly use. The language of that case is the
19 use must be only of reasonable frequency as
20 determined from the nature and the needs of the
21 complainant and it doesn't require every day use
22 or weekly or monthly use.

23 The plaintiffs in this case would have you
24 believe that case said that out of state owner
25 can return every few years and that's okay. That

1 that amounts to continual use. There is nothing
2 in that case that suggests the plaintiff, Miss
3 Jones, returned after several years or that any
4 period beyond weeks or months is okay.

5 Testimony in this case from Miss Medlin is
6 that she went to the property through the Lee's
7 property only eight times in her life as a young
8 child in the eighties and nineties. There was
9 testimony about 1959, 1966, and 1981. Eight
10 times in her life over that period, that many
11 years apart. Fifty-nine through sixty-six.
12 Sixty-six to eighty-one and then again in the
13 nineties. That is not days, weeks or months.
14 That is many years and there is nothing in the
15 Jones' case that would suggest that can amount to
16 a continual use.

17 Mr. Reid testified that he had been to the
18 property four times. Only four times since 2001
19 and that he doesn't remember before that any
20 particular times which he used the property.
21 Four times since 2001. Four times in the period
22 of ten years is not going to amount to a
23 continual use.

24 Mr. Patrick testified that he began working
25 for the plaintiffs in 1983. And he testified

1 about the forty-year crop and what that means.
2 First, there was some removal of timber and then
3 he comes back in '92 he testified, '92 to do more
4 work and again in '94. He has not been back
5 since. There was only testimony about three
6 incidents where he -- three years where he needed
7 access to the property. It is just too far out.
8 It is not weeks, months, or even year to year to
9 year. It is many years and it just doesn't
10 amount to a continual use.

11 In the first element the plaintiff is also
12 required to prove this continued use was
13 uninterrupted. In *Kelley v. Snyder*, which is
14 369 S.C. 564, in *Kelly v Snyder* the Court said
15 that the servient owner may interrupt the
16 prescriptive period by engaging in overt acts
17 such as erecting physical barriers, which
18 cause a discontinuance of the dominant
19 landowner's use of the land, no matter how
20 brief.

21 The Court also said that verbal threats,
22 they use the language threats, but I don't think
23 that it means a physical threat. It says verbal
24 threats which convey to the dominant landowner
25 that the servient landowner does not accept use

1 of land is sufficient to interrupt the continual
2 period of 20 years.

3 We heard testimony today of a fence that was
4 erected some time around '92. Mr. Patrick
5 testified that in '92 Mr. Lee, who was the
6 defendant's husband and a property owner at that
7 time, he is now deceased, that Mr. Lee either
8 erected the fence or moved the fence to block
9 off. It was completely perpendicular as
10 presented in Court today to the path that was
11 alleged across the Lee's property. And in '92
12 according to Tom Patrick's testimony, Mr. Lee
13 said you got to go in this other direct. That he
14 asked that the path that they had been using be
15 discontinued and a new direction be used. And
16 there is evidence today from Tom Patrick in one
17 of the exhibits of that second path. That is
18 drawn and marked.

19 So we have a physical act, erecting a
20 physical barrier which blocks off the path and
21 then we also have a verbal act from Joe Lee. But
22 there is also testimony from Miss Medlin and I
23 believe from Mr. Patrick that access was objected
24 to by Miss Lee about three years ago. That they
25 went to Miss Lee for access to the property for

1 forestry reasons around 2010 and that Miss Lee
2 objected. Well that, we would submit is
3 sufficient verbally to convey to the dominant
4 landowner that the servient landowner does not
5 accept use of the land and that is sufficient to
6 interrupt any alleged continual period of use.

7 The next element, is a peculiar one. The
8 proof of the identity of the thing enjoyed. In
9 my research I have not found a single case where
10 this has been an element that is at issue and it
11 is because in every single case there is a
12 gravel driveway, a paved driveway, or an
13 established path that is alleged to have been
14 used for a period. The identity of the thing
15 enjoyed in this case is not merely access to the
16 plaintiff's property. It is not forestry. It is
17 not the money they could get for forestry. The
18 identity of the thing enjoyed has to be alleged
19 to have been particular path. So if this is a
20 case where it was paved road splitting the Lee's
21 property the identity of the thing enjoyed would
22 be the existence of the paved roadway.

23 We would submit that there is not a path.
24 There is evidence about every number of years a
25 vehicle traveling down a particular line on the

1 property or in a particular direction. There is
2 no evidence it was the same path. This could
3 have been a situation where grass grew up
4 between the many years that access was used and
5 a different path was cut every time. There is no
6 evidence in this case that the Lee's or any
7 previous owners established a gravel driveway
8 that would continue and allow access for the
9 plaintiffs. No one created a roadway or a path.
10 It is just as testimony is here today, a place
11 where you can see where pick-up trucks had been,
12 or perhaps when this heavy equipment that we
13 heard testimony about comes in hundreds of times.
14 Ingress and egress, hundreds of times. It makes
15 a dirt path tearing up the grass. There is not a
16 path that is existing on Miss Lee's property.

17 We would like to contrast from the Jones
18 case wherein in Jones v Daley there was clear
19 evidence of plowing and shoveling and levelling
20 by the servient landholder. There was a purpose
21 for making a path. Miss Lee has done nothing
22 such like that and there is no evidence today
23 submitted by the plaintiffs that there was
24 established path. It is just we went this way
25 across the property.

1 Also, from Mr. Patrick, Mr. Patrick
2 testified that there was a second direction that
3 he went in '92. That he seized access through
4 the gate because the fence that was erected '92
5 or around '92 blocked that access. That he went
6 in a different direction and he has drawn that on
7 the map.

8 Well, if the plaintiffs are required to
9 prove the identity of the thing enjoyed, but they
10 are showing, well, we use to go this way, then we
11 went this way and now we haven't done it since
12 1992. They haven't proven the identity of the
13 thing enjoyed. The identity is not Miss Lee's
14 property. They haven't established a particular
15 roadway.

16 Next, in the third element of the
17 prescriptive easement is that the use was adverse
18 or under claim of right. The Jones' case
19 established that the plaintiff doesn't have to
20 prove both; that it was both adverse and
21 under claimant's right. Just that they had to
22 prove one or the other. And adverse means
23 that -- well, when it appears that the claimant
24 has enjoyed an easement openly, notoriously,
25 continuously, uninterruptedly in arrogation

1 of another's rights for the full period of
2 20 years there is a presumption it is adverse.
3 Our position would be that there is no evidence
4 today of intent to adversely possess access to
5 the Lee's property.

6 There was testimony from three witnesses
7 today that all say well, we don't know how we got
8 it from, but, you know, we just used it. We just
9 assumed that we could.

10 That is not evidence of intent to use it
11 adversely. There was testimony today that they
12 thought they had a right to use it. Which is not
13 adverse possession. That is not consistent with
14 adverse use.

15 With the under claim of right portion of
16 that element. In Kelly v. Snyder which I
17 mentioned earlier, the Court said a party
18 claiming a prescriptive easement under a claim
19 of right must demonstrate a substantial belief
20 that he had the right to use the parcel or road
21 based on the totality of the circumstances.
22 Nobody in this case knows how they got access.
23 Who gave them access. They just, well, somebody
24 else used it so we must be able to.

25 Under the totality of the circumstances that

1 nature and needs of the claimant. The exercise
2 or the right more or less frequently according to
3 the nature of the use and the needs of claimant.

4 In this case the nature of the use is to get
5 to timber track. The needs of claimant are not
6 constant and consistent needs because of there
7 many years, as has been testified, where there is
8 no need to get back to the track. So, the
9 continual use has been not only testified to by
10 all three witnesses but also all recollect
11 that their predecessors were entitled to use this
12 property -- use this easement to get that track
13 also. So the continual use requirement has been
14 met.

15 The uninterrupted portion of this, for the
16 use of the enjoyment for a full period of 20
17 years we would submit a this was never
18 interrupted at all until recently when they
19 attempted to come across the property in 2010.
20 It has been established that the plaintiffs as
21 well as their predecessors entitled use of this
22 easement to get to the property in uninterrupted
23 way with no overt act to stop them from using
24 this easement until 2010.

25 Now Miss Lee earlier had asked for them to

1 move the right-of-way for the last timber, the
2 last timber harvesting, but we submit even before
3 that the easement had already been established
4 based on 20 years of continuous use.

5 Your Honor, as far as the identity of the
6 thing enjoyed, I will agree with Mr. Hope that it
7 is rare that you see this discussed in case law,
8 but we have established, we drawn out using
9 arrows and using direct signals where this
10 easement is. It passes by the house. It goes
11 down and cuts from the south over to the east
12 where it connects up with the Reid property. We
13 don't claim that it was under adverse possession.
14 We claim it under a claim of right. As he
15 mentioned, you must demonstrate a substantial
16 belief that the claimant had the right to use the
17 parcel or road based on the totality of
18 circumstances surrounding his use and we would
19 submit that this is just like the Jones case in
20 that the plaintiff in that case stated that she
21 and her family had used the property, used that
22 easement as long as she can remember and it
23 doesn't matter whether it is paved or gravel or
24 what. It is an access way to get to the
25 property. It doesn't matter if it has been

1 is all they have. And they got contrasting that
2 they got Miss Lee telling them I don't want you
3 coming across the property. Under the totality
4 of the circumstances they can't think that they
5 have a substantial belief that they have got a
6 right to use the property.

