

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Richard B. Ness, Special Referee

Appellate Case No. 2014-000204
Case No. 2009-CP-38-1170

RECEIVED

AUG 27 2014

SC Court of Appeals

Patrick J. Williams, Frank J. Wallmeyer and
Mary B. Wallmeyer, ... Respondents,

v.

F. Carlisle Smith and First Citizens Bank and
Trust Company, ... Defendants,

Of whom F. Carlisle Smith is Appellant.

RECORD ON APPEAL
VOLUME I OF II

Curtis W. Dowling, Esq.
Matthew G. Gerrald, Esq.
BARNES, ALFORD, STORK & JOHNSON, LLP
1613 Main St. (29201)
PO Box 8448
Columbia SC 29202
Telephone: (803) 799-1111

Gregory G. Williams, Esq.
GREGORY G. WILLIAMS, LLC
1331 Richland St. (29201)
PO Box 727
Columbia SC 29202
Telephone: (803) 799-2211

Attorneys for Respondent

Louis H. Lang, Esq.
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln St., Ste. 200 (29201)
PO Box 1390
Columbia SC 29202-1390
Telephone: (803) 404-6900

Attorneys for Appellant, F. Carlisle Smith

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

AUG 27 2014

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

SC Court of Appeals

Richard B. Ness, Special Referee

Appellate Case No. 2014-000204
Case No. 2009-CP-38-1170

Patrick J. Williams, Frank J. Wallmeyer and
Mary B. Wallmeyer, ... Respondents,

v.

F. Carlisle Smith and First Citizens Bank and
Trust Company, ... Defendants,

Of whom F. Carlisle Smith is Appellant.

RECORD ON APPEAL

Curtis W. Dowling, Esq.
Matthew G. Gerrald, Esq.
BARNES, ALFORD, STORK & JOHNSON, LLP
1613 Main St. (29201)
PO Box 8448
Columbia SC 29202
Telephone: (803) 799-1111

Gregory G. Williams, Esq.
GREGORY G. WILLIAMS, LLC
1331 Richland St. (29201)
PO Box 727
Columbia SC 29202
Telephone: (803) 799-2211

Attorneys for Respondent

Louis H. Lang, Esq.
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln St., Ste. 200 (29201)
PO Box 1390
Columbia SC 29202-1390
Telephone: (803) 404-6900

Attorneys for Appellant, F. Carlisle Smith

INDEX

Orders:

Order of Reference to Special Referee	7
Order on Motions of Defendant, F. Carlisle Smith.....	11
Order of Judgment	13
Order Denying Defendants' Motion to Alter or Amend.....	33

Pleadings:

Complaint.....	35
Amended Answer and Counterclaim	41
Motion for Temporary Restraining Order.....	48
Motion to Dissolve Temporary Restraining Order as Improvidently Granted and Request to voir dire the Court	53
Motion to Alter or Amend Judgment.....	58

Trial Transcript of August 26, 2013 (Volume I):

Page 5, Opening	67
Pages 10 – 18, Randy Frazier, Direct Examination	68
Pages 26-44, Randy Frazier, Re-Direct Examination.....	77
Pages 60 – 89, Henry Briggs Salley, Re-Direct Examination	96
Pages 102-116, Justin Michael Steadman, Re-Direct Examination	126
Pages 125-131, Phillip Cooper, Re-Direct Examination	141
Pages 133-222, Patrick Joseph Williams, Direct Examination.....	149

Trial Transcript of August 27, 2013 (Volume II):

Pages 232-243, Patrick Joseph Williams, Direct Examination.....	241
Pages 287-303, Patrick Joseph Williams, Re-Direct Examination.....	253
Pages 305-325, Michael B. Caudell, Direct Examination	271
Pages 329-336, Michael B. Caudell, Re-Direct Examination	292
Pages 345-356, Charles T. Burk, Cross Examination.....	300
Pages 365-366, Charles T. Burk, Re-Direct Examination	312
Pages 369-416, Darryl Jones, Direct Examination	314
Pages 425-454, Darryl Jones, Re-Direct Examination	362
Pages 471-473, Guy J. San Fratello, Re-Direct Examination.....	392
Pages 476-518, Richard L. Stroman, Direct Examination.....	395

Trial Transcript of August 28, 2013 (Volume III):

Pages 526-588, Richard L. Stroman, Direct Examination.....	441
Pages 633-636, Richard L. Stroman, Re-Direct Examination.....	504
Pages 642-643, Patrick J. Williams, Direction Examination.....	508
Pages 665-695, William Christopher Daves, Direct Examination	510
Pages 710-711, William Christopher Daves, Cross Examination	542
Pages 742-743, William Christopher Daves, Re-Direct Examination.....	543A
Pages 748-760, Charles Laverne Steadman, Direct Examination	544
Pages 760-782, Charles Laverne Steadman, Cross Examination	556
Pages 784-851, Francis Carlisle Smith, Direct Examination.....	579
Pages 851-897, Francis Carlisle Smith, Cross Examination.....	641

Appellant's Exhibits:

Smith Exhibit 6	694
Smith Exhibit 9	695
Smith Exhibit 17	696
Smith Exhibit 17 (duplicate copy redacted)	710-721

Respondent's Exhibits:

Exhibit 1	722
Exhibit 2	724
Exhibit 3	729
Exhibit 6	731
Exhibit 7	732
Exhibit 8	733
Exhibit 9	734
Exhibit 10	735
Exhibit 11	736
Exhibit 12	737
Exhibit 13	738
Exhibit 14	739
Exhibit 15	740
Exhibit 16	741
Exhibit 17	742

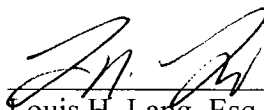
Exhibit 18.....	743
Exhibit 19.....	744
Exhibit 20.....	745
Exhibit 21.....	746
Exhibit 22.....	747
Exhibit 23.....	748
Exhibit 24.....	749
Exhibit 25.....	750
Exhibit 26.....	751
Exhibit 27.....	752
Exhibit 28.....	753
Exhibit 29.....	754
Exhibit 30.....	755
Exhibit 31.....	756
Exhibit 32.....	757
Exhibit 33.....	758
Exhibit 34.....	759
Exhibit 35.....	760
Exhibit 36.....	761
Exhibit 37.....	762
Exhibit 38.....	763
Exhibit 39.....	764

Exhibit 40.....	765
Exhibit 41.....	766
Exhibit 42.....	767
Exhibit 43.....	768
Exhibit 44.....	769
Exhibit 45.....	770
Exhibit 46.....	771
Exhibit 47.....	772
Exhibit 59.....	773
Exhibit 60.....	777
Exhibit 61.....	781
Exhibit 73.....	788
Exhibit 74.....	791
Exhibit 75.....	792
Exhibit 75(A)	793
Exhibit 76(A)	794
Exhibit 76	795
Exhibit 77.....	796
Exhibit 77(A)	797
Exhibit 78.....	798
Exhibit 84.....	799
Exhibit 103.....	800

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

CALLISON TIGHE & ROBINSON, LLC



Louis H. Lang, Esq., SC Bar#03127

1812 Lincoln St., Ste. 200

PO Box 1390

Columbia SC 29202-1390

Telephone: (803) 404-6900

Facsimile: (803) 404-6902

Attorneys for Appellant, F. Carlisle Smith

August 27, 2014
Columbia, South Carolina

7/20/11

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) CIVIL ACTION NUMBER:2009-CP-38-1170
Patrick J. Williams, Frank J. Wallmeyer)
and Mary B. Wallmeyer,)
Plaintiffs,)
vs.)
F. Carlisle Smith and First Citizens Bank)
and Trust Company, Inc.,)
Defendants.)

ORDER OF REFERENCE TO
SPECIAL REFEREE

2011 JUL 18 P 1:53
CLERK OF COURT
ORANGEBURG SC

Pursuant to Motion, this matter came before the Court for hearing on June 10, 2011. The hearing was conducted by telephone; Attorney Gregory G. Williams represented the Plaintiffs, and Attorney Andrew English represented the Defendants.

This case was originally referred by consent to the Orangeburg County Master-In-Equity. Concerned for a potential conflict-of-interest, the Master recused himself. The attorneys reported that they have attempted to identify an alternate Master-In-Equity or an attorney to serve as Special Referee, but have been unable to find such an alternate on whom their clients can agree. Recognizing their inability to agree, and concerned for the time that has passed, Attorney Williams asked that his original Motion for Reference be set for hearing.

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

After reviewing relevant materials in the Court's file, and after listening carefully to counsel, the Court finds that this case involves a disputed real property line, and is appropriate for reference to the Master-In-Equity pursuant to Rule 53 of the South Carolina Rules of Civil Procedure.

194
[Signature]

CLERK OF COURT
ORANGEBURG SC

This Court finds that this case was previously referred by consent to the Honorable O. Davie Burgdorf, Master-In-Equity for Orangeburg County, and that Judge Burgdorf subsequently recused himself.

This Court finds that the attorneys have made diligent efforts to agree on an alternate Master or Special Referee, but have been unable to do so.

This Court notes Attorney Williams's argument that he has experienced great difficulty identifying an alternate Master or an attorney in the community suitable to serve as Special Referee in large part because of his client's significant business presence in Orangeburg and surrounding areas for a number of years. This Court notes Attorney Williams's argument that Attorney Richard B. Ness, of Bamberg, South Carolina, is a suitable attorney to serve as Special Referee, and that Mr. Ness, through his staff, has indicated that he does not have a conflict of interest in this case, and that generally he is willing to serve as Special Referee. Attorney Williams pointed out that many witnesses for this case live in and near the town of Springfield, in Orangeburg County, such that Bamberg is a town relatively convenient for them, and relatively easy to navigate, as opposed to larger towns and cities, such as Columbia and Lexington. Attorney Williams argued against the further delay that would be required for continuing the search for other suitable candidates to serve as Special Referee.

Attorney English pointed out that his client resides in the Columbia area, and perhaps more recently in the Rock Hill area, such that a Special Referee and venue in the Columbia area would be more convenient for him. Attorney English noted also that his client has recently suffered periods of poor health, which sometimes make it difficult for his client to travel. Attorney English, while speaking completely respectfully of Mr. Ness, noted that the subject real property is near the town of Springfield, and noted that one of the Plaintiffs and many of the Plaintiffs' witnesses are from the

294
ca

Springfield area. Mr. English pointed out that his client, Defendant Carlisle Smith, is not a native of the Springfield area, and that Mr. Smith is concerned that there may be some prejudice against him, and some partiality for the Plaintiffs in the Springfield - Bamberg area. For these reasons, Attorney English argued that the case should not be referred to Mr. Ness, but that the search should continue for a suitable Special Referee in the Columbia area.

The Court finds that Richard B. Ness is a well-qualified, experienced, and suitable attorney to serve as Special Referee for this case. While respecting Defendant Smith's concerns, the Court is completely confident that Mr. Ness will handle this case with the highest possible level of fairness and impartiality. The Court notes Mr. Ness's availability and readiness, and notes the significant delays that have already taken place in this case. The Court notes also the significant number of witnesses who live in the Springfield area, and notes that the comparative convenience of Bamberg as opposed to the Columbia area is substantial.

The Court finds that pursuant to Rule 53, SCRCP, this case is appropriate for reference to Attorney Richard B. Ness of Bamberg, South Carolina, to serve as Special Referee.

IT IS HEREBY ORDERED that, pursuant to South Carolina Code Section 14-11-60 (Law Co-op. 1976, as amended), this real property line dispute/quiet title action is referred to Richard B. Ness, of Bamberg, South Carolina, to serve as Special Referee, and to direct entry of final judgment in this action under Rule 53, SCRCP. Any appeal from the final judgment entered by the Special Referee Richard B. Ness shall be to the Supreme Court of South Carolina or to the South Carolina Court of Appeals, as appropriate, pursuant to Section 14-11-85 of the Code of Laws of South Carolina (1976, as amended).

The Special Referee shall exercise all power and authority which a circuit judge sitting without a jury would have in this action, including, but not limited to the following: The Special

Referee is specifically authorized to issue such orders and rulings which are appropriate and necessary to provide the Plaintiffs/Defendants herein the relief sought in the Complaint/Counterclaim, to do all acts and take all measures necessary or proper for the efficient performance of his duties under Rule 53, SCRCP, including issuing Writs of Assistance and such orders pursuant thereto as may be necessary to put the Plaintiffs or Defendants, as the case may be, in exclusive possession, title, and ownership of any property which is the subject of this action, in compliance with the final judgment, to conduct all proceedings appropriate and necessary, and to issue such orders as are contemplated by those Code sections or which may be appropriate to grant relief available, and to entertain and to rule upon motions made pursuant to the South Carolina Rules of Civil Procedure addressed to any action taken or order issued in compliance with this directive, and otherwise generally to undertake such proceedings and issue such rulings and orders as are appropriate and required to resolve all issues related to the validity and marketability of the title to the real estate which is the subject of this action.

AND IT IS SO ORDERED.



Edgar Warren Dickson, Presiding Judge
First Judicial Circuit

July 8, 2011

Orangeburg, South Carolina

[15748]

494


STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) CIVIL ACTION NO. 2009-CP-38-1170

Patrick J. Williams, Frank J. Wallmeyer
and Mary B. Wallmeyer,

Plaintiffs,

v.

F. Carlisle Smith and First Citizens Bank
and Trust Company, Inc.,

Defendants.

ORDER ON MOTIONS OF THE
DEFENDANT, F. CARLISLE SMITH

This matter came before me on October 26, 2012, for a hearing on the motions of the Defendant, F. Carlisle Smith (Smith), to dissolve a temporary restraining order (TRO) entered in this matter on October 15, 2012, and Smith's motion to *voir dire* the Court.

Present at the hearing was counsel for the Plaintiff, Gregory G. Williams, Esq., and David F. Sullivan, Esq. Also present was counsel for Smith, Andrew C. English, III, Esq., and Louis H. Lang, Esq.

After considering the submissions and argument of counsel, I conclude Smith's motion to dissolve the TRO should be granted and Smith's motion to *voir dire* the Court should be denied.

Accordingly, it is

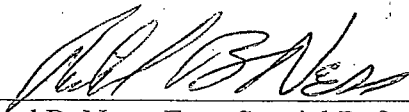
ORDERED, ADJUDGED AND DECREED as follows:

1. Smith's motion to dissolve the October 15, 2012, TRO should be and hereby is GRANTED; and
2. Smith's motion to *voir dire* the Court should be and hereby is DENIED.

PR
71

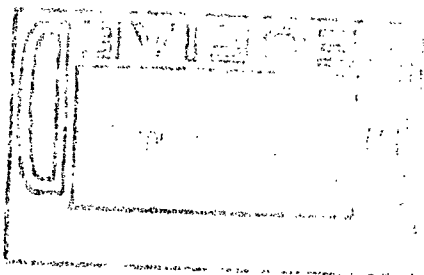
FILED FOR
CLERK OF COURT
ORANGEBURG, SC
2012 NOV 15 AM 11:54
WILLIAM B. WALLMEYER
CLERK OF COURT
ORANGEBURG COUNTY, SC

AND IT IS SO ORDERED.



Richard B. Ness, Esq., Special Referee for
Orangeburg County

Bamberg, South Carolina
November 7, 2012
5399.001\Order on Motions



STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Patrick J. Williams, Frank J. Wallmeyer
and Mary B. Wallmeyer,

Plaintiffs,

vs.

F. Carlisle Smith and First Citizens Bank
and Trust Company, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

2013 OCT -3

CIVIL ACTION NUMBER: 2009-CP-38-1170

FILED FOR RECORD

WITNESSED BY

CLERK OF COURT

CLERK OF COURT

ORDER OF JUDGMENT

The Summons and Complaint commencing this litigation were filed in July, 2009. By Order of the Circuit Court filed in July, 2011, this case was referred to the undersigned, Richard B. Ness, as Special Referee. This case came before the Court for a trial on the merits on August 26, 2013, and continuing through August 28, 2013.

BACKGROUND, ANALYSIS, AND GENERAL FINDINGS OF FACT

This is a property line dispute. The Plaintiffs bought a parcel of real estate near Springfield, in Orangeburg County, South Carolina, in 1978. According to the property description in their deed, the Plaintiffs bought 1,050 acres. The Plaintiffs did not have their parcel surveyed. The property description in the Plaintiffs' deed identified the western boundary of their parcel, the boundary which is in dispute, as "Dean Swamp."

Defendant F. Carlisle Smith ("Mr. Smith") bought an adjacent parcel in 1986. The property description in Mr. Smith's deed indicated that he bought 400 acres. Defendant Smith did not have his parcel surveyed. The property description in Defendant Smith's deed identified the eastern boundary of his parcel, the boundary which is in dispute, as "the run of Dean Swamp Creek."

FILED Oct 22, 2013 11:08:01 am
BOOK 01530
PAGE 0202 THRU 0223
INSTRUMENT # 2013003544

Elaine G. Alexander
Signature

FILED
ORANGEBURG
COUNTY
ELAINE G. ALEXANDER
REGISTER
OF DEEDS

1

RON PI

Based on testimony and evidence, apparently there is no modern, definitive plat for either parcel. In recent years, the location of the property line has come into intense dispute, culminating finally in this litigation.

Over the course of the three-day trial, a total of ten witnesses testified for the Plaintiffs, including four witnesses who were qualified as experts, and including one of the Plaintiffs, Patrick J. Williams. (The other two Plaintiffs live out of state, and do not have any hands-on knowledge of the property or the dispute.) Three witnesses testified for Defendant Mr. Smith, consisting of two experts and the Defendant, Mr. Smith. (The other Defendant, First Citizens Bank and Trust Company, Inc., was named because of its status as mortgagee, and although First Citizens filed an Answer, it did not otherwise take an active part in this litigation.)

Through the Plaintiffs' witnesses, approximately 105 exhibits were entered into evidence, consisting of such things as:

1. Aerial photographs obtained from various government agencies, going back in time for decades;
2. Maps and drawings similarly obtained from various government and private agencies, also going back in time for decades;
3. Farming and hunting leases;
4. Documents evidencing sales of timber;
5. Numerous photographs depicting recent activity and conditions at, and in the vicinity of, the disputed property line;
6. Application materials submitted to the South Carolina Department of Natural Resources for doe tags by a hunt club with which Defendant Smith was associated, these

application materials including an acreage number (400 acres) and a property diagram of Defendant Smith's parcel, introduced by an officer of the South Carolina Department of Natural Resources;

7. A recent mortgage of record by which Mr. Smith mortgaged this subject parcel, which mortgage includes a property description indicating the parcel contains 400 acres;

8. Plats and deeds of several parcels surrounding the subject parcels belonging to the Plaintiffs and the Defendant; and,

9. The plat depicting the property line as claimed by the Plaintiffs, this plat having been prepared by the Plaintiffs' surveyor, Richard Stroman, who testified credibly and convincingly about his research and work that went into the survey and plat. (This property line as depicted on this plat has been consistently referred to as the "Stroman Line.")

Approximately 17 exhibits were entered into evidence through the Defendant and his witnesses. Defense exhibits included such things as:

1. Photographs allegedly depicting remnants of old liquor stills;
2. Photographs allegedly depicting a tree stump which marks a property corner;
3. Photographs of bridges on state highway number 39;
4. Copies of deeds in the Plaintiffs' chain of title; and
5. A drawing prepared by Defendant Smith's surveyor. (In his testimony, the surveyor acknowledged that he had not signed the drawing and was not willing to refer to it as a "plat." Rather, the surveyor testified candidly that the drawing was the result of Defendant Smith's instructions to him to find a thousand acres. The surveyor testified candidly that his drawing, which indicated a total of one thousand fifty-two

acres for Defendant Smith, did not reconcile with neighboring parcels of real estate, and did not reconcile with County tax maps, County tax records, or aerial photographs and maps generated in recent decades by various government and private agencies. Further, Defendant Smith's surveyor acknowledged that the plat prepared by the Plaintiffs' surveyor did, in fact, reconcile with neighboring parcels, County tax maps and records, aerial photographs and maps generated by government and private agencies. In short, Defendant Smith's surveyor did not meaningfully add support to Defendant Smith's claim.)

I. **LOCATION OF DEAN SWAMP CREEK**

In light of the language of the property descriptions in the parties' deeds, much emphasis was placed on the location of Dean Swamp Creek. In his initial Answer and in his Amended Answer and Counterclaim, Defendant Smith expressly admitted that the disputed property line should be "the old run of Dean Swamp Creek." During the trial, many aerial photographs and maps from numerous sources were examined closely and entered into evidence, all purportedly showing the historic location of the Creek.

A substantial part of the Plaintiffs' case was devoted to demonstrating that the original run of Dean Swamp Creek has been deliberately altered by human efforts. Many of the Plaintiffs' photographs, and much of the testimony of Plaintiffs' witnesses were devoted to proving that the run of the Creek has been altered. The Plaintiffs presented numerous photographs depicting freshly disturbed dirt, recently-cut trees, debris seemingly piled in small streambeds, and similar. These photographs included pictures of two pieces of equipment which appeared to be in the vicinity of

this activity - a tractor with a disc harrow attached, and a "Bobcat." Defendant Smith acknowledged his ownership of these pieces of equipment.

One of the primary items of contention was a sizeable barrier, dam or dike built across the Creek just feet upstream from the point at which Defendant Smith's property begins. There were photographs of this barrier, and a substantial amount of testimony was devoted to it. The barrier is made of concrete and metal; clearly visible from the photographs and consistent with the witnesses' testimony. There was uncertainty as to who put this barrier in place, but the Court is convinced that this barrier did, indeed, alter the run of the Creek. In fact, this conclusion is almost inescapable. The Court is convinced that this major barrier, combined with the other activity described above, downstream from this barrier, has resulted in an alteration of the original, old run of Dean Swamp Creek.

One of Defendant Smith's expert witnesses, Chris Daves, testified about the *present* run of the Creek. Mr. Daves and his team apparently went to considerable effort to chart the present flow of the Creek. The Court does not doubt that the Creek no longer follows its original flow, and, the location of the present run as presented by Mr. Daves may well be accurate. The Court is convinced, however, that the present flow is a result of deliberate, human alteration, and that but for the concrete and metal barrier and the other recent activity described in words and photographs, the Creek would continue to flow along the old Creek bed, as identified in the Plaintiffs' surveyor's plat. In his testimony, Mr. Daves was at first inexplicably resistant to the suggestion that the run of the Creek had been altered. He finally conceded, however, that the concrete and metal barrier "deflected" the flow of the Creek.

Also significant in the Court's analysis is the fact that testimony from all four of the

Plaintiffs' expert witnesses supports the conclusion that the run of the Creek has been altered. One of the Plaintiffs' experts, for instance, whose expertise is in soil sampling, testified that dirt around the area of the barrier was brought there, and is not native soil. Another of the Plaintiffs' experts described in detail how he tested the bed of the old run of the Creek and the bed of the present run, to determine the approximate age of each run; his testimony strongly supports the conclusion that the run of the Creek has recently been altered. (Defendant Smith's expert, Mr. Daves, did not mention any such testing to determine the comparative ages of the creek beds, other than his visual observations.)

II. ACREAGE CALCULATIONS

Yet another factor in the Court's analysis is the testimony offered by the witnesses as to the numbers of acres that various locations of the disputed property line will yield to the parties. At the extreme, the "drawing" prepared by Defendant Smith's surveyor will yield one thousand fifty-two acres to Mr. Smith. The surveyor acknowledged that this version of the property line would reciprocally reduce the Plaintiffs' historic acreage by roughly five hundred acres. (This drawing showing one thousand fifty-two acres for Defendant Smith includes one hundred fifty acres across a paved highway from the disputed property line, this one hundred fifty acres being owned by third parties who are not even parties to this suit.) (The surveyor was utterly unable to justify how his drawing could encompass this one thousand fifty-two acres, and repeatedly pointed out that he did not sign the drawing, but expected it to be revised by the Court.) Defendant Smith's surveyor acknowledged that, on the other hand, the plat submitted by the Plaintiffs and their surveyor will yield roughly four hundred acres to Mr. Smith and eight hundred fifty acres to the Plaintiffs, which

PA
PL

acreage numbers are consistent with the numbers in the parties' deeds, consistent with County tax records, and consistent generally with all other evidence presented. Defendant Smith's other expert, Chris Daves, similarly acknowledged that the line proposed by the Plaintiffs and their surveyor would yield acreage numbers generally consistent with deeds and County records.

The Plaintiffs' surveyor, Richard Stroman, testified that he calculated the acreage numbers his proposed plat ("the Stroman Line") would yield to the parties, using recognized points and satellite and GPS-like technology. Mr. Stroman testified about the methods and accuracy of his calculations, and testified ultimately that his proposed plat will yield to Defendant Smith an acreage amount very close to the three hundred eighty acres stated in the L.B. Till deed, the deed of the owner who sold the parcel to Defendant Smith. Surveyor Stroman testified that per his calculations, his proposed plat will yield to the Plaintiffs an acreage amount very close to the eight hundred fifty acres they claim to own. The Court did not recognize any hesitation, weakness, or shortcoming in Surveyor Stroman's analysis and testimony.

III. DEFENDANT SMITH'S TIMBER HARVESTING

Aerial photographs and testimony from multiple witnesses demonstrate that in recent years Defendant Smith harvested timber from his parcel. The witnesses testified and the photographs confirm that Defendant Smith harvested his timber right up to the old run of Dean Swamp Creek. Defendant Smith acknowledged in his testimony that he harvested his timber right up to the old run of the Creek, but stated that this irregular, zig-zag line of the edge of his timber cutting was entirely coincidental, and had nothing to do with the run of the Creek. The Court is not convinced, but believes that the perimeter of Defendant Smith's timber harvesting, which so closely duplicates the

7 *RON*
P

old run of the Creek as depicted on the Plaintiffs' plat, is more than coincidence. The Court views this timber activity as another factor suggesting that in the recent past the old run of the Creek was recognized as the property line, another factor tilting the balance in favor of the Plaintiffs.

IV. ADVERSE POSSESSION - DEFENDANT SMITH'S COUNTERCLAIM

Defendant Smith brought a counterclaim on the theory of adverse possession. The Plaintiff, Patrick J. Williams, along with five fact witnesses for the Plaintiff testified credibly and convincingly about various and numerous activities in which the Plaintiffs, their families, guests, and farm and hunting lessees have engaged continuously since the time the Plaintiffs bought the property. One of the Plaintiffs' expert witnesses, who has assisted the Plaintiffs with forestry issues and timber sales since the Plaintiffs first purchased their parcel, testified about specific timber harvests on locations on the Plaintiffs' side of the creek, which locations Defendant Smith is claiming he owns on the theory of adverse possession.

Mr. Smith's testimony in support of his claim for adverse possession was largely vague and unspecific. Defendant Smith did testify about several deer stands which he has erected on the Plaintiffs' side of Dean Swamp Creek; however, Mr. Smith indicated a specific number of years each of these stands has been in place, and none has been in place long enough to satisfy the time requirement for adverse possession.

Testimony and evidence from both sides indicate a recent outburst of activity by Defendant Smith, such as posting of No Trespassing signs, erecting cables and barricades at locations on the Plaintiffs' side of Dean Swamp Creek, and removing Plaintiffs' deer stands and other hunting equipment from areas Defendant Smith is presently claiming. These activities, however, are very

recent in time, and, are the very activities which prompted the Plaintiff to file this lawsuit. Under no circumstances would these recent activities justify Defendant Smith's ownership of these areas under the theory of adverse possession. Furthermore, the general, vague, and unspecific nature in which Defendant Smith described the areas he is claiming under the theory of adverse possession would by definition defeat his claim, as the requirements for a successful adverse possession case are specific and exacting.

Finally, on Defendant Smith's adverse possession claim, even if Defendant Smith has engaged in activities in areas on the Plaintiffs' side of the Creek, he has not demonstrated exclusivity. There was much undisputed testimony from the Plaintiffs' witnesses about their various, numerous, and frequent activities in and on the areas Defendant Smith is claiming.

In summary, the Court finds that Defendant Smith has fallen far short of proving his ownership of any land beyond the old run of Dean Swamp Creek (the Stroman Line) by way of adverse possession.

V. VAGUENESS OF DEFENDANT SMITH'S CLAIM

Another factor the Court recognizes is the overall vagueness of Defendant Smith's claim. That is, assuming for the sake of argument that the Court gives credence to Defendant Smith's position, the Court would nevertheless not know where to locate the property line. Defendant's expert, Chris Daves, testified about the present run of the Creek, implying that the Creek should be the property line. Defendant's surveyor, Mr. Steadman, testified about his drawing of one thousand fifty-two acres, but refused to commit to an opinion as to where the property line should be. Defendant Smith himself testified in a somewhat elusive manner about his belief that he owns a

thousand acres, but he was not able to offer evidence to support that belief. (In fact, such things as his mortgages, his divorce affidavit, and doe tag applications and diagrams suggest that Mr. Smith has held a different belief.) There was no cohesion or consistency in Defendant Smith's camp as to where the property line should be. In truth, even if the Court were inclined in Defendant Smith's favor, the Court does not know where Defendant Smith would have the Court locate the property line. The Plaintiffs' proposed location of the line, on the contrary, is specific, and the testimony and evidence supporting the Plaintiffs' version is consistent and overwhelming.

SPECIFIC FINDINGS OF FACT

After listening to the testimony of the thirteen witnesses, after considering well over one hundred exhibits, after considerable deliberation and effort to mesh the testimony and exhibits for the most logical, sensible, and reasonable result, the Court makes the following findings of fact:

1. The Plaintiffs bought their parcel of real estate in 1978, and the property description in their deed indicated a total of 1,050 acres.
2. Defendant Smith bought his parcel in 1986, and his deed included a property description indicating 400 acres.
3. Only two days before Defendant Smith bought his parcel, the previous owner, L.B. Till, bought the identical parcel. However, the property description in Till's deed indicated 380 acres. None of the witnesses, neither Plaintiffs' or Defendants', was able to discover or explain how this parcel increased from 380 acres to 400 acres almost overnight.
4. Neither the Plaintiffs nor the Defendant had his parcel surveyed prior to this present controversy.

5. No previous reliable plats for either parcel were discovered by either party. The item which most closely approaches a reliable modern plat is a plat which has been referred to as the old "Rosa Stroman Plat," and which is substantially lacking in specificity and detail. This Rosa Stroman Plat depicts parcels from which Defendant Smith's parcel is derived, at least in part. The Rosa Stroman Plat also depicts, at least in a crude fashion, the location of Dean Swamp Creek. This location of Dean Swamp Creek as depicted on the Rosa Stroman Plat is generally consistent with the location of Dean Swamp Creek as determined by the Plaintiffs' surveyor, Richard Stroman.

6. The property description in Defendant Smith's deed indicates that his eastern property line is "the run of Dean Swamp Creek." The property description in the Plaintiffs' deed indicates that the western property line of their parcel is "Dean Swamp." Previous deeds in the Plaintiffs' chain of title indicate the property line to be "Dean Swamp Creek."

7. In 2003 the Plaintiffs sold roughly 200 acres of their parcel, located on the far side of the property from the disputed property line, leaving a remaining acreage of roughly 850 acres. The Plaintiffs have paid real property taxes based on those acreage numbers since buying their property in 1978.

8. Defendant Smith similarly has paid real property taxes on 400 acres since buying his parcel in 1986.

9. The Orangeburg County tax map for the Plaintiffs' parcel is consistent with the property line depicted on the plat prepared by the Plaintiffs' surveyor.

10. The Orangeburg County tax map for Defendant Smith's parcel is also consistent with the property line depicted on the plat prepared by the Plaintiffs' surveyor.

11. In mortgage loan documents related to Defendant Smith's use of his parcel as security for mortgage loans, Defendant Smith indicated that his parcel contains 400 acres.
12. In an affidavit Defendant Smith provided to the Richland County, South Carolina, Family Court in relation to his divorce, Defendant Smith indicated his parcel contains 440 acres.
13. Defendant Smith's parcel was included with other parcels in an application submitted to the South Carolina Department of Natural Resources for an allotment of "doe tags" for deer hunting. This doe tag application indicated that Defendant Smith's parcel contains 400 acres. These application materials, which were introduced through an officer of the South Carolina Department of Natural Resources, also included a map of the several parcels listed in the application. The map, though certainly not precise, indicates a boundary for Defendant Smith's parcel which is entirely consistent with the boundary claimed by the Plaintiffs and depicted on the plat prepared by the Plaintiffs' surveyor.
14. Numerous aerial photographs and maps prepared by various government and private agencies show Dean Swamp Creek at a location consistent with the plat prepared by the Plaintiffs' surveyor. Many of these documents actually identify the property line; without material exception, all these historic documents show the Creek and the property line at a location consistent with the plat prepared by the Plaintiffs' surveyor.
15. The property line proposed by the Plaintiffs will yield an acreage amount to each party which is consistent with deeds in their chains of title, consistent with property descriptions in their deeds, consistent with property tax records and payments, and generally consistent with other evidence presented.

16. Defendant Smith failed to present evidence which would allow the Court to identify a property line in his favor. Defendant Smith and his witnesses failed to identify with consistency or specificity a proposed location for the proposed property line. The possible locations for the property line which Defendant Smith seemed to propose are substantially without supporting evidence.

17. As to his adverse possession claim, Defendant Smith has failed to prove the required elements. Among other things, Defendant Smith has failed to demonstrate that he has maintained exclusive possession of the disputed areas.

18. The Court finds that the run of Dean Swamp Creek has been altered in recent years by a combination of deliberate human efforts, and that Defendant Smith is responsible for at least some, if not all, of the activities which have resulted in the altered run of the Creek.

19. The Court finds that the Plaintiffs' surveyor, Richard Stroman, conducted extensive, earnest research, both on site and of available historic documents, and that the plat prepared by Surveyor Stroman for the Plaintiffs accurately reflects the old run of Dean Swamp Creek, and accurately identifies the property line between the Parties' parcels.

CONCLUSIONS OF LAW

The Court reaches the following Conclusions of Law:

1. The real property which is the subject of this litigation is situate in Orangeburg County, South Carolina. This Court has jurisdiction for this case.
2. The Plaintiffs brought this suit as an action to quiet title. South Carolina's courts have made it clear that a boundary line dispute may be brought as a quiet title case. "Generally

speaking, there are several ways a disputed boundary line may be judicially determined. It may be determined incidentally by an action in ejectment where the plaintiff is out of possession of property, or in trespass to try title where the plaintiff is in possession and believes the defendant has trespassed on his property. Additionally, disputed boundary lines may either be directly or indirectly judicially settled in actions to quiet title, actions for injunctions and declaratory judgment actions." Knox v. Bogan, 322 S.C. 64, ___ 472 S.E.2d 43, 45 (Ct. App. 1996). See also Garrett v. Locke, 309 S.C. 94, 419 S.E.2d 842 (Ct. App. 1992); Bodiford v. Spanish Oak Farms, Inc., 317 S.C. 539, 455 S.E.2d. 194 (Ct. App. 1995); Tolbert v. Greenwood Cotton Mill, 213 S.C. 43, 48 S.E.2d 599 (1948).

3. In its Findings of Fact, the Court determined the property line to be the old run of Dean Swamp Creek. The Court offered its varied reasoning for this finding, including, in addition to overwhelming evidence, the important observation that the Defendants admitted in their Answer that the boundary line should be the old run of Dean Swamp Creek. The Court notes that such an admission in a pleading is conclusive as to the fact admitted. "It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action." Skull Creek Club Ltd. Partnership v. Cook and Book, Inc., 313 S.C. 283, ___, 437 S.E.2d 163, 166 (Ct. App. 1993). Even without this admission, the Court would have reached the same result, based on the evidence.

4. Closely related to this issue is the testimony of the Defendants' expert, Chris Daves, who testified as to the present run of Dean Swamp Creek, notwithstanding the substantial evidence that the run, or flow, of the creek has been altered. South Carolina courts have established the general rule that "a change in the location of a stream or way that is a boundary between adjacent owners does not change the location of the boundary." Ivester v. Fowler, 109 S.C. 424, ___, 96 S.E. 154, 156 (1918). See also Ex Parte Keller, 189 S.C. 26, 199 S.E. 909 (1938). The Court is convinced that the run of Dean Swamp Creek has been deliberately altered, and that Defendant Smith is at least partly responsible. However, regardless of how, or by whom, the run of the Creek was changed, the changed, or new, run of the creek does not create a new boundary line.

5. Relatedly, the Court notes Defendant Smith's testimony suggesting that the boundary line should be defined somehow by the edge of the swamp, or the high-water line on the Plaintiffs' side of the Creek, because the Plaintiffs' deed identifies the property line as "Dean Swamp," rather than "Dean Swamp Creek," as indicated in other deeds in both chains of title. In addition to the reasons explained elsewhere in this Order, the Court notes that this very question has arisen apparently with some frequency in South Carolina, and our Courts have determined that when a property line is defined as a "swamp," the literal placement of the line is meant to be the middle of the creek or primary flow of water that runs through the swamp: "Under the law of this state, where a swamp is given as the boundary, unless a contrary intention is clearly disclosed, the center of the run of the creek of the swamp is the boundary line, and not the margin of the swamp area." Ex Parte Keller, 189 S.C. 26, ___, 199 S.E. 909, 913 (1938). Accordingly, in light of this precedent, as well as for the other reasons

discussed, the Court concludes that consistent with all deeds in both chains of title, the boundary line between the parcels is Dean Swamp Creek.

6. The Court notes the importance of a surveyor's work in this boundary line case. Bodiford v. Spanish Oak, 317 S.C. 539, 455 S.E.2d. 194 (Ct. App. 1995), is illustrative on this issue. The Court of Appeals stated, "As an expert in land surveying, Smith [the surveyor] was qualified to review the relevant deeds and plats, and to render his opinion as to the location of the boundary." The Court went on to say, "We find no error by the referee in allowing Smith to render his opinion as to where the boundary line is, and in using Smith's opinion to make that factual finding." Bodiford, 455 S.E.2d at 196. These statements by the Bodiford Court are critically important to our instant case, in that the Plaintiffs have submitted a plat prepared by an seasoned, expert surveyor, along with all his supporting testimony and documentation. Defendant Smith, on the other hand, offered a surveyor whose work was unsubstantiated, a surveyor who refused to sign his "drawing" or call his drawing a "plat," and a surveyor who would not or could not tell the Court where he earnestly believed the property line should be located. The Court concludes that the Stroman Plat is the result of the very work described in the Bodiford opinion, and that since the Stroman Plat in practical terms is unopposed, the Stroman Plat is the law of this case.

7. The Court looks next at the significance of acreage calculations. The Court recognizes South Carolina authority which instructs that acreage numbers in deeds are, in fact, of great importance when determining a disputed property line. Brunson v. Graham, 259 S.C. 298, 191 S.E.2d 713 (1972). The Court recognizes that Surveyor Stroman addressed the reconciliation of acreage numbers as part of his overall work. Other witnesses, including

Defendant Smith's witnesses, also testified about the acreage numbers; the testimony of the various witnesses on this issue was remarkably similar. The Court concludes that this reconciliation is an important factor in this case, a factor which further reinforces the strength of the Richard Stroman Plat.

8. The Court next examines the key elements of adverse possession. In short, to prove a case of adverse possession, a party must demonstrate: 1) actual possession, 2) the possession must be open and notorious, 3) possession must be continuous, 4) and possession must be exclusive and hostile. Jones v. Leagan, 384 S.C. 1, 681 S.E.2d 6 (Ct. App. 2009); Getsinger v. Midlands Orthopedic Profit Sharing Plan, 327 S.C. 424, 489 S.E.2d 223 (Ct. App. 1997); Butler v. Lindsey, 293 S.C. 466, ___, 361 S.E.2d 621 at 624 (Ct. App. 1987); South Carolina Code Ann., Section 15-67-210 (Law. Co-op. 1976, as amended). Another factor often mentioned in South Carolina adverse possession cases is whether or not the party claiming ownership by adverse possession has paid taxes on the property. Harrelson v. Reaves, et al, 219 S.C. 394 at 481, 65 S.E.2d 478 (1951). For the reasons discussed above in its Findings of Fact, the Court concludes that Defendant Smith has failed to prove ownership of the disputed areas by adverse possession.

CONCLUSION

Having made its Findings of Fact and reached its Conclusions of Law, this Court hereby rules in favor of the Plaintiffs, both as to the Plaintiffs' causes of action and as to the Defendants' counterclaims, terminating any and all interests of the Defendants, as well as any and all interests of the Defendants' heirs, devisees, successors, assign, or anyone or anything in the whole world



claiming under them, regardless of the nature of that interest or claim, in and to the property on the Plaintiffs' side of the property line as depicted on surveyor Richard Stroman's plat, and barring any future claims that may be asserted by any person or entity.

Specifically, the Court rules that the boundary line marked on-site by, and the corresponding plat prepared by, surveyor Richard L. Stroman (the "Stroman Plat" or "Stroman Line"), reflect the boundary line between the Parties' parcels. (Surveyor Stroman's plat was attached as an exhibit to the Plaintiffs' Complaint.) Specifically, the Stroman Plat identifies the boundary between the Plaintiffs' parcel, which the Plaintiffs obtained by deed dated April 13, 1978, and recorded in Orangeburg County Deed Book 443, at Page 135, and Defendant F. Carlisle Smith's parcel, which Defendant Smith obtained by deed dated December 31, 1986, and recorded in Orangeburg County Deed Book 521 at Page 685. The Court hereby directs that Surveyor Stroman is to modify the plat, to remove any and all notations that express uncertainty or controversy as to the indicated line, and to add an appropriate notation indicating that the plat has been determined by, and is recorded at, the direction of the Court. The modified plat is to be recorded with the Orangeburg County Register of Deeds. This Richard Stroman plat is the law of this case.

The Defendants, and particularly Defendant F. Carlisle Smith, are to remove all personal property, including, but not limited to, no-trespassing signs, deer stands, cables, barricades, and similar, from the Plaintiffs' side of the boundary line within fifteen (15) days of the date of this Order, and to otherwise immediately and absolutely respect the Stroman Plat and the boundary line as marked on-site by Surveyor Stroman as the boundary line separating his parcel from the Plaintiffs' parcel. Except for the purpose of removing his personal property within the next fifteen (15) days, Defendant Smith is not to go onto the Plaintiffs' lands for any reason, unless the Plaintiffs have



given their express permission.

The claims, if any, of the Defendants herein and all who claim title under them, in and to the subject property are without any right, and the Defendants and Claimants, if any, have no estate, right, lien, or interest in or to the property on the Plaintiffs' side of the Stroman Line. The Defendants herein and all who claim title under them are permanently barred and enjoined from asserting any estate, right, title, lien, or interest in the subject property or any part thereof. The Plaintiffs herein, Patrick J. Williams, Frank J. Wallmeyer and Mary B. Wallmeyer, are the owners of the property on the their side of the Stroman Line, "free and clear," in fee simple absolute.

A copy of this Order shall be recorded and properly indexed in the Office of the Register of Deeds for Orangeburg County, South Carolina. Specifically, the Orangeburg County Register of Deeds shall index this Order under the Plaintiffs' names, in the Grantee and Grantor indices, and under the name of Defendant F. Carlisle Smith, also in the Grantee and Grantor indices.

The Sheriff of Orangeburg County, South Carolina, and/or Officers of the South Carolina Department of Natural Resources are hereby ordered and directed to eject and remove from the lands on the Plaintiffs' side of the Stroman Line the occupant(s), if any, of the herein described property, together with all personal property remaining thereon after fifteen (15) days of this Order, and to put the Plaintiffs and their agents, employees, and representatives or assigns in full, quiet and peaceable possession of the property described herein without delay, and to keep the Plaintiffs, their agents, employees, and representatives or assigns in such full, quiet and peaceful possession.

This Court retains jurisdiction of this case to address issues of possession and trespass generally, as needed, and for the purpose of issuing a Writ of Assistance, or similar, if needed.

AND IT IS SO ORDERED, ADJUDGED AND DECREED.


Richard B. Ness
Special Referee for Orangeburg County

Oct 1, 2013
Bamberg, South Carolina

P 20

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	CIVIL ACTION NUMBER:2009-CP-38-1170
	)	
Patrick J. Williams, Frank J. Wallmeyer	)	
and Mary B. Wallmeyer,	)	
Plaintiffs,	)	ORDER DENYING DEFENDANTS'
	)	RULE 59(E) MOTION TO ALTER OR
	)	AMEND
vs.	)	
F. Carlisle Smith and First Citizens Bank	)	
and Trust Company, Inc.,	)	
Defendants.	)	

2013 DEC 26 PM 12:30
 FILED FOR RECORD
 WITH CLERK OF COURT
 ORANGEBURG, SC

THIS MATTER CAME BEFORE THE COURT for hearing on November 25, 2013, on Defendants' Motion To Alter Or Amend Judgment Pursuant To SCRCP, Rule 59(e). Attorney Andrew English was present for Movants, Defendants, and Gregory Williams was present for Plaintiffs. (Plaintiff Patrick J. Williams was also present.)

Attorney English argued, consistent with the Defendants' Motion, that the Court should alter or amend its Order dated October 1, 2013, and entered on October 3, 2013. Specifically, Mr. English argued that the Court should alter or amend its Order because the Plaintiffs brought the case as a quiet title action, rather than a trespass-to-try-title case, because the deeds in the Plaintiffs' chain of title indicate the subject property line should be located as proposed by Defendant F. Carlisle Smith, because there was insufficient evidence to support the Plaintiffs' contention that the run of Dean Swamp Creek has been altered, because acreage calculations are irrelevant, and because Defendant Smith proved his ownership of the disputed real property by way of adverse possession.

Attorney Williams argued in opposition, consistent with the Plaintiffs' Return to the Motion. Specifically, Mr. Williams reiterated the Plaintiffs' position on the quiet-title vs. trespass-to-try-title issue, he reviewed the Plaintiffs' position as to the deeds in the chain of title, he noted the overwhelming nature of evidence supporting Plaintiffs' position that the run of the Creek has been altered, he argued for the relevance of acreage calculations, and he noted Defendant Smith's shortcomings in proving the elements of adverse possession. Attorney Williams also appropriately mentioned the cumulative effect of the several components of the evidence, all in favor of the Plaintiffs.



-1-

ATTEST: TRUE COPY
Wingja B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

The Court earnestly considered the Defendants' Motion and arguments of Defendants' attorney. The Court does not, however, recognize any new issues, evidence or legal arguments previously overlooked or misinterpreted. The Court is convinced that its Order of October 1, 2013, is entirely consistent with the evidence in this case, that it is soundly in line with applicable law, and that it accurately reflects the reasoning and decision of the Court.

Accordingly, the Defendants' Motion To Alter Or Amend is denied.

AND IT IS SO ORDERED.



Richard B. Ness
Special Referee for Orangeburg County

December 20, 2013

Bronley, South Carolina

P2

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Patrick J. Williams, Frank J. Wallmeyer and
Mary B. Wallmeyer,

Plaintiffs,

vs.

F. Carlisle Smith and First Citizens Bank
and Trust Company, Inc.,
Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2009-CP-38-1170

COMPLAINT

(Non-Jury - Quiet Title/Property Line Dispute)

FILED FOR RECORDED
MINIJA B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2009 JUL 17 AM 9:09

The Plaintiffs herein, Patrick J. Williams, Frank J. Wallmeyer, and Mary B. Wallmeyer, complain of the above-named Defendants, allege as follows:

1. The Plaintiffs bring this action for the purposes of obtaining a decree adjudging that the Plaintiffs are seized in fee simple of a good and marketable title to the real estate described below, and that the Defendants do not have any interest or estate in, or lien upon the subject real estate. More particularly, the purpose of this action is to resolve a disputed property line.

2. The property which is the subject of this action is situate in Orangeburg County, South Carolina, and is described as follows:

a.) A parcel owned by the Plaintiffs:

All that certain piece, parcel, or tract of land, situate, lying, and being about two miles south of Springfield, in the County of Orangeburg, State of South Carolina, containing one thousand fifty (1,050) acres, more or less, known as the Bean-Boland property and bounded now or formerly as follows: On the North by property of Milligan, Bailey and Porter, et al.; on the East by property of W. E. Bennett; on the South by the South Edisto River; and on the west by Dean Swamp. (This acreage is less and except a portion subsequently conveyed out, not relevant to this controversy.)

This property was conveyed to Patrick J. Williams, Frank J. Wallmeyer, and Mary B. Wallmeyer, by deed of Elizabeth Boland and Marie B. Timmons dated April 13, 1978, and recorded April 13, 1978, in Orangeburg County Deed Book 443 at Page 135.

TMS#: 0006-00-04-027.000

b.) A parcel owned by Defendant F. Carlisle Smith:

All that piece, parcel or tract of land, situate, lying and being in Goodland Township, School District No. 1, in the State of South Carolina, County of Orangeburg, containing four hundred (400) acres, more or less, and bounded on the North by County dirt road leading from S. C. Highway #4 (four); on the East the run of Dean Swamp Creek, and property of Q. D. Fulmer, commonly known as Lofton Tract; on the South by the South Edisto River; and on the West by property of Oscar Corbett. This property is more fully shown and delineated on a map of lands of Rosa Stroman by F. W. Frederick, Engineer and Surveyor, dated September 28, 1914, and recorded in the Office of the Clerk of Court for Orangeburg County in Plat Book 3 at Page 50, and is all the land shown on said plat located south of county dirt road leading from S. C. Highway #4 (four) except a tract thereon shown as six hundred (600) acres and the Lofton Tract.

This property was conveyed to F. Carlisle Smith by deed of L. B. Till dated December 31, 1986, and recorded December 31, 1986, in Orangeburg County Deed Book 521 at Page 685.

TMS#: 0003-00-01-006.000.

3. The Plaintiffs herein, Patrick J. Williams, Frank J. Wallmeyer, and Mary B. Wallmeyer, together own real estate in Orangeburg County, in or near the town of Springfield, South Carolina, as described in paragraph 2 (a) above.

4. Defendant F. Carlisle Smith, upon information and belief, owns real estate in Orangeburg County, in or near the town of Springfield, South Carolina, which adjoins the real estate owned by the Plaintiffs. Mr. Smith's parcel is described in paragraph 2(b) above.



17. Unable to obtain a response from Defendant Smith and unable to establish a dialogue, the Plaintiffs finally addressed the controversy with Mr. Smith by letter delivered by private process server.

18. Plaintiffs engaged a highly reputable licensed surveyor with many years experience in Orangeburg County and surrounding areas. The Plaintiffs instructed the surveyor generally to use his best skills, training, and experience to determine the appropriate location of the subject property line.

19. Plaintiffs' surveyor and others concluded that there are no formal plats on record for either of the subject parcels. Therefore, Plaintiffs' surveyor undertook and completed exhaustive research, gathering maps, drawings, and other evidence from numerous sources to help determine the proper location of the subject property line. Plaintiffs' surveyor also engaged in extensive observation on-site, searching for physical evidence to determine the location of the subject property line.

20. After receipt of Plaintiffs' letter (delivered by process server), Defendant Smith engaged an attorney and a surveyor.

21. Over the course of the next several months, the parties, including their attorneys and surveyors, met three times, including one time on-site, to discuss the disputed line.

22. In these meetings Plaintiffs have shared with Defendant Smith and his attorney and surveyor the exhaustive data obtained through Plaintiffs' research, primarily the research of Plaintiffs' surveyor, all of which supports the property line as indicated on Exhibit "A" attached hereto.

23. To date, neither Defendant Smith nor an attorney or surveyor on his behalf, has provided any opposing data or evidence whatsoever. Nevertheless, Defendant Smith seemingly continues to hold the position that the property line is not the original run of Dean Swamp Creek, but that the line

5 

should be an arbitrary, ill-defined line as created loosely by the recently-diverted run of the Creek, or one of the branches created or enhanced by recent diversion efforts.

24. Based on numerous items of historical data found by way of his exhaustive research, and based on countless hours of observation and searching for landmarks and physical evidence on the ground, Plaintiffs' surveyor has prepared the aforementioned plat, which is attached hereto as Exhibit "A." Although the Plaintiffs directly, through counsel, and through their surveyor have repeatedly asked Defendant Smith to provide evidence and input for the benefit of the surveyor in analyzing and calculating the proper location of the subject property line, to date Defendant Smith has provided no opposing data or evidence whatsoever. The plat which was prepared by the Plaintiffs' surveyor and which is attached hereto as Exhibit "A" was recorded with the Orangeburg County Register of Deeds on July 10, 2009, in Book 00D146 at Page 0002.

25. The amount at stake in very-approximate calculations, is roughly One Hundred Fifty (150) Acres. Upon information and belief, if Defendant Smith's version of the property line is accepted, his original Four Hundred (400) Acres [or Three Hundred Eighty(380) Acres, as the case may be] will increase perhaps to Five Hundred Fifty (550) Acres. Conversely, the Plaintiffs' parcel will shrink by approximately One Hundred Fifty (150) Acres.

26. Upon information and belief, all research and historical data, without exception, and overwhelming physical evidence, indicate that the property line should be the old run of Dean Swamp Creek, as shown specifically on the plat prepared by the surveyor and attached hereto as Exhibit "A." Furthermore, the people familiar with these parcels in the Springfield community, except Defendant Smith, have long recognized the old run of Dean Swamp Creek as the property line separating the two parcels.

27. Upon information and belief, there is no meaningful evidence, by way of historical data, physical evidence, or otherwise, to support the arbitrary and capricious location of the property line as proposed by Defendant Smith, the exact location of which is not known.

6



28. The Plaintiffs are entitled, therefore, to an Order of this Honorable Court acknowledging the accuracy of the property line as articulated by the surveyor on his plat which is attached hereto as Exhibit "A," and quieting title for the Plaintiffs as to their parcel as determined by the property line demonstrated in Exhibit "A."

FOR A SECOND CAUSE OF ACTION

29. The above paragraphs are realleged as if repeated herein verbatim.

30. In addition to, or in the alternative to an Order Quieting Title, as set out above, upon information and belief, the Plaintiffs herein are entitled to an Order of this Honorable Court establishing the subject property line to be that line indicated on the plat provided herewith as Exhibit "A."

NOW, THEREFORE, the Plaintiffs herein, having stated their causes of action, respectfully pray for judgment as follows:

- a. This Court determine that the Plaintiffs are the sole holders of the fee simple title to the subject real property as described and claimed in this Complaint, and as bounded by the property line depicted on the plat which is attached to this Complaint as Exhibit "A;"
- b. This Court determine that the property line which is depicted on the plat attached to this Complaint as Exhibit "A" is the true and accurate property line which divides the Plaintiffs' parcel from Defendant Smith's parcel;
- c. The Defendants herein are barred from any claim or lien upon the Plaintiffs' subject real estate as defined by the property line depicted on the plat which is attached to this Complaint as Exhibit "A," and that any cloud, lien, or other incumbrance, if any, as to the said real estate be extinguished, and that the Plaintiffs' title to their parcel be accordingly

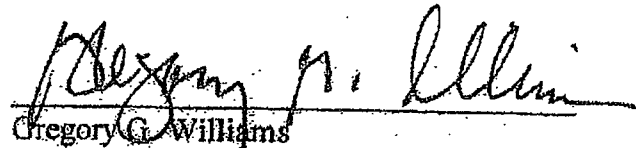
7 

quieted; and

d. For such other and further relief as this Honorable Court
deems just and proper.

GREGORY G. WILLIAMS, ATTORNEY, LLC

By:



Gregory G. Williams

1331 Richland Street

Post Office Box 727

Columbia, South Carolina 29202-0727

Ph. 803-799-2211

Fax 803-799-5555

Attorney for the Plaintiffs, Patrick J. Williams,
Frank J. Wallmeyer, and Mary B. Wallmeyer

July 13th, 2009
Columbia, South Carolina

[14224]

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) FOR THE FIRST JUDICIAL CIRCUIT

Patrick J. Williams, Frank J Wallmeyer) CIVIL ACTION NO. 2009-CP-38-1170
and Mary B. Wallmeyer,)
Plaintiffs,)

**AMENDED ANSWER AND
COUNTERCLAIM OF DEFENDANT
F. CARLISLE SMITH**

vs.)

F. Carlisle Smith and First Citizens Bank)
and Trust Company, Inc.,)
Defendants.)

NOW COMES THE DEFENDANT, F. Carlisle Smith, and for and as his Amended Answer and Counterclaim to the Complaint in the within action, would respectfully show unto the court:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter admitted, qualified or explained is denied.

FOR A SECOND DEFENSE

2. The allegations of Paragraph 1 of the Complaint require no answer of this Defendant; however, this Defendant specifically denies any allegation therein which alleges that this Defendant own on interest in the real property described in the complaint.

3. So much of the allegations of Paragraph 2 as allege the description of the property owned by this Defendant are admitted; the remaining allegations of this Paragraph of the Complaint are denied.

4. This Defendant lacks sufficient information to form a belief as to the truth or falsity of

ATTEST
Winnie B. L...
CLERK OF COURT
ORANGEBURG COUNTY

the allegations of Paragraph 3 of the Complaint and therefore denies the same and demands strict proof thereof.

5. The allegations of Paragraphs 4, 5 and 6 of the Complaint are admitted.

6. The allegations of Paragraph 7 of the Complaint require no answer of this Defendant.

7. This Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph 8 of the Complaint and therefore denies the same and demands strict proof thereof.

8. So much of the allegations of Paragraph 9 of the Complaint are admitted as assert that this Defendant purchased real property in Orangeburg County on or about December 31, 1986. Further answering, this Defendant would show that any recitations of acreage contained in any deeds are approximate, and that the land is swampland and had never been surveyed, and that such recitations of acreage were and are therefore not reliable. To the extent any allegations contained in Paragraph 9 remain unanswered, they are denied.

9. So much of the allegations of Paragraph 10 of the Complaint as assert that this Defendant purchased his property from L.B. Till, and that L.B. Till acquired his property from Augustus Boland and H.T. Boland are admitted; and reference is craved to the deeds referred to therein for their particular terms and import. Further answering, this Defendant would show that the recitations of acreage in said deeds are approximate, and that the land is swampland and had never been surveyed, and that the recitations of acreage were and are therefore not reliable.

10. The allegations of Paragraph 11 of the Complaint are denied. Further answering, this Defendant asserts that the boundaries of the two tracts at issue shall be determined at trial.

11. As to the allegations contained in Paragraph 12 of the Complaint, this Defendant

lacks sufficient information to form a belief as to whether or not the Plaintiff Williams has observed unauthorized activity on property which he claims to own and therefore denies such allegations and demands strict proof thereof. Further answering, this Defendant would deny that either he, his family members or other agents have conducted any activities on the Plaintiffs' property.

12. The allegations of Paragraph 13 of the Complaint are denied.

13. This Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegations of Paragraphs 14, 15 and 16 of the Complaint and therefore denies the same and demands strict proof thereof.

14. The allegations of Paragraph 17 of the Complaint are denied.

15. This Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegations of Paragraphs 18, 19, and 20 of the Complaint and therefore denies the same and demands strict proof thereof.

16. The allegations of Paragraph 21 of the Complaint are admitted.

17. This Defendant admits so much of the allegations of Paragraph 22 of the Complaint that alleges that the Plaintiffs have made an effort to convince others of their position. Further answering, this Defendant denies any allegations of Paragraph 22 that the "exhaustive data" presented by Plaintiffs have any basis in fact.

18. The allegations of Paragraphs 23, 24 and 25 of the Complaint are denied.

19. This Defendant admits only so much of the allegations of Paragraph 26 as aver that his property line is the old run of Dean Swamp Creek, but denies that it is as shown on Exhibit A attached to the Plaintiffs' Complaint.

20. The allegations of Paragraphs 27 and 28 of the Complaint are denied.

21. The allegations of Paragraph 29 of the Complaint require no answer of this Defendant.

22. The allegations of Paragraph 30 of the Complaint are denied.

FOR A THIRD DEFENSE AND
BY WAY OF COUNTERCLAIM

23. Paragraphs 1 through 22 hereafter are hereby incorporated and realleged as if set forth verbatim.

24. On or about December 31, 1986, L.B. Till conveyed to the Defendant, F. Carlisle Smith, real property located in Orangeburg County (the "Defendant Property") by way of a deed recorded December 31, 1986 in Book 521 at Page 685, Orangeburg County Records.

25. On or about April 13, 1978, Elizabeth Boland and Marie B. Timmons conveyed certain real property to the Plaintiffs by way of a deed recorded on April, 13, 1978 in Book 443 at Page 135, Orangeburg County Records.

26. The property so conveyed to Plaintiffs, hereafter referred to as the "Plaintiffs' Property", is more particularly described as follows:

All that certain piece, parcel, or tract of land, situate, lying, and being about two miles south of Springfield, in the County of Orangeburg, State of South Carolina, containing one thousand and fifty (1,050) acres, more or less, known as the Bean-Boland property and bounded now or formerly as follows: On the North by property of Milligan, Bailey and Porter, et al.; on the East by property of W. E. Bennett; on the South by the South Edisto River; and on the *West by Dean Swamp* [Emphasis added]

27. As set forth in their deed, as above described, the western boundary of the Plaintiffs' Property is Dean Swamp. This Defendant is informed and believes that Dean Swamp and its edge is located at the western edge of Plaintiffs' arable farmland, as will be proved at the trial of this action.

28. This Defendant has, since acquiring title to the Defendant Property in 1986, possessed

all the real property lying between Dean Swamp Creek and the edge of Plaintiffs' arable farmland and has possessed that real property in an exclusive, continuous, uninterrupted, visible and notorious manner for a period greater than ten (10) years and indeed greater than twenty (20) years.

29. From 1986 until 2008, a period greater than twenty (20) years, none of the Plaintiffs ever contested or questioned this Defendant's use of the real property lying between Dean Swamp Creek and the edge of Plaintiffs' arable farmland. During this period of exclusive and quiet possession, this Defendant enjoyed the said real property for hunting, camping, fishing, and other recreational uses; he constructed roads and a campsite therein and generally owned, possessed and maintained the said real property in the same manner as other recreational tracts are commonly enjoyed.

