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JUN 17 2014

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM DORCHESTER COUNTY  
COURT OF COMMON PLEAS

Maité Murphy, Circuit Court Judge

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Case No. 2010-CP-18-2243  
Appellate Case No. 2013-002129

Kay Howell Jordan, Marion Howell Tolson,  
and Lewis Virgil Howell, ..... Respondents,

v.

Betty L.S. Judy, ..... Appellant.

---

RECORD ON APPEAL

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## TABLE OF CONTENTS

|                                       | <u>Page:</u> |
|---------------------------------------|--------------|
| I. Orders                             |              |
| Order of June 17, 2013 .....          | 2            |
| Form 4 Order of August 14, 2013 ..... | 12           |
| II. Pleadings                         |              |
| Complaint .....                       | 14           |
| Answer .....                          | 24           |
| Motion to Alter or Amend .....        | 27           |
| III. Trial transcript                 |              |
| Colloquy .....                        | 29           |
| Lewis Edward Jordan .....             | 42           |
| Kay Howell Jordan .....               | 66           |
| Lewis Howell .....                    | 78           |
| Marion Howell Tolson .....            | 83           |
| Ben Coker, Jr. ....                   | 89           |
| Paul Clifton Lawson, Jr. ....         | 150          |
| Wilbur Judy, Jr. ....                 | 157          |
| David Bass .....                      | 194          |
| Paul Clifton Lawson, Jr. ....         | 241          |
| IV. Exhibits                          |              |
| Plaintiffs' exhibit 1 .....           | 247          |
| Plaintiffs' exhibit 2 .....           | 248          |
| Plaintiffs' exhibit 3 .....           | 249          |
| Plaintiffs' exhibit 4 .....           | 250          |
| Plaintiffs' exhibit 5 .....           | 251          |
| Plaintiffs' exhibit 6 .....           | 252          |
| Plaintiffs' exhibit 7 .....           | 257          |
| Defendant's exhibit 3 .....           | 264          |
| Defendant's exhibit 5 .....           | 265          |
| Defendant's exhibit 8 .....           | 266          |
| Defendant's exhibit 9 .....           | 267          |
| Defendant's exhibit 11 .....          | 268          |
| Defendant's exhibit 14 .....          | 268A         |
| Defendant's exhibit 25 .....          | 269          |
| Defendant's exhibit 26 .....          | 270          |
| Defendant's exhibit 42 .....          | 271          |
| Defendant's exhibit 45 .....          | 272          |
| Certificate of Counsel .....          | 273          |

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-18- 2243

Kay Howell Jordan, Marion Howell Tolson,  
and Lewis Virgil Howell,

Plaintiffs,

VS.

Betty L.S. Judy,

Defendant.

ORDER

CERTIFIED COPY  
2013 JUL -2 AM 9:16  
Clerk of Court  
DORCHESTER COUNTY

A two part Hearing was had before me in this matter on February 27, 2103, and May 8, 2013. The Plaintiffs were present at the hearing and represented by their attorney, W. Grady Jordan. The Defendant was not present, but her son, who is her attorney in fact under a duly executed power of attorney, was present and represented her interests without objection. The Defendant was represented by her attorney, Robert McCurry.

This case involves a dispute of the location of a common property line between the respective properties of the parties. The Parties, through arguments of their counsel, and the testimony of the parties to the Court showed that in the early 1970s during construction of Interstate 95, the Highway Department dug sand from the property of both parties. The areas from which the sand was removed became the present day ponds. There is an earthen dike which runs between the two ponds and this is the area of dispute.

There was a prior Order dated May 28, 2002, in a case between the parties, under Civil Action Number: 96-CP-18-924, issued by the Honorable Patrick Watts, Jr., finding that the location of a disputed bill board was on the property of Betty Judy but in which the Court

declined to rule upon the exact location of the common boundary line between the parties property as that issue was not before the Court. Therefore, the issue as to the common boundary line was an issue that needed resolution and hence the basis for this action.

The Parties stipulated as to each owning their respective properties with the only dispute being the location of the common property line between these two properties at the dike area.

The Plaintiffs' position was that John Howell, deceased, father of the Plaintiffs and Wilbur Judy, deceased, husband of the Defendant each owned these adjoining parcels of land and that during the construction of Highway 95 they both allowed ponds to be dug on their respective properties with the dirt used in the construction of the highway. This digging left an earthen dike between the two ponds. Their position was that the dike area is the property line but that regardless of where the Court determined the line to be that both sides should have access to the dike area as both families have used this dike to access their ponds and that to now allow same would be unfair to both sides.

The Defendant's position as set out by her counsel was that there was a property line based on the Survey of Ashley Surveying dated December 31, 1986. This survey, he was argued, was based on a 1927 plat and that based on these surveys the Plaintiffs do not have rights to the dike as it is located entirely on the Defendant's property. It should be noted that this survey shows the property line cutting into the pond that is the Howell pond. The Plaintiff's counsel did make the point in opening arguments that to use this line would place the property line partially in the pond on the Howell side of the line, which would be inconsistent with the two gentlemen, Howell and Judy, digging the ponds out years ago and using the dike area afterwards.

There was also testimony as to prior access of the Judy property over and across the Howell property from Old St. George Road and how that access, or potential access, played into discussions as to where a potential agreed upon common boundary line would be. Evidence in this case was that the Judy family was allowed access over and across the Howell property from Old St. George Road, but that a fence was eventually erected, keys were provided, but that access was then finally stopped being provided. The Judy family has accessed the property over property owned by Southern Railroad which is on the Northwestern side of their property. However, this Court has already ruled in a prior Order entitled Order Denying Motion to Compel dated May 18, 2012, that a prior settlement agreement as to the common property line and access for the Defendant over and across the lands of the Plaintiffs from Old St. George Road was unenforceable. Therefore this issue was not an issue that the Court was addressing at this hearing, other than as a sideline as to discussions on where a potential property line could be and whether or not a potential agreed upon line was contingent on the Defendant having access over and across the Judy property.

On behalf of the Plaintiffs testimony was provided by Lewis E. Jordan, Kay Howell Jordan, Marion Howell Tolson, Lewis Virgil Howell and John David Bass, a professional licensed surveyor who testified as an expert.

On behalf of the Defendant testimony was provided by Roy Judy, Ben Coker, James Benjamin Kensey, Jr., with the Department of Natural Resources, Donald Baker, and Paul Clifton Lawson, Jr, a licensed surveyor who testified as an expert. Betty Judy did not testify herself but the parties did stipulate that Roy Judy would testify on her behalf as Attorney in Fact, under a Power of Attorney. The Defendants attempted to qualify Mr. Ben Coker as an expert in the area of land surveying, but on cross-examination by Plaintiff's attorney it was shown to the

Court that Mr. Coker was not licensed as a land surveyor and had no educational experience related to land surveying. Therefore, he was only qualified as an expert in the area of field work done in order to accomplish a land survey. Mr. Coker did perform the field work for the survey performed by Mr. Lawson.

The Plaintiffs witnesses testified that their father (and father-in-law) John Howell (deceased) and Wilbur Judy (deceased), husband of Betty Judy, used the subject earthen dike without interfering with the other and that both Plaintiffs and Betty Judy continued, after Mr. Howell and Mr. Judy passed away, to use the dike area and treated it as the boundary between the respective properties, until the erection of the fence by Roy Judy as referenced in several instances hereinbelow. They provided testimony that the Howell family used the dike area for walking, driving, and fishing and that they would clean it and do whatever needed to be done. Lewis Jordan said that both parties had done a good job as far as trying to keep the dike area clean. He said there were never any problems in the past with the dike staying clean. He said he thought the Judy family had done a good job as well as far as that when the Howell family was not around. Lewis Jordan also testified that after the erection of the fence by Roy Judy, that he and Roy Judy had met at the property and placed flags down the dike in an attempt to mark a property line so that a surveyor could then accomplish a survey for them. He showed the Court, using Defendant's exhibit #25, that there was a fence on the Southeast corner of the dike, which prevents driving from the Howell property onto the dike. He said before the fence erected relatively recently there was never an interference with usage of the dike. He also testified that his family had not placed any fence in the dike area to prevent the usage of or access to it.

Kay Howell Jordan testified that she agreed with her husband's testimony that both the Judy family, a lot of it Roy Judy, and her family kept the dike clean and usable. She said this

was never a problem. She further testified that her family never tried to keep Ms. Judy or her family from using the dike area. She also stated that there would not be any reason for her to not want the Judy's to use the dike area. She further testified that no one ever prevented her family from using their pond. She also testified that her husband, Lewis Jordan, was the point man for the family trying to resolve the boundary issue and that she was present at times when attempts were made to resolve it.

Lewis Howell testified and his testimony was consistent with his sister Kay that both parties would keep the dike clean and maintained, his family never interfered with the Judy families ability to use their pond or the dike and that the Howell's had access to ride vehicles on the dike. He further testified that he was asking that both parties have access to the dike area and that he has no reason to interfere with the Defendant's use of the dike or her pond.

Marion Howell Tolson testified that her family had used their pond for years without interference as well as the dike area, including riding vehicles on it and walking across it. She testified that her family and Roy Judy would keep the dike maintained and clean. She did testify that interference with the dike access did begin with the construction of the fence at the southeastern corner of the dike. She was also present when the flags were put out trying to mark a common border line on the dike for a surveyor to then mark a line for the parties. She testified that she wanted the Court to find that The Defendant as well as the Plaintiffs have access to the dike area and that the Court find a common boundary line fair to both sides. She further testified that she had no reason to prevent the Defendant from using the dike.

The Plaintiffs presented a survey prepared by John David Bass dated October 30, 1998, [Plaintiff's Exhibit #1] showing a potential property line. In his testimony, Mr. Bass explained to the Court that the survey was based on prior surveys including an 1865 survey. The 1865

survey was the beginning point of his new survey. Mr. Bass also visited the property to find what markers he could in order to survey the property of the Plaintiffs. Mr. Bass readily admitted that the techniques and equipment used at that time upon which they relied on, were not as accurate as modern tools available today. He also readily admitted that he could not find every marker that was used in the 1865 survey. There was testimony that at least one marker would have been in the area that is now Interstate 95 and other markers could have been in the areas that are now ponds.

Roy Judy testified that to the best of his knowledge the dirt was dug from both the Howell property and the Judy property for the construction of Highway 95 and the present day ponds resulted from the removal of this dirt. The earthen dike which runs between the two ponds is the area of dispute. He does not recall either his father or Mr. Howell ever fussing about the dike and he never helped his father erect a fence and to his knowledge Mr. Howell never erected a fence to keep Mr. Judy off of the property. Mr. Judy did agree that as far as he could remember there was never any confrontation between the parties as to access to the ponds. As both parties referenced at various times in the hearings, a dispute did result regarding access from Old St. George Road to the subject disputed area, but the usage of the dike was not in question until litigation began until the early 1990's and continued after the death of Mr. Wilbur Judy in 1993.

In 1995, Mr. Judy was reviewing the Highway Department maps and a question in his mind arose as to the common property line. Field work by Ashley Surveying was completed in late 1995 and the resulting 1996 survey, Defendant's Exhibit 25, shows that the dike was almost wholly on the land of the Judys. With the field work results, Roy Judy with the help of Mr. Baker, erected posts and a fence in December 1995 on the southeast corner of the Judy property

along the dike between the property of the parties to keep both the Plaintiffs and unknown trespassers from accessing the property. He did testify that prior to his erecting the fence at the edge of the dike area he knew of no confrontation between the Howells and the Judy's in relation to use of the dike area. Because of the existence of the fence which Mr. Roy Judy erected in late 1995, there were several meetings on the dike issue that occurred.

After the death of Mr. Wilbur Judy and Mr. John Howell, there were several meetings between the parties during the years without any resolution as to the dike issue and access to the ponds.

The Defendant presented numerous photos showing the existence of pipes and blazed trees resulting in the 1996 survey performed by Ashley Surveying [Defendant's Exhibit #25]. Based on testimony, the field work for this survey began in the fall of 1995. Mr. Coker testified that he performed the field work for this survey and explained that he used the 1927 survey done by F.A. Moore, marked as Exhibit #3, and SC Highway Department maps of U.S. Highway I-95 to accomplish the 1996 Ashley Surveying Survey that was signed by Mr. Lawson. Earlier plats prepared prior to 1927 were used for comparison but they relied on the 1927 plat and SCDOT US Highway I-95 maps to conform and make their new plat in 1996 because of monumentation and railroad monumentation. The 1996 plat prepared by Ashley Surveying shows the dike road to be wholly within Mrs. Judy's property.

Mr. Lawson testified that his survey was correct and accurate based on the 1927 survey and on the field markings found on the site. He questioned the accuracy of Mr. Bass' survey as he did not think it properly concurred with the 1896 survey or other surveys. He also questioned Mr. Bass' survey based on Mr. Bass only finding, according to Mr. Lawson, one established pin on which he relied as a point of reference on the ground.

This case involves two professional surveyors who disagree as to where the property line is located based on the information available to them in the form of prior surveys and based on their field work in accomplishing their respective surveys. Clearly, the survey methods of the 1800's were not as exact as those of today and both parties provided testimony as to their respective positions as to the correct property lines through their respective surveyors. However, I find that the parties past actions and usage of the property are compelling evidence in my determination.

Based on all the evidence I find that the property line is located in the middle of the dike road. I further find that both parties are granted an easement right in and to the dike road for the purposes of ingress and egress over and across the earthen dike. The parties are to maintain their respective side of the road so as not to interfere with normal usage of the easement. The parties are estopped from erecting any fencing or other impediments to block each other's access to the dike area and the easement over and across it, which includes the right to access the dike with motor vehicles. Should the parties wish to maintain any current fencing to keep out potential trespassers they can, however, each side is to be granted a key or way to access the property accordingly.

I further find that in order for this Order to be fully complied with the parties are going to have to have a survey done in order to mark the property line down the middle of the dike. If the parties cannot agree on a surveyor the Court will appoint one. Further, once this survey is accomplished it is to be presented to the Court for a ruling that it does in fact comply with this Order.

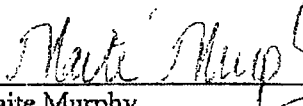
Any language in this order as to an easement in the dike area relates only to an easement over and across the dike area. Nothing in this order should be construed to grant any access to

the Defendant over and across the land of the Plaintiffs to the dike area. As no such easement is being granted and that issue was previously ruled on by this court.

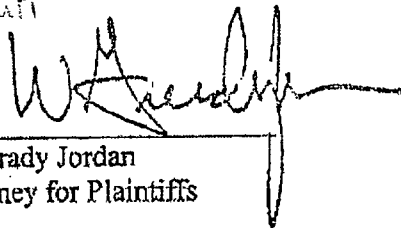
The undersigned, by consent of the Parties through their respective counsels whose signatures are affixed hereto solely for this portion of the Order and not as to consenting to the rulings themselves, does retain jurisdiction of this case for purposes of ensuring that the Court's order is complied with in regards to a new survey and that survey being approved by the Court.

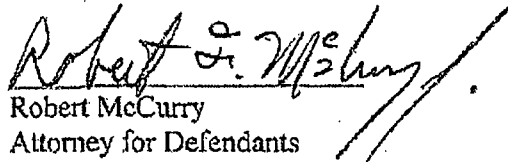
IT IS SO ORDERED.

DONE AND ORDERED this 17 day of June, 2013 in St. George, South Carolina.

  
Maite Murphy  
PRESIDING JUDGE-  
THE COURT OF COMMON PLEAS

WE CONSENT TO THAT PORTION OF THIS ORDER WHICH ALLOWS JUDGE MAITE MURPHY TO RETAIN JURISDICTION OF THIS MATTER ONCE SHE BECOMES A CIRCUIT COURT JUDGE. Maite

  
W. Grady Jordan  
Attorney for Plaintiffs

  
Robert McCurry  
Attorney for Defendants

the Defendant over and across the land of the Plaintiffs to the dike area. As no such easement is being granted and that issue was previously ruled on by this court.

The undersigned, by consent of the Parties through their respective counsels whose signatures are affixed hereto solely for this portion of the Order and not as to consenting to the rulings themselves, does retain jurisdiction of this case for purposes of ensuring that the Court's order is complied with in regards to a new survey and that survey being approved by the Court.

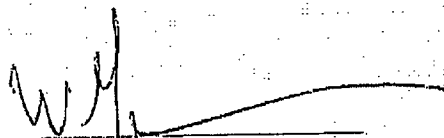
IT IS SO ORDERED.

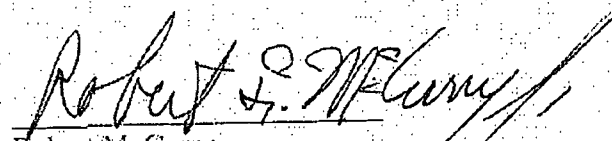
DONE AND ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2013 in St.

George, South Carolina.

\_\_\_\_\_  
Maite Murphy  
PRESIDING JUDGE-  
THE COURT OF COMMON PLEAS

WE CONSENT TO THAT PORTION OF THIS ORDER WHICH ALLOWS JUDGE MAITY MURPHY TO RETAIN JURISDICTION OF THIS MATTER ONCE SHE BECOMES A CIRCUIT COURT JUDGE.

  
\_\_\_\_\_  
W. Grady Jordan  
Attorney for Plaintiffs

  
\_\_\_\_\_  
Robert McCurry  
Attorney for Defendants

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2010CP1802243

Kay Howell Jordan

Marion Howell Tolson

Betsy L. S. Judy

Lewis V. Jordan

2013 AUG 20 PM 2:13  
*Cheryl Tolson*  
CLERK OF COURT  
DORCHESTER COUNTY

PLAINTIFF(S)

DORCHESTER COUNTY

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);  
☐ Rule 43(k), SCRPC (Settled); ☐ Other: \_\_\_\_\_
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: \_\_\_\_\_
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: Defendant's Motion to Reconsider is denied and dismissed without oral argument. I find that all arguments properly raised to the Court have already been ruled upon and this Court will not consider further arguments on the matter.

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Maité Murphy  
Circuit Court Judge

*Maité Murphy*

2166  
Judge Code

8/14/2013  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on 8/ 20 2013, and a copy mailed first class or placed in the appropriate attorney's box on 8/ 20 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Woodrow Grady Jordan PO Box 1207 Easley, SC  
296411207

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

Robert F. McCurry Jr. PO Drawer 329 Orangeburg, SC  
29116

**ATTORNEY(S) FOR THE DEFENDANT(S)**

*Cheryl Graham*

**Court Reporter**

Cheryl Graham - Clerk of Court

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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013

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF DORCHESTER ) C.A. No.: 2010-CP-18- 2243

Kay Howell Jordan,  
Marion Howell Tolson,  
and Lewis Virgil Howell,

Plaintiffs,

Vs.

Betty L.S. Judy,

Defendant.

**COMPLAINT**  
(Non-Jury)

FILED COPY  
2010 AUG 12 AM 11:45  
CLERK OF COURT  
DORCHESTER COUNTY

The Plaintiffs, Complaining of the Defendant herein, would show unto this Honorable Court that:

1. The Plaintiff Kay Howell Jordan is a citizen and resident of the State of South Carolina, County of Pickens.
2. The Plaintiff Marion Howell Tolson is a citizen and resident of the State of South Carolina, County of Aiken.
3. The Plaintiff Lewis Virgil Howell is a citizen and resident of the State of South Carolina, County of Aiken.
4. Upon information and belief the Defendant Betty L. S. Judy is a citizen and resident of the State of South Carolina, County of Dorchester.
5. This Court has jurisdiction of this matter and venue is proper in this Court pursuant to §15-7- 10 of the South Carolina Code of Laws (1976 as amended).

6. The Plaintiffs are owners in fee simple of the following described property:

All that certain piece, parcel or tract of land with the buildings and improvements thereon, situate, lying and being in the County of Dorchester, State of South Carolina and in School District #5 of the County of aforesaid and measuring and containing One Hundred and Seventy Eight (178) Acres by the same more or less and butting and bounding as follows: North by lands of the First Carolina Joint Stock Land Bank formerly known as lands of J.H. Rickborn and Brothers and by lands of the Estate of H.M. Behling; East by lands formerly known as lands of M.J. Smith now lands of the Estate of Mrs. D.A. Reeves and lands of Frank A. Kizer and lands jointly owned by Mrs. Ida Patrick Bullington and Marie Weeks, lands of Henrietta Moorner and by Road known as St. George Church Road; South by St. George Church Road and lands of Mrs Annie D. Judy; South and West by lands of the Estate of Mrs. Maude K. Appleby and lands of First Carolina Joint Stock Land Bank formerly known as lands of J.H. Rickborn and Brothers.

This is the same property conveyed to John A. Howell by deed of H.H. Jessen, Sheriff, dated April 14, 1937, and recorded in Deed Book 66, at Page 446, in the Office of the Register of Deeds for Dorchester County, South Carolina.

Former Tax Map #: 044-00-00-067

**LESS HOWEVER:**

All that certain piece, parcel, or tract of land, situate, lying, and being in George Township, in the County of Dorchester, State of South Carolina, measuring and containing fifteen (15) acres, more or less; butting and bounding, as shown by the plat hereinafter referred to, as follows: Northeast by lands of John Howell, Jr.; Southeast by lands of Joe Kirby; Southwest and Northwest by lands of J.A. Howell.

The real estate above described is delineated on a plat entitled "Property Surveyed for Town of St. George, S.C., in Dorchester County Near St. George, S.C.," by B.P. & Barber & Assoc., Inc., Engineers, dated March 3, 1971, said plat being recorded Office of the Clerk of Court for Dorchester County in Plat Book 18, at page 194, and by reference made a part hereof; and being a portion of a tract of land containing 178 acres, more or less, conveyed to John A. Howell by Deed dated April 14, 1937, and recorded in the Clerk's Office aforesaid in Deed Book 66, at page 446.

This is the same property conveyed to the Town of St. George, South Carolina, by deed of John A. Howell, dated March 19, 1971, and recorded in Deed Book 183, at Page 181, in the Office of the Register of Deeds for Dorchester County, South Carolina.

Former Tax Map #: 057-00-00-048

**ALSO LESS HOWEVER:**

All that certain parcel or lot of land with the buildings and improvements thereon; situate, lying, and being near the Town of St. George, School District No. 1, County of Dorchester, State of South Carolina, and measuring now or formerly as follows, to-wit: On the Southwest by an unpaved County Road and measuring thereon 100 feet; on the Northwest by lands of the Estate of John A. Howell, Jr., and measuring thereon 365 feet; on the East by the run of Deep Hole Branch, separating from other lands of John A. Howell, Sr. and measuring thereon 125 feet; more or less and on the Southeast by other lands of John A. Howell, Sr. and measuring thereon 315 feet; more or less.

This is the same property conveyed to Marion Suzanne Howell, Catherine Elizabeth Howell and Patricia Kay Howell by deed of John A. Howell, Sr., dated January 23, 1979, and recorded in Deed Book 366, at Page 179, in the Office of the Register of Deeds for Dorchester County, South Carolina.

Former Tax Map #: 057-00-00-082

**ALSO LESS HOWEVER:**

All that certain piece, parcel, or tract of land, situate and lying in the State and County above named, measuring and containing one (1) acre, being bounded by a public road on North West and by lands of grantor, John A. Howell, on the North East and South East and by lands of Judy on the South West. Reference is hereby made to a plat made by F.A. Moorer, Surveyor, dated Jan. 22, 1948 which will more fully show.

This is the same property conveyed to Alvin H. Coffield and Corrie Lee Coffield by deed of John A. Howell, Sr., dated February 5, 1948, and recorded in Deed Book 96, at Page 509, in the Office of the Register of Deeds for Dorchester County, South Carolina.

Former Tax Map #: 057-00-00-066

**ALSO LESS HOWEVER:**

All that certain parcel or lot of land, containing two and three-tenths (2.3) acres, more or less, with the buildings and improvements thereon, situate, lying and being near the Town of St. George, in School District No. 1, County of Dorchester, State of S.C., and bounding and measuring now or formerly as follows, to-wit: On the Northwest by lands of Joseph A. Kirby and measuring thereon Four Hundred Seventy-Five (475') Feet; on the East by the run of Deep Hole Branch separating from other lands of John A. Howell, Sr.; on the Southeast by other lands of John A. Howell, Sr., and measuring thereon Three Hundred Sixty Five (365') Feet; and on the Southwest by an unpaved county road and measuring thereon Two Hundred Twenty (220') Feet.

The above described tract of land is more fully delineated on a plat of Property of John A. Howell, Sr., Dorchester County, S.C., Area 2.3 Acres, about to be conveyed to John A. Howell, Jr., dated May 13, 1969 by F.A. Moorer, R.L.S. said plat being recorded in Plat Book 17, Page 187, in the Office of the Clerk of Court for Dorchester County.

This is the same property conveyed to John A. Howell, Jr. by deed of John A. Howell, Sr., dated June 21, 1969, and recorded in Deed Book 169, at Page 91, in the Office of the Register of Deeds for Dorchester County, South Carolina.

Former Tax Map #: 057-00-00-047

See also Estate of John A. Howell, in Dorchester County, South Carolina, under File Number 82ES1800118 wherein it is evidenced that he died testate on June 5, 1982 devising the above Property to his wife, Marion S. Howell.

7. The Plaintiffs were conveyed this property by Deed of Distribution of the Estate of Marion S. Howell dated October, 21<sup>st</sup>, 2004.
8. The Current Tax Map Number of the property of the Plaintiffs is 044-00-00-067.00
9. The Defendant is the owner in fee simple of a portion of the following described property:

All that certain, piece, parcel or tract of land, situate, lying and being to the South of the Southern Railroad at Badham, about two miles from the town of St. George, in Koger Township, in School District No. 4, Dorchester County, State of South Carolina, containing 118.77 acres, more or less, and butting and bounding now or formerly as follows, to wit: on the North by lands now or formerly of Clifford Wimberly, Harry Shuman and Southern Railroad; on East by lands of Behling and Rawlings Wimberly; on the South by lands of Blease Judy, the Grantor herein, and lands this day conveyed by the said Blease Judy to Vandie Judy; on the West by lands of W.F. Berry, the run of Howell Mill Pond being the southern boundary line.

Tax map #: 044-00-00-152.00

10. The Defendant was conveyed the above described property by Deed of Distribution in the Estate of Wilbur L. Judy, dated July 14, 1994, and recorded in Deed Book 1350 at Page 124 in the Office of the Register of Deeds of Dorchester County, South Carolina.

11. The Plaintiffs would allege that the real property of the Plaintiffs shares a common line with the real property of the Defendant.
12. The Plaintiffs would further allege that there has arisen a question as to the exact location of said common property line.
13. The Plaintiffs would allege that the parties are in need of a determination of this Court of the location of the common boundary line of the parties in and near the ponds located on the parties' respective properties.
14. The Plaintiffs would further allege that the parties have, for years, comported themselves such that the property line was located in the middle of the dike road which is located on the Northern Side of The Plaintiffs' property and on the Southern side of the Defendant's property.
15. The Plaintiffs would further allege that the parties have, for years, used the dike road for access to portions of their respective properties.
16. The Plaintiffs would allege that said permissive use by both parties and their respective predecessors in title for more than thirty (30) years does, in addition to any other rights claimed herein, give both the Plaintiffs and the Defendant an unfettered easement right in and to the dike road for purposes of ingress and egress.
17. The Plaintiffs would further allege that, within the past several years, the Defendant has erected a fence in order to attempt to deny the Plaintiffs and their predecessor in title access to the dike road.
18. The Plaintiffs would further allege that there are survey pins located in the pond located on the Defendant's property at the edge of the dike separating the ponds of the parties and further

that said pins could, in fact, be the true boundary line, notwithstanding the comportment of the parties to the contrary.

19. The Plaintiffs would further allege that neither the Plaintiffs nor the Defendant can access, by  land, that portion of their ponds located at and abutting the dike road on their respective properties if they do not have access to said ponds from the dike road.

20. The Plaintiffs would also allege that they have worked with the Defendant and/or her representative to agree on a common boundary line to the benefit of both parties to no avail, even though the Defendant had, after many meetings and much discussion, agreed to the location of a common line on more than one occasion, including during the pendency of a similar action. Defendant would not allow her counsel to sign a Consent Order submitting a Settlement Agreement that had been executed by all parties. 

**FOR A FIRST CAUSE OF ACTION**  
(Declaratory Judgment)

21. The Plaintiffs reaffirm and reallege the prior allegations of this Complaint as if repeated herein verbatim.
22. The Plaintiffs are informed and believe that they are entitled to an order of this Court declaring the common property line of the parties' subject properties to be the center of the  dike road or, in the alternative to be that proposed new line as set out on Exhibit A.

**FOR A SECOND CAUSE OF ACTION**  
(Quiet Title)

23. The Plaintiffs reaffirm and reallege the prior allegations of this Complaint as if repeated herein verbatim.

24. The Plaintiffs are informed and believe that they are entitled to an order of this Court quieting title to the lands of the parties by declaring the common property line of the parties' subject properties to be the center of the dike road or, in the alternative to be that proposed new line as set out on Exhibit A.

**FOR A THIRD CAUSE OF ACTION**  
(Easement)

25. The Plaintiffs reaffirm and reallege the prior allegations of this Complaint as if repeated herein verbatim.
26. The Plaintiffs are informed and believe that, should the Court find the common boundary line to not be in the middle of the dike road as alleged by the Plaintiffs, or in the alternative that proposed new line as set out on Exhibit A, that the Court should order that the party(ies) to which title is not granted as to the dike road should have an unfettered easement for purposes of ingress and egress over and across the dike road.

**FOR A FOURTH CAUSE OF ACTION**  
(Estoppel)

27. The Plaintiffs reaffirm and reallege the prior allegations of this Complaint as if repeated herein verbatim.
28. The Plaintiffs are informed and believe that, should the Court find the common boundary line to not be in the middle of the dike road as alleged by the Plaintiffs, or in the alternative the proposed new line as set out on Exhibit A, that the party(ies) to which title is not granted as to the dike road, should be estopped from denying access to said dike road to the party(ies) to which title is not granted as to the dike road, so that all parties can access the dike road, as

they have done for years.

**FOR A FIFTH CAUSE OF ACTION**  
(Easement by Necessity)

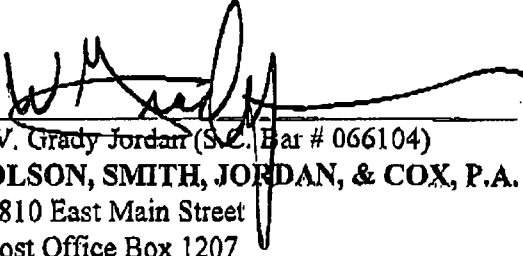
29. The Plaintiffs reaffirm and reallege the prior allegations of this Complaint as if repeated herein verbatim.
30. The Plaintiffs are informed and believe that, should the Court find the common boundary line to not be in the middle of the dike road as alleged by the Plaintiffs, or in the alternative to be the proposed new line as set out on Exhibit A, that the Court should order that the party(ies) to which title is not granted as to the dike road, should have an unfettered easement by necessity for purposes of ingress and egress over and across the dike road for access of the respective ponds.

**WHEREFORE**, the Plaintiffs pray:

- A. That the Court declare the common property line of the parties' subject properties to be the center of the dike road or in the alternative the proposed new line as set out on Exhibit A; and,
- B. That the Court declare their title in the real property which is the subject matter of this action be quieted with a determination as to the proper location of the common boundary line; and,
- C. That the Court Order the proper easement rights of the parties as stated herein if it does not find the common lines as plead herein; and,
- D. That the Court Order that the party(ies) to which title is granted as to the dike

road, should be estopped from denying access to said dike road to the party(ies) to which title is not granted as to the dike road, so that all parties can access the dike road; and,

E. For such other and further relief as this Court may deem just and proper.

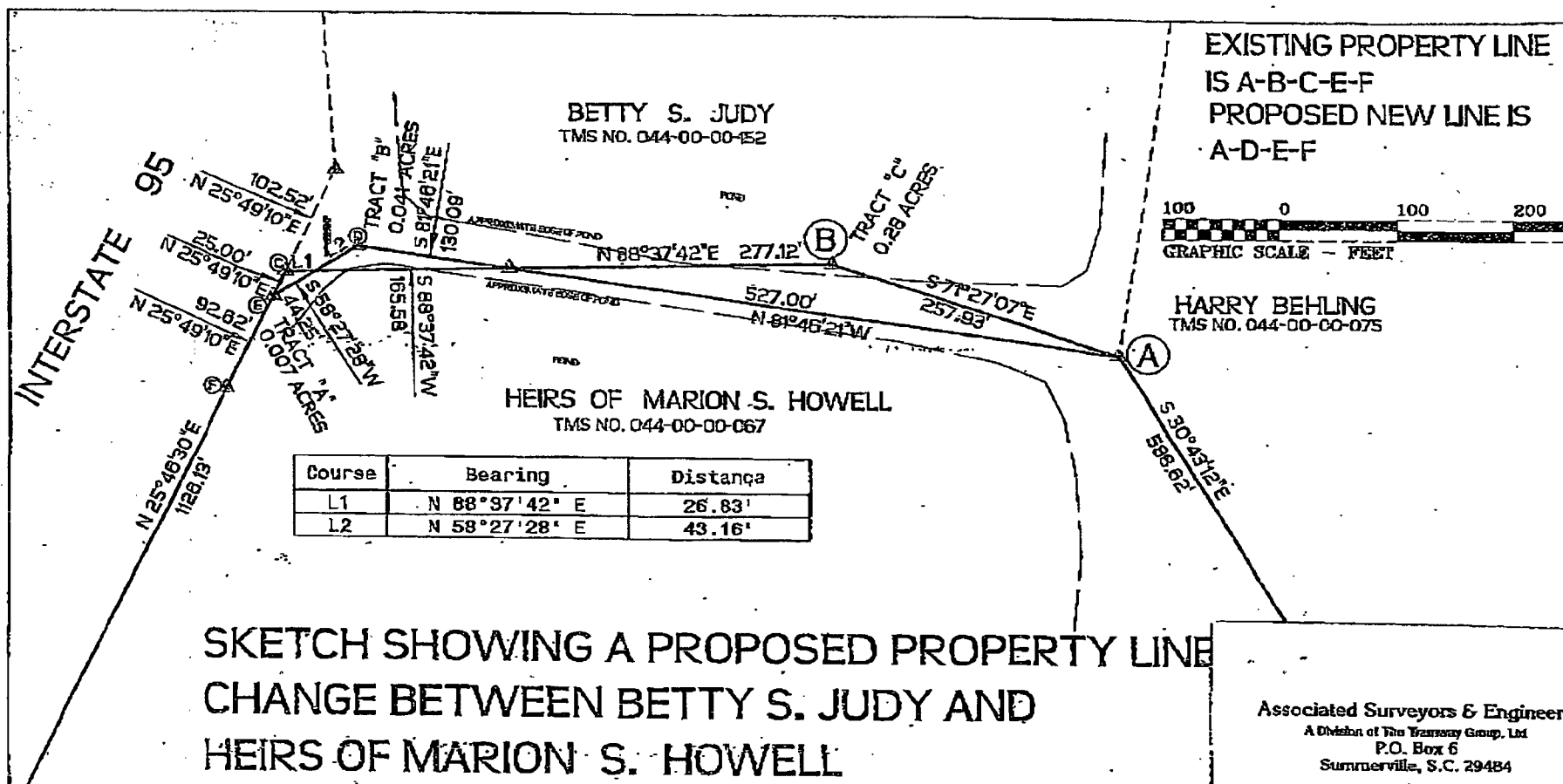


W. Grady Jordan (S.C. Bar # 066104)  
**OLSON, SMITH, JORDAN, & COX, P.A.**  
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[Jordan@osjc.com](mailto:Jordan@osjc.com)  
Attorney for the Plaintiffs

Easley, South Carolina

Date: August 2, 2010

## EXHIBIT "A"



023

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS  
C/A No.: 2010-CP-18-2243

Kay Howell Jordan, Marion Howell  
Tolson & Lewis V. Jordan,

Plaintiffs,

vs.

ANSWER

Betty L. S. Judy,

Defendant.

The Defendant, Betty L. S. Judy, herein, answering the Complaint of the Plaintiff, and reserving her rights under any motions filed or to be filled, would respectfully allege unto this Honorable Court as follows:

FIRST, FOR A FIRST DEFENSE

1. As to Paragraphs 1, 2 and 3 of the Plaintiff's Complaint, the Defendant admits on information and belief the allegations contained therein.
2. As to Paragraphs 4 and 5 of the Plaintiff's Complaint, the Defendant admits the allegations contained therein.
3. As to Paragraphs 6, 7 and 8 of the Plaintiff's Complaint, the Defendant lacks sufficient information on which to form a belief and therefore denies the same and demands strict proof thereof.
4. As to Paragraphs 9 and 10 of the Plaintiff's Complaint, the Defendant would admit only that she is the owner of certain properties located adjacent to the Plaintiffs situated in the County of Dorchester, State of South Carolina, the title and description of which is more fully set forth in those deeds, plats, and documents recorded and

referenced in the office of the Clerk of Court and Register of Deeds for Dorchester County and the Probate Court for Dorchester County as applicable. The Defendant denies all other allegations contained therein and demands strict proof thereof.

5. As to Paragraph 11 of the Plaintiff's Complaint, the Defendant admits on information and belief the allegations contained therein.

6. As to Paragraphs 12, 13 and 14 of the Plaintiff's Complaint, the Defendant denies same and demands strict proof thereof.

7. As to Paragraph 15 of the Plaintiff's Complaint, the Defendant would admit only that she and her family have used the dike for access to her family's property including the pond of the Defendant, and would deny all remaining allegations therein and demands strict proof thereof.

8. As to Paragraph 16 of the Plaintiff's Complaint, the Defendant denies same and demands strict proof thereof.

9. As to Paragraph 17 of the Plaintiff's Complaint, the Defendant would admit only that she or her family have placed a gate along the property line. The Defendant denies all other allegations contained therein and demands strict proof thereof.

10. As to Paragraphs 18, 19, 20, 22, 24, 26, 28 and 30 of the Plaintiff's Complaint, the Defendant denies the allegations contained therein and demands strict proof thereof.

11. As to Paragraphs 21, 23, 25, 27 and 29 of the Plaintiff's Complaint, this Defendant is neither required to admit nor deny the allegations contained therein.

12. The Defendant denies all other allegations contained herein not specifically

admitted, controverted, modified, or denied.

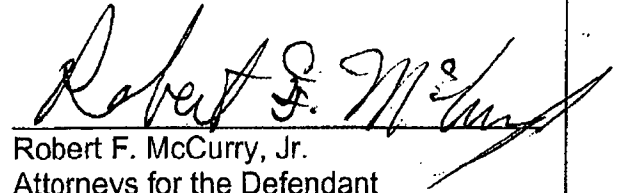
WHEREFORE, having fully answered the Plaintiff's Complaint, this Defendant prays that said Complaint be dismissed with costs to the Plaintiff, and for such other and further relief as this Court may deem just and proper.

Orangeburg, S.C.

HORGER, BARNWELL & REID, L.L.P.

October 20, 2010

BY:



Robert F. McCurry, Jr.  
Attorneys for the Defendant  
PO Drawer 329  
Orangeburg, SC 29116-0329  
(803) 531-3000

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS  
C/A No.: 2010-CP-18-2243

Kay Howell Jordan, Marion Howell  
Tolson, and Lewis Virgil Howell,

Plaintiffs,

vs.

NOTICE OF MOTION AND MOTION  
FOR RECONSIDERATION

Betty L. S. Judy,

Defendant.