7 There is also a case that I want to draw the
8 Court's attention to called Paine Gayle
9 Properties, LLC versus CSX Transportation
10 Incorporated and that is 400 S.C. 568 and that is
11 a Court of Appeals case. In that case the Court
12 said, a claim of right is without recognition of
13 the rights of the owner of the servient estate.
14 So by recognizing the rights of the servient
15 estate, in this case it would be Miss Lee, they
16 can't establish that the use was under claim of
17 right and the Court goes on to say in that case
18 that use of the land by expressed or implied
19 permission or license can not ripen into an
20 easement by prescription.

21 I want to come back to that in just a
22 moment. The most important thing to take in that
23 case is language that the Court I believe even
24 put in bold. It says the asking and obtaining
25 of permission whether from the tenant or owner of

1 the servient estate stamps the character of the
2 use as not having been adverse or under claim of
3 right. What that means is if a dominant estate
4 owner asks permission and even gets permission
5 they can never establish adverse use or use
6 under claim of right. And there is testimony
7 from two of the three witnesses today that
8 permission was asked either from Joe Lee, the now
9 deceased Joe Lee, and from Miss Lee who is
10 present today. So there is testimony today that
11 they asked permission and then been denied that.

12 So our position would be relying on this
13 2012 case that I just mentioned, Paine Gayle
14 Properties, that by asking and obtaining
15 permission they can not prove adverse use or use
16 under claim of right.

17 THE COURT: All right.

18 MR. HOPE: That is all, thank you.

19 THE COURT: Thank you.

20 MR. JAMES: Thank you, Your Honor.

21 Your Honor, responding to Mr. Hope's
22 argument. First of all continual use, I
23 think we established that very well. As Your
24 Honor well knows continuing use must only be of a
25 reasonable frequently as determined from the

1 shoveled or plowed over or anything along those
2 lines. The actual easement was there regardless
3 of what you do to the property.

4 As far as permissive use, there has no
5 testimony that anybody asked permission. There
6 was testimony that people agreed not to use the
7 easement when it came time for the last timber
8 harvest back in the '90's. But that was just a
9 neighborly thing to do. An agreement. Even so,
10 the easement was already established by that time
11 as has been testified to. The easement had been
12 used at least since the 50's and also before that
13 based on the earlier members of the family who
14 owed the property since 1912.

15 Testimony has shown that this easement has
16 been used for as long as any of the plaintiffs
17 who are here today can remember. And they used
18 it when they were children with their parents and
19 continued to use it. It doesn't matter how many
20 times. And based on the nature -- getting back
21 to the first element -- based on the nature of
22 the use and the needs of the claimant it is not
23 necessary to get back to the timber track for
24 long periods of time during the time the crop is
25 growing and before it needs to be harvested. So

1 Your Honor, I would submit to the Court a
2 directed verdict motion or involuntarily nonsuit
3 motion must be denied.

4 THE COURT: Let me ask you a question about
5 something I am not sure of.

6 The last time the timber was hauled out, as
7 I understand it, was '92 or '93, or something
8 like that.

9 MR. JAMES: Yes, sir.

10 THE COURT: And that was under I will call
11 route B, not the one that the family drove down.
12 Where is the easement that the plaintiff's seeks
13 today?

14 MR. JAMES: The plaintiff seeks the original
15 easement, route A, because that is the one that
16 has been used for one hundred years.

17 THE COURT: Let me ask you another question.
18 How wide is that easement?

19 MR. JAMES: The easement would be wide
20 enough for vehicles to traverse with the
21 equipment. I don't know have the specific
22 measurement as to how wide it is, but it has
23 been used for not only for pick-up trucks and
24 other vehicles, but logging equipment also.

25 THE COURT: Refresh my memory about

1 something.

2 There was some testimony about the access
3 going through the driveway. The original one
4 that we were talking about that indicated it is
5 now through a farm gate or barbwire gate or
6 something like that; is that right?

7 MR. JAMES: If I remember correctly, there
8 was a little bit of confusion about that. I know
9 that when the logging took place in the '90's
10 there was a gate.

11 THE COURT: Right. There was a separate
12 gate.

13 MR. JAMES: Right.

14 THE COURT: But wasn't there testimony
15 recently there was a gate you had to go through.

16 MR. JAMES: There was a gate at the point
17 where the Lee property turns into the Reid
18 property. From the residence into the pasture.

19 THE COURT: Isn't that what Mr. Reid was
20 talking about when he testified, that he went by
21 the house.

22 MR. JAMES: Went by the house. He went down
23 south.

24 THE COURT: Right.

25 MR. JAMES: And then turned to the east

1 where it followed the trail into their property
 2 and the gate he is saying is located where the
 3 turn is.

4 MR. REID: Yes, there is a gate between the
 5 driveway and the pasture and one from the pasture
 6 and our property.

7 THE COURT: From the pasture meaning you
 8 have to open a gate to go through it. Is the
 9 point I was trying to make.

10 MR. JAMES: Yes, sir.

11 THE COURT: Is that right?

12 MR. REID: Yes, sir.

13 THE COURT: Is that the gate that the
 14 plaintiff seeks access through to move their
 15 timber out of?

16 MR. JAMES: Yes, sir. We feel like we have
 17 the prescriptive easement.

18 THE COURT: Coming through those gates is
 19 what I am trying to figure out.

20 MR. JAMES: Yes, sir.

21 THE COURT: All right, Mr. Hope, briefly.

22 MR. HOPE: Just two things, Your Honor, very
 23 briefly.

24 I mentioned earlier that the Paine Gayle
 25 case language includes that use by expressed or

1 implied permission or license no matter how long
2 continued can not ripen into a easement property
3 by prescription.

4 What I think we may have here by use
5 according to the forty-year crop, is we use it on
6 day one. We need access on day one. Then we
7 come back 16 years from now and then another six
8 to eight years from there. I don't know that we
9 have continued use. I think what we got is
10 if there is any permission is a license, which
11 is exactly what Mr. Joe Lee gave to Tom Patrick
12 when he said you need to go that way. Not
13 through the fence. Here is a license to go
14 through my property that way. And this case
15 says use by expressed or implied permission or
16 license, no matter how long continued can not
17 ripen into an easement by prescription. And just
18 the second thing, very briefly.

19 THE COURT: All right.

20 MR. HOPE: Something that opposing counsel
21 said about going back to 1912 and the previous
22 users. There is no testimony today about tacking
23 or a continuous use from previous owners. In
24 order to tack on their use they have to meet all
25 the elements for prescription easement as well,

1 and they certainly haven't done that. There is
2 no evidence to that today. There is some
3 testimony, well, as long as I can remember.
4 Well, you only been alive for so long and you
5 were using it when were you seven years old.
6 There is no evidence. There is no deed. Nothing
7 here today. He is talking about all these people
8 that used it going back to 1912.

9 THE COURT: I will take your motion
10 under advisement.

11 Call your witness.

12 MR. HOPE: Thank you, Your Honor. I would
13 like to have these marked.

14 (Defendant's Exhibit 1 and 2, Photo and
15 invoice, marked for identification as of this
16 date.)

17 MR. HOPE: Defense calls Miss Helen Lee.

18 HELEN Lee, called as a witness, having been
19 duly sworn by the clerk, was examined and
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. HOPE:

23 Q. Tell the Court your name. Give us your full
24 name.

25 A. I can't hear you.

1 Q. Give us your full name?

2 A. My full name is Mary Helen Moore Lee.

3 Q. Okay. What is your address?

4 A. 3095 Ashford Road, Blackstock, South Carolina,
5 29014.

6 Q. How long have you lived there?

7 A. I lived there since ninety.

8 Q. Since 1990?

9 A. We started there and we sold the property in '89
10 and then my husband and I started buying the different
11 pieces of property from the nine brothers and sisters.

12 Q. Okay. We will get to that in just a moment.
13 Have you been present for today's testimony?

14 A. Yes, I have.

15 Q. Can you see your residence on this map?

16 A. Right here. (Indicating)

17 Q. Your house is there where you are pointing?

18 A. This is my house.

19 Q. Does anyone live with you?

20 A. No, I live alone unless my son comes and spend
21 the night with me.

22 Q. Okay. Have you ever been married?

23 A. Have I been what?

24 Q. Married.

25 A. Married, yes, sir. To Joseph Harvey Lee Sr.

1 Q. Has he since passed away?

2 A. He passed away January the 14th, 1999.

3 Q. And were you married up until the time that he
4 passed away?

5 A. We were married for forty-five years. Right at
6 forty-five years. We got married on April 3rd and he
7 died in January.

8 Q. Did you and Mr. Lee live in the residence that
9 you just indicated on the map?

10 A. Yes, we did. We also started out living together
11 when we first got married in '54?

12 Q. When did you start living in the residence that
13 you indicated?

14 A. In the residence there we started in '89 because
15 we called that home away from home because the actual
16 home place and two acres was left to a sister and my
17 husband bought that from his sister.