30. Based on the forgoing, this Defendant is informed and believes and respectfully submits that he is entitled to an order of this Court declaring that he is the owner, in fee simple absolute, of that real property lying between Dean Swamp Creek and edge of Plaintiffs' arable farmland, the true and accurate location of the boundaries of such real property to be determined at trial.

WHEREFORE, having amended his answer and asserted a counterclaim, the Defendant, F. Carlisle Smith, respectfully requests that this Court inquire into the matters set forth in the pleadings, and determine the boundary line between the Plaintiffs and this Defendant, and grant such other and further relief as this Court may deem just and proper.

[SIGNATURE ON FOLLOWING PAGE]

CALLISON TIGHE & ROBINSON, LLC


Michael W. Tighe
Andrew C. English, III
1812 Lincoln Street, Suite 200 (29201)
Post Office Box 1390
Columbia, SC 29202
Telephone: (803) 256-2371
Facsimile: (803) 256-6431

ATTORNEYS FOR DEFENDANT F.
CARLISLE SMITH

Columbia, South Carolina
October 2, 2009

5399.001\Amdended Answer and Counterclaim

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2009-CP-38-1170

Patrick J. Williams, Frank J Wallmeyer)
and Mary B. Wallmeyer,)
)

Plaintiffs,)
)

v.)

F. Carlisle Smith and First Citizens Bank)
and Trust Company, Inc.,)
)

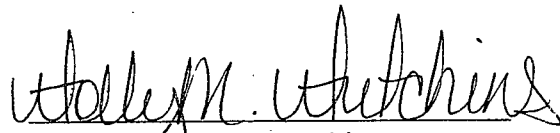
Defendants.)
)
)

CERTIFICATE OF SERVICE

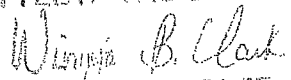
I, Holly M. Hutchins, an employee of Callison Tighe & Robinson, LLC, hereby certify that, on this date, I caused to be served a copy of the foregoing **Amended Answer and Counterclaim of Defendant F. Carlisle Smith** upon all counsel of record, by depositing a copy of the same in the United States Mail, with sufficient first-class postage affixed thereon:

Gregory G. Williams, Esquire
1331 Richland Street
Post Office Box 727
Columbia, SC 29202-0727
Attorney for Plaintiffs

October 2, 2009


Holly M. Hutchins

5399.001\COS

ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Patrick J. Williams, Frank J. Wallmeyer
and Mary B. Wallmeyer,
Plaintiffs,

vs.

F. Carlisle Smith and First Citizens Bank
and Trust Company, Inc.,
Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NUMBER 2009-CP-381170

NOTICE OF MOTION
AND MOTION FOR TRO

FILED FOR RECORD
CLERK OF COURT
ORANGEBURG
JUL 20 2009
15 PM 2:43

NOW COME THE PLAINTIFFS, by and through their undersigned attorney, and make their request for a Temporary Restraining Order ("TRO"). This request is supported by the Summons and Complaint previously filed in this case, as well as extensive discovery undertaken subsequent thereto, all of which are available if needed. Critical to this request for a TRO, and attached hereto, are the following: Affidavit of Patrick J. Williams, with Exhibits.

This lawsuit was commenced by the filing of a Summons and Complaint on July 17, 2009. Prior to filing suit, the Plaintiffs engaged a local surveyor of many years practice in Orangeburg County to research and determine the controversial property line separating the Plaintiffs' property from that of Defendant F. Carlisle Smith. After extensive research and on-site work, the surveyor prepared a plat for the property line, which plat was recorded in Book 00D146, Page 002, on July 10, 2009. A copy of the plat was attached as an exhibit to the Plaintiffs' Complaint. The plat is entirely consistent with all available data. Furthermore, the plat yields an acreage for the Plaintiffs which is consistent with the acreage indicated in their deed, and an acreage for the Defendant which is consistent with the acreage indicated in his deed. The Defendants have not provided an opposing plat in any manner whatsoever.

1

ATTEST: TRUE COPY
Wingy B. White
CLERK OF COURT
ORANGEBURG COUNTY

The Plaintiffs have enjoyed full, unfettered, unobstructed use of their real property up to the property line as depicted in the above-mentioned plat continuously since they purchased this property in 1978. The Plaintiffs have harvested timber from this area, and for many years, in addition to hunting this area themselves, they have leased the hunting rights for this area for income. Historically, as to previous owners of the two subject parcels, the property line as depicted in the above-mentioned plat has been recognized as the property line without controversy.

Inexplicably Defendant Smith has begun claiming property far beyond his rightful parcel. Mr. Smith has, upon information and belief, posted "No Trespassing" signs on property even beyond the property of the Plaintiffs, on property which belongs to yet other parties. Similarly, the Plaintiffs recently learned that Defendant Smith was attempting to bring some manner of criminal charges against the Plaintiffs, alleging they had presently harvested timber from his land. The timber harvesting and land in question, in fact, belonged to other owners, and the land and harvesting in question are even across a major paved road and far removed from Defendant Smith's parcel. Defendant Smith's allegations were summarily dismissed by the agency to whom he was making his complaint.

The events mentioned above are provided to give the Court a very brief background for the Plaintiffs' request for a Temporary Restraining Order. In earnest, the Plaintiffs are not aware of even a good-faith argument by which Defendant Smith can claim the remote and expansive acreages which he is apparently claiming.

Since this litigation has been pending, Defendant Smith has erected cables (gates) across the Plaintiffs' private roadways to their real estate on their side of the creek. After proper notice to Mr. Smith's attorney, the Plaintiffs removed the cables and no-trespassing signs. Several weeks ago, Mr.

Smith erected cables and no-trespassing signs on the Plaintiffs' property again. After notice to Mr. Smith's attorney, the Plaintiffs again removed the cables and no-trespassing signs. The Plaintiffs arranged for DNR officers to be present when they removed the cables, for fear of a violent confrontation. Mr. Smith approached in his vehicle while the removal was underway, but seemingly when he recognized those present, he sped away.

In recent days, Mr. Smith has again erected cables and no-trespassing signs, not only at the same access roads as before, but also at additional access points on the Plaintiffs' property. With these cables, he has, in effect, blocked the Plaintiffs from several hundred acres of their land on their side of the creek. There is no reasoning, logic, or legal authority whatsoever by which Defendant Smith can claim this property.

As noted, the Plaintiffs, through their attorney, have attempted to resolve this issue with Defendant Smith, through his attorney, all to no avail. In good faith, the Plaintiffs believe that further communications and pleas on this issue would be entirely futile.

The Plaintiffs seek this Temporary Restraining Order because of the immediate and irreparable harm threatened by Defendant Smith's activities as described above. There are at least three specific areas of pending harm.

First, Defendant Smith has cut trees, moved earth, and built roads on the Plaintiffs' side of the creek. Although the Plaintiffs have been hopeful Defendant Smith ceased these activities when litigation was filed, Defendant Smith's recent irrational activities have made the Plaintiffs worry that Defendant Smith will resume the tree-cutting, earth-moving, and similar activities.

Second, the Plaintiffs' hunting Lessees, because of the activities described above, are being denied access to hundreds of acres of land which they have leased and for which they have paid. The

Lessees are frustrated, and the Plaintiffs will likely have to refund a portion of the rent to the Lessees. The Plaintiffs earnestly believe that this monetary loss will be unrecoverable from Mr. Smith.

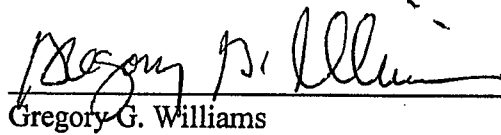
Third, and most importantly, the Plaintiffs are genuinely concerned and fearful about the possibility of a violent confrontation. Defendant Smith is apparently advancing farther and farther onto the Plaintiffs' property, blocking Plaintiffs' roadways with cables and posting no-trespassing signs. Defendant Smith has moved Plaintiffs' Lessees' hunting equipment and piled it outside the area he has most recently gated. All this activity by Mr. Smith is absolutely without basis, logic, or legal authority.

The hunting season for this location opened on August 15, and is fast-approaching the peak of the season (the "rut.") The Plaintiffs earnestly fear that if their Lessees and Defendant Smith were to encounter each other in the woods in this controversial area that an undesirable and unsafe confrontation could easily occur, certainly amounting to a threat of irreparable harm.

Accordingly, as Defendant Smith's actions create the immediate danger of irreparable harm in multiple ways, the Plaintiffs ask that this Court issue a Temporary Restraining Order against Defendant Smith, restraining him (and others under his influence or control) from erecting cables or gates, posting no-trespassing signs, hunting, interfering, or otherwise coming onto the Plaintiffs' land as defined by the above-mentioned plat prepared by Surveyor Richard Stroman, for any reason or purpose whatsoever; authorizing the Plaintiffs to remove cables, gates, no-trespassing signs, and similar from their land, as defined by Surveyor Stroman's plat; and authorizing the Plaintiffs to enjoy full and unfettered access for purposes of hunting and any and all other legal activities. Further, the Plaintiffs have prepared a petition for a temporary/permanent injunction, which will be filed presently and served on the Defendants, seeking to prevent Defendant Smith from engaging in

activities such as those described above until the Court makes a final determination in this case.

Respectfully submitted,



Gregory G. Williams

Gregory G. Williams, Attorney, LLC

P.O. Box 727 (1331 Richland Street)

Columbia, South Carolina 29202-0727

Phone: 803-799-2211 Fax: 803-799-5555

E-mail: lawgreg@bellsouth.net

Attorneys for Plaintiffs Patrick J. Williams, Frank J.

Wallmeyer, and Mary B. Wallmeyer

October 15th, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2009-CP-38-1170

FILED
OCT 23 PM 12:01

Patrick J. Williams, Frank J Wallmeyer)
and Mary B. Wallmeyer,)

Plaintiffs,)

v.)

F. Carlisle Smith and First Citizens Bank)
and Trust Company, Inc.,)

Defendants.)

NOTICE OF MOTION AND
MOTION TO DISSOLVE TRO
AS IMPROVIDENTLY GRANTED
AND REQUEST TO *VOIR DIRE*
THE COURT

TO: GREGORY G. WILLIAMS, ESQUIRE, ATTORNEY FOR THE PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that two (2) days after the service hereof, as soon thereafter as counsel may be heard, the Defendant, F. Carlisle Smith (Smith), by and through his undersigned counsel, will move this Honorable Court for an Order dissolving, as improvidently granted, the Temporary Retraining Order (TRO) entered, *ex parte*, on October 15, 2012, a copy of the same being received by counsel for Smith on October 16, 2012.

This motion is based upon the following:

As indicated above, the TRO was entered *ex parte* on October 15, 2012. Neither Smith nor his counsel were provided notice of the motion upon which the TRO issued, the affidavit attached to that motion, or notice of the hearing on the motion. The first counsel learned of the motion, affidavit, hearing and TRO was when he was provided a copy of the motion, affidavit and TRO by hand-delivery late on the afternoon of October 16, 2012. This, in spite of the fact that Plaintiffs' counsel's office is located no more than four (4) blocks from Smith's counsel's office, this matter was filed in 2009 and Smith's counsel and Plaintiffs' counsel have corresponded by letter, spoken

by telephone and exchanged electronic mail since the point at which the issues in this case were joined.

The affidavit attached to the TRO motion is dated October 3, 2012, twelve days prior to the hearing held in regard to that motion and the entry of the TRO. Further, copy of a letter from counsel to the Plaintiffs to the Court, delivered to Smith's counsel on October 16, 2012, refers to a "meeting" with the Court on October 15, 2012, and expresses Plaintiffs' counsel's appreciation for the Court "working [Plaintiffs' counsel] in to [its] schedule for the TRO hearing...." This letter says further that Plaintiffs have filed a motion for summary judgment and alludes to Plaintiffs' counsel's belief that he mentioned that Plaintiffs would be filing such a motion "after our [presumably the TRO] hearing yesterday...."

SCRCP, Rule 65(b) provides the "[no] temporary restraining order shall be granted without notice of motion for the order to the adverse party unless it clearly appears from specific facts shown by affidavit ... that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon."

The affidavit attached to the TRO motion is dated October 3, 2012. Between October 3, 2012 and the date of the TRO "hearing" there passed a total of eight business days and twelve calendar days, more than sufficient time to provide Smith and his counsel with notice and opportunity to be heard.

"We have stated repeatedly the *ex parte* orders are reserved for those *rare occasions* where no adverse interest exists or where exigent circumstances dictate that action be taken prematurely." *In re Kenneth W. Thornton*, 241 S.C. 1, 3, 260 S.E.2d 179, 180 (1979), quoting *Herring v. Credit Bureau of Cola.*, 272 S.C. 368, 252 S.E.2d 123 (1979) (emphasis added).

Smith would submit the circumstances surrounding the entry of the TRO were neither rare, exigent or presented circumstances which dictated action be taken prematurely. Smith would respectfully submit the foregoing is conclusively established by the date of the affidavit submitted in support of the TRO motion.

Rule 65 further provides the TRO order shall define the injury and state why it is irreparable and why the order was granted without notice. The TRO order contains none of these required findings. It simply says, in conclusory fashion, that based on the October 3, 2012, affidavit, there is a "strong likelihood that the Plaintiffs ... will suffer immediate and irreparable harm."

Rule 65 also provides any TRO entered *ex parte* must be endorsed with the date and hour of issuance. The TRO order contains no endorsement as to the hour it was issued.

The TRO order sets a date for a "full hearing" on a temporary/permanent injunction for October 24, 2012, at 2:30 p.m. Discovery in this matter is not completed. Smith's counsel has been unsuccessfully attempting to schedule the deposition of the Plaintiff for some time. This matter is simply not ripe to be heard on the merits on October 24, 2012, and the Plaintiff should not have been provided a short-cut to the merits by way of the grant of an *ex parte* TRO, especially given the fact that there is no cause of action in Plaintiffs' complaint seeking a temporary or permanent injunction.

Finally, the issue in this case is the location of a property line separating the parties' property. The *ex parte* TRO provides "[u]ntil such time as this Court rules otherwise, the subject property line ... shall be" the property line advocated by the Plaintiffs. This declaration deals directly with the merits of the claims of the parties and goes well beyond anything necessary or provident in the issuance of the instant or any TRO.

Based upon the foregoing, Smith respectfully requests the Court dissolve the TRO entered

October 15, 2012, as improvidently granted.

Smith also respectfully submits the manner in which the TRO was entered may implicate Rule 11 (a) concerning consultation among counsel prior to the filing of any motion, and Rule 501, Judicial Conduct, Canon 3(B)(7) regarding *ex parte* communications. Accordingly, Smith respectfully requests that if a court reporter was present at the October 15, 2012, hearing, a transcript of that hearing be immediately prepared and a copy provided to Smith's counsel. If no court reporter was present, and thus no transcript can be prepared, Smith respectfully requests he be so informed. Finally, Smith requests the opportunity to *voir dire* the Court in regard to any communications, whether oral, written, electronic or otherwise, between the Court and the Plaintiffs or their counsel.

CALLISON TIGHE & ROBINSON, LLC



Andrew C. English, III, Esq.

Louis H. Lang, Esq.

1812 Lincoln Street, Suite 200 (29201)

Post Office Box 1390

Columbia, SC 29202

Telephone: (803) 256-2371

Facsimile: (803) 256-6431

Attorneys for Defendant F. Carlisle Smith

Columbia, South Carolina
October 19, 2012
5399.001\Motion to Dissolve TRO

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CIVIL ACTION NO. 2009-CP-38-1170

Patrick J. Williams, Frank J Wallmeyer)
and Mary B. Wallmeyer,)
Plaintiffs,)

CERTIFICATE OF SERVICE

vs.)

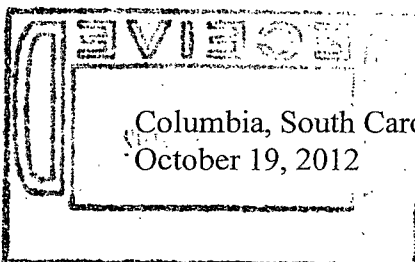
F. Carlisle Smith and First Citizens Bank)
and Trust Company, Inc.,)
Defendants.)

I, Holly H. Rikard, an employee of Callison Tighe & Robinson, LLC, hereby certify that, on this date, I caused to be served a copy of the foregoing **Notice of Motion and Motion to Dissolve TRO as Improvidently Granted and Request to Voir Dire the Court** upon all counsel of record, by depositing a copy of the same in the United States Mail, with sufficient first-class postage affixed thereon:

Gregory G. Williams, Esquire
1331 Richland Street
Post Office Box 727
Columbia, SC 29202-0727
Attorney for Plaintiffs

FILED FOR RECORD
OCT 23 PM 12:07
CLERK OF COURT
ORANGE COUNTY, SC


Holly H. Rikard



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) FOR THE FIRST JUDICIAL CIRCUIT

Patrick J. Williams, Frank J Wallmeyer
and Mary B. Wallmeyer,

Plaintiffs,

v.

F. Carlisle Smith and First Citizens Bank
and Trust Company, Inc.,

Defendants.

Case No. 2009-CP-38-1170

NOTICE OF MOTION AND MOTION
TO ALTER OR AMEND JUDGMENT
PURSUANT TO SCRPC, RULE 59(e)

FILED
CLERK
COURT
ORANGEBURG, SC

2013 OCT 16 PM 12:00

TO: GREGORY G. WILLIAMS, ESQUIRE, ATTORNEY FOR THE PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service, as soon as counsel may be heard, the Defendant, F. Carlisle Smith (Smith), through his undersigned counsel, will move this Honorable Court for an Order altering or amending the Order received by the undersigned counsel on October 12, 2013. Counsel has not received written notice of the entry of this order, but assumes it has been or will shortly be entered.

This motion is based on the following argument.

A. Introduction.

If the "run" of Dean Swamp Creek was "altered," the plaintiffs' claim the boundary between the two properties is where the Deans Swamp Creek was previously located cannot be the boundary line between the two properties.

B. Argument.

1. Nature of action.

Although the complaint is cast as a "quiet title action," this is a trespass to title case.

ATTEST: TRUE COPY

Winnia B. Clark

CLERK OF THE COURT
ORANGEBURG COUNTY

"An action brought for the primary purpose of determining title to disputed land is in the nature of a trespass action (sic) to try title, which is an action at law." *Watson v. Suggs*, 313 S.C. 291, 293, 437 S.E.2d 172, 173 (Ct. App. 1993). In a trespass to try title case, the burden is on the plaintiff to prove title by a preponderance of the evidence. *Kirkland v. Gross*, 286 S.C. 193, 332 S.E.2d 546 (Ct. App. 1985).

Plaintiffs' burden is to show title by one or a combination of four methods. *Watson*, 313 S.C. at 294, 437 S.E.2d at 173. These methods are: (1) showing a grant from the state to someone and successive deeds to the plaintiff (perfect legal paper title method), (2) tracing title to a common source from whom both he and the defendant claim through separate chains of title, (3) plaintiff showing he and those under whom he claims, have been in actual, hostile, exclusive, and continuous possession of the land adversely to the defendant for twenty years, or (4) plaintiff showing he alone or with those from whom he has inherited have been in actual, hostile, exclusive, and continuous possession of the land adversely to the defendant for ten years. *Id.*

Smith respectfully submits plaintiffs failed to carry their burden of proof and the Court's order should be altered or amended accordingly.

2. Deeds in plaintiffs' chain.

The oldest deed in the Williams' chain of title introduced is dated January 13, 1888 and is recorded in the Office of the ROD for Orangeburg County at deed book 22, page 284. The grantee of this deed is P.W. Farrell, the grantor Walter C. Jumper. The property conveyed is described as containing 765 acres, being bounded on the north by lands of Joe Milligan and Ephraim Carmichael; on the east by lands of W.A. Rice and Ann C. Porter; on the south by lands of Ann C. Porter and the waters of the South Edisto River; and on the west by the waters of Dean

Swamp Creek.

The next deed in Williams' chain is dated January 28, 1889 and is recorded in the Office of the ROD for Orangeburg County at deed book 22, page 536. This deed from Ann Porter to P. W. Farrell describes the property conveyed as containing 286 acres, being bounded on the north by lands of P.W. Farrell and E. M. Gantt and "brother;" on the east by lands of Mrs. Loyd Morgan; on the south by waters of South Edisto River; and on the west by lands of P.W. Farrell.

Every deed in the Williams' chain following these two deeds describes the property conveyed as containing 1050 or 1051 acres (765 acres plus 286 acres) and locates the property by reference to adjoining property. Each subsequent deed, except for the deed into Williams, describes the western boundary of the property as the waters or run of Dean Swamp Creek.

The oldest deeds in Williams' chain of title date to 1888 and 1889. None of Williams' proof speaks to the location of Dean Swamp Creek at that time or before.

The first deed in Williams chain, which describes a conveyance of 765 acres, describes the western boundary as Dean Swamp Creek, while the next conveyance of 286 acres, (the total being the 1051 acres ultimately conveyed to Williams), describes its western boundary as the lands of P. W. Farrell, the grantee of the 1888 deed. Smith's wetlands scientist testified the approximate acreage of the upland areas on the Steadman Survey was approximately 687 acres. This comports with the original grant of 765 acres. Given the description of the 1889-286 acre grant, none of that property was bounded by Dean Swamp Creek - it must be located to the east of the 1888 grant and well to the east of the location of Dean Swamp Creek in 1888.

Further, the last deed in plaintiffs' chain, does not describe the western boundary as the "run" or "waters" of Dean Swamp Creek, but rather as "Dean Swamp."

"The paramount and cardinal rule of construction of a deed is to ascertain the intention of the grantor" *Rhodes v. Black*, 170 S.C. 193, 200, 170 S.E. 158, 159 (1933). When a swamp or stream is given in a deed as the boundary of property, the grantor will be presumed to have intended the middle of the stream or in the case of a swamp, the middle of the stream in the swamp, absent evidence of a contrary intention. *Wheeler v. Wheeler*, 111 S.C. 87, 96 S.E. 714 (1918). Emphasis added.

Here, for over 100 years the western boundary of the plaintiffs' tract was described as the "run" or "waters" of Dean Swamp Creek. The last deed in the chain, however, describes the western boundary as "Dean Swamp." The implication of this change is clear. Either it was in recognition of the changed location of Dean Swamp Creek, or the grantor intended an edge of Dean Swamp to be the western boundary. Smith denies there has been any change in the course or run of Dean Swamp Creek during the period of his ownership of the property. However, there is no dispute the construction of Furtick Road in the late 1940's necessarily changed the course of the water flow across the property.

Smith respectfully submits the Order should be altered or amended accordingly.

3. Dean Swamp Creek.

The Order concludes the "original run of Dean Swamp Creek has been deliberately altered by human efforts."

Plaintiffs original position was Smith altered the "original run." The evidence adduced however, showed plaintiffs theory to be incorrect. There was no dispute the evidence showed the location of the Bird or Tree House, below which is located what the Order calls "a sizeable barrier, dam or dike built across the creek" is on property formerly owned by E.B. Atkins and

was constructed by E.B. Atkins during the time he owned the adjacent tract. There is no credible evidence the structure to which the Order refers is a "dam" or "dike" or "barrier." Further, the survey previously done on the adjacent property formerly owned by E.B. Atkins by plaintiffs' own surveyor shows no change in the course of the creek. Plaintiffs' also failed to join E.B. Atkins and his successor-in-interest as parties, their interests being affected by the Court's Order.

Finally, there was no credible evidence to establish Smith had anything to do with the non-existent "alteration" in the course or run of the creek.

Smith respectfully submits the Order should be altered or amended to find no credible evidence showing a change in the course or run of the creek and similarly there is no credible evidence showing Smith had anything to do with any such non-existence change.

4. Acreage calculations.

The Order places significant weight on acreage calculations. However, "it is ... a proposition too elementary for any citation of authority that boundaries govern acreage and inaccuracies relating to the area of a tract are generally immaterial." *Brownlee, et al. v. Miller, et al.*, 208 S.C. 252, 260, 37 S.E. 2d 658, 661 (1946).

The property has always been described by referring to adjacent property with acreage recitations being "more or less." Neither property was completely surveyed prior to the conveyances to plaintiffs and Smith. Accordingly Smith respectfully submits acreage estimates reflected in deeds in the chains-of-title to the properties is irrelevant and the Order should be altered or amended accordingly.

5. Adverse possession.

The order refers to deer stands placed on the property by Smith and concludes none were in place for the requisite 10 year color-of-title or 20 year presumption-of-grant adverse possession periods.

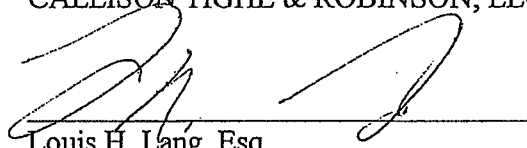
However, Smith testified he constructed what he calls the "condominium" and "swamp" campsite in the late 1980's, over 20 years prior to the filing of this action. In addition, Smith cleared a field and built roads on the disputed portion of the property in the 1990's. In addition, in the years he used the disputed property, Smith never saw anyone else, other than his own guests and family, on that property.

Smith respectfully submits he established the requisite elements of adverse possession and the Order should be altered or amended accordingly.

C. Conclusion.

Smith respectfully submits the Order should be altered or amended to establish the boundary line between the plaintiffs' and Smith's property as set out in the proposed order submitted by Smith – that boundary being the line denominated as the "Edge of Swamp" on the Steadman Survey.

CALLISON TIGHE & ROBINSON, LLC



Louis H. Lang, Esq.

1812 Lincoln Street, 2nd Floor

Post Office Box 1390

Columbia, SC 29202-1390

Telephone: (803) 404-6900

Facsimile: (803) 404-6902

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina
October 14, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

Patrick J. Williams, Frank J Wallmeyer)
and Mary B. Wallmeyer,)

Plaintiffs,)

vs.)

F. Carlisle Smith and First Citizens Bank)
and Trust Company, Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2009-CP-38-1170

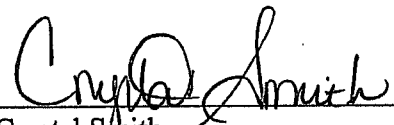
CERTIFICATE OF SERVICE

FILED FOR RECORD
WINNIEA J. CLARK
CLERK OF COURT
ORANGEBURG, SC

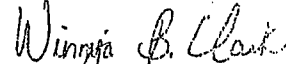
2013 OCT 16 PM 12:09

I, Crystal Smith, an employee of Callison Tighe & Robinson, LLC, hereby certify that, on this date, I caused to be served a copy of the foregoing **Notice of Motion and Motion to Alter or Amend Judgment pursuant to SCRCP, Rule 59(e)**, upon counsel of record, by depositing a copy of the same in the United States Mail, with sufficient first-class postage affixed thereon:

Gregory G. Williams, Esq.
1331 Richland St.
PO Box 727
Columbia SC 29202-0727
Attorney for Plaintiffs


Crystal Smith

Columbia, South Carolina
October 14, 2013

ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY, SC

In The Matter Of:
Patrick J. Williams, et al vs
F. Carlisle Smith, et al

Trial
August 26, 2013

A. William Roberts, Jr. and Associates
We're About Service...Fast, Accurate and Friendly
(800) 743-DEPO
www.scheduledepo.com



A. William Roberts, Jr. & Associates
court reporting | videography | trial presentation | nationwide scheduling
scheduledepo.com | 800-743-DEPO

Original File Trial_-_130826.TXT
Min-U-Script® with Word Index

1 And there's case law that says that, if it's not
2 amended or so forth, than a party who pleads a fact
3 like that is bound by that.

4 Naturally, the testimony that we
5 illicit from witnesses and the direction of the
6 trial, would be greatly effected by whether or not
7 they, in fact, are bound by that admission. And so
8 that's why I think it's appropriate at this --
9 before we get into witness and testimony, it's
10 appropriate to ask for the Court's thinking on
11 that.

12 THE COURT: Well, if he's admitted in
13 the answer, and I haven't looked back at it and I
14 can certainly look at it this morning, then you
15 know, it's something we have to take up, maybe an
16 estoppel issue. But let me hear from Mr. Lang
17 first and hear what he's got to say.

18 MR. LANG: Your Honor, the question is
19 where was the old run of the creek? That's the
20 issue in the case. They say it's where the
21 strobbling line is, we say it's not there. And
22 that's the whole point of the case. I mean, that's
23 the sink line of this whole case is where that was.
24 And there's some case law, which I'm sure I'll
25 invite your attention to at some point in time, but

Trial - August 26, 2013

10

1 to last three days, I think that's what's the
2 timeframe we set aside was, and I don't think I'm
3 going to make these folks, witnesses, yours or his,
4 sit back here in the jury room or out there in the
5 hall for three days while they wait for your call.
6 So I'm going to deny that motion.

7 MR. LANG: Thank you, Your Honor.

8 MR. WILLIAMS: Mr. Frazier, come on
9 around. Up there, please, sir.

10 RANDY FRAZIER

11 being first duly sworn, testified as follows:

12 EXAMINATION

13 BY MR. WILLIAMS:

14 Q. Is that microphone on, Mr. Frazier?
15 Speak up, I don't think it's on. Just speak up
16 nice and loud, please.

17 A. Okay.

18 Q. Mr. Frazier, please give full name and
19 spell your last name for the court reporter.

20 A. Randy Jack Frazier. F-R-A-Z-I-E-R.

21 Q. What's your occupation, Mr. Frazier?

22 A. I'm currently retired.

23 Q. What did you do before you retired?

24 A. I worked mostly in mechanical work,
25 construction work.

1 Q. How old are you, Mr. Frazier?

2 A. 57.

3 Q. And where do you presently live?

4 A. I presently live at Bonneau.

5 Q. At Bonneau?

6 A. Bonneau Beach.

7 Q. Bonneau Beach?

8 A. Yes, sir.

9 Q. Where did you grow up?

10 A. Williston, South Carolina.

11 Q. Williston, South Carolina. How close
12 is Williston to Springfield?

13 A. 10 miles.

14 Q. How close is -- I'm just going to point
15 to this diagram over here on the stand where the
16 Edisto River goes under Number 39 --

17 A. Yes, sir.

18 Q. -- how close is Williston to that?

19 A. About eight miles.

20 Q. About eight miles?

21 A. Yes, sir.

22 Q. How long did you live in the Williston
23 area, Mr. Frazier?

24 A. Well, I was living in Williston -- I
25 was born in Orangeburg, but my family was living in

1 Williston at the time. And so my whole high school
2 years and beyond I stayed in Williston on up into
3 my latter 30 years, I'd say, before I started going
4 on the road to do jobs. You know how construction
5 work would work here --

6 Q. Yes, sir.

7 A. -- as you go on job and I'd come back
8 to Williston. Williston was my home location.

9 Q. Yes, sir. Did you grow up in
10 Williston?

11 A. Yes, sir.

12 Q. And I know you explained about your
13 occupation and moving around with it. How old were
14 you when you were still living in Williston full
15 time, so to speak, up to what age?

16 A. Approximately 33 or 34 years old before
17 I got -- would go on the road. And that would
18 sometimes be two months or six months that I would
19 come and relocate, you know, essentially.

20 Q. Yes, sir.

21 A. I'm going to be honest with you, I'd
22 work out -- I would stay with my parents' house
23 when I was -- I went to work with construction when
24 I didn't have a home at this time. I finally
25 bought a home in Williston. But after I, you

1 know -- after my 30's.

2 Q. I gotcha. Do you have familiarity with
3 the controversy that we're here about today?

4 A. Yes, sir, I do.

5 Q. Okay. In general, how is that you have
6 familiarity with this controversy?

7 A. Because I -- me and my father and
8 grandfather frequently fished the river. In fact,
9 we frequently fished it so often that my daddy made
10 wooden boats, and specifically river boats, that we
11 kept one chain at Edisto River at that Springfield
12 bridge.

13 Q. Now, I want to back up and sort of take
14 it one step at a time.

15 A. Okay.

16 Q. When you say you fished in the river,
17 be more specific about the location, please.

18 A. All right, sir. We fished, the way I
19 remember it, we fished up and down the river, but
20 we had our favorite spots where we did fish.
21 Mainly --

22 Q. Where was your starting point, Mr.
23 Frazier?

24 A. Springfield Bridge on the Edisto River
25 swamp.

1 Q. Are you talking about the Number 39
2 bridge?

3 A. Yes, sir, I am.

4 Q. All right. And now go ahead about what
5 you were saying.

6 A. We mainly would fish up river, you
7 know, because of, you know, if you had motor
8 trouble or any problems or something like that.
9 And I'm very familiar with that river.

10 Q. All right, sir. Over what span in your
11 age did you fish in that river?

12 A. As far back as I remember when I was a
13 little boy sitting on the cooler between my dad and
14 my granddad in the middle of the boat. And right
15 up on until I started working out of town.
16 Sometimes when I had every opportunity after that
17 time, I would still fish the river because I was
18 raised fishing the river.

19 Q. During those years when you were
20 fishing in the river, Mr. Frazier, what would you
21 estimate would be the frequency, how often would
22 you fish in the river?

23 A. Sir, with the days when the afternoons
24 was long, my dad would work shift where we could go
25 fishing as many as three times a week some weeks.

1 You know, we fished the river quite often.

2 Q. All right, sir. And again, from the
3 Edisto bridge there on 39, describe where you
4 fished up and down the river?

5 A. Well, like I said, we had our favorite
6 holes. And the creek we're talking about was one
7 of our favorite holes, being it was a contributory
8 to the river, it was a good feeding area for fish
9 to locate. So we wouldn't bypass that place.

10 Q. Hold on a second with that. I believe
11 you said you fished in a boat?

12 A. Yes, sir.

13 Q. Where did you keep the boat or your dad
14 and granddad?

15 A. All right. We kept a boat for years
16 chained up under the bridge at the Edisto -- at the
17 bridge on 39 outside of Springfield, about
18 two miles outside of Springfield, 39 bridge.

19 Q. Did you use the motor?

20 A. We would tote a three-horse motor with
21 us when we'd go. Which we'd remove the motor, take
22 it home. If we'd go fishing, we'd carry it because
23 it was a small motor. I remember it was a
24 three-horse motor.

25 Q. All right, sir. Now, let me ask you

1 this: When you were fishing during those years in
2 that area, did you have occasion to observe a creek
3 flowing into the Edisto River?

4 A. Yes, sir.

5 Q. Tell the Court about that, please?

6 A. About that creek?

7 Q. Yes, sir.

8 A. It was just one of our favorite spots
9 because it -- any time -- I call it a contributory
10 to the river. Just made for a good fishing area.
11 There was enough stream of water where I guess it
12 -- the fish just like to gather there, you know,
13 with the current and stuff. Now, we had other
14 fishing holes, but we wouldn't bypass that hole.
15 That was a good hole.

16 Q. Do you know what creek that was, that
17 you're -- what creek was it that you're talking
18 about right now?

19 A. Sir, I can't answer exactly the name of
20 that creek because I do not know the answer to the
21 name of the creek, but I know the location of the
22 creek.

23 Q. Where was the location? Tell me in
24 terms of upstream or downstream from the bridge.

25 A. I'm going to say approximately one mile

1 upstream, that's approximate, from the 39 bridge.

2 Q. Yes, sir. Were you familiar with any
3 other creeks flowing into the river at that area?

4 A. Not any, no, sir. Not upriver, no,
5 sir.

6 Q. I want to ask you, please, Mr. Frazier,
7 to step down a second and go over to that chart.
8 And just put a circle of your best estimate of
9 where that creek flowed into the river; that chart
10 on the left.

11 A. This being the bridge?

12 Q. Yes, sir, that being Number 39 and the
13 bridge.

14 A. This is the river.

15 Q. Yes, sir.

16 A. You go this river and around these
17 bends and all and the creek was coming up on the
18 right side. I'm saying right here, this area right
19 here on the right. Now, this is approximately a
20 mile I'm saying, but I can't say, you know, with
21 the turns in the rivers exactly, if I'm saying the
22 way the crow flies or that's a mile, see. But
23 that's the only creek I have knowledge of coming
24 from this river.

25 Q. All right, sir. Would you put your

Trial - August 26, 2013

18

1 initials by that circle, please.

2 A. (Complying).

3 Q. Thank you, sir.

4 A. Yes, sir. Be seated again, sir?

5 Q. Yes, sir, please. Did you ever have
6 occasion, Mr. Frazier, if -- looking at that
7 diagram, again, and the bridge that crosses the
8 river on Number 39, did you have occasion to
9 observe whether there were any creeks flowing under
10 Highway 39 going in the direction of Springfield?

11 A. Any type of creek?

12 Q. Yes, sir.

13 A. None, but that one.

14 Q. All right, sir.

15 A. I'm not aware of any other creek.

16 MR. WILLIAMS: That's all the questions
17 that I have. Please answer any questions that
18 Mr. Lang has.

19 THE WITNESS: All right, sir.

20 MR. LANG: May it please the Court.

21 THE COURT: Yes, sir.

22 EXAMINATION

23 BY MR. LANG:

24 Q. Mr. Frazier, good morning. My name is
25 Louis Lang. And I represent the defendants in this

Trial - August 26, 2013

26

1 might have been 34, I can't determine exactly.

2 Q. So it would be about the '80s, mid
3 '80's or so?

4 A. Yes, sir, I was working at the Savannah
5 River Site during that time.

6 MR. LANG: Beg the Court's indulgence
7 for a moment.

8 BY MR. LANG:

9 Q. Let me ask you just a couple of more
10 questions, Mr. Frazier.

11 A. Okay.

12 Q. Did you ever go up beyond this creek,
13 as you pointed out?

14 A. Yes, sir.

15 Q. All right. And your testimony is you
16 saw no opening like this creek to the east and
17 going down toward 39; is that right?

18 A. Nothing, but -- you know, there's a
19 pond of eddy here and there, but there wouldn't be
20 a creek flow into it.

21 MR. LANG: No further questions.

22 THE COURT: Redirect?

23 RE-EXAMINATION

24 BY MR. WILLIAMS:

25 Q. Just a couple of questions on sort of

1 following up, Mr. Frazier.

2 A. Yes, sir.

3 Q. Mr. Lang asked you about going
4 downstream on the Edisto River.

5 A. Yes, sir.

6 Q. How far downstream did you go?

7 A. We've been quite a ways down it. I
8 can't say in miles, but quite a run.

9 Q. Did you ever go as far as the next
10 bridge, which I believe is a highway going from
11 Springfield to Blackville?

12 A. No, nowhere near that distance, no,
13 sir.

14 Q. All right, sir. So I'm sorry, tell me
15 again, a mile or two, what would you say how far
16 down would you say you went?

17 A. I'd say about a couple of miles down
18 there was a creek to the right, we would go down to
19 it to fish it.

20 Q. Did that creek have a nickname?

21 A. We didn't have a name for it. It was a
22 small entrance, but it would go back in through
23 there and it would open up and we would fish in
24 there.

25 Q. Yes, sir.

1 A. But it was on -- going down river and
2 it would bear off to the right.

3 Q. Well, again, I'm pointing at the
4 diagram. And going down the river, as far as you
5 went, did you see any creeks coming in from, I
6 guess, that would be the east direction from your
7 left?

8 A. The only -- no, sir, the only thing
9 you'd find is if you turned the river, you'd find
10 some eddies, because we would jack fish those where
11 the water -- current wasn't moving, you would have
12 an eddy, you know, where it --

13 Q. Yes, sir. Now, just for the sake of
14 the record, Mr. Frazier, explain the difference
15 between an eddy and a creek?

16 A. You have moving water in the creek.
17 And the eddy is a place where the river turns and
18 the water is out of the flow of the river. And we
19 used to jack fish a lot in there, but that's the
20 kind of area you look to fish for jack fish. Your
21 current was here, there'd be a dip over there on
22 the faucet side, where you wouldn't have the flow
23 because you couldn't fish up the fast-moving
24 current with corks for jack fish.

25 Q. All right, sir. Now, going upstream

Trial - August 26, 2013

29

1 from the bridge --

2 A. Yes, sir.

3 Q. -- this place where you have testified
4 about seeing the creek.

5 A. Yes, sir.

6 Q. Did that spot change from time to time
7 or was it the same spot as you remember it every
8 time you went there?

9 A. I've never noticed it to change. The
10 only change would be, would be level of the river.
11 That's the only thing that would change the
12 appearance of it.

13 MR. WILLIAMS: All right, sir, that's
14 all I have. Thank you, sir.

15 THE COURT: May this witness be
16 excused?

17 MR. WILLIAMS: Yes, sir. I would ask
18 that, please.

19 MR. LANG: No objection.

20 THE COURT: You may be excused.

21 MR. WILLIAMS: Thank you, Mr. Frazier.
22 Next Your Honor we would call Mr. Briggs Salley.

23 HENRY BRIGGS SALLEY

24 being first duly sworn, testified as follows:

25 THE COURT: Would you state your full

1 name for the record.

2 THE WITNESS: Henry Briggs Salley.

3 EXAMINATION

4 BY MR. WILLIAMS:

5 Q. Morning, Mr. Salley.

6 A. Uh-huh.

7 Q. I believe you already gave your full
8 name. Would you spell your last name for the court
9 reporter?

10 A. S-A-L-L-E-Y.

11 Q. What is your occupation, Mr. Salley?

12 A. I'm a farmer.

13 Q. How long have you been a farmer?

14 A. 45, 50 years, all my life.

15 Q. All right, sir. How old are you,
16 Mr. Salley?

17 A. 72.

18 Q. Where do you live?

19 A. In Salley.

20 Q. The town of Salley?

21 A. Right.

22 Q. All right, sir. How long have you lived
23 there?

24 A. All my life.

25 Q. Have you familiar with the events

1 surrounding this controversy?

2 A. Somewhat.

3 Q. All right, sir. Let me ask you looking
4 at this diagram on the left over here. Have you
5 farmed land in that area?

6 A. I farmed the open land on Mr. Pat
7 Williams' farm.

8 Q. All right, sir.

9 A. It's just east of --

10 Q. This --

11 A. Dean Swamp Creek.

12 Q. Let's refer to this line here as sort
13 of our reference point. And I think on that
14 diagram it's marked as the Stroman line, Stroman
15 being the name of the surveyor. So using this
16 Stroman line as a reference point, where did you
17 farm land?

18 A. I'm farming the land that's east of
19 that of -- of all those drawings.

20 Q. All right, sir. And how long have you
21 farmed that land?

22 A. I started either -- I think it was '88.

23 Q. '88?

24 A. Right.

25 Q. Do you own land in that area?

1 A. I own land adjoining that property,
2 between there and Springfield.

3 Q. All right, sir. And do you farm some
4 other land that you don't own?

5 A. Oh, yes, uh-huh.

6 Q. And in this area, tell me about that
7 land that you don't own.

8 A. The land that belonged to Mr. Williams?

9 Q. Yes, sir.

10 A. It's -- I farm about 85 acres of that
11 land and --

12 Q. Land that belongs to Mr. Williams?

13 A. Right.

14 Q. How long have you been farming that?

15 A. Since about '88.

16 Q. And I tell you what, if you will, I'm
17 going to probably ask you to come down a couple
18 times. Would you come down to mark, please, on
19 that drawing just -- put a couple of slash marks in
20 the general area of where you farm, the part that
21 belongs to Mr. Williams.

22 A. Is this his property line up here?
23 (Indicating).

24 Q. Well, that's part of the debate, but
25 anyway.

1 A. I'm farming -- you want me to draw what
2 I'm farming?

3 Q. Just draw a few slash marks to sort of
4 indicate the area.

5 A. (Complying).

6 Q. And put your initials by that, please.

7 A. (Complying).

8 Q. And while you're up here, have you been
9 involved in any other agricultural activities up in
10 that area on Mr. Williams' land?

11 A. I planted trees for him on this other
12 land that I gather is somewhere in here.

13 Q. All right, sir.

14 A. From the highway all the way west --
15 the land that was cleared before, I planted pine
16 trees on it approximately '88 or '89.

17 Q. All right, sir. In other words, you
18 did that for hire for plaintiff Pat Williams?

19 A. That's right.

20 Q. And would you just put some slash marks
21 sort of generally in the area of where you planted
22 the pine trees, please, sir.

23 A. I guess along here. (Indicating).

24 Q. All right, sir. And you mentioned that
25 this area started at the highway. Which highway is

1 that?

2 A. 39.

3 Q. Okey doke. And if you will put your
4 initials by those marks that you just put up there,
5 please.

6 A. (Complying).

7 Q. All right. And you can have a seat for
8 a minute, but I'm going to ask you to come back up
9 in a minute.

10 Now, I'm going to ask you to look,
11 Mr. Salley, at this little block on this diagram
12 and I'm pointing to a block that is just west --
13 it's the top of the diagram just west of what we're
14 calling the Stroman line --

15 A. Right.

16 Q. -- are you familiar with that parcel?

17 A. Yes, I am, uh-huh..

18 Q. And do you know who owned that parcel?

19 A. Can I give you a little history of what
20 I know about the land?

21 Q. Yes, sir, please.

22 A. That land was owned by a cousin of
23 mine, Ms. Fulmer.

24 Q. And you're talking -- let me clarify,
25 you're talking specifically about that block --

1 A. That little block of land.

2 Q. Yes, sir.

3 A. And I used to farm all of her land
4 except that, but I was familiar with that tract.
5 And had a friend that farmed it back in the early
6 '80's. When her grandson got ready to sell that
7 land, I was the listing agent for it and helped him
8 sell that property to Mr. Adkins. And since then
9 Mr. Adkins has sold it to another gentleman from
10 Columbia, I don't remember his name.

11 Q. All right, sir. Let me go back a
12 minute and get some clarification. You mentioned
13 that you were the listing agent?

14 A. Right.

15 Q. So in addition to your farming --

16 A. Right.

17 Q. -- did you have another occupation?

18 A. Well, just from time to time, I'd list
19 the property and a friend of mine usually did the
20 selling that I had my sales license with.

21 Q. Who was the agent or broker with whom
22 you had --

23 A. Kennerly Real Estate.

24 Q. Kennerly?

25 A. Right.

1 Q. When you had that property listed, did
2 you have occasion to visit that property?

3 A. Yes, we went on it. And right after it
4 sold, I went on even further.

5 Q. Yes, sir. How many times would you say
6 you visited down on that property?

7 A. Maybe three times.

8 Q. All right, sir. Did you visit it
9 before Mr. Adkins bought it?

10 A. Right.

11 Q. And did you visit it after he bought
12 it?

13 A. I visited it -- got the best look at it
14 about the time he started to do work on the place.

15 Q. And do you know -- do you have
16 knowledge when you were visiting that property, did
17 defendant Carlisle Smith already own his parcel
18 there?

19 A. Right, he did.

20 Q. Okey doke. Tell us what you observed
21 when you visited that property that stands out in
22 your mind?

23 A. There -- it looked like equipment had
24 been run down along the creek. And I don't know
25 what took place there, but it hadn't been done, you

1 know, within the last year or two, it had been
2 several years before. And back up on the edge of
3 the swamp, there was a pit that somebody had dug
4 clay out of. And when Mr. Adkins got it, he
5 further went to that same pit and dug dirt and made
6 him a road all the way to the creek.

7 But down at the creek, there had
8 already been some dirt moved around down at the
9 creek. I don't know what was done or how, but it
10 had been changed some. And also, there were
11 ribbons up through the -- through the property
12 where somebody had run different lines like they
13 were running survey lines that had been done, you
14 know, a year or so prior to that.

15 Q. And you say lines and ribbons through
16 the property, which property --

17 A. The property that we had sold to
18 Mr. Adkins. And I don't know the circumstances,
19 but I know when Ms. Fulmer had the land, there were
20 hedge rows and property boundaries that were
21 observed by the Fulmer family and the Bolin family.
22 And they had been removed and there was a lawsuit
23 involving this gentleman and Ms. Fulmer.

24 Q. What's the gentleman's name?

25 A. Mr. Carlisle Smith and I don't know --

1 I know nothing about the case except the judge had
2 a different --

3 MR. LANG: Objection, objection, that
4 would be hearsay.

5 THE COURT: You have to stop until I
6 rule into the objection. Yes, sir.

7 MR. LANG: I believe we're about to get
8 into hearsay.

9 THE COURT: Is there a court order
10 we're going to deal with or --

11 MR. WILLIAMS: No, sir, I didn't
12 realize his testimony was going in that direction,
13 Your Honor.

14 THE COURT: Well, move into a different
15 direction.

16 BY MR. WILLIAMS:

17 Q. Mr. Salley, if you will, tell a little
18 bit more about the dirt that you observed.

19 A. I don't know -- all I know is the creek
20 bank in places looked like it had been changed and
21 some equipment had been run in there at some time.
22 Not only up creek, but down creek a little ways.
23 And this wasn't something that was just done, you
24 know, the year before, it had been done awhile.

25 Q. Yes, sir.

1 A. And --

2 Q. Mr. Salley, generally what was the
3 timeframe when you listed that property and made
4 those observations?

5 A. What year?

6 Q. Yes, sir. As best you can estimate.

7 A. I would say it was eight years ago, it
8 might have been 10. Maybe eight, I'm not sure.

9 Q. So let's see, 2005 or so?

10 A. Yeah, something like that.

11 Q. The activities that you described with
12 the dirt in the pit and the ribbons, did you
13 actually see anybody in the --

14 A. No.

15 Q. -- in the act of doing those things?

16 A. Nope, nope.

17 Q. Do you know who was doing those things?

18 A. Nope.

19 Q. Let me ask you this, Mr. Salley, did
20 you ever observe any logging activities, any timber
21 harvesting in this area?

22 A. Yes, uh-huh.

23 Q. And would you tell us what you observed
24 in terms of timber harvesting, please, sir?

25 A. I noticed Mr. Pat Williams -- I know he

1 logged one place -- two places in '88,
2 approximately '88, when I first started working the
3 place. And then at sometime after that, he logged
4 one of those locations a second time, sometime
5 after that. But I'm pretty sure it was the first
6 year I farmed it, he logged two places.

7 Q. And I believe you might have mentioned
8 it, but could you tell the Court who was doing that
9 logging, the landowner?

10 A. Mr. Williams, Pat Williams.

11 Q. All right, sir. How do you know that?

12 A. I thought it was his property and they
13 were logging on his property. On one of them we
14 had a gate locked that nobody had a key except me,
15 him, and his hunters. So I figured that he gave a
16 key to his loggers.

17 Q. All right, sir.

18 A. Now, the other part it wasn't, but I
19 just presumed that he was logging both places.

20 Q. Did Mr. Williams have control of the
21 property at that time?

22 A. Oh, yes, uh-huh.

23 Q. Mr. Salley, if you will, I'm going to
24 ask you to do some more diagramming over there.
25 Using that same green marker, if you will, put a

1 little star where you saw the pit that you
2 testified about.

3 A. (Indicating).

4 Q. And put your initials by that, sir.

5 All right, sir. Using that same green marker,
6 please mark the area where you saw the dirt that
7 you described, the -- that you testified about, the
8 dirt activity?

9 A. (Indicating).

10 Q. Use plenty of ink so it will be easy to
11 see.

12 A. And maybe there were some skips in
13 here. But it was in places along here, it might
14 have not been solid, it might have been just
15 filled-in places there.

16 Q. Yes, sir.

17 A. But it was in that area.

18 Q. If you will, please, put your initials
19 by that mark.

20 A. (Complying).

21 Q. And you mentioned that the creek bank
22 was changed. Is that that location or do you need
23 to mark --

24 A. That was -- there had been some -- work
25 had been done in there and some saw moved around

1 and that's all I can say.

2 Q. Yes, sir. I just didn't know whether
3 there was any other area you needed to mark?

4 A. No.

5 Q. That covers it?

6 A. That'll cover it.

7 Q. All right, sir. Now, if you will,
8 please, mark on the diagram the place where you saw
9 timber harvesting activity.

10 A. (Indicating). That was the road right
11 there.

12 Q. You testified about a gate, Mr. Salley.
13 Is that where the gate was located?

14 A. No, the gates were located up here off
15 of 39 and then coming back through my place up
16 here. (Indicating).

17 Q. All right, sir. If you will, that
18 first line you drew, put your initials by that,
19 please. And did you see timber logging anywhere
20 else?

21 A. Yeah, in -- I don't know where this
22 line is, but --

23 Q. And just for clarification, I believe
24 that line is generally supposed to represent sort
25 of the ridge line.

1 A. And what I'm drawing is the logging
2 road.

3 Q. All right.

4 A. Logging took place on, I think, all
5 over here.

6 Q. Well, draw sort of --

7 A. But I did not walk -- all I did was
8 walk down the logging road here.

9 Q. Yes, sir. And I'm only asking you to
10 testify about what you saw.

11 A. Right.

12 Q. And so if you saw where the logging was
13 actually going on, then that would be helpful --

14 A. Right.

15 Q. -- if you just saw the road, then that
16 would be the extent.

17 A. Logging went on in this area. How big
18 it was, I don't know. (Indicating).

19 Q. All right, sir.

20 A. But you could tell -- from over here
21 you could tell the timber had been cut from looking
22 from this property, you could tell this had been
23 cut over here.

24 Q. Now, let me back up and make sure we
25 get that clear on the record. You said you could

1 tell from --

2 A. There had been some timber cut close
3 enough to the creek that you could see it from this
4 property that the Adkins bought. You tell the
5 property -- some timber had been cut close enough
6 that you could tell that some had been cut from the
7 other side of the creek.

8 Q. I see. I see. Mr. Salley, is there
9 anything else you can think of that would help the
10 Court understand this question?

11 MR. LANG: Object to the question,
12 that's not a viable question.

13 THE COURT: Let's see if he thinks of
14 anything.

15 THE WITNESS: No, uh-uh.

16 MR. WILLIAMS: Thank you, Mr. Salley.
17 Answer any questions that Mr. Lang has. Keep your
18 seat a minute. Thank you, sir.

19 EXAMINATION

20 BY MR. LANG:

21 Q. Mr. Salley, good morning. My name is
22 Louis Lang and I represent Carlisle Smith. Just a
23 couple of questions, if I could, Mr. Salley. So I
24 take it from your testimony that you farmed some of
25 Mr. Williams' property; is that correct?

Trial - August 26, 2013

60

1 A. It was left on it when they drew the
2 new line.

3 MR. LANG: Begging the Court's
4 indulgence for a moment. Thank you, Mr. Salley,
5 those are all the questions that I have.

6 MR. WILLIAMS: I've got a couple more
7 questions for you, Mr. Salley.

8 RE-EXAMINATION

9 BY MR. WILLIAMS:

10 Q. You said you've been a farmer all your
11 life?

12 A. Right.

13 Q. As a farmer, do you work with dirt?

14 A. Uh-huh.

15 Q. Do you have familiarity with dirt?

16 A. Right.

17 Q. So when you say you saw dirt moved down
18 there in the vicinity that you marked, how certain
19 are you that you know what you're talking about?

20 A. I think I'm pretty certain. Of course,
21 I know creek flows can do some strange things too,
22 but I'm pretty sure that there had been some dirt
23 moved not naturally down there.

24 Q. Yes, sir.

25 A. And just how it was done, I do not

1 know.

2 Q. Did you see any signs that equipment
3 had been down there?

4 A. Nope, I couldn't see it.

5 Q. All right, sir.

6 A. Couldn't see it by that time. Like I
7 said it had to have been done years before, several
8 years before.

9 Q. And do you know what year Mr. Smith
10 bought his parcels? If you don't know, that's
11 fine.

12 A. I would guess it was early '80's, but I
13 don't know that.

14 Q. And I believe you've testified that
15 when you were down there it was maybe around 2005
16 or so?

17 A. That's about right.

18 Q. So if I'm doing my math right, would
19 you say that your estimate of when this earth was
20 moved, would have been after the time Mr. Smith
21 bought his parcel?

22 A. Right.

23 MR. LANG: Objection, Your Honor. He
24 just testified he doesn't know when my client
25 bought the property.

1 THE COURT: We'll leave that up to
2 cross-examination for you, Mr. Lang.

3 BY MR. WILLIAMS:

4 Q. Let me ask you this, again, drawing on
5 your experience as a farmer, do you have occasion
6 to estimate how many acres are in a field or how
7 many acres are in an area?

8 A. Right.

9 Q. Well, looking at the top line on that
10 diagram, the one where you drew the logging road
11 down, counting the area planted in pines and
12 counting the area that you farm, what would be your
13 estimate of the number of acres above that ridge
14 line?

15 A. All I can tell you is what -- what I
16 told the Court earlier what I think is
17 approximately -- did we say 150 acres of planted
18 pine, maybe 200.

19 Q. I believe.

20 A. And 85 acres of farmland. And I think
21 it would fall about that.

22 Q. Do the pines and the farmland account
23 for all that acreage or are there some corners and
24 spots that are not in --

25 A. That would account for all of it that

1 was open when I started working the property.

2 Q. All right, sir. I want to ask you a
3 couple of questions about the picture that's been
4 introduced as Defendant's Exhibit Number 1. And I
5 believe you identified this as the birdhouse. I
6 know it's sometimes called the tree house.

7 A. Right.

8 Q. I want to ask you if you look under
9 that birdhouse, is that the creek?

10 A. Right.

11 Q. And looking at the picture, just point
12 with your finger which way is the creek flowing?

13 A. It's flowing this way. (Indicating).
14 It's flowing toward the birdhouse.

15 Q. All right, sir. From the direction of
16 the blue sticker?

17 A. Right.

18 Q. All right. Is this the same creek that
19 you've been testifying about and marking up on the
20 diagram?

21 A. Right.

22 Q. And do you see any unnatural structures
23 under that birdhouse?

24 A. Yes, it's --

25 Q. What do you see?

Trial - August 26, 2013

64

1 A. It's some pilings of something that's
2 been put under that.

3 Q. Now, did you see those when you were
4 there in -- around the time you listed that
5 property?

6 A. No, that was added when he built the
7 birdhouse.

8 Q. Okay. And when you look at this
9 picture and you marked the location of the
10 birdhouse up here on the diagram, was this the full
11 extent of where you saw the earth moved around?

12 A. No.

13 Q. All right, sir. Looking at the diagram
14 again, did you see earth moved around downstream --

15 A. Right.

16 Q. -- from the Adkins' line?

17 A. And up, both.

18 Q. Down and up?

19 A. Right.

20 MR. WILLIAMS: All right. That's all I
21 have.

22 MR. LANG: Can I go briefly?

23 THE COURT: Yeah, go ahead.

24 RE-EXAMINATION

25 BY MR. LANG:

Trial - August 26, 2013

65

1 Q. Mr. Salley, you never saw any earth
2 moved; is that right?

3 A. No.

4 Q. You just saw something that you thought
5 was unnatural, correct?

6 A. Right.

7 Q. And in Defendant's Exhibit 1, you
8 pointed out this concrete structure that was put in
9 place by Mr. Adkins, correct?

10 A. Right.

11 Q. Mr. Smith didn't do that, did he?

12 A. I think Mr. Adkins did that.

13 Q. And he did it so he could build that
14 tree house or birdhouse, correct?

15 A. I guess he thought it made it more
16 secure; I don't know.

17 MR. LANG: No further questions, Your
18 Honor. Thank you.

19 THE COURT: Next witness. May this
20 witness be excused?

21 MR. WILLIAMS: Yes, Your Honor.

22 MR. LANG: Yes.

23 MR. WILLIAMS: Justin.

24 JUSTIN MICHAEL STEADMAN

25 being first duly sworn, testified as follows:

1 THE COURT: Would you state your full
2 name for the record, please.

3 THE WITNESS: Justin Michael Steadman.
4 S-T-E-A-D-M-A-N.

5 EXAMINATION

6 BY MR. WILLIAMS:

7 Q. Good morning, Mr. Steadman.

8 A. Good morning, Mr. Greg.

9 Q. Mr. Steadman, what's your occupation?

10 A. I'm a maintenance coordinator at DSM
11 Chemicals in Augusta, Georgia.

12 Q. How long have you had that job?

13 A. I currently took that promotion about a
14 year ago.

15 Q. How long you been working for that
16 employer?

17 A. 15 years.

18 Q. How old are you Mr. Steadman?

19 A. 38.

20 Q. Where do you live?

21 A. Barnwell, South Carolina.

22 Q. How long have you lived there?

23 A. 19 years.

24 Q. 19 years?

25 A. Yes.

1 Q. Where did you live before that?

2 A. Williston.

3 Q. How far is Barnwell from Williston?

4 A. 15 miles, I think.

5 Q. Where did you grow up?

6 A. In Williston, three miles out of
7 Williston.

8 Q. Do you have familiarity with the events
9 in this controversy?

10 A. I have familiarity with the property.

11 Q. Okay.

12 A. As far as the lawsuit, I'm not sure
13 what's --

14 Q. All right. That's good. How do you
15 happen to know about the property?

16 A. Me and my father started hunting the
17 property in roughly '85, '86, '87; somewhere around
18 there. I was 11 years old when we started hunting
19 Mr. Pat's place.

20 Q. Is your father still living?

21 A. No, sir, he's deceased.

22 Q. Okay. How was it that you had access
23 to hunt that property?

24 A. Through Mr. Pat and my Uncle Buddy
25 Brady used to farm it and we started hunting it

1 through him; through my uncle and Mr. Pat.

2 Q. And you said -- excuse me, go ahead.
3 And you said you started hunting it when you were
4 about 11 years old?

5 A. Yes.

6 Q. And for how long did you hunt it?

7 A. Until I was 30. So roughly 18 years;
8 17, 18, 19 years. I had to do the math real quick.

9 Q. Okay. And looking at this diagram that
10 we've been talking about, describe what part you
11 hunted on?

12 A. You want me to get up?

13 Q. Well, for now why don't you just sort
14 of tell us.

15 A. Oh, we started -- Mr. Pat's property --
16 me and my dad, when we first -- well, not first,
17 throughout our years of hunting, from the first
18 bridge going towards Springfield, all the way to
19 where Mr. Briggs' -- over to what we call Dean's
20 Swamp dirt road, was the areas that we hunted.