The Defendant above named, having received the Order of the Court dated June 17, 2013 and filed on July 2, 2013, does hereby file its Notice and Motion for the Court to reconsider its Order in several respects. Counsel for the Defendant received the Order on July 8, 2013 and makes its Motion on the following grounds:

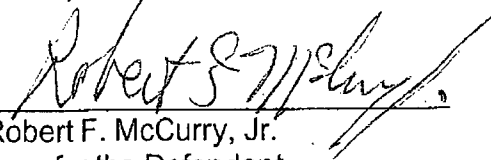
1. The Defendant requests that the Court reconsider those portions of the Order dealing with the testimony of the parties and witnesses as to the usage of the dike area, the testimony of the witnesses as to the fencing placed upon the dike area, and the documentation and exhibits regarding these issues.

2. The Defendant further requests that the Court reconsider those portions of the Order dealing with the testimony, documentation and evidence presented regarding the plats, witnesses and surveyors in the case. The Defendant believes that the Court erred in failing to rule that the 1996 Ashley Surveying plat, based upon the 1927 Moorer plat, shows that the common boundary line between the two parcels is as indicated in the 1996 Ashley Surveying plat.

The Defendant does hereby make this Motion for Reconsideration regarding the above items pursuant to Statutory and Case Law of the State of South Carolina and pursuant to the South Carolina Rules of Civil Procedure.

HORGER, BARNWELL & REID, LLP

By:

  
Robert F. McCurry, Jr.

Attorney for the Defendant

P.O. Drawer 329

Orangeburg, SC 29116

(803) 531-3000

Dated: July 15, 2013  
Orangeburg, SC

1 THE COURT: It looks like this is Jordan,  
2 Tolson, and Howell versus Judy; is that correct?

3 MR. JORDAN: Yes, ma'am.

4 THE COURT: And you're here on behalf of the  
5 plaintiffs?

6 MR. JORDAN: Yes, ma'am.

7 THE COURT: All right. I'm happy to hear  
8 from you. Would you care to make a quick  
9 opening statement?

10 MR. JORDAN: Yes, ma'am. I think maybe I  
11 could make an opening and we could sort of agree  
12 on the history of this just to help the Court to  
13 simplify things. And you know, we were here  
14 before Your Honor on a prior motion about a  
15 settlement agreement where there had been a  
16 purported agreement as to the property line and  
17 as to access.

18 THE COURT: Correct.

19 MR. JORDAN: And that agreement, if you  
20 remember wasn't signed by the attorneys, wasn't  
21 brought in open court. And Your Honor ruled  
22 based on the rules that it wasn't enforceable.

23 THE COURT: Correct.

24 MR. JORDAN: So what we're here and what we  
25 need help on today is, where is the common

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1 boundary line. And I would submit to you that  
2 neither party can really say where the line is.  
3 Mr. Judy deceased and Mr. Howell deceased back  
4 when they built the interstate were two people  
5 that allowed dirt to be removed for purposes of  
6 laying the foundation for the interstate, and it  
7 gave them a pond. And they weren't the only  
8 ones that did that when that happened.

9 And their two ponds were dug side by side.  
10 And they have a dike between them, which we call  
11 it a dike. I guess it is a dike. It's a  
12 containment, a strip of land. It's wide enough  
13 that you can drive a vehicle across it. And it  
14 gives access to the ends of the ponds on that,  
15 the common ends I guess.

16 But they had a bunch of old surveys. And  
17 you know, this case has been litigated. It has  
18 a long history for different reasons. There was  
19 a sign that Judge Watts ruled on years ago, the  
20 location of a billboard that's on 95. And he  
21 ruled that that was on Ms. Judy's property. And  
22 in his order he said, I'm not ruling where the  
23 boundary line is, because it's not -- I think  
24 they must have wanted him to, but it wasn't  
25 before him. And he declined to make that

1 decision. So when they left court after that,  
2 unfortunately that was still out there. And  
3 it's still out there today.

4 There are markers out there. And there are  
5 some surveys that we're going to provide Your  
6 Honor today. But no one is going to be able, or  
7 our position is no one is going to be able to  
8 show you exactly where any boundary line is.  
9 And that's what we're going to have to ask. I  
10 mean, we just need help and ask you to find the  
11 line so everybody can move on with life.

12 And what we will ask Your Honor is is that  
13 you find a boundary line that is fair to both  
14 sides. We are not going to ask for any line  
15 that we think harms Ms. Judy. And we are asking  
16 the Court not to find any line that would harm  
17 us. Our position is that the dike area is the  
18 property line and that both Ms. Judy -- and Mr.  
19 Judy deceased, Mr. Howell deceased. And their  
20 families since then have used this dike to  
21 access their ponds. And it really makes no  
22 sense otherwise, because we can't access that  
23 end of our pond without being able to go on the  
24 dike. And Ms. Judy and her family can't access  
25 their end of their pond, that side, without

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1 going on the dike.

2 And so we take the position it would be  
3 unfair to either side not to be able to use it.  
4 And we want them to be able to use it. We want  
5 to be able to use it. Regardless, Your Honor,  
6 you're going to have to draw a line. But  
7 regardless of where you draw the line we are  
8 asking that both sides have access. If that  
9 line were to run right down the middle or one  
10 edge of the dike, wherever it is, we're still in  
11 our pleadings we've asked, and we'll ask today  
12 in our testimony that you grant both Ms. Judy  
13 and our, my plaintiff's rights to that area,  
14 which they've had forever.

15 There has been a fence constructed by  
16 someone, I assume on behalf of Ms. Judy in the  
17 last so many years to try to cut off access to  
18 the dike. You can still walk around the fence  
19 and go on the dike. We can, but you can't drive  
20 on that like they once did because of that  
21 fence. So there has been an attempt in recent  
22 history of this case to try to block us.

23 We will provide you testimony that we have  
24 done nothing. We have never done anything to  
25 interfere with Ms. Judy's use of the property.

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1 We don't want to, don't intend to, don't think  
2 it would be the right thing to do.

3 Our contention is, and I think we do agree  
4 we disagree on this point, we have one survey  
5 that was done by John David Bass, which has a  
6 line, which I'll show up to Your Honor. And  
7 then Ms. Judy has a survey by Ashley Survey,  
8 which has a different line. This is the one  
9 that Ms. Judy had done.

10 THE COURT: Oh, I see the line.

11 MR. JORDAN: And this area is the pond.  
12 There is land over here. And then this is  
13 another survey that was done that shows the two  
14 ponds and another line on the edge of this pond  
15 and a marker here.

16 And there are markers all along this edge  
17 over here. And our contention, which we  
18 disagree on this, our contention is that this  
19 line is just, you know, you can pick any one of  
20 these markers and draw a line to it and say,  
21 that's my line. I mean, there's markers all  
22 over. We could draw one here and say this is  
23 our line, but we're not trying to do that.

24 We're just trying to get -- what we're  
25 asking for is a court order essentially

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1           condoning what they've done forever or until  
2           this fence recently. There is a fence on this  
3           end right here.

4           THE COURT: This is where original access  
5           would be, going down this way?

6           MR. JORDAN: Yes, ma'am. This is the only  
7           access that my clients have to the dike is down  
8           this side. They can't come, they can walk.  
9           They can't drive, but they can drive here. Ms.  
10          Judy can drive this way and she can drive this  
11          way.

12          My understanding it's her contention this  
13          is her line. We would submit, I guess that's a  
14          possible line, but we would think it would be  
15          unfair to draw a line in a pond when we have a  
16          dike here. I don't know that Mr. Howell and Mr.  
17          Judy knew exactly where that line was or we  
18          wouldn't all be here today. I guess they  
19          thought it must have been somewhere in the dike  
20          here, because I don't know why one would have  
21          put a dike inside his lot, why Mr. Judy would  
22          have put a dike inside his line and dug out just  
23          a piece on the other side.

24          So now, the other thing, which I think we  
25          disagree on, and I'm not submitting these into

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1 evidence now. This was what was submitted to  
2 Your Honor last time as a part of the agreement,  
3 the settlement agreement that stood before us.

4 MR. McCURRY: I've been quiet until now, but  
5 my point about that, that settlement agreement  
6 was blown apart.

7 THE COURT: Right.

8 MR. McCURRY: That is no longer, you know.  
9 Basically the settlement agreement says we'll  
10 give you access on that, because we've got the  
11 dike. If you give us access from the property  
12 that we've been using for all these good years  
13 until it was taken away. And then whatever  
14 reason the agreement didn't work out. And so to  
15 me this --

16 THE COURT: Well, why don't I do this? Each  
17 party give an opening based on what your  
18 positions are going to be. And then we'll  
19 introduce the exhibits as they come in properly.

20 MR. McCURRY: I just had to interject that.

21 MR. JORDAN: I understand. But the other  
22 thing is there are two more lines that we  
23 contend based on the markers out there. And  
24 this is what they had used. But we can do that.  
25 That's fine.

1 Ms. Judy has been accessing her property  
2 across Southern Railway's land, not across ours.  
3 And years ago, and I actually have the  
4 documents, the Southern Railway, this is back in  
5 the '70s, Southern Railway had done up an  
6 easement granting the right to come across their  
7 property and sent two originals to be executed.  
8 For whatever reason they were never executed to  
9 our knowledge. They were never recorded. But  
10 Ms. Judy still uses that property to come  
11 across. She's not accessing over us. I don't  
12 want to think the Court to think that she comes  
13 across us, because she doesn't. But I mean, she  
14 does have, she accesses. I don't think she has,  
15 I don't know if she has legal access across the  
16 railroad, but I don't know what has ever been  
17 brought against them to claim that some easement  
18 has been acquired over time or not.

19 But that's pretty much what we're going to  
20 ask today. We just need help.

21 THE COURT: Thank you, Counsel.

22 MR. McCURRY: Little bit of background, this  
23 Judy property, at one time access was able to be  
24 gained from a couple of areas. It was farm  
25 land. It could be gained off of Highway 78. It

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1 could be gained off of Old Saint George Road,  
2 which comes up through some other land owners up  
3 through the Howell property. Both accesses were  
4 used when 95 came through. That's what brought  
5 all this about.

6 And the borrow pits were dug, of course by  
7 95. They weren't dug by the parties. The  
8 contractors dug the borrow pits. And there was  
9 no access from 78, because the bridge stopped  
10 the access. So there was no access for the  
11 first 20 or so years. And so access was gained  
12 off of Old Saint George Road through the Howell  
13 property.

14 At some point in time they terminated that  
15 access, didn't give a key to my client, that  
16 kind of thing. At some point my clients asked  
17 the highway department if they could go under  
18 the bridge. So they have to go on their  
19 property, go under the I95 bridge, look both  
20 ways for the railroad, go down a ways on the  
21 other side of the bridge, and cut back in. That  
22 is purely the pleasure of the railroad. That  
23 could be taken away in a skinny minute. And  
24 that happens sometimes.

25 So where we are today, Your Honor, is I

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1 disagree to a large degree with what Mr. Jordan  
2 indicated on behalf of his clients. We feel we  
3 do have a property line. We have an old plat,  
4 1927 plat that formed the basis of the 1986 plat  
5 done by Ashley Survey. And in real terms it  
6 does take away the dike from the Howells they at  
7 one time thought were theirs. But they still  
8 have unfeathered access to their whole property.  
9 They can get anywhere they want to get to on the  
10 property.

11 My clients lost that means of access in  
12 that settlement agreement that never came about.  
13 And so we've been harmed in a big way. And if  
14 you want to say that if our plat has problems it  
15 might harm the Howell family, that may be a true  
16 statement. But we feel that our plat is based  
17 upon the plat that has legal significance and  
18 was filed.

19 And he made a comment about there are  
20 points on that eastern boundary. There are  
21 concrete monuments on the right of way, but our  
22 surveyors didn't just pick a point. They  
23 followed the 1927 plat and went all the way to  
24 the right of way. And so we feel that there is  
25 a decision the Court needs to make. And I don't

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1 think it's an equitable give and take. I think  
2 that we have a right to that plat, that line  
3 that was shot in the 1927 and following in the  
4 1996 plat. And so we feel that there is a  
5 result that it should hold to that smaller plat,  
6 the ones we've shown.

7 In other words, we contend that this plat  
8 here is not reliable for reasons we'll show.  
9 And we feel that this plat is correct and filed  
10 as an older plat, and that this in fact would be  
11 the line. And this is the pond right here.  
12 They have foot access, despite my client has  
13 foot access along different points here. They  
14 have foot access to this side of the pond. They  
15 have driveable access everywhere else. And  
16 that's sometimes the nature of a pond that might  
17 sit along the I95. So I guess they have walking  
18 access, probably driving back here too.

19 But we sort of differ about --

20 THE COURT: That's why we're here.

21 MR. JORDAN: That's it.

22 THE COURT: Thank you, Mr. McCurry.

23 MR. McCURRY: Thank you.

24 THE COURT: Mr. Jordan, are you ready to  
25 call your first witness?

1 MR. McCURRY: Judge, I might mention one  
2 thing right now too if I can.

3 THE COURT: Sure. I didn't mean to cut you  
4 off.

5 MR. McCURRY: Ms. Betty Judy is the  
6 defendant of record. She wasn't the same age as  
7 Ms. Howell, but she's the same generation as Ms.  
8 Howell, who's now deceased. She is not present  
9 here today, has good days and bad days. She's  
10 getting older. Her testimony would be of scant  
11 value, I believe. Her son, Roy Judy, who is  
12 with me here today, I think Jim Bell had done a  
13 power of attorney for Ms. Judy sometime in the  
14 past couple months. It's been recorded. I  
15 don't have a copy of it. I've got the recording  
16 information. But unless the Court wants Ms.  
17 Judy here we can get the other son and go get  
18 her, but we were not planning on calling Ms.  
19 Judy as a witness or using her testimony in any  
20 way.

21 THE COURT: If you don't need her in your  
22 case that's completely up to you.

23 MR. McCURRY: All right. Thank you, Your  
24 Honor.

25 THE COURT: Thank you. Are you ready to

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**LEWIS EDWARD JORDAN – Direct Examination by Mr. Jordan**

Page 15

1 call your first witness?

2 MR. JORDAN: Yes, ma'am. Okay. I call  
3 Lewis Jordan.

4 THE COURT: Mr. Jordan, if you'd please come  
5 around here to the witness stand.

6 (Lewis Jordan, having been duly sworn,  
7 testifies as follows:)

8 THE COURT: Thank you, sir. Please have a  
9 seat and state your full name.

10 A. Lewis Edward Jordan.

11 MR. JORDAN: And Your Honor, if we could  
12 just have these marked. We'll mark what we do  
13 agree on.

14 (DOCUMENTS MARKED AS PLAINTIFF'S EXHIBIT  
15 NUMBER ONE FOR I.D.)

16 (DOCUMENTS MARKED AS DEFENDANT'S EXHIBIT  
17 NUMBER TWENTY-FIVE FOR I.D.)

18 (Whereupon an off the record discussion  
19 took place.)

20 MR. JORDAN: And Your Honor, we also talk  
21 about the fact because we have this prior order  
22 of Judge Watts, and actually there were several  
23 orders. I think either party, we both agree  
24 that we own our respective properties, but we  
25 disagree as to where the line is. Neither one

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1 of us are going to burden the other with having  
2 to go back in the chain of title and prove  
3 ownership.

4 MR. McCURRY: Correct.

5 THE COURT: So you're stipulating to that?

6 MR. JORDAN: To the ownership, but we do not  
7 stipulate as to where our line, I think that's -  
8 -

9 MR. McCURRY: The deeds and plats might be  
10 at issue, but the ownership is not an issue.

11 MR. JORDAN: Right.

12 THE COURT: Okay.

13 **DIRECT EXAMINATION BY MR. JORDAN:**

14 Q. All right. Mr. Jordan, what is your  
15 relationship to the plaintiffs?

16 A. Plaintiff was my mother-in-law, father-in-law.  
17 I married their daughter, Kay.

18 Q. And Kay is one of the plaintiffs, so you're her  
19 husband?

20 A. Yes.

21 Q. And just so the Court understands, and I'm just  
22 going to give a little background. You're a  
23 retired Air Force Colonel?

24 A. Right.

25 Q. You live in Clemson?

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1 A. Right.

2 Q. When you retired you went into the real estate  
3 profession?

4 A. Right.

5 Q. And you do a little bit of real estate sales and  
6 a little bit of real estate development; is that  
7 a fair statement?

8 A. Right.

9 Q. Now, I just want you to try to help Judge  
10 Murphy, give her information you have to help  
11 her make a decision. We have two surveys that  
12 we agree on. I've got another one I'm going to  
13 ask you about. But what we've marked as  
14 Plaintiff's Exhibit Number One, Mr. Jordan, the  
15 ponds that are on there, is that a good  
16 representation of at least giving an idea of  
17 where the ponds are located beside each other?

18 A. Sure.

19 Q. And the ponds have a dike area between them?

20 A. Right.

21 Q. Now, the pond on the Howell's side, we'll call  
22 it the Howell's side, has your family used the  
23 pond on the Howell's property for years without  
24 any interference?

25 A. Sure.

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1 Q. Has Ms. Judy or anyone to your knowledge ever  
2 interfered with anything that y'all did in the  
3 pond itself, the water?

4 A. In the pond itself, no.

5 Q. And did y'all stock the pond with fish at any  
6 time?

7 A. Sure.

8 Q. You did? Okay. And have you used it to fish  
9 in?

10 A. Sure.

11 Q. Has your family used the dike area?

12 A. Yes.

13 Q. And how have you used the dike area?

14 A. Walking on it, driving on it, fishing on it,  
15 cleaning it, whatever needed to be done.

16 Q. And I know that relatively recently there's been  
17 a fence put up at the end of the dike; is that  
18 right?

19 A. Yes.

20 Q. But before that was there ever any interference  
21 with usage of the dike?

22 A. No.

23 Q. And can you show Judge Murphy where, and since  
24 we have a dike on Defendant's Exhibit Number  
25 Twenty-Five, can you show her on here, just give

1 her an idea of where the fence is now?

2 A. The fence is at this -- it comes right across  
3 here so that when you come up this way there is  
4 a fence across here to prevent you from driving  
5 onto the dike. You can walk around it. You can  
6 crawl through it, you know. But you can't drive  
7 on the dike.

8 Q. But you still can get on the dike?

9 A. Oh, sure.

10 Q. Now, do you know who constructed the fence?

11 A. I know it was not the Howell side.

12 Q. You weren't there the day it was put up?

13 A. No.

14 Q. You never constructed a fence to try to keep Ms.  
15 Judy from using the dike?

16 A. No.

17 Q. Now, have you talked to anyone in the Judy  
18 family to try to figure out where the property  
19 line was?

20 A. Sure.

21 Q. Can you explain that? Who did you talk to?

22 A. Well, normally talk to Roy. And we met out  
23 there varying times, many times seems like to  
24 say, would it go here? Would it go there? Move  
25 the thing here. Move it there. We met many

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1 times to try to work out something that would  
2 give both of us access and capability to see  
3 where would be the best place to put a line.

4 Q. And did you meet at the dike and also meet at  
5 home?

6 A. Sure. We met at Ms. Judy's one -- at her house  
7 one time.

8 Q. But you and Roy have met out there at the dike  
9 many times?

10 A. Yes.

11 Q. Did you and Roy ever try to flag where a line  
12 should be?

13 A. We did. We certainly did. And we did it a  
14 couple of times and moved it here or there to --  
15 -

16 MR. JORDAN: Bob, you want to object to this  
17 now?

18 MR. McCURRY: Your Honor, I guess he's going  
19 to present something.

20 MR. JORDAN: Yeah.

21 MR. McCURRY: The document that Mr. Jordan  
22 is holding in his hand was part of the  
23 settlement agreement, which has been scrubbed,  
24 which never was reached. And so that's not even  
25 on the table. I don't believe that's before the

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1 Court at all. The decision the Court has to  
2 make is where is the line, and that was an  
3 agreement that my clients would agree to that  
4 line if we get access. And as we learned in the  
5 motion hearing a while back, access is no longer  
6 being offered to my client. And so that  
7 settlement offer is certainly withdrawn. We are  
8 not at all agreeing to that line as depicted  
9 there.

10 THE COURT: I understand that. And  
11 certainly if that's part of the settlement  
12 negotiation I understand that's off the table.  
13 If he can authenticate it as where the parties  
14 were working towards I think I'll allow that.

15 MR. JORDAN: Because I'm not asking this to  
16 be admitted for purposes of this is where an  
17 agreement exists. I'm only --

18 THE COURT: Right. Asking where you were  
19 talking about putting potential flags --

20 MR. JORDAN: Yes, ma'am. And I think from a  
21 technical standpoint this is already in  
22 evidence, because it was submitted into evidence  
23 by the plaintiff for purposes of enforcing a  
24 settlement agreement. So really this document  
25 is already in the Court's file.

1 Q. So Mr. Jordan, is this document that I'm showing  
2 you, is that document trying to show where y'all  
3 were putting potential lines on the dike?

4 A. Yes.

5 MR. JORDAN: I'll ask that this be marked as  
6 Plaintiff's Exhibit Number Two.

7 (DOCUMENT MARKED AS PLAINTIFF'S EXHIBIT  
8 NUMBER TWO FOR I.D.)

9 Q. Now, what I'd like for you to do if you could,  
10 just sort of explain to Judge Murphy the  
11 conversations you've had with Roy. Well, not  
12 the conversations but explain what you and Roy  
13 did as far as where y'all flagged it. And just  
14 explain how this sketch came about from y'all's  
15 trying to come up with a line so she  
16 understands.

17 A. Okay. We met out there varying times. And  
18 trying to determine exactly where the line,  
19 where both of us could live with the line. And  
20 we would have -- Roy would put a flag. I'd put  
21 a flag and so forth. And we'd talk back and  
22 forth about where it ought to be. The line,  
23 ABC, ABC off the top piece was the point that  
24 the survey said, here's where it ought to be.  
25 We both agreed that --

- 1 Q. It goes into the pond?
- 2 A. It goes into the pond. We both agreed at that
- 3 time didn't make sense for it to go into this
- 4 pond, back across, into the other pond, and mess
- 5 up both ponds. We said, logically in no way we
- 6 could move them both ends and split the middle
- 7 or put it in there somewhere. And so that's
- 8 when we started doing the flags to say, where's
- 9 the best place to get both of us access to the
- 10 ponds and the use of the dike for both parties.
- 11 And that's where we came up then -- the last one
- 12 we came up then was AD -- AD and then on down on
- 13 the lefthand side. And that's --
- 14 Q. That line runs on the dike but it runs, more of
- 15 the dike is on Ms. Judy's side with that line?
- 16 A. Right.
- 17 Q. Less of the dike is on Howell's?
- 18 A. Right. Because we were starting at a point in
- 19 here down on A.
- 20 Q. And you went to one of these markers out --
- 21 A. Went to one of the markers on the -- well, it
- 22 ended up down at F, E and F.
- 23 Q. And that line has the sign on Ms. Judy's side?
- 24 A. Yes.
- 25 Q. Which is what Judge Watt's had ordered?

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1 A. Sure, sure.

2 Q. And how did y'all flag that so that you could  
3 end up getting the surveyor, because I think he  
4 gave y'all this sketch too.

5 A. He did.

6 Q. How did y'all end up flagging it?

7 A. Well, we moved along and said, okay. You know,  
8 we put a flag here. That'll give you room to  
9 get around. That'll give you a little place on  
10 your side to drive your car to do that. One of  
11 the things they wanted was the capability to put  
12 a, back a boat in. And they said, well, we can  
13 move it over some to be able to let him back his  
14 boat in and put it into the pond. And -- but in  
15 varying places we wanted to make sure we weren't  
16 bothering either pond, interfering with either  
17 pond. And then we got down to the end and  
18 turned it back so that the sign that is theirs  
19 would be on that side of the property.

20 THE COURT: That's the sign right here?

21 MR. JORDAN: Yes, ma'am. Yes, ma'am.

22 A. And it was something we worked varying times.  
23 We would go out and go out there and we'd meet.  
24 And we'd move a flag a little bit this way or  
25 that way to be able to get it where it was

1 agreeable to both of us.

2 Q. And I guess after those numerous meetings that  
3 you had is it your testimony that what you and  
4 Roy had finally come up with was this line that  
5 runs from point A over to little d, and then  
6 down to little e; is that what y'all ended up  
7 saying, this is a fair line?

8 A. Right, right.

9 Q. Now, this that we have, which is Plaintiff's  
10 Exhibit Number Two has the dike area and where a  
11 common boundary line would be, correct?

12 A. Right.

13 Q. It doesn't have anything on there about access  
14 to the property from a roadway, does it?

15 A. No, it doesn't.

16 Q. And when you and Roy were doing this there  
17 wasn't any agreement that this was only if an  
18 easement or access was given to the property?

19 A. We were talking at the time about trying to get  
20 use of the dike for both parties.

21 Q. Just the --

22 A. Very, very logical. We both know that the dads,  
23 when they made, they decided, you know, this is  
24 where it was going to be, and they used it. And  
25 so we worked out on varying times the best route

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1 to be able to do what we were trying to do. And  
2 we thought we had it agreed.

3 Q. Right. But my question is, you didn't do this  
4 with Roy with the condition that this line was  
5 only going to be an agreed upon line if in  
6 addition you gave Ms. Judy access across your  
7 property to get to her pond?

8 A. They have access to their pond. No.

9 Q. So what I want to make clear, because this is a  
10 part of their position. I want to make clear  
11 about this.

12 A. Right.

13 Q. I want you to be clear with Judge Murphy about  
14 whether when you and Roy were trying to do this  
15 there was any discussions that we're only going  
16 to agree to this line if the Howells agree that  
17 we're going to get a specified access or  
18 easement.

19 A. No. He and I were trying to work on a line to  
20 be able to use the dike for both of us.

21 Q. And at the time that this survey, I guess we can  
22 call it a draft survey, was done to try to come  
23 up with a boundary line there was no other  
24 survey done showing some easement that gave  
25 access to property?

- 1 A. No.
- 2 Q. And did that issue not even arise until much
- 3 later in the ball game?
- 4 A. That was a -- must have come, because this was
- 5 just the use of the dike.
- 6 Q. Now, did you ever get frustrated, Mr. Jordan,
- 7 thinking that as far as your discussions with
- 8 Roy or Ms. Judy?
- 9 A. There were times when -- yes. And part of that
- 10 -- if I may elaborate.
- 11 Q. Yes.
- 12 A. Was because we changed the flags so many times
- 13 to be able to get it right.
- 14 Q. Before you finally came up with this?
- 15 A. Before we finally came up with that. And your
- 16 comment that the sketch down the middle was a
- 17 sketch that was done per our laying out the
- 18 flags, the other piece, the other ABAD so forth
- 19 was a plat that was drawn up by a surveyor.
- 20 Q. Okay. And who initiated, Mr. Jordan, most of
- 21 those conversations trying to resolve this
- 22 issue? Were you initiating the conversations to
- 23 try to get this accomplished, or were Roy
- 24 calling you all the time?
- 25 A. We kept -- we talked a bunch of times. And my

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- 1 sister-in-law talked a bunch of times. We tried
- 2 many times to be able to get this done.
- 3 Q. Now, this survey that we have in evidence, which
- 4 is Plaintiff's Exhibit Number One was a survey
- 5 that I guess you had also asked Mr. Bass to do
- 6 trying to look at old surveys. I think he'd
- 7 referenced on there eight surveys, more than
- 8 that. He's got eight notations of surveys. And
- 9 then he's got references to deeds on there that
- 10 he used in doing this. Plaintiff's Exhibit
- 11 Number One was done prior to --
- 12 A. Yes.
- 13 Q. -- you and Roy coming up with what y'all thought
- 14 was a fair line; is that your testimony?
- 15 A. Right.
- 16 Q. And on Plaintiff's Exhibit Number One the
- 17 property line that the surveyor shows on there,
- 18 it actually just cuts the lip of their water it
- 19 looks like and then goes to a marker. Is that
- 20 marker inside the pond?
- 21 A. Yes.
- 22 Q. I think it says actually point is in pond. And
- 23 then it goes across the corner of the Howell
- 24 pond; is that right?
- 25 A. Yes.

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- 1 Q. Did you and Roy talk about the fact that there  
2 was a potential that you could end up with a  
3 line in ponds?
- 4 A. Sure. And that's why we were trying to work out  
5 the thing.
- 6 Q. Have you driven on the dike in the past? Have  
7 you driven on the dike in the past?
- 8 A. Oh, yes.
- 9 Q. For what reasons?
- 10 A. Fishing, visiting, looking, cleaning, all of  
11 those things. And it ---
- 12 Q. Who has maintained or cleaned the dike?
- 13 A. I think both sides have done well with that.
- 14 Q. The Howells and Judys?
- 15 A. Yes.
- 16 Q. What portions of the dike to your knowledge have  
17 the Howells maintained?
- 18 A. Whatever needed to be done anywhere along there.  
19 And if there was a deal limb you do away with  
20 it.
- 21 Q. So as far as the maintenance of the dike was  
22 there ever any problems with it staying clean or  
23 useable?
- 24 A. No. I think they did a good job with some of  
25 that when we weren't around.

- 1 Q. On what we've marked as Defendant's Exhibit  
2 Twenty-Five, which I'm going to show you a copy  
3 of it, this survey shows as you see the line  
4 going into the Howell pond; is that right? It  
5 doesn't have the pond drawn on there, but from  
6 the other surveys we have would that line have  
7 to go into your pond?
- 8 A. It would.
- 9 Q. Because it varies from the dike?
- 10 A. Right.
- 11 Q. Now, you've walked this side of the property?  
12 When I say this side, this side is the 95 --
- 13 A. Sure.
- 14 Q. Interstate 95 side?
- 15 A. Sure.
- 16 Q. If we're looking at Defendant's Exhibit Twenty-  
17 Five that would be the lefthand side of the  
18 survey, correct?
- 19 A. Right.
- 20 Q. Now, are there markers out there, Mr. Jordan?
- 21 A. Sure, sure.
- 22 Q. And do you have any knowledge that this mark  
23 that was picked is any different than any other  
24 mark that could have been picked to draw a line?
- 25 A. There are varying markers along there. And you

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1 know, who knew what they were there for? I  
2 mean, highway put them in or ---

3 MR. JORDAN: All right. I don't think I  
4 have any other questions for this witness, Your  
5 Honor.

6 THE COURT: Mr. Jordan, at this time are you  
7 moving into evidence One and Two?

8 MR. JORDAN: Yes, ma'am. Yes, ma'am.

9 THE COURT: Okay. Any objections?

10 MR. McCURRY: No. Again, I would object to  
11 the sketch that shows the so called, I call it  
12 the settlement agreement, because that  
13 settlement agreement no longer worked. Because  
14 of the Howell's unwillingness to allow us access  
15 we certainly have no desire to split the baby,  
16 if you will, split the dam. And that  
17 agreement's no longer on the table, if you will.

18 THE COURT: I understand. And I know it's  
19 based on a prior settlement agreement, but on  
20 his understanding of the history of the parties.

21 MR. McCURRY: Thank you, Your Honor.

22 **CROSS EXAMINATION BY MR. McCURRY:**

23 Q. Mr. Howell, I have a few questions for you. Mr.  
24 Howell --

25 A. Mr. Jordan.

1 Q. Thank you. Mr. Jordan, in 1995 when the field  
2 work was done for the plat which resulted in the  
3 developing this 1996 plat, my client will  
4 testify that the fence was put up in  
5 approximately late 1995, early 1996. And my  
6 recollection is the lawsuit was filed in 1996  
7 regarding the sign and the easement, and that  
8 percolated until 2004. Does that time frame  
9 sound about right to you that the fence was put  
10 up in 1995?

11 A. No.

12 Q. And why is that?

13 A. Because we used it. That fence, that fence was  
14 a later addition after we had had all these  
15 discussions. We had walked that property many  
16 times and had access to it. The fence was a  
17 later, to my recall was a later addition to  
18 prevent anybody from driving down on that place.

19 Q. And that fence, if you will, that fence did  
20 prevent someone from accessing the property?

21 A. Absolutely.

22 Q. And on the posts were there placed some signs  
23 indicating no trespassing, what have you? I'll  
24 ask you to take a look at what's been marked as  
25 Defendant's Sixteen and Seventeen and ask you,

1           one sign looks like it's old and placed.

2           A.   Now, when were these placed there?

3           Q.   No, I'm just asking you.   Have you seen those  
4           signs on the property?

5           A.   I have not.   When were they placed there?

6           Q.   I'm asking you.

7           A.   I'm asking you.

8                   THE COURT: Mr. Jordan, you have to allow  
9           Mr. McCurry to ask the questions.   You can  
10          answer questions.

11          A.   I just answer?

12                   THE COURT: Yes, you just answer.

13          A.   No.

14          Q.   You've not seen those?   Okay.   Very good.   And  
15          Mr. Jordan, during this history of the ownership  
16          of the property we have this dam issue.   But  
17          there's also an access issue that's not before  
18          the Court but certainly is part of this  
19          discussion.   And there were times in which after  
20          95 was built that my clients had access from Old  
21          Saint George Road, what's now called Old Saint  
22          George Road; is that correct?

23          A.   Sure.   There was a road all the way back in  
24          there.

25          Q.   And at some point in time a gate was put up, a

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- 1 lock was put up, and my clients didn't have a
- 2 key. And there have also been times when my
- 3 client did have a key. Have there been times
- 4 when my clients have had a key to the gate and
- 5 not had a key to the gate, is my question.
- 6 A. I was not the keeper of the key.
- 7 Q. But is it your understanding that there were
- 8 times that my clients were not allowed access
- 9 from the Old Saint George Road?
- 10 A. There was an understanding on my part that there
- 11 were times when he was allowed access.
- 12 Q. And by the nature of your response there also
- 13 had to be times that they weren't allowed
- 14 access?
- 15 A. Could be.
- 16 Q. And during some of the discussions that you and
- 17 Mr. Roy Judy had about the property did the
- 18 issue of the key come up saying, you know, like
- 19 something to the effect, we can work this out if
- 20 you give us access from Old Wire Road? Did
- 21 discussions along those lines ever come up?
- 22 A. My discussions with Roy were toward the pond
- 23 issue. I did not control the access point.
- 24 Q. You can paraphrase that and say you can't speak
- 25 for the whole family; is that correct?

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- 1 A. I certainly can't.
- 2 Q. But my question is, did access from Old Saint
- 3 George Road ever come into the discussions when
- 4 y'all were talking on the dam or talking about
- 5 the dam, the dike, the access?
- 6 A. There were points of my knowledge where the
- 7 gates had a key. And there were times when we
- 8 had to have a key to get back in there to the
- 9 road. But that was well after the point we were
- 10 discussing.
- 11 Q. Let me ask you this. With regard to this
- 12 discussion about the dam, did y'all ever put
- 13 anything in writing? Prior to the settlement in
- 14 Saint George several years ago, prior to the
- 15 settlement agreement.
- 16 A. On the dam?
- 17 Q. Was there ever any agreement in writing
- 18 regarding this dam?
- 19 A. The only thing I know in writing was the one
- 20 that we had the discussion and it went to -- and
- 21 you were there. And it was put down in writing.
- 22 And then it was -- you said had no effect
- 23 anymore.
- 24 Q. Other than that agreement was there anything in
- 25 writing?

1 A. I've never came to anything.

2 Q. And did Roy ever indicate to you that he  
3 couldn't speak for Ms. Judy, Ms. Judy would have  
4 to have the final say on anything? Just like  
5 you couldn't speak for everybody he couldn't  
6 speak for his mother.

7 A. We both understood that, yes.

8 Q. Did you ever ask Mr. Judy in response to saying  
9 I'd like access on Old Saint George Road, did  
10 you ever say, well, I'd like access from the  
11 railroad?

12 A. Sure.

13 Q. And did he tell you that that access was  
14 personal and he couldn't give access from the  
15 railroad?

16 A. Yes.

17 Q. So the issue of access from Old Saint George  
18 Road and the railroad did come up in y'all's  
19 conversations?

20 A. Yes.

21 Q. And certainly it's true now that the Howell  
22 family, if you will, is not willing to give a  
23 key to the Judys for access from Old Saint  
24 George Road; is that correct?

25 A. There is a different access there now that is.

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- 1 not the one that we discussed way back. There
- 2 is a access now by another party who owns the
- 3 land before you get to that.
- 4 Q. Right. But my point is --
- 5 A. I don't have access to that.
- 6 Q. But the Howells are still not willing to give a
- 7 key to the Judys to access the property from Old
- 8 Saint George Road?
- 9 A. They -- that is not their gate.
- 10 Q. On whose property is the gate located?
- 11 A. The gate is located on Elrods (ph). It used to
- 12 be Elrod. I don't know who it is now.
- 13 Q. And have y'all spoken to the Elrods about access
- 14 for the Judys?
- 15 A. I have not.
- 16 Q. Mr. Jordan, have you ever taken the time to look
- 17 at this plat that was done by Mr. Bass? I'm not
- 18 sure how particular a person you are or how
- 19 inquisitive you may be, so I'm just asking this
- 20 question. Have you ever looked at any of the
- 21 old plats and tried to compare some of the work
- 22 that was done on the Bass plat with the old
- 23 plats themselves? Have you ever tried to
- 24 compare the plats?
- 25 A. One of the reasons we called him was because

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1 he's a professional. He had the use of the old  
2 plats to construct this. And we called a  
3 professional surveyor to do that.

4 Q. I understand. So you have not really gone back  
5 and tried to check the work he did based on the  
6 references that he's given here?

7 A. I have seen the old plats. And I have looked at  
8 them. We have the old plats.

9 (Whereupon an off the record discussion  
10 took place.)

11 Q. Mr. Jordan, I'll just ask you this question. A  
12 number of these plat references refer to these  
13 pieces of property on Old Saint George Road. Is  
14 that correct, or do you really know if that's  
15 the case or not?

16 A. We gave the surveyor the information we had. We  
17 asked him to come up with the property lines and  
18 put this all together.

19 Q. And he did the work?

20 A. And he did the work.

21 Q. Mr. Jordan, where is the approximate location of  
22 that fence based on this plat here? If you  
23 could just point that out to me. I did not see  
24 where you pointed it out to him.

25 A. It is from here across. This is where the

**LEWIS EDWARD JORDAN – Redirect examination by Mr. Jordan**

Page 39

1 property comes up. You cannot get through that  
2 place right there.

3 Q. So the fence is --

4 A. On that plat.

5 Q. Right.

6 A. On that plat.

7 Q. Right. And in other words, from what you said  
8 the fence is placed pretty close to where this  
9 line has been drawn on that plat?

10 A. I'm not sure of that. I know where the point  
11 is. Whether it's on the line or not I do not  
12 know.

13 MR. McCURRY: I have nothing further, I  
14 believe, of Mr. Jordan.

15 **RE-DIRECT EXAMINATION BY MR. JORDAN:**

16 Q. I just have one question. Mr. Jordan, the fence  
17 does not prohibit getting on the dike by walking  
18 on the dike, does it?

19 A. No.

20 Q. It just prohibits access by vehicle?

21 A. Access by vehicle.

22 MR. JORDAN: All right. I have no other  
23 questions.

24 THE COURT: You may step down, Mr. Jordan.  
25 Thank you.

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**KAY HOWELL JORDAN – Direct examination by Mr. Jordan**

Page 40

1 MR. JORDAN: Your Honor, I call Kay Jordan  
2 to the stand.

3 (Kay Jordan, having been duly sworn,  
4 testifies as follows:)

5 THE COURT: Thank you, ma'am. If you could  
6 have a seat and tell me your full name.

7 A. My name is Kay Howell Jordan.

8 **DIRECT EXAMINATION BY MR. JORDAN:**

9 Q. And Ms. Jordan, you're the daughter of Marion  
10 Howell?

11 A. Yes.

12 Q. And John Howell?

13 A. Yes.

14 Q. And so your dad, John, and Wilbur Judy were the  
15 ones that originally were involved when these  
16 ponds were dug; is that right?

17 A. Yes.

18 Q. And I guess while it's fresh can you give some  
19 information to Judge Murphy about keys being  
20 given to Mr. Judy and about why eventually that  
21 became a problem?