18 Q. Where did you live before that?

19 A. I lived at 1101 West End Road. At one time it
20 was called Route 2, Box 355, Chester.

21 Q. Okay. Now, you heard some testimony today about
22 people coming across your property. Have you given
23 permission for anybody to come across your property?

24 A. I had hunters to hunt on my place but not for
25 people to do anything other than to hunt.

1 Q. Do you know if your husband had given permission
2 to anyone while he was alive?

3 A. The only person that I know that he gave
4 permission to was Tom Patrick.

5 Q. Okay. How long have you known Tom Patrick?

6 A. I have known Tom Patrick for many years because
7 he did quite a lot of work. I lived up on West End Road
8 and my father acquired a lot of land. He did a lot of
9 work for all my brothers and sisters and sat out pine
10 trees and he was a friend of ours. He would come to see
11 Joe. He would come to the house in the country.

12 Q. All right. When was the last time that you talk
13 to Tom Patrick?

14 A. The last time I talk today Tom Patrick was last
15 year. I am saying April because I got a letter from
16 James, Johnny James the third in May, so I am saying
17 April of last year he called me.

18 Q. Okay. What was the nature of that conversation?

19 A. Well, he called me and he asked me -- he told me
20 that he wanted to come through the property, my
21 property, and I said Tom you can't come through my
22 property. I said my brother-in-law and sister-in-law
23 that bought the rest of the land that we did not by from
24 the family. I said I wouldn't let him come through and
25 I am certainly not going to let you come through.

1 Q. Do you have knowledge about any forestry, any
2 forest equipment coming through your property?

3 A. None whatsoever.

4 Q. In your memory going back as long as you have
5 been at that house have you ever had forest equipment
6 come across your property?

7 A. No.

8 Q. No. Can you tell us about the driveway that
9 leads to your house. Where is the driveway that leads
10 to your house?

11 A. The driveway it starts right up here. It is a
12 little open field. That is the only open spot I have on
13 my property here. Up here. And on the other side of
14 that is a driveway down to hear and that's a one acre
15 plot where Red Willie, (phonetics) he was hunter that
16 bought that. He is now deceased.

17 Then you come -- he only had that one acre. And
18 the rest of this right here is a fence and my driveway
19 coming down to hear and then from here to there is a
20 fence.

21 (Witness indicating)

22 Q. Okay. But does the driveway that you describe
23 end at any point on this map?

24 A. Can I show you the driveway?

25 Q. You can.

1 A. The driveway comes right down where you see these
2 trees, the pine trees right here and when it gets to
3 here it opens out and comes around and circle around my
4 house.

5 Q. Is this half circle that we see is that your
6 driveway?

7 A. That is my driveway.

8 Q. Okay. Is it paved?

9 A. No, it is not paved.

10 Q. It is gravel?

11 A. It has got gravel.

12 Q. Has it always been like that?

13 A. Not always.

14 Q. Not always. How long has there been gravel down?

15 A. Well, I think we started putting the gravel on it
16 to make it look a little better.

17 Q. Now, do you have any live stock on your property?

18 A. Yes. I got live stock on my property. But as
19 soon as we bought the property we had cows up on West
20 End as soon as we started buying the property from the
21 family members, Joe got Jimmy Dove to come down and put
22 a wire fence around the property.

23 Q. Do you have live stock now?

24 A. I do have live stock there now, yes.

25 Q. How are they maintained on your property?

1 A. They are running right now, I sort of have like
2 five different pastures. They are more or less running
3 on the whole pasture except the field right beside the
4 house which I am saving for hay which has been terraced.
5 That is what was so messed up before when the pulp wood
6 came through there. It took years to get that
7 straightened out.

8 Q. Okay. I will talk about that in a minute.

9 Can you tell me about the location of the fence on
10 your property? Can you indicate on the map where the
11 fence is?

12 A. Where the fence is at my house?

13 Q. Yes, and will I hold this up for you.

14 A. The fence -- well actually it is iron fence. It
15 is a graveyard fence that comes right around even the
16 circle right here. But it is also a fence from there
17 straight down to the house.

18 All of this is got a fence around it.

19 (Indicating.)

20 Q. Okay.

21 A. All of this.

22 Q. Can you show me where the cattle would be?

23 A. Well, most of the cattle would be in the back
24 area. The back areas here. This big open around the
25 house is more or less the hayfield.

1 Q. Have you ever had the cattle south of your house
2 where I am indicating on the map?

3 A. Oh yes, we had cattle up there.

4 Q. Did you have cattle there in 1992?

5 A. In '92?

6 Q. Right.

7 A. Yes, I did.

8 Q. Now, you mentioned a moment ago about pulp wood
9 coming through. Can you tell me more about that?

10 A. Pulp wood -- the only time I know pulp wood of
11 coming through there was in '89 and we were there off an
12 on when the wood was being cut while we were trying to
13 get all this settled up; buying the house and buying the
14 different tracks from the different brothers and sister.

15 Q. Who had pulp wood coming through your property?

16 A. Who did I have? Frank Wilkes brought pulp wood
17 for Tom Patrick.

18 Q. Which of the nearby landowners was having wood
19 taken off of their property?

20 A. We were having all of the brothers and sisters
21 wanting all the timbers cut before they sold their land.

22 Q. Can you show me on the map where the pulp wood
23 was coming from?

24 A. You see there is no trees there, so it couldn't
25 have been pulp wood. It was a lot of pulp wood. It was

1 pulp wood a good bit in different areas.

2 Mr. Lee use to like leave trees up for his cows.
3 He didn't do anything but farm corn and cotton and he
4 like some resting area so he left some trees up, but
5 mostly was just a corn and cotton farmer.

6 Q. When the pulp wood vehicles would come in and out
7 can you show me how they get in and out?

8 I am going to hold it up so everyone can see.

9 A. Let me look at the location and then I will hold
10 it up. This is my house. The pulp wood that when Mr.
11 Patrick brought it out came from here. (Indicating.) It
12 went through this field. It came out here. Came
13 through this field through this back field and then came
14 across right here which is where I mostly have my hay
15 field now.

16 Can you show them that.

17 Q. Well, what effect, if any, did the pulp wood
18 trucks have on your property?

19 A. Well, it took many, many years to be able to get
20 where pulp wood trucks have gone across the pasture land
21 or farming land or anything. It is so impacted that it
22 takes a lot of time to build that back up.

23 Q. Now you mentioned Tom Patrick doing some work for
24 you. What kind of work did he do for you?

25 A. Tom has always been a good forester. He liked

1 getting his ten percent but he didn't like to finish up
2 his jobs. He left the place a mess.

3 Q. Did he do work on your property?

4 A. Some work, but not all. No.

5 At that time when this was coming through this
6 was right after my mother-in-law she died in December
7 26, 1986 and then we started selling -- the children,
8 the brothers and sisters, started selling in '88 and '89.

9 Q. Who had your property before you had it?

10 A. My mother and father-in-law.

11 Q. Okay. Do you like to go out and walk on your
12 property?

13 A. I love -- we use to just get out and walk all
14 through the property.

15 Q. Do you still do that?

16 A. I do. It is very limited now since I had the
17 stroke. They just -- my children don't like me getting
18 out unless I got my cell phone, my dog and let somebody
19 know when I am leaving and when I am coming back.

20 Q. Who takes care of your cattle?

21 A. I have someone taking care of my cattle.

22 Q. Are you able to see the cattle pasture from your
23 residence?

24 A. Oh, yes, you can see it.

25 Q. Are you aware of who is on your property at all

1 times?

2 A. No one comes to my house after dark without them
3 letting me know and that is what a lot of times things
4 can really get me upset about if someone should come on
5 my property.

6 Q. Are there any paths or roads across your
7 property?

8 A. No, sir. There are no paths. Cow paths and you
9 might see where truck had been in to take hay to feed
10 the cows.

11 Q. Is there any type of road on your property other
12 than your driveway?

13 A. My driveway and the driveway down to my guardian.
14 And then to the pasture land is track. It would just go
15 straight on there. If you show me again I will show
16 where that would be. This is my house and I have a
17 garden back in here. I got a fence up and there is
18 garden back in here and then a fence up here and it goes
19 down there and one that comes this way. It is sort of
20 in five different areas.

21 Q. You heard testimony today about two paths across
22 of your property. I will show you a map that Mr. Tom
23 Patrick had drawn on. Where you see the drawing is
24 there a path across your property where that drawing
25 appears?

1 A. Absolutely not.

2 Q. Is there anything across your property other than
3 a pasture?

4 A. Pasture with the fence up with the cattle in
5 there.

6 Q. In those areas is the grass worn from repeated
7 use?

8 A. Where the cows are back there grazing, yes, but
9 not nothing around that.

10 Q. Not from a vehicle?

11 A. No. No vehicle. If there is a vehicle in there
12 I haven't seen it.

13 Q. You heard some testimony today that the Reid
14 property is landlocked. What can you tell me about any
15 other access to the Reid property?

16 A. You mean my neighbors or something like that.

17 Q. Sure.

18 A. Well, just right up the road you can see Mr.
19 Widner (phonetics) he lived here in this house. Across
20 the road is a trailer.

21 Q. Well, what I am asking, what I like to know is,
22 there any other way that you are familiar with that
23 somebody can get down here?