21 Q. All right. I tell you what, just to
22 sort of help us put it in perspective, looking at
23 this line here that is called the Stroman line --

24 A. Right, yes, sir.

25 Q. -- in relation to that line, where did

1 y'all hunt?

2 A. From -- we actually had access all the
3 way from that creek all the way forward to
4 Mr. Briggs' property. And from the bridge
5 toward -- to the creek, the first bridge from the
6 main run of the river.

7 Q. I tell you what why don't you come on
8 down to the diagram.

9 A. Your first bridge is the main run of
10 the river.

11 Q. I'll give you the orange pen.

12 A. We had access from here to here to
13 here, to -- this ain't really drawn the way I'm
14 used to it. I don't know exactly where Mr. Briggs'
15 property line is as far as -- I'm just going to
16 draw it here. That's the road there. So it's
17 not -- it's kind of hard for me to draw it the way
18 I know it as. You want me to draw the gates and
19 all that too?

20 Q. Sure. Draw the gates.

21 A. This is your bridge line, I believe
22 without --

23 Q. And put a little orange mark along
24 there so it will be on the record, please
25 Mr. Steadman.

1 A. Anyway, there's a gate; hold on, let me
2 look at it. I can't tell by this -- is this what
3 y'all are considering the ridge line. This is the
4 field?

5 Q. Yes, sir.

6 A. Okay. That's what's throwing me off.
7 There's a gate approximately right here that we had
8 access too. We also had a gate right here that me
9 and my father put up and still the trees had grown
10 around it, the cable.

11 Q. Now, that last line you drew was coming
12 off of 39?

13 A. Coming off 39.

14 Q. And you drew a line inward, explain
15 what that line represents?

16 A. We had a stand, it's probably 500 yards
17 off -- almost at the end, it went past a little
18 further and it had a little dip right here. And it
19 actually went further past our stand, but it was
20 about 500 yards off the highway on the left. We
21 had a deer stand in there. And right here, we
22 always -- daddy always called it Dean Swamp Road,
23 that's what I always known it as. This is your
24 twins pipe --

25 Q. I'm just going to break it down a

1 little bit. You says Deans Swamp Road; is that's
2 the dirt road up --

3 A. Dirt road, yes, sir.

4 Q. Okay. Put the orange slash mark along
5 that road, please.

6 A. (Indicating).

7 Q. All right. Go ahead.

8 A. Right here at the twin pipes, what I
9 always called them, there was a secondary like old
10 logging road, if you want to call it that, that
11 went in along that creek side. We also would stand
12 this road from here to Mr. Pat's property line
13 because we dog rode this whole area from the first
14 bridge here this way, once a year for roughly
15 15 years.

16 Q. Now, I want to make sure we get that on
17 the record. You just waved your hand, would you
18 start at the lowest point where y'all did the dog
19 driving, the southern-most point. Whether it's on
20 the river, the road, wherever, and draw an arrow
21 back up northwards?

22 A. We would do it this way. That right
23 there is -- at -- there's actually another little
24 creek there that goes under this, but during the
25 dry time that water wouldn't even move under that

1 bridge. That was your main run. At this -- these
2 three bridges that water would barely flow through
3 here, you could actually cross that --

4 Q. Now, we've got to back up and think of
5 a way to identify what you're marking. First of
6 all, that line you put on there for your dog
7 drives, just put dogs by that line, please, write
8 dogs by it.

9 A. (Indicating).

10 Q. And then up at the top by the pipes,
11 what did you refer to the pipes?

12 A. Twin pipes.

13 Q. Is that where the creek flows under the
14 road; is that what you mean?

15 A. That's it, yes, sir.

16 Q. And tell me again what you said was
17 located there.

18 A. A little secondary and old logging
19 road, a secondary road off the main -- a clay dirt
20 road.

21 Q. Was it a place that looked like where
22 the loggers did their staging area sort of?

23 A. It was just an access road off of. But
24 it was up -- a little piece up from the twin pipes,
25 it wasn't directly beside the twin pipes, it was up

1 from it a little bit.

2 Q. Now, you mentioned a deer stand coming
3 off of 39?

4 A. That's off of Tiger Row.

5 Q. Write deer stand by that if you will,
6 please.

7 A. I'm sorry, I messed your map up.

8 Q. That's fine. And any other deer
9 stands?

10 A. Yes, we -- if this is what y'all were
11 saying is the ridge line, we had -- as soon as you
12 come off this gate, we had a stand here. We had a
13 stand in this curve. I'm trying to think of where
14 the big oak is in relation, we had a big oak tree
15 approximately here. (Indicating).

16 Q. And all of those orange dots you're
17 putting on there represent deer stands?

18 A. Yes, sir.

19 Q. All right.

20 A. And we actually had one here.

21 (Indicating). Right here is a big oak in this
22 line, I don't know if Mr. Briggs -- this is a
23 logging back here. We also had stands on it, up to
24 this old -- like I said, when it would flood or
25 rain a lot, you wouldn't get water through -- I'm

1 assuming y'all drew this as a creek, it wouldn't
2 actually flow water, most of this time it was
3 stagnant water.

4 Q. Most of the time, what?

5 A. What I considered stagnant water. It
6 didn't flow very much back when we were there.

7 Q. And so draw those stands that were
8 further down in the swamp that you're talking
9 about?

10 A. Yes, yes, this one we had -- actually,
11 had one over here. And let me draw this correctly.
12 Back here it is off the -- there's also this old
13 logging road that kind of did like this. Years
14 ago, years past before we started hunting, we had a
15 stand back here that was actually off the ridge a
16 little bit.

17 Q. When you were hunting there for those
18 20 years or so, Mr. Steadman, what did you
19 recognize the property line to be?

20 A. The property line for us was what we
21 always took it as and always consider it, during
22 our hunting, was the first bridge coming from
23 Williston to Springfield and all the way to the
24 Twins Pipe to the creek bed to --

25 Q. When you say the creek bed, will you

1 draw it on that diagram, please?

2 A. Do you want me to follow the line all
3 the way through?

4 Q. Just wherever you think it is.

5 A. This is what y'all were drawing it...

6 Q. Well, will you write property line by
7 that, please.

8 A. (Indicating).

9 Q. Mr. Steadman in the 20 years or so when
10 you were hunting that area --

11 A. Yes, sir.

12 Q. -- was that property line that you just
13 indicated on there, was it ever challenged or
14 contested?

15 A. Not to my knowledge. I was never
16 approached by anyone.

17 Q. How often did you hunt down in there?

18 A. We'd always go to here, you know, for
19 the four and a half months of deer season. And we
20 also coon hunted occasionally. A timeline, I don't
21 know.

22 Q. Are you an avid hunter --

23 A. Oh, yes, sir, I'm dedicated. That's my
24 passion.

25 Q. During the time when you were hunting

1 there, was any of that area east of that property
2 line that you've depicted, was any of that area
3 ever blocked off by anybody other than
4 Mr. Williams?

5 A. I don't understand the question.

6 Q. Did anybody else try to claim that land
7 that you observed other than Mr. Williams?

8 A. This here? (Indicating).

9 Q. Yes, sir.

10 A. No, sir, not that I'm aware of.

11 Q. Did anybody other than Mr. Williams
12 ever put up any no trespassing signs?

13 A. Me and my dad did. We actually posted
14 it right here by the twin pipes. Because, like I
15 said, we would stand this clay dirt road, Dean
16 Swamp Road, I call it Twin Pipe road. We would
17 actually put standers on this so we would know
18 where the property line was, where to start and
19 stop when we dog rode this once a year.

20 Q. You said --

21 A. Me and my dad put them up.

22 Q. -- you and your dad put them up --

23 A. We put them up at this gable right here
24 and by the bridge at one time and then it flooded.

25 Q. When you say by the bridge --

1 A. The first bridge coming from
2 Springfield.

3 Q. The bridge for the river?

4 A. The main run river bridge, yes, sir,
5 Edisto River bridge.

6 Q. Now, whose name did you put on those --

7 A. Mr. Williams.

8 Q. Sir?

9 A. Pat Williams.

10 Q. You put plaintiff Pat Williams' name on
11 the no trespassing sign?

12 A. Yes, sir.

13 Q. Did you put the signs up every year?

14 A. I'm not going to testify every year.

15 It may have been every other year. Just when they
16 got worn or torn down or somebody ride by and shoot
17 them. So we would try to replace them. I wouldn't
18 say every year, no, sir.

19 Q. Sure, sure. All right. Let me just
20 look a minute. Did you ever meet Mr. Smith while
21 you were hunting down there?

22 A. No, sir.

23 Q. Did you ever meet any of his guests?

24 A. No, sir. I never had any problems, we
25 never had any problems.

1 Q. How many times did you dog hunt down in
2 that area, Mr. Steadman?

3 A. Probably 15 years. I know the last
4 two years for sure we didn't dog drive it, that we
5 were on the place. So I'd say roughly 15 years.

6 Q. Describe how you would conduct the dog
7 drive?

8 A. We -- this little logging road or
9 whatever you want to call it, right here by the
10 twin pipes, we would turn in a pack of dogs right
11 here. If we had enough people, we'd split the
12 difference, and we'd have the packs here, along 39.
13 And then we would drive here as well. It was just
14 kind of -- so you would man drive to each other
15 this direction, this direction, and this direction.
16 (Indicating).

17 Q. So from all directions --

18 A. All directions.

19 Q. -- sort of towards the middle?

20 A. Yes, sir. And we had standers along
21 these lines on the third bridge through Mr. Pat's
22 place. Up on the ridge is the road in-between it.
23 You'd have standers here along the field and on the
24 dirt road.

25 Q. Let me ask you, I'm not sure I'm

1 understanding are you saying standards --

2 A. Standers, just people.

3 Q. People?

4 A. You know, with shotguns waiting --

5 THE COURT: Hunters that sit on a deer
6 stand or stand by a deer stand or wherever you tell
7 them to sit.

8 THE WITNESS: Right. Not per se a
9 stand they were just --

10 BY MR. WILLIAMS:

11 Q. Standing in a spot?

12 A. Yeah.

13 Q. I got you. Let me ask you this: Did
14 you ever have occasion to fish in this area?

15 A. Yes, sir, in the offseason. You know,
16 in the deer season, mainly all we did was deer
17 hunt. We would put in at the main bridge at the
18 Edisto run.

19 Q. Is that where 39 crosses?

20 A. 39 crosses, yes, sir. The land right
21 here on the right side of the bridge, you put in
22 there and go up and fish. And also on Mr. Pat's
23 place on the other side of the river in the canal,
24 you could actually get to this area by putting in
25 his canal and coming down and then going back up.

1 Q. Now, again, just to make sure we have a
2 clear record. I believe the location you were
3 pointing to was the bridge on Highway 39?

4 A. Yes, sir.

5 Q. Where the Edisto River goes under?

6 A. Yes, sir.

7 Q. And you said up, does that mean
8 upstream?

9 A. Upstream, upriver. Coots Hudson
10 Bridge, towards the other bridges up here.
11 (Indicating).

12 Q. All right. And locally, I recognize
13 the name you just called, but for the sake of the
14 court reporter would you say that other landing
15 that you just mentioned?

16 A. Coots Hudson Bridge is what we called
17 it.

18 Q. All right. And that was upstream?

19 A. Yes, sir.

20 Q. And that was up the river?

21 A. Yes, sir.

22 Q. Did you ever put in up there?

23 A. We floated down a couple of times
24 throughout the 18 years we were there and maybe --

25 Q. Go ahead, excuse me.

1 A. Just a couple of times.

2 Q. You mentioned the canal.

3 A. Yes, sir.

4 Q. Please mark where the canal
5 approximately might be.

6 A. It's hard to tell without looking at
7 this other side of the map. I don't want to draw
8 the line and not really know for sure where it is.

9 Q. That's fine.

10 A. I know we put in, you went down and
11 then it turned kind of like that. (Indicating).

12 Q. You just drew a zigzag line south of
13 the river --

14 A. Pretty much. That's how -- you had to
15 put in the manmade -- it was dug out umpteen years
16 ago. It was a little section probably the length
17 of this courtroom so you could put your boat and
18 Mr. Pat was on the other side. You had to go in,
19 take a right, just go down and then you come back
20 to the main run and you would be right at it.

21 Q. And in the -- purpose of these
22 questions is to ask if you had occasion to observe
23 a creek flowing into the Edisto River?

24 A. Yes, sir.

25 Q. And tell us about that, please.

1 A. It was just -- in detail-wise, it was
2 just another creek that you tried to throw up into,
3 you know, from the main run.

4 Q. You said throw up into, explain what
5 you mean?

6 A. You know...

7 Q. Cast?

8 A. Cast into, we didn't -- I never went up
9 it.

10 Q. Where was your -- what's your
11 recollection of where that creek was? Where that
12 creek flowed into the river? The spot where the
13 creek flows into the river?

14 A. I mean, just like it's drawn here, it
15 was up from the bridge; I know that. Distance-wise
16 I have no earthly idea. I couldn't tell you and I
17 know when we come into the river, you would
18 actually pass it as we followed it down.

19 Q. And how did you know that that was a
20 creek; how could you tell?

21 A. I mean, you had water flowing, you
22 could tell it was a creek. It was a creek.

23 Q. From the bottom of the page, draw an
24 arrow indicating where you would estimate that
25 creek flowed into the river?

1 A. Say that again? From the bottom of the
2 page --

3 Q. From the bottom, draw up, an arrow
4 where your best estimate is where that creek flowed
5 into the river. Just draw an arrow where the creek
6 flowed into the river.

7 A. You're talking about here?
8 (Indicating).

9 Q. If that's your --

10 A. That's the creek, in my opinion.
11 (Indicating).

12 Q. All right.

13 A. I know that creek was from this bridge.
14 This was a creek on the right from the bridge.

15 Q. If you will write the word creek by
16 that arrow, please.

17 A. (Indicating).

18 Q. Now, during the years when you were on
19 that river --

20 A. Yes, sir.

21 Q. -- upstream from the bridge --

22 A. Yes, sir.

23 Q. -- you mentioned Coots Hudson Landing?

24 A. Yes, sir.

25 Q. Was that the next landing up?

1 A. Yes, sir.

2 Q. Was that at a paved road?

3 A. Yes, sir.

4 Q. And you mentioned that you floated from
5 Coots Hudson, I believe, all the way to the 39
6 bridge?

7 A. Yes, sir.

8 Q. Did you ever see any other creeks
9 flowing into the river on that stretch?

10 A. I've seen one, it was kind of like a
11 dead river or a dead creek bed, up in this area
12 where you would consider Coots landing. But it
13 wouldn't flow, you know, you would have to have a
14 lot of rain to actually have -- it may have been a
15 runoff creek or something that...

16 Q. Well, the way you recollect this creek
17 with the arrow on it --

18 A. It was a little more water than a --
19 I'm not going to say a heavy amount all the time,
20 the time that we were in there, but it was
21 definitely a flow of water.

22 Q. Did you ever see any other creeks along
23 that stretch that flowed as much as that one did?

24 A. No. Like I said, I only seen from
25 Coots to the 39 bridge, to that one.

1 Q. Now, did you ever go downstream from
2 the bridge?

3 A. We very seldom; we did go down a couple
4 of times because we worried about motor problems,
5 we always would try to go up. Normally, we'd float
6 from here to here because we'd have a truck part
7 here. We'd pick them up, and we would go over
8 there and then we would float in case we had motor
9 problems. I don't know if y'all need to know all
10 that.

11 Q. No, that's okay. How many times would
12 you say you went downstream, Mr. Steadman?

13 A. Three over the whole...

14 Q. How far down did you go?

15 A. Not very far, maybe three or four
16 bends.

17 Q. Okay. You never went down as far as
18 the next bridge?

19 A. No, sir. No, sir, never did.

20 Q. Well, when you went downstream even as
21 you testified, did you notice any creeks flowing
22 into the river downstream from the bridge?

23 A. Not that -- only thing I recall
24 downstream is the main river to like a --

25 Q. A runaround?

1 A. A runaround, that's all I recall.

2 Q. Do you remember the name of that
3 runaround?

4 A. I have no idea. And I'm not saying
5 it's in that location either. I shouldn't have
6 drawn on it, all I remember is like a bypass or
7 something is downstream. As far as, you know,
8 was -- a creek flowing into it somewhere, I don't
9 recall that myself.

10 Q. Mr. Steadman, how many bridges are on
11 Highway 39 starting with the river and going
12 towards Springfield?

13 A. There's three.

14 Q. Three?

15 A. Yes, sir.

16 Q. Would you describe in the years that
17 you were hunting and fishing in that area, would
18 you describe what was going under each one of those
19 bridges?

20 A. First bridge from Williston to
21 Springfield is the main run. The other two was
22 what you could consider a creek, but the second and
23 third one a lot of times wouldn't have a lot of
24 flow through them as a -- it was definitely not a
25 river. The third one was even less than the second

1 one.

2 Q. The third one, would you point where
3 you mean by the third one?

4 A. The third bridge here.

5 Q. Just put number 3 by that, please.

6 A. (Indicating).

7 Q. All right. So compare, please, the
8 creek that you drew first with the arrow that you
9 pointed to first with the arrow --

10 A. Right.

11 Q. -- compare that flow with the flow, if
12 any, under those other bridges?

13 A. This was definitely more of a steady
14 run creek. This one -- the third bridge would
15 flow, like I said, depending on your rain, I mean,
16 you would see -- to me, I considered it stagnant
17 water because it barely moved unless you had a
18 heavy rain, then it would flow. And the second one
19 as well it was like a mediocre creek, as best I can
20 describe it.

21 Q. All right.

22 A. It was like it didn't have -- it had to
23 have more rain to make it flow like a natural
24 creek.

25 Q. All right.

1 A. When it didn't, it didn't. It did
2 move, but it didn't.

3 Q. Okay. Going back to that first creek
4 that you drew the arrow to on the Edisto River --

5 A. Yes, sir.

6 Q. -- were you aware that it had a name?

7 A. No, sir.

8 Q. Okay.

9 A. No, sir.

10 Q. All right. Let me ask you this,
11 Mr. Steadman, did you ever observe any logging or
12 timber harvesting activity on this land?

13 A. Yes, sir, we was hunting it at the time
14 that Mr. Pat cut, cut from this ridge here, he cut
15 the swamp, what we considered the swamp land, it
16 was behind the ridge.

17 Q. How far down did he cut that you
18 recall?

19 A. That road here, if you want to call it
20 that.

21 Q. You can draw an orange line beside the
22 green line if that's where you're looking.

23 A. I don't know about location exactly,
24 because right behind this big oak is a pit that
25 they dug the clay out of to keep making this road

1 as far as they could go before it got to this -- it
2 got so wet, they couldn't go no further basically.
3 How far it went? I know we had a stand here almost
4 to the creek, an old run or a dried river bed,
5 whatever you want to call it. I would say --
6 that's just ballpark without seeing it. Because
7 you --

8 Q. Any other logging activity?

9 A. I mean, it -- it actually was like --
10 (Indicating).

11 Q. Okay. How about up there by the pipes?

12 A. I don't remember them cutting right at
13 the pipe, no, sir. They didn't actually go into
14 the old bed, as I recall, when they cut it. They
15 didn't disturb that the time we were on the
16 property.

17 Q. I think I already asked you this, but
18 just to make sure, those 20 years or so when you
19 were hunting there, did you ever see anything
20 indicating that defendant Carlisle Smith was
21 claiming land on the east side of that creek?

22 A. I never personally saw it, no, sir.

23 MR. WILLIAMS: All right. That's all
24 the questions that I have. Please answer
25 Mr. Lang's questions.

Trial - August 26, 2013

102

1 coming in from all directions?

2 A. Right.

3 Q. So you wouldn't have hunters out
4 wandering around there?

5 A. No, sir. Anyway, go ahead.

6 Q. And we talked about, I think, there are
7 a couple of bridges on 39?

8 A. Yes, sir.

9 Q. And these bridges are there to
10 accommodate this stream, which is the current run
11 of Dean Swamp Creek marked -- and another stream I
12 think you indicated; is that correct?

13 A. Yes, sir.

14 Q: And you never -- again, you never took
15 your boat up --

16 A. No, sir, never have.

17 MR. LANG: Begging the Court's
18 indulgence.

19 THE COURT: Sure.

20 MR. LANG: Nothing further,
21 Mr. Steadman. Thank you very much.

22 THE COURT: Any redirect?

23 MR. WILLIAMS: Yes, sir, just a couple
24 of questions, Mr. Steadman.

25 RE-EXAMINATION

Trial - August 26, 2013

103

1 BY MR. WILLIAMS:

2 Q. Mr. Lang cross-examined you on the
3 creek that you first identified as compared to
4 what's marked as the current run of Deans Swamp
5 Creek?

6 A. Yes, sir.

7 Q. Just to clarify, the higher one, the
8 current run of Deans Swamp Creek, did you see every
9 time you observed that creek was the water flowing
10 in that creek?

11 A. No, sir.

12 Q. The one that you recognize as a
13 property line with the arrow from the bottom, did
14 you see water flowing in that creek every time you
15 observed it?

16 A. Yes, sir.

17 Q. Now, the next thing is Mr. Lang asked
18 you about clearing --

19 A. Yes, sir.

20 Q. -- on either side of this creek that
21 you marked as a property line. Did you ever see
22 any clearing on Mr. Smith's side of that creek?

23 A. I saw some -- I did not know it was
24 Mr. Smith's so I can't -- there was some openings,
25 I don't know if there was timber cut or just spots.

1 Q. Did it look like timber harvesting?

2 A. I'm not going to say for sure that it
3 was. I know there was some openings.

4 Q. Openings on Mr. Smith's side of the
5 creek?

6 A. Yes, sir, just little sections.

7 Q. Did those openings come across the
8 creek?

9 A. Not that I recall.

10 Q. Okay. Thank you. And then Mr. Lang
11 asked you some questions and showed you a picture
12 looks like down in the field in the woods
13 somewhere. And he asked you some questions about
14 this northern most tip, there's a name up here,
15 Maxine Elaine Hart. Did I understand you to
16 testify that you did see some metal up in that
17 area --

18 A. Yes, people used to throw out trash.

19 Q. So explain what you mean by that?

20 A. Well, there's a clay pit that you
21 actually went beside to get out to Dean Swamp Road
22 through her property. And people would just throw
23 out house trash, or limbs, trees, whatever. They
24 used that pit in that general area for trash.

25 Q. For a trash dump?

1 A. A trash dump, yes.

2 Q. Was it a legal recognized place to dump
3 trash?

4 A. I wouldn't say it would be. It was not
5 a -- it wasn't marked as that.

6 Q. Just one of those places beside the
7 road where people dumped trash?

8 A. Yes, sir.

9 Q. Now, as you observed that area -- well,
10 let me back up.

11 Did you have occasion to go by that
12 place where people were dumping trash?

13 A. Yes, sir, a couple -- I know one for
14 sure that we had caught somebody dumping trash in
15 there. My dad actually run them off for the woman
16 that owned the place because they were making a
17 mess.

18 Q. Okay. So one time you caught people
19 dumping trash?

20 A. Yes.

21 Q. Well, let me ask you: Did you have
22 occasion to go by that trash dump from time to
23 time?

24 A. Yes, sir.

25 Q. What -- did you observe metal stuff in

1 that trash dump?

2 A. It was from metal to paper to -- it was
3 all kind of stuff. It was just normal household
4 waste, trash, yard debris. It was a dump site.

5 Q. Did you ever observe anything in that
6 trash dump that you thought was an old liquor
7 still?

8 A. No, sir, I'm not going to say that. I
9 mean, no, sir, I wouldn't say that it would be a
10 liquor still, that I saw. That I saw, I wouldn't
11 know it as a liquor still.

12 MR. WILLIAMS: That's all I have
13 Mr. Steadman. Thank you.

14 MR. LANG: Nothing further on recross,
15 Your Honor. And this witness can be excused. I
16 don't have any objection to that.

17 MR. WILLIAMS: We would appreciate
18 that, Your Honor.

19 THE COURT: They're finished with you
20 and you're welcome to leave or you could stay and
21 watch to the end.

22 MR. LANG: Judge, can we take a
23 five-minute break.

24 THE COURT: I was going to suggest that
25 myself.

Trial - August 26, 2013

107

1 MR. WILLIAMS: Your Honor, I'm watching
2 the clock also and I don't know what time you
3 wanted to take a lunch break, but I wanted to ask
4 specifically we have one gentleman here who is here
5 at a good bit of effort. And so before we take a
6 lunch break, I would like for him to testify so he
7 can go home.

8 THE COURT: How long a witness do you
9 think he will be?

10 MR. WILLIAMS: Sir?

11 THE COURT: How long a witness do you
12 think he will be.

13 MR. WILLIAMS: A half hour maybe.

14 THE COURT: About like the others.

15 MR. WILLIAM: Yes, sir.

16 THE COURT: Okay. We'll take a
17 five-minute break and we'll do him. And when we
18 finish with him, we'll take a lunch break.

19 MR. WILLIAMS: That sounds great.

20 (A recess transpired.)

21 PHILLIP COOPER
22 being first duly sworn, testified as follows:

23 THE COURT: Would you state your full
24 name for the record.

25 THE WITNESS: Phillip Cooper.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXAMINATION

BY MR. WILLIAMS:

Q. Mr. Cooper, the microphone is not on, so I'm going to ask you to speak up a little bit as loud as you can. Mr. Cooper, what is your occupation?

A. I drove a truck for about 37 years.

Q. Are you still driving a truck or are retired?

A. Retired.

Q. Who did you drive a truck for?

A. American Oil Company.

Q. Say that again?

A. American Oil Company.

Q. How old are you, Mr. Cooper?

A. 82.

Q. 82?

A. Yes, sir.

Q. Where do you live?

A. Springfield.

Q. Springfield. And did you grow up around Springfield?

A. All my life.

Q. Where you born in Springfield?

A. I was born between Springfield and

1 Salley.

2 Q. All right, sir. Are you familiar with
3 the controversy that we're here about today?

4 A. Well, I hunted the Fulmer property for
5 about 25 years, yes, sir.

6 Q. Now, let me stop you right off the bat,
7 Mr. Cooper, you've been watching us on that
8 diagram?

9 A. Uh-huh.

10 Q. Could you see it from where you were
11 sitting back there?

12 A. Yes, sir.

13 Q. When you say the Fulmer property, if we
14 talk about that line that goes down the middle, the
15 one that goes down the middle, were you talking
16 about the property on the west side or on the east
17 side?

18 A. On the west side.

19 Q. On the west side. All right, sir. And
20 you say you've hunted that about how long?

21 A. Probably 25 years.

22 Q. About 25 years. And you called it the
23 Fulmer property?

24 A. Fulmer property.

25 Q. Was that the property that Mr. Carlisle

1 Smith owns?

2 A. No, sir, he didn't own that.

3 Q. All right, sir. Now, did you ever hunt
4 with Carlisle Smith?

5 A. No, sir, not that I know of.

6 Q. Were you ever in any hunting clubs?

7 A. I was in a hunt club that hunted it.

8 Q. What was the name of that hunting club?

9 A. Guinard Hunting Club.

10 Q. The Guinard Hunting Club?

11 A. Yes, sir.

12 Q. And now when you look at this picture
13 up on the board that we've been talking about, does
14 all that look familiar to you?

15 A. Yes, sir, looks familiar.

16 Q. All right, sir. And when you hunted
17 that, what did you recognize as a property line
18 between those two parcels?

19 A. The creek.

20 Q. The creek?

21 A. Yes, sir.

22 Q. Now, which creek?

23 A. Dean Swamp Creek.

24 Q. Dean Swamp Creek. That's the creek --
25 is there a line representing that creek up on that

1 map that you recognize?

2 A. No, sir, not from here, I can't
3 recollect.

4 Q. Let me bring it over to you a little
5 closer. Looking at this diagram Mr. Phil,
6 Mr. Cooper, do you recognize a line on there that
7 looks like Dean Swamp Creek to you?

8 A. Right in there. (Indicating).

9 Q. All right. What is this property line
10 here or this line here?

11 A. That was the line between where I
12 hunted and where I didn't hunt.

13 Q. So which one of those did you recognize
14 as the property line between the two lands?

15 A. The creek.

16 Q. And did you ever cross over and hunt
17 over on this side of that line?

18 A. No, sir, I never did.

19 Q. I want to -- I'm sorry, the only color
20 I have left is pink?

21 A. I like pink.

22 Q. Would you draw a line where you
23 recognize the property line to be?

24 A. All the way down. (Indicating).

25 Q. And thank you, Mr. Cooper. And the

1 record please will reflect that he drew a pink line
2 on this diagram. Who were some of the people who
3 were in that hunt club when you were hunting in
4 those days?

5 A. There was about 25 of them, 30, there
6 was a good many of them.

7 Q. And can you think of any of the names?

8 A. Well, yes, sir. Mr. Samuel Cooper was
9 the president. Donald Cooper. And Rick Hissley
10 was the treasurer. And my brother had a part of
11 it, had a share in it. And that was about -- the
12 rest of them, they go and come.

13 Q. Yes, sir. And did you have to pay dues
14 to be in that club?

15 A. Yes, sir.

16 Q. And how long ago was it that you quit
17 with it?

18 A. Been about 10, 11 years.

19 Q. Yes, sir. And the other people that
20 hunted in that club with you, did they recognize
21 that -- where you drew that line, that pink line,
22 they recognized that as the property line?

23 MR. LANG: Objection, Your Honor, that
24 calls for --

25 THE COURT: Sustained. He wouldn't

1 know what they recognized.

2 THE WITNESS: We didn't hunt on that
3 other side at all. We didn't hunt the Fulmer place
4 either, the dogs run through there, but we didn't
5 hunt it.

6 BY MR. WILLIAMS:

7 Q. Let me ask you this, Mr. Cooper, has
8 Mr. Carlisle Smith contacted you about this
9 controversy?

10 A. He come by there one time and told me
11 did I know where the line was at.

12 Q. He come by where?

13 A. When I was working for the county.

14 Q. Yes, sir. When were you working for
15 the county?

16 A. I been(sic) quit there for about a
17 year.

18 Q. And what did you do for the county?

19 A. I run a trash dump down there.

20 Q. Yes, sir. And Mr. Smith came there to
21 the trash dump where you were working?

22 A. Yes, sir.

23 Q. And what did he ask you?

24 A. Did I know where the line was.

25 Q. And what did you tell him?

1 A. I told him the creek, as far as I know
2 was the line.

3 Q. Did he ask you to do anything?

4 A. No, sir, he didn't ask me to do
5 nothing.

6 Q. Did he ask you to sign anything?

7 A. No, sir.

8 Q. Okay. While you were hunting in that
9 hunting club, Mr. Cooper, did you ever make any
10 effort to claim any of this land on the Williams'
11 side of the creek?

12 A. No, sir, none at all.

13 Q. Did you ever see, with your own
14 observation, did you ever see anybody in that
15 hunting club do anything to claim land across the
16 creek?

17 A. No, sir, not that I know of.

18 Q. Did you know of any deer stands by your
19 hunt club people being built on the Williams' side
20 of the creek?

21 A. We didn't have any on that side.

22 Q. Did you know of any campsites or
23 platforms built on the Williams' side of the creek?

24 A. No, sir, none that I know of.

25 Q. Now, Mr. Cooper, do you recall how many

1 bridges there are between the river and
2 Springfield?

3 A. Three that are river bridges.

4 Q. Yes, sir. What do you know about the
5 water under those other two bridges besides the
6 river?

7 A. The first bridge would be Knights Lake.

8 Q. Is that the first one coming from
9 Springfield or from the river?

10 A. From Springfield.

11 Q. The first one coming from Springfield?

12 A. Yes, sir.

13 Q. Knights Lake. And does that water flow
14 all the time like a creek?

15 A. Well, if the water is high in the swamp
16 it does.

17 Q. How about in dry weather?

18 A. Dry weather it don't, very little.

19 Q. Yes, sir. How about the next, the
20 middle bridge?

21 A. It dries up when it's about...

22 Q. It dries up?

23 A. (Nods head up and down).

24 Q. All right, sir. How about Dean Swamp
25 Creek over here where you said was the property

1 line?

2 A. I never seen it dry up.

3 Q. It flows all the time?

4 A. Yeah.

5 Q. All right. Let me look to see if I got
6 anything else I need to ask you. When you were
7 hunting over here in this club on the west side of
8 the creek, did anybody in your group, your club,
9 put up any gates or cables on the Williams' side?

10 A. No, sir, not that I know of.

11 Q. Did anybody in your club put up any no
12 trespassing signs on the Williams' side?

13 A. I didn't put none on the Williams'
14 side, I put up some on my side.

15 Q. On --

16 A. On the Fulmer side.

17 Q. On the west side of the creek?

18 A. Yes, sir.

19 MR. WILLIAMS: All right, Mr. Cooper,
20 that's all the questions that I have. Mr. Lang
21 might have some questions.

22 EXAMINATION

23 BY MR. LANG:

24 Q. All right. Mr. Cooper, good afternoon.
25 My name is Louis Lang, I represent Mr. Smith.

Trial - August 26, 2013

125

1 A. Tip of which property?

2 Q. Let me -- do you see this, Mr. Cooper,
3 from where it says -- this point right here, right
4 next to Maxine Elaine Hart coming down in this area
5 where you're talking about a clay pit?

6 A. No, sir, talking about number 4?

7 Q. Yes, sir.

8 A. No, sir.

9 Q. How about the elevation, is it running
10 downhill in this direction to your left?

11 A. Yes, sir, all the way through.

12 MR. LANG: One more time, Your Honor.
13 No further questions, Your Honor. Thank you,
14 Mr. Cooper.

15 RE-EXAMINATION

16 BY MR. WILLIAMS:

17 Q. Mr. Cooper, I got a couple more
18 questions for you, please, sir. Mr. Lang asked you
19 about where this creek flows into the river.

20 A. It's about three-quarters of a mile up
21 the river from the bridge.

22 Q. Say that again, please.

23 A. Three-quarters to a mile.

24 Q. Where Dean Swamp Creek flows into the
25 river?

1 A. Yeah.

2 Q. I believe you said upstream from the
3 bridge?

4 A. Upstream from the bridge.

5 Q. Yes, sir. Now when Mr. Lang asked you
6 about that, I believe you said that you'd seen it
7 how many times?

8 A. Probably a hundred times.

9 Q. How is it that you happen to see where
10 the creek flows into the river that many times?

11 A. I used to fish up there every week.

12 Q. You fished up there. Where would you
13 put your boat in?

14 A. At the bridge and go up.

15 Q. The 39 bridge?

16 A. The 39 bridge.

17 Q. Everybody who's testified says they
18 always go upstream?

19 A. Right.

20 Q. Why is that?

21 A. Well, if your boat tear up, you drift
22 right down.

23 Q. Yes, sir. How far up did you go?

24 A. I have been all the way through.

25 Q. All the way to Coots Hudson?

1 A. Yes, sir.

2 Q. I think somebody else testified about
3 Coots Hudson.

4 A. Yeah, the Davidson Bridge Crossing.

5 Q. That's the next paved bridge up?

6 A. Right.

7 Q. How far up is it to get to Coots
8 Hudson?

9 A. Seven or eight miles by water.

10 Q. Seven or eight miles. And are you
11 aware of any other creeks that flow into the river
12 on that stretch?

13 A. Not on that stretch, I don't know.

14 Q. That's the only one?

15 A. That's the only one. The one that
16 comes in from the west side.

17 Q. Yes, sir. And did you say you know the
18 name of that creek?

19 A. That's Deans Swamp Creek.

20 Q. Now, the time when you were fishing on
21 the river and passing by that creek, was that time
22 limited to the time you were in that hunting club
23 or is that longer than that?

24 A. That was longer than that. I done been
25 fishing longer than that.

1 Q. How long have you been fishing in the
2 Edisto River?

3 A. Probably 45 years.

4 Q. 45 years. Between this spot where you
5 pointed to Deans Swamp Creek and where it goes
6 under the bridge, are there any other creeks that
7 go in the river in that stretch?

8 A. No, sir.

9 Q. Are you -- how certain are you that
10 Deans Swamp Creek goes into that river, like you
11 said, three-quarters of a mile up from the bridge?

12 A. I stopped and fished in it.

13 Q. So how certain would you say you are?

14 A. 100 percent certain.

15 Q. 100 percent certain. Mr. Cooper, did
16 you ever go downstream from the bridge?

17 A. Yes.

18 Q. How far down did you go?

19 A. To the trestle.

20 Q. To the trestle?

21 A. Yes, sir, which is about six miles,
22 seven miles.

23 Q. Is the trestle next to the next highway
24 down?

25 A. Yes, sir, next to number 3.

1 Q. And when you say trestle, you're
2 talking about the train trestle, the railroad
3 track?

4 A. The railroad track.

5 Q. Is that railroad there anymore?

6 A. No, sir, not anymore.

7 Q. How long ago did they take it up?

8 A. Probably been around five years
9 probably.

10 Q. Yes, sir. So you went all the way from
11 the 39 bridge. What is that highway, that next
12 highway?

13 A. Number 3.

14 Q. Where does it go?

15 A. From Springfield to Blackville.

16 Q. From Springfield to Blackville?

17 A. Right.

18 Q. In that stretch, from the 39 bridge
19 down to the trestle, did you know of any other
20 creeks flowing into the river from the north side?

21 A. No, the north side, no, sir.

22 Q. All right, sir. So if I'm
23 understanding you right then, all the way from
24 Coots Hudson to the trestle, this is the only
25 creek of any significance --

1 A. There was one up above Guinard that
2 come off the Hall Creek.

3 Q. That would be way upstream?

4 A. Way upstream.

5 Q. Yes, sir.

6 MR. WILLIAMS: All right, sir. That's
7 all the questions that I have, Mr. Cooper, thank
8 you so much.

9 MR. LANG: Nothing on recross, Your
10 Honor.

11 THE COURT: Mr. Cooper, I have one
12 question. When you hunted this tract of land and
13 you honored a creek as being the boundary, was it
14 the creek that ran into the Edisto River or was it
15 a creek that ran under highway 39 that you honored
16 as the boundary?

17 THE WITNESS: It was coming from number
18 4 all the way to 39.

19 THE COURT: No, I'm asking you when you
20 hunted this tract of land and you said you honored
21 one of the creeks as being the boundary between the
22 land you had rights on and the next door neighbor
23 to the east. Which creek was it that you honored
24 as the boundary? Was it the one that flows into
25 the Edisto River or was it the one that flows up

Trial - August 26, 2013

131

1 under Highway 39.

2 THE WITNESS: Right here.

3 THE COURT: And you're describing the
4 one that runs into the Edisto River?

5 THE WITNESS: Right.

6 THE COURT: Thank you.

7 MR. WILLIAMS: May Mr. Cooper be
8 excused?

9 THE COURT: If you're finished with
10 him.

11 MR. LANG: Begging the Court's
12 indulgence.

13 THE COURT: Just a second.

14 MR. LANG: Madame Court Reporter, if
15 you could, I'm not sure I heard it correctly, but
16 could you read back the first answer that Mr.
17 Cooper gave to the Judge's question.

18 (The Court Reporter read the answer
19 commencing on page 15, line 15, and concluding on
20 page 15, line 16.)

21 RE-EXAMINATION

22 BY MR. LANG:

23 Q. If I could. Mr. Cooper, the judge
24 asked you a question what boundary lines you
25 honored when you were hunting this property. And

1 answered the line was coming from number 4 all the
2 way to 39.

3 A. The river all the way through there.

4 Q. Say that again, please, sir.

5 A. Coming from the river all the way to
6 39.

7 Q. That's the boundary you honored?

8 A. I didn't hunt all the way down, I just
9 honored where I was hunting at.

10 Q. It went all the way from 4 to 39?

11 A. Where my property was, it was halfway
12 between number 4 and 39.

13 MR. LANG: Okay. No further questions.

14 MR. WILLIAMS: That's it, Mr. Cooper.

15 THE COURT: Thank you for coming.

16 You're welcome to leave if you want to.

17 (A luncheon recess transpired.)

18 THE COURT: Any preliminary matters
19 before we get going again?

20 MR. WILLIAMS: None from the
21 plaintiffs, Your Honor.

22 MR. LANG: None from the defendants,
23 Your Honor.

24 THE COURT: All right. Plaintiffs get
25 ready to call your next witness.

Trial - August 26, 2013

133

1 MR. WILLIAMS: Plaintiffs will call
2 Mr. Pat Williams.

3 THE COURT: Mr. Williams, will you
4 place your left hand on the Bible.

5 PATRICK JOSEPH WILLIAMS
6 being first duly sworn, testified as follows:

7 THE COURT: State your full name.

8 THE WITNESS: Patrick Joseph Williams.

9 EXAMINATION

10 BY MR. WILLIAMS:

11 Q. Mr. Williams, where do you live?

12 A. St. Matthews, South Carolina.

13 Q. How long have you lived there?

14 A. Since 1970.

15 Q. And where did you grow up?

16 A. Springfield, South Carolina.

17 Q. How old are you, Mr. Williams?

18 A. 72.

19 Q. What's your occupation?

20 A. I have real estate rental property. I
21 have a restaurant. And I manage a farm. And I'm
22 semiretired.

23 Q. Semiretired. Before retirement,
24 semiretirement, what was your lifelong career?

25 A. For 30-plus years was a Realtor/broker

1 in charge of Pat Williams Realty, and ultimately
2 Coldwell Banker Pat Williams Realty headquartered
3 in Santee, South Carolina. With sales primarily in
4 the five counties surrounding the Santee Cooper
5 Lakes, Calhoun, Orangeburg, Clarendon.

6 Q. All right. And this real estate that
7 we're talking about today, you're one of the
8 owners?

9 A. That's correct.

10 Q. Who are your partners or co-owners?

11 A. Frank J. Wallmeyer and Mary B.
12 Wallmeyer.

13 Q. And they're also plaintiffs in the
14 case?

15 A. That's correct.

16 Q. And where do they live?

17 A. They live in Mechanicsville, Virginia.

18 Q. Do they actually visit this property
19 often?

20 A. Maybe three times every two years.

21 Q. Do they -- are they outdoors people?

22 A. No.

23 Q. Are they involved in the day-to-day
24 management of the property?

25 A. No.

1 Q. Of the three owners, who's the one who
2 knows most about the day-to-day management of the
3 property?

4 A. I am.

5 Q. Okay. And when did y'all buy this
6 property?

7 A. 1978.

8 Q. All right. Did you have it surveyed
9 when you bought it?

10 A. No.

11 Q. What have you recognized since your
12 purchase of this property in 1978 as the property
13 line between your parcel and Mr. Smith's parcel?

14 A. The run of Dean Swamp Creek.

15 Q. All right. And using our diagram,
16 without making any marks on it yet, can you just
17 describe if you see the run of the creek on that
18 diagram?

19 A. It's run of the creek that's marked
20 pretty much in orange about -- it enters the river
21 maybe three-fourths of a mile, a mile above the
22 bridge.

23 Q. Is it the western most line there on
24 the diagram?

25 A. Yes, marked in orange.

1 Q. And I believe it's one that's marked as
2 the Stroman line?

3 A. Yes.

4 Q. Prior to this controversy with
5 Mr. Smith has, to your knowledge and your
6 management of the property, has that been the line
7 consistently recognized?

8 A. Yes.

9 Q. Have you ever had any controversy with
10 anybody else up until this controversy with
11 Mr. Smith?

12 A. No.

13 Q. And I believe you mentioned, but I want
14 to make sure, do you have knowledge where Dean
15 Swamp Creek flows into the Edisto River?

16 A. I've walked that creek there and I've
17 walked the dead creek bed and I have knowledge
18 based on that map where this creek enters the
19 river.

20 Q. Based on your knowledge, where does the
21 creek empty into the Edisto River?

22 A. That depicts it, but I would say, as I
23 said earlier --

24 Q. When you say, that, what are you
25 talking about?

1 A. That orange line.

2 Q. On the diagram?

3 A. On that diagram, yes. And that would
4 be, I'd say, three-fourths of a mile or a mile up
5 the river from the Highway 39 bridge.

6 Q. All right. Now, the two other bridges
7 on Highway 39; are you familiar with those?

8 A. Yes.

9 Q. Starting from the Springfield side, the
10 first bridge you come to, how would you describe
11 the water or the activity under that bridge?

12 A. I would say it fluctuates based on
13 season, based on rainfall. It's mostly flowing,
14 but not a big stream. Times like now when the
15 swamp is full, there would be considerable water
16 going under there. But normally very small run.

17 Q. In the outdoors context, would you say
18 there was a difference in the swamp area between a
19 creek and a lake?

20 A. I'm not sure of the question.

21 Q. Are you familiar with a term lake in a
22 swamp area?

23 A. I've heard people refer to lakes, which
24 are typically paralleling or somewhere near a river
25 with maybe some still water or very limited flow of

1 water.

2 Q. Okay. The second or middle bridge
3 there, how would you describe what you have
4 observed under that bridge?

5 A. Somewhat similar to what I just
6 described for the first run of Knights Lake. At
7 times really wet seasons there will be more water
8 going through than normal, but I would say that too
9 would be a lake; a small stream of water or swamp
10 water going underneath.

11 Q. The middle bridge there, does water
12 flow under it all the time?

13 A. I can't answer that. I don't know.

14 Q. Okay. The first bridge, Knights Lake,
15 I believe you called it, have you observed that
16 water flows under that bridge all the time?

17 A. I've never noticed it being entirely
18 dry, but I haven't looked to see it dry. I would
19 say I've seen limited water. But I can't honestly
20 say I've seen it totally dry.

21 Q. Okay. How often since you've bought
22 this property in 1978 with your partners, how often
23 do you actually visit that property onsite?

24 A. I pass Highway 39 a lot where the main
25 entrance gate is and make sure the gate is closed

1 unless we have hunters in the area. And I probably
2 visit and ride through or walk on part of it,
3 typically a dozen times a year. Once a month or
4 in -- sometimes hunting season, much more often
5 than that. Maybe I could bump that up 12 to 15
6 times a year, I ride, look at the timber, walk,
7 hunt arrowheads, walk into the woods. Just enjoy
8 the property.

9 Q. All right. Now, do you have other
10 property in this area?

11 A. Yes, I do.

12 Q. Where is that?

13 A. It's on the opposite side of subject
14 property in Barnwell County. Some fronts on 39,
15 long river frontage on the opposite side of the
16 south Edisto River. I reckon that would be
17 southern border.

18 Q. So when you say you're on this property
19 12 or 15 times a year, are you talking specifically
20 about this parcel?

21 A. Yes.

22 Q. Now, if you include your other parcel,
23 is it adjacent to this one? Does it join this one
24 in places?

25 A. Yes.

1 Q. Okay. If you include your other
2 parcel, how often would you say you're over
3 visiting that property?

4 A. Probably five, six times a month.

5 Q. Do you ever spend the night there?

6 A. On the other side I do, I have a cabin.

7 Q. Okay. Do you have to pass this
8 property typically to get to the other property?

9 A. Virtually every time.

10 Q. All right. This is in-between -- I
11 guess, let me ask you: How does this property lay
12 on the surface of the earth between your home and
13 the cabin?

14 A. I get there first -- I pass this
15 property to get to the other side of the river to
16 get to the where the cabin is.

17 Q. Okay. Are you an outdoorsman yourself?

18 A. Yes, I am.

19 Q. Would you say you're a moderate, avid,
20 how would you describe your outdoor interests?

21 A. Avid.

22 Q. What kind of outdoor activities do you
23 engage in?

24 A. I do a lot of hunting, deer hunting. I
25 do some turkey hunting. I, in the past, have been

1 a dove shooter and do a lot of fishing.

2 Q. Have you done those activities on this
3 parcel?

4 A. I have done a lot of deer hunting on
5 this part. I have probably done very limited
6 turkey hunting on that part. And for outdoors, for
7 sporting outdoors, that would be it.

8 Q. What about camping?

9 A. I've camped on that a number of times
10 with church groups, Boy Scouts, Cub Scouts.

11 Q. Are you married?

12 A. Yes, I am.

13 Q. How long have you been married?

14 A. Almost 47 years.

15 Q. Do you have children?

16 A. I have five.

17 Q. Grandchildren?

18 A. 16.

19 Q. Have they ever joined you in any of
20 these activities?

21 A. Yes, they have.

22 Q. Would you elaborate just a bit.

23 A. They fish with me. They've done some
24 limited deer hunting with me. And they have camped
25 with me. They have hiked with me. They have

1 hunted arrowheads, pottery with me.

2 Q. Now, those activities that you're
3 describing, would they include the area all the way
4 down to the place you identified as a property
5 line?

6 A. I've had children walk down there with
7 me, adult children, but the grandchildren most of
8 that's been limited to the field area and below the
9 bridge -- ridge and logging road areas where ATVs
10 could pass. And where there's a borrow pit and
11 fresh logging roads where you could find a better
12 chance of finding arrowheads and Indian relics.

13 Q. Now, you mentioned logging roads, have
14 you harvested timber on this parcel?

15 A. Not counting thinning and planted
16 pines, which I've done I think three times. I have
17 harvested hardwood, timber, and pines three times,
18 grown pines.

19 Q. Okay. How about leasing. Have you
20 leased this parcel at all?

21 A. Ever since I bought it in 1978, I've
22 had agricultural and hunting leases on the parcel.

23 Q. When did you become aware of a
24 controversy with Mr. Smith?

25 A. Probably from 2001 to 2003, in that

1 period.

2 Q. Okay. How did you become aware?

3 A. I saw equipment on the creek and I
4 walked down and saw a road being built into that
5 area. And the road was of sand, of sand clay, not
6 natural to that immediate area. And I could tell
7 that it looked at that time like encroachment. A
8 lot of what ultimately got done hadn't been done at
9 that time.

10 Q. You say a lot of what ultimately got
11 done, explain what you mean, please.

12 A. Well, the point of the equipment, what
13 I first saw, went down. Ultimately a lot of fill
14 dirt, sand clay type soil, had moved into the area
15 and there was -- going up Deans Swamp Creek, I
16 would say maybe 75 yards up parallel in the creek.

17 Q. We need to get a reference point. When
18 you talk about equipment and soil moved into the
19 area, we've already marked the tree house on that
20 diagram. Where would that be in relation to the
21 tree house?

22 A. From the tree house, upstream, up Dean
23 Swamp Creek, towards the pipes, probably 60,
24 80 yards up and --

25 Q. And what did you see in that area, from

1 the tree house up?

2 A. Upstream?

3 Q. Yes.

4 A. Freshly, recently moved fill dirt that
5 was not swamp dirt. And then ultimately -- and
6 blow also --

7 Q. By ultimately, do you mean later?

8 A. Yeah. You had about -- going upstream
9 from the tree house, I guesstimate 60 to 80 yards.
10 Where the tree house itself was built, the creek
11 was blocked with a cement and metal retainer wall.
12 And at that point, the creek of necessity whereas a
13 large portion was running straight down to the
14 river, as depicted on that orange line, what I
15 always considered the major run, the retainer wall
16 was almost at a right angle made of concrete and
17 metal. And under the tree house, around the tree
18 house, and below the tree house, going downstream
19 where the creek had been diverted, there was
20 probably another 80, maybe 100 yards of the same
21 type fill dirt built up along the bank of the
22 creek.

23 Q. Downstream from the tree house?

24 A. Pardon me?

25 Q. Did I understand you to say downstream

1 from the tree house?

2 A. Downstream from the tree house.

3 Q. Okay. When you observed these things,
4 what did you do?

5 A. I knew something was going on. I
6 called Mr. Smith. And the first time I called him,
7 as I recall, I got him. I said Mr. Smith, I think
8 we have a problem. I'm sure I related the problem
9 of the equipment and the fill dirt. And I said, we
10 need to get together to make sure that there's no
11 problem with property lines.

12 He said I'm going pheasant hunting in
13 North and South Dakota, I'll be gone for about
14 10 days. We'll have to get together when I get
15 back. I never heard again from Mr. Smith.

16 Q. Did you try to contact him again?

17 A. I called the number numbers of times,
18 I'm not sure if that was a home or office number.
19 I feel certain I left messages, if there was an
20 answering machine I'm sure I did. I also sent
21 letters to Mr. Smith that I didn't get back. And
22 then I sent him a number, I would say a minimum of
23 three, a maximum of five, certified letters that
24 would return after weeks, if not two or
25 three months of sitting in the post office, they

1 would be returned to me.

2 Q. Did you ever, in fact, have the
3 opportunity to discuss it with Mr. Smith or to meet
4 with him in those days?

5 A. In that brief conversation when he said
6 he was going pheasant hunting, I said -- of course,
7 it was by phone, it was night, I said, Mr. Smith, I
8 assume you consider the property line to be down
9 your clearcut, which was where the Dean Swamp
10 Creek, as we have depicted on the maps is. He
11 goes, no, I go much further than that. We need to
12 meet and get together. He said, again, I'm going
13 pheasant hunting and we'll get together when I get
14 back. That's the last I heard.

15 Q. All right. I'm going to ask you to
16 look at this document, Mr. Williams, and see if you
17 recognize that.

18 MR. WILLIAMS: I'm sorry, that's the
19 deed. Let me show that to Mr. Lang first.

20 MR. LANG: That's all right, just tell
21 me what it is.

22 MR. WILLIAMS: It's the deed.

23 BY MR. WILLIAMS:

24 Q. Do you recognize that document?

25 A. Yes.

1 Q. What is?

2 A. It's the deed from the two women I
3 bought the property to Patrick J. Williams and the
4 Wallmeyers, dated 1978.

5 Q. And look at the property description,
6 please. Do you know what the property description
7 is?

8 A. Yes, I do.

9 Q. Does it indicate a number of acres?

10 A. 1,050 acres.

11 Q. And who handled that closing for you
12 when you and your partners bought that?

13 A. Charles and Karen Williams, Orangeburg,
14 South Carolina.

15 Q. All right. Thank you.

16 MR. WILLIAMS: Louis, do you want to
17 look at this?

18 MR. LANG: No.

19 MR. WILLIAMS: I would offer this into
20 evidence as Plaintiff's --

21 THE COURT: Any objection?

22 MR. LANG: No objection.

23 MR. WILLIAMS: -- 1, I believe it is.

24 THE COURT: So admitted.

25 (PLF. EXH. 1 in evidence.)

1 BY MR. WILLIAMS:

2 Q. I want to show you another document,
3 Mr. Williams, and ask you if you recognize this
4 document.

5 A. Yes, I do.

6 Q. What is that?

7 A. That is a deed from L.B. Till to F.
8 Carlisle Smith.

9 Q. And when is it dated?

10 A. It's, I think, recorded January 9th,
11 1987. And it's filed for record December 31st,
12 1986.

13 Q. Okay. Does it have a property
14 description that you can recognize?

15 A. It does describe the property.

16 Q. Does it indicate the number of acres?

17 A. The number of acres are 400 acres.

18 Q. Thank you very much.

19 MR. WILLIAMS: I would offer this into
20 evidence as Plaintiff's Number 2.

21 MR. LANG: No objection.

22 (PLF. EXH. 2 in evidence.)

23 BY MR. WILLIAMS:

24 Q. I want to show you another document,
25 Mr. Williams, and ask if you recognize that

1 document?

2 A. That is a deed from Augustus M. Bolin
3 and H.T. Bolin to a L.B. Till. And this recorded
4 on January 9th, 1987. And it calls for 380 acres.

5 Q. Looking at the dates of the deeds, how
6 do the dates compare -- the one that I'm handing
7 you to compare was the deed from Till to Mr. Smith
8 that you just looked at, Plaintiff's Number 2?

9 A. One is dated January -- both are
10 recorded January 9th, 1987, one is dated
11 December 31st, 1986. And I don't see --

12 Q. Let's look on the signature page and
13 see when they were actually signed.

14 A. All right.

15 Q. We're looking at Bolin to Till. What
16 day was it signed?

17 A. On the 29th day of December 1986.

18 Q. Now, let's look Till to Smith and see
19 what day it was signed?

20 A. Till to Smith deed, it was signed on
21 December 31st, 1986, it was signed on the same day.

22 Q. If you glance at the property
23 descriptions, how do the property descriptions
24 compare; other than the acreage?

25 A. They're the same.

1 Q. But the acreage is 20 acres different?

2 A. Bolin to Till the 380 acres. Till to
3 Smith is 400 acres.

4 Q. Since you have been involved in this
5 controversy, have you been able to figure out how
6 this parcel went from 380 to 400 acres?

7 A. No.

8 MR. WILLIAMS: I would offer this as
9 Plaintiff's Exhibit 3.

10 MR. LANG: No objection.

11 THE COURT: Entered as Plaintiff's
12 Exhibit 3.

13 (PLF. EXH. 3 in evidence.)

14 BY MR. WILLIAMS:

15 Q. Mr. Williams, your deed, the property
16 description, does it indicate that you have
17 frontage on the Edisto River?

18 A. Yes, it does.

19 Q. Have you always understood that you
20 have frontage on the Edisto River?

21 A. Absolutely.

22 Q. In this Stroman line that you
23 identified, does it give you frontage on the Edisto
24 River?

25 A. Yes, it does.

1 Q. This -- on this diagram, understand
2 that this diagram is approximate, this distance on
3 the Edisto River between Highway 39 and the point
4 indicated where the creek flows into the river; is
5 that your understanding of your river frontage?

6 A. It is.

7 Q. Mr. Williams, the original acreage
8 indicated in your deed, I believe was 1,050 acres?

9 A. That is correct.

10 Q. Have you sold any of that?

11 A. Yes, I have.

12 Q. What did you sell?

13 A. I sold the portion east of South
14 Carolina Highway 39 running between Springfield and
15 Williston.

16 Q. Did you -- on the Springfield side of
17 the river, do you still own any land east of
18 Highway 39?

19 A. No, I don't.

20 Q. You sold all the land over on this side
21 of 39?

22 A. That is correct.

23 Q. All right. When did you sell that?

24 A. The year 2000.

25 Q. And to whom did you sell it?

1 A. Whitesides Lumber Company, the lady was
2 Sarah White and her husband and his first name
3 slips my name -- my mind. They're from Walterboro,
4 South Carolina.

5 Q. Is it Randy?

6 A. I think that's correct. Randy and
7 Sarah White.

8 Q. Do you know how many acres that was you
9 sold?

10 A. I believe it was 200 or 201 acres.

11 Q. So just to move it along, if you owned
12 1,050 and you sold 200, how many do you still own
13 by your understanding in this parcel?

14 A. 850 acres.

15 Q. Okay. Since this controversy began,
16 have you had your parcels surveyed?

17 A. The entire tract?

18 Q. Well, the disputed property line?

19 A. I've had the property line surveyed.

20 Q. Who surveyed that for you?

21 A. Edisto Surveyors, Richard Stroman was
22 the surveyor.

23 Q. Okay. I want to show this document to
24 you and ask if you recognize that?

25 A. Yes, I do.

1 Q. Okay. What is this document?

2 A. That is the line that runs along Dean
3 Swamp Creek to the river.

4 Q. All right. Is this line -- is this
5 just a larger copy of this?

6 A. Yes, it is.

7 Q. And is this the same line depicted over
8 here as the Stroman survey line?

9 A. Yes, it is.

10 Q. Okay.

11 MR. WILLIAMS: Do you want to look at
12 it?

13 MR. LANG: I'm sure it is what it is.
14 Your Honor, no objection, if it's a recorded
15 survey, so I certainly would suggest it is
16 admissible. If it's accurate, it's admissible, if
17 that's the case.

18 MR. WILLIAMS: Sure, I understand that.

19 THE COURT: No objection.

20 MR. WILLIAMS: Sure. Offer this as
21 Plaintiff's Number 4, I believe.

22 (PLF. EXH. 4 in evidence.)

23 BY MR. WILLIAMS:

24 Q. Mr. Williams, since you became aware
25 that there was a problem with Mr. Smith, how many

1 times would you say you've been down to this site
2 where all this activity is?

3 A. Probably 15, 20 times.

4 Q. Okay. And you testified about earth
5 moving, trees cut, and so forth. Anything else
6 come to mind that you saw down there? You
7 testified about the concrete wall?

8 A. Have I seen other things?

9 Q. Yes.

10 A. From when it started, yes.

11 Q. Such as, what else have you seen?

12 A. Well, I've walked the old streambed and
13 on the edge of the old streambed and sometimes in
14 the old streambed, probably eight times, I'd say.
15 I've been down with attorneys, surveyors, and
16 others, paralleling the old creek bed, and I've
17 seen trees cut, ATV trail built, pipes, logs.

18 Q. I want to show you this picture that's
19 already been marked as Defendant's Exhibit Number
20 1. Do you recognize that?

21 A. Yes, I do.

22 Q. And focus your attention, please, to
23 the underneath of the tree house.

24 A. That is a concrete wall that's part
25 concrete and part metal blocking the natural flow

1 of Dean Swamp Creek. And this picture, if you
2 haven't been there, might not tell, but the water
3 to the right is going straight down from Furtick
4 Road and the pipes and right at that concrete
5 barrier. The flow has been cut off instead of
6 going to the right, any kind of flow, it's turned
7 dog-leg to the left.

8 Q. Show you another picture and ask if you
9 recognize this.

10 A. That's part of the retainer wall, you
11 can see metal and fill dirt behind the metal.

12 Q. Is that under the tree house?

13 A. In the immediate proximity in this
14 picture, it's right at the edge of the tree house,
15 yes.

16 Q. Is that adjacent to the concrete that
17 you just looked at?

18 A. Yes, it is.

19 MR. WILLIAMS: I'm going to try to move
20 quickly with these pictures because we got a lot of
21 them. I would ask that that be marked as
22 Plaintiff's 5. Any objection, Mr. Lang?