22 A. Yes.

23 Q. Okay. Without me asking questions, just go  
24 ahead.

25 A. Years ago my mother had to put a gate up,

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1 because there was so much traffic going through  
2 to the ponds. It was in the '70s I believe.  
3 And she was afraid there was drug exchange and  
4 drug use going on back there. And she was  
5 afraid she would be liable for something, so she  
6 put up a gate on our road, our access to the  
7 pond.

8 She gave Mr. Judy a key with the  
9 specification that it was only to be used by his  
10 family for recreation, fishing, and so forth.  
11 And the same thing continued. People were going  
12 through, driving their vehicles through the gate  
13 at all hours of the night and day. And she had  
14 the locks changed, the lock changed on the gate.

15 She gave Mr. Judy a key a second time and  
16 told him again that it was not for use except by  
17 his family and anybody that he gave specific  
18 permission to go back there. The same thing  
19 happened again. A third time she had the lock  
20 changed. And she offered Mr. Judy a key. And  
21 he just threw it down at her feet and left.

22 Q. And so your understanding is there was no issue  
23 with access for Mr. Judy or his family to have  
24 access across what was then I guess your mom's  
25 property? Your dad had died. And keys were

1 given to him so that he and his family could  
2 access it?

3 A. Yes, three times.

4 Q. Now, you heard your husband testify about the  
5 use of the property. Do you have any knowledge,  
6 Ms. Jordan, that any members of your family or  
7 anyone on their behalf has ever tried to keep  
8 Ms. Judy or her family from using the dike area?

9 A. No.

10 Q. Would there be any reason for you not to want  
11 them to use the dike area?

12 A. No.

13 Q. And do you agree with your husband's testimony  
14 that both Mr. Judy's family, I think a lot of it  
15 Roy, and your family kept the dike clean and  
16 useable?

17 A. Yes.

18 Q. And that was really never a problem?

19 A. No.

20 Q. Do you have any knowledge that anyone ever  
21 prevented your family from using your pond, your  
22 water itself?

23 A. No.

24 Q. Anyone ever claim to your knowledge that a part  
25 of your pond belonged to Mr. Judy and you

1           couldn't use a part of your pond?

2           A.   No.

3           Q.   Now, is it a fair statement, and if it's not  
4               correct me, but is it a fair statement that your  
5               husband, Mr. Jordan that's testified, was sort  
6               of the point man for your family to try to  
7               resolve the boundary issue?

8           A.   Yes.

9           Q.   And were you ever present at any of those  
10               discussions that he talked a little bit about  
11               today trying to resolve where the line would be?

12          A.   Yes.

13          Q.   Can you just explain to Judge Murphy, again  
14               without me asking? Just tell her what  
15               information you have that would help her in  
16               trying to decide where the line should be.

17          A.   Judge, I believe I instigated the first meeting.  
18               I called Ms. Judy and asked her if we could get  
19               together and maybe come to some agreement  
20               without having to go to court again. And she  
21               said, yes, and invited us to her home. My  
22               husband, my sister-in-law, Marion, and her  
23               husband Tolson went with us. And we met in Ms.  
24               Judy's kitchen. And we spread out one of the  
25               big plats. And Roy was not there at the time.

1 He was coming. And so we waited.

2 And we just had a pleasant time with Ms.  
3 Judy until Roy arrived. And then he looked at  
4 the plat. We left it with him. We told him he  
5 was welcome to keep it. And he said he would  
6 have to think about it. And he didn't ever get  
7 back to us. So that was the only time that I  
8 really met with Roy and Ms. Judy.

9 But my sister-in-law and her husband -- my  
10 sister, Marion Tolson and her husband Bob took  
11 this over working with Roy because we were in  
12 Clemson so far away. And she could get here  
13 easier from Aiken. And they were not able to  
14 schedule any appointments. They scheduled many  
15 appointments with Roy, but they weren't able to  
16 meet very often. And she has kept her calendar.  
17 She has kept a calendar of all the meetings that  
18 they tried to have.

19 And the last meeting that I attended I  
20 remember out at the pond Roy did not attend. He  
21 sent his brother, Timmy, and his cousin, Ron  
22 Judy to represent him. Ms. Judy was not there  
23 either. And we had -- I believe we met with the  
24 surveyor at that time. And that's the last of  
25 my knowledge.

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1           My sister felt that she just couldn't get  
2           any response at all from the Judy family. And  
3           so she asked my husband to try again. And  
4           that's when we came back into the picture.

5       Q.   Were you ever present with Roy and your husband  
6           out at the dike when they, according to your  
7           husband were trying to flag a line and agree on  
8           a line?

9       A.   Yes. And to my knowledge what they agreed on  
10          was later changed by Roy, because we weren't  
11          living here. And the next time we would come  
12          back the flags were in a different place, had  
13          moved over closer to our ponds.

14      Q.   And do you know if Roy ever said, I've moved the  
15          flags?

16      A.   No.

17      Q.   So your understanding, what y'all had put out  
18          and agreed to, is it your testimony that behind  
19          your back Roy had started moving the flags?

20      A.   I believe so, yes.

21      Q.   When you said that y'all gave a survey at Ms.  
22          Judy's that time to look at, was it what we  
23          marked as Plaintiff's Exhibit Two, or was it a  
24          different survey, or do you remember?

25      A.   I really am not sure. It was a great big one

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KAY HOWELL JORDAN – Cross-examination by Mr. McCurry

Page 46

1           that spread out all over the kitchen table.

2           Q.   Are you asking the Court, Ms. Jordan, to find a  
3           common boundary line that's fair to both sides?

4           A.   Yes.

5           Q.   Are you asking the Court to find that you as a  
6           plaintiff, your family and Ms. Judy have access  
7           to the dike area?

8           A.   Yes.

9           Q.   Do you have any reason at all, Ms. Jordan, to  
10          interfere with Ms. Judy's use of the dike?

11          A.   No.

12          Q.   Any reason to interfere with her use of the  
13          pond?

14          A.   No.

15               MR. JORDAN: I don't have any more questions  
16          for this witness.

17               THE COURT: Mr. McCurry?

18   CROSS EXAMINATION BY MR. McCURRY:

19          Q.   I have a few questions. You indicated that your  
20          mother had done some different things with  
21          regard to the keys. Do you also recollect if  
22          Ms. Judy after Mr. Wilbur Judy's death spoke to  
23          your mother and came to her and said, we'd like  
24          to have a key for access for the children, and  
25          your mother denied her a key? Do you recollect

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1           that?

2           A.   No, I don't. I don't believe my mother ever  
3           denied Ms. Judy a key.

4           Q.   But you testified that a key was --

5           A.   Well, I'm sorry. That was after Mr. Judy's  
6           death. And I really can't testify as to what  
7           happened after that.

8           Q.   At any point in time during this controversy  
9           over the dam did y'all ever post any signs and  
10          say no trespassing and place any impediments to  
11          the Judy's use of the dam?

12          A.   No.

13          Q.   And in the conversations that you had at Ms.  
14          Judy's house your husband indicated that there  
15          was conversations about access from Old Wire  
16          Road and from the railroad. Were you a party to  
17          those conversations at all that someone said  
18          we'd like access here, and y'all said we'd like  
19          access off of the railroad?

20          A.   I don't remember that.

21          Q.   When the plat was done by Ashley Surveying in  
22          1996 which resulted in the 1996 lawsuit  
23          regarding a sign, which is depicted right here,  
24          at that point in time y'all were aware that this  
25          survey indicated that the dam was on the Judy

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1 side? It was the Judy's, correct?

2 A. I don't know. I was not here when this case  
3 took place. All I know is that the Court  
4 determined that the sign was on the Judy's  
5 place. And we made restitution.

6 Q. Right. That's correct. And the location of the  
7 boundary line was not determined by the Court?

8 A. No.

9 Q. Have you ever seen any no trespassing signs on  
10 the posts to the property?

11 A. Where would they be?

12 Q. They would be as y'all come onto the property  
13 off of Old Wire Road, those signs would be  
14 facing you before you enter onto the dam, walk  
15 onto the dam.

16 A. From Old Saint George Road?

17 Q. Yes, ma'am.

18 A. No. I've never seen those.

19 Q. When's the last time y'all have been on the  
20 property?

21 A. To my knowledge my husband I have -- yes, we  
22 did. We were on the property in June. I was  
23 not. My husband, my brother-in-law Bob Tolsen,  
24 and someone else were out there in June of last  
25 year.

1 Q. When's the last time you've been on the  
2 property?

3 A. I haven't, I haven't been since the last time  
4 that we met with the surveyor. And Roy was not  
5 in attendance. His brother Timmy was.

6 Q. And would this have been done some time after  
7 the 2008 lawsuit was filed, that sketch? That  
8 sketch brought about a potential end to the 2008  
9 litigation. So I'm asking you if that was --

10 A. I am not sure what year this sketch was done.

11 Q. Ms. Jordan, at this point in time the Howell  
12 family is still not willing to grant to my  
13 clients access from Old Saint George Road, are  
14 y'all?

15 MR. JORDAN: Your Honor, I know he's on  
16 cross but I object because that's not even why  
17 we're here. And I think, although I know we're  
18 judge and jury, but I think it tries to taint  
19 the case that it's prejudicial that they for  
20 some reason are not willing to give access. And  
21 that's not even why we're here today in front of  
22 the Court.

23 THE COURT: I understand you're not here for  
24 the Court, but I think you opened the door with  
25 your line of questioning as far as access was

1 concerned.

2 Q. Is the Howell family willing to give to my  
3 clients access to Judy property off of Old Saint  
4 George Road?

5 A. There is another owner between us and the  
6 access. Mr. Elrod has that property. And we  
7 don't even have access to it unless he gives it  
8 to us.

9 Q. If Mr. Elrod gave access to my clients are the  
10 Howells willing to give access to the Judys to -  
11 -

12 A. I don't -- we don't have access anymore. That's  
13 -- we have to go through Mr. Elrod's property to  
14 get to our property.

15 Q. I'm asking if the Elrods gave my clients access  
16 through their property would the Howells be  
17 willing to give access from that point where it  
18 enters the Howell property onto --

19 A. I believe that would depend on Mr. Elrod. I  
20 mean, we can't ask access and then give it to  
21 somebody else.

22 Q. My question was if my clients were able to go  
23 all the way to the end of the Elrod's property  
24 with permission from Mr. Elrod are y'all willing  
25 to give, is the Howell family willing to give

1 access across your property to the Judy  
2 property?

3 A. Give me just a minute to think about that. I  
4 don't see the relevance of that question,  
5 because it's not, it's not ours to give.

6 Q. No. It's your property. I'm saying if --

7 A. We would have to stipulate to Mr. Elrod that we  
8 are now going to give access to --

9 Q. Assume that's been done.

10 A. No, I don't think so.

11 Q. But y'all are wanting my clients to give up the  
12 dam. If our --

13 A. No, we're not. We're not asking them to give up  
14 the dam. We're asking for an equitable line  
15 through there that will help both of us.

16 Q. But my clients are asking for access from Old  
17 Wire Road and Old Saint George Road and y'all  
18 aren't willing to give it you just said.

19 THE COURT: Mr. McCurry, I think that's been  
20 asked and answered. Let's move on.

21 MR. McCURRY: Okay. I have no further  
22 questions.

23 MR. JORDAN: I have no further questions of  
24 this witness.

25 THE COURT: You may step down Ms. Jordan.

**LEWIS HOWELL – Direct examination by Mr. Jordan**

Page 52

1 MR. JORDAN: Your Honor, we call Lewis  
2 Howell.

3 (Lewis Howell, having been duly sworn,  
4 testifies as follows:)

5 THE COURT: Thank you, sir. Please have a  
6 seat and state your full name.

7 A. My name is Lewis Howell.

8 **DIRECT EXAMINATION BY MR. JORDAN:**

9 Q. And Mr. Howell, just so the judge has a little  
10 background you're retired?

11 A. Yes.

12 Q. And where did you work?

13 A. I was a counselor with the State Department of  
14 Vocational Rehabilitation for 30 years and had  
15 to retire due to injuries sustained in an  
16 automobile accident. And I went on working  
17 after that, but I worked half days for ten  
18 months. And then my neurosurgeon told me that  
19 he was going to retire me. So that ended that  
20 career.

21 Q. And you are John Howell's son?

22 A. Yes.

23 Q. And you are the brother of Kay Jordan and Marion  
24 Howell Tolson?

25 A. Yes.

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- 1 Q. And where do you fall in the line? Who was the  
2 first child?
- 3 A. Kay was first, then Marion, and then me.
- 4 Q. So you're the youngest of the three children?
- 5 A. Yes.
- 6 Q. Do you have any knowledge of your family ever  
7 being denied or interfered with the use of it's  
8 pond, it's water?
- 9 A. No.
- 10 Q. And do you have any knowledge that your family  
11 ever interfered with Ms. Judy or Mr. Judy or  
12 their family's use of their pond?
- 13 A. No.
- 14 Q. Do you have any knowledge that your family ever  
15 interfered with the Judy's ability to use the  
16 dike?
- 17 A. No.
- 18 Q. Do you have knowledge that both parties would  
19 keep the dike clean and maintained?
- 20 A. Sure.
- 21 Q. And did y'all have access to ride and use  
22 vehicles on the dike?
- 23 A. Yes.
- 24 Q. And did you?
- 25 A. Yes.

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1 Q. Can you explain to Judge Murphy what knowledge  
2 you bring here today as far as discussions with  
3 either Roy or Ms. Judy in regards to this  
4 boundary line?

5 A. Actually I have very little experience with that  
6 in that my health was an issue for so many  
7 years. And I don't think I attended any  
8 meetings, so my knowledge is limited by hearsay.

9 Q. Now, are you asking the Court, Mr. Howell, to  
10 find a common boundary line that's fair to both  
11 sides?

12 A. Yes.

13 Q. Are you asking the Court to find that your  
14 family and Ms. Judy's have access to the dike  
15 area?

16 A. Yes.

17 Q. And do you have any reason to interfere with Ms.  
18 Judy's use of the dike or her pond?

19 A. No.

20 Q. Have you been out to the property recently, Mr.  
21 Howell?

22 A. It's been a good while.

23 Q. Years?

24 A. Years.

25 Q. Had you ever seen any trespassing or no

1           trespassing signs posted when you were out  
2           there?

3           A.   No.

4           Q.   Have you been out there since the fence was  
5           erected?

6           A.   Yes.

7           Q.   At that time did you ever see any no trespassing  
8           signs or anything like that?

9           A.   No.

10                   MR. JORDAN: I don't have any other  
11                   questions of this witness.

12                   THE COURT: Thank you. Mr. McCurry?

13   CROSS EXAMINATION BY MR. MCCURRY:

14           Q.   Mr. Howell, clearly there's a dispute as to who  
15           owns the dam; is that correct?

16           A.   Pardon me.

17           Q.   There clearly is a dispute as to who owns the  
18           dam, isn't that correct?

19           A.   I didn't know there was a dispute until today.  
20           And I still don't understand why there is one.

21           Q.   Well, the January, 1996 plat, which I'm showing  
22           you right here indicates that the dam if you  
23           will, or the dike is wholly on the Judy's side.  
24           It's on Judy property; is that correct? Here's  
25           the sign by the way.

1 A. That's where it's at, the plat appears.

2 Q. And until 1995 there was not a realization that  
3 there may have been an issue, until the field  
4 work was done in '95 for this plat; is that  
5 correct?

6 A. I suppose so.

7 Q. And the agreement that later became not an  
8 agreement dealt with this plat here, Plaintiff's  
9 Exhibit Number Two, this sketch. Part of that  
10 agreement was that the line would be agreed to  
11 be here if access was given for the Howell  
12 family from Old Saint George Road, wasn't it?

13 A. I'm not aware of that at all.

14 Q. You're not aware that was in the agreement?

15 A. No.

16 Q. Were you at the agreement? Were you at the  
17 conference several years ago when that agreement  
18 was written down or what have you?

19 A. Yes.

20 Q. And your knowledge of the meetings was fairly  
21 limited, I think you said with regard to Mr.  
22 Judy and your relatives. Were you ever in  
23 attendance at any meeting that involved either  
24 Mr. Roy Judy or his brother, Timmy or their  
25 mother, Ms. Betty Judy? Were you ever in

1 attendance of those meetings?

2 A. Only at Ms. Shirley's office when we --

3 Q. In 2009. Okay.

4 MR. McCURRY: I have no further questions.

5 MR. JORDAN: I have no further questions of  
6 this witness.

7 THE COURT: You may step down, Mr. Howell.

8 MR. JORDAN: Your Honor, we call Marion  
9 Howell Tolson to the stand.

10 (Marion Howell Tolson, having been duly  
11 sworn, testifies as follows:)

12 THE COURT: Thank you. Please have a seat  
13 and state your full name.

14 A. My name is Marion Howell Tolson.

15 **DIRECT EXAMINATION BY MR. JORDAN:**

16 Q. And Ms. Tolson, you are the sister of Kay and  
17 Lewis?

18 A. Yes.

19 Q. And has your family, Ms. Tolson, used the pond  
20 for years without any interference?

21 A. Yes.

22 Q. And when I say the pond, I actually mean the  
23 waterway itself.

24 A. Yes.

25 Q. And have you and your family used the dike area

- 1 without any interference other than this fence  
2 that was constructed at some point?
- 3 A. Yes.
- 4 Q. And did you ride vehicles across it?
- 5 A. Yes.
- 6 Q. And walk across it?
- 7 A. Yes.
- 8 Q. And did your family and Roy to your knowledge  
9 keep the dike maintained and clean and use it?
- 10 A. Yes.
- 11 Q. Do you have any reason to interfere with Ms.  
12 Judy or her family's use of the pond?
- 13 A. No.
- 14 Q. Do you have any reason to interfere with Ms.  
15 Judy or her family's use of the dike?
- 16 A. No.
- 17 Q. Now, when was the last time you went out to the  
18 property?
- 19 A. It has been over a year.
- 20 Q. Have you ever seen any signs posted that were no  
21 trespassing signs?
- 22 A. No.
- 23 Q. Did you have any involvement with talking to Roy  
24 or Ms. Judy to try to work out a determination  
25 as to where the property line would be?

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- 1 A. Yes.
- 2 Q. And who did you talk to?
- 3 A. I talked with Roy mostly, only his mother over
- 4 the phone to try to get a phone number.
- 5 Q. Were you present when Lewis Jordan went out to
- 6 the dike area with Roy and put flags out?
- 7 A. Yes.
- 8 Q. You heard Mr. Jordan's testimony about he and
- 9 Roy were talking to try to come up with a line
- 10 and then they flagged it. Do you agree with
- 11 that testimony or is there something different
- 12 that you want to tell Judge Murphy about that?
- 13 A. No, that's true.
- 14 Q. And you were present when that was done?
- 15 A. Yes.
- 16 Q. Did you want the property line to go into the
- 17 Judy pond?
- 18 A. No.
- 19 Q. And did you want the property line to go into
- 20 your pond?
- 21 A. No.
- 22 Q. And is that why y'all were trying to come up
- 23 with a common line in the dike area?
- 24 A. Yes.
- 25 Q. And what we have admitted as Plaintiff's Exhibit

1 Number Two, which has the point A and the point  
2 B, those two lines going across, and correct me  
3 if I'm wrong. I'm just trying to shorten the  
4 testimony. Was it your understanding from when  
5 y'all flagged the property that the line was  
6 this A line to the little d and then down to e  
7 like Mr. Jordan testified to?

8 A. Yes.

9 Q. Even though that line provides more of the dike  
10 area, more of the property on the dike area  
11 would be for Ms. Judy if that line were used?

12 A. Yes.

13 Q. You understand that?

14 A. Yes.

15 Q. Are you asking the Court to find a common  
16 boundary line that is fair to both sides?

17 A. Yes.

18 Q. Are you asking the Court to find that you and  
19 Ms. Judy have access to the dike area?

20 A. Yes.

21 Q. And do you have any reason to interfere with Ms.  
22 Judy's use of the dike?

23 A. No.

24 Q. And what about this issue of access? If you  
25 were asked whether you would be willing to grant

**MARION HOWELL TOLSON – Cross-examination by Mr. McCurry**

Page 61

1 access to Ms. Judy across y'all's property what  
2 would your response to that be?

3 A. I don't know. That would take a lot of work.  
4 The only thing that I am interested in today is  
5 having a line drawn to separate the properties.

6 MR. JORDAN: I don't think I have any other  
7 questions for this witness, Your Honor.

8 THE COURT: Thank you. Mr. McCurry?

9 **CROSS EXAMINATION BY MR. McCURRY:**

10 Q. Ms. Tolson, just a few questions. The placing  
11 of the fence is really what prompted these  
12 meetings. In other words, y'all called and  
13 wanted to meet with Ms. Judy because there was a  
14 fence up; isn't that correct?

15 A. Yes. And there needed to be a line. We had two  
16 different plats that didn't agree.

17 Q. So there's a real dispute as to where the line  
18 is?

19 A. Yes.

20 Q. In your discussions and in the meetings were you  
21 present when it was discussed issues regarding  
22 access from either Old Saint George Road to the  
23 property by the Judys or access from the  
24 railroad route, if you will, for access by the  
25 Howells? Were you present during any

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1 discussions regarding access to the property?

2 A. Yes.

3 Q. And did those factors come into play? I mean,  
4 did the Judys say, well, we'd like to have  
5 access from Old Saint George Road and someone on  
6 the Howell side said, well, we'd like to have  
7 access from the railroad?

8 A. Yes, but that was determined at a supreme court  
9 hearing.

10 Q. Regardless, that was discussed by the parties in  
11 some of these meetings?

12 A. Yes.

13 MR. McCURRY: I have nothing further.

14 MR. JORDAN: I don't have any other  
15 questions.

16 THE COURT: You may step down, ma'am. Thank  
17 you. At this time we'll take a short lunch  
18 break.

19 (Hearing went off the record for a brief  
20 period of time.)

21 THE COURT: Mr. Jordan, are you ready to  
22 proceed with the next witness?

23 MR. JORDAN: Yes, ma'am. That's the  
24 plaintiff's case, Your Honor.

25 THE COURT: The plaintiff rests?

**RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711**

**BEN COKER, JR. – Direct examination by Mr. McCurry**

Page 63

1 MR. JORDAN: Yes, ma'am.

2 THE COURT: Mr. McCurry?

3 MR. McCURRY: May it please the Court, Your  
4 Honor, as my first witness I'd like to call Ben  
5 Coker to the stand please.

6 (Ben Coker, having been duly sworn,  
7 testifies as follows:)

8 THE COURT: Thank you, sir. Please have a  
9 seat and state your full name.

10 A. My name is Ben Coker, Jr.

11 **DIRECT EXAMINATION BY MR. McCURRY:**

12 Q. Mr. Coker, can you tell me your age please and  
13 by whom you are employed?

14 A. I am 64. And I'm co-owner of Ashley Land  
15 Surveying in Summerville.

16 Q. And Mr. Coker, you actually did the field work  
17 with regard to Plaintiff's Exhibit Number Two,  
18 which has been put into evidence; is that  
19 correct?

20 A. That's correct.

21 Q. Can you give the Court some of your background  
22 and experience please with regard to surveying?

23 A. I graduated in 1970 from Horry Georgetown Tech,  
24 degree in forestry technology. 1973 went to  
25 work with the South Carolina Department of

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1 Transportation in construction surveying  
2 department. Went back to school at night,  
3 Trident Tech, studying civil engineering.

4 January the 2<sup>nd</sup>, 1976 I opened a business  
5 called CDS Land Surveying in Sum -- I beg your  
6 pardon. In Moncks Corner. That was Coker,  
7 Dehay (ph), and Schuler (ph), Schuler being the  
8 registered party. I maintained that business  
9 until March, 1988 at which time I sold my  
10 interest in that business and became Chief Field  
11 Engineer on a \$28 million dam project for Santee  
12 Cooper. At which time Mr. Lawson and I met, and  
13 we opened Ashley Land Surveying in Summerville.  
14 And we currently operate that business.

15 Q. And you and Mr. Lawson are the shareholders in  
16 Ashley Surveying, Incorporated?

17 A. Yes, sir. We are.

18 Q. And can you give the Court some idea of your  
19 representative clients?

20 A. Yes, sir. We have represented Georgia Pacific  
21 since 1982, and it's currently known as Plum  
22 Creek, second largest land owner in the world.  
23 I have personally through Ashley Land Surveying  
24 represented Meade Westvaco on their survey since  
25 1995. National Audubon Society, which is the

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1 Beidler Forest, since 1982. We represented  
2 Giant Cement, La Forest Cement (ph), Wholesale  
3 Cement, Dupont, South Carolina Electric and Gas,  
4 South Carolina Department of Natural Resources,  
5 and a host of attorneys throughout the tricounty  
6 area.

7 Q. Mr. Coker, you're in charge of the field work,  
8 if you will, for Ashley Surveying; is that  
9 correct?

10 A. Yes, sir. I am.

11 Q. And Mr. Lawson, the registered surveyor, draws  
12 the plats, and certainly participates sometimes  
13 in some of the field work as well?

14 A. He and I share the plat preparation load. Mr.  
15 Lawson, if we incur problems Mr. Lawson and I  
16 confer on the problems and see to resolve the  
17 problems in a very amicable manner.

18 Q. And you had testified in state, local, and  
19 federal courts, have you not?

20 A. I certainly have.

21 Q. You also testified in one of the prior cases  
22 involving these families at issue here today; is  
23 that correct?

24 A. I have.

25 MR. McCURRY: Your Honor, we'd like to ask

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**BEN COKER, JR. – Cross-examination by Mr. Jordan**

Page 66

1           that Mr. Ben Coker be qualified as an expert in  
2           the field of land surveying please.

3           THE COURT: Any objections?

4           MR. JORDAN: I would ask that I be allowed  
5           to examine this witness prior to --

6           THE COURT: Sure.

7   **CROSS EXAMINATION BY MR. JORDAN:**

8           Q.   Mr. Coker, what degrees do you hold?

9           A.   I have that degree in forestry technology.

10          Q.   And is that a BA?

11          A.   That's an AS degree.

12          Q.   AS degree?

13          A.   Yes, sir.

14          Q.   Have you ever used that degree?

15          A.   Yes, I have.

16          Q.   And that was in 1970?

17          A.   I graduated from school May, 1970.

18          Q.   You do not hold an engineering degree?

19          A.   No, sir. I do not.

20          Q.   You do not hold a bachelors degree?

21          A.   No, sir. I do not.

22          Q.   What licenses do you hold?

23          A.   I'm not licensed in the field of surveying.

24          Q.   What licenses do you hold?

25          A.   With respect to?

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1 Q. Any professional licenses.

2 A. I do not have any professional license in  
3 surveying or engineering.

4 Q. Do you have any professional license? I  
5 understand you say you do not have a license in  
6 engineering or in surveying, but do you hold any  
7 professional license?

8 A. No, I do not.

9 Q. Do you hold any license issued by the State of  
10 South Carolina other than a driver's license?

11 A. You mean like hunting license, fishing license,  
12 or --

13 Q. Well, I guess that's a good question. Anything  
14 related to your job?

15 A. I have already stated emphatically that I do not  
16 have a license for surveying or engineering.

17 Q. Are you able to stamp a survey?

18 A. The only difference between me and a licensed  
19 surveyor is that a licensed surveyor can sign a  
20 map. I can't, but that does not mean that I  
21 cannot perform professional quality work as I  
22 have for many years.

23 Q. I understand. But my question is, are you able  
24 to stamp a survey?

25 A. And I said that I am not able to sign or stamp a

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1 survey.

2 Q. But you do field work for preparations of  
3 surveys; is that correct?

4 A. I don't want to narrow my answer to just field  
5 work. When a job comes into the company part of  
6 my job is the procurement of the information for  
7 the performance of that work.

8 Q. Yes, sir.

9 A. And I do supervise the performance of the field  
10 work, but my work does not limit my capability  
11 just to the performance of the field work.

12 Q. I understand. And I wasn't meaning to limit,  
13 but that is one of the things you do?

14 A. That is one of my capacities. Yes, sir.

15 Q. And no license is required for an individual to  
16 do field work for preparation of the survey?

17 A. No, sir.

18 Q. And no degree is required for a person to go out  
19 and do field work for purposes of a survey?

20 A. No, sir.

21 Q. Do you intend to offer expert testimony today,  
22 Mr. Coker?

23 A. I was asked to be here to provide expert  
24 testimony in this case as I have on many other  
25 occasions in other cases.

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1 MR. JORDAN: Your Honor, I object to the  
2 witness being qualified as an expert as he is  
3 neither degreed in but forestry technology. And  
4 I'm not taking away from that degree, but it  
5 doesn't go towards surveying. And he's not a  
6 licensed surveyor. He's not a licensed civil  
7 engineer. And so I object to his testimony. If  
8 he is offered as an expert to offer opinions as  
9 to a survey and the location of a line I object  
10 to his testimony. If he is offered to testify  
11 as to what field work he may have done in this  
12 case then I don't think I could object to what  
13 he did as a fact witness. But I do not see how  
14 this gentleman could be an expert.

15 THE COURT: Mr. McCurry?

16 MR. MCCURRY: Your Honor, we would certainly  
17 indicate by virtue of his long standing years of  
18 experience and testimony in court that he would  
19 be qualified as a witness. I'm going to read to  
20 you if I may put on the record, then I'll give  
21 this to you. This is a recent case from the  
22 Court of Appeals recently handed down regarding  
23 Mr. Coker, verbatim. The Moores in this case,  
24 one of the litigants, seem to imply Coker's  
25 status as an unlicensed surveyor undermines his

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1 credibility, although they do not specifically  
2 raise an issue regarding the trial court's  
3 qualification of Coker as an expert. While  
4 Coker was not a licensed land surveyor the trial  
5 court found his training and experience  
6 qualified him as an expert in the boundary line  
7 in this case. And we do not see any reason to  
8 doubt that qualification.

9 Your Honor, I would give that to you right  
10 now, hand it up. Mr. Coker has testified in  
11 federal, state, and local courts for over 25  
12 years, I'd say 30 years. And he has been the  
13 co-owner of two established and well respected  
14 entities, CDS Land Surveying out of Moncks  
15 Corner and Ashley Surveying from Summerville.  
16 Just for the Court's information, Mr. Lawson is  
17 actually here to testify as well, but I think  
18 Mr. Coker is a little more familiar with the  
19 work performed. And so I would like to call  
20 both Mr. Coker and Mr. Lawson as expert  
21 witnesses.

22 THE COURT: Well, tell me this, Mr. McCurry.  
23 I don't think he's questioning his credibility  
24 is in this particular case. He's questioning  
25 his expertise as a surveyor. Are you willing to

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1 limit his testimony as to what his expertise in  
2 the field work aspect of what he did? And that  
3 would go to certainly the weight of his  
4 testimony as far as his expertise goes. And  
5 then Mr. Lawson, I'm assuming you're going to  
6 call him as an expert for the surveying  
7 purposes.

8 MR. McCURRY: Well, Your Honor, Mr. Coker  
9 more often than not testifies without Mr. Lawson  
10 being present. I just wanted Mr. Lawson present  
11 for my purposes because this issue actually came  
12 up in the prior litigation. And the judge,  
13 Patrick Watts, found him qualified. And the  
14 supreme court again, vouched for his  
15 qualification as an expert, did not question  
16 that. So I would prefer that he be qualified as  
17 an expert in land surveying. If the Court rules  
18 that limits his testimony then I'll certainly  
19 abide by that instruction.

20 THE COURT: Mr. Jordan?

21 MR. JORDAN: I don't have the case, so I'm  
22 not sure what the case says. I'm not sure what  
23 objections were made in the case that you were  
24 provided from the Court of Appeals. And I don't  
25 know what, if any objections, or maybe it was

1 stipulated last time he was an expert with Judge  
2 Watts. I have no idea but --

3 MR. McCURRY: No, it was not stipulated. It  
4 became an issue.

5 MR. JORDAN: I don't know. And I don't have  
6 the case, Your Honor. The Court of Appeals,  
7 they rank higher than me. But I cannot imagine  
8 that a gentleman who is neither degreed nor  
9 licensed in a field is going to be qualified as  
10 an expert to opine in that field. I just cannot  
11 imagine that would ever be in a court. I don't  
12 know what the case that was handed up, whether  
13 he was allowed to testify in a certain area, or  
14 maybe that objection wasn't made as to that  
15 issue and it was a side note. I don't know what  
16 the case held but --

17 THE COURT: We can take a minute to read the  
18 case. My understanding of at least this  
19 highlighted portion is that his credibility was  
20 questioned, which is not what you're doing.

21 MR. JORDAN: No, I do not question his  
22 credibility.

23 THE COURT: You're questioning the extent of  
24 his expertise and education in the field of  
25 surveying, which I think is certainly a valid

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1 objection.

2 MR. JORDAN: Yes, ma'am.

3 THE COURT: I think if you want to further  
4 explore his experience to maybe raise that I'll  
5 be happy to allow you further voir dire of this  
6 witness, otherwise I don't think he's qualified  
7 as an expert for the field of surveying at this  
8 point. If you can bring out further testimony  
9 that would make him so I'm happy to give you  
10 time to do that.

11 **RE-DIRECT EXAMINATION BY MR. McCURRY:**

12 Q. Mr. Coker, in cases in which you have testified  
13 in the past have you been qualified as a witness  
14 in the area of land surveying?

15 A. Yes, I have. Many times.

16 Q. And in those cases tell me what you have  
17 testified to in regards to other cases.

18 A. I have testified in a case, in two cases that  
19 went to the appeals court of South Carolina,  
20 appellate court, and one that went to the  
21 supreme court, which all prevailed. I've  
22 testified in property line cases at least 40  
23 times in the last 38 years as an expert in the  
24 field of boundary surveying as well as  
25 construction surveying and been qualified each

1 time. I was appointed by Judge Patrick Watts,  
2 who is the former Master of Dorchester County to  
3 prepare mediation plats for his court in an  
4 effort to resolve a property line dispute in the  
5 Town of Ridgeville. So I have testified many,  
6 many times regarding the dispute of property  
7 lines in the capacity of an expert witness.

8 **RE-CROSS EXAMINATION BY MR. JORDAN:**

9 Q. Have you ever taken the land surveyor  
10 examination?

11 A. Yes, I did.

12 Q. And did you pass it?

13 A. In 1981. I took it for the first time. I  
14 failed it by three points. And I never did go  
15 back and take it again. I was invited to go  
16 back and take it on numerous occasions, but I  
17 did not go back and take it.

18 Q. And you could have?

19 A. I could have, yes. I could have until 2003, at  
20 which time the state changed the requirements.  
21 And now they require a four year degree. I  
22 wanted to qualify that statement.

23 Q. They require a four year degree for what?

24 A. In order for you to take the state exam in  
25 surveying now.

1 Q. To be a land surveyor?

2 A. Yes, sir.

3 Q. So based on your experience that you have now  
4 you would not be able to hold a land surveyor's  
5 license in the State of South Carolina unless  
6 you went back to school and got a four year  
7 degree?

8 A. Most of the surveyors in the state would not  
9 have a license. Most of them -- many of them  
10 are high school graduates that got the  
11 experience in the field.

12 Q. I understand. But they passed the test?

13 A. Yes.

14 THE COURT: Anything further, Mr. McCurry?

15 MR. McCURRY: Nothing further, Your Honor.

16 THE COURT: My ruling will stand. I think  
17 certainly he can testify regarding his  
18 experience as far as the field work that he's  
19 done. I'm not going to qualify him as an expert  
20 in land surveying.

21 **FURTHER DIRECT EXAMINATION BY MR. McCURRY:**

22 Q. All right. Mr. Coker, I'm going to ask you some  
23 questions, and answer to the best of your  
24 ability please. And if there's any limitations  
25 placed on you then I can address those with Mr.

1 Lawson. Ashley Land Surveying prepared the 1996  
2 plat that's marked as Plaintiff's Exhibit Number  
3 Two; is that correct?

4 A. That's correct.

5 Q. When was the field work done for that plat?

6 A. Fall of 1995.

7 Q. And after that field work was performed did you  
8 give that field work to the attorney or to the  
9 client?

10 A. Yes, sir. I did.

11 Q. And who actually asked you to perform the survey  
12 on this property?

13 A. Mr. Roy Judy and Mr. Gene Dukes.

14 Q. And you were contacted by them to provide a  
15 survey?

16 A. Yes, sir.

17 Q. And there is a reference on the plat to a 1927  
18 survey that had been performed. Tell me about  
19 that 1927 plat. And I'm going to give you a  
20 copy of it in just a second.

21 A. This 1927 plat was provided to me. A copy of it  
22 was provided to me by Mr. Dukes and Mr. Judy.  
23 And they indicated that this was the reference  
24 plat for the subject lines. However, before  
25 going to the site for the performance of the

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1 work I visited the DOT's office and obtained a  
 2 copy of their map depicting the right of way of  
 3 I95. I also went to the Registrar of Deeds  
 4 office to see if I could obtain other plats of  
 5 the adjoiners. I did obtain one other plat.  
 6 And that was an old, very old plat made in  
 7 1800s. I was not able to determine the exact  
 8 date on that plat, but that was my first task  
 9 was to obtain all the information relative to  
 10 the site. I also called Southern Railroad to  
 11 ascertain the width of their railroad right of  
 12 way. Then after gathering all this information  
 13 I performed the field work, which was as I said  
 14 in the fall of '95.

15 Q. I asked you to take a look at what I've marked  
 16 as Defendant's Exhibit Three. Is that the 1927  
 17 plat in question?

18 A. Yes, sir. It is.

19 Q. And tell me what's significant about that survey  
 20 that resulted in the plat?

21 A. One of the first things that I observed whenever  
 22 I received this plat was the note on the  
 23 northern side of the plat indicating Southern  
 24 Railroad at the top, which more or less  
 25 represents a permanent monument. And then once

1 I saw that I felt that we could determine --

2 MR. JORDAN: Objection. Objection.

3 He's going to give opinion as to what he -- my  
4 understanding is he's limited to his field work.  
5 If he's going to start testifying about what he  
6 thought could and couldn't be done based on  
7 prior surveys on the survey work then he's going  
8 into expert testimony.

9 THE COURT: That's correct. And Mr. McCurry,  
10 just so I'm clear. Defense Number Three is the  
11 1927?

12 MR. McCURRY: 1927 plat of Mr. FA Moorer,  
13 M-O-O-R-E-R.

14 MR. JORDAN: We don't have any objection to  
15 this.

16 MR. McCURRY: I'd like to move that into  
17 evidence, Your Honor.

18 THE COURT: Any objection?

19 MR. JORDAN: No objection.

20 Q. Mr. Coker, after review of that plat what did  
21 you do with regard to the field work?

22 A. Went to the field and I found a pipe on the  
23 northern end of the subject survey line adjacent  
24 to the railroad. And having found that pipe I  
25 then extended from that pipe along the bearing

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1 that's shown on this plat north 15 east, I  
2 believe that is. This is hard to read. North  
3 15 east, and extended that line to the  
4 southwest, found very old site marks on that  
5 line. Extended that line to the point at which  
6 I found a one inch pipe on the southwestern end  
7 of that line. I want to iterate there were very  
8 old side chops on that line with old witnesses  
9 adjacent to the corners that I found.

10 Q. Mr. Coker, let me ask you this. This was done  
11 in late 1995 you said, the field work?

12 A. '95.

13 Q. Have you had a recent occasion to recently  
14 revisit the site?

15 A. Yes, I have.

16 Q. And were some photographs taken on that visit?

17 A. Yes, sir.

18 Q. I want to show you some things here, if you  
19 will. That's been marked as Plaintiff's Exhibit  
20 One. Can you tell me what it is that you're  
21 picking up there, if you will?

22 A. In this picture you'll see me starting to stoop  
23 down. There's an old pot adjacent to the  
24 railroad about 45 feet off the railroad right of  
25 way. And this old pot sits on top of an old

1 iron pipe that I found in 1995 when I performed  
2 the survey work.

3 Q. And I'm going to show you what's been marked  
4 Defendant's Four. Is that the pipe that you  
5 found underneath the pot?