24 A. Oh, yes, been that way many a time.

25 Q. Can you show me where that access would be?

1 A. Yes, sir. It is right up here and it is on this
2 side of the road. It is man named Willie Copler. It
3 crosses a road which is Robbie Banks gave a 20-foot
4 easement and Liz Wages, both are deceased now, but it is
5 40-foot easement right in here between these two houses.
6 They go straight down here. This is a road that goes
7 all the way back here and all the way down here to the
8 bottom. And the whole road is still in good condition.
9 I went to the soil and water conservation and they said
10 right down here this road is thirty-seven and a half
11 feet from Mr. Reid's property.

12 Q. I want to ask you about the last time that you
13 talked to Tom Patrick. What was that conversation like?

14 A. Well, the first time he called and he said no.
15 Well, I said, Tom, if I can't let my brother-in-law come
16 through I am certainly not going to let you come through
17 and I didn't hear from him and then I got another phone
18 call. I mean I usually I write it on the calender. I
19 document so many things.

20 I got things back when Tom Patrick sold timber
21 down there. I can show him later. But anyway it wasn't
22 long. Tom Patrick called back the second time and he
23 said Helen this is Tom Patrick and Patrick he would
24 always ask about the family, but he said have you
25 considered any more about the Reids coming through

1 there. I said, Tom, you know the circumstances. Joe
2 gave you that. Joe said that you could come through and
3 that you would give him hunting privileges back there
4 which he did.

5 I have checks where Joe wrote a check for \$420
6 every year for hunting privileges back there on the Reid
7 property. And I said, Tom, you can't come through
8 there, and he says well, I have been in the forestry
9 business many years and he says I know all the different
10 rules and regulations that have taken place. I said
11 Tom, there is a right way and a wrong way. He says,
12 well, I will see you in Court. I said, well, you do
13 what you have to do and then I started getting letters
14 from Mr. Johnny James, III.

15 Q. Okay. I am going to hand you an item. Do you
16 recognize that?

17 A. Yes, I recognize that.

18 Q. What is that that I have handed you?

19 A. That is when this property was -- the timbers was
20 sold off of the property. This is one of the receipts.
21 You see the fee down here. Tom Patrick has always got
22 got it on there. He always says thanks. You see he has
23 got thanks Joe written on there.

24 Q. This it a receipt for work that Tom Patrick did
25 for you?

1 A. This was for all the Lee brothers and sisters
2 selling their timbers off the land before they sold the
3 land.

4 Q. Is there a date on that receipt?

5 A. It says 5-11-- or 16-89.

6 Q. 1989?

7 A. 1989.

8 Q. So if I understand correctly that is a receipt
9 from Tom Patrick?

10 A. Tom Patrick got his signature on there.

11 Q. From 1989?

12 A. Right. I got every ticket that came from Willa
13 Mett (phonetics). I saved ever bit of those in boxes
14 down at the house.

15 Q. Is this receipt in the same or substantially the
16 same condition as the last time you saw it?

17 A. That's a copy. I got the originals.

18 Q. Is this an identical copy?

19 A. We had to make so many copies of maps and things
20 I tell you.

21 Q. If you have the original I would like that
22 please.

23 (Document handed to counsel).

24 Q. Is this an identical copy?

25 A. Yes, it is.

1 MR. HOPE: Move to put it into evidence,
2 Your Honor.

3 THE COURT: Any objection.

4 MR. JAMES: Your Honor, I don't know about
5 the relevance of it, but I don't have any
6 objection.

7 THE COURT: All right.

8 MR. HOPE: Thank you, Your Honor.

9 (Defendant's Exhibit 2, Receipt, received
10 into evidence as of this date.)

11 Q. You heard some testimony today about the Henry
12 place. What can you tell me about the Henry place?

13 A. Well, it's all fascinated me, so I went to the
14 courthouse and I seen where that it was sold in 1912.
15 January 1912. I went up there and that's when Mr. Reid
16 and his wife, Jammie Reid, which my mother-in-law and
17 father-in-law knew them very well. They bought it from
18 a William Jones Henry and a Mary Jay Craig, and Lambert
19 S. Henry on January 1912. And I did a little more
20 research on that.

21 I just couldn't figure who those Henrys were and
22 I come to find out that was Frank Wilkes. Did you know
23 that was Frank Wilkes grandparents at the time.

24 Q. There is a photo in evidence marked as
25 Defendant's Exhibit A, I believe -- no, Defendants

1 Exhibit 1.

2 What is in that photo, can you tell me?

3 A. I know Tom Patrick seen this photo. This is a
4 photo. This Chimney always fascinated my husband. So
5 this is on that road that I showed you going through
6 that where it was about four or five houses that were
7 built there many years ago and it was the Hileys that
8 lived on that road and it was Russell. And this was
9 actually the Lee Robert's chimney and can you just
10 imagine a chimney without any cement. They just laid
11 that and it is still there.

12 All these houses were on the left and it is
13 almost -- it is to the right and up a little ways is
14 where you would find the Henry place if you want to find
15 it some day up there.

16 Q. Has anybody asked you to for permission to come
17 across your property?

18 A. Tom Patrick did about bringing some wood across
19 it and I said no.

20 Q. Is there anything else you like to tell the
21 Court?

22 A. This has been very stressful for me for a whole
23 year cause I have been just trying to get over a stroke
24 and I am just hoping the judge sees fit to do something.

25 MR. HOPE: No further questions, Your

1 Honor. Please answer any questions opposing
2 counsel has.

3 THE WITNESS: Yes, I will.

4 THE COURT: Cross examination.

5 MR. JAMES: Thank you.

6 CROSS EXAMINATION

7 BY MR. JAMES:

8 Q. Miss Lee, how are you doing today?

9 A. I am fine.

10 Q. Good. Good. Just a few questions so I can clear
11 up some things in my mind, if you don't mind.

12 A. Okay.

13 Q. You say that you and your husband moved to that
14 location in 1990; is that right?

15 A. '89 or '90. We started as soon as we started
16 selling the timber somebody had to be there.

17 Q. And if I understand right, this was your father-
18 in-laws?

19 A. My father-in-law died in '73 and she lived to
20 December the 26, 1987.

21 Q. Okay. Now, if I understand your testimony there
22 were several brothers and sisters that your husband
23 bought out; is that right?

24 A. There were nine children.

25 Q. And before they wanted to sell their share or

1 their interest in the property to your husband they
2 wanted to cut the timber?

3 A. That is correct.

4 Q. So the timber was cut on what is now your
5 property, 1989 or 1990; is that accurate?

6 A. No. It was cut in '89.

7 Q. And Frank Wilkes cut?

8 A. Frank Wilkes cut.

9 Q. He cut all that timber for you?

10 A. Yes, he did.

11 Q. Okay. And you mentioned that when he came
12 through and cut the timber he impacted the roads, or
13 tore up the roads is what you said?

14 A. Yes, sir.

15 Q. Now, when the fence was put up, when -- was that
16 when you all moved over there?

17 A. I say as soon as my husband found out that they
18 his brothers and sisters were getting Reid to sell he
19 fenced in the whole area.

20 Q. So it wasn't fenced before then, is that right?

21 A. It was not. My -- well, my father-in-law he was
22 only cotton and a corn farmer. He was just a very poor
23 farmer. But he was one of the best men on earth.

24 Q. How long did your in-laws live there, just out of
25 curiosity?

1 A. Oh, I can tell you exactly. When they moved out
2 in the late thirties they lived down there in the Reid
3 place. They lived there for years in the Reid place and
4 they moved to the local -- where actually where I am
5 staying now. They moved down Christmas Eve 1940.

6 Q. Okay, so they actually ---

7 A. They actually -- they wanted to buy the Reid
8 place and they -- they lived in the Reid place and the
9 acreage that was across which was either 60 or 75 acres
10 was nothing but corn and cotton.

11 Q. So they actually lived on the Reid place?

12 A. Mr. Reid was good friends of my mother-in-law.

13 Q. Now, when the timber was cut on the Reid place in
14 1992 or three or four?

15 A. No, that wasn't in 1990. It was cut at the same
16 time that the Lee timber came out.

17 Q. So you are saying Frank Wilkes cut it all at one
18 time?

19 A. Right. He cut that too.

20 Q. Okay. Now, how about -- let me ask you to get my
21 mind clear. Mr. Patrick said that your husband had
22 asked him to alter the route to go towards the top of
23 the land and if I can look at the -- if I could just
24 maybe I can show you better. Mr. Patrick said that your
25 husband asked him to come over here. (Indicating) Do you

1 recall that in the early nineties?

2 A. I don't know what my husband told you about where
3 to cut. That is not the way they came through.

4 Q. In the nineties which way did they come through?

5 A. Not ninety. They didn't come through ninety. It
6 was eighty-nine.

7 Q. When did they come through in eighty-nine?

8 A. Eighty-nine.

9 Q. Where did they come through?

10 A. They came from an area -- they came from the area
11 here. They came up here, cut across this field and cut
12 across this field. (Indicating)

13 Q. Okay. Now, you weren't living there until 1990
14 so you don't remember any other logging operations, do
15 you?

16 A. No. There was no more going on. You are talking
17 about the Lee place.

18 Q. Lee place or the Reid place because you weren't
19 living there at the time so I am just asking you.

20 A. Well, they were bringing all that at the same
21 time.

22 Q. Okay. How about earlier times?

23 A. Yes, I seen -- not at the Lee place no.

24 Q. Okay. Have you ever talked to Tom Patrick when
25 he came through to look at the Reid place in earlier

1 years?