23 MR. LANG: No, I don't.

24 (PLF. EXH. 5 in evidence.)

25 BY MR. WILLIAMS:

1 Q. I want to show you this picture, Mr.
2 Williams, and ask you if you recognize this?

3 A. That's what I refer to as the dead
4 creek.

5 Q. Where would that be located?

6 A. Right where that survey line is. To
7 one side is Mr. Smith's cutover timber land and to
8 the right is my land. And you can see a distinct
9 bed down the edge.

10 MR. WILLIAMS: We would offer this as
11 the plaintiff's next exhibit.

12 MR. LANG: It's hard for me to keep up
13 if you don't give me copies, I don't know what you
14 got. I know I have copies, I'm just trying to keep
15 up.

16 THE COURT: I understand.

17 MR. WILLIAMS: Your Honor, off the
18 record.

19 (Off-the-record conference.)

20 BY MR. WILLIAMS:

21 Q. We're going to try to move through
22 these pictures really quickly because we already
23 have -- let me ask you this: Were all these
24 pictures taken in the same general area?

25 A. Yes.

1 Q. And what area was that in relation --

2 A. Around the creek run, as I know it.

3 The large creek run, Dean Swamp Creek.

4 Q. Would these pictures be below or
5 upstream from the tree house?

6 A. I'm sorry?

7 Q. Were these pictures -- were they taken
8 upstream or downstream --

9 A. Downstream, the vast majority.

10 Q. All right. Do you recognize that one?

11 A. That's not far below the tree house. A
12 branch that was totally blocked by the concrete
13 wall and the metal wall.

14 Q. Is this part of what you understand to
15 be the old creek bed?

16 A. That might be upper end.

17 MR. WILLIAMS: And this is -- what was
18 previously marked as E-27.

19 (PLF. EXH. 6 in evidence.)

20 BY MR. WILLIAMS:

21 Q. Next picture. Do you recognize that?

22 A. That's some of the timber cutting and
23 pushing around of soil parallel to the line maybe
24 within 50, 60 yards of the line.

25 Q. Would this be on the Williams' side or

1 the Smith side of the line?

2 A. It would be on the Williams' side of
3 the line.

4 MR. WILLIAMS: All right. We will
5 offer that as the next plaintiff's exhibit.

6 (PLF. EXH. 7 in evidence.)

7 BY MR. WILLIAMS:

8 Q. The next picture, do you recognize
9 that?

10 A. That shows size of some of the timber
11 and equipment work pushing up soil in an unnatural
12 situation on the Williams' side.

13 (PLF. EXH. 7 in evidence.)

14 MR. WILLIAMS: E-30.

15 (PLF. EXH. 8 in evidence.)

16 THE WITNESS: This picture shows timber
17 cutting, moving around dirt, and a pipe that would
18 not represent the natural flow of the water near
19 the property of the line.

20 BY MR. WILLIAMS:

21 Q. Williams' side, Smith side?

22 MR. WILLIAMS: Louis, this is E31.

23 (PLF. EXH. 9 in evidence.)

24 BY MR. WILLIAMS:

25 Q. Where would this be in relation to the

1 tree house?

2 A. Below the tree house.

3 (PLF. EXH. 10 in evidence.)

4 BY MR. WILLIAMS:

5 Q. Do you recognize this picture,
6 Mr. Williams?

7 A. Another picture showing saw movement,
8 trees cut. The dirt that's not in it's natural
9 state. It looks like an ATV trail on the Williams'
10 side below the tree house.

11 Q. Did you or any of your guests cut this
12 tree?

13 A. No, we've had nothing to do with any of
14 that disturbance.

15 MR. WILLIAMS: This is E-32, Louis.

16 (PLF. EXH. 11 in evidence.)

17 THE COURT: Just for clarification, the
18 Williams' side --

19 THE WITNESS: The side I'm claiming.

20 THE COURT: The side you're claiming,
21 but that I've got to decide?

22 THE WITNESS: Right, east of old Dean
23 Swamp Creek.

24 MR. WILLIAMS: This next one, Louis is
25 E-33.

1 (PLF. EXH. 12 in evidence.)

2 BY MR. WILLIAMS:

3 Q. Do you recognize this, Mr. Williams?

4 A. Yes. Pipe, timber, a berm that blocks
5 natural water flow through the swamp. And an ATV
6 trail that would be east through the old Dean Swamp
7 line that I claim.

8 Q. As depicted on this diagram?

9 THE WITNESS: Any particular way you
10 want me to reference that line?

11 THE COURT: I understand. I just want
12 to make sure when you say on the Williams' side,
13 that we're talking about on what you claim is that
14 side.

15 MR. WILLIAMS: This is E-33, Louis.

16 BY MR. WILLIAMS:

17 Q. Do you recognize that picture,
18 Mr. Williams?

19 A. I do. Similar to some of the others,
20 natural water flow, there's a road trail where you
21 can see considerable amount of earth being pushed
22 up with the pipe running under. You can see logs
23 laying on the ground and some stumps.

24 Q. Similar location?

25 A. Similar location on the side I'm

1 claiming.

2 MR. WILLIAMS: That's E-34.

3 (PLF. EXH. 13 in evidence.)

4 BY MR. WILLIAMS:

5 Q. Let me ask you this, Mr. Williams, when
6 were these pictures taken?

7 A. I think these pictures were taken
8 October 2008 and some were taken probably early
9 spring, summer of 2009.

10 Q. Do you recognize that picture?

11 A. Yes, this is probably 2- to 300 yards
12 below the concrete metal diversion wall --

13 Q. Same location --

14 A. On the Williams' side that I'm
15 claiming.

16 MR. WILLIAMS: That's E-35, Louis.
17 Next the E8.

18 (PLF. EXH. 14 in evidence.)

19 BY MR. WILLIAMS:

20 Q. Do you recognize this, Mr. Williams?

21 A. Yes, I do.

22 Q. And I want to stop a minute on that
23 one. Specifically where is that location?

24 A. That's located, I would say, it could
25 be 150 yards below the berm, the metal concrete

1 wall. And this is between the lands of Mr. Smith
2 and my land that I'm claiming, it's the run of the
3 dead creek bed that's been blocked. You can see
4 the swale in the growth.

5 THE COURT: And that's going to be
6 exhibit what?

7 MR. LANG: 14, Your Honor.

8 (PLF. EXH. 15 in evidence.)

9 BY MR. WILLIAMS:

10 Q. Do you recognize that picture?

11 A. Very similar to the previous one, this
12 is part of the dead streambed.

13 Q. How far below the birdhouse?

14 A. I would say it could be anywhere from
15 150 to 400 yards below, that's where it was so
16 evident.

17 MR. WILLIAMS: That one is E-6.

18 (PLF. EXH. 16 in evidence.)

19 BY MR. WILLIAMS:

20 Q. Do you recognize this picture?

21 A. This is yet another picture showing
22 reeds and grasses typical of a grown upstream bed.

23 Q. Where would that be located in relation
24 to the tree house?

25 A. It would be below the tree house right

1 down the dead creek line where the creek's been
2 blocked.

3 MR. WILLIAMS: That's E-7.

4 (PLF. EXH. 16 in evidence.)

5 BY MR. WILLIAMS:

6 Q. Do you recognize that picture,
7 Mr. Williams?

8 A. Yes, I do. It's another similar shot,
9 it's got a little bit of water in it, in the old
10 streambed. And it runs -- this is below the tree
11 house.

12 Q. About how far below?

13 A. I would say it could be anywhere
14 between 150 to 500 yards.

15 MR. WILLIAMS: E-5.

16 (PLF. EXH. 17 in evidence.)

17 BY MR. WILLIAMS:

18 Q. Do you recognize that, Mr. Williams?

19 A. This picture is a dead stream that's
20 been blocked probably 100 yards below the concrete
21 metal wall on the Williams' side I'm claiming.

22 MR. WILLIAMS: That's one was E-3,
23 Louis.

24 (PLF. EXH. 18 in evidence.)

25 BY MR. WILLIAMS:

1 Q. Do you recognize that?

2 A. That is -- I believe that picture,
3 that's part of the sand clay soil that's been
4 brought up. That picture is there, the concrete
5 metal barrier that diverted the creek.

6 Q. Where is this location in relation to
7 the orange Stroman line?

8 A. Where is it in relationship?

9 Q. To the orange Stroman line?

10 A. That would be up right at the foot
11 along near the creek edge as its been diverted
12 going easterly at the bottom of Fulmer --

13 Q. Near this juncture here where this line
14 depicted as a current run of Dean Swamp Creek meets
15 in with the old run, the Stroman line?

16 MR. WILLIAMS: All right. That is E21.

17 (PLF. EXH. 19 in evidence.)

18 BY MR. WILLIAMS:

19 Q. Do you recognize that picture,
20 Mr. Williams?

21 A. That looks to be another shot of the
22 dead creek bed, the lower part going down --

23 Q. How far from the tree house?

24 A. I think, that I recall, there was about
25 2,400 feet from the concrete barrier to a little

1 open field that was cleared by Mr. Smith for some
2 of his hunt club that could be, I would say, the
3 upper end. The type soil and growth I would say
4 that could be 150 yards, 250 yards below the
5 artificial barrier.

6 MR. WILLIAMS: 22.

7 (PLF. EXH. 20 in evidence.)

8 BY MR. WILLIAMS:

9 Q. Do you recognize that picture?

10 A. That's an ATV trail below the
11 artificial barrier on the Williams' side of the
12 dead creek bed that I claim and it's going toward
13 the river.

14 Q. All right.

15 MR. WILLIAMS: And that's 20.

16 (PLF. EXH. 21 in evidence.)

17 BY MR. WILLIAMS:

18 Q. Do you recognize that picture?

19 A. Yes, I do.

20 Q. What is that?

21 A. That's a wooden artificial barrier to
22 block the natural flow of a stream.

23 Q. And where is that located in relation
24 to the tree house?

25 A. I believe, this -- I don't see a pipe,

1 I believe this is about 100 yards below the tree
2 house. There was somewhat similar blocked streams
3 above the tree house also. That one appears to be
4 one below.

5 MR. WILLIAMS: That's 19.

6 (PLF. EXH. 22 in evidence.)

7 BY MR. WILLIAMS:

8 Q. Do you recognize that picture?

9 A. Yes, I do. That shows blocking of the
10 stream with this one, its clear it's below the tree
11 house. And it's going -- I think there was a pipe
12 going through right in here from a berm and just
13 going toward the river, there's a little streambed.

14 MR. WILLIAMS: That's 18.

15 (PLF. EXH. 23 in evidence.)

16 BY MR. WILLIAMS:

17 Q. Do you recognize that picture?

18 A. Yeah, that's the diverted creek. And
19 this is part of the fill dirt that's been pushed up
20 fairly close to the tree house area. That's sandy
21 or sand clay type soil.

22 MR. WILLIAMS: All right. That's 15.

23 (PLF. EXH. 23 in evidence.)

24 BY MR. WILLIAMS:

25 Q. Is that downstream or upstream from the

1 tree house?

2 A. Let me look at it again. I don't see
3 fill in there, so this would have to be upstream.
4 I don't see an opening there, so it would have to
5 be upstream from the tree house.

6 MR. WILLIAMS: And that's 15, Louis.

7 (PLF. EXH. 24 in evidence.)

8 BY MR. WILLIAMS:

9 Q. All right. Do you recognize that
10 picture, Mr. Williams?

11 A. That's a small tributary that's been
12 blocked by unnatural means, pushed up soil by some
13 type of equipment and logs cut into joints below
14 the tree house. Probably I'd say, if I had to
15 guess, 200 yards on the Williams claimed side.

16 MR. WILLIAMS: 13, Louis.

17 (PLF. EXH. 25 in evidence.)

18 BY MR. WILLIAMS:

19 Q. Do you recognize that picture?

20 A. Somewhat similar to the previous one.
21 It shows cut logs, pushed dirt, disturbing the
22 natural swamp in the area, below the berm, below
23 the artificial area, going toward the river on the
24 Williams' side.

25 MR. WILLIAMS: That is 12.

1 (PLF. EXH. 26 in evidence.)

2 BY MR. WILLIAMS:

3 Q. Do you recognize that picture?

4 A. This appears to be the road coming at
5 the lower end of the Adkins property to the tree
6 house. And there are pipes and soil that's not
7 indigenous to that area.

8 MR. WILLIAMS: That is 11.

9 (PLF. EXH. 27 in evidence.)

10 BY MR. WILLIAMS:

11 Q. Do you recognize that picture,
12 Mr. Williams?

13 A. This picture appears to be part of the
14 old streambed below the concrete barrier and
15 retainer wall.

16 Q. Does that picture contain anything in
17 it?

18 A. It looks like metal objects over to the
19 left.

20 BY MR. WILLIAMS:

21 Q. Yes?

22 A. Yes.

23 Q. Okay. And can you tell what those
24 metal objects are?

25 A. All I see of the metal object is there

1 through, there looks like a piece of equipment.

2 Q. Do you have any indication that that
3 metal object is a remnant of a liquor still?

4 A. I really don't recall that.

5 (PLF. EXH. 28 in evidence.)

6 BY MR. WILLIAMS:

7 Q. Okay. Do you recognize that picture
8 Mr. Williams?

9 A. That is the run of old Dean Swamp Creek
10 dry bed cut over on one side and standing timber on
11 the other. To the left is the side I claim.

12 (PLF. EXH. 29 in evidence.)

13 BY MR. WILLIAMS:

14 Q. Do you recognize that picture?

15 A. It was a wooden barrier that was trying
16 to dam a dike, part of the natural flow of the
17 water. And I believe one or two were above the
18 retainer man-made barrier and there were one or two
19 below the man-made barrier.

20 (PLF. EXH. 30 in evidence.)

21 BY MR. WILLIAMS:

22 Q. Do you recognize that picture?

23 A. That's the tree house and that's going
24 downstream from the tree house. And the artificial
25 concrete barrier metal wall is right in the front

1 of the tree house. And the creek is to the far
2 right.

3 Q. Where would you describe the location
4 of the old creek bed in the relation to that
5 picture?

6 A. It would be right behind and a little
7 bit to the right going in a southerly direction
8 where this is in an easterly direction.

9 Q. In that picture do you recognize any
10 artificial embankment of any kind?

11 A. All of this is part of the soil that is
12 not indigenous to the area of the sand clay and
13 sand, goes upstream in front of the tree house
14 towards the pipes, makes almost a right angle turn,
15 and goes downstream where the creek has been
16 diverted by the wall and turns parallel.

17 Q. You mentioned a right angle turn. Is
18 there a corresponding right angle turn on that
19 diagram up there?

20 A. There at the bottom of Adkins land.

21 Q. I believe --

22 A. Right about there, yeah.

23 Q. I believe BH marked this as a tree
24 house. Is this where that right angle turn is that
25 you're talking about?

1 A. Yes.

2 (PLF. EXH. 31 in evidence.)

3 BY MR. WILLIAMS:

4 Q. Do you recognize that picture?

5 A. It shows built-up soil with cut trees
6 and a pipe in the ground. This would be below the
7 tree house on my side of the property.

8 Q. Would this be a -- the major old creek
9 bed?

10 A. I don't think so, no. It's not big
11 enough, it's not wide enough.

12 Q. What is your understanding of what that
13 picture is of?

14 A. It's probably a tributary near the
15 creek bed, that's been artificially blocked by
16 manmade soil movement and piping.

17 MR. LANG: Your Honor, if he doesn't
18 know where it is, I don't see the relevance of
19 this.

20 BY MR. WILLIAMS:

21 Q. Do you know where it is in relation to
22 this diagram?

23 A. It's below the manmade metal wall and
24 concrete barrier. That road, a substantial ATV
25 road, shoots off from the creek bed in that area

1 and goes a large way toward the river. And there
2 were numerous places to go under the road where the
3 road is built up for ATV travel.

4 MR. LANG: If he can't identify where
5 it is, Your Honor, again, I can't cross-examine him
6 on that --

7 MR. WILLIAMS: You can cross-examine.
8 BY MR. WILLIAMS:

9 Q. Is this generally part of the activity
10 that you observed down in there?

11 A. Yes.

12 THE COURT: I think he's accurately
13 described it as being in the area that he's dealing
14 with. So I will let it in.

15 MR. LANG: All right. Well, I would
16 then, just to the record is clear, I object to
17 Plaintiff's Exhibit 32.

18 (PLF. EXH. 32 in evidence.)

19 BY MR. WILLIAMS:

20 Q. Do you recognize that picture?

21 A. That is part of a streambed below the
22 wall.

23 Q. Do you recall that as being part of the
24 main streambed or one of the --

25 A. Tributaries, that is not part of the

1 main streambed. The main streambed is clear cut on
2 one side, you have standing big timber on both
3 sides of this. This is a tributary swamp run, not
4 the main creek bed.

5 Q. And how would you describe water in
6 that tributary?

7 A. None. It doesn't look like water has
8 been in there any time. We didn't see any water in
9 it.

10 MR. WILLIAMS: I have just a couple of
11 more for now and then I understand we're going to
12 take a break; is that right?

13 THE COURT: If you need one.

14 (PLF. EXH. 33 in evidence.)

15 BY MR. WILLIAMS:

16 Q. Ask you if you recognize that picture,
17 Mr. Williams?

18 A. Yes. This was on the side of the dead
19 creek bed that I claim. And this was identified
20 and ultimately, it's my understanding Mr. Smith
21 agreed it was his equipment.

22 Q. I was going to ask you next if you know
23 whose -- first of all, what is that in that
24 picture?

25 A. It's a Case International tractor with

1 a disk on the back.

2 Q. And do you know who's it is?

3 A. Either you and I with attorneys
4 representing Mr. Smith identified it as his piece
5 of equipment.

6 Q. Did you ever ask Mr. Smith if this was
7 his equipment or did you ever hear him say it was
8 his equipment?

9 A. If he and I and you and his attorney
10 were there at the same time, I think it was
11 Attorney Ashley that visited, I don't remember my
12 asking him, no.

13 Q. Okay. In conversations did -- before
14 suit was filed, did you visit the property with
15 Mr. Smith before suit was filed?

16 A. I really don't know the timetable of
17 the suit. There was a surveyor and Mr. Smith and
18 and Attorney Ashley and you and I, and I believe I
19 was surveyor at the site --

20 MR. LANG: Your Honor, that is
21 Mr. Smith's tractor.

22 THE COURT: Stipulated.

23 THE WITNESS: But that's when we saw
24 that equipment, yes.

25 BY MR. WILLIAMS:

1 Q. And that was in this same location
2 we've been talking about?

3 A. Yes.

4 MR. WILLIAMS: That was E25.

5 MR. LANG: I got it.

6 (PLF. EXH. 34 in evidence.)

7 BY MR. WILLIAMS:

8 Q. Do you recognize this picture?

9 A. Yes. It's at the same general
10 location, tractor in a ditch. In large, filling up
11 a natural tributary in the stream below manmade
12 barrier or the land that I claim.

13 Q. Okay.

14 MR. WILLIAMS: That is 26. And the
15 next is 28.

16 (PLF. EXH. 35 in evidence.)

17 BY MR. WILLIAMS:

18 Q. Do you recognize that picture?

19 A. Yes, I do. It's a piece of equipment
20 on the side of the dead stream that I claim. And
21 it appears that there's a tributary running right
22 to the right of it. It was probably 500 yards or
23 more below the manmade retainer wall.

24 Q. All right. And do you know who owned
25 this equipment?

1 A. That, again, ultimately Mr. Smith
2 identified it as his.

3 Q. Okay.

4 MR. WILLIAMS: Is this a good time for
5 a break?

6 THE COURT: Everybody a five-minute
7 break.

8 (PLF. EXH. 36 in evidence.)

9 (A recess transpired.)

10 (PLF. EXH. 37 in evidence.)

11 (PLF. EXH. 38 in evidence.)

12 (PLF. EXH. 39 in evidence.)

13 (PLF. EXH. 40 in evidence.)

14 (PLF. EXH. 41 in evidence.)

15 (PLF. EXH. 42 in evidence.)

16 (PLF. EXH. 43 in evidence.)

17 (PLF. EXH. 44 in evidence.)

18 (PLF. EXH. 45 in evidence.)

19 (PLF. EXH. 46 in evidence.)

20 (PLF. EXH. 47 in evidence.)

21 BY MR. WILLIAMS:

22 Q. Do you recognize that picture,
23 Mr. Williams?

24 A. More disturbance of the natural ground,
25 well below the artificial reef or barrier with a

1 pipe putting water through a channel.

2 Q. Do you recognize this?

3 A. Timber logs lying on the ground on the
4 side of the dead creek bed that I claim with some
5 soil disturbance from, I reckon, some logging
6 equipment.

7 Q. Same general area?

8 A. Yeah, same general area.

9 Q. Do you recognize this picture?

10 A. This, as I recollect, is about maybe
11 100 yards below the manmade barrier. It's a wooden
12 wall with a pipe under it, diverting water like a
13 dike.

14 Q. Do you recognize this picture?

15 A. That's part of a dead streambed with
16 the concrete and metal wall, I would say, if I had
17 to guess, 150 to 600 yards below the artificial
18 barrier.

19 Q. I apologize, I was distracted a moment.

20 Did you say this was part of the dead creek bed?

21 A. Dead creek bed.

22 Q. And when you were there at or about
23 that the time that picture was taken, was there
24 water flowing or was that stagnant water?

25 A. Stagnant water. You could see sticks

1 and logs and things and the debris in the bottom of
2 the streambed, that were typical of what would be
3 in bottom of a streambed.

4 Q. Do you recognize that picture?

5 A. Same kind of corrugated pipe.

6 Q. Where was that located, same general
7 vicinity?

8 A. Same general vicinity. Exactly where I
9 count pinpoint.

10 Q. Do you recognize that picture?

11 A. This looks like below the manmade
12 barrier into the forest, but not the main channel
13 of the dead creek bed.

14 Q. Any water flowing into the creek?

15 A. No water at the time we saw it, it was
16 below the fill dirt.

17 Q. Do you recognize that picture?

18 A. Small general area, small tributary
19 still water in it, blocked with logs. Same general
20 area.

21 Q. Do you recognize that picture?

22 A. Yes, this is, of course, there's a pipe
23 pictured under this trail that's an ATV trail. And
24 there was an opening down at the end of the trail
25 through the woods on the far -- same general area

1 with the part that I claim, standing timber on both
2 sides. Probably 60, 75 yards off the old
3 streambed.

4 Q. All right. Thank you. We'll have some
5 more pictures on another subject, but that's it for
6 now.

7 THE COURT: The pictures were 6 through
8 47 all omitted without objection.

9 MR. LANG: Except for the one.

10 THE COURT: Yes, sir.

11 BY MR. WILLIAMS:

12 Q. Mr. Williams, you testified a little
13 while ago, I believe, that you have leased this
14 property from time to time?

15 A. I've leased annually ever since I
16 bought it in 1978.

17 Q. What kind of lease?

18 A. Two kinds. One agricultural lease for
19 the open land; leased to Mr. Briggs Salley. And
20 also hunting leases from 1979 until the present.

21 Q. All right. Am I understanding you have
22 leased the hunting rights continuously since 1979?

23 A. Yes.

24 Q. Were all of those years since 1979
25 under written leases?

1 A. All except the last -- I think I have
2 one written lease since 2005. The same club with
3 the general same membership has leased it from
4 probably 1995, 1998 through the present. And
5 they're current lessees.

6 Q. How would the acreage numbers show up
7 on those leases?

8 A. Early on when I first purchased the
9 tract, it would show up as 1,050 acres representing
10 all of my holdings on the Springfield side of the
11 south Edisto River in the subject tract of land.
12 After 2000, I am sure the leases deducted the 200,
13 201 acres I sold to the east of 39.

14 Some of the lease read Dome Farms 1 and
15 some read Dome Farms 2. And some leases listed
16 both, which would come to a total of around
17 2,850 acres. Same club leasing both sides of the
18 river.

19 Q. 2,850 on this side, you've testified
20 1,050?

21 A. Initially until I sold 200 acres in
22 2000.

23 Q. The difference between 1,050 and 2,850;
24 what is that difference?

25 A. What is it about 1,800.

1 Q. Well, I mean, where does the rest of
2 that come from?

3 A. The large part of the acreage?

4 Q. Yes, sir.

5 A. It comes from the south side of the
6 south Edisto River, a piece -- you want a breakdown
7 in acreage?

8 Q. No, sir, that's fine. I wanted the
9 Judge to understand because these numbers are not
10 all 1,050. I wanted him to understand what 2,850
11 comes from. And then later after you sold the
12 200 acres, the number changed to --

13 A. 850 on the Springfield side.

14 Q. All right.

15 A. And the other acreage, I think would
16 drop accordingly.

17 Q. Let me show you that and ask you if you
18 recognize that document?

19 A. That's a 1979 lease, hunting lease, it
20 says 1,050 acres on the Springfield side of the
21 road.

22 Q. And who is the owner in this lease?

23 A. The land.

24 Q. Yes, the landowner?

25 A. The Wallmeyers and I.

1 Q. Is this the tract that we've been
2 talking about up here?

3 A. That is correct.

4 Q. And I believe you mentioned the date of
5 that lease?

6 A. 1979.

7 MR. WILLIAMS: I would offer this as
8 Plaintiff's Number 48; is that right?

9 MR. LANG: No objection, Your Honor.

10 THE COURT: No objection to Number 48.

11 (PLF. EXH. 48 in evidence.)

12 BY MR. WILLIAMS:

13 Q. Mr. Williams, I'll show you another
14 document and ask you if you recognize this
15 document?

16 A. This is a hunting lease, 1998, between
17 Patrick J. Williams and Tom Lake; the lessee.

18 Q. And how many acres are indicated in
19 that?

20 A. 2,850 acres.

21 Q. And so -- let me just ask you this way
22 in that 2,850, is this 1,050 a part of that?

23 A. Yes.

24 Q. All right.

25 MR. LANG: No objection.

1 THE COURT: Without objection.

2 (PLF. EXH. 49 in evidence.)

3 BY MR. WILLIAMS:

4 Q. Mr. Williams, on these hunting leases
5 since you were the landowner, these hunters who
6 were leasing it from you, how many would be in the
7 group on a given year, on average?

8 A. Ranging probably from a low of seven or
9 eight to a high of 12, 14, probably 12. Plus, I
10 had the right to hunt any time, anywhere. I could
11 take a guest any time, anywhere, my children could
12 any time, anywhere.

13 Q. Did the hunters utilize this parcel
14 over here?

15 A. Yes, they did.

16 Q. Is it still leased, in fact?

17 A. Yes, it is.

18 Q. Is it leased this year?

19 A. Yes, it is.

20 Q. When you describe to your hunters who
21 lease this property where this subject property
22 line is, what do you tell them?

23 A. Historically from day one from the
24 river on the lower end, the run of Dean Swamp
25 Creek, as I claim it to be, on the western side, a

1 little bit on both side of Furtick Road on up to
2 the closest part bordering Springfield, across the
3 line is Brig Salley land.

4 Q. Let's talk about this line specifically
5 because this is the one in controversy. And you
6 can answer by telling me the ridge line on this
7 diagram, the so-called current run of Dean Swamp
8 Creek or the Stroman survey line --

9 A. The Stroman survey line --

10 Q. -- or any combination.

11 A. Always, the ridge, the only time --
12 I've never claimed that as a hunting line.

13 Q. What have you instructed them as to the
14 property line?

15 A. The dead creek bed that I claim Dean
16 Swamp Creek to the river up 39.

17 Q. Is that line depicted on this diagram?

18 A. Yes, it is.

19 Q. And does it have a name up here?

20 A. Dean Swamp Creek.

21 Q. Are you talking about the Stroman
22 survey line?

23 A. Stroman survey line is correct.

24 Q. Have you ever varied your instructions
25 to your hunters ever since you first leased it in

1 1979 as to that property line?

2 A. Never, never varied.

3 Q. And it has been leased every year?

4 A. It has been leased every year.

5 Q. Up until this controversy a few years
6 ago with Mr. Smith, did that ever create any
7 problems for you?

8 A. Never.

9 Q. Have you, yourself, hunted that area?

10 A. Yes, I have.

11 Q. Let me show you another document,
12 please. Do you recognize that document?

13 A. It's a hunting lease dated May 2002 and
14 it calls the 2,850 acres, which is my land combined
15 on both sides of the south Edisto River.

16 Q. And are you the lessor, the owner,
17 property owner?

18 A. I am.

19 Q. And who is the lessee?

20 A. Tom Lake.

21 MR. WILLIAMS: Louis?

22 MR. LANG: No objection.

23 THE COURT: It's going to be Number 50
24 without objection.

25 (PLF. EXH. 50 in evidence.)

1 BY MR. WILLIAMS:

2 Q. I want to show you another document,
3 Mr. Williams, and ask if you recognize that?

4 A. It's a hunting lease between the
5 lessor, Patrick J. Williams and Tom Lake, 2003.
6 Same amount of land, 2,850 acres.

7 MR. LANG: No objection, Your Honor.

8 THE COURT: 51 without objection.

9 (PLF. EXH. 51 in evidence.)

10 BY MR. WILLIAMS:

11 Q. The next document, Mr. Williams.

12 A. A hunting lease 2004, Tom Lake,
13 2,850 acres.

14 Q. At that time did you still own the
15 2,850?

16 A. Yes, I did.

17 Q. In 2004?

18 A. 2004, that's correct.

19 Q. Okay.

20 MR. LANG: No objection.

21 THE COURT: 52 without objection.

22 (PLF. EXH. 52 in evidence.)

23 BY MR. WILLIAMS:

24 Q. I want to show you this next document,
25 Mr. Williams, and ask if you recognize that?

1 A. A hunting lease dated 2005, Patrick J.
2 Williams, lessor, Richard Pittman, lessee, who was
3 a member of the same hunting club as Mr. Lake, but
4 the presidency changed.

5 Q. What's the number of acres indicated in
6 that?

7 A. 2,850 acres.

8 Q. And when did you sell the 200 acres?

9 A. 2000.

10 Q. So I'm -- is that 2,850 outdated?

11 A. I was going to flag the point that I
12 also bought some land that brought it back up, I
13 bought -- should I go into that?

14 Q. Well, I'm just trying to --

15 A. Yeah; that's basically the same amount
16 of acres. I bought 100 acres; 35.8 acres;
17 14 acres; 15 acres. And the adjustment is about
18 the same amount.

19 Q. Okay. That's good.

20 MR. WILLIAMS: Louis, I already show
21 you this one. Do you want to look again?

22 THE WITNESS: Mr. Williams, let me
23 clarify that on the Springfield side, which we've
24 stated several times, it was initially 1,050 acres.
25 In the year 2000, I sold 200 or 201 to Whiteside,

1 Mr. and Mrs. White. The amount of acreage on that
2 side, with that one exception, has never changed.
3 The acreage on the other side of the river has been
4 added to.

5 BY MR. WILLIAMS:

6 Q. Thank you. When you leased these deer
7 hunting rights of this parcel, did your lessees
8 have any restrictions over on that parcel as to
9 property lines?

10 A. Other than follow game laws, no
11 property lines, they knew where the property lines
12 where. And they hunted any and all of it.

13 Q. All right. Let's talk a little bit,
14 Mr. Williams, about the harvesting of timber. And
15 I believe you mentioned earlier in your testimony
16 that you have harvested timber?

17 A. Yes, I have.

18 Q. I believe you said three times?

19 A. That's correct, plus pine tree thinning
20 on the high ground.

21 Q. I'm going to ask you now to step down
22 and look at the diagram up close. I'm going to
23 hand you a purple marker and ask you to draw some
24 circle or perimeter line at the places where you've
25 harvested timber.

1 A. (Indicating). Ridge 1988. 1978, time
2 I bought the property, an island of pines in that
3 vicinity.

4 Q. Did you say an island of pine?

5 A. They call it a high ground, a group of
6 pines is better than hardwood. And then in 1989 --
7 I'm sorry, '88, I'm sorry, we went down below the
8 ridge in all -- shoot, maybe like that, might have
9 gone a little deeper into the swamp. And then
10 2003, from there. (Indicating).

11 Q. All right, sir. Any other places?

12 A. That's pretty accurate, those are the
13 three different harvests.

14 Q. All right.

15 A. Now, I might mention, across Furtick
16 Road it was sold in 2003, but it was wet and we cut
17 several acres across Furtick Road in 2003. But
18 Weiger, Dean Dempsey, said it would rut too badly
19 that he wanted to continue to cut --

20 MR. LANG: Your Honor.

21 THE COURT: You can't state what
22 somebody outside the courtroom has said, sir.

23 BY MR. WILLIAMS:

24 Q. Mr. Williams, we've heard in this
25 lawsuit about a so-called logging deck. I'm going

1 to ask you to come back up here and mark where that
2 logging deck is.

3 A. For this and this harvest, a major
4 logging road was established. And let's see, it
5 came on through here somewhere and came up Furtick
6 Road to about right here. Maybe 100 yards in
7 Furtick Road a logging deck right there.
8 (Indicating).

9 Q. Now, for the benefit of the Court,
10 explain what you mean by logging deck?

11 A. That's where logging trucks would come
12 off Furtick Road going to this area and there would
13 be a loader that would load timber on the back of
14 the trucks. They would turn around, access load,
15 and depart from this area. And this area was a
16 major decking area where logs from the swamp and
17 that area where pulled around here and loaded onto
18 the trucks to be carried to the saw mills.

19 Q. All right. And for which of those
20 harvests was that logging deck utilized?

21 A. The logging deck was built in 1978 when
22 we cut this island of pines. And we call it an
23 island, again, it was high. And then it was used
24 again in 2003 when we cut all this area in here.

25 Q. Would you write the word logging deck

1 by that circle, please.

2 A. (Complying).

3 Q. Now, Mr. Williams, I see that you've
4 put three different dates up there '78, '88, and
5 2003. When you harvested timber those three
6 different times did you get any complaints from any
7 neighbors?

8 A. Never.

9 Q. You bought your land in what year?

10 A. 1978.

11 Q. And Mr. Smith bought his; do you
12 recall?

13 A. December 31st, 1986. Recorded
14 January 9th, 1987.

15 Q. So you owned your land approximately
16 how many years before he bought his?

17 A. About nine years.

18 Q. During that nine-year period before
19 Mr. Smith bought his, who primarily was the owner
20 of that parcel that he bought?

21 A. Augustus Bolin known as Gussie.

22 Q. Would you spell that name for the court
23 reporter.

24 A. A-U-G-U-S-T-U-S.

25 Q. And what was his nickname?

1 A. Gussie, G-U-S-S-I-E.

2 Q. Do you know where Mr. Bolin lived?

3 A. He lived right outside of Springfield.

4 Q. Did he work in Springfield?

5 A. He had a drugstore. He and his wife
6 were pharmacists in Springfield.

7 Q. Did you know Mr. Bolin?

8 A. Ever since my infancy.

9 Q. All right. Did Mr. Bolin ever complain
10 about any of your timber harvesting or hunting or
11 anything?

12 A. No.

13 Q. Did you and Mr. Bolin ever have any
14 conflicts or controversies about the property line?

15 A. None whatsoever.

16 Q. Has the entrance to that logging deck
17 been blocked recently?

18 A. Yes, it has.

19 Q. Explain that, please, give a little
20 description.

21 A. At Furtick Road, I think initially a
22 gate was put up, we took down. And then a cable
23 right here with --

24 Q. You're pointing at the entrance of the
25 logging deck --

1 A. Entrance at the logging deck right here
2 at the edge, right here at the edge it came out to
3 Furtick Road, cables had been put up two or three
4 times. My hunting club cut the cables once and
5 then we were advised to take the pictures and leave
6 it up. Didn't want confrontation, accidentally or
7 otherwise.

8 Q. Do you know who put the cables up?

9 A. Carlisle Smith's hunting club.

10 Q. How do you know that?

11 A. There were signs on it. There were
12 posted signs on the post and one time dangling from
13 the cable.

14 Q. All right. Is that barricade up there
15 presently?

16 A. Yes, it is.

17 Q. Okay.

18 A. To avoid conflict we've been advised
19 not to take it down.

20 Q. All right. You can have a seat for now
21 and we might call you back up there in a little
22 bit. Following up on the questions of the timber
23 harvesting, I want you to look at that document and
24 see if you recognize it.

25 A. Yes, I do.

1 Q. What is it?

2 A. It's a letter from the Orangeburg ASCS
3 Agricultural Office that's in charge of
4 conservation and timberlands.

5 Q. From whom?

6 A. From a Peter Bischoff, forester.

7 Q. To whom?

8 A. A forester for the state.

9 Q. To who?

10 A. My partner, Frank J. Wallmeyer, my
11 partner in this land ownership.

12 Q. What's the date on it?

13 A. November 8th, 1979.

14 Q. And the general subject matter?

15 A. It's forestry and forestry plans for
16 the land.

17 Q. And does it have a diagram attached to
18 it?

19 A. Yes, it was.

20 Q. And was that diagram originally
21 included with that letter?

22 A. Yes, it was.

23 Q. And does that diagram show -- have a
24 line labeled Dean Swamp?

25 A. It does.

1 Q. Does it --

2 MR. LANG: Your Honor, before we get
3 any further, this document is not in evidence yet
4 -- it's not in evidence yet, so I object to your
5 description of it.

6 MR. WILLIAMS: Let's put it into
7 evidence.

8 MR. LANG: Well, I object to it going
9 into evidence. It's obviously hearsay. It's a
10 letter from someone else to the plaintiff, not the
11 plaintiff, but someone else.

12 MR. WILLIAMS: He's just testifying
13 that he received it, Your Honor.

14 THE COURT: Well, lay your foundation
15 that as to where it came to as part of their
16 business that they run together, et cetera.

17 MR. WILLIAMS: Yes, sir.

18 BY MR. WILLIAMS:

19 Q. Now, you said it's addressed to
20 Mr. Wallmeyer?

21 A. That's correct.

22 Q. And tell the Court who Mr. Wallmeyer is
23 in relation to this controversy?

24 A. He is my partner in ownership of this
25 land.

1 Q. Does he actually get involved with the
2 management of these kinds of things?

3 A. No, he doesn't.

4 Q. And how did you come about actually
5 having possession of that letter?

6 A. My partner, Frank Wallmeyer, probably
7 forwarded it to me because both of our names on
8 documents is legal in the courthouse. It went to
9 him and he forwarded it to me.

10 Q. So do you have familiarity with those
11 things addressed in that letter?

12 A. Yes, I do.

13 MR. WILLIAMS: All right. I would
14 offer that into evidence.

15 MR. LANG: Again, Your Honor, it is
16 hearsay. And it is a letter that is addressed to a
17 plaintiff who is not present from someone who is
18 obviously not present. It is, I assume, offered
19 for the truth of some matter contained therein.
20 And I would suggest that it is double hearsay as to
21 the document and, of course, statement by a non
22 present witness. And I object.

23 THE COURT: Follow up with your
24 foundation about why he keeps that in his business
25 records issue.

1 BY MR. WILLIAMS:

2 Q. Mr. Williams, let me ask you this
3 question: Would you consider that document to be
4 part of your normal business records?

5 A. Yes, I would.

6 Q. And why do you keep documents like
7 that?

8 A. Just history on the farm and land
9 management and timber management.

10 Q. And at the time that document was
11 provided, the date on that document, were you
12 directly involved with those things addressed in
13 that letter?

14 A. Yes. I would be the one overseeing it
15 or working with it or approving it.

16 MR. WILLIAMS: All right. And, Your
17 Honor, we're not offering these diagrams to prove
18 the truth of the matter asserted, we just want to
19 demonstrate that has been part of this parcel since
20 he -- since the plaintiff has owned the land. And
21 the -- it's accurate, as Mr. Lang pointed out, the
22 accurate and precise location will be determined
23 I'm sure by the surveyors. Their testimony will be
24 paramount on that location.

25 MR. LANG: Well, that is the truth of

1 the matter asserted. But that's not the reason to
2 put it in is that it's relevant, it's not a
3 business record of the plaintiff and Mr. Wallmeyer
4 has, it's the record of somebody else this
5 Mr. Bischoff person.

6 THE COURT: I disagree with you,
7 Mr. Lang. You keep that kind of records as the
8 owner of the land in connection with the timber
9 business and this letter came from somebody with
10 the forestry issues. I think it is part of the
11 business records and I'm going to let it be
12 entered.

13 MR. LANG: I would also, Your Honor,
14 object based the accumulative nature of that
15 document.

16 THE COURT: Objection noted for the
17 record.

18 MR. WILLIAMS: What was that second
19 objection?

20 MR. LANG: Accumulative.

21 MR. WILLIAMS: Did you want to look at
22 it?

23 MR. LANG: I've got it.

24 (PLF. EXH. 53 in evidence.)

25 BY MR. WILLIAMS:

1 Q. I want to show you another document,
2 Mr. Williams, and ask if you recognize that
3 document?

4 A. Yes, I do.

5 Q. And what's the date on that document?

6 A. June 30th, 1994.

7 Q. And to whom is that document addressed?

8 A. To me, Pat Williams.

9 Q. And who wrote the document? It's a
10 letter, I believe you said.

11 A. It's a letter and a map.

12 Q. All right. What is the subject matter
13 of that letter?

14 A. My requesting assistance in forestry
15 and the different types of timber stands on the
16 farm under discussion.

17 Q. And I don't think I asked you the
18 author of the document?

19 A. Brad C. Bramlett, Orangeburg Project
20 Forster, South Carolina Registry.

21 Q. And does that document include a
22 diagram?

23 A. Yes, it does. And this South Carolina
24 Forestry Commission.

25 Q. All right. Is that a document that you

1 have kept in the normal course of your business
2 records?

3 A. It is.

4 Q. In relation to your management of this
5 farm property?

6 A. Yes, it is. It describes timber stands
7 and what I should do about them or with.

8 Q. All right.

9 MR. LANG: Your Honor, I would register
10 the same objection to this document that I did with
11 Exhibit 53 --

12 THE COURT: 54.

13 MR. LANG: -- 54, Plaintiff's Number
14 54, dated November 8th, 1978, to Mr. Wallmeyer from
15 Mr. Bischoff. The same objection, it's hearsay,
16 it's not a business record.

17 THE COURT: Same ruling, I'll let that
18 in subject to your objection made on the record.
19 And this is coming in as Number 55.

20 (PLF. EXH. 55 in evidence.)

21 BY MR. WILLIAMS:

22 Q. Let me show you this next document,
23 Mr. Williams, and ask if you recognize that
24 document?

25 A. Yes, I do.

1 Q. What is that document?

2 A. It's an extensive forestry management
3 plan, wildlife management plan provided to me by
4 Westvaco, who had offered landowners, forestry
5 owners, extensive plan and management programs.

6 Q. Is it specifically addressed to you on
7 the cover page?

8 A. It is, Pat Williams.

9 Q. And what is the date on that document;
10 do you see a date?

11 A. September 20th, 2000.

12 Q. And I note that that is a very thick
13 document consisting of many pages. Do you know if
14 the document contains any diagrams of your parcel?

15 A. I believe it does. It shows maps with
16 forestry type soils, types from the field areas all
17 the way to the river.

18 Q. And did -- how many diagrams do you see
19 readily in that document?

20 A. I see readily the -- several that are
21 flagged and there are numerous others showing maps
22 in general areas of the farm. I've looked through
23 it numerous times, I could dig, but that's several
24 major ones.

25 Q. All right. Is this a record that you

1 have kept as part of your management of the farm
2 business?

3 A. Yes, it is.

4 Q. Would you consider this a business
5 record --

6 A. Absolutely.

7 Q. All right, sir.

8 MR. WILLIAMS: I would offer this as
9 the plaintiff's next exhibit.

10 MR. LANG: Beg the Court's indulgence.

11 THE COURT: Fair.

12 THE WITNESS: Attorney Williams, if I
13 might add --

14 MR. LANG: Objection, Your Honor, he
15 needs to respond to questions from his attorney,
16 not testify.

17 THE COURT: I agree with you, Mr. Lang.

18 BY MR. WILLIAMS:

19 Q. I want to show you the next document,
20 Mr. Williams, and ask you --

21 MR. LANG: Before we put in that
22 document, I would object based on the same
23 objection I had for 54 and 55, as hearsay documents
24 and not business records and accumulative.

25 THE COURT: And this going to be 56.

1 And I overrule your objection.

2 MR. LANG: Thank you, Your Honor.

3 THE COURT: On the same grounds as 54
4 and 55.

5 (PLF. EXH. 56 in evidence.)

6 BY MR. WILLIAMS:

7 Q. Do you recognize that document,
8 Mr. Williams?

9 A. Yes, I do.

10 Q. What's the date on that document?

11 A. July 8th, 2002.

12 Q. And to whom is that addressed?

13 A. It's addressed to Pat Williams.

14 Q. And who is it from?

15 A. It's from Westvaco, plant management,
16 from Gary Herman, district forester, certified
17 forester.

18 Q. And in very general and brief terms,
19 what is the subject of that document.

20 A. Advice on a timber harvest on the
21 subject property.

22 Q. All right. I highlighted a line or two
23 at the bottom, which I would ask you to focus on.
24 Would you please read that sentence that I
25 highlighted?

1 MR. LANG: Before we get to that, Your
2 Honor, I assume this is going to be offered into
3 evidence.

4 MR. WILLIAMS: Yes.

5 MR. LANG: I object.

6 THE COURT: This is another document,
7 this isn't 56 --

8 MR. LANG: This should be 57.

9 THE COURT: You're not still talking
10 about 56, you've moved onto another document?

11 MR. WILLIAMS: Yes, sir.

12 THE COURT. Well, then we need to get
13 it into evidence before we can be able to read it.
14 BY MR. WILLIAMS:

15 Q. All right. Well, let me just ask you,
16 have you -- I believe you said it was addressed to
17 you. Is this part of your normal business records?

18 A. Yes.

19 Q. Thank you.

20 MR. LANG: Again, Your Honor, same
21 objection, hearsay, not business records
22 accumulative.

23 THE COURT: Same ruling. This will be
24 Number 57.

25 (PLF. EXH. 57 in evidence.)

1 BY MR. WILLIAMS:

2 Q. Now, I would ask you to read that
3 sentence at the bottom of the page, please.

4 A. On the Springfield tract I examined the
5 650 acres of bottom land and swamp hardwood for
6 possible sale.

7 Q. Now, my question is: Do you know what
8 650 acres of bottom land and swamp hardwood the
9 author of that letter is referring to?

10 A. He's referring from right at the bottom
11 of my ridge that goes across the farm to Dean Swamp
12 Creek to south Edisto River.

13 Q. All right. If you would step down and
14 mark that on this diagram.

15 A. (Complying).

16 Q. If you will, please, just write in some
17 open space there, 650 bottom land.

18 A. (Complying.

19 Q. Did you, in fact, sale this bottom land
20 Mr. Williams -- I mean, the timber land off of it?

21 A. Not on that, no.

22 Q. You can take your seat again.

23 MR. WILLIAMS: Your Honor, I just
24 noticed that this has an ID number on it. May I
25 just take a moment and strike through the ID

1 number?

2 THE COURT: Sure.

3 BY MR. WILLIAMS:

4 Q. I want to show you this document,
5 Mr. Williams, and ask if you recognize that?

6 A. This is a document dated 2003 from a
7 forestry company that assisted me with the sale of
8 timber on the subject tract with the sale totalling
9 about \$127,000.

10 Q. Is this a document you have kept in the
11 maintenance of your business records?

12 A. Yes, I have.

13 MR. WILLIAMS: At the suggestion of
14 Mr. Lang, I'm going to remove this top part.

15 MR. LANG: The top part is a narrative
16 of what the document is.

17 THE COURT: That's fine or you can, if
18 y'all want to, you can remove it tonight and make
19 another copy of it on a smaller piece of paper;
20 however you want to do that.

21 MR. LANG: That's fine, if you want to
22 put it --

23 MR. WILLIAMS: We've got so much stuff,
24 I'm afraid I'll forget to do that. So I'm offering
25 this into evidence.

1 THE COURT: 58?

2 MR. LANG: No objection.

3 THE COURT: No objection to 58.

4 (PLF. EXH. 58 in evidence.)

5 BY MR. WILLIAMS:

6 Q. Let me ask you this, Mr. Williams, have
7 you with your own eyes ever observed any timber
8 harvesting on Mr. Smith's side of this Stroman
9 line?

10 A. Any -- clarify that question, please.

11 Q. Have you personally ever observed any
12 timber harvesting on Mr. Smith's line?

13 A. I observed a vast amount of acreage
14 that had been what I would call clear cut on
15 Mr. Smith's side of the line.

16 Q. All right. And when ask if you
17 observed harvesting, I didn't mean did you actually
18 see them as they were cutting the trees. What I
19 meant was had you observed where timber had been
20 harvested?

21 A. Yes.

22 Q. And how would you describe the location
23 of the harvesting on Mr. Smith's side?

24 A. On the immediate west side of Dean
25 Swamp Creek, as I claim it to be, right up to the

1 creek bed, not across the creek bed. Right up to
2 the creek bed for probably basically the entire
3 length until right before it gets to the river edge
4 where it turns a little bit.

5 Q. Step back down, if you will, please.
6 And mark, back off of this line a little bit, so it
7 will be clear, mark where you saw the timber
8 harvesting on Mr. Smith's side, so it will be
9 clear.

10 A. (Indicating).

11 Q. And for the sake of the record, that --
12 those marks are little short slash marks on the
13 west side of the Stroman survey line.

14 A. Right, right up to the line.

15 Q. Did the harvesting come across that old
16 creek bed at all?

17 A. No.

18 Q. I want to show you this document and
19 ask if you recognize that?

20 A. Yes, I do.

21 Q. What is that document, Mr. Williams?

22 A. This is an aerial photograph that shows
23 the line of the timber on my side that I claim.
24 And the clear cut on Mr. Smith's side of Dean Swamp
25 Creek.

1 MR. LANG: Well, I move to strike that
2 testimony because it has not been admitted yet in
3 this document.

4 THE COURT: Let's see if he can get it
5 admitted and then we'll come strike it if
6 necessary. Lay a foundation of that document.

7 BY MR. WILLIAMS:

8 Q. Where did you get that document,
9 Mr. Williams? Do you know the source of that
10 document?

11 A. It's either a county map or I had a
12 pilot fly me over who is a pilot photographer that
13 took pictures from the air, so that the clear cut
14 line could be distinctly shown.

15 MR. WILLIAMS: Your Honor, you know,
16 I'll just get these in by one of the witnesses
17 tomorrow.

18 THE COURT: And we'll strike that
19 testimony regarding what that the picture depicted
20 for now.

21 MR. LANG: Thank you.

22 MR. WILLIAMS: Yes, sir.

23 BY MR. WILLIAMS:

24 Q. I want to show you this document,
25 Mr. Williams, and ask if you recognize that?

1 A. This is a statement from the Tax
2 Assessor's Office of Orangeburg County for Pat
3 Williams and Frank and Mary B. Wallmeyer. And it
4 is dated September 15th, 2012, illegal eight
5 acreage is 848.3 acres.

6 THE COURT: Hang on a second.
7 BY MR. WILLIAMS:

8 Q. Do you know the source of this
9 document, Mr. Williams? Do you know the source of
10 this document?

11 A. Orangeburg County Tax Assessor's
12 Office.

13 MR. LANG: Your Honor, it's a matter of
14 public record, I have no objection.

15 THE COURT: No objection. Admitted
16 into evidence. For record is it 608, 609?

17 MR. WILLIAMS: Don't know the number,
18 but I know --

19 THE COURT: What exhibit is that?

20 THE COURT REPORTER: 59.

21 (PLF. EXH. 59 in evidence.)

22 BY MR. WILLIAMS:

23 Q. Mr. Williams, tell me, again, the date
24 of that document?

25 A. September 15th, 2012.

1 Q. And I believe you said that is a
2 document identified for this parcel?

3 A. That is correct.

4 Q. Does it have the number of acres on
5 there?

6 A. 848.3 acres.

7 Q. And does it include a county tax map?

8 A. Yes, it does.

9 Q. And in general, does that tax map match
10 your understanding of your -- of this parcel that
11 you and your partners own?

12 A. Yes, it does.

13 Q. All right. Thank you. I want to show
14 you the next document, Mr. Williams, and ask if you
15 recognize that document?

16 A. Yes, I do.

17 Q. What is that?

18 A. It's a statement from the Tax
19 Assessor's Office Orangeburg County.

20 Q. And whose property is described there?

21 A. F. Carlisle Smith.

22 MR. WILLIAMS: And same exception,
23 public records? You want to look at it?

24 MR. LANG: I don't have any objection
25 to it.

1 THE COURT: That will be number.

2 MR. LANG: 60.

3 (PLF. EXH. 60 in evidence.)

4 BY MR. WILLIAMS:

5 Q. Look at that, again, please, Mr.

6 Williams, does that have a number of acres
7 indicated?

8 A. Yes, it does.

9 Q. What is the number of acres?

10 A. 400.001 acres. So right at 400 acres.

11 Q. Does that document include a tax map?

12 A. Yes, it does.

13 Q. A tax map for Mr. Smith's parcel?

14 A. Yes, it does.

15 Q. Does that -- the general perimeter
16 lines of that tax map, does it match your
17 understanding -- not so much of the other side of
18 this parcel, but the property line between you and
19 Mr. Smith?

20 A. Yes, it does, the run of Dean Swamp
21 Creek, the old creek bed.

22 Q. Thank you, sir. Mr. Williams, do you
23 have occasion to know whether or not Mr. Smith has
24 mortgaged his property?

25 A. I've seen a copy of a mortgage, yes.

1 Q. I want to show you this document and
2 ask if you recognize it?

3 A. It's a copy of a mortgage.

4 Q. And who is the borrower named on that
5 mortgage?

6 A. F. Carlisle Smith.

7 Q. What is the date that that mortgage was
8 recorded?

9 A. Is that filed?

10 Q. Yes, sir.

11 A. Date filed; April 28th, 2011.

12 Q. And flip, if you will, please,
13 Mr. Williams, and see if that mortgage includes a
14 property description?

15 MR. LANG: No objection, Your Honor,
16 it's a recorded mortgage. It would be Plaintiff's
17 61.

18 THE COURT: So admitted Number 61
19 without objection.

20 (PLF. EXH. 61 in evidence.)

21 BY MR. WILLIAMS:

22 Q. I think the property description is at
23 the back?

24 A. The back? Oh, I missed a page.
25 Without reading the full description, all the

1 . certain piece of parcel, lot, tract of land,
2 situated, lying and being in good land township
3 Orangeburg County, South Carolina, contained in
4 400 acres.

5 Q. Thank you, sir. Mr. Williams, you
6 testified a little while ago about a logging deck?

7 A. Yes.

8 Q. And you indicated a location on the
9 diagram?

10 A. Yes.

11 Q. And then you testified about recent
12 barricades at the logging deck?

13 A. Yes.

14 Q. Now, have you encountered barricades
15 more recently, different barricades?

16 A. Yes, I have.

17 Q. And where are those barricades located?
18 Come down and indicate on the diagram.

19 A. The only real good access from the
20 ridge and below on Highway 39 is the first run
21 Knights Lake and there's a cable across that. We
22 cut it one time, it was put back, and we were
23 advised not to cut it again last year to avoid
24 conflict. That barricade there, and it's been
25 there off and on for maybe three years.

1 And then the second barricade is over
2 at the logging deck at Furtick Road. And then last
3 year, I think, for the first time somewhat in the
4 middle of my property right at the lower part of
5 the ridge that runs across my property, a barricade
6 was put there maybe 150 feet below the natural
7 ridge, a cable with two, I think, four-by-four
8 posts, might have been a tree --

9 Q. Would you draw a circle there and draw
10 a line out to some clear space and write barricade.

11 A. (Indicating).

12 Q. And draw a circle and write out the
13 word barricade down on 39 where you just mentioned.

14 A. (Indicating).

15 Q. And you may as well do it up there at
16 the logging deck too.

17 A. (Indicating).

18 Q. Okay. You can have a seat, we're
19 almost through. I want to ask you if you recognize
20 that document?

21 A. Yes, I do.

22 Q. What is that document?

23 A. It's a no trespassing sign with the
24 reading U.S. Government Flood Plain, this area
25 designated as part of the U.S. Flood Plain and it's

1 protected by laws of unlawful trespassing and
2 violators will be prosecuted by the full extent of
3 the laws of the U.S. Government. This property is
4 being patrolled by U.S. personnel beneath Dean
5 Swamp Plantation.

6 Q. Thank you. Where did you find this,
7 Mr. Williams?

8 MR. LANG: I don't have an objection to
9 that, Your Honor. If you're going to admit it.

10 (PLF. EXH. 62 in evidence.)

11 BY MR. WILLIAMS:

12 Q. Okay. Where was this located?

13 A. To across the lower part of the ridge
14 going from my property on Highway to 39 to its
15 border near Furtick Road.

16 Q. I want to show you that picture and ask
17 if you recognize it?

18 A. Yes, I do.

19 Q. What is that?

20 A. This is a cable below our big oak tree
21 stand --

22 Q. Does it match one of the locations you
23 just drew up here for barricades?

24 A. Somewhat in the middle of the property.
25 Last year early in the hunting season right at the

1 first of the season, the barricade was up and --

2 Q. Mr. Williams, which one of these
3 barricade locations did you find that?

4 A. In the middle of the property where
5 your finger is, yes -- not in the middle of the
6 property, but you know...

7 Q. This barricade location?

8 A. Yes.

9 MR. LANG: If I could, before we start
10 publishing those pictures, if I could ask counsel
11 just give me the pictures, let me look through them
12 for a moment and then we'll --

13 MR. WILLIAMS: Sure, I'm very sorry.

14 MR. LANG: Begging the Court's
15 indulgence for a moment.

16 THE COURT: Sure, I understand, that
17 might make this go a little quicker. 63 through 70
18 admitted without objection.

19 MR. LANG: That's correct.

20 (PLF. EXH. 63 in evidence.)

21 (PLF. EXH. 64 in evidence.)

22 (PLF. EXH. 65 in evidence.)

23 (PLF. EXH. 66 in evidence.)

24 (PLF. EXH. 67 in evidence.)

25 (PLF. EXH. 68 in evidence.)

1 (PLF. EXH. 69 in evidence.)

2 (PLF. EXH. 70 in evidence.)

3 BY MR. WILLIAMS:

4 Q. I believe this is the one you were
5 looking at, Mr. Williams, and that is Number 70.

6 A. Yes.

7 Q. And I believe you testified that that
8 is -- was located up here at this barricade
9 location --

10 A. That is correct.

11 Q. -- on the ridge? And do you know who
12 barricaded that, who erected that barricade?

13 A. Carlisle Smith's hunting club with
14 signs -- four or five signs visible by his hunting
15 club.

16 Q. Whose equipment is that by the
17 barricade?

18 A. The hunters that belong to my hunting
19 club.

20 Q. Is that where they had left that
21 equipment?

22 A. Carlisle Smith's hunting club
23 undoubtedly moved those feeders --

24 MR. LANG: Objection, if the witness
25 doesn't know. But he can't testify undoubtedly

1 possibly, could be...

2 BY MR. WILLIAMS:

3 Q. Did that equipment appear at that
4 location at the same time those cables were put up?

5 A. Yes.

6 Q. Did you, in fact, see who put that
7 equipment up there?

8 A. No.

9 Q. Were there no trespassing signs there?

10 A. Yes.

11 Q. And whose name was on the no
12 trespassing signs?

13 A. The Carlisle Smith hunting club,
14 whatever name they went by that year.

15 Q. Okay, thank you.

16 THE COURT: And that's land that you
17 claim is your land?

18 THE WITNESS: Yes.

19 THE COURT: Is that land even disputed
20 land in this case?

21 THE WITNESS: It's -- I don't -- Your
22 Honor, a surveyor I've seen claims a ridge may be
23 the line that he's claiming, but it's no running
24 water, no stream anywhere around it. And it's in
25 the heart of my land that I claim.

1 THE COURT: Well, gentlemen the reason
2 I ask that question is because the testimony that
3 I've heard during the day today has been much more
4 south on that diagram than what's he's describing
5 now. If y'all can clear that up as you go along,
6 that would be helpful to me.

7 MR. WILLIAMS: That's part of the
8 problem, Your Honor, is that the --

9 MR. LANG: Objection, let's move on. I
10 mean, if I'm going to argue it, argue it. Argue it
11 later.

12 MR. WILLIAMS: Okay.

13 BY MR. WILLIAMS:

14 Q. Do you recognize that? It's already
15 been entered into evidence, that is Plaintiff's
16 Number 63?

17 A. Yes.

18 Q. Is that one of the signs that was up by
19 that barricade?

20 A. Yes.

21 Q. Whose name is on the bottom of that
22 sign?

23 A. Carlisle Smith Dean Swamp Plantation,
24 established 1850.

25 Q. Do you recognize that picture that has

1 been marked as Plaintiff's Number 65?

2 A. Yes, I do.

3 Q. And where is that located in relation
4 to this land that we've been talking about?

5 A. I believe this is along Highway 39,
6 just above Knights Lake of the first run bridge.

7 Q. Can you recall whose names were on that
8 posted sign?

9 A. Carlisle Smith.

10 Q. Is this the location of the barricade
11 that you marked on 39 a few minutes ago?

12 A. Yes, it is.

13 Q. I'm going to show you Plaintiff's
14 Number 66. Do you recognize that?

15 A. Yes, I do.

16 Q. Is that a -- and I'm just trying to
17 move it along a little bit. Is that just another
18 view of the barricade up on the ridge?