6 A. That's exactly right.

7 Q. And just to continue along, if you will, I'm  
8 going to show you another picture or series of  
9 pictures, Defendant's Five, Six, and Seven. And  
10 can you tell me what that is?

11 A. That is a one inch pipe that I set on the survey  
12 in 1995. And this pipe is set at the  
13 intersection point of the property line and  
14 along the railroad right of way.

15 Q. Is that pipe that you set you just testified to  
16 shown on the Ashley Survey?

17 A. Yes.

18 THE COURT: Can you point out where, Mr.  
19 Coker?

20 Q. In fact, for the judge's information please  
21 point out the first pipe that you found  
22 underneath the pot.

23 A. This is the first pipe that I found that was  
24 under the pot. Then once I determined the  
25 direction of that line it was necessary for me

1 to define the point of intersection the railroad  
2 right of way with that property line, because  
3 state standards require that. So once I had  
4 ascertained the location of that intersection I  
5 set the one inch iron pipe at the intersection  
6 of the property line and the railroad right of  
7 way.

8 Q. Mr. Coker, is this a picture, that's you getting  
9 ready to pick up the pot?

10 A. Yes, sir. It is.

11 Q. Is that the pipe underneath the pot?

12 A. That is the pipe under the pot that I had found  
13 in 1995.

14 Q. That's shown as --

15 A. The point inside the railroad right of way.

16 Q. And then this photograph here you just testified  
17 to is the pipe that you set; is that correct?

18 A. That's correct.

19 Q. Right here; is that correct, Mr. Coker? Where  
20 it says 115 open top pipe set?

21 A. Yeah.

22 Q. Mr. Coker, you indicated that there were some  
23 witness trees that had been marked that were not  
24 marked by you as I understand.

25 A. That's correct.

1 Q. You can take a look at that, Number Eight and  
2 Number Nine. Those are --

3 A. Well, I want to differentiate between the side  
4 chops and the witness. Usually a witness is  
5 represented by three chops on the base of a  
6 tree. And the witness is supposed to point to  
7 the property corner. And if you will observe  
8 this tree has three chops in the base of it.  
9 The three chops point toward that corner that is  
10 there.

11 And the difference between a witness and a  
12 side chop, whenever a surveyor surveys a  
13 property line if he chops the line out from  
14 corner to corner so that you can visually  
15 observe the line normally they'll put side chops  
16 in the trees adjacent to that line. And the  
17 side chops consist of two chops. Once these  
18 chops are cut into the tree over a long period  
19 of time that tree will heal. And the cambium  
20 layer extends out and forms a bubble. And that  
21 bubble will look like this on a tree. And it  
22 takes anywhere from 25 to 40 years for that tree  
23 to grow that bubble completely out of it.

24 But that helps us to identify the property  
25 line once it's been surveyed. And in

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1 surveying this property line that I had found in  
2 1995 this line had been side chopped, well  
3 marked, and witnessed all the way from the  
4 railroad back to the one inch pipe that I found  
5 on the southern end of the subject line.

6 Q. Number Eleven, that just shows the bulging out  
7 of the chops, if you will, a little bit?

8 A. That's correct. This is a tree that was side  
9 chopped many, many years ago. And you can see  
10 the bulge in this photograph. And this is a  
11 tree that was chopped to identify the location  
12 of that property line and has aged for many,  
13 many years thus resulting in that bulge.

14 Q. And those chops were evident in 1995 when you  
15 did the survey?

16 A. Very.

17 Q. But you did not make those marks?

18 A. I did not chop those. The line was very well  
19 chopped from the railroad all the way back to  
20 the one inch iron pipe. I did not deem it  
21 necessary to re-chop that line.

22 Q. And that's my next question, Mr. Coker. The  
23 1927 plat calls for a distance of how many  
24 chains?

25 A. 19 chains.

1 Q. And that's 1254 feet; is that correct?

2 A. I believe that's correct, yeah.

3 MR. JORDAN: Can we let the witness testify  
4 instead of counsel?

5 THE COURT: Leading the witness, Mr. McCurry.

6 Q. After placing those --

7 A. I did, of course in all surveys they're in  
8 chains. We convert the chains to footage. A  
9 chain is 66 feet long.

10 Q. And what did you find approximately 19 chains  
11 from the point that you found on the railroad  
12 right of way?

13 A. Excuse me just a minute. Let me get my  
14 calculator and I'm going to tell you exactly  
15 what that is.

16 MR. McCURRY: I'd like to go ahead and put  
17 these into evidence if I can.

18 THE COURT: What numbers are those?

19 MR. McCURRY: I've got One, and Four, and  
20 Five.

21 A. The total distance of the 19 chains is 1254  
22 feet. Now, the distance from the inch and a  
23 half open pipe to the one inch pipe I found on  
24 the southern end of that line was 1186.87 feet.  
25 But you have to add the distance from this pipe

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1           that I found inside the railroad right of way to  
2           this to determine the true length of that line  
3           that was found. So if you add those two  
4           together you come up with 1241.21 feet, which  
5           results in a difference of about 12.8 feet. But  
6           you've got to remember this was done in 1927.

7           Q. And they literally used chains?

8           A. By very crude measurements compared to our  
9           measurements now.

10          Q. Can you hold on for just a minute?

11                 MR. McCURRY: And these other Exhibits are  
12                 Eight, Nine, and Eleven.

13                 THE COURT: Any objection to those  
14                 photographs, Mr. Jordan?

15                 MR. JORDAN: No, ma'am.

16                 THE COURT: So we have Three, Four, Five,  
17                 Six, Seven, Eight, Nine, and Eleven?

18                 MR. McCURRY: Yes, ma'am.

19          Q. Mr. Coker, you just testified that at that  
20                 distance you found a pipe; is that correct?

21          A. That's correct.

22          Q. And I ask you to take a look at Defendant's  
23                 Fourteen. Is that the pipe that you found?

24          A. Yes, it is.

25          Q. And just to make sure not to confuse the

1 distance from that pipe that you found and that  
2 pipe that was found within the railroad right of  
3 way is that 1240 something feet?

4 A. Yes, 1240 some feet.

5 Q. And the other pipe that you placed was placed on  
6 the edge of the railroad right of way?

7 A. That's correct.

8 Q. That's why you placed that pipe?

9 A. Yes.

10 Q. On the Ashley Survey plats you had to add lines  
11 L1 and the distance on the side to get to that  
12 1241 feet?

13 A. That's correct.

14 Q. And what was the bearing on that line, that  
15 straight shot?

16 A. I utilized the bearing that was on the FA Moorer  
17 plat as a baseline bearing. And I used the  
18 south 15 degrees west.

19 Q. And that's where you found the pipe?

20 A. Yes, sir.

21 Q. Right where it was supposed to be?

22 A. Yes, sir.

23 Q. Now, on the Ashley Surveying plat there's an  
24 indication that you placed, there was placed a  
25 one inch pinch top pipe set. Where is that on

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1 this photograph? And why did you place that one  
2 inch pinch?

3 A. The one inch pinch pipe -- this tall pipe is the  
4 one that I found. But the tall pipe was leaning  
5 at the time I found it. It wasn't pulled up but  
6 it was just leaning. And it's a surveyor's  
7 desire to be --

8 Q. It could be a desire of someone doing the field  
9 work; would that be correct?

10 A. Anyone doing the field work. He wants a plumb  
11 shot on that point so he can ascertain the exact  
12 horizontal distance between two points. It was  
13 impossible to set that rod on that leaning pipe.  
14 So we set a pipe at the base of that point so we  
15 could be vertical on that point to ascertain the  
16 exact distance between the two points and to  
17 monument that point. And then we placed  
18 witnesses about that point, which you see  
19 painted on the tree.

20 Q. Now, Mr. Coker, after that pipe was placed or  
21 maybe concurrent with the placing of that pinch  
22 top pipe what did you next do with regard to the  
23 field work for the Ashley Survey that was to be  
24 performed with relationship to the 1927 plat?

25 A. My next task was to identify the right of way

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1 line of I95. But that point I traversed over to  
2 the right of way of I95 and located the concrete  
3 monuments that define the right of way of I95.  
4 And I found all of the concrete monuments that  
5 were called for on the construction drawings for  
6 I95.

7 Q. Since we're speaking of those let me ask you  
8 this. I'm going to show you one of those  
9 monuments. Can you take a look at Defendant's  
10 Number Twenty-Four? Is that the type of  
11 concrete monument that we're speaking of? Is  
12 that one of the ones you're speaking of?

13 A. This monument is one of the highway right of way  
14 monuments that I found. And this is indicative  
15 of a DOT right of way monuments. Usually  
16 they're six inch by six inches and they're three  
17 feet long with a re-bar down through the middle  
18 of it. And stamped into the face of the  
19 concrete monument is R/W meaning right of way.

20 THE COURT: Right there?

21 A. Yes, ma'am. This is characteristic of what you  
22 will find monumentation of highways.

23 Q. So you found the monuments indicating the edge  
24 of the right of way?

25 A. Yes, sir. We did.

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1 Q. Then what did you do?

2 A. Once I ascertained the exact location of that  
3 highway right of way then I tried to look at the  
4 evidence that was available to me from  
5 adjoiners. Now, please keep in mind that it is  
6 our responsibility to try to determine the exact  
7 location of a property line with regard to the  
8 plat that we are using versus any other plats  
9 that are available. And I did have another  
10 plat, 1800 some plat. I did exert an effort to  
11 locate some of those points, but I could not  
12 locate those points.

13 Not having the convenience of being able to  
14 tie to those points I did the next thing that  
15 was available to me in surveying law. And that  
16 was to utilize the bearings on the FA Moorer  
17 plat. So I utilized the angle that was created  
18 by the FA Moorer plat, turned that angle and  
19 intersected that line with the DOT right of way,  
20 which represents this line. And that is the  
21 point of the intersection of that property line  
22 with the DOT right of way for I95. We attempted  
23 to find other corners on this side of that  
24 property line, but they were not available.

25 Q. Mr. Coker, I'm going to ask you, if you will,

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NOTE: Next line of text is line 18 on court reporter's page #103

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2 plat, 1800 some plat. I did exert an effort to  
3 locate some of those points, but I could not  
4 locate those points.

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6 tie to those points I did the next thing that  
7 was available to me in surveying law. And that  
8 was to utilize the bearings on the FA Moorer  
9 plat. So I utilized the angle that was created  
10 by the FA Moorer plat, turned that angle and  
11 intersected that line with the DOT right of way,  
12 which represents this line. And that is the  
13 point of the intersection of that property line  
14 with the DOT right of way for I95. We attempted  
15 to find other corners on this side of that  
16 property line, but they were not available.

17 Q. Mr. Coker, I'm going to ask you, if you will,  
18 because this 1927 plat has a lot of markings,  
19 can you use this yellow highlighter with the  
20 Court's permission and highlight? The bearing  
21 that you're speaking of are right here I  
22 believe. The 19 chains on the eastern boundary.

23 A. This is the railroad, Southern Railroad. This  
24 is the first line I surveyed. And then I95 sits  
25 over here. And then I intersected that line

1 with the right of way line of I95.

2 Q. And Mr. Coker, if you will, orient those  
3 somewhat. Does the eastern line and a southern  
4 line depicted on the Ashley Surveying plat match  
5 up with that 1927 plat?

6 A. Yes, sir. This plat -- I beg your pardon. This  
7 line represents this line. This line represents  
8 this line.

9 Q. And you're using the exact same bearings?

10 A. Yes.

11 Q. And the only reason you couldn't go 14.5 chains,  
12 why couldn't you go the full 14.5 chains?

13 A. Because the right of way of I95 took a portion  
14 of the land.

15 Q. So you went to the right of way and what did you  
16 do? When you butted on the right of way what  
17 did you do?

18 A. Of course, I ran that bearing to the  
19 intersection of I95. And when I did that I  
20 ascertained that I95 took a portion of the link.  
21 So we did not have the 14.5 foot chain distance.  
22 So we utilized the distance that we calculated  
23 for the point of intersection.

24 Q. What did you place along the right of way to --

25 A. We placed the re-bar.

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1 Q. Ask you to take a look at Defendant's Nineteen  
2 and ask if that is the re-bar that was set.

3 A. That is the re-bar that I set.

4 Q. Can you show that to the Court please, if you  
5 will?

6 MR. McCURRY: I'd like to move for  
7 Nineteen and Twenty-Four.

8 MR. JORDAN: Yeah.

9 Q. Ask you to take a look at these, Number Sixteen  
10 and Seventeen, and ask you to tell me what those  
11 are.

12 A. These are posts, appear to be portions of a  
13 light pole with a no trespassing sign, posted  
14 sign.

15 Q. Did you see those when we went the other day to  
16 the property?

17 A. Yes, sir. I did.

18 Q. And one of those posts in particular is situated  
19 very close, if you will, to the corner right  
20 here; is that correct?

21 A. Correct. The one inch pipe that I found on the  
22 south end.

23 Q. And you set a pinch pipe?

24 A. That's correct.

25 Q. So that post is quite near there, correct?

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1 A. It was very close to that point, yes.

2 Q. And did you also observe from that post any type  
3 of fencing or remains of a fence?

4 A. Yes, there were remnants of fence along that  
5 line.

6 MR. JORDAN: I haven't been objecting, but  
7 I'm going to object to any more leading  
8 questions. He's feeding the witness the  
9 answers.

10 THE COURT: That's fine. Please don't lead  
11 the witness.

12 MR. McCURRY: Sure.

13 Q. Ask you to take a look at Defendant's Eighteen  
14 and tell me what that is.

15 A. These are pictures of that fence extending from  
16 the one inch iron pipe on the south end of that  
17 first line that I located.

18 MR. McCURRY: I'd like to put it into  
19 evidence.

20 THE COURT: Any objection?

21 MR. JORDAN: I don't have any objections of  
22 pictures that he took. I mean, they represent  
23 whatever they are.

24 MR. McCURRY: Sixteen, Seventeen, and  
25 Eighteen. Sixteen and Seventeen being the post,

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1 and Eighteen being the post and fence.

2 Q. Mr. Coker, as a result of your field work in '95  
3 and your recent visit to the property early this  
4 week what else have you done to try to prepare  
5 for your testimony today with regard to your  
6 plat?

7 A. I was provided a plat that was prepared by Mr.  
8 David Bass. And Mr. Bass' plat purportedly  
9 defines the property lines of the property on  
10 the south of the Judy property. And I made some  
11 comparisons --

12 MR. JORDAN: I'm going to object. He's  
13 testifying as the land surveyor, Your Honor, if  
14 he's going to go into comparison of plats and  
15 his opinion related thereto. That's not field  
16 work.

17 THE COURT: Sustained.

18 MR. McCURRY: Thank you, Your Honor.

19 Q. Mr. Coker, as a result of your review of the  
20 work since we visited the property the other day  
21 do you have any reason to want to change, alter,  
22 amend the 1995 Ashley Survey?

23 MR. JORDAN: Objection. He didn't do the  
24 survey.

25 MR. McCURRY: He did field work, Your Honor.

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1 Q. Let me ask you this. Based upon your recent  
2 visit to the property do you have any reason to  
3 recommend to your partner, Mr. Lawson, that  
4 something should be changed with regard to the  
5 survey?

6 A. Absolutely not. It's a part of the job of the  
7 field crew to determine the differences from one  
8 plat to another. And so when I receive  
9 information it's my responsibility to determine  
10 if there are deviations from one plat to  
11 another. And I do not see any reason for which  
12 Ashley Land Surveying needs to revise it's plat.

13 MR. JORDAN: Objection. Same objection.

14 THE COURT: Sustained.

15 Q. Mr. Coker, the plat prepared by Ashley Surveying  
16 shows based upon the testimony you've given,  
17 shows that the dam and the dike, dike road is  
18 wholly within the Judy property; is that  
19 correct?

20 A. That's correct.

21 MR. JORDAN: Objection. He can only  
22 testify to what he did on the field work. He's  
23 not the one to decide where the line is or what  
24 is whose property.

25 THE COURT: Right. I don't think he gave an

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1 opinion as to that. It was what he saw.

2 Q. Is that your testimony today?

3 A. My field work demonstrated that the dike was  
4 inside the property lines provided by the FA  
5 Moorer plat.

6 Q. Please answer any questions that Mr. Jordan may  
7 have for you.

8 **FURTHER CROSS EXAMINATION BY MR. JORDAN:**

9 Q. Mr. Coker, and I think you've been referring to  
10 it as plat. How many surveys did you reference  
11 in the starting point for your field work?

12 A. One.

13 Q. And where did you get that survey from?

14 A. As I testified previously Mr. Gene Dukes  
15 provided that survey plat to me.

16 Q. He represented Ms. Judy; is that right?

17 A. Yes, sir.

18 Q. So you took a plat that was provided to you by  
19 the attorney for Ms. Judy as your beginning  
20 point sort of?

21 A. That was a beginning point.

22 Q. Yes, sir. Did you go to the courthouse and pull  
23 other surveys?

24 A. I attempted to pull other surveys adjacent to  
25 the property. The property did not reference a

1 survey, nor could I find a survey for any of the  
2 property. I did find 1860 some plat to the  
3 south, which I had in my possession. But we  
4 were not able to locate any corners on that  
5 survey, so it was not a part of the survey that  
6 I used to define those lines. So I did not  
7 reference that map.

8 Q. So the only survey you used was an old survey  
9 that a lawyer for Ms. Judy gave you?

10 A. No, that was not the only survey I used. That's  
11 the only survey I referenced.

12 Q. Did you bring your ground work file with you  
13 today?

14 A. I was not requested to bring the ground work  
15 file.

16 Q. So you couldn't show the Court today what's in  
17 the file?

18 A. I don't have the ground survey file with me.  
19 The only thing in that ground survey file would  
20 be my field notes and the plat, the 1860 some  
21 plat on which I could find no points, and the FA  
22 Moorer plat. And that's the only information  
23 that you would find in that file.

24 Q. I want to ask you about the facts of this case.  
25 You did the field work?

- 1 A. Are you saying that or --
- 2 Q. I'm asking you. That's a question. You did the
- 3 field work?
- 4 A. Yes, sir. I did.
- 5 Q. You met with, I guess Gene Dukes?
- 6 A. Yes, sir.
- 7 Q. Did you meet with Ms. Judy?
- 8 A. Not prior to doing this. I met with Mr. Judy
- 9 and Mr. Dukes.
- 10 Q. And who was present when you were out at the
- 11 property doing the field work?
- 12 A. My two crew members.
- 13 Q. Anyone else?
- 14 A. No, sir.
- 15 Q. Was it done on a one day visit, or did you have
- 16 to come back?
- 17 A. I did it in one day, but once I drew the map I
- 18 tried to calculate the points of the adjoining
- 19 property. And I went back a second day and
- 20 spent about half day out there trying to locate
- 21 points by the 1800 map, which was unsuccessful.
- 22 Q. You couldn't find them?
- 23 A. No, sir.
- 24 Q. And what was the 1800 map? Why were you trying
- 25 to find those points?

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- 1 A. Because that plat is supposed to be  
2 representative of the property to the south, but  
3 we were not able to locate any of those points.
- 4 Q. And to the south would be to the Howell  
5 property?
- 6 A. Yes, sir.
- 7 Q. So you had another survey that showed you points  
8 to the south, which would be the Howell  
9 property, but you were unable to locate those  
10 points?
- 11 A. We were unable to find any points.
- 12 Q. And so you had to rely exclusively on one old  
13 survey because that's the only survey that you  
14 could find points that matched up?
- 15 A. When you don't have points of the adjoiner and  
16 you do have a plat of the subject then the only  
17 recourse of action a crew chief had is to  
18 maintain the old lines as depicted on that  
19 subject plat. Now, if we had been able to find  
20 corners of the subject adjoiner we would have  
21 located those corners also.
- 22 Q. I understand. But the corners of the 1800 plat  
23 of the southern property, which is our property  
24 couldn't have been the same on that survey as  
25 the corners on the plat you were using or you

- 1 wouldn't be saying you couldn't find them,  
2 correct?
- 3 A. You're saying that just because I could not find  
4 them that they aren't consistent with the map  
5 that we prepared? Would you please repeat that  
6 question?
- 7 Q. Isn't that right?
- 8 A. I asked you to please repeat the question.
- 9 Q. Yeah, that's the question.
- 10 A. The fact that I could not find the corners does  
11 not necessarily mean that that line was not  
12 consistent with the line that we surveyed.
- 13 Q. Doesn't necessarily mean that?
- 14 A. Doesn't necessarily mean that.
- 15 Q. But you were not able to take the survey of my  
16 client's property and find those points and  
17 match them up to what you found from the '27  
18 survey?
- 19 A. Could not find any corners.
- 20 Q. Couldn't match the two surveys?
- 21 A. No, sir.
- 22 Q. So one of the surveys has to be wrong?
- 23 A. Are you asking me or telling me?
- 24 Q. One of the surveys has to be wrong, doesn't it?
- 25 They don't match up.

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1 A. One of them is wrong.

2 Q. Now, when you did the field work for the survey  
3 in 1996 that we've got in evidence as Exhibit  
4 Number Twenty-Five you went back to the office  
5 and you plotted this out?

6 A. Let me correct you on what you said. You said  
7 when I did the field work in 1996. I did the  
8 field work in '95.

9 Q. I'm sorry.

10 A. Yes, sir. When I completed the field work I  
11 went back to the office, and I personally  
12 plotted the survey as you see it.

13 Q. When did you do the field work in '95?

14 A. In fall of '95.

15 Q. Do you remember what month?

16 A. It was about October.

17 Q. So then several months later you took your notes  
18 and you plotted out the survey that we have as  
19 Plaintiff's Exhibit Twenty-Five?

20 A. Yes, sir.

21 Q. Was there a reason why there was the delay in  
22 transforming the field work into a diagram?

23 A. Well, I prepared the plat as soon as I returned  
24 to the office. But we did not release it to  
25 anyone but Mr. Dukes and Mr. Judy. And I

1 discussed because they were our clients. And so  
2 I released copies of the map to them for review.

3 Q. Prior to you making it a survey?

4 A. Yes, sir. Because I had gone back to the site  
5 in '96 to look for other corners. And the state  
6 requirements require us to show the last date we  
7 were on the property. And so the date that you  
8 see on the survey plat represents that last day  
9 we were on the property.

10 Q. Okay. But if the survey points that you say you  
11 found for your field work you believed were  
12 consistent with the one plat that you did have,  
13 why would you have you wait for the client to  
14 review it before you or your firm publishes a  
15 survey?

16 A. We published the survey. We didn't give it to  
17 them for review for revision purposes. We gave  
18 it to them since they were our client. There  
19 were no revisions intended during the review  
20 period by them. The review period was to  
21 determine whether or not they wanted to proceed  
22 with the recordation of the plat.

23 Q. But had the survey already been dated and signed  
24 at that point?

25 A. In '96?

- 1 Q. No, when it was given to the client and their  
2 lawyer for review.
- 3 A. I'm sure that plat was signed and sealed when we  
4 gave it to Mr. Dukes.
- 5 Q. But correct me if I'm wrong. You did all the  
6 field work, and you did the office work for this  
7 survey?
- 8 A. Yes. And I sat down with Mr. Lawson and  
9 explained to him the survey and the lack of  
10 corners on the adjoining property.
- 11 Q. And Mr. Lawson, what he did was he stamped it  
12 and signed it?
- 13 A. Eventually after he reviewed the map and the  
14 evidence that I produced for him.
- 15 Q. But he stamped it and signed it?
- 16 A. Yes, sir. He did.
- 17 Q. Because you can't do that?
- 18 A. No, sir. I can't. I've already said that.
- 19 Q. But really the work was all done by you?
- 20 A. I did the field work. I drew the map. Then as  
21 usual if we see a problem -- on every survey I  
22 communicate with him.
- 23 Q. Did you see a problem on this one?
- 24 A. At first I did not, because no one was aware  
25 that there may have been a property line

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- 1 problem. Because we could not find the property
- 2 corners on the old 1800 plat that's supposed to
- 3 represent the Howell survey.
- 4 Q. But Mr. Lawson didn't make any changes to what
- 5 you did for the proposed survey?
- 6 A. He obviously did not see the need.
- 7 Q. So the truth is you did the ground work, you did
- 8 the document that we have as Defendant's Exhibit
- 9 Twenty-Five as the survey. And Mr. Lawson
- 10 stamped it and signed it for you?
- 11 A. After review and consultation with me.
- 12 Q. And that happens frequently in your office,
- 13 doesn't it, that you do the work and you do the
- 14 plotting of the survey, and you get Mr. Lawson
- 15 to stamp it and sign it?
- 16 A. I think I see where you're going, but you know,
- 17 the process is not as you depicted.
- 18 Q. I'm trying to go to the truth, sir.
- 19 A. Okay. I'm going to tell you the truth. I field
- 20 surveyed the map. I drew the map. And then
- 21 when I saw that there was no other evidence
- 22 other than the 1927 plat I consulted with Mr.
- 23 Lawson and asked him what he thought we should
- 24 do. Should we maintain the angle that was
- 25 created by the FA Moorer plat? I explained to

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1 him we had exhausted all avenues of locating the  
2 corners on the 1800 Howell plat. So he had all  
3 the information available to him to make the  
4 decision.

5 Q. How do you remember that?

6 A. I have a very acute memory.

7 Q. So you remember those conversations specifically  
8 from 1996?

9 A. I'm sorry. Please speak facing me. I have a  
10 little hearing deficit.

11 Q. Do you remember those specific conversations  
12 from 1996 with Mr. Lawson?

13 A. Very acutely.

14 Q. Did you read any deeds?

15 A. Yes, sir. The deeds were ambiguous.

16 Q. So the deeds couldn't help you?

17 A. No, sir.

18 Q. And so you couldn't read the deeds and make a  
19 clear determination as to where the line should  
20 be?

21 A. Normally I like to see a meats and bounds that  
22 would describe the property so that we could  
23 then ascertain our angles and determine our  
24 distances, but there was no deed that provided a  
25 meats and bounds on any of the property.

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- 1 Q. So you couldn't look at those and come up with  
2 what on the ground you thought would be about  
3 borderline?
- 4 A. We could not achieve any resolution by reading  
5 the deeds.
- 6 Q. Did you look at the three plats at the tax  
7 assessors office by David Gavin?
- 8 A. I don't recall any map by David Gavin that  
9 joined up against the Judy property.
- 10 Q. Did you review the plat of Hansford Reeves that  
11 was recorded at the courthouse?
- 12 A. If you would show me those plats so I could look  
13 at them I'd be happy to say yes or no.
- 14 Q. Well, let me ask you this. When you do your  
15 references, I say you, Mr. Lawson does the  
16 references, do you not reference the documents  
17 that you used for your survey? At least  
18 reference other surveys that you used?
- 19 A. We do provide the references on our plat, but as  
20 I said, the only other plat that I saw was the  
21 1800 plat. And I wasn't able to determine the  
22 author of that plat.
- 23 Q. So your testimony is you only looked at the '27  
24 plat and an 1800 plat, correct? Haven't you  
25 testified to that?

1 A. To the best of my memory, yes.

2 Q. And you have an acute memory?

3 A. Yes, I do.

4 Q. So you looked at two plats?

5 A. I looked at a host of plats, but some of these  
6 plats did not join up against the subject  
7 property, the Judy property. All the plats you  
8 see on the David Bass map do not join up against  
9 the Judy plot -- plat.

10 Q. But now you've seen a host of plats when all  
11 along you've testified you only looked at two  
12 plats?

13 A. I testified that I used the FA Moorer plat. I  
14 used the 1860 some plat. I do not know the name  
15 of the author of that 1800 plat.

16 Q. That's only two plats, Mr. Coker?

17 A. Yes, sir.

18 Q. You used two plats?

19 A. Yes, sir.

20 Q. You used two plats as your reference?

21 A. I also used SCDOT construction drawings for 95.

22 Q. But you only used two plats for your references,  
23 correct?

24 A. I showed one reference on the plat, the FA  
25 Moorer plat, because that's what we utilized in

1 defining that property.

2 Q. You won't answer my question. You only used two  
3 plats as references in this work?

4 A. We had a whole host of plats that I looked at,  
5 but only two --

6 THE COURT: Mr. Coker, you need to answer  
7 yes, no, and then explain. You have the  
8 opportunity to explain.

9 A. Well, let me preface my answer. A whole host of  
10 plats were available to me, out of which we used  
11 the 1927 plat by FA Moorer and the 1800 some  
12 plat whose author I was not able to determine.

13 Q. You would agree with me that chains at the time  
14 that chains were used it was very rudimentary  
15 compared to what we do today to try to determine  
16 the length and the degree of a line; would you  
17 agree with that?

18 A. Yes, sir. I do.

19 Q. And so when you have chains, they don't always  
20 match up to the length of what is found between  
21 two pins when you do your field work?

22 A. That's correct.

23 Q. And in fact, in this case the chains when you  
24 ran the line on the southeast side, which would  
25 be the right hand side looking at Defendant's

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- 1 Exhibit Number Twenty-Five. The length that you
- 2 found on the field work and the length of the
- 3 chains on the survey do not match?
- 4 A. If you're referring to that eastern line, yes,
- 5 sir. You're right. About 12 feet.
- 6 Q. Now, did you find any other pins along the
- 7 southeast line?
- 8 A. No, sir. Other than those depicted on this
- 9 plat.
- 10 Q. When you ran the line that runs in a
- 11 southwesterly direction, which is the bottom of
- 12 Defendant's Exhibit Twenty-Five, did you look to
- 13 see if there were other pins in and around the
- 14 dike area?
- 15 A. Yes, I did. But we had no base point on the
- 16 1860 some plat to even begin looking for this
- 17 corner. We calculated those points the best we
- 18 could. But we did look along the old dike to
- 19 determine if there were other corners that we
- 20 might be able to locate. And we weren't
- 21 successful.
- 22 Q. You could not find any other pins?
- 23 A. No, sir.
- 24 Q. So if Mr. Bass found the pins in a dike or the
- 25 edge of the pond, those were just pins you could

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- 1 not find?
- 2 A. According to Mr. David Bass' plat he did not
- 3 find that point. In fact, Mr. Bass set up his
- 4 corners except one. And that was a channel iron
- 5 that doesn't even join up against the Judy land.
- 6 Q. That's your opinion as an unlicensed surveyor?
- 7 A. Well, the borrow pit was dug since 1860. I
- 8 don't see any way a pipe could have been there
- 9 if the borrow pit was dug.
- 10 Q. Now, you are not testifying today that you have
- 11 field work that establishes with certainty where
- 12 the line is, are you?
- 13 A. That I have field work? Yes, I am.
- 14 Q. With certainty?
- 15 A. Yes, sir.
- 16 Q. Even though you could not match up the 1800
- 17 survey with the 1927 survey you are testifying
- 18 that your field work shows with certainty where
- 19 the line should be?
- 20 A. Shows with certainty with regard to that FA
- 21 Moorer plat.
- 22 Q. Yes. With regard to that plat, correct?
- 23 A. Yes, sir.
- 24 Q. But you also are testifying it does not match up
- 25 with the 1800 plat?

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- 1 A. My plat doesn't. No, it does not.
- 2 Q. So you'd have to tell the judge that you base
- 3 yours on one old plat that you had and you know
- 4 it didn't match up with another one?
- 5 A. No, sir. I'm not saying that. I'm telling you
- 6 that I found three irons on that line that
- 7 define the line against the Harry Beading
- 8 property. I'm asking telling you that when I
- 9 obtained the David Bass plat Mr. Bass' plat
- 10 clearly says that he set all of his corners. He
- 11 only found one corner on the whole map.
- 12 Q. I didn't ask about Mr. Bass' plat. You've
- 13 admitted that your field work does not match up
- 14 with one of the two plats that you had as
- 15 references?
- 16 A. No. It does not. At the time we performed the
- 17 field work we were unaware that there may have
- 18 been any kind of overlap. And I'm not
- 19 suggesting that there is an overlap.
- 20 Q. Did you know at the time that you did your field
- 21 work that there was a boundary dispute issue?
- 22 A. In 1995? No, I was not aware of any kind of
- 23 boundary dispute.
- 24 Q. What were you asked to do?
- 25 A. I was asked to survey that property and prepare

- 1 a plat that accurately defined that line. And
- 2 they gave me the plats and then I obtained what
- 3 plats were available to me recorded and
- 4 unrecorded from the ROD.
- 5 Q. But you were asked to define the line based on
- 6 the 1927 plat?
- 7 A. I wasn't asked to use only that 1927 plat. I
- 8 was asked to define the plat, to define those
- 9 lines based on the information available to us.
- 10 I was given the 1927 plat, but I wasn't told by
- 11 anybody to use that as a sole source.
- 12 Q. But you did end up drawing a line --
- 13 A. I did. Yes, I did.
- 14 Q. Let me finish my question. You did end up
- 15 drawing a line consistent with the '27 plat?
- 16 A. Yes, I did.
- 17 Q. Did you talk to any of the Howell family members
- 18 when you did your work?
- 19 A. No, sir. I did not.
- 20 Q. Did you talk to the Judys when you did your
- 21 work?
- 22 A. They're the ones who called me, yeah.
- 23 Q. The pipe you said you found on Defendant's
- 24 Exhibit Number Twenty-Five on the southwestern
- 25 corner, the five-eighths re-bar, you set that

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- 1 re-bar?
- 2 A. You said I found it?
- 3 Q. No, I'm asking you. Didn't you say you set
- 4 that?
- 5 A. Yes, sir. I did.
- 6 Q. So you didn't find the pin there that gave you
- 7 that line?
- 8 A. I did not anticipate I would.
- 9 Q. But you didn't?
- 10 A. No, sir. I did not find the iron.
- 11 Q. And that was because 95 was already there?
- 12 A. That is correct.
- 13 Q. Did you go beyond to see on the other side of 95
- 14 if the pin was there where it should have been?
- 15 A. The pin would have fallen in the middle of I95.
- 16 Q. So we can't find that --
- 17 A. We cannot determine location of that point. You
- 18 could, but it's not there.
- 19 Q. So that makes it where if we ask the surveyor to
- 20 go back out and help us find that corner we
- 21 could never find it because the roadway's there?
- 22 A. Exactly right.
- 23 Q. And to make sure that the 1927 numbers add up or
- 24 that the lines are correct and consistent with
- 25 what's on the ground you'd want to go out there

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1 and find that pin, but we can't?

2 A. That would be the desirable thing, yes.

3 MR. JORDAN: I don't have any other  
4 questions.

5 THE COURT: Mr. McCurry, anything?

6 **FURTHER DIRECT EXAMINATION BY MR. McCURRY:**

7 Q. Mr. Coker, the Bass plat is prepared when, if  
8 you will?

9 A. He has it dated October 30<sup>th</sup>, 1998.

10 Q. And what's the date of your plat?

11 A. Date on this plat is January 31, 1996.

12 Q. So his plat's prepared approximately two years  
13 after the Ashley Surveying plat, correct?

14 A. That's correct.

15 Q. And you testified in cross examination that you  
16 had some old plats that were not beneficial to  
17 you; is that correct?

18 A. I had old plats, did not provide any answer  
19 whatsoever as well as plats that did not even  
20 join up against the Judy property.

21 Q. Do you have an old plat in your possession that  
22 is pertinent to the Bass plat?

23 A. That is one of the plats I had in my possession  
24 at the time I performed the field work.

25 Q. And do you have a copy of that with you?

1 A. I do.

2 Q. Mr. Coker, is this the plat that you're speaking  
3 of? Is that the copy you wanted?

4 A. Yes, sir.

5 Q. Tell me, if you will, what you were able to do  
6 with that plat at the time of your survey. And  
7 I believe there's been some discussion of the  
8 Bass plat as well. Tell me how it lines up with  
9 the Bass plat, that 18 something survey.

10 (Whereupon an off the record discussion took  
11 place.)

12 Q. I'll ask you to take a look at this document  
13 we'll place into evidence in a few minutes. The  
14 plat I've given you is a blowup of an old plat;  
15 is that correct?

16 A. That's correct.

17 Q. Has meats, bounds, and chains?

18 A. That's correct.

19 Q. Was that plat beneficial to you in your work?

20 A. None whatsoever.

21 Q. And why was it not beneficial?

22 A. The job of a crew chief, field crew chief is to  
23 take all plats available to you and to  
24 analytically determine if these plats tie  
25 together. And it is the job of the crew chief

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1 to look for other points that would help to  
2 solve any problems that you're experiencing on a  
3 survey. So when I was out there I took this  
4 plat and attempted to locate any of these  
5 corners that we were able to find. And it was  
6 impossible to locate any of these corners on  
7 this survey plat.

8 Q. There was a question with regard to the Bass  
9 plat. And you used the word, set. Does it  
10 appear that the Bass survey indicates that those  
11 pins were able to be found?

12 A. No. Mr. Bass set all of his corners.

13 Q. Explain what you mean when you say he set.

14 A. He physically drove the corners. He did not  
15 find those corners.

16 Q. So why did he set them where he set them?

17 MR. JORDAN: Objection.

18 THE COURT: Sustained.

19 Q. So the points depicted here were set as opposed  
20 to found?

21 A. That's correct. He found one point on that  
22 survey, and that is this point.

23 Q. And if you can maybe highlight that.

24 A. He stated that he found that corner. On the  
25 rest of the points he clearly states on his map

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1           that he set those points. And he couldn't set  
2           that point because it's in the water.

3       Q.   And with regard to the Ashley survey, were  
4           points found or set?

5       A.   We had points that we found and one that we set.

6       Q.   The point in the railroad right of way was  
7           found?

8       A.   That's correct.

9       Q.   The corner 19 chains away was found?

10      A.   We found that.

11      Q.   And you also set a pinch pipe beside it to make  
12           sure the vertical issue was taken away?

13      A.   That's correct.

14      Q.   But those two points I just referenced were  
15           found points?

16      A.   You are correct.

17      Q.   You set a re-bar in the edge of the right of  
18           way?

19      A.   On the right of way of I95.

20      Q.   In conformity with the '27 plat?

21      A.   '27 plat.

22      Q.   And you also set a pipe in the edge of the  
23           railroad right of way?

24      A.   As required by law.

25      Q.   Did you have in your possession at the time of

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1 the survey these other old plats? Tell me if  
2 they were in the assessors office as referenced.

3 A. These plats were in the assessors office, but  
4 there was no way that we could relate our survey  
5 to these points, because we could not find.  
6 They just did not exist. And that's the reason  
7 we did not reference the maps on our map,  
8 because they did not give rise to the  
9 credibility of our survey. Well, whether they  
10 would give credibility or not, that's not the  
11 issue. They did not help us to define the Judy  
12 lines.

13 (Whereupon an off the record discussion took  
14 place.)

15 (DOCUMENT MARKED AS DEFENDANT'S EXHIBIT  
16 NUMBER TWENTY-SIX FOR I.D.)

17 Q. Mr. Coker, the 12 foot difference in the eastern  
18 side for 19 chains, can you divide 12 by 19 on  
19 your calculator and tell me how much of a  
20 variation per chain that is?

21 A. That's .6.

22 Q. So .6 feet per chain is the variation?

23 A. I've seen much larger variations on many  
24 occasions throughout my 38 years.

25 Q. Mr. Coker, after your plat was prepared and the

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1 Bass plat was prepared have you had an occasion  
2 to make a computations to compare the Bass plat  
3 with that old survey that was just admitted into  
4 evidence?

5 MR. JORDAN: I'll object to the question.  
6 He's not an expert in the field.

7 MR. McCURRY: I would think if he could do  
8 the computations with regard to comparing those  
9 two plats, but that's all I'm asking.

10 THE COURT: I'll sustain the objection.

11 Q. Mr. Coker, I just gave you two plats a minute  
12 ago. Is it your understanding that these two  
13 plats, these old plats are south of Exhibit  
14 Number Twenty-Six that was just put into  
15 evidence?