2 A. Tom Patrick use to come when my husband was
3 living. I have not seen Tom Patrick in person since '93
4 when he cut the property up, some of our timbers up
5 there on West End.

6 Q. Okay.

7 A. We were just trying to get a little money to pay
8 for the property that we were trying to buy it in
9 country.

10 Q. So, he came through and would stop and visit when
11 you all were living there?

12 A. Yes.

13 Q. After 1989?

14 A. Tom Patrick did call me in 2009. As well as I
15 remember he called me in 2009. It was September the
16 third because I was going on a trip out west and I had
17 planned it for over a year, but I was taking care of my
18 sister-in-law Leah Wages and I would go up there in the
19 morning. She was dying and I knew she was dying and I
20 had been up there and gave her breakfast and gave her a
21 bath and she quieted down and I told him, James Wages
22 was her husband, I called him Buster. I am going home
23 to pack a few clothes. You need a break when you stay
24 with somebody that is dying with cancer, and so while I
25 was at home Tom Patrick says I am sending three of my

1 guys up to your property. I said now? He says they are
2 on there way. I said what for and he says they want to
3 see the Reid line. I said okay. I will be here. So I
4 was there.

5 When they got there. I got in the truck with them
6 and I road with them. I made them open the gates and go
7 down to where they wanted to show me and they came back
8 out and they said this is the way Tom wanting to come.
9 I says Tom is not coming through the property here. I
10 says I will show you the road that Tom is suppose to
11 come out of and I took them up and you give me that map
12 and I will show you what I did.

13 I took them up there. I too them -- I stayed in
14 the truck when they tried to let me out at my driveway
15 and we drove back up to the road here.

16 Q. Hold that up so everyone can see it.

17 A. Road up here where you see. I took them up here
18 and we walked down to here and it was a gate up. They
19 said we can't go no further there is a gate up. I said
20 I might be trespassing. At that time I hadn't had no
21 stroke so I says I can climb the fence. So I climbed
22 the fence. We went over. Went on down the road a
23 little ways another fence. There is another fence. I
24 said yeah. Went on down. Went on down and come up on
25 the top of the flat. I said you see those pine trees

1 over there. That is what you are looking at. That's
2 the Reid property and that is the way they can come out.
3 There's a road all the way. I saw it.

4 Q. So they told you Tom had told them to come across
5 your land?

6 A. But I showed that to them and I didn't hear from
7 Tom Patrick from 2009 until he called me 2012.

8 Q. And they wanted - - just so I can understand what
9 you are saying. They came to your house?

10 A. Yeah, they came to my house.

11 Q. And they wanted to go across your land. Did they
12 say which way they wanted to go?

13 A. I showed you the way they wanted to come.

14 Q. Okay. Okay. And they said -- they told you that
15 Tom had told them this is the way to come?

16 A. They told me that.

17 Q. Okay. And this was 1989?

18 A. This was in 2009. I was going out west for three
19 weeks.

20 Q. I am sorry. I misspoke.

21 A. And by the way, my sister-in-law I saw on before
22 I left on Saturday which was the fifth. She died on the
23 seventh that Monday morning early. She was mostly
24 unconscious but I was glad I could do what I did for
25 her.

1 Q. Yes, ma'am. I sure you were.

2 As far as your recollection, the pasture -- you
3 didn't live there until 1989, so were you ever a witness
4 to people using -- driving pass the Lee house to get
5 down towards the Reid property?

6 A. No, never saw nobody go that way.

7 Q. But you didn't live there, is that fair?

8 A. Sir?

9 Q. You didn't live there until 1989?

10 A. Never saw nobody go down there.

11 Q. Okay.

12 MR. JAMES: Your Honor, those are all the
13 questions I have. Thank you, Miss Lee.

14 THE COURT: Redirect.

15 MR. HOPE: No further questions.

16 THE COURT: Thank you, ma'am, you may step
17 down.

18 Any other witnesses.

19 MR. HOPE: Yes, Your Honor. The defense
20 calls Miss Linda Lee.

21 LINDA LEE, called as a witness, having been
22 duly sworn by the clerk, was examined and testified as
23 follows:

24 THE CLERK: Please state your name for the
25 record.

1 THE WITNESS: Linda Moore Lee.

2 DIRECT EXAMINATION

3 BY Mr. Hope:

4 Q. Miss Lee, what is your address?

5 A. 9385 Horseshoe Circle, Fort Mill, South Carolina,
6 29707.

7 Q. And do you have any relation to Miss Lee that
8 just testified?

9 A. Yes, that is my mom.

10 Q. Are you familiar with the property that is in
11 dispute today?

12 A. Yes.

13 Q. Tell me about your familiarity with the Lee
14 property?

15 A. Primarily that property was owed by my Dad's mom
16 and dad, and then my father, Joe Lee, bought his
17 brothers and sisters out and purchased all of that
18 property and then my parents moved to that property in
19 the '89 timeframe.

20 Q. Have you ever lived on that property?

21 A. Shortly after -- I wouldn't call live, but I
22 stayed with my mom from early '99 until fall of 2006.

23 I worked four to ten schedule at work so it allowed
24 my to spend element fifty percent of my time there
25 during that time period.

1 Q. What kind of work do you do?

2 A. I recently retired from Duke Energy.

3 Q. What did you do for Duke Energy?

4 A. I worked in nuclear at Duke Energy and my father
5 also worked at Duke Energy for thirty-eight years and I
6 worked for thirty-five, so I do know a little bit about
7 right-a-ways and easements to be dangerous.

8 Q. What do you mean by that "To be dangerous"?

9 A. I dealt with some of them.

10 Q. So you have knowledge about easements and how
11 they generally work?

12 A. Yes.

13 Q. You have heard testimony today about folks coming
14 across your mother's land. Are you familiar with any
15 paths or roadways across the Lee property?

16 A. No. My mom has a driveway that circles her
17 house. There is no existing path, other than a cow path
18 that is in any of those drawings.

19 Q. What is a cow path?

20 A. A cow path, this typically maybe no wider than
21 this (Indicating.) and it has been stuff-up by cows
22 following each other.

23 Q. Do the cows take the same path at all time?

24 A. They follow each other.

25 Q. Looking at this map you see where a witness in

1 this case has marked a path across the Lee property. Is
2 there a path there?

3 A. You mean this black mark that is right here?

4 Q. Yes, that black mark.

5 A. No, there is no path there.

6 Q. Are you familiar with anyone coming across the
7 property and taking that direction?

8 A. No.

9 Q. Ever?

10 A. Not to my knowledge.

11 Q. Are you familiar with anyone coming across the
12 property beyond your mother's driveway, south, and then
13 east to the Reid property?

14 A. Not to my knowledge.

15 Q. How often do you go out to the property?

16 A. On weekends. Not as frequent as I did in the
17 late 90's, early 2000.

18 Q. Have you seen any forestry operations coming
19 across the property?

20 A. No.

21 Q. You heard testimony today that the Reid property
22 is landlocked. Do you have any knowledge of access to
23 the Reid property other than across your mother's land?

24 A. I did a little bit of research on my own and I
25 have available today. I see at least, five or six other

1 roads that led either to the back part of the Fairfield
2 piece of the Reid property or the Chester County piece,
3 of the Reid property that they can use to hall the
4 timber in and out of.

5 Q. Has anybody asked you for permission to come
6 across the property?

7 A. No.

8 Q. And you are one of the owners of the property?

9 A. That is correct.

10 Q. Do you know if anyone has asked your mom for
11 permission to come across the property?

12 A. Only in the testimony that she's been asked by
13 Tom Patrick.

14 Q. So you don't have any personnel knowledge of the
15 questions from -- you didn't hears questions from Tom
16 Patrick or anyone else about coming across the property;
17 is that right?

18 A. Right.

19 MR. HOPE: No further questions. Please
20 answer any questions from opposing counsel.

21 THE WITNESS: Sure.

22 CROSS EXAMINATION

23 BY MR. JAMES:

24 Q. Miss Lee, how are you today?

25 A. Pretty good. How about you?

1 A. I am good. Thank you.

2 Just so I can clear up a couple of things in my
3 mind. You said that you stayed with your mom while you
4 were working four to ten-hour shifts from '99 to '06; is
5 that accurate statement.