19 A. Yes, it is, with my hunters equipment.

20 Q. And Plaintiff's Number 67, is that the
21 same location?

22 A. Yes, it is.

23 Q. And 68, is that the same location?

24 A. Yes, it is.

25 Q. And 69, is that the same location?

1 A. Yes, it is.

2 Q. Okay. Thank you.

3 MR. WILLIAMS: That's all I have.

4 Mr. Williams, please answer Mr. Lang's questions.

5 THE COURT: It's a quarter to 5:00. I
6 don't want to make you split your
7 cross-examination --

8 MR. LANG: Judge, I'm not a long
9 cross-examiner -- we can go off the record.

10 (The trial was adjourned at 4:39 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF ORANGEBURG

3 PATRICK J. WILLIAMS, FRANK J. WALLMEYER
4 AND MARY B. WALLMEYER,

Plaintiffs,

5 vs.

CASE NO. 2009-CP-38-1170

6 F. CARLISLE SMITH AND FIRST CITIZENS BANK
7 AND TRUST COMPANY, INC.,

8 Defendants.

9 TRIAL - VOLUME II

10 BEFORE THE HONORABLE RICHARD B. NESS

11
12 DATE: August 27, 2013

13 TIME: 9:41 A.M.

14 LOCATION: Bamberg County Courthouse
15 2873 Main Highway
16 Bamberg, SC

17 REPORTED BY: LORI S. MORTGE,
18 Certified Court
19 Reporter, CCR

20
21 A. WILLIAM ROBERTS, JR., & ASSOCIATES

22 Fast, Accurate & Friendly

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

24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFFS

3 PATRICK J. WILLIAMS, FRANK J. WALLMEYER
AND MARY B. WALLMEYER:

4 GREGORY G. WILLIAMS, ATTORNEY, LLC

5 BY: GREGORY G. WILLIAMS

DAVID F. SULLIVAN

1331 Richland Street

6 Columbia, SC 29201

(803) 799-2211

7 Lawgreg@sc.twcbc.com

8 ATTORNEYS FOR THE DEFENDANTS

9 F. CARLISLE SMITH AND FIRST CITIZENS
BANK AND TRUST COMPANY, INC.:

10 CALLISON TIGHE & ROBINSON, LLC

11 BY: LOUIS H. LANG

1812 Lincoln Street

Suite 200

12 Columbia, SC 29201

(803) 256-2371

13 louislang@callisontighe.com

14
15
16
17
18
19
20
21
22
23
24
25 (INDEX AT REAR OF TRANSCRIPT)

1 MR. LANG: There are a couple of
2 pictures that Mr. Williams -- I don't know how many
3 pictures we have but can we re-open his testimony?

4 MR. WILLIAMS: Yes.

5 MR. LANG: Okay.

6 MR. WILLIAMS: Just two pictures, Your
7 Honor.

8 THE COURT: We'll re-open direct
9 testimony before we go into cross-examination,
10 that's fine. Are you ready, Madam Court Reporter?

11 THE COURT REPORTER: I need to mark
12 these but I don't know what number.

13 (Off-the-record conference.)

14 MR. WILLIAMS: I appreciate Mr. Lang's
15 consent and the Court's indulgence in allowing us to
16 show these last two pictures.

17 THE COURT: No problem.

18 (PLF. EXHS. 71 and 72 marked for
19 identification.)

20 PATRICK J. WILLIAMS
21 being previously duly sworn, testified as follows:

22 EXAMINATION

23 BY MR. WILLIAMS:

24 Q. Mr. Williams, do you recognize that?

25 A. That's the tree house, the old creek,

1 where the retainer wall and concrete wall are.

2 Q. And do you -- what is the significance
3 of that picture?

4 A. That was part of the creek diversion,
5 the main part right in front of that and the tree
6 house. And that's fill dirt brought in. That's not
7 natural dirt.

8 Q. All right. And this one, this picture,
9 do you recognize that?

10 A. Yes. This is the creek running from the
11 pipes to the artificial barrier of concrete and
12 metal and making almost a right angle turn as a
13 result of the barrier.

14 MR. WILLIAMS: Okay. Thank you very
15 much. That's it. Thank you.

16 MR. LANG: 71?

17 MR. WILLIAMS: 71 and 72.

18 THE COURT: Can you pass those up here?

19 MR. WILLIAMS: Yes, sir.

20 THE COURT: Okay. Mr. Lang, are you
21 ready?

22 MR. LANG: Yes, sir.

23 THE COURT: Please proceed.

24 EXAMINATION

25 BY MR. LANG:

1 Q. Mr. Williams, good morning. My name is
2 Louis Lang. We met on a couple of occasions.

3 A. Excuse me, Attorney Lang, my hearing --

4 Q. Yes, sir.

5 A. -- is not the best --

6 Q. I understand that.

7 A. -- so be sure to speak up where I can
8 hear.

9 Q. I'll do the best I can. I apologize, I
10 have somewhat of a soft voice so I may try to stand
11 a little bit closer to you to make it easier to
12 hear.

13 Let me start, Mr. Williams, during your
14 direct examination your attorney asked you about the
15 deed into you back in 1978. And let me hand you
16 what's been marked as -- and entered as Plaintiff's
17 Exhibit Number 1. And that's the deed to the 1,050
18 acres; correct?

19 A. Give me that question again. What's the
20 question?

21 Q. That's the deed to the 1,050 acres;
22 isn't that right?

23 A. Yes, it is.

24 Q. And it describes the acreage as more or
25 less; is that not correct?

1 A. It says 1 -- containing 1,050 acres more
2 or less.

3 Q. All right. And you never had -- you've
4 never done a complete boundary survey of this 1,050
5 acres; correct?

6 A. Correct.

7 Q. And you've owned the property since
8 1978; is that right? You've owned the property
9 since 1978 --

10 A. Yes, I have.

11 Q. -- is that correct?

12 A. That's correct.

13 Q. And from that time until now you've
14 never had a boundary survey done of the property;
15 correct?

16 A. Not on the total property, no.

17 Q. Right. You've had this survey, which is
18 the Stroman survey; correct?

19 A. Correct.

20 Q. And that survey is just what you claim
21 to be the western boundary of your property;
22 correct --

23 A. That is correct.

24 Q. -- or one of the western boundaries;
25 correct?

1 A. That's correct.

2 Q. And I also wanted -- your attorney asked
3 you about the deed into my client, Mr. Smith;
4 correct?

5 A. Correct.

6 Q. And you read a portion of that deed but
7 not all of it in terms of the property description;
8 isn't that right?

9 A. Let me see.

10 Q. Well, you didn't read the part where it
11 said --

12 A. No, I read where it said 400 acres.

13 Q. Right. You left off the part that said
14 400 more or less; correct?

15 A. I don't recall.

16 Q. Well, let me hand you that deed, which
17 is Plaintiff's Exhibit Number 2, and it says 400
18 acres more or less; isn't that right?

19 A. That is correct.

20 Q. And let me hand you what's been marked
21 Plaintiff's Exhibit Number 3, which was just the
22 prior deed in the chain of title to my client's
23 property, for 380 acres. And it says 380 acres more
24 or less; isn't that right?

25 A. That is correct.

1 Q. Let me retrieve those from you, if I
2 could. Now, Mr. Williams, I think you conveyed this
3 200-acre tract to the Whites in 2003; isn't that
4 right? I think you said 2000, but the deed says
5 2003; isn't that right?

6 A. When I sold the property?

7 Q. Yes, sir.

8 A. 2000.

9 Q. Are you sure the deed says 2000?

10 A. I'm quite sure it says 2000.

11 Q. And this was the property that you sold
12 to the Whites in this area; isn't that correct?

13 A. That's some or all, I don't know whether
14 that's all or not.

15 Q. It's generally in this area; isn't that
16 right?

17 A. That's the area, yes.

18 Q. Just south of 39; is that correct?

19 A. That is correct.

20 Q. And who are the names of the individuals
21 that you sold the property to?

22 A. Sarah White and Randy White, I believe
23 it was.

24 Q. Are they related to you in any respect?

25 A. No.

1 Q. All right. Let me hand you a document,
2 and you can take all the time you want to look at
3 it, but I would invite your particular attention to
4 the last page of the document and I would ask if you
5 recognize any signatures on that document. The last
6 two pages.

7 A. (Reading.) Frank J. Wallmeyer, Mary B.
8 Wallmeyer is -- sellers and the page before, Patrick
9 J. Williams, seller.

10 Q. Do you recognize those signatures?

11 A. Yes, I do.

12 Q. All right. Is one of those signatures
13 your signature?

14 A. That one is, yes.

15 Q. And what's the date of the deed?

16 A. Sworn to me before this 12th day of June
17 2003.

18 Q. So it was 2003 that you sold this
19 property to the Whites; isn't that correct? Not
20 2000; isn't that right?

21 A. Based on this deed, that is correct.

22 Q. Let me retrieve that from you.

23 MR. LANG: Your Honor, I ask that this
24 be marked as Defendant's Exhibit Number -- 4? Let
25 me check. It would be Defendant's 3, Your Honor.

1 Defendant's 2 was marked for identification only.

2 THE COURT: Okay.

3 (DFT. EXH. 3 in evidence.)

4 BY MR. LANG:

5 Q. So you would agree with me,
6 Mr. Williams, that you didn't sell the property --
7 that 200 acres in 2000 but, rather, in 2003;
8 correct?

9 A. That deed says 2003.

10 Q. You'd agree with me that's when the
11 property was sold; isn't that right?

12 A. Undoubtedly, yes.

13 Q. All right. And the timber deed was done
14 almost immediately when that deed was signed by you
15 conveying the property; isn't that correct?

16 A. The timber deed?

17 Q. Yes, sir.

18 A. To what tract?

19 Q. The 200 acres right there. You sold to
20 the Whites; isn't that right?

21 A. I didn't sell timber on that tract.

22 Q. I know you didn't, but the Whites did;
23 isn't that right?

24 A. They sold timber?

25 Q. Yes, sir. You don't know that this

1 property was timbered at some point in time after
2 you conveyed it?

3 A. About 2011 or 2012.

4 Q. So it wasn't timbered until 2011 or
5 2012; is that your testimony?

6 A. Yes, that's correct.

7 Q. Now, a couple of things, Mr. Williams, I
8 wanted to ask you about. And, in particular, I want
9 to hand you what's been marked and entered as
10 Defendant's Exhibit Number 1 which is what we've
11 been referring to as the tree house or the bird
12 house. What do you call it? The tree house, bird
13 house?

14 A. It's been referred to as the tree house
15 all day yesterday, I believe, so tree house is good
16 with me.

17 Q. We'll refer to it as the tree house.
18 And that tree house and the picture that's shown in
19 Defendant's Exhibit Number 1, that's not located on
20 Mr. Smith's property, is it?

21 A. I don't think it is, no.

22 Q. All right. So you would not disagree
23 with the testimony of -- and help me with his
24 name -- Mr. Salley. He testified yesterday and he
25 said that the tree house was located right -- can

1 you see where I'm pointing?

2 A. Right in that immediate area, yes.

3 Q. Well, he pinpointed and put an X right
4 there. He said BH for bird house but we'll refer to
5 it as tree house. He put an X right there and --
6 right at this little corner right there that's drawn
7 with a black line; is that right?

8 A. What?

9 Q. This little corner right here is where
10 the tree house is located; isn't that --

11 A. Yes.

12 Q. -- correct?

13 A. Pretty much, yeah.

14 Q. Well, pretty much or where is it? Is it
15 right where my finger is?

16 A. On that small plat I think that's
17 correct.

18 Q. All right. And this document, which
19 will be entered shortly, is the Stroman survey; is
20 that not correct?

21 A. That is correct.

22 Q. And you see the same little point right
23 up there; isn't that right? You see the same little
24 point that's on this document on the Stroman plat
25 where I'm pointing where the tree house is located;

1 isn't that correct?

2 A. I believe it is, yes.

3 Q. Now, I think your contention is the
4 Stroman plat shows accurately your western boundary;
5 isn't that right?

6 A. Yes.

7 Q. I mean, you hired Mr. Stroman to do a
8 survey of your western boundary; correct?

9 A. Yes.

10 Q. And you relied upon him to accurately
11 show that western boundary; isn't that right?

12 A. That's correct.

13 Q. And so as far as you know, what is shown
14 on the Stroman plat is an accurate depiction of the
15 western boundary of your property; isn't that
16 correct?

17 A. That's correct.

18 Q. Now, you say the stream was diverted in
19 some fashion; isn't that right?

20 A. Yes.

21 Q. All right. You also referred to the
22 stream or the bed as the dead stream, I think, or
23 the dead creek; isn't that correct?

24 A. That's correct.

25 Q. When did it die?

1 A. To the best of my knowledge, probably
2 between 2000, 2003.

3 Q. 2000 and 2003, and you base that upon
4 what?

5 A. I base it upon the dead creek bed that I
6 have walked a number of times. I base it from the
7 description of the dead street -- creek bed that
8 I've seen and walked numerous times. And I based it
9 on probably over two dozen aerial photographs, maps
10 from various entities from forestry, aerial photos,
11 tax maps, soil conservation maps and a number of
12 other type maps.

13 Q. Well, you contend, do you not, that the
14 tree house -- the concrete barrier, the tree house,
15 is what diverted the stream; isn't that correct?

16 A. The main single diversion.

17 Q. Well, the principal diversion is the
18 tree house; isn't that correct?

19 A. The main -- the main part of diversion.
20 There's other things that dealt with diversion, too.

21 Q. And when was the tree house built?

22 A. The best of my knowledge, between 2002,
23 2004.

24 Q. Well, you say the stream died in 2000 --
25 between 2000 and 2003; isn't that right?

Trial - Vol. 2 - August 27, 2013

287

1 MR. WILLIAMS: Sir?

2 THE COURT: May make you go faster.

3 THE WITNESS: Excuse me. Is Attorney
4 Lang through questioning?

5 MR. WILLIAMS: Yes.

6 EXAMINATION

7 BY MR. WILLIAMS:

8 Q. Mr. Williams, I'm going to ask you a few
9 follow-up questions to Mr. Lang's questions. The
10 first question is, did you see the tree house while
11 it was being built?

12 A. No.

13 Q. The first time you saw the tree house,
14 was it already built and in place?

15 A. Yes.

16 Q. Did you see the concrete diversion wall
17 while it was being installed and built?

18 A. No.

19 Q. Was the first time you saw it after it
20 was already in place?

21 A. That is correct, yes.

22 Q. Now, we have looked at the picture of
23 the tractor two or three times.

24 THE COURT: What number is that?

25 THE WITNESS: 34.

1 BY MR. WILLIAMS:

2 Q. Did you see that in place on the ground?

3 A. Yes, I did.

4 Q. Did Mr. Smith acknowledge that that's
5 his tractor?

6 A. Yes, he did.

7 Q. Did you see that tractor during a
8 meeting on-site when Mr. Smith was present?

9 A. Yes.

10 Q. Did you see that tractor on the east
11 side of the Stroman line or on the west side?

12 A. The east side.

13 Q. I want you to look at Plaintiff's Number
14 35. What is the focus in that picture?

15 A. The focus is a small tributary that's
16 dried up with one, two, three, four, five -- six
17 logs in the base of the tributary of the natural
18 ravine.

19 Q. What about the tractor? How does the
20 tractor play into that picture, or the equipment
21 behind the tractor?

22 A. It looks -- it's not any fresh disking
23 it would appear to me that it could have --

24 MR. LANG: Objection --

25 THE WITNESS: -- easily pulled these

1 logs --

2 MR. LANG: Objection. Objection.

3 THE COURT: What's the objection,
4 Mr. Lang?

5 MR. LANG: Speculation. He's about to
6 say he could have done this, could have done that.
7 He doesn't know.

8 THE COURT: He can say how he perceived
9 it, Mr. Lang. I can look at it and see how I
10 perceive it. You can look at it and see how you
11 perceive it. If it's total speculation I don't
12 think he can testify, but if he's saying here's what
13 it's doing in the picture I think that's okay.

14 Try that again, Mr. Williams, and ask --

15 THE WITNESS: The disks are being used
16 to pull the logs into place in that lower area of
17 the low ravine.

18 BY MR. WILLIAMS:

19 Q. Thank you. We've also looked at two or
20 three -- or looked two or three times at a picture
21 of a piece of equipment that had Bobcat written on
22 it. Do you remember that picture?

23 A. Yes, I do.

24 Q. I can't put my hands on that picture at
25 the moment, but do you recall that picture?

1 A. Yes, I do.

2 Q. Did you see that Bobcat with your own
3 eyes on-site?

4 A. Yes, I did.

5 Q. Was that Bobcat when you saw it, was it
6 on the Smith side of the Stroman line or on the
7 Williams' side?

8 A. Williams' side.

9 Q. Was Mr. Smith present on the day that
10 you saw the Bobcat?

11 A. Yes, he was.

12 Q. Did he acknowledge he owned the Bobcat?

13 A. Yes, he did.

14 Q. When you were on-site the day that you
15 saw the tractor and Bobcat, was that the same time
16 frame when these other pictures were taken?

17 A. Yes, it was.

18 Q. And I believe you've testified about
19 these pictures of various things, they show the
20 dirt, the trees and so forth?

21 A. (Witness moves head up and down.)

22 Q. Did Mr. Smith acknowledge that those
23 were his activities?

24 A. I believe he did --

25 MR. LANG: I'm going to object to this,

1 Your Honor, move to strike. That meeting -- and I
2 wasn't there, but I think the meeting was an effort
3 to come up with a settlement. And if the contention
4 is somehow this goes to the merits of this case, I
5 would suggest that that precludes that testimony
6 from being admitted.

7 MR. WILLIAMS: Your Honor, Mr. Smith was
8 present, he was represented by an attorney at that
9 meeting, although it was a different attorney from
10 Mr. Lang. And Mr. Lang cross-examined Mr. Williams
11 extensively on the location of those activities and
12 the cause of those activities. So I think
13 Mr. Williams would have an opportunity to explain
14 those circumstances.

15 MR. LANG: The circumstances are not
16 relevant and that's what Rule 401 says. When you
17 talk settlement, you talk about what things were
18 said --

19 MR. WILLIAMS: Settlement was not
20 discussed at that meeting.

21 MR. LANG: Well, that was the purpose of
22 the meeting. Everybody got together to see if they
23 couldn't resolve this issue.

24 THE COURT: Well, Mr. Lang, I agree with
25 you on issues of settlement are not to be discussed

1 in a trial. But if this is -- the purpose of this
2 questioning from Mr. Williams is to go on an
3 admission of some fact that's at issue that -- based
4 on a statement that Mr. Smith said, I don't think
5 that's necessarily a settlement negotiation. I
6 mean, one of you were laying a foundation on what
7 transpired at that meeting other than both of you
8 throughout yesterday and today have questioned about
9 whose tractor was it and whose Bobcat was it and did
10 you see earth being moved in on that day, I think
11 was a bunch of your questions.

12 MR. LANG: No, sir. I respectfully
13 disagree. I never asked if we're talking about
14 earth moving that day. I don't know when that was,
15 Number 1. Number 2, there's never been any issue as
16 to whose Bobcat that was or whose tractor that was.
17 Any further testimony about who owns it is
18 irrelevant because that's been stipulated to. We
19 own it.

20 So, again, the whole purpose of
21 settlement is when you get together and you say,
22 okay, I'll give you this, I'll give you that.
23 That's the whole purpose of the rule to preclude
24 that so people can speak freely when they meet in an
25 effort to resolve a dispute. And that applies both

1 before litigation and certainly after litigation.

2 MR. WILLIAMS: Your Honor, that's
3 premised on the fact that settlement was discussed,
4 which it was not.

5 MR. LANG: Well, Your Honor, I
6 respectfully disagree. I mean, you can't -- it
7 doesn't matter what the -- what the exact words
8 were. When you have a dispute over a property line
9 and the two sides get together with their lawyers
10 present, that's settlement. If that's not
11 settlement I don't know what settlement is.

12 MR. WILLIAMS: And also --

13 THE COURT: Mr. Williams, let me ask you
14 this.

15 MR. WILLIAMS: Yes, sir.

16 THE COURT: Were both you -- you were
17 there, Mr. Williams?

18 MR. WILLIAMS: Yes, sir.

19 THE COURT: And Mr. Smith had an
20 attorney there as well?

21 MR. WILLIAMS: Yes, sir. Robert Ashley.

22 THE COURT: And if you weren't there to
23 talk about some resolution of the boundary line
24 debate, what were you there about?

25 MR. WILLIAMS: We were really just

1 looking at the conditions. Mr. Ashley had never
2 been there before, he wanted to view the property
3 and we were looking at the conditions. We were just
4 observing, taking pictures. I -- not one settlement
5 word was uttered.

6 MR. LANG: Well, I --

7 THE COURT: Mr. Atkins that owns some of
8 this property that we've talked about?

9 MR. WILLIAMS: He was not there.

10 MR. LANG: Ashley, not Atkins.

11 THE COURT: Okay.

12 MR. WILLIAMS: Robert Ashley, attorney.

13 THE COURT: I misunderstood. So the
14 attorney for Mr. Smith --

15 MR. WILLIAMS: Yes, sir.

16 THE COURT: -- at that point in time?

17 MR. WILLIAMS: Yes, sir.

18 THE COURT: Well, were you there to
19 garner up admission to enter on Mr. Smith's
20 property, or Smith was trying to get permission to
21 enter onto what you -- what your client claimed is
22 his property?

23 MR. WILLIAMS: It -- more than anything
24 else, it was just an initial visit to the property.
25 As I said, Mr. Ashley was -- was new with Mr. Smith

1 and wanted to get perspective. And we just went and
2 looked at the property. That was it. It was -- it
3 was -- some of the other things that you're asking
4 about really was probably premature. Those things
5 were not on the table. We were -- Mr. Ashley, I
6 think, wanted to size it up.

7 THE COURT: Well, I think, just to be
8 safe here, that y'all can glean out -- garner enough
9 of the facts here that I can make a ruling on this
10 case, but let's stay away from possible settlement
11 negotiations.

12 MR. WILLIAMS: Sure.

13 THE COURT: We don't need to mention it,
14 and I don't need to hear about it.

15 MR. WILLIAMS: Yes, sir.

16 THE COURT: Not that I doubt what you're
17 telling me about no settlement being discussed, but
18 just because of the possibility of it since you're
19 out there. And it seems to me that if both sides
20 are there and both sides have lawyers you're trying
21 to either resolve a problem, which is a settlement,
22 or discuss a resolution of it which is towards
23 settlement. So let's stay away from that line of
24 questioning. And, you know, some other statements
25 Mr. Smith made -- I mean, admission or something

1 else he could say beyond that day then it's fair
2 game here.

3 MR. WILLIAMS: But I would just ask you
4 to stop me if you think -- perceive that I'm going
5 there because that was not my intent and so I'll try
6 to be careful not to ask any questions in that
7 regard.

8 THE COURT: I'll let Mr. Lang.

9 MR. LANG: Be sure I will try to stop
10 it.

11 THE COURT: He's got a spring underneath
12 there. He can --

13 MR. WILLIAMS: I've observed that.

14 Q. All right, Mr. Williams, getting back to
15 the questions. The pictures that we've been looking
16 at and talking about, we entered a lot of them into
17 evidence yesterday. To the best of your knowledge,
18 were any of those pictures taken on the Smith side
19 of the Stroman line?

20 A. No.

21 Q. All of the pictures were taken on the
22 east side of the Stroman line then; is that --

23 A. That is correct.

24 Q. Okay. Back to the tree house and the
25 concrete wall. You testified that -- that you don't

1 know -- or that you didn't see those under
2 construction?

3 A. That is correct.

4 Q. Do you know, in fact, who built the
5 concrete wall?

6 A. In fact, I didn't see, if that's what
7 you're asking.

8 Q. Yeah.

9 A. I saw no human bodies there building it.

10 Q. Do you know, in fact, who built the tree
11 house?

12 A. I saw nobody building it.

13 Q. Now, is the question of who built those
14 really critical to you?

15 A. No.

16 Q. Do you know who built the dam under the
17 tree house, who put the dirt there?

18 A. I didn't see anyone.

19 Q. The question of who did that, is that
20 critical to you?

21 A. No.

22 Q. And I know there's been much testimony
23 about the location of the tree house, which by this
24 diagram appears to be on Mr. Atkins' property;
25 correct?

1 A. Yes.

2 Q. These pictures that we've been looking
3 at and talking about with the equipment, the logs,
4 the dirt and so forth, in general, where were those
5 pictures taken?

6 A. On property I claim west of...

7 Q. West?

8 A. West -- no, east, I'm sorry, east.

9 Q. East?

10 A. To the right.

11 Q. Of the Stroman line?

12 A. Of the Stroman line, yes.

13 Q. And what about in relation to this
14 southernmost Atkins line?

15 A. It would be to the south.

16 Q. South of the Atkins line, east of the
17 Stroman line?

18 A. That is correct.

19 Q. I want to ask you this, Mr. Williams.
20 Mr. Lang asked you a number of questions about
21 activities on the ridge, up in the field and then
22 down near the -- the lower part. Would you describe
23 for the Court what the conditions are down in this
24 lower part in this bottom area?

25 A. It's swampy.

1 Q. What do you mean by swampy?

2 A. Like in conditions with the rain we have
3 now, it would be -- a large part of it would be
4 flooded under water, boggy.

5 Q. Is this an area, say -- say where the
6 ridge has been identified up here in the Stroman
7 line in the river down to the -- to the west and
8 south. Say the bottom half of that part, the bottom
9 half. Is that an area where you could camp if you
10 wanted to?

11 A. Other than maybe an old logging road or
12 two, no.

13 Q. Why not?

14 A. Too swampy, probably with kids
15 especially, mosquito infested, water standing a lot
16 of the time.

17 Q. Okay. When you want to get to this area
18 where the Stroman line is, how do you have to get
19 there?

20 A. Without trespassing, typically I would
21 walk a log -- walk across a log.

22 Q. Where would you come in?

23 A. Typically below the loading deck in that
24 area. I'd go downstream a little ways and walk
25 across.

1 Q. Is that swampy area?

2 A. Not -- not immediately there because now
3 it's filled, but there's some high swamp and low
4 swamp.

5 Q. When -- since this controversy has
6 erupted and you have visited this area with -- with
7 various people, how have you accessed this area?

8 A. Most of the time walking along with a
9 pole just keeping me steady. And then at times I
10 would walk on the west bank of Dean Swamp Creek and
11 come into where the activity was going on.

12 Q. Did you ever get access from Mr. Atkins
13 to come onto his road?

14 A. I got a key from Mr. Atkins to come on
15 and make it available to the surveyor to come on.

16 Q. Mr. Atkins has his road locked,
17 typically?

18 A. I think that the same gate at Furtick
19 Road serves both Mr. Smith and Mr. Atkins. And that
20 gate is typically locked.

21 Q. So you had to make arrangements to get
22 access?

23 A. That is correct.

24 Q. So is this a place you would visit with
25 any great frequency?

1 A. No.

2 MR. WILLIAMS: I want to find the
3 exhibits you entered -- 4 and 5 -- Defendant's 4 and
4 5. Right here.

5 MR. LANG: Your Honor, if we could
6 excuse my client for a moment. You can continue
7 with your redirect.

8 MR. WILLIAMS: Sure. Do you want us to
9 wait?

10 MR. LANG: No.

11 MR. WILLIAMS: You're sure?

12 MR. LANG: Positive.

13 BY MR. WILLIAMS:

14 Q. I want you to look, please,
15 Mr. Williams, at what has been identified as
16 Defendant's Exhibit Number 4.

17 A. (Reviewing photograph.)

18 Q. And I want to ask you a couple of
19 things. First of all, there's a dark line on the --
20 sort of the right side of that photograph. Do you
21 know what the purpose of that line is?

22 A. This was a sketch by the FSA office in
23 Barnwell to identify fields, planted pines and
24 relatively high ground. No more than a sketch.

25 Q. Was it ever intended, in your

1 understanding, to be a boundary map or plat of any
2 kind?

3 A. In no way whatsoever.

4 Q. Now, looking also at that picture, are
5 you able to identify what you believe to be Dean
6 Swamp Creek?

7 A. Yes. Across this Furtick Road, it
8 meanders down and comes into the river right about
9 here above that bend.

10 Q. I notice two blue arrows were copied on
11 that picture. Just for the sake of the record, the
12 arrows, do they point to the line for the creek that
13 you just identified?

14 A. As best I can see. My eyes are not the
15 best like my hearing, but you see the creek -- an
16 outline running right there.

17 Q. Now, looking generally at those two
18 diagrams over to the right on the easels.

19 A. This?

20 Q. These two diagrams over on the easels.

21 A. Oh, I'm sorry. Yes.

22 Q. In your recognition, in your view of the
23 three, now, Exhibit Number 4 and the two diagrams,
24 is that creek location similar to the location
25 depicted on the two diagrams on the easels?

1 A. Yes.

2 Q. Thank you. I want to show you what has
3 been marked as Defendant's Exhibit Number 5, and I
4 believe you testified that that is -- tell me again
5 what kind of document that is.

6 A. That came from the FSA office from
7 Barnwell County which is now, I think, called Farm
8 Service Association or something to that effect.

9 Q. Okay. And --

10 A. Farm Service Agency.

11 Q. All right. And, again, that has a very
12 dark straight line sort of in the central part of
13 the picture. Do you know the meaning of that dark
14 straight line?

15 A. I think it was a sketch of high
16 ground -- basically, most of the high ground with
17 timber planted pines, open fields, just to show what
18 they were dealing with in various programs but no
19 way intended to be property lines.

20 Q. All right. Is that -- does that
21 particular picture show enough of the property to
22 include the creek?

23 A. No.

24 MR. WILLIAMS: All right. Thank you.
25 That's all the questions I have, Mr. Williams.

1 THE COURT: Recross, Mr. Lang?

2 MR. LANG: Just very briefly,

3 Mr. Williams.

4 EXAMINATION

5 BY MR. LANG:

6 Q. Have you ever seen any remnants of
7 stills on your property, either the high ground or
8 the low ground?

9 A. Have I what?

10 Q. Ever seen any still remnants, what looks
11 like an old still?

12 A. About a year and a half, two years ago I
13 found remnants of one or two stills.

14 Q. Where were those located? You can step
15 down.

16 A. I would say probably -- there was an old
17 ditch probably somewhere in an area like here to
18 here.

19 Q. How about where -- in the area generally
20 what's marked as the logging deck?

21 A. The logging deck -- no. It was east of
22 the logging deck. It might have been down about
23 where the K was, somewhere in this area.

24 Q. The K in the logging deck, D-E-C-K?

25 A. Yes.

Trial - Vol. 2 - August 27, 2013

305

1 Q. The K, around that area?

2 A. Yes.

3 MR. LANG: Thank you. I have nothing
4 further.

5 THE COURT: Are we done with this
6 witness?

7 MR. WILLIAMS: Yes, sir.

8 THE COURT: Mr. Lang?

9 MR. LANG: Yes, sir.

10 THE COURT: You may step down.

11 .(Witness excused.)

12 THE COURT: Next witness -- well, let's
13 take about a five-minute break for everybody. We've
14 been going a long time now.

15 (A recess transpired.)

16 THE COURT: Call your next witness.

17 MR. WILLIAMS: Mr. Mike Caudell.

18 THE COURT: Have a seat here, sir.
19 Raise your right hand.

20 MICHAEL B. CAUDELL

21 being first duly sworn, testified as follows:

22 THE COURT: State your full name for the
23 record, please.

24 THE WITNESS: Michael Brandon Caudell.

25 THE COURT: How do you spell your last

1 name?

2 THE WITNESS: C-A-U-D-E-L-L.

3 EXAMINATION

4 BY MR. WILLIAMS:

5 Q. Good morning, Mr. Caudell. Appreciate
6 you being here. Mr. Caudell, what is your
7 occupation?

8 A. I'm a wildlife biologist with the South
9 Carolina Department of Natural Resources.

10 Q. How long have you been in that
11 occupation?

12 A. About 35 and a half years.

13 Q. What do you do in that occupation?

14 A. Currently I'm responsible for four
15 county areas of the state. I manage the public land
16 within that area, as well as work with private
17 landowners who want wildlife management assistance,
18 they'll put in applications. Just a wide variety of
19 things.

20 Q. All right, sir. Focus a minute on
21 the -- on the doe quota application part and tell
22 the Court a little bit about what you do in that
23 area.

24 A. Well, for instance, a hunt club will --
25 will submit an application with the -- it will

1 designate how much acreage, where the acreage is
2 located and they'll -- they usually request a number
3 of doe tags to balance their harvest. Under law
4 they're basically -- in my counties there's no bulk
5 limit. So once the season comes in, they don't need
6 any permission to go out and kill buck, but there
7 are field controls, a number of doe deer that they
8 can harvest and that -- that's the reason for this
9 application. And it's my responsibility to approve
10 how many antlers, deer tags each club receives.

11 Q. Do you actually receive the applications
12 and review them yourself?

13 A. Yes, sir. I do. Once it's gone through
14 Columbia -- it goes to Columbia first so they can
15 check off the top, and then it's sent out to me for
16 evaluation.

17 Q. I see. Do you know any of the parties
18 in this case?

19 A. I really -- I know Mr. Williams because
20 he does -- he puts in an application each year for a
21 doe tag in Marlboro County. I really don't know the
22 other party.

23 Q. Do you know Mr. Williams other than
24 through the fact that he submits a doe tag
25 application?

1 A. I've talked to him a couple of times
2 over the years about different wildlife matters, but
3 that's...

4 Q. Do you know him on a social --

5 A. No, sir.

6 Q. -- or personal level?

7 A. No, sir. Not at all.

8 Q. How about the other plaintiffs in this
9 suit, the Wallmeyers? Do you know them?

10 A. (Witness shakes head from side to side.)
11 The Wallmeyers, I've never heard of them.

12 Q. All right, sir. I'm going to show you a
13 document, Mr. Caudell, and ask you if you recognize
14 that document.

15 A. Yes, sir.

16 Q. What does that appear to be?

17 A. That's an antlers deer quota application
18 that was submitted by the Guinyard Hunt Club.

19 Q. And is that a document that you would
20 typically review in association with doe tag
21 applications?

22 A. Yes, sir. That's correct.

23 Q. Is that a document that would typically
24 be under your custody and control?

25 A. Yes, sir. I have -- I have a file in my

1 office on each hunt club within my jurisdiction.

2 Q. All right, sir. And is that a document
3 that the Department of Natural Resources keeps in
4 its normal course of record keeping?

5 A. Yes, sir.

6 MR. WILLIAMS: All right, sir. I would
7 offer this into evidence.

8 MR. LANG: If I could voir dire the
9 witness, Your Honor, on the issue of admissibility.

10 THE COURT: Yes, sir.

11 MR. WILLIAMS: Mark this as the next
12 one.

13 THE COURT REPORTER: 73.

14 MR. WILLIAMS: 73 for ID?

15 THE COURT REPORTER: Yes.

16 (PLF. EXH. 73 marked for
17 identification.)

18 VOIR DIRE EXAMINATION

19 BY MR. LANG:

20 Q. Mr. Caudell, my name is Louis Lang. I
21 represent Mr. Smith in this matter. Let me hand you
22 what's been marked for identification as Plaintiff's
23 Exhibit Number 73. I take it it bears your
24 signature; is that correct?

25 A. That's correct.

1 Q. Do you know who filled out the other
2 portions of -- that -- the handwritten portions of
3 Plaintiff's 73 for identification?

4 A. I assume it was Donald Cooper, the
5 president of the Guinyard Club.

6 Q. You assume that, but do you know that?

7 A. He's the one that signed for it, so I
8 don't know. I mean, I -- I wasn't there when he
9 filled out the application. They submitted it, but
10 it's his signature.

11 Q. Do you know --

12 A. Claiming that everything is accurate.

13 Q. Do you know Donald Cooper?

14 A. Yes, sir.

15 Q. Did you see him sign this document?

16 A. No, sir.

17 Q. And I take it the document went first to
18 Columbia; is that correct?

19 A. That's correct.

20 Q. And then it goes from Columbia -- and
21 where is your office?

22 A. My office is on Savannah River Site.

23 Q. I suppose the rel -- the relevance of
24 this is where it says Carlisle Smith 400 acres. It
25 looks like the cop -- well, let me ask you. Where

1 is the original of this document?

2 A. It's still in my possession.

3 Q. Do you have it with you?

4 A. It's in my truck outside. This is '99,
5 yes, sir.

6 Q. You have it with you?

7 A. Yes, sir.

8 Q. Do you know -- it looks like a sticky
9 got put on Carlisle Smith 400 acres.

10 A. Yes, sir. Well, this originated several
11 years ago with a Freedom of Information request at
12 the Columbia office about any application, maps,
13 whatever for the Guinyard Club.

14 Q. Right.

15 A. Our lawyer passed it on to me as being
16 the responsible party for it and I submitted, you
17 know -- I first submitted it to Columbia, the way I
18 remember it now, and Mr. Williams -- they were
19 supposed to copy and get it to Mr. Williams. In the
20 photocopying process, I don't think some of it came
21 out clear. He had problems with it. I was
22 eventually contacted by Mr. Williams and asked to
23 bring the file so that he could look at it.

24 Q. The sticky?

25 A. Yes, sir. I've done that. I was -- I

1 don't know who copied that right there. That looks
2 like my writing. But I put sticky notes on
3 everything because I was -- I was -- in the process
4 I was directed to find any Guinyard records or maps
5 that mentioned Carlisle Smith.

6 Q. Who put the sticky on this document?

7 A. I would have originally.

8 Q. Do you remember doing that?

9 A. Yes, sir.

10 Q. You actually have a present memory --

11 A. Yes, sir.

12 Q. -- of putting a sticky on it?

13 A. I did it on each application that I sent
14 to Columbia.

15 Q. Did you ever talk to Carlisle Smith?

16 A. No, sir.

17 Q. Where did you get the 400 AC from?

18 A. When it was submitted -- when the
19 application was submitted it's right there. It said
20 400 acres for Carlisle Smith.

21 Q. Do you know who wrote that on here?

22 A. I'm assuming Donald Cooper, since he's
23 the one --

24 Q. No, sir.

25 A. -- that signed that.

1 Q. I'm not asking you to assume. Do you
2 know?

3 A. I have no clue.

4 Q. You drove your State truck here, did you
5 not?

6 A. That's correct.

7 Q. Are you on duty working today?

8 A. Yes, sir.

9 Q. Are you under subpoena?

10 A. Yes, sir.

11 MR. LANG: I don't have any other
12 questions on the issue of admissibility, Your Honor.

13 THE COURT: Do you agree with it,
14 Mr. Lang?

15 MR. LANG: I'm sorry?

16 THE COURT: You said you agree with the
17 admissibility?

18 MR. LANG: No, I do not. I don't have
19 any further questions.

20 THE COURT: Okay. So do you object to
21 him offering it into evidence?

22 MR. LANG: I do, Your Honor. There's no
23 foundation for this document. Somebody else wrote
24 it, it's not our document. It's the hunt club that
25 wrote it. I just don't think it can be

1 authenticated unless Mr. Porter appears and says, I
2 wrote that.

3 THE WITNESS: Cooper.

4 MR. LANG: I'm sorry, Cooper?

5 THE WITNESS: Yes, sir.

6 THE COURT: I'm going to let it in not
7 necessarily for the truth of the matter asserted,
8 but because it's part of the records of DNR as this
9 man has testified.

10 MR. LANG: Thank you, Your Honor.

11 EXAMINATION

12 BY MR. WILLIAMS:

13 Q. Now, picking up where we left off,
14 Mr. Caudell -- actually, in answering Mr. Lang's
15 questions you answered much of what I was going to
16 ask you. What is the name of the hunt club
17 indicated on that document?

18 A. Guinyard.

19 Q. And what is the year that application
20 was submitted?

21 A. 1999.

22 Q. And does it have a location line to be
23 completed on that application?

24 A. Yes, sir. It says Dean Creek
25 from Salley to South Edisto River.

1 Q. Read that again, please.

2 A. Dean Creek from Salley to South Edisto
3 River.

4 Q. All right. And explain for the Court,
5 please, how various parcels are considered in
6 allotting a quota for doe tags.

7 A. Well, over a period of time you become
8 accustomed to the deer population within each --
9 within each section of the county, and a lot is
10 total acres or the quality of the habitat acres.
11 That's what determines the -- the doe quota approved
12 for that -- that particular club and it's based on
13 past experience also. I mean, you know, if it's too
14 high, they don't utilize all the tags. If it's
15 right on the money, they'll pretty -- come pretty
16 close to using that many tags and they'll either --
17 next year we'll adjust if need be.

18 Q. Yes, sir. Let me ask you this. When
19 you get an application like that is it always -- the
20 total acreage on the application, is it always from
21 one parcel or it can be -- can there be a number of
22 parcels in that application that make up the total
23 acreage?

24 A. Certainly there's a number of parcels in
25 most applications. There's very few landowners that

1 have sufficiently -- sufficient amount of land to
2 just make up one application. There's a lot --
3 usually are a lot of tracts. The only -- only
4 distinction as far as tracts is each contiguous
5 tract must be within five miles -- five linear
6 straight line miles of another tract to be included
7 on one -- one application. Anything outside that
8 distance would require a separate application.

9 Q. I see. Well, now, looking at this
10 application, does it consist of a number of parcels
11 or is it a single parcel?

12 A. A number of parcels.

13 Q. Roughly how many parcels are included on
14 that Guinyard application?

15 A. There's 20 parcels listed.

16 Q. Twenty parcels?

17 A. Yes, sir.

18 Q. Looking at those parcels, do you see one
19 identified by the name of Carlisle Smith?

20 A. Yes, sir.

21 Q. Does it have a number of acres
22 indicated?

23 A. 400.

24 Q. 400 acres?

25 A. Yes, sir.

1 Q. All right, sir. That's all the
2 questions I have on that.

3 THE COURT: And that document is
4 submitted in evidence as Number 7...

5 THE COURT REPORTER: 3.

6 THE COURT: 73, yes, sir.

7 (PLF. EXH. 73 in evidence.)

8 THE COURT: Any cross, Mr. Lang?

9 MR. WILLIAMS: I have -- I'm not -- I
10 have more questions.

11 THE COURT: Okay.

12 MR. WILLIAMS: That was just all I have
13 on this document. I'm sorry.

14 THE COURT: All right.

15 BY MR. WILLIAMS:

16 Q. I want to show you another document,
17 Mr. Caudell. Do you recognize that document?

18 A. Yes, sir. It's -- it's a parcel
19 location map for the Guinyard Hunt Club --

20 Q. Let me ask you some preliminary
21 questions.

22 A. Okay.

23 Q. Is that a document that will be part of
24 the doe tag application process?

25 A. Yes, sir. Initially from the early '80s

Trial - Vol. 2 - August 27, 2013

318

1 is when I first started dealing with this club -- or
2 any club as far as antler deer quota. In those days
3 a map -- a location map was required annually with
4 an application.

5 Q. All right, sir. Is that a document that
6 would be part of your file?

7 A. Yes, sir.

8 Q. Is it a document under your custody and
9 control?

10 A. Yes, sir.

11 Q. Is it a document that you would keep as
12 normal business records of the Department of Natural
13 Resources?

14 A. Yes, sir.

15 MR. WILLIAMS: All right, sir. I would
16 offer that into evidence.

17 MR. LANG: Just a few questions on the
18 question of admissibility, Your Honor, just to make
19 the record clear.

20 THE COURT: Yes, sir.

21 VOIR DIRE EXAMINATION

22 BY MR. LANG:

23 Q. Mr. Caudell, this document -- which I
24 guess we ought to mark as 74 for ID.

25 A. Sure.

1 (PLF. EXH. 74 marked for
2 identification.)

3 BY MR. LANG:

4 Q. Mr. Caudell, let me hand you what's been
5 marked as 74 for identification. I take it that
6 that is not a document that you produced?

7 A. No, sir.

8 Q. It's not a document -- it was a document
9 that was sent to you?

10 A. Yes, sir. It was attached to one of
11 those applications.

12 Q. Do you know which one?

13 A. 1992.

14 Q. Okay. The document that you just talked
15 about is 1999; is that correct?

16 A. That's correct.

17 Q. So that document, 74 for identification,
18 was not attached to what's been admitted as 73; is
19 that correct?

20 A. Over time they changed -- changed the
21 rule -- rules about maps. If they didn't -- didn't
22 substantially change from year to year, if you had
23 the same landowners and a map was on file you didn't
24 have to -- all you had to do was submit the
25 application.

Trial - Vol. 2 - August 27, 2013

320

1 Q. Do you know of any connection between
2 what's been marked as Plaintiff's 74 for
3 identification and Mr. Carlisle Smith?

4 A. Looking at this, no, sir.

5 MR. LANG: No further questions, Your
6 Honor. I would have the same objection that I
7 submitted for Plaintiff's 73.

8 THE COURT: The same ruling. This
9 gentleman is the custodian of records and he's
10 testified as to what it is.

11 MR. LANG: Yes, sir. I add that -- I
12 would suggest that neither 74 nor 73 are relevant
13 because there's no connection to Mr. Smith. They're
14 just documents. Someone else produced, someone else
15 wrote, someone else signed.

16 THE COURT: That's for a relevancy thing
17 and I'm not sure where Mr. Williams is going with
18 all this. I'm not going to try to -- and I don't
19 see any reason to hold that document -- either one
20 of those documents out, so 73 and 74 are in.

21 MR. LANG: Thank you.

22 MR. WILLIAMS: Thank you, sir.

23 (PLF. EXH. 74 in evidence.)

24 EXAMINATION

25 BY MR. WILLIAMS:

1 Q. Looking back at this document,
2 Mr. Caudell, I want you to keep it in front of you
3 and I want to ask you some very specific questions
4 about it, please, sir.

5 A. Okay.

6 Q. Would you say again the year of that
7 document?

8 A. This -- this map is from 1992.

9 Q. And does it have identification on it,
10 the club that submitted it?

11 A. The Guinyard Club.

12 Q. Is that the same club that was
13 identified on this other exhibit, Number 73?

14 A. Yes, it is.

15 Q. Same club? Do you remember that
16 yourself, from working with these?

17 A. Yes, sir. It was in my file, this --
18 this notation, what club and year. That's my
19 handwriting.

20 Q. You actually made that notation on
21 there --

22 A. Yes, sir.

23 Q. -- about the club and the year?

24 A. Because I separated -- I kept a file's
25 application. I -- I kept a file for maps.

1 Q. Mr. Caudell, from your perspective, what
2 is the purpose or the function of that map or
3 drawing in the doe tag application process?

4 A. It's to give us as clear a depiction as
5 possible about where the applicant's land lies.
6 Admittedly it can't -- you know, we ask that they be
7 as concise as possible but it's not -- it's such a
8 small scale, about all you can really expect is --
9 is a general area. But we would expect to have it
10 on the proper side of a road if the road was the
11 divide line or a creek or river or whatever.

12 Q. All right, sir.. Now, on this document
13 that's been entered into evidence, this Number 74, I
14 noticed there's yellow highlighting on that
15 document.

16 A. Yes, sir.

17 Q. Do you -- did you put that highlighting
18 there?

19 A. No, sir.

20 Q. Was that highlighting on that document
21 when you received it?

22 A. That's correct.

23 Q. Typically who puts the highlighting on
24 the document?

25 A. Someone with the hunt club. I -- I

1 would assume it would have been the president,
2 Donald Cooper, but it could have been any other
3 member. Donald Cooper signed the application and
4 attested to the accuracy of everything.

5 Q. All right, sir. Is the highlighting
6 actually part of the application?

7 A. Yes, sir. At -- at the time we -- we
8 would have preferred a plat of each, but you can
9 imagine how difficult that would be at the time with
10 20 different landowners. So over time, just to
11 simplify and try to work with the hunt clubs, I
12 suggested that they just get a county map and
13 estimate as close as possible on the county map
14 where the acreage was.

15 Q. All right, sir. Now, as you testified,
16 this hunt club -- the application included 20
17 different parcels and we're only concerned with one
18 of those so I'm going to focus a little more
19 sharply. Do you see on that map what is labeled as
20 Dean Swamp Creek?

21 A. Yes, sir.

22 Q. Do you see on that map what is labeled
23 as the South Fork Edisto River?

24 A. Yes, sir.

25 Q. On that map does Dean Swamp Creek flow

1 into the South Fork of the Edisto River?

2 A. Yes, sir.

3 Q. Do you see what's labeled on that map as
4 Highway 39?

5 A. Yes, sir.

6 Q. In relation to Highway 39, does Dean
7 Swamp Creek flow into the Edisto River upstream or
8 downstream from Highway 39?

9 A. Upstream.

10 Q. Looking more closely at the map, do you
11 see a road labeled 2249?

12 A. Yes, sir.

13 Q. And I would ask you to look up at this
14 diagram and -- and see if you can make a comparison
15 with that map and this diagram. Take your time.

16 THE COURT: You're welcome to step down.

17 BY MR. WILLIAMS:

18 Q. Yeah, you can step down.

19 A. This is that little -- that's Furtick
20 Drive -- okay. I've got it. I've got it.

21 Q. Now, looking at the map in your hand,
22 the one that you've been testifying about, and
23 looking at this diagram do you see a point on the
24 diagram that matches your map for the spot where
25 Dean Swamp Creek runs into the Edisto River?

1 A. Yes, sir. There's a tract down right
2 there.

3 Q. And would you read this name of that
4 line you're pointing to?

5 A. Stroman survey line.

6 Q. All right, sir. And in the DNR map that
7 you are holding in your hand and matching that with
8 the Furtick's -- excuse me, the Stroman survey line
9 you just pointed to on the diagram, can you tell
10 from that yellow highlighting the location claimed
11 by the hunters for the doe tags?

12 A. It appears to be left of Dean Swamp
13 Creek, this immediate area.

14 Q. Yes, sir. And looking at the north
15 south symbol over here, would you say that's --

16 A. That's west.

17 Q. West of the Stroman-Furtick line?

18 A. Yes, sir.

19 MR. WILLIAMS: All right, sir. That's
20 all the questions I have. Please answer any
21 questions that Mr. Lang might have.

22 MR. LANG: Your Honor, rather than go
23 through what I did on the voir dire, if I can just
24 incorporate that in my cross-examination.

25 THE COURT: Yes, sir. It's all part of

1 landowner -- and I'm talking about in particular the
2 Guinyard --

3 A. Yes, sir.

4 Q. -- Hunt Club, but filled out by somebody
5 in the Guinyard Hunt Club?

6 A. Yes, sir. That's correct.

7 Q. Okay. Who corrected the spelling on
8 Guinyard?

9 A. That -- let me see. (Reading.) That
10 would be me.

11 Q. How is Dean Creek spelled?

12 A. D-E-E-N (sic).

13 Q. Have you ever met Mr. Smith?

14 A. No, sir.

15 THE COURT: Begging the Court's
16 indulgence for a moment.

17 THE COURT: Yes, sir.

18 MR. LANG: No further questions, Your
19 Honor. Thank you.

20 THE COURT: Redirect?

21 MR. WILLIAMS: Just a couple, Your
22 Honor.

23 EXAMINATION

24 BY MR. WILLIAMS:

25 Q. Mr. Caudell, when the air conditioner

1 came on I missed a couple of Mr. Lang's questions so
2 I may be asking you -- sort of trying to connect the
3 dots on what I think he said.

4 Did you testify for Mr. Lang that some
5 of the acreage numbers for Mr. Smith changed in
6 subsequent years?

7 A. Yes, sir. There was -- there was an
8 escalation up to about 400 for the first seven or so
9 years that it was listed. Then I remember a 656 for
10 a couple of years and then it was, like, 1,058 that
11 went to that and that was last count -- or last time
12 it was submitted on the application.

13 Q. Yeah. Now, those years with those
14 different numbers, do you recall whether they were
15 for this same parcel or whether they were for
16 multiple parcels?

17 A. They -- it was just -- no additional
18 maps were submitted on the back. There was just one
19 listing for Carlisle Smith and one acreage. That's
20 all I know.

21 Q. So the format of the application
22 changed?

23 A. Yes, sir.

24 Q. And tell me, again, how many years
25 consistently did it list 400 acres?

1 A. From '92 to '99, the best of my
2 recollection.

3 Q. 400 acres for Carlisle Smith?

4 A. Yes, sir.

5 MR. WILLIAMS: All right, sir. That's
6 all I have.

7 THE COURT: Mr. Lang?

8 MR. LANG: Nothing further.

9 THE COURT: Since this witness was under
10 subpoena, is he now released from subpoena?

11 MR. WILLIAMS: Yes, sir.

12 THE COURT: All right. You are
13 released. Thank you for coming.

14 (Witness excused.)

15 THE COURT: Next witness?

16 MR. WILLIAMS: Do you want to put up
17 another witness now?

18 THE COURT: Yes, sir.

19 MR. WILLIAMS: All right, sir.

20 THE COURT: Unless you think it's going
21 to be a real long witness. These gentlemen are here
22 I assume in uniform from the State and I don't want
23 to keep them waiting any longer than we need to.

24 MR. WILLIAMS: Sure.

25 THE COURT: They've been here all

Trial - Vol. 2 - August 27, 2013

332

1 morning.

2 MR. WILLIAMS: Sure. Mr. Charles Burk.

3 THE COURT: If they want to stay they're
4 welcome to stay, but I doubt they want to.

5 Place your left hand on the Bible and
6 raise your right hand.

7 CHARLES T. BURK

8 being first duly sworn, testified as follows:

9 EXAMINATION

10 BY MR. WILLIAMS:

11 Q. Good morning, Mr. Burk.

12 MR. WILLIAMS: Are you ready, Your
13 Honor?

14 THE COURT: Yes, sir.

15 MR. WILLIAMS: For me to start?

16 THE COURT: Yes.

17 BY MR. WILLIAMS:

18 Q. Good morning, Mr. Burk.

19 A. Good morning.

20 Q. I appreciate you being here.

21 A. Thank you.

22 Q. Would you please tell the Court Reporter
23 your full name and spell your last name?

24 A. Charles Thomas Burk, last name is

25 B-U-R-K. No E.

1 MR. WILLIAMS: Judge, did you want to
2 swear him in?

3 THE COURT: I already did.

4 MR. WILLIAMS: Oh, you did. I'm sorry,
5 I missed it.

6 THE WITNESS: You missed it.

7 BY MR. WILLIAMS:

8 Q. Okay. What is your age, Mr. Burk?

9 A. Seventy in a couple of months.

10 Q. Seventy? And what's your occupation --
11 let me ask you. Are you working full-time or
12 retired, semi-retired?

13 A. Well, I'm semi-retired but I do -- I do
14 land clearing and pipeline installation, irrigation
15 systems and various things associated with clearing
16 which would be, like, housing projects and stuff
17 like that.

18 Q. All right, sir. Where do you live?

19 A. St. Matthews, South Carolina.

20 Q. How long have you lived there?

21 A. Since 1978.

22 Q. All right. Would you briefly give a
23 summary or outline of your education background?

24 A. Basically after high school two years of
25 tech school in mechanical engineering and

1 progressively got into soil-related jobs working for
2 various people, and in 1967 started doing soil
3 sampling and site investigation for new buildings
4 and bridges and various things. And have pretty
5 much done that up until 1989, and in '89 I went to
6 work for a company selling the drilling rigs to
7 which I did that for ten years and then went back to
8 doing what I was doing. In the meantime I've owned
9 A-C Borings since 1967.

10 Q. Tell a little bit about your boring
11 company and your work actually with -- with soil,
12 with soil sampling.

13 A. Most of that work consists of site
14 investigation. An engineering firm will give you a
15 drawing and go out and locate some -- drill soil
16 samples so that they can determine foundation
17 design. Also determine whether or not the site has
18 had any artificial fill moved on it or any
19 disturbance in the ground.

20 Q. All right. How many years of your
21 career have been devoted to working with soil?

22 A. At least 30.

23 Q. And when you worked with soil what
24 exactly is it you're doing?

25 A. Doing the physical part of what an

1 engineering firm would complete later, just to
2 verify that what I said the soil type was was
3 correct. And I give them information as far as blow
4 count, which they correlate into pounds per square
5 foot bearing capacity for building.

6 Q. Where -- where, geographically, have you
7 done this work?

8 A. Pretty much to some extent I've
9 drilled -- I've drilled some number of holes in
10 every state this side of the Mississippi.

11 Q. What kind of licenses do you have,
12 Mr. Burk?

13 A. Presently I don't maintain any because
14 I'm not doing any water well drilling where I need a
15 license. In the past I've had them in New Jersey
16 and Florida and South Carolina and some North
17 Carolina. Georgia at the time only required a
18 permit, they now require a license. And also on
19 that line I'm on the advisory board -- or when they
20 decided to do licensing in South Carolina they
21 picked people from three different sections in the
22 State, to which I was one of the three they picked
23 in the center part of the state.

24 Q. And what board is that? Tell me again.

25 A. Water well licensing board for well

1 drillers.

2 Q. All right, sir. Are you still on that
3 board?

4 A. They never really cancelled the board,
5 but there's no meetings involved and there has not
6 been for some number of years. But letterheads --
7 the most recent ones I've seen there's a perimeter
8 of the outside that has the names of the original
9 people. And as far as I know if they have not
10 dropped that paperwork altogether my name is still
11 on it.

12 MR. WILLIAMS: All right, sir. Thank
13 you. Your Honor, I would ask that Mr. Burk be
14 qualified as an expert in the area of soil boring
15 and analyzing soils.

16 THE COURT: Voir dire?

17 MR. LANG: If I could very briefly, Your
18 Honor.

19 VOIR DIRE EXAMINATION

20 BY MR. LANG:

21 Q. Mr. Burk, my name is Louis Lang. I
22 represent Mr. Smith. Do you do any chemical
23 analysis of the soils from the borings that you
24 take?

25 A. No, sir.

1 court. He can be qualified as an expert based on
2 work experience, not necessarily education or
3 degrees from a university or any of that kind of
4 thing.

5 MR. WILLIAMS: Sure. All right, sir.
6 And I will try to limit the -- the breath of my
7 questioning.

8 Q. So, Mr. Burk, do you have familiarity
9 with this controversy?

10 A. Yes, I do.

11 Q. All right, sir. Have you visited this
12 site of the controversy?

13 A. Yes, I have.

14 Q. And I know you've been sitting in the
15 courtroom for a while so do you recognize the
16 Stroman survey line that we've been talking about on
17 this left-hand diagram?

18 A. Yes.

19 Q. This -- this line here?

20 A. Yes.

21 Q. All right, sir. I want to show you this
22 picture and ask you if you recognize that picture.
23 That's Defendant's Exhibit Number 1.

24 A. Yes.

25 Q. And looking at this picture and looking

1 at that diagram, can -- can you place where that
2 structure -- we've been referring to this during
3 all -- the entire trial as the tree house or the
4 bird house. Can you get your perspective and place
5 where this structure is on this diagram?

6 A. I can, but that's only from information
7 that I've heard. Originally when I looked at it I
8 did not have any idea whose property it was on, but
9 that is the structure that I saw. And I guess now
10 it's documented that it is on somebody else's
11 property.

12 Q. Well, I just won't comment on that. But
13 the question is, do you recognize that structure?

14 A. Yes.

15 Q. Is that in the location where you
16 visited the site?

17 A. Yes.

18 Q. All right, sir. And looking at this
19 diagram, this being the line representing some
20 version of the creek, whether --

21 A. Yes.

22 Q. -- it's current or old or blocked, I
23 think it's well established at this point that that
24 structure is right here on this -- this little point
25 right here?

1 A. Yes. I would agree with that, because
2 that's where they determined it was at from survey.

3 Q. Now, in relation to that structure, that
4 really is for our reference point.

5 A. Mm-hmm.

6 Q. Where was your visit?

7 A. Directly back uphill from there where
8 the material came from.

9 Q. Upstream?

10 A. No, would be back inland.

11 Q. I tell you what? Why don't you step
12 down and -- can you step on this side so the judge
13 can see?

14 A. It appears as the material had come from
15 up the hill this way.

16 Q. Now, when you say material, what are you
17 talking about?

18 A. Fill dirt.

19 Q. All right. Now, what --

20 A. Just generally, an orange sandy clay
21 fill.

22 Q. What I would ask you to do, Mr. Burk, is
23 to break it down step by step what you saw and how
24 you connected the dots.

25 A. Okay. When you first look at this, it

1 does not look natural. It's been alongside of the
2 stream for a long period of time because the
3 material that was on the surface was an orange sandy
4 clay material, not anything that would have been
5 alluvially deposited in a stream bed because the
6 material is a different color from --

7 Q. Stop on that word. How deposited?

8 A. Alluvial.

9 Q. Alluvial?

10 A. Meaning it was washed in there at some
11 point in time.

12 Q. All right, sir. Go ahead.

13 A. And, basically, I looked back up and you
14 can see a spot up here where the side of the hill
15 had been cut out for the material to have been moved
16 down there.

17 Q. All right, sir. And -- go ahead.

18 A. And at that point we hand augered with a
19 three-inch diameter hand auger several holes along
20 the path that went back up the hill. And down at
21 the bottom where the structure is actually sitting
22 there was four, four and a half feet of material
23 before you reached the peak which would have been
24 the surface of the swamp or the bottom of the creek.

25 Q. All right. I want to -- I want to go

1 back on a couple of points just to make sure the
2 record is clear. The Court Reporter -- you know,
3 when you do a hand pointing the Court Reporter can't
4 take that. So if this is west and this is east --

5 A. This would be directly west.

6 Q. All right. So directly west from the
7 tree house?

8 A. From the tree house.

9 Q. And is that roughly -- was there a road
10 there or what -- what structure was there?

11 A. There was a roadway up the hill.

12 Q. A roadway?

13 A. Yeah.

14 Q. All right. And so you augered on the
15 roadway?

16 A. On the roadway, yes.

17 Q. About how many...

18 A. Three or -- three or four times until we
19 got back to where there was no more -- no more peat
20 material underneath, which would have been the
21 natural swamp.