16 A. They are. They're not contiguous to the Judy  
17 line.

18 Q. They're south whereas Exhibit Twenty-Six  
19 purports to be contiguous to the Judy line; is  
20 that correct?

21 A. Purports to be, yes.

22 MR. McCURRY: I have no further questions of  
23 Mr. Coker.

24 **FURTHER CROSS EXAMINATION BY MR. JORDAN:**

25 Q. Mr. Coker, you said this highlight was the only

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1 pin that Mr. Bass found?

2 A. When I said that I was referring to the points  
3 that are depicted on this particular survey.  
4 And the reason I say that, this point would  
5 represent that point.

6 Q. But you said the highlight was the only one they  
7 found?

8 A. We were discussing this particular map.

9 Q. But you're not telling Judge Murphy that from  
10 your reading of this survey to try to do your  
11 ground work that that's the only pin on the Bass  
12 survey that was found?

13 A. We were referring to this plat at the time I  
14 made that statement. And I highlighted that pin  
15 indicating that that was the only pin that he  
16 found on this survey.

17 Q. On that survey? The impression that I got, and  
18 I just want to clarify this. There are many  
19 pins on the Bass survey when you tried to look  
20 at it that --

21 A. Let me clarify that. Okay?

22 Q. Yes, sir. Okay.

23 A. If I may, we were discussing this particular  
24 survey at the time Mr. McCurry showed me this  
25 map. It is my testimony that relative to this

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1 particular plat --

2 Q. Which is the --

3 A. 1800 plat. That Mr. Bass -- and I can say that  
4 without equivocation, the only point he found --

5 Q. The only one he identified on his survey as he'd  
6 found.

7 A. Well, why would he -- he found one point. And  
8 there's no way based on a crew chief, crew chief  
9 -- I'm making this statement as a crew chief,  
10 because it is the job of a crew chief to make  
11 these judgment calls and then take this  
12 information back to the office. So based on the  
13 judgment of a crew chief, if he found this  
14 particular iron he would attempt to retrace  
15 these old lines, but we weren't able to locate  
16 any of these points to ascertain if there was  
17 any kind of overlap.

18 Q. But now, like at the corner of the Judy property  
19 and the Howell property it says, one inch pinch  
20 top found?

21 A. Yes, sir.

22 Q. And there's a one inch pipe that was set at the  
23 corner of the --

24 A. Yes.

25 Q. And then before that he found re-bar prior?

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1 A. Yes, sir. But that point -- and it does not  
2 represent this point.

3 Q. And he found the re-bar found on this side over  
4 here?

5 A. I'm sorry. That's the re-bar that I set.

6 Q. I just wanted to clarify that. Now, this survey  
7 of the John Howell tract --

8 A. That's a sketch.

9 Q. Did you use it?

10 A. I had it in my possession but I did not use it,  
11 because to me that doesn't represent a survey.

12 Q. But it wouldn't have tried to help you find  
13 points?

14 A. That information is compiled from other maps.  
15 That is just a compilation of these old maps  
16 that we've already looked at.

17 MR. JORDAN: I don't have any other  
18 questions.

19 (Whereupon an off the record discussion took  
20 place.)

21 (Hearing adjourned at 4:15 o'clock p.m.)  
22  
23  
24  
25

1 STATE OF SOUTH CAROLINA)  
 2 COUNTY OF DORCHESTER ) Case No.: 2010-CP-18-2243  
 3  
 4 KAY HOWELL JORDAN, et al., )  
 5 )  
 6 Plaintiff(s), )  
 7 -vs- )  
 8 BETTY L.S. JUDY, )  
 9 Defendant(s). )

10  
 11 Given before, Molly C. Newton, Court Reporter and  
 12 Notary Public, at the Dorchester County Master in  
 13 Equity, 5200 Jim Bilton Boulevard, Saint George, South  
 14 Carolina, on Wednesday, May 8<sup>th</sup>, 2013, commencing at  
 15 10:30 o'clock, a.m.

16  
 17  
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 20  
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1 fold

2 THE COURT: Okay.

3 MR. JORDAN: That's what they are. So if we  
4 could just mark Number Three and Number Four.

5 (OVERLAY MARKED AS PLAINTIFF'S EXHIBIT  
6 NUMBER THREE FOR IDENTIFICATION.)

7 (OVERLAY MARKED AS PLAINTIFF'S EXHIBIT  
8 NUMBER FOUR FOR IDENTIFICATION.)

9 MR. JORDAN: I don't think there's any  
10 objection for those being admitted into evidence  
11 as Plaintiff's Three and Four.

12 MR. MCCURRY: No objection.

13 THE COURT: Okay, Mr. Jordan, if you'd like  
14 to call your next witness.

15 MR. JORDAN: I think Mr. Lawson was still  
16 under cross, Your Honor, because when we left I  
17 wasn't quite finished.

18 THE COURT: Mr. Lawson, all right.

19 (Paul Lawson, being duly sworn, testified  
20 as follows:)

21 THE COURT: Mr. Lawson, if you'll have a  
22 seat and please state your name for the record.

23 MR. LAWSON: Paul Clifton Lawson, Junior.

24 THE COURT: Thank you.

25 MR. JORDAN: Mr. Lawson, since we were here

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1 last I think you found out and you went over to  
2 David Bass' office to look at the overlays he had  
3 done?

4 MR. LAWSON: I think Mr. Coker did that.

5 MR. JORDAN: You did not go over there?

6 MR. LAWSON: No. I did not go to his  
7 office.

8 MR. JORDAN: Okay. Have you seen the  
9 overlays?

10 MR. LAWSON: Yes. I saw them.

11 MR. JORDAN: All right. And let me ask  
12 you, what we have as Plaintiff's Exhibit Three,  
13 did you take Plaintiff's Exhibit Number Three and  
14 lay on the survey of Mr. Bass to look at it?

15 MR. LAWSON: No. I haven't.

16 MR. JORDAN: You haven't done that?

17 MR. LAWSON: No. I haven't.

18 MR. JORDAN: Did you take the overlay of  
19 Plaintiff's Exhibit Number Four, which to my  
20 understanding is your survey brought to scale,  
21 did you lay that up against Mr. Bass' survey or  
22 the 1800 survey?

23 MR. LAWSON: No. I haven't.

24 MR. JORDAN: Okay. Did anyone in your  
25 office do that at any time?

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1 MR. LAWSON: Mr. Coker might have but --

2 MR. JORDAN: Mr. Coker, all right. You're  
3 not able to testify -- Do you feel comfortable  
4 testifying today as to those overlays that are on  
5 the same scale and how they match up?

6 MR. LAWSON: I can look at them and try to.

7 MR. JORDAN: Do you want to take a moment  
8 and do that? I'd like to get your opinion so the  
9 judge understands what you think about that. Do  
10 you know where the pins line up on this plat as  
11 opposed to Mr. Bass' plat?

12 MR. LAWSON: Not exactly.

13 MR. JORDAN: How about your survey; do you  
14 know how your survey would line up with the same  
15 survey and the overlay?

16 MR. LAWSON: There's a shift in between  
17 these two bars.

18 MR. JORDAN: Now, did your office do some  
19 overlay type clear diagrams to try to match up  
20 with the surveys?

21 MR. LAWSON: Yes.

22 MR. JORDAN: Did you do those or did someone  
23 do those?

24 MR. LAWSON: Actually Mr. Coker did.

25 MR. JORDAN: Would you be able to testify to

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1 those or --

2 MR. LAWSON: I've looked at them and kind of  
3 did the same thing we did here.

4 MR. JORDAN: Right. But you didn't actually  
5 develop those drawings?

6 MR. LAWSON: No. I didn't do the drafting.

7 MR. JORDAN: Who would be better able to  
8 testify as to those?

9 MR. LAWSON: Probably Mr. Coker since he  
10 prepared them.

11 MR. JORDAN: All right. So as a surveyor  
12 from your office, you would not feel comfortable  
13 testifying as to what your office did?

14 MR. LAWSON: I could. I mean, it just -- I  
15 could but like I said, he prepared them so he  
16 might can answer more questions about them than I  
17 could.

18 MR. JORDAN: And he prepared them and then  
19 showed them to you?

20 MR. LAWSON: Yes.

21 MR. JORDAN: Or plotted them out?

22 MR. LAWSON: He plotted them out.

23 MR. JORDAN: And did you look at what was  
24 done in your office to see if they were actually  
25 correct or not or you just looked at them?

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1           MR. LAWSON: I looked at them and checked  
2 the distance and they looked correct.

3           MR. JORDAN: And are you familiar with how  
4 those compare with the overlays I've shown you  
5 today, Exhibit Numbers Three and Four?

6           MR. LAWSON: Four does look exactly like  
7 the survey we prepared and we checked all the  
8 bearings and distances on that.

9           MR. JORDAN: And what about Three?

10          MR. LAWSON: I'm not sure about Three; this  
11 is the first time I've seen it so I'm not sure.

12          MR. JORDAN: Let me ask you this, I just  
13 want to refresh you a little bit since we've had  
14 so much time, I believe your testimony was last  
15 time if the judge agrees with the 1800 survey  
16 then Mr. Bass' survey would be more correct; is  
17 that right?

18          MR. LAWSON: No. I never said that.

19          MR. JORDAN: You never said that?

20          MR. LAWSON: No.

21          MR. JORDAN: All right. Do you agree we  
22 have two old surveys, the '27 survey and an 1800  
23 survey?

24          MR. LAWSON: Yes.

25          MR. JORDAN: And yours agrees with the '27

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1 survey?

2 MR. LAWSON: Correct.

3 MR. JORDAN: It does not agree with the 1800  
4 survey, does it?

5 MR. LAWSON: I'm not sure.

6 MR. JORDAN: Why aren't you sure?

7 MR. LAWSON: Because we couldn't find any  
8 points to tie it in to.

9 MR. JORDAN: So you couldn't say whether it  
10 does or doesn't.

11 MR. LAWSON: Right.

12 MR. JORDAN: You couldn't find points since  
13 they dug ponds there?

14 MR. LAWSON: Yes.

15 MR. JORDAN: And when they dug ponds the  
16 points got lost?

17 MR. LAWSON: Right. We looked for the  
18 points where the ponds were not.

19 MR. JORDAN: I understand but some points  
20 were lost in the digging of the ponds?

21 MR. LAWSON: It's possible.

22 MR. JORDAN: Well, I mean, did you find  
23 points at the bottom of the pond?

24 MR. LAWSON: No.

25 MR. JORDAN: And some points were lost when

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1 95 was constructed, correct?

2 MR. LAWSON: Yes.

3 MR. JORDAN: I don't have any other  
4 questions for Mr. Lawson.

5 THE COURT: Mr. McCurry?

6 MR. MCCURRY: Your Honor, it might be possible  
7 possible we will need to bring Mr. Lawson back to  
8 the stand at a later point in time so I have no  
9 further questions for him.

10 THE COURT: You may step down, Mr. Lawson.  
11 Thank you.

12 MR. MCCURRY: Your Honor, that was Mr.  
13 Jordan's cross examination of my witness so the  
14 next one is mine and I'd like to call Mr. Jay  
15 Kensey to the stand, please.

16 THE COURT: All right, sir.

17 (James Kensey, being duly sworn, testified  
18 as follows:)

19 THE COURT: Please have a seat and state  
20 your full name.

21 MR. KENSEY: James Benjamin Kensey, Junior.

22 MR. MCCURRY: Mr. Kensey, you're also known  
23 as J.B.; is that correct?

24 MR. KENSEY: That's correct.

25 MR. MCCURRY: Tell me, if you will, how old

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**WILBUR JUDY, JR. – Direct examination by Mr. McCurry**

Page 46

1 follows:)

2 **THE COURT:** Please have a seat and please  
3 state your full name for the record, Mr. Judy.

4 **MR. JUDY:** Wilbur Judy, Junior; I go by  
5 Roy.

6 **THE COURT:** Your witness, Mr. McCurry.

7 **MR. MCCURRY:** Mr. Judy, can you tell me your  
8 age, please?

9 **MR. JUDY:** 65.

10 **MR. MCCURRY:** And where do you live, Mr.  
11 Judy?

12 **MR. JUDY:** 6280 Badham Drive, Reesville,  
13 SC.

14 **MR. MCCURRY:** Mr. Judy, you are the son of  
15 Ms. Betty Judy who is named as a Defendant in  
16 this case?

17 **MR. JUDY:** That's correct.

18 **MR. MCCURRY:** Are you her attorney in fact?

19 **MR. JUDY:** That's correct.

20 **MR. MCCURRY:** And I can get a copy of that  
21 power of attorney document for The Court, Your  
22 Honor. Um, who was your father, Mr. Judy?

23 **MR. JUDY:** Wilbur Judy, Senior.

24 **MR. MCCURRY:** And do you have any siblings,  
25 any brothers and sisters?

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1           **MR. JUDY:** That's correct.

2           **MR. MCCURRY:** And who are they?

3           **MR. JUDY:** Tammy and Rhonda.

4           **MR. MCCURRY:** And Tammy Judy is in the court  
5 room today, I believe?

6           **MR. JUDY:** That's correct.

7           **MR. MCCURRY:** Mr. Judy, of course we're  
8 discussing this property, the Judy pond and the  
9 Howell property, if you will; I'll ask you to  
10 take a look at these documents. I guess, Your  
11 Honor, as to the status, we probably don't need  
12 to get into that.

13           **MR. JORDAN:** Yeah. And I don't -- To my  
14 understanding, and I think we stipulated this  
15 earlier, we don't have any question as to the  
16 Judy's owning the property that they own and I  
17 don't think they have any -- I think we both  
18 stipulate that both sides own their properties;  
19 we only have a question as to where the actual  
20 common line exists; is that correct?

21           **MR. MCCURRY:** That would be correct.

22           **THE COURT:** Okay. Thank you for that.

23           **MR. MCCURRY:** Mr. Judy, there's been much  
24 testimony regarding the Judy property depicted  
25 upon a 1996 plat that was prepared by Ashley

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1 Surveyors. I'll ask you to take a look at  
2 Defendant's Number 25 and tell me what that is.

3 MR. JUDY: That's correct.

4 MR. MCCURRY: Tell me what that is.

5 MR. JUDY: This document indicates a  
6 property that was surveyed by Ashley Surveying.

7 MR. MCCURRY: And whose property is it  
8 indicating?

9 MR. JUDY: Betty Judy.

10 MR. MCCURRY: Mr. Judy, uh, with regard to  
11 this survey tell me how that survey came about;  
12 what prompted you to -- Did you request that  
13 survey?

14 MR. JUDY: That's correct. Through my  
15 attorney this survey was requested back probably  
16 in '95. Prior to '95, up until about '89 or '90  
17 roughly we used to travel a road off of Old Saint  
18 George Church Road, I think it's named, off  
19 Heather Road which came into this property, and  
20 off and on until probably 1989 or '90, I'm not  
21 sure exactly the access road that came into the  
22 back side of this property, I call it the  
23 backside, it was access denied to our family or  
24 anybody, I guess, who traveled it. It was shut  
25 off and the access we had to the property no

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1 longer existed. So we did not have any access to  
2 the property and, uh, my daddy was up in age at  
3 that time and he didn't have an access to get to  
4 the property. Of course, I could get to it by  
5 walking; the only access I had to it was walking  
6 to the property and my daddy passed away  
7 September 4<sup>th</sup> of '93 never being able to get to  
8 his property and at some point we asked, my  
9 mother did, for access to come in on it the way  
10 we'd been coming in all our life and it wasn't  
11 allowed so I started looking into the property  
12 myself.

13 **MR. MCCURRY:** Mr. Judy, I'm going to  
14 interrupt you. This is Plaintiff's Exhibit  
15 Number One, and the access you're speaking of,  
16 that's the plat done by David Bass, can you tell  
17 me, if you will, the access you at one time had;  
18 show me on that plat?

19 **MR. JUDY:** Let me find it.

20 **MR. MCCURRY:** That's the Judy property  
21 here.

22 **MR. JUDY:** I see the access road here. The  
23 access road actually went further up. This is  
24 the road he's indicating here off of Saint George  
25 Road, Old Saint George Road; that was the old

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1 access road that came here. Well, it might not  
2 have come any further than this, up to this  
3 point.

4 **MR. MCCURRY:** And that was the means of  
5 access to the property that y'all had after I-95?

6 **MR. JUDY:** After I-95, correct.

7 **MR. MCCURRY:** Prior to I-95 how did y'all  
8 access your property?

9 **MR. JUDY:** Prior to 95 we came in off of  
10 Highway 78 on the east side of 95.

11 **MR. MCCURRY:** And you indicated after your  
12 father died that you no longer had access?

13 **MR. JUDY:** That's correct.

14 **MR. MCCURRY:** And you could access the  
15 property by walking, you indicated?

16 **MR. JUDY:** That's correct.

17 **MR. MCCURRY:** Tell me, or tell The Court if  
18 you will, what prompted you to have this survey  
19 prepared.

20 **MR. JUDY:** The DOT maps back then, I saw an  
21 access road that came into the property, came on  
22 the property, one that I had used since I was a  
23 kid; I saw that. It also appeared to me that the  
24 dike at that time, the property line was way  
25 back, well, actually more towards Walterboro off

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1 of the dike as indicated on the drawing. I did  
2 the measuring as best I could from the railroad  
3 side to kind of verify what I was seeing and it  
4 looked pretty close to me so I discussed it with  
5 my attorney and my attorney then hired a  
6 surveyor. And that's how this came about.

7 **MR. MCCURRY:** Mr. Judy, I'll ask you to take  
8 a look at that document and tell me what that is.

9 **MR. JUDY:** That's something the DOT  
10 prepared is what I see.

11 **MR. MCCURRY:** Is that the DOT map you were  
12 referencing in your comments just a moment ago?

13 **MR. JUDY:** Yes. That's correct.

14 **MR. MCCURRY:** I didn't ask you earlier but  
15 by whom were you employed?

16 **MR. JUDY:** SCE&G, South Carolina Electric  
17 and Gas.

18 **MR. MCCURRY:** And do you have opportunity to  
19 work with the railroad, communicate with the  
20 railroad?

21 **MR. JUDY:** That's correct.

22 **MR. MCCURRY:** As well as the South Carolina  
23 Department of Transportation?

24 **MR. JUDY:** That's correct.

25 **MR. MCCURRY:** Tell me when this map was done

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1 to the best of your knowledge.

2 MR. JUDY: Well, probably prior --

3 MR. JORDAN: Objection. Either he knows or  
4 he doesn't know.

5 THE COURT: Do you know when it was done,  
6 Mr. Judy?

7 MR. JUDY: Do I know when this map was  
8 prepared?

9 THE COURT: Yes, sir.

10 MR. MCCURRY: For what reason was it  
11 prepared is maybe a better question.

12 MR. JUDY: I think construction of 95 began  
13 in '74, maybe '70 and this had been prepared by  
14 that time obviously because they started work on  
15 it back then so probably in the early '70's, if I  
16 had to guess but I don't have an exact answer.

17 MR. MCCURRY: Does the map depict the ponds  
18 or was this prior to the ponds?

19 MR. JUDY: This is the area of the ponds  
20 here.

21 MR. MCCURRY: I'll ask you to take a look at  
22 this document; is that a smaller version of the  
23 map?

24 MR. JUDY: That's correct.

25 MR. MCCURRY: Tell me again what you did

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1 with regard to looking at these maps.

2 MR. JUDY: When I looked at the maps to  
3 determine what I saw, again I talked to my  
4 attorney which in turn hired a surveyor who  
5 surveyed the property and it indicated as I said  
6 the property lines went down beyond the adjacent  
7 pond and that action was taken from my attorney.

8 MR. MCCURRY: Right. During the process of  
9 when this plat was prepared, tell me what action  
10 you took given the information regarding the  
11 surveyor's results; what did you do?

12 MR. JUDY: The action at that time was, I  
13 can't be specific on it, on the action, but it  
14 was a suit brought at that time and I think it  
15 was a trespass suit. Prior to that the suit was  
16 brought by another attorney on the -- I've got to  
17 get all these suits straight while I'm talking.

18 MR. MCCURRY: What action did you take when  
19 you had the information regarding this survey  
20 results?

21 MR. JUDY: My lawyer, he filed a suit at  
22 that time, and it was, well the end result was, I  
23 think, part of it was trespass at that time and  
24 access. It had been a few lawsuits. I think  
25 there was two parts of it, access and I think

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1 trespass. I'm not a lawyer so I can't tell you  
2 exactly what it was. The end result of it was  
3 that the property on the other end which it was a  
4 billboard, a small billboard, ended up being  
5 shown on our property and a line was determined  
6 -- I'm not sure at that time.

7 MR. MCCURRY: The billboard, tell me where  
8 that's shown on this Number 25.

9 MR. JUDY: That side right there.

10 MR. MCCURRY: Can you show that to the  
11 judge?

12 MR. JUDY: That was the sign right there.

13 MR. MCCURRY: Mr. Judy, that was a  
14 litigation -- If you will, you heard Mr. Baker  
15 testify as to the posts. Can you tell The Court  
16 what prompted you to put these posts up and tell  
17 The Court about the placement of the posts?

18 MR. JUDY: Afer the survey was done and it  
19 was determined the line was where it showed on  
20 this map, that entire dam shows on our property  
21 and those posts were put up to limit access  
22 coming from the other end the same way ours was  
23 limited further down. That access was cut off so  
24 I determined this was our property here based on  
25 the survey; that access was also shut off. It

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1 was done. It also included our property based on  
2 this.

3 MR. MCCURRY: If you will, take a look at  
4 these photographs and explain what was done.

5 MR. JUDY: The posts and fence were erected  
6 in '95 or in the early middle part of December  
7 1995, and signs and whatever.

8 MR. MCCURRY: How do you recollect that it  
9 was December of '95.

10 MR. JUDY: Ashley Surveying, when they  
11 completed the survey, that's where the lines were  
12 determined.

13 MR. MCCURRY: The survey is dated January  
14 31<sup>st</sup>, 1996 but you indicated it was December '95;  
15 why do you say that?

16 MR. JUDY: Because it was. I remember it  
17 being that month. It was after the survey was  
18 done and I was sure, based on our plat, our  
19 survey, that was the line so I erected the fence  
20 up.

21 MR. MCCURRY: Were you advised by Ashley  
22 Surveying of the completion of the work?

23 MR. JUDY: That's correct.

24 MR. MCCURRY: Mr. Judy, I'm going to ask you  
25 to take a look at these photographs, Defendant's

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1 36, 18; what do those photographs depict?

2 MR. JUDY: The posts in the fence.

3 MR. MCCURRY: I'll ask you to take a look at  
4 Defendant's 34; what does that depict?

5 MR. JUDY: Posts and fence as well, and also  
6 there's a no trespassing sign.

7 MR. MCCURRY: Did anyone other than you and  
8 Mr. Baker put up the fence?

9 MR. JUDY: No.

10 MR. MCCURRY: And the no trespassing signs  
11 you spoke of, tell me when those were placed and  
12 if they have been replaced over time?

13 MR. JUDY: The old ones have been there for  
14 many, many, many year and the other one probably  
15 in the last while. I replace them from time to  
16 time. I don't know the exact date of the red  
17 one. I don't have an exact date. I've kept them  
18 on the property. If someone removed them I'd put  
19 them back up.

20 MR. MCCURRY: Mr. Judy, were the no  
21 trespassing signs placed upon the posts?

22 MR. JUDY: What?

23 MR. MCCURRY: How soon after you put up the  
24 fence and the posts were no trespassing signs  
25 placed?

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1           **MR. JUDY:** No trespassing signs have been  
2 there.

3           **MR. MCCURRY:** There's been some testimony  
4 earlier, can you tell me who has maintained the  
5 pond and the dam and the dike area?

6           **MR. JUDY:** I've maintained it to the best of  
7 my ability. I maintained it many years back,  
8 even back then from up the head of the road back  
9 in old days and the dike as well, around our pond  
10 as well.

11           **MR. MCCURRY:** Has anyone ever assisted you  
12 in the maintenance of the property?

13           **MR. JUDY:** No.

14           **MR. MCCURRY:** Have you ever seen the  
15 Howell's or Jordan's assist in any type of  
16 maintenance of the dam or dike area?

17           **MR. JUDY:** I have not.

18           **MR. MCCURRY:** Have you ever seen any  
19 evidence of that?

20           **MR. JUDY:** I have not.

21           **MR. MCCURRY:** How would you access your  
22 property now?

23           **MR. JUDY:** I access it from the property on  
24 the west side of I-95, coming down beside the  
25 railroad, a very narrow area.

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1           **MR. MCCURRY:** Can you explain to the judge  
2 what you have to do to get to the property with  
3 relation to the railway?

4           **MR. JUDY:** Well, the property is very close  
5 to the tracks. I wish I had a picture to show  
6 you better but I don't. It's just narrow down by  
7 the track under the I-95 bridge. I drive the  
8 property on the west side of I-95, I drive under  
9 the bridge --

10          **MR. MCCURRY:** Use this and show to The Court  
11 and please explain to the judge what you have to  
12 do.

13          **MR. JUDY:** If I had a picture of 95 that  
14 would help. Let's see. That would be 95, the  
15 other property is over here, and I come to the  
16 property under the I-95 bridge.

17          **MR. MCCURRY:** And how is that access -- was  
18 there any grant of an easement or how did you get  
19 that access?

20          **MR. JUDY:** It's no easement at all. They  
21 just allow me, I might say, to do that. So far  
22 they have not disturbed me going back under their  
23 bridge.

24          **MR. MCCURRY:** If DOT or the railroad  
25 forbade you from going that route would you have  
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1 any access?

2 MR. JUDY: No.

3 MR. MCCURRY: All right. Mr. Judy, at some  
4 point in time, has anyone from the Jordan or  
5 Howell side contacted you about, uh, your  
6 placement of that fence or those posts on the  
7 dam; was contact made by their side of the family  
8 to your side of the family; has this issue come  
9 up?

10 MR. JUDY: Yes.

11 MR. MCCURRY: Tell the judge if you will  
12 what those conversations were and what happened.

13 MR. JUDY: I'll just use the Howell side for  
14 example. From the Howell side coming onto the  
15 dike, we've had that conversation, actually  
16 looked at it a time or two and I was as  
17 interested as they were to try to work something  
18 out. They have access actually on all sides of  
19 that pond except the south side which is on the  
20 dam which our plat indicates is ours. In order  
21 to get onto the dike that fence would have been  
22 eliminated. We discussed it and I was --

23 MR. MCCURRY: Who made the first contact?

24 MR. JUDY: To the best of my memory it was  
25 Mr. Jordan, Lou Jordan, if I remember.

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1                   **MR. MCCURRY:** And who did he contact?

2                   **MR. JUDY:** Stopped by my mother's house one  
3 day and I don't have this documented but to the  
4 best of my memory he stopped by my mama's one day  
5 and we talked about it and somewhat later we met,  
6 had the discussion of trying to work out  
7 something if we could. I had mentioned us having  
8 access, a key, to come in the other side at that  
9 point; that never happened. At one point I think  
10 I remember him saying he thought he could help  
11 work something out.

12                   **MR. MCCURRY:** Help work something out, I'm  
13 sorry?

14                   **MR. JUDY:** Try to get us a key to come into  
15 the property. We talked about it and I was going  
16 to try to work it out and I was going to help  
17 work out any kind of compromise we could. That's  
18 what I was trying to do. We actually met in 2009  
19 and did come up with a compromise. We could  
20 access the road and they could access the dike  
21 but here we are today.

22                   **MR. MCCURRY:** During one of those times  
23 there was some comments earlier about -- Were  
24 there any flags or markings put up to try to work  
25 out some compromise?

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1           **MR. JUDY:** I actually went out, after me and  
2 Mr. Lou talked, I went out and looked at it and I  
3 put probably a stake or two, something I thought  
4 could work, and as I told them, I was doing what  
5 I could to see if it could work. And also  
6 indicated if we could do this, could we help, you  
7 know, us an access from the other side. Maybe he  
8 did try but nothing ever came about it.

9           **MR. MCCURRY:** So you never got a key?

10          **MR. JUDY:** No, sir.

11          **MR. MCCURRY:** And the agreements have  
12 basically failed?

13          **MR. JUDY:** That's correct. Absolutely. I  
14 was willing and I was trying.

15          **MR. MCCURRY:** Okay. Um, since 1995 when the  
16 fence and posts were placed do you give  
17 permission sometimes for persons to fish on the  
18 property and to be back there?

19          **MR. JUDY:** At this time it's if we take them  
20 with us.

21          **MR. MCCURRY:** And Mr. Kensey, Officer  
22 Kensey, testified, have you had the occasion to  
23 periodically call to request some help from  
24 trespassers?

25          **MR. JUDY:** On a number of occasions. Yes.

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1           **MR. MCCURRY:** There was testimony about  
2 surveyors last time and I want to show you some  
3 of the photographs from that testimony; Mr. Judy,  
4 I'm going to ask you to take a look at that  
5 photograph and tell me what that depicts.

6           **MR. JUDY:** The property marker which would  
7 be on the southeast corner of the property.

8           **MR. MCCURRY:** Can you show the judge where  
9 that stob is located?

10          **THE COURT:** Can you tell me what exhibit  
11 number that is?

12          **MR. MCCURRY:** 14. Do you object to him  
13 circling that?

14          **MR. JORDAN:** Which one do you want?

15          **MR. MCCURRY:** The southeastern corner  
16 that's depicted on Defendant's 14. I thought it  
17 might be good for him to circle that.

18          **MR. JORDAN:** Oh, that's fine.

19          **MR. MCCURRY:** Mr. Judy, that stob you  
20 pointed to, the pipe, can you tell us how long  
21 you recollect that being there?

22          **MR. JORDAN:** It's been there as far back as  
23 I possibly can remember. Many years from way  
24 back when my daddy was living.

25          **MR. MCCURRY:** And what was that point

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1 acknowledging as far as you knew?

2 MR. JORDAN: It was the property marker.

3 MR. MCCURRY: And your surveyors testified  
4 that was used in their survey, correct?

5 MR. JUDY: That's correct.

6 MR. MCCURRY: There was also testimony from  
7 surveyors regarding the line from the railroad,  
8 if you will, and I'll ask you to look at  
9 Defendant's 25 again; have you had an occasion to  
10 observe any other points or stobs along that  
11 eastern boundary?

12 MR. JUDY: On the eastern boundary -- The  
13 only one I would have observed was the one on the  
14 railroad side.

15 MR. MCCURRY: Do you recollect how long that  
16 stob has been in existence?

17 MR. JUDY: As long as I can remember. Way  
18 back when.

19 MR. MCCURRY: Mr. Judy, the documents, tell  
20 me what you used again in conjunction -- Your  
21 Honor, I move to admit this highway department  
22 big map as Defendant's Exhibits --

23 THE COURT: 39 and 40?

24 MR. MCCURRY: Yes, ma'am.

25 THE COURT: Any objection, Mr. Jordan.

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1 MR. JORDAN: No, ma'am.

2 (MAP MARKED AS DEFENDANT'S EXHIBIT NUMBER  
3 THIRTY NINE FOR IDENTIFICATION.)

4 (DOT MAP MARKED AS DEFENDANT'S EXHIBIT  
5 NUMBER FORTY FOR IDENTIFICATION.)

6 MR. MCCURRY: Mr. Judy, I'm going to ask you  
7 to take a look at Exhibit Defendant's 40; and you  
8 just pointed out the stobs depicted here; where  
9 are those stobs in relation to this map here,  
10 Defendant's 25?

11 MR. JUDY: That would be right here and the  
12 other one right here.

13 MR. MCCURRY: And this is what prompted  
14 your request for a survey?

15 MR. JUDY: That's correct.

16 MR. MCCURRY: Mr. Judy, you have seen some  
17 documentation presented, a survey presented Mr.  
18 Bass, you've had conversations with your  
19 surveyors as well; is it still your position that  
20 with regard to Ashley Surveying that their survey  
21 is correct and their lines are depicted as how  
22 you think it should be?

23 MR. JUDY: Yes, sir.

24 MR. MCCURRY: And are you asking The Court  
25 to hold to the Ashley Survey, if you will, and

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1 find that the line is as depicted on the Ashley  
2 Survey?

3 MR. JUDY: Yes, sir.

4 MR. MCCURRY: I have one more photograph,  
5 Your Honor. Mr. Judy, can you tell me what that  
6 photograph is of?

7 MR. JUDY: This would be the monument by  
8 the, uh, off of the railroad by I-95.

9 MR. MCCURRY: And to your knowledge what --  
10 Well, I believe you've measured it. How far off  
11 is the railroad tracks along your property line  
12 is that?

13 MR. JUDY: It's 112.

14 MR. MCCURRY: I'd like to put that into  
15 evidence.

16 (PHOTO MARKED AS DEFENDANT'S EXHIBIT NUMBER  
17 FORTY ONE FOR IDENTIFICATION.)

18 MR. MCCURRY: Mr. Judy, if you could just  
19 show The Court where this monument is located.

20 MR. JUDY: Right here.

21 MR. MCCURRY: Thank you, Mr. Judy. I have  
22 no further questions. Please answer any  
23 questions Mr. Jordan may have for you.

24 MR. JORDAN: May I please The Court, Your  
25 Honor?

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1           **THE COURT:** Yes, sir.

2           **MR. JORDAN:** Mr. Judy, um, were you one of  
3 the Plaintiff's against -- Is Ronnie Judy your  
4 brother?

5           **MR. JUDY:** No.

6           **MR. JORDAN:** What is Ronnie Judy's relation?

7           **MR. JUDY:** Cousin.

8           **MR. JORDAN:** Were you involved in the recent  
9 lawsuit we got a appeals court decision on  
10 involving Ronnie Judy; were you involved in that  
11 lawsuit?

12           **MR. JUDY:** Not that I know of.

13           **MR. JORDAN:** All right. Now, when your  
14 daddy and Mr. John Howell were living is that  
15 when the ponds were dug?

16           **MR. JUDY:** As far as I know. I know daddy  
17 was and I think Mr. John was.

18           **MR. JORDAN:** And your daddy and Mr. John  
19 Howell, is it fair to say that of the  
20 construction of 95 they both ended up with a pond  
21 built?

22           **MR. JUDY:** I think it would be fair to say  
23 a pond was built.

24           **MR. JORDAN:** Okay. And I think they used  
25 the dirt dug out the ponds for the construction;

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1 is that to the best of your knowledge?

2 MR. JUDY: Best of my knowledge.

3 MR. JORDAN: And given the dirt they ended  
4 up getting a free pond; is that a fair statement?

5 MR. JUDY: As far as I know. Let me just  
6 say this, I can't speak for Daddy and I can't  
7 speak for Mr. Howell but you're asking me --

8 MR. JORDAN: To the best of your knowledge.

9 MR. JUDY: It makes sense.

10 MR. JORDAN: Okay. Your daddy got a pond  
11 and Mr. Howell got a pond.

12 MR. JUDY: That's kind of what I see.

13 MR. JORDAN: Okay. And between the two  
14 ponds was a dike?

15 MR. JUDY: Still there.

16 MR. JORDAN: And your daddy and Mr. Howell,  
17 to the best of your knowledge, never fussed about  
18 the dike?

19 MR. JUDY: To my knowledge.

20 MR. JORDAN: Your daddy never erected a  
21 fence, did he?

22 MR. JUDY: If he did I didn't help him.

23 MR. JORDAN: And Mr. Howell never erected a  
24 fence to keep your daddy off the property, did  
25 he?

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1           **MR. JUDY:** I can't answer that. If he did  
2 I didn't see it. I don't have any knowledge of  
3 it. I can't speak for Daddy and Mr. Howell.

4           **MR. JORDAN:** Okay. And your daddy knew he  
5 had an access problem back then, didn't he, Roy  
6 -- Can I call you Roy or do you want me to call  
7 you --

8           **MR. JUDY:** Call me Roy, that's fine.

9           **MR. JORDAN:** Okay.

10          **MR. JUDY:** And he had access -- Well, I'd  
11 say he had a problem but obviously it was worked  
12 out from time to time because he had a key that  
13 allowed him access so it really wasn't a problem  
14 until the gate was put up and we were not allowed  
15 to come in so I wouldn't call it a problem until  
16 the problem really came when the gate was put up  
17 with no key. That's when the problem came.

18          **MR. JORDAN:** I got you. Your daddy had  
19 access as long as he had a key to ride over the  
20 Howell's property?

21          **MR. JUDY:** That's correct. That was in the  
22 later days. In the earlier years there was no  
23 gate up. That came at a later time.

24          **MR. JORDAN:** Tell me what you know about the  
25 railroad and your daddy agreeing on an

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1 easement for him come through their  
2 property and why didn't it go through?

3 **MR. JUDY:** There again, I could not speak  
4 for my daddy. I was probably way back younger  
5 then.

6 **MR. JORDAN:** What is your knowledge of that?

7 **MR. JUDY:** Well, other than the fact there  
8 might have been some discussion. I think I saw  
9 something in some documentation and you might  
10 have mentioned this the other day at the last  
11 session.

12 **MR. JORDAN:** Let me show you a letter from  
13 Southern Railways System dated May 24<sup>th</sup>, 1978 and  
14 what the letter talks about is it's instructions  
15 to get the attached agreement signed in duplicate  
16 and return it to Southern Railroad and attached  
17 to it are two copies of the proposed easement  
18 given an easement from Southern Railway and I  
19 want to ask if you've ever seen that before or if  
20 that helps you remember if they had come to an  
21 agreement about an easement?

22 **MR. JUDY:** I can't remember any agreement  
23 but it will take me a little while to read all  
24 this, too.

25 **MR. JORDAN:** But does that help you

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1 remember your daddy was talking to the railroad?

2           **MR. JUDY:** Daddy's been gone for a long time  
3 and this here doesn't mean anything. Unless I  
4 read it all and then I still won't know what I'm  
5 reading.

6           **MR. JORDAN:** I might not know either but let  
7 me ask you, do you see the letter from the  
8 railroad on the front?

9           **MR. JUDY:** I see that.

10           **MR. JORDAN:** And do you see the letter  
11 telling Tom Berry to get the agreement signed and  
12 return to them the signed copies, the originals;  
13 do you see that?

14           **MR. JUDY:** Yes.

15           **MR. JORDAN:** And do you see what is attached  
16 to it entitled, This agreement made and entered  
17 into by and between Southern Railway Company, a  
18 Virginia corporation, hereinafter styled  
19 Licencee; do you see that?

20           **MR. JUDY:** Yes. I see it but I don't know  
21 what it means.

22           **MR. JORDAN:** Do you see where it says  
23 Railroad hereby grants unto the Licensee, insofar  
24 as Railroad's title enables it so to do, the  
25 right to construct, maintain and use a private

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1 road crossing hereinafter called crossing, upon  
2 and across, at grade, the right of way of  
3 property and track, hereinafter more than one  
4 track of Railroad; do you see a map on the back  
5 of it?

6 MR. JUDY: I see a map but I'm not sure.

7 MR. JORDAN: This goes to Charleston and  
8 this goes to Branchville; do you see where you  
9 cross now; it used to be a 16 foot dirt road or  
10 do you still use the dirt road?

11 MR. JUDY: Where is north and south at?

12 MR. JORDAN: This is north.

13 MR. JUDY: So out on the south side,  
14 somewhere in the vicinity.

15 MR. JORDAN: And you see where this map says  
16 Proposed relocation of private grade crossing for  
17 Mr. Wilbur Judy?

18 MR. JUDY: I see that.

19 MR. JORDAN: Do you know why your daddy  
20 didn't end up signing that so he'd have access?

21 MR. MCCURRY: Your Honor, I'd object. He's  
22 already testified he doesn't know what his dad's  
23 thought process was or can't speak for his  
24 father.

25 THE COURT: Well, I'll certainly agree he

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1 can't speak for his father but if he's got any  
2 independent knowledge of why the agreement was  
3 not executed I think that is a fair question.

4 **MR. JORDAN:** Do you know why your daddy  
5 didn't sign an agreement so he'd have access  
6 across the railroad right away to his property?

7 **MR. JUDY:** I can't answer why he wouldn't  
8 sign. However, at this time we had access coming  
9 from old Saint George side which was an access.