6 A. About early January, February of '99 to fall of
7 2006, yes.

8 Q. Okay. And now you visit on weekends is pretty
9 much the time you visit your mom?

10 A. That's correct.

11 Q. Okay. And that has been since the late 90's to
12 early 2000?

13 A. Uh-huh.

14 Q. And so nobody has ever asked you permission to
15 cross the property?

16 A. No one.

17 MR. JAMES: Those are all the questions I
18 have, Your Honor.

19 MR. HOPE: Just one brief follow up.

20 REDIRECT EXAMINATION

21 BY MR. HOPE:

22 A. Miss Lee, have you ever had cause to or a reason
23 to access the Reid property.

24 A. No.

25 MR. HOPE: No further questions.

1 THE COURT: You may step down. Thank you.
2 Any other witnesses.

3 MR. HOPE: Your Honor, the defense calls Joe
4 Lee.

5 JOEY LEE, called as a witness, having
6 been duly sworn by the clerk, was examined and
7 testified as follows:

8 THE CLERK: Please state your name for the
9 record, please.

10 THE WITNESS: Joey Lee.

11 DIRECT EXAMINATION

12 BY MR. HOPE:

13 Q. Mr. Lee, are you any relation to his Helen Lee?

14 A. Yes, she is my mom.

15 Q. Are you familiar with the property where she
16 lives?

17 A. Yes, I do.

18 Q. Have you been present for the entire trial today?

19 A. Yes, I have.

20 Q. Have you heard testimony about folks coming
21 across your mother's property?

22 A. Say that again.

23 Q. Have you heard testimony today about folks coming
24 across your mother's property?

25 A. Yes.

1 Q. You heard testimony then about at least one path
2 across your mother's property. Are you familiar with
3 any /PATS across your mother's property?

4 A. No, sir.

5 Q. Are there any roads or gravel roads across your
6 mother's property?

7 A. No gravel roads.

8 Q. Are you familiar with any forestry operations
9 coming across your mother's property?

10 A. No, sir.

11 Q. You heard testimony today that the Reid property
12 is landlocked. Do you have any personal knowledge about
13 other access to the Reid property across my mother's
14 land?

15 A. Probably six, seven hundred feet up the road
16 there is another driveway that I am aware of.

17 Q. Can you indicate that on this map?

18 A. Yes. Here down through hear. (Indicating)

19 Q. Has anyone approached you about permission to
20 come across the property?

21 A. No, sir.

22 Q. And you are one of the owners of the property,
23 correct?

24 A. Yes, sir.

25 Q. How often do you visit the property?

1 A. I try to get there every three or four weeks.

2 Q. Do you know if there are any cattle on the
3 property?

4 A. Yes, there are.

5 Q. Are they in a fence on the property?

6 A. Yeah, they are fenced in.

7 Q. Can you indicate on the map where the fence in
8 area would be.

9 A. Yes, sir. (Indicating)

10 A. The fencing is here down to hear. So the fence
11 continues along your mother's driveway and then out into
12 the pasture.

13 A. Yes.

14 Q. Is there -- is there a gate for access through
15 the pasture?

16 A. There is a gate.

17 Q. How wide is the gate?

18 A. I would say its eight to twelve feet in length.

19 Q. Do you know if your mom keeps it locked?

20 A. Not locked, but it is latched.

21 Q. Latched. When was that fence erected?

22 A. The early nineties.

23 MR. HOPE: No further questions. Please
24 answer any questions opposing counsel has.

25 CROSS EXAMINATION

1 BY MR. JAMES:

2 Q. Mr. Lee how are you doing today?

3 A. Good.

4 Q. Good. Where do you live Mr. Lee?

5 A. I live in Columbia, South Carolina.

6 Q. Okay. And you say that you get to visit your mom
7 every three or four weeks?

8 A. Yes, sir.

9 Q. Okay. Now if I could just -- I couldn't see very
10 well. So if you could show me if I understand you right
11 you said the fence kind of come down to your mom's place
12 and cuts across here.

13 A. The fence comes around the comes through here.

14 Q. Kind of cuts across the middle of the pasture?

15 A. Here there is a barn here and there is a fence
16 there. There a fence around here.

17 A. Okay. All right. Thank you.

18 And you said that nobody has ever asked your
19 permission to cross the land; is that right?

20 A. That is correct.

21 Q. And did you ever live there?

22 A. It was a period in 2006. I took a leave of
23 absence from work. I stayed there for about a couple of
24 months with my mom.

25 Q. Where do you work?

1 A. I work for Computer Science Corporation in
2 Columbia.

3 Q. Okay. And you said that the fence was erected in
4 early 1990's.

5 A. To the best of my knowledge, yes.

6 Q. Okay. Are there any other gates on the property?

7 A. No, sir.

8 MR. JAMES: Those are all the questions I
9 have, Your Honor.

10 MR. HOPE: No further questions.

11 THE COURT: Thank you. You may step down.

12 MR. HOPE: The defense rests.

13 THE COURT: The defense rests.

14 Anything in reply?

15 MR. JAMES: No, sir.

16 THE COURT: What I would like for each side
17 to do is submit a brief or memorandum setting
18 forth their respective positions. What they
19 think supports their -- what testimony they
20 believe supports their positions and citations of
21 authority and make sure I understand something
22 the plaintiff is not seeking a is seeking an
23 easement by prescription but not by necessity.

24 MR. JAMES: That is correct Your Honor.

25 THE COURT: All right. Ten days be

1 sufficient time for you all to submit the brief.

2 MR. HOPE: Yes, Your Honor.

3 MR. JAMES: Yes.

4 THE COURT: All right. If you send it to my
5 office in Lancaster.

6 MR. JAMES: Thank you.

7 MR. HOPE: Thank you, Your Honor.

8 * * * *

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C E R T I F I C A T E

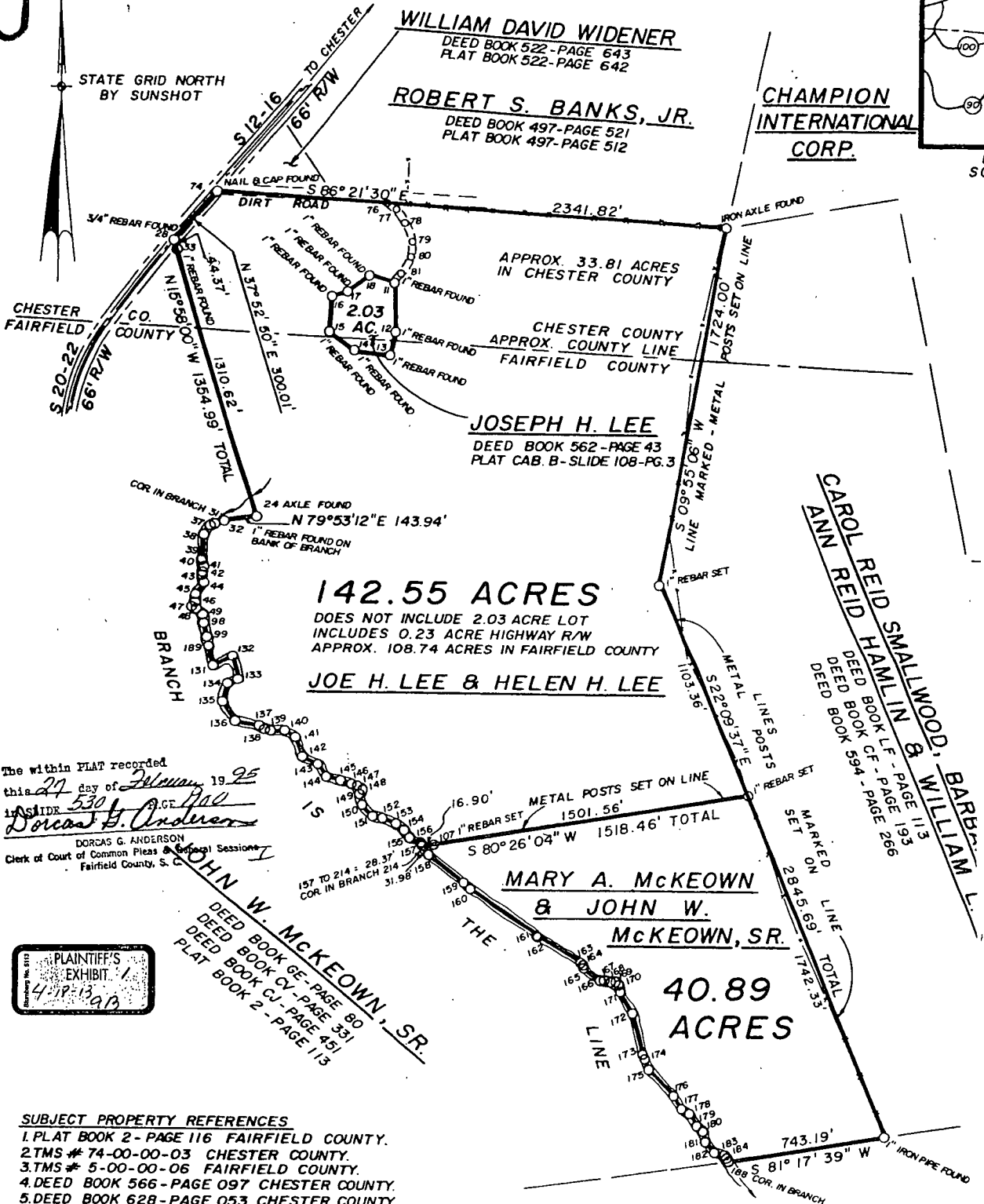
1
2
3 I, the undersigned Aileen Butler, Official Court
4 Reporter for the 16TH Judicial Circuit of the State of
5 South Carolina, do hereby certify that the foregoing is
6 a true, accurate, and complete transcript of record of
7 all the proceedings in the captioned case, in the
8 Circuit Court for York County, South Carolina, on the
9 18th day of April, 2013.

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

12 July 28, 2013

13
14 Aileen Butler
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25

Slide "530" page 1180.