22 Q. Now, based on your inspection of those
23 samples that you dug.

24 A. Mm-hmm.

25 Q. What did you observe?

1 A. That that material was not natural for
2 along the creek, that it had come from up the hill.
3 It was identical to material on the hill.

4 Q. All right. And tell me what things you
5 look at in soil, you know. It -- it probably is
6 second nature to you, but tell us what you were
7 looking at in that soil that helped you --

8 A. Well, in some similarities you look at
9 the color of the soil and you look at its texture to
10 determine whether or not it's the same. And that's,
11 basically, what I determined, is that the material
12 that was at the bottom that used this fill was from
13 the hill and it appeared to be natural on the hill.

14 Q. Natural on the hill?

15 A. Yes.

16 Q. All right, sir. Now, coming forward,
17 you also said that you took a couple of samples
18 right under or at the location of the tree house?

19 A. Yes.

20 Q. And tell us about those.

21 A. That's where it was about four, four and
22 a half feet before you reached -- what would have
23 been the original bottom, which at that point was
24 probably several feet below the water level.

25 Q. All right. And when you say four to

1 four and a half feet, are you talking about depth?

2 A. Depth.

3 Q. So you drilled a hole four and a half
4 feet?

5 A. Yes.

6 Q. And -- and that's the point at which you
7 reached the natural?

8 A. Yes.

9 Q. Okay. So just to sort of finish the
10 thought process, what does that tell you about that
11 four and four and a half feet?

12 A. That it was artificially put in there.

13 Q. All right, sir. Now, did you make an
14 observation how that four and a half feet artificial
15 deposit compared to the water level?

16 A. It was approximately two and a half feet
17 or so of the water table. Approximately two and a
18 half feet or so above the water table.

19 Q. Above the water table?

20 A. Yes.

21 Q. So if that four and a half feet had not
22 been deposited there, what would that have meant for
23 the flow of the creek?

24 MR. LANG: Objection, Your Honor. This
25 witness isn't qualified to testify to that.

1 THE COURT: Yeah. Sustained.

2 BY MR. WILLIAMS:

3 Q. You testified that the deposited bank
4 was two and a half feet above the water level?

5 A. That's correct.

6 Q. And the total thickness of the bank was
7 four to four and a half feet?

8 A. That's correct.

9 Q. All right, sir. Did you observe
10 anything behind the tree house?

11 A. Yes. I noticed the old stream bed.

12 Q. All right.

13 A. Which at that point in time was dry.

14 MR. LANG: I would object and move to
15 strike. Again, this witness has not been qualified
16 as an expert in old stream beds or the existing --

17 MR. WILLIAMS: Well, he's just
18 testifying what he observed to there, Your Honor.

19 MR. LANG: Well, he's been qualified as
20 an expert witness.

21 MR. WILLIAMS: That's not in the nature
22 of expert testimony.

23 THE COURT: I actually didn't hear his
24 comment so we'll just -- I'll just strike it because
25 that's one thing I didn't hear, I was writing

1 something here. But he's not qualified on stream
2 beds. I mean, if he can say that the material on
3 one side of this house is consistent with the whole
4 swamp that's one thing, but I don't think he can say
5 it was stream bed material.

6 MR. WILLIAMS: Yes, sir.

7 Q. Mr. Burk, other than those holes that
8 you've already testified about, did you testify --
9 or did you take any other samples?

10 A. Along the roadway that -- where back
11 further down here there's a spot where there's a
12 path that cuts across, I believe it's somewhere in
13 here, and that -- the dirt had been pushed out in
14 the same way.

15 Q. All right, sir. Did you dig a hole
16 there and take a sample?

17 A. Yeah. That was roughly -- there was
18 about a foot of material over top of the existing,
19 which would have been a creek bank.

20 Q. All right, sir. Anywhere else?

21 A. No, that was about the extent of the
22 holes.

23 Q. Okay. So how many -- how many holes in
24 total would you say you dug?

25 A. Somewhere between eight and ten, I

1 believe.

2 Q. Eight and ten? And were the results of
3 your observations consistent with those?

4 A. Yes.

5 Q. And what were those? What were the
6 results?

7 A. That there had been fill put on top of
8 the peat which would have been the original swamp.

9 Q. All right, sir. Did you actually look
10 in the old creek bed itself?

11 A. Yes.

12 Q. Did you observe the dirt and soil in the
13 creek bed?

14 A. Mostly leaves and sand sediment.

15 Q. Okay. Did -- from the area in which
16 you've been qualified with -- with the observing of
17 soils and so forth, did you have any observations
18 about the nature of that dirt in the creek bed?

19 MR. LANG: I would object again, Your
20 Honor. He didn't drill any holes, he just looked at
21 the dirt and he's not describing what he drilled and
22 found beneath the surface. He's not qualified.

23 MR. WILLIAMS: He's been qualified to
24 tell about his observations of dirt. And if he --
25 if he looked at dirt that he dug out of a hole or he

1 looked at dirt that was on the bottom of the creek
2 bed, I think he's -- I think he's still qualified to
3 testify --

4 THE COURT: I think he said it was a
5 mixture of leaves and sandy sediment I believe is
6 what he said.

7 THE WITNESS: That's correct.

8 MR. WILLIAMS: Yes, sir. But I was
9 going to ask him another question or two.

10 THE COURT: Whether you ask him another
11 question, I'm not going to let him answer that. I'm
12 not going to let him answer the one you just asked
13 because he's -- his expertise of digging holes is to
14 see what kind of dirt is down below the surface.

15 MR. WILLIAMS: Okay.

16 THE COURT: And I don't think -- just
17 looking at the surface is necessary -- if he says
18 what was in the stream beds is consistent with
19 what's on either side of the stream bed, that's one
20 thing. But digging a hole -- not digging a hole is
21 the same as san -- sandy sediment, that doesn't tell
22 me anything either. I don't think that's where his
23 expertise is.

24 MR. WILLIAMS: All right, sir.

25 Q. Did you dig any holes in the creek bed,

1 Mr. Burk?

2 A. No, sir.

3 Q. All right.

4 A. Can I say something along --

5 MR. LANG: I would suggest the witness
6 needs to answer the questions.

7 BY MR. WILLIAMS:

8 Q. If what you want to say is an answer to
9 a question I just asked, I think you can.

10 MR. LANG: Again, I don't know what the
11 question is.

12 THE COURT: I think, Mr. Williams, you
13 need to ask him a question and if he wants to
14 respond to the question he can.

15 MR. WILLIAMS: I believe that's all the
16 questions I have for you, Mr. Burk.

17 THE WITNESS: Okay.

18 MR. WILLIAMS: Let me see if Mr. Lang
19 has any.

20 MR. LANG: Mr. Burk, just a few
21 questions.

22 EXAMINATION

23 BY MR. LANG:

24 Q. How much is Mr. Williams paying you to
25 appear here today?

1 A. The natural dirt, yes.

2 Q. Well, the fill dirt -- do you know where
3 the fill dirt came from?

4 A. It came from the top.

5 Q. So it came from the property, just a
6 different location?

7 A. Yes.

8 MR. LANG: Begging the Court's
9 indulgence.

10 THE COURT: Yes.

11 BY MR. LANG:

12 Q. Is it your testimony, Mr. Burk, that --
13 if you don't mind stepping down just for a moment
14 this will help me. You went, as I understand it --
15 if you can -- you went in your borings west?

16 A. That's correct.

17 Q. The elevation of the property is uphill
18 going west?

19 A. Correct.

20 MR. LANG: Okay. No further questions.
21 Thank you.

22 MR. WILLIAMS: I just have a couple of
23 more questions, please, Mr. Burk.

24 EXAMINATION

25 BY MR. WILLIAMS:

1 Q. That structure we've been calling the
2 tree house, do you know who owns that?

3 A. No, sir.

4 Q. Would it make any difference as far as
5 your soil borings are concerned?

6 A. No, sir.

7 Q. Are you claiming to know where the
8 property line is?

9 A. No, sir.

10 Q. Are you claiming to know where the creek
11 flows into the river?

12 A. No, sir.

13 Q. So your -- your testimony is really just
14 about what you observed with the soil at those
15 spots?

16 A. That's correct.

17 MR. WILLIAMS: That's all I have. Thank
18 you.

19 MR. LANG: Nothing further.

20 THE COURT: Thank you, Mr. Burk. Can
21 this witness be excused?

22 MR. WILLIAMS: Yes, sir. He's done.

23 MR. LANG: Yes, sir.

24 THE COURT: Thank you for coming.
25 You're free to leave.

1 Bible, raise your right-hand.

2 DARRYL JONES

3 being first duly sworn, testified as follows:

4 EXAMINATION

5 BY MR. WILLIAMS:

6 Q. Mr. Jones, please speak up nice and loud
7 because the microphone is not on. Good afternoon.

8 A. Good afternoon.

9 Q. I believe you've already given your name
10 to the Court Reporter. Can you spell it?

11 A. Darryl Jones. D-A-R-R-Y-L J-O-N-E-S.

12 Q. What's your age, Mr. Jones?

13 A. Forty-four.

14 Q. And what is your occupation?

15 A. I'm the Forest Protection Chief for the
16 South Carolina Forestry Commission.

17 Q. All right. How long have you been doing
18 that?

19 A. I've been in this position since 2005.

20 Q. Okay. How long have you been working
21 for the Forestry Commission?

22 A. I started in 1987.

23 Q. All right. Where do you live,
24 Mr. Jones?

25 A. In Lexington County.

1 Q. Lexington County. Would you please
2 start, if you will, by giving the Court a brief
3 summary of your education background?

4 A. I attended Clemson University, got a BS
5 degree in forestry resource management, and been --
6 got -- got that in 1992. While I was working with
7 the Forestry Commission I completed that degree.
8 And since then I've had a lot of other -- other
9 training pertinent to wetlands delineation,
10 hydrology and botany, wildlife management, all
11 those.

12 Q. Would you actually name some of those,
13 please?

14 A. Yeah. I'll refer to my list.

15 Q. Sure. That's fine.

16 A. (Reading.) I'm a certified prescribed
17 fire manager, a certified --

18 THE COURT REPORTER: Wait. A certified
19 what?

20 THE WITNESS: Prescribed fire manager.
21 I'm a South Carolina certified public manager. I'm
22 a member of the South Carolina (inaudible)
23 Regulatory Committee, South Carolina Drought
24 Response Committee, head general instructor at the
25 South Carolina Fire Academy, certified tree farm

1 inspector, chairman of the -- already said that,
2 never mind. I'm certified by the U.S. Army Corps of
3 Engineers in wetland delineation and identification.

4 BY MR. WILLIAMS:

5 Q. Mr. Jones, you mentioned your degree
6 from Clemson.

7 A. Mm-hmm.

8 Q. Education wise, what else would you add
9 to that besides your degree from Clemson?

10 A. Well, I've had continuing education
11 every year to maintain my forestry registration.
12 That includes ten hours per year, 20 hours every
13 other year that you have to get to maintain that
14 certification. I've had courses in wetlands, water
15 quality, hydrology, wildlife management, fire
16 management.

17 Q. Speak up a little bit.

18 A. Invasive species control, hog
19 management -- all those facets of forestry
20 management over time. I spend a lot of time in
21 the -- particularly in wetlands, wildlife problems
22 and dangerous species as it relates to forestry.

23 Q. Wetlands and forestry-related courses
24 you said?

25 A. Yes, sir.

1 Q. All right. And now, if you will, go
2 back and fill in the gaps on your professional
3 history.

4 A. Okay. I started in 1987 at Manchester
5 State Forest, I was a forestry intern. I worked
6 there preparing timber sales, marking timber,
7 property lines, overseeing timber harvest, those
8 kinds of things for several years while I was
9 getting my forestry career. After 1992 I got a
10 full-time position with the Forestry Commission at
11 Sand Hills State Forest where I was in charge of our
12 timber sales, forest product sales, pine straw and
13 other -- other forest products. I was also
14 conducting prescribed burning and managing for
15 wildlife, red-cockaded woodpeckers which is a -- it
16 was a federal endangered species at that time. I
17 did that until 1996.

18 In 1996 I moved to Florence as a
19 stewardship forester. At that time I was working
20 with landowners in -- I think it was a 14-county
21 area and worked with landowners to improve the
22 management of their property, managing for wildlife,
23 forestry, soil and water quality, you know, whatever
24 the landowners desired from a forestry management.
25 Assisted them in timber sales and, you know, moving

1 their product.

2 In 1997 I was promoted to our
3 headquarters in Columbia. I was the environmental
4 section chief, environmental management chief. That
5 job entails administering South Carolina's best
6 management practices and setting guidelines for
7 loggers and people that own forest land when they're
8 harvesting timber or doing activity in the woods.
9 The whole gist of that program is to protect water
10 quality while you're doing forestry activities, so
11 it prescribes things like leaving a buffer near
12 streams when you're harvesting, not disturbing the
13 soil, maintaining the integrity of the stream,
14 appropriately building crossings across the streams,
15 preventing erosion on the roads you build to do
16 logging and just generally protect the water quality
17 while you're doing your forestry work.

18 Another facet of that was endangered
19 species and logging -- particular stuff related to
20 water quality. There's some federal endangered
21 species that depend on very high water quality. I
22 did a lot of work with the Carolina heelsplitters,
23 for example. It's a federal enlisted species that
24 if you don't have high quality water because of
25 sediment moving into the stream it goes away. So

1 I've got a lot of experience and training in that.

2 Generally just flying rivers in the
3 State looking for logging operations where there's
4 potential water quality impacts, trying to encourage
5 loggers through training and just on-site visits to
6 abide by the guidelines. And then identify stream
7 types, whether they're perennial streams that flow
8 all year round, intermittent streams that flow part
9 of the year or what we call ephemeral streams that
10 flow a very small percentage of the year.

11 So a lot of time in the swamps and
12 working in creeks and, you know, identifying the
13 types of streams, the types of flows that happen in
14 the streams.

15 Q. All right --

16 A. And then...

17 Q. Go ahead.

18 A. To finish, in 2005 I became the forest
19 protection chief so now I'm the fire chief for the
20 agency for the state, and we respond to 6,000 or so
21 wildfires a year. I'm over law enforcement staff,
22 shops, equipment, aviation, Homeland Security,
23 instant management teams -- all the response side of
24 our agency now. I still do some of the water
25 quality related stuff to help out the guy who

1 backfilled me, but I primarily do fire since 2005.

2 Q. Good. Thank you. Let me ask you this.
3 What special licenses or certifications do you hold?

4 A. A registered forester and tree farm
5 inspector and wetlands delineation. I was certified
6 in wetlands delineation by the U.S. Army Corps of
7 Engineers in 1998.

8 Q. Anything else?

9 A. I can probably think of more but that's
10 the big ones. Let's see. (Reading.) Pesticide
11 applicator license, prescribed -- certified
12 prescribed fire manager. That's it.

13 Q. What about publications?

14 A. I've published several -- several
15 different things. I did an implementation
16 monitoring study how -- detailing how well loggers
17 were implementing the guidelines of the best
18 management practices that I described earlier.

19 Q. What kind of issues would be addressed
20 in that?

21 A. That would be whether or not they
22 retained sufficient stream side zones near the
23 creeks to protect the water quality. For perennial
24 streams, streams that flow 90 percent or more, you
25 have to leave 40 feet of a certain density of trees

1 to protect the stream after a logging operation. If
2 they cross the stream there are certain limitations
3 on how you can cross it without requiring a permit
4 from the EPA, the Environmental Protection Agency,
5 whether or not sediment was allowed into the stream
6 as a result of that logging operation. Soil moving
7 off of high ground into creeks is pollution from the
8 Clean Water Act and that's enforced in this state by
9 the Department of Health and Environmental Control.

10 So we would look for instances where a
11 logging operation contributed to water quality
12 issues, whether it was algae blooms, which happens
13 when water gets stagnant, or sediment, you know,
14 which can cause fish kills or other -- other things
15 like that.

16 Q. So your training in publication includes
17 study of stream sediment?

18 A. Sure. Yes, it does.

19 Q. Okay. All right. What other
20 publications?

21 A. I published a botanical publication,
22 Forest Inventory of Rare Species Management on Sand
23 Hills State Forest. I did a survey of all the
24 animals and plants on a 46,000-acre property and
25 scientifically identified the snakes, the turtles --

1 you know, all the flowering plants and tried to
2 catalog those. To define kind of what we needed to
3 do from -- that's a state property managed by the
4 Forestry Commission, so we had to know what species
5 were present because there are laws about management
6 around certain endangered species so we had to
7 identify those.

8 I did a floristic survey of the State
9 Forest with two professors from Francis Marion
10 University in 1996, I think that was, and published
11 just an inventory of the forest. And then I was the
12 primary author on a publication called the Best
13 Management Practices for Braided Streams, which is a
14 particular set of guidelines for loggers and
15 forestry activities around the braided streams,
16 which are a particular stream type in some parts of
17 South Carolina where a single stream, because of
18 lack of topography, just flattens out into multiple
19 channels.

20 So we had to define -- we had a lot of
21 water quality issues at the time, around 1997/'98,
22 we needed some guidance to give the loggers to
23 protect water quality in swamps. So I was the
24 primary author and chair of that committee for that
25 publication.

1 Q. All right. And what was -- when was
2 that published?

3 A. 1999.

4 Q. Okay. All right. Anything else you
5 want to mention in that category?

6 A. I think that's it.

7 MR. WILLIAMS: All right. I would ask
8 the Court that Mr. Jones be qualified as an expert
9 witness in the areas of forestry, wetlands
10 delineations, streams and sediments.

11 THE COURT: Streams and what?

12 MR. WILLIAMS: Sediments.

13 THE COURT: Any voir dire, Mr. Lang?

14 MR. LANG: I don't have any objection to
15 he's an expert as he's a registered forester,
16 wetlands delineation. I'm not sure of streams and
17 sediments. That's a pretty broad area and I don't
18 know what he's being offered to testify about.

19 THE COURT: Can you be more specific on
20 that, Mr. Williams?

21 MR. WILLIAMS: I would like to ask him
22 questions to the extent he has studied those things,
23 sediments in the streams and written publi --
24 publications in that area. I think his testimony
25 demonstrated qualifications, education and

1 experience wise.

2 THE COURT: I'll qualify him in the
3 field as forestry and wetlands. And I'll hold the
4 reservation of stream and sediment, Mr. Lang, and if
5 you think they're going far field on some issue on
6 that then you object and we'll take it up at that
7 time.

8 MR. LANG: Thank you.

9 BY MR. WILLIAMS:

10 Q. All right, Mr. Jones. Moving on to this
11 case. Have you visited this site?

12 A. I did two times that I can recall to
13 look at this particular area in question.

14 Q. And do you remember about when you
15 visited?

16 A. It was in August of 2004. Both of the
17 visits were during August.

18 Q. And did you make any observations in
19 those visits?

20 A. As -- when I visited the site I was
21 looking at the stream above where the diversion
22 is -- is plotted on the map there. And then below
23 the diversion on the -- what I'll call the new
24 stream where it made a turn back toward the east and
25 what I saw is the old original channel that I saw

1 going --

2 Q. Okay.

3 A. -- based toward the south.

4 Q. Let's refer to the diagram up here.

5 This point right here, just to sort of get your
6 perspective, this point right here has been
7 identified repeatedly as the tree house.

8 A. Mm-hmm.

9 Q. And, as a matter of fact, I believe the
10 picture right in front of you, Defendant's Exhibit
11 Number 1, do you recognize that?

12 A. I remember there being a structure there
13 but, honestly, I -- I'm sure it was the same place
14 but I was looking down at the ground and the
15 stream -- I don't recall exactly what it looked like
16 but there was a structure going up right there where
17 we looked. We walked above that on the stream and
18 then to that point and then below there.

19 Q. All right. Let me just ask you to pass
20 these over on that -- there you go. Thank you.

21 So if this is where the structure is
22 right here on this diagram, does that give you sort
23 of a little perspective?

24 A. Yes, it does.

25 Q. So describe. Did you go upstream,

1 downstream or both?

2 A. We came in off of Furtick Road.

3 Q. This is Furtick Road?

4 A. That's right. We drove in a little
5 woods road a little bit of ways, I don't remember
6 how far. But we parked -- it may have been the log
7 deck. I think it may have been the log deck where
8 we parked. But we parked and then walked to the
9 stream and walked downstream to where this structure
10 in this photograph was.

11 Q. Okay.

12 A. And then we walked further downstream
13 past that also.

14 Q. Okay. And did you walk those places
15 both times?

16 A. Yes.

17 Q. All right. And, of course, it's down --
18 this line down here is South Fork Edisto River?

19 A. Yes.

20 Q. Did you go as far as the Edisto River?

21 A. No, we did not go -- I would say
22 probably 2 or 300 yards below where this tree house
23 is.

24 Q. Where the structure is?

25 A. Mm-hmm.

1 Q. All right. Now, this first line here is
2 identified on this diagram as a Stroman survey line?

3 A. Mm-hmm.

4 Q. This next line here is identified as a
5 Current Run of Dean Swamp Creek. Do you recall
6 observing those two locations?

7 A. I do. When we walked downstream and
8 came to this tree house location I observed sediment
9 or a plug -- what I called a plug, soil built up in
10 the stream, and the water turning to the current run
11 of the stream or swamp at that point. And you could
12 see the old previous stream bed below -- below that
13 plug or sediment in the stream.

14 Q. And what is that word you're using?

15 A. Just a plug. When you plug a stream up
16 you block it and change the flow. That's...

17 Q. Okay. So you're referring to the dirt
18 under the tree house as a plug?

19 A. Yes. And I noticed it particularly
20 because it was a -- a different color, the
21 vegetation was established on it, and it was a
22 different texture than the sediment I had seen in
23 the stream above that point.

24 Q. And you said you visited these two times
25 in 2004?

1 A. That's correct.

2 Q. Would you have any way to tell how
3 recent that plug was placed there?

4 A. The only thing I could go by -- I did
5 take photographs that day but they were lost when my
6 hard drive died on my computer. But I did take
7 photographs of it but I -- I distinctly remember it
8 being a different color. We had walked down the
9 stream where it was undisturbed and it was dark soil
10 with vegetation on the banks and pretty cleanly
11 defined as a stream. You could see the channels and
12 the bank structures.

13 Q. Now, when you're describing that, are
14 you talking about the -- what's up here as the
15 Stroman line or the current run?

16 A. I'm talking about on the Stroman line
17 north of where the tree house is. In other words,
18 we walked in --

19 Q. North would be this way?

20 A. Yes.

21 Q. Okay. Go ahead.

22 A. We walked down -- we were walking south
23 down the stream above where the tree house is at
24 first.

25 Q. Up here?

1 A. And that's where I kind of -- you always
2 start looking above and below where it's in
3 question, we're looking at streams and how they flow
4 and how they function. We started above it where it
5 was undisturbed, the banks were intact, the stream
6 was flowing within the banks, there was vegetation,
7 you know, shrubs and everything on either side, and
8 those things function to hold the bank of stream
9 intact so that's what we were looking at.

10 I was particularly looking at the stream
11 bed, the bottom of the stream in a -- what we call a
12 perennial stream, a stream that flows 90 percent or
13 more of the year.

14 Q. I was going to ask you that. While you
15 mentioned that, you mentioned three different types
16 of stream beds earlier in your testimony. Would
17 you, please, name those again?

18 A. Perennial streams are defined as streams
19 that flow 90 percent or more of the time. They flow
20 even when there's no rain because they receive water
21 from subsurface flow. In other words, they're
22 getting groundwater that goes into the stream bed
23 and at low point it flows downstream. So even if
24 you go for a while without rain they still have
25 water and they still flow.

1 Intermittent streams are the next lowest
2 class, we call that a stream. They flow 20 to 80
3 percent of the time. They receive some flow from
4 the ground, but most of their flow is runoff water
5 coming from the immediate area. Basically draining
6 into a basin.

7 Ephemeral streams are the least -- carry
8 the least amount of water. They flow only right
9 after rain. You get a big thunderstorm rain that
10 runs off really quick, it flows down this channel
11 and then it dries up. It doesn't feed -- have any
12 other way to feed except for rainwater.

13 So this stream, what I observed above
14 there, was a perennial stream.

15 Q. A perennial stream?

16 A. That's right. A perennial stream could
17 be determined by looking at the -- the solidity and
18 the structure of the banks. In other words,
19 there's -- there's a shape to them, they're --
20 they're not eroding, they're pretty well defined.
21 There's roots and vegetation there to help hold the
22 banks in place.

23 The bottom of the stream in a perennial
24 stream, if you imagine water flowing constantly 90
25 percent of the time, the only particles that settle

1 to the bottom are the heavier pieces of soil which
2 would be sands and bigger pieces of sediment. So in
3 a perennial stream they almost, in every case, have
4 a hard bottom. It's sandy, it's firm. You may walk
5 out on the floodplain adjacent to the stream and
6 sink up to your knees, but the bottom of the stream
7 is -- is firm. And that's a hydraulic function.
8 The water is carrying soil -- the smaller pieces
9 stay suspended and get deposited somewhere
10 downstream as the water slows. As the water slows
11 down, as in an intermittent stream, the smaller
12 pieces of sediment settle, so you get the sand
13 covered by an inch or two of smaller particles --
14 fine silt, clay pieces that are not as firm or as
15 big -- just bigger pieces of soil.

16 So, you know, at that point I was
17 looking at the stream and stick -- I had a metal
18 stick --

19 Q. I was going to ask you, how do you check
20 that, test that?

21 A. You generally walk out in the stream and
22 you stick -- you know, I have a metal stick that I
23 carry, a four and a half foot stick. You can hear
24 the sand rubbing on it, it's very distinctive.

25 Q. Is this a special stick?

1 A. Oh, it's a stick with a ruler on it,
2 basically, so it measures the depth of water. You
3 know, but you either bend down and go in the water
4 and grab the sand or stick it with a stick to hear
5 the sand run on the metal pole. And you can also
6 touch it with your foot if it's really firm. If
7 you're in a swamp and you want to walk in the
8 stream, because that's where you can stand up. If
9 you're in the flats you can sink up to your knees or
10 waist. Because that's where the water has kept the
11 smaller particles, the mud and stuff that build up
12 out of the way and you have a firm sandy bottom.. So
13 above there I noticed it was sandy and firm.

14 Q. All right.

15 A. And indicated to me a perennial stream.

16 Q. All right. And that was from the tree
17 house up?

18 A. That's correct.

19 Q. Okay. Now, next let's go to the tree
20 house down in the old creek bed.

21 A. Mm-hmm.

22 Q. Did you -- tell me what observations you
23 made in the old creek bed.

24 A. We walked down there and I was still,
25 you know, sticking my stick and kicking around to

1 see what kind of -- in the old channel within the
2 banks that you can clearly see whether there was a
3 firm bottom to that or it was muddy and silty. And
4 what I found was sand was just beneath the surface
5 and there was a light layer of smaller particles,
6 silt or other stuff that had settled in. What that
7 indicated to me was recent, sometime in the last two
8 or three years, maybe a little longer, that had been
9 experiencing a lot of flow of water because that --
10 over -- streams move very slowly over time, you
11 know. When the stream quits flowing it will dry up
12 and the smaller pieces settle and you still have
13 sand that's covered by a light layer of sediment. A
14 stream that's been -- has not been flowing for a
15 long time will have a lot more sediment on top of
16 the hard sandy layer.

17 Q. So you can make an estimate on how long
18 it's been since water was in the creek?

19 A. A rough -- really rough estimate. It
20 wouldn't be that it happened last week or last
21 month, but maybe within the last five years this
22 stream was flowing or -- you know, not within the
23 last five years. It's very rough. Without some
24 other data, you know, stream flow monitors or other
25 things you really can't tie it too close to it -- to

1 a week or month or year.

2 Q. Let me ask you this. We're sort of
3 skipping a step, talking about the stream bed in
4 this old creek. Did you make some connection or
5 some determination whether this old creek was
6 originally a continuation of the creek that you
7 studied above the tree house?

8 A. I did. And when I got to the plug, or
9 the soil that was in the creek, it was based on the
10 way the creek bank was structured and you could see
11 it continuing past there. It appeared to me that
12 that was where the creek had run previously at some
13 point.

14 Q. When you say that was where, you mean
15 the -- this Stroman survey line?

16 A. The survey line. It was going
17 downstream in that direction. When I looked at the
18 current run of the creek, where it's running back
19 toward the east, and I started looking for the soil
20 in the bottom of the stream it was a lot more mucky,
21 it was less structured to the soil that was very
22 boggy or, you know, muddy, which indicated to me
23 that that stream had not had a current -- a constant
24 flow of water for a long period of time.

25 And that led me to conclude that that --

1 that soil in the stream had diverted it off of its
2 historic channel into a new channel.

3 Q. Okay. Would you be able to give an
4 estimate on the age of this current run of Dean
5 Swamp Creek when you were there in 2004?

6 A. Based on what I remember, you know,
7 looking at the soils I would guess it would have
8 been within five years or so when -- you know,
9 sometime five, seven years. It hadn't been flowing
10 that long because the stream had not developed
11 really firm banks. The stream bed was not really
12 firm and it wasn't exhibiting those characteristics
13 for a long-term perennial stream that had been
14 flowing water for most of the year for hundreds of
15 years, you know.

16 Q. Okay. You just mentioned it didn't
17 exhibit characteristics of a stream that had been
18 flowing for 150 years. The stream bed above the
19 tree house, would you be able to estimate how long
20 that's been in its current place?

21 A. From what I saw, it had been there a
22 long time. I say that based on the stability of the
23 stream banks. The stream moves within -- you know,
24 you have a bank on one side and a bank on the other
25 and the stream wanders back and forth between the

1 banks. When a stream gets to what's called bank
2 full, when it gets to the top of the line between
3 the two banks and flows into the floodplain, the
4 whole swamp would be the floodplain of that -- of
5 that creek.

6 So the stream bank is there, its
7 vegetation, its roots, they go around and hold the
8 bank in place so that it doesn't erode constantly
9 and just naturally forms. Plants grow to the point
10 where they get too much water where they can't live
11 anymore, basically. They grow in the bank. I'm
12 talking about shrubs, woody vegetation -- you know,
13 perennial plants, things like that that develop a
14 root map that holds the soil in place.

15 So above that point the stream had been
16 there a long time, it had not moved significantly at
17 least, you know, in the last, I don't know, 100
18 years, maybe more. It had moved slightly but it
19 never moved very rapidly in that time period.

20 Q. Now, the dry creek bed on the Stroman
21 line, did those characteristics match the
22 characteristics above the tree house?

23 A. They did. That stream bank was
24 continuous from above that point to below it. You
25 could see the stream bank meander below, the same

1 characteristics above and below. The same type of
2 soils in the stream bottom, same consistency and
3 same, you know, texture of the soils below and
4 above.

5 Q. Okay. So the current run of Dean Swamp
6 Creek, if I'm understanding you right, it looked
7 recent in comparison?

8 A. It did. The stream -- the stream bank
9 was not well formed, the channel was not as well
10 formed, and the soils in the bottom of that stream
11 were not as firm and well packed as you would have
12 in a stream that had been flowing for a long time at
13 that location. It certainly had been there -- the
14 channel was not new. The amount of flow had
15 changed, is what I was saying.

16 Q. Okay. Now, you talked about the plug --

17 MR. LANG: If I could -- if I could
18 excuse my client just for a moment. You can
19 continue.

20 MR. WILLIAMS: Sure.

21 Q. Okay. Mr. Jones, you talked about the
22 plug. Am I to understand that the plug -- that
23 you're attributing the plug to the change in the
24 flow to the current run of Dean Swamp Creek?

25 A. Yes, sir. My -- after looking at the

1 plug and looking at the soil in the plug and the
2 soil in the stream channel below and above, that
3 soil was brought in. It wasn't naturally occurring
4 where it's at. And I could tell it by the
5 consistency, the layers of it were not present.
6 Soil that is in place has layers. There's an A
7 horizon in the top part of the soil, there's a B
8 horizon and they're all different colors. And when
9 you look at wetlands and soils you look at the color
10 of soils which reflects how much oxygen they get.

11 Soils that are deprived of oxygen are
12 very dark colors -- gray, brown. Soils that get
13 oxygen are lighter colored -- orange, yellow, even
14 white. And that was a lighter colored soil, it was
15 not indicating to me it had been saturated with
16 water for a long time. So that led me to conclude
17 that that plug, that soil in the stream, had been
18 placed there fairly recently and had created a
19 diversion to send the water into that new channel.

20 Q. All right. Let me ask you this.
21 Besides the plug did you observe anything else that
22 is relevant to the two creek beds?

23 A. The only particular thing I remember is
24 a road going up beyond where the plug came into the
25 stream. There was, like, a logging road going up

1 towards the west and there was evidence of a timber
2 harvest. The trees had been cut up to the stream,
3 the trees on --

4 Q. On --

5 A. On the west side.

6 Q. On this side of the old creek bed?

7 A. That's correct.

8 Q. You observed?

9 A. Recent timber harvest.

10 Q. Okay.

11 A. And the trees had been cut up to -- just
12 a few feet right adjacent to the bank, within 10 or
13 so feet of the bank had been left, maybe 15 feet,
14 which indicated to me that whoever is cutting it
15 didn't want to cut beyond --

16 MR. LANG: Objection, Your Honor. That
17 can't indicate anything.

18 THE COURT: Just tell what you observed.

19 THE WITNESS: Okay.

20 BY MR. WILLIAMS:

21 Q. Mr. Jones, the reason he objected is you
22 were sort of speculating what other people thought.
23 So let's just leave it to what your observation was.
24 Tell us about the observation.

25 A. What I saw was timber had been harvested

1 up to within 10 or 15 feet of the stream bank on --
2 shown on the Stroman line.

3 Q. How much -- how big an area was the
4 timber harvest that you observed?

5 A. I didn't really try to estimate that
6 area. I just saw that it had been cut and I didn't
7 know whose land it was, didn't have permission to go
8 there so I did not really try to estimate it. I
9 just saw there had been a harvest because all I did
10 at that point in my career was look at timber
11 harvests and evaluate how they complied with the
12 guidelines we had in place.

13 Q. Did you look around -- well, let me just
14 ask you again. Tell me, again, about how far down
15 the old creek bed you went.

16 A. I'm estimating we walked 2 or 300 yards
17 at most down -- down below where the tree house was
18 located.

19 Q. Okay.

20 A. We did not walk all the way down the run
21 of the swamp or to the South Edisto.

22 Q. Sure. Would you be able to testify
23 where the creek runs into the river?

24 A. No, sir. No, sir. I never saw that
25 part.

1 Q. Now, on this creek that's identified as
2 the current run of Dean Swamp Creek, how far down
3 that stream did you go?

4 A. I remember us walking down the new run
5 of the creek -- the current run of the creek and
6 then back across to the old channel and back up to
7 the cars and back out. So, basically, we walked a
8 couple of hundred yards down the new creek, the new
9 flowing area and back across to the old channel and
10 then back up past the tree house and out to the
11 vehicles we had driven.

12 Q. The couple of hundred yards you walked
13 down the new channel, were those characteristics
14 that you described present throughout that couple of
15 hundred yards?

16 A. You mean as far as the stream not
17 looking very well established?

18 Q. Right.

19 A. Yes, to me -- to me it didn't look like
20 it had been a stream that had been flowing water
21 constantly for a long period of time. In other
22 words, it was flowing water at the time, it looked
23 like it had been flowing for some couple of years
24 before, but it didn't look like it had been an
25 established perennial stream for hundreds of years

1 or more.

2 Q. All right.

3 A. It was an existing channel but the flow,
4 in my opinion, had changed somewhere in the last few
5 years.

6 Q. Okay. Did you review any documents in
7 relation to your work with this property?

8 A. I did. The Forestry Commission
9 maintains -- or gets air photo -- aerial photography
10 taken of the state usually every five or six years.
11 We use this for all of our forest management work so
12 we keep those photographs on hand. I did look at
13 historic photographs of the aerial photographs that
14 were taken -- going back to the first time aerial
15 photos were taken of the state, which was between
16 1937 and 1941, and some successive flights of this
17 area that were taken in other years after that,
18 so...

19 Q. I want to show you these two documents,
20 please, Mr. Jones, and I'm handing you two at a
21 time. There's a significance to that, which I'll
22 ask you to explain but, first, do you recognize
23 those documents?

24 A. Yes, I do.

25 Q. And what are they, in a general way?

1 A. These are black and white infrared
2 aerial photography, photographs taken of the whole
3 state in South Carolina between 1937 and 1941.
4 These particular images show the run of Dean
5 Swamp --

6 Q. Well, let me ask you before you get to
7 that, please, sir. Are these documents kept by your
8 employer?

9 A. Yes. These are kept by the Forestry
10 Commission in our -- in our aerial photography room.

11 Q. Would you say they are in your archives?

12 A. Well, they're -- they're -- they're kind
13 of in archives. We use them very frequently. Even
14 a photograph that's 70-something years old is still
15 very valuable, because we look in long-term
16 rotations. So these -- these are kept there,
17 they're able to -- forest landowners to look and
18 view all the time, and we keep all of the
19 photographs for -- for future reference.

20 Q. Are you a custodian of those documents?

21 A. They are in my section, someone in my
22 section actually manages that room. One of my
23 technicians takes care of that room and checks out
24 the photographs to landowners and, you know, lets
25 them go make copies of them at request.

1 Q. And are those documents kept in the
2 normal business of the Forestry Commission's record
3 keeping?

4 A. Yes, they are.

5 Q. They are?

6 A. They're maintained, just because we use
7 them often we keep them around.

8 MR. WILLIAMS: Okay. I would offer
9 those into evidence, Your Honor.

10 MR. LANG: It depends what they are. I
11 mean, if we have them --

12 MR. WILLIAMS: Yeah, you have them.
13 They're in the summary judgment notebook, one of
14 Mr. Jones' exhibits.

15 MR. LANG: Tell me which one.

16 MR. WILLIAMS: The first exhibit. A1
17 and A2, I think.

18 MR. LANG: No objection.

19 THE COURT: All right. Exhibits
20 Number...

21 THE COURT REPORTER: 75 and 76.

22 THE COURT: 75 and 76 admitted without
23 objection.

24 MR. WILLIAMS: Would it be possible to
25 do 75 and 75A just so they're a pair? I really

1 don't want to staple them together because you've
2 got to look at them side by side.

3 THE COURT: Okay, sure. Any objection
4 to that, Mr. Lang?

5 MR. LANG: No, sir.

6 THE COURT: 75 and 75A.

7 MR. WILLIAMS: Thank you.

8 (PLF. EXHS. 75 and 75A marked for
9 identification.)

10 BY MR. WILLIAMS:

11 Q. Now, Mr. Jones, will you look at these,
12 please? And I'll give you time to get your glasses
13 on.

14 A. I won't be able to see much.

15 Q. Do you recognize the property that those
16 are actually pictures of?

17 A. Yes, sir. I see Pat Williams' property
18 and the run of Dean Swamp, and then I see Highway 39
19 and the South Edisto River.

20 Q. Okay. Let me ask you. Why do you look
21 at those two in pairs?

22 A. There's a -- you take a lot of aerial
23 photograph interpretation classes in forestry school
24 because we use them so much for management. If you
25 use a device called a stereoscope, you look at it

1 with both eyes. You take two adjacent photographs,
2 each photograph overlaps the next to some degree.
3 If you look in an area that's within the overlap and
4 you have two images, you can use this device called
5 a stereoscope. You look through it with -- each eye
6 is looking at a different photograph, and if you
7 look hard enough it essentially crosses your eyes
8 and you can see the terrain. You can see hills, you
9 see it, like, in a 3D. You can measure the height
10 of trees, you can measure acreage, you can measure
11 how tall your house is. If you see a shadow on here
12 and you know how high the plane is flying, you can
13 tell how high the altitude is in the photograph. So
14 it's a geometrical calculation.

15 So we use these all the time to define
16 different stand types, if you're doing forestry
17 management work. Infrared photos -- pines are going
18 to show up different from hardwoods. If you take
19 photos in the wintertime, hardwoods are going to be
20 darker since they don't have leaves, they're not
21 reflecting heat. The pines are going to show up
22 lighter because they are reflecting heat and the
23 infrared is picking up on heat. So the stereoscope
24 allows you to define the topography if you're on a
25 slope in the bottom of a valley and where the lowest

1 point is. In this case, it's where the stream is
2 going to run.

3 Q. Sure.

4 A. So...

5 Q. Let me ask you this. Did you look at
6 those photographs under the stereoscope?

7 A. I did, and you -- without the
8 stereoscope you can see the stream channel. Here
9 with the stereoscope you can see, you know, it's a
10 very slight terrain. We're not talking about more
11 than a foot or two elevation drop, but you can see a
12 general slant of the land towards the main -- what's
13 showing up on here is a flowing creek, a wide creek
14 in the photograph for the run of Dean Swamp.

15 Q. And tell me again the year those photos
16 were taken.

17 A. These were taken on February 12, 1941.

18 Q. All right. Now, in -- in those
19 photographs can you identify Dean Swamp Creek
20 clearly?

21 A. Yes, you can.

22 Q. All right. And does Dean Swamp Creek,
23 as you identify in those photographs, match this
24 Stroman survey line on this diagram?

25 A. Very -- very similar line. It's

1 probably not exact because since 1941 and, you know,
2 whenever the Stroman survey was done the stream was
3 moved a little bit. But it's very close to the same
4 line as depicted in the Stroman survey.

5 Q. All right. Is there anything in those
6 1941 photos that you're looking at that would be
7 suggestive of this line marked as a current run of
8 Dean Swamp Creek?

9 A. I -- I don't have a stereoscope with me
10 but I -- I can't define a single channel that takes
11 the same path that that current flow takes.

12 Q. All right. Well, let me ask you this.
13 Mr. Jones, you've used the term braided streams.

14 A. Yes.

15 Q. What are braided streams?

16 A. Water --

17 Q. And specifically in relation to this
18 case and this area.

19 A. I mean, generally you have a -- when you
20 have a stream you have some kind of slope that keeps
21 the stream flowing in one channel. In flat parts of
22 the country basically -- in South Carolina pretty
23 much the east side of I-20 you start to lose the
24 slope and the land gets very flat. In the absence
25 of a lot of slope to keep the stream into one

1 channel, the water starts to break it into smaller
2 channels. And it could be a difference in two or
3 three inches that makes the channel.

4 If you think about a trout stream in the
5 mountains, you've got big valleys in the mountains
6 that keeps it in the channel. Down here you don't
7 have that. You have very flat terrain where six
8 inches or a foot may be all the elevation you have
9 in a swamp plain. So when the channel breaks up and
10 doesn't have enough slope force of the channel, it
11 forms many smaller channels rather than one large
12 channel.

13 A good example in this part of the world
14 would be the Socastee River. The Socastee River is
15 one channel. It gets about to Bells Crossroads and
16 because the county -- it disappears into a bunch of
17 small channels. You cannot find one main channel in
18 Socastee Swamp. Below Snyder's Crossroads it picks
19 up again and becomes one channel almost down into
20 five. So the swamp, because of the absence of
21 slope -- the stream spreads out into a lot of small
22 channels and then picks up together into a main
23 channel further down.

24 So in this case it appears to me that
25 Dean Swamp was pretty well in the channel, our main

1 channel. When the swamp -- when there's a lot of
2 rain and water comes up out of the banks, it floods
3 the floodplain. That's what floodplains are for,
4 they hold overflow from the stream's channels. So
5 when the floods make it come out of the banks you
6 get a solid, you know, sheet of water basically
7 across the swamp. When the water goes down it goes
8 back into multiple channels. All the time, the main
9 channel is still flowing.

10 Q. Sure.

11 A. But it just covered up six or eight or
12 ten feet, however deep by excess water, which is the
13 flood water that -- that is coming from
14 precipitation or whatever source.

15 Q. Okay. Well, looking at those '41
16 photos, are they detailed and do they provide enough
17 information to you to be able to tell from those
18 photos if Dean Swamp Creek was a perennial stream at
19 that time?

20 A. Based on how well defined the stream
21 looks, the channel looks in these photographs -- I
22 mean, to have that much definition and be able to
23 see it that clearly from a plane however many
24 thousand feet up in the air it has to be a very well
25 defined channel that is flowing regularly to stay

1 open and -- and show up that well. So it's pretty
2 distinct to me that there is a channel -- primary
3 channel for Dean Swamp coming down on this
4 photograph.

5 Q. Okay. Are there any other channels in
6 those photographs that would be similar in size and
7 dominance?

8 A. I see some smaller channels off to the
9 east side of where Dean Swamp -- where that main
10 channel looks like it comes, but those are not as
11 well defined and not -- definitely don't carry as
12 much water as that one branch -- that main stream
13 does.

14 Q. Okay. I'm going to show you the next
15 two photographs, Mr. Jones, and ask you if you
16 recognize those.

17 A. Yes, I do.

18 Q. And are those similarly kept in your
19 records --

20 A. Yes, sir.

21 Q. -- for the Forestry Commission?

22 A. These are from 1994 and these are color
23 infrared photographs. So they're taken in the
24 wintertime, the hardwoods are dark, the pines are
25 bright red because they're reflecting heat, so this

1 is a flight from 1994 and it is kept in archives in
2 our office.

3 Q. Let me ask you a couple of preliminary
4 questions before we get into too much detail. Are
5 these also kept in the normal business records of
6 the Forestry Commission?

7 A. Yes, they are.

8 Q. And are you a custodian?

9 A. Yes, sir.

10 MR. WILLIAMS: Okay. I would offer
11 these into evidence.

12 MR. LANG: I'm sorry?

13 MR. WILLIAMS: Evidence. Do you have
14 any objection?

15 MR. LANG: No objection, Your Honor.

16 MR. WILLIAMS: And if we could -- the
17 last ones were 75 and 75A? Maybe 76 and 76A.

18 THE COURT: 76 and 76A, infrared photos
19 of 1994 admitted, without objection.

20 (PLF. EXHS. 76, 76A in evidence.)

21 BY MR. WILLIAMS:

22 Q. I hand you these back to you, Mr. Jones,
23 and...

24 THE COURT: Can you hand me those,
25 Mr. Jones?

1 THE WITNESS: (Tendering.)

2 BY MR. WILLIAMS:

3 Q. Do you find it efficient to look at
4 those two together side by side as well?

5 A. Yes, sir. These are -- where you
6 could -- with the stereoscope easily see, you know,
7 the topography and the terrain features.

8 Q. All right. Did you look at those under
9 the stereoscope?

10 A. I did.

11 Q. All right. And what property is
12 depicted in those pictures?

13 A. It's the same property with Dean Swamp
14 Creek and the South Edisto River and Highway 39 in
15 the top right corner of this photograph.

16 Q. And tell me again --

17 A. Top left of this one.

18 Q. Tell me again the date.

19 A. These were taken January 18th, 1994.

20 Q. 1994. And what do you see in those
21 photographs as far as the creek is concerned?

22 A. These were taken from a higher altitude
23 so the stream is not quite as distinct, but you can
24 clearly see the -- by following the hardwoods that
25 don't have leaves and show up really dark in these

1 photos, you can clearly see where the main portion
2 of the swamp runs. And you can see -- you know, not
3 quite as distinctly but you can see a creek channel
4 coming through there, this one channel.

5 MR. WILLIAMS: Do you want to point that
6 out to Mr. Lang?

7 THE WITNESS: Sure.

8 MR. LANG: That's all right. I'll get
9 it. If you're going to have him point to something
10 if you'll give me a heads up I'd appreciate it.

11 MR. WILLIAMS: I didn't know he was
12 going to point --

13 MR. LANG: I know, I know.

14 MR. WILLIAMS: I'm sorry.

15 THE WITNESS: And in these photographs
16 it's a lot -- because of the altitude without
17 magnification it's really hard to tell. I don't see
18 any distinct -- other extreme channels because I
19 don't have a magnifying glass and stereoscope to
20 help me.

21 BY MR. WILLIAMS:

22 Q. All right. Does location of the creek
23 as you observed in those 1994 photographs -- how
24 would it compare to the location on this diagram up
25 here, the Stroman line?

1 A. Again, it's a very similar line. It
2 probably is very close to that based on time.
3 Fifteen years or so in the life of a stream is not
4 much so it would have moved, but very close to what
5 you see dictated -- or indicated on that Stroman
6 line.

7 Q. Okay. Put those, please, if you will,
8 up on the ledge there. I want to hand you the next
9 two photographs, please, and ask if you recognize
10 those.

11 A. I do.

12 Q. And what are those photographs
13 generally?

14 A. These are color infrared photographs.

15 Q. Are they photographs that the Forestry
16 Commission keeps in its regular course of business?

17 A. Yes, they are.

18 Q. Are you a custodian of those
19 photographs?

20 A. I am.

21 MR. WILLIAMS: All right. I would offer
22 these -- let me see, Mr. Lang, the numbers.

23 MR. LANG: I think I have them.

24 MR. WILLIAMS: You've got them?

25 MR. LANG: C2 -- C1 and C2?

1 MR. WILLIAMS: That's it. I would offer
2 these into evidence.

3 MR. LANG: No objection, Your Honor.

4 MR. WILLIAMS: And would ask that you
5 mark these 77A and B -- or 77 and A.

6 THE COURT: 77 and 77A without
7 objection.

8 (PLF. EXHS. 77 and 77A in evidence.)

9 BY MR. WILLIAMS:

10 Q. Now, Mr. Jones, if you will look a
11 little more closely at those. What's the date of
12 those photographs?

13 A. These were -- let me check. I'm pretty
14 sure these were 1999. (Reading.) Yeah. 1999.

15 Q. All right. And what is the property
16 which is the subject of those photographs?

17 A. It shows Highway 39 and the South Edisto
18 River and the run of Dean Swamp coming in this way,
19 so it's the property depicted on the Stroman line on
20 either side.

21 Q. Did you look at those photographs under
22 the stereoscope?

23 A. I did.

24 Q. And elaborate a little bit on what you
25 saw.

1 A. You can see -- especially through the
2 stereoscope, but you can see the run of -- the
3 biggest channel in the swamp is coming right here,
4 approximately where the Stroman line is, and coming
5 into the South Edisto River. These photos -- flow
6 is in this direction, but you can see --

7 MR. WILLIAMS: Can you see what he's
8 illustrating?

9 MR. LANG: Mm-hmm.

10 THE WITNESS: But there's a lower area
11 you can see the recess in topography and you can
12 actually see some of the water reflected in the
13 infrared photographs and here where the run of Dean
14 Swamp runs into the South Edisto.

15 BY MR. WILLIAMS:

16 Q. When you say the run of Dean Swamp, you
17 mean the run of Dean Swamp Creek?

18 A. Yes. Depicted very close to what's on
19 the Stroman line here.

20 Q. Okay. That was my next question. How
21 did -- what you see in those photos, how does that
22 compare with what's on this diagram?

23 A. Very similar run of the stream with some
24 minor differences, of course, due to stream movement
25 and, you know, how the map was made on the Stroman

1 plat.

2 Q. Sure. Can you see, on those two
3 photographs, any other streams of significance in
4 that area?

5 A. You can see where channels run, but they
6 are not as well defined or easy to pick up on.
7 They're quite clearly -- from my perspective and
8 years of looking at these photographs, there's one
9 channel that holds more water and flows more and
10 that would be the one that's very closely laid out
11 to where the Stroman line is.

12 Q. All right. Pass those up, if you will,
13 please.

14 THE COURT: Do you mind if I ask him one
15 question?

16 MR. WILLIAMS: No, go right ahead.

17 THE COURT: The photos of 76 and 76A and
18 77 and 7 -- excuse me, 77 and 77A, they're taken
19 from different elevations. Is that --

20 THE WITNESS: They are.

21 THE COURT: -- what I'm observing?

22 THE WITNESS: They are. On the next
23 four photographs the plane was at a much higher
24 altitude so there's less area in the photograph. We
25 typically get this scale of photographs where one

1 inch on the photograph equals 660 feet on the
2 ground.

3 THE COURT: That would be the 1999?

4 THE WITNESS: That's -- for forestry
5 purposes that's the preferred scale because you
6 can -- a lot of the measurements used are based on
7 66 feet, surveyor's chain, so it just makes it
8 easier for us.

9 THE COURT: I thought my eyes were
10 telling me it was two different elevations, but I
11 wanted to make sure I asked you that.

12 THE WITNESS: And the next '94
13 photographs were actually flown by a federal project
14 and not specifically for South Carolina, we just
15 purchased the images, so we didn't get to dictate
16 the altitude.

17 THE COURT: Thank you.

18 BY MR. WILLIAMS:

19 Q. Mr. Jones, did you review any other
20 documents besides these photographs that we've
21 looked at?

22 A. I don't recall reviewing anything else
23 specific.

24 Q. Did you review any other photographs,
25 for instance, similar to these?

1 A. I looked for other photographs that we
2 had in archives. These were the only ones I had and
3 the archives are in my office, so these are the only
4 ones that I provided. There may be other ones out
5 in the agency somewhere but I -- after about 1999 we
6 went to digital images and not hard copy images, so
7 I don't have all of those.

8 Q. All right. And other than just the
9 passing references to the Stroman line today, have
10 you actually reviewed the plat prepared by Surveyor
11 Richard Stroman?

12 A. I did. I was provided a copy of that
13 and looked at it and compared it to the photographs,
14 the aerial photographs, and looked at approximate
15 line that was put on the -- on the Stroman survey
16 and compared it to the run of the creek. And
17 they're very similar to where -- where it's easily
18 defined -- the biggest run of that swamp runs is
19 very similar to where the Stroman line --

20 Q. That was really going to be my next
21 question, is how would you compare your review of
22 these photographs with the Stroman line?

23 A. They're very closely -- closely lined
24 up. If you were able to lay them over each other
25 they would be very closely matched. That's not to

1 say there couldn't be other channels but the primary
2 channel in that swamp, based on what I see in the
3 photographs and what I saw on the aerials, is
4 depicted on these photographs very clearly as a
5 substantial stream carrying a lot of water.

6 MR. WILLIAMS: All right. I think
7 that's all the questions I have. Thank you,
8 Mr. Jones.

9 THE COURT: Mr. Lang?

10 MR. LANG: Thank you.

11 EXAMINATION

12 BY MR. LANG:

13 Q. Mr. Jones, my name is Louis Lang. I
14 represent Mr. Smith. You went out to the property
15 in 2004?

16 A. Yes, sir.

17 Q. Who asked you to do that?

18 A. The Guy Steven -- or Guy San Fratello
19 who used to work with the Forestry Commission was
20 a -- doing some consulting work for Pat Williams
21 when Guy called -- he suggested that Pat call me and
22 ask me out there because of my expertise in
23 wetlands.

24 Q. I thought that was a fairly simple
25 question. Who asked you to go out there?

Trial - Vol. 2 - August 27, 2013

425

1 A. If it was, I didn't take -- pay
2 particular notice to it.

3 Q. And, of course, you didn't walk down
4 that far so you couldn't tell?

5 A. Right.

6 MR. LANG: Nothing further, Your Honor.

7 MR. WILLIAMS: I have a couple of
8 follow-up questions, Mr. Jones.

9 EXAMINATION

10 BY MR. JONES:

11 Q. Mr. Lang asked you about if you had any
12 indication that -- when Furtick Road was
13 constructed.

14 A. Yes.

15 Q. And I believe you said you did not?

16 A. No.

17 Q. Can you look at these three sets of
18 photographs and tell if there's been any material
19 change since 1941?

20 A. (Reviewing photographs.) There's not
21 much evidence of the road on the 1941 photographs.
22 You can see clearly in 1994 and 1999 the same basic
23 design layout of the road. It doesn't look like it
24 was improved or expanded, no.

25 Q. Well, in this stretch from Furtick Road

1 to the river, has there been any significant change
2 up in that area -- that vicinity of Furtick Road,
3 has there been any significant change that you can
4 detect on either of those photographs?

5 A. (Reviewing photographs.) The only
6 significant change I see is some of the farm fields
7 have grown up in forest instead of maintained -- so
8 there's been some change in the land use but
9 nothing...

10 Q. As to the creek?

11 A. No. I don't see any significant changes
12 to the creek in that time period.

13 Q. Okay. And I'm going to ask you this
14 next question not trying to be a smart-aleck but
15 it's come up two or three times and I'm sincere. Is
16 there any condition under which a creek can flow
17 uphill?

18 A. No, sir.

19 MR. WILLIAMS: All right. Thank you.
20 That's all I have.

21 MR. LANG: Nothing on recross.

22 THE COURT: You may step down. Thank
23 you.

24 THE WITNESS: Thank you.

25 THE COURT: May this witness be excused?

Trial - Vol. 2 - August 27, 2013

427

1 MR. WILLIAMS: Yes, sir. I was just
2 going to mention to Your Honor as I understand it
3 Mr. Jones is expected -- ordered any minute to go
4 out west to fight some of the forest fires out there
5 and I would just like to thank him and commend him
6 for his service.

7 THE WITNESS: Thank you.

8 THE COURT: Good luck.

9 THE WITNESS: Thank you.

10 (Witness excused.)

11 THE COURT: Next witness.

12 MR. WILLIAMS: Mr. Guy San Fratello.

13 THE COURT: Place your left hand on the
14 Bible.

15 GUY J. SAN FRATELLO
16 being first duly sworn, testified as follows:

17 THE COURT: State your full name for the
18 record.

19 THE WITNESS: Guy Joseph San Fratello.

20 THE COURT REPORTER: Can you spell it?

21 THE WITNESS: The last name is
22 capital-S-A-N, space, capital-F-R-A-T-E-L-L-O.

23 EXAMINATION

24 BY MR. WILLIAMS:

25 Q. Good afternoon, Mr. San Fratello.

1 A. Good afternoon.

2 Q. How old are you, Mr. San Fratello?

3 A. I'm 69.

4 Q. What is your occupation?

5 A. I'm a forester.

6 Q. Forester. And where do you live?

7 A. I live in upper Calhoun County at a
8 place called Beckham Hill Lake.

9 Q. And how long have you lived there?

10 A. Twenty-five years.

11 Q. Would you please -- for the Court, would
12 you please give a brief summary of your education?

13 A. Right. In 1963 I was attending Augusta
14 College in Augusta, Georgia and -- from 1963 to
15 1965. From '65 to '68 I attended the University of
16 Georgia and got a master's degree in forestry. In
17 1983 the State of South Carolina sent me back to
18 school at N.C. State in Raleigh, North Carolina to
19 work at a master's program in forestry and
20 nurseries.

21 Q. Did you get a -- did you graduate from
22 that course at Raleigh?

23 A. It wasn't necessary to.

24 Q. Explain how that worked.

25 A. The State sent me back to school -- I

1 actually wrote some papers in tree improvement. My
2 professors needed probably six more months to stay
3 and get a master's, but it was important to come on
4 back to the State and start developing the State's
5 programs so I opted not to stay and finish and get
6 the master's degree.

7 Q. Okay. But, now, what degree did you get
8 at the University of Georgia?

9 A. A bachelor of science in forestry.

10 Q. All right. Okay. And anything else
11 education wise, Mr. San Fratello?

12 A. No, sir. Not at a major university, no.

13 Q. Okay. What about your work experience?

14 A. I started with -- in '63 to '65 I worked
15 as a temporary at Savannah River Plant in Aiken,
16 South Carolina doing TSI work.

17 Q. What is TSI work?

18 A. Timber Stand Improvement work. I also
19 worked doing CFI plots, taking inventory of the
20 resources at that plant. And then in '68 I went to
21 work with the State Commission of Forestry. I
22 started off as a project forester in -- from '68 to
23 '83 I worked as a private forester in Bamberg,
24 Barnwell, Allendale, Hampton, Jasper and Beaufort
25 Counties, assisting landowners with the management

1 of their forestry resources.

2 Q. That takes us through '83?

3 A. Right. So I went back to school in '83,
4 learned what I could as far as forest kinetics in
5 the nursery program. And I worked from '83 to 1998
6 with the State and wound up in Columbia over all the
7 programs in the State of South Carolina from nursing
8 and tree improvement. And at that time I retired, I
9 opened up my private forestry company in 1998 until
10 present.

11 Q. What is the name of your company?

12 A. SanBar Forestry and Wildlife Services.

13 Q. Spell the name of that for the Court
14 Reporter.

15 A. It's spelled -- it's one word. It's
16 capital-S-A-N-capital B-A-R.

17 Q. And that's what you're doing presently,
18 self-employed at SanBar?

19 A. Right.

20 Q. All right. What special licenses or
21 certifications do you have?

22 A. I'm a licensed forester in the State of
23 South Carolina, North Carolina. I'm also a
24 prescribed certified fire manager, have to take
25 courses and get a number to be able to do that. And

1 then I belong to the Society of American Foresters
2 and the South Carolina Forestry Association.

3 Q. Lexington County?

4 A. Lexington County -- South Carolina
5 Forestry Association is statewide. Society of
6 American Foresters is national. And Lexington
7 County Landowners Association is countywide.

8 MR. WILLIAMS: Okay. All right. Your
9 Honor, I would ask that Mr. San Fratello be
10 qualified as an expert in the area of forestry.

11 MR. LANG: No objection, Your Honor.

12 THE COURT: Mr. San Satello?

13 THE WITNESS: San Fratello.

14 THE COURT: San Fratello is qualified
15 without objection as a forester.

16 BY MR. WILLIAMS:

17 Q. All right. Mr. San Fratello, let's talk
18 a little bit about this property in this case. When
19 did you first become aware of this controversy?

20 A. I had -- I got the call from
21 Mr. Williams and he asked me to come over and look
22 at the property and asked me if I could find the run
23 of Dean Swamp Creek. And that was probably, I
24 guess, somewhere around the year 2000, maybe, 2001.
25 And so he didn't go with me but I did go down there

1 and looked around a little bit because I had been
2 down there before.