10 **MR. JORDAN:** I got you. But you don't have  
11 any knowledge as to why your daddy didn't sign  
12 the agreement with the railroad company giving  
13 him the right away to access the pond.

14 **MR. JUDY:** I don't even know if he saw this.  
15 I mean, I feel like he probably did if he had a  
16 lawyer handle it. Daddy's not here to answer  
17 that and I don't want to speculate what he did.

18 **MR. JORDAN:** I understand. Did you have  
19 any knowledge that Tom Berry used to, for years,  
20 represent the railroad company?

21 **MR. JUDY:** I didn't know that.

22 **MR. JORDAN:** This is from the railroad to  
23 Tom asking him to get it executed.

24 **MR. JUDY:** I was thinking Tom might have  
25 done work for my daddy.

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1           **MR. JORDAN:** For your daddy too?

2           **MR. JUDY:** I tend to think so.

3           **MR. JORDAN:** Do you have any reason to  
4 testify that your daddy would have had the dike  
5 put between their ponds anywhere but where they  
6 thought the line was?

7           **MR. JUDY:** Repeat that.

8           **MR. JORDAN:** Do you have any reason why your  
9 daddy and Mr. Howell would have had the dike put  
10 anywhere but where they thought the property line  
11 was?

12           **MR. JUDY:** I can't answer that. I don't  
13 want to even speculate on what they did.

14           **MR. JORDAN:** All right. There was no  
15 problems using the dike, was there Roy, until you  
16 started putting a fence up; is that correct; as  
17 far as the Judy's and the Howell's both using the  
18 dike?

19           **MR. JUDY:** Well, I didn't have a problem.  
20 In those times it was no problem if I went on  
21 their property any time I wanted to back in the  
22 days.

23           **MR. JORDAN:** They didn't cause you any  
24 trouble.

25           **MR. JUDY:** Nobody caused anybody any

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1 trouble. The trouble caused when we got locked out back  
2 in '89 or '90. It happened a time or two over the years  
3 prior to that. '89 and '90 was when we got locked out  
4 and my daddy went to his grave not able to get to his  
5 property when he passed on September 4<sup>th</sup>, 1993. And when  
6 I talk about it I get a little upset. It worries me  
7 everyday I think about it. The day he dropped dead of a  
8 heart attack I was sitting thinking how I was going to  
9 get him there.

10 **MR. JORDAN:** But prior to you putting the  
11 fence up the Howell's didn't bother the Judy's  
12 and the Judy's didn't bother the Howell's and  
13 they both used the dike?

14 **MR. JUDY:** To my knowledge I don't know of  
15 any confrontation.

16 **MR. JORDAN:** Okay. And then you put this  
17 fence up because you had the survey done because  
18 you felt like y'all didn't have access across the  
19 Howell property?

20 **MR. JUDY:** Repeat that one more time.

21 **MR. JORDAN:** You put the fence up at the  
22 edge of the dike because you said you didn't have  
23 access across the Howell property?

24 **MR. JUDY:** I didn't -- I said -- I'll say  
25 it again, the access that came into that property

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1 one time came off the old Saint George Road  
2 through Heather Street and that was put up to  
3 determine our boundaries, our property, which in  
4 all honesty, I wasn't coming through to get to my  
5 property that way. I didn't see the need for  
6 anybody from the other side, Howell's or whoever,  
7 to come out the property which was established as  
8 mine based on our survey.

9 MR. JORDAN: But you didn't know where your  
10 line even was until you had that survey done?

11 MR. JUDY: That's correct.

12 MR. JORDAN: And you're testifying here for  
13 your mother today, here on her behalf?

14 MR. JUDY: Yes.

15 MR. JORDAN: You don't have any knowledge  
16 that your mama knew where the line was before  
17 this survey?

18 MR. JUDY: No. I don't.

19 MR. JORDAN: So before the '96 survey y'all  
20 didn't know where the line was.

21 MR. JUDY: Until the later part of '95.

22 MR. JORDAN: When they put the stakes up for  
23 the survey?

24 MR. JUDY: That's right.

25 MR. JORDAN: But before that everybody used

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1 the dike, the Howells and the Judys?

2 MR. JUDY: I never had any confrontation  
3 with anybody if they did; I'll put it like that.

4 MR. JORDAN: And the Howells could still  
5 walk on the dike, they just couldn't drive a car  
6 after you put the fence up, right?

7 MR. JUDY: Well, I think that sign indicates  
8 no walking on it, too, but whether they did, I  
9 didn't stay there 24 hours a day.

10 MR. JORDAN: And Lou Jordan and others, they  
11 did help maintain the dike, didn't they, Roy?

12 MR. JUDY: Don't remember that.

13 MR. JORDAN: You don't remember that?

14 MR. JUDY: No. I don't.

15 MR. JORDAN: You can't say they didn't, can  
16 you?

17 MR. JUDY: I just said I didn't stay there  
18 all the time but whenever I was there I never saw  
19 him. I didn't stay there all the time.

20 MR. JORDAN: All right. Um, and Lou Jordan  
21 met with you and your mama on many, many times  
22 trying to resolve this issue of the fence and the  
23 dike and the access, didn't he?

24 MR. JUDY: I wouldn't say many, many times  
25 with me and mama. I can only remember mama at

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1 the house but she might have come down here one  
2 time. Maybe on two or three occasions, possibly  
3 four, but what you call many, I don't know.

4 MR. JORDAN: But every time you'd get what  
5 you thought was an agreement you or your mama  
6 wanted something changed; isn't that right?

7 MR. JUDY: No.

8 MR. JORDAN: And even after -

9 MR. JUDY: Absolutely not.

10 MR. JORDAN: Even after you signed that  
11 settlement agreement that we entered from the  
12 prior lawsuit, even after that was signed, after  
13 that was done y'all wanted the right away  
14 widened, didn't you?

15 MR. JUDY: If possible, that's what we  
16 mentioned because my understanding is if 25 foot  
17 was granted, because it was a tight squeeze in  
18 there, a little extra wouldn't hurt. That could  
19 have been mentioned, yeah.

20 MR. JORDAN: So even after you had a signed  
21 agreement you and your mama wanted to change?

22 MR. JUDY: That wasn't an agreement. That  
23 didn't hold agreement. It was a question  
24 possibly asked. 25 would have been better than  
25 20 but that wasn't anything that was holding any

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1 progress up.

2 MR. JORDAN: Hold on.

3 THE COURT: Are you looking for the  
4 settlement agreement?

5 MR. JORDAN: Yes, ma'am. We had used it in  
6 the motion hearing but I thought it was admitted  
7 in this too but I can't find it as an exhibit.

8 THE COURT: I don't have it listed as an  
9 exhibit but I do have it as part of the court  
10 record.

11 MR. JORDAN: So is it part of the court  
12 record in this case? It is because of that  
13 motion?

14 THE COURT: Correct.

15 MR. JORDAN: Does it have an exhibit number  
16 I can reference or do we need to mark it? I have  
17 a copy I can mark.

18 THE COURT: I don't want to take it out the  
19 court records so if you mark it separate that  
20 would be good.

21 MR. JORDAN: Okay. This is a one, two,  
22 three, four, five page exhibit that we'll mark as  
23 Plaintiff's Exhibit Number Six.

24 MR. MCCURRY: Is that the typed one?

25 MR. JORDAN: Handwritten.

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1 MR. MCCURRY: No objection.

2 (SETTLEMENT AGREEMENT MARKED AS PLAINTIFF'S  
3 EXHIBIT NUMBER SIX FOR IDENTIFICATION.)

4 MR. JORDAN: Roy, you remember meeting at  
5 Frankie Quattlebaum's office with your mama back  
6 in --

7 MR. JUDY: March of '09.

8 MR. JORDAN: And when you can your mama  
9 went y'all were represented by Mr. McCurry, your  
10 mama was?

11 MR. JUDY: That's correct.

12 MR. JORDAN: And at the time it was  
13 Quattlebaum and Murphy but we were just there  
14 using Frankie's conference room, weren't we?

15 MR. JUDY: Correct.

16 MR. JORDAN: Frankie Quattlebaum never had  
17 anything to do with any of these negotiations?

18 MR. JUDY: Not to my knowledge.

19 MR. JORDAN: It was just me representing the  
20 Howells and your lawyer representing you?

21 MR. JUDY: As far as I know.

22 THE COURT: Mr. McCurry, is that your  
23 recollection as well?

24 MR. MCCURRY: Yes, Your Honor.

25 MR. JORDAN: Roy, there was some problem

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1 with people going back there and fishing and  
2 having problems, even with the Howell area; do  
3 you remember that years ago?

4 MR. JUDY: I don't remember the parties but  
5 the fishing.

6 MR. JORDAN: You testified earlier you  
7 didn't have a key but you did have a key, you did  
8 have a key at one time to enter the gate and get  
9 onto the Howell property?

10 MR. JUDY: My daddy had one and if I wanted  
11 it I used it.

12 MR. JORDAN: Okay. Because you testified  
13 earlier you never had a key but you did access --

14 MR. JUDY: If my daddy had it then I had  
15 access to it.

16 MR. JORDAN: I don't have any further  
17 questions.

18 THE COURT: Anything further, Mr. McCurry?

19 MR. JORDAN: I'm sorry. I had asked that  
20 this be admitted.

21 MR. MCCURRY: Your Honor, this document, it  
22 looks like Tom was representing the railroad  
23 there so I don't really know the relevance of  
24 these agreements that weren't reached. Some  
25 negotiations didn't even get anywhere so to me, I

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1 don't think that is relevant to what we're  
2 speaking of here today.

3 **THE COURT:** What's your position on that,  
4 Mr. Jordan?

5 **MR. JORDAN:** My position on that is it's  
6 been this testimony and position in their case  
7 that they could only get access across the  
8 Howell's and this has been a problem forever and  
9 they couldn't get access across the railroad to  
10 use it and I have the original documents that, on  
11 their face, show the railroad and Mr. Judy having  
12 agreed and the railroad sent to their lawyer, Tom  
13 Berry, two originals of an agreement for Mr. Judy  
14 to have access to his pond. Now for whatever  
15 reason, Mr. Judy didn't sign it and the railroad  
16 didn't sign it but there obviously the railroad  
17 was willing to give them access. Now why they  
18 didn't get it, I can't offer any evidence to that  
19 but this at least provides The Court evidence  
20 when they say they never had the ability to have  
21 an easement from the railroad, I mean, they did.

22 **THE COURT:** I'll allow it in.

23 **(SOUTHERN RAILWAY AGREEMENT MARKED AS**  
24 **PLAINTIFF'S EXHIBIT NUMBER SEVEN FOR**  
25 **IDENTIFICATION.)**

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**WILBUR JUDY, JR. - Redirect examination by Mr. McCurry**

Page 82

1           **MR. MCCURRY:** Mr. Judy, just a couple of  
2 questions. Have you ever seen this original  
3 document before; do you have any knowledge  
4 whatsoever as to why this document was not signed  
5 by your father or the railroad -- or do you have  
6 any idea if this document was ever given to your  
7 father?

8           **MR. JUDY:** I don't know anything about a  
9 document that daddy would have had or if he had  
10 it. He probably didn't discuss everything with  
11 me.

12           **MR. MCCURRY:** So you don't have any  
13 knowledge of this, a possible easement from the  
14 railroad?

15           **MR. JUDY:** No.

16           **MR. MCCURRY:** Mr. Judy, with regard to the  
17 property itself, have you had an occasion during  
18 your lifetime to walk the perimeter of this  
19 property, the boundary lines from the railroad --  
20 You're very familiar with the property?

21           **MR. JUDY:** That's correct.

22           **MR. MCCURRY:** And you had walked that  
23 property before you requested the survey?

24           **MR. JUDY:** That's correct.

25           **MR. MCCURRY:** Nothing further, Your Honor.

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1           **THE COURT:** Mr. Judy, you may step down.  
2 (The hearing went off the record for a period of time.)

3           **THE COURT:** Thank you everybody, you may  
4 have a seat. Ready to go forward?

5           **MR. JORDAN:** We are, Your Honor. We call  
6 David Bass to the stand.

7           **THE COURT:** Mr. Bass?

8           (David Bass, being duly sworn, testified as  
9 follows:)

10           **THE COURT:** Please have a seat and state  
11 your full name.

12           **MR. BASS:** John David Bass.

13           **MR. JORDAN:** Mr. Bass, can you tell The  
14 Court what your education background is?

15           **MR. BASS:** Yes, sir. I graduated high  
16 school in North Carolina and then I graduated  
17 from Clemson University with a degree in civil  
18 engineering.

19           **MR. JORDAN:** What year did you graduate from  
20 Clemson?

21           **MR. BASS:** 1983.

22           **MR. JORDAN:** What poyou do for a living now,  
23 Mr. Bass?

24           **MR. BASS:** I'm a professional licensed  
25 surveyor.

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1           MR. JORDAN: And you practice surveying; you  
2 have your own company?

3           MR. BASS: I do now.

4           MR. JORDAN: What's the name of your  
5 company?

6           MR. BASS: Associated Surveyors.

7           MR. JORDAN: How long have you been a  
8 licensed surveyor.

9           MR. BASS: Since '92, '93, somewhere along  
10 in there.

11          MR. JORDAN: Do you hold a civil engineering  
12 license now?

13          MR. BASS: No, sir.

14          MR. JORDAN: We would offer Mr. Bass as an  
15 expert land surveyor.

16          THE COURT: Any objections?

17          MR. MCCURRY: No, ma'am.

18          THE COURT: I find him qualified.

19          MR. JORDAN: Mr. Bass, we have marked as  
20 Plaintiff's Exhibit Number One a survey; is this  
21 a survey that you did?

22          MR. BASS: Yes, sir.

23          MR. JORDAN: Looks like you did this in  
24 1998; who asked you to do this survey?

25          MR. BASS: I believe Mr. Howell.

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1                   MR. JORDAN: Lou, the gentleman sitting at  
2 the desk with me?

3                   MR. BASS: Mr. Howell, I believe that's  
4 who.

5                   MR. JORDAN: Okay. Have you seen the survey  
6 that was done that we marked as Defendant's  
7 Exhibit Number 25 that was done by Lawson  
8 Surveying?

9                   MR. BASS: I have.

10                  MR. JORDAN: Ashley Surveying. You weren't  
11 here the first day I know but do you understand  
12 there is a question as to which survey properly  
13 shows the common boundary line between the Howell  
14 property and the Judy property?

15                  MR. BASS: Yes. I understand.

16                  MR. JORDAN: And did I ask you to try to  
17 bring all of these surveys to the same scale  
18 including an 1800 survey and a 1927 survey so we  
19 could try to show The Court if we put all of  
20 these together what it looks like?

21                  MR. BASS: Correct.

22                  MR. JORDAN: And did you do overlays so we  
23 can do that today?

24                  MR. BASS: Right.

25                  MR. JORDAN: Now, can you just explain what

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1 you used when you did your survey, what did you  
2 base it on?

3 **MR. BASS:** Basically we used the old -- He  
4 gave us some old plats.

5 **MR. JORDAN:** Mr. Jordan did?

6 **MR. BASS:** Um, right. And then we went to  
7 the court house and tried to find as many as we  
8 could and then we went out in the field and  
9 started looking.

10 **MR. JORDAN:** Did you also go to the tax  
11 assessor's office to find surveys?

12 **MR. BASS:** Yes, sir.

13 **MR. JORDAN:** And are some of the old  
14 surveys, Mr. Bass, actually found at the tax  
15 assessor's office as opposed to the Registrar of  
16 Deeds office?

17 **MR. BASS:** Some of them are. Yes, sir.

18 **MR. JORDAN:** We have what we've marked as  
19 Defendant's Exhibit 26 which is a survey from the  
20 1800's and I want to ask you, is this one of the  
21 surveys you used for your survey?

22 **MR. BASS:** Yes. It is.

23 **MR. JORDAN:** I don't know how to best do  
24 this but what I would like for you to do is, if  
25 you could show the judge how you did these

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1 overlays and before you start, let me ask,  
2 Plaintiff's Exhibit Three, is this the old 1800  
3 survey that's marked as Plaintiff's Exhibit  
4 Number 26?

5 MR. BASS: Correct.

6 MR. JORDAN: And you brought it up to the  
7 same scale as your survey?

8 MR. BASS: Yes, sir.

9 MR. JORDAN: And then Plaintiff's Exhibit  
10 Number Four, is this the survey that Mr. Lawson  
11 signed off on that was brought up to the same  
12 scale as your survey?

13 MR. BASS: Right. I reduced it down.

14 MR. JORDAN: Can we show Judge Murphy, can  
15 you overlay, and I guess we'll start with the  
16 1800 survey, and overlay that so she'll see. So  
17 what we have is Plaintiff's Exhibit Number Three  
18 overlaid on your survey?

19 MR. BASS: Correct.

20 MR. JORDAN: Now some of the lines don't  
21 match up perfectly.

22 MR. BASS: Correct.

23 MR. JORDAN: This extends over to 95 on that  
24 side?

25 MR. BASS: Correct.

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1           **MR. JORDAN:** But you know from the old  
2 survey what the bearings are, correct?

3           **MR. BASS:** Correct.

4           **MR. JORDAN:** And you took that and applied  
5 it to this survey to get it as close as you  
6 could?

7           **MR. BASS:** Correct.

8           **MR. JORDAN:** Okay. And when you have these  
9 old surveys do you always get a perfect line?

10          **MR. BASS:** No, sir. No. An old compass.  
11 It's to the nearest degree.

12          **MR. JORDAN:** And was there any question as  
13 to length on one of these lines?

14          **MR. BASS:** I can tell you it didn't close  
15 perfectly.

16          **MR. JORDAN:** Explain that to Judge Murphy.

17          **MR. BASS:** Well, it depends on what line.  
18 You can start at any point and follow it around  
19 and it's supposed to come back to the same point.  
20 If you don't come back you've got an error.

21          **MR. JORDAN:** How about on the old survey?

22          **MR. BASS:** No. It did not come back to the  
23 same point.

24          **MR. JORDAN:** So in your business how do you  
25 normally handle that if you have an old survey

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1 that doesn't close?

2 MR. BASS: Uh, you try to find information  
3 to help you come in so you can make sure you're  
4 in the right spot.

5 MR. JORDAN: Is that what you did in this  
6 instance?

7 MR. BASS: The point I had was the china  
8 line and then the other points I could not work  
9 out so I just took it to this overlay and laid it  
10 using the china line.

11 MR. JORDAN: Because you had the degrees  
12 going from the china line?

13 MR. BASS: Correct.

14 MR. JORDAN: And you tried to take them out  
15 according to distance?

16 MR. BASS: Right.

17 MR. JORDAN: And you did it from this point  
18 that you found and you carried it out to here and  
19 you see that?

20 MR. BASS: Correct.

21 MR. JORDAN: And it carried you out to  
22 here?

23 MR. BASS: Right. Now the area I pushed  
24 out was I-95.

25 MR. JORDAN: Pushed it out so it would be

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1 less; so it would not affect the property points?

2 MR. BASS: Right. Well, it depends on where  
3 you start out. You could start at this point and  
4 go around this way and the error would be here,  
5 but if you start over here and come back the  
6 error would be here so I just let the error fall  
7 to 95.

8 MR. JORDAN: Okay. Can you show Judge  
9 Murphy, show her the survey we have from Ashley  
10 Surveying; how does it fit up against yours?

11 MR. BASS: This is the iron that was always  
12 there that I found and flagged and then on Mr.  
13 Lawson's survey found a concrete monument and we  
14 found an iron. This is the concrete monument and  
15 this is the iron. So we can take this and lay it  
16 here. That's exactly how his fits.

17 MR. JORDAN: That's how his fits on your  
18 survey?

19 MR. BASS: Correct.

20 MR. JORDAN: And then let's lay the 1800  
21 survey on there so we can see how it all lines  
22 up. We end up with this area where y'all surveys  
23 don't agree?

24 MR. BASS: Correct.

25 MR. JORDAN: And that's why we're all here

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1 now; it's in that area where the boundary dispute  
2 is?

3 MR. BASS: Correct.

4 MR. JORDAN: And if you follow the old  
5 survey your line puts it on your survey as you  
6 have your property lines?

7 MR. BASS: Correct.

8 MR. JORDAN: And you understand there's a  
9 927 survey?

10 MR. BASS: Right.

11 MR. JORDAN: And you've looked at that?

12 MR. BASS: Right. That's how Lawson turned  
13 his bearing.

14 MR. JORDAN: Tell me if I'm wrong but it  
15 depends on which of the old surveys you use to  
16 base the current survey on as to which one is  
17 correct?

18 MR. BASS: Correct.

19 MR. MCCURRY: Your Honor, I guess I have to  
20 object a little bit as to leading just to be  
21 fair.

22 MR. JORDAN: So your survey is correct if  
23 the 1800 survey is correct?

24 MR. BASS: To the best of my knowledge it  
25 is.

1           MR. JORDAN: And then if the 1927 survey is  
2 correct would Mr. Lawson's survey be correct?

3           MR. BASS: Correct.

4           MR. JORDAN: Thanks. Now, if you would just  
5 hold that there and let me show you one other  
6 thing. Did you do the sketch that is Plaintiff's  
7 Exhibit Number Two?

8           MR. BASS: Yes. I did.

9           MR. JORDAN: Can you explain how these  
10 lines work in conjunction with what we have here?

11          MR. BASS: Point A would be the point of  
12 iron which there's never been any question; this  
13 is the dike run down; this is the sign that I run  
14 for using this 1800 plat and it goes back over to  
15 I-95 and that's the line I run for the bearing.  
16 These down here was what we were hoping to get  
17 as a compromise to the line to go down the dike.

18          MR. JORDAN: On Plaintiff's Two, does the  
19 line that starts that shows A to B and then B  
20 goes down to a little C, is that the same as your  
21 property line on your survey?

22          MR. BASS: Correct.

23          MR. JORDAN: So if you look at that on your  
24 survey this will be that this L3 and the line  
25 that goes out between --

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1                   MR. BASS: Correct.

2                   MR. JORDAN: After I asked you to go back  
3 and look at your survey and do these overlays are  
4 you still confident that using the 1800 survey  
5 that your survey is correct?

6                   MR. BASS: Yes, sir.

7                   MR. JORDAN: Did you find any mistakes or  
8 anything in your survey when you were going back  
9 and compare that to that old survey in comparing  
10 it to Mr. Lawson's survey; when you went back did  
11 you find anything in your survey that you thought  
12 needed to be changed?

13                  MR. BASS: No, sir.

14                  MR. JORDAN: Did you actually go out and do  
15 the ground work for your survey?

16                  MR. BASS: Yes, sir.

17                  MR. JORDAN: Explain how you did that.

18                  MR. BASS: I got one or two other helpers  
19 and I'm the lead man and we start finding corners  
20 and from there we go around trying to follow the  
21 old plats til we find corners then we go around  
22 the property. I'm leading where we going.

23                  MR. JORDAN: Who actually went back and  
24 plotted and diagramed?

25                  MR. BASS: I did.

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1 MR. JORDAN: So you did the field work and  
2 you actually did the survey itself?

3 MR. BASS: Correct.

4 MR. JORDAN: And are you confident your  
5 survey matches your fieldwork?

6 MR. BASS: Correct.

7 MR. JORDAN: Now there were pictures we had  
8 and you weren't here but there were pictures of  
9 trees and markings and things; did you find trees  
10 with markings?

11 MR. BASS: I do not remember.

12 MR. JORDAN: And you've not gone back to the  
13 property since you did your survey have you?

14 MR. BASS: Yes. I have, to do that sketch.

15 MR. JORDAN: Okay. This sketch that we  
16 marked as Plaintiff's Exhibit Number Two?

17 MR. BASS: Yes, sir

18 MR. JORDAN: When did you do that?

19 MR. BASS: I don't remember. Must have  
20 been 2001, 2002, somewhere.

21 MR. JORDAN: You didn't go back out in the  
22 last year or so since we've had this lawsuit?

23 MR. BASS: No, sir.

24 MR. JORDAN: One other thing I want to show  
25 you. Did you do a sketch with three pieces

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**DAVID BASS – Cross-examination by Mr. McCurry**

Page 95

1 together?

2 MR. BASS: No. I did not. That was  
3 something that was given to me.

4 MR. JORDAN: All right. Is there anything  
5 else you think is important, Mr. Bass, that you  
6 think the judge would need to know to help her in  
7 determining where the correct boundary line is,  
8 anything else from your survey, anything you did  
9 that you think is important for her to understand  
10 as to why you put the line where you put it or  
11 how you came about that that you think is  
12 important as a surveyor?

13 MR. BASS: Not right off hand, no. I know  
14 the two plats agree on the line and it's just a  
15 question of which line to use.

16 MR. JORDAN: All right. I don't have any  
17 further questions.

18 THE COURT: Mr. McCurry?

19 MR. MCCURRY: Mr. Bass, I'm Bob McCurry and  
20 I represent the Judy family; I believe you  
21 testified that if the Ashley survey is correct  
22 then their lines would be the lines the judge  
23 would rule upon and if your survey is correct  
24 then your survey should be relied upon; is that  
25 correct?

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1           **MR. BASS:** Correct.

2           **MR. MCCURRY:** Um, does your survey that you  
3 performed with regard to the area in question,  
4 does it conform to the 1800 plat that was done by  
5 Gavin or whoever it was done by?

6           **MR. BASS:** What do you mean conformed?

7           **MR. MCCURRY:** Are the bearings and  
8 distances the same or --

9           **MR. BASS:** No, sir. They're not going to  
10 be the same.

11           **MR. MCCURRY:** That was done by an old  
12 compass probably back in 1800's when you just  
13 held a compass and distance and you don't read to  
14 the nearest minutes and seconds so it would be  
15 off.

16           **MR. MCCURRY:** You testified earlier about it  
17 wouldn't close so you pushed the error out in I-  
18 95?

19           **MR. BASS:** Correct.

20           **MR. MCCURRY:** Why was the error pushed  
21 there; couldn't it have been pushed anywhere?

22           **MR. BASS:** That's correct.

23           **MR. MCCURRY:** Should a surveyor pick and  
24 choose where an error would be manifested; if you  
25 would have chosen an error on the boundary line

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1 in dispute --

2 MR. BASS: If I would have added some more  
3 corners I could have. I couldn't picked and said  
4 the error was this line or an other line but  
5 there was only one corner to go around and base  
6 everything off of.

7 MR. MCCURRY: If you could help me, is a  
8 copy of the 1867 plat somewhere here?

9 MR. JORDAN: It's right here.

10 MR. MCCURRY: Okay. Sorry. I'm looking  
11 for a blow up of that plat in question. Mr.  
12 Bass, I want to go through a comparison of the  
13 1867 or thereabouts plat with your survey and if  
14 you can look at this with me; I think you said  
15 the only point that you found that conformed to  
16 the 1867 plat was the china line, correct?

17 MR. BASS: Correct.

18 MR. MCCURRY: So the other points on this  
19 1867 plat were not able to be located, confirmed?

20 MR. BASS: They were not able to be  
21 located. It was no monumentation to be found.

22 MR. MCCURRY: If you will, let's just start  
23 at that point that you say is the point which  
24 would be right here, I believe; from that point  
25 there was to be, according to the old plat, there

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1 was a straight line of 429 feet, 6.5 chains,  
2 varying north 20 degrees east; your plat as  
3 indicated here shows three lines instead of one  
4 of differing degrees; the total footage is 448  
5 feet instead of 429 -

6 **MR. BASS:** Correct.

7 **MR. MCCURRY:** And the bearings, instead of  
8 20 degrees are 32, 42 and 43?

9 **MR. BASS:** Correct.

10 **MR. MCCURRY:** How do we explain that  
11 discrepancy?

12 **MR. BASS:** Like I said, I used the channel  
13 iron to try to work, rotate that thing best I  
14 could to match everything best I could.

15 **MR. MCCURRY:** Sounds as though you were  
16 trying to make it work as opposed to plotting  
17 points that were called for on this plat?

18 **MR. BASS:** If I put ti exactly as called for  
19 on this plat then we would have more controversy  
20 because it was pushed farther out.

21 **MR. MCCURRY:** Well, it might be more  
22 controversy for somebody but I don't know if it  
23 would be controversy for my client, but you're  
24 correct. If your plat had followed this map then  
25 your plat would have been different. If you plat

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1 would have followed the 1867 plat then your plat  
2 would look different.

3 MR. BASS: Not necessarily.

4 MR. MCCURRY: We've got a 21 foot  
5 difference there at the first point. --

6 MR. BASS: Like I said, it didn't close.

7 MR. MCCURRY: Okay, and the closing is when  
8 you go all the way around?

9 MR. BASS: Correct. It's like a square;  
10 it's supposed to go 100 foot one way, 100 foot,  
11 100 foot, 100 foot; if it don't come to that same  
12 point you've got an error.

13 MR. MCCURRY: Right. And this plat I'm  
14 showing The Court, this point here, you chose to  
15 throw that error off into I-95?

16 MR. BASS: Correct.

17 MR. MCCURRY: But if you instead had made  
18 this line 21 feet shorter it would have affected  
19 the whole plat, correct?

20 MR. BASS: No.

21 MR. MCCURRY: My question is this, Mr. Bass  
22 --

23 MR. BASS: You're saying it's 429 and it's  
24 longer so if I come back on this same line you  
25 can see it's going to be there in the pond, the

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1 north side pond.

2 **MR. MCCURRY:** But it's affecting -- What I'm  
3 trying to say is this plat does not conform with  
4 your plat because from the get go we're already  
5 off. The first line, instead of being a straight  
6 line it's three lines and instead being 429 feet  
7 it's 448 feet.

8 **MR. BASS:** Like I said it's errors.

9 **MR. MCCURRY:** Now, the point that you turned  
10 you set a pipe at that 448 foot point, you set  
11 this iron right here?

12 **MR. BASS:** Correct.

13 **MR. MCCURRY:** So that was not a monumented  
14 point or a chalked point, it was not based upon  
15 any landmarks, you just set it?

16 **MR. BASS:** I don't know. I don't remember  
17 why I set that one. Any chalks through there, I  
18 don't remember.

19 **MR. MCCURRY:** You don't know why it was set  
20 but it was set at a distance greater than what  
21 was called for in the 1867 plat. The next, and  
22 again, the difference in the bearings, 20 degrees  
23 north versus south 32, south 42, south 43, and I  
24 understand the south and north depending on which  
25 way you start, but it calls for 20 degrees and

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1 you've got 32, 42, and 43; any explanation for  
2 that?

3 **MR. BASS:** Like I said, he was using a hand  
4 compass where now we use more sophisticated  
5 equipment. You're going to come off.

6 **MR. MCCURRY:** You didn't find this point  
7 here at the corner of the room and say, Gosh,  
8 that looks like the point, it's monumented, it's  
9 chalked, I'm going to that, and once you got to  
10 that point you shot it with a compass with new  
11 equipment and you say, Well, now that was  
12 actually 42 instead of 20; in other words you  
13 didn't find a point, you just picked a point and  
14 set it.

15 **MR. BASS:** I did not just pick a point and  
16 set it.

17 **MR. MCCURRY:** But there was no rebar found  
18 there. It's a one inch pipe set, my question is  
19 why did you set it right there?

20 **MR. BASS:** I don't remember. Like I said,  
21 I'd have to go back out there and see why I set  
22 it.

23 **MR. MCCURRY:** All right. I would like to  
24 mark somewhere on one of these exhibits I'm  
25 pointing out and whether we need to --

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1                   **MR. JORDAN:** We've got two.

2                   **MR. MCCURRY:** Okay. What I've got here is  
3 just a blow up of the pertinent points in there  
4 but I'll take my marking off of that. Can I mark  
5 this Defendant's Exhibit and I'll get him to mark  
6 that on there?

7                   **THE COURT:** 42.

8                   **MR. MCCURRY:** Yes, Your Honor. Thank you.  
9 Mr. Bass, I'm going to ask you to do something or  
10 may I can do it but I've raised a question about  
11 your surveying and I just want you to mark, if  
12 you will, unless you have an explanation, I would  
13 like for you to mark where a question arises and  
14 can't be answered. In other words, instead of a  
15 straight line here there are three segments and  
16 even though there is a rebar found they are not  
17 all in a straight line.

18                   **MR. BASS:** It says right there the iron  
19 pipe is in the creek.

20                   **MR. MCCURRY:** Regardless, the old plat  
21 calls for one line. I would like you to put a  
22 question mark or an X whatever you'd like to do  
23 over L6, L5 and L4, and also a question mark  
24 where it says iron pipe set. Now if you come up  
25 with an answer as to why it was set there we can

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1 take that off.

2 MR. JORDAN: He's just telling him to put a  
3 question mark there. The witness hasn't  
4 explained --

5 MR. MCCURRY: I'm asking him to explain.

6 MR. JORDAN: I understand what you're asking  
7 him. Put a question mark there, there and there.

8 MR. MCCURRY: Do you have an answer for  
9 those three segments instead of a straight line?

10 MR. BASS: Because there were irons in the  
11 creek and I don't know; I'd have to go back to  
12 the survey and see whoever run that set irons in  
13 the creek.

14 MR. MCCURRY: Had you an opportunity to do  
15 that before you ran that plat?

16 MR. BASS: What do you mean? If these run  
17 --

18 MR. MCCURRY: Mr. Bass, let me ask you this  
19 --

20 MR. JORDAN: Mr. Bass, were you finished  
21 with your answer?

22 MR. MCCURRY: Go ahead with your answer.

23 MR. BASS: If somebody runs the property  
24 lines and they say the creek is the line and they  
25 found rebars in there I would have shot the

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1 rebar; I wouldn't have completely ignored his  
2 survey.

3 MR. MCCURRY: Okay. You told me earlier  
4 that your plat conforms with the 1867 plat.

5 MR. BASS: As best as I could. Yes.

6 MR. MCCURRY: Okay. That qualification,  
7 means the best as you could, I guess. Well,  
8 let's go to this point again; you've indicated  
9 that even though it called for 429 feet you went  
10 for 448 feet?

11 MR. BASS: Correct but I don't remember if  
12 this other line was a blazed line from the, um,  
13 iron up there on the dike back to this point.  
14 Seems to me there was a blazed line and there  
15 were blazes in there.

16 MR. MCCURRY: Well a little while ago you  
17 didn't say that.

18 MR. BASS: I'd have to go back out there and  
19 verify. You're talking almost 15 years ago.

20 MR. MCCURRY: So that iron was set there  
21 why?

22 MR. BASS: Because of the blazes set there  
23 to get back to the creek.

24 MR. MCCURRY: Do you have an explanation for  
25 the differences in the bearings?

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1           **MR. BASS:** Like I said, you can rotate  
2 these things completely around if you want to and  
3 you go back out there and somebody has done a  
4 different survey and they'll come up with a  
5 different bearing.

6           **MR. MCCURRY:** Would your angles, on this  
7 plat, match the angles on that plat?

8           **MR. BASS:** No.

9           **MR. MCCURRY:** Why not?

10          **MR. BASS:** On this point up here, the one we  
11 couldn't find at the ponds.

12          **MR. MCCURRY:** My question is, explain to me  
13 why -- If you follow an older plat --

14          **MR. BASS:** Like I said, this old plat is  
15 just using to the nearest -

16          **MR. MCCURRY:** But if you're following an old  
17 plat why wouldn't the angles be consistent if you  
18 go from point to point?

19          **MR. BASS:** Because if you find monumentation  
20 and it's different than this old plat then you  
21 use the monumentation.

22          **MR. MCCURRY:** But you haven't found any  
23 monumentation; according to your plat it says  
24 iron rod set so there wasn't any monumentation  
25 there.

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1                   MR. BASS: That's correct. I just used the  
2 channel iron.

3                   MR. MCCURRY: Okay. So this is your base  
4 point down here?

5                   MR. BASS: Correct.

6                   MR. MCCURRY: So now that point where the  
7 iron pipe was set it calls for a bearing of north  
8 37 west.

9                   MR. BASS: Correct.

10                  MR. MCCURRY: And your bearing is south 43  
11 so there's a difference in the bearing there?

12                  MR. BASS: Correct.

13                  MR. MCCURRY: And there's also 7.7 chains  
14 called for; that's 508.2 feet.

15                  MR. BASS: Correct.

16                  MR. MCCURRY: But your plat calls for 588.62  
17 feet; that's 80 feet off.

18                  MR. BASS: I came back to that iron that  
19 was there.

20                  MR. MCCURRY: What iron are you speaking  
21 of?

22                  MR. BASS: The iron that has always been  
23 there. I guess, the, um, Lawson plat showed an  
24 iron there and that's how I found that.

25                  MR. MCCURRY: All right. If you're relying

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1 on that point why isn't either the Lawson plat or  
2 the Moorer plat used as a reference in your  
3 survey; you didn't reference those surveys?

4 MR. BASS: Which plat?

5 MR. MCCURRY: The Lawson plat or the  
6 Moorer plat.

7 MR. BASS: What's the Moorer plat?

8 MR. MCCURRY: 1927.

9 MR. BASS: I don't know. I didn't  
10 reference it in my plat is what you're saying?

11 MR. MCCURRY: Right.

12 MR. BASS: I used it because that's how I  
13 found his iron on the right away of 95.

14 MR. MCCURRY: Do you have any explanation  
15 to The Court as to why you went 588 feet instead  
16 of 508 feet?

17 MR. BASS: To go back to that iron.

18 MR. MCCURRY: But again you're not following  
19 --

20 MR. BASS: If I didn't go to the iron I'd  
21 leave a gap, a no man's land is what you're  
22 saying.

23 MR. MCCURRY: Okay. And again, the base  
24 point is this point down here that I think we  
25 established -- We have no line yet that's worked,

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1 correct?

2 MR. BASS: Correct.

3 MR. MCCURRY: If you can stand up here with  
4 me, if that plat had been followed and instead of  
5 going 588 feet, if you go 508 feet, if you had  
6 then followed L3 your line would have been --

7 MR. BASS: Then I would have left a gap.

8 MR. MCCURRY: Your 1867 plat predated the  
9 1927 plat, correct?

10 MR. BASS: Correct.

11 MR. MCCURRY: This point is a 1927 point.

12 MR. BASS: I can't guarantee you that.

13 MR. MCCURRY: If you're following the 1867  
14 plat --

15 MR. BASS: Correct. I understand it  
16 doesn't work out perfectly.

17 MR. MCCURRY: I agree but if you had gone  
18 508 feet instead of 588 feet and then applied the  
19 bearing and distance for L3 your line --

20 MR. BASS: Would've been down further.

21 MR. MCCURRY: Would have been down further.

22 MR. BASS: But you left a gap in there, no  
23 man's land is what you're saying.

24 MR. MCCURRY: I'm just asking a question.

25 MR. BASS: I'm going to the monumentation.

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1           **MR. MCCURRY:** Did you find anything to give  
2 you this point in your research of the 1867 plat?

3           **MR. BASS:** Yes. The Lawson plat.

4           **MR. MCCURRY:** Okay. But you didn't  
5 reference the Lawson plat but now you're saying  
6 you relied on the Lawson plat.

7           **MR. BASS:** Say what now?

8           **MR. MCCURRY:** You did not reference the  
9 Lawson plat or the Ashley plat but you're now  
10 saying you did rely on the Lawson plat?

11          **MR. BASS:** Yes.

12          **MR. MCCURRY:** You would agree, you said  
13 there would be a gap?

14          **MR. BASS:** Right.

15          **MR. MCCURRY:** You could have left the gap  
16 there instead of throwing it into 95, right?

17          **MR. BASS:** I could have. Yes. I could've.

18          **MR. MCCURRY:** And just by way of  
19 computations --

20          **MR. BASS:** When you get to L3, when I put  
21 the point back on the channel iron to try to get  
22 close with that line going back to that corner,  
23 that's why L3 should have been at 313 feet where  
24 I've got it shorter.

25          **MR. MCCURRY:** All right. It seems as if

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1 you're trying to make this thing fit?