STATE GRID NORTH BY SUNSHOT

WILLIAM DAVID WIDENER
DEED BOOK 522 - PAGE 643
PLAT BOOK 522 - PAGE 642

ROBERT S. BANKS, JR.
DEED BOOK 497 - PAGE 521
PLAT BOOK 497 - PAGE 512

CHAMPION INTERNATIONAL CORP.

APPROX. 33.81 ACRES IN CHESTER COUNTY

CHESTER COUNTY APPROX. COUNTY LINE
FAIRFIELD COUNTY

JOSEPH H. LEE
DEED BOOK 562 - PAGE 43
PLAT CAB. B - SLIDE 108 - PG. 3

142.55 ACRES

DOES NOT INCLUDE 2.03 ACRE LOT
INCLUDES 0.23 ACRE HIGHWAY R/W
APPROX. 108.74 ACRES IN FAIRFIELD COUNTY

JOE H. LEE & HELEN H. LEE

CAROL REID SMALLWOOD, WILLIAM T. BARRIAM, JR.
DEED BOOK 115 - PAGE 193
DEED BOOK 594 - PAGE 266

The within PLAT recorded this 27 day of January 19 25 in SLIDE 530 of DEED BOOK 594
Dorcas G. Anderson
DORCAS G. ANDERSON
Clerk of Court of Common Pleas & General Sessions
Fairfield County, S. C.

JOHN W. MCKEOWN, SR.
DEED BOOK 66 - PAGE 80
DEED BOOK 67 - PAGE 331
DEED BOOK 67 - PAGE 431
PLAT BOOK 2 - PAGE 113

MARY A. MCKEOWN & JOHN W. MCKEOWN, SR.

40.89 ACRES

- SUBJECT PROPERTY REFERENCES**
1. PLAT BOOK 2 - PAGE 116 FAIRFIELD COUNTY.
 2. TMS # 74-00-00-03 CHESTER COUNTY.
 3. TMS # 5-00-00-06 FAIRFIELD COUNTY.
 4. DEED BOOK 566 - PAGE 097 CHESTER COUNTY.
 5. DEED BOOK 628 - PAGE 053 CHESTER COUNTY.
 6. DEED BOOK 628 - PAGE 057 CHESTER COUNTY.
 7. DEED BOOK 639 - PAGE 017 CHESTER COUNTY.
 8. DEED BOOK 670 - PAGE 193 CHESTER COUNTY.
 9. DEED BOOK MJ - PAGE 47 FAIRFIELD COUNTY.
 10. DEED BOOK MJ - PAGE 50 FAIRFIELD COUNTY.
 11. DEED BOOK MJ - PAGE 53 FAIRFIELD COUNTY.
 12. DEED BOOK MM - PAGE 61 FAIRFIELD COUNTY.

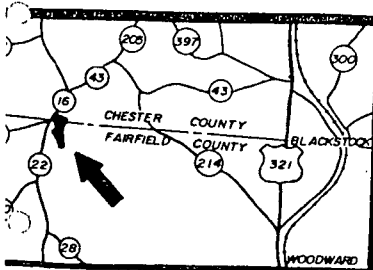
CHAMPION INTERNATIONAL
DEED BOOK CK - PAGE 309

PLAINTIFF'S EXHIBIT - 1
4-18-13 AD

DRAWING BY:

REF. 2874, 3006

TAX MAP #



LOCATION SKETCH
SCALE: 1 INCH = 2 MILES

COURSES ALONG BRANCH			
PT. -	PT.	BEARINGS	DIST.
32 -	31	S 79° 53' 12" W	43.06'
31 -	37	S 61° 33' 16" W	24.73'
37 -	38	S 27° 10' 51" W	52.74'
38 -	39	S 05° 30' 41" W	107.63'
39 -	40	S 26° 09' 21" W	17.25'
40 -	41	S 26° 12' 10" E	30.16'
41 -	42	S 10° 43' 16" W	27.46'
42 -	43	S 11° 44' 34" E	12.91'
43 -	44	S 04° 38' 42" E	36.97'
44 -	45	S 34° 07' 28" W	65.48'
45 -	46	S 04° 11' 25" W	33.83'
46 -	47	S 31° 17' 04" W	33.66'
47 -	48	S 73° 26' 43" E	26.22'
48 -	49	S 39° 59' 52" E	36.59'
49 -	98	S 12° 08' 29" E	50.18'
98 -	99	S 11° 33' 58" E	60.92'
99 -	189	S 09° 16' 23" E	49.92'
189 -	131	S 15° 49' 56" E	96.61'
131 -	132	N 59° 42' 14" E	98.72'
132 -	133	S 12° 39' 21" E	123.43'
133 -	134	S 70° 16' 53" W	58.70'
134 -	135	S 12° 32' 15" W	84.49'
135 -	136	S 30° 05' 04" E	108.31'
136 -	137	S 76° 06' 05" E	108.25'
137 -	138	S 47° 33' 42" E	26.76'
138 -	139	S 68° 36' 26" E	26.87'
139 -	140	N 82° 52' 23" E	69.37'
140 -	141	S 53° 54' 57" E	59.96'
141 -	142	S 20° 20' 42" E	100.57'
142 -	143	S 64° 37' 25" E	70.20'
143 -	144	S 33° 33' 30" E	69.77'
144 -	145	S 77° 29' 30" E	73.20'
145 -	146	S 67° 29' 18" E	49.35'
146 -	147	S 79° 38' 12" E	32.10'
147 -	148	S 41° 27' 18" E	31.96'
148 -	149	S 35° 21' 36" W	19.27'
149 -	150	S 11° 04' 48" E	47.75'
150 -	151	S 41° 30' 55" E	75.87'
151 -	152	S 81° 09' 02" E	53.81'
152 -	153	S 64° 40' 51" E	63.09'
153 -	154	S 58° 21' 45" E	45.30'
154 -	155	S 32° 04' 09" E	39.50'
155 -	156	S 58° 45' 11" E	48.60'
156 -	157	S 74° 04' 40" E	16.22'
157 -	158	S 27° 56' 01" E	60.35'
158 -	159	S 51° 57' 28" E	218.62'
159 -	160	S 46° 59' 47" E	37.32'
160 -	161	S 53° 40' 01" E	385.12'
161 -	162	S 70° 55' 33" E	15.60'
162 -	163	S 58° 01' 32" E	219.98'

PT. -	PT.	BEARING	DIST.
163 -	164	S 48° 02' 19" E	17.33'
164 -	165	S 08° 49' 03" W	13.09'
165 -	166	S 52° 14' 17" E	93.67'
166 -	167	N 88° 53' 53" E	21.64'
167 -	168	S 67° 08' 41" E	26.31'
168 -	169	N 68° 55' 53" E	19.07'
169 -	170	S 56° 35' 49" E	33.76'
170 -	171	S 03° 27' 22" W	32.34'
171 -	172	S 28° 17' 50" E	117.13'
172 -	173	S 15° 01' 15" E	199.26'
173 -	174	S 16° 35' 59" E	24.69'
174 -	175	S 20° 50' 14" E	56.12'
175 -	176	S 46° 00' 52" E	173.11'
176 -	177	S 27° 23' 00" E	70.10'
177 -	178	S 67° 05' 50" E	43.53'
178 -	179	S 24° 12' 59" E	69.80'
179 -	180	S 52° 03' 23" E	48.40'
180 -	181	S 09° 56' 12" E	45.63'
181 -	182	S 41° 39' 12" E	68.83'
182 -	183	S 82° 00' 44" E	42.19'
183 -	184	S 21° 07' 56" E	19.58'
184 -	188	S 51° 30' 44" E	23.89'

TIES ALONG C DIRT ROAD TO 2.03 ACRE LOT		
PT. -	PT.	DIST.
74 -	76	S 85° 59' 16" E 761.16'
76 -	77	S 63° 13' 46" E 56.84'
77 -	78	S 32° 14' 14" E 81.55'
78 -	79	S 19° 35' 32" E 91.18'
79 -	80	S 05° 18' 29" W 73.37'
80 -	81	S 24° 45' 01" W 87.05'
81 -	11	S 44° 58' 12" W 55.26'

COURSES AROUND 2.03 ACRE LOT		
PT. -	PT.	DIST.
11 -	12	S 02° 18' 43" E 231.41'
12 -	13	S 11° 49' 26" W 113.90'
13 -	14	N 83° 51' 46" W 166.47'
14 -	15	N 49° 13' 28" W 150.16'
15 -	16	N 02° 51' 52" E 159.00'
16 -	17	N 71° 36' 00" E 70.40'
17 -	18	N 53° 25' 04" E 129.88'
18 -	11	S 74° 33' 13" E 118.46'

REID SHICKLAND, II

CORP.

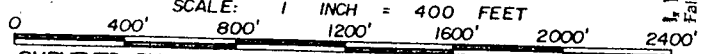
Date 2-27-95
 SUBDIVISION REGULATIONS
 DO NOT APPLY
 Thomas Anderson, JCR/
 Administrative Official

PROPERTY SURVEYED FOR
JOE H. LEE & HELEN H. LEE
 AND
MARY A. McKEOWN

&
JOHN W. McKEOWN, SR.