3 Q. Let me ask you this. I want you to pick
4 up where you left off but just try to put first
5 things first a little bit. How far do you go back
6 with this property?

7 A. I go back on this property, gosh, I know
8 he purchased it in '78, I think y'all indicated
9 earlier, so I know I go back to -- when I was
10 assisting him with forest management we'd ride
11 around and look at his property so I've had to have
12 visited in the '80s and the '90s.

13 Q. All right. Do you have a history with
14 Mr. Williams and his property prior to that?

15 A. I do. I go back to August of '68.

16 Q. How did you pull up that date so
17 readily?

18 A. Because I got a copy of a forest
19 management plan right there that I wrote for him on
20 the Barnwell side of the Edisto River in August of
21 '68.

22 Q. Okay. And, now, prior to this
23 controversy tell the Court a little bit about your
24 history with this property.

25 A. Pat's a client of mine, he's also a good

1 friend. He'll call me -- he loves his woods and his
2 land and let's ride and look. So we do that a good
3 many times every year, almost every year since I've
4 known him we'll ride and look.

5 But this particular piece of property,
6 after he acquired it we would ride around and look.
7 And most of the time he was watching his trees grow,
8 it was young planted pines that he planted and we
9 would always look at the swamp. He -- he liked his
10 swamp, he didn't necessarily want to cut it, but he
11 would ask me questions about the swamp.

12 So I remember when he had some questions
13 about the Dean Swamp he asked me to go in there and
14 see if I could find the main run of Dean Swamp. So
15 I had been down in that property before, beyond that
16 line before, and noticed that it was different than
17 when I had seen it years earlier.

18 Q. When would you say would be the first
19 time you were down in that swamp area?

20 A. Well, the first time I saw Dean Swamp
21 was in '68 when I did his management plan, because I
22 was on the south side of the river on the northwest
23 corner trying to find where Pat's -- his property
24 corner was. If you look at aerial photographs and
25 the county maps -- map, it was just below where Dean

1 Swamp comes into the Edisto River on the north side.
2 So I was looking for the run where it came in to the
3 river, trying to see if I could find the property
4 line across the river, and I distinctly remember
5 watching Dean Swamp run into the Edisto River in
6 '68.

7 Q. Let me follow you on the diagram.
8 Mr. Williams owns other land on the other side of
9 the river?

10 A. That's correct.

11 Q. And you were on that land on the other
12 side?

13 A. That's correct.

14 Q. You were on the south bank of the river?

15 A. That's right. I was on the south side
16 of the river on the bank, trying to find that
17 northwest corner.

18 Q. Okay. The northwest corner. So you
19 were looking for the northwest corner of his other
20 property on the other side of the river?

21 A. That's right.

22 Q. All right. And pick it up from there
23 again, please.

24 A. If you look on the aerial photographs
25 and you look on -- you'll see where Dean Swamp comes

1 into Edisto River. So normally being a forester and
2 looking at maps and trying to figure out where
3 property lines are and where corners are, I said,
4 well, his property line is just below where Dean
5 Swamp runs into the river. So I was looking for his
6 corner based on where Dean Swamp ran into the Edisto
7 River., I could not find the corner, but I did see
8 that water of Dean Swamp running into Edisto River
9 and that was in '68.

10 Q. Okay. Is that place where you saw that
11 creek running into the Edisto River consistent with
12 what's marked up here as the Stroman line?

13 A. Almost the exact same land.

14 Q. Okay. All right. Now, when did you
15 first have occasion to come over on this parcel?

16 A. After he purchased it I would walk
17 through it and he would -- just walk through it,
18 Guy, and look at it and let me know what you think
19 about the timber. Sometimes he'd walk with me,
20 sometimes he's asked me to walk by myself.

21 So I would walk down Dean Creek because
22 I knew Dean Creek was the line. It was a national
23 geographic boundary line by that creek, and I never
24 found any plats or anything else to show me
25 otherwise. So I walked that creek, Dean Swamp

1 Creek, on a couple of occasions while the water was
2 running in it.

3 Q. Let me ask you some questions to sort of
4 break that down, Mr. San Fratello. When would you
5 say approximately -- year wise, when would you say
6 was the first time you -- you would have walked over
7 there? I know that was many years ago, so I'm just
8 asking approximately.

9 A. Well, I saw it coming out of there in
10 '68 and I -- sometime probably in the '80s or '90s I
11 know I walked through that piece of property and saw
12 that water running down that creek.

13 Q. All right.

14 A. I didn't walk in the creek. All I had
15 to do was walk the bank, look at the timber until I
16 got to the Edisto River, and then turn around and
17 swim back up.

18 Q. Okay. Have you ever walked all the way
19 from, say, where the Atkins' property line -- are
20 you familiar with the structure we've been calling
21 the bird house or the tree house?

22 A. Yes, sir.

23 Q. Have you ever walked all the way from
24 the tree house all the way to the river?

25 A. I have on more than one occasion when

1 the creek was running with water, and on two
2 occasions when it was bone dry.

3 Q. How many times altogether would you
4 guess you've walked that line?

5 A. Not more than half a dozen over the last
6 30 years.

7 Q. A half a dozen times?

8 A. Yes, sir.

9 Q. And just to make sure I'm understanding,
10 you're talking about from end to end all the way to
11 the river?

12 A. Right. From the dirt road up there --
13 what did y'all call it?

14 Q. Furtick Road.

15 A. Furtick Road all the way down Dean Swamp
16 Creek till it comes into the river. And then Pat
17 asked me year 2000, 2001, somewhere around there, if
18 I would go find the run of Dean Swamp for him
19 because he knew I had walked it before.

20 Well, when I went in there it was
21 different. And you could tell that -- my
22 observation was when I got to the point, the point
23 of controversy there where the deer stand is, that
24 it had been dug out. You can see the spoil up on
25 the bank just not normal for that spoil -- soil to

1 be piled up there. I had never seen it before.

2 So I -- I was thinking I was going to
3 walk right down the creek, Dean Swamp Creek like it
4 had been in years past, but then it turned -- turned
5 east and went out into the Edisto River and it --
6 there was not a primary stream. When it turned
7 east, it's not primary. All that in there is
8 braided, which means you've got all kinds of little
9 streams running in there and nothing hardly any
10 deeper than your knee, probably, because I walked it
11 when it was -- had a lot of water in it, too much.
12 I said I can't find -- I can't find a mainstream
13 going through there so I waited till it dried up a
14 little bit, then I came back and walked through it
15 again and that's when I told Pat that Dean Swamp has
16 been altered to kick back into the effluences of the
17 Edisto and all them streams in there are braided and
18 there's not a primary stream running through there.
19 Never has been.

20 Q. When you say there's not a primary,
21 where are you talking about?

22 A. Everything to the east of the old dry
23 bed that y'all been referencing, there's not a
24 primary stream running through there in my opinion.

25 Q. How about this line that's marked the

1 current run of Dean Swamp Creek?

2 A. I have -- that's the area I was walking
3 in trying to find that. I didn't see it. I don't
4 see it as such. I don't see it characterized as a
5 creek like Dean Swamp Creek. It comes in -- when it
6 makes that east turn right there at the old channel,
7 it flattens out and flushes out and spreads out,
8 just like that.

9 Q. When you were down in there looking
10 after this controversy erupted, did you see any
11 indications of artificial diversion of the stream?

12 A. Absolutely. It was dug out.

13 Q. Tell the Court the things you saw.

14 A. Well, all I could recall seeing, it was
15 back on August the 24th of '04. When we went back
16 in there to look at it I could tell the creek had
17 been -- Dean Swamp Creek had been dug out and that
18 spoil was piled up on that side of the creek --

19 Q. Which side? We've got to make a record.
20 Which side was it piled up on?

21 A. It would be piled up on the south side
22 of -- what you call current.

23 Q. I tell you what? Why don't you come up
24 here and point to where you're talking about?

25 THE COURT: Get him to stand on that

1 side, please.

2 BY MR. WILLIAMS:

3 Q. Now, you're testifying where you saw
4 dirt piled up; right?

5 A. Right. Where is the deer stand on this
6 tract?

7 MR. LANG: Your Honor, if he doesn't
8 know --

9 BY MR. WILLIAMS:

10 Q. Are you talking about -- you're talking
11 the bird house thing?

12 A. Right.

13 Q. Okay. Well, just to give you
14 perspective --

15 A. Right.

16 Q. -- other witnesses have put the bird
17 house right on the little point. You see that BH
18 right there on the point?

19 A. Right.

20 Q. That's where -- that's where people have
21 located the bird house or tree house. Take your
22 time and look at it, don't be rushed.

23 A. No. I would say it's right there where
24 that dot is, where that -- where the origination of
25 Dean Swamp, where it goes back over in here, I would

1 say it's right there.

2 Q. Now, what is right there?

3 A. That's where it was dug out. That's
4 where Dean Swamp Creek was dug out. And the soil
5 was piled on this side of the dug out which somebody
6 else referenced as a plug.

7 Q. Okay.

8 THE COURT: Which side are you pointing
9 to? The left side of that line or the right side of
10 that line?

11 THE WITNESS: As you're looking at it,
12 on the right.

13 BY MR. WILLIAMS:

14 Q. You pointed to the left but you said the
15 right.

16 A. No, right there. Right there.

17 Q. Okay.

18 A. What line are you talking about? The
19 green, the purple, or the one in ink --

20 THE COURT: The one that the surveyor
21 put on there, the one -- original before ink pens
22 were put on it. Which side --

23 THE WITNESS: It has to be this little
24 black line and it would have to be on the right or
25 the west-hand side of it.

1 BY MR. WILLIAMS:

2 Q. If the north is the top.

3 A. Right.

4 Q. And the left is west?

5 A. You think the line is coming through
6 there? It's very faint, where that L-3 is? See it
7 coming right through there?

8 Q. Yes, sir.

9 A. Okay. So at that particular point, if
10 that was the run or the original Dean Swamp Creek,
11 it was dug out right there and then fleshed out into
12 the effluent of Edisto Swamp. That's the way I saw
13 it.

14 Q. Okay. Did -- other than that dirt that
15 you just testified about right here, did you see any
16 other activities of note?

17 A. It was -- it was a berm. From that
18 point on back south and around a little bit, it was
19 a berm. A berm is dirt fill, it didn't all come out
20 of the swamp. In my opinion, it would have to be --
21 some of it had to be brought in.

22 Then there was a pipe put right there
23 where the old run of Dean Swamp Creek is, there was
24 a pipe put right there with a little bridge or
25 walkway over it so if some water could scoot on

1 through that pipe which was the original run, in my
2 opinion, of Dean Swamp.

3 Q. Okay. Did you -- when you went down
4 there after the controversy started, did you examine
5 the abandoned creek bed at all?

6 A. I did. I walked that creek bed at the
7 point where it -- I drove into the old logging deck,
8 walked that creek bed with Pat Williams, bone dry
9 from that end all the way to the Edisto River. And
10 we stood one night in the Edisto River on a full
11 moon night wondering why in the world we were
12 standing there in the dark with all the alligators
13 in that swamp. But we walked the dry run of that
14 bed.

15 Q. All right. Mr. San Fratello, have you
16 had occasion to study the property line, the plat
17 that Mr. Stroman prepared?

18 A. Not the whole plat. I saw this Stroman
19 line and it -- it looked...

20 Q. This line right here.

21 A. The one line is all I looked at.

22 Q. Okay.

23 A. I haven't seen the other one except for
24 what I've seen there.

25 Q. Yes, sir. Now, I'm not representing to

1 you that Mr. Stroman did this. This is a plat that
2 Mr. Stroman did.

3 A. I've seen that.

4 Q. So have you studied that?

5 A. Yes, sir.

6 Q. How does that compare with what your
7 understanding of what the property line is?

8 A. General observation, it appears to me
9 from what I've seen and studied in the past we were
10 right on it.

11 Q. And since you first started working this
12 property with Mr. Williams and visiting this
13 property, have you known the property line to change
14 at all?

15 A. No, sir. I've never seen anything to
16 indicate otherwise. Well, other than Pat has told
17 me over the years that he was having a conflict with
18 an adjacent landowner and he showed me where the
19 fence was put up and he showed me where trespassing
20 signs were put up along -- higher up on the ridge,
21 all the way to 39.

22 Q. All right. Mr. San Fratello, prior to
23 this controversy that we're here about today, prior
24 to that when you were doing your work in this swamp
25 and down in there with Mr. Williams, did you ever

1 see any indications that would suggest to you that
2 somebody else was claiming any of this land to the
3 east side of this Stroman line?

4 A. No, sir. We -- we walked, we looked at
5 it, we flagged out some timber harvest operations
6 and we never saw anything -- I never saw anything
7 that would lead me to believe it was anything other
8 than what it was supposed to be.

9 Q. Did you ever see anywhere -- east of
10 this Stroman line did you ever see any no
11 trespassing signs that had been put up by anybody
12 other than Mr. Williams?

13 A. Not prior to the controversy.

14 Q. And did you ever see any cables or
15 barricades that had been put up by anybody other
16 than Mr. Williams?

17 A. No. A couple of gates that -- that
18 Mr. Williams had. He had keys to and he would
19 unlock and let me do any work.

20 Q. All right. Were you involved -- in your
21 work as a forestry consultant and so forth, were you
22 involved with any timber harvesting on this parcel?

23 A. I was.

24 Q. Would you step down a minute and -- we
25 haven't done this yet today because I was giving out

1 colors. I'm going to ask you to take this red
2 marker and draw some perimeter lines, please,
3 Mr. San Fratello, where you were involved or where
4 you observed or assisted Mr. Williams with timber
5 harvesting.

6 A. Is this the so-called new run of Dean
7 Swamp right here?

8 Q. That's the new run, yes, sir.

9 A. And that's Furtick Road right there;
10 right?

11 Q. Yes, sir.

12 A. We harvested timber -- (marking) --
13 probably -- I don't remember. It went all the way
14 back over to right there. If that's the ridge we
15 cut some on the ridge and we cut some off the ridge,
16 and then we came up in here and cut some, too.
17 About that whole area right in there we had -- if I
18 understand that map correctly.

19 Q. All right, sir. How many timber
20 harvestings were you involved in?

21 A. On that tract?

22 Q. Yes, sir.

23 A. I know I was involved with monitoring
24 that operation. Because I monitored it, I was
25 probably involved with the other operations up on

1 the ridge up there just as an adviser to Pat. He
2 handled some of that himself, but as an adviser I
3 did help him with bids and comments.

4 Q. All right, sir. Are you familiar with
5 any locations that were used as what we would call
6 logging decks?

7 A. Yes, sir.

8 Q. Where would those be?

9 A. If that's the gate that comes down in
10 here, we had a logging deck there. We had one right
11 there, and we had another one probably back over in
12 there somewhere.

13 Q. All right. And what do you mean when we
14 use the term logging deck? What does that mean to
15 you?

16 A. When you harvest timber you have to have
17 a deck where you bring the concentration of standing
18 timber over to a concentration point, and then you
19 separate that timber out by product, whether some of
20 it's pulp wood or pulp kind material or chicken saw
21 material or poles or whatever, you bring all that to
22 one concentration point and then the logger
23 separates it out and then it's loaded on the truck
24 by product, by species, and goes to the mill.

25 Q. All right. This -- this logging deck

1 that you indicated up at the -- I guess the northern
2 most point on Furtick Road there of the parcel --
3 no, I'm sorry. I guess that would be the second,
4 that's the northern most, but this next one here.

5 A. Right.

6 Q. When you've been over there recently
7 have you seen any barricades or gates across that?

8 A. We rode over there not too long ago and
9 that road off of Furtick was fenced off and we
10 couldn't go down in there.

11 Q. Do you know who had it fenced off?

12 A. According to Mr. Williams --

13 MR. LANG: Objection. If he doesn't
14 know, he doesn't know.

15 THE WITNESS: According to
16 Mr. Williams --

17 BY MR. WILLIAMS:

18 Q. Don't say according to him. Did you see
19 any --

20 THE COURT: Not what somebody told you.
21 What you know.

22 BY MR. WILLIAMS:

23 Q. Did you see any names on any no
24 trespassing sign?

25 A. I didn't look.

1 Q. Okay. Do you know if it was gated off
2 by Mr. Williams?

3 A. We couldn't go down in there, so
4 evidently not.

5 Q. Okay. What was the most recent time
6 that you were involved in a logging operation at
7 that logging deck?

8 A. '03.

9 Q. 2003?

10 A. Right.

11 Q. Okay.

12 A. I have all that documentation in my
13 file.

14 Q. Okay. All right. You can have a seat
15 again. Thank you, sir.

16 Mr. San Fratello, what does the term
17 timber cruising mean?

18 A. Well, it's a representative sample of
19 the volume by species, by product that's on the
20 parcel of land and --

21 Q. Well -- go ahead.

22 A. 100 percent cruise would be marketing
23 and tallying every tree on the property or the
24 tract. If it's a large tract you might do a five
25 percent cruise or two and a half percent cruise,

1 which would be a representative sample, then you
2 would blow it up.

3 Q. Okay. Have you ever done any timber
4 cruises on this parcel?

5 A. I've -- I did 100 percent cruise, marked
6 100 percent of the tract at one time.

7 Q. You did 100 percent cruise on this
8 parcel?

9 A. Of what was to be cut.

10 Q. And by 100 percent cruise, does that
11 mean 100 percent of the parcel?

12 A. The parcel across 39, I selectively
13 marked that for a timber sale one time.

14 Q. Now, when you say across 39, you mean
15 this piece over here south of 39?

16 A. Yeah.

17 Q. How about this parcel here?

18 A. No. It was all done by the unit ton.

19 Q. Okay. And your -- other -- I guess what
20 I'm wanting to know from you is other than those
21 times when timber was harvested, what other work did
22 you do as a forester on that property?

23 A. For the most part I would meet with Pat
24 Williams, I would ride, we would look. If he asked
25 me a question, like how much per acre you think this

1 will cut, I've got X number of acres, how much do
2 you think I would generate? I know also -- I think
3 it was back in '03 Westvaco did a management plan
4 for him and we would ride and look and see if I
5 thought the value of the blocks on that tract
6 were -- estimated value that they estimated, if I
7 thought that estimated value was there. I would
8 just share my general input on that.

9 Q. Okay. Were you still actively assisting
10 Mr. Williams with this parcel up to the time this
11 controversy started?

12 A. Yes..

13 Q. Let me ask you this, Mr. San Fratello.
14 Did you ever have occasion to observe what looked to
15 you like any timber harvesting west of this Stroman
16 survey line?

17 A. I did. I know I observed it when the
18 so-called overrun, the dried up bed, was dry because
19 I walked it. You could tell that everything on the
20 west side of Dean Swamp Creek had been totally
21 harvested. Whether it was harvested before or after
22 the bed ran dry, I can't remember. I don't know.

23 Q. Yes, sir. Did that harvesting cross
24 over the old creek bed?

25 A. No.

1 Q. Describe the location of the harvesting
2 in relation to the creek bed.

3 A. It caught my attention because it was
4 harvested right up to the Dean Swamp Creek bed which
5 was a violation of wetlands. I can't believe it was
6 cut so close to the creek bed, but it did not go
7 beyond the run of Dean Swamp which more or less led
8 me to believe --

9 MR. LANG: Objection.

10 THE WITNESS: It stopped at the property
11 line.

12 MR. WILLIAMS: Your Honor, I believe --

13 THE COURT: Was there an objection?

14 MR. LANG: Yes, I did an objection. It
15 led him to believe something.

16 MR. WILLIAMS: I think that's a fair
17 statement, Your Honor.

18 MR. LANG: I would suggest not. That's
19 pure speculation.

20 THE COURT: Ask the question again.
21 Let's try this again.

22 BY MR. WILLIAMS:

23 Q. Okay. Tell us about the timber
24 harvesting you observed on the west side of the old
25 creek bed.

1 A. When I walked the creek bed I noticed
2 that all the timber had been harvested on the west
3 side of the creek bed. Knowing and understanding
4 that the run of the creek bed was Mr. Williams'
5 property line, that's okay because he didn't cross
6 the property line. But it did violate wetlands SMG,
7 stream management guidelines, because he cut it
8 right up to the creek bed but did not cross the
9 creek bed.

10 Q. Let me just take a quick look, Mr. San
11 Fratello, if you will. (Reading.) I did want to
12 ask you one other question. I've heard you use a
13 term before, a certified creek. What is a certified
14 creek?

15 A. I reference Dean Creek as a certified
16 creek because it had been placed on maps -- state,
17 federal, county maps. A map that I looked at was
18 the old Soil Conservation Department of Services
19 Offices, the NRCS offices, as a running creek. And
20 if it had to be a perennial creek or one that ran
21 water most year round, it ought to be certified --
22 or heavy flow enough creek to be put on those maps.
23 So it's a certified legitimate perennial running
24 creek. It has to have water running in it all time
25 to be titled something like Dean Swamp Creek. If it

1 didn't have water running in it, why would you call
2 it a creek if it didn't have water running in it
3 year round?

4 Q. All right. Are you aware of any other
5 certified creeks on that parcel east of the Stroman
6 survey line?

7 A. No. Nothing -- nothing stood out to me
8 as being predominant enough to characterize it as a
9 creek, more or less like Dean Swamp was.

10 MR. WILLIAMS: All right. That's all
11 the questions I have. Please answer any questions
12 Mr. Lang has.

13 THE COURT: Mr. Lang, let's take about a
14 five-minute break before we start; okay?

15 (A recess transpired.)

16 THE COURT: Okay, Mr. Lang.

17 EXAMINATION

18 BY MR. LANG:

19 Q. Mr. San Fratello, my name is Louis Lang.
20 I represent Carlisle Smith. Let me pick up where
21 you said that you recall in 1968 standing on the
22 south shore, I guess, of the South Fork at the
23 Edisto River looking across at what you described as
24 the Dean Creek Swamp; is that right?

25 A. Right.

1 such a clearing you'd probably notice it, don't you
2 think?

3 A. Unless it had time for vegetation to
4 regenerate from that point -- (inaudible.)

5 Q. I'm sorry. I missed that.

6 A. Unless it had been -- if it had been
7 maintained from year to year, I might have noticed
8 it. If it had not been maintained from year to
9 year, then vegetation would probably take it over
10 and you wouldn't of...

11 Q. But you didn't notice?

12 A. I didn't notice it.

13 MR. LANG: Begging the Court's
14 indulgence. (Reading.) No further questions.
15 Thank you, Mr. San Fratello.

16 MR. WILLIAMS: Couple of questions on
17 redirect.

18 THE COURT: Okay.

19 EXAMINATION

20 BY MR. WILLIAMS:

21 Q. Mr. San Fratello, Mr. Lang asked you a
22 number of questions about the berm, asked you two or
23 three times if you had a picture of the berm. I
24 want to show you that picture and ask you. This is
25 Plaintiff's Number 31. I want to show that picture

1 to you and ask you if you recognize that as a berm
2 you're talking about.

3 A. More or less that would be the berm I'm
4 making reference to. Back in August of '04 the dig
5 out was on that side, we would come across this
6 side. When we came up out of the water we could see
7 this pile of berm coming up through here and then
8 circling and going back up the hill.

9 Q. All right. And, for reference, would
10 you recognize this tree house as the same as this
11 structure there from a different angle?

12 A. (Reviewing photographs.) It appears
13 that -- no. Doesn't look to be the exact same
14 house.

15 Q. Okay.

16 A. Could be, but doesn't look to be.

17 Q. All right. Looking at this picture,
18 Number 31, which side of that berm is the creek on
19 presently?

20 A. Would this be north over here?

21 Q. Yes, sir.

22 A. Then the berm would be on the south
23 side. The creek would be cut across in the front
24 emptying out into the swamp east that way.

25 Q. Yes, sir. And do you see anything in

Trial - Vol. 2 - August 27, 2013

473

1 that picture that would -- you would recognize as a
2 dry creek bed?

3 A. It would have to be over on this side,
4 coming across through here.

5 Q. All right, sir. Thank you, sir. The
6 only other thing I want to ask you about, Mr. San
7 Fratello, is Mr. Lang asked you if you saw any
8 indications or any places where dirt was dug up
9 along this new current run of the creek, and I would
10 ask you to elaborate a little on that.

11 A. The only place I felt like dirt was
12 digging -- dug out was right there at the main run
13 of the creek. It was brought up to divert the
14 creek. I did not see any other dirt dug up, but the
15 dirt on that berm did -- not all of it -- did not
16 come out of that creek. So it either had to be
17 brought in or pulled up off the side of the forest
18 on either side. Just -- that's just not a natural
19 occurrence, it had to be man-made.

20 MR. WILLIAMS: All right, sir. That's
21 all I have.

22 MR. LANG: Let me just take a look at
23 that picture.

24 EXAMINATION

25 BY MR. LANG:

1 MR. LANG: That will be fine, Your
2 Honor.

3 MR. WILLIAMS: Before we start him could
4 we take about a five-minute break?

5 THE COURT: Sure.

6 (A recess transpired.)

7 THE COURT: Mr. Stroman, place your left
8 hand on the Bible.

9 RICHARD L. STROMAN
10 being first duly sworn, testified as follows:

11 EXAMINATION

12 BY MR. WILLIAMS:

13 Q. Good afternoon, Mr. Stroman.

14 A. Good afternoon.

15 Q. Would you please give your full name for
16 the Court Reporter and spell your last name?

17 A. Richard L. Stroman, S-T-R-O-M-A-N.

18 Q. Mr. Stroman, how old are you?

19 A. Sixty-five and 11 months.

20 Q. Are you retired or still working
21 full-time?

22 A. No, I retired February of this year.

23 Q. And what was your occupation before
24 retiring?

25 A. A land surveyor.

1 Q. How long have you been doing that?

2 A. Forty years.

3 Q. Where do you live, Mr. Stroman?

4 A. Orangeburg County.

5 Q. And would you please give a brief
6 summary of your education to the Court?

7 A. Graduated from Clemson University in
8 1969 with a bachelor of science in civil
9 engineering. After that I went straight into the
10 service through the ROTC program and went to Army
11 Engineer school, and from there overseas. After
12 that, of course, when I got my license I did
13 continuing education every year and that's the
14 education.

15 Q. Do you still do continuing education
16 even though -- well, this is your first year
17 retired, I guess?

18 A. Right.

19 Q. Anything else you want to mention
20 education wise?

21 A. That's the bulk of it.

22 Q. All right, sir. Would you give --
23 similarly give us a brief summary of your work
24 experience?

25 A. I've been involved with land surveying

1 for 47 years, before I got my license and practiced.
2 Highway department, summers through high school.
3 Went in the service and was in charge of company and
4 road construction, we had survey crews that kept the
5 alignments and grades. Got out of the service in
6 '71, '2, somewhere along in there, and I ran a
7 branch office for Calvin Engineering on Hilton Head.

8 Q. And was that -- did that involve
9 surveying?

10 A. Yes. Property development and golf
11 courses, roads, ponds, drainage -- everything.
12 Excuse me. That lasted a short period of time.
13 Then I joined with some guys and we formed a new
14 company, Coastal Surveying Company.

15 Q. What was the name of that again?

16 A. Coastal.

17 Q. Coastal?

18 A. And that lasted till 1975 and I was in a
19 pretty serious car wreck, had some pretty bad
20 injuries and was in the hospital three to four
21 months recuperating and ended up moving back to
22 Orangeburg in 19 -- the end of 1975. I opened up
23 Edisto Surveyors in Orangeburg. And I worked there
24 until 2004, two civil engineers joined with me and
25 my partner and I sold the old company and we formed

1 a new company, Edisto Engineers and Surveyors. And
2 that was 2004 until February of this year and they
3 are still there running the company and I'm just
4 on-call as needed for problems.

5 Q. Was your degree, I believe you said,
6 actually in civil engineering?

7 A. Yes.

8 Q. How does that overlap with surveying?

9 A. Surveying is one part of it. Civil
10 engineering encompasses quite a few disciplines. We
11 have courses in statics, dynamics, a lot of
12 mathematics up through Calculus 3, statics,
13 dynamics, chemistry, physics.

14 Q. How do those things come into play with
15 your surveying work?

16 A. Well, a lot of the survey work we do is
17 in conjunction with civil engineering projects.
18 Construction, property analysis prior to development
19 so you can do your drainage designs and lay out your
20 buildings and roads, make the property efficiently
21 utilized by whatever business is going there,
22 whether it be a hospital, a school, grocery store,
23 whatever.

24 Q. Have you used those things in your work
25 over the years?

1 A. Yes. We did a lot of that. Primarily
2 my largest volume of experience is property lines --
3 reestablishing of property lines. But it's all
4 interrelated with what the economy is doing and
5 paying the light bill.

6 Q. Sure. All right. Anything else you
7 want to mention about your work over the years?

8 A. No. I stayed primarily in the surveying
9 part of civil engineering because that's what I
10 like, is outside and I love the outdoors.

11 Q. What about licenses or certifications?

12 A. I'm licensed in South Carolina since the
13 mid-'70s, I forget exactly when I got my license. I
14 was licensed in Mississippi for some projects we
15 were going to do for NOAA, National Oceanographic
16 and Atmospheric Administration. I dropped that
17 license a while back because I didn't need it and
18 that's it. I've just been using my land surveyor's
19 license and property development and property line
20 surveys.

21 Q. Mm-hmm. Do you have your land
22 surveyor's license current now?

23 A. Yes.

24 Q. Has it been current continuously since
25 you got it?

1 A. Yes.

2 Q. Okay. Anything else you want to mention
3 about your education or professional background?

4 A. Not that I think would be relevant.

5 MR. WILLIAMS: Okay. Your Honor, I
6 would ask that Mr. Stroman be qualified as an expert
7 witness in the area of civil engineering,
8 specifically related to surveying -- land surveying.

9 THE COURT: Objection, Mr. Lang?

10 MR. LANG: I don't object to
11 Mr. Stroman being qualified as an expert surveyor.
12 I don't know what civil engineering has to do with
13 it.

14 MR. WILLIAMS: Well, he testified about
15 it and to the extent that would come in a little bit
16 I was just trying to cover that as well. But
17 primarily surveying -- land surveying.

18 MR. LANG: No objection.

19 THE COURT: Okay. No objection. I find
20 him to be an expert in land surveying.

21 BY MR. WILLIAMS:

22 Q. Mr. Stroman, when you get a survey
23 assignment, in general what is the process you go
24 through?

25 A. Well, it depends on the type survey. If

1 it's construction, there's certain procedures you
2 use. But specifically this, without getting
3 bogged down in my thinking, property line
4 reestablishment -- we meet with the client and find
5 out all we can about what the problem is. And from
6 that we research for documents that tells us, as a
7 surveyor, where that line is supposed to be, because
8 until that day we've never seen the property lines.
9 Something legal has to tell us where the line
10 belongs. From there you go to the ground, do your
11 observations, your measurements, you come back and
12 do your computations, relate the physical monuments
13 that you found -- in this case the old creek bed,
14 the new diverted creek. Once you locate all that
15 with angles and distances and survey data metes and
16 bounds, you relate it to what previous surveys you
17 have found, plats, documents by other mapping
18 agencies. You see how that relates to the legal
19 documentations that we interpret as where the
20 property line is supposed to be.

21 And from that you usually go back to the
22 field and take more measurements, ties, depending on
23 what you need to confirm your conclusions that you
24 have drawn from that analysis. After that, you
25 prepare your plat.

1 Q. All right.

2 A. And it's ready to record.

3 Q. Somewhere in that process do you
4 consider neighboring parcels?

5 A. Absolutely.

6 Q. How does that fit into the process?

7 A. Well, the property line in this case
8 belongs to two, three people -- Atkins, Williams and
9 Smith. So anything relative to those properties we
10 try to find documentation to what established those
11 properties and that's how we find the old maps, old
12 plats -- whatever we can get our hands on. The more
13 information we can get, the better we are as far as
14 drawing a conclusion.

15 Of course, what you find on the ground
16 makes a big impact on what you end up doing versus
17 physical monumentation as it relates to the
18 mathematical or map documentation. So you try to
19 get all your adjacent owner maps, plats to correlate
20 your final decision on where that line should be.

21 Q. When you researching -- when you are
22 researching the documentation, what are the primary
23 sources and documents that you're looking for?

24 A. What is what?

25 Q. The primary sources of documents you're

1 looking for.

2 A. Sources of the documents? Courthouse,
3 record review. You look at plats and deeds as the
4 primary documents you start with. So you get the
5 deeds on both properties, all three properties, any
6 plats done on those properties and, if necessary, go
7 further into mapping agencies to find maps that have
8 been drawn by other agencies that has recognized the
9 swamp creek -- in this case, Dean Swamp Creek.

10 Q. Okay. When were you first contacted
11 by -- well, when were you first contacted about this
12 project, roughly?

13 A. May of 2008. Mr. Williams called and
14 the project was started.

15 Q. Mr. Pat Williams?

16 A. Right.

17 Q. How did he explain the project to you --
18 strike that. What did he ask you to do?

19 A. He asked me to determine the property
20 line between him and Mr. Smith. He shared with me
21 what information he had and said that he had been
22 trying to contact Mr. Smith for some time with no
23 success and that there was encroachments onto the
24 property as he knew it to be. So he wanted a
25 professional interpretation and location of that

1 property line.

2 Q. When Mr. Williams first contacted you,
3 at that point did you have any familiarity with his
4 property or this property line?

5 A. I did not. My partner had done some
6 work in that area but, no, I had no relationship to
7 it.

8 Q. Okay. When was the first time you went
9 and actually visited the property?

10 A. I think I did a little research and
11 shortly after that, couple or three weeks,
12 Mr. Williams and I went to the site and we walked
13 the old creek bed that he remembered to be the
14 property line. And from that I went back and did
15 some extensive research everywhere I could to find a
16 plat on Dean Swamp Creek.

17 Q. Mr. Stroman, I believe you just said
18 that you did a little research and then you went and
19 met him and walked the property line. What would
20 have been involved in that initial little research
21 that you talked about?

22 A. Be tax map, aerial photographs where the
23 County said the property line was by the tax
24 records, the aerial photographs, which would also
25 give me insight when I'm on the ground where I'm at

1 and what I'm looking at, how it relates to other
2 tracts adjacent to it which become important working
3 old plats back in.

4 Q. Yes, sir.

5 A. Deeds -- check the deeds to see what's
6 been deeded, mostly at that time to Mr. Williams.
7 That would be initial just to confirm that, yeah,
8 this is what he says he owns and this is what's
9 recorded in your courthouse and here are the county
10 tax maps that show it.

11 Q. When you first went to the property with
12 Mr. Williams that first time, and I believe you said
13 you walked the whole creek bed, did you know then
14 that that's where you were going to draw the line to
15 match the old creek bed?

16 A. No.

17 Q. What kind of things would be going
18 through your head at that point?

19 A. Well, I had nothing from a survey
20 standpoint that was substantial enough to tell me
21 that that creek bed was the property line or the old
22 creek, original creek.

23 Q. All right.

24 A. So I had to find something to tell me,
25 as a surveyor, where to put that line or where it

1 had been previously defined.

2 Q. Okay. So from that visit where did you
3 go and what did you do from there?

4 A. After that visit?

5 Q. Yes, sir. After that first visit to the
6 property.

7 A. We did additional research looking for
8 maps, anything that would help us to locate the
9 property line. We physically began measuring --
10 making measurements and ties on the property to
11 existing corners we found. We actually traversed --
12 turned angles and distances down the creek bed as
13 far as we could -- as far as we were comfortable
14 that that was the old creek bed. And from there I
15 think we got about 2500 feet, 2400 feet down the old
16 creek bed towards the river. I think there was a
17 small cleared area, I assumed was a deer plot, what
18 had been -- apparently been used for. And from
19 there the braiding of the creek's -- of course,
20 where the cleared area was anything that had been
21 disturbed and leveled out like a small field.

22 Q. When you say disturbed or leveled out,
23 do you mean by nature or by what?

24 A. No. By equipment or tractor, to plow, I
25 don't know, backhoe down in there to clear it.

1 Timber had been cut up to that creek bed all the way
2 down to that point and further, so I don't know
3 whether heavy equipment had been on it to -- from
4 the logging it did not appear to be. It appeared to
5 be a food plot that was being manicured to a
6 planter.

7 Q. When you say a food plot, are you
8 talking about for deer?

9 A. Right, for wildlife.

10 Q. I just want to go back and hand you this
11 deed that's already been marked as Plaintiff's
12 Exhibit Number 1 and ask you if you recognize that.

13 A. (Reading.) I need some help. Yes.
14 That's the deed that we found through Mr. Williams
15 for the 1,050 acres.

16 Q. At the early point of your work how much
17 reliance do you put on that 1,050 acre number?

18 A. From this point I have no reason to
19 question it. I mean, that's the deed. Normally a
20 man buying that much property would have the title
21 checked, maybe even title insurance put on it.
22 Acreage was not a consideration. I was looking for
23 the property line.

24 Q. All right. Let me show you this deed
25 marked as Plaintiff's Number 3 and ask you if you

1 recognize that.

2 A. (Reading.) Yes. This is the 380 acres
3 that Mr. -- L.B. Till purchased adjacent to
4 Mr. Williams.

5 Q. Do you remember the sequence of events
6 with these deeds or do we need to look at these
7 dates?

8 A. No, I don't remember the dates on them.

9 Q. Let me show you this one.

10 A. Okay.

11 Q. And see if you recognize that one.

12 A. (Reading.) Yes. This is where
13 Mr. Smith purchased 400 acres from Mr. Till that is
14 supposed to be the same tract as previously
15 described as 380 acres.

16 Q. Do you recall -- and if not you can look
17 at the signature pages that have the dates. Do you
18 recall how close in time those two deeds were
19 executed?

20 A. Yeah. I remember, very close. I mean,
21 it was a little unusual for that to be.

22 Q. When you say very close, give us a --
23 little more specific. And you can look at the dates
24 if you want to.

25 A. Right. If I remember right, it was just

1 a few days or a week. Let's see. Mr. Till bought
2 it 29 December of '8 -- 1986. Mr. Till sold it to
3 Mr. Smith 31st of December of '86.

4 Q. And I believe you said the --

5 A. It was 20 acres larger.

6 Q. Twenty acres larger?

7 A. Yes.

8 Q. As a surveyor, would that be something
9 that you would notice?

10 A. Yeah.

11 Q. Did you make any effort to figure out
12 that 20-acre growth?

13 A. No, because I was not doing a complete
14 boundary to get acreage on either one of the tracts.
15 At that time my sole objective was establish the
16 property line between Mr. Smith and Mr. Williams.

17 Q. Okay. Did these acreage numbers factor
18 into your equations and your analysis later on as
19 you progressed through your work?

20 A. Yes, it became an issue. When I
21 realized the magnitude of what Mr. Smith was
22 claiming or beyond his deed, then it became an
23 issue. But it turns out the 20 acres is almost
24 insignificant to what the real number is.

25 Q. Just to sort of get off on that little

1 side question a moment, do you know exactly what it
2 is Mr. Smith is claiming?

3 A. No -- well, this project started in
4 early 2008. It took a year to come up with my plat
5 because of the extensive work we put into it in
6 trying to uncover every stone to find whatever we
7 could find, because in the beginning it was my
8 understanding Mr. Smith was not communicating and
9 had provided no information to help me understand
10 what he wanted -- what he felt the property line was
11 at that time. And that went on for years and --

12 MR. LANG: Your Honor, I have an
13 objection to this line of questioning. What
14 relevance is this? I mean, he was not engaged by
15 Mr. Smith to do anything. Mr. Smith doesn't have a
16 duty to tell him anything.

17 THE COURT: It goes to the weight but
18 it's sort of insignificant. I think what he's
19 saying is he got information from one side of the
20 property line but not the other side. Go ahead.

21 BY MR. WILLIAMS:

22 Q. So the question is even today do you
23 know exactly what -- where Mr. Smith proposes the
24 property line is?

25 A. Exactly, no. Last week you sent me

1 copies of the Steadman drawing and all I know is
2 what it indicates, but I really don't know for sure
3 what Mr. Smith is claiming.

4 Q. All right, sir. Mr. Stroman, you
5 mentioned that you look for physical monuments on
6 the ground. What are physical monuments?

7 A. Physical monuments are either iron pipe,
8 fence lines, ditches, creeks, marked trees.

9 Q. Did you find any physical monuments in
10 your work on this line?

11 A. On the line itself, the physical
12 monumentation would be that creek bed. And then we
13 found some corners that we tied to put in the E.B.
14 Atkins lines I've drawn on my plat.

15 Q. Would you -- would you step down and
16 show me where those corners are that you found?

17 A. The main two corners that we're showing
18 on this survey on the two corners that identify the
19 southern line of the E.B. Atkins tract.

20 Q. Let me ask you to circle those in this
21 blue marker, please.

22 A. (Marking.)

23 Q. Did you find any other corners relevant
24 to this survey work?

25 A. Well, trying to be thorough, we had

1 obtained plats of the Homer -- Homeland (phonetic)
2 Plantation. We had other surveys somewhat done for
3 Mr. Smith by Arant out of Columbia. I've got a
4 pretty extensive list of what we had. We went down
5 Furtick Road and tied to lots of corners to relate
6 all of these plats to see if it would shed any light
7 on what the question was, but it didn't.

8 So all of this work we did here was
9 really not usable because this is the line we were
10 trying to establish, being swamp creek. And it's
11 identified by a dry creek bed now.

12 Q. You mentioned that the creek bed is a
13 physical monument, one of several items you named as
14 an example of a physical monument.

15 A. Right. It's physical evidence.

16 Q. Did you find enough of the creek bed
17 to -- let me ask it this way. Describe what you
18 found in terms of the creek bed as it would satisfy
19 the need for a physical monument. What did you find
20 helpful with the dry creek bed?

21 A. It was a dry creek bed. I mean, I don't
22 know what technically you want to define a creek
23 bed, but I think Mr. Jones did pretty good at it.

24 Q. Yes, sir.

25 A. Get into the shape and the bank and the

1 shore and the vegetation. This thing was just a
2 concave...

3 Q. Were you able to identify it --

4 A. -- question -- oh, no doubt about where
5 it was.

6 Q. Okay.

7 A. And it went -- after we got past the
8 redirecting of the creek from this point, which is
9 where the woods went over to Mr. Smith's property,
10 it was very evident all the way down to -- all the
11 way to this point, B.

12 Q. Would you circle that, please?

13 A. (Marking.)

14 Q. Blue marker. And is that where you
15 mentioned a few minutes ago you came to the place
16 that had been cultivated?

17 A. Yes. I've got it drawn in here as a
18 cleared area, right there. (Marking.)

19 Q. All right. Now, beyond that cleared
20 area were you able to pick back up with the creek
21 bed?

22 A. There were areas that we could tell
23 where the creek bed was, but at that point we were
24 getting into what I call the serious swamp, really
25 flattened out and the stream had braided into

1 numerous streams.

2 Q. Well, then, what -- what would you sort
3 of fall back on, then, to establish the line from
4 there on down? How would you do that?

5 A. By the documentation we discovered in
6 our research, as well as that same documentation
7 that would tell us if this configuration or
8 alignment from Point A to B, the old creek bed, if
9 it matched the maps we had discovered. And it did.

10 Q. And in addition to the documentation,
11 did those bits and pieces that were still visible --
12 were you able to use those?

13 A. They were -- general area. But I
14 decided since all this was so wet and flat that I
15 used the average of all those maps to put this line
16 physically on the ground to the river.

17 Q. Okay. So from the tree house to Point B
18 determined primarily by?

19 A. From Point A.

20 Q. Okay. Excuse me. Circle Point A.

21 A. (Marking.)

22 Q. From Point A to Point B you determined
23 the line primarily by what?

24 A. The old creek bed.

25 Q. And then from Point B on the rest of the

1 way to the river primarily by?

2 A. Let me back up.

3 Q. Okay.

4 A. Something had to tell me where that line
5 was.

6 Q. Yes, sir.

7 A. So all the documents we had, we used
8 them to come up with the alignment of the old creek
9 bed. First thing was the existing -- we used them
10 to find the alignment of Dean Swamp Creek as
11 previously mapped by others. Then we overlaid the
12 old creek bed and the alignment was very close. Of
13 course, on the ground we picked up a lot of extra
14 little crooks and turns that some of the mappers
15 would not have had access to without physically
16 surveying it on the ground.

17 Q. Yes, sir.

18 A. And since it matched so well, we took
19 the average and projected it to the river. And the
20 way it fit the ground, it just looked natural. But
21 there's really no distinct monumentation from B to
22 the river that you could really cite was the old
23 creek bed, because there's -- so many braids have
24 been in there. I don't know how long that thing's
25 been diverted and that swamp carries a lot of water

1 at times, especially when the river comes up and
2 floods in there and you get all that sediment on top
3 of your sand.

4 Q. Do you think there would have been a
5 better chance of identifying a recognizable dominant
6 creek bed from B to the river before the diversion?

7 A. Yes. It should have been more dominant.
8 The water would have maintained that course.

9 Q. Okay. I'm going to ask you about some
10 specific documents in a minute, but just tell me
11 what's your best guess of how many documents you
12 reviewed in the process of this work?

13 A. I probably looked at a hundred documents
14 but I actually used, I don't know, 25 or 30.

15 Q. Okay.

16 A. Some of the documents weren't relevant,
17 some of them were hard to discern -- they weren't
18 clear, bad photographs. Because when you're doing
19 your research you get anything you can get your
20 hands on and get back to the office and really study
21 it so I actually used, maybe, 25. I really don't --
22 I'd have to look in my book and see -- well, I
23 referenced 15 on the plat that I felt was critical
24 to the decision I made.

25 Q. Okay. Looking -- looking at all those

1 documents, you just gave a very rough estimate of
2 100 documents.

3 A. That can vary.

4 Q. Sure, I understand. Did you see any
5 documents that were meaningfully or significantly
6 inconsistent with that line?

7 A. No. And we looked to try to find -- we
8 tried to find a hole in Mr. Williams' theory. I
9 couldn't find anything to deviate from this that
10 resulted as a line.

11 Q. Why were you trying to find a hole in
12 his theory?

13 A. Because it would -- it's the mind-set
14 that when you're doing your research, if you keep
15 thinking there's something else out there you look a
16 little harder. Common sense, I guess.

17 Q. All right. The day is getting a little
18 long so I apologize if I'm asking you questions
19 twice.

20 A. That's fine.

21 Q. I want to show you a photograph
22 identified as Defendant's Exhibit Number 1 and ask
23 you if you recognize that.

24 A. Yes.

25 Q. What -- what do you recognize that to

1 be?

2 A. That's the structure that I -- I believe
3 everybody's been calling the tree house.

4 Q. All right.

5 A. And it's placed on the embankment that
6 was, in my opinion, man-made.

7 Q. Describe what you see underneath that
8 tree house that would be relevant to this case.

9 A. Concrete retaining wall, which is where
10 the major deflection of the water flow has occurred,
11 the beginning of it -- no, not the beginning, but
12 the major deflection point. And there's a metal
13 retaining wall to further handle the stream from
14 concrete.

15 Q. And then Plaintiff's Exhibit Number 5,
16 do you recognize what's in that photograph?

17 A. Yes. That's the metal retaining wall
18 next to the concrete retaining wall.

19 Q. Underneath the tree house?

20 A. Correct.

21 Q. All right, sir. And did you see those
22 things yourself?

23 A. Yes.

24 Q. In your review of documents, in your
25 research, did you see any documents suggestive of

1 this -- what's marked on this diagram as a current
2 run of Dean Swamp Creek?

3 A. No.

4 Q. Did you see any evidence of timber that
5 had been harvested across the old run of Dean Swamp
6 Creek?

7 A. The timber had been harvested right up
8 to the edge on the western side of the creek.

9 Q. Did it come over the old creek bed, the
10 harvesting?

11 A. No. The only area was that little
12 cleared area that protruded over where we put the
13 monumentation for Dean Swamp Creek.

14 Q. Mr. Stroman, are you aware of
15 Mr. Williams selling any land in this area in recent
16 years?

17 A. The only piece I'm aware he sold is
18 across the road to Randy White.

19 Q. All right. Do you know how many acres
20 that was, roughly?

21 A. 200-plus.

22 Q. Do you know how many acres that
23 leaves -- that Mr. Williams -- if you start with the
24 1050 and subtract the sale of the 200, how many is
25 Mr. Williams -- just by math, how many is he looking

1 for now?

2 A. From memory?

3 Q. Yes, sir.

4 A. Eight -- 85 -- 864.

5 Q. All right. So let me ask you this.

6 With your property line here, do you have any
7 capability of calculating what that property line
8 would yield to Mr. Smith in his parcel in acres and
9 what that property line would yield to the
10 Plaintiffs, Mr. Williams and his partners, in acres
11 in their parcel?

12 A. Yes.

13 Q. What capability do you have?

14 A. Mapping very similar to what the county
15 tax office has used now, with the new technology of
16 GPS. We're able to go out and locate critical
17 points that you can see or identify on aerial
18 photographs, which we have some very good
19 photography now.

20 From those physical points, control
21 points, you can calculate exact distances between
22 street intersections and the driveway ten miles
23 away. You overlay that onto your photograph and you
24 can scale that photograph and usually use a minimum
25 of three points, control points, but we try to use a

1 dozen, just overkill, to get that aerial as accurate
2 as possible. And, of course, the county maps now,
3 when they fly them, they have paid a lot more to
4 have that already done by the airplane and the
5 people making the maps -- making the photographs.

6 From that you can determine acreage
7 based on what you can see on that aerial because now
8 you have it to scale. And with the computer program
9 you've got it's -- you know, it's not rocket science
10 theory. It's pure mathematics, you calculate the
11 acreage. And that's what I did on these two tracts
12 and I think it's in one of my exhibits.

13 Q. That was my next question, did you do
14 these calculations on these two parcels?

15 A. Yes.

16 Q. And do you have that number in front of
17 you, the resulting number from Mr. Smith's parcel?

18 A. (Reading.) It's in here somewhere. The
19 Williams tract would have 874 acres in it, plus or
20 minus, and Mr. Williams would have 376.

21 Q. I believe you used the Williams name
22 twice. Would you back up and say those numbers
23 again?

24 THE COURT: You did. You misspoke on
25 the names.

1 THE WITNESS: Smith. Smith 376,
2 Williams 874.

3 MR. LANG: I'm sorry, I missed it both
4 times. Can you say that again, please, sir?

5 THE WITNESS: Sure. Mr. Smith's
6 property, I scaled it out as 376 acres. And
7 Mr. Williams, it's scaled out as 874. And I believe
8 that's fairly close to what the county has on their
9 web site.

10 BY MR. WILLIAMS:

11 Q. All right, sir.

12 A. And on the maps up in the GIS
13 department.

14 Q. What's the difference between the county
15 tax maps and the county GIS department?

16 A. What's the difference in the tax maps?

17 Q. Well, I notice their acreage numbers are
18 a little different on those two sources.

19 A. Well, they're not supposed to be.
20 That's the old filing system catching up with the
21 new GIS technology, I guess. I really don't know.

22 Q. Do you know what the most recent,
23 accurate, up-to-date county number is for these
24 acreages?

25 A. I've got it somewhere. This thing was

1 five years ago.

2 Q. Yes, sir. Well, if you don't know
3 readily where to look for it --

4 A. It's not far off what I got. I think I
5 can find it pretty quick.

6 Q. All right.

7 A. I believe the first tax sheet I got does
8 not show the acreage, so I can't put my hands on it
9 real quick.

10 Q. Let's move -- move along, then,
11 Mr. Stroman. I've got some other things I want you
12 to look at. I'll give you a minute to pack back up.
13 Take a look at that document and see if you
14 recognize that.

15 A. That's a map of Rosa Stroman Plantation.

16 Q. And where did you get that?

17 A. Courthouse.

18 Q. The courthouse? Was it a public record
19 at the courthouse?

20 A. Yes.

21 MR. WILLIAMS: I would offer that into
22 evidence.

23 MR. LANG: That's a 1914 -- 1914 map?

24 MR. WILLIAMS: Yes, I think.

25 MR. LANG: No --

1 MR. WILLIAMS: Yeah -- oh, the year,
2 1914. Let me just show it to you.

3 THE COURT: That is 7...

4 THE COURT REPORTER: 78.

5 THE COURT: What is that document --
6 what is that document you put in?

7 MR. WILLIAMS: Rosa Stroman plat.

8 (PLF. EXH. 78 in evidence.)

9 BY MR. WILLIAMS:

10 Q. Take a look at that, please,
11 Mr. Stroman, and let me ask you. The name on that
12 plat is Stroman. Any relation to you?

13 A. Not that I know of.

14 Q. Okay. And just take a look at that plat
15 and tell me, briefly, what significance that
16 document has.

17 A. It shows a run of Dean Swamp Creek line,
18 all the way from the old mill pond down across where
19 Furtick Road would be today, which is not on here,
20 all the way to the river South Edisto.

21 Q. How would you describe the quality of
22 that plat?

23 A. Well, for 1914 it's pretty typical. A
24 lot of the divisions he has no metes and bounds on
25 it. How he got the alignment I don't know but,

1 amazingly, it fits.

2 Q. Does it show Dean Swamp Creek?

3 A. Yes.

4 Q. Very generally, is it in the same
5 location as depicted on your plat?

6 A. Yes.

7 Q. All right. I want to show you this next
8 document and this is --

9 THE COURT: Mr. Stroman, do you have the
10 book and page number of that plat?

11 THE WITNESS: No, I don't.

12 THE COURT: But you got it from the
13 courthouse?

14 THE WITNESS: I'm pretty sure I did.

15 MR. LANG: It is a recorded document.

16 THE COURT: It is?

17 MR. LANG: Yes, sir.

18 THE COURT: Okay.

19 THE WITNESS: I might have it right
20 here. (Reading.) No, I don't have it with me.

21 BY MR. WILLIAMS:

22 Q. See if you recognize that document,
23 Mr. Stroman.

24 A. Yes. This is one of the surveyors that
25 Mike Arant did for Mr. Smith.

1 Q. Did you get that from the courthouse?

2 A. Yeah, I'm pretty sure I did.

3 Q. Is it a public record, to the best of
4 your knowledge, in the courthouse?

5 A. Yes.

6 MR. WILLIAMS: All right. I would offer
7 that into evidence, Your Honor, as...

8 THE COURT REPORTER: 79.

9 MR. WILLIAMS: Any objection, Mr. Lang?

10 MR. LANG: No objection.

11 MR. WILLIAMS: Are you following that
12 one?

13 THE COURT: 79?

14 THE COURT REPORTER: Yes, sir.

15 THE COURT: Admitted without objection.

16 (PLF. EXH. 79 in evidence.)

17 BY MR. WILLIAMS:

18 Q. Okay. Just take a look at that and tell
19 the Court what the significance of that document is.

20 A. It also shows the line on Dean Creek as
21 on here is a property line.

22 Q. Is a property line?

23 A. Right.

24 Q. And, again, generally is that consistent
25 with your plat?

1 A. Yes.

2 Q. All right. Put that up there.

3 MR. WILLIAMS: This is -- I think it's
4 P3, Louis, in that notebook.

5 Q. Take a look at that document, please.
6 Do you recognize that?

7 A. (Reading.) Yes. That's Oscar Corbett's
8 property as of 1994.

9 Q. Is that a plat you obtained from the
10 courthouse?

11 A. Yes.

12 Q. From public courthouse records?

13 A. Yes.

14 MR. WILLIAMS: I would offer that into
15 evidence.

16 MR. LANG: No objection.

17 THE COURT: Number 80, admitted without
18 objection.

19 (PLF. EXH. 80 in evidence.)

20 BY MR. WILLIAMS:

21 Q. Now, please take a closer look at that
22 and tell the significance of that document, please,
23 how it went into your analysis.

24 A. It is the property to the west of
25 Mr. Smith's property -- it's a portion of the

1 property west of him that was subdivided into, like,
2 nine-acre tracts.

3 Q. Is that property contiguous to these two
4 parcels?

5 A. Yes. It would be on the west side of
6 the westernmost tract there.

7 Q. So as we're looking at this diagram it
8 would be on the left?

9 A. It should be adjacent to it.

10 Q. Okay. So that would have been relevant
11 to your analysis in a little less direct way. Would
12 that be --

13 A. Correct.

14 Q. Take a look at that one, please. Do you
15 recognize that?

16 A. Yes.

17 Q. And is that a plat you got from the
18 courthouse?

19 A. Yes.

20 Q. Courthouse public records?

21 A. Right.

22 MR. WILLIAMS: All right. That's P4.
23 We would offer that as Plaintiff's next exhibit.

24 MR. LANG: No objection.

25 THE COURT: 81, admitted without

1 objection.

2 (PLF. EXH. 81 in evidence.)

3 BY MR. WILLIAMS:

4 Q. Take a look at that, please,
5 Mr. Stroman, and tell us how that played into your
6 analysis.

7 A. It's a portion of Mr. Smith's property.
8 It shows 75 acres and 30 acres. If I remember
9 correctly, there was something wrong with this
10 acreage but that really is not relevant. It's just
11 an adjacent plat next to what we were working on.

12 Q. Okay. Is that -- does that plat depict
13 part of that parcel up there, or is it a different
14 parcel?

15 A. This was on the west side of Q.D.
16 Fulmer.

17 Q. What's the date on that plat?

18 A. 1997 for Mr. Smith. I think it is part
19 of that current tract -- it is. You can tell by the
20 configuration of Furtick Road.

21 Q. Okay. If you can hand that up there.
22 Take a look at that one and see if you recognize it.

23 A. Yes, that's the plat that our company
24 did of Q.D. Fulmer's property.

25 Q. Okay. Is this a plat you got from the

1 courthouse?

2 A. I may have gotten it out of our file,
3 but I think it's recorded.

4 Q. Okay. And so it would be a public
5 record?

6 A. Yeah.

7 MR. WILLIAMS: All right. This is P5.

8 MR. LANG: No objection.

9 MR. WILLIAMS: We would offer that as
10 Plaintiff's next exhibit.

11 THE COURT: Number 82, without
12 objection.

13 (PLF. EXH. 82 in evidence.)

14 BY MR. WILLIAMS:

15 Q. Take another look, please, Mr. Stroman,
16 and is any part that is depicted on that plat also
17 depicted up on -- depicted on either one of these
18 diagrams?

19 A. Yes. Tract B is what I'm showing on my
20 current plat of the E.B. Atkins, I think it is.

21 Q. E.B. Atkins? And who was the owner at
22 the time that plat was prepared?

23 A. Q.D. Fulmer.

24 Q. Q.D. Fulmer. Did you say your company
25 was involved in that plat?

1 A. Right. My partner did this project. I
2 may have helped with some calculations, but he did
3 the field analysis.

4 Q. Okay. All right. Is the property line
5 on this Atkins -- on this Tract B here for Q.D.
6 Fulmer, does it match the property line on your plat
7 here?

8 A. Yes.

9 Q. All right. You can hand that up. Take
10 a look at this one, please. Do you recognize that?

11 A. Yes. That's the plat done by my partner
12 through the company for Randy White.

13 Q. And is that a plat that's a part of the
14 public records?

15 A. Yes.

16 Q. Orangeburg County?

17 A. Correct.

18 Q. Okay.

19 MR. LANG: Are you offering?

20 MR. WILLIAMS: What's that?

21 MR. LANG: Are you going to offer it?

22 MR. WILLIAMS: Yes.

23 MR. LANG: No objection, Your Honor.

24 THE COURT: What number is that?

25 THE COURT REPORTER: This is 83.

1 (PLF. EXH. 83 in evidence.)

2 BY MR. WILLIAMS:

3 Q. Please take another look at this,
4 Mr. Stroman, and what's the date -- date on that
5 plat?

6 A. 2003.

7 Q. And that plat was prepared for who?

8 A. Randy and Sarah White.

9 Q. And how many acres does that plat
10 identify?

11 A. 2005.42.

12 MS. WALLMEYER: 2005?

13 BY MR. WILLIAMS:

14 Q. Say that again. How many acres?

15 A. 205.42 -- wait a minute. It's a plat of
16 205.42, but you add the 201 and this Parcel A.

17 Q. Okay.

18 A. To get the 205.42.

19 Q. What is the Parcel A? Is that a
20 separate parcel?

21 A. Yeah.

22 Q. Okay.

23 A. It is -- see notes. Parcel A as shown
24 on the tax map, ownership unknown. So 3.6 acres
25 that the tax map identified when we did the survey,

1 but we don't really know who owns it.

2 Q. All right. Do you remember that survey
3 personally?

4 A. A little. I mean, I did some
5 calculations on it and some of the drafting Robert
6 did with field controls with the crews.

7 Q. But my real question is do you know that
8 that -- or do you know whether that survey
9 represents the acreage that Mr. Williams sold to the
10 Whites south of 39?

11 A. I'm not sure what he showed me.

12 Q. Do you remember a little while ago we
13 looked at the deed from the Plaintiffs to the
14 Whites? Is that generally this area here
15 represented by that plat?

16 A. Yeah. This plat would be here. Randy
17 O. White and Sarah White?

18 Q. Right.

19 A. This plat would take up at this point
20 and go back toward Springfield.

21 Q. Does this plat show a -- one of the
22 property lines at Edisto River?

23 A. Yes.

24 Q. Where would that be?

25 A. On here?

1 Q. Yeah.

2 A. Should be right here.

3 Q. The river? Take your time and look at
4 this.

5 A. He's got Randy White up there.

6 MR. LANG: We'll stipulate that the
7 southern boundary of that property is Edisto.

8 MR. WILLIAMS: Okay.

9 THE WITNESS: That's not the White
10 property, but this plat starts here on Edisto River
11 and goes to the right here up -- okay. And includes
12 this and more property up here. Now I'm with you.