2 MR. BASS: That's correct.

3 MR. MCCURRY: Let me go back to the  
4 beginning. That channel iron you found, was  
5 there any monumentation or do you recall?

6 MR. BASS: What do you mean?

7 MR. MCCURRY: Was it blazed or anything  
8 like that?

9 MR. BASS: No. Not to my knowledge.

10 MR. MCCURRY: Doing the math and if you have  
11 a calculator you can do it; I just spoke of 588  
12 versus 508, that discrepancy of 80 feet is a 15.8  
13 degree error in distance. Would you agree with  
14 that?

15 MR. BASS: I guess so. I don't have a  
16 calculator.

17 MR. MCCURRY: This 1867 plat does not  
18 conform, at least on that line, with your plat?

19 MR. BASS: Correct.

20 MR. MCCURRY: L3 and the next distance, L3  
21 calls for -- I'm sorry. The north line calls for  
22 a bearing of 76 degrees west and 88 degrees  
23 north. Again, do you have an explanation as to  
24 where ---

25 MR. BASS: Where now? 76?

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1           MR. MCCURRY: The old plat.

2           MR. BASS: Yes. Laying mine on top, best as  
3 I could, that's the way it went. When I laid  
4 this on top we picked out a point where this  
5 point hit going across the fence at 95.

6           MR. MCCURRY: And you set a pipe there?

7           MR. BASS: Correct.

8           MR. MCCURRY: Is there any reason, if there  
9 was no monumentation, why you didn't go ahead and  
10 run it at 76 degrees instead of 88 degrees? Why  
11 was the 1867 plat not followed?

12          MR. BASS: I'm trying to follow it. You're  
13 trying to hold me to bearings when I'm trying to  
14 hold distances. When it went out to the line to  
15 95 we tried to hold that and that's the reason it  
16 came up that far.

17          MR. MCCURRY: You said I'm trying to hold  
18 you to bearings and you're trying to hold  
19 distances?

20          MR. BASS: Right.

21          MR. MCCURRY: There is also an L3 that  
22 calls for a distance of 313.5 feet.

23          MR. BASS: Right.

24          MR. MCCURRY: And your distance was 257  
25 feet.

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1           **MR. BASS:** Correct. Because if I come back  
2 from where I tried to establish that point in the  
3 pond I would have went out 313 feet but the  
4 monumentation was only at that distance.

5           **MR. MCCURRY:** What monumentation are you  
6 speaking of?

7           **MR. BASS:** The corner iron that's always  
8 been there.

9           **MR. MCCURRY:** And that corner iron, though  
10 it's been there since '27, we presume, again  
11 there's a 17 percent difference in the distance  
12 there. I get back to your testimony; you said  
13 this plat conforms to yours but it doesn't seem  
14 that it does.

15           **MR. BASS:** As best as it could.

16           **MR. MCCURRY:** As best as it could?

17           **MR. BASS:** I realize these bearings aren't  
18 going to work all the time so you can't go out  
19 there and turn 20 degrees and go a distance if  
20 monumentation is there.

21           **MR. MCCURRY:** As best as it could is going  
22 to affect somebody and you chose to let it affect  
23 the right away in 95. In other words, the error,  
24 you said you threw it into 95?

25           **MR. BASS:** Correct. Which would have been

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1 way out in 95 which had no bearings now because  
2 it was taken by the U.S. Government.

3 MR. MCCURRY: I understand. That was the  
4 choice that you made to put it into 95.

5 MR. BASS: Correct.

6 MR. MCCURRY: Mr. Bass, you performed the  
7 same calculations, if you will, on the Moorer  
8 plat and the Lawson plat, if you will; have you  
9 seen the Moorer plat?

10 MR. BASS: Yes.

11 MR. MCCURRY: The Moorer plat is right here.

12 MR. BASS: Is this the one that was  
13 revised?

14 MR. MCCURRY: No. That's the 1927 Moorer  
15 plat but someone has written some things up  
16 above.

17 MR. BASS: They've revised it, right?

18 THE COURT: Mr. McCurry, the plat --

19 MR. MCCURRY: I'm sorry, that is  
20 Defendant's Exhibit Number Three. Answer me if  
21 you will, Mr. Bass, that plat is 1927 plat that  
22 shows it's negative, it's in white; there is some  
23 handwriting in black -

24 MR. BASS: Where they agreed to change the  
25 lines.

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1           **MR. MCCURRY:** That was a different Judy  
2 family and a family way on the western side of  
3 that plat, correct?

4           **MR. BASS:** Correct.

5           **MR. MCCURRY:** Has anything changed here on  
6 the --

7           **MR. BASS:** No. And again, these bearings  
8 are to the nearest degree.

9           **MR. MCCURRY:** I agree. If you can look at  
10 that with me and I'm orienting this plat, the  
11 Ashley Surveying plat, to the way you're looking,  
12 that plat, if you will, if you can read that,  
13 does that say where I'm pointing, does that say  
14 40 feet from track?

15           **MR. BASS:** Yes.

16           **MR. MCCURRY:** How many chains?

17           **MR. BASS:** 19 chains.

18           **MR. MCCURRY:** Is 19 chains 1254 feet?

19           **MR. BASS:** I don't now; I'd have to  
20 calculate it. It's pretty close I can tell you.

21           **MR. MCCURRY:** I probably do have a  
22 calculator over there. There's some paper there  
23 if you will. This calculator is a little too  
24 fancy for me.

25           **THE COURT:** Which exhibit number are you  
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1 referring to?

2 MR. MCCURRY: He's looking at Defendant's  
3 Exhibit Number Three and comparing it to  
4 Defendant's Number 25, the Ashley plat.

5 MR. BASS: Okay.

6 MR. MCCURRY: 19 chains is 1254. We agree  
7 about that. I'm asking you to do this for me,  
8 the Southern Railroad right away is 200 feet,  
9 correct?

10 MR. BASS: That's what he said.

11 MR. MCCURRY: That's what this DOT map  
12 says. Would you agree that the right away is 200  
13 foot at that point?

14 MR. BASS: Correct.

15 MR. MCCURRY: Okay. And the Ashley plat  
16 indicates that at L1 there is a pin that was --  
17 There's a distance from the center line to that  
18 point of about 45. --

19 MR. BASS: 54.

20 MR. MCCURRY: Well, it would be 54 to get  
21 to that point so if you add 1186 being the line  
22 plus 100 you would get the distance from the  
23 railroad track, correct?

24 MR. BASS: Correct.

25 MR. MCCURRY: Let me ask this, that 1186

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1 plus 100 is 1286.87; it's a difference of 7.13  
2 feet.

3 MR. BASS: Correct.

4 MR. MCCURRY: If you divide 7.13 plus 1294,  
5 the 19 chains, plus the four it was calling for  
6 you're out of tolerance, the Ashley survey, if  
7 you will, is out of tolerance .006 from the 1927  
8 plat.

9 MR. BASS: I guess so.

10 MR. MCCURRY: So in that particular case  
11 they're out of tolerance .006 as opposed to the  
12 difference in your plat and the 1867 plat are 15  
13 and 17 from a distance standpoint.

14 MR. BASS: I'm not questioning.

15 MR. MCCURRY: Does the Ashley plat follow,  
16 if you will --

17 MR. BASS: Looks like he turned the bearing  
18 and went --

19 MR. MCCURRY: 82 degrees.

20 MR. BASS: Correct.

21 MR. MCCURRY: Then he hit I-95.

22 MR. BASS: Right. Did he find the sweet  
23 gum tree over there?

24 MR. MCCURRY: What sweetgum tree?

25 MR. BASS: Over here.

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1           MR. MCCURRY: No. That would be in the  
2 middle of 95.

3           MR. BASS: He didn't have no monumentation.  
4 He just turned the bearing and went.

5           MR. MCCURRY: He turned the bearing at what  
6 the 1927 plat called for from a pipe that was  
7 found.

8           MR. BASS: So he's out seven feet so if he  
9 backed up seven feet he'd be seven feet or eight  
10 feet over this way.

11          MR. MCCURRY: Correct. But they shot the  
12 line and they used the line called for in the '27  
13 plat?

14          MR. BASS: Right.

15          MR. MCCURRY: Okay. Contrast, if you will,  
16 what was done by Ashley by what you did. You've  
17 got different bearings, different distances,  
18 you're trying to make it closed; I'm just trying  
19 to figure out -

20          MR. BASS: Well, if I go out there and put  
21 a compass on that iron and look at that iron will  
22 I get 15 degrees southwest?

23          MR. MCCURRY: Have you gone back and  
24 disproved their plat?

25          MR. BASS: No. I'm just asking, would you

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1           come up with that same bearing?

2           **MR. MCCURRY:** I'm not following your  
3 question and really you shouldn't be asking  
4 questions.

5           **THE COURT:** Your job is to answer the  
6 questions.

7           **MR. MCCURRY:** Does the Ashley plat appear  
8 to you to conform to the 1927 plat?

9           **MR. BASS:** Correct.

10          **MR. MCCURRY:** And you told me earlier that  
11 if the Ashley plat was right then that line  
12 would be right or if your plat was right then  
13 your line would be right?

14          **MR. BASS:** Correct.

15          **MR. MCCURRY:** Which plat seems to be more  
16 in conformity with the prior plat upon what is  
17 relied?

18          **MR. BASS:** You're basing everything off of  
19 two different plats. You're asking me to  
20 speculate I used the older plat.

21          **MR. MCCURRY:** But the older plat doesn't  
22 mean anything if you can't monument it, establish  
23 --

24          **MR. BASS:** You're basing everything off of  
25 two irons here where I based mine off of one.

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1                   **MR. MCCURRY:** There are two found irons;  
2 one angle iron found that you used as a base  
3 point. Were angle irons used in 1867?

4                   **MR. BASS:** I have no idea.

5                   **MR. MCCURRY:** Did it appear to be an old  
6 angle iron when you found it?

7                   **MR. BASS:** Yes. I don't know how old these  
8 two are.

9                   **MR. MCCURRY:** But that served as your base  
10 point?

11                   **MR. BASS:** Correct.

12                   **MR. MCCURRY:** Did you rely any on a DOT  
13 map?

14                   **MR. BASS:** No.

15                   **MR. MCCURRY:** Would agree that the DOT was  
16 actually the last person that would have sketched  
17 or surveyed the property prior to the existence  
18 of I-95; have you found any evidence of anyone  
19 else that would've formed any work pre 95 than  
20 that DOT map?

21                   **MR. BASS:** I don't understand what you're  
22 asking me.

23                   **MR. MCCURRY:** Would you agree that given  
24 the plats you've reviewed that from a sketch or  
25 plan standpoint this highway department map would

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1 have been prepared the closest in time prior to  
2 the creation of the ponds?

3 MR. BASS: I don't know that.

4 MR. MCCURRY: Okay. But certainly your plat  
5 was prepared a year or two after the Ashley plat  
6 and they were both done after I-95 had been  
7 completed?

8 MR. BASS: Correct.

9 MR. MCCURRY: Mr. Bass, how did you  
10 determine that the channel line was the same  
11 point or point called for in the 1867 plat?

12 MR. BASS: What do you mean? Like I said,  
13 that was the only corner; we had three separate  
14 plats. One on the front end, one in the middle  
15 and this one on the end on the sketch.

16 MR. MCCURRY: But how did you determine  
17 that point was the same on that 1867 plat?

18 MR. BASS: Like I said, we had three  
19 different plats. We come off the middle plat and  
20 that's where we found that channel iron. This  
21 last plat, the '69 plat, this is the only iron we  
22 found on that whole track of that whole plat.

23 MR. JORDAN: Is this the sketch you're  
24 talking about?

25 MR. BASS: Yes, sir.

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1           MR. MCCURRY: That's just a sketch. I  
2           don't know. That was compiled by somebody.

3           MR. JORDAN: Can I give it to him so he can  
4           use it to answer?

5           THE COURT: If it will assist him.

6           MR. MCCURRY: All right. And I think  
7           you've answered my question which is similar to  
8           what you said earlier. That was the only point  
9           you found?

10          MR. BASS: Correct.

11          MR. MCCURRY: Mr. Bass, you indicated you  
12          couldn't get it to close so you, I think in your  
13          words, you threw the error into I-95, into the  
14          right away; I guess my question is why didn't you  
15          depict things as the 1867 plat depicted it and  
16          leave it up to someone else to determine the gap  
17          or to close the gap --

18          MR. BASS: What do you mean leave it to  
19          somebody else?

20          MR. MCCURRY: Well, it seems like a surveyor  
21          would put on paper what was called for in a prior  
22          plat; in other words, I still get back to the  
23          fact that there is no doubt that if you had  
24          superimposed your plat over that of the 1867 plat  
25          they don't jive because you've got 80 feet

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1 difference here; you've got bearings --

2 MR. BASS: That's right. Because I found  
3 monumentation.

4 MR. MCCURRY: So whose plat is right?

5 MR. BASS: That's why you are here. Y'all  
6 are trying to decide whose plat is right.

7 MR. MCCURRY: If your plat doesn't conform  
8 to the 1867 plat then --

9 MR. BASS: The best that I could do it it  
10 does.

11 MR. MCCURRY: There's still an error out  
12 there that you had to put somewhere so you chose  
13 to put it in 95 because no one was going to get  
14 hurt?

15 MR. BASS: Right.

16 MR. MCCURRY: And I come back to a question  
17 I asked you earlier because I don't know if I  
18 understand your answer; if you had gone 80 foot  
19 shorter on this line that you've got marked 588  
20 feet, if you had gone 508 feet and followed the  
21 other bearings this line wouldn't even be on the  
22 dike, correct?

23 MR. BASS: If I would've gone 508 feet?

24 MR. MCCURRY: If you had gone 508 feet  
25 instead of 580 the line, the boundary line,

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1 wouldn't even be on the dike?

2 MR. BASS: I don't know about that because  
3 then you're asking me to turn the bearing.

4 MR. MCCURRY: But there's no monumentation;  
5 that was just a computed point, correct?

6 MR. BASS: Correct.

7 MR. MCCURRY: So and still we get back to  
8 the big question which is, if this is your base  
9 point you still haven't followed the 1867 plat  
10 and there was a pipe set here that doesn't --

11 MR. BASS: What I'm saying here is I went  
12 to the monumentation. If it left gaps in there I  
13 didn't, we didn't --

14 MR. MCCURRY: When you say iron pipe set  
15 what does that generally mean?

16 MR. BASS: One inch iron pipe in the ground.

17 MR. MCCURRY: But it doesn't say channel  
18 iron found. You have one inch set beside channel  
19 iron found.

20 MR. BASS: Correct.

21 MR. MCCURRY: Over here you have one inch  
22 pipe set and there is no monumentation here by L1  
23 and L2; why doesn't this one, if you say there  
24 was monumentation --

25 MR. BASS: Why do you need monumentation?

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1           There is one inch pipe set.

2           MR. MCCURRY: You set it but that was a  
3           calculated point.

4           MR. BASS: No. One inch pipe set.

5           MR. MCCURRY: I'm sorry. There was no  
6           monument?

7           MR. BASS: That's correct. There was no  
8           monument there to be found.

9           MR. MCCURRY: And I can look all over the  
10          big plat here and in every case where it says one  
11          inch pipe set if it doesn't have anything else  
12          beside it that's a point that you calculated  
13          based upon bearing and distances.

14          MR. BASS: Correct.

15          MR. MCCURRY: And the channel iron situation  
16          you've got one inch pipe set beside channel iron  
17          found.

18          MR. BASS: Correct.

19          MR. MCCURRY: Up here you don't have  
20          anything, just says pipe set like it was a  
21          calculated point?

22          MR. BASS: It probably was calculated --  
23          well, like I said I don't know if we come back  
24          down from the iron, if there's a blazed line in  
25          here. I remember finding a blazed line.

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1 MR. MCCURRY: But you don't have any  
2 recollection of blazes?

3 MR. BASS: Not right off hand.

4 MR. MCCURRY: Okay.

5 MR. BASS: I have nothing further, Your  
6 Honor.

7 THE COURT: Mr. Jordan?

8 MR. JORDAN: Yes, ma'am. Tell me, explain  
9 to us, there was no sweetgum tree so the Lawson  
10 survey just picked a point?

11 MR. BASS: He turned a bearing.

12 MR. JORDAN: Show Judge Murphy what you're  
13 talking about.

14 MR. BASS: On the old plat --

15 MR. JORDAN: You're talking about  
16 Defendant's Exhibit Three?

17 MR. BASS: Right. This is going down,  
18 southwest and then they use the same bearing here  
19 which is 28 southwest so the bearing was turned.

20 MR. JORDAN: Does that mean that had an  
21 effect on where this line ended up over here?

22 MR. BASS: You turn the angle; they've  
23 calculated this angle here.

24 MR. JORDAN: But to find that you would've  
25 had to find the sweetgum; is that what you're

1 saying?

2 MR. BASS: Well then you go out 14 chains  
3 they should've found the sweetgum tree and if the  
4 sweetgum tree was on an angle --

5 MR. JORDAN: I got you so what you're saying  
6 is this line is here assuming that this angle is  
7 correct.

8 MR. BASS: Correct.

9 MR. JORDAN: But since it said there was a  
10 sweetgum tree, not having a sweetgum tree you're  
11 having a sweetgum tree you're having to round an  
12 angle but if they found a sweetgum tree they  
13 could've shot to the sweetgum tree?

14 MR. BASS: Correct.

15 MR. JORDAN: And then it could have changed  
16 this south 82 west line on the Defendant's  
17 Exhibit 25?

18 MR. BASS: Correct.

19 MR. JORDAN: So it would be a little bit  
20 closer to the dike or taking it away from the  
21 dike?

22 MR. BASS: Correct.

23 MR. JORDAN: We don't know.

24 MR. BASS: We don't know.

25 MR. JORDAN: But the monumentation is what

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1           you would have used?

2           MR. BASS: Right.

3           MR. JORDAN: Because of these old plats you  
4           couldn't always rely on the degrees and bearings  
5           because of the instrumentation they used at the  
6           time?

7           MR. BASS: Correct.

8           MR. JORDAN: Could you circle that point  
9           that you're talking about. Is it your testimony  
10          --

11          MR. MCCURRY: Could we not lead?

12          MR. JORDAN: I'm going to ask him. What is  
13          the circled red point?

14          MR. BASS: It's the iron that Ashley  
15          established between Howell and Judy on 95.

16          MR. JORDAN: But do we have the sweetgum  
17          tree to know that point is correct?

18          MR. BASS: No.

19          MR. JORDAN: So what do surveyors do when  
20          they don't have the monument?

21          MR. BASS: We have to rely on angles and  
22          bearings.

23          MR. JORDAN: Can you testify that the point  
24          you circled in red on 25 is the correct line and  
25          conforms to the survey that is Number Three?

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1           **MR. BASS:** Without having the sweetgum  
2 tree, yes.

3           **MR. JORDAN:** But without the sweetgum tree  
4 do we know that it conforms to the old survey?

5           **MR. BASS:** No.

6           **MR. JORDAN:** Do you find when you're doing  
7 surveys with your current instruments today, Mr.  
8 Bass, that when you do go and find the monument  
9 that the distance is different from what the old  
10 survey shows?

11           **MR. BASS:** Correct.

12           **MR. JORDAN:** And when you do find a monument  
13 that an old survey shows do you often find that  
14 the bearings on the line are different from what  
15 the old survey shows?

16           **MR. BASS:** Correct.

17           **MR. JORDAN:** And in that case do you go with  
18 the monument or with the old survey?

19           **MR. BASS:** With monumentation.

20           **MR. JORDAN:** Let me ask you about your  
21 survey; you were asked about L3 and the fact that  
22 it was shorter than what the survey called for?

23           **MR. BASS:** Correct.

24           **MR. JORDAN:** What would have happened to  
25 your survey if you had made L3 longer?

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1           MR. BASS: It would have pushed the, um,  
2 this point on over toward 95 more and taken more  
3 of the dike.

4           MR. JORDAN: Would it have gone more into  
5 the Judy property, more into the Howell property  
6 or what would it have done?

7           MR. BASS: Yes. It would have been more  
8 into the Judy property.

9           MR. JORDAN: So by making that point you  
10 that was to the benefit of the Judy property?

11          MR. BASS: Correct.

12          MR. JORDAN: Were you trying to prejudice  
13 the Judy property and benefit the Howell  
14 property?

15          MR. BASS: No. I was trying to get this  
16 plat back on the ground as best I could.

17          MR. JORDAN: You understand that you've been  
18 questioned as to you just couldn't get your  
19 survey to match up to the 1867 plat?

20          MR. BASS: Correct.

21          MR. JORDAN: Do you feel like you've given  
22 in your answers enough explanation to The Court  
23 as to your survey and why you put your lines  
24 where you did?

25          MR. BASS: Yes. I went by what

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1 monumentation I could find and what I couldn't  
2 find I tried to overlay and make it where the  
3 corners should be.

4 **MR. JORDAN:** And do you still stand by the  
5 survey work that you've done?

6 **MR. BASS:** Yes, sir.

7 **MR. JORDAN:** I don't have any further  
8 questions.

9 **THE COURT:** Thank you, Mr. Bass.

10 **MR. JORDAN:** I would ask that this witness  
11 stay.

12 **THE COURT:** Mr. Bass, remain with us.

13 **MR. BASS:** Okay.

14 **MR. MCCURRY:** Your Honor, I wish to recall  
15 Mr. Lawson to the stand, please.

16 **THE COURT:** Come on up, Mr. Lawson. You're  
17 still under oath.

18 **MR. MCCURRY:** Mr. Lawson, you're still under  
19 oath as The Court reminded you of. Mr. Lawson,  
20 you heard the testimony of Mr. David Bass  
21 regarding the survey work he performed  
22 particularly where it impacts the Judy property;  
23 can you give me your impression of the degree to  
24 which his plat conforms to the 1867 plat?

25 **MR. LAWSON:** There are several mistakes or  
**RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711**

1 differences between the two plats. First off,  
2 bearings change over the years but the angles  
3 should be the same so we calculated some angles  
4 off Mr. Bass' plat, off the 1864 plat. There is  
5 a difference in the degrees, the line. On this  
6 one, Mr. Bass has 131 degrees, 1605, 136 degrees  
7 on the 1867 plat.

8 **MR. MCCURRY:** I guess, Mr. Lawson, just to  
9 ask this question, how reliable is a plat given  
10 those differences or discrepancies?

11 **MR. LAWSON:** I would not have done it the  
12 way he did it. You can't just pick and choose  
13 which angle you're going to use.

14 **MR. MCCURRY:** The comment and I'm  
15 paraphrasing, there was a comment about it not  
16 closing

17 **MR. LAWSON:** Right. The 1867 plat did not  
18 close. We ran it through and it came out about  
19 57 feet of error. That can be, like he said,  
20 they used a compass, chain, but generally that is  
21 accumulated error. That's not dumped in one  
22 spot.

23 **MR. MCCURRY:** And he indicated that he  
24 moved the error onto 95 property; in your  
25 professional opinion that is not the way it

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1 should have been done?

2 MR. LAWSON: I would not have done it that  
3 way.

4 MR. MCCURRY: The highway department map,  
5 let's look at it. I'm showing Defendant's  
6 Exhibit Number 40, if you will; looks as though  
7 there was an attempt by the highway department to  
8 make -- I don't know to what degree one can rely  
9 on that but does the highway department map  
10 indicate the compliance with the 1927 survey?

11 MR. LAWSON: Yes. It does.

12 MR. MCCURRY: So the 19 chains and 82  
13 degrees is where?

14 MR. LAWSON: 14 and a half chains there.

15 MR. MCCURRY: That 14 and a half chains  
16 ended up where?

17 MR. LAWSON: In the south bound lane on 95.

18 MR. MCCURRY: If a sweetgum tree was there,  
19 would there have been any way to find that when  
20 you did your survey work in 1995?

21 MR. LAWSON: No.

22 MR. MCCURRY: What would be the appropriate  
23 call in that case?

24 MR. LAWSON: The only course of action was  
25 to turn that angle and calculate those two

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1 bearings and intersect 95 and set that point  
2 there.

3 MR. MCCURRY: And that's what was done?

4 MR. LAWSON: Correct.

5 MR. MCCURRY: Can we put into evidence the  
6 document here; let me ask you this, Mr. Lawson,  
7 Mr. Bass indicated that this angle iron was in  
8 fact his base point; is that established in your  
9 mind that angle iron is a starting point?

10 MR. LAWSON: I did not survey this property  
11 so I don't honestly know. I can't say. I know  
12 with one corner you need to have other ways to  
13 verify. I would never just use one corner and  
14 say that's it.

15 MR. MCCURRY: You heard the testimony that  
16 was the only iron that was found?

17 MR. LAWSON: Yes.

18 MR. MCCURRY: Mr. Lawson, the handwriting,  
19 you and Mr. Coker, I don't know if I can read it  
20 that terribly well, these are the calculations;  
21 tell me again what the differences were in the  
22 angles.

23 THE COURT: What exhibit is that?

24 MR. MCCURRY: This is a sketch that is  
25 really based on Plaintiff's Number One but I

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1 think I need to make a copy of it and I do have  
2 an extra copy. I'm going to ask you if we can  
3 mark this and I'll ask him to mark the angles.

4 **THE COURT:** Defendant's 43.

5 **MR. MCCURRY:** Can you explain as you're  
6 writing what you're doing?

7 **MR. LAWSON:** Comparing the angles of Mr.  
8 Bass' plat to the angles on the 1867 plat.

9 **MR. MCCURRY:** Can you put Bass in blue by  
10 the top one.

11 **MR. JORDAN:** Can Mr. Bass come look while  
12 he's doing this?

13 **THE COURT:** Sure.

14 **MR. MCCURRY:** I'd like to introduce this  
15 into evidence.

16 **THE COURT:** Any objection?

17 **MR. JORDAN:** I don't have any objection.

18 **(PLAT MARKED AS DEFENDANT'S EXHIBIT NUMBER**  
19 **43 FOR IDENTIFICATION.)**

20 **MR. MCCURRY:** Mr. Lawson, you also heard  
21 Mr. Bass testify as to the placement of this pin  
22 or the setting of this pipe; do you have any  
23 explanation as to why that was set there; the  
24 difference seems to be fairly large?

25 **MR. LAWSON:** If you're following the 1867  
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1 plat you should try to match the distance. I  
2 don't know why the distance is longer.

3 MR. MCCURRY: And with regard to the 588  
4 feet being used instead of 508 feet, could that  
5 be called into question?

6 MR. LAWSON: I would think so.

7 MR. MCCURRY: Your Honor, I would like to  
8 put these documents into evidence to show the  
9 differences.

10 THE COURT: Any objections?

11 MR. JORDAN: As long as Mr. Lawson  
12 testifies to what they are and who did them as  
13 opposed to counsel.

14 MR. MCCURRY: Mr. Bass has testified to  
15 these as well.

16 MR. JORDAN: I understand.

17 THE COURT: 44?

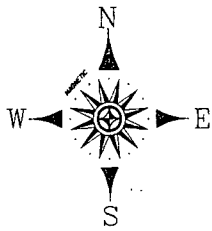
18 MR. MCCURRY: 44 and 45. I have nothing  
19 further.

20 (DOCUMENT MARKED AS DEFENDANT'S EXHIBIT  
21 NUMBER FORTY FOUR FOR IDENTIFICATION.)

22 (DOCUMENT MARKED AS DEFENDANT'S EXHIBIT  
23 NUMBER FORTY FIVE FOR IDENTIFICATION.)

24 (The hearing concluded at 4:26 o'clock, p.m.)  
25

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711



SOUTH CAROLINA  
DORCHESTER COUNTY  
GEORGE TOWNSHIP

BOUNDARY PLAT SHOWING 154.92 ACRES OF LAND,  
LOCATED SOUTHWEST OF THE TOWN OF ST. GEORGE,  
BEING TMS NO. 044-00-00-067, SURVEYED FOR

**MARION S. HOWELL**

AS REQUESTED BY LEW JORDAN

OCTOBER 30, 1998  
JOB NO. 98-316

REFERENCES

- 1.) THREE PLATS LOCATED IN THE TAX ACCESSORS OFFICE, ONE DATED 1855, BY DAVID GAVIN
- 2.) PLAT OF HANSFORD REEVES RECORDED PLAT CAB. "G", PAGE 246
- 3.) PLAT BY R. J. RHODES REVISED DATE AUG. 21, 1989 RECORDED PLAT CAB. "G" PAGE 303
- 4.) PLAT BY R. J. RHODES DATED DECEMBER 19, 1989 RECORDED PLAT CAB. "H" PAGE 232
- 5.) PLAT BY F. A. MOORE DATED JANUARY 22, 1991 RECORDED PLAT CAB. "A" PAGE 99
- 6.) PLAT BY F. A. MOORE DATED MAY 13, 1959 RECORDED PLAT CAB. "B" PAGE 146
- 7.) PLAT BY B. P. BARBER, JR., INC. DATED MARCH 3, 1971 RECORDED PLAT CAB. "B" PAGE 168
- 8.) PLAT BY T. W. BAILEY, DATED OCTOBER, 1976 RECORDED PLAT BOOK 26 PAGE 126
- 9.) DEEDS AT BOOK 810, PAGE 346 BOOK 639, PAGE 234 BOOK 1899, PAGE 216 BOOK 594, PAGE 239 BOOK 32, PAGE 39

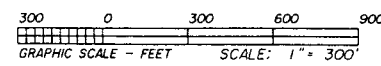
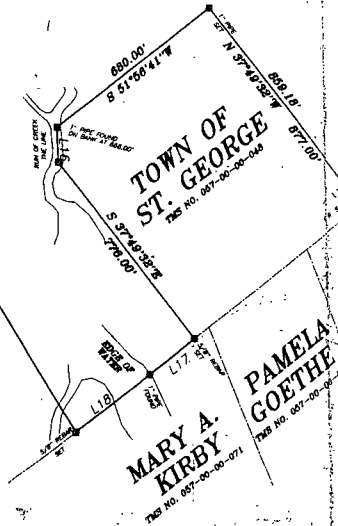
Paintings Exhibit No. 1

154.95 ACRES

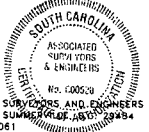
| COURSE | BEARING      | DISTANCE |
|--------|--------------|----------|
| L1     | N 25°49'10"E | 117.62'  |
| L2     | N 25°49'10"E | 102.52'  |
| L3     | S 71°27'07"E | 257.93'  |
| L4     | S 32°34'04"W | 213.41'  |
| L5     | S 42°43'18"W | 126.02'  |
| L6     | S 43°25'48"W | 109.14'  |
| L7     | S 47°59'58"W | 228.87'  |
| L8     | S 76°31'36"W | 440.45'  |
| L9     | N 35°37'11"W | 198.44'  |
| L10    | N 35°37'18"W | 209.98'  |
| L11    | S 55°44'23"W | 205.01'  |
| L12    | N 50°53'44"W | 81.56'   |
| L13    | N 25°13'12"W | 320.00'  |
| L14    | S 59°04'10"W | 315.00'  |
| L15    | S 03°34'48"E | 405.69'  |
| L16    | S 02°16'19"E | 120.40'  |
| L17    | S 52°02'39"W | 199.50'  |
| L18    | S 52°02'43"W | 328.00'  |
| L19    | S 58°08'42"W | 209.15'  |
| L20    | S 56°02'16"W | 209.17'  |
| L21    | N 35°44'09"W | 190.75'  |
| L22    | N 34°29'15"W | 208.84'  |
| L23    | S 51°48'02"W | 471.19'  |

| CURVE | RADIUS  | TANGENT | LENGTH  | DELTA     | DEGREE   | CHORD   | CH. BEARING  |
|-------|---------|---------|---------|-----------|----------|---------|--------------|
| C-1   | 835.83' | 133.09' | 263.97' | 18°05'42" | 6°51'18" | 262.88' | S 67°28'45"W |

PROPERTY APPEARS TO LIE WITHIN ZONES "X", "A", AND "AE", AS SHOWN ON FIRM MAP 450068 0105 C, DATED APRIL 15, 1994



JOHN DAVID BASS, F.L.S.  
S.C. REG'D. NO. 15388



ASSOCIATED SURVEYORS AND ENGINEERS  
P.O. BOX 6, SUMMER HARBOR, SC 29584  
843-873-1061

**PLAINTIFFS' PRODUCTION**

100 0 100 200  
GRAPHIC SCALE - FEET

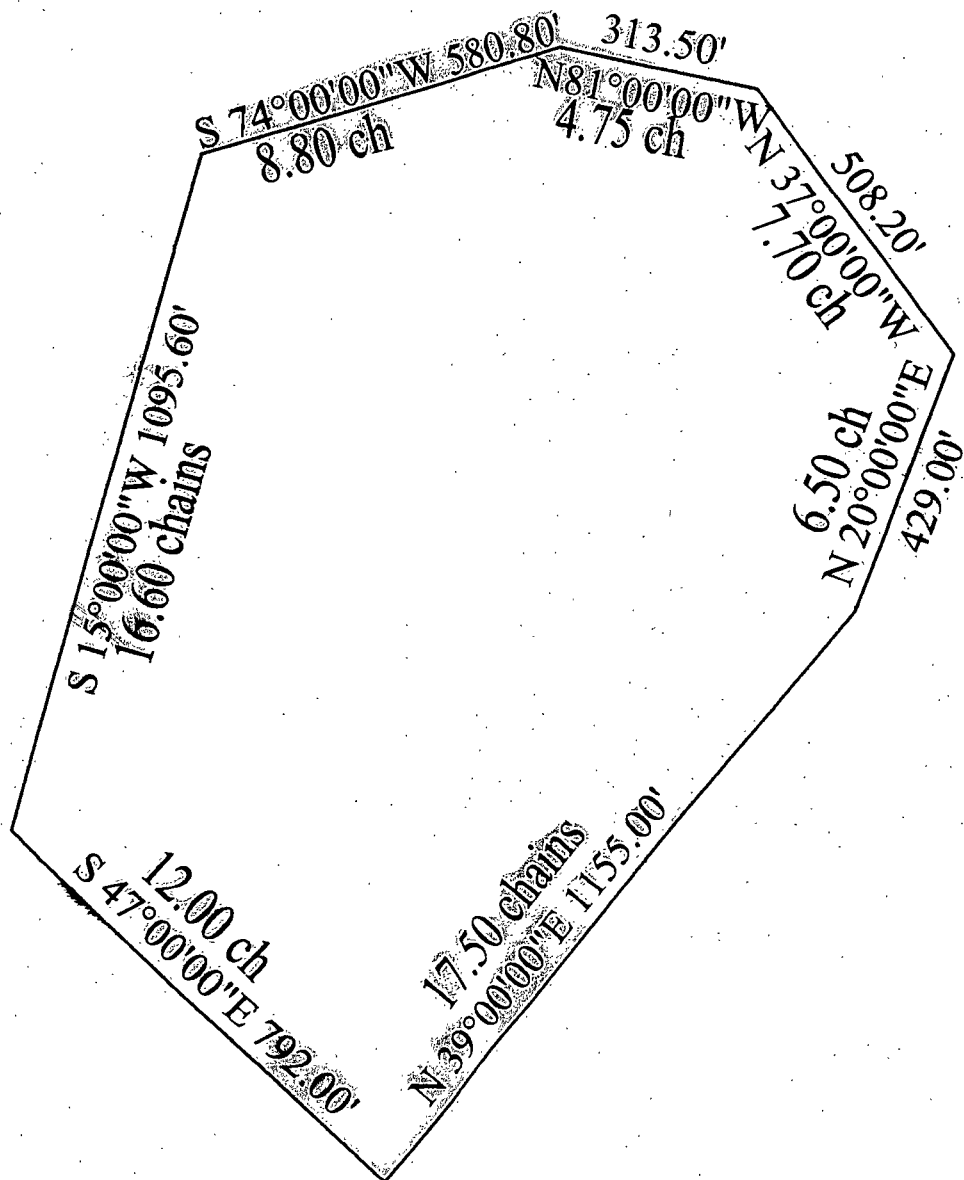
248

| Course | Bearing       | Distance |
|--------|---------------|----------|
| L1     | N 88°37'42" E | 26.83'   |
| L2     | N 58°27'28" E | 43.16'   |

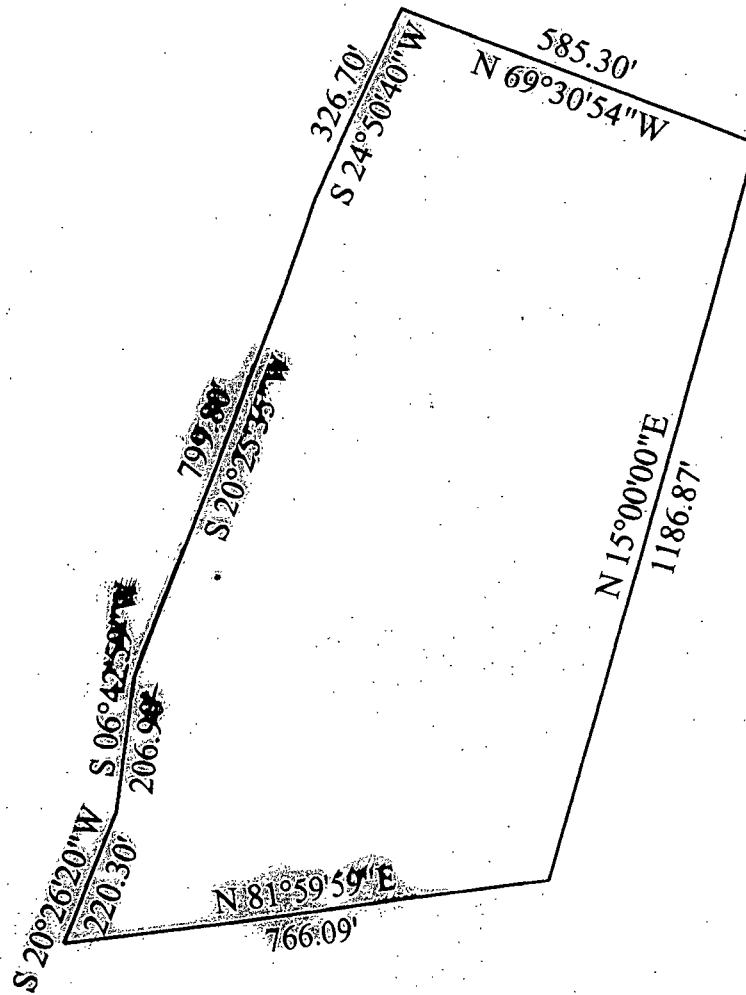


SKETCH SHOWING A PROPOSED PROPERTY LINE  
CHANGE BETWEEN BETTY S. JUDY AND  
HEIRS OF MIRIAN S. HOWELL

INTERSTATE 95  
N 25° 46' 12"



Plaintiffs' Exhibit 3



Plaintiffs' Exhibit 4



Settlement Agreement as  
to civil Action 2008-CP-18-7169

② The parties agree as follows:

① The common boundary line which is the subject of the suit is the line marked as "A" on the attached sketch prepared by John David Bass. This agreement as to the line assumes that the sign as shown on the survey, which is on the Judy side, is in fact completely on the Judy side of the line.

② The parties agree to grant each other cross easements for access on their respective sides of the common boundary line on the dike such that the H's and the B. will have unfettered access to the dike.

③ The parties agree to maintain & control any and all brush and tree growth on their respective sides of line A such that said brush and trees do not impede the access or use of the dike.

①

252



(4) The parties shall share in the general maintenance of the dike through conferring with each other and agreeing on the scope and extent of necessary repairs.

(5) The plaintiffs agree to give the defendant an easement for the purposes of maintaining and control brush, debris and trees to keep the sign visible from I-95, within an area 45 feet from the sign. However this access is on the ground only and does not access to the pond of the plaintiffs. This will exist as long as the sign exists.

(6) The parties agree that neither themselves nor their agents, licensees, or invitees shall fish or otherwise cross the pond of the other without express permission.