LOCATED ON ROADS S20-22 and S12-16
 FAIRFIELD COUNTY and CHESTER COUNTY
 SOUTH CAROLINA

FEBRUARY 14, 1995



SURVEYED BY GLENN ASSOCIATES LAND SURVEYING COMPANY
 P.O. BOX 12 JENKINSVILLE, S.C. 29065 telephone 345-5297

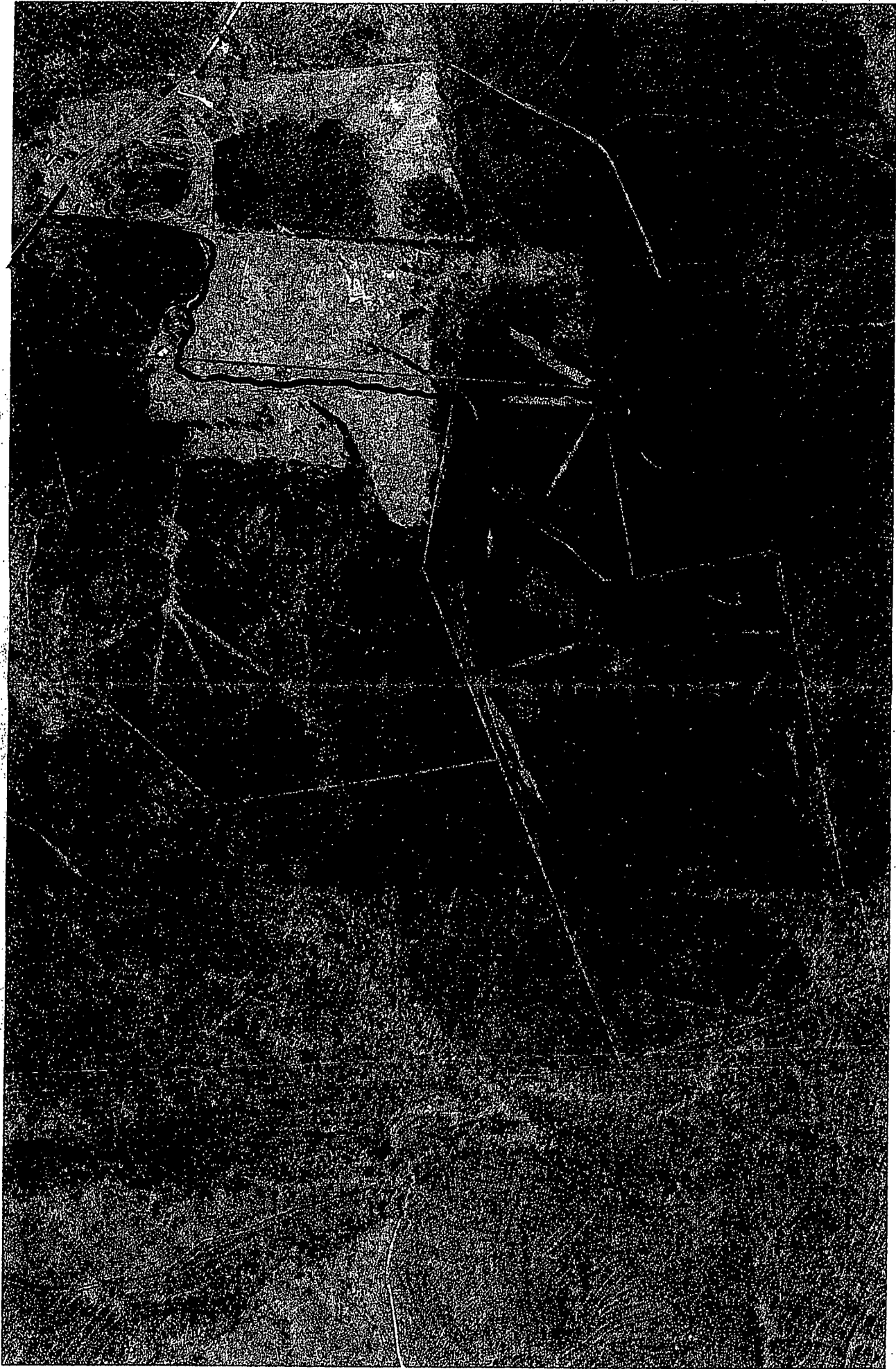
Michael R. Mills
 MICHAEL R. MILLS; R.L.S. # 11606

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF THAT THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN. ALSO TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF THERE ARE NO ENCROACHMENTS OR PROJECTIONS AFFECTING THE PROPERTY OTHER THAN SHOWN.

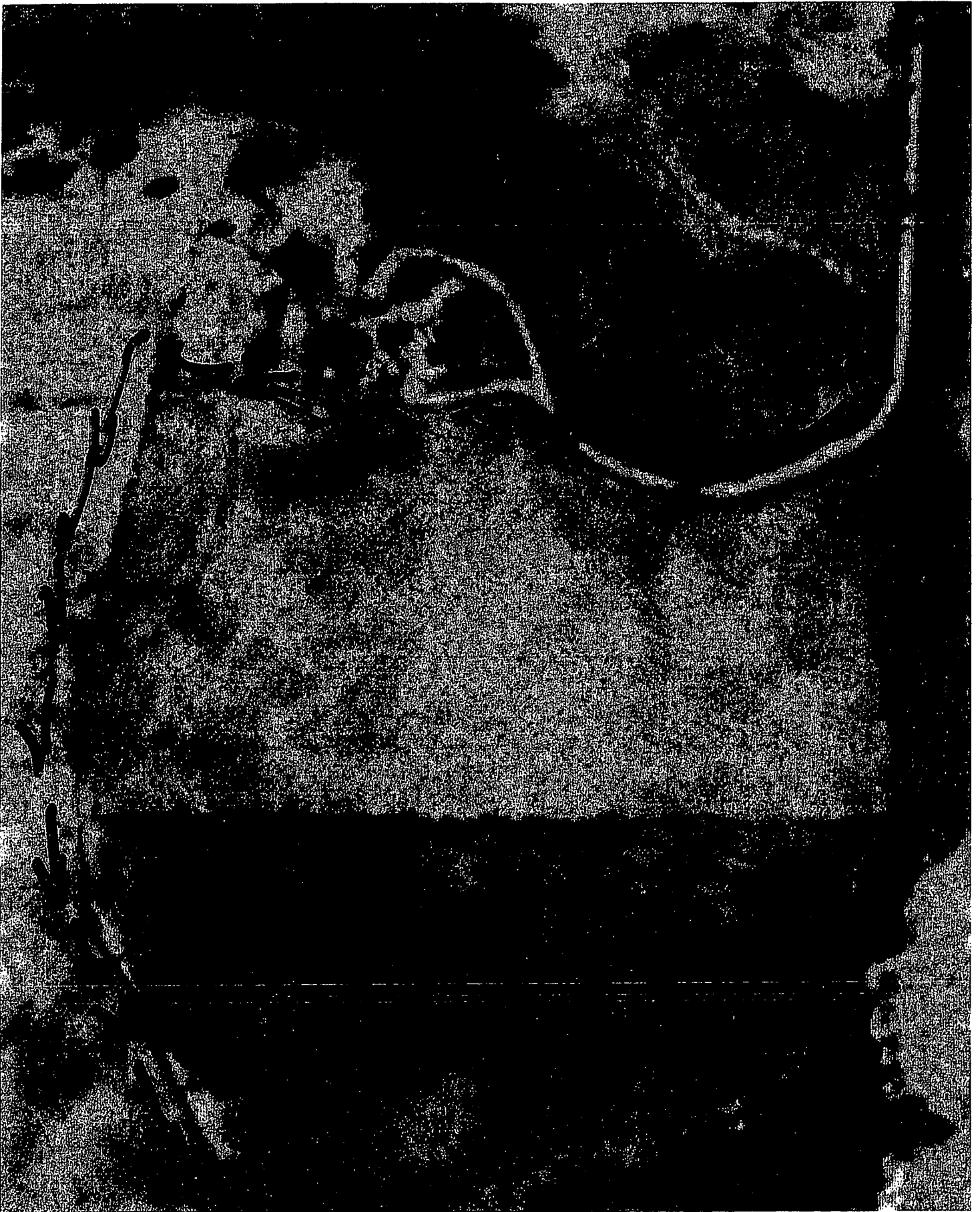


Feb 27 10 10 AM '95
 FAIRFIELD COUNTY
 CLERK OF COURT
 BETTY JO BECKHAM

Betty Jo Beckham, Clerk of Court,
 Fairfield County, South Carolina, do
 hereby certify this is a true copy of
 the original on file in this office.
 1/17/95
Betty Jo Beckham
 Clerk of Court









THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2012-CP-20-401
Appellate Case No. 2013-001386

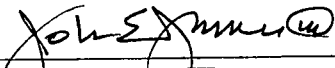
Carol Reid Smallwood, Barbara Reid Strickland, Ann Reid Hamlin,
William L. Reid, III, Judith Lawrence Medlin,
Frances Patterson LawrenceAppellants,

v.

Helen M. Lee, Linda Lee and Joe Lee, Jr., as Co-Trustees of the
Joseph H. Lee, Sr. Family Trust U/W Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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SC Bar No. 2620
Attorney for the Appellants