13 BY MR. WILLIAMS:

14 Q. Okay.

15 A. Sorry about that.

16 Q. That's okay. Now, the reason I'm
17 handing you these documents is because I understand
18 these documents went into your analysis; is that
19 accurate?

20 A. Yes. Some -- yeah. We looked at them
21 all to study them and see what significance they had
22 to preparing our plat.

23 Q. All right. Please take a look at this
24 one. You can put those up there if you want to.

25 A. You didn't mark it?

1 Q. Yeah, this is marked.

2 A. I'm sorry.

3 Q. Do you recognize that?

4 A. Yes. This is a plat of the E.B. Atkins
5 tract that I did.

6 Q. All right. And is that a matter of
7 public record at the courthouse?

8 A. Yeah. I think it is, although I'm sure
9 I got this out of the file to save a trip to the
10 courthouse.

11 MR. WILLIAMS: Okay. This is P7. We
12 would offer this as Plaintiff's next exhibit.

13 MR. LANG: No objection. Is that 84,
14 Madam Court Reporter?

15 THE COURT REPORTER: 84.

16 THE COURT: 84, without objection.

17 (PLF. EXH. 84 in evidence.)

18 BY MR. WILLIAMS:

19 Q. Would you please take another look and
20 tell me what parcel is depicted on that plat?

21 A. The E.B. Atkins parcel I'm showing
22 there.

23 Q. Is that the same one on this plat that
24 you prepared for Mr. Williams that's up here?

25 A. Yes.

1 Q. Okay. Mr. Stroman, this plat that's up
2 on the easel, is this a plat that you prepared for
3 Mr. Williams, this plat over on the right side?

4 A. Yes.

5 Q. Okay. And we'll put a copy of that into
6 evidence a little bit later.

7 THE COURT: Mr. Williams, I don't want
8 to break your momentum but it's five minutes to
9 five. Can you finish this in the next five or ten
10 minutes?

11 MR. WILLIAMS: No, sir.

12 THE COURT: No?

13 MR. WILLIAMS: No, sir.

14 THE COURT: Y'all want to break and
15 move?

16 MR. WILLIAMS: Move?

17 THE COURT: Yeah.

18 MR. WILLIAMS: That would be good.

19 MR. LANG: If you can finish in five or
20 ten minutes --

21 MR. WILLIAMS: I can't, realistic.

22 MR. LANG: Okay. I don't want to rush
23 you.

24 THE COURT: Why don't we take a break
25 and move?

1 MR. WILLIAMS: Move across the street to
2 your office?

3 THE COURT: I've already got a
4 conference room ready for this number of people.

5 (Off-the-record conference.)

6 THE COURT: We're going to recess for
7 the day. And, Mr. Stroman, I've instructed you that
8 you were in the middle of your direct examination so
9 you can't talk with Mr. Williams or Mr. Lang, for
10 that matter, about your testimony because it's in
11 the middle of the trial. You'll just have to wait
12 until the morning to finish your testimony.

13 THE WITNESS: Okay. Yes.

14 THE COURT: We'll be in recess till the
15 morning.

16 (The proceeding was concluded at 5:00
17 p.m.)
18
19
20
21
22
23
24
25

In The Matter Of:
Patrick J. Williams, et al vs
F. Carlisle Smith, et al

Trial
Vol. 3
August 28, 2013

A. William Roberts, Jr. and Associates
We're About Service...Fast, Accurate and Friendly
(800) 743-DEPO
www.scheduledepo.com



A. William Roberts, Jr. & Associates
court reporting | videography | trial presentation | nationwide scheduling
scheduledepo.com | 800-743-DEPO

Original File Trial_-_130828.TXT
Min-U-Script® with Word Index

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF ORANGEBURG

3 PATRICK J. WILLIAMS, FRANK J. WALLMEYER
4 AND MARY B. WALLMEYER,

Plaintiffs,

5 vs.

CASE NO. 2009-CP-38-01170

6 F. CARLISLE SMITH AND FIRST CITIZENS BANK
7 AND TRUST COMPANY, INC.,

8 Defendants.

9 TRIAL BEFORE THE HONORABLE RICHARD B. NESS

10 VOLUME III

11
12 DATE: August 28, 2013

13 TIME: 9:34 A.M.

14 LOCATION: Bamberg County Courthouse
15 2873 Main Highway
Bamberg, SC

16
17 REPORTED BY: LORI S. MORTGE,
18 Certified Court
Reporter, CCR

19
20
21 A. WILLIAM ROBERTS, JR., & ASSOCIATES

22 Fast, Accurate & Friendly

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

24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFFS

3 PATRICK J. WILLIAMS, FRANK J. WALLMEYER
4 AND MARY B. WALLMEYER:

5 GREGORY G. WILLIAMS, ATTORNEY, LLC

6 BY: GREGORY G. WILLIAMS

7 DAVID F. SULLIVAN

8 1331 Richland Street

9 Columbia, SC 29201

10 (803) 799-2211

11 lawgreg@sc.twcbc.com

12 ATTORNEYS FOR THE DEFENDANTS

13 F. CARLISLE SMITH AND FIRST CITIZENS
14 BANK AND TRUST COMPANY, INC.:

15 CALLISON TIGHE & ROBINSON, LLC

16 BY: LOUIS H. LANG

17 1812 Lincoln Street

18 Suite 200

19 Columbia, SC 29201

20 (803) 256-2371

21 louislang@callisontighe.com

22
23
24
25 (INDEX AT REAR OF TRANSCRIPT)

1 THE COURT: Mr. Stroman, you're still
2 under oath.

3 RICHARD L. STROMAN
4 being previously duly sworn, testified as follows:

5 EXAMINATION

6 BY MR. WILLIAMS:

7 Q. Good morning, Mr. Stroman.

8 A. Good morning.

9 Q. Let's try to pick up where we left off
10 yesterday. I want to follow up -- I think I touched
11 on this yesterday -- with you yesterday but I want
12 to follow up just a little bit.

13 Did you ever have occasion to talk with
14 Mr. Smith, Defendant Smith, face to face about this
15 controversy?

16 A. Yes.

17 Q. Did you have occasion to ask him to tell
18 you where he believed his property line to be?

19 A. Yes, sir. That was meeting at your
20 office with him and his attorney. I think his wife
21 was there, I really don't remember, but I asked him
22 if we could share his ideas and thoughts and
23 information on where he thought the property line
24 was.

25 Q. What response did you get?

1 MR. LANG: I would object, again, Your
2 Honor, based on we have a meeting at a lawyer's
3 office with lawyers and parties. Clearly settlement
4 discussions, resolution discussions --

5 MR. WILLIAMS: Your Honor, it had
6 nothing to do with settlement. He was just asking
7 where -- for his work in identifying the line where
8 Mr. Smith thought the line was.

9 THE COURT: Are you asking for a verbal
10 response from this witness, or are you asking did he
11 compile paperwork and get it to you response -- kind
12 of response?

13 MR. WILLIAMS: Really, I'm asking more
14 of a verbal. Like what did he -- how did he respond
15 when you asked him where his property line was.

16 THE COURT: Mr. Lang, were you present?

17 MR. LANG: No, sir.

18 MR. WILLIAMS: But he was represented by
19 an attorney.

20 MR. LANG: Who was present, I believe.

21 MR. WILLIAMS: Yes, sir.

22 THE COURT: I'm not going to do that. I
23 think you're creating a problem for yourself. I
24 think Mr. Lang is right and I'd rather err on the
25 side of attorney/client kind of privilege than I

1 would to go on the other side of that, so I'm going
2 to sustain his objection on that.

3 MR. WILLIAMS: Yes, sir.

4 Q. Well, what I want to do, then,
5 Mr. Stroman, is go through -- really, the rest of
6 this will be fairly quick, I think, just to go
7 through some additional documents that you reviewed
8 in your analysis of this property line. Do you
9 recognize that document?

10 A. Yes.

11 Q. And, generally, what is that document?

12 A. It's a map of the area where Dean Swamp
13 is and it's a SAS surveyor of Orangeburg County.

14 Q. And where did you get that document?

15 A. I think this particular one came from
16 the University of South Carolina's archives.

17 Q. Is it a public record available to the
18 public?

19 A. Yes.

20 MR. WILLIAMS: All right. I would offer
21 this into evidence as Plaintiff's next exhibit. And
22 this, Louis, is...

23 MR. LANG: I've got it.

24 MR. WILLIAMS: 1A.

25 MR. LANG: No objection.

1 THE COURT: Without objection. Number?

2 THE COURT REPORTER: 85.

3 THE COURT: 85, admitted without
4 objection.

5 (PLF. EXH. 85 in evidence.)

6 BY MR. WILLIAMS:

7 Q. Mr. Stroman, take another look at that
8 and explain to the Court what the significance of
9 that document is in your analysis.

10 A. Well, it's a 1913 mapping of that area
11 that shows Highway 39 South Edisto River, and it
12 shows Dean Swamp Creek intersecting the river well
13 above the road. However --

14 Q. Well above Highway 39?

15 A. Correct. However, on this particular
16 map in 1913, it was called -- Bachelor Creek? I
17 really can't read that.

18 Q. All right. Does it appear to be,
19 location wise, the same creek that we've been
20 talking about?

21 A. Yes.

22 Q. All right. You can pass that up there.
23 I want to show you this next document and ask if you
24 recognize that.

25 A. Yes.

1 Q. What is that, generally?

2 A. It's an aerial photograph, 1940
3 photograph of the area that you can see.

4 Q. Well, let me ask you where you got it.

5 A. Where I got it? I don't remember where
6 I particularly got this one.

7 Q. Do you know the source of it?

8 A. I think this was from Soil Conservation
9 Service, but I'm not sure. It's one of the
10 government agencies where we do our research to find
11 public maps.

12 Q. All right. Is it -- was it from a
13 public source of some kind?

14 A. Yes.

15 Q. And is that a document you used in your
16 analysis as an expert?

17 A. Yes.

18 MR. WILLIAMS: All right. Let me offer
19 that into evidence.

20 THE COURT: Any objection, Mr. Lang?

21 MR. LANG: No objection, Your Honor.

22 THE COURT: Number 86, without
23 objection.

24 (PLF. EXH. 86 in evidence.)

25 BY MR. WILLIAMS:

1 Q. Now, Mr. Stroman, I would ask you to
2 look at that again and tell the Court the
3 significance of that document in your analysis.

4 MR. LANG: Which document are you
5 talking about?

6 MR. WILLIAMS: The one we just entered.

7 MR. LANG: 86?

8 MR. WILLIAMS: Plaintiff's Number 86.

9 THE WITNESS: It also shows you can
10 clearly see the run of a creek and it enters Edisto
11 River above the road just above two oxbows that is
12 very evident on the ground and easy to find.

13 BY MR. WILLIAMS:

14 Q. Now, tell me again the date of that
15 document as best you can tell.

16 A. It says 10/27/40 in the upper left-hand
17 corner, so I would say 1940.

18 Q. And that location of the creek in that
19 picture, is it consistent with your plat?

20 A. Yes.

21 Q. All right. Hand that up, please. I'm
22 going to hand you the next document.

23 MR. WILLIAMS: And, Louis, this is 2.

24 Q. And ask if you recognize that document.

25 A. (Reading.) Yes. It's a 1941 Forestry

1 Department map.

2 Q. And where did you get that document,
3 Mr. Stroman?

4 A. I would assume -- had to get it from the
5 Forestry Department because it's a forestry map.

6 Q. Was it a document available to the
7 public in public records?

8 A. Yes.

9 Q. All right. Did you use that document in
10 your analysis?

11 A. Yes.

12 MR. WILLIAMS: All right. Let me offer
13 this into evidence.

14 MR. LANG: No objection, Your Honor.

15 THE COURT: 87, without objection.

16 (PLF. EXH. 87 in evidence.)

17 BY MR. WILLIAMS:

18 Q. Now, look at what's been marked as
19 Plaintiff's Exhibit Number 87. Look at that again,
20 please, Mr. Stroman, and tell the Court the
21 significance of that document in terms of your
22 analysis of this work.

23 A. It shows you can clearly see the run of
24 Dean Swamp Creek entering the river above the two
25 oxbows, which is upstream of Highway 39, and you can

1 delineate some geometry from it because it's very
2 visible.

3 Q. All right. And tell me again the date
4 of that one.

5 A. 1941.

6 Q. 1941. And is the location of the creek
7 in that document consistent with the location on
8 your plat?

9 A. Yes.

10 Q. All right. Thank you, sir. Look at
11 this next --

12 MR. WILLIAMS: This is 3, Louis.

13 Q. Look at this one and do you recognize
14 that document, Mr. Stroman?

15 A. Yes.

16 Q. And can you tell us where you got that
17 document?

18 A. This -- University of South Carolina map
19 library.

20 Q. And how did you retrieve that? Did you
21 go to Columbia?

22 A. I think one of my workers went for me
23 and got the map.

24 Q. Is it -- those maps where you got that,
25 are they available to the public?

1 A. Yes.

2 Q. Did you use that in your analysis?

3 A. Yes.

4 MR. WILLIAMS: All right. Let me offer
5 that into evidence.

6 MR. LANG: Let me just ask one question
7 of the witness.

8 Were these digitally reproduced or were
9 these just copies that you made from a file or
10 something that you got them from?

11 THE WITNESS: I'm -- I'm not sure. One
12 of my people went and got it for me and I would
13 imagine they copied whatever they had. If it was
14 digital, they printed it. If it was a hard copy
15 they would -- it was a copy machine copy.

16 MR. LANG: But you don't know?

17 THE WITNESS: No.

18 THE COURT REPORTER: Number 88.

19 (PLF. EXH. 88 in evidence.)

20 BY MR. WILLIAMS:

21 Q. Now, please look at this again,
22 Mr. Stroman, and tell the Court, please, the
23 significance. This is what's been marked as
24 Plaintiff's Exhibit 88. Tell the Court the
25 significance of that document as to your analysis.

1 A. The same as the other photographs. It
2 shows the creek running north/south down to Edisto
3 River above the two oxbows.

4 Q. And did you use that as part of your
5 analysis?

6 A. Yes.

7 Q. Did you tell us the date of that? Do
8 you know?

9 A. 1948.

10 Q. 1948. And what kind of document would
11 you call that? Is that an aerial photograph or what
12 is that?

13 A. Yes. Aerial photograph.

14 Q. All right. Look at that next document,
15 please, Mr. Stroman. Do you recognize that?

16 A. Yes.

17 Q. Do you know where you got that?

18 A. Orangeburg County GIS Office.

19 Q. Was it a matter of public record?

20 A. Yes.

21 Q. And is that a document you used in your
22 analysis?

23 A. Yes.

24 Q. All right. What is that document,
25 generally?

1 A. It's an aerial photograph.

2 MR. LOUIS: All right. We would offer
3 this -- this is -- Louis, in the notebook it's 4.

4 MR. LANG: Could I see it?

5 MR. WILLIAMS: Sure. (Tendering.)

6 MR. LANG: (Reading.)

7 THE COURT REPORTER: This will be 89.

8 MR. LANG: No objection.

9 THE COURT: 89, admitted without
10 objection.

11 (PLF. EXH. 89 in evidence.)

12 BY MR. WILLIAMS:

13 Q. Take a look at this Plaintiff's 89,
14 again, please, Mr. Stroman, and I believe you said
15 that's an aerial photograph?

16 A. Correct.

17 Q. And what is the source? Where did you
18 get that?

19 A. Orangeburg County GIS Office.

20 Q. And can you identify a date on that?

21 A. 1963.

22 Q. 1963. And please tell the Court the
23 significance. What did you see in that that entered
24 into your analysis?

25 A. The creek is very visible on this map.

1 Probably the best one yet. And from that you can
2 get the geometry of the run of that creek.

3 Q. All right. Is the location, as you see
4 it on that photograph, consistent with your plat?

5 A. Yes.

6 Q. Thank you. If you can pass that up.
7 Look at this next one.

8 MR. WILLIAMS: Louis, it's 5 in the
9 notebook.

10 Q. Please look at this document,
11 Mr. Stroman. Do you recognize that document?

12 A. Yes.

13 Q. And, generally, what is that document?

14 A. It is an aerial -- aerial photograph,
15 Barnwell County. On it is the SAS mapping for that
16 county.

17 Q. What county did you say it is?

18 A. Barnwell.

19 Q. Okay.

20 A. But it also shows a portion of
21 Orangeburg County in the Dean Swamp Creek area.

22 Q. All right. Where did you get that
23 photograph?

24 A. Barnwell County.

25 Q. Is it a matter of public record?

1 A. Yes.

2 Q. And did you use --

3 A. It's called Survey Book, has got all the
4 maps in it.

5 Q. Did you use it in your analysis?

6 A. Yes.

7 MR. WILLIAMS: I would offer this.

8 MR. LANG: No objection.

9 THE COURT: Admitted without objection.

10 (PLF. EXH. 90 in evidence.)

11 BY MR. WILLIAMS:

12 Q. If you will, take another look at that,
13 Mr. Stroman, and tell the Court -- first of all, the
14 date of that photograph, the year. And we're
15 talking about Plaintiff's Number 90.

16 A. I don't know the date of the aerial
17 photograph. The SAS booklet will tell you the dates
18 of the mapping, but I'm not sure of the date of the
19 photograph.

20 Q. Well, do you know the date of the
21 mapping?

22 A. No. I don't have the booklet with me.

23 Q. Based on your study and review do you
24 know approximately when that photograph would have
25 been taken?

1 A. No, not without looking at the SAS
2 booklet.

3 Q. Okay. Well, what is the significance of
4 that photograph? What did you see in it relative to
5 your analysis?

6 A. It also shows the creek entering the
7 river above the road above the two oxbows.

8 Q. All right. Is the location on that
9 photograph consistent with the location on your
10 plat?

11 A. Yes.

12 MR. WILLIAMS: Thank you. The next one
13 we're looking at is 6, Louis.

14 Q. I show you this next document,
15 Mr. Stroman, and ask if you recognize that.

16 A. (Reading.) Yes. It's an Orangeburg
17 County map, aerial photograph that they use, and
18 it's either a 1963 or a 1966 map.

19 Q. And do you know where you got that map?

20 A. Orangeburg County Assessor's Office.

21 Q. Is it a matter of public record?

22 A. Yes.

23 Q. And did you use it in your analysis?

24 A. Yes.

25 MR. WILLIAMS: All right. We would

1 offer this as the Plaintiff's next exhibit. Number
2 91, I believe.

3 MR. LANG: No objection.

4 THE COURT: Number 91, admitted without
5 objection.

6 (PLF. EXH. 91 in evidence.)

7 BY MR. WILLIAMS:

8 Q. All right. Take another look at this,
9 Mr. Stroman. I believe you said that was from the
10 mid-'60s?

11 A. Yes.

12 Q. And is that an aerial photograph?

13 A. Yes.

14 Q. And what is the significance of that
15 document, which is Plaintiff's Number 91? What is
16 the significance of that document relevant to your
17 analysis?

18 A. Well, it shows me that Orangeburg County
19 is using the creek as the property line on their
20 mapping for the taxes, and they have delineated what
21 they saw as the run of the creek which is consistent
22 with the other maps we've looked at and my plat.
23 And it enters the river above the two oxbows, which
24 is well above Highway 39.

25 Q. Thank you, sir.

1 MR. WILLIAMS: Six.

2 Q. Please take a look at this document,
3 Mr. Stroman. Do you recognize that document?

4 A. Yes.

5 Q. Generally, what is that document?

6 A. It's a 1963/1966 Orangeburg County
7 Assessor's aerial photograph that they use to map
8 tax parcels with.

9 Q. And where did you get that document,
10 Mr. Stroman?

11 A. Orangeburg County Assessor's Office.

12 Q. Is it a matter of public record?

13 A. Yes.

14 Q. And did you use it in your analysis?

15 A. Yes.

16 MR. WILLIAMS: All right, sir. We would
17 offer this as Plaintiff's -- 92?

18 THE COURT REPORTER: Yes.

19 MR. LANG: Could I retrieve for a moment
20 91? I may have -- I think Your Honor has it.

21 THE COURT: (Tendering.)

22 MR. LANG: (Reading.) Okay.

23 (PLF. EXH. 92 in evidence.)

24 BY MR. STROMAN:

25 Q. Now, please, Mr. Stroman, look at that

1 map a little more closely. I believe you already
2 said it's an aerial photograph?

3 A. Correct.

4 Q. And did you tell us the years -- the
5 year of it?

6 A. 1963 to 1966. I don't know the exact
7 year, but it's in that period.

8 Q. All right, sir. And what is the
9 significance of that aerial photograph in your
10 analysis?

11 A. It again, as the other ones, shows where
12 Orangeburg County has delineated the run of the
13 creek as a property line for mapping tax parcels.
14 This particular map shows it well above Furtick Road
15 coming through -- coming under Furtick Road down
16 below E.B. Atkins' property.

17 Q. Okay. So this one is sort of the upper
18 part of the creek?

19 A. Correct.

20 Q. Does this photograph show where it comes
21 into the river?

22 A. No.

23 Q. So this relevance would be a little
24 different, I guess. Explain.

25 A. Its relevance is the same, but on a

1 different section of the creek.

2 Q. I see. All right. That's good.

3 MR. WILLIAMS: Seven we're looking at
4 next, Louis.

5 Q. Please take a look at this next
6 document, Mr. Stroman, and see if you recognize
7 this.

8 A. Yes. It's Orangeburg County 1977 tax
9 map 002. It's an aerial photograph that they use.

10 Q. They, being Orangeburg County?

11 A. Orangeburg County, use in their
12 delineation of properties.

13 Q. Where did you get that map, Mr. Stroman?

14 A. Orangeburg County.

15 Q. Is it a matter of public record?

16 A. Yes.

17 Q. Did you use it in your analysis?

18 A. Yes.

19 MR. WILLIAMS: All right. Thank you.
20 Let me see if we can get it into evidence.

21 MR. LANG: No objection.

22 THE COURT REPORTER: 93.

23 THE COURT: 93, without objection.

24 (PLF. EXH. 93 in evidence.)

25 BY MR. WILLIAMS:

1 Q. Now, looking at that -- what's been
2 marked as Plaintiff's 93, looking at that again,
3 Mr. Stroman, what is the significance of that aerial
4 photograph in your analysis?

5 A. It shows the Orangeburg County's GIS
6 Department's delineation of the creek. Dean Swamp
7 Creek that enters the river above the two oxbows
8 that's above the road. It's the very lower section
9 before you get to the river.

10 Q. All right, sir. And do you know the
11 year of that photo?

12 A. 1977.

13 Q. 1977. Are you able to match that
14 location on that aerial photo with your plat?

15 A. Yes.

16 Q. How do the two compare?

17 A. I used this data to determine the lower
18 section of my plat. I used these maps to determine
19 it from the geometry that we get off of these maps.

20 Q. Okay. Thank you, sir.

21 MR. WILLIAMS: We're looking next at
22 Number 7.

23 Q. Mr. Stroman, do you recognize this next
24 document?

25 A. Yes. It's Orangeburg County's Tax Map

1 Number 3, which is adjacent to Number 2.

2 Q. And where did you get that?

3 A. Orangeburg County GIS Office.

4 Q. Is it a matter of public record?

5 A. Yes.

6 Q. Was it used in your analysis?

7 A. Yes.

8 MR. WILLIAMS: All right. Let me offer
9 this into evidence.

10 MR. LANG: No objection, Your Honor.

11 THE COURT: 94, without objection.

12 (PLF. EXH. 94 in evidence.)

13 BY MR. WILLIAMS:

14 Q. Mr. Stroman, please take another look at
15 that. And what do you see in that area?

16 A. It, again, shows Dean Swamp Creek coming
17 under Furtick Road for a portion of the way to the
18 river.

19 Q. And what is the year of that aerial?

20 A. 1977.

21 Q. '77?

22 A. If you take this map and Map 2, combine
23 them, you would get the entire picture of Furtick
24 Road to the river.

25 Q. Would just hold those two up together

1 and demonstrate that to the -- to the Court?

2 A. This is not a good copy. I'm sure I had
3 a better one. Okay. This is -- this is Map 2, this
4 is Map 3. And if you notice, this shows the
5 adjoining panel as 3 which means that there's a
6 match line -- I think that's a match line right
7 there.

8 Q. You mentioned the match line,
9 Mr. Stroman. What is a match line?

10 A. Where the -- a line that's common on
11 both maps so that you can join them.

12 Q. An artificial line created by the...

13 A. Mapping.

14 Q. The mapping people?

15 A. Right. Let's get -- there. It's hard
16 to see but...

17 MR. WILLIAMS: Do you have a better
18 copy?

19 MR. LANG: I don't even know that I have
20 copies.

21 THE WITNESS: If you scan these and get
22 them in the computer and scale them, you can do a
23 lot better work with them. But doing that, taking
24 these two maps and putting them together, you get
25 the entire geometry of the creek that Orangeburg

1 County has accepted as being the property line.

2 BY MR. WILLIAMS:

3 Q. Well, as you mentioned, Mr. Stroman,
4 this copy is dark and sort of hard to read. Can you
5 point to the creek?

6 A. Yes. This is Furtick Road, it's coming
7 right through here. You can see this dark line.

8 Q. Mm-hmm.

9 A. Comes right here on down. And to get it
10 lined properly you can follow it right on down,
11 because there I've got it labeled Dean Swamp Creek.
12 From the two oxbows the road comes down here.

13 Q. Highway 39?

14 A. Highway 39. And from that you can get
15 geometry, get it all scaled, you take the old creek
16 bed and superimpose all this, using all these maps.
17 And because these are a human drawing this little
18 line from an aerial, they're not going to be exact
19 but they're not going to be way over here and way
20 over here. They're going to all be in the ballpark.
21 So from that you can get a geometry that would be
22 acceptable to a survey to -- to plat.

23 A portion from A to B is where the
24 physical creek bed is, and it surprisingly matched
25 this real good except for the diverted area.

1 Q. Mm-hmm.

2 A. And the section that wasn't visible on
3 the ground is what we constructed from these maps
4 and put it on the map, and it came right above these
5 oxbows.

6 Q. Thank you.

7 A. That's it, in a nutshell.

8 Q. All right. Thank you, sir.

9 MR. LANG: If I could just look and make
10 sure I've got the right numbers. Could I see 93
11 again?

12 THE WITNESS: Which one?

13 MR. LANG: 93, please. Never mind,
14 Judge.

15 THE COURT: You can get on the same
16 page.

17 MR. LANG: I'm sorry?

18 THE COURT: We can wait so you can be on
19 the same page.

20 MR. LANG: I'm not sure we need to take
21 that long.

22 THE COURT: We'll take a break and you
23 can do that.

24 MR. LANG: Thank you.

25 THE COURT: If y'all find a better copy

1 of 9 -- I guess it's 94, if you want to you can
2 substitute it. You don't have to stop now --

3 MR. WILLIAMS: I'll look.

4 THE COURT: -- if you find one.

5 MR. WILLIAMS: Yes, sir.

6 Q. Take a look at this next document, it's
7 a multipage document, Mr. Stroman, and see if you
8 recognize that.

9 MR. WILLIAMS: That's, I believe, 8 in
10 our notebook, Louis.

11 THE WITNESS: Yes, these are what we
12 call quadrangle sheets.

13 BY MR. WILLIAMS:

14 Q. Where do you get those?

15 A. Department of Natural Resources. It's a
16 massive topographic of roads, creek, river mapping
17 of the whole country.

18 Q. Are those available to the public?

19 A. Yes.

20 Q. Did you use that document in your
21 analysis?

22 A. Yes.

23 MR. WILLIAMS: Okay. Let me offer that
24 into evidence.

25 THE COURT: Is that going to be both

1 sheets? Both sheets?

2 MR. WILLIAMS: Yes.

3 MR. LANG: No objection.

4 THE COURT REPORTER: 95.

5 MR. WILLIAMS: Would you rather do 95
6 and 95A?

7 MR. LANG: If they get separated at some
8 point you might want to do that.

9 MR. WILLIAMS: Okay. Let's do that,
10 just to be on the safe side.

11 (PLF. EXHS. 95 and 95A in evidence.)

12 BY MR. WILLIAMS:

13 Q. Mr. Stroman, take another look at this
14 now, please. It's been marked as -- premarked as
15 Plaintiff's Number 95. And tell us -- tell the
16 Court the significance of that document, please.

17 A. It's a three dimensional quadrag
18 sheet -- quadrangle sheet that you can get from the
19 web site that shows this quadrangle but at a
20 different scale, a portion of this quadrangle, and
21 on it they have delineated Dean Swamp Creek from
22 Furtick Road to the river. And all of it's
23 consistent with all the other mapping that we found.

24 Q. And do you know the date of that map,
25 that quadrangle sheet?

1 A. The quadrangle is 1979, and it's the
2 Springfield quadrangle.

3 Q. All right, sir. And is that depiction
4 of Dean Swamp Creek consistent with your plat?

5 A. Yes. I believe you're referring to 95
6 and 95A, I don't know whether you're still on 95.

7 Q. Yes, sir.

8 A. Okay.

9 Q. 95 and 95A being the exhibit numbers.

10 A. Okay.

11 Q. Yes, sir.

12 A. But both of them show the same thing.

13 Q. What's the difference between 95 and
14 95A?

15 A. 95 is a mapping place where you buy
16 maps.

17 Q. Yes, sir.

18 A. That take these quadrangle sheets and
19 make a little prettier picture of the same data of
20 different areas of which you can use in whatever
21 you're doing. The quadrangle sheet is more of a
22 technical map.

23 Q. And that's 95A you're looking at --

24 A. 95A.

25 Q. -- the quadrangle sheet?

1 A. And it shows the same thing. The lower
2 roller (phonetic) uses these maps to build their
3 maps, and the reason I put this is because it's just
4 a cleaner picture without the technical information
5 on it.

6 Q. All right. Does the quadrangle sheet
7 itself, 95A, does it have Dean Swamp Creek actually
8 labeled?

9 A. Yes. And it is consistent with all the
10 other mapping in the plat.

11 Q. If you can hand that one up to the
12 Judge. I'm going to show you the next document.

13 MR. WILLIAMS: Louis, this is Number 9
14 in our notebook.

15 Q. Do you recognize that? And that is a
16 multipage document.

17 A. Yes. This is just some pages I copied
18 out of the SAS Surveyor of Orangeburg County.

19 Q. And is that a matter of public record?

20 A. Yes.

21 Q. Is it a document that you used in your
22 analysis?

23 A. Yes.

24 MR. WILLIAMS: Okay. Let me offer that
25 into evidence.

1 MR. LANG: No objection.

2 MR. WILLIAMS: This is several pages,
3 Your Honor. I tell you, rather than marking each
4 page maybe if we can just put an extra staple or
5 two.

6 THE COURT: Why don't you put how many
7 pages it is on the sticker? So it's 96, three pages
8 or a five-pager?

9 MR. WILLIAMS: I believe it's nine
10 pages.

11 (PLF. EXH. 96 in evidence.)

12 BY MR. WILLIAMS:

13 Q. Now, take another look at that,
14 Mr. Stroman, please, and tell us the significance of
15 that, please.

16 A. On Page 4, the mapping shows Dean Swamp
17 Creek and labels it clearly, just like the other
18 maps, coming from Furtick Road a portion of the way
19 down to the river. There may be an additional
20 section -- yeah. The next page would show it
21 continuing on to the river in the same relationship
22 above the two oxbows which is above Highway 39.

23 Q. And --

24 A. This was an SAS mapping delineation.

25 Q. Is that consistent with your plat?

1 A. Yes.

2 Q. And did you tell us the date when that
3 document was prepared? Do you know?

4 A. (Reading.) Major field work was
5 completed in 1984. SAS name descriptions were
6 approved in 1984. I would say it was around 1984.

7 Q. All right, sir. Please take a look at
8 this next document and see if you recognize that.

9 A. It's a 1987 photograph that also shows
10 the run of the creek. It's not labeled but you can
11 see the delineation coloring.

12 Q. Where did you -- where did you get that
13 document, Mr. Stroman?

14 A. I'm not sure. It looks like it's part
15 of the soil conservation -- not soil conversation --
16 Agricultural Department where they delineate crop
17 areas, farmland, fields for -- because it has CRP
18 and different markings on here.

19 Q. Yes, sir.

20 A. So it has to do with the Agricultural
21 Department. I'm not sure exactly where I got this
22 one.

23 Q. Did you get it from a public source of
24 public records?

25 A. Yes.

1 Q. And did you use it in your analysis?

2 A. Yes.

3 MR. WILLIAMS: I would offer this into
4 evidence as the Plaintiff's next exhibit. Number
5 97, I believe.

6 THE COURT: Any objection, Mr. Lang?

7 MR. LANG: It's already in evidence.
8 It's Defendant's 4. I mean, we can put another copy
9 in if you want to. This is a much better copy of
10 Defendant's 4.

11 MR. WILLIAMS: That's fine. I believe
12 it is already in evidence so we would not offer it.

13 MR. LANG: I mean, that's what I just
14 showed you.

15 BY MR. WILLIAMS:

16 Q. Now, Mr. Stroman, as Mr. Lang pointed
17 out that document has already been entered into
18 evidence as Defendant's Exhibit Number 4. So please
19 take a look at that and tell me again, now, what
20 type of document is that?

21 A. It's an aerial photograph that has some
22 markings on it delineating what appears to be
23 farmland of some type blocking out from an
24 agricultural standpoint.

25 Q. Okay. And what is the significance of

1 that document in your analysis?

2 A. It also shows the creek from Furtick
3 Road to the river. It's not as good of a picture as
4 the other, but it would reinforce what I'm finding.

5 Q. All right. And does that document have
6 a date on it?

7 A. 1987.

8 Q. Okay. On this document, Mr. Stroman, I
9 want to go back and sort of follow up on something
10 you mentioned. I'm pointing to a very dark
11 perimeter looking line on the right half of the
12 page. Do you know the meaning and purpose of that
13 line?

14 A. From all the maps I've looked at for
15 years and years, it has to do something with
16 agricultural relationship to the farm.

17 Q. And tell me again who prepared -- what
18 agency prepared that map as best you know?

19 A. Soil Conservation Service, U.S.
20 Department of Agriculture. I'm not sure what the
21 name is now.

22 Q. So that dark perimeter line there, in
23 your expert opinion, does that have anything to do
24 with property boundaries?

25 A. No. This is strictly delineating

1 acreages, CRP.

2 Q. What does CRP stand for?

3 A. It's a pine tree program.

4 Q. A pine tree program?

5 A. Conservation Reserve Program, I think
6 they call it, for pine trees.

7 Q. Okay.

8 A. And there's a bunch of scribbling on it.
9 It's got a number 31413E682, which is consistent
10 with numbering they use on farm mapping.

11 Q. Farm mapping?

12 A. Mm-hmm.

13 Q. All right. I want to show you this next
14 document, and it's also a two-page document, and ask
15 you if you recognize this document.

16 A. Yes. It's a 1999 Forestry Commission
17 aerial photograph that I got from the Forestry
18 Commission.

19 Q. Would that be a matter of public record?

20 A. Yeah.

21 Q. And is it a document you used in your
22 analysis?

23 A. Yes.

24 MR. WILLIAMS: All right. Let me offer
25 that into evidence. On this one, let's do -- what's

1 the next number?

2 THE COURT REPORTER: 97.

3 MR. WILLIAMS: 97 and 97A, if it's
4 admitted.

5 THE COURT: That's not one of the same
6 ones you put in through Mr. Jones?

7 MR. WILLIAMS: No, sir. No, sir. It's
8 just a little different.

9 (PLF. EXHS. 97 and 97A in evidence.)

10 BY MR. WILLIAMS:

11 Q. Okay, Mr. Stroman. Take another look at
12 that, and I believe you said it's a Forestry
13 Commission aerial?

14 A. Right.

15 Q. And what is the date of that photograph?

16 A. 1999.

17 Q. And what is the significance of -- is
18 that -- is it a duplicate photograph or why are we
19 looking at two pages?

20 A. They've got two different scales and one
21 is a lot clearer. That's the best I can say.

22 Q. All right. Which one is the clearer
23 one? 97 or 97A?

24 A. 97.

25 Q. All right. And tell us what you see in

1 that photograph that is significant in your
2 analysis.

3 A. It also shows the run of Dean Swamp
4 Creek from Furtick Road toward the river, but it
5 doesn't go all the way on 97. And 97A goes all the
6 way to the river but it's not as clear.

7 Q. Okay. Are those two photographs, the
8 location of Dean Swamp Creek, is that consistent
9 with your plat?

10 A. Yes. Can I add something on that?

11 Q. Sir?

12 A. Can I add something?

13 Q. Sure.

14 A. On 97 you can see what I call the little
15 farm road where someone has been building access
16 through the bottom area.

17 Q. Yes, sir.

18 A. And which is in the area of all that
19 diversion.

20 Q. All right. Now, when you say it's an
21 area of diversion, for clarity on the record the
22 area that you just pointed to on that photograph,
23 where would be the corresponding area on this
24 diagram that we've been using throughout the trial?

25 A. Because of the scaling it's hard to

1 pinpoint exactly where.

2 Q. Yes, sir.

3 A. Can I use my map?

4 Q. Sure, either one.

5 A. All right. This little Woods Road here
6 is Woods Road here. And you can see beside it where
7 they dug a ditch to pile to have higher land beside
8 it.

9 Q. You can tell that from looking at that
10 photograph?

11 A. And knowing what's there. Having walked
12 it and seen it you can tell what it is. I mean, you
13 can see it, it's visible on this photograph.

14 Q. So is that photograph --

15 A. Had I not been on the ground, I couldn't
16 make that statement.

17 Q. All right.

18 A. But the ditch was dug all through here
19 and piled up and probably additional dirt brought
20 in, because there's a huge pipe right here where the
21 old rail --- run of the creek came across that
22 improved area for access.

23 Q. Now, for the record, I want to point out
24 that on your plat, which is displayed on the easel,
25 you are pointing to a slashed road line labeled

1 Woods Road?

2 A. Correct.

3 Q. All right. So is that photograph that
4 you're looking at, as Plaintiff's Exhibit 97,
5 consistent with what you have on your plat?

6 A. Yes.

7 Q. Is it consistent with what you observed
8 on the ground?

9 A. Yes.

10 Q. Okay.

11 MR. LANG: What exhibit number was that?
12 I'm sorry.

13 MR. WILLIAMS: That was 97 and 97A.

14 THE COURT: Those are without objection,
15 Mr. Lang?

16 MR. LANG: Without objection.

17 BY MR. WILLIAMS:

18 Q. I want to show you the next document,
19 Mr. Stroman, and ask if you recognize that document.

20 A. Yes.

21 Q. Generally, what is that?

22 A. It's a forest map prepared for Mr. Pat
23 Williams of 1,074 acres prepared by Westvaco.

24 Q. Is that a document you used in your
25 analysis?

1 A. Yes.

2 MR. WILLIAMS: All right. Let me offer
3 that into evidence.

4 MR. LANG: No objection.

5 THE COURT REPORTER: 98.

6 MR. WILLIAMS: Would you do 98 and 98A,
7 please? Just a two-page document.

8 THE COURT: 98 and 98A.

9 (PLF. EXHS. 98 and 98A in evidence.)

10 BY MR. WILLIAMS:

11 Q. Could you, please, take another look at
12 these two pages, Plaintiff's Exhibit 98 and 98A,
13 Mr. Stroman?

14 MR. LANG: Your Honor, if my client
15 could be excused.

16 THE COURT: Oh, sure. And you don't
17 need to keep asking that as long as, Mr. Lang,
18 you don't want to stop.

19 MR. WILLIAMS: Let us know if you want
20 us to stop.

21 MR. LANG: I will.

22 BY MR. WILLIAMS:

23 Q. 98 and 98A, Mr. Stroman. Do you see a
24 date on those?

25 A. I think September of 2000, if I'm

1 reading -- EWS09/00.

2 THE COURT REPORTER: I'm sorry. Can you
3 read the number again?

4 THE WITNESS: EWS09/00. I think that's
5 the date saying 2000. I have it in my other notes
6 that it's a 2000 map.

7 BY MR. WILLIAMS:

8 Q. All right, sir. And what about the
9 second page of that? Do you see a date on that?

10 A. It's the same map with an aerial
11 photograph behind it overlaid -- underlaid.

12 Q. All right. And what is the significance
13 of those two pages in your analysis?

14 A. It shows a run of Dean Swamp Creek and
15 Furtick Road to the river, same general geom --
16 geometry as all of the other aeriels we found.

17 Q. And do both of these pages include a
18 depiction of Dean Swamp Creek?

19 A. Yes.

20 Q. Is there any difference in the two
21 depictions on the two pages?

22 A. In the creek?

23 Q. Sir?

24 A. No, the creek is shown the same.

25 Q. Okay.

1 A. It's the same map, just with an aerial
2 overlaid onto an aerial photograph so you can see
3 the features of the ground better.

4 Q. I see. And is the depiction of Dean
5 Swamp Creek on those two pages consistent with your
6 plat?

7 A. Yes.

8 MR. WILLIAMS: Okay. That's it on that
9 one. Thank you. 13.

10 Q. I want to show you another document,
11 Mr. Stroman, and ask if you recognize that document.

12 A. Yes.

13 Q. What is that document, generally?

14 A. 2002 proposed timber sale map of the
15 same property that was on the preceding map.

16 Q. Where did you get that map?

17 A. I'm not sure where I got this from. I
18 think I probably got this from Mr. Williams because
19 it's a proposed timber sale that he probably had
20 prepared.

21 Q. Do you know who prepared it?

22 A. (Reading.) I don't know, but looking at
23 the graphics and the delineations of the roads it
24 appears to be exactly like the other maps. And he
25 was dealing with Westvaco, so I would surmise it's a

1 Westvaco proposal if that's who was doing the timber
2 for him.

3 Q. All right, sir. Did you use this as
4 part of your analysis of your survey work?

5 A. Yes.

6 MR. WILLIAMS: All right. I would offer
7 that into evidence.

8 MR. LANG: No objection.

9 MR. WILLIAMS: And, again, it's a
10 two-page document so let's do...

11 THE COURT REPORTER: 99.

12 MR. WILLIAMS: 99 and 99A, if that's
13 okay.

14 THE COURT: 99 and 99A, without
15 objection.

16 (PLF. EXHS. 99 and 99A in evidence.)

17 BY MR. WILLIAMS:

18 Q. Now, looking at 99 and 99A, Mr. Stroman,
19 what's the significance of those documents in your
20 analysis?

21 A. It is a continue -- it's just another
22 map showing what we have been finding as to the
23 location of Dean Swamp Creek and what the timber
24 people for Mr. Williams was using as the property
25 line.

1 Q. Okay. Are those depictions consistent
2 with your plat?

3 A. Yes.

4 Q. I want to show you the next document
5 and, for the benefit of the Court and Mr. Lang, I
6 believe the top photograph probably is largely
7 duplicative but the significance I think is the
8 second page. So, with that, would you look at that
9 and see if you recognize that?

10 A. Yes. It's an aerial photograph 2006.

11 Q. Do you know the source of that
12 photograph?

13 A. I believe it is a copy of one of the
14 preceding ones, and I don't remember where it came
15 from. Could I see...

16 THE COURT: Which one? The previous
17 one?

18 THE WITNESS: That one.

19 THE COURT: I'm handing him Number 97,
20 Mr. Lang.

21 THE WITNESS: It's a 1999 Forestry
22 Commission map.

23 BY MR. WILLIAMS:

24 Q. All right. Is that a map --

25 A. This one is marked out 2006, which tells

1 me that I got it from the Forestry people and this
2 is what we were using in 2006.

3 Q. Okay. And is that an aerial that would
4 have been available in public records?

5 A. Yes.

6 Q. Did you use it in your analysis?

7 A. Yes.

8 Q. And how about the second page of that?

9 A. It's a photograph of the concrete
10 retaining wall and the lower section of that tree
11 house.

12 Q. Did that photograph, the things
13 depicted, did you see those yourself?

14 A. Yes.

15 Q. Did you use those in your analysis?

16 A. Yes.

17 MR. WILLIAMS: Okay. Let me offer these
18 into evidence.

19 MR. LANG: No objection.

20 THE COURT REPORTER: Do you want it
21 marked 100 and 100A?

22 MR. WILLIAMS: Please.

23 THE COURT: 100 and 100A offered without
24 objection.

25 (PLF. EXHS. 100 and 100A in evidence.)

1 BY MR. WILLIAMS:

2 Q. Mr. Stroman, take another look at 100
3 and 100A, please, and tell me the significance of
4 those two pages.

5 A. It just continues to show the location
6 of the creek that's been used on the mapping by
7 other agencies as to the location of that creek
8 and...

9 Q. How do the two pages fit together?

10 A. How do they fit together? I've noted on
11 the aerial photograph the approximate location of
12 the concrete wall which is shown in the picture.

13 Q. Okay. Any other significance about
14 those two?

15 A. No. It just continues to confirm what
16 we've been finding.

17 Q. All right. Thank you. Take a look at
18 this document, please, and see if you recognize
19 that.

20 A. It's a copy of the Orangeburg County Tax
21 Map Number 3 that shows Parcel 6.

22 Q. And who's identified as an owner?

23 A. This is Mr. Smith's property. It's
24 Parcel 6 on the map. 363.41 acres. This was
25 printed off of the records in August 2012.

1 Q. And I just mention I know that we've
2 already put a copy of that in evidence and if --

3 MR. WILLIAMS: Louis, I see you're
4 looking. If you find it we can -- he can testify
5 from that one.

6 MR. LANG: Well, I mean, I know I --

7 MR. WILLIAMS: I --

8 MR. LANG: I'm sorry. I didn't mean
9 to --

10 MR. WILLIAMS: Yeah, I do, too. But if
11 it's okay he can just testify from this and I just
12 won't offer it into evidence.

13 THE COURT: He can reference it as a
14 Defendant's Exhibit and you can put it on the record
15 you're going to find it later.

16 MR. LANG: Right. We'll find it, Judge.
17 We've got enough copies and stuff already. We don't
18 need a copy of this.

19 BY MR. WILLIAMS:

20 Q. Okay. Taking a look at that,
21 Mr. Stroman, what's the date of that tax map?

22 A. The map itself I'm not sure, but I
23 printed it in August 2012 from the County records.

24 Q. And I believe you said that is a map of
25 Defendant Smith's parcel?

1 A. Correct.

2 Q. The property line that is in controversy
3 in this lawsuit, is that property line shown on that
4 tax map consistent with your plat?

5 A. Yes. It shows it, just like all the
6 other maps, where it enters the Edisto River above
7 the roads and oxbows and so forth.

8 Q. All right. Did you use this in your
9 analysis?

10 A. Yes.

11 Q. Okay. And --

12 MR. WILLIAMS: Thank you, Mr. Lang.

13 Q. The document you're looking at I believe
14 is a duplicate of Plaintiff's Exhibit Number 60. So
15 you can look and see if you see any significant
16 difference in them.

17 A. No, this is just the Orangeburg County
18 data on that parcel shown on the map. I did notice
19 a difference in -- may I see that one more time?

20 MR. WILLIAMS: Did you happen to see the
21 next one? Were they adjacent?

22 THE WITNESS: On the brief description
23 on the map data it says 363.41 acres.

24 BY MR. WILLIAMS:

25 Q. It says how many?

1 A. 363.41.

2 Q. Yes, sir.

3 A. On the back-up data they're listing the
4 acreage as 400.

5 THE COURT: By back-up data, which one
6 are you referring to?

7 THE WITNESS: It was attached to this
8 map.

9 THE COURT: By back-up data, you're
10 referring to Number 60?

11 THE WITNESS: Correct.

12 BY MR. WILLIAMS:

13 Q. Well, if there is a difference in the
14 two maybe we ought to go ahead and enter the other
15 one as well.

16 A. I don't think there's any difference
17 because the other sheets here...

18 Q. They do correspond?

19 A. Correct. Here's a copy of 60.

20 Q. All right. So that's Plaintiff's Number
21 59 that we were talking about -- oh, excuse me,
22 Plaintiff's Number 60.

23 Now I'm going to show you what's been
24 marked as Plaintiff's Exhibit 59 and ask you to look
25 at that.

1 A. This is Orangeburg County data on
2 Mr. Williams' property that shows the acreage of
3 848.3.

4 Q. And what is the date on that document,
5 Mr. Stroman?

6 A. This is the assessment year 2011. I
7 printed it in September of 2012.

8 Q. Does it include a tax map?

9 A. Yes. It shows the parcel on -- as a map
10 of Orangeburg County.

11 Q. And the property line that is in
12 litigation -- is the property line on that tax map
13 consistent with your plat?

14 A. Yes.

15 Q. Thank you. I want to show you --

16 MR. WILLIAMS: I believe in our notebook
17 this is 17, Louis.

18 Q. I want to show you this next document,
19 Mr. Stroman, and ask if you recognize that.

20 A. Yes. This is a map I prepared -- it's
21 not a physical survey. It's a map prepared from
22 physical surveyors' aerial photographs, and I
23 superimposed property lines onto the aerial
24 photograph and calculated the acreages. I show Dean
25 Swamp Creek as I have platted it on my plat.

1 Q. Let me ask. Is this a document you
2 prepared?

3 A. Yes.

4 Q. In your work on this case?

5 A. Yes.

6 MR. WILLIAMS: Okay. I would offer this
7 into evidence.

8 MR. LANG: No objection.

9 THE COURT: What number is this?

10 THE COURT REPORTER: 101.

11 (PLF. EXH. 101 in evidence.)

12 BY MR. WILLIAMS:

13 Q. Now, take another look at that,
14 Mr. Stroman, and elaborate on what that is, please.

15 A. After we located the creek and used all
16 these maps to come up with our final plat, the
17 question came up about, well, what is the acreage
18 out there? Well, instead of doing a physical survey
19 of both properties, we did this acreage calculation
20 very similar to the way the County GIS mapping
21 people do. And the methods and procedures used now
22 are pretty accurate. There are variances because
23 you are locating rivers and property lines based on
24 visible transitions that show up on the map.

25 Having delineated the property lines we

1 calculated the acreage in each tract and came up
2 with 874 for Mr. Williams and 376 for Mr. Smith, all
3 of which is consistent with what Orangeburg County
4 had -- not exact but it's consistent. It's an
5 independent approach to it. To scale the photograph
6 we used physical GPS points.

7 Q. What are physical -- for us people who
8 are not surveyors, what are physical GPS points?

9 A. Control points that would show up
10 visibly on the aerial that you survey and then you
11 know the exact relationship -- mathematical
12 relationship of angles and distances. And from that
13 you can scale the photograph to get accuracy in what
14 they're doing. So you end up with a really good
15 estimate on the acres. As I was saying, the GIS
16 people are using it now and getting pretty good at
17 it.

18 Q. Now, I know that that's not a full
19 perimeter survey.

20 A. Correct. Definitely not.

21 Q. Elaborate a little bit on the -- on the
22 accuracy of a full perimeter survey compared to what
23 you did -- the calculations you did there.

24 A. Well, this is not accurate by no means.
25 Like I say, it's an intelligent estimate to the

1 acreage. Physical survey, you're going to have
2 mathematical checks as to the precision of your work
3 so you can calculate the exact accuracy of your
4 physical survey. On this you really can't get --
5 the only way to know how accurate it is is to do a
6 physical on-the-ground survey and then compare it.
7 That's the only way I would know to do it.

8 Q. Mm-hmm. Okay.

9 A. And I don't think anybody else has any
10 other procedures, unless we had access to some of
11 the military GPS stuff.

12 Q. Sure. In your experience does this
13 method provide -- elaborate a little bit on the
14 level of accuracy of this method.

15 A. Well, let me compare it this way. A lot
16 of the surveys we've been doing the last eight, ten
17 years the County has used their maps. I think --
18 let me back up. 2007 is when Orangeburg County
19 really got some good aerial maps that were scaled.
20 And from that they did exactly what I did here.
21 They drew property lines based on surveys that were
22 superimposed onto the map, physical surveys based on
23 visible field lines, fence lines, roads, whatever
24 that they could see. From that -- I got lost where
25 I was going.

1 Q. You were saying that in 2007 the County
2 started using --

3 A. Oh. The survey we're doing, we compared
4 acreage. We get from -- an accurate physical survey
5 to what the County had projected and it's getting
6 very close. I would say, you know, a 400-acre
7 tract -- there again, though, it depends on how many
8 really visible features they have. If it's all
9 roads, they're going to be real close because the
10 roads are highly visible on the maps and the maps
11 are accurate. If you've got a lot of areas that run
12 through woods that you really can't see and they
13 don't have a physical survey to show them where to
14 put it in relation to some roads that they can see,
15 then they have to estimate it.

16 But we found that our surveys, the
17 acreages -- the tax people's acreages are real close
18 to our physical surveys. A 400-acre tract might --
19 they might have 389 or 410 but they're going to be
20 close, where before they were iffy because they were
21 just guessing.

22 Q. I see.

23 A. And their purpose way back was to get
24 your tax money, not to tell you the acreage.

25 Q. Thank you, sir.

1 MR. WILLIAMS: 18.

2 Q. I want to show you this next document,
3 Mr. Stroman, and ask if you recognize that.

4 A. Yes. Orangeburg County aerial
5 photograph 2007 flight.

6 Q. Where did you get that?

7 A. The Orangeburg GIS office.

8 Q. Is it a public record?

9 A. Yes.

10 Q. And did you use that in your analysis?

11 A. Yes.

12 MR. WILLIAMS: Let me offer that into
13 evidence.

14 MR. LANG: No objection.

15 THE COURT REPORTER: 102.

16 THE COURT: 102, admitted without
17 objection.

18 (PLF. EXH. 102 in evidence.)

19 BY MR. WILLIAMS:

20 Q. Take another look, too, Mr. Stroman.
21 The first thing I want to ask you, there's some
22 unusual markings going across the bottom of the
23 page. Is that part of the photograph or is that
24 just a defect in the printing?

25 A. Defect in the printer. Orangeburg

1 County had ordered a part but it had not come in,
2 and I needed information to put together at a
3 certain time so I used what I had.

4 Q. Sure. Tell us the significance of that
5 document, please.

6 A. It shows the boundary lines as
7 determined by Orangeburg County for Mr. Williams'
8 property.

9 Q. All right. Does it show anything else
10 of significance?

11 A. Well, the creek that shows -- generally,
12 just like all the other maps, it shows they're using
13 the same location which is consistent with my
14 survey.

15 Q. All right, sir. And tell me again the
16 date on that.

17 A. It's a 2007 aerial photograph, but this
18 is what the County had available I think last year.

19 Q. All right, sir. Let me show you this
20 next document, Mr. Stroman, and ask if you recognize
21 that.

22 A. Yes. This is a copy of 19 -- I thought
23 we've been over this one.

24 Q. Did we already go over that one?

25 A. I thought so. 1979 DNR quadrangle

1 sheet.

2 Q. Okay. Let me withdraw that. I think
3 we've gone over this one. This is in black and
4 white and the other one was in color.

5 Now, do you recognize that document?

6 A. Yes.

7 Q. What is that?

8 A. It's my final plat representing -- it's
9 my plat representing the property line as the
10 results of all of my research.

11 Q. All right, sir. Is that the same plat
12 as we have on display up here on the easel?

13 A. Yes.

14 Q. Okay. Has that plat been recorded, to
15 your knowledge?

16 A. Yes.

17 Q. All right. Did you sign that plat?

18 A. Yes.

19 Q. Did you put your official identification
20 on it?

21 A. Yes.

22 Q. Do you have any doubts or hesitation
23 about that plat?

24 A. None at all. I mean, like I said from
25 the beginning, in order for a surveyor to establish

1 the property line something has to tell him where
2 that line belongs. After reading the deeds, the
3 descriptions in the deeds, the acreages, all of the
4 aerial mapping by numerous Government public
5 agencies, it's totally consistent with all I found.
6 I couldn't find anything that varied tremendously
7 from this location.

8 And using the physical creek bed that
9 was very visible, as Mr. Jones more professionally
10 described than I can, from my Points A to B as a
11 physical creek bed to that cleared area. And from
12 that area it's a lot of grading of the creeks and
13 hard to really say where that main run was years ago
14 because that section of the swamp I would say floods
15 more often than the upper section. So with all that
16 water, it's not going to be a dominant run.

17 So the lower section from B to C to the
18 river, which is just above those two oxbows that's
19 shown on all the photographs, I reconstructed from
20 the geometry derived from all of the aerial mapping.

21 Q. Okay. You have on this plat,
22 Mr. Stroman, some sort of qualifying language. For
23 instance, I see it says a plat of disputed property
24 line and there may be some other similar language
25 like that. Explain what that means and the reason

1 you put that language on there.

2 A. Because the adjacent owner was -- the
3 whole project started because of the dispute between
4 Mr. Williams and Mr. Smith as to the way the
5 property line was, so it's a disputed property line.

6 Q. Does that language, that qualifying
7 language, does it reflect on your confidence in the
8 plat -- the accuracy of the plat?

9 A. No, not at all. I'm only saying that
10 Mr. Smith objects to the line.

11 MR. WILLIAMS: Okay. I don't believe we
12 actually have this into evidence yet, so I would
13 offer it into evidence.

14 MR. LANG: No objection.

15 THE COURT REPORTER: 103.

16 THE COURT: 103 is the plat prepared
17 by -- the boundary line prepared by Mr. Stroman and
18 surveyors.

19 (PLF. EXH. 103 in evidence.)

20 MR. WILLIAMS: And, Your Honor, I'm just
21 afraid -- this is a little bit sort of out of order
22 but I'll forget. Can we go ahead and offer this
23 diagram that several witnesses have marked on into
24 evidence?

25 THE COURT: One of them or both of them?

1 MR. WILLIAMS: I guess both of them,
2 Your Honor. I would -- the first one is -- just for
3 identification, the very top left-hand language it
4 says Smith Line Table Parcel 1. That's just to
5 identify it up here.

6 MR. LANG: Actually, Your Honor, what
7 that is is a portion of the Steadman survey.

8 MR. WILLIAMS: But this has been marked
9 on by numerous witnesses, so I would actually like
10 it marked into evidence.

11 MR. LANG: Oh, I understand that. I
12 don't have any objection to that. But just for
13 purposes of the record, that's the Steadman --

14 THE COURT: Wait. I've been waiting for
15 you to put that in. I was wondering if you were
16 going to forget or not.

17 MR. WILLIAMS: I was worried about
18 forgetting.

19 THE COURT: The colors you've got --
20 both of you have used it, virtually every witness
21 has referred to it in one way or another and it's
22 got different colors on it. I think it needs to be
23 in evidence.

24 MR. WILLIAMS: Yes, sir.

25 MR. LANG: I don't have an objection to

1 that, Your Honor. I assumed it's coming in. It's
2 somewhat demonstrative of testimony and things of
3 that nature.

4 THE COURT: Well, you've used it as a
5 demonstrative thing and it's also -- it's consistent
6 with Number 103, I think, which is marked as far as
7 the line. Then you've got all these other drawings
8 I think is relative to the testimony of other
9 witnesses already. So you want to make this 104?

10 MR. WILLIAMS: That's good, Your Honor.

11 THE COURT: That will be 104.

12 (PLF. EXH. 104 in evidence.)

13 MR. WILLIAMS: And then, Your Honor, I
14 would also offer into evidence Mr. Stroman's plat
15 that's on display on the board up here, just because
16 it has some markings and so forth that witnesses put
17 up here.

18 THE COURT: And what we're going to call
19 106 is simply a blowup of 103 with some markings
20 made -- circles or whatnot made by a couple of
21 witnesses; right?

22 MR. WILLIAMS: That's right.

23 THE COURT: Okay.

24 THE COURT REPORTER: It's 105.

25 MR. WILLIAMS: I believe it's 105.

1 THE COURT: 105? Okay.

2 (PLF. EXH. 105 in evidence.)

3 BY MR. WILLIAMS:

4 Q. Mr. Stroman, we have certainly been
5 through a substantial number of documents. How
6 would you characterize the way these documents work
7 together, the interplay, how you use these
8 documents?

9 A. I used the documents to determine where
10 the Dean Swamp Creek was located, especially in the
11 area where I could not see the old run -- old creek
12 bed. Mr. Smith's deed calls for Dean Swamp Creek as
13 a line, so it was imperative to find Dean Swamp
14 Creek. From the physical creek bed and all of these
15 maps, which were generally consistent with each
16 other and were prepared by different agencies, it
17 confirmed that that old creek bed was the run of
18 Dean Swamp Creek -- which Dean Swamp Creek is not
19 there now because of the diversion activities that
20 took place whenever.

21 I found nothing to really -- nothing to
22 indicate that the creek was located at any other
23 location all the way back to 1913, I believe, the
24 oldest map I found.

25 The vagueness, Mr. Smith -- Mr. Smith's

1 deed called for the creek, Mr. Williams' deed just
2 said Dean Swamp. That's really not unusual, we've
3 found those situations before. I believe if you
4 took those deed descriptions further back, some of
5 the earlier deeds on the Smith property would say
6 Dean Swamp Creek.

7 Q. On the Smith or Williams?

8 A. Williams' side of the property. Now,
9 I'm going back five years in all these deeds. But
10 I'm pretty sure if you go back you'll find a
11 description -- somewhere back through that land
12 description on his side, Mr. Williams' side, that's
13 referred to the run of the creek but -- I'm not
14 positive but I'm pretty sure that's what it was.

15 But, nonetheless, even if it didn't the
16 preponderance of the evidence of the maps and the
17 location, there was no question that this has got to
18 be where Dean Swamp Creek was. So I guess the real
19 question -- from a survey standpoint that's the
20 property line based on everything I found to tell
21 me, as a surveyor, where that line belongs and what
22 I physically found on the ground.

23 You know, I still don't know how --
24 especially with the acreages coming out so close to
25 the deeded acreages, how there can be such