(2)

⑦ The Plaintiffs shall grant to the defendant ~~an easement~~ a permanent non-exclusive easement for purposes of ingress and egress, twenty (20) feet wide from the point at which access from old St. George Road ceases to be public, said easement abutting the property line of the Plaintiffs in the same area as the Plaintiffs currently access this pond, excepting the area of low lying land to the pond of the Dike Road at Easternmost Point here A. The Parties further agree that if there is a legal impediment to freely traversing the lands formerly of Inez Fralix that the easement would run as close to the common property line of the Plaintiffs and the property formerly of Inez Fralix as is practicable.

③

8) The parties agree their respective attorneys will hire a surveyor on their behalf to survey the easement and to provide to the Large Survey a survey of the Silver Road, the Sign, showing all cross easements with the costs of said survey to be shared equally (50/50) between the Plaintiffs and the D.

9) Nothing herein shall be construed to prevent the Defendant from moving the Sign to a different location on her property as long as it does not ~~violate~~ <sup>infringe</sup> any easement or other rights granted to the parties herein.

⑩ The Plaintiffs agree to  
not do anything or allow any  
brushcutters on their property  
near the sign that would  
impede the visibility of the  
sign from I-95.

The parties by affixing their  
signatures hereto do this  
21<sup>st</sup> day of March 2009 bind  
themselves and assigns to  
this Agreement  
Defendant. Plaintiffs

~~Betty L. Jones~~

~~Kay Howell Jordan~~

~~Marion Howell Tolson~~

~~Lewis Virgil Howell~~

2008 CP-18-1169

Witness

~~John H. Sedberry~~

5

# *Southern Railway System*

*Operating Department  
Office of Superintendent  
Asheville, N.C. 28803*

G. S. BARON  
SUPERINTENDENT

May 24, 1978 /dc  
L-4403

Mr. Thomas O. Berry, Jr.  
Attorney at Law  
P. O. Box 368  
St. George, SC 29477

Dear Mr. Berry:

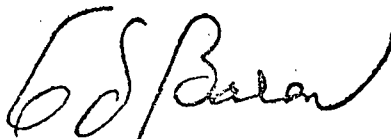
Please find attached the proposed agreement between Southern Railway Company and Wilbur Judy, concerning construction, maintenance and use of a private road 16 feet wide, upon and across, at grade, the right of way or property and track(s) of Railroad running between Branchville and Charleston at Badha, South Carolina, (Milepost SC-49.6).

We ask that you please handle to have executed this agreement in duplicate, having the signature witnessed on both copies. After which, please return both to me for further handling by the Railway. Upon execution by Southern, a counterpart will be mailed to you for your files.

Please do not date this agreement as this will be done when executed by Southern; however, please advise the effective date.

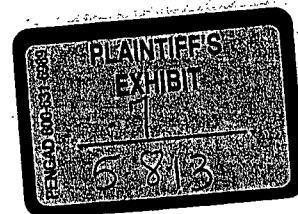
If you should have any questions concerning this agreement, please do not hesitate to contact me.

Yours very truly,



G. S. Baron  
Superintendent

257



DO NOT REMOVE FROM AGREEMENT

Please observe the following in connection with execution of the attached instrument:

1. Execution on behalf of a corporation should be accomplished by the President or a Vice President. An official other than president or vice president executing this instrument should furnish documentary evidence of his authority to execute and to bind his Company.
2. If executed by an Attorney-in-Fact, a Power of Attorney, currently in force, should accompany his signature.
3. If attached agreement is with an individual, that individual should execute the agreement exactly as his name is set out in the caption of the agreement unless his name is set out erroneously.
4. If the attached agreement is with a partnership, all members of the partnership should execute unless an authorized member of the firm is designated by the partnership to execute.
5. If an acknowledgement is appended to the attached agreement, it should be properly filled in.
6. If the attached agreement is with a city or town, resolution adopted by the City Council authorizing the Mayor or City Manager or other official to execute the agreement should accompany his signature.
7. Do not date the instrument.
8. Where space is provided for witnesses, the signatures must be witnessed.

Private Grade Crossing  
Rev. 12/15/77

THIS AGREEMENT, made and entered into by and between  
SOUTHERN RAILWAY COMPANY, a Virginia corporation,  
hereinafter styled "Railroad", party of the first part; and

WILBUR JUDY, an individual,  
hereinafter styled "Licensee", party of the second part;

W I T N E S S E T H:

THAT the PARTIES HERETO agree as follows:

1. Railroad hereby grants unto Licensee, insofar as Railroad's title enables it so to do, the right to construct, maintain and use a private road crossing, hereinafter called crossing, upon and across, at grade, the right of way or property and track (whether more than one track) of Railroad running between Branchville and Charleston, at BADHAM, South Carolina, located substantially as shown in red outline upon print of Drawing No. TA-78-0106, dated March 8, 1978, hereunto annexed and made a part of this agreement.

2. Licensee will pay unto Railroad, for said privilege, a rent or sum of ONE HUNDRED DOLLARS (\$100.00---) per annum, payable annually, in advance, beginning as of the effective date hereof.

3. Railroad will, for the accommodation of and at the expense of Licensee, perform the work of constructing or installing the portion of said crossing between the rails in said track and to the outside ends of the crossings on each side thereof, and shall revise, relocate and reconstruct signal facilities and other railroad facilities in such manner as may be necessary to this project. If the cost of said work to be performed by Railroad has been estimated, such estimate is attached hereto, and Licensee will pay to Railroad, promptly upon bill rendered therefor, the actual expenditures by Railroad in connection with the construction of said crossing including, but not restricted to, the expenditures herein expressly described.

4. Licensee will, at the expense of Licensee, construct said crossing (except the portion to be constructed by Railroad as aforesaid), including all necessary drainage, and will maintain said portion of said crossing constructed by Licensee in all respects in accordance with the requirements of Railroad looking to the safe and convenient operation and maintenance of its said line of railroad. Licensee agrees to reimburse Railroad upon bill rendered therefor, the annual cost to Railroad for maintaining said portion of said crossing constructed by Railroad.

5. This license is a personal privilege to Licensee hereunder, and shall not be transferred or assigned without the written consent of Railroad.

6. No person other than Licensee, its agents, employees, patrons, or invitees, shall be permitted to use said crossing; said crossing to be a private crossing for the use and convenience of Licensee, its agents, employees, patrons or invitees, only, and shall not be or be permitted to become a highway for the use of the public. To the end of preventing the use of said crossing by the public, Licensee will, at Licensee's expense, construct and maintain, at a point to be designated by the Superintendent of Railroad, or his duly authorized representative, a signboard clearly indicating that said crossing is for the private purposes of Licensee.

7. In each instance when a vehicle shall approach said crossing the same shall be stopped and shall not proceed over said track of Railroad until

Private Grade Crossing  
Rev. 12/15/77

the driver or other person in charge thereof shall have ascertained that no train, engine or car of Railroad is approaching said crossing.

8. Licensee accepts the privilege hereby granted with full cognizance of the risk of loss of life, personal injury, and property loss or damage which may be caused: (1) by railroad operations at or in the vicinity of said crossing; or (2) by the construction, maintenance, or use of said crossing by the Licensee or others; or (3) by the presence of equipment or personnel of the Licensee at or in the vicinity of said crossing or on or in the vicinity of the right of way of the Railroad. The Licensee is willing to assume this risk entirely and specifically covenants that the privilege granted hereby shall be used and enjoyed at the sole risk of the Licensee, and that neither the Railroad nor any corporate affiliate of the Railroad shall have any responsibility whatever for any such loss, injury or damage. To that end, the Licensee hereby specifically agrees to indemnify and save harmless the Railroad and all corporate affiliates of the Railroad from and against all cost, expense, liability, or loss resulting from death, personal injury, or property loss or damage, arising out of, connected with, or caused by: (1) railroad operations at or in the vicinity of said crossing; or (2) the construction, maintenance, or use of said crossing by the Licensee or others; or (3) the presence of equipment or personnel of the Licensee at or in the vicinity of said crossing or on or in the vicinity of the right of way of the Railroad. The indemnity obligations imposed upon the Licensee by this paragraph shall be absolute, and shall not be affected by the negligence, either primary or contributory, of the Railroad, or of any corporate affiliate of the Railroad.

9. In order to contribute toward the safety of train and motor vehicle operations at said crossing, Licensee will at all times during the life of this agreement keep the vegetation on its property cut in such manner and to such extent as is necessary to permit a person approaching the crossing from either direction to see approaching trains before such person reaches a position of danger on or near the crossing. Licensee will also prevent the erection on its premises of any structures which would interfere with the view of approaching trains or other rail equipment operating on said tracks.

10. If said crossing should at any time in the future become a public grade crossing, Licensee shall bear or shall cause such public authority as may assume responsibility for said public grade crossing to bear the cost of furnishing, installing and maintaining automatic signals, or such other protective devices as may be necessary in the judgment of Superintendent of Railroad to protect said public crossing. It is specifically understood that said crossing shall not be permitted to become a public grade crossing without the consent of Railroad, and unless arrangements satisfactory to the Railroad are made for the installation and maintenance of such protective devices, without cost or expense to Railroad.

11. Either party hereto may terminate this agreement at any time hereafter by serving upon the other        days' written notice of election so to do. If Licensee shall violate any of its covenants herein Railroad may terminate this agreement forthwith by written notice to Licensee of its election so to do. At or before the expiration of the time limited by any notice to Licensee of Railroad's election to terminate this agreement, Licensee will discontinue the use of said crossing and restore said right of way or property to condition existing prior to the construction of said crossing thereupon; or, in default thereof, Railroad may, in addition to any other legal remedy it may have, close said crossing and restore the condition of said right of way or property at the expense of Licensee.

12. Simultaneously upon the completion of construction of said

crossing, and the opening and use of same by Licensee, Licensee agrees, at its own cost and expense, to remove and abandon the existing road shown in yellow on said annexed print and to effectually barricade the same to prevent its use.

13. This agreement shall take effect as of the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have executed these presents in duplicate, each part being an original, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

In presence of:

SOUTHERN RAILWAY COMPANY,  
By

As to Railroad.

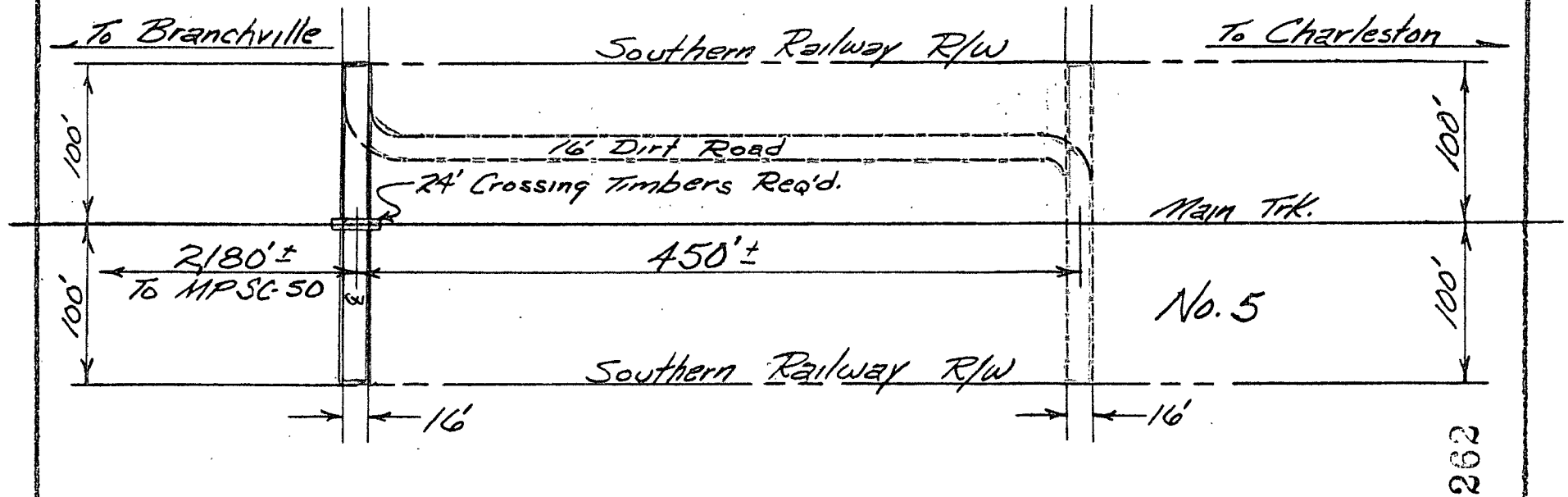
Vice President.

In presence of:

As to Licensee.

Wilbur Judy.

Dorchester Co., S.C.  
V-38/11



Note:  
Proposed Grade Crossing shown red. (3,200 #)  
Existing Crossing & Dirt Road  
To be Removed shown yellow.

| REV.                                                                                                                                                                                                            | DATE     | BY       | REVISION | DESCRIPTION |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|----------|----------|-------------|
| <b>SOUTHERN RAILWAY SYSTEM</b><br><br><b>Southern Railway Co.</b><br><small>OFFICE OF A.V.P. M.W.B.S. ATLANTA, GA.</small> |          |          |          |             |
| <b>Badham, S.C.</b><br><b>Proposed Relocation of Private Grade X-ing for Mr. Wilbur Judy.</b>                                                                                                                   |          |          |          |             |
| DES.                                                                                                                                                                                                            | FILE NO. | 1272-870 | DWG. NO. | TA-78-0106  |
| DR.                                                                                                                                                                                                             | VAL. MAP | 38/11    | M.P.     | SC-49.6     |
|                                                                                                                                                                                                                 |          |          | DATE     | 3-8-78      |

SCALE: 1" = 100'



TA-78-0106

BADHAM, SOUTH CAROLINA  
SOUTHERN RAILWAY COMPANY

Estimate of cost of work to be done by Railway Company or its contractor for the account of Mr. Wilbur Judy in connection with the relocation of a grade crossing at Milepost SC-49.6 as shown on Drawing TA-78-0106

MATERIAL:

\$ 919

|                                     |      |      |             |          |
|-------------------------------------|------|------|-------------|----------|
| Timber Guards                       | .516 | MBM  | @ \$ 410.00 | = \$ 212 |
| Drive Screw Spikes                  | 72   | Each | @ 1.05      | = 77     |
| Additional Ballast                  | 15   | NT   | @ 5.00      | = 75     |
| Crossties, New                      | 15   | Each | @ 13.00     | = 195    |
| Asphalt paving<br>(track area only) | 12   | NT   | @ 30.00     | = 360    |

LABOR:

1,130

|                                           |                |   |     |
|-------------------------------------------|----------------|---|-----|
| Remove & Barricade existing X-ing         | L.S.           | = | 200 |
| Prepare area for crossing                 | L.S.           | = | 150 |
| Install New Crossties                     | 15 Each @ 6.00 | = | 90  |
| Distribute Ballast                        | 15 NT @ 2.00   | = | 30  |
| Install timber guards                     | 12 Each @ 4.00 | = | 48  |
| Relocate Signs                            | 2 Sets @ 30.00 | = | 60  |
| Flagmen and/or Watchmen<br>(2 men 2 days) | 32 Hrs. @ 6.10 | = | 195 |
| Vacation Allowance                        | 7.25% of 773   | = | 56  |
| Paid Holidays                             | 3.50% of 773   | = | 27  |
| Health & Welfare Ins.                     | 5.00% of 856   | = | 43  |
| Comp. Ins. P.L. & P.D. Ins.               | 4.00% of 829   | = | 33  |
| R.R. Retirement & Unemploy.               | 23.10% of 856  | = | 198 |

Engineering & Contingencies

251

TOTAL

\$ 2,300

NOTE: The above estimate does not include the cost of grading, paving, drainage or any necessary alterations to private or public utilities, which items of cost are to be borne by others than the Railroad

Office of AVP - MW&S  
Southern Railway Company  
Atlanta, Georgia  
May 2, 1978  
File No. 127-2-870-GRE

263

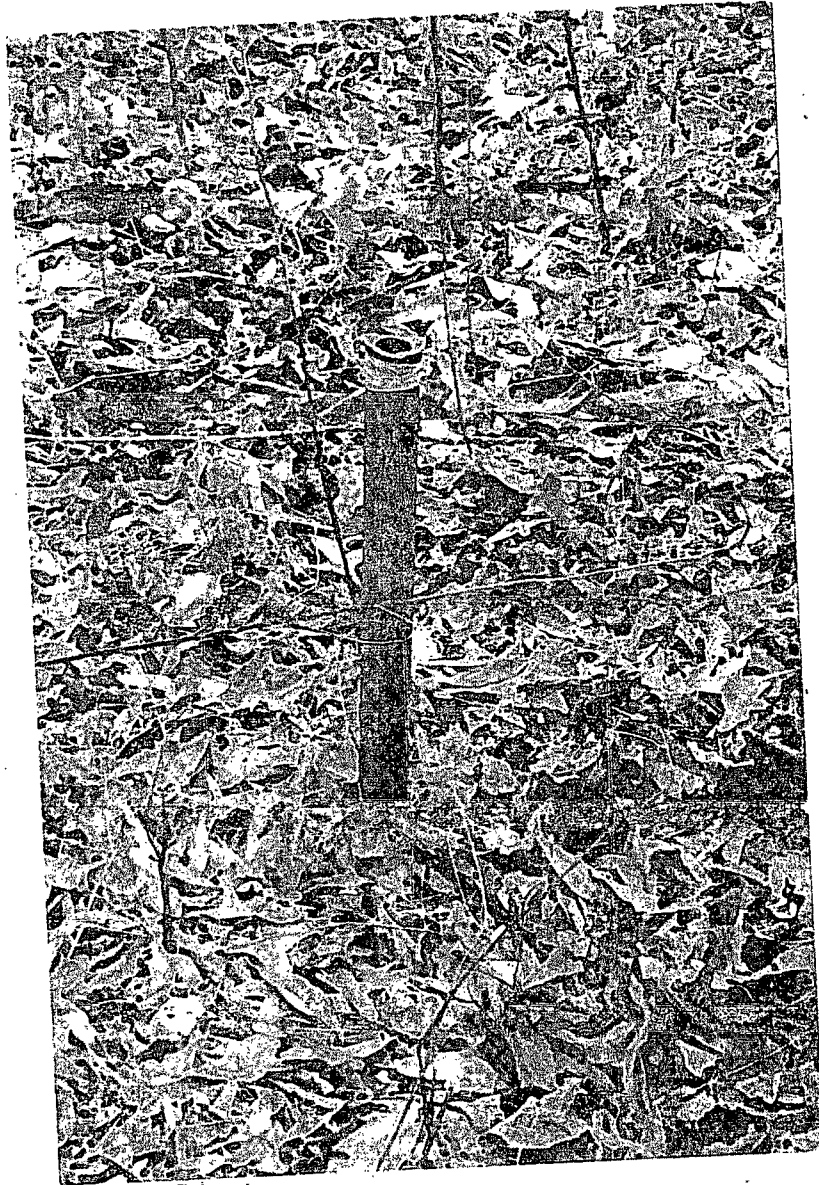
[illegible]

SCALE: 1" = 20 chains

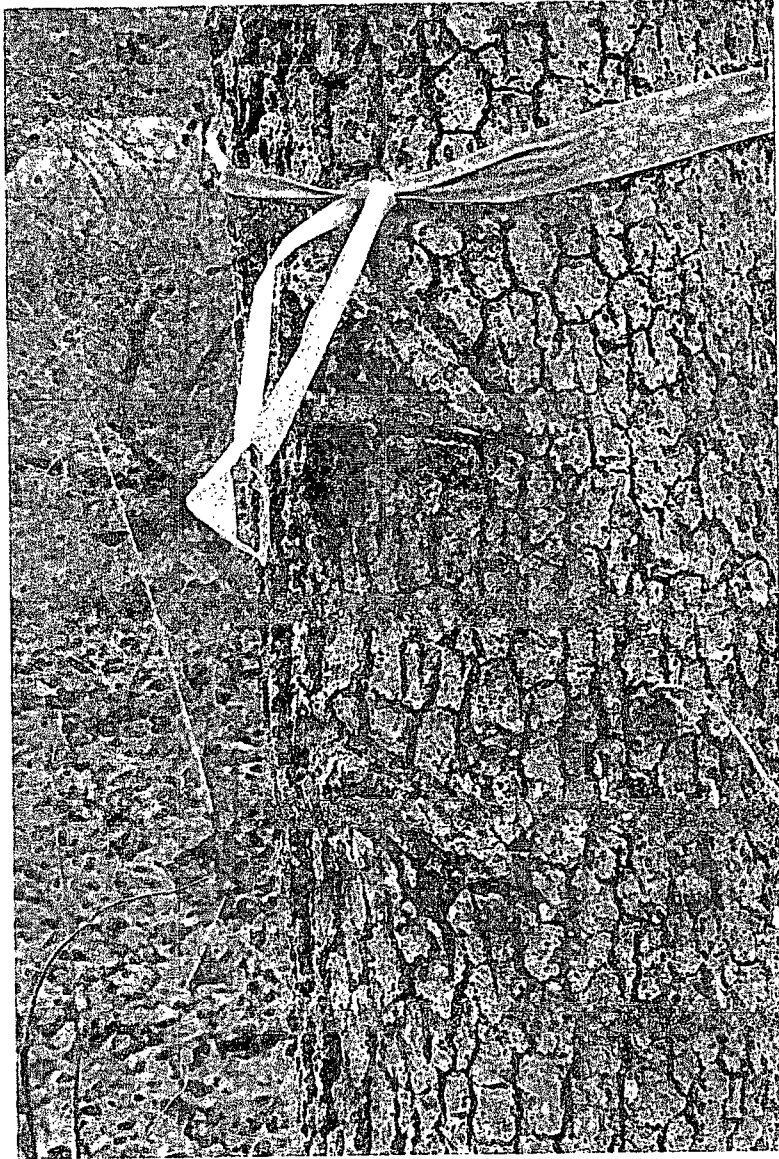
Note: This plot was copied from a plat made by Mr. F. A. Meyer, Nov. 23, 1927. It is part of a 453-Acre tract surveyed for J. H. & Glen W. Blackburn.

No. 10 / 2-51

**Defendant's Exhibit No. 5**



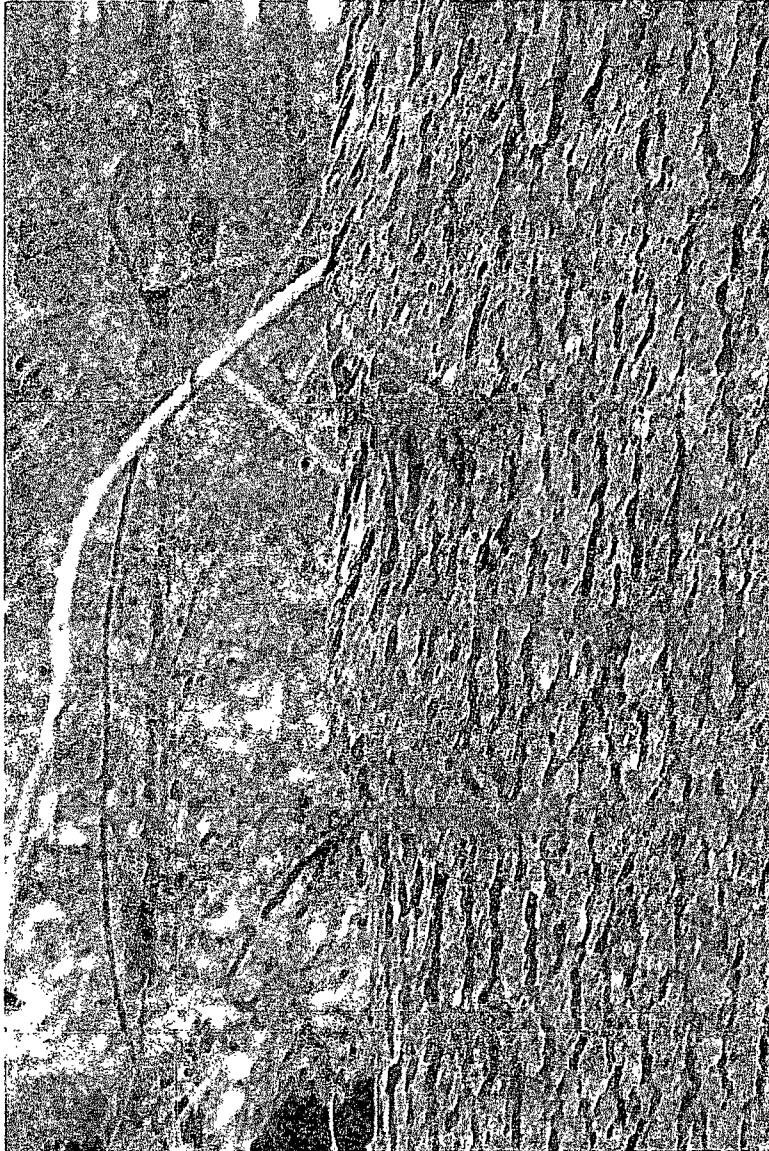
265



Defendant's Exhibit No. 8



**Defendant's Exhibit No. 9**

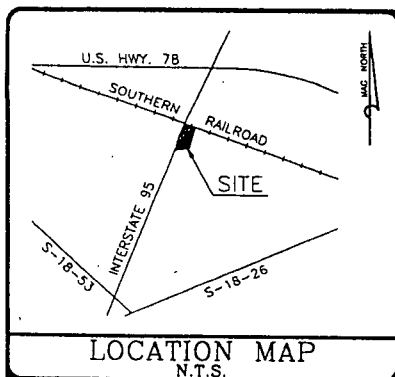
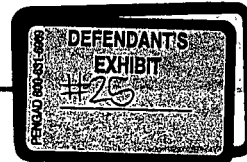


**Defendant's Exhibit No. 11**



**Defendant's Exhibit No. 14**

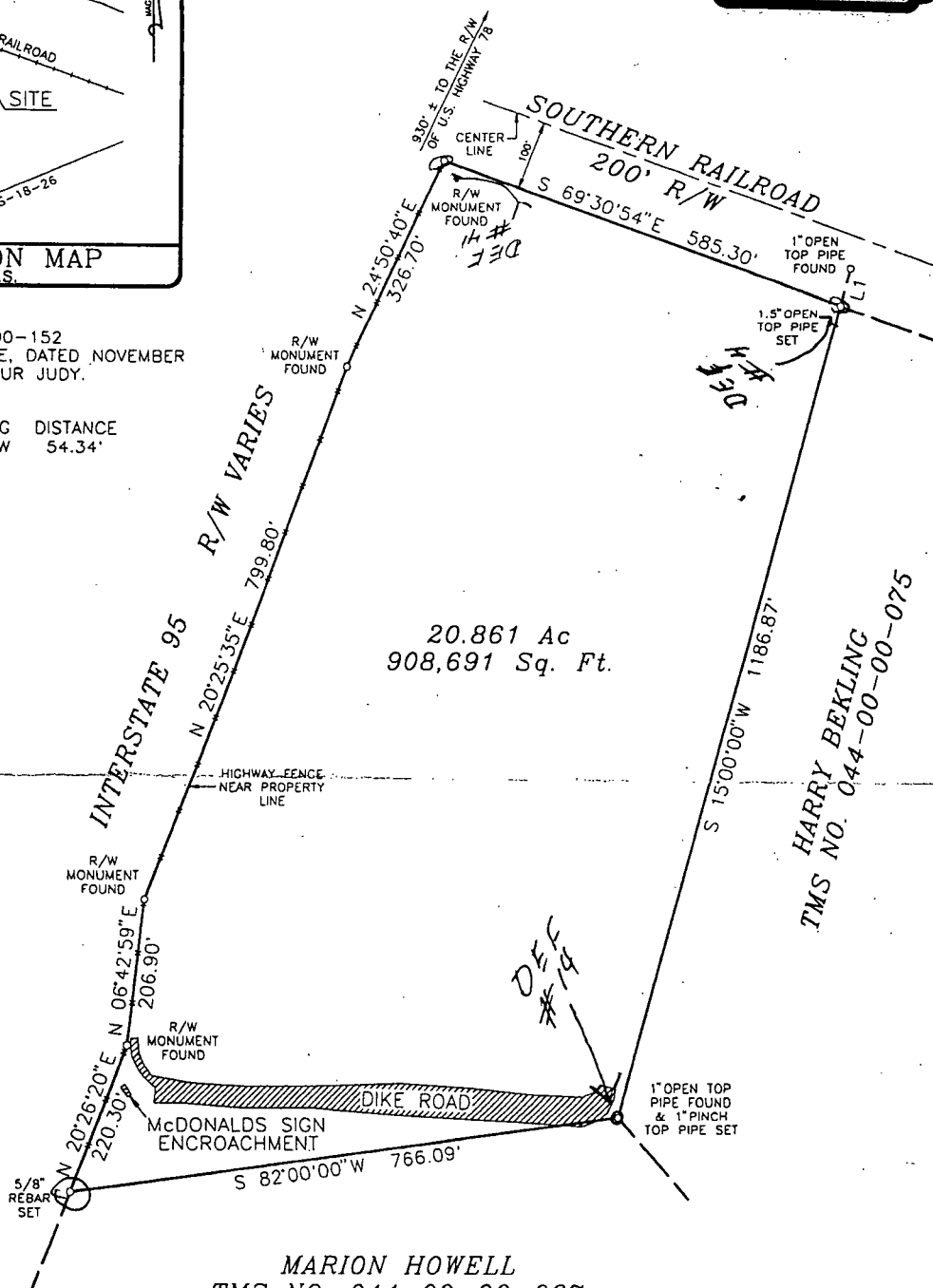
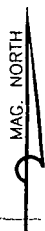
**268A**



REFERENCES:

TMS NO. 044-00-00-152  
PLAT BY F.A. MOORE, DATED NOVEMBER  
23, 1927 FOR WILBUR JUDY.  
(UNRECORDED)

| LINE | BEARING      | DISTANCE |
|------|--------------|----------|
| 1    | S 15°00'00"W | 54.34'   |

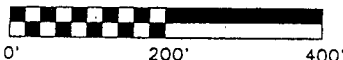


MARION HOWELL  
TMS NO. 044-00-00-067

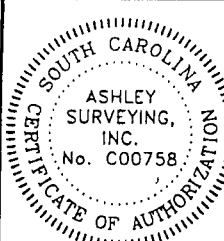
269

PLAT SHOWING  
20.861 ACRES OWNED BY  
BETTY L.S. JUDY  
LOCATED IN  
DORCHESTER COUNTY, SOUTH CAROLINA

SCALE : 1" = 200'



JANUARY 31, 1996



"I HEREBY STATE TO THE BEST OF MY KNOWLEDGE  
INFORMATION AND BELIEF, 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 A SURVEY AS  
SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE  
ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN

*Paul C. Lawson, Jr.*  
PAUL C. LAWSON, JR. S.C. REG. NO. 14191

| Station | Time | Lat       | Long       | Alt | Temp | Wind | Clouds | Remarks |
|---------|------|-----------|------------|-----|------|------|--------|---------|
| 1       | 0000 | 30° 00' N | 156° 00' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 2       | 0005 | 30° 05' N | 156° 05' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 3       | 0010 | 30° 10' N | 156° 10' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 4       | 0015 | 30° 15' N | 156° 15' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 5       | 0020 | 30° 20' N | 156° 20' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 6       | 0025 | 30° 25' N | 156° 25' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 7       | 0030 | 30° 30' N | 156° 30' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 8       | 0035 | 30° 35' N | 156° 35' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 9       | 0040 | 30° 40' N | 156° 40' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 10      | 0045 | 30° 45' N | 156° 45' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 11      | 0050 | 30° 50' N | 156° 50' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 12      | 0055 | 30° 55' N | 156° 55' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 13      | 0100 | 31° 00' N | 157° 00' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 14      | 0105 | 31° 05' N | 157° 05' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 15      | 0110 | 31° 10' N | 157° 10' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 16      | 0115 | 31° 15' N | 157° 15' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 17      | 0120 | 31° 20' N | 157° 20' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 18      | 0125 | 31° 25' N | 157° 25' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 19      | 0130 | 31° 30' N | 157° 30' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 20      | 0135 | 31° 35' N | 157° 35' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 21      | 0140 | 31° 40' N | 157° 40' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 22      | 0145 | 31° 45' N | 157° 45' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 23      | 0150 | 31° 50' N | 157° 50' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 24      | 0155 | 31° 55' N | 157° 55' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 25      | 0200 | 32° 00' N | 158° 00' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 26      | 0205 | 32° 05' N | 158° 05' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 27      | 0210 | 32° 10' N | 158° 10' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 28      | 0215 | 32° 15' N | 158° 15' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 29      | 0220 | 32° 20' N | 158° 20' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 30      | 0225 | 32° 25' N | 158° 25' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 31      | 0230 | 32° 30' N | 158° 30' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 32      | 0235 | 32° 35' N | 158° 35' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 33      | 0240 | 32° 40' N | 158° 40' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 34      | 0245 | 32° 45' N | 158° 45' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 35      | 0250 | 32° 50' N | 158° 50' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 36      | 0255 | 32° 55' N | 158° 55' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 37      | 0300 | 33° 00' N | 159° 00' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 38      | 0305 | 33° 05' N | 159° 05' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 39      | 0310 | 33° 10' N | 159° 10' W | 10  | 58.5 | 11   | 88     | 3549.88 |
| 40      | 0315 | 33° 15' N | 159° 15' W | 10  | 58.5 | 11   | 8      |         |



46°30'E 1126.13'

BETTY S. JUDY

TMS NO. 044-00-00-152

HARRY M. BEHNING  
TMS NO. 044-00-00-025

HA

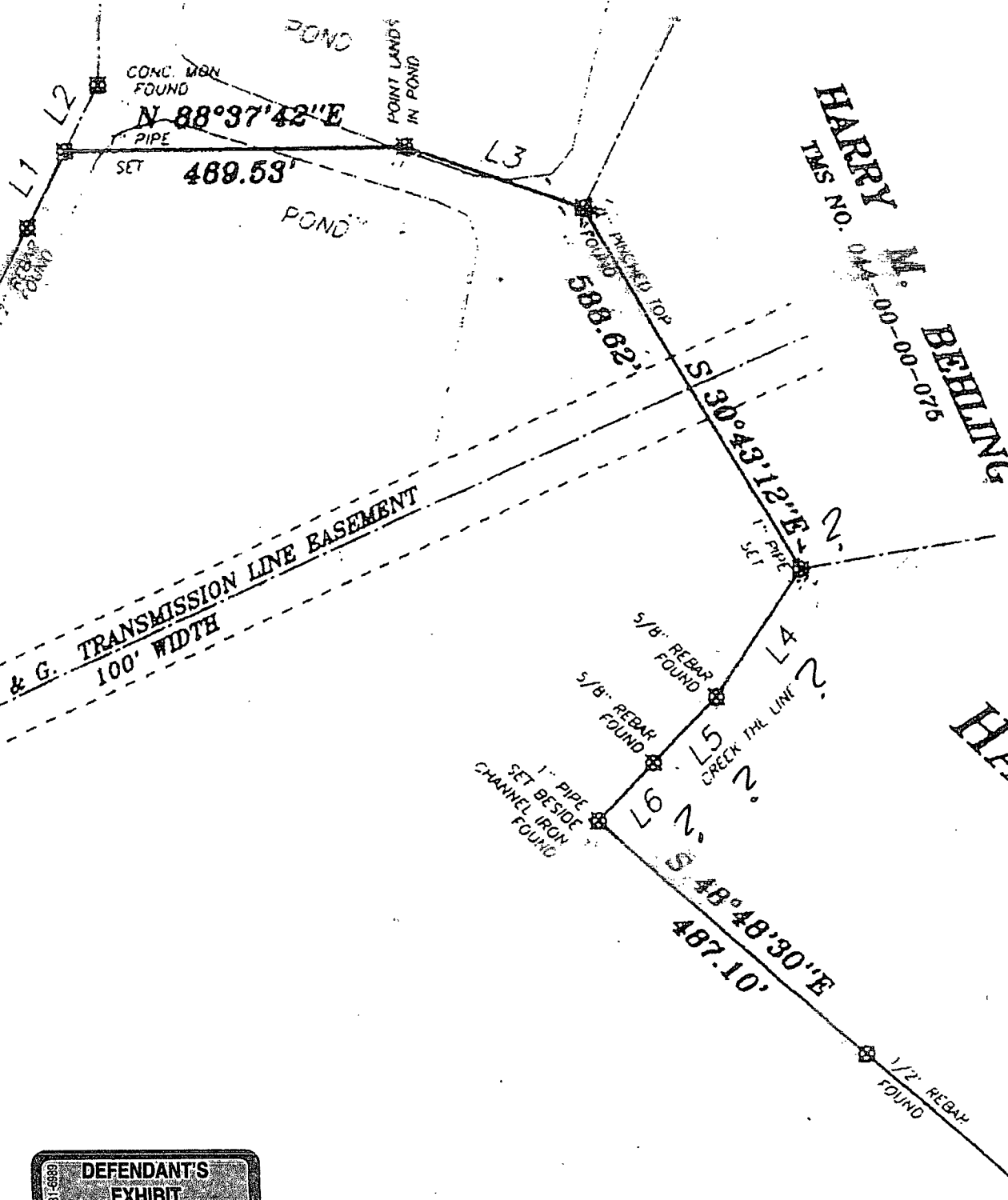
S.C.E. & G. TRANSMISSION LINE BASEMENT  
100' WIDTH



271

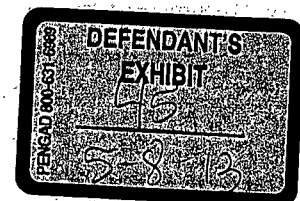
154.95 ACRES

645.75'



Errors/Discrepancies in 1867 Plat vs. Bass Plat

|                           | 1867 Plat                                                                                                        | Bass Plat | Difference | Out of Tolerance               |
|---------------------------|------------------------------------------------------------------------------------------------------------------|-----------|------------|--------------------------------|
| 1. NE or L3               | 4.75 chains = 313.5'                                                                                             | 257.93'   | 55.57'     | $\frac{55.57}{313.5} = 17.7\%$ |
| 2. NNE or<br>Behling Line | 7.7 chains = 508.2'                                                                                              | 588.62'   | 80.42'     | $\frac{80.42}{508.2} = 15.8\%$ |
| 3. L6, L5 and L4          | 1867 plat calls for straight lines at N 20° E<br>Bass plat shows three (3) lines at<br>S 32° W; S 42° W; S 43° W |           |            | difference of 12° to 23°       |



THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY  
COURT OF COMMON PLEAS

Maité Murphy, Circuit Court Judge

Case No. 2010-CP-18-2243  
Appellate Case No. 2013-002129

Kay Howell Jordan, Marion Howell Tolson,  
and Lewis Virgil Howell, ..... Respondents,

v.

Betty L.S. Judy, ..... Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the foregoing Record on Appeal contains all  
material proposed to be included by any of the parties and not any other material.

  
James B. Richardson, Jr.  
1229 Lincoln Street  
Columbia, South Carolina 29201  
(803) 799-9412

May 27, 2014.

Attorneys for Appellant.

**RECEIVED**

JUN 17 2014

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY  
COURT OF COMMON PLEAS

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Kay Howell Jordan, Marion Howell Tolson,  
and Lewis Virgil Howell, ..... Respondents,

v.

Betty L.S. Judy, ..... Appellant.

CERTIFICATE OF SERVICE

I certify that I served a copy of the Record on Appeal by first class mail,  
postage prepaid, addressed to respondents' attorney at his address of record,  
namely:

W. Grady Jordan, Esq.  
Smith, Jordan, Lavery & Lee  
P.O. Box 1207  
Easley, SC 29641

on May 27, 2014.



James B. Richardson, Jr.  
S.C. Bar No. 4718  
1229 Lincoln Street  
Columbia, SC 29201  
(803) 799-9412

May 27, 2014.

Attorney for Appellant.

**RECEIVED**

MAY 29 2014